

1 Thursday, 28 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: Any change in the composition of the
11 panel for the Prosecution?

12 MS. BOLICI: The only difference is that the legal intern,
13 Molly Norburg, who was present yesterday, is not present today.

14 PRESIDING JUDGE SMITH: All right. Thank you.

15 Mr. Rees, any additions?

16 MR. REES: No change, Your Honour.

17 PRESIDING JUDGE SMITH: Mr. Cadman?

18 MR. CADMAN: No change, Your Honour.

19 PRESIDING JUDGE SMITH: Thank you.

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

22 As promised yesterday, we will rule today on the joint Defence
23 request under Rule 102(3) in anticipation of the testimony of
24 Witness 4842.

25 The Panel recalls first that yesterday it rejected the

1 application of the Gucati Defence in relation to new information
2 provided by Witness 4842 and found that the additional information
3 was limited in scope and nature; and that the information fell within
4 the scope of the witness's anticipated testimony and did not go
5 beyond what the Defence had notice of.

6 The Panel is now seized of a new request by the Gucati Defence
7 and joined by the Haradinaj Defence. We will call this Defence
8 Disclosure Request.

9 In this request, the Defence seeks disclosure under Rule 102(3)
10 of material and information it maintains is material to its
11 preparation for the cross-examination of Witness 4842. The Defence
12 maintains that this disclosure is necessary as a result of the new
13 information provided by the witness.

14 The SPO maintains that the Defence Disclosure Request is
15 untimely and overly broad. It submits that such eleventh-hour
16 motions make the witness preparation procedure adopted by the Panel
17 unworkable. The SPO also states that Witness 4842 is the best source
18 on the matters that the Defence seeks to address and that he can be
19 cross-examined when he appears.

20 Before ruling on the matter, the Panel recalls that the
21 Pre-Trial Judge has held that: The Defence may request the
22 disclosure or inspection of material not included in a Rule 102(3)
23 notice; in such a case, the Defence must (i) provide suitable
24 parameters for the specification of any requested items, so as to
25 enable the SPO to identify the items sought; and (ii) indicate the

1 materiality of the requested items for Defence preparation.

2 As regards the parameters of specification, the Pre-Trial Judge
3 held that these may include: A specific event or group of witnesses;
4 a time period and/or geographic location to which the material
5 refers; a category of documents defined by criteria which apply to a
6 distinct group of individuals; or any other features defining the
7 requested items with sufficient precision.

8 The Pre-Trial Judge also held that the Defence may not rely on
9 mere general descriptions of or conclusory allegations on the
10 requested information and should avoid making requests in the form of
11 catch-all phrases.

12 For the record, that is F172, paragraph 26.

13 This decision was not appealed by either party, and the Panel
14 has no reason to revisit it in the present context.

15 The Panel notes that the Defence Disclosure Request encompasses
16 virtually any record the SPO has ever made regarding witness
17 protection referrals, including field measures. It also covers any
18 record the SPO made regarding checks of names against the distributed
19 material. It also encompasses internal meeting records on witness
20 contacts and related managerial decisions since October 2020.

21 The Panel understands the Defence tried to provide suitable
22 parameters of specification, but the scope of its request goes well
23 beyond the anticipated testimony of 4842.

24 While the disclosure system must provide an effective way for
25 the Defence to obtain relevant information, it is not to be used as a

1 fishing expedition.

2 The Panel is further not satisfied that the Defence made a
3 showing of materiality in relation to this disclosure insofar as it
4 pertains to the proposed evidence of Witness W04842. That being
5 said, if during the direct examination the witness is asked to
6 testify to matters that go beyond the scope of his statement and the
7 14 October notice, and these matters fall under the scope of the
8 Defence Disclosure Request, the Defence may make a new request of
9 disclosure under Rule 102(3) regarding that specific material or
10 information.

11 The Defence should indicate, at that time, the materiality of
12 that information for the preparation of its cross-examination of
13 Witness 4842.

14 Moreover, during cross-examination the Defence is free to elicit
15 information from Witness 4842 on specific matters pertaining to the
16 Defence Disclosure Request provided that they can demonstrate
17 relevance to their case, and the line of questioning is otherwise
18 permissible.

19 The Panel, therefore, rejects the Defence Disclosure Request
20 with the caveat just mentioned.

21 This concludes the oral order on the Defence Rule 102(3).

22 I'm not finished yet, Mr. Rees.

23 Preliminary matters regarding authors of notes.

24 The Panel takes this opportunity to note that the SPO exhibit
25 list for Witness 4842 contains several Official Notes not authored by

1 the witness.

2 The SPO is not barred from eliciting information contained in a
3 note prepared by a third party if the witness is capable of
4 testifying to its content, nor is the showing of such notes
5 prohibited if, again, the witness is able to add to what is stated in
6 the note or to corroborate some or all of its content.

7 However, as previously held, to the extent that these notes fall
8 under Rule 153 or 154 of the rules, they are not admissible through
9 this witness.

10 Where the SPO intends to rely upon a note not prepared by
11 Witness 4842, it should ensure that the basis of his knowledge of a
12 fact or circumstance stated in one of those notes is clearly
13 outlined.

14 Now, Mr. Rees.

15 MR. REES: In our *inter partes* correspondence, which raised the
16 disclosure request under Rule 102(3), we did, of course, point out
17 that there'd been no updated Rule 102(3) notice that deals with the
18 material in the possession of the Specialist Prosecutor that falls
19 within the scope of the three paragraphs alleged to be new
20 information in the e-mail correspondence of 14 October.

21 It is, of course, not new information. And, indeed, the
22 Prosecution, in their response to our filing F00349, had, at that
23 stage, suggested that 04842 was in a position to testify on
24 institutional tasks carried out by the witness security team and
25 provide examples of measures undertaken by the SPO to address

1 concerns raised by witnesses in relation to their safety and
2 well-being --

3 PRESIDING JUDGE SMITH: Mr. Rees.

4 MR. REES: And in our reply --

5 PRESIDING JUDGE SMITH: Excuse me, Mr. Rees, what's the purpose
6 of this statement? Are you asking for a reconsideration or
7 something?

8 MR. REES: We still submit that the SPO are required to provide
9 an updated Rule 102(3) notice.

10 PRESIDING JUDGE SMITH: Unfortunately, we have ruled on that,
11 and that's what we're going to proceed under.

12 MR. REES: Your Honour, I understand Your Honours' clear ruling
13 in relation to requests for disclosure under Rule 102(3). But, of
14 course, Rule 102(3) has, as we know, three stages.

15 The first stage, of which, is the provision of relevant notice
16 setting out all relevant material in the possession of the
17 Specialist Prosecutor. The request for disclosure is only stage
18 three of Rule 102(3).

19 PRESIDING JUDGE SMITH: Thank you.

20 Mr. Pace.

21 MR. PACE: Thank you, Your Honour. Just briefly.

22 The reasons to reject these repeated requests are the same
23 Your Honour mentioned in your decision. The overly broad nature of
24 the request would also apply to any listing requirements.

25 Thank you, Your Honour.

1 PRESIDING JUDGE SMITH: We will proceed.

2 So the Panel will now hear submissions on the admissibility of
3 the exhibits tendered but deferred during the testimony of
4 Ms. Pumper.

5 As said yesterday, the parties should present their arguments on
6 both admissibility and proposed classification of these exhibits.
7 Everyone is also reminded to present their arguments in a manner that
8 does not defeat the confidential classification of the tendered
9 exhibits and which avoids repetition of submissions already made.

10 The SPO and each Defence counsel will be allotted 15 minutes to
11 make submissions on all categories. The Prosecutor is also reminded
12 to read out a concise summary of Ms. Pumper's declarations. The time
13 spent reading these summaries will not be counted for the 15 minutes
14 allocated to the Prosecution.

15 The Panel will issue a written decision on admissibility and
16 classification after hearing all arguments of both parties.

17 We will begin with the Prosecutor.

18 Madam Prosecutor, the floor is yours.

19 MS. BOLICI: Thank you, Your Honour.

20 I would proceed according to the categories and list of items
21 that have been notified by the Trial Panel to both parties, and we
22 start with the declarations of W04841.

23 The SPO reiterates its request for admission of P86 MFI,
24 P87 MFI, P88 MFI, P89 MFI, P90 MFI, and P91 MFI under Rule 154. The
25 request for admission extends to the respective Albanian translations

1 of this declaration which have not been given an MFI number yet.

2 A decision on the admission of these items has been deferred.
3 The requirements of Rule 154 have been met at the outset of this
4 witness's testimony. The witness confirmed that she authored this
5 declaration, was present in court, and available for
6 cross-examination and questioning by the Panel, and confirmed that
7 the declaration reflects what she would say if examined on the
8 specific points.

9 All of the objections raised by the Defence in relation to these
10 items address the weight to be attributed, in the Defence's view, to
11 the evidence provided by this witness, which is a matter for the
12 Trial Panel to ultimately assess and do not impact, in any way, on
13 the admissibility of this witness's evidence, whether provided
14 through oral testimony or pursuant to Rule 154.

15 The classification of each of these declarations is
16 confidential, as these declarations contain specific references to
17 the contents of confidential materials disclosed without
18 authorisation by the accused.

19 The SPO is available to submit a public redacted version of the
20 English version of each declaration and will be ready to do so within
21 ten days from the Trial Panel's decision on the admission of these
22 items.

23 And in order to ensure an efficient use of translation
24 resources, the SPO seeks to provide the Albanian redacted version of
25 admitted items once the redaction on the English version have been

1 approved by the Trial Panel.

2 I will read the summary of the declarations at the end of these
3 submissions.

4 I will move to P0098 MFI, which is an Official Note authored by
5 W04841 with attached correspondence. This has been already tendered
6 by the SPO in the course of W04841's testimony. W04841 has confirmed
7 the authenticity of the Official Note and the correspondence attached
8 to this Official Note.

9 The authenticity of this correspondence has further been
10 confirmed through the testimony of W04866 yesterday and the day
11 before, and I noted that part of this material has been admitted as
12 P00981.

13 The entirety of this correspondence is relevant and probative as
14 it documents the resonance of the events occurred at the KLA War
15 Veterans Association on 7 September 2020 within the Kosova Press.

16 In the SPO's submission, the classification of P0098 MFI should
17 be maintained confidential as it contains references to the identity
18 of third parties and could, therefore, impact on the right to
19 privacy. Proposed redactions for the English public redacted version
20 have already been submitted by the SPO with the filing
21 KSC-BC-2020-07, F00324, Annex 1, of 24 September 2021.

22 I will move now to category 2, which includes excerpts of
23 Batch 1. These are the items P93 MFI, P94 MFI, P95 MFI, P96 MFI, and
24 P97 MFI.

25 All the disclosed pages of Batch 1 have been authenticated by

1 W04841 in the course of her testimony and identified as part of the
2 documents that have been seized at the KLA War Veterans Association
3 on 8 September 2020. Both their relevance and probative value appear
4 evident, as they are excerpts of the confidential materials that has
5 been disclosed by the accused on 7 September 2020, as charged in the
6 indictment.

7 As previously submitted, and mindful of the Trial Panel's
8 guidance in the decision F00350, paragraph 18, the SPO submits that
9 the classification of these materials should remain confidential as
10 the present proceedings should not become an avenue for the
11 publication of information contained in the batches which had not
12 been placed in the public domain before the events relevant to the
13 charges in the indictment.

14 I move to category 3, starting with item P99 MFI.

15 And I note in relation to this item that W04841 has
16 authenticated this document as part of the SPO official records.
17 While W04866, in the course of his testimony in the last two days,
18 has spoken to the truth of the events documented in the Official Note
19 and has been cross-examined by the Defence, among other subjects, on
20 these events in particular.

21 The document is relevant as it corroborates W04866's testimony
22 on the delivery of Batch 4 to the SPO and is probative of the events
23 documented therein.

24 The proposed classification is confidential as the document
25 contains names of SPO staff members. Proposed redactions for the

1 English public redacted version have already been submitted by the
2 SPO with the filing F00324, Annex 1, of 24 September 2021. Depending
3 on the Trial Panel's decision on the request to add W04876 to the SPO
4 witness list, a lesser redacted version of this Official Note will be
5 provided.

6 Moving to item P101 MFI and P102 MFI, which I will address
7 jointly.

8 I note that P00102 is relevant for the reasons addressed by
9 W04841 in her declaration P89 MFI. This is correspondence received
10 by the SPO, including pictures of pages of Batch 1 and Batch 4,
11 received by the SPO from a media outlet. And, as such, the document
12 corroborates the dissemination of the confidential information
13 disclosed by the accused on 7 September within the press.

14 P00101 is an SPO Official Note speaking to the origin of such
15 correspondence and, therefore, confirming its authenticity.

16 The authenticity of both P00101 and P00102 has been further
17 addressed by W04841 in the course of her testimony. The SPO's
18 submission is that these items should remain confidential as they
19 contain references to the identity of third parties and could,
20 therefore, impact on their right to privacy as well as the identity
21 of SPO staff members.

22 A public redacted version has already been submitted by the SPO
23 with the filing F00324.

24 Moving to category 4, which includes Batch 2, that is item
25 P104 MFI.

1 I note that all disclosed pages of Batch 2 have been
2 authenticated by W04841 as the documents that have been seized from
3 the KLA War Veterans Association on 17 September 2020.

4 They are directly relevant to the events alleged in the
5 indictment as they constitute evidence of the materials that have
6 been found in the accused's possession following the press conference
7 of 16 September 2020.

8 Besides six pages which have been redacted, as they contain
9 confidential information pertaining to SITF and SPO investigation,
10 the remaining materials do not pertain to SITF and SPO investigation
11 and the charges in the indictment do not encompass the dissemination
12 of such materials by the accused.

13 As such, the SPO has no objections to the reclassification of
14 this material as public.

15 It is highlighted, however, for the Trial Panel's consideration
16 of the opportunity to publish this item on the web site of the Kosovo
17 Specialist Chambers that not all of the public judgements contained
18 in Batch 2 are available in the same format on open sources. In
19 particular, it is noted that the practice of Kosovo courts is to
20 apply redactions to public judgements prior to their publication
21 online, for example, by including only the initials of accused
22 persons; although, these accused have been tried in the course of
23 public trials - or, only the initials of witnesses, although these
24 witnesses have previously testified in public proceedings.

25 So the SPO submits that the materials included in Batch 2 should

1 not be uploaded in this format on the KSC web site in order to mirror
2 the policy online publication of the Kosovo courts that issued these
3 public judgements.

4 Moving to category 5. These are excerpts of Batch 3. This
5 category includes all items including in the range from P106 to
6 P119 MFI.

7 All the disclosed pages of Batch 3 have been authenticated by
8 W04841 in the course of her testimony, and both the relevance and
9 probative value appear evident as they are excerpts of the
10 confidential materials that have been disclosed by the accused on
11 22 September 2020 and that have been handed over to the SPO on the
12 same day.

13 As previously submitted, and mindful of the Trial Panel's
14 decision F00350, paragraph 18, the SPO submits that the
15 classification should remain confidential, as these are confidential
16 materials disseminated without authorisation by the accused.

17 Category 6 includes one item only. It's P126 MFI. And it is a
18 letter from an international organisation received by the SPO.

19 The origin of this document appears clear based on the layout
20 and content of the document itself. In addition, the SPO is the
21 recipient of such correspondence, which is part of the SPO official
22 records as confirmed by the W04841 who authenticated this letter.

23 This correspondence is relevant as it explains the framework of
24 the cooperation between the SPO and this international provider, and,
25 in particular, the regime of confidentiality imposed on materials

1 obtained by the SPO from this provider.

2 The document corroborates W04841's testimony that certain
3 information included in Batch 3 was subject to confidentiality and
4 use restrictions imposed by third parties.

5 The letter has been classified as confidential by the
6 international provider itself, as it is apparent on the face of the
7 document. And the SPO requests that such classification be
8 maintained.

9 Category 7. These are public filings of the Kosovo Specialist
10 Chambers referred to in the course of W04841's testimony. All these
11 items have been addressed in the course of the witness's testimony in
12 relation to protected information contained in Batch 3.

13 As submitted by the SPO with the filing F00357, the dates and
14 contents of publicly available court records of the Kosovo Specialist
15 Chambers are judicially noticeable. Should the Trial Panel consider
16 necessary that these filings be also tendered for admission in order
17 to be relied upon in the present proceedings, the SPO requests, in
18 the alternative, that these public court records be formally admitted
19 into evidence in the framework of the present proceedings.

20 And the classification of these items is public.

21 In relation to category 8, associated exhibits. First, there
22 are some items which have been addressed with W04841 in the course of
23 her testimony shown to the witnesses, and these are items 46 and 45
24 on the SPO exhibit list. And, in particular, items with ERN 081381
25 to 081391 and 081381 to 081383-ET revised.

1 W04841 referred to this press article and this translation in
2 her declaration P86. The admission of this press article has already
3 been requested by the SPO under Rule 154, among other associated
4 exhibits. Should the Panel require that this request for admission
5 be reiterated for these items individually, I hereby do so.

6 This item has also been addressed in the course of the witness's
7 examination, and she authenticated its origin. The item is relevant
8 and probative as it contains information and images of materials
9 included in Batch 3.

10 The classification of the item is confidential, in our
11 submission, as it contains references and pictures of confidential
12 information included in Batch 3.

13 Proposed redactions have been already submitted by the SPO with
14 filing F00324.

15 Identical submissions, Your Honour, apply to items 50 and 51 on
16 the SPO exhibit list. That is, press article with ERN 081395 to
17 081404 and the English translation 081395-081398-ET, so I will not
18 repeat these submissions which are identical in terms of relevance
19 and authenticity, probative value and classification.

20 And the same submissions also apply to items 55 and 56 on the
21 SPO exhibit list. That is, item 081414 to 081415-ET and
22 081414-081422.

23 The next item is SITF 00372142 to 00372153.

24 The witness has -- W04841 has expressly referred to this order
25 in her declaration with the MFI number P86. Its admission has been [

1 requested by the SPO under Rule 154 as an associated exhibit to that
2 declaration. Should the Panel require an individualised request for
3 admission of these items, I hereby request the admission of these
4 items.

5 It has been addressed in the course of the witness's
6 examination, who authenticated it. It's relevant as it is
7 exemplificative [sic] of the information replied upon by W04841 when
8 addressing protective measures relevant to witnesses referred to by
9 name and pseudonym in Batch 3.

10 The classification of these items should remain confidential as
11 the link between a specific court order on protective measure issued
12 by Kosovo courts in a specific case and Batch 3 increases the risk of
13 identification of SPO witnesses and potential witnesses mentioned in
14 Batch 3.

15 There are then three more items identified by the Trial Panel --
16 two more items as exhibits not shown by the witness but which she
17 specifically confirmed that she reviewed.

18 I note that within this category, actually, also items 52 to 54
19 on the SPO exhibit list should be included as the witness
20 specifically confirmed to have reviewed these items during her
21 testimony of 19 October 2021, and it is page 980 of the transcript.

22 For all these items, the submissions are the same. And I will
23 just mention which items I am referring to. These are items 47, 49
24 on the SPO exhibit list; in particular, the video-clip 081392-01 as
25 well its English transcript and Albanian transcripts; and items 57,

1 59 on the SPO exhibit list, referring to the video-clip 081422-01, as
2 well as the English transcripts and Albanian transcripts; and,
3 finally, the video with ERN 081405-01, including the English
4 transcripts and Albanian transcripts, corresponding to items 52 to 54
5 on the SPO exhibit list.

6 All these videos have been expressly referred to in the
7 declaration of W04841 with MFI P86, and the authenticity and
8 relevance of these materials has been contextualised by the witness
9 both in her declaration and in the course of her testimony. These
10 are all videos that contain information and images of materials
11 included in Batch 3.

12 The classification for all these items should be confidential,
13 and the SPO has already submitted proposed redactions with the filing
14 F00324, Annex 1.

15 Finally, there is a last item, which is an exhibit associated to
16 the witness declaration with MFI P88. And this is item 078981 to
17 078982 and its English translation. These are pages included in
18 Batch 4 that W04841 identified in her written declaration as being of
19 a different nature than the confidential materials included in
20 Batch 4.

21 These two pages have been disclosed and W04841 expressly
22 referred to these particular pages in P88 MFI. For this reason, its
23 admission has been requested by the SPO under Rule 104. I reiterate,
24 if necessary, requests for admission of these two specific items.

25 And the document has been authenticated by the witness and is

1 relevant because it provides the context and makes intelligible the
2 information included in the witness declaration and is part of the
3 materials that the SPO received from Gazeta inFokus. The
4 classification of this item can be public.

5 Thank you, Your Honour.

6 PRESIDING JUDGE SMITH: Judge Gaynor had a question or two.

7 JUDGE GAYNOR: Thank you very much, Mr. President.

8 Ms. Bolici, just a reminder about the proposed redactions. As
9 the Presiding Judge pointed out at the start of this trial, this is a
10 public trial. The accused are entitled to a public trial. And one
11 aspect of a public trial is that all exhibits admitted are accessible
12 to the public.

13 So I would remind you, in respect of proposed redactions, to
14 keep those redactions to the absolute minimum. Is that all right?

15 MS. BOLICI: Your Honour, for the redactions that have already
16 been submitted, we would maintain that these are the proposed
17 redactions that we would submit to the attention of the Trial Panel.

18 JUDGE GAYNOR: Very well.

19 MS. BOLICI: Yes.

20 JUDGE GAYNOR: Just a couple of questions about category 4.

21 MS. BOLICI: Yes.

22 JUDGE GAYNOR: Which is Batch 2.

23 MS. BOLICI: Yes.

24 JUDGE GAYNOR: Now, in your submissions today, you reminded us
25 that besides the six pages, which are fully redacted, the rest of

1 P104 MFI, which is Batch 2, can be admitted as a public document.

2 MS. BOLICI: Yes.

3 JUDGE GAYNOR: Right. So just very briefly, and you don't have
4 to answer it now if you're not prepared, setting aside the six fully
5 redacted pages, what crime precisely has been committed by the public
6 release of the rest of Batch 2?

7 MS. BOLICI: The indictment does not encompass the remaining
8 parts of Batch 2. It's very clear.

9 JUDGE GAYNOR: So the crime focuses on the six fully redacted
10 pages of Batch 2; is that correct?

11 MS. BOLICI: The indictment refers to the dissemination of
12 confidential materials on 16 September. Batch 2 is the materials
13 that the SPO manages to seize on 17 September.

14 JUDGE GAYNOR: Right. Insofar as a crime has been committed,
15 the crime -- the essence of the crime is about those six pages; is
16 that right?

17 MS. BOLICI: The six pages are the materials that the SPO
18 managed to recover. There is information, based on the press
19 conferences and the declarations of the accused, that the materials
20 that have been distributed to the press and the public exceed the
21 materials that were, in fact, recovered by the SPO on the following
22 day.

23 JUDGE GAYNOR: The concern that I have is that neither the
24 Trial Panel, nor the Defence, are able to inspect those six fully
25 redacted pages, and those are the very pages which constitute the

1 essence of the crime insofar as you are able to present evidence of
2 that crime.

3 MS. BOLICI: The six pages have been addressed in W04841's
4 declarations, and the contents of these six pages has been reiterated
5 in the course of her testimony before this Trial Panel. The six
6 pages are currently subject to a protective measure order issued by
7 the Pre-Trial Judge.

8 JUDGE GAYNOR: Right. So that brings me very neatly, thank you
9 very much, to the core of the issue. And that is that those six
10 pages on their own, obviously, have no probative value. Six pages of
11 black ink have no probative value. They have no relevance.

12 So the Trial Panel is left with the evidence of Witness Pumper
13 about those six pages; is that correct?

14 MS. BOLICI: The Trial Panel has the six pages in the sense that
15 these are part of the records that had been submitted to the
16 Pre-Trial Judge when protective measures had been requested.

17 JUDGE GAYNOR: Let me make our position absolutely clear on
18 that.

19 MS. BOLICI: Yes.

20 JUDGE GAYNOR: The six unredacted pages are not admitted in
21 evidence.

22 MS. BOLICI: Yes.

23 JUDGE GAYNOR: They have not been tendered --

24 MS. BOLICI: Yes.

25 JUDGE GAYNOR: -- by the SPO. They have not been admitted into

1 evidence. They form no part of the trial record. So this Panel
2 cannot rely on the unredacted versions of those six pages. Do you
3 fully understand that?

4 MS. BOLICI: I understand it. And the way how the information
5 concerning the contents of these six pages has been presented is
6 through the testimony of the witness who has reviewed these six
7 pages, reported on that, and confirmed the contents of these six
8 pages before this Trial Panel.

9 JUDGE GAYNOR: Very well. I'll now move --

10 THE INTERPRETER: The interpreters kindly ask the speaker,
11 Ms. Bolici, to speak into the microphone. Thank you very much.

12 JUDGE GAYNOR: You've been asked to speak closer to the
13 microphone, Madam Bolici.

14 Could I ask you to turn your attention to the concept of
15 judicial notice.

16 Now, judicial notice under the Rules of Procedure encompass
17 either the judicial notice of adjudicated facts or the judicial
18 notice of facts of common knowledge. And here the SPO has submitted
19 that the items, which you say are judicially noticeable, are
20 judicially noticeable as facts of common knowledge. Isn't that
21 correct?

22 MS. BOLICI: As a filing of this Court, as publicly accessible
23 filings of this Court.

24 JUDGE GAYNOR: Now, is there anything to distinguish publicly
25 accessible filings of this Court from any publicly accessible

1 document issued by a ministry or a court in another country? Is
2 there anything which makes the filings of this Court more admissible
3 as facts of common knowledge than the filings of any other public
4 entity in the world?

5 MS. BOLICI: To start with, the authenticity of the filings of
6 this Court is hardly in question, I believe. But the relevance of
7 this filing has been shown through the testimony of W04841. She
8 relied on these filings in relation to the information she provided
9 on confidential materials included in Batch 3.

10 Should there be a need for a formal request for admission of
11 these specific filings as relevant to W04841's testimony, we are
12 ready to make this request. In fact, I already made it.

13 JUDGE GAYNOR: Yes, we've noted that as an alternative. You
14 sought the admission of the filings as exhibits, and we are actively
15 considering that option.

16 I have no further questions. Thank you, Mr. President.

17 Thank you, Ms. Bolici.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 Ms. Bolici, two things. You did not mention the lone item in
20 category 9, item 1D1. You might want to restate your position on
21 that one.

22 MS. BOLICI: Yes. The Defence has sought to tender this witness
23 interview through the testimony of W04841, who explained she's not
24 competent to speak about these items. So in the SPO's position, the
25 Defence has not established the relevance of this item at all.

1 And on this reason, the submission into evidence should be
2 rejected.

3 PRESIDING JUDGE SMITH: And, secondly, it is now time for you to
4 read the summaries concerning Ms. Pumper's statements. And bear in
5 mind the translators.

6 MS. BOLICI: I'll slow down, yes.

7 So we start with the summary of the declaration with MFI
8 number P86.

9 W04841 states that she reviewed the documents that were seized
10 at the Kosovo Liberation Army War Veterans Association (KLA WVA) on
11 8 September 2020.

12 Batch 1.

13 W04841 states that Batch 1 includes confidential documents
14 pertaining to investigations of the Special Investigative Task Force
15 (SITF) and Specialist Prosecutor's Office, including names and
16 personal details of witnesses and potential witnesses.

17 W04841 further states that media articles referred to in this
18 declaration reproduce information contained in Batch 1.

19 W04841 states that she reviewed the documents that were seized
20 at the KLA War Veterans Association on 17 September 2020.

21 Batch 2.

22 W04841 states that Batch 2 includes six pages of confidential
23 documents pertaining to SITF and SPO investigations that are also
24 contained in Batch 1.

25 W04841 states that she reviewed the documents that were seized

1 at the KLA War Veterans Association on 22 September 2020.

2 Batch 3.

3 W04841 states that Batch 3 includes two incomplete copies of an
4 SPO confidential document pertaining to SPO investigations, including
5 names of witnesses and potential witnesses.

6 W04841 further states that media publication referred to in this
7 declaration reproduce information contained in Batch 3.

8 We move now to the declaration dated 9 September 2021, P88 MFI.

9 In this declaration, W04841 provides more detailed information
10 on certain documents, not in the English language, which are included
11 in Batch 1.

12 We move to the declaration dated 17 February 2021, which is
13 P89 MFI.

14 In this declaration, W04841 states that she reviewed the
15 documents that were handed over to the SPO by a media outlet on
16 9 September 2020.

17 Batch 4.

18 W04841 states that the contents of Batch 1 and Batch 4 largely
19 overlap.

20 W04841 states that she reviewed documents that were sent via
21 e-mail to the SPO by a media outlet on 7 September 2020.

22 W04841 states that these documents reproduce pages included in
23 Batch 1 and/or Batch 4.

24 We move now to the declaration of 7 May 2020 with MFI number
25 P90.

1 W04841 provides, in Annexes 1 and 3 to this declaration,
2 detailed information on each of the documents contained in Batches 1
3 and 2 respectively; and, in particular, the language, type, title,
4 description, and origin, author of the document, a list of indicia
5 suggesting the confidentiality of the documents, and whether the
6 documents includes names of potential witnesses.

7 W04841 provides, in Annexes 2 and 4 to this declaration,
8 screenshots of portions of documents contained in Batches 1 and 2
9 respectively, which constitutes samples of indicia suggesting the
10 confidentiality, such as logos, stamps, and/or apparent markings and
11 other specific references to confidentiality.

12 W04841 states that Batch 3 includes two incomplete copies of an
13 SPO confidential document pertaining to SPO investigations, including
14 names of approximately 150 witnesses and potential witnesses.

15 W04841 provides, in Annex 5, screenshots of portions of Batch 3
16 which constitute samples of indicia suggesting confidentiality.

17 I will move now to the declaration dated 7 May 2021 with
18 MFI P91.

19 W04841 provides, in Annex 1, detailed information on each of the
20 confidential documents contained in Batch 4. And, in particular, the
21 language, type, title, description, origin, and author of the
22 document, a list of indicia suggesting the confidentiality of each
23 document, whether the document includes names of potential witnesses,
24 and whether the document is also contained in Batch 1.

25 W04841 provides, in Annex 2 to this declaration, screenshots of

1 portions of documents contained in Batch 4, which constitutes samples
2 of indicia suggesting confidentiality such as logos, stamps, and/or
3 apparent markings and other specific references to confidentiality.

4 And, finally, the signed statement dated 14 October 2021, which
5 is P87 MFI.

6 In this statement, W04841 provides minor corrections and
7 clarifications in relation to previous declarations.

8 Thank you, Your Honours.

9 PRESIDING JUDGE SMITH: Mr. Rees, Ms. Bolici used a little extra
10 time, so we will grant you 25 minutes. And the same for you,
11 Mr. Cadman. So that you have about the same amount of time.

12 MR. REES: I'm grateful.

13 Your Honour, our first submission, primary submission, is that
14 the entirety of Ms. Pumper's testimony, both oral and to the extent
15 documentary, should be excluded and should not be admitted under
16 Rule 138(1).

17 Rule 138(1) provides that:

18 "Evidence should not be admitted if its probative value is
19 outweighed by its prejudicial effect."

20 I will rely on Rule 138. And in relation to the documents
21 themselves, make some additional points that, in fact, the ground for
22 admissibility is not established in the first place; namely,
23 relevance.

24 In relation to their primary submission, Ms. Pumper was called
25 on behalf of the SPO and testified to, effectively, summarise the

1 contents of four of what's been described by her as Batch 1, 2, 3,
2 and 4, the vast majority of which have not been produced, the
3 documents themselves, in evidence, so the Trial Panel does not have
4 access to the documents to make assessments itself nor are the
5 Defence able to scrutinise Ms. Pumper's assertions as to their
6 contents.

7 She was called to and has summarised the contents of those
8 documents. The act of summarising documents necessarily entails the
9 giving of opinions and conclusions on the contents of those
10 documents. That's a reference to the case of Prosecutor and Perisic.
11 The Trial Panel has the reference previously in an earlier filing,
12 which I will ask the Trial Panel to look back at F00317.

13 Not only has Ms. Pumper summarised the content, she has -- an
14 act of which involves making decisions on which features of the
15 document to report. That is an act of selection. It involves
16 drawing conclusions by the witness as to what she thought was
17 relevant to bring to the Trial Panel's attention and with little
18 consideration as to what else might be relevant. And I'll come on to
19 that in due course.

20 And, indeed, she has gone so far not only as to describe the
21 contents but also to make assertions as to the conclusion, namely, as
22 concisely summarised by Ms. Bolici moments ago, she has repeatedly
23 stated that the batches that have not been produced for Court contain
24 confidential information. That is a drawing of a conclusion on the
25 documents.

1 She is an investigator of the prosecuting party. She is not, in
2 our submission, entitled to present opinions or draw conclusions on
3 those contents. She is -- they are documents with which she has
4 familiarised herself only by virtue of having reviewed them in the
5 context of a discrete task at the request of the Prosecutor for this
6 case. She made that clear. She'd never seen or had any relationship
7 with the documents before that. And we rely, again, on Prosecutor
8 and Perisic for support for the proposition that she cannot draw
9 conclusions on documents in those circumstances.

10 And we submit that where a summary of this nature is prepared by
11 an employee of the party who seeks to rely upon it, that summary
12 should not be regarded as reliable unless the material itself is in
13 evidence so the Trial Panel may make its own assessment of the
14 material. Were the Trial Panel to rely upon the summary without
15 having an opportunity to make its own assessment of its reliability,
16 the public perception of a verdict, based upon that summary, would be
17 that the verdict is unsafe.

18 Those are the words of the Appeals Chamber in the case of the
19 Prosecutor and Milosevic. The reference set out at footnote 7 to
20 filing F00317.

21 And we submit that that is the situation that the Court finds
22 itself in being presented with the evidence of Ms. Pumper. It is not
23 an independent assessment.

24 The documents should have been produced by the Prosecution for
25 the Trial Panel for the Trial Panel to review and assess itself. The

1 assertions of her as to the contents of Batches 1, 2, and 3, and 4
2 are not accepted as accurate and reliable. In the absence of
3 disclosure of them, and production of the documents itself, her
4 assertions have no greater probative value than assertions made by
5 Ms. Bolici on behalf of the Prosecution as to their contents.

6 Indeed, we know now that, in fact, her declarations were
7 produced at the request of and with significant input by the
8 Prosecutor herself, indeed.

9 In relation to her very limited review of the documents. Not
10 only are we unable to challenge her assertions as to the contents of
11 the documents, we are unable to do any of the other checks that may
12 have been relevant which the witness did not consider making and did
13 not. So, for example, she accepts now she undertook no checks of the
14 authority of named persons to designate documents as confidential.
15 She was not aware, when she undertook the review, that authenticity
16 of the documents was an issue. And she was candid enough to accept
17 that it cannot be said that there has been a complete review of
18 authenticity. She said that at transcript page 1069.

19 She made it clear that her testimony does not set out any
20 reporting on the exclusion of persons who were dead or provided
21 negative information during the course of the review. She undertook
22 no checks as to whether names included by her in her charts as
23 witnesses or potential witnesses had been publicly identified by, for
24 example, the Serbian authorities or by other courts or by the
25 witnesses themselves. References to the transcript page 1089, page

1 1313, page 1315, page 1316 to 1321, and 1326.

2 She undertook no background checks on any of the names that she
3 reports upon, such that Defence cannot explore the issue of public
4 interest in relation to those names further. The reference to the
5 transcript is page 1098 and 1099.

6 She undertook no checks as to whether any of the orders or
7 petitions or requests which the witness asserted lent a quality of
8 confidentiality to undisclosed names had been subsequently amended or
9 rescinded or altered. The reference to the transcript is page 1333.

10 She took no checks -- even the most simple checks with dates of
11 letters from international organisations which the witness asserted
12 lent a quality of confidentiality to undisclosed names to consider
13 whether, for example, they pre- or post-dated events in September
14 2020. Reference to that page of the transcript is page 1338.

15 And again on the same page of the transcript, she'd accepted
16 she'd undertaken no checks as to whether any of the letters from
17 international organisations, which she asserted lent a quality of
18 confidentiality to undisclosed names, if they predated September 2020,
19 whether they'd been subject to any subsequent amendment or waiver by
20 those organisations.

21 In the absence of disclosure of the documents, the names, such
22 letters from international organisations, for example, those checks
23 cannot be undertaken by the Defence, and the Trial Panel is left in
24 the position, as we assert, that the SPO are asking the Trial Panel
25 to simply accept the assertions of the witness that the batches

1 contained confidential information without scrutiny or question.

2 So our primary submission is that the evidence of Ms. Pumper, in
3 its entirety, should be excluded, should not be admitted. Its
4 probative value is outweighed by its prejudicial effect in the
5 circumstances.

6 In relation to the specific documents. We object to the
7 declarations and the Official Note of the witness. The submissions
8 that we make in relation to her oral testimony in relation to the
9 unfairness of admitting her evidence summarising documents that have
10 not been produced as exhibits for the Court apply equally to the
11 declarations in writing.

12 Additionally, of course, if her oral evidence is admitted, we
13 would submit that, in those circumstances, there is little point in
14 admitting the declarations as an exhibit as well. It's not as if the
15 SPO sought to admit the declarations under Rule 154 and then,
16 effectively, tendered the witness for cross-examination. She was
17 examined on direct examination for some two days going over the
18 matters that are set out in the declarations.

19 So we submit that it would be -- it's inappropriate, in those
20 circumstances, to adduce the declarations that are effectively
21 repetitive of her direct evidence.

22 Moreover, they contain, of course, the annexes that she
23 produces. Again, the submissions we make about the unfairness of her
24 oral testimony in general apply to the proposed admission of those
25 annexes.

1 We note as well that, despite their length, the SPO, during the
2 course of the two days of direct examination with her, did not,
3 frankly, seek to explore those charts or go through them with the
4 witness in any detail whatsoever. So we say, additionally, the
5 submission or, rather, the admission of those lengthy annexes, where
6 the witness has been in direct examination for two days without any
7 attempt to address those lengthy annexes, is unfair.

8 In relation to P98 MFI, the Official Note, we do object. The
9 one document that is relevant and properly can be admitted already
10 has been, at P98.1. The remainder of that Official Note deals with
11 matters which are outside the knowledge, direct knowledge of this
12 witness. And the Court has already ruled that Official Notes, that
13 the evidence of a witness should deal with matters that are within
14 their knowledge. The contents of that Official Note are not.

15 In relation to the category 2, excerpts of Batch 1. Well, those
16 are documents which we have seen. They are asserted to have come
17 from the documents that the witness labels as Batch 1, but we do
18 raise the issue of continuity which we have raised previously in the
19 filing F00317.

20 We raised at that stage that the SPO did not appear to intend to
21 call evidence to prove the origin, the provenance, and the chain of
22 custody of Batches 1, 2, 3, or 4, noting that in the declarations of
23 Ms. Pumper they had been described in informal shorthand rather than
24 being given a formal exhibit number identified upon a sealed evidence
25 bag, securing contents from interference with the log produced which

1 records a date, time, and identity of the officer whenever the bag
2 has been opened and the contents accessed before being resealed.

3 So the SPO cannot claim that they were not put on notice that
4 continuity was an issue in the case. And as far as Ms. Pumper, in
5 her oral evidence went, was to assert that the documents that she
6 then labelled as Batches 1, 2, 3, and 4 came from evidence bags, she
7 gave no detail as to those evidence bags. She gave no evidence bag
8 number from which the documents came.

9 I am aware that the SPO seeks to call -- there's an application
10 outstanding to add another witness to the witness list that might
11 deal with the seizure of the documents in the first instance, or at
12 least in some of those documents, in a way that is fuller than the
13 sole documentary record, which the Trial Panel does have in evidence
14 which, as we've looked at, describes documents being seized in the
15 most general of terms giving no indication as to the number and
16 certainly no assistance with, for example, a number and evidence bag
17 in which those documents were put into.

18 But Ms. Pumper's evidence has concluded -- whatever the witness
19 who's subject to the request which is objected to, but whatever that
20 witness might be able to say, Ms. Pumper's evidence has concluded,
21 and she has not assisted the Court with giving any greater detail as
22 to where the documents that she refers to as Batches 1, 2, 3, or 4
23 came from, and in particular what evidence bag if they were indeed
24 placed in any such bag.

25 So in relation to the excerpts from Batch 1 and, indeed,

1 Batches 2 and 3, we make the same point that there is no proper
2 evidence of continuity and the relevance of those exhibits, in the
3 circumstances, is therefore not established in the first instance.

4 In relation to category 3, Official Notes on the receipt of
5 material from the media. Items P99 MFI and P101 MFI are authored by
6 two other SPO officers, and they record events with which this
7 witness was not involved. And despite the Trial Panel's reminder,
8 only moments before we turn to deal with the admissibility of these
9 matters as to how they expected the SPO to address, Official Notes,
10 they again seek to adduce a note the substance of which, effectively,
11 is a witness statement from a witness who is -- authored by a witness
12 who is not being called to give evidence, the contents of which the
13 present witness, Ms. Pumper, cannot give evidence as to the truth and
14 accuracy of their contents.

15 The same position relates to P102 MFI.

16 In relation to category 6, correspondence from an international
17 organisation. We, certainly in relation to the first document, the
18 relevance of it is entirely unclear in the sense that it post-dates
19 by, I think, six months the events with which we are concerned.

20 The other correspondence, we submit the relevance of those
21 letters has not been established in the absence of the document in
22 evidence which any such letter is alleged to have lent
23 confidentiality. So we understood the purpose of referring to those
24 letters was for the witness, Ms. Pumper, to say letter A establishes
25 or lends a quality of confidentiality to the material or information

1 found in document B.

2 We understood the purpose. But in the absence of production in
3 evidence of document B, in that example letter A has no established
4 relevance. And we submit they should be excluded for those reasons.

5 We do not consider that filings are judicially noticeable. We
6 think that that is a misuse of the principle which allows a court to
7 take into account matters, judicial notice. If they are to be relied
8 upon, they should be properly admitted as exhibits.

9 And in relation to category 8, the associated exhibits. To the
10 extent that any such press articles were referred to in evidence. If
11 the evidence of Ms. Pumper, her oral testimony, is not excluded, we
12 have no great objection to those items referred to in evidence being
13 exhibited, but we do not think -- we submit that the exhibits that
14 were not referred to the witness should not be.

15 Finally, in relation to category 9, the item we tendered. The
16 interview, of course, is a document that's been disclosed to us by
17 the SPO. It's prepared by the SPO. It was shown to the witness. We
18 did ask for it to be tendered.

19 If there is an objection to that, we will look to address its
20 admissibility at a later stage in the trial when we address the
21 admissibility of other potential Defence exhibits. We are conscious
22 that at an earlier stage in the proceedings, the Trial Panel
23 encouraged the parties to consider the use of bar table motions as
24 part of their case, and we are considering that direction and such an
25 application may well follow in due course.

1 PRESIDING JUDGE SMITH: [Microphone not activated].

2 Mr. Cadman, we have about 20 minutes. Is that going to be
3 sufficient for you, or do you wish to have more?

4 MR. CADMAN: On the basis of the ground that's already been
5 covered by Mr. Rees, I certainly don't want to go over what he's
6 already covered.

7 What I can say as far as category 1 is concerned, I adopt
8 Mr. Rees' submissions as far as the totality of Ms. Pumper's
9 evidence. That is the position which is shared by the Defence for
10 Mr. Haradinaj for the same reasons that Mr. Rees has already set out,
11 and I don't need to repeat.

12 On the basis of the declarations, sorry, I was just searching
13 for the word. Not statements but the declarations that she has made.
14 And, as Mr. Rees has quite clearly stated, she's given lengthy
15 evidence in both chief, chief for two days, and further
16 cross-examined for a number of days, so it's unclear on what basis,
17 as Mr. Rees has already set out, those Official Notes and
18 declarations ought to be admitted. I mean, her evidence is what she
19 gave on the stand both in-chief and cross-examination.

20 I would also state that the declarations are, in part,
21 meaningless in the areas where she seeks to comment on a significant
22 amount of matters and that she cannot possibly give evidence upon as
23 she was not present, and they refer to declarations of other persons
24 who may or may not be called.

25 As we've heard, one request for an additional Prosecution

1 witness, another SPO officer, has been made, and we will, obviously,
2 respond to that in due course by the end of today as to whether that
3 witness should be called.

4 But there are significant concerns that much of the material
5 that the Prosecution is seeking to admit falls outside of her
6 knowledge and should not be admitted on that basis.

7 One of the points that Mr. Rees has set out in detail, which is
8 shared by the Haradinaj Defence. Mr. Rees has set out in detail the
9 question of continuity and the effect of chain of custody.

10 Now, as far as the excerpts from the batches are concerned,
11 chain of custody is a real issue. Mr. Rees has referred to the
12 absence of anything being put in evidence by Ms. Pumper that
13 establishes a continuity. We have set out previously, and I say it
14 now, given the lack of a seizure list, a detailed breakdown of what
15 was recovered, there's no basis upon which we can be certain that the
16 documents that formed part of the batches are, therefore, as much as
17 they are what they purport to be, they aren't necessarily evidence of
18 being within the batches.

19 What we have not heard is evidence to confirm that the material
20 that has been scrutinised or reviewed by Ms. Pumper is the same
21 material that purports to have been seized from the WVA, and so I
22 stress that the chain of custody remains a real issue.

23 In respect of category 3, P99 MFI. Certainly, that's a matter
24 that may or may not be presented by the additional witness that the
25 SPO is now seeking to call. Ms. Pumper is not the author of this

1 note and, therefore, should not be entitled and cannot adduce the
2 exhibit.

3 To enable the exhibit to be admitted, the individual who
4 authored that note ought to present it and give evidence concerning
5 its contents. And we've heard that both in respect of the witness
6 that they may call, but there is also further declarations by other
7 SPO officers who the SPO are not seeking to call.

8 The Panel has previously ruled in respect of the other contact
9 notes. And, yet, the response of the SPO is not to call those
10 witnesses. Again, only one. This is for reasons only known to the
11 SPO. But, regardless, further efforts to try and circumvent
12 ordinarily accepted rules of evidence ought to be resisted.

13 In terms of category 4, dealing with Batch 2. I would merely
14 just state that that is the same issues in respect of chain of
15 custody and provenance.

16 In respect of category 5, Batch 3. I won't say anything further
17 than what Mr. Rees has already said. I merely join his submissions
18 in that regard.

19 Category 6. Mr. Rees has set out the relevance test that is not
20 met in respect of this document.

21 And then in respect of category 7, we've already heard whether
22 these are documents that should be considered judicially noticeable.

23 In respect of category 8, the associated exhibits. Again, I
24 don't feel it necessary to go over ground already covered by
25 Mr. Rees.

1 And, certainly, in respect of category 9, which relates to items
2 referred to by Mr. Rees. Again, you've heard his position on that,
3 and I don't feel as though I can add anything further that Mr. Rees
4 hasn't already said in his submissions.

5 PRESIDING JUDGE SMITH: Thank you, Mr. Cadman.

6 We're a little early, but we will break for the morning break
7 before beginning with the testimony of the next witness. Be back
8 here at 11.30. We are adjourned.

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

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

11 PRESIDING JUDGE SMITH: Mr. Cadman.

12 MR. CADMAN: Your Honours, I just wanted to raise something with
13 the Court before the witness is brought in. It's got nothing to do
14 with the witness.

15 Your Honours will be aware that *inter partes* communications
16 within this case have been far from optimal. Following the matter
17 that I raised with the Court earlier this week in relation to the
18 additional expert I communicated to the SPO, the documents,
19 certainly, that we intended to put to the witness, the expert, for
20 him to consider, with a request that they indicate whether they had
21 any objections to those documents or whether they had any documents
22 that they would like to be added based on the previous objections
23 they'd made to the first expert.

24 The regrettable response that we have received is that they take
25 no position at this time. So I am compelled to proceed on the basis

1 of having no input from the SPO. I just wanted to put that on the
2 record.

3 PRESIDING JUDGE SMITH: Thank you, Mr. Cadman. It is on the
4 record.

5 Mr. Pace.

6 MR. PACE: Just briefly, Your Honour. That is correct in terms
7 of our response.

8 I note that the SPO was not even heard as to whether the expert
9 should be instructed. We would have objected, given the opportunity.
10 And, more importantly, of course, the expert is not going to be a
11 joint proposed expert. It is a Defence expert. So we thought it
12 inappropriate at this stage to propose material to be provided to
13 that person.

14 Once that expert is instructed, we, of course, reserve our
15 position pursuant to rules to object on the basis of the reports,
16 including what material has or has not been provided. Thank you.

17 PRESIDING JUDGE SMITH: Thank you.

18 We can now continue in the presentation of the evidence.

19 Madam Court Usher, please bring the witness in.

20 [The witness entered court]

21 PRESIDING JUDGE SMITH: Good morning, Mr. Jukic.

22 THE WITNESS: [Microphone not activated].

23 PRESIDING JUDGE SMITH: The Court Usher will provide you with
24 the text of the solemn declaration which you are asked to take
25 pursuant to Rule 141(2) of the rules, and you can please proceed to

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1 read it.

2 THE WITNESS: Conscious of the significance of my testimony and
3 my legal responsibility, I solemnly declare that I will tell the
4 truth, the whole truth, and nothing but the truth and that I shall
5 not withhold anything which has come to my knowledge.

6 PRESIDING JUDGE SMITH: Thank you, Mr. Jukic. You can now take
7 your seat.

8 THE WITNESS: Thank you, Your Honour.

9 WITNESS: MIRO JUKIC

10 PRESIDING JUDGE SMITH: Mr. Jukic, today we will start your
11 testimony which is expected to last up to three days. As you may
12 know, the Prosecution will be asking you questions first. And once
13 they're done, the Defence has the right to cross-examine you. And
14 then members of the Panel may have some questions for you as well.

15 The Prosecution estimate for your examination is four hours.
16 The Defence estimate is two days. The Panel may allow redirect
17 examination by the SPO if conditions for it are met.

18 Please try to answer the questions directly and clearly, with
19 short sentences. If you don't understand a question, feel free to
20 ask the counsel to repeat the question or to tell them you don't
21 understand and then they will clarify. Also, please try to indicate
22 the basis of your knowledge and facts and circumstances that you will
23 be asked about.

24 Please also speak into the microphone and wait five seconds
25 before answering a question, and speak at a slow pace for the

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1 interpreters to catch up with you.

2 During the next days while you are giving evidence in this
3 court, you are not allowed to discuss with anyone the content of your
4 testimony. If any person asks you questions outside this court about
5 your testimony, please let us know.

6 Mr. Prosecutor, you may begin.

7 MR. PACE: Thank you, Your Honour.

8 Examination by Mr. Pace:

9 Q. Good morning, Mr. Witness.

10 A. Good morning, Mr. Prosecutor.

11 Q. We know each other, but I'm going to start by asking you some
12 questions to establish your identity and background for the Court.

13 What is your name?

14 A. My name is Miro Jukic.

15 Q. What is your date of birth?

16 A. 4 December 1971.

17 Q. What is your nationality?

18 A. Croatian.

19 Q. What is your level of education?

20 A. I am bachelor of law.

21 Q. And where are you currently employed?

22 A. I am currently employed in the Specialist Prosecutor's Office.

23 Q. And how long have you been employed with the Specialist
24 Prosecutor's Office?

25 A. I am employed since September 2019.

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1 Q. And what is your current position with the SPO?

2 A. I'm a witness security and handling team leader in Specialist
3 Prosecutor's Office.

4 Q. And how long have you occupied this specific position?

5 A. From April this year.

6 Q. And before you took on this current role, what was your role
7 within the office?

8 A. I was witness security officer in the Specialist Prosecutor's
9 Office.

10 Q. Could you provide a general outline of your duties and
11 responsibilities in your current role?

12 A. Yes. I'm adviser of Deputy Specialist Prosecutor and head of
13 unit for operation -- operational and witness security unit in all
14 witness security related matters, administrative and operational, for
15 the witnesses the Specialist Prosecutor's Office is responsible for.

16 Q. And could you tell us a little bit about your duties in your
17 prior role with the SPO when you were a witness security officer?

18 A. Yeah. A role as a witness security officer was a direct contact
19 with the witnesses, with all the witnesses who are -- which the
20 Specialist Prosecutor's Office is responsible for. Keep contact with
21 them and maintain all their needs and meetings with the Prosecutor
22 and Specialist Prosecutor's Office.

23 Q. And do you still have direct contact with witnesses in your
24 current role?

25 A. Yes, I do.

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1 Q. Before you started your work with the SPO, could you tell us
2 whether you carried out work of a similar nature to that which you
3 carry out within the SPO?

4 A. Yeah, last 20 years I am working in the field of witness
5 protection --

6 THE INTERPRETER: Could the counsel and the witness slow down,
7 please. Could they pause between question and answer and please do
8 not forget the interpreters. This pace is really very, very fast.
9 Thank you very much.

10 MR. PACE: Yes, I've been told to slow down, and I'll do my best
11 to do so.

12 PRESIDING JUDGE SMITH: I won't add anything to that. It was
13 quite complete.

14 THE WITNESS: Okay.

15 MR. PACE:

16 Q. And, Mr. Witness, I had asked you about your experience -- if
17 you had experience of a similar nature to that within the SPO before
18 you started your work with the SPO.

19 A. The last 20 years I'm working in the field of witness
20 protection, witness security, and victims support. I was working
21 nationally and internationally in the Balkan area, in Croatia and
22 Bosnia. Before I joined to the SPO, I worked six years for ICTY as a
23 witness protection officer/support officer -- victims support
24 officer.

25 Q. And am I correct in understanding that the work you just

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1 described with these other entities is similar in nature to that you
2 carried out with the SPO?

3 A. Yes, I worked for the Croatian Ministry of the Interior and I
4 worked for International Criminal -- International Criminal Tribunal
5 for the former Yugoslavia.

6 Q. And were your duties and responsibilities similar in nature to
7 those you carry out for this office, the SPO?

8 A. Yes, especially during work for International Criminal Tribunal
9 for the former Yugoslavia, I was protection officer responsible for
10 the whole protected witnesses for the -- I was engaged in the work
11 with the victims, victims support, and all of their needs.

12 Q. Do you recall providing a declaration to the SPO in October 2020
13 and later an addendum to this declaration in January 2021?

14 A. Yes, I do.

15 Q. I'm going to ask you some general questions about the October
16 2020 declaration, so the first one.

17 First of all, could you briefly tell us what this first October
18 2020 declaration was about, in general terms?

19 A. In general terms, that declaration was about my contacts with
20 the witnesses after the SPO document leaked and published in the
21 public.

22 Q. And you said it was about your contacts with witnesses. Did it
23 include information about contacts by other persons with witnesses in
24 the same context you just referred to?

25 A. Yes, there was also several official notes I reviewed from the

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1 contacts from the other colleagues, Prosecutors, witness security
2 officers, and investigators.

3 Q. And in general terms, what about this contact yourself and other
4 persons had was reported in this declaration?

5 A. So after -- after the leak, the document leak, we received
6 several phone calls from the witnesses who were concerned, scared
7 about the fact that their name is published in the -- in the media in
8 Kosovo, in the region. We decided to call some of them to inform
9 them that their name is in the leak, in the public document, and all
10 my knowledge and all written in the declaration was about the contact
11 with those people.

12 Q. And then do I understand correctly that the declaration reflects
13 information obtained during these contacts you just described?

14 A. Yes.

15 Q. You mentioned concerns and persons feeling scared during such
16 contact, and you also mentioned that persons contacted us. Was that
17 by phone that persons contacted the office?

18 A. Yes, first, several witnesses contacted, because, usually our
19 procedure is after the interview of the witness, we provide them with
20 the phone number that in the case they need to contact SPO. So
21 usually that phone numbers are phone numbers -- witness security
22 phone numbers, and that's the way, how witness can contact us.

23 Q. When this phone number is provided to witnesses, is it specified
24 that this is the number to contact in the case of security-related
25 matters, to your knowledge?

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1 A. It is -- it is for all SPO related matters.

2 Q. And you mentioned that other than witnesses contacting the SPO,
3 the SPO then also contacted witnesses. And how was that done?

4 A. After the leak 22 December when we find out about documents who
5 were -- who -- which published, we decide -- we decide to see the
6 list, to go through the document and identify all the names in the
7 leak. After we identified all the names, we went through the list
8 and identified all the victims and the cooperative witnesses, and we
9 decide to call them and inform them about the leak. We think -- we
10 thought that in that moment we are obliged to inform the people who
11 gave the statement and who cooperated with SPO, that we are obliged
12 to inform them that their name become public.

13 Q. I believe you refer to 22 December in your response. Do you
14 know if that's correct or whether the --

15 A. September, sorry.

16 Q. And just for clarity's sake, when referring to these documents
17 being made public, is that -- you're referring to the instances of
18 the press conferences by the KLA War Veterans Association?

19 A. Yes, I do.

20 Q. You mention that among persons contacted were victims. Could
21 you give a little bit more clarity what you mean when you say
22 "victims"?

23 A. Yeah, we have a -- several categories of the witness -- of the
24 witnesses. And one of the category are victims who, by our SPO
25 opinion, are -- are mistreated, beaten, or -- or tortured in any way

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1 from any person during the period of our mandate in Kosovo.

2 Q. And you also mentioned the concept of cooperative witnesses.

3 Could you clarify what you mean by that in this context?

4 A. We mean about every witness who was summonsed by SPO and gave
5 the statement to the SPO.

6 Q. And the persons that you contact, was that contact by phone, in
7 person, or both?

8 A. Most of them, they were contact by phone. Some of them, if they
9 insist, we met personally. And some of them, because we couldn't
10 reach them on the phones, we went through -- to their homes and
11 houses to meet them in person.

12 Q. In relation to the telephone contacts that the office made to
13 these persons, could you tell us how you obtained the relevant
14 telephone numbers?

15 A. So we got relevant phone numbers from -- from public sources in
16 Kosovo and also for -- from the witnesses during their interview.
17 They provide us with the phone numbers.

18 Q. So --

19 PRESIDING JUDGE SMITH: Excuse me.

20 Mr. Rees.

21 MR. REES: Your Honour, earlier today you reminded the
22 Prosecution that it would be important with this witness to identify
23 what matters are within his knowledge.

24 At the moment, there's no attempt, to be specific, in the
25 questions, and the witness is answering -- the question is put in

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1 terms of "you," and the witness is responding by "we," and I make no
2 criticism of the witness of that. But it would follow that the
3 question should be more specific following the guidance the
4 Trial Panel has given the Prosecution earlier this morning.

5 I ask for some attention to be given to that, please.

6 PRESIDING JUDGE SMITH: We have to be careful with names and
7 what not also, so we're also going to have to use some sort of
8 general terms for these witnesses or victims.

9 MR. REES: At the moment the questions are being, as I
10 understand it, general questions about the office.

11 PRESIDING JUDGE SMITH: Yes.

12 MR. REES: And as I understood the Trial Panel's guidance, the
13 Prosecution were to make clear in their examination of this witness
14 what matters are within his knowledge and his actions, his --

15 PRESIDING JUDGE SMITH: I understand.

16 MR. REES: -- conduct. And --

17 PRESIDING JUDGE SMITH: Understood.

18 MR. REES: -- if they seek to refer to other matters in the
19 office, to make clear what is within his knowledge and when they're
20 dealing with other matters that aren't.

21 PRESIDING JUDGE SMITH: Accepted.

22 Try to couch your questions in those terms so that we're clear
23 what you're asking about.

24 MR. PACE: Certainly, Your Honour.

25 Q. And, Mr. Witness, perhaps just to clarify, when you were

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1 talking, for example, about the persons who -- the identification of
2 names of victims and cooperative witnesses, were you yourself
3 involved in that process of identification of who to contact?

4 A. I was involved in that process in the role of the witness
5 security officer. When I answer "we," I was referring to the witness
6 security officers, because I am not the only one witness security
7 officer in the Specialist Prosecutor's Office.

8 Q. And in relation to the telephone contacts, did you yourself make
9 any such contacts that you described earlier?

10 A. Yes, I did.

11 Q. And when you made such contacts, you were telling us that you
12 had obtained certain numbers during interviews, for example. So am I
13 correct in understanding that the witness would have provided this as
14 the number on which to call them and then that is what you used at a
15 later stage last year?

16 A. After the interview, witness security officers always had a kind
17 of interview with the witness, obtain all relevant information for
18 witness security, like, home address and the phone numbers, and also
19 phone numbers in the case that we can't reach the witness that we can
20 contact.

21 Q. And were these among the numbers that you yourself and your
22 colleagues used to contact the witnesses after the documents went
23 public in September last year?

24 A. Yes, we used that numbers to contact them.

25 Q. You told us that you were one of the persons making these

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1 contacts. If you recall, could you give us a rough idea of how many
2 such calls you made related to this incident or these incidents in
3 September 2020?

4 A. I would say around 30. And I met, maybe, ten people.

5 Q. And do you know -- you mentioned that other witness security
6 officers were involved. Were they also involved in making the calls
7 or the meetings with these persons?

8 A. Yes, they did, involved in both.

9 Q. Were lawyers working for the SPO involved in this exercise?

10 A. Yes, they did.

11 Q. Investigators?

12 A. Yes.

13 Q. And did you use interpreters or language assistants of any kind?

14 A. We used interpreters in every call.

15 Q. You gave us an idea about the number of calls and meetings that
16 you were involved in. Could you give us a rough idea, if you know,
17 of how many calls were made by all SPO staff as part of this specific
18 exercise?

19 A. Yeah, we have -- we did around 200 phone calls.

20 Q. Were contacts with witnesses for the purposes of this exercise
21 we're discussing, be they over the phone or in person, documented or
22 recorded in any way?

23 A. We document them in official notes after the phone calls.

24 Q. And what was the purpose of documenting them in official notes?
25 Why did you do that?

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1 A. It is our procedure, every contact with the witness we record.

2 Q. And you're using "we" again. I understand that you mean you.

3 Who else are you also referring to in this case?

4 A. I am referring to the witness security officers and also to the
5 lawyers, investigators. So in our office, every contact with the
6 witness must be recorded and submitted in the evidence.

7 Q. And do you know what such notes were used for, if anything?

8 A. For example, now they are used for this case.

9 Q. Was there any other reason why the notes were recorded for this
10 exercise?

11 A. Yeah, of course. It's very -- very important for us that we
12 keep track of all our contacts with the witnesses in the preparations
13 for the trials and in the preparations for the -- for the -- to make
14 decision if we invite them as witnesses or not.

15 Q. And who, if anyone, would review such notes? And, again, we're
16 talking about notes recorded in this exercise we described earlier.

17 A. Witness security team leader will review that notes, and Deputy
18 Specialist Prosecutor.

19 Q. And were there ever any discussions or meetings about these
20 notes with the security team leader or the Deputy Specialist
21 Prosecutor, to your knowledge?

22 A. We had a lot of discussions about notes, because what we
23 noticed, there was a lot of people who expressed their fears and a
24 lot of people, they felt threatened after the publishing of the -- of
25 the documents and their names. So we had discussion in general what

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1 we will do, how we will proceed, which measures and actions we will
2 take.

3 Q. Was this exercise that you just described, about contacting the
4 persons named in the documents, in any way planned or foreseen by
5 yourself or by the SPO?

6 A. Yes, we had a plan.

7 Q. But when you had a plan, when did the plan come into place? Was
8 it after the documents were provided? When did this start?

9 A. So our plan, we first had plan after the leak to call the
10 people. So we start with the phone calls 24 September. And we split
11 in several groups. Witness security officers -- it was usually
12 witness security officer, lawyer, or investigator, and language
13 assistant in one call. So we had three person in one call, if that
14 was possible.

15 Q. And was this exercise that you're describing, and have been
16 describing today, a priority for the office at the time once it
17 started?

18 A. That was the most higher priority for the office in that time.

19 Q. And when you say a priority for the office, was that a high
20 priority for you in your role in your team or also for others, if you
21 know?

22 A. It was the highest priority for our office.

23 Q. And were you in any way involved in planning or organising this
24 exercise?

25 A. No, in that time I was just involved in phone calls.

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1 Q. And who would have been supervising the exercise at the time?

2 A. The witness security and handling team leader who was in that
3 time.

4 Q. When this exercise started in September last year, do you happen
5 to recall whether staff members and the SPO were mostly at the office
6 or most of them were working from home?

7 A. No, we were mostly working from the home.

8 Q. And do you know whether, because of this exercise, any persons
9 were obliged to come into the office to do this work necessary for
10 it?

11 A. There were -- there were some persons obliged to come in the
12 office in that time.

13 Q. How would you describe this exercise in terms of intensity or
14 time consumption?

15 A. It was -- actually, my -- personally, I was all the time
16 involved in this exercise.

17 Q. Did you have time to conduct the work that you had planned other
18 than this exercise?

19 A. Not really.

20 Q. Did you know if others in your same position at the time,
21 witness security officers, had the same issue, that this was taking
22 up all their time?

23 A. This was taking all the time for all witnesses security officers
24 and for most investigators and the lawyers.

25 Q. And could you tell us how the names of the persons that the SPO

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1 contacted as part of this exercise were treated by the SPO in terms
2 of confidentiality?

3 A. We always -- for our office, witness security is top priority.
4 We know and we learn that without witnesses we don't have cases. And
5 names of the witnesses are the highest priority for witness security
6 officers, for me, and for our office.

7 Q. So, for example, would you divulge the name of the persons that
8 you were contacting through an unsecure means of communication or
9 not?

10 A. We always tried to call and contact them through secure means of
11 the communications.

12 Q. And when, for example, you were told to contact this or that
13 person, was the name and contact information of that person provided
14 to you through secure means or not?

15 A. All the names were provided through secure means.

16 Q. I'd like to focus a little bit on the contacts you were involved
17 in yourself. Could you tell us in general how long these contacts
18 lasted?

19 A. Depends. I mean, you are asking about every single call or you
20 are thinking about whole process?

21 Q. I am asking in general. For example, one phone call, would that
22 generally last a few minutes, several, or it depended?

23 A. Yeah. Every call lasted at least 15 minutes.

24 Q. And in general terms, again focusing on those contacts you were
25 directly involved in, what was the reaction of the persons you

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1 contacted?

2 A. So all the persons were very upset. Some of them, they start to
3 scream on the phone. Some of them, they said, "Don't contact me
4 anymore." And the reaction usually wasn't very pleasant for us.

5 Q. And these reactions that you just described, what prompted them,
6 according to the witnesses and according to what they conveyed to
7 you? What made them feel that way?

8 A. They all had a kind of --

9 MR. REES: The witness can't answer the question "what made them
10 feel that way."

11 PRESIDING JUDGE SMITH: Sustained.

12 MR. PACE:

13 Q. You said that they felt upset and they would scream. Do you
14 recall what information you had provided or what question you had
15 asked which led to that reaction?

16 A. Yeah. So we -- first, we introduced ourself during the phone
17 calls. Then we would ask if they heard about the leaking of the SPO
18 documents. And then we also informed them that their name is public
19 now, and that was -- caused them to feel -- to feel very bad.

20 Q. So they expressed their concerns after you provided that
21 information?

22 A. If you are talking about people who we called, yes.

23 Q. And how about the people that called you?

24 A. Then they start with the expressions immediately after they
25 call. They were very angry.

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1 Q. Did the persons that called you or persons within the SPO state
2 why they were calling in that particular instance?

3 A. Yes, they do.

4 Q. And in general, if you recall, what did they say? Why did they
5 say they were calling you?

6 A. They were calling me --

7 MR. REES: Your Honour, again, can we clarify whether the
8 witness is being asked about contact that he had with the witness, or
9 whether he is being asked about general matters --

10 PRESIDING JUDGE SMITH: Sustained.

11 MR. REES: -- that he wasn't involved in?

12 PRESIDING JUDGE SMITH: Sustained.

13 You have to clarify the basis for his knowledge.

14 MR. PACE: Certainly, Your Honour.

15 Q. Mr. Witness, let's start from the contacts that persons had with
16 you.

17 First of all, did you receive any phone calls rather than you
18 making any phone calls as part of this exercise?

19 A. I received the phone calls before we decide to call and inform
20 all the witnesses.

21 Q. Could you tell us, in general terms, what the person or persons
22 who contacted you said during that conversation?

23 A. I recall that one of them said that he trust us and now his name
24 is in public and he and his family are in danger, and he told me
25 that, "I know very well what happened to the witnesses in Kosovo."

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1 Q. And to be clear, this was a contact from a person before the
2 exercise you described started?

3 A. It was contact before.

4 Q. And do you have any knowledge as to whether your colleagues
5 within the SPO received the same or similar information?

6 A. Witness security officers in my office received this same and
7 similar messages or phone calls.

8 Q. And how do you know that?

9 A. Because we had daily meetings as a witness security team. So
10 witness security officers had the daily meetings with the witness
11 security and handling team leader.

12 Q. And could you tell us, in general terms, what was discussed at
13 such meetings?

14 A. In general --

15 MR. REES: Your Honour, I do object to this. We're now going
16 into the eliciting of accounts that are second-hand. We've dealt
17 with the bar table motion, and the Trial Panel has ruled upon that.
18 I understood that the Trial Panel permitted in the ruling on the bar
19 table motion limited examination of this witness based on matters
20 that are within his direct knowledge as opposed to accounts given by
21 other persons of what other persons have said to them.

22 PRESIDING JUDGE SMITH: He was asked about meetings that they
23 held, and I'm not sure where he's going with it yet. I understand
24 your objection at this point. We'll let him continue and we'll rule
25 on it if necessary.

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1 MR. PACE:

2 Q. Mr. Witness, the meetings you're referring to with witness
3 security officers, were you present at those meetings?

4 A. There were teams and the -- actually, they were phone meetings.

5 Q. And you attended these phone meetings?

6 A. Yes, I did.

7 Q. So you listened to the information that your colleagues were
8 providing?

9 A. Yes, I did.

10 Q. And you provided information and contributions during these
11 meetings?

12 A. Yes, I did.

13 Q. Could you tell us what information you shared with your
14 colleagues in such meetings, generally speaking?

15 A. I shared all information I got from the witnesses during the
16 phone calls or during the exchange of the messages on the phone.

17 Q. And did your colleagues do the same?

18 A. Yes, they did.

19 Q. You mentioned that persons contacted were upset and they were
20 screaming, for example. Do you recall whether, from the contacts you
21 were involved in, all persons said they were scared or were there
22 some that said they were not scared?

23 A. All the persons contacted me, they were scared and upset.

24 Q. Are you aware whether the information provided by contacted
25 persons to your colleague was the same? Were there any persons who

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1 were not particularly scared or afraid despite what had happened?

2 A. All the persons who contacted us, they were scared and -- but
3 some of the persons we contacted later during our exercise, they --
4 they said that they don't care or they are not scared.

5 Q. Could you tell us whether, as a result of people telling, for
6 example, you or your colleagues that they were scared, the SPO had to
7 take any specific measures or steps in relation to these persons'
8 security or well-being?

9 A. SPO made a lot of steps and a lot of measures after this
10 exercise.

11 Q. Could you tell us, in general terms, what you're referring to
12 when you talk about "a lot of steps and a lot of measures"?

13 A. So we provide them with -- some of them we provide with the new
14 phone numbers, with the phone devices for the safe communication with
15 us. We prepared for a lot them emergency risk management plans. We
16 also relocate some people from Kosovo.

17 Q. Let's start with the provision of new phone devices. Am I
18 understanding correctly that the SPO gave new devices to these
19 persons?

20 A. For some witnesses who are -- who wasn't able to contact us via
21 secure phone conversation via internet, we provide them with the
22 phones for the secure contacts.

23 Q. And to be clear, was this provided as a result of this exercise,
24 as a result of contact with persons following the disclosures of
25 documents in September 2020?

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1 A. Yes, it was because of that.

2 Q. You also mentioned a lot of -- preparation of a lot of emergency
3 risk management plans. Could you explain to us, in general terms,
4 what an emergency risk management plan is?

5 A. An emergency risk management plan is prepared for the emergency
6 situation that we can extract witness and their family from their
7 homes to the safe place in -- in our office.

8 Q. And could you tell us what kind of work goes into preparing that
9 plan? Is it you, as a security officer, who would do so? Multiple
10 persons?

11 A. That was multiple persons, including witness security officers
12 and operational security officers.

13 Q. You also mentioned relocation. Could you tell us, in general
14 terms, without specifying who or where, this relocation related to?

15 A. All relocation we did were related to the leak, to the witnesses
16 who were scared and they didn't want to stay anymore in their homes.

17 Q. And how was the decision to relocate a witness due to the leak,
18 as you said, made? What were the factors you considered in making
19 that decision?

20 A. The factors are two: Threat and statement, importance of the
21 statement.

22 Q. Were you personally involved in decisions as to relocation of
23 witnesses related to the documents made public in September 2020?

24 A. Yes, I did.

25 Q. And you mentioned that the two factors are threats and the

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1 importance of a statement. When you talk about threat, was that the
2 threat in general terms, the threat communicated to you during the
3 contacts? Could you explain?

4 A. In this particular case, that was a threat because of the leak
5 of the document and the name of the witness has become public.

6 THE INTERPRETER: The interpreters kindly ask the speakers to
7 make a pause between the question and the answer. Thank you very
8 much.

9 MR. PACE: Certainly. My apologies to the interpreters.

10 I'm now going to ask to show the witness a document. And at
11 this stage, I'd also ask to provide the witness with a binder, and
12 this binder contains hard copies of all the documents in the
13 presentation queue.

14 If the Court Usher could assist. The binder is with our case
15 Manager. And they could, of course, be shown to the Defence for
16 inspection.

17 And while that's happening, I ask the Court Officer to call
18 document 084303 to 084303RED. Thank you to the Court Usher. And I
19 see that the document is on everybody's evidence channels.

20 Q. And, Mr. Witness, in this binder you have yellow tabs with
21 numbers on them. And in this particular instance, I would like you
22 to turn to tab 190.

23 MR. PACE: And pursuant to Your Honours' instructions, tab 190
24 means that it's item 190 on the Prosecution's exhibit list.

25 PRESIDING JUDGE SMITH: Thank you.

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1 MR. PACE:

2 Q. Mr. Witness, can you see this document before you?

3 A. Yes, I can.

4 Q. And do you recognise the document?

5 A. I recognise this document.

6 Q. Do you recognise your signature on this document?

7 A. I recognise signature on this document.

8 Q. We see the SPO logo and the words "Official Note" at the top of
9 the document. And then beneath those, we have a table with
10 information such as the date, author, and activity, and then we have
11 some text.

12 Mr. Witness, could you tell us whether this is the standard
13 format for such notes within the SPO?

14 A. This is the standard format for the SPO Official Notes.

15 Q. And we also see two different dates in this document. We have
16 the same date at the top left and in the table, and then another date
17 in the text which appears. There's no need to mention the dates, but
18 could you explain what the different dates refer to?

19 A. Different dates refer to that -- because the date when the --
20 when I talk to the witness was date when I was in Kosovo. And the
21 date on the top of the document is date when I was in the office and
22 submit this document in ZyLAB.

23 Q. You said that the date in the text is when you were in Kosovo.
24 Do I take that to understand it's the date when the event recorded
25 occurred?

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1 A. That is date when -- when I call the witness.

2 Q. Did you ever review notes of other colleagues of yours in the
3 SPO similar to this?

4 A. Yes, I did.

5 Q. And in the context of the exercise we were talking about earlier
6 related to the documents being made public, were these the type of
7 notes also produced by your colleagues in that exercise?

8 A. They produced the same or similar kind of notes.

9 Q. I'm going to turn to the content of this particular note for a
10 moment. We see in the second and third lines beneath the table that
11 you ask someone, whose identity is redacted, if he had any security
12 concerns in relation to the recent publication of documents allegedly
13 coming from the SPO. Was this a typical question you asked during
14 such contacts?

15 A. That was one of the typical questions we ask during the
16 contacts.

17 Q. You said it was "one of the typical questions we ask during the
18 contacts." Who in this case are you referring to as "we," you and
19 who else?

20 A. I am referring to me, witness security officers, Prosecutors,
21 and investigators who did these calls during the exercise.

22 Q. And before this exercise, was there any communication between
23 yourself and your colleagues as to how to approach these contacts?
24 For example, what questions to make or what information to provide?

25 A. There was a discussion between me and my colleagues and also

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1 instructions from the witness security and handling team leaders --
2 leader, which questions and what kind of questions, which information
3 we provide to the witnesses during the phone calls.

4 Q. And this note - and I'm referring to lines 4 to 8 in the text -
5 states that after you asked the person about his security concerns in
6 relation to the incident we've been discussing, the person told you
7 he does not feel secure, that there were rumours around his
8 neighbourhood that he's an SPO witness, and that this made him feel
9 not safe.

10 Do you recall being provided with information of this nature
11 either during this particular contact or during other contacts you
12 made at the time?

13 A. I do.

14 MR. PACE: Your Honours, at this stage I'd like to seek
15 admission of this particular note.

16 PRESIDING JUDGE SMITH: Any objection on this?

17 MR. REES: Can we defer admissibility until after
18 cross-examination?

19 PRESIDING JUDGE SMITH: Because?

20 MR. REES: I'm very conscious of the ruling that Your Honour
21 gave earlier today on disclosure. I'm also very conscious that
22 Your Honour did make it plain that, of course, if during the course
23 of direct examination matters arose which may lead to a more specific
24 directed disclosure request, that might lead to further disclosure.

25 In the circumstances, I would wish a decision on admissibility

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1 to wait. It may be that in due course we take the view there isn't
2 an objection, and I'll make that clear if that is the case. But can
3 I ask at this stage, simply, that it's marked as an MFI number.

4 MR. PACE: Your Honour, if I could be heard on this matter.

5 PRESIDING JUDGE SMITH: Yes.

6 MR. PACE: Yes, Your Honour. We have heard no reason to defer
7 admission of this item. The information has been elicited as to its
8 authorship authenticity. The witness has stated he is familiar and
9 recalls the content thereof. Deferring admission of items when there
10 is no good reason is not really conducive to the efficiency of
11 proceedings.

12 It would be ideal to avoid a situation like we had this morning,
13 where we had to go back in time and address several items discussed
14 at a time. And, of course, any information elicited in
15 cross-examination as to this specific item, or anything else the
16 witness has to say, would go to the weight, if any, Your Honours
17 place, not on its admissibility.

18 PRESIDING JUDGE SMITH: Thank you, Mr. Pace.

19 Mr. Cadman, do you wish to add anything to this?

20 MR. CADMAN: Nothing further. I think Mr. Rees has set out what
21 the position is.

22 PRESIDING JUDGE SMITH: All right.

23 [Trial Panel confers]

24 PRESIDING JUDGE SMITH: There is no objection being made and the
25 exhibit is proper. And, of course, any statement made goes to the

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1 weight of the testimony or the weight of the evidence. So the
2 exhibit will be admitted.

3 Can I have a number, please.

4 THE COURT OFFICER: Your Honours, that will be Exhibit P130.

5 PRESIDING JUDGE SMITH: P130 is admitted.

6 Go on, Mr. Pace.

7 MR. PACE: I'd like to show another document and that is 093386
8 to 093387RED.

9 Q. And, Mr. Witness, this is at tab 354 of the binder in front of
10 you. Can you see the document, Mr. Witness?

11 A. Yes, I can.

12 Q. Do you recognise it?

13 A. I recognise this document.

14 Q. So this note refers at paragraph 4 to you being informed that a
15 person, whose name is redacted, heard about the leaking of documents
16 the previous day and this made him very scared, panicked, and worried
17 about his and his family's safety. The note also reports that the
18 person told you that he took his wife, and then we see a reference to
19 driving and the house. And it goes on to say that the person told
20 you he left Kosovo and was scared to go to work.

21 At paragraph 6, the note refers to you receiving a message from
22 this person referring to leaked documents being all over Albanian
23 media.

24 Do you recall being provided with the information recorded in
25 this note?

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1 A. Yes, I do.

2 Q. And during your own interactions, such as this one and other
3 calls and meetings in the context of the exercise referred to
4 earlier, did you get the impression from the persons you were in
5 contact with that they were aware of what had happened in relation to
6 the documents in September 2020?

7 A. This particular person was very scared from the -- from the
8 moment when was published first document from KLA War Veterans
9 Association.

10 Q. And earlier you told us that some persons contacted the office
11 themselves, and those persons knew about the documents. I'd like now
12 to focus on when you yourself contacted persons initially. Was the
13 information you provided about the documents being made public news
14 to them in general or had they heard about this before from other
15 means?

16 A. We provided -- that exercise started only with the people and we
17 called the people who -- which name was in the -- in the document.

18 Q. And did those persons whose name was in the document, when you
19 called them, did you understand that they already knew their name was
20 in the document or that these documents existed, or were you the
21 person informing them of that event?

22 A. Some of them, they knew about document. Some of them, they knew
23 their name was there. But most of them, they didn't know that their
24 name was there. Majority of them, they heard about a leaking of --
25 or publishing of those documents.

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1 Q. And in general terms, the majority that had heard, did you get
2 any sense of how they had heard; from other persons or from other
3 means?

4 A. I learned during the phone calls that they find out from the
5 media, it was all over the media in Kosovo and the region. Some of
6 them who find out about their names, they heard from their family
7 members or from their friends that their name is published in public
8 in the media.

9 MR. PACE: Your Honour, I'd like to seek admission of this note.

10 PRESIDING JUDGE SMITH: Any objection?

11 MR. REES: In relation to that, Your Honour.

12 Obviously, the document is put forward not as truth of the
13 statement made by the third party whose name is redacted, as I
14 understand it. And if that is right, and my understanding is
15 correct, then I don't raise an objection.

16 PRESIDING JUDGE SMITH: Mr. Pace.

17 MR. PACE: Thank you, Your Honour.

18 The SPO is, of course, aware of Your Honours' ruling in the bar
19 table motion decision. However, the situation has changed now.
20 These notes that we're addressing thus far were authored by the
21 witness. You have the witness who is here to explain the content
22 thereof, what happened, the process - both generally and more
23 specifically. You also have received information about who was
24 contacted and how.

25 And for those reasons, we do seek admission for the truth of its

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1 contents both in relation to the already admitted item and this one.

2 PRESIDING JUDGE SMITH: There is no question that they are
3 offering it for the truth of the matter, and that makes it hearsay,
4 and I understand that. And we will give it the weight we deem to be
5 appropriate under the circumstances. But this man is here to be
6 cross-examined by you, and we will admit it. There is no prohibition
7 against hearsay.

8 In our bar table, we were talking about the cases where they
9 were completely unable -- I'm sorry, when the witness that had signed
10 it, the man who had signed it was not the witness who was going to
11 appear in court.

12 So we will admit the item. We will admit the exhibit. I
13 understand your objection. We will give this information the weight
14 it should have during our deliberations. So it is being offered for
15 the truth of the matter. And you've stated your objection.

16 MR. REES: I've stated my objection, yes.

17 PRESIDING JUDGE SMITH: Yes.

18 THE COURT OFFICER: Your Honours, that will be Exhibit P131.

19 PRESIDING JUDGE SMITH: P131 is admitted.

20 Mr. Pace, you were supposed to give us the classification
21 recommendation on each of these items as well. So the last one and
22 this one.

23 MR. PACE: Yes, my apologies, Your Honour. The classification
24 should remain confidential. While I am eliciting some information
25 from these documents in open session, I have tailored the examination

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1 with a view to keeping things in open session. However, the rest of
2 the contents, for example, the dates and other specificities therein,
3 would mean that publishing these documents and making them publicly
4 available on the web site might lead to, for example, the contacted
5 witnesses themselves being able to see that the information they
6 provided to us is now publicly available, and these and similar
7 reasons were advanced when we made our submissions when we sought
8 admission through the bar table of these items.

9 So we are at the moment in court eliciting the kind of
10 information we believe can be made public. In terms of the remainder
11 of the information, we believe that that should not be made publicly
12 available.

13 PRESIDING JUDGE SMITH: I'll take the classification under
14 advisement for now. Thank you.

15 Go on.

16 MR. PACE: I'd like to show the document 084008 to 084010.

17 Q. And, Mr. Witness, that is tab 180 of your binder.

18 Mr. Witness, do you recognise this document?

19 A. Yes I do.

20 Q. Could you tell us what it is?

21 A. Can you -- I -- I'm sorry. Can you repeat the number?

22 Q. The tab number is 180.

23 A. Okay, yeah. This is my declaration I wrote. That's my first
24 declaration.

25 Q. And on the last page of this document, 084010, is that your

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1 signature that we see?

2 A. This is my signature.

3 MR. PACE: I'd like the Court Officer, and also the witness, to
4 turn to page -- the first page, 084008. And I'm going to be
5 referring to paragraph 6, which starts on this page and then
6 continues on the next.

7 Q. Paragraph 6 reads as follows:

8 "Tens of the witnesses with whom the SPO was in contact after
9 confidential documents were made public by the KLA WVA noted that
10 they felt worried, stressed, unsafe, threatened and/or intimidated in
11 the wake of the publications."

12 Mr. Witness, is that accurate according to your recollections
13 based on the contacts that you had and other contacts you were aware
14 of at the time?

15 A. This is accurate to my contacts, and this is written by me.

16 Q. The paragraph goes on to state:

17 "The following are some non-exhaustive examples of information
18 provided by such witnesses during their contact with the SPO."

19 Before turning to one of these examples that you provide in the
20 declaration, could you tell us the basis for the examples in the
21 declaration, what you base those examples on?

22 A. I base those examples on my contacts with the witnesses.

23 Q. Do you recall whether it was just contacts which you carried out
24 yourself, or was it also contacts that you had knowledge of conducted
25 by other persons?

1 A. Mostly they are about my contacts carried by people, but some of
2 them, because I reviewed some notes, are also from the other
3 colleagues.

4 MR. REES: Your Honour, under the circumstances, shouldn't the
5 witness concentrate on those persons that he spoke to himself?

6 MR. PACE: Yes, Your Honour, if I'm allowed to continue my
7 examination, I will certainly do that. And if there is an objection
8 later on that's not pre-emptive, it will be received.

9 PRESIDING JUDGE SMITH: [Microphone not activated].

10 MR. PACE:

11 Q. I'm going to turn to paragraph 7 of this declaration, which is
12 on page 084009. And here we see:

13 "One of the witnesses" --

14 MR. REES: Your Honour, is the witness going to be examined by
15 Mr. Prosecutor? Because just reading out the declaration doesn't, in
16 my submission, amount to a proper approach to questioning in direct
17 examination.

18 MR. PACE: Your Honour, if I may, if perhaps I'm allowed to get
19 to the question I'm trying to put, then the scope of my examination
20 will be clear for everyone. And after I put such a question, if
21 there's an objection to it, it can certainly be made at that stage.

22 PRESIDING JUDGE SMITH: Allow him to finish the question before
23 you object.

24 MR. PACE:

25 Q. Paragraph 7 of this declaration reads as follows:

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1 "One of the witnesses stated that after learning of the
2 publication of confidential information, he felt panicked and worried
3 about his safety, so he first moved out of his house and then left
4 Kosovo."

5 Now before I put my question, I'd like to show another document
6 side by side with this declaration, and that is a document we saw
7 moments ago, which is 093386 to 093387RED, tab 354 of the binder.

8 PRESIDING JUDGE SMITH: That has an exhibit number.

9 THE COURT OFFICER: Yes, Your Honour. For the record, that is
10 P131.

11 PRESIDING JUDGE SMITH: Please refer to them by exhibit number.

12 MR. PACE: Yes, Your Honour, I will endeavour to do so.

13 Q. So we are now looking at the declaration and Exhibit P131.

14 Mr. Witness, if you recall the contents of the Official Note we saw
15 earlier, and you bear in mind the paragraph that I just read from the
16 declaration, do you recall or remember whether the information in
17 paragraph 7 of the declaration is based on the note that we addressed
18 earlier today, P131?

19 A. Information in paragraph 7 are based on this Official Note.

20 MR. PACE: I'd like to show another document to the witness, and
21 that is 089886 to 089886RED. And that is tab 228.

22 Q. Do you recognise this document, Mr. Witness?

23 A. I recognise this document.

24 Q. Is that your signature at the bottom of this document?

25 A. This is my signature on the bottom of this document.

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1 Q. And in general terms, do you remember the conversation described
2 in this note that you have before you?

3 A. I remember conversation in this note.

4 Q. At paragraph 1 of this note, there is a reference to a person
5 telling you, *inter alia*, that he felt stressed because of the
6 documents leaked to the media. Do you recall being provided with
7 this information during this or other calls?

8 A. Yes, I recall.

9 MR. PACE: I'd like to seek admission of this document,
10 Your Honour.

11 PRESIDING JUDGE SMITH: [Microphone not activated].

12 THE COURT OFFICER: Your Honours, that will be Exhibit P132.

13 MR. PACE: The next document I'd like to show is 0 --

14 PRESIDING JUDGE SMITH: [Microphone not activated].

15 MR. PACE: Apologies, Your Honour.

16 The next document I'd like to show is 089908 until 089908RED.
17 And that is at tab 229.

18 Q. Do you recognise this document, Mr. Witness?

19 A. I recognise this document.

20 Q. Is that is your signature at the bottom of the document?

21 A. This is my signature on the bottom of the document.

22 Q. And do you happen to recall the conversation recorded in this
23 document?

24 A. I recall. Yes, I do.

25 Q. At paragraphs 2 and 3 of this note, we see reference to a person

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1 who told you and a colleague that he is not worried about the leaks
2 and that he does not have any security concerns. Do you recall being
3 provided with the information in this note?

4 A. Yes, I do.

5 Q. And I think you told us earlier today that there were some
6 persons who expressed similar sentiments; is that correct?

7 A. It is correct.

8 MR. PACE: Your Honour, I'd like to seek admission of this note.

9 PRESIDING JUDGE SMITH: That exhibit will be admitted. Please
10 assign a number.

11 THE COURT OFFICER: Your Honours, that will be Exhibit P133.

12 PRESIDING JUDGE SMITH: I'm sorry, I couldn't hear you.

13 THE COURT OFFICER: Exhibit P133, Your Honours.

14 PRESIDING JUDGE SMITH: P133 is admitted.

15 MR. PACE: The next document I'd like to show is 091902 to
16 091902RED, and that is at tab 320.

17 Q. Do you recognise this document, Mr. Witness?

18 A. I recognise this document.

19 Q. This note refers to a meeting with someone whose name is
20 redacted, and you can see in the first paragraph the date of this
21 meeting. I won't specify since we're in open session, out of an
22 abundance of caution.

23 At paragraphs 2 and 3, the note refers to this person telling
24 you he's a little worried because of the general security situation
25 and particularly because of a certain announcement from the KLA

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1 veterans. Do you remember the meeting described in this note?

2 A. Yes, I remember the meeting.

3 Q. And given the particular date of this note, do you recall
4 whether this meeting was planned in relation to the events, or was
5 this meeting already planned and this information just came up?

6 A. This meeting wasn't planned.

7 Q. So did you plan this meeting because of the events which took
8 place in September 2020, or were you going to meet this person
9 regardless; if you remember?

10 A. This person contact me and ask for the meeting.

11 Q. When did that person contact you, if you remember?

12 A. The same day, which is in the Official Note.

13 MR. PACE: I'd like to seek admission of this note, Your Honour.

14 MR. REES: There is an objection in relation to this note.

15 It's not made, on the face of it, until some five months after
16 the event.

17 MR. PACE: Yes, Your Honour. I'm happy to clarify that with the
18 witness. But regardless, that may go to weight, not admissibility.
19 But I'm guided by Your Honour if you want me to clarify now or it can
20 be clarified later.

21 PRESIDING JUDGE SMITH: Go ahead with your clarification.

22 Thank you, Mr. Rees.

23 MR. PACE:

24 Q. Mr. Witness, as counsel for the Defence noted, here we see two
25 different dates. The date in the table is a few months later, after

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1 the date of the encounter as recorded in this note. Could you
2 provide any information, if you remember, as to why that may be, why
3 there is this gap in time?

4 A. The gap in time is because of the lockdown, and we didn't have
5 the opportunity, and we haven't been allowed to go in the office that
6 we can submit all our documents in the ZyLAB.

7 Q. Do you, by any chance, remember whether the information you
8 recorded in this note, did you record it on the same day or soon
9 thereafter, or did you only record it several months later?

10 A. I record all my official notes immediately after the meeting or
11 after the phone calls.

12 Q. So to be clear, you would have recorded the information we see
13 here near to the date of the events but only later sent this document
14 to be registered in the office; is that correct?

15 A. It is correct.

16 MR. PACE: Your Honour, I hope that clarifies. And I again seek
17 admission on this.

18 PRESIDING JUDGE SMITH: Anything further, Mr. Rees?

19 MR. REES: Nothing further but I maintain the objection.

20 PRESIDING JUDGE SMITH: Okay, thank you.

21 This document will be admitted. If the Court Officer will
22 assign a number.

23 THE COURT OFFICER: Your Honours, that will be Exhibit P134.

24 PRESIDING JUDGE SMITH: P134 is admitted.

25 MR. PACE: And the next document I'd like to show is 091907 to

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1 091908RED2, which is at tab 324.

2 Q. Do you recognise this document, Mr. Witness?

3 A. I recognise this document.

4 Q. This note refers to calls on different dates within the same
5 month during which you and a colleague contacted multiple persons
6 whose names are redacted. At paragraphs 2 and 3, the note refers to
7 contacted persons expressing anger and concern when they were
8 informed that the KLA War Veterans Association had made their names
9 public. Do you remember the calls described in this note or similar
10 calls thereto?

11 A. I remember these calls.

12 Q. And just one detail, Mr. Witness. If we look at the table where
13 we have "Other Attendees," we see LA11. In general terms, could you
14 tell us who would that refer to? And I mean the position rather than
15 a name here.

16 A. It would refer to language assistant in Specialist Prosecutor's
17 Office.

18 MR. PACE: Your Honour, I would like to seek admission of this
19 note.

20 PRESIDING JUDGE SMITH: [Microphone not activated].

21 MR. REES: Perhaps the Prosecutor could deal with clarification
22 of the dates and the discrepancy there, please.

23 PRESIDING JUDGE SMITH: Yes, please do. I noticed the same
24 problem.

25 Thank you, Mr. Rees.

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1 MR. PACE: Certainly, Your Honour.

2 Q. Mr. Witness, in this case we also have a date in a table which
3 is a few months after the dates referred to relating to the
4 incidents. Could you explain why that may be?

5 A. These notes are prepared after the phone conversations and
6 submitted in Zy few months after because we haven't been allowed to
7 go to the office.

8 Q. And just for clarity, when you say "submitted in Zy," could you
9 briefly explain what that means?

10 A. In our system in ZyLAB.

11 Q. And that's within the SPO?

12 A. And this is in SPO system.

13 MR. PACE: Your Honour, I hope that clarifies and I seek
14 admission.

15 MR. REES: I do object but have nothing further to add, as it
16 were.

17 PRESIDING JUDGE SMITH: Thank you.

18 Please assign a number.

19 THE COURT OFFICER: Your Honours, that will be P135.

20 PRESIDING JUDGE SMITH: P135 is admitted.

21 MR. PACE: The next document I'd like to show is 093379 to
22 093379RED. And that is at tab 352 of the binder.

23 Q. Do you recognise this note, Mr. Witness?

24 A. I recognise this note.

25 Q. At paragraph 2 of this note, there is reference to you receiving

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1 a message in September 2020 in which a relative of a person, whose
2 information is redacted, states that his family informed him and
3 others that the name of a person, whose information is redacted,
4 became public in the leaked documentation, and he decided to bring
5 his relative and the rest of his family somewhere which is also
6 redacted in this note. Do you happen to recall this message
7 described in this note?

8 A. Yes, I do.

9 Q. And do you happen to remember what kind of a place this person
10 said he was taking his family member to? Was it another town,
11 another country? In general terms.

12 A. It was another country.

13 Q. Paragraph 4 of this same note refers to you and to a colleague
14 contacting the relative of a person, whose name is redacted, once
15 again in the same month on a separate date. And we have reference to
16 your colleague informing the person that the name of the person,
17 which is redacted here, was published in the leaked documents.

18 Earlier you described this process. Is this part of the regular
19 information provided during such calls?

20 A. Yes, it is. As I explained earlier, after the leak document on
21 22 September, we -- we decide to have that exercise and this phone
22 call was part of that exercise.

23 MR. PACE: Your Honour, I seek admission of this note.

24 PRESIDING JUDGE SMITH: Any objection?

25 MR. REES: Perhaps again the Prosecutor could assist with

1 clarification on the dates that appear at the top alongside the date
2 row and, indeed, in the document itself.

3 PRESIDING JUDGE SMITH: It's a seven-day difference.

4 MR. PACE: I note counsel might be referring to the top-most
5 date on the left, and I'm happy to clarify, Your Honour.

6 PRESIDING JUDGE SMITH: Oh, I'm sorry.

7 MR. PACE: It is a longer difference.

8 PRESIDING JUDGE SMITH: Go ahead.

9 Excuse me, Mr. Rees, I didn't notice the other date.

10 MR. PACE: Thank you, counsel. And thank you, Your Honour.

11 Q. Mr. Witness, in this case we see three different dates on this
12 note. There is one date on the top left which is dated in a month
13 this year. We have a date in a table from September last year and in
14 the text, also from September last year.

15 If you're able to, could you explain why this may be that we
16 have three separate dates in this instance?

17 A. I can explain that date -- this second date is a typo.

18 Q. And to be clear, which second date are you referring to, the one
19 in the table, the one in the text?

20 A. In the table.

21 Q. So to be clear, the one in the table should contain the date we
22 see in the top left? Am I understanding correctly?

23 A. No, it's date from bottom, from the text. It should be from the
24 text.

25 Q. And so -- I'm sorry to continue on this line of questioning, but

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1 the date that we see in paragraph 1 is the date of the event
2 recorded; is that right? The event recorded occurred on the date in
3 paragraph 1?

4 A. No, it's in paragraph 4.

5 Q. Yes, in paragraph 1 we have reference to a -- my apologies. In
6 paragraph 1 we have reference to a message being received on a
7 certain date and then, in paragraph 4, to a call. And that's correct
8 that those occurred on separate dates; right?

9 A. That happened on the separate dates, and there was also one more
10 call in between.

11 Q. And then when did you submit this document into evidence in
12 ZyLAB, as you referred to earlier? Would that be the date in the top
13 left of the document?

14 A. That is the date on the top -- top left on the document.

15 Q. So which date would you replace the date in the table with: The
16 one in paragraph 1 or paragraph 4?

17 A. With the date in paragraph 4.

18 Q. Thank you, Mr. Witness.

19 MR. PACE: And, Your Honour, we seek admission.

20 PRESIDING JUDGE SMITH: Any objection?

21 MR. REES: The same position as before.

22 PRESIDING JUDGE SMITH: Just call it an ongoing objection, if
23 you wish.

24 MR. REES: Objection.

25 PRESIDING JUDGE SMITH: Okay.

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1 Please assign a number.

2 THE COURT OFFICER: Your Honours, that will be P136.

3 PRESIDING JUDGE SMITH: Go ahead, Mr. Pace.

4 MR. PACE: I'd like to show 093388 to 093388RED, and that's at
5 tab 355.

6 Q. Do you recognise this document, Mr. Witness?

7 A. Yes, I recognise this document.

8 Q. This note refers to a call you made to someone, whose name is
9 redacted, and to this person telling you that, although he did not
10 feel threatened, he felt concerned because of the leaking of files
11 from the SPO. Do you remember the calls described in this note?

12 A. Yes, I remember the call.

13 Q. And in this note we see two different dates. We have a date
14 from this year on the top left, and then the same date from last year
15 in the table and the text. Could you explain why that may be?

16 A. Different dates -- dates in the text is date when I called the
17 witness. And date on the top of the document left is date when I
18 submit this document in ZyLAB in our evidence.

19 MR. PACE: Your Honour, I seek admission of this note.

20 MR. REES: Objection.

21 PRESIDING JUDGE SMITH: Objection is overruled.

22 Please assign a number.

23 THE COURT OFFICER: Your Honours, that will be P137.

24 PRESIDING JUDGE SMITH: P137 is admitted.

25 MR. PACE: I'd like to show the document 084232 to 084233RED,

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1 and that is at tab 184.

2 Q. Do you recognise this document, Mr. Witness?

3 A. Yes, I recognise the document.

4 Q. Do you remember the conversation described in this document?

5 A. Yes, I remember conversation.

6 Q. At paragraph 4, this document refers to a person who told you
7 and the colleague that he supports the work of the Court but that it
8 is very concerning that these documents were leaked. Do you recall
9 being provided with information of this nature in this or other
10 contacts?

11 A. Yes, I do.

12 Q. In relation to this note, we see there is a name in the table of
13 an Associate Prosecutor, and that is the same name of the person who
14 signed this note. We also see your name under the title "Other
15 attendees," and then we have a reference to an interpreter.

16 PRESIDING JUDGE SMITH: [Microphone not activated].

17 MR. PACE: Sorry, I was just going to ask a question.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 MR. PACE:

20 Q. Does this mean, Mr. Witness, that while you did not author this
21 note, since it's not your signature, you were present during this
22 interaction that's documented in the note?

23 A. I was present during the interaction.

24 MR. PACE: Your Honour, we seek admission of this note.

25 MR. REES: We do object. And I would like to address this and

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1 the further notes which I anticipate Mr. Pace to be moving on to
2 additionally.

3 The Trial Panel gave the decision on the Prosecution request for
4 admission of items through the bar table on 29 September 2021. It's
5 filing F00334, and it would assist if the Trial Panel had the
6 decision in front of it, because I wish to refer to parts of it.

7 In that application, part of it, of course, related to these
8 very notes. And in paragraph 90 --

9 PRESIDING JUDGE SMITH: Mr. Rees, before going into what we
10 said, what is your objection? Just state your objection. Is it
11 hearsay? Is it lack of confrontation?

12 MR. REES: Well -- and it's inconsistent and contrary to the
13 ruling that the Trial Panel has already given.

14 PRESIDING JUDGE SMITH: Okay. But we don't need to have the
15 rule read back to us. We wrote the order.

16 MR. REES: Well, I certainly follow that but --

17 PRESIDING JUDGE SMITH: I understand your --

18 MR. REES: With the greatest respect, it's difficult to recall
19 every utterance.

20 PRESIDING JUDGE SMITH: Let me put it this way: I'm going to
21 sustain your objection.

22 MR. REES: I'm grateful.

23 PRESIDING JUDGE SMITH: The fact of the matter is this was not
24 authored by this person.

25 MR. REES: Yes.

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1 PRESIDING JUDGE SMITH: No one's here to be cross-examined. You
2 can't confront the witness. And I'm going to sustain your objection.

3 MR. REES: Thank you.

4 MR. PACE: Your Honour, so I take it the exhibit -- the item is
5 not admitted into evidence?

6 PRESIDING JUDGE SMITH: Not admitted.

7 MR. PACE: Your Honour, I think this would be a convenient time
8 for a break. I can already inform you that I would not require too
9 much time after the break. It won't take me the entirety of the next
10 session.

11 PRESIDING JUDGE SMITH: Can I ask you a question?

12 MR. PACE: Certainly.

13 PRESIDING JUDGE SMITH: Is it your intention to submit more
14 notes by people who were not the author of the note?

15 MR. PACE: Yes, Your Honour. So I am very mindful of the
16 guidance you provided this morning. And as is evident to everyone it
17 seems, the next set of questions will, indeed, be about notes.

18 I'm sorry, Your Honour, I don't sure if you want me to make
19 these submissions in presence of the witness or not. I don't think
20 it's controversial, but perhaps you deem it best.

21 PRESIDING JUDGE SMITH: It's very difficult to cross-examine
22 somebody who is not here, and so be guided by what we just said.

23 MR. PACE: Yes, Your Honour.

24 PRESIDING JUDGE SMITH: Take a look at your potential questions
25 during the break and we'll talk about it later.

1 MR. PACE: Certainly. Thank you, Your Honour.

2 PRESIDING JUDGE SMITH: We are adjourned until 2.30.

3 Sorry, Mr. Rees. Everybody back down. Mr. Rees was standing
4 up.

5 The witness can be excused.

6 MR. REES: Yes.

7 PRESIDING JUDGE SMITH: Thank you, Mr. Jukic. You can be back
8 at 2.30.

9 [The witness stands down]

10 PRESIDING JUDGE SMITH: While we're at it, before you speak, I
11 want to clarify a little bit that just the -- that the -- the fact
12 that the evidence is being heard, these notes that we have admitted
13 are being heard and being admitted, and his testimony about those
14 notes, I recognise the fact that the person being questioned is not
15 here for you to cross-examine.

16 The fact that we hear that testimony or admit that note is no
17 indication of the weight we are going to give that testimony. The
18 Panel is aware of the inability of the Defence to be able to
19 effectively cross-examine the person who was questioned, because
20 those witnesses are not called.

21 And I just wanted to make it clear on the record that we
22 understand that situation. We understand your objection. But we are
23 admitting them as hearsay for the purpose -- because they are
24 relevant, they are probative, and we believe they are authentic in
25 this case because the witness was here who actually examined or

1 talked to those witnesses.

2 So, anyway, go ahead with your statement, then.

3 MR. REES: Just on that point, if I may, Your Honour. Clearly I
4 understand that the witness can give evidence that the note is an
5 accurate account of what was said to the witness. I follow that.
6 But in the decision on the bar table motion, Your Honours did deny
7 admission to establish the truth of the matters asserted in the notes
8 by the witnesses with whom the SPO spoke.

9 Now, I follow that the Trial Panel has heard evidence from this
10 witness as to what was said to him. And, indeed, he has said to
11 other SPO officers but which perhaps goes beyond the scope of the
12 previous ruling. But there we are.

13 We will submit that, in accordance with the Trial Panel's
14 ruling, whereas what has been said by others has been admitted, it's
15 not been admitted and cannot be admitted for the purpose of
16 establishing the truth of the matters said by the third party to that
17 officer or indeed other SPO officers because that would be
18 inconsistent with the Trial Panel's ruling on the bar table motion.

19 PRESIDING JUDGE SMITH: Well, the bar table motion was -- some
20 items were denied admission but not because they were inadmissible
21 but because we needed more information before we could admit them.
22 They were not admitted under the bar table motion. I believe I am
23 correct about that.

24 In other words, they now have provided more information and we
25 are allowing those documents to come in.

1 MR. REES: No, and I follow that. But, of course, a document
2 can be admitted for one purpose or more than one purpose. And,
3 certainly, in paragraph 93 of the ruling, Your Honour said:

4 "The Panel finds the probative value of the content of the
5 contact notes, if any, is outweighed by their prejudicial effect and
6 that, consequently, their admission into evidence for their content
7 would severely erode the rights of the accused to confront in an
8 effective fashion the case against -- presented against them. For
9 the reasons in considering its obligation to guarantee the fairness
10 of the proceedings, the Panel denies admission of the proposed
11 contact notes to establish the truth of the matters asserted in those
12 notes by the witnesses with whom the SPO spoke. The present ruling
13 is without prejudice to the possibility for the SPO to use and
14 request admission of certain contact notes, one, through the
15 testimony of a witness who authored the notes; and, two, for the
16 limited purpose of describing the procedures followed by the SPO in
17 interviewing these witnesses, as well as the resources used and time
18 spent on such interviews, to the extent that such witnesses have
19 knowledge of such matters."

20 So for that limited purpose, not for the purpose of establishing
21 the truth of the matters asserted in those notes by the witnesses
22 with whom the SPO spoke.

23 PRESIDING JUDGE SMITH: Well, among other things, it's also
24 corroborating the testimony that this witness has already given about
25 what he found out during his conversations.

1 MR. REES: And I follow that. And that is a limited purpose.
2 So I understand that the note has been admitted because it
3 demonstrates what he was told. The only point I wish to clarify was
4 that, in accordance with Your Honours' ruling on the bar table
5 motion, it doesn't go further than that and be used as evidence of
6 the truth of what the third person said to Mr. Jukic.

7 That's a different matter and one which he can't comment on the
8 truth or reliability of that information.

9 PRESIDING JUDGE SMITH: And he isn't commenting on it.

10 MR. REES: No, he's not.

11 PRESIDING JUDGE SMITH: He's asking that the document be
12 admitted for what it says.

13 This is still going to the weight of the testimony. That's what
14 we have to decide on it. And we've heard the testimony, we've
15 admitted the exhibits, we will decide the weight to be given to this.
16 I've told you that we have some limits to what we can accept out of
17 this witness's testimony and out of these documents, and we intend to
18 carry that through. But that's going to be our ruling.

19 So I appreciate your candour and the argument, but what are you
20 asking us to do?

21 MR. REES: Well, at the moment I'm not asking the Trial Panel to
22 do anything other than the next request, at which I will, again, be
23 candid, and this is what I had actually risen to my feet about,
24 Your Honour.

25 PRESIDING JUDGE SMITH: Well, bear in mind you're going to have

1 an opportunity to cross-examine this witness too and to talk to him
2 about some of these issues.

3 MR. REES: Well, indeed.

4 PRESIDING JUDGE SMITH: And that's why --

5 MR. REES: And it's on that point --

6 PRESIDING JUDGE SMITH: That's why we didn't admit them from the
7 bar table and we asked him to be here, so that we could actually hear
8 his testimony and you can cross-examine him.

9 MR. REES: Well, I can't cross-examine him on whether what he
10 was told was true or not, can I, because that -- the person who told
11 that is not there.

12 But leaving that aside, Your Honour, the reason why I rose to my
13 feet, in fact, is because I wish to press the request that I made
14 earlier in the week in relation to cross-examination. And I would
15 wish to conduct my cross-examination, to begin it next week, next
16 Thursday morning. That's the request that I wish to make.

17 We have heard significant testimony which doesn't feature in the
18 declarations. And I'm not revisiting that issue, Your Honour. I'm
19 simply referring to the request I made earlier in the week.

20 PRESIDING JUDGE SMITH: We'll take it under consideration and
21 rule on it.

22 MR. PACE: Your Honour, if I may be heard.

23 PRESIDING JUDGE SMITH: I'm sorry, Mr. Pace. I didn't mean to
24 ignore you. If you want to speak, go ahead.

25 MR. PACE: Thank you, Your Honour.

1 Just very briefly. The Prosecution does object to any delay in
2 cross-examination. There will be a maximum of 15 or 30 minutes of my
3 questioning --

4 THE INTERPRETER: The speakers are kindly requested to slow down
5 for the purposes of interpretation. Thank you.

6 MR. PACE: It will take me a maximum of 15 or 30 minutes
7 following the break to complete my examination. It's in the
8 interests of the efficiency of proceedings to start with the
9 cross-examination at this point. There have been no valid reasons
10 presented as to why there should be a delay in cross-examination.
11 The reasons put forward to Your Honours earlier this week have been
12 rejected because there is to be no further 102(3) disclosure, there
13 was no weight given to the arguments that there is anything beyond
14 the scope or it's impermissible to do beyond the scope of the
15 declaration.

16 So there is truly no reason not to start cross-examination
17 today.

18 PRESIDING JUDGE SMITH: Thank you.

19 You might tell us your reason, again, why this gentleman's
20 testimony, if there's only 20 minutes more, is so difficult that you
21 can't cross-examine him today?

22 MR. REES: Well, our submission remains that there are
23 significant parts of that testimony that we will not find in any of
24 the declarations, so we did not have notes of it.

25 I understand the ruling of the topics involved, but the detail

1 was not in any of the declarations. We do wish to consider again
2 Your Honours' remarks this morning about disclosure. It is, of
3 course, an ongoing obligation that the Prosecution has.

4 And, frankly, I am aware of the time estimates we gave
5 previously. I hope that the Trial Panel will have recognised that we
6 tend to err on a pessimistic side and then aim to better the worst
7 case scenario. And I am of the view, and I am confident of this,
8 that we will not lose time if we are allowed to reflect on what has
9 been said today in the transcript and carry out our cross-examination
10 in one session on Thursday.

11 MR. PACE: Your Honour.

12 [Trial Panel confers]

13 PRESIDING JUDGE SMITH: [Microphone not activated].

14 MR. PACE: Thank you, Your Honour.

15 Just simply to say that there has been nothing surprising from
16 what we heard today. Much of this is covered in the declaration.
17 All of it is covered in the declaration when you combine it with the
18 summaries of anticipated testimony in addition to the three points
19 perhaps that were provided two weeks ago pursuant to the Conduct of
20 Proceedings.

21 And the last thing I'll mention is that it's also that the notes
22 which we are addressing, which has taken up the majority of my
23 examination, have been disclosed to the Defence a while ago. The
24 Defence have been on notice of the items I may use with this witness
25 several weeks ago, so there truly is no reason. If there's anything

1 the Defence itself considers surprising, they are within their rights
2 to address that later on.

3 PRESIDING JUDGE SMITH: We'll take it under consideration,
4 Mr. Rees, during the noon hour, during the lunch hour, and we'll come
5 back and let you know. You may have to do a cross-examination; you
6 may not, today.

7 I will tell you, I went back and I reread all of this material,
8 and I haven't heard anything from the witness today that is out of --
9 that couldn't have been anticipated by reading the disclosure and the
10 following matters.

11 MR. REES: Well, I understand Your Honour's insight is greater
12 than mine. Certainly, as I listened to the evidence, there are many
13 aspects that I was not, that I did not perceive, did not appreciate,
14 and are entirely new to me, and I wish to explore in some detail.

15 And I will do that more concisely and more effectively and more
16 efficiently for the Trial Panel, to know, if I am given time to
17 reflect upon that.

18 PRESIDING JUDGE SMITH: What about you, Mr. Cadman? Would you
19 want to proceed with cross-examination today?

20 MR. CADMAN: No. Very simply, we have planned, based on
21 discussions that took place earlier in the week, when Your Honours
22 said that we would be given time until Thursday. And as Mr. Rees has
23 set out, there are matters that have been put in evidence today that
24 we were not previously aware of.

25 PRESIDING JUDGE SMITH: We will take it under advisement. We'll

1 give you an answer when we come back after lunch. Thank you very
2 much.

3 We are adjourned.

4 --- Luncheon recess taken at 1.08 p.m.

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

6 PRESIDING JUDGE SMITH: Before we bring back the witness, we
7 will address the points raised by Mr. Rees.

8 Mr. Rees, I don't want you to make a habit of this, but you may
9 be right about something.

10 In our bar table decision, that is F334, paragraphs 93 to 94, we
11 made it very clear that contact notes would not be admitted to
12 establish the truth of the matters asserted in these notes by the
13 witnesses with whom the SPO spoke. So, in other words, the Panel
14 reiterates that the notes contain hearsay evidence which could affect
15 the weight to be given to them.

16 The Panel also notes that the notes suggest that Mr. Jukic was
17 told of fears and concerns expressed by a number of witnesses, and
18 that evidence is now corroborated by his account in court. If the
19 Defence disputes that this was said, the Defence can challenge that
20 assertion in cross-examination.

21 In contrast, what was made clear in our bar table decision, the
22 Panel will not rely on any admitted contact notes to establish the
23 truth of the expression of fear and concern recorded in those notes.
24 This does not mean that the Panel cannot rely on any admitted contact
25 notes to ascertain that Mr. Jukic spoke with those witnesses or what

1 they told him. This goes to the exception the Panel carved out in
2 paragraph 94 of its bar table decision, where it said that the SPO
3 could use and request admission of certain contact notes through
4 their authors for the limited purpose of describing procedures
5 followed and resources on such interviews.

6 Also, nothing stops the SPO from eliciting Mr. Jukic's knowledge
7 during direct examination about whether, in his professional
8 assessment, witnesses he dealt with were threatened in the wake of
9 the publications and what measures the SPO had to subsequently
10 undertake to ensure the safety or well-being of those people.

11 This is also clearly stated in the SPO's summary provided for
12 this witness as filed on 1 October. That is, F347.

13 And I hope this clarifies.

14 Now, in relation to your request to start cross-examination of
15 Mr. Jukic next week. The Panel is aware that you raised this matter
16 on Tuesday morning. While the Panel stands by its observations that
17 so far nothing was heard by the witness that couldn't have been
18 anticipated by reading the disclosure in the notice given, we will
19 grant your request and you can start cross-examination of Mr. Jukic
20 next week. But then we expect your examination will be done more
21 concisely and more effectively and more efficiently, as you promised,
22 knowing now how we rule.

23 Before we go any further, before we adjourn for the day, we will
24 proceed with the balance of the direct testimony, and then even
25 though it's out of order, the Panel may have some questions prior to

1 your cross-examination.

2 So you can bring the witness back in, Madam.

3 MR. PACE: Your Honour, maybe while we wait, just a
4 clarification on classification of exhibits.

5 PRESIDING JUDGE SMITH: [Microphone not activated].

6 MR. PACE: I stated earlier, in relation to the first two
7 exhibits that were admitted that we maintained they should be
8 confidential. The submissions I made about those items refer to all
9 items today, which are P130 to P137.

10 Should the Panel be inclined to make those documents available
11 on the web site, the SPO would request some time just to apply
12 redactions to names of staff members and to the dates of the events
13 recorded in those notes.

14 [The witness takes the stand]

15 PRESIDING JUDGE SMITH: Thank you, Mr. Pace. We will consider
16 those items.

17 Mr. Jukic, you may take a seat.

18 THE WITNESS: [Microphone not activated].

19 PRESIDING JUDGE SMITH: We will proceed with your direct
20 examination at this time.

21 Mr. Pace, you have the floor.

22 MR. PACE: Thank you, Your Honour.

23 Q. Good afternoon, Mr. Witness.

24 A. Good afternoon.

25 Q. Earlier today we discussed your declaration and you stated that

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1 you based the examples contained in this declaration on your own
2 contact with the witnesses and on contact by other colleagues which
3 you had reviewed, and I'm here referring to page 72, lines 1 to 10 of
4 today's transcript.

5 I would like to show you the declaration again, and that is
6 084008 to 084010, and that's at tab 180.

7 MR. PACE: And if we could turn to page 084009, please.

8 Q. I'm going to read from paragraph 11, which contains the
9 following:

10 "A witness" --

11 MR. REES: Your Honour, before Mr. Pace does that. If the
12 purpose of the questions here is to adduce that these examples in the
13 declarations are based on the content or witness contact notes that
14 this witness did not author, we would submit that that is
15 objectionable and falls foul of the Trial Panel's ruling.

16 PRESIDING JUDGE SMITH: Mr. Pace.

17 MR. PACE: Yes, Your Honour. I do intend to ask certain
18 questions. Once again, I've not been allowed to go there yet. What
19 I intend to do is based on my understanding of Your Honours' guidance
20 this morning, which is establishing a foundation in relation to notes
21 I'm going to show the witness and then proceed if that foundation is
22 laid.

23 PRESIDING JUDGE SMITH: Go ahead.

24 MR. PACE:

25 Q. Paragraph 11 of the declaration reads as follows:

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1 "A witness stated that he was informed by friends that his name
2 was in the confidential documents and that he immediately took
3 measures to enhance his children's safety. He noted that he had
4 started to feel like people were isolating him and his family and
5 that people did not seem to differentiate between witnesses and
6 spies, adding that he felt that his family was endangered."

7 MR. PACE: Before I ask my question, I'd like the Court Officer
8 to pull up side by side with the English version of the declaration
9 item 084247 to 084248RED and that is at tab 188.

10 MR. REES: Your Honour, it looks like I anticipated correctly.
11 And what Mr. Pace is trying to do is elicit the content of witness
12 contact notes that this witness did not author, and that is in breach
13 of the Trial Panel's ruling.

14 MR. PACE: Your Honour, this is exactly the same objection that
15 was made before, and you allowed me to continue my examination. As I
16 said, I can repeat it.

17 PRESIDING JUDGE SMITH: Well, let's start out with a
18 preliminary. Does this witness have anything to do with creating
19 this?

20 MR. PACE: Yes, Your Honour. In my submission, as I read out, I
21 paraphrased from what the witness said earlier today at page 72,
22 lines 1 to 10, where he stated that for the purposes of creating the
23 declaration he also reviewed notes by other persons. And the content
24 of those notes is reflected in his declaration.

25 So I am now seeking to elaborate on that information by pointing

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1 to a paragraph that I had just read, and I'm now going to ask if the
2 basis for the paragraph is that in the Official Note. In our
3 submission, Your Honour, this falls squarely within your guidance
4 this morning.

5 We will not seek admission, if that is the concern, also based
6 on your guidance this morning.

7 [Trial Panel confers]

8 PRESIDING JUDGE SMITH: We overrule your objection.

9 Go ahead.

10 MR. PACE:

11 Q. Mr. Witness, if you could direct your attention --

12 MR. CADMAN: I did rise whilst --

13 PRESIDING JUDGE SMITH: I'm sorry.

14 MR. CADMAN: Whilst you were conferring.

15 PRESIDING JUDGE SMITH: I'm sorry, I didn't see you.

16 MR. CADMAN: The concern is you asked Mr. Prosecutor whether
17 this witness was involved in authoring that report. There's no
18 mention -- we only have to look at the Official Note. There's no
19 mention of this witness.

20 PRESIDING JUDGE SMITH: Thank you.

21 Go ahead, Mr. Pace.

22 MR. PACE:

23 Q. Mr. Witness, I'd like you to focus on the Official Note which is
24 on the left of your screen and also at tab 188. And I note that in
25 paragraphs 1 to 3 of this Official Note, we have reference to someone

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1 stating that some friends had told him about his name being included
2 in documents recently released by the KLA War Veterans Association
3 and that this person took his children out of school as soon as he
4 found out about this.

5 We also see, at paragraph 6, which is on the next page of the
6 Official Note.

7 MR. PACE: If the Court Officer could go to 084248. Thank you.

8 Q. Paragraph 6, the note states the person said he started feeling
9 that people were isolating him and his family, that people did not
10 differentiate between witnesses and spies, and that the leak
11 endangered his family.

12 Mr. Witness, having read -- or, rather, having listened to me
13 read paragraph 11 of your declaration, as well as a summary of the
14 contents of this Official Note, could you confirm, if you remember,
15 whether that paragraph in your declaration was based on this note?

16 A. The paragraph 11 was based on that note.

17 Q. And this note does not mention your participation in the
18 contact. Do I take that to understand that your only knowledge of
19 this information in the note was pursuant to your review of the note
20 produced by your colleagues?

21 A. Not only. I was in the meeting as well.

22 Q. And what meeting are you referring to in this instance?

23 A. In this meeting, I was a observer of the meeting. Not
24 participating in the meeting, but I was there.

25 Q. And are you referring to being an observer in this meeting on

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1 the document on the left; is that correct?

2 A. Yes.

3 Q. And is that -- why, then, is there no mention of you having
4 attended in this note?

5 A. I don't know.

6 MR. PACE: I'd like to turn to another paragraph of the
7 declaration and that is paragraph 12. And, again, the declaration is
8 the document on the right, which, for clarity, is 084008 to 084010.

9 Q. And paragraph 12 reads as follows:

10 "Another witness stated that since his name featured in the
11 confidential documents, people were looking at him and his family
12 differently and ... his business had lost customers."

13 MR. PACE: I'd like the Court Officer to replace the document on
14 the left of the screen with 085880 to 085883, tab 191.

15 MR. REES: Your Honour, can I ask, rather than be put in a
16 position where the Prosecution adduces the content of the declaration
17 and the note and then subsequently goes on to deal with what
18 involvement this witness had with the meeting or contact that's
19 reported in the note. Perhaps if we could start with what
20 involvement this witness had and then work from there, and that would
21 save us some time in dealing with objections, I would have thought.

22 MR. PACE: Your Honour, I believe I'm leading the direct
23 examination. I've been allowed to proceed in this manner, and I see
24 no reason to change that.

25 PRESIDING JUDGE SMITH: You may continue.

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1 MR. PACE: Thank you, Your Honour.

2 Q. Mr. Witness, I direct your attention to the note on the left of
3 your screen, which is that at tab 191. And it refers to a call by a
4 colleague of yours in September of 2020. And at paragraph 7 and 8,
5 which are on the first page, it refers to a person telling your
6 colleague that the leak of SPO documents in the media raised very
7 serious security concerns for him and his family, that people looked
8 at him and his family differently, that he lost customers, and that
9 the publication of the document is bringing the family into a
10 difficult financial situation.

11 Mr. Witness, could you confirm that the paragraph I read to you
12 earlier from the declaration, in this case paragraph 12, which
13 appears on the right-hand side of your screen, was based on the
14 information in the Official Note on the left-hand side of your
15 screen?

16 A. Yes, I can confirm.

17 Q. And in this instance, Mr. Witness, could you clarify whether
18 your knowledge of the information in the Official Note that we just
19 read is something that you learned of through a meeting or through a
20 review of the documents you conducted for the purpose of your
21 declaration?

22 A. I learned during the review of the documents.

23 Q. I'm now going to address paragraph 10.

24 MR. PACE: Madam Court Officer, the document on the left can be
25 withdrawn. We'll keep the document on the right, please.

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1 Q. The declaration, once again, is 084008 to 084010, and I'm now
2 going to read from paragraph 10, which reads as follows:

3 "A witness noted that, because of the confidential information
4 being made public, the pool of people who could potentially harm his
5 family has been broadened."

6 MR. PACE: The document I'd like displayed on the left side of
7 the screen is 089938 to 089939 at tab 234.

8 Q. In the note appearing on the left side of the screen, we see
9 reference to a call by a colleague of yours, Mr. Witness, to a person
10 in September 2020. And paragraph 3, on this first page, refers to
11 the person telling your colleague he was aware of the leak, that he
12 was angry because of the leak, and that his family members in Kosovo
13 are not safe because the KLA WVA has thousands of members.

14 In paragraph 5 of this same note on this same page, we see
15 reference to the person stating that he thinks the leaks broaden the
16 pool of people who could potentially harm his family and that now the
17 fact he collaborates with The Hague is known.

18 Mr. Witness, once again, having reviewed paragraph 10 on the
19 right side of your screen in the declaration, and now the
20 Official Note on the left side of your screen, could you confirm that
21 paragraph 10 of the declaration was based on the contents of this
22 Official Note?

23 A. Yes, I can.

24 Q. And in this case, once again, Mr. Witness, can you clarify the
25 basis of your knowledge for this? Was it your attendance at the

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1 meeting - although, it's not reported here - or was it that you
2 reviewed this document as part of the review for the preparation of
3 the declaration?

4 A. I learned about this from the reviewing of this Official Note.

5 MR. PACE: The document on the left side could be withdrawn, and
6 we will turn our attention to paragraph 8 of the declaration.

7 Q. Which reads as follows --

8 PRESIDING JUDGE SMITH: Excuse me, Mr. Pace. Am I correct that
9 you're intending to rely on this information in some way? Is it
10 going to be used for something? Are you going to offer an exhibit?

11 MR. PACE: Your Honour, based on the guidance provided, I don't
12 intend to tender the Official Notes for admission.

13 PRESIDING JUDGE SMITH: And these triple hearsay statements that
14 are being made have almost no probative value, and I'm just
15 questioning how long we continue with something that doesn't
16 accomplish much.

17 MR. PACE: Yes, Your Honour. Of course I'm guided by your
18 statement just now. I was going to go through the rest of the
19 paragraphs and conduct the same exercise. If Your Honour deems that
20 that's not necessary --

21 PRESIDING JUDGE SMITH: Is it your intention to offer these
22 paragraphs, then?

23 MR. PACE: So, Your Honour, I was not going to tender the
24 Official Notes, based on your guidance this morning. If Your Honour
25 would allow the declaration to be tendered pursuant to Rule 154, we

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1 could go through the procedure with the witness.

2 PRESIDING JUDGE SMITH: But you've got the witness right here.
3 Why do we need this?

4 MR. PACE: Yes, Your Honour. But it's a matter of eliciting the
5 information in a declaration which he produced based on information
6 he reviewed in his capacity within the office.

7 PRESIDING JUDGE SMITH: And that's a good question, did you get
8 information from your office. And he said, "Yes, a long time ago."

9 And I don't see the point of any of this. You know, we've
10 asked, for a long time, are there going to be witnesses who come here
11 and testify about this, and we've been told no, we're going to have
12 other testimony. And we've allowed it. But we aren't accomplishing
13 much, because there's not much probative value to this.

14 MR. PACE: Certainly, Your Honour.

15 PRESIDING JUDGE SMITH: You go ahead and finish your direct
16 examination. I just think you need to know.

17 MR. PACE: No, Your Honour. In that case, I will not ask any
18 more similar questions. I am guided by Your Honours observations.
19 If you just allow me one minute to confer with my colleagues.

20 [Specialist Prosecutors confer]

21 MR. PACE: Thank you for the time to confer, Your Honour.

22 In that case, we don't have any more questions for this witness.
23 And that concludes my direct examination.

24 PRESIDING JUDGE SMITH: Thank you, Mr. Pace.

25 As we stated earlier, the cross-examination by Defence will

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1 occur next Thursday at 9.30.

2 Yes, Mr. Pace?

3 MR. PACE: Sorry, Your Honour. Just one matter for
4 clarification.

5 Despite the postponement of the cross-examination to next week,
6 based on our understanding of the order of the conduct of
7 proceedings, the list of items to be used should be disclosed now
8 essentially because I concluded my direct.

9 Yes, thank you very much.

10 PRESIDING JUDGE SMITH: Yes, how quickly can you list your items
11 for cross-examination?

12 MR. REES: [Microphone not activated].

13 PRESIDING JUDGE SMITH: Okay, that's fine. Later today was the
14 answer.

15 There will be some questions of the witness by the Panel
16 members, beginning with Judge Gaynor.

17 Questioned by the Trial Panel:

18 JUDGE GAYNOR: Thank you, Mr. President.

19 Good afternoon, Mr. Jukic. In your evidence earlier, you told
20 us that you've been employed by the SPO since September 2019.

21 Now, I accept that there's been, of course, a great deal of
22 disruption as a result of COVID-19, but could you give us an idea of
23 how many and what kinds of staff within the SPO you've dealt with as
24 part of your professional duties since you began in September 2019?

25 A. So when I start work with the SPO, we've been two witness

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1 security officers and witness security and handling team leader. And
2 then in the spring 2020, that group grow up. We have five witness
3 security officers and one -- and witness security and handling team
4 leader.

5 JUDGE GAYNOR: And from your evidence, I understand that you
6 deal with investigators and Prosecutors; is that right?

7 A. Yes, that's right.

8 JUDGE GAYNOR: And you deal with them on a weekly basis or a
9 daily basis?

10 A. I deal with them on the daily basis.

11 JUDGE GAYNOR: Now, as a result of your professional experience
12 since September 2019, do you have any reason to believe that any
13 current or former member of the SPO was involved in any way in
14 delivering unauthorised information to the KLA War Veterans
15 Association?

16 A. No, I don't have.

17 JUDGE GAYNOR: Do you have any reason to believe that any person
18 acting under the instructions or control of the SPO was involved in
19 any way in delivering information, unauthorised information to the
20 KLA War Veterans Association?

21 A. No, I don't have.

22 JUDGE GAYNOR: Thank you, Mr. Jukic.

23 Thank you, Mr. President.

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 JUDGE METTRAUX: Thank you, Judge Smith.

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1 And good afternoon, Mr. Jukic.

2 A. Good afternoon.

3 JUDGE METTRAUX: I understand from your account of this morning
4 that it is part of your responsibilities and your team's
5 responsibilities to make security assessments of witnesses; is that
6 correct?

7 A. Yes, it is correct.

8 JUDGE METTRAUX: And can you tell us, in general terms, what are
9 the factors or considerations that you take into account to make that
10 determination, that assessment?

11 A. After the -- after the interview given to the SPO, witness
12 security officers doing witness security briefing or short interview
13 with the witnesses, collecting all data about him, his family, data
14 about contacts, and about threat. If there was any threat before, if
15 a witness feel unsafe or threatened by anyone, or if he expect any
16 kind of the threat, so that we are mainly focused on the threat
17 assessment after the interview.

18 JUDGE METTRAUX: And would the context in which the witness in
19 question find him or herself be relevant; in particular, I mean the
20 location at which the person is, whether it's in Kosovo or outside
21 Kosovo? Would that be a relevant consideration for your purposes?

22 A. Yes, of course. We -- we take all the -- all the facts into --
23 into account. So it's different if person is living out of the
24 Kosovo or in Kosovo. And what kind of the witness is. If that
25 witness is a victim or -- or just witness or witness insider. So we

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1 all -- we are taking all that facts into consideration during our
2 assessment.

3 JUDGE METTRAUX: I'll come to your point about victims in a
4 second. But can you tell me first, one thing you just said that you
5 take into consideration whether the person in question is located in
6 Kosovo or outside of Kosovo.

7 Why is it relevant to your security assessment or threat
8 assessment that someone might be located in Kosovo at the time?

9 A. Because in Kosovo we have a -- a kind of the power. As -- as
10 SPO, we have people present in Kosovo who can react and help -- help
11 to the person, to the witness. But in other countries, we need to
12 request for the help from the other authorities, send request to
13 protect that person.

14 JUDGE METTRAUX: Thank you. At page 57, 58 of the live
15 transcript of today, you explained -- you gave evidence about the
16 phone call that you received from a witness who expressed his concern
17 to you, and you said that he told you, and I quote:

18 "I know very well what happened to the witnesses in Kosovo."

19 What did you understand the witness to be telling you there?

20 A. Because I have some knowledge and experience in the Balkan
21 region and in Kosovo during my work for International Criminal
22 Tribunal for the former Yugoslavia. There was a lot of incidents
23 happen to the witnesses. And also I know from my experience that
24 there was some incidents in -- during the UNMIK and EULEX time when
25 some witnesses was -- were threatened.

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1 I -- I think that was what that person was thinking during the
2 phone call.

3 JUDGE METTRAUX: And at page 47, 48 of the transcript of today,
4 and you've just repeated it a moment ago, you explained that there
5 were different categories of witnesses for the purpose of your
6 professional responsibilities, and that one of these categories were
7 victims. And you gave us a definition of what a victim was for your
8 purposes, that is.

9 Now, can you explain to us why you treat the category of
10 victims, as you define them, as a specific subcategory of witnesses?
11 Are there particular needs? A particular consideration that go into
12 treating these individuals?

13 A. So for the victims, we think that they are a more vulnerable
14 person. That the victims, they will suffer some threat or harm
15 before. So we think they are more vulnerable in the psychological
16 way.

17 JUDGE METTRAUX: And does that imply different measures or
18 steps, as you described them this morning, in relation to these sorts
19 of persons?

20 A. Different steps in a way that we sometimes advise them to take
21 psychological support or -- or -- or some kind of a professional help
22 to -- to improve their health situation.

23 JUDGE METTRAUX: Now, just assume a scenario here, and I want
24 your opinion from the professional point of view, from your point of
25 view. Not from a legal point of view, of course. But assume that a

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1 witness discloses to the public the fact that he or she is a witness
2 in relation to this jurisdiction. If this were to occur, does such a
3 person lose protection to which he would otherwise be entitled to
4 receive from yourself and from your office?

5 A. No, it's not a reason to lose protection. From -- from our
6 side, we discuss this with the witness. We tell them about what --
7 what happened, and we ask the reason why he made public that facts.

8 JUDGE METTRAUX: Now, you also gave evidence earlier today that
9 a number of individuals with whom you called, whether you called them
10 or they called you, expressed fears and concern, and that you took
11 some steps and measures. And, in particular, that's page 60 and 61
12 of the live transcript, you indicated, and I believe it was in
13 relation to one individual, that he or she was relocated; and in
14 relation to others, that you took what you called emergency risk
15 assessment.

16 And what I want to ask you is whether such measures are regular,
17 usual measures, or whether they are exceptional in the sense of being
18 rare and relatively infrequent.

19 A. So when we are talking about relocation, it's really
20 exceptional. We call it, in our profession, last resort. So when we
21 don't have any other option to protect somebody, in his place in --
22 in the territory of Kosovo, we propose a relocation for that person.

23 For the emergency risk management plan, it's also exceptional.
24 But it's for the limited number of the witnesses who are most
25 vulnerable -- vulnerable and who are also, from our perspective,

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1 important for the Prosecutor office.

2 JUDGE METTRAUX: So asking you in general terms, and no need to
3 give any specifics, of course, but what would justify such measures
4 in a given case? What level of threat, in your experience, would
5 justify such, I think your expression was, exceptional measures.
6 Yes, "exceptional" you said.

7 What level of threat would justify such measures?

8 A. High level of threat.

9 JUDGE METTRAUX: Thank you.

10 PRESIDING JUDGE SMITH: Judge Barthe will have a question.

11 JUDGE BARTHE: Thank you, Mr. President.

12 Good afternoon, Mr. Jukic.

13 A. Good afternoon.

14 JUDGE BARTHE: I also would like to ask you a few questions,
15 actually.

16 My first question is, if I'm not mistaken, you told us this
17 morning that you and your colleagues contacted around 200 witnesses
18 after the three press conferences were held by the KLA WVA in
19 September 2020; is that correct?

20 A. Yeah, approximately 200.

21 JUDGE BARTHE: Now, how many of these individuals expressed
22 security concerns? If you cannot say exactly, you could maybe give
23 us a rough estimate in this regard.

24 A. It's difficult to say, but majority expressed -- expressed
25 some -- some kind of the concerns. Big majority.

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1 JUDGE BARTHE: So by referring to the "majority," you say more
2 than a hundred?

3 A. Yes, more than a hundred.

4 JUDGE BARTHE: And how many of these persons told you that they
5 had received threats in or after September 2020? Also --

6 A. I can't recall.

7 JUDGE BARTHE: -- roughly.

8 A. Yeah, I don't know. Received the threats, direct. Very few.

9 JUDGE BARTHE: Very few.

10 A. That they received threats. Not many.

11 JUDGE BARTHE: So less than a hundred?

12 A. Yes, less than a hundred.

13 JUDGE BARTHE: You cannot be more precise?

14 A. Not at this moment.

15 JUDGE BARTHE: How many of these individuals you or your
16 colleagues contacted were actually relocated? If I remember
17 correctly, you mentioned one case this morning. A person who was
18 relocated. Is this the only person who was relocated --

19 A. No, it was more than one.

20 JUDGE BARTHE: -- or were there others?

21 A. More than one.

22 JUDGE BARTHE: More than one?

23 A. More than one.

24 JUDGE BARTHE: More than one. Can you say how many --

25 A. Two.

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1 JUDGE BARTHE: -- roughly? Two. Exactly two?

2 A. Yes.

3 JUDGE BARTHE: And my last question. For how many witnesses
4 were other security or protective measures taken, other than
5 relocation?

6 A. I can say between 20 and 30.

7 JUDGE BARTHE: Thank you very much, Mr. Jukic. I have no
8 further questions.

9 A. You're welcome, Your Honour.

10 PRESIDING JUDGE SMITH: All right. You can escort the witness
11 out, please, Madam Usher.

12 Thank you, Mr. Jukic.

13 THE WITNESS: [Microphone not activated].

14 [The witness stands down]

15 PRESIDING JUDGE SMITH: There being nothing else, we will
16 adjourn for the day.

17 We'll see you Thursday at 9.30 a.m. Thank you.

18 --- Whereupon the hearing adjourned at 3.06 p.m.

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