

1 Wednesday, 15 December 2021
2 [Status Conference]
3 [Open session]
4 [The accused appeared via videolink]
5 --- Upon commencing at 2.32 p.m.

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

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

9 THE COURT OFFICER: Good afternoon, Your Honour. This is
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 Mr. Prosecutor.

17 MR. FERDINANDUSSE: Good afternoon, Your Honour, and everybody
18 attending and watching today. The Specialist Prosecutor's Office
19 today is represented by Specialist Prosecutor Jack Smith; Marlene
20 Yahya Haage, Legal and Disclosure Officer; and I am
21 Ward Ferdinandusse, Head of Investigations and Prosecutions.

22 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

23 Now I turn to the Defence, please.

24 Mr. Kehoe.

25 MR. KEHOE: Good afternoon, Your Honour. Good to see you.

1 Gregory Kehoe, Mr. Luka Misetic, Pierre Prosper, Sophie Menegon,
2 Dastid Pallaska, and Chiara Loiero on behalf of Mr. Hashim Thaci.
3 Thank you.

4 JUDGE GUILLOU: Thank you, Mr. Kehoe.
5 Mr. Emmerson, please.

6 MR. EMMERSON: Good afternoon, Your Honour, everybody inside and
7 outside the courtroom. This is Ben Emmerson representing
8 Kadri Veseli together today with my co-counsel, Mr. Andrew Strong and
9 Ms. Annie O'Reilly, and our legal assistant Pascale Langlais.

10 JUDGE GUILLOU: Thank you, Mr. Emmerson.
11 Mr. Young, please.

12 MR. YOUNG: [via videolink] Good afternoon, Your Honour. Today I
13 am representing Mr. Selimi, and I am assisted today in court -- in
14 the courtroom, by Mr. Roberts, co-counsel, and Ms. Ryzhenko, Case
15 Manager. And, Your Honour, on their first appearance in the
16 courtroom, I'm also assisted, I believe, by team members Ms.
17 Riva Gjecaj and Ms. Siera Skendo. Thank you.

18 JUDGE GUILLOU: Thank you, Mr. Young.
19 And now I turn to Ms. Alagendra, please.

20 MS. ALAGENDRA: [via videolink] Your Honour, good morning.

21 JUDGE GUILLOU: Sorry, I see Mr. Baiesu asking for the floor.
22 So, Mr. Baiesu, then.

23 MR. BAIESU: Thank you, Your Honour. Good afternoon to you and
24 to everyone in the courtroom. I am Victor Baiesu for Mr. Jakup
25 Krasniqi. By videolink today we have Ms. Venkateswari Alagendra,

1 lead counsel; Mr. Aidan Ellis, co-counsel; and Mentor Beqiri, legal
2 associate. And I am assisted today in the courtroom by
3 Ms. Laura Abia, our support team member. Thank you.

4 JUDGE GUILLOU: Thank you, Mr. Baiesu.

5 Just for the Status Conference, today, shall I address to you,
6 Mr. Baiesu, first, or to Ms. Alagendra?

7 MR. BAIESU: To me first, probably.

8 JUDGE GUILLOU: This is noted. Thank you, Mr. Baiesu.

9 MR. BAIESU: Thank you.

10 JUDGE GUILLOU: Now let me turn to the counsel for victims.

11 But before, I just want to note that Mr. Thaci, Mr. Veseli,
12 Mr. Selimi, and Mr. Krasniqi are attending this Status Conference
13 not physically in the courtroom but via video-conference.

14 Now I turn to the counsel for victims.

15 Mr. Laws, please.

16 MR. LAWS: [via videolink] Good afternoon to Your Honour, and to
17 everyone. Simon Laws, assigned counsel for the victims in this case.

18 JUDGE GUILLOU: Thank you very much, Mr. Laws.

19 And now finally I turn to the Registry, please.

20 MR. ROCHE: Good afternoon, Your Honour. The Registry has today
21 Mr. Jonas Nilsson, Judicial Services Adviser, on my right, and also
22 myself, Ralph Roche, Head of Judicial Services Division. Thank you.

23 JUDGE GUILLOU: Thank you very much, Mr. Roche.

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

1 On 2 December 2021, I scheduled this ninth Status Conference. I
2 asked the parties to provide written submissions if they so wished.

3 On 10 December, the SPO and the four Defence teams submitted
4 their written observations. I thank these parties for their written
5 submissions.

6 The purpose of our hearing today is to review the status of the
7 case and to discuss the topics in our agenda; specifically,
8 disclosure, translations, SPO investigations, Defence investigations,
9 and detention. I would invite the parties to present their views in
10 a concise fashion about each item.

11 But before we start with our first topic, I would like to take
12 time to remark on the conduct that I wish to see from counsel and
13 Prosecutors in this hearing and in future hearings.

14 In the course of the last Status Conference, held on 29 October
15 2021, discussion between the parties sometimes devolved into
16 personalised attacks, and it is not what I would expect of collegial
17 and vigorous debate in the courtroom. I would, therefore, like to
18 recall some principles as outlined in the Code of Professional
19 Conduct for Counsel and Prosecutors before the KSC.

20 Pursuant to Article 6(1)(c) of this code, counsel and
21 prosecutors shall act with respect towards anyone with a standing in
22 the proceedings. In addition, Article 10(a) of this code provides
23 that counsel and prosecutors shall act with due deference to Panels.

24 In light of these principles, I expect the parties to refrain
25 from personalised or aggressive language directed at other parties or

1 participants in these proceedings. Parties shall at all times
2 demonstrate courtesy to the opposing party. Personal comments
3 relating to and personal criticism of an opposing party shall not be
4 tolerated.

5 I would like to remind the parties that in case of
6 non-compliance with these principles and obligation, I would not
7 hesitate to resort to instruments that allow me to uphold order in
8 the courtroom and ensure smooth conduct of the proceedings, including
9 the measures under Rule 63 of the Rules of Procedure and Evidence.

10 The objective of this and future Status Conferences is to
11 provide a forum for constructive discussion so as to fairly and
12 expeditiously proceed with the case, and I expect and encourage the
13 parties to engage in such discussions.

14 I would also like to remind and encourage the parties to be
15 concise and not to repeat themselves in their submissions. This is
16 of particular importance for this Status Conference, as we need to
17 proceed through the items on our agenda before 6.00 p.m. at the
18 latest since, for the sake of the interpreters, they need some rest
19 because they have been in this courtroom since the morning.

20 I would like to thank the parties in advance for adhering to
21 these principles and look forward to a constructive dialogue during
22 this Status Conference.

23 Before we go into matters pertaining to disclosure, which is the
24 first item in our agenda, I will first like to address three issues
25 raised by the Defence in recent filings. The first is the time limit

1 for the next detention review; the second is the Rule 149(2) notices
2 provided by the Defence; and the third is the matter that the
3 Thaci Defence requested, which is to be heard on matters relating to
4 detention review and the submissions of the SPO on contact with
5 witnesses.

6 So let's start with the first of these requests, which is the
7 timeline for the next detention review.

8 I note that the Defence for Mr. Krasniqi, the Defence for
9 Mr. Veseli, and the Defence for Mr. Selimi have requested a variation
10 of existing time limits. In particular, it is requested that they be
11 allowed to provide submissions within ten days of a decision of the
12 Court of Appeals on the third detention review.

13 Do the parties wish to raise any further issues in relation to
14 these matters?

15 Mr. Kehoe, briefly, please.

16 MR. KEHOE: Yes, Your Honour. At this point, our appellate
17 filing, I believe, has to be filed by December 27th, and we would ask
18 for an extension until January 15th, given the holidays.

19 JUDGE GUILLOU: Thank you, Mr. Kehoe.

20 When you say January 15th, is January 15th to provide a position
21 on this or would it be for any ...

22 MR. KEHOE: I believe our appellate schedule has our appeal
23 being filed shortly after Christmas and just prior to New Year's.
24 And what we would like is, given the holidays, to extend that period
25 of time out until January 15.

1 JUDGE GUILLOU: This is not before me. This will have to be
2 filed before the relevant Panel.

3 MR. KEHOE: That's fine, Judge.

4 JUDGE GUILLOU: I don't see any parties requesting to be heard
5 on this matter.

6 So I will now issue my first oral order on the timeline for the
7 next detention review.

8 In light of the Defence requests, I consider that the parties'
9 submissions on detention would benefit from analysis of the impending
10 decisions of the Court of Appeals on the various accused appeals of
11 my last decisions on detention.

12 In this context, I note that Mr. Krasniqi, Mr. Veseli, and
13 Mr. Selimi have waived their right to have their detention reviewed
14 before the expiry of the two-months time limit set out in
15 Article 41(10) of the Law and Rule 57(2) of the Rules.

16 I, accordingly, find that good cause have been shown warranting
17 the requested extension of time.

18 I, therefore, order each Defence team to provide submissions on
19 whether reasons for continued detention still exist by no later than
20 10 days after notification of the relevant decision of the Court of
21 Appeals on their pending appeals against my last detention decision.
22 Responses and replies shall follow the timelines set out in Rule 76
23 of the Rules.

24 Should the Defence for Mr. Krasniqi, Mr. Veseli, and Mr. Selimi
25 decide not to file any submissions, the SPO shall file their

1 submissions by no later than ten days after the Defence deadlines.
2 If the Defence wishes to respond to the SPO submissions, then they
3 may do so ten days after the SPO's deadline.

4 This concludes my first oral order.

5 MR. KEHOE: If I may --

6 JUDGE GUILLOU: Mr. Kehoe.

7 MR. KEHOE: If I may, Your Honour, given the fact that our
8 decision just came down literally this morning, we certainly would
9 want to be incorporated into that extended timeline after the
10 appellate review, whenever that decision might be. So we would make
11 that oral submission at this time.

12 JUDGE GUILLOU: Thank you, Mr. Kehoe. This is noted.

13 I will then issue a written decision as soon as you have filed
14 your appeal. I will wait for the appeal to be filed. But this is --
15 your position is noted in any case and your request is noted.

16 Now in relation to the SPO's disclosure of expert reports.

17 I note that all Defence teams have indicated in their written
18 filings their intent to challenge the qualifications of the SPO's
19 expert witnesses, not accept the expert witness reports, and
20 cross-examine these witnesses.

21 The Defence teams also reserve their rights to file updated
22 notices pursuant to Rule 149(2) of the Rules.

23 In light of the parties' submissions, I formally take note of
24 the Defence Rule 149(2) notices. These notices, and any updated
25 notices, will be included in my handover document to the Trial Panel

1 so the Trial Panel can take these matters into consideration when
2 determining the witness's expert status or the admissibility of the
3 expert witness reports pursuant to Rule 149(4) of the Rules.

4 Do the parties wish to make any further submission on this
5 matter?

6 MR. KEHOE: No, Your Honour.

7 MR. EMMERSON: No, Your Honour.

8 JUDGE GUILLOU: Thank you very much.

9 Now in relation to the Thaci Defence's request to address
10 additional matters at this Status Conference.

11 I note that we have a very limited time to get through a number
12 of agenda items, and I further note that, with respect to the
13 detention review, the issues raised have been addressed in the
14 decision rendered yesterday.

15 As regards the SPO's filing F594 concerning confidential
16 information and contact with witnesses, I note that this filing was
17 filed and distributed on 3 December 2021. Victims' Counsel responded
18 on 10 December 2021. And the Thaci Defence and the Selimi Defence
19 responded today.

20 As I prefer to receive submissions on this matter in writing and
21 do not wish to use our limited time today on this issue, I reject the
22 Thaci Defence request to be heard orally on this matter at today's
23 hearing. I will assess the need for further debate on this at a
24 further hearing when I will review all the submissions that will be
25 filed in writing.

1 Let us now move to the first topic that was listed in the
2 Scheduling Order, which is disclosure.

3 MR. KEHOE: Yes, Your Honour, if I may just discuss the two
4 items that you have spoken about.

5 Having the opportunity to address orally the disclosure or
6 treating of witnesses, we feel that -- and as we have submitted, that
7 we strongly suggest that the Court hold a hearing on those items. As
8 we put forth into our filing, the incursion into the Defence camp is
9 unprecedented, certainly in my career and the career of my
10 colleagues.

11 So the position presented by the SPO at this point would
12 essentially vitiate the Defence and bring them all into the Defence
13 camp.

14 Where am I going with this, Judge. If the Court is considering
15 these measures, we ask very strenuously that the Court engage in an
16 ongoing open discussion in the courtroom as to how these issues are
17 going to be handled, because the way that the Prosecution has
18 presented this would cut the legs off, if you will, pardon my
19 vernacular, of the Defence or the ability to put together a defence.
20 It would allow the Prosecution into the Defence camp. It would
21 violate the attorney-client privilege, et cetera, and would violate
22 our respective clients' rights.

23 So I understand that Your Honour is not going to make a decision
24 on that point now until Your Honour has all of the written filings in
25 this matter, but once the Court does, we strongly suggest that

1 Your Honour conduct a hearing.

2 On the first point, I understand that Your Honour has made a
3 decision on pre-trial detention this morning, and that matter will be
4 appealed. However, there is a regime we're going to be back before
5 you in very short order if your decision is, in fact, affirmed. And
6 one of the things that we wanted to discuss with the Court at this
7 point are the parameters of pre-trial release. What more the Court
8 would need.

9 We haven't had an examination of anybody from the Kosovo police
10 or from third-party countries. The only thing we have had is
11 submissions by the Prosecution talking about the police in Kosovo
12 being corrupt, you can't rely on them, they are the worst
13 organisations in Kosovo, and can't be trusted to follow Your Honour's
14 orders.

15 Those discussions need to be addressed in a public forum and
16 have the Prosecution question representatives from the Kosovo police
17 or representatives from third-party countries and ask the questions
18 that need to be asked in order to satisfy you, Your Honour, that the
19 protective measures are in place to ensure that these four gentlemen
20 will not violate the law, will abide by Your Honour's rulings, and
21 will return to this Chamber as ordered.

22 That is -- I don't seek at this point to revisit Your Honour's
23 order. What I seek to talk about is guidance on what more we need,
24 given the fact, as I presented, that no Kosovar Albanians have ever
25 been released from this Court. They did it in the ICTY, both Serbs

1 and Kosovar Albanians. No Kosovar Albanian has been released on
2 pre-trial release by this Court. Why? Why? Are there no conditions
3 present at any time that would guarantee that these individuals would
4 present themselves to the Court at the proper time, would abide by
5 Your Honour's restrictions, and would abide by any other limitations
6 that Your Honour put forth?

7 That proceeding, again in open court, as with the confidential
8 witness proceeding, has to be addressed in open court so we can hear
9 in open court what the Prosecutor's reservations are about the Kosovo
10 police or any other entity. So, again, it's a request for a public
11 hearing to address reasons how we can ensure that these gentlemen, as
12 they're awaiting trial, as they have for the past year, can go back
13 home and also abide by Your Honour's orders, do what Your Honour
14 wants them to do when they're at home, as opposed to this veiled
15 comments by the Prosecution that they want to hide behind
16 confidentiality orders about how the Kosovo police are corrupt and
17 can't be trusted.

18 We need an examination before Your Honour where Your Honour and
19 the Prosecution and everybody else can question these individuals to
20 ensure that they are going to abide by what Your Honour orders, which
21 is the key. And that's what we're asking for on this.

22 And I don't mean to revisit your decision that you made this
23 morning. But given the fact that we're on a pretty short timetable,
24 where we could very well be back before you in the same exercise for
25 pre-trial release, we wanted to put forth what the Defence needs to

1 advance this position and explain it thoroughly to the Court as
2 opposed to this rumour and innuendo and unsupported allegations made
3 by the Prosecution.

4 JUDGE GUILLOU: Thank you, Mr. Kehoe.

5 Mr. Prosecutor, very briefly on this matter, because this is not
6 in the agenda, please.

7 MR. FERDINANDUSSE: I can be very brief, Your Honour. Thank
8 you.

9 The Thaci Defence has just mischaracterised SPO submissions in a
10 way that would be problematic in any Status Conference but especially
11 so after you have indicated that this is not an issue to be addressed
12 today. So there will be no chance to respond in any sort of time.
13 Thank you.

14 JUDGE GUILLOU: Thank you.

15 Let us now move back to disclosure. I will give the floor to
16 the parties on the disclosure of each evidentiary material
17 separately, as we did in the previous Status Conference.

18 The Rule 101(b) material, which is the evidentiary material the
19 SPO intends to use at trial; the Rule 102(3) material, which is the
20 material relevant to the case as listed by the SPO; the Rule 103
21 material, which is exculpatory material; and the Rule 107 material,
22 which is protected material for which the consent of the provider is
23 requested.

24 So let us start with the disclosure of Rule 102(1)(b) material.

25 At the last Status Conference, I extended the deadline for the

1 disclosure of outstanding 102(1)(b) material and the translation of
2 such material to 31 January 2022.

3 On 5 and 17 November 2021, I issued decisions on the SPO's 11th
4 and 12th requests for protective measures. In its written
5 submissions, the SPO indicated that since the last Status Conference
6 it has disclosed a total of five new Rule 102(1)(b) items, all
7 comprising material related to the 11th and 12th protective measures
8 requests. The SPO has also disclosed two packages containing
9 translations of Rule 102(1)(b) material.

10 I also note that the SPO does not foresee difficulty in meeting
11 the 31 January 2022 deadline for the disclosure of remaining
12 102(1)(b) items including translations.

13 I would like to hear from the parties what progress has been
14 made in relation to the disclosure of Rule 102(1)(b) material; in
15 particular, I would like the SPO to indicate precisely how much of
16 such material remains to be disclosed, and what are the outstanding
17 Rule 102(1)(b) material to be disclosed.

18 I would also like the parties to give their feedback on the new
19 witness entities that have been created in Legal Workflow following
20 my oral order in the last Status Conference.

21 I note that the Defence indicated, in its written submissions,
22 that despite the creation of witness entities, searching for witness
23 material remains insufficient. The Selimi Defence notes, in
24 particular, that very limited information has been populated into
25 Legal Workflow by the SPO in relation to each entity and requests to

1 add the following information: First, all previous statements of
2 witnesses disclosed under Rule 102(1)(b), in whatever form, including
3 transcripts of prior proceedings, SPO interviews, statements, and
4 interviews or public statements given in any form; second, all
5 documents about a particular witness prepared by investigative
6 authorities including, but not limited to, the SPO, such as
7 investigators notes and memos; third, all exhibits shown to a witness
8 during interviews; and fourth, any filing and submissions directly
9 relevant to these witnesses including, but not limited to, protective
10 measures or mode of testimony.

11 The Selimi Defence also suggests that Legal Workflow is set up
12 to link more information in the future to each entity; notably, the
13 proposed exhibits by use of the presentation queue for each entity,
14 proofing notes and transcripts of each witness testimony.

15 Finally, I note from the Selimi Defence submissions that no
16 information has been provided by the SPO on either the review of
17 documents linked to Mr. Selimi or the efforts it has undertaken to
18 link translations, lesser redacted versions and corrected versions of
19 documents of their originals in Legal Workflow.

20 Sorry for having been a bit long, but I invite the parties now
21 to give an update on these issues and other similar problems that
22 they may face regarding the categorisation and linkage of items in
23 Legal Workflow.

24 And I will first give the floor to the Prosecution.

25 Mr. Prosecutor.

1 MR. FERDINANDUSSE: Thank you, Your Honour.

2 In addition to the 102(1)(b) releases you have mentioned, one
3 further package of Rule 102(1)(b) materials was disclosed this week
4 containing 13 items recently received from a third-party institution.

5 Of the over 11.300 Rule 102(1)(b) items which have been
6 disclosed, disclosure of English translations of approximately
7 496 items remain outstanding. Of the over 1.400 Rule 102(1)(b)
8 statements which have been disclosed, disclosure of Albanian
9 translations of approximately 545 items remain outstanding.

10 All requests for variation of protective measures which were
11 outstanding before third-party institutions have now been granted.
12 The SPO has received most of the materials in question and is
13 processing them for disclosure, which we anticipate completing before
14 the end of January. There is only one 102(1)(b) item for which
15 Rule 107 clearance is still awaited, and --

16 JUDGE GUILLOU: Sorry to interrupt you, but I see that the
17 connection with the accused has been suspended, so I will wait until
18 the connection is remade.

19 [Technical difficulties]

20 JUDGE GUILLOU: Madam Court Officer, when you can, if you can
21 give an update to the Court.

22 [Trial Panel and Court Officer confers]

23 JUDGE GUILLOU: So I am informed that the audio-visual
24 technicians need at least 10 minutes to reconnect. So we have two
25 options: Either we proceed without the accused on the line or we

1 wait for these 10 minutes for the connection to be re-established.

2 I have a preference to wait for the connection to be
3 re-established, unless the Defence teams wish me to proceed. But I
4 would rather take a break for 10, 15 minutes.

5 MR. KEHOE: Your Honour, we certainly can't waive without
6 talking to our clients, so we would ask for a delay of 10 to
7 15 minutes.

8 UNIDENTIFIED SPEAKER: [via videolink] Your Honour, I agree.

9 JUDGE GUILLOU: You want me to have a break for 10 to 15 minutes
10 until it's re-established; correct?

11 MR. KEHOE: [Microphone not activated].

12 JUDGE GUILLOU: This is noted.

13 So we're going to have a short break of, let's say, 10 minutes,
14 hopefully 10 minutes, and we will come back into court as soon as the
15 connection is re-established.

16 The hearing is adjourned.

17 --- Recess taken at 3.02 p.m.

18 --- On resuming at 3.15 p.m.

19 JUDGE GUILLOU: Thank you.

20 I see that the connection has been re-established.

21 Mr. Thaci, Mr. Veseli, Mr. Selimi, Mr. Krasniqi, I apologise for
22 this technical interruption. I will ask the Specialist Prosecutor's
23 Office to start from the beginning of its last submissions, because I
24 think this is where the connection has been lost, and I wouldn't want
25 that you are not privy to everything that has been said during this

1 hearing.

2 So I give back the floor to Mr. Prosecutor. Thank you.

3 MR. FERDINANDUSSE: Thank you, Your Honour.

4 In addition to the disclosures mentioned by you in your
5 introduction, one further package of Rule 102(1)(b) materials was
6 disclosed this week containing 13 items recently received from a
7 third-party institution. And of the over 11.300 Rule 102(1)(b) items
8 which have been disclosed, disclosure of English translations of
9 approximately 496 items remains outstanding. Of the over 1.400
10 Rule 102(1)(b) statements which have been disclosed, disclosure of
11 Albanian translations of approximately 545 items remains outstanding.
12 All requests for variation of protective measures which were
13 outstanding before third-party institutions have now been granted.

14 The SPO has received most of the materials in question and is
15 processing them for disclosure, which we anticipate completing before
16 the end of January.

17 There is only one 102(1)(b) item remaining for which Rule 107
18 clearance is still awaited. And as previously indicated, that is one
19 associated exhibit of an international witness.

20 As mentioned by you in your introduction, the SPO is on track to
21 meet the deadline of 31 January 2022 for disclosure of remaining
22 Rule 102(1)(b) items, including translations.

23 On 29 October, Your Honour ordered the SPO to create witness
24 entities in Legal Workflow to link prior statements and associated
25 exhibits to the relevant witness by December 15th, 2021. And as was

1 discussed at the previous Status Conference, there were some
2 technical difficulties encountered in creating the witness entities.

3 The functionality in Legal Workflow for releasing linkages
4 between batches of witnesses and their associated materials became
5 available for testing on 1 December and it was implemented in
6 Legal Workflow on 7 December. The witness entities have been created
7 and relevant relations to evidentiary items have then been made.

8 We have conducted careful checks to ensure that material which
9 may be identifying for the late disclosure witnesses is not linked,
10 and there are some technical challenges that have affected both the
11 creation of the witness entities and their performance, including the
12 appearance of witness index numbers noted by the Selimi Defence. We
13 continue to work with the Registry to solve them.

14 Despite those challenges, 268 witness entities have been
15 released. And if the technical challenges can be met, we anticipate
16 releasing the last entities later today.

17 The SPO is currently finalising the review of all items
18 categorised in relation to Mr. Selimi, and we will soon revert to the
19 Selimi Defence on the results of that review *inter partes*.

20 The SPO has also conducted a review of the linking and metadata
21 of translations, lesser redacted versions and corrected versions, and
22 is continuing to do so. The SPO has fixed missing relationships of
23 translations and metadata where technically possible and will
24 continue to do so. And when this was not possible, the SPO has
25 informed the Registry for their assistance and will continue to

1 follow-up.

2 While some clerical errors have been identified and solved,
3 there are also some technical challenges regarding Legal Workflow
4 that have affected the SPO's review, and constructive discussions on
5 a technical level regarding all these issues will be the best way
6 forward. And like the Selimi Defence, the SPO is open to further
7 *inter partes* discussions regarding all disclosure matters, and these
8 can likely be discussed at the envisaged Legal Workflow forum
9 meeting.

10 As previously indicated, the SPO will gladly participate in such
11 a Legal Workflow working forum. Unfortunately, the Selimi Defence's
12 submissions mischaracterise this communication with the SPO about
13 this matter. We query why Defence teams would wait until 7 December
14 to unilaterally demand a meeting with the SPO at a two-day notice
15 without involving the Registry, while at the same time, apparently, a
16 separate meeting between the Krasniqi Defence and the Registry
17 regarding Legal Workflow issues was being organised.

18 We believe that a Legal Workflow working forum will work
19 particularly well when it involves all parties, is organised
20 constructively, and with fair notice to everyone involved, and
21 respects the Registry's leadership when it comes to technical
22 Legal Workflow issues.

23 We look forward to leave these apparent misunderstandings behind
24 us and cooperate in a constructive manner with all parties involved.
25 We have noted the Registry's response that it supports this approach

1 and stands ready to provide input and assistance on technical issues
2 regarding Legal Workflow. We highly appreciate that as we believe
3 that will be important to move this process forward, and we look
4 forward to a constructive dialogue in January.

5 Thank you, Your Honour.

6 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

7 Just one follow-up question regarding the list of information
8 that the Selimi Defence suggests to include in each witness entity.
9 I understand that at the moment there are some technical difficulties
10 that should be fixed in the following weeks, but do you oppose any of
11 the type of information that is listed in the Selimi submissions that
12 I just recalled before I gave you the floor, or are you in agreement
13 with all of them but it's just a question of technical difficulty at
14 the moment?

15 MR. FERDINANDUSSE: We are not in agreement with everything
16 listed by the Selimi Defence. The Selimi Defence has now raised
17 additional demands regarding the way they believe information already
18 in the possession of Defence teams should be reflected in
19 Legal Workflow.

20 Your order for the creation of witness entities was made in
21 response to the Selimi request that the SPO should create witness
22 entities and link the requisite associated exhibits to each entity.
23 And according to the Selimi Defence, that would be minimal additional
24 work for the SPO.

25 That is what has been done as agreed and ordered. We are open

1 to exploring the new issues raised by the Selimi Defence. The SPO is
2 committed to make available all relevant information to the Defence
3 through Legal Workflow and is willing to see if it can support, in an
4 efficient manner, Defence wishes to carry over that information from
5 Legal Workflow to other working platforms. But the SPO sees no
6 grounds for the kind of unilateral demands now formulated by the
7 Selimi Defence.

8 In addition, it may be queried whether it's appropriate
9 security-wise and a proper use of resources to request the SPO to
10 duplicate in the witness entities information about witnesses that is
11 already available to the Defence.

12 Like the Selimi Defence, the SPO is open to further *inter partes*
13 discussions regarding such more detailed matters, and this can be
14 likely be discussed at the envisaged Legal Workflow forum. Thank
15 you.

16 JUDGE GUILLOU: Thank you for the clarification.

17 Mr. Kehoe, please.

18 MR. KEHOE: Yes, Your Honour. Just a few brief points. I'm
19 always intrigued by the Prosecution saying that the Defence is
20 something less than diligent in providing matters in a timely matter.
21 Just for the record, one matter left out by my learned friend across
22 the bar was that almost half the documents that they provided since
23 the October 29th hearing came within the last 48 hours.

24 So the diligence on disclosing 102(1)(b) material seems to be
25 less than aggressive on behalf of our learned friends.

1 That being said, I turn our most important question back to the
2 question that Your Honour asked in your outline for this hearing,
3 which is: How much is left? Your Honour asked that question and
4 that question hasn't been answered. We're looking at 102(1)(b)
5 material that we've been looking for over a year. How much more is
6 coming? And I'm not talking about the 107 restrictions that they're
7 awaiting for one witness, apparently.

8 But how much is coming across the transom? We had another 899
9 documents since October 29, so what's left to be turned over? And
10 Your Honour rightly asked that question in your outline in
11 paragraph 1(a), and I submit to Your Honour that the Court, as well
12 as the Defence, deserves an answer to that.

13 And with regard to the Legal Workflow, I'm going to let my
14 friends on the Selimi Defence talk about that at some length because
15 they're much smarter than I am. But that being said, I will tell you
16 that in my review of the Legal Workflow, which the Court ordered on
17 29 October that it be done, I don't want to put words in your mouth,
18 but the intent was certainly expeditiously. It looks like very
19 little was done until the early part of December.

20 And right now, the Legal Workflow documents that I reviewed with
21 the assistance of my colleagues is deficient almost across the board.
22 Yes, they have some numbers in there, but all the other requisite
23 information that you would need in order to make this a functional
24 piece for moving this case along is gone. Query: What was the
25 Prosecution doing from 29 October until, I guess, 2 December?

1 But with regard to the specifics of Legal Workflow, I will turn
2 to my colleagues on the Selimi Defence to give some more details
3 about that.

4 JUDGE GUILLOU: Thank you, Mr. Kehoe.

5 Mr. Emmerson, please.

6 MR. EMMERSON: On a general level, we've noted in our written
7 submissions that so far we've had - it's obviously a little more than
8 that now, because a couple of days have passed - 13.800 items
9 labelled under Rule 102(1)(b), of which more than 11.000 post-date
10 23 July deadline. And one can hear as well about the increased
11 volume just before this Status Conference.

12 Again, I suppose I would echo the comment made by Mr. Kehoe that
13 we obviously need to know how much more there is and what it is, in
14 broad terms, and to have some idea of how much more to expect. I
15 mean, are we to expect a huge volume of material, a glut in January
16 or not? And that would be a helpful indication. But overall -- I am
17 going to leave my co-counsel to deal with certain specifics. I'll go
18 through them in a minute.

19 Overall, I would like to simply lay down the marker that if you
20 look at the timeline for the way in which the Prosecution has served
21 its evidence and the length of its proposed pre-trial brief and the
22 number of witnesses that are going to require to be called at trial
23 on the current witness list, I have to be frank, we haven't and won't
24 have until sometime into the new year, probably some considerable
25 time into the new year, have even done the first read through of

1 everything. So that is the reality of the situation that we all now
2 find ourselves in.

3 I'm going to, if I may, defer to Mr. Strong to deal with witness
4 entities and the Rule 103 issues, and to Ms. O'Reilly to deal with
5 102(3) material.

6 JUDGE GUILLOU: Mr. Strong, please, on the witness entities.
7 We'll address the 102(3) later.

8 Mr. Strong, please.

9 MR. STRONG: Excellent. Thank you. Just with respect to the
10 witness entities, I want to emphasise that we see this as a
11 fundamental piece of the information infrastructure in this case.

12 As Your Honour knows, up until this point the -- the way the
13 disclosure has been carried out is such that as you're reading
14 through a witness, if there's a document that's described by the
15 witness or used with that witness, you need to search across the
16 entire sea of disclosure to find it. And if it doesn't have an ERN
17 attached to it, it's effectively lost.

18 So for the first time now we're able to gather all of these
19 documents in one place, and that is only -- so that's such a welcome
20 development, but it's only useful if it can be used. And so to have
21 a witness with ten documents that are just identified by an ERN and
22 not a description or a name isn't particularly helpful. It still
23 requires some considerable time.

24 The only other point to make on this is that because this is
25 happening now at this stage of the proceedings, the Defence is in a

1 position where we're now having to revisit the witnesses that we've
2 already read to read them in context with the documents that they're
3 associated with. And with a case where there's 60 or 70 witnesses,
4 that's a cumbersome task. But in this case, where there's 330
5 witnesses, that is going to have knock-on effects in terms of the
6 Defence's timeline and preparation. And so I want to make sure that
7 that's put on the record. Thank you.

8 JUDGE GUILLOU: Thank you, Mr. Strong.

9 Mr. Strong, do you want to add anything? Thank you.

10 Mr. Young, please.

11 MR. YOUNG: [via videolink] Your Honour, thank you. Well, first
12 of all, before I turn to Legal Workflow, as there's a lot to discuss
13 in relation to that, let me deal with a matter raised in relation to
14 paragraph 5 of our written submissions. I think Your Honour referred
15 to them earlier, where you drew attention to the fact we indicated
16 that no information had been provided by the SPO in either their
17 review of documents linked to Mr. Selimi or the efforts it's
18 undertaken on translations, lesser redacted versions, and so on.

19 Just to be complete, that was written on 10 December.
20 Yesterday, we received an e-mail from the Prosecution. So it's right
21 to say they have now responded, and we will consider their response
22 carefully.

23 Turning to the main issue, Your Honour, in relation to
24 Legal Workflow and the matters we raise at paragraph 22 of our
25 written submissions. Your Honour read them out, so I don't repeat

1 them. But basically, we submit these are obvious and sensible case
2 management proposals. And these are very obvious and evident
3 requests for better case management.

4 What the Prosecution appear to be saying is, they seem to be
5 saying that they might accept some of our proposals but not others.
6 I'm not clear, to be honest, what they're saying in terms of whether
7 they're prepared to link statements but not transcripts, interviews
8 but not expert notes or filings. I think the position, Your Honour,
9 is that the Prosecution should respond, now that they've seen our
10 filing, and indicate what they're prepared to do and what they're not
11 prepared to do so we can litigate it.

12 But this is very important because, as Your Honour knows, in any
13 witness package, normally the key ingredients of a witness package
14 will be a witness's prior statements, any prior transcripts of
15 evidence, any reports and suchlike, and exhibits. So these are, with
16 respect, all eminently sensible proposals, and I cannot see for the
17 life of me any reason why the Prosecution would object to that.

18 Now, the other matter is, of course, this. As I understand as
19 of today, there are now 268 witness packages. I have to confess I'm
20 wholly unclear, and I don't think we've heard this from the
21 Prosecution, to what extent they say they have populated in
22 Legal Workflow these 268 witness packages with prior witness
23 statements, with prior transcripts, with prior reports, prior
24 interviews. These are all fundamentally important to the Defence.

25 And so I do ask that the Prosecutor make it clear to Your Honour

1 today and to the rest of us, what have they done? Because from what
2 I can see, he's really ducked that question wholesale. So if we can
3 know that, that would be helpful.

4 There's been no mischaracterisation. The Defence for Selimi
5 have actively engaged with the Prosecution and sought to assist them.
6 As Your Honour knows, Mr. Roberts and I are quite familiar with
7 Legal Workflow, Your Honour may remember, from a long time ago. It's
8 not something that magically appeared, like TikTok, in the last year
9 or two. It's been around for over ten years. It's been used by the
10 international courts for over ten years, so I fail to understand how
11 in a case with the high spec that the KSC has, how it is that only a
12 few days ago they started to organise the functionality of
13 Legal Workflow when it's meant to be a core aspect of case
14 preparation.

15 I don't frankly understand that. But we will work with the
16 Prosecution, we will work with the Registry to do anything we can.

17 But our submissions are clear, they're on paper, they deserve a
18 response. Because these are very important for the way in which the
19 Court works, the expeditious way in which the Court can work in the
20 future, and it's important not just for the Defence but for the
21 victims and for the Prosecution.

22 And if this is not started, as Mr. Roberts has said on previous
23 occasions, if it's not fixed now, it's going to get a whole lot worse
24 in the future. So I would really strongly endorse the Prosecution to
25 grasp the nettle, indicate what their problem is with our proposals,

1 because in my respectful submission, they're all eminently sensible.

2 JUDGE GUILLOU: Thank you, Mr. Young. This is why I recalled
3 all your proposals in my introduction to this topic.

4 Mr. Baiesu, please.

5 MR. BAIESU: Thank you, Your Honour. Mr. Ellis will make our
6 submissions covering this agenda item.

7 JUDGE GUILLOU: Thank you.

8 Mr. Ellis, please.

9 MR. ELLIS: [via videolink] Thank you, Your Honour. And I will
10 address all the issues on agenda item 1 as well in due course,
11 Your Honour.

12 Your Honour, there are a range of technical disclosure issues
13 persisting in relation to Legal Workflow, much as we've outlined in
14 previous Status Conferences. It had always been our intention that
15 those be addressed between the parties at a forum at which the
16 Defence would attend, the SPO would attend, and a representative of
17 the victims, of course, as well.

18 I regret that hasn't happened before this Status Conference.
19 It's, of course, something that you'll recall we've been proposing
20 for some time, back as early as September, I believe. Nonetheless, I
21 believe the intention is that it will happen in January, and I hope
22 there will be a more substantive update to give Your Honour. And I
23 very much encourage all parties to attend that forum in a
24 constructive spirit and to grapple with the technical issues we are
25 all facing.

1 In relation to the specific issue of witness identities, I
2 strongly endorse and support the suggestions made by the Selimi
3 Defence. We agree with those. Thus far, there's been no
4 communication whatsoever as to exactly what the SPO is doing in
5 relation to these witness entities.

6 I've received, I think, 268 separate automatically generated
7 e-mails telling me that a witness entity has been created, but no
8 information whatsoever as to what that means, what exactly has been
9 linked to those witnesses. Are those entities now said to be
10 complete, or is there more work ongoing?

11 Those are the answers that we seek. Thank you, Your Honour.

12 JUDGE GUILLOU: Thank you, Mr. Ellis.

13 Let me give the floor back to the SPO, especially on two points
14 that have been raised by the Defence, and I think rightfully so. If
15 I go back to the transcript, I think you mentioned the material to be
16 disclosed, but you mentioned the translation that is remaining, not
17 the material that remains to be disclosed. So I would like to have a
18 specific and precise figure on the material that is left to be
19 disclosed.

20 And, second, which, I think it was raised by Mr. Selimi, out of
21 the category, what has been populated so far in the witness entities;
22 and is it just a start, or is it to be populated in the following
23 weeks once the technical glitches will have been solved?

24 Mr. Prosecutor.

25 MR. FERDINANDUSSE: Thank you, Your Honour. First, on the

1 numbers of the Rule 102(1)(b) disclosures, I note that the number of
2 disclosed items mentioned by the Thaci Defence are translations of
3 previously disclosed Rule 102(1)(b) materials and the translation
4 numbers have been indicated very precisely, as you said.

5 And I believe that the numbers of 102(1)(b) materials still to
6 be disclosed, not being translations, are one-digit numbers. I don't
7 have the exact number. I could -- but it is less than ten, I
8 believe.

9 When we are talking about the witness entities, I've indicated
10 we are open to further discussions on these matters, and I believe
11 that is the correct way to proceed with them for a number of reasons.
12 First, the issues being discussed here are both of a technical nature
13 and are of a question who, which party is feeding what information
14 into Legal Workflow.

15 It is quite certain that there are differences of opinion
16 between the Selimi Defence and possibly other Defence teams and the
17 SPO. However, I do believe that further discussions on a more
18 detailed basis by the people who have most knowledge of
19 Legal Workflow will be beneficial to diminish those differences of
20 opinion, because I do believe that our positions have not been
21 brought together as much as is possible.

22 For example, redacted and revised versions are currently
23 identifiable by way of their ERN, and transcriptions of SPO
24 interviews are not translations, in our view. And I believe that a
25 further discussion, taking into account each other's points of view,

1 will be beneficial to make sure that we only put before the Chamber
2 differences in this regard that have been fully explored.

3 I do note that the resources required to link lesser redacted
4 and revised documents and as well as to populate witness entities
5 with all possible information partly depend on the technical aspects
6 of Legal Workflow, but it would in any case seriously diminish
7 available resources for other disclosure work streams, and that would
8 be done to duplicate information already available to the Defence.

9 Now, the SPO is willing to, with an open mind, discuss with the
10 Defence why it is that these requests are being made and what are
11 possible alternatives. But at this stage, it does not seem to us to
12 be the best use of SPO disclosure capacity, and we believe it will be
13 beneficial to continue such discussions. Thank you.

14 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

15 If I may, before giving the floor to the Defence. This issue of
16 populating Legal Workflow for the witness entities is beneficial to
17 the Defence, certainly, but will also at a certain point be
18 beneficial for the Trial Panel. And so this is something that is to
19 be taken into account for the future.

20 Very briefly, Mr. Kehoe.

21 MR. KEHOE: Just briefly. Just by way of clarity, Judge, with
22 regard to 102(1)(b) documents, is it the position of the SPO that the
23 number of documents to be disclosed is somewhere between 1 and 10?
24 Is that what I'm hearing?

25 JUDGE GUILLOU: I think it's even between 1 and 9, because

1 single digits means --

2 MR. KEHOE: 1 and 9, single [Overlapping speakers] ...

3 JUDGE GUILLOU: -- between 1 and 9. So that's what I
4 understood.

5 MR. KEHOE: So we are not getting anymore -- there are no more
6 documents above a single-digit amount that fall in the category of
7 102(1) (b). Do I understand that correctly?

8 JUDGE GUILLOU: That's what I understood. We can go back to the
9 transcript, but I think the Prosecution said "I believe," so there is
10 a small caveat. But that's also what I understood. I understood
11 single digit; i.e., between 1 and 9. The figures that have been
12 given by the SPO at the beginning of this item on the agenda was
13 referring to the translations.

14 MR. KEHOE: Yes, yes.

15 JUDGE GUILLOU: Mr. Prosecutor, do you wish to add anything on
16 this?

17 MR. FERDINANDUSSE: Sorry, Your Honour. Indeed, I have given
18 the precise number for the translations to be disclosed, and we were
19 discussing other items than translations. And I fully agree to your
20 definition of single-digit numbers. Thank you.

21 JUDGE GUILLOU: So I think that's clear.

22 MR. KEHOE: [Microphone not activated].

23 JUDGE GUILLOU: Thank you very much.

24 I don't see anybody requesting the floor. Let me just invite
25 the parties to continue their discussion on Legal Workflow -- ah,

1 Mr. Young, please, briefly.

2 MR. YOUNG: [via videolink] Yes, thank you, Your Honour. Very
3 briefly.

4 Firstly, I don't believe that the Prosecutor has responded to
5 the matter that I raised with Your Honour; namely, to give us some
6 information as to his understanding of the level of population of the
7 268 witness packages in terms of the very obvious basic proposals we
8 made in our paragraph 22. I don't believe the Prosecutor's answered
9 that in any way, shape or form.

10 Secondly, the Prosecutor appears to suggest that it may not be
11 the responsibility -- at least that's how I interpreted it. It may
12 not actually be the responsibility of the Prosecutor -- or there may
13 be an issue about who feeds the information to Legal Workflow. With
14 respect, that's quite an outrageous suggestion. I don't know if he's
15 suggesting the Registry staff should do this.

16 As Your Honour knows, it's the Prosecution who bring the case.
17 They are responsible for presenting the case, and that includes
18 presenting the evidence in a proper manner before the Court and the
19 Trial Panel. And this appears to be a suggestion of an utter
20 abdication by them for resource difficulties, and that's really
21 utterly unacceptable.

22 And so my learned friend from the Prosecution suggests, well,
23 some of the alternatives -- let's sit down and discuss the
24 alternatives. In my respectful submission, I can say this very
25 clearly, there are no alternatives. These are very basic, obvious

1 things, and the fairness of the proceedings will be significantly
2 undermined if the Prosecution do not state what they're prepared to
3 do and populate the Legal Workflow as we've asked.

4 JUDGE GUILLOU: Thank you, Mr. Young.

5 Mr. Prosecutor, do you want to add anything?

6 MR. FERDINANDUSSE: I will just add my invitation to discuss
7 these things constructively on a technical level by the people who
8 know most about the functioning of Legal Workflow.

9 I note that the Selimi Defence has indicated being open to do so
10 in several e-mails to us, and so I would suggest we do so. Thank
11 you.

12 JUDGE GUILLOU: So I invite the parties to continue their
13 discussions, but this matter will be re-evaluated at the next
14 Status Conference. And I invite the parties, especially the Selimi
15 Defence, to give an update in its submissions before the next
16 Status Conference on this matter, and especially if there are
17 categories that are not populated that you would like the SPO to
18 populate in the future.

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

21 I remind the parties that at the last Status Conference I
22 suspended the remaining Defence deadlines for Rule 102(3) material.
23 Since then, the SPO has indicated that three Rule 102(3) disclosure
24 packages have been released. I note that further packages have been
25 disclosed yesterday evening on top of these ones.

1 Regarding the disclosure timelines of Rule 102(3) material, the
2 Defence submits that no deadline should be re-established for
3 requesting such material, as the Defence will need to make further
4 requests in the future, first, as a result of the significant number
5 of witnesses for whom disclosure of their identity is delayed; and,
6 second, once the Defence have had the opportunity to conduct more
7 fulsome investigations.

8 The Defence considers that it shall have the ability to conduct
9 further review of the Rule 102(3) notice and make further requests
10 each time new information is received.

11 The SPO indicated that, given the multiplicity of concurrent
12 requests, their varying size and complexity, and the need to compare
13 and coordinate between the requests, there would be difficulty in
14 ascribing deadlines to individual requests.

15 I also note the Krasniqi Defence request that the SPO should be
16 ordered to disclose the relevant Rule 102(3) material by
17 14 January 2022. And I further note the Selimi Defence submissions
18 regarding the overlap between Rule 107 material and Rule 102(3)
19 material, and the potential need for a supplemental Rule 102(3)
20 notice.

21 I would like to hear the parties on the disclosure calendar of
22 this Rule 102(3) material and, more generally, an update on the
23 disclosure of this category of material.

24 Mr. Prosecutor.

25 MR. FERDINANDUSSE: Thank you, Your Honour.

1 As indicated in our written submissions, the SPO has continued
2 to work actively on the processing of Rule 102(3) requests. And
3 until this week, eight packages have been released.

4 The SPO anticipates releasing at least four more packages this
5 week. And before the start of the judicial recess, at the end of
6 this week, more than before 12.500 items relating to requests from
7 each of the Krasniqi, Selimi, and Veseli Defence teams will have been
8 released since the last Status Conference, and each Defence team with
9 outstanding requests will have received multiple and substantial
10 packages.

11 THE INTERPRETER: Interpreter's note: The transcript in
12 interpreters booth has frozen.

13 JUDGE GUILLOU: The interpreter just mentioned that the
14 transcript in the interpretation booth has frozen. So before we
15 resume, I will ask the Court Officer to inform me if this has been
16 resolved.

17 This might involve rebooting the software. It might take a
18 couple of seconds. I hope not minutes.

19 I think we are now ready to start again.

20 Can the interpreters confirm to me in the headphones that the
21 issue has been resolved?

22 THE INTERPRETER: Yes, Your Honour. It has been resolved.

23 JUDGE GUILLOU: Thank you very much.

24 Mr. Prosecutor, sorry for the interruption. You can proceed.

25 MR. FERDINANDUSSE: Thank you, Your Honour.

1 Rather than processing 102(3) requests in their entirety,
2 strictly in the order as received, the SPO has proceeded to process
3 various outstanding requests from different Defence teams aiming to
4 disclose substantial packages to all Defence teams with outstanding
5 requests.

6 In doing so, we have taken into account the timeframe for the
7 lifting of protective measures for witnesses this week. If we would
8 have fully processed outstanding requests in the order received, that
9 would have resulted not only in uneven disclosure to different teams,
10 but also in unnecessary redaction and litigation to conform to
11 protective measures being lifted a short time later.

12 These are the reasons that for the second request of the
13 Krasniqi Defence team some 75 per cent has been disclosed in this
14 period rather than everything, and we expect to disclose the
15 remaining items of that request in January.

16 Due to the number and sizes of the multiple 102(3) requests of
17 the different Defence teams, there is still substantial work to be
18 done for the SPO. We welcome the fact that a recent 102(3) request
19 of Krasniqi has been joined by the Selimi Defence team as joint
20 requests are more efficient to process and can thus contribute to a
21 faster completion of this procedure.

22 Processing all outstanding 102(3) requests is a priority for the
23 SPO, and we are planning to commit considerable further resources to
24 this work stream in the coming weeks, resulting in a substantial
25 increase in the pace of review and processing. While 102(3) packages

1 will keep being disclosed on a rolling basis, we anticipate that this
2 intensification will result in a high disclosure turnout, especially
3 in February.

4 For a number of reasons, it is difficult to set deadlines for
5 individual requests. Not only do the requests vary greatly in number
6 of items, the processing time for each item is also very different,
7 depending on the public or sensitive nature of the document, its
8 language and size, and its relation to other similar or related
9 documents.

10 Assessing the possible need for redactions cannot be done in
11 isolation but often requires review of a number of related documents,
12 including ones already disclosed or being requested in other 102(3)
13 requests. It will benefit the efficiency of processing and avoid
14 unnecessary litigation if we retain the flexibility to keep grouping
15 similar and related sets of documents from various requests for
16 review and processing and disclosing these on a rolling basis. Thus,
17 the SPO requests to keep the deadlines suspended until the next
18 Status Conference in February.

19 We will be able to report on the results of our further
20 intensification of this work stream and more concretely forecast the
21 resulting disclosures in February then. If there is also more
22 clarity about the status and timeline of the Defence 102(3) requests
23 at the next Status Conference, a more concrete discussion of the
24 timeframe for processing the requests in their totality can be held
25 then. Thank you.

1 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

2 Mr. Kehoe, please.

3 MR. KEHOE: Yes. Remarkably, Judge, we have found common ground
4 with regard to the suspension of any deadline for 102(3) material at
5 this point, Judge. We believe, as the Prosecution does, that any
6 deadline for that is premature given all of the outstanding matters
7 that have yet to be disclosed, witnesses, the unredaction of the
8 indictment, the multitude of issues that Your Honour knows about. So
9 a suspension of that timeline we agree is warranted.

10 JUDGE GUILLOU: Thank you, Mr. Kehoe.

11 Mr. Emmerson.

12 MR. EMMERSON: I'm going to ask Ms. O'Reilly to deal with this
13 matter if I may. Simply recording, by way of introduction, that the
14 Defence have made requests for 16.270 items and have so far received
15 79. So whilst I entirely accept that it may be that the Prosecution
16 are going to devote greater resources to speeding up the process, at
17 the moment it's barely got off the ground as far as we're concerned.

18 JUDGE GUILLOU: Thank you, Mr. Emmerson.

19 Ms. O'Reilly, please.

20 MS. O'REILLY: Thank you, Your Honour. And just a brief
21 correction. Actually, so far we have received 1.736 as a result of
22 last-minute disclosure before this Status Conference. But, yeah,
23 it's still at only about 10 per cent of what we've requested overall
24 over the course of nine separate requests.

25 We are unaware of any particular protective measures requests

1 that are outstanding in relation to this material, and we would note,
2 furthermore, that we have no indication of when the rest of those
3 documents will be disclosed, except that it now appears that will be
4 at some point after the end of January when they're done with their
5 pre-trial brief material.

6 We agree that there should be no deadline imposed on Defence
7 requests. As what is material to the Defence, obviously, changes as
8 we get full oversight of this case, which we still have not been able
9 to do as a consequence of the volume and pace of disclosure. So our
10 submission is that the deadline will have to be suspended
11 indefinitely for us.

12 However, if the Prosecution continues to disclose Rule 102(3)
13 material at this rate or anything comparable to it, it will be maybe
14 the middle of next year by the time they've dealt even with the
15 requests that we have so far submitted. Those amount to, as we've
16 said, 16.270 documents. And we anticipate, at a minimum, requesting
17 a further 25.000.

18 So we do submit that some deadline will have to be imposed on
19 the Prosecution in terms of responding to our requests if the
20 exercise is to be at all meaningful.

21 And, finally, with respect to translations. As we have put in
22 our written submissions, we note that many of the documents that we
23 have so far received from the Prosecution are not in English, which
24 is the working language of this case. We recall, in your
25 Framework Decision, issued on 23 November last year, that it was

1 written that the disclosing party must ensure that the evidence,
2 including witness statements, is disclosed in English, the working
3 language of the proceedings.

4 We are, therefore, requesting that the SPO be ordered to
5 disclose the non-English material pursuant to Rule 102(3) that we
6 have been receiving along with an English translation of that
7 material, whether it is in draft or final format, indicating
8 whichever it is, which we assume was used to evaluate the evidence to
9 determine that it was relevant to our case.

10 Those are my submissions.

11 JUDGE GUILLOU: Thank you, Ms. O' Reilly.

12 Mr. Young, please.

13 MR. YOUNG: [via videolink] Thank you. Just very briefly, two
14 points, if I may, on 102(3). And then if I may, I'm going to ask
15 Mr. Roberts to address you on the issue of suspension and deadlines.

16 So, firstly, in relation to an update in relation to the Selimi
17 102(3) disclosure. It's right to say we've received three lots of
18 102(3) disclosure: In October, 107 items; on 10 December, so last
19 week, 4.052 items; and then yesterday, we received 1.796 items. So,
20 Your Honour, we have some -- we've received some 5.000 ...

21 JUDGE GUILLOU: Mr. Young, you were frozen for -- sorry,
22 Mr. Young, you were frozen for the past 15 seconds. If you can just
23 repeat what you just said. Thank you very much. Sorry for this.

24 MR. YOUNG: [via videolink] Okay. Well, it is rather freezing
25 here in London.

1 Yes. So I was just indicating that we've received three
2 different packages of 102 material: One in October, one on
3 10 December, another one on 14 December. And in total, Your Honour,
4 we've received some 5.900 items of 102(3) material, which is some
5 10 per cent of the items we requested, which goes to some 39.839
6 items.

7 And I can indicate to Your Honour that we have engaged with the
8 Prosecution to identify, and we have identified, 3.179 priority items
9 to ensure and assist the Prosecution focusing on that very important
10 material.

11 Just one other point. In relation to 102(3), Your Honour will
12 be aware that in our filing we raised the issue of the size and scale
13 of the Rule 102(3) items. And I think that at the time of
14 Your Honour's Framework Decision back in November 2020, the
15 Prosecution indicated there would be some 100.000 items on the 102(3)
16 list. And presumably, to come up with that figure, the Prosecution
17 must have assessed, presumably, these 100.000 items as being
18 potentially material to Defence preparation, because that's what it's
19 all about.

20 Now, of course, it's right to say that the Prosecution should
21 always review the figures and their materials, and so the figures can
22 change, I accept that, and they can go upwards and they can go
23 downwards, as they realise from their evidentiary holding base there
24 may be more or less than they first anticipated.

25 But what is, frankly, of concern to the Selimi Defence team, is

1 that, in this case, the figure of 100.000 on the 102(3) list was
2 reduced by such a substantial amount, because as Your Honour knows,
3 the figure that we were provided on the notice, I think, came down to
4 68.753, some one-third reduction in items. Given that these are
5 items which are deemed to be potentially material to the Defence
6 preparation, we are pursuing how it can come around and how it can
7 come about that at one moment in time some 30.000 extra items were
8 deemed potentially relevant to the Defence, and then some months
9 later, that's been revised to a much reduced figure.

10 So in order to satisfy ourselves about the methodology that the
11 SPO have deployed in their reassessment or their process of
12 disclosure, Your Honour may have seen at paragraph 13 of our filing
13 we asked the Prosecution to indicate to us what criteria and
14 methodology were applied to identify the 68.000 items identified by
15 the SPO. And we are very sensitive about this because, as
16 Your Honour made clear, I think, in the Framework Decision, it's --
17 whereas the Defence may know their case best, we can only work with
18 what we're told about. And the reality is the Prosecution are making
19 a very important assessment, professional assessment on relevance and
20 materiality.

21 And so we will pursue the Prosecution, I just give them notice,
22 so that we can get an answer to explain how such a massive reduction
23 in the 102(3) list is made. And because it -- on the face of it, it
24 cries out for an answer. And at the end of the day, as Your Honour
25 knows, and as Your Honour said rightly, I think, in the

1 Framework Decision, it's not for the Prosecution to tell the Defence
2 what's material to the Defence. And identifying what's potentially
3 relevant to the Defence may be a much more difficult issue for the
4 Prosecution than the Defence because, obviously, we're in a very
5 different position.

6 I won't repeat what was said last time by my learned friends
7 Mr. Emmerson and Mr. Roberts about, basically, a general request to
8 hand over in toto the entirety of the 68.000. But it may well be we
9 will need to revisit that if there is no cooperation with the Defence
10 in terms of them providing us the ones that we at least are able to
11 identify. Because as Your Honour knows, we can only identify what's
12 put on the Excel spreadsheet.

13 If I can just now ask Mr. Roberts just to address you on
14 suspension and deadlines, please.

15 JUDGE GUILLOU: Thank you, Mr. Young.

16 Mr. Roberts, please.

17 MR. ROBERTS: Thank you, Your Honour. I'll be very brief.

18 Obviously, similar to my colleagues, we don't perceive that it
19 would be fair or appropriate to apply any deadline to Defence
20 requests for Rule 102(3) disclosure. There is no justification for
21 doing so. Obviously, as the case changes and expands and evolves, we
22 need to be able to make requests. We don't need -- or we should not
23 be required to seek leave to do so after the expiration of a certain
24 deadline. So no deadline for us.

25 However, for any requests that we have made, there does need to

1 be, if I can suggest, a carrot and a stick to the Prosecution to
2 actually ensure they are complied with. I think an ultimate deadline
3 may be difficult, but certainly a requirement for them to respond
4 expeditiously, and a concrete requirement does tend to focus the mind
5 a little bit. How exactly that operates, I think, may well be
6 something that we need to work with the Prosecution to do. And as
7 I've repeatedly said, I'm more than happy to do so.

8 I would suggest, though, a little bit of constructive response
9 or a constructive attitude back from the Prosecution in this regard.
10 And when we ask for methodology on how they come up with this
11 document, they don't give us a banal and irrelevant response saying,
12 "We looked at what documents were relevant and we gave those." We're
13 trying to work out with how they came up with a list so we can avoid
14 litigation. If they've covered everything, great. I'd be more than
15 happy not to have to litigate issues. But if they don't, then that
16 does actually assist us to knowing that in advance of bringing it
17 before Your Honour.

18 So I would request that they be politely encouraged, if not
19 ordered, to actually respond properly to that request, to provide us
20 in detail information as to how they came up with their list so we
21 can work out what's not on it, what they've removed. Without that,
22 then we'll just file before Your Honours. But then they complain
23 that we haven't brought it to them first.

24 So in relation to the list itself and the deadlines, I think
25 that's all I would suggest.

1 The one other issue in relation to this which crosses over to a
2 later question is Rule 107. We did, subsequent to the last
3 Status Conference, raise the issue with the Prosecution in relation
4 to 107 clearance. There was an exchange of e-mails. They have
5 suggested that they will be preparing a filing very soon on this. I
6 think as we suggested in our submissions, it would assist us to know
7 when that's coming and approximately how many documents that's
8 relating to.

9 Obviously, the more information we have, the more we can be
10 prepared and, therefore, plan ahead. So that's my submissions.
11 Thank you, Your Honour.

12 JUDGE GUILLOU: Thank you, Mr. Roberts.

13 Mr. Baiesu, please.

14 MR. BAIESU: Thank you, Your Honour. I defer to Mr. Ellis to
15 deal with these issues. Thank you.

16 JUDGE GUILLOU: Sorry, Mr. Ellis. I forgot. You mentioned to
17 me that you were in charge of this item in the agenda. I apologise.
18 Mr. Ellis, please.

19 MR. ELLIS: [via videolink] Not at all. Thank you, Your Honour.
20 Our position is essentially the same as that advanced by the Selimi
21 Defence, in that we agree with all previous teams that it's not
22 appropriate to set a final deadline for the Defence to make requests
23 at this stage.

24 We would, however, encourage the Court to setting a deadline for
25 the Prosecution to respond to requests when they are made.

1 And the background to that, Your Honour, is that in October we
2 made two requests pursuant to Rule 102(3), totalling some 14.000
3 documents in total between the two requests. Since the last
4 Status Conference, some six weeks ago now, we have received two
5 packages. We've received disclosure batch 126, which comprise
6 41 documents; and disclosure batch 114, which comprised two
7 documents.

8 I was surprised to hear the Prosecutor say that we'd, therefore,
9 received 75 per cent of our second request. Our second request was
10 some 5.900 documents. On my maths, which is never something that
11 anyone should rely on, but on my maths, that would be less than
12 1 per cent. But perhaps there is another disclosure batch imminent.

13 Be that as it may, Your Honour, recently in December we'd made a
14 further request for, again in rough terms, another 14.000 documents.
15 And it would appear to me that the hole created by Rule 102(3)
16 requests is getting bigger rather than getting smaller, because the
17 volume of new documents being requested is still far greater than the
18 documents being released to us by the Prosecution.

19 And that's why we say some deadlines need to be considered for
20 the Prosecution to respond. I know that initially in filing 99, the
21 Framework Decision, the Prosecution were to respond to requests
22 within three weeks. When the Prosecution sought an extension in
23 filing 527, I think the suggestion was that they should have six
24 weeks to respond to these requests.

25 At the moment, we're certainly beyond three weeks, and I think

1 we're also well beyond six weeks. And all of these delays, of
2 course, matter, because Mr. Krasniqi has now been in detention for
3 more than a year. And it can't be right that he remains and all the
4 accused remain there whilst disclosure continues to be delayed.

5 So we would say some deadline does need to be imposed on the
6 Prosecution. We've suggested, I think, mid-January in our filing for
7 the requests that have already been made. I was tempted to set a
8 shorter deadline but, of course, that rather runs into the Christmas
9 recess. So we set mid-January, trying not to be unreasonable, but
10 these requests do need to be dealt with.

11 JUDGE GUILLOU: Thank you, Mr. Ellis.

12 Let me turn back to the Prosecution. If you can answer the
13 questions from the various Defence teams, especially the -- if you
14 can give an update on the Rule 107 material and the need to update
15 the list with this material, and also the criteria that you've used
16 to identify all the items on the list as was mentioned by the Selimi
17 Defence in its written submissions.

18 Mr. Prosecutor.

19 MR. FERDINANDUSSE: Thank you, Your Honour.

20 Let me start with the criteria. When it comes to the questions
21 by the Defence about the way the 102(3) list was generated, we have
22 indicated before that the SPO has been mindful of the nature of the
23 Rule 102(3) process and interpreted relevance in a broad manner that
24 allows the Defence teams to make potential materiality assessments
25 from a wide range of items.

1 The SPO is well aware of the broad standard of relevance
2 previously set out by Your Honour and subsequently endorsed by the
3 Court of Appeals, being evidence in the SPO's possession which has
4 not been disclosed under Rule 102(1) (a) or (b), and Rule 103, and
5 which is relevant to the case.

6 Anyone wishing to ascertain if the 102(3) notice conforms to
7 these Rules requirements need only to look at it. In fact, there has
8 been substantial discussion about the Rule 102(3) notice earlier with
9 the Defence teams, and in that discussion it has been suggested that
10 the criteria for generating the lists were too broad rather than too
11 narrow. In fact, as recently as August 4th, after receiving the
12 Rule 102(3) notice, the Veseli Defence, in *inter partes*
13 communications with the SPO, insinuated that the notice amounted to,
14 I quote, "a repository for the unbridled dumping of all materials,
15 apart from a limited set of Rule 102(1) and 103 materials."

16 So one can see at first glance that the notice has not been
17 restricted to only that what is directly linked to exonerating or
18 incriminating evidence, and that there is no need for the SPO, or
19 also no basis, to identify the specific basis upon which an item is
20 assessed to be relevant or not relevant.

21 With the Krasniqi Defence, we wish to advance this process and
22 see these requests fully processed as soon as possible. I have
23 explained why we have adapted our processing strategy. That was due
24 both to the need to cater to different Defence teams in more or less
25 equal measure, and because processing the second Krasniqi request

1 before December 3rd in its entirety would have meant providing a
2 number of redacted items for which redactions would have to be lifted
3 again a fortnight later in light of the variation of protective
4 measures for a number of witnesses this next Friday.

5 That would have been inefficient for all parties involved as
6 well as for the Panel who would have had to rule on such redactions.

7 Indeed, the difference in our percentage numbers is because I
8 was addressing disclosures before the start of the judicial recess,
9 and it is planned that the Krasniqi Defence will receive a voluminous
10 package of 102(3) materials this week.

11 More generally, we note that reimposing deadlines for individual
12 requests will likely result in uneven disclosures to Defence teams in
13 different periods and a less expeditious output all across the board
14 as it would hamper concentrating resources on batches of related or
15 like documents across different requests. The SPO has a strong
16 interest in moving this case forward and where we can, we will.

17 When it comes to the Veseli request for translations of
18 Rule 102(3) materials, the SPO has already been adding English
19 translations to --

20 JUDGE GUILLOU: We'll discuss about that later in the
21 Status Conference.

22 MR. FERDINANDUSSE: Thank you. So then I believe there is only
23 the question about Rule 107 left?

24 JUDGE GUILLOU: Correct.

25 MR. FERDINANDUSSE: Indeed, the SPO is continuing to actively

1 work to complete discussions with Rule 107 providers. And decisions
2 are still coming in and are anticipated to be coming in. And given
3 where we are currently in terms of outstanding Rule 102(3) requests
4 to be processed and the expectation that additional Rule 107
5 decisions will be coming in the next period, we believe it will be
6 more efficient to all parties to not set a current deadline for an
7 updated relevance list with Rule 107 items but discuss that at the
8 next Status Conference.

9 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

10 MR. ROBERTS: Your Honour, if I may respond to that very
11 briefly.

12 JUDGE GUILLOU: Mr. Roberts, please.

13 MR. ROBERTS: Without wishing to fall foul of your initial
14 direction, my colleague could have a career in politics because he
15 managed to answer a question without answering it at all.

16 You asked him a very specific question. He neglected to respond
17 to it. You asked him a specific question on my behalf, or directed
18 him, in relation to Rule 107. He basically shifted it to the next --
19 well, next year, next Status Conference.

20 The point of these Status Conferences, in my respectful
21 submission, is to move things forward. That will happen when there
22 are clear, straightforward answers to clear, straightforward
23 questions. And I feel if we don't get those, we all come back six
24 weeks later and nothing has really moved forward.

25 So I would urge you to direct the Prosecution to respond, very

1 clearly, to those two questions whether in -- orally now or, if my
2 colleague would prefer to consult with his team, that's perfectly
3 understandable, in writing before we all go away for the recess. But
4 I really do feel that we need to actually grasp these questions and
5 move them forward. Otherwise, we're just going to push everything
6 down the road a little bit.

7 So I apologise for repeating myself, but I feel that unless
8 actually concrete actions are taken now, we are not going to move
9 this forward. Thank you.

10 JUDGE GUILLOU: Thank you, Mr. Roberts.

11 Mr. Prosecutor, on the repeated question related to the 107
12 material, are you able to give us more detailed figures today or can
13 you commit to inform the Defence before the Christmas recess?

14 You have floor.

15 MR. FERDINANDUSSE: Thank you, Your Honour.

16 I believe that we can, indeed, inform the Defence before the
17 Christmas recess. If the Defence will address their questions to us
18 with precision and clarity, we will try to get the answers to the
19 Defence in the same manner. Thank you.

20 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

21 I don't see anyone requesting the floor. So in light of the
22 parties' submissions, I will issue a second oral order.

23 I will not reinstate deadlines for Rule 102(3) disclosure at
24 this Status Conference. I expect the parties to continue to work
25 expeditiously towards the disclosure of such material. This includes

1 the Defence requesting items from the Rule 102(3) notice and the SPO
2 processing of Defence requests.

3 I note, favourably, in this respect that the Defence has
4 continued to request items from the Rule 102(3) notice, and the SPO
5 is in the final processing stages in relation to 12.500 items
6 requested by the Defence and has disclosed several packages of
7 Rule 102(3) material.

8 I note further that the SPO has indicated that it will be able
9 to commit more resources to the disclosure of Rule 102(3) material in
10 January and February of next year.

11 I, accordingly, dismiss the Krasniqi Defence request for a
12 deadline of 14 January 2022 for the disclosure of relevant
13 Rule 102(3) material.

14 In addition, and for the above-mentioned reasons, I do not see a
15 need to reconsider my prior oral ruling on the procedure for the
16 disclosure of the Rule 102(3) materials and accordingly dismiss the
17 Veseli Defence request in this regard.

18 We will revisit the topic of deadlines for the disclosure of
19 Rule 102(3) material during the next Status Conference.

20 This concludes my second oral order.

21 And before we move to the next item in the agenda, I want to
22 insist that I expect that before the next Status Conference robust
23 discussion be organised between the SPO and the Defence team on this
24 matter and all the points that have been raised, especially the
25 points raised by the Selimi Defence. This includes details on how

1 the notice has been established, and especially the discrepancy
2 between the 100.000 that was announced in the first place and the
3 number that figured in the list, and this also includes all the
4 matters that have been raised by Mr. Young and Mr. Roberts in their
5 previous submissions orally today.

6 Let us now move to Rule 103 material.

7 Since the last Status Conference, the SPO disclosed three
8 further packages of potentially exculpatory items. The SPO has also
9 indicated that a protective measures request in respect of a small
10 number of items will be forthcoming.

11 The Veseli Defence requests that a deadline be set for
12 completion of Rule 103 disclosure.

13 I would like to know whether there remains exculpatory evidence
14 in the SPO's custody, control, or actual knowledge that must be
15 disclosed to the Defence pursuant to Rule 103.

16 Mr. Prosecutor.

17 MR. FERDINANDUSSE: Thank you, Your Honour.

18 Indeed, we are continuing to conduct exculpatory reviews and run
19 relevant searches for potentially exculpatory material as the witness
20 and exhibit lists are being finalised. And we are, of course, also
21 aware that exculpatory disclosure will remain an ongoing obligation
22 of the office throughout the proceedings and after the current review
23 exercises are completed.

24 We are also performing quality control and double-checks on
25 previously reviewed materials. So, indeed, the work on this work

1 stream will continue in the next period. Thank you.

2 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

3 Mr. Kehoe, please.

4 MR. KEHOE: Yes, Your Honour, that doesn't tell us anything.
5 Going back to what Your Honour had asked on the 102(b) -- 102(1)(b)
6 items. How much is left? We're talking about a case that has been
7 under investigation for years, that was indicted over a year ago with
8 the promise that these gentlemen were going to be tried last spring.
9 And we are still, according to the SPO, reviewing certain further
10 material on an ongoing basis and that the material will be turned
11 over on a rolling basis.

12 This is exculpatory material which the rule says shall be
13 immediately disclosed. Not yesterday, not last month, not two weeks
14 from now. Immediately disclosed. And reminding the SPO of what
15 exculpatory material means under Rule 103, it also means evidence
16 that affects the credibility or reliability of the SPO's evidence.
17 Are the people at the SPO reviewing this document with that very
18 important clause in mind?

19 At the last hearing before Your Honour on 29 October, I posited
20 the question whether the SPO was fulfilling their Rule 103
21 responsibilities, because we knew that exculpatory statements had
22 been given to the SPO by individuals that we have talked to. Now, we
23 can get into the witness issues later on. And I searched in vain for
24 the 386 documents that were disclosed pursuant to Rule 103, and that
25 statement, again, was not turned over.

1 And a rhetorical question is: If that statement is not turned
2 over by a very competent witness in the international arena, what
3 else is not being turned over? What else has not been given to the
4 Defence? What else falls in the category of Rule 103 material that
5 we wait in vain for? It's very disturbing, Your Honour. It's very
6 disturbing. And it makes me question, frankly, it has to make one
7 question, how this 103 material is being examined and how it is being
8 determined that it's, in fact, 103 material.

9 Because I know, as I stand before Your Honour as an officer of
10 the court, they have not turned over 103 material, and we wait for
11 this information that we should have had a long period of time. My
12 client, with the rest of these gentlemen, have been here in custody
13 for over a year, and the Prosecution is still reviewing matters on a
14 rolling basis? Question, Judge: If there was Rule 103 material,
15 would Your Honour not want to have seen that material when assessing
16 the pre-trial release issues? Of course you would, Judge. Of course
17 you would. As a learned jurist, you would take that and everything
18 else into consideration. But it's not coming. And that is
19 problematic.

20 Now, we will see how quickly this other material comes across
21 the transom and how much is involved. And in the very near future,
22 we're going to have to address this lack of disclosure. The lack of
23 disclosure certainly on a timely manner, and the lack of disclosure
24 when it comes to the content, content that Your Honours would have
25 wanted to have seen in making an array of decisions that you've made.

1 I end this, Judge, with one comment: The disclosure under
2 Rule 103 has been very disturbing. Thank you.

3 JUDGE GUILLOU: Thank you, Mr. Kehoe.

4 Mr. Strong, please.

5 MR. STRONG: Yes, just to add to that. From our perspective,
6 this information is so important because we're trying to organise our
7 Defence case and our timeline. And to date, I don't think that I've
8 heard any timeline at all throughout these proceedings as to when we
9 can expect, when we can anticipate to see this 103 material.

10 Obviously, the deadline will be rolling as new material arises.
11 The Prosecution has an obligation to give it to us. But in terms of
12 what's in their possession at the moment and what they control now,
13 we need to get some clarity on the amount and when we can expect it
14 so we can start to make our preparations. Thank you.

15 JUDGE GUILLOU: Thank you, Mr. Strong.

16 Mr. Young, please.

17 MR. YOUNG: [via videolink] Your Honour, nothing to add. We
18 completely support the submissions of Mr. Kehoe. And also I'd also
19 support, having re-read the transcript of the last Status Conference,
20 the concerns Mr. Emmerson expressed then about his concerns over a
21 lack of disclosure of exculpatory material. Thank you.

22 JUDGE GUILLOU: Thank you, Mr. Young.

23 Mr. Ellis, please.

24 MR. ELLIS: [via videolink] Your Honour, we support the
25 submissions that have been previously made by the other Defence

1 teams.

2 On this issue, we have had essentially the same submissions from
3 the Prosecution at each of the previous Status Conferences. It can't
4 be the case that just keeps being reviewed on an ongoing basis with
5 no actual deadline set. Of course, as new material comes in, it
6 needs to be assessed pursuant to the Prosecution's obligations. But
7 for the material that they have already, why can't a deadline be set
8 now?

9 They've had a year already. Our clients are in detention. They
10 must be able to review what they have already and tell us what is
11 exculpatory in it.

12 JUDGE GUILLOU: Thank you, Mr. Ellis.

13 Mr. Prosecutor, what would you like to reply?

14 MR. FERDINANDUSSE: Thank you, Your Honour.

15 We have, indeed, indicated that a review of the materials is
16 ongoing. If Defence teams, for whatever reason, wish to identify
17 items that they are apparently wishing to be reviewed with priority,
18 they are welcome to inform us of those and we will expedite their
19 review accordingly. And we would believe that that would be more
20 effective than a repeatedly abstract discussion about such items in
21 these Status Conferences.

22 We are well aware of our obligations for the exculpatory review
23 and disclosure, and we are working hard on those as well as we are
24 working on the other disclosure obligations. Thank you.

25 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

1 Mr. Kehoe, very briefly.

2 MR. KEHOE: Just very briefly, Judge. If they are well aware of
3 their obligations, we respectfully ask that they meet them. It's not
4 the role of the Defence at every turn to attempt to squirrel through
5 the files of the SPO to try to find out what they have. We know they
6 have exculpatory information, and we also know that it came from very
7 competent sources, and we also know, most importantly, that it hasn't
8 been turned over.

9 When, Your Honour, will they make an end? When will they
10 complete the disclosure of Rule 102(3) material? That's essential as
11 this case moves forward. That's essential, Your Honour, for
12 information that we would present to Your Honour for pre-trial
13 release come January, which I suspect where we probably will be. But
14 as time goes on, it just doesn't happen. And there will come a time
15 when we will present it all to Your Honour.

16 But in the interim, we simply ask for the Prosecutor to fulfil
17 their obligations without giving this, "We're constantly reviewing
18 this and we're going to do this on a rolling basis, and the rolling
19 basis can roll well into 2022." That will not suffice. Thank you.

20 JUDGE GUILLOU: Thank you, Mr. Kehoe.

21 So I regard the Defence request for a deadline for disclosure --
22 I mean, I can recall that in my Framework Decision on disclosure, the
23 famous F99. I noted that the requirement is that the SPO immediately
24 disclose all exculpatory material in its custody, control or actual
25 knowledge. And this obligation is a continuous one.

1 This is why I ordered the SPO to disclose the material as soon
2 as practicable on a rolling basis, particularly when the material did
3 not require a redaction.

4 Setting in an outer deadline for disclosure of this material
5 could potentially undermine this continuing obligation. This is why
6 I refrained from reconsidering my framework disclosure -- decision on
7 disclosure, and setting such a deadline at this point in time.

8 But, nevertheless, I remind the SPO of its obligation to
9 disclose exculpatory evidence immediately as soon as it is in its
10 custody, control or actual knowledge. And I also remind the SPO that
11 only justifiable reasons, such as the need for redactions, may
12 prevent immediate disclosure.

13 So if there is still a need to double- or triple-check the
14 database of the SPO, it is definitely the time to do it. This cannot
15 wait. It has to be done as a matter of priority.

16 So we are supposed to go on a break very soon. But if the
17 interpreter will allow me, I will take just a couple of minutes to
18 finish the last item on disclosure. That should be very brief.

19 And I turn to the interpreters, can I have just a couple of
20 minutes? I promise it's not going to be long.

21 THE INTERPRETER: Yes, Your Honour.

22 JUDGE GUILLOU: Thank you very much.

23 So I promised the interpreters to be very brief, so I expect the
24 same from the parties. We will move to the Rule 107 material.

25 I would like to know whether the parties are facing or foresee

1 any difficulties related to disclosure process with respect to
2 Rule 107 material, and whether any applications pursuant to this rule
3 are imminent.

4 I note the SPO's submission that it's continuing to actively
5 work to complete discussion with Rule 107 providers.

6 Mr. Prosecutor, do you want to add anything on this category of
7 material?

8 MR. FERDINANDUSSE: No, thank you, Your Honour. I have nothing
9 to add to our written submissions and the discussions that we have
10 had. Thank you.

11 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

12 Does any of the Defence team want the floor?

13 Mr. Kehoe, please.

14 MR. KEHOE: Yes, Your Honour, nothing from my client.

15 JUDGE GUILLOU: Mr. Emmerson.

16 MR. EMMERSON: Nothing. Thank you.

17 JUDGE GUILLOU: Mr. Young, please.

18 MR. YOUNG: Nothing. Thank you. Our submissions are in
19 writing.

20 JUDGE GUILLOU: Thank you, Mr. Young.

21 Mr. Ellis, please.

22 MR. ELLIS: [via videolink] I've nothing to add. Thank you,
23 Your Honour.

24 JUDGE GUILLOU: Thank you very much.

25 Then I think I respected my promise to the interpreters,

1 probably even faster than I thought.

2 It is now 4.33. We will break for 20 minutes, and we will come
3 back in the courtroom to discuss the next item in the agenda, which
4 is translation, at 4.53.

5 The hearing is adjourned.

6 --- Recess taken at 4.33 p.m.

7 --- On resuming at 4.54 p.m.

8 JUDGE GUILLOU: Let us move now to the issue of translation of
9 filings and evidentiary material.

10 I would first like to hear from the Registry on the progress
11 made in regards to the translation of these items. Notably, whether
12 the parties have made any further urgent requests for translation,
13 and whether the Registry can give an estimate for the translation of
14 the SPO pre-trial brief.

15 I would also like to hear the parties on any further
16 difficulties regarding translations and if there are filings that
17 need to be prioritised.

18 I also note the submissions of the Veseli Defence regarding the
19 translation of Rule 102(3) material. The Veseli Defence requests
20 that I order the SPO to disclose the English translation of the
21 Rule 102(3) material.

22 I will first give the floor to the Registry.

23 Mr. Roche, please.

24 MR. ROCHE: Thank you, Your Honour.

25 The first item is previous request for prioritisation. The SPO

1 preliminary witness list had been prioritised. That was filing F542,
2 Annex 02. That was distributed in unrevised form on 2 December ahead
3 of the previously indicated time-scale.

4 As regards the pre-trial brief, we currently are not able to
5 give any indication of when it would be translated. This is because
6 we -- it has not yet been filed, and it will need to be the subject
7 of a review by the Language Services Unit to assess the complexity,
8 whether some of the contents are already available in the other
9 official languages of the Chambers, et cetera. So currently we're
10 not able to give a firm indication.

11 It is going to be a matter of the utmost priority for
12 translation in Case 06, and we will, of course, provide a firmer
13 indication of when it will be ready as soon as that is available. So
14 we will immediately assess it once it has been filed, and then
15 provide that time-scale as quickly as possible.

16 More generally, concerning translations in general, obviously,
17 all of the documents that are filed and required to be translated
18 into Albanian have been. And there is a total of 218 filings of
19 documents which have been translated into Albanian. That constitutes
20 5.713 pages.

21 As regards other requests for priority or urgent translation, we
22 have not received any over and above the preliminary witness list.
23 Thank you, Your Honour.

24 JUDGE GUILLOU: Thank you, Mr. Roche.

25 Let me turn to the Defence.

1 Mr. Kehoe, please.

2 MR. KEHOE: I have nothing, Your Honour.

3 JUDGE GUILLOU: Thank you, Mr. Kehoe.

4 Mr. Emmerson, please, or Ms. O'Reilly.

5 MS. O'REILLY: We have nothing further than the submissions we
6 made earlier on Rule [indiscernible].

7 JUDGE GUILLOU: Thank you, Ms. O'Reilly.

8 Mr. Young, please.

9 MR. YOUNG: [via videolink] Your Honour, really we have little to
10 say, save that obviously the most important document translation will
11 be the pre-trial brief which is, as Your Honour knows, due to be
12 filed in two days' time.

13 My submissions would really depend upon Your Honour's response
14 to paragraph 26 in our written submissions, because Your Honour may
15 recall, in paragraph 26 of our written submissions, I asked
16 Your Honour to reconsider Your Honour's decision to grant the
17 Prosecution a triple extension only a matter of a few days ago, just
18 before the date of the service of the pre-trial brief.

19 And we've set out our submissions in writing. I don't really
20 feel they would be improved orally. But, obviously, whether you
21 reconsider that or not is obviously going to be a very significant
22 matter, because, Your Honour may recall, with the other document that
23 was a significant one to be translated, namely, Prosecution outline,
24 I think it took some six months to translate it into Albanian.

25 The pre-trial brief is going to be one of the most important

1 documents that the accused must be able to read carefully in their
2 own language. And so Your Honour might want to consider that when
3 reflecting on whether you should allow them to triple the standard
4 size of the pre-trial brief.

5 As Your Honour knows, the Prosecution filed the extension
6 request on Thursday last week. Within three hours, Your Honour
7 granted the decision. We filed one minute after Your Honour's
8 decision. So it's a matter for Your Honour. There's nothing more I
9 can say.

10 JUDGE GUILLOU: Thank you, Mr. Young.

11 Mr. Baiesu, please.

12 MR. BAIESU: Thank you, Your Honour.

13 As regards the item 2(b), the Defence did not make any urgent
14 requests for translations. But there is an important point to be
15 made in respect of translations which, to some extent, overlaps with
16 the other agenda items regarding the pre-trial brief and the related
17 material.

18 Now that the pre-trial brief tripled in length since last week,
19 the resources available for translation, in our submission, should be
20 prioritised and focused not only on the remaining Rule 102(b)
21 material, but mostly to translate as expeditiously as possible the
22 pre-trial brief and the supporting material.

23 What we don't want is what occurred with the translation with
24 the SPO's outline and the Prosecution provisional list of witnesses,
25 where it took about six weeks to produce the Albanian translation of

1 this list. It's clear that Mr. Krasniqi needs to see this document,
2 the pre-trial brief and the supporting material, sooner rather than
3 later, just as the Defence requires these documents to advance with
4 its investigations.

5 We also support and adopt the written submissions of the Veseli
6 Defence, that is filing 613, with respect to the need to prioritise
7 the translation into English of the disclosure of 102(3) material
8 which is in multiple languages other than English. Thank you.

9 JUDGE GUILLOU: Thank you, Mr. Baiesu.

10 Mr. Prosecutor, can I have your submissions on the request by
11 the Veseli Defence on having all the 102(3) material translated in
12 English? This was in their written submissions.

13 MR. FERDINANDUSSE: Yes, Your Honour. The SPO has already been
14 adding English translations to Rule 102(3) requests where available
15 for some time now. Such translations are not available for items
16 that have been reviewed by SPO staff speaking the relevant language
17 or through sight translations. There is no obligation for the SPO to
18 generate translations of 102(3) materials. Such materials cannot be
19 equated to evidence being relied upon by the SPO.

20 In granting a request to order such translations would take away
21 substantial language resources from review and redaction of
22 foreign-language materials for different disclosure work streams.
23 Therefore, the SPO requests Your Honour to deny the request.

24 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

25 I have a follow-up question on this. Can you give me a very

1 broad estimate of the number of evidentiary material it concerns, if
2 you can? And you can take a minute, if needed. Because I'd like to
3 know if we are talking about 10 items, 100 items, or 1.000 items.

4 [Specialist Prosecutors confer]

5 JUDGE GUILLOU: And if I may add, I think the Veseli Defence
6 indicated that this applies to multiple languages. I think
7 33 languages, as you mentioned in your submissions, if my memory is
8 correct?

9 MS. O'REILLY: Well, no -- apologies. We were saying that
10 33 are in a language other than English. Our point was that it's not
11 just that they're in Albanian or Serbian, but in all the languages
12 that were spoken by the various parties who were in Kosovo during
13 that period, such as the various KFOR contingencies.

14 JUDGE GUILLOU: Thank you. This is noted.

15 So if you have an idea of how many languages this material
16 refers to.

17 MR. FERDINANDUSSE: Yes, Your Honour. I say this with some
18 caution. But I believe it will be thousands of items. Surely, if
19 the Defence team who is making this request will be able to indicate
20 with more precision which items they feel are lacking a translation
21 at the same time. It is very difficult for me now to generate
22 reliable figures, because we have multi-language items.

23 As I said, the SPO is disclosing all translations that we
24 already have to the Defence teams regardless of whether they have
25 been specifically requested or not, so we would have to have a

1 different subset of documents to see how many translations there are.
2 But it would be a very substantial number. And as I said, it would
3 take away translation resources from other disclosure work streams.

4 Whereas, we believe the materials covered by the 102(3) process
5 are fundamentally different than the materials covered in 102(1)(b)
6 and 103. Thank you.

7 JUDGE GUILLOU: May I suggest that between now and the next
8 Status Conference the parties have discussions on finding, I wouldn't
9 say an alternative way, but a pragmatic solution in order for the
10 parties to understand with more detail what each item is about so
11 that the Defence can really assess if they will request it. Because
12 I understand from the Defence that they can really not assess if the
13 document is material for the Defence if they cannot understand it; on
14 the other hand, I also understand that if we're talking about
15 thousands and thousands of documents, and if in the end these
16 documents are not material for the Defence, it would be a waste of
17 resources for everybody.

18 So is there a possibility that there is *inter partes* discussion
19 so as to give probably more detail about certain documents without
20 translating the totality of the documents? Would this be a practical
21 solution?

22 Ms. O'Reilly.

23 MS. O'REILLY: Well, Your Honour, well, it seems that that
24 information already exists, because even if they were having Albanian
25 or Serbian or other speakers reviewing this information, they would

1 have to record their observations in English so that the team in
2 general could understand. So I would assume that information is
3 already available to be disclosed to us.

4 Should there be any work product in the mix there that isn't
5 subject to disclosure, that, of course, could be redacted. But we
6 would assume it's a relatively straightforward exercise for you to
7 simply order them to do that already today.

8 We are, of course, happy to engage with them further on the
9 materiality relevance issue and perhaps if you're not minded to make
10 an order today. Thank you.

11 JUDGE GUILLOU: Mr. Prosecutor.

12 MR. FERDINANDUSSE: Your Honour, the SPO is always open to
13 constructive *inter partes* discussion on any issue that is between us.

14 I do note, though, that we have had discussions before about the
15 nature of the Rule 102(3) process and about the information that we
16 have been providing in a -- with more detailed descriptions,
17 geographic criteria, names, dates, places, that would allow the
18 Defence to make, first, estimates of what would be potentially
19 material and what would be not.

20 We have had discussions before when it was suggested that the
21 SPO should disclose all Rule 102(3) materials that it is not for --
22 and, in effect, we have had them today. That it is not for the SPO
23 to do the Defence -- to make the judgement about what is potentially
24 material to the Defence case and what is not.

25 And I have a hard time -- and, therefore, to equate the review

1 that the SPO has conducted of such items with the review that the
2 Defence will then conduct of such items, I think will be very
3 difficult because they regard to a very different level of
4 information, and they also regard to a judgement call by the Defence
5 that we cannot make. And certainly, we don't have all the
6 information that the Defence needs.

7 What needs to be done, we believe, is that the Defence select
8 documents that are on their face potentially relevant material to
9 their case and will then have to process them in the way they see
10 fit.

11 So, yes, we are open to *inter partes* discussions. But I am
12 giving a word of caution that we believe the information available
13 and the role each party plays in the Rule 102(3) process is very
14 different, and we can probably only assist in a limited manner.
15 However, we are always open to discuss in what manner that may be.

16 JUDGE GUILLOU: Mr. Emmerson.

17 MR. EMMERSON: Your Honour, I would just point out, as I have
18 been doing periodically during the course of the agenda, that to the
19 extent that the SPO in this instance casts the burden of translation
20 on the Defence, then it necessarily follows that the process is going
21 to be that much longer because, of course, the Defence resources are
22 not inexhaustible either.

23 So if we don't know what the document -- I mean, I don't know to
24 what extent the volume of material in a language we don't have
25 resources for is going to impact on the timeline. But as I've been

1 pointing out as we've gone through, the timeline for trial is looking
2 very pessimistic.

3 And, of course, to the extent that the SPO takes the view that
4 the appropriate distribution of responsibility must devolve to the
5 Defence on this material rather than the Prosecution in serving it,
6 then, of course, that will prolong matters even further.

7 JUDGE GUILLOU: Thank you, Mr. Emmerson.

8 I will not rule on this matter today, but I invite the parties
9 to have discussions on this issue. I also invite the parties to find
10 constructive solutions. I think it's in the interest of all the
11 parties. And I invite the parties to indicate in their submissions
12 before the next Status Conference the result of these discussions,
13 and I also invite specifically the Prosecution, after this
14 discussion, to indicate with more precision how many documents, how
15 many items we're talking about, and also in which language.

16 So I invite the parties to brief me before the next Status
17 Conference.

18 I now turn back to the SPO to ask about the status of its
19 ongoing investigations.

20 At the last Status Conference, I ordered the SPO to file its
21 pre-trial brief and related material pursuant to Rule 95 by
22 17 December 2021.

23 I further ordered the SPO to file its Rule 109(c) chart by 28
24 January 2022.

25 I would like the SPO to confirm that it will respect these

1 deadlines.

2 Furthermore, I would like the SPO to indicate whether it can
3 provide a further update on the estimated date of completion for
4 outstanding investigative steps, if any. I also invite the SPO to
5 make any submissions on the procedural calendar in this case.

6 I also note that on 9 December 2021, I granted the SPO an
7 extension of the word limit to 150.000 words for its pre-trial brief.
8 And I further note that the Krasniqi Defence and the Selimi Defence
9 requested reconsideration of this decision.

10 I would like the parties to give their views on this request for
11 reconsideration.

12 Mr. Prosecutor.

13 MR. FERDINANDUSSE: Thank you, Your Honour.

14 With respect to ongoing investigative steps, the SPO's position
15 is the same as at previous Status Conferences. It remains the case
16 that it is the responsibility of the office to continue to
17 investigate within its mandate. We are aware of the applicable
18 framework and that should such further investigations result in
19 material which we seek to rely upon, judicial authorisation may be
20 required.

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

24 The SPO does not currently anticipate difficulties regarding the
25 17 December 2021 deadline for Rule 95(4) materials or the deadline of

1 28 January 2022 for submission of the Rule 109(c) chart.

2 The extension of the word limit for the pre-trial brief was
3 granted for good reasons. Taking into account the nature,
4 geographical area, and period of the charges, the number of victims,
5 and the number of evidentiary items, the word limit as amended is
6 eminently reasonable and a request for reconsideration should be
7 denied. Thank you.

8 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

9 Mr. Kehoe, please.

10 MR. KEHOE: Yes, Your Honour. I would like to address, first,
11 their ongoing investigations. And if I can turn the issue concerning
12 the 150.000 words to Mr. Misetic, with Your Honour's permission.

13 What the SPO seems to not have grasped is that the ability to
14 continue to investigate is not given as a matter of right. We have
15 seen a series of comments by the SPO concerning conducting
16 investigations and their investigations encompass other cases and
17 other investigations being conducted by the office. And I refer to
18 the hearing before Your Honour on 21 July 2021 at page 508. That was
19 reemphasised against on September 14th of 2021 when counsel said the
20 same thing.

21 The last time we were here, Judge, I raised Rule 47 concerning
22 the completion of an investigation. And there are certain
23 requirements under Kosovo law that don't appear to be being followed
24 by the SPO.

25 Now, under Article 221 of the prior law prior to 2012 that the

1 investigation had to be initiated by the public prosecutor, the
2 ruling shall specify the person against whom the investigation will
3 be conducted, the timing of the initiation of an investigation, a
4 description of the act which specifies the element of the criminal
5 offence, and all the other measures concerning that defence.

6 That statute was amended in 2012 which incorporated not only
7 what -- what was going on with the Special Investigation Task Force,
8 but also thereafter in 2012, which said that the investigation has to
9 be triggered by a decision made by the prosecutor. And the decision
10 has to -- and this is Article 104 of the amended Statute:

11 "The decision shall specify the person or persons against whom
12 an investigation will be conducted, the date and time of the
13 initiation of the investigation, a description of the act which
14 specifies the elements ..." et cetera.

15 And those details have to be given in writing to a
16 Pre-Trial Judge.

17 Now, why is this significant? Because the law in Kosovo,
18 Article 224 and thereafter the amended Statute, 159, Article 159,
19 puts limits on what the prosecutor can do. Article 224 noted that:
20 The prosecutor shall terminate the investigation if at any time it is
21 evident from the evidence collected that the period of statute of
22 limitations of criminal prosecution has expired.

23 The amended Statute that came in in 2012 in Kosovo restricted
24 this yet further and put a two-year timeframe on this. Article 159:

25 "If an investigation is initiated," in other words, a prosecutor

1 gives a written order to a Pre-Trial Judge initiating investigation,
2 "the investigation shall be completed in two years."

3 With permission of the pre-trial court it can go to another
4 potential six months.

5 What are we investigating here, Judge? What document has been
6 given to any Pre-Trial Judge to justify this additional
7 investigation? If, in fact, my client is being -- continues to be
8 investigated on an open-ended fashion on some thin argument that
9 they're fulfilling their mandate when, in fact, they're investigating
10 other things, we ask that this investigation be terminated.

11 Again, as with the 102 material and the 103 material, this
12 investigation has to come an end. And we request, Your Honour,
13 again, we asked the last time, and I believe Your Honour deferred,
14 that this investigation be terminated. I mean, is the filing of this
15 pre-trial brief the end of this investigation? I'm sure Your Honour
16 would want to know. I mean, this is right around the corner. It's
17 next Friday. Or are we talking about another investigation that's
18 going to continue on and heaven knows how long, because they don't --
19 the SPO once again, as with the exculpatory evidence, don't put any
20 time parameters on what is going on with this investigation and when
21 it will be completed.

22 And I will say, Judge, Your Honour asked a specific question
23 about that, when it's going to be completed, and Your Honour didn't
24 get an answer.

25 So we have an open-ended investigation. We don't know when this

1 started. We don't know what the parameters of that are. We don't
2 know what documents have been given to anybody to justify this
3 investigation. By Mr. Williamson or anyone else, or Mr. Smith or
4 anyone else. But the rule clearly provides that after a given period
5 of time that the investigation be terminated.

6 So we ask once again, Your Honour, to terminate this
7 investigation and let us deal with the indictment that's before us
8 and put an end to all the other ancillary investigations that counsel
9 for the Prosecution has been referring to over the past six months.
10 This cannot go on forever. There has to be an end. There has to
11 come a point, Your Honour, where you, as the Pre-Trial Judge, have
12 the information that you're going to transfer over to the
13 Trial Panel.

14 According to what they just said, we're nowhere near that. So
15 we ask once again for Your Honour to shut any further investigation
16 down as we move forward and let us deal with what we have before us.

17 Now, on the issue of the 150.000 words, if Mr. Misetic can
18 address that issue for Your Honour, with Your Honour's permission.

19 JUDGE GUILLOU: Mr. Misetic.

20 MR. MISETIC: Thank you, Your Honour. First we note, for the
21 record, that we didn't have an opportunity to be heard on this
22 question, and so we do that now.

23 We do object to the extension of the word limit in addition to
24 the argument that the Selimi Defence put forward in terms of how much
25 this is going to delay things due to the need to translate a

1 document, which we estimate will now move from about 100 pages to
2 about 300 pages.

3 There is another concern which is -- and we say this not having
4 seen what's going to be filed on Friday, but putting this on the
5 record now in case we have to raise an issue after it's filed. We
6 understand the purpose of the pre-trial brief to, among other things,
7 streamline the case so that the Defence has notice of what not only
8 the allegations are but what the evidence is that is going to be used
9 to support that particular allegation.

10 If the extension of the word limit is really now being designed
11 so that we can get footnotes that are pages long so that we're citing
12 every conceivable document that might be related to a particular
13 allegation, it defeats, in our view, the purpose of the pre-trial
14 brief because it just basically continues to make the water muddy and
15 not clear and, therefore, will make the Defence investigation much
16 longer and will keep us more in the dark about what is actually the
17 evidence that the Prosecution intends to rely on.

18 For that very purpose, we were hoping that the pre-trial brief
19 would actually force the Prosecution to be very focused on what are
20 the actual allegations in the case, what is the evidence that they
21 really rely on, and then we could have hopefully streamlined both the
22 Defence investigation and the trial in this case.

23 And for that reason, we would have asked that the word limit not
24 be extended. Thank you very much, Your Honour.

25 JUDGE GUILLOU: Thank you, Mr. Misetic.

1 Mr. Emmerson, please.

2 MR. EMMERSON: On behalf of Mr. Veseli, we take a slightly
3 different approach.

4 So far as we're concerned, the paramount consideration is that
5 there should be no delay on the 17 December deadline. And if the
6 consequence of a reconsideration would be to put that deadline back,
7 then we regard that as the worst of two possible scenarios. So
8 that's the first thing.

9 Of course, I join the other teams in registering our concern
10 that the decision to extend by this extent was taken without
11 reference or without observance of the *audi alteram partem* rule that
12 both sides to an issue should be heard, and we are slightly surprised
13 that that would have happened on an issue of that kind.

14 But I, for my part, am willing to take at face value the
15 Prosecution's assertion that it considers it necessary to reflect the
16 full scope of the case it wants to produce at trial to apply for an
17 extension to three times the length permitted by the rules. And I
18 take it at face value that since Your Honour didn't think it
19 necessary to consult the Defence, you must have been convinced that
20 nothing the Defence said could have deflected that.

21 Therefore, we proceed on the basis, as it was put to you just a
22 moment ago by the Prosecution, that three times the length permitted
23 by the rules is "eminently reasonable" given the sheer size and scope
24 of the case that they're setting out to prove.

25 I just want to put that in a little bit of context. That is

1 twice as long as the pre-trial brief in the case against
2 Slobodan Milosevic at the ICTY, which concerned the conflicts in
3 Bosnia, Croatia, and Kosovo spanning a ten-year period. It is three
4 times as long as the pre-trial brief in the genocide case against
5 Radovan Karadzic, concerning the massacre at Srebrenica and a whole
6 slew of other crimes against humanity perpetrated against the Muslim
7 population of Bosnia.

8 So, clearly, in the Prosecution's view, the scope of this case
9 evidentially is much, much greater by several factors than the scope
10 of either of those two cases. So we take that at face value, and we
11 take Your Honour's decision summarily to permit it without argument
12 at face value. And, therefore, when we look again at the scope of
13 the undertaking that the Prosecution is forcing onto this Tribunal
14 and onto the Defence, we ask ourselves what is the length of time
15 that is going to be necessary before this trial starts, and what is
16 the length of time that can conceivably be necessary before it
17 finishes.

18 Bearing in mind, as I said, I think, to Your Honour on an
19 earlier occasion, that to send this case for trial to a Trial Chamber
20 with the Prosecution asserting the necessity to call more than 300
21 witnesses presages a three-year plus trial based on the experience of
22 other comparable tribunals.

23 So there it is. We take it at face value that this case is
24 deemed to be disproportionately huger than the Milosevic trial. But
25 let us see, then, what the Prosecution has to say about the

1 implications of that for the management of the case.

2 JUDGE GUILLOU: Thank you, Mr. Emmerson.

3 Mr. Young, please.

4 MR. YOUNG: [via videolink] Your Honour, thank you very much.

5 Well, let me start by saying, of course, we completely
6 understand the points made by Mr. Emmerson, but we also make it clear
7 that we do object and ask -- we do object to this triple extension
8 and we ask for reconsideration.

9 The two main points are, of course, that, of course, Your Honour
10 did not seek -- as Mr. Emmerson said, Your Honour did not seek any
11 consultation with the Defence or not seek any -- seek to give the
12 Defence an opportunity to be heard, and nor did the Prosecution give
13 any indication at all that only a few days before the pre-trial
14 brief, which presumably has been written many, many months ago, that
15 they would be asking just before it's due to be served for a tripling
16 of the word extension.

17 The three points I make are these: Firstly, just to remind
18 Your Honour that, if I recall correctly, on a number of occasions, I
19 understand that Your Honour has asked for written filings from the
20 parties in relation to quite modest word extensions on quite modest
21 filings of the order of 1.000 to 3- or 4.000, for example. Here, in
22 contradistinction, we have not 1- or 2- or 3.000, we have an
23 extension from 50.000 to 150.000, and yet the Defence isn't even
24 asked to be heard.

25 So, with respect, the logic is beyond me, that if it's important

1 for even the minor word extensions, why is it that on possibly the
2 most important word extension application we weren't even notified by
3 the Prosecution let alone with respect to your good self.

4 So the second point I make is in relation to the standard
5 Practice Direction, because we rely upon the Practice Direction. I
6 am relying upon Article 44 of the Registry Practice Direction on
7 Filings, which Your Honour knows. And so that's the
8 Practice Direction. It's there for good reason. And, obviously,
9 those who drafted the Practice Direction in relation to these cases
10 considered it carefully and came up with a formula: 10.000 words for
11 a contextual background, 10.000 per accused. And, yet, Your Honour
12 has now added 100.000 to that Practice Direction of the Registry.

13 The third and final point I make is one of clarity and
14 succinctness. Because - and I am referring now to paragraph 30 of
15 our filing - I do rely upon what the Appeals Panel said in a recent
16 request for an extension of words, where they reiterated that the
17 quality and effectiveness of submissions do not depend on their
18 length but rather on their clarity and cogency of the presented
19 arguments.

20 So we do submit that that rationale should apply to the
21 Prosecution's pre-trial brief. And, with respect, I do respectfully
22 remind Your Honour that Your Honour on almost every Status
23 Conference, and I understand the reason why Your Honour does it, you
24 remind counsel to be succinct and clear and shorten their
25 presentations. Yet in this breathtaking example, Your Honour allows

1 a 100.000 word extension without even giving us an opportunity.

2 It's a clear and obvious of natural justice, and it won't
3 advance the case. It will only cause prejudice to the Defence. And
4 we do submit that it will simply cause greater confusion,
5 obfuscation, in relation to an already wholly vague case. Thank you
6 very much.

7 JUDGE GUILLOU: Thank you, Mr. Young.

8 Mr. Baiesu, please.

9 MR. BAIESU: Mr. Ellis is going to address this issue with your
10 permission, Your Honour.

11 JUDGE GUILLOU: Thank you, Mr. Baiesu.

12 Mr. Ellis, please.

13 MR. ELLIS: [via videolink] Your Honour, thank you. In relation
14 to the ongoing Prosecution investigation, we've heard the same
15 submission from the Prosecution again at, I think, all nine of the
16 Status Conferences to date. Namely, that without giving any really
17 specific information to Your Honour at all, it's said that the
18 investigation is ongoing.

19 There has to come a point where it stops, where this case can
20 move forwards. And difference between this Status Conference and the
21 previous Status Conferences is that we have the pre-trial brief due
22 in two days. In our submission, the time has come for this ongoing
23 investigation to be brought to a close, and I invite Your Honour to
24 order that today.

25 As to the extension of the word limit, Your Honour, we have put

1 our views in writing in our requests for reconsideration. It was not
2 a request that we made lightly, Your Honour. It is a real source of
3 concern to the Defence that an extension of this size was granted so
4 quickly and before we had the opportunity to put our submissions in
5 response.

6 We, of course, appreciate the complexity of this case having
7 been involved in it for more than a year now. But at the same time,
8 it must have been apparent to the Prosecution before 9 December that
9 they were going to exceed the 50.000 word limit. There's no reason
10 why the Defence couldn't have been put on notice of that at an
11 earlier point in time, and why it couldn't have been raised before
12 Your Honour at an earlier point in time.

13 And for the reasons given in our written submission, nothing in
14 the Prosecution's reasoning in seeking an extension justifies the
15 size of extension that was sought. A tripling of the word limit is a
16 dramatic increase. And I don't want to repeat everything that's in
17 the written submission, Your Honour, but we maintain those
18 submissions. We would not have opposed a more modest extension.

19 JUDGE GUILLOU: Thank you, Mr. Ellis.

20 Mr. Prosecutor, do you want to add anything --

21 MR. EMMERSON: Your Honour, just before --

22 JUDGE GUILLOU: Mr. Emmerson, briefly.

23 MR. EMMERSON: Just before the Prosecution replies, may I make
24 it absolutely clear that not only am I not applying on behalf of
25 Mr. Veseli for a reconsideration of the order, but I am actively

1 opposing such an application.

2 JUDGE GUILLOU: Thank you, Mr. Emmerson.

3 Mr. Prosecutor.

4 MR. FERDINANDUSSE: Thank you, Your Honour, I will be very
5 brief, and I will note only that the provision cited by the Thaci
6 Defence were not incorporated into the rules and do not apply before
7 this Court, except for Rule 47 of the rules, but that only addresses
8 investigations when there is no indictment. It does not apply to
9 this case.

10 The relevant provision for late disclosure in this case is
11 Rule 102, and as I said before, the SPO is well aware of it. Thank
12 you.

13 JUDGE GUILLOU: Mr. Prosecutor --

14 MR. KEHOE: Your Honour, may we briefly respond to that last --

15 JUDGE GUILLOU: Mr. Kehoe, can you --

16 MR. KEHOE: -- legal point and I'm going to turn to
17 Mr. Dastid Pallaska for --

18 JUDGE GUILLOU: Can you wait for me to give you the floor,
19 please.

20 MR. KEHOE: My apologies.

21 JUDGE GUILLOU: You have the floor. Thank you.

22 MR. KEHOE: My apologies, Judge. And I just will hand this to
23 Mr. Pallaska.

24 JUDGE GUILLOU: Mr. Pallaska, please.

25 MR. PALLASKA: Thank you, Judge. We realise that the

1 Prosecution acts and behaves as if this Court does not belong to
2 Kosovo and which would render the Court extraordinary under the
3 constitution and, therefore, prohibited. But the test under Rule 47
4 is very -- the test under the Rule 47 is very clear. It requires --
5 I mean, it gives the right to the suspect to make a motion for
6 termination of the investigation in case the indictment is not issued
7 within a reasonable time.

8 To what Mr. Kehoe referred in his earlier submission was that
9 one of the key pre-conditions for making this determination is to
10 determine the time when the investigation started. And we
11 respectfully submit to you that the investigation started actually
12 before this law -- I mean, before the law was enacted, before this
13 Court was created. It started with the investigation of Mr. Clint
14 Williamson, and the law in effect at that time was the Criminal
15 Procedure Code of Kosovo, either the provisional one or the one that
16 was adopted later. That is why the provisions that were cited by
17 Mr. Kehoe are relevant for this exercise.

18 We still don't have the decision for the initiation of the
19 investigation, which is the procedural act that marked the beginning
20 of the investigation. We need to know whether our client was named
21 in that decision as a suspect as that would serve as the basis for
22 determining whether the indictment for these ongoing investigation
23 has not been issued within a reasonable time.

24 That's why we oppose the explanation that was given by the SPO.
25 Thank you.

1 JUDGE GUILLOU: Thank you very much, Mr. Pallaska.

2 I will issue an oral order on the matter we just discussed at
3 the end of the Status Conference.

4 Let us now move to the next point in the agenda, which is the
5 Defence investigation. I would be interested to hear the Defence
6 regarding the status of their investigations.

7 Mr. Kehoe.

8 MR. KEHOE: Yes, Your Honour.

9 Yes, we have been investigating. Yes, we are out talking to
10 witnesses. We have been contacting witnesses. We have been
11 contacting witnesses that are on the Prosecution's list of witnesses.
12 And we will continue to do so.

13 Putting aside these draconian measures advanced by the
14 Prosecution to invade the Defence camp, I will tell Your Honour that
15 nobody has objected to being interviewed during the course of our
16 investigation, and notwithstanding the fact that the Prosecution
17 improperly has told all of these witnesses to immediately advise
18 them, the SPO, if, in fact, that particular witness is contacted by
19 anybody in the Defence.

20 With regard to the investigation itself, let me say this at the
21 outset. And this goes back -- and I'm not attempting to revisit
22 Your Honour's ruling on pre-trial detention. But I must urge on
23 Your Honour how it has become yet more problematic to have our client
24 to assist in his defence for one simple reason, very, very simple
25 reason: The detention unit has limited the amount of people to go

1 into the detention unit at any time to talk to my client or any of
2 these other clients to investigate this matter to two.

3 We cannot bring any more people into the detention unit because
4 of COVID. This is going to have a dramatic impact as we move forward
5 on our ability to investigate this matter. With the release of these
6 gentlemen on pre-trial release under the conditions set forth by the
7 Kosovo police or third-party countries, we would be able to continue
8 this investigation. We would be able to sit with our client in a
9 forum that would allow for more than two people to sit down and talk
10 to him so we can get to the bottom of this investigation.

11 Your Honour, we're about to take on a 300-page brief to be
12 followed by heaven knows how many documents in a chart to come at the
13 end of January. That is an enormous amount of work to expect two
14 people for protracted periods of time to go into the detention unit
15 to talk to my client and for other counsel to talk to their
16 respective clients.

17 There are -- not only is there number limitations, and I'm sure
18 Your Honour is aware of this, there are time limitations. You have
19 till approximately 11.45 in the morning if you get in at 8.30 or
20 9.00, depending on how the detention unit works. And then you can
21 only get back in at 1.00, and then you have to be out by, at the
22 latest, 4.45.

23 Is it possible to meaningfully have our client assist us while
24 he continues to be in the detention unit with these restrictions that
25 come at him as a result of COVID? I submit to you it's not.

1 That being said, we will continue as best we can to investigate
2 these matters, putting aside the draconian measures advanced by the
3 Office of the Prosecutor, where they attempt to invade the Defence
4 camp. But I have to advance, bring before Your Honour the point that
5 the restrictions on our ability to consult with our client have been
6 significantly hampered, unnecessarily so, because he is in the
7 detention unit.

8 And much of this could all be alleviated if he was just
9 permitted, with Your Honour's permission, and restrictions, as
10 Your Honour has ordered it, to go back to Prishtine and allow us to
11 conduct our investigation there. I simply can't give Your Honour,
12 and I suspect my colleagues can't either, give you an operative
13 timeframe when we can potentially conclude this investigation under
14 these very severe restrictions, which takes me back to my point.

15 Given the fact that we will probably be back in January with
16 another motion that Your Honour convene a hearing where we can vet
17 these issues and talk to the people from the Kosovo police or third
18 parties to allow the Court to understand what kind of restrictions
19 are going to be on our respective clients, how they're going to abide
20 by Your Honour's ruling, and allow just for once some Albanian
21 Kosovar to go back to Prishtine and be released on pre-trial
22 detention. Thank you.

23 JUDGE GUILLOU: Thank you, Mr. Kehoe.

24 Mr. Emmerson, please.

25 MR. EMMERSON: In answer to the question about the Defence

1 investigation, I think I've made it clear all the way through that
2 the Defence investigation can begin seriously to be scoped once we
3 receive the Prosecution's pre-trial brief.

4 And so in the expectation -- or hope and expectation that that
5 will be this Friday, just before the Christmas vacation, which,
6 therefore, takes a month in effect out of any effective operation on
7 the ground, we would expect to be able to scope from mid-January.

8 But the scale -- and that's why I've been popping up and down
9 periodically throughout this Status Conference, to just focus on what
10 the scale is of what's being suggested here. It presages a
11 gargantuan and extremely difficult pre-trial investigation period.

12 You'll notice I've wore my mask all the way through this
13 hearing, and that's because I come from a part of the world where the
14 latest strain of coronavirus is now out of control, and there's every
15 reason to expect that that will continue to be the position and that
16 it will peak around about January or February.

17 And as we all know, the existing regime of vaccinations is
18 largely ineffective, 20 per cent protection for those who -- unless
19 they've been vaccinated either three or four times.

20 So we're in a situation where we'll have all of those
21 difficulties as well.

22 The submissions that we would wish to make to you in relation to
23 the Gucati witness protocol we will put in writing, as you have
24 indicated, and, indeed, we should be in a position to file them
25 within the next day or two. But I can say straightaway that a

1 protocol that was designed to deal with a case in which there were a
2 total of three Prosecution witnesses will double or more than double
3 the length of time it would take to investigate this case. Just to
4 be clear, just to be practical about it for a moment.

5 The way the Prosecution suggests it should work is that let's
6 say we see a witness who was a senior member of the Kosovo Liberation
7 Army, perhaps they worked or fought alongside them, and they're being
8 called as one of the 300 witnesses that the Prosecution has sort of
9 slewed into this case, which essentially covers a very large number
10 of the people in Kosovo who fought in the conflict as well. We have
11 to ask the Prosecution, under this arrangement, to ask them if they
12 would mind flying to The Hague, at their own expense it seems, to be
13 interviewed by the Defence in the presence of the Prosecution and in
14 the presence of the Registry.

15 Now, just think about it. 300 witnesses. I mean, it's a
16 completely unworkable proposal. So we'll put that in writing as we
17 move forward.

18 As far as the submissions that have been addressed to you in
19 relation to detention is concerned, we agree that there needs to be a
20 final and full bottoming out of the concerns that have been expressed
21 about the reliability and enforceability of the guarantees offered by
22 the Kosovo police service. I'm not going to go into what the
23 Prosecution said in its confidential filing. Although, you've asked,
24 I think, for some clarity about whether that should remain
25 confidential. We say it certainly shouldn't. I think it's very

1 important that the Kosovo institutions know what the Prosecution
2 think about them and know what they say about them and know what kind
3 of material that they rely upon.

4 That's important in the public interests. It's also important
5 because the public in Kosovo want to see these proceedings being
6 conducted fairly, and they are, I'm sure, no doubt rightly scratching
7 their heads as to, as how Mr. Kehoe put it: What more could the
8 police do other than tell you they would do everything you've asked
9 and they would do it by consent so there's no need for a legal basis.

10 You will know, and I'm not going to make an issue out of it, but
11 we have appealed your decision on the grounds of both apparent and
12 actual bias on the basis that the way in which you reasoned it makes
13 it pretty clear that this Court had no intention of granting
14 provisional release under any conditions that were offered. And to
15 the extent that you relied upon things you said were not sufficiently
16 explicit in the representations that were made by the police, that's
17 completely inconsistent with the ruling of the Court of Appeal which
18 directed you to seek further investigations on anything you didn't
19 know about.

20 So we would support Mr. Kehoe's submission really regardless of
21 the outcome of the appeal. But let it be clear, the Kosovo police
22 service was asked by you, in great detail, what they could do, and
23 they answered in very great detail as to what they could do. And yet
24 it appears to those outside the courtroom that that exercise was a
25 futile one from the start, because the flaws that were found in the

1 response that was given were all questions that you could have
2 addressed to the Kosovo police service at the time before ruling,
3 just as the Court of Appeal said you should have done on the last
4 occasion.

5 JUDGE GUILLOU: Thank you, Mr. Emmerson.

6 Mr. Young, please.

7 MR. YOUNG: [via videolink] Your Honour, thank you. Just very
8 briefly. To say -- to update Your Honour that we have commenced
9 investigations. We are at the very early stages and have secured a
10 professional investigator, but the reality is embarking on Defence
11 investigation will very much depend upon the clarity and the
12 assistance we get from the pre-trial brief of the Prosecution.

13 At present, the Defence are wholly unclear about the case
14 against Mr. Selimi, and we're also suffering massively from a lack of
15 information, redactions, delayed disclosure, and all sorts. So at
16 present, there is a limited amount we can work with. But that may
17 change depending upon what the contents of the pre-trial brief are.
18 Thank you.

19 JUDGE GUILLOU: Thank you, Mr. Young.

20 Mr. Baiesu, please.

21 MR. BAIESU: Thank you, Your Honour.

22 We agree with the submissions that have already been made by the
23 other Defence teams and we support them. We are in the same position
24 as the other Defence teams as far as our -- the progress of our
25 investigations are going -- is going, and we stand by the submissions

1 we outlined in our written submissions for this Status Conference.
2 That is filing 606. Thank you.

3 JUDGE GUILLOU: Thank you, Mr. Baiesu.

4 Mr. Prosecutor, do you want to mention anything? Briefly,
5 please.

6 MR. FERDINANDUSSE: Yes, Your Honour, very brief on one point.
7 I will only note that the proposed framework for contacts with
8 witnesses and handling of confidential information involves a careful
9 balancing of the duties and prerogatives of the
10 Specialist Prosecutor --

11 JUDGE GUILLOU: Mr. Prosecutor, sorry to interrupt, but we --
12 this will be litigated in written rulings. So I mentioned this to
13 the Defence. I don't want the parties to start raising the merits of
14 your request today, please.

15 MR. FERDINANDUSSE: Your Honour, all I then will do, in a
16 briefer way, is put on the record that the submissions made by the
17 Thaci Defence mischaracterise the proposed framework as submitted by
18 the SPO. Thank you.

19 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

20 Let me turn to the Court Officer, because I see that there might
21 be another issue with the VTC.

22 [Trial Panel and Court Officer confers]

23 JUDGE GUILLOU: I have been told that there is another
24 interruption with the VTC and that it's been reconnecting, so we have
25 to wait for a couple of seconds.

1 [Technical difficulties]

2 JUDGE GUILLOU: So for the information of the public, we are
3 currently reconnecting with the four accused. And I see now that we
4 are reconnected.

5 Madam Court Officer, can you confirm that the connection works
6 for the four accused? Thank you, Madam Court Officer.

7 We can now proceed with the next item in our agenda related to
8 detention.

9 And for this, I would like the Registry to give an update on the
10 detention regime, given the evolution of the COVID pandemic,
11 including, but not limited to, counsel and family visitation
12 policies. And if you could also address what has been mentioned by
13 Mr. Kehoe for the limits, that would be much appreciated.

14 Mr. Roche, please.

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

16 As regards the general situation, the activity schedule for
17 detainees is back, has been reintroduced following the necessary
18 suspension for a period of time due to an outbreak of COVID, but now
19 it is back to normal.

20 In terms of visits, there are a certain number of restrictions
21 but family visits are allowed and are taking place at the moment.
22 They are linked to members of the close family and other family
23 members of detainees.

24 As regards counsel visits, they are proceeding. They are
25 proceeding very intensely. We, of course, consult on a weekly basis

1 formally, and on a daily basis informally, with the medical officer,
2 and he provides advice about the necessary measures to ensure the
3 safety of detainees and others who are present in the DMU.

4 Just today there was a recommendation from -- a strong
5 recommendation that the number of persons present in the meeting
6 rooms be reduced because of the evolution of the pandemic.

7 To respond to Mr. Kehoe's comments. We have arranged, and have
8 just now arranged visits for all of tomorrow which will involve two
9 team members and an interpreter physically present. Obviously, other
10 team members can attend remotely. There is provision for some to
11 attend remotely, some to be physically present, and Zoom and
12 telephone consultations can happen in the evenings and, if necessary,
13 at weekends through prior arrangement.

14 So, again, these measures are based on medical necessity. As
15 soon as they are no longer deemed necessary, they will be removed.
16 Thank you.

17 JUDGE GUILLOU: Thank you, Mr. Roche.

18 Does any of the Defence teams want to comment on the Registry's
19 submissions?

20 Mr. Kehoe.

21 MR. KEHOE: No, Your Honour, but I am sure you can appreciate
22 how difficult this makes consultation with a client and our ability
23 to conduct a proper investigation with his assistance, which we, of
24 course, need.

25 JUDGE GUILLOU: Thank you, Mr. Kehoe.

1 Let us now move to the date of the next Status Conference. I
2 confirm to the parties that I intend to schedule the next
3 Status Conference on Friday, 4 February, 2022, at 1430 Hague time. I
4 invite the parties to confirm their availability.

5 Mr. Prosecutor.

6 MR. FERDINANDUSSE: Your Honour, the SPO will be available on
7 4 February. Thank you.

8 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

9 Mr. Kehoe.

10 MR. KEHOE: Your Honour, we will be available. Thank you.

11 JUDGE GUILLOU: Thank you, Mr. Kehoe.

12 Mr. Emmerson.

13 MR. EMMERSON: We will be available, Your Honour.

14 JUDGE GUILLOU: Thank you, Mr. Emmerson.

15 Mr. Young.

16 MR. YOUNG: [via videolink] Yes, we'll be available. Thank you.

17 JUDGE GUILLOU: Thank you, Mr. Young.

18 Mr. Baiesu.

19 MR. BAIESU: We will also be available. Thank you, Your Honour.

20 JUDGE GUILLOU: Thank you, Mr. Baiesu.

21 Mr. Laws, please.

22 MR. LAWS: [via videolink] Your Honour, yes, we will also be
23 available.

24 JUDGE GUILLOU: Thank you, Mr. Laws.

25 You will receive a Scheduling Order which will include an agenda

1 before the Status Conference in due course. And as usual, I invite
2 the parties to make written submissions if they would like to raise
3 any specific issue during the next Status Conference. And I also
4 remind the parties of the submissions that they are expected to file
5 as we discussed earlier in this Status Conference.

6 At this point, I would like to ask the parties and participants
7 whether they have any other issue they would like to raise.

8 Mr. Prosecutor.

9 MR. FERDINANDUSSE: Nothing further, Your Honour. Thank you.

10 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

11 Mr. Kehoe.

12 MR. KEHOE: Nothing that we haven't previously addressed. Thank
13 you.

14 JUDGE GUILLOU: Thank you, Mr. Kehoe.

15 Mr. Emmerson.

16 MR. EMMERSON: Nothing, Your Honour.

17 JUDGE GUILLOU: Thank you, Mr. Emmerson.

18 Mr. Young, please.

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

20 JUDGE GUILLOU: Thank you, Mr. Young.

21 Mr. Baiesu, please.

22 MR. BAIESU: Thank you. Nothing from us.

23 JUDGE GUILLOU: Thank you, Mr. Baiesu.

24 Mr. Laws, please.

25 MR. LAWS: [via videolink] Your Honour, there is nothing that we

1 wish to raise today. Thank you.

2 JUDGE GUILLOU: Thank you very much.

3 And before we end this hearing, I will issue my third oral order
4 on the Defence request for reconsideration of my decision of
5 9 December 2021 in which I extended the word limit for the SPO's
6 pre-trial brief.

7 I find that the Defence has not demonstrated a clear error of
8 reasoning or that reconsideration is necessary to avoid an injustice
9 pursuant to Rule 79(1) of the Rules.

10 In relation to the size and complexity of the case and the
11 volume of disclosure, the Defence has not demonstrated an error in
12 relying on this factor to determine whether an extension of the word
13 limit would be warranted. The relevance of this factor to other
14 matters does not diminish its relevance to whether an extension of
15 word limit should be granted to the SPO in relation to its pre-trial
16 brief.

17 The Defence itself has stressed on a number of occasions the
18 need to know the SPO's case and the evidence the SPO has in support
19 thereof as well as how essential the SPO's pre-trial brief is to that
20 endeavour.

21 In this context, a detailed pre-trial brief with extensive
22 references to the evidence can do nothing but assist the Defence in
23 its preparations.

24 As regards the finding that the SPO's request for an extension
25 of the word limit was made sufficiently in advance, while the request

1 could have been made earlier, a week before the deadline for filing
2 the SPO's pre-trial brief was sufficient time to consider the
3 request.

4 In addition, I note that the disclosure process remains ongoing.
5 In particular, the Rule 102(3) disclosure has been suspended at the
6 request of the parties and will only regain momentum in the new year.
7 In this context, the time needed to translate the SPO's pre-trial
8 brief will not be the sole determinative factor in relation to the
9 length of the pre-trial phase of the case.

10 I therefore find that the test for reconsideration pursuant to
11 Rule 79(1) has not been met.

12 This concludes my third and last oral order.

13 And this concludes today's today hearing. I thank the parties
14 and participants for their attendance. I also wish to thank the
15 interpreters, stenographers, audio-visual technicians, and security
16 personnel for their assistance.

17 The hearing is adjourned. Thank you.

18 --- Whereupon the Status Conference adjourned
19 at 5.58 p.m.

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