

1 Tuesday, 26 October 2021

2 [Open session]

3 [The accused entered court]

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

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

6 Madam Court Officer, please call the 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: Thank you.

11 I notice that Mr. Pace has rejoined us today. Anybody else?

12 No.

13 Mr. Rees, any additions?

14 MR. REES: Ms. Stephenson has returned and is back in court.

15 PRESIDING JUDGE SMITH: Mr. Cadman.

16 MR. CADMAN: And Ms. Chelsea Qu has returned and is back in  
17 court.

18 PRESIDING JUDGE SMITH: Thank you.

19 I note that Mr. Haradinaj and Mr. Gucati are both present in the  
20 courtroom.

21 And then before we bring back the witness, the Panel will  
22 address a few matters.

23 First, the Panel notes that the SPO filed yesterday its  
24 submissions on the associated exhibits as ordered last week. This is  
25 filing F397. The Panel also ordered the Defence to indicate orally

1 or in writing which of those exhibits it objects to by close of  
2 cross-examination.

3 Mr. Rees, Mr. Cadman, we are assuming that the cross-examination  
4 finishes today. Will we get a written filing today or will your  
5 objections be presented orally later?

6 MR. REES: We'll make oral representations.

7 MR. CADMAN: [Microphone not activated].

8 PRESIDING JUDGE SMITH: All right. Well, in effect, that's  
9 giving you a little more time, because you don't have to file  
10 immediately, and that's all right. We will listen to your oral  
11 objections when we get to the admissions stage.

12 Mr. Cadman, you wanted the floor?

13 MR. CADMAN: Your Honour, just before the witness is called in,  
14 one matter.

15 Obviously, we had filed the application for an additional expert  
16 witness. So as not to delay matters, we will need to put written  
17 formal instructions to the witness. But, of course, we will need an  
18 indication of whether we are going to be permitted to do that or not.

19 PRESIDING JUDGE SMITH: And we will get to that. Thank you for  
20 reminding us, though.

21 As just mentioned, the Panel notes that it was seized yesterday  
22 with an application of the Haradinaj Defence to add a new expert  
23 witness to its list of potential witnesses and to direct that an  
24 expert report be filed with a deadline of 14 days. The application  
25 is F394.

1 In the interest of expeditiousness, the Panel orders the  
2 Haradinaj Defence, without hearing from the SPO on the application,  
3 to file the new expert report by 9 November 2021.

4 The Prosecution is instructed to follow the procedure set out in  
5 Rule 149(2) and file any notice within seven days of notification of  
6 the report.

7 This concludes the oral order on the report of the new expert  
8 witness.

9 Go ahead, Mr. Cadman.

10 MR. CADMAN: Certainly the timeline is acceptable. The only  
11 question would be, bearing in mind the SPO have raised objections in  
12 relation to the first expert, as to the material that should be put  
13 to the expert in order to prepare a report, I'm more than happy to  
14 liaise with the SPO on what matters or what documents should be  
15 provided to this particular expert.

16 PRESIDING JUDGE SMITH: We always encourage that. Thank you  
17 very much.

18 Now let's continue with the witness.

19 Madam Court Usher, please bring Ms. Pumper in.

20 [The witness takes the stand]

21 THE WITNESS: [Microphone not activated].

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

23 THE WITNESS: [Microphone not activated].

24 PRESIDING JUDGE SMITH: Good morning. Today the Defence will  
25 continue and finish its cross-examination. The SPO indicated that it

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1 wishes to ask you a number of questions in re-examination, then the  
2 members of the Panel may have a few questions for you. Our plan is  
3 to finish your testimony today.

4 THE WITNESS: Thank you.

5 PRESIDING JUDGE SMITH: Mr. Cadman, you have the floor.

6 WITNESS: ZDENKA PUMPER [Resumed]

7 Cross-examination by Mr. Cadman:

8 Q. Good morning, Ms. Pumper.

9 A. Good morning.

10 Q. As Mr. Rees had indicated prior to his cross-examination, I will  
11 just say the same: If there is anything that you don't understand,  
12 anything that you're not able to answer, then please do so indicate.

13 A. Thank you.

14 Q. I will do my best to maintain the position that we don't need to  
15 go into private session. But, obviously, there may be aspects of --  
16 and I'll be guided by the Panel. There may be aspects that we may  
17 need to go briefly where we mention individual's names.

18 So just a few points of clarification that should be fairly  
19 noncontroversial to start with. So, first of all, it's right that  
20 you were not present at the search and seizure on the 8th, 17th, and  
21 22nd of September of 2020?

22 A. That is correct.

23 Q. And on 25 September when you coordinated the search and seizure  
24 operation that we saw yesterday, you did not come into contact with  
25 either Mr. Haradinaj or Mr. Gucati on that time?

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1 A. I did speak to Mr. Gucati.

2 Q. But he was not present during the search and seizure operation?

3 A. No.

4 Q. And it's also correct that at no stage have you either formally  
5 or informally questioned Mr. Haradinaj in these matters?

6 A. No, I have not.

7 Q. And you were not present during his arrest on 26 September  
8 either?

9 A. Sorry, I'm not sure whether I understand. He was arrested on  
10 the day of the search.

11 Q. But you were not present when he was arrested?

12 A. He was arrested at the War Veterans Association, so I believe I  
13 was there, yes. But I was not involved in the arrest, if that is  
14 your question.

15 Q. What I'd like to look at now is your professional background.  
16 You previously held the position as investigator in the Austrian  
17 police force for a number of years; that's correct?

18 A. That's correct.

19 Q. And subsequent to that, you served in a number of UN and EU  
20 missions, as you've told us?

21 A. Yes, one EU mission.

22 Q. So one EU mission.

23 A. Yes.

24 Q. First of all, you were assigned, whilst you were still an  
25 Austrian serving officer, to the UN mission in East Timor?

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1 A. That's correct.

2 Q. And you've also served in DRC?

3 A. Correct.

4 Q. Haiti?

5 A. Correct.

6 Q. And Ivory Coast?

7 A. Correct.

8 Q. In East Timor you progressed to become a team leader for the War  
9 Crimes Investigation Unit?

10 A. That's correct.

11 Q. And amongst your responsibilities were crime scene management  
12 and securing evidence?

13 A. To a lesser extent.

14 Q. Then from 2009 to 2015, you were, as I understand it, an  
15 executive police officer with the EU mission on financial  
16 investigations?

17 A. Both financial investigations and organised crime.

18 PRESIDING JUDGE SMITH: Mr. Cadman, we've been asked to have you  
19 slow down just a bit in your delivery.

20 MR. CADMAN: I apologise.

21 Q. And during your time in Kosovo, you led a number of complex  
22 investigations?

23 A. That is correct.

24 Q. You were responsible for preparing work-plans?

25 A. Correct.

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1 Q. Evidence analysis?

2 A. Correct.

3 Q. Interviewing witnesses and suspects?

4 A. Correct.

5 Q. Utilising covert measures?

6 A. Correct.

7 Q. Executing searches and arrest orders?

8 A. Correct.

9 Q. And drafting preliminary and final investigative reports?

10 A. Correct.

11 Q. Around this time, you also undertook academic study at Leicester  
12 university; is that correct?

13 A. Yes, long distance.

14 Q. You did a master's in criminology and criminal justice?

15 A. That is correct.

16 Q. You then moved to the SITF where you were there for a period of  
17 five months?

18 A. Correct.

19 Q. At that time, it would have been under David Schwendiman and  
20 Kwai Hong Ip?

21 A. Correct.

22 THE INTERPRETER: Could the counsel and the witness please pause  
23 between answer and question, the interpreters kindly ask, because at  
24 this speed it is impossible to work.

25 MR. CADMAN:

1 Q. In 2016, again under David Schwendiman and Kwai Hong Ip, you  
2 joined the SPO where you are now an independent investigative  
3 consultant?

4 A. Excuse me, would you please repeat because I had a message.

5 PRESIDING JUDGE SMITH: Yes, excuse me. Mr. Cadman and both the  
6 witness, both of you pause after the question so that the translators  
7 can keep up with the delivery.

8 MR. CADMAN:

9 Q. So I'll ask the question again. In 2016 you joined the SPO; is  
10 that correct?

11 A. Correct.

12 Q. And that would have been under David Schwendiman and  
13 Kwai Hong Ip at that time?

14 A. Correct.

15 Q. Where you are now as an independent investigative consultant?

16 A. No.

17 Q. So your position now, as you've said in evidence, is as an  
18 investigative coordinator?

19 A. My position is investigator. But internally, I have the role of  
20 investigative -- investigation operations leader.

21 Q. And in both your evidence-in-chief and cross-examination, you  
22 made a point of telling us that you have 20 years experience in your  
23 field as a senior investigator. So it's fair to say you're an  
24 experienced investigator?

25 A. I've 20 years as an investigator.



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1 Q. But in this case, your evidence is that you were deployed to  
2 conduct data analysis?

3 A. Would you please specify?

4 Q. Well, what you've actually said is that you were -- you were  
5 asked to review the three batches and confirm whether that material  
6 was contained within your ZyLAB system.

7 A. Yes, sorry. I didn't understand. If you refer to the batches,  
8 I was tasked to analyse the three batches. Correct.

9 Q. And as you've said, when questioned by Mr. Rees, as to further  
10 analysis of the content of that material, you didn't stray outside of  
11 what were your instructions?

12 A. No, I did not.

13 Q. But that doesn't really stack up with your background  
14 experience, does it, Ms. Pumper?

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

16 Q. Well, you've been an experienced investigator --

17 MS. BOLICI: There is an objection, Your Honour, on this. It's  
18 argumentative.

19 PRESIDING JUDGE SMITH: Overruled.

20 Continue.

21 MR. CADMAN:

22 Q. My question is that, as we've just seen, you are an experienced  
23 investigator, and in this case you were instructed - restrictively -  
24 to do data analysis. My question is that that doesn't really stack  
25 up with your years of experience as progressively a senior

1 investigator.

2 A. For me, there is nothing unusual to be given specific tasks.  
3 Sometimes it's one thing. The other time, it's a more demanding  
4 thing.

5 Q. I just want to go back for a moment to the arrest of  
6 Mr. Haradinaj. You have said that he was arrested at the WVA.

7 A. Sorry, maybe we misunderstand. I meant Mr. Gucati.

8 Q. Oh, I said Mr. Haradinaj.

9 A. I --

10 PRESIDING JUDGE SMITH: Yes, excuse me, her answer previously  
11 was Mr. Gucati was arrested in her presence.

12 MR. CADMAN:

13 Q. Yes, my question was in relation to Mr. Haradinaj.

14 A. I apologise. I misheard.

15 Q. So you were not involved in the arrest in any shape or form?

16 A. No, not of Mr. Haradinaj, of course.

17 Q. In your evidence under cross-examination from Mr. Rees, you have  
18 said that previously you'd never used a disclosure officer.

19 MS. BOLICI: I would like to ask the counsel to refer to the  
20 specific answer given by the witness. I don't think she said so.

21 PRESIDING JUDGE SMITH: [Microphone not activated].

22 THE INTERPRETER: Microphone, please.

23 PRESIDING JUDGE SMITH: Please do so. Please refer to the  
24 specific question that was asked.

25 MR. CADMAN: Well, Your Honour, whilst we identify where the

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1 witness actually said that.

2 Q. Let me put this question to you again: During the course of  
3 your engagement on this, have you ever had cause to use a disclosure  
4 officer?

5 A. In this case, you mean?

6 Q. Yes.

7 A. Just please bear with me a moment. No, I don't think so.

8 MR. CADMAN: Just one moment, Your Honours.

9 Q. And, again, we'll come back to the reference in due course. But  
10 your evidence has also been that when you received the third batch of  
11 material, you received that batch from your -- from the case and  
12 management officer, I believe the person who is sitting at the second  
13 row of the Prosecution table now; that's correct?

14 MS. BOLICI: I don't think this was the evidence that was  
15 provided by the witness, and I would ask to refer to the specific  
16 part.

17 PRESIDING JUDGE SMITH: No, you can answer the question.  
18 Overruled. If you know.

19 THE WITNESS: If I may ask if you can be more precise when you  
20 mean when I received the evidence?

21 MR. CADMAN:

22 Q. Well, in your declaration, and a matter that came out in  
23 evidence, you said that the material that you received to review  
24 Batch 3 was presented to you by the case and management officer, the  
25 person who's seated in the second row of the Prosecution table.

1 A. If I may say, I have submitted the evidence into the Case  
2 Management Unit, and I reviewed it from the ZyLAB system.

3 Q. Now going back to the first point, just to remind you, in the  
4 transcript of 21 October, page 1191, at line 5, a question was put to  
5 you:

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

10 Your answer was:

11 "I'm not aware."

12 A. And I believe I also said that I would do that in any case, and  
13 I believe that later on I also clarified that I understood now that  
14 you are referring or Mr. Rees was referring to the exculpatory  
15 review. It took me some time to understand where this was going to.

16 Q. Well, let's go to line 10:

17 "In your previous work or in your previous experience working  
18 for EULEX, were you aware of the designation of a disclosure officer  
19 in cases as a normal operating procedure?"

20 "A. I was not.

21 "Q. So that we understand, it's not part of the normal  
22 operating procedure of the Specialist Prosecutor's Office to  
23 designate an individual as a disclosure officer responsible for  
24 bringing material which may help the accused to the attention of the  
25 Prosecutor?"

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

2 So your evidence was, on 21 October, that you are not aware, nor  
3 have you had cause to use, a disclosure officer.

4 A. All until I started working for the SPO, my experience did not  
5 involve any case going in the trial phase. My experience is  
6 investigating until indictment and then I move on to the next case.  
7 This is my first experience with a disclosure team.

8 Q. So in all of your 20 years' experience conducting  
9 investigations, working with prosecutors, at no stage have you ever  
10 come into contact with a person who may come under a different title,  
11 but a person who has the function of a disclosure officer?

12 A. When I was in EULEX, I did come in contact, because I had to  
13 help paginating the evidence in one of my cases, but that was the  
14 limit to it.

15 Q. Staying with the transcript of 21 October, on page 1196 you were  
16 asked:

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

20 Your answer was: "That is correct."

21 A. That was my answer.

22 Q. Now, we know that you have had reason to coordinate with the  
23 Case and Evidence Manager, whose name I won't mention so that we stay  
24 in public session, but what I'd like you to do is to look at --

25 MR. CADMAN: And if we could bring up on the screen,

1 Madam Court Officer, DHG0231 to DHG0246. I apologise. That's the  
2 wrong one. Just one sec. I do apologise. DHG247.

3 Q. Now, as you can see -- are you able to see that?

4 A. Maybe we can make it a little bit bigger.

5 Q. The only part that I would like you to look at -- so if we look  
6 at the headline, so it's a vacancy for an associate Case and Evidence  
7 Manager.

8 A. Yes.

9 Q. Then if you have a look on the left-hand side under the blue  
10 line where it says "Reporting Line," it says: Reports to the legal  
11 officer for disclosure. That would indicate a position within the  
12 SPO of a person who is responsible for disclosure.

13 A. I don't know these details.

14 Q. You have never come across anyone who holds that title in the  
15 SPO before?

16 A. I can't confirm or deny.

17 Q. You have never been made aware of that person?

18 A. We have a team.

19 Q. A team that is completely oblivious to you?

20 A. I don't say it's oblivious. You asked me for whether I know  
21 what they do. I don't know specifically what they do. I know they  
22 exist.

23 Q. Let's move on to your role in this investigation. As you have  
24 said, your role is as an investigator, currently a general  
25 investigator, and informally an investigations coordinator.

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1 A. Investigations operations coordinator.

2 Q. Operations. And I assume you're not involved just in this case?

3 A. That is correct.

4 Q. And in your capacity, you would undertake a range of functions,  
5 including analysing and reporting on evidence?

6 A. Correct.

7 Q. Conducting a review?

8 A. A review of what?

9 Q. A review of the material.

10 A. Of evidence? Yes.

11 Q. Conducting witness interviews?

12 A. That is correct.

13 Q. Now, I don't want to mention any names of cases that would  
14 require us to go into private session, but in terms of the cases you  
15 have worked on, it's right, is it not, that none of the present  
16 investigations or present public investigations or cases relate to  
17 any Serbian accused? That's correct?

18 A. That is correct.

19 MS. BOLICI: Your Honour, I would object in general to any line  
20 of questioning that goes to the contents of SPO investigations.

21 PRESIDING JUDGE SMITH: Overruled.

22 Go on.

23 MR. CADMAN: The witness has answered, so her answer can stand  
24 on the record.

25 PRESIDING JUDGE SMITH: Yes.

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1 MR. CADMAN: I'm grateful, Your Honour.

2 Q. And it's right that you have led parts of this investigation,  
3 even if you may not have been at the top of the chain of command?

4 A. That is correct.

5 Q. Certainly as we saw yesterday, you had coordinated the search  
6 operation, albeit not resulting in anything tangible. But you had  
7 led that operation on 25 September of last year?

8 A. That is correct.

9 Q. Now, you have said that your first involvement was on  
10 25 September in relation to that search.

11 A. That is correct.

12 Q. But it's also correct, and it must follow, that your  
13 instructions would have come several days before that?

14 A. It was not several days. I believe to conduct it was a day  
15 before or two days before, if my memory serves me correctly.

16 Q. And you were here in The Hague when you received those  
17 instructions?

18 A. No, I believe I was in Kosovo when I received these  
19 instructions. But that can be checked. I cannot be 100 per cent  
20 certain.

21 Q. Perhaps if there is a way for you to check during the first  
22 interval, it would be helpful to know where you were when you  
23 received those instructions.

24 MS. BOLICI: I believe there was an order from the  
25 Presiding Judge that the witness should not be tasked to conduct



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1 further researches in order to testify.

2 PRESIDING JUDGE SMITH: Sustained.

3 Just answer the question to the best of your ability.

4 THE WITNESS: I believe to recall I was in Kosovo.

5 MR. CADMAN:

6 Q. And, in fact, you were in Kosovo on 22 September, were you not?

7 A. I prefer not to guess. I cannot be sure whether I was already  
8 at that date in Kosovo.

9 Q. Well, let me put it to you that you were in Kosovo on the 22nd  
10 because Mr. Haradinaj, in the company of three German KFOR officers,  
11 standing on his balcony, actually saw you in Prishtine on that day?  
12 That's correct, isn't it?

13 MS. BOLICI: Objection, Your Honour. It's not evidence in this  
14 case that Mr. Haradinaj ever saw the witness in Kosovo on  
15 22 September.

16 PRESIDING JUDGE SMITH: Sustained. You're asking her to assume  
17 something that is not in evidence.

18 MR. CADMAN:

19 Q. Now, going back to the start of this investigation from the 7th,  
20 who had overall responsibility on the ground for that investigation?

21 MR. CADMAN: We may need to go briefly into private session as I  
22 will need to mention some names.

23 PRESIDING JUDGE SMITH: Already at this time?

24 MR. CADMAN: Yes.

25 PRESIDING JUDGE SMITH: [Microphone not activated].

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

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

3 PRESIDING JUDGE SMITH: We're in private session, Mr. Cadman.

4 You can continue.

5 MR. CADMAN: I will remain in private session only for this  
6 question, and then we can go straight back. Just to mention the  
7 names.

8 PRESIDING JUDGE SMITH: Thank you.

9 MR. CADMAN:

10 Q. So my question was who was leading the investigation on the  
11 ground after the 7th? We've heard a number of names mentioned.  
12 We've heard that you took instructions from Ms. Bolici at some stage;  
13 correct?

14 A. I took instructions from Ms. Bolici for the review of the seized  
15 batches. So if we can be clear what time-period you are referring  
16 to, please.

17 Q. Well, at a later stage, as you say, you took instructions from  
18 Ms. Bolici?

19 A. Mm-hmm.

20 Q. You've also taken instructions from Mr. Whiting?

21 A. Yes, during the search.

22 [Private session]

23 [Private session text removed]

24

25

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

1 A. Sorry, are you saying I received instructions from him --

2 Q. No.

3 A. -- or I share an office with him?

4 Q. You share an office with him and you are aware that he was  
5 involved with the investigation?

6 A. I have read Official Notes, which are -- are -- are referring to  
7 his involvement, correct.

8 Q. So other than reading the Official Notes, your evidence is you  
9 had no idea of his involvement?

10 A. You mean at the time?

11 Q. Yes.

12 A. No, I did not have any idea.

13 Q. So my question was, on the 7th, after these matters were brought  
14 to your attention, who had on the ground overall responsibility of  
15 that investigation from 7 September onwards?

16 A. As I've mentioned before, I inquired in the office and I was  
17 told that the responsibility for the investigation on the ground from  
18 the 7th was with the Chief Prosecutor and the Deputy Chief  
19 Prosecutor, Mr. Smith and Mr. Whiting.

20 MR. CADMAN: Now just one final question, and we can go back  
21 into public session, Your Honours.

22 [Private session]

23 [Private session text removed]

24

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

25 MR. CADMAN: If I need to mention him by name again, I will

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1 merely mention him as Officer X, Your Honour.

2 PRESIDING JUDGE SMITH: [Microphone not activated].

3 MR. CADMAN: We can go back to public session.

4 PRESIDING JUDGE SMITH: Back into public session.

5 [Open session]

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

7 PRESIDING JUDGE SMITH: Thank you.

8 Continue, Mr. Cadman.

9 MR. CADMAN: Thank you.

10 Q. So sharing an office with Officer X, like any normal person, you  
11 would exchange views and you would presumably talk?

12 A. Yes, we would talk.

13 Q. Exchange views on topical issues?

14 A. What do you mean with "topical issues"?

15 Q. Well, did you just have general conversations with him, things  
16 that interest you?

17 A. We talk.

18 Q. Did you talk about work?

19 A. Yes, we talk about work.

20 Q. Did you talk about the office?

21 A. I guess so.

22 Q. And as an investigator, both of you have worked in different  
23 institutions in different parts of the world. I'm sure you exchanged  
24 war stories?

25 A. Not really. Officer X is not that talkative.

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1 Q. Sharing an office with him, obviously, we all try to be  
2 discreet, but I'm sure you overheard conversations that he had with  
3 other people?

4 A. I don't remember anything specific, but I'm sure I did.

5 Q. And like any functional office, communication is an important  
6 part of the role of an institution such as this?

7 PRESIDING JUDGE SMITH: Sorry, could you repeat that,  
8 Mr. Cadman? Your hand hit the microphone.

9 MR. CADMAN: I was moving away from the microphone. I do  
10 apologise. Bad habit.

11 Q. Like any normal office, any normal functional office,  
12 communication is key?

13 MS. BOLICI: Your Honour, it's argumentative and generic as  
14 well. Also, it's not clear what's the relevance of these questions.  
15 They are besides the scope of the examination-in-chief, and I would  
16 like to understand what's the Defence case that is being put to the  
17 witness.

18 PRESIDING JUDGE SMITH: What is the Defence case you are putting  
19 to the witness?

20 MR. CADMAN: Your Honours, I'm trying to establish that -- this  
21 witness has said that she had no communication, had no discussion.  
22 I'm trying to establish how the office actually functioned in terms  
23 of how it was organised and how they communicated.

24 PRESIDING JUDGE SMITH: [Microphone not activated] Get on with  
25 it.

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1 MR. CADMAN:

2 Q. The question is, as I've said, any functional office operates on  
3 communication, probably none more so than a prosecutor's office.

4 Would you agree?

5 A. I agree that communication is an important thing in an office.

6 Q. And this would have entailed regular team meetings?

7 A. That is correct.

8 Q. Do you have a Listserv in the SPO for updates on relevant  
9 matters?

10 MS. BOLICI: Your Honour, there is an objection. It really goes  
11 to internal work product about the organisation of the office.

12 MR. CADMAN: Your Honour, if I can respond before you rule. I'm  
13 not asking this witness to identify anything confidential. Only  
14 exploring what means of communication they had in the office. That  
15 does not disclose how -- anything confidential as to how the  
16 organisation operates.

17 PRESIDING JUDGE SMITH: The objection is overruled. You can  
18 continue.

19 THE WITNESS: Would you please repeat the question?

20 MR. CADMAN:

21 Q. Certainly. I had asked whether you have a Listserv for  
22 communicating information on important events.

23 A. I don't know what "Listserv" means.

24 Q. Okay. Do you have a system where information is communicated  
25 office-wide on a regular basis, or is there a tool that you can

1 access that provides information on important matters affecting the  
2 office?

3 A. We have a Friday meeting every week, weekly Friday meeting. And  
4 we have -- we have meetings on projects. So we have teams assigned  
5 specific projects. They meet regularly. All in all, I would say  
6 that we have a regulated line of communication in this office.

7 Q. And so if a significant matter occurred, there would have been a  
8 forum by which that information would be communicated to all staff  
9 within the SPO?

10 MS. BOLICI: Objection, Your Honour. It's speculative.

11 PRESIDING JUDGE SMITH: Sustained.

12 MR. CADMAN:

13 Q. Now, we know that the events that surround this case, if we are  
14 to accept the Prosecution case, presented a major issue for the SPO  
15 from 7 September; is that correct? Is that a fair question?

16 A. It was an issue, yes.

17 Q. When were you informed?

18 A. I think I said before, I don't remember when I got -- became  
19 aware of it. But I -- I became aware of it, and it was an issue we  
20 talked about.

21 Q. Certainly as a senior member of the office, around the 7th or  
22 the 8th September you would have been made aware?

23 A. Look, I have to repeat. Really, I would just speculate. I -- I  
24 don't remember when I was made aware, but I was made aware.

25 Q. And sharing an office with Officer X at that time --

1 MS. BOLICI: Your Honour, I'm not sure whether at the time the  
2 witness said that she was sharing an office with Officer X at the  
3 time. Can we establish whether the witness was in the office at all  
4 at the time?

5 PRESIDING JUDGE SMITH: Try to be specific about your question.

6 MR. CADMAN: Sorry, Your Honour.

7 Q. Were you sharing an office with Officer X at that time?

8 A. If I can just be clear. So, yes, we, indeed, have one office,  
9 but that doesn't mean that he was there or I was there. We have our  
10 desks in this office. I don't recall whether he was specifically in  
11 the office at that time.

12 Q. Do you recall him travelling to Kosovo on the 16th and again on  
13 the 22nd?

14 A. No, I don't recall that.

15 Q. At no time did he tell you that he was going to Prishtine at  
16 that time?

17 A. This happened a year ago. I really have no recollection.

18 Q. Now, I know you've said that he wasn't a particularly talkative  
19 person, but you must have been aware of his professional background  
20 to some extent?

21 A. To some extent, yes.

22 Q. *[REDACTED] Pursuant to instructions from Trial Panel II.*

23 *[REDACTED] Pursuant to instructions from Trial Panel II.*

24 *[REDACTED] Pursuant to instructions from Trial Panel II.*

25 *[REDACTED] Pursuant to instructions from Trial Panel II.*



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1 [REDACTED] Pursuant to instructions from Trial Panel II.

2 [REDACTED] Pursuant to instructions from Trial Panel II.

3 [REDACTED] Pursuant to instructions from Trial Panel II.

4 [REDACTED] Pursuant to instructions from Trial Panel II.

5 [REDACTED] Pursuant to instructions from Trial Panel II.

6 [REDACTED] Pursuant to instructions from Trial Panel II.

7 [REDACTED] Pursuant to instructions from Trial Panel II.

8 PRESIDING JUDGE SMITH: That's just a different matter. I'm  
9 telling you do not reveal that. We're in public session.

10 MR. CADMAN: Well, let's go into private session for a moment  
11 then.

12 PRESIDING JUDGE SMITH: All right. We will go into private  
13 session.

14 [Private session]

15 [Private session text removed]

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25 [Open session]

Witness: Zdenka Pumper (Resumed) (Open Session)

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

2 PRESIDING JUDGE SMITH: Thank you.

3 Mr. Cadman, you can continue.

4 MR. CADMAN:

5 Q. So I'd like to move on to the organisational structure and the  
6 internal rules of the office.

7 So the SPO has been operating since 2016 and you have been here,  
8 effectively, since the beginning?

9 A. Correct.

10 Q. The SPO inherited a mandate from SITF?

11 A. Correct.

12 Q. Whilst I don't imagine you to be aware of the specifics, it  
13 obviously has a significant budget considering the size of its  
14 operations?

15 MS. BOLICI: Objection, Your Honour. Argumentative and it's  
16 asking for speculation about the budget of this institution.

17 PRESIDING JUDGE SMITH: It's irrelevant whether they have a  
18 budget or how much it is.

19 MR. CADMAN:

20 Q. The point is that it's a relatively large operation, and you are  
21 aware of that?

22 MS. BOLICI: Your Honour, it's asking for an opinion and it's  
23 not clear what the comparison the counsel has in mind is. Relatively  
24 large in comparison to what is irrelevant in general.

25 PRESIDING JUDGE SMITH: Overruled.

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1           You can answer that question, if you know.

2           THE WITNESS: I apologise, I have no comparison. I don't know  
3 whether we would call that large, medium or small.

4           MR. CADMAN:

5           Q. Okay. Not pressing you on the size of the operation, you would  
6 agree that an operation of this kind requires a level of  
7 organisation?

8           A. I can confirm to the positive.

9           Q. And you would also agree that such an institution, there's a  
10 need to record key activities that relate to criminal investigations?

11          A. I -- I would agree, yes.

12          Q. And in case any questions are asked, there needs to be a  
13 documented record of what happens in a particular case?

14          A. If you can just explain to me what you mean with "what happens  
15 in a case"?

16          Q. Well, you would agree that in a prosecutor's office you need to  
17 maintain effective records, documented records of all actions that  
18 are taken in a case in case any questions are raised at any stage?

19          A. I don't know what level of record you are looking at, but, for  
20 instance, information obtained has to be processed, submitted into  
21 evidence. Whether you refer to internal communications, I think that  
22 is individual from organisation to organisation. It depends on the  
23 leadership, really.

24          Q. Now, you have said on more than one occasion that your  
25 instructions were provided to you orally by Ms. Bolici; is that

1 correct?

2 A. I actually thought of this, and I believe I also have e-mail  
3 communications. I'm not sure whether I said that at the time.

4 Q. Well, we can come back to that after the break, perhaps. But  
5 what you had said was that you had been provided with oral  
6 instructions and no contemporaneous note was made as a result of  
7 those oral instructions.

8 A. I did not make a contemporaneous note of the instructions.

9 Q. But now you're saying that there was an e-mail communication  
10 from Ms. Bolici providing you with your instructions in this case?

11 A. There were e-mail communications, now I remember. I apologise.  
12 It's a year ago. I'm trying my best. There was a combination, oral  
13 and e-mail communications.

14 Q. And was that just from Ms. Bolici or did you receive written  
15 instructions from other members of the Prosecutor's Office?

16 A. I remember at least one more e-mail communication. It's not an  
17 instruction. It's just providing some information for me to review.

18 Q. Who provided that instruction?

19 A. Shall I say the name?

20 Q. Well, let me ask -- well, wait for the Judges to rule before you  
21 look to Ms. Bolici for assistance. Did that instruction come from  
22 Ms. Bolici?

23 PRESIDING JUDGE SMITH: That comment is not necessary. Just  
24 confine yourself to questioning.

25 MR. CADMAN: Certainly.

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1 We can go into private session so she can answer that question,  
2 Your Honour, perhaps.

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

4 [Private session]

5 [Private session text removed]

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13 [Open session]

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

15 PRESIDING JUDGE SMITH: Now you can proceed, Mr. Cadman.

16 MR. CADMAN:

17 Q. What was the nature of those instructions?

18 A. I received an e-mail pointing me to the files where these  
19 communications are located which I needed to draft paragraphs, I  
20 think, 32 to 34 of my first declaration. There was a consolidated  
21 folder, so it was easier for me to review it. There was no  
22 instruction to it.

23 Q. Now, staying with internal procedures, as a general point, would  
24 you accept that a prosecutor's office, such as this, can only  
25 function adequately with proper internal guidelines and protocols on

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1 matters that relate to the functioning of the office and the conduct  
2 of investigations?

3 MS. BOLICI: Objection, Your Honour. It's argumentative.

4 PRESIDING JUDGE SMITH: Overruled. You can answer the question.

5 THE WITNESS: Well, this is, like, a general question. I can  
6 confirm that, from my perspective, we have a functional communication  
7 line and organisation in the office.

8 MR. CADMAN:

9 Q. The question is not about communications. We've heard you on  
10 that. The question was about internal guidelines and protocols that  
11 exist in the office on different matters that relate to the internal  
12 structure of the office and the conduct of investigations.

13 A. In relation to the internal structure, yes, there is an internal  
14 structure in the office. And in relation to guidelines for  
15 investigations, I think I said I don't recall having seen anything  
16 written to that effect.

17 Q. You've never seen any written guidelines on the conduct of  
18 investigations or any other aspect of your work other than how the  
19 organisation is structured?

20 A. You are referring to a very broad topic. So I can say, for  
21 instance, we have guidelines that when we travel there is a certain  
22 amount of paperwork which needs to be approved beforehand, needs to  
23 be filled in. When we interview people, there is a certain process  
24 how we get there, how we prepare for it, how -- we have meetings with  
25 management discussing how to go about. When we finish them, we come

1 back, we report on the outcome. On the submission of evidence, there  
2 is a clear procedure.

3 So, like, generally speaking, I don't think we have an issue.  
4 So if you want to ask me specifics.

5 Q. Well, I'm asking you this because - and, again, we may need to  
6 come back to the point on which you answered this question previously  
7 - you had said that you were unaware of the existence of any such  
8 protocols or guidelines.

9 A. If I remember correctly, and I apologise if I misunderstood, you  
10 were referring to something like a -- guidelines on how to conduct  
11 investigations. We do not have a guidelines how to conduct  
12 investigations. We have guidelines, like, operational guidelines,  
13 how to go about it.

14 Q. What about guidelines on search and seizure operations?

15 A. We have guidelines on search and seizure operations.

16 Q. Guidelines on internal security matters?

17 A. We have guidelines on internal security matters.

18 Q. And at what stage were you made aware of those internal  
19 guidelines? When you first started in the office?

20 A. The security guidelines?

21 Q. The guidelines that were just listed, when were you made aware  
22 of the existence of those guidelines?

23 A. The security guidelines I was made aware immediately when I  
24 started. It's part of the induction package. Then we talked about  
25 the search and seizure guidelines. That, I was involved in

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1 development. What was the other one? I apologise.

2 Q. Search and seizure.

3 A. Search and seizure, I was part in developing those.

4 Q. You were part of developing the rules on the search and seizure  
5 operations?

6 A. Not the rules. The -- the --

7 Q. The guidelines?

8 A. Yes, yes.

9 Q. Now, I want to go back to what happened during or immediately  
10 after 7 September. And recognising that this was, by your account or  
11 by the SPO's account, a significant data breach, did the Prosecutor  
12 call an office-wide meeting to inform you all of what had happened?

13 MS. BOLICI: Your Honour, I believe the question has been asked  
14 and answered already.

15 PRESIDING JUDGE SMITH: Overruled. You can answer.

16 THE WITNESS: I would need to clarify. We were -- at one point  
17 we had an office meeting where the Chief Prosecutor -- or the  
18 Specialist Prosecutor made an announcement, yes.

19 MR. CADMAN:

20 Q. And when was that?

21 A. I don't remember the date.

22 Q. So an office-wide meeting where you are informed about the  
23 breach? The data breach. You were informed by the  
24 Specialist Prosecutor.

25 A. That, I don't remember. No. I don't remember that I was --



1 that there was an office announcement that there was the breach. I  
2 don't remember. But there was an announcement sometime later about  
3 the data breach.

4 Q. And was that an entire office or were you in a smaller team when  
5 you were informed of that?

6 A. That was the entire office.

7 Q. What further steps were taken following that announcement?

8 Well, let me ask that in a little bit more simple terms: Were any  
9 further steps taken internally as a result of that data breach?

10 A. As I said, I don't recall that the Prosecutor --

11 Specialist Prosecutor announced the data breach. But what I do  
12 recall is that we had an amendment to our security procedures and  
13 protocols subsequently to that incident.

14 Q. Now, we've also spoken about the size of the office. You're not  
15 with me that it's a large office. Now, my question is this: At some  
16 point between September and December 2020, a number of personnel were  
17 terminated or ceased working with the office. Were you aware of  
18 that?

19 MS. BOLICI: The question has been asked and answered already.

20 PRESIDING JUDGE SMITH: That was part of the cross-examination,  
21 Mr. Cadman. And I think the answer was that she was aware of people  
22 leaving and she also dated the time it occurred.

23 MR. CADMAN: Your Honour, if I could just confer one moment on  
24 that point.

25 PRESIDING JUDGE SMITH: Yes, you may.

1 [Specialist counsel confers]

2 MR. CADMAN: We may need to come back to that point.

3 Q. But I just want to return for a moment. You have said today  
4 that your instructions were not merely oral. They were in writing  
5 and via e-mail. That's your evidence today?

6 A. That is correct, yes.

7 Q. But if we go to the transcript of 20 October, at page 1066, you  
8 say completely the opposite, that there were no written instructions,  
9 that your instructions from Ms. Bolici were orally.

10 A. I don't recall saying that there were no written instructions.  
11 I believe I remembered oral instructions. But thinking of -- of it  
12 deeper in session, I want to confirm I remember receiving also  
13 written instructions, a couple of e-mails, I believe. It's all on  
14 the record.

15 Q. But if we can turn to page 1066 of the transcript, looking at  
16 line 8, you said -- the question was put to you:

17 "Did you send an e-mail back to the person confirming,  
18 informally, what you had been asked to do?

19 "Not that I recall.

20 "Is that usual operating procedure for the SPO?

21 "Yes, it is.

22 "So the normal operating procedure within the SPO is that you  
23 would be tasked to undertake actions verbally without any record  
24 being kept of what you're asked to do?

25 "That is correct, yes."

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1 MS. BOLICI: Your Honour, for completeness, I would also ask the  
2 counsel to refer to page 1068 of the same transcript where the same  
3 subject was considered again and clarified by the witness. I refer  
4 to the lines 5 to 13 of page 1068. I can read it, if you --

5 PRESIDING JUDGE SMITH: You can certainly raise that on  
6 redirect.

7 MS. BOLICI: Yes.

8 PRESIDING JUDGE SMITH: But right now, your position is  
9 overruled.

10 MR. CADMAN:

11 Q. I want to go back for a moment to your role in the  
12 investigation. What you have said is that you were instructed to  
13 conduct a review of the material of the three batches and make a  
14 determination of whether that material was within your database.  
15 That's what you were asked to do.

16 A. Not only. As you can see from the declaration, there are a  
17 number of issues I reported on.

18 Q. We'll get to --

19 A. Not only that.

20 Q. We'll get to those in a moment. But, principally, you were  
21 asked to review those three batches. And when you were asked whether  
22 you went further, conducted additional analysis, you repeatedly  
23 stated that: No, that's not what I was instructed to do.

24 A. I did not conduct any analysis other than the one which I was  
25 tasked to do. That is my statement.

1 Q. And from 25 September, I just want to look at what happened  
2 after that point in terms of the investigation. So you've been made  
3 aware of what is, by all accounts, a significant security breach.  
4 And as an experienced investigator, and we've heard about your  
5 experience, would you agree that any investigation must consider all  
6 the facts, follow leads, and follow the evidence to ensure what is  
7 established? Would you agree with that?

8 A. When you say would follow all the leads, I mean, this is a  
9 hypothetical now. Like, you have to consider your entire operation  
10 and you need to prioritise, so there are internal and external  
11 factors who will play a role whether you follow every lead;  
12 e.g. personnel issues or security issues will have an impact on how  
13 you progress an investigation or a lead.

14 Q. You've said when you were presented with a hypothetical  
15 situation that you probably would have ordered surveillance but that  
16 wasn't your responsibility.

17 A. I believe, and I hope I said, that I would take it into  
18 consideration as an option.

19 Q. And after the 25th, you did not order any surveillance of the  
20 premises?

21 A. I had no involvement in that decision-making process.

22 Q. And despite the request being made by the association, no  
23 discussion was taken to place the premises under surveillance?

24 MS. BOLICI: Your Honour, it's not in evidence about any request  
25 made by the association.

1 MR. CADMAN: Well, let me rephrase the question.

2 PRESIDING JUDGE SMITH: You may rephrase the question.

3 MR. CADMAN:

4 Q. Were you made aware of any request by the association or the  
5 defendants to place the premises under surveillance?

6 A. No, I was not.

7 Q. You've also confirmed to us that part of your responsibilities  
8 on other matters is the interviewing of witnesses and suspects. That  
9 falls within your remit on a general level?

10 A. I also interview suspects and witnesses, yes.

11 Q. But you didn't interview either Mr. Haradinaj or Mr. Gucati?

12 A. I was not assigned this task. You are correct.

13 Q. And you didn't interview any person at the KLA War Veterans  
14 Association?

15 A. I had no involvement in that. That is correct.

16 Q. You didn't interview any person in the building of the War  
17 Veterans Association?

18 A. No, I did not.

19 Q. And as far as you're aware, no other member of your team did?

20 A. I don't know what they did because I was not part of the  
21 investigation.

22 Q. So from 25 September onwards, you were never made aware of any  
23 action that was taken as part of the investigation?

24 A. I was made aware in the sense that I reviewed the batches and  
25 the Official Notes. So as I was reading, I got more and more aware

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1 of what has taken place. But from an operational level, when things  
2 took place, I had no knowledge and no involvement.

3 Q. So neither did you interview any of the journalists present at  
4 either of the press conferences?

5 A. I -- I was involved in the interviews of, I think, three  
6 journalists.

7 Q. You didn't have cause to question Mr. Arsim Lani or  
8 Ms. Elmedina Ballazhi?

9 A. I don't remember the names now.

10 Q. Directly opposite the building, there are a number of businesses  
11 that all have CCTV pointing towards the building which houses the KLA  
12 War Veterans Association. You didn't have cause to interview any of  
13 those or try to secure the CCTV material from either of those three  
14 days?

15 A. You mean me personally? I was not involved in investigation. I  
16 had no involvement in that.

17 Q. To the best of your knowledge, did any of the investigators  
18 conduct any interviews with any of these individuals?

19 A. I am not aware of that.

20 Q. And we've also heard, and you can confirm, you had no direct  
21 contact with the Kosovo police as part of this investigation?

22 A. If we can just distinguish between two things is my involvement  
23 in the search, there were Kosovo police there, and I don't know have  
24 I spoken to them but they were part of the team. In relation to what  
25 I think you are referring to, investigative steps, investigating the

1 disclosure of the batches? Is that what you are asking me?

2 Q. Well, my question was other than the Kosovo police being outside  
3 of the building, you had no contact with them as part of your  
4 investigation, as part of your role in this investigation?

5 A. My role in the search, you mean?

6 Q. Well, I'm talking overall as part of your responsibilities from  
7 25 September onwards.

8 A. I was not involved in investigations other than speaking to the  
9 journalists. So, no, I don't think I spoke to any police, Kosovo  
10 police officers.

11 Q. So who would have had responsibility for that?

12 A. As I mentioned before, the overall responsibility of conducting  
13 this -- directing this information was with the Specialist Prosecutor  
14 and the deputy. They would have tasks -- they have tasked  
15 individuals to conduct investigative steps.

16 Q. And following your engagement at some point before the 25th, at  
17 no stage were you asked to complete or create a work-plan for the  
18 investigation?

19 MS. BOLICI: Your Honour, I think this question has been asked  
20 and answered several times now.

21 PRESIDING JUDGE SMITH: Overruled.

22 You can answer that question.

23 THE WITNESS: I did not have involvement in the investigation  
24 before.

25 MR. CADMAN:

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1 Q. And is it your evidence that you had no involvement either into  
2 the investigation into how the material was leaked?

3 A. I had no involvement in this investigation. Excuse me, with the  
4 exception of the search where we looked for materials. Just to be  
5 precise, in case you are looking for this.

6 Q. And looking at the search on -- in which we've all had the  
7 opportunity to see on 25 September, that entire search was video  
8 recorded; that's correct?

9 A. That is correct.

10 Q. And to the best of your knowledge, no such video recording  
11 exists for the operations on the 8th, the 17th, and the 22nd?

12 A. I'm not aware.

13 Q. Did you not ask?

14 A. Like I said, I did not make inquiries. I was tasked specific  
15 jobs to do, and that is what I did. In -- in line of performing this  
16 task, I did not become aware, get aware that there is any video  
17 recording.

18 Q. So you didn't become aware. My question was did you not ask  
19 after 25 September for a copy of the video recordings of the 8th,  
20 17th, and 22nd?

21 A. As I said, I'm not aware that there were any video recordings,  
22 and I didn't ask whether there -- didn't ask for them as I wasn't  
23 aware of them.

24 Q. You didn't ask for them.

25 Now, going to what you were asked to do, to review what was



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1 presented to you as the three batches, and we've confirmed that you  
2 had no involvement in the seizure of that material on the 8th, 17th,  
3 and 22nd; correct?

4 A. Correct.

5 Q. And as you've said in each of the three batches, and perhaps we  
6 can turn to them after the break, the only record or the record that  
7 you were presented with at that time were the three handover forms  
8 that Mr. Rees took you through in cross-examination?

9 A. Not only the three handover forms. If ...

10 Q. You've said that the three handover forms were the front pages  
11 for each of those batches that you received.

12 A. That is correct.

13 MR. CADMAN: Your Honours, I think I will come back to that  
14 point after lunch. I want to just check the references before I come  
15 back to it.

16 [Specialist counsel confers]

17 PRESIDING JUDGE SMITH: Mr. Rees, I assume you mean you're going  
18 to check the references but at this next break.

19 MR. CADMAN: Yes.

20 PRESIDING JUDGE SMITH: Okay, that's not lunch.

21 MR. CADMAN: No, that wasn't a question. Effectively, there are  
22 two additional points that I want to put to the witness.

23 PRESIDING JUDGE SMITH: No problem. I'm just trying to get the  
24 timeline straight.

25 MR. CADMAN: Certainly. Certainly. And certainly I will be

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1 done by the lunch break. It's not -- there's not a particularly long  
2 point that needs to be put to the witness. I just want to get in  
3 order the transcripts from the press conferences and the handover  
4 notes. So perhaps if we could break ten minutes early, I can take  
5 those points now.

6 PRESIDING JUDGE SMITH: We will break now, come back at  
7 20 minutes after 11.00, and then proceed on till the lunch break.

8 Thank you, Ms. Pumper.

9 THE WITNESS: [Microphone not activated].

10 [The witness stands down]

11 PRESIDING JUDGE SMITH: [Microphone not activated].

12 --- Recess taken at 10.50 a.m.

13 --- On resuming at 11.20 a.m.

14 PRESIDING JUDGE SMITH: Go ahead, Mr. -- oh, we need a witness.  
15 Please bring the witness in.

16 [The witness takes the stand]

17 PRESIDING JUDGE SMITH: [Microphone not activated].

18 THE WITNESS: [Microphone not activated].

19 PRESIDING JUDGE SMITH: Mr. Cadman will continue with his  
20 cross-examination.

21 MR. CADMAN: Thank you.

22 MS. BOLICI: Your Honour, I would just like to note for the  
23 record that the Case and Evidence Manager is not present at the  
24 moment. I believe she will be here shortly.

25 PRESIDING JUDGE SMITH: Okay. Thank you.

1 MR. CADMAN:

2 Q. I just want to start by looking at the point that we dealt with  
3 at page 33, line 23 of today's session where the Presiding Judge  
4 said:

5 "That was part of the cross-examination, Mr. Cadman. I think  
6 the answer was that she was aware of people leaving, and she also  
7 dated the time it occurred."

8 If I could just correct that, if I may. If we turn to the  
9 transcript of 21 October at page 1249, line 16 onwards, Mr. Rees  
10 asked:

11 "Can you confirm that in the period of 22 September and  
12 December 2020 there were some 25 staff members, including four team  
13 leaders, whose time at the SPO came to an end?"

14 "A. No, I cannot confirm that.

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

18 Ms. Bolici then objected. Your Honour asked what was the  
19 relevance. And then at page 1250, line 14 onwards, Mr. Rees said:

20 "Yes, the last question hasn't been answered. Are you aware of  
21 any staff members whose time at the SPO came to an end during that  
22 time period, which was between the period between 22 September and  
23 December 2020?"

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

1 speed. Thank you very much.

2 PRESIDING JUDGE SMITH: Please -- please slow your speech and --

3 MR. CADMAN: I do apologise, Your Honour.

4 PRESIDING JUDGE SMITH: Yes.

5 MR. CADMAN: I can read the last question again.

6 Q. "Are you aware of any staff members whose time at the SPO came  
7 to an end during that period, which was the period between  
8 22 September and December 2020?"

9 "A. I don't recall whether anyone specifically left at that  
10 time."

11 MR. CADMAN: That was her answer. So just to -- if I can boldly  
12 correct what Your Honour said earlier, she did answer the question  
13 and said that she was not aware.

14 Q. Now, I'd like to go back to a number of questions that we spoke  
15 about earlier.

16 So today you said:

17 "All until I started working for the SPO, my experience did not  
18 involve any case going in the trial phase. My experience is  
19 investigating until indictment and then I move on to the next case."

20 That's what you said today.

21 Then if we can look at the transcript of 20 October 2021,  
22 page 1151, you were asked by Mr. Rees if you'd previously given  
23 evidence at trial before, and you said that you have. So your answer  
24 earlier is not correct. You've been a witness in a trial previously.  
25 So which one is it?

1 A. If you allow me. When I -- what I said today is I meant as an  
2 investigator, doing my job as an investigator, I was never involved  
3 in the trial phase before joining this office. But I have testified  
4 as a witness in trial before.

5 Q. Now, you also said that you were not aware of the disclosure  
6 obligations earlier today because of the fact that you've not been  
7 involved with the trial phase. But you must understand that those  
8 disclosure obligations are relevant from day 1, are they not?

9 A. I think that I have said, when I was asked the first time, that  
10 if I came across exculpatory evidence that I would, of course, report  
11 it to the Prosecutor immediately. This is what I would do as an  
12 investigator investigating a case. I have, I think, also said that  
13 in this office we have a whole team dealing with disclosure, and that  
14 I've been involved in exculpatory review.

15 So please excuse me. I just don't know the exact ins and outs  
16 that you want me to answer.

17 Q. So you are now aware that there are members of your team that  
18 are responsible for disclosure?

19 A. I think I've said that the last time you asked me, that there  
20 is -- that we do an exculpatory review.

21 MR. CADMAN: Now what I want to look at, if we can, is a  
22 transcript from the first press conference, which is 081344-01-TR-ET.

23 Q. Now, if we look at page 2, lines 15 to 17, here you see  
24 Mr. Haradinaj criticising members of parliament and making reference  
25 to what he considers to be a mono-ethnic court.

Witness: Zdenka Pumper (Resumed) (Open Session)

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Cross-examination by Mr. Cadman

1 A. Excuse me, which paragraph are you at?

2 Q. It's lines 15 to 17 of page 2.

3 A. I don't have numberings of lines in front of me.

4 PRESIDING JUDGE SMITH: The exhibit doesn't appear to have  
5 numbers.

6 THE COURT OFFICER: Your Honours, for the record, that is  
7 Exhibit P1, admitted.

8 MR. CADMAN: If I could just take a moment just to check the  
9 reference. It may be that the reference is not correct. It does  
10 appear that the reference from the document I'm looking at, which  
11 comes as Disclosure 2, I'm going to have to check what the actual  
12 reference is on the presentation queue, because it may be that I'm  
13 using what has been disclosed but is not the same reference in the  
14 presentation queue.

15 PRESIDING JUDGE SMITH: Are you going to go on to a different  
16 subject, then? Is that it?

17 MR. CADMAN: I apologise, Your Honour?

18 PRESIDING JUDGE SMITH: Are you going to go on to a different  
19 subject, then?

20 MR. CADMAN: Well, Your Honour, I think I'm going to just have  
21 to, just for a brief moment, check.

22 PRESIDING JUDGE SMITH: All right.

23 MR. CADMAN: Because there are a number of references that need  
24 to come out of this exhibit.

25 PRESIDING JUDGE SMITH: All right. I just didn't understand

1 your point.

2 [Specialist counsel confers]

3 MR. CADMAN: Whilst we're checking those, I'll move on to  
4 another subject and we can come back to that.

5 PRESIDING JUDGE SMITH: Thank you.

6 MR. CADMAN:

7 Q. Now, earlier this morning, you referred to a meeting that took  
8 place, an office-wide meeting at some point after the 7th. Can you  
9 tell us when that meeting took place, approximately?

10 A. What I was referring to is a meeting which took place months  
11 after the 7th.

12 Q. A month after the 7th?

13 A. Months, t-s. Several months after that.

14 Q. So there was -- after the press conference on 7 September, there  
15 was no office-wide meeting immediately afterwards?

16 A. What I'm saying is that I recall one which took place months  
17 after where the Specialist Prosecutor spoke to the entire team. I'm  
18 not saying one didn't take place before.

19 Q. So you're not aware of any meeting that took place after the  
20 7th?

21 A. I can only repeat. It has been a year ago. I don't recall.

22 Q. You don't recall any meeting occurring after the 17th, after the  
23 second press conference?

24 A. I can't recall any meeting.

25 Q. No meeting took place after the 22nd?

Witness: Zdenka Pumper (Resumed) (Open Session)

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Cross-examination by Mr. Cadman

1 A. I'm not saying that no meeting took place. What I'm saying is  
2 it has been a year, and I really don't remember. I can't confirm in  
3 the positive, neither in the negative.

4 Q. And you were not part of any meeting, if a meeting did take  
5 place?

6 A. I'm not sure whether it's my English. I can't recall whether a  
7 meeting took place.

8 Q. And when you were instructed to do the task that you were  
9 instructed to do, there was no briefing after the 25th in relation to  
10 the matters that had occurred?

11 A. Would you please -- when you --

12 Q. So --

13 A. -- when you -- if you just allow me, when you say a "briefing,"  
14 what do you mean with that?

15 Q. Well, a briefing on what had occurred, that there is a  
16 suggestion that there has been a major security breach of data held  
17 by the Specialist Prosecutor's Office, and you were not informed  
18 until, as you say, months later.

19 A. As I said, I have become aware sometime after the 7th of the  
20 first disclosure. I just don't remember when after the 7th. I do  
21 not recall -- I simply don't remember - I'm not saying it didn't take  
22 place or it took place - that there was an official meeting where the  
23 entire office was addressed about the matter. That is my position.

24 Q. But surely you would remember if a meeting took place dealing  
25 with what is, effectively, internally, a catastrophic event, would



Witness: Zdenka Pumper (Resumed) (Open Session)

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Cross-examination by Mr. Cadman

1 you not?

2 A. I can only say I don't remember.

3 Q. And you don't remember any meeting after the second press  
4 conference either?

5 A. I think I've answered that.

6 MS. BOLICI: I think it's been asked and answered about ten  
7 times by now. I would suggest that we move on to the next line of  
8 questioning.

9 PRESIDING JUDGE SMITH: [Microphone not activated].

10 THE INTERPRETER: Microphone, please.

11 PRESIDING JUDGE SMITH: I'm sorry. I overrule your objection.  
12 You may answer about after the second meeting.

13 THE WITNESS: It's the same answer as the first meeting -- first  
14 press conference. I really don't remember. It has been a long time.

15 MR. CADMAN:

16 Q. And your answer would be the same after the third press  
17 conference on the 22nd?

18 A. That is correct.

19 Q. And after you conducted the search on the 25th, was there any  
20 meeting at any time -- well, was there any meeting around that time,  
21 internally, dealing with these matters?

22 A. I think what I need to say: We have a Friday weekly meeting.  
23 It's just that I don't remember was anything mentioned on that Friday  
24 weekly meeting. I would be assuming something.

25 PRESIDING JUDGE SMITH: I think she's been quite clear about

Witness: Zdenka Pumper (Resumed) (Open Session)

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Cross-examination by Mr. Cadman

1 this. Let's move on.

2 MR. CADMAN:

3 Q. So just one final question on this point. So at your Friday  
4 weekly briefings, are they chaired by the Specialist Prosecutor?

5 MS. BOLICI: Your Honour, there is an objection about the  
6 relevance of the specifics of the internal working procedures.

7 PRESIDING JUDGE SMITH: I understand your objection. It is  
8 probably peripherally relevant, and I'll allow the answer.

9 But then you said one more, so that will be it.

10 THE WITNESS: Generally speaking, the Specialist Prosecutor is  
11 not in attendance to these meetings.

12 MR. CADMAN:

13 Q. But you have --

14 A. Sorry, sorry, I have to clarify. I'm not sure whether he's in  
15 attendance because it is over Teams. He doesn't speak during these  
16 meetings.

17 Q. And so between the 7th and the 25th, you would have had three  
18 Friday team meetings?

19 A. If they had not been cancelled, I suppose so.

20 Q. Do you remember if they were cancelled?

21 A. I don't recall. It's been a year.

22 Q. Well, are there minutes sent around as a result of these  
23 meetings, or are these just oral presentations?

24 A. These are oral presentations, and I do not know whether the  
25 assistant to the management takes minutes.

Witness: Zdenka Pumper (Resumed) (Open Session)

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Cross-examination by Mr. Cadman

1 Q. You certainly don't receive any minutes after those meetings,  
2 then?

3 A. I have not received minutes during -- for these meetings, no.

4 Q. You said that you became aware of the first press conference  
5 after the 7th. Do you recall when that was?

6 A. I cannot recall.

7 Q. Within a day?

8 A. As I said, I think -- I can't tell if it's a day later, couple  
9 of days later.

10 Q. Do you recall how you became aware?

11 A. I cannot.

12 Q. You also spoke earlier about security measures that were put in  
13 place as a result of what transpired from the three press  
14 conferences. What security measures were put in place?

15 MS. BOLICI: Objection, Your Honour, about the questioning into  
16 the internal security protocols of the office.

17 [Trial Panel confers]

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 THE INTERPRETER: Microphone, please.

20 PRESIDING JUDGE SMITH: The Panel is curious about where you're  
21 going with this. We don't see very much relevance. It also has to  
22 do with internal working arrangements. You're going to have to be  
23 very careful and state the case that you have so that we know the  
24 direction you're going in and we can judge it accordingly.

25 MR. CADMAN: Certainly. The point being made, as the witness

Witness: Zdenka Pumper (Resumed) (Open Session)

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Cross-examination by Mr. Cadman

1 has said earlier today, that there were security measures put in  
2 place as a result of the breach. I'm merely trying to identify what  
3 measures were taken and when those measures were taken.

4 PRESIDING JUDGE SMITH: You're not satisfied that security  
5 measures were taken. You want to know exactly what. Isn't that a  
6 little bit into an investigation that you're not privy to?

7 I think I'll sustain your objection based upon that statement of  
8 the case.

9 You do not need to answer that question.

10 Go ahead.

11 MR. CADMAN:

12 Q. So not answering what measures were put in place, can you tell  
13 the Court when those security measures were changed?

14 A. I don't remember.

15 Q. At any stage after the 7th, were you briefed by security  
16 personnel within the Prosecutor's Office as to what those security  
17 measures were going to be?

18 A. To my recollection, we received an e-mail.

19 Q. You received an e-mail. Can you expand upon that?

20 A. Sorry. In relation to your question, I was not briefed of  
21 security personnel. I received an e-mail.

22 Q. You received an e-mail?

23 A. Mm-hmm.

24 Q. And that was the extent of the security notification that you  
25 had?

1 A. To my recollection, yes, we received a detailed e-mail. Yeah.

2 [Specialist counsel confers]

3 MR. CADMAN:

4 Q. I just want to go back for a moment on the question of  
5 disclosure. And I'll try not to repeat what I said earlier. But you  
6 recognise that from the outset of investigation, it is your  
7 responsibility as an investigator to review any information that  
8 undermines the Prosecution case or supports the Defence case? You  
9 understand that?

10 A. I do.

11 Q. And that there is an obligation on you to report that to your  
12 disclosure officer or to report that to the Prosecutor, if that's who  
13 you're reporting to?

14 A. As -- as I mentioned before, yes, we have in this office a  
15 system in place how we address this specific issue. And before that,  
16 I have, when I came across exculpatory information, I've reported it  
17 to the Prosecutor. That's what we do in Austria.

18 Q. Okay. That's what you do in Austria?

19 A. Well, I am a police officer from Austria. My police education  
20 was there, and that is a principle which we were taught.

21 Q. So you understand that as an obligation on you as an  
22 investigator within the SPO?

23 A. I don't know whether it is an obligation on me as an  
24 investigator. It's an obligation of the office, yes.

25 Q. Of the entire team?

Witness: Zdenka Pumper (Resumed) (Open Session)

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Cross-examination by Mr. Cadman

1 A. Well, of the office. Now, please don't hold me to --

2 Q. Of which you are a member?

3 A. I'm not saying I'm excluded.

4 Q. So you accept that there is an obligation on you in conducting  
5 an investigation to disclose potential material that undermines the  
6 Prosecution case or could potentially support a defence raised by a  
7 defendant?

8 A. I think I am part of an office which has processes in place  
9 which would fulfil this obligation. I haven't read that anywhere  
10 it's written that I specifically have to do it. I think that's what  
11 we are discussing, sort of.

12 Q. Now, you have said that you reviewed the transcripts of the  
13 three press conferences as part of your involvement in this matter.

14 A. I read them, yes.

15 Q. And I believe we're still having difficulty identifying where  
16 they are, so I will try to -- they're fine? Oh.

17 MR. CADMAN: Apparently, the files that we have have a line  
18 numbered system, and what's in your system does not have a line  
19 number. I believe that's the issue. But we believe that we can  
20 actually track where they are so I can inform.

21 So turning to the first press conference, looking at my page 2,  
22 lines 15 to 17. Sorry, page 2, lines 15 to 17.

23 Q. Your version is page 2, line 2. You will see there --

24 A. Excuse me. Would you please shrink the page that I can see the  
25 whole page? Thank you.

Witness: Zdenka Pumper (Resumed) (Open Session)

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Cross-examination by Mr. Cadman

1 Q. Do you have that?

2 A. I have the page. Would you please point me to which line?

3 Q. Line 2. You will see here that Mr. Haradinaj is making  
4 reference to members of parliament and referring to what he considers  
5 to be a mono-ethnic court?

6 A. Yes, I can see that.

7 Q. Then if we go further down, line 4, you will see he refers to  
8 cooperation with the Milosevic state apparatus.

9 A. I can see that, yes.

10 Q. Line 8, you will see that he only flicked through the documents.  
11 The same page, paragraph 3, line 1, he makes the same reference.  
12 Page 2, paragraph 5, he again makes reference to the Milosevic  
13 regime, referring to Serbian officials who are responsible for  
14 atrocities in Kosovo.

15 Final paragraph, page 2, he calls for accountability and then  
16 accuses the SPO of having collaborated with those who tortured and  
17 killed Kosovo Albanians.

18 Next page, line 1 --

19 PRESIDING JUDGE SMITH: Mr. Cadman, is there a question here or  
20 are you just making statements?

21 MR. CADMAN: Well, I'm taking her through these points because  
22 it's quite clear from these points --

23 PRESIDING JUDGE SMITH: And my question is, is there a question  
24 here? That's what a witness is here for.

25 MR. CADMAN: Certainly.

1 Q. When you reviewed these transcripts, taking into account some of  
2 the references that I've already made, what steps did you take?

3 A. Sorry, when you --

4 Q. The point being made is that you can see from these references,  
5 and following on from the point that we've made as your obligation,  
6 what steps did you take to raise these with whoever you were  
7 reporting to at that time as matters that undermined the Prosecution  
8 case or supported a potential Defence case?

9 A. I received -- or I reviewed this transcript, and my task was to  
10 identify the names - I think they're on page 1 - specific names which  
11 were mentioned, I believe you said Mr. Haradinaj, by Mr. Haradinaj  
12 and to check whether these names are contained in the batch. My job  
13 was not to review this and report back on the contents of it. And I  
14 have received this document from the Prosecutor, Ms. Bolici.

15 Q. So you didn't consider it to be your task to do anything other  
16 than to review what names had been stated by Mr. Haradinaj?

17 A. The specific task which I was given here is to review -- to  
18 check these names, and that is what I did. But I read the entire  
19 document.

20 Q. One final reference that I would like to make is page 3. It's  
21 the paragraph that starts: "I believe it was necessary ..."

22 A. I've read it, yes.

23 Q. Now, as you can see, what Mr. Haradinaj is stating there is that  
24 he considers that he did this in the public interest. This is not a  
25 matter that you took upon yourself to review?



1 A. I think --

2 MS. BOLICI: Yes, apologies. There is another objection. The  
3 question has been asked, has been answered. The witness clarified  
4 the scope of her task, and the question is argumentative.

5 PRESIDING JUDGE SMITH: I'll overrule the objection.

6 The question has been asked many times. I'll let you ask it  
7 this one more time, then we're finished with that.

8 MR. CADMAN: Thank you.

9 Q. So you didn't consider that to be a relevant consideration in  
10 your review?

11 A. My task was not to identify the relevance of all the details in  
12 this document. My task was to view specific names and to cross-check  
13 those.

14 PRESIDING JUDGE SMITH: Mr. Cadman, I've been reminded that this  
15 is P1. You need to make reference to it as P1 so that the record  
16 will show where you're getting these statements.

17 MR. CADMAN: I'm grateful, Your Honour.

18 I just have one final question. We will need to go into private  
19 session for that.

20 PRESIDING JUDGE SMITH: [Microphone not activated]. I'm sorry.

21 On the record, into private session, Ms. Court Officer.

22 [Private session]

23 [Private session text removed]

24

25

Witness: Zdenka Pumper (Resumed) (Private Session)

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Cross-examination by Mr. Cadman

1 [Private session text removed]

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Witness: Zdenka Pumper (Resumed) (Private Session)  
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1 [Private session text removed]

2

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

3 MR. CADMAN: We can go back into public session.

4 PRESIDING JUDGE SMITH: Back into public session,  
5 Madam Court Officer.

6 MR. CADMAN: At this time, I don't have any further questions.

7 As Mr. Rees has indicated, there may be a need to recall this witness  
8 later on.

9 [Open session]

10 THE COURT OFFICER: For the record, Your Honours, we are in  
11 public session.

12 PRESIDING JUDGE SMITH: We're back in public session.

13 Could you make that statement again on the public record?

14 MR. CADMAN: Oh, I do apologise.

15 PRESIDING JUDGE SMITH: No. Could you make your statement  
16 again?

17 MR. CADMAN: We're in public session now?

18 PRESIDING JUDGE SMITH: Yes.

19 MR. CADMAN: I have no further questions for this witness at  
20 this stage. As Mr. Rees has already indicated, we may need to recall  
21 this witness at a later time.

22 PRESIDING JUDGE SMITH: All right.

23 Madam Prosecutor, do you have any redirect?

24 MS. BOLICI: Just a few questions, Your Honour.

25 PRESIDING JUDGE SMITH: All right. As you know, the SPO may be

1 permitted to conduct a redirect examination but only on matters  
2 arising in the cross-examination.

3 MS. BOLICI: Yes.

4 PRESIDING JUDGE SMITH: This is what we've said in our  
5 paragraph 76 of our Order on the Conduct of Proceedings. Can you  
6 please state the reasons for your redirect?

7 MS. BOLICI: Yes. There were some questions put in the course  
8 of the cross-examination in relation to the confidentiality of the  
9 documents in the batches. The witness provided some answers in  
10 relation to that. I would like just some clarifications in relation  
11 to this topic.

12 PRESIDING JUDGE SMITH: You may go ahead.

13 MS. BOLICI: Thank you.

14 Re-examination by Ms. Bolici:

15 Q. Investigator, you mentioned in the course of the  
16 cross-examination that you verified whether the coordination requests  
17 in Batch 1 are contained in the SPO evidentiary database. Is this  
18 correct?

19 A. That's correct.

20 Q. And are they contained in the SPO evidentiary database?

21 A. They are.

22 Q. And are the coordination requests contained in Batch 1 part of  
23 the SITF or SPO investigative records?

24 A. Sorry, would you please repeat this question?

25 Q. Yes. Coordination requests and general requests for assistance

1 in criminal matters, are they part of the investigations of the SITF  
2 or SPO?

3 A. Yes, they are.

4 Q. And do these coordination requests pertain to SITF or SPO  
5 investigations?

6 A. Yes, they do.

7 Q. And based on your experience as an SITF and SPO investigator,  
8 are records of investigation confidential?

9 A. Yes, they are.

10 Q. Thank you. In relation to Batch 3, you were asked some  
11 questions about the confidentiality of that document. And I would  
12 like to ask: Does Batch 3 pertain to SPO's investigation?

13 A. Yes, it does.

14 Q. And does this document contain information that, to your  
15 knowledge, had not been made public by the SPO?

16 A. To my knowledge, it has not been made public.

17 Q. And did include names of witnesses that the SPO had interviewed?

18 A. Yes.

19 Q. And did include references to information and evidence provided  
20 by those witnesses?

21 A. Yes, it did.

22 Q. And to your knowledge, did the SPO ever make public any names or  
23 evidence or information provided by witnesses to the SPO?

24 A. To my knowledge, it did not.

25 MS. BOLICI: That would conclude the re-examination,

Witness: Zdenka Pumper (Resumed) (Open Session)

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Questioned by the Trial Panel

1 Your Honour. Thank you.

2 PRESIDING JUDGE SMITH: Thank you, Madam Prosecutor.

3 The Panel will now have some questions for you, Ms. Pumper.

4 We're getting close to the end.

5 THE WITNESS: Thank you.

6 PRESIDING JUDGE SMITH: Judge Mettraux has some questions.

7 You have the floor.

8 JUDGE METTRAUX: Thank you, Judge Smith.

9 Questioned by the Trial Panel:

10 JUDGE METTRAUX: And good morning, Ms. Pumper.

11 I'd like to ask you first about the potential indicators of  
12 confidentiality that you have identified in your declarations and its  
13 annexes. You will recall that on 20 October you were asked by  
14 Mr. Rees about some of these indicators, and Mr. Rees made the point  
15 a number of times that the document, the batches, to use that term  
16 that you used, went into the hundreds of pages. Do you recall this  
17 questioning from Mr. Rees?

18 A. Yes.

19 JUDGE METTRAUX: Well, what I want to ask you is this, then: If  
20 we were to replicate your review of those batches, how often, if you  
21 can tell, would these indicators of confidentiality appear in these  
22 documents? Was it every page, every other page, every document? Are  
23 you able to tell us how common and frequent they were in your review  
24 of these batches?

25 A. Your Honour, when you look at the spreadsheet which I made,

Witness: Zdenka Pumper (Resumed) (Open Session)  
Questioned by the Trial Panel

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1 there I list every single document and I also have a column which  
2 states how many pages this document is. So you would see there that,  
3 for instance, Document 1, contained of two pages, has four indicia of  
4 confidentiality. So if you go through this spreadsheet, it will  
5 answer this question, I believe, for each of the documents.

6 JUDGE METTRAUX: Thank you. And one of the indicators or  
7 potential indicator of confidentiality that you identified and that  
8 you discussed briefly with Mr. Rees was the presence on some of these  
9 documents of the SITF logo.

10 Now, what I want to ask you is why you considered the presence  
11 of this logo to be of potential relevance to determining the  
12 confidential status of a document?

13 A. When I reviewed this, I thought of indicators suggesting  
14 confidentiality. So SITF is an institution investigating crimes  
15 committed at a certain period of time. And for me, the institution  
16 itself could be an indicator to a reader that it could be  
17 containing confidential information.

18 JUDGE METTRAUX: And did you consider it as such on its own as a  
19 potential indicator of confidentiality or in combination with other  
20 factors that you identified in some or all of these documents?

21 A. Your Honour, I believe you will see from the spreadsheet, I  
22 don't think I have the indicate -- I don't think I've come across one  
23 single document that only contains the SITF logo as an indicia. It  
24 was multiple indicators.

25 JUDGE METTRAUX: Now, there's a related but slightly different

Witness: Zdenka Pumper (Resumed) (Open Session)

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Questioned by the Trial Panel

1 issue that was explored by counsel with you. And it's the question  
2 of cooperation with a third party, SITF and SPO cooperation with  
3 third party. And you were asked, in particular, by Mr. Rees about  
4 cover letters accompanying these requests for assistance, these  
5 cooperation requests. Do you recall being asked about that?

6 A. I do.

7 JUDGE METTRAUX: Now, can you tell us whether, as a matter of  
8 practice, the content or the tenor of these coordination requests was  
9 treated by SITF and the SPO as confidential; and if so, why?

10 A. As I mentioned, I have not been a long time with the SITF so I  
11 don't have too much personal experience. But what I have seen and  
12 what I was -- what I inquired is, for instance, these coordination  
13 requests were sometimes sent in encrypted form, electronically, to  
14 this institution.

15 Then these coordination requests, they contain names of  
16 witnesses. So also the cover letter sometimes, they contain: We  
17 want to meet with A and B, could you please summon these individuals.

18 JUDGE METTRAUX: Does that mean that - and, again, to your  
19 knowledge, of course - these requests and the responses to the  
20 requests were treated by your office as confidential? Is that a  
21 correct understanding?

22 A. That would be my understanding, yes, clearly.

23 JUDGE METTRAUX: Now, you were also asked about a number of  
24 media reports that contain documents identical or potentially  
25 identical to those recovered from the KLA WVA. And I want to ask you



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1 a couple of questions about this.

2 The first one is whether you are aware, whether you have any  
3 indication that at the relevant time - meaning, September of 2020 -  
4 there was another source of this same information that could have  
5 provided these documents to the media; in other words, whether you  
6 came across information that could suggest that these journalists,  
7 this media could have obtained the same information from another  
8 source?

9 A. No, I did not.

10 JUDGE METTRAUX: And staying with these media reports. Can you  
11 recall approximately how many of these made express reference to the  
12 origin of the material that they were using in relation, of course,  
13 to these events? In other words, can you recall how many articles,  
14 what proportion of the articles expressly mentioned the fact that  
15 they had received the published information from the KLA WVA?

16 A. Your Honour, just for the purpose of precision, I believe  
17 that -- to the previous question, to be accurate, I believe that  
18 there was the Gazeta -- or one outlet made the reference that they  
19 obtained the document from the SPO. Just that is sort of a  
20 different -- what -- something what I read.

21 And to your second question, I -- I have no knowledge.

22 JUDGE METTRAUX: I want to go to something slightly different,  
23 Ms. Pumper.

24 On 25 October, Mr. Rees asked you about a number of individuals,  
25 witnesses or potential witnesses, who are said to have disclosed

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1 their status as witnesses. Do you recall these questions?

2 A. I do.

3 JUDGE METTRAUX: And Mr. Rees asked you about a specific  
4 individual, and I want to ask you about this. So I will go to an  
5 exhibit, Ms. Pumper, and I will ask you not to use the name but just  
6 to look at your declaration.

7 This is Exhibit P86 MFI. This is your declaration of 29 October  
8 2020. It's ERN 084015. And I will ask the Registry to go to page 6,  
9 please. It's ERN 084020.

10 And to focus your attention, Ms. Pumper, on paragraph 31.

11 Now, do you recall being asked about the individual -- asked,  
12 actually, by counsel from both sides, about this specific individual  
13 mentioned in paragraph 31 of your statement? Do you recall that?

14 A. I do.

15 JUDGE METTRAUX: Now, we understand the Prosecution's case to be  
16 that one of the accused disclosed that name in public as part of one  
17 of the press conferences that were held. I want to ask you - and  
18 again, of course, if it is within your knowledge - would you know why  
19 this particular individual might have attracted the attention of the  
20 accused? Any information specific about him that you think might  
21 have or might go to explain why his name, rather than the name of the  
22 many other witnesses you identified, might have been mentioned by one  
23 of the accused?

24 A. I do not know, Your Honour.

25 JUDGE METTRAUX: Now, you've been asked, also, about the

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1 presence or absence of ERNs, the numbering system on documents. And  
2 if I've understood your evidence properly, you've indicated that some  
3 of the documents that you retrieved from the WVA were effectively, in  
4 substance, the same as those in your records, but some of them did  
5 not bear an ERN number; is that correct?

6 A. The documents which we have seized, they do not bear an ERN  
7 number.

8 JUDGE METTRAUX: And what, if anything, could you conclude from  
9 this in respect of the potential origin of the leak? Is there any  
10 information, any conclusion that you could draw about the presence or  
11 absence of ERNs from these documents?

12 A. I would be speculating.

13 JUDGE METTRAUX: And I won't ask you that, Ms. Pumper. But I  
14 will ask you about another document which Mr. Rees asked you about on  
15 21 October 2021, and it's a document that came from the Serbian  
16 authorities. And you've indicated that you were not able to retrieve  
17 that particular document from the records of your office. Do you  
18 recall?

19 A. Correct.

20 JUDGE METTRAUX: And, again, the same question, and, please,  
21 tell us if you can't say anything about it. But what, if anything,  
22 would that potentially indicate in terms of the origin of the leak,  
23 the fact that you were not able to retrieve this particular document  
24 from the record of your office?

25 A. Again, I believe I would be speculating.

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1 JUDGE METTRAUX: I'll spare you the speculation, Ms. Pumper.

2 A. Thank you.

3 JUDGE METTRAUX: And I'm grateful for your answers.

4 JUDGE GAYNOR: Ms. Pumper, I've a couple of questions for you on  
5 your evidence which you've given.

6 You told us this morning that you were an investigations  
7 operations leader at the SPO. Do you recall that evidence?

8 A. I do.

9 JUDGE GAYNOR: Now, on the basis of your experience in the SITF  
10 and subsequently with the SPO, do you have any reason to believe that  
11 any current or former member of the SPO was involved in any way in  
12 providing any of the information contained in the batches of  
13 information to the KLA War Veterans Association?

14 A. I have no information that this took place.

15 JUDGE GAYNOR: Do you have any reason to believe that any person  
16 acting under the instructions or control of the SPO provided any of  
17 that information to the KLA War Veterans Association?

18 A. I have no information to that effect.

19 JUDGE GAYNOR: To the best of your knowledge, did the SPO carry  
20 out any steps to rule out the involvement of any current or former  
21 members of the SPO or any person acting under the instruction or  
22 control of the SPO in the delivery of information to the KLA War  
23 Veterans Association?

24 A. Your Honour, respectfully, I have no information of the -- the  
25 substance of the investigation into this matter, so I cannot answer

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1 what was investigated or what was not investigated. I'm not privy to  
2 this information.

3 JUDGE GAYNOR: Thank you, Ms. Pumper.

4 Thank you, Mr. President. No further questions from me.

5 PRESIDING JUDGE SMITH: [Microphone not activated].

6 JUDGE BARTHE: Yes, thank you, Mr. President.

7 Good morning, Ms. Pumper.

8 A. Good morning.

9 JUDGE BARTHE: I have also a few questions in relation to the  
10 search and seizure carried out by you and your colleagues at the  
11 office of the KLA WVA on 25 September 2020.

12 And I would like to ask Madam Court Officer to put for us on the  
13 screen ERN range 083846 to 083927. I don't think it has a P number  
14 yet. Thank you very much.

15 Ms. Pumper, first I would like to ask you how many of your  
16 colleagues were involved in the search and seizure operation on that  
17 day, or, in other words, how many people from the SPO participated in  
18 the operation, including yourself?

19 A. Your Honour, I don't remember the exact number, but can I say  
20 maybe seven to ten.

21 JUDGE BARTHE: Thank you.

22 Could I ask Madam Court Officer to put for us on the screen  
23 page 083894.

24 MR. REES: Your Honour, can I ask if this is in the list of  
25 exhibits that had been indicated that this witness would address?

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1           PRESIDING JUDGE SMITH: It is not in the list. No, it is not.

2           MR. REES: Well, I do understand, of course, that the  
3 Trial Panel is entitled to, if I just get the words right in the  
4 rules, invite the submission of additional evidence not produced by  
5 the parties where it considers it necessary for the determination of  
6 the truth. That's Rule 132.

7           PRESIDING JUDGE SMITH: Yes.

8           MR. REES: That is, of course, after hearing from the parties.  
9 And we've had no notice, of course, in relation to this.

10                                   [Trial Panel confers]

11           PRESIDING JUDGE SMITH: We will go ahead with Judge Barthe's  
12 questions. We will reserve some time for you to ask any questions  
13 about that afterwards.

14           MR. REES: Your Honour.

15           JUDGE BARTHE: Thank you.

16           So, Ms. Pumper, unfortunately there is a black box right beneath  
17 your name on this page. But just to -- or in order to refresh your  
18 memory, can you -- I don't expect that this is secret information.  
19 Can you say or be more precise in relation to the question I asked if  
20 you know how many people were involved on that particular day?

21           A. Just one moment. Myself, plus eight.

22           JUDGE BARTHE: So nine people all in all, including yourself?

23           A. That is correct.

24           JUDGE BARTHE: Thank you.

25           A. And if I can just be precise. For instance, we had security

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1 personnel and special units. They're not included here, but they are  
2 for security purposes only. Don't participate in the search, per se.

3 JUDGE BARTHE: Thank you. And I think you said earlier this  
4 morning that the Kosovo police were also present during the search  
5 operation; is that correct? Not in the building but maybe outside  
6 the premises.

7 A. Yes, I believe they had the second or third perimeter of  
8 security. I'm not sure. But I know they were there.

9 JUDGE BARTHE: Ms. Pumper, my next question would be how long  
10 did the entire operation take and how many rooms - if you can  
11 remember that - how many rooms were searched on that day?

12 A. Your Honour, I would refer to this report which states exactly  
13 the start date, day, time, and here the finish time is 1921. And I  
14 can confirm that there were two floors with several rooms, but I  
15 can't remember now the rooms.

16 JUDGE BARTHE: Thank you.

17 Maybe I can ask Madam Court Officer to put on the screen  
18 page 083887.

19 Ms. Pumper, I assume you can read on the top of the page the  
20 starting time of that operation?

21 A. It's 1402.

22 JUDGE BARTHE: Thank you. There was, Ms. Pumper, if I remember  
23 correctly, a sequence in the video we saw yesterday in which you - I  
24 believe it was you - who stated that someone from the KLA WVA broke a  
25 door during the execution of the search warrant or the search

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1 warrants. Could you give us more details about this, who broke the  
2 door and why, if you know?

3 A. Who broke the door was Mr. Faton Klinaku. And the sequence of  
4 events was that when we were at the locked door, he did ask me,  
5 rather relaxed, "Shall I break it?" And I said, "No, no, no, don't  
6 break it. We will try to obtain the key." And I turned around, and  
7 he broke it.

8 JUDGE BARTHE: But you can't say why?

9 A. No idea.

10 JUDGE BARTHE: All right. My next question is were there,  
11 Ms. Pumper, any security concerns that had to be taken into  
12 consideration, in general, in the planning of that operation from  
13 your office, from you as the executing officer in charge?

14 A. There were security concerns which had to be taken into  
15 consideration. What concerned me specifically as the -- the  
16 coordinator of the search is that I needed to take into consideration  
17 what may happen outside and which may have an impact on the time, how  
18 long we have to conduct this search at this rather large location.

19 JUDGE BARTHE: So were there specific or just general security  
20 concerns? I mean, specific in relation to that specific operation on  
21 that day.

22 A. If my memory serves me correct, it is that there was an  
23 expectation that there would be large crowds potentially gathering at  
24 the War Veterans Association, considering whom they are representing.

25 JUDGE BARTHE: Let me put it in other words. Just generally



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1 speaking, how would you describe the situation for an SPO officer who  
2 executes or intends to execute a search warrant against former  
3 members of the KLA or members of the KLA WVA in general? Is it  
4 dangerous or is it -- for you, is it business as usual?

5 A. In relation to the question whether it's dangerous, I think our  
6 security sections are the -- is the right place to answer that,  
7 respectfully. For me, I don't have security concerns. People are  
8 taking care of my security. What my concern is that security is a  
9 concern, so I have to take into consideration, for instance, how fast  
10 I move, how I do this, and how I go about a search.

11 JUDGE BARTHE: And this is what you did --

12 A. And this is --

13 JUDGE BARTHE: -- in that case?

14 A. This is what I did, yes.

15 JUDGE BARTHE: I also think you mentioned this morning that  
16 there were security guidelines and I assume also specific security or  
17 safety procedures or rules in place for the execution of search  
18 warrants; is that correct?

19 A. That's correct.

20 JUDGE BARTHE: And are you in a position to say that or to  
21 confirm that these security guidelines or procedures and rules were  
22 observed by you and, as far as you know, by your colleagues on that  
23 day during the operation on 25 September 2020?

24 A. What I have seen and what I witnessed, I can confirm that in the  
25 positive.

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1 JUDGE BARTHE: Ms. Pumper, how would you describe the atmosphere  
2 during the aforementioned operation compared to other search and  
3 seizure operations you conducted in the past, be it with the SPO or  
4 the SITF or other -- or the Austrian authorities or other authorities  
5 in general?

6 A. If you just give me a moment. For me, as a professional,  
7 coordinating this search at the War Veterans Association, it was a  
8 big project. It was very demanding. It was a big building. It was  
9 a big case. It was the first search. So, yes, it was, if I can put  
10 it so bluntly, a big deal.

11 JUDGE BARTHE: Thank you. And next question: I take it from  
12 the video we saw yesterday that Mr. Tome Gashi was also present  
13 during at least parts of the search; is that correct?

14 A. To my recollection, he was present during the entire search.

15 JUDGE BARTHE: Can you say in what function was he there on that  
16 day?

17 A. Mr. Gashi was appointed the legal representative of the War  
18 Veterans Association to be present during the search, which is a  
19 legal requirement.

20 JUDGE BARTHE: Was, what we call, an independent observer  
21 present during the search and seizure operation?

22 A. Yes, there was.

23 JUDGE BARTHE: And, Ms. Pumper, has anybody complained about the  
24 way the search warrant or search warrants were executed; for example,  
25 Mr. Gashi, as the legal representative, or someone from the KLA WVA,

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1 or even the independent observer?

2 A. Your Honour, if you will indulge me, I would like to make two  
3 comments to that.

4 JUDGE BARTHE: Please, go ahead.

5 A. So I would like to state that Mr. Klinaku, he was the  
6 representative of the War Veterans Association in the absence of  
7 Mr. Gucati, and he made a point of telling me personally that I  
8 conducted myself and the search very well. And Mr. Tome Gashi, who  
9 was the legal representative for the War Veterans Association, at one  
10 point even told me, "Stop making such a fuss. We know you're doing  
11 this correctly," but that I'm overdoing it. And I responded to him,  
12 "This is a search. This needs to be done squeaky clean to the legal  
13 requirements," and this is how we progressed. So I would be very  
14 surprised if we heard otherwise.

15 JUDGE BARTHE: Thank you. Could I, Madam Court Officer, ask you  
16 to put on the screen for us the document under 083901.

17 A. Would you please make it smaller that it fits the page.

18 JUDGE BARTHE: Can you see it, Ms. Pumper?

19 A. Yes, I can see it.

20 JUDGE BARTHE: Is that what you just referred to?

21 A. No, that was not what I referred to.

22 JUDGE BARTHE: But can you remember Mr. Klinaku making such a  
23 comment?

24 A. I remember Mr. Klinaku stating this straightaway when he came to  
25 the War Veterans Association. And, actually, the same was reiterated

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1 by Mr. Gashi. And I addressed this issue straightaway.

2 JUDGE BARTHE: Thank you.

3 Madam Court Officer, could you go to the previous page, please.  
4 Thank you.

5 Ms. Pumper, there you can see, I guess, a comment made by the  
6 independent observer; is that correct?

7 A. That is correct.

8 JUDGE BARTHE: Could you read this comment, please, for the  
9 record?

10 A. "No comments or concerns. The process was conducted very  
11 professionally."

12 JUDGE BARTHE: Is this what the independent observer wrote in  
13 your presence on this document?

14 A. That is correct.

15 JUDGE BARTHE: Thank you. Ms. Pumper, did you or one of your  
16 colleagues, as far as you know, write a report about the search and  
17 seizure in addition to the video recording? And if so, how many and  
18 which reports were prepared by you or by others?

19 A. Your Honour --

20 JUDGE BARTHE: Can you say that?

21 A. Yes. The only report which was produced is this report that you  
22 are showing me now. There are no other additional reports. I  
23 consolidated the information and placed it in this report.

24 JUDGE BARTHE: So this is the only report you wrote actually  
25 after the search and seizure operation?

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1 Or may I ask, Madam Court Officer, can you go back to page  
2 ERN 083846. So the first page. It's ERN range -- and could you  
3 scroll down to the next page, please.

4 Referring to paragraphs 8 to 10, Ms. Pumper, could you again  
5 tell us how many reports were not only by yourself but also by other  
6 colleagues in the SPO prepared or drafted?

7 A. I apologise, Your Honour. When I mean the report is -- I mean  
8 this report which I consolidated all the other reports and exhibited  
9 to it, yes. So ...

10 JUDGE BARTHE: So is it correct that there was a report, what is  
11 called supplement report -- oh, no, I'm sorry. Let me refer to  
12 paragraph 8, a Report on Search of Persons, Premises and/or other  
13 Property outlining the sequence of events of the search, and also  
14 another report under paragraph 9, mentioned in paragraph 9, a  
15 supplement report to the report on search on persons. And  
16 additionally, referring to paragraph 10, it is stated the SPO  
17 compiled a photo report on seized evidence containing pictures and  
18 detailed explanations related to these seven pieces of evidence and  
19 so on. Is that correct?

20 A. That is correct, yes.

21 JUDGE BARTHE: Several reports --

22 A. Yes.

23 JUDGE BARTHE: -- were prepared --

24 A. Yes, sorry.

25 PRESIDING JUDGE SMITH: -- and written.

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1 Thank you. And my last question would be, if I remember  
2 correctly, Ms. Pumper, you mentioned yesterday that you had to be,  
3 and I think you used the term, inclusive. Can you remember that?

4 A. Yes, I do.

5 JUDGE BARTHE: Could you explain what do you mean by that, by  
6 that term?

7 A. If you indulge me to give just a bit background.

8 JUDGE BARTHE: [Microphone not activated].

9 A. Mr. Gucati has decided that Mr. Faton Klinaku would be his --  
10 would be the representative of the War Veterans Association. There  
11 was quite a heated situation and a lot of heated discussions until we  
12 finally managed to settle and get on with the job.

13 And something which I always kept in mind is that, you see,  
14 Your Honour, I can only conduct this search if I have cooperator, if  
15 Mr. Klinaku cooperates. If he's out of shape, I need, then, to find  
16 another representative, because he won't be able to concentrate on  
17 the search, which is his task to observe.

18 So, for me, I could tell that he was irritated about us being  
19 there, which I consider very natural. So I try to do the search in a  
20 way which was highly respectful and accommodating this -- this -- a  
21 nuisance, that he is annoyed with us being there, and part of it was  
22 that I allowed him to be, maybe, closer to the officers and  
23 monitoring the search closer than maybe I would have done in other  
24 situations.

25 JUDGE BARTHE: I understand. Those are my questions. Thank

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1 you, Ms. Pumper.

2 A. You're welcome. Thank you.

3 PRESIDING JUDGE SMITH: This document was obviously used to  
4 refresh the witness's memory on three items - a number of the team  
5 members that were involved in the search, the time the search began,  
6 and some other peripheral items.

7 You can ask questions about those but, please, not into great  
8 detail.

9 MR. REES: No, I follow. Thank you.

10 Further Cross-examination by Mr. Rees:

11 Q. Just, I think, very briefly. Firstly in relation to the  
12 independent observer, was the independent observer briefed before the  
13 search about the issues in the case?

14 A. Sorry, do you mean facts of the investigation?

15 Q. Was the observer briefed about the issues in the case?

16 A. I don't understand what you mean with "issues." I apologise.

17 Q. I'll be specific: Was the independent observer specifically  
18 briefed that one of the issues that had been raised by  
19 Mr. Hysni Gucati repeatedly -- we went through the references in the  
20 transcripts of the press conferences, TV interviews. One of the  
21 issues being whether the source for the information was, indeed, the  
22 SPO itself. Was the independent observer briefed about that being an  
23 issue before the search?

24 A. No, she was not.

25 Q. No. Mr. Faton Klinaku. Are you aware as to whether Mr. Klinaku

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Further Cross-examination by Mr. Rees

1 has any experience whatsoever in the conduct of police searches?

2 A. I'm not aware.

3 Q. No. You would regard yourself as being somebody with experience  
4 in the conduct of police searches rather than Mr. Klinaku, would you  
5 not?

6 A. Mr. Klinaku was appointed by Mr. Gucati. I don't know as why he  
7 chose him.

8 Q. Mr. Klinaku, of course, as far as the SPO is concerned, was a  
9 suspect in the case, was he not?

10 A. I had no knowledge of that at the time when I conducted the  
11 search.

12 Q. Again, it didn't form part of your appreciation of the facts  
13 that the SPO regarded Mr. Klinaku and Mr. Tome Gashi as suspects in  
14 the case; is that right?

15 A. I have no idea when Mr. Klinaku was regarded a suspect in the  
16 case.

17 Q. Thank you. No further questions.

18 PRESIDING JUDGE SMITH: Thank you.

19 Mr. Cadman?

20 MR. CADMAN: Nothing to add.

21 PRESIDING JUDGE SMITH: Ms. Pumper, we are finished with your  
22 testimony, and you will be escorted from the courtroom. We thank you  
23 for your attention and your candour.

24 THE WITNESS: Thank you.

25 PRESIDING JUDGE SMITH: And we wish you well.



1 THE WITNESS: Thank you very much.

2 PRESIDING JUDGE SMITH: We will break at this time for lunch to  
3 give everybody a chance to be ready for the next witness. Please be  
4 back here at 2.00.

5 [The witness withdrew]

6 PRESIDING JUDGE SMITH: Is everyone able to be available at  
7 2.00?

8 MR. REES: Yes, Your Honour.

9 Can I raise one other matter?

10 PRESIDING JUDGE SMITH: Yes.

11 MR. REES: Whether Your Honour wishes to deal with it now or at  
12 some point later today, I would be grateful.

13 But looking ahead, we've, of course, got the evidence to be  
14 called from Witness W04842. And I did raise at the outset of last  
15 week in relation to both 0 -- to the witness, Ms. Pumper, who has  
16 just left, but also in relation to W04842, that we'd received an  
17 e-mail about a witness preparation session --

18 PRESIDING JUDGE SMITH: Yes.

19 MR. REES: -- which had referred, in the case of W04842, to new  
20 information. It did not refer to -- it said there were to be no  
21 clarifications, changes or corrections to his declarations but that  
22 new information had been provided.

23 I do wish to press that if it is the intention of the SPO to  
24 seek to adduce testimony in relation to that new information, as it  
25 was described, that we require a witness statement or declaration to

1 be signed setting out the scope of that witness's testimony in those  
2 areas, with a proper application being made for leave at the late  
3 stage to adduce that material.

4 MS. BOLICI: Your Honour, the Prosecution had already replied on  
5 this request, observing that Rule 102 of the rules prescribed that  
6 witness statements are disclosed but do not prescribe to undertake  
7 witness statement in order to provide notice. The notice has been  
8 provided with the summary pursuant to Rule 95 of the rules and with  
9 the notification of the preparatory meeting, as instructed by  
10 Your Honour with the Order on the Conduct of Proceedings.

11 MR. REES: Well, if that is the SPO's continued position, then I  
12 wish to address the Trial Panel at some length about that, because it  
13 does seem to me that there is an undue informality being approached  
14 to the approach of the SPO in these matters.

15 PRESIDING JUDGE SMITH: [Microphone not activated] What do you  
16 mean by --

17 MR. REES: I would wish to take the Trial Panel through the  
18 rules that would require me to develop a submission in relation to a  
19 number of the rules to the effect, we say, that the rules require a  
20 party, if they are seeking to adduce testimony from a witness, to  
21 serve in advance a witness statement setting out the scope of that  
22 testimony.

23 [Trial Panel confers]

24 PRESIDING JUDGE SMITH: Why don't you go ahead and make your  
25 submission now.

1 MR. REES: So the starting point, we say, is Rule 102 of the  
2 rules. Rule 102(1)(b) requires the Specialist Prosecutor to make  
3 available to the Defence "within the time limit set by the Panel, and  
4 no later than 30 days prior to the opening of the  
5 Specialist Prosecutor's case:

6 "(i) the statements of all witnesses whom the Specialist  
7 Prosecutor intends to call to testify at trial;

8 "(ii) all other witness statements, expert reports, depositions,  
9 or transcripts that the Specialist Prosecutor intends to present at  
10 trial; and

11 "(iii) the exhibits that the Specialist Prosecutor intends to  
12 present at trial."

13 Subrule -- Rule 102(2) provides that:

14 "Any statements of additional Specialist Prosecutor witnesses,  
15 which have not been disclosed within the time limit pursuant to  
16 paragraph (1)(b) and whom the Specialist Prosecutor intends to call  
17 to testify at trial, shall be made available to the Defence as soon  
18 as possible and shall be accompanied by reasons for the late  
19 disclosure. The Defence may seize the Panel where grounds to dispute  
20 the late disclosure exist."

21 Rule 102(4) continues:

22 "Disclosure pursuant to paragraph (2) shall be finalised during  
23 the pre-trial stage. Thereafter, the Specialist Prosecutor shall  
24 provide notice of any new disclosure accompanied by reasons for the  
25 late disclosure."

1 Rule 102 and the obligations therein are then reinforced in  
2 relation to -- by Rule 143, the examination of witnesses.  
3 Rule 143(1) makes express reference to previous statements of the  
4 witness.

5 "The examining Party may ask questions to the witness and may  
6 show the witness any document or other evidence in compliance with  
7 these Rules. If a witness cannot recall the facts he or she has  
8 provided in a previous statement, the witness may, with the  
9 permission of the Panel, be shown documents to refresh his or her  
10 memory."

11 A witness can only be shown documents to refresh his or her  
12 memory if the witness has made a previous statement which has been  
13 disclosed.

14 Rule 143(c) then again refers to the witness's prior statements  
15 because it provides that where the witness has made a prior  
16 statement, where it's inconsistent, the prior statement "may be  
17 admissible for the purpose of assessing the credibility of the  
18 witness, as well as for the truth of its contents or for other  
19 purposes within the discretion of the Panel."

20 Obviously, Rules 153, 154, and 155, as we have previously looked  
21 at, again concentrate on written statements of the witness, for the  
22 purposes of admission those written witness statements in lieu of  
23 oral testimony or direct examination.

24 The whole thrust of the scheme is that if a witness is to be  
25 called to give evidence, disclosure of the evidence that the SPO

1 intends to adduce from that witness is to be disclosed to the Defence  
2 in advance in the form of a witness statement. That allows the  
3 refreshing of memory in accordance with Rule 143, and it also allows,  
4 in the course of cross-examination, the cross-examination of the  
5 witness on the previous statement that he or she has signed setting  
6 out the content of his or her evidence.

7 The reference or the reliance, if it is indeed relied upon by  
8 the SPO, of the additional provisions on disclosure that arise in  
9 Rule 95, to provide a summary of the facts on which each witness is  
10 expected to testify, is not a requirement to make such disclosure  
11 that, in effect, removes the obligation to provide a witness  
12 statement.

13 If that was right, then the effect of Rule 102(1) would be  
14 nullified. The SPO could avoid making proper disclosure as to the  
15 extent of their case by simply providing a summary of facts on which  
16 each witness is expected to testify. If they were to do that, and,  
17 indeed, be permitted to do that, then Rule 143 in the rules on  
18 refreshing the memory of a witness from a previous statement would  
19 have no effect. There would be no proper way of refreshing a  
20 witness's memory. And, indeed, cross-examination would quite  
21 unfairly face the position where a witness could not be  
22 cross-examined on a previous account because, for example, if we look  
23 at the only information we've had provided by the SPO in relation to  
24 what is described as new information - although, for reasons which  
25 will become obvious, patently is not - at the moment is in the form

1 of an e-mail that came from Mr. James Pace. It did not come from the  
2 witness.

3 I can't properly cross-examine the witness on that document  
4 because it's not his statement. And I cannot, therefore, explore any  
5 inconsistency between the witness and what is recorded there because  
6 that is an account recorded by Mr. James Pace.

7 We have not raised a point before about the informal  
8 introduction of the concept of a declaration by the SPO in these  
9 proceedings as opposed to dealing with witness statements as the  
10 rules require.

11 We have noted that even with the declarations that have been  
12 provided, not with the statements, they do at least come with the  
13 declaration that: The witness affirms the following facts and  
14 information to be true and accurate to the best of his or her  
15 knowledge and belief. And we have appreciated that that declaration  
16 as to truth and accuracy is reinforced by a signature on the  
17 document.

18 In relation to Witness W04842, we have such declarations in  
19 relation to what is now a very narrow area of his testimony, and we  
20 do not, in the circumstances, ask for a witness statement in relation  
21 to the matters that are covered by his existing declarations. We are  
22 content in that we can properly cross-examine him in relation to that  
23 part of his testimony, at least, on the declarations that have been  
24 made.

25 But to the extent that the SPO intend to adduce evidence as to

1 what is described as to the following new information: One,  
2 following the distribution of the batches SPO witness security took  
3 measures in the field --

4 PRESIDING JUDGE SMITH: Slow down.

5 MR. REES: Such measures, including one relocation, moving  
6 someone to a safe house, and referring two persons to witness  
7 protection.

8 Two, when deciding which witnesses to contact following the  
9 distribution of the batches, SPO witness security checked all the  
10 names in the materials and then contacted these persons.

11 And three, W04842 has been attending senior management meetings  
12 on witness contacts since he became the *de facto* witness security  
13 team leader in October 2020. He has formally held this position  
14 since April 2021. These discussions concern what witnesses say  
15 during contacts, how the next call should be organised, and which  
16 topics would be discussed.

17 PRESIDING JUDGE SMITH: Mr. Rees, I think we get the gist of  
18 your argument.

19 MR. REES: That is -- that is described as new information.  
20 It's new information to us. It is not, of course, new information to  
21 the SPO because Witness W04842 is an SPO official and he's been at  
22 the SPO throughout.

23 The SPO, if they seek to adduce testimony along those lines,  
24 should serve a signed declaration with an affirmation as to truth  
25 from the witness on those matters with an application for leave to

1 adduce that material, explaining the good reasons for late  
2 disclosure.

3 PRESIDING JUDGE SMITH: [Microphone not activated].

4 MR. REES: Judge.

5 JUDGE METTRAUX: Thank you, Mr. Rees. Just a number of  
6 clarifications.

7 You received notice of these information on 14 October of this  
8 year; correct? That's two weeks ago.

9 MR. REES: 14 October, yes.

10 JUDGE METTRAUX: And as you properly indicated, it touches upon  
11 three rather narrow issues which you've put into the record; is that  
12 right?

13 MR. REES: Well, I don't know how narrowed or wide the proposed  
14 testimony is likely to be because I don't have the witness statement  
15 from the officer setting out what his -- what he intends to say.

16 JUDGE METTRAUX: Well, what I want to understand better,  
17 Mr. Rees, is the prejudice that you say you suffer from not having  
18 what you describe as a witness statement. If these same three items  
19 were provided to you with the addition of a signature, could you tell  
20 me what difference that would make to you in terms of your  
21 preparation?

22 And the other thing, if you may address it at the same time, you  
23 have suggested that you can't properly cross-examine with this  
24 notification because it is not signed. Now, isn't it a possibility  
25 for you to simply take the witness to these three items at the



1 beginning of your cross-examination - and, again, it's not for me to  
2 direct you and to tell you how to do your job - but to ascertain  
3 whether that corresponds to what he would tell you? Isn't that a  
4 procedure that could be followed so that you would have the certainty  
5 that this is, indeed, his view rather than counsel's view?

6 MR. REES: Judge, in the first instance, it does not fall, in  
7 our submission, for us to demonstrate prejudice at this stage. We  
8 say the effect of the rules are perfectly clear, and it is not for us  
9 to demonstrate that we suffer no prejudice from the SPO ignoring the  
10 rules on early disclosure in Rule 102(1)(b) to serve witness  
11 statements prior to the opening of the Specialist Prosecutor's case  
12 within the time limit. If they are late in doing so, for them to  
13 provide reasons for late disclosure.

14 Secondly, there is prejudice, and the prejudice arises, as is  
15 recognised in the disclosure rules in Rule 102, and, indeed, we say  
16 in Rules 143 also, that a defendant is not -- should not be  
17 required -- the SPO should not be permitted to take a defendant into  
18 a situation where a witness is entering into, as far as the Defence  
19 are concerned, a voyage of discovery. That is not a fair application  
20 of the rules. That's why disclosure at an early stage of the SPO's  
21 case which witnesses it relies upon and which witness -- and the  
22 witness statements of those witnesses is to be provided at an early  
23 stage.

24 Yes, Your Honour, I could, of course, in due course, if they are  
25 entitled to call this evidence without any witness statement from the

1 witness, ask him about paragraphs 1, 2, and 3 in that e-mail, and he  
2 may say that, "Actually, that's not accurate. That's not my  
3 account." And if I put to him an inconsistency in his oral evidence  
4 with that note, I suspect that is what he would say, because in  
5 contrast with a signed declaration from the witness who gives a  
6 different account to the witness statement that has been disclosed  
7 previously, I can't put to the witness: This is your account. You  
8 signed it and you confirmed it was true to the best of your knowledge  
9 and belief.

10 Now, we're not at a stage where Witness W04842 is to give  
11 evidence. I understood the position that the Trial Panel took at the  
12 beginning of last week in relation to Ms. Pumper. She was. And I  
13 understood that there was an element of pressure involved there, but  
14 we are not in that situation with Witness W04842. So I am yet to  
15 understand what is the SPO's objection to providing a signed  
16 declaration setting out -- or a witness statement, even better, in  
17 accordance with the rules, setting out the testimony that they  
18 propose to adduce from that witness ahead of his testimony.

19 JUDGE METTRAUX: I will let the Prosecutor speak for herself,  
20 but I would think that part of her submissions is likely to be,  
21 Mr. Rees, that what you are asking goes beyond the rules. Because  
22 the practice, for what it's worth, from a number of comparable  
23 jurisdictions has been that the last-minute additions or corrections  
24 to a statement by a witness who is due to provide evidence is given  
25 in the form that you have received, now with the caveat that that

1 evidence should be relatively constrained in order not to cause  
2 prejudice to the other side.

3 That's my question to you, Mr. Rees. Again, we will decide upon  
4 your application, but I would think that this is probably going to be  
5 part of your colleague's submissions here.

6 PRESIDING JUDGE SMITH: Madam Prosecutor, you have the floor.

7 MS. BOLICI: Yes.

8 If I may, Your Honour, the entire Defence submission is based on  
9 a faulted premise. The rules do not prescribe that only witnesses  
10 who provided previous witness statements can be called to testify,  
11 and they do not prescribe neither that questions to be put to  
12 witnesses be limited to the topics that have been addressed in a  
13 previous witness statement.

14 The rules indicate in Rule 95 that the opposite party should be  
15 provided notice of the facts and circumstances a witness is to  
16 testify about. The Defence has been provided such notice in April,  
17 in October this year, and through the log record of the preparatory  
18 meeting which was undertaken in accordance to Article 93 of  
19 Your Honours' Order on the Conduct of Proceedings.

20 I also want to highlight that the practice of other  
21 international tribunals which have similar rule frameworks do confirm  
22 that there is no need to produce previous witness statements for  
23 witnesses that are going to be called to testify live when such  
24 witness statements do not exist.

25 And I cite, for example, to Prosecutor versus Hadzic, the

1 "Decision on Urgent Defence Motion to Preclude GH-162's Appearance  
2 Until After Disclosure of a Proper Witness Statement," IT-04-75-T, of  
3 17 May 2013, and similar decision of the same kind.

4 The Defence refers to Rule 143 of the rules and refers to the  
5 fact that there is a mentioning of witness statements. The fact that  
6 witness statements may be taken, that the witness statement may be  
7 used, doesn't mean that witness statements need to be used in the  
8 course of the presentation of the evidence of a witness live or that  
9 they need to be used in the course of the cross-examination.

10 The cross-examination is supposed to be on the matters addressed  
11 in the examination-in-chief that are notified to the Defence through  
12 the ways prescribed by the rules, under Rule 95 and as indicated in  
13 the Order for the Conduct of the Proceedings. Thank you.

14 PRESIDING JUDGE SMITH: [Microphone not activated].

15 JUDGE GAYNOR: Thank you, Mr. President.

16 Mr. Rees, the paragraph which Ms. Bolici just referred to as  
17 paragraph 93, in my version it's paragraph 53 of the Order of the  
18 Conduct of Proceedings, refers to the provision of new information  
19 provided by a witness during a witness preparation session.

20 Now, you had an opportunity to make legal submissions to the  
21 Panel on that particular paragraph, didn't you?

22 MR. REES: So I have no issue - I have no issue - with the  
23 proposition that where a witness makes a clarification or change or  
24 correction to his or her -- the content of his or her existing  
25 declaration, if that is material which is disclosed to the Defence on

1 the basis that it's material to the preparation of the Defence or if  
2 it's exculpatory matter, I have no issue it, certainly in the first  
3 instance, with it coming via an e-mail.

4 What we have here, though, is a different scenario. We have the  
5 Prosecution seeking, at a late stage, to adduce whole new testimony  
6 from a witness. And I do not -- if it is the practice in other  
7 tribunals for that to be dealt with informally by way of e-mail,  
8 well, then, that is the practice of other tribunals.

9 We know, because we've explored it, that Rule 102 and the  
10 operation of it in this Court is a material advance on the rules  
11 applied by other tribunals, and we have already confirmed that the  
12 disclosure regime set out in Rule 102(3) is, in many respects, an  
13 advancement upon that applied in other tribunals.

14 JUDGE GAYNOR: But, Mr. --

15 MR. REES: So I would ask the Trial Panel to concentrate on the  
16 practice to be developed in the Kosovo Specialist Chambers itself.

17 JUDGE GAYNOR: Mr. Rees, can I ask you this: If a witness comes  
18 to testify and gives evidence about a matter which is not previously  
19 contained in a witness statement, you will always have the  
20 opportunity to cross-examine the witness on that new evidence.

21 MR. REES: I would. And I would be able to say to the witness:  
22 You were asked to make a full declaration, you were asked to sign a  
23 declaration setting out what you knew was true with all material  
24 aspects of your testimony, and you haven't put that in your  
25 declaration. That is a recent invention I can put to the witness.

1 But I can't do that in the absence of a witness statement from that  
2 witness.

3 JUDGE GAYNOR: Mr. Rees, is there anything at all to prevent you  
4 putting to a witness in cross-examination information which has been  
5 provided to you in good faith about what corrections or new  
6 information that that witness provided during the witness preparation  
7 session? Is there anything in the world to prevent you putting your  
8 case to the witness on the basis of the e-mails that you've received?

9 MR. REES: So, at the moment, if it is the case that the witness  
10 intends only to, effectively, give the evidence that is in the  
11 contents of paragraphs 1, 2, and 3, that's one matter, but I suspect  
12 the SPO does not intend that and it would be very difficult to  
13 confine the witness to do that. Because I anticipate they wish to  
14 explore in much greater detail what he has to say about the matter  
15 set out in that paragraph 1, 2, and 3.

16 And in relation to the specific question Your Honour asked about  
17 that e-mail, yes, I can put it to the witness that somebody else took  
18 a note and these are the three paragraphs. But what I can't say to  
19 the witness if the witness says, "Well, I know, Mr. Rees, but I said  
20 this and I said that, and I said more, and I did say this, this is  
21 not the first time I've said it in testimony because I told  
22 Mr. Pace," then what I can't do is put to him a signed declaration  
23 that he made confirming that the content of that witness statement is  
24 true and ask him to explain the inconsistency between his testimony  
25 and his signed declaration. That is the purpose for Rule 143, which

1 does set out what is -- whether it's the approach taken in other  
2 international tribunals in this city, it is very much the standard  
3 approach taken in all common law jurisdictions. It is not, by any  
4 means, an alien proposition that if the Prosecution wish to call a  
5 witness to give testimony, they should serve in advance a witness  
6 statement signed by that witness so he can properly be refreshed on  
7 his memory, if necessary, on the statement or indeed cross-examined  
8 on it.

9 PRESIDING JUDGE SMITH: Thank you, Mr. Rees. We will issue an  
10 oral order on that before proceeding. Thank you very much.

11 We will be adjourned now until 2.30.

12 --- Luncheon recess taken at 1.04 p.m.

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

14 PRESIDING JUDGE SMITH: Good afternoon. We're ready to start  
15 with the next witness, Mr. Berisha.

16 I note that Duty Counsel for the witness is in the courtroom,  
17 Mr. Arianit Koci. Is it Koci, is that correct?

18 MR. KOCI: Koci.

19 PRESIDING JUDGE SMITH: Koci. Okay.

20 MR. KOCI: Good afternoon, Your Honour.

21 PRESIDING JUDGE SMITH: For the record, the Panel notes that in  
22 a decision dated 8 October 2021, that is F355, the Panel permitted  
23 that the witness be represented by counsel for the purpose of his  
24 testimony and for the counsel to be present in the courtroom.

25 Madam Usher, would you please bring the witness in?

1 MR. HALLING: Your Honour, I'm sorry, before the witness comes  
2 in, is it possible to put two short matters on the record arising  
3 from the preparation session yesterday?

4 PRESIDING JUDGE SMITH: Yes.

5 MR. HALLING: Thank you. And, for the record, these are both  
6 reflected in the preparation log disclosed yesterday.

7 The first, as was noted in the preparation log, this witness,  
8 who is about to come, stated that there were some errors in the  
9 Albanian language interview transcript. We immediately asked that  
10 our Translation Unit review this transcript after that preparation  
11 session.

12 Because of this issue and the fact that this witness, who is  
13 fluent in English, confirmed that his English interview transcript is  
14 correct but for one spelling of one name, I will only be using  
15 English statements should there be any need to refresh the  
16 recollection of the witness in the course of today. And those are on  
17 our presentation queue. We will not be using the old Albanian  
18 transcripts from our presentation queue for that reason.

19 Should the Defence wish to use the Albanian translation of this  
20 witness's interview, we are going to disclose a further corrected  
21 version of that today.

22 The second matter is -- of two, is that yesterday the witness  
23 also said that at the beginning of his testimony he wanted to address  
24 the Trial Panel about how he is not testifying voluntarily. The  
25 witness was, indeed, summonsed to appear, but I wanted to briefly



1 address the question of self-incrimination before the witness is  
2 brought out.

3 The SPO's position throughout is that W04866 is a witness and is  
4 not a suspect. He was interviewed as a witness and Mr. Koci is  
5 present today at the request of the witness.

6 I wanted to make it clear on the record, and on the authority of  
7 the Specialist Prosecutor himself, that we will not be prosecuting  
8 this witness for anything he did in relation to this case. From the  
9 nature of the conduct to the limited scope of what he published to,  
10 most notably, his intentions throughout and effective actions to  
11 protect and return confidential information, no crimes were committed  
12 in our assessment.

13 And, to repeat, the Specialist Prosecutor has stated that he  
14 will not be prosecuted.

15 The Trial Panel has already held that no self-incrimination  
16 assurances are necessary at this time, and the SPO continues to have  
17 no objection to providing them should the circumstances change in the  
18 course of his testimony.

19 Your Honour, thank you. That's all I wanted to say.

20 PRESIDING JUDGE SMITH: Mr. Cadman.

21 MR. CADMAN: Nothing in relation to the second issue. But the  
22 first issue, just to put on the record, we had raised concerns with  
23 the translation with the SPO at an earlier stage. We had requested  
24 copies of the recording so that we could verify.

25 The interview was obviously -- certainly for Mr. Berisha was

1 conducted in Albanian, so we will need to verify that because we have  
2 raised these concerns previously.

3 PRESIDING JUDGE SMITH: And when do you intend to verify that?

4 MR. CADMAN: Well, they've said that they will provide us with a  
5 corrected Albanian transcript. We will need to see that before we  
6 can cross-examine Mr. Berisha.

7 PRESIDING JUDGE SMITH: You mean you're not going to be ready to  
8 cross-examine him today?

9 MR. CADMAN: Well, I don't know what the timeline is for the --  
10 those verifications.

11 PRESIDING JUDGE SMITH: Well, possibly you will have time  
12 overnight then.

13 MR. HALLING: Yes, Your Honour, if it helps for the record, they  
14 did tell us, the Translation Unit, that they didn't see any  
15 substantial changes in the transcript, and we're hoping we can  
16 disclose it even during this session.

17 PRESIDING JUDGE SMITH: Thank you very much.

18 Mr. Koci.

19 MR. KOCI: Yes, Your Honour.

20 PRESIDING JUDGE SMITH: Are you comfortable with us proceeding  
21 with the testimony in English?

22 MR. KOCI: Yes, Your Honour. But as it is Kosovar court, with  
23 your permission, I will proceed, I will speak in Albanian.

24 PRESIDING JUDGE SMITH: That's fine. That's fine.

25 MR. KOCI: So it's okay with me in English, but I will speak in

1 Albanian.

2 PRESIDING JUDGE SMITH: Just be sure to pause to allow -- and go  
3 slowly so it can be translated.

4 MR. KOCI: Thank you.

5 PRESIDING JUDGE SMITH: I know you know that process.

6 MR. KOCI: Yes. Thank you very much.

7 PRESIDING JUDGE SMITH: Thank you very much for being here.  
8 Now you can call in the witness.

9 [The witness entered court]

10 PRESIDING JUDGE SMITH: [Microphone not activated].

11 THE INTERPRETER: Microphone for Your Honour, please.

12 PRESIDING JUDGE SMITH: All ready, Mr. Berisha?

13 THE WITNESS: [Interpretation] Yes.

14 PRESIDING JUDGE SMITH: Good afternoon.

15 THE WITNESS: [Interpretation] Good afternoon.

16 PRESIDING JUDGE SMITH: The Court Usher will provide you now  
17 with the text of a solemn declaration which you are asked to take  
18 pursuant to Rule 141(2) of the Rules.

19 Please proceed.

20 THE WITNESS: [Interpretation] Conscious of the significance of  
21 my testimony and my legal responsibility, I solemnly declare that I  
22 will tell the truth, the whole truth, and nothing but the truth, and  
23 I shall not withhold anything which has come to my knowledge.

24 WITNESS: HALIL BERISHA

25 [Witness answered through interpreter]

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1           PRESIDING JUDGE SMITH: Thank you, Mr. Berisha. You can hand  
2 that back to the usher.

3           Mr. Berisha, I understand you wanted to make a short statement  
4 concerning the fact that you are here to testify; is that correct?

5           THE WITNESS: [Interpretation] Yes, Your Honour.

6           PRESIDING JUDGE SMITH: You may do so now.

7           THE WITNESS: [Interpretation] I just wanted to tell you that I  
8 am not very happy to be here to testify in front of you, but that  
9 doesn't affect the fact that I am going to tell the truth. I was  
10 obliged to be here. Otherwise, I am not happy to be here.

11          PRESIDING JUDGE SMITH: And we understand that, and we  
12 understand that you were summoned to be here. And, of course, your  
13 attorney is here with you. If you have any questions you need to ask  
14 at any time, we will stop and allow you to do that. Do you  
15 understand?

16          THE WITNESS: [Interpretation] Yes, I do.

17          PRESIDING JUDGE SMITH: You may be seated.

18          Thank you, Madam Usher.

19          Mr. Berisha, today we will start your testimony, which is  
20 expected to last until tomorrow. As you may know, the Prosecution  
21 will be asking you questions first, and once they are done, the  
22 Defence has the right to cross-examine you. Members of this Panel  
23 may also have questions for you.

24          The Prosecution estimate for your examination is three hours.  
25 The Defence estimate is up to one day. The Panel may allow

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1 re-examination by the Prosecution if conditions for it are met.

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

7 The Panel understands, as we have already said, that you have  
8 been formally summonsed to appear by the Prosecution in accordance  
9 with Rule 121(2) of the rules, which means that you have been  
10 compelled to appear for testimony.

11 The Panel also informs you that you have the right not to  
12 incriminate yourself and that you may object to providing testimony  
13 that might tend to incriminate you. You are also permitted to  
14 consult with your counsel whenever you feel that your answer might  
15 tend to incriminate you.

16 If the Panel considers that you should, nevertheless, provide an  
17 answer to a specific question, we may decide to compel you to answer  
18 that question. In that case, we may also decide to provide you with  
19 an assurance with respect to self-incrimination, but we will do this  
20 only if necessary and we will inform you of the specific procedure at  
21 that time. And I'm sure that your attorney can advise you more fully  
22 in regard to these issues.

23 So please speak into the microphone and wait five seconds before  
24 answering a question, and then speak at a slow pace for the  
25 interpreters to catch up.

Witness: Halil Berisha (Open Session)

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Examination by Mr. Halling

1           While you are giving evidence in this court, you are not allowed  
2   to discuss with anyone, except your assigned counsel, the content of  
3   your testimony. If any person other than your assigned counsel asks  
4   you questions outside the court about your testimony, please let us  
5   know.

6           Mr. Prosecutor, you may start.

7           MR. HALLING: Thank you, Your Honours.

8                               Examination by Mr. Halling:

9   Q.    Good afternoon, Mr. Witness.

10 A.    Good afternoon.

11 Q.    Mr. Witness, I'll be asking you questions here this afternoon,  
12 and we'll start with: What is your name?

13 A.    My name is Halil Berisha.

14           THE INTERPRETER: Could the witness be asked to speak closer to  
15 the microphone, please?

16           MR. HALLING:

17 Q.    Mr. Witness, I'm told you need to speak a little closer to the  
18 microphone.

19 A.    My name is Halil Berisha.

20 Q.    Thank you, sir. What is your date of birth?

21 A.    28 February 1994.

22 Q.    And what is your place of birth?

23 A.    Doberdol, Kline.

24 Q.    And that's in Kosovo; correct?

25 A.    Correct.

Witness: Halil Berisha (Open Session)

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Examination by Mr. Halling

1 Q. What is your level of education?

2 A. I have a bachelor degree.

3 Q. And, Mr. Berisha, what languages do you speak?

4 A. Albanian and English.

5 Q. Mr. Berisha, where were you working in September 2020?

6 A. I work for inFokus, Gazeta inFokus.

7 Q. And what was your job with Gazeta inFokus?

8 A. I was a reporter and editor.

9 PRESIDING JUDGE SMITH: Excuse me, you'll have to ask that  
10 question and get the answer over again. We're having a technical  
11 difficulty with Mr. Haradinaj's speakers.

12 Is it working now?

13 THE INTERPRETER: I can't hear him very well, but he seems to  
14 say, "I don't hear very well."

15 THE ACCUSED HARADINAJ: [Interpretation] I can't hear very well,  
16 Your Honour. Maybe the speaker is not speaking to the phone or I  
17 don't hear him very well.

18 PRESIDING JUDGE SMITH: Everyone, please try to speak into your  
19 microphone and let's go on.

20 MR. HALLING: Thank you, Your Honour.

21 Q. Mr. Berisha, what was your job with Gazeta inFokus?

22 A. I was a journalist and editor.

23 Q. Please describe your responsibilities as a journalist.

24 A. I found topics to write about. And on certain occasions, I have  
25 edited texts written on certain topics.

Witness: Halil Berisha (Open Session)

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Examination by Mr. Halling

1 Q. And where was your office with Gazeta inFokus?

2 A. At the centre of Prishtine, across Bill Clinton Square.

3 Q. Mr. Berisha, are you still a journalist?

4 A. For the moment, I am not exercising the profession of  
5 journalist.

6 Q. When did you stop working for Gazeta inFokus?

7 A. At the end of September 2020.

8 Q. Why did you leave at the end of September 2020?

9 A. I started studies in Germany.

10 Q. Mr. Berisha, as a journalist, what subjects were you writing  
11 about for Gazeta inFokus?

12 A. About daily events and various subjects. It was not a specific  
13 subject I wrote about.

14 Q. Did you ever write about the KLA War Veterans Association?

15 A. Yes.

16 Q. Did you have any professional contacts within that organisation?

17 A. As a journalist, for the subjects I wrote about, I contacted the  
18 persons that were involved in that topic or subject.

19 Q. To the extent you remember, can you provide the names of those  
20 persons?

21 A. I don't know what specific case you are asking me, because I  
22 wrote about many subjects.

23 Q. I'll ask the question in a different way. Mr. Berisha, did you  
24 attend a KLA War Veterans Association press conference on  
25 7 September 2020?



Witness: Halil Berisha (Open Session)

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Examination by Mr. Halling

1 A. Yes, I did.

2 Q. Where was the press conference held?

3 A. At the offices of the WVA.

4 Q. Where is that?

5 A. It is in the vicinity of Prishtine municipality.

6 Q. How did you hear about the press conference?

7 A. I heard it from the media, that a press conference was going to  
8 be held.

9 Q. Now, Mr. Berisha, you were working with the media at the time.  
10 Was this something that you read, something that you heard? Can you  
11 please describe how you learned about it?

12 A. You're asking me about the conference in question?

13 Q. Correct, the one on 7 September 2020.

14 A. We were in the morning briefing that we have every day at the  
15 newspapers, and one of the journalists said that it's possible that  
16 the WVA might hold a news conference. I tried to find out and I did.

17 Q. So if I understand correctly, someone from your office told you  
18 that this press conference was happening that day?

19 A. He said that according to some information the person had, it is  
20 probable that a press conference was going to be held that day.

21 Q. After learning this information, did you contact the KLA War  
22 Veterans Association before the press conference?

23 A. Yes.

24 Q. Who did you contact?

25 A. With Mr. Nasim Haradinaj.

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Examination by Mr. Halling

1 Q. Had you known Mr. Haradinaj previously?

2 A. As journalist that I was, I knew many people working in  
3 institutions, organisations. In this case, Mr. Haradinaj.

4 Q. Why did you contact Mr. Haradinaj specifically?

5 A. Because he was always friendlier towards the media.

6 Q. When you contacted Mr. Haradinaj, what did you ask him?

7 A. I don't recall exactly. But to my recollection, I asked him  
8 that we have information that you are going to hold a news conference  
9 and is it true.

10 Q. What did he say?

11 A. He told me that very soon they are going to come up with a  
12 public notice, and then in that case we might attend that conference.

13 Q. After you finished this conversation with Mr. Haradinaj, what  
14 did you do next?

15 A. We tended to other things we had to do in the office until we  
16 saw a public announcement about the said conference.

17 Q. Upon arriving at the KLA War Veterans Association, were there  
18 other journalists there besides yourself?

19 A. In fact, I was among the first. When I went there, there wasn't  
20 anyone else present.

21 Q. In the course of the press conference, what is the most number  
22 of journalists that you saw with you?

23 A. I think there were about ten journalists, but I am not sure.

24 Q. I understand. Do you remember which media outlets were  
25 represented there besides Gazeta?

Witness: Halil Berisha (Open Session)

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Examination by Mr. Halling

1 A. From what I remember, but, nonetheless, I'm not very, very clear  
2 about that, it was Kosovo Press, Ekonomia Online, and I believe that  
3 there was a team from kallxo.com, but I am not sure about the others.

4 Q. How did the press conference begin?

5 A. We waited there in the office for a couple of minutes, then the  
6 persons that held the conference came and they started with the press  
7 conference.

8 Q. Who was speaking at the press conference?

9 A. As it can already be watched in the video that is published  
10 online as well, Mr. Nasim Haradinaj and Mr. Hysni Gucati were the  
11 ones talking at the press conference.

12 Q. And what were they speaking about?

13 A. They spoke about some documents that were brought to the office  
14 of the War Veterans Association by an unknown person.

15 Q. What else did they say about the documents?

16 A. They showed -- I mean, they said that it was unexpected. They  
17 didn't expect anyone to bring those documents, but the documents  
18 were, instead, brought in the morning, and those were the documents  
19 that they were presenting at the press conference.

20 Q. What did the documents concern?

21 A. As it was said in the press conference, it was said that the  
22 documents were from the Specialist Court.

23 Q. Now, Mr. Witness, you talked about a video of this event. I  
24 would now like to show you part of a video.

25 MR. HALLING: And for the record, Your Honours, this is P1.

Witness: Halil Berisha (Private Session)

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Examination by Mr. Halling

1 This video is already in evidence. The sound can be on but no  
2 simultaneous interpretation is needed. The part I want to show is  
3 14 minutes, 30 seconds, to 16 minutes on the video. I am more  
4 interested in what the accused are doing than what they are saying,  
5 but the corresponding transcript pages in both English and Albanian  
6 are pages 6 to 8 in P1-ET and P1-AT.

7 Now, Your Honours, because the excerpt involves displaying  
8 confidential documents, we would ask to go into private session for  
9 two minutes to play the excerpt. My questions about the excerpt can  
10 then continue in open session.

11 PRESIDING JUDGE SMITH: For purposes of protecting  
12 confidentiality, we will go into private session.

13 Madam Court Officer.

14 [Private session]

15 [Private session text removed]

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Witness: Halil Berisha (Private Session)

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Examination by Mr. Halling

1 [Private session text removed]

2

3 [Open session]

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

5 MR. HALLING: Thank you.

6 Q. Mr. Berisha, in relation to the video excerpt we just watched in  
7 private session, is that the press conference you attended?

8 A. Yes, it was.

9 Q. Please identify the people that you saw in the screen during the  
10 excerpt.

11 A. Mr. Nasim Haradinaj and Mr. Hysni Gucati.

12 Q. Do you know the name of the third person?

13 A. No, I don't know.

14 Q. Please describe what Mr. Gucati and Mr. Haradinaj were doing  
15 during the part of the video that you saw.

16 A. They were looking for some documents which, allegedly,  
17 demonstrate the cooperation of the task force with Prosecutors and  
18 with people from Serbia as well.

19 Q. Mr. Berisha, after the press conference ended, what did  
20 Mr. Gucati and Mr. Haradinaj do with those documents they were  
21 discussing?

22 A. When the press conference ended, the journalists as well as the  
23 cameraperson, so, like, at every other press conference, what they  
24 did is that they started to take photos and they started to record  
25 the documents because of the interest that they imposed onto them.

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Examination by Mr. Halling

1 Q. Did you ask to take a copy of the documents?

2 A. Because of the fact that the documents were many in number and  
3 it was not possible for us to know what those documents contained, it  
4 was impossible to shoot them all and to video record them all,  
5 therefore, I asked for a copy of those documents.

6 Q. Who did you ask?

7 A. I was close to the journalists and to the persons that were  
8 heading the conference, and it was there that I asked these persons  
9 on whether I could take a copy of the documents.

10 Q. When you say "the persons who were heading the conference,"  
11 which of those people specifically did you ask?

12 A. I asked on whether I could take the documents. It's not that I  
13 addressed someone specifically, but there were the persons that  
14 headed the conference and I addressed them together on whether I  
15 could take the documents or not.

16 Q. When you say you "addressed them together," is that in reference  
17 to Mr. Gucati and Mr. Haradinaj?

18 A. Yes.

19 Q. What did they say in response to your request to take the  
20 documents?

21 A. They said I could take the documents.

22 Q. Do you remember who said the words "you can take the documents,"  
23 between the two of them?

24 A. Mr. Nasim Haradinaj.

25 Q. How many pages did you take, approximately?

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Examination by Mr. Halling

1 A. It's difficult to know. It's a considerable number of pages,  
2 but it's about 1.000 pages, I think. 1.000.

3 Q. Mr. Berisha, after you took your pages, were there other batches  
4 of documents remaining in the same place where you took yours?

5 A. Yes. From what I know, yes, there were other documents there as  
6 well.

7 Q. Did you see anyone else taking the documents while you were  
8 there?

9 A. I have not seen anyone else because I took the documents and I  
10 immediately left the place where the press conference was held.

11 Q. When Mr. Haradinaj gave you permission to take the documents,  
12 did he say anything else about the documents to you?

13 A. So it was a very brief contact with him. I took the documents,  
14 like I said. It was a considerable number of pages and it was  
15 difficult for me to hold them all, and, therefore, I asked for a bag  
16 in order for the plastic -- I mean, for the documents to be put in  
17 the plastic bag. Something like that.

18 Q. Were you told anything about making copies of the documents?

19 A. Making copies of the documents, no. But I was told that given  
20 that there are many documents, the number of copies is small.

21 Therefore, there are not sufficient for all the media outlets.

22 Therefore, if another media was asking for the same documents, I was  
23 asked to collaborate with the other media outlets if it was at all  
24 possible.

25 Q. What did that mean "to collaborate with the other media outlets"

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1 because there weren't that many copies?

2 A. I said it before that there were too many media representatives  
3 there. There were not sufficient copies for all the journalists.  
4 When I asked for having the documents and when those documents were  
5 given to me, other media representatives were left without documents.  
6 And I was told that if any of the other media people would ask for  
7 the documents from me, I was kindly asked to refer and to give those  
8 documents to the other media representatives.

9 Q. So, in other words, you were asked to make copies for these  
10 other media members if they required it; is that right?

11 A. If someone asks of these documents, I was told to share the  
12 documents with them.

13 Q. Who told you that? Who told you to share the documents with  
14 those other media members?

15 A. When I asked if I could take the documents, Mr. Haradinaj  
16 answered that question, and I continued that conversation with him.

17 Q. So just to be clear, the remark you were saying about how if  
18 they needed it you should share it with others, it was Mr. Haradinaj  
19 that said this to you?

20 A. Yes.

21 Q. Mr. Berisha, once you left the press conference with these  
22 documents, please describe what you did next.

23 A. The inFokus office where I had to go is about 1 and a half  
24 kilometres, so 2 kilometres away from where I was. So given that I  
25 had a considerable number of documents, I was just thinking that



1 probably someone from the office would come and take me by car.

2 In that moment in time, I had to wait. And I had a coffee in  
3 the coffee shop of the War Veterans Association, in a coffee shop  
4 that is nearby.

5 Q. At what point after the press conference did you first inspect  
6 the documents you had been given?

7 A. Can you repeat that again? I didn't understand the question.

8 Q. At what point after the press conference did you inspect the  
9 documents that you took with you from the press conference?

10 A. After I went in the offices of the inFokus newspaper.

11 Q. When you inspected the documents, what did you see?

12 A. It was a problem because, like I said, the documents were many  
13 in number and they were not in a sequential order. Therefore, it was  
14 a problem to understand what it was that those documents contained.

15 Q. Were you able to assess the classification of those documents?

16 A. For me, as a journalist, it's not easy for me to know on whether  
17 the documents were confidential or not, because I don't have any  
18 tools to identify that. However, in some of the pages of the  
19 documents there was this marking "confidential."

20 Q. How long had you been inspecting the documents before you  
21 noticed that classification?

22 MR. REES: Your Honour, the witness referred to markings as  
23 opposed to classification. Perhaps the question can be rephrased by  
24 referring to the words used by the witness rather than putting words  
25 in his mouth.

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1 PRESIDING JUDGE SMITH: [Microphone not activated].

2 MR. HALLING: Happy to do that.

3 PRESIDING JUDGE SMITH: [Microphone not activated].

4 I'm sorry, I'm sustaining your -- I don't know if it was an  
5 objection. Request for clarification.

6 MR. REES: [Microphone not activated].

7 MR. HALLING: Happy to do that.

8 Q. Mr. Witness, you said that on some of the pages there was a  
9 marking "confidential." Do you remember after how long you'd been  
10 inspecting the documents before you noticed those markings?

11 A. I do not remember. So we first took them and we started  
12 inspecting them in the office to see what they contained, so it was  
13 probably after half an hour to 45 minutes that I saw them.

14 Q. Once you realised that there were confidential markings inside  
15 the documents, what did you do next?

16 A. As a matter of fact, we had suspicions about the authenticity of  
17 the documents, because in the moment in time when we received the  
18 documents, we sent an e-mail to the SPO to ask about those documents.  
19 And so the answer was not an answer, because they told us that: We  
20 can't comment these documents.

21 And given that we are in such a situation, and we were  
22 suspicious about the confidentiality issue and the authenticity of  
23 the documents as well, so we decided to not deal with these documents  
24 up until there was some clarification on the matter.

25 Q. When you said that you would not deal with the documents, did

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1 you store them while you figured out what to do with them?

2 A. As a matter of fact, we had some articles about the documents.  
3 So at least we tried to be cautious about those documents that had  
4 this marking "confidential," although we had our own doubts about  
5 confidentiality and about authenticity of the documents. So we tried  
6 to be cautious not to publish those documents. Whereas we put the --  
7 these documents in the space that was the safest there in the  
8 premises of inFokus.

9 Q. Where was that? Where was the most secure place in the inFokus  
10 premises?

11 A. In the office where the director and the administration stay, in  
12 the place where the financial documents of the company. I mean,  
13 that's the most secure spot in the premises of the inFokus newspaper.  
14 So it's not that we have any special place for documents of an  
15 important nature.

16 Q. When they were stored in the director's office, who had access  
17 to them?

18 A. The inFokus newspaper is a media outlet that has a big office.  
19 I mean, the journalists are there located in this big office. I  
20 mean, there is a meeting room as well and a room for the director.  
21 So everything is open for the three parties; namely, for the editors,  
22 for the journalists, and for the director. So, usually, journalists  
23 don't go in the office of the director or other people that are  
24 working for the newspaper, they don't go in the director's office  
25 without the presence of someone else in that office.

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1 Q. To the best of your knowledge, were any pages added or removed  
2 from those materials at the time they were in possession of  
3 Gazeta inFokus?

4 A. To my knowledge, nothing was added or removed from those  
5 materials.

6 Q. Now, Mr. Witness, I believe you said this already, but just to  
7 confirm, did you contact the Specialist Prosecutor's Office that you  
8 had these documents?

9 A. As far as I remember, we exchanged e-mails two times with the  
10 Office of the Prosecutor. They were informed. We initially asked  
11 them whether they -- these documents were from -- coming from the  
12 address that was on them. So we wanted a confirmation from them  
13 whether these were their documents.

14 Q. Mr. Berisha, during the time that these pages were in the  
15 possession of Gazeta inFokus or afterwards, did Gazeta inFokus ever  
16 receive these same documents distributed by the KLA from any other  
17 source?

18 A. To my knowledge, no, there was no other source for these  
19 documents.

20 Q. Now, Mr. Witness, you mentioned two e-mails you exchanged with  
21 the Specialist Prosecutor's Office. I want to show you an e-mail  
22 now.

23 MR. HALLING: This is from P98 MFI. And the pages are 091915 to  
24 091916.

25 Now, Your Honours, I can see -- I'm not sure Mr. Koci has a copy

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1 of the e-mails that I'm about to show. I have a hard copy of all of  
2 the exhibits. If it would be helpful, I'm happy to provide this to  
3 Duty Counsel.

4 PRESIDING JUDGE SMITH: Mr. Koci, do you need a copy of these  
5 documents?

6 MR. KOCI: [Microphone not activated].

7 MR. HALLING: Could I get the assistance of the Court Usher,  
8 please? And the Defence is welcome to inspect them as well. It's  
9 just the materials from our presentation queue in hard copy.

10 PRESIDING JUDGE SMITH: We'll get them to you, Mr. Koci,  
11 eventually.

12 MR. KOCI: [Microphone not activated].

13 MR. REES: Your Honour, within this bundle there are articles  
14 that, as far as we understood at least, do not relate to this  
15 witness. The bundle also contains copies of Official Notes drafted  
16 by an operational security officer, Ms. Pumper who gave evidence and  
17 completed her evidence this morning. In fact, there is one  
18 Official Note and, indeed, Ms. Pumper's declaration, together with  
19 the Official Note from the operational security officer.

20 I'm not sure as to why those documents are in a bundle for this  
21 witness.

22 PRESIDING JUDGE SMITH: I thought we had some e-mails you were  
23 talking about. This is a lot of other stuff.

24 MR. HALLING: Your Honour, what has been given to the Gucati  
25 Defence at the moment is just a reproduction of our presentation

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1 queue in hard copy.

2 PRESIDING JUDGE SMITH: I see.

3 MR. HALLING: This particular e-mails, there is a declaration  
4 from Ms. Pumper at the beginning of them, and there are e-mails from  
5 a variety of different people of which we'll see how many the witness  
6 actually authored. We're only going to show him the pages that we  
7 believe he authored.

8 MR. REES: I'm grateful for that clarification.

9 PRESIDING JUDGE SMITH: Thank you.

10 Show them to Mr. Koci.

11 MR. HALLING: Yes. And for the witness, he can look at the  
12 screen. And from P98 MFI, we're interested in pages 091915 --

13 PRESIDING JUDGE SMITH: Excuse me, wait until Mr. Koci is  
14 finished.

15 MR. HALLING: Oh, of course. And for the benefit of Mr. Koci,  
16 we are talking about -- it's tab 325 which is the exhibit list number  
17 for this item.

18 PRESIDING JUDGE SMITH: I don't know that he heard you.

19 Mr. Koci, it's Exhibit 325.

20 MR. HALLING: And the page number is 091915. And it's on the  
21 screen. I'll wait a moment for Mr. Koci to get oriented before I  
22 continue.

23 PRESIDING JUDGE SMITH: All right?

24 MR. KOCI: Yes.

25 PRESIDING JUDGE SMITH: Now you may proceed, Mr. Halling.

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1 MR. HALLING: Thank you, Your Honour.

2 Q. Mr. Berisha, do you recognise this e-mail?

3 A. Yes.

4 Q. Is this one of the two e-mails that you wrote to the SPO?

5 A. Yes, this is one of the two e-mails that was sent to the SPO,  
6 that we decided to send to the SPO.

7 Q. Thank you.

8 MR. HALLING: And to go to the next page.

9 Q. That's your signature; correct?

10 A. It's my name and my position within Gazeta inFokus.

11 Q. I follow.

12 MR. HALLING: To go to the next page, and this would be 091917.

13 Q. Mr. Berisha, do you recognise this e-mail?

14 A. Yes.

15 Q. Did you write this e-mail to the SPO?

16 A. I sent this e-mail from my own e-mail address, but the e-mail  
17 itself was composed and written together with the editors.

18 Q. And why did you send this e-mail?

19 A. We sent this e-mail because the first response of the SPO --  
20 because, in fact, I don't know if I can call it an answer, since they  
21 did not provide any information. They just said that they cannot  
22 discuss the documents.

23 As I mentioned earlier, we were not sure about the authenticity  
24 of the documents as well as about their confidentiality. That's why  
25 we wanted to be sure, and that is why we informed the Office of the

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1 Prosecutor, Specialised Prosecutor.

2 Q. Mr. Witness, where it says in the e-mail:

3 "So, we locked the documents in the safe place and we would like  
4 to inform you about this."

5 Is that what you were describing earlier about storing the  
6 documents?

7 A. Yes.

8 MR. HALLING: Your Honours, at this point we would suggest that  
9 the MFI designation can be removed for P98 in respect of the three  
10 pages just authenticated by the witness.

11 We are mindful that the whole document is MFI'd at present, so  
12 our suggestion would be to either admit this part of the exhibit as a  
13 kind of decimal of the old exhibit, like P98.1, or to just give these  
14 three pages its own exhibit number, as the Trial Panel prefers. But  
15 we would be tendering these three pages at this time.

16 PRESIDING JUDGE SMITH: [Microphone not activated].

17 MR. REES: No, I agree with the suggestion from Mr. Halling.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 MR. CADMAN: Also concur.

20 PRESIDING JUDGE SMITH: We will refer to this as 98.1, no longer  
21 using the MFI. It is admitted.

22 MR. HALLING: Thank you, Your Honour. And although P98 MFI  
23 still has a confidential classification, P98.1, as you've described  
24 it, can be public.

25 PRESIDING JUDGE SMITH: All right.



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1 MR. REES: Can I just check. So that's what was formerly  
2 ERN 091915 to 091917, now P98.1?

3 THE COURT OFFICER: Indeed, yes.

4 MR. REES: Thank you.

5 PRESIDING JUDGE SMITH: Thank you.

6 And any objection to the reclassification as public?

7 MR. REES: No.

8 PRESIDING JUDGE SMITH: All right. It is reclassified as  
9 public.

10 MR. HALLING: Thank you, Your Honour.

11 Q. Now, Mr. Berisha, did the Specialist Prosecutor's Office collect  
12 the batch of documents that we've been discussing?

13 A. Yes. Two persons who introduced themselves as investigators of  
14 the SPO came.

15 Q. And this was on 9 September 2020; is that right?

16 A. To my recollection, yes.

17 Q. Please describe the interaction you had with the SPO when the  
18 documents were collected.

19 A. At the outset, I was called by someone from the SPO, from a  
20 Dutch number, and I was asked whether two investigators could come to  
21 our offices and collect the documents. I said they could. Then they  
22 called me, we arranged a meeting, because I think they didn't know  
23 exactly where our offices were. They came to our offices, stayed for  
24 about an hour if I'm not mistaken. And before they saw the  
25 documents, we asked them to identify themselves, to produce a

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1 document -- identification documents. They did so. We saw that they  
2 were representatives of the SPO.

3 We took, then, the documents from the place where we had stored  
4 them. They inspected them, and then they said that they would take  
5 them with you. And this is what they did. They took the documents  
6 and left.

7 Q. Did the SPO take all of the documents you took from the KLA War  
8 Veterans Association?

9 A. Yes, they took all of the documents that we had, that we had  
10 taken from there.

11 Q. Was it publicly known that Gazeta had returned these documents  
12 to the SPO?

13 A. Yes, it was made public that investigators from the office of  
14 the Specialist Prosecutor came and collected the documents.

15 Q. Did anyone from the KLA War Veterans Association react to you  
16 returning these materials to the SPO?

17 A. Nobody from the KLA WVA called me on the phone, neither did we  
18 have any contact with them on this matter.

19 Q. Did anyone from the War Veterans Association make a public  
20 comment about this?

21 A. You mean about the fact that they took the documents, the SPO?

22 Q. Yes, that you gave the documents to the SPO.

23 A. I don't remember whether anybody made any comments on the fact  
24 that SPO came and collected the documents.

25 MR. HALLING: Your Honour, the witness just said that he doesn't

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1 remember. With your leave, I would request permission to show him  
2 page 20 of part 1 of his SPO interview, the English transcript. And  
3 it would be lines 18 to 25.

4 PRESIDING JUDGE SMITH: You may do so.

5 MR. HALLING: Thank you. For the benefit of Mr. Koci, this is  
6 tab 496 in the binder, and the ERN is 102781-TR-ET, Part 1,  
7 Revised 1.

8 Q. Mr. Berisha, I'm going to read you a question and answer from  
9 your SPO interview from August, and then I want to ask if this  
10 refreshes your recollection on this point.

11 "Q. So there were TV shows where representatives of the KLA War  
12 Veterans Association said what?"

13 "A. They -- so the War Veterans Association's representatives  
14 said in these TV shows or programmes that had these" --

15 THE INTERPRETER: Could the counsel please slow down when  
16 reading.

17 MR. HALLING: I'm guided.

18 Q. "... that had these documents been in relation to or had they  
19 contained information about the War Veterans Association, be that  
20 sensitive information, the journalists would not have hesitated to  
21 publish them. However, this did not happen. Any of the journalists  
22 did not publish these documents in this case."

23 Mr. Witness, is that an accurate statement that I've just read  
24 to you?

25 A. [Microphone not activated].

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1 THE INTERPRETER: Microphone, please.

2 THE WITNESS: [Interpretation] Was your question whether I --  
3 this was my statement?

4 MR. HALLING:

5 Q. My question is whether what I just read to you, does it refresh  
6 your recollection of any public comment the KLA War Veterans  
7 Association had said?

8 A. Yes. But this is not an answer to the question I was asked.  
9 The question posed was whether there were reactions on the fact that  
10 we handed over the documents, and the answer quoted here was not the  
11 answer to your question.

12 What I was saying there was that there were reactions on TV  
13 shows on non-publishment of the documents, but not on their handing  
14 over to the SPO.

15 Q. I follow you. So is this public comment of the War Veterans  
16 Association criticising Gazeta for not publishing these materials; is  
17 that correct?

18 A. This is not the way I understood it. I did not understand it as  
19 a criticism against Gazeta inFokus. It was not specifically directed  
20 at Gazeta inFokus but in general to all media outlets and  
21 journalists.

22 Q. Mr. Witness, did you understand such statements to be referring  
23 to Gazeta as well?

24 A. We were open from the moment we took the documents. So it was  
25 public knowledge that we possessed the documents. And we are

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1     journalists, we are a media outlet, so we belong to that larger group  
2     of media outlets and journalists.

3     Q.    I understand that.  But from what I understood from your  
4     statement was that there was a remark about certain media outlets not  
5     publishing the materials.  To your understanding, was that remark  
6     from your interview in relation to Gazeta inFokus as being one of the  
7     media outlets not publishing the documents?

8           MR. REES:  Your Honour, is that not a question for someone else  
9     as opposed to this witness?  In particular, the maker of such a  
10    statement, if there was such a statement?

11           PRESIDING JUDGE SMITH:  Yes, you are asking him to assume  
12    something that he doesn't necessarily know.  Somebody else might know  
13    it, but he doesn't know who they are actually criticising because  
14    they don't say who they are actually criticising.

15           MR. HALLING:  My question is in relation to whether the witness  
16    understood the remark to be in reference to his media outlet.

17           PRESIDING JUDGE SMITH:  Well, but he may be wrong.  That  
18    question is not probative of anything.

19           MR. HALLING:  I'll move on.

20     Q.    Mr. Witness, you mentioned that the SPO came to take the  
21    documents from Gazeta inFokus.  I now want to show you a document.

22           MR. HALLING:  This is P100 MFI.  In the binder of materials,  
23    it's tab 2.

24     Q.    Mr. Berisha, do you see your name on this page?

25     A.    Yes.

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1 Q. And is that your signature?

2 A. Yes.

3 Q. What is this document?

4 A. This is a document that was given to us by SPO representatives  
5 after they took the documents, the document that we had to sign  
6 confirming the handover of the documents.

7 Q. Mr. Berisha, where it says "Content," it says the words:  
8 "Documents from KLA WVA." Do you see that?

9 A. Yes.

10 Q. And that is in reference to the files that we've been discussing  
11 that you handed over to the Specialist Prosecutor's Office; is that  
12 right?

13 A. Yes. This refers to the files that the Specialist Prosecutor's  
14 Office investigators took from inFokus newspaper.

15 MR. HALLING: Your Honours, at this point the SPO would request  
16 to remove the MFI designation and to admit P100 as an exhibit.

17 PRESIDING JUDGE SMITH: [Microphone not activated].

18 MR. REES: No objection to that.

19 MR. CADMAN: No objection, Your Honour.

20 PRESIDING JUDGE SMITH: P100 is admitted.

21 MR. HALLING: As to the classification of the exhibit, this  
22 exhibit is currently classified as confidential to protect the  
23 identity of SPO staff member W04876. W04876's application to be  
24 added to the witness list is pending. Should it be granted, we have  
25 no objection to reclassifying this exhibit as public.

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1           PRESIDING JUDGE SMITH: We'll defer on the reclassification,  
2 then.

3           MR. HALLING:

4           Q. Now, Mr. Berisha, did you go to any other press conferences of  
5 the KLA WVA in September 2020?

6           A. I was not present in any other conference other than on the day  
7 when the arrest took place.

8           Q. Before the arrest, did Gazeta attend any of those other press  
9 conferences?

10          A. I did not take part in any other press conference. But to my  
11 recollection, also nobody else from our Gazeta took place in them.

12          Q. Why didn't you go to any of the other press conferences?

13          A. Because the inFokus Gazeta doesn't employ many journalists.  
14 Mainly we work from the office. So we followed the first conference  
15 and decided not to attend the other conferences. So we didn't deem  
16 it appropriate to go.

17          Q. Mr. Berisha, in your capacity as a journalist, did you write  
18 press articles concerning these KLA War Veterans Association press  
19 conferences in September 2020?

20          A. Yes.

21          Q. How many did you write, approximately?

22          A. It's a problem for me to give you a certain number, because  
23 usually during the day I wrote about some 30 or 40 articles on  
24 various subjects, so I can't give you an accurate number.

25          Q. And when you say "30 or 40 articles on various subjects," were

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1 these still 30 or 40 articles related to the KLA War Veterans  
2 Association's activities in September 2020?

3 A. Not necessarily. We covered many activities, many events, so we  
4 dealt with many topics simultaneously.

5 Q. Can you approximate how many articles you wrote that month about  
6 the War Veterans Association in particular?

7 A. It is, again, very hard for me to say, because in a day, I would  
8 write about 30, 40 articles. But I wouldn't say that the number of  
9 the articles I wrote on them was more than ten in a month. That  
10 month.

11 Q. Focusing on this subset of the articles that you wrote, did you  
12 publish any articles about the batch of documents you personally  
13 obtained?

14 A. Yes.

15 Q. When you were publishing these articles about the materials  
16 you'd obtained, were the materials still in your possession at the  
17 time?

18 A. To my recollection, and I am quite certain, that the articles we  
19 wrote on these documents were written during the time the documents  
20 were in our possession. We continued to write about this issue but  
21 not about specific documents that we did not possess.

22 Q. Did these articles that we're talking about now include pictures  
23 of the batch of documents you'd received from the War Veterans  
24 Association?

25 A. Some, yes. But, I'm repeating, even though we did not know



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1 whether the documents were authentic and confidential, we took care  
2 to edit the place in the documents which might be confidential.

3 Q. Now, Mr. Witness, I'm going to show you a number of media  
4 articles now. We'll do as many as we can by 4.00, and then we'll do  
5 the rest in the first session tomorrow, where I can already promise I  
6 will comfortably finish my direct examination.

7 I am generally going to ask, in relation to these articles,  
8 whether you wrote them, what they are about, and for those that you  
9 did write and the extent you can explain without revealing  
10 confidential sources, how you came to know what was reported.

11 MR. HALLING: And I wanted to start with P125 MFI, and  
12 specifically pages 081361 to 081362. This is tab 40, or at least  
13 exhibit list number 40. The English transcript of this is tab 39,  
14 and it has the same ERN with an -ET.

15 Q. Mr. Witness, do you see this article?

16 A. Yes.

17 Q. [Microphone not activated] Did you write it?

18 A. I have authored this article which was afterwards edited by the  
19 editorial board before publishing it.

20 Q. When was it written?

21 A. It's an issue for me to give you an accurate date and time, but  
22 usually the texts that we publish were written within the same day.  
23 So probably -- I see the date 7 September. It must have been written  
24 on the same date.

25 Q. Thank you. Now, Mr. Witness, on this page there's a part of the

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1 English transcript that I want to read. It says:

2 "InFokus Newspaper has secured evidence by which the Special  
3 Investigative Task Force, under the framework of the Special Court,  
4 is suspected of requesting evidence and testimonies from Serbia ..."

5 Mr. Berisha, is that sentence in your article in reference to  
6 the materials you obtained from the War Veterans Association?

7 A. Yes, it is one of the documents that were part of the dossier.

8 MR. HALLING: Can we please go to the next page.

9 Q. Please describe what this picture is.

10 A. This picture is a picture of the document that speaks about the  
11 text we wrote about and where we edited some of the data that we  
12 deemed to be sensitive.

13 Q. So I'm correct, this is a picture from the batch of materials  
14 you obtained from the War Veterans Association?

15 A. Yes.

16 MR. HALLING: I would now like to turn to the next article,  
17 which is 081364 to 081367. It's in the same batch of materials but  
18 it has -- which would be MFI P125. But the English transcript of  
19 this one has got an -ET at the end of the ERN I just read, and it's  
20 in tab 41.

21 Q. Mr. Witness, do you see this article?

22 A. Yes.

23 Q. Did you write this?

24 A. Yes. Just like the other article, I was the author. And it was  
25 redacted by the inFokus editorial board.

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1 Q. Please describe the picture that we see on this page.

2 A. These are the documents we obtained. And after we returned to  
3 the office, as far as I remember, I'm not sure about the total number  
4 of documents, we took pictures of the documents we obtained.

5 Q. So am I correct that these are pictures of the documents you  
6 obtained on 7 September 2020 from the War Veterans Association?

7 A. Correct.

8 MR. HALLING: Can we go to the next page.

9 Q. Mr. Witness, is this also pictures of those same materials?

10 A. Yes, it's a picture of the same documents.

11 MR. HALLING: And the next page.

12 Q. The same question, Mr. Witness. Are these also materials from  
13 the same batch?

14 A. Yes.

15 Q. And, finally, the same question one more time on the last page.  
16 The same pages from the same batch?

17 A. Yes.

18 PRESIDING JUDGE SMITH: Mr. Halling, our records show that 125  
19 is not an MFI but is admitted.

20 MR. HALLING: I'm glad to hear that. I have it recorded  
21 differently.

22 MR. REES: There's no objection to this article. It's produced  
23 by the witness. It's properly admitted in any event.

24 PRESIDING JUDGE SMITH: Yes, okay. Thank you.

25 MR. HALLING: Thank you.



1 MR. REES: It won't take long to give that indication.

2 PRESIDING JUDGE SMITH: Another Welsh [overlapping speakers] ...

3 MR. REES: What we do next -- sorry?

4 PRESIDING JUDGE SMITH: Another couple of minutes [overlapping  
5 speakers] ...

6 MR. REES: A Welsh couple. Yes. It depends on where the  
7 Trial Panel wants to go next with it, as it were. But certainly  
8 giving the indication we can do quite quickly.

9 PRESIDING JUDGE SMITH: I think we'll allow Mr. Berisha to have  
10 the rest of the day off then, and we'll finish up.

11 Mr. Berisha, you'll need to be back here at 9.30 tomorrow for us  
12 to begin. Do you understand? And we appreciate you being here today  
13 and your candour in discussing these matters. So you will be  
14 excused. The Court Usher will take you out.

15 And, Mr. Koci, thank you very much for your attendance.

16 [The witness stands down]

17 PRESIDING JUDGE SMITH: Mr. Koci, you are free to leave as well.

18 MR. HALLING: And, Your Honours, just before Mr. Rees makes his  
19 submission, the translation I was speaking of at the beginning of  
20 this session has now been disclosed.

21 MR. CADMAN: I can certainly confirm that I have received them,  
22 but, obviously, not being an Albanian speaker, I will have to take  
23 instructions on that.

24 PRESIDING JUDGE SMITH: By morning we can get an answer?

25 MR. CADMAN: Absolutely.

1           PRESIDING JUDGE SMITH: All right.

2           Okay. Go ahead, Mr. Rees.

3           MR. REES: So yesterday we did receive a notification from the  
4 SPO of a written request, it's called a Prosecution's second request  
5 for additions to its witnesses, its witness and exhibit lists with  
6 confidential Annexes 1 and 2. It's filing F00396, and Annexes A01  
7 and A02.

8           The decision or the intention of the SPO is to seek permission  
9 to add one witness of the two that were referred to in the oral  
10 order. So not both, not neither, but one of them, W04876. And the  
11 request goes beyond the scope identified by the Trial Panel in the  
12 oral order which made it clear that the Prosecution were being given  
13 permission to reflect, as it were, on calling the two individuals for  
14 the limited purpose of questioning in respect of three identified  
15 reports.

16           The oral order then gave us until close of business by today to  
17 give an indication whether we have any objection to these two  
18 individuals being added to the witness list. Complying with that  
19 order, we indicate that we do object to the SPO's detailed request to  
20 call one witness and add exhibits and adduce testimony that goes  
21 beyond the scope of the oral order.

22           Clearly, we have not had a great deal of time to deal with a  
23 written filing to respond in detail to what is not a straightforward  
24 request from the SPO. And if the Trial Panel wishes us to put our  
25 submissions in writing as opposed to at some stage dealing with this

1 in oral argument, we would ask for sufficient time to be able to do  
2 that.

3 Clearly, the SPO were given some six day -- six full days to  
4 clarify their position, and we've been given less than 24 hours to  
5 respond.

6 PRESIDING JUDGE SMITH: Is it possible for you to respond fully  
7 by Thursday?

8 MR. REES: Yes, depending on what other work is envisaged. But  
9 if, as I anticipate, at the moment, as I understand it, we are  
10 intending to finish with this witness and then there will be no  
11 further live evidence this week. In which case, then yes, we will be  
12 able to and we'd be grateful for that time.

13 [Trial Panel confers]

14 PRESIDING JUDGE SMITH: So just so I understand, the Prosecution  
15 is only asking to bring one of those two witnesses?

16 MR. HALLING: That's correct, Your Honour. The only other thing  
17 I would mention is we have no objection to them being given a written  
18 submission or a further submission on Thursday. We are still  
19 planning to call the next witness. This witness is not going to take  
20 all week, and W04842 is ready to start on Thursday.

21 PRESIDING JUDGE SMITH: And my understanding -- maybe you should  
22 tell me what the basis of your objection is. Just in general. You  
23 will be allowed to make a written documentation, but just what I'm  
24 interested in.

25 MR. REES: Yes.

1           PRESIDING JUDGE SMITH: Are you saying one is not acceptable,  
2 two is?

3           MR. REES: So dealing with the application that's before us, and  
4 there may be a different position taken if there was an application  
5 to adduce both witnesses but there isn't. On the application before  
6 us, we will object, firstly, to the state of the disclosure in  
7 relation to the witnesses proposed to be added to the list, W04876.

8           We object to the proposals as to the scope of that witness's  
9 testimony because of the very limited nature of that witness's role  
10 compared to what it is proposed to ask the witness about.

11           We will raise objections to the way in which witness preparation  
12 sessions have been conducted in relation to that witness, making  
13 reference to specific parts of the Order on the Conduct of  
14 Proceedings, filing F00314, which we say the spirit of which, at  
15 least, including the letter, have been not obeyed leading to  
16 potential prejudice.

17           PRESIDING JUDGE SMITH: That's good enough to let us know what  
18 the basis of your objections are.

19   [Trial Panel confers]

20           PRESIDING JUDGE SMITH: We'll give you until Thursday to file a  
21 written response. You can file a consolidated response, if you wish,  
22 to avoid duplication. And there is no need for a reply, as far as  
23 the Court's concerned. We'll take that up Thursday, possibly have it  
24 first thing Thursday so that we can deal with it.

25           MR. REES: Thank you. I'm grateful for that, Your Honour.



1           PRESIDING JUDGE SMITH: Thank you.

2           MR. REES: Can I then deal with the rest of the timetable for  
3 this week?

4           PRESIDING JUDGE SMITH: Yes.

5           MR. REES: It was of some surprise to us that the SPO have just  
6 indicated that they would intend to go on to call the officer with  
7 the pseudonym W04842 this week following the conclusion of the  
8 evidence of Mr. Berisha.

9           We, of course, have raised the issue about the absence of a  
10 declaration or witness statement covering the three areas. We had  
11 asked for the Court to rule on that. If that witness is available, I  
12 struggle to understand why the SPO wouldn't just ask him to prepare a  
13 declaration or witness statement, frankly, but I'll await the  
14 Trial Panel's ruling on that matter.

15           But it does -- it would place us in difficulties in preparing  
16 cross-examination. Certainly, I think it's difficult to see how we  
17 could complete that witness's evidence. Perhaps if he was called, he  
18 could deal with matters in chief, that would allow us some time to  
19 actually see what testimony he's going to give, but I can't prepare a  
20 presentation queue in the absence of a proper witness statement  
21 because I simply do not know what he's going to say.

22           PRESIDING JUDGE SMITH: Well, we've tried to be reasonable  
23 whenever necessary. If you need some time, we can give you some  
24 time. We would like to finish this week with the Prosecution's case.  
25 But if we don't, we don't. We'll deal with it. We're going to be

1 meeting again next week on Thursday and Friday, and we can perhaps  
2 finish up then if we have to.

3 So let's just deal with the issue we've got. The Prosecution  
4 will call the witnesses they can. I'm questioning whether you'll get  
5 to cross-examination by [overlapping speakers] ...

6 MR. REES: Well, I -- I am giving forenotice, forewarning, as it  
7 were, that if it got to that stage, I would be asking for us not to  
8 move into cross-examination with that officer and reserve that until  
9 we return next week.

10 PRESIDING JUDGE SMITH: And we'll see where we are and rule on  
11 that at the time. We don't want to put you in a bad spot --

12 MR. REES: I'm grateful.

13 PRESIDING JUDGE SMITH: -- and have tried not to.

14 MR. REES: Thank you.

15 PRESIDING JUDGE SMITH: All right. It's 4.00.

16 Mr. Cadman, I'm sorry. I didn't mean to ignore you.

17 MR. CADMAN: Just to clarify the scheduling. You said we're  
18 sitting Thursday and Friday next week. I just want to confirm. I  
19 thought I had it in the diary as Wednesday and Thursday, not Thursday  
20 and Friday.

21 PRESIDING JUDGE SMITH: You're absolutely correct -- no, no, it  
22 is Thursday and Friday.

23 MR. CADMAN: It is Thursday and Friday.

24 PRESIDING JUDGE SMITH: Because the other Trial Panel is going  
25 to be sitting Monday, Tuesday, and Wednesday --

1 MR. CADMAN: I see.

2 PRESIDING JUDGE SMITH: -- so we are sort of stuck into a fuller  
3 week than we would normally do, because it's a bit difficult for the  
4 translators to have that many days and that many hours. But, anyway,  
5 next week that's sort of where we are, and it will be Thursday and  
6 Friday.

7 MR. CADMAN: I'm grateful.

8 PRESIDING JUDGE SMITH: So we will see you all tomorrow at 9.30,  
9 and we are adjourned.

10 --- Whereupon the hearing adjourned at 4.02 p.m.

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