

1 Thursday, 4 April 2024

2 [Open session]

3 [The accused entered the courtroom]

4 [The Accused Krasniqi appeared via videolink]

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

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

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

11 PRESIDING JUDGE SMITH: Thank you.

12 Today we will continue with W04739's testimony.

13 I note that Mr. Krasniqi is appearing via videolink. The other  
14 three accused are present in court.

15 We have a couple of matters to take care of while we're still in  
16 public session.

17 The Panel has some concerns about the absence of the four  
18 accused from time to time from the courtroom during trial sessions.  
19 It is our belief that the accused should normally be present in  
20 person in the courtroom during the presentation of the evidence  
21 unless there are good reasons for them to follow the proceedings  
22 remotely. The waivers that are being used do not always indicate the  
23 reason for the accused's request.

24 We are guided by Rule 68(1) which states that:

25 "The Accused shall be tried in his or her presence, except as

1 otherwise provided in the Law and the Rules."

2 While presence can be established other than through physical  
3 presence, the Panel considers it is important that the accused be  
4 present in person when evidence is presented not least so that they  
5 can communicate directly and effectively with their counsel should  
6 the need arise during the testimony of a witness or for purposes of  
7 identification.

8 Rule 68 provides that at (4) that where the accused refuses to  
9 appear, then the Panel may order that the trial be conducted in the  
10 absence of the accused with certain enumerated conditions.

11 The requests we are considering here though are not refusals but  
12 voluntary absences to observe the proceedings via videolink. Of  
13 course, if one of the accused is ill or otherwise unable to attend  
14 for good cause, right to physical presence could be validly waived.  
15 We would also recognise that the attendance of the accused would not  
16 be required if the only witness being examined on a given day is  
17 appearing via videolink or if non-testimonial matters are being  
18 discussed in court.

19 So unless there's any comment from the parties on that issue?

20 It is therefore ordered that all waivers filed with a request  
21 from an accused to be absent from the courtroom during trial include  
22 a sufficient statement of the reason of absence so as to provide good  
23 cause. Any such waiver should be communicated to the Panel no less  
24 than 24 hours before the relevant court session unless circumstances  
25 do not allow. Based on that waiver the Panel will decide to allow or

1 disallow the request.

2 And this concludes the Panel's oral order.

3 Also before we continue with the witness's testimony, we wish to  
4 raise another matter in relation to the parties' presentation queues.

5 We note that there has been an increasing number of late  
6 additions of the items to the parties' presentation queues with no or  
7 very limited reasons given for these additions.

8 The Panel wishes to reiterate that the presentation queues which  
9 the parties must release in accordance with the deadlines specified  
10 in the Order on the Conduct of Proceedings shall, in principle, be  
11 final. When requesting authorisation to add an item to the  
12 presentation queue, the respective party shall indicate the reasons  
13 for its late addition and why the item could not be added earlier.

14 While the Panel has shown understanding of the late addition of  
15 such documents to party's queue, it believes that greater efforts  
16 should be made to ensure that the list of documents is final when  
17 first released.

18 This concludes the Panel's oral order.

19 We can now continue with W04739's testimony.

20 Madam Court Officer, please bring us into closed session.

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Witness: W04739 (Resumed) (Closed Session)

Page 14402

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

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Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

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Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

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Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14406

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14407

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

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Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

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Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14410

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14411

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14412

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14413

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14414

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14415

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14416

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14417

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14418

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14419

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14420

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14421

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14422

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14423

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14424

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14425

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14426

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14427

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14428

Cross-examination by Mr. Misetic (Continued)

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Witness: W04739 (Resumed) (Closed Session)

Page 14429

Procedural Matters

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10 [Open session]

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

12 PRESIDING JUDGE SMITH: We will adjourn for ten minutes. We'll  
13 reconvene at about 10.15.

14 --- Break taken at 10.04 a.m.

15 --- On resuming at 10.15 a.m.

16 PRESIDING JUDGE SMITH: Into closed session, please,  
17 Madam Court Officer.

18 [Closed session]

19 [Closed session text removed]

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Witness: W04739 (Resumed) (Closed Session)

Page 14430

Procedural Matters

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21 [Open session]

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

23 PRESIDING JUDGE SMITH: Thank you.

24 We will stand adjourned until we are notified that the accused

25 are all able to be present. That's all.

Witness: W04739 (Resumed) (Closed Session)

Page 14431

Re-examination by Mr. Halling

1 --- Break taken at 10.19 a.m.

2 --- On resuming at 10.43 a.m.

3 PRESIDING JUDGE SMITH: We're glad you're back with us,  
4 Mr. Krasniqi. Hope you're feeling better.

5 We will proceed now until 11.30, and then we'll take the normal  
6 half-hour break, come back and go from 12.00 to 1.00, and then have  
7 the lunch break, so we'd be on schedule -- back on schedule.

8 You may please take us into closed session, Madam Court Officer.

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Witness: W04739 (Resumed) (Closed Session)

Page 14432

Re-examination by Mr. Halling

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Witness: W04739 (Resumed) (Closed Session)

Page 14433

Re-examination by Mr. Halling

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Witness: W04739 (Resumed) (Closed Session)

Page 14434

Re-examination by Mr. Halling

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Witness: W04739 (Resumed) (Closed Session)

Page 14435

Re-examination by Mr. Halling

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Witness: W04739 (Resumed) (Closed Session)

Page 14436

Re-examination by Mr. Halling

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Witness: W04739 (Resumed) (Closed Session)

Page 14437

Re-examination by Mr. Halling

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Witness: W04739 (Resumed) (Closed Session)

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Re-examination by Mr. Halling

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Witness: W04739 (Resumed) (Closed Session)

Page 14439

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14440

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

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Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

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Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14443

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14444

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14445

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14446

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14447

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14448

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14449

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14450

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14451

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14452

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14453

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14454

Questioned by the Trial Panel

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15 [Open session]

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

17 PRESIDING JUDGE SMITH: All right. We are adjourned until noon.

18 --- Recess taken at 11.35 a.m.

19 --- On resuming at 12.00 p.m.

20 PRESIDING JUDGE SMITH: Judge Mettraux has questions.

21 Please bring the witness in.

22 And, Madam Court Officer, go into closed session.

23 [Closed session]

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Witness: W04739 (Resumed) (Closed Session)

Page 14455

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14456

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14457

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14458

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14459

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14460

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14461

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Witness: W04739 (Resumed) (Closed Session)

Page 14462

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14463

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14464

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14465

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14466

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14467

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14468

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14469

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14470

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14471

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14472

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Witness: W04739 (Resumed) (Closed Session)

Page 14473

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14474

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14475

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14476

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14477

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14478

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Witness: W04739 (Resumed) (Closed Session)

Page 14479

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14480

Questioned by the Trial Panel

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15 [Open session]

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

17 PRESIDING JUDGE SMITH: We are adjourned until 2.30.

18 --- Luncheon recess taken at 1.01 p.m.

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

20 PRESIDING JUDGE SMITH: [Microphone not activated].

21 Closed session, please, Madam Court Officer.

22 [Closed session]

23 [Closed session text removed]

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Witness: W04739 (Resumed) (Closed Session)

Page 14481

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14482

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14483

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14484

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14485

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14486

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14487

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14488

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14489

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14490

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14491

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14492

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14493

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14494

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

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Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

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Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

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Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14498

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14499

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14500

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14501

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14502

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14503

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14504

Questioned by the Trial Panel

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Witness: W04739 (Resumed) (Closed Session)

Page 14505

Procedural Matters

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[Closed session text removed]

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10 [Open session]

11 MR. EMMERSON: Just one matter. In terms of -- I'm sorry.

12 THE COURT OFFICER: Sorry, just for the record, we are in public  
13 session now.

14 PRESIDING JUDGE SMITH: [Microphone not activated].

15 Go ahead.

16 MR. EMMERSON: Your Honour, in terms of questions arising out of  
17 judicial questioning, this is the first occasion on which we have had  
18 or the Defence have had to seek an extended adjournment in order to  
19 deal with new material.

20 So as I've indicated in private session, I can ask one or two  
21 questions based on the questions that were asked by the Judges before  
22 the lunch break, but I regret to say that the bulk of the judicial  
23 questioning will require further examination in light of the matters  
24 that were raised.

25 PRESIDING JUDGE SMITH: We're not going to waste the half hour.

1 We have --

2 MR. EMMERSON: Well, with respect, I can't --

3 PRESIDING JUDGE SMITH: We have an hour left.

4 MR. EMMERSON: Yes, I'm not quite sure where -- I'm simply  
5 saying I can't ask the questions until I've done the research. It's  
6 simply not possible.

7 PRESIDING JUDGE SMITH: [Microphone not activated].

8 [Trial Panel confers]

9 PRESIDING JUDGE SMITH: [Microphone not activated] ... did not  
10 involve a good deal of what you're talking about.

11 MR. EMMERSON: No, I can deal with one --

12 PRESIDING JUDGE SMITH: And he did not introduce any  
13 documents --

14 MR. EMMERSON: No -- well, exactly. I can deal with one -- the  
15 one matter that arises out of [Overlapping speakers] ...

16 PRESIDING JUDGE SMITH: And the other thing is can we hand this  
17 off to somebody else to ask some questions while you prepare?

18 MR. EMMERSON: Well, that's a matter for the other counsel.  
19 But, obviously, I would normally re-examine first. I mean, there  
20 were serious questions that were asked which had --

21 PRESIDING JUDGE SMITH: [Microphone not activated].

22 I don't think it makes any difference now whether you're first  
23 or not.

24 Does anybody else -- are you in a position to go forward with an  
25 hour's worth of questions?

1 MR. ROBERTS: I can stand up and say I'm not at this stage,  
2 Your Honour, no. I'm in a similar situation. Not quite in the same  
3 situation as Mr. Emmerson, but very similar.

4 And I also, just for the record, note that Judge Gaynor has not  
5 asked questions yet, so maybe in terms of timing -- is Judge Gaynor  
6 having --

7 JUDGE GAYNOR: I have no questions.

8 PRESIDING JUDGE SMITH: [Microphone not activated].

9 MR. ROBERTS: Okay, no. Thank you. I would be in the same  
10 position and the support application of Mr. Emmerson, Your Honour.

11 MS. ALAGENDRA: I too support the application of Mr. Emmerson,  
12 Your Honours. We need time to prepare. A lot of issues have come up  
13 in respect of our client.

14 MR. MISETIC: I don't want to commit to this. I, at the moment,  
15 don't have any questions, but I would like to reserve that and  
16 consider it, because I was supposed to be fourth now.

17 PRESIDING JUDGE SMITH: All right. We'll take a moment. We'll  
18 come back. We'll take the ten minutes. We'll let you know our  
19 decision.

20 --- Break taken at 3.34 p.m.

21 --- On resuming at 3.45 p.m.

22 PRESIDING JUDGE SMITH: Let me first ask Mr. Halling, do you  
23 have any questions that arise from the Judges' questions?

24 MR. HALLING: No, Your Honour. We have no questions. There  
25 were certain items that were used during the Judges' questions that

1 we were interested in tendering from our list of exhibits. Given the  
2 predictable objection to that, we would actually propose to do that  
3 as a written application after the witness concludes.

4 PRESIDING JUDGE SMITH: Thank you. And do you have any  
5 objection to the request for forgoing the last hour of this session?

6 MR. HALLING: We would very much like for this witness to finish  
7 this week. If there's any way to do that, we would support that.  
8 Otherwise, no position.

9 PRESIDING JUDGE SMITH: Well, it appears that the Defence side  
10 is that there is no way to avoid that.

11 I can say that we are somewhat disappointed. Just a second,  
12 I'm -- I --

13 MR. EMMERSON: No, I'm standing to -- I thought you were  
14 addressing me.

15 PRESIDING JUDGE SMITH: [Microphone not activated].

16 MR. EMMERSON: Sorry.

17 PRESIDING JUDGE SMITH: I can say that we are somewhat  
18 disappointed. None of these documents that were used are news to  
19 anybody. They're all in the record. The questions are all in line  
20 with the previous discussions, so I find it very difficult to just  
21 forgo an hour worth of testimony.

22 However, we do want to be fair. We want to give everyone an  
23 ample opportunity to prepare, but we don't want this to be a habit.  
24 Because we do it today does not mean we will do it the next time.

25 We will grant the request. You don't need to say anything more.



1 MR. EMMERSON: I was just going to apologise.

2 PRESIDING JUDGE SMITH: No, no, you don't have to apologise. We  
3 will grant the request in our efforts to be fair to everybody  
4 involved, and we hope that we can finish this witness in an efficient  
5 way.

6 And I will say that in the event that the Prosecution decides  
7 they want to use a videolink for his final questioning, that would  
8 not be objected to by us. And probably if it was objected to by any  
9 of you, we would overrule the objection. But I will leave that to  
10 the Prosecution. It's their call to make whether they bring the  
11 witness here or not.

12 So that being said -- and please be advised that we won't be  
13 doing this on a regular basis. However, we don't usually back up to  
14 a two-week break either, so that makes it somewhat difficult.

15 We will grant the request made by Mr. Emmerson, and we will not  
16 continue yet today, and we'll take this up at our next session two  
17 weeks from now.

18 Yes, you have a question?

19 MS. ALAGENDRA: Your Honours, I do have some exhibits that I  
20 need to put into the record.

21 PRESIDING JUDGE SMITH: Please do that in writing just as  
22 Mr. Halling has just indicated for themselves.

23 MS. ALAGENDRA: And my apologies for not doing it [Overlapping  
24 speakers] ...

25 PRESIDING JUDGE SMITH: Let's try to avoid that practice also.

1 MS. ALAGENDRA: Yes.

2 PRESIDING JUDGE SMITH: Offer what you've got when you're using  
3 it, not two days later.

4 I'm not --

5 MS. ALAGENDRA: My apologies --

6 PRESIDING JUDGE SMITH: -- pointing at you on that.

7 MS. ALAGENDRA: -- for that, Your Honour.

8 PRESIDING JUDGE SMITH: Yes, sir.

9 MR. EMMERSON: I was just saying I think what Mr. Halling was  
10 suggesting was to use the exhibits that had been used by  
11 Judge Mettraux in questioning as exhibits for the Prosecution. Is  
12 that correctly understood?

13 MR. HALLING: I can clarify. We would be seeking to tender them  
14 no differently than the situation with W04769. But as I said, we can  
15 file a written application as to which items are at issue.

16 MR. EMMERSON: I hope that rather explains the position that I  
17 am in as well. I mean, the Prosecution are now choosing to use those  
18 as exhibits in --

19 PRESIDING JUDGE SMITH: When will you have that on file?

20 MR. HALLING: We can do that on any deadline the Court pleases.

21 PRESIDING JUDGE SMITH: Can it be filed by Friday?

22 MR. HALLING: Tomorrow, yes.

23 PRESIDING JUDGE SMITH: Oh, tomorrow? Let's say Monday then.

24 MR. HALLING: Of course.

25 PRESIDING JUDGE SMITH: And that way we can rule on it well in

1 advance so you know where you stand on those.

2 Thank you very much. That's all. We are in public session,  
3 yes. We are adjourned then until -- as I said, until -- what's the  
4 date? 22?

5 MR. HALLING: I believe it's 22 April.

6 PRESIDING JUDGE SMITH: The 22nd day of April.

7 --- Whereupon the hearing adjourned at 3.50 p.m.

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