

1 Thursday, 21 October 2021

2 [Open session]

3 [The accused entered court]

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

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

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

10 PRESIDING JUDGE SMITH: I note that Mr. Whiting is not here
11 today.

12 Any change with the Defence?

13 MR. REES: No, Your Honour, thank you.

14 MR. CADMAN: No, Your Honour.

15 PRESIDING JUDGE SMITH: Thank you.

16 I note that Mr. Gucati and Mr. Haradinaj are both in the
17 courtroom.

18 Today the Defence will continue its cross-examination of
19 Ms. Pumper. As I said yesterday, we will be sitting in the first two
20 sessions today until 1.00, and we will adjourn for the week,
21 continuing Ms. Pumper's testimony, if necessary, on Monday.

22 In the afternoon at 2.30, the Panel will hold an *ex parte*
23 session with the Prosecution on ongoing Rule 102(3) matters.

24 Now, before we bring back the witness, the Panel will address
25 some preliminary matters.

1 First in relation to the tendering of exhibits.

2 As you all remember, the Panel deferred a number of exhibits
3 tendered through Ms. Pumper until the end of her testimony. When
4 that discussion comes up, the Prosecution is expected to read out a
5 concise summary of the witness's declarations in the open court in
6 open session. This is in line with paragraph 93 of the Order on the
7 Conduct of Proceedings. I note that the Prosecution provided these
8 summaries in F367 Annex 1.

9 At the same time, the Prosecution is also expected to indicate,
10 for each tendered exhibit, its proposed classification. The Defence
11 will be asked to give an indication of its position on the proposed
12 classification. If an exhibit is proposed to be confidential, the
13 SPO should also indicate if a public redacted version can be made
14 available; and, if so, by when.

15 For the future, whenever a party wishes to tender an exhibit, it
16 will also indicate its proposed classification. Parties are invited
17 to discuss the matter of classification before the issue is brought
18 before the Panel with a view to find an agreeable position, if
19 possible.

20 This concludes the oral order on the tendering of exhibits.

21 I again remind both parties that when they use a document in
22 court with a witness, they should identify its exhibit number, if it
23 has one, or an MFI number if one was given to it. And if there's a
24 question about that, you can quickly consult with the Court Officer
25 for the number. This is important to ensure the clarity of the

1 record.

2 Now, Mr. Cadman, you indicated yesterday that you expect to call
3 another expert witness. Can you please tell the Panel what the topic
4 of the expert opinion of this witness refers to, and how long you
5 would need to prepare and file his or her final expert report?

6 MR. CADMAN: Your Honour, I would expect to be able to file a
7 relatively brief expert report. It's on investigative standards and
8 chain of custody matters. We have identified an expert, Dr. William
9 Wiley, who is an experienced investigator, who would be willing to
10 provide a statement or a report.

11 I will be able to confirm, by the end of today, and can report
12 back the timeline, but I have impressed upon him that the proceedings
13 are ongoing and we would have limited time in which to file that
14 report.

15 The application will be made today for leave to file that
16 report, and I'm in Your Honours' hands as to the timeline. But I
17 have impressed upon Dr. Wiley that we will be given limited time to
18 prepare a report.

19 PRESIDING JUDGE SMITH: And you will have a definite time yet
20 today?

21 MR. CADMAN: I will.

22 PRESIDING JUDGE SMITH: We'll rule on that Monday, then. Or
23 possibly even today if you get it on file early enough.

24 Madam Court Usher, please bring the witness in.

25 [The witness takes the stand]

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1165

1 PRESIDING JUDGE SMITH: Good morning, Ms. Pumper. You may be
2 seated.

3 THE WITNESS: Good morning.

4 PRESIDING JUDGE SMITH: We are going to continue with your
5 testimony today, Ms. Pumper.

6 Mr. Rees, you may continue.

7 MR. REES: Thank you, Your Honour. I'll just wait for the
8 witness to settle.

9 PRESIDING JUDGE SMITH: Thank you.

10 THE WITNESS: I'm settled.

11 MR. REES: Okay.

12 WITNESS: ZDENKA PUMPER [Resumed]

13 Cross-examination by Mr. Rees: [Continued]

14 Q. We finished yesterday, Ms. Pumper, just by looking at the
15 registration check that was done on that vehicle index number for the
16 Volkswagen Passat that was provided by Mr. Gucati to an SPO officer
17 on 17 September relating to the delivery of documents to the KLA War
18 Veterans Association headquarters the day before. And we've seen in
19 that check the request had taken place either the 25th or the 26th
20 November with the check coming back the next day, the 27th of
21 November. And we saw the name of the person that was the -- to which
22 the index number was registered. Do you remember that name?

23 A. I don't.

24 MR. REES: Can we put 089049 back up on the screen.

25 PRESIDING JUDGE SMITH: What's the classification of that

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1166

1 document?

2 MR. REES: It's a redacted document. I don't think there is any
3 further classification on it. There's a redaction in relation to an
4 address, but the -- the name of the person has never been redacted.
5 I don't regard it as a name that requires us to go into private
6 session.

7 Then again, the Trial Panel has taken a different view on a
8 number of occasions to me about this, so I'm in the Trial Panel's
9 hands as to whether we do or not.

10 PRESIDING JUDGE SMITH: Is there some reason you need his name?
11 We're all aware of what occurred -- we're all aware of what occurred.
12 We're aware of the license number. We're aware of the fact that the
13 notification was made. It doesn't seem necessary, and there's a
14 privacy issue.

15 MR. REES: I can certainly continue without referring to the
16 name.

17 PRESIDING JUDGE SMITH: Do that, please.

18 MR. REES: Although, I had understood the presumption being that
19 these are public proceedings, so the presumption was not to
20 demonstrate the necessity of referring to something in public but,
21 rather, the necessity of not referring to something in public.

22 But I am, as always, in the Trial Panel's hands over this.

23 PRESIDING JUDGE SMITH: All right, then. Do not use the name.

24 MR. REES: All right.

25 Q. So you can see the name, there, please, Ms. Pumper?

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1167

1 A. I can, yes.

2 Q. And that person was belatedly invited to be spoken to by the
3 SPO, and that occurred on 18 December, and we'll come on to that in a
4 moment.

5 Are you aware that on 18 December there was another colleague of
6 yours who spotted that person, when he arrived to be spoken to by the
7 SPO at the interview location, firstly, the vehicle that he was
8 driving was the vehicle with that index number?

9 A. I have to apologise. Can you repeat this again?

10 Q. So are you aware that when that individual attended the
11 interview location on 18 December, he was seen by a colleague of
12 yours -- at least I assume it's a colleague, because the name is
13 redacted, so it might even be you. Was seen by an SPO officer to
14 arrive in a vehicle that had the registration plate that Mr. Gucati
15 had provided?

16 A. I'm unaware of this.

17 Q. In a car that matched the description that Mr. Gucati provided?

18 A. I'm unaware of this.

19 Q. And the SPO officer noted that he had an identifiable gait,
20 that's this individual, that matched the gait seen by the journalist
21 who recorded the man delivering documents to the KLA WVA on
22 16 September? Are you aware of that as well?

23 MS. BOLICI: Your Honour, if possible, there is an objection
24 because the witness has already answered she is unaware of the
25 circumstances.

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1168

1 PRESIDING JUDGE SMITH: You can answer if you're aware of
2 anything -- you can answer that question.

3 THE WITNESS: I'm unaware.

4 MR. REES:

5 Q. So are you aware that that person was then interviewed on 18
6 December then?

7 PRESIDING JUDGE SMITH: Was what?

8 MR. REES:

9 Q. Was interviewed on 18 December.

10 A. I'm aware to that effect that I recall that my colleague has
11 mentioned that in passing.

12 Q. Right. Can I ask which colleague?

13 MS. BOLICI: I would request that the names of SPO staff members
14 are not repeated in open court.

15 PRESIDING JUDGE SMITH: Sustained.

16 MR. REES: So can we go into private session.

17 PRESIDING JUDGE SMITH: Just for that one question?

18 MR. REES: Yes.

19 PRESIDING JUDGE SMITH: Any objection?

20 MS. BOLICI: Yes, Your Honour. There is an objection in terms
21 of relevance of who is the SPO colleague who --

22 PRESIDING JUDGE SMITH: [Microphone not activated]. Oh, it
23 could be relevant. We will go into private session.

24 THE INTERPRETER: Microphone for Your Honour, please.

25 PRESIDING JUDGE SMITH: We will go into private session.

Witness: Zdenka Pumper (Resumed) (Private Session)
Cross-examination by Mr. Rees (Continued)

Page 1169

1 [Private session]

2 [Private session text removed]

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10 [Open session]

11 THE COURT OFFICER: We're back in open session, Your Honours.

12 PRESIDING JUDGE SMITH: Thank you. We are in open session.

13 Mr. Rees.

14 MR. REES:

15 Q. And that colleague of yours didn't mention that the individual
16 who attended for interview on that date was driving the car that
17 matched the description given with the number plate and had an
18 identifiable gait that matched the person seen on the video footage
19 recorded by the journalist delivering documents?

20 A. No, he did not.

21 MR. REES: Can we look, please, at the interview which is
22 088395-TR-ET, Part 1 RED.

23 PRESIDING JUDGE SMITH: Is there a P number for that document?

24 MR. REES: There's not. Can I say, Your Honour, I've done my
25 best to look at the documents that I intend to refer the witness to

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1170

1 today and compare them with the ongoing list that's being developed
2 for P numbers and P MFI numbers.

3 PRESIDING JUDGE SMITH: Okay.

4 MR. REES: I think there's one that I identified.

5 PRESIDING JUDGE SMITH: Okay. Go ahead, thank you.

6 MR. REES: I have already spoken to Madam Court Officer before
7 the Court came to session, and I've explained that if I missed
8 something, she will --

9 PRESIDING JUDGE SMITH: Okay. That's --

10 MR. REES: -- point it out to me.

11 PRESIDING JUDGE SMITH: That's a good practice.

12 MR. REES: But I will try and do it myself where I've identified
13 them.

14 PRESIDING JUDGE SMITH: Good practice. Thank you.

15 THE COURT OFFICER: Your Honours, could Specialist Counsel
16 confirm for the record is it ERN 088395 or --

17 MR. REES: [Overlapping speakers] ... 935.

18 THE COURT OFFICER: -- 935? 935.

19 MR. REES: 935-TR-ET, Part 1 RED.

20 Q. So we can see the first page of the interview. The interview
21 was conducted by the Prosecutor of the -- sorry, an
22 Associate Prosecutor of the SPO's office. I take it I won't name the
23 individual.

24 PRESIDING JUDGE SMITH: Correct.

25 MR. REES:

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1171

1 Q. But you can see the individual there, Ms. Pumper. We can all
2 see the name.

3 A. I can, yes.

4 Q. And also an investigator. Again, I won't name the name. We can
5 see it there. And an interpreter. And the individual had counsel to
6 assist.

7 MR. REES: But if you look, please, at page 3, line 17, after
8 some prolonged introductions.

9 Q. We can see it's made clear that he was interviewed in the
10 capacity of a witness.

11 As an experienced investigator of 20 years, can you assist as to
12 why he was interviewed in the capacity of a witness as opposed to a
13 suspect?

14 MS. BOLICI: Objection, Your Honour. The counsel is asking for
15 the legal opinion of the witness. She's not here to provide legal
16 opinions to the Court.

17 PRESIDING JUDGE SMITH: Sustained.

18 MR. REES:

19 Q. From what you know now, would you have regarded him as a
20 potential suspect in your experience?

21 MS. BOLICI: And again. It's the same kind of question with
22 different words.

23 PRESIDING JUDGE SMITH: Sustained.

24 MR. REES:

25 Q. Did you play any role in the coordination of this investigation,

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1172

1 Ms. Pumper?

2 A. I did not, with the exception of the search at the War Veterans
3 Association and the review of the batches.

4 Q. Who did? Who was responsible for the coordination of the
5 investigation?

6 A. I was told by the Deputy Specialist Prosecutor that it was him
7 and the Specialist Prosecutor.

8 Q. Right. Are we going to be able to ask the person who was
9 responsible for coordinating this investigation any questions during
10 the course of this trial?

11 PRESIDING JUDGE SMITH: Is that a question for the Court or for
12 the witness or --

13 MR. REES: [Overlapping speakers] ... it's a question for
14 Ms. Pumper.

15 PRESIDING JUDGE SMITH: Pardon?

16 MR. REES: It's a question for Ms. Pumper. She may not be able
17 to answer --

18 PRESIDING JUDGE SMITH: [Overlapping speakers] ... do you know
19 that, ma'am?

20 THE WITNESS: I cannot answer this question.

21 MS. BOLICI: [Overlapping speakers] ... There's a objection,
22 Your Honour.

23 PRESIDING JUDGE SMITH: I understand.

24 MS. BOLICI: Yes.

25 PRESIDING JUDGE SMITH: Answer the question.

1 THE WITNESS: I cannot answer this question. I cannot answer
2 this question.

3 MR. REES:

4 Q. As an experienced investigator, you would agree, would you not,
5 that criminal litigation is not a game to be played, is it?

6 MS. BOLICI: Your Honour, it's argumentative and it's not a
7 question for the witness.

8 PRESIDING JUDGE SMITH: It is argumentative. Sustained.

9 MR. REES:

10 Q. We can see that the -- after some further introductory questions
11 about father's occupation and brothers and sisters, we eventually get
12 to the meat of the interview at page 6, line 18, please.

13 Question:

14 "You told me that the license plate is ..."

15 Repeats, I'm not going to say it again.

16 PRESIDING JUDGE SMITH: Thank you.

17 MR. REES:

18 Q. "Correct?"

19 Answer:

20 "Yes."

21 "Are you the owner of that vehicle?"

22 "Yes."

23 MS. BOLICI: Your Honour, objection again. I think the
24 classification of this document is confidential, and, in addition,
25 the witness, I think, made clear that she had not involvement with

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1174

1 this particular interview, so it's not established what the base is
2 for the questions on these interviews to this witness.

3 PRESIDING JUDGE SMITH: Why are you asking this witness about
4 this interview that she did not attend?

5 MR. REES: She is an experienced investigator of 20 years. She
6 has played a part in this investigation, albeit, she says, limited,
7 and we have no other means of dealing with this material because the
8 SPO are not calling the people who have been said to be responsible
9 for the coordination of the investigation.

10 So I intend to go through this. If it requires us to go to
11 private session, then I ask for that to be done. It is a short
12 passage, as we will see, which is very much the point of the
13 questioning.

14 PRESIDING JUDGE SMITH: I'll allow you to question her, briefly,
15 about this. Please avoid any identifying information by name,
16 address, or license plate number. And if you need to go beyond that,
17 we will go into private session.

18 MR. REES: I don't think -- I --

19 PRESIDING JUDGE SMITH: And let's limit it to what she actually
20 knows and not opinions about the procedure, because she wasn't there.
21 She had no effect on it.

22 MR. REES: Thank you, Your Honour.

23 Q. So we -- at the part of the transcript where he had just
24 confirmed he was the owner of the vehicle.

25 "And how long have you owned it for?"

1 "Since mid-February this year."

2 So that's 2020.

3 "And has that vehicle always had that license plate or has it
4 changed at any time?"

5 "It changed when I purchased it," going over the page.

6 PRESIDING JUDGE SMITH: Can we have the page changed.

7 MR. REES:

8 Q. "So since February, it's been the same one that we just
9 mentioned; right?"

10 "Yes.

11 "And are you the only driver of this vehicle, or do other people
12 also use it?"

13 Answer:

14 "I ... I am the -- 90 per cent of the time I am the person who
15 drives it. Very rarely my wife uses it too. And my father."

16 There is then a short passage in which they talk about whether
17 working for home or in the office, and he confirms back in the office
18 from June.

19 And then at line 23 of page 7, the Prosecutor puts:

20 "So we have information that a vehicle with the license
21 plate ..." and then it's referred to "... was seen in the vicinity of
22 the KLA War Veterans Association" on the date that I just mentioned,
23 16 September 2020. Over the page please, line 4.

24 THE INTERPRETER: The interpreters kindly ask the speaker to
25 read slowly. It's impossible to interpret at this speed. Thank you

1 very much.

2 PRESIDING JUDGE SMITH: Please read a little slower.

3 MR. REES:

4 Q. "No.

5 "Have you ever been to the offices of the War Veterans
6 Association?

7 "No.

8 "So just to locate you better," this is what the Prosecutor
9 says, then gives the address of the KLA War Veterans Association in
10 Prishtine and asks:

11 "Does that address sound familiar to you?

12 "No.

13 "Have you heard anything perhaps in the news concerning ...
14 documents which were delivered to the KLA War Veterans Association
15 and then made public by the same association?

16 "I heard on the news, but I do not know anything in this
17 regard."

18 PRESIDING JUDGE SMITH: Slower reading, please.

19 MR. REES:

20 Q. Question:

21 "So you don't have any information about who provided those
22 documents or who may have been involved in this incident by any
23 chance?"

24 Answer:

25 "No."

1 Over the page, please, line 3:

2 "Do you by any chance remember whether you had lent your car to
3 anyone on that day, the 16th of September, 2020, or around that day?
4 Because I know it's very specific.

5 "No, I did not lend it to anyone.

6 "Do you know anyone who works for or is associated with the KLA
7 War Veterans Association?

8 "No.

9 "Do you know or have you ever spoken to Nasim Haradinaj, for
10 example?

11 "No.

12 "To Hysni Gucati?

13 "No.

14 "Faton Klinaku?

15 "No.

16 "Mexhin Shala?

17 "No.

18 "We have no further questions for you today."

19 Following that briefest of interviews, were you asked to
20 undertake any further investigations into, for example, the
21 credibility of that individual?

22 A. I have not seen this interview and I have not been asked to do
23 any investigation into this matter.

24 Q. So no investigations, for example, that might corroborate that
25 brief account?

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1178

1 MS. BOLICI: Objection. The question has already been asked and
2 answered.

3 PRESIDING JUDGE SMITH: Asked and answered. Next question.

4 MR. REES: I specifically asked about credibility issues.

5 PRESIDING JUDGE SMITH: You asked her:

6 "... were you asked to undertake any further investigations
7 into, for example, the credibility of that individual?"

8 And she said no. And what's this question?

9 MR. REES: I wanted to ask her --

10 PRESIDING JUDGE SMITH: I'm reading it. Just a moment. So you
11 said:

12 "So no investigations, for example, that might corroborate ..."

13 That has to do with credibility. No, she's answered the
14 question.

15 MR. REES:

16 Q. Do you know if anyone else was asked to undertake any further
17 investigations into the credibility of that witness?

18 A. I have no idea.

19 Q. Do you know who would have an idea and can tell us whether
20 anyone was asked to undertake any further investigations into the
21 credibility of that witness?

22 A. I would refer, again, to the Specialist Prosecutor and to the
23 Deputy Specialist Prosecutor.

24 Q. Well, you can refer it to the Specialist Prosecutor but,
25 unfortunately, we can't.

1 MR. REES: Can I offer that exhibit to be admitted?

2 PRESIDING JUDGE SMITH: Any objection?

3 MS. BOLICI: Yes, an objection, considering that it would fall
4 under Rule 153 to 155 of the rules, and there is no indication that
5 any of the requirements of the relevance rules are met.

6 PRESIDING JUDGE SMITH: I'll defer ruling on that. It needs to
7 have an MFI number.

8 MR. REES: Thank you, Your Honour.

9 THE COURT OFFICER: Your Honours, that will be 1D1 MFI.

10 PRESIDING JUDGE SMITH: Thank you.

11 MS. BOLICI: And furthermore, if I may add, there is no
12 relevance to the charges in this indictment.

13 PRESIDING JUDGE SMITH: Well, understood.

14 Go ahead, Mr. Rees.

15 MR. REES: I intend to move on rather than argue that point now.
16 I understand that's the position the Trial Panel wishes me to take.

17 PRESIDING JUDGE SMITH: The Court will take all of that into
18 consideration and rule on it. I understand the issue.

19 MR. REES: Yes.

20 PRESIDING JUDGE SMITH: Okay.

21 MR. REES:

22 Q. Is there an SPO officer who has been designated as the officer
23 responsible for disclosure to the accused in this matter of material
24 that may assist them?

25 A. I have no knowledge.

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1180

1 Q. You said yesterday that you weren't particularly familiar with
2 the Rules of Procedure; is that right?

3 A. Can you rephrase, please?

4 Q. That you weren't -- you hadn't read the Rules of Procedure in
5 any great detail, you said?

6 A. What I believe I've said, I apologise if that didn't come
7 across, that I have not read whether the chief prosecutor -- whether
8 it was legal for him to announce the indictment.

9 Q. Are you aware that there are obligations on the Prosecution to
10 provide to an accused any information the Specialist Prosecutor has
11 in his or her custody and control or knowledge which may reasonably
12 suggest the innocence or mitigate the guilt of the accused or affect
13 the credibility or reliability of the Specialist Prosecutor's
14 evidence?

15 MS. BOLICI: Objection, Your Honour. He's asking for a legal
16 opinion of the witness about the applicable rules on disclosure.
17 This is not a relevant question for this witness.

18 PRESIDING JUDGE SMITH: This witness has already indicated she
19 isn't acquainted with the Rules of Procedure in detail, and that is a
20 legal opinion that she's not qualified to give at this point, and
21 I'll sustain the objection.

22 MR. REES: Your Honour, I asked whether she was aware about the
23 obligations.

24 PRESIDING JUDGE SMITH: And she said -- all right.

25 Are you aware about the Rules of Procedure in general?

1 THE WITNESS: I have an overall idea, yes.

2 MR. REES: Thank you. I'll ask her specifically about Rule 103,
3 if I may, and if she had any knowledge of that?

4 PRESIDING JUDGE SMITH: Are you specifically acquainted with
5 Rule 103?

6 THE WITNESS: I am not.

7 MR. REES:

8 Q. Well, let's leave a label. Listen carefully to the words. So
9 I'm just going to read the rule.

10 PRESIDING JUDGE SMITH: Mr. Rees, this is an improper question
11 for her. She's unaware of it and she's not going to be put on that
12 spot, so move on. I'm sustaining the Prosecution's objection.

13 MR. REES: Okay.

14 Q. So, Ms. Pumper, who is aware in the SPO and is responsible for
15 bringing to the Specialist Prosecutor's attention material that may
16 reasonably suggest the innocence or mitigate the guilt of the accused
17 or affect the credibility or reliability of the
18 Specialist Prosecutor's evidence?

19 A. I would refer you to the Deputy Specialist Prosecutor and to the
20 Specialist Prosecutor.

21 Q. Yes, but, Ms. Pumper, as talented and hard working as the
22 Specialist Prosecutor and the Deputy Specialist Prosecutor no doubt
23 are, they are not responsible, are they, for investigating matters in
24 the first instance?

25 MS. BOLICI: Your Honour, there is an objection. The question

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1182

1 has been asked and answered several times.

2 PRESIDING JUDGE SMITH: It has. Move on. [Microphone not
3 activated].

4 MR. REES: Your Honour, at this point can I ask for the witness
5 to withdraw, because I'd like to address the Trial Panel about these
6 matters and explain further the relevance and the line of
7 questioning.

8 PRESIDING JUDGE SMITH: [Microphone not activated] You want to go
9 into private session?

10 MR. REES: Not private session. I'd like the witness to
11 withdraw because I'd like to address argument about this matter.

12 [Trial Panel confers]

13 PRESIDING JUDGE SMITH: All right, briefly.

14 THE INTERPRETER: Microphone, please.

15 PRESIDING JUDGE SMITH: Briefly. Madam Usher, would you please
16 escort the witness out of the room temporarily.

17 [The witness stands down]

18 PRESIDING JUDGE SMITH: All right, Mr. Rees.

19 MR. REES: Your Honour was very kind enough to clarify, at the
20 end of the witness's first day of testimony, that Ms. Pumper was here
21 to assist and to testify concerning the normal operating procedures
22 in her office of which she is aware.

23 I am seeking to explore with her the normal operating procedures
24 in her office of which she is aware. If I can just expand upon that,
25 because I understand that there is an element of laying the

1 groundwork for any submission.

2 It must be, one would have thought, a normal operating procedure
3 of the SPO that they are alive to their obligations under Rule 103 to
4 make disclosure of material "which may reasonably suggest the
5 innocence or mitigate the guilt of the accused or affect the
6 credibility or reliability of the Specialist Prosecutor's evidence."

7 PRESIDING JUDGE SMITH: Slow down, please.

8 MR. REES: And to make disclosure under Rule 102(3) of material
9 which is deemed by the Defence to be material to its preparation.
10 And as we've already clarified, of course, that requires a proactive
11 approach from the Specialist Prosecutor in the first place, to
12 consider that question for the purpose of preparing a Rule 102(3)
13 notice and so on.

14 Now, that does not mean, of course, it would be rather trite and
15 facile of anybody to suggest that that means, under Rule 103 and
16 Rule 102, that the Specialist Prosecutor himself is required to
17 review every single piece of paper that officers working underneath
18 him produce in the course of their investigations.

19 One would have thought it was normal operating procedure for
20 there to be a process in place by which other members of the SPO
21 staff closer to the investigations themselves are designated to
22 review the material that is being obtained in the possession of the
23 SPO office and bring to the attention of the Specialist Prosecutor or
24 other persons designated or delegated to which delegation has been
25 made material which may meet Rule 103 and Rule 102(3). That would be

1 a normal operating procedure, rather than anticipate if the
2 Specialist Prosecutor or, indeed, the Deputy Specialist Prosecutor to
3 trawl through every piece of paper that his office produces.

4 I wish to ask about the normal operating procedure that she is
5 aware of. And if she is not aware of any such normal operating
6 procedure, I wish to ask her how, in her experience, these matters do
7 work. Because if she then says "I am not aware of any such
8 procedure," that also is a matter that the Trial Panel ought to be
9 aware of when considering both disclosure issues that are ongoing,
10 and will continue to on-go, because, of course, the obligation on the
11 Specialist Prosecutor to make disclosure is an ongoing one throughout
12 the course of the trial and, indeed, after, and it's also relevant,
13 in particular, to the issue and the plea of police incitement that we
14 are pressing.

15 Those are my submissions, and that's why I wish to ask this
16 witness about these matters.

17 MS. BOLICI: Your Honour, I would like to have a chance to
18 reply, if possible.

19 [Trial Panel confers]

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

21 Judge Mettraux has asked permission to ask a question of you.

22 JUDGE METTRAUX: Thank you, Judge Smith. And we will come to
23 the Prosecution in a second.

24 As you probably, and properly, read it out, Mr. Rees, the order
25 was that she would be giving evidence about the normal operating

1 procedures in her office of which she is aware.

2 Now, you are asking her questions, in effect, about the
3 disclosure process within the office. Shouldn't you, perhaps, start
4 with a question as to her knowledge, if any, about that matter? She
5 hasn't given evidence to this point that would suggest that she has
6 any role or particular knowledge of that process.

7 Now, if that question is asked and she gives you an indication
8 that she has no involvement and no knowledge of that process, that
9 should put an end to that line of questioning, shouldn't it?

10 MR. REES: Your Honour, she began her evidence by saying that
11 she is a investigations coordinator. She is responsible for
12 coordinating investigations. She might have then gone on to limit
13 her role in this case, but her position is involved in the
14 coordination of investigations.

15 And I'm not asking about some esoteric area of the rules. I am
16 talking about a process which is at the very heart of any
17 investigation and prosecution, which is the fair approach to
18 disclosure of material that is required to be disclosed to the
19 Defence. That is something that -- and Judge Mettraux, I can see the
20 red light going on, but if I can just finish the point.

21 That is something where if the witness says she is not aware of
22 it, that doesn't mean that I have to accept it. I am entitled to
23 probe that, because I may well address the Trial Panel in due course
24 as to whether the Trial Panel thought it was credible that
25 Ms. Pumper, a coordinations investigator of some five years

1 experience at the SPO since it began, responsible for conducting a
2 search in this case - which I will come on to, to deal with - who had
3 worked for the SITF before that, and many years experience before
4 that for both EULEX and other European modern police forces, a denial
5 by her that she's completely unaware of any approach to disclosure, a
6 systemic approach to disclosure, I may well address the Trial Panel
7 that is wholly incredible in due course.

8 JUDGE METTRAUX: Well, the red light has come on, Mr. Rees.

9 First thing. You seem to assume that as an investigating
10 coordinator she would have a role in the disclosure process. Now,
11 you haven't established that. If you want to ask her that question,
12 ask her that question. It's an assumption that is not, for the time
13 being, on the record.

14 The second thing is if you want to be in a position to make the
15 submission that you have indicated at the end of your submission that
16 what she says is not credible, you will have to put that proposition
17 to her, in fairness, so that she can address it. But, again, it's a
18 suggestion you may wish to consider if you want to continue asking
19 questions about issues of disclosure, that you establish whether she
20 has any role in relation to this matter and, if so, what that role
21 is. If the answer is otherwise, you may consider - and, again, this
22 is a suggestion - moving on to another topic.

23 MR. REES: And, of course, Your Honour, firstly, of course if I
24 wish to make that submission, that her evidence lacks credibility, I
25 must put that to her. And I must, before I put that submission to

1 her, explore matters with her as a matter of fairness because the
2 line of cross-examination does not work by me simply standing up and
3 saying to the witness: "I find your evidence incredible."

4 I have to explore the groundwork first. And that means being
5 allowed to have a proper opportunity to question the witness, even if
6 her answers are "no, I'm not aware." That doesn't mean that I then
7 have to accept it and move on, in my respectful submission.

8 PRESIDING JUDGE SMITH: Thank you, Mr. Rees.

9 Prosecutor, you may respond.

10 MS. BOLICI: Yes. Just a few points, Your Honour.

11 The first one is that the Defence is stating its case through
12 questions put to this witness, while the Defence will have every
13 opportunity to state its case in the course of this trial. It is not
14 clear what is the purpose of doing so by questions to a witness who
15 has specifically stated that has no knowledge about the matters the
16 counsel is talking about.

17 And, secondly, the disclosure in this case has been litigated by
18 the parties at length. Had the counsel wished to raise any other
19 matters in relation to the disclosure process, he should have done so
20 in due course and not through questions put to a witness.

21 Third, the witness not only stated that she didn't have any role
22 in the disclosure process but said that she's not aware of the
23 meaning of the rules on disclosure; in particular, Rule 103. So any
24 further line of questioning in this respect would be already
25 superfluous.

1 [Trial Panel confers]

2 PRESIDING JUDGE SMITH: Judge Gaynor.

3 JUDGE GAYNOR: Ms. Bolici, just in respect of your submission
4 that you've just made, where you referred to the case of the
5 cross-examining party.

6 Now, under Rule 143(3), where the witness is able to give
7 evidence relevant to the case of the cross-examining party, he or she
8 may be examined on the subject matter of that case provided that the
9 cross-examining party puts to that witness the nature of that case.

10 So what exactly is the problem with the cross-examining party
11 putting the nature of its case to the witness?

12 MS. BOLICI: The nature of the case that the Defence wants to
13 advance has not been put to the witness yet, so this is the first
14 point.

15 JUDGE GAYNOR: So your request is that the cross-examining party
16 should put the case squarely to the witness?

17 MS. BOLICI: This would be the first step. But also, like, I
18 argue in terms of relevance of whatever question the counsel is
19 putting to the witness, and competence of the witness to answer this
20 question above all, when she's stated already that she's not
21 competent to speak about these matters.

22 JUDGE GAYNOR: Thank you for those clarifications.

23 [Trial Panel confers]

24 PRESIDING JUDGE SMITH: Mr. Rees, the witness has given answers
25 that would lead me to believe that she does not know anything about

1 Rule 103, but I will go along with Judge Mettraux's advice to you,
2 that you first ask her the question, whether she does -- what her
3 role -- whether she had any role in 103 or 102 disclosures.

4 Unfortunately for you if she says she did not, that will
5 probably be the end of that line of questioning.

6 So we will call the witness back into the --

7 MR. REES: Well, before the witness does return. I do
8 understand the Trial Panel's position, of course. But can I ask that
9 I can develop the point in this regard also. If she says she's not
10 involved in it, am I allowed to develop how material, for example,
11 that she comes across in her role as an investigator, which may meet
12 that definition, is passed up the chain and brought to the attention
13 of the Prosecutor so that it is disclosed?

14 Because if it is the case, Your Honour, that there isn't such a
15 process, that also is relevant to both the Trial Panel's decision on
16 disclosure matters but also the plea of police incitement.

17 PRESIDING JUDGE SMITH: I believe she testified in quite a bit
18 of detail about exactly how evidence that comes into her possession
19 goes into the system and goes up the line.

20 But getting to the point of running the case is not her job.

21 MR. REES: No, but we're not dealing with the submission of
22 material that the SPO wish to rely on. I want to ask her about
23 material that she might come across as material that is to be
24 disclosed because it undermines the SPO's case.

25 PRESIDING JUDGE SMITH: Well, I guess we disagree about what she

1 testified to, because she talked about not deciding what was and was
2 not relevant. She put the evidence she found into the system and
3 tracked very accurately what happens to that.

4 MR. REES: She also said in evidence, when I cross-examined her,
5 that not all materials that they come across are submitted into the
6 ZyLAB system. She did say that, Your Honour. So perhaps I can
7 clarify that matter, at least.

8 PRESIDING JUDGE SMITH: Let's start out with -- just ask the
9 question that was suggested to you, and we will rule on anything
10 further beyond that.

11 Madam Usher, please bring the witness back in.

12 I won't make a ruling, Madam Prosecutor, on your objection at
13 this time, but it's noted, and I will rule on it shortly, if
14 necessary.

15 [The witness takes the stand]

16 PRESIDING JUDGE SMITH: Be seated, Ms. Pumper.

17 THE WITNESS: Thank you.

18 PRESIDING JUDGE SMITH: Ms. Pumper, the Defence attorney,
19 Mr. Rees, is going to ask you a very specific question about your
20 knowledge and/or of your process, your participation in issues of
21 disclosure. And if you can answer that question, he can ask it and
22 you can answer it.

23 THE WITNESS: Thank you.

24 MR. REES:

25 Q. Are you involved, as an investigator and coordinator, in the

1 process of bringing to the Prosecutor's attention material which
2 might help the accused in any investigation or prosecution?

3 A. That has nothing to do with my position. I would do that
4 anyway.

5 Q. Is there a specific role then in an investigation for a person
6 who is responsible for making sure that material which might help an
7 accused, in any investigation or prosecution, is brought to the
8 attention of the Prosecutor?

9 A. I'm not aware.

10 Q. In your previous experience working for EULEX, were you aware of
11 the designation of a disclosure officer in cases as a normal
12 operating procedure?

13 A. I was not.

14 Q. So that we understand, it is not part of the normal operating
15 procedure of the Specialist Prosecutor's Office to designate an
16 individual as a disclosure officer responsible for bringing material
17 which may help the accused to the attention of the Prosecutor?

18 A. I'm not aware of that. I can't confirm or deny.

19 Q. Well, you haven't come across it as part of the normal operating
20 procedure of the SPO?

21 A. No.

22 Q. Does it simply fall then to each individual SPO member of staff
23 to bring to the attention of a Prosecutor material they might come
24 across which may help the accused in any investigation or
25 Prosecution?

1 A. Your Honour, can I clarify something, please?

2 PRESIDING JUDGE SMITH: Yes, you may.

3 THE WITNESS: I am aware that there is an exculpatory review
4 ongoing in the cases. So if that is what the Defence means, yes, we
5 have exculpatory review going on.

6 MR. REES:

7 Q. So in each case there is a review ongoing; yes?

8 A. Well, I'm not involved in all of them, but I -- I know that we
9 have exculpatory review as part of every case.

10 Q. So we are, of course, just dealing at the moment with normal
11 operating procedures. Okay?

12 A. I don't know what you mean under "normal operating procedures."
13 I apologise.

14 Q. Well, does the SPO not have -- each investigation is not
15 commenced on an ad hoc basis, is it, or is it? Do you have some
16 guidance as to the conduct of investigations?

17 A. I'm not sure what you mean.

18 Q. Well, is there any internal guidance as to how you conduct an
19 investigation?

20 A. We're all experienced investigators and we work with
21 prosecutors. I'm unaware of something written on a guidance how to
22 conduct investigations.

23 Q. And you're each trusted to get on with the job how you see fit?

24 MS. BOLICI: Objection, Your Honour. It's not clear what this
25 line of questioning is about. It's not about this case. It's about

1 the general undertakings of the office. It's not relevant to the
2 specificity of this case and to the competence of this witness.

3 PRESIDING JUDGE SMITH: Overruled. It's foundational.

4 You can continue.

5 MR. REES:

6 Q. So I asked you if there was any internal guidance as to how the
7 SPO and its officers should conduct an investigation, and you said
8 you're unaware of anything written as to how to conduct the
9 investigations. And then I asked:

10 "So you're each trusted to simply get on with the job how you
11 see fit?"

12 And then Ms. Bolici objected and that's been overruled.

13 So can you answer that: Are you each trusted simply to get on
14 with the job how you see fit?

15 A. Give me a moment to think of my answer to that.

16 Q. Please. Take your time, please.

17 A. So when you have this large amount of material and this broad
18 mandate, so how it is that it's ultimately the Specialist Prosecutor,
19 Deputy Specialist Prosecutor, who make a decision which case to
20 pursue and how to pursue it. So -- but clearly we are the ones who
21 are confronted with the material in due course of our research.

22 So if I come across something which I consider relevant or that
23 I consider should be brought to the attention of the Prosecutor, I
24 will do that in -- either verbally or maybe I make a proposal, a
25 work-plan. So I don't open cases myself or decide whether to open or

1 not to open this them, if that helps.

2 Q. It does help. Of course, you've said that in our specific case
3 your role was relatively limited; yes?

4 A. It was what it was.

5 Q. And you clearly weren't aware, this is not a criticism, but you
6 were not aware of all the issues in the case, were you?

7 A. No, I was not.

8 Q. So from your point of view, being unaware of all the issues in
9 the case, do you accept that there may be material that you have seen
10 the relevance of which would not be apparent to you because you
11 haven't seen -- you're not aware of all the issues in the case?
12 Would you concede that?

13 A. No, because I can confirm I haven't seen any material which the
14 Prosecutor, Ms. Bolici, hasn't seen.

15 Q. Right. But you can't confirm that for one of your colleagues,
16 can you?

17 A. Of course not.

18 Q. No. So the use of one officer who is tasked with making himself
19 aware of the overall issues in the case, and then ensuring that other
20 investigators collate, retain, and list relevant material so that it
21 all can be brought to the attention of a Prosecutor to review it for
22 disclosure, that is a role that you are not familiar with within the
23 Specialist Prosecutor's Office; is that right?

24 A. My answer is: In this case, I was told that the coordinators
25 were the -- the Specialist Prosecutor and his Deputy. I am unaware

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1195

1 whether they have appointed anyone, whether there was such a role.
2 All what I can say is I had very limited involvement -- or very
3 limited. Let's not judge it. I was involved in coordinating the
4 search and preparing for these declarations and the testimony today.

5 Q. Yes, I follow that. But I was asking you about the general
6 position. You are not familiar with the use of an officer tasked
7 with making himself aware of the overall issues in the case and then
8 ensuring that other investigators collate, retain, and list relevant
9 material so that it can all be brought to the attention of a
10 Prosecutor to review for disclosure?

11 MS. BOLICI: Your Honour, the question has been asked and
12 answered.

13 PRESIDING JUDGE SMITH: Sustained. You asked the same question
14 twice.

15 MR. REES: Well, she answered it not in the general but in the
16 specific with this case, but I take it that one can infer, therefore,
17 she's not.

18 Can we look, please, at declaration ERN 084015.

19 THE COURT OFFICER: For the record, that's P86 MFI.

20 MR. REES:

21 Q. Before I do that, in fact, move on, to the declaration, can I be
22 frank. Are you really saying that, as an experienced investigator of
23 20 years, you are unaware of the role of a disclosure officer?

24 MS. BOLICI: Asked and answered, Your Honour. Objection.

25 MR. REES: Well, that was a direct challenge to the credibility

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1196

1 that I thought I was required to make.

2 PRESIDING JUDGE SMITH: Hold on. Overruled.

3 You may answer that question.

4 And also could we use the MFI number for that document, please.

5 THE COURT OFFICER: Yes, Your Honour. That is P86 MFI.

6 MR. REES: [Microphone not activated].

7 THE INTERPRETER: Microphone for the counsel, please.

8 MR. REES: The mistake I've made there is to look at documents
9 as opposed to the declaration, so I haven't done the task of looking
10 at the declaration and comparing it to the exhibit list. So I'm
11 going to have to ask Madam Court Officer to assist me on that point.

12 Back to the question. Shall I repeat it?

13 PRESIDING JUDGE SMITH: I think that would be best.

14 MR. REES:

15 Q. So, Ms. Pumper, are you really saying that as an experienced
16 investigator of some 20 years you are unaware of the role of a
17 disclosure officer?

18 A. That is correct.

19 Q. Thank you.

20 MR. REES: Can we look then at -- tender the exhibit, P86 MFI,
21 which begins ERN 084015.

22 Q. And we are, as we began yesterday, onto your review of Batch 2.
23 And in the main, as you've put in the declaration, the large majority
24 of that were rather unremarkable court judgements.

25 PRESIDING JUDGE SMITH: Could we get the --

1 MR. REES:

2 Q. [Overlapping speakers] ... didn't bear any logos or marks --

3 PRESIDING JUDGE SMITH: Excuse me, Mr. Rees. Could we get the
4 paragraph number you're referring to?

5 MR. REES: 21. I apologise, Your Honour.

6 PRESIDING JUDGE SMITH: Thank you.

7 MR. REES:

8 Q. 21: Judgements not bearing any logos or marks typical of SITF
9 or SPO documents, you've said. And they have, indeed, been disclosed
10 and exhibited. There were six pages, you have said, in your review
11 that have not been disclosed and not exhibited, and they were
12 documents in the Serbian language, you say; yes? You see Batch 22,
13 it refers to Serbian documents.

14 A. Yes, Serbian language, yeah.

15 Q. And at paragraph 23, you describe there being a copy of a cover
16 page of coordination request 61. And you say that that document was
17 replicated in the documents that you label Batch 1 also; is that
18 right?

19 A. That is correct, yes.

20 Q. You say that there is reference to an annex which was not
21 present in the documents you label Batch 2. Yes?

22 A. Excuse me, which paragraph?

23 Q. Paragraph 23.

24 A. Yes, it says "it's not included." Correct, sorry.

25 Q. And the letter itself was not marked as confidential. That's

1 right, isn't it?

2 A. That is correct, not expressly marked confidential.

3 Q. No. So the document that is in Batch 2 does not claim to be
4 confidential. It refers to another document which was not in
5 Batch 2?

6 A. Correct.

7 Q. And the document that you are describing at paragraph 23, that
8 was a copy, not the original? I think that follows from your
9 evidence yesterday when you said that all documents were copies.

10 A. Correct.

11 Q. And the document that you describe is in the corresponding
12 Batch 1 as the corresponding document, that also was a copy? Yes?

13 A. I apologise. Can you say again?

14 Q. And the document that was in the batch you label Batch 1 that
15 corresponds to the document you described in 23, that was also a
16 copy?

17 A. Correct.

18 Q. And you cannot say whether the version in Batch 2 was copied
19 from the document in Batch 1?

20 A. No, I cannot.

21 Q. Or from the original?

22 A. No, I cannot.

23 Q. Or from another copy of the document that might be elsewhere?

24 A. No, I cannot, yeah.

25 Q. What checks, if any, have you carried out to check if the

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1199

1 document you referred to in paragraph 23 is genuine?

2 A. I have checked the SPO database, and I located this document.

3 Q. Just bear with me a second. So do you mean you located a
4 corresponding copy in the database? Is that what you mean?

5 A. Let me say what I saw, Your Honour.

6 Q. Please do.

7 PRESIDING JUDGE SMITH: Please do. Go ahead.

8 THE WITNESS: What I located in our database, in ZyLAB, or in
9 DT, is the document, the same document uploaded electronically. That
10 is what I saw. Uploaded in colour. It appears coloured.

11 MR. REES:

12 Q. Right. So when you say "the same document," do you mean the
13 document that was in Batch 2 had been scanned into the system and you
14 saw that on the system?

15 A. No.

16 Q. Right. So you don't mean you saw the same document on the
17 system. You mean you saw a different document on the system but one
18 you thought corresponded to the document you describe in
19 paragraph 23?

20 A. Maybe that's the better way of putting it.

21 Q. And which system was that located in?

22 A. The majority, the vast majority, with the exception of only a
23 few, coordination requests were uploaded into the ZyLAB system, and
24 they have received a registration number.

25 Q. What about the document in 23? Which system was that in?

1 A. I'm sorry, I don't recall by heart.

2 Q. You said nothing in the declaration about that document being
3 located in the database, but you did in your annotated version that
4 was disclosed the working day before you started your testimony. So
5 that exercise was very recent, was it?

6 A. The exercise of checking whether it's in ZyLAB, no. What was
7 very recent is verbalising it in a line or two so that I remember
8 what I've done for the purpose of testifying here.

9 Q. And are you saying that the document you saw in the system,
10 whether it was -- whichever system it was in, had an ERN number?

11 A. Because I do not remember these -- these six pages, where they
12 were, but what I can say is when I wrote this declaration, I checked
13 the six pages, whether we have them in our system irrespective from
14 the batch. And I can confirm that of the six, five were in our
15 system. Only the last one was not.

16 Q. Okay. So we don't know which system. What you mean is
17 somewhere you had a corresponding version of that document in the
18 SPO's possession; yes?

19 A. I did not say "somewhere." I'm saying that it is either
20 registered in ZyLAB or it is found in a folder in DT.

21 Q. And -- yes, okay. And if registered -- if in the folder in DT,
22 presumably the document could be printed off?

23 A. Yes, it could.

24 Q. Paragraph 24 then. You describe in paragraph 24 the document
25 you label Batch 2 is including a page of a SITF document relating to

1 coordination request 61. That concerns logistical arrangements to
2 carry out interviews, you say, and "expressly refers to the
3 confidentiality of the SITF investigations."

4 The document itself does not claim to be confidential; do you
5 agree?

6 A. Do you mind if I look at the hard copy so I have the text -- the
7 complete text?

8 Q. If you have it.

9 A. It's my annotated declaration.

10 Q. The annotated declaration, you mean? Yes.

11 A. Yes, I apologise.

12 Q. Well, you can by all means look at it. And if there's further
13 assistance in your annotated version you have there, please let us
14 know.

15 A. There is no further assistance. It's just that in the annotated
16 versions, I can look at the paragraphs completely. Here I only see
17 the second part or the first part of the paragraph.

18 Q. I follow. No, absolutely. So you want to see it on the one
19 page. Yes, paragraph 24.

20 A. Thank you. I have read the paragraph. Excuse me, what was your
21 question?

22 Q. The question was although the document refers to the
23 confidentiality of SITF investigations, the letter itself does not
24 claim that it is confidential.

25 A. I can confirm, other than this sentence which expressly refers

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1202

1 to confidentiality, there is no additional marking to my
2 recollection. But it would be included in the column indicia of
3 confidentiality in the Annex 2 declaration May 2021.

4 Q. So if the annex does not refer to the word "confidential" being
5 attached to the letter itself, then we can infer that the letter
6 doesn't claim to be confidential? Do you agree or not?

7 A. This document does not have an annex.

8 Q. No, it doesn't.

9 A. It just is a two-page document.

10 Q. Yes. And I'm asking you, because you've seen it and I
11 haven't --

12 A. [Overlapping speakers] ... I apologise, yes.

13 Q. [Overlapping speakers] ... although it refers --

14 PRESIDING JUDGE SMITH: [Microphone not activated]. You're
15 talking over each other.

16 MR. REES: Oh, I apologise.

17 Q. I thought you'd finished. Sorry, Ms. Pumper, carry on.

18 A. I apologise. I didn't want to assume something. It is just
19 that I have it in my head. Sorry.

20 Q. So I follow that the document that you describe in paragraph 24
21 doesn't have an annex. You say that it refers to the confidentiality
22 of SITF investigations, and I'm asking you, because you've seen the
23 document and I haven't, to confirm that it follows that the letter
24 did not itself claim to be confidential?

25 A. That is correct. It contains this reference to confidentiality.

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1203

1 There was no other reference to confidentiality in this letter, other
2 than the indicia which I have described. But I leave it up to the
3 Court to decide how to judge these indicias.

4 Q. Well, we can't leave it to the Court to decide whether the
5 letter claims to be confidential, because the Trial Panel will not
6 see it. Only you do. Which is why I'm asking you the question.

7 But I think you've confirmed it, that the letter did not claim
8 itself to be confidential; yes?

9 A. The letter did not have any other confidential -- express
10 confidential marking other than this sentence and this exact sentence
11 I have written in Annex 2 of that declaration May 2021.

12 Q. Paragraph 25 then.

13 MR. REES: Sorry, before we do that, I ought to deal with some
14 other matters under paragraph 24.

15 Q. Your answers may be the same as in relation to paragraph 23, but
16 I should go through the process.

17 The document you refer to in paragraph 24 that is from the
18 documents you labelled Batch 2 was a copy; yes?

19 A. Yes.

20 Q. You refer to there being the same page included in Batch 1. Do
21 you mean that there was a corresponding version that was also a copy
22 you saw in the documents you label Batch 1?

23 A. That is correct, yes.

24 Q. And you cannot say whether the Batch 2 copy was made from the
25 Batch 1 copy?

1 A. I cannot.

2 Q. Or from an original or, indeed, another copy elsewhere?

3 A. That is correct.

4 Q. But you did, we know, from your annotated declaration locate a
5 document that corresponded somewhere in the SPO database?

6 A. That is correct.

7 Q. And, again, are you unable to tell us which database?

8 A. I don't know it by heart, but I have records of it.

9 Q. But it could, for example, have been in the DT folder and could
10 be printed off?

11 A. If it's in the DT folder or in ZyLAB, it can be printed off.

12 Q. Yes.

13 A. Okay.

14 Q. Paragraph 25 then, please. This is a Serbian document you
15 describe as having been issued by the Serbian Deputy War Crimes
16 Prosecutor; yes?

17 A. Issued by -- 25?

18 Q. Yes.

19 A. Issued --

20 Q. Sorry, I'm -- my fault. You pointed out I'm wrong.

21 Paragraph 25, coordination request 74; yes?

22 A. It talks about coordination request 74.

23 Q. It is, in fact, the cover page, not the request itself?

24 A. Your Honour, can I clarify something, please?

25 PRESIDING JUDGE SMITH: Yes, you may.

1 THE WITNESS: I would just like to make clear that when I talk
2 about the request that is the cover letter. And if there is an
3 annex, it includes the annex. That's the request. But for the
4 purpose of being precise, I then refer to the cover letter and the
5 annex. But the whole document is our coordination request.

6 MR. REES:

7 Q. Okay. So although you refer, in paragraph 25, to cover page and
8 cover letter, there's no distinction there. They're the same
9 document, are they?

10 A. Just one moment. Yes, that I refer to the same document.

11 Q. And, again, the letter itself does not claim to be confidential?

12 A. It refers to a confidential annex.

13 Q. We can see that. But the question is: Can you confirm that the
14 cover letter itself does not claim to be confidential?

15 A. It is not mentioned in the paragraph. I believe you're correct,
16 yeah.

17 Q. Again, this document, not an original. It's a copy?

18 A. They're all copies.

19 Q. And you cannot say whether the version in Batch 2 that you say
20 you saw that was made from the version you report in the documents
21 labelled Batch 1; yes?

22 A. I cannot.

23 Q. Or whether, from the original or, indeed, any other copy?

24 A. I cannot.

25 Q. But that document was in the SPO's -- or, sorry, I'll be

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1206

1 accurate. A version of that document was in the SPO's possession;
2 yes?

3 A. Correct.

4 Q. Can you tell us this in relation to the documents you've
5 described in both paragraphs 23, 24, and 25 when those documents
6 entered whichever SPO database they did?

7 A. Can I explain something more, please?

8 PRESIDING JUDGE SMITH: Yes.

9 THE WITNESS: When the coordination requests are drafted in
10 Word, they're filed in a folder coordination requests. Then I
11 found -- so you have a Word version there. Then there are
12 coordination requests which contain stamps, as you will see in the
13 batches. So I have seen in ZyLAB, for instance, uploaded
14 coordination requests which are registered which contain a receipt
15 stamp which, for instance, in the Word version, which is in the
16 corresponding DT folder, is not. So I just wanted to let you know.

17 MR. REES:

18 Q. Yes. No, I follow. So in the DT folder, you'll see
19 coordination request that is not stamped as being received?

20 A. Correct, a Word version.

21 Q. But the SPO may also have copies of the request that is stamped
22 by the recipient as having received it?

23 A. Stamped by the recipient or not stamped. So sometimes I have
24 both.

25 Q. I see. I follow.

1 A. Okay.

2 Q. But the specific question I asked was can you say -- it may
3 follow from your answer that you can't, but if you could directly
4 answer the question: Can you say when the documents that you've
5 described in paragraphs 23, 24, and 25 entered the SPO databases?

6 A. I cannot recall.

7 Q. And is there a way via the databases of ascertaining when a
8 document was accessed?

9 A. I would refer to an IT person and assume yes, it is.

10 Q. Did you check with IT for dates and times when these documents
11 you were reviewing were last accessed within the SPO databases?

12 A. No, I did not. And this was not part of my assignment.

13 Q. Do you know if anyone else was asked to do that task?

14 A. I have no information about that.

15 Q. Paragraph 26. This is described as a Serbian document issued by
16 the Serbian Deputy War Crimes Prosecutor, and it contains
17 instructions to other Serbian authorities about the location of a
18 person relating to, you say, coordination request 74. What steps
19 have you taken to check if that's a genuine document?

20 A. For this document, I searched ZyLAB and I engaged the assistance
21 of a Serbian interpreter to do the same.

22 Q. So what steps did you take to check that that was a genuine
23 document, if any? If you have haven't, it's fine.

24 A. I have.

25 Q. Right.

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1208

1 A. Well, specifically, I would, like with all documents, I would
2 find words and find search criteria and search the system for text,
3 and there's a certain mechanism how we do that. Yes.

4 Q. Okay. And is it a genuine document?

5 A. I have not located it in the database.

6 Q. So does that mean it's a false document?

7 A. That means I don't know whether it is genuine or false.

8 Q. And that's because, with the best will in the world, the SPO's
9 recording systems will not record every document that they come into
10 possession of?

11 A. I have not confirmed that we got -- that we have possession of
12 this document before it was leaked. I just said that I didn't find
13 it in the database.

14 Q. Yes. Right. So you may have been in possession of it before or
15 may not have been in possession of it before?

16 A. I could not locate it in the database. That would suggest to me
17 that we don't have it, if it is not a technical glitch and the system
18 couldn't find the document. But I'm not an IT person.

19 Q. No. And, of course, it would require one, there's the IT issue,
20 you're not an IT person; but, also if a document is not submitted to
21 the system by an individual, then it wouldn't be a surprise if you
22 couldn't find it on the system?

23 A. That is correct.

24 Q. Absolutely. So if an SPO officer receives a piece of paper and
25 doesn't submit it to ZyLAB, then you won't find it on ZyLAB, will

1 you?

2 A. Clearly not.

3 Q. Clearly not. And, likewise, with the other systems; yes?

4 A. That is correct.

5 Q. And there, at paragraph 27, we have a similar document, again in
6 Serbian?

7 A. Correct.

8 Q. And this time you could find a version of it in the documents
9 you labelled Batch 1?

10 A. That is correct.

11 Q. And you could also find a version of this document in the SPO
12 systems?

13 A. Yes, I could find it in the SPO database.

14 Q. Again, tell us if you can't help us, but do you recall which
15 database?

16 A. This document I would have found in ZyLAB, because it has not
17 been offered by us, so it cannot be in DT.

18 Q. And --

19 A. As a Word version - sorry - to be precise.

20 Q. And all of the versions you saw effectively are copies?

21 A. That is correct.

22 Q. I'll be accurate. What I mean by that is the version that you
23 saw in the documents you label Batch 1 and the version you label as
24 documents Batch 2; yes?

25 A. I only saw copies.

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1210

1 Q. And you can't say whether the version in Batch 2 is a copy of
2 the version in Batch 1 or the original or some other copy?

3 A. No, I cannot.

4 Q. Thank you.

5 MR. REES: That's a convenient point to break.

6 PRESIDING JUDGE SMITH: All right.

7 Madam Court Usher, you may escort the witness out of the
8 courtroom.

9 We'll take a half hour break, Ms. Pumper.

10 THE WITNESS: Thank you.

11 [The witness stands down]

12 PRESIDING JUDGE SMITH: So please be available and back at
13 11.30, and we are adjourned until that time.

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

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

16 PRESIDING JUDGE SMITH: Everyone ready to proceed?

17 Madam Usher, you may bring in the witness.

18 [The witness takes the stand]

19 PRESIDING JUDGE SMITH: You can be seated, Ms. Pumper.

20 THE WITNESS: Thank you.

21 PRESIDING JUDGE SMITH: Mr. Rees, you have the floor.

22 MR. REES: Thank you, Your Honour.

23 Q. So we are now at paragraph 28 of your declaration. And you
24 begin this part of the declaration by explaining that you conducted a
25 review of documents that you understood were seized at the KLA WVA on

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1211

1 22 September 2020 and labelled, by you, as Batch 3; yes?

2 A. That is correct.

3 Q. And you can confirm that you were not present at the KLA WVA on
4 22 September 2020?

5 A. That is correct.

6 Q. You were directed in direct examination to document SPOE00220194
7 and 195.

8 MR. REES: If we can look at those briefly, please.

9 PRESIDING JUDGE SMITH: Do we have an MFI for that document?
10 Madam Court Officer?

11 I'm sorry, I'll repeat that. Do we have an MFI for that, Madam
12 Court Officer?

13 THE COURT OFFICER: Your Honours, I'm having trouble locating
14 the ERN number. Perhaps counsel could repeat.

15 PRESIDING JUDGE SMITH: Okay. Go ahead then.

16 MR. REES: SPOE00220914.

17 THE COURT OFFICER: Your Honours, that's admitted Exhibit P54.

18 MR. REES: I'm grateful. Thank you, Madam Court Officer. Can
19 we fit to height on this document, please. Thank you.

20 Q. We can see here this is one of those -- it's obviously a hard
21 copy document but not with an ERN number manually stamped but with
22 the red lettering SPOE00220914 applied to the bottom; yes?

23 A. Correct.

24 Q. And we can see at the top typed is: "The Hague 9 September
25 2020," although the 9 is crossed out, replaced by manuscript hand

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1212

1 with the numerals 22. And then there is a handwritten entry "the
2 date changed by" and then an SPO officer who, in court we can all
3 obviously see who it is, and you mentioned before; yes?

4 A. Correct.

5 Q. Then the document is described as an order, it's addressed to
6 Mr. Gucati and/or the KLA War Veterans Association. It provides:

7 "You are hereby ordered to:

8 "1. Immediately produce all documents and records, including,
9 internal work product, of the Specialist Prosecutor's Office; and

10 "2. Refrain from recording or copying, in whatever form, and
11 further disseminating, by whatever form means of communication, the
12 documents or their content."

13 And at the bottom there is a facsimile of the signature of the
14 Specialist Prosecutor; yes?

15 A. Correct.

16 Q. And it does not, on the face of it, record whether any documents
17 or records were seized as a result of the order or, if they were,
18 what documents and records; do you agree?

19 A. It states to "produce all documents and records, including
20 internal work product, of the Specialist Prosecutor's Office."

21 That's what I read.

22 Q. Yes, thank you. But can you confirm that it does not record
23 whether any documents and records were seized or produced as a result
24 of this order and, if so, what?

25 A. No, that's the order.

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1213

1 Q. Indeed.

2 MR. REES: The other document was SPOE00220915RED.

3 Q. This is --

4 PRESIDING JUDGE SMITH: This has a P number.

5 THE COURT OFFICER: Your Honours, P58, for the record.

6 MR. REES: Thank you, Your Honour. I'm grateful.

7 Q. This is an acknowledgement of delivery form. Again, a hard copy
8 document with -- it doesn't have the manual ERN document number
9 stamped on it. It does have in red, what looks like an electronic
10 entry, rather, at the bottom of the page, SPOE00220915. And it is
11 described as an acknowledgement of delivery. The recipient's name is
12 written in manuscript. There is a signature, date, time. There is a
13 box ticked for "Recipient signed for service," the name of an SPO
14 officer. It's the same SPO officer that we've seen on the last form
15 and, indeed, you referred to previously, with a date and time.

16 And the form -- the purpose of the form is clear in the second
17 line. The recipient is asked to sign to acknowledge receipt of the
18 order to produce documents and records; yes?

19 A. Correct.

20 Q. And there is nothing on this form either that confirms that, as
21 a result of the order, any documents or records were produced?

22 A. That is correct.

23 Q. Or, if so, what?

24 A. Correct.

25 Q. And on the two documents, the order and the acknowledgement of

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1214

1 delivery of the order, nothing said that if any documents and records
2 were produced as a result of the order; and if they were placed in
3 evidence bags, what evidence bag they were placed in?

4 A. That is correct.

5 Q. Going back, then, to your declaration at paragraph 28, please.
6 So you were asked to review documents that you were told had been
7 seized at the KLA WVA, and you labelled them Batch 3.

8 And at paragraph 29, you described Batch 3 as composing of two
9 incomplete documents counting 244 and 245 pages respectively of the
10 same document.

11 "In particular," you said "Batch 3 includes complete copies of
12 an SPO confidential document, counting 261 pages, which pertains to
13 SPO investigations and official proceedings and which constitutes
14 internal work product."

15 Just pausing there. Did you mean to say that it was a
16 confidential document, or did you mean something else?

17 A. I'm not sure what you mean.

18 Q. Well, did you mean to assert that it was confidential, or were
19 you simply describing it as a document -- well, what did you mean?

20 A. I wrote that it is a confidential document because it had
21 confidential indicia on it.

22 Q. So your opinion was it was a confidential document because you
23 saw indicia of confidentiality on it?

24 A. It had indicia on -- on -- on the document, and that's why I
25 referred to it as a confidential document. Expressly referred as

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1215

1 confidential, that's why I mentioned a confidential document.

2 Q. You were not to say -- well, do you know who classified this as
3 confidential?

4 A. No, I don't.

5 Q. Do you know whether they had authority to classify it as
6 confidential?

7 A. No, I don't.

8 Q. You went on to say:

9 "Batch 3 is written in the English language and includes an
10 analysis of available evidence and applicable law in relation to five
11 SPO suspects ..." and then you name them.

12 MR. REES: Can we, at this stage, go into private session?
13 Again, I am of the view that the material which I am about to ask
14 about is not -- it does not require protection, but I understand the
15 Trial Panel's ruling and I'm doing my best to abide by it.

16 So can I invite the Court to go into private session at this
17 stage?

18 PRESIDING JUDGE SMITH: Concerning names?

19 MR. REES: Well, it depends on the answers from the witness. If
20 the witness, when I ask questions, replies "don't know," then there
21 will be no names.

22 PRESIDING JUDGE SMITH: No, I know. But the thing you're
23 worrying about, complying with our order --

24 MR. REES: I am.

25 PRESIDING JUDGE SMITH: Excuse me. The thing you're worried

Witness: Zdenka Pumper (Resumed) (Private Session)
Cross-examination by Mr. Rees (Continued)

Page 1216

1 about is names being used that we have forbidden, and you don't agree
2 with that but I understand that.

3 MR. REES: Yes.

4 PRESIDING JUDGE SMITH: Okay. We will go into private session.

5 MR. REES: Obviously, if I have misunderstood the scope of the
6 ruling --

7 PRESIDING JUDGE SMITH: No, no, no.

8 MR. REES: -- then I will invite Your Honour to tell us we can
9 go back into public proceedings as soon as we can.

10 PRESIDING JUDGE SMITH: No, I'm merely trying to get on the
11 record the reason for going into private session.

12 MR. REES: I understand.

13 ~~[Private session]~~ *Reclassified as Public and inserted
pursuant to order contained in F611/A3 of 18 May 2022.*

14 THE COURT OFFICER: Your Honours, we are now in private session.

15 PRESIDING JUDGE SMITH: Thank you.

16 You can proceed, Mr. Rees.

17 MR. REES:

18 Q. Who authored the document that you describe as a confidential
19 document, analysis of available evidence and applicable law?

20 MS. BOLICI: Objection, Your Honour. It goes to information
21 subject to pending non-disclosure requests.

22 PRESIDING JUDGE SMITH: Sustained.

23 MR. REES:

24 Q. Do you know which current or former SPO staff member contributed
25 to its creation?

Witness: Zdenka Pumper (Resumed) ~~(Private Session)~~ Reclassified as Public in F611/A3 Page 1217
Cross-examination by Mr. Rees (Continued)

1 A. I don't know that.

2 Q. Do you know who authored the document?

3 A. I don't know that.

4 Q. Do you know which current or former SPO staff member had access
5 to that document electronically?

6 MS. BOLICI: This is also an objection, Your Honour. It's also
7 information subject to pending non-disclosure requests.

8 [Trial Panel confers]

9 PRESIDING JUDGE SMITH: Your objection is overruled.
10 You may answer the question.

11 THE WITNESS: Would you repeat the question, please?

12 MR. REES:

13 Q. Do you know which current or former SPO staff member had access
14 to that document electronically?

15 A. Please give me a moment. I have to think about this answer.

16 PRESIDING JUDGE SMITH: Take your time.

17 THE WITNESS: Your Honour, can I comment something, please? Ask
18 something?

19 PRESIDING JUDGE SMITH: Do you want to ask the Court or
20 Mr. Rees?

21 THE WITNESS: The Court.

22 PRESIDING JUDGE SMITH: Yes, go ahead.

23 THE WITNESS: The Defence, when you say, whether I know, I just
24 want to say that I have not looked into these matters and that for me
25 I would make assumptions, like from a system, what could be.

Witness: Zdenka Pumper (Resumed) ~~(Private Session)~~ Reclassified as Public in F611/A3 Page 1218
Cross-examination by Mr. Rees (Continued)

1 PRESIDING JUDGE SMITH: You're not to make assumptions. The
2 question is very direct: Do you know.

3 THE WITNESS: I do not know.

4 MR. REES:

5 Q. In accordance with normal operating procedures, as you would
6 understand them, who would you expect to have access to that document
7 electronically?

8 MS. BOLICI: Objection, Your Honour. It's hypothetical and
9 argumentative.

10 PRESIDING JUDGE SMITH: If you know, you may answer that.

11 THE WITNESS: I don't. I don't know.

12 MR. REES:

13 Q. So --

14 A. I don't know because I don't know where it was placed.

15 Q. You had access to that document electronically via the DT
16 folder?

17 A. I did not have access to that -- to that document. I was not in
18 the office.

19 Q. But did you not find a version of it as part of your review in
20 the DT folder?

21 A. When I conducted the research, I found a version on DT.

22 Q. So you had access to it?

23 A. When I conducted the research, I had access to it.

24 Q. Does that mean that you were specifically given access to it for
25 the purpose of the review?

1 A. No, that's -- that means that I don't know where the document
2 was before I have conducted the review. I found it when I conducted
3 the review.

4 [Private session

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1220

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1221

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1222

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1223

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1224

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1225

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1226

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1227

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1228

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1229

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1230

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1231

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1232

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1233

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1234

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1235

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1236

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1237

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1238

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1239

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1240

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1241

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1242

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)

Page 1243

Cross-examination by Mr. Rees (Continued)

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Witness: Zdenka Pumper (Resumed) (Private Session)
Cross-examination by Mr. Rees (Continued)

Page 1244

1 [Private session text removed]

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Reclassified as Public and inserted pursuant to order contained in F611/A3 of 18 May 2022.

5 MR. REES: Now, the next part I want to turn to, again, in my
6 view, can be dealt with, quite properly, and should be, in public
7 because it relates to something the Specialist Prosecutor asserted in
8 the public opening of this case. Albeit, we had no notice that he
9 was going to do that.

10 Perhaps the witness should retire for a moment so I can raise
11 this with the Trial Panel in her absence.

12 PRESIDING JUDGE SMITH: If you're just talking about whether we
13 will be in private session or public session, we'll stay in private
14 session for the time being.

15 MR. REES: Well, I think I'll raise it -- not only to do with
16 the issue as to whether it's public or private, but also I want to
17 raise with the Trial Panel what I'm about to ask about. Okay?
18 Because I certainly don't want to do anything that the Trial Panel
19 thinks I shouldn't have done.

20 PRESIDING JUDGE SMITH: No, I understand.

21 [Microphone not activated].

22 [The witness stands down]

23 PRESIDING JUDGE SMITH: Go ahead, Mr. Rees.

24 MR. REES: In the opening of the case, the
25 Specialist Prosecutor, with no notice to us, and in public session,

Witness: Zdenka Pumper (Resumed) ~~(Private Session)~~ Reclassified as Public in F611/A3 Page 1245
Cross-examination by Mr. Rees (Continued)

1 asserted that the documents were stolen. And we have had no evidence
2 disclosed to us to that effect. We had no material provided to us
3 under Rule 102(1) suggesting that the Prosecution were intending to
4 adduce any evidence to that effect.

5 And, indeed, when we asked in the days leading to the opening
6 whether, for example, a draft opening statement might be provided to
7 us, acknowledging that it would, of course, be without prejudice and
8 could be amended at any stage but so we could see whether there was
9 anything we might object to, the SPO said there was nothing in the
10 rules that required them to do so and they would not. Which, of
11 course, was within their rights, because there isn't anything in the
12 rules that require that process.

13 But it did mean that we were taken wholly by surprise when the
14 Specialist Prosecutor asserted that. And there has been no
15 indication since that despite, as part of the opening of the case,
16 intended to be a summary of the issues and the evidence that the
17 Prosecution would call to prove matters, we've had no indication
18 since that the SPO intends to call any evidence on that point.

19 In those circumstances, I had intended to explore with this
20 witness whether she knows anything about that, whether we are going
21 to receive any information that points to that effect publicly during
22 the course of this trial, and to explore that further with her.

23 You will understand that I can't do that with anyone else other
24 than her or potentially the second SPO officer, Miro Jukic. And it
25 may well be that within relation to these questions she answers, as

Witness: Zdenka Pumper (Resumed) ~~(Private Session)~~ Reclassified as Public in F611/A3 Page 1246
Cross-examination by Mr. Rees (Continued)

1 she has done thus far, "I don't know." And it may well be more
2 likely, perhaps, that the second SPO officer they intend to call, who
3 is only involved in witness security, we're told, may well say "I
4 don't know."

5 But if that's right -- well, one -- I -- it does seem to us that
6 the Prosecution can't open a matter, make an assertion in opening and
7 not expect us to explore the basis for that assertion. Nor, indeed,
8 can they expect to make an assertion like that, in public, and leave
9 it hanging in the air without any evidence addressing it at all.

10 If it's addressed in evidence, and the answer from this witness
11 and the security officer is "I know nothing about that," then at
12 least the public will have seen that it was an assertion made without
13 any foundation in evidence.

14 [Trial Panel confers]

15 PRESIDING JUDGE SMITH: Prosecution, do you want to be heard?

16 MS. BOLICI: Yes, Your Honour.

17 First of all, as clarified also by the Presiding Judge at the
18 start of the opening statements, the opening statements are not the
19 presentation of the evidence of the case.

20 Second, we were not provided with a specific reference to the
21 information the Defence is referring to.

22 And, third, in the course of the opening statement, the
23 Specialist Prosecutor also made very clear that the case is not about
24 how the documents reached the KLA War Veterans Association but how
25 they were subsequently disseminated and distributed.

Witness: Zdenka Pumper (Resumed) ~~(Private Session)~~ Reclassified as Public in F611/A3 Page 1247
Cross-examination by Mr. Rees (Continued)

1 Finally, this witness already explained that she had made no
2 investigations on this matter, so this is not the witness who is able
3 to answer any questions in this respect.

4 PRESIDING JUDGE SMITH: We'll allow you to go on with this
5 witness. But as you phrased your question, you said you were
6 intending to ask her about, basically, about the plans of the
7 Prosecution in this case. She's not the Prosecutor. You can
8 certainly ask her direct questions about what she knows about the
9 investigation.

10 MR. REES: I --

11 PRESIDING JUDGE SMITH: You said you wanted to ask her if she
12 knew of any information that was going to be presented. She's not in
13 charge of evidence being presented.

14 MR. REES: No, and I -- I did say that. I didn't mean that that
15 would be put to the witness as a question. I do follow. I can run
16 through the questions, if Your Honour wants me --

17 PRESIDING JUDGE SMITH: No, just direct questions to her are
18 okay.

19 MR. REES: I understand.

20 PRESIDING JUDGE SMITH: Give some time. Give the Prosecution an
21 opportunity to object.

22 MR. REES: Will do.

23 PRESIDING JUDGE SMITH: I'll give the witness the same
24 opportunity.

25 Madam Prosecutor, Mr. Smith raised this issue during opening

Witness: Zdenka Pumper (Resumed) ~~(Private Session)~~ Reclassified as Public in F611/A3 Page 1248
Cross-examination by Mr. Rees (Continued)

1 statements, and I think they can at least address them.

2 MS. BOLICI: I just identified the right quote, if it's of
3 interest for the record. I found the quote which says:

4 "The accused are charged with illegally disseminating these
5 documents, not with actually stealing them. And to be very clear, we
6 are actively investigating ..." et cetera, et cetera.

7 [Overlapping speakers] ... the documents in question.

8 PRESIDING JUDGE SMITH: You're absolutely correct. And the
9 Panel is aware of that. We are in the process of a trial with
10 reasonable questions being asked under the circumstances.

11 But you understand my direction.

12 MR. REES: I absolutely do and I will not ask her anything about
13 the intentions of the Prosecutor.

14 PRESIDING JUDGE SMITH: All right.

15 Madam Usher, would you please bring the witness back in.

16 MR. REES: Is this to be in private or open session?

17 PRESIDING JUDGE SMITH: We are still in private session.

18 [The witness takes the stand]

19 PRESIDING JUDGE SMITH: You may be seated, Ms. Pumper.

20 THE WITNESS: Thank you.

21 PRESIDING JUDGE SMITH: We only have a few minutes left.

22 Mr. Rees is going to ask you a few more questions. But please pause
23 before you answer, which you're very good at doing, to allow the
24 Prosecution, if they wish, to interpose an objection. Do you
25 understand?

Witness: Zdenka Pumper (Resumed) (~~Private Session~~) Reclassified as Public in F414&F611/A3 Page 1249
Cross-examination by Mr. Rees (Continued)

1 THE WITNESS: Yes, I do.

2 PRESIDING JUDGE SMITH: All right.

3 Go ahead, Mr. Rees.

*Reclassified as Public and inserted pursuant to order contained in F414 of
4 November 2021.*

4 MR. REES:

5 Q. You have said that you know nothing about the investigation into
6 the process by which the documents arrived at the KLA War Veterans
7 Association headquarters. If I was to ask you, then, if you were
8 aware of any evidence that the Specialist Prosecutor's Office has
9 that documents were stolen, what would you say?

10 A. I have no idea.

*Reclassified as Public and inserted pursuant to order contained in F611/A3 of
18 May 2022.*

11 Q. All right.

12 [Specialist Counsel confer]

13 PRESIDING JUDGE SMITH: Do you want water?

14 THE WITNESS: I have some.

15 MR. REES:

16 Q. Can you confirm that in the period between 22 September and
17 December 2020 that there were some 25 staff members, including four
18 team leaders, whose time at the SPO came to an end?

19 A. No, I cannot confirm that.

20 Q. Without the numbers, can you confirm that there was -- well, are
21 you aware of any staff members whose time at the SPO came to an end
22 during that period?

23 MS. BOLICI: Your Honour, objection to this question as to the
24 relevance of it.

25 PRESIDING JUDGE SMITH: What's the relevance? You're going to

Witness: Zdenka Pumper (Resumed) (~~Private Session~~) Reclassified as Public in F414&F611/A3 Page 1250
Cross-examination by Mr. Rees (Continued)

1 have to state your case a bit with this witness. The relevance of
2 this is quite unknown at this point.

3 MR. REES: So as part -- we say it is part of the circumstantial
4 picture which points towards the involvement of the SPO in the form
5 of an individual or individuals who had a connection with the SPO
6 being involved in that process. The fact, if she confirms it, that
7 there were staff members that lost their position with the SPO is
8 part of our circumstantial picture the Court can consider.

9 If she can't confirm that, she can't confirm it.

10 PRESIDING JUDGE SMITH: She's answered that once. You can ask
11 her one more question on that line. If it's not fruitful, we'll stop
12 that.

13 MR. REES: Well --

14 PRESIDING JUDGE SMITH: If you can repeat the question for her.

15 MR. REES: Yes, the last question she hasn't answered.

16 Q. Are you aware of any staff members whose time at the SPO came to
17 an end during that period, which was the period between 22 September
18 to December 2020?

19 A. I don't recall whether anyone specifically left at that time.

20 Q. Now, obviously, there's ten minutes to go.

21 MR. REES: We have more questions for the witness as we flagged
22 yesterday, but it doesn't seem to me fruitful for me to start a topic
23 now. Can I ask that we break at this stage and resume on Monday, I
24 think it is?

25 PRESIDING JUDGE SMITH: Can you give us a hint as to how much

Witness: Zdenka Pumper (Resumed) (~~Private Session~~) Reclassified as Public in F414&F611/A3 Page 1251
Cross-examination by Mr. Rees (Continued)

1 1 longer you will be with this witness? I don't want -- a couple of
2 Welsh minutes is not going to work.

3 MR. REES: No, and it won't be a couple of Welsh minutes. I
4 will be finished on Monday.

5 PRESIDING JUDGE SMITH: All day Monday?

6 MR. REES: As the Trial Panel knows, and acknowledged yesterday,
7 there is, of course, the hearing this afternoon, which may have an
8 impact on matters. There are also other matters that are outstanding
9 including, for example, the decision of the SPO as to what they do
10 about the official notes from two witnesses who were involved on the
11 days of the searches. That's still to be determined, and I have had
12 some constructive discussion with my colleagues across the way about
13 that. And I hope that the more clarity brought to it, the shorter I
14 can be in due course.

15 PRESIDING JUDGE SMITH: I'm just worrying about Mr. Cadman and
16 whether or not he's going to get a chance to ask some questions.

17 MR. CADMAN: I can say, Your Honour, you need not worry about
18 me. There is a fair amount of consultation going on between the
19 Defence teams.

20 PRESIDING JUDGE SMITH: All right.

21 You can escort the witness out. We will adjourn for the day.

22 MS. BOLICI: Your Honour, if I may, just for scheduling
23 purposes, ask one question.

24 PRESIDING JUDGE SMITH: Go ahead, Ms. Bolici.

25 MS. BOLICI: Yes.

Witness: Zdenka Pumper (Resumed) (~~Private Session~~) Reclassified as Public in F414&F611/A3 Page 1252
Cross-examination by Mr. Rees (Continued)

1 In relation to the oral order of 8 September 2021 from the
2 Trial Panel, which ordered the SPO to call W04866 as the last of the
3 three SPO witnesses, the SPO, together with the Registry's support,
4 had made plans for this witness to attend the Court next week, at the
5 end of next week.

6 I believe that it will not be possible to cover all of the three
7 SPO witnesses within the framework of next week, so we ask the --
8 based on the time required for cross-examination of the first
9 witness. So we would ask the Court, in case that is not possible, if
10 we could invert the order of the witnesses and have W04866 examined
11 before W04842.

12 PRESIDING JUDGE SMITH: Thank you. Just one moment.

13 [Trial Panel confers]

14 PRESIDING JUDGE SMITH: First of all, let's go back into public
15 session.

16 [Open session]

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

18 PRESIDING JUDGE SMITH: Does the Defence wish to respond to the
19 question from the Prosecutor?

20 MR. REES: Only to say that the question was asked of us what
21 our view was by the Prosecution. We took the view that there's a
22 degree of uncertainty about the progress of next week, particularly
23 in light of the hearing this afternoon. And the scope of the
24 Prosecution case, they still have to answer the matter that they've
25 been ordered to answer by the end of Monday.

Witness: Zdenka Pumper (Resumed) (Open Session)
Cross-examination by Mr. Rees (Continued)

Page 1253

1 So trying to -- we felt that we couldn't give much assistance on
2 it. It is, of course, a matter for the Trial Panel ultimately and,
3 indeed, the SPO for when they call their witnesses and to do that as
4 efficiently as possible.

5 PRESIDING JUDGE SMITH: You're not making an objection to it at
6 this time.

7 MR. REES: No.

8 PRESIDING JUDGE SMITH: Mr. Cadman.

9 MR. CADMAN: I've communicated the same position to the SPO
10 before Your Honours came in this morning.

11 [Trial Panel confers]

12 PRESIDING JUDGE SMITH: Because of the fact that there's no
13 objection, and that witness is, apparently, coming from somewhere
14 else, and travel is always an issue, especially during the last year
15 or so, we will grant the request. And so the order will be: After
16 Ms. Pumper, that witness will then testify, followed by Mr. Jukic.

17 So we will be in adjournment and see you Monday at 9.30.

18 --- Whereupon the hearing adjourned at 12.57 p.m.

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