

1 Tuesday, 25 June 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: Mr. Court Officer, you may call the
7 case.

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

12 PRESIDING JUDGE SMITH: I note that all the accused are present
13 in court today except for Mr. Krasniqi, who has been allowed to
14 attend via videolink. I also note that due to personal circumstances
15 Judge Barthe is also attending the hearing via videolink.

16 Now we will continue with hearing the evidence of Prosecution
17 Witness 4744. But first, I think, Mr. Roberts, you had a couple of
18 matters to take up.

19 MR. ROBERTS: Yes, Your Honour, very briefly, but I think we
20 just need to go into private session just to raise them very quickly.

21 PRESIDING JUDGE SMITH: All right.

22 Into private session, please, Mr. Court Officer.

23 [Private session]

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Witness: Kurtesh Fondaj (Resumed) (Private Session)
Cross-examination by Mr. Misetic (Continued)

Page 17089

1 [Private session text removed]

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5 [Open session]

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

7 Thank you.

8 [The witness takes the stand]

9 PRESIDING JUDGE SMITH: Good morning, Mr. Fondaj.

10 THE WITNESS: [Interpretation] Good morning.

11 PRESIDING JUDGE SMITH: We hope you had a restful evening.

12 We will be proceeding now --

13 THE WITNESS: [Interpretation] Thank you.

14 PRESIDING JUDGE SMITH: -- with the continuation of the
15 cross-examination of you. Mr. Misetic still has some questions for
16 you, so we will begin with him.

17 Go ahead, Mr. Misetic.

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

19 WITNESS: KURTESH FONDAJ [Resumed]

20 [The witness answered through interpreter]

21 Cross-examination by Mr. Misetic: [Continued]

22 Q. Witness, good morning again.

23 A. Good morning.

24 Q. Thank you. I just have one matter to ask your clarification on
25 this morning, and then I will be finished.

Witness: Kurtesh Fondaj (Resumed) (Open Session)
Cross-examination by Mr. Misetic (Continued)

Page 17090

1 I'd like to take you to your SPO interview.

2 MR. MISETIC: And if we could please put it on the screen in
3 both English and Albanian. It's P01327.6, page 12 in the English and
4 the same in Albanian.

5 Q. Now, Witness, I'd just give you the context of -- while this is
6 being put on the screen. You were asked some questions by the SPO
7 concerning certain allegations that Halil Qadraku had made concerning
8 you and FARK, and you brought a document to the SPO that you found, I
9 believe, that was prepared by Halil Qadraku.

10 MR. MISETIC: And if we can go to, in the English, line 18. And
11 I'll just -- and in the Albanian it is -- starts at line 23 and
12 continues on to the next page.

13 Q. But the question that you were asked was:

14 "There's an allegation in here that you were a FARKist or it
15 appears to suggest that you were a member of FARK; is that right? Or
16 that you somehow associated with or better for the FARKists. I was
17 hoping you could tell us about that."

18 And then at line 18 in the English and line 23 in the Albanian,
19 part of your response is:

20 "All we wanted is that the army could fall under the Ministry of
21 Defence and government without paying attention of the fact that who
22 was leading it. That's why they have given such an interpretation of
23 it."

24 So I'm wondering if you could, first of all, explain what you
25 meant when you said you wanted the army, by which I presume you meant

Witness: Kurtesh Fondaj (Resumed) (Open Session)
Cross-examination by Mr. Misetic (Continued)

Page 17091

1 the Kosovo Liberation Army, to fall under the Ministry of Defence and
2 government without paying attention to the fact of who was leading
3 it.

4 A. Yes, counsel. It's true that the KLA formation existed and also
5 initially the Ministry of Defence within the Bukoshi government.
6 However, the formations operating within the Ministry of Defence were
7 called FARK, the Kosovo armed forces -- the Armed Forces of the
8 Republic of Kosovo.

9 In the period of time October, November, there were initiatives
10 and several attempts for these two military formations to unify into
11 one single. In November, a military agreement was reached to unify
12 the army.

13 As far as I'm concerned, as a member of FARK -- I was never a
14 member of FARK. I was a member of the Kosovo Liberation Army.

15 I mentioned in my interviews that the KLA and FARK operated in
16 the territory of Kosovo as KLA units. They had the insignia and
17 reported to the General Staff at the Kosovo level and not to the
18 Ministry of Defence. I say this last part with caution, but the fact
19 that they reported to the General Staff of the KLA is true.

20 Therefore, the claim of Qadraku could be due to the fact that I
21 asked for the unification these two factors, and I contributed acting
22 as a connecting bridge so that in the end of November, soldiers --
23 former FARK soldiers would join in the region of Suhareke.

24 But, again, the FARK title existed in Albania but not in Kosovo.
25 Therefore, Halil must have certainly thought of this.

Witness: Kurtesh Fondaj (Resumed) (Open Session)
Cross-examination by Mr. Misetic (Continued)

Page 17092

1 Q. Before I get to my next question, your -- the sentence there
2 says:

3 "All we wanted is that the army could fall under the Ministry of
4 Defence and government ..."

5 Who were you referring to when you said "we"?

6 A. My wish, which was realised, was that there would be only one
7 army. It was not important to me -- or less important to me to know
8 who they would report to. The important thing to me was to have one
9 single army, which was realised. And I also asked for the life
10 within the army to be institutional. I made attempts in this
11 direction, and I believe we achieved this.

12 Q. You've referenced in your answer this morning that you were --
13 that an agreement had been reached in November to unify. And in the
14 context of this answer that you gave to the SPO, I just wanted to
15 know, after the agreement was reached in November, what was your
16 understanding of the relationship between the unified forces now and
17 the Ministry of Defence and Bukoshi government?

18 A. Having in mind the conversations I had with Bislim Zyrapi, the
19 chief of staff, he told me that in the -- that the forces under the
20 control of the Ministry of Defence would enter Kosovo, but they would
21 be organised following the orders of the General Staff and that they
22 would report to the General Staff, and this is what actually
23 happened.

24 Q. Yes. But my question is, in that new arrangement, what was that
25 arrangement of that -- of the forces under the command of the

Witness: Kurtesh Fondaj (Resumed) (Open Session)
Cross-examination by Mr. Misetic (Continued)

Page 17093

1 General Staff with the Bukoshi government and the Ministry of
2 Defence?

3 A. I don't know the details of the agreement. I haven't seen it.
4 However, with respect -- I remember two of the aspects I was told
5 about, which is that the agreement would enter into force at the
6 specific date, I have forgotten the date, and that we were expecting
7 the political agreement. If the political agreement was not to be
8 reached on the specific date, specified day, then the agreement would
9 come into force.

10 So the military agreement came into force before reaching a
11 political agreement, which was never reached. These are the details
12 I know with respect to this document. I also know that the command
13 and organisation authority was the General Staff of the Kosovo
14 Liberation Army, according to this agreement.

15 Q. Okay. Let me ask it one final way. Your answer here was:

16 "All we wanted is that the army could fall under the Ministry of
17 Defence and government without paying attention of the fact that who
18 was leading it."

19 As far as you know, did the KLA ever fall under the Ministry of
20 Defence or government?

21 A. Not within the Bukoshi government. Quite the opposite. The
22 Defence forces within the Ministry of Defence and the Bukoshi
23 government merged into the KLA.

24 Q. Thank you very much for answering my questions, Witness. Thank
25 you.

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17094

Cross-examination by Mr. Emmerson

1 MR. MISETIC: That concludes my cross-examination,
2 Mr. President.

3 PRESIDING JUDGE SMITH: Thank you, Mr. Misetiç.
4 Mr. Emmerson.

5 Cross-examination by Mr. Emmerson:

6 Q. Thank you, Witness. I have just a few questions for you on
7 behalf of Mr. Veseli.

8 MR. EMMERSON: Could we start by calling up P500, please. This
9 is a document we've seen several times.

10 Q. Now, I'm sure you recognise the document from its appearance, it
11 being the 14 March letter signed by Sadik Halitjaha and Halil Qadraku
12 or in the names of the two.

13 I wanted to ask you, first of all, you gave evidence yesterday
14 that there were two problems in particular with Qadraku that you
15 identified despite them being merged into questions referring to the
16 word "reporting" as equating the two. And I just want to be
17 absolutely clear what your testimony on this is.

18 One of the problems, as I understood your evidence, is that
19 Qadraku was reaching out directly to local ZKZ within the brigades
20 without first seeking the permission of Commander Drini; is that
21 correct?

22 A. Partially, yes. This would be rather without coordination with
23 the brigade commanders where the ZKZ structures were part of. And
24 also at least one of the commanders of the brigades had filed a
25 complaint to Ekrem Rexha, as zone commander, saying that Halil

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17095

Cross-examination by Mr. Emmerson

1 Qadraku is talking directly to the persons, namely, the deputy
2 commander for the intelligence and counter-intelligence, without
3 informing, notifying the brigade commander. He's asking information
4 from them in an uncontrolled manner without any prior permission or
5 instruction from Commander Rexha. So more or less this was it.

6 Q. And if I've correctly understood your evidence, that wasn't an
7 isolated incident. It was a pattern of behaviour of his of speaking
8 to ZKZ representatives within the different brigades without first
9 obtaining the permission of the brigade commander, and I think you
10 said also without obtaining authority of Ekrem Rexha.

11 A. We come to this conclusion. However, to my knowledge, this
12 matter was dealt with at a zone level meeting, where Commander Rexha
13 made a remark to him saying that this behaviour should not happen,
14 that he should have a permission from the zone commander or an
15 official document based on which he would then go to the brigade
16 commander who would, in turn, give permission to communicate with the
17 ZKZ sectors. This was the request of Ekrem Rexha. And Halil
18 Qadraku, in this document, mentions this fact, considering it as an
19 obstacle to him performing his job and not as a rules or military
20 rules to be followed.

21 Q. Yes, we'll come to that in a moment because we can see that's
22 one of the complaints that he raises in this document. But as far as
23 those events are concerned, that is to say, him connecting without
24 prior consent with the ZKZ representatives within the brigades, can I
25 just understand, from your own experience with the 123 Brigade, when

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17096

Cross-examination by Mr. Emmerson

1 you gave evidence yesterday you said that you engaged Musli Kololli
2 within the command of the 123 Brigade with responsibility for local
3 intelligence; is that correct?

4 A. Correct.

5 Q. So he was your appointment? Your choice?

6 A. Yes.

7 Q. Was that the general pattern, then, that the brigade commanders
8 would decide who locally would be, on their own command, responsible
9 for intelligence, as you did?

10 A. Not only for the counter-intelligence but all resources. The
11 brigade commander is the authority who selects his team. He would
12 only ask for a confirmation from higher structures for this selected
13 team. When I mentioned yesterday my case, I had full authority to
14 select people without any further confirmation needed because the
15 circumstances were such that we would -- didn't need these admin --
16 following administrative steps in war circumstances.

17 Q. So these were not people that had been chosen by the
18 General Staff in the different brigades. They hadn't been selected
19 by the General Staff; is that correct?

20 A. At least during my time as a brigade commander, I formed the
21 team. I don't know how this worked in other brigades, but in
22 principle it should have been the same. I'm referring here to the
23 period of time end of December -- December 1998 and January 1999.

24 I assisted both Brigade 122 and 124. The appointments of the
25 staff command there was done upon consent of the brigade commander

1 without any higher structure interference or commanding structure at
2 a higher level.

3 Q. And since that was the pattern, who would give orders -- for
4 example, in your brigade, who would your ZKZ representative take
5 orders from?

6 A. From the brigade commander.

7 Q. Thank you. And that remained the position at least up until
8 January, you would say; correct?

9 A. This is how I proceeded, and I am convinced that this is how it
10 continued further.

11 Q. Thank you. And just to avoid any doubts on the transcript, that
12 is your comment on the general pattern within your zone; correct?

13 A. Correct. And in the period of time I was a brigade commander,
14 this was the pattern, how we acted. In the other period of time, I
15 would refer to practices because I do not have information how this
16 unfolded, were there any obstacles. I don't know.

17 If I may add something to supplement this. We're dealing here
18 with -- we're referring here to a document of -- with a document
19 covering a period of time where -- during which Mr. Veseli was not in
20 the territory of Kosovo, 14 March 1999. This is my opinion.

21 Q. I hadn't sought to ask you about Mr. Veseli's whereabouts, but
22 perhaps you'd like to tell us what you know about that.

23 A. I only know that he was not in the territory of Kosovo. That's
24 it.

25 Q. Do you --

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17098

Cross-examination by Mr. Emmerson

1 A. I don't know where and how it happened.

2 Q. Would you accept from me as a proposition or can you shed light
3 on the proposition that Mr. Veseli left Kosovo in the autumn time
4 very shortly after being appointed as head of intelligence for the
5 General Staff and was not in the country again until mid-March. As
6 far as you know.

7 A. I don't know when he left, but I met with him sometime in April
8 1999. I am not aware of that he returned until that time. My first
9 contact with him was in April.

10 Q. Thank you.

11 A. End of the month.

12 Q. Thank you. So let's go back to the problems with Qadraku
13 because we've all seen the letter. As you said, I think, yesterday,
14 it's a series of complaints about Commander Drini, some about
15 yourself. You characterised it as complaints about your manner of
16 operating.

17 First of all, am I right in understanding your evidence from
18 yesterday that this is the only time you have ever seen a document in
19 which Qadraku wrote directly to the General Staff?

20 A. Correct. I saw this document after the war. I did not see
21 during the war. And, yes, this is the only document.

22 Q. And you have, I think you told us yesterday, no evidence or
23 information that he was reporting to the General Staff other than
24 this document, i.e., orally or in any other way. Is that correctly
25 understood?

1 A. I have no information. I do not know about his activity or
2 work.

3 Q. I mean, clearly as you pointed out yesterday, the only reason
4 you knew about what was happening at the brigade level was because
5 you were -- Ekrem Rexha and yourself were informed about it by the
6 brigade commanders; correct?

7 A. Ekrem Rexha was told by the brigade commander and raised the
8 issue at a meeting at the zone level.

9 Q. And, obviously, if there were conversations going on between
10 Mr. Qadraku and anybody on the General Staff that were not written
11 but oral, two things we can establish, am I right: First of all, it
12 can't have been Mr. Veseli because he wasn't in the country; and,
13 secondly, you wouldn't know about it even if it had happened.

14 MR. HALLING: Objection, compound question.

15 MR. EMMERSON: I'll ask the two questions.

16 PRESIDING JUDGE SMITH: Split it up, please.

17 MR. EMMERSON: I will.

18 Q. The hypothesis, the theory that you were being asked about by
19 Mr. Halling concerned the notion that there was a pattern of
20 Mr. Qadraku reporting to the General Staff outside the reporting
21 structures upwards. That was the proposition that Mr. Halling was
22 putting to you.

23 And I think you would agree, wouldn't you, and I think you said
24 so as much yesterday, that anything's possible, but you wouldn't know
25 about that one way or the other because if it was bypassing the

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17100

Cross-examination by Mr. Emmerson

1 leadership, how on earth would you know about it; is that correct?

2 A. Sir, I was not aware of Qadraku's work or manner of working but
3 simply the information which I base on that document that we have.
4 Nothing else. And I did not doubt as to whether he was not really
5 working or not working appropriately. But if he has done anything
6 like that, it was done because of lack of knowledge or out of
7 ignorance. So, really, it's about ignorance and any other elements
8 like that. Otherwise, I do not believe that there was any other
9 reason why he would have done that.

10 Q. But leaving that aside, the second thing we can be sure of, on
11 your evidence, is that even if that was happening, it wouldn't have
12 been conversations with Mr. Veseli because he was out of the country
13 at the time that you're talking about, wasn't he?

14 MR. HALLING: Objection as to lack of foundation for that
15 question.

16 PRESIDING JUDGE SMITH: Overruled. It's a valid question.
17 Go ahead.

18 MR. EMMERSON:

19 Q. It couldn't -- if Qadraku was speaking privately to members
20 of -- or someone on the General Staff during the period prior to the
21 writing of this letter, he couldn't have been speaking to Mr. Veseli
22 because, as you've told us, he was out of the country during that
23 time. Do you agree?

24 A. In principle, I do agree, indeed, because Veseli was not in
25 Kosovo at the time.

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17101

Cross-examination by Mr. Emmerson

1 Q. And then the last thing I wanted to ask you about this because
2 it's not -- I mean, you've read the document. It's not flattering.
3 We're not here to decide any -- the Court isn't here to decide any of
4 the issues raised in the document. But let me ask you this: This is
5 not an intelligence document, is it? It's not a document about any
6 relevant intelligence operatives or information. It's a document
7 describing a complaint about the workings of the brigade and the
8 effect that that was having on Qadraku and Halitjaha's ability to do
9 their job as they saw it. Do you agree with me on that proposition?

10 A. Well, yes, and it is written there. That is, it's a sort of a
11 statement. It is not a report.

12 Q. And then this: We talked about why a document might have been
13 sent to the General Staff directly, but this is a complaint about the
14 zone commander particularly and others such as yourself who work
15 closely with him. Would you accept from me that it would be
16 surprising if members of -- subordinate members of staff were going
17 to make a complaint, that they would make it to the commander about
18 whom they were complaining?

19 Do you want me to put the question a different way or?

20 A. Perhaps I understood it correctly. So if you wouldn't -- but
21 maybe not, so if you wouldn't mind asking it again, please.

22 Q. What I'm saying is this has been presented as intelligence
23 reporting direct to the General Staff. In reality, I suggest, it's a
24 complaint about Commander Drini and those immediately around him. It
25 may be an unjustified complaint, but it is a complaint about the

1 operative -- about the leadership of the operative zone; specifically
2 Ekrem Rexha.

3 My question, therefore, to you is this: Would you agree that
4 it's quite probable that somebody in the ranks who was making a
5 complaint about Ekrem Rexha would seek to have that complaint
6 received by somebody than the person about whom the complaint is
7 being made? In other words, if I am complaining about my superior
8 and the only person I complain to at that stage is my superior,
9 that's not going to come to anybody else's attention. Do you
10 understand the point?

11 Let me put it yet one more time. There's an alternative
12 explanation for why Halil Qadraku and Sadik Halitjaha would have
13 addressed this to the General Staff which is that they were
14 complaining about the zone commander. And they may well have taken
15 the view, as perhaps others would, do you agree, there's no point in
16 complaining to the person you're complaining about?

17 A. Yes, sir, I understood your question. But in these cases, the
18 complaint should have still gone to the chief of staff, if this is a
19 complaint indeed. But this is not directed to the chief of staff,
20 but at the end of the list several people are mentioned who are part
21 of the team of the Pashtrik operative zone, so in a sly way so that
22 the document today can have more weight precisely because of the
23 names. So a big question mark as to whether they were aware of the
24 drafting of this document at all.

25 Q. Yes. So if we look at it another way, it was in breach of the

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17103

Cross-examination by Mr. Emmerson

1 protocol that at least it should have gone to the chief of staff,
2 but, as you've told us, one of the characteristics of Halitjaha and
3 Qadraku was that they didn't seem to know the process as well as they
4 should have done; is that correct?

5 A. These are my suspicions, that they did not actually know how to
6 do the work, so they gave themselves the right to interpret that in
7 the best possible manner or the most appropriate manner according to
8 them. So this is my conviction.

9 Q. Yes, thank you.

10 MR. EMMERSON: Those are my questions.

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

12 Mr. Roberts.

13 MR. ROBERTS: Thank you, Your Honour. Just as a question, are
14 we taking a break on 10.00 on are we powering on through to 11.00
15 like we did yesterday afternoon?

16 PRESIDING JUDGE SMITH: [Microphone not activated].

17 MR. ROBERTS: Keep on? Thank you, Your Honour.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 If somebody needs a break, let me know.

20 MR. ROBERTS: Thank you very much.

21 Cross-examination by Mr. Roberts:

22 Q. Good morning, Mr. Fondaj. My name is Geoff Roberts. I am
23 counsel for Mr. Selimi, and I have about an hour to an hour and a
24 half of questions, I think, this morning. Obviously, please keep
25 your answers brief and concise and respond to the questions I ask.

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17104

Cross-examination by Mr. Roberts

1 But if anything isn't clear, please don't hesitate to ask me. Is
2 that all clear?

3 A. Good morning, first of all. Yes, it is clear.

4 Q. Now, just very quickly on your background. You have experience,
5 I think as you told my colleague Mr. Misetic yesterday, in the JNA
6 from 1985 to 1987; is that right?

7 A. It is. 1987 was when I left the JNA.

8 Q. And when you joined the KLA in over June, July, and August, one
9 of your major roles was training the different units around, wasn't
10 it?

11 A. Yes. I mostly worked in training to tell them -- to train them
12 on the operational aspects.

13 Q. And there was quite a lack of training, professionalism in KLA
14 soldiers at that time, wasn't there, from your experience?

15 A. Yes, there was. And yesterday here I also mentioned the fact
16 that, from 1990 onwards, our chaps from Kosovo wouldn't serve in the
17 military of the former Yugoslavia. So a considerable number of KLA
18 soldiers had no military service, and they had even the most basic
19 problems when it came to carrying a weapon, for instance, let alone
20 any other elements of how to undertake any sort of activities like
21 marching, attacks, defence, and so on and so forth.

22 Q. How many soldiers did you train over this period, July and
23 August and September?

24 A. I was actually training at that stage. But, first of all, I was
25 mostly dealing with the organisation of the training rather than the

1 actual training. However, for about three to four weeks I also
2 worked in this regard, and then I also took upon myself to train, for
3 instance, a platoon when it came to grenades. So I worked with them
4 for about three to four weeks. And this is about June to July and
5 also August. These were primarily my activities.

6 In August, I was appointed chief of staff in the 123rd Brigade.

7 Q. Yeah, we'll --

8 PRESIDING JUDGE SMITH: Mr. Roberts, just a moment.

9 We're going to -- after all, we're going to have to take a break
10 at 10.00, so --

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

12 PRESIDING JUDGE SMITH: All right.

13 MR. ROBERTS:

14 Q. Yes, we'll get to your appointments a bit later. So extensive
15 involvement in training. And I think, as you told the SPO, that the
16 need for continual military training was of the utmost importance
17 throughout the war, wasn't it?

18 A. Yes, absolutely true. Yes, I did say that, and it was true,
19 indeed. And I affirm it today.

20 Q. So I just want to move now to your interactions or the first
21 interactions with members of the General Staff.

22 Now, you initially told the SPO in your interview there was a
23 group known with the name of the General Staff early on, so you said
24 in April and May 1998, and that Blerim Kuqi, who was leader of a
25 military unit at that time, was in contact with all of them. But you

1 then clarified that Mr. Zyrapi didn't arrive in Kosovo until the
2 month of May and that is you can't be exact with dates. So that's
3 right, isn't it? As you admitted in your interview, you're not
4 always exact with dates.

5 A. Yes, it is right.

6 Q. And you also told the SPO in your preparation session that you
7 were not aware of any contacts Mr. Kuqi had with Mr. Zyrapi before
8 the meetings on 10 June.

9 MR. ROBERTS: So that's P1328, paragraph 3.

10 Q. That's correct, no?

11 A. Yes, it is correct. And I say this because I became a member of
12 the KLA exactly on 10 June. Whereas my becoming a member is directly
13 related to Blerim Kuqi, who, on the very same day, accompanied me to
14 Negroc, the village, and he notified the -- those in a leadership in
15 the General Staff about what military activities had been undertaken
16 at the time.

17 Q. Yes. So you accept you don't have any direct knowledge of what
18 happened before 10 June in terms of the role of the General Staff; is
19 that fair?

20 A. Well, no. We simply had general information and unconfirmed
21 pieces of information and mostly guessing on our side, even
22 prejudice, if you like, which are also accompanying us to this day,
23 perhaps.

24 Q. And even when you met members of the General Staff on 10 June,
25 that was just some members of it, wasn't it? I think it was

1 Mr. Bashota, Mr. Krasniqi, and Mr. Zyrapi; is that right?

2 A. That day when I travelled the idea was to meet Sokol Bashota.
3 So my name had come up, and the idea was that I would meet
4 Sokol Bashota to find room for me within the KLA. So that was the
5 purpose of my going. I didn't go there to talk to any others. But
6 the contact took place in Jakup Krasniqi's home where Mr. Krasniqi
7 was present. Whereas later, because of the movements on the ground,
8 Bislim Zyrapi arrived. And that day I continued my discussions with
9 Bislim Zyrapi as well as Agim Celaj, another leader. And then I
10 arrived at another home in Negroc, not -- I did not stay in
11 Jakup Krasniqi's home but in somebody else's home.

12 Q. Thank you, yes. If you could just try and keep your answers as
13 concise as possible to the questions, that would help us to move
14 through your evidence as quickly as possible. But thank you for your
15 extensive answer.

16 Now, when you met Mr. Bashota, I think you told the SPO that you
17 thought he had the nickname Ten; was that right?

18 A. Yes, I can say that. I can't say I haven't said that. That's
19 how we knew of him. And when I contacted him, I -- what I knew was
20 that I was in touch with Number Ten, and it was later on that I
21 realised that it was -- later on I realised that it was a person by
22 the name of Sokol Bashota.

23 Q. Right. And he was using that code or he was referred to as that
24 code when you interacted with him?

25 MR. HALLING: Again, paragraph 6 of Preparation Note 1 is

1 relevant context to this question. We'd ask that that be put as
2 well.

3 MR. ROBERTS: He can answer a question, Your Honour.

4 PRESIDING JUDGE SMITH: [Microphone not activated].

5 MR. ROBERTS: Thank you.

6 PRESIDING JUDGE SMITH: [Microphone not activated].

7 MR. ROBERTS:

8 Q. I can repeat it if you like, Witness. Just for clarity.

9 A. Actually, because of the interventions, would you be kind enough
10 to repeat the question, please?

11 Q. Of course, yes. So when -- my question was -- I'll be clear.

12 When Sokol Bashota -- sorry, Sokol Bashota was using that code or he
13 was referred to as that code when you interacted with him; is that
14 right?

15 A. Yes, it is.

16 Q. Now, later on, on, I believe, the 21st or around the 21st
17 September 1998, you met Mr. Selimi in Abri where he was together with
18 Mr. Thaci. Do you recall giving that evidence both in your SPO
19 interview and also confirmed in your preparation session?

20 A. Yes, I do.

21 Q. And you explained during this meeting that they gave you several
22 duties to consolidate the 123 Brigade. But when -- this is what you
23 told the SPO, that they gave you several duties. And I just want to
24 be clear what "duties" means.

25 Now, is it fair to suggest that it was advice or assistance they

1 were giving you in terms of the ongoing Serb offensive at that time
2 as to what you might need to do?

3 A. I went to Abri for advice with these two individuals because I
4 knew they were there. And that was because, to start off with, the
5 situation was quite complicated in the area I was operating in. So I
6 went there for consultation purposes, and I spoke to them about the
7 ways as to how we can do the best in that situation.

8 So mostly it was advice rather than being told about duties to
9 do. So the interpretation as to whether they gave me duties or not,
10 at that time they didn't give me any duties, but we communicated with
11 each other about the problems that we were encountering back then,
12 and mostly they gave advice. Also, sometimes they would make
13 remarks, but mostly it was about advice as to how to act given the
14 situations.

15 Q. Yes. So it wasn't an order or an obligation if it was advice.
16 That's fair, isn't it? Sorry, if you could just speak for the
17 record. I see you shaking your head.

18 A. Yes.

19 Q. So it's yes. Sorry, just to be clear, you're saying it wasn't
20 an order or an obligation?

21 A. I was waiting for the interpretation to be completed and that is
22 why perhaps it looked as if I wasn't answering. But it is a yes from
23 me.

24 Q. I think you're better about waiting for the interpreters to
25 complete than I am.

1 And you, just to be clear, as it was advice or assistance, if
2 you'd taken a different route or done something different in your
3 role, there wouldn't have been any consequences for you, would there,
4 if you'd not followed that advice?

5 A. Well, indeed, it was an extraordinarily difficult situation, so
6 the way we would act were mostly how commanders thought it was best
7 to do. But I was an admirer of us respecting that military line no
8 matter how small it was, and it was mostly out of respect and in full
9 coordination with -- that is my work, with the commanding chain or
10 lines.

11 Q. Yes, but it's respect on a personal level rather than an
12 obligation; is that right?

13 A. Yes.

14 Q. Now, when you met -- sorry, when this meeting happened on
15 21 September, you were very clear with the SPO that this was the only
16 time you met Mr. Selimi during the war. So this is your SPO
17 interview Part 8, page 20 in the English and 24 to 26 in the
18 Albanian.

19 I will just quote the last bit of it just so you're very clear
20 with this. So talking about this meeting on 21 September:

21 "Q. Well, you said Rexhep Selimi was there as well; correct?"

22 "A. Yes, in September, but I haven't seen him anymore. And if
23 I'm not wrong, I think that Rexhep Selimi, he stayed for the whole
24 period in Kosovo. But I have met him once [in] September."

25 So I just want to be very clear, that's right, isn't it, that's

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17111

Cross-examination by Mr. Roberts

1 the only time you met him throughout the entire war?

2 A. I met Mr. Selimi, I think it was on the 10th or 11th September
3 in Doberdolan village. He was there with Hashim Thaci, and they
4 continued on their way to Abri, and that's why I knew that they would
5 be in Abri. Whereas the Abri meeting with Rexhep Selimi was the last
6 time I was in touch with him. So I've only met him twice during the
7 entire war of the KLA in Kosovo.

8 Q. Okay. So at no point after 21 September 1998 did you see him
9 until September 1999; that's right?

10 A. Yes, it is. Neither again during the war nor after the war
11 until yesterday here.

12 Q. Thank you.

13 MR. ROBERTS: Actually, Your Honours, it's not a bad time now,
14 if we could have the break.

15 Q. Thanks, Mr. Witness.

16 PRESIDING JUDGE SMITH: We'll take a ten-minute break at this
17 time. It will actually be a few minutes more than ten minutes.
18 We'll reconvene at ten minutes after the hour.

19 [The witness stands down]

20 PRESIDING JUDGE SMITH: All right. We're adjourned until 10.10.

21 --- Break taken at 9.57 a.m.

22 --- On resuming at 10.10 a.m.

23 PRESIDING JUDGE SMITH: Madam Usher, you may bring the witness
24 in.

25 MR. ROBERTS: Your Honour, just as an indication, it's likely I

1 think I'll go into the next session, and possibly significantly into
2 it, depending on the speed of his answers.

3 PRESIDING JUDGE SMITH: All right. Thank you.

4 [The witness takes the stand]

5 PRESIDING JUDGE SMITH: All right. Mr. Fondaj, we will continue
6 now.

7 Go ahead, Mr. Roberts.

8 MR. ROBERTS: Thank you, Your Honour.

9 Q. Welcome back, Mr. Fondaj. We were talking just before the break
10 about the meeting in Abri, and in your SPO interview you described,
11 at the time, Mr. Selimi as one of the primary representatives of the
12 General Staff in Kosovo. Do you recall telling the SPO that?

13 A. Yes, I do.

14 Q. By this point, Bislím Zyrapi was the chief of the operational
15 staff, wasn't he, according to your evidence?

16 A. Yes, correct.

17 Q. And he was in Kosovo obviously at that time as well?

18 A. No. Three or four days before that he had travelled to Albania.
19 And I was in a situation which was, like, almost out of control.
20 Therefore, I felt it necessary to go there for a meeting.

21 At the moment when I discussed and sought advice with
22 Rexhep Selimi and Hashim Thaci, Bislím Zyrapi was in Albania.

23 Q. Okay. But he had been up to there, up until that point, up
24 until shortly before the meeting, three or four days before.

25 And in your understanding, he was superior to Mr. Selimi at that

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17113

Cross-examination by Mr. Roberts

1 point as well -- sorry, Mr. Zyrapi was superior to Mr. Selimi at that
2 point as the chief of the operational staff; is that correct?

3 A. As we understood things, this was a high-level team that
4 composed the highest part -- structure of our army, which we referred
5 to as the Central Staff or later on as the General Staff. Now, with
6 respect to specifics, and in particular referring to the person in
7 question, Rexhep Selimi, I did not know at the time, nor do I know it
8 today, what his duties and tasks were.

9 Q. Okay. So you don't know his relationship with Zyrapi in terms
10 of superiority between the two?

11 A. That's right.

12 Q. But is it fair to suggest that the understanding or your
13 perception of him being one of the primary representatives was
14 because he was still in Kosovo; is that correct?

15 A. The fact that he was in Kosovo does not mean necessarily that.
16 But, in fact, he was one of the most courageous, intrepid fighters
17 who -- because it was quite difficult to remain -- to decide to
18 remain in Kosovo under the circumstances in the territory of Kosovo,
19 in particular in September.

20 Q. And just so I understand, you met with Mr. Selimi in part
21 because Mr. Zyrapi had left; is that right? You would have met with
22 Mr. Zyrapi otherwise, but as he had left for Albania, that's one of
23 the reasons why you met with Mr. Selimi; is that correct?

24 A. Precisely. Not only with Mr. Selimi but I knew he was together
25 with Mr. Thaci.

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17114

Cross-examination by Mr. Roberts

1 Q. Yes. I just want to move forward now to your situation as chief
2 of staff of the Pashtrik zone. So that was between December 1998 and
3 you continued in that position until some point in March 1999; is
4 that right?

5 A. Beginning of March 1999.

6 Q. And where were you based at that time as chief of staff?

7 A. We were based in the village of Kasterc, which is adjacent to
8 the village of Nishor. So when we say Nishor, Kasterc, these are two
9 villages that are almost overlapping with respect to the habitat and
10 houses.

11 Q. And as you obviously told us earlier, you didn't meet Mr. Selimi
12 at all again until at least the end of the war?

13 A. I don't recall having met Rexhep Selimi anymore during the war.

14 Q. And so throughout this entire three-month period as chief of
15 staff, you never met him. That's obviously a logical consequence of
16 your evidence, isn't it?

17 A. Correct.

18 Q. Now, Nexhmedin Kastrati, who you said earlier, I think, or in
19 evidence yesterday, took over from you as chief of staff of the
20 Pashtrik zone; is that right?

21 A. That's right. I am aware that Nexhmedin Kastrati replaced me.

22 Q. Now, he has said on a previous occasion that Mr. Selimi visited
23 every week, on a weekly basis, so presumably he met him on a very
24 regular basis as well. That would be utterly inconsistent, wouldn't
25 it, with your recollection of your time as chief of staff for those

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17115

Cross-examination by Mr. Roberts

1 three months from December 1998 until March 1999?

2 A. I respected Rexhep Selimi and I wanted to meet him, at least
3 privately. Had I known that he was in the area or in the proximity,
4 I would have insisted to at least greet him. But I am not aware that
5 he ever came in Nishor during the time I served as chief of staff;
6 namely, in Kasterc.

7 Q. Yes, that's interesting, where you say that "had I known he was
8 in the area," you would have insisted to at least greet him. This is
9 because you were, obviously, chief of staff, so you would have
10 expected to have been told and informed, I presume, if Mr. Selimi, a
11 member of the General Staff, was visiting your zone and your area in
12 Nishor. And that never happened during the entire time you were
13 chief of staff, as you have told us. That's right, isn't it?

14 A. I did not have any information indicating that Rexhep Selimi
15 came to Nishor during the time I served as chief of staff.

16 Q. Thank you. If we can move on to another topic now, and that's
17 Rahovec in July 1998. I know you were asked questions about that
18 during the SPO interview.

19 And you confirmed in your interview that there were military
20 operations in Opterushe, Reti, and Zocishte. I can't even pronounce
21 it. Zocishte. That's appalling, my apologies. You didn't
22 participate in this action, though, did you, as you told the SPO that
23 your grenade launcher unit wasn't operational until 19 August?

24 A. With a group of grenade launchers, in the operation taking back
25 Zocishte and Reti, my task was to secure the right-hand side, the

1 road Rahovec above Zocishte, so to prevent any further attacks from
2 Serbian forces. So I positioned myself with a group in that point.
3 But it is true that the group of grenade launchers was used for the
4 first time on 19 July. It was used in August -- I apologise, it was
5 not used in July but in August.

6 Q. Yes, 19 August. That's your evidence; yeah?

7 A. Yes. Because we are discussing 19 July which -- in which time
8 the grenade launchers were not used.

9 Q. Yes. You were shown a document which is a military -- well,
10 supposedly a report by Agim Kuqi.

11 MR. ROBERTS: If we could just have that up on the screen. So
12 that's U001-7877 in the English and Albanian.

13 Q. Just so you can see what I'm talking about. And this is what
14 you were shown during your SPO interview.

15 MR. HALLING: And, Your Honours, for the record, that's P1329.

16 MR. ROBERTS: Thank you, counsel.

17 Q. Just to be very clear on what you've said to the SPO, you
18 already told them you hadn't seen this before. That's right, isn't
19 it?

20 A. That's right. I saw this document for the first time during my
21 SPO interview in 2019.

22 Q. And you told them there were errors in the substance of the
23 interview in terms of your role?

24 A. I clarified that according to the description given by Agim
25 Kuqi, my duty within the group is not accurately described.

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17117

Cross-examination by Mr. Roberts

1 Q. And even this document refers to the -- basically what was
2 supposedly happening on 21 July, wasn't it? So several days after
3 the fighting had started in Rahovec on 17 July.

4 A. With respect to this document, I believe this should be 19 July,
5 not 20 or 21. So this report, if I'm not mistaken, is -- describes
6 the same issue I discussed earlier.

7 Q. I thought you discussed earlier 19 August, or am I mistaken?

8 A. No, it's 19 July.

9 Q. Okay. But either way, this isn't -- this is a couple of days,
10 two, three days after any fighting started in Rahovec, and you don't
11 know how that fighting did start, do you?

12 A. Correct, I don't know. And this is why I'm saying two or three
13 days, because the fighting in Rahovec started on 17 July. And if I'm
14 not wrong, based on my recollection, the date should be 19 July, when
15 we took on us the obligation, under the command of Blerim Kuqi, to
16 take Zocishte, Rahovec under the control of Brigade 123 with the
17 purpose of forcing Serbian forces to stretch their military
18 capabilities in the area because at that time Rahovec was under
19 intense shelling.

20 Q. Yes, I think it was to allow for civilians to perhaps escape as
21 well, no? Is that right?

22 A. Including that, but mostly -- as a matter of fact, Rahovec
23 started resembling Vukovar in the period of time we're discussing,
24 17th, 18th, and several days, consecutive days.

25 Q. And by that you mean --

1 A. July 1998.

2 Q. Sorry to interrupt, but by -- when you say resembling Vukovar,
3 you mean that it had been destroyed utterly similar to Vukovar in
4 Croatia in, I believe, 1991 when shelled by Serb forces. That's what
5 you're suggesting.

6 A. Precisely. The entire area of the town of Rahovec, this was
7 under intense constant shelling similarly to Vukovar that was shelled
8 by the Serbian forces.

9 Q. Right. And the reason I asked about you not knowing the reason
10 or how the fighting started in Rahovec is, just to be clear, because
11 in your interview you do refer to an attack on Rahovec.

12 MR. ROBERTS: And for the record, that's Part 3, page 14.

13 Q. And when you say "attack on Rahovec," I want to be clear that
14 you're not suggesting, because you don't know how it started, you're
15 not suggesting that it was a KLA attack on Rahovec; is that correct?

16 A. I am not informed about the initial or first military actions,
17 how this all started. I do know, however, that we dealt with
18 consequences which were very severe. We were in the initial stages
19 of forming the brigades, and we had to immediately deal with very
20 serious military operations without having had time to consolidate
21 the brigades.

22 So regardless of the fact whether it was the Kosovo Liberation
23 Army who entered Rahovec or whether this was staged by the Yugoslav
24 forces, what I know is that we suffered dire and severe consequences
25 as a result of the fighting in Rahovec.

1 Q. Yes, I don't doubt that at all. And, actually, as you have
2 explained earlier, with the shelling that was going on in relation to
3 Rahovec, am I right in understanding there were a substantial number
4 of Yugoslav military forces in the area at that time?

5 A. Correct.

6 Q. And they were in that area before 17 July as well; am I right?

7 A. Correct. They were there before. However, the fighting became
8 more intense and -- after the first battles in Rahovec. So starting
9 from the 17th and onward. 17th, 18th.

10 Q. Yes. The point I'm trying to make in relation to this is,
11 obviously, with all of those Yugoslav military units around, it
12 wouldn't have been very sensible to have launched an attack on
13 Rahovec, would it, especially with limited numbers of soldiers?

14 A. Given that we were at the initial stages of our formations and
15 preparations, unprepared, poorly armed, it is obvious that the
16 fighting in Rahovec -- we paid a big price of the fighting in
17 Rahovec. In the operation was launched by the KLA, then this was the
18 biggest mistake the KLA committed in that period of time. If this
19 wasn't the case and it was in fact staged by the Yugoslav authorities
20 in power, they organised this very well because this was then
21 followed by other attacks, assaults, and offensives that cost us
22 dearly.

23 Q. But given, obviously, Bislum Zyrapi's military knowledge and the
24 situation of lack of training of troops, it certainly wouldn't have
25 been something that you would have thought he would have ordered, for

1 example, or even considered ordering or suggesting at that point, is
2 it?

3 A. I have never discussed this matter with Bislim Zyrapi. What I
4 mentioned earlier is my opinion, which I later on saw other military
5 experts supporting it.

6 Q. Understood. And if we can just go back to that document. And
7 at the top of it, it refers to:

8 "On 20 July 1998 at 23:00 hours, the commander of the KLA local
9 staff, Blerim Kuci, by order of the KLA general staff, gave an order
10 for the villages of Zaqisht and Hoqe, inhabited by Serbs, to be
11 attacked."

12 Do you see that at the top of the document on the screen in
13 front of you?

14 A. Yes.

15 Q. Now, you were asked repeatedly by the SPO in your interview
16 about whether Blerim Kuqi's order was issued on the basis of an order
17 by the General Staff, to which you replied that you cannot confirm
18 because in theory "it might be correct, but I don't know."

19 Do you recall telling the SPO that?

20 A. Yes, I said that and I stand by the same affirmation, because my
21 duty at the time within the brigade was commander of the grenade
22 launchers platoon. I did not have information regarding this order.

23 Q. Yes. So when you say in theory it might be correct, is that
24 merely from -- on the basis of reading what's written in that
25 document? It's not based on any specific knowledge you have?

1 A. I base this on my military experience only, which is that
2 military orders can only come from -- in a hierarchical structure,
3 not because I have any specific indication or any knowledge that the
4 order came, indeed, from the higher-ups or the higher structures
5 level.

6 Q. Right. And just to be clear, this document doesn't specify the
7 date, reference, content, or nature of this supposed order from the
8 General Staff, does it? It's a very generic reference in that
9 report.

10 A. From what I can tell, Agim Kuqi is trying to describe events in
11 detail, but I am convinced that he was lacking in certain elements.

12 Q. Okay. Now, in your SPO interview, you told them that the
13 General Staff coordinated the efforts by your brigade to draw
14 attention away from Rahovec. But this was -- but you also confirmed
15 that this was based only on information that you had afterwards, but
16 you didn't know how the General Staff carried out this supposed
17 coordination. That's all correct, isn't it?

18 A. I do not remember any particular details. But that said, what I
19 have already stated, it was because it was based on an idea or on
20 information. But today, I cannot remember any particular details
21 about this matter.

22 Q. Okay. Thank you. And I think as you told the SPO, quite
23 rightly, all you can say for sure is that you know you were part of
24 the operation in trying to control Zocishte and Reti and that's all.
25 Is that a fair summary of your evidence? For the reference, that's

1 your interview, Part 4, page 4.

2 A. If I'm not wrong, what I said was that my duty with my group,
3 that is the platoon of the grenade launchers, so not the entire
4 platoon but a group of the platoon, our task was to make sure that we
5 defended our forces from an eventual Serb attack on ours.

6 So I do not know how it was said but that was the purpose, the
7 intention.

8 Q. Yes. It's just to understand the limits of your knowledge of
9 the wider context of the operation. You were limited to your own
10 actions, and your evidence is limited to knowing what you did and
11 what your small group did during that or those days. That's fair,
12 isn't it?

13 A. It is.

14 Q. And at the bottom of this document --

15 MR. ROBERTS: If we could just scroll down in both of them. To
16 the bottom. Yes.

17 Q. And you see the last paragraph starting with the words "Result":
18 "... the village of Zaqisht was completely cleansed of Serbian
19 forces, captives were taken as were ammunition and weapons that were
20 won in the war."

21 Now, just to be clear, you didn't see any captives being taken
22 in the context of this operation, did you? And that's what you told
23 the SPO. You know absolutely nothing about any captives being taken
24 in the operation.

25 A. No, sir, I have not seen any captives. So the matter of any

1 captives or capturing or taking any weapons or ammunition, I did not
2 see any such thing.

3 Q. You did make some reference to overhearing some other people
4 talking about rumours, I believe, of such things, but you don't know
5 which soldiers that referred to, do you?

6 A. Sorry, counsel. I didn't really understand. What were you
7 asking?

8 Q. No, sorry, my question wasn't very clear. You had overheard
9 some rumours in relation to some captives, but you don't know which
10 soldiers you overheard these from, what they were about, or even if
11 they were rumours about other rumours, do you?

12 A. I cannot actually confirm because during the war we've heard all
13 sorts of words or rumours, of fiction, and I mentioned one yesterday
14 which we came up with, for instance. So I cannot say really that it
15 was one or the other.

16 Q. Yes, that's the danger of rumours, isn't it? You can't have any
17 basis for assessing whether it's reliable or not.

18 MR. HALLING: Can we just get a citation from counsel of where
19 the witness says "rumours" in his SPO interview?

20 PRESIDING JUDGE SMITH: Yes, please.

21 MR. ROBERTS: Certainly, I will. It's not the reference to
22 rumours. I will use the full quote to be clear for the record. This
23 is the SPO interview, Part 3, page 22. It says:

24 "So who -- go ahead, please.

25 "So among the soldiers, they were talking about that. So I have

1 heard about that, but I don't know anything concrete. I don't have
2 any evidence. I don't know anything."

3 So to be clear, it was my question which included the word
4 "rumours," which I believe the witness accepted.

5 Q. If we can go now onto the issue of the Guri unit, which you
6 mentioned yesterday. Do you remember when you were drawing the areas
7 of responsibility on the maps shown to you by Prosecution counsel,
8 and you referred to the Guri unit as a special battalion of the
9 General Staff?

10 A. Yes, I do.

11 Q. Now, when you mentioned this Guri battalion, am I correct in
12 understanding that you didn't have any direct knowledge in relation
13 to this battalion?

14 A. I had very little knowledge.

15 Q. Is it possible that actually this unit was part of the
16 121st Brigade and wasn't connected to the General Staff at all?

17 A. A very small likelihood. If I'm not wrong, this was part of the
18 units that operated under the control of Fatmir Limaj, and then it
19 was called the 121st Brigade. But with the formation of the brigade,
20 if I'm not wrong, this battalion received its tasks and it was due to
21 act separately, and it was, I think, part of the General Staff as a
22 special battalion.

23 Q. Okay. But when you say you think it was part of the
24 General Staff, you never had any contact with them; is that fair?

25 A. I have happened to meet Commander Guri a few times, but we

1 haven't talked to each other about who he would report to and how
2 they were organised.

3 Q. Right. So he never confirmed that he was reporting or in any
4 way connected with the General Staff. This is your understanding or
5 assumption; is that right?

6 A. It could be interpreted that way. But what I have confirmed,
7 and I've mentioned that this was a special battalion of the
8 General Staff, in other words, a battalion that reported to the
9 General Staff rather than a particular brigade, I say this because of
10 the fact that at some stage at the end of November we consulted
11 Bislir Zyrapi so that this battalion would become a member of the
12 123rd Brigade. That said, that never happened and that is why they
13 continued to work as an independent unit.

14 Q. Do you recall there being an issue of the boundary between the
15 Pashtrik and Nerodime zone at the end of 1998, beginning of 1999,
16 when you were the Pashtrik zone chief of staff, in relation to the
17 Guri unit?

18 A. No, no, I do not remember that.

19 Q. Okay. Because I would suggest to you, to be clear, that the
20 Guri unit was not a battalion of the General Staff and was actually
21 under the command of the brigades. The only issue or the only
22 question as to your belief that it was independent was because it was
23 unclear which of the zones it fell under, and that was in part
24 because the commander wanted to remain under the authority of the
25 121st Brigade but geographically was located in the Nerodime zone.

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17126

Cross-examination by Mr. Roberts

1 Do you have any information on that at all?

2 A. So it is in the boundary of the Nerodime zone, but Greicec
3 village, according to the divisions of the zones, it belongs to the
4 Pashtrik operational zone. But that doesn't necessarily mean that
5 one takes out a ruler and issues are then dealt with by that division
6 of the ruler. But the separation of work was also given the
7 functions.

8 So I am not aware of these things. I've forgotten. Perhaps I
9 might have been informed but have since forgotten.

10 Q. Okay.

11 A. I do not know, basically, whether this matter was ever
12 discussed.

13 Q. I'll leave it to one side for now. We may come back later, but
14 I just want to move to a different topic now, and that's the
15 authority of the General Staff in relation to appointments.

16 Now, obviously, you had a long discussion with my colleague,
17 Mr. Misetic, yesterday about the creation of the Lisi and Celiku 50
18 units. And my understanding of the evidence is that those units
19 formed themselves at the beginning of June and then merged at the end
20 of June 1998; is that correct?

21 A. To my knowledge, these units were established in April 1998 and
22 continued with their operations in May, and in June they managed to
23 establish the Suhareke regional staff. But to my knowledge, they had
24 begun their work since April 1998.

25 Q. Okay. But they -- no one had instructed them to form the units.

1 And when they merged, Mr. Kuqi was chosen by the other soldiers
2 within those units to be the commander by agreement, I think, as you
3 said yesterday.

4 A. Yesterday, I saw a document here which was submitted by counsel
5 which I had not been aware of, but I was aware of the actions or
6 efforts to unify these two units and the work for the merging under a
7 single command. Whereas in relation to the document, as I stated, I
8 only saw it for the first time yesterday.

9 Q. But it was your evidence yesterday - and that is provisional
10 transcript page 90 - that it was only after about -- it was about
11 after ten days after they merged that they became Brigade 123. Am I
12 correct in that?

13 A. That's what I stated, yes, so also by guessing on my part and a
14 bit of maths. So based on that I stated that. And that is correct
15 what I've said.

16 Q. Yes. And I think you accepted earlier you were not always right
17 with dates; is that fair?

18 A. Yes, yes, it is, of course.

19 Q. And it's not meant as a criticism, obviously. We're merely just
20 trying to assess exactly how reliable your recollection is.

21 MR. ROBERTS: The document we just saw from Agim Kuqi, if we
22 could pop that back on the screen, please. Sorry, I'll just have to
23 go back and check the ERN. It was U001-7877.

24 Q. Just actually in the first line of that - this is obviously
25 talking 21st, 22nd July - this is still referring to KLA local staff,

1 isn't it?

2 A. Yes, it was local staff. In July, right? It says July here.

3 So in July --

4 Q. It says 20 July.

5 A. -- if I'm not wrong -- if I'm not wrong, then -- yes, because it
6 says here 20 July. So if I'm not wrong, the command of the brigade
7 was formed according to this document. Actually, maybe we should go
8 back and have a look. I think it was 7 July 1998. Yesterday, I
9 think there was something by counsel to that effect.

10 Q. But the point I'm making is that this document, which is,
11 obviously -- well, purports to be a document from Mr. Kuqi, refers to
12 the unit as the local staff. It doesn't refer to it as the
13 123 Brigade, does it?

14 A. Yes, that's what we see written there. Yes. What you're
15 saying.

16 Q. And this is the 20th or 21st July.

17 MR. ROBERTS: And, similarly, if we could just have P1342 on the
18 screen, which is a document again you were shown yesterday by
19 Prosecution counsel. This is the request from the Dukagjin
20 operational staff. And this document, for the record, is dated 28
21 July 1998.

22 Q. So, again, much later than 7 July. Again, no reference to
23 Brigade 123 there, is it? It's still a request to the local staff,
24 the Suhareke staff.

25 A. You're correct. Yes, that's what the document states.

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17129

Cross-examination by Mr. Roberts

1 Q. So in light of these documents, would you accept that the formal
2 creation of Brigade 123 could potentially have been much later than
3 7 July as you suggested yesterday?

4 A. In my mind, I thought that the first brigade was formed on
5 7 July. But perhaps it would be good to have that document back and
6 to see when the brigade was formed. So this is about the
7 establishment of the staff. Perhaps I've got the two mixed up.

8 Q. I understand. And I think the reason I'm trying to ask these
9 questions is to be sure as to what your evidence is in relation to
10 the date of the creation of the brigade, and I would suggest that
11 your evidence that it was 7 July is mistaken, and that the formal
12 creation of the brigade was significantly later than that. And is
13 that something that you accept as possible or likely in light of what
14 I've shown you?

15 A. That we have made mistake, one can tell. Somebody has made a
16 mistake here. It's either me or Ramush Haradinaj or perhaps
17 Agim Kuqi. One of us has got it wrong.

18 MR. ROBERTS: Your Honour, I see there's a problem with the
19 transcript, actually. Sorry, I've just been alerted to it. Mine's
20 frozen. I'm not quite sure what's been captured from the last few
21 questions and answers.

22 PRESIDING JUDGE SMITH: [Microphone not activated].

23 MR. ROBERTS:

24 Q. Apologies, Witness. If you just bear with us for a few minutes.

25 PRESIDING JUDGE SMITH: It seems to be going again now.

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17130

Cross-examination by Mr. Roberts

1 MR. ROBERTS: Okay. I'll just try and -- okay.

2 Q. If you can just complete your answer, and maybe you had --

3 PRESIDING JUDGE SMITH: I think -- I believe he did complete his
4 answer.

5 MR. ROBERTS: Okay. Thank you. Sorry. I couldn't tell whether
6 it had been recorded on the transcript fully or not.

7 PRESIDING JUDGE SMITH: You can certainly ask him, yes.

8 MR. ROBERTS:

9 Q. Your answer was -- to my question was:

10 "That we made a mistake, one can tell. Someone has made a
11 mistake here. It's either me or Ramush Haradinaj or perhaps
12 Agim Kuqi. One of us has got it wrong."

13 Was that your complete answer to my question? Just for the
14 record.

15 A. No. Whoever has written it down, they are less likely to have
16 made it wrong than the rest of us who are speaking from our
17 recollections. And in this case I would be wrong.

18 Q. So you accept you could be wrong about that date?

19 A. I could be wrong. I don't quite know. I mean, it's 25 years
20 later.

21 Q. Understood. And, again, there's no criticism implied from my
22 questions. I'm merely trying to verify the evidence that you're
23 giving.

24 In relation to your role later on as head of Brigade 123, you
25 were based in Breshanc for that time, were you not?

1 A. Yes, I was.

2 Q. And before then, from 10 June up until you were appointed in the
3 beginning of October, where were you based?

4 A. During that time, too, the command of the brigade was in Nishor
5 rather than Kasterc, sorry, because I got that wrong. But I usually
6 operated in Rreshtan area.

7 Q. Okay. And so until you changed your position in March 1999 when
8 you finished being the chief of staff of the Pashtrik zone, you were
9 located the whole time in the Pashtrik zone, from 10 June up until --
10 10 June 1998 up until March 1999?

11 A. Yes, primarily the region of Suhareke commune, the village of
12 Nishor.

13 Q. And I think you told Mr. Misetic yesterday you had very little
14 information about the other zones, about what was happening in the
15 other zones; is that right?

16 A. Yes, it is right.

17 Q. So just to be clear, where you say in your SPO interview that
18 you believe the General Staff had effective control over who served
19 in command positions in the KLA, at its very highest this
20 understanding could only apply in relation to your zone. It couldn't
21 apply in relation to any of the other zones. That's fair, isn't it?

22 A. Counsel, one would actually start off from one's knowledge, so
23 what was my rapport with the General Staff. And other commands had
24 perhaps some more frequent communications than I did, or perhaps even
25 less so. Again, I wouldn't know either way. So these answers of

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17132

Cross-examination by Mr. Roberts

1 mine are based on my own experience and my experience alone.

2 Q. And so when you make these statements in relation to the
3 General Staff, you're talking about Brigade 123 in the period
4 October, November, when you were the brigade commander; is that
5 right?

6 A. Of course.

7 MR. ROBERTS: Your Honour, this is actually a convenient time.
8 Thank you very much.

9 Q. Thank you, Witness. I'll see you again in half an hour.

10 PRESIDING JUDGE SMITH: Witness, we'll take our regularly
11 scheduled break now, and we will be back in court at 11.30. You may
12 leave the courtroom with this usher at this time.

13 [The witness stands down]

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

15 --- Recess taken at 10.59 a.m.

16 --- On resuming at 11.29 a.m.

17 PRESIDING JUDGE SMITH: Madam Usher, you can bring the witness
18 in.

19 MR. ROBERTS: Just for planning purposes, I think I should be
20 somewhere in the region of 45 minutes.

21 PRESIDING JUDGE SMITH: Thank you very much.

22 [The witness takes the stand]

23 PRESIDING JUDGE SMITH: All right. Mr. Fondaj, we will continue
24 with your examination. Mr. Roberts will be asking more questions.

25 Go ahead, Mr. Roberts.

1 MR. ROBERTS: [Microphone not activated].

2 That's a good start. Thank you, Your Honour.

3 Q. Hello, Mr. Fondaj. So we would just like to -- or, sorry, I'd
4 just like to ask you some questions about reporting to the
5 General Staff by the brigades.

6 And just to follow on from, I think, what you were saying just
7 before the break, obviously, your knowledge is most directly related,
8 isn't it, to the time that you were the brigade commander of
9 123 Brigade between around the 8th or 10th October until the end of
10 November. That's correct, isn't it?

11 A. Correct.

12 Q. Now, first of all, in your interview you talk about reporting
13 from Blerim Kuqi to Bislim Zyrapi before Blerim Kuqi left for
14 Albania. So this was in August or September, early September 1998;
15 is that right?

16 A. The form of reporting of Blerim Kuqi to Bislim Zyrapi, I don't
17 know. However, during that period of time I saw Bislim Zyrapi on
18 several occasions in the framework of the brigade where the regional
19 staff was initially operating and then Brigade 123. So I am assuming
20 that during this period of time they had a regular communication, but
21 I am not aware of the form or content of their communication.

22 Q. Yes. I think that's helpful. So it's an assumption that there
23 was reporting based on the fact that they were together, but you
24 didn't see Mr. Kuqi formally reporting to Mr. Zyrapi during that
25 period?

1 A. No, I did not see. I was not present during his reporting.

2 Q. And also you told the SPO that the brigade commanders received
3 orders from the General Staff.

4 MR. ROBERTS: So for the reference, that's the SPO interview,
5 Part 3, page 6.

6 Q. But, again, am I correct that your understanding or that your
7 evidence in relation to that is only your brigade, so only in October
8 and November? Or are you suggesting that you have direct evidence
9 that other brigade commanders received orders from the General Staff?

10 A. My statement is based on my experience and my work as a brigade
11 commander. At a later stage, the brigade commanders reported at the
12 zone level, not at the level of the General Staff. This is the
13 period of time January, February 1999.

14 Q. Yes, that was when you were chief of staff of the Pashtrik zone,
15 and all of the brigade commanders in that time reported to the zone
16 commander, Commander Drini, Ekrem Rexha?

17 A. Correct.

18 Q. But before this time, so in October, November, just to try and
19 understand your evidence, is your evidence limited to the fact that
20 you believed you received orders from the General Staff, or are you
21 saying that you have knowledge that other brigade commanders received
22 orders from the General Staff?

23 A. In the time period in November 1998, the brigade commanders
24 reported to the General Staff, and they held regular weekly meetings.
25 I attended two or three of these meetings with other commanders of

1 the brigades in the Pashtrik operational zone.

2 I apologise. We reported to Sali Veseli, who was deputy of the
3 chief of the General Staff.

4 Q. Yes, this was the point I was trying to get to. When you talk
5 about the General Staff, I think it's important that we're clear as
6 to who you're talking about within that.

7 So you're not, obviously, talking about Mr. Selimi because
8 you've been very clear you never saw him again. So any reporting or
9 information that was provided at that time was to Sali Veseli. Is
10 that your evidence?

11 A. We reported to the operational directorate of the General Staff,
12 and during this period of time these meetings were chaired mostly by
13 Sali Veseli. Again, I did not meet Rexhep Selimi during the war with
14 the exception of those two occasions I mentioned.

15 Q. Yes. And -- sorry, I've been warned by the interpreters to wait
16 in between responses. I've been not very good at it so far.

17 So to be clear, you don't know also what Sali Veseli did with
18 the information that you provided to him?

19 A. Now, do I know what he did with it? I was not the person in a
20 position to know why he needed this information, what he would do
21 with it. I understood that the information reporting we provided to
22 the General Staff were of an operational nature, which then would be
23 reviewed and dealt with by the chief of staff, who would then have a
24 clear picture of the state of the affairs within the army and take
25 the necessary steps.

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17136

Cross-examination by Mr. Roberts

1 Q. But you don't know that for sure, that that was provided to the
2 rest of the General Staff?

3 A. It was not for me to deal with this issue. I had enough work to
4 do in my position, so I wouldn't have had time to deal with matters
5 that were supposed to be dealt with by other people.

6 Q. Of course. And just in relation to when you talk about other
7 brigade commanders, because you were asked about Xheme Gashi,
8 Xhemajl Gashi in your interview. He had already left for Albania in
9 September, had he not? September 1998.

10 A. I do not know the exact dates, but I know that he was in Albania
11 in October, and I also know that he came back in November.

12 Q. And your appointment as the Brigade 123 commander. This was,
13 obviously, at a time when there'd been a huge Serb offensive over the
14 course of the summer, and I think you told my colleague yesterday
15 about the devastation that that had caused KLA forces in the area.
16 That's right, wasn't it?

17 A. My appointment occurred after the offensives and the defeats we
18 suffered at that time.

19 Q. And that had obviously caused quite a lot of disruption within
20 your brigade because of certain people leaving to Albania and,
21 obviously, other soldiers who had been killed during that offensive?

22 A. Of course, there were losses, extraordinary high casualties, but
23 also material damage and destruction both in the army equipment and
24 civilian structures.

25 Q. Okay. And if I just want to move on to a last topic now, which

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17137

Cross-examination by Mr. Roberts

1 is the military police directorate. And because you were asked some
2 questions about a specific document in your SPO interview that --
3 that I believe you had made on 10 November 1998 to the KLA military
4 police directorate because of an incursion by people representing
5 themselves as military police and under the command of Uke Gegaj to
6 requisition a Land Rover which was under the authority of the
7 123rd Brigade.

8 Do you recall that interaction in general terms?

9 A. Yes.

10 Q. Now, according to the request that you produced on 10 November
11 1998, these military police who entered Nishor had a signed decision
12 by Uke Gegaj who you believed was a member of the military police of
13 the General Staff, and that order was to place the vehicle at the
14 disposal of the 121 Brigade; is that right?

15 A. From what I read last week, the content of that document, it is
16 true that Uke Gegaj was part of the Brigade 121, but he uses a stamp
17 which is from the military police of the General Staff of the KLA.

18 Q. Yeah, maybe if we can get the document up so you can see on the
19 screen, and then I can ask you some more questions about it.

20 MR. ROBERTS: So this is U003-3360, and the Albanian is IT-03-66
21 P29. And I believe it's a Prosecution exhibit that my learned friend
22 is about to remind me of.

23 MR. HALLING: Well anticipated. It's P1332, Your Honour.

24 MR. ROBERTS: Thank you very much.

25 PRESIDING JUDGE SMITH: Thank you.

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17138

Cross-examination by Mr. Roberts

1 MR. ROBERTS:

2 Q. Now, just to be clear, you mentioned in your SPO interview, and
3 I believe again in cross-examination, that the director of the
4 Directorate of Military Police in the General Staff was not able to
5 issue orders to you as a brigade commander throughout the war -- or
6 was not able to issue orders to you. That's what you were very clear
7 about; is that right?

8 A. In fact, this is how it should have been. I did not receive
9 orders from the Directorate of the Military Police.

10 Q. And you could ignore, therefore, any order that had have come
11 because that was not one that you were obliged to follow. As a
12 brigade commander, to be clear.

13 A. Yes. In any event, I would have informed the chief of staff
14 reporting this interference, interference from unauthorised persons.

15 Q. Understood. And by extension of that logic, the military police
16 directorate couldn't have issued orders to military police units
17 within the zones, could they, because it would have usurped the
18 authority of a brigade commander?

19 A. This is how it was supposed to be, should have been, and as a
20 matter of fact, this is how it functioned during the time I was with
21 the brigade.

22 Q. Thank you. Now, in relation to this document specifically, you
23 said to the SPO that it was a falsified document by Mr. Gegaj and not
24 signed by Mr. Limaj. And this is your interview, Part 8, page 14.

25 Now, is it your understanding of this incident and this document

1 that Mr. Gegaj may have thought that stamping a document with a
2 military police directorate stamp could have given it greater
3 legitimacy?

4 A. Yes. And during this incident I took this document which
5 Uke Gegaj calls a decision, and based on it, I filed a complaint and
6 sent a copy of this decision to the chief of staff, Bislim Zyrapi.

7 Q. It could simply have been, therefore, Mr. Gegaj acting
8 completely independently, could it not?

9 MR. HALLING: Objection, calls for speculation.

10 PRESIDING JUDGE SMITH: Overruled.

11 THE WITNESS: [Interpretation] I don't know. Perhaps it's better
12 to ask Uke Gegaj about this. I don't know. What's important is the
13 fact that the signature -- the document bears the signature of
14 Uke Gegaj and the stamp of the military police of the General Staff.

15 MR. ROBERTS:

16 Q. Yes. And just in relation to the military police directorate,
17 you were very clear in your preparation note - so that's Preparation
18 Note 1, P1328, at paragraph 39 - that no one announced when the
19 military police directorate was created. You were not in the
20 military police, and you do not know exactly when it was established.

21 So simply because this document bears a purported stamp of the
22 military police directorate doesn't mean that you were aware that it
23 actually existed and functioned at the date of this document, are
24 you, or does it?

25 A. Based on the document, we have here the full content of the

1 decision. It reads that the Kosovo Liberation Army, Brigade 121
2 Agim Qelaj, Coli. This brigade changed its name afterwards, but
3 initially this was its name. It's called decision -- I don't need
4 the read the entire content of this decision.

5 It says that they have some sort of authorisation to come and
6 requisition this vehicle. And as I mentioned, I prevented them from
7 taking the vehicle. However, the decision contains the stamp
8 indicating that this comes from the military police of the
9 General Staff of the KLA, and this is the reason why I filed a
10 request with the Directorate of the Military Police to inform them
11 about this issue and reprimand or make remarks to the person in
12 question.

13 Q. Yes, but just to be clear, you don't have any direct knowledge
14 that the military police directorate was actually functioning --
15 sorry, military police directorate at the General Staff was actually
16 functioning at the date of this document, 10 November 1998, do you,
17 as you said in your preparation session with the Prosecution?

18 A. I cannot speculate from where I stand today whether I knew at
19 the time or not.

20 Q. Thank you. Thank you very much, Witness.

21 MR. ROBERTS: Thank you, Your Honours. I was actually a bit
22 quicker than I'd planned, but I've finished my questions.

23 PRESIDING JUDGE SMITH: Thank you, Mr. Roberts.

24 Mr. Ellis --

25 MR. ELLIS: Thank you, Your Honour.

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17141

Cross-examination by Mr. Ellis

1 PRESIDING JUDGE SMITH: -- cross-examination.

2 MR. ELLIS: Just a moment.

3 Cross-examination by Mr. Ellis:

4 Q. And I think it's still good morning, Witness. My name is
5 Aidan Ellis and I'm representing --

6 A. Good morning.

7 Q. -- Mr. Jakup Krasniqi.

8 MR. ELLIS: And, Your Honours, for planning purposes, I think I
9 will at least go till lunch.

10 PRESIDING JUDGE SMITH: [Microphone not activated].

11 I'm sorry. Thank you, Mr. Ellis.

12 MR. ELLIS: Thank you.

13 Q. Mr. Fondaj, I want to go back, if I may, to Negroc on 10 June
14 1998. And you've said, I think, that your intention was to go there
15 in order to meet with Sokol Bashota, and it was Sokol Bashota who
16 explained to you how to become a member of the KLA; is that right?

17 A. On 10 June 1998, I went to Negroc with Blerim Kuqi who had had
18 prior conversations with Sokol Bashota regarding me joining the
19 Kosovo Liberation Army. This was the purpose of my visit, in order
20 to join and become a member of the KLA.

21 Q. And you weren't intending to meet Jakup Krasniqi. He just
22 happened to be there because one of the meetings happened at his
23 house; is that right?

24 A. No, I -- my intention was not to meet with Jakup Krasniqi but
25 with Sokol Bashota in order to join. But the meeting was, in fact,

1 held in the house of Jakup Krasniqi, where I met him. Now I take
2 this opportunity to say that his entire family was serving the cause
3 of the war, and I must add that I had a meal there. His family
4 members were not obliged to prepare a meal for the Kosovo Liberation
5 Army members but they did, and I shared a meal with them on that day.

6 Q. Thank you. And this would be around the time when the decision
7 was taken to appoint Jakup Krasniqi as the spokesman for the KLA;
8 yes?

9 A. I followed the evidence given here by Nuhi Bytyqi, and it
10 results from this that Jakup Krasniqi gave his first statement
11 sometime on 14 June. I remember this from the testimony of
12 Nuhi Bytyqi. Otherwise, I don't know. I did not know before or I
13 have forgotten.

14 Q. Thank you. Now, you said you yesterday in answer to
15 Mr. Misetić, I think, that you didn't have any information at the
16 time about what Mr. Bashota's position or post was. Do you recall
17 that evidence yesterday?

18 A. I don't understand. I don't know. However, Mr. Bashota had a
19 leading position, and I was expecting him to organise and integrate
20 me within the army. We discussed this matter with him. He said,
21 "There is no specific position for you right now in the army, but
22 wait and we will find a position."

23 This war was a guerilla war. At that time, I was not able to
24 give my contribution to this guerilla war. However, at that time the
25 Kosovo Liberation Army and some units like Lisi, Celiku 50, started

1 being stationed units, building barricades in specific parts. So
2 following the conversation with Sokol Bashota, he suggested that I
3 could go and help Blerim Kuqi, and this is what I did.

4 MR. ELLIS: Now, could we have on the screen, please, P00847 in
5 both English and Albanian. And if it assists, it's SITF00243000.
6 And it's the third page, at least in the English translation. If you
7 could scroll down, please, in the English.

8 Q. Witness, do you remember in your interview with the Prosecution
9 in 2019, you were shown a copy of an interview that Azem Sylja had
10 given?

11 A. Yes.

12 Q. And I'll just read to you a line from that. He said:

13 "So, my deputy Sokol Bashota was placed at the head of the
14 General Staff, who carried out both duties until the period between
15 the two meetings in Rambouillet."

16 Do you recall seeing that passage, Witness?

17 A. I saw this document in 2019. I hadn't seen it before.
18 Therefore, I'm not aware of its full content. I did not read it.
19 But excerpts used during the interview with the SPO are in the
20 transcript of my interview.

21 Q. Yes. And if that's what Azem Sylja has said in interview, you
22 wouldn't have any reason to disagree with that, would you, as to
23 Mr. Bashota's position?

24 A. I do not wish to express myself in relation to this matter
25 because I don't know.

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17144

Cross-examination by Mr. Ellis

1 Q. Very well. Now, after you met with Sokol Bashota at that point,
2 you also had a meeting with Bislím Zyrapi; is that right?

3 A. Yes, on the same day. It was in the afternoon that I met
4 Bislím Zyrapi. And it was that evening that we spent together, and I
5 will mention it again, Bislím Zyrapi, Agim Qelaj, and myself, in a
6 home inside the village where I stayed overnight and the following
7 day in Jakup Krasniqi's home. So I returned to Jakup Krasniqi's
8 home, and then from there on I went to Semetishte in Suhareke.

9 Q. I see. And when you mentioned, I think, Blerim Kuqi notifying
10 those about military activities, that would be to Sokol Bashota and
11 Bislím Zyrapi; correct?

12 A. Well, yeah. Blerim Kuqi was in touch with Sokol Bashota up
13 until 10 June. On 10 June, I contacted Bislím Zyrapi for the first
14 time. To my knowledge, he was in Kosovo at the end of 1998,
15 thereabouts.

16 So Blerim Kuqi, I don't believe that he would have met him,
17 Bislím Zyrapi, before 10 June. But Blerim Kuqi's contacts with
18 Sokol Bashota and other leaders of the then time of the KLA.

19 Q. I see. And this occasion was your first meeting with
20 Jakup Krasniqi, wasn't it? I'm sorry. I'll put that again. Prior
21 to 10 June 1998, you hadn't met Jakup Krasniqi?

22 A. I do not know that I had met him before. I think I got to know
23 him as of that day. That was the first day.

24 Q. Yes. Now, when you were answering questions from the
25 Prosecution in that interview in 2019, you said that around March,

1 May 1998, Blerim Kuqi had contact with Jakup Krasniqi. You were not
2 a part of any contact that Blerim Kuqi had with Jakup Krasniqi at
3 that time, were you?

4 A. If I have said that, I do not know what information I base that
5 on. But I think the idea was that it was with the leaders of the
6 KLA. Whether I've said it, I do not know. I think today I can say
7 that that was a mistake.

8 Q. I see. Now, you confirmed yesterday, I think, that Blerim Kuqi
9 was part of the LDK and that he was working within the parallel state
10 in Suhareke as part of the financial council; is that right?

11 A. Yes, yes.

12 Q. And were you aware that Jakup Krasniqi was the chair of the LDK
13 in the municipality of Glogoc and that he also worked within the
14 parallel state at that time?

15 A. Yes, I am aware.

16 Q. And Blerim Kuqi and Jakup Krasniqi knew each other from their
17 work within the parallel state, didn't they?

18 A. I do not wish to enter into that sort of discussion because I do
19 not know, but I can only guess that they did.

20 Q. That's very proper, Witness. And, of course, if I ask you
21 something that you don't know, you must say that you don't know, of
22 course. But Blerim Kuqi was with you when you went to Negroc that
23 day, wasn't he?

24 A. Yes, he was. We travelled together but, once again let me
25 reiterate, to meet Number Ten, who later I found out was

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17146

Cross-examination by Mr. Ellis

1 Sokol Bashota.

2 Q. I see. Blerim Kuqi was with you when you had a meal with
3 Jakup Krasniqi's family, wasn't he?

4 A. I cannot remember the particulars, but we had both lunch and
5 dinner there in his home. And that house was simply -- I can't
6 describe it here really. I can't put it into words.

7 So it was a hospitable home who gave extraordinary contribution
8 to us, and that is why it has given me emotions. I became emotional
9 when I thought about it again.

10 Q. And it was a hospitable home to welcome both you and Blerim Kuqi
11 to the home; correct?

12 A. Not just the two of us, though, but many, many other soldiers
13 and other members of other structures of the KLA and of other people
14 who would just go past that path.

15 Q. Now, you have known Blerim Kuqi, I think, since your school
16 days. That's right, isn't it?

17 A. Yes, I have. I have known him from grade 1 of primary school,
18 so I was about 3 years older than him, because he was -- he attended
19 school with my brother in the same class.

20 Q. And by 1998, he was an influential figure in the Suhareke area,
21 wasn't he?

22 A. Yes, of course. He was a hard worker.

23 Q. And the Lisi unit and later Brigade 123 itself were growing in
24 numbers in part because of Blerim Kuqi in those early days?

25 A. Yes. Other than the contribution of Blerim Kuqi, this is also

1 about the character and personality of Uke Bytyqi. These two were
2 people of the highest authority in Suhareke at the time who have
3 given an extraordinarily great contribution to the war effort for the
4 liberation of Kosovo.

5 Q. Now, I'm going to move to ask you some questions about
6 Blerim Kuqi's arrest in January 1999. I'm going to ask some short
7 questions which it is the case that you could answer "yes" or "no"
8 and we can move through it, Witness.

9 You were not physically present when Blerim Kuqi was arrested,
10 were you?

11 A. No, I was not.

12 Q. And you do not know who arrested Blerim Kuqi or who ordered his
13 arrest, do you?

14 A. I do not know.

15 Q. And you never spoke to Blerim Kuqi himself about his arrest or
16 his detention after he was released, did you?

17 A. No, I never spoke to him.

18 Q. When you were interviewed by the Prosecution in 2019, you told
19 them that it was Jakup Krasniqi who invited Blerim Kuqi for his
20 consultation. Do you recall that?

21 A. I may have said that because I was in regular contact with
22 Ekrem Rexha. So he asserted that Blerim Kuqi and Nexhmedin Kastrati
23 and Ekrem Rexha went to the General Staff by invitation of
24 Jakup Krasniqi for consultation purposes, and it's then that the
25 detention of Blerim Kuqi happened. So this was the information I

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17148

Cross-examination by Mr. Ellis

1 had, and that's why I may have said that.

2 Q. Witness, are you okay to continue or would you want a break at
3 that point? I saw you taking a tissue.

4 A. No, no, I can continue.

5 Q. Thank you. Now, you, of course, weren't present at that -- at
6 any consultation between Drini, Nexhmedin Kastrati, Blerim Kuqi in
7 Divjake, were you?

8 A. No, I was not.

9 Q. And you wouldn't know what was -- you don't know what was
10 discussed at that meeting, do you?

11 A. Realistically speaking, when Ekrem Rexha returned from Klecke
12 and Divjake, he was frustrated, and we couldn't even hold a
13 conversation.

14 Q. Are you aware that Nexhmedin Kastrati has said that the meeting
15 discussed issues like the boundaries of brigades and issues relating
16 to training courses for battalion leaders? Were you aware of that?

17 A. No, I am not aware of that at all, about the conversation they
18 had.

19 Q. Very well. And after you had heard that Blerim Kuqi had been
20 arrested, you wanted to know what had happened and you spoke to
21 different people about it. That's right, isn't it?

22 A. Perhaps not with many but I did speak to a few.

23 Q. And you clarified in your preparation session with the
24 Prosecution last week that you don't remember if you spoke to
25 Jakup Krasniqi directly about Blerim Kuqi or if someone else told you

1 what Jakup Krasniqi had said? That's right, isn't it?

2 A. I really do not remember.

3 Q. You said in your interview that Jakup Krasniqi, he stated later
4 that he was not aware of the fact that Blerim would be arrested. Do
5 you remember that?

6 A. Something like that. Like we say, it's a bit vague. But I
7 think so, but I'm not sure.

8 Q. Do you recall speaking with Bislim Zyrapi about the Blerim Kuqi
9 case?

10 A. Yes, I discussed this with Bislim Zyrapi in detail, and I told
11 him that Blerim Kuqi -- Blerim Kuqi's case needs to be clarified
12 because he did not desert, and that there is a mistake in
13 interpreting his case and his arrest. Because Blerim Kuqi just back
14 then had -- it was very clear the help he had given to the KLA.

15 Q. And did you know that Bislim Zyrapi was in communication with
16 Sokol Dobruna about the Blerim Kuqi case?

17 A. I do not know the details, so how they organised or how they
18 acted. I mean at the General Staff. I do not know that.

19 Q. I see. But you knew at the time that Bislim Zyrapi was the
20 chief of staff; correct?

21 A. Of course, yes. I did know that.

22 Q. And the reason you went to him would be because he was chief of
23 staff; correct?

24 A. Yes. But it was also that I gave a statement -- and I reiterate
25 this, I gave the statement before Sokol Dobruna. So that is why I

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17150

Cross-examination by Mr. Ellis

1 claim that he was a prosecutor and not a judge in Blerim Kuqi's case.

2 Q. No doubt you thought because Bislum Zyrapi was chief of staff,
3 he was in a position to do something about the Blerim Kuqi case;
4 correct?

5 A. I was convinced that Bislum Zyrapi's statement had to be
6 decisive for Blerim Kuqi's fate, and that is why I communicated with
7 Bislum Zyrapi, clarifying in detail his going to Albania.

8 MR. ELLIS: Now, could we now have on the screen, please, P1344,
9 which was SPOE00232264.

10 Q. Now, Witness, you'll recall you were shown this document by the
11 Prosecution both yesterday and last week, and I think you confirmed
12 that you hadn't seen this document until you were shown it by the
13 Prosecution. That's right, isn't it?

14 A. Yes, it is.

15 MR. ELLIS: Could we go to the final page of the document,
16 please, towards the bottom.

17 Q. Now, I see the name at the bottom, Arben Sejdiu. Is that a name
18 you were familiar with at the time, Witness?

19 A. No, I was not. And I'm really surprised to see this.

20 Q. And you wouldn't know who prepared this document or when it was
21 typed, would you?

22 A. No, I do not know. And I say it again, I really am surprised to
23 see this. And it just seems like in Hitchcock's movies.

24 MR. ELLIS: Now, if we go, please, back to the first page,
25 towards the -- underneath the "Proposed," there. If we could scroll

1 down in the Albanian, please.

2 Q. Now, you said yesterday in the transcript at provisional page 32
3 that:

4 "... Ekrem Rexha ... informed me then that I had to go to Klecke
5 for a statement regarding Blerim Kuqi."

6 And you then clarified that it could be true that you went upon
7 the request of Blerim Kuqi's defence counsel.

8 This document appears to be saying that the general military
9 prosecutor wanted to subpoena to attend the hearing. Did you
10 actually receive a subpoena from the military prosecutor to attend
11 the hearing?

12 A. Counsel, I wish to repeat once again that I responded to what
13 Ekrem Rexha said, that I had to go to the General Staff, and actually
14 in Divjake, to give a statement to the prosecutor of the Kosovo
15 Liberation Army on the Blerim Kuqi case.

16 When I went there and gave my statement, I gave my statement to
17 Sokol Dobruna. I gave that statement before him not the prosecutor
18 whose name is found on the other page. In this document, I mean,
19 which is in front of me.

20 Q. And I see that this document refers to "the criminal offence of
21 arbitrary desertion of duty specified in Article 29, Section 1 and 2
22 of DLP of KLA."

23 Are you able to help with what Article 29, Section 1 and 2 of
24 DLP of KLA relates to, Witness?

25 A. No, I'm afraid I can't. I can't get into this because I have

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17152

Cross-examination by Mr. Ellis

1 forgotten. And even if I knew, I don't know today. I do not believe
2 that I ever had access to this document, even if it existed.

3 Q. I see. And you say "even if it existed." You were not aware
4 that documents of this type were being produced by the KLA at that
5 time; correct?

6 A. Exactly that. That's what I wish to say.

7 Q. Yeah. It could be, in your view, it was created later. Is that
8 what you are saying?

9 A. Well, I didn't have access to those. I do not know whether they
10 ever existed or whether they exist to this day.

11 Q. I see. But when you went Divjake, it was to Sokol Dobruna that
12 you gave your statement. That's right, isn't it?

13 A. It is right. Blerim Kuqi's counsel was there present and
14 somebody keeping minutes.

15 Q. Yes. And when you say "Blerim Kuqi's counsel," is that
16 Agron Berisha?

17 A. Correct.

18 Q. I see.

19 MR. ELLIS: Could we now have on the screen P1345, which was
20 SPOE00231841.

21 Q. Now, again, this was a document that you were shown in the
22 course of your evidence yesterday, and, again, it's a document that
23 you didn't see during the conflict? That's right, isn't it?

24 A. No, I saw this document last week with the Prosecutor.

25 Q. Yes. And you wouldn't be able to say who wrote it or when it

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17153

Cross-examination by Mr. Ellis

1 was written, would you?

2 A. No, I wouldn't. I'm not aware of this document.

3 MR. ELLIS: If we go to the bottom of the page -- sorry, the
4 bottom of the second page. Ah, the final page. Sorry.

5 Q. There isn't a name on this document. It's just signed by the
6 defence. Do you -- or it's just typed "The Defence." Do you see
7 that?

8 A. Yes, I can see that on the screen. It just says "The Defence,"
9 but nothing else other than that.

10 Q. Yes. Now, in your preparation session last week, one of the
11 things you said to the Prosecution was that very few people in the
12 KLA actually had a computer at that time. But that's the position,
13 isn't it?

14 A. Yes, it is. Yes.

15 Q. And so if there was a computer available, it would be shared
16 between anybody who wanted to use it; correct?

17 A. Correct.

18 Q. The Prosecution's case is that they seized both this document
19 and the previous document from the same workstation. Could it be the
20 case in the conditions at the time that the prosecution and the
21 defence were working on the same computer, Witness?

22 A. Anything and everything is possible. But please spare me. I do
23 not wish to get into this discussion because I have no knowledge of
24 it whatsoever, and I cannot possibly guess either way because I
25 really have no evidence either way to say whether this is accurate or

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17154

Cross-examination by Mr. Ellis

1 not.

2 Q. No. Now, you've confirmed that you spoke with Bislim Zyrapi
3 about this case. Did Bislim Zyrapi tell you that he consulted with
4 Sokol Dobruna about it?

5 A. When I gave my statement in the premises of the command of the
6 staff, on that same day I met Bislim Zyrapi. And Bislim Zyrapi, if
7 I'm not wrong, had known that I gave this statement to Sokol Dobruna,
8 so he should know that my statement was given to Sokol Dobruna. And
9 on the same day we communicated and asked him to be vigilant and be
10 very careful, indeed, in Blerim Kuqi's case.

11 Q. Is that the only communication you had with Bislim Zyrapi about
12 the case?

13 A. No. There were other occasions when we talked about it. But
14 this is quite a case because it's about my giving a statement to the
15 prosecutor, the KLA prosecutor, and, to my recollection, to Sokol
16 Dobruna.

17 Q. I just want to read to you a passage from Bislim Zyrapi's
18 evidence on 5 June 2013.

19 MR. ELLIS: Which for those following is SITF00393427 to
20 SITF00393456, and it's page 393433.

21 Q. But I'll just read it to you. It's about Sokol Dobruna. And
22 Bislim Zyrapi said:

23 "I remember several cases where he came to seek advice and act
24 further. In particular the case involving Blerim Kuqi."

25 And the prosecutor asked:

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17155

Cross-examination by Mr. Ellis

1 "What do you remember about this case?"

2 Bislím Zyrapi:

3 "I remember in relation to this case having had consultations
4 with him about this case before the bombing regarding KLA soldier who
5 had made mistake and were under the military court and to release
6 them and send them home and to deal with these prisoners after the
7 war."

8 Were you aware that Bislím Zyrapi had those kind of
9 communications with Sokol Dobruna?

10 A. No, I am not aware of conversations that Bislím Zyrapi and
11 Sokol Dobruna have had in relation to this case. I am not aware of
12 these.

13 Q. But is this consistent with the nature of the discussions that
14 you had with Bislím Zyrapi?

15 A. I don't recall, but we had several -- we communicated on several
16 occasions on which I insisted for him to exercise care and caution to
17 bring justice and to avoid finding guilty and punishing or sentencing
18 a person who's giving his best contribution to the war effort. This
19 is absurd and painful to have someone who's giving his best
20 contribution to the war and then being accused of being a deserter.

21 Q. And your discussions about the case were then limited to what
22 you said to Sokol Dobruna -- the statement that you gave to
23 Sokol Dobruna and your conversations with Bislím Zyrapi; is that
24 right?

25 A. Yes. However, we discussed other matters with Bislím Zyrapi

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17156

Cross-examination by Mr. Ellis

1 because we knew Blerim Kuqi personally. Therefore, the conversations
2 were somehow informal.

3 Q. Yes, fair enough. And, of course, you know that Blerim Kuqi was
4 ultimately released around towards the end of March 1999; yes?

5 A. With the start of the bombing campaign, Blerim Kuqi was
6 released, returned to his position, and continued giving his
7 contribution to the Kosovo Liberation Army.

8 Q. Right. Thank you. We'll move away from that topic now,
9 Witness. I want, briefly, if I may, to go back to the role of
10 Bislrim Zyrapi.

11 Now, you've confirmed, I think in answer to Mr. -- well, you've
12 confirmed a moment ago you understood Bislrim Zyrapi to be acting --
13 to be the chief of staff of the KLA; correct?

14 A. Correct.

15 Q. And there were occasions, I think you said, when you went to
16 Divjake to report to Bislrim Zyrapi; is that right?

17 A. There were rare occasions. But, yes, I met with Bislrim Zyrapi.

18 Q. Have I understood correctly that after November 1998, there was
19 a building in Divjake for the operations directorate?

20 A. Yes, there was a building. And inside this building, there was
21 a room which was called the room of the operational directorate.

22 Q. Yes. And I just want to talk about some of the people that you
23 met there. You met Sali Veseli there. I think you gave his name
24 earlier.

25 A. Yes. And we mostly reported to Sali Veseli, especially in

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17157

Cross-examination by Mr. Ellis

1 November. Our reports from the brigade level, meaning.

2 Q. And Sali Veseli was another experienced military officer, wasn't
3 he?

4 A. Yes, he was.

5 Q. And you saw Naim Maloku with the operations department as well,
6 didn't you?

7 A. In the course of January, yes.

8 Q. And he was somebody who had studied with you in Zagreb. He was
9 another person with a military background; correct?

10 A. Correct.

11 Q. So when you're speaking about reporting to the General Staff,
12 it's in fact reporting to Mr. Zyrapi, Mr. Veseli, or somebody within
13 those military people in the operations department; yes?

14 Sali Veseli, sorry. I just said "Mr. Veseli."

15 A. Within the operational directorate following the military line.
16 This is how we reported as brigade commanders.

17 Q. And you were asked yesterday by Mr. Misetic about which members
18 of the General Staff you were in contact with around October 1998. I
19 just want to be very clear, you were not reporting to Jakup Krasniqi
20 at that time, were you?

21 A. I don't know. In October 1998, if I'm not mistaken,
22 Mr. Krasniqi was not even in Kosovo. At least I did not meet him.

23 Q. Well, he was in Kosovo at that time. But what you can say is
24 that you didn't meet him or contact him in that period; correct?

25 A. Thank you for your remark, counsel. I recognise my mistake. I

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17158

Cross-examination by Mr. Ellis

1 did not see Mr. Jakup Krasniqi in October or November.

2 Q. And you wouldn't have been reporting to Jakup Krasniqi because
3 you understood the reporting line to go to the operations
4 directorate; correct?

5 A. Correct.

6 MR. ELLIS: Could we look together at P1331, which was
7 U000-6605.

8 Q. And do you recognise that as a document that you prepared?

9 A. Yes, this is my document.

10 Q. And presumably it's handwritten because you didn't have access
11 to computers at that time; correct?

12 A. Correct, I did not have a computer.

13 Q. And what it is, effectively, is a list of the locations of
14 Serbian forces; is that right?

15 A. That's right.

16 Q. And it doesn't give the numbers or the strength of the forces in
17 each location. It's just identifying by description where they are.
18 That's right, isn't it?

19 A. We followed their movements. We didn't have precise information
20 or intelligence. Therefore, we haven't included any numbers. I
21 reported in writing here the information available to me.

22 Q. And so when you speak about reporting to the operations
23 directorate, this is the kind of information that was being reported,
24 isn't it?

25 A. We reported on the situation in the brigade, the number of

1 soldiers, other aspects related to our requests, our needs at the
2 brigade level, and, of course, one of these aspects is the Serb
3 forces' positioning in the municipality of Suhareke. So all aspects
4 involved in the brigade.

5 Q. I want to go back then to the role of Jakup Krasniqi. And you
6 knew from mid-June 1998 that he was the spokesperson for the KLA.
7 That's right, isn't it?

8 A. From the public information means, media, we realised that he
9 was the spokesperson of the KLA. We did not learn this through any
10 information circulating within the KLA.

11 Q. Now, when you were interviewed by the Prosecution in 2019, you
12 told them that Jakup Krasniqi was a deputy commander of the KLA at
13 the time when Blerim Kuqi was arrested. And my question is: Is that
14 something that you knew at the time in 1999 or is it something that
15 you learnt later?

16 A. With respect to the position of deputy commander, I learned when
17 I was chief of staff in the Pashtrik operational zone. With the
18 appointment of Sylejman Selimi as commander of the Kosovo Liberation
19 Army, it was mentioned that the deputy commander was Jakup Krasniqi.
20 I learned this in the course of April, not when I was the chief of
21 staff but when I was acting in the directorate of the operational
22 sector of the General Staff, training and education centre, which was
23 in April 1999.

24 Q. Very well. So in January 1999, and, in fact, during the whole
25 period you were chief of staff in the Pashtrik zone, you didn't know

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17160

Cross-examination by Mr. Ellis

1 that Jakup Krasniqi was a deputy commander in the KLA; correct?

2 A. Correct, I did not know. With respect to him being deputy
3 commander, as I mentioned, I learned this at the end of April, and I
4 was given this information by Ekrem Rexha, Drini. Until that moment,
5 I did not know.

6 Q. Now, you know that Jakup Krasniqi was part of the delegation
7 that went to the Rambouillet negotiations in February 1999; correct?

8 A. Correct.

9 Q. And then there was a second round of negotiations in Paris,
10 wasn't there?

11 A. I do not know the details of it. I don't recall them. But I do
12 know that he was our representative in the talks in Rambouillet and
13 other meetings.

14 Q. Now, Jakup Krasniqi didn't return to Kosovo after the
15 negotiations in Paris, so he wasn't in Kosovo in April and May 1999,
16 was he?

17 A. I did not meet him. Because I erroneously said before that he
18 was not, you indicated that he was, so I do not want to make the same
19 mistake again. So my answer is I did not meet him.

20 Q. So to be clear, you did not see him in April or May 1999;
21 correct? In Kosovo in April or May 1999.

22 A. Correct. After he went to Rambouillet, from February I don't
23 recall having met Mr. Krasniqi anymore.

24 MR. ELLIS: Could we then have on screen, please, from your
25 interview with the Prosecution, it's P1327.9. In the English,

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17161

Cross-examination by Mr. Ellis

1 page 26, line 9; and in the Albanian, page 34, line 3, beginning at
2 line 3.

3 Q. Now, I just want to read through that passage with you because
4 you said there that:

5 "... in February 1999, the discussions in Rambouillet started.
6 The zone commanders and the members of the General Staff, they held a
7 meeting in the village of Likoc of the municipality Skenderaj, and
8 there they decided that the general commander of the KLA could be
9 Sylejman Selimi. This is why he refers to him as the first
10 commander. So he accepts that there were changes in the structure.

11 "Q. Yes.

12 "A. This happened, yes, on the 7th of February.

13 "Q. Thank you.

14 "A. And then during that meeting, the deputy commander was
15 Jakup Krasniqi. They wanted a second deputy and they proposed
16 Sokol Bashota, but this -- they couldn't approve it. And so the
17 meeting was over."

18 Now, do you recall giving those answers to the Prosecution back
19 in 2019, Witness?

20 A. Yes, I do. I received this information from Ekrem Rexha,
21 Commander Drini, who attended the meeting and explained to me exactly
22 how the meeting unfolded. Again, in April 1999, when I communicated
23 often with Ekrem Rexha on many topics, we had enough time because we
24 were both in Jezerc. One is in the municipality of Shtime --

25 Q. I follow. So --

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17162

Cross-examination by Mr. Ellis

1 A. -- and the other in Ferizaj.

2 Q. I follow. So this is a meeting which happened, you say, on
3 7 February, which you learnt about in April from Drini, Ekrem Rexha,
4 when you were in Jezerc; is that right?

5 A. Right.

6 Q. Jakup Krasniqi couldn't actually have been at the meeting on 7
7 February 1999 because he was in Rambouillet; correct?

8 A. Correct.

9 MR. ELLIS: Could we have on the screen, please, P182, and it's
10 beginning at page SPOE00226397.

11 Q. Just to be absolutely clear, you were not at the meeting that
12 you're describing in February 1999 because it was a meeting for zone
13 commanders; correct?

14 A. Zone commanders and staff -- the staff of the General Staff.

15 Q. Exactly. But you were not at the meeting yourself; correct?

16 A. I was not present in the meeting, but I was in the proximity of
17 the venue of the meeting. I was carrying out other tasks, which is
18 training soldiers to use anti-aircraft equipment.

19 Q. I see. Now, what we see on the screen are notes which have a
20 date of 6 February 1999, and we have the names Ramush Haradinaj,
21 Rrustem Mustafa, Ekrem Rexha, Sylejman Selimi, and then we have
22 further down the page two representatives of the General Staff.

23 I'll again suggest to you this is probably the note of the
24 meeting that you're talking about, isn't it? We've got zone
25 commanders there, we've got representatives of the General Staff

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17163

Cross-examination by Mr. Ellis

1 there, and Ekrem Rexha, as you've said, was there.

2 MR. HALLING: Just objection as to the foundation for this
3 witness to answer that question.

4 PRESIDING JUDGE SMITH: Overruled.

5 You can answer if you know.

6 THE WITNESS: [Interpretation] It's the same meeting. I don't
7 know why I'm -- I have this date of 7 February in my head, but it's
8 the day when our delegation started the talks in Rambouillet. We
9 said it before. This document is accurate.

10 MR. ELLIS:

11 Q. Now, we can agree, I think, that in the course of this meeting
12 the zone commanders decided to appoint Sylejman Selimi as the new
13 general commander. That's right, isn't it?

14 A. I wouldn't want to discuss the details of this meeting. Perhaps
15 it would be better to request or ask this kind of information from
16 the other attendees of the meeting.

17 PRESIDING JUDGE SMITH: There we go. I can hear that. Go
18 ahead.

19 THE INTERPRETER: Test, test, test. Can you hear me?

20 PRESIDING JUDGE SMITH: Yes.

21 THE WITNESS: [Interpretation] I am not in a position to talk
22 about the details of the meeting because these are things that I have
23 only heard from other people.

24 MR. ELLIS:

25 Q. Did you hear that the zone commanders questioned whether

1 Jakup Krasniqi was the right person to be deputy commander at that
2 meeting?

3 A. No. I was only informed about the fact that Sylejman Selimi was
4 chosen as a commander. And when the deputy commander was proposed,
5 it was said that we have already deputy commanders and the name of
6 Jakup Krasniqi was mentioned. Then they were looking for a second
7 deputy commander. The name of Sokol Bashota was proposed. I don't
8 see his name here, but I think he was present. I am not certain. So
9 his name was mentioned but it was not approved, and the meeting
10 ended.

11 These are the words of Ekrem Rexha. Anything else I say would
12 be guessing.

13 Q. Well, I'm going to put it to you that there were two deputy
14 commanders, one for operations and one for support. Is that
15 something that you are aware of?

16 A. No, I'm not.

17 Q. Were you aware that Jakup Krasniqi was appointed deputy
18 commander for support at a meeting on 12th and 13th November 1998?

19 A. No, I am not aware of this information. I don't know.

20 Q. And, in fact, the discussion at the meeting on 6 February 1999
21 was about removing Jakup Krasniqi and Sokol Bashota as deputy
22 commanders, not about appointing them.

23 A. I do not know the details. I already said what I know.

24 Q. And after those meetings in February 1999, you didn't see
25 Mr. Krasniqi again until after the war was over. That's right, isn't

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17165

Cross-examination by Mr. Ellis

1 it?

2 A. I don't recall having met Mr. Krasniqi including after the war,
3 let alone during the war.

4 MR. ELLIS: Your Honours, that would be a good moment to break.
5 I see the time. I have, I think, 15 minutes, maybe a little bit
6 longer to go.

7 PRESIDING JUDGE SMITH: Witness, we will break for lunch now.
8 We thank you for your time. Please go with the Court Usher, and we
9 hope you enjoy your lunch. And we'll be back here at 2.30.

10 THE WITNESS: [Interpretation] Thank you.

11 [The witness stands down]

12 PRESIDING JUDGE SMITH: [Microphone not activated].

13 --- Luncheon recess taken at 1.00 p.m.

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

15 PRESIDING JUDGE SMITH: Madam Court Officer or Court Usher, you
16 can bring in the witness.

17 [The witness takes the stand]

18 PRESIDING JUDGE SMITH: Welcome back, Mr. Fondaj. We continue
19 on with Mr. Ellis's questions, so please give him your attention.

20 MR. ELLIS:

21 Q. Good afternoon, Witness.

22 A. Good afternoon.

23 Q. I only have, I think, about ten minutes left, so it'll be
24 relatively short for me this afternoon.

25 I want to ask you first about an incident you were asked about

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17166

Cross-examination by Mr. Ellis

1 by the Prosecution involving Abdyl Rama. And I think you said in
2 your preparation session last week that you did not talk to Abdyl
3 Rama about what happened to him, and all that you know about this
4 comes from Abdyl Rama's nephew Destan Berisha. That's correct, isn't
5 it, Witness?

6 A. Yes, it is correct.

7 Q. And in 2019, when you spoke to the Prosecution, you told them
8 that Destan Berisha was still living in Suhareke; correct?

9 A. Yes, indeed.

10 Q. But you don't know whether the Prosecution went to speak to
11 Destan Berisha or not, do you?

12 A. No, I do not know.

13 Q. Let's move to something different.

14 MR. ELLIS: Could we have on the screen P00641, please.

15 Q. You were shown this document by the Prosecution in your
16 preparation session last week, and your response was that you had not
17 seen this document before. That's right, isn't it?

18 A. Yes, it is.

19 Q. And if I could show you one more document from the preparation
20 session last week.

21 MR. ELLIS: It was U000-5139.

22 Q. This is another document, isn't it, that you had not seen until
23 the Prosecution showed it to you last week; correct?

24 A. It is correct.

25 Q. And you said that this list reflects what documents should have

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17167

Cross-examination by Mr. Ellis

1 been in a brigade, but a majority of the brigades did not have all
2 these documents. That's right, isn't it?

3 A. Yes, it is.

4 Q. And you said that you had very little from this list when you
5 were the 123 Brigade commander. That's right, isn't it?

6 A. That also is right.

7 Q. And although work was done to prepare such documents, you do not
8 know the extent to which these papers were actually ever collected;
9 correct?

10 A. We worked hard with documents, but this complete set, no, I
11 couldn't manage to do that because I was in the Pashtrik operational
12 zone.

13 Q. So sometimes these sort of documents reflect what you would have
14 liked to have not what you necessarily had in practice; correct?

15 A. Yes, it is.

16 Q. Thank you.

17 MR. ELLIS: Just a moment.

18 [Specialist Counsel confer]

19 MR. ELLIS: Thank you. I don't have anything further.

20 PRESIDING JUDGE SMITH: Thank you, Mr. Ellis.

21 Redirect?

22 MR. HALLING: A brief one, Your Honour. Actually, just before
23 commencing, the document that's on the screen now, this is something
24 that we would eventually like to tender for admission into evidence.
25 Does the Defence have any objection to that given the exchange in

1 court just now?

2 MR. ELLIS: Well, the exchange was the witness hadn't seen it
3 before and doesn't know the extent to which anything on it ever
4 happened then. That's ...

5 PRESIDING JUDGE SMITH: Let's just go on with your redirect.

6 MR. HALLING: Very well. It's one topic and it should be quite
7 brief.

8 Re-examination by Mr. Halling:

9 Q. Witness, I just have a few questions for you now. A lot of
10 other questions I could have potentially asked were clarified in the
11 subsequent cross-examination and your admitted evidence.

12 MR. HALLING: But I would ask if the Court Officer could please
13 pull up P1327.8, and it would be page 21 in the English and page 26
14 in the Albanian.

15 Q. Witness, as that's being done, do you recall your testimony from
16 earlier today that when you went to Negroc on June 10, 1998, you were
17 put in touch with Number Ten, a person you later learnt is
18 Sokol Bashota. Do you remember that evidence?

19 A. Yes, I do. Yes, I think I have stated that.

20 MR. HALLING: And for the record, this is pages 23 to 24 of the
21 realtime transcript. It was said again on page 61 of the realtime
22 transcript.

23 Q. Witness, I'd like to take you to part of your statement now
24 that's on the screen. You did say in your SPO interview that you
25 understood Sokol Bashota to be known as Ten, and this is in P1327.1,

1 page 16 in the English. But then later on in the interview you say
2 this:

3 "Q. What was Rexhep Selimi's pseudonym, code name?

4 "7. But I don't know -- I'm not sure about his pseudonym."

5 And then you're asked:

6 "So is it fair to say that as of October -- sorry, please go
7 ahead."

8 And then you answer as follows:

9 "7 or 10. Because there is one more name, Sokol Bashota, and I
10 don't know who of them had which number. So one of them had the 7
11 and the other the 10 [in] their code name. But I'm not sure."

12 Witness, are you sure that Sokol Bashota was known as Ten when
13 you went to see him at Negroc in June 1998?

14 A. When I gave this statement in 2019, there was so much and -- to
15 say, and, of course, I was a little confused about the numbers. But
16 in the meantime, and given the conversations we had last week, and
17 this week too, I can say, and it is quite clear for me, that Number
18 Ten is Sokol Bashota.

19 Q. That's interesting. Why don't we go to what you said last week.
20 This is P1328 in paragraph 6. Witness, this is what's recorded from
21 your preparation session:

22 "Sokol Bashota was referred to only by number when [you] met him
23 at Negroc, but [you are] not good with numbers and [forget] what
24 number he referenced ..."

25 Is that correct?

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17170

Re-examination by Mr. Halling

1 A. Indeed, we discussed this, but back then I didn't remember. But
2 now I remember that it was about Number Ten. Sokol Bashota's number
3 was 10.

4 Q. So as I understand it, this was not information that you knew at
5 the time of your SPO interview in 2019; is that right?

6 A. I was confused. I was confused, really. And I've mixed up
7 these concepts. But nonetheless, now I am convinced that this was
8 about Number Ten, and it is about Sokol Bashota.

9 Q. Witness, the readback of your preparation note was on 21 June,
10 last Friday; is that right?

11 A. Yes.

12 Q. So your confusion as to this number was still persisting as of
13 last Friday; is that right?

14 A. Well, yeah, it could be. It could have been on Friday,
15 Saturday, Sunday. But in the meantime I remember now, and I can say
16 with the greatest responsibility that it is about Sokol Bashota being
17 Number Ten. And, yes, I can say this with conviction.

18 Q. Well, if you are as convinced as you are now, then what was
19 Rexhep Selimi's number?

20 A. And now it turns out that it's Number Seven, but I'm not quite
21 sure.

22 Q. So it turns out that it's Number Seven, and what is that based
23 on?

24 A. Well, I don't know. But I know that some of the members of the
25 General Staff were identified by numbers. I cannot say this basing

1 it on anything particular, but I am convinced that his was Number
2 Seven.

3 Q. So, Witness, as I understand it, you just said in response to my
4 question that you don't know but you are nevertheless convinced; is
5 that right?

6 A. That's what I said. And these concepts have gradually come back
7 to me. These are notes or information that has come back to me at
8 this stage while being here in the court.

9 Q. Witness, you just said you don't know. With a simple "yes" or a
10 "no," do you know Rexhep Selimi's number that he used during the war?
11 Just a "yes" or a "no."

12 A. I cannot remember exactly, but now it seems to me that it is
13 Number Seven. But still I'm not sure.

14 Q. Witness, with a "yes" or a "no," did you know Sokol Bashota's
15 number that he used during the war?

16 A. Sokol Bashota was identified by the Number Ten.

17 Q. Witness, I put it to you that there is no explanation for why
18 between Friday and now you would gain this much certainty on this
19 fact. What do you say to that?

20 MR. MISETIC: I'm going to object as argumentative, Judge.

21 PRESIDING JUDGE SMITH: Overruled. He can answer.

22 MR. HALLING: I'm told that the transcript is paused for the
23 moment. Oh, it's just come back.

24 Q. Witness, would you like me to repeat my question?

25 A. No, the question is quite clear. That said, I have had

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17172

Questioned by the Trial Panel

1 sufficient time to think about these matters. And since my being
2 here, so today is the eighth day, I have done nothing else but try
3 and recollect the issues of the then time, what happened during the
4 war, and it is as a result of that that I have now got this
5 recollection in my memory.

6 MR. HALLING: Your Honours, the witness's answer is his answer.
7 We have nothing further.

8 PRESIDING JUDGE SMITH: Thank you.

9 Judge Barthe, do you have some questions?

10 JUDGE BARTHE: [via videolink] Yes, thank you, Judge Smith.
11 Unfortunately, I cannot see the witness right now. Maybe that can be
12 changed. Oh, wonderful. Thank you very much.

13 Questioned by the Trial Panel:

14 JUDGE BARTHE: [via videolink] Good afternoon, Mr. Fondaj. I
15 hope you can hear me well.

16 A. Yes, I can hear you, but I cannot see who is speaking though.

17 JUDGE BARTHE: [via videolink] I'm participating on Zoom. Maybe
18 that can be changed as well so that you can see me. Good afternoon.

19 A. That's fine, yes.

20 JUDGE BARTHE: [via videolink] Thank you.

21 Mr. Fondaj, the Panel has a few more questions for you which we
22 believe are necessary to better understand your evidence. And my
23 first questions are about your personal meetings with Mr. Thaci.

24 If I'm not mistaken, you told Mr. Misetic from the Thaci Defence
25 yesterday that you met Mr. Thaci two or three times in 1998. And for

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17173

Questioned by the Trial Panel

1 those following, I'm referring to page 17061, line 22, of the
2 provisional transcript.

3 Do you remember saying this yesterday to Mr. Misetic during your
4 cross-examination?

5 A. Yes. Yes, I do.

6 JUDGE BARTHE: [via videolink] Thank you. And you also said that
7 all of these two or three meetings took place in October and November
8 1998; correct?

9 A. Yes.

10 JUDGE BARTHE: [via videolink] Can you tell us again where the
11 first of these meetings took place? Was that in the village of
12 Marali, as you said yesterday on page 17062, line 10, of the
13 provisional transcript?

14 A. Yes, it was.

15 JUDGE BARTHE: [via videolink] And you met Mr. Thaci there in the
16 courtyard of a private house; is that right?

17 A. In Marali is about the second or the third meeting. The first
18 was in Fshati i Ri, new village.

19 JUDGE BARTHE: [via videolink] Thank you. I will come back to
20 that in a moment.

21 You also said that, apart from Mr. Thaci and yourself, at the
22 meeting that took place in Marali only Mr. Fatmir Limaj was present;
23 is that correct?

24 A. Yes, it is.

25 JUDGE BARTHE: [via videolink] Thank you. Mr. Fondaj, you told

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17174

Questioned by the Trial Panel

1 us earlier this morning that you already met Mr. Thaci together with
2 Mr. Rexhep Selimi in September 1998; is that right?

3 A. Yes, it is. It is right.

4 JUDGE BARTHE: [via videolink] How many times did you meet
5 Mr. Thaci in September 1998, if you can remember that?

6 A. Twice.

7 JUDGE BARTHE: [via videolink] And when you met Mr. Thaci and
8 Mr. Rexhep Selimi for the first time, how did you know that the
9 persons in front of you were, in fact, Mr. Thaci and Mr. Selimi?

10 A. The meeting with them was in Doberdolan, and they were
11 accompanied by Bislum Zyrapi and some other members of the command of
12 the 123rd Brigade. So the information I obtained from them too.
13 Amongst them, there was the commander of the 122nd Brigade, back then
14 Agim Kuci. So Agim Kuci introduced me to Rexhep Selimi. I didn't
15 know Rexhep Selimi before, so for the very first time we said hello
16 to each other in Doberdolan village. It was around 10 September.
17 Whereas Hashim Thaci I knew beforehand.

18 JUDGE BARTHE: [via videolink] And how did you know Mr. Thaci?
19 Did you meet him personally or did he ...

20 A. We had met in war situations before, but the circumstances in
21 which we met I cannot remember.

22 JUDGE BARTHE: [via videolink] Thank you. And did you know when
23 you met Mr. Selimi for the first time what position Mr. Selimi had
24 within the KLA? I think you said earlier today, and this is on page
25 29 of the realtime transcript, that you did not know him at the time

Questioned by the Trial Panel

1 nor do you know -- or that you did not know that at the time, nor you
2 know it today, especially what his duties and tasks were; is that
3 correct?

4 A. Yes, it is correct.

5 JUDGE BARTHE: [via videolink] So is it also correct that you
6 don't know now that Mr. Rexhep Selimi was allegedly the inspector
7 general of the KLA from at least July 1998 onwards? You're not aware
8 of that?

9 A. No, I do not remember this detail. Perhaps I knew it in the
10 past, but I do not know that.

11 JUDGE BARTHE: [via videolink] You said perhaps you knew it in
12 the past. So is it possible that you forgot that he was the
13 inspector general of the KLA from summer 1998 -- or to be more
14 precise, from July -- at least July 1998 onwards? Is that possible?

15 A. The fact you mentioned, I never knew. But since you mentioned
16 it, something still tells me that it could have been something.
17 Perhaps a piece of information I once knew, but I have forgotten
18 about that piece of information.

19 JUDGE BARTHE: [via videolink] Mr. Fondaj, just to be clear on
20 that point, I'm not saying that Mr. Selimi was, in fact, the
21 inspector general. I said he was allegedly the inspector general, so
22 there's an allegation that he was the inspector general or became
23 inspector general in July 1998. But this is just for clarification.

24 My next question, if I may, Mr. Fondaj, is the following: Do
25 you know how Mr. Thaci and Mr. Selimi came to the meetings you had

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17176

Questioned by the Trial Panel

1 with them? Did they come by car or on foot?

2 A. I do not have information about these details, but I do know
3 that they had come from a region of the 124th Brigade. And
4 Bislrim Zyrapi stayed in Doberdolan. Whereas Rexhep Selimi and
5 Hashim Thaci, with -- they were accompanied by our soldiers and they
6 went towards Drenica operational zone.

7 JUDGE BARTHE: [via videolink] That would have been my next
8 question. Apart from Mr. Bislrim Zyrapi and the soldiers of
9 Brigade 123, were the two, Mr. Thaci and Mr. Selimi, accompanied by
10 other soldiers or other members of the KLA when you met them?

11 A. When I met them, I do not recall anybody else being with them.
12 But from then on, they were accompanied by our soldiers.

13 JUDGE BARTHE: [via videolink] So they didn't bring their own
14 soldiers, for example, with them?

15 A. From what I can remember, they were not accompanied by any
16 soldiers.

17 JUDGE BARTHE: [via videolink] Understood. Thank you.

18 My next question is the following: Can you remember what
19 Mr. Thaci was wearing during the meetings you had with him? Was he
20 wearing a uniform; and if so, can you describe the uniform? Or was
21 he wearing civilian clothes?

22 A. I am just trying to recollect that, but I cannot remember the
23 particulars, I'm afraid.

24 JUDGE BARTHE: [via videolink] Thank you. Can you remember
25 whether Mr. Thaci had a weapon? Was he carrying a weapon?

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17177

Questioned by the Trial Panel

1 A. I am convinced that he was armed.

2 JUDGE BARTHE: [via videolink] And could I ask you to remember,
3 if possible, what kind of weapon he had?

4 A. I am not sure, but it could have been an automatic rifle. We
5 refer to it as a Kalashnikov.

6 JUDGE BARTHE: [via videolink] Thank you. And what about
7 Mr. Selimi? Did he wear a uniform and did he have a weapon? If you
8 can remember that.

9 A. Again, I cannot remember because the meeting with Rexhep Selimi
10 was in the courtyard, and at that moment up until we were contacted
11 at least, he didn't have a weapon on him. So I do not know about
12 what weapons he had, if at all any.

13 JUDGE BARTHE: [via videolink] And what about a uniform? Was
14 Mr. Selimi wearing a uniform?

15 A. I think he was in uniform, but I am not sure though.

16 JUDGE BARTHE: [via videolink] And what about Mr. Zyrapi? Was he
17 wearing a uniform?

18 A. Yes, Bislim Zyrapi I remember was regularly in uniform.

19 JUDGE BARTHE: [via videolink] And coming back to the meeting you
20 had with Mr. Thaci and Mr. Limaj in Marali in October 1998. Could
21 you please tell us again briefly how it came to the meeting and what
22 happened? Was that the same meeting where you got the position as
23 commander of Brigade 123 or was it a different meeting?

24 A. Being given the position, that happened in another meeting
25 beforehand in Fshati i Ri. Whereas this was a meeting after that,

1 when Hashim Thaci asked me there to -- for consultation purposes and
2 to coordinate our efforts with other units of other brigades that
3 acted in that region. So I had an invitation, but I did respond to
4 the meeting with a little bit of a delay. And when we met in the
5 courtyard of that home, there was a bit of a reprimand as to the
6 delay. But it was a situation of war, and I couldn't react
7 immediately at that particular hour that was required, but I
8 responded with quite a bit of a delay instead.

9 But it was there that we talked to each other, standing there in
10 the courtyard of the home I mentioned.

11 JUDGE BARTHE: [via videolink] So the meeting, just to be very
12 clear on that point, the meeting where you received the general order
13 to attack Serb positions from Mr. Thaci, as you said yesterday, was a
14 different meeting? That meeting was later than the meeting when you
15 were appointed commander of Brigade 123; right?

16 A. Yes, this occurred in the village of Marali in October. I don't
17 recall the exact date. But in any event, this was after I was
18 communicated the task of -- the position of commander of the brigade.

19 JUDGE BARTHE: [via videolink] Thank you. And did you know at
20 the time of the second meeting with Mr. Limaj and Mr. Thaci, did you
21 know what role or position Mr. Limaj had in the KLA at the time, if
22 any?

23 A. At that time, Fatmir Limaj was the commander of Brigade 121. I
24 know this for certain.

25 JUDGE BARTHE: [via videolink] Do you know whether Mr. Limaj

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17179

Questioned by the Trial Panel

1 later became a member of the KLA General Staff?

2 A. Yes. Later, he became director of the military police
3 directorate, and he was replaced in his previous position by
4 Haxhi Shala.

5 JUDGE BARTHE: [via videolink] And do you know when Mr. Limaj was
6 replaced and when he became a member of the KLA General Staff or the
7 head of the military police directorate?

8 A. I don't recall the dates or details of this. But in my opinion,
9 this occurred in November 1998.

10 JUDGE BARTHE: [via videolink] Mr. Fondaj, when you wrote the
11 letter or the request to the military police directorate, I'm
12 referring to Exhibit P1332, on 10 November 1998, did you know that
13 you were writing this request to Mr. Limaj in his capacity or in his
14 position as the head of the military police directorate?

15 A. If I'm not mistaken, I directed my request to the Directorate of
16 the Military Police but not to a person as an authority. I knew -- I
17 understood that -- I didn't know at the time whether Fatmir Limaj was
18 the head of the military police directorate or not.

19 JUDGE BARTHE: [via videolink] Yes. This was actually my
20 question, whether you were aware that you wrote the letter to Mr. --
21 or the request to Mr. Limaj as the head of the military police
22 directorate. I'm aware that you didn't mention Mr. Limaj in the
23 letter, but were you aware that you were writing to him or not?

24 A. I don't know. I don't know. But, again, the letter was sent
25 based on the information in the stamp of the document.

Witness: Kurtesh Fondaj (Resumed) (Open Session)
Questioned by the Trial Panel

Page 17180

1 JUDGE BARTHE: [via videolink] I'm asking, Mr. Fondaj,
2 specifically because, as you just confirmed a few minutes ago, that
3 Mr. Limaj was commander of Brigade 121, 121, and if I remember
4 correctly from the letter, the letter was referring to problems you
5 were facing with members or -- of Brigade 121 or at least the vehicle
6 that was seized should have gone to or should have been transferred
7 to the brigade and used by Brigade 121. This is why I'm asking.

8 A. This is how it happened. However, I sent complaint, my
9 notification to the military police directorate because the document
10 bore the stamp, and the person in question told me, I quote, "I have
11 an order from the military police." So these were the two elements
12 that guided me in filing the request through this line.

13 JUDGE BARTHE: [via videolink] Understood. Thank you.

14 Mr. Fondaj, you also said yesterday to Mr. Misetich from the
15 Thaci Defence that, I quote:

16 "... all directors or -- of directorates [the KLA] had at the
17 General Staff ... were advisers to the chief of staff."

18 And:

19 "In their role as advisers, they advise the chief of staff how
20 to formulate an order ..."

21 And, for the record, this is from page 17065 of the provisional
22 transcript.

23 Do you remember saying this yesterday?

24 A. If I said this, this is how it should have functioned based on
25 my knowledge and my comprehension of the military structure. Now, I

1 am not in a position to affirm whether it did actually function in
2 that way or not.

3 JUDGE BARTHE: [via videolink] You mentioned that in connection
4 to or in the context of discussing Mr. Limaj's position -- new
5 position as head of the military police directorate. And my question
6 would be or my next question is actually does this also apply to
7 Mr. Thaci? Was he also only an adviser of or to the chief of staff
8 in his position?

9 A. In our military terminology, the chief of staff is the person
10 who's number three in the military hierarchy. Number one is the
11 commander, then the deputy commander, and then number three is the
12 chief of staff. In our organisation, if there was a different
13 structure, that would be a different matter.

14 JUDGE BARTHE: [via videolink] And assuming that
15 Mr. Rexhep Selimi was, indeed, the general inspector or inspector
16 general of the entire KLA, would he also be an adviser or should be
17 an adviser to the chief of staff in that role?

18 A. In principle, yes.

19 JUDGE BARTHE: [via videolink] But you're not saying that
20 Mr. Thaci and Mr. Selimi were, indeed, advisers of the chief of staff
21 in September 1998 or October 1998 when you met them?

22 A. I do not know the exact way they conducted their work. In
23 principle, I'm saying that based on my knowledge and what I learned
24 in school, they should be within the or under the responsibility of
25 the chief of staff.

Witness: Kurtesh Fondaj (Resumed) (Open Session)
Questioned by the Trial Panel

Page 17182

1 However, in September and October, the chief of staff was
2 referred to as the head of the operations, chief of operations, not
3 as the chief of staff. Therefore, during the mentioned period of
4 time, somebody else might have as well be the chief of staff.

5 JUDGE BARTHE: [via videolink] You just mentioned a school. Are
6 you referring to the military school of the former army -- or army of
7 the former Yugoslavia?

8 A. Yes.

9 JUDGE BARTHE: [via videolink] So did that army have -- or also
10 have directorates and a general staff?

11 A. The Yugoslav Army?

12 JUDGE BARTHE: [via videolink] The Yugoslav Army, yes.

13 A. Of course, the Yugoslav Army had its staff. Now, I do not know
14 exactly the internal organisation, but it should be the case. There
15 were sectors with perhaps different denominations, but they certainly
16 had them.

17 JUDGE BARTHE: [via videolink] Also a political directorate?

18 A. The Yugoslav Army did not need to have a political directorate
19 because they had the government and other state organs. We are
20 talking about April when the provisional government was formed and
21 the director of the political directorate moved to become -- so as
22 you form the government structures and state structures, many
23 positions change and become unnecessary.

24 JUDGE BARTHE: [via videolink] Thank you. And one last question
25 on that topic. Can you just mention for the record who the chief of

Questioned by the Trial Panel

1 staff within the KLA General Staff was at the time? That is, in
2 September and October 1998. Was that Mr. Bislum Zyrapi?

3 A. In September, he was still referred to as chief of operations.
4 Perhaps -- and perhaps until the beginning of October. Later on, he
5 was known as the chief of staff. Now, the exact date this -- when
6 this transition happened between chief of operations and chief of
7 staff, I do not know.

8 JUDGE BARTHE: [via videolink] Thank you. My next questions are
9 about the investigations against Mr. Blerim Kuqi, and considering
10 that my colleagues might have more questions about this later, I only
11 want to know the following.

12 In your SPO interview, this is Part 7, page 21, and also in your
13 preparation session, you said that you believe that you were
14 questioned by a prosecutor, namely, Mr. Sokol Dobruna, in the
15 presence of a defence counsel, Agron Berisha, and a note-taker; is
16 that right?

17 A. That's right.

18 JUDGE BARTHE: [via videolink] Could you please explain how you
19 knew that the person in front of you was, in fact, Mr. Dobruna? I'm
20 not talking about his function as a prosecutor or as a judge. I am
21 talking about his identity. Did you know him from before?

22 A. Yes, I have known Sokol Dobruna for a long time. Since 1990.

23 JUDGE BARTHE: [via videolink] And my last questions on this
24 topic. Are you aware of other cases or investigations or trials led
25 by Mr. Dobruna or another KLA prosecutor or judge against non-members

Questioned by the Trial Panel

1 of the KLA or civilians who were accused of having collaborated with
2 the enemy?

3 A. I am not aware.

4 JUDGE BARTHE: [via videolink] Thank you. Do you know who was
5 responsible for dealing with such cases or suspicions? Who was
6 investigating such cases? Who was arresting suspects, et cetera?

7 A. If we're talking in principle, then this -- within the military
8 structure would be the police or the intelligence or
9 counter-intelligence sector. Now, in practice, in reality, were
10 there cases or not, I cannot say because I don't know.

11 JUDGE BARTHE: [via videolink] Thank you, Mr. Fondaj. My final
12 questions pertain to an individual you describe in your SPO interview
13 as one of the spokespersons of the KLA; namely, Mr. Adem Demaci. Now
14 I'm referring to Part 7 of your SPO interview, page 33, line 1.

15 First of all, have you ever personally met Mr. Demaci during the
16 war; and if so, where, when, and on what occasion?

17 A. No, I never met with Adem Demaci during the war.

18 JUDGE BARTHE: [via videolink] And is it still your evidence that
19 Mr. Demaci was one of the spokespersons or spokesmen of the KLA?

20 A. I am giving this information based on the fact that this was
21 also communicated in the public media.

22 JUDGE BARTHE: [via videolink] Mr. Fondaj, I'm asking that
23 question because we have heard several times in this courtroom that
24 Mr. Demaci was maybe the most important person if not the true leader
25 of the KLA. What do you say to that?

Witness: Kurtesh Fondaj (Resumed) (Open Session)
Questioned by the Trial Panel

Page 17185

1 A. I did not have more information than what I said.

2 JUDGE BARTHE: [via videolink] Let me ask you -- let me
3 nevertheless ask you two more questions, final questions. Do you
4 know whether Mr. Demaci was a member of the KLA General Staff in 1998
5 or 1999?

6 A. I don't know.

7 JUDGE BARTHE: [via videolink] And are you aware of any military
8 orders or instructions, either specific or general, given by
9 Mr. Demaci to KLA forces during the war? Have you ever seen or heard
10 of any such orders or instructions?

11 A. Instructions that he gave in his capacity as a spokesperson,
12 yes. So those that went through the media. And one of the elements
13 that I mentioned yesterday as well is when he asks for the army to
14 organise and move into a guerilla warfare.

15 JUDGE BARTHE: [via videolink] Was that instruction an order from
16 your point of view?

17 A. An instruction. Because in addition to that, the purpose was to
18 make those who are busy with other tasks available. So this was a
19 proposal, not an instruction, to have these people and for their army
20 to move into a guerilla warfare.

21 JUDGE BARTHE: [via videolink] Thank you, Mr. Fondaj. I have no
22 further questions. Thank you.

23 A. Thank you.

24 PRESIDING JUDGE SMITH: Thank you, Judge Barthe.

25 Rather than break up the next series of questions, we'll take a

Witness: Kurtesh Fondaj (Resumed) (Open Session)
Questioned by the Trial Panel

Page 17186

1 short break, a ten-minute break at this time, and come back to the
2 courtroom at -- in ten minutes.

3 MR. EMMERSON: Yes. I'm not sure if it's just me, but the
4 temperature in the courtroom seems to be rather high this afternoon.

5 PRESIDING JUDGE SMITH: [Microphone not activated].

6 MR. EMMERSON: Thank you.

7 PRESIDING JUDGE SMITH: [Microphone not activated].

8 Can you check that, have somebody check the temperature?

9 [Microphone not activated].

10 [The witness stands down]

11 --- Break taken at 3.20 p.m.

12 --- On resuming at 3.30 p.m.

13 PRESIDING JUDGE SMITH: Madam Usher, you can bring the witness
14 in.

15 [The witness takes the stand]

16 PRESIDING JUDGE SMITH: All right. Mr. Fondaj, we will have
17 some more questions from -- now from Judge Mettraux.

18 JUDGE METTRAUX: Thank you, Judge Smith.

19 And good afternoon, Mr. Fondaj.

20 A. Good afternoon, Judge.

21 JUDGE METTRAUX: I'd like to follow up with a few issues that
22 were already raised with you. The first one is about the chronology
23 of what happened to Blerim Kuqi from the moment when he returned to
24 Kosovo in early December 1998. And I understood you to suggest that
25 he had left Kosovo for Albania on or around 10 September and had come

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17187

Questioned by the Trial Panel

1 back on the 3rd or 4th December 1998; is that right?

2 A. That's right. Blerim Kuqi went on the 9th or 10th September and
3 returned in the beginning of December.

4 JUDGE METTRAUX: And I understood you to suggest, and correct me
5 if that understanding is incorrect, that he came back with a group of
6 other fighters, some of whom had arrived shortly before him; is that
7 correct?

8 A. Your Honour, he came together with them. But during the trip,
9 the travel, he was left a little bit behind. But the organisation
10 and them coming inside the territory is the result of the work of
11 Blerim Kuqi and my work.

12 JUDGE METTRAUX: And did I understand you correctly yesterday, I
13 understood you to suggest that Bislim Zyrapi had facilitated the
14 return of -- Blerim Kuqi's return to Kosovo. Did I understand that
15 correctly?

16 A. No, I am not aware of having said something similar. When it
17 comes to the role of Bislim Zyrapi, I mentioned yesterday that he was
18 aware, informed of the organisation and the arrival of the soldiers
19 from the Ministry of Defence inside the territory of Kosovo.

20 JUDGE METTRAUX: I see. That's clear now. Thank you.

21 And did I understand your evidence correctly that when
22 Blerim Kuqi came back in early December 1998, he came back with an
23 appointment order from Halil Bicaaj as Pashtrik zone commander; is
24 that correct?

25 A. Based on the information I have, which I cannot perhaps

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17188

Questioned by the Trial Panel

1 demonstrate, based on the conversations, when Blerim Kuqi left for
2 Kosovo from Albania, he had -- was as a commander of the operational
3 zone of Pashtrik. The deputy commander was Sylejman Kollqaku.
4 However, during the trip they exchanged their positions. Sylejman
5 Kollqaku took the position of the zone commander and Blerim Kuqi as a
6 deputy commander. These are -- this is information that I have no
7 proof to substantiate them, but I do have such information.

8 JUDGE METTRAUX: But you'd agree, I suppose, that if Mr. Kuqi
9 presented himself as the would-be commander of the Pashtrik zone,
10 there was already a Pashtrik zone commander, Ekrem Rexha, Drini;
11 correct?

12 A. Your Honour, this matter is a bit more complicated. In this
13 period of time, Ekrem Rexha was also in Albania. He was not in
14 Kosovo. He entered Kosovo on 14 December. And it was known
15 beforehand -- I knew that he would come in as chief of staff as a
16 zone commander because I was given this information by the chief of
17 staff, Bislime Zyrapi.

18 The issue of Blerim is that he did not introduce himself as a
19 commander when he came back from Albania nor did he introduce himself
20 as a deputy commander. He arrived and he knew that, according to the
21 military agreement, the appointments were made by Bislime Zyrapi, so
22 he was not claiming any position. He was then positioned in the
23 Brigade 123 as a commander of a sabotage and reconnaissance company
24 which went by the name Kitrat Company.

25 JUDGE METTRAUX: So just to be clear, from what you've just

Questioned by the Trial Panel

1 said, Mr. Zyrapi did not consider that Blerim Kuqi had been appointed
2 by anyone of relevance to become the commander of the Pashtrik zone;
3 is that correct?

4 A. I mentioned it yesterday that the agreement reached by
5 Halil Bicaj from the Bukoshi government and Bislim Zyrapi as the
6 chief of staff of the KLA, one of the points of this agreement said
7 that the appointments within the KLA in the territory of Kosovo were
8 made by the chief of staff, Bislim Zyrapi, and that all appointments
9 made in Albania are only temporary until the arrival on the ground.
10 Then these would be replaced by the appointments made by the chief of
11 staff.

12 So this was part of the agreement and this was how it was
13 implemented.

14 JUDGE METTRAUX: Thank you. That's clear now.

15 Can we see now the next step in the information we have about
16 that. Exhibit P1104.

17 I'm going to try -- so that you understand what I'm going to be
18 asking you to do, I'm going to try to go through the chronology of
19 certain events around Mr. Blerim Kuqi in the later part of 1998 and
20 the early part of 1999.

21 First, I'll ask you to read this document. Take a minute, sir,
22 and we'll scroll it down so that you can read the totality of it.
23 Please let me know once you are done.

24 A. Yes, I did read it.

25 JUDGE METTRAUX: Can we please turn the page for the benefit of

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17190

Questioned by the Trial Panel

1 the witness, please, in both languages.

2 So let's go back to the first page, please, and I'll -- as you
3 can see from the face of this document, it appears to be the record
4 of a meeting of the General Staff of the KLA in Divjake on
5 29 December 1998. And it is, or it purports to be, the agenda of
6 that meeting. My first question is are you aware that such a meeting
7 of the KLA General Staff took place on that date in Divjake?

8 A. No, I am not.

9 JUDGE METTRAUX: So I want to look at a few items that are
10 scheduled for discussion there. The first one is under number 1. It
11 says:

12 "Issues related to the organisation and the creation of
13 structures (especially in [the] Pashtrik area)."

14 And if we can just turn the page for a second.

15 You can see in the middle of that page it says also that it's
16 "about reviewing the command structure of the Operational Zone of
17 Pashtrik." Do you see that?

18 A. Yes, I do.

19 JUDGE METTRAUX: Now, my first question is were you consulted,
20 you personally or, to your knowledge, anyone else from the Pashtrik
21 zone, about the KLA General Staff having discussions about the
22 structure of your zone and your command structure? Did they tell you
23 that they were discussing these things?

24 A. At this time, the zone commander was Ekrem Rexha. If he were
25 aware, that's an entirely different matter. But in relation to what

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17191

Questioned by the Trial Panel

1 I see here on the screen now, I see this for the first time, and I
2 have no information whatsoever, and I had no information whatsoever.

3 JUDGE METTRAUX: And may I take that to mean that Drini never
4 told you that he had been informed of these discussions? Would that
5 be fair?

6 A. I do not know. Perhaps we did discuss it, but I cannot
7 remember. Something about this type of topic, I do not believe he
8 would have told me.

9 JUDGE METTRAUX: Let's go back to the first page, please.

10 Now, among the topics it discusses is the case of a Serbian
11 released in Llap. Do you know about the case of a Serbian police
12 officer by the name of Goran Zbilic? Do you know of any such case?

13 A. No.

14 JUDGE METTRAUX: Next item on this agenda is the case of
15 Blerim Kuqi who is being described here, on 29 December, as a
16 deserter. And it's said here that he's later appointed commander of
17 the reconnaissance company of the 123 Brigade. Is that the position
18 you understood him to have been appointed to at the time?

19 A. At the time, in December, he had the task of the reconnaissance
20 commander in the 123rd Brigade.

21 JUDGE METTRAUX: And were you informed -- and I suppose you'll
22 give me the same answer as before. Were you or, to your knowledge,
23 Drini told that the case of Blerim Kuqi (deserter) was being
24 discussed at General Staff level in late December 1998?

25 A. Blerim would have told me -- rather, Ekrem Rexha would have told

Questioned by the Trial Panel

1 me. But I do not know that he was informed at all. Of course, I was
2 not, but I doubt he knew about this matter.

3 JUDGE METTRAUX: And he did not tell you, Drini that is, that he
4 had been informed of a decision to arrest Blerim Kuqi following that
5 meeting; correct?

6 A. No. Because had Ekrem Rexha known that Blerim was the target or
7 under suspicion for arrest, then he wouldn't have gone with him in
8 Divjake on the critical date.

9 JUDGE METTRAUX: Thank you. And can we turn the page one last
10 time, please.

11 Here it refers at the top to the case of Uke Bytyqi and Isa
12 Morina, and you've told us who they were yesterday. I just have one
13 follow-up question on that. Is it correct that sometime in January
14 and over the following month, Uke Bytyqi, Ise Morina, and, when
15 eventually released, Blerim Kuqi would all become part of the 123
16 Brigade? Is that right? In different capacities.

17 A. Uke Bytyqi, Isa Morina were from the outset, from June, up until
18 the end of the war a part of the 123rd Brigade. Blerim Kuqi, there
19 were a bit -- he was away for a bit, but it is a fact what you
20 mentioned, and then he was the commander of the reconnaissance
21 company.

22 JUDGE METTRAUX: And my last question on this document is it
23 refers to the case of Kilaj-Krasniqi, Kilaj-Krasniqi. Do you know
24 what this refers to?

25 A. Respect to the Kilaj-Krasniqi case, it could well be the case --

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17193

Questioned by the Trial Panel

1 well, a little bit, because it was the end of December, and in the
2 framework of the 122nd Brigade, two parallel commands were
3 established and each called the other illegal. And as I mentioned,
4 at this time there was an intervention by the Pashtrik operational
5 zone command and they established the command of Brigade 1, and we
6 managed to reconcile them, the command.

7 So I think it is about this matter. If it is something else
8 entirely, I do not know.

9 JUDGE METTRAUX: Well, thank you for that, sir.

10 Now, the next thing that we know about and that you've told us
11 about in relation to Blerim Kuqi is that he, Nexhmedin Kastrati, and
12 Drini are being called in for a meeting at the General Staff on
13 16 January 1999; correct?

14 A. Yes, they went to the General Staff, but the exact particulars,
15 what type of invite it was or how they got there, I do not know. And
16 you are confirming it now, that is, the date. I cannot possibly -- I
17 have no reason to oppose it.

18 JUDGE METTRAUX: I'll show you a document in a second, sir. But
19 did I understand you correctly that Drini told you they had been
20 called in for that meeting by Jakup Krasniqi?

21 A. Yes, he did say that.

22 JUDGE METTRAUX: Can the Registry please bring up Exhibit P1105,
23 please. Thank you. Can perhaps the document in the Albanian be
24 shrunk. Thank you. Perfect.

25 My first question, sir, is have you ever seen this document

Witness: Kurtesh Fondaj (Resumed) (Open Session)
Questioned by the Trial Panel

Page 17194

1 before?

2 A. No.

3 JUDGE METTRAUX: So just looking at it with you, it looks to
4 be -- it's entitled "Order to report to General Staff," and it's made
5 to the attention of the Pashtrik Operational Zone Commander, Drini at
6 the time. And it says that:

7 "Pursuant to working regulations of the Kosovo Liberation Army
8 General Staff I issue this:

9 "Ordinance," in English.

10 And it calls in the Pashtrik Operational Zone Commander Drini
11 and 123 Brigade Commander as well as Blerim Kuqi to report to the
12 Kosovo Liberation Army General Staff on 16 January 1999.

13 It makes it clear that this ordinance is obligatory. And it's
14 signed by Jakup Krasniqi as deputy commander, and it's signed.

15 Now, is that, first, consistent with what Drini told you at the
16 time he had been ordered to do?

17 A. From what I can remember, Ekrem Rexha said that there was an
18 invitation, not an order. But in the other paragraph it says that
19 this ordinance is of an obligatory nature. I think it's actually a
20 bit preposterous, absurd, because any type of orders are obligatory,
21 aren't they.

22 JUDGE METTRAUX: Did Drini tell you who other than himself,
23 Nexhmedin Kastrati, and Blerim Kuqi attended that meeting on
24 16 January 1998?

25 A. I cannot remember the details.

Witness: Kurtesh Fondaj (Resumed) (Open Session)
Questioned by the Trial Panel

Page 17195

1 JUDGE METTRAUX: So you cannot remember which members of the
2 General Staff, for example, were present during that meeting
3 according to what he told you?

4 A. I cannot remember. I simply know that Ekrem, when he returned,
5 was really frustrated. He could hardly say a word. Emotionally he
6 was in a bad way.

7 JUDGE METTRAUX: And is it fair to assume that he was upset
8 because of the arrest of Blerim Kuqi?

9 A. Yes, yes, it's precisely because of that. That's what I meant.

10 JUDGE METTRAUX: So I'll come to the arrest in a second, but
11 first I want you to look again at this document. It's signed as
12 deputy -- by Jakup Krasniqi as deputy commander of the KLA
13 General Staff. Do you know why it's not Bislim Zyrapi who wrote that
14 order?

15 A. I do not know, but it does seem to be odd because there's no
16 protocol number on this document.

17 JUDGE METTRAUX: Do you think it is possible that Bislim Zyrapi
18 did not want to have anything to do with the arrest and imprisonment
19 of Blerim Kuqi from what you discussed with him?

20 MR. ELLIS: Your Honour, I apologise for objecting to a question
21 from the Bench, but it is important. This is a document that the
22 witness has not seen before, that he's being asked to speculate about
23 matters that he doesn't know. He's now being asked whether
24 Bislim Zyrapi did not want to have anything to do with the arrest and
25 imprisonment of Blerim Kuqi, when the document in front of him says

Witness: Kurtesh Fondaj (Resumed) (Open Session)
Questioned by the Trial Panel

Page 17196

1 nothing about arrest or imprisonment.

2 JUDGE METTRAUX: I'll reformulate, Mr. Ellis. I think you have
3 a point.

4 Now, when you talked to Bislim Zyrapi after the arrest, did he
5 tell you whether he agreed or approved of the arrest of Blerim Kuqi
6 or disapproved of it?

7 A. I cannot remember the details of the way or what explanations he
8 gave, but I do know that he too was taken by surprise when Blerim was
9 arrested.

10 JUDGE METTRAUX: Now, you were told by Drini, and you can see
11 from this document that it seems to corroborate Drini's account, that
12 the order was made to attend by Jakup Krasniqi. My question is to
13 the military man in you: Why wouldn't the chief of staff, who I
14 understood you to say was generally dealing with this question, why
15 weren't Drini, Kastrati, and Kuqi called in by Bislim Zyrapi, if you
16 know?

17 A. I have no information whatsoever about that. However, logically
18 speaking, commander, deputy commanders, in terms of the hierarchy,
19 are one. So the commander, two deputy commanders, and then -- then
20 the chief of staff. So the deputy commander comes above the chief of
21 staff hierarchically speaking in the military.

22 JUDGE METTRAUX: So if I understand that correctly, the deputy
23 commander could basically make any order that the chief of staff
24 would be in a position to exercise and more; correct?

25 A. Yes. And that is why I said what I said. This document doesn't

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17197

Questioned by the Trial Panel

1 necessarily mean that it came from the chief of staff. Nonetheless,
2 there could have been a written document by the deputy commander or
3 the commander themselves.

4 JUDGE METTRAUX: I see. Thank you.

5 Can we please see now Exhibit P1106.

6 And I'm trying, to the extent we can, sir, to go in
7 chronological order here. But I'll give you a second to read the
8 document, and then I'll ask you a few questions. Is it large enough
9 for you to read, sir?

10 A. No, it's okay. Okay. I read it.

11 JUDGE METTRAUX: Then that's the next step we know of in this
12 process. It's dated 16 January 1999. It comes from the Kosovo
13 Liberation Army General Staff Military Police. It has a number,
14 5/99. It's being sent to the military prosecution of the KLA. It's
15 called a report. It's signed by the authorised person, Fatmir Limaj.
16 And it pertains to Blerim -- well, the accused Blerim Kuqi. And it
17 explains that on 11 September 1999 he has committed the criminal
18 offence of desertion provided in the military criminal code, and then
19 it goes on to describe the facts.

20 My first question is here: Were you aware at the time that the
21 Kosovo Liberation Army had a military criminal code?

22 A. I am not aware of the documents that the General Staff had. I
23 am not aware of those.

24 JUDGE METTRAUX: And were you aware of a criminal offence of
25 desertion within the KLA at the time?

Questioned by the Trial Panel

1 A. Desertion as a term in itself, yes. But for it to be classified
2 as a criminal offence, I do not know. But in terminology, yes. But
3 here, there are several flaws. Although it says here a law graduate
4 before the name of Fatmir Limaj, I'm no lawyer myself, but in this
5 document I find plenty of scope for debate.

6 JUDGE METTRAUX: Well, I'll ask you about some of that debate,
7 and please feel free to add your own comments on this. But the first
8 question I have for you is whether you were aware that at the time
9 Fatmir Limaj, as director of the military police directorate, was
10 involved in the investigation and prosecution of people, a KLA member
11 in that case? Were you aware of that?

12 A. No.

13 JUDGE METTRAUX: And here in the middle of that document, it
14 says -- in English, at least, it says:

15 "Therefore, the Prosecution," so that seems to be Mr. Limaj,
16 "requests to order the execution of investigations with regard to
17 this criminal case."

18 Now, do I understand this report correctly, and, again, you can
19 read the Albanian, as Mr. Limaj ordering the execution of an
20 investigation in relation to Blerim Kuqi?

21 A. This sentence, as far as I'm concerned, is extremely unclear.
22 And whoever held the position the director of military police has
23 mentioned, in this type of official document of this nature I think
24 goes beyond the competencies provided and the actions as such.

25 JUDGE METTRAUX: So, in other words, and I don't mean to put

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17199

Questioned by the Trial Panel

1 words in your mouth, Mr. Limaj here, in his capacity as director of
2 the military police, was, in your understanding, going beyond his
3 powers? Is that what you're saying?

4 A. Well, as I said, I do not know as to whether there was an
5 internal rules of procedure, and it is based on that that one would
6 see what the duties of the military police are to -- and perhaps not
7 for them to become prosecutor, not for the police to become
8 prosecutor. Because the police does act, indeed, but based on the
9 order of a prosecutor, not on their own behalf.

10 JUDGE METTRAUX: Thank you. Now can we go to next document,
11 that's Exhibit P1174.

12 And, again, I'll give you a moment to read through it. And if
13 it needs to be enlarged for you, Witness, just let us know.

14 A. No, it's okay. Thank you.

15 I have just read it, Judge.

16 JUDGE METTRAUX: Thank you. I'll ask you to comment on a few
17 things. But as you did previously, feel free to add your views on
18 this. But that is -- it's entitled a "Decision on detention." It's
19 dated of the same day as the meeting with Drini and Kastrati, so the
20 day when Blerim Kuqi is first arrested and detained, 16 January 1999.
21 And the decision on detention is taken by law graduate Fatmir Limaj.
22 And it says that there are grounded suspicion that Blerim Kuqi,
23 without sufficient reason and without approval of the General Staff,
24 left the company of the KLA, and that therefore the military police
25 has issued this decision on detention for the initial period of three

1 days. And, again, it refers to the military penal code and the
2 offence of desertion.

3 And at the end of the document, it says that:

4 "An appeal to the investigative judge against this decision is
5 permitted within 24 ... hours."

6 So I have the same general question as I did before. The first
7 one being that were you aware that Mr. Limaj, as head or director of
8 the Directorate of the Military Police, had the authority to order
9 the detention of a KLA member?

10 A. No. But I say it again, this document too is a poor excuse, so
11 it matters not whether there is a law graduate in it, because even if
12 a secondary school pupil had written this, it would be a mistake.
13 And we couldn't possibly excuse him or her, let alone a law graduate,
14 to say that he left the KLA company even though he was the commander
15 of the company in the Pashtrik area. And then he says without
16 reasonable cause and along with his company he set off and left for
17 Albania.

18 This makes no sense. So he left the company behind but with his
19 own company he went to Albania? It makes no sense.

20 JUDGE METTRAUX: I'll come back and ask you about perhaps other
21 reasons why Mr. Kuqi was arrested in a moment. But do I take it from
22 your responses that you were not aware that the initial detention of
23 Mr. Kuqi had been made by Mr. Limaj as head of the military police
24 directorate?

25 A. All I know is that it was the military police that detained him.

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17201

Questioned by the Trial Panel

1 But precisely how they went about it, what paperwork there was, I do
2 not know.

3 JUDGE METTRAUX: Well, I'll make a small segue into what you
4 just said. There's -- or there were military police regulations in
5 force at the time within the KLA. Do you recall those?

6 A. No.

7 JUDGE METTRAUX: So I'll tell you what they say there. And for
8 the record, it's Exhibit P9. And, sir, I'm referring to a document
9 that is called "Military police and its tasks," and we've received it
10 as part of this trial. And it has a Rule 4, which says that:

11 "The military police organs are subordinate to the Military
12 Police Directorate which appoints the commanders in the military
13 police operative [zones]."

14 Now, I understand you cannot remember seeing those regulations,
15 but does that rule -- Rule 4, is that consistent with your
16 understanding of how the directorate functioned in relation to
17 military police in the zones and subzones?

18 A. There was a conversation in relation to this matter because
19 there were interferences in the subordinate units. Namely, in the
20 zones and in the brigades. The military police at the central level
21 could give -- have given information or specific information that a
22 specific person has a negative background and as such cannot be
23 appointed as head of the unit, but they could not have decided
24 exclusively on this. This would have been decided by the brigade
25 commander, zone commander. So the appointment of the military police

Witness: Kurtesh Fondaj (Resumed) (Open Session)
Questioned by the Trial Panel

Page 17202

1 commander.

2 This was talked about and was one of the mistakes made by the
3 Directorate of the Military Police at the time.

4 JUDGE METTRAUX: But here what we seem to see is the director
5 himself ordering the detention of a KLA member; is that right?

6 A. That's right.

7 JUDGE METTRAUX: Can we please see Exhibit P1344 now. It's a
8 document you've already been shown, sir. I'll just have a couple
9 more questions on that.

10 So you've seen it before. This is called an "Indictment," and
11 it's dated 4 March 1999. And it pertains again to the case of
12 Mr. Kuqi, and you've been taken through various parts of that
13 document already.

14 I want to take you to the bottom of that first page first,
15 please. Can you see the small Roman letters "III-Witness
16 statements ..." Do you see that?

17 A. Yes, I do.

18 JUDGE METTRAUX: And in the English at least, it says that:

19 "Witness statements, namely the statement of Habib Elshani of
20 05.12.1998, minutes of interrogation of Chief of Operational Staff of
21 Pashtrik OZ ... of 27.01.1999 and the statement of soldier
22 Ilaz Kadolli of 07.12.1998, are to be read in this hearing."

23 Now, simply for you to confirm that the statements of Habib
24 Elshani and Ilaz Kadolli appear to have been taken a day or two, or
25 three in the case of Kadolli, after Mr. Blerim Kuqi came back in

Witness: Kurtesh Fondaj (Resumed) (Open Session)
Questioned by the Trial Panel

Page 17203

1 Kosovo; is that right? So immediately upon his re-entry.

2 A. I am not aware of this information. I do not know the details.

3 JUDGE METTRAUX: Now, just turn to the next page. There's --
4 the document is attributed to General Military Prosecutor Arben
5 Sejdiu, and you've told us, I think, that you do not -- you do not
6 know that person; right?

7 A. I do not know him. To me, this is a new name. I don't think I
8 have ever heard the name Arben Sejdiu.

9 JUDGE METTRAUX: You mentioned that in addition to Sokol Dobruna
10 there was a -- I think you called it a note-taker. Do you know the
11 name of the person who was taking the notes while you gave your
12 statement to Mr. Dobruna?

13 A. No, I don't.

14 JUDGE METTRAUX: Now, just in terms of -- again, I understand
15 that you don't know what happened in fact, but I'm going to ask in
16 terms of your understanding of how the KLA would have functioned. We
17 saw a moment ago that Mr. Limaj, as director of the military police
18 directorate, issued a decision to arrest Blerim Kuqi.

19 Now, if it were suggested that it was at the request of
20 Jakup Krasniqi what -- that Jakup Krasniqi informed the military
21 police and Mr. Dobruna of the decision to arrest Blerim Kuqi, would
22 you have any reason to dispute that?

23 MR. ELLIS: Your Honour, I object to that question. That is a
24 prosecutorial question, not a judicial one. What is the basis in the
25 evidence or in anything this witness can say for suggesting that

Witness: Kurtesh Fondaj (Resumed) (Open Session)
Questioned by the Trial Panel

Page 17204

1 Jakup Krasniqi informed the military police?

2 JUDGE METTRAUX: I'll put the question differently, Mr. Ellis,
3 so that hopefully you can live with it.

4 If Bislim Zyrapi were to say that the decision of the
5 General Staff to arrest Mr. Kuqi was communicated by
6 Mr. Jakup Krasniqi, would you have any reason to dispute that?

7 MR. ELLIS: Again, it's an extremely leading question on a
8 matter that the Court clearly feels is an important one to the
9 assessment of this case. If that is going to be the evidence from
10 another witness, then we need to hear it from the other witness, not
11 from somebody who clearly has no knowledge of it. This witness has
12 not said that Bislim Zyrapi said that to him.

13 PRESIDING JUDGE SMITH: Witness, you may answer the question.

14 THE WITNESS: [Interpretation] I am not a lawyer by profession,
15 but the legal matters are as follows: If the prosecutor -- if
16 there's any remarks or any reprimand, information is provided to the
17 prosecutor, the prosecutor will then assess whether the person in
18 question needs to be arrested or not. Then the police acts upon an
19 order or orders from the prosecution office. But one cannot be both
20 prosecutor and executioner in this case.

21 Then if there are grounds for it, the judge, the court will
22 assess whether the person must be kept in detention and remand or
23 released or sentenced. In this particular case, I don't see this
24 line having been followed. Therefore, I think, in my opinion, there
25 were violations made. But, again, I am not a lawyer. Where -- this

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17205

Questioned by the Trial Panel

1 is a document that is not mine and a document which contains plenty
2 of anomalies.

3 JUDGE METTRAUX: Thank you, sir.

4 And maybe to follow up on that. Of the people who returned with
5 Blerim Kuqi from Albania in early December 1998, were some of them
6 the same people who had left with him in September 1998?

7 A. When Blerim Kuqi left for Albania, he was with two or three
8 persons, no more than that. They escorted him in the sense of
9 helping him, assisting him, because this was not an easy travel to go
10 through the mountains of Pashtrik. When he returned, there were 120
11 soldiers and officers at the end of November. And they arrived in
12 the territory of Suhareke after midnight on 1 December. These units
13 crossed the border on 28 November. Therefore, the journey of these
14 120 soldiers lasted from 28 November, 29th, 30th, and then they
15 reached the territory of Suhareke on 1 December immediately after
16 midnight.

17 This was an extremely harsh winter, very cold, a lot of snow.
18 So those who made this journey are able to tell about the
19 difficulties and hardship they faced. But because of this will,
20 powerful will, they surmounted these obstacles and difficulties to
21 give their contribution to the war effort.

22 Again, Blerim Kuqi in this process helped the cause. He did not
23 hinder it. After this, the Ministry of Defence started supporting
24 financially the Kosovo Liberation Army, and in particular the
25 Pashtrik operational zone, despite the fact that within the Pashtrik

Questioned by the Trial Panel

1 operational zone there were other brigades where their officers were
2 not deployed. However, a significant number of these officers were
3 given different assignments throughout the Kosovo Liberation Army
4 ranks and not only within Brigade 123 and the operational zone of
5 Pashtrik.

6 JUDGE METTRAUX: Now, trying to maybe answer slightly more
7 briefly my question. Was Sabit Gashi one of the individuals who left
8 with Blerim Kuqi in September 1998?

9 A. I do not know.

10 JUDGE METTRAUX: Do you know whether anyone other than Blerim
11 Kuqi who left in September 1998 was prosecuted and imprisoned for
12 desertion?

13 A. I do not know.

14 JUDGE METTRAUX: Now, you said in your preparation session last
15 week, and it's Preparation Note 2, paragraph 41, that some people
16 were claiming or were trying to portray Blerim Kuqi as a
17 collaborator. Do you know what was the basis for these people to
18 make such claims?

19 A. I do not know. I can only guess. I would say that it's because
20 they were jealous because of the contribution that Blerim Kuqi gave.
21 He gave a lot more than others did. But nothing else. Nothing more
22 than this.

23 JUDGE METTRAUX: And I'd like to finish for the day with these
24 questions.

25 We have received information that Mr. Kuqi was detained for a

Witness: Kurtesh Fondaj (Resumed) (Open Session)

Page 17207

Questioned by the Trial Panel

1 time in a prison in Klecke. Are you aware of that?

2 A. I know that he was detained. But how long he was detained for,
3 I do not know. Based on information I have, I have mentioned the
4 fact that it's about Fshati i Ri, but I'm not sure about that.

5 JUDGE METTRAUX: But my question was about the location. Were
6 you aware that he was detained in a prison in Klecke for a time?

7 A. It's not like it was a prison, something improvised at that, but
8 I do not know the exact details. I do not know the circumstances.

9 JUDGE METTRAUX: And Klecke is geographically within the
10 Pashtrik zone; is that right?

11 A. Yes, it is.

12 JUDGE METTRAUX: And that particular prison, or you called it
13 something improvised as a prison, was not under the command of the
14 Pashtrik zone, was it?

15 A. The General Staff of the Kosovo Liberation Army was in Klecke.
16 It so happened that it was within the Pashtrik operational zone, but
17 it could have just as well been another zone. But other than that,
18 the General Staff also had an office in Nishor.

19 JUDGE METTRAUX: So do I understand your response to suggest
20 that the prison, or the improvised prison, as you call it, was under
21 the authority of the General Staff, or are you saying something
22 different?

23 A. Your Honour, just so that I do not make mistakes. There is talk
24 of a prison. I do not know of a prison. I know that Blerim Kuqi was
25 detained somewhere, somewhere. Let's call it a room or a detention

Witness: Kurtesh Fondaj (Resumed) (Open Session)
Questioned by the Trial Panel

Page 17208

1 room or something along those lines. But in terms of a prison
2 per se, I do not know that there was one in that region.

3 JUDGE METTRAUX: Okay. I'll ask it differently. Let's say the
4 room in which he was kept, was it under the zone command in your
5 understanding or was it under someone else's authority?

6 A. Under the authority of the General Staff, respectively. Not the
7 zone. That's all I can say.

8 JUDGE METTRAUX: Thank you.

9 PRESIDING JUDGE SMITH: All right. Witness, we will be finished
10 for today. You will have to be back again tomorrow at 9.00. We will
11 try to start promptly at 9.00 or closely thereafter.

12 You may leave the room now with the Court Usher. Remember not
13 to speak to anyone about this case and your testimony outside of the
14 courtroom.

15 THE WITNESS: [Interpretation] Thank you very much, and have a
16 lovely day.

17 [The witness stands down]

18 MR. MISETIC: Mr. President, I have two issues.

19 PRESIDING JUDGE SMITH: We have some others, too.

20 I want to get to your two points that you raised this morning if
21 you're ready to do that.

22 MR. TULLY: Your Honour, I am ready to do it, but I see across
23 the room is Mr. Halling, and I don't think he's been dealing with
24 that particular issue, so --

25 PRESIDING JUDGE SMITH: [Microphone not activated].

1 MR. TULLY: Sorry --

2 PRESIDING JUDGE SMITH: We have to get on with it. This witness
3 is coming up tomorrow.

4 MR. TULLY: I understand that, but I think Mr. Halling is not
5 the person who is dealing with it, so maybe if my counterpart -- I
6 can do it now, but it will take some time.

7 PRESIDING JUDGE SMITH: [Microphone not activated].

8 MR. TULLY: Oh, it --

9 PRESIDING JUDGE SMITH: You've already filed a written
10 submission on it?

11 MR. TULLY: No, it's not related to the written submission.

12 PRESIDING JUDGE SMITH: I'm talking about 4846.

13 MR. TULLY: Yes. But the issues that I wish to address don't
14 relate to the written submission that's filed. I'm not replying to
15 that. This is to do with matters that were in *inter partes*
16 correspondence between us and the Prosecution relating to two issues
17 that have arisen from the preparation session, so ...

18 MR. HALLING: The counsel of record for this witness did want to
19 address the Court on it. If Your Honours would like to address it
20 now, we have sent an e-mail reflecting our full position on those two
21 points, and that's essentially our submission.

22 PRESIDING JUDGE SMITH: [Microphone not activated] ... already
23 with a written submission.

24 MR. TULLY: Okay. Well, what would --

25 PRESIDING JUDGE SMITH: And I'm asking you is there something

1 else you want to say about it?

2 MR. TULLY: Well, what I wanted to do was set out the -- the
3 particulars of the new allegation because it's not fleshed out
4 entirely within the e-mail itself.

5 PRESIDING JUDGE SMITH: [Microphone not activated].

6 Flesh it out in writing, because we're not going to spend an
7 hour in here listening to it get fleshed out now. So if you have
8 something you want to submit, get it in writing, have it in our hands
9 tomorrow morning at 8.00.

10 MR. TULLY: I can do that. Either way, as long as it's resolved
11 before the witness turns up, I'm happy.

12 PRESIDING JUDGE SMITH: It will be resolved.

13 MR. TULLY: Okay. Thank you.

14 PRESIDING JUDGE SMITH: Now.

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

16 Two points, one in public session. I'm told that a document
17 that Judge Mettraux used, which was authored by Fatmir Limaj, there
18 was a translation mistake, and so the sentence that says "the
19 Prosecution requests to order the execution of investigations" is
20 incorrectly translated.

21 And the correct translation should be "the Prosecution is
22 requested to order the execution," which changes the meaning that
23 Judge Mettraux put to the witness.

24 The second issue I have, we need to move into private session
25 briefly. It relates to a witness.

1 PRESIDING JUDGE SMITH: All right. We will ask the interpreters
2 to please check that particular issue out and get back to us.

3 And, please, into private session.

4 While we're waiting for that, you had also a 4445 issue you
5 wanted to raise?

6 MR. MISETIC: That's --

7 MR. ROBERTS: Yes, Your Honour, I think that may be pre-empted
8 by my colleague's -- what he's about to inform you and which comes
9 from what the Prosecution informed us about half an hour ago. So
10 that was what I wished to raise as well.

11 PRESIDING JUDGE SMITH: Thank you very much.

12 [Private session]

13 [Private session text removed]

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4 [Open session]

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

6 PRESIDING JUDGE SMITH: Thank you.

7 Now we're adjourned until 9.00 a.m. tomorrow.

8 --- Whereupon the hearing adjourned at 4.36 p.m.

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