

1 Tuesday, 15 March 2022

2 [Open session]

3 [Closing Statements]

4 [The accused entered court]

5 --- Upon commencing at 9.30 a.m.

6 PRESIDING JUDGE SMITH: Good morning, everyone.

7 Madam Court Officer, please call the case.

8 THE COURT OFFICER: Good morning, Your Honours. This is
9 KSC-BC-2020-07, The Specialist Prosecutor versus Hysni Gucati and
10 Nasim Haradinaj.

11 PRESIDING JUDGE SMITH: Thank you.

12 We'll have the appearances.

13 Ms. Bolici.

14 MS. BOLICI: Good morning, Your Honour. The SPO is in the same
15 composition, with the exception that Mr. Whiting is not in court
16 today, and the legal intern who joined us today is Mr. John Flavin.

17 PRESIDING JUDGE SMITH: Thank you.

18 Mr. Rees.

19 MR. REES: No change, Your Honour.

20 PRESIDING JUDGE SMITH: Thank you.

21 Mr. Cadman.

22 MR. CADMAN: No change, Your Honour.

23 PRESIDING JUDGE SMITH: Thank you.

24 I also note Mr. Gucati and Mr. Haradinaj are both in court.

25 Today we will continue the closing statements in the Prosecutor

1 versus Gucati and Haradinaj case. Yesterday we heard the closing
2 statements of the SPO. Today we will start with the Defence.

3 As indicated yesterday by the Defence, Mr. Rees will speak today
4 and for some time tomorrow. At least that is the plan. And then
5 Mr. Cadman will have the floor for the remainder of the time
6 allocated to the Defence.

7 As said yesterday by the Panel, the Defence should take into
8 consideration that the Panel's questions should last 30 to 45 minutes
9 after each statement. If need be, the Panel members may also ask
10 questions during the oral submissions.

11 Before I give the floor to the Defence, I note that the Panel
12 received the proposed additional evidence yesterday.

13 Mr. Cadman, one question. We did not seem to have received the
14 statement from Emin Kabashi. Can you please disclose it by noon
15 today?

16 MR. CADMAN: It can be done this morning. It was clearly an
17 oversight.

18 PRESIDING JUDGE SMITH: Thank you very much.

19 On the same issue. In last week's order, we asked the parties
20 to let us know by the start of their submissions on sentencing
21 whether any facts could be agreed upon. The Panel varies now this
22 order in part, so that it can better prepare for the submissions on
23 Thursday.

24 The SPO is accordingly asked to indicate in an e-mail, by close
25 of business today, whether it is ready to agree to any facts in these

1 statements or whether it agrees or objects to the admissibility of
2 the statements.

3 If the SPO objects only in part to the admission of some of
4 these statements, we ask the parties to have *inter partes* discussions
5 before Thursday with a view to finding a solution as was done with
6 respect of the tendered witness statements of the Defence.

7 Depending on the SPO information, the Panel will give some
8 guidance on the order of issues to address in the sentencing
9 submissions.

10 Mr. Rees, you have the floor.

11 Oh, I'm sorry, Mr. Pace.

12 MR. PACE: Thank you, Your Honour.

13 Just briefly to update the Panel. This morning we already
14 reached out to the Defence teams via e-mail in relation to the items
15 disclosed yesterday and with a view to reaching a proposal, and we
16 look forward to more *inter partes* discussions and hopefully can get
17 back to the Panel as soon as possible, when we've had a chance to
18 discuss it.

19 PRESIDING JUDGE SMITH: Thank you very much, Mr. Pace. We
20 appreciate the initiative.

21 Now, Mr. Rees.

22 MR. REES: In any criminal trial, the defendant is presumed
23 innocent till proven guilty. As the Prosecution have correctly
24 stated, the guilt of the accused must be proved beyond reasonable
25 doubt. The burden of proving that the defendant is guilty falls on

1 the Specialist Prosecutor, and that burden remains with the
2 Prosecution throughout the trial. Mr. Gucati does not have to prove
3 his innocence.

4 There are, of course, two defendants on trial, and the use of
5 the label "the accused" to collectively refer to Mr. Gucati and
6 Mr. Haradinaj is apt to, if not designed to, mislead. The statement
7 from the Prosecution and the final trial brief from the Prosecution
8 is littered with examples where it is stated that the accused says
9 this, the accused says that, and it is only through the diligent
10 examination of each and every footnote that it can be ascertained
11 that, in fact, the words are properly attributable to only one of the
12 defendants and spoken, indeed, in the other defendant's absence. And
13 what one defendant has stated in the absence of the other should only
14 be held against the maker unless subsequently specifically adopted.
15 It's not enough to try, as the Prosecution did, to ask the very
16 general question: Mr. Gucati, between the 7th and 25th September,
17 did Nasim Haradinaj say anything in public that you wish to disavow?
18 And that was not good enough, as Mr. Gucati answered: Well,
19 Mr. Haradinaj said many things in that long period. What specific
20 parts are you asking me about? Can you remind me.

21 The evidence for and against each defendant is different, and
22 their cases should be assessed separately. On behalf of Mr. Gucati,
23 I will, of course, concentrate on the case against him.

24 Mr. Gucati faces six counts. Again, the Prosecution case on
25 those six counts, and whether the Prosecution have proved guilt

1 beyond reasonable doubt on any one of those counts, must be assessed
2 separately and verdicts likewise reached separately.

3 Now, yesterday you were treated to a rather colourful and
4 partisan approach. I, on the other hand, will seek to take a rather
5 more sober approach, lower the temperature somewhat. I will aim to
6 remind the Panel of some of the salient parts of the evidence.
7 Obviously I can't remind the Panel of all the evidence, but of some
8 salient parts of the evidence and make some submissions about that.
9 But it is, of course, your view, the Trial Panel's view, of the
10 evidence that counts and your view alone. And, likewise, I will then
11 turn to make some submissions on the law and how, we submit, an
12 approach can be taken to the counts, and those submissions are
13 designed to assist; but it is, of course, your view, the
14 Trial Panel's view, on the law that matters and yours alone.

15 Before I embark upon that exercise, though, I do make one
16 comment, if I may. Talk of the Trial Panel not allowing the Court to
17 fail by effectively not giving the SPO what it seeks, as the
18 Prosecution did talk in paragraph 238 of the final trial brief, that,
19 in my respectful submission, demonstrates a lack of professional
20 respect and courtesy on the part of the Specialist Prosecutor towards
21 this Trial Panel.

22 This is a criminal trial. And the success or failure of a
23 criminal trial is to be measured only by reference to its fairness
24 towards a defendant, its capacity to afford respect and dignity to
25 all participants in the trial, and the arguments advanced on their

1 behalf, its ability to judge the evidence, whether called on behalf
2 of the Prosecution or the Defence, by the same fair standards, and
3 ultimately whether it delivers fair, independent, and impartial
4 verdicts based only on the evidence and an objective analysis of the
5 law. And whether those true verdicts - fair, independent, and
6 impartial - are those of guilt or acquittal is irrelevant to the
7 success or failure of this trial and, indeed, of this Court. And on
8 behalf of Hysni Gucati, I do not dare this Trial Panel to return any
9 particular outcome, in the style of the Specialist Prosecutor. I ask
10 only that this Trial Panel returns true and just verdicts based on a
11 dispassionate analysis of the evidence and the law.

12 The test on any individual count is whether, in relation to
13 Mr. Gucati, the Prosecution have proved beyond reasonable doubt
14 whether the elements of the charge, as particularised in the count on
15 the indictment, are made out. Only the evidence admitted during the
16 trial can be considered. So, for example, the reference in the
17 Prosecution final trial brief at paragraph 267, footnote 749, to
18 another statement of the Specialist Prosecutor made out of court on
19 22 September 2020 has not been admitted in evidence, it's not
20 appropriate to have referred to it in the trial brief, and it's not,
21 of course, to be taken into consideration.

22 Similarly, the assertion in the Prosecution final trial brief at
23 paragraph 22, footnote 47, about a globe icon featuring a Facebook
24 post and what that might mean. No evidence called at trial in
25 relation to that assertion.

1 And, similarly, the assertion in the trial brief at paragraph 24
2 that the person who made the first delivery was unknown to the SPO.
3 Again, no evidence called by the SPO at trial to make good that
4 assertion.

5 It is not sufficient, on any count, to establish general
6 non-legal propositions, such as the proposition that Mr. Gucati's
7 stated intention was to challenge or undermine the KSC or the SPO.
8 It is not sufficient to establish the proposition that Mr. Gucati has
9 at some point revealed to another person the name of a so-called
10 potential witness. That is, according to the SPO's own definition, a
11 person likely to have information about a crime, the perpetrator, or
12 important circumstances relevant to proceedings of this Court. After
13 all, every person in this room would meet that definition. Nor is it
14 sufficient on any count to establish the proposition, if it has been
15 established, that prosecutors in some historic cases dating back some
16 10 to 15 years ago encountered various difficulties with witnesses
17 which, collectively, have given rise to the now well-worn trope of a
18 climate of witness intimidation in Kosovo. None of those general
19 non-legal propositions repeated over and over again by the SPO are,
20 indeed, sufficient.

21 Let me turn, to begin with, then, to a theme which runs
22 throughout the trial and is central, we submit, to the Trial Panel's
23 understanding of the evidence, and that is Mr. Gucati's concern about
24 selective justice. It's a theme which runs throughout the trial
25 because it is, Mr. Gucati says, the motivation, his purpose that ran

1 throughout his actions, his words and deeds in September 2020.

2 Criticism is made that he has expressed the view that the
3 Specialist Chambers is mono-ethnic or has referred to it as racist
4 and talked of collaboration with Serbia. In the opening statement,
5 the Specialist Prosecutor specifically acknowledged the right to
6 criticise the Specialist Chambers. At page 787 of the transcript,
7 lines 4 to 6, the Specialist Prosecutor said:

8 "It is okay to say what you do not like about this Court, and it
9 is okay to say why you do not like this Court. That is all part of a
10 free society."

11 Well, Mr. Gucati has expressed his concern about the Court and,
12 indeed, there are objective grounds to support that view whether you
13 agree with it or not. And as we have seen from the evidence, many,
14 including many members of the press in Kosovo, share that view.
15 Mr. Gucati has called for justice for all, not some.

16 Can I ask, please, for Exhibit P29-ET to be pulled up, page 1.

17 If Your Honours look to the bottom of that page, we will see in
18 that bottom paragraph, under the time 00:01:59, Mr. Gucati said:

19 "We are not against justice, but we are against selective
20 justice."

21 And that neatly sums up Mr. Gucati's position and his concern in
22 relation to this trial. His support for justice for all, as it were,
23 is a position that he's expressed both during the indictment period
24 and, indeed, before it.

25 Can we look, please, at Exhibit P83-ET at page 57. And the

1 English version, please, of P83-ET.

2 So at page 57 of 87, we can see there an entry, 18 July:

3 [As read] "The whole world knows about the crimes that the
4 Serbian state committed in several countries of the Balkans,
5 including Kosovo, at the end of the twentieth century. I invite
6 Viola von Cramon," an MEP, "to come and witness herself the barbarous
7 crimes which the Serbian state committed against the Kosovo
8 population. But now, instead of punishing the Serbian criminals for
9 the crimes and violence in Kosovo, there is a trial against the just
10 war of the Kosovo Liberation Army and of the people of the Kosovo. I
11 invite Viola von Cramon to visit us at the War Veterans Association
12 of the KLA where we can tell her the crimes of the Serbian state. We
13 call on the MEP Cramon not to interfere with the activity of the
14 Specialist Chambers. If she really wants justice, let her come and
15 see herself the evidence of the barbarian crimes committed by the
16 Serbian forces in Kosovo."

17 And the comment immediately below on his page:

18 "We call on MEP Viola von Cramon to ask for the creation of a
19 specialist court which would investigate all the crimes committed by
20 the Serbian state in Kosovo, so that the Serbian state is punished
21 for these crimes ..."

22 He did not call for any interference with the activity of the
23 Specialist Chambers but supported the creation of a court which would
24 investigate all crimes committed in the relevant period.

25 As he said at P9-ET, please, page 8, at lines 5 to 6 on page 8,

1 here on 7 September now, so at the beginning of the indictment
2 period:

3 "As we have said for the last four or five years, we're against
4 the Special Court. We're not against justice but against the
5 Special Court ..." because of its selective approach.

6 Mr. Haradinaj, in the presence of Mr. Gucati, has supported that
7 call for justice for all.

8 Can we look, please, at P35-ET. At page 5 of 15. If Your
9 Honours look under 00:14:21, in the second paragraph under that time,
10 you'll see that Mr. Haradinaj referred to extending the mandate of
11 this Court and said:

12 "... they should consider our proposal to amend the law and
13 enable the Court to prosecute all the crimes. The Association of KLA
14 Veterans supports a court to prosecute all crimes. The War Veterans
15 Association is not against solving crimes; in fact, it supports
16 this."

17 It's a position that they set out time and time again.

18 Can we look, please, at P12-ET. Again, the same date. If we
19 can turn to page 5, please. And towards the top of the page, this
20 time Mr. Tome Gashi, but again in the presence of Mr. Gucati, states:

21 "The KLA's OWV officials, including the Chairman
22 Mr. Hysni Gucati and others, are seeking the undoing of the
23 Specialist Chambers through legitimate means. And if that proves
24 impossible, if due to certain international agreements the
25 establishment of the Court heralds a certain connotation and

1 international weight, then they seek an [alternative] normal
2 solution. And that is the investigation of the crimes committed by
3 the Serbs. Let's not separate the Serb crimes from the Albanian
4 ones, but let's investigate anyone who committed war crimes during
5 the Kosovan war instead.

6 "We know that 15.000 Albanian civilians were killed by none
7 other than the occupying Serb forces, the Serbian police and army and
8 their paramilitaries, which the Serbian army and police used in order
9 to elude their commanding responsibility. And based on this law they
10 are not subject to investigations at all. Just think about it. It
11 means that the Specialist Chambers, which is now the only
12 international court investigating the war crimes in Kosovo, does not
13 deal with the crimes committed by the Serbs, and that's a
14 catastrophe. They are allegedly investigating for crimes against
15 humanity, supposedly committed by some members of the KLA, but they
16 do not investigate the crimes against humanity, that horror amounting
17 to genocide that the occupying Serb forces committed here for many
18 years against us Albanians as a national entity."

19 Now, the Prosecution, of course, concentrate, focus to the
20 exclusion of all else, even if their presentation redacting out words
21 that immediately precede those words and follow those words that they
22 wish to rely on. The Prosecution draw focus to the words "Mr. Gucati
23 and others are seeking the undoing of the Specialist Chambers through
24 legitimate means." But they ignore the context, the context that is
25 repeatedly stated by Mr. Gucati and others, that they seek a court

1 only that investigates all crimes. They are not against justice.

2 As Mr. Gucati said again, if we can look, please, at P28-ET.
3 The first page of this interview on 22 September at lines 14 to 16,
4 please:

5 "As far as justice and us is concerned, we are all for an honest
6 justice and not a selective justice or a one-sided justice."

7 Indeed, later at page 11 of the same interview, beginning at
8 line 28, he specifically called on this Court, this Prosecution, to
9 investigate a particular matter. He'd referred to it on other
10 occasions as well, Your Honours will recall. But we'll see there at
11 line 28:

12 [As read] "... I mentioned, in another programme today, a debate
13 that I had with a lawyer in the case of 'Pec Panda,' I believe that
14 you know ...

15 And he goes on over the page to say:

16 "... about those six young Serbs that were killed. They were
17 citizens of Kosovo, those Serbs, those children, because they were
18 just children when they were killed, somewhere between 15 and 17
19 years old. Why doesn't the Special Court take up and investigate
20 this case? Because, they are saying that, we are looking into crimes
21 that the 'KLA' has committed against the Serbs."

22 And the journalist raised the issue about jurisdiction, and
23 Mr. Gucati pointed out:

24 [As read] "Well, they're also citizens of Kosovo. Yes, they are
25 citizens of Peja. Why doesn't the Special Court consider them to be

1 citizens of Kosovo and look into their case? Despite the fact that
2 they are Serbs, they are citizens of Kosovo, why don't they look into
3 this case? Why doesn't it deal with such cases at all?"

4 He wanted the investigation of all crimes. It was a position he
5 repeated when he gave evidence. Can we look, please, at the
6 transcript of Mr. Gucati's evidence at page T2412. And at line 25,
7 going over the page, but beginning at line 25, he said this:

8 "I said that I am against this Court and I remain against it
9 because this Court does not convince us that it is able to
10 investigate the crimes that have occurred in Kosovo. The crimes that
11 the police and the Serb Chetniks killed six Serbian civilians. This
12 is what I said, and I stand by it. If this Court were to investigate
13 crimes in a non-discriminatory manner, and I stress
14 non-discriminatory, only from that point onwards would I be able to
15 extend my full support to this Court."

16 He continued, if we go on, please, to page 2428, and if we look
17 at line 15, please, he continued:

18 "... this Specialist Court which has been set up needs to pursue
19 the crimes committed by the Serb -- by the Serbs, by Serbia. And I
20 don't think that that is fair and equitable justice. I'm not in --
21 seeking to make anyone guilty here, because they are doing their own
22 jobs, but they ought to be -- to be doing their jobs impartially and
23 to follow every single case in a fair and equitable manner."

24 This is not sophistry from Mr. Gucati. Obviously it will be for
25 the Trial Panel to make an assessment of Mr. Gucati as a man, as a

1 witness.

2 One thing you might not think of Mr. Gucati is that he is a man
3 of particular sophistication. He tries to speak as plainly as he
4 can. He is being criticised for using the word "collaborate." Can I
5 strike a note of caution when the Trial Panel considers that word.
6 Whereas, of course, in English there are two words for "cooperation"
7 and "collaboration." In Albanian, of course, there is only a single
8 word. And forgive my pronunciation, but it's "bashkepunoj." There
9 is no distinction, there is no different word between "collaborate"
10 and "cooperate." But it's a word that he used in answer to
11 Judge Mettraux as part of his evidence.

12 At T2433, please.

13 At line 13, Judge Mettraux, having continued a discussion with
14 Mr. Gucati about his approach, as it were, to support or otherwise
15 for this Court, Your Honour asked:

16 "So when you said on public television you wanted to undermine
17 the Special Court, we must understand you to mean you wanted to
18 advise it. Is that your evidence, Mr. Gucati?"

19 His answer was:

20 "That is correct, Your Honour. I wanted to advise it, not to
21 undermine it and destroy it, but advise it not to collaborate with
22 war criminals but with people who are witnesses of fact, who have
23 taken part. I'm not against chasing every single case in Kosovo. I
24 am a vehement supporter of justice. And from that point of view, I
25 have been against this Court."

1 His position, repeated over and over again, perhaps not in the
2 most elegant of terms but clear, in my submission, is that his
3 objection is based on his concern that this Court and this
4 Prosecution does not investigate and prosecute all crimes committed
5 during the relevant period.

6 Of course, as part of that he has expressed he concern, as he
7 did there in that passage, with the Prosecution dealing with what the
8 Prosecution have described in their final trial brief, notorious
9 Serbian officials. People who - and, again, there is evidence of
10 this, we have seen it during the course of the trial, in newspaper
11 articles - have been described by the press as participating in
12 massacres during the course of the Kosovan war. And Your Honour,
13 Judge Mettraux, of course, made the point, has made the point, and
14 did so when Mr. Robert Reid gave evidence, that it is not in itself
15 neither unique nor necessarily objectionable for an investigation to
16 seek the cooperation or take information from persons suspected of
17 crime; even very serious criminal offences.

18 And it at page T3364 of the transcript, please, Madam Court
19 Officer, Your Honour Judge Mettraux asked Mr. Reid about that in his
20 experience. At line 2, Your Honour asked Mr. Reid:

21 "... in your practice and experience, whether in Australia or at
22 the ICTY, did that happen that you collected information from
23 individuals you suspected of having committed a crime?"

24 And Mr. Reid answered:

25 "Yes. I mean, in some instances -- and this was one of the

1 difficulties that we had, that in some instances we would be
2 investigating one perpetrator group and we would have a group of
3 victims. But then there was another team investigating the victims
4 which were their perpetrator group, and the victims were the other
5 perpetrator group."

6 If you look further down to line 12, you see Mr. Reid continued:

7 "And that occurred a number of times ... where perpetrators
8 would give evidence or give information, and we would corroborate
9 that and confirm that evidence, that it was, in fact, true and
10 correct."

11 And then he gave the best examples, he said, where the accused
12 have pleaded guilty and then give evidence in another investigation.
13 And then, in those circumstances, the information they provided had
14 to be corroborated, he said, "to the nth degree." So, yes, of
15 course, it is not unique, nor necessarily objectionable for an
16 investigation to seek the cooperation and seek information from
17 persons suspected of involvement in crime or serious crime.

18 But there is a real distinction in Mr. Reid's answer there to
19 the situation that we face here, because Mr. Reid is talking about
20 investigating one perpetrator group, where we'd have a group of
21 victims, and another team investigating the victims which were their
22 perpetrator group. And, indeed, he talks about the prosecution of
23 those suspected of crime, whether cooperating and providing evidence
24 or not, because he gave the best examples where the accused pleaded
25 guilty, facing, no doubt, the consequences of their actions and

1 giving evidence and there, even then, their information would be
2 required to be corroborated to the nth degree.

3 There is that distinction between that situation, which Mr. Reid
4 had encountered in his experience, that fair and balanced process,
5 where there's no immunity, where both sides are fully investigated
6 and the information provided corroborated to the nth degree, and
7 those who commit crime, whether they cooperate or not, are required
8 to face the consequences of their actions. It's that distinction,
9 the fact that that fair and balanced process cannot happen, is not
10 happening, that failure to investigate both sides, as Mr. Reid and
11 his colleagues would have done, is precisely the complaint that
12 Mr. Gucati raises.

13 It is, of course, inherent in the law which creates the
14 Specialist Chambers and the Specialist Prosecutor's Office that the
15 sweeping powers that have been given to the Prosecution to inquire
16 into evidence located within the territory of Kosovo without having
17 to seek to rely upon the cooperation of the Kosovan national
18 authorities, but it is no less a valid concern for it. The
19 Specialist Prosecutor we know, under the law, has the powers to
20 summon persons for questioning, collect, examine information and
21 evidence, conduct on-site investigations, order the arrest of a
22 person during the investigative stage within Kosovo. It has the
23 powers of the police with the same authority and responsibility as
24 the Kosovan police within Kosovo. The law specifically requires the
25 SPO to act independently from the other prosecution authorities in

1 Kosovo but says nothing about Serbia.

2 The personnel, premises, and property are given wide privileges
3 and immunities by the law to the Specialist Prosecutor's Office but
4 only in Kosovo. Orders issued by the Specialist Chambers are given
5 force and effect but only in Kosovo. A warrant of arrest issued by
6 the Specialist Chambers is given the same force and effect as a
7 warrant of arrest issued by any other Kosovo court. And the
8 Specialist Chambers given primacy within its subject matter
9 jurisdiction over all other courts but only in Kosovo. There's the
10 power to order the transfer to the Specialist Chambers and
11 Specialist Prosecutor of proceedings and investigations but only in
12 Kosovo.

13 The fact that that is the -- inherent in the law, that selective
14 approach, does not mean that the concern about it is any less valid
15 nor, indeed, that it is not shared widely, as we have seen, including
16 amongst many members of the press. That legislative framework, it is
17 clear, would appear to have been crafted to ensure that whilst the
18 SPO may, if it wishes, request the cooperation of Kosovan
19 authorities, the SPO is not beholden to them and can act unilaterally
20 within Kosovo.

21 There is no reason why, when the mandate of this Court is to
22 investigate crimes committed during the course of the Kosovan war, a
23 war between Serbian state, an aggressive war conducted by the Serbian
24 state in Kosovo, that that mandate should treat the Kosovan and
25 Serbian authorities differently. A fair system would be a system in

1 which identical legal powers to act in Serbia, as in Kosovo, were
2 created. And to the extent that the SPO does not have such powers,
3 it is, we submit, and Mr. Gucati has submitted, and many others in
4 Kosovo, including members of the professional press have submitted, a
5 fundamental deficit in the mandate of the Specialist Prosecutor.

6 That the Prosecution is beholden to Serbia in its ability to
7 inquire in Serbia into crimes committed during a war of aggression
8 carried out by Serbia on Kosovan soil leaves the SPO and the
9 inquiries it makes in Serbia at risk of an obvious interference and
10 manipulation. Mr. Gucati has, both before the indictment period,
11 during it, and, indeed, at this trial, expressed his fear of that
12 risk, of the manipulation of evidence as a result of inquiries
13 conducted by the Serbian authorities in Serbia. And it's not a fear,
14 again, that Mr. Gucati holds alone. It's one that's shared, we have
15 heard, by others, including members of the press.

16 Can we look, please, at page 7-ET.

17 And if we look, during the course of this interview, the anchor
18 of the interview is a journalist. Again, I apologise for the
19 pronunciation, but I think it's Ms. Osmani, and at 00:24:42 expresses
20 the view, the clear view:

21 "... Belgrade is known for fabricating facts."

22 That is, again, a neat summary of a position widely held in
23 Kosovo. The fear that the Specialist Prosecutor and these -- this
24 Specialist Chambers is exposed through its lack of any investigative
25 power in Serbia and is beholden to Serbia to make inquiries within

1 Serbia, renders the result of those inquiries at risk of an obvious
2 interference and manipulation. A widely held view.

3 And it is an irony in this case that any attempt by a Serbian
4 official, for example, to fabricate facts, as Ms. Osmani suspects,
5 that any such attempt to pervert the course of justice before the
6 Specialist Chambers by a Serbian official would effectively enjoy
7 impunity. A concern, again, that Mr. Gucati has expressed, that
8 others share, including members of the press.

9 Serbia, we know, does not recognise Kosovan independence, the
10 Kosovan constitution, the Assembly of the Republic of Kosovo, and
11 necessarily as an institution created by legislation made by the
12 Kosovan assembly under the Kosovan constitution, the SPO itself. And
13 we know that Serbia still claims, despite the reality, that it is the
14 national authority for the territory of Kosovo.

15 A legitimate, fair, and independent, impartial legal structure
16 would have required equal recognition in Serbia and Kosovo. It would
17 have provided the SPO with the same powers on to act unilaterally in
18 both Serbia and Kosovo, and it would have investigated all offences
19 committed during the 1998-2000 aggressive war conducted by Serbia by
20 persons of whichever ethnicity or affiliation.

21 That selective approach to the investigations and prosecution
22 inherent in the SPO mandate, inherent arising both from the subject
23 matter restrictions that are imposed by Article 1(2) and Article 6 of
24 Article 1 of the Law on the Specialist Chambers, and also effectively
25 selective because of the SPO's lack of powers in Serbia. Though that

1 selective approach is inherent, it does not explain, although it is
2 mirrored by, a selective approach that the SPO has employed in
3 relation to its own interpretation of the law in this case. Mirrored
4 by a selective approach to the evidence that the SPO has taken in
5 this case, and, indeed, the selective approach to the arrest and
6 prosecution of these two defendants when, at the same time, they
7 allege both explicitly in the case of Mr. Faton Klinaku and
8 Mr. Tome Gashi in the indictment, and also name others to have
9 committed offences, some of which have actually appeared at this
10 Court, in their final trial brief. A selective approach
11 demonstrating not only in relation to the prosecution of Mr. Gucati
12 and, indeed, Mr. Haradinaj, in those circumstances, but also as a
13 selective approach, it would seem, in relation to the press.

14 Mr. Halil Berisha gave evidence. And at the outset, before
15 Mr. Berisha's counsel, on 26 October 2021, the SPO quite rightly
16 stated that Mr. Berisha had committed no crimes and the
17 Specialist Prosecutor would not be prosecuting him for anything he
18 did in relation to this case.

19 If we can have a look, please, at the transcript at T1507. At
20 line 6, Mr. Halling, I think it was, explicitly confirmed in front of
21 Mr. Berisha's counsel, and, indeed, in public, of course, as we were
22 in open session, that he wanted to make clear on the record:

23 "... on the authority of the Specialist Prosecutor himself, that
24 we will not be prosecuting this witness for anything he did in
25 relation to this case. From the nature of the conduct to the limited

1 scope of what he published to, most notably, his intentions
2 throughout and effective actions to protect and return confidential
3 information, no crimes were committed in our assessment."

4 And Mr. Halling did not seek to dissent or deviate from that
5 clear assertion yesterday in the closing statement for the
6 Prosecution.

7 Now just pausing there, if I may. In relation to Mr. Gucati,
8 the Prosecution advances the widest interpretation of the scope of
9 the offence particularised in Count 5, unauthorised revelation of
10 secret information disclosed in official proceedings. Under that
11 wide interpretation that the SPO seeks to convict Mr. Gucati on
12 Count 5, guilt is established on the part of any non-SPO staff member
13 simply by the revelation, they would say, of any SPO document to
14 another person with awareness that the document was confidential.

15 And, likewise, in relation to Mr. Gucati, the SPO advances the
16 widest interpretation of the scope of the offence particularised in
17 Count 6, unauthorised revelation of the identities and personal data
18 of protected witnesses. At least in relation to Mr. Gucati. Under
19 which, they say, his guilt is established on the basis that any
20 non-SPO staff member is guilty of that offence simply by the
21 revelation of any name to another person that is contained within any
22 SPO document with awareness that that name might be of a person
23 likely to have information about a crime, perpetrator, or important
24 circumstances relevant to Specialist Chambers proceedings. And,
25 again, I repeat, that definition, of course, would apply to every

1 single one of us in this chamber.

2 Well, neither interpretation, in relation to Count 5 or Count 6,
3 can be right, because Mr. Berisha has committed no criminal offence,
4 the Specialist Prosecutor says, and we agree. And it is worth
5 considering the full extent of Mr. Berisha's entirely lawful conduct.

6 On 7 September 2020, at the KLA WVA offices, Mr. Berisha
7 attended the press conference held that day with a cameraman and was
8 told that documents from the Specialist Court were present.

9 Can we look, please, at T1517, line 16.

10 Mr. Berisha had attended at the KLA War Veterans Association
11 offices, you can see there. And:

12 "They showed -- I mean, they said it was unexpected. They
13 didn't expect anyone to bring those documents, but the documents
14 were, instead, brought in the morning, and those were the documents
15 that they were presenting at the press conference.

16 "What did the documents concern?

17 "As it was said in the press conference, it was said that the
18 documents were from the Specialist Court."

19 Mr. Berisha was told at the outset that they were from the
20 Specialist Court.

21 Can we look at page T1523, and at line 16.

22 While he was at the offices, he saw that at least on some of the
23 pages -- we can see it from between lines 16 and 19 there. That on
24 at least some of the pages, there was a marking "confidential."

25 Mr. Berisha's cameraman began making copies of those documents in the

1 form of a digital image or images whilst they were still at the
2 offices.

3 If we look, please, at T1584, beginning at line 10.

4 So the cameraman, a person of many years experience, much more
5 experience as a journalist than Mr. Berisha, he began recording the
6 documents.

7 "As any other cameraman, an experienced one who knew his job,
8 and he knew that he was going to record -- to make footage."

9 And continued down the page.

10 Madam Court Officer, we continue down the page, please.

11 So at the bottom of the page, you can see that he began making
12 copies of the documents.

13 Over the page, please.

14 It's difficult to give a number of how many documents the
15 cameraman recorded there at the offices. Difficult to give an
16 approximate or accurate number. But perhaps some 10 to 15 minutes
17 duration, we can see there at lines 20 to 21, the cameraman was
18 taking digital copies of those documents.

19 If we go over the page, please, to line 25. Sorry. T1585 at
20 line 25. And going over the page, if we look at the bottom there, he
21 was asked:

22 [As read] "You asked to take the documents themselves, did you
23 not?"

24 He said:

25 [As read] "... it's a bit problematic. There were many

1 documents ..."

2 And then over the page, please. He said he asked if he could
3 take some of them to see what they were about, and he took a large
4 number, he said.

5 T1521, line 2:

6 "It's difficult to know."

7 It's a considerable number. About a thousand was his estimate.
8 And, indeed, if we look, please, at page T1587, line 22, he confirmed
9 that if he was able, he would have taken all the documents.

10 "It's right, isn't it, if you were able, you would have taken
11 all the documents?"

12 "Yes, correct."

13 Over the page, please, T1588, line 5. What he wanted to do, he
14 said, was to look at those documents that he had seen were marked
15 confidential and spend some time considering them.

16 [As read] "So we would look at the documents because it was made
17 possible for us to take those documents, look at them, and see what
18 we could report on them."

19 So to look at them and see what he could report on them.

20 And, indeed, he physically removed the documents.

21 And then we look at T1522, please, at line 21, he described how
22 he took those documents about 2 kilometres away. 1 and half to
23 2 kilometres away to the offices of *inFokus* newspaper where he
24 presented them in unredacted form to members of the press, other
25 members of the press; four, in fact.

1 If we look at T1572, please. Top of the page, at line 1:

2 "The editors and I looked at these documents to see what was in
3 there ..."

4 So he's seen at the offices of the KLA WVA that some were marked
5 confidential. He's taken them all though. Or as many as he could.
6 And he's shown them to four other members of the press who were not
7 at the KLA WVA offices but were at his office, the *inFokus* newspaper
8 office, where he presented them, made them available, invited four
9 other journalists to read, in unredacted form.

10 If we look, please, at 1598, and line 3.

11 So they were -- one of the issues they were interested in was to
12 see whether the documents would shed any light on who had delivered
13 the documents, where'd they come from. And he says, at line 7:

14 "For the time that these documents were being discussed, we
15 dealt with that as well."

16 So that was one issue.

17 If we look at T1597, please. And line 21.

18 Just confirming there, line 21 to 24, that the documents that he
19 shared, that he took back and showed to those four other members of
20 the press, were in the same form that they were when he picked them
21 up from the KLA WVA. He didn't do anything to them.

22 And if we can go to T1607, please, line 21.

23 There were digital redactions applied later, but that was after
24 he brought the documents back and he'd shared the documents in full
25 without redactions with his editorial colleagues. As he said at

1 line 24:

2 "Every article that was published afterwards came after
3 discussions were held with that editorial team."

4 If we look over the page, please, to line 1:

5 "... and in those discussions, the editorial team had the
6 documents in their unredacted form. The redactions were applied
7 later?

8 "Yes.

9 "Before publication?

10 "When we decided on what to publish, we also decided which
11 pictures we will publish together with the text."

12 And then he talked the redactions being applied not by any
13 specific person. No one had a particular role to apply those
14 redactions.

15 While the documents were being examined at Mr. Berisha's
16 invitation at the *inFokus* offices, more copies were made.

17 Can we look, please, at T1591. And line 1, please.

18 So the documents, if you recall, were spread out on a table in a
19 large room by Mr. Berisha to allow the other members of the press in
20 that room at the *inFokus* offices to read them. And photos were
21 taken, he said, from the big table that is in the main room in the
22 middle of the office, the open-plan office.

23 "Images taken that day of the documents spread out on the big
24 table in the main room in the *inFokus* offices; is that right?"

25 "It must have been on the same day because that was the day when

1 we looked at the documents."

2 And if we look at, please, at page T1623, line 9, he couldn't
3 exclude that, after that day, other copies were made.

4 "So you're saying, as far as you know, there were no other
5 copies made, but you can't ... exclude the possibility because you
6 were not in the office 24 hours a day; is that right?"

7 And his answer was:

8 "Correct."

9 Couldn't exclude that possibility. Others had access - of
10 course they did - to that room.

11 What did the unredacted documents that Mr. Berisha revealed to
12 the four other editors contain? According to Mr. Berisha, if we look
13 at T1572, please. At line 6:

14 "As we were looking at the documents," he said, "we saw there
15 was a lot of correspondence between the Special Task Force with
16 prosecutors in Serbia, and they had asked them to provide them with
17 witnesses. And there were names and addresses that the Special Task
18 Force had received, but they had not been able to verify their
19 addresses.

20 "So this was correspondence between the Task Force and the
21 Serbian prosecutors, in order for them to assist with finding these
22 witnesses and their addresses."

23 So Mr. Berisha had delivered, physically removed and delivered
24 to a location 2 kilometres away from where he'd originally picked
25 them up, unredacted documents which he saw contained at least some

1 that were marked confidential. They contained, when he showed those
2 documents in unredacted form to members of the press, four of them,
3 spreading them out on a table in a room in the office, he and the
4 others that he showed the documents to saw there was a lot of
5 correspondence between the Special Task Force with prosecutors in
6 Serbia asking them to provide witnesses with names and addresses that
7 the Special Task Force had received and requests to find those
8 witnesses and their addresses.

9 And that does not amount, the SPO agrees, and I agree, that does
10 not amount to the offence of unauthorised revelation of secret
11 information disclosed in official proceedings. Nor does it amount,
12 the SPO agrees, and I agree, to the offence of unauthorised
13 revelation of the identities and personal data of protected
14 witnesses.

15 Mr. Berisha made a distinction between things that were not
16 confidential within the documents and things that were confidential
17 and secret. Those are his words.

18 If we look at T1570 in line 12, please.

19 So he -- as we can see there, in his answer at line 12, had
20 doubts, as did his colleagues, about the authenticity of these
21 documents. But, of course, that's a doubt that Mr. Gucati also
22 expressed, and we've seen others also express. But he said this:

23 "... we decided, in spite of our doubts, that we would publish
24 only things that were not confidential, so not publish things that
25 were confidential and secret."

1 So the distinction between, in the documents he saw, some which
2 were marked confidential, but what contained, in general, to be SPO
3 or SITF requests to Serbia to assist with witnesses providing their
4 names and addresses also, that they would look again at the material,
5 publish only things that were not confidential, and not publish
6 things that were confidential and secret. So the distinction: Some
7 things in that documentation that were not confidential, some things
8 that were confidential.

9 He made a further distinction as well. T1605, please. At
10 line 11.

11 He made a distinction between persons who were public persons,
12 such as Serbian officials, and people who were private persons. So
13 he was talking specifically about the public interest in publishing
14 articles, which I will turn to in a moment. But for these purposes,
15 my concentration is on that distinction between public and private
16 persons.

17 "It was in the public interest to do so," he said, "because
18 these persons were high Serbian officials and were the persons that a
19 part of the people in Kosovo know due to their statements. So these
20 were not private persons. Since they were mentioned in these
21 documents ... we deemed it necessary to publish them, their
22 identity."

23 So two distinctions so far: Things that were not confidential
24 and things that were confidential; names of persons who were public
25 persons, such as Serbian officials, and other people who were private

1 persons.

2 Another distinction. T1609, please, line 10.

3 He made a distinction between documents marked as confidential
4 and those that were not marked as confidential. Again, we'll look at
5 the specific document he's referring to in a moment. But here he has
6 said -- he's referring to the term "Kosovo and Metohija," which he
7 said is not the correct term. And it's not. But he said this:

8 "And these terms have been used in a document or a statement by
9 Serbian officials, and this document was not marked as confidential."

10 And so he published it. So a third distinction. First
11 distinction, things that were confidential in documents, things that
12 were not confidential; second distinction, persons who were named in
13 a document that were public persons, such as Serbian officials, and
14 other names that were names of private persons; third distinction,
15 some documents marked as confidential, others not.

16 And, of course, we know that he also made the distinction, we've
17 looked at it, effectively, the fourth distinction, the distinction
18 between making available the unredacted documents to members of the
19 press, distinguished from publishing documents online. Actually
20 making them, putting them up there for the public to read. That, of
21 course, was the fourth distinction he made because he showed the
22 documents in full, he revealed them in full to his four colleagues;
23 but then having applied distinctions 1, 2, and 3 he, then chose what
24 to publish online, and that was not the full unredacted bundle that
25 he made available to the four members of the press at *inFokus*

1 offices.

2 Well, what did he publish online? Can we look, please, as P125,
3 at page 4. And in relation to P125, it should be P125-ET-2. It's
4 the translation.

5 So we can see that he published images of the documents on the
6 left, and this was at -- on 7 September 2020 at 1439 hours. And he
7 reported, we can see --

8 If we look at the Albanian version, can we scroll down slightly,
9 please.

10 Again, you'll have to bear with me in relation to the Albanian.
11 But can we see there the reference to "bashkepunimi" in the
12 penultimate sentence. That is translated in the English version that
13 we have here as cooperation between special investigators and Serbian
14 witnesses.

15 So he reported that the documents showed cooperation between
16 special investigators and Serbian witnesses and officials being
17 evident in these documents. That information from the documentation
18 was not confidential. It was, he said, in the public interest to
19 report what those documents were about.

20 Still on 7 September, at 1503 hours, so shortly afterwards, he
21 published a further article.

22 Can we look, please, at the Albanian P125, and then the English
23 version, which is P125-ET-1.

24 So we can see there an image. There is a document. It looks
25 like a coordination request.

1 On the first page, if we scroll the Albanian version down,
2 please. If we scroll to the next page, keep on going, then we get to
3 the second page, which has a coordination request addressed to
4 Mr. Vukcevic from David Schwendiman, and it is dated 11 June 2015.
5 And there are three redactions that are applied to it. The
6 redactions appear to be to reference numbers at the very top. And
7 then again, the reference number of a case in the penultimate
8 paragraph.

9 But the rest of the document is published in full. And we can
10 see from the English translation that effectively the text of that
11 letter is replicated in the article. The title was "Exclusive: How
12 the Special Court requested evidence from Serbia against
13 Adem Jashari, Hashim Thaci, Sami Lushtaku, Rexhep Selimi and others."

14 "*InFokus* Newspaper has secured evidence by which the Special
15 Investigative Task Force, under the framework of the
16 Special Court ... suspected of requesting evidence and testimonies
17 from Serbia, against Adem Jashari, Hashim Thaci, Sami Lushtaku,
18 Rexhep Selimi and others.

19 "Amongst thousands of exclusive documents obtained by the
20 *inFokus* Newspaper, there is a letter of the Lead Prosecutor David
21 Schwendiman addressed to former War Crimes Prosecutor
22 Vladimir Vukcevic requesting documentation from Serbia.

23 "'Pursuant to the ongoing coordination of our offices and
24 further to our meeting of 1 June 2015, I respectfully request that
25 your office provides us with copies of related cases to terrorism by

1 the organised armed groups committed by the Kosovar Albanians during
2 1981 to 1999, including the criminal offences contained in chapter 15
3 of the criminal code of SFRY. We request the following documents:
4 Indictments, judgements of the first- and second-instance courts,
5 including those of the Supreme Court. Furthermore, we kindly request
6 that the first documentation should be related to the case of"

7 And then there is the redaction.

8 "... tried in Prishtine District Court against the following
9 individuals, Besim Rama, Idriz Aslani, Adem Jashari, Jakup Nura,
10 Fadil Kadriu, Nuredin Lushtaku, Sahit Jashari, Hashim Thaci,
11 Sami Lushtaku, Rexhep Selimi *et al.*' This is what is stated," the
12 article said, "in the document secured by the newspaper."

13 And then they printed the image with only those three minor
14 redactions of the letter in full, 11 June 2015.

15 Applying those distinctions that Mr. Berisha made, he published
16 it. He made the full document, unredacted, available to members of
17 the press at the *inFokus* offices. He then saw that that document was
18 not marked confidential, and it is not. The material within not
19 something that was confidential. And referred to the names -
20 Mr. Vukcevic - because they were public persons, not private.

21 And when he did so, he committed, the SPO agrees, and we agree,
22 no offence of the unauthorised revelation of secret information
23 disclosed in official proceedings. And when he did so, he committed
24 no offence of unauthorised revelation of the identities and personal
25 data of protected witnesses, the SPO agrees and we agree.

1 He was asked why he published that. And if we look at T1612,
2 please. At line 7, he was asked:

3 "... why was that, in your assessment, in the public interest to
4 publish?"

5 "Yes, he said, "at that time, the indictment against the
6 then-president Hashim Thaci and other people was mentioned ..."

7 And he's referring there to the fact that although no Confirmed
8 Indictment existed, the fact that an indictment had been filed had
9 been revealed by the Specialist Prosecutor.

10 "... but," he continued, "it was never mentioned that that
11 evidence" -- that that -- sorry. "That evidence was being sought
12 against Kosovo's hero Adem Jashari. So when we saw this in these
13 documents, we thought this was in the public interest to know about,
14 because Adem Jashari, at that time, had been killed by the Serbian
15 forces. And I believe Kosovo citizens were expecting evidence to be
16 collected against those who killed Adem Jashari and not on
17 Adem Jashari."

18 Just pausing there. He was repeating, wasn't he, the concern
19 that Mr. Gucati has, that others we've heard in this trial share,
20 and, indeed, we can see Mr. Berisha shares, the concern of selective
21 justice.

22 "I believe Kosovo citizens were expecting evidence to be
23 collected against those who killed Adem Jashari and not on
24 Adem Jashari."

25 He continued at the next page, please, line 19, I think. He was

1 asked why he quoted directly from the letter. Why that quote was in
2 the public interest. And he said:

3 "Adem Jashari and over 50 members of his family, including young
4 infants, were massacred by the Serb forces. So we, as citizens and
5 journalists, expect that evidence to be collected against" that
6 "... massacre. And it was very strange to us that facts are being
7 collected on Adem Jashari in the context of organised terrorism and
8 armed terrorism."

9 Again, it is a concern shared by Mr. Gucati. At the heart of
10 everything Mr. Berisha did and said and at the heart of everything
11 that Mr. Gucati has done and said was that concern about the
12 selective approach to justice from the SITF, the SPO.

13 After publication of those two articles, it's right that
14 Mr. Berisha e-mailed the SPO on 7 September at 1626 p.m., in which he
15 asked about the information leaked to the KLA WVA. He didn't say in
16 that e-mail that he had a copy of the documents himself.

17 If we can have a quick look at it. It's P98.1.

18 PRESIDING JUDGE SMITH: Mr. Rees, after this, we will take our
19 break, if that's convenient at this point.

20 MR. REES: So e-mail 7 September at 1626. And you can see,
21 after describing briefly what he understood to be the documents, the
22 nature of the documents, at the -- two questions at the end. He
23 wanted to know about whether the SPO were aware, and would they harm
24 investigations from the SPO, and whether the SPO were investigating
25 the leakage of documents, and what would happen if non-edited

1 documents were published. So not concerned about publishing edited
2 documents but non-edited documents being published from media
3 outlets.

4 He didn't, of course, say that he had a copy of the documents
5 himself, but he had, very publicly, made it clear he did. Because
6 we've seen in the earlier articles it actually published, in the
7 first instance, the batch that he had spread out on the table and a
8 picture of it and, indeed, in the second article he'd actually
9 published the coordination request almost in full, save for redacting
10 the reference numbers and the case name.

11 There's a later article that he published on the same day. I'll
12 come to that after the break, Your Honour.

13 PRESIDING JUDGE SMITH: Thank you, Mr. Rees. We'll reconvene at
14 11.30 and we're adjourned until then.

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

16 --- On resuming at 11.31 a.m.

17 PRESIDING JUDGE SMITH: You may proceed, Mr. Rees.

18 MR. REES: Thank you, Your Honour.

19 Mr. Berisha then published a further article, which we have at
20 1D2 as well as at P129. But if we can look at 1D2 first, please,
21 simply because it's a more legible copy, at page 61 of 67.

22 And Your Honour will recall that this version of it actually
23 dates to the time which Mr. Berisha was giving evidence. It's still
24 publicly available, as it were. And if we zoom in on the time and
25 date. We can see 7 September, 17:08. And if we just scroll through

1 the document, we can see that there are images published in full,
2 just pausing there, of full coordination request No. 63, unredacted.
3 And it's addressed to Mr. Vukcevic:

4 "Pursuant to the ongoing coordination between our offices,
5 attached please find a list of persons that the EU Special
6 Investigative Task Force (SITF) ... would like to interview as
7 witnesses in the near future.

8 "Although the last known addresses of the concerned individuals
9 were in Kosovo, I should be grateful if your office could provide
10 current addresses, telephone numbers, and any other contact
11 information that may assist in locating the persons named in the
12 attached list, as it is believed they have sought resident cards or
13 Serbian citizenship.

14 "Furthermore, I respectfully request copies of all previous
15 statements provided by those individuals to Serbian judicial and
16 police authorities.

17 "I look forward to continuing our ongoing cooperation."

18 Signed by Kwai Hong Ip, apparently.

19 And then at the bottom of the page, there is a reference to an
20 attachment, which is said to be a confidential list of witnesses,
21 dated 24 September 2014, but the letter itself not marked
22 confidential.

23 And if we scroll down, please. Pausing there. We can see an
24 image of coordination request No. 120 published by Mr. Berisha
25 online. And this is -- has what appears to be details of three

1 persons redacted, as well as redactions applied to the penultimate
2 paragraph. But the letter is published without redaction to the
3 following information:

4 "Dear Mr. Vukcevic.

5 "Coordination request No. 120.

6 "Pursuant to the ongoing coordination between our offices, the
7 EU Special Investigative Task Force (SITF) hereby seeks your
8 assistance in locating and providing contact details for the
9 individuals listed in the table below. Based on our most recent
10 information, all of these individuals are currently residing in
11 Kosovo, however, in the past three years they have provided
12 information to MUP officials, namely [REDACTED] Pursuant to In-Court
Redaction Order F575RED in Jagodina."

13 And then there is the redactions applied to that table.

14 The letter continues:

15 "In addition, the SITF kindly requests a copy of the statement
16 of" redacted "2015 as well as any statements related to" redacted
17 "disappearance from" redacted "I look forward to continuing our
18 ongoing cooperation."

19 That letter, as with coordination request 63 that we saw,
20 revealed in unredacted form by Mr. Berisha to the four members of the
21 press at the *inFokus* offices. Then he's applied redactions to the
22 details of the private persons, as he put it. But the letter itself,
23 not marked confidential, and he has published the non-confidential
24 part of that letter in full, including the details of the Serbian
25 public official, [REDACTED] Pursuant to In-Court Redaction Order F575RED
from Jagodina.

1 And then scrolling down again, please, to page 64. A further
2 letter published in the article, this time with no redactions, and it
3 is the unredacted full image of a letter from, we can see,
4 Mr. [REDACTED] Pursuant to In-Court Redaction Order F575RED. It's the
5 chairman of the Working Group, is the
6 title that he's given himself in the letter, and we can see there at
7 the top of the letter it is headed: Republic of Serbia, National
8 Assembly, Committee on Kosovo and Metohija, Working Group for
9 Gathering Facts and Evidence in Elucidation of the Crimes Committed
10 Against Members of the Serbian People and Other Ethnic Communities in
11 Kosovo and Metohija. 15 number, it says, 17 November 2015, Belgrade.
12 Special Investigative Task Force is the heading.

13 "Dear Sir/madam.

14 "I would hereby like to inform you that the Committee on Kosovo
15 and Metohija, in the meeting held on 19 October, has established by a
16 decision establishing the Working Group for Gathering Facts and
17 Evidence Elucidation of the Crimes Committed Against Members of the
18 Serbian People and Other Ethnic Communities in Kosovo and Metohija.

19 "The Working Group believes that it can contribute to the
20 successful work of the Special Investigative Task Force ..."

21 PRESIDING JUDGE SMITH: Mr. Rees, please don't read the name
22 that's at the end of that. As far as we know, it is still a
23 protected name. You read some names in the previous letter that are
24 probably going to have to be redacted as well. The fact that you
25 don't think it's protected doesn't mean that we have made a finding
 that that is not protected.

1 [Microphone not activated].

2 MR. REES: I am, of course, as always, in the hands of Your
3 Honours.

4 The letter continued to refer to establishing successful
5 relations and cooperation aimed at the revelation of crimes committed
6 by the so-called UCK, is how the chairman of the working group
7 referred to the KLA.

8 And that letter published in full by Mr. Berisha in his article.
9 Those three letters published in accordance with the distinctions
10 that he made, we say quite properly, distinction between things that
11 were not confidential within the documents and things that were
12 confidential; distinction between persons who were public persons,
13 such as Serbian officials, and people who were private persons; a
14 distinction between documents marked confidential and those that were
15 not, like that letter from the chairman of the working group; and a
16 distinction between making available the unredacted documents in full
17 to the four members of the press at the *inFokus* offices, as he did,
18 and publishing them online, when he redacted confidential material
19 from them and published the rest.

20 And when he published that article, he committed no offence of
21 the unauthorised revelation of secret information disclosed in
22 official proceedings. The SPO agrees and we agree. And when he
23 published that article with those three letters, with all the
24 details, including the name of the chairman of the working group, he
25 committed no offence of the unauthorised revelation of the identities

1 and personal data of protected witnesses. The SPO agrees and we
2 agree. And he explained why he published that article at T1603,
3 line 20, please.

4 THE INTERPRETER: The interpreters kindly ask the counsel to
5 slow down when reading. Thank you.

6 MR. REES: So he said, in relation to the publication of that
7 article with those three letters published in full --

8 THE COURT OFFICER: A note for the interpreters, the Serbian is
9 on the English.

10 THE INTERPRETER: Apologies.

11 MR. REES: Published in full, save for those redactions of the
12 names of private persons, not public persons, he said:

13 "We thought this was of public interest given the past of our
14 nation, the people of Kosovo. Maybe I am young by age, but I
15 experienced war as well. I was 6 years during the war. And at that
16 time, I, my family, and other citizens were forced out of our
17 apartment, of our house, and we were forced to travel to Albania.

18 "What I'm saying now is lighter compared to what others can say.
19 As a 6-year-old, I had to walk to Albania without food, without
20 water, and Serbian forces had put corpses of dead persons along the
21 way. And for me, as a 6-year-old, it was horrifying. So this is a
22 theme that is discussed on a daily basis in our parts, and this is
23 why we thought this was of public interest -- reporting on this issue
24 was of public interest."

25 And specifically in relation to the names of, for example, the

1 chairman of the working group that he published in full, if we look
2 at line 11 of page T1604.

3 Sorry, can we reduce to fit, please. It may be a mistake with
4 the reference. Can we look at the next page, please. Thank you.
5 It's my fault. It should be reference T1605 and at line 11, please.

6 When asked about referring to the names of, for example, the
7 chairman of the working group, he said this:

8 "It was in the public interest to do so because these persons
9 were high Serbian officials and were the persons that a part of the
10 people in Kosovo know due to their statements. So these were not
11 private persons. Since they were mentioned in these documents, so we
12 deemed it necessary to publish them, their identity."

13 And when he did so, he committed no offence of unauthorised
14 revelation of secret information disclosed in official proceedings.
15 The SPO agrees and we agree. And he committed no offence of
16 unauthorised revelation of the identities and personal data of
17 protected witnesses when he published that material online. The SPO
18 agrees and we agree.

19 For those four articles preserved confidentiality and did not
20 disclose any sensitive information, Mr. Berisha maintained.

21 P129-ET, please. So at page 2, please. If we zoom in, bottom
22 paragraph.

23 Mr. Berisha, on 9 September, in an article, set out that the
24 articles that he published on the Monday preserved confidentiality
25 without disclosing any sensitive information contained in the

1 documents. And we agree and the SPO agrees.

2 And if we look at page 3. Again, on the 9th, in this article,
3 again, *inFokus*, at the bottom of the page, refers to the articles
4 they published on 7 September. They were published without violating
5 any sensitive information. And the SPO agrees and I agree.

6 Though publication of those articles with those letters in full,
7 save for the minor redactions in relation to case numbers and the
8 names of private persons, but the publication of the rest of those or
9 the information in those requests and the identities and professional
10 positions of both the MUP official from Jagodina in coordination
11 request 120 and the name and position of the chairman of the working
12 group of the Serbian Committee for Kosovo and Metohija, as they call
13 it, did not violate any sensitive information. We agree.

14 Just like Mr. Berisha, Mr. Gucati only gave access to the
15 documents to members of the press. Whereas, it is asserted by the
16 SPO at paragraph 66 of their final trial brief that access to the KLA
17 WVA might have meant that someone else other than a member of the
18 press might have seen those documents. Well, there's no evidence at
19 all. No evidence at all that anyone other than the press accessed
20 those documents.

21 The SPO acknowledges at paragraph 144 of their final trial brief
22 that, and I quote, "during the charged timeframe in their testimony,
23 the accused stress that they were never saying witness names and
24 directed the media to do the same," and then described that position
25 as a sophistry in denial of reality or at another stage I think they

1 referred to it as semantics. It is no sophistry, nor is it
2 semantics, to make a distinction between giving access to unredacted
3 documents to members of the professional media with their own
4 professional and ethical obligations and, at the same time, insist
5 that they did not publish witness names. That is the approach, the
6 distinction, that Mr. Berisha himself made. It's a distinction that
7 Mr. Berisha lawfully made also. And, indeed, as it happens, it's a
8 distinction that the Panel may recall Ms. Anna Myers drew also
9 between, as she put it, the nuclear option of full public disclosure
10 and the distinction of, instead, going to the press. As she noted,
11 press and journalists have their own duties of confidentiality that
12 are clearly defined, and it's part of their role to understand them.

13 That is the position, the distinction that Mr. Gucati made and,
14 indeed, Mr. Haradinaj made.

15 Can we look, please, at P1-ET. And this, I think, is the
16 transcript of the first press conference. And if we look at page 4
17 at 00:09:43 seconds -- can we look, please, at the next page of that.

18 Just bear with me, please. If we go back to page 4. And, in
19 fact, I was right, under the section 9 minutes and 43 seconds, in the
20 last paragraph, in the second line, Your Honours will see
21 Mr. Haradinaj and Mr. Gucati's presence state clearly:

22 "We will not take this material out in the street."

23 They were making it available to the press, but they would not
24 take the material out in the street, they said.

25 And at 11:21, so on the next page, please, the journalist that

1 is referred to there invited Mr. Haradinaj to read for the public, it
2 seems, names. You can see that from the question following on from
3 Mr. Haradinaj's comments immediately before. And Mr. Haradinaj, to
4 that invitation from the journalist, answered:

5 "No. Those who allow these documents to be leaked should know
6 that."

7 Now, Your Honours, of course, will look at the material in the
8 round. I, of course, accept that. And Your Honours will look at all
9 the material in its context. But I do urge Your Honours to look at
10 the material in its context and not selectively. And when Your
11 Honours do look at the material in its context, Your Honours should
12 take notice there of Mr. Haradinaj's clear statement:

13 "We will not take this material out in the street."

14 And they did not. There is no evidence that they did. And when
15 he was invited by the journalist to read out names of witnesses, he
16 said:

17 "No. Those who allow these documents to be leaked should know
18 that," that he wouldn't read out names of witnesses.

19 He was repeating, wasn't he, the same distinctions that
20 Mr. Berisha made. A distinction between making available the
21 unredacted documents to members of the press and publicly publishing
22 information. That distinction, that he was making the distinction,
23 was he not, between persons who were public persons, such as Serbian
24 officials, and people who were private persons.

25 And in the second press conference, again, when Your Honours

1 look at the evidence, and look at all the evidence, and look to see
2 the context, Your Honours will see at Exhibit P2-ET, please. You
3 will see what Mr. Haradinaj said in relation to the suggestion of
4 intimidation.

5 At page 4, please.

6 He addressed anyone who might be thinking of intimidating
7 anyone. It's in the fifth paragraph:

8 "... those who think of intimidating anyone - they will say that
9 we have the files, we know their names. They are anti-nationalist
10 people and people who do not love Kosovo."

11 That is what he was saying about the suggestion of anyone who
12 was thinking of intimidation. They are anti the people of Kosovo,
13 people who do not love Kosovo. And the press were repeatedly
14 exhorted by Mr. Gucati and Mr. Haradinaj, and Mr. Gashi also, to
15 protect the names of the witnesses that were contained in the
16 documents that were made available to the press.

17 Can we look, please, at P4-ET. At page 9 -- at paragraph 4 on
18 page 9, Mr. Gashi, in the presence of Mr. Gucati, address in the
19 media, said, at the end of that paragraph:

20 "... even if you have come and you have had access to these
21 documents, it is strictly prohibited to publish the names of
22 witnesses ..."

23 The press were only to publish what they were told, again
24 repeatedly, we say, what they were able to publish.

25 Exhibit P12-ET, please.

1 At page 3 of 7, just after 00:7:18, tape counter, Mr. Gashi
2 again, in Mr. Gucati's presence, repeated:

3 "Everyone, including the chairman and others, have always stated
4 to you and them that whoever had access to the information contained
5 in those documents, that is, the names of witnesses, be them
6 ordinary, protected or anonymous witnesses, should not be published."
7 And that's right, they had.

8 And at P35-ET, please, Mr. Haradinaj repeated the same.

9 At page 12 of 50, at 00:23:40, tape counter time, a journalist
10 in the press conference -- this is the third press conference, so
11 this is the last, said:

12 "You're suggesting to us, the media, to publish these
13 documents?"

14 Mr. Haradinaj's answer was:

15 "Whatever you can. What you can."

16 He's repeating even the last press conference the same position
17 that he set out from the off. We're not going to make the documents
18 public. They were not going to take the material out in the street.
19 They were making it available to the press, who they knew had their
20 own professional obligations, and who, like Halil Berisha, looked at
21 the documents to see what they could, what they were able to publish
22 and they did publish. For example, three letters in full, we saw
23 Mr. Berisha, save for redactions applied only to the names of private
24 persons, as it were, making distinctions between whether documents
25 were marked confidential and those that weren't, between whether the

1 information within the documents was confidential and that which
2 wasn't, and Mr. Haradinaj is repeating that position again there in
3 the final press conference.

4 In cross-examination of Mr. Gucati, he was asked questions about
5 a later exchange, right at the very end of this press conference, the
6 very end of the indictment period, about a discussion about fake
7 veterans, which we see at page 13 of P35-ET. And the whole exchange
8 begins -- we've just seen Mr. Haradinaj already stress to the
9 journalist who asks are you suggesting to us to publish these
10 documents, and Mr. Haradinaj confirms only what they could. And
11 immediately before the exchange about fake veterans, we can see
12 Mr. Gucati again repeating, at the bottom of the page, just under
13 00:25:23, about a person's privacy is to be protected. We can see
14 that.

15 Then the exchange that took place about fake veterans. Well,
16 the SPO, in our submission, misread what Mr. Gucati was saying
17 thereafter. It's the next page. And we can see there Mr. Gucati
18 again invites, as he's done throughout, the press to read the
19 documents, but he doesn't say to publish the names. What he says
20 about fake veterans is he was criticising the press for how they
21 previously published the names of so-called fake veterans, as
22 Mr. Gucati put it in evidence in circumstances where he was
23 effectively being provoked by them.

24 But he had stressed throughout that exchange, like all the other
25 exchanges, of course, and all the parts of these recordings that I

1 refer to, I acknowledge, of course, Your Honours will read it all and
2 see the context, put them in context, and come to a fair evaluation
3 of the evidence rather than selectively focusing, for example, simply
4 on those parts that the SPO say are -- wish to focus on.

5 But I submit that when you look at all the evidence in the
6 round, they have been consistent throughout that they made those same
7 distinctions that Mr. Berisha made. A distinction between making
8 them available in unredacted form for the press for them to look at,
9 to see what they could publish using their professional judgement,
10 applying their professional ethical obligations, looking to see what
11 in the material was marked confidential, what wasn't, look at the
12 content to see whether the content was of a confidential nature or
13 whether it wasn't, to look at whether the persons are public persons,
14 like Serbian officials, or private persons, and making the same
15 judgements that Mr. Berisha made, quite properly, in relation to
16 those articles that we've seen and the letters that he published in
17 full, save for the redaction of details in relation to private
18 persons.

19 Now, Mr. Gucati's understanding of the law, we say, is
20 consistent throughout and consistent with Mr. Berisha's. And it
21 seems, although there is, I accept, something of an inconsistency
22 here, or a contradiction, consistent with the SPO's understanding of
23 the law, at least in relation to Mr. Halil Berisha. And they
24 publicly stated their understanding of the law.

25 At Exhibit P2-ET, please. At page 4 of 11.

1 This is the second press conference. And, again, it's
2 consistent with what was said in the first press conference, but here
3 it confirms that by this stage the KLA WVA had taken legal advice
4 also. If we look at the second paragraph on this page,
5 Mr. Haradinaj, again in the presence of Mr. Gucati, at this
6 conference, obviously:

7 [As read] "... we discussed it with our lawyer; we have hired a
8 lawyer in relation to this, and he told us: 'Nothing is punishable if
9 we do not mention the names.' We are not mentioning names and" -- it
10 says "the Netherlands did not mention it." I'm not sure what that
11 means.

12 [As read] "... but this is where they are. We're not mentioning
13 names. This is where they are. I do not think that it is a criminal
14 offence to reveal the names of the officials. I mean Williamson,
15 Schwendiman. These are official people. We are not talking about
16 individuals here. Never given their names."

17 So, again, it's that same distinction that Mr. Berisha made.
18 The distinction between persons who were public persons, like the
19 officials, and people who were private persons. They weren't
20 mentioning those names. It's exactly the same distinction that
21 Mr. Berisha makes.

22 And the following day, that lawyer, Mr. Gashi, repeated again in
23 Mr. Gucati's presence his advice.

24 Exhibit P4-ET, please. At page 2. If we go down, please, in
25 fact. Under tape counter time 00:04:00, Mr. Gashi, in Mr. Gucati's

1 presence, line 3, said:

2 "They think that the publication of these documents is not
3 prohibited at all. But you must bear in mind that if you find
4 information that contains names, surnames and other data of the
5 witnesses, you are not allowed to make them public in any way ... it
6 is not prohibited to publish the relations between officials of the
7 Specialist Prosecutor's Office or Specialist Chambers with Serbia
8 prosecution authorities."

9 That's exactly the same distinction that Mr. Berisha made. A
10 distinction between things that were not confidential in documents
11 and things that were confidential in documents. A distinction
12 between persons who were public persons, such as Serbian officials,
13 and people who were private persons. This is now the advice
14 confirmed by Mr. Tome Gashi, the lawyer for the KLA WVA.

15 He continued, I think, the next page -- in fact, if we go right
16 to the very bottom of the page before. Sorry. There we are. Pause
17 there. Thank you. Last sentence:

18 [As read] "I reiterate," he said, to the media "that you should
19 be very careful to not publish eventual names of the witnesses you
20 may be find in the documents, because this is prohibited. It's legal
21 and punishable. However, you are free to publish what happened
22 between official institutions, the communication between them, to the
23 detriment of former members of the KLA."

24 And that's exactly the material that Mr. Berisha, for example,
25 published. So he didn't have that advice from Mr. Gashi, but that's

1 the approach that he took. It's the approach that Mr. Haradinaj and
2 Mr. Gucati expressed in the first press conference. It's the
3 approach that they were advised about before the second press
4 conference we saw from Mr. Haradinaj. It's confirmed now again the
5 day after the second press conference. And at page 7, Mr. Gashi
6 again comments at the end of the paragraph under tape counter time
7 00:14:32:

8 [As read] "... for this reason, I said it is not prohibited to
9 publish the communication between institutions, but in no way should
10 you publish the names of witnesses if you find them. Please erase
11 them. Do not publish them as it is prohibited."

12 And, indeed -- P7-ET, please. This is now the 18th. Page 15
13 of 19. Under tape counter time 00:25:39, this is Mr. Gashi again, in
14 the presence of Mr. Haradinaj, not in the presence of Mr. Gucati on
15 this occasion. But what he says is simply consistent with what
16 Mr. Gashi has said his advice has been throughout and, indeed, what
17 Mr. Haradinaj and Mr. Gucati thought from day 1, and, indeed, exactly
18 the same approach taken by Mr. Berisha and the press.

19 "... we have said it a hundred times and we are saying it again,
20 one cannot disclose the name or identity of any witness. If the KLA
21 War Veterans Association is in possession of official communications,
22 as it was on two occasions, of an institution, i.e. the War Crime
23 Prosecutor Office, whose chief prosecutor's name we have learned by
24 heart, the Association is not prohibited to publish them. But
25 witness testimonies should not be published, because that is harmful.

1 I don't know what else to say."

2 So applying those same distinctions, the Berisha distinctions,
3 as it were, distinctions between things that were not confidential in
4 the documents and things that were confidential. And there, as an
5 example, Mr. Gashi has talked about actual testimony of witnesses,
6 and no suggestion that that's ever been published by anyone. And,
7 again, a distinction between persons who were public persons, Serbian
8 officials at the war crimes prosecutor's office, for example, and
9 people who were private persons.

10 And, indeed, it follows, does it not, from Mr. Gashi's view,
11 it's exactly the same distinction Mr. Berisha makes between making
12 available the unredacted documents to members of the press because,
13 no doubt, of their individual ethical and professional
14 responsibilities, the duty of confidentiality that Ms. Anna Myers
15 referred to, and the press actually publishing documents online.

16 The understanding of the law, Mr. Gucati's understanding of the
17 law, is consistent with, it's reinforced by how the press acted, how
18 Mr. Berisha acted, and other colleagues of his. And I don't need to
19 take you through every press article we've seen, but it's exactly the
20 same approach taken by the other press houses, *Gazeta NewBorn*, and so
21 on. And it's reinforced, at least from after the first press
22 conference, by legal advice from Mr. Gashi.

23 Now, I know the Prosecution in their closing statement and their
24 final trial brief refers to an answer by Mr. Gucati saying that --
25 referring to the second press conference as being the point at which

1 Mr. Gashi became involved, but actually they ignore the earlier
2 evidence where he said that "both before and after he became our
3 lawyer," he was given advice.

4 We look at transcript T2389. And we look at line 11.

5 He was in contact with Tome Gashi on television debates. So,
6 for example, he heard Mr. Gashi express his view "both before and
7 after he became our lawyer." We can see that at lines 11 to 12.

8 And, in fact, if we look at page T2393. At line 15, Mr. Gucati
9 had said that, in fact, they authorised Tome Gashi after the first
10 press conference.

11 "It is then that we hired him as our lawyer."

12 And that, in fact, is consistent with actually the
13 contemporaneous records that we've seen because Mr. Haradinaj during
14 the second press conference himself refers to having taken advice
15 from the lawyer.

16 And just as an aside, and I don't want to be distracted too much
17 from the thread, as it were, it is something very noticeable about
18 the SPO's approach to the evidence that when, for example, an SPO
19 witness expresses, as Mr. Daniel Moberg did, confusion between
20 separating out exactly the chronology of events and saying I can't
21 remember whether events took place in the second meeting or the third
22 meeting, that is waved aside as of no consequences when, in relation
23 to the Defence witnesses, any inconsistency at all is seized upon as
24 if it is of some great significance. That's an aside. As I said at
25 the outset, of course, I've no doubt that the Trial Panel will judge

1 the evidence whether called by Defence or Prosecution by the same
2 fair standards.

3 But whenever the advice is given, it reinforces the
4 understanding of the law that Mr. Gucati had expressed from the
5 outset, and Mr. Haradinaj had, and the press had demonstrated, as
6 Mr. Berisha clearly elucidated. And that understanding of the law,
7 in fact, that if you maintained, abide by those distinctions that
8 Mr. Berisha neatly encapsulated, the four distinctions, that there's
9 no offence of unauthorised revelation of secret information disclosed
10 in official proceedings, and no offence of unauthorised revelation of
11 the identities and personal data of protected witnesses, as the SPO
12 agrees and we agree. That understanding of the law was reinforced by
13 the contact that was had with the Specialist Prosecutor's Office, the
14 investigators from the Specialist Prosecutor's Office, after the
15 first and second press conferences.

16 Now pause there.

17 The SPO, of course, place great reliance on the service of two
18 orders upon the KLA WVA, one of which not served on Hysni Gucati.
19 The second they say was served on Hysni Gucati. Both documents, of
20 course, served in English only, with no Albanian translation until
21 after later dates.

22 And to suggest, as the SPO do, that Mr. Gucati can speak English
23 is a misleading interpretation of what the evidence actually was.
24 What Mr. Gucati actually said, at T2169, is at line 23, and this is
25 the reference that the SPO rely on. It's the only reference.

1 Can I just check the page numbers, having said that? 2169.

2 So we see there:

3 "Do you speak English?"

4 "No, I don't. ... I don't speak English."

5 There is a later reference, sorry, where the -- that the SPO
6 rely upon where he says -- he's asked the question:

7 [As read] "Do you read English?"

8 And the highest he puts it is:

9 [As read] "To tell you the truth I don't. Very little or almost
10 not at all."

11 To suggest that is an admission that you can -- the Trial Panel
12 can properly rely upon, that he could read English to the degree of
13 being able to understand those orders, to read them and understand
14 them is, we say, farfetched.

15 But what do the orders actually say?

16 One, they don't say that any criminal offence had been committed
17 through what took place in the press conferences on the 7th and 16th
18 of September. They weren't arrested for anything in relation to
19 those press conferences. The documents we know had been left with
20 the KLA WVA overnight after both the first and second press
21 conferences, during which -- and we don't need to go through the
22 detail of what was said in those press conferences, but at the very
23 least it was clear the reference was made to official communications
24 between Serbia and the Specialist Chambers in relation to
25 investigations and names, indeed, of Serbian officials were mentioned

1 in the first press conference, which the SPO knew at the time that
2 the search -- that the order was obtained after the first press
3 conference. But no witness names, no private persons names being
4 mentioned. So to the extent that the orders were understood, they
5 reinforced the understanding of the law that Mr. Gucati had at that
6 stage. Indeed, they were told that. It had been recognised that
7 they hadn't disclosed names, and they were thanked for it.

8 So at 1D3-ET, please, in the statement of Mr. Gucati,
9 paragraph 39, and this was the first occasion that Mr. Gucati had
10 actually spoken to an official from the SPO about this.

11 So am I able to refer to the officers' names, Your Honour?

12 PRESIDING JUDGE SMITH: No, you may not.

13 MR. REES: Well, if I -- can I deal with it this way then?
14 Your Honour will recall the Swedish officer. If I refer to the
15 Swedish officer as A; and I refer to the other officer, who is
16 referred to by initials in 39, paragraph 39, I'll call him B.

17 So Your Honours will recall that A couldn't speak any Albanian
18 and didn't say anything and couldn't understand what was being said
19 during the interaction between Officer B and the members of the KLA
20 WVA on both the second and the third visits. Officer A, because he
21 couldn't understand what was being said, couldn't help at all about
22 what was being said. And Your Honour will recall that Officer B was
23 never called, despite invitations from the Defence and even from the
24 Trial Panel to the SPO to call Officer B, they refused to for
25 inexplicable reasons.

1 So we never actually heard what B has got to say about these
2 matters, so the only evidence about what was said comes from
3 Mr. Gucati. And Officer B said that he'd been following the news and
4 he thanked Mr. Gucati for not disclosing any names. He said this on
5 both the second and the third occasion when he came to collect the
6 files. He said:

7 "'It's good ... that you did not mention any names in public.'"

8 So what he was told by the SPO reinforced his understanding of
9 the law, the same understanding that was shared by Mr. Berisha,
10 reinforced when they got legal advice, which was exactly the same,
11 that you make a distinction between things that were confidential and
12 not confidential. Look at whether the documents were marked as
13 confidential or whether they weren't. It's a distinction between
14 making them available to the press in unredacted form and actually
15 publishing them online so that the public could read or see them.
16 And a distinction between public persons, such as Serbian officials,
17 who weren't named in the first press conference, and Officer B who
18 was following the news, and he is obviously of the same view, and
19 persons who were private persons, because they didn't mention those
20 witness names, private persons' names, as it were.

21 And they did not tell Mr. Gucati, even on the first -- no one on
22 the first or second visit said that any criminal offence had been
23 committed.

24 If we look at P4-ET, please. At page 8.

25 At 00:17:21, this is the conference on the 17th, so after

1 Officer A and B -- Officer A, who couldn't speak Albanian, and
2 Officer B who could, attended. And Mr. Gucati confirmed -- well, the
3 journalist asks:

4 "... did they say it is a possible criminal offence ..."

5 That is what they did in the first and second press conferences.

6 Mr. Gucati said:

7 "No. They did not tell me that it is a criminal offence."

8 And Mr. Gashi, who had also spoken with Officer B by this stage,
9 confirms, at page 9, the second paragraph, there were no talks --
10 this is talking about the contact they'd had from Officer A and B.

11 [As read] "There were no talks about initiating the prosecution
12 of anyone from the KLA veterans organisation because they have not
13 committed a crime."

14 So Mr. Gashi confirmed that when Officer A and B attended and
15 Officer B spoke to them in Albanian, he didn't suggest that there had
16 been any offence committed, which reinforces -- you'll understand
17 that for these purposes -- because in due course I will make
18 submissions on mistake of law. Whether, in fact, that understanding
19 of the law is right or not, I'm not necessarily concerned with it at
20 this stage, although we say it is, and we say that's why it explains,
21 quite properly, the SPO making it clear that Mr. Berisha committed no
22 offence.

23 But the point is that what took place after the first and second
24 press conferences reinforced the understanding of the law that
25 Mr. Gucati had, as did the way the press responded, as did the legal

1 advice that they received after the first press conference, all
2 reinforced that understanding of the law. And Mr. Gucati's actions,
3 what he said and did, are entirely, we submit, consistent with that
4 understanding of the law.

5 I was going to refer to -- take Your Honours to consider, at
6 this stage, 14 names, because obviously names were mentioned in the
7 course of three press conferences. I'm going to do them, if I may,
8 by reference to the final trial brief. And if I can find them in the
9 exhibits so Your Honours can see them, then I will attempt to do
10 that.

11 So there were names mentioned in the first press conference.
12 They were all Serbian officials. If we look at P1-ET. Well, if Your
13 Honours look at -- if we scroll down to the bottom of page 1, please.
14 Go on to page 2.

15 So we can see Mr. Haradinaj mentions in the second paragraph the
16 name I've already said.

17 Is there any issue about that name, Your Honour?

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 MR. REES: There is?

20 PRESIDING JUDGE SMITH: Yes, do not name the name. We can read
21 it. We can read it.

22 MR. REES: Well, there are two names there. One is the
23 ex-Serbian war crimes prosecutor, a name familiar to every person in
24 Kosovo. And the second one is the chairman of the Working Group of
25 the Committee of Kosovo and Metohija in Serbia. Again, public

1 official. Then there's a reference at the end of that paragraph to
2 Deputy Prosecutor of Serbia, and Your Honours can see the name there.
3 That's three names.

4 If we scroll down further then, please. In the middle of that
5 page, if we can just count the paragraphs. Can we reduce to fit? In
6 the fifth paragraph, there's the name of a deceased person.

7 Is that a name that I can mention, Your Honour?

8 PRESIDING JUDGE SMITH: We can read it. There's no reason to
9 mention it.

10 MR. REES: Well, he's obviously deceased. And I don't think
11 anyone suggests that he is, for example, a confidential name in any
12 way.

13 If we carry on then further. The next page then, please, I
14 think. Next page, I hope. Go to the next page, please. Next page,
15 please. Next page, please. Next page, please. Can you keep
16 scrolling down, please, Madam Court Officer, towards the end.

17 Can we go back to the start, please. Can we scroll down again,
18 please. Ah, that's because we've got the redacted version. Can we
19 have the unredacted version up, please. Thank you. If we go to
20 page -- if we start scrolling down then, please. So pausing there.

21 In paragraph 2, we saw three names that haven't been redacted.
22 Then there's another name that was redacted, but we can see it in
23 unredacted form there. So that's four.

24 And then if we go down, three paragraphs down, we see another
25 two there -- sorry, one there, former chief of police from Prizren.

1 Next paragraph. We're up to six, with Mitrovica chief of
2 police.

3 And then we get two more in the next paragraph. We get the
4 seventh then -- sorry, the ninth in the paragraph that begins: "They
5 have also cooperated with - and I have only picked a few as we only
6 flicked through them ..."

7 And then there is a reference to former employee of civil
8 defence in Ferizaj.

9 So nine mentioned at the outset there, in that first conference,
10 all Serbian officials, all mentioned consistent with those same
11 distinctions that Mr. Berisha made. In fact, Mr. Berisha himself
12 published two of those names in the article that we saw. So nine.

13 In the second conference, only two names mentioned, again both
14 Serbian officials, one of whom is mentioned in the first press
15 conference. So only one additional further name.

16 And if we can look, then, at the transcript from the second
17 press conference, which is P2-ET, please.

18 And if we look on the first page there, there were two names
19 mentioned in the first press conference. These two are mentioned by
20 Mr. Gucati. So in the first press conference, Mr. Haradinaj
21 mentioned those nine names of Serbian officials, albeit in
22 Mr. Gucati's presence. In the second press conference, Mr. Gucati
23 mentioned the only two names mentioned, the two Serbian officials,
24 and the only two that he named. And one of them, again, was -- is a
25 name mentioned on the first occasion. You can see it in the third

1 paragraph from the bottom. A deputy prosecutor of the Special Court
2 of Serbia. And then the only additional name - so the tenth name
3 mentioned - in the second paragraph from the bottom, general director
4 of police in Serbia and a member of MUP. So that's the tenth name;
5 again, a Serbian official.

6 So such names that are mentioned in the first press conference,
7 in the second press conference, entirely consistent with that same
8 distinction that Mr. Berisha had made between persons who were public
9 persons, such as Serbian officials, and people who were private
10 persons. And Mr. Gucati confirmed his understanding of the law, that
11 he was acting consistently with it.

12 If you look at T2192, please. And if we look at line 2 --
13 sorry, line 16.

14 So, again, he's talking about two Serbian officials. And at
15 line 16, he said:

16 "So we thought we did not do anything in violation with the law
17 because" they "... were public Serbian officials, and that's why we
18 mentioned their names."

19 So there were two further names that Mr. Gucati did not mention,
20 or Mr. Haradinaj did not mention, or anyone else from the KLA WVA.
21 But Mr. Gucati did on his Facebook page post a link to an article by
22 *Gazeta NewBorn* that did refer to two further Serbian officials. So
23 these are numbers 11 and 12, if you count that as a disclosure by
24 him. Albeit, as I say, he didn't refer to them. These are names
25 disclosed by *Gazeta NewBorn* in an article they published online. The

1 article is at P124.

2 Just pausing there. You can see in the title in the Albanian
3 that word, again pardon my pronunciation, "bashkepunoj" which can
4 either be interpreted as "collaborate" or "cooperate." It's the same
5 word. And we can see here it's interpreted in English, this time, as
6 "cooperated," but on other occasions it's interpreted as
7 "collaborated." But it is the same word. There is only a single
8 word.

9 But if we look at the Albanian article first, we can see that
10 it's an article published by *Gazeta NewBorn*, and on the first page
11 there's an image of Serbian army officers, and we see that from the
12 headline. And there's a reference to particular Serbian army
13 officers, which, if we scroll down, scroll down, we can see there is
14 an image online. It's a full unredacted version of coordination
15 request No. 95 in this printed version, because this is a PDF of what
16 you can see on the screen. It's quite small. But they actually
17 accessed the web site itself. It's perfectly legible. It's a full
18 copy of the coordination request No. 95. It's unredacted, published
19 by *Gazeta NewBorn*.

20 And the letter is not marked as confidential. It refers to a
21 confidential annex, but the letter itself is not marked as
22 confidential. And it refers to two MUP war crimes liaison officers.
23 And if we look at the English translation, we can see their names.
24 They're named by *Gazeta NewBorn* in the second paragraph of the
25 article. They are two Serb officers present in some of the macabre

1 massacres committed in Kosovo by the regime of a deceased person.

2 And we could all -- we all know who the deceased person is.

3 It may be possible, in fact, can I ask if Madam Court Officer
4 can actually zoom in on the letter.

5 You can see, as I say, when you actually look at the web site
6 itself, it's perfectly legible. And, in fact, we will see in the
7 exhibits coordination request No. 95, and we will look at that later
8 together. And you'll see, as I say, published in full, referring to
9 MUP war crimes liaison officers and naming them. And, no doubt,
10 *Gazeta NewBorn* applied exactly the same distinctions that Mr. Berisha
11 had, that Mr. Gucati understood was the position, confirmed by
12 Mr. Gashi.

13 Distinction: Look at the document. Is the document itself
14 marked as confidential? Look at the content. Things that are
15 confidential in it or not? Distinction between persons who are
16 public persons, such as Serbian officials.

17 And they published that letter. Why? Because it demonstrates
18 the degree of cooperation between special investigators and Serbian
19 officials, as Mr. Berisha said was his explanation and no doubt what
20 *Gazeta NewBorn* would say also.

21 In fact, I found the reference to it. Can we look at P93,
22 please. And we can see here the actual copy of the coordination
23 request No. 95. And, in fact, you can see, and if you were to -- I'm
24 not going to invite us to do it at the moment. But you can compare
25 back and see no redactions applied in the version that was printed by

1 *Gazeta NewBorn.*

2 In the third press conference then, there were two additional
3 names that were mentioned that obviously I concede were not Serb
4 officials, but they were both certainly public figures. And the
5 press understood them to be public figures.

6 If we look, please, at P35-ET, we will see that one of those two
7 names, which will take the list up to 13, in fact, the name wasn't
8 mentioned by either Mr. Haradinaj or Mr. Gucati.

9 If we look at page 13 and we look at 00:25:43, it's a journalist
10 who raises the name. He asks whether -- I'll call him X, whether X
11 was referred to in the documents. The answer from Mr. Haradinaj,
12 and, indeed, Mr. Gucati over the page, both, they say we don't know.
13 Neither of them actually mention his name nor say whether he's in the
14 documents or not.

15 So we can see Mr. Haradinaj's answer there:

16 "We don't know if he is."

17 If we look at the top of the next page, Mr. Gucati says the
18 same:

19 "We don't know about him."

20 So 13 names, if you count him, even though neither of them
21 actually mentioned his name or said whether he was referred to in the
22 documents of Batch 3 or any other batch.

23 There was another name mentioned, so this will take us up to 14.
24 And you'll have to bear with me while I find the reference.

25 Can we go earlier on please, Madam Court Officer.

1 I need to find his name only to show it to you, Your Honour.

2 So if we can go back to the start, I'm afraid. And if we can
3 just scan down. Next page, please. Next page, please. Next page,
4 please. Next page, please. Next page, please. And further again,
5 please. Next page, please. And again, please. And again, please.

6 I'll tell you what. We'll do it another way. You'll have to
7 just trust me on this. If we look at T1313, we'll see the name that
8 I was looking for, and then Your Honour can see it, and you'll just
9 have to look in due course to see whether his name was mentioned in
10 the third press conference.

11 If we scroll down. In fact, we're not going to see his name
12 here either because we weren't allowed to refer to it at that stage.

13 Perhaps if we break at this stage, an early break, and we can
14 think of a way of identifying for you the person that we're going to
15 refer to, and I'll continue at that stage.

16 PRESIDING JUDGE SMITH: All right. We will break. Be back
17 at 2.30, and we will be ready to proceed at that time.

18 We are in adjournment.

19 --- Luncheon recess taken at 12.54 p.m.

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

21 PRESIDING JUDGE SMITH: All right, Mr. Rees. You may proceed.

22 MR. REES: Your Honour, if we look, please, at transcript T1791.
23 So 1791.

24 Madam Court Officer, that's the public version. Thank you.

25 And if we look at line 20, Your Honours will see the 14th name

1 that was mentioned. And we can see there that although not an SPO
2 official, certainly a very public person. As Mr. Jukic accepted,
3 acknowledged, to his knowledge, that person was somebody who had made
4 it very public for a number of years, dating back at least to 2012,
5 somebody who has made it public that he had been cooperating with the
6 investigators, prosecutors investigating alleged offences committed
7 by the KLA, he acknowledged.

8 So only 14 names mentioned by Mr. Gucati or by Mr. Haradinaj in
9 his presence or the two names referred to in a Facebook link to a
10 *Gazeta NewBorn* article and one name of which a journalist asked
11 about, even though Mr. Gucati and Mr. Haradinaj said they did not
12 know whether his name was in the Batch 3.

13 All of them, each and every one of those 14 names, public
14 figures. So I submit Mr. Gucati's actions, words, entirely
15 consistent with that understanding of the law that Mr. Gucati had,
16 expressed, and shared with the public, with the press, shared by
17 Mr. Berisha, shared by the lawyer Mr. Gashi, reinforced by the
18 actions of the SPO when they came after the first and second press
19 conferences.

20 None of the named Serbian officials, none of them, contacted the
21 SPO with any complaint about their names being published, or at least
22 there's no evidence that any of them did.

23 If we look at page 1793 of Mr. Jukic's evidence, at line 4, and
24 Your Honours will recall that I'd gone through the names previously
25 with Mr. Jukic.

1 "Of the names that were published, you can only help us with
2 one, and that's [REDACTED] Pursuant to In-Court Redaction Order F575RED.
No one else?" had called in saying
3 they were concerned with their name being published.

4 And, indeed, if we go back, just to be clear about it, at
5 page 1784 of the transcript from line 11 through to line 5 on
6 page 1785, you can see that he was specifically asked about those
7 names. The only one that he could confirm, didn't, was the first.
8 The others, couldn't say. As I say, he then went on to say that he
9 could only help with the one name.

10 So no evidence of any of those named Serbian officials making
11 any sort of complaint.

12 PRESIDING JUDGE SMITH: Mr. Rees, you named the name again at
13 line 19. It will have to be redacted.

14 MR. REES: Sorry? I named -- sorry, Your Honour. I named what,
15 sorry?

16 PRESIDING JUDGE SMITH: [Microphone not activated].

17 MR. REES: At what page?

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 MR. REES: I apologise for that, Your Honour. I have throughout
20 the trial done my best to follow, but sometimes these things happen.
21 I apologise.

22 In relation to the name which we see at page 1792, line 24, in
23 relation to that name, again, he was not a person who made any
24 complaint about his name being mentioned, because we can see, over
25 the page, that, in fact, he was somebody who the SPO was no longer in

1 contact with anyway by then.

2 So none of the Serbian officials, no evidence they made any
3 complaint. The person, public person named, we see, in the
4 transcript at page 1792, line 24, he never made any complaint because
5 he wasn't in contact with the SPO anyway at that stage.

6 And if we look at page 1904, the bottom of the page. You're
7 going to have to start, actually, at the bottom of page 1903.
8 Your Honours will see at the bottom of that page that Mr. Jukic was
9 asked about the name that had been discussed at page 27 of the draft
10 transcript. That is the name that he had said was very public, had
11 made very public for a number of years, dating back at least to 2012,
12 that he had been cooperating with the investigators, prosecutors
13 investigating alleged offences committed by the KLA. That person,
14 we'll see at the bottom of page 1904, although he contacted the
15 office, he did not express any concern for his security.

16 We can see at line 11 he was asked, Mr. Jukic, whether that
17 person had expressed any concern for his security or had received any
18 threat. The answer was, at line 20:

19 "I can't recall exactly what he said ..."

20 So no evidence that he did complain about concerns of security
21 or receiving any threat.

22 "... he was complaining about publishing of the leaked
23 documents."

24 At the bottom of the page:

25 "The SPO didn't take any measure to protect this particular

1 individual."

2 So of the 14 names that were either mentioned by Mr. Gucati or
3 by Mr. Haradinaj in his presence, or the two names referred to in the
4 *Gazeta NewBorn* article that Mr. Gucati put a Facebook post link to,
5 or the name of the public person that a journalist asked
6 Mr. Haradinaj and Mr. Gucati about and they said they didn't know
7 whether he was named in Batch 3, of any of those names, there's no
8 evidence that any of them made any specific complaint about any fear
9 for security or threat or at all, and no evidence that any protective
10 measures were taken in relation to any of them.

11 That is the evidence of Mr. Jukic in relation to those names,
12 the only names that the SPO identify as having been mentioned in
13 public.

14 And despite the broad-brush approach that the SPO take, when you
15 analyse, scrutinise the evidence, such as there is, as to the
16 consequences of Mr. Gucati's words and actions, it's our submission
17 that on a proper analysis that evidence is underwhelming to say the
18 least.

19 Firstly, the SPO has called no evidence from any alleged witness
20 themselves as to consequences. There is no admissible evidence that
21 any of them were threatened or indeed felt threatened, were harmed or
22 felt harmed, were afraid or felt fear, were intimidated or felt
23 intimidated. No admissible evidence from any alleged witness or at
24 all.

25 To the extent that the SPO were permitted to adduce any evidence

1 of complaint from an anonymous third party, because whatever was
2 suggested in terms of complaints, they were by anonymised third
3 parties. To the extent they were permitted to adduce any such
4 evidence, that evidence was not admitted as truth of its contents, as
5 evidence of the truth of its contents, that is. Not admitted as
6 evidence, for example, that any anonymous third party was afraid or
7 had actually suffered any harm. And that was the consequence of
8 Your Honours' rulings at filing 00334 at paragraphs 90 to 94, as
9 reaffirmed in the transcripts at T1737, T1743, and T1754.

10 The sole purpose for the admission of evidence of any such
11 complaint, Your Honours held, was for the limited purpose of
12 describing the procedures followed by the SPO in interviewing these
13 witnesses as well as the resources used and time spent on such
14 interviews to the extent that such witnesses have knowledge of such
15 matters, such witnesses being SPO officers. That is, the sole
16 purpose for the admission of any evidence of complaint was to
17 demonstrate the degree of inconvenience caused to the SPO rather than
18 the truth of the contents of any complaint.

19 Properly analysed, the evidence reveals, we say, the following.

20 Can I ask if we look, please, at transcript page 1795.

21 At line 15, going over the page, we'll see in a minute, to 1796,
22 line 4. So if you go back to 1795, line 15, we'll see that there was
23 no specific action taken by the witness and security handling team
24 after 16 September, is the question -- sorry, after the first press
25 conference on 7 September.

1 No, there wasn't, was the answer.

2 And, again, if we go over to the next page, we'll see that again
3 there was no action taken by the witness and security handling team
4 after the press conference on 16 September.

5 So no specific action taken by the witness security handling
6 teams after the first and second press conferences. It was not a
7 high priority or a priority at all for witness security. And there's
8 no evidence that the other teams within the SPO regarded the first
9 and second press conferences as leading to consequences in relation
10 to which it was a high priority resolve.

11 If we look, please, at T1797, at line 25.

12 Mr. Jukic was talking about how the SPO -- or his knowledge,
13 rather, of the SPO and its priorities in September. And at the last
14 line on that page, it was put to him that he didn't know what -- if
15 you look at the top of the next page, to what extent it was a
16 priority for other teams within the SPO.

17 "All you can say is that as far as the witness and security
18 handling team is concerned, the 7th and 16th of September press
19 conferences did not create a high priority?"

20 "I don't know ... I can't answer.

21 "So all you can answer is in relation to your experience with
22 the witness security and handling team; is that fair?"

23 "Yes, that's correct."

24 And we know that Ms. Pumper was not asked to do anything either.

25 And as far as the witness security team was concerned, they did

1 nothing after the 7 September press conference, and they did nothing
2 after the 16 September press conference.

3 And, of course, there were two orders applied for after the
4 first and second press conferences. But Mr. Officer A, the Swedish
5 officer, accepted that on both occasions, certainly in relation to
6 the second he could recall there being a telephone call to the KLA
7 WVA and him agreeing that they wouldn't go around that evening and
8 they would leave the documents where they were and they would come
9 the following day. And he accepted that that was probably the same
10 chronology after the first press conference. As far as Mr. Moberg
11 was concerned, he was content -- as far as the Swedish officer was
12 concerned, he was content for the documents to remain with the KLA
13 WVA overnight.

14 And, indeed, the orders themselves not suggest any particular
15 urgency or priority because they gave up to five days for the orders
16 to be carried out.

17 So if we look at P52, please.

18 So we can ignore the Albanian because that wasn't translated, as
19 we can see, until days afterwards. So we only need to look at the
20 English. And if we look at paragraph 15, we can see there at the end
21 of paragraph 15 the Single Judge gave five days for the issuance of
22 the present decision and the execution of the requested seizure.

23 And if we look at P53. And, again, go to paragraph 15, please.

24 We see again the same terms. End of paragraph 15, the Single
25 Judge finds that five days from the issue of the present decision is

1 sufficient for the execution of the requested seizure.

2 Can we go back to T1799, please, and Mr. Jukic's evidence then.

3 Mr. Jukic having said that the witness security team didn't do
4 anything after the first press conference or after the second press
5 conference, and couldn't say whether any other team did, there wasn't
6 even much discussion about witness contact in the days after the
7 first and second press conferences.

8 At line 15, he asked to clarify the general evidence that he
9 gave in direct examination about there being a lot of discussions
10 about witness contact notes. At line 18, he was asked:

11 "... I'm going to ask you to confirm, or reject, the suggestion
12 from me that when you talked about there being a lot of discussion
13 about witness contact notes, that must have been at the time of or
14 after the formulation of the 24 September plan. Do you agree with
15 that?

16 "Yes, I agree.

17 "Thank you. So there wasn't a lot of discussion about witness
18 contact notes in the days after the 7 September press conference; is
19 that right?"

20 Can we continue to the next page, please?

21 "That's correct.

22 "Or, indeed, after 16 September press conference; do you agree?

23 "Yes, I do ."

24 So there wasn't even much discussion within the SPO, certainly
25 within the witness security handling team about what had taken place

1 on the 7th or the 16th September, and they didn't do anything about
2 it.

3 After the third press conference, we know that a decision was
4 taken to contact each person on a list that was presented by Mr. -- I
5 can't say his name. By the officer who was the leader of the witness
6 security handling team at that time, the predecessor of Mr. Jukic in
7 that role.

8 And if we go to transcript page 1804, we see there the name of
9 that team leader, in fact, and he was talking about what plan was
10 formulated after the 22 September press conference. And on the 24th,
11 if we go over the page, in fact, I think, we see that at line 9
12 onwards [REDACTED] Pursuant to In-Court Redaction Order F575RED, Mr.
13 Jukic knew, had been provided with a
14 document. He didn't actually know what it was. But from that,
15 [REDACTED] Pursuant to In-Court Redaction Order F575RED produced a list
16 of names. It was either on or after 24
17 September, he said, I think -- sorry, before or on the 24th, but he'd
18 never seen that document himself.

19 So we don't know, actually, how that list was produced or what
20 was the basis of it, but it was a list of names that the witness
21 security and handling team were to contact. And that exercise,
22 which, as the evidence went on, you recall, began to be referred to
23 as the 24 September exercise. The net effect of that exercise was
24 that it involved approximately 200 telephone calls.

25 If we look at page T1824, please.

So in the middle of that page, round about from lines 15
onwards, we can see that he confirmed that as part of that specific

1 exercise the team was involved in around 200 phone calls. And that
2 took -- or, rather, the SPO were busy at least with that exercise for
3 approximately two to three days.

4 If we can look at page T1838, please.

5 So at line 22:

6 "As I said," Mr. Jukic said, "we were very busy for two, three
7 days with the phone calls."

8 So nothing after the first press conference. Nothing after the
9 second press conference. After the third, Mr. Jukic was told, as
10 were other members of the team, to contact everybody on a list that
11 had been prepared by [REDACTED] Pursuant to In-Court Redaction Order
12 F575RED, although we don't know on what
13 basis or from what. And that exercise took -- involved approximately
14 200 telephone calls, and the SPO were busy with that for
15 approximately two to three days.

16 And in relation to such complaints as were received, not a
17 single complaint - whether true or false - not a single complaint was
18 recorded as involving a direct threat being made to a person which
19 could be attributed in any way to Mr. Gucati's actions. There was a
20 suggestion that made at one stage of two complaints of threat.

21 If we look at T1834, please.

22 "You were asked," the question went, line 2, "'... how many of
23 these persons told you that they had received threats in or after
24 September 2020?'

25 "And you said, 'I can't recall.' Yes?"

Answer: "Yes, that's correct."

1 "Is it still the case you can't recall?

2 "I can recall a majority but not numbers."

3 Question:

4 "Well, you say that today. What you actually said on the 20th
5 of October when you gave evidence was when you were pushed just to
6 say roughly, you said 'very few.'"

7 And we saw that in the transcript, in fact, and the
8 Prosecution's referred to it in their presentation yesterday. And
9 Mr. Jukic agreed there, at line 14, yes, he had said very few.

10 And then at line 18 he was asked to describe how many is very
11 few, and he said, at line 19:

12 "... two."

13 And, indeed, there had been two contact notes that had been
14 disclosed which Mr. Jukic had been referring to. One at line 23 we
15 can see. It was put to him that it involved a posting on a Facebook
16 post on the page of *Kosova Press*. He said that he can't recall.

17 If we can go over the page, please.

18 Because he couldn't recall, he was shown the document at line 9.
19 And at lines 10 to 14, he accepted he could see that the document was
20 dated 7 September and referred to a link to facebook.com and a page
21 for *Kosova Press*. And then there was a opinion from an unknown
22 person reporting that person's opinion on what 7 September amounted
23 to. And that was one of the documents.

24 The second, if we carry on, please, to -- if we go to T1837,
25 line 1 there.

1 The second matter that Mr. Jukic was referring to, as we could
2 see from the contact note, was somebody who claimed that they'd
3 received a letter with a threat if he was going to be a witness. He
4 was asked for the letter. He couldn't produce it. So the question
5 was there must be some doubt as to whether he received -- whether
6 this letter was, in fact, received by him. But he doesn't say
7 himself that that referred to events arising out of September 2020 in
8 that record. And the answer was: He doesn't.

9 And he doesn't claim that the author of the letter, if indeed
10 there was a letter, said anything relating the letter back to the
11 events of September 2020, and he agreed.

12 So for those two matters, one was simply the opinion of a -- a
13 reference, sorry, to the opinion of someone else expressed on a
14 Facebook post as to what the events on 7 September amounted to.
15 Although, we don't have evidence as to specifically what that was.

16 And the second matter related to a letter, but there was no link
17 either by the person making the complaint about the letter or in the
18 letter itself, if it ever existed, to the events of September 2020.

19 And, indeed, it had appeared at least from the SPO's final trial
20 brief, although not entirely clear what the position is now after the
21 statement yesterday, but certainly in the final trial brief it did
22 not suggest that anyone had received a direct threat as a result of
23 Mr. Gucati's actions, or indeed Mr. Haradinaj's for that matter.

24 Of the other complaints recorded or reported during the trial,
25 although not admissible as evidence that they were true, Ms. Pumper

1 gave evidence of contact with two persons.

2 If we look, please, at transcript page T1385. And at line -- so
3 1385, please.

4 At the beginning of this page, Ms. Pumper was reminded that at
5 the close of her direct examination she referred to speaking to two
6 witnesses or potential witnesses, one of whom she had said had shown
7 concern. The first of those two witness contacts she was asked took
8 place on 17 December. She couldn't confirm the date.

9 But if we go to the next page, having been shown the
10 Official Note to remind her, at line 18, she was reminded from the
11 note that there was a meeting 17 December 2020, two other SPO
12 officers, one of which was Mr. Jukic, two interpreters, a phone call.
13 That reminded her. She said:

14 "I recall the participants, yes."

15 And then on to page T1387.

16 Continuing to talk about the contact note. Witness, according
17 to the note, said he was aware of the dissemination but not aware his
18 name was in any of the documents. And Ms. Pumper said:

19 "If that's what's written there, that's correct."

20 And if we go to on to T1388, she confirmed that, in fact, that
21 person said they did not have any information about the matter and
22 they did not have any security concerns. And she confirmed that
23 that's what the witness had said.

24 "If it's written" there, she said, "it's accurate," at line 7.

25 So of the two contacts Ms. Pumper referred to, one said that

1 they did not have any security concerns.

2 The second matter, if we look at T1388, line 11, that second
3 conversation, that second contact took place, we can see there at
4 line 21, in [REDACTED] Pursuant to Post-Session Redaction Order F580. If
we can just scroll down slightly.

5 "That is correct."

6 And over the page. She said the -- go over the page, please.
7 There was a discussion in Serbo-Croatian. And the witness was
8 provided with a telephone, had been provided with a telephone before,
9 it seems. But was asked whether the witness had raised concerns
10 about the KLA press conferences, KLA WVA press conferences, before
11 [REDACTED] Pursuant to Post-Session Redaction Order F580.

12 If we can just reduce it down slightly in size. Thank you.

13 And she said she didn't know. She wasn't involved.

14 "As far as you're aware, he hadn't raised any concerns?"

15 "I don't know."

16 So there's no evidence that he had, or she had, raised any
17 concerns before [REDACTED] Pursuant to In-Court Redaction Order F575RED,
some ten months after the relevant events.

18 And moreover, as we can see there from line 18 onwards,
19 Ms. Pumper had undertaken no checks. She hadn't done any checks on
20 that individual's credibility. She didn't know whether anyone else
21 in the SPO had undertaken any checks on that individual's
22 credibility. And she hadn't reviewed any material confirming that
23 checks on his credibility had been carried out.

24 If we can just scroll down to the next page.

25 No -- wasn't even whether that individual had a criminal record,

1 for example, or whether he had a history of failing to attend court
2 proceedings for whatever reason, for example.

3 So of the evidence that Ms. Pumper gave about contact, not
4 admissible as evidence that they were true complaints. But even
5 then, the one said no security concerns; and the second, not spoken
6 to until [REDACTED] Pursuant to In-Court Redaction Order F575RED, ten
7 months later. No evidence of any concern
8 raised before then by that person, and no checks undertaken to
9 consider the credibility, the veracity of that complainant or his
10 complaint.

11 Mr. Jukic reported on the contacts that he said he had had with
12 alleged anonymous witnesses.

13 At T1841, please -- sorry, T1841, line 14.

14 Now, I'm going to use, if I may, the letters A through to L.

15 But we can see, lines 14 to 17 there, the person A. This is the
16 person that had said he was a little bit worried about the general
17 security position, which is referred to in the SPO's brief. But that
18 person hadn't noticed anything suspicious, and he hadn't had any
19 problems since they last met. That was a routine meeting, he said.

20 At T1845, please, lines 2 to 5.

21 The person B was told by Mr. Jukic that the documents were
22 public, old SITF documents. There was nothing from the SPO era, and
23 there was nothing in the files that actually related to him. And
24 that made B a bit calmer.

25 At T1855, please, line 13 to 16.

This is somebody, C, who had asked to be relocated with his

1 family, Mr. Jukic had said, but that was not because he had been
2 called or approached by anyone because he hadn't. And we can see
3 that at lines 13 to 16.

4 And on the same page, if we go down to line 22 to 24, the next
5 person, D, he confirmed that he too had not been called or approached
6 by anyone either in a short call that lasted approximately ten
7 minutes.

8 The person E that Mr. Jukic spoke to. If we look at T1859,
9 please, at line 4.

10 Person E was spoken to - I think if we go -- if we can just go
11 slightly smaller - on 3 October, according, at least, to the contact
12 note. He too said, according to the note, that nobody had approached
13 him or threatened him, and he doesn't feel threatened, Mr. Jukic
14 confirmed.

15 At page T1861, next, please, at line 7 to 9.

16 F, the individual F, said that he heard rumours but he had not
17 actually received any threat himself, we can see.

18 At T1867, line 17.

19 The individual G was recorded as saying he didn't care about
20 what had happened and that he hadn't received any threat, and he
21 didn't have any security concerns.

22 Over the page to page T1868, at line 6.

23 Individual H, he also said, according to the note, he wasn't
24 worried, he hadn't received any threat, and he didn't have any
25 security concerns.

1 T1869, then, please, line 3.

2 Individual I was recorded as saying he's not afraid, he didn't
3 have any security concerns. In fact, he said he was never threatened
4 after the war in Kosovo and the only threat for him was Serbs during
5 the war.

6 "Is that right?" he was asked.

7 Mr. Jukic said:

8 "That's what he said."

9 And then at T1877, please, at lines 14 to 19.

10 Individual J, according to the note, when asked if he'd been
11 contacted in the last weeks before 26 October, whether anything had
12 caused him concern, he said nothing had happened and he didn't expect
13 anything to happen.

14 Then to page T1878, please, lines 1 to 4.

15 The individual K was contacted, and she said she hadn't received
16 any threat.

17 And then finally of the contacts that Mr. Jukic had.

18 At T1882, please, lines 10 to 14.

19 The son of L who contacted the SPO. They said they did not need
20 any help, and they didn't express that they were scared.

21 Those were the contacts that Mr. Jukic had. And although he was
22 ready to make general assertions, which the SPO rely upon, when
23 scrutinised and the detail looked at, our submission is it did not
24 amount to much.

25 He gave evidence to the effect that the SPO had to provide a

1 small number of new telephone numbers to witnesses in the months
2 after September 2020. They'd also done that before the events of
3 September 2020 as well.

4 If we look at page T1882, please, at line 22 -- sorry, line 18
5 first. Question:

6 "You said in evidence last week that in relation to measures
7 that were taken as a result of the September 24 exercise, some
8 witnesses who weren't able to contact you, 'We provided them with
9 phones.'

10 "Can I ask you again, perhaps you've had time to think now, how
11 many witnesses, individuals that you had contact with were provided
12 with a phone prior to September 2020?"

13 Answer:

14 "Maybe one or two."

15 And then over the page, please.

16 "How many after? Can you say or can you not remember?"

17 "Let's say between five and ten," he said. "I really don't know
18 the exact number."

19 And we didn't have any records produced to assist one way or the
20 other.

21 So a small number of new telephone numbers before, a small
22 number after.

23 And similarly, there were a small number of emergency risk
24 management plans in place before, and an unspecified number after the
25 events of September 2020.

1 If we go to T1885, please, line 21. Question:

2 "Were any emergency risk management plans already in place for
3 any witness before 7 September 2020, in the two years before
4 7 September 2020?"

5 Continuing over the page, please.

6 "Yes, there was two or three emergency risk management plans in
7 place.

8 "Do you keep a record of those plans?"

9 "Yes, we do."

10 But, he continued:

11 "... we don't have a -- records of the decision-making process
12 ... creating such plans."

13 And we never did get a number for emergency risk management
14 places after September 2020. And he produced no records -- the SPO
15 produced no records in relation to, for example, the application of
16 new telephone numbers or emergency risk management plans to support
17 the proposition that any such measure was taken in response to
18 Mr. Gucati's actions.

19 Similarly, no records were produced to support Mr. Jukic's late
20 assertion, very late assertion that a relocation or relocations were
21 required as a result of the events of September 2020. Mr. Jukic did
22 not in any of his declarations refer to a relocation.

23 If we look at page T1889, please, at line 11.

24 "In your October declaration, you did not say anywhere that the
25 SPO had to relocate any witness as a result of the events of

1 September 2020; do you agree with that?

2 "I agree with that.

3 "And in your January declaration, you did not say anywhere that
4 the SPO had to relocate any witnesses as a result of the events of
5 September 2020; do you agree with that?

6 "Yes, I do."

7 The suggestion arose for the very first time in the witness
8 preparation session that Mr. Pace and Mr. Halling conducted with
9 Mr. Jukic on 14 October 2021, shortly before he gave evidence. And
10 at that stage, he referred to one relocation, moving someone to a
11 safe house.

12 And we see that confirmed at T1902, please, at lines 2 to 5.

13 Mr. Pace, I think it was, read to him the content of the note
14 that Mr. Pace, I think, had prepared -- or either Mr. Pace or
15 Mr. Halling.

16 "'Such measures included,'" we see at lines 3 to 5, "'one
17 relocation, moving someone to a safe house ...'"

18 In evidence that became two relocations, although the
19 explanation that is given as to why he appeared to have said only one
20 relocation to Mr. Pace and Mr. Halling, well, it will be a matter, of
21 course, for the Trial Panel, but I make this submission: It's
22 difficult to follow any real explanation.

23 Mr. Pace asked Mr. Jukic:

24 [As read] "Specifically, here, we're talking about one
25 relocation and someone being moved to a safe house."

1 Answer:

2 "Yes, that's correct. Two persons."

3 Mr. Pace continued:

4 "... in terms of moving someone to a safe house, are you
5 distinguishing that from a relocation, or is it essentially the same
6 thing?

7 "It's the same thing."

8 Which, of course, it does look exactly what it is, one
9 relocation moving someone to a safe house.

10 "Could you explain why at least as reported in this note,"
11 Mr. Pace continued, "did you distinguish at one stage between one
12 relocation and moving someone to a safe house? Is there any
13 difference that you can think of? Is there any and if relevant?"

14 "The relocation that we did was direct -- directly person was
15 extracted out of the house moving in the safe house. Person was
16 extracted from their home to the safe house, and afterwards extracted
17 out of the Kosovo."

18 So no real explanation at all as to why it appeared to be one
19 relocation in the note that Mr. Pace had recorded, two relocations he
20 mentioned for the first time in evidence, and no attempt to explain
21 or any attempt that can be borne out to explain that inconsistency.
22 And, of course, there were no records in relation either to one or
23 two relocations produced by Mr. Jukic to support his proposition that
24 arose very late, that such a measure at all was taken as a
25 consequence of the events of September 2020.

1 Remarkable, one might think, when he had been specifically asked
2 to make two declarations, one in December and one in January, setting
3 out the consequences of the events of September 2020. Remarkable
4 that he did not mention until he gave -- well, until he spoke to
5 Mr. Halling and Mr. Pace in relation to one relocation and then, in
6 evidence, two relocations, both of which he said, in evidence,
7 although without anything to support it, took place before both his
8 declarations were produced.

9 Mr. Jukic, as well as the late claim that there was one or two
10 relocations, also claimed in evidence that one anonymous witness
11 commented to him: I know very well what happened to witnesses in
12 Kosovo. Which is something that the SPO in their trial brief rely
13 upon.

14 But, again, he was confronted about that assertion, because that
15 arose the very first time in his evidence. He never said anything
16 like that before. And when confronted about his records, he conceded
17 that it's not recorded anywhere that a witness had ever said that.
18 And we see that at T1880, lines 20 onwards.

19 We can see there in line 20:

20 "And in none of those notes do you record a witness saying, 'I
21 know very well what happened to witnesses in Kosovo,' do you? You
22 don't record that anywhere in the contact notes.

23 "They are not in these contact notes."

24 The evidence of Mr. Jukic was neither clear nor unequivocal, as
25 the SPO have asserted. Such records that he did produce were

1 characterised by inconsistent dates with no sensible explanation
2 given as to why.

3 He gave evidence -- if we look at T1771, line 23, first.

4 He had said earlier that every contact with a witness was
5 documented in an Official Note after every phone call. It was his
6 initial assertion. But that simply did not correspond with the dates
7 on the Official Notes, because some were dated days, some dated
8 weeks, some dated months, in fact, after the alleged contact recorded
9 in them.

10 If we look at T1846, please, at line 13.

11 In relation to a note, this one dated apparently 25 September
12 but referring to events on 8 September and 22 September. At line 13,
13 he was asked:

14 "So are you, Mr. Jukic, are you saying that you made this note
15 of events on 8 September or on 22 September or a short period later
16 on 25 September?"

17 And he said: "Yes, I made this note.

18 "On 25 September.

19 "Right," the question continues. "So just so we understand,
20 your evidence that you record in Official Notes immediately after
21 every phone call and meeting, you accept that that's now wrong. Do
22 you agree with that?

23 "That's right."

24 So he abandoned the initial position that he asserted - that
25 perhaps you would expect - that there would be a contact note made

1 immediately after every phone call and meeting. Indeed, of course,
2 as we've just seen there, that couldn't be right, not only because
3 some were dated later than the last alleged contact in the note, but
4 a single note would often record a contact on a series of different
5 days, as we have just seen.

6 When confronted with the discrepancy in the dates at the top of
7 the documents, he initially attempted to suggest that, whereas, for
8 example, some documents, allegedly referring to, or referring to
9 alleged events in September and October 2020, in fact, had a date in
10 February and March 2021. His initial attempt to explain that
11 discrepancy was that because of COVID the notes had been made
12 contemporaneously with the meetings, but he wasn't able to submit
13 them in a timely fashion to ZyLAB because he was not allowed back to
14 the office.

15 Well, he abandoned that. Again, this was the second position he
16 abandoned, when it was pointed out to him that there was evidence
17 that, of course, he was in the office long before the dates belatedly
18 put onto those notes.

19 If we have a look, please, at T1849, at line 9.

20 So this is a document that had 15 March 2021 on it, although
21 purporting to deal with events, I think, in September.

22 "... last week you were saying," the question was, "that there
23 was a delay in submitting documents to ZyLAB by you because you
24 weren't in the office, blaming the pandemic; is that right?"

25 "Yes, that's correct."

1 "But we saw you in the office earlier on 27 October 2020, didn't
2 we?

3 "Yes, that's correct.

4 "Yes. So if this note predated that, why didn't you submit this
5 note on that date?"

6 So he abandoned that position and instead then sought -- well,
7 he gave this explanation:

8 "We asked the witness security team leader to send official
9 notes, and he was supposed to submit them in ZyLAB."

10 So it wasn't to do with COVID and the pandemic. It was,
11 although -- he did not accept that this was the effect of it, that it
12 was an attempt, we submit, to then blame [REDACTED] Pursuant to In-
13 Court Redaction Order F575RED.

14 In fact, no real alternative explanation was put forward by
15 Mr. Jukic because those dates in February and March were not
16 automatically applied to the documents. They'd been added to them,
17 as Mr. Jukic did, in fact, accept.

18 Can we have a look at T1858, please.

19 He accepted that he had applied the dates in February and March.
20 And our position was put to him, and it's right that Mr. Jukic denied
21 it, but we suggest that what was put to him is the inference to be
22 drawn, in fact. It was put to him that he was asked in February to
23 start putting together notes, and he realised that there were notes
24 that he had not made of witness contact, so he started preparing them
25 in February and March, and that's why they were dated months after
the events.

1 Now, he did not accept that, but he gave no real explanation.
2 No real alternative explanation for those errant dates. And I make
3 this observation, if I may. If there were similar discrepancies in
4 dates of records adduced on behalf of Mr. Gucati, by Mr. Gucati, or
5 by any of his Defence witnesses, you can no doubt bet that the SPO
6 would not dismiss those discrepancies as lightly as they wave them
7 aside in relation to Mr. Jukic and his credibility and his
8 reliability. And we submit that Mr. Jukic's evidence is to be
9 adjudged by exactly the same fair standards as will be applied, I
10 have no doubt, to the evidence called on behalf of and by Mr. Gucati.

11 On one occasion, Your Honours will recall that Mr. Jukic, being
12 aware that he was only allowed to give evidence about contacts which
13 he was involved in, which he was present at with a witness, he
14 claimed that he was present at a contact so he could describe the
15 contents of the note, even though the record made it perfectly clear
16 that he was not there.

17 And you'll recall that. And it's at transcript page T1750.

18 It is our submission that his account of the consequences of
19 events of September 2020 is both, as it happens, underwhelming and,
20 in any event, unreliable. Specifically, he gave no evidence, and the
21 Prosecution have called no other evidence to the effect that any
22 specific investigation or prosecution has actually been adversely
23 affected by what took place in September 2020. Certainly by the
24 actions of Mr. Gucati. No evidence of any specific investigation or
25 prosecution had been adversely affected. And nor does that evidence,

1 the evidence called by Mr. Jukic, that they did nothing after the
2 first press conference, they did nothing after the second press
3 conference, they did after the third go through a list of witnesses
4 that [REDACTED] Pursuant to Post-Session Redaction Order F582 had
provided them with - although we don't know on
5 what basis that list was drawn up with - and they were involved in
6 about 200 telephone calls, busy with that exercise for approximately
7 two to three days, even though there might have been some outlier
8 follow-up calls, but busy for two to three days. And of those
9 contacts that Mr. Jukic had, one was a little bit worried but had not
10 noticed anything suspicious and hadn't had any problems. Another one
11 was calmed down after being told that nothing in the file related to
12 them. No one had been called or approached by anyone directly. No
13 one had received any threat. [Indiscernible] didn't have any
14 security concerns. They didn't need any help. They didn't express
15 that they were scared. Those contacts that, on analysis, we went
16 through carefully, that evidence doesn't amount to evidence of a
17 current climate of witness intimidation which, no doubt, is why the
18 SPO rely on events dating back some 10 to 15 years.

19 Your Honour, at this point, before I move to, if you like,
20 making legal submissions, I know it's early, but perhaps I can ask
21 for an early end to the day today. I don't have much longer, but I
22 certainly won't be finished by 4.00 and will go sometime after that.

23 I would rather do those submissions in one go tomorrow rather
24 than begin them and then stop in flow, as it were.

25 PRESIDING JUDGE SMITH: Give me your best estimate of time.

1 MR. REES: An hour.

2 [Trial Panel confers]

3 PRESIDING JUDGE SMITH: We'll adjourn until tomorrow.

4 MR. REES: Thank you.

5 PRESIDING JUDGE SMITH: But just before we do that, just on the
6 issue of the witness statements that we've asked for and you've both
7 filed, and I appreciate that.

8 Mr. Cadman, the sole objection to the proposed witness
9 statements for the session devoted to sentencing submissions was your
10 tendered statement number 574. Do you still wish to submit that?

11 MR. CADMAN: I do, Your Honour.

12 PRESIDING JUDGE SMITH: And have you looked over, perhaps -- I
13 was looking at the second page of the statement, and there's two
14 paragraphs about a third of the way down that deal directly with
15 issues of non-violence and -- which I think would be acceptable to
16 the Prosecution.

17 But, at any rate, if you will file by 4.00 tomorrow a short
18 written submission on that particular item, that's all that's
19 required. We'll make a decision based upon that.

20 MR. CADMAN: Certainly.

21 PRESIDING JUDGE SMITH: All right.

22 Anything further from anybody?

23 MS. BOLICI: No, Your Honour, thank you.

24 PRESIDING JUDGE SMITH: Thank you.

25 Mr. Rees, anything else? Nothing else.

1 Thank you. We will be adjourned, and we will see you here
2 tomorrow morning at 9.30. Thank you for your candour today and
3 submissions, and we wish you good evening.

4 --- Whereupon the hearing adjourned at 3.45 p.m.

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