

1 Wednesday, 14 September 2021
2 [Status Conference]
3 [Open session]
4 [The accused appeared via videolink]
5 --- Upon commencing at 2.30 p.m.

6 JUDGE GUILLOU: Good afternoon and welcome everyone in and
7 outside the courtroom.

8 Madam Court Officer, can you please call the case.

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

12 JUDGE GUILLOU: Thank you, Madam Court Officer.

13 Now, I would kindly ask the parties and participants to
14 introduce themselves, starting with the Specialist Prosecutor's
15 Office.

16 Madam Prosecutor.

17 MS. LAWSON: Good afternoon, Your Honour, and to all of those
18 joining. For the Specialist Prosecutor's Office this afternoon are
19 Alan Tieger, Senior Prosecutor; Ward Ferdinandusse, Head of
20 Investigations, Prosecutions; Marlene Yahya Haage, Legal and
21 Disclosure Officer; and I am Clare Lawson, Senior Prosecutor. Thank
22 you.

23 JUDGE GUILLOU: Thank you, Madam Prosecutor.

24 And now I turn to the Defence. May counsel introduce themselves
25 and their teams, starting with Mr. Kehoe, please.

1 MR. KEHOE: Good afternoon, Your Honour, and good afternoon to
2 everybody in the courtroom. My name is Gregory Kehoe. I'm here with
3 Mr. Prosper, Pierre Prosper, in person, and also Luka Misetic and
4 Dastid Pallaska who are on the video monitor. Thank you.

5 JUDGE GUILLOU: Thank you, Mr. Kehoe.

6 Mr. Emmerson, please.

7 MR. EMMERSON: Good afternoon, Your Honour, to those inside the
8 courtroom and following remotely. My name is Ben Emmerson. I am
9 representing Kadri Veseli, together with my co-counsel,
10 Andrew Strong, who appears remotely, and we are here today in court
11 with Legal Advisor Joanna Frivet, and our Case Manager
12 Pascale Langlais.

13 JUDGE GUILLOU: Thank you, Mr. Emmerson.

14 Mr. Young, please.

15 MR. YOUNG: [via videolink] Good afternoon, Your Honour. I
16 appear for Mr. Rexhep Selimi, along with Mr. Geoffrey Roberts. Thank
17 you.

18 JUDGE GUILLOU: Thank you, Mr. Young.

19 And Ms. Alagendra, please.

20 MS. ALAGENDRA: [via videolink] Good afternoon, Your Honour.
21 Venkateswari Alagendra for Mr. Jakup Krasniqi, appearing together
22 with Mr. Aidan Ellis, Mr. Mentor Beqiri, and Mr. Victor Baiesu.

23 JUDGE GUILLOU: Thank you, Ms. Alagendra.

24 And for the record, I note that Mr. Thaci, Mr. Veseli,
25 Mr. Selimi, and Mr. Krasniqi are not physically present in the

1 courtroom but attend this hearing via video-conference.

2 Now, I turn to the counsel for victims. Mr. Laws, please.

3 MR. LAWS: [via videolink] Good afternoon to Your Honour and to
4 everyone joining us. Simon Laws, counsel for the participating
5 victims in this case.

6 JUDGE GUILLOU: Thank you, Mr. Laws.

7 Now I turn to the Registry.

8 Mr. Roche, please.

9 MR. ROCHE: Good afternoon, Your Honour. My name is
10 Ralph Roche, Head of Judicial Services Division in the Registry.
11 Thank you.

12 JUDGE GUILLOU: Thank you, Mr. Roche.

13 And for the record, I am Nicolas Guillou, Pre-Trial Judge for
14 this case.

15 On 8 September 2021, I scheduled the Seventh Status Conference.
16 I asked the parties to provide written submissions, if they so
17 wished.

18 On 13 September, the SPO and the Defence for Mr. Krasniqi
19 submitted their written observations. I thank these parties for
20 their written submissions.

21 The purpose of our hearing today is, as usual, to review the
22 status of the case and to discuss the topics on the agenda,
23 specifically: Disclosure; translations; SPO investigations; Defence
24 investigations; and detention. I will invite the parties to present
25 their views in a concise fashion about each item, and I remind the

1 parties to give prior notice should any submissions require the
2 disclosure of confidential information so we can go into private or
3 closed session.

4 Let us start with the first topic that was listed in the
5 Scheduling Order, which is disclosure. I will give the floor to the
6 parties on the disclosure of each category of evidentiary material
7 separately.

8 First, the Rule 102(1)(a) material, which is the evidentiary
9 material filed with the indictment; then the 102(1)(b) material,
10 which is the evidentiary material the SPO intends to use at trial;
11 then the Rule 102(3) material, which is the material relevant to the
12 case, as listed by the SPO; then the Rule 102(3) material, which is
13 the exculpatory material; and, finally, the Rule 107 material, which
14 is protected material for which the consent of the provider is
15 requested.

16 Let us start with the Rule 102(1)(a) material which has already
17 been disclosed by the SPO.

18 The Defence requested an expansion of subcategorisation in
19 Legal Workflow to include Rule 102(1)(a) material that was already
20 discussed during the previous Status Conference.

21 I would like to hear from the Defence if they still consider
22 this subcategorisation to be necessary to prepare their case.

23 I note that the Krasniqi Defence indicated in its submissions
24 that a provisional witness list and witness packages of documents
25 would be of a higher priority for the Defence than the categorisation

1 of Rule 102(1) (a) material.

2 Finally, I would like the SPO to indicate the impact of the
3 subcategorisation to -- the extension of the subcategorisation to the
4 Rule 102(1) (a) material on their current disclosure deadline.

5 I will first start with the Defence.

6 Mr. Kehoe, please.

7 MR. KEHOE: Yes, thank you, Your Honour.

8 On behalf of Mr. Thaci, we would still urge the Court to order
9 that the 102(1) (a) materials be given to us in categorisation on the
10 Legal Workflow.

11 The problem, as I see this: Yes, this information has been
12 disclosed under Rule 86(3) (b). However, when we look at the actual
13 document, Your Honour, it has any number of footnotes throughout it.
14 In fact, there are, I believe - and correct me if I'm wrong, my
15 colleagues - but there are 4.133 footnotes. And in those footnotes,
16 they have lines of information concerning heaven knows what.

17 And what we have before us is, really, a potpourri of
18 information that is not broken down as it is in the disclosures under
19 (b) (1). It's just an array of information. And what we are trying
20 to do is to pinpoint what exactly the Prosecutor is relying on with
21 the information that's coming across the transom to us under
22 102(1) (a). It's virtually impossible with over 4.000 footnotes. And
23 these aren't just footnotes. And I'm sure Your Honour knows this.
24 These aren't just footnotes. They are footnotes that have scores of
25 notations, of witnesses, of information, and it's virtually

1 impossible to categorise that information vis-a-vis what is in the
2 Rule 86 information as a whole.

3 So in an effort to streamline matters, not only now but in the
4 courtroom setting, it would be immensely helpful for the Court to
5 order the Prosecution to take that information and put it into
6 categorisation in the same fashion or similar fashion that they've
7 done with the (1)(b) material so that it can be used in an
8 expeditious and fair fashion on behalf of all the accused, not the
9 least of which is my client, Mr. Thaci.

10 And I welcome any questions, Your Honour. I just wanted to
11 brief.

12 JUDGE GUILLOU: Thank you, Mr. Kehoe.

13 Mr. Emmerson, please, on this topic of 102(1)(a) and the
14 subcategorisation.

15 MR. EMMERSON: Yes, Your Honour, in general terms, as you will
16 be aware, there's been a flurry of late disclosure from the
17 Prosecution, which we'll no doubt deal with in due course. But I'm
18 going to, if I may, delegate to Mr. Strong the detailed answers to
19 the questions that you've posed in (a) to (d) and return to the more
20 general questions at the end.

21 Thank you.

22 JUDGE GUILLOU: Mr. Strong, please, on this topic of the
23 subcategorisation.

24 MR. STRONG: [via videolink] Yes, good afternoon.

25 I think, in general, we agree with the submissions made just

1 previously by Mr. Kehoe. We hope it's not an either/or proposition,
2 where either we're getting the witness lists in a timely manner or
3 we're getting the subcategorisations.

4 One of the real benefits of subcategorisation is in the
5 categories that have been applied to the evidence is it allows you to
6 search the entire body of evidence that's been disclosed. So if
7 there's a corner of that evidence that isn't categorised, that isn't
8 able to turn up in a category search, that's going to be an issue
9 that we'll have to deal with. And I'll leave my comments on that
10 matter there.

11 Thank you.

12 JUDGE GUILLOU: Thank you, Mr. Strong.

13 Mr. Young, please.

14 MR. YOUNG: [via videolink] Yes, thank you, Your Honour.

15 Yes, in general terms we do support the oral submissions of
16 Mr. Kehoe on behalf of Mr. Thaci and the written submissions of
17 Mr. Krasniqi in paragraphs 5 and 6 of their filing.

18 It would be immensely helpful to have the expanded
19 subcategorisation, in my respectful submission. Obviously, it's more
20 important that the Prosecution complete the rest of their disclosure
21 obligations. But expanding subcategorisation would be an obvious and
22 useful piece of case management.

23 Thank you.

24 JUDGE GUILLOU: Thank you, Mr. Young.

25 Ms. Alagendra, knowing that you filed the initial request on

1 this topic, you have the floor.

2 MS. ALAGENDRA: [via videolink] Your Honour, could I request for
3 Mr. Ellis to address Your Honour on this.

4 JUDGE GUILLOU: Mr. Ellis, please.

5 MR. ELLIS: [via videolink] Your Honour, yes. We filed the
6 initial request on this, and we still stand by the submissions made
7 both orally and in writing at the last Status Conference and, indeed,
8 support the oral submissions made today by the other Defence teams.

9 The point, in short, is that whilst there remains a body of
10 material on Workflow that is not subject to the categorisation, then
11 the usefulness of categorisation as a means of searching is
12 diminished, and that affects all the Defence teams and, indeed,
13 anyone else who wishes to carry out searches using the categorisation
14 function. So we would submit that it remains beneficial.

15 Of course, it would take some time to impose the
16 categorisations, but we still submit spending that time now will be
17 of assistance to all parties and participants going forward.

18 JUDGE GUILLOU: Thank you, Mr. Ellis.

19 Let me give the floor to the SPO.

20 Madam Prosecutor.

21 MS. LAWSON: Thank you, Your Honour.

22 On this topic, we have previously outlined the reasons why we do
23 not consider it, but subcategorisation of Rule 102(1)(a) material is
24 warranted and why we do not consider it to be a good use of limited
25 resources, certainly at the present time. The relevance of the

1 Rule 102(1)(a) materials is not only addressed in the Rule 86(3)(b)
2 outline, which was mentioned by the Thaci Defence, but the material
3 in question has been available to the Defence for review and analysis
4 for approximately nine months now.

5 The footnotes referred to by the Thaci Defence are not abstract
6 entities. Obviously they support particular assertions that are made
7 in that outline, and the outline is broken down, in detail, by count
8 and by site. It is, therefore, relatively easy to determine - in
9 fact, very easy to determine - which footnotes relate to each site
10 and to which count, and we therefore do maintain our prior position.

11 There are approximately 1.800 items disclosed under
12 Rule 102(1)(a), and our experience to date has been that
13 subcategorisation, which is done manually, would be a
14 resource-intensive exercise. Certainly, at the current time, it's
15 not something which can be done without depleting resources needed to
16 meet other requirements in this case.

17 The Veseli Defence mentioned an either/or, and unfortunately at
18 this stage of proceedings it is an either/or. But in that regard, we
19 note the indication from both the Krasniqi and Selimi Defence teams,
20 that certain other matters would be of higher priority for them, and
21 that indication is helpful to us because it is our constant position
22 that where there are additional steps we can take above what is
23 required by the framework, we are always willing to do that where it
24 would be genuinely useful to the other parties and where we can
25 figure out a way of doing it that doesn't seriously compromise our

1 ability to fulfil ongoing obligations.

2 And we also thank the Krasniqi Defence for recent *inter partes*
3 exchanges. Certain of the proposals and other matters that they have
4 raised with us have been very helpful. We're simply happy to
5 continue those discussions, and we're hopeful that we will be able to
6 reach solutions on a number of them. The Defence filing mentioned
7 what those issues are and anticipated being able to update the Court
8 on progress at the next Status Conference. So just to note that we
9 agree that is likely to be the case that we would be in a position to
10 provide further updates to the Court.

11 Thank you.

12 JUDGE GUILLOU: Thank you, Madam Prosecutor.

13 Mr. Kehoe.

14 MR. KEHOE: Yes, Your Honour.

15 JUDGE GUILLOU: Briefly, please.

16 MR. KEHOE: Just briefly, Your Honour.

17 Basically what the Prosecution is arguing is that we don't want
18 to go into the subcategorisation because it's difficult or it's
19 time-consuming. Well, if it's difficult and time-consuming for the
20 Prosecution, it's impossible for us. There are scores of
21 information, and I know Your Honour is acutely aware of that document
22 and the amount of information that are in those footnotes that we
23 have to sift through and try to discern exactly what the Prosecution
24 is going to do with that -- all those pieces of information and where
25 they fit into the slots, and we don't want to do it because it's too

1 hard?

2 I submit to Your Honour that that is not equality of arms,
3 especially since they're making the disclosure under 102(1)(a) and
4 they plan on using that information and pointing to those run-on
5 footnotes to say: Look, we disclosed it here. But they're not
6 telling us what category it falls into.

7 I appreciate the difficulty with it. I appreciate the
8 difficulty because we tried to go through it ourselves to make the
9 same conclusions, but this is the Prosecution's information, and we
10 submit to the Court that it is incumbent upon them to break this down
11 and give us some subcategorisation so that we can have an idea when
12 we walk into trial what issues they're going to -- what evidence
13 they're going to advance and on what issues. And I think that's just
14 an equality of arms basis. I submit to the Court that we follow that
15 procedure as we followed for the 102(1)(b) items.

16 Thank you.

17 JUDGE GUILLOU: Thank you, Mr. Kehoe.

18 Does any other Defence team want the floor to reply? I don't
19 see any request.

20 Madam Prosecutor. Briefly, please, then.

21 MS. LAWSON: Very briefly, Your Honour.

22 I would just like to note that there was a slight
23 misrepresentation of what our submissions were. It's not that we
24 don't want to do it. It's that we have, in fact, already done it in
25 the outline broken down to a degree of detail that is, in fact, more

1 categorised than what would be done in the subcategorisation required
2 for Legal Workflow. And my submission was simply that at the current
3 time, we simply do not have the resources without taking from other
4 obligations, which are higher priority, at least for certain of the
5 Defence teams, to transfer the work from the outline, which is
6 already available, into the Legal Workflow format.

7 Thank you.

8 JUDGE GUILLOU: Thank you, Madam Prosecutor.

9 Let us now move to the Rule 102(1)(b) material.

10 I would like to hear what progress has been made in the
11 disclosure of this category of material. I note that the SPO has
12 disclosed 24 packages of Rule 102(1)(b) material but that there are
13 still outstanding material to be disclosed.

14 In light of the approaching deadline of 27 September 2021, I
15 would like the SPO to indicate: How much of such material remains to
16 be disclosed today; how much of such material will remain to be
17 disclosed after the deadline of 27 September 2021, if any; if the
18 list of material in paragraph 3 of its written submissions is
19 exhaustive - and I remind all the parties that the list contains,
20 first, the statements of three international witnesses for which
21 Rule 107 clearance is still pending; two, reports from three expert
22 witnesses relating to forensic matters; and three, certain materials
23 which were the subject of requests for variation of protective
24 measures - and finally, if the list is not exhaustive, I'd like the
25 SPO to indicate what are the outstanding Rule 102(1)(b) materials to

1 be disclosed.

2 I also invite the SPO to indicate if it requests a further
3 extension of the deadline of 27 September and, if so, for what
4 Rule 102(1)(b) material.

5 I also take from the SPO submissions that translation of
6 Rule 102(1)(b) materials will not be fully completed by the current
7 deadline of 27 September, and that the SPO consequently requests an
8 extension of deadline for disclosure of remaining translations. I
9 invite the SPO to give details on the expected timeline for these
10 translations to be finalised.

11 Finally, I note that the SPO indicated in its written
12 submissions that no further protective measure requests in respect of
13 Rule 102(1)(b) material will be necessary in order to complete
14 disclosure of such material.

15 I invite the SPO to confirm its written submissions on this
16 point.

17 Madam Prosecutor, you have the floor.

18 MS. LAWSON: Thank you, Your Honour.

19 As you noted, since the last Status Conference, 24 packages of
20 Rule 102(1)(b) material have been disclosed, and a number of further
21 packages are currently being processed for disclosure by the deadline
22 of 27 September.

23 With respect to the specific matters which had been identified
24 at the last Status Conference, significant progress has been made.
25 Two of the international witnesses have been cleared and disclosed.

1 Documentary evidence, which had been the subject of Rule 107
2 restrictions, has been cleared and disclosed. Outstanding
3 applications for protective measures have been made, and the material
4 in question has been or will be disclosed by the deadline. And,
5 finally, variations of protective measures have been obtained in
6 respect of materials relating to five witnesses. And, again, those
7 materials have been or will be disclosed by the deadline.

8 We also expect that the reports from the three experts will be
9 obtained within the 27 September deadline. However, as indicated in
10 our filing, there is a possibility that certain e-redactions may be
11 necessary with respect to the names of victims in the expert reports.
12 We have not yet seen the reports, so we're not in a position to
13 confirm whether that's the case or to make any relevant application.
14 But should it prove necessary, we will do so at the earliest
15 opportunity as soon as the reports are received.

16 That is the only outstanding protective measures issue that we
17 can see foresee which is relevant to our ability to disclose the
18 remaining Rule 102(1)(b) materials.

19 There are, as Your Honour --

20 JUDGE GUILLOU: Sorry to interrupt. On this issue, would you
21 file one protective measure request, or would you need several of
22 them depending on the different reports? Are you able to make one
23 consolidated filing on this?

24 MS. LAWSON: We are hoping to be able to make one consolidated
25 filing, depending on the date of receipt. We wouldn't like to delay

1 making the application if, for example, one of the reports is
2 arriving later than anticipated. But we would hope to do a
3 consolidated filing, yes.

4 As Your Honour noted, there are a number of items which we
5 identified in our filing where we are not yet in a position to
6 confirm that the necessary clearances or variations will be complete,
7 and these are three international witnesses for whom the clearance
8 process remains ongoing and is being actively worked on.
9 Unfortunately, we can't right now confirm whether those clearances
10 will come through by the 27th. For example, one of the witnesses is
11 currently travelling in a relatively remote location with a limited
12 access to materials, and that may impact his availability for
13 interacting with the organisations who are attempting to clear the
14 materials.

15 In addition to those three international witnesses, there is one
16 witness in respect of whom litigation for a variation of protective
17 measures remains ongoing. For that witness, we are hopeful of having
18 clearance to disclose the individual's SPO interview by the deadline,
19 but it is uncertain whether certain prior testimony will be available
20 by that date. It is a matter that's pending further judicial
21 determination at a different institution.

22 And, finally, there are six individuals for whom we have already
23 disclosed their prior transcripts, and we sought a variation of
24 protective measures in order to be able to disclose lesser redacted
25 versions of those transcripts which are already disclosed. The

1 request has been granted, but we are waiting receipt of the
2 materials. And we understand that preparing them is a fairly
3 painstaking matter, so we don't have confirmation from the third
4 party as to whether they will manage to have them prepared and
5 provided to us by the relevant deadline.

6 Those are the matters where there is currently some uncertainty
7 as to whether or not we will be able to meet the 27 September
8 deadline.

9 As indicated by Your Honour, and in our filing, we are already
10 seeking an extension of deadline in respect of translations. And
11 translation of Rule 102 material is ongoing. It's being treated as
12 an absolute priority for the translation team and has been their
13 priority for many months. All available translation resources are
14 being devoted to it, and we're constantly seeking to expand and
15 maximise those resources.

16 I am not able to provide Your Honour with a precise estimate,
17 but I can say that the work is expected to continue for a number of
18 months in light of the volume of material. We will continue to
19 disclose translations on a rolling basis as soon as they become
20 available and once any redactions, as relevant, have been applied.

21 And I'm available for any further questions Your Honour may
22 have.

23 JUDGE GUILLOU: Thank you, Madam Prosecutor.

24 One follow-up question: Can you confirm that the list of
25 Rule 102(1)(b) material that you mentioned is exhaustive? That the

1 one that will not be able to be disclosed by the deadline of
2 27 September, there is nothing that you haven't mentioned today
3 during the Status Conference?

4 MS. LAWSON: That is --

5 JUDGE GUILLOU: I mention this because in your -- sorry. In
6 your written submissions, it is mentioned "includes," and, you know,
7 the term "including" is sometimes misleading.

8 MS. LAWSON: Absolutely, Your Honour. And "including" was
9 deliberate in this instance because there are a number of other
10 materials relating to variation of protective measures which I
11 haven't mentioned here today, but I haven't mentioned them because we
12 do believe that we will have them and have them disclosed by the
13 deadline.

14 So the items that I have mentioned are exhaustive in terms of
15 what we anticipate there is real uncertainty about.

16 Thank you.

17 JUDGE GUILLOU: Thank you very much.

18 And regarding the translations, you mentioned several months.
19 Do I take it that this would go beyond the end of the year, or do you
20 see this as a question of two or three months? So that the Defence
21 can have an idea of what to expect.

22 MS. LAWSON: Our current estimates would aim to complete the
23 translations within this year. I can't be firm due to the nature of
24 the work, and some documents, they just take longer to translate than
25 other documents. Certainly our intention and the planning is to have

1 them completed by December. But as I said, I am not in a position to
2 give a firm answer on that.

3 Thank you.

4 JUDGE GUILLOU: Thank you, Madam Prosecutor.

5 Let me turn to the Defence.

6 Mr. Kehoe, please, on the 102(1)(b) material.

7 MR. KEHOE: Yes, Your Honour, on behalf of Mr. Thaci.

8 I am still not clear, Your Honour, what is the volume of
9 material we're supposed to get by 27 September.

10 I will bring to the Court's attention that -- and pardon me if I
11 misspeak at any point, but I tried to get caught up with the last
12 Status Conference that Your Honour held where the Prosecution made a
13 statement in their submission to Your Honour that they were
14 substantially on track with respect to Rule 102(1)(b) disclosures.

15 And what has happened as a result is that since that hearing, or
16 shortly thereafter, we received 11.000 -- over 11.000 documents.
17 10.000 of those were both 102(1)(a) and (b). With regard to the
18 102(1)(b), there were 11.300 that we've received since 24 July 2021.
19 8.542 were 1(b) items. That's 75 per cent of the documents that
20 we've gotten that are 102(1)(b) documents -- excuse me, (b)(1) [sic]
21 documents were received after the last hearing which, of course --
22 which was the initial deadline that Your Honour had.

23 And I understand that Your Honour did, in fact, put the deadline
24 out until the 27th. But to get 75 per cent of the documents that
25 fall under (b)(1) during that timeframe gives me some pause. And

1 certainly it plays into Your Honour's request for notice under
2 Rule 102(3), because we haven't had anywhere near the amount of time
3 to digest this.

4 So while this is, you know, 8.542 documents, and that's --
5 that's not 8.542 pages. These are documents, multipage documents.
6 And it's simply impossible to get our arms around this when we think
7 we are getting near disclosure, and lo and behold after the last
8 Status Conference we got 75 per cent of the (b) (1) documents that
9 came to us.

10 And as we sit here today with the deadline of 27 September, it's
11 not clear again what we are going to get at that point, how that
12 plays into Your Honour's request under 102(3) for notice which
13 frankly, at this point, is impossible to have, and what we are going
14 to get on a delayed basis down the line. If, in fact, there is a
15 delay -- and I know there is a delay for non-disclosure, I believe,
16 for some time. What kind of volume of information are we talking
17 about in that realm? Are we talking about thousands of documents?
18 Are we talking about a handful of documents?

19 I put these on the table, Judge, because it seems to be a
20 running process of: Yes, there's going to be disclosure at a certain
21 point; no, there is not a disclosure, we need more time; and then
22 they hit us with an array of documents that, even as we sit here
23 today, are virtually impossible to get our arms around, to sit down
24 and speak with you cogently about what's in them.

25 And the concern yet further, on behalf of Mr. Thaci, is how much

1 more of this is going to happen? How much more of this is coming
2 down the line? And I know that some of my colleagues are concerned
3 about this as well. We have conversed about this disclosure that's
4 going on over such a long period of time, and when will it come to an
5 end so we can sit down with my client who wants to know, you know,
6 what is going to be the evidence as opposed to something that just
7 goes on indefinitely.

8 That's the biggest concern that we have: What are we looking at
9 here and what are we going to get?

10 And I will give the floor to my other -- I'll turn the floor
11 back to you, Your Honour, for further questions of my colleagues.

12 JUDGE GUILLOU: Hank you, Mr. Kehoe.

13 And I think you pointed an important point. That's exactly the
14 reason why I asked the SPO what were the remaining documents. And I
15 asked if it was exhaustive or not because I had the same concern:
16 What's left?

17 MR. KEHOE: Yes.

18 JUDGE GUILLOU: And is it, like, 75 per cent, 25 per cent,
19 2 per cent? That's the information that I wanted to get.

20 Mr. Emmerson or Mr. Strong.

21 MR. EMMERSON: If I can just say a few words at the outset.

22 Again, I think just to pick up on that last exchange between
23 yourself and Mr. Kehoe, we were all listening attentively to
24 determine whether the Prosecution was regarding paragraph 3 of its
25 submission as exhaustive. But, of course, that relates to material

1 for which they currently anticipate seeking a yet further extension
2 beyond the 27th.

3 And the immediate concern, which we haven't heard an answer from
4 from the Prosecution, is yet how much more is there to be disclosed
5 between now and that deadline. And I don't wish to be in I told you
6 so mode, but Your Honour will recall the early stages of the hearings
7 in this case when the Prosecution were still robustly claiming they
8 would be ready for trial by now, right. And when I said that
9 experience shows, and we gave you statistics from all of the other
10 tribunals, that the timeframes that these things tend to take expand,
11 the Prosecution repeatedly -- Mr. Black himself stood up --

12 JUDGE GUILLOU: Mr. Smith.

13 MR. EMMERSON: Mr. Smith, I'm sorry, it's the same problem
14 again. Mr. Smith himself, as well as my learned friend on the
15 opposite side of the courtroom for the Prosecution today, stood there
16 and said to your face that the whole purpose of the way this Tribunal
17 was being run was to ensure that no such delays would occur and that
18 they would be ready for trial right now. What we have had is that in
19 the eleventh hour, that is, literally, the last month before the
20 deadline is due to expire, 75 per cent of the Prosecution case.

21 Now, these men have been in custody since November, and they've
22 been in custody on the basis of a case that the Prosecution wasn't
23 disclosing. And I said to Your Honour at the time we need to take
24 account of how long the pre-trial process is going to be, and the
25 Prosecution responded that I and the other Defence counsel were

1 deliberately manufacturing a risk of false delay in order to justify
2 applications for provisional release.

3 I'd like to hear an apology. I've asked for it before. I see a
4 counsel who was in the courtroom who made the allegation is here
5 today. I'd like to hear her apologise to the defendants for them
6 being in custody for this length of time on the basis for an
7 undisclosed case, to the Court, and to the Defence for misleading in
8 terms of what it was precisely that the case was.

9 I mean, the Prosecution have known throughout all those hearings
10 that that 75 per cent of their case was not disclosed. They've known
11 that. They're ones who know what they've got and what they're using.
12 And they misled you. There is no way around it. They misled us all.

13 And I see everybody behaving as though this were just a
14 normality, that we should accept this as normal. It is abnormal.
15 Profoundly abnormal for responsible prosecutors to behave in this
16 way. I'm sorry, but it is. And I see not the slightest sign of
17 contrition or acknowledgement from the other side of the courtroom
18 or, frankly, concern from Your Honour about the lack of prosecutorial
19 professionalism.

20 And it needs to be said. Something needs to be recorded. Not
21 just from me, because everybody knows that I'm always complaining
22 about it and always have been since the beginning. But since we are
23 now standing here just before the eleventh hour, which you've already
24 extended, where we've been receiving 75 per cent of the case, and in
25 my client's case direct evidence relating to allegations against him

1 that were withheld for all of the months that these gentlemen have
2 been in custody.

3 Something needs properly to be said in order to maintain the
4 credibility of this Tribunal, because people are watching all over
5 the world to see how this Tribunal conducts itself. And if the
6 Pre-Trial Judge sits here and watches the Prosecution behave like
7 that and says and does nothing about it other than to ask them how
8 long is it going to be before the next time they ask for an
9 extension. We are all of us in the situation -- well, we know you
10 know now that we were right. There is no possibility of a trial
11 starting before the summer of next year, because the Prosecution is
12 only now starting to disclose its actual case.

13 So I know -- I'm not suggesting it's the Bench's fault. It's
14 clearly the Prosecution's fault. But there is a responsibility for
15 this Tribunal as a -- I appreciate it's an national court rather than
16 an international court, and that will become very important in due
17 course. But it is being watched by the international community, and
18 there are very real concerns, and there are very real concerns about
19 the integrity, and I'll use the word clearly, of the Prosecution.

20 What kind of Prosecution tells you they're substantially on
21 track in July, having held these men in custody since November, and
22 then discloses 75 per cent of its evidence in the following week?

23 I'm also curious, just on a matter of principle, why it should
24 be that we are being told that there will be many months before the
25 Prosecution can disclose the translated 102(1)(b) material? It's a

1 curious thing, because, as I've understood the position, 102(1)(b),
2 the Prosecution will have already decided that it is going to use
3 that material at trial. Otherwise, it wouldn't be 102(1)(b). How
4 have they done that without a translation?

5 Are you being given an honest appraisal?

6 JUDGE GUILLOU: Thank you, Mr. Emmerson.

7 I turn to Mr. Young, please.

8 MR. YOUNG: [via videolink] In light of the submissions of
9 Mr. Kehoe and Mr. Emmerson, I can be very brief.

10 In short, we fully share the concerns expressed by Mr. Kehoe and
11 Mr. Emmerson. And, indeed, Your Honour asked the question as well.
12 And there are extraordinary concerns over not just the volume of the
13 material but the content of the material we still haven't had
14 disclosed, and how that will impact upon what needs to be translated
15 into either Albanian or English in terms of priority documentation as
16 a matter of issue.

17 Your Honour may remember at the last Status Conference, I
18 flagged up the issue of the Tribunal's capacity to translate into the
19 language of the accused is an absolute essential for the Court. And
20 I warned the Court, I advised the Court that there may be a need for
21 significant or substantial new resources, because the capacity of the
22 Court to translate priority materials is, obviously, being stretched,
23 if not -- it's simply not working at present.

24 And this is, without even -- this is where we already have a
25 massive backlog of translations and before -- the Prosecution have

1 still to pin their colours to the mast and to name the witnesses, to
2 identify the exhibits that they will for sure be relying upon in
3 court in relation to the specific allegations.

4 So when I said last time this is a major Achilles' heel of the
5 Tribunal, I wasn't underestimating it. I think it's a real concern
6 and it's something that Your Honour should take into account,
7 especially given that these men are in custody and given that there
8 is such a lack of knowledge over the case that there is against them.

9 They are entitled to know what the case is against them and
10 given the way the Prosecution have behaved, respectively, the least
11 that the Court can do to mitigate the damage is to release these men
12 with conditions.

13 JUDGE GUILLOU: Thank you, Mr. Young.

14 Ms. Alagendra or Mr. Ellis, please.

15 MR. ELLIS: [via videolink] Your Honour, we share the concerns
16 expressed by the other Defence teams and do join with them.
17 Particularly also in relation to the issue of the translation of
18 102(1)(b) material into English as the working language of these
19 proceedings.

20 The 102(1)(b) process can't be regarded as complete until those
21 translations have been provided to the Defence. It obviously limits
22 our ability to work on the documents, our ability to review and
23 analyse what we're being given, if those documents are not made
24 available in the working language of the Court -- of proceedings.
25 And to hear that there's many months still to go or months to go

1 before those translations are finished should be a source of real
2 concern, Your Honour.

3 JUDGE GUILLOU: Thank you, Mr. Ellis.

4 Let me turn to the Prosecution. And, Madam Prosecutor, if you
5 could specifically answer the question of Mr. Emmerson regarding the
6 amount of Rule 102(1)(b) material to be disclosed before the deadline
7 of 27 September. Because you've been very clear on what will
8 probably not be disclosed on that date but, especially in terms of
9 quantity, because I think it was a concern shared by all the Defence
10 teams, what is coming in the following weeks before the deadline.

11 And then I give you the floor to also respond to all the
12 concerns of the Defence.

13 Madam Prosecutor.

14 MS. LAWSON: I will start with that specific question.

15 I don't have the precise figure in terms of the number of items,
16 but it is not a large figure. What we are talking about now is
17 materials that we are waiting to receive from variation requests. So
18 it's not that we have a current backlog of materials to be processed
19 or packages that are impending.

20 To give an approximation, I was attempting, while the -- I was
21 attempting just now to give some approximation of it, and I believe
22 there are prior statements or testimonies relating to approximately
23 15 witnesses that we -- that have been the subject of variation
24 requests and that we hope to have received and processed by the
25 deadline. And then there are the items that I specifically mentioned

1 earlier in the hearing. So it is not a large volume of material.

2 Turning to the other points that were made.

3 Disclosure of Rule 102(1)(b) material was provided on a rolling
4 basis. As explained at the last Status Conference, there were a
5 number of factors which impacted the frequency and timing of those
6 disclosures. The first was the requirement for subcategorisation,
7 which included both going back over previously disclosed or processed
8 packages as well as building that requirement into the future
9 packages that we were preparing. And the second was the need to
10 prioritise the processing of witness materials that necessitated
11 protective measures, due to the significantly more time-consuming
12 nature of the review process for those materials and the need to make
13 relevant applications to the Court.

14 It is also the case that conducting a large-scale review and
15 processing exercise with a majority of staff working remotely due to
16 COVID restrictions and, consequently, without access to centralised
17 evidence databases and software was an enormously logistically
18 challenging task which vastly increased the time required.

19 A couple of the Defence teams have mentioned the issue of
20 disclosure in this context, so I would just like to note that
21 disclosure is subject to separate ongoing litigation. The legal
22 framework provides a mechanism for very regular review of detention,
23 and the continuation of detention is therefore considered on its
24 merits on a regular basis.

25 At this time, and based on the last review, circumstances

1 justifying detention have been found to continue to exist, and any
2 future reviews will continue to be litigated and considered on their
3 merits on the circumstances that exist at the relevant time and
4 subject to an automatic right of appeal.

5 The SPO has not tethered its estimates on the timing of the
6 trial to detention litigation. On the contrary, our constant
7 position has been that it is irrelevant in light of the regular
8 detention reviews provided by the applicable framework.

9 Thank you.

10 JUDGE GUILLOU: Thank you, Madam Prosecutor.

11 Mr. Kehoe, please. Briefly.

12 MR. KEHOE: Yes, Your Honour.

13 JUDGE GUILLOU: And on the Rule 102(1)(b) material.

14 MR. KEHOE: Yes, on the 102.

15 With all due respect, Your Honour, the question I asked and I
16 think my co-counsel asked under Rule 102(1)(b) was: What kind of
17 material are we looking at? Counsel just said 15 witnesses. And
18 that covers (i). There's a two -- (ii) and (iii) that go for
19 witnesses statements but exhibits. And the question that we all have
20 is: Witness statements is fine, what about the attendant exhibits,
21 and what is the volume with that?

22 With the amount of documents that we received recently, yes,
23 there were witness statements, but there were also scores of other
24 exhibits. So I hate to press the point, Your Honour, but what are we
25 looking at in that volume, putting aside the 15 witnesses counsel's

1 just alluded to? What else is there and how much is it?

2 JUDGE GUILLOU: Mr. Emmerson, just before I give you the floor,
3 I will just give the opportunity to the Prosecution to respond to
4 this question, if you can give even an approximative figure,
5 Madam Prosecutor.

6 MS. LAWSON: Unfortunately, I can't be any more precise than I
7 have been because we haven't received the materials. We've requested
8 variation, but we don't know the volume of materials that will
9 accompany that request.

10 Thank you.

11 JUDGE GUILLOU: Thank you, Madam Prosecutor.

12 Mr. Emmerson, please.

13 MR. EMMERSON: In a sense, there we are. It's another example
14 of the way in which the Prosecution has conducted itself. I asked
15 for an apology for the way the Prosecution misrepresented the
16 position throughout at the outset, and I haven't had one. What I've
17 had instead is a suggestion that the Prosecution's constant position
18 has been that the date of trial is unrelated to the procedure -- the
19 pre-trial length or the pre-trial review.

20 Leaving that entirely aside, everyone in this courtroom,
21 including Your Honour and everybody watching, knows full well that
22 there's been nothing remotely constant about the Prosecution's
23 position. If it were the case, we would be ready for trial now.
24 Instead of which we're being told there is an unquantifiable amount
25 of material still to be served. And that's effectively what you've

1 just been told: It's unquantifiable. Other than that there are
2 certain specific categories that they already know that they're not
3 going to be in a position to disclose, which somehow include, which I
4 find extremely difficult to understand, a large body of material
5 which has yet to be translated into English, even though the
6 Prosecution don't speak Albanian and have made the decision to use
7 that material at trial.

8 Now, there have been various different techniques used by this
9 dishonest Prosecution to mislead you about when it was ready for
10 trial, but normalising this level of prosecutorial professional
11 misconduct is an unacceptable thing for a Tribunal to do.

12 Pleases sit down until I've finished speaking. I think we've
13 heard enough.

14 JUDGE GUILLOU: Please do not address each other like that. I
15 mean, you can express your argument, but --

16 MR. EMMERSON: Well, I'm trying to, but I can see that there is
17 an attempt to interrupt me. Unless it's to apologise for the way in
18 which things have been conducted and the allegations that have been
19 made, I wouldn't normally give way.

20 JUDGE GUILLOU: Mr. Emmerson, did you want to add anything else?

21 MR. EMMERSON: Yes, absolutely. I've been interrupted by
22 counsel standing up in the middle of my submissions.

23 JUDGE GUILLOU: Please continue.

24 MR. EMMERSON: Thank you.

25 We are dealing now with a Prosecution that, on any view, lacks

1 all credibility when it makes predictions about the conduct of the
2 case. The fact that the position is being made clear to you today --
3 we have an expression in English about lawyers using weasel words.
4 And the document you were submitted very carefully avoided --
5 recognising what you have just elicited from the Prosecution, which
6 is that they've got no idea of the volume of material they've still
7 to serve and that we are still nowhere near knowing what the case
8 against the accused at trial is really going to be.

9 I'm going to have some submissions to make to you in a moment
10 when it comes to the Defence investigation. But we are in a
11 situation where we have seen very significant, consistent, high
12 levels of prosecutorial misconduct, and something needs to be done to
13 put it to a stop.

14 JUDGE GUILLOU: Thank you, Mr. Emmerson.

15 Madam Prosecutor, do you want to reply now, or do you want me to
16 continue with the other Defence teams before?

17 MS. LAWSON: Thank you, Your Honour. My only request was that
18 submissions be made in a civil manner in the courtroom. Thank you.

19 JUDGE GUILLOU: Thank you, Madam Prosecutor.

20 And I remind everyone in this courtroom to please avoid being
21 aggressive towards each other.

22 Let me ask Mr. Young for his submission, if any.

23 MR. YOUNG: [via videolink] Nothing to add, thank you.

24 JUDGE GUILLOU: Thank you, Mr. Young.

25 Ms. Alagendra or Mr. Ellis, please.

1 MS. ALAGENDRA: [via videolink] Your Honour, if I may be
2 permitted. I noticed that the SPO is unable -- the Prosecution is
3 unable to tell us just what the volume of material is.

4 Could we ask the Prosecution to clarify if what we have received
5 so far is 75 per cent of the 102(1)(b) material? Would that be
6 possible?

7 JUDGE GUILLOU: Thank you, Ms. Alagendra.

8 Let me turn to Madam Prosecutor. Is it a question that you can
9 answer, approximatively?

10 MS. LAWSON: The question is whether what has been so far
11 received is 75 per cent of the Rule 102(1)(b) material. I would
12 consider it to be well in excess of 75 per cent of the Rule 102(1)(b)
13 material. I don't believe that we have 25 per cent remaining to be
14 disclosed.

15 Thank you.

16 JUDGE GUILLOU: Thank you, Madam Prosecutor.

17 I don't see any other Defence team requesting the floor.

18 Let us move now to the Rule 102(3) notice and evidentiary
19 material.

20 I would like to know whether the parties could provide an update
21 on their progress towards the completion of the procedure for the
22 disclosure of Rule 102(3) material. In particular, whether the
23 Defence has requested or will request Rule 102(3) material to be
24 disclosed based on the existing notice by 24 September 2021.

25 I note from the SPO's submissions that five requests have

1 already been made by the Defence and that three of these have already
2 been processed, while two or still pending.

3 I also note from the Krasniqi Defence that it will not be ready
4 to make all its requests for access to material from the Rule 102(3)
5 notice by 24 September 2021. The Krasniqi Defence submits that the
6 deadline for requesting access to material from their Rule 102(3)
7 notice should, in principle, be after the last date for the SPO to
8 disclose Rule 102(1)(b) material, which is not until 27 September,
9 and after the Defence have had fair opportunity to digest the recent
10 voluminous disclosures.

11 And, finally, I would like to know whether the Defence has
12 indicate or will indicate to the SPO the items in the notice for
13 which further details are needed, in accordance with my decision on
14 the Defence Request for an Amended Rule 102(3) Notice.

15 Madam Prosecutor.

16 MS. LAWSON: Thank you, Your Honour.

17 We have so far received seven Rule 102(3) requests. As I'll
18 mention in a moment, we've received two more this morning. Three of
19 those have been processed and disclosed, subject to one protective
20 measures application which was filed on 24 August, Filing 439.

21 Materials relating to the two other outstanding requests are
22 currently under review and processing. We anticipate disclosing the
23 materials relating to the two Veseli requests 444 within the coming
24 days.

25 And as I mentioned, two further requests were received from the

1 Thaci Defence team a short time ago today. One of the requests is
2 for 440 items, and the other is for 2.649 items. We will proceed to
3 review and address them both. This is a more voluminous request than
4 those received to date, and we will have to assess whether it can be
5 met within the applicable timeframes.

6 We have also taken note of the guidelines and the timelines both
7 in respect of description amendments and for future Rule 102(3)
8 requests, as contained in Your Honour's decision, which was
9 Filing 460.

10 We are currently not in a position to predict the volume of
11 further requests that will be received, but it does appear that
12 Rule 102(3) disclosure may constitute a very significant and
13 increasing workload over the coming months. Decision 460 has
14 forecast such disclosure continuing to, at least, 26 November, and
15 we've taken note that extensions from the existing timeframe may be
16 sought by certain of the Defence teams for making further requests.

17 While so far requests that have been received on a rolling
18 basis, were we to receive requests for a large volumes of materials
19 at once, it is likely that we may also need to seek an extension of
20 applicable deadlines for reviewing and processing such requests.

21 Thank you.

22 JUDGE GUILLOU: Thank you, Madam Prosecutor.

23 Mr. Kehoe, please.

24 MR. KEHOE: Yes, Your Honour. Thank you.

25 We are working together, the four teams, to put lists together,

1 so we're not going to get into duplication and putting people through
2 unnecessary work. We don't, you know, see that as advantageous to
3 anybody.

4 That being said, giving the proper notice goes back to my prior
5 argument on the voluminous documents that have just been disclosed.
6 It's virtually impossible for us to assess what exactly -- what other
7 information we want under 102(3) without digesting that information.
8 Now we're going to have yet more documents coming on the 27th, and
9 more importantly we're not going to have translations until, maybe,
10 the end of the year or the beginning of the year. All of which, I
11 submit to Your Honour, will delay the notice time for the 102(3)
12 timeframe.

13 I understand that the Krasniqi Defence has requested Your Honour
14 to extend that time. We join in that request, and I think all
15 counsel will join in that request.

16 That being said, Judge, we are still going to go through or
17 continue the 102(3) requests on a rolling basis. We're not going to
18 wait until the eleventh hour. But under the current regime of
19 disclosure, it's virtually impossible to meet that deadline, and we
20 ask you to suspend that deadline pending further information and
21 further information on the disclosure timetable of the Prosecution.

22 JUDGE GUILLLOU: Thank you, Mr. Kehoe.

23 I invite you to send your requests on a rolling basis, because I
24 think it's important not to wait for the last hour for the sake of
25 the disclosure process.

1 You mentioned suspend the deadline. Would you have a time in
2 mind for which you would be ready to file all your requests? Because
3 as you may know, I don't like to postpone deadlines up in the air
4 forever, so would you have any idea? Do you need six more weeks, two
5 more weeks, two more months?

6 MR. KEHOE: Well, Your Honour, we haven't suspended it. As
7 counsel for the Prosecution noted, we gave them a request this
8 morning on that score, so we are going to continue to do that.

9 My reluctance in giving you a date of six weeks, two months is
10 tied to the translations that we haven't seen. If I tell Your Honour
11 that we will have our 102(3) notices done by November 1st, and we
12 have yet additional information coming in these translations, I will
13 be back before Your Honour asking for leave to extend that timeframe.

14 So, in principle, Your Honour, I understand Your Honour wants a
15 deadline on something, be it two months down the line, with the
16 understanding that if additional information comes to us, that we
17 will seek leave to Your Honour to extend that 102(3) notice
18 timeframe.

19 JUDGE GUILLOU: Thank you, Mr. Kehoe.

20 Mr. Emmerson, please.

21 MR. EMMERSON: Very briefly, if I may.

22 There are many different ways that the Prosecution have delayed
23 the process of disclosing their case, and this is one of them.

24 The Rule 102(3) material is material which is in the possession
25 of the Prosecution and deemed relevant. We have been handed an

1 index, most of which is impossible to discern the content from,
2 which contains 68.700 entries. Now, where Mr. Kehoe says there is to
3 be cooperation between the Defence teams, what I think has been
4 provisionally agreed between our teams is that we will divide the
5 list of 67.000 -- 68.700 between us in order to see which ones we
6 need further descriptions of.

7 But to be frank, most of them need further descriptions. And I
8 hope Your Honour will understand that as Defence teams the default
9 position is to request everything, because how else do we know that
10 there isn't material within that haystack which is of vital evidence
11 to the Defence. And, obviously, we've put in requests because you
12 can tell from some of the entries, the title, that your client's name
13 is mentioned in it. So that, straightaway, one can say there's a
14 request.

15 But we're dealing with, as I say, nearly 70.000 entries where we
16 just don't know what the body of the evidence is. Now, we have
17 professional obligations on this side of the bar. It's no good
18 talking to -- for the Prosecutor to stand up and start talking about
19 the Defence may request extensions. This is the Prosecution's job to
20 disclose its case, and we are again in a situation where they've
21 failed to disclose the primary part of their case until the very,
22 very last moment, and there's still an unknown quantity yet to be
23 disclosed.

24 And they have, if you like, from the purposes of the Defence,
25 dumped on us a haystack of 70.000 separate entries which may or --

1 and we have to rely on the Prosecution to have been through that
2 material. Have they even read it? I mean, I'm asking that question
3 genuinely. It would be interesting to know. Has the Prosecution
4 read that material? In which case, why are we not being given a
5 better description of what's in it? Do the Prosecution know what's
6 in it?

7 I mean, I'm genuinely inviting you to put that question to the
8 Prosecution: Do they know what's in that material; and, if so, why
9 are they unable to give better descriptions in the index? Why are we
10 having to go to them, splitting this job, which is the Prosecution's
11 job, among the four Defence teams to work out how -- which of them we
12 have to ask them for in order then to make the requests?

13 As I say, there is a very real danger of the practice in this
14 Tribunal normalising abnormal prosecutorial misconduct.

15 JUDGE GUILLOU: Thank you, Mr. Emmerson.

16 Mr. Young, please.

17 MR. YOUNG: [via videolink] Your Honour, thank you. I can be
18 brief.

19 I share the concerns expressed by Mr. Kehoe and Mr. Emmerson
20 entirely. And just to supplement the point that Mr. Emmerson's just
21 made in terms of what do the Prosecution know about their own case or
22 how much they're able to work on their own case and make value
23 judgements on what should be disclosed and under which category.

24 What was of some concern to me, with respect, was when
25 Ms. Lawson, frankly, explained to Your Honour, that because of the

1 pandemic, and I understand this entirely, the majority of the
2 Prosecutorial staff working remotely. Unless I misheard what she
3 said, I understood that she actually told Your Honour that the
4 majority of the staff did not have access to the central database.

5 Now, if that is correct and I did not mishear what she said,
6 that would be a very simple way of explaining and understanding why
7 there may be delays in terms of categorisation, subcategorisation,
8 and making value judgements on what evidence falls into which
9 category. Artificial intelligence is a wonderful thing, but it's
10 important that individuals - humans - make decisions based on
11 professional judgements.

12 And if the Prosecution staff don't have access to the materials,
13 then that's another good reason, with respect, why we're experiencing
14 so many substantial delays.

15 JUDGE GUILLOU: Thank you, Mr. Young.

16 Ms. Alagenda or Mr. Ellis, please.

17 MR. ELLIS: [via videolink] Thank you, Your Honour. I think this
18 issue is one of mine to address.

19 Your Honour will have seen from our written submissions that we
20 do request an extension in which to request items from the
21 Rule 102(3) notice. There are, really, two bases for that request.
22 The first is the sheer volume of material on the list, 68.000
23 documents. The list itself is nearly 3.000 pages long. And the
24 review of that list, by the Defence, coming at a time when resources
25 were committed to the appeal process on preliminary motions, is

1 necessarily a time-consuming process in itself.

2 But the second, and perhaps more important point, is that the
3 assessment of materiality is tied to our review of the disclosure
4 that we receive from the Prosecution.

5 To take an obvious example: If a document is described in the
6 notice by reference to the name of a particular individual, we may
7 not know at the current time whether that individual is material to
8 our investigation or not. It's only after we've had the opportunity
9 to go through the disclosure that we've been given and to see whether
10 there is information relevant to that individual in the disclosure
11 that we can make an assessment of materiality.

12 And that's why, in my submission, counsel for Mr. Thaci was
13 right to initially seek a suspension of this timeline. Because the
14 problem is, from my point of view, I am not going to be in a position
15 to give a final decision on whether these documents are material or
16 not until the Prosecution has completed its disclosure. And by that,
17 I mean until we've received the translations of all the 102(1)(b)
18 material.

19 So to even begin to talk about our final deadline until that
20 point would, in my submission, be wrong in principle. And being
21 completely up front with the Court, given the volume of material
22 that's been disclosed, and the volume of material on the list, it's
23 going to be months after we've received those translations, rather
24 than days.

25 JUDGE GUILLOU: Thank you, Mr. Ellis.

1 Before I give the floor to the Prosecution, I'd like to hear the
2 Defence teams on the deadline that I set in my recent decision, F460,
3 on the Defence request on the notice if the deadline of 24 September,
4 if my memory is correct, to ask the SPO to supplement its notice is a
5 deadline that seems feasible, or if you also request an extension of
6 this deadline? Because in the decision, if all the teams remember, I
7 set two different regime: One for which you consider that you have
8 enough information in the notice currently; and one for the entries
9 for which you consider that you're not briefed enough and you need
10 more.

11 And I set the deadline of 24 September for the Defence teams to
12 ask the SPO to supplement the notice. And all the Defence teams have
13 spoken about the deadline to request the documents themselves. But
14 to go back to the SPO to supplement the notice, is the date of
15 24 September feasible, or do you also request an extension of this
16 deadline?

17 Mr. Kehoe.

18 MR. KEHOE: Yes, my apologies, Judge, but I was including both
19 of those issues together, but I do, on behalf of Mr. Thaci, we do
20 request an extension of the deadline to supplement the disclosure.

21 As Mr. Emmerson rightly pointed out, we're talking about an
22 enormous amount of material, and heaven knows we're not looking to
23 review more information than we have to. So we would like an
24 extension on both deadlines.

25 JUDGE GUILLOU: Thank you, Mr. Kehoe.

1 Mr. Emmerson.

2 MR. EMMERSON: Yes, when I said the Defence were cooperating
3 amongst themselves, that was in relation to determining which parts
4 of the 67.000 entries needed further -- we tried to break that down
5 on the basis that there is at least sufficient common interest for us
6 to being able to determine whether the description of a document is
7 sufficient to understand its contents.

8 But you can be certain, sure of this, that insofar as it has
9 been, the Defence have already made the requests. So we've made our
10 requests for documents relating to Mr. Veseli. I gather the other
11 teams have done the same.

12 So everything else, at the moment, requires further analysis,
13 and we're basically being asked to do the Prosecution's job for them.

14 I mean, I'm uncomfortable about it being put on the basis of the
15 Defence seeking an extension of a deadline, because a decent
16 Prosecution wouldn't come before this Court with a 68.000 entry
17 document which was largely, subject to these few entries mentioning
18 people's names, impenetrable and meaningless, and say: Here you are,
19 it's for the Defence to show why they should have each of these
20 documents when we can't even see what they say.

21 We're being asked to do the Prosecution's job for them. And as
22 I said right at the beginning of these proceedings -- I wasn't --
23 remember, when you were asking to set a schedule for the form in
24 which it was -- I said I'm not doing that, because that's the
25 Prosecution's job. The Prosecution's job is to be fit for trial.

1 And whatever you can say about this Prosecution, wherever they
2 started off, the wheels have come off and it needs to be dealt with
3 urgently.

4 JUDGE GUILLOU: Mr. Young, briefly on this two concurrent
5 deadlines.

6 MR. YOUNG: Nothing to add. I support what Mr. Kehoe and
7 Mr. Emmerson have said.

8 JUDGE GUILLOU: Thank you, Mr. Young.
9 Mr. Ellis, please.

10 MR. ELLIS: [via videolink] Yes, I don't think there's anything
11 to add, Your Honour. We join with the earlier submissions.

12 JUDGE GUILLOU: Thank you, Mr. Ellis.
13 Madam Prosecutor.

14 MS. LAWSON: We are, obviously, aware that there is a
15 significant volume of materials listed on the notice. That's the
16 nature of the case, the scope of the case, the geographic and
17 temporal parameters, and we have no comments on what the Defence have
18 indicated.

19 One clarification, perhaps. I did not say that staff did not
20 review the materials. What I said was that they did not have access
21 to the centralised database. What that means is we had to find
22 workarounds to enable the review - review by people, not by machinery
23 - to take place, and that this was logistically challenging and did
24 increase the time required.

25 Thank you.

1 MR. EMMERSON: One --

2 JUDGE GUILLOU: Thank you --

3 MR. EMMERSON: One very short matter, if I may --

4 JUDGE GUILLOU: Mr. Emmerson, please. I give the floor --

5 MR. EMMERSON: I was asking for the floor, yes.

6 JUDGE GUILLOU: -- so if you wish to ask for the floor, you get
7 back to me. You don't directly address the Prosecution.

8 MR. EMMERSON: No, I wasn't. I was standing up to address you,
9 to invite you, to give you the floor for what is a very, very short
10 point.

11 JUDGE GUILLOU: Then you have the floor for a very short point.

12 MR. EMMERSON: Yes.

13 So just addressing the debate between Mr. Young and the
14 Prosecution. The precise form of words used was that for the
15 Prosecution conducting a large-scale review with staff working
16 remotely, it was an enormously logistically challenging task.

17 All of that was said at the first hearing by the Defence about
18 the way these proceedings were going to take place. All of that was
19 entirely predictable. But the Prosecution chose when to indict.
20 They made the decision to indict these men and have them remanded in
21 custody - in other words, to seek their arrest and detention - at a
22 time when they were years away from being ready.

23 All of the excuses, and they are, frankly -- I mean, it's
24 extraordinary to hear the Prosecution stand up and try and excuse its
25 conduct on the basis of the Coronavirus pandemic when right at the

1 very beginning, all of that was totally obvious, all of that was said
2 in open court, and you were promised this Prosecution would be trial
3 ready by now.

4 I still don't understand why you haven't asked the Prosecution
5 to explain or apologise for that.

6 JUDGE GUILLOU: Thank you, Mr. Emmerson.

7 Madam Prosecutor, do you want to respond?

8 MS. LAWSON: No, thank you, Your Honour. I don't think I have
9 anything to add to that. Thank you.

10 JUDGE GUILLOU: Thank you.

11 Let us now move, briefly, I hope, to the last two items in the
12 disclosure agenda. The Rule 103 material.

13 I would like to know whether there remains any exculpatory
14 evidence in the SPO's custody, control, or actual knowledge that must
15 be disclosed to the Defence, pursuant to Rule 103, and whether any
16 requests for protective measures of such material is imminent.

17 Madam Prosecutor.

18 MS. LAWSON: Since the last Status Conference, five packages of
19 potentially exculpatory items have been disclosed, including, most
20 recently, disclosure package 83.

21 Remaining materials are being worked through. The review is
22 ongoing, and we will continue to disclose the materials on a rolling
23 basis as soon as it is identified. And there are no protective
24 measures requests imminent in respect of such material.

25 JUDGE GUILLOU: Thank you, Madam Prosecutor.

1 Mr. Kehoe, please.

2 MR. KEHOE: Yes, Your Honour. This is an issue that I have been
3 looking at given these disclosures, and I am not going to stand
4 before Your Honour and attest that I have gone through the voluminous
5 disclosures that we have just received.

6 However, I was interested in much of the cable traffic coming
7 from internationals. And, frankly, there were not that many, for
8 lack of a better term. And that was surprising given the amount of
9 time my client spent with internationals in various fora throughout
10 Europe and elsewhere, that there is very few cables concerning where
11 he was and what he was doing.

12 And my concern is that these aren't being disclosed because
13 they're not helpful to the Prosecution and they look at them benignly
14 as opposed to something that could certainly mitigate any guilt of
15 our client or, more importantly, affect the credibility of an
16 international witness.

17 For instance, if a diplomat for the United States, who happened
18 to be in the theatre or in NATO or in some other locale - and I use
19 the United States just as an example, it could be a diplomat from any
20 country - and he or she is going to testify about a certain issue.
21 And there are, in fact, cables -- there are, in fact, reports that
22 undercut what that witness has to say or tell a different story, that
23 is also 103 material. It's not only just exculpatory material or
24 mitigation material. It's information that affects the credibility
25 of a Prosecution witness.

1 And my concern with these lack of cables is this: I see various
2 internationals on the witness list, but I see very few cables coming
3 from their respective countries which could fall into a variety of
4 categories, and certainly - certainly - affect the credibility of
5 that particular witness. Again, this is extremely important to
6 Mr. Thaci, because Mr. Thaci was doing a lot of work on an
7 international level with international leaders.

8 So we go through a request, and this can be pursuant to a 107
9 request, because it could be that these can't be disclosed without
10 permission of the providing country, that that request be made and
11 that request be made that we look at everything that the Prosecution
12 has looked at. That would be the easiest way to do this.

13 So if cable traffic coming from France, whatever it happens to
14 be, whether they are going to use it or not, it be disclosed to us to
15 discern whether or not it undercuts the credibility of somebody or
16 whether or not it is in support of the position taken by Mr. Thaci at
17 trial.

18 I raise this, Your Honour, simply because with this lack of
19 cable traffic from various countries, I am not certain that the
20 Prosecution has not expanded their Rule 103 focus to encompass an
21 analysis to whether documentation - not only that they have control
22 over, but that they have knowledge of - of whether that information
23 affects the credibility of their witnesses.

24 And I make that request, Your Honour, to ask the Prosecution to
25 give us the disclosure of all of that information, the cable traffic

1 from every country. And if there has to be permission received under
2 Rule 107, and I understand that, you know, Rule 103 is subject to
3 Rule 107 and 108, that that request be made.

4 JUDGE GUILLOU: Thank you, Mr. Kehoe.

5 Just one follow-up question. If I understand correctly, you
6 invite the Prosecution to have a proactive conception of exculpatory
7 material; i.e., not only what they have in their possession or
8 control, but to investigate or to request documents from
9 international organisations or states in order to assess if there
10 could be exculpatory material in these documents. Am I correct?

11 MR. KEHOE: That would be ideal. But what preliminarily,
12 Your Honour, is, is there a raft of material, are there -- has
13 information been received by the Prosecution, and they have selected
14 document 1, 2, and 3 and not 4, 5, and 6 because they're not going to
15 use it in their case.

16 JUDGE GUILLOU: So your request is twofold: It's first, the
17 conception of exculpatory in the documents that are currently in the
18 possession of the SPO, that they have a very broad conception of
19 Rule 103; and, second, that they have a proactive conception of 103,
20 if I may call it that way?

21 MR. KEHOE: Except, and just so -- and just as an officer of the
22 Court, I would take Your Honour back to it and not extend it too far,
23 our port. If they know about it, that the rule says, quite clearly,
24 it's in their custody, control or knowledge.

25 So if it's in their custody and control, that's the easy part.

1 But let's take, for instance, there is a trip to the Quai d'Orsay and
2 they look through a variety of documents and they read some and leave
3 some there. If, in fact, the ones they've decided not to take were
4 potentially impeaching of one of their witnesses, certainly that is
5 something within their knowledge that we're entitled to under
6 Rule 103, subject, of course, to Rule 107.

7 JUDGE GUILLOU: Thank you, Mr. Kehoe.

8 Thank you.

9 Mr. Emmerson, please.

10 MR. EMMERSON: So just to be clear, there's -- we're obviously
11 dealing with these items of the agenda separately, but there's
12 inevitably a potential overlap between Rule 103 and Rule 102(3)
13 material.

14 And if you remember, I invited the Prosecution to indicate have
15 they read the 68.000 entries? Do they actually know what's in there?
16 If they don't, if the answer to that is those documents have not been
17 humanly read, then the Prosecution cannot have performed its
18 obligations in relation to exculpatory material.

19 Now, without going into detail, I know that there is material in
20 that list that is exculpatory and should be in their list of
21 exculpatory material. So they clearly haven't got to grips with
22 what's in it. And so I must insist again that the Prosecution be
23 asked to indicate formally in court the extent to which that 68.700
24 page index, the documentation underlying it have been humanly read
25 and analysed for relevance.

1 And we need an answer to that today. They know the answer.
2 They should tell you. Because if the answer is no, then we're in
3 real trouble in terms of this trial.

4 JUDGE GUILLOU: Thank you, Mr. Emmerson.

5 Mr. Young, please.

6 MR. YOUNG: [via videolink] Your Honour, yes. Very briefly.
7 It's really on the same point.

8 As Your Honour knows, the Prosecutor has just told you that the
9 Prosecution are reviewing the Rule 103 or potentially exculpatory
10 material, that the review remains ongoing. As Your Honour knows,
11 this is a very important category of material, because it goes to the
12 potential innocence of the accused or to the undermining of the
13 Prosecution witnesses. So as a category, it doesn't get more
14 important, with respect, than that.

15 For that reason, and building on the point that Mr. Emmerson has
16 made, in my respectful submission, it's very important that
17 Your Honour and the parties - and particularly the Defence and the
18 accused - have an idea of the volume of material that the Prosecution
19 have identified as material they need to review to consider whether
20 it falls within 103.

21 This will be directly relevant to the proceedings. And so I
22 support what Mr. Emmerson says, we need to have an idea. Are we
23 talking about one or two documents? Are we talking about thousands
24 or tens of thousands? They've clearly identified a body of material
25 they still need to review, and so an answer to that would be useful.

1 JUDGE GUILLOU: Thank you, Mr. Young.

2 Mr. Ellis or Ms. Alagendra.

3 Ms. Alagendra, microphone, please.

4 MS. ALAGENDRA: [via videolink] Mr. Ellis will address the Court,
5 Your Honour. I apologise.

6 JUDGE GUILLOU: Sorry, my apologies. You are a lot on Zoom
7 today, so I see you in very little images so it's sometimes harder
8 for me to have an idea of who will take the floor.

9 Mr. Ellis, please.

10 MR. ELLIS: [via videolink] Your Honour, it was not worth waiting
11 for me. I simply join with what's been said before by other Defence
12 teams.

13 JUDGE GUILLOU: It is always worth, Mr. Ellis.

14 Let me turn to the Prosecution. I think there are several
15 questions that I've been asked by the Defence.

16 The first one is, I think, the conception of the Prosecution of
17 what is actual knowledge in Rule 103. I think the second question is
18 has the review of the 103 material been made so as to make sure that
19 there is no Rule 102(3) material in the list that should have been
20 disclosed separately. And then the third question is about the
21 volume of the 102(3) material.

22 MR. EMMERSON: I'm sorry, before Ms. Lawson answers that
23 question. The question I asked you to ask, and I don't know whether
24 you deliberately put it in a different way or not, but the question I
25 asked you to ask, very specifically is: Has the Prosecution read

1 each of the documents in the 103 list - in other words, has a human
2 mind been brought to bear on those 68.700 entries to determine
3 whether or not they contain 103 material?

4 JUDGE GUILLOU: I heard you, Mr. Emmerson.

5 Ms. Lawson, you have the floor.

6 MS. LAWSON: Thank you, Your Honour.

7 In relation to the Thaci Defence indication of cables being of
8 particular interest to them, that is something that we have taken
9 note of. I believe that a number of cables have been disclosed and
10 there are others which are listed on the Rule 102(3) notice.

11 If the Thaci Defence intends to make a Rule 102(3) application
12 in respect of cables or considers itself to have done so now, we can
13 discuss after the hearing.

14 With respect to the Veseli Defence query, the materials on the
15 102(3) notice have, indeed, been humanly reviewed and assessed for
16 their relevance. Identification of exculpatory review is, though, a
17 more in-depth review exercise and it is ongoing. The Defence teams
18 are correct that there may well be Rule 102(3) information among the
19 items that are listed on the Rule 102(3) list, and that is because
20 that review is ongoing. We have never claimed it to be complete.

21 However, in a case of this nature, we would anticipate that a
22 significant amount of Rule 102(3) disclosure would relate to similar
23 potentially exculpatory issues to material which has already been
24 disclosed as Rule 102(3). Now, we're not in any way suggesting that
25 that makes it less of an obligation for us to disclose that material.

1 We are reviewing and will disclose it. But just to note that it may
2 well not be significantly new exculpatory issues that are arising.

3 And in addition, as the Thaci Defence team themselves mentioned,
4 certain items are, of course, only exculpatory relative to the
5 witnesses and evidence that's being relied upon. So that is a review
6 that we will need to continue and we're aware that we need to
7 continue it as we finalise our witness and exhibit lists.

8 I believe that addresses the questions. If there is something
9 that I have missed, I'm happy to go back to it.

10 JUDGE GUILLOU: There was the volume of the Rule 102(3)
11 material, if you can add any detail on this.

12 MS. LAWSON: I don't have that number in front of me. I know
13 that there is a category of material that has been identified as
14 requiring Rule 102(3) review, and I know that there is more recently
15 received material which has not yet undergone review. Those are the
16 two categories, but I don't have the number, the volume with me.

17 JUDGE GUILLOU: And I correct myself for the transcript. I said
18 the volume of 102(3). It was, in fact, volume of Rule 103 material.

19 Mr. Emmerson, please.

20 MR. EMMERSON: The fact is Ms. Lawson can't conceivably answer
21 that question because, as she's just told you, that has been no
22 effective review of the 68.700 documents on the 103 list for
23 exculpatory material.

24 Nonetheless, she reassures you that it's likely to be the same
25 as other exculpatory material. How on earth does she know that when

1 there's been no review? On what factual basis does counsel make that
2 submission to you when the review hasn't yet occurred? This is what
3 I mean about prosecutorial misrepresentation. There is 68.700
4 documents which she acknowledges may well contain Rule 103 material,
5 but she has no idea what it is.

6 Can we just note what that means? I mean, the whole discussion
7 that we've been having in the last hour has been a complete waste of
8 time because there is a volume of material which may contain
9 significantly exculpatory material which hasn't even been looked at
10 for that purpose. So, yes, there has been some human involvement,
11 whatever that means, but not enough to give it a proper description
12 in the index.

13 But more fundamentally than that, you've just heard it admitted,
14 cold as day, that the review for exculpatory material has not been
15 done. In other words, that, as Ms. Lawson has just said in
16 absolutely clear terms, yes, there may well be exculpatory material
17 in that 70.000 document list.

18 Now, if that is the position, then how are we to place any
19 reliance on the closure of the Prosecution case? I mean, that we are
20 the Defence being asked to go through that material when the
21 Prosecution themselves haven't even done it, and the burden is being
22 cast upon us, something's gone very seriously wrong here. This is
23 why I say you have to listen very carefully to what Ms. Lawson says.
24 She doesn't like me personalising it. She likes me to use language
25 which is polite. She doesn't like the word "prosecutorial

1 misconduct." But for counsel to stand up and say to you it may well
2 be the same as stuff we've already disclosed when it hasn't yet been
3 analysed, clearly, there was no factual basis for that submission.

4 That is, in my experience, in the jurisdictions I come from,
5 that is prosecutorial misconduct.

6 JUDGE GUILLOU: Mr. Kehoe.

7 MR. KEHOE: If I may, briefly.

8 JUDGE GUILLOU: Briefly, please.

9 MR. KEHOE: Just very briefly.

10 The Rule 103 item that I brought up. Rule 103 stands on its
11 own, Your Honour. As you know. It has to do with mitigation. It
12 has to do with guilt. And, yes, there is a portion of it that has to
13 do with impeaching of witnesses.

14 But independent of the witnesses that they put on and
15 independent of the documents that they rely on, there is a standalone
16 obligation to disclose exculpatory material under the rule. Yes, it
17 is supplemented and explained in these other ways, but there is a
18 standalone obligation.

19 My submission on the cables is not the cables haven't been given
20 to us, but there is not nearly enough. For those of us who have
21 lived in that world and recognised the amount of cables that go back
22 and forth when significant meetings that my client attended have a
23 significant dearth of cable traffic, it indicates to me that there is
24 more cable traffic out there that either hasn't been disclosed or the
25 Prosecution doesn't think, you know, it doesn't help their case and

1 they don't see it as 103 material. It is that material that we want
2 to see. And ask for -- if they need to get 107 permission, I ask
3 that the Court order them to do so.

4 JUDGE GUILLOU: Thank you, Mr. Kehoe.

5 Madam Prosecutor, do you want to reply? And if so, briefly.
6 Thank you.

7 MS. LAWSON: Yes, very briefly.

8 To be clear, I did not say that 68.000 items have not been
9 reviewed. There is a subset of that data which has not been reviewed
10 fully for exculpatory material yet, and that review is ongoing.

11 JUDGE GUILLOU: Thank you, Madam Prosecutor.

12 Let me turn to the interpreters. Do you allow me, do you allow
13 us five minutes to finish the topic of disclosure before the break?

14 THE INTERPRETER: Yes, Your Honour.

15 JUDGE GUILLOU: Thank you very much. I really appreciate,
16 because that way we're going to finish the disclosure item in the
17 agenda.

18 Let us move to the last category, the Rule 107 material. I
19 would like to know whether the parties are facing or foresee any
20 difficulties related to the disclosure process with respect to
21 Rule 107 material, and whether any application pursuant to this rule
22 is imminent.

23 I know we've already touched upon that category when we went
24 through the other categories, but is there anything to add in
25 relation to the Rule 107 material?

1 Madam Prosecutor.

2 MS. LAWSON: Your Honour, I don't have much to add to the
3 written submissions. Discussions with certain relevant organisations
4 are ongoing in respect of clearances or counterbalancing measures.
5 The organisations have been and are continuously being kept apprised
6 of the urgency and importance of the matter, and the remaining
7 clearances are being actively worked on.

8 It is a process where, in many cases, we are discussing
9 individual documents on an almost line-by-line basis with the
10 providers, and we're doing that to ensure that any restrictions or
11 redactions, which they consider necessary, are kept to an absolute
12 minimum, and to the maximum extent possible that any such
13 restrictions do not relate to information that would be material to
14 Defence preparations.

15 As Your Honour is aware, we have made a number of Rule 107
16 applications to date, and we do anticipate that further applications
17 may be forthcoming. As indicated in our filing, they could arise in
18 connection with a number of matters, including in the context of
19 Rule 102(3) requests to access material.

20 Thank you.

21 JUDGE GUILLOU: Thank you, Madam Prosecutor.

22 Mr. Kehoe, please.

23 MR. KEHOE: Yes, Your Honour. This is a bit of a dark hole for
24 us, the 10 -- under these submissions. You know, under Rule 107.
25 We're not exactly [sic] what is being contemplated by the

1 Prosecution.

2 So without further information, I beg Your Honour's indulgence.

3 I just don't have much to say.

4 JUDGE GUILLOU: Thank you, Mr. Kehoe.

5 Mr. Emmerson, please.

6 MR. EMMERSON: Likewise.

7 JUDGE GUILLOU: Mr. Young.

8 MR. YOUNG: [via videolink] Nothing to add, thank you.

9 JUDGE GUILLOU: Ms. Alagendra.

10 MR. ELLIS: [via videolink] Nothing to add from us either,

11 Your Honour.

12 JUDGE GUILLOU: Sorry, Mr. Ellis. Thank you, Mr. Ellis.

13 It is 4.07, Hague time. We're going to have a break for
14 30 minutes, so we will be back at 4.37 for the remaining items in the
15 agenda of our Status Conference today.

16 The hearing is adjourned.

17 --- Recess taken at 4.07 p.m.

18 --- On resuming at 4.37 p.m.

19 JUDGE GUILLOU: Let us now move to the second issue in our
20 agenda, after disclosure, which is the issue of translations of
21 filings and evidentiary material.

22 I would first like to hear from the Registry on the progress
23 made with regard to the translation of these items. Notably, whether
24 the Language Services Unit has an estimate for the translation of the
25 decisions on preliminary motions, and whether the parties have made

1 any further urgent requests for translation.

2 In addition, I note the submission from the Krasniqi Defence
3 recalling that out of 684 filing items available in English, only 114
4 are available in Albanian and that the backlog continues to grow.

5 MR. LAWS: [via videolink] Mr. President, I believe you're on
6 mute.

7 JUDGE GUILLOU: No, I don't think I'm on mute. Can you hear me?
8 Apparently -- I think there is a -- okay. Can you hear me now?
9 Okay --

10 MR. LAWS: [via videolink] Yes.

11 JUDGE GUILLOU: Okay. So from what I understand, I was muted in
12 Zoom but I wasn't muted in the courtroom. So I don't control Zoom.
13 Zoom is controlled by the audio-visual booth here. So did you hear
14 anything I said or did it stop at some point?

15 MR. LAWS: [via videolink] I just heard when you said "can you
16 hear me now."

17 JUDGE GUILLOU: Okay. So I will start from scratch so that you
18 can go back to -- you will not miss anything.

19 So I said that we will now move to the issue of translations of
20 filings and evidentiary material. So I said that I would like to
21 hear from the Registry first of the progress made with regard to the
22 translation of specific items. Notably, if the Language Services
23 Unit has an estimate for the translation of the decisions on
24 preliminary motions, and whether the parties have made any further
25 urgent requests for translation.

1 In addition, I note the submissions from the Krasniqi Defence,
2 recalling that out of 684 filing items available in English, only 114
3 are available in Albanian and that the backlog continues to grow.

4 I would, therefore, also like to hear the parties on any further
5 difficulties regarding translations and if there are filings that
6 need to be prioritised.

7 Mr. Roche, you have the floor.

8 MR. ROCHE: Thank you very much, Your Honour.

9 First concerning the three decisions on preliminary motions,
10 that's F00412, 413, and 450.

11 The current best estimate from Language Services Unit is that
12 these will all be completed no later than 15 October, and that's
13 subject to any supervening urgent requirements which may set that
14 deadline back. But 15 October is the current best estimate.

15 As regards other priority requests, there are no outstanding
16 priority requests. Court Management Unit contacted all the Defence
17 teams on 8 September asking them to submit any requests. And as of
18 now, we have not received any requests to date.

19 More generally, all of the documents that are required under the
20 RP and the Law to be translated are already translated. And,
21 obviously, we are progressing through all of the filings as
22 expeditiously as possible.

23 JUDGE GUILLOU: Thank you, Mr. Roche.

24 Let me give the floor to the Defence. Mr. Kehoe, please.

25 MR. KEHOE: Yes, Your Honour. I think the Krasniqi submission

1 has outlined where we are here, Judge. Obviously that with 684 items
2 in English, only 114 translated, it makes it impossible for our
3 client, Mr. Thaci, to review these items. And it goes back to what I
4 noted with Your Honour before under the notice disclosure under
5 102(3). So they're all wrapped up in the same item, that it's
6 difficult to give a 103 notice without having that discussion with
7 our client with those documents in Albanian.

8 JUDGE GUILLOU: Thank you, Mr. Kehoe.

9 Mr. Emmerson, please.

10 MR. EMMERSON: Nothing to add at this stage.

11 JUDGE GUILLOU: Thank you, Mr. Emmerson.

12 Mr. Young, please.

13 MR. YOUNG: [via videolink] Yes, Your Honour, the situation is
14 this: In terms of priority requests. As I mentioned at the last
15 Status Conference, there will be, clearly, a number of requests for
16 translation or priority materials. But at this stage, where we are
17 unclear about the relevance of a large amount of the materials, it
18 would not be proper to put the requests in.

19 But I can say it's highly likely that there will be a number of
20 priority requests, and so that hopefully there will be resources in
21 due course to deal with the translation requirements.

22 JUDGE GUILLOU: Thank you, Mr. Young.

23 Ms. Alagendra or Mr. Ellis.

24 MR. ELLIS: [via videolink] Your Honour, very briefly on this
25 point.

1 In relation to the preliminary motions. If the translation of
2 those is received on 15 October, which I think is a Friday, the
3 current deadline for replies on jurisdiction issues is 18 October,
4 which is the Monday. So if it's at all possible for those to be
5 received earlier, it would be beneficial and might allow Mr. Krasniqi
6 to participate in the appeal process.

7 JUDGE GUILLOU: Thank you, Mr. Ellis. Do I take from your
8 submissions that you would like the Registry to prioritise the
9 Decision on Jurisdiction so that this one is distributed, the
10 translation is distributed before the others, if needed?

11 MR. ELLIS: [via videolink] That would be sensible, Your Honour,
12 yes. And on other matters, we've received the Registry's e-mail and
13 we'll engage with them on those matters.

14 JUDGE GUILLOU: Thank you, Mr. Ellis.

15 Mr. Roche, does this seem to be feasible for the Language
16 Service Section to prioritise the jurisdictional decision? The
17 Decision on Jurisdiction.

18 MR. ROCHE: Thank you, Your Honour. I will expedite that with
19 the Language Services Unit, so filing F00412, out of the three, will
20 be given additional priority. And if we have a more specific date in
21 advance of 15 October, we will communicate that.

22 Thank you.

23 JUDGE GUILLOU: Thank you, Mr. Roche. This is much appreciated.

24 Does the SPO have anything to add on the issue of translation?

25 No.

1 Let me just give the floor to Mr. Laws on the question of
2 translation. Do you have anything you would like to add?

3 MR. LAWS: [via videolink] Your Honour, no, thank you very much.

4 JUDGE GUILLOU: Thank you, Mr. Laws.

5 I now turn back to the SPO to ask about the status of its
6 ongoing investigations. In particular, whether the SPO can provide a
7 further update on the estimated date of completion for outstanding
8 investigative steps, whether the SPO is prepared to commit to a date
9 for filing its pre-trial brief and related material pursuant to
10 Rule 95. I note that the SPO did not mention anything in that regard
11 in its written submissions.

12 And in light of the Thaci Defence request discussed during the
13 last Status Conference, whether the filing of a preliminary witness
14 list ahead of the deadline set forth in Rule 95(4)(b) of the Rules is
15 feasible; and, if so, when.

16 I also invite the SPO to make any submissions on the procedural
17 calendar in this case.

18 Madam Prosecutor.

19 MS. LAWSON: Thank you, Your Honour.

20 With respect to ongoing investigative steps, I do not have much
21 to add to the submissions made at the last Status Conference. It
22 remains the case that it is the responsibility of the office to
23 continue to investigate within its mandate. We are aware of the
24 applicable framework, and we are aware that should further
25 investigations result in material which we seek to rely upon judicial

1 authorisation may be required.

2 Any such application would be considered at the relevant time
3 with regard to the nature of the material in question, the timing,
4 and other considerations going to relevance and potential prejudice.

5 With respect to Rule 95(4) materials. We had indicated at the
6 last Status Conference that there were a number of variables which
7 could impact timing, depending on how resource-intensive they proved
8 to be. That included, in particular, litigation on preliminary
9 motions and Rule 102(3) disclosure and related litigation.

10 There has been some, but by no means full, further clarity on
11 those matters. For example, the preliminary motions litigation is
12 continuing to be very intensive. All parties have had to seek
13 certain extensions of deadline in order to address it, both at the
14 appellate level and before Your Honour.

15 There are currently seven motions encompassing 81 issues and
16 grounds of appeal, which the SPO is in the course of responding to.
17 And further motions on constitutional issues are expected at the end
18 of this week. We don't yet know how extensive those will be, but I
19 think it's safe to say that the litigation is likely to continue on
20 preliminary motions with a degree of intensity for some time.

21 Additionally, as I already mentioned today, we do not have
22 clarity on the remaining volume of the Rule 102(3) disclosure
23 requests and review that will be required. However, including based
24 on the submissions made today, there is every reason to anticipate
25 that that may occupy -- well, that disclosure in one form or another

1 may occupy a majority of our resources - indeed, those of each of the
2 parties - through October and November at least.

3 In summary, these are very intensive work streams which are
4 forecast to continue, perhaps even more intensively than they have
5 been, over, at least, the next couple of months. And as a result,
6 while we can confirm that we will not be in a position to provide the
7 Rule 95(4) materials in October, we are, unfortunately, not in a
8 position to commit with certainty to a concrete date.

9 We are, of course, continuing to work internally to the best of
10 our abilities to simultaneously progress each of the work streams
11 that need to progress, and that does include work on the Rule 95(4)
12 materials. And we'll continue to keep the Court apprised in that
13 regard. It is as much in our interests as in anyone else's that
14 these materials are provided at the earliest opportunity and upon
15 which it is possible to provide them.

16 With respect to provision of a preliminary witness list. On
17 6 August, the SPO informed the Defence teams of the names of three
18 individuals whose statements or prior testimony had been relied upon
19 in the indictment supporting materials but whom the SPO no longer
20 intends to call as witnesses. It remains the position that the SPO
21 currently intends to rely upon the evidence of all other witnesses
22 whose material has been or is being disclosed. And subject to the
23 outstanding clearance are variation matters, which I mentioned
24 earlier, this is anticipated to be approximately 320 individuals.

25 As indicated at the last Status Conference, the witnesses and

1 their materials is available to the Defence. However, should the
2 Court consider it necessary, we would be in a position to provide a
3 preliminary list in advance of the Rule 95(4)(b) requirements. It
4 must be stressed that that list would, indeed, be preliminary and
5 subject to change. However, we believe we could provide such a list
6 in the upcoming weeks; that is, we anticipate we could provide it by
7 22 October.

8 Thank you.

9 JUDGE GUILLOU: Thank you, Madam Prosecutor.

10 Mr. Kehoe, please.

11 MR. KEHOE: Yes, Your Honour. At the outset, it is quite
12 disturbing that we have heard from the Prosecution that their
13 investigation is ongoing, I believe the word was used to describe it,
14 with no date in sight as to when that would end. So we are forced to
15 guess as to when this entire matter would be complete, and we have
16 the body of evidence that we need to address in the courtroom.

17 Kosovo law, as you know, Your Honour, requires that the
18 investigation be complete before the case is actually indicted. That
19 has not happened in this case. Not only has it not happened, my
20 client and the other accused have been in custody since last November
21 for an investigation that was supposed to be completed. And here we
22 stand before Your Honour on 14 September, and there is still no date
23 in sight for the end of this investigation.

24 I think it behooves the Prosecution to give the Court and the
25 Defence some idea of when will there be an end. When will this end

1 so we all know what we need to address? And nothing that was just
2 advanced by my learned friend across the well has given us any
3 indication as to when that's going to end. And for us to have a
4 trial that is not only fair but expeditious there has to be some end
5 to this investigative matter, such that it is turned over to the
6 Defence: This is what we have and this is what we are going to
7 address.

8 And that does not look like it's anywhere in sight, certainly
9 not in the near future.

10 Now, we certainly appreciate a list - any list - of witnesses
11 that the Prosecution is going to call. Clearly at this juncture the
12 Prosecution has made a decision that a certain set of witnesses are
13 going to be called *viva voce*. And in defence of the Prosecution,
14 they did, in fact, inform us of four individuals who they do not
15 intend to call, and we appreciate that.

16 But with regard to the first segment on this preliminary list,
17 we would hope that those are the witnesses that the Prosecution has,
18 in fact, made a decision that it would call, and we welcome that.
19 But, again, at the risk of reiterating this, Judge, this has been
20 going on for a very long time, and we still don't have no idea, no
21 concrete date as to when this investigation will end. And we will
22 ask the Court to put that question to the Prosecution as to when this
23 investigation is going to end.

24 Thank you.

25 JUDGE GUILLOU: Thank you, Mr. Kehoe.

1 Mr. Emmerson, please.

2 MR. EMMERSON: Obviously I adopt the position taken by
3 Mr. Kehoe. But I want, if I may, specifically to focus on item B in
4 your list.

5 And, first of all, and it may be a translation issue, but it's
6 put as whether the Prosecution is prepared to commit to a date for
7 the filing of its pre-trial brief, which, with respect, is the tail
8 wagging the dog. It's not for the Judge to ask the Prosecution if
9 they're prepared to commit. It's for the Judge to order the
10 Prosecution when they must do things. And to be inviting the
11 Prosecution to set its own deadline when we know - we know - that
12 nothing the Prosecution says about its deadlines has the slightest
13 shred of remaining credibility is, with respect, entirely the wrong
14 approach.

15 You should be ordering a deadline. On the Fifth Status
16 Conference, that was on 19 May -- that's what judicial muscularity
17 means, the Prosecution told you it would have its pre-trial brief
18 ready by mid-October. Now, that was -- we're already a year in,
19 given that the Prosecution started by telling you that this trial
20 would begin in June of this year. So already we were way past that.

21 But in the Fifth Status Conference on 19 May, they said the
22 pre-trial brief would be ready by mid-October, and at the last Status
23 Conference they said that there had been no change to that estimate.
24 That is what you should order. You should order it today. The
25 31 October is the date for the pre-trial brief. It's what they've

1 been promising.

2 Otherwise, literally, the tail is wagging the dog. The Judge is
3 effectively inviting the Prosecution to set its own timetable, its
4 own procedure, and when it breaks its own promises or even breaks the
5 orders of the Court, just ignoring it and letting them go along. I
6 mean, that's a very strange way to find a question being posed in an
7 agenda which the Judge is setting a timetable and actively managing a
8 case.

9 You know, we all know the Prosecution is out of control. It had
10 every opportunity -- it was entirely predictable. They even knew
11 about the jurisdictional litigation at the time when they gave you a
12 promise last Status Conference they would be ready by mid-October.

13 You must understand -- I don't know your practicing history.
14 But if you've ever practiced on either side of the bar, you must
15 understand that we need to know the case we have to meet before we
16 can commence on an investigation of that case. So given the chaos,
17 the absolute utter chaos and the constant misrepresentation -- I'm
18 not going to call it lies, because, presumably, circumstances have
19 changed, but utter lack of foresight.

20 Giving you excuses that we told you were predictable at the
21 time, and then leaving for you to then leave it to the Prosecution to
22 decide when they'd like to file their pre-trial brief. That's not
23 case management, with greatest of respect. The Prosecution should be
24 required and ordered to file their pre-trial brief at the latest on
25 31 October. Then we can start making some progress with the Defence

1 investigations.

2 It's not about a list -- I mean, it would be helpful to have a
3 list of possible witnesses. We want to know exactly how the
4 Prosecution puts its case. We will, by 31 October, be one year --
5 no, sorry. Let me just get the dates correct. We will be very close
6 to one year in custody. And is Your Honour really going to sit there
7 and say it's for the Prosecution to decide whether these men, after a
8 year in prison, presumed innocent, are entitled to know the case they
9 have to meet?

10 The order should be made and you have a judicial responsibility
11 to make it.

12 JUDGE GUILLOU: Thank you, Mr. Emmerson.

13 Mr. Young, please.

14 MR. YOUNG: [via videolink] Your Honour, thank you. Very
15 briefly.

16 Your Honour may remember, I think it was at the First or the
17 Second Status Conference that we had, when I sought to use a French
18 expression, which was *guillotine*, and we had an interesting legal
19 discussion about whether there should be a *guillotine* on the
20 Prosecution in terms of stopping a fixed, hard stop deadline for the
21 end of investigations, the end of disclosure by the Prosecution, to
22 give the Defence a chance to consider what's been disclosed, to have
23 an overview, and to have some breathing space to move on from there.

24 There was never a day to impose for some form of *guillotine*.
25 But I think, as Mr. Emmerson has said, the time has come. And to use

1 another French expression, if I may, the reality is that this
2 Prosecution cannot be allowed to have *carte blanche* over the way they
3 choose to prosecute and manage this case.

4 So I do respectfully ask Your Honour to make a decision and to
5 take a judicial decision on the timeline. It cannot be for the
6 Prosecution to exercise some form of *carte blanche*. And, with
7 respect, I do ask for a case management on this, as it's directly
8 relevant to the fairness of the proceedings.

9 JUDGE GUILLOU: Thank you, Mr. Young.

10 Ms. Alagenda or Mr. Ellis.

11 MR. ELLIS: [via videolink] Your Honour, we do join in the
12 earlier submissions that have been made.

13 On a practical matter, we do also say that the provision of a
14 preliminary witness list, understanding that it would be a
15 preliminary list, would be not just useful but essential to the
16 Defence preparation on what is still a large number of documents
17 given to the Defence with very little by way of navigational aid. So
18 we would seek a preliminary witness list at an early stage, as early
19 a stage as possible, and for that to be accompanied with witness
20 packages, linking documents to witnesses.

21 MR. KEHOE: Your Honour --

22 JUDGE GUILLOU: Thank you, Mr. Ellis.

23 MR. KEHOE: Your Honour, if I may --

24 JUDGE GUILLOU: Mr. Kehoe. Very briefly then.

25 MR. KEHOE: Very briefly. And I neglected to bring this up,

1 because it ties into this subject as well as the next.

2 A date for the unredacted indictment. Your Honour has asked
3 issues on alibi, et cetera. We still don't have a completely
4 unredacted indictment. Not only for just the Defence. So is there a
5 date in the very near future when the Defence is going to get a
6 completely unredacted indictment? It can be under seal, a variety of
7 measures can be taken. But in order for us to conduct -- at least
8 preliminarily, we have to know what these redactions are in this
9 indictment, because they go to time, they go to place, they go to a
10 variety of different things.

11 Thank you.

12 JUDGE GUILLOU: Thank you, Mr. Kehoe.

13 Madam Prosecutor, first of all, I welcome your proposal to
14 prepare a preliminary witness list by the deadline that you have
15 proposed. So I take note that this is something that you're going to
16 work *inter partes* and is going to be prepared in the following weeks.

17 On the other issues raised by the Defence teams - notably, the
18 issue of the end of the investigations raised by several Defence
19 teams and the *guillotine*, and also on the pre-trial brief and the
20 request by Mr. Emmerson that a deadline be ordered, according to your
21 earlier estimates.

22 You have the floor.

23 MS. LAWSON: Thank you, Your Honour.

24 We have taken note and we will, indeed, provide such a list by
25 the timeline that I indicated.

1 In respect of ongoing investigations, I did address that matter
2 at the last Status Conference. And at a degree of length, I don't
3 believe I need to repeat the submissions, but further investigations
4 will encompass other cases and investigations being conducted by the
5 office as well as following up leads in this case, and it is the
6 responsibility of the office to do so.

7 With regard to the pre-trial brief. The Veseli Defence
8 mischaracterises the submission made at the last Status Conference.
9 The SPO certainly did not promise any date at that point. There
10 were -- as I mentioned already in my submissions today, there were a
11 number of factors that I mentioned that would impact that timing
12 potentially significantly depending on how resource-intensive they
13 proved to be, and I have explained further today, and all of the
14 parties are aware of how resource-intensive each of the two matters
15 that I mentioned are. They are resource-intensive for everyone, not
16 just the Prosecution.

17 Estimates are obviously provided at any particular time in light
18 of the circumstances existing at that time and the available
19 information, and it is certainly not the case that the Prosecution is
20 dictating timelines in this case. The Pre-Trial Judge has
21 established a pre-trial calendar, including in respect of disclosure,
22 and what the Prosecution is doing is endeavouring to keep the Court
23 apprised of what are realistic timeframes in the circumstances as
24 they prevail.

25 It is really not of benefit, I think, to anyone for an

1 unrealistic deadline to be set. As I indicated, we are continuing to
2 advance that work stream as expeditiously as we can do, and it is in
3 our interest, of course, that we provide the materials as soon as
4 they can possibly be provided.

5 I think I was clear that October is not a realistic date for us
6 in the present circumstances.

7 Thank you.

8 JUDGE GUILLOU: Madam Prosecutor, I have to recall that you talk
9 about an unrealistic deadline, but the deadlines have been proposed
10 by your office. They've been proposed by your office in November
11 last year, and then they have been proposed in several
12 Status Conferences. So I understand you. And this is why I always
13 hear the parties before setting deadlines, because I think it's
14 important for that every party around here is able to do its job so
15 that we have robust, adversarial proceedings.

16 That said, it is also important that all the parties give
17 realistic deadlines throughout the proceedings, and here I rely on
18 the deadlines, or at least the proposals, that the SPO made in the
19 previous months. So I understand your point. I don't want to set
20 unrealistic deadlines, but here I also have to be consistent with the
21 calendar that I have set and with the estimates of each party.

22 So I understand that today you are in a difficult position to
23 propose a deadline, but in any case I will have to set this deadline,
24 and I will have to set this deadline in the following weeks. We
25 cannot wait any longer for the SPO pre-trial brief. I think the

1 Defence is right in saying that at some point the case has to be
2 clear for them. We are reaching the one-year anniversary mark after
3 the beginning of these proceedings before -- these adversarial
4 proceedings in the pre-trial phase, so I think we will have to move
5 on and I will have to set a time for the pre-trial brief, at the
6 latest, in the next Status Conference.

7 Madam Prosecutor.

8 MS. LAWSON: Your Honour, that is well understood. Thank you.

9 JUDGE GUILLOU: Thank you, Madam Prosecutor.

10 MR. EMMERSON: May I just respond.

11 JUDGE GUILLOU: Mr. Emmerson.

12 MR. EMMERSON: Very --

13 JUDGE GUILLOU: Very briefly, please.

14 MR. EMMERSON: I will be brief, if I may.

15 Just to be absolutely clear. At the last Status Conference, we
16 were told that the pre-trial brief would be ready by mid-October.
17 Nothing has happened since then to justify an extension. By then,
18 the Prosecution had already received the constitutional challenge
19 material. By then the Prosecution knew what material was in its
20 possession for the purposes of disclosure.

21 So with the greatest of respect, it's not enough to say that we
22 will be fixing a date at the next Status Conference. The next Status
23 Conference will be beyond the appropriate date. The appropriate date
24 absolutely outside is 31 October --

25 JUDGE GUILLOU: Mr. Emmerson, you heard me.

1 MR. EMMERSON: I've heard that you're going to set a date.

2 JUDGE GUILLOU: So I told the Prosecution that I was going to
3 set a date, at the latest, at the next Status Conference.

4 MR. EMMERSON: At the latest.

5 JUDGE GUILLOU: So there is no need --

6 MR. EMMERSON: Well, can we, then at the same time link the next
7 Status Conference -- the point I am trying to make here is at
8 the last Status --

9 JUDGE GUILLOU: I hear you, but we are not going to re-discuss
10 my previous decisions. We are not going to re-discuss points that
11 you are already presented in your submissions.

12 MR. EMMERSON: I am making a different point, right, which is
13 that on 21 July, the last Status Conference, the Prosecution said it
14 would be ready by mid-October.

15 I am concerned only at this stage with the pre-trial brief.
16 There must therefore be a draft pre-trial brief. That promise could
17 not have been made to you on 21 July.

18 JUDGE GUILLOU: But I'm not interested to see a draft --

19 MR. EMMERSON: Exactly.

20 JUDGE GUILLOU: I want to see a final --

21 MR. EMMERSON: Exactly.

22 JUDGE GUILLOU: -- pre-trial brief --

23 MR. EMMERSON: Exactly.

24 JUDGE GUILLOU: -- that is finalised in order for the Defence
25 team to do a proper job.

1 MR. EMMERSON: Exactly. And there is plenty of time between now
2 and the end of October for it to be finalised and served, is the
3 point I was making.

4 JUDGE GUILLOU: Exactly.

5 Any Defence wants to request the floor? No, I don't see any.
6 Very briefly, Mr. Kehoe, then.

7 MR. KEHOE: Again, counsel didn't raise -- counsel for the
8 Prosecution didn't raise disclosure of an unredacted indictment. Is
9 that possible to do in the next few days?

10 JUDGE GUILLOU: Madam Prosecutor, on this question.

11 MS. LAWSON: Your Honour, it's not possible to do within the
12 next few days. We are -- as certain of the redactions in it are
13 related to protective measures which have been ordered, but we do
14 keep it under constant review and lift redactions when they can be
15 lifted. Indeed, in the version of the indictment which was filed on
16 3 September, certain additional redactions had been lifted.

17 Thank you.

18 JUDGE GUILLOU: Thank you, Madam Prosecutor.

19 Let us now move to the next topic in our agenda related to
20 detention. I would like the Registry to give an update on the
21 detention regime, including but not limited to counsel and family
22 visitation policies.

23 I also invite the parties to indicate if the latest measures
24 implemented by the Registry respond to their concerns.

25 Mr. Roche, please.

1 MR. ROCHE: Thank you, Your Honour.

2 As you will be aware from previous submissions from the
3 Registry, we have, throughout the pandemic, sought to safeguard the
4 health and safety of detainees while ensuring adequate access to
5 counsel.

6 As of 1 July, in-person counsel visits were facilitated. And as
7 of 15 July, they have been in the same room, and those have been
8 proceeding well. There have been -- each detainee in this case has
9 had a number of visits from counsel and/or members of their team,
10 with the exception of one, who has had members of the team, just not
11 counsel.

12 As of 6 September, the remaining restrictions on personal visits
13 have been removed, so as of 15 July close personal relatives could
14 visit and have done so on many occasions. And as of 6 September,
15 other personal visits are now possible. This has led to a
16 significant increase in the number of visitors to the detention
17 facilities.

18 More generally, we continue to work with the Medical Officer to
19 ensure that it is a safe environment for detainees and all those who
20 are required to be present there. And if there are any more specific
21 issues that arise, I will endeavour to answer them as best I can.

22 Thank you, Your Honour.

23 JUDGE GUILLOU: Thank you, Mr. Roche.

24 Does any of the Defence teams want to react?

25 MR. KEHOE: Nothing for Mr. Thaci.

1 JUDGE GUILLOU: Thank you, Mr. Kehoe.

2 Mr. Emmerson?

3 MR. EMMERSON: Nothing, Your Honour.

4 JUDGE GUILLOU: Mr. Young?

5 MR. YOUNG: [via videolink] No, thank you.

6 JUDGE GUILLOU: Ms. Alagendra.

7 MS. ALAGENDRA: [via videolink] Nothing to add, Your Honour.

8 JUDGE GUILLOU: Thank you very much.

9 And let me now move to the next and I think close to last point
10 on the agenda related to Defence investigations.

11 The Krasniqi Defence indicated in its written submissions that
12 the Defence have commenced their investigations but remain
13 constrained by various factors. I would be interested to hear the
14 Defence regarding the status of their investigations. In particular,
15 based on the SPO's estimates and the ongoing disclosure process,
16 whether the Defence can provide more information on the status of
17 their investigations, whether the Defence can provide information on
18 any intention to make requests concerning unique investigative
19 opportunities pursuant to Rule 99(1), and whether the Defence can
20 provide information on any intention to give notice of an alibi or
21 grounds for excluding responsibility.

22 Mr. Kehoe.

23 MR. KEHOE: Yes, Your Honour. Given the circumstances and the
24 disclosures, I can't give Your Honour any estimate as to when any
25 investigation is going to take place or be completed, better still.

1 Are we reviewing the information that's come -- the disclosures made
2 by the Prosecution? Absolutely. Are we talking to our fellow
3 counsel? Absolutely. Is there difficulty getting in and out of
4 Kosovo because of COVID? I think Your Honour understands that that's
5 been a difficulty for everyone.

6 But there are so many difficulties, redactions, and hurdles that
7 have been put up by the Prosecution. It has made any investigation
8 immeasurably difficult. I've raised the simple issue of an
9 indictment, and Your Honour raised the notice of alibi. We have
10 paragraph after paragraph of charges in this indictment that say a
11 particular event took place in this locale between "redacted" 1999
12 and "redacted" 1999.

13 That's not just one paragraph. I'm sure Your Honour knows that
14 the indictment is replete with those types of redactions that make it
15 virtually impossible to even consider whether or not my client who, I
16 will tell you, was operating on an international level throughout
17 Europe while all these difficulties were taking place and was not in
18 the theatre of operations for most of the time. It makes it
19 impossible to take any position on a variety of those issues.

20 Now, as an officer of the Court, do I think there is going to
21 come a time and a place when a variety of issues come to the fore,
22 when my client was either in Brussels or Rome or London or Vienna?
23 Yes. But I cannot give you that information now because I'm looking
24 at an indictment that I don't even know what I am facing. And that
25 was why I had hoped at the outset, at least in the next couple of

1 days, I will take the next couple of weeks, we will get an unredacted
2 indictment from the Prosecution so we can address this issue which,
3 by its very nature, will focus our investigation. Because at this
4 point, we can't. We can take this information, and how this
5 information directly reflects or pertains to the indictment, in some
6 cases it's impossible.

7 So that's a long answer to say that we are unprepared to give
8 the status of the investigation at this point.

9 JUDGE GUILLOU: Thank you, Mr. Kehoe.

10 Mr. Emmerson, please.

11 MR. EMMERSON: We, on behalf of Mr. Veseli, we've significantly
12 started the investigation insofar as we're able to do. We have a
13 team established in Kosovo, and we have visits that have taken place
14 to begin the process of identifying potential witnesses from the
15 cases we're able to so far discern it.

16 If, indeed, Your Honour does issue a direction that the
17 Prosecution serve their pre-trial brief by 31 October, that will very
18 significantly assist in defining lines of inquiry and investigation.

19 The only thing I want to say, and I'm saying this publicly on
20 the record, is that different jurisdictions have different terms for
21 this, but in our jurisdiction the rule is that there is no property
22 in a witness. In other words, we're investigating at the moment
23 without any restriction on who we speak to, and we do not regard
24 ourselves as under any obligation to notify the Prosecution about
25 whoever we wish to speak to, because the Prosecution, at this stage,

1 has failed to nail its colours to the mast or even identify which
2 witnesses it intends to call.

3 So as matters stand, the Defence investigation considers itself
4 free to make any inquiries that it judges appropriate without
5 notification to the Prosecution or the Court. And if anybody
6 disagrees with that, I'd invite them to indicate now and to explain
7 their reasons.

8 JUDGE GUILLOU: Thank you, Mr. Emmerson.

9 Mr. Young, please.

10 MR. YOUNG: [via videolink] Yes, Your Honour, briefly. Thank
11 you.

12 Well, for the reasons, in the main articulated by Mr. Kehoe, and
13 also really by virtue of the fact it's really unclear what the actual
14 Prosecution case is against Mr. Rexhep Selimi, I'm not able to assist
15 the Court today in relation to these issues.

16 JUDGE GUILLOU: Thank you, Mr. Young.

17 Ms. Alagendra, please.

18 MS. ALAGENDRA: [via videolink] Your Honour, I note Your Honour
19 will, in the following weeks, set a deadline for the pre-trial brief,
20 but may I say at this stage that the filing of the pre-trial brief
21 will not be an indication at all of the Defence readiness for trial.

22 The difficulties we face as investigations continue, we have put
23 it in our written submissions. I stand by that. And I also join my
24 learned friends on the various issues that are confronted by the
25 Defence.

1 For that reason, we are unable to give any further update on the
2 status of investigations, Your Honour.

3 Thank you.

4 JUDGE GUILLOU: Thank you, Ms. Alagendra.

5 Does the SPO want to say anything on this item of the agenda?

6 MS. LAWSON: Just with respect to the point raised by the Veseli
7 Defence.

8 That is obviously a complicated matter, contacting witnesses,
9 which is regulated before many institutions, and we reserve the right
10 to make further submissions on that issue in writing.

11 Thank you.

12 JUDGE GUILLOU: This is noted.

13 Let me move to one of the last items in our agenda, which is the
14 date of the next Status Conference.

15 I informed the parties that given that Trial Panel I will start
16 the trial of Case 05 tomorrow, and Trial Panel II will start the
17 trial of Case 07 in early October, the availability of the courtroom
18 will be limited in the following weeks for pre-trial
19 Status Conferences in our case.

20 After consulting with the other Panels, I inform the parties
21 that I intend to schedule the next Status Conference on Friday,
22 29 October, at 1430 Hague time; 2.30 p.m. I also inform the parties
23 that a time slot has already been reserved for the last
24 Status Conference of the year on Wednesday, 15 December, at 1430
25 Hague time; 2.30 p.m.

1 Let me give the floor to all parties and participants.

2 Madam Prosecutor.

3 MS. LAWSON: We will be available at the dates indicated by

4 Your Honour, and there are no further matters we wish to raise.

5 Thank you, Your Honour.

6 JUDGE GUILLOU: Thank you, Madam Prosecutor.

7 Mr. Kehoe.

8 MR. KEHOE: Yes, thank you, Your Honour. We will be available.

9 JUDGE GUILLOU: Thank you, Mr. Kehoe.

10 Mr. Emmerson.

11 MR. EMMERSON: Likewise.

12 JUDGE GUILLOU: Thank you, Mr. Emmerson.

13 Mr. Young.

14 MR. YOUNG: [via videolink] Yes, briefly.

15 Your Honour, can I say, regrettably, the date of 29 October is
16 difficult for me. I'm wondering if Your Honour would be good enough
17 to consider a date in the week following in the first week of
18 November.

19 If Your Honour would prefer for submissions to be made in
20 writing, that can be done. But the one date, I do have a
21 professional difficulty is Friday, 29 October. So I would be
22 grateful if you could put it back a day or two or a few days into the
23 first week of November, if at all possible.

24 JUDGE GUILLOU: I will consult my colleagues, but I cannot
25 promise anything because the schedule is a very complicated

1 organisational task.

2 Would your co-counsel be available should the date not be able
3 to be moved?

4 MR. YOUNG: [via videolink] I believe Mr. Roberts is here.
5 Perhaps he can assist.

6 JUDGE GUILLOU: Mr. Roberts.

7 MR. ROBERTS: [via videolink] Good afternoon, Your Honour. Yes,
8 I would be available on that date.

9 JUDGE GUILLOU: Thank you. This is noted. And I will see what
10 is possible to do, Mr. Young, but I cannot promise anything.

11 MR. EMMERSON: Can I just say I would object to Mr. Young's
12 application, because I think that the next Status Conference needs to
13 be before the 31 October deadline. So I would object to that
14 request.

15 MR. YOUNG: [via videolink] Your Honour, just to shorten matters,
16 if Mr. Roberts is available on that date, that's fine. I am not
17 seeking it to be put back, just to reassure Mr. Emmerson.

18 JUDGE GUILLOU: Thank you, Mr. Young. This is much appreciated.
19 And I would indeed prefer to have our Status Conference before
20 31 October.

21 Ms. Alagendra, please.

22 MS. ALAGENDRA: [via videolink] We are available, Your Honour, at
23 the Court's convenience.

24 JUDGE GUILLOU: Thank you, Ms. Alagendra.

25 Mr. Laws, please.

1 MR. LAWS: [via videolink] Your Honour, yes. I'll be available.
2 Thank you.

3 JUDGE GUILLOU: Thank you very much. You will receive a
4 Scheduling Order that will include an agenda before each
5 Status Conference in due course. I also invite the parties, as
6 usual, to make written submissions if they would like to raise any
7 specific issue during the next Status Conference.

8 At this point, I would like to ask the parties whether they have
9 any other issues they would like to raise.

10 Madam Prosecutor, I think you already responded to this, but you
11 have the floor again.

12 MS. LAWSON: Yes, nothing further. Thank you, Your Honour.

13 JUDGE GUILLOU: Thank you, Madam Prosecutor.

14 Mr. Kehoe.

15 MR. KEHOE: No, Your Honour, just to encourage the Court to put
16 a deadline on the ongoing investigation. Thank you.

17 JUDGE GUILLOU: Thank you, Mr. Kehoe.

18 Mr. Emmerson, please.

19 MR. EMMERSON: Nothing further, Your Honour.

20 JUDGE GUILLOU: Thank you, Mr. Emmerson.

21 Mr. Young, please.

22 MR. YOUNG: [via videolink] No, thank you.

23 JUDGE GUILLOU: Thank you, Mr. Young.

24 Ms. Alagendra, please.

25 MS. ALAGENDRA: [via videolink] Nothing further, Your Honour,

1 other than whether or not we would be required to put in a written
2 submission for extension of time on the 102(3) material or requests.

3 JUDGE GUILLOU: Sorry, can you repeat? I didn't get your point.

4 MS. ALAGENDRA: [via videolink] Whether or not we would be
5 required to put in a written submission for the 102(3) requests.

6 JUDGE GUILLOU: No, because --

7 MS. ALAGENDRA: [via videolink] Or is Your Honour making a
8 decision on it?

9 JUDGE GUILLOU: No, because I intend to issue an oral order
10 today.

11 MS. ALAGENDRA: [via videolink] I'm grateful, Your Honour. Thank
12 you.

13 JUDGE GUILLOU: Thank you, Ms. Alagendra.

14 Let me now issue a couple of oral orders following our debates
15 today.

16 I will issue my first oral order concerning the
17 subcategorisation of Rule 102(1)(a) material.

18 I recall my decision on categorisation of evidence issued on 12
19 March 2021, wherein I decided that no further categorisation was
20 needed in respect of Rule 102(1)(a) material as the Defence already
21 benefitted from the meticulous guidance provided in the detailed
22 outline prepared by the SPO, pursuant to Rule 86(4) of the Rules.

23 I further note that Rule 102(1)(a) material does benefit from
24 the application of standard Rule 109(c) categories in Legal Workflow.

25 In this context, I find that the time and resources that would

1 be required to apply subcategorisation to Rule 102(1)(a) material
2 would slow the disclosure process and add little value in light of
3 the tools already available to categorise such material.

4 I, accordingly, deny the Defence request for subcategorisation
5 of Rule 102(1)(a) material.

6 This concludes my first oral order.

7 I will issue my second oral order concerning the SPO's deadline
8 related to Rule 102(1)(b) material.

9 In light of SPO submissions that certain external factors have
10 delayed disclosure of: First, the statements of three international
11 witnesses with pending Rule 107 clearances; second, reports of three
12 expert witnesses on forensic matters; and, third, certain materials
13 subject to requests for variation of protective measures; the current
14 Rule 102(1)(b) deadline for such material is varied and the SPO is
15 ordered to disclose such material to the Defence by 1 November 2021.

16 As regards translation of Rule 102(1)(b) material, I order the
17 SPO to provide outstanding translations as soon as possible and on a
18 rolling basis, but no later than 1 November 2021.

19 Any requests for an extension of time in relation to the
20 translation and/or disclosure of the outstanding Rule 102(1)(b)
21 material should be made in writing and detail the material to which
22 it pertains by Wednesday, 27 October 2021.

23 This concludes my second oral order.

24 I will issue my third oral order concerning Defence deadlines in
25 relation to Rule 102(3) material.

1 With respect to the Defence request to extend the deadline for
2 requesting access to Rule 102(3) material, good cause for such an
3 extension has been shown in light of: First, the vast number of
4 documents on the SPO's Rule 102(3) notice; and, second, the fact that
5 assessment of materiality would be aided by review of the SPO's
6 Rule 102(1)(b) disclosure.

7 The deadline for all Defence teams to request Rule 102(3)
8 material, as set out in my 24 June 2021 decision and recalled in my
9 8 September 2021 decision on the amended Rule 102(3) notice, is
10 accordingly extended to 5 November 2021.

11 I further order the SPO, by no later than Friday, 26 November,
12 2021, or within three weeks of the Defence indication, whichever is
13 earlier, to: First, disclose or provide access to the selected
14 material that does not require redactions; second, submit a request
15 for protective measures, if any, in respect of the material sought by
16 the Defence and to disclose, as soon as possible, such material with
17 redactions, if granted; and third, I order the SPO to seize me within
18 ten days of the Defence indications should a dispute as to the
19 materiality of the evidence arise.

20 Finally, the deadline for requesting further details remains.

21 This concludes my third oral order.

22 I will, finally, issue a fourth oral order concerning the filing
23 of a preliminary witness list.

24 In light of the parties' submissions, I order the SPO to provide
25 a preliminary witness list to the Defence by 22 October 2021.

1 This concludes my fourth and last oral order today.

2 This concludes today's public hearing. I thank the parties and
3 participants for their attendance. I also wish, as usual, to thank
4 the interpreters for their flexibility, stenographers, audio-visual
5 technicians, and security personnel for their assistance.

6 This hearing is adjourned.

7 --- Whereupon the Status Conference adjourned at 5.28 p.m.

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