

1 Tuesday, 1 October 2024
2 [Status Conference]
3 [Open session]
4 [The accused appeared via videolink]
5 --- Upon commencing at 2.30 p.m.

6 PRESIDING JUDGE SMITH: Please call the case,
7 Madam Court Officer.

8 THE COURT OFFICER: Good afternoon, Your Honours. This is file
9 KSC-BC-2020-06, The Specialist Prosecutor versus Hashim Thaci,
10 Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi.

11 PRESIDING JUDGE SMITH: Thank you.

12 [Microphone not activated].

13 Good afternoon, and thank you for coming. Today, we want to
14 seek input from the parties and the participants on planning and
15 scheduling for the balance of this trial year and also into next
16 year, since we've released a calendar for that as well.

17 Before we begin, though, I do want to have one note on sitting
18 schedule. On Monday, October 21st, which is the first day we are
19 back in the courtroom after this next two-week time out of the
20 courtroom, we will have an altered sitting schedule for that day and
21 that day only. We will be sitting from 1300 till 1430, and then a
22 half-hour break, and then for another hour-and-a-half session from
23 1500 until 1630.

24 I want to just go over briefly some of the brief statistics that
25 some of you are aware of, perhaps all of them, but I think it's worth

1 mentioning that as of September 27th, which is the last day I
2 checked, we've heard witnesses as follows: 13 live witnesses -- this
3 is in the entire trial. 13 live witnesses, 75 Rule 154 witnesses, 39
4 Rule 153 witnesses, and 32 Rule 155 witnesses. This totals 159
5 witnesses in all modes of testimony as of September 27th.

6 We have recently been informed by the SPO that it plans on
7 dealing with the remainder of the witnesses as follows, subject to
8 Court rulings: 15 live witnesses, 50 Rule 154 witnesses, 40 Rule 153
9 witnesses, and 14 Rule 155 witnesses. These all are to be completed
10 by April 15th, 2025. This is, in fact, a six-month period from now,
11 taking out the length of the winter recess.

12 There are 24 trial days between now and the winter recess, and
13 36 trial days from January until April 15th. Therefore, a total of
14 60 maximum trial dates between now and the target date to complete
15 the SPO case in chief, which we have said repeatedly is mid-April of
16 2025. So we thank you for all your efforts thus far for everybody.

17 However, we are curious, and somewhat sceptical, about whether
18 or not the SPO's case in chief can be completed as planned by
19 mid-April. We have listened to testimony for a year and a half in
20 order to complete 88 witnesses in court.

21 As already stated, you have 65 witnesses, Mr. Prosecutor, listed
22 for courtroom testimony or Rule 154 submission with
23 cross-examinations. The question that arises is how will you do that
24 in six months. So let me start by asking the representative of the
25 SPO how you intend to meet the target date as supplied by the SPO of

1 April 2025.

2 MR. HALLING: Thank you, Your Honour. And going off the numbers
3 just given, the most important one is the 65 witnesses, the *viva voce*
4 and the Rule 154. And in short, we're not planning to call them all,
5 and that's going to be the solution.

6 We outlined in our roadmap the various factors that make the
7 target date not fully a matter within our control. But as we said in
8 our last filing - and this is F02576/RED - in light of our past and
9 ongoing streamlining efforts, it is becoming increasingly likely that
10 that target date is going to be met.

11 The challenges that we specified in the roadmap filing - and
12 this is, for the record, F02400/CONF/RED - those challenges still
13 remain. And, I mean, just to highlight one in particular, witnesses
14 have needed to be pulled from the order for various reasons,
15 including for a lack of cooperation in situations where a summons is
16 either unavailable or would unduly harm the witness concerned. The
17 deeper into the case that we go, there are fewer substitutes
18 available when things like this happen.

19 PRESIDING JUDGE SMITH: [Microphone not activated].

20 MR. HALLING: Yes.

21 PRESIDING JUDGE SMITH: [Microphone not activated].

22 Tell me about how they are harmed by the warrant.

23 MR. HALLING: There are certain witnesses who, if they are
24 coming here to testify against their will, may risk suffering
25 secondary victimisation as a result of that in a situation where

1 further engagement with that witness to get them back on side, shall
2 we say, may make a world of difference in the testifying experience.
3 And there are certain people where we have taken them out of the
4 order, and I'll just use as one example W03878, for a short period of
5 time even though they could have been summonsed, and then put them
6 back in the order in a way that was reflective of the well-being and
7 dignity of the witness we're required to preserve.

8 But needless to say, all of this, it may complicate calling the
9 last witnesses in a kind of neat, uninterrupted sequence, but we're
10 also trying to take that into account with the streamlining that we
11 are doing. And we are satisfied that we are continuing to make good
12 progress in the light of the Panel's targets and the directions that
13 have been given.

14 We are forecasting that our next streamlining round is going to
15 be ready for filing on 1 November 2024, and we are expecting to
16 streamline at least seven more witnesses in that filing.

17 PRESIDING JUDGE SMITH: [Microphone not activated].

18 Of those who will appear in court or?

19 MR. HALLING: Of those who will appear in court.

20 PRESIDING JUDGE SMITH: Okay.

21 MR. HALLING: Of that 65 number, at least seven, and we'll be
22 able to give a more complete update then.

23 PRESIDING JUDGE SMITH: So you do believe that the target date
24 is reachable?

25 MR. HALLING: Yes.

1 PRESIDING JUDGE SMITH: And we understand the challenges. We
2 are not working with them. The Prosecution's Office is working with
3 them. But we understand that some of the challenges can be handled
4 in this courtroom, and we'll try to do that as well.

5 MR. HALLING: Thank you, Your Honour.

6 PRESIDING JUDGE SMITH: I should note that it is not anticipated
7 by the Panel that we would extend this target date, and I think
8 that's fairly clear to you. Since that is our intention, we believe
9 it would be wise for the SPO to bring forward your most important
10 witnesses as soon as possible so in the event somebody has to be cut
11 at the last minute, you won't be losing your primary witness.

12 MR. HALLING: We understand the Panel.

13 PRESIDING JUDGE SMITH: And you can certainly comment on that if
14 you wish, but you don't have to.

15 MR. HALLING: Yes. Understood.

16 PRESIDING JUDGE SMITH: One of the problems that causes a delay
17 in adjusting cross-examination time estimates is the delay in getting
18 the prep sessions completed further in advance of the actual
19 testimony. In most cases -- I'm speaking how we look at the issue.
20 But in most cases, as far as the Panel's concerned, it is the second
21 note with the possible new information, new material that is the
22 primary cause for concern, at least among the Defence, and we
23 understand that.

24 I would like to hear from you about the possibility of having
25 the prep sessions a bit earlier by videolink. We've talked about

1 this before. We've been down this road. But the same problems
2 arise. A late prep session and then a late revision of the
3 cross-examination time estimates and the resulting inability to
4 insert a backup witness happens too regularly. The last two weeks
5 were a good example of this wasted time. We could have easily had
6 three extra witnesses in these last two weeks. The more time we
7 waste on repetitious witnesses or the more we rely on unrealistic,
8 inflated overestimates for time of cross-examination, the worse the
9 problem gets.

10 We can come up with solutions ourselves, but we would much
11 rather -- we would much prefer that the parties and the participants
12 discuss and resolve this issue. How can we avoid that time wasting
13 that I just spoke of that we had in the last two weeks?

14 MR. HALLING: Yes. Well, at least one issue that arose, I don't
15 know if it's in the last two weeks, but what happened with W02135 is
16 one of the large causes for why the hearing did not proceed as
17 scheduled. That is not something that we can predict or do anything
18 about.

19 There are situations where we have been able to move witnesses
20 up in the order in order to cover missing hearing days. And we have
21 said, and we have done, that we try and do prep sessions in advance
22 more and more whenever we can. For the witness that appeared
23 yesterday, on older versions of the schedule he was supposed to
24 testify tomorrow, but he was needed on Monday, and that was okay
25 because the prep session finished last Thursday. And these are the

1 kinds of measures that we're taking to try and avoid these sorts of
2 gaps.

3 It's never going to be perfect, but we are actively mindful of
4 the thing that the Panel is addressing now, and we're trying our best
5 to solve it.

6 PRESIDING JUDGE SMITH: It's just that when we come down to 60
7 days left, each day is precious, and we have to deal with it as best
8 as possible. And I know you're aware of that problem. It has to be
9 dealt with.

10 We will come to some questions for Victims' Counsel and Defence
11 counsel in a bit, but I would like my colleagues to have a chance to
12 ask anything they have of the SPO concerning the SPO's case at this
13 time.

14 Judge Barthe, anything? No.

15 JUDGE METTRAUX: You've answered most of my questions,
16 Mr. Halling, but I have a couple more, if I may.

17 I understand from your submissions that you are not going to
18 call the 65ish *viva voce*/154 witnesses and that you plan to comb the
19 list down. We understand that out of these 65, seven will go on or
20 about 1 November. Do you have a sense of when you will be in a
21 position to inform us and, of course, the Defence and the Counsel for
22 Victims as to the others? Because I would expect everyone here to
23 spend quite a bit of preparation time on witnesses you might never
24 call, so the message is, at least from my point of view, the sooner,
25 the better.

1 MR. HALLING: Yes. And, first, if I could maybe clarify the
2 1 November deadline. That would be at the latest when we would
3 provide this information. If we knew who the seven witnesses were
4 now, we would announce them now. But that is sort of when the next
5 one is forecast.

6 In terms of the one after that, we could forecast another
7 streamlining round perhaps just before the winter recess, and then a
8 further one after that after the winter recess, just to make sure
9 that we are -- I mean, these are always piecemeal assessments that --
10 but that we are giving regular updates on the progress.

11 JUDGE METTRAUX: Thank you for that. I have a couple of small
12 things, perhaps. But one of them is how witness dependent you are,
13 from your point of view, in terms of the exhibits that are left to be
14 tendered by you. Have you conducted that assessment? In other
15 words, will you offer the bulk of what's remaining on your exhibit
16 list from the bar table, or are there categories of documents that
17 you consider require the calling of witnesses?

18 And, again, I don't ask for specifics but to get a general sense
19 from you.

20 MR. HALLING: We don't have any particular categories of items
21 that have to go through witnesses other than things that are obvious,
22 like statements of witnesses and associated exhibits to their
23 transcripts. There are, indeed, a great many items that we would be
24 proposing to call through the bar table, but we don't have relative
25 percentages of these.

1 One thing that we are doing commonly is we are pursuing multiple
2 active paths at once to get items admitted. We file a motion trying
3 to tender items through the bar table for the Karadak operational
4 zone, Mr. Russell appears in the courtroom in August, and we pull
5 some items out of that bar table motion and tender them because we
6 would like the ruling now, and we think we can get it, rather than
7 waiting for a future ruling that may not be in our favour.

8 And so we are making these decisions regularly and moving from
9 one frame to the other, but there are, indeed, going to be a great
10 many things tendered through the bar table between now and the end of
11 the case.

12 JUDGE METTRAUX: And maybe last but not least, in terms of the
13 category, or categories perhaps, of witnesses that you are planning
14 to pull, are they, I'll use broad terms, but victim witnesses? In
15 other words, are there sites and locations that will not be subject
16 to witness evidence, or are they of a different sort of witnesses?
17 If you can give us a sense of that.

18 MR. HALLING: I don't think that there's any sort of general
19 trend between victims and insiders. I guess there is relatively more
20 insiders in the remaining list, just looking at the people on the
21 list.

22 JUDGE METTRAUX: It's about half-half.

23 MR. HALLING: Yes, that sounds about right. But the number of
24 victims that are being called, a lot them are reduced to writing in
25 Rule 153 or at least tendered through this frame. The Panel has told

1 us before to focus on crime base victims and using those means to
2 which -- to admit their evidence in writing. This is something that
3 we're trying to prioritise.

4 This is not something that we can do on every occasion. And,
5 indeed, there have been occasions where we have attempted to use
6 Rule 153 to admit a crime base witness and been told we need to call
7 them under Rule 154. But we are trying to kind of work within the
8 parameters that the Panel has been encouraging us to work in.

9 JUDGE METTRAUX: Thank you.

10 PRESIDING JUDGE SMITH: Judge Gaynor.

11 JUDGE GAYNOR: Thank you, Judge Smith.

12 I've a question about the preparation sessions for the, let's
13 say, 60-odd, after you reduce maybe 55-odd, live or Rule 154
14 witnesses who you're still to call.

15 It seems to me, looking at the list of those witnesses, that at
16 least some of them could be subject to a preparation session by a
17 Zoom link, and then you can get Preparation Notes 1 and 2 across to
18 the Defence well in advance of their arrival in The Hague, and then
19 the Defence have additional time to look at Preparation Notes 1 and
20 2. And you could use those witnesses to fill in, perhaps, especially
21 the internationals, where gaps arise. Is that a possibility?

22 MR. HALLING: Yes, it is a possibility, and it's something that
23 we're already trying to do. And it's something that -- there are
24 certain witnesses where this works relatively less well, and in
25 particular witnesses that -- noting that preparation sessions are

1 also for the well-being of the witness, that they feel comfortable
2 coming into this courtroom and telling their story, there are certain
3 people where that remote prep session may be less helpful because it
4 may be better to have it closer in time to when they come.

5 But Your Honour is correct, there are some witnesses on that
6 list that don't need that, and we are looking for remote preparation
7 solutions. This is something we've done before. We're going to
8 continue.

9 JUDGE GAYNOR: Thank you.

10 PRESIDING JUDGE SMITH: Now turning to the Defence. We
11 appreciate the fact that you've made efforts, and we have noticed the
12 efforts, to shorten your cross-examine times. But as I have stated,
13 we continue to struggle with exaggerated time estimates, and it's not
14 a new problem. Some of you have taken this to heart, but it still
15 amazes me that, as happened yesterday, the Defence team's estimate
16 for cross-examination was three hours when, in fact, they only took a
17 half an hour for the questions. That's unacceptable.

18 We have previously threatened to adopt the practice of reviewing
19 statements of witnesses and setting time estimates for you, and we
20 are drawing closer to that. We have never denied anyone's request to
21 exceed time estimates to complete a cross-examination if a reasonable
22 request is made, and I see no reason to change that practice. And I
23 don't think we've ever had an unreasonable request. So when we ask
24 you to give us an accurate estimate, you have to bear in mind that
25 there's reasonable latitude by the Panel to give you the extra time

1 you need when and if it comes up. Now, if it comes up every single
2 time, it's telling a story. But, please, accept the fact that we are
3 reasonable and we will give you time. But what we really need from
4 you is an estimate that you're going to live with, not an estimate
5 that has two hours' padding stuck in just in case, you know,
6 something untoward happens. If something untoward happens during
7 your cross-examination and you need to add something, we can help you
8 do that. But we can't help having a two-and-a-half-hour overage on
9 the estimate. We have to deal with that.

10 So I ask the teams to submit your thoughts on this issue. First
11 of all, let's just start there, and we'll start just in the regular
12 rotation with the Thaci Defence first.

13 Oh, I'm sorry. We have somebody on the screen. Mr. Misetic.

14 MR. MISETIC: [via videolink] Yes.

15 PRESIDING JUDGE SMITH: Thank you for being with us.

16 MR. MISETIC: [via videolink] Thank you, Mr. President. Good
17 afternoon to everyone.

18 Just speaking on behalf of the Thaci Defence, I think the Panel
19 will have noted that in this block of witnesses we've kept our
20 estimates to an hour or an hour and a half with a rare exception. I
21 believe there were one or two witnesses where we asked for more time,
22 one of which, unfortunately, was not able to appear last week, so --

23 PRESIDING JUDGE SMITH: Excuse me. Was it because you weren't
24 here?

25 MR. MISETIC: [via videolink] Ha-ha, yes. That does improve

1 things, slightly. But we are of the same view that we're trying to
2 keep our witness estimates relatively short, to an hour or an hour
3 and a half, unless we feel that there is a witness who really
4 deserves extra time for cross-examination.

5 The only thing I would add is that recently we have not had
6 reserve witnesses ready. I don't know why that practice dropped off,
7 but we didn't have from August and September reserve witnesses ready
8 to go, which I think would be a good practice to reinstitute who the
9 reserve witnesses are going to be for the following weeks just in
10 case we go short.

11 But you'll see our cross-examination estimates for this next
12 block of witnesses coming up. I think they'll be quite reasonable as
13 there don't appear to be many who require an excessive amount of
14 cross-examination.

15 PRESIDING JUDGE SMITH: Thank you very much. And we have
16 noticed. As I stated when we started, we have noticed that there has
17 been an effort by everybody to consolidate so that you're not
18 repeating the same questions over and over, although it still
19 happens, but we appreciate that.

20 Mr. Dixon.

21 MR. DIXON: Thank you, Your Honours. We, too, have been trying
22 to ensure that the time estimates are updated. But if I can
23 underline two points in this regard. The first is, which has been
24 raised already, about getting the prep notes at the last moment or
25 shortly before as opposed to much earlier before. If those sessions

1 could take place earlier and we were able to get those notifications
2 earlier, it would mean that we could look at all of the new issues,
3 new documents that have been trawled through way in advance, and then
4 be able to work out the cross-examination based on that material.
5 The problem is that if it comes two days before, you have to allow
6 time to review all of that, and it's only very often at the last
7 moment, having looked at all of that, that a final time estimate can
8 be made. Of course, then that's given, but that might then affect
9 whether other witnesses can be lined up just in case.

10 So doing the prep sessions much earlier as a principle would
11 help enormously in being able to plan time and use the time most
12 effectively. And, of course, we more than anyone wish to maintain
13 the target deadline of the middle of April. So all wish to work
14 together as best as we can for that purpose.

15 The other point would be if the Prosecution could tell us in
16 advance which parts of the prep notes, Prep Note 2, they intended to
17 go through with the witness in advance, that would also help. Very
18 often there are 20 points there and only one or two are explored in
19 examination-in-chief. So you've prepared all the 20, checked all the
20 documents, looked at all the cross-examination, and then only a few
21 arise. There have been a few witnesses recently. I've only looked
22 at this recently, obviously, where I've noticed this happening, and
23 I've seen the amount of preparation that goes in and therefore the
24 time that has to be estimated.

25 So I understand that Prep Note 2 has to cover everything that is

1 discussed, but in advance, if the Prosecution could say, even if it
2 was 48 hours in advance: We are only going to go to points 1 and 5
3 in the prep note and nothing further. Of course, once again, if
4 something completely dramatic arises or a new point comes up, they
5 can always do it. They wouldn't be forestalled entirely, but it
6 would help with streamlining.

7 And then the last point, just to reiterate, fillers. I'm still
8 a little lost as to why filler witnesses can't be lined up. Even if
9 it's a small number, two or three lined up to fit in, if time allows.
10 Even this week potentially, we might not be sitting on Thursday. A
11 filler witness could come in, even if it was a smaller witness, to
12 make sure that that valuable time is not lost.

13 So I would reiterate again a direction that filler witnesses are
14 lined up because the Court time is fixed. Of course, there are
15 issues to take into account. But call me old-fashioned, but when a
16 Court schedule is fixed, witnesses have to be available to come into
17 that, and they can be lined up and told: This is when you're coming.

18 It's really there for the Court, not only for the witness.
19 There has to be a balance struck.

20 PRESIDING JUDGE SMITH: Yes. And the balance has to include the
21 fact that those witnesses have lives too, and we have to accommodate
22 that to some extent.

23 MR. DIXON: Absolutely to some extent, Your Honour. But there
24 has to be a balance struck.

25 PRESIDING JUDGE SMITH: Let me ask Mr. Halling if he wants to

1 respond to the reserve witness availability and what problems you
2 might have in having three or four of them ready.

3 MR. HALLING: Yes, we support having reserve witnesses. There
4 are two reserve witnesses in our latest Rule 154 filing, which is
5 F02593.

6 PRESIDING JUDGE SMITH: [Microphone not activated].

7 How quickly are they available?

8 MR. HALLING: For the reserve witnesses that we put in the last
9 filing, they're available for the next block. So the idea is that
10 they are available on short notice if any gap arises between 21
11 October and 7 November.

12 PRESIDING JUDGE SMITH: Like, for the next day, for example?

13 MR. HALLING: I can't always say it will be next day, but that's
14 the kind of short notice that a reserve --

15 PRESIDING JUDGE SMITH: That's what we need.

16 MR. HALLING: -- witness is needed for.

17 PRESIDING JUDGE SMITH: Yeah. Just yesterday the witness was
18 testifying or made a statement at the end that he'd been here seven
19 days, and that is a bit of a stretch. I mean, that's a long time to
20 sit and wait in a foreign city by yourself in order to testify. So
21 we have to think about those kind of situations, too, and we do.

22 So --

23 MR. DIXON: Your Honours, I was thinking of videolink witnesses
24 in particular, where they could be scheduled at shorter notice --

25 PRESIDING JUDGE SMITH: [Microphone not activated].

1 MR. DIXON: -- provided we have notice.

2 PRESIDING JUDGE SMITH: [Microphone not activated].

3 I think you're right about that, that the more we can use
4 videolink on short-term notices, the better. Easier for them, easier
5 for us, easier for you.

6 MR. DIXON: So provided we've got notice of that in advance,
7 then we could have those prepared and ready so they could be slotted
8 in at short notice.

9 PRESIDING JUDGE SMITH: Sure. Thank you.

10 MR. DIXON: Thank you.

11 PRESIDING JUDGE SMITH: Mr. Roberts, anything you would like to
12 add?

13 MR. ROBERTS: Very little, Your Honour. I swore to myself I was
14 not going to blame anyone else in the courtroom for any delays in
15 proceedings --

16 PRESIDING JUDGE SMITH: Thank you for that.

17 MR. ROBERTS: -- so I will try and keep this short.

18 The one thing I would suggest -- and, obviously, like all the
19 other teams, we are making efforts to make the most realistic cross
20 estimates. But one thing I would say, and this has happened various
21 times, and I hold myself completely responsible for this, we have
22 given a good-faith estimate, and then we have reassessed that after
23 hearing what the witness has said, and then decided that that
24 actually might result in a much shorter cross or no cross at all.
25 And that is something that is part of trial proceedings.

1 We, obviously, reserve the right to do what we believe is in the
2 best interests of our client throughout. And so, therefore, there
3 will be good-faith estimates that are given in advance of the witness
4 coming, and then that results in quite a change.

5 Now, we, obviously, try and keep that down as much as possible
6 because we're fully aware of the resulting impact on proceedings, but
7 that is part of what we need to do. And just to flag up that that is
8 a reality of trial proceedings, as, obviously, you're all well aware.

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

10 MR. ROBERTS: Thank you.

11 PRESIDING JUDGE SMITH: I'll come back over in just a minute.

12 How long of a time period is there on average between the end of
13 the prep conference till you have delivered the documents to the
14 Defence and to the participants?

15 MR. HALLING: If we consider the end of the prep session being
16 the readback of the Preparation Note, which we are required to do in
17 order to confirm its accuracy, we tend to do that same day.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 MR. HALLING: Same day. At least by courtesy copy in the
20 e-mail, if not in the formal disclosure package.

21 PRESIDING JUDGE SMITH: Thank you.

22 Mr. Ellis or Ms. Alagendra.

23 MR. ELLIS: Thank you, Your Honour. We, of course, echo the
24 points that have been made before. We are trying to give accurate
25 time estimates, as we always do. I certainly appreciated a few

1 witnesses ago that the Panel gave some latitude where I, perhaps,
2 took a little longer and perhaps was more generous to another team
3 with giving time than required.

4 But equally, there was an occasion recently with Witness 4752
5 where we had reduced our time estimate and then, in the course of
6 cross-examination, wanted to use longer again. And due to
7 constraints, we were held to a shorter time estimate than we would
8 have liked. So that's also on our minds.

9 PRESIDING JUDGE SMITH: Sometimes it depends upon what's being
10 asked.

11 MR. ELLIS: I'm sure that's right, Your Honour. I don't want to
12 reopen old debates, but it's a situation that we encountered
13 recently.

14 PRESIDING JUDGE SMITH: [Microphone not activated].

15 MR. ELLIS: We, of course, also echo what's been said about
16 preparation sessions. Your Honours are right, it's Preparation
17 Note 2 that is often the concern, and particularly where new
18 documents are shown, which we then have to go through and which then
19 aren't always used in the course of direct examination. We may have
20 reserved time to deal with documents that don't ultimately come up.

21 And, of course, going forth, we're always mindful of
22 Your Honours' instruction to be judicious with our use of time, and
23 if our questions are touched on or asked, we shorten down
24 accordingly.

25 PRESIDING JUDGE SMITH: [Microphone not activated].

1 Judge Barthe, do you have any questions you would like to bring
2 up?

3 JUDGE BARTHE: Yes. Thank you, Judge Smith.

4 And good afternoon to everyone in and outside the courtroom.

5 I have one or two questions for the Defence. I promise it has
6 nothing or my questions don't have anything to do with
7 cross-examination estimates or witness preparation but with potential
8 submissions under Rule 130.

9 So looking into the future, as you all know, pursuant to this
10 rule, immediately after the closing of the Specialist Prosecutor's
11 case, the Defence shall notify the Panel of its intention to file a
12 motion to dismiss any or all of the charges in the indictment. And
13 this motion shall then be submitted within ten days of the closing of
14 the Specialist Prosecutor's Office case, after which the Prosecution
15 may file a response within ten days of the motion.

16 My first question to the Defence is this: Assuming that you
17 intend to file a motion under the aforementioned rule, and I don't
18 want to know whether you do so, whether you want to file a motion or
19 not, I'm only interested in knowing if you can give us an estimate of
20 whether the ten days for submitting such a motion are sufficient.
21 And if this is not the case, can you already tell us how long you
22 will need for the submission of this motion? Of course, it goes
23 without saying that this is not intended to be binding in any way,
24 but only to allow us to estimate how we can proceed in terms of time
25 from April 2025, next year, onwards.

1 So who wants to go first?

2 MR. ELLIS: I'm grateful, Your Honour. It was a direct
3 question, so I'll try and give a direct answer. No, I don't
4 anticipate ten days would be sufficient given the scale of this case,
5 the number of witnesses, the amount of time trial has taken. We
6 would be asking for a month.

7 JUDGE BARTHE: Thank you.

8 Any other submissions or estimates?

9 MR. ROBERTS: We, obviously, are not in a position to decide
10 whether we would or not. It's something we'll, obviously, actively
11 consider right up until the end of the Prosecution case. I think we
12 would certainly need a sufficient amount of time given the size of
13 the case. And what my friend, Mr. Ellis, has just said seems
14 reasonable in that context.

15 The one issue that would potentially interest me in determining
16 whether that would be something we would want to do is how the Panel
17 interprets Rule 130 and the extent to which they can dismiss certain
18 incidents, factual incidents, or if it's limited to dismissing an
19 entire count. And I believe, again, without having looked at this
20 for quite a while, there has been a potential difference of opinion
21 on this in the past, but that would certainly interest me in
22 determining the extent to which and how and why it would be worth
23 filing such a submission and how much time we would therefore need to
24 do that.

25 This is me speaking off the top of my head because I had to look

1 up what Rule 130 actually meant, but certainly from my initial
2 position that's where I've landed.

3 PRESIDING JUDGE SMITH: We did exactly the same thing today.

4 MR. ROBERTS: Thank you, Your Honours.

5 PRESIDING JUDGE SMITH: Anybody else?

6 Mr. Dixon?

7 MR. DIXON: Yes, thank you, Your Honours. If we exercise that
8 right, I think, like my colleagues have said, we would look to
9 request additional time given the complexities. But this also raises
10 the next question, and I don't want to jump ahead, about the Defence
11 case. Because that would also be very useful, maybe not at this
12 Status Conference but at one coming up, to have an indication of how
13 much time would be permitted thereafter, if there was a Defence case,
14 in order to allow for preparations of that now in advance.

15 PRESIDING JUDGE SMITH: We would probably start out with asking
16 you how much do you want.

17 JUDGE BARTHE: [Microphone not activated].

18 MR. DIXON: Yes, I expected that question, and that's why I said
19 I think it would have to be dealt with at a later stage, if I may
20 ask. Because I think it's important that that is fully consulted and
21 then we take instructions in order to provide that. But just to flag
22 that that would be an important consideration for us to know when the
23 Prosecution case was finishing, which I think that has given been
24 very clearly today very helpfully to be able to then plan to have
25 sufficient time, given that investigations for a Defence case during

1 the Prosecution case are quite difficult to take and further time
2 would be required thereafter. Obviously, doing it entirely
3 proportionately and within reasonable limits.

4 PRESIDING JUDGE SMITH: Go ahead. Do you have more?

5 JUDGE BARTHE: Thank you. Yeah, I actually had a question, but
6 Mr. Dixon just stole my question.

7 No, for us, I think it's important to point out that we are only
8 interested in knowing how we can proceed after the Prosecution's case
9 is closed, and then we have to -- if you decide to file a motion
10 under Rule 130, what we do with the motion and when we can proceed,
11 and this would be -- or would have been my next question.

12 Maybe I can ask other Defence teams whether they want to just
13 help us in that regard, and can help us in that regard. And, again,
14 I'm not asking -- and this is purely hypothetical, of course, because
15 we don't know yet whether there will be a motion and whether we will
16 grant parts of it or -- and dismiss charges or not.

17 So I return the ball and play the ball, and I would like to know
18 whether somebody wants to tell us how long you would need in case a
19 Rule 130 motion is not granted and the Panel would not dismiss all of
20 the charges, how long you would need to prepare for the continuation
21 of the proceedings.

22 In other words, is it a matter of weeks or months or -- I hope
23 not more --

24 MR. MISETIC: [via videolink] [Overlapping speakers] ...

25 PRESIDING JUDGE SMITH: And, of course, you have no obligation

1 to do that, but --

2 JUDGE BARTHE: That's right.

3 PRESIDING JUDGE SMITH: -- it's just a question.

4 MR. MISETIC: [via videolink] If I may --

5 JUDGE BARTHE: Oh, yes.

6 PRESIDING JUDGE SMITH: Yes, go ahead.

7 MR. MISETIC: [via videolink] -- on behalf of the Thaci Defence.

8 First, in answer to the previous question, I would need to
9 consult with my client and consult with the other Defence teams. I
10 very much agree with Mr. Roberts that it would really depend on
11 whether whole counts have to be dismissed, it's all or nothing, or
12 whether there could be partial dismissal in terms of how much time we
13 would need to prepare.

14 Obviously, our clients are in detention, so I actually may
15 request lesser time, more consistent with the provisions of Rule 130,
16 but that's something I need to discuss with my client and the other
17 Defence teams.

18 In terms of how much time we would need between the Prosecution
19 case and any decision on Rule 130 and the start of the Defence case.
20 Since we are the first Defence team in line, I would think - again,
21 motivated by the desire and the fact that our clients are in
22 detention - we typically would need about six weeks, four to six
23 weeks to make sure we can line up our witnesses. And, obviously,
24 this is dependent -- we're in the same position as the SPO in that
25 regard, because we have witnesses that have their own schedules, and

1 we need to make sure that we know when the Defence case would start
2 and we can line them up to have them go one after the other and we
3 can move our defence case quickly, if we decide to put on a defence
4 case.

5 I would say roughly four to six weeks to start our defence case.

6 PRESIDING JUDGE SMITH: Anybody else have a comment on this?
7 Prosecution?

8 MR. HALLING: Nothing at this time, Your Honour.

9 PRESIDING JUDGE SMITH: Mr. Laws, I don't want to overlook your
10 valuable contribution to the procedure. Can you estimate the time
11 you might think you need to present the case that you would present
12 on behalf of the victims?

13 MR. LAWS: Your Honour, yes, we can.

14 May I just say something about the timing of things first and
15 how we see it subject to everybody else's view and Your Honours'
16 view. The chronology seems to us to be this: That the Prosecution
17 case has closed; the Rule 130 litigation, if it's going to happen,
18 begins and ends; and then we put on the case that we want to put on.
19 That's the way that we see it, because Rule 130 starts with
20 immediately after the closing of the Specialist Prosecutor's case and
21 doesn't appear to admit of the possibility of Victims' Counsel having
22 a case that comes after the end of the Prosecution's case and before
23 the Rule 130 litigation.

24 So if that understanding is shared by all and by Your Honours,
25 that would be a valuable milestone for us.

1 Our intention at the moment is to submit the majority of the
2 material that we are going to be relying on in writing, and we
3 will -- as things stand, our intention is to call some evidence, both
4 lay witnesses and one or more experts. We think that that process
5 will take somewhere around a week, possibly going into a second week.
6 That's our best estimate at the moment.

7 PRESIDING JUDGE SMITH: [Microphone not activated].

8 Thank you very much for your submission.

9 Anybody have any comments about that?

10 Go ahead, Mr. Prosecutor.

11 MR. HALLING: No comments at this time.

12 PRESIDING JUDGE SMITH: [Microphone not activated].

13 Any comments by the Defence, especially concerning his concept
14 of how the procedure should occur?

15 MR. ROBERTS: Thank you, Your Honour. From my side, that makes
16 perfect sense. I would also suggest that it needs to be done that
17 way because the Victims would only be able to lead evidence in
18 relation to counts or incidents that hadn't been dismissed by
19 Your Honours, if such a motion was raised. So chronologically, it
20 would have to go that way. That's the only thing -- only thought I
21 have at this stage. But apart from that, nothing. Thank you.

22 PRESIDING JUDGE SMITH: [Microphone not activated] ... it would
23 be helpful. Does anybody else feel that they need to object to that
24 particular procedure? And it may be you have to think about it. I
25 don't know. But it would help Mr. Laws, I'm sure, to know if that's

1 the process we're going to follow.

2 [Microphone not activated].

3 MR. DIXON: Your Honours, I don't want to object now, because
4 it's a matter that it has to be taken under consideration and
5 instructions taken, so it's once again very helpful that it's raised.
6 So there's no objection on the record now. But if there's any matter
7 arising, we will notify all of the parties and, of course,
8 Your Honours immediately.

9 PRESIDING JUDGE SMITH: I think, perhaps, we should have a
10 deadline for making that --

11 MR. DIXON: Yes.

12 PRESIDING JUDGE SMITH: -- decision. Maybe December 1 or
13 something to that effect. Would that be sufficient, Mr. Laws?

14 MR. LAWS: Yes, certainly. And so that we understand, that's
15 the Defence filing notice that they don't object to --

16 PRESIDING JUDGE SMITH: [Microphone not activated].

17 MR. LAWS: Yes.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 Anybody have a problem with that schedule?

20 MR. ELLIS: That's helpful, Your Honour, to have that schedule.
21 It's just something we haven't turned our mind to yet.

22 PRESIDING JUDGE SMITH: [Microphone not activated].

23 Mr. Misetic, anything from you on that?

24 MR. MISETIC: [via videolink] Nothing further at this time. But
25 I do wish to reserve my position and to consult further with Mr. Laws

1 when I return tomorrow to The Hague.

2 PRESIDING JUDGE SMITH: No problem. I'm just talking about
3 having -- is there any problem with setting a deadline to raise an
4 objection by December 1st?

5 MR. MISETIC: [via videolink] No. No problem with that.

6 PRESIDING JUDGE SMITH: All right. That will be the way. We'll
7 enter an oral order to that effect yet this week.

8 JUDGE METTRAUX: I have a question for you, Mr. Laws.

9 You've indicated in your submissions that you are planning to
10 submit, I don't want to paraphrase, but the bulk of the material in
11 writing. Do you mean witness statements? Or are you referring to
12 reports, exhibits? Can you clarify this?

13 MR. LAWS: A mixture of material, Your Honour.

14 JUDGE METTRAUX: And, again, I'm not pressing you too hard, at
15 least, but do you have a sense of how many witnesses you would be
16 minded to call for your case?

17 MR. LAWS: It's a small number. And when I gave the estimate of
18 a week, possibly going into a second week, what I had in mind was the
19 time that it would take to call the oral evidence that we have in
20 mind. So we're talking about really half a dozen witnesses,
21 something like that.

22 JUDGE METTRAUX: Thank you.

23 JUDGE GAYNOR: I've just -- I've just one question --

24 PRESIDING JUDGE SMITH: [Microphone not activated].

25 JUDGE GAYNOR: -- for the Thaci Defence, and, of course, you're

1 not obliged to answer this at this point. But for the purposes of
2 trial planning, are you able to indicate, even in general terms, how
3 many witnesses you might wish to call as part of your Defence case if
4 the proceedings reach that point?

5 MR. MISETIC: [via videolink] So, first of all, again, with all
6 the qualifiers, we haven't decided whether we're going to put on a
7 Defence case, first of all.

8 Second of all, I can give you a very rough estimate, and that's
9 at this point in time, subject to whatever else transpires in the
10 case, but I would say at this point no more than ten, and that's
11 without prejudice to us amending that later.

12 JUDGE GAYNOR: Thank you for that answer.

13 I've another question about Rule 154, which is, of course, a
14 time-saving device. And, of course, the Panel welcomes good advocacy
15 and good cross-examination, but it has been noticed that occasionally
16 Defence counsel will put to a witness a sentence from evidence which
17 has been admitted pursuant to Rule 154 not as a basis to ask further
18 questions on that point, but simply put it to the witness and then
19 move on completely to a completely unrelated point, and I was
20 wondering if there is some reason for this.

21 We are mystified as to why the Defence would want the witness
22 simply to confirm that they've said something earlier and then move
23 on. These Rule 154 statements are in evidence. The Defence can use
24 them in their final briefs and final submissions to make whatever
25 points they wish. Is there a particular reason for asking the

1 witness merely to confirm something that they said earlier?

2 Mr. Dixon, you look like you're interested in this one.

3 MR. DIXON: I am because I've noticed that the Prosecution does
4 that a lot, and I've been mystified as to why, when it's there,
5 really. The Prosecution does it over and over again, and in
6 re-examination as well, so perhaps the Prosecution can be asked as
7 well.

8 But I know I've been asked. My answer is that we do understand
9 that there's no need to do it. It's on the record already. It
10 shouldn't be done merely for repeating. The purpose why very often,
11 certainly speaking from my point of view, other counsel can add, it's
12 done is to lay a foundation for questions that are to follow and to
13 make sure the full context is known so that when new questions arise,
14 you don't have to go back and clarify: Well, you've said this
15 before. So it's trying to go step by step to save time, not to
16 repeat.

17 But we'll obviously take it on board and ensure there's no
18 repetition. The sole purpose would be to get new material out from
19 the witness that is relevant to Your Honours' determination of the
20 facts.

21 JUDGE GAYNOR: Yeah. I think asking a question to lay a
22 foundation is, obviously, perfectly acceptable.

23 MR. DIXON: Yes.

24 JUDGE GAYNOR: It's where there is no follow-up question that I
25 had in mind. But I thank you for your answer.

1 MR. DIXON: Yes, I'll certainly take that on board and be wary
2 of it. And my submission would also be that I think the Prosecution
3 should equally be focusing on that, not to take up unnecessary time
4 with what's there already and only to elicit what's new.

5 JUDGE GAYNOR: I will turn to the Prosecution in a moment. If
6 any other Defence team wishes to make a point here, they're invited
7 to do so.

8 I'll move now to the Prosecution. It's the same point. The
9 evidence is in. It's already there. We don't need to go down the
10 same road. Is there any reason the Prosecution occasionally, not
11 often but occasionally, asks the witness to say something in exactly
12 the same terms as is already in evidence?

13 MR. HALLING: I mean, we fully agree with Your Honour. We're
14 doing it very limited but for specific reasons. Typically, in direct
15 examination this is done just as an orientation to launch other
16 questions. So Your Honour talked about there being a foundation to
17 ask future questions. Sometimes we show prior statements for that
18 purpose.

19 We would also submit the redirect context is totally different
20 in this regard. In situations where the cross-examination has
21 already occurred, sometimes confirming that the witness's prior
22 statement is actually correct does become a live issue, and so that
23 is a difference between direct and redirect examination. And we are
24 more inclined - and this actually happened yesterday - to use prior
25 statements to get a witness to actually clarify their evidence in a

1 way that isn't just a mere recitation or repetition.

2 JUDGE GAYNOR: Thank you for that.

3 MR. MISETIC: [via videolink] Judge Gaynor, if I may just add one
4 point?

5 JUDGE GAYNOR: Please, go ahead.

6 MR. MISETIC: [via videolink] Sorry. I can see one scenario, and
7 this is related to the fact that we have public trials, right? So if
8 we're talking about a witness that's testifying in public or whose
9 summary is being put forth in public as to what the testimony is
10 about, there may be also a benefit for the Defence to highlight
11 portions of the Rule 154 statement that have not been highlighted by
12 the Prosecution in their 154 summary, and that for purposes of a fair
13 and public trial, the Defence may wish to highlight that the witness
14 has said something in a statement that is also exculpatory and should
15 be in public.

16 JUDGE GAYNOR: Thank you.

17 Thank you, Judge Smith.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 JUDGE METTRAUX: Thank you.

20 And, first, I'll try to mystify Mr. Dixon a bit more. But on
21 your submissions regarding the preparation notes or proofing notes, I
22 would like to make it clear that the main problem we've had in terms
23 of time estimate is with the initial estimate, not with the latter
24 estimate. The latter estimates have actually been quite accurate,
25 and we've indicated we're grateful for that. The one that has been

1 problematic is the initial estimate that we received and based on
2 which the Prosecution brings witnesses here and the schedule is set
3 accordingly.

4 As far as the preparation notes is concerned, as I think we've
5 made clear, is, to the extent there's something new, particularly in
6 Preparation Note 2, that would come to the surface, there is, of
7 course, the possibility for you to ask of us to extend the time that
8 you had initially foreseen.

9 I'll just note for the record that in almost every single case
10 after you've had the benefit of the preparation notes, the time
11 estimate has gone down, not up, so I don't think it's a particular
12 vector of increase of time.

13 But putting that aside for a moment, I have a question also for
14 the Defence. There is a rather large group of remaining 154
15 witnesses in relation to whom you would normally, if you so request,
16 be entitled to cross-examine these witnesses. Has there been any
17 thought given to the need or not of cross-examining some of these
18 witnesses? In other words, have you gone through the list of
19 remaining 154 witnesses already, and have you been able to ascertain
20 whether each and every one of them would require, from the point of
21 view of each and all Defence teams, to be cross-examined?

22 The underlying question is could any of the 154 turn into *de*
23 *facto* 153 witnesses?

24 MR. DIXON: Your Honours, perhaps I could start by -- on the
25 point of the Prep Note 2, I much appreciate that indication. The

1 submission I was making was that the earlier we got Prep Note 2, the
2 sooner we could then get that estimate and get it down, inevitably.
3 So the request was whether the Prosecution could do those
4 preparations remotely or earlier or even travel to wherever the
5 witness is to get it done, if there was even a need for a preparation
6 note. And there might be cases where it's just not necessary. And
7 I've noticed that some of them take days. It's almost like you're
8 reinvestigating all over again.

9 So if they have to happen at all, then if they could happen
10 sooner, we could give those estimates immediately, plus also indicate
11 which are the main topics that the Prosecution is going to focus on.
12 But we certainly use that as a way to trying to reduce and will
13 continue to do that as quickly as we can.

14 On the question of 154, 153, we know that the Prosecution has
15 been filing various applications to admit under 153, so submitting
16 that there's no need to call the witness, and we have responded to
17 those. I think the recent one we responded to was on 30 July,
18 indicating where we agree or where we would ask that 153 witnesses
19 are not admitted. There hasn't been any ruling on that yet.

20 And our submission would be that we should continue this
21 practice where, as the Prosecution brings the case, they indicate
22 where they believe it could be dropped down from 154 to 153. We can
23 then respond and see if we can agree without troubling Your Honours,
24 and then in that way reduce the number of witnesses that need to be
25 called.

1 Even in relation to what the Prosecution has said now about the
2 streamlining, bringing it down to seven. We're not sure if they're
3 dropping those altogether or are they going to seek to admit them
4 through written evidence. If they are, they should apply. We can
5 respond. Perhaps we can agree. If we can't agree, then we can send
6 the matter to Your Honours to determine whether those could be
7 admitted purely in writing.

8 So my request would be that the Prosecution, in bringing the
9 case, make those applications to us as the Defence, and then we can
10 respond in response to all of these various witnesses whether they
11 actually have to be called or not or whether they could be admitted
12 in writing.

13 JUDGE METTRAUX: We'd welcome these discussions, Mr. Dixon, with
14 a view to achieving exactly what you said. And I can see you've been
15 given a note. If you want to add to what you've --

16 MR. DIXON: Yes, just to correct. It was our application to
17 exclude certain witnesses who the Prosecution has sought to rely on
18 under 153. And I understand there were only four where we're waiting
19 for a ruling. And I understand the Prosecution's going to be giving
20 further indications soon, including the streamlining now, what
21 they'll do with the witnesses that they may not call or want to call
22 in written form. Then we can apply and get rulings accordingly, if
23 it can't be agreed.

24 JUDGE METTRAUX: We're like you, we are waiting on that,
25 Mr. Dixon.

1 I can see Mr. Misetic raising his hands.

2 MR. MISETIC: [via videolink] Yes, Judge. I just wanted to add
3 that I understand when the Prosecution makes a declaration that they
4 intend to make a witness a 154 witness, that usually there's going to
5 be a Prep Note 2 and there's probably going to be new documents that
6 they wish to authenticate through the witness or there's otherwise
7 new information that they may seek to elicit in the prep session from
8 the witness. And so therefore -- and where they think that there is
9 no additional information that they want to elicit from a witness,
10 that can be 153.

11 So I think the initiative should come from the Prosecution.
12 Because if they have a reason to call a witness to elicit new
13 information, then there's no point in us, you know, deciding at this
14 point that we're not going to cross-examine someone.

15 PRESIDING JUDGE SMITH: One thing we've never objected to is
16 agreements between the parties, so feel free to do that at any time.

17 MR. MISETIC: [via videolink] And we have in the past, Judge, on
18 that point. We have had *inter partes* communications.

19 PRESIDING JUDGE SMITH: I know you have.

20 MR. MISETIC: [via videolink] Yeah.

21 PRESIDING JUDGE SMITH: I'm just encouraging you to continue.

22 MR. MISETIC: [via videolink] Yeah.

23 PRESIDING JUDGE SMITH: Just one point. I think you were saying
24 you were going to completely drop seven witnesses, not you were going
25 to put them in a different category.

1 MR. HALLING: What I said was streamline at least seven, which
2 would be both. It would be drops and people that would be converted
3 to writing.

4 As concerns what the Defence was discussing now in relation to
5 Rule 154, we have to file Rule 154 applications for these witnesses.
6 That is our clear, overt act indicating the basis on which we want to
7 call these witnesses. The responses to those applications are a
8 natural opportunity to say that no cross-examination is going to be
9 given for those witnesses, and it would spare the need to call them,
10 if that could only be done.

11 PRESIDING JUDGE SMITH: And I think that happened once.

12 MR. HALLING: It happened once. It actually happened after the
13 response, but it did happen once. So it can happen.

14 PRESIDING JUDGE SMITH: So we're going to go for doubling that
15 now. We'd like to get two.

16 Anybody else have anything? That's all that's on our schedule.
17 Yes, Mr. Ellis.

18 MR. ELLIS: Your Honour, the only additional point that occurs
19 to me is that, looking down the list of witnesses to come, we could
20 probably all identify less than ten, probably six or seven, large
21 witnesses who are likely to take significant Court time, whether done
22 by virtue of their position in the organisation or just looking at
23 the Prosecution's time estimates.

24 So we probably all know who those witnesses are going to be, and
25 it would be extremely helpful to our planning to have some sort of a

1 roadmap for when those witnesses are likely to fall within the six
2 months of this case, because that would enable advance preparation
3 and perhaps some advance time estimates.

4 PRESIDING JUDGE SMITH: That seems like a very good idea, and it
5 would be helpful to know where those ten major witnesses are going to
6 occur, because they're going to fill up a good number of the days
7 that you have. I think we've estimated a couple of people could have
8 four or five days in trial.

9 MR. HALLING: We can say in this regard that, I don't know if
10 it's going to cover every single witness that Mr. Ellis was just
11 referring to, but early next week we're going to file a notification
12 for the witnesses from November to January, and that is going to have
13 an indication of some of those big witnesses and approximately when
14 they would be appearing.

15 PRESIDING JUDGE SMITH: That would be helpful.

16 MR. ELLIS: The earlier we could get the preparation notes,
17 obviously, for the bigger witnesses, that would be extremely helpful.

18 PRESIDING JUDGE SMITH: [Microphone not activated].

19 Mr. Laws.

20 MR. LAWS: Your Honour, one final matter from us, and it's to do
21 with the timing of the request for reparations, if any is
22 appropriate.

23 On 27 May, at the last Status Conference, I said that there was
24 an issue in relation to reparations and that I would be approaching
25 the Defence and discussing it with them. That's happened since then.

1 And the position is that Victims' Counsel and the Defence are agreed
2 that -- subject to the Judges' view, of course, that the request for
3 reparations should only be filed after the judgment in the case. So
4 that a decision is taken as to the ultimate outcome, the verdicts on
5 the counts for each accused, and that the reparations request follows
6 that.

7 I gave reasons for that in the course of my opening statement,
8 in fact, but it boils down to this: That to try to construct a
9 reparations request in a case where there are so many possible
10 factual findings which alter the scope of the request itself is, we
11 suggest, just very difficult. And the Panel won't, in any case, be
12 applying its mind to reparations until its made its factual findings
13 in relation to the indictment. So very, very little time is lost.

14 In Case 04, in the Shala case, the reparations proceedings were
15 conducted at the same time as the trial. But in that case, there was
16 a very small number of victims and it had a very limited choice of
17 outcomes.

18 So that's going to be our suggestion. It changes things quite
19 significantly both for us and for the Defence if it's all done, as it
20 were, at the same time as the closing briefs because it's a very
21 labour-intensive process for the Defence to respond to a reparations
22 request. And I'm not quite sure why they've agreed, but I imagine
23 that they want to be spending their time focusing on the issue of the
24 indictment rather than any consequences of the convictions.

25 PRESIDING JUDGE SMITH: And how quickly would you be estimating

1 right now that you would be ready to proceed with the reparations
2 case after the judgment is entered, if there is one?

3 MR. LAWS: Yes. Were there to be convictions, our plan would be
4 to be ready to go, and then it's simply a question of seeing which
5 factual findings have been made and slotting those into our overall
6 plan. So it's a matter -- say four weeks. I mean, that's my
7 estimate at this stage.

8 But -- yes, anyway, Mr. Misetic was good enough to be the
9 spokesperson for the Defence in this regard, and we've reached an
10 agreement with him, and we put that before the Panel. We informed
11 the Prosecution of that as well. But that's our suggestion.

12 PRESIDING JUDGE SMITH: And we're not trying to hold you to that
13 four weeks. We're just trying to get some sort of an idea. So thank
14 you very much.

15 MR. LAWS: We're going to have done the work before anyway.
16 That's for sure.

17 PRESIDING JUDGE SMITH: Yes.

18 MR. LAWS: But it's a question of submitting something which is
19 focused and also something which reflects the totality of the
20 findings, assuming that there are any adverse findings, and that's
21 just -- it's impossible for us to do that in advance in reality.

22 PRESIDING JUDGE SMITH: [Microphone not activated].

23 MR. HALLING: No objection on that. Actually, what Mr. Laws is
24 proposing is consistent with the ICC reparations proceedings.

25 PRESIDING JUDGE SMITH: [Microphone not activated].

1 Anybody in the Defence want the floor on this issue or not? You
2 don't have to. It seems it's already been agreed, so ...

3 MR. ROBERTS: I would just say maybe, Your Honour, we just
4 reflect and agree or disagree by 1 December in the same vein as we
5 were going to do so in relation to --

6 PRESIDING JUDGE SMITH: [Microphone not activated].

7 MR. ROBERTS: -- the case. I think our position is as Mr. Laws
8 has set out, but just in terms of consolidating them, if there's any
9 update to that, that's something that we could do.

10 MR. LAWS: 1 December is not going to change anything. But for
11 the record, my clear understanding, and I'm sure Mr. Misetić will
12 agree, is that we already have an agreement.

13 PRESIDING JUDGE SMITH: That's what it was said in the first
14 place.

15 MR. MISETIĆ: [via videolink] I do, yes.

16 MR. DIXON: Your Honour, I would -- unless Mr. Misetić was -- I
17 would want some time to consider this because I haven't been party to
18 any of these discussions. I mean, there's no problem that I'm
19 highlighting here. I'm just saying I think, given that this has just
20 arisen for the first time now, we would want some further time to
21 reflect on it.

22 And there are also other proceedings including potential appeals
23 and all of that to take into account were we ever to get to that
24 point.

25 PRESIDING JUDGE SMITH: Is the December 1st date all right,

1 Mr. Laws, if that's the case?

2 MR. LAWS: Yes, I don't object to that. It was slightly
3 difficult to hear, but it did make it onto the transcript. When I
4 said that I'm sure Mr. Misetić will agree, he said, "I do, yes," that
5 we have an agreement. So just --

6 MR. MISETIĆ: [via videolink] Let me --

7 PRESIDING JUDGE SMITH: I heard him.

8 MR. LAWS: Thank you.

9 MR. MISETIĆ: [via videolink] Just to remove any doubt, I said,
10 for the transcript, yes, Mr. Laws and I did reach an agreement. I
11 also, however, have been reminded now by Mr. Dixon that he was not
12 counsel at the time that we had these conversations. So --

13 PRESIDING JUDGE SMITH: All right. Given the circumstances --

14 MR. MISETIĆ: [via videolink] -- I will speak to him tomorrow.
15 Yeah.

16 PRESIDING JUDGE SMITH: Given the circumstances, anybody that
17 has an objection to that proceeding shall do so by December 1st, and
18 that will be included in the same oral order as we mentioned earlier.

19 Anything else? Anybody else has any gripes, complaints?

20 Nothing. Nothing that you want to talk about out loud, huh?

21 MR. ROBERTS: There's many things that I want to talk about out
22 loud and probably shouldn't, Your Honours, and this probably falls
23 into that category, and I blame Judge Barthe entirely, who directed
24 me to Rule 130, and I looked at rule -- the following rules.

25 And, obviously, any indication -- and I'm not suggesting that or

1 prompting you to do so, but, obviously, any indication under Rule 132
2 and Your Honours' intentions in that regard, the earlier that that
3 would, obviously, be provided to us would also assist us greatly in
4 terms of understanding the future direction of the case.

5 And I've nothing more than that. But merely having looked at
6 the following rules, that's something which, obviously, could impact
7 both the timing and -- yes, and the amount would, obviously, have an
8 impact on those proceedings.

9 PRESIDING JUDGE SMITH: It's good to look at those rules once in
10 a while.

11 MR. ROBERTS: Occasionally it does help, Your Honour, yes.

12 PRESIDING JUDGE SMITH: All right. Thank you all very much for
13 being here. I hope this was constructive. We will try to do it
14 again on a regular basis, as we have. And thank you. And we'll see
15 you all tomorrow morning at 9.00.

16 We're adjourned.

17 --- Whereupon the hearing adjourned at 3.38 p.m.

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