

1 Tuesday, 19 March 2024

2 [Open session]

3 [The accused entered the courtroom]

4 [The Accused Thaci and Krasniqi appeared
5 via videolink]

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

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

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

12 PRESIDING JUDGE SMITH: Thank you.

13 For the record, I note that Mr. Thaci and Mr. Krasniqi are
14 attending today's hearing via videolink. Messrs. Veseli and Selimi
15 are present in court.

16 Today, we will start hearing the evidence of Prosecution
17 Witness W04446.

18 Madam Court Usher, please bring the witness in.

19 [The witness entered court]

20 PRESIDING JUDGE SMITH: Good morning, Witness.

21 THE WITNESS: [Interpretation] Good morning.

22 PRESIDING JUDGE SMITH: Mr. Witness, can you hear me?

23 THE WITNESS: [Interpretation] Yes.

24 PRESIDING JUDGE SMITH: The usher has provided you with the text
25 of a solemn declaration which you are asked to take pursuant to

1 Rule 141(2) of our rules. Please read the document aloud.

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

6 WITNESS: W04446

7 [The witness answered through interpreter]

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

9 THE WITNESS: [Interpretation] Thank you.

10 PRESIDING JUDGE SMITH: Witness, today we will start your
11 testimony which is expected to last approximately four hours. As you
12 may know, the Prosecution will ask you questions first. Once they
13 are finished, the Defence has the right to ask you questions, and
14 then members of the Panel might also ask questions of you.

15 The Prosecution estimate for your examination by them is one
16 hour. The Defence estimates that it will need three hours and
17 15 minutes. As regards each estimate, we hope that counsel will be
18 judicious in the use of their time. The Panel may also allow
19 re-examination by the Prosecution if conditions are met.

20 Witness, please try to answer the questions clearly with short
21 sentences. If you don't understand a question, feel free to ask
22 counsel to repeat the question or tell them you don't understand and
23 they will clarify it.

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

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

5 Please also speak into the microphone and wait five seconds
6 before answering a question, and then speak at a slow pace to allow
7 the interpreters to catch up.

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

12 Please stop talking if I ask you to do so and also stop talking
13 if you see me raise my hand. These indications mean that I need to
14 give you an instruction. If you feel the need to take breaks, please
15 let us know and an accommodation will be made.

16 We begin with the Prosecution's questions of you. They are
17 seated on your left. Please give them your attention.

18 Madam Prosecutor, you have the floor.

19 MS. IODICE: Thank you, Your Honour. And good morning.

20 Examination by Ms. Iodice:

21 Q. Good morning, Witness. My name is Vega Iodice, and today I will
22 be asking you questions on behalf of the SPO. As explained during
23 our last meeting, rather than asking you questions about every
24 relevant issue you may have information about, it may be possible to
25 admit some of your prior statements containing such information into

Witness: W04446 (Private Session)

Page 13317

Examination by Ms. Iodice

1 evidence. There are a number of procedural steps to follow in order
2 to do so. Before turning to these, I will first establish your
3 identity.

4 MS. IODICE: Your Honour, if we could please move into private
5 session to obtain some of the identifying details of the witness.

6 PRESIDING JUDGE SMITH: For the protection of the witness,
7 please take us into private session, Madam Court Officer.

8 [Private session]

9 [Private session text removed]

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24 [Open session]

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

1 PRESIDING JUDGE SMITH: [Microphone not activated].

2 MS. IODICE:

3 Q. Witness, you have given statements in the past, including to the
4 SPO, and you were allowed to review those statements in preparation
5 of your testimony. Today we will seek to tender your statements into
6 evidence.

7 MS. IODICE: Could the Court Officer please bring up
8 ERN 011022-011029 RED2, not for public broadcast.

9 Q. And, Witness, we're now in open session, so please do not
10 mention any of your identifying details. Don't mention your name or
11 any detail that might identify you. Okay?

12 MS. IODICE: Can we go to page --

13 PRESIDING JUDGE SMITH: Just a second. You have to answer "yes"
14 or "no." You can't nod your head, Witness.

15 THE WITNESS: [Interpretation] Yes.

16 PRESIDING JUDGE SMITH: [Microphone not activated].

17 MS. IODICE: Can we go to page -- to the first page in English
18 and page 5 in Albanian, which is 011026.

19 Q. Witness, looking at the document on your screen, do you
20 recognise this as the statement you gave before the Special
21 Prosecution Office of the Republic of Kosovo?

22 A. Yes.

23 MS. IODICE: Can we now go to page 4 in English, that's page
24 011025, not for public broadcast. And if we can scroll towards the
25 end of the page where the signature blocks are.

1 Q. Witness, do you recognise your signature on this document?

2 A. Yes, I do.

3 MS. IODICE: Could the Court Officer now bring up ERN

4 066675-TR-AT Part 1 RED2.

5 Q. Witness, do you recall being interviewed by the SPO in 2019?

6 A. Yes.

7 Q. And do you remember reading these statements in your language
8 last week?

9 A. Yes.

10 Q. Do you recall that you had the opportunity to make corrections
11 and clarifications to your statements?

12 A. Yes.

13 Q. Do you recall that those corrections were written down in a note
14 and were read back to you?

15 A. Yes.

16 Q. Do you confirm that what was read back to you in that note
17 reflects your changes fully and accurately?

18 A. Yes, of course.

19 Q. Now, if we include all the corrections and clarifications you
20 made last week, is the information in your two statements accurate
21 and truthful to the best of your knowledge and belief?

22 A. Yes.

23 Q. If you were asked the same questions today about the same
24 events, would your answers be the same?

25 A. Yes.

1 MS. IODICE: Your Honour, having fulfilled the Rule 154 criteria
2 and in accordance with decision F02117, paragraph 58(a) and (b), we
3 would like to tender the statements into evidence. And with your
4 leave, I would like to read the ERN numbers.

5 PRESIDING JUDGE SMITH: Yes, go ahead.

6 MS. IODICE: The statements are ERN 011022-011029 RED2,
7 066675-TR-ET Part 1 RED2, 066675-TR-ET Part 2 RED2, and 066674-066674
8 as an associated exhibit to the SPO interview, together with
9 Preparation Note 1, which is ERN 120135 to 120140.

10 PRESIDING JUDGE SMITH: Any objections to the tender from the
11 Thaci Defence?

12 MR. MISETIC: No objection.

13 MS. ROWAN: No, thank you.

14 PRESIDING JUDGE SMITH: Thank you.

15 MR. ROBERTS: Nothing, Your Honour.

16 MR. BAIESU: No.

17 PRESIDING JUDGE SMITH: All right. ERN 011022 to 011029 RED2 is
18 admitted. ERN 066675-TR-ET Part 1 RED2 is admitted. The prep note
19 of 066675-TR-ET Part 2 RED2 -- no, I'm sorry, that's not the prep
20 note. The prep note is ERN 120135 to ERN 120140, and the associated
21 exhibit is 066674 to 066674. Those are all admitted. You may give a
22 number.

23 THE COURT OFFICER: Thank you, Your Honours.

24 So for the first statement 011022 to 011029 RED2 will be
25 assigned Exhibit P1056.

Witness: W04446 (Open Session)

Page 13321

Examination by Ms. Iodice

1 The second statement, 066675-TR-ET Part 1 RED2, together with
2 the Albanian version of it, will be assigned Exhibit P1057.1. Part 2
3 of that same ERN will be Exhibit P1057.2.

4 Associated Exhibit 066674 to 066674 will be assigned
5 Exhibit P1058.

6 And the Preparation Note, 120135 to 120140, will be assigned
7 Exhibit P1059.

8 And just to confirm, Your Honours, these should all be
9 classified confidential.

10 PRESIDING JUDGE SMITH: Do you wish to remain confidential as
11 far as all of the documents?

12 MS. IODICE: Yes, Your Honour.

13 PRESIDING JUDGE SMITH: All right.

14 You may proceed.

15 MS. IODICE: Your Honour, on 15 March, the SPO submitted the
16 proposed summary for this witness, now admitted 154 statement, to the
17 Panel, Defence, and Victims. We have not received any objections, so
18 with your leave I would like to read the summary in open session.

19 PRESIDING JUDGE SMITH: You may proceed.

20 MS. IODICE: Thank you.

21 W04446 learned from a relative that his brother had been
22 arrested by the KLA. When W04446 went to look for his brother, KLA
23 soldiers told him to speak to a KLA commander who confirmed that
24 W04446's brother was there and that his case was being investigated
25 as the KLA believed that he was a collaborator of the occupier.

Witness: W04446 (Private Session)

Page 13323

Examination by Ms. Iodice

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Witness: W04446 (Private Session)

Page 13324

Examination by Ms. Iodice

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Witness: W04446 (Private Session)

Page 13325

Examination by Ms. Iodice

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Witness: W04446 (Private Session)

Page 13326

Examination by Ms. Iodice

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Witness: W04446 (Private Session)

Page 13327

Examination by Ms. Iodice

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Witness: W04446 (Private Session)

Page 13328

Examination by Ms. Iodice

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Witness: W04446 (Private Session)

Page 13329

Examination by Ms. Iodice

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Witness: W04446 (Private Session)

Page 13330

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13331

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13332

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13333

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13334

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13335

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13336

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13337

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13338

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13339

Cross-examination by Mr. Roberts

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4 [Open session]

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

6 PRESIDING JUDGE SMITH: Thank you. We'll take a ten-minute
7 break.

8 --- Recess taken at 10.02 a.m.

9 --- On resuming at 10.11 a.m.

10 PRESIDING JUDGE SMITH: You may bring the witness in,
11 Madam Court Officer.

12 MR. ROBERTS: Your Honour, if we could just go back into private
13 session as well.

14 PRESIDING JUDGE SMITH: Yes, please take us back into private
15 session for the protection of the witness.

16 [Private session]

17 [Private session text removed]

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Witness: W04446 (Private Session)

Page 13340

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13341

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13342

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13343

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13344

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13345

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13346

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13347

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13348

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13349

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13350

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13351

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13352

Cross-examination by Mr. Roberts

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Witness: W04446 (Private Session)

Page 13353

Cross-examination by Mr. Miletic

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Witness: W04446 (Private Session)

Page 13354

Cross-examination by Mr. Miletic

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Witness: W04446 (Private Session)

Page 13355

Cross-examination by Mr. Misetić

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Witness: W04446 (Private Session)

Page 13356

Cross-examination by Mr. Misetić

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Witness: W04446 (Private Session)

Page 13357

Cross-examination by Mr. Misetić

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Witness: W04446 (Private Session)

Page 13358

Cross-examination by Mr. Miletic

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Witness: W04446 (Private Session)

Page 13359

Cross-examination by Mr. Misetić

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Witness: W04446 (Private Session)

Page 13360

Cross-examination by Mr. Miletic

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Witness: W04446 (Private Session)

Page 13361

Cross-examination by Mr. Misetic

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18 [Open session]

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

20 PRESIDING JUDGE SMITH: We're adjourned until 11.30.

21 --- Recess taken at 11.00 a.m.

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

23 PRESIDING JUDGE SMITH: Madam Court Usher, you can bring the
24 witness back into the court.

25 What's the timeframe, Mr. Misetic?

Witness: W04446 (Open Session)
Cross-examination by Mr. Misetic

Page 13362

1 MR. MISETIC: I would say about a half an hour, 45 minutes.

2 PRESIDING JUDGE SMITH: Okay.

3 Ms. Rowan, how long is your cross going to be?

4 MS. ROWAN: Your Honour, at the moment I'm unlikely to have any
5 questions.

6 PRESIDING JUDGE SMITH: [Microphone not activated].

7 MR. BAIESU: About 15 minutes. About 15 minutes.

8 PRESIDING JUDGE SMITH: [Microphone not activated].

9 [The witness takes the stand]

10 PRESIDING JUDGE SMITH: Witness, we will continue with the
11 questions from Mr. Misetic.

12 You have the floor, Mr. Misetic.

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

14 Q. Witness, picking up where we left off before the break, you
15 visited [REDACTED] Pursuant to In-Court Redaction Order F02189RED. a
number of times; correct?

16 A. Correct.

17 Q. And during those visits, you did not know any of the people
18 present there personally; correct?

19 A. No. They only just showed their names, the names of the two
20 persons; namely, [REDACTED] Pursuant to In-Court Redaction Order
F02189RED.. Only those two
21 persons.

22 Q. And when you say [REDACTED] Pursuant to In-Court Redaction Order
F02189RED. showed you his name --

23 PRESIDING JUDGE SMITH: Mr. Misetic, we are in public session.

24 MR. MISETIC: Oh, I'm sorry.

25 PRESIDING JUDGE SMITH: That was my fault.

Witness: W04446 (Private Session)

Page 13363

Cross-examination by Mr. Miletic

1 Please take us into private session.

2 [Private session]

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Witness: W04446 (Private Session)

Page 13364

Cross-examination by Mr. Misetić

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Witness: W04446 (Private Session)

Page 13365

Cross-examination by Mr. Miletic

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Witness: W04446 (Private Session)

Page 13366

Cross-examination by Mr. Misetić

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Witness: W04446 (Private Session)

Page 13367

Cross-examination by Mr. Miletic

1 [Private session text removed]

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Witness: W04446 (Private Session)

Page 13368

Cross-examination by Mr. Miletic

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Witness: W04446 (Private Session)

Page 13369

Cross-examination by Mr. Miletic

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Witness: W04446 (Private Session)

Page 13370

Cross-examination by Mr. Misetić

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Witness: W04446 (Private Session)

Page 13371

Cross-examination by Mr. Misetić

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Witness: W04446 (Private Session)

Page 13372

Cross-examination by Mr. Miletic

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Witness: W04446 (Private Session)

Page 13373

Cross-examination by Mr. Miletic

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Witness: W04446 (Private Session)

Page 13374

Questioned by the Trial Panel

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Witness: W04446 (Private Session)

Page 13375

Questioned by the Trial Panel

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Witness: W04446 (Private Session)

Page 13376

Questioned by the Trial Panel

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Witness: W04446 (Private Session)

Page 13377

Questioned by the Trial Panel

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Witness: W04446 (Private Session)

Page 13378

Questioned by the Trial Panel

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Witness: W04446 (Private Session)

Page 13379

Procedural Matters

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8 [Open session]

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

10 PRESIDING JUDGE SMITH: [Microphone not activated].

11 --- Luncheon recess taken at 12.11 p.m.

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

13 PRESIDING JUDGE SMITH: Before we start hearing the evidence of
14 Prosecution Witness 4571, the Panel wishes to issue two oral orders.

15 First, the page range assigned to Exhibit P1052, which was
16 admitted into evidence during W02475's testimony.

17 The Panel recalls that on 10 December 2023, the Panel issued its
18 Rule 154 decision, which was F01848, in which it determined, at
19 paragraph 35 and 41, that pages 024855 to 024859 of a report entitled
20 "Roma in the Kosovo Conflict" with ERN 024844 to 024865 were not
21 appropriate for admission pursuant to Rules 138 and 154 as they did
22 not form an indispensable and inseparable part of W02475's statement.

23 The Panel noted, however, that this was without prejudice to the
24 SPO offering these items separately or eliciting additional evidence
25 in relation to those pages.

1 Yesterday, the SPO tendered these pages as part of a larger
2 report without eliciting any additional evidence on the subject
3 matter contained therein. The Panel therefore determines that in
4 line with its decision F01848, there is no reason for pages 024855 to
5 024859 to be admitted at this time.

6 The Panel therefore orders the Registry to remove those two
7 pages from P01052 so that the admitted exhibit reflects only the
8 pages that were found appropriate for admission in F01848.

9 This concludes the Panel's first oral order.

10 Regarding the objection to the use by Judges of documents
11 disclosed to the Defence pursuant to 102(3), the Panel rules as
12 follows.

13 As is apparent from Rule 127(3) and from the Panel's Order on
14 Conduct of Proceedings, the Panel can ask any question it considers
15 relevant to the fulfilment of its responsibilities in particular to
16 establish the truth.

17 Secondly, the rules on which Mr. Misetić sought to rely are
18 binding not on the Panel but on SPO. They are rules of disclosure
19 that regulate *inter partes* communication of information and have no
20 application to the Panel directly. The Panel is not the custodian of
21 the records of either party but can decide to make use of documents
22 that are available to it as a result of the disclosure process.

23 The Panel is, in that regard, no better placed than the Defence
24 and has access to the same material.

25 Thirdly, the Panel notes that Rule 102(3) places the onus upon

1 the Defence to seek disclosure of any document of which they have
2 received notice from the SPO in application of that rule. That
3 regime was intended to benefit the Defence by allowing the Defence,
4 rather than the SPO, to decide what could be relevant to its case.

5 Lastly, consistent with the ruling of the Court of Appeals
6 Panel, the Panel notes that judicial questioning is not subject to
7 any limitation of substance or form but requires the Panel to conduct
8 its questioning fairly.

9 The Panel is satisfied that fairness was guaranteed in this
10 case. First, the documents had been disclosed to the Defence in
11 disclosure Packages 325, 337, 384/388, and was available to the
12 Defence which, by its own accounts, it was able to locate.

13 Secondly, the document, when used, was placed on the screen
14 during questioning so that it was visible to all.

15 Thirdly, the Defence could have asked questions about it if
16 relevant to its case or asked for more time to review that document
17 if necessary.

18 Lastly, the very content of the document should have alerted the
19 Defence to its potential relevance to the witness's evidence as it
20 contained an account pertaining to the fate of that witness's
21 relative about whom the witness testified.

22 Based on the above, the Panel finds that the Thaci objection to
23 the use of Rule 102(3) as a basis for judicial questioning is without
24 merit. However, the Panel has decided to exercise its own discretion
25 to review material which it plans to use with future witnesses.

1 Where the Panel wishes to put to the witness material from the public
2 domain or where it wishes to put to a witness material that was
3 disclosed to the Defence pursuant to Rule 102(3), it will endeavour
4 to give notice of that fact to the parties prior to the commencement
5 of questioning.

6 This concludes the second oral order.

7 We will now start hearing the evidence of Prosecution
8 Witness 4571.

9 And, Ms. Rowan, I see you on your feet. Do you have something
10 to bring up?

11 MS. ROWAN: Your Honour, yes. We notified the Court this
12 morning that there was a matter of law to be raised in advance of
13 this witness's testimony.

14 PRESIDING JUDGE SMITH: [Microphone not activated].

15 MS. ROWAN: I'll be as short as I can.

16 Your Honour, as notified this morning, the objection relates to
17 two documents that the SPO showed this witness in their preparation
18 session conducted at the end of last week. For the record, the two
19 documents in question are ERNs U001-8211 to 8252, and the second
20 document is ERN 099928 to 099955.

21 Your Honour, the objection is twofold. The primary objection is
22 that of want of notice, and the second objection relates to lack of
23 compliance again with Rule 138.

24 In relation to the concerns around want of notice, for clarity,
25 Your Honour, the SPO, with this witness, put to him last week in

1 their preparatory session four documents that they had not previously
2 notified. This objection is confined to two as two of those
3 documents are already exhibits in this case.

4 In our submission, the way that these documents have been dealt
5 with are now -- we are now straying into a situation where the
6 defendant's right to have adequate facilities and time to prepare are
7 being infringed upon, and also that the Order on Conduct of
8 Proceedings is no longer being properly respected by the SPO by the
9 manner in which these documents are being used and preparation
10 sessions are being conducted.

11 In filing 1226, the Conduct of Proceedings clearly states that
12 the SPO is required to notify parties in advance of the documents
13 which they intend to put to a witness. Now, that serves a very clear
14 purpose which is to allow the Defence to identify any issues, to take
15 instructions from their client, to make any investigations that they
16 see fit, and that rule is in place for a reason. But unfortunately
17 that process has now, for all intents and purposes, broke down in
18 this trial.

19 PRESIDING JUDGE SMITH: Can I interrupt you for a moment?

20 MS. ROWAN: Of course.

21 PRESIDING JUDGE SMITH: Have you taken this concern to the SPO
22 and talked to them about it as required by Rule 43 of our Rules on
23 Conduct of the Proceeding?

24 MS. ROWAN: Well, the difficulty, Your Honour, is -- the short
25 answer is no, but the reason is the --

1 PRESIDING JUDGE SMITH: Then why didn't you?

2 MS. ROWAN: Well, the difficulty, Your Honour, is we received
3 yesterday the preparation session notes for this witness in the
4 middle of the afternoon when we were in court. We were then provided
5 with them to review at the end of the court day at 4.30, when the
6 SPO, I assume, will have gone home and all parties would be working
7 out of hours.

8 We then were busy yesterday evening --

9 PRESIDING JUDGE SMITH: So you're just assuming they went home.
10 You didn't really go and try to find out.

11 MS. ROWAN: I didn't go to try and find out, no. That's not
12 something that the Defence took steps to do. We e-mailed the SPO,
13 though, to clarify whether or not they intended to use the documents
14 in question with the witness. We sent that e-mail last night to
15 engage in communication --

16 PRESIDING JUDGE SMITH: [Microphone not activated].

17 MS. ROWAN: We're asking for the SPO not to be permitted to use
18 both of these documents with this witness.

19 PRESIDING JUDGE SMITH: [Microphone not activated].

20 Are you asking for time to further consider these two documents?

21 MS. ROWAN: Our submission is that we've had insufficient time
22 to deal with them.

23 PRESIDING JUDGE SMITH: [Microphone not activated].

24 Are you asking for more time to do that?

25 MS. ROWAN: Would Your Honour allow me to turn my back for a

1 moment?

2 PRESIDING JUDGE SMITH: [Microphone not activated].

3 MS. ROWAN: Would Your Honour allow me to turn my back for a
4 moment, please?

5 PRESIDING JUDGE SMITH: [Microphone not activated].

6 [Specialist Counsel confer]

7 MS. ROWAN: Your Honour, the application this afternoon is not
8 for more time at this stage. What we are raising is a general
9 difficulty in how we are being expected to deal with documents
10 disclosed in this fashion. That it's put an undue pressure and
11 unnecessary pressure on Defence teams.

12 PRESIDING JUDGE SMITH: [Microphone not activated].

13 MS. HATTABI: Thank you, Your Honour.

14 PRESIDING JUDGE SMITH: I'm sorry, let me hear from the
15 Prosecution. My mic was turned off.

16 MS. HATTABI: No problem.

17 We take an issue with the lack of notice. Both of the items
18 were disclosed in July 2021 under Rule 102(1)(b). The Defence has
19 been notified about the documents and what the witness said about
20 them in -- as it's all recorded in Preparation Note 2 distributed on
21 18 March, that's right. And, in fact, the Defence only sent an
22 e-mail yesterday about one of the four documents at 10.00 p.m., so,
23 yeah, we take issue with the lack of notice.

24 We notified the Defence as soon as we could, which was
25 yesterday, the content of the preparation note, and it was all

1 recorded in the note as to what the witness said.

2 MS. ROWAN: Your Honour, the difficulty is this witness's
3 preparation session concluded on Friday afternoon, and for no
4 justifiable reason, the SPO sat on that preparation note until
5 yesterday afternoon. They are three full days the Defence could have
6 put to good use in preparing this information and these documents.
7 We were deprived of that for no reason.

8 The SPO in relation to this witness filed its list of documents
9 for use in October of last year. That filing relates to filing 1828.
10 So some five months ago the SPO indicated the documents that it
11 intended to use, so the Defence was in a position to prepare for this
12 witness on the basis -- and we should be able on a good faith basis
13 to rely upon the filings given by the SPO, and that when they say in
14 October of 2023, "These are the documents that we intend to use," we
15 should be entitled to rely upon that on a good faith basis and not be
16 ambushed the evening before a witness is due to come.

17 With the documents, particularly of this nature, Your Honour,
18 the SPO knows that these are the types of documents that again and
19 again cause the Defence issue, cause objection, and cause concern.
20 These are handwritten notebooks that again appear in vacuums like
21 we've seen repeatedly with these lists. And to expect the Defence to
22 deal with a 42-page handwritten note disclosed and identified to us
23 the night before a witness is due to testify is insufficient and it's
24 an abuse of the preparatory session process and [Overlapping
25 speakers] ...

1 PRESIDING JUDGE SMITH: But you've had this document for a long
2 time; right?

3 MS. ROWAN: It's been in the disclosure. It hasn't been
4 notified for use with this witness. It has been notified for use in
5 this block.

6 PRESIDING JUDGE SMITH: [Microphone not activated].

7 You have a certain obligation when you get a document noted
8 under 102(3), you have an obligation to decide is this possible for
9 us to need this. It's kind of difficult to come in at this point and
10 say, "Oh, we didn't know about that."

11 MS. ROWAN: Well, Your Honour, considering the vastness of the
12 evidential base of this trial, the Defence has to be given some
13 deference in the -- in the capacity that we have to review all
14 evidence. And, again, it's not our obligation to foresee what case
15 the SPO is going to bring. The SPO has an obligation to notify us of
16 that case. We, on a good faith basis, have the right to rely upon
17 their submissions in their filings and have adequate time to prepare
18 properly, not be dealing with situations such as this, where 42-page
19 handwritten documents of unknown origin are given to us the day
20 before a witness is due to testify. It's simply not --

21 PRESIDING JUDGE SMITH: Thank you.

22 MS. ROWAN: -- acceptable.

23 PRESIDING JUDGE SMITH: Is there some reason you waited from
24 Friday until yesterday --

25 MS. HATTABI: May I --

1 PRESIDING JUDGE SMITH: -- to submit this?

2 MS. HATTABI: May I respond, Your Honour? Can I briefly just
3 address a few points that --

4 PRESIDING JUDGE SMITH: [Microphone not activated].

5 MS. HATTABI: We were finalising the notes. It was -- as you
6 know, the preparation was dealt remotely, and it took us a long time
7 to finalise it.

8 PRESIDING JUDGE SMITH: [Microphone not activated].

9 MS. HATTABI: No, but what I wanted to say about the lack of
10 notice also is that the document in question, the 42-page document,
11 is -- is referenced in footnote in the pre-trial brief, and it
12 relates specifically to the events that the witness in question will
13 testify about.

14 This witness also -- we're not expecting the witness to be
15 called as early in the schedule. In fact, it was due to the Defence
16 cutting their cross-examination substantively. So we were not
17 anticipating to start until Wednesday, and the e-mail was sent on
18 Monday, at 12.00, which was yesterday, the session was concluded on
19 Friday evening. So this is -- this is the SPO's submission on this
20 -- on lack of notice.

21 PRESIDING JUDGE SMITH: [Microphone not activated].

22 Well, I don't need to hear anymore. I understand what you're
23 bringing up. I understand it.

24 I am directing the Prosecution to do a better job of getting you
25 advance warning for a document coming in. Although, this is a fine

1 line because it came in Friday late and was given to you noon
2 yesterday.

3 Number two. You did not ask -- you did not follow our rules on
4 42, 43, to take this up with the Prosecution. It's taking valuable
5 time for the trial away from us. It's not what we need to do right
6 now. You did not ask for a further -- any further time to examine
7 this, so your objection is overruled.

8 But I will direct the Prosecution to please take these issues
9 more seriously. It should have been -- they should have been
10 notified on Friday if you interviewed him on Friday. It takes
11 15 minutes extra to do that, and it should have been done. Thank
12 you.

13 MS. ROWAN: Your Honour, the objection was two-pronged. The
14 second prong of that being that neither of these documents satisfy
15 the Rule 138 criteria --

16 PRESIDING JUDGE SMITH: That's premature. That's premature at
17 this time. We have to see what happens in the hearing.

18 MS. ROWAN: Very well.

19 PRESIDING JUDGE SMITH: I don't even know if they're going to
20 use these documents.

21 MS. ROWAN: We've been informed that they will use the
22 substantive first --

23 PRESIDING JUDGE SMITH: We'll wait --

24 MS. ROWAN: -- document cited.

25 PRESIDING JUDGE SMITH: We will wait and see on that.

1 MS. ROWAN: Very well.

2 PRESIDING JUDGE SMITH: Go ahead. Please bring the witness into
3 the courtroom.

4 [The witness entered court via videolink]

5 THE COURT OFFICER: [via videolink] Your Honours, for the record,
6 present in the transmission room are Witness W04571 and myself,
7 Court Officer.

8 PRESIDING JUDGE SMITH: [Microphone not activated].

9 Good afternoon, Witness. I'm going to read the text of --

10 THE WITNESS: [via videolink] [Interpretation] Good afternoon.

11 PRESIDING JUDGE SMITH: -- a solemn declaration, and I will ask
12 you to repeat the text after you've heard me make my statement. Do
13 you understand that?

14 THE WITNESS: [via videolink] [Interpretation] Yes.

15 PRESIDING JUDGE SMITH: This is the statement: Conscious of the
16 significance of my testimony.

17 THE WITNESS: [via videolink] [Interpretation] Yes.

18 PRESIDING JUDGE SMITH: You have to repeat it. Conscious of
19 the --

20 THE WITNESS: [via videolink] [Interpretation] Yes.

21 PRESIDING JUDGE SMITH: Conscious of the significance of my
22 testimony. Please repeat that.

23 THE WITNESS: [via videolink] [Interpretation] Conscious of the
24 significance of my testimony.

25 PRESIDING JUDGE SMITH: And my legal responsibility.

1 THE WITNESS: [via videolink] [Interpretation] And my legal
2 responsibility.

3 PRESIDING JUDGE SMITH: I solemnly declare.

4 THE WITNESS: [via videolink] [Interpretation] I solemnly
5 declare.

6 PRESIDING JUDGE SMITH: That I will tell the truth.

7 THE WITNESS: [via videolink] [Interpretation] That I will tell
8 the truth.

9 PRESIDING JUDGE SMITH: The whole truth.

10 THE WITNESS: [via videolink] [Interpretation] The whole truth.

11 PRESIDING JUDGE SMITH: And nothing but the truth.

12 THE WITNESS: [via videolink] [Interpretation] And nothing but
13 the truth.

14 PRESIDING JUDGE SMITH: And that I shall not withhold anything.

15 THE WITNESS: [via videolink] [Interpretation] And I shall not
16 withhold anything.

17 PRESIDING JUDGE SMITH: Which has come to my knowledge.

18 THE WITNESS: [via videolink] [Interpretation] Which has come to
19 my knowledge.

20 WITNESS: W04571

21 [The witness testified via videolink]

22 [The witness answered through interpreter]

23 PRESIDING JUDGE SMITH: You may be seated.

24 THE WITNESS: [via videolink] [Interpretation] Thank you.

25 PRESIDING JUDGE SMITH: Can we get the camera up there so we can

1 see the witness? There we go.

2 Witness, today we will start your testimony, which is expected
3 to last approximately six and a half hours. As you may know, the
4 Prosecution will ask you questions first. Once they are finished,
5 the Defence has the right to ask questions of you. Members of the
6 Panel might also ask questions of you.

7 The Prosecution estimate for your examination is one hour. The
8 Defence estimates that it will need five and a half hours. As
9 regards each estimate, we hope that counsel will be judicious in the
10 use of their time. The Panel may allow redirect examination if
11 conditions for it are met.

12 Please try to answer the questions clearly with short sentences.
13 If you don't understand a question, feel free to ask counsel to
14 repeat the question or tell them you don't understand and they will
15 clarify.

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

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

22 Please also speak into the microphone and wait five seconds
23 before answering a question and speak at a slow pace for the
24 interpreters to catch up.

25 While you are giving evidence in court, you are not allowed to

1 discuss with anyone the content of your testimony outside of the
2 courtroom. If any person asks you questions outside of this court
3 about your testimony, please let us know.

4 Please stop talking if I ask you to do so and also stop talking
5 if you see me raise my hand. These indications mean that I need to
6 give you an instruction.

7 If you feel the need to take a break, please make an indication
8 and an accommodation will be made.

9 The Panel understands that the SPO has hard copies of your prior
10 witness statements for you to reference during your testimony in case
11 of need. If you cannot recall something and therefore wish to
12 consult these documents to refresh your memory, please notify the
13 Panel before doing so. I repeat that this should only be done in the
14 event that you need to make that reference because you cannot recall.
15 You should not read directly from these documents.

16 We begin first with the Prosecution's questions for you. They
17 will begin at this time.

18 Madam Prosecutor, you may proceed.

19 MS. HATTABI: Thank you, Your Honour.

20 Examination by Ms. Hattabi:

21 Q. Good afternoon, Witness. We have met before, but I will
22 introduce --

23 A. Good afternoon.

24 Q. I will introduce myself again. I am Dounia Hattabi on behalf of
25 the SPO, and I will be asking you questions for the next hour or so.

1 Before I ask the Presiding Judge to move into private session to
2 obtain information to establish your identity, I will note that, as I
3 explained to you during your preparation session last week, rather
4 than asking you questions about every relevant issue you may have
5 information about, it is possible to admit some of your prior
6 statements containing such information into evidence. And in order
7 to do so, there are a number of procedural steps to follow to which I
8 will turn after establishing first your identity.

9 MS. HATTABI: Your Honour, we will need to move into private
10 session before obtaining --

11 PRESIDING JUDGE SMITH: Please take us to private session,
12 Madam Court Officer.

13 [Private session]

14 [Private session text removed]

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Witness: W04571 (Private Session)

Page 13396

Examination by Ms. Hattabi

1 [Private session text removed]

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7 [Open session]

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

9 PRESIDING JUDGE SMITH: [Microphone not activated].

10 MS. HATTABI: Thank you, Your Honour.

11 The items that I will be asking to be shown today are not for
12 public broadcast unless I specifically say so.

13 Q. Witness, I would like to show you a document.

14 MS. HATTABI: Court Officer, could you please show the witness
15 075468-TR-ET Part 1 RED2 and side by side with the Albanian version,
16 which is 075468-TR-AT Part 1 Revised RED2.

17 Q. And this document refers to meeting with the SPO in March 2020.
18 Mr. Witness, do you recall that meeting?

19 A. I can say yes. Yes.

20 Q. Yes. So, yes, you recall that meeting; correct? Thank you.
21 And do you recall being provided with an opportunity to provide
22 clarifications in relation to the statement last week?

23 A. Yes.

24 Q. And -- thank you. Do you recall that you made a number of
25 clarifications to this prior statement?

1 A. Yes.

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

4 A. Yes.

5 Q. Subject to the corrections set out in the note, is the
6 information provided in the statement I referred you to today
7 accurate and truthful to the best of your knowledge and belief?

8 A. From what I remember and I believe that's what happened.

9 Q. Subject to the corrections set out in the note, does the
10 statement I refer you to today accurately reflect what you would say
11 if you were examined about the events recorded therein?

12 A. I have some problems with my memory. However, when I listen to
13 what you're telling me, certain things come into my mind.

14 Q. Do you remember, Mr. Witness -- so you remember having reviewed
15 your statement last week; correct? Do you remember?

16 A. Yes, Madam Prosecutor. Yes, I do remember.

17 Q. And you remember that you made some clarifications --

18 A. Yes.

19 Q. -- and corrections; correct?

20 A. Yes.

21 Q. And as I explained to you, there is this procedure whereby
22 instead of asking questions about every aspect of your testimony
23 contained in the statement, if you -- if you confirm that you would
24 say the same thing today in the courtroom -- if you would -- if you
25 would confirm that it would reflect accurately the events at the

1 time, do you ...

2 [Specialist Prosecutors confer]

3 MS. HATTABI:

4 Q. If I were to ask you the questions today, would you answer in
5 the same way?

6 A. We will see, but I think so. Yes.

7 Q. Yes. And what you said in your statement, the statement that
8 are recorded following your meeting in March 2020, you said the
9 truth; right?

10 A. Yes, I remember and it should be like that.

11 Q. Thank you.

12 MS. HATTABI: Your Honour, I would like to seek admission of the
13 prior statement and the two associate exhibits. The relevant ERNs of
14 which are set out in our 18 March 2023 e-mail and in Annex 1 to
15 Prep Note 1, which is ERN 120146-120152, and we also ask to tender
16 this note for admission.

17 PRESIDING JUDGE SMITH: Any objection?

18 MR. MISETIC: None other than what we've already written in the
19 154 response.

20 MS. ROWAN: No, thank you.

21 MR. ROBERTS: Nothing further, Your Honour.

22 MR. BAIESU: No objection.

23 PRESIDING JUDGE SMITH: 075468-TR-ET Part 1 RED2 and the
24 Albanian, 075468-TR-AT Part 1 RED2, plus the preparation note, 120146
25 to 120152, and the associated exhibits are all admitted and will be

1 assigned exhibit numbers.

2 THE COURT OFFICER: Your Honours, before I proceed, I note that
3 the statement actually has five parts and which were part of the
4 Rule 154 decision, but just to clarify what do I assign numbers to?

5 PRESIDING JUDGE SMITH: I believe she only offered one, Part 1.

6 MS. HATTABI: Oh, sorry [Microphone not activated].

7 I would like to offer for admission the five parts of the
8 transcript. So it's --

9 PRESIDING JUDGE SMITH: [Microphone not activated].

10 MS. HATTABI: Exactly. Part 1 to 5 in the English and the
11 Albanian version.

12 PRESIDING JUDGE SMITH: Thank you for the correction.

13 THE COURT OFFICER: Okay. So 075468-TR-ET Part 1 RED2 and the
14 corresponding Albanian transcript will be assigned Exhibit P1060.1.

15 075468-TR-ET Part 2 and the Albanian corresponding transcript
16 will be Exhibit P1060.2.

17 Part 3 with the same ERN will be Exhibit P1060.3.

18 Part 4 will be Exhibit P1060.4.

19 And Part 5 will be Exhibit P1060.5.

20 The two associated exhibits which, as listed in footnote 99 of
21 the Rule 154 decision F1901, are ERN 078022 to 078022, which will be
22 assigned Exhibit P1061.

23 Associated exhibit with ERN U000-5370 to U000-5370-ET will be
24 assigned Exhibit P1062.

25 And the preparation note with ERN 120146 to 120152 will be

Witness: W04571 (Private Session)

Page 13400

Examination by Ms. Hattabi

1 assigned Exhibit P1063. Thank you.

2 PRESIDING JUDGE SMITH: [Microphone not activated].

3 You may proceed.

4 MS. HATTABI: Thank you, Your Honour.

5 Your Honour, on March 15th, 2024, the SPO submitted a proposed
6 summary of this witness's now admitted Rule 154 statement to the
7 Panel, Defence, and Victims. We have not received any objection to
8 the proposed summary and procedures, so with your leave I will read
9 the summary now in open session.

10 PRESIDING JUDGE SMITH: You may proceed.

11 MS. HATTABI: In or around August 1998, W04571, a Kosovo
12 Albanian, was arrested by multiple KLA soldiers. W04571 was taken by
13 car to the local KLA headquarters. He was questioned by KLA members,
14 including about a co-detainee, and told, *inter alia*, that he had to
15 help the KLA. He was detained with others who showed serious signs
16 of mistreatment.

17 W04571 still suffers from certain issues as a result of his
18 detention.

19 Your Honour, we will need to move into private session for my
20 next set of questions due to the witness's protective measures.

21 PRESIDING JUDGE SMITH: For the witness's protection, we will
22 move into private session, Madam Court Officer.

23 [Private session]

24 [Private session text removed]

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Witness: W04571 (Private Session)

Page 13401

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13402

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13403

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13404

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13405

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13406

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13407

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13408

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13409

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13410

Examination by Ms. Hattabi

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15 [Open session]

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

17 PRESIDING JUDGE SMITH: Thank you. We'll take a ten-minute
18 break.

19 --- Break taken at 3.35 p.m.

20 --- On resuming at 3.44 p.m.

21 PRESIDING JUDGE SMITH: Madam Court Officer, you can bring the
22 witness back into the room.

23 [The witness takes the stand via videolink]

24 PRESIDING JUDGE SMITH: All right, Madam Prosecutor.

25 Witness, the Prosecution will continue with their questions.

Witness: W04571 (Private Session)

Page 13411

Examination by Ms. Hattabi

1 MS. HATTABI: Thank you, Your Honour. Could we move back to
2 private session, please.

3 PRESIDING JUDGE SMITH: Please take us to private session,
4 Madam Court Officer.

5 [Private session]

6 [Private session text removed]

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Witness: W04571 (Private Session)

Page 13412

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13413

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13414

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13415

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13416

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13417

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13418

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13419

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13420

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13421

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13422

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13423

Examination by Ms. Hattabi

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Witness: W04571 (Private Session)

Page 13424

Cross-examination by Mr. Misetić

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Witness: W04571 (Private Session)

Page 13425

Cross-examination by Mr. Misetić

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Witness: W04571 (Private Session)

Page 13426

Cross-examination by Mr. Misetić

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Witness: W04571 (Private Session)

Page 13427

Cross-examination by Mr. Misetić

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Witness: W04571 (Private Session)

Page 13428

Cross-examination by Mr. Misetić

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Witness: W04571 (Private Session)

Page 13429

Cross-examination by Mr. Misetić

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Witness: W04571 (Private Session)

Page 13430

Cross-examination by Mr. Miletic

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Witness: W04571 (Private Session)

Page 13431

Cross-examination by Mr. Miletic

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5 [Open session]

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

7 PRESIDING JUDGE SMITH: Yes, Ms. Rowan.

8 MS. ROWAN: Your Honour, simply if I can invite the Panel not to
9 issue its determination in relation to the admissibility of the
10 contested documents until all of the evidence is heard tomorrow;
11 i.e., post cross-examination.

12 PRESIDING JUDGE SMITH: We'll determine that when we make our
13 decision. All right?

14 MS. ROWAN: Yes.

15 PRESIDING JUDGE SMITH: We will either postpone it and let you
16 know, or we will issue it immediately based upon our discussions.

17 MS. ROWAN: Yes. Because, of course, Your Honour, the
18 Trial Panel would be best placed having heard everything about these
19 documents to make a determination as to these documents'
20 authenticity.

21 PRESIDING JUDGE SMITH: Thank you.

22 MR. MISETIC: Mr. President, just on a time estimate. You can
23 feel -- comfortably take that hour tomorrow away from my time. I
24 expect to finish much shorter.

25 PRESIDING JUDGE SMITH: Okay.

1 MR. MISETIC: So we'll be on time. Thank you.

2 PRESIDING JUDGE SMITH: So it looks like we will start at 10.00.
3 It seemed like a reasonable request. We'll see you all tomorrow
4 morning at 10.00, and we are adjourned.

5 --- Whereupon the hearing adjourned at 4.33 p.m.

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