

1 Friday, 16 December 2022

2 [Status Conference]

3 [Open session]

4 [The accused entered court]

5 --- Upon commencing at 10.30 a.m.

6 PRESIDING JUDGE SMITH: Good morning, everyone, and welcome.

7 For the record, I am Charles Smith. I am the Presiding Judge  
8 for this Panel. My colleagues are, to my left, Judge  
9 Christoph Barthe; to my right, Judge Guénaél Mettraux; and to my far  
10 right, Judge Fergal Gaynor.

11 Madam Court Officer, would you please call the case.

12 THE COURT OFFICER: Good morning, Your Honours. This is case  
13 KSC-BC-2020-06, The Specialist Prosecutor versus Hashim Thaci,  
14 Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi.

15 PRESIDING JUDGE SMITH: Thank you.

16 I kindly ask the parties to introduce themselves, starting with  
17 the Specialist Prosecutor.

18 Mr. Halling.

19 MR. HALLING: Good morning, Your Honours. Appearing for the SPO  
20 today, Alex Whiting, Ward Ferdinandusse, Nate Quick, Sarah Clanton,  
21 Sebastian van Hooydonk. And my name is Matt Halling.

22 PRESIDING JUDGE SMITH: Thank you, Mr. Halling.

23 Now, Mr. Kehoe, for Mr. Thaci.

24 MR. KEHOE: Yes, Your Honour, good morning. Sophie Menegon to  
25 my right; Bonnie Johnston to my far right; and on the Zoom is my

1 co-counsel, Luka Misetic. President Thaci is present and before the  
2 Court.

3 PRESIDING JUDGE SMITH: Thank you, Mr. Kehoe.  
4 Mr. Emmerson, please.

5 MR. EMMERSON: [via videolink] Good morning, Your Honours. I  
6 appear this morning remotely for Mr. Kadri Veseli, together with  
7 co-counsel, who is in court, Mr. Andrew Strong, Ms. Annie O'Reilly,  
8 and Legal Adviser, Mr. Hajredin Kuci.

9 Just to say one word, if I may, which is my apologies for not  
10 being there in person. I had intended to be, but I'm afraid I was  
11 diagnosed with COVID earlier on in the week.

12 PRESIDING JUDGE SMITH: We understood that and got advance  
13 notice and thank you for reminding us, and we hope you have a speedy  
14 recovery. Thank you.

15 Mr. Young, you're going to introduce the next party. Go ahead.

16 MR. YOUNG: Yes, Your Honours, as you know, I appear for  
17 Mr. Rexhep Selimi as counsel. And today I appear with co-counsel  
18 Mr. Geoffrey Roberts, Mr. Eric Tully, and Dr. Rudina Jasini. We are  
19 assisted today by Nataliia Ryzhenko, Case Manager, and by  
20 Riva Gjecaj, evidence reviewer. Thank you.

21 PRESIDING JUDGE SMITH: Thank you, Mr. Young.  
22 Ms. Alagendra, please.

23 MS. ALAGENDRA: [via videolink] Good morning, Your Honours.  
24 Firstly, my apologies for not being there in person. I'm  
25 Venkateswari Alagendra appearing for Mr. Jakup Krasniqi. Together

1 with me on videolink is Mr. Aidan Ellis, co-counsel. Present in  
2 court, our co-counsel Mr. Victor Baiesu; case manager Eva Jerman;  
3 legal associate Melissa Gregg; evidence reviewer Jacopo Ricci; and  
4 support team members Durim Limaj and Laura Abia.

5 For the record, Mr. Krasniqi is present in court.

6 PRESIDING JUDGE SMITH: Thank you, Ms. Alagendra.

7 Mr. Laws, we turn to you now on behalf of the victims.

8 MR. LAWS: Good morning to Your Honours, and to everyone. I am  
9 Simon Laws representing the victims in this case, together with my  
10 co-counsel Maria Radziejowska.

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

12 Mr. Nilsson, we understand you are alone today; is that correct?

13 MR. NILSSON: It's correct, Your Honour. It's only me. Good  
14 morning.

15 PRESIDING JUDGE SMITH: Thank you, for the Registry.

16 Now, before we start, I'd like to recall that on 30 November,  
17 this Trial Panel was assigned to this case by the President of the  
18 Kosovo Specialist Chambers, in accordance with Rules 98 and 115(1) of  
19 the Rules of Procedure and Evidence, upon transmission of the case  
20 file, which occurred yesterday. On November 30, 2022 -- I'm sorry,  
21 that's not correct. Yes, the transfer was yesterday. On 30 November  
22 2022, I was elected Presiding Judge of this Panel by its members.

23 With a view to ensure that no time is lost in preparing this  
24 case to go to trial, we have taken advantage of the short time before  
25 the winter recess to hold this Status Conference, and we thank you

1 all for making yourselves available on this short notice.

2 The primary reason for holding a Status Conference at this point  
3 is to enable us to get on with the planning and the commencement of  
4 the trial without undue delay. We didn't want three weeks of winter  
5 recess to go by without ensuring that all necessary preparations are  
6 being made to ensure that this case goes to trial as soon as  
7 possible. We believe it is in the interest of all that this case now  
8 moves to the next stage without delays.

9 First of all, I would like to recognise all the hard work by all  
10 parties and participants during the pre-trial stage. We are quite  
11 mindful and do not need to be reminded of the fact that this case is  
12 now entering its third year, and the accused await trial in  
13 detention.

14 You and the accused and the other participants can all rest  
15 assured that this Panel will do everything in its power to fairly and  
16 expeditiously bring this matter to trial without undue delay and to  
17 manage the trial in a timely and effective manner. To that end, we  
18 intend today to give you some information, some direction, and some  
19 orders with strict deadlines that will enable a prompt scheduling of  
20 the opening statements and the calling of witnesses and the offering  
21 of evidence in this case.

22 This practice will continue throughout the trial to ensure that  
23 proceedings remain focused exclusively on issues that are relevant to  
24 this case and so that the trial moves along at a reasonable pace.

25 We must say that having read the pre-trial briefs of the

1 parties, we are encouraged that there are many issues that are not,  
2 or at least should not, be in dispute between the parties. We also  
3 take note of the degree of cooperation that is apparent from the  
4 record, both between opposing parties and between the various Defence  
5 teams.

6 This Panel will encourage such cooperation and it is certainly  
7 conducive to shorter and more effective proceedings.

8 The responsibility to ensure that an accused is given a fair  
9 trial and an expeditious trial is the responsibility of all of us  
10 within the limits of our respective mandates.

11 Now, as for today's session, we will proceed until about noon  
12 and take a half-hour break. We will then resume at 12.30 and  
13 continue until finished, hopefully by 2.00 p.m. If after our  
14 questioning we are finished and it is before noon, we will then break  
15 at that time anyway, and then we will come back with some finishing  
16 matters, including some oral orders.

17 Just as advance notice, and so that you can all start making  
18 some plans for the future, during the trial of this case, the hours  
19 in court will normally be as follows: First session from 9.00 to  
20 11.00; second session, 11.30 to 1.00 p.m.; third session, from 2.30  
21 to 4.00. Only if exceptionally needed would we extend the hours  
22 beyond those stated hours.

23 These hours allow approximately five hours sitting time on any  
24 day in court. This gives due consideration to the efforts of our  
25 excellent interpreters and the very difficult and tiring task of

1 simultaneous interpretation that is necessary in a trial of this  
2 type.

3 We are hoping to sit for 20 hours per week in court.

4 First of all, we need to deal with the working language, because  
5 it's provided for in Rule 8(3)(a) of the rules. It requires us,  
6 after hearing the parties and the Victims' Counsels, to decide on a  
7 working language for the proceedings. The Pre-Trial Judge, in his  
8 decision on working language of 11 November 2020, determined that  
9 English shall be the working language for the proceedings in this  
10 case.

11 May I take it to all parties that they are fine with English  
12 being the working language for these proceedings?

13 Mr. Prosecutor.

14 MR. HALLING: We are, Your Honour.

15 PRESIDING JUDGE SMITH: Mr. Kehoe.

16 MR. KEHOE: Yes, Your Honour.

17 PRESIDING JUDGE SMITH: Mr. Emmerson.

18 MR. EMMERSON: [via videolink] [Microphone not activated]

19 PRESIDING JUDGE SMITH: Microphone, Mr. Emmerson.

20 MR. EMMERSON: [via videolink] Sorry. Yes, Your Honour.

21 PRESIDING JUDGE SMITH: Okay.

22 Mr. Young.

23 MR. YOUNG: Yes, thank you.

24 PRESIDING JUDGE SMITH: Ms. Alagendra.

25 MS. ALAGENDRA: [via videolink] Yes, Your Honours.

1           PRESIDING JUDGE SMITH: Thank you.

2           Mr. Laws.

3           MR. LAWS: Your Honour, yes. Thank you.

4           PRESIDING JUDGE SMITH: Thank you.

5           Now on courtroom scheduling in the future.

6           As you all know by now, this courtroom is not reserved  
7 exclusively for this trial. Other pre-trial and trial proceedings  
8 will be taking place in the same courtroom as this trial. We must  
9 accommodate those proceedings as well as ours.

10           It is our plan for trial time in this case to proceed as  
11 follows. We are planning to sit three consecutive weeks, 20 hours  
12 per week, spread over four days per week, with Friday being generally  
13 reserved for activities other than court appearances. Then one week  
14 out of court, with that week taken by the other Trial Panel and to  
15 allow you and the Panel to prepare for the next sessions. We will  
16 then sit for another three weeks, followed by two weeks out of court  
17 for the same reason, to allow the Trial Panel I to proceed. Then  
18 back to another three-week session, followed by one week out of  
19 court. That pattern will continue to alternate one and two weeks out  
20 of court without change throughout the trial.

21           Normal holidays and summer and winter recesses will be honoured.

22           Such a plan, we hope, will enable this Panel to move forward as  
23 expeditiously as possible under the circumstances. This plan will  
24 allow us a maximum of 620 hours in court per year. At this time, it  
25 is our intention to convene this case in our courtroom for the

1 opening statements by SPO and, if sought, by Victims' Counsel and  
2 Defence counsel, on 1 March 2023.

3 With a view to achieving this starting date, the Panel will  
4 schedule a trial preparation conference, pursuant to Rule 117 of the  
5 Rules, on Wednesday, 18 January 2023, and the Specialist Prosecutor's  
6 preparation conference, pursuant to Rule 118, in early February.

7 Rule 117(1) provides that the Panel shall hold a trial  
8 preparation conference with the parties and, where applicable,  
9 Victims' Counsel. The Panel considers the participation of the  
10 Victims' Counsel appropriate and, therefore, invites him to attend  
11 the trial preparation conference.

12 We now ask the parties' views on the schedule that I just  
13 outlined and also the plans to start the trial.

14 Mr. Prosecutor.

15 MR. QUICK: Good morning, Your Honours. The SPO agrees that the  
16 schedule could ultimately facilitate fair and expeditious  
17 proceedings. We would just note that there should be some degree of  
18 flexibility in particular in relation to sitting days per week so  
19 that there is no unnecessary break or prolongation of the time that's  
20 required for a witness to travel or be available for testimony.

21 PRESIDING JUDGE SMITH: Well, we will come back to that at a  
22 later time, but the schedule will be quite rigid. We can warn you of  
23 that ahead of time. So you're going to have to make advance notice  
24 and advance placement with your witnesses to get them here and to  
25 have them here and, as we'll say later, to have backups.



1 MR. QUICK: Understood, Your Honour.

2 PRESIDING JUDGE SMITH: Thank you.

3 Mr. Kehoe.

4 MR. KEHOE: Yes, Your Honour, we will jointly, this is the  
5 Defence, propose the end of March, and the reason is the witness  
6 protocol which has significantly hampered our investigative efforts.  
7 As Your Honour is aware, we have been unable to contact SPO witnesses  
8 albeit shortly before then. For instance, in my case, I had  
9 interviews set up extensively with international witnesses which I  
10 had to cut off at the 11th hour because of the witness protocol.

11 Currently, the witness protocol issue is on appeal, and we are  
12 seeking relief from the witness protocol, most specifically with  
13 regard to international witnesses. The instance that I was just  
14 referring to was a senior -- extremely senior military officer who  
15 was more than willing to sit down and discuss these matters with me,  
16 and I -- obviously per the Court's order, the Pre-Trial Judge's Court  
17 order, I had to advise him that I had to postpone that until further  
18 notice. That is yet pending. That is now months and months old.

19 So given the circumstances, and we have some other issues  
20 concerning SPO disclosures, disclosures coming at the 11th hour which  
21 amount to, I think it's 66 redacted witnesses -- or 54, within 30  
22 days of trial, 46.000 pages in trial, plus this witness protocol, we  
23 would seek a trial date at the end of March, given the fact that we  
24 need some time for more investigative measures.

25 PRESIDING JUDGE SMITH: What date?

1 MR. KEHOE: The last Monday in March.

2 PRESIDING JUDGE SMITH: That's your request?

3 MR. KEHOE: That's the request.

4 PRESIDING JUDGE SMITH: We'll take that under consideration.

5 Is that everyone's request on the Defence?

6 Mr. Emmerson.

7 MR. EMMERSON: [via videolink] Yes, indeed, I support that  
8 position. I think it is the common position of the Defence.

9 May I indicate, I doubt that Your Honour would be wishing to  
10 hear submissions in detail about particular witnesses at this early  
11 stage of the process, but there is one issue that we need to address  
12 in terms of disclosure --

13 PRESIDING JUDGE SMITH: Just a second, I'd rather we come back  
14 to that at another time. Right now we just need to know your view on  
15 the time to start.

16 MR. EMMERSON: [via videolink] No, exactly. For the reasons that  
17 relate to that issue, we think it would be necessary to start at the  
18 end of March rather than the beginning.

19 PRESIDING JUDGE SMITH: Thank you.

20 Anybody else?

21 Mr. Young.

22 MR. YOUNG: We agree.

23 PRESIDING JUDGE SMITH: Ms. Alagendra.

24 MS. ALAGENDRA: [via videolink] We agree, Your Honour.

25 PRESIDING JUDGE SMITH: Thank you.

1           The Panel would also like to state a few things about how it  
2           expects the parties to conduct themselves, though we assume much of  
3           what will be said would be obvious to all.

4           First, in accordance with Article 10 of the Code of Professional  
5           Conduct for the Counsel and Prosecutors before the Kosovo Specialist  
6           Chambers, counsel and Prosecutors have a general duty of candour  
7           towards the Trial Panel, and the Panel expects that such duty will be  
8           upheld throughout the proceedings.

9           Parties and participants shall also at all times demonstrate  
10          courtesy to each other in and out of court. Personal comments  
11          relating to and personal criticism of any party or participant will  
12          not be tolerated by the Trial Panel. Therefore, the parties will  
13          focus on what is relevant to this case, and we hope not to have to  
14          use our authority to sanction any such comments.

15          All objections, comments, or other statements made in the  
16          courtroom shall be directed to the Bench and not to opposing counsel.

17          Parties and participants shall refrain from sharp tactics and  
18          shall, as far as possible, inform other participants in advance of  
19          oral and written applications they intend to make in court. As  
20          already mentioned, the Trial Panel also expects parties and  
21          participants to regularly discuss issues arising from the case among  
22          themselves with a view to finding solutions that do not require  
23          litigation or reduce the scope thereof.

24          Communications with the Judges are regulated by Article 11 of  
25          the Code of Conduct. Contacts by a party or other participant with

1 the Trial Panel should, in general, be copied to or otherwise  
2 notified to the opposing party.

3 The Panel would finally highlight the fact that any problem that  
4 a party or participant has with the other party or with counsel  
5 acting on behalf of a party or participant shall first be raised in  
6 compliance with the Code of Conduct with the party or counsel  
7 concerned. When a dispute cannot be resolved, it shall be raised  
8 with the authorities provided for under the Code of Conduct or with  
9 the Trial Panel.

10 Are there any comments on this?

11 MR. KEHOE: Nothing from President Thaci.

12 PRESIDING JUDGE SMITH: All right. Anybody? Raise your hand if  
13 you want to say something. Thank you.

14 The responsibility to ensure that these proceedings are fair and  
15 expeditious is not only the obligation of the Trial Panel but also of  
16 the parties and participants.

17 The Trial Panel will not tolerate any delaying tactics by any  
18 party. It will seek to ensure at all times that proceedings proceed  
19 in a timely and effective manner. The Trial Panel expects the  
20 parties and participants to contribute to that goal within the scope  
21 of their responsibilities and in a manner that is consistent with the  
22 rights of the accused and those of participating victims.

23 Extension of times will only be granted when clear reasons and  
24 justifications have been demonstrated. Furthermore, a party seeking  
25 such relief is expected to make an application for additional time in

1 a timely fashion rather than at the last minute.

2 Parties' and participants' submissions, whether oral or in  
3 writing, should be focused and to the point. Parties and  
4 participants shall avoid lengthy speeches, repetitious submissions or  
5 submissions in respect of issues not relevant to the proceedings.

6 Any comments on this? Thank you.

7 I want to make a statement in general concerning closed and  
8 private court sessions as well as protective measures.

9 The Panel is guided by the fact that the trials are expected to  
10 be in public so that the public knows and has confidence in the  
11 judicial process as well as an understanding of the issues and  
12 decisions in that trial. This belief is reinforced by our Law and  
13 the Rules of Procedure and Evidence which demand publicity subject of  
14 certain qualifications.

15 Private and closed sessions of the court proceedings should be  
16 used sparingly and be the exception rather than the rule. Counsel  
17 are instructed to plan their direct and cross-examinations carefully  
18 and, in so doing, to endeavour to group together any questions that  
19 must be asked and answered in private or closed session so as to  
20 avoid the need to move to closed or private session repetitively.

21 Could you understand should be prepared to justify briefly why  
22 they request going into private or closed session.

23 I now turn to the specific issues of redactions and withholding  
24 of documents which has a direct bearing on the question of publicity  
25 in these proceedings.

1 Redacting names and information that might identify a witness,  
2 witnesses, victims participating in proceedings, and other at risk on  
3 account of information they gave or their participation in the  
4 proceedings might be necessary to guarantee their effective  
5 protection and is permissible under our legal regime under certain  
6 conditions.

7 However, such measures must at all times be consistent with the  
8 effective protection of the rights of the accused. In particular,  
9 their rights to be informed promptly and in detail of the nature and  
10 cause of the charges against them and to have adequate time for the  
11 preparation of their defence.

12 The need to guarantee a sufficient degree of publicity of  
13 proceedings will also be relevant to deciding what redactions are  
14 necessary and proportionate in the circumstances. The necessity and  
15 proportionality of the proposed redactions will, therefore, have to  
16 be clearly demonstrated by the relevant party.

17 The Panel notes that a large number of redactions and/or the  
18 withholding of a large number of documents have been authorised  
19 during the pre-trial phase based on the fact that they were necessary  
20 and proportionate during that stage of the proceedings.

21 Now that we are about to commence trial, it is the view of the  
22 Panel that many of those redactions are no longer necessary or  
23 proportionate. If kept, many of these redactions would constitute an  
24 impermissible interference with the fundamental rights of the  
25 accused.

1           The Panel will, therefore, take steps in successive stages to  
2 ensure that information not yet known to the accused will be made  
3 available to them so that they can effectively prepare and present  
4 their case at trial.

5           There are three categories of regulations presently affecting  
6 the Defence: First, those contained in the indictment; second, those  
7 contained in witness statements and exhibits, which pertain to the  
8 first 40 witnesses that the SPO is planning to call at trial; third,  
9 those in statements or of other witnesses and exhibits on the SPO's  
10 list of witnesses and exhibits.

11           I will deal with these in turn.

12           Turning first to the redactions contained in the indictment. We  
13 have counted 70 pending redactions, 58 of those are scheduled to be  
14 removed 30 days prior to, trial which, on the current schedule, will  
15 be - if we adopt the current schedule - will be 1 February.  
16 Actually, it would be 30 January. The remaining 12 redactions are  
17 scheduled to be removed 30 days before the testimony of the witness  
18 in relation to whom the information pertains.

19           Except for one witness with the implications on one redaction in  
20 the indictment, there is no indication as to when the other witnesses  
21 concerned might be called by the SPO to testify.

22           Consistent with Article 21(4)(a) of the Law and Rules 86, 88(2),  
23 and 124(2) of our Rules, the Panel would like to indicate that it is  
24 planning to order the removal of all redactions in the indictment, as  
25 far as the Defence is concerned, no later than 30 January 2023.

1           The SPO will have to demonstrate the need to maintain any  
2 redactions in the public version of the indictment in accordance with  
3 Rule 88(2) of our rules.

4           The removal of all redactions in the indictment, as far as the  
5 accused are concerned, should enable them to get timely and detailed  
6 notice of the nature and cause of the charges against them and have  
7 adequate time to prepare.

8           Secondly, we take the view that while many of the redactions in  
9 the disclosed evidentiary material which the SPO plans to use at  
10 trial might have been necessary and proportionate at an earlier stage  
11 of the proceedings, many of the redactions have become unnecessarily  
12 cumbersome and could be an impediment to the timely preparation of  
13 the Defence and to the prompt and timely conduct of this trial.

14           Based on this, it is our preliminary view - I note that again,  
15 our preliminary view - that all redactions contained in the  
16 evidentiary material that the SPO plans to use or to show to any of  
17 its first 40 witnesses, including any witness's statement that the  
18 SPO plans to use or tender, should, in principle, be removed 30 days  
19 before the commencement of the trial.

20           That includes the disclosure of the identity of, we believe,  
21 seven of the first 40 witnesses that the SPO intends to call, in  
22 relation to whom the Pre-Trial Judge ordered delayed disclosure up  
23 until 30 days before testimony.

24           Under the regime in place during pre-trial, the identity of  
25 these seven witnesses and their related evidentiary material were



1 scheduled to be disclosed 30 days prior to their testimony. The  
2 Panel is intent on ordering that this be done instead 30 days prior  
3 to the commencement of trial; in other words, on 30 January 2023.

4 Now, as the Panel sees it, there are two ways in which the SPO  
5 can respond to such an approach. One is to call these witnesses  
6 early in its case so that, in effect, the protective measure of  
7 disclosure 30 days prior to testimony remains in place; or, the SPO  
8 can ask the Panel to grant other less intrusive measures to deal with  
9 any remaining security concerns in respect of those witnesses.

10 For instance, the Panel might entertain, in relation to those  
11 seven witnesses, any application by the Prosecution to subject the  
12 use of the Defence and Victims' Counsel of information pertaining to  
13 these seven witnesses to contain conditions or limitations. The  
14 Panel might also entertain any application from the SPO to vary its  
15 list of the first 40 witnesses that it intends to call at trial in  
16 order to ensure that all redactions in the indictment can be lifted  
17 by 30 January 2023.

18 If the SPO is unable to arrange for any particular witness to  
19 testify in the first month of trial to achieve the same, the Panel  
20 would like to know why this is so. But we leave it to the SPO to  
21 decide what submissions it wishes to make on these issues.

22 In any event, we want to make it clear that, consistent with the  
23 orders of the Pre-Trial Judge, protective measures in relation to  
24 these matters will continue to stand in relation to the general  
25 public.

1           Concerning the third category of redactions - namely, redactions  
2           in the statements of other witnesses and exhibits on the SPO list of  
3           witnesses and exhibits - we plan to adopt a similar approach and  
4           order the removal of redactions for each new group of SPO witnesses  
5           that are going to be called in concession each time notice is given  
6           of the next group of SPO witnesses.

7           We will now give each of you the opportunity to state your views  
8           in respect to these issues and to make additional written submissions  
9           before we render our decision on this matter in January.

10          Please be mindful that we will simply not allow a continuation  
11          of the redaction system as it currently stands as we approach trial.

12          From the SPO first.

13          MR. HALLING: Thank you, Your Honour. I'll address these.

14          For the first of Your Honours three orders in relation to the  
15          indictment. We understand. We'll comply by the deadline indicated.

16          On the second one. We also understand the terms of  
17          Your Honour's orders. We will evaluate what applications are  
18          necessary for the --

19          PRESIDING JUDGE SMITH: Mr. Halling, this was not an order.  
20          This was a statement of what we intended.

21          MR. HALLING: Thank you. But in relation to the statement of  
22          intention, we will work within the framework that Your Honour has  
23          set, and we can accept that. We do need to evaluate what  
24          applications would be necessary in relation to the 30 days before  
25          testimony of witnesses, and so we would revert back on that.

1 And for the third order, we understand and we'll comply.

2 PRESIDING JUDGE SMITH: Thank you very much.

3 Mr. Kehoe.

4 MR. KEHOE: Yes, Your Honour, just briefly. We appreciate the  
5 redactions on the indictment themselves, Your Honours. That will  
6 assist us tremendously as we move forward on there.

7 With regard to the witness redactions that Your Honour alluded  
8 to, that would include, I suspect, the 46.000 pages that was  
9 scheduled to receive on the cusp of trial.

10 PRESIDING JUDGE SMITH: We weren't counting the pages.

11 MR. KEHOE: No, I don't know the number of pages. I got the  
12 46.000 page number from the SPO, who told us that our post-Christmas  
13 present at this stage was going to be 46.000 pages of documents on  
14 top of everything else that we were supposed to digest and  
15 investigate 30 days before trial.

16 With all due respect, Your Honour, this was addressed with the  
17 Pre-Trial Judge. Obviously, the order was the order. But we are at  
18 a point we are removing redactions and trying to get disclosure. So  
19 if we could move that date up to an earlier date, it would be  
20 helpful. 46.000 pages is difficult to read in 30 days, much less  
21 digest and find out exactly where it's going to be deployed or our  
22 resources are going to be deployed.

23 I say that, Judge, somewhat in the abstract, because I don't  
24 know what's in those documents. I suspect the 46.000 pages of  
25 documents are going to be significant or we would have received them

1 previously, or there are other concerns. Whatever it happens to be.  
2 But it's still a lot of information. It's still a lot of information  
3 to get through on top of everything else. So we would respect -- I'm  
4 sorry.

5 PRESIDING JUDGE SMITH: So on the 40 witnesses, you want an  
6 earlier date?

7 MR. KEHOE: Well, on the 40 witnesses we would -- the  
8 documentation --

9 PRESIDING JUDGE SMITH: The documentation.

10 MR. KEHOE: There are two issues. The one is the documentation,  
11 the 46.000 pages that we are getting on the eve.

12 With regard to the witnesses themselves, yes, we would want them  
13 before. But it would help, Judge, if we had the order of their  
14 witnesses. If we had the first -- what's their first 20?

15 PRESIDING JUDGE SMITH: We're going to get to that in a little  
16 bit. So I understand. You'd like to have the documents sooner.

17 MR. KEHOE: Basically, Judge.

18 PRESIDING JUDGE SMITH: All right.

19 MR. KEHOE: You said it much more succinctly than I.

20 PRESIDING JUDGE SMITH: Thank you. You will find that we are  
21 going to be succinct quite often.

22 MR. KEHOE: I trust, Judge, that that would be case.

23 PRESIDING JUDGE SMITH: Thank you very much.

24 MR. KEHOE: Thank you. Okay. There is one --

25 PRESIDING JUDGE SMITH: Go ahead.

1 MR. KEHOE: There is one matter with regard to these 40  
2 witnesses that, Your Honour, I think we are going to have to take  
3 that in private session. I don't want to delay matters now, but I  
4 would like to address that at some point.

5 PRESIDING JUDGE SMITH: Today?

6 MR. KEHOE: Well, it would just be very brief concerning the  
7 disclosure of those witnesses, because they do pertain to each other.

8 PRESIDING JUDGE SMITH: Okay. Thank you.

9 Mr. Emmerson.

10 MR. EMMERSON: [via videolink] Your Honour, I wanted to return to  
11 the issue I'd flagged up earlier on, and it relates -- and I'm not  
12 going to mention any details, but it relates to the witness that  
13 Your Honour referred to when speaking within categories 1 and 2 of a  
14 witness who relates both to redaction on the indictment and to  
15 significant redactions in the witness's testimony.

16 This issue was raised in advance in writing with the SPO, and  
17 there's been *inter partes* correspondence about the question of  
18 raising it in front of Your Honours today. It is rather important on  
19 the scheduling questions that Your Honour is deciding. And the SPO,  
20 at this stage, have requested that I apply to go into private session  
21 before addressing the Bench. This is me making that application at  
22 their request.

23 But since I need to refer neither to the name nor to the number  
24 in the context of the submission I'm just about to advance, because  
25 it's perfectly clear that Your Honour has identified the one witness

1 that these submissions relate to, I personally wouldn't support that  
2 application. But if -- it might be right just to hear from the  
3 Prosecution at this stage on whether it needs to be addressed in  
4 private session.

5 PRESIDING JUDGE SMITH: Mr. Halling.

6 MR. HALLING: Thank you, Your Honour.

7 And we appreciate that the Veseli Defence gave us advance notice  
8 of this.

9 The discussion that Mr. Emmerson is proposing to have is about  
10 one of the most protected witnesses in the entire case, and it's  
11 extremely sensitive, and so we don't know exactly what the content of  
12 the submission is, but this is why we ask that these submissions be  
13 in private session.

14 PRESIDING JUDGE SMITH: All right. Thank you.

15 All right, Mr. Emmerson. What we will do is we will consider  
16 that, together with Mr. Kehoe's request for a private session, and  
17 deal with it later on. All right?

18 MR. EMMERSON: [via videolink] Very well.

19 PRESIDING JUDGE SMITH: Thank you.

20 Mr. Young.

21 MR. YOUNG: Yes. Your Honour, I can be very brief. In short,  
22 we welcome the generality of the points you make in relation to  
23 lifting of redactions. That's welcome news, because clearly the  
24 Defence have to know the case that they're facing as soon as  
25 possible.

1           And given the size of the expected disclosure as a result of the  
2    lifting of redactions, the sooner we are given the material, the  
3    better, because, obviously, the lifting of the redactions would mean  
4    undoubtedly more investigations, further preparation work. So we ask  
5    for it to be received by us as soon as possible.

6           PRESIDING JUDGE SMITH: Thank you.

7           MR. YOUNG: And Mr. Roberts will address you on another matter.

8           PRESIDING JUDGE SMITH: Thank you.

9           Mr. Roberts.

10          MR. ROBERTS: [via videolink] Good morning, Your Honours. Very  
11    briefly, am I led to believe that the redactions to the pre-trial  
12    brief and to the outline will also be lifted at the same -- or it's  
13    your intention to lift them at the same time? There are, obviously,  
14    overlapping redactions and extensive redactions to the pre-trial  
15    brief which also prevent our preparation, so we would request that  
16    they be lifted at the same time as redactions to the indictment.  
17    Thank you.

18          PRESIDING JUDGE SMITH: Thank you. That's noted. That's noted.  
19    Thank you.

20          Ms. Alagenda, or whoever is speaking.

21          MR. BAIESU: Mr. Ellis is going to address you on this matter.

22          PRESIDING JUDGE SMITH: Okay, Mr. Ellis.

23          MR. ELLIS: [via videolink] Thank you, Your Honour. I am mindful  
24    also of the need to avoid repetitive submissions, and we support of  
25    much of what's been said before by the other Defence teams.

1 Can I just add my particular support to the submission made by  
2 Mr. Kehoe, that we would seek to receive the material more than 30  
3 days in advance of the trial in relation to those first 40 witnesses.

4 In relation to witnesses that were due to be disclosed 30 days  
5 before trial, we heard from the Prosecution that there were some  
6 46.000 pages either to be disclosed for the first time or redisclosed  
7 with redactions lifted, and I think I made the point in previous  
8 Status Conferences that that would require us to read more than 1.000  
9 pages a day in those 30 days running up to trial, ignoring all of the  
10 other tasks we've got to do. And assuming that reading them once is  
11 sufficient which, of course, it isn't, because there needs to be a  
12 process of analysis.

13 So we would seek to bring that deadline forwards so that we  
14 receive the material in sufficient time to prepare for trial.

15 PRESIDING JUDGE SMITH: I want to come back to Mr. Halling.

16 You've heard the requests by the Defence. Do you have any  
17 comments on that? Is that a possibility as far as you're concerned?

18 MR. HALLING: Yes, Your Honour. There were multiple requests  
19 made. I can talk about the feasibility of each.

20 PRESIDING JUDGE SMITH: Okay.

21 MR. HALLING: In terms of receiving the materials earlier, the  
22 schedule set out by Your Honours is preserving the 30 days before  
23 trial protective measures that the Pre-Trial Judge imposed, which is  
24 by the dates of 30 January to 1 March. Those protective measures  
25 have been deemed necessary and proportionate, and there is no



1 explanation given as to why that timeline should be varied.

2 In terms of the 46.000 pages, there is a couple of points that  
3 may be of assistance as to qualifying that number. One: Not all of  
4 the pages are new. These pages are often going to be lesser redacted  
5 versions of things already provided. The second one is that this  
6 46.000 number is pages in all languages where non-standard redactions  
7 have been applied - English and Albanian. So the actual number of  
8 pages that needs to be processed in advance of trial in English is  
9 going to be closer to half of that number, and so we just wanted to  
10 qualify both the scale and the timing. Thank you.

11 Sorry, one last point, on the pre-trial brief and the outline.  
12 In our submission, that's different from the indictment. The  
13 indictment, we actually reassessed the redactions and actually  
14 thought that a reclassification of the indictment would be feasible  
15 at the moment of 30 days before trial, which is precisely what  
16 Your Honours ordered. But the pre-trial briefs and the outline have  
17 detailed summaries of evidence of witnesses 30 days before testimony  
18 and the redactions cannot be lifted in the same way.

19 PRESIDING JUDGE SMITH: And one other thing. They jointly have  
20 requested an end of March start date rather than a 1 March start  
21 date.

22 MR. HALLING: It's our submission that the trial can proceed  
23 aligned with the schedule that Your Honours set out. We understand  
24 that the start date of the trial is within Your Honours' discretion,  
25 but we see no reason why the trial can't start on 1 March the way you

1 originally ordered.

2 PRESIDING JUDGE SMITH: There would be possibly the option of  
3 taking opening statements on March 1st, and commencing with the  
4 evidence at a later date. Any comments on that possibility?

5 MR. KEHOE: My comment on that, Judge, is --

6 PRESIDING JUDGE SMITH: Excuse me just a second.

7 [Trial Panel confers]

8 MR. KEHOE: While we have had this discussion about the 46.000  
9 pages over a many month period of time before the Pre-Trial Judge,  
10 today was the first day that we've received some explanation as to  
11 what was in those documents.

12 PRESIDING JUDGE SMITH: Progress is progress.

13 MR. KEHOE: Progress is progress. It's all perspective, you're  
14 absolutely -- be that as it may, Judge, it still leaves us in the  
15 dark as to exactly what we are looking at. We are still going to  
16 receive a significant amount of information and a tremendous amount  
17 of unredacted information from witnesses that we would not otherwise  
18 have had. That information has to be digested. And certainly, for  
19 the Court's benefit, the digestion of that benefit will be  
20 incorporated into an opening statement.

21 So we would like to fully explore all of this evidence, examine  
22 it before we stand before Your Honours as officers of the Court to  
23 give a fulsome opening statement.

24 PRESIDING JUDGE SMITH: Thank you.

25 Mr. Emmerson.

1 MR. EMMERSON: [via videolink] In order to address Your Honour on  
2 that question, I'm afraid it takes us back to the issue that  
3 Your Honours put to the back of the agenda in terms of issues that  
4 need to be raised in closed session.

5 PRESIDING JUDGE SMITH: Fine. Thank you.

6 MR. EMMERSON: [via videolink] [Overlapping speakers] ...

7 PRESIDING JUDGE SMITH: We'll deal with that later then. Thank  
8 you for your advice.

9 Mr. Roberts. Mr. Young.

10 MR. YOUNG: Your Honours, simply, we support Mr. Kehoe's  
11 submissions in relation to a later date. Clearly, the disclosure  
12 that we receive may affect opening statements if they're to be made.  
13 So we fully support the Thaci position.

14 PRESIDING JUDGE SMITH: Sorry, Mr. Young, for referring to you  
15 as Mr. Roberts.

16 Ms. Alagendra or Mr. Ellis.

17 MR. BAIESU: We support the previous submissions made by  
18 Mr. Kehoe and Mr. Young on the earlier disclosure of this material.  
19 Thank you.

20 PRESIDING JUDGE SMITH: Thank you.

21 MR. HALLING: And --

22 PRESIDING JUDGE SMITH: Judge Mettraux has a question.

23 JUDGE METTRAUX: Thank you, Judge Smith. And the question is  
24 for you, Mr. Kehoe.

25 I understand that on the issue of the starting date, you have

1 raised two concerns or justification for not starting on 1 March.  
2 The first being the witness protocol, which, as you pointed out, is  
3 currently under consideration before the Court of Appeals Panel, and  
4 the issue of disclosure.

5 My question to you is this: You now have the list of the first  
6 40 witnesses which the Prosecution wants to call as part of the  
7 initial presentation of its case. Is any of these witnesses those  
8 that you wish or intend to interview prior to trial? In other words,  
9 are any of these actually affected by your challenge to the witness  
10 protocol as it exists?

11 And the second question, which maybe you can address at the same  
12 time, is: Is any of the disclosure issues that you currently have  
13 affecting your preparation in relation to any of these 40 witnesses?

14 MR. KEHOE: The first question first, Judge Mettraux. Yes, the  
15 protocol does affect several of the first 40 witnesses. In case in  
16 point, the international witnesses, I can tell you specifically,  
17 without mentioning the particular witness's name. It is a witness  
18 that is on the SPO's witness list, but he is also one of the  
19 witnesses that we advanced to the Pre-Trial Judge to take his  
20 deposition or statement out of order before the Chamber.

21 So that is not the only one, but it is one of the most immediate  
22 concerned. He is, again, one of those witnesses that I spoke to as  
23 an officer of the court. I spoke to him preliminarily. But as any  
24 follow-up, Judge Mettraux, I was precluded from doing so because of  
25 the protocol.

1           This is a witness that is, I suspect, going to be called early  
2           on in the proceedings, and is a witness that we want to spend a  
3           significant amount of time with, that has had significant activity in  
4           the theatre in 1998 and 1999.

5           Now, with regard to the second issue, Judge Mettraux, the  
6           specifics are everything. The redactions that we are going to get on  
7           these 40 witnesses -- yes, they gave us the witnesses that they're  
8           going to call. But if Your Honour examines the statements that have  
9           been handed over, there are significant redactions from all of those  
10          statements that don't give a fulsome explanation of exactly what  
11          these witnesses are going to say.

12          Some of the redactions are remarkable in the sense that they  
13          delete dates, they delete locations, put aside the fact that other  
14          witnesses that -- other people who would have been involved. So all  
15          of those matters play into our ability to examine those particular  
16          witnesses.

17          As a case in point, Judge Mettraux, the Pre-Trial Judge had  
18          asked us - me, specifically - on numerous occasions about an alibi  
19          notice. And I informed him that given the redactions that are in the  
20          charging documents and statements, it was virtually impossible. I  
21          said what I did try to do -- what we did try to do, it's not about  
22          me, it's we. What we did try to do is, in our pre-trial brief, give  
23          a brief outline of where President Thaci was during some operative  
24          timeframe. Whether that answers the alibi question or not, I can't  
25          answer that without some more specific information. And,

1 unfortunately, Judge Mettraux, that takes time and effort to pin down  
2 dates and times and where somebody was and where they were  
3 travelling. That's just the case in point, but that's not the only  
4 issue.

5 I take that as a salient issue because it was an issue that came  
6 up quite frequently with the Pre-Trial Judge.

7 JUDGE METTRAUX: Thank you.

8 MR. HALLING: Your Honour, if we could be heard in relation to  
9 the recent submissions.

10 PRESIDING JUDGE SMITH: [Microphone not activated]

11 MR. HALLING: Okay. First in --

12 PRESIDING JUDGE SMITH: I'm sorry. My mic was off. Go ahead.

13 MR. HALLING: Thank you, Your Honour.

14 First, in relation to the protocol, this has been raised by the  
15 Defence before. The Defence has phrased this protocol as blocking  
16 their investigations, which is a misrepresentation of the protocol.  
17 The protocol just sets modalities for contacts with opposing party  
18 witnesses.

19 The Thaci Defence, and, actually, none of the Defence teams,  
20 have ever attempted to use the protocol by its own terms. This is a  
21 decision the Defence teams are making off of the decision and not an  
22 actual limit imposed by the Pre-Trial Judge.

23 But more generally, in relation to the options given about  
24 splitting the opening statements that was suggested by the Panel, the  
25 SPO would very much like to start the evidence immediately after the

1 opening statements. So if there is interest in accommodating what  
2 the Defence is asking for of a small delay of the proceedings into  
3 March, our personal preference would be to actually delay both the  
4 opening and the evidence into March. Thank you.

5 PRESIDING JUDGE SMITH: Thank you.

6 MR. KEHOE: May I have a --

7 PRESIDING JUDGE SMITH: Go ahead.

8 MR. KEHOE: -- just a brief response as to counsel's argument on  
9 the protocol.

10 PRESIDING JUDGE SMITH: Yes, I don't really want to get into a  
11 litigation on the protocol. I understand somebody else is doing  
12 that.

13 MR. KEHOE: Yes, I understand too.

14 PRESIDING JUDGE SMITH: So you go right ahead, but make it  
15 short.

16 MR. KEHOE: Thank you. Your Honour, the protocol was calling  
17 upon us to bring the SPO into any Defence interview of any witness  
18 that was then going to be filmed by the Registrar's office, so our  
19 preliminary interview of a witness to try to investigate matters is  
20 going to be filmed, put on file, and used by the Court if need be,  
21 all with the SPO sitting in the room.

22 Now, as that presents a hurdle -- if that doesn't present a  
23 hurdle to the Defence investigation, I stand corrected. But with all  
24 due respect to my learned friend, I've been doing this a long time,  
25 as Your Honours have, it's a significant hurdle.

1           PRESIDING JUDGE SMITH: Thank you very much.

2           Mr. Laws, I didn't mean to ignore you. Do you have any comments  
3 on the redaction discussion and the private and closed session  
4 discussion that we've already had?

5           MR. LAWS: Your Honour, no, save to say we assume we will also  
6 receive the material in its unredacted form, but we've nothing to  
7 add. Thank you.

8           PRESIDING JUDGE SMITH: Thank you very much.

9           Are we finished with this subject? Anybody else? All right.  
10 We'll move on.

11           Concerning issues that will be raised and their relevance.

12           In order to ensure a fair and expeditious proceeding, this Panel  
13 will be firm in excluding and disallowing lines of questioning or  
14 attempts at tendering evidence that are not clearly relevant to this  
15 case. The Panel notes in this regard that it will not entertain on  
16 the part of the parties historical narratives that are not  
17 demonstrably linked to the resolution of this case.

18           The Panel furthers notes that contrary to what has been claimed,  
19 the Kosovo Liberation Army is not on trial in this case. If that is  
20 the Defence's understanding of the SPO case, that is not an  
21 understanding that is shared by the Panel. Four defendants are on  
22 trial here and no one else.

23           Similarly, the suggestion that the SPO's case is that the  
24 creation of an independent Kosovo was the result of a criminal plan  
25 is - again - not the understanding of this Panel, nor is it pled or



1 averred in the indictment.

2 Now, I'll turn to the submissions which appear to suggest that  
3 Serbian forces committed a large number of serious crimes against  
4 Kosovo Albanians and others during the relevant time period.

5 The Defence appears to suggest that some of these incidents in  
6 which crimes were committed affected the operations or efforts of the  
7 Kosovo Liberation Army to structure itself.

8 Regarding the suggestion of serious Serbian crimes being  
9 committed during the relevant time, may we take it that the SPO does  
10 not dispute that fact, and that if that is the case, there will be no  
11 need for any further submissions or discussions of these matters at  
12 trial.

13 Mr. Prosecutor, is this being disputed or is it, in fact,  
14 admitted that these things occurred?

15 MR. FERDINANDUSSE: That is -- we are in agreement with the  
16 position you just expressed.

17 PRESIDING JUDGE SMITH: Thank you.

18 MR. FERDINANDUSSE: That is not disputed.

19 PRESIDING JUDGE SMITH: So with that clarified, the suggestion  
20 of Serbian crimes can be regarded as not being in dispute here so  
21 that there is even less reason to tell us about those.

22 Furthermore, if the Defence wishes to demonstrate that a given  
23 incident associated with Serbian crimes impacted the functioning or  
24 operations of the Kosovo Liberation Army in a manner that is relevant  
25 to the case of the Prosecution, it will, of course, be permitted to

1 lead evidence of that fact. At the same time, the Panel will not  
2 entertain evidence of Serbian crimes simply because it is said to  
3 give a broader and more complete picture of the events in 1998 and  
4 1999 in Kosovo.

5 This Panel and the parties are only concerned with events and  
6 circumstances that are relevant to these accused. We are not a  
7 historical association and we will not permit the parties to turn  
8 this trial into a history lesson.

9 Is that understood by everyone?

10 Mr. Kehoe, I see you getting to your feet.

11 MR. KEHOE: Yes, Your Honour. I mean, obviously, at the  
12 appropriate time we will discuss the relevance of particular Serbian  
13 crimes contextually with what's happening on the ground.

14 PRESIDING JUDGE SMITH: That's our only request.

15 MR. KEHOE: Yes.

16 PRESIDING JUDGE SMITH: Let's make it relevant.

17 MR. KEHOE: Absolutely. Make it contextual. I understand.

18 PRESIDING JUDGE SMITH: All right.

19 Anybody else?

20 MR. EMMERSON: [via videolink] May I just --

21 PRESIDING JUDGE SMITH: Yes, go ahead, Mr. Emmerson. I wasn't  
22 going to skip you.

23 MR. EMMERSON: [via videolink] No, no.

24 Clearly, we have set out - I hope clearly - in our pre-trial  
25 brief the particular ways in which we have suggested that those

1 issues may touch upon some of the questions and inferences that the  
2 Prosecution are inviting the Trial Chamber to draw, a number of which  
3 depend upon the intensity and frequency of the number of incidents on  
4 the indictment. And, clearly, some examination or agreement about  
5 context is important to be able to test the reasonableness of the  
6 inferences that the Prosecution are seeking to draw from the alleged  
7 pattern of events.

8 And from the Defence point of view, we, as far as Mr. Veseli is  
9 concerned, have sought to confine ourselves to a very significant  
10 extent to findings that have been made by trial chambers or on appeal  
11 by the ICTY in respect of those matters which can be dealt with very  
12 briefly as adjudicated facts, if that's the way that the Court would  
13 prefer to deal with it.

14 PRESIDING JUDGE SMITH: Thank you, Mr. Emmerson.

15 I think our statement is quite clear. Relevance is going to be  
16 important. We're going to carefully monitor that. This trial needs  
17 to be over within our lifetimes, especially within mine. So we will  
18 be carefully watching the evidence that comes in, and we will want to  
19 make sure that it has to do with the allegations against these four  
20 individuals alone.

21 MR. ELLIS: [via videolink] Your Honour, if I may on that issue.

22 PRESIDING JUDGE SMITH: Yes, go ahead.

23 MR. ELLIS: [via videolink] Your Honour, we -- sorry, it's  
24 Mr. Ellis for the Krasniqi Defence. We had also set out our position  
25 on this issue in, I think it's paragraph 54, of our pre-trial brief.

1           We appreciate and we will demonstrate relevance of the evidence  
2 we seek to adduce when we come to that point, and we'll be very  
3 mindful of the instructions that Your Honour has given this morning.  
4 But we would see that the evidence about Serbian crimes in specific  
5 locations at specific times may be relevant to issues going to the  
6 alleged common purpose in this case and, indeed, to the motivation of  
7 individual KLA members who the Prosecution will suggest committed  
8 crimes in those locations.

9           So understanding that we will need to demonstrate relevance when  
10 we seek to adduce that evidence, we do highlight that we've sought to  
11 do that already in our pre-trial brief.

12           And it is perhaps worth saying that we had tried to put agreed  
13 facts to the Prosecution on Serbian crimes which were all rejected by  
14 the Prosecution. So we would say the specifics do matter, and it's  
15 not simply enough for the Prosecution to say they do accept crimes  
16 were committed in a general sense. We've tried, and we can try  
17 again, to seek agreement on specific crimes, if that makes things  
18 more efficient.

19           PRESIDING JUDGE SMITH: We always encourage cross discussions  
20 with the opposing parties. It can't hurt you.

21           We now will have some questions for some of you. Each of us  
22 will have something to ask. I will ask the first question, and I  
23 direct it to the SPO.

24           How does the SPO intend to present its case in general terms?  
25 In other words, will witnesses be called by categories, such as crime

1 base or alleged command structure, or in any particular order, or  
2 will the SPO follow a chronological order or some other method?

3 MR. FERDINANDUSSE: Your Honour, thank you. The SPO will  
4 endeavour to order its case in a manner that allows the Court to best  
5 understand and process the evidence and also serves the twin goals of  
6 fairness and efficiency.

7 This requires us to balance many factors, including the  
8 availability, security, and well-being of witnesses, and the ability  
9 of the Defence to investigate and prepare. And we note there is not  
10 one logical order for us to present the evidence in this case. The  
11 evidence is interlinked not only chronologically and geographically,  
12 but also thematically, for example, on themes of command and control,  
13 notice, categories of opponents, and individual roles of the accused  
14 or other JCE members.

15 Numerous witnesses will give evidence relating to multiple crime  
16 sites, multiple JCE members or tools, and different time periods.  
17 And for all these reasons, we cannot tell you that we will order the  
18 evidence by any of those particular strands, but we need to take them  
19 all into account. So we will have to consider and balance all  
20 factors.

21 PRESIDING JUDGE SMITH: You're telling me you don't have a plan  
22 as how to proceed at this point? Who is going to be the first  
23 witness? Who is going to be the second witness? Is it going to be  
24 on command structure? Is it going to be on a particular crime? At  
25 this point, I would think you would have some idea.

1 MR. FERDINANDUSSE: Your Honour, we certainly have plans and  
2 ideas, and we are ready to submit them to you. All I meant to say is  
3 that I can't tell you that we will proceed to order the evidence  
4 either chronologically or geographically or by crime site or by  
5 theme, but that we will take all these factors into account when  
6 ordering our witnesses.

7 So to give you an example. We have some international witnesses  
8 who interrelate to different crime sites, different victims,  
9 different time periods, and different roles of the accused, and we  
10 believe it will be beneficial to understanding the evidence to take  
11 into account what they will testify about and see which witnesses  
12 will be logical to have them testify either before or after, in order  
13 to best understand the evidence.

14 So, yes, we are ready to inform you in more detail about how we  
15 are going to proceed. We think that will best be done in writing,  
16 because it will allow us to be more specific about the witnesses.  
17 And we can do so for each block of witnesses.

18 PRESIDING JUDGE SMITH: By the time of our trial preparation  
19 conference, you can have that in writing for us?

20 MR. FERDINANDUSSE: Well, we also submit that experience shows  
21 that organisation of the evidence in trials of this nature is best  
22 done in tranches, and that we will have to balance the need of timely  
23 information to all involved with the need to make these decisions on  
24 a realistic timeline.

25 So we believe it will be beneficial if we can show you the order

1 of our witnesses for each block of witnesses.

2 PRESIDING JUDGE SMITH: The block of witnesses we've asked for  
3 is 40 witnesses, and we will have another order dealing with a  
4 smaller group on more of a weekly basis. So I'm still asking you,  
5 can you have -- you've told me you can present this in writing, and  
6 will it be presented by the time of the trial prep conference?  
7 That's a very simple question.

8 MR. FERDINANDUSSE: Your Honour, we are, obviously, ready to  
9 submit in writing what you require us to submit in writing.

10 PRESIDING JUDGE SMITH: Okay. All right. It will be required  
11 and it will be required by the trial prep conference. Thank you.

12 Judge Gaynor, I believe you had a question.

13 JUDGE GAYNOR: Thank you, Judge Smith.

14 This question is also for the SPO. When is the SPO planning to  
15 request the admission of written statements pursuant to Rules 153,  
16 154, and 155? And, in particular, will the SPO file all of its  
17 Rule 155 applications relating to deceased witnesses as one  
18 consolidated application?

19 MS. CLANTON: Thank you. Your Honours, I will address this  
20 question.

21 The SPO has submitted a streamlining filing in which we've  
22 indicated that we will be submitting our applications for 153 and 154  
23 witnesses before the commencement of trial. Our first applications,  
24 that is. It will be the same for the Rule 155 applications.

25 In terms of your specific question about the deceased witnesses.

1 To the extent that we are able at this time to submit them in one  
2 consolidated application, we can do that. However, there are some  
3 factors which are still under consideration. For example, we are in  
4 the process of receiving documentation, including death certificates  
5 and medical reports, for certain witnesses. This is an ongoing  
6 process that we've been engaged in during the pre-trial period, and  
7 all efforts are being made to expedite the receipt of these  
8 documents.

9 JUDGE GAYNOR: That's fine. Thank you.

10 JUDGE METTRAUX: Thank you, Judge Smith.

11 This is a couple of questions for the SPO as well. It has to do  
12 with 154 and 153, but in particular the requirements of form  
13 contained in Rule 153(2), which requires the presence of the  
14 signature of a number of individuals - the interviewee, the  
15 interviewer and, as the case may be, counsel representing the  
16 interviewee.

17 Now, we've acquainted or we've started acquainting ourselves  
18 with some of the material which you propose to offer under these  
19 rules, and they are, for the most part, records of interviews taken  
20 not in the form of a -- strictly speaking, a statement as may be  
21 traditionally taken but really a verbatim record of interviews.

22 Now a question for you is, are you saying that these type of  
23 records fulfil the formal requirement of Rule 154(2), if you were to  
24 seek to rely on that rule? And if so, on what basis?

25 And the second question, maybe I'll put them both to you so you



1 can address them together, is: Is our understanding correct that if  
2 and when you will seek to tender statements under either of these  
3 rules - 153 or 154 - these will be tendered for the truth of their  
4 content and for no other purpose? Is that a correct understanding or  
5 is it one that needs to be qualified?

6 MS. CLANTON: Yes, Your Honour. On the --

7 JUDGE METTRAUX: Before you start, Judge Gaynor corrected me. I  
8 need to be corrected by Judge Gaynor quite regularly. It was 153(2).  
9 And I apologise and I'm grateful to Judge Gaynor.

10 MS. CLANTON: Yes, Your Honour. As to your first question, the  
11 SPO's position in respect of Rule 153(2).

12 So as you'll be aware, Rule 153(1) specifies that witness  
13 statements or transcripts of evidence in prior proceedings can be  
14 tendered pursuant to this rule if the conditions are met. The  
15 requirement of a signature in 153(2) doesn't apply to transcripts of  
16 evidence in prior proceedings before the KSC based on the wording of  
17 the rule, and also, this is logical, we submit, typically transcripts  
18 are not signed by a witness, transcripts of testimony in particular.

19 We submit that this should extend to transcripts of recorded  
20 interviews which are also tendered under Rule 153(1). There is no  
21 issue of reliability, authenticity, or probative value raised by the  
22 fact that we're tendering records in the form of a transcript which  
23 are not signed. There are indicia of reliability in the transcripts  
24 of the recorded interviews similar to the ones required in  
25 Rule 153(2), that being that the witness will have been identified,

1 the record has the date, the time, the place and the attendees, as  
2 specified in the rule.

3 As to your second question as to whether -- if and when we  
4 tender witness statements pursuant to Rule 153, if they're being  
5 tendered for to the truth of their contents, the answer is yes.

6 JUDGE METTRAUX: And just a quick follow up, it's a yes  
7 exclusively or it's a yes that needs qualification? The statements  
8 will be relied upon truth of their content; correct?

9 MS. CLANTON: There may be an exceptional basis where that is  
10 not the case, but for the majority, I would said nearly all  
11 witnesses, the intention is that we are tendering witness statements  
12 for the truth of their contents.

13 JUDGE METTRAUX: And just on your point in paragraph 1 of  
14 Rule 153, would your submissions be similar if the record of  
15 interview is not one taken by the SPO but by a third party, that  
16 there's no formal requirement of signature for admission under that  
17 rule?

18 MS. CLANTON: In that situation, it would depend on whether the  
19 record of the interview is prepared for the purpose of legal  
20 proceedings and has all of the attendant indicia of reliability that  
21 you would have, including those that I mentioned, the fact that the  
22 people are identified, with the date, time, place, and the witness is  
23 identified.

24 JUDGE METTRAUX: And I have a second question. I don't know if  
25 you are the person to ask, but it's certainly someone from the SPO.

1 It's about protective measures for your witnesses and, in particular,  
2 the first 40 witnesses.

3 Now, a number of measures are in place. They've been ordered.  
4 We are quite keen to avoid any last-minute application for variation  
5 of these measures. We do understand there might be a situation where  
6 you might have to do so because of particular circumstances  
7 pertaining to this or that witness.

8 What we would like to know is whether steps have been taken  
9 already by the SPO to ascertain with your witnesses whether any of  
10 the orders for protective measures that are currently in place need  
11 to be varied? And if the answer to my first question is "not yet,"  
12 when is the SPO planning to take steps to ascertain whether witnesses  
13 still need the protective measures that had been ordered and/or  
14 require additional measures? Thank you.

15 MR. HALLING: Thank you, Your Honour. I can address this  
16 question.

17 We're in communication with our witnesses about their protective  
18 measures. If variations of protective measures have been necessary,  
19 we have already reported that. There is a notification procedure, if  
20 we are changing protective measures, to provide further information  
21 to the Defence. If there is the need to request further protective  
22 measures, we have been doing so.

23 So we are not anticipating last-minute variation requests of  
24 protective measures coming to this Trial Panel. We have been trying  
25 to request them in advance as much as possible.

1           Should there be any variations of protective measures, such as a  
2 witness wanting to waive protective measures, we'll promptly report  
3 that to the Trial Panel and we can follow the same procedure set out  
4 in the Gucati and Haradinaj Conduct of Proceedings.

5           JUDGE METTRAUX: I'm grateful for the indication. Thank you.

6           PRESIDING JUDGE SMITH: [Microphone not activated]

7           Judge Barthe has a question. I haven't forgotten about the  
8 Defence. We will ask you to make comments on all of the questions  
9 that were asked in just a moment.

10          Go ahead, Judge Barthe.

11          JUDGE BARTHE: Thank you very much, Mr. President.

12          My question is also for the SPO. The Panel has taken note of  
13 your time estimates for the first 40 witnesses to be called at trial  
14 in the annexes to your submission of 18 November 2022 and would like  
15 to know why you need so much time for your Rule 154 witnesses,  
16 sometimes more time than you calculated for a witness who testifies  
17 live? Why do you need, for example, six, nine, or even 13 hours for  
18 a Rule 154 witness, particularly in view of the fact that Rule 154  
19 serves to expedite the proceedings?

20          MS. CLANTON: Yes, Your Honour.

21          The SPO has made our provisional time estimates for the length  
22 of direct examination for the Rule 154 witnesses, but I want to make  
23 clear that our objective in every case will be to use less time than  
24 foreshadowed where that is possible. The time estimates reflect the  
25 reality of the Rule 154 process. There are formalities, there are

1 questions that have to be asked to every Rule 154 witness which take  
2 up court time.

3 There is also the issue that we wish to call 154 witnesses and  
4 allow them to highlight or clarify or explain certain elements of  
5 their evidence. We will also use this time if a witness is the  
6 appropriate witness to comment on a particular exhibit, and we think  
7 it would be a worthwhile use of court time to do that. We also would  
8 like to be able to ask witnesses questions, with an appropriate  
9 witness, about the impact of the events on their lives, if they're  
10 victims, for example.

11 Another reason why we would call 154 witnesses and ask for  
12 additional time is that they may be uniquely placed to talk about  
13 events because, due to the passage of time, they might be the only  
14 in-court witness who can comment on that.

15 JUDGE BARTHE: Thank you.

16 PRESIDING JUDGE SMITH: Now, we'll turn to Mr. Kehoe, if you  
17 have any comments on any of those submissions.

18 MR. KEHOE: Yes, Your Honour. And I hope I remember them all,  
19 but I will start with Your Honour's first question to the SPO  
20 concerning the organisation of trial.

21 My reaction was similar to yours, having done cases on the  
22 prosecution side quite extensively, that they don't know the order of  
23 their witnesses or how this is going to proceed. It's somewhat  
24 alarming at this point that they don't know the lineup of their first  
25 20 witnesses.

1 MR. FERDINANDUSSE: Point of order, Your Honour.

2 PRESIDING JUDGE SMITH: Excuse me.

3 MR. FERDINANDUSSE: It is unacceptable that counsel put words in  
4 my mouth that I did not speak. I understand your question. I think  
5 we may have had a misunderstanding. It is quite clear that we know  
6 the order of our witnesses, and counsel should refrain from  
7 attributing words to me that I did not say.

8 PRESIDING JUDGE SMITH: Okay. That's fine.

9 Go ahead. Finish your statement.

10 MR. KEHOE: And what we're looking for at this point, Judge, is  
11 some roadmap as to how this trial is going to proceed so we can do it  
12 expeditiously. If we have to take up Rule 154 applications or 153  
13 applications, we can do so expeditiously and we'll be ready to do it.

14 This all flows together, as I'm sure Your Honour knows, to get  
15 an idea of what's coming, what do we need to do, how do we need to  
16 address the 153, 154 issues, so we can do those quickly and cut down  
17 on the time.

18 PRESIDING JUDGE SMITH: Got it.

19 MR. KEHOE: Now, the second issue concerning Judge Gaynor's  
20 question on the 153 and 154 -- or, excuse me, the 154 and 155  
21 applications.

22 You know, obviously, it's -- we are not going to object across  
23 the board to all of those statements. I can say that as an officer  
24 of the court now. But there are several of those statements which  
25 could prove extremely problematic for a variety of reasons. And that

1 turns to Judge Mettraux's question concerning 153(1) and 153(2). And  
2 what -- fortunately or unfortunately, I think the experience that  
3 most of us have had in other international tribunals is that we  
4 didn't have transcripts from third country or third entity  
5 proceedings, in this case, be it EULEX, UNMIK, or actually Kosovo  
6 courts.

7 Do they present themselves with the indicia of reliability  
8 sufficient to meet the test under 153(1)? It may, Judge Mettraux.  
9 It may not. And I think that's a case-by-case question. We're not  
10 saying across the board that they cannot meet that standard, but  
11 we're talking about a different time and a different place. And,  
12 certainly - certainly - the witness akin to 154(2) is not reading his  
13 prior transcript that he or she might have given in another  
14 proceeding in another time and attested to that. That simply didn't  
15 happen.

16 In our common experience of witness statements, those statements  
17 are read by the witness, signed or initialled by the witness, and  
18 then signed at the last page. With the use of all of these  
19 depositions, I submit to Your Honour it is the rare case where that  
20 transcript is given to the witness and say, "Witness X, is this  
21 everything you had to say and do you want to make any changes in it?"  
22 That being said, there are going to be challenges to those  
23 submissions and we will just -- on the relevance issue, Your Honour,  
24 we are going to take that up on a case-by-case basis.

25 With the protective measures, I am encouraged by the comments by

1 counsel to say that they are monitoring their witnesses to see if  
2 they still need protective measures. We have brought to the  
3 attention of the SPO, on various occasions, that their witnesses have  
4 given public statements on TV or in the media in Prishtine, and asked  
5 them to take that into consideration whether or not protective  
6 measures are still warranted. Some of the people that have made  
7 those public statements are still protected witnesses as we speak.  
8 And we encourage the SPO to revisit that issue as often and as  
9 necessary to ensure that if a witness does not need protective  
10 measures or has waived it or done something to undercut the entire  
11 procedure, that those measures are lifted.

12 PRESIDING JUDGE SMITH: Thank you, Mr. Kehoe.

13 Mr. Emmerson, anything to add?

14 MR. EMMERSON: [via videolink] No. I sound like a scratched  
15 record. The only comments that I have to make are matters that touch  
16 upon the issue that needs to be raised on which Your Honours need to  
17 decide whether you'll be hearing submissions in open court or in  
18 closed session.

19 PRESIDING JUDGE SMITH: Thank you.

20 Mr. Young.

21 MR. YOUNG: Your Honour, nothing that I need to add, save that  
22 Your Honour may be aware that we should have notes on 18 November  
23 which deals with the 135 proposed facts. And the reality is that the  
24 Prosecution replied on 10 November and they informed us that the  
25 Defence will not -- in fact, the agreed facts wouldn't be agreed.



1           It's very important -- these are very important because we set  
2           out 135 agreed facts in relation to Serb atrocities. They relate to  
3           the period of time of the indictment. They relate to very important  
4           features of the case, and it's welcome to know that the Prosecution  
5           will not be objecting to the Serb atrocities. But we want the  
6           detail. We want the detail because this could be relevant to the  
7           relevance of the charges that we face.

8           So we want to know exactly what their position is in relation to  
9           135. It may well be that they have changed their position from the  
10          refusal to accept 135 acts, but we have clearly stated that these are  
11          important that we know exactly where we stand. And we've taken the  
12          liberty of setting them out in a public document, which Your Honour  
13          has and which Your Honour can see. Thank you.

14          PRESIDING JUDGE SMITH: Thank you.

15          Mr. Ellis. Oh, I'm sorry.

16          MR. BAIESU: We agree with the submissions that have been  
17          already made by the other Defence teams, and we support them. We  
18          will respond in writing, too, when the SPO will file for the  
19          admission of the statements and all other evidence under 153, 154,  
20          155, and that includes the statements and the transcripts other than  
21          obtained by -- received not under the KSC but by other investigative  
22          bodies and courts, including EULEX, UNMIK, and so on. Thank you.

23          PRESIDING JUDGE SMITH: The Defence has seen the first 40  
24          witnesses, and you know the identity of some of them. And I will ask  
25          you, first of all, in general terms, and we'll begin with Mr. Kehoe,

1 of those that you know, is there an extensive cross-examination for  
2 these witnesses, or have you been able to assess that?

3 MR. KEHOE: I will tell you, Judge, and I'll give you a partial  
4 answer, because I don't have a full answer to that. The witnesses  
5 that I have reviewed and assessed, the cross-examination will be  
6 extensive.

7 PRESIDING JUDGE SMITH: Extensive.

8 MR. KEHOE: I can tell you, for instance, I have been spending  
9 times with my colleagues on the international witnesses because there  
10 are fewer redactions there. Those cross-examinations will be  
11 extensive.

12 PRESIDING JUDGE SMITH: What do you call "extensive"? I mean,  
13 are we talking a day?

14 MR. KEHOE: A day. I would say a day. I don't -- I don't  
15 generally do a cross-examination on issues that don't pertain to my  
16 client, for instance. Just going across the board. I will focus on  
17 matters related to my client and the JCE.

18 PRESIDING JUDGE SMITH: And is the Defence talking about these  
19 cross-examinations and thinking about possibly consolidating the  
20 cross-examination with one attorney handling one and another attorney  
21 handling another?

22 MR. KEHOE: Not so much with one attorney handling one and  
23 someone else handling another, because it is very client-specific --

24 PRESIDING JUDGE SMITH: Yes.

25 MR. KEHOE: -- as I'm sure Your Honour understands. But is

1 there a discussion, and have I talked to Mr. Young, for instance,  
2 about what we might want to do with a particular witness? Of course.

3 PRESIDING JUDGE SMITH: Just keeping in mind the timing, we just  
4 don't want to end up with extensive cross-examination over the same  
5 subject from each of you. I mean, it doesn't serve any purpose.

6 MR. KEHOE: And I agree with Your Honour. There will be always,  
7 in multi-defendant cases, I'm sure Your Honour has seen, there is  
8 some limited overlap, but I don't think it behooves us or the Court  
9 to have extensive overlap.

10 PRESIDING JUDGE SMITH: No commando cross-examinations, though?  
11 In and out with a few questions?

12 MR. KEHOE: Well, I shouldn't say that, Judge. I have done that  
13 in the past. Especially in identity issues. Cases I'm sure  
14 Your Honour is familiar with.

15 PRESIDING JUDGE SMITH: It's sometimes the best way to go.

16 MR. KEHOE: It is. Thank you.

17 PRESIDING JUDGE SMITH: All right. Thank you.

18 Mr. Emmerson, anything to add?

19 MR. EMMERSON: [via videolink] Yes, briefly. So far as the  
20 Veseli Defence is concerned, there is only - on the witnesses whose  
21 evidence we know and have seen, that is to say, leaving aside the  
22 witness we are going to talk about at a later stage, there's only one  
23 witness in the first 40 that I anticipate would take a considerable  
24 amount of time as far as the Veseli Defence is concerned.

25 In fact, having cross-examined him in other proceedings, he's a

1 witness who's testified in numerous cases, his evidence generally  
2 covers a very wide compass and can go on for quite a while. And, I  
3 mean, I don't need to mention the name. It isn't protected. But it  
4 relates to internal KLA organisation and matters of that nature which  
5 are going to be, obviously, important questions for the Panel to deal  
6 with thoroughly.

7 As far as cooperation is concerned, I mean, I personally regard  
8 that as just a matter of basic professional standards. But you will  
9 be aware, I'm sure, that the practice in the Yugoslavia tribunal was  
10 to have a general expectation of what the maximum time would be that  
11 anybody was permitted to cross-examine, and then to depart from that  
12 only where the Defence have given an indication, or the Prosecution,  
13 if it's the other way around, that they're going to need longer for a  
14 particular witness. And that is, at least, a benchmark. But,  
15 obviously, one doesn't want to see cross-examinations expanding to  
16 fill up the space.

17 But it's an option that does focus the minds of all concerned,  
18 including the cross-examiner, and may be something that the  
19 Trial Chamber would want to give consideration to.

20 PRESIDING JUDGE SMITH: [Microphone not activated]

21 MR. EMMERSON: [via videolink] I'm sorry, I --

22 PRESIDING JUDGE SMITH: That was my fault. I didn't have my  
23 microphone on. Thank you. We have discussed this and it will  
24 continue to be discussed. We have not made a decision right now  
25 about limiting cross-examination, but it is something that we have to

1 think about. So thank you for reminding us of that.

2 Mr. Young, anything to add?

3 MR. YOUNG: Yes, nothing to add to what Mr. Kehoe said. Thank  
4 you, Your Honour.

5 PRESIDING JUDGE SMITH: And from the --

6 MR. BAIESU: Your Honour, thank you. Mr. Ellis will address you  
7 on this item.

8 PRESIDING JUDGE SMITH: Thank you.

9 MR. ELLIS: [via videolink] Your Honour, simply to say that on  
10 the first 40 witnesses, there are a variety of witnesses, some of  
11 whom I anticipate cross-examination will be relatively swift. But  
12 there are others for whom it may well be more extensive.

13 We, of course, have heard what the Court said about cooperation,  
14 and it's certainly not my intention, speaking fourth, simply to  
15 repeat questions that have been put by others. We'll avoid that,  
16 Your Honours.

17 PRESIDING JUDGE SMITH: Thank you. Thank you very much.

18 MR. KEHOE: Your Honour, may I just follow up on one point, just  
19 to bring it to the Court's attention.

20 There may be instances where, with the Court's permission, we  
21 would change the order of cross-examination. For instance, if it  
22 pertains to a particular accused more than others, that counsel may  
23 start first. It just, again, would shorten the cross-examination for  
24 anybody that follows.

25 PRESIDING JUDGE SMITH: Thank you. That's a good idea and we

1 encourage it.

2 Now, Mr. Laws, I ask you the same general questions. You've  
3 seen the 40 witnesses and have given some thought to this, I'm sure.  
4 Can you give us some general estimation of your view to  
5 cross-examination of these people and the time limits?

6 MR. LAWS: Yes, Your Honour. I certainly can. Very limited is  
7 my time estimate.

8 PRESIDING JUDGE SMITH: Thank you. That's a great answer.

9 Mr. Laws, another question. Are you planning to file a  
10 pre-trial brief in this matter?

11 MR. LAWS: Your Honour, no, we're not.

12 PRESIDING JUDGE SMITH: You are not?

13 MR. LAWS: No.

14 PRESIDING JUDGE SMITH: Thank you.

15 Well, it is almost 12.00. We estimated that fairly well. So we  
16 will take a half-hour break. We'll just make it till 12.30, and we  
17 will come back. We'll have some brief orders. And we'll take up the  
18 requests for private session or closed session and deal with that at  
19 that time.

20 --- Recess taken at 11.52 a.m.

21 --- On resuming at 12.30 p.m.

22 PRESIDING JUDGE SMITH: First of all, we will honour the request  
23 for a private session for protection of witness identity at this  
24 time.

25 So, Madam Court Officer, please take us into private session.

1 [Private session]

2 [Private session text removed]

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12 [Open session]

13 THE COURT OFFICER: Your Honours, we are now in public session.

14 PRESIDING JUDGE SMITH: Mr. Emmerson, when we go into private  
15 session, you will not be able to hear us on Zoom, so what we will  
16 do -- but I believe we can hear you. You just can't hear us.

17 [Trial Panel and Court Officer confers]

18 PRESIDING JUDGE SMITH: Unfortunately, neither you nor we can  
19 hear each other. So is anyone else in your group able to make your  
20 submission?

21 MR. EMMERSON: [via videolink] Not exactly. But may I indicate  
22 that I can make my submission without referring -- well, I don't know  
23 the identity of the witness who it concerns, and I do not need to  
24 refer to the witness numerical cypher either, nor do I need to refer  
25 in any detail to the content of his evidence. And so -- or their

1 evidence, I should say, because I don't know -- I make no comment as  
2 to on -- on the witness themselves, but simply on the fact of the  
3 issue that Your Honour's already drawn attention to, which is that --

4 PRESIDING JUDGE SMITH: Unless there is an objection to that  
5 proceedings, and I guess it would have to come from you, Mr. Halling.

6 MR. HALLING: Well, just to state our concerns for the record.

7 At the last Status Conference, there was a similar issue that  
8 Mr. Emmerson raised. We needed to do redaction orders. It was  
9 perceived as public and it wasn't. There was then a written  
10 application where the public redacted version needed to be  
11 reclassified following that Status Conference, and this is Decision  
12 F01150.

13 We don't want to preclude Mr. Emmerson from making the  
14 submissions he wants to make, but we would suggest it would be safer  
15 if this be a written confidential application that we could respond  
16 to.

17 PRESIDING JUDGE SMITH: No, no, that's going to be way too  
18 lengthy.

19 We're going to trust you, Mr. Emmerson, to go ahead with this.

20 MR. EMMERSON: [via videolink] Thank you. Thank you. And if  
21 I --

22 PRESIDING JUDGE SMITH: But please be cautious.

23 MR. EMMERSON: [via videolink] I will be very cautious and  
24 perhaps speak a little slower than I normally would do so that if any  
25 objection is to be raised, it can be raised in the course of what I'm



1 saying, but I don't imagine there will be.

2 As Your Honour indicated earlier on, there is one witness who  
3 effects a significant redaction on the indictment, and the supporting  
4 evidence from that witness is also very significantly redacted as far  
5 as the Defence is concerned. It's because the redactions in the  
6 evidence correspond to the almost entire -- I think the entire  
7 redaction in the count on the indictment, it's -- it makes no -- it's  
8 not in any sense a surprise to say that the witness is the only or  
9 prime witness who speaks to that count.

10 And we don't know what that count involves, but we do know from  
11 what has been disclosed that it includes a direct allegation against  
12 two of the accused, one of whom is my client.

13 There is, as you will have appreciated, I think, from reading  
14 the pre-trial briefs, and from some of the submissions that will have  
15 been included in the transfer material, there is -- as far as that  
16 witness is concerned, there is very little other direct evidence of a  
17 participation by Mr. Veseli in any of the events alleged on the  
18 indictment. So this is an important witness. That's really all I  
19 need to say about the witness themselves. They are a witness who,  
20 depending on what it is they're alleging, is a witness that the  
21 Defence would very much need to be in a position to properly prepare  
22 for.

23 And we don't know the date, we don't know the place, and we  
24 don't know the details of the allegation.

25 Now, with that said, I hope it will be apparent that that is one

1 witness for whom the interrelationship between the various issues  
2 that have been discussed over the past hour and a half or two hours  
3 need to be considered in terms of implications on that specific  
4 witness. And as presently postulated -- and may I say, this is the  
5 only area in relation to a particular witness where the framework  
6 that Your Honour has proposed in terms of disclosure may raise a  
7 problem, especially if the trial starts on the 1st or the beginning  
8 of March, because with a witness of that centrality and importance to  
9 a particular accused such that there's a count on the indictment that  
10 depends wholly on that witness's evidence because the count itself  
11 has been redacted, clearly it's impossible for us to know for sure,  
12 but it's likely that -- that something of that nature will require  
13 considerable focus in terms of investigation.

14 Now, at the moment, he's one of those witnesses who falls into  
15 the category of a witness whose unredacted information is to be  
16 disclosed 30 days before they testify rather than 30 days before the  
17 start of the trial. And one, I think, would immediately see if that  
18 were to happen in the middle of the trial, it would place the Defence  
19 in a very serious difficulty and could indeed cause a situation where  
20 we would need to ask the Trial Chamber to adjourn while we  
21 investigated that -- adjourn the witness's evidence while we had the  
22 opportunity to properly investigate it.

23 It's not simply one count of many. It's the only count where  
24 there is potentially evidence that directly involves the commission  
25 of a crime as it is alleged against Mr. Veseli.

1           So that leaves us in this situation. We would normally expect  
2           to have, I would hope, two months at minimum to investigate a witness  
3           of that nature, that's so central. At least to investigate the count  
4           to know whether it raises alibi issues, to understand when it  
5           happened and so forth, and to find other witnesses that may be able  
6           to contradict or undermine.

7           At present -- so the Defence wrote to the Prosecution by e-mail  
8           two days ago, indicating that, in respect of that one witness, we  
9           would invite them to consent to a variation of the protective  
10          measures so that we could have that witness, and this was our opening  
11          bid, 90 days before the start of the trial. The response, and I'm  
12          not criticising it, but the response is, simply to say, that the  
13          basis for the protective measures remains, despite the fact that the  
14          case has been transferred to the Trial Chamber now, and that any  
15          disadvantages to the Defence by not having sufficient time to  
16          investigate could be mitigated by calling that witness very early in  
17          the trial as one of the very first witnesses, and that -- which is  
18          one of the suggestions that Your Honour said earlier on might  
19          dove-tail in certain circumstances, and that that would then result  
20          back to a situation where we wouldn't have the evidence even 30 days  
21          before trial, but we would have it sometime, because there'd  
22          obviously be opening statements and then he may or may not be the  
23          very first witness. But either way, it will be less than 30 days  
24          before trial, just as we are all gearing up to prepare for trial and  
25          opening statements.

1           And so it's a -- if it were any other witness, and it was simply  
2 a question of scheduling and being flexible about the way in which  
3 it's handled, having -- you know, adopting a proportionate approach  
4 to the importance of their evidence, then I am sure we would find a  
5 practical way of dealing with it. But this is not any old witness.  
6 It's the one witness who, according to the Prosecution, alleges the  
7 participation of Mr. Veseli in a crime on the indictment. And the  
8 implications could be very far reaching.

9           We note that in the submissions made briefly this morning by the  
10 SPO, the point was made that this was a highly protected witness. In  
11 other words, he was a witness who was regarded as being highly  
12 important, at least that's how I understood it, to the SPO's case,  
13 which chimes exactly with what I'm suggesting about the importance of  
14 that witness, and, above all, the importance of the Defence having a  
15 proper opportunity to conduct the investigations that would be  
16 necessary to find out or to properly test whatever allegations are  
17 coming down the line.

18           So that's the problem. The various solutions that -- I mean,  
19 there seems to me to be three possible solutions, some of which have  
20 been canvassed in a general sense but not in a specific one in  
21 relation to this witness. The first is to bring disclosure forward  
22 so that instead of saying it must be disclosed 30 days before the  
23 start of the trial, because that would take us to the beginning of  
24 February with a trial starting at the beginning of March, so the  
25 problem doesn't resolve.

1           The second would be to put the trial back date -- the trial date  
2 back to the end of March, hence the connection that I was obliquely  
3 drawing earlier on between this problem and the start date of the  
4 trial. Because if the start date of the trial was the end of March,  
5 then we would have March and February if you kept the date of  
6 disclosure as it is today.

7           The third possibility, and Your Honour canvassed it a moment  
8 ago, would be to start the trial formally with opening statements but  
9 then to adjourn the evidence, or at least that witness's evidence, so  
10 that we had a proper chance to investigate it. But if we're sitting  
11 for a three-week block in the middle of that, it will be difficult to  
12 take instructions, it will be difficult to go to Kosovo, it will be  
13 difficult to interview witnesses. And he's the witness who -- or one  
14 of the witnesses with whom the Prosecution wishes to front load its  
15 case.

16           And so without taking any further time on it, that's the  
17 problem. The SPO's reaction to that last alternative was to say, no,  
18 they wish the opening statement to be followed immediately by the  
19 calling of the evidence. So that's their position in relation to  
20 that. They also resist the solution of disclosing it before or  
21 varying the protective measures so that it can be disclosed now or at  
22 the beginning of January so we have the time up to the trial date.  
23 And the Prosecution's position is the trial can start on 1 March.

24           The net result is, I mean, just in relation to this one witness,  
25 there is the danger of the Defence being bounced, trial by ambush, to

1 deal with what could turn out to be an extremely important witness at  
2 a very early stage of the trial without it being properly  
3 investigated.

4 [Trial Panel confers]

5 PRESIDING JUDGE SMITH: Is that all, Mr. Emmerson?

6 MR. EMMERSON: [via videolink] Yes. Any one of those three  
7 solutions would work as far as the Defence is concerned.

8 PRESIDING JUDGE SMITH: Let me ask a question to the  
9 Prosecution. And, Mr. Ferdinandusse, you spoke on this earlier.

10 Do we know when this witness that Mr. Emmerson is talking about  
11 is intended to testify? I mean, can we not put that off for a period  
12 of time so that these people have an opportunity to know who it is?  
13 We're going to make you release the name sooner or later anyway, so I  
14 see that as a simple solution, is to not put him in the first three  
15 months' worth of testimony.

16 MR. HALLING: Actually, Your Honour, I think one of  
17 Mr. Emmerson's proposed three solutions would work even more  
18 elegantly than that.

19 First of all, just preliminarily, we would like to thank  
20 Mr. Emmerson. He described this at a level of abstraction and we do  
21 appreciate it.

22 This is one of the top 40 witnesses in the witness order.

23 PRESIDING JUDGE SMITH: Yes.

24 MR. HALLING: From what was discussed before the break, it  
25 sounds like it's Your Honours' intention that, on 30 January, we

1 would need to provide all of the lesser redacted documents for,  
2 amongst others, our witnesses with 30 days delayed disclosure before  
3 testimony.

4 PRESIDING JUDGE SMITH: Yes.

5 MR. HALLING: So when Mr. Emmerson says, "The first is to bring  
6 disclosure forward, so instead of saying it must be disclosed 30 days  
7 before the start of trial," that is actually something that would be  
8 covered by Your Honours' order. And so we can accept that  
9 arrangement.

10 The only other thing we wanted to mention. This is a redacted  
11 paragraph of the indictment that is being discussed. This is not the  
12 only witness for that paragraph of the indictment, but the indictment  
13 as well will be made available on the same day.

14 PRESIDING JUDGE SMITH: Well, there's another problem. We're  
15 only dealing with 30 days, and he's indicated that's going to be  
16 difficult. Does this witness have to testify at the very beginning  
17 of the trial?

18 MR. HALLING: Your Honour, it's our submission that one of the  
19 reasons why this witness needs the level of protective measures that  
20 he does is that he is at risk of interference, and so we believe that  
21 it's very important that you hear this witness's evidence, and we are  
22 intending to call him early in the trial so that Your Honours can  
23 hear his story.

24 PRESIDING JUDGE SMITH: Mr. Emmerson.

25 MR. EMMERSON: [via videolink] Well, I mean, the concern I have

1 about the stance of the SPO, as you rightly say, partly that that  
2 cuts down the time that the Defence is in a position to investigate  
3 to 30 days whilst we're all gearing up for opening statements and the  
4 start of the trial and other witnesses as well are being prepared.

5 But also -- I mean, this is not a criticism, but the effect of  
6 what the Prosecution is seeking to do is to give the Defence the  
7 shortest possible time. I mean, it's justified, it is said, by the  
8 Prosecution on the basis of the need to avoid interference or  
9 protection of the witness. Obviously, we have nothing that we can  
10 meaningfully said about that because we don't know anything about  
11 what's alleged against us.

12 But the concern that I have is that any of the solutions offered  
13 by the Prosecution are necessarily intended to ensure that we are not  
14 in a position to have a more than the absolute minimum time --

15 PRESIDING JUDGE SMITH: Well --

16 MR. EMMERSON: [via videolink] -- to investigate. That's not to  
17 make -- I'm not saying that --

18 PRESIDING JUDGE SMITH: That might be a bit unfair, but I  
19 understand your point. I understand your point.

20 MR. EMMERSON: [via videolink] It's intended to be part of the  
21 protective regime that we should have the information for as a short  
22 a time as possible before he testifies. That I think is fair.

23 PRESIDING JUDGE SMITH: Okay. Well, we understand the issue,  
24 and I would encourage you, the two of you, to continue to talk about  
25 this. There seems to be some alternative solutions that we have



1 suggested you might want to explore. But if you can't, we'll make  
2 the call.

3 MR. EMMERSON: [via videolink] Very well. As I say, there were  
4 three solutions and I'm happy with any one of them.

5 PRESIDING JUDGE SMITH: Thank you, Mr. Emmerson.

6 Mr. Kehoe, is this a different subject or the same subject?

7 MR. KEHOE: This is a different subject.

8 PRESIDING JUDGE SMITH: Okay.

9 MR. KEHOE: Should I move to the --

10 PRESIDING JUDGE SMITH: Absolutely.

11 MR. KEHOE: I do believe that based on our discussion on this  
12 topic before the Pre-Trial Judge that it has to go into closed  
13 session at this point.

14 PRESIDING JUDGE SMITH: Okay.

15 You understand you're not going to be able to hear his  
16 discussion, Mr. Ellis?

17 Ms. Alagendra, do you understand that?

18 All right. We will go then into private session.

19 [Private session]

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3 [Open session]

4 THE COURT OFFICER: Your Honours, we are now in public session.

5 PRESIDING JUDGE SMITH: Thank you.

6 Judge Mettraux had a question for Mr. Halling, I believe.

7 JUDGE METTRAUX: I believe it is Mr. Halling, but to the  
8 Prosecution in any case.

9 Mr. Kehoe might not be prepared to admit to how quickly he  
10 reads, but he might have a point when he suggests that 46.000 pages  
11 of new material, although it's been disclosed in another form  
12 already, is quite a challenge for anyone to read within a short  
13 period of time.

14 My question to you, or questions, is this: Would you be in a  
15 position to identify when you will release the material one month for  
16 trial, what material within these pages have any bearing on your  
17 first 40 witnesses? And what I have in mind in particular are any  
18 statements or proposed exhibits that you plan to use and/or to seek  
19 to tender through any of these witnesses; in other words, to try to  
20 facilitate the work of the Defence, and of Mr. Laws, I'm sure, to try  
21 to identify within that material what they should give primary focus  
22 to.

23 The second question has to do with the witness that was just  
24 mentioned a second ago by Mr. Kehoe. And the question here is  
25 whether there would be any difficulty in this witness being called

1 towards the end of your first block rather than the beginning of that  
2 first block? In other words, that if there is a need, indeed, to  
3 interview the witness, subject, of course, to what the Appeals  
4 Chamber will say on the conditions under which this can be done,  
5 whether you could accommodate a later date for that particular  
6 witness?

7 MR. HALLING: Thank you, Your Honour. I'll give an answer and  
8 hopefully it will hit all aspects of your questions.

9 In terms of the 46.000 pages, when things are disclosed in  
10 Legal Workflow, relations are made to witnesses in the course of that  
11 disclosure. So in the ordinary course of events, some of the  
12 connections that Your Honour is describing will be made. I'll also  
13 mention that any application, say, pursuant to Rule 154 within these  
14 witnesses, we're intending to file our first Rule 154 applications  
15 prior to the commencement of trial. That will identify all of the  
16 statements and the associated exhibits for these witnesses that we  
17 would be intending to tender under that rule.

18 In terms of the witness that was discussed by Mr. Emmerson, for  
19 the reasons that we were stating, we think it is very important for  
20 this witness's safety and in securing his evidence that he is called  
21 as closely as 30 days before testimony as possible. We have already  
22 accepted that for this particular person something closer to 30 days  
23 before trial, in line with Your Honours' intended order, is something  
24 that we can accept.

25 If upon receiving the lesser redacted documents the Defence

1 wants to make a substantiated application to move that witness in the  
2 order, we could respond to it in kind. But for the moment, we would  
3 say that this is a hypothetical issue, and we would like to wait  
4 until it actually arises before actually responding.

5 JUDGE METTRAUX: Thank you.

6 PRESIDING JUDGE SMITH: Anything else before I get to the oral  
7 orders?

8 MR. KEHOE: [Microphone not activated]

9 PRESIDING JUDGE SMITH: No, go ahead.

10 MR. KEHOE: [Microphone not activated]

11 THE INTERPRETER: Microphone, please. Microphone.

12 MR. KEHOE: This has to do with the issue of pre-trial release.  
13 Our clients have been in custody, as Your Honour noted at the outset,  
14 for over two years, and at least if we could accommodate some ability  
15 for them to go back home for a period of time. One of the protected  
16 measures that we've outlined in detail before the Pre-Trial Judge,  
17 that means 24-hour a day monitoring in their particular locations, or  
18 some type of facility in a third country.

19 I know that we had -- we just made a filing again before the  
20 Pre-Trial Judge on the most recent notice by the SPO. It's the same  
21 stuff all over again, much of it which is unsubstantiated. Frankly,  
22 much of it which comes from the witness that I was talking about  
23 previously, believe it or not. And I can establish that by  
24 connecting the dots with statements made during the course of prior  
25 proceedings by Mr. Smith and others.

1           That being said, Judge, I would like to entertain that as a  
2           proposal to Your Honour and just look for guidance as to how we bring  
3           that before the Chamber.

4           PRESIDING JUDGE SMITH: The periodic reviews are ongoing and  
5           continue to go, and we will carefully examine them as we are two of  
6           them right now. And we'll make rulings. Your position is well  
7           stated, and we will consider all of those items. Thank you.

8           MR. KEHOE: Thank you, Your Honour.

9           PRESIDING JUDGE SMITH: The first oral order --

10          MR. LAWS: I'm so sorry, Your Honour.

11          PRESIDING JUDGE SMITH: [Microphone not activated]. I'm sorry,  
12          Mr. Laws.

13          MR. LAWS: There was one matter that I wanted to raise --

14          PRESIDING JUDGE SMITH: Yes, go ahead.

15          MR. LAWS: -- on behalf of the victims in this case. And it's  
16          this, it's a matter of some importance.

17          As of today, 53 victims have been admitted to participate in  
18          these proceedings. There are, as I'm sure Your Honour and  
19          Your Honour's colleagues know, five Registry reports outstanding.  
20          The earliest in time is the sixth Registry report which was filed on  
21          18 August of this year.

22          Taking together the number of victims who are recommended for  
23          admission, and leaving to one side those who have not been  
24          recommended for admission, it is a further 84 victims who, if  
25          Your Honour and Your Honour's colleagues agree with the Victims

1 Participation Office, will be participating in these proceedings.

2 It's obviously a significant number.

3 We are very conscious that there are a number of different  
4 competing claims on the Judges' time in a case of this kind, but we  
5 just to want highlight the issue really for two reasons. First of  
6 all, this: The Pre-Trial Judge, in a decision just of this week,  
7 granted, in part, an application on behalf of the Thaci Defence for  
8 disclosure in relation to the dual-status witnesses on the basis that  
9 it is important for Defence preparation for them to know who the  
10 dual-status witnesses are. And, plainly, they will want to know, and  
11 we will want to know, before the trial starts. So that's the first  
12 way in which these outstanding reports are relevant.

13 And the second, Your Honour, is much more simply this, that for  
14 the individuals most affected by those applications - that's to say,  
15 the victims themselves - obviously, they want to know as soon as is  
16 possible.

17 So I hope Your Honour doesn't mind me taking just a few moments  
18 to describe that issue and to do what I can respectfully to promote  
19 it up the agenda.

20 PRESIDING JUDGE SMITH: Thank you, Mr. Laws. And we are aware  
21 of the numbers and have discussed already preliminarily -- I mean, we  
22 just got the case yesterday. Preliminarily discussed a method of  
23 getting to those issues and getting them decided. All right?

24 MR. LAWS: I'm very grateful to hear that. Thank you,  
25 Your Honour.

1           PRESIDING JUDGE SMITH: Hopefully we will do that as soon as  
2 possible.

3           So on the working language, the first oral order.

4           In accordance with Rule 8(3), the Panel determines that English  
5 shall be the working language for the trial proceedings in the  
6 present case, and that the parties and participants should otherwise  
7 continue to comply with the directions contained in the  
8 Pre-Trial Judge's decision on working language of 11 November 2020.

9           The second oral order deals with a proposed order on the conduct  
10 of proceedings. At the present time, it is a draft order and is in  
11 the process of completion.

12           In accordance with Rule 116(3), a draft of our Order on the  
13 Conduct of Proceedings will be circulated to the parties as soon as  
14 the Panel is able to finalise the draft for your consideration and  
15 submissions, and we expect that to be very quickly.

16           The parties, as well as counsel for victims, are invited to make  
17 submissions to comment upon the draft Order on the Conduct of  
18 Proceedings by 13 February 2023 at 4.00 p.m. We do not expect from  
19 you a paragraph-by-paragraph commentary on the draft but instead  
20 expect you to focus on any contentious issue.

21           The parties, as well as counsel for victims, shall identify, in  
22 particular: One, any objection they may have to any of the proposals  
23 made in the draft Order on the Conduct of Proceedings; and, two, the  
24 basis and authorities to support any objection. No responses will be  
25 entertained. The Panel will address any residual issue with the



1 parties, if necessary, before issuing its order.

2 I'm sorry, January 13th is the date for the response. I'm  
3 sorry.

4 Third oral order.

5 The Panel is still satisfied that March 1st is appropriate for  
6 the start of the proceedings of the trial. However, the following  
7 order is intended to deal with some of the concerns raised by the  
8 Defence concerning timing.

9 The SPO is ordered to provide to the Panel, and to the other  
10 parties and participants, by 1 February 2023, at 4.00 p.m., the list  
11 of the first 12 witnesses it intends to call to testify or those  
12 witnesses which will be heard during the first three weeks of the  
13 case, whichever is the greater.

14 The SPO filing shall indicate the following in respect of each  
15 witness: The name and pseudonym of the witness; the order in which  
16 the witness will be called; all prior statements or transcripts of  
17 evidence of the witness; whether the SPO proposes that the witness  
18 should give evidence partly or wholly live; and whether the SPO  
19 intends to tender the witness's statement or transcript of evidence  
20 pursuant to Rule 154; five, the issues, facts, and circumstances in  
21 relation to which the witness will be examined; six, the estimated  
22 time for the direct examination; seven, documents and exhibits which  
23 the SPO proposes to use with each witness identified by their  
24 electric record number, ERN; and eight, protective measures ordered  
25 in relation to the witness with reference to relevant orders and any

1 application for variation of such order.

2 By 3 February 2023, at 4.00 p.m., each Defence team, as well as  
3 counsel for victims, are ordered to notify the Panel and other  
4 parties and participants in respect of each of the first 12 SPO  
5 witnesses: One, whether it intends to cross-examine the witness,  
6 and if so, the proposed duration of the cross-examination; two,  
7 whether it objects to the admission of the witness's statement  
8 pursuant to Rule 154, if offered by the SPO under the rule, and the  
9 general grounds on which objection is taken to its admission; three,  
10 whether it objects to the admission of any or all of the documents  
11 which the SPO proposes to use with that witness and the general  
12 grounds on which objection is taken.

13 Defence teams shall consult among themselves to discuss the  
14 scope and nature of cross-examination with a view to avoiding  
15 repetitive questioning and agreeing that one Defence team shall  
16 conduct all the cross-examination of a witness or the bulk thereof.  
17 That's not an order to do it but to discuss it.

18 By the same date, victims' counsel shall notify the Trial Panel  
19 and the other parties and participants of those witnesses which he  
20 would wish to cross-examine with general description of the issues or  
21 areas of evidence in relation to which he wishes to cross-examine  
22 each witness.

23 The Panel notes, furthermore, that it is the presiding party's  
24 responsibility to ensure that at the conclusion of the evidence of a  
25 witness there is another witness ready to begin to testify. If one

1 of the proposed witnesses is not able to testify at the scheduled  
2 time, or if there is no cross-examination of a witness, or if  
3 cross-examination proceeds faster than expected, the presenting party  
4 shall ensure that the subsequent witness can be called so as to avoid  
5 any delay in the proceedings.

6 The fourth oral order.

7 By 8 February 2023, at 4.00 p.m., the SPO is invited to file, if  
8 it so wishes, any bar table motion pertaining to: A, proposed  
9 exhibits on its list of exhibits which it intends to use for any of  
10 its first 40 witnesses; B, evidentiary material that the SPO  
11 considers important to the clear and effective presentation of its  
12 case at this stage.

13 The SPO is not bound to tender the evidentiary material in that  
14 way, but can do so if, in accordance with the rules, it considers  
15 that doing so will reduce the amount of courtroom time which will be  
16 spent addressing the admission of those exhibits.

17 Where such an application is made, the SPO shall: One, provide  
18 a short description of the proposed exhibits of which it seeks  
19 admission; two, identify the proposed exhibits pertaining to the  
20 first 12 witnesses; three, clearly specify the relevance of the  
21 proposed exhibits by reference to the relevant paragraphs of the  
22 indictment and the probative value of each proposed exhibit; and,  
23 four, provide indicators of the proposed exhibit's authenticity where  
24 the document does not, on its face, contain sufficient indicators of  
25 authenticity.

1           The Defence shall respond to any such application by 22 February  
2 2023, at 4.00 p.m. No replies will be entertained.

3           The Panel expects that before any such filing the parties will  
4 have discussed the matter collegially with a view to avoid, as much  
5 as possible, contentious issues to be resolved by the Panel.

6           Fifth oral order, protective measures.

7           By February 13, 2023, the SPO is ordered to file submissions on  
8 the Panel's proposal to order the removal by January 30, 2023, of all  
9 redactions in the indictment and the disclosure to the Defence of the  
10 identity and unredacted evidentiary material of the first 40  
11 witnesses. If the SPO wishes to maintain any redaction in the  
12 indictment or to withhold the identity or unredacted evidentiary  
13 material of any of the first 40 witnesses beyond 30 January 2023, the  
14 SPO shall set forth clearly for each relevant protected witness  
15 fact-specific reasons justifying the necessity and proportionality at  
16 this stage of the proceedings of the relevant protective measure.

17           The SPO shall explain, where relevant, why that witness cannot  
18 testify in the first 30 days of trial.

19           The SPO shall also identify which redactions should, in its  
20 view, be maintained in relation to the public.

21           The Defence teams are ordered to file responses, if they so  
22 wish, by 20 January 2023. No replies will be entertained.

23   [Trial Panel confers]

24           PRESIDING JUDGE SMITH: I'm going to repeat the first line of  
25 the fifth oral order on protective measures, as I think there's some

1 confusion in the transcript.

2 By 13 January 2023, the SPO is ordered to file submissions on  
3 the Panel's proposal to order the removal by 30 January 2023 of all  
4 redactions in the indictment and the disclosure to the Defence of the  
5 identity and unredacted evidentiary material of the first 40  
6 witnesses.

7 That concludes our oral orders.

8 We have honoured your request not to set scheduling responses or  
9 scheduling any type of response work during the holiday period.  
10 We've loaded it up right afterwards, as you can see.

11 But we really do welcome you all here, and we welcome your  
12 contribution. It may have been a tough morning, but we've  
13 accomplished a lot, and we will continue to do so.

14 Specifically, Mr. Thaci, Mr. Veseli, Mr. Selimi, and  
15 Mr. Krasniqi, thank you for attending this hearing. We appreciate  
16 your presence.

17 And I believe that concludes the hearing, unless there is  
18 something else that is on your mind.

19 MR. KEHOE: The only thing on my mind is the witnesses that --  
20 or the motion on depositions or taking witnesses out of turn. We  
21 will be filing a motion --

22 PRESIDING JUDGE SMITH: You can file that --

23 MR. KEHOE: Yes.

24 PRESIDING JUDGE SMITH: Do that right after the recess.

25 MR. KEHOE: Right after the recess. Yes, Your Honour.

1           PRESIDING JUDGE SMITH: Thank you.

2                               --- Whereupon the Status Conference adjourned  
3                               at 1.24 p.m.

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