

1 Friday, 5 November 2021

2 [Open session]

3 [The accused entered court]

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

5 PRESIDING JUDGE SMITH: Good morning, everyone.

6 Madam Court Officer, would you please call the case.

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

10 PRESIDING JUDGE SMITH: Thank you.

11 I see Mr. Halling is back with us today and there's no other
12 change in the Prosecution's team.

13 Mr. Rees.

14 MR. REES: Same representation as yesterday, save that I'm
15 additionally assisted by Mr. Vladimir Dashi this morning.

16 PRESIDING JUDGE SMITH: Mr. Cadman.

17 MR. CADMAN: No changes this morning.

18 PRESIDING JUDGE SMITH: Thank you.

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

21 The Panel has an oral order to render on the admission of the
22 exhibits tendered through Witness 4841, Ms. Pumper. Written reasons
23 will follow next week.

24 The Panel heard the testimony of Witness 4841 between 18 and
25 26 October 2021. During this time, a decision on admission was

1 deferred in relation to a number of proposed exhibits.

2 On 28 October 2021, the Panel heard oral submissions from the
3 parties regarding the admissibility of these exhibits. Having
4 reviewed the exhibits and having carefully considered the parties'
5 submissions, the Panel decides as follows.

6 The generational admissibility objection of the Defence is
7 rejected.

8 The Panel admits into evidence all exhibits under Categories 1,
9 2, 3, 5 and 6.

10 The Panel considers that the items under Category 7 are not
11 judicially noticeable, but admits them into evidence as individual
12 exhibits.

13 The Panel also admits into evidence, as individual exhibits, all
14 items under Category 8, except the item with ERN 07891-078982.

15 The Panel does not admit the item under Category 9.

16 Regarding the item marked as P104 under Category 4, also
17 referred to as Batch 2, the Panel makes the following ruling.

18 In light of the complete redaction of the six pages containing
19 relevant information, the Panel is not in a position to make findings
20 in respect of the authenticity, reliability, and probative value of
21 the material concerned.

22 The Panel therefore varies, in part, the decision of the
23 Pre-Trial Judge rendered on 23 February 2021, and that is F141,
24 regarding the undisclosed part of Batch 2.

25 The Panel invites the SPO to produce an unredacted or lesser

1 redacted version of P104, redacting only what is absolutely necessary
2 in the circumstances and to resubmit that material for admission.

3 The Panel notes that if the SPO seeks admission once again of
4 this item, the documents should be capable in all material respects
5 of a determination of its authenticity, relevance, and probative
6 value. If the SPO chooses to do so, it is ordered to disclose an
7 unredacted or lesser redacted version today, 5 November 2021.

8 If that happens, the Defence is ordered to indicate by
9 8 November 2021, in oral submissions during the hearing, whether it
10 wishes to further cross-examine Witness 04841 in view of the SPO
11 disclosure.

12 Detailed instructions to the Registry regarding the specific
13 items will be included in the written decision to be filed next week.
14 The same decision will also address the classification of these items
15 and also the deferred classification of some of the already admitted
16 exhibits.

17 This concludes the oral order.

18 Now, we move on to discuss the next steps in the current
19 proceedings. For the benefit of the public, I note that we are
20 nearing the end of the SPO case. We have one witness left who will
21 start testimony today and finish either today or on Monday. Then, we
22 may have some further cross-examination on Monday and maybe Tuesday
23 depending on the disclosure by the Prosecution today regarding P104
24 and the two pending Rule 102(3) matters.

25 We also have one additional matter pending under Rule 102(3)

1 which may also lead to request for further examination in the week of
2 15 November.

3 At this point, I would like to hear from the Prosecution if
4 Witnesses 4841 and 4842 can be made available on Monday and maybe in
5 the week of 15 November for any further cross-examination, if
6 requested by the Defence for the narrow purposes just outlined.

7 Mr. Prosecutor.

8 MR. PACE: Yes, Your Honour. I will make inquiries about it.
9 And if it's okay, we'll let you know after the next break.

10 PRESIDING JUDGE SMITH: Thank you.

11 In any event, strictly speaking, the presentation of the SPO's
12 case will be finished early next week, which is in line with the
13 9 November target date that we had set. The Panel is grateful to the
14 parties for keeping the efficient pace of these proceedings. We know
15 it hasn't always been easy, but we have made good progress so far.

16 Now, according to Rule 130, immediately after the closing of the
17 SPO case, the Defence must notify the Panel whether they intend to
18 file a motion to dismiss any or all of the charges. We know that
19 some further cross-examinations are still pending, but the Panel
20 would welcome an indication from the Defence on Monday, during the
21 hearing, whether it expects to file such a motion.

22 The Panel would also welcome an indication during the hearing on
23 Monday whether it plans to call a Defence case as to both accused.

24 We know that according to Rule 119 no such notification is
25 required before the resolution of any motion to dismiss charges, but

1 the Panel invites the Defence to share whatever information they can
2 so a realistic timeline can be set out next week and so as to ensure
3 the proceedings are conducted most efficiently and for the benefit of
4 all, not the least the accused.

5 In particular, it would be very helpful to get a proposed
6 estimate from the Defence on when can they file their witness and
7 exhibit lists, and when will they be ready for the Defence
8 Preparation Conference. The Panel would also like to know if any
9 material changes are expected to the proposed witness lists; in
10 particular, whether the Defence teams intend not to call some of the
11 witnesses currently on their lists and whether they still intend to
12 call their clients.

13 Of course, this is all dependent on whether a motion to dismiss
14 charges is filed, and we are aware of that.

15 Now, Mr. Rees, Mr. Cadman, this is just a heads-up for the next
16 steps, but you are welcome to comment at this time if you want. Any
17 information is highly appreciated.

18 We'll begin with Mr. Rees.

19 MR. REES: We do anticipate a motion to dismiss. We also
20 anticipate that in the event that there is a case to answer on some
21 or all of the charges, that there will be a Defence case called.
22 We'll reflect on Your Honours' comments and be in a better position
23 to assist next week.

24 PRESIDING JUDGE SMITH: Okay.

25 MR. REES: And we will be as candid as we feel appropriate, in

1 the circumstances, because we certainly agree that it's in everyone's
2 interest, not least the accused, for a clear timetable to be set out.

3 Can I just address briefly the issue of potential re-call of
4 Witnesses 04841 and 04842. We are conscious that the order that had
5 previously been given by the Trial Panel gave us until the end of
6 Monday to give an indication as to whether we seek re-call.

7 There is an outstanding order for disclosure to be made, as I
8 understand it, by the end of today, by the Prosecution, with a
9 further outstanding disclosure matter yet to be resolved and will not
10 be resolved until, on the timetable currently set out, as we
11 understand it, after November 12th.

12 We would urge that the decision on re-call await the
13 finalisation of all outstanding disclosure requests because it would
14 not seem to us to be a useful use of court time for any further
15 re-call of any of those two witnesses to take place in bit part. If
16 there is to be re-call, we would ask for that to take place once all
17 disclosure matters are resolved, the Defence are provided with all
18 such disclosure as they will receive, and then any further re-call
19 cross-examination can take place in a complete form, and then those
20 witnesses can be released, as it were.

21 PRESIDING JUDGE SMITH: We'll take that under advisement. We'll
22 make a ruling later today on your request.

23 MR. REES: Thank you.

24 PRESIDING JUDGE SMITH: Mr. Cadman.

25 MR. CADMAN: Your Honour, certainly on the disclosure point, I

1 take Mr. Rees' point and support him. So we'll await your ruling by
2 the end of today on that point.

3 As far as an application to dismiss is concerned. Our position,
4 based on the Prosecution case presented thus far, we do anticipate
5 making such an application. Obviously, we'll come to a final
6 decision once the Prosecution case is completed.

7 And in terms of what evidence we intend to call, as Mr. Rees has
8 said, we will be as pragmatic as we can, ensuring that we are only
9 calling those witnesses that are necessary to the charges that may or
10 may not need to be dealt with.

11 The only matter that I do need to address Your Honours on
12 concerns the additional expert who made contact late last night.
13 He's currently in Queensland, Australia, so there is quite a time
14 difference in being able to communicate.

15 He has indicated that he has completed the main part of his
16 report. We have not seen a draft. He has completed -- but what he
17 needs to consult are the publicly available transcripts of
18 Ms. Pumper's evidence in order for him to finalise that. He has
19 asked whether he could have until Monday to finalise his report. I
20 have impressed upon him the need to expedite matters as quickly as
21 possible.

22 Obviously, some delay was as a result of no *inter partes*
23 communications with the SPO. I take the point on that. I am not
24 criticising that. I am just stating that as a fact.

25 The other issue is the delay in getting publicly available

1 transcripts, which so far we only have, I believe, two of those for
2 Ms. Pumper's evidence. I will certainly take that up with the
3 Registry today so that we can get the transcripts to him today so
4 that he can consider that over the weekend and finalise his report
5 for Monday.

6 And if Your Honours grant us leave to -- of an extension until
7 Monday to serve that report, we would be most grateful.

8 PRESIDING JUDGE SMITH: We will take that up together also and
9 rule on that later today as well.

10 [Trial Panel confers]

11 PRESIDING JUDGE SMITH: [Microphone not activated].

12 MR. PACE: Thank you, Your Honour.

13 Just briefly, because the disclosure deadline set for today was
14 mentioned by counsel, I do want to inform the Court that we are, of
15 course, aware of that deadline. We are currently considering our
16 options in relation thereto. And should we be filing any leave to
17 appeal, we would intend to do so today. And if we do file a leave to
18 appeal, we would also seek suspensive effect of the order.

19 And, as I said, I will know more about this matter a little bit
20 later in view of the fact the decision was rendered very recently.
21 But I did just want to put that as an information because that may
22 have an impact on future proceedings. Thank you.

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

24 One other question is whether the accused wish to make a
25 statement at the closing of the SPO case.

1 As the Panel has said before, we will give the opportunity to
2 the accused to make unsworn statements at specific times during the
3 proceedings. Monday could be such an occasion or if they prefer to
4 do so at the beginning of their case.

5 Any comment that you have on that, Mr. Rees? Not required, but
6 we're just asking for a heads-up.

7 MR. REES: We're grateful. I anticipate that Mr. Gucati will
8 wish to make an unsworn statement, and the end of the Prosecution
9 case would seem to be an appropriate point for us.

10 PRESIDING JUDGE SMITH: Thank you.

11 Mr. Cadman.

12 MR. CADMAN: I will certainly confirm that by the end of today,
13 but the position is likely to be the same.

14 PRESIDING JUDGE SMITH: Okay. Thank you.

15 I also invite the parties on Monday to bring forward any other
16 matter they wish to solve before we go to the next stage of the
17 proceedings.

18 For the next topic, we will go into private session because it
19 involves a protected person.

20 [Private session]

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2 [Open session]

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

4 PRESIDING JUDGE SMITH: Thank you, Madam Court Officer.

5 For the benefit of the public, during the private session the
6 Panel heard arguments regarding the application for in-court
7 protective measures of Witness 4876. The Panel recalls that it
8 denied previous similar requests by the SPO and the Witness
9 Protection and Support Unit because it found no objective, concrete
10 indications that the public disclosure of the witnesses' names meant
11 that there was a real likelihood that they or others may be in
12 danger.

13 The current request is no different from the previous ones. The
14 alleged risks, while theoretically possible, have not been shown to
15 be more than hypothetical in this case.

16 The Panel also recalls its finding on the Decision on Protective
17 Measures - that is F303 - that SPO staff members fall into the
18 category of witnesses who are members of the police or associated
19 investigative authorities and that it is in the nature of things that
20 their duties may involve giving evidence in open court.

21 The request is therefore rejected.

22 Mr. Rees and Mr. Cadman, what is your cross-examination estimate
23 for Witness 4876?

24 Mr. Rees.

25 MR. REES: Up to an hour.

1 PRESIDING JUDGE SMITH: Thank you.

2 Mr. Cadman.

3 MR. CADMAN: Your Honour, a lot will depend upon what the
4 witness says, but I will certainly try to -- I will assess what
5 Mr. Rees deals with, whether there's any need to put anything
6 further. But I certainly don't expect to be very long.

7 PRESIDING JUDGE SMITH: Thank you.

8 In order to notify the next witness of the decision that we just
9 made, we will take a 15-minute break. You can stay where you are if
10 you wish and relax, and we will leave the room and we will come back
11 after a 15-minute period. So we are going to adjourn briefly for
12 that purpose.

13 MR. REES: Do you mind if we leave the room?

14 PRESIDING JUDGE SMITH: No, I don't mind if you leave the room,
15 just so you're nearby.

16 MR. REES: Thank you.

17 --- Recess taken at 9.56 a.m.

18 --- On resuming at 10.15 a.m.

19 PRESIDING JUDGE SMITH: Before we bring the witness in to
20 testify, we remind the parties that the scope of the testimony in
21 chief of 4867, as set out in F408, is that he can testify about his
22 recollection of the events addressed in P92, P103, P105 MFI, and in
23 the Official Note 102754 and 102755.

24 In addition, in its recent decision on the Rule 102(3) matters,
25 that is F413, paragraph 81, the Panel also permitted the Gucati

1 Defence to question the witness on some of the entrapment
2 allegations.

3 Please keep in mind these perimeters when questioning the
4 witness. And we will now call the witness in.

5 Madam Usher.

6 [The witness entered court]

7 PRESIDING JUDGE SMITH: Good morning, Mr. Moberg.

8 THE WITNESS: [Microphone not activated].

9 PRESIDING JUDGE SMITH: The Court Usher will provide you with
10 the text of a solemn declaration which you are asked to take pursuant
11 to Rule 141(2) of the rules.

12 When you are ready, please proceed.

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

17 WITNESS: DANIEL MOBERG

18 PRESIDING JUDGE SMITH: Thank you, Mr. Moberg. You can be
19 seated.

20 THE WITNESS: Thank you.

21 PRESIDING JUDGE SMITH: Mr. Moberg, today we will start your
22 testimony. As you may know, the Prosecution will be asking you
23 questions first. And once they are finished, the Defence has the
24 right to cross-examine you. Members of the Panel might also have
25 some questions for you.

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1 The Prosecution estimate for your examination is two hours. The
2 Defence's estimate is approximately one hour. Those are not
3 promises. Those are just estimates that we hope to stick to.

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

9 The Panel understands that you might be asked by the SPO to
10 attest to some corrections made during your statements. If and when
11 that happens, you are reminded to confirm on the record that the
12 written statement, as corrected by the list of corrections,
13 accurately reflects your declaration if it does.

14 Please also speak into the microphone and wait five seconds
15 before answering a question and speak at a slow pace so that the
16 interpreters can stay up with your statement.

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

21 Mr. Prosecutor, you may begin.

22 MR. PACE: Thank you, Your Honour.

23 Examination by Mr. Pace:

24 Q. Good morning, Mr. Witness.

25 A. Good morning.

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1 Q. We know each other, but I'll ask you some questions to establish
2 your identity and background for the Court.

3 What is your name?

4 A. My name is Daniel Moberg. In my passport, there will be more
5 names. As Swedes, we often have several first names, so that will be
6 as well Lars Johan Daniel Moberg. However, Daniel is the one that is
7 being used.

8 Q. Where are you currently being employed?

9 A. I'm employed with the Specialist Prosecutor's Office.

10 Q. What is your current position with the SPO?

11 A. My current position is operational security officer.

12 Q. And did you occupy that same position in 2020?

13 A. Yes, I did.

14 Q. Do you recall attending the KLA War Veterans Association
15 premises in Prishtine on 8 September 2020?

16 A. Yes, I do.

17 Q. Could you tell the Court what you went there to do that day?

18 A. I went there with a court order to seize documents that had been
19 delivered to the KLA war veterans office.

20 Q. And when you went there, did you do anything with that court
21 order that you mentioned?

22 A. Yes. A copy of that court order was provided to the secretary
23 of the KLA War Veterans Association as a representative of that
24 organisation.

25 Q. And you mentioned that you also went there to seize certain

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1 documents. During your time on 8 September, did you seize any
2 documents?

3 A. Yes, I did.

4 Q. And do you happen to remember what you did with the documents
5 you seized that day?

6 A. After seizing the documents, they were taken back to our offices
7 in Prishtine where colleagues were scanning them to send them back to
8 the office digitally. Sorry.

9 Q. No, please go on if you have any relevant information on this
10 issue.

11 A. Afterwards, they were also locked away in a safe. And then
12 taken back -- the originals were then taken back to The Hague about
13 potentially ten days later.

14 Q. And how do you know about where they were stored and how they
15 were transported?

16 A. I stored them in the safe of our premises, and I also handed
17 them over to the Prosecutor transporting them back to The Hague.

18 Q. When you stored them in the safe, were the documents stored in
19 the same manner you received them? Were they in anything, contained
20 in anything?

21 A. They were placed in two evidence bags.

22 Q. And do you know who placed them in the evidence bags?

23 A. I believe I did that myself.

24 Q. Did those evidence bags contain only the items you seized from
25 the KLA War Veterans Association that day or were there any other

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1 items?

2 A. I believe there would also be the handover document which was
3 signed by the secretary and myself at the time of the seizure.

4 Q. Were these bags sealed when you put them in the safe or storage?

5 A. I cannot say for sure they were sealed at the time of being
6 placed in the storage, but I know they were at least sealed at the
7 time of being taken back to The Hague.

8 Q. And do you remember who would have sealed them?

9 A. Most likely that would have been done by myself.

10 MR. PACE: I'd now like to show the witness a document, and that
11 is P92 MFI, ERN 083988 to 083991RED.

12 Q. Mr. Witness, can you see a document on your screen?

13 A. Yes.

14 Q. And do you recognise this document?

15 A. Yes.

16 Q. Could you tell us, in general, what this document is about?

17 A. The document details the events taking place at the time of the
18 seizure and how the documents were seized.

19 Q. And to be clear, the seizure, is that the one you were referring
20 to just before I showed you this document, the one on 8 September?

21 A. That is correct.

22 MR. PACE: If the Court Officer could kindly turn to page 083990
23 of the same document, please.

24 Q. Mr. Witness, do you recognise your signature on this page?

25 A. Yes, I do.

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1 MR. PACE: And, Madam Court Officer, if we could go back to the
2 first page.

3 Q. Mr. Witness, we see on this first page at the top an SPO logo
4 and the words "Official Note" underneath that. And beneath those, we
5 have a table with information described as date, author, and subject.
6 And then below the table, we have some text about a subject. Could
7 you tell us whether this is a standard format for such notes within
8 the SPO to your knowledge?

9 A. To my knowledge, this is the standard format.

10 Q. And when we look at the text of this note on the first page, as
11 well as the subsequent pages, we see reference to events which took
12 place in paragraph 1 and following that on 8 September 2020.

13 MR. PACE: If we can then turn to the last two pages, 083990.

14 Q. At paragraph 14, we see reference to an event on 17 September
15 2020; and at paragraph 15, to an event on 21 October 2020. Do you
16 follow thus far, Mr. Witness?

17 A. Yes.

18 MR. PACE: Now, Court Officer, if we could please go back to the
19 first page, 083988.

20 Q. And, Mr. Witness, in the table by the word "Date," we see
21 21 October 2020. Could you explain what this date refers to, bearing
22 in mind the three other dates also mentioned in this note?

23 A. I believe that date would be the time of putting this in -- the
24 text into this format and also providing the DVD that was mentioned
25 as an attachment with -- which was a short film clip taken with my

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1 work cell phone at the time of the seizure from the CCTV of the
2 premises of KLA. And I believe that's when the document was handed
3 in to -- I can't remember who I handed this in to.

4 Q. And you talk about handing it in to. Just in general, for what
5 purposes would you be handing this document over to someone?

6 A. To be submitted into ZyLAB.

7 Q. And, very briefly, could you tell us what ZyLAB is?

8 A. A collection of all the relevant material collected by the SPO.

9 Q. Mr. Witness, do you recall earlier this week being provided with
10 an opportunity to provide any corrections or clarifications to this
11 Official Note?

12 A. Yes, I do.

13 MR. PACE: And, Madam Court Officer, if, side by side with the
14 note on our screen, you could kindly call up item 103915 to 103915.
15 This does not have an MFI.

16 Q. Mr. Witness, do you recognise the document on the left of your
17 screen?

18 A. Yes, I do.

19 Q. And if you'd look at the text below the ERN 083988, we see two
20 bullet points. Could you confirm that these are the clarifications
21 or corrections you had in relation to the notes on the right side of
22 your screen, the one dated 21 October?

23 A. Correct.

24 Q. And considering the clarifications on the left of your screen,
25 is the information you provided in the document dated 21 October

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1 accurate and truthful to the best of your knowledge and belief?

2 A. Yes.

3 Q. And does the information in the document dated 21 October,
4 including these clarifications on the left side of your screen,
5 accurately reflect what you would say if you were examined about the
6 events recorded therein?

7 A. Yes.

8 MR. PACE: Your Honour, at this stage I'd like to seek admission
9 of the document, the one which is P92 MFI, along with its Albanian
10 translation. And in addition to that, the note on the left side of
11 our screen, which is item 103915 to 103915, since that contains
12 relevant clarifications.

13 And in terms of classification of the note dated 21 October,
14 prior to this note being made publicly available, we would only seek
15 to make redactions to the name of the second operational security
16 officer referred to therein, not to the witness, in view of this
17 morning's ruling, and also to the name of the independent observer.

18 PRESIDING JUDGE SMITH: Any objection by the Defence?

19 MR. REES: No, Your Honour.

20 PRESIDING JUDGE SMITH: Mr. Cadman.

21 MR. CADMAN: No, Your Honour.

22 PRESIDING JUDGE SMITH: P92 MFI will be admitted as P92 plus the
23 Albanian translation. The document 103915-103915, being a correction
24 of an Official Note, needs to have a P number assigned to it.

25 THE COURT OFFICER: Your Honours, that will be P138.

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1 PRESIDING JUDGE SMITH: P138 is admitted in evidence. The
2 classification will be public except, as noted, the two names on the
3 note may be redacted prior to making it public.

4 Go ahead.

5 MR. PACE: And, Your Honour, just to be clear, would it be okay
6 for the Prosecution to provide that redaction, or is that something
7 the Registry will do itself? We're happy to provide it.

8 PRESIDING JUDGE SMITH: The Prosecution can provide the
9 redaction and then offer it for approval.

10 MR. PACE: Thank you, Your Honour.

11 Q. Mr. Witness, during this 8 September seizure that we referred to
12 earlier today, did you tell anyone present at the KLA War Veterans
13 Association premises that they could keep the documents you were
14 there to seize for up to 30 days?

15 A. No, I did not. No such discussion took place.

16 Q. Did you say that they could keep those documents for any period
17 of time?

18 A. No.

19 Q. And to your knowledge, did you say anything which could be
20 understood to imply that this retention could happen?

21 A. No.

22 Q. Do you recall whether the other SPO staff member who was present
23 spoke during the seizure at all?

24 A. The second SPO staff member did not speak at all during the
25 entire meeting.

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1 Q. And to your knowledge, did you collect all the documents made
2 available to you by the KLA War Veterans Association representatives
3 that day?

4 A. I collected all the documents that were provided to us.

5 Q. And, Mr. Witness, other than this seizure on 8 September, did
6 you attend the KLA War Veterans Association for seizures after that
7 date?

8 A. Yes, twice.

9 Q. Do you happen to remember the dates of those two seizures?

10 A. I cannot remember the dates from the top of my head.

11 MR. PACE: I don't think it's controversial if I propose those
12 dates. I don't know if counsel has any opposition to me stating
13 those dates.

14 PRESIDING JUDGE SMITH: [Microphone not activated].

15 MR. PACE:

16 Q. So, Mr. Witness, we'll refer to the second seizure as having
17 taken place on 17 September, and the third one on 22 September.

18 Now, referring to both these seizures, the second and third ones
19 you attended, did you yourself speak to any KLA War Veterans
20 Association representatives or members?

21 A. As I don't speak Albanian, it might only have been courtesy
22 greetings, et cetera, but I also spoke to Mr. Haradinaj, as he speaks
23 Swedish and he knew that I was Swedish. Those conversations were
24 basically on general life situation, greetings, et cetera.

25 Q. So in your greetings and your conversation with Mr. Haradinaj,

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1 did you say anything on the lines of an ability for the KLA War
2 Veterans Association to be able to keep the documents the SPO was
3 there to seize for any period of time?

4 A. No.

5 Q. And to your knowledge, did anyone else present that day on
6 behalf of the SPO make any such statement, if you know?

7 A. Not to my knowledge.

8 Q. I'd like to focus next on the seizure of 17 September, which is
9 the second time you attended the premises for a seizure. Could you
10 tell us what your role was during this particular seizure?

11 A. Partially, my role was to -- to guide the investigator that was
12 with me to do the seizure of where this office would be found, as I
13 had been there before and I know where it was. I was also there to
14 support in terms of security, and I also carried the bag for
15 seizing documents.

16 Q. And could you tell us what you remember about the events that
17 day from the moment you and your colleague entered the KLA War
18 Veterans Association premises? And just a reminder, we here are
19 talking about 17 September, so the second time you went there.

20 A. I have some difficulties differentiating between these two
21 events, what took place at what of those two -- the second two
22 events.

23 Q. In that case, Mr. Witness, let's start by addressing both events
24 together. So I'm now going to ask you, first, at least, a little
25 more generally, about both the second seizure of 17 September and the

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1 one on 22 September.

2 PRESIDING JUDGE SMITH: [Microphone not activated].

3 MR. REES: Your Honour, I will wait to hear the question, but it
4 does seem to me to be a difficult concept for the witness to address
5 both dates together.

6 PRESIDING JUDGE SMITH: Well, we'll give him a chance to ask the
7 question.

8 Go ahead.

9 MR. PACE:

10 Q. Mr. Witness, as I was saying, you mentioned that you are finding
11 it a bit difficult to distinguish, so I'm going to ask you and you
12 can answer with reference to both.

13 A. Mm-hmm.

14 Q. Or if you're able to specify which, feel free to do so. Do you
15 happen to remember whether on the 17th or on the 22nd any documents
16 were served on the KLA War Veterans Association representatives?

17 A. Documents served from SPO?

18 Q. Correct.

19 A. I believe documents were served both times, but as I was not
20 engaged myself in the talks, I cannot really differentiate.

21 Q. And are you able to recall whether any documents were actually
22 seized on one or both of those occasions, the 17th and the 22nd?

23 A. On both occasions, documents were seized. At one of the
24 occasions, we were taken up from the office of Mr. Gucati, up one
25 floor, I believe, to a larger conference room where the documents

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1 were laid out on several tables, and that took place at one of the
2 events.

3 Q. Do you recall how the documents were transported outside of the
4 KLA War Veterans Association premises on one or both occasions?

5 A. I know that on one of the occasions, I believe it was the first
6 of the two, the documents were handed over. The documents were
7 transported by myself and they were handed over to my line manager
8 somewhere in the -- somewhere in Prishtine for a quick review.

9 Q. [Microphone not activated].

10 THE INTERPRETER: Microphone, please.

11 MR. PACE:

12 Q. My apologies. Without mentioning a specific name, could you
13 give us the title of your line manager, his position?

14 A. Yes. This was the head of operational and witness security
15 unit.

16 Q. And to be clear, is it you yourself who took these documents you
17 seized from the KLA War Veterans Association to your line manager
18 that day?

19 A. Yes.

20 Q. And when you took those documents to your line manager, were
21 they in a loose format or were they contained in any envelope or
22 other item?

23 A. They were in evidence bags, not sealed.

24 Q. Do you have any memory as to what happened after you gave these
25 documents to your line manager? Did he give them back to you? Did

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1 he do something with them? Or if you don't know?

2 A. I believe at this time they were scanned and sent back to the
3 office and also compared to the previous seizure.

4 Q. You said that documents were scanned and sent back to the
5 office. Just so I'm sure that I'm understanding, the scanning of
6 documents, the documents scanned were those that were seized at the
7 KLA War Veterans Association on that occasion?

8 A. Correct. The documents seized were scanned and encryptedly send
9 back to the office in The Hague.

10 Q. And you also mentioned a comparing of documents, I believe.
11 Could you tell us -- you said "compared to the previous seizure."
12 Could you clarify what that means?

13 A. Yes. I believe staff members of the SPO were comparing the
14 documents seized to the documents seized previously, and this took
15 place in the office in Prishtine. I did not take part in this, so I
16 don't know the details.

17 MR. PACE: Your Honours, I just need one minute to confer with
18 my colleagues.

19 PRESIDING JUDGE SMITH: Go ahead.

20 [Specialist Prosecutors confer]

21 MR. PACE:

22 Q. Thank you, Mr. Witness. The Prosecution has no further
23 questions for you at the moment.

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 Sorry, I didn't have my mic on.

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Cross-examination by Mr. Rees

1 Cross-examination, Mr. Rees.

2 MR. REES: Would Your Honour just give me a moment.

3 Cross-examination by Mr. Rees:

4 Q. Mr. Moberg, you are an operational security officer; is that
5 right?

6 A. Correct.

7 Q. The live transcript picked up that you said you were a witness
8 security officer. Was that a mistranscription?

9 A. I believe so. My title is operational security officer.

10 Q. Yes. So you aren't involved in investigations; is that right?

11 A. Sorry?

12 Q. You are not involved in investigations?

13 A. Not other than providing support to events like this.

14 Q. No. The first of the relevant press conferences took place on
15 7 September 2020. Did you become aware of that press conference on
16 that date?

17 A. I arrived to Prishtine, I believe, that date, and was informed
18 sometime in the afternoon that the documents were with KLA.

19 Q. And who gave you that information?

20 A. This was again my line manager.

21 MR. REES: Can I go into private session briefly to ask for the
22 name, Your Honour?

23 PRESIDING JUDGE SMITH: We'll go into private session.

24 MR. REES: Thank you.

25 [Private session]

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1 [Private session text removed]

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9 [Open session]

10 THE COURT OFFICER: Your Honours, we're in public session.

11 PRESIDING JUDGE SMITH: Thank you.

12 Go ahead, Mr. Rees.

13 MR. REES:

14 Q. And do you recall what time your line manager informed you about
15 the press conference?

16 A. I cannot recall the exact time, but this was sometime in the
17 afternoon as I was flying into Prishtine probably arriving 3 --
18 around 3.00 in the afternoon I arrived. So maybe 4.00 or so.

19 Q. And it was not until 24 minutes past midday the following day
20 that you attended at the KLA WVA office; yes?

21 A. That's correct.

22 Q. So if we say you were informed of the press conference at 4.00,
23 we've got some 20 or so hours until you attended at the KLA WVA
24 headquarters?

25 A. That is correct.

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1 Q. And in that period, presumably you were of the view that they --
2 the documents were with the KLA war veterans headquarters?

3 A. According to the information I had, yes.

4 Q. Yes. And did you infer from your line manager that he was aware
5 of the press conference sooner than he informed you at 4.00 on
6 7 September?

7 A. I'm sorry, can you repeat?

8 Q. From the information you received from your line manager, was it
9 apparent to you that he was already aware of the press conference at
10 some point prior to 4.00 in the afternoon when he informed you about
11 it?

12 A. Well, as he informed me, I believe he must have known himself.

13 Q. When you attended then the following afternoon, you were with
14 another operational security officer; yes?

15 A. Correct.

16 Q. And neither yourself nor the second operational security officer
17 spoke Albanian?

18 A. Correct.

19 Q. So you were assisted by an interpreter from EULEX; is that
20 right?

21 A. Correct.

22 Q. Before you attended at the KLA WVA, had you had any contact with
23 anyone at the office?

24 A. The office?

25 Q. The KLA WVA office.

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1 A. Yes -- well, not sure where the person is -- is employed. In
2 the evening of 7th, a phone call was made to a number which somebody
3 had found which should belong to the KLA War Veterans Association. A
4 phone call was made to see if we could get hold of Mr. Gucati. I
5 believe the person who answered was an IT worker or something.

6 Q. Mr. Gucati wasn't present when you arrived at the KLA WVA office
7 the following day, but you spoke to and dealt with the secretary of
8 the War Veterans Association who was present; yes?

9 A. Correct.

10 Q. And there were a number of others present as well, including a
11 Taibe Miftari, a lady. Do you recall that?

12 A. There were several people walking in and out of the office. I
13 can't remember specifically.

14 Q. Well, Ms. Miftari was, in fact, the first person you met there
15 at the top of the stairs. Do you recall that?

16 A. Not in detail, no.

17 Q. And you asked to see somebody who was in charge that day, and
18 she took you to Mr. Klinaku as the most senior person present in the
19 offices. Do you recall that?

20 A. Yes, I believe he was in the canteen.

21 Q. In the canteen. And he was with a Mr. Pren Marashi?

22 A. I can't remember who was with him, because he was with several
23 people at the table.

24 Q. And having moved to the office, you were joined by a
25 Mr. Qele Gashi [phoen] also? Do you remember that?

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1 A. I cannot remember the names.

2 Q. But there were others there, yes, and you took coffee with them?

3 A. Yes.

4 Q. Your communication with them, of course, was through the
5 interpreter; yes?

6 A. Correct.

7 Q. So whatever you said, the persons that you were addressing were
8 receiving the message through the interpretation of the EULEX
9 interpreter; yes?

10 A. Correct. I believe there might have been one person speaking a
11 little bit of English, but anything related to the seizure was done
12 through the interpreter.

13 Q. And it's right, isn't it, that the -- one of the issues that
14 Mr. Klinaku raised was that in relation to the documents that you
15 were discussing with them, they wanted the Kosovan police to have
16 involvement in any handover. Do you recall that?

17 A. I can't recall that.

18 Q. Do you recall in your declaration you did record at paragraph 7
19 that there was a conversation about the KLA WVA discussing handing
20 them over to the prosecution in Kosovo?

21 A. Yes, I remember.

22 Q. So they were raising that they wanted the Kosovan authorities,
23 the police or prosecution, to be present at any handover. Does that
24 help you remember?

25 A. I remember state -- that Mr. Klinaku stated they wanted to hand

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1 them over to Kosovo prosecution.

2 Q. So whereas the atmosphere was quite relaxed, there was a
3 discussion about whether the documents would be handed over to you
4 immediately or whether there would need to be a wait, a pause, to
5 allow the Kosovan authorities to be present. Do you recall that?

6 A. I can't recall that.

7 Q. Is your recollection of these events clearer for 8 September,
8 because you have a note which gives you some assistance, less clear
9 for the 17th and 22nd of September? Is that accurate?

10 A. Correct.

11 Q. But in relation to the 8th itself, is your recollection of the
12 events that day clear or is it really confined to what we see in the
13 declaration?

14 A. I believe it's fairly clear as I had a larger role in that
15 event.

16 Q. So when you say you don't recall discussion about a wait to see
17 if the Kosovan authorities could attend, are you saying that that
18 wasn't said or it may have been said but you don't remember that
19 being said?

20 A. I don't remember that being said.

21 Q. So it's the latter of those two alternatives?

22 A. Correct.

23 Q. Thank you. And I'm going to suggest that your response was that
24 to remind them that your authority -- the SPO's authority was
25 superior to that of the Kosovan authorities?

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1 A. I cannot recall that.

2 Q. That they would only be involved if the SPO authorised them to
3 be involved. I'm paraphrasing but that was the general message.

4 A. I can't recall that.

5 Q. Again, would you accept that that's something that may have been
6 said but you can't remember it?

7 A. It may have been said. As you stated earlier, this was a calm
8 event. However, there were also -- a lot of people wanted to speak
9 at the same time. And in the beginning especially, it was a bit
10 chaotic.

11 Q. Yeah. And in order to impress upon them that any role for the
12 Kosovan police or prosecuting authorities was subject to the SPO's
13 authority, you said that you could wait for a month in the office but
14 no Kosovan prosecutor would come or local police wouldn't come unless
15 the SPO approved that.

16 A. That was never said.

17 Q. Of course, what was said to the -- those members of the KLA WVA
18 who were present was said to them in Albanian via the interpreter,
19 was it not? So you can't help us with the accuracy or otherwise of
20 the interpretation from the EULEX interpreter, can you?

21 A. Correct. But I had no indication of that the interpretation
22 would not have been correct.

23 Q. Well, but you wouldn't know, would you? You don't speak
24 Albanian, so you wouldn't know, would you?

25 A. Like I said, wouldn't know, but I have no indication that it

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1 would not.

2 Q. No. You'd have to be on the other side, wouldn't you, listening
3 in Albanian to know whether there was an indication as to what was
4 said in Albanian, would you not?

5 MR. PACE: Objection, Your Honour. Argumentative and asked and
6 answered.

7 PRESIDING JUDGE SMITH: Sustained.

8 MR. REES: Your Honour, slightly early, but is that a convenient
9 moment to pause? Is that a convenient moment to break? I know it's
10 slightly early, but ...

11 PRESIDING JUDGE SMITH: If you have a break in what you've got,
12 we will break now for --

13 MR. REES: Thank you.

14 PRESIDING JUDGE SMITH: -- until 11.30. Thank you. We're
15 adjourned.

16 [The witness stands down]

17 --- Recess taken at 10.56 a.m.

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

19 PRESIDING JUDGE SMITH: You can bring the witness back in
20 please, Madam Usher.

21 [The witness takes the stand]

22 PRESIDING JUDGE SMITH: Please be seated, Mr. Moberg.

23 Mr. Rees will be continuing with your cross-examination.

24 Mr. Rees, you still have the floor.

25 MR. REES: Your Honour will be pleased to know that, on

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1 reflection, I think I can be shorter than I had anticipated
2 previously.

3 Q. Mr. Moberg, can you help us with this. Do you know that Mr. --

4 MR. PACE: [Microphone not activated].

5 PRESIDING JUDGE SMITH: Pardon me?

6 MR. PACE: I think we realised what was happening, and it's
7 okay.

8 MR. REES: I didn't either. I'm grateful for the interruption
9 from Mr. Pace. Mr. --

10 PRESIDING JUDGE SMITH: It's good if somebody knows what's going
11 on.

12 MR. REES:

13 Q. The investigator who you attended with on 17 September and
14 22 September. You know who I'm referring to; yes?

15 A. Yes, I do.

16 Q. That investigator called the WVA offices at 6.50 on
17 16 September, so the day of the second press conference, and
18 discussed with Mr. Klinaku collecting the documents that evening but
19 Mr. Klinaku said it was too late. And so it was agreed that the KLA
20 WVA would keep the documents overnight and you attended the following
21 morning. Are you aware of that?

22 A. I'm aware that I attended. As for the phone call, I was not
23 involved in that.

24 Q. Right. Well, are you are you aware of it? Have you become
25 aware of that?

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1 A. I can't recall it, but I might very well have been.

2 Q. Right. So two calls on the day of the first press conference,
3 the day of the second press conference. And effectively on both
4 occasions, it was decided to leave the documents in the possession of
5 the KLA War Veterans Association and attend the following day; is
6 that right?

7 A. As I said, I was not involved in the phone calls so I cannot say
8 anything about it.

9 Q. Well, you accept that that is the chronology, don't you?

10 MR. PACE: Your Honour, the witness doesn't need to accept that.
11 The Defence can make that argument later if that's necessary.

12 PRESIDING JUDGE SMITH: You may answer that question. You can
13 answer whether you accept that chronology, yes or no.

14 THE WITNESS: It sounds reasonable, yes.

15 MR. REES:

16 Q. Thank you. And I'm going to suggest to you that you did on the
17 8th also discuss and suggest waiting, leaving the documents in the
18 possession of the KLA WVA for up to a month while consideration was
19 given to the involvement or otherwise of the Kosovan police.

20 PRESIDING JUDGE SMITH: [Microphone not activated].

21 THE WITNESS: That is not correct.

22 MR. REES: That is a question.

23 Q. I am putting to you --

24 PRESIDING JUDGE SMITH: Please put it in the form of a question.

25 MR. REES: I put to Mr. Moberg that that was said.

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1 Q. Do you agree with that or not?

2 A. I do not agree.

3 Q. On 22 September --

4 MR. REES: Well, firstly, can we have a look at the document
5 SPOE00220914.

6 THE COURT OFFICER: That is P54 for the record.

7 MR. REES: Thank you.

8 PRESIDING JUDGE SMITH: [Microphone not activated].

9 MR. REES: Thank you.

10 Q. So this is P54. Do you recognise that document, Mr. Moberg, or
11 not?

12 A. I do not recognise it.

13 Q. So if I was to ask you who created it, when it was created, you
14 wouldn't be able to answer?

15 A. I would not be able to answer.

16 Q. Okay. You talked about documents being scanned back at the SPO
17 premises in Prishtine; yes?

18 A. Yes.

19 Q. When you refer to scanning them, you mean, don't you, scanning
20 documents, turning them to electronic files for the purposes of
21 sending them by e-mail to the offices here in The Hague; is that
22 right?

23 A. Correct. Encrypted.

24 Q. They were encrypted. But the -- so when you're talking about
25 scanning, just so we understand, not submission to the ZyLAB system

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1 but they were scanned, they were sent by e-mail, I think, in relation
2 to the documents from 22 September, I think, in 11 separate e-mails
3 to - I won't name him - but the assistant to the Deputy
4 Specialist Prosecutor. Are you aware of that or not?

5 A. As I said, I was not involved in that process --

6 Q. Okay. So --

7 A. -- so I cannot say anything.

8 Q. -- you can't assist us with as to who was involved, the format,
9 when documents were sent and so on?

10 A. Correct.

11 Q. Okay. Let me then, I think, just deal with one further topic.
12 And, again, if you can assist, please do; if you can't, please say
13 so. But what knowledge, if any, do you have of the investigation
14 that's being carried out by the SPO into the process by which
15 documents came to be delivered to the KLA WVA?

16 A. I had no involvement.

17 Q. So does "no involvement" mean no knowledge?

18 A. Correct.

19 Q. Thank you, Mr. Moberg.

20 MR. REES: No further questions -- well, with one reservation,
21 that if there is further disclosure that has an impact then we may,
22 in those circumstances, ask for this officer to be re-called as with
23 the others.

24 PRESIDING JUDGE SMITH: Understood the reservation. We've been,
25 I think, fairly explicit that you will be allowed to re-draw

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1 witnesses upon a proper application, if necessary.

2 Mr. Cadman, you have the floor if you'd like to cross-examine.

3 MR. CADMAN: Thank you, Your Honour. As yesterday, I will be
4 adopting the position taken by my learned friend, and I just have a
5 couple of additional questions to ask.

6 PRESIDING JUDGE SMITH: Go ahead.

7 Cross-examination by Mr. Cadman:

8 Q. Mr. Moberg, you have stated that you were not involved with the
9 telephone calls that Mr. Rees just took you through. The reason for
10 that is, as I understand it, and as you have confirmed, you don't
11 speak Albanian.

12 A. That is correct.

13 Q. Can you also confirm that the officer, the investigator that
14 Mr. Rees has referred to that attended with you on the second two
15 dates -- and I appreciate your memory is hazy as to those dates, but
16 that officer, investigator does speak Albanian?

17 A. That is correct.

18 Q. And that during that time, as you've said, you were not able to
19 follow conversation on the basis that the conversations were taking
20 place in Albanian, and your only interaction with Mr. Haradinaj was
21 actually in Swedish.

22 A. Correct.

23 Q. You mentioned that there was a brief conversation, although
24 it -- as I think you said, it was just introductory conversation with
25 somebody who spoke English. Do you recall who that person was?

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1 A. I can't recall the name.

2 Q. If I can just take you to your declaration of 21 October 2020.

3 MR. CADMAN: I apologise for the P number, but 083988.

4 Q. And that we've already heard this morning.

5 PRESIDING JUDGE SMITH: That's P92, Mr. Cadman.

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

7 If we can just turn to the last page at paragraph 13.

8 Q. At paragraph 13, there's a reference that you had requested a
9 cover page that Mr. Klinaku was unaware of, actually said that there
10 was no cover page in existence. Is that correct? Is that your
11 recollection?

12 A. Correct.

13 Q. And certainly no page was ever identified or discovered?

14 A. Not to my knowledge.

15 Q. And actually, the discussion was that any reference to any
16 further material was made when the mysterious man dropped that
17 material off. That was certainly Mr. Klinaku's position.

18 A. I'm sorry, can you ask the question?

19 PRESIDING JUDGE SMITH: Is that a question, Mr. Cadman?

20 MR. CADMAN:

21 Q. The response from Mr. Klinaku was that any reference to
22 additional material was made by the person who -- the mysterious man
23 who had dropped off the material, and there was certainly no note
24 that he was aware of. Is that your recollection?

25 A. Yes, that's my recollection of what Mr. Klinaku told me.

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1 MR. CADMAN: Subject to what Mr. Rees has already said, we
2 reserve the right, if the need arises, but I don't have any further
3 questions at this time, Your Honour.

4 PRESIDING JUDGE SMITH: Thank you. Any redirect?

5 MR. PACE: Your Honour, no redirect. I just wanted to ask the
6 Court whether the witness needs to be present for me to read the
7 summary of P92, which has now been admitted, if the Court wants that
8 to happen.

9 PRESIDING JUDGE SMITH: You want to make a summary of P92?

10 MR. PACE: Only because it was admitted pursuant to Rule 154,
11 Your Honour.

12 PRESIDING JUDGE SMITH: Okay. All right. No, we are going to
13 have some questions of him. So we will wait until after our
14 questions, then the witness will be excused, and then you can do your
15 summary.

16 So, Judge Gaynor, I think you had a question or two.

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

18 Questioned by the Trial Panel:

19 JUDGE GAYNOR: Mr. Moberg, just a couple of questions about your
20 duties within the SPO.

21 First of all, when did you start working for the SPO?

22 A. I've been with the SPO since the beginning of the organisation.
23 I was previously to that also employed with SITF for some months.

24 JUDGE GAYNOR: Could you put a month or a year on it?

25 A. I joined SITF in 2015. And then in 2016 was transferred over to

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1 SPO.

2 JUDGE GAYNOR: All right. In your evidence, you've told us
3 you're an operational security officer. Now today at page 30,
4 line 22 of the transcript - I'm saying that for the benefit of the
5 other participants, Mr. Moberg - you were asked:

6 "You are not involved in investigations?"

7 And your answer was:

8 "Not other than providing support to events like this."

9 Do you recall that evidence?

10 A. Yes.

11 JUDGE GAYNOR: All right. Could you help us understand your
12 role as an operational security officer, in general terms, in a few
13 sentences.

14 A. In general terms, as a operational security officer, a lot of
15 the work is performed in the field providing security for staff
16 members, also working closely with other departments in terms of
17 witness security, security of interlocutors. Most of the work is
18 being done in the field.

19 JUDGE GAYNOR: Okay. And during your period of service with the
20 SITF and SPO, what kinds of staff do you interact with as part of
21 your professional duties within the SPO?

22 A. That would normally be investigators, prosecutors, witness
23 security.

24 JUDGE GAYNOR: Now, over the course of your duties with the SITF
25 and SPO, have you ever had any reason to believe that any current or

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1 former member of the SPO was involved in any way in the delivery of
2 any unauthorised information to the KLA War Veterans Association?

3 A. No, Your Honour.

4 JUDGE GAYNOR: Have you ever had any reason to believe that any
5 person acting under the instructions or control of the SPO was
6 involved in any way in the delivery of unauthorised information to
7 the KLA War Veterans Association?

8 A. No.

9 JUDGE GAYNOR: I've no further questions. Thank you,
10 Mr. Moberg.

11 Thank you, Mr. President.

12 PRESIDING JUDGE SMITH: [Microphone not activated].

13 JUDGE METTRAUX: Thank you, Judge Smith.

14 Good morning, Mr. Moberg. I just have a simple question that
15 pertains to 8 September. Did you yourself transport the material
16 that was seized from the KLA War Veterans Association to your offices
17 in Prishtine? Were you physically present during the transport?

18 A. Yes.

19 JUDGE METTRAUX: And did you remain present with the material up
20 to the point when it was scanned and digitalised?

21 A. Yes, I believe that's how the material was handed over to
22 someone I can't recall.

23 JUDGE METTRAUX: Thank you.

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 JUDGE BARTHE: Thank you, Mr. President.

Witness: Daniel Moberg (Open Session)
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1 Good morning, Mr. Moberg. I also have a couple of questions for
2 you. My first question is you said earlier this morning that
3 Mr. Haradinaj already knew that you were Swedish; is that correct?

4 A. That was -- as we met twice, on the second and third occasion.
5 So that's when he learned that I was Swedish. So on the first of
6 those occasions.

7 JUDGE BARTHE: All right. And my second question is you also
8 stated in one of your notes or, better, declaration, the declaration
9 dated 3 November 2021, that you were told by the interpreter that the
10 call Mr. Klinaku made before he handed over the documents to you was
11 to Mr. Gucati. Could you please specify this? In particular, could
12 you -- or maybe can you recall what the interpreter told you about
13 how he figured that he was -- or Mr. Klinaku was talking to
14 Mr. Gucati?

15 A. Yes. We were sitting in Mr. Gucati's office. Mr. Klinaku was
16 sitting at the desk and made the phone call in front of us.

17 JUDGE BARTHE: So you heard?

18 A. I heard a phone call, but, of course, I cannot understand what
19 was being said. But I believe afterwards, when we've left the
20 office, the interpreter informed me of this.

21 JUDGE BARTHE: So did you hear Mr. Klinaku mentioning the name
22 Gucati?

23 A. No.

24 JUDGE BARTHE: Or was it just told us --

25 A. I can't recall.

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1 JUDGE BARTHE: But you were told by the interpreter that he
2 was -- Mr. Klinaku was talking to Mr. Gucati.

3 A. That is correct.

4 JUDGE BARTHE: And can you recall what he said to you?

5 A. The interpreter?

6 JUDGE BARTHE: The interpreter, yes.

7 A. Nothing more than that the phone call was made to Mr. Gucati and
8 it sounded like he was informed that the documents should be handed
9 over to us.

10 JUDGE BARTHE: Okay. And my last question is in your note dated
11 21 October 2020 - this is P92 - you wrote in paragraph 7 that FK, I
12 assume that this is -- you're referring to Mr. Klinaku, right, with
13 FK?

14 A. Correct, Your Honour.

15 JUDGE BARTHE: Also informed DM -- this is yourself; is that
16 correct?

17 A. Correct.

18 JUDGE BARTHE: That:

19 "... three copies of these documents had been provided to the
20 media, specifically to Kosova Press, Gazeta inFokus and T7."

21 My question is: Did Mr. Klinaku tell you why these copies had
22 been given to the media? Did he mention any reasons for this?

23 A. I cannot recall him mentioning any reasons.

24 JUDGE BARTHE: All right. Thank you very much, Mr. Moberg. No
25 further questions.

1 PRESIDING JUDGE SMITH: All right. Unless there's some
2 extraordinary reason, we will be finished with Mr. Moberg. Nothing
3 from anyone?

4 Mr. Moberg, thank you for being with us. You are excused. Your
5 time here has completed. Thank you for being with us.

6 THE WITNESS: Thank you, Your Honour.

7 [The witness withdrew]

8 PRESIDING JUDGE SMITH: All right, Mr. Pace, for your
9 submission.

10 MR. PACE: Yes, Your Honour.

11 So the first thing I will do, as I mentioned, I will read the
12 summary of P92. I also have three other brief matters to raise.

13 The summary that I'm going to read in relation to Exhibit P92,
14 admitted earlier today, is contained in filing F00411, Annex 1.

15 In P92, W04876 states that together with other SPO staff
16 members, an interpreter, and an independent observer, on 8 September
17 2020 he attended the KLA WVA premises in Prishtine. There, he read
18 excerpts from the Single Judge's 7 September 2020 decision
19 authorising a seizure and Rule 42 of the Rules of Procedure and
20 Evidence to KLA WVA representatives.

21 W04876 states that he handed over a copy of the decision to
22 Faton Klinaku who handed over documents to W04876 and that both
23 signed the handover document.

24 W04876 states that Klinaku noted that the documents he handed
25 over were those which unknown persons had provided to the KLA WVA the

1 previous day and that copies thereof had been provided to three media
2 outlets.

3 W04876 states that he recorded CCTV footage played on a screen
4 at the KLA WVA office.

5 W04876 states that he subsequently placed the documents seized
6 from the KLA WVA office in evidence bags along with the handover form
7 and sealed the evidence bags.

8 W04876 states that at a later date he handed over the sealed
9 evidence bags to a colleague for the transportation to the SPO office
10 in The Hague.

11 And that concludes my reading of the summary, Your Honour. If I
12 can move on to the other brief matters.

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

14 MR. PACE: Thank you, Your Honour.

15 First of all, I can't recall whether I noted that Mr. Halling is
16 not present during this current session.

17 PRESIDING JUDGE SMITH: Say that again, please?

18 MR. PACE: Mr. Halling is not present during this session. I
19 can't remember whether I noted that --

20 PRESIDING JUDGE SMITH: [Microphone not activated].

21 MR. PACE: -- or not earlier today.

22 And the next thing that I would like to address, Your Honour, as
23 foreshadowed in relation to the order for disclosure today, and
24 that's the one contained in F413, I would now like to make a request
25 for suspension of the order contained in paragraph 95(b) of the

1 Decision F413.

2 And this is due to the fact that the SPO intends to file today a
3 request for leave to appeal pursuant to Rule 77 in relation to that
4 specific order. The implementation of this order, which is due
5 today, would entirely defeat the purpose of the relief which will be
6 sought in our leave to appeal and thus lead to irreversible
7 consequences. And for those reasons, Your Honour, we request that
8 you suspend that order. Again, I'm only referring to
9 paragraph 95(b).

10 And to clarify, Your Honours, the SPO currently still intends to
11 undertake the order in paragraph 95(c) and will then address that as
12 necessary at a later stage.

13 That's all I have for Your Honours, unless you have any
14 questions. Actually, I can also add that if the leave to appeal is
15 filed after 4.00, we would be very happy to provide a courtesy copy
16 to the Panel and the Defence so that it doesn't arrive on Monday, in
17 case that assists in any way with speeding up the process.

18 PRESIDING JUDGE SMITH: Thank you.

19 MR. PACE: The next matter I'd like to address, Your Honour, is
20 we inquired with Witnesses 4841 and 4842 and they could be available.
21 Of course, if we get a few days' notice that will be best in terms of
22 mission planning and other issues.

23 And I believe the last thing I wanted to address today is in
24 relation to this morning's order on admission relevant to
25 Witness 4841. Specifically in relation to item P104 MFI, which we

1 have referred to as Batch 2.

2 The SPO does intend to take the Panel up on its offer and
3 provide a redacted version of those pages by close of business today.
4 And the SPO would also like to, in the spirit of that order, apply
5 similar redactions to the corresponding pages from that batch in the
6 other batches, because once we are providing a redacted version of
7 those pages, in our opinion, it makes sense, as we have asserted that
8 these pages also appear elsewhere, to provide those given that it
9 would be the same content. But, of course, we are guided by
10 Your Honour, because, of course, I note that this goes slightly
11 beyond the scope of what you instructed this morning. So we will
12 appreciate your guidance on that issue.

13 PRESIDING JUDGE SMITH: Anything else, Mr. Pace?

14 MR. PACE: No, thank you, Your Honour.

15 PRESIDING JUDGE SMITH: Thank you.

16 Mr. Rees.

17 MR. REES: In relation to the request for suspension of the
18 disclosure order, as I understand the rules, any appeal against that
19 order will be an appeal requiring certification under Rule 77.
20 Rule 171 provides that there shall be no suspensive effect "unless
21 otherwise ordered in the certification decision."

22 So to the extent that this is an application for suspension,
23 suspensive effect prior to the filing of an appeal of a request for
24 certification, and, indeed, the provision for allowing any response
25 to that request, and, indeed, the decision itself, it is an

1 application that has no basis in the rules.

2 Rule 171 is perfectly clear. Subject only to Rule 58(4), which
3 deals with interlocutory appeals against detention, so we can set
4 that aside:

5 "... interlocutory appeals shall not have suspensive effect
6 unless otherwise ordered in the certification decision or by the
7 Court of Appeals Panel ..."

8 This request is not based in the rules and is premature.

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

10 Mr. Pace, so as I understand, you've asked for a suspension but
11 you have not filed a motion for an interlocutory appeal.

12 MR. PACE: Correct, Your Honour. And to be completely clear, I
13 am requesting an suspension now more as a courtesy and in the
14 interest of the efficiency of the proceedings. That request could
15 also be contained in the filing which we will file today. But
16 mindful of the fact that the deadline which is at play at the moment
17 is today, I thought it best for the office to provide notice of our
18 intentions so that it doesn't appear as though we are not mindful of
19 your order.

20 PRESIDING JUDGE SMITH: I understand that.

21 MR. PACE: And -- thank you, Your Honour.

22 And just on one other point. We do note that Rule 77 actually
23 allows for up to seven days for a party to file a request for leave
24 to appeal. We, of course, understand that this -- an appeal on this
25 issue would require certification. So, again, mindful of the order

1 for disclosure today and the fact that this is a matter which
2 everyone would be happy for it to be resolved sooner rather than
3 later, we do intend to file that request today, which is entirely
4 within our rights. And that's our position.

5 Thank you, Your Honour.

6 PRESIDING JUDGE SMITH: I think it's safe to say we'll deal with
7 it when we see the documents filed. And I also take it you are not
8 resting your case today because of these issues.

9 MR. PACE: Your Honour, at the moment we don't intend to call
10 further witnesses. The one issue that was quite central to the SPO's
11 case was the one which resolved the admission of items in relation to
12 4841.

13 Of course, I cannot say that we rest our case today, in
14 particular, because of the disclosure of P104, which we will then
15 renew our request. And we may also be requesting, in addition to
16 admission of that item, admission of the corresponding unredacted
17 pages from other batches.

18 So at the moment that is all we envision. Of course, the SPO
19 will address any further issue which may arise as a result of any
20 decision as to disclosure of other items, including 102(3).

21 PRESIDING JUDGE SMITH: And will all of this material be
22 available to us by Monday?

23 MR. PACE: So, Your Honour, if -- just to clarify, the P104,
24 which is the Batch 2, will be provided today. The other material
25 which is at issue is, of course, that which is subject to disclosure

1 pursuant to the 102(3) decision.

2 PRESIDING JUDGE SMITH: And that's not what I'm talking about.
3 I'm talking about the appeal, the request for certification, the
4 suspension, all of that will be filed and available to us by Monday?

5 MR. PACE: All of that will be available today, Your Honour.

6 PRESIDING JUDGE SMITH: All right.

7 Mr. Rees.

8 MR. REES: Can I say that I would endorse the position expressed
9 by Mr. Pace that the SPO's case should not formally be closed until
10 all disclosure matters have been resolved.

11 Secondly, the point that I wish to make about Rule 171 and the
12 suspensive-effect matter is not just that the application is
13 premature, in that the application should be made together with the
14 request for certification, but Rule 171 does not provide for a
15 suspensive effect pending a decision on an application for
16 certification for appeal.

17 Rule 171 expressly says that in the period of both seeking
18 leave, the appeal shall not have suspensive effect unless it's
19 ordered in the decision on certification. It's not pending
20 certification. That was the point that I wish to raise.

21 PRESIDING JUDGE SMITH: It does seem, Mr. Pace, that you kind of
22 waited to the last minute to do this, which puts you in a bad spot.

23 MR. PACE: Your Honour, in terms of being at the last minute, I
24 note that the decision which we're seeking leave to appeal is dated
25 3 November and was filed at 5.18. So it's not that much later.

1 PRESIDING JUDGE SMITH: No, I know, but you still have a short
2 period of time in which to act.

3 MR. PACE: I'm not sure I understand the reference, Your Honour.

4 PRESIDING JUDGE SMITH: Go ahead. Go ahead. You stood to say
5 something.

6 MR. PACE: Yes, Your Honour. Just that the reading of the
7 Defence in relation to Rule 171 is illogical.

8 Of course, if you are requesting suspensive effect, that would
9 be entirely useless if the matter at issue, in this case the
10 disclosure of the information at issue, would have happened already.
11 That cannot be and is not the correct reading of Rule 171, so it is
12 entirely within our rights to make that request and for the Panel to
13 rule on that.

14 And, again, I reiterate that the deadline set by the Panel was
15 for today. The usual deadline for seeking leave to appeal is seven
16 days, but we are really acting in the interest of efficiency of
17 proceedings and seeking to expedite the manner as best we can.

18 [Trial Panel confers]

19 PRESIDING JUDGE SMITH: It will be the oral order that the
20 disclosure deadline is extended for you until Monday so that you have
21 an opportunity to deal with this.

22 Your point's well taken, Mr. Rees. I understand it. And that
23 will give us an opportunity to deal with this entire matter in one --
24 at one time.

25 I do have a couple of other matters.

1 I take it you're finished then, Mr. Pace?

2 MR. PACE: Just to clarify, Your Honour, because you mentioned
3 that the disclosure deadline is extended until Monday.

4 PRESIDING JUDGE SMITH: Yes.

5 MR. PACE: Of course, we would have no issue with that if our
6 leave to appeal request to be filed still is determined by Monday.
7 That's the understanding --

8 PRESIDING JUDGE SMITH: It probably won't be. It'll probably be
9 -- it may be determined first thing Monday, but we have to spend some
10 time looking at all this.

11 MR. PACE: Of course, Your Honour. In which case, of course,
12 the request for suspensive effect makes sense, in our submission,
13 until the determination thereof. So I don't know that we can say
14 Monday because that depends on a decision being rendered.

15 PRESIDING JUDGE SMITH: Yes. But we'll deal with Monday on
16 Monday, then.

17 MR. PACE: Thank you, Your Honour.

18 PRESIDING JUDGE SMITH: Mr. Cadman, I had a couple of things for
19 you.

20 You asked for an extension to file your new expert report until
21 Monday. I notice that the deadline that the Panel set in an oral
22 order on October 26 seems to give you until 9 November, which is
23 Tuesday. Is that going to be sufficient?

24 MR. CADMAN: Absolutely. I've spoken to the expert in the break
25 and he said that subject to transcripts, which I think we're still

1 battling with -- I had anticipated the deadline was today, which is
2 why I raised it today. So that's my mistake.

3 PRESIDING JUDGE SMITH: Understood. We just wanted to recheck
4 that. Okay. The deadline stays for November 9. The SPO can file
5 its notice pursuant to 149(2) within seven days of notification of
6 the report.

7 If you wish to respond to the SPO notice, Mr. Cadman, you will
8 have five days from the receipt of the SPO notice.

9 And that ends this oral order.

10 While you're still on your feet, Mr. Cadman, almost, can you now
11 confirm whether your client wishes to make a statement on Monday?

12 MR. CADMAN: I can. I can confirm that, Your Honour.

13 PRESIDING JUDGE SMITH: All right. Or do you -- whether it's
14 closed or not, do you both want to make your statements on Monday?
15 It's perfectly all right. We're not arguing about it.

16 MR. REES: Certainly on my part that makes some sense.

17 PRESIDING JUDGE SMITH: Okay. You too, Mr. Cadman?

18 MR. CADMAN: [Microphone not activated].

19 PRESIDING JUDGE SMITH: All right. We'll provide some time for
20 that, then.

21 Mr. Rees, further to your request to defer any cross-examination
22 of Witnesses 4841 and 4842, the Panel rules as follows.

23 The SPO is required to come back with a report on the
24 outstanding Rule 102(3) matter by November 12th, and that may end up
25 being changed because of these matters that we've just discussed.

1 As we heard this morning, we might also have a request for
2 certification, which we now know we will have. So this may lead to
3 further steps.

4 Once all of the matters are ruled upon, you will have five to
5 eight days to decide whether you want to request --

6 THE INTERPRETER: Can you slow down please, Your Honour.

7 PRESIDING JUDGE SMITH: Whether you want to request further
8 cross-examination, and then the Panel will hear your request at that
9 time.

10 That's all.

11 Anything further? Looks like we'll see you all here at 9.30 on
12 Monday, and we'll hopefully be in a position to deal with everything
13 that has now been announced. So we are adjourned until 9.30 on
14 Monday. Thank you.

15 --- Whereupon the hearing adjourned at 12.07 p.m.

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