

1 Friday, 10 December 2021

2 [Open session]

3 [The accused entered court]

4 --- Upon commencing at 9.45 a.m.

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

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

10 PRESIDING JUDGE SMITH: Good morning, everyone, and welcome.

11 Any change in the Prosecutor's staff?

12 MR. HALLING: Good morning, Your Honour. Benjamin Dearden,  
13 legal intern, is not with us today, but otherwise, same appearances.

14 PRESIDING JUDGE SMITH: Thank you.

15 Mr. Rees.

16 MR. REES: No change. Thank you, Your Honour.

17 PRESIDING JUDGE SMITH: Mr. Worboys.

18 MR. WORBOYS: No change, Your Honour.

19 PRESIDING JUDGE SMITH: Mr. Buckley is with us on video. Can  
20 you hear us okay, Mr. Buckley?

21 MR. BUCKLEY: [Via videolink] I can, Your Honour. Yes.

22 PRESIDING JUDGE SMITH: Thank you.

23 We also note for the record that Mr. Gucati and Mr. Haradinaj  
24 are present in the courtroom.

25 Let's first address the SPO request filed yesterday. For the

1 benefit of the public, I will provide a brief summary of the  
2 background of this issue.

3 On 5 November 2021, the Panel ordered the Defence to indicate  
4 within five to eight days after all matters under Rule 102(3) were  
5 solved, whether it requested further cross-examination of SPO  
6 witnesses.

7 On 7 December 2021, the Panel ruled on the last outstanding  
8 matter regarding Rule 102(3).

9 On 8 December 2021, the Gucati Defence requested to re-call  
10 Witnesses 4841 and 4842; that is, Ms. Pumper and Mr. Jukic.

11 Yesterday, on 9 December, the SPO filed an application in  
12 relation to Mr. Rees' request. The SPO filing is F485.

13 The SPO submits that there is no basis to re-call the two  
14 witnesses because, first, there is no indication that either of them  
15 have any personal knowledge of the information in the Rule 102(3)  
16 materials; and, second, on the basis of the Defence evidence  
17 submitted and heard, it is now established that neither accused was  
18 entrapped.

19 The SPO requests the Panel to either preclude any further  
20 questioning of those witnesses or regulate their re-call within the  
21 following limitations: One, that the Defence provide in advance a  
22 summary of the scope of questioning of these witnesses and the  
23 relevancy of the intended subject matter to the issues before the  
24 Trial Panel; two, that all evidence concerning the Rule 102(3)  
25 materials is to be elicited in private session; and, three,

1 questioning on all other subjects should be disallowed.

2 First of all, I'll ask Mr. Rees if he has any comments on these  
3 submissions.

4 MR. REES: Firstly, we do not accept the proposition the SPO  
5 make that the evidence of Hysni Gucati, as they put it, disavows  
6 entrapment. The SPO are under the misguided and misunderstanding  
7 that coercion is a necessary element of a plea of police incitement.  
8 It's not.

9 I won't go further into that. We've made our submissions in law  
10 that we will return to in closing submissions, are very clear as to  
11 what the elements in [indiscernible] of a successful plea of police  
12 incitement are. Coercion is most definitely not one of them.

13 We have been invited throughout by the Trial Panel, and we are  
14 grateful for it, to proceed expeditiously and to avoid delays where  
15 possible by being flexible as to, for example, the fact that the SPO  
16 have not fully complied with their disclosure obligations by the  
17 outset of the trial or by the point at which the conclusion, in an  
18 ordinary sense of the evidence of Ms. Pumper, was reached or having  
19 completed their disclosure obligations by the point at which the  
20 evidence of Mr. Jukic would ordinarily have been completed.

21 And although we had reservations and concerns about that, we  
22 raised it with the Trial Panel who encouraged us, nevertheless, to  
23 try and make progress without insisting on a delay of proceedings  
24 until those disclosure matters were dealt with. And seeing that the  
25 Trial Panel were prepared to be flexible, we followed that course.

1 And we hope that we did so with a view to ensuring that these  
2 proceedings took place expeditiously and as efficiently as possible,  
3 despite the delays caused by the SPO in repeatedly misunderstanding  
4 their disclosure obligations as they clearly do now, still not  
5 understanding the true scope of a plea of police incitement.

6 In relation to the two witnesses and their ability to assist  
7 with the matters that have been disclosed with the final ruling on  
8 Rule 102(3), at least at this stage, and at least as far as any  
9 outstanding challenge is concerned, only being provided to us the day  
10 before yesterday. And as promptly indicating at the request of the  
11 Trial Panel that we wished to have the re-call of the Witnesses  
12 Zdenka Pumper and Miro Jukic the following day, not standing on  
13 ceremony in the five to eight days that the Trial Panel allowed us to  
14 do. Despite our reservations about their ability to assist, they are  
15 the only witnesses the SPO have made available from within their  
16 ranks that in any way would allow us to explore properly and  
17 effectively our plea of police incitement.

18 As the Trial Panel has observed in a number of rulings now,  
19 reflecting the jurisprudence of the European Court of Human Rights,  
20 it is essential that in cases where a plea of police incitement is  
21 raised that the Prosecution provide both disclosure and access to  
22 such witnesses that are capable of testifying on the issue as to  
23 whether police incitement occurred.

24 Whether the SPO take advantage and follow the guidance from the  
25 Trial Panel reflecting the jurisprudence from the European Court is a

1 matter, of course, from the SPO. As they have put forward those two  
2 witnesses, and as the Trial Panel have invited us to request the  
3 re-call of those two witnesses, in order so that we can press our  
4 case as fully as we are allowed to, with the restrictions put in  
5 place by the SPO, to pursue our plea of police incitement, we have  
6 requested their re-call.

7 It may be, as the SPO says, these witnesses cannot assist in any  
8 way, shape or form. We will find out on Wednesday morning when they  
9 are re-called and I ask them questions whether they can or not. If  
10 they cannot, so be it, and we will make our submissions in due course  
11 that the SPO and the trial process in this court has not provided us  
12 with the ability to effectively raise the plea of police incitement.

13 If they can assist, then we will find out when they are further  
14 cross-examined on Wednesday morning. I intend my cross-examination,  
15 further cross-examination, to be restricted to the issues raised in  
16 the further disclosure that we have received since they were  
17 previously before the Court to give evidence. I do not intend to go  
18 on a voyage in relation to other issues unrelated to those  
19 disclosures.

20 Unless I can assist any further in these circumstances,  
21 Your Honour.

22 PRESIDING JUDGE SMITH: [Microphone not activated].

23 MR. WORBOYS: Nothing to add, Your Honour. However, I do adopt  
24 the same position as Mr. Rees.

25 PRESIDING JUDGE SMITH: Thank you.

1 Mr. Halling.

2 MR. HALLING: Briefly, Your Honour. Thank you.

3 The arguments that we made in this filing from yesterday are  
4 arguments of evidence and substantive law. There are currently no  
5 outstanding disclosure requests in this case. They have all been  
6 complied with. The restrictions referenced by the Gucati Defence, we  
7 don't know what they are, but whatever restrictions on disclosure  
8 that have been imposed have been imposed on the order of the  
9 Trial Panel following requests of the SPO.

10 The only point I would like to reference now, and to emphasise  
11 in our filing is in relation to the alternative relief sought if this  
12 is happening next week and, in particular, the point about private  
13 session with these materials. We want to emphasise there is no  
14 margin for error with these materials and the questioning of these  
15 materials.

16 This week the Trial Panel gave a direction to the Gucati Defence  
17 about names that they used in their opening statements, about things  
18 that had been said before. There was a filing of the Haradinaj  
19 Defence that had to be reclassified because the name of an SPO staff  
20 member, that's been consistently redacted in these proceedings, was  
21 made briefly available, and there were 14 redaction orders this week  
22 during the testimony of the accused.

23 These Rule 102(3) materials are highly sensitive for reasons  
24 that have been discussed throughout the trial, and we are concerned  
25 that there is going to be a retrospective misunderstanding or

1 something that the gallery hears, and it maybe won't be broadcast,  
2 but these issues are very important to us and our investigations, and  
3 we would just ask that the Trial Panel bear that in mind when  
4 deciding on the modalities of any re-call.

5 Thank you.

6 PRESIDING JUDGE SMITH: Thank you, Mr. Halling.

7 [Trial Panel confers]

8 PRESIDING JUDGE SMITH: We've heard your submissions. We want  
9 to spend a little bit of time more examining the issue. We will make  
10 a ruling yet today so that you can prepare for next week. So  
11 hopefully at the next break we will make that determination and give  
12 an oral order in that regard.

13 Today we are ready to continue with the next witness, who is  
14 number 1245, Mr. Cele Gashi. We will address the matter of his  
15 statement as we go, as we have in the past, following the steps of  
16 Rule 154.

17 Madam Court Usher, would you please bring the witness in.

18 MR. REES: Your Honour, Mr. Bowden will be taking this witness.

19 PRESIDING JUDGE SMITH: Pardon me?

20 MR. REES: Mr. Bowden will be taking this witness.

21 PRESIDING JUDGE SMITH: Thank you.

22 [The witness entered court]

23 PRESIDING JUDGE SMITH: Good morning, Mr. Gashi. Can you hear  
24 everything all right?

25 THE WITNESS: [Interpretation] Yes, I can. Good morning.

1           PRESIDING JUDGE SMITH: The Court Usher will now provide you  
2     with the text of the solemn declaration which you will be asked to  
3     take pursuant to Rule 141(2) of our Rules. Please proceed. And  
4     please read it aloud.

5           THE WITNESS: [Interpretation] Subjected to Rule 141(2),  
6     conscious of the significance of my testimony and my legal  
7     responsibility, I solemnly declare that I will tell the truth, the  
8     whole truth, and nothing but the truth, and that I shall not withhold  
9     anything which has come to my knowledge.

10           WITNESS: CELE GASHI

11           [Witness answered through interpreter]

12           PRESIDING JUDGE SMITH: Thank you, Mr. Gashi. Please be seated  
13     and you can remove your mask.

14           [Microphone not activated]. If you wish, you can remove your  
15     mask.

16           Mr. Gashi, today we will hear your testimony. As you may know,  
17     Mr. Bowden will go first and he will ask questions of you about your  
18     statement. Then the Court will issue a brief order regarding your  
19     statement. Once that is done, the admitted part of your statement  
20     will be read into the record.

21           Then Mr. Bowden might ask you some more questions, if he has  
22     any. And next the lawyers representing Mr. Haradinaj may ask some  
23     questions as well, and then it will be the Prosecution's turn to ask  
24     you questions. And the members of our Panel here may ask you  
25     questions as well.



1 Mr. Bowden estimates his examination will be short, perhaps  
2 15 minutes. The Prosecution will have a longer time cross-examining  
3 you. They've estimated as much as two hours. The Panel may also  
4 allow re-examination by the Defence counsel if conditions for it are  
5 met.

6 Please try to answer the questions clearly with short sentences.  
7 If you don't understand a question, feel free to ask counsel to  
8 repeat the question or tell them that you don't understand and they  
9 will clarify. Also, please try to indicate the basis of your  
10 knowledge of facts and circumstances that you will be asked about.

11 Please also speak into the microphone and wait five seconds  
12 before answering a question and speak at a slow pace so the  
13 interpreters can catch up.

14 While you are giving evidence in this Court, you are not allowed  
15 to discuss with anyone the content of your testimony. If any person  
16 asks you questions outside of this Court about your testimony, please  
17 let us know.

18 Mr. Bowden, please first ask the witness if his statement  
19 accurately reflects what he would say in court, and then the Panel  
20 will render its order, and then you can read what is admitted, and we  
21 can continue with the examination.

22 Go ahead.

23 MR. BOWDEN: Thank you, Your Honour.

24 Examination by Mr. Bowden:

25 Q. Good morning, Mr. Gashi.

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1 A. Good morning.

2 Q. Can you confirm your full name, please.

3 A. Cele Gashi.

4 Q. And your date of birth is 5 April 1966?

5 A. Yes, the 5th. That's correct.

6 MR. BOWDEN: Your Honour, I wonder whether the witness could  
7 have access to his statement.

8 PRESIDING JUDGE SMITH: Certainly.

9 MR. BOWDEN:

10 Q. Mr. Gashi, the statement is printed on both sides of the paper.  
11 So it's three pieces of paper.

12 MR. BOWDEN: And I note that, Your Honour, the Albanian and the  
13 English versions are being displayed.

14 Q. Mr. Gashi, can you confirm that you've previously had the  
15 opportunity to read through that statement? You've previously seen  
16 the statement and looked at it and its contents? Is that correct?

17 A. Yes.

18 Q. Thank you. And if I could ask you to turn to the final page of  
19 the statement, so the third page that you have before you, which will  
20 be shown on the screen also.

21 A. Okay.

22 Q. And in the copy you have, you will see a name and a signature  
23 and a date of 15 July 2021; is that correct?

24 A. Yes.

25 Q. And is that your signature?

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1 A. Yes.

2 Q. And we've already spoken about the contents of the statement.

3 Can you confirm that the contents are true?

4 A. That's correct.

5 Q. Thank you. And the contents of the statement accurately reflect  
6 the evidence that you would wish to give to this Court? Is that  
7 correct?

8 A. With the exception of two, three, or four, which might be  
9 slightly wrong.

10 Q. Paragraphs 2, 3, and 4; or two, three and four matters?

11 A. It's on the hours. It says two or three hours. That might be  
12 wrong. The time of reading, that is.

13 MR. BOWDEN: Your Honour, I believe that's paragraph 14. If we  
14 get -- Your Honour, the approach, I think, as suggested yesterday,  
15 and I hope that that is still in agreement with both the SPO and the  
16 Trial Panel, would be if the statement is read. There are certain  
17 paragraphs that are not to be read, which we would propose to deal  
18 with by way of oral evidence, and I would propose to stop reading at  
19 the appropriate time and then ask Mr. Gashi specific questions at  
20 that time, with the Trial Panel's approval, as opposed to dealing  
21 with the matters at the end of the statement, not chronologically in  
22 order.

23 If the Trial Panel agrees with that approach, perhaps I can  
24 conduct a similar approach with regard to paragraph 14 and not read  
25 paragraph 14 in the light of the indication given by Mr. Gashi.

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1           PRESIDING JUDGE SMITH: Mr. Worboys, is that acceptable to you?

2           MR. WORBOYS: Of course, Your Honour.

3           PRESIDING JUDGE SMITH: Mr. Halling?

4           MR. HALLING: Well, Your Honour, he said two, three, or four,  
5           and he's only mentioned one. We would say that the proper procedure  
6           here would be for the witness to clarify each of the points of the  
7           statement that don't correspond to his current recollection, and then  
8           our objection remains on those two paragraphs which we say should be  
9           elicited orally without a summary read first.

10          PRESIDING JUDGE SMITH: We'll deal with those two paragraphs,  
11          but try to nail down exactly which paragraphs he now is suggesting he  
12          disagrees with.

13          MR. BOWDEN:

14          Q. Mr. Gashi, when you mentioned the -- when I asked you about the  
15          contents of the statement and if it accurately reflected the  
16          evidence, you mentioned that there were two or three things. When  
17          you say two or three, what do you mean? The two or three that you've  
18          mentioned already, or is there anything else?

19          A. It's -- it's paragraph 14, where it mentions two or three hours.

20          Q. That was the one amendment you wish to or the [Overlapping  
21          speakers] ...

22          A. And somewhere else there is a mention of four hours too, which I  
23          can't find at the moment. If you allow me some time.

24          PRESIDING JUDGE SMITH: I'd suggest we find that.

25          MR. BOWDEN: Yes, thank you, Your Honour.

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1 JUDGE METTRAUX: It's paragraph 28.

2 MR. BOWDEN: Paragraph 28, yes.

3 Well, perhaps, Your Honour, with the Trial Panel's leave, I can  
4 conduct similarly an exercise to deal with paragraph 28 and  
5 paragraph 28 will not be read.

6 PRESIDING JUDGE SMITH: [Microphone not activated].

7 So 14 and 28 are the two paragraphs that this witness has  
8 indicated might not be correct, and I would suggest that 14 and 28  
9 not be read but be subject to direct examination and then possibly  
10 cross-examination.

11 All right, Mr. Halling?

12 MR. HALLING: For those paragraphs, no problem.

13 PRESIDING JUDGE SMITH: Okay.

14 MR. BOWDEN:

15 Q. Mr. Gashi, then, with those --

16 MR. BOWDEN: I do apologise, Your Honour.

17 PRESIDING JUDGE SMITH: No, go ahead.

18 MR. BOWDEN:

19 Q. With those amendments, can you confirm that the remainder of the  
20 statement accurately reflects the evidence which you would wish to  
21 give to the Court?

22 If you could just indicate an answer to that, Mr. Gashi, "yes"  
23 or "no"?

24 A. Yes.

25 MR. BOWDEN: I apologise, Your Honour. The application would be

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1 to tender that statement as an exhibit.

2 PRESIDING JUDGE SMITH: All right. It is tendered. Adding  
3 in -- you made oral arguments yesterday, so we won't go through that  
4 again. We've heard your arguments.

5 The Panel admits the written statement of Mr. Gashi in evidence  
6 under Rule 154 of the Rules, except paragraphs 16, 32, 34; and now,  
7 in addition, 14 and 28, which are reserved for direct testimony.

8 The Panel notes that the SPO also objects to the admission under  
9 Rule 154 of paragraphs 20 and 22, submitting that the nature of the  
10 facts mentioned in these paragraphs are more appropriately adduced by  
11 the witness in the courtroom. And according to the principle of  
12 orality, it would be more appropriate to hear this evidence orally  
13 rather than simply introducing it in writing.

14 The Panel notes that the two paragraphs concern the alleged  
15 statement of an SPO investigator regarding the access of the Kosovo  
16 police to the seized documents and the possibility of retaining those  
17 documents for a month. Nothing in the wording of Rule 154 prohibits  
18 the admission of such facts through that provision. In fact,  
19 Rule 154 permits the admission of written statements that go to proof  
20 of the acts and conduct of the accused, if the three conditions  
21 stated in the rule are met.

22 In contrast, Rule 153 does not permit the admission of evidence  
23 concerning the acts and the conduct of the accused. The Panel  
24 recognises that certain parts of a Rule 154 statement may concern  
25 issues that are particularly contested. A calling party who submits

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1 a statement under this rule may, if it wishes, conduct an additional  
2 direct examination on any parts of the written statement, and the  
3 Panel retains a discretion to order the calling party to conduct a  
4 direct examination of the witness on any --

5 THE INTERPRETER: The interpreters kindly ask His Honour to  
6 speak more slowly.

7 PRESIDING JUDGE SMITH: -- parts of the statement. In this  
8 instance, the Panel has decided not to exercise its discretion to  
9 order the Gucati Defence, as the calling party, to conduct a direct  
10 examination on most of the paragraphs except as to the ones I just  
11 mentioned, which are 14 and 28.

12 Moreover, the Panel sees no merit in singling out paragraphs 20  
13 and 22, rather than the others in the statement, to advance an  
14 argument based on the principle of orality. If the SPO is not  
15 satisfied with the content or level of detail in those paragraphs, it  
16 can cross-examine the witness in that regard.

17 The Panel, accordingly, finds that the statement, including  
18 paragraphs 20 and 22, and 14 and 28, are relevant and have probative  
19 value as it goes to the acts and conduct of the accused in relation  
20 to the charges.

21 The Panel notes that Mr. Gashi is present in court and is  
22 available for cross-examination and questioning by the Panel as well  
23 as the parties. He has also attested that the written statement  
24 accurately reflects what he would say in court except paragraphs 14  
25 and 28.

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1           The Panel, therefore, admits the written paragraphs except 16,  
2   32, and 34 with a public classification; and also restricts admission  
3   of 14 and 28, as a written document under 154, but he may be subject  
4   to direct examination and cross-examination in this court.

5           Madam Court Officer, please assign an exhibit number to this  
6   item and state it on the record.

7           THE COURT OFFICER: Your Honours, the witness statement will  
8   receive Exhibit 1D9.

9           PRESIDING JUDGE SMITH: 1D9 is admitted with the exceptions that  
10   I have noted.

11          You may read the statement, Mr. Bowden.

12          MR. BOWDEN: Thank you, Your Honour.

13          PRESIDING JUDGE SMITH: As you suggested, you may pause at the  
14   appropriate time and question those particular paragraphs.

15          MR. BOWDEN: Thank you, Your Honour.

16          The statement says as follows.

17          I, Cele Gashi, will say as follows.

18          I was born in Doberdal, in the municipality of Podujeve, Kosovo.  
19   I was educated in the local school. I left in 1983, 1984. I now  
20   live in Prishtine with my wife and my son.

21          In 1983, 1984, together with a group of friends I became  
22   actively involved in promoting the cause of Kosovo. In 1985, my  
23   cousin was a Yugoslav conscript who returned to his family dead. He  
24   was in a closed coffin. My family were instructed that under no  
25   circumstances should they open the coffin before burial. We ignored



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1 this and opened the coffin to view him and saw that he had been shot  
2 twice with a small entry wound and a large exit wound. It appears he  
3 was shot from behind. We, as a family, believed the Yugoslav Army  
4 were responsible.

5 In March 1987, I was conscripted for the Yugoslav Army in Vranje  
6 in modern day Serbia. I obviously believed that the same fate my  
7 cousin experienced awaited me. I was also aware of the case of  
8 Aziz Kelmendi who was murdered. After his case, the Kosovan Albanian  
9 soldiers were treated differently. Frequent interrogations took  
10 place and I felt I could be targeted at any time and harmed.  
11 Albanian soldiers were frequently woken and taken away for  
12 questioning by members of the Yugoslav Army. All I wanted to do was  
13 to get through my conscription unscathed. The treatment of the  
14 Albanian soldiers increased my level of ideology for an independent  
15 Kosovo.

16 In 1988, I was offered 3.000 deutschemarks to become reactivated  
17 and take part in the war. I turned down this offer.

18 In 1989 to 1990, Yugoslavia started to breakup. At the time, I  
19 worked in a market in Prishtine. I took part in student protests and  
20 strikes that were occurring. At this time, this was my only cause  
21 until I met my future wife.

22 In the 1990s, Albanians were systematically dismissed from all  
23 forms of employment.

24 On 10 February 1997, because of the friendship with Sejdi Rama,  
25 who was a high-ranking KLA member, I was initiated into the KLA. I

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1 have been an active member ever sense. I took an oath with the  
2 Albanian flag. It was on this date that I first took up arms and  
3 became weaponised.

4 We were viewed as liberators by the Serbs, who became our  
5 oppressors. I had lots of conflicts and problems with the Serbian  
6 police. We were under constant surveillance by the Serbs and in  
7 constant fear from being arrested or liquidation.

8 In early 2017, I became a committee member of the steering  
9 council, 61 members from all municipalities, and a member of the  
10 headship committee, the inner circle of 23 members. At that time, I  
11 became a close associate of Hysni Gucati and when he had just been  
12 elected as chairman of the War Veterans Association of the Kosovo  
13 Liberation Army, KLA WVA. My branch of the WVA gave our vote en bloc  
14 to Hysni Gucati.

15 On 7 September 2020 at approximately 10.00 a.m., I was with  
16 Hysni Gucati, Nasim Haradinaj, Faton Klinaku, Taibe Miftari, and  
17 Elvir Gucati in the upstairs office of the WVA.

18 Taibe Miftari was very upset, as a package had been delivered  
19 and she thought that it might have been a bomb. She told us all that  
20 the package had been delivered but she seemed very distressed, so we  
21 all left the office where we were to see what was going on.

22 The scene was one of confusion. Some were saying that the  
23 package was a bomb, and this was causing a certain amount of panic.  
24 However, when Nasim went to have a look, we realised that the package  
25 was only papers. Once we knew this, the situation calmed down.

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1 I went to the reception area where I saw a box, slightly smaller  
2 than the size of a banana crate, which contained documents inside.  
3 These documents had Serbian writing on them, including Serbian names,  
4 such as Vukcevic. This name was not known to me. However, I saw  
5 this name numerous times because it was mentioned on numerous  
6 documents.

7 Your Honour, if I may stop reading at this point.

8 Q. Mr. Gashi, is it true to say that at this time you remained in  
9 the company of Mr. Gucati, Mr. Haradinaj, and Mr. Klinaku?

10 A. Yes, that's true.

11 Q. And you had with you the box with the papers?

12 A. Yes, that's right.

13 Q. And you were discussing and looking at the contents of those  
14 papers?

15 A. Yes.

16 Q. You yourself read a few of those documents; is that true?

17 A. Yes, that's correct.

18 Q. Could you estimate how many documents you read and how long you  
19 took reading those documents?

20 A. I did not read all of them, but I did go through a few. It was  
21 a voluminous package.

22 Q. When you say "a few," could you give a more accurate figure to  
23 that? Was it, perhaps, five, 10, 20?

24 A. 70 to 100, roughly.

25 Q. I see. And how long did you take looking at these documents,

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1 time-wise?

2 A. It could be in parts. I went in and out, because at the time I  
3 had to go to Taibe to check on her because she was scared.

4 Q. So it wasn't one continuous period of time. It was shorter  
5 periods? When you add them all up together --

6 A. That's correct.

7 Q. -- how long would that be?

8 A. That's correct. It was done piecemeal.

9 Q. Yeah. We you add all of those piecemeal times together --

10 THE INTERPRETER: The interpreters kindly ask the speakers to  
11 not overlap. Thank you.

12 MR. BOWDEN: Yes, I apologise.

13 THE WITNESS: [Interpretation] 30 to 40 minutes, roughly. I just  
14 cannot recall, because it was done, as I say, piecemeal.

15 MR. BOWDEN:

16 Q. So 30 to 40 minutes in total?

17 A. Fairly possible. I'm not entirely certain, because a long time  
18 has elapsed since but it might well have been the case, yes.

19 Q. Of course. Thank you, Mr. Gashi.

20 MR. BOWDEN: Your Honour, may I continue reading?

21 PRESIDING JUDGE SMITH: Yes, you may.

22 MR. BOWDEN: The statement continues as follows.

23 I thought to myself when looking at the box of documents, how  
24 could the SPO stoop to the level of Serbia? I was confused as to the  
25 purpose of the reason for the documents being delivered. We felt

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1 that the Kosovan public should be made aware of the contents of the  
2 box, so it would undermine the Kosovo Specialist Chambers, KSC, which  
3 is a body that we do not recognise as legitimate. We did not want to  
4 provide any names. We just wanted to tell the public that the  
5 information had been provided to The Hague by Serbia.

6 On 8 September 2020, the following day, at approximately  
7 11.00 a.m., I was having coffee with friends but not at the WVA  
8 headquarters. I received a phone call asking me to return to the  
9 office, but I did not know why.

10 When I returned, I saw four strangers in the headquarters. Two  
11 I realised were from The Hague, and they were accompanied by two  
12 interpreters, one male and one female. The two interpreters  
13 introduced themselves and said that they were from The Hague. Pren  
14 Marashi, head of the WVA committee, was present at the time.

15 One of the men from The Hague was Swedish but Chinese looking  
16 and was seated. The other looked a bit tense, was fidgeting,  
17 restless, and refused to sit. I was sitting opposite him and could  
18 see that he was noticeably nervous. The man who was standing was  
19 confrontational. Faton Klinaku was present and insisted that the man  
20 sit down. The man said that he was providing security. In turn,  
21 Faton responded saying that he could not provide security in our  
22 office. Eventually, the man sat down and the situation calmed down.  
23 They then both had a coffee with us.

24 The men were asking for us to give them the documents. We were  
25 saying to the men that we would not give them the documents until we

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1     were able to speak to the Kosovan prosecutor. Once we spoke to him,  
2     then we would decide what we would do next. They continued to  
3     request the documents and we repeatedly denied them access. The  
4     Swedish SPO investigator then said: "We can stay here for one month,  
5     but no one will come from the ...prosecutor's office or the local  
6     police without our approval."

7             At this time, when the SPO investigators were present, I said to  
8     Faton that they should look at the CCTV footage to identify the  
9     persons who made the drop-off. We then rang Hysni Gucati, who was in  
10    Albania at the time, who said that we should give them the CCTV  
11    footage.

12            They then said that we could have the documents for a month, and  
13    then it was mentioned that the Kosovan prosecutor may be allowed to  
14    have access to the documents then.

15            Either on the 14th or 15th September 2020, we, at the WVA,  
16    decided that any further document delivery of this nature would be  
17    made public immediately. As far as I was aware, we put things out on  
18    Facebook to confirm this policy. As such, journalists would be  
19    invited via e-mail to attend any future press conferences.

20            On 16 September 2020, I was in the WVA offices with  
21    Taibe Miftari and Elvir Gucati. I was sat in the office with the  
22    door open. I was aware of a person that had come into the offices  
23    and appeared at the door. He appeared confused and frustrated. I  
24    was the first to attend to the unknown man, because Taibe is a woman,  
25    so I did not want her to confront him. Taibe was confused and

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1     frightened and I was concerned for her welfare. My purpose was not  
2     to let him get inside our offices. The man was milling around from  
3     the canteen to the entrance to where our offices are. I wanted to  
4     prevent him from entering our office space.

5             The unknown man came in holding a big box, which he then placed  
6     on the floor. When I went out to attend to the man, I was nearer to  
7     the man than the box itself. I did not interact with the man.  
8     Having dropped the box on the floor, the man then left by the same  
9     door and appeared confused as to the location of the exit.

10            The man was masked, wearing gloves and all in dark clothing. It  
11     was impossible to make out any identifying features.

12            The man then went toward the stairway and disappeared. Faton  
13     then chased after him, and I went after Faton as I feared for Faton's  
14     welfare. The man was too quick, however, and exited the building.  
15     We chased him down a couple of flights of stairs, but he was too  
16     quick for us. We did not follow him all the way down to the ground  
17     near. Indeed, when we returned to our office, everyone said that we  
18     should not have endangered ourselves by chasing him at all. Faton  
19     and I went to look through the window but could not see which way the  
20     man went.

21            Once again, Your Honour, may I pause at this stage and clarify  
22     some matters with Mr. Gashi.

23            PRESIDING JUDGE SMITH: Yes, you may.

24            MR. BOWDEN:

25     Q.     Mr. Gashi, at that stage you were in the company of

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1 Mr. Hysni Gucati, Mr. Nasim Haradinaj, and Mr. Faton Klinaku; is that  
2 correct?

3 A. Yes, that's correct.

4 Q. And the box of papers that had been delivered by this unknown  
5 man were taken into Mr. Hysni Gucati's office; is that correct?

6 A. Yes.

7 Q. And you looked through those documents; is that correct?

8 A. Yes.

9 Q. Like the previous delivery, can you remember how many documents  
10 you yourself looked at?

11 A. I cannot say exactly, because Taibe, in fact, was utterly  
12 stressed, so I had to go to her to try to calm her down. We were, in  
13 a way, more concerned about her well-being than the documentation  
14 that has arrived -- had arrived. She was really stressed out and we  
15 had to go to her to try to reassure her and give her a bit of water  
16 so she calms down.

17 Q. So, once again, you weren't spending one continuous period  
18 looking at the documents. It was piecemeal. Is that --

19 A. Yes.

20 Q. Could you estimate for how long altogether you were looking at  
21 the documents?

22 A. You mean generally? Generally, every time we had the delivery,  
23 or about this particular package?

24 Q. On this particular occasion.

25 A. 10, 15, 20 minutes. I cannot recall exactly, but time was --



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1 limited. Time that we had available was limited.

2 Q. And you can't recall how many documents you looked at?

3 A. Can I speak?

4 Q. Of course.

5 A. I've seen Vukcevic's name in the Serbian language. I wasn't  
6 fully aware of who he was, but I've seen a few credential papers  
7 exchanged between Vukcevic and the SPO.

8 Q. Thank you.

9 MR. BOWDEN: Your Honour, may I continue reading the remainder.  
10 Statement?

11 PRESIDING JUDGE SMITH: Yes, you may.

12 MR. BOWDEN: The statement continues.

13 We had already made a collective decision on either 14th or 15th  
14 September that if there were any more drop-offs then a press  
15 conference was to be called and the public informed of the contents  
16 of the box and documents. So this is what we did.

17 On 22 September 2020, together with Emin Lati, I was in the  
18 conference room at the top floor of the WVA building, when I heard a  
19 commotion downstairs in the WVA offices. I went down and I could see  
20 that Taibe was upset so I tried to calm her down. She told me, and I  
21 am now aware, that a male had attended the offices and produced  
22 documents which he had thrown to the floor.

23 I had a quick look at the documents, which appeared to be  
24 indictments and were in English. I knew the names in the  
25 indictments, and I felt overwhelmed as they were my heroes and

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1 selfless in the cause. I felt that this was a Serbian deed.

2 After the detention of Hysni Gucati in approximately mid-May  
3 2021, I saw his elderly parents whilst at the museum and I felt bad  
4 for them.

5 I am willing to attend -- to come and testify at the KSC in  
6 The Hague.

7 That is the end of the statement, Your Honour.

8 PRESIDING JUDGE SMITH: [Microphone not activated].

9 THE INTERPRETER: Microphone, please.

10 PRESIDING JUDGE SMITH: Anything further for direct examination?

11 MR. BOWDEN: No, Your Honour.

12 PRESIDING JUDGE SMITH: Thank you, Mr. Bowden.

13 MR. BOWDEN: Thank you.

14 PRESIDING JUDGE SMITH: Mr. Worboys, any questions?

15 MR. WORBOYS: Nothing now, Your Honour. Thank you.

16 PRESIDING JUDGE SMITH: Thank you.

17 Mr. Halling, cross-examination.

18 MR. HALLING: Thank you, Your Honour.

19 Cross-examination by Mr. Halling:

20 Q. Good morning, Mr. Gashi. My name is Matt Halling and I am an  
21 Associate Prosecutor with the SPO. I'll be asking you some questions  
22 this morning.

23 Your statement that was just read out in summary to you, you  
24 signed that on 15 July of this year; is that right?

25 A. Yes.

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1 Q. And in the statement that you signed, at paragraph 14, you said  
2 you took approximately two to three hours to review the first batch  
3 of materials sent to the War Veterans Association; isn't that right?

4 A. I think it's a mistake when it was translated.

5 Q. The statement on 15 July is in Albanian, isn't it?

6 A. Yes.

7 Q. And do you speak Albanian?

8 A. Yes, I do.

9 Q. So did you review the statement before signing it?

10 A. I did, yes.

11 Q. And in paragraph 28 of the statement you reviewed and signed,  
12 you also said you reviewed the second batch of materials for up to  
13 four hours; isn't that right?

14 A. I think it's a mistake in both cases about the time, because it  
15 was a short time. I couldn't have four hours at my disposal. When  
16 the media was called, I think we -- just one hour passed from the  
17 first moment, so I didn't have four hours. This proves it.

18 Q. On 6 September 2021, you signed the English translation of this  
19 same statement; isn't that right?

20 A. Yes.

21 Q. Do you speak English?

22 A. No.

23 Q. So was the statement read back to you before you signed it?

24 A. It was read back to me. But when I came here, I wanted them to  
25 be improved. I didn't want to go into details initially. But as I

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1 said, some minor mistakes were made.

2 Q. Did you make any corrections to your 6 September 2021 statement  
3 after it was read back to you?

4 A. I did. But yesterday, when I read it, I noticed these minor  
5 mistakes.

6 Q. Who read the statement back to you on 6 September?

7 A. I read it myself. Why should anyone read it out to me? When I  
8 came here, I saw -- I found out that there were some technical  
9 mistakes in it.

10 Q. Mr. Gashi, right now I'm talking about the English translation  
11 of your statement, and you said that someone read it back to you  
12 before you signed it. My question is: Who read it back to you on  
13 6 September?

14 A. Admir. When I came here, he translated it to me because I don't  
15 speak English.

16 Q. Did you indicate any corrections at that time to Admir?

17 A. Two corrections were made. It was -- the mistake was there. I  
18 don't think the words are very well found -- very adequate. I said  
19 that there are a few mistakes in translation.

20 Q. So I'm correct that the two mistakes that you identified today,  
21 you identified with Admir on 6 September 2021?

22 A. No, now. Now. Now that I am here.

23 Q. I'm talking about on 6 September 2021. My question is: On that  
24 date, did you communicate the same corrections you've indicated just  
25 now?

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1 A. Some were corrected but not these ones. But now I realised  
2 there is something about the school I did in my village and this is  
3 not mentioned here. Two years in Podujeve, two in my village, and  
4 that was not reflected here, and I wanted them to be amended.

5 Q. Is the summary that Mr. Bowden read just now about your years in  
6 school accurate?

7 A. Accurate. But the school that I went, there were two different  
8 schools. The first two years I did in Kerpimeh. The third and the  
9 fourth in Podujeve. It is written there that I went to the other  
10 village. It's wrong. Only two years of high school I did in my  
11 village and two in Podujeve.

12 Q. So is paragraph 1 of the statement read to you just now accurate  
13 or not, as Mr. Bowden read it to you?

14 A. Can I read it? Can I? Yes?

15 I was born in Doberdan [phoen], Podujeve commune. I went to the  
16 local school. The local school is in Doberdan. I moved in 1983,  
17 1984. It should be two years. I did them in Kerpimeh, in the high  
18 school. Then in Podujeve. That is altogether four years. It's not  
19 written there at all. It's not mentioned, my schooling.

20 Q. And you indicated that on 6 September 2021?

21 A. Yes, I did. I don't know how it happened that it's not  
22 reflected. I said it, that this is where I did the school there. I  
23 couldn't say -- I mentioned another name.

24 Q. Were you ever presented with an amended version of your 15 July  
25 statement with this amendment incorporated?

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1 A. There was something but not everything. So the mistake consists  
2 in the fact of my schooling, my education.

3 Q. Were the comments that you gave today about how long you  
4 reviewed the first and second batches, did you indicate those  
5 corrections on 6 September 2021?

6 A. Yes, yes, but I can't explain how it came about that they are  
7 not there. I explained about my school, but I can't know how it came  
8 about. I couldn't deny where I went to school. It seems as if I had  
9 done only the elementary school and nothing more.

10 Q. Mr. Gashi, when you were read on 6 September 2021 this quote, "I  
11 spent two or three hours reviewing the documents," did you inform the  
12 member of the Defence you were speaking to that that was incorrect?

13 A. I did.

14 Q. Were you ever presented an amended version of your 15 July 2021  
15 statement in Albanian with that fact corrected?

16 A. It was given to me in English. At the end, it was in English.

17 Q. So your Albanian statement of 15 July 2021 was never amended  
18 after you signed it; isn't that right?

19 A. After I signed it? No.

20 Q. And when that same member of the Defence read you from paragraph  
21 28, "We then went through the documents, although admittedly not all  
22 of them, for up to four hours," did you indicate that correction on  
23 6 September 2021?

24 A. I don't remember if I did. But when I came here, I identified  
25 those mistakes and I presented them. You can do as you like. It's

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1 not a problem for me.

2 Q. You had a preparation session with the Gucati Defence this week;  
3 isn't that correct?

4 A. Here? You mean here?

5 Q. This week, on 7 December; is that right?

6 A. Yes, yes.

7 Q. Did you review your statements at that preparation session?

8 A. No, I didn't see them, because it was a very short meeting.  
9 Five minutes.

10 Q. Did you review your statement before that preparation session?

11 A. I -- when I looked at it, I found out that there were mistakes.

12 Q. When did you look at it before the preparation session?

13 A. Yesterday or the day before, I think. I can't be accurate. I  
14 read it and I saw that my education was not there, I mean, and the  
15 mistakes that I mentioned.

16 Q. Mr. Gashi, I'd like to read to you part of an e-mail from the  
17 Gucati Defence. It was sent on 7 December 2021 at 8.14, and it's in  
18 relation to this preparation session. I said the session was on  
19 the 7th. The e-mail says it was on the evening of 6 December.  
20 Please listen to what I'm about to read, and then I'll have a couple  
21 of questions for you.

22 "On Monday, 6 December 2021, Huw Bowden, co-counsel,  
23 Eleanor Stephenson, co-counsel, and Muharem Halilaj, team member,  
24 held a witness preparation session with DW1245 (Cele Gashi) at the  
25 premises of the Kosovo Specialist Chambers, The Hague, between 7.25

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1 and 7.45.

2 "The statement of DW1245, exhibited as DHG0190-DHG0194, was  
3 formally disclosed (disclosure package 64) and in accordance with the  
4 Trial Panel's guidance concerning admission of material pursuant to  
5 Rule 154, the clarification, changes or corrections which the witness  
6 makes are as follows:

7 "The witness confirmed that the content of his statement was  
8 accurate and no alterations or amendments to the statement were  
9 necessary."

10 Mr. Gashi, does that accurately reflect what you said during the  
11 preparation session?

12 A. I may have said it. But when I came and saw it, it was with  
13 mistakes. Yesterday or the day before I saw it.

14 Q. And you indicated those mistakes to the Gucati Defence at this  
15 preparation session?

16 A. Initially, there were even more mistakes. They were corrected  
17 two or three times. There were several technical mistakes. Always  
18 there were mistakes.

19 Q. Mr. Gashi, isn't it true that the two- to three-hour estimate  
20 that you gave in July and September and 6 December, that you reviewed  
21 the first batch of materials for two to three hours, is what you  
22 actually remember for how long you reviewed that batch?

23 A. No, four times. It was impossible during the second time. I  
24 think one hour or one hour and a half, because we called the media.  
25 It says four hours. No, it was impossible for me to have four hours



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1 during the second batch.

2 Q. I asked the question in relation to the first batch. I'll  
3 repeat it.

4 Mr. Gashi, isn't it true that the two- to three-hour estimate  
5 that you gave in July and September and 6 December, that you reviewed  
6 the first batch of materials for two to three hours, is what you  
7 actually remember for how long you reviewed that batch? Please  
8 answer that question.

9 A. No, I don't think it was that long, because there were other  
10 things to do. Technical issues. I don't think I spent so much time.

11 Q. And in relation to the second batch, you just said now that it  
12 might have been an hour and an hour and a half that you reviewed the  
13 materials. You said earlier today it was 10, 15, or 20 minutes.  
14 Which is it?

15 A. No, I didn't say that. I said one -- after one and a half hour,  
16 the media representatives came. There it's written four hours.  
17 Isn't it four hours there? I didn't have four hours. But I'll --  
18 the media came after one and a half hours, and I couldn't read them  
19 when the media were there.

20 So that's why I say it's impossible for me to have said four  
21 hours. Look at yourself.

22 Q. As --

23 A. Sorry, look it yourself.

24 Q. Mr. Gashi, as of this moment, what is your estimate of how long  
25 you reviewed the second batch of materials? How long was that time?

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1 A. 20, 30 minutes. I don't think more. Just, I leafed through  
2 them as much as I could.

3 Q. Can you give any explanation for why the first time those  
4 numbers were introduced as evidence was this morning?

5 A. Today I had the opportunity to meet with you.

6 Q. So you gave these estimates, these corrections this morning,  
7 because now you're talking with me? Is that your answer?

8 A. Yes, yes.

9 Q. Mr. Gashi, you said this morning that you reviewed somewhere  
10 between 70 to 100 documents when reviewing the second batch; is that  
11 right?

12 A. I just leafed through it, I said.

13 Q. I'm sorry. Was the 70 to 100 documents in relation to the  
14 second batch or the first batch that you reviewed?

15 A. I don't -- I can't be sure whether it was the first or the  
16 second. I am not sure. But most probably the second.

17 Q. Can you explain why that isn't in your statement?

18 A. What are you saying? I mentioned somewhere in my statement that  
19 I looked at them.

20 Q. Did you indicate how many documents you reviewed when your  
21 statement was taken?

22 A. I didn't look at them carefully. I just leafed through them.  
23 Some of them didn't seem relevant to me, so I just gave it up.

24 Q. Mr. Gashi, that wasn't my question. Did you indicate how many  
25 documents you reviewed when your statement was taken? Could you

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1 please answer that question.

2 A. Yes, I looked at them, but very quickly.

3 MR. HALLING: Your Honour, if I could get the Trial Panel's  
4 assistance, if that question could be directed from the Judges to the  
5 witness. Thank you.

6 PRESIDING JUDGE SMITH: Mr. Gashi, you need to answer the  
7 question as it is asked. You were asked:

8 "Did you indicate how many documents you reviewed when your  
9 statement was taken?"

10 Please answer that. Did you make that statement?

11 THE WITNESS: [Interpretation] I said about 70. I looked at  
12 them. I just looked through -- leafed through them.

13 PRESIDING JUDGE SMITH: [Microphone not activated].

14 THE INTERPRETER: Microphone, please.

15 PRESIDING JUDGE SMITH: [Microphone not activated].

16 THE INTERPRETER: Microphone, please.

17 PRESIDING JUDGE SMITH: Did you indicate how many documents you  
18 reviewed when your statement was taken, the day you took your  
19 statement?

20 THE WITNESS: [Interpretation] 60, 70 I said, approximately.

21 PRESIDING JUDGE SMITH: And you said that on the day your  
22 statement was given?

23 THE WITNESS: [Interpretation] Are you talking about the first  
24 batch?

25 PRESIDING JUDGE SMITH: Mr. Bowden, could you please direct your

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1 client to answer that question.

2 MR. BOWDEN: Your Honour, could I perhaps make this point. That  
3 paragraph 14, of course, was not read this morning. And whether or  
4 not the content of paragraph 14, it would be fair to remind Mr. Gashi  
5 of, in those circumstances, as to the number of documents that were  
6 read. Because it is indicated in paragraph 14.

7 PRESIDING JUDGE SMITH: We need to get the answer from him on  
8 this question first. Then if you want to clarify, you can.

9 MR. BOWDEN: Your Honour, he's being asked as to the content of  
10 the statement that he gave to his representatives, and the content of  
11 that statement, of course, has not been specifically referred to, and  
12 we have paragraph 14 that he could be referred to.

13 PRESIDING JUDGE SMITH: Was 14 left out this morning or was it  
14 read?

15 MR. HALLING: It was left out this morning. There is actually  
16 not a number in that paragraph.

17 PRESIDING JUDGE SMITH: That's my understanding as well.

18 MR. BOWDEN: Well, Your Honour, we're entering the realms of "a  
19 couple" and "a few."

20 PRESIDING JUDGE SMITH: All right.

21 MR. BOWDEN: And there is reference to.

22 PRESIDING JUDGE SMITH: All right. That's all, Mr. Bowden.

23 Mr. Gashi, I expect you to give us an answer. On the day you  
24 made your statement, did you say that you had read 70 to 100 pages?

25 THE WITNESS: [Interpretation] I don't think so.

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1           PRESIDING JUDGE SMITH: Thank you. That's all.

2           Go ahead.

3           MR. HALLING: Your Honour, I note that it's three minutes to  
4 11.00. Now would be a good time to break for purposes of our  
5 questioning, if you would like the break to be taken now.

6           PRESIDING JUDGE SMITH: How much longer will you be,  
7 Mr. Halling?

8           MR. HALLING: I expect to finish in the first half of the next  
9 session.

10          PRESIDING JUDGE SMITH: Thank you very much. We will break at  
11 this time. Be back at 11.30.

12          Please escort the witness.

13                               [The witness stands down]

14                               --- Recess taken at 10.58 a.m.

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

16          PRESIDING JUDGE SMITH: You may continue, Mr. Halling.

17          MR. HALLING: I'd love to, Your Honour, but --

18          PRESIDING JUDGE SMITH: Oh, we don't have a witness.

19          MR. HALLING: -- we've misplaced the witness.

20                               [The witness takes the stand]

21          PRESIDING JUDGE SMITH: Can you hear, Mr. Gashi?

22          THE WITNESS: [Interpretation] [No interpretation].

23          PRESIDING JUDGE SMITH: Mr. Halling, you may continue.

24          MR. HALLING: Thank you, Your Honour.

25          Q. Mr. Gashi, now I would like to take you to 8 September 2020.

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1 This is the day after the first batch of materials was delivered to  
2 the War Veterans Association.

3 You said in your statement that you were at the office and the  
4 SPO was there, and you said that you were speaking with a Swedish man  
5 from the SPO. Why was the SPO at your office that day?

6 THE INTERPRETER: Microphone, please.

7 MR. HALLING:

8 Q. I'm sorry, Mr. Witness. It seems your microphone needs to be  
9 turned on. Please repeat your answer.

10 A. We understood that they had arrived when the interpreters told  
11 us.

12 Q. The SPO came back to take the documents delivered on the 7th;  
13 isn't that right?

14 A. Yes.

15 Q. And they came with a Court order for this purpose; isn't that  
16 right?

17 A. Yes, later.

18 Q. And for a while, the documents were not given back because you  
19 wanted to give them to the Kosovo prosecutor; is that correct?

20 A. That's correct. That's true.

21 Q. And the SPO responded, according to paragraph 20 of your  
22 statement: "We can stay here for one month, but no one will come  
23 from the Kosovo prosecutor's office or the local police without our  
24 approval."

25 Is that correct?

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1 A. That's right.

2 Q. At the time of this discussion, there was a kind of stand-off  
3 going on in relation to the documents such that you didn't want to  
4 give them back to the SPO; is that right?

5 A. We wanted the Kosovo prosecution's office to be there, yes.

6 Q. Did the SPO say at any point during this interaction that the  
7 War Veterans Association could keep the documents?

8 A. No. They said -- they said you may keep them, but literally  
9 they said you may call the Kosovo prosecutors but they wouldn't be  
10 able to come here without a permission, even if we were to stay here  
11 for 40 days.

12 Q. And the SPO didn't leave that day until they'd taken the  
13 documents from you; isn't that right?

14 A. That's right.

15 Q. And when the other batches were delivered on 16 and  
16 22 September, the SPO came and took those documents back too; isn't  
17 that right?

18 A. Yes.

19 Q. Mr. Gashi, in the course of this week did you watch any of the  
20 evidence of the other Defence witnesses in this case?

21 A. You mean here?

22 Q. Yes, here. This week, as other evidence was presented, did you  
23 watch that evidence be presented on video?

24 A. We have no TV at the place we're staying. Some fragments  
25 here -- here and there on the phone. Yes, that is the case.

Witness: Cele Gashi (Open Session)

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Cross-examination by Mr. Halling

1 Q. You say "fragments here and there on the phone," so that means  
2 you were watching the court hearing on your phone at times this week;  
3 is that correct?

4 A. Not all of it. Brief excerpts.

5 Q. Are you aware that during the course of this week there's been  
6 testimony as to how long batches of materials were reviewed at the  
7 WVA before the press conferences?

8 A. Can you repeat the question, please.

9 Q. Certainly. Are you aware that during the course of this week  
10 there's been testimony as to how long batches of materials were  
11 reviewed at the War Veterans Association before the press  
12 conferences?

13 A. No, no, I don't think so. I haven't seen.

14 Q. You recently had a meeting with many of the Defence witnesses in  
15 this case; isn't that right?

16 A. Yes.

17 Q. And isn't it correct that you consider yourself to be a  
18 supporter of the accused in this case?

19 A. You mean these two here?

20 Q. That's right.

21 A. Yes, I do support them.

22 Q. And that's, in fact, why you're here today, to support the  
23 accused in this case?

24 A. Yes.

25 Q. These three batches that were given to the War Veterans



Witness: Cele Gashi (Open Session)

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Cross-examination by Mr. Halling

1 Association, you wanted them to be given to the press; isn't that  
2 right?

3 A. Yes.

4 Q. Because you wanted to undermine the Kosovo Specialist Chambers;  
5 isn't that right?

6 A. Not to threaten them but to bring to light the cooperation of  
7 the Specialist Chambers with the Serbian regime. Their cooperation  
8 between the Prosecutor's Office at the Specialist Chambers and  
9 Serbia.

10 Q. Mr. Gashi, please answer the question as I've asked it. You  
11 wanted to undermine the Kosovo Specialist Chambers; isn't that right?

12 A. I gave you my opinion.

13 Q. Please answer that question with a "yes" or a "no." You wanted  
14 to undermine the Kosovo Specialist Chambers; isn't that right?

15 A. We just wanted to tell the truth.

16 MR. HALLING: Your Honours, if I could please ask the indulgence  
17 of the Court to ask that question.

18 PRESIDING JUDGE SMITH: That question, Mr. Gashi, calls for a  
19 "yes" or "no" answer. You can use either one. Do you need to have  
20 the question asked again?

21 Mr. Halling, ask the question again, please.

22 MR. HALLING: Certainly, Your Honour.

23 Q. You wanted to undermine the Kosovo Specialist Chambers; isn't  
24 that right?

25 A. I didn't want to. You did the undermining by taking materials

Witness: Cele Gashi (Open Session)

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Re-examination by Mr. Bowden

1 from Serbia. There's nothing else to add here. The materials came  
2 to us via the SPO. I did not send those batches there.

3 Q. Mr. Gashi, you said the following at paragraph 15 of your  
4 statement:

5 "We felt that the Kosovan public should be made aware of the  
6 contents of the box, as it would undermine the Kosovo Specialist  
7 Chambers, which is a body that we do not recognise as legitimate."

8 That's still how you feel, isn't it?

9 A. Yes. That's how I feel, yes.

10 MR. HALLING: No further questions, Your Honour.

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

12 My redirect, Mr. Bowden?

13 MR. BOWDEN: Your Honour, if I may ask just two questions  
14 resulting from the cross-examination.

15 PRESIDING JUDGE SMITH: Yes, go ahead.

16 Re-examination by Mr. Bowden:

17 Q. And they relate, Mr. Gashi, to the evidence that you've given  
18 about 7 September and 16 September.

19 Am I correct in saying that there are two periods of time on  
20 both of those days?

21 MR. HALLING: Your Honour, that question is vague as phrased.  
22 Maybe it's possible to reformulate the question.

23 MR. BOWDEN: [Overlapping speakers] ...

24 PRESIDING JUDGE SMITH: He hasn't finished the question yet.

25 MR. HALLING: Oh, apologies.

Witness: Cele Gashi (Open Session)

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Re-examination by Mr. Bowden

1 MR. BOWDEN:

2 Q. The first period of time being the total period of time between  
3 when the batch arrived at the WVA offices and the calling of a press  
4 conference. That's the first period of time; is that correct?

5 So it starts from the arrival of the documents, it goes on until  
6 the calling of the press conference, and that will be a clearly  
7 recorded period of time; is that correct?

8 A. Yes.

9 Q. And then there's a second period of time, which was the actual  
10 period during that time that you spent looking at the documents?

11 A. That's correct.

12 Q. So the two time-periods are not the same?

13 A. They are not.

14 Q. That's the point that you would like to make?

15 A. Yes.

16 MR. BOWDEN: Nothing further, Your Honour.

17 PRESIDING JUDGE SMITH: Thank you.

18 Mr. Worboys, anything further?

19 MR. WORBOYS: I don't think so, Your Honour, but I'm slightly  
20 confused on having to -- no, thank you, Your Honour.

21 PRESIDING JUDGE SMITH: If you want to step back and consult  
22 with your client?

23 MR. WORBOYS: It's fine. I've got the instructions. Thank you,  
24 Your Honour.

25 PRESIDING JUDGE SMITH: Okay.

1 MR. HALLING: Nothing further, Your Honour.

2 PRESIDING JUDGE SMITH: Thank you.

3 Anything from the Panel?

4 Mr. Gashi, this concludes your testimony. You may leave now.  
5 Thank you for being with us.

6 [The witness withdrew]

7 PRESIDING JUDGE SMITH: In relation to the further examination  
8 by Mr. Rees of the SPO witnesses and the SPO's request in this  
9 regard, the Panel decides as follows.

10 The Panel grants the request of the Gucati Defence to further  
11 cross-examine Witnesses 4841 and 4842 for the following reasons.

12 The delayed disclosure of the items concerned is the result of  
13 the fact that the Prosecution resisted disclosing these to the  
14 Defence and sought an order from the Panel not to disclose these.

15 Furthermore, the Panel deferred its decision on, *inter alia*,  
16 item 191 and items 195 to 200 to the end of the SPO case as it wanted  
17 the benefit from the evidence adduced during that case before  
18 deciding on this issue. The issue regarding items 201 and 202 arose  
19 later on with decisions rendered in mid-November and again this week.

20 Accordingly, the items that were ordered to be disclosed reached  
21 the Defence after the close of the Prosecution case and could not be  
22 used by the Defence at the time they cross-examined those witnesses  
23 during the Prosecution case.

24 Furthermore, the Panel notes that the SPO's argument on the  
25 effect of the evidence recently heard on the entrapment allegations,

1 but a decision on this matter will be rendered in the judgement once  
2 all of the evidence has been heard and not at this stage.

3 The Panel is mindful, however, that these witnesses are being  
4 called after the SPO's case is closed further to the Panel's  
5 indication that it will entertain such a request, and the information  
6 in Rule 102(3) materials is highly sensitive as it is said to relate  
7 to ongoing SPO investigations.

8 The Panel notes, however, that there is no requirement in the  
9 Rules or in the Order on the Conduct of the Proceedings for the  
10 cross-examining party to provide a summary in advance to the opposing  
11 party of the areas on which it proposes to cross-examine a witness.

12 For these reasons, the Panel orders the Defence to ask its  
13 questions with the following limitations: Questions as to any other  
14 topic than the materials disclosed pursuant to decisions F413 and  
15 F435 are not permitted. While the Defence is not required to  
16 provide, in advance, a summary of their intended questioning, the  
17 Defence should be ready to explain the relevance of any line of  
18 questioning pertaining to these documents.

19 Pursuant to Rule 120, for purposes of security, non-disclosure  
20 of the identity of witnesses, and the interests of justice, the  
21 Defence is directed to conduct its cross-examination in private  
22 session. The Panel will, in due course, review the transcript and  
23 order reclassification, if appropriate.

24 Noting the SPO's indication that the two witnesses are available  
25 next week from Wednesday to Friday, the Panel expects to have them

1 hear for questioning on Wednesday, 15 December, in the morning. The  
2 Defence is asked to provide the Panel and the SPO with an estimate of  
3 the amount of time it expects will be needed for the further  
4 cross-examination of each witness by 13 December 2021 at 4.00 p.m.  
5 unless such an estimate can be provided today.

6 That concludes the oral order.

7 Mr. Rees, can you provide an estimate today, or do you prefer to  
8 make use of the deadline we just set?

9 MR. REES: Your Honour, I'm happy to say that I do not envisage  
10 cross-examination for either taking more than half an hour.

11 PRESIDING JUDGE SMITH: Thank you.

12 Now as to some housekeeping matters.

13 Mr. Rees, we have been informed by the Registry that your next  
14 witness, Mr. Faik Fazliu, has not yet arrived to The Hague and is not  
15 available to testify today. We would want to start and conclude his  
16 testimony on Wednesday. Can you give us any information on this?

17 MR. REES: Can I assist in this way? We've obviously dealt with  
18 the bulk of the Defence case. We're at a stage now where we will  
19 revisit the extent to which we regard it as necessary or of  
20 assistance to call any further evidence in terms of witnesses. We  
21 will update the Court as soon as a final decision has been made about  
22 that.

23 There are further administrative matters that we require to take  
24 place before we reach the position where we can formally close the  
25 case, not least dealing with the two witnesses who are to be

1 re-called, which Your Honour has just referred to. There will also  
2 be a request for admission of items through the bar table and related  
3 matters submitted pursuant to the direction this afternoon. And we  
4 also envisage seeking to perfect proposed agreed facts with the SPO,  
5 again before we formally close our case.

6 We will obviously consider whether we are able to do that next  
7 week. If we're not formally able to, or we feel that that's our  
8 position, we'll address the Trial Panel at that stage. But we're  
9 conscious that progress needs to be made with Mr. Haradinaj's case,  
10 and the Trial Panel has given directions as to the commencement of  
11 calling evidence by the Haradinaj Defence next week, and certainly we  
12 don't envisage anything holding up the commencement of the Haradinaj  
13 case, whether or not we seek an extension of time before formally  
14 closing our case.

15 But we'll deal with those matters next week.

16 Returning back to the witness you specifically named,  
17 Your Honour. I hope Your Honour will have picked up that we are --  
18 as we are reviewing our case and whether there is a necessity to call  
19 further witnesses, it may be that there is no further oral evidence  
20 that we seek to call, other than dealing with the cross-examination  
21 of Ms. Pumper and Mr. Jukic on Wednesday morning.

22 PRESIDING JUDGE SMITH: All right. Thank you.

23 [Trial Panel confers]

24 PRESIDING JUDGE SMITH: Mr. Rees, we would like to have a little  
25 more advanced notice on this last witness. Maybe by Tuesday?

1 MR. REES: Certainly.

2 PRESIDING JUDGE SMITH: Okay. And then, secondly, we would like  
3 you to be in a position to close your case at the end of the  
4 cross-examination of those two witnesses, save for the fact that you  
5 may have a bar table motion that we could consider on paper later on.

6 We'd like to get this matter moving on, and we'd like to take  
7 the next step to the Haradinaj Defence with you having rested. Is  
8 that going to be possible? Or you could get the bar table motion to  
9 us right away and we can start dealing with it.

10 MR. REES: I certainly understand the Court's position, and we  
11 will look to be in a position to close our case as soon as we can.

12 We are conscious that the SPO has an ongoing disclosure  
13 obligation that doesn't complete -- that doesn't end at any point,  
14 and we are conscious that the closing of the evidential proceedings  
15 is yet -- is likely to be sometime after the end of next week, for  
16 example.

17 So it may be that in due course next week we seek the indulgence  
18 of the Trial Panel to, for example, permit ongoing discussions about  
19 proposed agreed facts that might be concluded at any point before the  
20 end of evidential proceedings, whether or not a party's case has  
21 closed, for example.

22 Can I address the Trial Panel again in relation to that,  
23 acknowledging the Trial Panel wishes us to be in a position to close  
24 our case formally next week?

25 PRESIDING JUDGE SMITH: Yes, you may. But bear that in mind so



1     that we are able to discuss it with some sort of timetable when you  
2     come back to the Court.

3             MR. REES: I understand.

4             PRESIDING JUDGE SMITH: Secondly, we haven't resolved  
5     Witness 1248 and whether or not that's going to be adopted as agreed  
6     facts or what.

7             MR. REES: So in relation to the witness statement of Mr. Bowden  
8     and his exhibits. As part of the draft filing that we will file this  
9     afternoon for, effectively, the bar table motion, we will indicate  
10    that we will seek admission of his statement and exhibits pursuant to  
11    Rule 153 as invited to do so by the SPO. It seems to us be the most  
12    straightforward way of dealing with it in the circumstances.

13            PRESIDING JUDGE SMITH: And I assume the Prosecution still has  
14    no objection to that admission?

15            MR. HALLING: That's correct, Your Honour.

16            PRESIDING JUDGE SMITH: Okay, that's great. Thank you.

17            [Microphone not activated] Do you have any objection to what  
18    Mr. Rees just discussed?

19            MR. WORBOYS: No, none, Your Honour. Thank you.

20            PRESIDING JUDGE SMITH: Mr. Rees, if you wish, you can just  
21    offer the Mr. Bowden testimony at this time. There is no objection.  
22    We can admit it.

23            MR. REES: I offer it, the statement and the exhibits to the  
24    statement.

25            PRESIDING JUDGE SMITH: All right. Can you give us a number for

1 the statement and exhibits for Mr. Bowden's Rule 153 admission.

2 MR. REES: If it assists --

3 PRESIDING JUDGE SMITH: No, I'm asking the Court Officer.

4 [Trial Panel and Court Officer confers]

5 PRESIDING JUDGE SMITH: [Microphone not activated].

6 MR. REES: I can assist with identifying the DHG number for both  
7 the statement and the exhibits. The statement is -- actually, the  
8 draft cannot be correct, I'm afraid, so I'm not sure I can assist  
9 right now.

10 So the statement is DHG0447-DHG0449. The exhibits referred to  
11 therein are DHG0392-DHG0404, DHG0444-DHG0446, DHG0431-DHG0443,  
12 DHG0405-DHG0418, DHG0419-DHG0430, DHG0390-DHG0391, DHG0388-DHG0389,  
13 and DHG0364-DHG0387.

14 It may make sense if a single P number is given for that, the  
15 statement and the exhibits, together. I see Madam Court Officer  
16 shaking her head. I'll leave it to Madam Court Officer then to  
17 wrestle with the technicalities.

18 [Trial Panel and Court Officer confers]

19 THE COURT OFFICER: Your Honours, the documents in the order as  
20 read by Mr. Rees: DHG0447-DHG0449 will be Exhibit 1D10;  
21 DHG0392-DHG0404 will be Exhibit 1D11; DHG0444-DHG0446 will be  
22 Exhibit 1D12; DHG0431-DHG0443 will be Exhibit 1D13; DHG0405-DHG0418  
23 will be Exhibit 1D14; DHG0419-DHG0430 will be Exhibit 1D15;  
24 DHG0390-DHG0391 will be Exhibit 1D16; DHG0388-DHG0389 will be  
25 Exhibit 1D17; and DHG0364-DHG0387 will be Exhibit 1D18.

1 Thank you, Your Honours.

2 PRESIDING JUDGE SMITH: So Exhibits 1D10 through 1D18 are  
3 admitted through Rule 153, satisfying Rule 138 for admissibility.

4 Thank you, Mr. Rees.

5 MR. REES: Thank you, Your Honour.

6 PRESIDING JUDGE SMITH: Moving on to the Haradinaj Defence.

7 Just to put it on the record, the Panel reclassified as  
8 confidential Annex 2 of F471, which is the summary of the evidence of  
9 Mr. Haradinaj.

10 Mr. Worboys, your team filed a summary of your client's evidence  
11 on 3 December. At that time, Mr. Cadman indicated to the Panel that  
12 the document was filed as a summary because Mr. Haradinaj was in  
13 quarantine and could not sign a proper statement.

14 Do you still intend to file a signed statement; and, if so,  
15 when, given that your client is sitting here in the courtroom?

16 MR. WORBOYS: Your Honour, thank you for raising that matter.  
17 It's something that I have been speaking with the Prosecution about  
18 this morning. I'm sure they'll correct me if I misrepresent  
19 anything.

20 The position is I haven't been in touch with Mr. Cadman much at  
21 all over the last 48 hours, because he is significantly unwell. What  
22 I've proposed to the Prosecution is that we will provide them with an  
23 update by Monday, latest, as to exactly what the position is. But  
24 ideally, over the weekend.

25 I can only apologise for the fact that that is where I am right

1 now, but I am sure you can appreciate I have stepped in and appearing  
2 before you somewhat last-minute notice, and we are moving forward in  
3 the best way that's possible.

4 PRESIDING JUDGE SMITH: While you're at it, it would be good by  
5 Monday to indicate whether Mr. Haradinaj intends to testify as a  
6 Rule 154 witness or not, and I'm sure the Prosecution and Mr. Rees  
7 would appreciate knowing that.

8 MR. WORBOYS: That's understood, Your Honour.

9 PRESIDING JUDGE SMITH: So let's say Monday by noon you will  
10 have filed something to let us know.

11 MR. WORBOYS: We will let you know the position by Monday noon.  
12 And it is understood on the 154 position, that is also something that  
13 I have discussed with the SPO this morning.

14 So thank you, Your Honour.

15 PRESIDING JUDGE SMITH: You've discussed but not decided?

16 MR. WORBOYS: No, I've pre-emptively raised the issue this  
17 morning, and we have agreed a way forward, which reflects what  
18 Your Honour has said as well.

19 PRESIDING JUDGE SMITH: And do you have an answer for us which  
20 of the two witnesses will be called next week?

21 MR. WORBOYS: Yes. Well, scheduling -- it should be 1254 as  
22 well.

23 PRESIDING JUDGE SMITH: I believe that's all for you,  
24 Mr. Worboys. Thank you.

25 MR. WORBOYS: Your Honour, there is one other matter which,

1 again, and I'm raising it now mindful of the fact that I've only be  
2 on my feet this week with this.

3 On the examination of the re-called witnesses, my understanding  
4 is that there is a deadline of today to file any applications. We,  
5 obviously, would hope not to ask any questions in cross-examination  
6 and simply to adopt the position that the Gucati Defence takes. The  
7 direction I would seek is whether we would need to submit a formal  
8 application to be able to rely on or adopt the position which they  
9 take or whether I can deal with it orally now, Your Honours.

10 PRESIDING JUDGE SMITH: You can deal with that orally, if you  
11 wish to.

12 MR. WORBOYS: Thank you. Well, in that case, Your Honours, we  
13 would seek to also have leave to cross-examine the further  
14 witnesses -- sorry, the former witnesses. I would hope that there  
15 will be no questions to ask and we can simply adopt the position  
16 adopted by the Gucati Defence.

17 PRESIDING JUDGE SMITH: Any problem with that, Mr. Halling?

18 MR. HALLING: No problem with that, Your Honour. The only thing  
19 we would say in response to what Mr. Worboys has just said is that we  
20 appreciate the difficulties the Haradinaj Defence have had recently.  
21 We really do require a statement for our preparations. If one is  
22 being given, it is already late. So we appreciate that Monday an  
23 update will be given. But if a statement is being provided, we would  
24 ask that it be provided by next Wednesday at the latest.

25 PRESIDING JUDGE SMITH: That's a reasonable request.

1 And, Mr. Worboys, that will be what you're ordered to do.

2 MR. WORBOYS: Yes, Your Honour. That's understood. And it also  
3 reflects the discussions which I've had with the SPO.

4 PRESIDING JUDGE SMITH: Thank you.

5 In any case, the Defence for Mr. Haradinaj should be ready to  
6 have its opening statement on Wednesday, 15 December. We don't know  
7 at this point whether we can get to it on Wednesday, depending on the  
8 witnesses still to be heard. But if we can, we will have your  
9 opening on that day and start the evidence on Thursday, 16 December.

10 If the Wednesday witnesses take up both the morning sessions, we  
11 will have the Haradinaj Defence opening statement on Thursday  
12 morning, with the evidence starting immediately afterwards.  
13 Understood?

14 MR. WORBOYS: Your Honour, that is fully understood and I'm  
15 prepared.

16 PRESIDING JUDGE SMITH: Thank you.

17 Anything else to be brought to our attention?

18 Thank you for your attendance. This was a long week and I think  
19 we accomplished quite a bit altogether. So thank you for that  
20 cooperation.

21 Thank you to the translators and court reporters and security  
22 personnel for all of their efforts.

23 We'll see you Wednesday morning at 9.30.

24 --- Whereupon the hearing adjourned at 12.06 p.m.

25