

1 Tuesday, 3 March 2026

2 [Open session]

3 [The accused entered the courtroom]

4 [The Accused Thaci appeared via videolink]

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

6 JUDGE GOSNELL: Madam Court Officer, please call the case.

7 THE COURT OFFICER: Good morning, Your Honour. This is file
8 KSC-BC-2023-12, The Specialist Prosecutor versus Hashim Thaci,
9 Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuci.

10 JUDGE GOSNELL: I note that the accused are all present this
11 morning except for Mr. Thaci.

12 Ms. Menegon, I understand that he will be attending by
13 video-conference, and I do see him there on the screen.

14 MS. MENEGON: Yes, Your Honour. Indeed.

15 JUDGE GOSNELL: Thank you. So good morning to the accused.

16 Prosecution, are the appearances a bit different from yesterday?
17 I think they are.

18 MR. HAFETZ: They are a bit different, Your Honour. Joining
19 myself today -- I'm Josh Hafetz for the SPO, and joining me today is
20 Dirk-Jan Laman to my left, Earl Sullivan, immediately behind me is
21 Brent Hicks. Next to Brent Hicks is Zuzanna Gorczynska and
22 Line Pedersen.

23 JUDGE GOSNELL: Thank you.

24 Defence, are there any changes in appearances from yesterday?

25 MS. MENEGON: None for the Thaci team. Thank you.

1 MR. REES: No change on our part, Your Honour. Thank you.

2 MR. EDWARDS: No changes from the Kilaj team.

3 MR. YOUNG: On my own today. Thank you.

4 MR. ADMIRAAL: No changes.

5 JUDGE GOSNELL: I note that the estimates of questioning for
6 today's witness will take us into the third session, so I would ask
7 the Prosecution to ensure that Witness 9 is available to start in the
8 third session if possible.

9 MR. HAFETZ: He will be available, Your Honour. Thank you.

10 JUDGE GOSNELL: Thank you.

11 Yesterday, I received a request from Messrs Kilaj, Smakaj,
12 Fazliu, and Kuci to vary the conditions of their provisional release
13 in two respects. Without going into detail in terms of the SPO
14 position, can I first ask whether the request is opposed?

15 MR. HAFETZ: It is, Your Honour.

16 JUDGE GOSNELL: Could I ask, please, the Prosecution to, before
17 the first break, if possible, and I know it may be difficult,
18 Mr. Hafetz, considering that you're sitting here in court, but if you
19 could instruct someone in the Prosecution to set out your position by
20 e-mail to the Chamber by the first session, I would be very grateful
21 for that.

22 MR. HAFETZ: Certainly, Your Honour.

23 JUDGE GOSNELL: Court Clerk, could you please usher in the
24 witness.

25 And while that's happening, I can already say that we will be

1 hearing the testimony of Prosecution Witness Mr. Koen Herlaar today.
2 I note that in decision F691 of 26 January 2026, I deferred a final
3 decision on the witness's qualification as an expert and the
4 admissibility of his report and associated materials until after his
5 testimony.

6 The Defence may file written submissions on these matters no
7 later than two days after the conclusion of his testimony, and
8 thereafter, the Prosecution may reply two days thereafter.

9 I also recall that the testimony of Mr. Herlaar may, in parts,
10 touch on confidential information, and I therefore invite the parties
11 to request to move into private session as necessary.

12 I also remind the parties - and this is important - not to refer
13 to Mr. Herlaar's employer and to otherwise be circumspect in respect
14 of any such references.

15 MR. HOLMES: Your Honour.

16 JUDGE GOSNELL: Yes, Mr. Holmes.

17 MR. HOLMES: Just in relation to today's additional submissions,
18 Your Honour, it may well be that following the end of the witness's
19 testimony we file a request for a little bit of extra time to file
20 those submissions, but we'll make that decision in due course.

21 JUDGE GOSNELL: Thank you, Mr. Holmes.

22 MR. HAFETZ: And, Your Honour, if I may, just for one moment.

23 On the subject of the public nature of his employment, my
24 understanding from the witness himself and from the NFI or the -- the
25 provider is that it's actually okay in public. So for -- I intend to

1 do a significant portion of his direct in public and move into
2 private session on what I understand to be the more -- the sensitive
3 matter.

4 JUDGE GOSNELL: Well, he's your witness, Mr. Hafetz. So if you
5 do have that assurance from the employer, then we will take that as a
6 correct understanding and proceed accordingly.

7 MR. HAFETZ: Thank you, Your Honour. And just for the record,
8 I'll note that in one of the pieces of material we've provided is
9 actually a published court case. It's 102(3), we provided it 102(3),
10 but it's a published court case that refers to the organisation by
11 name and actually the material that we're talking about.

12 [The witness entered court]

13 JUDGE GOSNELL: All right. Thank you.

14 MS. MENEGON: Your Honour, excuse me, I see that Mr. Thaci is
15 raising his hands.

16 JUDGE GOSNELL: Yes, Mr. Thaci.

17 THE ACCUSED THACI: [via videolink] [Interpretation] I don't have
18 interpretation here, Your Honour. This is the reason why I'm
19 intervening. I don't have interpretation here.

20 JUDGE GOSNELL: Could the Court Officer present at the location
21 of the video-conference please assist.

22 [Trial Panel and Court Officer confers]

23 JUDGE GOSNELL: Mr. Thaci, could we try again? I understand the
24 matter has been fixed.

25 THE ACCUSED THACI: [via videolink] [Interpretation] Yes, I do

1 hear you now.

2 JUDGE GOSNELL: Thank you for raising that, Mr. Thaci.

3 Mr. Herlaar, you are called to testify today in the case of the
4 Specialist Prosecutor versus Thaci *et al.* You will first be asked
5 questions by the Prosecution and then by one or more of the Defence
6 teams in this case to your right.

7 Please listen carefully to the questions and try to answer them
8 as directly as possible. If you do not understand a question, please
9 ask that it be repeated or clarified.

10 Do you understand what I've just said?

11 THE WITNESS: [Interpretation] Yes, Your Honour. Absolutely
12 clear.

13 JUDGE GOSNELL: And I do understand that you are testifying
14 today in Dutch, and there will be translation provided. I will now
15 read to you the solemn declaration in English, it will be interpreted
16 to you in Dutch, and I would ask you at the conclusion of that
17 affirmation to confirm "I do."

18 Conscious of the significance of my testimony and my legal
19 responsibility, I solemnly declare that I will perform my expert
20 analysis conscientiously and to the best of my knowledge, and that I
21 will state my findings and opinion accurately and completely.

22 THE WITNESS: [Interpretation] Yes, I confirm.

23 JUDGE GOSNELL: I advise you that by taking this declaration you
24 are under an obligation to tell the truth and may be prosecuted for
25 any false testimony, and you are under that oath until the conclusion

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1 of your testimony.

2 Mr. Prosecutor, please proceed. Mr. Hafetz.

3 MR. HAFETZ: Thank you, Your Honour.

4 WITNESS: KOEN HERLAAR

5 [The witness answered through interpreter]

6 Examination by Mr. Hafetz:

7 Q. Good morning, Witness. Can you please state your name for the
8 record.

9 A. Yes, my name is Koen Herlaar.

10 Q. Mr. Herlaar, I'll be asking you some questions for the next
11 90 minutes or so. If there's anything I ask you that's not clear,
12 please tell me and I'll rephrase the question. Do you understand?

13 A. Yes, I do.

14 Q. We are now in public session, which means that members of the
15 public outside of the courtroom can see and hear your testimony. Any
16 item I show you here in public session will not be visible outside
17 the courtroom. It will be confidential.

18 I'm going to begin by asking you a series of questions in public
19 session about your work generally. I understand, from what you've
20 previously told us, that parts of your testimony will need to occur
21 in private session, and that there may be certain questions related
22 to the work that you perform at the NFI unrelated to this case that
23 you may not be able to answer in any forum, even in private or closed
24 session.

25 Therefore, I ask you to please inform the Judge if you are asked

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1 a question by me or any party which you are not permitted by your
2 employer to answer. And that goes two ways. If I ask you a question
3 in public which you can only answer in private, I ask you to say you
4 can only answer that in private. If you are asked a question in any
5 session, public or private, that you are not permitted to answer, I
6 ask you to explain that. Is that clear?

7 A. Yes, perfectly clear.

8 Q. Where do you work, sir?

9 A. I work for the Netherlands Forensic Institute.

10 Q. And can you briefly explain what the Netherlands Forensic
11 Institute is and what type of work that it does.

12 A. Yes, the Netherlands Forensic Institute is an agency of the
13 Ministry for Security and Justice. We examine evidence for the
14 criminal justice chain and for international partners, if necessary.

15 Q. Is your employer sometimes referred to as the NFI?

16 A. Yes, NFI is the acronym for the Netherlands Forensic Institute.

17 Q. And how long have you been working at the NFI?

18 A. I have been working for the NFI since February 2009. Let me
19 just calculate that out. Yeah, that's 16 years.

20 Q. And what is your current position there?

21 A. Currently, I am a forensic expert in the field of striations,
22 impressions, and shape analysis.

23 Q. Can you explain generally what that field is?

24 A. Yes. The field striations and shape analysis may be a little
25 bit different than what one imagines. It's basically traces from

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1 footwear and tool marks. For instance, we examine various objects
2 and traces in order to identify what trace relates to what origin,
3 for instance, a footprint left by a piece of footwear. But also we
4 might compare duct tape found at a crime scene to see if it is the
5 same as duct tape which is found in the possession of a suspect, for
6 instance.

7 Q. How long have you been working as an expert in that field, the
8 striations, impressions, and shape analysis field for the NFI?

9 A. Since 2018, approximately, I have been operating in that
10 discipline. Since 2018, I've been operating in the field. And since
11 2019, I have been certified in the field. The details are in my CV.
12 I don't have them all to mind.

13 Q. And just stepping back for a moment, what is it that a forensic
14 expert does at the NFI?

15 A. A forensic expert has a final responsibility for the examination
16 which is conducted. He also drafts the report and signs the report,
17 and therefore bears responsibility for that part of the examination
18 work done. In the NFI, we have approximately 40 different expert
19 disciplines, and I am certified for the field of striations,
20 impressions, and shape analysis, and may sign off reports in that
21 area.

22 Q. And I'll come back to the reports in a moment, but is the
23 striation, impressions, and shape analysis field sometimes
24 abbreviated by the acronym SISA or S-I-S-A?

25 A. In the Netherlands, we use KIV, which is the abbreviation for

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1 the equivalent Dutch words. And in English that would be striations,
2 impressions, and shape analysis, and, you are quite right, that would
3 be SISA.

4 Q. Are you comfortable with me referring to the field as -- by the
5 acronym SISA for purposes of this hearing?

6 A. I am. No problem.

7 Q. Okay. How did you become qualified as an expert in the SISA
8 field for the NFI?

9 A. When it comes to that particular field, I followed in-house
10 training. The in-house training takes one and a half to two years,
11 whereby you are taken under the wing of experienced staff who work in
12 that field and who train you up so that you are au fait with the
13 field and with the techniques which need to be applied to carry out
14 the examinations and, indeed, what the limitations and framework is
15 for the examinations conducted.

16 Q. And what type of test, if any, did you have to pass to become a
17 SISA expert for the NFI?

18 A. NFI has a comprehensive procedure which one must follow to
19 become an expert with the authorisation to sign off reports.
20 Following the training, there is an examination procedure which
21 involves an examination panel, which is made up of a principal
22 scientist from the NFI, a prosecutor from the Dutch legal system who
23 is experienced in the field, and also an external expert in the same
24 field. And this examination panel examines the candidate over the
25 course of two hours to ascertain whether the candidate is

1 sufficiently well trained and has the knowledge and experience
2 required to be certified as an NFI forensic examiner in that field or
3 expert in that field.

4 Q. And once you've been certified as an expert at the NFI in the
5 SISA field, what, if anything, do you have to do to maintain your
6 certification?

7 A. The expectation is that you keep abreast of developments in your
8 field of work and also that you contribute to developments in your
9 field of work, notably by carrying out scientific research. One
10 needs to be re-certified after a set period of time. In my case, two
11 years after my initial certification I was re-certified, and that
12 re-certification was valid for five years.

13 Q. And when are you due to be re-certified again as a SISA expert?

14 A. My certification will come to an end in June of this year, my
15 current certification.

16 Q. Before you became certified as a striations, impressions, and
17 shape analysis expert in 2016, what was your field of expertise at
18 the NFI?

19 A. I started at the NFI as an examiner in the field of document
20 examination and printers examination. In English, one generally
21 refers to that field as questioned documents and printers. So I
22 started in that field, and I completed the training to become an
23 authorised signatory of reports in the field of questioned documents
24 and printers before SISA.

25 Q. And for how many years were you certified in that field? When I

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1 say that, I mean the questioned documents and printers field.

2 A. I believe that I was authorised to sign in that field for a
3 period of seven years.

4 Q. And can you briefly explain what that field is? And when I say
5 "that," I mean the questioned documents and printers field. What
6 type of work is it?

7 A. Well, that field involves a technical examination of documents
8 and printers, and that includes examining the authenticity of
9 documents, comparing documents one against another to ascertain
10 whether the documents were produced by the same printer, whether the
11 paper of the documents is the same. That is the nature of the work.

12 Q. Did you have to pass a test to become an expert at the NFI in
13 the questioned documents and printers field?

14 A. I did. The same examination rules apply to that field as other
15 fields. So there, too, I had to successfully pass an exam to be
16 authorised to sign reports in that field.

17 Q. Is there any overlap between the questioned documents and
18 printers field and the SISA fields?

19 A. No, there is not. The field of questioned documents and
20 printers is a field which previously was dealt with by the NFI. NFI
21 is ceasing its support in that field, and that field is being taken
22 over by various other organisations in the Netherlands and either
23 were moved to the field of striations, impressions, and shape
24 analysis. There are some techniques which apply to the two fields,
25 including techniques that I will testify on today.

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1 Q. Understood. And I'll come back to that. Thank you. I'm going
2 to ask you a few questions now about the curriculum vitae, or CV,
3 that you provided to the SPO.

4 MR. HAFETZ: I'd now ask the Court Officer to pull up
5 ERN 127822-127830 RED. And, Your Honour, just for the record, this
6 item was one of the items you referenced earlier that has been
7 tendered and is currently pending with filing 620.

8 Q. Mr. Herlaar, looking at the first page of this document, 127822,
9 do you recognise it?

10 A. Yes, indeed.

11 Q. What is it?

12 A. This is my CV, a CV that I produced in English and which I
13 provided to you at your request.

14 Q. Does your CV shown here contain details on the training that
15 you've received to become a forensic expert at the NFI?

16 A. In the CV, you find enumerated the various courses and types of
17 training which I've undertaken to become an expert.

18 Q. And does the CV that we're looking at here also contain basic
19 information on some of the casework you've performed as an expert for
20 the NFI?

21 A. Yes, general information on that topic is included in the CV.

22 Q. And you touched on this earlier, but just to clarify, who was
23 this casework generally requested for? In other words, who was
24 usually the commissioning authority that requests your expertise?

25 A. As I said, I generally work within the Dutch criminal justice

1 system. And further to Dutch law, it is generally an investigating
2 judge who will commission work from me.

3 Q. And without getting into the specifics now, does your CV contain
4 information about your training and experience relevant to the
5 14 December 2023 expert report you provided to the SPO in this case?

6 A. Yes, this information is also in this CV. But I've also
7 provided an appendix to the CV because the information may have been
8 hidden away amongst the information in the larger CV, so I provided
9 an appendix which picks out the information regarding my CV which is
10 relevant to this report.

11 MR. HAFETZ: Can we go to the last page of this document,
12 Madam Court Officer. If you could scan down just to show the ...

13 Q. Mr. Herlaar, is this the appendix that you're talking about?

14 A. It is. Yes, this is the document I was referring to.

15 Q. And you provided these details at the SPO's request; is that
16 correct?

17 A. Yes, I did.

18 MR. HAFETZ: If we could go, Madam Court Officer, back to the
19 first page.

20 Q. Now, again, you alluded to this earlier, but I just want to
21 clarify. It indicates here on your CV that you're authorised by the
22 NFI to sign expert reports on the institution's behalf; is that
23 correct?

24 A. Yes, that is correct.

25 Q. What are the standards, if any, governing how such reports are

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1 conducted at the NFI?

2 A. Could you please clarify your question?

3 Q. Certainly. Are there standards that you have to meet or follow
4 when drafting a report for the NFI?

5 A. Yes, certainly. We're educated and trained as forensic experts
6 at the NFI to report within the framework that the institute has set.
7 One is to use the Bayesian manner to do the interpretations, and they
8 generally expect NFI staff to be as objective and transparent and
9 impartial as possible when drafting the report.

10 Q. Just for the benefit of the Court and the parties, can you
11 explain what you mean with "the Bayesian manner"?

12 A. The Bayesian manner of interpreting evidence is based on a set
13 of two hypotheses in which it's always clear that the evidence is
14 examined from two perspectives, which are clearly stated in the
15 report, so that you evaluate the evidence as objectively and as
16 balanced as possible. And then the statement about the findings of
17 the examination is placed in the perspective of those two hypotheses.

18 Q. Approximately how many expert reports have you authored and
19 signed in the SISA field for the NFI?

20 A. I'd have to think about that. I think on average I sign about
21 20 reports a year. And by now, I've been authorised to sign for
22 seven years, so roughly 140, 150, or even 160. I'm not sure the
23 exact number.

24 Q. And before the SISA field, you were writing and signing expert
25 reports in the questioned documents and printers field also; is that

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1 correct?

2 A. Yes, that's correct.

3 Q. Is it fair to say you've been writing and signing expert reports
4 for the NFI for more than 15 years?

5 A. Yes, that's correct.

6 Q. Once an expert report is drafted with your conclusions on a
7 particular examination, is your report reviewed by anyone before it
8 is finalised?

9 A. Yes, that's correct, that the standard working procedure of the
10 NFI that each expert report is also sent to the commissioning party
11 and is checked and peer reviewed by a second person.

12 Q. Does that second person work at the NFI?

13 A. In 99 per cent of the cases of the reports from the NFI based on
14 examinations, that person also works at the NFI. If due to
15 circumstances such as illness or death no second individual is
16 available at the NFI, they'll look for a second person outside the
17 NFI because the standard procedure is to peer review a report before
18 issuing it.

19 Q. And when the -- in the 99 per cent or 99.9 per cent of cases
20 that they are peer reviewed, is that second peer reviewer also an
21 expert in the same field?

22 A. Once again, there are exceptions, but generally it's always an
23 expert in the same field.

24 Q. Have you yourself functioned as a second expert reviewer for
25 other experts' reports at the NFI?

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1 A. Yes, that's part of my standard duties, both drafting your own
2 reports, expert reports, and peer reviewing reports by others.

3 Q. Understanding that you don't have your records in front of you,
4 approximately how many times in the last five years have you been a
5 second reviewer for an expert report in the SISA field?

6 A. I think on average I sign a bit more my own reports than peer
7 reviewing, so perhaps if there are 100 cases on striations and form
8 impressions and something similar for the documents that I signed
9 before that.

10 MR. HAFETZ: Your Honour, at this point I'd ask to move into
11 private session.

12 JUDGE GOSNELL: Yes, private session, please.

13 [Private session]

14 [Private session text removed]

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12 [Open session]

13 THE COURT OFFICER: Your Honour, we are now in open session.

14 JUDGE GOSNELL: Thank you.

15 We stand adjourned until 11.30.

16 --- Recess taken at 10.59 a.m.

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

18 JUDGE GOSNELL: Welcome back. Could the witness be brought in,
19 please.

20 And, Mr. Hafetz, I assume you wish to go back into private
21 session?

22 MR. HAFETZ: Yes, please, Your Honour.

23 JUDGE GOSNELL: Private session.

24 And while the witness is being brought in, Mr. Edwards, we will
25 have -- well, let's stay in open session just for this, please.

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1 Mr. Edwards, we will have a ruling on the Defence request to
2 vary the provisional measures immediately after lunch, and that
3 decision will be issued orally, possibly with reasons to follow.

4 MR. EDWARDS: Very grateful. Thank you, Your Honour.

5 JUDGE GOSNELL: And I'm grateful to the Prosecution for their
6 very timely submissions.

7 MR. HAFETZ: Thank you, Your Honour.

8 JUDGE GOSNELL: So now private session, please.

9 [The witness takes the stand

10 [Private session text removed]

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Procedural Matters

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9 [Open session]

10 THE COURT OFFICER: Your Honour, we are now in open session.

11 JUDGE GOSNELL: Mr. Rees, will you be using any documents with
12 the witness? Is there a presentation queue?

13 MR. REES: [Microphone not activated].

14 THE INTERPRETER: Microphone, please.

15 MR. REES: The only document that very recently I formed the
16 intention to use that is not in the Prosecution's presentation queue
17 is the following ERN, ERN 129956-129956. Literally arises out of
18 matters that were raised by Mr. Holmes only moments ago, and deals
19 with an aspect of an answer given by the witness which wasn't
20 entirely expected at an earlier stage.

21 It's a very short document. I've got it here in hard copy. I
22 don't propose to ask for any time to -- for a presentation queue to
23 be created and dealt with. If Mr. Hafetz wishes to have a look at it
24 briefly, he, of course, may well do.

25 JUDGE GOSNELL: Could I ask you, please, to repeat that ERN

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1 number?

2 MR. REES: 129956-129956.

3 I'm grateful for the flexibility that Mr. Hafetz shows.

4 JUDGE GOSNELL: The one potential logistical problem is
5 apparently that document is not available for broadcasting on our
6 system. And actually this is -- one of the advantages of the
7 presentation queues is even when you're using documents from other
8 parties, I understand that there is a reason to create autonomous
9 presentation queues so that the Registrar can rapidly pull up any
10 document you may refer to.

11 MR. REES: Sorry, I'm slightly lost. Does Your Honour mean it's
12 not available to be shown on the -- when you say "broadcasted," do
13 you mean on the public footage?

14 JUDGE GOSNELL: No, I mean shown to the witness through our
15 system.

16 MR. REES: No, but I can literally give him the document. I'll
17 read it out and give it to him. Your Honour can see it as well.

18 JUDGE GOSNELL: Just one moment. I want to see whether it can
19 be downloaded onto our system so that --

20 MR. REES: Okay.

21 JUDGE GOSNELL: -- it can be broadcast.

22 [Trial Panel and Court Officer confers]

23 JUDGE GOSNELL: So, Mr. Rees, we will attempt to locate the
24 document so that it's available on the system.

25 MR. REES: That will be good.

1 JUDGE GOSNELL: If I could ask you to just not use that document
2 immediately.

3 MR. REES: I'm not going to.

4 JUDGE GOSNELL: Thank you. And just to ensure, please, kindly
5 in the future, even if there is a document like this or if other
6 documents are going to be used from other presentation queues, please
7 do create your own presentation queue to facilitate the Registrar's
8 work to be able to show documents to witnesses quickly. Thank you.

9 MR. REES: Your Honour.

10 Cross-examination by Mr. Rees:

11 Q. So, Mr. Herlaar, at the end of Mr. Hafetz's
12 examination-in-chief, I invited him to take further time if he needed
13 it because this is an interesting area of science, is it not?

14 A. You mean forensic sciences are interesting?

15 Q. It's an interesting area. I'm concerned specifically with the
16 document that I think you gave the label AAOR4213NL. For short, I'm
17 going to refer to it as 4213. Okay?

18 A. [Overlapping speakers] ...

19 Q. And in relation to 4213, you have told us that you did not
20 examine each of the pages of that document. That's right, isn't it?

21 A. Yes, that is right.

22 Q. You were told by the commission authority to assume that they
23 all came -- all the pages of 4213 were printed on one single printer;
24 is that right?

25 A. Yes, that is right.

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1 Q. Did you ask the commissioning authority, that's the SPO, why
2 they were asking you to assume that?

3 A. No, I didn't ask them that. The NFI was asked to make choices
4 regarding its examination strategy. The document was available. It
5 consisted of ten pages. Examining ten pages costs more time, money,
6 and space of NFI. So the question was whether it was necessary to
7 examine all ten pages or whether the assumption could be made all ten
8 pages came from the same document -- or, rather, the same printer, in
9 which case fewer pages need be examined, and that suggestion or
10 question was put to SPO.

11 Q. So there were two assumptions made at the outset. The first
12 assumption was that all the pages of 4213 were printed on one single
13 printer. And your second assumption was that the SPO asked you to do
14 -- to only examine -- not to examine all of them as a matter of cost;
15 is that right?

16 A. The first question which was put to us was to examine the
17 document with respect to microdots. We returned to the commissioning
18 authority asking whether we should examine all pages or only a
19 selection of the pages based on the assumption that all of the pages
20 were produced by self-same printer. We put that choice to the
21 commissioning authority. As to whether money or any other factor was
22 at play in their answer, I do not know.

23 Q. Thank you. As a result, of the ten sides, you didn't examine
24 seven of them; is that right?

25 A. That is right.

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1 Q. And accordingly, you cannot confirm the presence of microdots at
2 all on any of the unexamined seven sides; yes?

3 A. Yes, that's correct.

4 Q. Nor can you confirm whether the patterns of microdots, if any
5 present on any of those seven sides, match those of the three that
6 you did examine; is that right?

7 A. Yes, that is right.

8 Q. It is therefore possible, and you have said this before, have
9 you not, that the unexamined seven sides for the five total pieces of
10 paper comprising the Table 2 document 4213 were printed using a
11 different printer from that of the three sides of the two pieces of
12 paper you did examine; is that right?

13 A. Yes, that is a possibility.

14 Q. Thank you. Now, we know that of the five double-sided pieces of
15 paper, you tested side 1 of the first piece of paper, side 2 of the
16 first piece of paper, and side 2 of the fourth piece of paper; is
17 that right?

18 A. It is correct that I examined two sides of one physical sheet,
19 and that I examined one other face of another sheet. Now, I can't
20 confirm the numbers that you've just given there. If we could review
21 or view anew, display anew the document we were looking at before,
22 then I could check.

23 Q. We can. And, in fact, I had made an error there. The later
24 page, page 4, it was side 1 that you examined.

25 MR. REES: Can we pull up, please, for the witness the following

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1 reference from the Prosecution's presentation queue,
2 SPOE00410048-00 -- I'll change that, sorry, not 48, 59-00410065 RED.

3 MR. HAFETZ: Your Honour, if I may. While I appreciate and
4 agree with Mr. Rees's desire to be in public as much as possible, if
5 we're going to be questioning off this document in detail - and I
6 don't know what the next question or questions are - I would suggest
7 we may need to move into private session.

8 MR. REES: At the moment, I only intend to offer the witness the
9 opportunity, as he has asked, to confirm the specific pages of 4213
10 that he examined.

11 Q. If we go to page 1 of 6, so it's page 2, I think, of this PDF,
12 and we scroll down to the bottom of that page, we see there,
13 Mr. Herlaar, that you "used in examination," we can see the longer
14 reference 4213 document; yes? Doc1_side1; yes? And we can see that
15 red oblong describing what part of that page was used, yes?

16 MR. REES: And then if we go to the next page, please, in the
17 exhibit.

18 Q. We see then at the top there you also looked at 4213 Doc1_side2;
19 yes? And if we go down --

20 A. [No interpretation].

21 Q. -- to the bottom of that page, you looked at 4213 Doc4, I assume
22 that means the fourth piece of paper, side 1; yes?

23 A. Correct. And perhaps I could add by way of clarification, the
24 numbering, document 1, 2, 3, 4, that relates to how we found the bag
25 as we removed it from the evidence bag. So document 1 was the page

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1 which was on the top of the pile, and document 4 was lower in the
2 pile. So it's not related to the page numbering that was on the
3 document. I think I should clarify that so that there is no
4 confusion.

5 Q. [Microphone not activated]. So the doc number relates to the
6 order in which you found the exhibit; is that right?

7 A. Correct.

8 Q. Not the page number that is on some or all of the pages?

9 A. Correct.

10 Q. Do you know, as it happens, whether the order in which you
11 received the documents was any different to the order on the page
12 numbering or not?

13 A. I don't know. I didn't pay attention to that.

14 MR. REES: We can take that document off the screen for the
15 moment.

16 [REDACTED] Pursuant to In Court Redaction Order F772RED.

17 [REDACTED] Pursuant to In Court Redaction Order F772RED.

18 [REDACTED] Pursuant to In Court Redaction Order F772RED.

19 [REDACTED] Pursuant to In Court Redaction Order F772RED.

20 [REDACTED] Pursuant to In Court Redaction Order F772RED.

21 [REDACTED] Pursuant to In Court Redaction Order F772RED.

22 [REDACTED] Pursuant to In Court Redaction Order F772RED.

23 [REDACTED] Pursuant to In Court Redaction Order F772RED.

24 [REDACTED] Pursuant to In Court Redaction Order F772RED.

25 [REDACTED] Pursuant to In Court Redaction Order F772RED.

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1 *[REDACTED] Pursuant to In Court Redaction Order F772RED.*

2 *[REDACTED] Pursuant to In Court Redaction Order F772RED.*

3 Q. Can you please --

4 JUDGE GOSNELL: Just a moment, Mr. Rees.

5 Are we in private session? Could we move into private session,
6 please.

7 [Private session]

8 [Private session text removed]

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14 [Open session]

15 THE COURT OFFICER: Your Honour, we are now in open session.

16 JUDGE GOSNELL: We're adjourned until 2.30. Thank you.

17 --- Luncheon recess taken at 1.00 p.m.

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

19 JUDGE GOSNELL: Good afternoon. Just to say that the oral order
20 that was promised earlier will be given at the end of the session.

21 I do understand the Thaci Defence wants to address the Bench.

22 MS. MENEGON: Yes, Your Honour. Thank you. I wanted to
23 reiterate and clarify my objection with regard to the witness's
24 refusal to answer questions on the grounds of confidentiality.

25 As indicated earlier, our position is that the witness of the

1 SPO have not provided any legal basis for such a refusal.

2 And with regard to the interpretation of Rule 107 that I quoted
3 earlier, I note that in Case 06 the SPO and the Thaci team regularly
4 called employees from the US Government or the UN and applied under
5 Rule 107 in order that they be not compelled to answer questions
6 related to classified information, such as the source of their
7 information and intelligence information, and the Panel granted such
8 measures. And it's only because of such legal basis that they were
9 allowed not to answer certain questions related to their work,
10 especially the source of their knowledge.

11 And in addition, I note that Article 58 of the Law provides
12 that:

13 "Third States and international institutions may make an
14 application for necessary measures to be taken in respect of the
15 protection of their servants or agents and for the protection of
16 their confidential or sensitive information. The Rules of Procedure
17 and Evidence shall provide for the procedure for such applications."

18 This is clarified by Rule 211, which provides that:

19 "Third States and international organisations may take all
20 reasonable steps, acting in cooperation with the [SPO], the Defence
21 or Victims' Counsel ... to ensure the protection of their servants,
22 agents and confidential or sensitive information.

23 "If a Third State or international organisation learns that
24 information subject to Article 58 ... is being or is likely to be
25 disclosed at any stage of the proceedings ... it may make an

1 application to the President for resolution of the matter, who shall
2 refer the application to the competent Panel."

3 And:

4 "The Panel may afford [the] protective measures ... or, where
5 appropriate, apply Rule 107 *mutatis mutandis*."

6 So our position is that the SPO should have either filed a
7 Rule 107 motion or asked the NFI to file an application before the
8 President under Rule 211 in order that the witness be authorised not
9 to answer questions related to the purported confidential agreements
10 surrounding the microdots.

11 And last, I note that Rule 141(6) provides that:

12 "A witness who appears before the Panel is compellable to
13 provide testimony, unless otherwise provided for in the Law and the
14 Rules ..."

15 So we submit that this rule allows you to compel the witness to
16 answer questions from the parties.

17 In conclusion, we submit that either the witness should be
18 compelled to answer the questions asked in cross-examination or his
19 evidence should be excluded.

20 JUDGE GOSNELL: Does the Prosecution have any response?

21 MR. HAFETZ: Your Honour, I was anticipating we'd address this
22 more fully, as proposed by Your Honour, in the submissions that will
23 follow on the admission of the expert report.

24 I will note just a couple of things with Your Honour's
25 indulgence.

1 As to Article 58 and the institution -- the authority, the NFI,
2 being asked to intervene or seeking to intervene. As I understand
3 it, the language of the article refers to the likelihood of it
4 happening and then believing there's a reason that they would have to
5 intervene. Prior to today, there hasn't been one because the parties
6 have been on notice for more than a year what the contents of the
7 report is and what the contours of his testimony, and that it would
8 be limited to the portions of his report and the analysis he did, not
9 other analysis that other experts or other people may be able to do.

10 Now, I also underscore that, in filing 620, we noted this issue
11 and have at no point received any inquiry whatsoever, nor, to my
12 knowledge, has the NFI, about what the contours and limits of his
13 subject matter are, other than we have said, and it's clear to us,
14 that his reports as written are relied on using the information in
15 those reports, without additional information about the one
16 characteristic he's not able to provide more detail on.

17 If Your Honour believes that Rule 107, without our having
18 possession of the knowledge of what it is that he would say, as he's
19 already indicated, if Your Honour's position is that this would have
20 been better dealt with in a more formal request than 620 beforehand,
21 I take the point. I would suggest, though, that we'd be in no
22 different position than what Your Honour ordered early this morning
23 in any event.

24 The witness is not in a position to tell anyone - us or the
25 Defence or, frankly, Your Honour, I believe, alone - what it is that

1 he cannot say. We don't know what it is. We don't possess it, have
2 not possessed it, and don't know. And so I believe what the position
3 we'd be in is the position we're in now, where the contours exactly
4 of what he can and cannot say he has to inform when asked.

5 We did our level best to not ask him a question outside the
6 scope of his report today, which I again underscore are used
7 routinely in his national jurisdiction. And so I believe that the
8 best way forward is what Your Honour proposed, which is that the
9 Defence should be allowed to ask every question they deem relevant,
10 I'm not opining on whether it is or is not, but that they deem
11 relevant. They should be permitted to ask all of those questions and
12 he can answer what he can answer. He's answered quite a few
13 questions already about what he did, and he's clear on what he cannot
14 answer.

15 And I think ultimately that's the position we would have been in
16 in any event because we don't know what he can and cannot answer.
17 And so -- and have a good faith basis to believe that the information
18 in the four corners of his report as to how he did his analysis is
19 sufficient for this Court to rely on. And ultimately, Your Honour,
20 this will, I believe, go to the weight that Your Honour gives to the
21 testimony he is able to provide, which, again, is within the four
22 corners of his report.

23 JUDGE GOSNELL: Thank you, Mr. Hafetz.

24 We are in a somewhat unusual situation in the sense that this
25 testimony is governed by a decision that indicates that its admission

1 is conditional upon a future decision. And in the absence of this
2 matter having been raised before today, we will proceed on the basis
3 that I indicated earlier. I expect to hear further submissions from
4 the Defence on these matters, and the remedies will be as previously
5 indicated.

6 MS. MENEGON: That is fine with us, Your Honour. Thank you.

7 JUDGE GOSNELL: May the witness be brought in, please.

8 Could I just ask now for an estimate on where we stand with the
9 cross-examinations?

10 MR. REES: Sorry, Your Honour. From my part, you'll understand
11 it's very difficult for me to give a sensible estimate at this stage
12 given where we've reached. I have to say, whereas I might have
13 anticipated some resistance from the witness to answer a small part
14 of my cross-examination, I am rather astounded that we met that
15 resistance so early on.

16 I can -- I don't see why I shouldn't inform Your Honour where I
17 anticipated the blockage to come. I anticipated the blockage would
18 come when questions were being asked about data upon which this
19 witness bases his assessment of likelihood and probability as opposed
20 to the general features of microdot pattern analysis, which are very
21 publicly well known, and, indeed, we're going to come on to one part
22 that I think even this witness will accept as publicly well known,
23 but perhaps he won't.

24 But it's been very difficult for me to give an estimate. The
25 estimate I gave was on the basis of a witness answering questions and

1 us moving on.

2 JUDGE GOSNELL: Ms. Menegon, are you in a position?

3 MS. MENEGON: Thank you, Your Honour. I will depend, of course,
4 on the cross-examination of my colleagues who will go before me. But
5 for now, I stand by my 30 minutes.

6 JUDGE GOSNELL: Mr. Edwards -- or, excuse me, Mr. Holmes.

7 MR. HOLMES: It's going to be me, Your Honour. We've given an
8 estimate of an hour and 15 minutes. Subject to some of the
9 uncertainties that Mr. Rees has outlined, that remains our estimate
10 for now.

11 JUDGE GOSNELL: Thank you.

12 In light of that, we -- yes, Mr. Young.

13 MR. YOUNG: I was going to say nothing for me, Your Honour.

14 JUDGE GOSNELL: And I assume Mr. Admiraal's estimate is also
15 unchanged from zero?

16 MR. ADMIRAAL: Correct.

17 JUDGE GOSNELL: In light of those indications, we'll release
18 Witness 9 for the day.

19 [The witness takes the stand]

20 JUDGE GOSNELL: Welcome back, Mr. Herlaar.

21 THE WITNESS: [Interpretation] Thank you.

22 JUDGE GOSNELL: Mr. Rees, open session?

23 MR. REES: As far as we're concerned.

24 JUDGE GOSNELL: All right. Well, let's see how we go then.

25 MR. REES:

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1 Q. Just before the luncheon adjournment, Mr. Herlaar, you had
2 agreed with me that not all colour laser printers generate microdot
3 patterns; yes?

4 MR. HAFETZ: Your Honour, I'd ask at this time that we move into
5 private session.

6 JUDGE GOSNELL: All right. Private session, please.

7 MR. REES:

8 Q. Yes? Mr. Herlaar? I did ask a question --

9 JUDGE GOSNELL: Just a moment, Mr. Rees. We actually have to --

10 MR. REES: Ah, I see [Overlapping speakers] ...

11 [Private session]

12 [Private session text removed]

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Witness: Koen Herlaar (Private Session)

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23 [Open session]

24 THE COURT OFFICER: Your Honour, we are now in open session.

25 JUDGE GOSNELL: Mr. Herlaar, we unfortunately weren't able to

1 complete your examination today, so you'll be back with us tomorrow
2 in the morning at 9.30. I remind you that you remain under oath, and
3 that means please do not discuss your testimony with anyone outside
4 the courtroom between now and tomorrow morning.

5 Thank you very much for your time, and you'll be escorted out of
6 the courtroom.

7 THE WITNESS: [Interpretation] Thank you.

8 [The witness stands down]

9 JUDGE GOSNELL: This is an oral order following a request from
10 yesterday by the Defence for Messrs Kilaj, Smakaj, Fazliu, and Kuci,
11 requesting the Single Trial Judge to lift certain conditions on their
12 provisional release. Namely, first, that they shall refrain from any
13 contact or communication, direct or indirect, through any other
14 person, of any kind and through any means, with their co-accused or
15 with any person known to be a visitor of his co-accused to the
16 detention facilities; and, secondly, not to discuss, except with
17 designated members of the Defence team, the substance of the case,
18 whether public or confidential, et cetera.

19 And these conditions were imposed, for the record, on Mr. Kuci
20 in respect -- by way of decision F37, paragraph 100, and F94,
21 paragraph 14; in respect of Mr. Kilaj, in decision 599,
22 paragraphs 50(e) and (h); in respect of Mr. Smakaj, in decision 719,
23 paragraphs 58(e) and (h); and in respect of Mr. Fazliu, decision 720,
24 paragraphs 63(e) and (i).

25 On 3 March, that's today, the Specialist Prosecutor's Office

1 opposed the request and offered reasons.

2 So these restrictions are hereby varied as follows. The
3 accused, Mr. Smakaj, Mr. Kilaj, Mr. Fazliu, and Mr. Kuci, are
4 permitted to communicate with one another while on the premises of
5 the Specialist Chambers here in The Hague, including concerning this
6 case. They shall take special care to ensure that they do not
7 discuss any confidential matter while in the public areas of the
8 premises.

9 The orders otherwise remain in effect in all other respects,
10 which means that they continue to apply to all communications and
11 contact outside the premises of the Special Court in The Hague.

12 Written reasons for this decision will follow.

13 That's the end of the oral order.

14 Are there any other matters before we adjourn for the day?
15 Seeing none, we stand adjourned until tomorrow morning at 9.30.

16 Thank you.

17 --- Whereupon the hearing adjourned at 4.02 p.m.

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