

1 Thursday, 19 September 2024

2 [Open session]

3 [The accused appeared via videolink]

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

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

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

10 PRESIDING JUDGE SMITH: Thank you.

11 I note that the accused are all attending today via videolink  
12 with our permission based on the fact that the witnesses will both be  
13 by videolink.

14 Before we start hearing the testimony of Prosecution  
15 Witness W04600, I note for the record that Duty Counsel for 4600 is  
16 present at the remote location.

17 Good morning, counsel. Oh, he's not in yet.

18 Madam Court Officer, will you bring the witness and Duty Counsel  
19 into the room.

20 Madam Court Officer, I misspoke. Madam Court ...

21 Mr. Osaj, you may be seated.

22 I only need the Duty Counsel. I only need the Duty Counsel at  
23 this time. The witness should stay out of the room while I discuss a  
24 matter with Mr. Osaj.

25 You can be seated, Mr. Osaj. First of all, if you would

1 identify yourself for the Court on the record. You have to turn your  
2 microphone on.

3 MR. OSAJ: [via videolink] [Interpretation] Good morning to  
4 everyone. Thank you for inviting me. I am lawyer Kadri Osaj with my  
5 office in Mitrovica. I have citizenship of the Republic of Kosovo  
6 and Austria. I've been a lawyer since 2004. I reside and work in  
7 Kosovo.

8 If further information is needed, I'm welcoming your questions.

9 PRESIDING JUDGE SMITH: No, that's sufficient, Mr. Osaj, and  
10 thank you for being with us and assisting the witness.

11 [REDACTED] Pursuant to In Court Redaction Order F2587RED.

12 [REDACTED] Pursuant to In Court Redaction Order F2587RED.

13 [REDACTED] Pursuant to In Court Redaction Order F2587RED.

14 [REDACTED] Pursuant to In Court Redaction Order F2587RED.

15 [REDACTED] Pursuant to In Court Redaction Order F2587RED.

16 [REDACTED] Pursuant to In Court Redaction Order F2587RED.

17 [REDACTED] Pursuant to In Court Redaction Order F2587RED.

18 [REDACTED] Pursuant to In Court Redaction Order F2587RED.

19 [REDACTED] Pursuant to In Court Redaction Order F2587RED.

20 [REDACTED] Pursuant to In Court Redaction Order F2587RED.

21 [REDACTED] Pursuant to In Court Redaction Order F2587RED.

22 [REDACTED] Pursuant to In Court Redaction Order F2587RED.

23 [REDACTED] Pursuant to In Court Redaction Order F2587RED..

24 [REDACTED] Pursuant to In Court Redaction Order F2587RED.

25 MR. OSAJ: [via videolink] [Interpretation] And I believe that,

1 based on his prior evidence, he's been very correct.

2 And I have an additional issue to discuss, Your Honour, with  
3 your permission.

4 PRESIDING JUDGE SMITH: And what is that?

5 MR. OSAJ: [via videolink] [Interpretation] Perhaps you've  
6 noticed in the -- I expressed my concerns at the beginning of the  
7 interview. These concerns are that in my view some of his rights  
8 were violated during the interview because he was interviewed as an  
9 accused and a witness, which, based on the laws in force, this should  
10 not have happened.

11 Secondly, during his interview in the capacity of a suspect, his  
12 rights were again violated because he's entitled to mandatory defence  
13 representation, and the absence of the legal representative is a  
14 serious violation. Therefore, I would ask for my client not to be  
15 confronted with his prior testimony. This -- I insisted that if  
16 other proceedings were to be initiated against my client, then his  
17 prior statement would not be used against my client.

18 With respect to the proceedings here in this Court, I will not  
19 refer to this circumstance because this can be done by other  
20 counsels. However, I wished to inform you about this reality because  
21 I noted in the transcript that the objection was recorded but not the  
22 reasoning.

23 PRESIDING JUDGE SMITH: Thank you for supplying your reasoning.

24 Does the Prosecution wish to -- just a second.

25 MR. OSAJ: [via videolink] [Interpretation] I would have another

1 issue to raise.

2 PRESIDING JUDGE SMITH: All right. Let's finish with this one,  
3 first.

4 Prosecutor, do you wish to respond?

5 MR. DE MINICIS: Yes, Your Honour. Thank you. The SPO  
6 interviewed 4600 as a suspect in January 2020 in full compliance with  
7 the procedure set forth in Article 38 and Rules 32 to 34.

8 The witness was clearly informed about his rights as a suspect,  
9 including the right to remain silent and to be assisted by counsel,  
10 which he waived, in writing, in accordance with the requirements of  
11 Rule 43(3), and the waiver was disclosed to the Defence as 072908,  
12 072914 RED2.

13 The transcript of his SPO interview, Your Honours, the first  
14 part, pages 2 and 4, make it very clear that the waiver was both  
15 voluntary and unequivocal, in full compliance with the Law of the  
16 Kosovo Specialist Chambers and the jurisprudence of the European  
17 Court of Human Rights.

18 Finally, Your Honours, the witness suffered no prejudice in  
19 relation to any alleged violation of his rights. So we don't see any  
20 issue with the way the interviews were taken.

21 PRESIDING JUDGE SMITH: Thank you.

22 Now, what is your second issue, Mr. Osaj?

23 MR. OSAJ: [via videolink] [Interpretation] The second issue is  
24 that the witness expressed his willingness to give evidence openly  
25 for the public to be able to follow these proceedings. He filed a

1 request with the Specialist Chambers in order to be allowed to  
2 testify openly, publicly, and I don't see any impediment to this. We  
3 haven't received an answer yet despite the fact that we submitted our  
4 request and our reasons for that.

5 PRESIDING JUDGE SMITH: [Microphone not activated].

6 We will deal with that in just a moment when your client comes  
7 into the room. We're aware of your request.

8 [REDACTED] Pursuant to In Court Redaction Order F2587RED.

9 [REDACTED] Pursuant to In Court Redaction Order F2587RED.

10 [REDACTED] Pursuant to In Court Redaction Order F2587RED. So we will  
take all of

11 this into account.

12 The Panel will now deal with a couple of matters in the presence  
13 of the witness who will be appearing by videolink. We can remain in  
14 private session for the time being.

15 Please bring the witness in.

16 Into private session.

17 Please bring the witness in. Oh, she is. Okay.

18 [Private session]

19 [Private session text removed]

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14 [Open session]

15 THE COURT OFFICER: Your Honours, we are in public session. And  
16 I can confirm that the protective measures have been removed, and  
17 from this point on, the witness will testify without voice and face  
18 distortion.

19 PRESIDING JUDGE SMITH: All right. Witness, we now indicate  
20 that, that you are now in public session as you requested and there  
21 are no protective measures given.

22 We now ask you to take a solemn declaration to tell the truth,  
23 and for this we would kindly ask you to stand.

24 The Court Usher has provided you with the text of the solemn  
25 declaration which you are asked to take pursuant to our rules.



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1 Please take a look at the document and then read it aloud.

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

7 WITNESS: HALIM BERISHA

8 [The witness answered through interpreter]

9 [The witness testified via videolink]

10 PRESIDING JUDGE SMITH: Thank you. You can be seated now.

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

12 PRESIDING JUDGE SMITH: As to the question of the sufficiency of  
13 the warning given the witness at the time of prior statements, we  
14 find that the witness was fully advised of his rights as a suspect,  
15 and he waived his right to counsel and his right to remain silent at  
16 that time.

17 Witness, we will give you now some general instructions that we  
18 want you to follow during the trial or during your testimony.

19 Today, we will start your testimony. It is expected to last  
20 approximately one day. As you may know, the Prosecution will ask you  
21 questions first. Once they are finished, the Defence has the right  
22 to question you. Members of the Panel might also ask questions of  
23 you.

24 The Prosecution estimate for your examination is one hour. The  
25 Defence estimates that it will need approximately two hours. As

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1 regards each estimate, we hope that the counsel will be judicious in  
2 the use of their time. The Panel may allow redirect examination by  
3 the Prosecution if conditions for it are met.

4 Witness, please try to answer the questions clearly with short  
5 sentences. If you don't understand a question, feel free to ask  
6 counsel to repeat the question or tell them you don't understand and  
7 they will clarify. Also, please try to indicate the basis of your  
8 knowledge of 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 statements, you are reminded 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 then speak at a slow pace so that  
15 the interpreters can catch up.

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

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

23 If you feel the need to take a break at any time, please let us  
24 know and we will accommodate you.

25 So we begin now with the direct questions by the Prosecution.

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1 Please give them your attention.

2 Mr. Prosecutor, you may proceed.

3 MR. DE MINICIS: Your Honours, as this is the first time that I  
4 appear before this Panel, I'll introduce myself. My name is  
5 Filippo de Minicis, and I am a Prosecutor with the SPO.

6 PRESIDING JUDGE SMITH: Thank you.

7 Examination by Mr. De Minicis:

8 Q. Good morning, Witness.

9 A. Good morning.

10 Q. Could you please state your name and surname.

11 A. Halim Berisha.

12 Q. And could you please tell us your date and place of birth.

13 A. 9 December 1958, in Grashtice, Prishtine.

14 Q. What is your nationality?

15 A. Albanian.

16 Q. And are you currently employed?

17 A. No, I'm retired.

18 Q. And what did you do before retiring? What is the last job you  
19 held?

20 A. Deputy chief of security in the hotel restaurant Swiss Diamond.

21 Q. One last preliminary question is do you understand English at  
22 all?

23 A. No.

24 MR. DE MINICIS: Could the Court Officer please call up the  
25 statement -- have on the screen 072914-TR-AT Part 1 Revised RED3.

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1 And the Albanian version as well, please.

2 Q. Witness, can you see the documents on the screen?

3 A. Yes.

4 Q. This is the first part of an interview you had with the SPO in  
5 January 2021. Do you recall taking part in this interview?

6 A. Yes.

7 Q. Now, Witness, last week we met on occasion of your preparation  
8 session. Do you recall being shown this interview at the beginning  
9 of that session?

10 A. Yes, I recall it.

11 MR. DE MINICIS: Now, if the Court Officer could call up another  
12 document, which is the witness testimony for -- KSC testimony  
13 23 September 2021.

14 PRESIDING JUDGE SMITH: Do you have the ERN number?

15 MR. DE MINICIS: Yes, I do, Your Honour. The ERN number is  
16 KSC-BC-2020-05-20210923 ALB for the Albanian and ENG for the English.

17 Q. Now, can you see the documents on the screen? This is  
18 actually --

19 A. Yes.

20 MR. DE MINICIS: One second, because there is the testimony of  
21 another witness at the beginning, and I'd like to -- the witness to  
22 be shown -- yes, if we could go to page 704 in English. 704. I'm  
23 afraid I don't have the specific page in Albanian, but I'm not going  
24 to read out anything from that transcript, so I will ask the  
25 witness --

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1           PRESIDING JUDGE SMITH: [Microphone not activated].

2           MR. DE MINICIS:

3           Q.    So, Mr. Witness, you also provided testimony before the Kosovo  
4           Specialist Chambers on 23 September 2021, on the 24th, and on the  
5           27th. Do you recall being shown the transcript of that testimony at  
6           the beginning of your preparation session?

7           A.    Yes, I do.

8           Q.    Now, did you have the opportunity to review the transcripts of  
9           your SPO interview and of your KSC testimony before we began the  
10          preparation session?

11          A.    Yes.

12          Q.    Now, while re-reading your SPO interview and KSC testimony, you  
13          requested to make some corrections to some names and other  
14          information recorded therein; correct?

15          A.    Yes, that's correct.

16          Q.    And once you finished reading the statements, you wrote down the  
17          changes you requested in a note that was then read back to you;  
18          correct?

19          A.    Yes.

20          Q.    Did that note, as it was read back to you, accurately reflect  
21          the changes you wanted to make in your statements?

22          A.    Yes.

23          Q.    And subject to the changes recorded in that note, do your SPO  
24          interview and trial testimony accurately reflect what you would say  
25          if examined today on the same topics?

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1 A. Yes, certainly.

2 MR. DE MINICIS: Your Honours, we submit that this satisfies the  
3 requirements of Rule 154. So the SPO seeks admission of Preparation  
4 Note 1, which bears ERN 122755 to 122757, and of the Rule 154  
5 materials found to be admissible in Your Honours' decision of  
6 13 September 2024, F02571, paragraphs 46 to 54. And these materials  
7 are listed in footnote 85 of that decision, but I'm prepared to read  
8 out the ERNs here if necessary.

9 PRESIDING JUDGE SMITH: Any objection?

10 MS. TAVAKOLI: No objection, Your Honour.

11 MR. TULLY: None.

12 MS. S. ALAGENDRA: None, Your Honour.

13 PRESIDING JUDGE SMITH: No objection is heard. 072914-TR-AT --  
14 how many parts?

15 MR. DE MINICIS: There are four parts to the interview.

16 PRESIDING JUDGE SMITH: Five? Four? Okay.

17 MR. DE MINICIS: Four, four parts.

18 PRESIDING JUDGE SMITH: All four parts in English and Albanian  
19 are admitted.

20 THE COURT OFFICER: Your Honours, 072914-TR-ET Part 1 Revised  
21 RED3, together with its Albanian version, will be assigned  
22 Exhibit P01645.1. Part 2 of the same ERN will be assigned P1645.2.  
23 Part 3 for the same ERN, both English Albanian, will be assigned  
24 Exhibit P01645.3. And Part 4 for both English and Albanian of the  
25 same ERN will be assigned Exhibit P01645.4.

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1           And, Your Honours, I would appreciate that we clarify  
2           classification for each.

3           MR. DE MINICIS: Yes. We request that even though the witness's  
4           protective measures have been revoked, that these materials remain  
5           confidential for the protection of the identity of other victims and  
6           witnesses in this case who still enjoy protective measures.

7           While the associated exhibits, Your Honours, can be classified  
8           as public.

9           PRESIDING JUDGE SMITH: [Microphone not activated] What about the  
10          -- KSC-BC-2020-05-20210923 in Albanian and English is admitted.

11          THE COURT OFFICER: Your Honours, that also consists of three  
12          parts, so KSC-BC-2020-05-20210923, English and Albanian, will be  
13          assigned Exhibit P01646.1. KSC-BC-2020-05-20210924, English and  
14          Albanian, will be assigned Exhibit P01646.2. And for the third date,  
15          KSC-BC-2020-05-20210927, the English and Albanian transcripts will be  
16          assigned Exhibit P01646.3.

17          MR. DE MINICIS: And, Your Honours, I would like to add that,  
18          due to an oversight, one of the associated exhibits, and that is  
19          SPOE00128386 to 00128420, was not included in the presentation queue.  
20          We were advised that was the case by the Court Officer, and so we're  
21          putting that on the record, but we still request that it be admitted.

22          PRESIDING JUDGE SMITH: [Microphone not activated].

23          We have the prep note, which is 122755 to 122757, and it is  
24          admitted, together with the associated exhibits.

25          THE COURT OFFICER: Your Honours, the Prep Note 122755 to 122757

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1 will be assigned Exhibit P01647 and will be classified as  
2 confidential as indicated.

3 For the associated exhibits, Your Honour, there is a photo book  
4 for which separate pages have been admitted as evidence. Should each  
5 page be assigned a separate number or the photo book as one exhibit  
6 number?

7 PRESIDING JUDGE SMITH: Do you have a preference?

8 MR. DE MINICIS: We would prefer for one exhibit number for the  
9 whole book.

10 PRESIDING JUDGE SMITH: Unless there is an objection, there will  
11 be one exhibit number for the book, and you'll have to refer page by  
12 page.

13 THE COURT OFFICER: Your Honours, the --

14 MS. ROWAN: [Overlapping speakers] ... in relation to the book --

15 PRESIDING JUDGE SMITH: [Microphone not activated].

16 MS. ROWAN: Your Honours, my apologies. Just in relation to the  
17 book, considering that this witness is to testify publicly and has  
18 waived his protective measures, perhaps the best course, in terms of  
19 confidentiality, is that the 154 package remains confidential until  
20 the Prosecution submit relevant redactions and then it be converted  
21 to public as it is his evidence in chief.

22 PRESIDING JUDGE SMITH: [Microphone not activated].

23 MR. DE MINICIS: The booklet can be classified as public. We're  
24 not requesting that it be -- remains confidential.

25 MS. ROWAN: Your Honour, my submission is in relation to his



1 prior testimony and his interview. My learned friend had suggested  
2 that his prior testimony and interview should be confidential as it  
3 refers to other protected witnesses.

4 That interview and that prior testimony is this witness's  
5 evidence in chief. This witness wishes to give evidence in public.  
6 His evidence in chief therefore should be public. We, of course,  
7 recognise the concerns of the Prosecution in relation to references  
8 to others. So the submission simply is that it remain confidential  
9 at the moment, that the Prosecution submit proposed redactions, and  
10 then it is converted to a public document.

11 PRESIDING JUDGE SMITH: [Microphone not activated].

12 We will mark the book as one exhibit, and it will be public.

13 Go ahead.

14 THE COURT OFFICER: Your Honours, the book with ERN SPOE0012836  
15 to 000128420 and the specific pages that were admitted as the  
16 Rule 154 package will be assigned Exhibit P01648.

17 Furthermore, Your Honours, there is a few more associated  
18 exhibits.

19 KSC-BC-2020-05-REG00-002 will be assigned Exhibit P01649.

20 KSC-BC-2020-05-REG00-004 will be assigned Exhibit P01650.

21 KSC-BC-2020-05-REG00-005 will be assigned Exhibit P01651.

22 KSC-BC-2020-05-REG00-006 will be assigned Exhibit P01652.

23 And, lastly, KSC-BC-2020-05-REG00-007 will be assigned

24 Exhibit P01653.

25 And for those last ones, can we clarify classification or are

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1 they also public?

2 MR. DE MINICIS: They can be public.

3 PRESIDING JUDGE SMITH: Reclassified as public then, that list.  
4 Go ahead, Mr. Prosecutor.

5 MR. DE MINICIS: Your Honours, on 12 September 2024, we e-mailed  
6 a proposed summary to the Defence for this witness. We received no  
7 objection. So with Your Honours' leave, I'm going to read it on the  
8 record.

9 PRESIDING JUDGE SMITH: Go ahead.

10 MR. DE MINICIS: In April 1999, 4600, acting on upon an order,  
11 escorted the murder victim to the BIA compound in Zllash. As he was  
12 handing over the victim to a guard at the entrance of the compound,  
13 4600 saw Salih Mustafa, who was standing on a balcony within the  
14 compound. They exchanged greetings, and 4600 left.

15 Towards the end of April 1999, after the end of the Serb  
16 offensive in the Zllash area, 4600 learned that the murder victim had  
17 died.

18 And this concludes the summary.

19 PRESIDING JUDGE SMITH: Thank you. You may proceed.

20 MR. DE MINICIS:

21 Q. Witness, I have a few additional questions in addition to you --  
22 to the questions that I've asked you about your prior statements, and  
23 I want to begin by showing you some photographs.

24 MR. DE MINICIS: If the Court Officer could please pull up  
25 SPOE0022549, which can be broadcast to the public. Thank you.

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1 Q. Witness, can you see the photograph on your screen?

2 A. Yes.

3 Q. Do you recognise any of the people depicted in this photograph?

4 A. Only Salih Mustafa.

5 Q. And can you describe his appearance in that photograph, how is  
6 he dressed?

7 A. He has got a camouflage uniform of the Kosovo Liberation Army  
8 and he's wearing a red beret, and he's got the emblem of the KLA.

9 Q. Thank you.

10 MR. DE MINICIS: I'm done with this photograph. If we could now  
11 pull up 222550. Maybe we can enlarge the picture a little bit.

12 Yeah, that will do. Thank you.

13 Q. Mr. Witness, do you see the new photograph on your screen?

14 A. Yes.

15 Q. Could you tell the Court if you recognise any of the persons  
16 depicted in that photo, starting from the right-hand side of the  
17 photograph.

18 A. From my right-hand side?

19 Q. Yes.

20 A. Remi is the first one.

21 Q. And Remi, do you know the full name?

22 A. Mustafa.

23 Q. What about the person next --

24 A. Rrustem Mustafa.

25 Q. Okay. You may continue.

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1 A. Ramush Haradinaj.

2 Q. And then do you know the identity of the person next to him,  
3 sitting down?

4 A. Rrahman Rama.

5 Q. And do you recognise any other person in this photograph?

6 A. Salih Mustafa, too.

7 Q. Thank you.

8 MR. DE MINICIS: Can we please -- I'm done with this photograph.  
9 Can we please move on to the next one which is 222548. And this  
10 should not be broadcast to the public because it concerns a private  
11 dinner in a private setting, so for the privacy of those involved.

12 Q. Now, Witness, I'm going to ask you again to identify the people  
13 you can recognise, starting this time from the left-hand side of the  
14 picture and moving clockwise across the photograph.

15 A. Salih Mustafa.

16 Q. And then person sitting next to him, do you recognise that  
17 person?

18 A. Yes, Bimi.

19 Q. Do you recall the name of that person?

20 A. It escapes me for the moment.

21 MR. DE MINICIS: Your Honours, if I may be allowed to refresh  
22 the witness's memory with information he provided during the  
23 preparation session.

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 MR. DE MINICIS:

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1 Q. So during the preparation session, as recorded in Preparation  
2 Note 2, which bears ERN 122758 to 122763, you told us that Bimi's  
3 name was Ibrahim Mehmeti; is that correct?

4 A. Yes. Yes, correct.

5 Q. Now, continuing to move clockwise, who's the person sitting next  
6 to Mr. Mehmeti? Do you recognise him?

7 A. Adem Shehu.

8 Q. And the person sitting to Mr. Shehu -- sitting next to  
9 Mr. Shehu?

10 A. Fatmir Humolli.

11 Q. Do you recognise the last person, the one on the right-hand side  
12 of the photograph?

13 A. No, I do not.

14 Q. Do you recall if Mr. Humolli had any position within the KLA  
15 during the war?

16 A. As far as I know, he dealt with issues of organisation of the  
17 Kosovo Liberation Army.

18 Q. And what operational zone, if any, was he a member of?

19 A. In the Llap operational zone.

20 MR. DE MINICIS: I'm done with this photograph. If we could  
21 please pull up 222575.

22 Q. Witness, can you please tell the Panel if you recognise the  
23 persons in this photograph?

24 A. Salih Mustafa is the only one I know.

25 Q. Do you recognise or does the person standing next to Mr. Mustafa

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1 look familiar to you in any way?

2 A. Maybe I have seen him somewhere, but I don't know who he is.

3 MR. DE MINICIS: Your Honours, may I be allowed to refresh the  
4 witness's memory with information provided during the preparation  
5 session?

6 PRESIDING JUDGE SMITH: Yes, you may. Go ahead.

7 MR. DE MINICIS:

8 Q. Witness, when we met and I showed you this photograph, you said  
9 that that person looked to you like Agron Xhemajli, although you were  
10 not 100 per cent sure. Do you recall giving us that information?

11 A. Yes, I did tell it to you but he's not. When I looked at that  
12 picture, I discerned the resemblance, but, in fact, it's not.

13 MR. DE MINICIS: Very well. Can we please move to the next  
14 photograph, which would be 222582. And the next photograph, that's  
15 this one, can be broadcast to the public.

16 Q. Now, can you tell the Court if you recognise any of the people  
17 in this photograph?

18 A. I recognise Salih Mustafa, Sejdi Veseli, and Vallon Murati.

19 Q. Can you please tell the Court who do you recognise as being  
20 Mr. Veseli, Sejdi Veseli? Could you describe the person or his  
21 position in the photograph?

22 A. It's the gentleman to my left.

23 Q. So is it the one with the moustache or without the moustache?

24 A. The one wearing a moustache.

25 Q. Thank you.

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1 MR. DE MINICIS: I'm done with this photograph. And,  
2 Your Honours, I would now request -- I would like to tender these  
3 photographs into evidence, the ones that I've shown to the witness.

4 PRESIDING JUDGE SMITH: Any objection?

5 MS. ROWAN: Your Honour, yes. The objection goes to relevance.  
6 All of the photos tendered, we have no information in relation to  
7 where they were taken, the dates upon which they were taken. And in  
8 relation to those which appear to be taken during wartime, we would  
9 ask the Prosecution to identify the issue to which these photos go as  
10 to us their relevance is not clear. And in relation to the  
11 photograph taken what appears to be post war, again, we can see no  
12 relevance in a coffee being had amongst men in the post-war period,  
13 and we would again ask the relevance of that photograph to the issues  
14 in this trial.

15 MR. DE MINICIS: I'd be happy to do so, Your Honours.

16 These photographs depict persons of interest in the case,  
17 commanders of units under whose area of responsibility the crimes are  
18 alleged to have happened, and so that per se establishes relevance.  
19 But also the witness's knowledge of these people can be a factor that  
20 also adds to their relevance, his membership in the KLA and his  
21 relation with the individuals depicted in the photographs, so they're  
22 relevant.

23 PRESIDING JUDGE SMITH: The objection is overruled and the  
24 photos will be admitted.

25 SPOE00222549.

Witness: Halim Berisha (Open Session)  
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1 THE COURT OFFICER: Your Honours, that will be assigned  
2 Exhibit P01654.

3 PRESIDING JUDGE SMITH: And 222550.

4 THE COURT OFFICER: That will be Exhibit P01655.

5 PRESIDING JUDGE SMITH: 222548.

6 THE COURT OFFICER: That will be assigned Exhibit P01656.

7 PRESIDING JUDGE SMITH: 222575.

8 THE COURT OFFICER: Will be assigned Exhibit P01657.

9 PRESIDING JUDGE SMITH: And 222582.

10 THE COURT OFFICER: Will be assigned Exhibit P01658. And I note  
11 they're all classified confidential, but we can -- if counsel can  
12 clarify.

13 MR. DE MINICIS: They can be classified as public with the  
14 exception of 222548, which we requested --

15 PRESIDING JUDGE SMITH: So noted. Thank you.

16 MR. DE MINICIS:

17 Q. Witness, I'm done with the photographs, and I'd like -- I will  
18 now move on to asking you some questions concerning the presence of  
19 the Karadak zone staff in Zllash.

20 In your previous testimony, you testified that in addition to  
21 Brigade 153 of the Llap operational zone and to the BIA unit, the  
22 Karadak operational zone staff was also based in Zllash.

23 MR. DE MINICIS: And for reference, this can be found in his  
24 testimony of 23 September 2021, page 718 in English and 52 in  
25 Albanian.



Witness: Halim Berisha (Open Session)  
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1 Q. My first question is when did the Karadak zone staff set up  
2 their headquarters in Zllash?

3 A. The Karadak staff headquarters was stationed at Zllash as of the  
4 time of its formation.

5 Q. And was the Karadak zone formed before, at the same time, or  
6 after the Llap operational zone?

7 A. I do not know. But I know that it was stationed at Zllash as of  
8 the time of its formation, and it stayed there for over a certain  
9 period of time.

10 Q. By the time, for instance, of March and April 1999, do you  
11 recall if by that time the Karadak zone was already stationed in  
12 Zllash?

13 A. I think it was there in March. I'm not very certain about  
14 April.

15 Q. In fact, this is my next question. Do you recall until when the  
16 Karadak staff kept their base in Zllash?

17 A. I think until the beginning of the Serbian offensive. It  
18 withdrew and it went in the Marec neighbourhood somewhere, but the  
19 location is not known to me.

20 Q. Do you recall when the Serbian offensive that you're talking  
21 about began?

22 A. The Serbian offensive began on 18 April.

23 Q. Do you remember what year that was?

24 A. 1999.

25 Q. Now, in your testimony, you have described the location of the

Witness: Halim Berisha (Open Session)

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Examination by Mr. De Minicis

1 BIA base in Zllash. Can you explain to the Panel where the Karadak  
2 zone headquarters were located in relation to the BIA unit base.

3 A. They were roughly 2 kilometres apart.

4 Q. If you were at the BIA base, to get to the Karadak zone  
5 headquarters, which you told us was about 2 kilometres apart, would  
6 you walk uphill or downhill?

7 A. Downhill.

8 Q. Do you remember any further detail that can help narrow down its  
9 position *vis-à-vis* the BIA base?

10 A. It was close to the school. It was 3 or 400 metres downwards  
11 from the school. That's where the base was.

12 Q. During the time that the Karadak zone headquarters were based in  
13 Zllash at the location you've just described for us, who was the  
14 Karadak zone commander?

15 A. Ahmet Isufi.

16 Q. Who was the deputy commander?

17 A. Shaqa, whose name I cannot remember.

18 MR. DE MINICIS: Your Honours, may I refresh the witness's  
19 memory on this point?

20 PRESIDING JUDGE SMITH: [Microphone not activated].

21 MR. DE MINICIS:

22 Q. You told us during the preparation session that, indeed, Shaqa  
23 was the deputy commander and his name was Shemsi Syla.

24 A. Shemsi Syla.

25 MR. DE MINICIS: Could the Court Officer please pull up

Witness: Halim Berisha (Open Session)  
Examination by Mr. De Minicis

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1 SITF00240755. This document can be broadcast to the public. Now, if  
2 we can zoom from the top and zoom in a little bit on the first  
3 paragraph, the header, if you want, of that document.

4 Q. Now, Witness, this is a document sent by the staff of the  
5 Karadak operational zone to the military police of Brigade 153 of the  
6 Llap zone.

7 MR. DE MINICIS: And now if we can scroll down the document,  
8 both in English and Albanian, to the bottom.

9 MS. ROWAN: Your Honour, my apologies, perhaps if the  
10 Prosecution can make it clear that that is their case. That is not a  
11 fact.

12 PRESIDING JUDGE SMITH: [Microphone not activated].

13 MR. DE MINICIS: It is our case.

14 Q. But at the bottom, bottom right, it is signed by the Karadak  
15 operational zone deputy commander, who happens to be Shaqa, as you  
16 told us.

17 Now, if you could take a moment to read the document on the  
18 screen in the Albanian. I hope you can read the calligraphy there,  
19 the handwriting, and familiarise yourself with the content of the  
20 document. And I would like to ask you a couple of questions about it  
21 once you are done.

22 A. I'm familiar with this.

23 Q. So are you familiar with the content of this document? Is that  
24 what you're familiar with?

25 A. Yes.

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Examination by Mr. De Minicis

1 Q. This document contains a request made by Shaqa to the military  
2 police of Brigade 153. What details, if any, do you recall about  
3 this request?

4 A. This request was made after the offensive.

5 Q. At the time, were you familiar -- at the time after the  
6 offensive, were you familiar with this request made by Shaqa to the  
7 military police of Brigade 153?

8 A. He filed this to the military -- with the military police of  
9 Brigade 153.

10 Q. And was the issue ever discussed in your presence, the issue  
11 described and detailed in this document?

12 A. Yes.

13 Q. Thank you.

14 MR. DE MINICIS: I'm done with this document. Your Honours, I  
15 tender this document in evidence.

16 PRESIDING JUDGE SMITH: [Microphone not activated].

17 MS. ROWAN: Your Honour, yes. The objection is that the  
18 requirements of Rule 138 in relation to authenticity have not been  
19 met. The simple observations that have been made on one aspect of  
20 the content are insufficient to authenticate the document.

21 PRESIDING JUDGE SMITH: [Microphone not activated].

22 SITF0240755 will be admitted, having met the minimum *prima facie*  
23 standards of 318.

24 Go ahead.

25 THE COURT OFFICER: Your Honours, that will be assigned

Witness: Halim Berisha (Open Session)  
Examination by Mr. De Minicis

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1 Exhibit P01659. And if we can just confirm the classification.

2 PRESIDING JUDGE SMITH: Thank you.

3 We're going to take a break.

4 Witness, we will give you a ten-minute break at this time.

5 We'll come back to the courtroom in ten minutes and continue with  
6 your testimony. Please don't discuss this case with anyone --

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

8 PRESIDING JUDGE SMITH: -- outside the courtroom. And you may  
9 now leave the room with the Court Attendant.

10 [The witness stands down via videolink]

11 PRESIDING JUDGE SMITH: We're in public session. We will  
12 adjourn for ten minutes. It's now 10.03.

13 [Microphone not activated].

14 --- Break taken at 10.05 a.m.

15 --- On resuming at 10.16 a.m.

16 PRESIDING JUDGE SMITH: Madam Court Officer, you may bring the  
17 witness in.

18 MR. DE MINICIS: Your Honour, if I may take the opportunity. In  
19 relation to the last document we sought to tender, that document can  
20 be classified as public.

21 PRESIDING JUDGE SMITH: Thank you.

22 [The witness takes the stand via videolink]

23 PRESIDING JUDGE SMITH: You can be seated, Witness.

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

25 PRESIDING JUDGE SMITH: Witness, we continue with the

1 examination by the Special Prosecutor's Office.

2 Go ahead, Mr. Prosecutor.

3 MR. DE MINICIS:

4 Q. Witness, before the break we discussed -- I asked you some  
5 questions about the Karadak zone staff in Zllash. I'm done with that  
6 topic. And I'll now ask you some questions about your whereabouts in  
7 June 1999 after Serb forces withdrew from Prishtine.

8 So your evidence is that in the spring of 1999, you were based  
9 in the neighbourhood of Crvadik, located within the triangle formed  
10 by Gollak, Kecekolle, and Mramor.

11 MR. DE MINICIS: Your Honours, for reference this can be found  
12 in his testimony of 23 September 2021, pages 713, 714, and 46 to 47  
13 in Albanian.

14 Q. Now, did you at any point in June 1999 move to another location?

15 A. Yes, we did.

16 Q. Where did you go?

17 A. We entered in Prishtine.

18 Q. And when you say "we," who do you mean in addition to you?

19 A. Sejdi Veseli, Shukri Rafuna, myself, and other soldiers. We  
20 were together.

21 Q. And that -- did you move together with a specific unit or part  
22 of a specific unit of the KLA? These persons you have mentioned.

23 A. No, no. We were all soldiers from Brigade 153. There was a  
24 certain number of soldiers of us who entered Prishtine in order to  
25 protect the civilian population from the Serbian forces who were

Witness: Halim Berisha (Open Session)

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Examination by Mr. De Minicis

1 pulling out - military, paramilitary, and police forces.

2 Q. Who led that Brigade 153 group that you entered Prishtine with?

3 A. It was led by Sejdi Veseli.

4 Q. Did any other KLA unit other than part of Brigade 153 enter  
5 Prishtine on that occasion?

6 A. No. There was no other unit with us when we entered Prishtine.

7 Q. Can you recall --

8 A. Only soldiers from Brigade 153.

9 Q. And I haven't asked you, but on what date did you and soldiers  
10 of Brigade 153 led by Sejdi Veseli enter Prishtine?

11 A. Sejdi Veseli. This happened on 8 June 1999, on the very day or  
12 night when the Russian forces moved in.

13 Q. Now, you told us that your group was just a group of  
14 Brigade 153, but do you know if any other KLA unit entered Prishtine  
15 on or around the same date?

16 A. No, I -- there were other groups who entered Prishtine. I don't  
17 know the date. I don't know if they did before or after. But there  
18 were other units, such as BIA.

19 Q. Now, you told us that the purpose of you and your brigade --  
20 part of your brigade entered Prishtine on that date was to protect  
21 the civilian population from the withdrawing Serb forces and  
22 paramilitaries. Did you and the other soldiers receive any  
23 instructions before entering Prishtine on how you should carry out  
24 this task?

25 A. We did not receive instructions, but every soldier knew that we

Witness: Halim Berisha (Open Session)

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Examination by Mr. De Minicis

1 were moving in to protect the civilian population from Serbian forces  
2 and paramilitaries. We did not receive any specific order on how to  
3 exactly protect them because we were already informed and we had  
4 information about the situation.

5 Q. Did you receive any instruction on how to protect any member of  
6 the Serb civilian population that remained there?

7 A. No. There was no distinction between civilians, be them Turks,  
8 Albanians, or Bosnian. We were there to protect the civilian  
9 population from the Serb forces and paramilitaries.

10 Q. When you entered Prishtine on 8 June 1999, where in the city did  
11 you and the rest of your brigade set up your base?

12 A. We entered in the part Vranjevc neighbourhood. Now it's called  
13 Kodra e Trimave. We did not have a base, but we settled in private  
14 houses.

15 Q. Are you familiar with a school in Prishtine named after Zenel  
16 Hajdini?

17 A. Yes, I know where it is.

18 Q. And in which neighbourhood of Prishtine is that school located?

19 A. In Kodra e Trimave.

20 Q. So that's the place where your unit entered once you entered  
21 Prishtine; correct?

22 A. No, we were not in the school. We were in private houses.

23 Q. Sorry, I -- my question was confusing. I meant Vranjevc,  
24 Kodra e Trimave, that's the place where you entered?

25 A. Yes. The school is situated in Kodra e Trimave neighbourhood.



Witness: Halim Berisha (Open Session)

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Examination by Mr. De Minicis

1 Q. Now, you told us you entered on 8 June. For how long did you  
2 and the rest of your unit remain stationed in that area?

3 A. About two weeks. Ten days to two weeks.

4 Q. And during this time, was anyone, to your knowledge, stationed  
5 in that Zenel Hajdini school?

6 A. Could you please repeat the question?

7 Q. Of course. During the time that you were in the Vranjevc area,  
8 you told us you stayed there for a couple of weeks, and you -- you  
9 used these accommodations and private houses. Now, my question is  
10 whether any unit took up -- set up their base or were staying in the  
11 Zenel Hajdini school.

12 A. No, I'm not aware there was one. I am not aware of any unit in  
13 this school, Zenel Hajdini.

14 Q. Did you ever participate in any celebrations in or around that  
15 school, the Zenel Hajdini school?

16 A. Yes. I participated on 12 June when two KFOR vehicles came, and  
17 we and the civilians of the area went out to celebrate together with  
18 the NATO soldiers. We celebrated outside the school building, not  
19 inside the school.

20 Q. Do you remember anything --

21 A. We celebrated with them.

22 Q. Do you remember anything in particular about these celebrations?

23 A. I don't recall something specific --

24 Q. My question was simply general --

25 A. -- with the exception of --

Witness: Halim Berisha (Open Session)

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Examination by Mr. De Minicis

1 Q. Sorry, please go ahead.

2 A. While we were celebrating, somebody raised the flag in the  
3 school. That was a rather noticeable event. That's all.

4 Q. What flag was that?

5 A. I think it was the national red and black flag.

6 Q. So, Witness, you told us how on 8 June you moved to Prishtine,  
7 to the Vranjevc area, with part of Brigade 153. You were aware of  
8 the fact that BIA had also entered, although you didn't know the  
9 circumstances. To your knowledge, did the command of the Llap  
10 operational zone set up any base in Prishtine after the withdrawal of  
11 Serb forces?

12 A. Yes, they set it up in the neighbourhood Kolovica e Re.

13 MR. DE MINICIS: May I have a second to consult with my  
14 colleague?

15 PRESIDING JUDGE SMITH: Yes.

16 [Specialist Prosecutors confer]

17 MR. DE MINICIS:

18 Q. Thank you, Witness.

19 MR. DE MINICIS: Your Honours, this concludes our  
20 examination-in-chief.

21 PRESIDING JUDGE SMITH: Thank you.

22 Ms. Tavakoli.

23 MS. TAVAKOLI: Your Honour, having spoken to the Prosecutor  
24 about the limits on this evidence being public, I request that we go  
25 into private session.



Witness: Halim Berisha (Private Session)

Page 20071

Cross-examination by Ms. Tavakoli

1 [Private session text removed]

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Witness: Halim Berisha (Private Session)

Page 20072

Cross-examination by Ms. Tavakoli

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Witness: Halim Berisha (Private Session)

Page 20073

Cross-examination by Ms. Tavakoli

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Witness: Halim Berisha (Private Session)

Page 20074

Cross-examination by Ms. Tavakoli

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Witness: Halim Berisha (Private Session)

Page 20075

Cross-examination by Ms. Tavakoli

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Witness: Halim Berisha (Private Session)

Page 20076

Cross-examination by Ms. Tavakoli

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Witness: Halim Berisha (Private Session)

Page 20077

Cross-examination by Ms. Tavakoli

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1 [Open session]

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

3 MS. TAVAKOLI:

4 Q. Now, you called the Prosecutor's Office twice on the telephone,  
5 on 27 February 2023 and 14 March 2023.

6 MS. TAVAKOLI: And the reference for the record is ERN 111184  
7 and ERN 111004.

8 Q. And in those telephone calls, do you remember that you queried  
9 why you had to give evidence in this case against my client and the  
10 others? Do you remember making those calls?

11 A. Yes.

12 Q. And you didn't understand why you'd been called to give evidence  
13 against Hashim Thaci and the others because you don't know them, do  
14 you?

15 A. I do not know the reason. And obviously I don't know any of  
16 them --

17 Q. Thank you.

18 A. -- so I do not know the reason why I have been invited, and that  
19 is the reason why I contacted them.

20 Q. Thank you. And you also told the Prosecutor in those calls that  
21 you had no evidence against them; correct?

22 A. Correct, yes. I have absolutely nothing against them. I do not  
23 know them.

24 Q. [Microphone not activated].

25 MS. TAVAKOLI: No further questions.

1           PRESIDING JUDGE SMITH: Ms. Rowan.

2                           Cross-examination by Ms. Rowan:

3       Q.   Mr. Berisha, good morning. Can you hear me?

4       A.   Good morning, yes.

5       Q.   Now, Mr. Berisha, just to make clear at the outset, I don't  
6   intend to ask you any questions about the incident that you were just  
7   discussing with Ms. Tavakoli, and I don't intend to ask you any  
8   questions about your activities in the KLA during the war.

9           However, I would just ask for your assistance in helping us to  
10   just clarify some of the issues that you have discussed with the  
11   Prosecution in the past. And what I would like to do is begin with  
12   asking you some questions about Agron Xhemajli, who has been  
13   mentioned already today.

14           Now, it's right that you joined the KLA in April 1998?

15       A.   Yes, that's true.

16       Q.   And Agron Xhemajli himself was an early member of the KLA from  
17   the time period when it first began to organise in the Gollak area in  
18   1998?

19       A.   Yes.

20       Q.   He was one of those first early or founding members in the  
21   region, and he was doing so alongside Fatmir Sopi, Sejdi Veseli, and  
22   Rrahman Dini; is that correct?

23       A.   Yes.

24       Q.   And as a result of their position as early or founding members,  
25   those men took on, in those early days in 1998, commanding roles in

1 the area; isn't that right?

2 A. That's right.

3 Q. And Agron Xhemajli, therefore, along with those men, was a  
4 commander from the early summer 1998.

5 A. He played a key role in the brigade.

6 Q. From your initial entry into the KLA at the beginning of the  
7 summer, he was your superior; is that correct?

8 A. He was everyone's superior. Some of them.

9 Q. Exactly. But just so that we're clear on timing, from the point  
10 at which you entered the KLA in those early summer months in 1998, he  
11 was your superior from the outset; is that correct?

12 A. He was a superior. But we were not aware who was a commander,  
13 who was not, because they were all part and parcel of the  
14 organisation of the KLA in Gollak. Fatmir Sopi, Salih Mustafa,  
15 Sejdi Veseli, they were all organisers of the Kosovo Liberation Army.

16 Q. So while you may not have been clear on his exact title at the  
17 time, what you were clear on was that he was superior to you and he  
18 was superior to other soldiers; is that right?

19 A. Yes.

20 Q. And as you just mentioned, your other superiors were the  
21 gentlemen that you just mentioned in addition to Agron Xhemajli?

22 MR. DE MINICIS: Your Honour, this is a slight --

23 THE WITNESS: [via videolink] [Interpretation] Yes, all of them.

24 MR. DE MINICIS: -- mischaracterisation of the evidence.

25 PRESIDING JUDGE SMITH: [Microphone not activated].

1 MR. DE MINICIS: Mischaracterisation of the evidence. He just  
2 listed these names as organisers of the KLA, but he didn't say that  
3 they were all his superiors.

4 PRESIDING JUDGE SMITH: Sustained.

5 MS. ROWAN:

6 Q. Witness, could you clarify, please. The gentlemen that you just  
7 mentioned as being founding members of the KLA, were they also  
8 superior to you in the summer months of 1998?

9 A. Yes, that's true.

10 Q. Thank you for clarifying that. Now, a moment ago when  
11 mentioning Agron Xhemajli, you said "all of us." So could I just  
12 clarify that he was not only a superior to you, but he was also a  
13 superior to those who were part of the military police?

14 A. Yes, he was superior to all.

15 Q. Now --

16 A. At least that's what we knew about it.

17 Q. That was your understanding?

18 A. Yes.

19 Q. Now, Shukri Rafuna became the military police commander of  
20 Brigade 153 in early 1999; that's correct?

21 A. Yes.

22 Q. But up until the point that Rafuna arrived, you were taking your  
23 orders from Xhemajli and those other commanders we've discussed; is  
24 that correct?

25 A. Yes, but mostly from Agron Xhemajli.

Witness: Halim Berisha (Open Session)

Page 20082

Cross-examination by Ms. Rowan

1 Q. Yes. So from the outset up until Rafuna's arrival,  
2 Agron Xhemajli, throughout that period, was the person mainly giving  
3 you orders.

4 A. As far as we were concerned, yes.

5 Q. Now, you've told the SPO previously that -- just to quote what  
6 you said, that:

7 "Up until the moment that Shukri Rafuna arrived, up until that  
8 moment, we reported to Agron Xhemajli ..."

9 Can I just clarify with you once --

10 MR. DE MINICIS: Reference, please.

11 MS. ROWAN: Of course. The reference is SPO interview Part 1,  
12 072914-TR-ET, line 10, page 18.

13 Q. Apologies, Witness. The question was: After Rafuna's arrival,  
14 did you continue to take orders from Agron Xhemajli, or after that  
15 point, after he arrived, did you report and take orders only from  
16 him?

17 A. Not only from the last -- no, only from the last one.

18 THE INTERPRETER: Correction from the interpreter.

19 THE WITNESS: [via videolink] [Interpretation] Only from the last  
20 one.

21 MS. ROWAN:

22 Q. Witness, could I just ask you to clarify, when you say "only  
23 from the last one," could you specify, please, who you're referring  
24 to?

25 A. Shukri Rafuna.

1 Q. So do we understand your evidence correctly to be that upon his  
2 arrival that was who you reported to and took orders from?

3 A. That's right, yes.

4 Q. Thank you. Now, you've already clarified for us that Agron  
5 Xhemajli had the power to give orders both to the military police and  
6 the brigade. But could I also clarify, in terms of the units that  
7 were operating in Gollak at the time, it's right that the units  
8 reported to Agron Xhemajli but also to the brigade commander; is that  
9 correct? So talking about reporting.

10 A. They reported to Agron but to the commander, too.

11 Q. And just for clarity, that would have been Fatmir Sopi in the  
12 early days and Adem Shehu from early 1999; is that right?

13 A. Yes.

14 Q. Now, when speaking with the SPO, you have previously explained  
15 to the SPO that there was no distinguishing features between the  
16 military police and the army. And I just want to read how you  
17 explained the position to the SPO.

18 MS. ROWAN: And the reference for the record is P01645.1, line  
19 10, page 18.

20 Q. You were asked this question, Mr. Berisha:

21 "And would Agron Xhemajli task the military police or the  
22 brigade?"

23 And you gave the SPO this answer:

24 "He would task the military police and the brigade, because we  
25 were the same. There were no distinguishing between the military



1 police and us. We were equal. The military police and the army, we  
2 were the same. We were equal. The additional tasks that we had, we  
3 had to look after the soldiers and to make sure that there were not  
4 any unpleasant behaviour or acts that would be unpleasant in  
5 their" --

6 JUDGE METTRAUX: Ms. Rowan, can you slow down? It has to be  
7 interpreted.

8 MS. ROWAN: Of course. Thank you for the reminder. Perhaps if  
9 I just repeat that last line for the benefit of the interpretation.

10 Q. You said this, Mr. Berisha:

11 "We were equal. The additional tasks that we had, we had to  
12 look after the soldiers and to make sure that there were not any  
13 unpleasant behaviour or any acts that would be unpleasant in their  
14 behaviour."

15 So --

16 A. That is correct. Yes.

17 Q. So --

18 PRESIDING JUDGE SMITH: Ms. Rowan, it's time to take a break.

19 MS. ROWAN: Thank you.

20 PRESIDING JUDGE SMITH: Witness, we'll give you a half-hour  
21 break at this time. We'll come back to the court at 11.30. Remember  
22 not to speak with anyone outside the courtroom. And if someone tries  
23 to talk to you, you report it to us.

24 Madam Court Officer, you can take the witness out of the room  
25 now.

1 [The witness stands down via videolink]

2 PRESIDING JUDGE SMITH: Yes, Mr. Tully.

3 MR. TULLY: Simply housekeeping, Your Honour. The Selimi team  
4 will go first in cross-examination of the witness following this one.  
5 I didn't send an e-mail. It's just easier to do it in court.

6 PRESIDING JUDGE SMITH: [Microphone not activated].

7 MR. TULLY: Thank you.

8 PRESIDING JUDGE SMITH: Ms. Rowan, how much more do you have?  
9 Can you give us a hint?

10 MS. ROWAN: I believe, Your Honour, we had indicated an hour.  
11 We've used ten minutes. I don't anticipate we'll need the hour. 15,  
12 20 minutes.

13 PRESIDING JUDGE SMITH: [Microphone not activated].

14 MS. ROWAN: 15 to 20.

15 PRESIDING JUDGE SMITH: [Microphone not activated].

16 MS. ROWAN: I would hope.

17 PRESIDING JUDGE SMITH: [Microphone not activated].

18 MS. ROWAN: Thank you. We will go under the hour.

19 PRESIDING JUDGE SMITH: Thank you.

20 We're adjourned --

21 MS. S. ALAGENDRA: Your Honour, can I --

22 PRESIDING JUDGE SMITH: -- until 11.30.

23 MS. S. ALAGENDRA: Can I also just indicate --

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 MS. S. ALAGENDRA: I'm sorry. Can I also just indicate for

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1 planning purposes that our cross-examination will be about 10 to  
2 15 minutes and not 30 minutes.

3 PRESIDING JUDGE SMITH: Thank you for the update.

4 We're adjourned until 11.30.

5 --- Recess taken at 11.04 a.m.

6 --- On resuming at 11.33 a.m.

7 PRESIDING JUDGE SMITH: Madam Usher, you may bring the  
8 witness -- I mean, Court Attendant, you may bring the witness in.

9 [The witness takes the stand via videolink]

10 PRESIDING JUDGE SMITH: Witness, we now continue with the  
11 questions from the Veseli Defence team.

12 Go ahead, Ms. Rowan.

13 MS. ROWAN:

14 Q. Welcome back, Mr. Berisha. Before the break, I had read to you  
15 the account that you had given --

16 A. Thank you.

17 Q. I'd read to you the evidence that you had given to the SPO in  
18 your interview where you were discussing the fact the military police  
19 and the brigade were equal, and you had just confirmed that the  
20 passage that I read to you is correct.

21 So just following on from that, could I just clarify that, as  
22 far as you were concerned, the only difference that existed between  
23 the army and the military police, as you saw it, was that the  
24 military police had an additional task of making sure that the  
25 soldiers were not behaving in any sort of unpleasant way?

1 A. Correct.

2 Q. Now, in terms of the relationship between your brigade's  
3 military police and your brigade's information service, it's right,  
4 isn't it, that they were separate functions in the brigade and that  
5 the information service was not part of the military police?

6 A. Correct. They were not part of the military police.

7 Q. Now, what I would like to do next, Mr. Berisha, is just read you  
8 Agron Xhemajli's description of his relationship to you and see if  
9 you agree with that. So Agron Xhemajli was asked, and I'll go slow  
10 for the interpreters:

11 "And what was Halim Berisha's role within the brigade" --

12 MR. DE MINICIS: Reference, please.

13 MS. ROWAN: The reference is 076501-TR-ET Part 3, page 5, line  
14 1.

15 Q. So, Mr. Berisha, Agron Xhemajli was asked this. He was asked:

16 "What was Halim Berisha's role within the brigade?"

17 And he answered:

18 "He was a soldier of the brigade and a part of the unit of his  
19 neighbourhood of Cervanik ..."

20 He was then asked:

21 "Was he a brigade military policeman or perform a military  
22 policing role at the time in April 1999?"

23 He answered:

24 "I don't remember for April. Maybe later on he incorporated in  
25 what we called military police, but I don't know ..."

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1 "Q. Was he your subordinate or did you have -- was he within  
2 your chain of command?"

3 And Agron Xhemajli gave this answer:

4 "He was not my direct subordinate, but -- however, he was a  
5 soldier, just like any other soldier, and I was a commander, so in a  
6 way he was my subordinate just like the other soldiers were."

7 Mr. Berisha, would you agree with that description of your  
8 relationship to Mr. Xhemajli?

9 A. No --

10 Q. Could you clarify in what respect?

11 A. -- because from the beginning when I joined --

12 Q. Of course, Mr. --

13 PRESIDING JUDGE SMITH: [Microphone not activated] ... finish,  
14 please.

15 THE WITNESS: [via videolink] [Interpretation] His statement is  
16 not correct because when I joined the KLA at the beginning, I  
17 was from the beginning within -- in the unit of the military police.  
18 From the beginning to the end, I belonged to that unit.

19 MS. ROWAN:

20 Q. Yes. So in answering his questions, Mr. Xhemajli doesn't  
21 remember when you were in military police. But in terms of his  
22 answer about you being answerable to him as his subordinate, do you  
23 agree with that?

24 A. I don't seem to understand the question. In the dependency  
25 relationship?

1 Q. Don't worry, Mr. Berisha. That will be my fault. I'm simply  
2 asking you to clarify, as you have already today, that the  
3 relationship between you and Mr. Berisha was that he was your  
4 superior?

5 A. Yes.

6 Q. Thank you. Now, as your superior, he was in a position to give  
7 you tasks.

8 A. Yes.

9 Q. And it's right that his authority to give you tasks came from  
10 his position as your superior; is that correct?

11 MS. S. ALAGENDRA: Your Honours, I --

12 THE WITNESS: [via videolink] [Interpretation] Could you please  
13 repeat the question again?

14 PRESIDING JUDGE SMITH: Just a second, please.

15 MS. S. ALAGENDRA: Forgive me for standing up, but I think  
16 there's something on the record that needs to be corrected. I think  
17 my learned friend maybe misspoke when she said "the relationship  
18 between you and Mr. Berisha." I think she meant somebody else.

19 MS. ROWAN: I'm grateful to my learned friend. That is, of  
20 course, an error. It should be Xhemajli.

21 PRESIDING JUDGE SMITH: Why don't you just repeat the question.

22 MS. ROWAN: Is there -- could I have a reference for the  
23 question? A line reference?

24 MS. S. ALAGENDRA: Page 53, line 14.

25 MS. ROWAN: Thank you.

1 Q. Mr. Berisha, could we clarify, please, that in terms of your  
2 relationship with Mr. Xhemajli, it's right that Mr. Xhemajli was your  
3 superior? Apologies.

4 A. Yes, he was.

5 Q. Thank you for clarifying that so we have the record clear.

6 Now, in terms of Mr. Xhemajli's authority to give you tasks,  
7 it's right that that authority came from his position as your  
8 superior. Would you agree?

9 A. Naturally every superior had the right to give orders.

10 Q. Exactly. Now, would you agree that his authority to do so was  
11 unrelated to the fact that he had a role within the information  
12 service later on?

13 A. Correct.

14 Q. Now, other than Agron Xhemajli, it's right that there were no  
15 other soldiers or superiors responsible for the information service  
16 within your brigade?

17 A. I am not aware. I don't know.

18 Q. Now, just dealing with that role and Agron Xhemajli's role in  
19 the information service, you were asked about that by the Prosecution  
20 previously, and is it right, as you told them, that as far as you  
21 understood Mr. Xhemajli's role as head of the information service for  
22 the brigade, you understood him to be responsible for gathering  
23 intelligence and, as you explained, that included gathering  
24 intelligence on hostile elements to the KLA; is that correct?

25 MR. DE MINICIS: Reference.

1 MS. ROWAN: P01645.1, page 21, line 3.

2 THE WITNESS: [via videolink] [Interpretation] No, I don't know  
3 about this. I only know that he was the head of the information  
4 service. I don't know what he did and what actions he undertook.

5 MS. ROWAN:

6 Q. So when you told the SPO that you understood him to be  
7 responsible for gathering intelligence, you had no knowledge of the  
8 specifics of that task or what that task entailed in reality; is that  
9 right?

10 A. Correct.

11 Q. Now, what I'd like to do is just read to you what Agron Xhemajli  
12 described his role to be himself. He has said in the past that no --  
13 and I'll quote this:

14 "As I understand my role, by my own means, because no one  
15 explained to me the role, I looked for, gathered intelligence in the  
16 field regarding the Serbian positions, armed forces, Serbian armed  
17 forces, because they were attacking us at any moment. [And] I tried  
18 to find out [what they were]."

19 MS. ROWAN: The reference for that is 076501-TR-ET Part 1, page  
20 16, line 8.

21 Q. Now, Mr. Berisha, would you have any reason to disagree with  
22 Mr. Xhemajli's description of his own role that he has given?

23 A. No, I don't dispute that because I don't know. He did not  
24 report to me what his tasks were. I don't know.

25 Q. Yes. And, again, Mr. Xhemajli has explained in the past that



1 one of his roles was not identifying collaborators. Again, would you  
2 have any reason to dispute that? And I --

3 MR. DE MINICIS: Objection, he said that he doesn't know.

4 PRESIDING JUDGE SMITH: Sustained.

5 MS. ROWAN:

6 Q. In terms of information about Serbian forces' positioning, did  
7 you ever experience Mr. Xhemajli coming to the brigade and the armies  
8 in the brigade to give you information that he had about Serbian  
9 forces?

10 A. No, he didn't come to tell us about Serbian forces, but he was  
11 most of the time in the brigade.

12 Q. And in terms of his other duties - and the reference for this is  
13 076501-TR-ET, page 16, line 19 - he has described having various  
14 duties within the brigade and that those included making sure there  
15 was enough food, enough weapons, clothes, shelter to making sure  
16 there was medical, weaponry supplies, and other supplies.

17 Did you experience Mr. Xhemajli undertaking or witness him  
18 undertaking tasks such as those?

19 A. Yes, that's true. And not only him, but this was an obligation  
20 for everyone to take care of the soldiers and to provide them with  
21 supplies, clothes, and so on. It was an obligation for us.

22 Q. Okay. Now, the final issue, Mr. Berisha, that I just want to  
23 cover with you is the question of reporting lines. So who was  
24 reporting to who and the question of who had power to give tasks to  
25 who.

1           Now, despite the fact that you were a soldier, and then in the  
2 police, you were asked some questions about reporting within the  
3 information service by the Prosecution. Do you remember being asked  
4 those questions in your interview?

5           A.    Yes.

6           Q.    So what I would like to do with you, Mr. Berisha, is just look  
7 at some of the answers that you have given in the past and clarify  
8 the position on those. And what I would like to be very clear on is  
9 what you yourself have personal knowledge of versus what you might  
10 have thought was the case or what you might have been told by other  
11 people.

12          A.    I don't understand the question.

13          Q.    Don't worry, Mr. Berisha.

14                PRESIDING JUDGE SMITH: There wasn't really a question.

15                MS. ROWAN: It wasn't a question.

16          Q.    It was not intended to be a question, Mr. Berisha. Don't worry.  
17 What I was simply seeking to do was explain to you the exercise I'm  
18 about to embark on so that you understand what we're doing.

19          A.    Okay.

20          Q.    Okay. So what I would like to just focus on is some answers  
21 that you have given to the Prosecution in the past when you were  
22 asked about who Agron Xhemajli got his orders from. All right?

23          A.    Yes, I remember that.

24          Q.    Okay. So I'm just going to read your answer in relation to  
25 that.

1 MS. ROWAN: And the reference is -- oh, pardon me, it's an  
2 exhibit now. P01645.3, page 22, line 15 in the Albanian; page 19,  
3 line 5 in the English.

4 THE INTERPRETER: May the counsel please slow down when  
5 speaking.

6 MS. ROWAN:

7 Q. Mr. Berisha, you were asked this by the Prosecution:

8 "And who gave Agron Xhemajli his orders? Who was tasking him?"

9 You replied:

10 "As far as I know and as far as I could understand, he got his  
11 orders from the staff of Llap zone.

12 "Q. Who, in particular?"

13 You answered:

14 "I don't know. I don't know from who exactly, but I know that  
15 Agron Xhemajli had full competencies as chief of information services  
16 and that he would report to the zone, to the staff. This is how I  
17 know it.

18 "Q. Right. But how do you know that he was reporting to the  
19 zone command?"

20 "A. We knew, even from others -- there was nothing to hide from  
21 each other."

22 And then a little bit later, Mr. Berisha, at page 20, line 3,  
23 you were asked this by the Prosecutor:

24 "So are you saying this: That the military police in the  
25 153 Brigade were tasked by Agron Xhemajli, and Agron Xhemajli was

1       tasked by the zone command. Is that the situation?"

2               And you said this:

3               "I don't know. I have no knowledge as to where he got the tasks  
4       or the orders from, whether it was the zone command or whether it was  
5       the chief of information services ... I know one thing, that Agron  
6       Xhemajli, he had the full competencies to arrest, not just one  
7       soldier, but with the soldier or commander. I don't know [where] he  
8       got [these] competencies from the zone [command] or from who, but I  
9       know that he had the full competencies to do so."

10              Now, what I'd like to do --

11       A.     Yes.

12       Q.     -- is just break that down a little bit with you. So it's right  
13       that you knew that Agron Xhemajli had the competencies of the chief  
14       of information services; is that right?

15       A.     Yes, he had the competencies of the chief of the information  
16       service.

17       Q.     And you knew that because you observed that within the brigade;  
18       is that correct?

19       A.     He was in the brigade constantly.

20       Q.     But you do not know where he got those competencies from or who  
21       afforded those competencies to him; is that correct?

22       A.     Correct, I don't know.

23       Q.     You don't know --

24       A.     And I was --

25       Q.     Please continue.

1 A. I was never present when he would have received any order from  
2 the zone or somebody else. I don't know.

3 Q. And when you told the Prosecutor, "I have no knowledge as to  
4 where he got [his] tasks or his orders from," is that your position  
5 today?

6 A. Yes. I don't know.

7 Q. So it's right that you have no knowledge as to where his tasks  
8 came from or who gave him his orders?

9 A. Correct. I don't have.

10 Q. You don't know whether or not it was the zone command, the chief  
11 of information services --

12 JUDGE METTRAUX: He's answered the question three times,  
13 Ms. Rowan. Three or four times.

14 MS. ROWAN: Thank you, Your Honour. I'll move on.

15 Q. So, Witness, to clarify, when speaking to the SPO you said this:  
16 "As far as I know and as far as I could understand, he got [his]  
17 orders from the ... Llap zone."

18 So would it be fair to say that when you said that to the SPO  
19 you were simply making an assumption, that you don't actually know  
20 that to be true?

21 A. Correct, I didn't know. I made an assumption, and this is how I  
22 said it. I just guessed. I didn't know at the time, and I do not  
23 know now where he got his orders from. I just made an assumption.

24 Q. Yes. And would you agree that Mr. Xhemajli himself is probably  
25 best placed to know who he received his orders from, if anybody?

1 A. I didn't understand the question.

2 Q. Pardon --

3 PRESIDING JUDGE SMITH: Ms. Rowan, I think we've completely  
4 exhausted that line. So if you have something else, move to it.

5 MS. ROWAN: I'm going to move on to reporting after one more  
6 question. There's one passage I would like to put to this witness  
7 before I do so.

8 PRESIDING JUDGE SMITH: [Microphone not activated].

9 MS. ROWAN: No, it deals with Mr. Mustafa.

10 PRESIDING JUDGE SMITH: All right. Go ahead.

11 MS. ROWAN:

12 Q. Apologies, Mr. Berisha. I'm going to read you something that  
13 Agron Xhemajli has said in relation to his relationship with  
14 Commander Remi. He said this.

15 MS. ROWAN: And the reference is 076501-TR-ET Part 3, page 7,  
16 line 2.

17 Q. "We never had during the entire period of time we're referring  
18 to -- we never received any order from Commander Remi. We managed  
19 ourselves to do things in the field, be that with regards to the  
20 supplies, weaponry, fighting. I don't have any orders from  
21 Commander Remi or any request saying, 'You have to act in this manner  
22 or in this manner.' He visited us on two or three occasions. He  
23 asked, 'What have you done so far?' We told him what we had done.  
24 He said, 'Go, carry on, continue.' We asked for support and help.  
25 He said, 'I cannot help you.' And this is it."

1 Now, my question, Mr. Berisha, is do you have any reason to  
2 dispute that account that Mr. Xhemajli has given?

3 A. No.

4 Q. I'd like to move now away from orders and on to the question of  
5 reporting. When you were speaking with the SPO, you were asked how  
6 do you know that Agron Xhemajli was reporting to zone command. And  
7 you said:

8 "We knew, even from others -- there was nothing to hide from  
9 [anybody]."

10 Mr. Berisha, is it right that you had simply heard that that may  
11 be the case, but, again, you do not know that to be true and cannot  
12 confirm it to be correct?

13 A. No. I'm not able to say 100 per cent and I don't know.

14 Q. When speaking with the SPO during your interview --

15 MS. ROWAN: And the reference is 072 -- pardon me, it's an  
16 exhibit, P01645.1.

17 Q. You explained to the SPO this:

18 "... we were not allowed to talk directly to such [superiors]  
19 with regard to what he was allowed and what he was not allowed to  
20 do."

21 So is it right, Mr. Berisha, that you were not permitted to  
22 inquire of your superiors or your commanders about the intricacies or  
23 details of their roles?

24 A. That's correct. We did not have the competencies to ask what  
25 the commander was doing and so on.

1 Q. And, again, I assume you would again agree that Mr. Xhemajli  
2 himself is best placed to know what his reporting lines were?

3 A. Yes.

4 Q. Witness, I'm going to read you something that Mr. Xhemajli has  
5 said in the past.

6 MS. ROWAN: And the reference for the Court is 076501-TR-ET  
7 Part 1, page 17, line 15.

8 Q. Mr. Xhemajli said this:

9 "After we gathered this intelligence on the positions or  
10 movements of Serbian forces, we would go back to a meeting point  
11 where we all met, all of us, the friends I just mentioned before. We  
12 would share this information and use it to make the best of ... to  
13 protect our -- to defend our positions [in] our area.

14 "Q. Yes, but were you reporting this information to the zone  
15 command?

16 "A. No, not on a regular basis. [That] was not a formalised  
17 thing. However, when I just -- as I mentioned, when I met with Remi,  
18 we would talk about it. He asked, 'How are things going on your  
19 side?' And we would talk about this too. But there was no regular  
20 reporting. Nobody asked such a thing."

21 So, again, Mr. Berisha, would you have any reason to disagree  
22 with the account given by Mr. Xhemajli?

23 MR. DE MINICIS: Objection, because he's been saying so far that  
24 he didn't know specifically who Xhemajli was reporting to, and he was  
25 not present during these meetings where they gathered together, so



1 I'm not sure the witness is placed to give an answer to that  
2 question.

3 MS. ROWAN: Well, as Your Honour will have seen from the way in  
4 which the question was formed, the witness was simply asked if he  
5 disagrees with it. This is a common --

6 PRESIDING JUDGE SMITH: [Microphone not activated].

7 Just restate the question, please.

8 MS. ROWAN:

9 Q. Mr. Berisha, do you have any reason to disagree with that  
10 account given by Mr. Xhemajli?

11 A. No, I don't dispute that.

12 Q. All right. Now, finally, I'd like to come on to deal with  
13 Latif Gashi.

14 Mr. Xhemajli, Latif Gashi was the head of intelligence services  
15 for the Llap zone. You were aware of that?

16 A. Are you asking Mr. Xhemajli or me?

17 Q. Pardon me, Mr. Berisha. I'll get the names the right way around  
18 eventually.

19 A. Could you please repeat the question?

20 Q. Of course. I simply asked whether or not you were aware that  
21 Latif Gashi was head of the intelligence service in Llap.

22 A. No, I was not aware.

23 Q. When you say you were not aware, do you mean during the time  
24 period of the war?

25 A. Correct.

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1 Q. At any stage after the war, did you become aware that that was  
2 the role he played?

3 A. Yes.

4 Q. Now, in terms of your interactions with Mr. Gashi during the  
5 war, it's right that you only met him once during the war; is that  
6 right?

7 A. Yes, once.

8 Q. You were never directly tasked by him; that's correct?

9 A. I wasn't. No, never.

10 Q. And you never worked alongside him in your role as military  
11 police?

12 A. I did not.

13 Q. And it might seem obvious, but it's right, therefore, that you  
14 are not in a position to assist us with what Latif Gashi did during  
15 the war, what his position was, or what his activities were; is that  
16 right?

17 A. Correct, yes. I have no knowledge. I don't know what  
18 activities he undertook, what post he had, what he did and so on. I  
19 have no knowledge whatsoever.

20 Q. And it follows, doesn't it, Mr. Berisha, that you would,  
21 therefore, have no knowledge of who reported to him or who he gave  
22 orders to, if anybody?

23 A. Correct, yes. I have no knowledge.

24 Q. Now, according to Agron Xhemajli, he did not report to  
25 Latif Gashi and only met him twice during the war. You wouldn't have

1 any reason to dispute that account, would you?

2 MR. DE MINICIS: The same objection as earlier.

3 THE WITNESS: [via videolink] [Interpretation] No, I wouldn't  
4 know. I wouldn't know.

5 MS. ROWAN:

6 Q. Now, I just want to bring you back to a question that you were  
7 asked by the SPO in your interview. You were asked --

8 MS. ROWAN: And the reference is 072914 -- oh, pardon me, we  
9 have an exhibit number, P01645.1, and it is page 20, line 21.

10 Q. Now, in your SPO -- Mr. Berisha, the SPO asked you this:

11 "Was it Latif Gashi, as head of the information service for the  
12 zone, that was tasking Agron Xhemajli?"

13 And you answered:

14 "For sure, yes. This is how the chain of command went."

15 Now, pausing there. Considering what you've just accepted in  
16 terms of the state and limitations of your knowledge about  
17 Latif Gashi, can we take that you simply assumed that that's who he  
18 would be reporting to, but, again, you don't know?

19 A. I don't know.

20 Q. And as you said earlier, you learned after the war that  
21 Latif Gashi was head of the information services for Llap, and you  
22 knew Mr. Xhemajli was information services for the brigade.

23 A. Yes.

24 Q. So is it right that when answer -- so would it be correct or  
25 fair to say that when answering that question for the Prosecution,

1 because it made sense in terms of chain of command, that you assumed  
2 that that's what the reporting line was but have no knowledge and  
3 were not told that that was true?

4 A. I had absolutely no knowledge, no.

5 Q. Thank you.

6 PRESIDING JUDGE SMITH: Thank you.

7 Mr. Tully.

8 MR. TULLY: We have no questions for the witness. Thank you,  
9 Your Honour.

10 MS. S. ALAGENDRA: Thank you, Your Honours.

11 PRESIDING JUDGE SMITH: Ms. Alagendra, go ahead.

12 MS. S. ALAGENDRA: Thank you.

13 Cross-examination by Ms. S. Alagendra:

14 Q. Good afternoon, Mr. Witness. My name is Shyamala Alagendra, and  
15 I represent Mr. Jakup Krasniqi today. Sir, I have just very few  
16 questions for you, so please bear with me.

17 Sir, my first question to you relates to the Karadak zone.

18 MS. S. ALAGENDRA: And I'm referring to paragraph 18 of  
19 Prep Note 2.

20 Q. And there, sir, you have told the Prosecution that the Karadak  
21 zone did not coordinate their activities with Brigade 153 and they  
22 worked independently. Can you confirm, sir, that's in fact correct?

23 A. Yes.

24 MS. S. ALAGENDRA: Could I please ask for Exhibit P1655 to be on  
25 the screen, please. Could I also please ask for it to be zoomed in a

Witness: Halim Berisha (Private Session)

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Cross-examination by Ms. S. Alagenda

1 little bit onto the uniforms. Yes, this should do.

2 Q. Sir, could you have a look at the photograph on the screen. You  
3 were shown this photo earlier by the Prosecutor. And I just wanted  
4 you to have a look at the patches on the sleeves of the uniform, and  
5 can you confirm for us that, in fact, those are TMK patches? Can you  
6 confirm that?

7 A. TMK, yes.

8 Q. And it's correct, isn't it, the TMK was established after the  
9 KLA ceased to exist?

10 A. Correct.

11 MS. S. ALAGENDRA: Could I go into a closed session very  
12 briefly?

13 PRESIDING JUDGE SMITH: Private session, please.

14 [Private session]

15 [Private session text removed]

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1 [Private session text removed]

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5 [Open session]

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

7 PRESIDING JUDGE SMITH: Go ahead, Ms. Alagendra.

8 MS. S. ALAGENDRA: Thank you.

9 Q. Sir, you told the SPO during your interview --

10 MS. S. ALAGENDRA: And I'm referring to P01645.3, page 18 to 19.

11 Q. You told the SPO that in 2005 you went to France, where you  
12 stayed for a period and you sought asylum. Do you recall saying  
13 that?

14 A. Yes. It was in 2006.

15 Q. And may I ask, sir, the basis for your application, was it  
16 related to the issues that you have also given evidence about in the  
17 proceedings before this Court? Just a "yes" or "no" answer, please,  
18 without any details. We're in public.

19 A. No, I did not. I did not have an invitation by this office for  
20 me to be able to rely on that.

21 Q. But the basis for your application, did it involve the same  
22 incident that you may have given evidence about in the proceedings in  
23 this Court?

24 A. No. It was mostly to do for economic reasons.

25 Q. And did you provide the SPO with the decision rejecting your

Witness: Halim Berisha (Open Session)  
Cross-examination by Ms. S. Alagendra

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1 asylum application?

2 A. I wasn't asked by anyone.

3 Q. Thank you very much.

4 MS. S. ALAGENDRA: Those were my questions. Thank you,  
5 Your Honours.

6 PRESIDING JUDGE SMITH: Thank you.

7 Any redirect?

8 MR. DE MINICIS: No, Your Honour.

9 PRESIDING JUDGE SMITH: Witness, that is the end of your  
10 testimony. You will be excused from further obligation to the Court.  
11 Thank you for being with us. You may leave the courtroom now in the  
12 company of the Court Attendant.

13 We also thank Duty Counsel for your attendance and for assisting  
14 the witness in his testimony.

15 You may leave now.

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

17 MR. OSAJ: [via videolink] [Interpretation] Thank you.

18 [The witness withdrew via videolink]

19 PRESIDING JUDGE SMITH: Yes, Ms. Rowan.

20 MS. ROWAN: Your Honour, if I could just correct a reference. I  
21 misspoke at page 58, line 9, of today's transcript. The correct  
22 reference should be Part 1.

23 PRESIDING JUDGE SMITH: Thank you.

24 MS. ROWAN: Thank you.

25 PRESIDING JUDGE SMITH: We will take about a 20-minute break to

1 make the transition to the next witness. So we will reconvene at  
2 12.30. Please be available at that time.

3 We are in public session, so we are adjourned until 12.30.

4 --- Break taken at 12.12 p.m.

5 --- On resuming at 12.33 p.m.

6 PRESIDING JUDGE SMITH: We will now start hearing the evidence  
7 of Prosecution Witness W04366 who will be appearing by videolink.

8 Madam Court Attendant, you may bring the witness into the room.

9 [The witness entered court via videolink]

10 THE COURT OFFICER: [via videolink] Your Honour, for the record,  
11 just to confirm that at the remote location present are the witness,  
12 W04366, and myself, Court Officer.

13 PRESIDING JUDGE SMITH: Thank you. Good morning, Witness --  
14 actually, good afternoon, Witness. It's now past 12.00. The CMU  
15 member at your location --

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

17 PRESIDING JUDGE SMITH: The CMU member at your location will  
18 provide you with the text of the solemn declaration which you are  
19 asked to take pursuant to our rules of procedure.

20 Please stand up first. Now you may take a look at the solemn  
21 declaration and then read it aloud.

22 THE WITNESS: [via videolink] [Interpretation] Conscious of the  
23 significance of my testimony and my legal responsibility, I solemnly  
24 declare that I shall tell the truth, the whole truth, and nothing but  
25 the truth, and I shall not withhold anything which has come to my



1 knowledge.

2 WITNESS: W04366

3 [The witness answered through interpreter]

4 [The witness testified via videolink]

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

6 Witness, first of all, can you hear okay?

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

8 PRESIDING JUDGE SMITH: Good. Today we will start your  
9 testimony, which is expected to last less than one day. As you may  
10 know, the Prosecution will ask you questions. Then the Defence has  
11 the right to ask questions of you. Members of the Panel might also  
12 ask questions of you.

13 The Prosecution estimate for your examination is 30 minutes.  
14 The Defence estimates that it will need approximately one and a half  
15 hours altogether. As regards each estimate, we hope that the counsel  
16 will be judicious in their use of the time. The Panel may allow  
17 redirect examination if conditions for it are met.

18 Witness, please try to answer the questions clearly with short  
19 sentences. If you don't understand a question, feel free to ask  
20 counsel to repeat the question or tell them that you don't understand  
21 and they will clarify. Also, please try to indicate the basis of  
22 your knowledge of facts and circumstances that you will be asked  
23 about.

24 In the event you are asked by the SPO to attest to some  
25 corrections made regarding your statements, you are reminded to

1 confirm on the record that the written statement, as corrected by the  
2 list of corrections, accurately reflects your declaration.

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

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

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

13 If you feel the need to take a break at any time, please let us  
14 know and we will accommodate you.

15 We begin now with the direct examination by the Prosecution's  
16 Office. Please give them your attention.

17 Mr. Prosecutor, you have the floor.

18 Examination by Mr. De Minicis:

19 Q. Good afternoon, Witness. Thank you for being here. Is your  
20 name --

21 A. Good afternoon.

22 Q. Is your name [REDACTED] Pursuant to In Court Redaction Order  
F2587RED.

23 [REDACTED] Pursuant to In Court Redaction Order F2587RED.

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 MR. DE MINICIS: I'm very sorry, Your Honours. I thought we

Witness: W04366 (Private Session)

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Examination by Mr. De Minicis

1 were in private session. That should be redacted.

2 PRESIDING JUDGE SMITH: [Microphone not activated].

3 MR. DE MINICIS: I apologise.

4 [Private session]

5 [Private session text removed]

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24 [Open session]

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



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15 [Open session]

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

17 MR. DE MINICIS:

18 Q. Witness, did you have the opportunity to review the documents  
19 that we have just discussed before we began the preparation session?

20 A. Yes.

21 Q. And after having reviewed the documents, you requested to make  
22 some corrections, mostly spelling errors and some other information  
23 recorded therein; correct?

24 A. Yes.

25 Q. Once you finished reading the statements, we wrote down the

1 changes you had requested in a note that was then read back to you;  
2 correct?

3 A. Yes.

4 Q. Then after the readback of the note, you confirmed that you were  
5 satisfied that the note accurately reflected the changes that you had  
6 requested to be made; is that correct?

7 A. That's right.

8 Q. And subject to the changes you made in that note, do these  
9 statements accurately reflect what you would say today if asked the  
10 same questions?

11 A. Yes.

12 MR. DE MINICIS: Your Honours, we submit that this satisfies the  
13 requirements of Rule 154. The SPO seeks admission of Preparation  
14 Note 1 with ERN 122749 to 122752 and of the Rule 154 materials found  
15 to be admissible in Your Honours' decision of 13 September 2024, that  
16 would be F02571 in paragraphs 113 to 122.

17 These materials are listed in footnote 226 of that decision.

18 I'm prepared to read the ERNs on the record, if necessary.

19 PRESIDING JUDGE SMITH: Any objection?

20 MS. TAVAKOLI: No objection.

21 MS. ROWAN: No, thank you.

22 MR. TULLY: None.

23 PRESIDING JUDGE SMITH: No objection is heard.

24 059351-TR-AT Part 1 -- how many parts are there, please?

25 MR. DE MINICIS: They are three parts.

Witness: W04366 (Private Session)

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Examination by Mr. De Minicis

1 PRESIDING JUDGE SMITH: Two?

2 MR. DE MINICIS: Three.

3 PRESIDING JUDGE SMITH: Three. And all three parts, that's  
4 Part 1, 2, and 3 RED2 is admitted.

5 THE COURT OFFICER: Your Honours, those parts will be assigned  
6 Exhibit P01660.1 for Part 1; P01660.2 for Part 2; and P01660.3 for  
7 Part 3. And they will be marked for both English and Albanian  
8 versions.

9 MR. DE MINICIS: And, Your Honour, just a reminder that the ERN  
10 of that second statement should not be read out in public.

11 PRESIDING JUDGE SMITH: [Microphone not activated].

12 The prep note is 122749 to 122752 and is admitted.

13 THE COURT OFFICER: Your Honours, the prep note will be assigned  
14 Exhibit P01661.

15 PRESIDING JUDGE SMITH: All right.

16 And then into private session, please.

17 [Private session]

18 [Private session text removed]

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Witness: W04366 (Private Session)

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Examination by Mr. De Minicis

1 [Private session text removed]

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1 [Open session]

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

3 PRESIDING JUDGE SMITH: Thank you.

4 MR. DE MINICIS: Your Honours, with your permission, I'd like to  
5 read a short public summary of the witness's testimony that was  
6 shared with the Defence on 12 September 2024.

7 PRESIDING JUDGE SMITH: Go ahead.

8 MR. DE MINICIS: In 1999, 4366 was arrested by certain KLA  
9 members and taken to the metal factory in Kukes. There, 4366 was  
10 mistreated, questioned, and held in inhumane conditions. He  
11 witnessed the mistreatment of co-detainees and will also be able to  
12 provide evidence concerning the death of the murder victim.

13 This concludes the summary.

14 PRESIDING JUDGE SMITH: Thank you.

15 MR. DE MINICIS:

16 Q. Now, Witness, I only have a couple of additional questions for  
17 you.

18 You testified - and this is to be found in [REDACTED] Pursuant to  
19 In Court Redaction Order F2587RED.

19 [REDACTED] Pursuant to In Court Redaction Order F2587RED. - that you  
had donated --

20 MR. DE MINICIS: Your Honours, can we actually move into private  
21 session for this?

22 PRESIDING JUDGE SMITH: Yes. Into private session, please.

23 [Private session]

24 [Private session text removed]

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Witness: W04366 (Private Session)

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Examination by Mr. De Minicis

1 [Private session text removed]

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Witness: W04366 (Private Session)

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Examination by Mr. De Minicis

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Witness: W04366 (Private Session)  
Procedural Matters

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1 [Private session text removed]

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5 [Open session]

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

7 PRESIDING JUDGE SMITH: Thank you.

8 Witness, we have a lunch break at this time every day, so you  
9 will be excused for an hour and a half. We will be back in the  
10 courtroom at 2.30. Please do not speak with anyone about your  
11 testimony outside the courtroom, and you may leave the room now in  
12 the accompaniment of the Court Attendant. Enjoy your lunch.

13 [The witness stands down via videolink]

14 PRESIDING JUDGE SMITH: [Microphone not activated].

15 --- Luncheon recess taken at 12.59 p.m.

16 --- On resuming at 2.31 p.m.

17 PRESIDING JUDGE SMITH: Madam Court Officer, you can bring the  
18 witness into the room.

19 MR. TULLY: And prior to him beginning his -- prior to the  
20 beginning of the cross-examination, all of my questions should be in  
21 private session for his protection.

22 PRESIDING JUDGE SMITH: [Microphone not activated].

23 MR. TULLY: Thank you.

24 [The witness takes the stand via videolink]

25 PRESIDING JUDGE SMITH: So into private session, please.

Witness: W04366 (Private Session)

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Cross-examination by Mr. Tully

1 [Private session]

2 [Private session text removed]

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Witness: W04366 (Private Session)

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Cross-examination by Mr. Tully

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Witness: W04366 (Private Session)

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Cross-examination by Mr. Tully

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Witness: W04366 (Private Session)

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Cross-examination by Mr. Tully

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Witness: W04366 (Private Session)

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Cross-examination by Mr. Tully

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Witness: W04366 (Private Session)

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Cross-examination by Mr. Tully

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11 [Open session]

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

13 PRESIDING JUDGE SMITH: All right. Thank you very much.

14 That concludes things for today unless there's something else to  
15 be brought before the Bench.

16 We will see you all Monday morning at 9.00. We're adjourned.

17 --- Whereupon the hearing adjourned at 2.45 p.m.

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