

1 Wednesday, 21 July 2021

2 [Open session]

3 [Status Conference]

4 [The accused appeared via videolink]

5 --- Upon commencing at 2.31 p.m.

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

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

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

12 JUDGE GUILLOU: Thank you, Mr. Court Officer.

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

15 Madam Prosecutor.

16 MS. LAWSON: Good afternoon, Your Honour, and to everyone
17 joining. For the Specialist Prosecutor's Office today are
18 Alan Tieger, Senior Prosecutor; Ward Ferdinandusse, Head of
19 Investigations; Marlene Yahya Haage, Legal and Disclosure Officer;
20 and I am Clare Lawson, Head of the Legal Office.

21 Thank you.

22 JUDGE GUILLOU: Thank you, Madam Prosecutor.

23 Now I turn to the Defence. May counsel introduce their teams,
24 starting -- I don't know if it's Mr. Prosper or if it's --

25 MR. MISETIC: I guess since I'm [Microphone not activated].

1 JUDGE GUILLOU: Then please proceed.

2 MR. MISETIC: I am Luka Misetic [Microphone not activated].

3 THE INTERPRETER: The interpreters cannot hear the Defence.

4 JUDGE GUILLOU: Excuse me. The interpreters just mentioned that
5 they cannot hear you. So there might be a problem with the
6 microphone. But I see that your microphone is on, so it shouldn't be
7 a problem. So let's see how this can be fixed. It might be because
8 this microphone does not work.

9 MR. MISETIC: Can you hear me now?

10 JUDGE GUILLOU: Now I can hear you perfectly.

11 MR. MISETIC: Okay.

12 JUDGE GUILLOU: And just for the transcription, it's not
13 Mr. Kehoe. So for the transcript, this is not the right name.

14 Please proceed. Sorry for these technical issues.

15 MR. MISETIC: No problem, Your Honour.

16 My name is Luka Misetic on behalf of Mr. Thaci. With me are
17 co-counsel Sophie Menegon and our legal associate Bonnie Johnston,
18 and remotely with us are co-counsel Mr. Pierre Prosper and
19 Mr. Dastid Pallaska.

20 Thank you, Your Honour.

21 JUDGE GUILLOU: Thank you very much, Mr. Misetic.

22 Mr. Emmerson, please.

23 MR. EMMERSON: [via videolink] Good afternoon, Your Honour, and
24 to everyone in and outside the courtroom. This is Ben Emmerson
25 appearing on behalf of Mr. Veseli, together with co-counsel

1 Mr. Nicholas Kaufman.

2 JUDGE GUILLOU: Thank you, Mr. Emmerson.

3 Now I turn to Mr. Young, please.

4 MR. YOUNG: [via videolink] Yes. And good afternoon,
5 Your Honour, and to everyone. For Mr. Rexhep Selimi, David Young.
6 Thank you.

7 JUDGE GUILLOU: Thank you, Mr. Young.

8 And now I turn to Ms. Alagendra, please.

9 MS. ALAGENDRA: [via videolink] Good afternoon, Your Honour.
10 Venkateswari Alagendra for Mr. Jakup Krasniqi, appearing together
11 with co-counsel Mr. Aidan Ellis and Mr. Mentor Beqiri.

12 JUDGE GUILLOU: Thank you, Ms. Alagendra.

13 For the record, I note that Mr. Thaci, Mr. Veseli, Mr. Selimi,
14 and Mr. Krasniqi are not physically present in the courtroom but
15 attend this hearing via video-conference.

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

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

19 JUDGE GUILLOU: Thank you, Mr. Laws.

20 And now I turn to the Registry.

21 Mr. Registrar.

22 DEPUTY REGISTRAR: Thank you, Your Honour. For the Registry,
23 Stephane Wohlfahrt, Deputy Registrar; and I am here with
24 Dr. Fidelma Donlon, Registrar.

25 Thank you.

1 JUDGE GUILLOU: Thank you very much.

2 Before we proceed with our agenda today, I remind the parties
3 that should anyone attending the Status Conference via
4 video-conference experience any technical difficulty, please inform
5 the Court Officer and myself immediately by waving your hand.

6 Let me now move to the recent procedural history of the case.

7 On 12 July 2021, I scheduled this sixth Status Conference. I
8 asked the parties to provide written submissions if they so wished.

9 On 16 July the SPO, the Defence for Mr. Thaci, the Defence for
10 Mr. Krasniqi, Victims' Counsel, and the Registrar submitted their
11 written observations. I thank these parties and participants for
12 their written submissions.

13 Based on those submissions, I have modified the agenda slightly
14 to include all the following topics: Update on preliminary motions,
15 disclosure, disclosure of material obtained during search and
16 seizures, case-specific categorisation in Legal Workflow and other
17 matters related to Legal Workflow and the Rule 86(3)(b) outline, the
18 Defence request for preliminary witness list, translation, the status
19 of SPO investigations, the status of Defence investigations, the
20 points of agreement on matters of law and fact, detention, the date
21 for the seventh Status Conference, and any other matters they wished
22 to raise.

23 The purpose of our hearing today is to review the status of the
24 case and to discuss the topics I just listed. I will invite the
25 parties, as usual, to present their views in a concise fashion about

1 each item in that order.

2 I remind the parties, as usual, to give prior notice should any
3 submission require the disclosure of confidential information so we
4 can go into private or closed session.

5 First, I would like to give an update to the parties on
6 preliminary motions decisions.

7 I will issue two decisions tomorrow. First, a decision on
8 motions challenging the jurisdiction of the Specialist Chambers
9 pursuant to Rule 97(1)(a); and, second, a decision on motions
10 alleging defects in the form of the indictment pursuant to
11 Rule 97(1)(b). Each of these decisions addresses several motions.

12 I also inform the parties that any deadlines for requests to
13 leave to appeal will be extended until after the recess, and this
14 will be done in the decision.

15 I also inform the parties that I will issue a third decision on
16 constitutional challenges in August after the recess.

17 Let us now continue with the first topic that was listed in the
18 Scheduling Order, which is disclosure. I would first like to hear
19 from the Specialist Prosecutor's Office on the progress made in the
20 disclosure of evidentiary material; in particular, what progress has
21 been made in the disclosure of the Rule 102(1)(b) material by the SPO
22 by the deadline of 23 July 2021, in line of this approaching deadline
23 how much of such materials remains to be disclosed, does the SPO
24 intend to submit further requests for protective measures for the
25 additional Rule 102(1)(b) material - in the affirmative, what is a

1 realistic timeline for the SPO to meet its Rule 102(1)(b) disclosure
2 obligations. Then, whether the SPO is on track to provide the
3 Defence with a detailed notice of evidence falling under Rule 102(3)
4 by Friday, 30 July 2021, whether there remains exculpatory evidence
5 in the SPO's custody, control, or actual knowledge that must be
6 disclosed to the Defence pursuant to Rule 103, and whether any
7 request for protective measures for such material is imminent. And,
8 finally, whether the parties are facing or foresee any difficulties
9 related towards the disclosure process with respect to Rule 107
10 material and whether any application pursuant to this Rule is
11 imminent.

12 In particular, in light of the SPO's submission on 16 July, I
13 would also like to know the number of variation requests the SPO
14 intends to file and when, a reasonable timeline for submission on
15 pending Rule 107 requests, and finally the approximate number of
16 expert reports needing to be finalised, as mentioned in the SPO's
17 submissions.

18 These are a lot of topics. I will give the floor to the SPO,
19 and this will be followed by the Defence.

20 Madam Prosecutor.

21 MS. LAWSON: Thank you, Your Honour.

22 As indicated in our written submissions, the SPO does remain
23 substantially on track with respect to Rule 102(1)(b) disclosure.
24 Since the last Status Conference, ten further packages of
25 Rule 102(1)(b) materials have been disclosed. Those are disclosure

1 packages 37, 38, 40, 41, 42, 43, 44, 46, 48, and 49.

2 In addition, two further protective measures requests were filed
3 on 4 June and 8 July respectively.

4 There are a number of further Rule 102(1)(b) packages currently
5 in final processing which will be released this week. The majority
6 of these remaining packages relate to certain outstanding prior
7 statements and associated exhibits. So those items, which were
8 mentioned in the Thaci Defence filing, will indeed be disclosed this
9 week subject to certain protective measures issues, which I will
10 address in a moment.

11 With the release of the remaining schedule packages, the SPO
12 will have largely disclosed Rule 102(1)(b) material, subject to the
13 limited number of discrete exceptions outlined in our written
14 submissions and which Your Honour just mentioned and requested
15 certain further details on.

16 As noted in our written submissions, there was one further
17 anticipated protective measures request that we had anticipated
18 submitting, and this will be anticipated -- this will be filed
19 shortly. By that, I mean probably tomorrow. That filing relates
20 primarily to associated exhibits of witnesses for whom protective
21 measures have already been requested or granted.

22 In addition to that, we have taken note of Your Honour's
23 decision on the seventh protective measures request as notified this
24 morning. And in light of that ruling, the SPO seeks authorisation to
25 make a further request for the application of non-standard redactions

1 to prior statements and associated exhibits of witnesses for whom
2 protective measures have already been requested or authorised. The
3 review of those materials has been completed, and the proposed
4 redactions in question are ready.

5 There was a very significant volume of associated exhibits in
6 this case. It's in the range of 2.300 items in total. And although,
7 obviously, not all of those items require redaction, as a result of
8 the volume review of certain of those items was only recently
9 completed. The SPO was consequently not in a position to bring an
10 application in respect of such materials before now. While the
11 materials themselves are ready, some time will be needed to prepare
12 the application to the Court.

13 As such, including in light of existing ongoing case-related
14 deadlines and the upcoming judicial recess which we will already
15 being working through to meet those existing deadlines, the SPO
16 requests an extension until 27 August to make this further
17 application.

18 Currently the main potential challenge we have with regard to
19 completing this week's disclosures are technical ones. We are
20 experiencing fairly significant difficulties with the release of
21 material in Legal Workflow. One example was provided in our filing
22 last week. However, since then other issues have arisen.

23 Since Monday evening, after packages have been released, there's
24 been a substantial delay before the disclosure actually goes through
25 and the parties and Chamber are notified of the package. In at least

1 one instance, a released package disappeared from the sequence of
2 disclosures. And on top of that, shortly after 7.00 p.m. yesterday
3 evening we lost access to Legal Workflow.

4 Your Honour, and, indeed, the parties may have seen the IT
5 service announcement this morning indicating that the need to restart
6 the Legal Workflow server, and full service was restored at 10.38
7 this morning.

8 Currently, or at least as of shortly before this hearing, the
9 missing disclosure package remains missing. We're hoping that that
10 can soon be resolved so that we can continue with the other scheduled
11 disclosures, and we are reporting each of these issues as soon as
12 they arise, and we're very grateful to the Registry for their
13 continuing availability and the prompt manner in which they are
14 assisting with these issues. However, it is obviously a challenging
15 circumstance in the context of this week's disclosure.

16 In relation to Rule 102(3), the SPO is also substantially on
17 track to provide the Defence with a Rule 102(3) notice by 30 July.
18 The Rule 102(3) notice will indicate remaining materials in the SPO's
19 possession which are of potential relevance to the case and which
20 have not already been disclosed pursuant to either Rules 102(1)
21 or 103 prior to that date.

22 The SPO will be making a short request to the Chamber in
23 connection with that list; in particular, relating to items for which
24 clearances are not yet available.

25 Turning to Rule 103 material. Since the last Status Conference,

1 four packages of potentially exculpatory items falling under Rule 103
2 have been disclosed. That includes in disclosure package 45, a
3 package containing potentially exculpatory items identified amongst
4 the seized materials, which was a matter mentioned by the Krasniqi
5 Defence in their filing. So that disclosure has now already taken
6 place.

7 Further review of material remains ongoing, and the SPO will
8 continue to promptly disclose any such material. No protective
9 measures request is currently imminent.

10 With respect to Rule 107. The SPO continues to work very
11 vigorously to conclude discussions with relevant organisations in
12 relation to clearances or as relevant potential counterbalancing
13 measures. As Your Honour is aware, we have begun making certain, so
14 far, very discreet requests to the Court in respect of such material.
15 And as I just mentioned, we do anticipate making a further request in
16 connection with the Rule 102(3) notice.

17 On the specific questions that Your Honour raised in relation to
18 the pending items, which is the number of variation requests and when
19 they will be made, all of those variation requests have already been
20 made to relevant institutions and panels. Certain of them, as
21 indicated in the -- as you will have seen from the Annex to the
22 filing, it is a relatively discrete number of matters. And for
23 certain of them, the variation requests have actually already been
24 granted -- in fact, for quite a number of them they have already been
25 granted, but we have not yet received -- actually received the

1 materials.

2 For the other pending requests, we can't really give an -- it's
3 somewhat outside of our control when those will be ruled upon or
4 we'll have a decision. There is a degree of ongoing litigation in
5 relation to a couple of them. But as we indicated in the filing,
6 these are relatively discrete matters. And, where possible, we're
7 actually already providing disclosure of similar or redacted versions
8 of the material in question by the deadline this week.

9 In relation to clearances. Again, that is a very limited volume
10 of material. It relates to approximately five international
11 witnesses for whom clearances have not yet been received. As of
12 making the filing last Friday, the number was actually six but we had
13 anticipated receiving a clearance this week. We did receive the
14 clearance, but we didn't receive the signed statement in a legible
15 format, so the number of approximately five remains accurate at this
16 point.

17 In addition, there are a relatively small number of documentary
18 items. And by "relatively small," I genuinely mean relatively small.
19 I believe it's less than 50.

20 In terms of the timing for them. Again, it's somewhat outside
21 of our control to give you a specific timeline on that, but they are
22 coming in on a constant basis. We're pursuing it extremely
23 vigorously. And some of them continue to come in as we can speak.

24 On expert reports. The number of experts in question is three,
25 and it relates to forensic material, as indicated in our filing. In

1 addition, the actual underlying material on which those reports will
2 be based is being disclosed by the deadline this week.

3 Thank you very much.

4 JUDGE GUILLOU: Thank you, Madam Prosecutor.

5 Let me now turn to the Defence, starting with Mr. Misetić.

6 MR. MISETIĆ: Thank you, Your Honour.

7 We acknowledge the SPO's commitment to disclose the 102(1)(b)
8 material by Friday's deadline and note that we have received
9 recently - very recently - packages of hundreds, I believe,
10 documents, including in the hours leading up to this
11 Status Conference, so we have not had a chance to review those
12 materials yet. But we, of course, will do so.

13 With respect to the materials that are going to be subject to
14 protective measures applications, we note that there was a 4 June
15 deadline that Your Honour set for seeking protective measures for
16 witnesses. Some of these applications, including the most recent
17 filing, are for, I believe, witnesses that have not been previously
18 disclosed and therefore are passed the deadline that you set.

19 We understand from counsel today that the materials that will
20 now be the subject of the next application will not involve any new
21 witnesses but, rather, will be materials related to existing
22 witnesses who've already been disclosed and we note that; but we do
23 express our concern about any additional witnesses that would be
24 disclosed or for whom protective measures would be sought beyond the
25 4 June deadline.

1 Concerning the expert reports, we do wish to note our surprise
2 that expert reports are still being prepared at this stage of the
3 proceeding. Your Honour will recall that in November the SPO
4 indicated that there was no reason -- there would be no reason why
5 trial could not start in this month, in fact. We now have been
6 advised that there are three expert reports that are still being
7 prepared and will not be prepared in time for the disclosure
8 deadline.

9 We would ask Your Honour to set a firm deadline for any expert
10 reports that the SPO intends to use in the case well before the
11 submission of the Prosecution's pre-trial brief so that the Defence
12 is fully aware of all of the evidence that will be submitted or will
13 be presented in the SPO's case.

14 We take note again of the fact that some of this material now
15 the SPO will seek to disclose its full documents by the end of
16 August. Just for the record, we note that this was supposed to be
17 disclosed at the end of May. You then set a new deadline for this
18 Friday, and now we are going to wait another month, I guess, before
19 we see all of the evidence. We take note of that and then this will
20 be relevant to our submissions later on preparation for trial and
21 Defence investigations, et cetera, but I will wait until we get to
22 those points to address you on those points.

23 Thank you, Your Honour.

24 JUDGE GUILLOU: Thank you, Mr. Misetic.

25 Mr. Emmerson, please.

1 MR. EMMERSON: [via videolink] I would like to allow Mr. Kaufman,
2 if I may, to address the issues of disclosure.

3 JUDGE GUILLOU: Mr. Kaufman, please.

4 MR. KAUFMAN: [via videolink] Yes, thank you, Mr. Emmerson, and
5 thank you, Your Honour.

6 As stipulated in Rule 96(1), the purpose of a Status Conference
7 is to ensure that the preparations for trial are being conducted in a
8 diligent and timely fashion. Now, I ask how the SPO can be seen to
9 be acting diligently if since 21 June it has given us access to 15 of
10 the 35 disclosure packages released to date.

11 This is not diligence. It's a frenzied, panic-stricken
12 last-minute dumping of materials. It's frankly quite a shameful
13 state of affairs that 43 per cent of the disclosure packages, which
14 we now have for trial, have been disclosed in the last month.

15 Now, Ms. Lawson, very assiduously, almost with pride today,
16 mentioned how many Rule 102(1)(b) packages were released since the
17 last Status Conference. What she doesn't mention is that the first
18 of these packages was only disclosed on 30 June, package number 37.
19 In other words, out of sight, out of mind. If there's no
20 Pre-Trial Judge handling a monthly Status Conference, as we
21 requested, then nothing of substance is disclosed.

22 Now as for timeliness, it did not escape our attention that the
23 language employed by the SPO in filing 398 submitted in advance of
24 this hearing is guarded and carefully calculated to leave the door
25 open for further deadline postponement requests. And I quote:

1 "The SPO is substantially on track with respect to
2 Rule 102(1) (b) disclosure."

3 This is a mantra which we've heard repeat itself today, and it's
4 repeated in the SPO's pre-Status Conference submissions. In my
5 submission, it's a more refined form of the same fuzziness which has
6 characterised the SPO's approach to its disclosure obligations
7 throughout. A far shout, I may add, from the cavalier attitude
8 displayed by the Prosecutor's representative at the Status Conference
9 on 17 December 2020; page 199 of the transcripts. He assured us then
10 of a pre-trial brief in early July and a trial date in September.

11 Your Honour, a judicially ordained type deadline is designed to
12 set up a cut-off point, and it's imposed in order to maintain the
13 fairness of the proceedings, particularly in light of the continued
14 detention of the accused. A disclosure deadline is not a
15 recommendation or a goalpost to be shifted at the will of the
16 Prosecution or, worse still, to be ignored.

17 Let me cite just one example which has arisen recently, which we
18 hope that the SPO will be able to clarify by way of response today;
19 namely, the eighth request for protective measures filed on
20 8 July 2021, and which seems to have been submitted in flagrant
21 contravention of the schedule set out in Categorisation Decision of
22 12 March 2021. That's filing 218 in the case record, whereby the
23 last request for protective measures should have been filed on
24 4 June.

25 So we ask Your Honour to make it clear to the Prosecution if

1 such deadlines, which have already been extended and not met, then
2 the currently undisclosed evidence will not been received; or,
3 alternatively, that Mr. Veseli will be granted interim release.

4 Now, I'll just move, if I may, to the discrete matters detailed
5 by the SPO in paragraph 4 of filing 398. Firstly, the pending
6 variation requests. Here it's not quite clear to us what exactly is
7 covered by this category. From whom, for example, is the SPO asking
8 authorisation for a variation of confidentiality? How many of these
9 requests have been made? When were they made?

10 The opacity of the requests prevents any reasonable Defence
11 input.

12 Secondly, the pending clearance requests. Now, I'm not going to
13 repeat the submission that I made at the last Status Conference
14 regarding the obscure manner in which Rule 107 materials have been
15 handled. Suffice it to say that Your Honour was seized of a formal
16 request for metadata which would have allowed us to place a check on
17 the Prosecution's disclosure activities, but it's a notoriously
18 problematic category of evidence. No ruling has been rendered since
19 this request was made, and the matter seems to have disappeared into
20 the atmosphere like smoke on a windy day.

21 All we know is that the SPO is handling the matter, as
22 Ms. Lawson said, very vigorously. We feel it most appropriate, once
23 again, to ask that Your Honour order the Prosecution to clarify the
24 number of items that it has in its possession pursuant to Rule 107,
25 when these items were received, the number of information providers

1 concerned. We also ask Your Honour to demand clarification as to
2 what proportion of these items the SPO has sought to be relieved of
3 disclosure obligations under Rule 102(3) and Rule 103, and what has
4 been done to proffer in lieu thereof counterbalancing measures.

5 This request is now more acute, especially since the SPO, as it
6 appears, will not even meet its deadline for the disclosure of five
7 international witnesses falling under Rule 107.

8 If we were to play by the book, Your Honour, these witnesses
9 would not be allowed to testify, not least because the Prosecution
10 request for a postponement of the deadline is completely laconic and
11 totally devoid of any explanation as to the nature of the problems
12 encountered in gaining the necessary clearances.

13 Thirdly, regarding expert reports. There is absolutely no
14 justification for disclosure beyond 23 July 2021. Expert reports are
15 specifically referred to in Rule 102(1)(b) and have the same status
16 as witness statements. There is no legal entitlement for disclosing
17 witness statements at a later date, nor expert reports, and the
18 justification provided - namely, that some of expert reports will
19 deal with forensic issues - is not persuasive.

20 The availability of the experts, with all due respect, would not
21 have been a problem if the SPO had managed its resources
22 appropriately.

23 Thank you, Your Honour.

24 JUDGE GUILLOU: Thank you, Mr. Kaufman.

25 I'll give the floor to the SPO after the other Defence teams

1 respond to what has just been expressed by Mr. Kaufman.

2 Let me now turn to Mr. Young, please.

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

4 On behalf of Mr. Selimi, we support very much the concerns which
5 have just been raised by counsel for Mr. Thaci and counsel for
6 Mr. Veseli, so they won't improve by repetition.

7 I just want to make two general comments in relation to
8 disclosure.

9 Firstly, it's difficult for the Defence, with respect, to
10 understand the full scope of disclosure, given the effective
11 piecemeal nature of it, given the fact that there are six extensive
12 protective measures affecting, we estimate, around a half of the
13 total number of witnesses, and given the continuing nature of the
14 extensive redactions to the indictment.

15 So, secondly, we would plan to undertake a full-stop take, as it
16 were, in August, in the light of the supposed completion of the
17 Rule 102(1)(b) disclosure and the Rule 102(3) list in order to
18 attempt to provide a comprehensive list of the issues and gaps that
19 we see then in terms of disclosure.

20 Thank you.

21 JUDGE GUILLOU: Thank you, Mr. Young.

22 Ms. Alagendra, please.

23 MS. ALAGENDRA: [via videolink] Your Honour, could I defer to
24 Mr. Ellis to address issues of disclosure.

25 JUDGE GUILLOU: Absolutely.

1 Mr. Ellis, please.

2 MR. ELLIS: [via videolink] Thank you, Your Honour.

3 Your Honour, we've set out a number of our points in writing
4 before today. In relation to the matters that have arisen from the
5 SPO's submissions this morning, there are two points in particular
6 that we would wish to highlight.

7 First of all, in relation to the experts issue, Your Honour.
8 The starting point, as I think Mr. Kaufman said, must be that both
9 Rules 149 and 102(1)(b) make it clear that expert reports should be
10 disclosed by the final date for the Rule 102(1)(b) disclosure, which
11 is, of course, in two days time.

12 So what the SPO is effectively seeking is an extension from
13 Your Honour today and in its written submissions on Friday.

14 The issues that arise from that are these.

15 Firstly, why was no request made earlier? So far as I can see,
16 apart from one footnote to the SPO's written submissions to the very
17 first Status Conference, the issue of expert evidence has not
18 previously been addressed by the Prosecution. It must have been
19 apparent that there was going to be a need to seek an extension
20 before Friday.

21 And the second point, Your Honour, is just what is the basis for
22 extending time? What has been done by the Prosecution to obtain this
23 expert evidence earlier? We are, after all, dealing with alleged
24 crimes from 20 years ago in circumstances where the investigation has
25 already been going on for years. Why does the Prosecution not have

1 its expert evidence in hand already?

2 In our submission, without a compelling explanation for that, no
3 extension for the expert reports should be granted.

4 The second issue, Your Honour, is in relation to the search
5 material. It's correct to say that yesterday the SPO --

6 JUDGE GUILLOU: Mr. Ellis, sorry, I will -- we will deal with
7 this matter in a separate point for the search material, if you don't
8 mind. So we will come back to that specific point of your
9 submissions after this -- after this point, if you don't mind.

10 MR. ELLIS: [via videolink] Thank you, Your Honour.

11 JUDGE GUILLOU: Do you have anything else to add to the SPO's
12 submissions, Mr. Ellis?

13 MR. ELLIS: [via videolink] No, not on that, Your Honour. Thank
14 you.

15 JUDGE GUILLOU: Thank you. And we will go back to this point in
16 a couple of minutes.

17 Let me turn to the Specialist Prosecutor's Office. If you could
18 reply to the different Defence teams.

19 Madam Prosecutor.

20 MS. LAWSON: Thank you, Your Honour.

21 The submissions are largely divorced from the reality of the
22 pre-trial disclosure process that has so far taken place. The volume
23 of material which the Defence have already received and are receiving
24 this week is more than enough to keep them occupied for the
25 foreseeable future in reviewing that material. The suggestion that

1 there has been any delay in providing such material is not based on
2 reality. What the Prosecution has been working towards is the
3 disclosure deadline established by Your Honour and which we are
4 substantially meeting this week. The timing of and disclosure
5 packages and the review of material, the sequencing in which material
6 is being released is obviously related to the necessity of
7 prioritising materials for which protective measures are necessary as
8 those do require advance applications and additional processing and
9 preparatory steps.

10 Therefore, the SPO worked towards the interim deadlines for
11 protective measures applications and processed material in accordance
12 with that schedule. That did mean that certain other materials for
13 which redactions and protective measures were not envisaged had to
14 wait until those materials were processed in order to meet the
15 schedule outlined.

16 The eighth protective measures request, which was filed at the
17 start of July, was after the schedule that Your Honour had outlined
18 for the filing of protective measures. However, it was not our
19 understanding that that was an exhaustive schedule and that requests
20 for protective measures could only be made on the dates specified.
21 It, nonetheless, was made at the earliest possible opportunity in
22 which it could be made.

23 The one single factor which has had the most significant impact
24 on the timing of disclosure in this case is not based on Prosecution
25 requests or on Prosecution processes. It's the requirement for

1 additional subcategorisation of materials as requested by the
2 Defence.

3 As Your Honour recognised in the Categorisation Decision,
4 requiring that did necessitate an alteration in the disclosure
5 time-line for Rule 102(1)(b) materials, and we've previously -- and
6 as we have previously submitted, provision of the Rule 102(3) notice,
7 as well as the Rule 95(4) materials, are both substantially dependent
8 on completion of Rule 102(b) disclosure.

9 With respect to -- I mean, some of the other matters I think I
10 will actually respond to -- Defence counsel indicated they were going
11 to elaborate upon them later in the hearing, and I can respond to
12 them in that context.

13 Thank you.

14 JUDGE GUILLOU: Thank you, Madam Prosecutor.

15 I think one of the issues today is how do we interpret the word
16 "substantially" for the Rule 102(1)(b) material, and how do we
17 interpret the word "exhaustive" in my schedule for the different
18 requests for protective measures.

19 Let me go back to the Defence. Would any of the Defence team
20 want to add anything at this stage on this general topic of
21 disclosure?

22 Mr. Misetic.

23 MR. MISETIC: Sorry, Your Honour, just very briefly.

24 I would just respond respectfully that the Defence is not
25 looking for disclosure of materials to, quote, "keep us occupied."

1 We are looking for materials that we will then categorise -- once we
2 get the whole world of evidence, we will categorise as to what we
3 need to prioritise in our investigations. We are not looking for
4 busy work.

5 And, yes, there have been large volumes of material that have
6 been disclosed. As you can appreciate, much of that material may not
7 be relevant to all of the defendants collectively. It may be more
8 relevant for one defendant than the other. But just the disclosure
9 of paper doesn't really assist the Defence when we haven't gotten the
10 whole world of information. And as we have pointed out in our
11 written submissions, at this stage there are 102 out of approximately
12 200 witnesses for whom we have no information about, which, of
13 course, greatly inhibits our ability to conduct investigations. And
14 I'll deal with that point later.

15 The other point I would mention just in response on the
16 protective measures application that was filed earlier this month.
17 We have heard a submission now that it was filed at the earliest
18 possible opportunity. Obviously the Defence is not in a position to
19 test that, and we leave it to Your Honour to assess whether that
20 application was filed at the earliest possible opportunity or could
21 have been filed before your 4 June deadline.

22 Thank you.

23 JUDGE GUILLOU: Thank you, Mr. Misetic.

24 I think Mr. Young and Mr. Ellis requested the floor.

25 Mr. Young, please.

1 MR. YOUNG: [via videolink] Yes, counsel -- Your Honour, thank
2 you.

3 Counsel for Mr. Thaci have just made the busy point that I was
4 going to respond on, so I won't repeat it.

5 Thank you.

6 JUDGE GUILLOU: Thank you, Mr. Young.

7 Mr. Ellis, please.

8 MR. ELLIS: [via videolink] Very briefly, Your Honour, I'm still
9 not hearing a clear response on why expert evidence could not have
10 been addressed or obtained earlier.

11 Thank you, Your Honour.

12 JUDGE GUILLOU: Thank you, Mr. Ellis.

13 Let me get back to the Prosecution on this specific topic of the
14 expert reports.

15 MS. LAWSON: Yes, Your Honour. I'm happy to address that.

16 The SPO made early efforts to identify and instruct experts.
17 However, there were certain difficulties encountered in relation to
18 that which required changes; in particular, for example, one of the
19 experts who we had intended to instruct was refused clearance to
20 testify in these proceedings, which required identifying an
21 alternative expert who would be in a position to speak to the
22 relevant matters.

23 And as I have mentioned, all of the underlying forensic material
24 on which those reports will be based is being disclosed by the
25 deadline this week, so we are essentially referring to three items,

1 three expert reports that are outstanding.

2 Similarly, with respect to all other outstanding matters,
3 whether that be the variation requests or the clearance requests
4 which relates to five individuals, these are extremely limited,
5 extremely discrete requests in light of the overall volume of the
6 case and the volume of material which is being disclosed to the
7 Defence teams and is available for their review.

8 Thank you.

9 JUDGE GUILLOU: Thank you, Madam Prosecutor.

10 You mentioned earlier that 27 August would be the day where you
11 could be done with the disclosure of all 102(1)(b) material; is it
12 correct? Have I understood you correctly? And if not, what would
13 still be missing at this date or what are you not sure to be able to
14 disclose at this date? Because it doesn't only depend on your work.

15 MS. LAWSON: No, Your Honour. The 27 August date was the date
16 that we are requesting to make the application for protective
17 measures in light of Your Honour's ruling in the Seventh -- the
18 decision on the Seventh Request for Protective Measures.

19 The other Rule 102(1)(b) materials, which I mentioned, is a very
20 discrete limited number of materials and is subject to the variation
21 and clearance requests, and I'm not in a position to give a firm
22 deadline as to when we will have those rulings or have those
23 clearances. However, as soon as the material does come through, we
24 will obviously be disclosing it promptly.

25 And our request, as made in the written submissions, is that the

1 expert reports would be submitted together with the Rule 95(4)
2 materials. We would, however, have hope that the other materials
3 would have been disclosed in advance of that timeline, including the
4 clearance and variation requests.

5 Thank you.

6 JUDGE GUILLOU: Do you see any possibility that the expert
7 reports could be disclosed earlier? I mean, earlier than the Rule 95
8 material. By this, I mean in the month of September, for example?
9 Or is this too early, according to your current schedule?

10 MS. LAWSON: Your Honour, I would not be in a position to commit
11 to that at the moment without going into specific circumstances of
12 the experts. Some of them are -- do have availability issues with
13 regard to the extent to which they can work on the materials. I
14 would not be able to commit to an earlier date at this time, no.

15 JUDGE GUILLOU: Thank you.

16 And last question, just to confirm that for the Rule 102(3)
17 list, you don't request any change of the deadline, which is
18 currently 30 July? You are on track to meet this deadline; correct?

19 MS. LAWSON: Yes, Your Honour, that's correct.

20 JUDGE GUILLOU: Thank you, Madam Prosecutor.

21 I turn to the Defence team. Mr. Misetic.

22 MR. MISETIC: Very briefly, Your Honour.

23 We remain concerned about the expert witness disclosure. I
24 repeat what I said at the outset, that we were supposed to be ready
25 for trial in July. It is not sufficient to say that the underlying

1 material is disclosed to the Defence, and I'll give you a
2 hypothetical since we don't know who the experts are but I can
3 perhaps make a hypothetical that suggests what they might be.

4 You might disclose all of the pathology reports, let's say, or
5 autopsy reports. The Defence is not going to review all of those
6 reports until we see what the Prosecution's case is going to be with
7 respect to each particular victim, so it does little to put the
8 burden on us to just start de novo reviewing all of that material.
9 We need to see what the allegation will be with respect to each one
10 of those reports before we can prepare a response.

11 I would also note at this point that the Defence, to the extent
12 that there will be experts, will likely want to engage their own
13 experts to both, first, assist us in interpreting that expert
14 testimony and being ready for cross-examination; and perhaps to have
15 them be testifying as witnesses themselves, and that could affect our
16 preparation for -- for being ready for trial at the outset, so ...

17 Thank you, Your Honour.

18 JUDGE GUILLOU: Thank you, Mr. Misetic.

19 I don't see any other -- no, Mr. Ellis, please.

20 MR. ELLIS: [via videolink] Thank you, Your Honour, very briefly.

21 We're two days away from the date when the Prosecution was
22 supposed to be disclosing expert reports, if they were relying on
23 them. And the explanation that's been given today for needing to
24 seek an extension is that early attempts were made to identify
25 experts without telling Your Honour when those attempts were made or

1 when the new experts were instructed.

2 It's apparent from what's been said they're still working on the
3 reports now. And we're, what, two days from the date when the
4 Prosecution was meant to disclose this material? In our submission,
5 there has clearly been delay here. And with the accused sitting in
6 detention, no extension should be granted unless there's a better
7 explanation than the one that Your Honour has heard so far.

8 JUDGE GUILLOU: Thank you, Mr. Ellis.

9 Madam Prosecutor.

10 MS. LAWSON: Your Honour, only to remind all counsel here of the
11 stage of proceedings that we are at. We are clearly at an advanced
12 stage of the pre-trial proceedings, and the Prosecution has met its
13 burden in order to advance us to this stage.

14 However, we are not at a stage where any trial date has been
15 set, and the suggestion that reports or other very discrete items
16 coming slightly after the 23 July deadline and in light of the volume
17 of material, which is disclosed and is available, causes any
18 prejudice whatsoever to the Defence is misleading. It's simply not
19 accurate in light of where we are procedurally, the steps that are
20 still required to be taken before this case can be even be
21 transferred to a Trial Panel. For example, for resolution of
22 preliminary motions before the Appeals Panel as relevant.

23 And the suggestion that the very discrete number of identified
24 materials which may be later than the July deadline in any way
25 impacts or prejudices the Defence is simply not accurate in the

1 context of the proceedings in this case and where we are at.

2 Thank you.

3 JUDGE GUILLOU: Thank you, Madam Prosecutor.

4 I indicate to the parties that I intend to issue an oral order
5 at the end of this hearing related to the disclosure deadlines.

6 Now let me move to another issue that the Defence for
7 Mr. Krasniqi raised in their submissions. This is the issue that
8 Mr. Ellis touched upon a couple of minutes ago; namely, the
9 disclosure of material seized during search and seizures conducted in
10 November 2020.

11 I would first like to hear from the Defence for Mr. Krasniqi on
12 its request for such material; in particular, its request that
13 disclosure of exculpatory material from the searches to be made
14 within seven days.

15 Mr. Ellis.

16 MR. ELLIS: [via videolink] Your Honour, we yesterday received a
17 disclosure package containing a number of documents said to come from
18 the search of Mr. Krasniqi's property. We don't know, of course,
19 whether that represents the totality of what is said to be the
20 exculpatory material on that search.

21 There was a further disclosure package, I think, relating to
22 Rule 102(1)(b) material said to arise from this same search. Taken
23 together, that would appear to represent only a small fraction of the
24 documents that were said to be found during the search. But until
25 we've seen what is placed, for example, on the Rule 102(3) list, it's

1 perhaps early for us to comment on that.

2 So we have received some exculpatory disclosure. It was
3 received yesterday. We don't know what else is left.

4 JUDGE GUILLOU: Thank you, Mr. Ellis.

5 Before I give the floor to the Prosecution on this, does any of
6 the Defence teams want to add anything on this topic? No.

7 Then Madam Prosecutor.

8 MS. LAWSON: Yes, Your Honour.

9 Two disclosure packages relating to seized materials have been
10 released. One of those is disclosure package 44, which was released
11 under Rule 102(1)(b); and the other is disclosure package 45,
12 released under Rule 103.

13 The Rule 103 disclosure package does contain all of the
14 materials which have so far been identified as potentially
15 exculpatory from the search materials.

16 Thank you.

17 JUDGE GUILLOU: Thank you, Madam Prosecutor.

18 Mr. Ellis.

19 MR. ELLIS: [via videolink] Does that mean, Your Honour, that the
20 assessment of whether documents are exculpatory is ongoing, or that
21 it has been conducted and these are -- we have everything?

22 JUDGE GUILLOU: Madam Prosecutor. I think you mentioned that,
23 if I read exactly what you said in the transcript, that "the Rule 103
24 disclosure package does contain all of the materials which have so
25 far been identified as potentially exculpatory," so can you elaborate

1 on the "so far," please.

2 MS. LAWSON: Yes, Your Honour.

3 The review has been completed and identified materials have been
4 disclosed in that disclosure package. Obviously, our Rule 103
5 exculpatory applications are an ongoing obligation, and the
6 identification of what could be potentially exculpatory may develop
7 as the case develops and as the Defence -- lines of Defence or
8 investigation become more apparent.

9 So it is an ongoing exercise that we would need to keep under
10 review. However, the review has been completed, and what has been
11 identified as exculpatory, from what's known to the Prosecution at
12 this time, has been disclosed.

13 JUDGE GUILLOU: Thank you, Madam Prosecutor.

14 And for what has not been identified as exculpatory? I mean,
15 especially would there be any relevant Rule 102(1)(b) material
16 following these searches that haven't been disclosed yet?

17 MS. LAWSON: Rule 102(1)(b) material. Disclosure package 44
18 contains the Rule 102(1)(b) material from those searches. There will
19 be approximately 50 additional items from the searches which are
20 going to be included in one of the forthcoming disclosure packages
21 this week.

22 Thank you.

23 JUDGE GUILLOU: Thank you, Madam Prosecutor.

24 Mr. Ellis, does it answer your question, or do you have a
25 further question to the Prosecution on this?

1 MR. ELLIS: [via videolink] Your Honour, I'm grateful.

2 I think it does answer most of the question. What remains is
3 whether the remaining material will be placed on the Rule 102(3)
4 list.

5 JUDGE GUILLOU: Correct. It's the question that I missed.

6 Madam Prosecutor, what is not 103, what is not 102(1)(b), will
7 it be in the Rule 102(3) notice at the end of next week?

8 MS. LAWSON: Yes, Your Honour, it will be. And it amounts to
9 approximately 2.300 items.

10 Thank you.

11 JUDGE GUILLOU: Thank you, Madam Prosecutor.

12 Mr. Ellis.

13 MR. ELLIS: [via videolink] Thank you, Your Honour.

14 We'll review it when it comes in. Perhaps we can revert at the
15 next Status Conference if its remains an issue.

16 JUDGE GUILLOU: Absolutely. Then I invite you to mention in
17 your submissions for the next Status Conference, in your written
18 submissions in advance, if you want this point to be put in the
19 agenda. That would be helpful.

20 MR. ELLIS: [via videolink] Thank you, Your Honour. We will.

21 JUDGE GUILLOU: Thank you, Mr. Ellis.

22 The next issue I would like to discuss is the use of
23 case-specific categories in Legal Workflow and other issues raised by
24 the Defence for Mr. Krasniqi.

25 First, on the matter of linkage to locations. In particular,

1 location categories related to Rule 102(1)(a) material, and a
2 designation of location names with respect to Rule 102(1)(b)
3 material.

4 Second, regarding the linkage to witnesses. In particular, the
5 Defence for Mr. Krasniqi requests that the SPO amend the titles of
6 documents in Legal Workflow to include the relevant witness number;
7 or, alternatively, for the SPO to produce and disclose a package for
8 each witness containing all statements or interviews as well as
9 documents and exhibits referred to by the witness in those statements
10 or interviews.

11 And, in addition, the Defence for Mr. Thaci submits that it has
12 not received all items mentioned in witness statements and
13 interviews.

14 And, third, I would like the Defence for Mr. Krasniqi to address
15 its request for an updated version of the Rule 86(3)(b) outline.

16 Let me start with Mr. Ellis, because this mainly stems from your
17 submissions.

18 Please, Mr. Ellis.

19 MR. ELLIS: [via videolink] Your Honour, on all of those issues
20 or purely on the outline issue?

21 JUDGE GUILLOU: On all of these issues.

22 MR. ELLIS: [via videolink] I'm grateful, Your Honour.

23 Firstly in relation to the categorisation issue. The situation,
24 as Your Honour knows, is that the Prosecution has been applying
25 categorisations to the 102(1)(b) disclosure that appears on Workflow.

1 What we had certainly hoped to achieve by that is a situation where
2 if somebody wanted to search for the documents relevant to a
3 particular category, they would simply be able to run that search on
4 that category in Workflow and pull up everything. That would be of
5 assistance not only to us but also to any party conducting research
6 on that basis, including Chambers in due course.

7 The current system doesn't achieve that. And we gave the
8 example that at the time of making the submission some 19 locations
9 didn't have any documents tagged to them at all. I think I now need
10 to update that. It's now 18 locations with no documents tagged as a
11 result of some of the disclosures in recent days.

12 The solution to this that we see would be for the Rule 102(1)(a)
13 material to be categorised in the same way. I appreciate that
14 involves a time commitment on the part of the Prosecution. But in
15 our submission, it's likely to be relatively limited in the light of
16 the work they've already done to prepare the outline and the time
17 saving for all parties when conducting searches and when making the
18 categorisation process useful is such that it would be worth the time
19 commitment, in our submission. So that was why we raised that issue.

20 In relation to the updated outline. This relates to a specific
21 issue that we identified when searching Workflow for a witness who
22 had been identified in the outline only to discover that it wasn't
23 there and being told then by the SPO that that witness had been
24 withdrawn. And subsequently a filing was reclassified and made
25 available to us confirming that the witness had been withdrawn.

1 If there are other changes out there, we'd like to know about
2 it. And it shouldn't be the case that we only discover these things
3 on carrying out searches on the existing outline. It would have been
4 better had that been communicated to us. If there are no further
5 changes, then, of course, the outline doesn't need to be updated at
6 this stage. But if there are, it's relevant to our preparations to
7 know that.

8 And, finally, Your Honour, the other matters relate really to
9 practical considerations using Workflow. It's all too easy to
10 interpret these as the Defence being obstructive, but it's really
11 not, and it's an attempt to use or find ways of using the material
12 that we're being given in circumstances where Defence teams have
13 previously made the point at various Status Conferences that material
14 is being provided in a piecemeal fashion.

15 And what we're really seeking is ways to ensure that when
16 documents are disclosed they're easily linked to the witnesses to
17 whom they relate, and that's why we've made the proposals for
18 complete witness packages. A proposal, I think, made previously by
19 the Defence for Mr. Thaci some Status Conferences ago. Either we get
20 a list of the witnesses relied upon and with them the various prior
21 statements and documents shown during the interviews, or at the very
22 least what is disclosed needs to be clearly linked to the witnesses.

23 And so examples of ways in which that is not done at present
24 include where prior statements of protected witnesses don't always
25 include the witness number in the title. Which, of course, means

1 that as soon as you download it from Workflow you've lost the chance
2 of connecting it up with the witness.

3 And then in relation to witnesses whose identity is known, some
4 of those witnesses are described on Workflow -- sorry, some of those
5 statements are described on Workflow by reference to the name of the
6 witness rather than the unique witness number. And that, of course,
7 becomes a problem because a number of witnesses have the same or
8 similar surnames; whereas, the witness number is unique. So if
9 you're searching for them, the witness number is preferable.

10 JUDGE GUILLOU: Thank you, Mr. Ellis.

11 Before I give the floor to the SPO, is there any other Defence
12 who wants to have the floor?

13 Yes, Mr. Misetic.

14 MR. MISETIC: Your Honour, just to note that the Thaci Defence
15 joins in those submissions.

16 Thank you.

17 JUDGE GUILLOU: Sorry, Mr. Kaufman?

18 MR. KAUFMAN: [via videolink] We also join in those submissions,
19 Your Honour.

20 JUDGE GUILLOU: Thank you, Mr. Kaufman.

21 Mr. Young.

22 MR. YOUNG: [via videolink] Your Honour, we join these
23 submissions, particularly the submission that in relation to one
24 package for each witness. That would make life inordinately more
25 simple and is an obvious example of good case management.

1 JUDGE GUILLOU: Thank you, Mr. Young.

2 Let me turn to the SPO on all these different requests. Maybe
3 starting with the categorisation of the Rule 102(1)(a) material and
4 then all the other requests.

5 Madam Prosecutor.

6 MS. LAWSON: With respect to the request for further
7 subcategorisation of materials.

8 First, the scope of additional subcategorisation required to
9 facilitate review is a matter which Your Honour has previously ruled
10 on. Your Honour made that ruling following a careful weighing of
11 relevant factors, including the very significant resource and time
12 implications involved in subcategorisation, which we've previously
13 outlined at length, the multiple other navigational tools which are
14 or will be available to the Defence to assist their understanding of
15 disclosed materials, and the ultimately limited utility of such
16 subcategorisation. There's simply no basis for altering that prior
17 ruling.

18 The subcategorisations done pursuant to Rule 109(c) and
19 Your Honour's order are simply an additional navigational aid. It's
20 one of a number of such tools available to facilitate the Defence's
21 review of disclosed materials, including the Rule 86 outline, which
22 Your Honour has previously recognised provides meticulous guidance to
23 the Rule 102(1)(a) materials and is itself divided by location.

24 It's consequently a relatively simple exercise for the Defence
25 to identify from it materials relating to a particular site. Indeed,

1 as Mr. Emmerson has rightly noted previously, it needs to be
2 emphasised that the subcategorisations are ultimately of limited
3 utility. They are a guide done by the Prosecution, upon
4 Your Honour's order, to provide additional assistance to the Defence.
5 They're not a substitute for the Defence itself carefully reviewing
6 all of the underlying disclosed material, and running searches on
7 Legal Workflow subcategories does not absolve them from that
8 responsibility.

9 Indeed, the subcategorisations provided are certainly not
10 exhaustive. In doing the subcategorisations, the SPO was aware that,
11 although evidentiary items often speak to many aspects of a case,
12 simply tagging items with every issue would render the function not
13 at all useful. And, consequently, the subcategorisations have been
14 done in accordance with the primary issues to which an item speaks.

15 Moreover, our experience to date in applying the
16 subcategorisations has confirmed the very resource-intensive and
17 time-consuming nature of the exercise. It has been a primary reason
18 for the reduced frequency of Rule 102(1)(b) disclosures since that
19 requirement was introduced. That frequency was a matter which
20 Defence counsel referred to earlier in the hearing. And as we
21 mentioned in previous Status Conferences, the additional
22 subcategorisation was a primary cause of that.

23 Indeed, from the disclosure timetable originally established by
24 Your Honour, it has been the requirement for subcategorisation, based
25 on Defence requests, which above all else has resulted in adjustment

1 to that timetable. And this occurred either directly in respect of
2 the Rule 102(1)(b) deadline or as a knock-on effect for other items
3 which are dependent upon prior completion of Rule 102(1)(b)
4 disclosure.

5 Finally, although not mentioned in the submissions now, the
6 Krasniqi Defence did raise a query with regard to the locations
7 included in the subcategorisations, and the locations identified by
8 the SPO and provided to the Registry for implementation in
9 Legal Workflow were drawn from the schedules to the indictment. If
10 there are any particular queries, we do invite the Krasniqi Defence
11 team to contact us after the hearing and we'll be happy to address
12 them.

13 Turning to the second item, the request for an updated outline.
14 It is, indeed, the case that there was only one incident removed from
15 the indictment prior to confirmation of charges and the related
16 evidence withdrawn. That is the incident which the Krasniqi Defence
17 have identified, and there was no further similar -- similar changes
18 which would necessitate any update in the outline.

19 On the searchability of the materials in Legal Workflow. The
20 Krasniqi Defence have noted that witness codes are contained in the
21 description field rather than in the title field and that that
22 impacts searchability. This is an issue which we had also identified
23 ourselves, and in March we made a request for the description field
24 to be added to the search options in Legal Workflow.

25 As there are a number of Legal Workflow upgrade requests

1 pending, this was one we had flagged as a priority matter. And,
2 therefore, we understand it is something that is already being worked
3 on or at least is on the to-do list and will hopefully be addressed
4 shortly.

5 However, in the interim there is a workaround which we have
6 identified and are using ourselves, and that is to export a CSV,
7 which is basically an Excel sheet, from Legal Workflow, and from
8 there you can search the description fields for the witness code or,
9 as applicable, witness name. Although, in principle, it is the
10 witness code that we are including in the description fields.

11 If the Defence teams have any difficulty in generating the
12 necessary CSVs, I am sure that the IT Services Unit and CMU would be
13 happy to provide assistance.

14 Thank you.

15 JUDGE GUILLOU: Thank you, Madam Prosecutor.

16 Mr. Ellis, please.

17 MR. ELLIS: [via videolink] Well, Your Honour, we stand by the
18 submissions that we've made already.

19 Regarding the categorisation. Of course, it would take time,
20 but we believe that time would be beneficial to everyone.

21 Regarding the upgrades to Workflow. We, of course, look forward
22 to those, if they arrive. It's not only the Prosecution that have
23 had difficulties in using Workflow over the past few days. There
24 appear to have been problems, perhaps caused by the volume of
25 material be disclosed in the last few days, but we'll have to assess

1 those when they come in.

2 For the time being, the issues we've identified remain.

3 JUDGE GUILLOU: Thank you, Mr. Ellis.

4 Does any other Defence want to take the floor on this? No.

5 On these matters, I think some *inter partes* discussion could be
6 useful, as suggested by the Prosecution.

7 Mr. Ellis, if you agree, you could be in touch with the
8 Prosecution, notably for the improvement to Legal Workflow and for
9 the generation of documents from Legal Workflow. And I invite both
10 the Prosecution and yourself, ahead of the next Status Conference, to
11 update me on the remaining issues.

12 Of course, for the question of the Rule 102(1)(a) material, this
13 is something that I will have to rule on, but I will do so in the
14 next -- or for the next Status Conference after I have an update on
15 these *inter partes* discussions.

16 I see that it is 20 to 4.00, so we will continue with the next
17 and last topic on disclosure. And after, we might have a break.

18 Let me now move to the request for a preliminary witness list.

19 The next issue we're going to discuss now is this issue that has
20 been presented by the Thaci Defence team in its preliminary -- in its
21 submissions ahead of this Status Conference.

22 Mr. Thaci's Defence requests that a preliminary witness list be
23 prepared by the SPO with accompanying summaries of the anticipated
24 testimonies. I also note that the Defence for Mr. Thaci proposed two
25 dates for the provision of such list.

1 I will give you the floor to present this request, Mr. Misetic.

2 MR. MISETIC: Thank you, Your Honour.

3 As you indicated, our requests relate to our desire to get
4 confirmation from the Prosecution as to which of the witnesses that
5 it has disclosed so far it is certain to call at trial and which it
6 is either not going to call at trial or not likely to call at trial.

7 What we have -- obviously, where we have witnesses for whom the
8 SPO has directly obtained a witness statement, we anticipate them
9 being a witness in the case. There are, however, situations where we
10 have received transcript testimony from proceedings outside of this
11 institution. We've received statements that are not directly taken
12 by this institution, et cetera, and it is not clear to us whether
13 those are witnesses that the Prosecution intends to call to testify,
14 to submit as evidence but not as testifying evidence.

15 Some of the way that these materials have been disclosed to us
16 have been categorised as 102(1)(a) material, 102(1)(b) material, and
17 we're not certain at this point, as I said, which of these witnesses
18 are intended to be called as testifying witnesses, even if they do
19 not have an SPO witness statement given to them.

20 So our effort here is to try to prioritise our preparation in
21 terms of which witnesses will be testifying in the trial. And,
22 therefore, we've proposed that the Prosecution prepare a list to that
23 effect.

24 If I could just have one moment, Your Honour.

25 Sorry, and we've asked if a preliminary witness list could be

1 disclosed by 2 August identifying the witnesses that are, again,
2 certain to testify and the second category would be the witnesses
3 that are certain not to testify. That would obviously assist the
4 Defence.

5 Thank you.

6 JUDGE GUILLLOU: Thank you, Mr. Misetic.

7 Does any other Defence team want to take the floor on this
8 issue?

9 Mr. Young, please.

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

12 Just to support this. And with respect, this is a very sensible
13 good case management suggestion by Mr. Thaci's Defence team, and
14 Your Honour may -- I don't know if Your Honour has ever worked on a
15 Defence team. But until the Defence are aware of exactly what the
16 position is or precisely what the Prosecution intend to do in a given
17 set of proceedings in a trial situation, and where there are
18 potentially hundreds and hundreds of different possible witnesses,
19 one can waste an inordinate amount of time researching, analysing,
20 preparing witnesses whom the Prosecution may have already decided
21 they have no intention whatsoever either to call or no intention not
22 to call.

23 So, with great respect and very simply, we support this
24 entirely.

25 Thank you, Mr. Young. I don't see -- or Mr. Ellis. Oh,

1 Mr. Emmerson, please.

2 MR. EMMERSON: [via videolink] I would simply say that we would
3 endorse the application on behalf of the Thaci Defence.

4 JUDGE GUILLOU: Thank you, Mr. Emmerson.

5 Mr. Ellis, please.

6 MR. ELLIS: [via videolink] Yes, Your Honour. We join as well.
7 This is, of course, a matter that has been raised in previous Status
8 Conferences, and it would still be of significant assistance to the
9 Defence in preparing this case.

10 JUDGE GUILLOU: Thank you, Mr. Ellis.

11 Let me turn to the Prosecution.

12 Madam Prosecutor.

13 MS. LAWSON: Thank you, Your Honour.

14 The concept of a preliminary witness list is one which the
15 Defence appears to have borrowed from the Yekatom case at the ICC.
16 The decisions in that case expressly recognised that requiring such a
17 list was an exceptional measure and not something which is generally
18 required. It's certainly not something which is required in the
19 framework applicable to the Specialist Chambers. And, therefore, the
20 Defence characterisation in their filing of there having been a
21 failure to provide such a list is misleading.

22 A preliminary witness list was ordered in the Yekatom case for
23 reasons which were very particular to that case and none of which are
24 relevant here. In particular, it occurred in May 2020 near the
25 outset of the COVID pandemic when strict COVID restrictions were in

1 place and people had relatively recently moved to remote working
2 arrangements. As a result of those exceptional circumstances, the
3 Trial Panel in the Yekatom case had been unable to schedule a first
4 Status Conference with the parties, and that is clearly not the case
5 in these proceedings.

6 It also occurred in circumstances where the scope of the charges
7 in Yekatom had been significantly narrowed in the confirmation
8 decision and, therefore, there was actually a genuine question as to
9 the extent to which witnesses relied upon for confirmation remained
10 relevant to the proceedings. That is, again, not a circumstance
11 relevant to these proceedings.

12 And perhaps most significantly, it occurred at a point in time
13 five months in advance of when it was anticipated that the Defence in
14 Yekatom would receive disclosure of the material the Prosecution
15 intended to rely upon at trial. It was, therefore, as recognised in
16 the decision itself, simply an interim measure.

17 In this case, the Defence already has or will during the
18 remainder of this week be receiving the underlying material that the
19 Prosecution intends to rely upon at trial. There is no need for
20 interim measures. The information is already available, and the SPO
21 has or is disclosing the material of the witnesses whose evidence it
22 intends to rely upon at trial.

23 The reference to hundreds of possible witnesses is simply not
24 applicable in this case. We have disclosed the material of witnesses
25 upon whom it is our current intention to rely upon their evidence at

1 trial.

2 So, in summary, this request appears to have been pulled
3 entirely out of context and without regard to the particularities of
4 the case in which it was ordered and without regard to the
5 significantly different and more advanced stage of proceedings in
6 this case.

7 Thank you.

8 JUDGE GUILLOU: Thank you, Madam Prosecutor.

9 Mr. Misetic, you want to respond?

10 MR. MISETIC: Yes, thank you, Your Honour.

11 I take the Prosecution's position under advisement, but yet I
12 don't see any rationale for why this was so hard for the Prosecution
13 to do.

14 They've spent their entire time trying to distinguish an ICC
15 case instead of just explaining why it's difficult for them to put a
16 list of who they intend to call as a witness at trial. It would not
17 seem to be a resource-intensive effort to put such a list together.
18 We do not ask that they be bound by the list and therefore could
19 never change it or add to it or not -- or take names off of it if
20 they were to choose so at a later date, but it would certainly be a
21 good guide for the Defence as to where we should be focusing our
22 case.

23 And as I indicated before, I can see that they have disclosed
24 much material, but that material in and of itself doesn't show us
25 which of these witnesses is actually intended to be a testifying

1 witness and which of these non-SPO witness statements is intended to
2 be submitted as a documentary evidence rather than as testifying
3 evidence in these proceedings.

4 So unless there is a good reason why such a list can't be
5 disclosed at this stage, we continue to reiterate our request.

6 Thank you.

7 JUDGE GUILLOU: Thank you, Mr. Misetic.

8 Madam Prosecutor, do you want to add anything on the merits of
9 the request?

10 MS. LAWSON: Only very briefly, Your Honour.

11 The material is with the Defence. As I indicated, these are not
12 a list of possible witnesses. These are witnesses upon whose
13 evidence we intend to rely. As to whether they will testify in
14 person viva voce before the Court or their evidence will be submitted
15 through some other means, that would be premature at this stage.
16 We're not in a position to make that assessment.

17 Thank you.

18 JUDGE GUILLOU: Thank you, Madam Prosecutor.

19 Mr. Kaufman, please.

20 MR. KAUFMAN: [via videolink] Yes, if I may add a bit of legal
21 justification.

22 I would refer to Your Honour to Rule 98 which talks about the
23 transmission of the case file to the Trial Panel.

24 And as Your Honour is well aware, you will in due course have to
25 provide a Handover document. And if I may just refer to

1 Rule 98(1)(e), subsection (v), that talks about suggestions as to the
2 number and relevance of the witnesses to be called. I would have
3 thought that that would give sufficient statutory basis for the
4 requests which are being presented by the Krasniqi and Thaci team.

5 JUDGE GUILLOU: Thank you, Mr. Kaufman.

6 Madam Prosecutor, briefly, please.

7 MS. LAWSON: Yes, Your Honour, just in reply, I would like to
8 refer the Defence to Rule 95(4), and they will see there that upon
9 provision of the witness list indications as to mode of testimony
10 would be provided at that time.

11 Thank you.

12 JUDGE GUILLOU: Thank you, Madam Prosecutor.

13 I don't see any party requesting the floor. A decision on this
14 matter will be issued in due course.

15 I see that it is 3.55. If the interpreters allow me, we can
16 continue for a couple of minutes on the next topic on the agenda. Is
17 it possible?

18 THE INTERPRETER: Yes, Your Honour. We're good to go.

19 JUDGE GUILLOU: Thank you. Thank you to the interpreters.

20 Let us now move to the issue of translation of filings and
21 evidentiary material.

22 I would first like to hear from the Registrar on the progress
23 made with regard to the translation of these items. Notably, whether
24 the Language Service Unit has made progress on the translation of
25 prioritised documents, and whether the parties have made any further

1 urgent requests for translation.

2 I note in this regard that the Registry has completed
3 translation of the confidential redacted version of the Rule 86(3)(b)
4 outline, the strictly confidential and confidential redacted version
5 of the confirmation decision, and documents submitted for priority
6 translation by the Krasniqi Defence team. The only remaining
7 priority translation is the public redacted version of the
8 confirmation decision.

9 I also note that the Defence of Mr. Krasniqi's concerns
10 regarding a potential backlog of other untranslated filings and
11 future translation of preliminary motions decisions.

12 I would then like to hear from the parties about any
13 difficulties regarding translations. But before, I'll give the floor
14 to the Registry.

15 Madam or Mr. Registrar. Mr. Registrar.

16 DEPUTY REGISTRAR: Thank you very much, Your Honour.

17 I think that you've made the point of what has been made
18 available as noting in our submissions of 16 July, paragraph 214. I
19 would only highlight from those submissions, Your Honour, that all of
20 those documents that by law must be translated in a language the
21 accused understands have now been provided in Albanian. All of them,
22 indeed, as of 16 July, as just mentioned.

23 There is only one document that remains pending due to
24 additional priorities in all of the cases before the
25 Specialist Chambers since March 2021. And that is the public

1 redacted version of the decision confirming the indictment. Our
2 Language Services Unit is doing its absolute utmost, Your Honour, to
3 provide this additional document by the end of this month.

4 I would have -- also like to stress, Your Honour, that this
5 document has been available already in the Albanian language since
6 16 July, however in its confidential and strictly confidential
7 versions respectively. This brings me back to the point that all
8 documents, from our perspective, those required under the law,
9 including as well your Framework Decision of 23 November 2020, have
10 been provided.

11 If I may, Your Honour, there were some additional points raised
12 by counsel for Mr. Krasniqi at paragraph 13 of their submissions of
13 16 July, and that was in reference to their intention to request that
14 the translation in the Albanian language of certain decisions of the
15 Pre-Trial Judges, those on preliminarily motions scheduled to be
16 delivered shortly be prioritised.

17 Consistent with our internal rules on translation requests and
18 prioritising of translations, Your Honour, we are, of course,
19 available to discuss this matter as soon as the decisions are
20 rendered. And as you have informed us, as you have confirmed, they
21 will be rendered tomorrow. So we have all taken note of that.

22 Thank you, Mr. Registrar.

23 JUDGE GUILLOU: Thank you very much.

24 DEPUTY REGISTRAR: Your Honour.

25 JUDGE GUILLOU: Let me turn to the Defence. Does any of the

1 Defence team want to take the floor? I think most of the Defence
2 teams I see -- Mr. Misetic, do you want to take the floor on this?

3 MR. MISETIC: We do not have any comments. We have no issues,
4 Your Honour, regarding translation.

5 Thank you.

6 JUDGE GUILLOU: Thank you, Mr. Misetic.

7 Mr. Kaufman, please.

8 MR. KAUFMAN: [via videolink] Thank you, Your Honour.

9 Yes, with respect to translations, Mr. Veseli has a general
10 observation and a legitimate expectation.

11 As a citizen of Kosovo being tried in a court operating in a
12 Kosovo legal system, albeit for crimes that he never committed,
13 Mr. Veseli insists that he be given each and every document on which
14 the SPO intends to rely on as incriminating evidence in the Albanian
15 language. This is far more important for his own purposes than
16 translations of the Court decisions, the operative substance of which
17 has been communicated to him by his Defence team.

18 Accordingly, we note that the SPO, according to paragraph 4(d)
19 of filing 398, is continuing to provide translations of
20 Rule 102(1)(b) materials as soon as they're available. We expect the
21 translations of all Rule 102(1)(b) materials to be supplied to us
22 well in advance of trial so that Mr. Veseli can constructively
23 participate in the preparation of cross-examination of every witness
24 to be called.

25 For those witness statements subject to delayed disclosure or

1 redactions to be lifted at a later date, we expect the translations
2 to be made available immediately upon the lifting of the protective
3 measures in question.

4 Thank you, Your Honour.

5 JUDGE GUILLOU: Thank you, Mr. Kaufman.

6 The translation regime has been set in the Framework Decision on
7 Disclosure. So I recalled the parties that if they are in
8 disagreement with what has already been assessed, they must submit a
9 request for reconsideration. If it's a question of prioritising,
10 this is what we are discussing today. But if there is -- if any
11 party has an issue with the regime as it is set, then I invite you to
12 make a filing regarding this regime.

13 Let me turn to Mr. Young, please.

14 MR. YOUNG: [via videolink] Your Honour, yes.

15 Certainly there will be a filing in light of what Your Honour
16 has just said. In general terms, we support, in its entirety, the
17 submissions made by Mr. Krasniqi regarding the Court's ability to
18 translate documents.

19 With great respect, it's a major concern to the Defence, and
20 it's one of the major Achilles' heels of the Court. No priority
21 requests for translation have been made to date, as such, on behalf
22 of Mr. Selimi. Until -- and that won't be the case until, hopefully,
23 we will have clarity in relation to Rule 102(1)(b) disclosure as to
24 the relevance of documents in evidence.

25 But I do want to indicate to the Court, and this may well have

1 to be in a filing given what Your Honour has just said, but the Court
2 should be aware it's likely there will be a substantial increase in
3 requests for priority translations in August and September. So it
4 will be important for the Registry to have the necessary resources.

5 Your Honour may remember that over the last few
6 Status Conferences I've picked on one or two key case documents and
7 explained what were, in our submission, the huge delays for such
8 significant documents arriving six, seven months after the arrests
9 and appearance in court of the accused.

10 Your Honour, I won't go into it in any detail now, but I would
11 support the submissions of Mr. Kaufman on behalf of Mr. Veseli,
12 because we will submit that it's vital that the vast majority of the
13 documents are translated into Albanian, and -- either Albanian into
14 English or English into Albanian, and particularly in relation to all
15 the Rule 102(1)(b) material and all the Rule 103 material.

16 And at this stage, I'd like to ask a question or invite
17 Your Honour to ask the representative from the Registry, because I
18 addressed Your Honour on one or two documents, to understand the
19 bigger picture of the translation dilemma, as I will call it, and
20 it's a major, major issue. To understand the bigger picture, if the
21 Registry have the information to hand, it would be immensely helpful
22 to know, even approximately, what percentages of the disclosed
23 102(1)(b) and 103 material have been translated either from Albanian
24 into English or English into Albanian. Because we strongly suspect
25 there are significant percentages of important materials that simply

1 haven't been translated.

2 Thank you.

3 JUDGE GUILLOU: Thank you, Mr. Young.

4 Before giving the floor to the Registry, let me turn to the
5 Krasniqi Defence team.

6 Ms. Alagendra or Mr. Ellis, please.

7 MR. ELLIS: [via videolink] Your Honour, we join in those
8 submissions and stand by what we've already submitted in writing.

9 JUDGE GUILLOU: Thank you, Mr. Ellis.

10 Let me give the floor to Mr. Laws also on this issue of
11 translation. Do you have any submissions on this?

12 MR. LAWS: [via videolink] Your Honour, thank you. No, I don't.

13 JUDGE GUILLOU: Thank you, Mr. Laws.

14 Mr. Registrar, on the question of Mr. Young and on any other
15 submissions you can make regarding this issue of translation, please.

16 DEPUTY REGISTRAR: Thank you.

17 We would like to thank counsel, Mr. Young, for the question. We
18 do not have statistics at hand, but obviously this is an issue that
19 we can look into very soon and we will report back on it.

20 Thank you.

21 JUDGE GUILLOU: Thank you, Mr. Registrar. This is noted.

22 Does the SPO have any submissions on this topic?

23 Madam Prosecutor.

24 MS. LAWSON: No, thank you, Your Honour. We are proceeding in
25 accordance with Your Honour's prior ruling and the relevant

1 provisions of the rules in respect of the languages for disclosure.

2 Thank you.

3 JUDGE GUILLOU: Thank you, Madam Prosecutor.

4 Does any one of the Defence team want to take the floor on this
5 issue? No, I don't see any Defence team.

6 So we will now take a break for, let's say, 20, 25 minutes
7 approximately. We will resume at 4.30 Hague time.

8 This hearing is adjourned.

9 --- Recess taken at 4.06 p.m.

10 --- On resuming at 4.29 p.m.

11 JUDGE GUILLOU: So let me now turn to the SPO to ask about the
12 status of its ongoing investigations. In particular, whether the SPO
13 can provide a further update on the estimated date of completion for
14 outstanding investigative steps, and whether the SPO's estimate of
15 mid-October 2021 to file its pre-trial brief and related material
16 pursuant to Rule 95(4) still stands.

17 I also invite the SPO to make any submissions on the procedural
18 calendar in this case. In this regard, I note the submissions of the
19 Victims' Counsel indicating that participating victims would like to
20 have further clarity on the time-scale for proceedings; in
21 particular, the anticipated start date for trial and the estimated
22 length of trial. While the length of trial cannot be determined at
23 this stage, the start of trial depends on all the issues we are
24 discussing today.

25 I now give the floor to the SPO to provide its submission on the

1 remaining timeline for the pre-trial phase, as well as the status of
2 its investigation.

3 Madam Prosecutor.

4 MS. LAWSON: Thank you, Your Honour.

5 SPO investigations in fulfilment of its mandate are anticipated
6 to continue for the foreseeable future. Such investigations will
7 encompass other cases and other investigations being conducted by the
8 office, as well as following up on leads in this case. It's the
9 responsibility of the office, indeed of any prosecution office, to do
10 so, and there is nothing unusual or exceptional about that.

11 And contrary to submissions made in the Thaci Defence filing, it
12 has absolutely no impact on Mr. Thaci's right to know the charges
13 against him. Those charges are clearly set out in the Confirmed
14 Indictment which delineates the scope of the case. The relevant
15 question is not one of what investigations are being undertaken by
16 the office but, rather, one of what material the SPO intends to rely
17 upon to prove its case at trial. There is a clear legal framework
18 regulating that, and the SPO is fully aware that at a certain point
19 in the event additional incriminating evidence of relevance to this
20 case is identified in the course of such investigations, it would be
21 a matter for the Panel to decide whether or not it may be used. And
22 that decision would be taken in light of the degree of prejudice, if
23 any, which would occur. Such prejudice would primarily arise as a
24 result of the stage of proceedings.

25 As things stand, although the pre-trial stage is significantly

1 advanced, the case has not yet been transmitted to a Trial Panel and
2 no date for the commencement of trial has been set. So if or when
3 the SPO makes any such application, it would be determined at the
4 relevant time and in light of the relevant circumstances prevailing
5 at that time, including the stage of proceedings.

6 With respect to Rule 95(4) materials. As indicated in our
7 written submissions, there is currently no change in the SPO's
8 estimate. However, there are a number of upcoming work streams which
9 we're not currently in a position to know how resource-intensive or
10 otherwise they will be, and that includes possible further litigation
11 on preliminary motions and the extent of Defence requests which may
12 be made for Rule 102(3) materials. Both of those variables, in
13 particular, could impact the estimate.

14 There are also the outstanding variation and clearance requests
15 which have been previously discussed in this hearing and are outside
16 of our direct control. Although, we would be hopeful, as I mentioned
17 earlier, that they would have been resolved by that time.

18 In relation to the Rule 95 materials, and in particular the
19 witness list, I would like to make one clarification to the
20 submissions that I made just before the break in the hearing. And
21 that is to clarify that there are a small handful of witnesses whose
22 statements were relied upon in the indictment supporting materials,
23 which the Prosecution no longer intends to rely upon at trial. And,
24 consequently, we did not disclose further materials relating further
25 prior statements of those witnesses in the Rule 102(1)(b) materials.

1 We'll be happy to identify those witnesses to the Defence teams.

2 The remainder of the disclosed material is, as I stated,
3 witnesses upon whose evidence the Prosecution intends to rely, and
4 that goes for all Rule 102(1)(b) materials disclosed.

5 With respect to the queries raised by the Victims' Counsel and
6 the -- sorry, the questions raised on the start date of trial. It is
7 a matter of which the parties have previously made fairly fulsome
8 submissions. The SPO's request is obviously for a prompt trial start
9 date three months after provision of the Rule 95(4) materials, which
10 is in line with prevailing practice before other institutions trying
11 cases of equivalent scope. In fact, it was precisely that timeline
12 that was established in the Yekatom case which the Thaci Defence
13 relied upon for other purposes in their written submissions.

14 The parties have obviously made differing submissions on this
15 matter, and those are already on the record in this case either in
16 written filings or in the record of previous Status Conferences.
17 Nonetheless, it is, of course, Your Honour who directs the procedural
18 process of the case at the pre-trial stage and the Trial Panel which
19 will direct it after transfer of the case.

20 We would, therefore, consider that the case-specific information
21 available to counsel, together with his knowledge of the framework
22 applicable before this Court - both from the law and the Rules and
23 from other cases which are proceeding before the Court and his
24 experience, of course, from cases of similar magnitude before other
25 tribunals - would provide a basis for advising his clients.

1 Thank you.

2 JUDGE GUILLOU: Thank you, Madam Prosecutor.

3 Now let me turn to the Defence. Mr. Misetic, please.

4 MR. MISETIC: Thank you, Mr. President.

5 First, let me respond to the issue of ongoing investigations.

6 The Defence takes issue with the Prosecution's position that it can
7 continue indefinite investigations. Our position is that Rule 4 of
8 the Specialist Chambers Rules of Procedure and Evidence state that
9 the Criminal Procedure Code of Kosovo must be considered when
10 interpreting the Rules of Procedure and Evidence.

11 According to Article 159 of the Criminal Procedure Code of
12 Kosovo, a criminal investigation must be terminated by operation of
13 law two and a half years after its initiation. I am not sure a
14 Status Conference is the right forum to litigate the issue, but we
15 take the opportunity to put the SPO on notice of our position that we
16 will challenge any additional materials coming in on the basis of
17 both the Rules of Procedure and Evidence of this Court and the
18 Criminal Procedure Code of Kosovo.

19 Turning to the next point. I note that now the Prosecution
20 states that there are no changes to its anticipation of its
21 disclosure of Rule 95(4) materials. But clearly, there are a lot of
22 qualifiers that are being attached to that statement, which we
23 interpret as a firm non-commitment to producing those materials on
24 time in October as currently scheduled.

25 We must take note of the fact that our clients are in detention

1 at the moment. We are not in a proceeding where we can take our
2 time, and then depending on how things go, continuously push
3 deadlines further and further along while the accused in this case
4 continue to suffer the direct harm of being held in detention. So we
5 do think there is an urgency to holding the SPO to the existing
6 deadlines without qualification, without opportunity to later come
7 back and say, "Well, we didn't promise that we would comply with the
8 Rule 95(4) obligations by the current October deadline."

9 Finally, with respect to the issue of preparation for trial. We
10 continue to reiterate that there are still many materials that we
11 have not seen, continuing disclosures that still need to be produced,
12 the Prosecution continues to not commit to the 95(4) disclosure by
13 October, expert reports are still being prepared, or perhaps have not
14 even begun to be prepared, as we speak. And in those circumstances,
15 we will not be prepared to give an indication of when we'll be ready
16 for trial until we see the SPO's Rule 95(4) materials.

17 Thank you, Your Honour.

18 JUDGE GUILLOU: Thank you, Mr. Misetic.

19 Mr. Emmerson, please. Or Mr. Kaufman.

20 MR. EMMERSON: [via videolink] I would just like to say a word or
21 two before handing over to Mr. Kaufman, if I may.

22 Two things. I haven't intervened, of course, today in the
23 course of these discussions, but it's evident what the thrust of the
24 submissions of the Defence have been and what the concerns are, or,
25 at the very least, ought to be on the part of Court about the way in

1 which the Prosecution has been managing its conduct of the
2 proceedings.

3 I should like to say, if I may, on behalf of Mr. Veseli, that
4 particularly in the light of Your Honour's recent decision, refusing
5 him provisional release, notwithstanding the factors that were
6 brought to your attention, that he feels -- and that he feels, in our
7 submission quite reasonably, that he is being held hostage whilst the
8 Prosecution continues to delay the process of bringing the case
9 forward in a timely fashion. So that's the first thing I wanted to
10 say in relation to that.

11 The second thing -- and it may be that you'd rather I address
12 this when we come to Defence preparation. But in terms of readiness
13 for trial and Defence preparation, I should like to seek a
14 clarification from you in relation to the rulings to be delivered
15 tomorrow and in August. But since the question of Defence
16 preparation and therefore implicitly preparedness for trial is, I
17 believe, a separate item on today's agenda, and may we return to that
18 at that stage. But can I hand over to Mr. Kaufman, please, to deal
19 with any of the specific details that were raised just now.

20 MR. KAUFMAN: [via videolink] Yes, very briefly on this matter,
21 Your Honour.

22 It may well be the case that the SPO would like to continue its
23 investigation ad infinitum, but the introduction of any so-called
24 incriminating evidence resulting from such an investigation beyond
25 the disclosure deadline is subject to judicial approval and will be

1 met by a vigorous Defence objection.

2 Thank you.

3 JUDGE GUILLOU: Thank you, Mr. Kaufman.

4 Mr. Young, please.

5 MR. YOUNG: [via videolink] Your Honour, nothing to add save that
6 we support the submissions made by Mr. Thaci and Mr. Veseli.

7 JUDGE GUILLOU: Thank you, Mr. Young.

8 Ms. Alagendra, please.

9 MS. ALAGENDRA: [via videolink] Likewise, Your Honour. We also
10 support the position of the Thaci and Veseli team.

11 JUDGE GUILLOU: Thank you, Ms. Alagendra.

12 Madam Prosecutor, do you want to reply?

13 MS. LAWSON: It appears that there is not a significant
14 difference between the parties. What was -- what I expressed
15 previously was that we're aware of the framework and that any
16 materials arising from such investigations on which we intend to rely
17 would be subject to judicial authorisation at a certain point in
18 time. That we acknowledge the right of the Defence to litigate that
19 at the relevant time.

20 We, obviously, do dispute, very strongly, the Veseli Defence
21 suggestion that there has been delay in the process of bringing this
22 case forward in a timely manner. On the contrary. The Prosecution
23 has been fulfilling its obligations in an exceptionally expedited
24 fashion and in accordance with the timelines outlined or has sought
25 or is seeking limited extensions for discrete items of material.

1 Thank you.

2 JUDGE GUILLOU: Thank you, Madam Prosecutor.

3 Mr. Emmerson, please.

4 MR. EMMERSON: [via videolink] That last statement is
5 self-evidently nonsense. The Prosecution began this case by
6 suggesting that they would be ready for trial today. The fact that
7 they are now talking about trial which cannot possibly begin until
8 2021 makes it evidently clear that they have not, as it was just
9 suggested, kept to the timetables they have outlined.

10 So I'm perfectly happy to hear submissions being made that are
11 proportionate, appropriate, and truthful, but that isn't one.

12 JUDGE GUILLOU: Thank you, Mr. Emmerson.

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

14 Mr. Laws, do you have anything to add on this topic?

15 MR. LAWS: [via videolink] No, thank you.

16 I raised those questions, of course, because they have been
17 raised with me by the participating victims, and I've heard what has
18 been said. And to be frank about it, the questions haven't been
19 answered in any particularly satisfactory way.

20 But I don't say that as a criticism. I appreciate the
21 difficulties in looking ahead in the way that those involved as
22 victims would wish the parties to do. So I'm not going to press the
23 matter today.

24 I hope, in turn, the parties appreciate the legitimate interest
25 of the victims in having just clear a sense of the future of these

1 proceedings as is possible, and today I'm content to leave it there.
2 But it is a matter that will need to be addressed, perhaps at later
3 Status Conferences.

4 JUDGE GUILLOU: Thank you, Mr. Laws.

5 Then let us move to the next point on the agenda, which is
6 related to Defence investigations. I would be interested to hear the
7 Defence on its investigations. In particular, whether based on the
8 SPO's estimates and the ongoing disclosure process the Defence can
9 provide more information on the status of their investigations,
10 whether the Defence can provide information on any intention to make
11 requests concerning unique investigative opportunities, and whether
12 the Defence can provide information on any intention to give notice
13 of an alibi or grounds for excluding responsibility.

14 In this regard, I note the submissions of the Defence for
15 Mr. Thaci and the Defence for Mr. Krasniqi, that Defence
16 investigations are hindered by the ongoing pandemic, the extensive
17 redactions applied to SPO material, and the application of other
18 protective measures such as delayed disclosure.

19 I would like also to hear details about the upcoming
20 presentation of the Registry Witness Protection and Support Office
21 referenced in the submissions provided by the Defence for Mr. Thaci.

22 Let me turn to Mr. Misetic, please.

23 MR. MISETIC: Thank you, Your Honour.

24 You have accurately, obviously, recounted our positions that we
25 submitted in writing. At this stage we don't. At this stage are not

1 prepared to make submissions on alibi or unique investigative
2 opportunities. We reserve our right to do so after we receive the
3 Rule 95(4) materials.

4 I don't believe we have anything else to add at this stage.
5 Thank you.

6 JUDGE GUILLOU: Maybe just one point, because you mentioned in
7 your submissions that you expect a presentation of the Registry
8 Witness Protection and Support Office. Is it something that you have
9 liaised with the Registry, or is it something that you haven't been
10 able to obtain so far?

11 MR. MISETIC: I've been advised that -- yes, we have been
12 liaising with the Registry, and it is scheduled for tomorrow.

13 JUDGE GUILLOU: Thank you very much.

14 MR. MISETIC: Thank you.

15 JUDGE GUILLOU: I see that the matter has been addressed.

16 MR. MISETIC: Thank you.

17 JUDGE GUILLOU: Mr. Emmerson or Mr. Kaufman, please.

18 MR. KAUFMAN: [via videolink] Yes, Your Honour. As we mentioned
19 in filing 315 in the case record, the Defence for Mr. Veseli cannot
20 commence a substantive and meaningful investigation until it has
21 received full disclosure of the SPO's case and until all issues of
22 jurisdiction and constitutionality raised in the context of the
23 Rule 97(1) preliminary motions have been decided and avenues of
24 appeal exhausted.

25 The Defence for Mr. Veseli cannot be expected to allocate its

1 resources appropriately without knowing where the burden of the
2 so-called incriminating evidence may lie and without knowing against
3 what mode of liability it is required to defend.

4 Furthermore, the Defence should not be expected to provide an
5 alibi until it has been provided with all information detailing how
6 the SPO places Mr. Veseli at the scene of alleged crimes, something
7 which we have quite comprehensively shown to be false in our interim
8 release application.

9 Regarding unique investigative opportunities. We adopt the
10 position advocated by the Thaci Defence, and we reserve our position
11 on that matter. And we will introduce a properly motivated request
12 should the need arise.

13 Thank you, Your Honour.

14 MR. EMMERSON: [via videolink] Before Your Honour moves to
15 Mr. Young, I'm sorry, I had my microphone turned off at the outset.
16 Can you hear me?

17 JUDGE GUILLOU: Absolutely.

18 MR. EMMERSON: [via videolink] Sorry about that.

19 The point I wanted to raise was this. Your Honour indicated at
20 the outset of this hearing that tomorrow the Defence and Prosecution
21 can expect rulings on the jurisdiction and indictment content
22 challenges which, as I've understood it from what Your Honour has
23 said earlier on, will deal with issues raised by more than one
24 motion. In other words, it's been necessary, for reasons that I
25 think we probably all understand, to group together submissions under

1 certain heads and to deal with them in a ruling. Certain issues
2 could have been raised just as much as jurisdiction challenges or as
3 indictment challenges.

4 But the one thing I did note was that Your Honour went on to say
5 that a further decision on constitutional questions would be
6 forthcoming during the vacation period. And the reason I'm raising
7 this now is because it would be, obviously, extremely significant if
8 the decision about retrospectivity, the central issue raised in the
9 Veseli challenge about discrimination as between Serbian and Albanian
10 defendants, about the binding or [indiscernible] binding nature of
11 the equivalent ruling of the Serbian Constitutional Court and about
12 the implications of that decision for the continuation of these
13 proceedings and the scope of them, with something which is not the
14 subject of either of the rulings that are due out tomorrow.

15 The reason I say that is because obviously, I mean, it goes
16 without saying, that if we're right on that decision the case against
17 Mr. Veseli is over. There is no other case against him. The
18 Prosecution have effectively indicated -- or they've openly indicated
19 that there is no evidence against him of perpetration or
20 co-perpetration or aiding and abetting or otherwise participating in
21 any crime at all on the indictment. That's a formal admission that's
22 been made in writing.

23 And if the decision of the Serbian Constitutional Court, which
24 applies to protagonists in the same dispute, in the same conflict in
25 Serbia, at the same time is evenly, fairly and equitably applied to

1 the Albanian participants, that's going to see Mr. Veseli returning
2 to Prishtine properly acquitted and as an innocent man immediately.
3 The only case that there could possibly be is if there is a
4 maintenance of this candy-floss allegation of joint criminal
5 enterprise.

6 So the reason I'm asking is because when Your Honour indicated
7 that there'd be two -- apparently -- I mean, potentially decisive
8 rulings tomorrow and yet a third one not to come until the middle of
9 the vacation, and the third one being one which touches on
10 constitutional matters. Since that is obviously an issue which could
11 be raised in the jurisdiction challenge, the indictment challenge, or
12 the constitutional issues, I would like to ask you now to clarify
13 whether the discrimination - in other words, one rule for Serbs,
14 another for Albanians - whether that is in -- part of the decision
15 you're going to be ruling on tomorrow.

16 JUDGE GUILLLOU: Mr. Emmerson, I'm not going to pre-rule on
17 anything today, and I'm not going to announce what is going to be in
18 the decision. I'm not going to announce what is not going to be in
19 each decision. You will see my decisions tomorrow. I'm not going to
20 start commenting on a decision that I even haven't signed, so you
21 will see --

22 MR. EMMERSON: [via videolink] Will you be kind enough to
23 indicate what the constitutional decision is about in that case? The
24 one that's not contemplated until August? Could you kindly indicate
25 what that is intended to cover?

1 JUDGE GUILLOU: The requests that have been made by the
2 different Defence teams that raise a constitutional challenge.
3 That's it. And you will see in the decision.

4 Now let me turn to Mr. Young, please.

5 MR. YOUNG: [via videolink] Thank you, Your Honour. Very
6 briefly.

7 Frankly, it's very difficult, Your Honour, to provide further
8 information at this stage. I cannot, with respect, comment on a
9 question of alibi or unique investigative opportunities. As has been
10 noted previously, Defence's ability to investigate is, we say,
11 heavily undermined by the reason of the extensive protective
12 measures, the extensive redactions, the absence of a pre-trial brief,
13 and the vague, as we see it, nature of the Prosecution's case.

14 And to put it, finally, into some sort of overall context. In
15 relation to Mr. Selimi, Your Honour, we would say that presently
16 there are only a very, very small number of allegations of personal
17 acts alleged against him which, which in the absence of any joint
18 criminal enterprise, would not even amount to crimes within this
19 Court's jurisdiction.

20 That's all I can say.

21 JUDGE GUILLOU: Thank you, Mr. Young.

22 Ms. Alagendra, please.

23 MS. ALAGENDRA: [via videolink] Your Honour, we stand by what
24 we've said at paragraph 14 of our submissions. Nothing to add.

25 JUDGE GUILLOU: Thank you, Ms. Alagendra.

1 Let me turn to the SPO. Do you have any submissions on this?

2 MS. LAWSON: Yes, thank you, Your Honour.

3 With respect to truthful and accurate submissions, the
4 statements that Mr. Emmerson has just made are clearly not accurate.
5 The SPO has made no such concessions. The charges and modes of
6 liability set out in the indictment are those which stand. The only
7 thing that the SPO has indicated is the factual matter, that direct
8 perpetration is not one of the charged modes of liability. That is
9 the only indication that the SPO has given, and that is a factual
10 matter which is reflected in the indictment.

11 As the Defence is aware, pre-trial proceedings are reaching an
12 advanced stage. The disclosure of remaining materials which the SPO
13 intends to rely upon at trial is being substantially completed this
14 week, and it is consequently incumbent upon the Defence to ensure
15 that their investigations are similarly advancing.

16 I have already addressed the fallacy of the Defence's reference
17 to ongoing SPO investigations as being a matter hindering that.
18 Nothing about it hinders or compromises the Defence's current ability
19 to investigate.

20 Similarly, the narrative that there are prejudicial delays or
21 that the Prosecution was not trial ready in this case, which certain
22 of the Defence teams appear to be attempting to present, is simply
23 not based on the facts or on the reality of a pre-trial process.
24 Defence counsel are experienced, and they will be well aware, as
25 reflected in the law and the rules, that one of the primary purposes

1 of a pre-trial phase is to facilitate the disclosure process.

2 There are obvious and well-known reasons why disclosure can only
3 be effectuated after confirmation of an indictment, once a Panel has
4 been constituted, and the accused are before the Court. These
5 reasons obviously include knowing the scope of the confirmed charges
6 in order to facilitate identification of relevant material, knowing
7 the redaction regime which will be applied, having a Panel before
8 which protective measures applications may be brought, and so on.
9 There is absolutely nothing exceptional about this.

10 Indeed, the only remarkable matter is the speed with which the
11 SPO is accomplishing that task. And it's perhaps useful to remind
12 all of the parties that within six weeks of the Initial Appearance in
13 this case, the Defence had been provided with in excess of 1.800
14 evidentiary items, including statements or testimonies from
15 approximately 130 witnesses, as well as the detailed 600-page outline
16 indicating the relevance of those materials. And that is, of course,
17 in addition to having received the indictment itself and the
18 confirmation decision. Since then, regular disclosures of additional
19 Rule 102(b) materials have continued to be made up to and including
20 this week.

21 Your Honour established the calendar for disclosure in this
22 case, and the SPO is complying with it or making relevant and
23 discrete applications for limited volumes of material.

24 I've already mentioned this, but the single factor which has had
25 the most significant impact on the timing of disclosure in this case

1 has been the requirement for additional subcategorisation of
2 materials as requested by the Defence.

3 There have also been references to the impact of protective
4 measures. However, those granted are the ones necessitated by
5 objective risks.

6 And I think it is worth mentioning that a significant body of
7 evidence has been or is being disclosed to the Defence either with no
8 redactions at all or only with standard redactions. For example,
9 there are approximately 170 witnesses in this case without any
10 delayed disclosure and whose evidence the Defence has already or is
11 in the course of receiving.

12 In addition, the vast majority of documentary and video evidence
13 in this case, other than witness specific items, are being disclosed
14 without any redactions. And that is, again, a significant volume of
15 material, approximately 8.000 items excluding prior statements and
16 associated exhibited, that is now or will shortly be available to the
17 Defence.

18 So the suggestion that they are hindered or prevented from
19 investigating for reasons associated with disclosure or protective
20 measures is simply not supported.

21 Thank you.

22 JUDGE GUILLLOU: Thank you, Madam Prosecutor.

23 Does any Defence team want to take the floor? No. Oh,
24 Mr. Misetic.

25 MR. MISETIC: Thank you, Your Honour.

1 I must briefly respond. It seems that we're living in parallel
2 universes in terms of what the Defence faces and what the Prosecution
3 thinks is both how they're performing and what the Defence is capable
4 of at this stage.

5 I can only reiterate that we're in a position where 102 out of
6 200 witnesses we will not know the identity of until, at the
7 earliest, 30 days before trial. I am not sure whether some in the
8 Prosecution have worked on the Defence side and how it is to prepare
9 for trial, but certainly knowing the identity of a witness greatly
10 facilitates how you prepare to cross-examine those witnesses. So we
11 are indeed hindered by certainly, first, the protective measures
12 regime in this case.

13 Secondly, in terms of disclosures, we still, again, I repeat,
14 have more material to receive. But you're now being told that the
15 Prosecution's performance here is, I believe the word used was
16 "remarkable," and I can only quote, again from the transcript of the
17 Status Conference of 18 November 2020, where you told:

18 "In the SPO's view, there is no reason why this case could not
19 start in the summer of 2021."

20 Now, whether there are objective reasons that caused that
21 problem on the SPO's side, I will not get into trying to cast
22 aspersions as to objective difficulties they may have had in meeting
23 that deadline. But certainly to portray this now as somehow the
24 Defence painting a different picture, I think, distorts what's really
25 transpired in this case thus far. We are not at trial because the

1 Prosecution has not disclosed all of the materials and, indeed, is
2 still qualifying its commitment to provide the 95(4) material in
3 October because they're still not sure they're going to be able to
4 comply with all of those deadlines.

5 In that circumstance, I would say that it's certainly not fair
6 to say to the Defence that you're perfectly capable of being ready
7 for trial even though we still have -- we're still not even ready to
8 commit to producing our pre-trial brief to you. That document, of
9 course, is going to significantly guide how we prepare for trial.

10 And so those would be our submissions at this point.

11 Thank you, Your Honour.

12 JUDGE GUILLOU: Thank you, Mr. Misetic.

13 I don't see any other requests for the floor, so we'll move to
14 the next item in our agenda which is the points of agreement on
15 matters of law and fact.

16 I would like the parties to indicate if they anticipate being
17 able to identify a list of issues subject to dispute and one with
18 issues not subject to dispute.

19 In this regard, I note that the Defence for Mr. Krasniqi
20 indicated in submissions that agreement has been reached on four
21 points of fact relating to Mr. Krasniqi's personal background. I
22 also note the Defence for Mr. Thaci's submission, that it will
23 comment on these matters after the SPO has concluded its
24 investigations and provided the Defence with its pre-trial brief.

25 Madam Prosecutor, on this topic.

1 MS. LAWSON: Your Honour, I have nothing to add to that.
2 Certainly the Krasniqi Defence has indicated agreement to four
3 factual matters relating to biographical data and confirmed that they
4 will keep the remaining proposed facts under review. None of the
5 other Defence teams have responded to the Prosecution outside of
6 submissions that have been made in the context of Status Conferences.

7 Thank you.

8 JUDGE GUILLOU: Thank you, Madam Prosecutor.

9 Does any of the Defence teams wish to add anything to their
10 previous submissions in previous Status Conferences or written
11 submissions?

12 MR. EMMERSON: [via videolink] Your Honour, on behalf of
13 Mr. Veseli, we've made our position quite clear from the outset.
14 It's the same as Mr. Thaci's position. We shan't be making any
15 attempt to agree anything until we've seen the Prosecution pre-trial
16 brief.

17 JUDGE GUILLOU: Thank you, Mr. Emmerson.

18 Mr. Young, do you want to add anything?

19 MR. YOUNG: [via videolink] Just to say I completely support what
20 Mr. Emmerson said and what the Thaci team have said.

21 Thank you.

22 JUDGE GUILLOU: Thank you, Mr. Young.

23 Does Mr. Misetic or Ms. Alagendra want to add anything to their
24 submissions on this? No. Thank you.

25 Let us now move to the next topic on our agenda related to

1 detention. I would like the Registry to give an update on the
2 measures taken in relation to communication between Defence counsel
3 and their clients and the evolution of the detention regime.
4 Notably, whether the exchange of documents between counsel and the
5 accused in the detention facilities has improved as a result of the
6 updated COVID-19 regulations, and whether the Registry will be able
7 or has already resumed family visits of immediate family members in
8 July.

9 I note in this regard that the Registry has indicated that
10 improvements have been made to electronic file sharing system, and
11 that in-person meetings between counsel and the accused have resumed.
12 I also invite the parties to indicate if the latest measures
13 implemented by the Registry respond to their concerns.

14 Mr. Registrar, please.

15 DEPUTY REGISTRAR: Thank you, Your Honour.

16 As regards to the inquiries from counsel for Mr. Thaci on
17 certain restrictions and the numbers of Defence members who can
18 participate in privileged visits to the accused, Your Honour, I would
19 just like to confirm that the practice has been, before the COVID
20 situation, to allow a maximum of four Defence team members for each
21 privileged visit. The limitation to four in-person privileged
22 visitors is, I should add, mainly due to the size of the rooms.

23 Additionally, there is always a possibility to add one or more
24 team members via telephone line. On advice of the Medical Officer,
25 the limitation for counsels in-person visits to the accused, at this

1 time, is three instead of four privileged visitors.

2 Having consulted with the Chief Detention Officer, we are aware
3 of one request made towards the end of May to add a third Defence
4 team member for a privileged visited to Mr. Thaci. The request could
5 not be accommodated at the time, and that, I believe, was only on
6 account of the COVID-19 prevention measures recommended by the
7 Medical Officer at the time. Again, this was at the time in May.

8 I should also note that back in May, in-person counsel visits
9 were still being conducted with a window separating the participants
10 in two separate rooms. That was far from ideal, but it was required
11 because of the situation, the COVID situation. At the same time,
12 remote video visits were also being offered and they continue to be
13 offered in the present system.

14 So that leads me to the present system. Since this month of
15 July, counsel visits can now take place in the same room with only a
16 Plexiglass separating the Defence team visitors and the detainee.
17 Here again the new system has been introduced further to the advice
18 of the Medical Officer.

19 To give you a concrete idea, the Plexiglass contraptions are
20 similar to those in court; this one, for instance.

21 Now as to the issue of transmission of documents that you
22 mentioned, and I believe that was also mentioned by counsel for
23 Mr. Thaci, it has -- I would like to stress that it has always been
24 possible, upon counsel in-person visits to the accused, to provide a
25 physical copy of documents. However, this was due to the separation

1 in two rooms through a Detention Officer.

2 As of this month of July, the legal teams can now, in fact,
3 exchange printed documents without having recourse, at all, to a
4 Detention Officer since, as I have indicated, they are now meeting in
5 person with the accused.

6 If I may, we are glad to note, in passing, that the SEDS system,
7 a file server, has been introduced in March 2021 to allow digital
8 sharing of documents between Defence and the detainees. And that has
9 been welcomed by all, I believe, and used by Defence teams with, also
10 here, I believe, no particular concerns. Although, I am informed
11 that there were some initial issues with access and how to get
12 into -- how to make it work, but I think it has been -- they are --
13 these inquiries have been resolved.

14 We have, since March, substantially increased the storage
15 capacity available for all Defence teams on the system, the SEDS
16 system, and that has gone well also, I believe. Currently we are
17 looking to add more storage capacity if and when required.

18 Your Honour, you also asked about the family visits, and indeed
19 these were mentioned in the submissions. I am pleased to confirm in
20 this regard that, due to the easing of COVID-19 measures, on the
21 advice of the Medical Officer, in-person family visits have resumed
22 as of 15 July for immediate family members as had been anticipated.
23 The Registry is actively supporting the logistics implied for those
24 seeking to visit. As of today, I believe that all of the accused in
25 this particular case have benefitted from such visits.

1 We will continue to support them and to make them possible,
2 these visits, considering also the evolution of the COVID-19
3 situation and the advice of our Medical Officer.

4 Thank you, Your Honour.

5 JUDGE GUILLOU: Thank you very much, Mr. Wohlfahrt.

6 Let me now turn to the Defence. Does any Defence team want to
7 take the floor on this issue? And, notably, if there is any
8 remaining problem regarding visits.

9 Mr. Young.

10 MR. YOUNG: [via videolink] Your Honour, very briefly.

11 As Your Honour is aware, we are pursuing the release of
12 Mr. Selimi on provisional release terms, but I would like to thank
13 the Registry because there is an improved facility for sharing
14 information, and that's certainly been a useful, progressive
15 development. I also thank the Registry for facilitating the meetings
16 which are in-person in the meeting rooms which does significantly
17 improve the previous position.

18 So that's all I've got to say. Thank you.

19 JUDGE GUILLOU: Thank you, Mr. Young.

20 Mr. Misetic.

21 MR. MISETIC: Thank you, Your Honour.

22 Yes, we confirm our agreement with the Registry's submission on
23 the improved conditions. Obviously, there is still the limitation of
24 the number of people that can visit, which can hamper our
25 communication somewhat because we usually bring an interpreter with

1 us. But the conditions, indeed, have improved, and we're grateful to
2 the Registry.

3 Thank you.

4 JUDGE GUILLOU: Thank you, Mr. Misetic.

5 I don't see any other counsel requesting the floor, so we can
6 move to the next topic.

7 And let me also thank the Registry for all the efforts that have
8 been made both for communication between client and counsel and also
9 for the family visits.

10 Before I give the floor to the parties on the date of the next
11 Status Conference, I note that the Krasniqi Defence, the Selimi
12 Defence, and the Veseli Defence have lodged an appeal against the
13 decisions on review of detention.

14 I would like to ask these Defence teams if they intend to
15 request a postponement of the next review on detention of the accused
16 after the decision of the Court of Appeal is issued as they requested
17 during the last appeal on detention; or, if they prefer me to review
18 the detention two months after my last review.

19 And I will turn to the Krasniqi Defence team, because it's the
20 first team that lodged an appeal. Ms. Alagendra.

21 MS. ALAGENDRA: [via videolink] Your Honour, we would like to
22 request a postponement as we did previously until the appeal is
23 disposed of.

24 JUDGE GUILLOU: Under the same modalities?

25 MS. ALAGENDRA: [via videolink] Yes, My Lord.

1 JUDGE GUILLOU: Thank you, Ms. Alagendra.

2 Then the second appeal is for Mr. Selimi.

3 Mr. Young, please.

4 MR. YOUNG: [via videolink] Your Honour, may I briefly just
5 simply request 24 hours to consider our position and revert to you
6 within 24 hours?

7 JUDGE GUILLOU: Absolutely, this is noted. You can do it
8 through a filing tomorrow then.

9 MR. YOUNG: [via videolink] Thank you.

10 JUDGE GUILLOU: Thank you, Mr. Young.

11 And then the Defence for Mr. Veseli. Mr. Emmerson, please.

12 MR. EMMERSON: [via videolink] Apologies. I was muted for a
13 moment. We do not seek an extension. We request that you continue
14 with your obligation to review detention at the statutory period,
15 please.

16 JUDGE GUILLOU: Thank you, Mr. Emmerson. This is noted.

17 I would now like to ask the parties for their views on a
18 suitable date for the next Status Conference. I informed the parties
19 that given that Trial Panel I will start the trial of case 05 on
20 September 15, the courtroom will not be available in the weeks
21 following that date.

22 I therefore suggest that we convene the next status on Monday,
23 13 September, or on Tuesday, 14 September, at 1430 Hague time, which
24 seems to be the preferred timing to accommodate counsels in their
25 respective time zones.

1 Madam Prosecutor.

2 MS. LAWSON: The Prosecution will be available on either of the
3 proposed dates. Thank you.

4 JUDGE GUILLOU: Thank you, Madam Prosecutor.

5 Mr. Misetic.

6 MR. MISETIC: Thank you, Your Honour. The Thaci Defence will be
7 available on either date. Thank you.

8 JUDGE GUILLOU: Thank you, Mr. Misetic.

9 Mr. Emmerson, please.

10 MR. EMMERSON: [via videolink] No difficulty, Your Honour.

11 JUDGE GUILLOU: Thank you, Mr. Emmerson.

12 Mr. Young.

13 MR. YOUNG: [via videolink] Either date works. Thank you.

14 JUDGE GUILLOU: Thank you, Mr. Young.

15 Ms. Alagendra. Microphone, please.

16 MS. ALAGENDRA: [via videolink] The same, Your Honour.

17 JUDGE GUILLOU: Thank you, Ms. Alagendra.

18 Mr. Laws, please.

19 MR. LAWS: [via videolink] Well, I'm sorry to say I do have a
20 difficulty with those dates. I have a professional commitment in the
21 United Kingdom which I simply can't change, but I'm very conscious of
22 what Your Honour has said about a trial starting on the 15th. So I'm
23 not going to suggest that it's delayed beyond the 14th, and I will
24 simply do my best to accommodate the Court.

25 JUDGE GUILLOU: Thank you, Mr. Laws. This is much appreciated.

1 And I suppose the Registry doesn't have any problem with one of these
2 dates? Thank you very much.

3 As usual, I invite the parties to make written submissions if
4 they would like to raise any specific issues during this
5 Status Conference, and you will receive a Scheduling Order in due
6 course that will include the agenda.

7 At this point, I would like to ask the parties whether they have
8 any other issues they would like to raise. And, as usual, I remind
9 the parties to give prior notice should any submission that requires
10 the disclosure of confidential information.

11 Madam Prosecutor.

12 MS. LAWSON: No, thank you, Your Honour.

13 JUDGE GUILLOU: Thank you, Madam Prosecutor.

14 Mr. Misetic.

15 MR. MISETIC: Nothing from us, Your Honour. Thank you.

16 JUDGE GUILLOU: Thank you, Mr. Misetic.

17 Mr. Emmerson, please.

18 MR. EMMERSON: [via videolink] Nothing, Your Honour.

19 JUDGE GUILLOU: Thank you, Mr. Emmerson.

20 Mr. Young, please.

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

22 JUDGE GUILLOU: Thank you, Mr. Young.

23 Ms. Alagendra, please.

24 MS. ALAGENDRA: [via videolink] Nothing, Your Honour. Thank you.

25 JUDGE GUILLOU: Thank you, Ms. Alagendra.

1 Mr. Laws, please.

2 MR. LAWS: [via videolink] No, thank you, Your Honour.

3 JUDGE GUILLOU: Thank you, Mr. Laws.

4 Before we end this hearing, I will issue two oral orders. I
5 will issue my first oral order concerning the SPO's deadline for
6 Rule 102(1)(b) material.

7 In light of the outstanding redaction requests pending clearance
8 requests and delays in relation to expert reports, I hereby vary the
9 deadline for Rule 102(1)(b) material disclosure to 27 September 2021.

10 And I will issue my second oral order on the timeline for the
11 next review of detention regarding Mr. Krasniqi.

12 After having heard from the parties, I hereby order the Defence
13 for Mr. Krasniqi to provide submissions on whether reasons for
14 continued detention still exists ten days after notification of a
15 decision by the Court of Appeals Panel on pending appeals against the
16 Pre-Trial Judge decision denying interim release. Response and
17 replies shall follow the timeline set out in Rule 76 of the Rules.

18 And should the Defence decide not to file any submission by the
19 aforementioned time-limit, the SPO shall file submission on the next
20 review of detention ten days after the Defence deadline. Response
21 and replies shall follow the timeline set out in Rule 76 of the
22 Rules.

23 And this concludes my second oral order.

24 This concludes today's public hearing. I thank the parties and
25 participants for their attendance. And, as usual, I thank the

1 interpreters, stenographer, audio-visual technician, and security
2 personnel for their attendance.

3 The hearing is adjourned. Thank you.

4 --- Whereupon the Status Conference at 5.19 p.m.

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