

1 Wednesday, 27 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: I note the Prosecution has the same
11 personnel as yesterday; is that correct?

12 MR. HALLING: With one addition, intern Molly Norburg,
13 Your Honour.

14 PRESIDING JUDGE SMITH: Oh, okay. Sorry about that. I didn't
15 notice her.

16 Mr. Rees, any change?

17 MR. REES: No changes, Your Honour.

18 PRESIDING JUDGE SMITH: Thank you.

19 Mr. Cadman?

20 MR. CADMAN: Just Mr. Buckley joining us again this morning.

21 PRESIDING JUDGE SMITH: And I do note that Mr. Gucati and
22 Mr. Haradinaj are present in the courtroom.

23 Before we bring back the witness, the Panel will address a few
24 matters.

25 First, an oral order on the application of Mr. Rees made

1 yesterday regarding new information provided by Witness 4842, who is
2 due to testify this or next week.

3 The Panel notes that the SPO sent an e-mail to the Defence and
4 the Panel on 14 October 2021 after having held a witness preparation
5 session with Witness 4842. In this e-mail, the SPO informed the
6 Panel and the Defence that, *inter alia*, the witness provided some new
7 information in relation to certain measures taken and the witness's
8 duties.

9 The Gucati Defence maintains that if the SPO wants to adduce
10 testimony in relation to the new information provided by the witness,
11 then the SPO must provide a witness statement or declaration to be
12 signed setting out the scope of that witness's testimony and to apply
13 for leave to adduce that material. The Gucati Defence relies on
14 Rules 102, 143, 153, and 155 to advance this argument.

15 The SPO responds, among others, that Rule 95 only requires
16 notice to the opposing party and that there is no requirement that
17 only witnesses who provided previous statements can be called to
18 testify.

19 The Panel rules as follows.

20 A combined reading of paragraphs 4(a) and 4(c) of Article 21
21 require that the accused be given fair notice of evidence to be
22 presented. Rules 95, 102, and 143 of the Rules reflect the same
23 requirement.

24 To be clear, while Rule 102 does not require that the statement
25 of all witnesses whom the SPO intends to call to testify must be

1 disclosed, this does not mean that the witnesses who do not have
2 statements cannot testify. It also does not mean that any
3 information that the witness will testify about must be included in a
4 previous statement.

5 That being said, any new information that may arise before
6 testimony, for example, after a preparation session, must still meet
7 the fair notice requirement. If a party produces new information
8 that goes into entirely new areas of evidence, this may raise an
9 issue of fair notice.

10 In the present case, the SPO acted in accordance with
11 paragraphs 52 and 53 of the Order on the Conduct of Proceedings and
12 informed the Defence and the Panel well in advance of the witness's
13 testimony of the new information obtained from the witness.

14 The Order on the Conduct of Proceedings does not require a new
15 witness statement in such a case. It simply requires that the log of
16 the preparation session and notice as regards any information falling
17 under the calling party's disclosure obligations, including new
18 information, is provided to the opposing party and the Panel.

19 The Panel notes here that the Gucati Defence did not object to
20 such a procedure when submissions were invited on the draft Order on
21 the Conduct of Proceedings.

22 As regards the substance of the new information, the Panel is
23 satisfied that the additional information is limited in scope and
24 nature, the information falls within the scope of the witness's
25 anticipated testimony, and does not go beyond what the Defence has

1 notice of.

2 Preparation for the possibility of additional lines of
3 questioning is, therefore, limited, and the recent indication of
4 these issues will not cause prejudice to the Defence.

5 In any event, should the witness be asked by the SPO to testify
6 to matters that go beyond the scope of his statement and the
7 14 October notice, the Defence can seek relief at that point; for
8 example, more time to prepare or that the witness be re-called for
9 further cross-examination in relation to that issue.

10 For these reasons, the Panel rejects the application of the
11 Gucati Defence and concludes this oral order.

12 The Panel also wishes to give the parties notice of the plans
13 for the remainder of this week and next week.

14 We hope to finish the testimony of Mr. Berisha today or tomorrow
15 morning. We will then hear submissions on the exhibits deferred
16 during the testimony of Ms. Pumper. The Panel will address these
17 exhibits per categories. An e-mail will be sent today by our legal
18 officer setting out these categories. But for the sake of the
19 record, they are as follows:

20 Category 1 are declarations and Official Note of Ms. Pumper.
21 Here, the SPO is reminded to read out a concise summary of the
22 witness's declarations in conformity with the Order on the Conduct of
23 Proceedings and our oral order of 21 October;

24 Category 2, excerpts of Batch 1;

25 Category 3, Official Notes on the receipt of material from the

1 media;

2 Category 4, Batch 2;

3 Category 5, excerpts of Batch 3;

4 Category 6, correspondence from an international organisation;

5 Category 7, items the SPO considers judicially noticeable;

6 Category 8, associated exhibits; and

7 Category 9, item tendered by the defendants.

8 In accordance with our oral order of 21 October, the Prosecution
9 is reminded to indicate for each tendered exhibit its proposed
10 classification. The Defence will be asked to give an indication of
11 its position on the proposed classification.

12 If an exhibit is proposed to be confidential, the SPO should
13 also indicate if a public redacted version can be made available and,
14 if so, by when. The same applies for the one exhibit tendered by the
15 Defence.

16 The parties are also cautioned to present their arguments in a
17 manner that does not defeat the confidential classification of the
18 tendered exhibits. The SPO and each Defence counsel will be allotted
19 15 minutes to make submissions on all categories. The time spent by
20 the SPO reading the summaries of Ms. Pumper's declarations will not
21 be counted for the 15 minutes.

22 The Panel will decide on admissibility and classification after
23 having heard all arguments of both parties.

24 Depending on the time left after the admissibility discussion,
25 the Panel intends to start with the next witness, 4842, this week

1 or, if necessary, next Thursday.

2 Let's now continue with the witness.

3 Madam Court Usher, please bring in Mr. Berisha.

4 MR. HALLING: Your Honours, before commencing with the witness,
5 there was one issue related to the preparation log covered by
6 Your Honours' order that we wanted to address the Court on before
7 starting, if that's all right.

8 PRESIDING JUDGE SMITH: Yes.

9 MR. HALLING: Yes.

10 So at 7.28 p.m. and at 8.13 p.m. yesterday, the Defence team
11 sent a 12-point disclosure request relating to the three additional
12 items of information addressed in the preparation log covered by
13 Your Honours' order.

14 We just wanted to put on the record we have acknowledged receipt
15 of this and said that we would respond as soon as possible, but that
16 really shouldn't be necessary in this instance. There is no reason
17 why these three small items in the 14 October 2021 preparation log
18 should reasonably prompt an additional inquiry of this magnitude, and
19 there is no reason why this inquiry couldn't have been made a while
20 ago.

21 PRESIDING JUDGE SMITH: Excuse me. This deals with the next
22 witness, not with Mr. Berisha; correct?

23 MR. HALLING: Correct.

24 PRESIDING JUDGE SMITH: We'll deal with that and the motion
25 after this testimony is finished.

1 MR. HALLING: As you wish.

2 PRESIDING JUDGE SMITH: All right.

3 Mr. Koci.

4 MR. KOCI: [Microphone not activated].

5 PRESIDING JUDGE SMITH: You would like to raise an issue?

6 MR. KOCI: [Microphone not activated].

7 PRESIDING JUDGE SMITH: Just --

8 THE INTERPRETER: Microphone, please, for the speaker.

9 MR. KOCI: [Interpretation] Your Honours, I apologise for
10 interrupting.

11 PRESIDING JUDGE SMITH: Excuse me just a second. I'm getting a
12 message here. What's that? From the translator?

13 Go ahead.

14 MR. KOCI: [Interpretation] I was not allowed to bring my laptop
15 or iPad to the courtroom. May I bring it in to the courtroom?
16 Because I need it for my work.

17 PRESIDING JUDGE SMITH: We are sorry about that, Mr. Koci, but
18 it is a security issue. The other people here have gone through some
19 security management that allows them to have theirs, and you have not
20 had an opportunity to do that. So we can't allow your laptop in.
21 And I do apologise for that. And I hope you can manage to take other
22 notes and if you need some -- and if we get ahead of you and you're
23 making notes and you need some time, just raise your hand and we'll
24 give it to you.

25 MR. KOCI: Okay. Thanks a lot.

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1 PRESIDING JUDGE SMITH: Thank you.

2 Now, Madam Usher, you can bring in the witness.

3 [The witness takes the stand]

4 PRESIDING JUDGE SMITH: Good morning, Mr. Berisha. You can
5 please sit down.

6 Today, the SPO will continue and finish its direct examination.
7 Then the Defence will ask you some questions.

8 Mr. Halling, the floor is yours.

9 MR. HALLING: Thank you, Your Honours.

10 WITNESS: HALIL BERISHA [Resumed]

11 [Witness answered through interpreter]

12 Examination by Mr. Halling: [Continued]

13 Q. Good morning, Mr. Witness.

14 A. Good morning.

15 MR. HALLING: Your Honours, as I indicated at the end of
16 yesterday, there was one more set of media articles that I intend to
17 go through with the witness this morning. Before continuing, I did
18 want to address a small point of housekeeping in relation to the
19 media articles discussed at the end of yesterday.

20 We looked again into the record on the admitted status of P125
21 after the hearing. P125, indeed, has no MFI designation but it
22 actually isn't fully admitted. P125 is a compilation of Albanian
23 articles which are admitted across ERN 081361 to 081378. There is an
24 English translation, P125-ET, but it only covers part of this range;
25 namely, 081371 to 081373-ET.

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1 081361 to 081362-ET and 081364 to 081367-ET, also English
2 transcripts within this same range, are not currently admitted.

3 Mr. Berisha spoke about the Albanian versions of these
4 transcripts yesterday at the end of the session.

5 081369 to 081370-ET and 081374 to 081377-ET are not in the
6 presentation queue for this witness but they are also English
7 translations in this same range. Both were on our list of exhibits
8 and have also not yet been admitted.

9 It is our submission that, at least in principle, when admitting
10 Albanian language exhibits, their English translations should also be
11 admitted at the same time. So we would ask to tender the four ERNs I
12 just read into the record and to link those exhibit numbers to P125.

13 As for the numbering, this could be done with the decimal in the
14 English translation indication together, something like P125-ET.1 and
15 so on, as Your Honours did yesterday, but we would like to tender
16 those translations.

17 PRESIDING JUDGE SMITH: Defence have any objection to this
18 process?

19 MR. REES: No objection.

20 PRESIDING JUDGE SMITH: Anything, Mr. Cadman?

21 MR. CADMAN: No objection, Your Honour.

22 PRESIDING JUDGE SMITH: All right, then. Recite the ERN numbers
23 and beginning with .1 assign a number and we will then admit.

24 MR. HALLING: Thank you. And I will give the classification for
25 each as I go.

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1 PRESIDING JUDGE SMITH: Yes.

2 MR. HALLING: So what we would say should be 125-ET.1 would be
3 ERN 081361 to 081362-ET, and that can be public.

4 PRESIDING JUDGE SMITH: And that is admitted.

5 MR. HALLING: 081364 to 081367-ET would be 125-ET.2, and that
6 can be public.

7 PRESIDING JUDGE SMITH: And that is admitted.

8 MR. HALLING: 081369 to 081370 would be 125-ET.3, and that would
9 be confidential.

10 PRESIDING JUDGE SMITH: It is admitted and it's classification
11 is confidential.

12 MR. HALLING: And 081374 to 081377-ET would be 125-ET.4, and
13 that would be confidential.

14 PRESIDING JUDGE SMITH: ET-124?

15 MR. HALLING: It would be 125-ET.4, Your Honour.

16 PRESIDING JUDGE SMITH: Okay. That is admitted and it will
17 remain confidential.

18 MR. HALLING: Thank you, Your Honours.

19 Now, I would like the Court Officer to please open ERN 12766 to
20 12780, and please display it on the screen for the witness. For the
21 record, also, this is Exhibit 492 from the list, and the English
22 translation of these same articles is tab 493.

23 THE COURT OFFICER: Would you please repeat the ERN again?

24 MR. HALLING: Certainly. It's -- oh, I might have missed a
25 number. 102766 to 102780. And it's 492 on our list of exhibits.

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1 Q. Mr. Berisha -- just one moment. Mr. Berisha, can you see the
2 article on the screen?

3 A. Yes, I can see it.

4 Q. Are you able to read the text?

5 A. Yes.

6 Q. Is this an article you wrote on 7 September 2020?

7 A. I don't remember who exactly wrote it, because my name does not
8 stand there. But I was aware of it being published because I was in
9 the office that day.

10 Q. So this is an article from Gazeta inFokus; yes?

11 A. Yes.

12 Q. What is this article about?

13 A. It is about what was contained in one of the documents we got.

14 Q. Mr. Berisha, is the account of the woman in this article
15 something you saw in the batch of materials you took from the KLA War
16 Veterans Association?

17 A. Yes, it was amongst one of the documents in that batch.

18 Q. It says in the article that "inFokus will not publish any
19 details regarding these persons." Why was that decision made?

20 A. Because, as I already stated yesterday, we suspected the
21 authenticity of the documents and their confidentiality. And,
22 therefore, in order to avoid making a mistake, we decided not to
23 publish any information that could be sensitive.

24 Q. Thank you.

25 MR. HALLING: Madam Court Officer, can we please go to the next

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1 page.

2 Q. Mr. Berisha, is this an article you wrote on 9 September 2020?

3 A. Yes.

4 Q. This one describes the SPO saying it had no comments on the KLA
5 WVA files you mentioned yesterday?

6 A. Yes.

7 Q. Is the last paragraph of this article an accurate description of
8 the safeguards you took when publishing the KLA WVA materials you had
9 in your possession?

10 A. Yes. As it is stated there, with greatest care, inFokus
11 newspaper decided to report about the mentioned files that were in
12 our possession.

13 MR. HALLING: Can we please go to the next page.

14 Q. Mr. Berisha, is this an article you wrote on 9 September 2020?

15 A. This is an article published by inFokus newspaper, but I do not
16 remember who exactly wrote it, and the name of the author does not
17 appear on the article itself.

18 Q. Understood. Please briefly describe what this article is about.

19 A. In this article, it is explained the SPO investigators recovered
20 the files that were in possession of inFokus newspaper.

21 Q. On the Albanian article on the left side, there are two
22 pictures. Can you please describe what those two pictures are.

23 A. The first picture, if I'm not mistaken, was taken on
24 7 September, a photograph of the documents that we possessed. And
25 the second one is a proof which shows that SPO investigators

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1 recovered the documents from inFokus newspaper.

2 Q. And that's the delivery document I showed you yesterday;
3 correct?

4 A. Correct.

5 MR. HALLING: For the record, Your Honours, that was P100.
6 We can go to the next page.

7 Q. Mr. Berisha, is this an article you wrote on 8 September 2020?

8 A. This is an article that was written and published by inFokus
9 newspaper, but I'm not sure about the author, who authored it.

10 Q. This article is about the SPO seizing documents from the KLA War
11 Veterans Association; is that right?

12 A. Yes.

13 Q. There is a quote from Faton Klinaku in the middle of this
14 article. Did you hear Mr. Klinaku say that?

15 A. I don't remember.

16 Q. That's fine.

17 MR. HALLING: We can go to the next page.

18 Q. Mr. Berisha, is this an article you wrote on 17 September 2020?

19 A. It's an article by inFokus newspaper, but I do not remember who
20 authored it.

21 Q. What is this article about?

22 A. This article speaks of SPO investigators returning for the
23 second time to KLA WVA offices and recovering documents from there.

24 Q. To the extent that you know, how did you learn the information
25 reported in this article?

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1 A. The KLA WVA offices are situated in the centre of Prishtine, as
2 you know, and everything that happened there was made public.
3 Therefore, all the media outlets wrote about this event and this is
4 how we found out, because we ourselves were not on the ground.

5 Q. So do I understand you correctly that you learned about these
6 same events from the press statements of the KLA War Veterans
7 Association?

8 A. No. I said that KLA WVA offices are in the centre of Prishtine,
9 and there's a great circulation of people there. And everything that
10 took place there was public. And we, ourselves, were not on the
11 ground, and we learned about this event from other media that
12 reported on this issue.

13 Q. I understand. So the statements were made, it was reported by
14 other media, and you are knowledgeable about it from that?

15 A. Yes, to my recollection this is how it was. Because to my
16 knowledge, there were no inFokus journalists on the ground that day.

17 MR. HALLING: We can go to the next page.

18 Q. Mr. Berisha, is this an article that you wrote on 22 September
19 2020?

20 A. It is an article published by inFokus newspaper, but I do not
21 remember who authored it.

22 Q. What is this one about?

23 A. The article speaks about the third time that SPO investigators
24 went to KLA WVA offices and retrieving documents.

25 Q. To the extent that you know, please describe how you learned the

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1 information reported in this article.

2 A. Just like with regard to the previous article, these events were
3 the centre of attention at the time, and the media reported speedily
4 on those events. And probably this article was based on the
5 information received from other media, because I don't remember
6 inFokus newspaper having its own journalists on the ground that day
7 either.

8 MR. HALLING: We can go to the next page.

9 Q. I think you can sense the pattern by now. Is this an article
10 that you wrote on 17 September 2020?

11 A. Again, this is an article wrote by me.

12 Q. What is the picture in the article?

13 A. The picture was taken from security cameras of KLA WVA offices
14 when the unknown person brought the documents there.

15 Q. How did you get the picture?

16 A. From social media.

17 Q. Do you remember where on social media?

18 A. I'm not very certain, but I think it was published by KLA WVA
19 itself, by one of its officials.

20 MR. HALLING: We can go to the next page.

21 Q. Mr. Berisha, is this an article you wrote on 7 September 2020?

22 A. Yes.

23 Q. What is this one about?

24 A. It's an announcement for the first press conference held by KLA
25 WVA with regard to the documents.

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1 Q. This is the press conference you attended; correct?

2 A. Correct.

3 Q. Mr. Berisha, we spoke yesterday about Mr. Haradinaj telling you
4 that there would be a public notice about the press conference.

5 MR. HALLING: For the record, this is pages 105 to 106 of
6 yesterday's realtime transcript.

7 Q. Was this article written before or after that public notice?

8 A. As far as I remember, it was written before the public notice.

9 Q. How did the KLA War Veterans Association make that public
10 notice? How was it communicated?

11 A. I don't remember exactly whether it was through social media or
12 e-mail.

13 Q. Thank you.

14 MR. HALLING: We can go to the next page.

15 Q. Mr. Berisha, is this an article that you wrote on 16 September
16 2020?

17 A. I can confirm that it's an inFokus newspaper article, but I do
18 not remember who authored it.

19 Q. To the extent that you know, please describe how the information
20 provided in the article was learned.

21 A. It's not that I remember it correctly but given the way how the
22 situation developed those days, everything was made public in the
23 media very fast. So I think this was in coordination with or taken
24 from other media, this information.

25 MR. HALLING: We can go to the next page.

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1 Q. Mr. Berisha, is this an article that you wrote on 22 September
2 2020?

3 A. Could be, but I'm not very certain.

4 Q. Do you know what the picture is in this article?

5 A. It's from the security cameras of KLA WVA offices of the person
6 bringing the documents there.

7 Q. Who provided this picture, to the extent that you know?

8 A. As it can be seen on the article, there's a video from security
9 cameras and this picture is taken from that video. And as far as I
10 remember, it was published by KLA WVA officials in their own social
11 media page.

12 MR. HALLING: We can go to the next page.

13 Q. Mr. Berisha, is this an article that you wrote on 22 September
14 2020?

15 A. I don't remember exactly.

16 Q. What is this one about?

17 A. It speaks about the third time that a person brought documents
18 to them.

19 Q. To the extent that you knew, please describe how you learned
20 about this development.

21 A. As far as I remember, this was after we followed online the
22 third press conference in relation to these documents.

23 Q. Thank you.

24 MR. HALLING: We can go to the next page.

25 Q. Mr. Berisha, is this an article you wrote on 7 September 2020?

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1 A. Yes.

2 Q. I want to ask you about the beginning of this article in
3 particular. I'll read it:

4 "The Specialist Prosecutor's Office refuses to make any comments
5 regarding the leak of secret documents.

6 "Amongst other, there are names, addresses, and telephone
7 numbers of witnesses interviewed by the Special Investigative Task
8 Force and Serbian authorities."

9 Mr. Berisha, please describe how you came to know what is
10 reported here.

11 A. As I explained it already yesterday, upon getting these
12 documents, we wrote to SPO office to ask them about the authenticity
13 and confidentiality of these documents. The SPO office did not give
14 an accurate answer. They neither confirmed nor denied.

15 Since we had the documents, we at the inFokus newspaper, we
16 could see approximately what they contained.

17 Q. So if I understand you correctly, the information reported did
18 not come from the SPO but from your inspection of the documents
19 seized; is that right?

20 A. At the end of the article, there's the answer of the SPO
21 concretely from the spokesperson, Mr. Christopher Bennett. The
22 article says that Mr. Bennett thanked us for the e-mail and that he
23 did not make any comments on the document.

24 MR. HALLING: We can go to the next page.

25 Q. Mr. Berisha, is this an article that you wrote on 16 September

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1 2020?

2 A. I don't remember whether I wrote it.

3 Q. Are you familiar with the information reported in this article?

4 A. More or less, but I can't quite remember precisely.

5 Q. The title of the article is "Nasim Haradinaj 'attacks' the media
6 who did not publish Special Court secret information." Is that
7 right?

8 A. As you can see, "attack" is in inverted commas, which means that
9 is not exactly what it means.

10 Q. I follow. I wanted to ask about a couple of parts of this
11 article to see what you know about them. This is the first part.
12 I'll read it into the record:

13 "The second in charge of the KLA WVA said that when it comes to
14 the KLA veterans the media do not hesitate to publish, including
15 sensitive information, but not when it is about the Special Court.

16 "'In a way, they also exposed our press who were loud about the
17 alleged fake veterans, they even published their names and surnames
18 but you faced a tough challenge and you did not dare move, and it
19 appears that foreigners who damage us respect them more than our
20 people, and, at the end of the day, we may make mistakes but they are
21 unintentional mistakes,' said Haradinaj."

22 Mr. Berisha, did you hear this statement?

23 A. I was aware of this statement, but I am not sure and I can't
24 remember exactly whether I heard it myself.

25 Q. Do you know if the press in Kosovo published stories about

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1 allegations of fake war veterans in the past?

2 A. I don't know if I understood your question. Is it about fake
3 allegations by the WVA?

4 Q. Yes. Is there any publication about that that you're aware of?

5 A. At that time, I was not a journalist with inFokus. I was
6 working for another media outlet. I remember that at that time there
7 were several articles speaking about veterans who were fake veterans.
8 These names had been taken or received from a prosecutor in Kosovo,
9 as far as I remember.

10 Q. You said it was before you joined. Are you aware of whether
11 Gazeta inFokus published any such articles?

12 A. I am not aware of that, because at the time I was a field
13 reporter, and as a field reporter I did not have much time to read
14 online media.

15 Q. Mr. Berisha, there is a specific journalist discussed in this
16 article who Mr. Haradinaj is speaking to. Do you know who that
17 journalist is?

18 A. No, I don't remember. As I told you earlier, I am aware that
19 such a statement was made, but I don't know who he spoke to or for
20 whom he was speaking about.

21 Q. This part as well I wanted to read:

22 "Haradinaj further said that the media have these documents in
23 front of them but they do not dare publish them, writes inFokus."

24 Are you aware of Mr. Haradinaj saying that?

25 A. As I said earlier, I am more or less aware of the statement

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1 mentioned in this article, but I can't remember any specifics about
2 what was said and how he said them.

3 Q. Now, in this article, is there a description of how
4 Gazeta inFokus handled the documents in question?

5 A. Yes. In the last part of the article they -- it says here that
6 the -- that the inFokus -- Gazeta inFokus was very careful in dealing
7 with these articles, and they were very careful to ensure the
8 authenticity and confidentiality of the documents.

9 Q. Right. And it also discusses that inFokus did not publish
10 secret and sensitive information in the documents Mr. Haradinaj
11 identified; is that correct?

12 A. Yes. As I mentioned earlier, we had doubts about the
13 authenticity of these documents, first; and then, second, whether
14 they were confidential or not. And then we decided, in spite of our
15 doubts, we would publish only things that were not confidential, so
16 not publish things that were confidential and secret.

17 Q. And at the end of this article about Haradinaj's statements, it
18 says:

19 "These files were later recovered from inFokus by two
20 investigators from the Specialist Prosecutor's Office."

21 This is also an accurate description of what Gazeta inFokus did
22 with the materials; is that right?

23 A. Yes. As the previous document showed, SPO representatives
24 received the documents from us, recovered the documents from us, and
25 we reported that fact.

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Examination by Mr. Halling (Continued)

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1 MR. HALLING: We can go to the next page.

2 Q. Mr. Berisha, is this an article that you wrote on 7 September
3 2020?

4 A. Yes.

5 Q. Please describe what the pictures are.

6 A. These are pictures that were taken immediately after we took the
7 documents and we arrived at inFokus offices.

8 MR. HALLING: We can go to the next page. This is also the last
9 page.

10 Q. Mr. Berisha, is this an article you wrote on 7 September 2020?

11 A. I think so, yes.

12 MR. HALLING: There are some pictures in the Albanian version
13 that are currently being cut off by the page. If we could scroll
14 down. Thank you.

15 Q. Mr. Berisha, can you please describe what these pictures are?
16 If we need to zoom in, we can.

17 A. From what I can see here, these documents are the documents that
18 were part of the files that we got from there.

19 Q. I wanted to direct you to this part of the article:

20 "The files contain numerous names of witnesses, most of them
21 Serbs, but there are also Albanian, Roma, Ashkali names as well,
22 reports inFokus."

23 Now, Mr. Berisha, you mention that you initially inspected the
24 materials. Am I correct you said yesterday this took about 30 to
25 45 minutes? Is that correct?

Witness: Halil Berisha (Resumed) (Open Session)
Examination by Mr. Halling (Continued)

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1 A. Yes, that's correct. The editors and I looked at these
2 documents to see what was in there, while other journalists of the
3 inFokus newspaper were not allowed to get in the room.

4 Q. Is the information from the excerpt I just read to you, was that
5 also verified in the course of that initial inspection?

6 A. As we were looking at the documents, we saw that there was a lot
7 of correspondence between the special task force with prosecutors in
8 Serbia, and they had asked them to provide them with witnesses. And
9 there were names and addresses that the special task force had
10 received, but they had not been able to verify their addresses.

11 So this was the correspondence between the task force and the
12 Serbian prosecutors in order for them to assist with finding these
13 witnesses and their addresses.

14 Q. I wanted to read one last excerpt from this article. It says,
15 in relation to one of the pictures:

16 "Below is a list of witnesses requested to be interviewed, which
17 has been redacted for security reasons, most of the files obtained by
18 inFokus contain similar requests and witnesses' names."

19 Mr. Berisha, you already mentioned that the picture referenced
20 is part of the documents that you took from the KLA War Veterans
21 Association. When it's said here that most of the files contain
22 similar requests and witnesses' names, was this information also
23 learned in the course of your initial inspection of the documents?

24 A. Yes. As I mentioned earlier, part of these documents were
25 requests by the task force addressed to Serbian prosecutors to

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1 provide them with witnesses that were mentioned by name in their
2 request.

3 Q. Now, Mr. Berisha, all of the articles that we've been discussing
4 this morning, isn't it correct that you gave these articles to the
5 SPO?

6 A. I did not understand the question.

7 Q. During your SPO interview, you gave certain media articles to
8 the SPO. Are these those media articles that we've been discussing
9 this morning?

10 A. Part of these articles were in the possession of the SPO, and
11 they showed me the articles. And some other articles, I brought them
12 to the interview myself in order to be prepared for the questions
13 that might be asked of me.

14 Q. Mr. Berisha, across all of the articles that we've been
15 discussing, are they accurate to the best of your knowledge?

16 A. For the time I was working with inFokus, all the articles we
17 published were correct, true, and there was no deviation.

18 Q. Mr. Berisha, across all of the articles that we have looked at
19 today and yesterday, did you or Gazeta inFokus say at any point that
20 it was the SPO rather than the KLA War Veterans Association who
21 provided the documents in question to the media?

22 A. If I am understanding you correctly, are you asking about us
23 getting these files from the KLA WVA or the SPO?

24 Q. I'm curious whether in any of the articles that we just went
25 through there is any reporting that it was the SPO who provided these

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1 documents to the media. Is there any reporting like that --

2 MR. REES: Your Honour, we can see that from the articles
3 themselves. They've been exhibited.

4 PRESIDING JUDGE SMITH: [Microphone not activated].

5 THE WITNESS: [Interpretation] No, we have not reported at any
6 time that the SPO provided these documents to us.

7 MR. HALLING: Thank you, Mr. Berisha.

8 Your Honours, for this range of media articles, for 102766 to
9 102780, we would ask that this packet of articles and its English
10 translation also be admitted.

11 As for classification, we note that the article at page 102768
12 reproduces delivery document P100. The public reclassification of
13 P100 has been deferred pending the resolution of the motion to add
14 W04876 to the SPO's witness list. We would request that this packet
15 of articles also be classified as confidential for the same reasons.
16 If the request to add W04876 is granted, the SPO has no objection to
17 this packet of articles being classified as public.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 Go ahead.

20 MR. REES: We're happy for this to be reclassified as public.

21 In relation to the delivery document P100, I can't remember the
22 justification for the deferment of that reclassification as public.
23 I cannot see why it should not be public also. So we would agree
24 with Mr. Halling's submission that this package of documents can be
25 reclassified -- should be classified as public.

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1 [Trial Panel confers]

2 PRESIDING JUDGE SMITH: As to P100, we were merely waiting to
3 see if that witness was going to be allowed, and we understand the
4 request to keep it confidential at this time and will continue that.

5 MR. REES: Well, in relation to that document, if the -- whether
6 the witness gives evidence or not, the admission of the document
7 can't change its reclassification if it is admitted. So we would
8 submit that these documents should properly be classified as public.

9 PRESIDING JUDGE SMITH: Thank you. But I've already ruled on
10 that matter.

11 Now, are you making an offer of the others, or do you want a
12 deferment on all of them?

13 MR. HALLING: We would like them tendered as exhibits at this
14 time. The only thing that would be deferred would be the
15 classification as public.

16 PRESIDING JUDGE SMITH: Any objection to the tender?

17 MR. REES: There's no objection to the tender. But in relation
18 to these documents, and I do follow Your Honour's ruling, perhaps the
19 way to deal with it is if the documents themselves can be classified
20 as public save that the representation of the delivery document will
21 not be referred to save in private session if it's referred to at
22 all. That would meet both Mr. Halling's proposal and any concern
23 about the status of the delivery document.

24 PRESIDING JUDGE SMITH: And are you offering these, 102766 as
25 one exhibit?

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Examination by Mr. Halling (Continued)

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

2 PRESIDING JUDGE SMITH: And 102780 as a second exhibit or as the
3 same exhibit?

4 MR. HALLING: The whole range, 102766 to 102780, would be one
5 single exhibit.

6 PRESIDING JUDGE SMITH: All right. And will you assign a number
7 to that. Those are admitted.

8 THE COURT OFFICER: Your Honours, that would be P129.

9 PRESIDING JUDGE SMITH: And I understand your position, but we
10 will hold off on those. A ruling on whether or not the witness can
11 testify will be by tomorrow, and we'll make a ruling on the rest of
12 them by tomorrow.

13 MR. REES: But as far as this witness's evidence is concerned,
14 and applying the rule that proceedings should be in public session
15 save unless it is necessary not to be, it does seem to me perfectly
16 proper, in these circumstances, that we can deal with those exhibits
17 save for that one image in public session and in full.

18 PRESIDING JUDGE SMITH: [Microphone not activated]. The ruling
19 is that they will remain as previously classified until a ruling on
20 the admissibility of the witness is made.

21 MR. REES: If Your Honour -- if those documents were separately
22 exhibited, then there would be no issue with the remaining documents
23 being dealt with in public session, would there not?

24 PRESIDING JUDGE SMITH: Mr. Rees, we're not going to continue
25 this argument any longer. I've ruled on it.

Witness: Halil Berisha (Resumed) (Open Session)

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Cross-examination by Mr. Rees

1 Any other questions, Mr. Halling?

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

3 PRESIDING JUDGE SMITH: Mr. Rees, you may cross-examine.

4 MR. REES: May I cross-examine in public session or private
5 session, Your Honour?

6 PRESIDING JUDGE SMITH: We're in public session, are we not?
7 You know the rules. Don't use the names.

8 MR. REES: Well, I find the rules increasingly hard to follow,
9 Your Honour.

10 Cross-examination by Mr. Rees:

11 Q. Before you gave evidence, Mr. Berisha, albeit in the presence of
12 your lawyer, the SPO said they wanted to make it clear on the record
13 and on the authority of the Specialist Prosecutor himself, no less,
14 that they would not be prosecuting you for anything. You had done
15 nothing wrong. And just so you understand, for what it's worth, I
16 entirely agree with that. You have done nothing wrong. All right?

17 And I want to ask you some questions, nevertheless, just to
18 explore the chronology of matters, the articles that you printed and
19 made public, the content of those articles that you printed and made
20 public also. Again, please accept I make no criticism of you, and I
21 do not suggest you have done anything wrong. Okay?

22 Can I ask this: That before you gave evidence, did you ask for
23 any undertaking from the Specialist Prosecutor along the lines that
24 Mr. Halling read out in front of your lawyer?

25 A. Can you repeat the question, please? It's not very clear to me.

1 PRESIDING JUDGE SMITH: You might want to use a different word
2 than "undertaking." That may be difficult.

3 MR. REES:

4 Q. Before you gave evidence yesterday, had you asked for any
5 assurance or guarantee from the Prosecution about your status?

6 A. The only thing I asked was to have my lawyer present,
7 Mr. Arianit Koci present.

8 Q. You were previously interviewed by the Prosecution?

9 A. Yes, I was interviewed in Kosovo.

10 Q. And that took place on 25 August 2021?

11 A. Yes, as far as I remember.

12 Q. When did the Prosecution first ask you to attend for an
13 interview?

14 A. I don't remember exactly. However, I received a call when I was
15 a journalist with inFokus and I was told that somebody from the SPO
16 wanted to speak to me, but that meeting never happened. They didn't
17 contact me again. One or two weeks before that, I was contacted, but
18 I'm not sure about the dates.

19 Q. No, don't worry so much about the specific date. But so we
20 understand, you had finished working with inFokus by the end of
21 September of last year, so you were first asked to speak to somebody
22 back in September, no appointment was made, and then you heard
23 nothing further until a week or two before 25 August of this year; is
24 that right?

25 A. As far as I remember, yes. I'm not very sure. What I am sure

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1 about is that I was contacted once before that.

2 Q. The contact in August, was that initial contact by telephone or
3 by e-mail or in some other form?

4 A. By phone.

5 Q. And who contacted you by phone?

6 A. From what I remember, the first contact was with
7 Ms. Valeria Bolici, the Prosecutor.

8 Q. Following that contact by phone in August, did you receive a
9 summons to attend for an interview?

10 A. In the first interview in Kosovo, I didn't have a summons for
11 that.

12 Q. Did you receive any invitation, then, to that interview on
13 25 August in writing in any form?

14 A. No, I don't remember having an invitation in writing.

15 Q. What did the Prosecutor say to you about your status for that
16 interview? What were you -- in what capacity were you to be
17 interviewed?

18 A. I was told that I was to be interviewed in relation to this case
19 and that I would be interviewed in the capacity of a witness.

20 Q. Had you asked Ms. Bolici about the capacity, your capacity for
21 the purpose of that interview? Did you ask her: What capacity would
22 I be interviewed as?

23 A. Yes, I asked, and I was told that I was not a suspect.

24 Q. So before you agreed to attend the interview on 25 August, you
25 asked and she told you you were not a suspect. Did you ask -- why

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1 did you ask for your lawyer to attend that interview?

2 A. Because I'm a journalist. And, to be honest, I never expected
3 to be invited for an interview, neither as a suspect nor as a
4 witness, and I was just doing my job in a professional way. That was
5 the reason why I asked to have a lawyer. Because I felt it was very
6 strange for me to be invited for an interview, and that's why I asked
7 for Mr. Arianit Koci to be present there.

8 Q. And, again, just to reassure you, I do not suggest you were
9 doing anything other than your job in a professional way. Did you
10 ask Mr. Koci, your lawyer, to confirm with Ms. Bolici that you were
11 not a suspect before you attended on 25 August 2021 for an interview?

12 A. No. I was told that I was not a suspect, and I took it for
13 granted that I wasn't.

14 Q. You have worked as a journalist with inFokus and also previously
15 with Klan Kosova; is that right?

16 A. Correct.

17 Q. Have you worked for any other Kosovan press or media agencies?

18 A. No. These are the only two I worked for.

19 Q. When you left Klan Kosova, did you retain contacts at that media
20 agency?

21 A. Yes, of course. I kept my social contacts with many of the
22 journalists working there.

23 Q. And you had built relationships with other journalists working
24 in other media agencies in Kosovo as well?

25 A. I worked at Klan Kosova for more than four years. That's why I

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1 had friends there.

2 Q. And, again, is it right that you had built professional working
3 relationships with other colleagues in the press at other media
4 agencies as well as Klan Kosova and in inFokus?

5 A. I was a field reporter with Klan Kosova, and I met other
6 journalists very often. And my relationships with them were more as
7 a journalist than as a social relationship. So -- and when I went to
8 inFokus, I worked more as a desk journalist, so I didn't have many
9 relationships with other journalists outside.

10 Q. I follow. So closer relationships with ex-colleagues at
11 Klan Kosova, more professional relationships, less social
12 relationships with other colleagues in the press in Kosovo?

13 A. Correct.

14 Q. Thank you. On 7 September you attended the press conference at
15 the KLA WVA headquarters in your professional capacity as a
16 journalist; yes?

17 A. Yes.

18 Q. And there were other journalists in attendance in their
19 professional capacity at the press conference also; yes?

20 A. Correct.

21 Q. You attended with another professional colleague of yours from
22 inFokus, a cameraman; is that right?

23 A. Yes.

24 Q. And in relation to your other colleagues of the press there, you
25 have told us that you recall colleagues from Kosova Press, Ekonomia

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1 Online, and also a team from kallxo.com; is that right?

2 A. It's not that I knew them as journalists, because, as I said, I
3 was a desk journalist. It wasn't that I knew them very well, but I
4 recognised them from the logos they had on their microphones. So as
5 far as I remember, there was a team from Kosova Press, from Ekonomia
6 Online, and from kallxo.com.

7 Q. I follow. The purpose of the cameraman that you brought with
8 you was to take footage of the press conference; is that right?

9 A. Yes.

10 Q. And the cameraman, was it a Mr. Mirko Burim or Burim?

11 A. No, that's not the name. It's not Mirko but it's Mjeku. The
12 first name is correct whereas the surname is Mjeku.

13 Q. Well, apologies. It's my pronunciation, so I apologise for
14 mispronouncing it. And the cameraman took video footage of the press
15 conference, did he?

16 A. Yes.

17 Q. And we know that there were -- there was another press agency
18 that also took footage. Kosova Press broadcasted it, the conference;
19 yes?

20 A. Yes.

21 Q. Did inFokus broadcast footage from that press conference?

22 A. I don't remember precisely. As far as I remember, there was no
23 broadcast directly. The reason I don't remember was that once I
24 returned to the office, I was busy with the other staff and could not
25 deal with that.

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1 Q. In your interview with the Prosecutor on 25 August, you
2 suggested that there was some material broadcast in social media. Is
3 that right?

4 A. I did not quite understand your question. What suggestion do
5 you mean?

6 Q. So in your interview with the Prosecutor on 25 August, you
7 referred to some material being broadcast in social media; is that
8 right?

9 A. Probably, yes, because even now most of the questions and my
10 testimony is public and published by inFokus and other media. So the
11 questions asked of me at the time and now, the answers to those
12 questions are online.

13 Q. Absolutely. And you understood the press conference was about
14 the Special Court and some files related to the accused, I think, is
15 how it was put in one of the articles. Why did you attend that as a
16 professional journalist with a cameraman to record that press
17 conference and broadcast at least parts of it?

18 A. This was not my decision. It's -- it was the decision of the
19 editing office. As I said earlier, it's -- inFokus is not a media
20 outlet with lots of journalists, so the decisions for a journalist or
21 a cameraman to go on the ground are taken by the board of editors.

22 Q. Yes. And you were part of that editorial team; yes?

23 A. Yes, at that time I was both a journalist and editor.

24 Q. So let me ask you, what was your interest as a journalist in
25 attending the press conference about the Special Court and some

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1 Special Court files related to the accused? Can you help us with
2 that or not?

3 A. Of course, I can. As a media outlet, as an editorial team, we
4 have just one aim and that is the interest of the public, of the
5 citizens, so that they are informed of what is going on. And, of
6 course, a part of that public interest is the Special Court and the
7 KLA war veterans. So this was an issue that concerned both the
8 Special Court and the KLA WVA, and that's why it was of public
9 interest and of the interest of the citizens of Kosovo.

10 Q. Thank you, Mr. Berisha. And at the end of the conference, you
11 asked the cameraman to take images of the documents; is that right?

12 A. The cameraman in question is a person with many years of
13 experience, much more experience than myself as a journalist, so it
14 was not necessary for me to tell him to record. As any other
15 cameraman, experienced one, he knew his job and he knew that he was
16 going to record -- to make a footage.

17 Q. And again, Mr. Berisha, to reassure you, both the Prosecutor and
18 I do not suggest that you or the cameraman, who you said in the
19 interview recorded the documents, did anything wrong. So please be
20 assured about that. But I still want to explore what happened, if I
21 may.

22 So the cameraman was an experienced man. He began recording
23 copies of the documents. And you agreed with that?

24 A. It's something usual not only in this case but in other cases as
25 well of press conferences. Once a press conference ends, all

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1 journalists record or make footage of materials that need to be
2 processed later on. So for me, it was not something unusual.

3 Q. No. And you'd heard what had been said in the press conference
4 about the documents, and you and other journalists began, as you say,
5 that task of looking at the documents and your cameraman recording
6 them.

7 Do you know how many documents you looked at with the cameraman
8 before you asked if you could take the documents?

9 A. It is difficult to give you a number because the documents were
10 in a disorganised fashion at the moment we approached them to -- when
11 the conference ended and there were many other journalists and
12 cameramen around. So for me it's difficult to give you an
13 approximate or an accurate number.

14 Q. I follow. How long, perhaps, in time? Could you help us?
15 Again, without a precise number of minutes, but an indication how
16 long in time yourself and your cameraman spent looking at the
17 documents before you asked for a copy?

18 A. Perhaps for ten minutes or so, but these ten minutes are not the
19 recording itself, because the recording is from different angles so
20 that it is more professional. So in total it was 10 to 15 minutes,
21 but not all this time was covered in the recording.

22 Q. I follow. And I said before -- I made a mistake in the last
23 question. I said "before you asked for a copy." You didn't ask for
24 a copy. You asked to take the documents themselves, did you not?

25 A. As I said, it's a bit problematic. There were many documents,

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1 so I asked if I could take some of them to see what they were about.

2 Q. And in your witness interview, you said you'd asked
3 Mr. Haradinaj about that; is that right?

4 A. Well, in fact, as I mentioned earlier, there were many
5 journalists and cameramen around the table with the documents, and
6 there were also the people who held the conference. Next to me was
7 Mr. Haradinaj, so I just asked whether I could take some of those
8 documents, and the answer came from Mr. Haradinaj.

9 Q. So it is a very small point and one we'll finish on before the
10 break, if I may. It's a small point. But the person you asked was
11 Mr. Haradinaj and it was Mr. Haradinaj that answered in relation to
12 taking the documents; is that right?

13 A. As far as I remember, I asked the question -- it's a bit
14 problematic to explain it. As I said, there were many people there,
15 and I knew that the persons responsible -- when I say "responsible,"
16 I mean persons who held that conference for the media. So I asked
17 the question not to the journalists and the cameramen who were there
18 but to those who held that conference, and the answer was given by
19 Mr. Haradinaj.

20 Q. So, Mr. Berisha, I think we'll break there for the mid-morning
21 break.

22 PRESIDING JUDGE SMITH: [Microphone not activated].

23 [The witness stands down]

24 PRESIDING JUDGE SMITH: We will take a half-hour break. Please
25 be back here at 11.30. We are adjourned.

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1 --- Recess taken at 10.57 a.m.

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

3 PRESIDING JUDGE SMITH: Madam Court Usher, could you please
4 bring the witness back in.

5 [The witness takes the stand]

6 PRESIDING JUDGE SMITH: Be seated, Mr. Berisha.

7 All right, Mr. Rees. You can continue.

8 MR. REES: Thank you, Your Honour.

9 Q. So at the end of the press conference on the 7th, after spending
10 some 10 to 15 minutes looking at the documents, with your cameraman
11 recording some of the documents, you asked to take the documents.
12 And, in fact, you wanted to take the entire quantity of documents,
13 did you not?

14 A. I didn't think it was possible to take the whole quantity of
15 documents, but I asked what I was able to take.

16 Q. So in the interview you gave to the Prosecutor on 25 August, you
17 said, after asking if you could take the copies -- take the
18 documents, sorry, you were asked if that meant you wanted to take the
19 entire batch, and you said:

20 "In my position as a journalist, as it was my job, and I was
21 interested, I obviously said 'yes.'"

22 So it's right, isn't it, that if you were able, you would have
23 taken all the documents?

24 A. Yes, correct.

25 Q. And you were interested in taking the documents in your position

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1 as a journalist. Can you expand upon that? Can you say what was the
2 interest that you wanted to explore by taking the documents?

3 A. As I explained earlier before the break, we looked at the public
4 interest, and it was in the public interest to report on these
5 issues. We decided that we would look at the documents, because it
6 was made possible for us to take those documents, look at them and
7 see what we could report on them.

8 So these were the two things. First, if you were given a choice
9 between taking part of the documents or all of the documents, every
10 journalist would have chosen the second.

11 Q. So you and your colleague, the cameraman, you took about -- you
12 say, about a thousand pages; yes?

13 A. It's a bit difficult to establish how many pages there were.
14 But to my estimation, they were about a thousand pages.

15 Q. I understand. Very difficult to be exact. But approximately,
16 you said, a thousand pages. There were some documents left over, but
17 you took the thousand or so pages and you took them back to the
18 inFokus office; is that right?

19 A. Correct.

20 Q. And did you go with your cameraman colleague back to the office
21 together with the documents?

22 A. Yes.

23 Q. And at the office, you then discussed the documents with other
24 colleagues of yours at inFokus, the editors; is that right?

25 A. Yes, with the editors, not the journalists.

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1 Q. Now, do you remember how many of the editors, as it were,
2 discussed the documents with you?

3 A. If I'm not mistaken, there were four other people.

4 Q. So that's yourself, the cameraman, and four others?

5 A. No, the cameraman was not there.

6 Q. Right.

7 A. He had nothing to do with the documents. He just took the
8 images and came with me to the office.

9 Q. Okay. But just going through the numbers of colleagues at
10 inFokus who had access to the documents: The cameraman and yourself
11 initially and then four others back at inFokus's offices; yes?

12 A. However, the cameraman did not have access to them. He just
13 took images of them. But after we went to the office, he had no
14 access to them.

15 Q. I follow. But he had access to them when he was taking
16 copies -- taking images of them; yes?

17 A. Yes, when he was recording at the press conference. Yes.

18 Q. And I'm going to ask you to look at a document now.

19 MR. REES: 081364, which is, I think, the first page of P125.

20 MR. HALLING: It's the fourth page of that document,

21 Your Honours.

22 MR. REES: Thank you, Mr. Halling. I appreciate the assistance.

23 THE COURT OFFICER: And, for the record, Your Honours, the
24 English translation now has P125-ET.2.

25 PRESIDING JUDGE SMITH: Could you say that again, Madam Court

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1 Officer, a little louder?

2 THE COURT OFFICER: Your Honours, the English translation, the
3 range that was just called by Specialist Counsel, received P125-ET.2
4 this morning.

5 MR. REES: So not the English translation. Thank you.

6 Q. And we can see there the documents spread out on a table in the
7 image; yes?

8 PRESIDING JUDGE SMITH: [Microphone not activated].

9 MR. KOCI: Yes, I can't see, Your Honour. Sorry. Yes, thank
10 you.

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

12 MR. REES:

13 Q. So we can see there an image in the article that you publish on
14 7 September, 1439 hours, with the documents spread out in part on a
15 desk, on a table; yes?

16 A. Yes.

17 MR. REES: And if we go to the next page of the article itself.

18 Q. Again, documents spread out. And then another image on the
19 second page. And a further image then again showing images of part
20 of the documents; yes? And --

21 A. Yes.

22 Q. That desk, where is that desk?

23 A. Can I explain the -- how the office -- how the inFokus office is
24 laid out? The inFokus newspaper has a large office which is an
25 open-plan office where the journalists are. And in the middle, there

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1 is a room which is the room of the director and the administration.

2 These photos were taken in -- on the -- from the big table that
3 is in the main room in the middle of the office, of the open-plan
4 office.

5 Q. Thank you. And there were -- well, the article is at 1439 hours
6 on the 7th, so those images taken that day of the documents spread
7 out in the big table in the main room in the inFokus offices; is that
8 right?

9 A. It must have been on the same day because that was the day when
10 we looked at the documents. After that, they were locked.

11 Q. Well, and the article is published on the 7th, so it must have
12 been that day, mustn't it?

13 MR. REES: If we go back to the first page.

14 Q. And who took those images, then, of the documents spread out on
15 the desk -- on the big table in the main room of the inFokus offices?

16 A. I don't remember exactly because the focus then was what was
17 contained in the documents, so I didn't pay attention at who was
18 taking pictures.

19 Q. No, I understand. And if I ask you a question you don't know,
20 please just say that. But can you at least help us with this: Was
21 it the cameraman who had been with you at the press conference or
22 would it have been somebody else?

23 A. No, it wasn't the cameraman. He was not present in the office.

24 Q. And the footage of the press conference and the documents taken
25 at the press conference by the cameraman, was that taken on -- what

1 sort of device was used to take that footage and those images of the
2 documents by the cameraman?

3 A. I don't remember and I don't know. To be honest, I don't know
4 about these things. I know that it was a professional camera but not
5 what type or make it was.

6 Q. So leave aside the model or the brand. Was it a camera designed
7 for recording moving pictures or was it a more conventional camera
8 which could take still photographs and moving images, or can you not
9 say?

10 A. As far as I know, it was a recording camera. So not to take
11 pictures.

12 Q. And it presumably would have recorded in digital form, not on
13 old-fashioned film; is that right?

14 A. Yes, he recorded those in the press conference.

15 Q. And the camera or device that was used to take these images of
16 the documents, was that the same -- would that have been the same
17 device that the cameraman had used at the press conference or is it
18 more likely to be a different device, or can you not say?

19 A. I'm sorry, I didn't understand your question.

20 Q. So the cameraman at the press conference had a professional
21 camera. The device that was used to take the images of the documents
22 spread out on the big table at the inFokus offices, would that have
23 been the same device that the cameraman had used previously, or is it
24 more likely to have been a different camera or device?

25 A. The camera that was used by the cameraman, he was responsible

1 for that, only he would use that. And he was not in the room, so the
2 camera was not used.

3 Q. So these images taken by a second device. Again, can you help
4 us with this? If you can't, please say. But digital images being
5 taken or photographs being taken on old-fashioned film; can you say
6 or not?

7 A. We did not have old devices, so it couldn't have been that -- of
8 that type.

9 Q. Thank you.

10 MR. REES: Can we look at another image. Just bear with me for
11 a moment. ERN 102768, please, Madam Court Officer. And we're only
12 looking at the top half of the first page, so the first image. Okay.

13 Q. And just to clarify, you said earlier on -- all these articles
14 are still on the internet, aren't they? They're still published and
15 they're still available on the inFokus web site; yes?

16 A. I don't work there anymore, but as far as I know, it has not
17 been deleted.

18 Q. Well, thank you. And, in fact, we can confirm it hasn't.

19 MR. REES: And if you look, please -- Madam Court Officer, if
20 you can put up DHG0270 and have it alongside the document, the
21 inFokus article that we had up a moment ago. So have alongside that,
22 please, DHG0270. So just pause there.

23 Q. We're looking at the top of the page, the first image. Firstly,
24 you can see there it's the same article. And if you look at the
25 timestamp on the top left-hand corner of the document with the DHG

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1 number, you can see there 25 October 2021, 4.38. The same article is
2 still on the inFokus web site as you said; yes?

3 And if you look at the colour photograph - it's a bit clearer in
4 the version to the right - we can see the documents again. They're
5 spread out on the table there. And there's -- you can just about
6 make out at least four persons in the room, because you can see,
7 going in a clockwise fashion from the top of the table, somebody with
8 an orange or yellow T-shirt; yes? Somebody then in a white shirt, we
9 can see his hand on the table. If you look down at the bottom
10 right-hand corner of the image, you can see another hand just
11 appearing in the corner of the image. And then it looks like there's
12 another person to the left at about 9.00 on the clock face. Can you
13 see that?

14 Is that right, Mr. Berisha? I know that I'm going through -- we
15 can all see it, but if you can confirm if that's right --

16 A. Yes, yes.

17 Q. Thank you.

18 A. Yes, yes.

19 Q. So is this table the same table that we saw in the earlier
20 images or is this a different table?

21 A. It's the same one.

22 Q. The same table. And we can see there the four people -- the --
23 what are they doing? You were looking through the documents
24 together?

25 A. Yes. As I said earlier, it was the editorial team that was

1 looking at the documents in this office.

2 Q. And this article, we can see -- not in the black and white
3 really because the text is faded, but in the colour version we can
4 see that this article was published 9 September 2020 at 2124 hours.
5 Do you know when this image of the four people we can see were
6 looking through the documents? Can you tell us when that image was
7 taken?

8 A. I am pretty sure that the picture was taken on 7 September
9 because the documents were not in this room spread out like this on
10 any other days.

11 Q. And it looks like we can see -- well, do you know who took this
12 image?

13 A. No, I don't remember.

14 Q. And we can see in the room there's a phone on the table, again
15 using the clock face, at around about 10.00; is that right? Is that
16 a phone?

17 A. Yes.

18 Q. And it looks like there's at least one other phone in the room
19 down at about 7.00 or 8.00 on the clock face, the bottom left-hand
20 corner?

21 A. Yes.

22 Q. And they look like smartphones. Would you agree or not, or can
23 you not say?

24 A. From what I can see here, they look like smartphones.

25 Q. And, of course, all these images publicly available on the

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1 inFokus web site from the moment they were published; yes?

2 A. Say again?

3 Q. These images, as soon as inFokus put them up on their web site,
4 they were publicly available for anyone to see including
5 investigators from the SPO, for example? Do you agree with that?

6 Thank you.

7 A. Yes.

8 Q. So you show the documents to those four colleagues. The four
9 colleagues in the image on the right -- well, on both the left and
10 right, are they the four colleagues you referred to as being round
11 the table when discussing the documents in the big room or are
12 they -- can you not say who those four in that image are?

13 A. I can't tell from the picture. But as far as I know, it was
14 only the editorial team that was present there.

15 Q. And that was five of you, yourself and four others?

16 A. Yes, I think that's the correct number.

17 Q. Again, this may be difficult for you to answer. You may not be
18 able to. But are you one of the four people in that image or not?

19 A. I'm not one of the two that are on the right in the picture, but
20 I think, perhaps, I am the person to the left. But I'm not very sure
21 about that.

22 Q. So the person whose hands -- we can see both hands holding some
23 documents at about 9.00 on the clock face, that could be you, but
24 you're not sure. So could it be that you took this photograph?

25 A. I don't remember.

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1 Q. So -- and, obviously, if you don't remember, please say. But
2 does -- if you can't remember whether you took it or not, does that
3 mean that you may have taken it, you may not have, you can't say one
4 way or the other?

5 A. Yes, that's correct. I don't remember. I don't know.

6 Q. In the foreground on the table, there is a -- well, it's like a
7 white stick with a cable coming out of the end of it, and the cable
8 is coiled up. And can you help us with what that is or not?

9 A. It looks like a charger, a telephone charger.

10 Q. So you return to inFokus and share the documents with those four
11 colleagues. And in your interview -- obviously, there were no
12 redactions or anything on those documents. You didn't apply any
13 redactions to them at that stage?

14 A. Every document that we published, we tried not to have in that
15 document anything that could identify anyone, and the redactions were
16 made digitally, not physically.

17 Q. Thank you. I do follow that. And we'll come to look at some of
18 the documents that you published and we will look at those
19 redactions. And, again, for your assurance, neither the Prosecutor
20 or myself suggest you've done anything wrong. Okay?

21 But the documents that you shared with your four editorial
22 colleagues at that stage, they were the documents as you brought them
23 back? They were as you picked them up from the KLA WVA; yes?

24 A. Yes.

25 Q. And one of the things you said that you were interested about in

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1 your interview with the Prosecutor on 25 August was you were
2 interested to know who was the person who delivered the documents,
3 what was his story. Not the only thing you were interested in, but
4 that was one of the things you were interested in when you were
5 looking through those documents. Did you continue to investigate
6 that issue or not?

7 A. Yes, we dealt with that issue. For the time that these
8 documents were being discussed, we dealt with that as well.

9 Q. Can I ask you this discrete question, and if you can answer
10 "yes" or "no," please, in the first instance: Did you, in your
11 investigations, ever identify the person who delivered the documents
12 to the KLA WVA headquarters?

13 A. No, never.

14 Q. Now, you've said you didn't attend the second press conference
15 that took place on 16 September, but you did continue to report on
16 these events.

17 MR. REES: And can I ask if we can look, please, at the article
18 at 102766-ET. This is the translation of it.

19 Q. Just bear with me a moment, Mr. Berisha. I'm going to find the
20 reference within this larger document.

21 MR. REES: Can we look at page 102772 of that document.

22 Q. This is one of the documents that you identified. Is this a
23 document that you produced when you spoke to the Prosecutor in an
24 interview or is this one of the documents that they showed to you?
25 Do you recall or not?

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1 A. No, I don't recall.

2 Q. And the photocopy version on the left of the article itself, the
3 date is unclear because of the way in which it's been copied.

4 MR. HALLING: If it assists, Your Honours, the date is clear on
5 DHG0279.

6 MR. REES: Again, I'm very grateful for Mr. Halling who's there
7 before me with the Defence document.

8 So it is -- if we pull that up, DHG0279, please, just for a
9 moment.

10 Q. So we can see there the same article is there on the inFokus web
11 site, looking at the timestamp at the top left, 25 October 2021, and,
12 as Mr. Halling says, underneath the identity of the author, yourself,
13 there's the time and date; yes?

14 And going back to the translation ...

15 THE COURT OFFICER: Your Honours, for the record, the documents
16 that are currently on the screen were marked as P129 this morning.

17 MR. REES: Thank you, Madam Court Officer.

18 Q. Now, we can see there that you reported about two deliveries on
19 7 September and then nine days later on 16 September, delivery of
20 packages of documents, in the middle of the page, the middle of the
21 article. And you said there that you've reported that leaders of the
22 KLA WVA had complained that they appeared to have been monitored and
23 were worried their communication is being intercepted. You published
24 a photo of a fast-moving car showing they were being followed; yes?
25 Can you see that?

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1 A. Yes, I can see that. I can see the article, yes.

2 Q. And as you said in direct examination, all the -- the contents
3 of all the articles you published were true and accurate to the best
4 of your knowledge and belief; yes?

5 A. Correct.

6 Q. Going back to 7 September, then, we've looked at how yourself
7 and the rest of the editorial team had spread the documents out on
8 the big table and had been looking through the material.

9 MR. REES: And can we look, please, at 081364-081367-ET.

10 Q. And you reported, didn't you, that day that:

11 "The cooperation between Special Investigators and Serbian
12 witnesses and officials was evident in these documents."

13 Can you see that in the third paragraph?

14 MR. REES: This is, for the record, P125.2-ET, I think.

15 Q. Sorry, Mr. Berisha, I interrupted. Can you explain why you
16 reported on the cooperation between special investigators and Serbian
17 witnesses and officials being evident in those documents?

18 A. Because, as I explained earlier, a considerable part of the
19 documents that were in our possession consisted of a correspondence,
20 communication between SITF officials and prosecutors and other
21 officials of Serbia.

22 Q. And what was, in your view, the interest in publishing in that
23 article the fact that those documents made the cooperation between
24 special investigators and Serbian witnesses and officials evident?
25 Can you help us with that?

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1 A. Well, for every article that was published, the opinion of the
2 whole editorial team was taken into consideration. Our opinion was
3 to publish this, although we were not sure about the authenticity and
4 confidentiality of these documents. That was not mentioned in this
5 correspondence. And as this confidentiality was not mentioned on
6 that correspondence, it is -- it was in the public interest to report
7 what these documents were about.

8 Q. Thank you.

9 MR. REES: If we look at ERN 102780-ET.

10 THE COURT OFFICER: And again, that is P129.

11 MR. REES: At page 102780.

12 Q. We get a translation of a document which, if we look at DHG0311,
13 we can see, looking at the left, this is still publicly available in
14 October. Looking at the top left-hand corner. And although --

15 MR. REES: If we can focus in where the author's name is,
16 please, Madam Court Officer, we'll see there the time 17:08 on
17 7 September 2020.

18 Q. Going back to the translation, then. We can see that in the
19 article it refers at the eighth line down in the main body of the
20 text, what do all these files distributed on Monday contain?

21 "Journalists from the inFokus editorial board viewed the files
22 which refer to mainly to cooperation between the investigative Task
23 Force and the Serbian authorities to collect evidence regarding
24 alleged crimes committed during the war and which are now being
25 investigated by the Special Court.

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1 "The documents show very clearly how the Task Force cooperated
2 with the Serbian authorities and they also contain correspondence in
3 between them and exchange of letters.

4 "The system used here is mostly through requests to collect
5 evidence given by former police officers and chiefs of police
6 stations, with the instruction to locate witnesses and to gather as
7 much evidence as possible about the cases and alleged crimes."

8 Just pausing there. That information came from the documents,
9 did it?

10 A. Correct.

11 Q. And why were you were reporting specifically the information
12 that requests to give evidence given by former police officers and
13 chiefs of police stations was -- what was the interest in that? Can
14 you explain or expand, please?

15 A. Well, I more or less explained this earlier when I said that
16 when we inspected these documents, we suspected their authenticity
17 and confidentiality, and we tried to report on them without breaching
18 the confidentiality they might have had. Given the press conferences
19 held by KLA WVA, as well as the time when they were held, this was
20 something of interest for the citizens of Kosovo, what these
21 documents were about.

22 So we reported on them while keeping the confidentiality that we
23 thought these documents had.

24 Q. And I follow that and, again, can reassure you the SPO do not
25 say you did anything wrong, and I do not say you did anything wrong,

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1 and I understand your position. There is no dispute about it. You
2 did not publish anything confidential.

3 But I want to ask you, if you can, just to expand on your
4 reasoning.

5 MR. REES: Mr. Koci, do you --

6 MR. KOCI: [Microphone not activated].

7 PRESIDING JUDGE SMITH: [Microphone not activated].

8 MR. KOCI: [Microphone not activated].

9 [Witness and counsel confer]

10 MR. KOCI: [Microphone not activated].

11 [Trial Panel confers]

12 MR. REES:

13 Q. So, Mr. Berisha, if you can assist, can you just expand as to
14 why, in your view, did you think that the public would be interested
15 to learn that the system was mostly through requests to collect
16 evidence given by former Serbian police officers and Serbian chiefs
17 of police stations?

18 A. If you allow me, because this answer could be longer than any
19 other answer.

20 We thought this was of public interest given the past of our
21 nation, people of Kosovo. Maybe I'm young by age, but I experienced
22 war as well. I was 6 years during the war. And at that time, I, my
23 family, and other citizens were forced out of our apartment, of our
24 house, and we were forced to travel to Albania.

25 What I'm saying now is lighter compared to what others can say.

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1 As a 6-year-old, I had to walk to Albania without food, without
2 water, and Serbian forces had put corpses of dead people on the way
3 and for me, as a 6-year-old, was horrifying.

4 So this is a theme that is discussed on a daily basis in our
5 parts, and that is why we thought that this was of public interest,
6 reporting on this issue was of public interest.

7 Q. Thank you, Mr. Berisha. And in the article we can see, carrying
8 on with the English translation, that you went on to say that the
9 article would show the mode of cooperation between the task force and
10 Serbian authorities. In bold it set out: "How did the cooperation
11 between the Task Force and Serbian authorities work?" And you wrote:

12 "We learn from the correspondence of these letters that a key
13 role was played by virtually the Serbian entire state structures who
14 set up working groups to collect facts about alleged crimes to supply
15 the Task Force."

16 Again, perhaps we can deal with this more briefly this time.
17 That information came from the documents itself?

18 A. Correct.

19 Q. And you published in the public interest, as you've just
20 explained it to us?

21 A. Yes, because as I said, there are so many cases like this and
22 people want to know about this.

23 Q. You then continued:

24 "The Task Force was principally in contact with
25 Vladimir Vukcevic, former chief War Crimes Prosecutor, but also

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1 Milovan Drecun, Head of the Working Group looking for facts about war
2 crimes."

3 Again, can you assist with why you published -- well, firstly,
4 that information, did that come from the documents itself?

5 A. I don't know if the name was misinterpreted, but it's
6 Milovan Drecun. These were the documents, yes.

7 Q. No doubt that's my fault in my pronunciation, so I apologise.
8 And so that information came from the documents and you published
9 that. Can you explain, again, why it was, in your assessment, in the
10 public interest to do so?

11 A. It was in the public interest to do so because these persons
12 were high Serbian officials and were the persons that a part of the
13 people in Kosovo know due to their statements. So these were not
14 private persons. Since they were mentioned in these documents, so we
15 deemed it necessary to publish them, their identity.

16 Q. You continued that:

17 "The Heads of the Task Force communicated directly with those
18 two," Mr. Vukcevic and Mr. Drecun.

19 "Many of the communications between them show that the Heads of
20 the Task Force asked them for facts about various cases, previously
21 given evidence, but also contact information and interviews
22 arrangements for various people in Serbia."

23 Again, did that information come from the documents?

24 A. Yes.

25 Q. And, again, can you set out why you published that information

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1 in the public interest?

2 A. The title of this news is what the thousand pages handed over to
3 the KLA WVA contain. So from those documents that we saw, most of
4 them was of this nature, and we just showed what they contained.

5 Q. And you did not publish the names of witnesses but you did
6 identify, if we look in the middle of the page, that most of them
7 were Serbs but also Albanian, Roma, Ashkali names as well.

8 So can you help us with this, why you published that, not the
9 names but the reference to Serb, Albanian, Roma, Ashkali?

10 A. Because as a journalist, as a media outlet, it's our mission to
11 report on the truth to the extent we know it and to the extent we're
12 able to report on it. So this was a truth mentioned there, and we
13 tried to report on that.

14 Q. And you quoted, did you not, from two of the letters directly.
15 About a third of the way up the page, we can see this quote:

16 "Pursuant to the ongoing coordination between our offices,
17 please find attached a list of persons that the EU Special
18 Investigative Task Force ... would like to interview in the near
19 future. Although the last known addresses of the concerned
20 individuals are in Kosovo, I would be grateful if your office could
21 provide current addresses, telephone numbers and any other contact
22 information that may assist in locating the mentioned persons as it
23 is believed that they have sought Serbian citizenship.

24 "Furthermore, I respectfully request copies of all previous
25 statements provided by those individuals to the Serbian judicial and

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1 police authorities' reads the communication dated 24 September 2014
2 from Kwai Hong Ip, Head of the Task Force, to Vukcevic."

3 That's reading directly from the article; is that right? Yes?

4 A. Yes.

5 Q. And you published that on the web site. Again, can you explain
6 to us why you published that?

7 A. This was a factual statement from those documents translated
8 into Albanian. This statement was placed in the article to prove
9 what we wrote in the article, further up in the article.

10 Q. And staying with the text, the article continued:

11 "Below is a list of witnesses requested to be interviewed, which
12 has been redacted for security reasons."

13 And we will, at a later stage, look at the images themselves.
14 But what you were doing there is you published the body of the text,
15 but you redacted the names from the document that was put up on the
16 screen; yes?

17 A. Yes.

18 Q. And you said to us that that was done digitally, the redaction,
19 in the office; yes?

20 A. Yes, yes.

21 Q. And that was after that you'd brought the documents back and
22 you'd shared the document in full, without redactions, with your
23 editorial colleagues; yes?

24 A. Every article that was published came after discussions were
25 held with the editorial team.

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1 Q. And in those discussions, the editorial team had the documents
2 in their unredacted form, the redactions applied later, yes, before
3 publication?

4 A. When we decided on what to publish, we also decided which
5 pictures we will publish together with the text.

6 Q. And who applied the redactions, then, to images?

7 A. This kind of redaction is very easy. I don't remember exactly,
8 but we do not have a special person who deals exclusively with this.

9 Q. So it could have been anyone who was present in the office - any
10 journalist, that is - professional colleague in the office that might
11 have applied the redactions?

12 A. Yes. What is certain is that redactions were not applied by
13 somebody else who -- only by someone who had seen these documents.

14 Q. I follow. The article continued with a second quote. Can you
15 look at the very bottom of the page. There is a reference in the
16 article to a letter from the Serbian Parliamentary Committee on
17 Kosovo and Metohija - I apologise for the pronunciation - sent to the
18 task force on 17 November 2015:

19 "I would like to inform you the Committee on Kosovo and
20 Metohija at its meeting held on 19th October 2015 has endorsed a
21 Decision establishing the Working Group for Gathering Facts and
22 Evidence in elucidation of the crimes committed against members of
23 the Serbian people and other ethnic communities in Kosovo and
24 Metohija. The Working Group believes that it can contribute to the
25 successful work of the Special Investigative Task Force and is

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1 looking forward to future cooperation.'" "

2 Why were you reporting on that quotation? Can you help us with
3 that, please?

4 A. There are many reasons for that. One of the reasons for that is
5 each Kosovan citizen born before 1996 or 1995, they know about the
6 crimes that the Serbs committed in Kosovo. And in spite of the fact
7 that Kosovo now is an independent nation, here the text uses the
8 words "Kosovo and Metohija," which is not the correct term. And
9 these terms have been used in a document or a statement by Serbian
10 officials, and this document was not marked as confidential.

11 And this relates to the alleged crimes that allegedly Albanians
12 committed, and we thought that this was in the public interest to
13 know.

14 Q. Thank you, Mr. Berisha.

15 MR. REES: Can we look, please, at 081361 to 081363, which is
16 the original article, and then the translation which is 081361 to
17 081362, I think, -ET.

18 THE COURT OFFICER: And for purposes of the record, that is
19 P125, and the translation is P125-ET.1.

20 MR. REES: I'm very grateful. Thank you.

21 Q. Taking this slightly out of the chronology in that if we look at
22 the article itself on the left-hand side, we can see that you
23 authored this on 7 September but slightly earlier than the document
24 we've just looked at; is that right? At 1503 hours.

25 A. Yes.

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1 Q. And we can see in the middle of the first page there is an image
2 of a letter. Do you know when that image was taken?

3 A. As far as I know, all the photos that were published, everything
4 was published on 7 September, on the day that we looked at the
5 documents.

6 MR. REES: Can we zoom in on that letter, please, Madam Court
7 Usher.

8 Q. Do we know if this was an image that was taken by the cameraman
9 at the original scene of the press conference or whether it was taken
10 subsequently at the inFokus offices, or can you not say?

11 A. I am sure that it was taken at the office.

12 Q. But not sure about who or on what device. And it's then
13 uploaded, is it, to the inFokus -- well, let me take a step back.
14 How were the web pages actually put together, how were they
15 constructed, and who does that?

16 A. I don't understand the question, sorry.

17 Q. So obviously, as a journalist, presumably your main task is to
18 write the text for the article and identify which pictures to use in
19 the text. But then once the journalist has authored the text and
20 selected the images, somebody has to put it up onto a web page. Can
21 you help us with that process? Who puts it up on a web page and how
22 do they do that?

23 A. Yes, this is a very simple process. It -- we use an online
24 product which is called WordPress, and you can publish the articles,
25 texts, photographs, through WordPress. And each journalist who

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1 writes the article publishes their own article in that way.

2 Q. And so if somebody has taken a photograph that a journalist
3 wants to use in an article online, the person who took the photograph
4 needs to pass the file over to the person who's going to upload it
5 onto the web page as part of their article; is that right?

6 A. Yes.

7 Q. And, as you say, you don't use film anymore for obvious reasons.
8 Images are taken digitally. So someone has to pass a digital file
9 from the person who took the photo on whatever device it was, a
10 camera or a phone or a video camera, pass that digital file to the
11 journalist to then upload onto the system; yes?

12 A. Not necessarily, because all the journalists and media workers
13 have access to that online product I mentioned, WordPress. So every
14 time a photo is uploaded, other persons have access to that photo.
15 People who want to publish a certain text.

16 Q. I see. So before you make the article go live on the internet,
17 the person who took the image has to upload to a system the image,
18 the file, and then anyone who's a journalist in the -- who's got
19 access to that system can then access the file and put it into their
20 article and send the article live on the web page; yes?

21 A. Correct.

22 Q. And in the text, then, we can see that you reported the
23 headline: "Exclusive: How the Special Court requested evidence from
24 Serbia against Adem Jashari, Hashim Thaci, Sami Lushtaku,
25 Rexhep Selimi and others.

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1 "InFokus Newspaper has secured evidence by which the Special
2 Investigative Task Force under the framework of the Special Court, is
3 suspected of requesting evidence and testimonies from Serbia, against
4 Adem Jashari, Hashim Thaci, Sami Lushtaku, Rexhep Selimi and others."

5 Again, can you assist us with this: Why was that, in your
6 assessment, in the public interest to publish?

7 A. Yes. At that time, the indictment against the
8 then-president Hashim Thaci and other people was mentioned, but it
9 was never mentioned that evidence is being sought against Kosovo's
10 hero Adem Jashari. So when we saw this in these documents, we
11 thought this was in the public interest to know about, because
12 Adem Jashari, at that time, had been killed by the Serbian forces.
13 And I believe Kosovo citizens were expecting evidence to be collected
14 against those who killed Adem Jashari and not on Adem Jashari.

15 Q. Thank you. And the article continued, referring to a letter of
16 the lead Prosecutor, David Schwendiman, addressed to the former War
17 Crimes Prosecutor Vladimir Vukcevic, requesting documentation from
18 Serbia. And then quoted:

19 "'Pursuant to the ongoing coordination of our offices and
20 further to our meeting of 1 June 2015, I respectfully request that
21 your office provides us with copies of related cases to terrorism by
22 the organised armed groups committed by the Kosovar Albanians during
23 1981-1999, including criminal offences contained in Chapter XV of the
24 Criminal Code of SFRY. We request the following documents:

25 "Indictments, Judgements of the first and second instance court,

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1 including those of the Supreme Court."

2 MR. REES: Can we just look at the second page, briefly. Maybe
3 we don't need to -- I'll continue.

4 Q. Again, still quoting, I think, in the article:

5 "'Furthermore, we kindly request that the first documentation
6 should be related to the case of," there's a redaction, "tried in
7 Prishtine district Court against the following individuals, Besim
8 Rama, Idriz Aslani, Adem Jashari, Jakup Nura, Fadil Kadriu, Nuredin
9 Lushtaku, Sahit Jashari, Hashim Thaci, Sami Lushtaku, Rexhep Selimi
10 et al.'"

11 And you closed the quotes and referred to the photo which we'll
12 look at in a minute.

13 So just pausing there. You redacted the name of the old case
14 that was referred to; is that right?

15 A. Yes.

16 Q. The rest you quoted directly from the letter. Again, can you
17 assist us with why, in your assessment, you quoted that part of the
18 letter in the public interest?

19 A. Yes, I would continue the same thing that I said earlier.
20 Adem Jashari and over 50 members of his family, including young
21 infants, were massacred by the Serb forces. So we, as citizens and
22 journalists, expect that evidence be collected against those who
23 committed that massacre. And it was very strange to us that facts
24 are being collected on Adem Jashari in the context of organised
25 terrorism and armed terrorism.

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1 Q. Thank you.

2 MR. REES: If we look at the image, then, of the document.

3 Perhaps reduce it slightly, Madam Court Officer. Thank you.

4 Q. We can see that this was an image. The document at the top left
5 corner has the logo SITF on it; yes? And you didn't redact that
6 logo, did you?

7 A. No.

8 Q. Apologies if the question sounds trite, but there was no reason
9 you saw to redact the logo of the SITF from that document?

10 A. There was no reason according to us, as an editorial team,
11 because this is an agency, an organisation. I don't know what to
12 call it. But it's not a secret organisation. It was a well-known
13 organisation, and we thought it was useful to know who is writing
14 these letters.

15 As I mentioned, we had doubts about the authenticity of these
16 documents and what their confidentiality status was.

17 Q. Then we can see that there is an electronic redaction applied to
18 a line at the top of the document. Without giving us the details,
19 can you remember what that line is or not?

20 A. I don't remember the first line. While the other two, I think
21 it's the case number.

22 Q. I see. So there's a redaction of the case number and the name
23 of the old case that was referred to in the body of the text as
24 redacted; yes? But at the time, when this image was taken, those
25 redactions weren't in place. It was a document in full?

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1 A. Yes, these were done digitally.

2 Q. And whoever did that, somebody had the document in full, applied
3 the redaction, and then it's been uploaded to the system -- well,
4 I'll correct that. Presumably it's uploaded -- the image is uploaded
5 to the system before the redaction is put on?

6 A. No. Because the system can hold a finite number of documents or
7 photos that it can hold, so we don't -- we try not to upload
8 unnecessary documents or photos. And in this case, we only upload
9 the redacted versions because of that reason.

10 Q. So before the redactions are applied to it, in what format is
11 that file held? Is it on a USB stick or on somebody's hard drive on
12 their computer? How is it -- what is it stored on before the
13 redactions are put onto it?

14 A. Usually when we have such documents that need to be redacted,
15 this is mainly done by the journalist who writes the text. The
16 journalist informs the editor when he is uploading the document and
17 when he removes the document from the system.

18 So this is most of the time done by the journalist, but there is
19 no set way of doing things. It could be a USB stick or via messages.

20 Q. And when you say "messages," do you mean e-mails or do you mean
21 WhatsApp messages or text messages attaching the document?

22 A. No. As -- the fastest way to do this is to -- in their own
23 social media, they send the message to themselves sending the
24 photograph, so that the same person has access to that document and
25 not anybody else.

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1 Q. I follow. Can we look please, then, at the first e-mail you
2 sent to the SPO after publishing those two articles.

3 MR. REES: And this is, I think, P98.1, ERN 091909 to 091917 is
4 the main body, and we're looking specifically at pages 091915
5 onwards. Thank you.

6 Q. So following publication of those two articles, you sent an
7 e-mail to Christopher Bennett who is at the SPO. He handles public
8 inquiries, is that right, to your knowledge, or do you not know?

9 A. Yes, that's right.

10 Q. And you said you drafted this document, this e-mail, and then
11 before sending it, the editors -- the rest of the editors team cast
12 an eye over it, did they?

13 A. Yes, correct.

14 Q. And do you know if they made it -- were there any changes made
15 to the draft that you'd come up with after the editorial team
16 discussing, or can you not recall?

17 A. I don't remember exactly, but we act according to a rule that if
18 something -- if a material is edited by somebody, the text is changed
19 somewhat in order to be in the best shape possible.

20 Q. As a general rule. But we don't know whether this document had
21 any changes from the draft that you proposed?

22 A. I can't answer this exactly, but I believe that it was changed.

23 Q. Do you recall in what way or not?

24 A. No.

25 Q. But by the time it's sent, all five members of the editorial

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1 team are happy with its terms; is that right?

2 A. Yes, yes.

3 Q. And you wrote, "Subject: Question from Gazeta inFokus.

4 "Dear Mr. Bennett,

5 "Today in Kosovo, an unknown person handed thousands of records
6 and documents to the 'Organisation Of War Veterans - KLA'."

7 You then referred to a description of the content, in part, and
8 the nationality or ethnicity of witnesses. And you asked:

9 "We wanted to ask you, are you aware of these information leaks
10 and will those documents now handed to different journalists harm
11 investigations ...

12 "Are you investigating the leakage of documents and what will
13 happen if those non-edited documents are published from media
14 outlets?"

15 So, again, and let me reassure you, I make no criticism of you,
16 and the SPO agree you've done nothing done, but I just want to
17 clarify a couple of matters.

18 Firstly, the reply you received from that e-mail was: No
19 comment. Is that right?

20 A. Yes, I received a reply that neither confirmed nor denied.

21 MR. REES: So if we keep this document on the screen. Perhaps
22 reduce it and put it on the left-hand side of the screen. And on the
23 right-hand side, pull up the document within 102766-102780-ET, and go
24 to page 10277 of that.

25 Q. We can see that in the body of the article on the right-hand

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1 side, which was published slightly later that day, the only response
2 from the SPO, it's quoted in the article, isn't it:

3 "Thank you for the communication. The Specialist Prosecutor's
4 Office will not comment."

5 That was the brief reply to inFokus, your article said; yes?

6 A. Yes.

7 MR. REES: Your Honour, is that a convenient moment to break?
8 Thank you.

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

10 Court Usher, please escort the witness out of the courtroom.

11 Mr. Berisha, please be back here at 2.30 for further testimony,
12 and do not talk to anyone except your lawyer during the break about
13 your testimony. Understood?

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

15 [The witness stands down]

16 PRESIDING JUDGE SMITH: We will adjourn until 2.30.

17 --- Luncheon recess taken at 12.59 p.m.

18 --- On resuming at 2.29 p.m.

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

21 Mr. Rees, can you give us a hint about timeframe for the balance
22 of your cross?

23 MR. REES: [Microphone not activated].

24 PRESIDING JUDGE SMITH: A half hour? Okay. Thank you.

25 [Microphone not activated].

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1 MR. CADMAN: Very brief.

2 PRESIDING JUDGE SMITH: [Microphone not activated].

3 [The witness takes the stand]

4 PRESIDING JUDGE SMITH: [Microphone not activated].

5 Mr. Berisha, we will continue with the cross-examination.

6 Mr. Rees is still engaged in that. And then we will have some other
7 questions from other people.

8 Mr. Rees, you can go ahead.

9 MR. REES: Thank you, Your Honour.

10 Q. So we just dealt with the first e-mail that you sent to the SPO
11 and the reply, which we don't have but you quoted in an article,
12 which was that the SPO would not comment. And we saw in direct
13 examination that you continued to print some articles in the
14 meantime, including --

15 MR. REES: Can we look please, Madam Court Officer, at
16 ERN 102766 to 102780-ET, which we have on the screen, at page 102767.

17 Q. So this was a further article published by yourself,
18 Mr. Berisha. We can see you there as the author. And this is now
19 9 September, so some second day after the day on which the first
20 press conference was held. At 11.56 you printed an article stating
21 that EULEX had said they'd nothing to do with the reception of secret
22 files by the KLA WVA.

23 So you'd had information that EULEX had ruled out playing any
24 part in how the documents had arrived at the KLA WVA; yes?

25 A. Yes.

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1 Q. But as we see later on in the text, the SPO had refused to
2 comment, and they still hadn't by the date of your article, 11.56 on
3 9 September; is that right?

4 A. Yes, they did not comment.

5 Q. Later the same day you sent a further e-mail.

6 MR. REES: Which is at 091917, please. Thank you.

7 THE COURT OFFICER: For the record, that's P98 MFI.

8 MR. REES: I'm grateful. Thank you.

9 Q. And we can see that at 1557 on 9 September you again e-mailed
10 Christopher Bennett. And you set out, in the third paragraph of that
11 e-mail, that you were letting the SPO know that you had a copy of the
12 documents; is that right?

13 A. Yes.

14 Q. Now, you hadn't said that in the first e-mail but you've said it
15 there on 9 September in the second e-mail, and you have said that
16 there were a lot of medias requesting the documents. And you meant,
17 did you, a lot of colleagues in the media requesting to see the
18 documents that you had; yes?

19 A. Correct.

20 Q. And although in the e-mail of 7 September you had not set out
21 that you had a copy of the documents, of course, you weren't hiding
22 anything because you made that publicly clear in the articles that
23 inFokus had published that day; is that right?

24 A. Initially, we sent immediately an e-mail to the SPO office to
25 ask about the documents. But on the same day when we published the

1 document, we said that we had the copies. So there was nothing to
2 hide. The aim of the first e-mail was to find out whether the SPO
3 was aware about the documents that we had.

4 Q. Well, we have the other e-mail and we don't, perhaps, need to
5 look back at it. We've already done that.

6 And you've said that a lot of medias were requesting the
7 documents. Can you recall now which agencies or colleagues from
8 other agencies you had spoken to, if anyone, about that?

9 A. Not only in this case -- maybe I have to explain it in more
10 detail. Not only in this case but always when a media has a material
11 that is not in possession of other medias, then there's an
12 opportunity for cooperation with the other media outlets.

13 However, about these issues, you ask for permission the highest
14 person in the media hierarchy. It's not the journalists or the
15 editors who take such a decision. We spoke with the editorial team
16 of the inFokus newspaper, and we decided not to distribute these
17 documents to other medias.

18 Personally, I don't remember to have had a request from another
19 media to share the documents with them. But as I said, these
20 decisions were taken from the top.

21 Q. I follow. So you were made aware that other colleagues of yours
22 on the editorial team at inFokus had received requests from other
23 agencies. You don't recall receiving a request yourself?

24 A. I don't remember, because I was very busy with these documents,
25 and I did not answer my phones even when I was called by family

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1 members.

2 Q. And it was later that day, was it, that you were contacted by
3 two investigators from the SPO?

4 A. I'm not quite certain if it was later that day or the day after,
5 but it was in this period that I was contacted by them.

6 Q. And they -- two investigators attended at the inFokus offices;
7 is that right?

8 A. Yes.

9 Q. And we've got a copy of what's described as a delivery document.

10 MR. REES: It's at page 078569. This is P100, I think.

11 Q. And have you seen this document before, before you started
12 giving evidence? Is that your signature on it, for example?

13 A. Yes, it's my signature on this document.

14 Q. And what we can see as recorded as the content that the document
15 refers to is "Documents from KLA WVA"; yes?

16 A. Yes.

17 Q. So the investigators took documents from the KLA WVA; yes? They
18 didn't take any electronic data, any USB stick or any cameras or
19 anything like that?

20 A. No. The investigators took the documents that were there, the
21 documents that we had. The entire file.

22 Q. And they didn't ask about any electronic data or devices. They
23 just wanted the hard copy document.

24 A. As far as I remember, they did not ask for electronic documents.

25 Q. And you were asked in direct examination whether any document

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1 might have been added or removed during the days in which the
2 documents were at the offices, and you said, to your knowledge, no.

3 But it's right, isn't it, as the point you made in your
4 interview on 25 August 2021 with the Prosecutor, as you said in that
5 interview, you did not stay 24 hours in the office, in the inFokus
6 offices, of course? Is that right? Do you remember saying that in
7 the interview?

8 A. Yes, yes.

9 Q. So you were saying that as far as you know there were no other
10 copies made, but you can't, of course, exclude the possibility
11 because you were not in the office 24 hours a day; is that right?

12 A. Correct.

13 Q. And that's the same in relation to your answer about whether
14 another copy was made. To your knowledge, no other copy made, but
15 you weren't in the office for 24 hours, so you cannot exclude the
16 possibility. Do you agree with that?

17 A. Correct.

18 Q. And after the investigators had gone, it's right that inFokus
19 did continue to publish articles on this topic, including if we look
20 at the article itself at ERN 102768.

21 MR. REES: And if we look, please, at the version at DHG0270.
22 Thank you, Madam Court Officer.

23 Q. In the version that's still online, you can see there, 25
24 October 2021, we can see the date and time, which is not legible on
25 the black and white copy, and we can see that article was published

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1 2400 hours on 9 September, so after the investigators had left. Or
2 is that while they were still there?

3 A. No, this text was published after they had left, the
4 investigators.

5 Q. And we can see again -- I repeat, no criticism from me for doing
6 this, but we can see that in that article after they'd left, you
7 again published images of at least some of the documents, including a
8 larger document this time. We can see the original documents on the
9 table on the desk in the top image, and we can see the delivery
10 document itself in this article.

11 MR. REES: And then, again, if we can go now, please, to 102778
12 on the left-hand side, and DHG0297.

13 Q. And again, it's the same article, the one that you produced
14 during the course of the interview and also still available on the
15 internet, as we see the timestamp at the top and, underneath the
16 image at the top of the page, the reference to the time that it was
17 published, 1721 hours, this time on 16 September. And, again,
18 another reproduction of the images of the documents on the desk.

19 MR. REES: Can we finally go back - I'm afraid there was one
20 aspect that I missed earlier - to the document at 102780. And that's
21 obviously copied in small text, so difficult to read and make out.
22 But we can look at DHG0305.

23 Q. Now, we can see there, can't we, it's the same article in
24 colour. It's still available on 25 October 2021. And we can see
25 there in the headline there is an image that had -- below the

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1 headline an image that had four documents set out; yes?

2 A. Yes.

3 Q. And if we scroll down both documents, we can see that there
4 was --

5 MR. REES: If you scroll down again, please, Madam Court Usher,
6 on the right-hand side. Just pause there.

7 Q. We can see that in this article --

8 MR. REES: And, again, if you scroll the left-hand black and
9 white version down slightly, Madam Court Officer, please. There we
10 are. Thank you.

11 Q. We can see that in the article was a reproduction, without
12 redaction, of a letter. It's got the SITF logo at the top. There
13 has been the imposition of the word "inFokus" over the top part of
14 the page but it doesn't appear to be over the text. Do you agree?

15 A. Yes.

16 Q. And we can see that it's addressed to the Republic of Serbia,
17 Office of War Crimes Prosecutor, attention Mr. Vladimir Vukcevic:

18 "Dear Mr. Vukcevic,

19 "Coordination Request No. 63

20 "Pursuant to the ongoing coordination between our offices,
21 attached please find a list of persons that the EU/Special
22 Investigation Task Force (SITF) would like to interview as witnesses
23 in the near future. Although the last known addresses of the
24 concerned individuals are" --

25 THE INTERPRETER: The interpreters kindly ask the speaker to

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1 read slowly when quoting the text. Thank you very much.

2 MR. REES: And I convey my apologies to the interpreters. I
3 will start again from that paragraph, reading slowly.

4 Q. "Although the last known addresses of the concerned individuals
5 are in Kosovo, I should be grateful if your office could provide
6 current addresses, telephone numbers, and any other contact
7 information that may assist in locating the persons named in the
8 attached list as it is believed they have sought residence cards or
9 Serbian citizenship.

10 "Furthermore, I respectfully request copies of all previous
11 statements provided by those individuals to Serbian judicial and
12 police authorities.

13 "I look forward to continuing our ongoing cooperation.

14 "Sincerely ..."

15 Then there is a reproduction of a signature above the name
16 Kwai Hong Ip, Acting Lead Prosecutor, Special Investigative Task
17 Force.

18 Just pause there. You've published that letter in full. Can
19 you set out why, in your assessment, it was in the public interest to
20 do so?

21 A. First of all, to show what we had mentioned in the text of the
22 article; that is, that there were correspondences of this nature
23 between SITF and Serbian officials. So this was to prove, with a
24 photograph, the text, what was contained in the text of the article.

25 Q. And you set out earlier answers about cooperation between the

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1 SITF and the Serbian authorities. And the letter at the bottom
2 refers to an attachment. Can you see that at the bottom of the
3 letter? It has the words "Attachment: [CONFIDENTIAL] List of
4 Witnesses dated 24.09.2014."

5 But you did not attach the list of witnesses in the article; is
6 that right?

7 A. No, we did not publish it.

8 Q. So what we can see is that the letter doesn't claim to be
9 confidential, there's a reference to a list of witnesses being
10 confidential.

11 MR. REES: And if we scroll down, please, in the article, on
12 both versions. Just pause there, please, on the left. And if we
13 scroll down -- sorry, go to the next page on the right. And if we
14 can zoom in, please, on the top image and again on the left-hand side
15 as well.

16 Q. So, again, we can see the same document. It's not clear on the
17 small-print version that was produced in the interview. But on the
18 right-hand side, the version that's still there on the internet, as
19 you said, we can see there this time an image of another document
20 with the SITF logo; yes?

21 A. Yes.

22 Q. And this has, on the right-hand side at the top, "Republic of
23 Serbia, Office of the War Crimes Prosecutor." And then it reads:

24 "Dear Mr. Vukcevic,

25 "Coordination Request No. 120

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1 "Pursuant to the ongoing coordination between our offices, the
2 EU Special Investigative Task Force (SITF) hereby seeks your
3 assistance in locating and providing contact details for the
4 individuals listed in the table below. Based on our most recent
5 information all of these individuals are currently residing in
6 Kosovo; however, in the past three years they have provided
7 information to MUP officials, namely Dusan Dragovic in Jagodina."

8 And then there's a table that has three rows. It has seven
9 columns. And the entries in those rows and columns is blanked out be
10 the word "inFokus"; yes?

11 A. Yes. We took care that everything was redacted and could not be
12 seen what actually was written.

13 Q. And before we continue with the rest of that copy of the
14 document, you have, as we've just seen, referred to those individuals
15 in the past three years providing information to MUP officials,
16 namely Dusan Dragovic in Jagodina. Can you help us with why, in your
17 assessment, you were reporting on the fact that those unnamed
18 individuals have provided information to Dusan Dragovic in Jagodina?

19 A. This was decided by the editorial team, that is, to publish it
20 in a redacted form, for several reasons. First of all, not to
21 publish the names and the personal details of the persons listed.
22 Secondly, to prove what was contained in the text of the article.

23 Q. But you have referred to the name of Dusan Dragovic. Can you
24 help us as to why, in your assessment, it was in the public interest
25 to print and to publish that information in relation to

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1 Dusan Dragovic?

2 A. The name of Dusan Dragovic, it's not a name that I heard before.
3 I do not know who this person is. However, it is publicly known that
4 even after the declaration of independence of Kosovo, members of the
5 Serbian MUP continued to be present in Kosovo illegally. So this was
6 of public interest.

7 Q. Thank you, Mr. Berisha.

8 MR. REES: And if we scroll down the page, please, to the next
9 image.

10 Q. We can see there -- it's not entirely clear what that is, but it
11 looks like there's a continuation of the table with, again, the
12 contents of the table being redacted.

13 MR. REES: And if we then scroll down to one last page. So
14 scroll down on the right-hand side and go to the next page on the --
15 sorry, next page on the right-hand side and scroll down on the left,
16 indeed.

17 THE COURT OFFICER: What we see on the screen is the last page
18 of the left.

19 MR. REES: Let me just check one matter.

20 Q. Do you recall that in the translation of this article we saw
21 that there was a quote, was there not, from a letter to the Serbian
22 Parliamentary Committee on Kosovo and Metohija sent to the task force
23 on 17 November 2015. Do you recall us discussing that before lunch?

24 A. Yes.

25 Q. And, in fact, in the article itself there was the letter

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1 reproduced in full, wasn't there, which we can see on the web site,
2 25 October 2021, on the right-hand side in DHG0308; yes?

3 A. Excuse me, can you please repeat your question?

4 Q. So in the article that was published that was entitled "What do
5 the thousands of pages from the Special Court files delivered to the
6 KLA WVA contain?" at the end of that article, you quoted from and
7 reproduced the letter from the Serbian Parliamentary Committee on
8 Kosovo and Metohija sent to the task force on 17 November 2015; is
9 that right?

10 A. Yes, yes.

11 Q. And we can see that letter reproduced in full. It's still in
12 the article on the web site in DHG0308.

13 A. Yes.

14 Q. And we can see that no redactions applied to it.

15 MR. REES: In fact, it may assist if we can have a look at
16 DHG0314. It's the same page. And so we can see there's an even
17 better version.

18 Q. It's the document in full and it's that document that you quoted
19 from in the body of the article itself, completed by the Chairman of
20 the Working Group, Mr. Milovan Drecun. Is that right?

21 A. It is possible this is the one, but I'm not sure whether we were
22 citing from exactly this document.

23 Q. If we look at the translation of the article.

24 MR. REES: Which, if we can have on the left-hand side page --
25 document 102766-102780-ET.

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1 Q. So we can see that the letter is in English itself; yes? If we
2 look at the letter on the right-hand side, it's printed in English,
3 is it not?

4 A. Yes.

5 Q. And, of course, in your article it would have been -- the
6 content of it then translated into Albanian, and then translated back
7 into English by the -- for purposes of these proceedings in the
8 document on the left. So although the words in the English
9 translation of the Albanian don't match exactly the words in the
10 English, it's close enough.

11 You can see the date on the letter is 17 November 2015. Can you
12 see that? If you look at the letter itself, on 17 November 2015,
13 underneath -- yes.

14 A. Yes, yes.

15 Q. And then if we scroll down in the English translation of the
16 Albanian article, we can see the reference at the bottom of the page
17 to the letter dated 17 November 2015?

18 A. Yes, correct.

19 Q. And if you look at -- if you follow the translation of the
20 Albanian on the left, I'll read from the English original.

21 "I would hereby like to inform you that the Committee on Kosovo
22 and Metohija at its meeting held on 19th October 2015 has endorsed a
23 decision ..."

24 THE INTERPRETER: Could counsel please slow down.

25 MR. REES:

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1 Q. "'... has endorsed a decision establishing the Working Group for
2 Gathering Facts and Evidence in elucidation of the crimes committed
3 against members of the Serbian people and other ethnic communities in
4 Kosovo and Metohija. The Working Group believes that it can
5 contribute to successful work of the Special Investigative Task Force
6 and is looking forward to their future cooperation.

7 "'Also, we believe that we will establish successful relations
8 and cooperation aimed at revelation of crimes committed by the
9 so-called UCK. Please find enclosed the decision establishing the
10 Working Group.'"

11 And that's then marked "Sincerely" and typed at the bottom as
12 Chairman of the Working Group, Mr. Milovan Drecun. So it's the
13 letter that was referred to in the article, is that right, and you
14 already dealt with the public interest and publication thereof.

15 A. Yes, that's the one.

16 Q. Thank you, Mr. Berisha.

17 PRESIDING JUDGE SMITH: Mr. Cadman, your cross-examination.

18 Cross-examination by Mr. Cadman:

19 Q. Good afternoon, Mr. Berisha.

20 A. Good afternoon.

21 Q. First of all, as you've already heard from the Prosecutor and
22 you have heard from Mr. Rees, nothing that I say should be
23 interpreted in any way in suggesting that anything that you've done
24 is wrong and that you should be in any way concerned.

25 I note that you've said that you're not happy to be here. And

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1 on behalf of Mr. Haradinaj, I'm just going to ask you a few questions
2 of clarification.

3 You have said that you were informed of the press conference in
4 the morning of 7 September. When you arrived, you were one of the
5 first journalists to be there. That's correct?

6 A. Yes, that's correct.

7 Q. We've heard how you remained there throughout the press
8 conference with your cameraman who filmed the event.

9 A. Yes.

10 Q. You have said at the conclusion of the press conference you
11 approached the table where the documents were, and you've confirmed
12 that there are a number of people there; is that correct?

13 A. Yes.

14 PRESIDING JUDGE SMITH: Mr. Cadman, put something at the end to
15 let him know it's a question.

16 MR. CADMAN: I appreciate that.

17 Q. As you approached the table, you requested to take hold of a
18 number of those documents, and you have said that you requested to
19 have the whole batch; that's correct?

20 A. I did not mention any amount of documents. I asked whether I
21 could take some of the documents in order to be able to see what they
22 contained.

23 Q. And you have confirmed that you took a significant number of
24 those documents. Whilst you can't recall precisely, as I would not
25 expect, you estimated that they were in the region of a thousand

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1 pages; is that correct?

2 A. Correct.

3 Q. And is it right that at the time you collected those documents
4 there were a number of other journalists there as well?

5 A. Yes, there were other journalists.

6 Q. I think you had suggested that there was around ten journalists
7 in total.

8 A. Yes, approximately.

9 Q. And when you asked for or when you took hold of a copy of those
10 documents, there was a discussion amongst the other journalists as,
11 of course, they wanted to have copies as well; is that correct?

12 A. Yes, I heard that there were such discussions going on.

13 Q. And you were told at that stage that, certainly at the WVA, they
14 would not make copies for you; is that correct?

15 A. I was told that they had had the documents in their possession
16 for a very short time, so they didn't have time to make many copies.

17 Q. And there was no suggestion at that time that they were going to
18 make copies for you at that point?

19 A. No, there wasn't. I didn't hear anyone say anything about other
20 copies.

21 Q. And so when you collected the documents, it was made clear that
22 if the other journalists wanted copies they should get those copies
23 from you?

24 A. I was told that if documents were asked of me, then I could
25 distribute them to other journalists.

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1 Q. After you took hold of those documents, you have said that you
2 requested, due to the size, for them to be put in a bag; is that
3 correct?

4 A. Yes, correct. A plastic bag. Something to carry them in.

5 Q. And up until that point or -- or at least at no stage during
6 your time at the KLA WVA on that day did anyone give you any
7 instructions on what you should do with those documents?

8 A. There were no instructions except what I said earlier: If other
9 media were going to ask me to give them documents, I should cooperate
10 with them.

11 Q. You then sat for a short while in the coffee room at the WVA
12 before you then finally departed to take those documents to your
13 office; is that correct?

14 A. Yes.

15 Q. And, again, during the time that you were in the coffee shop, as
16 we have heard, no instructions were given to you as to what you
17 should do.

18 A. No, there were no instructions.

19 Q. At some point later that day, as we've heard, you contacted the
20 SPO with a request that they confirm the authenticity and/or
21 confidentiality of those documents?

22 A. Yes, we contacted the SPO and asked them in relation to these
23 documents.

24 Q. And then you contacted them again due to the fact that they had
25 not -- let me go back for a moment. You didn't receive any reply as

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1 to the question that you'd put to them, as we've already heard.

2 A. Christopher Bennett replied but the reply was: We cannot
3 comment on these issues.

4 Q. Then you wrote again on 9 September informing them that you had
5 a copy of those documents and that other media wanted to have copies
6 of them; is that correct?

7 A. Correct.

8 Q. You've also said today that following on from that exchange you
9 were contacted at some point by telephone. You can't remember
10 exactly when that was, but you have said that the SPO contacted you
11 by telephone and that somebody would be in contact with you following
12 that telephone call; that's correct?

13 A. Yes.

14 Q. But nobody was in contact with you following that call until
15 August of this year?

16 A. No, I was contacted by the investigators of the Specialist
17 Prosecutor's Office. They're the ones who came and recovered the
18 documents.

19 Q. That was on 9 September -- actually, earlier you said you were
20 not sure of the exact date, but it was following the e-mail that you
21 sent.

22 A. Yes.

23 Q. And just so I understand it correctly, there was a further
24 telephone call after that?

25 A. Yes. After the documents were taken by the investigators, I

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1 don't remember the exact date that happened, I received another phone
2 call by the SPO asking me to meet them.

3 Q. And as you have said earlier, there was no follow-up to that
4 telephone call; is that correct?

5 MR. HALLING: Your Honours, could we specify the timeframe here
6 with a little more precision.

7 MR. CADMAN: Certainly.

8 PRESIDING JUDGE SMITH: [Microphone not activated].

9 MR. CADMAN:

10 Q. So just for clarity, Mr. Berisha, after 9 September you were
11 contacted by telephone, as you've said, by the SPO. Do you recall
12 when that was?

13 A. No, I don't remember the date.

14 Q. Was it within days of the 9th?

15 A. No, I think it was weeks. But as I said, I can't give you a
16 date. I'm having trouble remembering it now.

17 Q. So possibly several weeks after you met the investigators on
18 9 September, you received a telephone call from the SPO, and you are
19 now confirming - or please confirm - that there was no further
20 contact from the SPO until you were contacted in August of this year.

21 A. There was another phone call at that period.

22 Q. At what period, Mr. Berisha?

23 A. In the period from 9 September to August 2021. There was
24 another phone call by the SPO.

25 Q. There were two separate phone calls you received?

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1 A. I'd like to explain it. Initially, I was contacted by the SPO
2 and they asked me whether some investigators could come to get the
3 documents. I can't remember how long it was after that when I was
4 contacted by the SPO asking me to meet up with them to discuss the
5 case of the documents.

6 They asked me to meet up with them on certain days. I wasn't
7 able to meet them. I was not available. So we discussed to meet up
8 with them -- not to meet up with them, but they would contact me over
9 the weekend, but they didn't. And after that, I did not have any
10 contact with them until August.

11 Q. Until August of this year?

12 A. Yes.

13 Q. Was any reason ever given to you why there was such a delay
14 between your contact the first -- shall we say the second call you
15 received and the contact that you had in August of this year?

16 A. No, I was not given any explanation. But I didn't ask for any,
17 to be fair.

18 Q. Mr. Berisha, I'm very grateful for your time. I don't have any
19 further questions at this time.

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

21 Anything from the Prosecution at all?

22 MR. HALLING: Your Honours, no redirect questions. We did have
23 one proposal for the Trial Panel's consideration.

24 During the Gucati Defence's examination, they were using two
25 documents with DHG ERNs. They are enhanced scans of P129, and we see

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1 no reason why they can't also be admitted into evidence as decimals
2 of P129, so we tender them.

3 PRESIDING JUDGE SMITH: Appropriate for you all?

4 MR. REES: I agree and I'm grateful to Mr. Halling for the
5 suggestion.

6 PRESIDING JUDGE SMITH: Okay. We'll give them .1 and .2.

7 MR. HALLING: Thank you, Your Honours. And for the record, the
8 full ERNs are DHG0251 to DHG0310 and that would be P129.1, and
9 DHG0311 to DHG0317. The first of those exhibits would be
10 confidential for the reasons explained previously, and the second of
11 those ERNs would be public.

12 [Trial Panel confers]

13 MR. REES: Your Honour, if -- sorry.

14 PRESIDING JUDGE SMITH: [Microphone not activated].

15 MR. REES: I -- if it makes a difference --

16 PRESIDING JUDGE SMITH: [Microphone not activated].

17 THE INTERPRETER: Microphone for the Judge, please.

18 MR. REES: Can I just suggest this: For simplicity's sake, we
19 uploaded to the presentation queue -- it was a bundle of clearer
20 reproductions of the exhibits that Mr. Halling had adduced. It
21 begins DHG0215 and runs through to DHG0317. I'd suggest that it
22 become a single exhibit with a single exhibit number.

23 MR. HALLING: We certainly have no objection to that. The
24 combined exhibit would be confidential for the reasons discussed
25 previously.

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1 PRESIDING JUDGE SMITH: At least for now.

2 MR. REES: At least for now.

3 PRESIDING JUDGE SMITH: And so you want to give it a wholly new
4 number? Is that your suggestion? Not making it attached to another
5 number but its own separate number?

6 MR. REES: Yes.

7 PRESIDING JUDGE SMITH: What number would that be?

8 THE COURT OFFICER: [Microphone not activated].

9 PRESIDING JUDGE SMITH: Defence.

10 THE COURT OFFICER: Your Honours, that would be 1D2.

11 [Trial Panel confers]

12 PRESIDING JUDGE SMITH: Madam Usher, you can escort the witness
13 from the courtroom. We are finished.

14 Mr. Berisha, thank you for being with us, for your candour in
15 answering the questions, and we wish you well.

16 THE WITNESS: [Interpretation] If I'm allowed, Your Honour, to
17 add something in relation to the public interest of the citizens and
18 our decision to publish those documents.

19 PRESIDING JUDGE SMITH: Your testimony is finished and those
20 questions were asked and you gave an answer to them several times.
21 So thank you very much.

22 THE WITNESS: [Interpretation] Thank you.

23 [The witness withdrew]

24 PRESIDING JUDGE SMITH: Judge Mettraux had a question for you,
25 Mr. Rees.

1 JUDGE METTRAUX: Thank you, Judge Smith.

2 And, Mr. Rees, I've followed your cross-examination of this
3 witness with some interest. And I understand it to be part of your
4 case that your client acted in the way he did in pursuance of a
5 public interest; is that right?

6 MR. REES: It is.

7 JUDGE METTRAUX: And I also understand that it is a part of your
8 case that your client was tricked, incited or entrapped into doing
9 what he did, and my question is simply for our own understanding of
10 what your position is on this.

11 Are you saying that the two propositions of acting in pursuance
12 of public interest and the suggestion of entrapment are not
13 inconsistent with each other, or is your position that these
14 arguments are advanced in the alternative; in other words, if the
15 Panel were not to accept the claim of entrapment, we would then have
16 to turn to the question of public interest? Could you help us with
17 that?

18 MR. REES: Our case is that Mr. Gucati acted in the way that he
19 did in the public interest. We will submit that his actions and his
20 conduct did not amount to a criminal offence.

21 If the Trial Panel is against us on that point, we say that he
22 acted following incitement from others. And as we have raised, it is
23 an issue in the case as to who incited. We will say that there will
24 be clear evidence of incitement. The only issue, as far as a plea of
25 police incitement is concerned, is who was involved in that

1 incitement.

2 JUDGE METTRAUX: So if I understand you well, we would have, in
3 the order in which you will offer these two defences or arguments, we
4 will have to consider first the issue of public interest and then the
5 claim of entrapment; correct?

6 MR. REES: We will submit in the first instance the Trial Panel
7 will wish to consider what actions Mr. Gucati took, to consider
8 whether that amounted to a criminal offence. We will submit that his
9 actions did not. Part of those submissions will involve reference to
10 the public interest.

11 If the Trial Panel is against us on that, having made decisions,
12 findings of fact as to his actions, then we will ask the Trial Panel
13 to also look at why he acted, not in terms of public interest, but
14 what preceded it. Was there incitement? And we will say that the
15 Panel will have clear evidence that he was incited so to act. The
16 question for a plea of police incitement will be who was involved in
17 that incitement.

18 That is how we put it.

19 JUDGE METTRAUX: I'm grateful, Mr. Rees.

20 Can I ask you, Mr. Cadman, whether your position is similar to
21 that of Mr. Rees?

22 MR. CADMAN: I would say it's identical to that. It's the
23 position that we put forward -- which I hope that we've put forward
24 clearly since the outset of these proceedings, and certainly it will
25 be the case that is put forward as part of the defence.

1 JUDGE METTRAUX: I'm grateful.

2 PRESIDING JUDGE SMITH: [Microphone not activated].

3 MR. KOCI: [Microphone not activated].

4 PRESIDING JUDGE SMITH: [Microphone not activated].

5 THE INTERPRETER: Microphone.

6 PRESIDING JUDGE SMITH: Everybody, we will commence again
7 tomorrow at 9.30. We will take up the issue of the MFI documents,
8 and following that, we will be in a position to take the next
9 witness.

10 MR. REES: Your Honour, there is -- just looking ahead to
11 tomorrow. There is, of course, the disclosure issue that we have
12 raised.

13 We had, when we corresponded with the SPO yesterday, following
14 the procedure that's been followed thus far which attempted to
15 resolve matters on an *inter partes* basis, we had indicated that we
16 sought, despite the fact that we were deprived of a Rule 102(3)
17 notice, dealing with relevant material associated with the three new
18 matters -- I don't concede they're new at all, but I hope the
19 Trial Panel will follow. They are referred to as three new matters
20 following the witness preparation session in relation to W04842.

21 And we raise those requests that we deem to be material to the
22 preparation of the Defence under Rule 102(3) as a matter of urgency.
23 And in the e-mail, we requested for those materials, to the extent
24 they exist, to be provided to us, but that if the SPO challenged
25 materiality under Rule 102(3), they were to provide us with a

1 Rule 102(3) notice update and seize the Panel with those matters.

2 We haven't had a response in accordance with the rules to that
3 correspondence other than to say they're not going to make
4 disclosure. But they have not indicated that they challenge
5 materiality or that they will seize the Panel of these matters.

6 In which case it follows, it seems to us, under Rule 102(3),
7 they either make such disclosure of material that is in their
8 possession or they prepare Rule 102(3) notice and seize the Panel.
9 We would wish for these matters to be dealt with before the witness
10 begins.

11 PRESIDING JUDGE SMITH: Okay. Thank you.

12 SPO, do you have a response to this?

13 MR. HALLING: Yes, Your Honour. I said some of it this morning,
14 that this request, in our assessment, is untimely and overly broad.

15 11th hour motions of the kind that we are talking about - and,
16 by the way, like the request to file formal declarations following
17 witness preparation sessions that was rejected this morning - these
18 kinds of motions make the witness preparation procedure adopted by
19 the Trial Panel unworkable.

20 We are asking that this request be dismissed *in limine* pursuant
21 to Article 40(2) of the Law for the reasons previously indicated,
22 such that W04842 can commence his testimony tomorrow as envisaged.
23 This matter can be revisited if and when procedural fairness demands.
24 We would also note in this regard that the witness is the best source
25 on the matters that the Defence seeks to address and he can be

1 cross-examined when he appears.

2 PRESIDING JUDGE SMITH: Thank you.

3 MR. REES: Can I respond briefly?

4 PRESIDING JUDGE SMITH: Briefly.

5 MR. REES: The proposition that our request is untimely, I find,
6 frankly, takes my breath away. When we are in circumstances where
7 the SPO as long ago as the beginning of this year rejected attempts
8 to enter into discussions, timely -- sensible discussions about the
9 scope of the SPO's case, including, for example, how they would seek
10 to prove the elements with which they wish to adduce evidence from
11 this witness from now, they steadfastly refuse to engage in those
12 discussions and set out their stall, so they were nailing their
13 colours to the mast by -- and were going to rely on official witness
14 contact notes that would be produced and belatedly admission sought
15 through a bar table motion.

16 That bar table motion in relation to witness contact notes was
17 refused, and it was refused as long ago as 29 September. And in that
18 refusal, the Trial Panel raised that that was without prejudice to
19 the SPO calling, for a limited purpose, a witness who had direct
20 knowledge and had authored some of the contact notes with a view to
21 giving evidence as to, in effect, the efforts and time involved in
22 those few witness contact notes.

23 We subsequently received the indication in the list of exhibits
24 that the SPO seek to rely on with this one witness reference to
25 numerous contact notes that they wish to adduce through this witness,

1 of which he is neither the author nor, indeed, involved at all in
2 those events outside the scope, the limited area identified in the
3 decision refusing admission of the witness contact notes in the bar
4 table.

5 PRESIDING JUDGE SMITH: Mr. Rees, we have that matter before us,
6 and we will rule on it tomorrow.

7 MR. REES: I'm grateful. But --

8 PRESIDING JUDGE SMITH: I don't know that we need to go through
9 all this, though, as I'm telling you we understand your position.

10 MR. REES: Well, if the Trial Panel rejects the proposition that
11 our disclosure request, when we are trying to deal with matters which
12 we have submitted are of real uncertainty to us, as untimely, then I
13 am grateful and I will sit down and I will not take up any further
14 time of the Trial Panel.

15 If that is the case, I am quite happy to leave it there for the
16 moment.

17 PRESIDING JUDGE SMITH: Finish what you have but let's just make
18 it a reasonable period of time.

19 MR. REES: Well, we have been trying to deal with a Prosecution
20 that has not put its ducks in a row at an early stage and instead has
21 refused to nail its colours to a mast which, when it's been taken
22 down, they seek to deal with informally and put us in a difficult
23 position. We have sought to raise disclosure, we've asked for the
24 witness statement. I understand the Trial Panel has ruled on that.
25 We have done our best to identify what reasonable disclosure we would

1 need working on the basis that all we will get from the witness is
2 nothing at all as to the further testimony but a summary in three
3 paragraphs from Mr. James Pace as to what the witness might say or
4 the areas.

5 We have not had a Rule 102(3) notice. It's clear that these
6 matters are relevant. After all, they are seeking to adduce
7 testimony on the point. I know the SPO does not accept the
8 consequences of the earlier ruling of the Pre-Trial Judge, the Court
9 of Appeal, and, indeed, the Trial Panel as to their ongoing
10 disclosure obligations and the necessity to produce a Rule 102(3)
11 notice which lists all relevant material in its possession on these
12 matters.

13 We have not had a Rule 102(3) notice that deals with the records
14 that would go to paragraphs 1 to 3 on that e-mail, so we have done
15 our best in the circumstances to try and identify that matter, the
16 material that they may well have that would be required by us in
17 preparation to deal with that witness.

18 The response that that's overly broad is met by the fact that
19 they should give us a Rule 102(3) notice that sets out with
20 sufficient specificity to give us the assistance the Court of Appeal
21 said that we are entitled to by a Rule 102(3) notice.

22 PRESIDING JUDGE SMITH: Thank you. We will do our best to rule
23 on that and clear this up tomorrow. Thank you very much. We'll see
24 you tomorrow morning at 9.30.

25 --- Whereupon the hearing adjourned at 3.37 p.m.