

1 Wednesday, 21 February 2024

2 [Open session]

3 [The accused entered the courtroom]

4 [The Accused Krasniqi appeared via videolink]

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

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

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

11 PRESIDING JUDGE SMITH: Thank you.

12 Today we will continue to hear the evidence of Prosecution
13 Witness W04576. I note that Mr. Krasniqi is appearing by videolink
14 today, and the other accused are present in court. And Judge Barthe
15 is continuing to participate by videolink.

16 Madam Court Officer, please bring the witness in.

17 We will briefly break at 10.00, as we did yesterday, for ten
18 minutes.

19 Madam Court Officer, you have the floor.

20 THE COURT OFFICER: Your Honours, just a clarification.
21 Yesterday, three admitted exhibits for the Krasniqi Defence with the
22 exhibit numbers 4D26, 4D27, and 4D28 are all classified as
23 confidential. So just to rectify that on the record.

24 [The witness takes the stand]

25 PRESIDING JUDGE SMITH: Do those need to remain as confidential?

1 Mr. Ellis, two of those were your exhibits.

2 MR. ELLIS: At least two of them have a name on it that could be
3 associated with the witness, so I would have thought that
4 confidential would be safer.

5 PRESIDING JUDGE SMITH: Thank you. And the others are from the
6 SPO? The other --

7 THE COURT OFFICER: Yes. The other exhibit is two pages of the
8 book, 043900 to 044239, which were admitted as P01014, and they're
9 all marked as confidential. The book is marked as confidential.

10 MR. PACE: We'll check with our colleague and get back to you,
11 Your Honour.

12 PRESIDING JUDGE SMITH: Thank you very much.

13 Good morning, Witness. Thank you for being with us again today.
14 I remind you during your testimony that will continue now --

15 THE WITNESS: [Interpretation] Good morning.

16 PRESIDING JUDGE SMITH: I remind you to please try to answer the
17 questions clearly with short sentences. If you don't understand a
18 question, feel free to ask counsel to repeat the question or tell
19 them that you don't understand and they will clarify. Also, please
20 remember to try to indicate the basis of your knowledge of the facts
21 and circumstances upon which you will be questioned.

22 I remind you that you are still under an obligation to tell the
23 truth as stated by you in your solemn declaration.

24 Please also remember to speak into the microphone and to wait
25 five seconds before answering a question to allow the translators to

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12625

1 catch up.

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

4 So we continue with the questioning from the Prosecution.

5 Mr. Pace.

6 MR. PACE: Thank you, Your Honour. And just to correct myself,
7 the Exhibit P01014 was actually one that I admitted yesterday and
8 that can be public.

9 PRESIDING JUDGE SMITH: Thank you.

10 WITNESS: HAJRUSH KURTAJ [Resumed]

11 [The witness answered through interpreter]

12 Examination by Mr. Pace: [Continued]

13 Q. Good morning, Mr. Witness.

14 A. Good morning.

15 Q. Yesterday where we left off, we were discussing the area of
16 responsibility of Brigade 162. And on those lines, my next question
17 is could you tell us where Kukaj is located?

18 A. Kukaj is a neighbourhood in the commune of Kacanik.

19 Q. And was Kukaj under the area of responsibility of Brigade 162 in
20 1998, 1999, or both?

21 A. No, it was not under the control of the units because they were
22 located in the mountainous part of the area, and I'm talking here
23 with regards to the brigade units.

24 Q. And how far is Kukaj from Bob, from the village of Bob or the
25 mountainous area above Bob that you described yesterday?

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12626

1 A. It is a neighbourhood in the village of Bob. It is about 2 to
2 3 kilometres over -- I mean, the mountains are 2 to 3 kilometres over
3 the neighbourhood of Kukaj.

4 Q. And in 1998 or 1999, were there any KLA units in Bicec?

5 A. In 1998, no, there were not.

6 Q. Okay. Were there in 1999?

7 A. In 1999, there was a company.

8 Q. When in 1999 was there a KLA company in Bicec, please?

9 A. From the beginning of April. About the date, I can't exactly
10 recall.

11 Q. And who from the KLA was in charge of that unit in Bicec?

12 A. Nazmi Osmani was the commander of the company.

13 Q. Was Varosh under the control -- or, sorry, within the area of
14 responsibility of Brigade 162?

15 A. No.

16 Q. And Varosh is in the Ferizaj municipality; is that correct?

17 A. Yes, it is in the commune of Ferizaj.

18 Q. Did Brigade 162 have any areas of responsibility in any other
19 part of the Ferizaj municipality in 1998 or 1999?

20 A. In 1998, no, there was no area of responsibility of that
21 brigade.

22 Q. And in 1999?

23 A. That is true for 1999 as well. So there were no
24 responsibilities of this brigade over the area of Ferizaj.

25 Q. Where is Jezerc or Jezerce?

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12627

1 A. The village of Jezerc is located in the municipality of Ferizaj.

2 Q. And how far is Jezerc from Varosh?

3 A. I don't know how far it is exactly. I can't tell you in terms
4 of kilometres. I don't know.

5 Q. Do you recall telling the Prosecution, when we met for witness
6 preparation, that it was 12 to 13 kilometres away from Varosh? Does
7 that sound correct?

8 A. It can be approximately that distance, but I can't tell that for
9 a fact, because Varosh is at the very beginning of the territory of
10 Ferizaj, whereas Jezerc is totally in the opposite direction.

11 Q. And were there KLA units in Jezerc at any point in 1999?

12 A. What units are you talking about?

13 Q. Any KLA units in Jezerc in 1999.

14 A. Jezerc was not part of my competencies or powers.

15 Q. Yes, I'd like you to listen to the question I'm asking. Were
16 there any KLA units in Jezerc in 1999 to your knowledge?

17 A. Yes, there were. But like I said, they were not under my
18 powers, and I can't be accurate in my answers for something that was
19 not part of my responsibilities.

20 Q. To your knowledge, under whose powers were the KLA units in
21 Jezerc?

22 A. I do not remember.

23 Q. Yesterday, towards the end of the day, we also discussed Ivaje.
24 Could you tell us what buildings or structures the KLA occupied or
25 used in Ivaje in February and March 1999?

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12628

1 A. They used areas and houses in the mountainous part of that area.

2 Q. And in relation to the houses that the KLA used in Ivaje in
3 February and March 1999, do you remember who owned those houses
4 before or when the KLA used them or occupied them?

5 A. I do not remember.

6 Q. Now, turning to Bob or the area above or around Bob, what
7 buildings or structures did the KLA use or occupy there in February
8 and March 1999?

9 A. There was a house in the mountainous part of the Bob village.
10 It was an old house, an old house, a house that served to summer
11 businesses, to farmers. That was a house that was used by the KLA.

12 Q. And yesterday you told us that it was Feriz Guri's company that
13 was based in the area above Bob, so is this the house that this
14 company was based in or used?

15 A. Yes.

16 Q. And turning to Bicec, could you tell us what buildings or
17 structures the KLA used or occupied in Bicec in 1999?

18 A. I am not sure because I have never been to that house. What I
19 can say is that it is recognised as the neighbourhood of Zharku.

20 Q. So in your answer you said you've never been to "that house" in
21 response to my question about Bicec. What house have you never been
22 to in Bicec? What are you referring to?

23 A. For the house that you are talking about. It was in answer to
24 your question. I told you that I don't know in what house they were
25 located, but I know the neighbourhood and the neighbourhood was that

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12629

1 of Zharku.

2 Q. Witness, just to be clear, I didn't refer to a house. I just
3 referred to buildings generally. Am I understanding correctly that,
4 to your knowledge, there was a house used by the KLA in the Zharku
5 neighbourhood of Bicec?

6 A. So the building -- a building or a house is the same thing to
7 me. About the house where they were staying, I can't say anything
8 about that because I haven't ever been to a house or to a building,
9 no matter on how you refer to it.

10 Q. Did you ever visit Bob or the area above Bob, Bob mountains, in
11 1999?

12 A. I've been to the tower of Hasan. There is the place where I've
13 been.

14 Q. And is the tower of Hasan the same location that you mentioned
15 the unit of Feriz Guri was based in or is it somewhere else?

16 A. It is the same place.

17 Q. And was this tower of Hasan, the place where Feriz Guri's unit
18 used, was there anything particular -- or, I'm sorry, was there any
19 particular reason why you went there at the time?

20 A. No, there was no particular reason. But I was the deputy
21 commander, and there was the place where they would cook the food for
22 the soldiers.

23 Q. And which soldiers was the food cooked for in this area of Bob
24 that you're just referring to?

25 A. The soldiers of the company of Feriz Guri would take food from

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12630

1 the tower of Hasan. So the food would be cooked there for the
2 soldiers of Feriz Guri.

3 Q. And you yourself were not part of Feriz Guri's unit; correct?

4 A. No, I was not.

5 Q. Okay. So like yourself, were there soldiers other than those in
6 Feriz Guri's unit who also went to this area for the food in 1999?

7 A. I don't remember. But nobody was prohibited to eat food. The
8 food was accessed by everyone.

9 MR. PACE: I'd like to show the witness a document. Court
10 Officer, please, can we call up 036622 to 036837, and we'll show the
11 first page of that, please. And side by side with it, the Albanian
12 version, which is 077039 to 077258, and again the first page please.
13 Thank you, Court Officer.

14 Q. Witness, do you see two documents on your screen?

15 A. Yes, I do.

16 Q. We see that the one on the left is in English, and the one on
17 the right is in Albanian. Do you recognise these items?

18 A. Yes, they are both my books.

19 Q. And you said that they are both your books. Is it correct that
20 you yourself wrote the version in Albanian?

21 A. Yes.

22 Q. And the version on the left is the English translation of that
23 book that you wrote yourself?

24 A. Yes.

25 MR. PACE: And, Court Officer, on the item on the right, could

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12631

1 we please turn to the second page, 077040. We can leave the one on
2 the left on the screen for now.

3 Q. And, Witness, here I'm just focusing you on the item in Albanian
4 on the right of your screen, we see at the bottom Prishtine, 2012.
5 Is that when you first published this book?

6 A. Yes.

7 Q. So you published it in 2012. Could you tell us when you started
8 writing the book?

9 A. I don't know exactly when, but it was about four to five years
10 before the publication. It took me four to five years to write the
11 book.

12 Q. And as soon as you finished writing it, was it published or was
13 there also a break in time or a lapse of time between the time you
14 finished it, writing the book, and then when it was published in
15 2012?

16 A. Once I wrote it, I published it immediately. There was no lapse
17 of time.

18 Q. And do you remember in your SPO interview telling the
19 Prosecution that you needed three years after you prepared the book
20 for it to actually be finalised and published?

21 A. Well, what I'm telling you is that it took me four to five
22 years, and the three years you're talking about are part of these
23 four to five years.

24 MR. PACE: And, Court Officer, could we please turn to page
25 36624 in the English version on the left, and in the Albanian

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12632

1 version, to page 077041. Thank you, Court Officer.

2 Q. And, Witness, as we can see on this page, is it correct that
3 Professor Dr. Selim Daci and Major-General Shukri Buja were the
4 editors of this book?

5 A. Yes, they were the editors of the book.

6 Q. And could you tell us very briefly who Professor Dr. Selim Daci
7 is?

8 A. Professor Daci is a professor with the University of Prishtine.
9 He is a history professor.

10 MR. PACE: And, Court Officer, I'd like to turn to pages 36637
11 in the English version, 36637, and in the Albanian, 077054.

12 Q. And, Witness, this is from your own introduction to your book,
13 and you state as follows:

14 "I am especially grateful to the reviewers; Dr. Selim Daci and
15 Major-general Shukri Buja, whose suggestions and critique increased
16 the scientific value of this publication and gave me courage for the
17 future studies as well."

18 That's the end of the quote.

19 And, Witness, my question is could you tell the Judges what
20 Shukri Buja's role as an editor of this book entailed?

21 A. He gave his opinions about this book. Even though I said
22 yesterday, and I am repeating it today as well, that we presented
23 things according to our own wishes rather than as they happened in
24 reality, so we have augmented things. I told you that yesterday as
25 well.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12633

1 Q. And, Witness, you said Shukri Buja gave his opinions about the
2 book. What opinions did he give you?

3 A. The opinion that is there reflected in the book.

4 Q. And do you recall what that opinion was by Shukri Buja?

5 A. No, I don't remember it by heart.

6 Q. And do you recall Shukri Buja giving you an opinion that
7 anything in your book was incorrect or not accurate?

8 A. Everything that Shukri Buja said is reflected in the book
9 itself.

10 Q. Yes, Witness. You're not answering my question. My question is
11 when he gave you his opinion -- or let's say when he spoke to you
12 about your book, do you remember Shukri Buja telling you that
13 anything in your book is not accurate or not correct?

14 A. I don't remember.

15 Q. Is that that you don't remember him telling you anything is
16 incorrect or anything is inaccurate, or are you saying something
17 different?

18 A. I don't remember. Everything that he said, those things are in
19 the book.

20 Q. So just to be clear, you don't remember Shukri Buja ever telling
21 you something you wrote is not correct, not accurate. You don't
22 remember that; right?

23 A. I don't remember that.

24 MR. PACE: Court Officer, if we could please turn in the English
25 to page 036629, and in the Albanian to page 077047.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12634

1 Q. And I'm reading from the last paragraph in the English and the
2 first paragraph on that page in Albanian. Witness, here we see some
3 words written by Professor Daci, including, and I quote, the
4 following:

5 "The author used as resource, and based this monograph on many
6 authentic documents, orders, reports and studies, which remain not
7 catalogued in the Archive of the Area of Operative Nerodima, Area VI
8 of the Kosova Defence Army, and the Kosova archives, mainly in the
9 KLA area.

10 "These numerous documents depict a clear tableau the most
11 important events of the KLA war in the Area of Operative Nerodima.
12 Original data abound from the facts, interviews, memoirs and
13 conversations with the KLA leaders in the Area of Operative Nerodima.
14 The author has also used the media of those times as an additional
15 means of verification of the data, further increasing the
16 professional and scientific value of this monograph."

17 That's the end of the quote.

18 And my question, Witness, is whether the information by
19 Professor Daci here in his introductory remarks is correct.

20 A. The professor was based on what he saw in the book.
21 Nonetheless, I wish to repeat once again that we have embellished
22 things, and that is something that you have to take into account.

23 Q. So, Witness, could you just clarify that. Was the professor
24 lying when he wrote that about your book or was he being truthful?

25 A. The professor has never lied. He doesn't lie. He's not a liar.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12635

1 Please don't formulate it like that because, like I said, the
2 professor has given his evaluation based on what he has seen in the
3 book. So the things that I have written myself, those things have
4 been embellished, they've been augmented so that the book was the
5 most interesting possible. So we have put things the way that we
6 wished, not as they were in fact.

7 MR. PACE: And, Your Honour, at this point I would like to admit
8 the pages that I've shown to the witness thus far from the book. I
9 could repeat those if it assists. They would be pages 036622, and in
10 Albanian, 077039, 077040; 036624, and in Albanian, 077041; 036637,
11 and in Albanian, 077054; and 036629, and in Albanian, 077046 to 47.

12 PRESIDING JUDGE SMITH: [Microphone not activated].

13 MR. MISETIC: At this point we would object. We're not sure
14 what the relevance is until something is going to be put to him about
15 the book. Given the objections we laid out yesterday, we'd like to
16 see what the rule is, that if other portions of the book are going to
17 be offered, we think it should be offered together. But until we see
18 what the purpose of the book is, we can't make a -- give an opinion
19 on whether this should be a part of what ultimately is coming.

20 So just to put a title of a book in and some comments about the
21 value of a book but then not put anything from the book is, I'm not
22 sure what the relevance or probative value is until we see what's
23 coming from the book.

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 MR. EMMERSON: We support that position.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12636

1 MR. TULLY: We also support it, Your Honour.

2 MR. ELLIS: Yes, Your Honour.

3 [Trial Panel confers]

4 PRESIDING JUDGE SMITH: The enumerated pages will be admitted as
5 clearly relevant to the book and to this case. They're authentic,
6 there's a probative value, so they will be admitted. And the Court
7 Officer please assign a number to them.

8 THE COURT OFFICER: Your Honours, page 077039, page 077040, page
9 077041, 077054, and 077046 to 47, Albanian version, and their
10 corresponding English translation, will be assigned Exhibit P01015.
11 And just to mention the pages are extracted from the book with ERN
12 077039 to 077258, while English translations are extracted from the
13 document with ERN 036622 to 036837. And the current classification
14 of the entire book is confidential.

15 MR. PACE: And on that, both versions, English and Albanian, can
16 be public.

17 PRESIDING JUDGE SMITH: [Microphone not activated].

18 Any objection to the public classification?

19 MR. MISETIC: No.

20 MR. EMMERSON: No separate objection, no.

21 MR. TULLY: No, Your Honour.

22 PRESIDING JUDGE SMITH: Mr. Ellis.

23 MR. ELLIS: No, Your Honour.

24 PRESIDING JUDGE SMITH: All right. They will be reclassified as
25 public.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12637

1 Go ahead, Mr. Pace.

2 MR. PACE: Thank you, Your Honour and Court Officer.

3 Q. And, Witness, still referring to the book in front of you, did
4 you knowingly include any facts that you knew to be false in the
5 book?

6 A. I don't remember.

7 Q. So you don't remember if you knowingly put in facts that you
8 knew to be false in the book? Am I understanding your answer
9 correctly?

10 A. I don't remember. I said it earlier, there are things that I
11 have amplified, I have embellished in there. I have included all
12 those in the book in the way I wanted them to be portrayed and not as
13 they were in reality, because the reality was something different.
14 The circumstances, the conditions were very hard, and I could not
15 represent those in the book as they were.

16 Q. Would you have written something in this book that you knew was
17 not true?

18 A. Right now I can't think of one.

19 Q. So right now you cannot think of something false that you wrote
20 in the book; right?

21 A. I don't remember.

22 Q. I just need you to be clear in your answer and to make sure that
23 I'm understanding. You don't remember writing anything in the book
24 that you knew to be false at the time; is that correct or not?

25 A. I am not able right now to give you -- to tell you specifically

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12638

1 those things. Therefore, I don't have an exact answer.

2 Q. Witness, I'm still not understanding your answer, so I'm afraid
3 I have to go over this again. What are you not able to tell me right
4 now? Are you not able to tell me right now that you did not include
5 false information in this book? Is that what you're unable to say?

6 MR. EMMERSON: I do apologise, but I don't even understand that
7 question with its double negatives.

8 PRESIDING JUDGE SMITH: You might want to rephrase that,
9 Mr. Pace. I agree that's not very clear.

10 MR. PACE: Certainly, Your Honour. I could also do this another
11 way and go, with your leave, to the prior statements since the
12 witness is talking about things he doesn't remember. There's a
13 relevant passage there I'd like to go to.

14 PRESIDING JUDGE SMITH: So withdrawing the question?

15 MR. PACE: Yes, I will rephrase it in another way.

16 And so, Court Officer, if we could please pull up 074301-TR-ET
17 Part 1, and the Albanian translation as well of the same item. And
18 we're going to go to page 17 in the English, and starting at page 20
19 in the Albanian, please.

20 So Part 1 and we're page 17 in the English. Yes, correct. No,
21 not correct. It's page 17 of the English. I can't see the page
22 number right now at the bottom of the ... thank you. And in the
23 Albanian, it should be page 20. Yes.

24 Q. So, Witness, I'm going to read to you from your prior statement
25 to the SPO in February 2020. You see the English version on the left

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12639

1 that I'll be reading from and the Albanian version on the right. And
2 so we have the following exchange.

3 PRESIDING JUDGE SMITH: Please indicate the line number.

4 MR. PACE: Yes, I'll be reading in English from line 13. And in
5 Albanian from page 20, line 9, and it goes on to the next page on to
6 line 12.

7 Q. "Q. Did you knowingly include any facts that you knew to be
8 false in this book?

9 "A. No."

10 And, Witness, we'll stop there. So is it correct or incorrect,
11 as you stated in February 2020, that you didn't include any facts
12 that you knew to be false in the book?

13 A. I have said this. However, I repeat again that I am not certain
14 about this matter.

15 Q. I'll continue reading. In your answer here, you say:

16 "As far as I know, I am aware that I wouldn't write something
17 that was not true."

18 Could you tell the Judges whether this is correct?

19 MR. ELLIS: Well, Your Honours, I'm going to rise at that point.
20 It would be helpful if the whole answer could be put to the witness
21 in context. We're picking phrases --

22 PRESIDING JUDGE SMITH: If the Prosecutor doesn't get to the
23 whole answer, we will ask him to, but let's let him handle the
24 questions as he wishes.

25 Go ahead, Mr. Pace.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12640

1 MR. PACE: Thank you, Your Honour.

2 Q. So, Witness, just to repeat. The next sentence here says:

3 "As far as I know, I am aware that I wouldn't write something
4 that was not true."

5 Is that correct or not?

6 A. I would want the entire sentence to be read.

7 Q. Witness, you're here to answer my questions. Please answer that
8 question. We will get to the rest of it when I choose to.

9 A. I am not able to give you an answer with partial things.
10 Because if we read the sentence word by word separately, in a
11 separate way, it loses its meaning.

12 Q. Witness, in the sentence that I read to you, you said you're
13 aware you wouldn't write something that was not true. Is that
14 correct or not? Could you please answer that question.

15 A. Can you please let me know the number under which the sentence
16 can be read?

17 Q. I believe it is being interpreted to you, but if you want to
18 follow from the Albanian, it is on your screen at page 20, line 9,
19 and it goes on to the next page, 21, line 12. But you can listen to
20 what I'm saying. I'll repeat it one more time, Witness. You stated
21 in February 2020:

22 "As far as I know, I am aware that I wouldn't write something
23 that was not true."

24 Could you tell the Judges if that is correct or not?

25 MR. MISETIC: Mr. President, just for the record, I'm told that

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12641

1 it actually begins on page --

2 THE WITNESS: [Interpretation] We need to read the preceding
3 sentence when I said --

4 PRESIDING JUDGE SMITH: Witness, please wait.
5 Go ahead.

6 MR. MISETIC: I'm told it actually begins on line 24 in the
7 Albanian.

8 MR. PACE: Thank you, Your Honour. That may well be correct.
9 Thank you to counsel for assisting.

10 PRESIDING JUDGE SMITH: Witness, listen to the question that's
11 asked and just -- Witness, listen to the question that is asked and
12 answer it. Don't ask for something that is not in the question.
13 Just answer the question. You will be allowed to clarify anything
14 after you finish that, but answer just the question Mr. Pace is
15 asking at this time.

16 Go ahead, Mr. Pace. Repeat the question.

17 MR. PACE: Thank you, Your Honour.

18 Q. And one more time, Witness, if you could please listen
19 carefully. You stated in February 2020:

20 "As far as I know, I am aware that I wouldn't write something
21 that was not true."

22 Is that correct or not?

23 PRESIDING JUDGE SMITH: That calls for a "yes" or "no" answer.
24 Correct is "yes"; incorrect is "no."

25 THE WITNESS: [Interpretation] That's correct.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12642

1 MR. PACE:

2 Q. And I'll go on to read the passage. You go on to say:

3 "But it is possible that there might -- something might not be
4 true, because I didn't have the proper documentation to support that
5 as well. It is possible I have forgotten something or my colleagues,
6 co-fighters, might have forgotten something as well."

7 Is that correct, Witness?

8 A. Correct.

9 MR. PACE: And we can take --

10 MR. EMMERSON: Your Honour, before we leave that passage, could
11 the witness's answer on the transcript be read to its end? There's a
12 further qualification which has been omitted by Mr. Pace.

13 MR. PACE: Your Honour, the further qualification is not
14 relevant to what I'm asking. It's something that the witness has
15 said in court multiple times. And should Defence counsel wish to put
16 that in cross-exam to reiterate something the witness said, they can
17 do so.

18 PRESIDING JUDGE SMITH: [Microphone not activated] ... entire
19 answer, I agree.

20 MR. PACE: Certainly, Your Honour. So as Your Honour ruled, I
21 will read the final sentence of this paragraph.

22 Q. Witness, the last sentence in your response is:

23 "But myself, as the author of the book, I would advise you not
24 to rely so heavily on it during -- as part of this process."

25 Is that correct? Does that correctly represent what you said in

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12643

1 February 2020?

2 A. Correct.

3 Q. And, Witness, since the book was first published in 2012, has
4 anyone ever informed you in any way of any particular error or
5 mistake in the book?

6 A. Nobody has informed me of any such errors. On the other hand, I
7 did not have time to deal with this in more detail either.

8 Q. So in the 12 years since this book was published, in Albanian at
9 least, nobody has pointed out any errors to you; right?

10 A. Not to me personally.

11 MR. PACE: And, Court Officer, if we could go back to the book
12 exhibit, please. So that is in English 036622 to 036837, and in
13 Albanian, 077039 to 077258. And we'll be turning to pages 036805 in
14 the English. So 036805 in the English, please. And in the Albanian,
15 that is at page 077225. Thank you. And if on both pages we could
16 zoom in on the photos in the bottom left corner of each page, please.
17 Thank you, Court Officer.

18 Q. Witness, in front of you are another two pages from your book,
19 on the right in Albanian and on the left in English, and we are
20 zooming in on an image there. Do you recognise the location in the
21 image depicted?

22 A. Yes, this is the Kulla e Hasanit, the dwelling of -- house of
23 Hasani above the village of Bob.

24 Q. So is this the location where Feriz Guri's unit was based in
25 1999 as you mentioned?

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12644

1 A. Yes.

2 Q. And we see a timestamp on the image. To me it looks like
3 13-3-99. To your knowledge, would that be correct?

4 A. It is possible. However, I am not able to confirm this with
5 certainty, because this was extracted from a recording and sometimes
6 there can be technical complications as a result of which the dates
7 are not correct.

8 Q. And we see that the caption to this photo, just for
9 completeness, says: "The Headquarters of 162nd Brigade
10 'Agim Bajrami' at a work meeting." Then, could you confirm that that
11 caption is correct?

12 A. Some of the members of the command, and I'm one of them.

13 Q. Are you at the meeting in the image to your recollection?

14 A. Yes, I am.

15 Q. Do you remember what that meeting was about?

16 A. I don't know exactly. But in this house where Feriz Guri unit
17 was stationed, this was as a point where all the volunteers would go
18 to join the Kosovo Liberation Army in Kacanik. And because my duty,
19 my task was to prepare the new recruits, to teach them and train them
20 how to use weapons and ammunitions, and to prepare them for their
21 soldiers' tasks and duties and combat operations, et cetera. So this
22 must have been -- the content of this meeting must have been related
23 to this.

24 Q. Do you recall who attended that meeting?

25 A. I don't exactly, and I am not able to distinguish from the

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12645

1 photograph the individuals there.

2 Q. And earlier you mentioned that you would go sometimes to this
3 location because there was where you could get food from. Could you
4 clarify whether the kitchen, as you described it, is in this building
5 that we see depicted in this image?

6 A. Yes, the kitchen was in this building.

7 MR. PACE: And Your Honour, I would seek to admit this image,
8 but I'm told that it has already been admitted as P01002 as an
9 associated exhibit to another witness, so I won't. If the Court
10 Officer could confirm that later, that would be good.

11 And if we could kindly turn to another book by the witness. So
12 it's a different ERN range. And that is 043900 to 042319. This is
13 the same book that we've had some excerpts of admitted already. And
14 the English translation is at 044212 to 044216-ET. Thank you.

15 And if we could turn in the Albanian to 044213, and actually
16 also in the English, 044213, please. And if we could zoom in the
17 Albanian on the bottom two photos, please, and the caption. Thank
18 you. And if we can scroll down in the English, I believe the caption
19 is translated. Yes, thank you.

20 Q. Now, Witness, this is from your other book that we already
21 discussed yesterday, I believe. Yes. And on your right, you see the
22 Albanian version with the images and the caption, and on the left
23 it's an English translation.

24 And could you confirm whether the image on the bottom at the
25 right also depicts the location where the unit of Feriz Guri was

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12646

1 situated?

2 A. Yes, it does.

3 Q. And do you recognise anyone in either of these two photos, the
4 one at the bottom left or the one at the bottom on the right?

5 A. On the picture on the left-hand side, I see myself and two of my
6 brothers and two other co-fighters.

7 Q. And were your brothers and the co-fighters also part of
8 Brigade 162?

9 A. Yes.

10 Q. And is the location in which you and your brothers and the
11 co-fighters are depicted in this image inside the building depicted
12 on the image just on the right-hand side of it?

13 A. Yes, inside.

14 Q. And on the image in which you've identified yourself and others,
15 we see a timestamp 2-4-99. If you remember, would that be 2 April
16 1999 or 4 February 1999? What would make more sense?

17 A. As it is represented here, it should be 2 April 1999. But,
18 again, as I said earlier, these photographs were extracted from the
19 recording.

20 Q. I understand.

21 MR. PACE: And, Your Honour, I seek to admit these two pages.
22 They could be added to this exhibit from this book that's already
23 been admitted. I believe that's 1014.

24 PRESIDING JUDGE SMITH: Any objection?

25 MR. MISETIC: No objection.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12647

1 PRESIDING JUDGE SMITH: No objection being heard, those two
2 pages will be admitted.

3 THE COURT OFFICER: Your Honours, for the record, pages 044213
4 in Albanian and its corresponding English translation, extracted from
5 the book with ERN 043900 to 044239, will be added to the
6 Exhibit P01014.

7 MR. PACE: Thank you, Your Honour and Court Officer.

8 And, Court Officer, if we could please go to another exhibit.
9 And this is SPOE00091385 to 00091408 RED. It's important that the
10 RED version is displayed, please.

11 And if we could please first turn to the page ending 91402.
12 Thank you. And if we could scroll down just a little to see the
13 heading. I think it says -- yes, it says "Picture #15." Yes,
14 perfect. Thank you.

15 Q. And, Witness, do you recognise the location in this image on
16 your screen now?

17 A. It looks like the building at the Hasani house, but I'm not
18 certain because this has changed -- seems to have changed.

19 Q. So it seems like the one where Feriz Guri's unit was located; is
20 that correct?

21 A. That's how it looks. However, it's not a complete picture and
22 I'm not able to ascertain this with 100 per cent certainty.

23 MR. PACE: And, Court Officer, let's please turn to the next
24 page, which is 91403, picture 16.

25 Q. And, Witness, the same question: Do you recognise the location

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12648

1 on your screen now?

2 A. Again, it's not a full picture of the building, so I cannot be
3 certain that it is that building.

4 Q. And just for clarity, that building you're talking about, the
5 one in which Feriz Guri's unit was located; right?

6 A. Correct.

7 MR. PACE: And, Your Honour, we won't seek to admit these two
8 pages. And I just want to note that an unredacted version has been
9 admitted, and that's P372. But I wanted to note for the record that
10 the pages as shown to this Witness, 4576, contained redactions to the
11 captions in that admitted document.

12 Court Officer, we can take this document down.

13 Q. And, Witness, my next question is whether you know someone
14 called Jonuz Shurdani?

15 A. Jonuz. Yes.

16 Q. Was he a member of the KLA?

17 A. Yes, he was. Starting from March 1999.

18 Q. And what was his role in the KLA from March 1999?

19 A. I don't remember because he received his tasks from the brigade
20 commander, Qamil Ilazi.

21 Q. So am I understanding correctly that he was in Brigade 162?

22 A. Yes, he was in Brigade 162, but I don't remember his tasks
23 because he received them from the brigade commander, Qamil Ilazi.

24 Q. And, Witness --

25 MR. PACE: Actually, Your Honour, I see the time, and we need to

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12649

1 stop for a break at 10.00, I believe.

2 PRESIDING JUDGE SMITH: We will take a short break.

3 Madam Usher, please escort the witness from the room.

4 [The witness stands down]

5 PRESIDING JUDGE SMITH: We will take the promised ten-minute
6 break at this time. We're adjourned.

7 --- Break taken at 9.59 a.m.

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

9 PRESIDING JUDGE SMITH: Madam Usher, please bring the witness
10 back in.

11 [The witness takes the stand]

12 PRESIDING JUDGE SMITH: All right. Mr. Prosecutor, you may
13 continue.

14 MR. PACE: Thank you, Your Honour.

15 Q. Witness, did Brigade 162 have a military police unit?

16 A. Yes.

17 Q. And who was in charge of that unit?

18 A. The person in charge of that unit was Xhabir Elezi.

19 Q. And when did Xhabir Elezi become in charge of the military
20 police unit in Brigade 162?

21 A. I don't know because that was not part and parcel of my
22 responsibilities. It was, instead, the responsibility of the brigade
23 commander.

24 Q. And did Xhabir Elezi report to the brigade commander?

25 A. To the brigade commander.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12650

1 Q. Now, could you remind us when Qamil Ilazi became the brigade
2 commander?

3 A. Qamil Ilazi became the brigade commander when Agim Bajrami fell
4 in August, on 10 August 1998. So he continued commanding the brigade
5 from that time onwards.

6 Q. And do you recall whether Xhabir Elezi was in charge of the
7 military police unit while Agim Bajrami was still alive and
8 commanding the brigade?

9 A. I don't remember. I have no knowledge about that period of
10 time. It was just the beginning for me.

11 Q. And when you took over as acting commander of Brigade 162 in May
12 1999, was Xhabir Elezi still in charge of the military police unit in
13 Brigade 162?

14 A. Yes.

15 Q. And do you recall roughly how long he had already been in charge
16 of the unit before you took command of the -- or before you took
17 acting command of the brigade?

18 A. Can you please repeat the question once again?

19 Q. So you became acting commander in May 1999. How many months
20 before that, if you remember, was Xhabir Elezi already the commander
21 of the military police unit?

22 A. I don't know. We didn't have the time to deal with the times
23 during the war period. I have never asked him and I have no
24 information. I don't know that.

25 Q. Did you ever meet Xhabir Elezi yourself in 1998 or 1999?

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12651

1 A. In 1999, after 15 May, yes, I did meet him.

2 Q. Did you ever meet him before 15 May 1999?

3 A. No.

4 MR. PACE: Court Officer, I'd like to show a page from 043900 to
5 044239, that's the Albanian. And in English, it's 044174 to
6 044186-ET. And, again, these are -- I'm going to show another page
7 from the book which -- parts of which have already been admitted as
8 1014. And the pages I'd like to turn to are in both pages 044183,
9 please. Thank you, Court Officer.

10 Q. And, Witness, once again you see two pages on your screen. As
11 you saw, they are from your book, the "*Flake e pashuar*" book. And on
12 the right is a page in Albanian, handwritten, and on the left is a
13 translation that we have created in English. And we see that it
14 refers to the operational structure of the military police and that
15 it's authored by Xhabir Elezi, commander of the military police.

16 And I ask you if you could kindly have a look at the information
17 in this document and let us know if, to your knowledge, the
18 information is correct.

19 A. The way in how well it is written by hand shows that this is a
20 document that is written after the war. This is a document that I
21 didn't possess during the war, but that's something that I have
22 written after the war.

23 So you can see the kind of writing that is used in this
24 document. It's beautifully written. During the war times, we didn't
25 have the time to write this well and to regulate things and to

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12652

1 reflect things in the way that you can see from this document.

2 Q. And am I understanding correctly that you're saying you yourself
3 wrote this document after the war?

4 A. No, I have not written this document myself because this is not
5 my handwriting. I can't write this well.

6 Q. And what makes you say that it was written after the war?

7 A. During the war, I have not seen this document. That's the
8 reason why I'm telling you this.

9 Q. And could you tell us when you first obtained this document?

10 A. After the war. But I can't tell you exactly when, at what time.
11 It was after the war. After I had already started to write the book.

12 Q. And where did you obtain the document from?

13 A. I obtained the document from Xhabir Elezi, my co-fighter.

14 Q. And when you obtained it from Xhabir Elezi, your co-fighter, did
15 he tell you anything in particular about it?

16 A. I don't remember. I don't know on whether we have discussed
17 about other things.

18 Q. Now, this document refers to Xhabir Elezi, it seems, with a
19 pseudonym or a nickname Sharri. Is that correct? Is that
20 Xhabir Elezi's nickname or pseudonym?

21 A. I don't remember, because during the war I have never heard of
22 this pseudonym. During the war I knew him by his first name and last
23 name, as he did know me.

24 Q. And we see in this document towards the top part, under Xhabir
25 Elezi, we see: "Jonuz Shurdani - Assistant Commander (Security)." I

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12653

1 asked you about Mr. Shurdani before. Do you recall whether this was
2 indeed his role within the brigade or the military police?

3 A. I don't know.

4 Q. Now, at the bottom of the document we read the following.

5 MR. PACE: If we could scroll down so we can see the bottom
6 parts of both English and Albanian, please. Thank you, Court
7 Officer.

8 Q. So, Witness, I'm just going to read and you can follow from your
9 screen or from the interpretation:

10 "On 9 April, at the place known as 'Proni Cakocit' /Cakoc
11 Brook/ in Kacanik the following fell heroically in action: Fadil
12 Caka, Nehat Caka, Ilir Zharku, Muhamet Zeneli, and Faruk Dogani:
13 Rrustem Dema was wounded."

14 Witness, do you recall if that's correct, that on 9 April those
15 named persons fell in action and Rrustem Dema was wounded?

16 A. Yes. It was on 9 April 1999 that there were very harsh
17 fightings in Ratkoc and in the third neighbourhood of Kacanik, and it
18 was on that exact date that 28 martyrs were killed as well as 32
19 citizens of Kacanik. So some of those people that fell during those
20 fightings were the people whose names you just read.

21 Q. And do you also recall that Rrustem Dema was wounded in fighting
22 on 9 April?

23 A. Yes.

24 Q. And for clarity, this is also 9 April 1999; right?

25 A. Right. Yes, it's 9 April 1999, during the fightings.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12654

1 Q. If we look at the document towards the bottom right where we
2 have a list of 10 people in 4 Squadron, or Squadron 4, we see a few
3 names, some of which I've read out already. So we have, for example,
4 Fadil Caka, Rrustem Dema, Nehat Caka, Ilir Zharku, Muhamet Zeneli.
5 And to your knowledge, Witness, were these persons indeed in part of
6 the squadron in the military police unit before they fell or were
7 injured in April 1999?

8 A. Yes.

9 Q. And if he look at the list for the 1st Squadron, a bit further
10 up and on the left, one of the names we see there is Nuhi Provoliu.
11 Do you recall that it is indeed correct whether Nuhi Provoliu was in
12 the military police within Brigade 162?

13 A. I cannot remember everyone. However, this is a list that was
14 written by someone that was in charge for the unit. I cannot tell
15 you everything about every person in the list because that was not my
16 responsibility.

17 Q. And putting aside what's in the list for moment, do you know who
18 Nuhi Provoliu is?

19 A. I know Nuhi Provoliu because the municipality of Kacanik is a
20 small one, and almost everybody knows everybody else there. I know
21 him like every other citizen in Kacanik.

22 Q. And do you recall whether Nuhi Provoliu was a KLA member in 1998
23 or 1999?

24 A. Yes, he was.

25 Q. And within which brigade or battalion?

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12655

1 A. I'm always talking about Brigade 162, Agim Bajrami, in Kacanik.

2 Q. And do you recall whether he was in the military police unit of
3 Brigade 162 or some other unit?

4 A. Based on this document, he was part of that. That's what we can
5 see. However, I might be wrong because I don't know every soldier.
6 I don't know every unit. It's not possible for me to do that.

7 Q. And at the bottom left of this document, we see a reference to
8 Kulla e Hasanit, Hasan's Tower, and that's the same location you
9 mentioned earlier in the village of Bob where Feriz Guri's unit was
10 located; is that correct?

11 A. Yes, that's correct. You should have into consideration the
12 fact that this is a document that is beautifully handwritten, it's
13 embellished, but that in the end there is no date, there is no
14 signature. And this is something that you have to take into account,
15 because I have repeated several times that these were things that
16 were embellished, amplified, and this is a document that probably
17 shouldn't serve that -- shouldn't be considered very seriously in the
18 context of this very important case.

19 Q. And could you tell the Judges what beautiful embellishments in
20 this document you're referring to, please?

21 A. For example, it is very beautifully handwritten. So there is a
22 ranking of the units according to the squadrons. There are two days,
23 and then there is the tower of Hasan at the end. But then there is
24 no date. There is a reference to the commander Xhabir Elezi at the
25 end of this document, but there is no signature to this document.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12656

1 And these are factual things and they tell of how valid this document
2 is.

3 Q. And we also see a reference at the bottom of the document to
4 Sadik Guri being killed in the village of Bicec on 25 May 1999. Do
5 you recall whether that is correct, that that person died on that day
6 in that village?

7 A. Yes, but it was not only Sadik Guri that fell on 25 May 1999,
8 because there was a very fierce fight going on in Kacanik, gorge of
9 Kacanik, Dubrava, other surrounding villages as well, and there were
10 many martyrs that fell during that day. The Serb forces massacred
11 the civil population, and about 13 citizens of this area were
12 massacred by the Serb forces.

13 MR. PACE: And, Your Honour, at this point I'd seek to admit
14 this page, both the Albanian and the English, and we propose that
15 that would be added to the already admitted pages of P1014.

16 PRESIDING JUDGE SMITH: Anything?

17 MR. MISETIC: No objection.

18 PRESIDING JUDGE SMITH: No objection being heard, the document
19 will be admitted.

20 THE COURT OFFICER: Your Honours, page with ERN 044183 in
21 Albanian and its English translation, extracted from the book with
22 ERN 043900 to 044239, will be added to the Exhibit P01014. The
23 classification is public as the book was reclassified to public this
24 morning.

25 PRESIDING JUDGE SMITH: Go ahead, Mr. Pace.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12657

1 MR. PACE: Thank you, Your Honour and Court Officer.

2 And, Court Officer, if we could take this document down and call
3 back up the other book, which is 036622 to 036837, and that's in
4 English. And the Albanian version is 077039-077258. And pages from
5 this have already been admitted as P0105. And if we could turn in
6 the English, on the left-hand side, to page 036645; and in the
7 Albanian, on the right, to page 077063, please.

8 Q. And I'll be reading in the English from the third paragraph on
9 this page, and from the Albanian from the first paragraph on the
10 page.

11 MR. MISETIC: At this point, Your Honour, we will object again
12 to leading. The matter should be put to the witness under the
13 principle of orality, what he knows about the topic. He should be
14 asked *viva voce*. And, again, I cite to the authority I cited
15 yesterday from the ICTR, Karemera, that if there's something that the
16 Prosecutor needs to follow up with the book about the witness's
17 recollection, then he can attempt to do that under the rules. But he
18 can't lead the witness by asking him about events that he hasn't
19 posed to him yet.

20 PRESIDING JUDGE SMITH: Overruled.

21 Go ahead.

22 MR. PACE:

23 Q. And, Witness, as I said, I'm going to be reading from the
24 English version. You can listen to the interpretation in Albanian or
25 follow from the Albanian page in front of you. And you state as

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12658

1 following:

2 "At the order of KLA HQ, Shukri Buja returned to Kacanik and
3 announced the decision of HQ to appoint Agim Bajrami Commander of the
4 Kacanik Unit."

5 And that's the end of the quote.

6 And then there is a footnote number 21 which, when we go to the
7 bottom of the page, we see it referring to an interview with
8 Major-General Shukri Buja in Lipjan on 23 May 2007. And, Witness, my
9 question is whether this means that Shukri Buja provided you with
10 this information that I just read out in 2007.

11 A. Can you please repeat the question once again?

12 Q. Certainly. So I read out an excerpt of your book, and then I
13 also read out what you cite in the footnote, that being an interview
14 with Shukri Buja in 2007. And my question is whether this means that
15 Shukri Buja provided you with the information I read out in 2007.

16 A. It is true that I have talked with Shukri Buja. But, again,
17 here there are too many things that have been amplified, that are
18 embellished by me, and they were not things that were told to me by
19 Shukri Buja. I don't have any documents where I'm based on.

20 Q. Now, Witness, I'm going to read the sentence again, and I would
21 like you to pay particular attention because, after that, I'm going
22 to ask you to tell the Judges specifically what you have embellished
23 and amplified in it. The sentence reads:

24 "At the order of KLA HQ, Shukri Buja returned to Kacanik and
25 announced the decision of HQ to appoint Agim Bajrami Commander of the

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12659

1 Kacanik Unit."

2 That's the end of the quote.

3 So as I said, Witness, kindly explain to the Judges what you
4 embellished or added to that.

5 A. The first thing is that I have not seen any order of the general
6 headquarters about this thing. Second, Shukri Buja did not tell me
7 as it is written there, but he did instead tell me that he appointed
8 Agim Bajrami as the commander of the Kacanik unit. So these then are
9 the things that I have embellished and have represented the way that
10 I wanted them to be read.

11 Q. And I'd like to turn to --

12 MR. PACE: I'll seek to admit these pages, which are 036645 in
13 English and 077063 in the Albanian, and then I'll move on to another
14 page.

15 MR. MISETIC: We object for the fact that it's inadmissible
16 under 143(2)(c), inadmissible under 138. Thank you.

17 PRESIDING JUDGE SMITH: [Microphone not activated].

18 The document will be admitted.

19 THE COURT OFFICER: Your Honours, page with ERN 077063, Albanian
20 version, extracted from the book with ERN 077039 to 077258, and
21 English version page with ERN 036645, extracted from the document
22 with ERN 036622 to 036837, will be added to the Exhibit P01015.
23 Classification is public as reclassified.

24 MR. PACE: Thank you, Your Honour and Court Officer.

25 And if we could kindly turn on the same document to, in the

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12660

1 English on the left, page 036669 and, in the Albanian, page 077088.
2 And in the English, I'm going to start reading towards the middle to
3 end of the page, and the same for the Albanian. It will spill over
4 to the next page.

5 Q. Witness, this is, again, on your screen, on the right in
6 Albanian, on the left in English, pages from the book that we have
7 just been discussing. And I'm going to read something that you wrote
8 in here, and then I have some questions about it.

9 "The KLA HQ formulated a wider strategy for the liberation of
10 Kosova (area 1), changed the name of the Sub-area of Operatives to
11 reflect their change as per area 1 (Kosova), code name Kosova, and
12 put its liberation as a primary goal. The sub-areas became areas
13 covering the same regions as before, and retained their existing
14 structure. After the preparations of November 1998, and as laid out
15 by the HQ plan of operations, the Nerodima Area Command decided to
16 form two brigades. Brigade 161 would operate in the Jezerc region,
17 and Brigade 162 would operate in the Kacanik region. After these
18 preparations, the Area commander sent invites to Shukri Buja,
19 Qamil Ilazi and Hajrush Kurtaj on November 27, 1998, asking them to
20 travel from Kacanik to the Area's HQ in Mollopolc. They arrived at
21 23:00, and after a short break met with the Area commander. The
22 meeting participants were: Shukri Buja, Imri Ilazi, Qamil Ilazi and
23 Hajrush Kurtaj. Shukri Buja informed the participants that after the
24 reorganisation and restructuring of KLA, they needed to choose a name
25 for the brigade. Immediately, Commander Qamil Ilazi proposed that

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12661

1 the brigade be called after fallen commander Agim Bajrami.

2 "The Operative Sub-areas became Areas and the KLA units became
3 brigades. The Area commander proposed that Brigade 162 choose Qamil
4 Ilazi as Commander, and Hajrush Kurtaj as Vice-Commander ... They
5 were charged with choosing new members for their headquarters and
6 propose commanders for battalions, platoons, units and squads. They
7 also proposed the formation of a military police unit and reinforcing
8 the logistics department.

9 "Ahmet Kaciku became the commander of the 161st Brigade, and
10 Nebih Musliu vice-commander. The commander of the Military Police of
11 the Area of Operative Nerodima became Isak Musliu-Qerqiz."

12 And that's the end of the quote, Witness. And my question is
13 whether the information that I just read out to you from your book is
14 correct.

15 MR. MISETIC: Objection, leading. Violates the principle of
16 orality.

17 MR. PACE: Yes, Your Honour, I believe you have overruled this
18 objection, and perhaps it could be stated as a standing objection so
19 that we don't need to repeat it every time.

20 PRESIDING JUDGE SMITH: The objection is overruled.

21 Go ahead.

22 MR. MISETIC: Mr. President, I just -- if we could get
23 clarification on Mr. Pace's point. Otherwise, I will continue to
24 make my record unless we agree that it's a standing objection.

25 PRESIDING JUDGE SMITH: [Microphone not activated] ... if you

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12662

1 wish to make it a standing objection.

2 MR. MISETIC: As long as that -- we agree that preserved our
3 rights on appeal, I'm fine to do it that way as well.

4 PRESIDING JUDGE SMITH: Go ahead. That's fine.

5 MR. MISETIC: Thank you.

6 MR. PACE:

7 Q. So, Witness, is the information from your book that I just read
8 out to you correct?

9 A. No, this meeting never occurred. I personally was not present
10 at such a meeting. And this shows, at its best, what I've repeated
11 so many times now, that things have been embellished. I did not
12 participate in that meeting. I don't know whether the other deputy
13 commander took part. But in my book, this is how it's represented:
14 That we met, that we discussed. But in reality, I personally did not
15 participate in such a meeting.

16 Q. So when you wrote and then published in your book that you
17 attended the meeting in November 1998, that was a work of pure
18 fiction?

19 A. It's not pure fiction, just an embellishment. I just presented
20 things the way I would have liked them to have been at the time.

21 Q. And, Witness, at least my understanding of an embellishment is
22 something happened but you add details to it. If you're going to say
23 that this is an embellishment, could you explain what actually did
24 happen? So let's take away what you embellished. What happened?
25 What is relevant or what happened in relation to this meeting in

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12663

1 November 1998, if anything?

2 A. More concretely, I did not participate in that meeting. I don't
3 know whether the commander of the brigade participated in that
4 meeting. That I don't know. As I said, I presented this event the
5 way I would have liked it to have been.

6 Q. I'm going to go back, because it was a rather lengthy excerpt,
7 and I'm going to break it down, and then I'm going to ask you more
8 specific questions there.

9 I'll start again from the top:

10 "The KLA HQ formulated a wider strategy for the liberation of
11 Kosova (area 1), changed the name of the Sub-area of Operatives to
12 reflect their change as per area 1 (Kosova), code name Kosova, and
13 put its liberation as a primary goal."

14 Now, Witness, from what I read, is that correct or incorrect?

15 A. This too was an aspiration, a wish, because all Albanian areas
16 and parts were occupied for more than a hundred years by Serbia, and
17 our aspiration was to liberate Kosovo and that's what we fought for.

18 Q. Focusing specifically on the change of name from subareas to
19 reflect their change per area 1, are you saying that this did not
20 happen, that Kosovo as a whole did not at some point become known as
21 area 1 within the KLA?

22 A. I did not say that it wasn't Kosova. I said that our wish was
23 to liberate all Albanian-occupied areas. The reality was that we
24 fought for the liberation of Kosovo.

25 Q. But was Kosovo itself ever known or -- was Kosovo itself ever

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12664

1 known as area 1 or zone 1 or something 1 in the KLA?

2 A. I didn't know that, and I did not personally see any document in
3 this respect.

4 Q. And in the next sentence you state:

5 "The sub-areas became areas covering the same regions as before,
6 and retained their existing structure."

7 Is that correct, Witness?

8 A. As I said, we started as a voluntary army. Small units,
9 subzones, later on zones. This is all I can say in this respect.

10 Q. And, Witness, you're not answering the question. The question
11 is whether what I read to you was correct, and you wrote:

12 "The sub-areas became areas covering the same regions as before,
13 and retained their existing structure."

14 Is that correct or not correct?

15 A. I will repeat it again. What I've written here was a wish I
16 had, not a reality. Had it been reality, I would have had to have
17 documentation to support what is written here, and I did not have
18 such documents regarding the zones that I've mentioned here.

19 Q. So, Witness, here you talk about subareas becoming areas. Let's
20 change that a little bit, and if we talk about subzones becoming
21 zones, are you familiar with that ever happening in the KLA or is
22 that not something that happened to your knowledge?

23 A. I don't remember precisely.

24 Q. Let's focus even more on your area, the Nerodime subzone. Was
25 there a time when it became the Nerodime operational zone instead of

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12665

1 a subzone?

2 A. Yes.

3 Q. And when that change took place, did the area covered remain the
4 same? So the Nerodime zone covered the same area as the Nerodime
5 subzone had?

6 A. I don't know when this occurred precisely, but it is true that
7 it had the same area of responsibility.

8 Q. So it had the same area of --

9 A. [Overlapping speakers] ...

10 Q. Yes?

11 A. Because the responsibility of 162 Brigade remained Kacanik and
12 its surrounding area both when Nerodime was a subzone and later a
13 zone. This was the area of responsibility of 162 Brigade
14 Agim Bajrami.

15 Q. And in terms of structure, to your knowledge, did much change
16 when there was a change from subzone -- of the Nerodime subzone to
17 the Nerodime operational zone? Was there much by way of structural
18 change there?

19 A. I don't have knowledge about this because the zone was not my
20 competence.

21 Q. And you were in Brigade 162. In fact, you were the deputy
22 commander and then acting commander of Brigade 162. When there was
23 this change from subzone to zone, did you feel that anything in your
24 brigade changed structurally or not?

25 A. No, because it was not my responsibility. This was the

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12666

1 responsibility of the brigade commander. I had other duties.

2 Q. And you were functioning in the Brigade 162, right, when you
3 were deputy commander and commander? You were working as part of the
4 brigade; correct?

5 A. Of course I worked as part of the brigade, because I was deputy
6 commander for combat operations on the front line. My duties were to
7 prepare the units and the soldiers for combat on the battle lines.
8 As far as combat and front lines are concerned, I am ready to answer
9 to any question you pose, of course to the extent of my knowledge.

10 Q. The next sentence that I read out to you earlier is the
11 following:

12 "After the preparations of November 1998, and as laid out by the
13 HQ plan of operations, the Nerodima Area Command decided to form two
14 brigades."

15 Could you tell the Judges whether that is correct or not?

16 A. Again, I'm repeating --

17 PRESIDING JUDGE SMITH: Witness --

18 THE WITNESS: [Interpretation] We --

19 PRESIDING JUDGE SMITH: -- the question is, is it correct or
20 incorrect. You've made that explanation enough times. Just answer
21 his question.

22 THE WITNESS: [Interpretation] You are taking my right to say
23 what I want to say and what I know.

24 PRESIDING JUDGE SMITH: No, I'm telling you to --

25 THE WITNESS: [Interpretation] In relation to this, this is not

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12667

1 true.

2 PRESIDING JUDGE SMITH: I'm telling you to answer his question.

3 [Microphone not activated].

4 THE WITNESS: [Interpretation] My answer is it is not correct.

5 MR. PACE:

6 Q. Now, Witness, I will read the same sentence again, and then I'm
7 going to ask you to tell the Judges what about it is not correct.

8 The sentence is the following:

9 "After the preparations of November 1998, and as laid out by the
10 HQ plan of operations, the Nerodima Area Command decided to form two
11 brigades."

12 Now, Witness, please tell the Judges what about that is not
13 correct?

14 A. It is not correct because I did not see any plan of the
15 General Staff or the command of the operational zone because the
16 brigade command or the zone staff were not my responsibilities. I
17 was responsible for the combat operations on the combat lines, so I
18 cannot give you any more precise answer.

19 Q. Now, Witness, you said just now that you didn't see any plan of
20 the General Staff. Did you hear or learn about such a plan from
21 anyone or through any other means?

22 A. I'm not here to speak about things that I've heard. I'm here to
23 speak about things that I've seen myself and about things where I
24 personally was involved. I cannot give you answer to things that
25 I've heard.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12668

1 Q. Witness, just to be clear, you're here to answer the questions
2 that are put to you unless the Judge doesn't allow those questions.
3 So when I ask you a question such as "did you hear about this," it's
4 your duty to answer it unless the Judge tells you don't answer that
5 question.

6 So once again, Witness, in your response a few moments ago, you
7 said you did not see any plan by the General Staff in relation to the
8 information I laid out. Could you please tell the Judges whether you
9 heard or learnt about it some other way?

10 A. During the war, I didn't.

11 Q. Did you learn or hear about it at any other time after the war?

12 A. No.

13 Q. And do you remember ever telling the Prosecution that you got
14 information about such a plan from Commander Qamil Ilazi?

15 A. I cannot recall that for the moment.

16 MR. PACE: And, Your Honour, since the witness said he cannot
17 recall this at the moment, I'd like to show an excerpt from his prior
18 statement with your leave.

19 PRESIDING JUDGE SMITH: Go ahead.

20 MR. PACE: Thank you, Your Honour.

21 And, Court Officer, that would be 074301-TR-ET Part 4, and the
22 same -AT for the Albanian, please. And I'm going to start reading
23 from page 6, line 13 in the English; and page 6, line 24 in the
24 Albanian. Sorry, that would be page 6, I believe, line 9 in the
25 Albanian.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12669

1 Q. Witness, so as I mentioned, this is from your February 2020 SPO
2 interview and I'm going to read what's recorded here, and then I have
3 some questions for you. So, question -- and here, Witness, before I
4 start, I should say we're referring to your book. In fact, we're
5 referring to very same excerpt as we were just discussing:

6 "Q. At page 36669, you say that:

7 "'After the preparations of November 1998 and as laid out by the
8 HQ plan of operations, the Nerodime Area Command decided to form two
9 brigades.'

10 "What HQ plan of operations are you referring to?

11 "A. Because in the beginning originally, it was the Kacanik
12 unit that was operating. So after the transformation and the
13 increase in numbers, it turned into Brigade 162.

14 "Q. Am I right in understanding that it changed from a unit to
15 a brigade based on this HQ plan of operations that you refer to?

16 "A. Yes.

17 "Q. How did you become aware of an HQ plan of operations at the
18 time?

19 "A. Based on the information I got from the commander,
20 Qamil Illazi.

21 "Q. So am I understanding correctly that the General Staff
22 prepared a plan of operations and communicated it to Qamil Illazi or
23 to someone who communicated to him, and then him to you?

24 "A. Yes."

25 Now, Witness, do you dispute that these are the answers that you

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12670

1 provided during your February 2020 interview?

2 A. I absolutely dispute it. Even if I've given such an answer, I
3 did not see any such order or plan from the General Staff to base my
4 knowledge on such documents.

5 Q. So, Mr. Witness, am I understanding correctly that you are now
6 telling the Judges while you are under oath that the information you
7 provided that I read out to you was not correct? It was false?

8 A. Respected Prosecutor, I don't want to hear the word "lie." You
9 are repeating that word every now and then. If you continue to use
10 that word, I will stop my testimony regardless of the consequences,
11 because I'm not bothered with the consequences. Please remove the
12 word "lie" from your vocabulary.

13 Even during the investigations, you were using whether it was a
14 professor who lied or you who lied. So please do not use this word.
15 I will stop my testimony. I am aware of the consequences. I know
16 that you're an authority that can take measures against me, but I
17 will not tolerate to use this word anymore with reference to me or
18 the professor or any citizen of the Republic of Kosovo for that
19 matter.

20 MR. PACE: Your Honour, I see that it's 11.00, but perhaps
21 before the break, if I could turn to Your Honour to guide the witness
22 into responding to my questions and doing so in a manner that's both
23 truthful and responsive to the questions actually asked, please.

24 PRESIDING JUDGE SMITH: We'll do that right after the break.

25 Madam Court Officer, please take the witness out of the

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12671

1 courtroom.

2 Do not speak to anybody about your testimony in this courtroom.
3 We will take a half-hour break as scheduled.

4 [The witness stands down]

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

6 --- Recess taken at 11.01 a.m.

7 --- On resuming at 11.30 a.m.

8 PRESIDING JUDGE SMITH: Madam Court Usher, you can bring the
9 witness in.

10 [The witness takes the stand]

11 PRESIDING JUDGE SMITH: Witness. Witness, I want to be very
12 clear with you. You are here today, and yesterday, and probably
13 tomorrow, to testify as a witness. Your obligation here is to answer
14 questions that are put to you and to tell the truth. You have no
15 other obligation. You don't get to decide what the question would be
16 or what language is used.

17 Whether you are considered to be a liar or somebody else is
18 considered to be a liar is not up to the Prosecution, it's not up to
19 the Defence, it's not up to you. It is totally up to this Panel to
20 decide if somebody is or is not lying. And you can rest assured that
21 we will do that. We will carry out our duty and make that
22 determination about your testimony or anybody else's testimony in
23 this case. But you do not get to object to the questions that are
24 asked to you. Your obligation is to answer them. Almost always it's
25 a "yes" or "no" or a "correct" or "incorrect." Once in a while

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12672

1 something else is needed, and the lawyers will ask you then to
2 explain.

3 Do you understand all this; yes or no?

4 THE WITNESS: [Interpretation] Yes, it's clear.

5 PRESIDING JUDGE SMITH: I want to be very clear, that's your
6 obligation. And if you don't follow your obligation, there could be
7 consequences, and we don't want to go into that. But you are here
8 for that sole purpose, to answer questions. You understand? Are you
9 understanding me?

10 THE WITNESS: [Interpretation] Yes, understood.

11 PRESIDING JUDGE SMITH: We would like to finish your testimony
12 in a reasonable time, and making long statements that are evasive are
13 not helping us get to the end of your testimony.

14 Mr. Prosecutor, you may continue.

15 MR. PACE: Thank you, Your Honour.

16 And, Court Officer, if we could pull up the same pages from the
17 prior statement we had before, which were 074301-TR-ET Part 4, also
18 in Albanian. From the English at page 6, line 13; and from the
19 Albanian, also at page 6, towards the end of the page.

20 Q. Witness, just because we had a break, I'm going to read the
21 exact same portion from your 2020 SPO interview again, and then once
22 again I'm going to ask you whether it's correct or not because you
23 did not provide me with an answer to that.

24 "Q. At page 36669, you say that:

25 "'After the preparations of November 1998 and as laid out by the

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12673

1 HQ plan of operations, the Nerodime Area Command decided to form two
2 brigades.'

3 "What HQ plan of operations are you referring to?

4 "A. Because in the beginning originally, it was the Kacanik
5 unit that was operating. So after the transformation and the
6 increase in numbers, it turned into Brigade 162.

7 "Q. Am I right in understanding that it changed from a unit to
8 a brigade ... on this HQ plan of operations that you refer to?

9 "A. Yes.

10 "Q. How did you become aware of an HQ plan of operations at the
11 time?

12 "A. Based on the information I got from the commander, Qamil
13 Illazi.

14 "Q. So am I understanding correctly that the General Staff
15 prepared a plan of operations and communicated it to Qamil Illazi or
16 to someone who communicated to him, and then him to you?

17 "A. Yes."

18 Now, Witness, as I said, could you tell the Judges whether your
19 answers here were correct or not correct?

20 A. I said it before, and I will repeat it again, I have never seen
21 a plan from the general headquarters. The unit of Kacanik was
22 transformed into a brigade.

23 PRESIDING JUDGE SMITH: [Microphone not activated]

24 THE WITNESS: [Interpretation] That is correct. But I've never
25 seen a plan from the General Staff.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12674

1 PRESIDING JUDGE SMITH: That wasn't the question that was asked
2 of you. Listen to the question again at the end and answer the
3 question as asked.

4 MR. PACE: Your Honour, I'll read the excerpt again and ask the
5 question again.

6 Q. Witness, I'm going to read this now, I believe, for the third
7 time, and I'm telling you now my question, after I'm done reading, is
8 whether the information provided is correct or not, so please bear
9 that in mind.

10 "Q. At page 36669, you say that:

11 "'After the preparations of November 1998 and as laid out by the
12 HQ plan of operations, the Nerodime Area Command decided to form two
13 brigades.'

14 "Q. What HQ plan of operations are you referring to?

15 "A. Because in the beginning originally, it was the Kacanik
16 unit that was operating. So after the transformation and the
17 increase in numbers, it turned into Brigade 162.

18 "Q. Am I right in understanding that it changed from a unit to
19 a brigade based on this HQ plan of operations that you refer to?

20 "A. Yes.

21 "Q. How did you become aware of an HQ plan of operations at the
22 time?

23 "A. Based on the information I got from the commander, Qamil
24 Illazi.

25 "Q. So am I understanding correctly that the General Staff

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12675

1 prepared a plan of operations and communicated it to Qamil Illazi or
2 to someone who communicated to him, and then him to you?

3 "A. Yes."

4 And that's the end of what I'm reading, Witness. And my
5 question once again is only whether that is -- the information that
6 you provided is correct or is not correct?

7 A. I don't remember.

8 Q. And just to be clear, you don't remember if the information you
9 provided in February 2020 is correct or not, or are you saying
10 something else?

11 A. I don't remember, because you're not allowing me to give
12 explanations. You are restricting me to saying "yes" or "no." If
13 you want me to say "yes" or "no," you can say whatever you want
14 because I cannot give you the answers you want from me. I can tell
15 you what I know and what I don't know, what I've seen myself and what
16 I've not seen.

17 PRESIDING JUDGE SMITH: Witness, once again, you're here to
18 answer the question. If the lawyer wants something else added as an
19 explanation, he'll ask for it. And if he doesn't, perhaps the
20 Defence will. But it is your job to answer the question as asked.

21 Is it correct or is it incorrect?

22 THE WITNESS: [Interpretation] I cannot say it is correct or it
23 is not correct because you are not allowing to give -- you are not
24 allowing me to give clarifications.

25 PRESIDING JUDGE SMITH: It doesn't need a clarification. It

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12676

1 just needs an answer.

2 THE WITNESS: [Interpretation] Then it is not correct.

3 PRESIDING JUDGE SMITH: Go ahead, Mr. Pace.

4 MR. PACE: Thank you, Your Honour.

5 Q. Witness, could you explain to the Judges what about the excerpt
6 I read to you is not correct, please?

7 A. When you refer to the operational plan of the General Staff,
8 that is not correct because I said before that I have never seen a
9 plan of operations of the General Staff. I haven't seen it with my
10 own eyes and nor has it been communicated to me by the brigade
11 commander.

12 Q. So, Witness, you just said that the plan by the General Staff
13 was not communicated to you by the brigade commander. But as you see
14 or as you heard me read out to you from your prior statement, when I
15 asked you:

16 "Q. So am I understanding correctly that the General Staff
17 prepared a plan of operations and communicated it to Qamil Illazi or
18 to someone who communicated to him, and then him to you?"

19 Your answer was:

20 "Yes."

21 Could you explain to the Judges why in February 2020 you
22 answered "yes"; that is, that Qamil Illazi received information about
23 the General Staff plan and then communicated it to you, whereas now
24 you're saying that that's not actually correct?

25 A. Probably it was an omission by myself back then, or probably it

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12677

1 was a misunderstanding because of interpretation, but I stand to what
2 I said before, that I have never seen a plan of operations of the
3 General Staff.

4 Q. And do you recall, Witness, in your preparation session, that
5 you were provided an opportunity to review your prior statements and
6 then to provide any clarifications or corrections?

7 A. I haven't understood it correctly. The way I understood it is
8 that if there was a misunderstanding or if there was a need for some
9 technical improvements, I would have to intervene, but I did not
10 understand it in the way that I would have to make more general
11 changes to the testimony.

12 MR. PACE: Your Honour, at this stage I'd seek to admit the
13 pages from the book that I read out to the witness. And those, just
14 to refresh recollection, are pages, from the English, 36669 to 36670;
15 and from the Albanian, page 077088 until the next page, page 9. And
16 that is from -- those would be being added to Exhibit P01015.

17 MR. MISETIC: Mr. President, we'll note our objection to the
18 admission of those portions of the book, first, because they are not
19 being tendered pursuant to Rule 143(2)(c). Therefore, anything that
20 is inconsistent in the book with what the witness's oral evidence was
21 cannot be used for the truth of the matters asserted and, I just want
22 to add our legal position on it, would violate Article 21(4)(a) of
23 the Law; Article 6(1) of the European Convention and the right to an
24 adversarial proceeding. And, therefore, we would argue that it's not
25 admissible for the truth of the matters asserted in the book. Thank

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12678

1 you.

2 MR. EMMERSON: And, Your Honours, may I make it clear, because I
3 haven't done so on the record, that the standing objection and its
4 elaboration are adopted by the Veseli Defence throughout.

5 PRESIDING JUDGE SMITH: Thank you, Mr. Emmerson.

6 MR. TULLY: And, Your Honour, for the record, that applies to us
7 too.

8 MR. ELLIS: And the Krasniqi Defence as well, Your Honours.

9 PRESIDING JUDGE SMITH: Thank you, all.

10 MR. PACE: And, Your Honour, just to respond briefly, we've
11 heard nothing from the counsel that should go against Your Honours'
12 previous decision on the matter, so the objection does not have any
13 ground unless they're seeking reconsideration of your earlier
14 decision, and these pages should be admitted.

15 MR. MISETIC: Mr. President, if I may just respond. As you may
16 have inferred, we're preserving our record on appeal, but we're more
17 than happy to establish a procedure along the lines of what Mr. Pace
18 proposed earlier, that with respect to admission of excerpts of this
19 book, that the objection I just articulated, and I articulated
20 yesterday, is a standing objection, and any non-objection going
21 forward will not waive our right to appeal the issue to any future
22 questions or portions on the book. Thank you.

23 PRESIDING JUDGE SMITH: Thank you.

24 Mr. Pace, anything else? You're finished with your questioning?

25 MR. PACE: No, no, nothing else on this matter. I was awaiting

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12679

1 your ruling on the admission of the pages, Your Honour. I'm not
2 finished with the questions.

3 PRESIDING JUDGE SMITH: Do you have any pages that are going to
4 come up?

5 MR. PACE: As I go along, yes, there will be more pages. I'm
6 just trying to keep --

7 PRESIDING JUDGE SMITH: All right. Go ahead.

8 MR. PACE: -- everyone on track.

9 So then would these pages be MFI'd or we'll just hold on to them
10 until the end, Your Honour?

11 PRESIDING JUDGE SMITH: We'll hold on to them until the end.

12 MR. PACE: Thank you, Your Honour.

13 And, Court Officer, if we could please call up once again the
14 book, which in English is 036622 to 036837, and in Albanian is 077039
15 to 077258, please. And in the English, I'd like to go to page
16 036767; and in Albanian, 077187. And we're going to look at the
17 document at the top of these pages.

18 Thank you, Court Officer.

19 Q. Witness, once again, on your screen, on the left in English, on
20 the right in Albanian, we have two pages from your book, the "KLA War
21 in Nerodime Operation Area," and I'd like you to focus on the
22 document at the top of the page which the Court Officer is now
23 zooming in. So again, on the left, at least the title is in English,
24 the document is the same; and on the right, it's in -- the document
25 is the same one, the heading is in Albanian.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12680

1 And we see --

2 MR. PACE: If we scroll down a little bit in the Albanian as
3 well, please, Court Officer, just for caption. Thank you.

4 Q. We see that the caption is from your book: "Decree of KLA HQ to
5 change Sub-areas into Area of Operatives." And we can also see,
6 hopefully, that the document is dated 19 November 1998 in Prishtine.
7 And that's at the top of the document itself.

8 Now, Witness, do you see that?

9 A. Yes, I do.

10 Q. And do you also see towards the middle of the document the word
11 "Vendim," which I'm told means "decision"?

12 A. Yes.

13 Q. And we see a seal at the bottom of the document. Do you
14 recognise that seal?

15 A. Yes. The seal, yes.

16 Q. And what seal is that?

17 A. That's the seal with an eagle in the middle. It also contains
18 the KLA, which is the Kosovo Liberation Army. That's the seal.

19 Q. And, Witness, where did you obtain this document?

20 A. I obtained this document after the war in the command of Unit 6
21 of the Kosovo Corps, Kosovo Protection Corps.

22 Q. And, Witness, to your knowledge is this document authentic?

23 A. I have said it during the questioning, that during the war time
24 I did not admit this document. If I received this document during
25 the war time only with a signature, I would have not admitted it

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12681

1 because there is no first name, last name of this document, and the
2 signature is inadmissible to myself. But like I said, I have only
3 seen this document after the war. I never saw this document during
4 the war.

5 Q. And you told us you obtained the document from the command of
6 Unit 6 of the Kosovo Protection Corps. Do you have any reason to
7 believe that the documents held by that unit or location were --
8 included false documents?

9 A. I have not conducted any detailed study about that.

10 Q. Do you have any reason to believe that this document that you
11 included in your book was false?

12 A. I have no reason to believe. But given that this document has
13 no first name, no last name, but only a signature, to me this
14 document is not very telling.

15 Q. And, Witness, are you able to read the text in Albanian of the
16 document on your screen or not?

17 A. Yes.

18 Q. And can you tell us what it says in the main text, please?

19 A. "Operational subzones of the Kosovo Liberation Army are
20 proclaimed operational zones."

21 Q. And are you able to read what it says above that, above
22 "Vendim," or is it not clear enough for you to read?

23 A. I can't clearly see it.

24 MR. PACE: And, Court Officer, let's please keep the version on
25 the left-hand side on the screen. But on the right-hand side, could

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12682

1 you instead kindly call up SPOE00228818 to SPOE00228818.

2 Q. Now, Witness, do you see a new document has appeared on the
3 right-hand side of your screen, but we've kept the document we're
4 talking about on the left-hand side.

5 Do you recognise this document on the right-hand side of your
6 screen?

7 A. No, I don't recognise this because I have not seen this before
8 and I can't read at the end on who issued this document. For as long
9 as I don't know who has issued this document, I can't recognise it.

10 Q. So, Witness, just to put things into perspective, the document
11 on the left is the one we've been talking about from your book and
12 the one on the right is a new document. Will you agree with me that
13 the documents appear to be similar?

14 MR. PACE: And, Court Officer, we can perhaps scroll so we can
15 see also see the signature. Thank you. Yes.

16 THE WITNESS: [Interpretation] It looks like they are the same.

17 MR. PACE:

18 Q. And we see, for example, the word "*Vendim*," "*Decision*," in both;
19 right? And we can see it's legible, the text that you read out
20 earlier about the announcement that the KLA operation subzones are
21 declared operational zones; correct?

22 A. Yes.

23 Q. And similarly, the seal that we discussed earlier appears to be
24 the same; right?

25 A. Yes, it looks like that.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12683

1 Q. And both documents are signed, both the one on the left and on
2 the right. Do you happen to be able to recognise the name and the
3 signature?

4 A. There is no name there. About the signature, I don't recognise
5 that signature.

6 Q. And you see on the left that both documents refer to Prishtine,
7 19 November 1998; right?

8 A. Right.

9 Q. Now, if we look at the top of the document, above the word
10 "Vendim," "Decision."

11 MR. PACE: And at this point, Court Officer, if we could kindly
12 take down the document on the left and instead of that one call up
13 the English translation of the item on the right which is
14 SPOE00228818-ET.

15 PRESIDING JUDGE SMITH: Could you read that ERN number again,
16 please?

17 MR. PACE: Of course. SPOE00228818 to SPOE00228818-ET. Yes, I
18 see it's on our screen now.

19 Q. And, Witness, just so you understand what's going on, the same
20 document in the Albanian that's on the right, I've just now called up
21 an English translation of it. And earlier you told me that from the
22 version in your book you couldn't read the text above the word
23 "Decision," so I'm going to read that to you now. And that says:

24 "The General Staff in the meeting held on 12th November 1998,
25 based on their needs for reorganisation, restructuring and command

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12684

1 establishment, issues as following:"

2 And then we have the word "Decision."

3 Witness, my question is whether you ever heard from anyone in
4 any way about this meeting of the General Staff on 12 November 1998
5 and that leading to the decision that we have before us?

6 A. During the war, I have never heard about this meeting.

7 Q. Did you hear about it after the war?

8 A. While I was writing the book, when my collaborators provided
9 some information, that information we reflected in the book.

10 Q. Could you tell the Judges who, if anyone, provided you
11 information concerning this General Staff meeting on 12 November
12 1998, please?

13 A. After I saw this document, that is, ten years after the war.

14 Q. Please go on. What happened after you saw this document ten
15 years after the war?

16 Witness, perhaps you haven't understood the question. I'll
17 repeat my earlier question. Could you tell the Judges who, if
18 anyone, provided you information concerning this General Staff
19 meeting on 12 November 1998?

20 A. This information I saw in the documents of the command of zone 6
21 after ten years.

22 Q. Witness, a few moments ago I asked you did you hear about it
23 after the war, the decision -- sorry, the meeting of the
24 General Staff in November 1998, and your answer was:

25 "While I was writing the book, when my collaborators provided

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12685

1 some information, that information ... reflected in the book."

2 Can you clarify if the information you're talking about is the
3 actual document you included, or did somebody tell you something
4 about it or about the meeting in November?

5 A. No, nobody has told me about that, but I have seen it in this
6 document.

7 Q. And who are these collaborators you're talking about when you
8 answered my question?

9 A. The collaborators are the editors of the book, the professor,
10 the chief editor, the photographer. Those are the people I mean.

11 Q. Did the editors of the book give you this document or talk to
12 you about this document or the November 1998 meeting? Could you
13 clarify?

14 A. This was the entire team that helped me to write the book.

15 Q. My question is whether your team provided you with the document
16 or any information about the document or the November 1998 meeting
17 referred to in it.

18 A. The document.

19 Q. Who specifically provided you the document?

20 A. I don't remember it now, because I was responsible of the
21 command of zone 6 and I didn't have direct supervision.

22 MR. MISETIC: Mr. President.

23 PRESIDING JUDGE SMITH: [Microphone not activated].

24 MR. MISETIC: There is an issue with regards to the two Albanian
25 documents. I don't think it's appropriate to do it in front of the

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12686

1 witness, but I do have an issue that's arisen about a comparison of
2 the two documents. So I'll just note it for the record, and if you
3 want to hear it, I can do it in front of the witness or outside the
4 witness's presence, but ...

5 PRESIDING JUDGE SMITH: If it needs to be heard outside the
6 witness's presence, we'll have him leave the room.

7 MR. MISETIC: I just don't want to be accused of leading the
8 witness, so ...

9 PRESIDING JUDGE SMITH: Okay.

10 MR. PACE: Sorry, just, Your Honour, if I may intervene. If
11 it's perhaps relating to a comparison of the one document with the
12 SPO number and the version in the book, I'm getting to perhaps
13 something that you are asking about before I seek admission.

14 PRESIDING JUDGE SMITH: Go ahead, Mr. Pace.

15 MR. MISETIC: Then I'll reserve my position. Thank you.

16 PRESIDING JUDGE SMITH: Go ahead.

17 We can always break if we need to.

18 Go ahead, Mr. Pace.

19 MR. PACE: Thank you, Your Honour.

20 Q. Witness, just to be clear, earlier you said that the document
21 you put in your book, you got that from the Kosovo Protection Corps;
22 is that right?

23 A. From the command of zone 6 of KPC where I was a chief.

24 Q. Thank you.

25 MR. PACE: And, Court Officer, could we keep the document on the

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12687

1 right and call up the same page as before, which is page 036767 from
2 036622 to 036837. Thank you, Court Officer.

3 Q. So, Witness, once again, we have the version of this document
4 from your book on the left and another version that I provided on the
5 right. I think we've agreed that they are similar documents. Would
6 you agree with me that one difference appears to be that in the
7 version in your book there is a handwritten annotation at the top
8 towards the middle of the document?

9 A. Yes, there is.

10 Q. And that reads to me 01/89, and then under that 08.10.01. Do
11 you have any information about what that refers to?

12 A. During my questioning, I told you that I don't know, and I still
13 don't know.

14 Q. Thank you.

15 MR. PACE: And, Your Honour, we seek admission of the page from
16 the book which contains this item, which in English is 36767, and in
17 Albanian, 077187, and then also of the other version that we have
18 shown to the witness, which is SPOE00228818 to SPOE00228818 and its
19 English translation as well.

20 MR. MISETIC: Your Honour, we -- now I will make the objection
21 that we dispute that this is the same document, and I can articulate
22 the reasons now or outside the witness's presence, however you wish
23 to proceed.

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 Please take the witness out of the room.

1 MR. PACE: Your Honour, before we do that, could I just be heard
2 momentarily? I won't say anything that would influence the
3 witness's --

4 PRESIDING JUDGE SMITH: Just save it for a moment.
5 Witness, you'll be excused for a few minutes.

6 [The witness stands down]

7 PRESIDING JUDGE SMITH: Go ahead, Mr. Pace.
8 He wanted to explain something first.

9 MR. MISETIC: Oh, sorry.

10 MR. PACE: Yes, Your Honour, I was just going to say that the
11 fact that there may be a difference between the version that the
12 witness included in his book and this other version is not a bar to
13 admissibility. So if that's the objection, I don't see the basis for
14 that -- of this objection. And once again, that would be an issue
15 that would go to the weight which is attributed towards the end of
16 the trial on the balance of the evidence before the Panel and not to
17 the admissibility of either document.

18 PRESIDING JUDGE SMITH: Go ahead, Mr. Misetic.

19 MR. MISETIC: I just want to note, because it's being said that
20 it's a different version of the same document, and we note that -- at
21 least two additional differences other than the one that Mr. Pace
22 highlighted, which is that in the upper left-hand corner there's a
23 number. In the version on the right it's clear to be /108. On the
24 version on the left, it's illegible, but it would not appear to us to
25 be similar to a 108.

1 And then if you go to the bottom of the page, the seal, the
2 stamp. The positioning of the stamp is slightly different. So the
3 one on the right appears almost even with the -- with the first line
4 there to the right. And the one on the left, the seal seems to be
5 slightly higher.

6 So we would not concede -- we have no objection to the page on
7 the left being moved in for its own value, whatever it is. But the
8 assertion that these are two versions of the same document we would
9 dispute. Thank you.

10 PRESIDING JUDGE SMITH: We understand your dispute.

11 Go ahead, Mr. Ellis.

12 MR. ELLIS: Your Honour, we also object to the page on the
13 right, the separate page being admitted into evidence. The witness
14 has clearly not authenticated it. He hadn't seen it at the time. He
15 said that, in his view, the absence of a first name, second name was
16 telling.

17 And in addition, we have our standing objection to the conduct
18 of the search of Mr. Krasniqi's house.

19 PRESIDING JUDGE SMITH: Go ahead, Mr. Pace.

20 MR. PACE: Thank you, Your Honour. Just briefly. Again, we
21 haven't heard anything that would bar admission. If anything, they
22 go to admissibility. We are not saying the documents are identical.
23 Clearly they are not. The witness provided information about where
24 he obtained the document in his book. It is, on its face, very
25 similar to the separate document we are seeking admission of.

1 I could add another difference, if counsel wanted me to, which
2 is the location of the signature in both documents is slightly off.
3 We're not saying they're identical. Clearly we're not. But that's
4 besides the point when it comes to the matter of admissibility.

5 As to counsel for Mr. Krasniqi's submissions, those objections
6 have also been overruled in terms of the search and seizure.
7 Consistent with your prior rulings, we could give the information on
8 that should you require it.

9 PRESIDING JUDGE SMITH: 036767 and SPOE00228818 to SPOE00228818
10 are admitted. The objection does not affect admissibility as far as
11 the Court's concerned. It deals with matters that are unimportant to
12 the issue at hand.

13 Go ahead.

14 THE COURT OFFICER: Your Honours, just a clarification. The
15 English translation from the document 0366702 with the ERN --
16 apologies, the English translation with ERN 036767 is the only
17 document that needs to be admitted. Not the Albanian version from
18 the book.

19 MR. PACE: We'll do both the English and the Albanian, and the
20 Albanian corresponding page is 077187, please, and that's, of course,
21 in addition to the SPO document.

22 THE COURT OFFICER: So Albanian page with ERN 077187 and its
23 English version with ERN 036767 will be added to the Exhibit P01015.

24 And another document with ERN SPOE00228818 to SPOE00228818 and
25 its English translation will be admitted as P01016.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12691

1 PRESIDING JUDGE SMITH: Thank you.

2 Go ahead, Mr. Pace.

3 Oh, gotta have a witness. Please call the witness.

4 [The witness takes the stand]

5 THE COURT OFFICER: And, Your Honours, just for the record, the
6 document that was admitted as P01016 is classified as confidential at
7 the moment.

8 MR. PACE: And that could be changed to public because it is
9 similar to the also now public version of the book.

10 PRESIDING JUDGE SMITH: [Microphone not activated].

11 Mr. Pace, you may proceed.

12 MR. PACE: Thank you, Your Honour.

13 And, Court Officer, in the page on the left, could we now scroll
14 down to the bottom two images, please. And could we call up, side by
15 side with that for now, the Albanian version from the book, which is
16 077039-077258, page, once again, 077187, which has just been
17 admitted. 77187, please.

18 Q. And, Witness, once again pages -- actually, the same page we
19 were looking at before from your book is on the left in English on
20 your screen and on the right in Albanian. We are now focusing on the
21 two documents or the two images at the bottom here, and we can see
22 that your caption for these two images reads as follows:

23 "Orders of KLA HQ Chief Commander, signed by
24 Colonel Bislím Zyrapi."

25 And could you kindly tell the Judges where you obtained this

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12692

1 document from, Witness?

2 A. After the war, I obtained this document from the command of
3 zone 6 of KPC.

4 Q. And, Witness, to clarify, when you say you obtained it from that
5 command, is that the archive that they kept or something else?

6 A. In the command of zone 6, where part of the TMK documentation
7 was to be found.

8 Q. Thank you, Witness. Are you able to read any part from these
9 two images on your screen or not?

10 A. No, it's not clear.

11 MR. PACE: Yes, thank you, Court Officer.

12 Q. On the image on the left-hand side, so the first of the two
13 images at the bottom of the page, would you agree with me that we can
14 see in the middle the word "Urdherese," and I apologise for my
15 pronunciation. I'm told that that means "Order." Do you see that
16 word in capital letters?

17 A. Yes.

18 Q. And do you also see that subsequently the paragraphs seem to be
19 numbered, and I can see on the right-hand side of the image that it
20 gets as far as paragraph 10.

21 MR. PACE: If we could zoom on the image -- on the next image on
22 the right-hand side, Court Officer, please. So the -- yes, correct,
23 in the Albanian, so there. And perhaps we can try to do that with
24 the English, for what it's worth.

25 Q. Witness, do you agree with me that the last paragraph over there

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12693

1 appears to be numbered number 10?

2 A. It's not visible.

3 Q. And do you see perhaps an 8 and a 9 at the commencement of the
4 paragraphs preceding that?

5 A. Yes, I do. But still, it is not clearly visible.

6 Q. Yes, thank you.

7 MR. PACE: And could we, Court Officer, zoom in on the signature
8 block, the seal and the written information. Thank you.

9 Q. And, Witness, as I asked you before, could you tell us whether
10 you recognise the seal that is included here in this document?

11 A. The seal is visible. It contains the eagle and the acronym of
12 the Kosovo Liberation Army, UCK.

13 Q. And do you see, like I do, the word "Bislim Zyrapi" above the
14 signature?

15 A. Yes.

16 MR. PACE: Moving, Court Officer, towards the left-hand side of
17 this same image if we can, so a little bit on the other side opposite
18 the seal, let's say. Correct, there. And let's do the same in the
19 Albanian, please. Yes, exactly.

20 Q. And, Witness, at least here I see initials or letters that are
21 S V/VG. Do you happen to know what that refers to by any chance?

22 A. I don't know.

23 MR. PACE: And shifting now instead to the other page at the top
24 left-hand corner, so -- yes, so the other page. The other image, I
25 should say. Yes, that's good in the English. Thank you,

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12694

1 Court Officer. If we can do the same for the Albanian. Thank you.

2 And if we could just go up a little bit in the Albanian so we can see
3 the top of the -- yes, thank you.

4 Q. And, Witness, here do you see towards the top middle of the page
5 that we have what seem to be handwritten - what is that? - 01/94
6 above 08.10.01. Do you see that in both versions?

7 A. Yes, I do.

8 Q. And beneath that to the right, do you see the words "Operational
9 Zone Command" typed out and then a handwritten word right next to
10 that? Do you see that?

11 A. Yes, I do.

12 Q. Could you read the handwritten word for us, please?

13 A. It is not readable. I cannot read it. It's not clear.

14 Q. Would you agree with me that the typewritten words say
15 "Operational Zone Command," and then the handwritten word says
16 "Nerodimes"?

17 A. It is possible, although the R resembles V and the D resembles
18 T. So it's not clearly visible, but it could be what you just said.

19 MR. PACE: And, Court Officer, as we did before, could we kindly
20 keep the version from the English book on our screens on the left and
21 call up side by side with it SPOE00228807 to SPOE00228808. And, yes,
22 we can leave that as it is there.

23 Q. And, Witness, focusing only on the two images on your screen,
24 just for clarity, again, the image on the left is from your book, and
25 the image from the right is not from your book. It is from another

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12695

1 document.

2 Would you agree with me that these two documents appear to be
3 similar?

4 A. To make a comparison, I'm not able because the one on the left
5 is not legible. So I cannot give you a precise answer.

6 MR. PACE: And, Court Officer, could we zoom out as much as we
7 can on only this first page on the left, and then similarly -- so
8 that we can see that whole first page as such. I mean, the first
9 image on the left. Sorry for the -- exactly. Yeah. So just to
10 focus on that one. We can see the totality. Perfect. Thank you.
11 Yes.

12 And then could we do the same for the image on the right. Could
13 we just zoom out so that we see the top and bottom of that page.
14 Thank you. That's what I was asking for.

15 Q. And, Witness, would you agree with me that, at least in terms of
16 appearance, these two pages look similar?

17 A. I cannot agree because there are changes that make them
18 different, and I wouldn't like to take that responsibility to confirm
19 that they are identical documents. Because from their appearance,
20 they don't look to be identical.

21 Q. Yes, Witness, I agree with you, in fact, that they don't appear
22 to be identical, but my actual question is whether to you they appear
23 to be similar.

24 A. They could be similar, but their substance is not. So I cannot
25 take that responsibility to confirm that these are the same document

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12696

1 because we are dealing with serious proceedings here.

2 Q. And when you say that their substance is not, could you clarify
3 for the Judges what you're referring to?

4 A. Since I cannot read the one on the left and compare it to the
5 one on the right, I cannot confirm 100 per cent that these documents
6 are the same or similar.

7 MR. PACE: And, Court Officer, could we, in the document on the
8 right, please move to the second page. And on the document on the
9 left, just focus in on that second page. Thank you, Court Officer.

10 Q. And, Witness, the same question I was asking before. Would you
11 agree with me that these documents, these two pages of the documents,
12 on the left from your book and on the right not from your book,
13 appear to be similar?

14 A. All I can say, because of the same name, Bislim Zyrapi, here and
15 there, yes. But as for the text, I cannot confirm because it's not
16 legible.

17 Q. And let's try to see what could perhaps be legible. Earlier you
18 agreed with me that you could see in the document in your book on the
19 left the paragraph number starting, for example, 8 and 9. And do you
20 see that actually we can see on this page they start from numbers 6
21 to 10 both on the document in the left and also in the one on the
22 right?

23 A. I cannot see number 10 anywhere on the document on the left.

24 Q. Do you see numbers 6 to 9 on the document on the left?

25 A. Number 9 cannot be easily identified as 9.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12697

1 MR. PACE: And, Your Honour, we seek to admit these pages. Both
2 the -- the page from the book is actually already admitted, because
3 it was -- it contained a document shown before. So all I seek to
4 admit now is this other version that's not provided by the witness,
5 which is SPOE00228807 to SPOE00228808 and the English translation
6 which has ET at the end.

7 MR. ELLIS: Your Honour, the objection is similar to the
8 objection to the previous document but with even more force here
9 because the witness has done nothing to authenticate the document on
10 the right.

11 Putting a document that the witness can't read before him and
12 getting him to speculate it might be similar is, in our submission, a
13 poor basis for admission.

14 MR. PACE: Your Honour, if I may be heard. Just briefly,
15 Your Honour. Of course, we tried to elicit from the witness his --
16 what he can see from his own eyes as well. The point here being that
17 the witness provided evidence on the authenticity of the document on
18 the left, which is included in his book. And in our submission, the
19 document on the right is similar and obtained elsewhere. Of course,
20 the witness can't speak to its content as such. But first of all, we
21 could also make a bar table submission, for example, about it, this
22 is a clearly relevant document. And, again, the submissions we've
23 heard from counsel are ones that would go to admissibility, not
24 weight, all things considered in the end of the case.

25 PRESIDING JUDGE SMITH: Why do you seek to admit this document

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12698

1 that obviously nobody can read?

2 MR. PACE: So to clarify --

3 PRESIDING JUDGE SMITH: I mean, we can read the one that's on
4 the right but we can't compare it in any way.

5 MR. PACE: Yes, Your Honour. Our submission is that based on
6 a on-its-face reading, it is very clearly similar documents in terms
7 of the numbering of paragraphs, how it is set out, and other words
8 which are, in fact, identifiable. And the relevance there is that
9 the witness has told you that that he took from the Kosovo Protection
10 Corps. Whereas the one that we obtained from sources, which I can
11 provide information on there, but it was not from the Kosovo
12 Protection Corps, is then, in our submission, very clearly the same
13 document -- or very clearly are similar documents, not with the
14 annotations. So that is the relevance of the exercise on why we're
15 seeking admission.

16 PRESIDING JUDGE SMITH: [Microphone not activated].

17 MR. PACE: If you wanted submissions as to the content --

18 PRESIDING JUDGE SMITH: What is its probative value?

19 MR. PACE: Certainly, Your Honour. So the witness in the
20 caption said it's an order of the KLA chief commander, signed by the
21 commander Bislum Zyrapi, for the document in his book. Very clearly
22 that is the same that applies to the document -- the SPOE document.
23 It is dated 18 December 1998. It refers to the KLA General Staff, to
24 the regulations. It contains an order, a very detailed order in
25 relation to the zones, and it is signed by KLA SHP General Staff

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12699

1 Chief, Colonel Bislime Zyrapi.

2 So in line with other KLA documents we have sought admission of
3 and have been admitted through the bar table, we suggest that this
4 certainly meets that test.

5 MR. EMMERSON: May I just invite Your Honours to inquire or at
6 least in -- in connection with the questions of probative value.

7 Obviously, as Mr. Miletic has pointed out in relation to the
8 last document, and Mr. Pace rightly conceded, they're not the same
9 physical document. The stamps are in different locations and so
10 forth.

11 So given that this is purportedly put forward as an order rather
12 than multiple orders, which of these does the Prosecution say is the
13 authentic version? There can't be more than one. One must be the
14 original of an order and one must be a copy. Which is said to be the
15 original?

16 MR. MILETIC: And if I may just add our additional point with
17 respect to your question, Mr. President, on the probative value. We
18 still are not clear as to what the probative value is of two similar
19 or same versions of the same document being admitted into evidence.

20 MR. EMMERSON: The same for me.

21 MR. PACE: Yes, Your Honour, briefly.

22 I could make long submissions about this, but I won't --

23 PRESIDING JUDGE SMITH: Don't.

24 MR. PACE: I'll keep it -- I know. I'll keep it brief. I
25 assumed as much.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12700

1 But just to counsel for Mr. Veseli's question, we are not
2 again -- like the previous document, we're not saying they're
3 identical. They are similar documents. One piece of information
4 that even the witness has noticed is that the version in his book has
5 a handwritten word, which he said could be Nerodimes, whereas the
6 version from the SPO document does not.

7 Once again, even if we look at the signature block, it's not
8 necessary that the signature is in the exact same place. We are not
9 at all saying that these are identical. The only reason for putting
10 in this now through this witness rather than through a bar table,
11 because, in our submission, this document would have clearly gone
12 into a bar table for its obvious relevance to this case, is that the
13 witness is able to add an extra layer of authentication to a similar
14 document. So that is it.

15 PRESIDING JUDGE SMITH: The Court will admit the document, but
16 it has very hazy evidential value. The weight will have to be
17 determined later on, and it's possible that it does not receive very
18 much weight. But we will admit it. It is admissible for the
19 purposes stated given the defects that the comparison has. That's
20 all.

21 Go ahead. We can assign a number to it.

22 THE COURT OFFICER: Your Honours, document with ERN SPOE00228807
23 to SPOE00228808 and its English translation will be admitted as
24 Exhibit P01017.

25 PRESIDING JUDGE SMITH: Thank you.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12701

1 MR. PACE:

2 Q. Witness, to your knowledge, did members of the KLA General Staff
3 ever conduct a visit or were they present within Brigade 162 area of
4 responsibility?

5 A. I did not have knowledge about this visit.

6 Q. You said "this visit." What visit are you referring to?

7 A. About the question you asked.

8 Q. I'll ask it differently. Witness, could you tell the Judges
9 whether you ever heard any information whatsoever about members of
10 the General Staff being present in the area of responsibility of
11 Brigade 162?

12 A. I never heard about that.

13 Q. Do you recall mentioning a visit of that nature in your SPO
14 interview in February 2020?

15 A. Even if I have mentioned that, I don't think I have, but even if
16 I have mentioned it, that must have been an omission on my part
17 because I didn't have any information of such a visit.

18 MR. PACE: Your Honours, since the witness doesn't seem to
19 recall making such an assertion, with your leave, I'd like to go to a
20 prior statement, 074031-TR-ET Part 2. And that would be from page 18
21 in the English; and in the Albanian translation, please bear with
22 me -- in the Albanian translation, it would be from page 22.

23 MR. MISETIC: Mr. President, just to clarify, is this for
24 purpose of refreshing recollection?

25 PRESIDING JUDGE SMITH: It seems to be.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12702

1 MR. PACE: Your Honour, the witness said he doesn't remember
2 providing such information so --

3 PRESIDING JUDGE SMITH: I see, and that's -- your purpose,
4 though, is to refresh -- yes.

5 MR. MISETIC: Then I have no objection. Thank you.

6 PRESIDING JUDGE SMITH: All right.

7 [Microphone not activated].

8 I'm sorry, I didn't have my mic on. Go ahead, Mr. Pace.

9 MR. PACE: Thank you, Your Honour. I'm just waiting for the
10 pages to come up on the screen.

11 PRESIDING JUDGE SMITH: Mr. Pace, I remind you that you are now
12 at four and a half hours, which is the time set.

13 MR. PACE: Yes, Your Honour. I believe I have five hours in
14 total. I would hope to complete within the next half hour. Because
15 of how things are going, I may ask your indulgence for an extra
16 amount of time, but I will cross that bridge when I come to it. I
17 have already --

18 PRESIDING JUDGE SMITH: Our indulgence may not be granted, so go
19 ahead and try to get it finished in the time period given.

20 MR. PACE: Certainly, Your Honour.

21 Q. And, Witness, this --

22 PRESIDING JUDGE SMITH: We did cost you ten minutes for the
23 break at 10.00, so you have that much leeway.

24 MR. PACE: Your Honour, at this point I'll also say that the
25 witness's cooperation in answering has also cost me a significant

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12703

1 amount of time, which couldn't have been foreseen.

2 Q. And, Witness, once again on the screen in front of you, we have
3 your prior statement to the SPO in February 2020. And I'm going to
4 read from it, and I'd like you to listen to what I'm reading and then
5 I have some questions.

6 "Q. What kind of visits would happen in the 162 Brigade's area?
7 Who would visit?

8 "A. I can't say that there were any visits as such, because we
9 didn't have the luxury to make visits at the time. At the time, it
10 was the Rambouillet conference happening and the leadership were
11 obliged to cross the border on foot through that area.

12 "Q. When you talk about the leadership, who exactly are you
13 talking about here?

14 "A. It was the -- it was the responsibility of the commander
15 dealing with that, so I can't -- such a long time has passed from
16 that time, so I can't say. But everybody knew who went through or
17 what part of the delegation went through that area.

18 "Q. And who --

19 "A. And it was the responsibility of the brigade commander
20 mainly to deal with that. At the time, I was just told ... to
21 prepare a certain unit that would carry out this escorting duty, and
22 I didn't have -- I was not privy to other more detailed information.

23 "Q. But the leadership here, are we talking about the KLA's
24 General Staff or something else?

25 "A. It is publicly known who was -- who were members of the

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12704

1 Rambouillet delegation. I can't mention names, because I might have
2 learned about this later on reading or something, so I couldn't say
3 that at the time I knew who exactly they were. I might have learned
4 them afterwards."

5 Now, Witness, is the information you provided in the excerpt I
6 read to you correct or not?

7 A. It is very true that it was not my responsibility and that I had
8 no knowledge about the movements in that time.

9 Q. In part of what I read to you, you say:

10 "At the time, it was the Rambouillet conference happening and
11 the leadership were obliged to cross the border on foot through that
12 area."

13 Is that also correct, that the leadership were obliged to cross
14 the border in that area when the Rambouillet conference was
15 happening?

16 A. This could have been an assumption on my part, because I didn't
17 have this information at the time. But after the war, we all learned
18 who led the delegation to Rambouillet.

19 Q. Witness, I don't think you're particularly answering the
20 question, but I'll perhaps rephrase. Did you learn, during the war
21 or after, that members of the KLA who attended the Rambouillet
22 conference visited or passed through the area of responsibility of
23 Brigade 162?

24 A. I don't know that accurately.

25 Q. Do you know anything at all about KLA members who went to

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12705

1 Rambouillet passing through or visiting the area of responsibility of
2 Brigade 162?

3 A. With regards to Brigade 162, I don't know that because that was
4 the responsibility of Qamil Ilazi, the commander of the brigade.
5 Whereas when it comes to the delegation of Kosovo to Rambouillet, the
6 entire, whole world knows that the delegation was led by
7 Hashim Thaci.

8 Q. And to your knowledge, did Hashim Thaci ever visit or was ever
9 present in the area of responsibility of Brigade 162?

10 A. I have said this back then, and I'm telling you right now as
11 well, I have no knowledge whatsoever about such visits.

12 MR. PACE: Court Officer, if we could kindly call up the book,
13 which is now partially -- parts of it are in as 1015, so 036622 to
14 036837 in English; and in Albanian, 077039 to 077258. And in the
15 English, I would like to turn to page 036818. And in the Albanian,
16 it's going to be page 077238. So in English, 036818; and in
17 Albanian, 077238. And I'd like to focus on the image in the middle
18 on the left, please.

19 Q. Witness, once again, these are pages from your book that we've
20 been discussing at some length today. And in relation to the picture
21 and the caption that the Court Officer is now zooming on, in the left
22 in English and on the right in Albanian, I'll read the caption in
23 English. And it says:

24 "The house of Reshat Bunjaku, where the Delegation of KLA HQ
25 stayed during their visit of the 162nd Brigade 'Agim Bajrami' in

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12706

1 Bicec."

2 Is that caption correct, Witness?

3 A. This caption is correct. But this is how the photograph was
4 being given to me by other people. At the time, I had no
5 information, no knowledge whatsoever about this house.

6 Q. Who is or are this other person or persons who gave you this
7 image and that information that you included in the caption? Please
8 tell the Judges.

9 A. I don't know who gave this photograph over to me. And I told
10 you earlier this probably is not the case. This is probably not
11 true, because I said it before that in the book we have embellished
12 things. Probably no delegation was staying in this house. I don't
13 know. I had no knowledge about this during the war, and I can't
14 confirm that this is true.

15 Q. Witness, could you explain to the Judges why or what exactly you
16 would be embellishing by putting an image in your book and describing
17 it as a house in which a KLA HQ delegation stayed? What exactly
18 would serve -- what purpose would that serve?

19 A. The purpose was to give more value to the book. But given that
20 personally I've not seen the delegation, and I had no knowledge about
21 the visit of the delegation during the war, I cannot confirm today
22 that that is accurate information.

23 MR. PACE: And, Court Officer, I'd like to turn in the same
24 items, on the left, to page 036807; and on the right, to 077227,
25 please.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12707

1 Q. And, Witness, do you recognise these images from your book?

2 A. Of course I do.

3 Q. Okay. And how do you recognise them? What do you know about
4 them?

5 A. These photos have been received after the war.

6 Q. Where did you receive them from?

7 A. We extracted them from the recordings that we had with the
8 brigade.

9 Q. And if we look at the caption to the photo on the top on the
10 left, we see that it reads:

11 "Chief of KLA Political Department Mr. Hashim Thaci during his
12 visit at the HQ of 162nd Brigade 'Agim Bajrami.'"

13 Do you see that, Witness?

14 A. I do.

15 Q. And seeing that, would you like to clarify or correct the
16 information you provided moments ago to the Judges that you had never
17 heard any information about Hashim Thaci being in the area of
18 responsibility of the 162nd Brigade?

19 MR. MISETIC: Objection under Rule 143, Mr. President.

20 PRESIDING JUDGE SMITH: Overruled.

21 Go ahead.

22 MR. PACE:

23 Q. So, Witness, do you need me to repeat the question?

24 A. Yes. Can you please repeat the question once again?

25 Q. Certainly. So in the caption that we're looking at on our

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12708

1 screen still, corresponding to the image, it says:

2 "Chief of KLA Political Department Mr. Hashim Thaci during his
3 visit at the HQ of 162nd Brigade 'Agim Bajrami.'"

4 And my question to you was whether you would like to correct or
5 clarify what you told the Judges moments ago, that you had no
6 information about Mr. Hashim Thaci ever being in the area of
7 responsibility of Brigade 162.

8 A. Again, I do confirm that I have not had any knowledge that the
9 delegation of the General Staff has visited the Brigade 162. These
10 photos have been taken after the war, and I cannot testify to the
11 fact that this photo has not been taken from a mountain somewhere in
12 Kosovo. We might have as well taken an extract of that photo, and we
13 might have as well wanted to add some value to that photo.

14 Myself, I have not had any information, any knowledge about the
15 visit, I have not met with them, and given that I've not seen them
16 with my own eyes, I cannot confirm that this is true. Whereas with
17 regards to the book, I mean, probably I'm becoming superfluous into
18 repeating it several times, but once again I wish to tell you that we
19 have embellished things and we have added things and we have
20 represented facts as we wanted them to be.

21 Q. Witness, when you inserted these images in your book and when
22 you included that caption, did you have any doubt that the
23 information was incorrect, that you're ascribing the caption to that
24 image?

25 A. I didn't dive into that back then. I didn't think of it back

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12709

1 then.

2 Q. And, Witness, you mentioned that you embellished parts of your
3 book for your own reasons or for certain purposes. Could you explain
4 to the Judges what purpose it would serve to add a caption here
5 saying that Hashim Thaci, the chief of the KLA political department,
6 was in a visit to Brigade 162?

7 A. The purpose was for the entire general opinion, the world, in
8 particular the citizens of Kosovo, because they all know Hashim Thaci
9 as the founder of the state of Kosovo and as somebody that led to the
10 independence of Kosovo. And this is something that we added to add
11 value to the book itself.

12 MR. PACE: Your Honour, I seek to admit these pages from the
13 book, 036807 in English, and 077227 in Albanian.

14 PRESIDING JUDGE SMITH: [Microphone not activated].

15 MR. MISETIC: Yes, Mr. President. The witness -- this was
16 clearly an attempted impeachment of the witness through the book.
17 First, the Prosecutor did not seek leave under 143 to do so. The
18 Panel does not have discretion to allow him to unilaterally impeach
19 his own witness, and for that proposition I cite the ICTY Appeals
20 Chamber Decision on Appeals Against Decision on Impeachment of a
21 Party's Own Witness, 1 February 2008, at paragraph 28. So it cannot
22 be used as impeachment and is inadmissible because the terms of 143
23 were not complied with.

24 In addition, under the Panel's ruling, this is not considered a
25 statement for purposes of 143(2)(c) and is inadmissible on that

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12710

1 grounds.

2 It cannot be used for the truth of the matter asserted under any
3 other rule for the reasons I articulated earlier yesterday and
4 earlier this morning; namely, that it would violate Article 21(4) (a)
5 of the Law on the Specialist Chambers and Article 6(1) and the right
6 to an adversarial proceeding under the European Convention on Human
7 Rights.

8 PRESIDING JUDGE SMITH: I assume joinder by the rest of the
9 Defence?

10 MR. EMMERSON: Yes, Your Honour.

11 MR. ELLIS: Yes, indeed, Your Honour.

12 PRESIDING JUDGE SMITH: All right. P036807 to 077227 will be
13 admitted.

14 THE COURT OFFICER: Your Honours, document, Albanian version,
15 with ERN 077227, and its English translation with ERN 036807,
16 excerpts from the book 077039 to 077258, will be added to
17 Exhibit P01015. And classification is public.

18 Also if I may just clarify the classification for the
19 Exhibit P01017, which is SPOE00228807 to 08 and its English
20 translation. It is marked as confidential.

21 MR. PACE: It can be changed to public. Thank you.

22 MR. MISETIC: Mr. President, I see from the transcript, and I'm
23 sorry to rise, but I did not cite the case name of the ICTY Appeals
24 Chamber decision. It is Prosecutor versus Popovic, 1 February 2008,
25 Decision on Appeals Against Decision on Impeachment of a Party's Own

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12711

1 Witness. Thank you.

2 PRESIDING JUDGE SMITH: Thank you.

3 MR. PACE: Thank you, Your Honour.

4 Court Officer, in the same book could we please turn to -- on
5 the left in the English version, to page 036806; and in the Albanian
6 version, to page 077226. And I'd like to zoom in on the two images
7 at the bottom of the page, please.

8 Q. Witness, once again, these are images from your own book that
9 we've been discussing. And I'd like you to look in particular at
10 these two images that the Court Officer is now zooming in on. The
11 image on the right of your screen, so on the page that is
12 bottom-right image, has the following caption:

13 "Qamil Ilazi, Vehbi Koraci, Ejup Runjeva, Hajrush Kurtaj, Musa
14 Zenuni and Azem Guri in the house of Ramadan Sallahu in Bicec, on
15 03/11/1998."

16 And, Witness, are the people mentioned in the caption those
17 featured in the photograph?

18 A. Yes.

19 Q. And I note that the English version refers to 3/11/1998, whereas
20 the Albanian version, as we can see, refers to 11 March 1998. Could
21 you clarify the correct date of that image, please?

22 A. What it reads is 11 March 1998.

23 Q. And to your recollection is that correct, that this image was
24 indeed from 11 March 1998?

25 A. I cannot confirm it 100 per cent. However, after the battle in

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12712

1 Ivaje in March, we withdrew and we were located afterwards in this
2 house. That is true.

3 Q. And just to clarify, the battle in Ivaje is the 8 March 1999
4 battle; right?

5 A. Yes, on 8 March.

6 Q. And did you go to Bicec immediately after 8 March 1999?

7 A. In the evening, late in the evening on 8 March we withdrew. It
8 was about one night that we -- we were staying there. And after
9 that, we got back to the tower of Hasan, to Hasan's house, basically.

10 Q. And so am I understanding you correctly that you yourself and
11 some or all of the persons in this image with you were in Ivaje until
12 8 March 1999 and then in Bicec for a short while before moving on?

13 A. Yes. The short period is just one night and one day.

14 Q. And, Witness, could you tell the Judges whose responsibility it
15 was to discipline soldiers in Brigade 162?

16 A. It was the responsibility of the commander of the brigade,
17 Qamil Ilazi.

18 Q. And during your time in Brigade 162 in the various capacities
19 that you occupied in 1998 or 1999, did you ever hear about a soldier
20 in that brigade being punished in any way for the way they treated
21 anyone?

22 A. There has been no case of this nature because the soldiers of
23 the KLA responded to the call for the war voluntarily, and there were
24 no such cases.

25 Q. Did you ever hear about a soldier in any other brigade or

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12713

1 battalion within the Nerodime operational zone ever being punished in
2 any way for the way they treated anyone?

3 A. No, I've never heard of anything like that.

4 Q. And we talked about the military police earlier, and my question
5 is whether you ever heard about any member of the military police at
6 any level within the Nerodime operational zone or brigade being
7 punished in any way for the way they treated anyone?

8 A. I've never heard of such a thing.

9 Q. I've asked you about punishment. I'm now going to ask you about
10 investigation. Have you ever heard of any soldier, military police
11 member, at any level within the Nerodime operational zone, being
12 investigated in relation to the way they treated anyone?

13 A. There have been no such cases, none of them.

14 MR. PACE: And, Court Officer, on the documents still on our
15 screen, I'd please like to turn to page, on the left, 036740, and on
16 the right, 077160. And in Albanian, that is -- yes, correct. If we
17 can focus, please, on the two images at the bottom of the screen.

18 Q. And, Witness, again we see documents reproduced in your book.
19 Do you recognise -- let me just wait for the Court Officer to move
20 the English one up. Do you recognise these documents which are
21 appearing on your screen which are the two images at the bottom of
22 the pages I referred to?

23 A. Yes, these were the documents of the police formations of the
24 Serb occupationist forces.

25 Q. And where did you obtain the documents from?

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12714

1 A. I said it during the interview as well. These documents I
2 received from the police station that was controlled by the Serb
3 police forces and the Serb administration the day of the liberation
4 of Kacanik.

5 Q. And could you remind us what day that was that you received
6 these documents?

7 A. On 12 June 1998. That was the date. 1999. Because Kacanik was
8 liberated on 11 June late in the evening, and it was in the early
9 hours of morning of 12 June that we started with the controlling of
10 the buildings and of the environments so that we could establish the
11 conditions for the citizens of Kacanik to get back to their homes and
12 so that they could not be put into difficult positions or fall into
13 mines or into difficult situations that were imposed by the state
14 apparatus of Serbia.

15 Q. And do you remember or can you see with your own eyes that these
16 documents contain the names of a number of Albanian persons?

17 A. Yes, there are Albanians, but there are other citizens as well,
18 citizens of other ethnicities. I cannot say anything about these
19 documents because these are documents of the Serb authorities.
20 Therefore, Belgrade would have given better answers to your questions
21 because these are documents that are drafted by them, and I have no
22 further knowledge about these documents.

23 Q. But is it correct that you yourself obtained these documents;
24 right?

25 A. Yes, I found them on 12 June when I entered the police station

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12715

1 after the forces of state police apparatus withdrew. So this is
2 where I found these documents.

3 Q. And before you found these documents in the location you
4 mentioned, did you have any information about Albanians being aligned
5 or enrolled with the Serbian police in any type of unit?

6 A. We didn't have that much information. We could not have that
7 type of information because Serbia stopped the communication means
8 but also the TV channel that broadcasted in Albanian. Therefore, we
9 had very limited, very few possibilities to have access to that type
10 of information.

11 MR. PACE: And, Court Officer, I'd like to keep the document on
12 the left on the screen. And on the right, instead please call up
13 SPOE0093211 to 00093212.

14 Q. And, Witness, once again, on the left we have an image or images
15 from your book, and on the right we have a document that's not from
16 your book. Would you agree with me that the page on the right of
17 your screen appears similar to the page -- the first page on the
18 image on the left of your screen, which is from your book?

19 A. They seem similar. So the document of the Serbian apparatus, so
20 that's the document we're talking about.

21 MR. PACE: And, Court Officer, on the document on the right,
22 could we turn to the second page, 212, please.

23 Q. And, Witness, again, would you agree that this appears to be
24 similar to the document on the left of your screen, the second page?

25 A. Yes. And it is signed by the chair of the municipality of

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12716

1 Kacanik; that is, the chair or the president of the occupationist
2 Serb forces.

3 MR. PACE: Now, Court Officer, on the document on the left of
4 our screen, I'd like to turn to page 36703, please. And on the
5 right, I'd like to call up the Albanian version, which is
6 077039-077258, page 077123.

7 And, Your Honour, I note the time, I need maybe two or three
8 more minutes to finish this point, and then after the break I would
9 need a maximum of 15 minutes which I think would still be within --

10 PRESIDING JUDGE SMITH: [Microphone not activated].

11 MR. PACE: Thank you, Your Honour. So I'll just finish this
12 point in five minutes and then we'll break.

13 And thank you, Court Officer. So, yes, and then in the Albanian
14 it's 077123, please.

15 Q. I'm going to be reading an excerpt from this page, Witness. You
16 can follow the interpretation in Albanian or you can follow on the
17 page in Albanian on your screen. And just for context here, you're
18 referring to the Kottlina massacre on 24 March 1999, and you state as
19 follows:

20 "It is worth mentioning here that several local Albanian
21 policemen were part of this massacre and all others in the Commune of
22 Kacanik, also included in the official list nr. 41 of 98 in Kacanik,
23 12/29/1998. They were led by the violent chieftain of Kacanik
24 commune Ognjenoviq Radosllav. The official Serbian list
25 includes ..."

1 PRESIDING JUDGE SMITH: [Microphone not activated] ... your mind,
2 Mr. Emmerson.

3 MR. EMMERSON: Yes, a very small housekeeping matter, if I may.
4 This afternoon's Status Conference has been listed at a time when I
5 have an unavoidable conflict and have to be elsewhere, which is not a
6 problem in itself because obviously co-counsel will be here to deal
7 with the procedural matters.

8 I wonder if you might permit me just at the appropriate moment,
9 either at five minutes to 4.00 or I can get five minutes afterwards,
10 just to say just a couple of basic position -- points about our
11 position on some of the key issues.

12 PRESIDING JUDGE SMITH: Of course.

13 MR. EMMERSON: Thank you very much.

14 PRESIDING JUDGE SMITH: We can do that. Remind me if I tend to
15 forget.

16 MR. EMMERSON: Thank you.

17 PRESIDING JUDGE SMITH: [Microphone not activated].

18 --- Luncheon recess taken at 1.05 p.m.

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

20 PRESIDING JUDGE SMITH: Madam Court Usher, please bring in the
21 witness.

22 [The witness takes the stand]

23 PRESIDING JUDGE SMITH: All right. Witness, we are ready to
24 proceed. The Prosecution is still having some questions for you.

25 Mr. Pace, you have the floor.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12719

1 MR. PACE: Thank you, Your Honour.

2 Q. And, Witness, just before the break, as you'll recall, we looked
3 at two images in your book which you captioned as a list of local
4 Serbian police in Kacanik, and then I had proceeded to read a passage
5 from your book which, now that we have had the break in between, I
6 will go to again.

7 MR. PACE: So, Court Officer, if please we could call up the
8 same last two documents that we had on the screen, and those are
9 036622 -- exactly, 036837. And we're going to start at page 036703.
10 And to be more specific, I'm going to start from the last two lines
11 on this page, from "It is worth mentioning," and then I'm going to go
12 over into the next page. So that's for the English.

13 Q. And for the Albanian, Witness, you can hear the interpretation
14 or you can follow on your screen. I'm going to start from the third
15 line on the page, "Vlen te ceket" [phoen]. Yeah. Over there.

16 And, Witness, once again, as I reminded you earlier, in this
17 passage you're referring to the Kottlina massacre on 24 March 1999,
18 and you state as follows:

19 "It is worth mentioning here that several local Albanian
20 policemen were part of this massacre and all others in the Commune of
21 Kacanik, also included in the official list nr." - if we can move in
22 the English - "41 of 98 in Kacanik, 12/29/1998. They were led by the
23 violent chieftain of the Kacanik commune Ognjenoviq Radosllav. The
24 official Serbian list includes ..."

25 And here, Witness, as I said earlier, you have a list of names.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12720

1 I'm just going to refer to some of them. And we have: Agim Idrizi
2 (Llanisht), Rrahim Elezi (Gjurgjedell), Nezir Topojani (Soponica),
3 Rizah Kiki (Gajre), Sejfullah Mulaku (Ivaja), Isak Luta (Ivaja), and
4 Bashkim Loku (Kotlina).

5 And after you list these and other persons, and I'm still here
6 on the -- I'm starting on the second paragraph of this page, you say
7 the following sentence:

8 "Whether consciously or subconsciously, these misguided souls
9 served the enemy and harmed the Albanian people."

10 Now, Witness, my question to you is what information did you
11 have when you wrote this that the people whose names I read out
12 harmed the Albanian people?

13 A. I based myself on the document of the Serb forces and the
14 occupying Serb apparatus who engaged these people within their
15 structures. I am conscious that all military police, paramilitary,
16 and local forces organised by the Serbian authorities, the occupying
17 state authorities, committed the Kotle massacre. In March 1999, 26
18 citizens were killed of which 22 were massacred. They were captured
19 alive by the Serb forces, they were beaten with various instruments
20 until they lost consciousness, and then they were thrown in two wells
21 just above the village of Kotle in Shala mountain. Most of them
22 could have still been alive when they were thrown into these two
23 wells. These wells were then blown up. This was confirmed by ICTY
24 teams who carried out investigations afterwards and who came to the
25 conclusion that none of the bodies or remains of these victims was

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12721

1 compact.

2 Q. Now, Witness, in your answer, in your first line, you said you
3 based yourself on the document of the Serb forces and the occupying
4 Serb apparatus. Are you here referring to the document we looked at
5 before the break or to some other document?

6 A. The document we saw just before the break.

7 Q. And, Witness, in relation to that document before the break you
8 told us you obtained it in June 1999; is that correct?

9 A. Yes.

10 Q. So, Witness, could you explain --

11 A. On 12 June 1999.

12 Q. So, Witness, could you explain to the Judges how you obtained
13 this document on 12 June 1999 and you're now saying you used that as
14 a basis for alleging that the people I read out to you were involved
15 in the 24 March 1999 attack?

16 A. I will repeat. I received -- obtained this document on the day
17 of liberation on 12 June 1999 in the police station in Kacanik where
18 Serb forces operated during the war. And on that document, the names
19 of the persons that you read out earlier were included. This
20 indicates that all the forces of the Serbian forces, be they police,
21 military, paramilitary, these people were included in those forces
22 and took part in massacres carried out in Kacanik and throughout
23 Kosovo.

24 Q. And do you recall that before the break you also said that
25 before you found the documents in June 1999, you didn't have

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12722

1 information about Albanians being enrolled with the Serbian police?

2 Do you remember stating that?

3 A. Yes, up until I saw the document, because I didn't know before
4 that which forces took part in the fightings in Kacanik.

5 Q. So just to make sure I'm clear. The people you list here as
6 having taken part in the March 1999 fightings in Kacanik, you're
7 making that assertion in your book based on the document that we
8 looked at that you found in June 1999; right?

9 A. On the document of the Serbian authorities.

10 Q. The one we looked at before the break; right?

11 A. Yes.

12 Q. And, Witness, we have information that the people I mentioned,
13 the names I read out to you, which I can repeat, were detained in
14 locations including one or more of Bob, Ivaje, and Bicec around March
15 1999. Do you know anything about that?

16 A. I didn't have such information or any information with respect
17 to this.

18 Q. And did you ever hear anything about anyone being detained or
19 having their liberty deprived in or around Bob, Ivaje, Bicec in or
20 around March 1999?

21 A. No, I never heard about it, and there were no such cases.

22 Q. And just to be very clear, Witness, when you say you never heard
23 about it, am I understanding correctly that you didn't hear about it
24 during the war and you didn't hear about it after the war?

25 A. I didn't hear about it during the war and I didn't hear about it

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12723

1 after the war. Very simple, I was not interested in the Serbian
2 forces.

3 Q. And I'm not sure, Witness, why you mentioned Serbian forces.
4 What I'm asking is about information we have that the persons
5 mentioned were detained by KLA members. I just want that to be
6 clear. Do you understand that?

7 A. I never heard this information, and I never possessed such
8 information.

9 MR. EMMERSON: I apologise for interrupting. I wonder if I
10 might raise the question of relevance because the lists that have
11 been shown to the witness are lists of Serbian combatants, part of
12 the armed forces of Serbia where they happen to be of Albanian
13 nationality is neither here nor there. They are combatants that
14 Mr. Pace is asking about.

15 So that's inevitably why you've just heard the evidence about
16 Serbian alleged massacres, which, of course, also are not directly
17 relevant to the indictment. So I wondered if it might be the
18 appropriate moment to take stock of where this is going.

19 PRESIDING JUDGE SMITH: Go ahead.

20 MR. PACE: Your Honour, would you like me to respond or just to
21 proceed? I can very quickly --

22 PRESIDING JUDGE SMITH: You may respond if you wish to.

23 MR. PACE: Yes, Your Honour, the names that I read out are of
24 relevance to hopefully everyone in the courtroom here, at least some
25 of them would be, so with your leave, I'll proceed with my questions

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12724

1 of the witness.

2 PRESIDING JUDGE SMITH: You may proceed.

3 MR. PACE:

4 Q. And, Witness, the names that I referred to, so, very briefly,
5 Agim Idrizi, Rrahim Elezi, Nezir Topojani, Rizah Kiki, Sejfullah
6 Mulaku, Isak Luta, Bashkim Loku, are you saying that you never heard
7 anything about them having been detained or their liberty being
8 deprived even after the war? You never heard that?

9 A. I never heard that.

10 Q. And, Witness, do you know anything about KLA members being tried
11 in Kosovo after the war concerning allegations of crimes in locations
12 including Bob and Ivaje in February and March 2003?

13 A. I have no knowledge about this. I didn't show any interest in
14 proceedings carried out by UNMIK because I didn't trust them.

15 Q. But you do know there were proceedings carried out by UNMIK in
16 relation to KLA members in relation to crimes in Bob and Ivaje;
17 right?

18 A. I have no knowledge about this, and I simply didn't want to deal
19 with such matters.

20 Q. And, Witness, just to be clear for -- at least for myself, are
21 you saying you have no knowledge about this trial existing? You
22 don't know whether this trial did or did not take place?

23 A. I don't have knowledge because these were of no interest to me.
24 The staged proceedings by UNMIK were of no interest to me, and I
25 simply didn't want to have anything to do with them.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12725

1 Q. You're referring to staged proceedings by UNMIK. What staged
2 proceedings are you referring to there?

3 A. All those proceedings that you are mentioning here. I didn't
4 want to have anything to do with them, and it was not my
5 responsibility.

6 MR. PACE: Your Honour, at this stage I seek to admit the pages
7 that I've referred to in the last couple of questions, even before
8 the break, from the book. Those are pages 036703 to 4, and 077123,
9 as well as 036740 and, in Albanian, 077160. And to be clear, those
10 are the pages which have the images that we discussed with the list
11 of Serbian police, and then the passage that I read to the witness
12 concerning the March 1999 attack.

13 And we also seek to tender into evidence the version that the
14 witness agreed is similar to that in his book of the -- what he has
15 described as the local Serbian police, and that is SPOE00093211. And
16 after that, I have a few questions and then I can conclude my
17 examination.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 MR. MISETIC: We don't object to any documents from the book
20 being admitted into evidence. We do object to the portions that were
21 read out, first, for lack of probative value, lack of relevance.
22 This is apparently what his opinions were in 2012 when he wrote the
23 book. The witness has said he had no knowledge of these things
24 during the actual indictment period. So first on relevance and
25 probative value. Second, for the reasons I've articulated already

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12726

1 this morning several times on Rule 143 being unavailable to the
2 Prosecution for various reasons including that leave was not sought.
3 Thank you.

4 MR. EMMERSON: Your Honour, I just rise to make one short point
5 concerning consistency of evidential rulings and procedural justice
6 in relation to the use of documentation. Like Mr. Misetic, I would
7 take no objection to any image shown to a witness and put to them in
8 a question so that it can be properly contextualised in analysing the
9 witness's evidence.

10 But it has been the practice of the Tribunal -- of the Panel up
11 until relatively recently that when a witness is cross-examined on a
12 document that is not admitted in evidence, the witness's testimony
13 and the part of the document that is read onto the record has been
14 treated as sufficient, and when the Defence have sought to tender
15 documents in that way, we've been told that we should rely on the
16 transcript. Because the passages that Mr. Pace wants in and wants
17 the witness's comments on have been read into the transcript, in some
18 cases three times. So it's difficult to see why there should be a
19 different rule than that which has hitherto been applied for the
20 admission of documents themselves.

21 It may not be a great deal of prejudice because the evidence is
22 the transcript, but it does seem to me that, with respect, we need to
23 have one sort -- we need to have the same rule in all respects
24 applied with some consistency.

25 PRESIDING JUDGE SMITH: Thank you. Your statement is noted.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12727

1 Mr. Pace, could we go through those numbers a little slower and
2 one at a time and stop after each one and we'll deal with it.

3 MR. PACE: Of course, Your Honour. So I'll start with pages
4 036703 to 036704, that's in English. And the Albanian is page
5 077123.

6 PRESIDING JUDGE SMITH: Any objection -- well, you've made your
7 statement about that. That will be admitted. Go ahead with the
8 number.

9 Madam Court Officer, you may go ahead with the number.

10 THE COURT OFFICER: Your Honours, pages ERN 077123 in Albanian
11 and its English translation with ERN 036703 to 036704 will be added
12 to the Exhibit P01015. And the classification is public.

13 PRESIDING JUDGE SMITH: Thank you.

14 MR. PACE: And the next page is from the same -- or the next
15 page for the same item is in the English 036740 and in the Albanian
16 077160.

17 PRESIDING JUDGE SMITH: [Microphone not activated].

18 Which exhibit is that? Or which document?

19 MR. PACE: So, Your Honour, that is referring to the pages from
20 the witness's book which contained the two images of the list that he
21 has testified about.

22 PRESIDING JUDGE SMITH: All right. 036740 and 077160 are
23 admitted and will be assigned a Prosecution exhibit number.

24 THE COURT OFFICER: Your Honours, page with ERN 077160 in
25 Albanian and 036740 in English will be added to the Exhibit P01015.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12728

1 PRESIDING JUDGE SMITH: Thank you.

2 MR. PACE: And the last tender that I had, at least for now, are
3 SPOE00093211 to 00093212, and the English version with -ET at the
4 end. And just to refresh memory, that is the version of the images
5 which Your Honour just admitted from the book but it's from a
6 separate document and which the witness agreed is at least similar to
7 the one in his book.

8 PRESIDING JUDGE SMITH: And that document will be admitted as
9 well.

10 THE COURT OFFICER: Your Honours, document with ERN SPOE00093211
11 to SPOE00093212 and its English translation will be admitted as
12 Exhibit P01018, which is currently classified as confidential.

13 MR. PACE: It can be reclassified as public. Thank you.

14 PRESIDING JUDGE SMITH: Reclassified as public.

15 MR. PACE:

16 Q. And, Witness, I have only very few questions left for you.

17 MR. PACE: Your Honour, it should be under five minutes.

18 Q. Witness, earlier we saw you in an image with Ejup Runjeva in
19 your book, if you recall that. And my question was whether you could
20 confirm that Ejup Runjeva was in Brigade 162.

21 PRESIDING JUDGE SMITH: Did you understand the question?

22 THE WITNESS: [Interpretation] No, the question is not clear to
23 me. I don't know which photograph you're referring to.

24 MR. PACE: I can make it more simple.

25 Q. Was Ejup Runjeva part of Brigade 162?

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12729

1 A. I cannot see the photograph.

2 PRESIDING JUDGE SMITH: There is no photograph. It is just a
3 question. Listen to the question and answer.

4 THE WITNESS: [Interpretation] Your Honour, the Prosecutor
5 mentioned a photograph that was used earlier.

6 PRESIDING JUDGE SMITH: Then he changed the question to make it
7 simpler.

8 Repeat the question, Mr. Pace.

9 Listen to the question.

10 MR. PACE:

11 Q. Witness, was Ejup Runjeva a member of Brigade 162?

12 A. Yes.

13 Q. Do you recall what role he played in that brigade?

14 A. I do not recall. It wasn't my responsibility. It was the
15 responsibility of the brigade commander, Qamil Ilazi.

16 Q. And do you know Bujar Tafili?

17 A. I know him as a citizen of Kacanik. Not more than that.

18 Q. Do you know whether he was a KLA member?

19 A. He probably was. But during the war, I didn't have the
20 opportunity to see him with my own eyes.

21 Q. And do you recall providing information in the SPO interview
22 that he was in the unit of Xhabir Elezi?

23 A. It is possible I said that. But as I said, I personally didn't
24 see him during the war.

25 Q. To your recollection, though, is that correct, that Bujar Tafili

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Examination by Mr. Pace (Continued)

Page 12730

1 was in the unit of Xhabir Elezi?

2 A. Based on the document, yes. But personally, I didn't see him
3 during the war.

4 Q. And was Enver Axhami a member of Brigade 162?

5 A. Yes, he was.

6 MR. PACE: No further questions, Your Honour.

7 PRESIDING JUDGE SMITH: [Microphone not activated].

8 Before you start, Mr. Misetic.

9 Just to add some clarity to our previous rulings on these
10 portions of the book that have been shown to Witness 4576.

11 The Panel finds that the portions of the book shown are not
12 statements within the definition of that notion applicable under the
13 rules as they are not taken in the context of a criminal
14 investigation or proceedings. This definition has been consistently
15 applied by this Panel as well as by other Chambers of that
16 jurisdiction and other jurisdictions from which our rules are
17 inspired.

18 The admission of the portions of the book are therefore
19 regulated by Rule 138(1) as exhibits offered by the SPO. The Panel
20 is satisfied that the documents are relevant, *prima facie* authentic,
21 and have clear probative value.

22 Considering that the Defence will have a full and fair
23 opportunity to cross-examine the author of the book, the Panel is
24 also satisfied that the probative value of those documents are not
25 outweighed by any prejudicial effect.

1 The other submissions raised by the Defence pertain not to the
2 admissibility but to the use that the Panel can make these portions
3 once admitted. The Panel will simply indicate that the suggestion
4 that the Panel would be limited in the use that the Panel can make of
5 these portions, in particular Defence's suggestion that the Panel
6 could not rely on them for the truth of its content, finds no support
7 in the rules nor has the Panel found any authority applicable before
8 it that would support such a position.

9 In particular, the oral order from the Karemera case, which
10 counsel of Mr. Thaci relied upon as authority for its proposition, at
11 page 80 of 20 February 2024, does not provide authority for the
12 position taken for two reasons: First, it pertains not to the
13 admission of an exhibit but to the admission and use of a prior
14 inconsistent statement. Secondly, the ICTR limited the admission of
15 prior inconsistent statements to issues of credibility of the witness
16 but not the truth of their content.

17 Such an evidential regime is different and inconsistent with the
18 one applicable before the KSC where Rule 143(2)(c) specifically
19 provides for such a possibility. That is in connection with the
20 Decision on Nsengiyumva Motion to Admit Documents As Exhibits at
21 paragraphs 6 to 7 of -- on February 26, 2007.

22 The Panel is therefore satisfied that the portions of the book
23 shown to and discussed with 04576 could therefore be relied upon for
24 both the truth of their content and to assess the credibility of the
25 witness and the reliability of his evidence in court.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Procedural Matters

Page 12732

1 Now you may cross-examine, Mr. Misetic.

2 MR. PACE: Your Honour, if I might, just before
3 cross-examination starts, I have two brief matters related to the
4 evidence.

5 PRESIDING JUDGE SMITH: [Microphone not activated].

6 MR. PACE: So, first, I just wanted to note that as far as I
7 have kept track, we have the admission status of two pages from the
8 book which is still pending with Your Honours. I just want to flag
9 that. And those are pages 036669 to 036670 in English. And in
10 Albanian, those were 077088 to 077089. And Your Honours postponed
11 the decision on that, so I just want to mention that now.

12 And then I just have one other tender to make.

13 MR. ELLIS: Your Honours, just on that point. Sorry.

14 PRESIDING JUDGE SMITH: [Microphone not activated].

15 MR. ELLIS: Your Honour, I was just checking, 36669 I recall
16 being read partially -- oh, I'm sorry. I've got my page numbers
17 wrong. I'll sit down.

18 PRESIDING JUDGE SMITH: That's all right. 036669 to 036670 are
19 admitted.

20 And what are the two -- those are the two pages. What's your
21 second item?

22 MR. PACE: So those are the two pages in English. And in
23 Albanian, the translation of those pages are 077088 to 077089. And I
24 can --

25 PRESIDING JUDGE SMITH: [Microphone not activated] ... number

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Procedural Matters

Page 12733

1 assigned to them, please.

2 THE COURT OFFICER: Your Honours, Albanian pages with ERN 077088
3 to 077089 and their English translation with ERN 036669 to 036670
4 will be added to the Exhibit P001015.

5 PRESIDING JUDGE SMITH: Thank you.

6 MR. PACE: And then, Your Honour, our last tender in relation to
7 this witness, at least for now, is that under Rule 143(2)(c) we seek
8 to tender the portions of his prior statement, and that is 074301,
9 that we have used with him --

10 PRESIDING JUDGE SMITH: [Microphone not activated].

11 MR. PACE: Certainly, Your Honour. So I was saying that under
12 Rule 143(2)(c), we seek to tender the portions of the witness's prior
13 statement, which prior statement starts with the ERN 074301, and we
14 are only in the circumstances seeking to admit under this rule the
15 portions actually put to the witness during direct examination, and
16 we can provide those portions via e-mail or as Your Honour deems best
17 later on.

18 And just in case necessary, we cite as authority for such a
19 procedure, amongst other decisions of this Panel, decision F01903 of
20 3 November 2023.

21 PRESIDING JUDGE SMITH: Record from the Defence on this?
22 Objection?

23 MR. MISETIC: [Microphone not activated].

24 PRESIDING JUDGE SMITH: Oh, okay. [Microphone not activated].
25 We'll have you submit the documents, and we can rule on this later.

1 MR. MISETIC: Actually, I do have the objection. And, again,
2 it's the same objection I cited the Popovic case. They didn't seek
3 leave and they needed to seek leave under the rules to -- if they
4 were going to pursue under that rule, and they're precluded from now
5 tendering it under Rule 143(2)(c) having not sought leave. And I
6 specifically clarified that point for a reason, that he was seeking
7 to refresh the witness's recollection and not to impeach the witness,
8 which Mr. Pace confirmed.

9 So that's the basis of my objection.

10 MR. PACE: Your Honour, if I may just clarify something. At one
11 point, at least, when I confirmed that I was seeking to refresh
12 recollection, yes, I was seeking to refresh recollection. But based
13 on the answers of the witness, what arose is that he has provided an
14 apparent inconsistent statement which is now the reason why I'm
15 seeking to tender those. Only the prior inconsistent statement
16 excerpts that I have read to the witness.

17 PRESIDING JUDGE SMITH: Understood.

18 MR. MISETIC: May I just reply briefly?

19 PRESIDING JUDGE SMITH: Yeah.

20 MR. MISETIC: Sorry.

21 This is precisely the scenario that the Popovic Appeals Chamber
22 had to deal with. I do believe that the drafters of the rules
23 specifically incorporated the Popovic ruling to say that you have to
24 seek leave for the reasons articulated in that Appeals Chamber
25 decision. And regardless of what the Prosecutor thought was taking

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Procedural Matters

Page 12735

1 place, you can't unilaterally -- no party can unilaterally begin to
2 impeach their own witness without leave of the Trial Panel. Thank
3 you.

4 PRESIDING JUDGE SMITH: Thank you.

5 You may now cross-examine the witness.

6 MR. ELLIS: Your Honour, before Mr. Misetic starts, I apologise
7 for taking a moment.

8 I noticed that Mr. Pace used the form of words "our last tender
9 for now." It would be useful to know before we start
10 cross-examination if the Prosecution is intending to tender anything
11 else with regard to this witness. The moment for that to happen, of
12 course, being before we start cross.

13 PRESIDING JUDGE SMITH: Yes, I don't know what he means by that.

14 MR. PACE: I can clarify. It's just because I don't have a
15 crystal ball, I don't know what's going to happen next, and sometimes
16 we tender items, for example, in re-direct examination, which we have
17 not come to. So to be clear, those are our tenders as relates to
18 what happened during the direct examination.

19 PRESIDING JUDGE SMITH: Understood.

20 Go ahead, Mr. Misetic. Last time you have to stand up on this
21 one.

22 MR. MISETIC: Thank you, Mr. President. I do need to because I
23 believe -- at least I'm inferring that the Panel issued a ruling
24 before I started my cross-examination for a reason, to put me on
25 notice for cross-examination, and I do need to briefly just put my

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Procedural Matters

Page 12736

1 position on the record which is this cross-examination will address
2 the Prosecution's case as it was put to this witness and as the
3 witness answered. We therefore will address the witness's *viva voce*
4 testimony and would be prepared for any testimony admitted under
5 Rule 143(2)(c) as prior inconsistent statements.

6 With respect to what the Trial Panel may infer later on its own
7 will not be the subject of cross-examination because, obviously, the
8 accused has a right to notice and does not have to speculate on what
9 the Panel may do with a particular piece of evidence. So this
10 cross-examination is geared towards addressing the Prosecution's
11 case.

12 I think we can argue it later about other legal issues that I've
13 raised. But in terms of the Panel's ability to use for the truth
14 matters that are inconsistent with the Prosecution's case, we also
15 rely on the European Convention Article 6(1) that specifically cites
16 Skondrianos versus Greece for the position at paragraph 28 to 31.
17 S-k-o-n-d-r-i-a-n-o-s.

18 And with that I will proceed with cross-examination.

19 PRESIDING JUDGE SMITH: Go ahead.

20 MR. PACE: Yes, Your Honour, simply to say that we disagree with
21 what counsel has just said. And we would invite the Panel to remind
22 counsel that if he has questions to put to this witness as they are
23 relevant, they should be put now without any caveats as to what the
24 Panel will do later.

25 The time to ask questions and to obtain information from this

1 witness and items he may have information about is now.

2 PRESIDING JUDGE SMITH: Thank you for your comments.

3 Go ahead.

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

5 Cross-examination by Mr. Misetic:

6 Q. Witness, good afternoon. I am Luka Misetic, counsel for
7 Mr. Thaci. And I have some questions for you for the rest of today
8 and into tomorrow. So let me begin with just a few questions about
9 your background.

10 It's correct that you served in the Yugoslav Army from 1986 to
11 1991; is that right?

12 A. Yes, it is.

13 Q. And after the war, from September 1999 to January 2009, you had
14 the rank of colonel in zone 6 command of the TMK; is that correct?

15 A. Yes.

16 Q. And since 2009, you have worked in the Ministry of Defence; is
17 that right?

18 A. Yes.

19 Q. And you are currently -- are you still currently in the
20 Department of Planning and Evaluation of the Ministry of Defence?

21 A. Yes, currently I'm still with this department.

22 Q. Okay. And have you continuously been at the Ministry of Defence
23 from 2009 until the present?

24 A. From 2009 to date, I am working at that department.

25 Q. Is it correct that you obtained your position through a public

1 procurement process?

2 A. I obtained this position through an open competitive procedure.
3 I applied for the vacancy and I met all the criteria. Therefore, I
4 was appointed in that position.

5 Q. And is it correct that your superiors are not political
6 appointees but rather members of the civil administration?

7 A. That's correct.

8 Q. Okay. Let's ask some background about your political
9 affiliations. You told the SPO that before joining the KLA in 1998
10 you had been an LDK member since 1991. Was that accurate?

11 A. Yes.

12 Q. And is it true that you supported Ibrahim Rugova not only in the
13 period prior to the war in 1998 but also after 1998?

14 A. That's true.

15 Q. Did you ever experience any negative reaction from anyone in the
16 KLA to your support of Ibrahim Rugova?

17 A. Never.

18 Q. Would you say there was regular cooperation and coordination
19 among LDK representatives and KLA members in the Ferizaj area?

20 A. Always. All the time. There was no problem whatsoever in this
21 direction.

22 Q. Okay. Do you know who Fazli Hetemi is?

23 A. No, I don't.

24 Q. How about Adem Salihu?

25 A. Adem Salihu lives in the same village as myself. So his village

1 is actually next door to where I live.

2 Q. And did you cooperate with Adem Salihu during the conflict?

3 A. No, I have not cooperated with him. There was no occasion for
4 me to do that because I was with Brigade 162 in the area of Kacanik.
5 Therefore, there was no possibility for me to meet him.

6 Q. Did you have courier communication with the LDK in Urosevac
7 during the conflict?

8 A. No, never.

9 Q. Is it true that you only ceased your membership in the LDK when
10 you joined the Kosovo protection forces?

11 A. Yes. Yes, because there was no time for me to deal with
12 politics, and that's when I decided to dedicate my time to the Kosovo
13 protection force.

14 Q. Were you allowed to have a political affiliation while you were
15 in the Kosovo Protection Corps?

16 A. It was not prohibited by special laws, but it was not favourable
17 for us to deal with politics while we're working for the Kosovo
18 Protection Corps.

19 Q. When did you enter politics after 2008?

20 A. Approximately in 2015. I can't tell you exactly, but that was
21 around that time.

22 Q. I'd like to show you something, which is DHT03714 to DHT03716 at
23 DHT03715 to 16.

24 MR. MISETIC: If we could actually scroll down a little bit,
25 please. Actually, could we go back to the previous page just so the

1 witness is oriented. And scroll down a bit, please.

2 Q. Witness, do you recognise this Facebook page?

3 A. Yes. This used to be my Facebook page while I was running for
4 an MP in the Assembly of the Republic of Kosovo.

5 MR. MISETIC: Can we now turn to the next page, please. And if
6 we scroll to the bottom, please. We keep going -- is that -- yeah,
7 that's the bottom.

8 Q. So that's a section here that says:

9 "Experience in Politics:

10 "Democratic Party of Kosovo January 2009 to December 2015."

11 Democratic Party of Kosovo is the PDK; correct?

12 A. Yes.

13 Q. And it says you're the vice-president of the PDK sub-branch in
14 Elezaj from June 2012; is that correct?

15 A. Correct.

16 Q. Member of the Governing Council of the PDK branch in Kacanik,
17 June 2012?

18 A. Correct.

19 MR. MISETIC: And if we turn to the next page, please. Point 3,
20 if it's legible. No, it's not legible here.

21 Q. But point 3 said:

22 "Assembly delegate in PDK in June 2012."

23 Was that accurate?

24 A. 20?

25 Q. 2012.

Witness: Hajrush Kurtaj (Resumed) (Open Session)

Page 12741

Cross-examination by Mr. Miseti

1 A. Correct.

2 MR. MISETIC: Can we go to the very bottom of the document,
3 please?

4 Q. Yeah, you can see it roughly. "Assembly delegate in PDK in June
5 2012."

6 And you only joined the AAK later; correct?

7 A. Later.

8 Q. As a matter of fact, your Facebook page says that you joined in
9 January 2016. Would that be accurate?

10 MR. MISETIC: Can we turn the page, please.

11 THE WITNESS: [Interpretation] Correct.

12 MR. MISETIC:

13 Q. Okay. So my first question to you is you were asked in your SPO
14 interview by Mr. Pace at Part 1, beginning at page 13, you were asked
15 did you then become involved in politics, meaning after January 2009.
16 And you responded that you joined the AAK, which is Mr. Haradinaj's
17 party; correct?

18 A. Yes.

19 Q. But you made no mention of having been in Mr. Thaci's PDK party
20 for approximately five years, six years; is that correct?

21 A. That could have been an omission of myself, but my curriculum
22 reflects everything in details.

23 Q. Okay. So at the time you published your book in 2012, you were
24 an active member of Mr. Thaci's party; is that correct?

25 A. That's correct.

1 Q. You were seeking political positions within Mr. Thaci's party;
2 is that fair?

3 A. My goal was to take positions in the party, within the party.

4 Q. Kacanik. Kacanik, would you agree with me, is a PDK political
5 stronghold? Would that be fair?

6 A. That's fair.

7 Q. Now, Witness, speaking about this book, you say you spent seven
8 to eight years preparing the book; correct?

9 A. Yes, more or less.

10 Q. And in preparing the book, you relied on various sources; is
11 that true?

12 A. Yes.

13 Q. And this includes access to documents in archives; correct?

14 A. Yes.

15 Q. And you've testified today that many of the documents that are
16 in your book you had never seen during your time in the KLA. Was
17 that accurate?

18 A. That's accurate.

19 Q. For example, you were asked during your interview with the SPO
20 about a document allegedly issued by the General Staff, but you had
21 not seen any documents from the General Staff during the war; is that
22 correct?

23 A. During the war, personally I have not seen any documents.

24 Q. So you have no ability to confirm the authenticity of any such
25 documents from the General Staff other than perhaps what you say you

1 retrieved from documents in the late 2000s; is that correct?

2 A. That's correct. I can't confirm things that I haven't seen
3 because, like I said, I haven't seen them during the war.

4 Q. You were shown today documents purported to have been authored
5 by Bislum Zyrapi, and you said you never saw those documents during
6 the war. Was that accurate?

7 A. That's accurate.

8 Q. You have no personal knowledge of the authenticity of any such
9 documents, do you?

10 MR. PACE: Your Honour, could counsel clarify "any such
11 documents"? It's a very broad assertion.

12 MR. MISETIC: Let me ask it very broadly.

13 Q. Any documents -- did you ever see during the war any document
14 purported to have been authored by Bislum Zyrapi?

15 A. No, I have not seen.

16 Q. Okay. So any documents that are in your book and purport to be
17 authored by Bislum Zyrapi, you have no personal knowledge of their
18 authenticity; correct?

19 A. I have no knowledge.

20 Q. When you took documents out of the archive, did you do any
21 independent research or verification as to the origins and
22 authenticity of those documents?

23 A. I would say that I received the documents not from the archive
24 but from the administration of the command of zone 6, but I haven't
25 dealt with any analysis or special research related to these

1 documents.

2 Q. So you never attempted, for example, to interview any of the
3 purported authors of these documents to see if they claim that the
4 documents were actually prepared during the war; is that accurate?

5 A. Yes.

6 Q. Now, Witness, you yourself have now testified in court on
7 questions from the Prosecutor about documents purporting to appoint
8 you as commander in May, and you say -- and the documents have your
9 signature, so you're, in the document, purporting to appoint
10 yourself. Do you recall those questions from the Prosecutor?

11 MR. PACE: Objection, Your Honour. Misstates the evidence. I
12 don't recall the witness saying he was appointing himself.

13 MR. MISETIC: He didn't say that but the document says that.

14 PRESIDING JUDGE SMITH: Overruled.

15 You may answer the question.

16 MR. MISETIC:

17 Q. Let me remind you, it was the document written in hand that
18 says: "Pursuant to an order from Agim Ceku," and then you're
19 appointed and you sign. And so that's why I say you're signing your
20 own appointment order. Do you recall that?

21 A. Yes. That is something that I have written myself. I
22 embellished it. I wrote it. I drafted it as I wished. However, I
23 haven't received any special order by Agim Ceku. After the falling
24 of Qamil Ilazi, that was the time that I wanted to continue with
25 carrying out that position.

1 Q. Okay. My question to you is if you embellished your own
2 documents, how do you know that other people didn't embellish their
3 own documents and they wound up in the archive?

4 MR. PACE: Objection, Your Honour. Calls for speculation.

5 MR. MISETIC: These are documents in his book, Judge.

6 PRESIDING JUDGE SMITH: No, that was -- I'm sustaining that
7 objection. That was very speculative on his part, on your question
8 for him.

9 MR. MISETIC:

10 Q. Well, the documents you publish in your book, how do you know
11 that they weren't also embellished by other people?

12 A. I don't know. I don't have any information about that. I don't
13 know.

14 Q. Is it possible that the documents published in your book are
15 also embellishments by other people?

16 A. It is possible, but I don't know.

17 Q. Because is it fair to say you have no idea how these documents
18 wound up in the archives that you looked at?

19 A. Correct.

20 Q. Do you have any knowledge of how KLA documents were collected
21 after the war and archived? For example, your documents, if you had
22 any documents during the war, what was the process by which -- did
23 somebody come by and say you have to turn over all your documents, or
24 was it just freely anybody could give whatever they wanted?

25 A. I don't know exactly because that was not part of my

1 responsibilities. I was not in charge of archiving the documents of
2 the KLA.

3 Q. Well, I'm asking you about -- first of all, did you have any
4 documents that you had created during the war that you still had in
5 your possession immediately after the war?

6 A. Personally, I haven't had any documents, any orders or any
7 plans. Whatever I had are there in the book.

8 Q. But -- so maybe I'm not being clear, but I want to make sure
9 that I understand you correctly. During the war, from June 1998
10 until June 1999, did you receive any documents as the deputy
11 commander or did you issue any documents as the deputy commander or
12 the acting commander in May 1999?

13 A. As a deputy commander, I have not received any document and I
14 have not issued any document either. That was not part of my
15 responsibility, because that was the responsibility of the commander,
16 not of the deputy commander.

17 Q. Okay. But wouldn't the commander have issued some written
18 document, even one, in the year that you were -- roughly the year
19 that you were the deputy commander? To you, I mean.

20 A. I don't remember this, because the circumstances of the war were
21 such that we could not prepare draft documents and issue them.

22 Q. Okay. So if I understand you correctly, you had no documents to
23 turn over to an archive after the conflict; is that correct?

24 A. That's correct.

25 Q. Do you have any knowledge, for example -- and let me ask it a

1 different way. You became the acting commander in May. Did you ever
2 see, for example, Qamil Ilazi's documents as his successor?

3 A. Can you please repeat the question once again?

4 Q. Let me rephrase. You succeeded Qamil Ilazi as the commander of
5 the 162nd Brigade; correct? You succeeded him as acting commander, I
6 mean; correct?

7 A. Yes.

8 Q. And as acting commander, when the conflict ended, did you have
9 responsibility for Qamil Ilazi's archive of documents as his
10 successor?

11 A. I found no document by the commander Qamil Ilazi. It was only
12 after the war that I saw the document that was issued. I saw that in
13 the command of zone 6.

14 Q. So let me ask another question. How about Agim Bajrami? Did
15 you find any documents as the third in line, you were the commander
16 who succeeded Qamil Ilazi, who had succeeded Agim Bajrami. Did you
17 find any documents of Agim Bajrami's?

18 A. No, I found no document. Because at the time when Agim Bajrami
19 was the commander, it was the beginning of the war, and I found no
20 documents issued by him. The place where Agim Bajrami fell in
21 Kacanik, the house was burned down. And even if there were documents
22 back then, I am sure that they would have been burned down. That was
23 on 10 August 1998.

24 Q. Okay. So if there are documents in the archive of the 162nd
25 Brigade, how did they -- based on the fact that you were the last

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Cross-examination by Mr. Misetic

Page 12748

1 commander during the conflict, how did they wind up in the KLA
2 archive? What was the process?

3 A. I have no knowledge about this because on 12 June, I handed over
4 my responsibilities as the commander of the battalion, and I have no
5 idea how they went about handing over the documentation, if there was
6 any.

7 Q. Let me ask a broader foundational question. Do you have any
8 knowledge, either from the war or your efforts to write a book after
9 the war, of how the archive collected documents from the war?

10 A. A part of the documentation of the KLA was kept in the commands
11 of the defence corps of Kosovo. That's all I know. I don't know
12 more than that.

13 Q. You say the defence corps of Kosovo. You're referring to the
14 period after the conflict; right? You're referring to the KPC or
15 TMK?

16 A. Yes, after the war. After September 1999. That's the period of
17 time that I'm referring to.

18 Q. But what I want to know is how did KLA documents -- do you have
19 any knowledge of how KLA documents wound up in the archives of the
20 TMK?

21 A. I have no knowledge about this because on 12 June I handed over
22 my post. I have no accurate knowledge on how this process was
23 carried out.

24 PRESIDING JUDGE SMITH: Mr. Misetic, we seem to be getting the
25 same answer over --

1 MR. MISETIC: I know.

2 PRESIDING JUDGE SMITH: -- and over again.

3 MR. MISETIC: I know. I just wanted to ask one more question on
4 this.

5 PRESIDING JUDGE SMITH: Go ahead.

6 MR. MISETIC:

7 Q. Is there a person that you know of at the TMK archive who would
8 know how documents were received? And I mean in -- not today, but
9 someone in the 2000s who would have knowledge of was there an
10 organised means of collecting documents or was just anybody who said
11 they were in the KLA allowed to show up at the archive and turn over
12 documents?

13 A. I have no knowledge that there was an organised process in place
14 to archive documents.

15 Q. Okay. I'll move on. Thank you.

16 You say that you relied on books written by other KLA members
17 when preparing your book; correct?

18 A. There are occasions that I have relied on other books. There
19 are occasions that I've relied on mass media channels, on ceremonies
20 and things of this kind.

21 Q. Well, you mentioned mass media, and I did want to ask you a
22 question in response to an answer you gave a little earlier this
23 afternoon.

24 MR. MISETIC: And for the parties, it's page 97 -- actually,
25 beginning at page 96, going to page 97.

1 Q. In response to the Prosecutor, you mentioned -- you brought up
2 on your own that the ICTY had conducted investigations and made
3 conclusions with respect to the Kotleline massacre, and you even
4 mention the ICTY's conclusions on the state of the bodies that were
5 recovered from that massacre. Do you recall those answers?

6 A. As I said before, it was a massacre where 27 citizens of Kotleline
7 were killed, of whom 22 were massacred. They were captured alive by
8 the Serbs, they were badly beaten, and then they were thrown in the
9 well alive. And this is the reason why the ICTY teams, they came up
10 with the conclusions that you just referred above.

11 Q. What I want to know is how you know what the ICTY concluded?

12 A. Based on the information from the media and during the reburial
13 process, which I attended myself.

14 Q. Okay. So you were following ICTY conclusions based on things
15 you read in the media; is that correct?

16 A. Yes.

17 Q. Did you watch Shukri Buja's testimony at the ICTY when it was
18 broadcast on television in Kosovo?

19 A. Yes, I did, but a long time has passed since. But I did follow
20 his testimony.

21 Q. How much of his testimony did you follow?

22 A. I don't remember exactly.

23 Q. Well, did you watch the whole thing? Did you watch just a few
24 minutes? Can you give us an estimate of how much you watched?

25 A. I couldn't follow all of it. But what I was most interested in,

1 that part I followed. I followed the part on the Recak massacre, on
2 Kotleline massacre.

3 Q. Okay. Let me ask you a few questions about your references to
4 Shukri Buja in your book.

5 MR. MISETIC: If we could turn to 036622 to 036837 in the
6 English, and 077039 to 077258 in the Albanian. And the specific page
7 I'm interested in is 036644 in the English, and 077061 in the
8 Albanian. And if we could go to the footnotes, please.

9 Q. So at footnote 17 in the -- in your book here, you cite to a
10 manuscript by General Mayor Shukri Buja dated May 23, 2007, entitled
11 "Remembering the Dawn of Freedom." Do you see that?

12 A. Yes, I do.

13 Q. Did you have a copy of that manuscript by Shukri Buja when you
14 wrote your book?

15 A. No, I didn't have a copy of this manuscript. It was simply a
16 conversation with Shukri Buja, and then I embellished it in the book,
17 and rearranged it, and presented it the way I saw it fit. But it was
18 based on the conversation I had with him.

19 Q. Well, let me ask a few more questions based on that answer.
20 When you say you embellished it, you have a specific title of a
21 manuscript here, right? "Remembering the Dawn of Freedom." Is there
22 such a manuscript? Did Shukri Buja publish a manuscript to your
23 knowledge with that title?

24 A. No, I personally don't have knowledge about this manuscript.

25 Q. So your evidence is you -- this footnote is, to use your words,

1 an embellishment to the extent that you invented a manuscript and
2 attributed it to Shukri Buja?

3 A. This was just a conversation I had with Shukri Buja.

4 Q. I understand that point, but what I want -- I need to know, are
5 you telling us now that you're citing to a document with a specific
6 title and a specific date that doesn't actually -- that never
7 actually existed? Is that your testimony?

8 A. This is correct.

9 Q. Let me take you to the next reference here, and this is at page
10 036645, which is the next page in both the English and the Albanian.
11 It's footnote 21.

12 Now, here you actually cite to an interview with
13 Major-General Shukri Buja. Do you see that? And it's the same date
14 as the manuscript you cited to on the prior page.

15 So my question to you now, in light of your answers here, is why
16 would you need to invent a footnote referencing a fictional or a
17 non-existent manuscript when you were obviously capable of saying
18 that other portions were attributed to an interview on the same day
19 as the manuscript?

20 A. Well, it's just a technical omission on my part or incidental
21 omission. And instead of mentioning the interview, I referred to the
22 manuscript. It's an omission on my part.

23 Q. And what I was going to ask you in my cross-examination is why
24 there's a manuscript and an interview with the same date, and is it
25 now your testimony that because there was no manuscript at all?

1 A. There wasn't any. It was just an interview, a conversation with
2 Shukri Buja. And this was an omission on my part, the manuscript,
3 that is.

4 Q. Let me turn you to the bibliography of the book.

5 MR. MISETIC: And this is at page 036827 in English and 077248
6 in Albanian. And if we scroll down to section C.

7 Q. Section C, you purport to put in the bibliography a list of the
8 interviews and memoirs that you used to prepare the book.

9 And if we look at page 831 in the English, and 252 in the
10 Albanian, at entry 78 and 79, your bibliography, where you're
11 purporting to identify actual interviews that you had and
12 manuscripts, the only things you list twice are the manuscript, with
13 no reference to any interview with Shukri Buja.

14 Now, if you actually interviewed Shukri Buja on the same date as
15 the manuscript, why doesn't your bibliography include a reference to
16 any such interview?

17 A. I already said it before. It's an omission on my part. A
18 technical omission, I would say. But it's mine. It was purely a
19 conversation or an interview with Shukri Buja.

20 Q. Well, let me put to you: Is it possible that, in fact, what you
21 relied on was a manuscript with Shukri Buja -- that Shukri Buja had
22 written and not an interview, and that's why it's not reflected in
23 the bibliography?

24 A. No, it's not possible that I had his manuscript.

25 Q. By the time you met with or discussed this or whatever happened

1 on 23 May 2007 with Shukri Buja, it was already four years after his
2 ICTY testimony -- or, sorry, three years after his ICTY testimony.

3 Are you aware of that?

4 A. Well, I did not dwell on this aspect.

5 Q. Okay. You already stated that the book was prepared and
6 published at a time that you were attempting to obtain positions in
7 the PDK; is that correct?

8 A. Yes.

9 Q. And you were trying to be a leader of the PDK in Kacanik, which
10 is a stronghold of the PDK; correct?

11 A. This was my goal.

12 Q. You've said this several times about embellishments, but is it
13 accurate that the book was written as a way to appeal to the PDK
14 electorate?

15 A. In a certain form, yes.

16 Q. Well, let me ask just a few quick questions. At the time the
17 book was published, Mr. Thaci was the prime minister, not only the
18 leader of the PDK; correct?

19 A. Yes.

20 Q. And you make several references to Hashim Thaci in your book;
21 correct?

22 A. Yes.

23 Q. You make these references although you were not present at any
24 meetings with Mr. Thaci during the conflict; correct?

25 A. Correct.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Cross-examination by Mr. Misetiç

Page 12755

1 Q. You never saw Mr. Thaci or heard from him during the conflict;
2 is that correct?

3 PRESIDING JUDGE SMITH: Excuse me, we're having a problem with
4 Judge Barthe's ...

5 THE WITNESS: [Interpretation] During ...

6 PRESIDING JUDGE SMITH: Can you hear me now, Judge Barthe?

7 JUDGE BARTHE: [via videolink] Yes, thank you. I can hear you.

8 MR. MISETIC: Okay.

9 Q. Let me repeat my question, Witness. You never saw Mr. Thaci or
10 heard from him during the conflict; is that correct?

11 A. I have said it before. I will repeat it again. During the war,
12 I never met him and I never communicated with him.

13 MR. MISETIC: Mr. President, Mr. Emmerson has asked for some
14 time at the end.

15 PRESIDING JUDGE SMITH: [Microphone not activated].

16 MR. MISETIC: Ten till. Okay. Thank you.

17 Q. Your reference to -- in the book to an order from Mr. Thaci to
18 start expanding military activities, you have no personal knowledge
19 of any such order; is that correct?

20 A. Correct.

21 Q. You were not a member of the KLA in March 1998; is that correct?

22 A. I wasn't.

23 Q. There are numerous pictures taken from videos of Mr. Thaci in
24 your book, and some of them were shown to you earlier today. Do you
25 recall those pictures?

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Cross-examination by Mr. Misetiç

Page 12756

1 A. Yes, after the war.

2 Q. Is it fair to say that the only pictures where the face is quite
3 visible are the two showing Hashim Thaci?

4 MR. PACE: Sorry, Your Honour. I don't understand the question.
5 I'm not sure what is being sought by the witness. Perhaps it can be
6 clarified.

7 MR. MISETIC: In terms of the only identifiable persons in the
8 pictures shown in the book are Hashim Thaci. I can move on. It's
9 fine.

10 PRESIDING JUDGE SMITH: [Microphone not activated].

11 MR. MISETIC: Well, rather than going through the book, I'll
12 just move on. That's fine.

13 Q. Was there a political reason why you decided to include pictures
14 of Hashim Thaci in your book?

15 A. It was precisely this political reason, to make the book more
16 readable knowing that Hashim Thaci was a leader.

17 PRESIDING JUDGE SMITH: The transcript has stopped.

18 MR. MISETIC: I'm being sabotaged this afternoon [Overlapping
19 speakers] ...

20 PRESIDING JUDGE SMITH: You are being ...

21 JUDGE METTRAUX: Mr. Misetiç, while you are being sabotaged.
22 You gave us a reference to the Skondrianos case. Would you be so
23 good as to check the date of the decision and the paragraph? The
24 transcript may have gotten the wrong paragraph reference.

25 MR. MISETIC: I will.

Witness: Hajrush Kurtaj (Resumed) (Open Session)
Cross-examination by Mr. Misetić

Page 12757

1 JUDGE METTRAUX: It doesn't need to be now.

2 MR. MISETIĆ: Okay. Thank you.

3 PRESIDING JUDGE SMITH: Do we have transcript? No.

4 [Trial Panel and Court Officer confers]

5 PRESIDING JUDGE SMITH: Mr. Emmerson, do you see need to have a
6 transcript for the comments you make?

7 MR. EMMERSON: Absolutely not, no.

8 PRESIDING JUDGE SMITH: Okay.

9 MR. EMMERSON: But --

10 PRESIDING JUDGE SMITH: We may terminate now, because if we're
11 having a transcript problem and we can give you the floor --

12 MR. EMMERSON: Absolutely.

13 PRESIDING JUDGE SMITH: Okay.

14 Is that all right with you, Mr. Misetić?

15 MR. MISETIĆ: Of course.

16 PRESIDING JUDGE SMITH: All right.

17 MR. EMMERSON: Thank you very much.

18 [Trial Panel and Court Officer confers]

19 PRESIDING JUDGE SMITH: We're told we can't proceed without a
20 transcript, so we -- just step aside for a minute to relax. We'll
21 take that up in a little bit.

22 You can escort the witness from the room, Madam Usher.

23 Witness, we'll see you tomorrow morning at 9.00.

24 THE WITNESS: [Interpretation] Okay.

25 [The witness stands down]

1 PRESIDING JUDGE SMITH: Just relax for a moment. We'll take a
2 short break while they restart the system.

3 We're adjourned.

4 --- Break taken at 3.49 p.m.

5 --- On resuming at 4.00 p.m.

6 PRESIDING JUDGE SMITH: Before we give you the floor,
7 Mr. Emmerson, I just wanted to make one brief statement about what
8 we're going to do, and that is I'd like to have us each concentrate
9 on what your team can do. In other words, I don't really need to
10 know, Mr. Emmerson, I'm just using you as an example, what you think
11 the Prosecution ought to do. I want to know what you can do. I want
12 to know what the Thaci team can do. We'll come to this. But I just
13 want to start off with the right idea, that we need to hear from you
14 about your ideas.

15 Go ahead, you have the floor.

16 MR. HALLING: Sorry, Your Honour, just very briefly, before
17 that. Mr. Pace was going to put a short request on the record just
18 before the Status Conference when the transcript went out. We can do
19 that now. It's just an unopposed word extension request.

20 PRESIDING JUDGE SMITH: Go ahead.

21 MR. HALLING: It's for a Rule 155 motion. We would request
22 2.000 words because of the number of witnesses covered. The
23 witnesses have already been shared with the Defence, and we
24 understand there's no opposition. Thank you.

25 PRESIDING JUDGE SMITH: No opposition?

1 MR. MISETIC: Our position was we have no objection provided
2 that there's a reciprocal extension if needed for the response.

3 PRESIDING JUDGE SMITH: That goes without saying. That's
4 granted.

5 Go ahead.

6 MR. EMMERSON: Your Honours, very briefly. First of all, thank
7 you for giving us a moment to address the Court before I have to
8 depart. And, obviously, my co-counsel, Ms. Kerrie Rowan and
9 Ms. Annie O'Reilly, will deal with the agenda items as they arise.

10 I wanted, if I may, just to say two brief words at the outset
11 about the attenuation, if you like, the balance between expedition
12 and transparency, both issues that the Panel has raised for this
13 afternoon, and one small question on the timetable, just as general
14 overview points.

15 First of all, my client has asked me to say that he wouldn't
16 want the proceedings or the Court Panel to sacrifice a full
17 examination of all the evidence as it pertains to his personal
18 involvement for issues of expediency or timetable. He's very keen
19 that everything that can be said about what he did and did not do be
20 publicly ventilated and available to the Kosovo public upon whose
21 behalf the Tribunal was established.

22 PRESIDING JUDGE SMITH: And I think we all would agree on that
23 general concept.

24 MR. EMMERSON: Absolutely.

25 PRESIDING JUDGE SMITH: Go ahead.

1 MR. EMMERSON: And so that having been said, we, of course, all
2 support all efforts at greater openness and transparency. And we
3 recognise that the process hasn't been ideal in a number of respects
4 and hasn't been as fast in terms of deredacting transcripts as it
5 should be to enable the public to keep up, and anything that can be
6 proposed to achieve that we would certainly support to achieve a
7 greater communication publicly.

8 As far as the proposed timetable is concerned, we are entirely
9 happy with the timetable as it is proposed. And by that, I mean the
10 schedule till the end of the year. We would struggle, if I'm honest,
11 to do it any greater sitting times because of the degree of catch-up
12 that is being played for two reasons. One, of course, is the fact
13 that we started the trial with a very heavy deluge of very late
14 disclosure which we, therefore, had to schedule throughout the trial
15 to consideration of material witness by witness. That has always
16 been a problem all the way through, and that's in a sense why we have
17 some breaks built in.

18 The second point, of course, is that both Mr. Thaci and
19 Mr. Veseli have lost key members of their teams in the past couple of
20 months. I would leave Mr. Misetic, obviously, to address the
21 particular situation with Mr. Thaci. But with the loss of our
22 co-counsel, Mr. Strong, we also lost a lot of accumulated knowledge
23 because he'd been working on the case for a great deal of time. So
24 we would find it very difficult to sit any more frequently or any
25 longer than the proposal that the Panel has circulated in light of

1 the practice that we've adopted.

2 It looks to me to be a consistent -- almost identically
3 consistent practice to the ideal practice that we've started from the
4 beginning, and we would urge you, therefore, as much as possible to
5 maintain that.

6 And then the last thing I just wanted to say is we've discussed
7 the question of time limits, of course, before. Obviously, if there
8 are time limits, then all participants to the proceedings would need
9 to consider time limits. And it wouldn't -- unless there's been
10 evidence on the statistics of a particular problem arising from one
11 section of the court, it would seem to us that if that is the way
12 forward, then two things we would ask on behalf of any order that's
13 made so far as the Defence is concerned.

14 And that is that we are -- it's a fallback time limit, in the
15 sense that that's the default position, that if there are particular
16 witnesses for whom we can anticipate we will need a considerable
17 longer period of time, then we can, of course, with reasons, I would
18 hope, make an application or a request to the Court for an extension
19 of that.

20 And, obviously, we also entirely understand the need for revised
21 time estimates. But in terms of ensuring - and this is, if you like,
22 the other side of the coin - that the Prosecution has as much
23 information as possible as to how long a witness is going to actually
24 take. And, certainly, it is difficult to predict those estimates.
25 We have an estimate for this witness down as two hours. But having

1 seen the way that the testimony has been handled so far, we don't
2 need to cross-examine or at least unless anything further emerges
3 that might change that position.

4 So I think improvements, if we can, on a rolling basis of time
5 estimates for cross-examination are also extremely helpful.

6 We are keen to abide by anything that the Court considers the
7 right balance to achieve expedition and to ensure that the trial
8 maintains its impetus. But as I said at the outset, subject to the
9 necessity to ensure that Mr. Veseli has all of the evidence
10 pertaining to him so far as he's concerned - and of course, others
11 will have their own position - fully ventilated. Because he doesn't
12 -- having come this far, he wants the whole story fully out in the
13 public domain so that the Kosovo public can judge what he did and did
14 not do during the course of the liberation war in 1998 and 1999.

15 So those are the submissions I wanted to make.

16 PRESIDING JUDGE SMITH: [Microphone not activated].

17 Thank you very much, Mr. Emmerson, for your contribution. And
18 we understand you have to leave, and that's perfectly all right.

19 I will say when it comes to the days that we sit, we somewhat
20 agree with what you're saying, but we lose an awful a lot of days
21 to -- our plan was to do four days in a stretch each week in the
22 three weeks we sit, but we continually lose days for court
23 maintenance, and that is a hindrance. It really bothers. And we
24 constantly are questioning each other about is there a better way to
25 do that. That's one of the things we will discuss, and you won't be

1 here when we discuss it, but we will discuss it and you'll get the
2 message sooner or later. And we'll try to come up with some sort of
3 reasonable solution working with CMU. I mean, they have certain
4 obligations to take care of this multimillion dollar operation here
5 so that it all works and so they live up to their contracts and all
6 that. So thank you. Thank you very much.

7 So we will continue.

8 [Trial Panel and Legal Officer confers]

9 PRESIDING JUDGE SMITH: [Microphone not activated] ... what I
10 said earlier, and that is we have to be aware that we are interested
11 in what you on your team can do to answer the questions that I come
12 up with, and some of it will be more general, the Court as a whole,
13 and I understand that. But I don't want to have the SPO talking
14 about what the Veseli Defence team should be doing or anything like
15 that. Talk about what you plan to do.

16 And everyone has received a proposed schedule for the balance of
17 the year from 1 September until the end of December.

18 So let me just ask are there any comments from the SPO? Is that
19 appropriate as you see it?

20 MR. HALLING: Certainly, Your Honour. We can go straight to the
21 schedule now. We received the calendar. And the discussion on the
22 sitting schedule and available courtroom time is very important to
23 us.

24 We would welcome a schedule, a regular schedule of three-week
25 blocks with one week off. The calendar now seems to be working on a

1 model that's close. It's three weeks on, one week off; three weeks
2 on, two weeks off, as I understand it. And so it's certainly getting
3 in that direction.

4 If there's any flexibility to sit additional weeks, which
5 doesn't seem to be a dramatic increase, but it would be an important
6 one, we would certainly welcome that, because the shorter breaks do
7 facilitate greater continuity in scheduling and would increase
8 available courtroom time.

9 As for Fridays, in particular, we understand if they can't be
10 generally incorporated into the schedule, which would be our
11 preference, it would still be helpful if it was possible that Fridays
12 could be reserve days on certain days, possibly at the end of blocks.
13 In situations where we could prevent holding over somebody if we had
14 that extra day, that would allow us to schedule more witnesses within
15 a block and prevent holdovers from happening.

16 It would be an extension of something the Panel is already
17 helpfully doing, which is when we're kind of just past 4.00 and we
18 can extend a little to finish a witness, we do that. Thank you.

19 PRESIDING JUDGE SMITH: Thaci Defence have something to say
20 about the scheduling?

21 MR. MISETIC: Just to -- I guess to respond to that, and to
22 follow up on Mr. Emmerson's comment. We're content with the current
23 schedule as has been circulated by the Panel. The reality of the
24 Defence side, particularly in light of recent events, is that it is
25 quite a challenge to prepare for the next set of witnesses, and we

1 use the time that we have available to us outside of court to be able
2 to be ready to go for the next set of witnesses.

3 So the three weeks on, two weeks off -- three/one, three/two is
4 a model that works for us, and I think fairly gives the Defence an
5 opportunity to catch up and to prepare for the next set of witnesses.
6 So we would ask that that schedule be maintained. We may have some
7 other ideas for how to expedite this, but if we're talking just about
8 the schedule now, that's --

9 PRESIDING JUDGE SMITH: [Microphone not activated].

10 MR. MISETIC: Yeah, that's it.

11 PRESIDING JUDGE SMITH: [Microphone not activated].

12 MS. O'REILLY: Not much, Your Honour. As Mr. Emmerson said, we
13 don't want any change to the schedule. We don't -- you know, we are
14 still playing catch-up with respect to the evidence, and I understand
15 that might be frustrating to hear, but that is the reality. We are
16 preparing witnesses still on a witness-by-witness basis, and the fact
17 that the Prosecution has continued to call their case out of order
18 does compound that problem. So we simply do ask that the calendar
19 remains as it is to make this manageable and to ensure that our
20 client's rights are actually protected and we can do our job. Thank
21 you.

22 PRESIDING JUDGE SMITH: Thank you very much.

23 MR. TULLY: Nothing further -- nothing major to add beyond what
24 my colleagues have said. But I would like to point out that the
25 Fridays during blocks are particularly important to us because we

1 don't get to visit our clients after court, and we don't get to see
2 them at the weekends. And with the restrictions on visiting now, it
3 can also be difficult for two teams to be there at the same time. So
4 if the Panel is minded to, perhaps on an exceptional basis, ever sit
5 on a Friday, it would have to be only the last Friday right before a
6 break, in our view, for -- in the interest of fairness. Thank you,
7 Your Honour.

8 PRESIDING JUDGE SMITH: I appreciate that. And we've talked
9 about that eventuality also -- or possibility, I should say.

10 Mr. Ellis.

11 MR. ELLIS: Your Honour, I think that is also our position. If
12 on an exceptional basis it would assist to take an hour on the Friday
13 to finish a witness, then that's one thing. But for it to be a
14 regular sitting all day Friday, that would take up the time that we
15 need to take instructions from our client.

16 PRESIDING JUDGE SMITH: Yes. And we need that time, too,
17 because you all file an enormous amount of documents, and sooner or
18 later we have to get to them and answer them in a reasonable period
19 of time. And those Fridays are important for that as are the weeks
20 where we're not sitting in the courtroom.

21 MR. ELLIS: Exactly, Your Honour.

22 PRESIDING JUDGE SMITH: So that's what we struggle with, you
23 know, day-to-day. I would like to solve the problem of losing
24 Thursdays, though. We lose quite a few Thursdays to court
25 maintenance, and I don't know yet that it can be avoided, but that's

1 one of the things we want to look into. And we promise you, we will
2 look into that, and at least get those days back for us.

3 We have a bit of a break right now also in that Trial Panel II
4 is not going to be sitting in the courtroom as often this next few
5 months as they were up till now and as they will be perhaps soon.
6 But so -- I mean, we do have a little extra wiggle room if we need to
7 add a day or finish a witness. It's possible.

8 Yes, go ahead.

9 MR. LAWS: Your Honour, before we leave that agenda item, may I
10 just say on behalf of the victims in this case that we would support
11 any move to increase the number of sitting days and of sitting weeks.
12 We hear what Your Honour says, of course, about the importance of
13 Fridays and what they mean in terms of the ability of the Panel to
14 process the large number of filings that there are in this case, but
15 there are bigger gaps perhaps than we were all expecting, and we
16 would support what Mr. Halling has said about that.

17 It really comes down to this: That the more sitting days there
18 are, the more witnesses can be called. And the more witnesses that
19 are called, the happier the victims in this case are going to be, not
20 least because the victims are included among their number, many of
21 them, the dual status witnesses. So we appreciate that there are
22 many other considerations, but we wanted to put on record what we see
23 as the considerations that affect our clients most directly, and that
24 is that we would invite the Court to sit as often as it can.

25 PRESIDING JUDGE SMITH: Thank you for that contribution.

1 Unless there's some other comment on the general scheduling,
2 I'll move on. No hands are up.

3 This next part is basically for the SPO. Back -- well, we're
4 almost up to a year of -- in this case. And back when we started,
5 you estimated -- I don't know if it was you, Mr. Halling, or somebody
6 estimated that we might be finished in April 2025. Is that still a
7 firm date? Or is that -- let me not say "still." Is that a firm
8 date?

9 MR. HALLING: Yes, Your Honour. And this question actually --
10 the agenda item has multiple subparts. Would you like me to answer
11 them kind of all globally at once or to go subpart by subpart?

12 PRESIDING JUDGE SMITH: I would rather go subpart by subpart, if
13 you don't mind.

14 MR. HALLING: Sure. With that in mind, we'll give a little bit
15 longer answer on the first question, but it will make subsequent ones
16 shorter.

17 There remains a path to hit the April 2025 target date which was
18 ordered by the Panel, as I understand, on 15 February 2023. It is
19 going to require further streamlining on our part and further
20 accelerating in the courtroom.

21 So on that 15 February 2023 date -- I mean, the Panel has to set
22 this target date. It's a requirement of the rules. But at that
23 moment in the trial, there were a lot of things that were unknown and
24 that complicated any estimate of the target, and there have certainly
25 been some developments since then.

1 Just to focus on couple of these at the outset. First, on the
2 same day that the target date was set by Your Honours, the
3 Trial Panel was discussing the sitting schedule as it was then
4 calendared for 2023, and the Trial Panel indicated, and I'm quoting
5 now from the transcript:

6 "The schedule we have provided to the parties and participants
7 totals a bit less than 600 hours in the first year of trial."

8 And that's on page 1912 of the transcript.

9 Going off the periodic time reports provided by the Registry, in
10 the first ten months of this trial, the total examination time up
11 until the beginning of the current block was only 308 hours. And no
12 matter how you contextualise that number, at the end there's still
13 been a lot fewer hours available for the SPO to present its case in
14 the first year than was anticipated.

15 The second point that I wanted to flag at the outset is that the
16 moment that that target date was set, it's recalled that the Defence
17 had only produced provisional cross-examination estimates for the
18 first 12 witnesses. You may remember that a lot them were actually
19 blank at the time. And there was subsequent discussion and even a
20 little bit of litigation leading ultimately to a decision in early
21 March 2023 where the Panel found that three Defence teams had not
22 fully complied with that order. Without accurate estimates at that
23 moment, it was understandably very difficult - frankly, impossible -
24 to set a forecast with a degree of accuracy.

25 There's also been a lot of procedural discussions in the

1 courtroom in the first year of trial that have eaten up a lot of
2 available time. And some of them are necessary to set applicable
3 procedures; some of them are not. There was a recent discussion
4 about the definition of a witness statement that has been canvassed
5 many times before in this trial that may be a recent example of that.

6 All said, this is the -- the combined effect of all this is that
7 over the first ten months of trial, the SPO has used 100 hours in
8 direct examination. Again, off the Registry reported numbers. So
9 that means we're only getting an average of about ten actual hours,
10 two hearing days of direct examination per month, and that was not
11 something that could have been anticipated, and it makes very clear
12 that we need to accelerate the pace.

13 And we would just ask that this be kept in mind when considering
14 the firmness of the current target date.

15 And as I said, we can give answers to the subsequent questions
16 about that date in turn.

17 PRESIDING JUDGE SMITH: Did you have a question?

18 JUDGE METTRAUX: I have a couple of questions for you,
19 Mr. Halling.

20 One thing is to follow up on a comment made by Ms. O'Reilly;
21 namely, the fact that you might, in some respects, have called your
22 case out of order. One witness in relation to one location, one
23 witness in relation to another, one witness pertaining to the chain
24 of command, and so on and so forth.

25 Now, have you given consideration to the possibility of trying

1 to do less of that and to consolidate substance-wise, if I can put it
2 that way, a bit more which might in turn, and that might be the
3 underlying idea of Ms. O'Reilly, or at least that's mine, enable you
4 to make an assessment in relation to specific incidents, to specific
5 locations, to specific issues in your case, whether there's a need
6 for further evidence.

7 I do share for myself the concern of Ms. O'Reilly that it makes
8 it very difficult not just for the Defence, but for us, the Judges,
9 sometimes to go back to a part of the case that we haven't heard of
10 in weeks, and sometimes months. And wouldn't it be one of the ideas
11 for you to try to accelerate the pace of your case and at some stage
12 perhaps decide not to call of the evidence that you currently have on
13 your list?

14 MR. HALLING: Thank you, Your Honour.

15 We -- it kind of cuts both ways a little bit, Your Honour's
16 question, because calling a broad cross-section of evidence across
17 different sites allows us to get also an earlier read of what may be
18 cumulative later in the case. So if we call all of -- say if we
19 schedule all of our witnesses for a particular site at once and we
20 realise after the first two that the next three are cumulative, we
21 may not be able to physically reschedule new people into their spots
22 because they're all lined up right in a row.

23 And so actually having some breaks in the first year of trial
24 we're actually hoping is going to help our streamlining, that we can
25 take some advancements forward on our crime sites across a great many

1 of them to be able to knock out duplicative witnesses later.

2 That said, we do appreciate that there may be situations where
3 this causes the need for extra time. And we certainly are mindful
4 when scheduling witnesses, and we're going to need to be even more so
5 in the year to come, that we need to schedule witnesses in times so
6 that they can be properly prepared, discussed in court, and
7 efficiently examined.

8 And on this level, I guess we have sympathy as well. We need to
9 further streamline our case down, and we can talk about that under
10 other subquestions.

11 JUDGE METTRAUX: Thank you.

12 JUDGE GAYNOR: Mr. Halling, just to put a little more bluntly, I
13 think, what Judge Mettraux was hinting at. Is there a particular
14 reason why you can't call your key witnesses sooner? Would it not
15 make more sense for the Panel to hear your key witnesses sooner
16 rather than later?

17 MR. HALLING: It does make sense. And some of them have already
18 been called. There are others that have not been called yet for
19 reasons that we didn't want.

20 One major issue in this trial that we wanted to stress in this
21 agenda item is the obstruction against witnesses in this case. It
22 has caused a lot of distortive effects. It has caused us to move
23 witnesses out of order that we didn't want. It's caused us to do
24 additional disclosures. It's caused us to divert resources up to and
25 including having a trial in Case 10 and Case 11 on further

1 obstruction-related offences.

2 So there's also some issues of availability with key witnesses
3 as well that we aren't able to line them all up in a row.

4 But in general, and we've said this before, we want to
5 prioritise our more important witnesses earlier in the case. And to
6 some extent that has happened, and to some extent that it hasn't.
7 And we believe we have key witnesses coming up in the coming months,
8 and we want to try and get them in front of Your Honours as quickly
9 as we can.

10 PRESIDING JUDGE SMITH: So, obviously, you've been, as I
11 averaged it -- maybe my math is faulty. It probably was on the 600
12 hours. It's been taking about seven hours per witness on average for
13 the 308 hours that have been used. At seven hours per witness, in
14 the next year, you cannot possibly call the balance of your 300
15 witnesses. So how many witnesses do you now expect to call?

16 MR. HALLING: The current number left to call right now is 144,
17 I believe, if you include *viva voce* and Rule 154. The exact number
18 that we're shooting for, we don't have an exact number. We're
19 shooting for an hours estimate in order to hit April 2025. But we
20 can readily acknowledge that's too many witnesses. We can't call
21 them all in that time.

22 And we talk about accelerating the pace of the hearings and
23 sitting more often and sitting better on the days that we sit, but
24 some of this really is on us. And we fully recognise that we need to
25 be expeditious and accountable at every step of our case, and that we

1 need to streamline this down further. We have cut about 55 hours off
2 our case since June 2023.

3 Streamlining opportunities, we do it for -- kind of what I was
4 saying before, we would expect them to be increasing in the year to
5 come. It's just natural that the higher volume of evidence that's
6 admitted, the more responsible streamlining decisions that you can
7 make. And it is our hope and expectation that if we do further
8 streamlining, it's not just cutting witnesses, it's also reducing
9 examination hours for remaining ones, that that's going to improve
10 that average of seven hours.

11 But a lot of that seven hours is for questioning other than us.
12 So there's, of course, a limit to this that's beyond our control.

13 PRESIDING JUDGE SMITH: Yeah, of course.

14 JUDGE METTRAUX: Just to follow up on that. You've told us you
15 started with 600. You've done about 100. Are you still at 500 for
16 the remainder of your case? Is that the whole?

17 MR. HALLING: I don't remember the exact number of hours if you
18 stop the case as of this moment. It goes beyond April 2025. It's
19 not 500, but it is still too many. And so what we are hoping to do
20 is to have basically a two-pronged acceleration. We need to shorten
21 the hours on the back end of our case so it finishes faster, and
22 we're hoping to accelerate the progress of the hearing at the same
23 time, and that the combination of that is going to allow us to clear
24 more hours per month and shorten our case.

25 So we don't have, like, a set number of hours that we need to

1 hit in order to finish the case in April 2025. The pace of the hours
2 we're also hoping is going to improve because of some of the measures
3 we're going to talk about later in the agenda about efficiency of the
4 hearing.

5 PRESIDING JUDGE SMITH: So at the present time, without holding
6 you to an exact number, about 145 witnesses?

7 MR. HALLING: 144 now with 498 finishing yesterday.

8 PRESIDING JUDGE SMITH: And you haven't finished streamlining
9 yet? I mean, that's your present total.

10 MR. HALLING: Right. Yeah. And so, again, and it goes to
11 Judge Mettraux's question, the number of hours now is a snapshot that
12 no one wants. We are not going to stay at that number, and we don't
13 intend to. We need to keep streamlining the case down. Like I said,
14 it's been 55 hours since June of last year, and we're expecting to do
15 another round of streamlining -- I think May is probably the next
16 time we would be able to do the round. Every witness that finishes
17 creates an opportunity to reassess others.

18 We're looking also for opportunities beyond witnesses finishing.
19 So one example would be we've recently started filing motions with an
20 intent to get adjudicated facts admitted from the Mustafa case in
21 this trial. Were that to be done, we think there would be further
22 Rule 153 opportunities for some witnesses relevant to that case.
23 That's another example.

24 PRESIDING JUDGE SMITH: Anything else you want to bring to our
25 attention, Mr. Halling, in this part of the discussion?

1 MR. HALLING: I think we've basically covered everything that we
2 need to say to contextualise the date. I don't know if we've given a
3 clear answer to the last question on the agenda, which is on
4 confirming the date for the SPO to rest its case.

5 As may be clear, we are not conceding that we can't make the
6 April 2025 date. We're not guaranteeing it either. What I can say
7 is that's the only date that we are working off of at the moment.

8 PRESIDING JUDGE SMITH: Yeah.

9 MR. HALLING: We are ten months into the case. There's over a
10 year remaining to get to the target. We're going to do our part to
11 work towards it.

12 PRESIDING JUDGE SMITH: Thank you.

13 Let me ask on what we just now discussed, Thaci Defence have any
14 comments?

15 MR. MISETIC: Yes, Your Honour. Let me start out by saying I
16 want this to be a constructive hearing and not to devolve into an
17 adversarial procedure. So with that caveat, I will say that we
18 obviously dispute the comment about the relevance of an argument
19 about the definition of a witness statement. You don't need to hear
20 the arguments about it anymore, but that's the first point.

21 The second is the introduction of witness interference into this
22 discussion we think is hotly disputed. I'm not going to get into it
23 in public session here. If you invite me to hear more argument about
24 why we think that's wrong, I'm happy to do it, but I'm trying to keep
25 this conversation constructive.

1 Let me just say, though, on that point that we disagree to use
2 that as a reason, in answer to Judge Gaynor's question, of why we're
3 not hearing more important, more relevant witnesses to the case
4 against these specific accused. One such allegedly interfered with
5 witness was called rather quickly and has already testified before
6 the Panel. We don't understand why others can't. But I'm prepared
7 to make submissions in a private session if that really is an issue
8 that needs to be debated.

9 In terms of speeding this up, we have some suggestions, but we
10 do actually -- Judge Gaynor anticipated what our point was going to
11 be, which is we think that this should be -- the witnesses more
12 relevant to these particular accused should be moved up. It would
13 potentially expedite things not only because we'd be hearing more
14 relevant witnesses, but it may open the door to -- certainly from the
15 Thaci Defence, to a conversation with the Prosecution about the need
16 to call more crime base witnesses and the potential for agreement on,
17 you know, potentially, and this is just a brainstorming idea, but
18 what they would propose to get out of those witnesses in direct, and
19 see if they would agree to what we would propose in cross, and avoid
20 the need to have to call some of the crime base witnesses as a means
21 of speeding up and reducing the number of witnesses that have to be
22 called.

23 Another proposal we would have, frankly, is we think that more
24 Status Conferences like this should be held. We think it provides an
25 incentive to all parties, particularly to the SPO, to stay on track

1 and to stay motivated to continue to review their cases, and I don't
2 mean that as a slight to the Prosecution. I think it's a natural
3 human tendency to deal with what's in front of you. And the more of
4 these we have, whether they're monthly, I think will help everybody
5 move this case along more quickly. So if it sacrifices an hour or
6 even adds an hour, like this, at the end of a day so that actually we
7 don't lose any courtroom time, I think would be very useful for the
8 Panel to schedule those on a monthly basis and we take stock of where
9 we are. Thank you.

10 PRESIDING JUDGE SMITH: Thank you.

11 Ms. O'Reilly.

12 MS. O'REILLY: I would tend to agree that a lot of this is about
13 making sure the case is organised properly. And certainly at the
14 ICTY, we used to have regular housekeeping sessions that were really
15 quite helpful in terms of keeping the trial on track, so I'd
16 definitely support that.

17 As regards the proposal to discuss the crime base with the
18 Prosecution, the Veseli Defence would also be willing to enter into
19 that discussion. As you will have noticed, we're not cross-examining
20 on quite a bit of the crime base, so we do think there is room for
21 agreement there, depending, of course, on our colleagues behind us.

22 What is not appropriate is additional use of Rule 153. We have
23 a right to cross-examine witnesses. We don't, you know, push for
24 them to call witnesses that we have no intention of cross-examining,
25 and, as I said, we're willing to discuss that. But that is a rule of

1 admission that's supposed to be used in an exceptional basis and it
2 should remain as such in order to protect our client's rights.

3 As for witness availability, I won't get into the allegations
4 about how allegations of witness interference might be affecting
5 that. But I would say that quite often we are told that a witness
6 can't come because of their availability and nothing further is said
7 about that. We don't know whether it's witness interference or some
8 other cause. But our clients have been in detention for three years.
9 It's not unreasonable to inconvenience a witness to make them come
10 here when their presence is required. So we'd just ask that the
11 Prosecution is bit more mindful of that and perhaps the Panel is a
12 bit stricter on that, and that could maybe help us get witnesses in
13 the right order and would provide more organisation for this case.

14 And, finally, I'm sure Your Honours will have noticed you
15 haven't actually had any specifics from the Prosecution so far today.
16 It does sort of bring back memories of Status Conferences that we had
17 for two years before we went to trial, and I would kindly request
18 that some deadlines are placed on the Prosecution to give concrete
19 answers for the questions you've posed them today. Thank you.

20 PRESIDING JUDGE SMITH: [Microphone not activated] ... suggestion
21 about meeting periodically and trying to come up with what I will
22 call a 153-type arrangement for a witness that maybe is
23 non-controversial. Is that something the Prosecution would
24 legitimately be interested in?

25 MR. HALLING: Yes. It helps to do it outside the standard

1 hearing schedule --

2 PRESIDING JUDGE SMITH: Yes.

3 MR. HALLING: -- like the current hearing. The only thing that
4 we would say, we have tried and tried with agreed facts proposals in
5 this case and agreements to law, and we've heard this kind of
6 receptive language before and then nothing gets agreed to. I think
7 it is --

8 PRESIDING JUDGE SMITH: I'm just asking if you are willing to.

9 MR. HALLING: Of course we are. We always are. But we -- there
10 definitely seems to be some parts of this case that are either
11 lightly contested and uncontested, and if that could be channelled
12 into further agreements, we could go faster.

13 PRESIDING JUDGE SMITH: Well, I will be very frank, and probably
14 everybody in this room, including the Panel maybe at sometimes, has
15 delved into minutia when it really wasn't necessary in a direct or
16 cross-examination mode. Things that are unimportant to the final
17 outcome case. And I don't like to interfere, especially from the way
18 I became a lawyer, interfere with the Prosecution or the Defence on
19 how you go forward with this. But we have to concentrate on
20 important issues, issues that are relevant to the decision that has
21 to be made in this case.

22 And I'm not going to come up with examples, but you all know
23 that you've sat and listened to questions and you've thought: Why on
24 earth is that person asking that question? What does that have to do
25 with anything? And I suggest that we try to avoid that.

1 And I also think it's a great idea that you meet periodically.
2 I'm not going to order you to do it. But you both have to go into
3 that kind of a meeting with a cooperative spirit and think that
4 you're trying to work something out for the benefit of everybody,
5 including the accused who are sitting and waiting for a decision in
6 this case while they are in detention.

7 So think about that, and I strongly suggest that you try to do
8 that.

9 Yes, go ahead.

10 THE INTERPRETER: Interpreter's note: We apologise, but we need
11 a few seconds to catch up with interpretation.

12 PRESIDING JUDGE SMITH: Okay. My fault.

13 JUDGE METTRAUX: Mr. Misetic and Ms. O'Reilly -- I want to take
14 you to task, Mr. Misetic, on something you've said, and Ms. O'Reilly
15 as well, is your willingness to discuss with the SPO crime base.

16 I want as candid an answer as you can give us in terms of
17 whether that's realistic. And I'm just going to cite a few facts.

18 The first is the attempts that were made to have a set of agreed
19 facts led close to nowhere in terms of facts of relevance to
20 expediting the process.

21 The second thing that I would highlight in my question is the
22 resistance by the Defence almost systematically to 153 and 154
23 statements, including and in particular in relation to crime base
24 witnesses.

25 The third issue that was also part of Judge Smith's comments a

1 second ago was the fact that your team, Mr. Misetic, spent close to
2 100 hours cross-examining witnesses, many and most of which were
3 crime base witnesses. So is it really realistic that -- are we
4 looking at a new approach by the Defence in relation to these issues?
5 Will there be less cross-examination of crime base witnesses? Will
6 there be more engagement with 153, 154 application in relation to
7 these sorts of witnesses? Or is that, in French we say "*un vœux*
8 *pieux*," a hope that somehow this will happen?

9 MR. MISETIC: Well, I do wish to wish to emphasise a second
10 point of what I said which I would ask that you keep in mind. My
11 proposal was not simply that we agree to crime base witnesses. It's
12 it would have to be a mutual approach where they agree to the points
13 we would make under cross-examination. And so it's not just as
14 simple as saying: Here is a list of facts that a crime base witness
15 would testify about and you concede the point.

16 What I'm proposing -- and that's why we don't automatically
17 agree to 153 and 154. Usually -- and I didn't write all of the
18 responses, or many of them, but it's because we have a point we want
19 to make in cross-examination. If the Prosecution is willing to
20 indicate in *inter partes* communications that they'll concede those
21 points on cross in exchange for us conceding certain points they wish
22 to make, and I'm using a hypothetical here, but if we go through the
23 pre-trial brief and they cited that witness for this proposition and
24 we say to them, in exchange, we want you to agree that on
25 cross-examination the witness would concede this point, et cetera,

1 then there would be some ground to not need to call the witness on
2 that point.

3 I can see there's problems with, for example, if we're -- we
4 want to call a witness to cross-examine on the basis of a credibility
5 challenge, then I doubt that the Prosecution is going to concede that
6 the witness is not credible. But if it's just affirmative facts that
7 we want to establish through a witness, at the very least it could
8 shorten what needs to be cross-examined during the hearing. But
9 that's my proposal. That's the reason we always in good faith ask to
10 cross-examine witnesses. And if we can reach some agreement
11 particularly because, and I need to emphasise this point, and
12 emphasise this point on behalf of my client, we need to finish the
13 Prosecution case by April 2025.

14 We have a lot of reasons that I could get into on the Thaci
15 Defence, but this is not an unlimited ability to endlessly litigate
16 for years on end, and I mean that in a staffing and resources and
17 et cetera. So we have a fundamental interest not only because
18 they're in detention, but because the effectiveness of the Defence
19 depends on this Prosecution case finishing and the Defence, which we,
20 having consulted with my colleagues, think we could put on a defence
21 efficiently and wrap this up so that they have a quality defence by
22 the time you get this for your deliberations.

23 In that spirit, what I'm suggesting to you is we should have
24 communications. And without by posturing by any side of, you know,
25 my witness is great, or we'd kill your witness on cross-examination,

1 but just to say: Look, you can make these points through the
2 witness, we wanted to make these points through the witness, and
3 let's see if there's a way we can avoid having to call.

4 PRESIDING JUDGE SMITH: I would like to see some positive
5 results on this issue. I think that's the way forward for us.

6 MR. MISETIC: Let me just say, though. I will say that it's
7 really up to the Prosecution to approach us because they decide who
8 they want to be in front of the Court and then we can respond.

9 PRESIDING JUDGE SMITH: I agree with you about that. I
10 personally agree with you about that. I think the Prosecution's
11 leading this case at this point and they need to bring to your
12 attention and to come request a conference on it. We'll come back to
13 the Defence and cross-examination in a little bit. I want to talk --

14 MS. O'REILLY: May I just quickly respond, sorry, as
15 Judge Mettraux had asked me to --

16 PRESIDING JUDGE SMITH: Well, I haven't asked Mr. Roberts and
17 Mr. Ellis yet for their comments, but go ahead.

18 MS. O'REILLY: Well, just to point out that there is a
19 difference between 153 and agreed facts and 153 witnesses that we
20 want to cross-examine. There are a number of 153 witnesses that we
21 have agreed *inter partes* that they can go via 153. That does not
22 amount to us agreeing to the contents of their testimony as truth.

23 There is also the fact that one year ago we knew almost nothing
24 about the case because of the extent of the redactions. We do now
25 know more. We don't -- we're still sort of playing catch-up, but I

1 do believe that that provides us with room to make more decisions on
2 what we're challenging and what we're not challenging, so do I think
3 there is scope for further agreement on this.

4 And I would also support Mr. -- Luka's proposals on behalf of
5 Mr. Thaci for us being permitted to put in some documents on the
6 cross-examination that we would have maybe done for 153 witnesses to
7 allow more full assessment of those witnesses. Thank you.

8 PRESIDING JUDGE SMITH: Mr. Tully.

9 MR. TULLY: I don't have anything substantive to add, just to
10 support the idea for regular Status Conferences and the proposal for
11 the procedure of *inter partes* discussions about witnesses. Thank
12 you.

13 PRESIDING JUDGE SMITH: Mr. Ellis.

14 MR. ELLIS: Yes. Your Honour, we would echo that position. We
15 have been trying to do the maths on the number of hours left in the
16 Prosecution case, and I think it's still quite alarming.

17 Sitting more weeks for us is not the answer because we are still
18 playing catch-up for the reasons explained by our colleagues. But if
19 there are going to be witnesses who are dropped by the Prosecution,
20 it would be helpful to know that earlier rather than later. We don't
21 want a situation where we get to this point next year and we're
22 suddenly hit by an avalanche of 153 applications and dropped
23 witnesses.

24 If there are witnesses being dropped, obviously, the Defence may
25 want to speak to those witnesses. And currently the contact protocol

1 would stand in the way of that. So the earlier we can have notice,
2 the better, and Status Conferences would certainly help that.

3 PRESIDING JUDGE SMITH: [Microphone not activated].

4 We want to discuss the publicity of proceedings, and we continue
5 to seek ways, as I said in the agenda, to increase the public trial
6 aspects of this case, and we are really interested in your comments.
7 And some of your comments have already been put into place and are
8 having some effect.

9 Using codes does work. I think we've proven that it worked, but
10 it seems to have fallen by the wayside. We used some the other
11 day -- not really codes, but we came up with an agreement on the use
12 of relationships rather than names. I would strongly suspect that we
13 can do a lot of good by using codes and avoid a lot of private
14 hearings and have more public hearings.

15 And the second thing is the public redacted transcripts. They
16 are coming in, they're being done, but we need to keep the speed up
17 as much as possible, get them finished. And when you file an
18 application, make sure you file the public redacted version as well
19 so that we can continue without having to go through unnecessary
20 motions and demands on our part.

21 Comments on this?

22 MR. HALLING: We can give brief ones in relation to --

23 PRESIDING JUDGE SMITH: Yes.

24 MR. HALLING: -- what Your Honour's --

25 PRESIDING JUDGE SMITH: Go ahead.

1 MR. HALLING: -- just said.

2 In relation to codes, yeah, we did try and do this yesterday.
3 So we are still looking for these opportunities. The only thing that
4 I would say as to codes for maybe some witnesses where it hasn't been
5 done, not every witness is able to consistently respect that kind of
6 a code arrangement. And as Your Honours know, every time a redaction
7 order is imposed, it's not just the individual line that's cut from
8 broadcast. It's sort of a range around that line. And if you do
9 that enough, you've effectively recreated private session. So it
10 doesn't always work.

11 There's also some witnesses where, because of interference or
12 other reasons, the stakes are so high that them being identified even
13 with a redaction order attached in open session may influence our
14 decision to proceed without codes.

15 But we are looking for this, and we do think it's a good
16 solution.

17 On the transcripts, we were following all of the deadlines. We
18 can say that we're very close to clearing the backlog from last year
19 of all of the witnesses that have testified so far. We did a filing.
20 I think it was 14 witnesses that went to the Trial Panel recently.
21 So this has been proceeding, and we've been satisfied with it.

22 We would just note in this regard that the Defence has actually
23 objected to very few redactions that we have proposed so far, which
24 is sort of helping to further get this resolved more quickly. And
25 also, this is always true, even when redactions need to be maintained

1 to private session testimony, it will be common that the confidential
2 evidence can still be referenced publicly when doing so doesn't
3 defeat the purpose of the confidential classification. And this is
4 already memorialised in paragraph 4 of Your Honours conduct of
5 proceedings. Thank you.

6 PRESIDING JUDGE SMITH: [Microphone not activated] ... anything?

7 MR. MISETIC: Your Honour, I don't have anything to add.

8 PRESIDING JUDGE SMITH: Okay.

9 MR. MISETIC: We obviously want to make it as public as
10 possible, but we can just ...

11 PRESIDING JUDGE SMITH: Well, I think sometimes we get a little
12 far afield on the associations with the witness. In other words,
13 whether we can use "him" or "her," for example. I understand
14 everyone once in a while it's important that we avoid that, but many
15 times it's not really necessary, and we need to avoid those very kind
16 of remote possibilities of any kind of contact.

17 The whole purpose of having a number for the witness is so that
18 you can use that number, not so that you have to use some other
19 number to reference to that number. That seems to be very difficult.

20 MR. HALLING: Yes, no, we fully understand. And in that regard,
21 we have asked for that gender-neutral language a lot less frequently
22 for recent witnesses.

23 PRESIDING JUDGE SMITH: Yes. But, anyway, those kind -- I was
24 using as an example, that's an example of a far-reaching or excessive
25 reaching for the conflict, but understanding that it's sometimes

1 necessary given a particular circumstance.

2 Yes, go ahead.

3 JUDGE METTRAUX: I have an idea, Mr. Halling, and I want to hear
4 from you whether that's a good one or a terrible one.

5 On a number of occasions, we've maintained the confidential
6 nature of something which is otherwise a public document. It's a
7 press article or a document otherwise available in the public domain.
8 We would be the only place where that information is confidential.

9 The logic of your request and the basis on which confidentiality
10 was maintained is the content of the document could, if associated
11 with its number, lead to the identification of the witness. That we
12 understand.

13 Now, would a solution whereby these specific documents are given
14 a mere number, let's say instead of being Exhibit 737, we give
15 another number that is 2402, which can't be associated to the
16 witness, would this enable us - in our judgment, in particular - to
17 use public documents in a public way?

18 MR. HALLING: Yes, I think Your Honour's solution is the kind of
19 thing that would need to be done. In these situations, it's not the
20 document itself that's the problem. It's the metadata around the
21 document. And so giving it an exhibit number that moves it out of
22 order or perhaps referencing certain documents only by their
23 electronic registration number, which is not indexed to a part of the
24 proceedings but is a number that's sort of pre-stamped before the
25 trial starts, there may be measures like this where the metadata can

1 be disguised that would then allow a public document to be referenced
2 publicly.

3 But Your Honour understands the reason why these things have
4 confidential classifications, and we do think that this could help in
5 solving that.

6 PRESIDING JUDGE SMITH: Any comment on that possibility by the
7 Defence? Anybody?

8 MR. MISETIC: Again, we would support anything that makes the
9 proceedings more public, and it actually touches upon a problem -- a
10 concern we do have, which is how this judgment is going to be public
11 and how it can be subjected to scrutiny when so much of it is going
12 to be confidential.

13 PRESIDING JUDGE SMITH: The only thing we haven't done is we
14 haven't talked about this concept with CMU because they're going to
15 have to keep track then of two different lines of exhibits, in
16 effect. So that has to be a solution that we can live with.

17 Okay. Now, we need to discuss a little bit with the
18 cross-examination end of -- oh, I'm sorry.

19 MR. LAWS: I'm so sorry, Your Honour.

20 PRESIDING JUDGE SMITH: I'm sorry. I didn't see you, Mr. Laws.

21 MR. LAWS: Yes, if I may have the floor just to say on behalf of
22 those in my team who are working very hard to keep up with the
23 transcripts and the redaction process, just to give you some idea
24 about what that involves.

25 A recent witness who testified for five days, it took five days

1 to do the redactions, which you're going to see very shortly, but
2 it's been an enormous job of work. And so that those involved in
3 that who saw this agenda and saw that the speed of the process had to
4 be improved rather hoped that I would say something on their behalf
5 about how difficult that would be, in fact. So having made that
6 submission, we would just ask you to bear that in mind when you
7 consider shortening any deadlines or doing anything of that kind.

8 It's a very laborious process, and it's much more difficult than
9 it seems from the outside where you've got a range of different
10 factors and variables which could identify a witness, and a lot of
11 thought goes into it.

12 PRESIDING JUDGE SMITH: Thank you.

13 I think as long as we can keep up with the schedule that we
14 adopted back in, I think it was February or -- anyway, I can't
15 remember when it was we adopted the schedule for redacting. As long
16 as we can keep up with that and get rid of the backlog and stay more
17 or less current with the new issues, I think everybody can live with
18 that. But it's really important to get that public redacted version
19 out there so that people can at least read through with some degree
20 of accuracy what's going on here, and I appreciate everybody's
21 efforts on that behalf.

22 So now our discussion on limits of cross-examination. Just on
23 the concept. We're not proposing something yet. We're just talking
24 about what could be done and the reason why. And I can just state
25 that instead of focusing on facts and circumstances material to this

1 case, cross-examination has many times -- I first wrote "frequently,"
2 but that's not really true, but many times has focused on issues only
3 remotely relevant to this case.

4 Also, the questioning sometimes has been highly repetitive in
5 respect of some of the issues explored. However, there has been
6 improvement recently, and I appreciate very much the fact that you,
7 on the Defence end, sometimes get together and decide that one person
8 will carry the largest part of the burden, and everybody else can
9 ride along and ask those important questions that they have in
10 addition.

11 But the Panel has a duty to ensure that the trial is fair and
12 expeditious, as you know. And we have the power under Rule 143(4)
13 to, *inter alia*, control the mode of questioning of witnesses so as to
14 make the questioning effective for the ascertainment of the truth and
15 to avoid repetition and undue consumption of time and resources.

16 The Panel has already indicated that a trial will only be
17 expeditious if all those involved contribute to achieving that goal.
18 The Panel believes that shorter and more focused cross-examinations
19 are necessary to achieve that goal.

20 And now Judge Gaynor had some questions. I just wanted to make
21 that general statement, and he has some more pointed questions about
22 it.

23 Go ahead, Judge Gaynor.

24 JUDGE GAYNOR: Thank you very much, Judge Smith.

25 Approximately 58 per cent of the total courtroom time used until

1 the start of this week in questioning Prosecution witnesses - that is
2 to say, 179 hours out of 308 hours - has been spent on
3 cross-examination by the Defence.

4 The Panel has allowed the SPO to make extensive use of
5 time-saving measures, such as Rule 154, and recognises that there is
6 no easy arithmetical relationship between the duration of direct
7 examination and the duration of cross-examination of Rule 154
8 witnesses, in particular those who have previously given extensive
9 evidence. And if a Prosecution witness has been evasive in their
10 testimony, that can require somewhat lengthier cross-examination.

11 Taking all this into account, we would like to hear your
12 comments on the following proposal.

13 The Panel might inform the parties and participants of the time
14 limit for total Defence cross-examination of each Prosecution witness
15 sufficiently in advance of the commencement of direct examination of
16 that witness, and the following factors would be taken into account:
17 First, the SPO estimate for direct examination; second, the time
18 estimates by the Defence for cross-examination; third, the scope and
19 complexity of the evidence expected to be given by the witness and,
20 in particular, whether the witness is expected to give evidence of
21 the acts and conduct of any of the accused; fourth, where the witness
22 is a Rule 154 witness, the total volume of prior evidence of the
23 witness and associated exhibits to be tendered by the SPO; fifth,
24 whether the proposed Rule 154 material includes a transcript of
25 cross-examination of the witness in prior proceedings.

1 The Defence teams would then be at liberty to divide that time
2 allocation for cross-examination among all Defence teams. Any
3 Defence team at the conclusion of the overall time limit for
4 cross-examination of a particular witness would then be at liberty to
5 apply for further time, identifying with specificity other areas of
6 relevant cross-examination and explaining why the Defence has not yet
7 cross-examined on those other areas.

8 We would now like to invite your comments on this proposal.
9 Could I start with the Thaci Defence, please.

10 MR. MISETIC: Yes. That's quite a bit to go through on my feet
11 here. So we would oppose the imposition of any restriction on the
12 Defence in terms of time limits. If the Panel, and in particular the
13 Presiding Judge, feels that we're being repetitive or not focusing on
14 any relevant topics, we would more prefer that the Presiding Judge
15 simply tell us to move on or grant an objection on the basis of asked
16 and answered or something like that, and we can move on.

17 There are -- I'm reluctant to get into even more litigation
18 before trial of all these factors and then us having to come back and
19 make, you know, arguments about what the appropriate amount of
20 examination time is in particular because the whole process of giving
21 you estimates thus far has been somewhat of a moving target for
22 numerous reasons on trying to predict exactly how much time you're
23 going to take in cross-examination.

24 Some witnesses are obvious. I can tell you right now off the
25 top of my head, I'm going to need a lot of time with certain

1 witnesses that are on the list. Others are difficult to foresee
2 because either they're extremely combative on either direct
3 examination or cross-examination. Or there was a witness earlier in
4 this trial, and I'm thinking of Mr. Mustafa, who gave very short,
5 concise answers, and my cross-examination went much faster than I
6 thought it was going to take.

7 So from our position, the Rule 154 material is, in effect, a
8 direct examination of the witness. We have to cross-examine on --
9 you know, I would say in response to that, if everything is coming in
10 under Rule 154, if transcripts from other proceedings are coming in
11 under 154, we have to assume that all of it is being offered because
12 it's relevant -- the Prosecution thinks it's relevant to proving
13 their charges against the accused, and we're going to cross-examine
14 on anything that's in the statement that could be relevant to the
15 Prosecution case.

16 So to us, the first step should be that the Panel has the
17 authority to reduce the amount of Prosecution witnesses in the case
18 rather than put the burden on the Defence to limit its
19 cross-examination. We think that's the first step.

20 Again, if there is any unneeded cross-examination, et cetera, I
21 think the Panel already has the power to tell us to move on or to
22 focus on different issues and be -- I'm sure all of us would be more
23 than satisfied to hear if a topic is not of a particular interest to
24 the Panel, then there is no point in us going through the exercise of
25 needlessly wasting time in cross-examination.

1 However, if that is the proposal, obviously we would have to
2 deal with it, but we do think that it further reduces the ability of
3 the accused to meet the case against them.

4 I do want to raise a couple of other points that make it more
5 difficult, and this is not a factor of this Panel but it is a factor
6 of international criminal law, which is two things that have come up,
7 including something that's come up today, which is when documents
8 come in and they just come in, we can't not address them.

9 So the fact that much more gets in than -- under a very, let's
10 say, very liberal regime of evidence admission, it means we have to
11 deal with it as if it could be used against us. So that is a problem
12 in our opinion. Too much is getting in that is of little probative
13 value, but nevertheless it's in, so we have to deal with it.

14 The second issue is the issue of judicial questions which many
15 times has added on more cross-examination by the Defence. The idea
16 of us not only having to anticipate what the Prosecution is intending
17 with certain evidence but anticipating what the Judges may ask or may
18 be relying on independent of the Prosecution case also adds to how
19 many questions we ask and what we go into.

20 So it's not a simple answer. I personally have tried, and I
21 hope the Panel has seen that, and I'm speaking for myself now only,
22 to try to keep my cross-examinations within three hours or less
23 because I do think there is a point of diminishing returns in
24 cross-examination, and we will attempt to achieve that. But as I've
25 said in my earlier submissions, where we think there is a Prosecution

1 witness who is actually part of a case against our client
2 specifically and is very direct linked to our client specifically, we
3 will take more time. With other witnesses, we will take less time.
4 And we would ask that you give us an opportunity to see if we can
5 continue the process of reducing cross-examination time on our own
6 without the imposition of limits not only because we don't think
7 limits should be imposed, but also, frankly, adding more
8 administrative burdens on us at this point is very difficult and
9 oftentimes, and I'll be blunt, if our deadline to give you a time
10 estimate is too far before the witness comes, candidly, we probably
11 haven't had a chance to even review the witness material. So we're
12 always going to err on the side of the caution and ask for more time
13 than perhaps we'll ultimately wind up needing.

14 So if you do impose the process, we think it should be much
15 closer to the actual date of the witness's testimony than saying, you
16 know, a month or two out, "Give us an estimate." Thank you.

17 JUDGE GAYNOR: Thank you.

18 The Veseli Defence.

19 MS. O'REILLY: Well, I think it goes without saying that any
20 sort of process would have to be subject to challenge by the Defence,
21 and I fear that you would be creating a situation where we're
22 generating more litigation because we are required to challenge the
23 limits that the Panel is attempting to impose.

24 I would also like to make clear that any attempt to impose
25 limits would have to be very specific and individualised because you

1 are -- you would be transgressing on the fundamental rights of the
2 accused, and that's also within your duties as well as efficiency and
3 so forth, and quite a serious matter.

4 Having said that, we actually aren't opposed to time limits
5 per se, but they would have to be reasonable and they would have to
6 take into account these factors.

7 Having said that, our cross-examination estimates haven't, in
8 our view, been terribly problematic. Our cross-examination times --
9 there's been a few times where we have gone long, particularly in the
10 last block we had one witness who changed her evidence right before
11 she came into court. That was an issue that arose out of the
12 preparation sessions. That is another problem. The Prosecution has
13 been using them to take new statements, which affects our estimates
14 and affects the complexity and, frankly, the stress levels of
15 everybody involved in these proceedings.

16 So, you know, that's another way in which these -- this trial
17 could be better organised is if some further limits were imposed on
18 the preparation sessions.

19 But, yeah, to summarise, I think it's going to be a very tricky
20 thing to try to impose on us for legal reasons, but we're not
21 completely unwilling to work with that.

22 JUDGE GAYNOR: Okay.

23 PRESIDING JUDGE SMITH: I will say that the few times, and it
24 has happened a few times, that I've asked there to be -- I've said
25 could we get finished by such and such a time, in effect imposing a

1 limit, everyone's cooperated and we've gotten through it without any
2 trouble at all and no objection.

3 So it does happen, and it has happened in this trial, and I
4 don't think we're -- well, let's just leave it at that for now.

5 So, Mr. Tully.

6 MR. TULLY: Well, Your Honour, I echo what Mr. Misetic said
7 about -- and what Your Honour is saying about putting a limit on us
8 at the moment, in the moment. So subjectively, if there's a moment,
9 we're never opposed to being kindly shepherded to move on from a
10 topic or to limit it to a certain time.

11 But one of the issues, I believe Ms. O'Reilly referred to
12 litigation that would happen, is that it's easy to look at us here as
13 an amorphous blob of the Defence, but we are four individual teams.
14 And herding together, and I know that His Honour Judge Mettraux would
15 know that herding together Defence teams to get to agree even points
16 that are -- where it would seem uncontroversial from the outside is
17 difficult at the best of times. So getting us to what would in
18 effect turn into at some point, not always, but a fight over hours,
19 in the abstract in some kind would be, in our respectful submission,
20 a bad idea.

21 But we're happy for the guiding hand of the Judges to limit us
22 in moments where you feel it's necessary. Thank you.

23 PRESIDING JUDGE SMITH: Thank you, Mr. Tully.

24 Mr. Ellis.

25 MR. ELLIS: Your Honour, first and clearly, we would oppose the

1 setting of any overall time limit on the Defence for
2 cross-examination.

3 I say that from the position in which we sit resolutely at the
4 bottom of the league table in terms of hours used in cross. And I
5 would, therefore, see no basis to impose any fetter on us.

6 Additionally, a comparison between the SPO and the Defence in
7 terms of hours used in this case is inherently misleading because of
8 the amount of 154 witnesses in the case. The Prosecution's 100 hours
9 of direct would be far longer if they had gone through all of the
10 very lengthy statements that have been admitted through 154, but we
11 have to cross-examine on all of that.

12 That's why I suspect what may look as though the Defence are
13 taking a long time in cross is wholly reflected by the Prosecution
14 saving its direct by putting in material through 154.

15 I would say that despite that, we've had long direct
16 examinations of 154 witnesses from the Prosecution. For example,
17 Witness 4337, over two hours taken in direct of a 154 witness. Other
18 examples would be 4448, 4408, 3165. There are witnesses where a lot
19 of time is spent in the Prosecution re-eliciting material that has
20 gone in in writing.

21 Finally just to echo the point made by others. If a procedure
22 is imposed setting a time limit based on a consideration of factors
23 with the Defence then having the opportunity to challenge that, that
24 in itself is a time-consuming procedure which is going to impose a
25 burden on the Panel and on the parties to make the submissions,

1 review the decision, and then challenge the decision. It's going to
2 lead satellite litigation that would delay rather than extend
3 proceedings.

4 I will say that I'm sure the Panel feels able to tell me when
5 I'm straying into an area that the Panel doesn't feel helpful in
6 cross-examination, and when that is said, we do our best to move on
7 as much as we can.

8 PRESIDING JUDGE SMITH: Thank you. Thank you, Mr. Ellis.
9 Go ahead. Time for the Prosecution.

10 MR. HALLING: Thank you, Your Honours.

11 We fully support this kind of a proposal. We were actually
12 going to propose a variation of the proposal of the Panel. This case
13 is not measured in direct examination hours as is with trials at some
14 other institutions. It's against a specific date in time of April
15 2025. That requires efficient behaviour from all the parties in
16 order to meet it, and we shouldn't have to lose witnesses important
17 to our case because the Defence is not prioritising something that
18 they've been repeatedly encouraged, and even ordered to do, by the
19 Panel.

20 We appreciate that the Panel can set limits within a witness as
21 certain questions become repetitive and so on. We've tried that
22 already. Paragraph 110 of the Conduct of Proceedings decision
23 foreshadowed the possibility of setting limits like the ones being
24 contemplated in the proposal now, and there have been inefficiencies
25 in the Defence's examination that have risen to a level that this

1 really needs to be done.

2 And the resistance to the proposal of the Panel, including one
3 submission from Ms. O'Reilly where she said "we are required to
4 challenge the limits that the Panel is attempting to impose," is
5 really a sign as to how much these limits are necessary in the first
6 place.

7 For W04448, which, to the Presiding Judge's point, this was an
8 example from last November where the Panel set a global
9 cross-examination estimate for the Defence teams for that witness,
10 and it indeed happened, and there were no significant issues.

11 This proposal is also going to help us with something that we
12 have been talking about a lot in this trial, which is that it will
13 make the Defence's cross-examination estimates more accurate which is
14 going to help us significantly in scheduling our witnesses. This has
15 been discussed before.

16 And just to give one statistic to really convey the degree of
17 inaccuracy that the estimates thus far have been, from comparing the
18 initial Defence written cross-examination estimates to what they have
19 actually done in the courtroom, by our calculations they are just
20 over 247 hours off collectively in ten months. That is 49 hearing
21 days off. And the Panel proposal that sets some objective
22 requirements that can lead to an estimate that, again, can be
23 extended upon good cause, we think would be worth doing at this
24 juncture.

25 MR. MISETIC: Mr. President, I'm sorry, I have to rise because I

1 thought the spirit was each of us to do what we thought we could do,
2 and now we've gotten into --

3 PRESIDING JUDGE SMITH: You're right.

4 MR. MISETIC: -- argument which you specifically requested we
5 not do, so I do ask for leave to respond to that.

6 PRESIDING JUDGE SMITH: Go ahead.

7 MR. MISETIC: Okay.

8 PRESIDING JUDGE SMITH: Shortly, though.

9 MR. MISETIC: First of all --

10 PRESIDING JUDGE SMITH: You have a time limit.

11 MR. MISETIC: Thank you.

12 First of all, this issue about however many hours Mr. Halling
13 mentioned. We know and you know full well that we haven't had empty
14 days because the Defence cross-examination estimates were off. It
15 may have happened on a rare occasion, but that's not the issue here.

16 Secondly, I don't want to relitigate what we said to you,
17 Mr. Emmerson said to you before the trial started, but we can give
18 you chapter and verse of trials before international criminal
19 tribunals comparable to this trial, or even bigger than this trial,
20 where the Prosecution and the Defence were able to put on their case
21 in less than two years with no restrictions on cross-examination.

22 The fact that we're engaging in this is because the Prosecution
23 refuses to give you specifics on: Are you cutting your witnesses?
24 They come to court. They say, "Boy, you know, we really know, we've
25 got to cut this done, we've got to streamline our case." Any

1 specifics? No specifics. So here we are. But, very specifically,
2 you can cut the Defence cross-examination time because that will make
3 things more efficient.

4 PRESIDING JUDGE SMITH: To be fair, they did say: We're going
5 to go 145 witnesses.

6 MR. MISETIC: Yeah, well --

7 PRESIDING JUDGE SMITH: That's a reduction. That's a huge
8 reduction.

9 MR. MISETIC: How is that a reduction?

10 PRESIDING JUDGE SMITH: Huh?

11 MR. MISETIC: How is that a reduction?

12 PRESIDING JUDGE SMITH: Well, we started out with 320, and we've
13 done 45 and now we're down to 145.

14 MR. MISETIC: Okay. But --

15 PRESIDING JUDGE SMITH: We've only done 45.

16 MR. MISETIC: Okay. So how are we going to finish 145 witnesses
17 by April?

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 MR. MISETIC: Well, their proposal so far -- their only concrete
20 proposal is cut the Defence cross-examination time.

21 PRESIDING JUDGE SMITH: No, no, and to expand the hearing days.

22 MR. MISETIC: Okay, well ...

23 PRESIDING JUDGE SMITH: You have to be fair, you know.

24 MR. MISETIC: I'm going to be fair. There's no way they're
25 going to finish 145 witnesses, *viva voce* -- or in court by April of

1 next year.

2 So my only point is there are plenty of examples - plenty of
3 examples - where a case comparable in size, right, Kosovo, a
4 two-year -- actually a -- what would it be? A 15-month conflict. I
5 don't want to relitigate everything we've said before, but let's not
6 lose sight of the fact that we're here because -- in a case I
7 participated in which was very similar, where everything was done in
8 two and a half years, right, they're asking for triple the amount of
9 time to put on their case, quadruple the amount of witnesses. That's
10 the real issue here.

11 So if we're going to drive this to some conclusion, it's not
12 simply: Let's look to the Defence and cut their time and continue
13 with a 300-witness case; right? Okay. They've cut some witnesses,
14 but they're just moving them through 153, 154, and 155.

15 PRESIDING JUDGE SMITH: I can see why *inter partes* discussions
16 become difficult. I mean, I ask at the very beginning to do just one
17 thing and both sides have violated that. We have to have some sort
18 of interparty connection with you. I don't expect you to sit and pat
19 each other on the back, but we need to get some issues dealt with,
20 and we aren't going to deal with them if we're constantly pointing
21 the fingers at the other side.

22 Everybody has had a hand in having delays. I guarantee you I've
23 heard repetitive questions out of the Defence, and I guarantee I've
24 heard repetitive questions out of the SPO. Many times. Many, many
25 times. We walk out of here and say, "Why do we have to listen to the

1 same question over and over and over again," each lawyer asking it
2 three or four times in order to get the answer that they want.
3 That's not how this works. You ask the question. You get the
4 answer. That's the answer you got. You can ask once in a while one
5 more time because of some misunderstanding, but we can't go through
6 this over and over again and get anywhere.

7 That's the idea of repetitive questions getting in the way of
8 resolving these cases.

9 I guarantee you that out of a four-and-a-half-hour proposed
10 cross-examination you can find a half-hour off and get rid of it
11 because -- just out of repetition alone. And that goes for
12 everybody. I'm not trying to pick on any one side. I've heard the
13 same thing from the Prosecution. Why are they asking that again?
14 They've already asked that question. Or why are they asking that
15 exact question that was answered in the 154 application? Very often
16 we're getting the questions that were in the 154 application asked
17 again. What's the point of the 154 if we're going to ask the same
18 questions in *viva voce* testimony rather than leaving it in the
19 documents?

20 So, well, I guarantee you we will have more Status Conferences
21 because that looks like something everyone -- one of the things
22 everyone can agree upon. I guarantee you that at times I'm going to
23 suggest that the Defence limit their cross-examination for certain
24 particular reasons, and I'll try to elucidate them in some way. And
25 I guarantee you that the SPO needs to govern themselves in asking

1 useless questions when they have a 154 witness. It can be done.

2 And 145 is not the final answer for you, I know. You've said
3 that. So by May 1st, I want to have a new estimate.

4 MR. HALLING: Your Honour, could we have that in the third week
5 of May? We're trying to do a significant assessment of our
6 streamlining, and we can give a more complete proposal if it's a
7 little deeper into the month.

8 PRESIDING JUDGE SMITH: May 21st.

9 MR. HALLING: Thank you.

10 PRESIDING JUDGE SMITH: Okay. And I expect a streamlining, not
11 just we've managed to cut out three witnesses. You know, that's not
12 going to work.

13 MR. HALLING: Yes. We know we need to do something meaningful.
14 It will also need to be done after that moment as well and just to
15 foreshadow.

16 PRESIDING JUDGE SMITH: Yes, I agree with you about that.

17 Anything else by anybody? Somebody -- any other complaints?
18 Something that you would like to bring up that you can -- you can't
19 complain about me. That's the only thing. I'm too old.

20 MS. O'REILLY: Fair, fair.

21 It's just a proposal. I'm not sure if it's going to work. But
22 each time we get a new batch of witnesses, we get 154 proposals and
23 separately documents for use in prior statements, and there's a lot
24 of duplication there. I can envisage a way that you could roll those
25 into one. Your Honours don't actually rule on our objections for the

1 documents for use, that's fine, you know, but we could have separate
2 columns for our objection to those documents being admitted for 154
3 and then for their use. But just to avoid us having to do two sets
4 of litigation every time there are new witnesses coming.

5 PRESIDING JUDGE SMITH: If you wish, you can put that in writing
6 and submit it to everybody --

7 MS. O'REILLY: Okay. Sure.

8 PRESIDING JUDGE SMITH: -- and they can answer it.

9 MS. O'REILLY: I'll maybe do it via e-mail with the SPO first to
10 see.

11 PRESIDING JUDGE SMITH: Okay. All right.

12 Anybody else? Any other issue you want to bring up that we can
13 listen to or possibly even solve?

14 MR. HALLING: You isolated complaints. We have no more,
15 Your Honour.

16 PRESIDING JUDGE SMITH: Mr. Misetic.

17 MR. MISETIC: Yes, I owe Judge Mettraux an answer, and I'm just
18 pulling it up here. Judge Mettraux, on your earlier question, it is
19 the 2004 case, and I misspoke, it is paragraphs 29 to 31. Thank you.

20 JUDGE METTRAUX: [Microphone not activated].

21 PRESIDING JUDGE SMITH: [Microphone not activated].

22 We'll have this transcript available to us soon. We'll go
23 through it, put together the proposals that were presented, and we
24 will get back to you as soon as possible with some idea of where we
25 go, other than what I just said about Status Conferences. Apparently

1 it's difficult to call them a Status Conference because of the way
2 the transcript -- the testimony goes out. We have to wait 45 minutes
3 to get to a Status Conference. Anyway, we'll call it what we can
4 call it. Meetings are fine with me.

5 So thank you very much, everybody.

6 --- Whereupon the hearing adjourned at 5.23 p.m.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25