

1 Wednesday, 19 February 2025

2 [Status Conference]

3 [Open session]

4 [The accused appeared via videolink]

5 [The Accused Thaci not present]

6 --- Upon commencing at 9.01 a.m.

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

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

12 PRESIDING JUDGE SMITH: The record will reflect that Mr. Selimi,
13 Mr. Veseli, and Mr. Krasniqi are appearing by videolink, and
14 Mr. Thaci has waived his appearance in court today with the
15 attorney's approval.

16 So we scheduled this Status Conference to take place today as
17 there are, obviously, no more Prosecution witnesses scheduled for
18 this week. The Panel wanted to take the opportunity that we've been
19 given to discuss timetabling for the conclusion of the Prosecution's
20 case and thereafter. I did pass around a brief agenda, and we will
21 address the points in the agenda in the order set out.

22 Just a couple of statements. First, let me ask -- I would like
23 to ask the Prosecutor, we show next week two witnesses. Is that the
24 fact?

25 MR. PACE: Yes, Your Honour, 4745 and 2677.

1 PRESIDING JUDGE SMITH: And thank you very much. So no one else
2 is intended as a backup or ...

3 MR. PACE: No.

4 PRESIDING JUDGE SMITH: Okay.

5 Number two. There's been some questions, some filings -- oh,
6 Mr. Selimi.

7 THE ACCUSED SELIMI: [via videolink] [Interpretation] Apologies,
8 Your Honours, but I would like to inform you that we're not receiving
9 Albanian translation.

10 PRESIDING JUDGE SMITH: Thank you. We will see to that right
11 away, and we won't go any further until that's done.

12 [Trial Panel and Court Officer confers]

13 PRESIDING JUDGE SMITH: All right. We're testing the system
14 now. Testing, testing.

15 THE ACCUSED SELIMI: [via videolink] [Interpretation] That's
16 fine. Thank you.

17 PRESIDING JUDGE SMITH: Okay.

18 THE ACCUSED SELIMI: [via videolink] [Interpretation] Thank you.

19 PRESIDING JUDGE SMITH: Okay. Thank you for letting us know,
20 Mr. Selimi.

21 THE ACCUSED SELIMI: [via videolink] [Interpretation] Thank you.

22 PRESIDING JUDGE SMITH: The other thing that I was about to tell
23 you is, just so that we are clear as soon as possible, there was some
24 question about the type of post-trial briefs that would be filed,
25 whether they would be simultaneous or sequentially. We will be

1 asking for simultaneous briefs only.

2 So, first, I want to address the closure of the SPO's case.

3 At the last Status Conference on 22 January, the SPO predicted
4 or projected that it would close its case by 4 April 2025. I just
5 want to confirm that once again, if that's still the case.

6 MR. HALLING: So, Your Honour, 4 April is the last scheduled
7 hearing date --

8 PRESIDING JUDGE SMITH: Yes.

9 MR. HALLING: -- so we would not call any witnesses beyond that
10 date. We were planning until April 15th to file any last written
11 motions that are necessary, evidentiary motions, bar table, Rule 155.
12 We've derived that date from previous indications from the Panel, and
13 I can point to page 20535 from the Status Conference of 1 October
14 2024 where that date was mentioned. So that's our plan.

15 PRESIDING JUDGE SMITH: So your plan is to close the case on the
16 15th, then?

17 MR. HALLING: Correct. But no further witnesses are --

18 PRESIDING JUDGE SMITH: Yeah, I understand.

19 MR. HALLING: -- currently scheduled beyond the 4th.

20 PRESIDING JUDGE SMITH: Yes, you've made that clear. And it has
21 to do, of course, with some of the other matters that are going to
22 come up in a little while, but I just wanted to have that clear.

23 I want to know if you foresee any issues with calling the
24 remaining witnesses.

25 MR. PACE: Yes, Your Honour. I'll address that.

1 So just to give a brief overview of where we are with the
2 witnesses, also following on from the agenda. As I mentioned, next
3 week we have two witnesses scheduled. For the March block, we
4 currently intend to call one witness. We'll provide updates on any
5 other witnesses to be called in the March block as soon as we're in a
6 position to do so.

7 In terms of special issues. As we previously outlined in our
8 submissions, in relation to some of the remaining witnesses, we're
9 dealing with complex issues, including witness security, witness
10 cooperation, and the cooperation by third states, but we are doing
11 everything that needs to be done in this regard and we are doing it
12 as expeditiously as possible.

13 We've recently notified further streamlining decisions in
14 relation to witness lists, and that includes filing 2877 on 30
15 January of this year, and then we also notified the Defence of one
16 further change via e-mail even this week. We anticipate being able
17 to notify further changes possibly concerning three or four witnesses
18 at the end of this week, and these changes would likely entail us
19 seeking to admit evidence of these witnesses in writing rather than
20 calling them to testify in court.

21 And in line with the Panel's previous directions, we're
22 notifying these changes as soon as decisions are taken in relation to
23 them rather than waiting for any periodic period of time.

24 As Mr. Halling mentioned, we currently don't intend to make a
25 new request for any of our witnesses to be heard after 4 April, which

1 is what we have scheduled. So that means, if I could sum it up, that
2 any witnesses that will be called to testify in the courtroom from
3 our remaining ones, we intend to call them in the March block. Of
4 course, if something exceptional comes up, we will let you know and
5 make our request if necessary, but that's not anticipated at the
6 moment.

7 So that's just an overview of the witnesses in terms of the
8 courtroom. If Your Honour wants, I could also get into the remaining
9 153 and 155 witnesses because that then concludes our submissions in
10 terms of who's left.

11 PRESIDING JUDGE SMITH: So I'm clear, any potential issues that
12 you raised are not foreseen to have -- will not be foreseen to have
13 changed the closure date?

14 MR. PACE: No, certainly --

15 PRESIDING JUDGE SMITH: But I -- yeah, the closure date or the
16 last witness date, we'll call it.

17 MR. PACE: No. Certainly not at the moment, Your Honour. If
18 anything changes, we will let the Panel know. But to be clear, even
19 when I talk about, for example, us having to deal with third states,
20 when we are dealing with those third states, the deadlines we're
21 imposing are deadlines which would make us in a position to be able
22 to then call the witnesses in March or make any written request for
23 the admission of their evidence in writing.

24 So for all intents and purposes, we are doing everything we can
25 so that everyone who needs to come to the courtroom does so by

1 4 April.

2 JUDGE METTRAUX: Thank you, Judge Smith.

3 I have a question for you, Mr. Pace, on that. And it's really
4 so that the Defence doesn't have to prepare for something they should
5 not be preparing for. Have you taken the view that you will drop any
6 of the witnesses that are still on your list and that at this stage
7 you have formed the view that you will not call one or more of these
8 witnesses?

9 MR. PACE: Thank you, Your Honour. In line with the Panel's
10 previous directions, if we do or if we had formed a view that we
11 would remove a witness, we would notify that view immediately. Since
12 we haven't done so from the last time, that means that we haven't
13 made that final decision. We're very aware, and that's obviously a
14 very good point and very fair to everyone, we have no interest in the
15 Defence undertaking work they don't have to. So it's very clear on
16 our side that when such a decision is reached, we will communicate it
17 immediately.

18 There is a possibility that among the remaining witnesses, some
19 of them - I don't anticipate it will be many - will be removed. It
20 seems like if those don't come to court, it's possible -- it's more
21 likely they will be converted to writing. If a decision is reached
22 that rather than being even converted to writing or coming to court
23 they will be removed, we will certainly notify the Defence
24 immediately.

25 JUDGE METTRAUX: Thank you.

1 MR. MISETIC: Mr. President, may I ask a question?

2 PRESIDING JUDGE SMITH: Yes.

3 MR. MISETIC: There's some confusion at least in our team.

4 Mr. Pace said, "For the March block, we currently intend to call one
5 witness," and then later on he used the plural. So is it the case
6 that there's only one witness that's intended to be called; and if
7 so, could we be informed of who that is to help our preparation?

8 MR. PACE: I can respond, Your Honour. At the moment, the only
9 witness we have confirmed attendance for the March block is W04403,
10 that is one witness. In regards to other witnesses that may be
11 called, those have not been identified yet. So as we've been saying,
12 if there's a witness who can testify in March, we will let the
13 Defence know and we will put them in the March block.

14 PRESIDING JUDGE SMITH: Does that answer your question?

15 I want to now turn to address any remaining Rule 153 and 155
16 application. At the last Status Conference on 22 January, the SPO
17 projected that it would file the final Rule 153 application on
18 21 February, and that the SPO had one further Rule 155 application to
19 file but that it was unsure about when this application would be
20 filed.

21 We'd like to know, one, if the SPO still intends to file a
22 Rule 153 application, their final one, on 21 February, as stated?
23 Well, let's start with that.

24 MR. PACE: Yes, Your Honour. So we intend to file a Rule 153
25 request for the witnesses we currently know will be Rule 153

1 witnesses from our side by the end of this week. The Defence has
2 already been informed of the four witnesses that will be included in
3 that motion, and, indeed, we received a response from the Defence
4 about these witnesses with their current position on them yesterday.
5 And I'm happy to report or give you a preview of our submissions, but
6 the Defence currently does not object to the admission of two of
7 these witnesses pursuant to Rule 153. And in relation to a third
8 witness, the Defence would not object to a Rule 153 admission subject
9 to the SPO applying certain redactions to the tendered material,
10 which the SPO has agreed to do. So there will be four witnesses in
11 this motion. Essentially, three are at this stage by the Defence
12 unopposed, subject to the caveat that I just mentioned.

13 As to your question whether this will be the final one. It is
14 likely that it will not be the final one and that includes because of
15 the ongoing assessment. So all of the witnesses who are not
16 scheduled to testify next week, or the one I mentioned in the March
17 block, there are various options for them. Either some of them will
18 come to testify in March, some of them will be 153, potentially some
19 will be 155, as I will get to later, and potentially some will be
20 removed.

21 So as soon as we are able to make a decision on the modality of
22 the testimony, we will file a further or further Rule 153 requests
23 for those.

24 And to give an example as to why this is also necessary, and we
25 cannot file everything by the end of this week, I'm sure, as

1 Your Honours recall, that Your Honours rejected the admission of one
2 witness in F9237 that was notified just on Monday, and that means
3 that, having received notice of that rejection on Monday, we now have
4 to assess - and we'll do that as quickly as possible - whether we are
5 going to call that witness to testify or whether we'll follow up on a
6 proposal or an option even included in the decision which is to
7 re-tender that material of that witness under Rule 153 with certain
8 changes.

9 With that being said, the number of witnesses which would be
10 included in any further Rule 153 request, so after the one this
11 Friday, is necessarily going to be limited in number because we are
12 now dealing with a very small pool of witnesses. As I mentioned,
13 from that small pool of witnesses there is limited options: They're
14 either going to come to court in March, they're going to be a 153,
15 155, or they're going to be removed. So the number is limited.
16 Where they go will depend on developments that are taking place very
17 soon and even as we speak.

18 So those are our submissions on 153.

19 PRESIDING JUDGE SMITH: We need to have as much information as
20 possible, and you've given us a lot of general information, but we
21 and the Defence would like to know, I'm sure, when these actions are
22 going to happen, when the cut-off date is, when you're going to make
23 the final decision.

24 MR. PACE: Yes, Your Honour. As we've previously submitted in
25 terms of decisions, and Your Honour will be aware, they depend on

1 various factors: They depend on the witness's cooperation, they
2 depend on the evidence that is heard in the courtroom, we are still
3 calling witnesses, and they depend on assessments which have to
4 balance all the Prosecution's interests and the Prosecution's case.
5 We assure you we have no interest in delaying when we file these
6 things and when we communicate the decisions.

7 But, again, I think the main assurance that everybody should
8 have is that we will be filing any request that needs to be filed,
9 unless something exceptional comes up, before or by the April
10 deadline.

11 In terms of the modalities, those are things that, yes, may
12 change. I did mention before in my submissions in relation to the
13 remaining witnesses that this week itself we will be notifying
14 further changes. We will be notifying three or four witnesses who
15 will likely be converted to writing. Decisions on those will be made
16 before the end of the week and they will be communicated.

17 And, Your Honour, we're being quite specific here. Again, we
18 are not dealing with hundreds of witnesses, 50 witnesses. We're
19 dealing with less than 20 witnesses overall. So from the ones who
20 are coming to testify in the courtroom that I've already mentioned,
21 the ones that are going to be filed in Rule 153 and 155 motions this
22 week, there's going to be six of those witnesses, the ones that we're
23 going to notify having changed to writing later this week, that
24 leaves just over a handful of witnesses.

25 So we are by no means dealing with a large number of witnesses.

1 Even in terms of any motions that will be made, those are not going
2 to be large, extensive motions with many witnesses.

3 PRESIDING JUDGE SMITH: Now the same question about 154 -- or
4 155 witnesses.

5 MR. PACE: Yes. So --

6 PRESIDING JUDGE SMITH: You certainly know who those targets are
7 at this point.

8 MR. PACE: Yes, Your Honour. As Your Honour will appreciate,
9 under Rule 155, there are various reasons why we were submitting.
10 One of them, as you indicated, is quite obvious. We would know now
11 if we're going to submit a witness under 155 should that witness, for
12 example, be deceased. As for the other reasons, which includes -- I
13 don't need to get into them, but, you know, there could be issues of
14 intimidation, that kind of nature, unfitness to testify. Those are a
15 little bit more complicated. And so for some of those I cannot tell
16 you right now, yes, they will be 155 or not. But I can tell you
17 right now that the processes which would lead to the determination as
18 to whether they will be 155 or not are well underway for all of them.

19 In terms of filings, we will file a Rule 155 request this week
20 that concerns two witnesses, and the Defence already knows which
21 those witnesses are. There will be a further 155 request, as you can
22 imagine from my submissions.

23 Reflecting what I said in relation to 153, those will
24 necessarily be limited in number. There are not many witnesses left
25 on our list. As I mentioned multiple times, and I hope it's clear,

1 those limited number of witnesses are either going to come in March,
2 they're going to go in 153, or go in 155, or be removed. The number
3 is limited.

4 PRESIDING JUDGE SMITH: Thank you.

5 All right. Let's talk about the bar table motions. We note you
6 filed one today, actually, or perhaps yesterday, and that had, I
7 think, approximately 300 items within it. Am I correct that there
8 are still five more bar table motions to come?

9 MR. HALLING: Yes. So I don't know if the number will be
10 exactly five, but there are more motions. We can group them in
11 different ways, but the ones that are intended already are the
12 Dukagjin zone motion, which I mentioned at the last Status Conference
13 and which is projected to be filed next week.

14 I mentioned a General Staff bar table motion. On Your Honours'
15 procedure, we send e-mails to the Defence of bar table items before
16 these are filed. We sent that e-mail yesterday for that
17 General Staff bar table motion, so that one is going to be -- we've
18 given them till the end of the month to comment, and we'll file it in
19 the weeks after that.

20 There are other residual categories of items - international
21 reports, some videos, other things. Whether that ends up being how
22 many motions exactly, we want to group them in a way that makes
23 sense. But there are certain residual categories that will be the
24 final motions. All are projected to be filed by the target date.

25 PRESIDING JUDGE SMITH: Surely you know what items you want

1 admitted, and I'd be interested to know a count on that.

2 MR. HALLING: The count actually we don't have to hand because
3 we actually assess them regularly as we go through the process. We
4 only want to tender those items that we think are really necessary
5 for the Panel to rule on, and so it's a number that's actually
6 changing all the time.

7 The one in the Pashtrik motion Your Honour mentioned is just
8 over 300. In the e-mail that was sent to the Defence yesterday for
9 the General Staff, it's currently 500 -- around 500 items. But that
10 is the largest projected bar table motion that we have remaining.

11 PRESIDING JUDGE SMITH: So you can't give us a number,
12 approximate?

13 MR. HALLING: I can't give a number that would be meaningful,
14 but the number is going to be -- if the Dukagjin motion isn't similar
15 in size to the Pashtrik zone motion and the General Staff is the
16 biggest one, I don't think the last motions are going to be of
17 comparable size. So I can give a rough estimate that way.

18 PRESIDING JUDGE SMITH: Pardon me?

19 MR. MISETIC: We're hanging on the edge of our seat here for the
20 estimate.

21 PRESIDING JUDGE SMITH: Yeah, I am too.

22 MR. HALLING: I'm worried that any estimate I give would be off.
23 Also, it's not even accurate to look at it in relation to what hasn't
24 been tendered yet from our exhibit list because, as Your Honours
25 know, many items from the exhibit list have not been followed through

1 on because witnesses have been dropped, and so their statements
2 aren't going to be tendered, certain associated exhibits will not be
3 tendered.

4 The exhibit list also has everything in Albanian and English,
5 so, I mean, it's not -- there's not an accurate proxy of the final
6 number from the exhibit list either.

7 PRESIDING JUDGE SMITH: We're just looking for some help, not an
8 argument why you can't do it.

9 MR. HALLING: Right. But these are -- ballpark figures for the
10 next ones are available and I've given them. And the last motions,
11 it's going to be less than that. Exactly how much less, I can't
12 really say.

13 PRESIDING JUDGE SMITH: This is basically no information.
14 That's not exactly what we were asking for.

15 Do you have any questions of the SPO? Oh, I'm sorry, do you
16 have a question?

17 JUDGE METTRAUX: I have -- thank you, Judge Smith. I have a
18 couple, and, in fact, they're more suggestions.

19 But the first one has to do with Mr. Misetic being on the edge
20 of his seat. We don't want him to fall from it. So I'll make,
21 perhaps, a suggestion for you to take on board, Mr. Halling. If you
22 are not in a position to give the Defence a number, when exactly are
23 you planning to give them that e-mail that you've mentioned for the
24 other bar tables where you put them on notice of the remaining
25 material? And again, I don't expect, and I think Defence won't

1 expect necessarily, to get the full list or a completely accurate
2 list at this point but at least that they get a sense of the ballpark
3 and the general nature of the material.

4 MR. HALLING: Yes. Understood. We can do that in mid-March.

5 PRESIDING JUDGE SMITH: In what?

6 MR. HALLING: Mid-March.

7 JUDGE METTRAUX: And I have a second observation, and I'll let
8 you do what you want with it.

9 You have tendered pages of various books, and you've done that
10 in pursuance of our order not to tender unnecessary material.
11 Reviewing some of these, I'll simply observe that sometimes it's
12 difficult to assess the context in which, let's say, a page or two
13 pages of a book come.

14 Now, I'm not inviting you to consider tendering a whole book, by
15 no means, but simply that as part of your process you review these
16 odd pages to see whether the tendering of one or more pages or a
17 section of a book might be necessary to give better context to
18 certain parts of this book. It's just difficult sometimes to get to
19 a point in a book or a chapter and to know what was being discussed
20 before, what was being discussed after. But that's your prerogative.
21 It's just an observation on my part at this stage.

22 MR. HALLING: Yes. Thank you for the guidance, Your Honour.

23 PRESIDING JUDGE SMITH: Also on the issue of bar table - and
24 you've done some of it, but I think you can probably do more - it
25 would be extremely helpful to have *inter partes* connection with all

1 of these. It could be that a huge percentage of them are going to be
2 unobjectioned to, or that they can tell you right away, "This is
3 firmly an objection with us." I strongly suggest, as we come to the
4 end of this Prosecution case, that you up the game on *inter partes*
5 connection.

6 MR. HALLING: Understood, Your Honour. We're required to do
7 this for bar tables pursuant to Conduct of Proceedings decision.
8 We'll do it every time.

9 PRESIDING JUDGE SMITH: Yeah, thank you.

10 Any questions you have for the Panel about these issues?

11 MR. HALLING: None from the SPO.

12 PRESIDING JUDGE SMITH: So turning to the Defence.

13 The first point -- I made the first point, and that was we will
14 have simultaneous filings of the final trial briefs.

15 Secondly, though, we would like to address whether there are any
16 issues of concern for the Defence regarding the remaining witnesses
17 to be called; and if so, have you expressed that to the Prosecution?

18 And I'll just ask you in turn if you have anything to that
19 effect.

20 MR. MISETIC: We have not had concerns about the witnesses to be
21 called, but that's before we heard the update today. So, obviously,
22 we didn't communicate with the SPO about them.

23 I'll speak for us. My concern is, first of all, that apparently
24 there is going to be some activity between 4 April and 15 April,
25 which was alluded to in the Prosecution's submissions. I'm not

1 exactly sure what is intended to be submitted at that point, but that
2 would seem to us to be late. And I say "late" because -- and this is
3 related to some of the other points, particularly point 6 that you're
4 going to ask us next. But given the volume of material we're talking
5 about now, we can't begin to file or prepare Rule 130 motions if
6 there are literally over a thousand exhibits on a bar table motion,
7 multiple Rule 153 and 155 applications, and still possibly even more
8 applications to be filed after April 4th.

9 And I anticipate now that, frankly, for staffing reasons, for
10 our team in particular - some of us are involved in two cases now -
11 the volume of material to have to address within 30 to 45 days before
12 the scheduled close of the Prosecution case is quite significant and
13 is going to be very burdensome for us, and I just let you know that
14 right now.

15 PRESIDING JUDGE SMITH: Trust me, there is only eight of us
16 doing this, and we have to go through it all also. So I understand
17 that.

18 MR. MISETIC: Yes. And you know we have --

19 PRESIDING JUDGE SMITH: It's a tough job, but somebody has got
20 to do it.

21 MR. MISETIC: Absolutely. But, you know, one of the things is
22 if we have a bar table motion that we received yesterday of
23 500-and-something exhibits that are titled "General Staff and PGoK
24 bar table motions," those are obviously documents that we're going to
25 have to take a careful look at each one of those documents given

1 their relevance and importance to the case.

2 PRESIDING JUDGE SMITH: Of course.

3 MR. MISETIC: We've been given a deadline to respond to the SPO,
4 I think by next week, which is highly unlikely that we're going to be
5 able to go through that amount of material in two weeks.

6 I say this just because you need to be aware that given that
7 volume of material things are likely to slow down, and then more bar
8 table motions coming on top of 153s and 155s. So it is going to be
9 problematic for us. We, of course, are going to do our best to
10 respond to keep this case moving forward because it's in our client's
11 interest to keep it moving forward as fast as possible, but it's an
12 issue.

13 PRESIDING JUDGE SMITH: All right. The next item is --

14 MR. DIXON: Your Honour, could I just --

15 PRESIDING JUDGE SMITH: -- a difficult one if I understand --
16 oh.

17 MR. DIXON: Could I just add on this matter? Our submission
18 would be that the Prosecution would not, in fact, be able to close
19 their case on 15 April if they are still filing motions and we're
20 having to respond. There might be replies and your decision has to
21 come as well. They'll only be able to close it once all final
22 decisions are made. And then the --

23 PRESIDING JUDGE SMITH: [Microphone not activated].

24 The rule says when all witnesses have been heard and all
25 materials have been presented, then they close their case. It does

1 not require us to have answered each and every motion.

2 MR. DIXON: Yes, Your Honour. I think the other way of looking
3 at it, then, would be that we would say that the time for considering
4 and filing the Rule 130 motion could only start running from the time
5 we know what the final body of evidence is --

6 PRESIDING JUDGE SMITH: Unfortunately, the rule doesn't say that
7 either. It says very specifically that when they close the case, you
8 must immediately advise us whether you do or do not intend to file a
9 Rule 130 motion.

10 MR. DIXON: Yes. Your Honour, if I could say our submission
11 would firmly be that we have to know what the case is, logically --

12 PRESIDING JUDGE SMITH: [Microphone not activated].

13 MR. DIXON: -- before --

14 PRESIDING JUDGE SMITH: I'm not talking about what you
15 believe --

16 MR. DIXON: Yes.

17 PRESIDING JUDGE SMITH: I'm telling you that's what the rule
18 says.

19 MR. DIXON: Yes.

20 PRESIDING JUDGE SMITH: And we have to deal with that rule.

21 MR. DIXON: Yes. So we would ask Your Honours take that into
22 account in scheduling. Really, that's our submission. To allow for
23 enough time for us to be able to respond to all of the motions, some
24 of which might well only come in on the 15th of April, and to take
25 into account Your Honours' decisions as well.

1 PRESIDING JUDGE SMITH: I think the rule envisions that you will
2 continue to advise yourself about what's being filed and be in a
3 position to say yes or no, whether you are going to file the motion
4 immediately.

5 We will do our very best to get the answers out, and you
6 certainly can't be expected to do a final argument, a brief, without
7 having all the answers given to you ahead of time. But the Rule 130
8 motion is quite specifically set out in the rules, and we intend to
9 follow it.

10 MR. DIXON: Yes, Your Honours. We also want to move this along
11 as quickly as possible.

12 PRESIDING JUDGE SMITH: It doesn't have to do with quickly.
13 It's just compliance.

14 MR. DIXON: Yes. But, Your Honour, we just want to ensure that,
15 fairly, we have enough time to take everything into account before we
16 have to file the final 130 motion, if that's the route that is
17 followed. So for that to be taken into account in the schedule is
18 really --

19 PRESIDING JUDGE SMITH: Thank you.

20 MR. DIXON: -- what our request comes down to.

21 And, Your Honour, one -- well, two further matters, just
22 briefly. The first is in relation to the number of live witnesses
23 potentially still to be called, as His Honour Judge Mettraux has
24 outlined.

25 We've calculated that it's at least ten further potential live

1 witnesses in addition to the one in the March block. And we would
2 ask, because it's a lot to prepare for ten potential live witnesses
3 if they're not going to be called, that there is a deadline set, that
4 by the end of this current block, so by the end of next week, the
5 Prosecution notifies if, in addition to the one, there are any other
6 live witnesses to come.

7 Of course, the applications can still be filed if they're not
8 going to come, but at least we know then by the end of this block
9 whether we're having to prepare for one or two or three or
10 potentially ten. It's a big difference in terms of resources which
11 we could direct towards addressing motions rather than preparing for
12 witnesses who aren't going to come. So that would be our request,
13 that some deadline is set for them to notify us about live witnesses.

14 And then the last matter, Your Honour, we would request that
15 there are reasons given in respect of your decision on simultaneous
16 briefs. We did file motions on --

17 PRESIDING JUDGE SMITH: We'll file an order for sure. No
18 question about it. I just wanted you to know as soon as possible.

19 MR. DIXON: [Overlapping speakers] ... yes, we'd be grateful for
20 that. Thank you, Your Honours.

21 PRESIDING JUDGE SMITH: And do you want to respond to the
22 request on the ten witnesses? Please try to be as specific as
23 possible, because we're getting close to the end and we need to have
24 this information.

25 MR. PACE: Yes, Your Honour. The number that counsel just

1 referred to, those ten remaining live 154 witnesses, as in ten
2 witnesses for whom we already said would be live or 154 until now, is
3 correct.

4 Now, as I've said before, of those ten, likely many, or at least
5 some, will be changed to 153, 154, or removed. We do not anticipate
6 that all ten will be added to the March block. As I said, we're not
7 even envisioning calling beyond that. In terms of setting a
8 deadline, that would be arbitrary. And the request to set a deadline
9 indicates that the issues at hand are not being well understood;
10 those issues being witness cooperation, witness security, and in
11 particular also cooperation with third states.

12 PRESIDING JUDGE SMITH: Okay. Just a second. You know who you
13 have problems with. If you don't, I don't know what you've been
14 doing. You do know. And it's time to start saying: These people
15 have potential problems and may cause these particular people not to
16 be called. And the Defence needs to know that.

17 MR. PACE: Yes, Your Honour. That is, of course, something that
18 we do know. We do know who we have issues with.

19 PRESIDING JUDGE SMITH: You know who you want to put on the
20 stand and who you are sure is going to be on the stand, and I'm sure
21 you have some that you're unsure about. You need to communicate that
22 as soon as possible.

23 MR. PACE: Your Honour, to be forthcoming, I don't see the value
24 of informing the Defence which ones we may or may not call before a
25 decision is made. There is no point in telling them: This one may

1 not come, or we have issues with this one.

2 PRESIDING JUDGE SMITH: You're missing my point. You know some
3 that you do want on the stand and you are sure are going to go there;
4 correct?

5 MR. PACE: Your Honour, of the ten witnesses, we do want them on
6 the stand. The reason for them not to be on the stand would be
7 issues that are being worked out. If we're not able to put them on
8 the stand, we will seek to admit them in writing or [Overlapping
9 speakers] ...

10 PRESIDING JUDGE SMITH: By when?

11 MR. PACE: [Overlapping speakers] ... remove them.

12 PRESIDING JUDGE SMITH: By when?

13 MR. PACE: Yes, Your Honour, that --

14 PRESIDING JUDGE SMITH: Because if you can't come up with a
15 reasonable deadline, we will.

16 MR. PACE: Certainly, Your Honour. As I mentioned, there is the
17 March block that ends on 4 April. We will make applications as they
18 come. We're not saying that we are going to notify the Defence one
19 week in advance if a witness is going to show up. If for any of
20 these witnesses we schedule them and the Defence argues that there
21 has not been sufficient notice, we will take that into account and
22 take it from there. But in terms of setting an arbitrary deadline,
23 that does not fit in with our working at the moment.

24 JUDGE BARTHE: Mr. Pace, excuse me for interrupting, but it's
25 not only for the benefit of the Defence, it's also for the benefit of

1 the Panel. You have probably noticed that the Panel is also
2 preparing witnesses and -- in order to ask proper questions. So it's
3 important that we also know who you are going to call or who is off
4 the list.

5 MR. PACE: Yes, Your Honour. And --

6 PRESIDING JUDGE SMITH: We're going to have to consider --

7 JUDGE BARTHE: [Overlapping speakers] ... as early as possible.

8 MR. PACE: Yes. And just to respond to Judge Barthe, as I said,
9 this week itself we are notifying three or four changes, so that will
10 address some of those ten witnesses. And in view of Your Honour's
11 comments now, we will also provide a further update next week. And
12 as I mentioned, we are providing updates as soon as we are able to
13 get them.

14 PRESIDING JUDGE SMITH: Yes.

15 MR. MISETIC: Your Honour, it's not arbitrary to set a deadline.
16 Paragraph 77 of the Order on Conduct of Proceedings requires them by
17 next Thursday to let us know who the witnesses are going to be in the
18 March block.

19 PRESIDING JUDGE SMITH: Yes.

20 MR. MISETIC: So there already is a deadline.

21 The second point to raise is the issues with these witnesses I'm
22 sure have been ongoing for months in their efforts to secure them.
23 If -- at least weeks if not months. So it's not like this has popped
24 up today and they need extra time to figure out if these witnesses
25 are going to come.

1 We would ask you, at the very least, to enforce the existing
2 deadline in the Order on Conduct of Proceedings, and that by next
3 week Thursday they make a commitment one way or another as to whether
4 these -- they intend to bring these people live or not.

5 PRESIDING JUDGE SMITH: We intend to do that. And we didn't
6 make the rule -- the Order on Conduct of Proceedings just for window
7 dressing. We actually intend it to be used. So please arm
8 yourselves accordingly.

9 I take it you're not in a position today to state whether or not
10 you are more likely than not to file a Rule 130 motion or more likely
11 than not you won't.

12 MR. MISETIC: I will say two things on this point. First, you
13 will recall that I had asked a question of the Bench at the last
14 Status Conference which will, at least in some measure, inform our
15 own decision on Rule 130 --

16 PRESIDING JUDGE SMITH: Yes, and it does, and we're aware of
17 that, and we appreciate that hint.

18 MR. MISETIC: Okay. So that's the first part of our submissions
19 from the Thaci Defence.

20 Secondly, at this point I think it's fair to say, with that
21 caveat, and in the absence of information from the Panel, that we
22 should prepare as if there will be a Rule 130 motion just for your
23 own planning purposes. But that may change depending on a number of
24 factors, one of which is the question that I posed to the Panel at
25 the last Status Conference. Thank you.

1 MR. DIXON: Yes, Your Honour. On behalf of the Veseli Defence,
2 likewise. In principle, we should proceed on the basis that there
3 would be such a motion, but it depends on a number of factors that
4 are under consideration.

5 PRESIDING JUDGE SMITH: Yeah.

6 MR. DIXON: But more likely than not, in the terms that you
7 used, Your Honours, so that that should be included, as we've said
8 before, in the schedule. And, of course, if anything changes, we
9 would notify Your Honours immediately.

10 PRESIDING JUDGE SMITH: The problem with putting together a
11 schedule that's based on one thing and then it changes, it means the
12 whole schedule's out again. So we simply cannot do a proper
13 scheduling until we know the answer to that question. And I
14 understand the limitations. I'm not arguing about that. I'm just
15 telling you the scheduling of pre-trial briefs, for example, will be
16 done by us at some point after that decision has been made. There is
17 no reason to do it ahead of time because we don't know how long all
18 of it's going to take. We don't know how long the 130 motions are
19 going to take if you file them, how long we'll need to deal with
20 them. We just can't give you that kind of an answer.

21 And it's specifically because you asked at the last meeting if
22 we could calendar some of these things and get them set. The answer
23 is we really can't until we have the 130 answer. And maybe you don't
24 know what you're going to do, and maybe you do, and you certainly
25 don't have to tell us. But that's the problem, that's the roadblock

1 that's in front of us.

2 MR. DIXON: Yes. Your Honour, our request was whether it was
3 possible to set a tentative schedule, to say that in the event that
4 there were 130 motions, this is how long you would be given, so we
5 know, and this is how long the Prosecution would be given to reply,
6 and then thereafter this is what the next step would be, as a
7 tentative schedule, so that we'd know what would happen in the
8 event --

9 PRESIDING JUDGE SMITH: Well, I think you already said you
10 wanted three weeks.

11 MR. DIXON: We said four weeks.

12 PRESIDING JUDGE SMITH: Four weeks?

13 MR. DIXON: Yes. From --

14 PRESIDING JUDGE SMITH: And I'm sure --

15 MR. DIXON: From a reasonable date.

16 PRESIDING JUDGE SMITH: -- that the Prosecution would have at
17 least one day.

18 MR. HALLING: We asked for a reciprocal extension of a month,
19 which, if that is acceptable to Your Honours, actually resolves many
20 of the issues Mr. Misetic was raising earlier.

21 PRESIDING JUDGE SMITH: I can tell you that that request is
22 reasonable.

23 MR. DIXON: [Microphone not activated].

24 PRESIDING JUDGE SMITH: The four weeks -- four weeks, four
25 months? Four weeks and one week and -- and four weeks. But you also

1 had indicated that you wanted to have, I think you said, ten weeks --

2 MR. DIXON: [Microphone not activated].

3 PRESIDING JUDGE SMITH: -- for doing final briefing. We have no
4 problem with that request. It's just putting it into a calendar, it
5 doesn't make any sense until we know where we're going with this.

6 But if it'll ease your mind a bit, you will be given that kind
7 of latitude in filing a final brief.

8 MR. DIXON: We're grateful, Your Honours, for that indication.
9 At least it allows for some planning to take place. Nothing binding,
10 of course, but on the basis that those guideline timelines are
11 broadly acceptable.

12 PRESIDING JUDGE SMITH: Yeah. You know, and the summer break
13 has some impact on all of that, but we'll deal with that at the time,
14 but the time you requested is certainly reasonable. And we don't --
15 you know, after two years of trial, we certainly don't want to start
16 cutting it back on your final brief. So it will be there. And then
17 there will be a reasonable period of time, since they are
18 simultaneous briefs, to absorb the other brief so that you can make
19 any comments or replies that you think are necessary.

20 MR. DIXON: And, of course, likewise with any Defence case as
21 well and the preparation of that and presentation of that. The
22 guidelines that we have set out in our proposed timelines, as long as
23 those are broadly acceptable, it gives some idea of --

24 PRESIDING JUDGE SMITH: They're broadly acceptable.

25 MR. DIXON: -- of planning forward.

1 PRESIDING JUDGE SMITH: Yeah. Thank you.

2 MR. DIXON: I'm grateful.

3 MR. MISETIC: Mr. President, may I just raise one issue? I
4 apologise.

5 PRESIDING JUDGE SMITH: [Microphone not activated].

6 MR. MISETIC: But it's related to a point you were making
7 earlier about Rules 129 and Rule 130. I understand the way the rule
8 is written, but our position would be that the Prosecution is not
9 going to close its case until there have been decisions made on
10 whether the evidence that's tendered have been admitted or not. The
11 case can't be closed if there are still pending evidentiary motions.

12 PRESIDING JUDGE SMITH: [Microphone not activated].

13 Their case could be closed. And we have to rule on the motions.
14 And unfortunately for them, if we disallow something, there's not
15 much they can do about it at that point.

16 MR. MISETIC: Okay. But then, I don't know how we can submit
17 that there's insufficient evidence without knowing what the evidence
18 is, particularly when we're talking about potentially --

19 PRESIDING JUDGE SMITH: Well --

20 MR. MISETIC: -- over a thousand exhibits.

21 PRESIDING JUDGE SMITH: -- if they'll hurry up and get these all
22 on file, we'll at least know what they're talking about.

23 MR. MISETIC: I agree with you. But then again I still go back
24 to the point, given that we may know what some of the issues we would
25 raise, but those documents may be related to the issues we would

1 raise, then are we arguing in a hypothetical in -- in a Rule 130
2 submission?

3 JUDGE METTRAUX: For myself, Mr. Misetic - I think you said it
4 the last time - the rules are what they say, so the case of the
5 Prosecution would be closed. But your position, with which I would
6 agree, is that the 130 could not be rendered until and unless the
7 admission decisions have been rendered. In other words, you would be
8 in a position to argue your case based on what you know is on the
9 record.

10 MR. MISETIC: Okay. Thank you. Just so that we're clear.
11 Thank you.

12 MR. HALLING: Yes. And, Your Honours, if we could just briefly
13 respond to that --

14 PRESIDING JUDGE SMITH: Sure.

15 MR. HALLING: -- because we think that submission is itself
16 hypothetical.

17 As Your Honours know, and as is set out in the Case 07 Rule 130
18 decision, a Rule 130 decision, at least if the same principles are
19 followed, are done count by count, and the evidence is only cited for
20 illustrative purposes.

21 It seems exceedingly unlikely, with the way these counts are
22 designed, that tendered, unadmitted material is going to make much of
23 a difference in the resolution of the Rule 130 decision. The Defence
24 does not require this information to file their motion.

25 JUDGE METTRAUX: So, Mr. Halling, do you want the Defence to

1 make submissions not knowing what evidence has been admitted? They
2 have to guess and assume?

3 MR. HALLING: Well, we certainly don't want to put it on the
4 Panel to have to resolve every pending motion in the one month after
5 the case closes. So it's up to the Court if they want to set that
6 record.

7 All I'm saying is that this is not a requirement for filing a no
8 case to answer motion. It is perfectly clear that if something is
9 tendered but not admitted, what its status is at that moment. It
10 might be used by the Panel, it might not be, and the submission can
11 be made accordingly.

12 MR. MISETIC: We obviously strongly disagree with that, and also
13 think that the submission that was made earlier about what Rule 130
14 means with respect to counts or partial counts is something to be
15 litigated and we have the right to litigate it. Thank you.

16 JUDGE GAYNOR: Mr. Misetic, I want to return to the question
17 that you asked the Panel at the last Status Conference. And I'll
18 just read it out. You said:

19 "... the question would be: If there is no Defence case to be
20 put on, and the Defence challenges the sufficiency of the evidence so
21 that there's no case to answer, would the Panel be prepared to move
22 straight to preparation of final briefs and closing argument?"

23 That was your question.

24 So my understanding is that if there is no Rule 130 stage at
25 all, and if all four Defence teams elect not to put on a Defence

1 case, well, then logically one must move towards final briefs and
2 closing argument. What else is there to do exactly?

3 MR. MISETIC: I agree with you, but I would just like you to
4 confirm that. And if that's the case, then that's the case.

5 JUDGE GAYNOR: [Overlapping speakers] ...

6 PRESIDING JUDGE SMITH: But we have a participant that is being
7 left out of the argument.

8 MR. MISETIC: [Overlapping speakers] ...

9 MR. LAWS: May I just interject to say --

10 PRESIDING JUDGE SMITH: You're next on my list.

11 MR. LAWS: Yes. I feel like a submission at this point might be
12 helpful.

13 JUDGE GAYNOR: Certainly the Victim's case would take place for
14 sure.

15 MR. MISETIC: Yes.

16 JUDGE GAYNOR: But if none of the Defence teams are going to put
17 on a Defence case --

18 MR. MISETIC: Yes --

19 JUDGE GAYNOR: -- there's no 130 --

20 MR. MISETIC: Let me --

21 JUDGE GAYNOR: -- we have go to --

22 MR. MISETIC: Let me then address what the issue is. Rule 127
23 says Specialist Prosecutor goes first, Defence, if any case -- sorry,
24 Victims' Counsel would go per our agreement, he would go after the --

25 PRESIDING JUDGE SMITH: Yeah.

1 MR. MISETIC: -- SPO. Then the Defence case, if any. Then
2 evidence called by the Panel pursuant to Rule 132. Our question
3 essentially is, is the Panel -- our position is that if we say
4 they've failed to meet their burden of proof and we wish to challenge
5 that, that at that stage the role of the Panel then moves to, okay,
6 we are challenging the sufficiency of the evidence and we go straight
7 to final argument.

8 JUDGE GAYNOR: So what you really want to know is: Is the Panel
9 intending to call witnesses?

10 MR. MISETIC: Yes. And especially --

11 JUDGE GAYNOR: Okay.

12 MR. MISETIC: -- if there is no Defence case, I don't want to
13 make submissions on the point, but that would be problematic in our
14 view because, in effect, the Panel would be potentially weighing in
15 on the side of the Prosecution in a situation where the Defence is
16 saying: We're challenging that they've met their burden of proof.

17 JUDGE GAYNOR: I understand. Thank you.

18 MR. MISETIC: Thank you.

19 PRESIDING JUDGE SMITH: Now, Mr. -- oh, go ahead.

20 JUDGE METTRAUX: Sorry. Thank you, Judge Smith.

21 Mr. Misetic, I have another question for you, just a
22 housekeeping matter. I'll be as generic as I can. You will
23 understand why.

24 But on 14 September 2022, you made use of a document. It was a
25 report of March 1999 from an organisation. The ERN is DHT02008 to

1 DHT02010. And at the time, you were queried to whether you intended
2 to tender these documents, and you indicated you needed further
3 clearance from the provider.

4 I just wanted to know whether there had been any movement on
5 that front; and if so, what you plan to do about it? If you are in a
6 position to say, of course.

7 MR. MISETIC: I do I believe I remember the document, and you
8 are correct. And I believe we have received clearance to submit
9 that, so we will go ahead and tender that at the next opportunity.

10 JUDGE METTRAUX: Thank you.

11 MR. MISETIC: Thank you.

12 PRESIDING JUDGE SMITH: Now, Mr. Laws. We save the best for
13 last.

14 MR. LAWS: Well, nothing to add, really. I wanted just to point
15 out the missing part of the chronology as it was developing, and I
16 think that's been acknowledged now. So we've nothing to say. Thank
17 you.

18 PRESIDING JUDGE SMITH: And we're aware that you need to have
19 some sort of guidance so that you can get your expert available to
20 you. Is that still true?

21 MR. LAWS: Well, we are in the process of instructing experts,
22 and one -- the one that's going to take the most time is fully
23 instructed and is in the process of preparing a report and will be in
24 a position to serve that report in April. No question of that.

25 Plainly, the whole issue of when the Prosecution case is closed

1 and what closing the Prosecution case means and whether there are
2 Rule 130 applications, all of those have an implication in terms of
3 when we are required to put on our case, but it doesn't seem to me
4 that I can do or say anything useful in that regard. We just have to
5 wait and see how things develop.

6 PRESIDING JUDGE SMITH: Thank you.

7 Anybody else have something or anything that you wish to bring
8 to our attention? You do? Oh.

9 JUDGE METTRAUX: Thank you.

10 And I have a question for the Defence just so that we are clear
11 about your position on 130. Is it the Defence position that you are
12 not able to decide whether or not to file such a motion until the
13 point when we've decided all pending applications? I'm not speaking
14 -- just to be clear, Mr. Misetic, I'm not asking you to make your
15 submissions before that point, but whether you will be in a position
16 to tell us whether you plan to file one or not, when would that be?
17 Only after all bar tables and 153, 154, 155 have been dealt with?

18 [Specialist Counsel confer]

19 MR. MISETIC: I think we would be in a position -- first of all,
20 again, with the caveat that we're waiting for a position on the Panel
21 on the question that I posed. But we would be in a position to say
22 whether our intention at the time is to file a motion. But, again,
23 we would reiterate that we would not be in a position to actually
24 prepare and submit it until we have final rulings from the Panel.

25 JUDGE METTRAUX: So you'd be in a position to tell us whether

1 you're going to file one or not by the end of the Prosecution case?

2 Did I get that right?

3 MR. MISETIC: Yes.

4 JUDGE METTRAUX: Thank you.

5 MR. DIXON: Yes, Your Honour, that would be, as I understand it,
6 15 April we'd be able to give that indication. But we would ask, as
7 I said earlier, that the 30 days start running from the date when we
8 know what the final state of the evidence is, including whether
9 important witnesses may be introduced through 153 or 155. That's all
10 important to take into account for each and every count that we might
11 wish to challenge in any 130 motion.

12 Thank you, Your Honours.

13 PRESIDING JUDGE SMITH: Just for what it's worth, from day 1
14 I've considered April 15th to have been the end of the case. This
15 April 4th figure only came up in the last month or so. I've always
16 considered it to be April 15th because I think that's what we -- that
17 was the day we started was on April 15th, two years ago.

18 Anybody -- yes, you had something else?

19 MR. HALLING: There was just one last aspect before leaving the
20 possible Defence case that we wanted to mention now.

21 There's been discussion about when Defence would actually start
22 opening and presenting its evidence in the event that they do choose
23 to bring a case, but there is an earlier deadline related to that and
24 it's the Rule 119(2) deadline --

25 PRESIDING JUDGE SMITH: Yes.

1 MR. HALLING: -- for witness and exhibit lists which really
2 hasn't been discussed very much in these hearings. In Case 07, it
3 was done within a few days of the Rule 130 decision. That's a very
4 important deadline for us. It's what really starts our ability to
5 investigate and seek cooperation as needed for the Defence case.

6 PRESIDING JUDGE SMITH: I believe we will be dealing with that
7 issue as soon as possible after the closure of your case.

8 MR. HALLING: Understood.

9 PRESIDING JUDGE SMITH: That's what we did in the previous trial
10 that we were involved with, and there is no reason to do otherwise.
11 To set the time for presenting evidence can be done. So that will be
12 our practice.

13 Anybody else have something to weigh in on?

14 MR. DIXON: Your Honour, there was just one request in relation
15 to the recent bar table motion that was filed yesterday, F2944, and
16 that's to ask for an extension of seven days to respond to it. We've
17 heard that it's over 200 documents. The Prosecution does not oppose
18 us having a further seven days to file by Friday, 7 March. That's in
19 the break.

20 PRESIDING JUDGE SMITH: Are you going to want to reply or not?

21 MR. HALLING: It depends on what the response says, Your Honour.

22 PRESIDING JUDGE SMITH: [Microphone not activated].

23 MR. HALLING: I think it's likely there'll be something to reply
24 to.

25 PRESIDING JUDGE SMITH: [Microphone not activated].

1 MR. DIXON: It's just that it's a lot of material to consider.

2 PRESIDING JUDGE SMITH: The extension is approved.

3 MR. DIXON: Thank you, Your Honours.

4 PRESIDING JUDGE SMITH: [Microphone not activated].

5 I said I don't know if we solved anything, but we did talk about
6 it. Everybody knows where the concerns lie and that helps.

7 So we will see you Monday or -- yeah, Monday. And thank you for
8 being here today. I'm sorry there was a short notice, but we were in
9 hopes that there might be more than one witness this week until it
10 was obvious that there wouldn't be. So we'll see you on Monday.

11 We're adjourned.

12 --- Whereupon the hearing adjourned at 9.55 a.m.

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