

1 Tuesday, 30 January 2024

2 [Open session]

3 [The accused entered the courtroom]

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

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

7 PRESIDING JUDGE SMITH: Mr. Court Officer, you may call the
8 case.

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

13 PRESIDING JUDGE SMITH: Today we will continue to hear the
14 evidence of Prosecution Witness W04870.

15 I note that Mr. Thaci and Mr. Krasniqi attend today's hearing by
16 videolink, and Judge Barthe is with us also on videolink. The rest
17 of the accused are present in court.

18 Before the witness is brought in, the Panel will issue two oral
19 orders in public session.

20 The Panel will first address the submissions of the Veseli
21 Defence joined by the other Defence teams and the relief sought
22 yesterday in respect of Witness 4325.

23 First, the Panel reminds all parties of the order of the Panel
24 that they should give timely notice to the opposing side before
25 raising a matter in court. That is paragraph 7 on the Panel's Order

1 on Conduct of Proceedings. This is not just a matter of professional
2 courtesy to the other counsel and to the Panel but also the most
3 effective way to ensure the Panel can address any matter without
4 delay. The Panel, therefore, orders all counsel once again to abide
5 by its order on that point.

6 As for the merits of the first request by the Veseli Defence's
7 concern, the Panel finds that there is no indication that SPO failed
8 to disclose material it is under an obligation to disclose. In other
9 words, there is no indication of a disclosure violation on the part
10 of the SPO in respect of any of the information mentioned by the
11 Defence counsel.

12 The SPO is already under an obligation to disclose statements of
13 Prosecution witnesses under 102 and/or 103. There is, therefore, no
14 justification at this stage for any additional disclosure on the
15 order -- no disclosure order on the part of the Panel.

16 Secondly, regarding the Veseli Defence's second request that the
17 evidence of this witness should be heard live and that the Panel
18 should refuse to receive this evidence pursuant to Rule 154, the
19 Panel has already decided that the proposed evidence of this witness
20 meets the requirement of Rule 154 and that it is suitable for
21 admission pursuant to that rule in filing F001848.

22 Subject to what will be said next, the Defence has failed to
23 establish that the conditions and requirements for reconsideration of
24 that decision have been met in relation to the mode of testimony of
25 the witness. It is right to note, however, that the two statements

1 given by the witness taken by Serbian authorities have now been
2 impugned by the account given by the witness during his proofing
3 session and that the information provided on that occasion was not
4 before the Panel at the time of its Rule 154 decision.

5 Considering that the parties agree that these two statements
6 contain false or incorrect information and that these two statements
7 would be relevant to assessing the witness's credibility and the
8 reliability of the witness's evidence, the Panel considers that if
9 and when the SPO meets the remaining requirements of Rule 154 the
10 Panel will admit those for the sole purpose of assessing the
11 credibility of the witness and the reliability of the witness's
12 evidence but not for the truth of their content.

13 The Panel does not agree that the issues raised in relation to
14 these two statements would render the witness's SPO statement
15 inadmissible under Rule 154. Instead, the effect of these statements
16 upon the reliability of the SPO statement and the witness's
17 endorsement of those statements during his SPO statement are matters
18 that can best be explored during questioning of the witness and which
19 the Panel would take into account during its assessment of the
20 credibility and the weight of that evidence.

21 The Panel therefore amends its Rule 154 decision insofar as it
22 finds the two Serbian statements at pages 043783 through 043791 and
23 043792 through 043793 respectively of the document 043783 to
24 043793-ET RED2 appropriate for admission for the sole purpose of
25 assessing the credibility and reliability of the witness but not for

1 the truth of their contents.

2 The Panel rejects the remainder of the relief sought by the
3 Veseli Defence.

4 And this concludes the first oral order.

5 The Panel notes that the SPO tendered two items shown to and
6 discussed by W04870 during the witness's direct examination by the
7 SPO. These items are P959 MFI and P960 MFI.

8 The Defence objects to the admission of the two items on the
9 basis that there is no evidential foundation as to their provenance.

10 The Panel observes that P959 MFI and P960 MFI have been
11 extensively discussed by W04870 during the course of her direct
12 examination by the SPO. The Panel further observes that the two
13 items contain lists of names of persons who were allegedly detained
14 by the KLA and other relevant information, the nature and extent of
15 which seems to be corroborate or to be corroborated by the account of
16 other witnesses, including the evidence of W02161 and W04421, as well
17 as other documentary evidence including exhibits P10, P104, P738, and
18 1D7.

19 The Panel is, therefore, satisfied of the *prima facie* relevance,
20 authenticity, and probative value of P959 MFI and P960 MFI.

21 As to the alleged prejudice that would derive to the accused
22 from the admission of these items, the Panel notes that it is not
23 called upon to determine the authorship of P959 MFI and P960 MFI for
24 the purposes of deciding their admission at this stage of the
25 proceedings. The Panel stresses that the issue of authorship goes to

1 the weight to be given to P959 MFI and P960 MFI and not to their
2 admissibility and will, therefore, be decided by the Panel at the end
3 of the trial having regard to the entire body of evidence.

4 The Panel is, therefore, satisfied that the probative value of
5 P959 MFI and P960 MFI is not outweighed by their prejudicial effect.
6 For these reasons, the Panel admits P959 MFI and P960 MFI into
7 evidence and instructs the Registry to classify both items as
8 confidential and to treat them as admitted exhibits.

9 This concludes the second oral order.

10 Madam Court Usher, you may bring the witness in.

11 We will have the same proceedings as we did yesterday. We will
12 take a break at 10.00 so that -- for the benefit of Judge Barthe.

13 And we'll be up to you in just a moment.

14 MR. TULLY: Understood, Your Honour. Thank you.

15 MS. D'ASCOLI: Your Honours, may I inquire if my learned
16 colleague intends to go directly into private session? Because I
17 have a brief matter to raise in private session. Thank you.

18 MR. TULLY: You read my mind. I was about to tell you that
19 everything is going to be in private, Your Honour --

20 PRESIDING JUDGE SMITH: It will be.

21 MR. TULLY: The questions are identifiable. Yes. Thank you.

22 MS. D'ASCOLI: So, Your Honour, if we can move, before the
23 witness is brought in, into private session.

24 PRESIDING JUDGE SMITH: Madam Court Usher, please hold for the
25 time being.

1 Mr. Court Officer, please take us into private session.

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Cross-examination by Mr. Tully

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Cross-examination by Mr. Tully

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Cross-examination by Mr. Tully

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Cross-examination by Mr. Tully

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Witness: W04870 (Resumed) (Private Session)

Page 12097

Cross-examination by Mr. Tully

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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20 [Open session]

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

22 Thank you.

23 PRESIDING JUDGE SMITH: We're adjourned until 10.10.

24 --- Break taken at 10.02 a.m.

25 --- On resuming at 10.14 a.m.

1 PRESIDING JUDGE SMITH: I would ask you to please try to honour
2 the time commitment we give. We gave a ten-minute break and it took
3 fifteen, so try to get back on time.

4 Mr. Tully, you still have the floor, and we will call the
5 witness in.

6 MR. TULLY: Thank you, Your Honour. Just for preparation for my
7 colleagues, I'll be maybe less than ten minutes. Thank you.

8 PRESIDING JUDGE SMITH: Mr. Court Officer, you can take us back
9 into private session.

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Cross-examination by Mr. Tully

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Tully

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Cross-examination by Mr. Kehoe

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Cross-examination by Mr. Kehoe

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Cross-examination by Mr. Kehoe

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Cross-examination by Mr. Kehoe

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Cross-examination by Mr. Kehoe

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Cross-examination by Mr. Kehoe

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Cross-examination by Mr. Kehoe

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Cross-examination by Mr. Kehoe

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Cross-examination by Mr. Kehoe

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Cross-examination by Mr. Kehoe

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Cross-examination by Mr. Kehoe

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W04870 (Resumed) (Private Session)

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Cross-examination by Mr. Kehoe

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Witness: W04870 (Resumed) (Private Session)

Page 12133

Cross-examination by Mr. Kehoe

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1 [Private session text removed]

2 [Open session]

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

4 Thank you.

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

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

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

8 PRESIDING JUDGE SMITH: Before we proceed, there's a brief
9 matter I want to discuss.

10 We are concerned about the recent filings involving the
11 representation of Mr. Thaci, and we think it would be best,
12 considering our need for continuity, that we have an *ex parte* meeting
13 with the Thaci team and Mr. Thaci, of course, which would mean it
14 would just be us and the team to discuss this matter, unless somebody
15 has an objection to that. And I'd want to hear that now. We are
16 thinking of doing that tomorrow at 4.00 or whenever we finish our
17 hearings tomorrow.

18 MS. D'ASCOLI: We wouldn't have any objection, Your Honours.

19 MR. LAWS: We would not have any objection to that, Your Honour.

20 PRESIDING JUDGE SMITH: All right. And I take it the Defence
21 has no objection to this kind of a discussion?

22 What about the Thaci Defence?

23 MR. KEHOE: No, we have no objection.

24 PRESIDING JUDGE SMITH: All right. All right.

25 You could all be here, and we will discuss it. And, Mr. Thaci,

1 if you can't be in person, you can certainly appear by videolink.
2 But if it's possible for you to be here for that, it would be good
3 because it, of course, it's concerning your situation and your
4 representation.

5 So we will count on that at 4.00 or as soon as we finish
6 tomorrow, and probably a half hour or so or maybe up to an hour.

7 Thank you very much. Madam Usher, you may bring the witness in.

8 MR. KEHOE: Your Honour, my learned friend -- I think -- the
9 microphone's on.

10 I neglected to offer another page [REDACTED] Pursuant to In-
11 Court Redaction Order F2089RED. that I
12 read from, which would be ERN 118761. Judge, we can do this in a
13 variety of ways. We can just add this in individually or just
14 connect it to the exhibit that was tendered by Mr. Tully. It really
15 doesn't make a difference.

16 PRESIDING JUDGE SMITH: [Microphone not activated].

17 MR. KEHOE: That's fine.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 MS. D'ASCOLI: No objections, Your Honours.

20 MR. KEHOE: So it -- I'm sorry, Judge. It is 118761 and 118762.

21 MS. D'ASCOLI: No objections, Your Honours.

22 PRESIDING JUDGE SMITH: [Microphone not activated].

23 MS. ALAGENDRA: Your Honours, we had earlier indicated one hour
24 for the witness. But after considering cross-examination that's
25 already taken place, we won't have any questions for the witness.

PRESIDING JUDGE SMITH: [Microphone not activated].

1 We are admitting that document last mentioned by Mr. Kehoe, and
2 it should be assigned an exhibit number.

3 THE COURT OFFICER: So the ERN 118692 to ERN 118788, in
4 particular pages 118761 and 118762, will be admitted as 1D108. Thank
5 you, Your Honours.

6 PRESIDING JUDGE SMITH: Thank you.

7 From the Veseli Defence, are there any questions?

8 MS. ROWAN: No more than ten minutes, Your Honour.

9 PRESIDING JUDGE SMITH: [Microphone not activated].

10 MS. ROWAN: No more than ten minutes.

11 PRESIDING JUDGE SMITH: [Microphone not activated].

12 MS. ROWAN: Thank you.

13 PRESIDING JUDGE SMITH: [Microphone not activated].

14 [The witness takes the stand]

15 THE INTERPRETER: Microphone, please.

16 PRESIDING JUDGE SMITH: Yes. We'll go into private session,
17 please.

18 Witness, we are ready to continue with your cross-examination.
19 The Veseli Defence team will have some questions for you. They are
20 seated immediately to your right.

21 [Private session]

22 [Private session text removed]

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Witness: W04870 (Resumed) (Private Session)

Page 12139

Cross-examination by Ms. Rowan

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Witness: W04870 (Resumed) (Private Session)

Page 12140

Cross-examination by Ms. Rowan

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25 [Open session]

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

2 PRESIDING JUDGE SMITH: We're adjourned until 11.50.

3 --- Break taken at 11.42 a.m.

4 --- On resuming at 11.51 a.m.

5 PRESIDING JUDGE SMITH: There is a point of clarification on my
6 discussion about the *ex parte* for tomorrow.

7 We will have to finish our regular hearings by 3.15 in order to
8 allow for the time delay that is used. We would not be able to film
9 and record our meeting until 45 minutes has passed, as you know,
10 because of the time delay. So at 3.15 we will be finished with
11 testimony here, and at 4.00 we will start the *ex parte* hearing.

12 MR. MISETIC: Mr. President, if I may, just as a housekeeping
13 matter.

14 I was informed that Mr. Thaci was raising his hand before the
15 break. I'm not sure what it was about, but I don't know if it still
16 needs to be addressed.

17 PRESIDING JUDGE SMITH: Go ahead, Mr. Thaci.

18 THE ACCUSED THACI: [via videolink] [Microphone not activated].

19 PRESIDING JUDGE SMITH: You have to turn on your microphone. We
20 couldn't hear what you said.

21 THE ACCUSED THACI: [via videolink] [Interpretation] Thank you,
22 Presiding Judge. I just wanted to confirm my presence in the
23 courtroom tomorrow. Thank you.

24 PRESIDING JUDGE SMITH: Thank you for that information.

25 Yes.

1 MR. EMMERSON: Your Honour, in connection with the next witness,
2 I would like to make a representation in open court that his evidence
3 should be given in open court; in other words, with the practice that
4 was previously been adopted of codes for names and places.

5 As Your Honours' ruling indicated this morning, in open court,
6 this is a witness that has given lying statements at the behest of
7 the Serbian intelligence service, and it is vital, more vital perhaps
8 than any other individual witness, that the trial process be open to
9 the public rather than in closed session for a witness whose evidence
10 includes, by his own admission, an attempt to manipulate these
11 proceedings by the Serbian intelligence service.

12 PRESIDING JUDGE SMITH: Thank you.

13 MR. HALLING: And, Your Honours, we'd like to respond to that if
14 that's possible.

15 PRESIDING JUDGE SMITH: Yes, go ahead.

16 MR. HALLING: Yes. And just briefly with what can be said in
17 open session.

18 Your Honours' ruling was in open session, but it took care not
19 to reveal any identifying information of this witness. We set out in
20 some detail in our e-mail of Sunday sending the preparation session
21 as to why the protective measures for this witness are of particular
22 importance.

23 There are some various serious grounds for why these protective
24 measures are in place, and we would submit that the best way for the
25 publicity of the proceedings is to hear this account largely in

1 private session so as to be able to allow the witness to speak freely
2 and to ensure his protective measures, and use the post-testimony
3 redaction procedure of the transcripts that Your Honours recently
4 adopted to ensure the public has all the information possible.

5 PRESIDING JUDGE SMITH: Thank you.

6 [Trial Panel confers]

7 PRESIDING JUDGE SMITH: The post-testimony redaction is adequate
8 protection for the public's right to know, and therefore we will
9 overrule your objection to a private session. We will be in private
10 session with this witness.

11 And, Madam Court Usher, you may bring the witness in.

12 MR. MISETIC: Mr. President, just one additional housekeeping
13 matter. I don't know if you wish to hear us before the witness comes
14 in or after. There is one issue -- dispute about whether some
15 information should have been in Preparation Note 1 or 2.

16 PRESIDING JUDGE SMITH: We were understanding that that -- there
17 was an attempt to work that out. I don't know if it's been
18 accomplished.

19 MR. MISETIC: We were not able to resolve it.

20 PRESIDING JUDGE SMITH: Okay.

21 MR. HALLING: At least our submissions on that would need to be
22 in private session.

23 PRESIDING JUDGE SMITH: [Microphone not activated].

24 THE INTERPRETER: Microphone, please.

25 PRESIDING JUDGE SMITH: We are going into private session right

1 now.

2 Mr. Court Officer.

3 Court Usher, please do not bring the witness in at this point.

4 [Private session]

5 [Private session text removed]

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Witness: W04325 (Private Session)

Page 12149

Examination by Mr. Halling

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22 [Open session]

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

24 PRESIDING JUDGE SMITH: Thank you.

25 Go ahead.

Witness: W04325 (Open Session)

Page 12150

Examination by Mr. Halling

1 MR. HALLING:

2 Q. Witness, have you been previously interviewed by the SPO?

3 A. Yes.

4 MR. HALLING: We'd ask the Court Officer to please pull up
5 043761 to 043781 RED, page 1, and this is not to be broadcast.

6 Q. Witness, the document that you see on the screen in front of
7 you, is this your SPO interview?

8 A. Yes.

9 Q. Have you recently had an opportunity to refamiliarise yourself
10 with the contents of this interview?

11 A. Yes.

12 Q. In your preparation session, you indicated some changes and
13 clarifications to your SPO interview; is that correct?

14 A. That's correct.

15 Q. And these changes were reflected in a note that was read back to
16 you; right?

17 A. Correct.

18 Q. And do you confirm that what was read back in that note
19 reflected your changes fully and accurately?

20 A. I do.

21 Q. Subject to the changes that you provided in that note, does this
22 statement accurately reflect what you said and what you would say if
23 asked again in court today?

24 A. Yes, certainly.

25 Q. Thank you.

Witness: W04325 (Open Session)

Page 12151

Examination by Mr. Halling

1 MR. HALLING: Your Honour, having fulfilled the Rule 154
2 criteria, and in accordance with decision F01848, as amended by the
3 oral order of this morning, the SPO hereby tenders 043761 to 043781
4 along with Preparation Note 1 minus the last sentence of paragraph
5 20. And this is ERN 118987-118991.

6 The two Serbian statements addressed in the oral order of this
7 morning, along with the witness's associated exhibits, can be found
8 in the partials across 043782 to 043795. All items tendered include
9 their associated Albanian and English translations, and the specific
10 partials admitted are listed in decision F01848 at footnote 197.

11 PRESIDING JUDGE SMITH: Any objection?

12 MR. MISETIC: Subject to the objections we've made on this
13 witness, we have no additional objections.

14 MR. EMMERSON: Yes, and Your Honours overruled the objection we
15 made.

16 MR. ROBERTS: Nothing, Your Honour.

17 MR. ELLIS: Yes, nothing new, Your Honour.

18 PRESIDING JUDGE SMITH: 043761 to 043781 plus Preparation
19 Note 1, less the last sentence of paragraph 20, and 118987 and 118991
20 are admitted.

21 THE COURT OFFICER: Your Honours, the ERN 093761 to 093781 --
22 apologies, I will start again. ERN 043761 to 043781 will receive
23 Exhibit P961.

24 The Preparation Note 1, which is ERN 118997 to 119991 -- 118991
25 will receive P962.

Witness: W04325 (Private Session)

Page 12152

Examination by Mr. Halling

1 And the ERN 043782 to 043795 will receive Exhibit P963.

2 Thank you, Your Honours.

3 MR. HALLING: Your Honours, we did have a summary for this
4 witness that we sent to the Defence in advance. We can read it now.

5 PRESIDING JUDGE SMITH: You may proceed.

6 MR. HALLING: W04325 visited multiple KLA headquarters,
7 including Likoc, Malisheve, Jeshkove, and Llapushnik. His evidence
8 concerns what he saw and learned at these locations, including KLA
9 commanders he interacted with.

10 And, Your Honours, for the reasons previously discussed before
11 the witness came in, we'd now like to conduct our supplemental direct
12 examination in private session.

13 PRESIDING JUDGE SMITH: [Microphone not activated].

14 Please take us into private session for the protection of the
15 witness, Mr. Court Officer.

16 [Private session]

17 [Private session text removed]

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Witness: W04325 (Private Session)

Page 12153

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12154

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12155

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12156

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12157

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12158

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12159

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12160

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12161

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12162

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12163

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12164

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12165

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12166

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12167

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12168

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12169

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12170

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12171

Examination by Mr. Halling

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1 [Private session text removed]

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5 [Open session]

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

7 Thank you.

8 MR. EMMERSON: Your Honour, may we return to the subject that
9 was just raised before we went into public session at the resumption
10 and before the witness enters, because I think it --

11 PRESIDING JUDGE SMITH: [Microphone not activated].

12 MR. EMMERSON: I'm so sorry. After the luncheon adjournment
13 when we recommence, may we return to the issue that was just raised
14 at the last submission, namely, submissions that had been made to the
15 Pre-Trial Judge in the context of protective measures, because
16 clearly they have an implication for the protective measures that are
17 in issue here. In other words, Your Honours were presented, when
18 ruling on protective measures, with a factually inaccurate position
19 which will need to be reviewed.

20 May we address that in private session --

21 PRESIDING JUDGE SMITH: Is this going to advance this hearing in
22 any way?

23 MR. EMMERSON: Well, as Your Honour knows, I fundamentally
24 disagree with the notion that this witness should be being heard in
25 private. Now, that is based on the protective measures that were

1 ordered which themselves were based on protective measures which the
2 Prosecution obtained from the Pre-Trial Judge on a factually
3 inaccurate basis, so it certainly needs reviewing.

4 PRESIDING JUDGE SMITH: Thank you. We are adjourned until 2.30.

5 --- Luncheon recess taken at 1.09 p.m.

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

7 PRESIDING JUDGE SMITH: CMU needs to have the floor to make some
8 clarification on the record.

9 THE COURT OFFICER: Yes, Your Honour. Thank you.

10 So for the record, clarifications on the Rule 154 package. As
11 for the statements, the statement 1, which is 043761 to 043781, and
12 the related Albanian and Serbian translations, as mentioned in the
13 footnote 197, already received Exhibit P961.

14 As for the statement 2, which is ERN 043783-043793, and related
15 Serbian and Albanian translations, as mentioned in the footnote 197,
16 will receive Exhibit P966.

17 As for preparation note which is ERN 118987 to 118991, this one
18 already received Exhibit P962.

19 As for the associated exhibits, the previously mentioned range
20 of the ERN 043782 to 043795 that consists of three associated
21 exhibits, and they will receive the exhibit numbers as follows:
22 043782 to 043782 and related Serbian and Albanian translations, as
23 mentioned in the footnote 197, will receive P963; the ERN 043794 to
24 043794 and related Albanian and Serbian translations, as mentioned in
25 the footnote 197, will receive Exhibit P967; and the ERN 043795 to

1 043975 and related Albanian and Serbian translations, as mentioned in
2 the footnote 197, will receive Exhibit P968.

3 Thank you, Your Honours.

4 PRESIDING JUDGE SMITH: Thank you.

5 Mr. Halling, you were to report back on the redactions.

6 MR. HALLING: Yes. So -- I mean, as for what was said in open
7 session at the end of the last session, we consider those submissions
8 to be absurd and unreasonable.

9 But in terms of what Your Honour just asked for the full
10 accounting, we can give one now, but we would ask to do it in private
11 session.

12 PRESIDING JUDGE SMITH: Mr. Emmerson.

13 MR. EMMERSON: Well, we have had certain documents de-redacted.
14 I mean, I don't think it's saying anything remotely at risk of
15 prejudice to say that the information placed before the
16 Pre-Trial Judge by the Prosecution and referred to and footnoted in
17 paragraph 30 of the decision KSC-BC-2020-06 was information
18 concerning where this particular witness lived at the time, and that
19 information was relied upon as the basis for establishing an
20 objectively justifiable risk. Without saying where that place is, it
21 is contradicted by the evidence that the witness has given.

22 So however absurd Mr. Halling might think it is, the fact is the
23 Pre-Trial Judge was either -- for whatever reason, misled. And
24 Your Honours had the Pre-Trial Judge's decision to work from when
25 considering the protective measures that were granted in this case.

1 Now, what that means, with respect, is that there is a process
2 that needs to be unpicked. In other words, the Prosecution needs to
3 go through again and explain why protective measures, to the extent
4 that there should be no open justice here, in the sense that the
5 public should not see and hear the issues relating to this witness's
6 falsification of evidence at Serbian authority's request, that that
7 is something that should be held in private session.

8 PRESIDING JUDGE SMITH: Thank you.

9 MR. HALLING: And that's incomplete to the point of being
10 misleading, and we've already stated our position on the publicity of
11 this witness. We can give a full update in private session because
12 it requires specifics in order to answer Your Honours' questions.

13 PRESIDING JUDGE SMITH: The decision of the Pre-Trial Judge was
14 made in good faith on his part. We have adopted it. The witness has
15 asked for protections. He has received it. We are going to continue
16 this hearing under those circumstances, and let's get on with it.

17 Madam Usher, please bring the witness in.

18 Mr. Halling, you want to continue in private session then?

19 MR. HALLING: That's correct, Your Honour. I can also give the
20 update you indicated in private session.

21 PRESIDING JUDGE SMITH: All right. We will go into private
22 session at this time.

23 Go ahead with the update.

24 Do not bring the witness in at this time.

25 Go ahead.

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Witness: W04325 (Private Session)

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Examination by Mr. Halling

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Witness: W04325 (Private Session)

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Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12185

Examination by Mr. Halling

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Witness: W04325 (Private Session)

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Examination by Mr. Halling

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Witness: W04325 (Private Session)

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Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12188

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12189

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12190

Examination by Mr. Halling

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Witness: W04325 (Private Session)

Page 12191

Examination by Mr. Halling

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

Page 12202

Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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Witness: W04325 (Private Session)

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Cross-examination by Mr. Emmerson

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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're adjourned until 9.00
18 tomorrow.

19 --- Whereupon the hearing adjourned at 4.05 p.m.

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