

1 Friday, 29 October 2021  
2 [Status Conference]  
3 [Open session]  
4 [The accused entered court via videolink]  
5 --- Upon commencing at 2.31 p.m.

6 JUDGE GUILLOU: Good afternoon, everyone in and outside the  
7 courtroom. I think I've never seen this courtroom that full. I  
8 think it's a good sign. It means that the pandemic is finally  
9 getting to an end.

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

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

14 JUDGE GUILLOU: Thank you, Madam Court Officer.

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

17 Madam Prosecutor, please.

18 MS. LAWSON: Good afternoon, Your Honour, and to all of those  
19 joining.

20 For the Specialist Prosecutor's Office this afternoon are  
21 Alan Tieger, Senior Prosecutor; Ward Ferdinandusse, Head of  
22 Investigations Prosecutions; Nathan Quick, Associate Team Leader;  
23 Marlene Yahya Haage, Legal and Disclosure Officer; and I am  
24 Clare Lawson, Senior Prosecutor. Thank you.

25 JUDGE GUILLOU: Thank you, Madam Prosecutor.

1 Now I turn to the Defence. May counsel introduce themselves and  
2 their teams, starting with Mr. Kehoe, please.

3 MR. KEHOE: Yes, good afternoon, Your Honour. Good to see you  
4 again. Gregory Kehoe on behalf of Mr. Hashim Thaci. With me is  
5 Dastid Pallaska, counsel; Jonathan Greenblatt; as well as to my right  
6 is Sophie Menegon and Bonnie Johnston.

7 JUDGE GUILLOU: Thank you, Mr. Kehoe.

8 Now I turn to Mr. Emmerson, please.

9 MR. EMMERSON: [Microphone not activated].

10 JUDGE GUILLOU: Microphone, please.

11 MR. EMMERSON: Sorry. Wrong button. I do apologise.

12 Good afternoon to Your Honour and to everyone inside and outside  
13 the courtroom. My name is Ben Emmerson. I appear on behalf of  
14 Kadri Veseli. Assisted today in court by co-counsel  
15 Ms. Annie O'Reilly and by Pascale Langlais, our Legal Assistant, and  
16 remotely by Mr. Andrew Strong, co-counsel.

17 JUDGE GUILLOU: Thank you, Mr. Emmerson.

18 Now I turn to Mr. Roberts, please.

19 MR. ROBERTS: Thank you, Your Honour. Geoffrey Roberts on  
20 behalf of Mr. Rexhep Selimi, together with Ms. Natasha Ryzhenko, our  
21 Case Manager. Thank you.

22 JUDGE GUILLOU: Thank you, Mr. Roberts. And now I turn to -- is  
23 it Ms. Alagendra or Mr. Ellis. I see Mr. Ellis is standing.

24 MR. ELLIS: Thank you, Your Honour. Good afternoon to you and  
25 to everyone in the courtroom. I am Aidan Ellis for Jakup Krasniqi.

1 I am assisted in the courtroom by Victor Baiesu, our co-counsel; and  
2 behind me sits Kalina Tzvetkova, our Case Manager; and by videolink  
3 today we have lead counsel Venkateswari Alagendra and also  
4 Mentor Beqiri.

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

6 Now let me turn to the Counsel for Victims. But before, for the  
7 record, I note that Mr. Thaci, Mr. Veseli, Mr. Selimi, and  
8 Mr. Krasniqi are not physically present in the courtroom but attend  
9 this hearing via video-conference.

10 Mr. Laws, please.

11 MR. LAWS: [via videolink] Good afternoon, Your Honour, and to  
12 everyone joining us today. I am Simon Laws, assigned counsel for the  
13 victims.

14 JUDGE GUILLOU: Thank you, Mr. Laws.

15 And now I turn to the Registry, please.

16 MR. ROCHE: Good afternoon, Your Honour. My name is  
17 Ralph Roche, Judicial Services Division in the Registry. Thank you.

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

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

21 On 18 October 2021, I scheduled this eighth Status Conference.  
22 I asked the parties to provide written submissions, if they so  
23 wished.

24 On 27 October 2021, the SPO and the Defence for Mr. Selimi and  
25 Mr. Krasniqi filed their written observations. I thank these parties

1 for their written submissions.

2 The purpose of our hearing today is to review the status of the  
3 case and to discuss the topics in our agenda; specifically,  
4 disclosure, translations, SPO investigations, and Defence  
5 investigations. I will invite the parties to present their views in  
6 a concise fashion about each item. And, as usual, I remind the  
7 parties to give prior notice should any submission require the  
8 disclosure of confidential information so we can go into private or  
9 closed session.

10 Let us start with the first topic that was listed in the  
11 Scheduling Order, which is disclosure.

12 As I did in previous Status Conferences, I will give the floor  
13 to the parties on the disclosure of each category of evidentiary  
14 material separately, starting with the Rule 102(1)(b) material, which  
15 is the evidentiary material the SPO intends to use at trial; then,  
16 the Rule 102(3) material, which is the material relevant to the case  
17 as listed by the SPO; then the Rule 102(3) material, which is the  
18 exculpatory material; and, finally, the Rule 107 material, which is  
19 protected material for which the consent of the provider is  
20 requested.

21 I inform the parties that for the discussion on the  
22 Rule 102(1)(b) material, I will first give them the floor on the  
23 disclosure deadlines. And in a second round of discussion, we will  
24 discuss the Selimi Defence request for further linkage of evidentiary  
25 material. So this will be for a separate round of discussion.

1 Let us start with the disclosure of Rule 102(1)(b) material, and  
2 especially the deadlines.

3 At the last Status Conference, I issued an oral order concerning  
4 the SPO's deadline related to a number of Rule 102(1)(b) material. I  
5 extended the deadline to 1 November 2021 for the statements of three  
6 international witnesses with pending Rule 107 clearances, the report  
7 of three expert witnesses on forensic matters, and the materials  
8 subject to request for protective measures.

9 I note that since the last Status Conference the SPO has  
10 disclosed an additional package of Rule 102(1)(b) material and two  
11 packages containing translations of such material, but there are  
12 still outstanding materials to be disclosed.

13 I inform the parties that I will issue a decision on the  
14 eleventh request for protective measures next week after the current  
15 1 November deadline for the disclosure of the Rule 102(1)(b)  
16 material. The decision of the twelfth request for protective  
17 measures will be issued thereafter.

18 I would like to hear from the parties what progress has been  
19 made in the disclosure of Rule 102(1)(b) material. In particular, I  
20 would like the SPO to indicate how much of such material remains to  
21 be disclosed and what are the outstanding Rule 102(1)(b) materials to  
22 be disclosed.

23 I note that the SPO seeks a further extension of the current  
24 deadline to 31 January 2022 for the completion of the disclosure and  
25 translation of remaining 102(1)(b) material. I invite the SPO to

1 give details on the expected timeline for the disclosure of remaining  
2 102(1)(b) material and for the finalisation of translations of this  
3 material.

4 And I also invite the SPO to indicate whether further protective  
5 measure requests in respect of Rule 102(1)(b) material will be  
6 necessary in order to complete disclosure of such material.

7 Madam Prosecutor, you have the floor.

8 MS. LAWSON: Thank you very much, Your Honour.

9 As indicated in our written submissions, in terms of volume of  
10 new materials, we're certainly nearing completion of Rule 102(1)(b)  
11 items. Since the last Status Conference, there have been three  
12 packages of Rule 102(1)(b) materials disclosed; that is, packages 87,  
13 103, and 105.

14 In terms of what has been done. The reports of the three expert  
15 witnesses have been obtained and the relevant protective measures  
16 application has been filed. Clearances have been obtained in respect  
17 of the statements and associated exhibits of the three international  
18 witnesses, and those materials have been disclosed with the exception  
19 of one document, which I will come back to. And further materials  
20 relating to witnesses which had been the subject of variation  
21 requests before third party institutions have been received and  
22 disclosed.

23 We do not anticipate releasing any further Rule 102(1)(b)  
24 disclosure packages before 1 November. We believe that all of the  
25 cleared materials in our possession have been disclosed. We also do

1 not anticipate a further protective measures motion in relation to  
2 Rule 102(1) (b) material at this time.

3 Nevertheless, there are a small number of items for which  
4 clearance or variation remain pending. Those items are specified at  
5 paragraph 12 of our written submissions, and I will also go through  
6 them now.

7 There is one associated exhibit of an international witness for  
8 which clearance was denied, and we are, therefore, conducting further  
9 discussions with the provider in relation to that one item. There  
10 are two witnesses in respect of which variation decisions are awaited  
11 for certain of their materials; that is, their prior evidence before  
12 a third party institution. All other materials relating to those two  
13 witnesses have been disclosed. And, finally, we are awaiting receipt  
14 of lesser redacted or unredacted versions of previously disclosed  
15 materials in relation to three witnesses.

16 That is the extent of Rule 102(1) (b) materials that are  
17 outstanding and for which we request an extension. Each of those  
18 items are subject to variation or clearance decisions, and,  
19 therefore, we're not in a position to specify exactly when those  
20 decisions would be made and when the materials would be received, but  
21 we would, of course, disclose them as soon as that occurred.

22 We have also made every effort to expedite outstanding  
23 translations of Rule 102(1) (b) materials. As I indicated at the last  
24 Status Conference, the SPO has prioritised the translation of these  
25 materials, and we've constantly sought to maximise available

1 translation resources. Further steps were taken since the last  
2 Status Conference to try and ensure maximum capacity and efficiency  
3 in that process. The steps are outlined in our written submissions.

4 And while they generated some positive results, the forecast has  
5 not significantly improved. We are processing and disclosing  
6 translations on a rolling basis, and we will continue to do so.  
7 Since the last Status Conference, four packages of translations have  
8 been disclosed, most recently in Disclosure Package 109. Those  
9 amounted to 1.669 translation items.

10 However, as previously estimated, given the volume and nature of  
11 the materials, some of which are handwritten documents, it is  
12 anticipated that translation of Rule 102(1)(b) materials will be  
13 continue to December to the end of this year.

14 A significant number of the translated items then do also  
15 require redaction before they can be disclosed, and that is a time  
16 consuming exercise involving multi-level review and the replication  
17 of redactions from the original language into the translation. It's  
18 a task which, again, involves the assistance of language staff, and,  
19 therefore, draws on the same small limited pool of people.

20 In order to enable this step to occur, we have identified  
21 31 January 2022 as the date upon which disclosure of translations of  
22 Rule 102(1)(b) materials is anticipated to be completed, and we have  
23 requested an extension of deadline for translations -- disclosure of  
24 translations to that date.

25 However, we do emphasise that translations would continue to be



1 disclosed on a rolling basis in the interim before that as they are  
2 available. The specific figures were in the written submissions, but  
3 I'm happy to repeat them here. No.

4 I understand that we're going to return to the specific points  
5 made in the Selimi Defence written submissions later, so I won't  
6 address them now. However, there is one point I would like to make,  
7 and that does go to the deadlines.

8 The Selimi Defence misrepresents the disclosure framework  
9 applicable before this Court. Nowhere in the law or the rules is it  
10 required that the deadline for Rule 102(1)(b) disclosure be in  
11 advance of filing of the pre-trial brief. What is required is that  
12 Rule 102(1)(b) materials be disclosed in accordance with the calendar  
13 established by the Pre-Trial Judge and at least 30 days before the  
14 opening of the case.

15 It's the practice at certain other courts, which apply similar  
16 pre-trial frameworks, for the deadline for disclosure of material to  
17 be relied upon by the Prosecution and the deadline for filing of the  
18 pre-trial brief to be the exact same date. And for that date to be  
19 three months prior to the commencement of trial.

20 Therefore, by contrast, the regime of deadlines being applied by  
21 Your Honour in this case, whereby the Defence has received the vast  
22 majority of Rule 102(1)(b) disclosure many months in advance, is  
23 significantly more favourable to the accused than that applied  
24 elsewhere and, indeed, more favourable than what is required by the  
25 rules. To try and cast this advantageous disclosure schedule as

1 prejudicial or as reflecting delay is misleading, and the Selimi  
2 Defence submissions at paragraph 8 of their filing are simply  
3 inaccurate.

4 Thank you.

5 JUDGE GUILLOU: Thank you, Madam Prosecutor.

6 Let me turn to the Defence.

7 Mr. Kehoe, please.

8 MR. KEHOE: Yes, Your Honour. I would -- certainly I'm going to  
9 address some of the comments made by the Prosecutor, certainly with  
10 regard to maximum efficiency and favourability to the accused, which  
11 we will address.

12 But at this point, if I could just see our first speaking aspect  
13 on the 102(1)(b) to counsel for Mr. Selimi. If he can just go first,  
14 if we can. And then I will follow after him.

15 Okay, Mr. Roberts.

16 MR. ROBERTS: With the Court's permission.

17 JUDGE GUILLOU: Mr. Emmerson, do you agree?

18 MR. EMMERSON: Absolutely.

19 JUDGE GUILLOU: Then I give the floor to Mr. Roberts, please.

20 MR. ROBERTS: Thank you, Your Honour. I see I've been promoted.

21 I'll be very brief because I have set out our position in  
22 general on the 102(1)(b) disclosure. In general terms, there's not  
23 much to add. The one thing I would note on this particular issue,  
24 obviously, we've been referred to, or our submissions have been  
25 referred to as misleading and misrepresenting the state of the legal

1 framework for 102(1)(b) disclosure.

2 I would note that in your original decision, your  
3 Framework Decision on disclosure back on, I believe,  
4 23 November 2020, you required the Prosecution to have disclosed all  
5 the Rule 102(1)(b) disclosure by 31 May of this year, if I'm not  
6 wrong.

7 Now, we're coming up for six months ago, I believe, that that  
8 should have been completed. Obviously by the time they ultimately do  
9 so, that will be almost eight months. Therefore, twice as long as  
10 you originally ordered.

11 Now, I note, obviously, that they have requested extensions.  
12 Every time we come here for a Status Conference, it's like Ground Hog  
13 Day. They ask for an extension, they seem to get an extension, we  
14 move forward. Nothing seems to really materialise or actually a  
15 specific deadline that they have to comply with. And so we're stuck  
16 in the situation where we are moving forward but very, very slowly.

17 And, Your Honour, I'm not a runner. I despise running,  
18 generally. But it does feel that we're running and the finish line  
19 is getting further and further away. Every time we get close to it,  
20 the deadline just disappears off into the distance.

21 So from my side, I believe, as I've said, without getting into  
22 the specifics of Rule 102(1)(b) and the specifics of what we're  
23 asking the Prosecution to do in Legal Workflow, which I'll deal with  
24 later, I just feel we've not actually moved the dial forward at all.  
25 We're still stuck in the same situation. It's now 31 January next

1 year before this will be completed, and we've still got, obviously,  
2 issues of the pre-trial brief and everything else.

3 So in terms of whether this is an advantageous disclosure  
4 process, I personally would take issue with that word. An  
5 advantageous disclosure process would have been one where the  
6 Prosecution stuck with their original deadline, disclosed all of  
7 these materials six months ago as they were originally ordered, and  
8 we actually would have a much better idea of what their case would  
9 be.

10 But apart from the submissions I've already set out in writing  
11 on 102(1)(b), I have nothing further to add. Thank you.

12 JUDGE GUILLOU: Thank you, Mr. Roberts.

13 Mr. Kehoe, please.

14 MR. KEHOE: Yes, Your Honour. Just a couple of points.

15 It's shocking to me that the Prosecution stands up there, at  
16 this point -- and I'm sure Your Honour is frustrated with the level  
17 and the efficiency coming from the Office of the Prosecutor, given  
18 the fact that our clients were arrested and charged back in November  
19 of last year. And yet we're still talking about this and they're  
20 talking to you, Your Honour, and asking for more time.

21 Yet they say they're working for maximum capacity or efficiency  
22 or come up with a regime that's more favourable to the accused? It's  
23 ludicrous.

24 Let's look at exactly what's -- what went on.

25 Counsel's just noted that the deadline initially was 31 May. I

1 understand, Judge, that you gave some ordered extensions to that.

2 But it was 31 May. But what's happened?

3 Since our last Status Conference, we've received 1.732  
4 documents. We got 217 last night. That's 13 per cent of the total  
5 production of this case with our client sitting in jail since last  
6 November. I mean, when, as Mr. Roberts said, when will they make an  
7 end to this?

8 How can anybody in heaven's name say that they're operating at  
9 maximum capacity or doing anything favourable to the accused while  
10 these documents keep coming across the transom and all of these  
11 clients remain in jail? When do the scales tip to the point where  
12 this is just too much?

13 Your Honour, gives an order and, frankly, the Prosecution  
14 doesn't comply with it. And now they're asking to kick it out yet  
15 till 31 January. The 31st January. That's for 760 translations into  
16 English and over a thousand translations into Albanian. Almost 1700  
17 documents to be translated. They wanted to go to trial last year or  
18 sometime earlier this year, and they come in here and say, "Oh, we  
19 need to go to January 31 to get all this stuff translated."

20 My client sits in jail, and he is entitled to have these  
21 documents and assist in the Defence. And the fact of the matter is,  
22 Judge, and I know I'm preaching to you, you understand this, he can't  
23 do it if he doesn't have the documents in his own language.

24 You know, we get all this information. I mean -- on their  
25 disclosure. And I know we're going to get to the -- the witness

1 list, but there are 327 witnesses on their list, and we have 122  
2 where there's no identification. And the redactions, you might as  
3 well just be talking to that wall, because they're incomprehensible.  
4 122.

5 So what is this going to look like 30 days before trial? We're  
6 going to have 122, or something close to that, pieces of information  
7 on witnesses to show up on our doorstep? Yet the Prosecution is  
8 saying that this disclosure regime is somehow favourable to these  
9 four men who are sitting in jail? That's just ludicrous, Judge.  
10 It's ludicrous.

11 There has to be -- they decided to indicted these four  
12 gentlemen. There has to be some line in the sand. Because it's not  
13 31 January 2022. That's when we're first going to get them. And I  
14 suspect that before 31 January 2022 we're going to get another  
15 request for an extension, and we're going to kick it out yet further.  
16 And we're down the line into March, for instance.

17 Suffice it to say, Judge, that there is a lot of disclosure that  
18 we know that they haven't disclosed. Heavens, there is eight  
19 witnesses on their witness list where we have no 102(1)(b)  
20 information at all. There are eight of them. We're looking through  
21 them, trying to find out if we know anything about these people.  
22 There's nothing. So I assume this is going to be part of some of  
23 these disclosures.

24 But this continued extension, Judge, is prejudicial to our  
25 clients, to my client, and to stand up here and to say that this

1 disclosure regime is favourable to the accused is a specious argument  
2 and should be rejected.

3 We ask Your Honour to ask the government -- tell the Prosecution  
4 to tow the line with the Court's orders and comply with the Court's  
5 orders like everybody else in this courtroom is required to do.

6 Thank you.

7 JUDGE GUILLOU: Thank you, Mr. Kehoe.

8 Mr. Emmerson, please.

9 MR. EMMERSON: Your Honour, I have some general comments to make  
10 about the witness list that has now this week been served, but I'll  
11 reserve those until the appropriate moment of the agenda.

12 May I just say this, for the purposes of the first item, and  
13 it's going to hover over everything, I think, that follows. Is that  
14 there is an elephant in the room, something that's not on your agenda  
15 but which ought to be driving every single one of your decisions and  
16 ought to have been, effectively, the subject of a guiding principle  
17 for the Prosecution.

18 Mr. Kehoe has already stressed it in very clear terms, which is  
19 that the Prosecution made a decision to arrest these men a year ago,  
20 and it's against the fact that you've remanded them in custody for a  
21 whole year that some of these issues now have to be decided.

22 So when the Prosecution says, as it said in its most recent  
23 submission on 102(1)(b) for this Status Conference, that it is  
24 substantially on track, I'm driven to recall the submission that was  
25 made on -- I think it was the 21st. Yes, the July Status Conference,

1 21 July, two days in front of 23 July. So two days before the  
2 deadline was due to expire for the foreclosure of this material the  
3 SPO put a submission into the Court saying that it was substantially  
4 on track to meet that deadline. Two days before 23 July it claimed  
5 to be substantially on track.

6 Now, with all due respect, that is a lie. That was a lie. And  
7 so when the Prosecution writes in its submissions yesterday, "Oh,  
8 we're substantially on track," you've no reason, any of us, to  
9 believe a word -- the Prosecution has, from the beginning -- let's  
10 put this as diplomatically as possible. Has from the beginning had  
11 an extremely casual relationship with the truth. They lied to you at  
12 the beginning when resisting the applications that were made for  
13 provisional release pending trial, and persuaded you to keep these  
14 men in custody in part on the basis that although we said the trial  
15 couldn't possibly begin, realistically, before the end of this year -  
16 that's now - they were claiming that they could be ready for trial in  
17 June of this year. That was a lie. And it was a lie that must have  
18 influenced your decision, because you referred to it -- it was  
19 referred to repeatedly in argument.

20 And not only was that a lie. We were accused of misleading you  
21 by saying experience shows that this date is completely unrealistic.  
22 So not only do they lie, but they are prepared to entirely falsely  
23 accused the other side of lying. And I'll give you another example  
24 of that later on in my submissions.

25 But we're left in the situation where, as Mr. Roberts says,



1 maybe they will, maybe they won't, but at the end of the day every  
2 single tick of the clock, every single second of the clock now,  
3 whilst these men have been in custody, should be weighing very  
4 heavily on Your Honour's thinking. You should be thinking, after a  
5 year, the Prosecution need to really overwhelming persuade me that I  
6 can carry on, even for the next 24 hours, keeping these men in  
7 custody, because otherwise this whole institution is shown up to be a  
8 disgrace.

9 It's shown up to be an institution in which the Prosecution is  
10 free to arrest people when they don't know what its case is, they're  
11 free to lie to the Court and get away with it, repeatedly. And every  
12 time it happens, with all respect, you listen patiently to me saying  
13 this, but you never say anything in response in any of the rulings,  
14 and you never require an explanation or an apology from the other  
15 side.

16 And yet the world is watching, and we're in a situation where  
17 the Court is beginning to look extremely badly managed to the  
18 detriment of individual defendants who are being held in custody.

19 After that -- on 21 July, they lie and say "We're substantially  
20 on track" for the 23rd. Since that 23 July deadline, by which time  
21 the defendants have been in custody, what, nine months. Since that  
22 deadline, overall the SPO has disclosed 10.039 items consisting  
23 112.142 pages of evidence that the SPO intends to rely on at trial.

24 Of all the evidence they now say they intend to rely on at  
25 trial, 80 per cent has been disclosed since they lied to you on

1 21 July and said they were substantially ready for the 23rd.  
2 80 per cent of their case. Which means that the first nine months of  
3 custody was itself a lie. It was based on a lie about their  
4 readiness for trial. It was based on a lie about their ability to  
5 disclose.

6 And I don't know about you sitting as a Judge, but if I was a  
7 Judge being lied to by the Prosecution in this way, I would be  
8 beginning to lose my patience. And certainly I would be looking in a  
9 very different light to these continued protestations that these four  
10 men should languish in custody indefinitely while this Prosecution  
11 continues to flail about with no focus and no organisation and to  
12 continue a process where they deliberately structured it so the men  
13 were in custody for a year before they even disclosed their case.

14 So we can't even start investigating until the end of January.  
15 That's when we know -- we're going to know what their case is. And  
16 I've got something to say about that as well, if I may. I'll touch  
17 on it now.

18 The foundation documents of this Tribunal make it completely  
19 clear that it was set up in order to try the allegations that were  
20 described within the four corners of the report prepared -- it was a  
21 political report, a pseudo-investigation by a politician called  
22 Dick Marty, a Swiss senator answerable to the Council of Europe, who  
23 wrote a report which included the most lurid and frankly absurd  
24 allegations that the Kosovo Liberation Army engaged --

25 JUDGE GUILLOU: Mr. Emmerson.

1 MR. EMMERSON: No, I am going to carry on, if I may.

2 JUDGE GUILLOU: We are talking about the Rule 102(1)(b) --

3 MR. EMMERSON: [Overlapping speakers] ... we are. We are. And

4 I --

5 JUDGE GUILLOU: [Overlapping speakers] ... I think this has

6 nothing to do with Rule 102(1)(b).

7 MR. EMMERSON: It absolutely does, I'm afraid.

8 JUDGE GUILLOU: Then go quickly to the point.

9 MR. EMMERSON: I will go to the point --

10 JUDGE GUILLOU: Thank you.

11 MR. EMMERSON: -- in the time that it takes to develop it. I  
12 mean, with the greatest of respect, this is a two-way process.

13 As I said to you a moment ago, most Judges in your situation  
14 would have lost patience with the Prosecution. Please don't lose  
15 patience with the Defence, because it's not us you should be losing  
16 patience with. So would you please give me a moment or two to  
17 elaborate my point.

18 The case was -- the institution was set up to examine those  
19 ludicrous allegations of organ trafficking. Now, we know those  
20 allegations were false, and we know that they were made up by  
21 witnesses who had been put forward by the Serbian intelligence  
22 service. We know that because it was proved, as a fact, in the  
23 Haradinaj retrial at the ICTY.

24 JUDGE GUILLOU: Mr. Emmerson, this has --

25 MR. EMMERSON: No, I'm not going to stop.

1 JUDGE GUILLOU: That has strictly nothing to do with what we are  
2 debating now.

3 MR. EMMERSON: It absolutely does, if you will listen to me.

4 JUDGE GUILLOU: We are talking about the disclosure deadline for  
5 Rule 102(1)(b) material.

6 MR. EMMERSON: Yes, I know we are.

7 JUDGE GUILLOU: What you just mentioned was perfectly to the  
8 point, and I really hear you, but here it has nothing to do with our  
9 agenda.

10 MR. EMMERSON: Because you haven't the patience to listen to why  
11 I say it has.

12 JUDGE GUILLOU: I think I have the patience to listen --

13 MR. EMMERSON: Well, then, please be patient.

14 JUDGE GUILLOU: -- to all the parties.

15 MR. EMMERSON: Please be patient then.

16 JUDGE GUILLOU: At least here, you're talking about --

17 MR. EMMERSON: We're wasting time now. I'm going to carry on  
18 until I've finished so we're wasting time now.

19 JUDGE GUILLOU: Then I am going to -- then I can stop you.

20 THE INTERPRETER: The speakers are kindly requested not to  
21 overlap for the purposes of interpretation. It's impossible to  
22 interpret overlapping.

23 Thank you.

24 JUDGE GUILLOU: Thank you very much.

25 Then please go to the point. I will hear you as much as you

1 want, as long as you are, first, in the agenda and, second, you are  
2 relatively concise. Thank you.

3 MR. EMMERSON: I am in the agenda. I am trying to be relatively  
4 concise. Every time you interrupt me, it slows me down. So would  
5 you kindly be patient and listen to what I have to say.

6 That was the basis on which this tribunal was set up and it's  
7 its foundational principle. It came as no surprise to anybody who  
8 knows anything about the conflict that this -- the Prosecution found  
9 absolutely no evidence whatsoever to support that central allegation.

10 In other words, the foundation for the establishment of this  
11 tribunal was based on a lie. That much we know. All right. But  
12 what has happened since then is that the Prosecution has now, this  
13 week, and it is -- and this is why I am getting to the point. So if  
14 perhaps you didn't jump the gun, you'd perhaps listen to  
15 [indiscernible] that's relevant. This week --

16 JUDGE GUILLOU: Please, I would appreciate if you wouldn't  
17 criticise the Bench like you do.

18 MR. EMMERSON: Well, I would appreciate it if you didn't  
19 criticise counsel like you do.

20 JUDGE GUILLOU: I am not criticising you. I am just telling  
21 that you have to stick to the agenda. That's all.

22 MR. EMMERSON: I am sticking to the agenda.

23 JUDGE GUILLOU: So please, if you avoid talking to the other  
24 parties or myself --

25 MR. EMMERSON: [Overlapping speakers] ... and if you avoid

1 interrupting me --

2 JUDGE GUILLOU: -- like this --

3 MR. EMMERSON: -- I would have a chance to explain why it's  
4 relevant to the agenda. I am not going to be closed down, so we can  
5 carry on --

6 JUDGE GUILLOU: That's not my point, Mr. Emmerson.

7 MR. EMMERSON: Well --

8 JUDGE GUILLOU: I am just asking you to be polite in this  
9 courtroom.

10 MR. EMMERSON: I am being polite.

11 JUDGE GUILLOU: That's the only thing. I don't think you are.

12 MR. EMMERSON: Well, I'm sorry.

13 JUDGE GUILLOU: I don't think in any courtroom you would be let  
14 talk like that, whether it would be in the United Kingdom or any  
15 other international court. So please focus on the point.

16 MR. EMMERSON: I am focussed on the point.

17 JUDGE GUILLOU: And I am going to listen to you.

18 MR. EMMERSON: Well, sir, I don't understand why you think it's  
19 rude of me to indicate to you that I intend to explain to you why  
20 this is relevant. And I must say, as I have said to you before,  
21 impatience is being directed in the wrong direction. All right?  
22 That much is -- I don't think that's rude either, when you look at  
23 the truth of what's happened here.

24 But the point I want to make is that we've, this week, received  
25 the summary of the evidence, that's to say the Prosecution's witness

1 list, plus summaries, of all the evidence that they intend to call.

2 And as I said, it came as no surprise to anybody that the  
3 foundational allegation of the tribunal was a load of nonsense. What  
4 did come as a surprise, and it's become apparent as this process of  
5 disclosure has been ongoing and was crystallised with the disclosure  
6 of the witness statements that the Prosecution intends to rely on  
7 this week is that there is no allegation of participation,  
8 incitement, instigation, or aiding or abetting any criminal act by  
9 Mr. Veseli.

10 What becomes clear, when you read the material that they have  
11 served, is that it is the joint criminal enterprise they are alleging  
12 is, itself, the Kosovo Liberation Army. The existence of that group.  
13 And why does that matter? It matters because very recently, within a  
14 week of the last Status Conference at the opening of the Mustafa  
15 trial, the Prosecutor, Mr. Smith, said this:

16 "The SPO does not level accusations against the KLA or against  
17 the war it fought for Kosovo's independence. It is neither the job  
18 nor the desire of the SPO or myself to do so."

19 And, yet, that is what we are here faced with now. There is no  
20 way of reading the evidence against Mr. Veseli or the others other  
21 than to say that what the Prosecution is now scrabbling to try and do  
22 is to create a case that the Kosovo Liberation Army was a criminal  
23 enterprise.

24 Now, it becomes very -- this becomes very important to all of  
25 the issues on your agenda. It becomes very important to all of the

1 issues on your agenda because if you start from the proposition that  
2 that is what they're setting out to prove, that's why we have a list  
3 of 327 witnesses. And 327 witnesses of whom all but 50 or so are  
4 viva voce. That spells out a three and a half year trial, three,  
5 three and a half years.

6 And you'll remember when it came to the very beginning of this  
7 case, I gave you some estimates about how long the pre-trial period  
8 would be based upon experience from other courts. That's when the  
9 Prosecution made their grandiose suggestion that this Court was  
10 different and it would never fall into the same delays, and we're now  
11 worse than what were predicted at the time.

12 So we have to accept that the Prosecution is proposing a three  
13 and a half year trial in order to try to persuade a court that the  
14 KLA was a criminal enterprise in itself. And these men have been  
15 plucked not because they did anything but because they were  
16 successful politicians or otherwise prominent people who would just  
17 do for the purpose of sample defendants.

18 I'm saying this with the benefit of the evidence that's been  
19 disclosed.

20 Now, the Prosecution is obviously struggling to draft its  
21 pre-trial brief, because it's somehow got to make something out of  
22 nothing. It's somehow got to create a case against these four men  
23 out of nothing. So it's given itself the furthest possible date in  
24 order to be able to say, "Oh, we got it in 2021," 17 December, the  
25 day before the institution's closed for the holidays, totally no use



1 to the Defence until the end of January. But in order to meet some  
2 internal or external projected deadline, the artificial end date of  
3 17 December is being given.

4 I asked you to order 31 October. Not only did I not get a  
5 ruling in my favour, but I didn't get a ruling at all. I, therefore,  
6 put it in writing and asked you again. Again, no response. So we  
7 are here today with the Prosecution saying that they would like until  
8 17 December to try and come up with something out of this morass of  
9 material that they have served. Indiscriminate morass of material.

10 I know because I've cross-examined some of the witnesses in the  
11 other cases. These people have nothing whatever to do. They are  
12 minor little incidents in far-flung places. People being kicked in  
13 the head. They're on the list. Nothing to do with any of these  
14 defendants. This is an absolutely chaotic, indiscriminate dump in a  
15 frantic panic to try and justify the fact that they arrested these  
16 men before they had a case against them.

17 And however it was spun to you at the beginning to justify the  
18 arresting of these men, the fact that the Prosecution has had a year  
19 and still can't state its case is a disgrace. But it's worse than  
20 that, because they're giving you -- they're now saying, well, they'll  
21 do the pre-trial brief by the 17th, but what we won't be able to do  
22 is to give either a final disclosure of the 103 material that's being  
23 relied upon or - and critically - the Rule 109 requirements.

24 Now, Rule 109 requires the Prosecution to categorise the  
25 information it's dumped on the Defence in accordance with the charges

1 on the indictment with specific reference to the underlying crimes,  
2 the contextual elements of the crimes, the alleged conduct of the  
3 accused, or where applicable evidence to be presented. Why can't  
4 they do that now? Answer: Because they don't know. They haven't  
5 made it up yet.

6 There's been no guiding mind behind this. If there was, they  
7 could do this chart jointly with the pre-trial brief. If the  
8 pre-trial brief was sufficiently particularised and cross-referenced,  
9 if they even knew what their case was, there would be no reason for  
10 them to be asking you till the end of January to make the connections  
11 between the evidence and the charges.

12 So what we're going to expect on 17 December is another load of  
13 meaningless fluff of the sort that was put before you to justify  
14 their arrests, without any linkage, despite the year that's passed,  
15 between the actual evidence and the charges that these men face.

16 Now, there can only be one inference from -- if you look at the  
17 whole picture: They're arrested a year ago. The arrest is announced  
18 six months before that of Mr. Veseli and Mr. Thaci for reasons that  
19 have no relevance but make it clear that a decision had been taken to  
20 arrest them even before the Prosecution had begun to sift its  
21 evidence. Why? Because they're prominent politicians. They'll do.  
22 They'll do for the purposes of symbolising the KLA, which is being  
23 accused.

24 Now, you know, you're right to say national, international  
25 courtroom. But this is a courtroom where the audience is not sitting

1 in the public gallery. The audience is the Balkan area; and, in  
2 particular, the people of Kosovo, because you're a Kosovo court and  
3 they want to see that you're doing justice in their name. And they  
4 all know, everybody that knows anything about this conflict knows  
5 that there is absolutely no equivalence whatsoever between the  
6 genocidal policy of the Milosevic regime to move into and across  
7 Kosovo and drive every Albanian and Kosovar over the borders into  
8 Macedonia, into Montenegro, and into Albania. And on the other side,  
9 there was a people's resistance which grew gradually and with very  
10 little organisation in an effort to try to put a stop to that.

11 But what we also know is that the ICTY had jurisdiction over  
12 Kosovo, which was not specific to one group or ethnicity, like this  
13 tribunal is. It tried the Serbian war criminals and it tried alleged  
14 Kosovar Albanian war criminals. All of the Serbian war criminals  
15 were convicted of involvement in a conspiracy to commit crimes  
16 against humanity in order to ethnically cleanse the country by  
17 committing crimes against humanity village by village, in a horseshoe  
18 movement to drive the entire population over the border. And all of  
19 the Albanian defendants were either acquitted or, in one or two  
20 cases, convicted of very minor offences.

21 Same judges, same tribunal. But the reason why the result was  
22 different is because the truth was different. This was a group of  
23 individual farmers and others doing what they could to defend  
24 themselves. This mono-ethnic tribunal set up despite the fact that  
25 there had been a fair trial of both sides only to focus on the KLA

1 now comes -- no, please sit down. Now comes to the point where we're  
2 a year in custody, and it's perfectly obvious to any objective  
3 observer that the Prosecution is still flailing about with no idea  
4 what its case is.

5 Now, I'm saying the elephant in the room is that these men are  
6 in custody. As I say, and I am sorry it's taken a little time to  
7 explain, but it is all relevant to that. It's all relevant to the  
8 fact that the assumption underlying the Prosecution is no more than  
9 there is some sort of equivalence between the Serbs and the KLA, and  
10 that since no KLA people got convicted at the ICTY it's justified to  
11 try and go again.

12 And they made the decision to choose these defendants when they  
13 had no idea what the case against them was. They just picked them  
14 out of the air on the basis that they would do.

15 JUDGE GUILLOU: Thank you, Mr. Emmerson.

16 I will give the floor to Mr. Ellis, please.

17 MR. ELLIS: Your Honour, thank you.

18 I want to use my time to deal just with one specific example in  
19 relation specifically to the Rule 102(1)(b) material, and I do that  
20 because it's an example that goes to support the general point being  
21 made that this all must be tied in with the length of time  
22 Mr. Krasniqi and the others have been kept in detention.

23 Before I do that, Your Honour, I notice, even as I sit here in  
24 the courtroom, Disclosure Package 109 has just been released to us.  
25 That following on from three disclosure packages yesterday, and I

1 think one disclosure package the day before. If one were to plot the  
2 dates of disclosure packages against the dates when Your Honour fixes  
3 Status Conferences, I am confident that you would see a spike in  
4 activity the day before and, in many cases, on the day of the Status  
5 Conference, almost as if there's a rush to get things out for  
6 Your Honour on that day.

7 But the specific point I wanted to deal with is the translation  
8 of statements into Albanian.

9 Ms. Lawson, for the Prosecution, didn't read out the statistics,  
10 but I think perhaps I will, because it's paragraph 17 of the  
11 Prosecution's submissions. There are 1.400 Rule 102(1) (b)  
12 statements. Of those, Albanian translations of 1.000 - 1.000 -  
13 statements have yet to be disclosed to the Defence.

14 So as Mr. Krasniqi sits there in detention, as he has for one  
15 year, he is able to read less than 30 per cent of the statements said  
16 to be against him. Now, is this a new issue? Is it something  
17 surprising? Of course it isn't, Your Honour.

18 In their submissions to you on the first Status Conference on  
19 13 November 2020, Filing 76, the Prosecution had this to say:

20 "The SPO will provide Albanian versions of the statements of all  
21 witnesses it intends to rely upon at trial and intends, to the  
22 maximum extent possible, to provide these translations within the  
23 same deadlines requested above for disclosure of English materials."

24 At that point, Your Honour, the deadline that they were talking  
25 about was 31 May, which, of course, is gone, and gone by months. But

1 they knew. They knew at the outset of the case that they were  
2 required to provide these statements in Albanian so that Mr. Krasniqi  
3 can read them.

4 And I'm not asking for this for fun. I'm asking for it because  
5 taking my your client's instructions on the statements against him  
6 are where my investigations need to start so that he can guide me on  
7 them.

8 Fast-forward almost a year. What are we? 11 and a half months  
9 to say submissions for today, and the Prosecution say at  
10 paragraph 13:

11 "The translation of Rule 102(1)(b) materials in this case has  
12 been prioritised for several months."

13 Several months. Mr. Krasniqi has been in detention for almost a  
14 year. What was happening before these statements were prioritised?  
15 It is, in my submission, simply not acceptable, and this goes in  
16 support of the general contention made by others, to keep these men  
17 in detention for this period of time when disclosure is not being  
18 dealt with efficiently, Your Honour.

19 JUDGE GUILLOU: Thank you, Mr. Ellis.

20 Let me turn to the SPO, in a concise fashion, please.

21 And before you take the floor, I hope that we can continue this  
22 hearing without tension and aggressivity between the parties. Thank  
23 you.

24 Ms. Lawson.

25 MS. LAWSON: Thank you, Your Honour.

1 To be clear, the date for which Rule 102(1)(b) disclosure was  
2 due was 31 July 2021. Not 31 May. The July date was set not as a  
3 result of a Prosecution request but as a result of Defence requests  
4 for additional subcategorisation; a request that was made, in  
5 particular, by the Selimi Defence.

6 The timing of disclosure packages are related to when materials  
7 are received, cleared, and processed. As the Defence are aware, the  
8 SPO currently has a disclosure deadline of 1 November, and,  
9 naturally, we have therefore made every effort to receive and  
10 disclose items before that date. Consequently, there have been  
11 disclosure packages released this week.

12 Disclosure Package 109, which has just been released, is a  
13 package containing translations, and that is in line with our  
14 commitment to disclose translations on a rolling basis as soon as  
15 they are available.

16 With respect to the Thaci Defence submissions. First, they have  
17 mischaracterised the submissions that I previously made. My comments  
18 were specifically in relation to the schedule of Rule 102(1)(b)  
19 disclosure relative to the filing of the pre-trial brief. That is  
20 what the Selimi Defence inaccurately based their written submissions  
21 around, and that is what I was responding to.

22 In terms of the volume of materials which have recently been  
23 disclosed. The material that was disclosed since the Status  
24 Conference on 21 July was, in the vast majority, disclosed in the  
25 immediate weeks following that Status Conference. That is in the

1 first weeks of August.

2 The timing of those disclosures occurring slightly after 31 July  
3 was the result of very severe technical issues, which resulted in  
4 Legal Workflow being unavailable for disclosure purposes, and of  
5 which we advised the parties at the time.

6 Similarly, in terms of new Rule 102(1)(b) materials. The figure  
7 that has been disclosed since the last Status Conference is 187  
8 items. Not thousands of items.

9 Protective measures are being applied where they are found  
10 objectively justifiable following individualised assessments. There  
11 are 203 witnesses in this case without any delayed disclosure and  
12 whose evidence the Defence has received. The identities of a further  
13 21 witnesses will be disclosed together with the submission of  
14 Rule 95(4) material.

15 As for detention. Detention is subject to separate ongoing  
16 litigation. The legal framework provides a mechanism for very  
17 regular review of detention with an automatic right of appeal, and  
18 the continuation of detention is, therefore, considered on its  
19 merits.

20 At this time, and based on the last review, including by the  
21 Court of Appeals, circumstances justifying detention have been found  
22 to continue to exist and future reviews will continue to be litigated  
23 and considered on their merits on the circumstances that exist at the  
24 relevant time.

25 As to the scope of this case. This is a case against four



1 individuals. It is about the individual criminal responsibility of  
2 the four named accused. Relatedly, for the Veseli Defence, to  
3 describe the mistreatment and abuse of victims in this case as minor  
4 little instances is insulting and it's gravely inappropriate.

5 MR. EMMERSON: It's also not what I said. I said some instances  
6 were.

7 JUDGE GUILLOU: Please, Mr. Emmerson. You will have the  
8 opportunity to respond after.

9 MS. LAWSON: The Veseli Defence has also taken a sudden interest  
10 in Rule 109. I would like to point out that all of the  
11 Rule 102(1)(b) material has already been subcategorised through  
12 Legal Workflow in greater detail than will be done in the chart that  
13 was mentioned by Veseli Defence counsel, and we can come back to the  
14 chart at the relevant agenda item.

15 As Your Honour rightly noted, the majority of the Veseli Defence  
16 counsel submissions had nothing to do with the agenda item in  
17 question. However, there is one point that I would like to address  
18 and that is the manner in which lead counsel for the Veseli Defence  
19 has just made his submissions.

20 They are, again, throwing allegations of dishonesty. It is easy  
21 to make wild allegations if you ignore or misstate the underlying  
22 facts. The SPO did not say in our submission this week that we are  
23 "substantially on track in Rule 102(1)(b) disclosure." I'm not sure  
24 what Veseli Defence counsel is quoting from, but it is not our  
25 submissions of this week. It may well have been submissions made

1 earlier in the year.

2 The fact is that the record in this case is replete with  
3 examples of the Veseli Defence making factually inaccurate assertions  
4 and persisting with them orally and/or in writing, even after such  
5 inaccuracy has been brought to their attention. That is wilful  
6 misrepresentation. Perhaps the submissions are just being framed to  
7 try and create media sound bites.

8 But every person familiar with the proceedings knows that on a  
9 frequent basis what lead counsel for Mr. Veseli is saying is not  
10 true. To have the parties spend their time here in this courtroom  
11 exchanging hyperbolic jibes at each other and failing to conduct  
12 themselves with the respect and decorum appropriate to a courtroom  
13 does no service to justice or to the victims of the crimes, it does  
14 no service to the accused. The manner in which Veseli Defence  
15 counsel has just addressed the Court is entirely unacceptable, and it  
16 should not continue.

17 Thank you.

18 MR. EMMERSON: Would you like me to respond to that now?

19 JUDGE GUILLOU: Thank you, Madam Prosecutor.

20 Yes, but I will first, Mr. Kehoe, please, and then we'll  
21 continue.

22 Mr. Kehoe, please. And in a concise fashion, because we have to  
23 move on to the next item in the agenda.

24 MR. KEHOE: Yes, Your Honour.

25 JUDGE GUILLOU: Thank you.

1 MR. KEHOE: I get the feeling that we're living in an alternate  
2 universe here.

3 What the Prosecutor said in their submission on the  
4 Rule 102(1)(b) was that they are nearing completion but they are  
5 working at maximum capacity and efficiency to the detriment of our  
6 clients. Because, remember, this trial was supposed to start a long  
7 time ago. Nearing had completion. When?

8 They're asking for an extension for over a thousand documents,  
9 1.000 in Albanian and over 700 in English. They want an extension to  
10 31 January 2022. How is this not to the detriment of these four men  
11 who are sitting in jail? When they say "nearing completion,"  
12 Your Honour, they have told you that before. What does that mean? I  
13 mean, nearing completion for most of us, Your Honour, I don't want to  
14 speak for you, is nearing completion, very soon. You know, not  
15 another three months, which is what we're looking at. Another three  
16 months before we even get 700 documents in English which, of course,  
17 we need, and my client gets the thousand documents to be translated  
18 into Albanian.

19 I am shocked that counsel for the Prosecution stands before you  
20 to try to justify the regime that they've employed in this. If they  
21 didn't have enough translators, it was incumbent upon them to hire  
22 more, get more, finish their investigation. We can get to the  
23 investigation, which is still ongoing, as they know. But there has  
24 to be an end to this. There has to be an end as four men wallow in  
25 jail while the Prosecution dithers. And with all due respect, when

1 they say "nearing completion," it's got to be complete.

2 Thank you.

3 JUDGE GUILLOU: Thank you Mr. Kehoe.

4 Mr. Emmerson, please.

5 MR. EMMERSON: I'll take it briefly, but I'm certainly not going  
6 to accept rebukes about misleading the Court or about my tone from  
7 somebody who stood up right the way through these proceedings and  
8 made entirely misrepresentations -- misrepresented factual statements  
9 about when the Prosecution would be ready for trial, about when it  
10 would disclose its material. She's not able -- she's accused me of  
11 misstating the facts but is not able to point to a single example.

12 What I actually said, and I hope there's no dispute about this.  
13 And if there is, kindly, I'd invite her to review the transcript and  
14 correct what she just said. But what I said was that at the 21 July  
15 Status Conference, this Prosecution promised, untruthfully, that it  
16 was at that stage substantially on track to meet a 23 July deadline.

17 That means at a time when it -- two days before, it must have  
18 known it was not substantially on track. That representation was  
19 made to you.

20 So you may not like my tone, she may not like my tone, I don't  
21 much care, frankly, because the tone ultimately is determined by what  
22 is going on here.

23 I understand that with such close attention to the procedural  
24 detail that Your Honour needs to pay to try to keep this case on the  
25 road, it may be difficult to keep a balanced overall perspective on

1 how this proceeding is being perceived. It may be difficult when  
2 you're so closely involved with the detail to understand exactly how  
3 an objective observer would view the way this Prosecution is behaving  
4 and the way they are not, frankly, being restricted, controlled, or  
5 managed.

6 So if there is frustration in the way I put my submissions,  
7 there absolutely should be. It's fully justified. And nothing is  
8 going to change it except some muscularity in terms of controlling  
9 the way the Prosecution behaves.

10 It's an interesting fact here that the only lawyer you've  
11 criticised for taking too long is me. I find that very surprising.

12 JUDGE GUILLOU: I haven't been criticising you because of that.  
13 I mentioned your tone towards me, Mr. Emmerson.

14 MR. EMMERSON: I've not been rude to you at all, other than not  
15 to sit down every time you interrupt me, and I'm not going to because  
16 that's not the sort of advocate I am.

17 JUDGE GUILLOU: Thank you, Mr. Emmerson.

18 Mr. Roberts, please.

19 MR. ROBERTS: Thank you, Your Honour. Just on this issue, one  
20 very brief point, and that's in reply to the last thing that my --  
21 the Prosecution mentioned in relation to the deadline -- the original  
22 deadline for Rule 102(1)(b) disclosure. The deadline of 31 May 2021,  
23 which was originally ordered by Your Honour, was apparently delayed  
24 by the Defence till 31 July because we had asked for categorisation,  
25 as if it was our fault.

1           What we had asked for, and what you had granted, was for the  
2 Prosecution to disclose their 102(1)(b) material in accordance with  
3 the proper interpretation of that provision. But that attempt to  
4 shift the blame and responsibility onto us for delays in proceedings  
5 appears to be somewhat symptomatic of the strategic approach taken by  
6 the Prosecution.

7           There are delays. It has taken a very long time to get to where  
8 we are, which is still a very long way away from the beginning of  
9 trial, so, therefore, it needs to be our fault.

10          Your Honour, disclosure of Rule 102(1)(b) material is the  
11 Prosecution's responsibility. It is not ours. We have tried to help  
12 them, and I will address the specific examples of how we've tried to  
13 help them later, because they don't seem to be able to identify that  
14 method of doing it by themselves, but it's their responsibility.

15          And their attempts to shift that responsibility, that burden  
16 onto us, are inappropriate in these circumstances.

17          Thank you.

18          JUDGE GUILLOU: Thank you, Mr. Roberts.

19          Mr. Ellis, briefly, please.

20          MR. ELLIS: And on the last point made by Mr. Roberts, of  
21 course, that deadline of 31 May of this year was not one that  
22 Your Honour had plucked out of the air. It was the date that the  
23 Prosecution suggested to you, Your Honour, in their submissions F76.  
24 That was the date when the Prosecution said it would be ready to  
25 disclose the Rule 102(1)(b) material. So it's quite clear on whom

1 the delay falls, Your Honour.

2 JUDGE GUILLOU: Thank you, Mr. Ellis.

3 We will now move to the request of the Defence for Mr. Selimi  
4 regarding the need for the SPO to, first, specify in Legal Workflow  
5 which document are translations, revised or lesser redacted version  
6 of previously disclosed materials, or simply have revised metadata;  
7 second, review all documents categorised or linked to Mr. Selimi;  
8 and, third, create "witness entities" in Legal Workflow for all the  
9 witnesses on the SPO's preliminary witness list.

10 Mr. Roberts, you have the floor to present your requests. Thank  
11 you. And, briefly, because you already made very detailed written  
12 submissions, so no need to go in detail about every point, please.  
13 Thank you.

14 MR. ROBERTS: Thank you, Your Honour. I have no intention of  
15 going into any detail, really, beyond what was set out in our  
16 submissions.

17 I've identified exactly what we want. I've identified why we  
18 think we need it. And I've even identified, to help the Prosecution,  
19 how they can do it. I have had the advantage of being involved in  
20 the creation of the Legal Workflow system a very long time ago in a  
21 former life and so, therefore, any assistance I can provide to the  
22 Prosecution, in a constructive manner, is what I'm seeking to do.

23 And we're at the stage now where we really need to do these  
24 things. Legal Workflow is supposed to be a complex system which  
25 assists disclosure, but -- and there are a variety of different ways

1 for using this expression - it's only as good as what you put in it.  
2 And if you don't put the work in at the beginning, and it's the  
3 Prosecution who are in the position to do that, then it exponentially  
4 increases the amount of work that you need to do from the Defence  
5 side and reduces, significantly, the utility of it.

6 So we're now at the stage where I think these three concrete,  
7 achievable and helpful objectives and requests should be something  
8 that the Prosecution would welcome and, hopefully, would be able to  
9 implement effectively and efficiently.

10 I have nothing to add but can certainly respond or reply, if  
11 necessary.

12 Thank you.

13 JUDGE GUILLOU: Thank you, Mr. Roberts.

14 And I note your offer to become a consultant for the SPO on  
15 Legal Workflow today.

16 MR. ROBERTS: For a fee, Your Honour.

17 JUDGE GUILLOU: Before I give the floor to the SPO, I would like  
18 all the Defence teams to indicate if they have anything to add or if  
19 they want to join the request or they can provide any other example  
20 of problems that are mentioned in the request from the Defence from  
21 Mr. Selimi.

22 Mr. Kehoe, please.

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

24 We certainly join the Selimi request in this regard. If I can  
25 just highlight one practical issue that we have had, of course, is



1 going through witness statements. And when a document is identified  
2 by a number, that very, very often doesn't match any number that is  
3 part of any disclosure.

4 So to compound the problem, we'll get a witness statement, and  
5 any document that happened to be shown to the witness may not be  
6 disclosed at the same time and may be part of another disclosure. So  
7 how do you find that document if the numbers don't match? And  
8 sometimes they do, but many, many, many, many times they don't. You  
9 have to go through word searches for these thousands of documents and  
10 try to make an educated guess as to whether or not this document  
11 matches up with what they showed the Prosecution witness when they  
12 took the statement. I know this sounds quite elaborate, but I can --  
13 the folks that are with me are nodding their head because they are  
14 the ones that are doing this.

15 There has to be a better way. And I think what Mr. Roberts is  
16 laying out in Legal Workflow is the methodology we should employ to  
17 get that done.

18 JUDGE GUILLOU: Thank you, Mr. Kehoe.

19 Mr. Emmerson, please.

20 MR. EMMERSON: I've had a chance to discuss with Mr. Roberts  
21 both the submissions that he's put in writing and the submissions  
22 he's made on this issue and, indeed, the submissions that he's going  
23 to make in relation to the disclosure regime that has been posed in  
24 relation to unused material.

25 Subject to listening to what he has to say, I adopt everything,

1 both what he has just said or that he is to say, but I may have one  
2 or two observations to add.

3 JUDGE GUILLOU: Thank you, Mr. Emmerson.

4 Mr. Ellis, please.

5 MR. ELLIS: Yes, thank you, Your Honour. We also adopt that  
6 position.

7 But witness packages, the linking of documents to witness  
8 statements, is a topic about which you have heard from our Defence  
9 team at a number of previous Status Conferences. It is, I'm afraid,  
10 déjà vu all over again. The difference this time is, perhaps, that  
11 we now have the preliminary witness list from the Prosecution.

12 As I understand it, there can now be no objection to creating,  
13 finally, these witness entities on Workflow. It seems to me that  
14 from everything we've heard so far in the case, Your Honour, this  
15 isn't going to happen quickly without a deadline being imposed, and  
16 we would certainly ask Your Honour to do that today. The Prosecution  
17 should be able to ensure that identities are created and, given a  
18 deadline, to actually link the documents to the witnesses.

19 JUDGE GUILLOU: Thank you, Mr. Ellis.

20 Let me turn to the Prosecution. I'd like to hear the SPO on the  
21 requests from Mr. Selimi on these three aspects related to the  
22 Rule 102(1)(b) material linkage. And including, especially, this  
23 issue of the witness package, because as rightly pointed by Mr. Ellis  
24 now, that the preliminary witness list has been filed.

25 This should enable the parties to use Legal Workflow to that

1 end.

2 Madam Prosecutor.

3 MS. LAWSON: Thank you, Your Honour.

4 I would like to start with one factual correction. I referred  
5 to 31 July previously, and the date in question for Rule 102(1) (b)  
6 material was 23 July. We had a separate deadline for the 31st.

7 We certainly welcome the Selimi Defence's offer of constructive  
8 engagement, and we're always happy to have staff or consultants who  
9 are familiar with Legal Workflow.

10 However, on that note, many of the specific matters identified  
11 in the Selimi submissions had not been brought to our attention  
12 *inter partes*. It has been repeatedly emphasised that doing so would  
13 allow certain queries to be addressed in a more efficient manner.  
14 And, in fact, Your Honour has previously encouraged the parties to  
15 try to address precisely these type of disclosure queries in an  
16 *inter partes* fashion.

17 The first issue identified by the Selimi Defence related to how  
18 redacted or revised items are associated with each other. Revised or  
19 lesser redacted versions of documents maintain the exact same core  
20 ERN number. Documents are searchable by ERN in Legal Workflow. So  
21 any time that the Defence searches the core ERN, all revised and  
22 redacted versions will be retrieved together with associated  
23 metadata, such as the date upon which they were disclosed, and that  
24 allows easy identification of the most recent version.

25 Moreover, on the same day that Disclosure Package 82 was

1 released, and this is the package specifically mentioned in the  
2 Defence's written submissions, the SPO sent the Defence an e-mail  
3 explaining that the disclosure package in question contained revised  
4 and lesser redacted versions.

5 Similarly, with respect to translations. The SPO consistently  
6 identifies translations as such using the "is translation" field in  
7 Legal Workflow, and we also consistently use the "relations" function  
8 in Legal Workflow to associate translations with their originals.

9 The Selimi Defence has identified an instance in which that  
10 appears not to be done, and we will review and, as necessary, correct  
11 the relevant metadata for that item.

12 The document in question is already both identified on its face  
13 as being a translation, and the -ET addition to the ERN clearly  
14 indicates it as a translation.

15 We note for the benefit of all parties that we are also already  
16 conducting our own review of such metadata to ensure that all linking  
17 of translations has been properly implemented.

18 With regard to the subcategorisation of materials. The Selimi  
19 Defence identified six documents for which it does not understand the  
20 categorisations indicated, and it seeks to extrapolate from there  
21 that the categorisations provided are a mere lottery. Again, that  
22 type of hyperbolic language is misplaced. We certainly don't exclude  
23 the possibility that there may be a small number of errors in an  
24 exercise that involved manual categorisation of in excess of 11.000  
25 items, and we will review the categorisations identified by the

1 Selimi Defence. However, the accused were not only tagged where they  
2 are specifically named in a particular document. An item of evidence  
3 may relate to an accused or to their responsibility without  
4 specifically identifying them by name. And if the SPO were to have  
5 confined itself to only tagging an accused where they were  
6 specifically named, that type of subcategorisation would have added  
7 no value to what could be achieved by doing a simple word search on  
8 the accused's name in Legal Workflow without any categorisation at  
9 all.

10 It's, therefore, not actually apparent from the Selimi Defence  
11 filing that there was an error in the categorisation of certain of  
12 the documents that they have identified. But we will, nonetheless,  
13 review them, as I indicated.

14 Finally, in relation to the linking of items to witnesses. To  
15 date, subject only to applicable protective measures, the pseudonym  
16 of the relevant witness is included in the descriptions of relevant  
17 statements and testimony. And that information is searchable through  
18 export of a CSV or Excel sheet.

19 Exhibits shown to or used with a witness during their SPO  
20 interviews are also, in many instances, disclosed together and,  
21 again, with the relevant witness pseudonym indicated in the  
22 description. In addition, in the e-mails which the SPO provides to  
23 the Defence following release of disclosure packages, it is specified  
24 which witnesses the disclosure package relates to.

25 However, for certain items - for example, where an exhibit has

1 been used with multiple witnesses, or where it happens to have been  
2 shown to a particular witness but doesn't specifically relate to them  
3 as such - we do not consider that including the pseudonym in the  
4 description is an appropriate solution. The ERNs that are referenced  
5 in the transcripts are searchable in Legal Workflow.

6 But apart from all of that, as previously indicated, and as also  
7 reflected in the Krasniqi Defence filing, achieving linking of  
8 materials to witnesses through the relations in Legal Workflow is  
9 something that has been part of *inter partes* discussions and it is  
10 something that the SPO is now advancing.

11 Following the filing of the preliminary witness list, indeed, we  
12 will be working with the relevant sections of the Registry to create  
13 witness entities in Legal Workflow, and then to arrange for the prior  
14 statements and associated exhibits to be linked to those entities.  
15 This will only be subject to applicable protective measures, which  
16 may require that certain exhibits, which could be identifying, not be  
17 linked to a witness at this time.

18 There were some technical difficulties encountered in creating  
19 the witness entities in other cases, but work has been done to try  
20 and resolve that. And the linking is something which we will work on  
21 as a matter of priority in the coming weeks.

22 Finally, we confirm that we would be happy to participate in a  
23 working forum of the type proposed in the Krasniqi Defence's written  
24 submissions.

25 Thank you.

1 JUDGE GUILLOU: Thank you, Madam Prosecutor.

2 Before I give the floor back to the Defence, are you in a  
3 position to give a timeline for the different proposals that you made  
4 to respond to the Defence request? Thank you. Or timelines, plural,  
5 maybe.

6 MS. LAWSON: Yes, Your Honour. The witness entities have to  
7 each be created manually, individually, and the relevant relations to  
8 evidentiary items then have to be made. We also have to conduct  
9 careful checks to ensure that delayed disclosure of witnesses, as I  
10 mentioned, material which may be identifying, to ensure that that is  
11 not linked.

12 It is something which takes a degree of time, but we would  
13 anticipate being able to complete it by the middle of December.

14 Thank you.

15 JUDGE GUILLOU: Thank you, Madam Prosecutor.

16 I turn to the Defence. Maybe, Mr. Roberts, because you filed  
17 the request.

18 MR. ROBERTS: Thank you, Your Honour. Very, very briefly.

19 So it basically seemed to be a no, no, and ultimately a yes to  
20 my three requests, from what I could gather. We'll see what happens  
21 with the review of the documents. We stand by, obviously, what was  
22 set out in our written submissions. The system does allow for a more  
23 easy to manage way of linking redacted versions, previous versions,  
24 and translations. Some, obviously, as a matter of whether mistakes  
25 were made. Other times, it actually needs to be a systematic

1 approach to the SPO to ensure that that's done properly. But we will  
2 constructively engage with the SPO, now this issue is before you, and  
3 try and make sure that that does happen in the future.

4 Just on the last point in relation to the disclosure and  
5 creation of witness entities. Obviously protected witnesses is more  
6 of an issue. As I believe the Prosecution mentioned earlier, there  
7 were 210 or 220, I can't remember, non-protected entities or  
8 witnesses on their list, so I would imagine there's quite a lot that  
9 they could be getting on with already without having to worry about  
10 the protected witnesses.

11 And on that issue, we shouldn't have to wait until mid-December  
12 until we get anything. One would presume, and I'm sure the  
13 Prosecution, if they're able to do this, would be willing to do so,  
14 should be able to disclose those entities on a rolling basis. And,  
15 obviously, the earlier and the more -- the earlier that's done and  
16 that we can make use of that material, the better for us.

17 Thank you.

18 JUDGE GUILLOU: Thank you, Mr. Roberts.

19 Briefly, Madam Prosecutor, on this specific point.

20 MS. LAWSON: On this specific point, and only to express  
21 agreement with the Selimi Defence. That is, indeed, how we plan to  
22 go about the work. We will do it as much as we can on a rolling  
23 basis, and we are going to prioritise the witnesses for which there  
24 is not a delayed disclosure issue.

25 Thank you.



1 JUDGE GUILLOU: Thank you, Madam Prosecutor.

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

4 I remind the parties that on 14 October 2021, the SPO requested  
5 an extension of time limit for, first, the Rule 102(3) request  
6 submitted by Mr. Krasniqi on 7 October 2021; and, second, the  
7 materiality review and disclosure of any future Defence request for  
8 Rule 102(3) material.

9 On 18 October 2021, I suspended the SPO deadlines in relation to  
10 the Krasniqi request and those related to the materiality review and  
11 disclosure of any future Defence requests for Rule 102(3) material  
12 until I issue a decision on the request.

13 I ordered the Defence and Victims' Counsel to make observation  
14 on the SPO request, if they so choose, ahead of this hearing.

15 I note from the SPO's submissions that it reiterates its request  
16 for an extension of the deadline for materiality and protective  
17 measures reviews in relation to the Krasniqi request as well as a  
18 general extension applicable to all Rule 102(3) deadlines.

19 With respect to these three requests from the Veseli Defence  
20 made between 16 and 22 October 2021, the SPO additionally requests an  
21 extension of the deadline for materiality and protective measures  
22 reviews until 1 December and 17 December 2021, respectively.

23 I also note that the Defence for Mr. Selimi requests that  
24 Rule 102(3) material be disclosed in its entirety; while the Defence  
25 for Mr. Krasniqi requests that the 5 November 2021 deadline for a

1 Defence indication in relation to Rule 102(3) material also be  
2 extended.

3 I inform the parties that I intend to issue an oral order at the  
4 end of this hearing on this topic.

5 And on that note, we will start with the Prosecution.

6 Madam Prosecutor.

7 MS. LAWSON: As indicated in our written submissions, the SPO  
8 has so far received 15 Rule 102(3) requests. Ten of those have been  
9 processed to date. The tenth one, that of the Selimi Defence, was  
10 disclosed a short time ago today, Disclosure Package 108, and a  
11 relative protective measures application has also been filed,  
12 filing 552.

13 Of the five requests which are now currently pending, four of  
14 them have been received within the last two weeks, and those four  
15 requests relate to 16.154 items.

16 The SPO has also taken note that the Krasniqi Defence indicates  
17 it is preparing further Rule 102(3) requests, which will be of a  
18 similar or larger size to that of their most recent request for 8.000  
19 items.

20 It is also noted that the Selimi Defence anticipates making a  
21 request for almost 40.000 items, with additional requests to follow.

22 Although the deadlines for processing are currently suspended,  
23 the SPO has continued to work on the requested disclosures. We  
24 remain on track to process the Krasniqi request for 5.945 items by  
25 the dates previously indicated.

1 With respect to the Selimi Defence's written submissions. There  
2 are, unfortunately, a number of sweeping and unsubstantiated  
3 statements in relation to the Rule 102(3) process generally. The SPO  
4 does not dispute that the process envisaged by the rules is a  
5 cumbersome, multi-stage one, which places a significant burden on all  
6 of the parties. However, to date the Selimi Defence has effectively  
7 not engaged in this process, despite having had the Rule 102(3)  
8 notice for almost three months. That Defence team has made only one  
9 request for 123 items.

10 Now, with a week left before 5 November deadline for the making  
11 of requests, the Selimi Defence indicate that they will be seeking  
12 almost 40.000 items. Absolutely no explanation is provided for why  
13 some of those items could not have been requested sooner to  
14 facilitate processing on a rolling basis, as was mentioned at the  
15 last Status Conference.

16 It is inevitably the case that if a request for two-thirds or  
17 more of the items on the notice is filed or submitted *inter partes* in  
18 the final week in which requests are permitted, a considerable amount  
19 of additional time will be required to process it.

20 With respect to the recipients of Rule 102(3) disclosures.  
21 Unless other teams are copied on an e-mail request, or it's otherwise  
22 indicated to be a joint request, disclosures are released only to the  
23 requesting team. This is a matter which the SPO advised the Defence  
24 of back in February 2021, and we more recently confirmed it again to  
25 the Selimi Defence.

1           So far we have received only one joint Rule 102(3) request, and  
2           that was made back in February. The SPO would be happy to receive  
3           joint requests which have been coordinated amongst the Defence teams,  
4           and we do invite the Defence to do so. However, in the absence of  
5           that, we will continue to provide the requested materials to the  
6           requesting parties.

7           To entirely upend the applicable disclosure regime at this stage  
8           and simply request, as the Selimi Defence has done, that the SPO now  
9           disclose all of the listed materials to all of the Defence teams,  
10          regardless of their materiality to Defence preparations, is belated  
11          and fails to recognise the nature of the Rule 102(3) process.

12          It's fundamentally different from the Rule 102(1)(b) and 103  
13          processes, where there is a positive obligation on the Prosecution.  
14          With the Rule 102(3) materials, it is for the Defence teams to select  
15          items that are material to their preparations. The fact that  
16          thousands of items have already been disclosed pursuant to this rule,  
17          and many more have been requested, shows that this is possible.

18          Moreover, the SPO has spent approximately nine months providing  
19          Defence teams with detailed notice and processing the requests  
20          received to date.

21          In the circumstances, our request at this stage is for the  
22          Defence teams to make all of their remaining requests for items from  
23          the existing Rule 102(3) notice by the applicable deadline of  
24          5 November. The SPO will then be in a position to assess those  
25          requests and the time necessary for processing them.

1 We note that the Krasniqi Defence team has sought an extension  
2 of that deadline, and we do not oppose that request should  
3 Your Honour consider it necessary. However, we ask that a deadline  
4 be imposed so that we have a firm date, we know the volume of  
5 materials that is sought, and we can assess the overall scope and  
6 make relevant submissions on timeline.

7 We also request that in the interim, the processing deadlines do  
8 remain suspended but with the understanding that we will continue to  
9 work through the requests received as efficiently as we can.

10 Thank you.

11 JUDGE GUILLOU: Thank you, Madam Prosecutor.

12 Mr. Kehoe, please.

13 MR. KEHOE: Yes, yes, Your Honour. Once again, I'm stunned.

14 The Prosecution wants to hold us to a deadline for requesting  
15 102(3) material when they haven't made all the prior disclosures on  
16 102(1)(b), which is a remarkable position to articulate in a  
17 courtroom.

18 They're in here asking you to delay a disclosure, at least of  
19 some of the 102(1)(b) documentation, and the translations, to the end  
20 of July [sic], but make sure that you tow the line on the Defence and  
21 make sure that they comply with the applicable timeline. It's  
22 ridiculous.

23 I mean, we got witnesses -- they took witness statements, Judge,  
24 less than two weeks ago that we received in this package. We're  
25 supposed to get more. We don't know what's in the 732 documents to

1 be translated into English. How are we supposed to give any type of  
2 notice under 102(3) as opposed to setting out a deadline?

3 We respectfully ask the Court to hold the deadline in abeyance  
4 until we get this discovery, get these disclosures in order, and we  
5 can have a rational conversation about how long it's going to take to  
6 go through this material and what type of notices do you anticipate.  
7 And we'll go through it as quickly as possible. We still don't know  
8 how much material we're going to get, so how in heaven's name could  
9 we possibly give you a fulsome or complete 102(3) disclosure, Judge?

10 I'm just being as perfectly honest as an officer of the court as  
11 to what we're capable of doing. And for the Prosecution to say,  
12 well, we should tow the line and abide by the deadlines, it's just  
13 inconceivable. If we're going to go through this rationally, and  
14 they're going to continue to delay the disclosure process, then there  
15 has to be a concomitant holding in abeyance of documents requested  
16 under 103(b). (1)(b) -- no, excuse me, 102(3). It's just a logical  
17 sequence of how it has to go, and certainly that's envisaged by the  
18 rules.

19 So, at this point, Judge, because of everything we have to do,  
20 because we don't know it, we ask you that you hold that deadline in  
21 abeyance until Your Honour can have a more fulsome discussion and we  
22 can attempt to educate you as to what's involved once we see the  
23 stuff.

24 JUDGE GUILLOU: Thank you, Mr. Kehoe.

25 Mr. Emmerson, please.

1 MR. EMMERSON: Can I start from the basics here, because  
2 obviously this category of evidence is a -- let's call it a database  
3 from which the Prosecution has selected evidence that it wishes to  
4 rely upon at trial or that it considers may be helpful to the  
5 Defence.

6 Well, as a general rule and in general experience it's never  
7 wise for a Court to rely on the Prosecution to decide what might be  
8 of assistance to the Defence, because they don't know what the  
9 Defence is, they don't know what issues may be relevant to the  
10 Defence, and above all they're likely to take the narrowest possible  
11 view of material that may be of assistance. It's just the way the  
12 world works.

13 Now, in most jurisdictions, the Prosecution nowadays are  
14 required simply to disclose their unused material so that the defence  
15 has access to the entirety of it, can read it, and see what of that  
16 material may, in fact, be of more use to them than the Prosecution  
17 first envisaged. That is, in the end, what's going to have to happen  
18 here.

19 However -- and I'll go through the mechanics and the details in  
20 just a moment, but I'm going to suggest to you at the end that  
21 Mr. Roberts is right, that the only way for us to solve this is we  
22 just make an application now, or by the 5th or whenever you like, for  
23 the whole lot, and let's see how long the Prosecution takes to do --  
24 estimate that's going to take.

25 Because why do I say that? Just to be clear, we, first of all,

1 received the list itself. Since receiving the list, we have made  
2 requests for 7.785 documents on 21 August, 2.202 on 16 October,  
3 2.805 -- 855 on 19 October, 26.892 on 22 October. Those were based  
4 on a very simple criteria, which is is there anything on the actual  
5 face of that inadequate index that was first exposed to enable us to  
6 identify that that might relate to our client. So it's a very, very  
7 superficial process.

8 Out of a total number of requests, which, as you heard, go into  
9 many, many thousands of documents, we've so far received 19.

10 Now, on 25 October, so just the other day, the SPO finally  
11 provided an amended notice with more complete descriptions but only  
12 for 24.842, to be precise, entries on the list. And as matters  
13 stand, if we were straitjacketing within this, frankly, crazy  
14 procedure, we would have to go through those 25.000 summaries and  
15 make a decision, on the hoof, based on the summary, as to whether or  
16 not there might be something in it that we require and notify that by  
17 Monday, is it, or Tuesday. I mean, that's obviously unreasonable.

18 But it leads us on, really, to a general question: Why is there  
19 a deadline at all? Why are there limits at all?

20 First of all, why is there a deadline? It's obvious that what  
21 is relevant to our Defence is going to change over time. It's going  
22 to change with the service of the pre-trial brief. It's going to  
23 change with the service of 109. It's going to change with the late  
24 disclosure that may come in January. But, above all, it's going to  
25 change during our investigation, which is now -- and let me make it



1 clear. I don't think any counsel will disagree here. There is no  
2 prospect of us starting a trial in 2022. Absolutely none at all.  
3 We're looking at the very earliest possible date maybe to get opening  
4 speeches in before December.

5 But realistically, the vast amounts of material -- there are  
6 300-odd Prosecution viva voce witnesses. Obviously, I mean, just  
7 looking at how long other cases have taken, it is obvious that the  
8 process of investigating that case is going to take at least a year  
9 for the Defence.

10 In the meantime, as we are investigating -- because there's  
11 no -- this is why what I was saying earlier is relevant and wasn't to  
12 be swept aside in, perhaps, the way summarily it may have seemed to  
13 be. If there was an actual case against certain of the accused, or  
14 let's take my client, if there was a definable case, we wouldn't need  
15 to be worrying about 185 or 285 of the witnesses, we would just be  
16 focusing on a few of them. And that's the way it's been with every  
17 other international criminal prosecution. The crime base evidence is  
18 usually agreed, and there -- or to a large extent, and there will  
19 usually be a number of key witnesses who point to a criminal  
20 responsibility of the accused. There is none of that.

21 So far from making our job easier, it makes our job much, much  
22 harder. The consequence is, of course, what's in that big repository  
23 is -- its relevance may pop up at any given time. We come across a  
24 witness, he says I was such and such, I was in so-and-so place, and I  
25 gave an interview to so-and-so. We might have to look at the

1 database.

2 So, obviously, 5 November is ludicrous. Even 5 December,  
3 5 January, or 5 November next year is ludicrous. Because what is  
4 relevant and, therefore, essential for fairness, and the fairness of  
5 the trial, is that we have access to the same body of material as the  
6 Prosecution. It's basic equality of arms. They have made their  
7 selection from that bulk of material. We now make our selection as  
8 well. So we need to be able to read all of that material if we want  
9 to.

10 And it's not up to the Prosecution to make decisions about which  
11 parts of it they're prepared to give to us and which they're not, or  
12 requiring us to make the requests based on an entirely unintelligible  
13 index, or starting to give us 19 items out of requests for 20.000.

14 No. It's very simple, and I think I'm supported in this by all  
15 Defence counsel, the only way you can deal with this is to just say:  
16 Okay, enough. They disclose that whole database. And if it means  
17 they've got to redact some stuff, get on and redact it. Do your job.  
18 They should have done all of that before they arrested these men.  
19 All of that preparation was all foreseeable.

20 And, of course, during the trial we need that database as well.  
21 A witness might come in, he might say, "Well, I was in" -- I don't  
22 know, "some part of Albania at a certain time and I did" -- and  
23 we'll want to search the database. We're absolutely entitled to the  
24 whole lot of it. There is no reason whatsoever why we shouldn't have  
25 it. Fairness demands that we should have it. And, therefore, I

1 think I speak for all of the Defence in saying, we must have it.

2 So let's stop messing around with them giving descriptions and  
3 us making requests and dates and so on. Just hand over the whole  
4 database so that a fair trial can be had.

5 If they're saying we can't do that because we haven't read it,  
6 then that in itself shows a dereliction of duty. If they have read  
7 it and they do know what's in it, then they ought very quickly to be  
8 able to disclose it. And they ought to have anticipated the need for  
9 any protective measures or redactions necessary in order to do that.

10 But the simple fact is that was work that should have been done  
11 before they arrested these men. All of this should have been done  
12 before they arrested these men. It's no good saying now, "Oh, it's  
13 going to take forever for us to do that and we haven't got the  
14 resources."

15 And, I'm sorry, I'm going to apologise to you if you don't like  
16 the tone, the way that I address the Court. We're being criticised,  
17 all of us, by the Prosecution for using hyperbole. Hyperbole means  
18 exaggeration, overstating the case. What we're saying is only  
19 hyperbole if the truth does not match up with it.

20 And I'm sure whatever you say or don't say in public, you are  
21 shocked and dismayed, you must be, by the way the Prosecution is  
22 behaving. We are rather disappointed that you haven't said anything  
23 on public in order to bring the Prosecution to book; in other words,  
24 to reprimand them and to expose this chaos.

25 But be that as it may, I take exception to the tone of counsel

1 opposite. I take exception to the complete complacency to the fact  
2 that these men are in custody, which characterises every single word  
3 that falls from her mouth. The failure to acknowledge and apologise  
4 or express the slightest remorse for misleading the Court and the  
5 accused into detaining these men on a false basis. I find the -- I  
6 personally find the emotionless tone of an automaton rather an  
7 inappropriate way to deal with a situation where she stands there as  
8 the representative of an organisation which is failing in an -- to an  
9 extraordinary degree, not fit for purpose.

10 And to stand there and simply read things out as though they  
11 were -- this was a normal situation, and then criticise us for  
12 hyperbole, I'm afraid -- she's a good spokesman in the sense that  
13 there's not a crack in the armour. There's no sign of compassion for  
14 these men. There's no sign of any real need for justice or urgency.  
15 Just excuses. And the moment it's taken beyond that, she complains  
16 about the tone of others.

17 She's here to make excuses for the inexcusable. To defend the  
18 indefensible. So I do take exception to her tone in that respect.

19 As far as these documents are concerned, the solution, and the  
20 only workable one, is for us now formally, and I'll do it here in  
21 court, I request all of those documents, and I'm within my deadline.

22 JUDGE GUILLOU: Thank you, Mr. Emmerson.

23 I see that it is 4.17. I guess the interpreters would need a  
24 break.

25 [Trial Panel and Court Officer confer]

1 JUDGE GUILLOU: I am told that we need to have a break. It is  
2 4.17. We will reconvene at 4.45, so in 28 minutes.

3 The hearing is adjourned.

4 --- Recess taken at 4.18 p.m.

5 --- On resuming at 4.46 p.m.

6 JUDGE GUILLOU: So I think we heard from two Defence teams for  
7 the Rule 102(3) material, and I will now give the floor to  
8 Mr. Roberts, please.

9 MR. ROBERTS: Thank you, Your Honour.

10 Fortunately, I fully support and second, obviously, what my  
11 colleagues Mr. Kehoe and Mr. Emmerson have already said. Our  
12 position is set out quite clearly in our written submissions. We do  
13 think that the only logical, fair, sensible approach is now to  
14 disclose to us every single one of the 68.000 documents on the list.

15 I have three very brief points to make in relation to this.

16 Firstly, I think it's important to recall - and this is my  
17 understanding, and I am sure the Prosecution will correct me if I'm  
18 wrong - but this isn't their entire evidentiary holdings we're asking  
19 for. They have already made a selection down from their initial  
20 estimate of 100.000 down to about 68.000. So they've already made a  
21 determination, a *prima facie* determination but a determination that  
22 those 68.000 documents are potentially relevant for the case,  
23 obviously having seen the content of the documents as well. So on  
24 that basis alone, I think we have a completely justified request in  
25 order to see all of those documents.

1           Now, secondly, the type of case that we have here is not the  
2 same as the other cases at this Tribunal. The two other cases at  
3 this Tribunal, which you are obviously far more familiar with than I  
4 am, being the Pre-Trial Judge in both, concern a contempt case and  
5 single accused, single crime site location case. So the Rule 102(3)  
6 process that was followed in those cases obviously is far, far, far  
7 more limited and more restricted than the cases -- than the documents  
8 and the process in this case.

9           Now, my understanding - and again this is only from public  
10 information - is that in the Mustafa case, it was around 417 items on  
11 the Rule 102(3) list, and in Gucati and Haradinaj, 200 or so. Again,  
12 I don't know the precise figures. This is from public filings.  
13 Total of about 600 items across the two cases. We're 68.000  
14 documents across the two cases, less than 1 per cent of the total  
15 volume of ours.

16           And the reason we have such a large number of documents is the  
17 way the Prosecution has pled its case. It is a very, very  
18 wide-ranging alleged JCE with a wide variety of different alleged  
19 perpetrators, be them members or tools. To be honest, we don't even  
20 know, and the Prosecution has not been required to plead.

21           So in consequence or as a consequence of the case that they have  
22 pled, that is why we say that all these documents potentially could  
23 be relevant to our case, and we should not be forced to make a choice  
24 and self-select documents that we are not allowed to see based on  
25 information that we don't have.

1           The only sensible way to move this forward - and I genuinely am  
2 trying to be as constructive as possible in this scenario - is to  
3 give us all the documents and then we can search for them and work  
4 out what we want. And, obviously, my colleagues have explained how  
5 that will be done at different stages of the process.

6           And, obviously, that doesn't mean that they have to give us  
7 every one straightaway. They can, for a start, give us every single  
8 one of the documents for which they do not require protective  
9 measures, they do not require redactions; for example, the first  
10 39.000, to give a figure from our filing. And then they can focus on  
11 the protective measures and redactions, and they can focus on whether  
12 there needs to be those protective measures and redactions, because  
13 at the moment we're in a situation where, if one team requests a  
14 document, then it's entirely likely that the Prosecution will need to  
15 seek redactions or protective measures for that document vis-à-vis  
16 the requesting team. The other teams are not allowed to know,  
17 obviously, on the basis that we have agreed so far, whether that  
18 document is redacted -- whether that document has been requested or  
19 not.

20           So, for example, the Thaci team requests a document, we go  
21 through that entire process. A month later, maybe we want that same  
22 document, but because we were not part of the initial proceedings,  
23 we, therefore, have to go through the whole process again. It seems  
24 to be a very flawed and complicated way of achieving the result that  
25 we want, which is to get hold of the information we need as

1 effectively and efficiently as possible.

2 And just to finish, I was amused -- I am often amused, but I was  
3 particularly amused that the Prosecution stated that we were somehow  
4 not following the proper procedure by waiting until the last minute  
5 to request the 39.000 documents, and that if we can just asked for  
6 some earlier, it all would have been fine, because we did ask for 123  
7 documents on 24 September, and we got them about two hours ago.

8 And to follow-up what Mr. Ellis has already said, it may well be  
9 that you need to schedule a Status Conference every day because that  
10 seems to be the only way that we get clear and concrete responses to  
11 our disclosure requests. The reality was that we did have a large  
12 number of documents we had identified as being relevant, but if the  
13 Prosecution is unable to even deal with the requests that have been  
14 submitted, what would have been the point of us submitting a further  
15 request at the same time?

16 The reality is the only way to deal with this, and, obviously,  
17 to second what Mr. Emmerson has said, is to give us all these  
18 documents and to do so as expeditiously as possible. Thank you.

19 JUDGE GUILLOU: Thank you, Mr. Roberts.

20 Mr. Ellis, please.

21 MR. ELLIS: Your Honour, we have been trying to make our  
22 requests on a rolling basis, but we have also now reached the point  
23 where we agree that the most practical solution is simply for the  
24 Prosecution to give us everything on the Rule 102(3) list.

25 In addition to the points that have already been made by others,



1 two things only. One, it seems to us that the process may have been  
2 just about working when Defence teams were asking for a couple  
3 hundred documents, but it was as soon as we made a request for almost  
4 6.000 documents that the Prosecution had to ask Your Honour for a  
5 more general series of extensions.

6 But that request for 6.000 documents, of course, is a drop in  
7 the ocean when you look at an overall list of 68.000 documents. It's  
8 less than 10 per cent. And the reality is that there are -- if we  
9 move forwards, as we are set to move at the moment, there are going  
10 to be an increasing number of these requests for thousands of  
11 documents.

12 We've seen in writing that the Selimi Defence have a request  
13 prepared for 39.000 documents. There will be similar large requests,  
14 I'm sure, from all Defence teams. And if a request for 6.000  
15 documents is needing extensions, how long will it take to respond to  
16 the 39.000? How long is it going to take when all the Defence teams  
17 start asking for up to 50, 60.000 documents? In our submission, the  
18 system is going to increasingly fall apart as we move forwards.

19 The second point, Your Honour, is at the last Status Conference  
20 we identified the link between the need to review the Prosecution's  
21 disclosure and our ability to make requests from the list, and I  
22 think Your Honour accepted that proposition in extending our deadline  
23 in an oral order at the end of the last Status Conference.

24 Of course, that remains the position. And that would mean that  
25 if the Prosecution is not finishing its 102(1)(b) disclosure until

1 the end of January, then the deadline for any Defence requests for  
2 102(3) would then have to go back into February sometime. And with  
3 rolling requests being made all the time up to that point, we are all  
4 going to be stuck here, litigating Rule 102(3) requests for the next  
5 period of months, Your Honour. And in our submission, this is just  
6 going to suck increasing time and resources out of all of the parties  
7 and slow proceedings down.

8 The time has come to just cut through this and say the Defence  
9 teams want everything on the list. And, otherwise, we are all going  
10 to get bogged down and slowed down in this matter.

11 JUDGE GUILLOU: Thank you, Mr. Ellis.

12 Madam Prosecutor.

13 MS. LAWSON: Thank you, Your Honour.

14 The Veseli Defence team raised the issue of foreseeability, and  
15 certain of the teams have now requested that all items on the notice  
16 be disclosed.

17 It's certainly the case that the SPO has been aware that a large  
18 volume of materials would be listed under Rule 102(3) notice, but  
19 that does not assist in the time required for processing the requests  
20 and it does not equate to foreseeability.

21 First, it doesn't take account of the fact that under the  
22 applicable framework the SPO is obliged to provide notice, very  
23 broadly and with very little discretion, whereas the Defence are then  
24 to select pertinent items from the notice which are material to their  
25 preparation. The framework under the Rule 102(3) regime requires

1 disclosure of items which are deemed by the Defence to be material to  
2 their preparation.

3 A request for everything on the list is an acknowledgement, an  
4 express acknowledgement by some of the teams, that this is not being  
5 done. They are simply requesting everything without any assessment  
6 as to materiality, and it is a misuse of the process. As Your Honour  
7 previously indicated in the Framework Decision, requests should focus  
8 on what is truly material to the case.

9 And, second, processing depends on the concrete requests which  
10 are made by the Defence. It depends on the concrete redaction regime  
11 that's in place. It depends on knowing the concrete protective  
12 measures which have been granted. It depends on up-to-date security  
13 assessments for hundreds if not thousands of individuals. It depends  
14 on a page-by-page review of requested items, and it requires the  
15 drafting of specific materiality and protective measures requests.  
16 These are things which could not have been done in the abstract or in  
17 the absence of concrete requests.

18 As I previously indicated, we don't oppose an extension to the  
19 Defence for making Rule 102(3) requests should they require it and  
20 should it be deemed necessary, but we do request there be a deadline  
21 so that the volume of what needs to be further reviewed, processed,  
22 and disclosed at this time is known.

23 We accept that what the Defence consider material to their  
24 preparation may well change. However, what they consider material at  
25 this time should be requested and should be done in accordance with

1 the framework and in accordance with an applicable deadline. Thank  
2 you.

3 JUDGE GUILLOU: Thank you, Madam Prosecutor.

4 Yes, Mr. Kehoe. No, you don't need to talk if you don't want  
5 to.

6 Mr. Emmerson, please.

7 MR. EMMERSON: No, I just wanted to reiterate. This is not just  
8 a request made on the grounds that the current regime is unworkable.  
9 We've asked for tens of thousands of documents. We've had a handful.  
10 It's a principled request, and I'm asking you to rule upon it, which  
11 is supported not by some but by all Defence teams, which is what is  
12 known as the common pool principle. And it's an essential foundation  
13 of the equality of arms required by Article 6 that both sides should  
14 have the same pool of material to look into and see whether or not --  
15 it has to satisfy the criterion of relevance. But all of this  
16 material, by definition, does because the Prosecution has categorised  
17 it as relevant.

18 And we ought to be able to look at all of it in whatever form we  
19 want, not because we can't be bothered to make requests. We've made  
20 requests. We've tried to make the system work. But we will, as  
21 counsel Mr. Ellis has pointed out, be engaged in satellite litigation  
22 until the end of next year on these issues if it's dealt with in that  
23 way.

24 But it's not just a question of practicability. There's nothing  
25 in the rules that says that a common pool principle should not apply.

1 At the moment in the way in which the Prosecution has framed its  
2 case - and I can take that only from the generality of the  
3 indictment, the material put before you at the outset, but more  
4 recently the list of witnesses that they have proposed to call -  
5 everything is relevant.

6 [REDACTED] Pursuant to instruction from Pre-Trial Judge.

7 [REDACTED] Pursuant to instruction from Pre-Trial Judge.

8 [REDACTED] Pursuant to instruction from Pre-Trial Judge.

9 [REDACTED] Pursuant to instruction from Pre-Trial Judge.

10 [REDACTED] Pursuant to instruction from Pre-Trial Judge.

11 [REDACTED] Pursuant to instruction from Pre-Trial Judge.

12 [REDACTED] Pursuant to instruction from Pre-Trial Judge.

13 [REDACTED] Pursuant to instruction from Pre-Trial Judge.

14 [REDACTED] Pursuant to instruction from Pre-Trial Judge.

15 [REDACTED] Pursuant to instruction from Pre-Trial Judge.

16 [REDACTED] Pursuant to instruction from Pre-Trial Judge.

17 [REDACTED] Pursuant to instruction from Pre-Trial Judge.

18 [REDACTED] Pursuant to instruction from Pre-Trial Judge

19 [REDACTED] Pursuant to instruction from Pre-Trial Judge

20 [REDACTED] Pursuant to instruction from Pre-Trial Judge.

21 [REDACTED] Pursuant to instruction from Pre-Trial Judge.

22 JUDGE GUILLOU: Do you need to present this example now?

23 MR. EMMERSON: I need to give you an example of how wide-ranging  
24 the evidence dump on the Defence is in order to explain why it is we  
25 need access to all this material.

1 JUDGE GUILLOU: Madam Court Officer, can we go into private  
2 session, please.

3 MS. LAWSON: And, Your Honour, if I may, we would request a  
4 redaction, please, of the relevant portion of the transcript.

5 [Private session]

6 [Private session text removed]

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24 [Open session]

25 THE COURT OFFICER: Your Honour, we are now back in public

1 session.

2 JUDGE GUILLOU: Thank you very much.

3 Let us now move to the Rule 102(3) material.

4 I would like to know whether there remains any exculpatory  
5 evidence in the SPO's custody, control, or actual knowledge that must  
6 be disclosed to the Defence pursuant to Rule 103. In this regard, I  
7 note the SPO's submission that since the last Status Conference,  
8 three packages of potentially exculpatory items have been disclosed  
9 and no protective measure requests for such material is imminent.

10 Madam Prosecutor.

11 MS. LAWSON: Yes, thank you, Your Honour. You've accurately  
12 summarised the position.

13 We are continuing to disclose potentially exculpatory items on a  
14 rolling basis as they are identified. That review does remain  
15 ongoing, and outstanding items are being worked through  
16 systematically.

17 In addition to the three packages you mentioned which have  
18 already been disclosed, two further packages are being processed and  
19 are expected to be disclosed within the coming week. No protective  
20 measures request is currently imminent. Thank you.

21 JUDGE GUILLOU: Thank you.

22 Mr. Kehoe, please.

23 MR. KEHOE: Yes, Your Honour. I want to be very clear with the  
24 Prosecution. Is it the Prosecution's position that they have  
25 disclosed all witness statements that have exculpatory material?

1 That's the question. And exculpatory material in this case is  
2 witnesses such as internationals have talked about the KLA being in  
3 disarray, about the KLA being disorganised, that the command and  
4 control was at a zone commander level.

5 Witness statements along those lines, along those specific  
6 lines, I ask the Court to ask the Prosecutor if the Prosecutor has  
7 disclosed all of those witness statements that the Prosecutor has  
8 taken. On that very specific point, I ask the Court to turn to the  
9 Prosecutor and ask that question.

10 JUDGE GUILLOU: I will give the floor to the Prosecution to  
11 respond to your question after I hear all the Defence teams.

12 Mr. Emmerson, on the Rule 102(3) material, please.

13 MR. EMMERSON: I'm just going to say this: I am aware of a  
14 number of people who have given exculpatory statements to the  
15 Prosecution, and I'm aware by a variety of different means, which are  
16 clearly and unequivocally exculpatory, and they have never surfaced  
17 in the disclosure exercise. I put that on record now.

18 JUDGE GUILLOU: Thank you, Mr. Emmerson.

19 Mr. Roberts, please.

20 MR. ROBERTS: Nothing for me. Just to second what's already  
21 been submitted. Thank you.

22 JUDGE GUILLOU: Thank you, Mr. Roberts.

23 Mr. Ellis, please.

24 MR. ELLIS: Your Honour, Rule 102(1)(b) disclosure, ongoing;  
25 Prosecution asking you for extensions. Rule 102(3) disclosure,

1 ongoing; extensions requested. Rule 103 disclosure, also ongoing.  
2 There's a pattern emerging here, and we're going to see it again with  
3 Rule 107.

4 JUDGE GUILLOU: Thank you, Mr. Ellis.

5 Madam Prosecutor, and if you can provide your submissions  
6 following Mr. Kehoe's question, please. You have the floor.

7 MS. LAWSON: As I indicated in my prior submissions, the  
8 exculpatory review is not complete and, therefore, it is not a  
9 confirmation that I can give. Thank you.

10 JUDGE GUILLOU: Thank you.

11 Mr. Kehoe, please.

12 MR. KEHOE: The answer to that question is limiting. Again,  
13 these four men are in jail and they have a 103 analysis still  
14 ongoing. And we have information that exculpatory information has  
15 been provided sometime ago, and we have not seen those documents.  
16 And there has to be a reason why. And when I say that this  
17 information was given sometime ago, several years ago, and we have  
18 not received that information.

19 And that was why I asked the question, with all due respect,  
20 Judge, as to why that particular information hasn't been disclosed.  
21 If information of an exculpatory matter is not provided -- that's got  
22 to be provided immediately to us. How do we know that this doesn't  
23 bear on their continued detention? The Prosecutor just decides to  
24 keep it and not turn this information over? That's not sustainable.  
25 And we will act accordingly if this information is not promptly

1 provided.

2 So I say this to the Prosecutor: Search your records well for  
3 statements made by, for instance, international witnesses that have  
4 this type of exculpatory material, and it needs to be turned over as  
5 soon as possible. Thank you.

6 JUDGE GUILLOU: Thank you.

7 Madam Prosecutor? No.

8 Let us move to Rule 107 material. I would like to know whether  
9 the parties are facing or foresee any difficulties related to the  
10 disclosure process with respect to Rule 107 material and whether any  
11 applications pursuant to this rule are imminent.

12 Madam Prosecutor.

13 MS. LAWSON: Yes, we have worked to finalise discussions with  
14 information providers. There are a number of items for which further  
15 progress and relevant decisions are anticipated, so we continue to  
16 pursue those matters vigorously.

17 We've gone back to relevant providers on multiple occasions,  
18 conducting what are sometimes page-by-page or line-by-line  
19 discussions in order to minimise the scope of what cannot be  
20 provided.

21 In the majority of cases though, the process has now reached a  
22 stage where relevant decisions have been made. Therefore, to the  
23 extent that clearance of items has been denied, the SPO is preparing  
24 an application to the Court, which we anticipate submitting shortly.  
25 We will also be submitting a shorter application addressing certain

1 redactions applied by information providers to material associated  
2 with the three international witnesses whose material was recently  
3 disclosed. Thank you.

4 JUDGE GUILLOU: Thank you, Madam Prosecutor.

5 Mr. Kehoe, please.

6 MR. KEHOE: Yes, Your Honour. I'm in the complete dark about  
7 the Rule 107 information as to what's been disclosed, what's not been  
8 disclosed, how timely they moved to get this information cleared by  
9 the respective agencies. I mean, did they wait a week? A month?  
10 Did they do this two years ago? I can tell you the information of  
11 internationals that we're referring to gave statements years ago.

12 And is the reason why that hasn't been disclosed because it's  
13 hung up in some Rule 107 process, and that's why exculpatory material  
14 hasn't been turned over? And when did the OTP -- when did the SPO go  
15 about to get that?

16 Those are all questions that we can't answer because we don't  
17 have the information. I just put that on the table for Your Honour's  
18 discussion and thought.

19 JUDGE GUILLOU: Thank you, Mr. Kehoe.

20 Mr. Emmerson, please.

21 MR. EMMERSON: You'll be pleased to hear I have nothing to say.

22 JUDGE GUILLOU: I am not pleased. I am disappointed.

23 Mr. Roberts, please.

24 MR. ROBERTS: I just have a question, Your Honour, and that goes  
25 back to our previous lengthy discussion on Rule 102(3). But, again,

1 as a constructive attempt to move this forward, how many of the  
2 68.000 documents on that list would be subject to Rule 107,  
3 approximately? If the Prosecution could give some indication of  
4 that, that may help us to actually understand how deep and big of a  
5 problem this actually could be. Thank you.

6 JUDGE GUILLOU: Thank you, Mr. Roberts.

7 Mr. Ellis, please.

8 MR. ELLIS: Your Honour, the submissions that we've heard are  
9 submissions that are very similar to those that have been made on  
10 Rule 107 at every Status Conference. It's happening again and again:  
11 "The process is still ongoing." We need an end.

12 JUDGE GUILLOU: Thank you, Mr. Ellis.

13 Madam Prosecutor.

14 MS. LAWSON: All of the items which have been listed under  
15 Rule 102(3) notice have been cleared by the provider. Otherwise, we  
16 could not have listed them. Thank you.

17 JUDGE GUILLOU: Thank you, Madam Prosecutor.

18 I'm not sure this will satisfy the Defence.

19 MR. ROBERTS: It does. It means there's no restrictions on them  
20 providing it to us, so I'm very happy.

21 JUDGE GUILLOU: Thank you.

22 Let us now move to the issue of translation of filings and  
23 evidentiary material. I would like to hear -- oh, Madam Prosecutor.  
24 Briefly then.

25 MS. LAWSON: Very briefly, but I need to make a factual



1 correction because there have been a number of items which were  
2 requested by the Defence teams for which we are going back to  
3 providers and will disclose them once that clearance is obtained. I  
4 don't have the specific figure.

5 JUDGE GUILLOU: Thank you.

6 Let us now move back to the issue of translation. I would first  
7 like to hear from the Registry on the progress made with regard to  
8 the translation of several items; notably, whether the translation of  
9 the decisions on preliminary motions are now completed, and whether  
10 the parties have made any further urgent requests for translation.

11 In particular, I note the Defence for Mr. Krasniqi's concerns  
12 about the translation of core filings into Albanian, and I think this  
13 has been touched upon earlier today, and its requested translation of  
14 the SPO's preliminary witness list, and SPO's pre-trial brief, when  
15 available, be prioritised.

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

19 Mr. Roche, please.

20 MR. ROCHE: Thank you, Your Honour.

21 As regards the preliminary motions, they have all now been  
22 translated. That's filings F00412, 413, and 450.

23 As regards the most recent request for a priority translation,  
24 which was the preliminary witness list submitted by the SPO, that is  
25 an extremely lengthy document, over 450 pages, so we are working

1 intensively to be able to give an assessment of when that will be  
2 ready, and we will revert to the parties as soon as that is  
3 available.

4 We will also, as we have in previous cases, distribute an  
5 unrevised translation prior to it being revised in order to get it to  
6 the parties as rapidly as possible.

7 There's also another request of translation of filing F00548,  
8 which came from Chambers, a reply from an authority in Kosovo, and  
9 that is to be ready by 10 November.

10 More generally, as regards core filings, progress is being made  
11 on translating all of them into Albanian, and they are being  
12 distributed as and when ready, including an unrevised form where that  
13 is appropriate.

14 Thank you, Your Honour.

15 JUDGE GUILLOU: Thank you, Mr. Roche.

16 Let me now turn to the Defence.

17 Mr. Kehoe, please.

18 MR. KEHOE: Again, Judge, we're talking about a timetable here.  
19 And the Prosecution, lest we forget, earlier today mentioned their  
20 request for an extension until the end of January on the translations  
21 of 7.060 items in English and on a thousand items into Albanian.  
22 That's in this translation mix too.

23 We look to Your Honour's guidance how we get this done as  
24 expeditiously as possible while these men sit in jail. But that's a  
25 lot of material to get through that these men need - and we need - in

1 order to properly defend these people. It's not a pretty picture;  
2 pardon the rather pedestrian description. But that's where we are.  
3 And the only reason it's been a significant difficulty is while we  
4 wait for this, these four gentlemen remain incarcerated.

5 JUDGE GUILLOU: Thank you, Mr. Kehoe.

6 Mr. Emmerson, please.

7 MR. EMMERSON: I am concerned at the moment with one document  
8 only, and it was mentioned just a moment ago at the very end of the  
9 submission. That is to say, the time for translation of a document  
10 that emerges from another authority. And I think I know what the  
11 reference is.

12 Does Your Honour have any objection to me addressing the issue  
13 in open court?

14 JUDGE GUILLOU: As long as you don't give any detail about the  
15 content of the document, and if you just stick to the question of the  
16 timelines or deadlines, I think that's fine.

17 MR. EMMERSON: Yes. So I think -- I just want to make sure that  
18 everybody -- that you, Your Honour, and Chambers know that we are  
19 talking about the same document. It will be a document that was  
20 received on Wednesday, 27th; correct?

21 I'm afraid 10 November is an impossibly long period of time for  
22 you to be able to read that document. We've had it fully translated  
23 in 24 hours. It's a critical document to issues pertaining to the  
24 liberty of my client, and it ought to be not just prioritised. It  
25 ought to be translated by Monday.

1           You need to see this document. It is absolutely crucial. I've  
2 read it in English. You obviously haven't. And you absolutely need  
3 to see the answers to the -- the content of that material is a matter  
4 of the utmost urgency.

5           JUDGE GUILLOU: Before I give the floor to the other Defence  
6 teams, Mr. Roche, is there any way to prioritise or over-prioritise  
7 this document, or is the deadline of 10 November the best possible  
8 timeline?

9           MR. ROCHE: Thank you, Your Honour.

10           Obviously there is a range of competing demands on the Language  
11 Services Unit within the Registry, but I will contact them  
12 immediately and see exactly how quickly this can be translated.

13           I cannot give a firm date at this time, but I will endeavour to  
14 do so as soon as possible.

15           MR. EMMERSON: Can I just --

16           JUDGE GUILLOU: Thank you, Mr. Roche.

17           Mr. Emmerson, please.

18           MR. EMMERSON: Without speaking across, we have a deadline of  
19 Monday to respond in respect of the review of our detention. You  
20 will need to know what is in that document in order to conduct that  
21 review.

22           I am going to suggest that if the document isn't fully available  
23 through translation services by Monday, when the deadline is due, we  
24 will make our submission appending a Defence translation of the  
25 document which, of course, can then be checked by the translations

1 unit. But our submissions cannot be made without the answers to  
2 those questions being incorporated.

3 JUDGE GUILLOU: I fully understand.

4 Do you want me to postpone the --

5 MR. EMMERSON: No.

6 JUDGE GUILLOU: -- deadline? No.

7 MR. EMMERSON: No. I -- absolutely. I know what's in the  
8 document. I want the matter dealt with immediately. It cannot wait  
9 any longer.

10 JUDGE GUILLOU: This is noted.

11 MR. EMMERSON: So that being the case. I mean, I -- it's at an  
12 appropriate moment, it was going to be the end of the agenda, I have  
13 a couple of things that I need to say to you about that process that  
14 needs to go on the public record, but I'm unsure what it is  
15 precisely.

16 Obviously the content of the document and the content of the  
17 requests in the document are confidential. Although, there seems to  
18 have been some publicity about some of it at some stage in the media.  
19 But the contents of the request and the contents of the response are  
20 confidential, but they are not the only two documents in the sequence  
21 because there has also been a request from the Defence and a response  
22 from the same person, which has been translated, and which I think  
23 you're probably aware of.

24 So I want to make some submissions in relation to that. Could  
25 you clarify for me whether or not there is -- material -- is

1 providing the substance -- is the identity of the person to whom this  
2 request is made something you would regard as confidential?

3 JUDGE GUILLOU: I would regard this as confidential.

4 But before that, isn't your deadline today for your submissions,  
5 the submissions you're referring to?

6 MR. EMMERSON: I thought it was Monday.

7 Mr. Strong is on the other --

8 MR. STRONG: [via videolink] Yes, I believe it's Monday. The  
9 filing came through after 4.00 p.m. last Friday, and so the -- we  
10 didn't receive it until Monday morning. The Prosecution response.

11 JUDGE GUILLOU: You received it on Monday. Yes, okay.

12 MR. EMMERSON: Well, if I need to apply for an extension until  
13 Monday, then I will. But this document is absolutely critical to  
14 that process.

15 But could I repeat the question? In addressing the sequence of  
16 events, and it's important that I do, and I can do it later or now.  
17 Is it Your Honour's position that the identity of the person to whom  
18 the requests have been made is something that ought not to be put in  
19 the public domain, despite the judgement of the Appeals Chamber on  
20 the point, which obviously is public?

21 JUDGE GUILLOU: I mean, this is, of course, public, but I would  
22 certainly consider that the names shouldn't be in the public domain.

23 MR. EMMERSON: No, not the name. But the status, the rank, the  
24 person. A description of the person to whom the request is made. I  
25 mean, it's obvious from the reading of the judgement of the Appeals

1 Chamber.

2 JUDGE GUILLOU: I would need to think about it for a couple of  
3 minutes. Clearly the name shouldn't be in the public domain.

4 MR. EMMERSON: No, no.

5 JUDGE GUILLOU: The function. To be honest, if it's very  
6 generic, and if it's very similar to what -- I mean, I don't have the  
7 exact -- everything in mind at the moment.

8 MR. EMMERSON: Would you prefer if I made the submissions in  
9 private session and then you considered whether as to --

10 JUDGE GUILLOU: I think that's probably better.

11 We're going to move to private session to continue the  
12 discussion.

13 [Private session]

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6 [Open session]

7 THE COURT OFFICER: Your Honour, we are back in public session.

8 JUDGE GUILLOU: Thank you.

9 Mr. Roberts, please.

10 MR. ROBERTS: Thank you, Your Honour. Nothing in relation to  
11 translations of filings. In relation to the requests for  
12 translation, I can deal with that now but I don't know if you wish to  
13 wait.

14 The only issue is, is actually just trying to plan ahead, and,  
15 again, I felt like I've repeated this multiple times, but we know,  
16 and this is the second elephant in the room that's coming up later,  
17 is the date of the pre-trial brief; and the other issue that arises  
18 in relation to that is the translation of the pre-trial brief.

19 And my concern is that if we wait until the Prosecution files  
20 their pre-trial brief, until they start translating it, that  
21 translation will take a very long time to be provided to my client  
22 and, obviously, the other three accused.

23 And, also, it's not just the pre-trial brief. There's obviously  
24 a significant amount of other information that's disclosed in  
25 relation to Rule 95.

1           So I'm merely foreshadowing now that maybe it would be sensible  
2   - and, again, the date of the pre-trial brief is important - that it  
3   may be sensible to start planning ahead for that already and already  
4   seeking to translate whatever sections of that pre-trial brief could  
5   potentially be done given its primordial importance to everybody in  
6   these proceedings.

7           Now, obviously certain sections will be let -- hopefully have  
8   already been completed, because if they haven't, then obviously the  
9   Prosecution is in a worse state than we think they are, and any  
10   sections that have been completed, it would make sense to prioritise  
11   the translation of those as soon as possible.

12           So that's merely a suggestion. I hope it moves things forward.  
13   But it's something that if it was possible to do, I think would  
14   assist.

15           Thank you.

16           JUDGE GUILLOU: Thank you, Mr. Roberts.

17           Mr. Ellis, please.

18           MR. ELLIS: Your Honour, I think Mr. Roberts has beaten me to  
19   it. That was why we identified the pre-trial brief translation in  
20   our written submissions.

21           We don't want this to be the same process as, I think, occurred  
22   with the 863 outline where it took a long time for the Albanian  
23   version to be produced. It's clearly a document that Mr. Krasniqi  
24   needs to see sooner rather than later, Your Honour.

25           JUDGE GUILLOU: Thank you, Mr. Ellis.

1 And I think this is noted by the Registry.

2 Mr. Laws, do you want to add anything on the issue of  
3 translation, please?

4 MR. LAWS: [via videolink] Not on the issue of translation.  
5 Thank you, Your Honour.

6 JUDGE GUILLOU: Thank you very much.

7 I now turn back to the SPO to ask about the status of its  
8 ongoing investigations. In particular, whether the SPO can provide a  
9 further update on the estimated date of completion for outstanding  
10 investigative steps, whether there are any issues in relation to the  
11 SPO's preliminary witness list that has been filed on 22 October  
12 2021, whether there are any anticipated issues with a deadline of  
13 17 December 2021 being set today for the filing of the SPO's  
14 pre-trial brief and related material, pursuant to Rule 95, and  
15 whether there are any anticipated issues with extending the SPO's  
16 deadline for providing a Rule 109(c) chart to 28 January 2022.

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

19 I inform the parties that I intend to issue an oral order today  
20 and to set the deadline for the SPO to file its pre-trial brief and  
21 related material, as well as a deadline for its Rule 109 (c) chart.

22 In this regard, I note the submissions of the Defence for  
23 Mr. Selimi, that the SPO's pre-trial brief should be provided as soon  
24 as possible but no later than 26 November 2021.

25 I will first give the floor to the SPO to provide its

1 submissions on the remaining timeline for the pre-trial phase.

2 Madam Prosecutor.

3 MS. LAWSON: My colleague will make our submissions on this  
4 agenda item. Thank you, Your Honour.

5 MR. QUICK: Thank you.

6 JUDGE GUILLOU: Mr. Quick, please.

7 MR. QUICK: Thank you, Your Honour.

8 With respect to ongoing investigative steps, I don't have much  
9 to add to prior Status Conference submissions.

10 The SPO is responsible for continuing investigations within its  
11 mandates. We are aware of the applicable framework. Should further  
12 investigations result in material, which we seek to rely upon,  
13 judicial authorisation may be required. Any such application would  
14 be considered at the relevant time with regard to the nature of the  
15 material in question, the timing, and other considerations going to  
16 relevance and potential prejudice.

17 Your Honour, in relation to the second issue you raised, which  
18 is the witness list, the SPO does not have any particular issues to  
19 address or to raise at this point.

20 Moving on to the pre-trial brief.

21 In light of Your Honour's indication at the last Status  
22 Conference that you intended to set a deadline by this hearing in  
23 relation to filing of a pre-trial brief, the SPO made submissions on  
24 that matter by way of filing F00520. Having carefully considered  
25 available resources and competing work streams in this case, the SPO



1 confirmed that it would be able to file its pre-trial brief and  
2 related materials on 17 December 2021. That remains the case.

3 Indeed, the SPO has been actively advancing Rule 95(4) materials  
4 in parallel to all other obligations. Most recently, on 22 October  
5 2021, the SPO filed its preliminary witness list. Such a preliminary  
6 list is not provided for in the legal framework and was provided at  
7 the Defence's request and following Your Honour's order to facilitate  
8 Defence preparations at this stage.

9 The Selimi Defence submissions challenging the proposed timeline  
10 for the pre-trial brief are, again, unfortunately misleading in a  
11 number of respects.

12 First, it is incorrect that litigation on preliminary motions  
13 has largely been completed. Up until 6 October, the SPO was  
14 completing responses to 81 issues and grounds of appeal on  
15 preliminary motions. There are now 27 grounds for which leave to  
16 appeal has been granted. Needless to say, the SPO will have to  
17 respond to all 27.

18 The parties will be required to make submissions on these  
19 matters over the coming weeks, and such submissions will continue  
20 until at least December, considering the most recent extension of  
21 time granted, at the Defence's request, by the Court of Appeals, and  
22 that's filing IA-12-F4.

23 As has been repeatedly recognised by both Your Honour and the  
24 Court of Appeals, the issues raised in the preliminary motions  
25 litigation are complex and require considerable time and resources to

1 address. Taking into account the impact of preliminary motions  
2 litigation on the pre-trial deadline is not only appropriate and  
3 reasonable but also necessary.

4 At other courts, the relevant rules did not even provide for the  
5 filing of pre-trial briefs and related materials until after  
6 resolution of preliminary motion litigation. For example, ICTY,  
7 Rule 65 ter and MICT Rule 70.

8 Here, the SPO has undertaken to file the pre-trial brief well  
9 before final resolution of preliminary motions.

10 The Selimi Defence also attempts to make an illogical  
11 distinction between available resources for legal and factual  
12 submissions. And this is at paragraph 43 of F00550. It is the same  
13 finite pool of SPO staff that must draft and review both, in addition  
14 to fulfilling other obligations in this case, including relating to  
15 disclosure.

16 On disclosure, contrary to what the Selimi Defence appears to  
17 suggest, it is simply not the case that where specific deadlines have  
18 been suspended, the SPO can just ignore pending requests from other  
19 Defence teams. The Rule 102(3) deadlines were suspended not for the  
20 SPO to set the requests aside and allocate its resources elsewhere  
21 but so that a more wholistic assessment can be made as to when the  
22 relevant disclosure could be effectuated as expeditiously as  
23 possible.

24 For the reasons explained in our written submissions that's  
25 filing F00520 - 17 December is the earliest date upon which we can

1 file the pre-trial brief. The submission of a finalised pre-trial  
2 brief is not just a matter of completing the drafting. There are  
3 multi-level redaction reviews and other checks which affect all  
4 sections of the brief and which are essential for the brief to be  
5 made available to the Defence.

6 Further, at the time of filing the brief, the delayed disclosure  
7 period for 21 witnesses ends and the SPO must, at the same time,  
8 through multi-level reviews and procedures, prepare those witness  
9 materials for disclosure.

10 Finally, Your Honour, in relation to the Rule 109(c) charts, the  
11 same considerations apply as for the Rule 95(4) materials.  
12 Preparation of the chart cannot commence until after the pre-trial  
13 brief has been completed and involves many similar checks as  
14 previously set out in filing F00520, paragraph 5.

15 These submissions are based on the SPO's experience in other  
16 cases of smaller size and scope. 28 January 2022 is the earliest the  
17 SPO anticipates that it will be able to complete the chart, if it's  
18 requested deadline of 17 December is ordered. Otherwise, for any  
19 other deadline, 30 days following submission of the pre-trial brief  
20 is the earliest the SPO would be available to complete the chart.

21 To conclude, Your Honour, the Prosecution, being given the time  
22 it needs to prepare the pre-trial brief and related materials, it is  
23 in the interest of the Defence, in the interest of the victims, and  
24 the Chambers. The SPO proposal will expedite and facilitate, not  
25 delay the proceedings.

1 Thank you, Your Honour.

2 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

3 Mr. Kehoe, please.

4 MR. KEHOE: Your Honour, I would suspect that the Court is  
5 fatigued, is probably the word, to hear about the SPO's finite staff  
6 and their competing work teams that are working at the maximum  
7 capacity and efficiency while those four men on the screen sit in  
8 jail.

9 The Prosecution made the decision to indict this case and when  
10 to indict this case. No one else on this side of the room had  
11 anything to say about it. And now they're telling the Court that  
12 because of their competing work streams and working at maximum  
13 efficiency, they can't get things done on a timely level. And, oh,  
14 by the way, gentlemen, you stay in jail.

15 That's what we just heard from counsel.

16 Meanwhile - meanwhile - they also argue that their  
17 investigations will continue to the foreseeable future. What does  
18 this mean? This means that while they attempt to work on their  
19 maximum efficiency, and with their competing work streams, they are  
20 continuing to investigate something else. What? What?

21 Is it in investigating the charges that are in the indictment  
22 already? That investigation should be over. If it's some other  
23 investigation that my client is being investigated for, I move under  
24 *ore tenus*, move to terminate that investigation under Rule 47.  
25 Rule 47 is a vehicle by the accused, because he is an accused on

1 something that he hasn't been charged with, that if, in fact, he is  
2 being investigated on something he hasn't been charged with, he is a  
3 suspect under the rule, not an accused as an indicted person, and a  
4 suspect under Rule 47 can move to have the investigation terminated,  
5 and we so move right now, to have any investigation outside of these  
6 charges terminated now.

7 If they are investigating the way the rules contemplate  
8 investigating, to investigate something that they have charged  
9 already, that's improper too. That investigation has already been  
10 charged and those facts have been presented to Your Honour.

11 So what, at the end of the day, with all these competing work  
12 streams and working at maximum capacity, and you have this vision of  
13 everybody sweating over at the SPO to get all this done, what are we  
14 continuing to investigate? And certainly, this is not to -- their  
15 delays, as a consequence of that, can't be viewed as anything but  
16 prejudicial to the accused in this case, clearly.

17 Because time just goes on. We have a pre-trial brief in  
18 December, and the chart. You know, 109(c) chart they want to put off  
19 until January. And I suppose the logical question for that, and I  
20 suspect most people in the room have done it this way, when you're  
21 putting a pre-trial brief together, as you go along you kind of note  
22 what your evidence is. I mean, maybe I just started doing this.

23 You know, I've been -- I've done a few pre-trial briefs in my  
24 day, and everybody -- well, I shouldn't say everybody. Usually, when  
25 you're putting a pre-trial brief together, Judge, and you say what's

1 our evidence for each one of these allegations? That's what you put  
2 in a footnote, and you turn it over at the same time. You know, I  
3 hate to sound glib here, Judge, but we're not putting a man on the  
4 moon.

5 I mean, this is stuff that everybody has done before but,  
6 nevertheless, we're waiting for another six weeks after we get this  
7 pre-trial brief to find out what's the evidence to support that stuff  
8 so we can start investigating that. It's just another delay and,  
9 frankly, it's a methodology that the SPO, for me, for the first time,  
10 has turned on its head. I've never heard of a pre-trial brief being  
11 done in that fashion, but I suppose there is a first time for  
12 everything, and it's happened here. There are a lot of firsts in  
13 this case.

14 That is difficult. Do you want me to go through the rest of the  
15 issues that you outlined, Judge, before I sit down?

16 The brief that they are contemplating filing is two days after  
17 our next scheduled pre-trial conference. Our pre-trial conference is  
18 on the 15th, so we're not going to have any -- according to their  
19 schedule, we're not going to have any fulsome discussion about the  
20 pre-trial brief until sometime in 2022, based on their proposed  
21 schedule. That's just a note. I mean, two down the line. That's  
22 why my colleagues, the Veseli team, had asked for October 31st, or at  
23 least something in early November, so we can at least begin to  
24 discuss this and get our arms around it at our next pre-trial  
25 conference. But with their schedule, that's not going to happen.

1 We're going to get kicked back yet further.

2 And I hate to repeat myself. I mean, the Rule 109 chart. I  
3 mean, the Rule 109 chart, it should be done at the same time. And I  
4 just, for the life of me, can't think of a reason why it couldn't be.  
5 I just can't for the life of me. It's usually done so, as I noted  
6 before.

7 The particular witness list that was given to us, and I think  
8 we've talked about this for a little bit before, they have 327  
9 incriminating witnesses listed. They have, in that list, they have  
10 266 witnesses testifying viva voce. 266. By the way, we've got 20  
11 dead guys in there too, and one of the dead guys, he's also going to  
12 be presented live. So they have a listing there where he's dead, but  
13 he's coming live, and I know Ben wants to be here when they -- that  
14 witness comes to -- this dead guy comes to testify. But it's true.

15 So they have 20 dead witnesses and then 57 -- excuse me, any  
16 number of them, 61 in writing, which we are going to move to exclude.

17 The timeframe on this? I mean, we don't have -- as I noted  
18 previously, we don't even have 102(1)(b) material on, what, eight  
19 witnesses? I think it was eight witnesses. We don't know anything  
20 about these people. That's on top of the redactions that are in the  
21 materials that we have. So are there problems with the SPO's witness  
22 list? There are a lot of problems with the SPO's witness list:  
23 Redactions, disclosure.

24 We talked about in the beginning that we have 122 witnesses that  
25 are, I trust, most of them viva voce witnesses, for which there is no

1 identification. That's 37 per cent of the witnesses. 37 per cent of  
2 the Prosecution's proposed witnesses are being presented, at this  
3 point, with no identifying information. And what they give us in  
4 their witness statement are redactions or redacted -- the names  
5 redacted, the times redacted, the events are redacted, who was there  
6 was redacted. And you look at this stuff page after page, and you  
7 say what am I supposed to do with this?

8 I mean, reviewing this information is a spiritual experience  
9 because it's not providing us with any information as to what  
10 actually transpired. And why is that important? It goes to  
11 something that comes up, and we addressed the last time, Judge, your  
12 question on alibi defence, which is a question that the Court has to  
13 ask. Well, how can we talk about an alibi defence when we don't even  
14 know when most of this stuff happened.

15 Certainly the events that have taken place on the ground, I will  
16 tell you categorically that for the better part of 1999 and a large  
17 part of 1998 my client was outside of the country. But how can I  
18 give you an alibi defence? Without this information, it's  
19 impossible.

20 So while we welcome as much information as we can possibly get,  
21 when you are going into a case like this and you get a list of  
22 witnesses and 37 per cent of the witnesses that you get, you have  
23 virtually no information about, there is a serious problem moving  
24 forward. Now, is that going to be clarified in this pre-trial brief  
25 or the 109 chart? Not if they continue to be unidentified or there's



1 no way that we can conduct our investigation yet further.

2 So it's a serious problem. The way this entire matter has been  
3 structured by the SPO is a serious problem: Lack of redaction, lack  
4 of information. I mean, they gave me a forensic statement in regard  
5 to somebody where the individual who has been dead for 20 years whose  
6 name is redacted. Now, I don't think that person is in danger  
7 anymore. I may be crazy, but the person has been dead for over 20  
8 years and his name is redacted for security purposes out of some idea  
9 that it may be traced back to some other person at some other time  
10 who might be put in danger.

11 I understand the analysis, but there has to be a limit to this  
12 and there has to be a freeing up of this redacted information. And  
13 getting information on 122 witnesses on this witness list 30 days  
14 before trial is completely unworkable. Completely unworkable and  
15 prejudicial to the Defence. While the Prosecution comes in and says  
16 everybody is working very hard, we've got competing work streams, and  
17 they were supposed to go to trial six months ago.

18 So I know that I'm overlapping with some of the comments that I  
19 made to Your Honour before and Your Honour is being quite patient  
20 about it, but you understand the difficulty from the Defence point of  
21 view when you get a list of witnesses like that. I mean, I can deal  
22 with the dead guys, but, you know, the people who are going to come  
23 in here and, you know, present testimony about which we have no  
24 information and can conduct no interviews and, well, our  
25 investigation is severely limited as a consequence of that.

1 Thank you.

2 JUDGE GUILLOU: Thank you, Mr. Kehoe.

3 Mr. Emmerson, please.

4 MR. EMMERSON: May I start by welcoming Mr. Quick for the first  
5 time in court making oral submissions. Perhaps the change is because  
6 Ms. Lawson is tired of making the same excuses over and over and over  
7 again.

8 It was hard not to be moved by the pathos of Mr. Quick's  
9 submissions, that the overworked and understaffed Prosecution can't  
10 do their job properly because they've got too much to do. It's  
11 never -- resources are never a legitimate justification for keeping  
12 people in custody. It's an elementary principle of international  
13 law, recognised by the European Court of Human Rights, that the lack  
14 of resources on the part of the Prosecution can never justify a  
15 prolonged detention in pre-trial proceedings.

16 There's a direct correlation between the obvious  
17 mismanagement -- and, I mean, we don't need to nudge around the  
18 edges. Any professional prosecutor would have planned all this  
19 before they started the process. They certainly wouldn't have misled  
20 us all and misled you about timing and be coming here now saying,  
21 "Oh, we've all got too much to do." What on earth did they think  
22 prosecuting an international criminal case was?

23 If they haven't got enough resources, tough. It's never, ever  
24 an excuse to come to a court and say, "Oh, dear, we've got too much  
25 to do, so we just have to have the trial put off and put off." But

1 you know, you know now this trial won't be beginning before 2023,  
2 effectively. It was promised to begin June this year.

3 All of that - all of that - is down to Jack Smith. All of it.  
4 He's the Prosecutor. Ms. Lawson's inability to acknowledge the  
5 situation, her complete lack of any kind of remorse, her totally  
6 unprofessional and unrealistic refusal to acknowledge the situation  
7 that the Prosecution is utterly out of control and so far wide of its  
8 own deadlines, that it's perfectly apparent to everyone inside this  
9 courtroom and out that they are beyond, at this stage, any serious --  
10 there is no one -- you know, the lights are on but there's no one  
11 home. There is no one at the driving wheel. It's just careering all  
12 over place.

13 And introducing Mr. Quick to give the same old excuses in a  
14 different voice isn't going to help anybody. How are these  
15 defendants supposed to listen to that man standing up there saying  
16 how sad and difficult it is for the Prosecution because they've got  
17 to do their job? If that was the -- if the resources were needed, it  
18 was their job to get them before they arrested people. And you'll  
19 find all the jurisprudence in Article 6. Makes it very, very clear  
20 that resources can never be a justification for unreasonable delay.

21 We know this is unreasonable delay because we are going to be at  
22 least a year and a half beyond the date that the Prosecution said the  
23 trial could be ready. That was what they thought was reasonable.  
24 We're well into unreasonable delay territory. And so you're faced  
25 with an Article 6 issue here.

1           You can't continue to keep these men in custody and not sanction  
2 the Prosecution, which is acting in violation of Article 6 of the  
3 European Convention on Human Rights, which it clearly is, because  
4 we're at least a year and a half -- because of their own lack of  
5 management planning, their own disgraceful lack of professionalism.

6           And that's what it is.

7           I'm not apologising for saying that. I'm not going -- I'm  
8 sorry, very sorry that Ms. Lawson doesn't like my tone. But you know  
9 a little contrition, a little humility from a Prosecution that has  
10 obviously gone so badly out of control and been so badly mismanaged.  
11 She hasn't once stood up and said, "You know, we are sorry, actually.  
12 We did say it would be June. We did accuse the Defence of misleading  
13 you by saying it couldn't possibly happen until next year. We did  
14 make all those accusations. We're sorry, we misjudged our situation.  
15 There have been large problems in the working of the SPO that we  
16 hadn't anticipated. That is a failure of management." All of those  
17 things any responsible prosecutor would have said in public to you,  
18 to us, and to the accused.

19           But the complete inability of the Prosecution to confront  
20 reality and the idea of changing faces to make the same old  
21 excuses -- yes, we are -- this whole litigation is a disgrace. I  
22 think -- you know, maybe that's hyperbole from those who speak in the  
23 language of the unemotional automaton. But it's true. You know it's  
24 true. Everyone here knows it's true. And, above all, the accused  
25 know it's true, and everyone watching in the outside world, not just

1 the international criminal law community but the man and woman in the  
2 streets in Kosovo.

3 You're supposed to be one of their courts. You belong to them  
4 and they're watching this happen.

5 I mean, seriously. We're now having a new person stand up and  
6 say, "I'm so sorry but we've too much to do, and we have got so many  
7 grounds of appeal to respond to. And, oh, blimey, we didn't have  
8 any -- I mean, a planning prosecutor has all that in mind. This is  
9 their big case. This is the one -- they call it the big case in the  
10 SPO. That's their name for it.

11 It's the big case, not because there's any evidence against the  
12 accused. It's the big case because they've got the four big fish  
13 that they want to get. And, as I said, they arrested them with no  
14 idea what the case was going to be, and they still have no idea.

15 That's why they can't draft their pre-trial brief. Why couldn't  
16 we have it on 31 October if they know what their case is? Why  
17 couldn't we? Why 17 December, curiously, the last working day before  
18 Christmas, so they can say, "Oh, we filed our pre-trial brief in  
19 2021." But without the detail that should go with it. You know that  
20 because they're trying to put off the 109, which should be directly  
21 part of the brief, that information, they're trying to put that off  
22 until the end of January.

23 So what we're going to get is some - excuse my French - but some  
24 half-assed pre-trial brief, which is as vague and general and,  
25 frankly, meaningless as the indictment and the documents that were

1 put before you at the beginning of the case, very general promises of  
2 evidence but nothing specific till 28 January.

3 And yet if they know their case, it can go into the pre-trial.  
4 If they don't know their case, what on earth are we doing here? So  
5 you didn't respond to my oral or my written request for an order for  
6 31 October other than to say that the issue would be dealt with at  
7 this hearing. The Selimi Defence has made a very reasoned  
8 application for the order to be 26 November, and that way, we'll have  
9 some idea at the December Status Conference of the state that the  
10 Prosecution case is in.

11 You'll be able to see if there is a case, actually. You'll be  
12 able to take that into account when you're doing your detention  
13 review to decide whether these men should stay in custody over  
14 Christmas on the basis of a case that doesn't exist. You can't have  
15 this material being served two days after the last Status Conference  
16 and far too late for any possible detention review.

17 I mean, this is running out of control. And, I mean, if there  
18 were a Pre-Trial Chamber, you would have colleagues to consult. But,  
19 unfortunately, the responsibility rests on your shoulders.

20 And as for the witness list, I have one thing to say, and it  
21 goes back to the point that I made earlier on about the difference  
22 between a Pre-Trial Chamber and a Pre-Trial Judge or, rather, the  
23 sameness of the responsibility despite the difference of the  
24 constitution: It is, with respect, your job to hand this case over  
25 in a triable form to the Trial Chamber. Not leave it to the Trial

1 Chamber to knock it into shape.

2 I'm just going to give you some statistics, and perhaps this  
3 time round we won't get the sort of, "Oh, it's different, because  
4 we're so efficient, and we're going to be so much quicker than the  
5 other tribunals." That was their position, if you remember, when we  
6 first arrived. "We're much quicker than the other tribunals. We've  
7 been set up to be super efficient." Yes, Mr. Smith, I notice he  
8 never comes into court to defend his own mismanagement.

9 But let me give you some statistics again, as I did last time,  
10 as to how long it would take before the case is ready for trial. Let  
11 me give you now some statistics about the relationship between  
12 witnesses and trial length.

13 Based on experience, the Popovic trial, which had almost exactly  
14 the same number of witnesses for the Prosecution, 328, took three  
15 years, nine months, and 20 days. The Milutinovic trial, which had  
16 242, took two years, seven months, and ten days. And the Prlic case,  
17 which had 320, took seven years and a month.

18 You cannot responsibly hand a case like that to the Trial  
19 Chamber and have properly discharged your functions. And, therefore,  
20 I am going to ask you now to make an order - you can date it for  
21 whatever date you like - that the Prosecution justify the relevance  
22 of every single witness before they are included in the case that is  
23 remitted to the Trial Chamber.

24 That by, let us say -- well, they should be able to do it by 28  
25 January, but let's just give -- and we know that they've got boohoo

1 problems with resources, so let's say 28 March. By 28 March, let  
2 them justify their 328, explaining exactly how they prove the guilt  
3 of these accused, because you're going to be shocked because I'm  
4 shocked at what they served. It's dross, absolute dross in terms of  
5 evidential value.

6 So I'm going to invite you to set a date by which the  
7 Prosecution, which is, I mean, unquestionably mismanaged and out of  
8 control, you're the only person who can put any control on it now.  
9 And so I'm going to ask you to force them to explain and justify  
10 every single witness, because otherwise we're looking at a four-year  
11 trial.

12 Let's just think about this. They're viciously resisting  
13 provisional release. The men have been in custody a year. They  
14 didn't serve their evidence until the last minute, 80 per cent of it  
15 in the last couple of months. They still aren't ready to tell us  
16 what their case is in a pre-trial brief. And they also, when they do  
17 serve their pre-trial brief, they're reserving the right to put any  
18 real information we need into the schedule at the end of January.

19 So, I mean, you don't need to be a genius or a doctor to  
20 diagnose that the patient is suffering from a very serious illness.  
21 And, so, you know, it's time, I'm afraid, for the surgeon - and  
22 that's you - to cut some of this crap out, excuse my French. But  
23 there is no way that you should be letting a trial go forward with a  
24 huge number of -- I mean, I gave you the example in closed session of  
25 a witness who could not be less relevant.



1           And the way it works in international criminal tribunals is that  
2   you --

3           JUDGE GUILLOU: Mr. Emmerson, I'm sorry, but it's 6.13.

4           MR. EMMERSON: I'm sorry it's 6.13 as well, but we are -- I  
5   mean, this is a Status Conference and it's our job to --

6           JUDGE GUILLOU: I know, but I also want to listen to your  
7   colleagues. So we have to end this hearing at 6.30. So if we can  
8   have a chance to listen to them, I will have to ask you to be very  
9   brief to finish.

10          MR. EMMERSON: I'll sit down. But the point I'm -- this is a  
11   formal application to you to give consideration to the appropriate  
12   date but to make an order timeously, first of all, that the  
13   Prosecution, as the Selimi Defence have proposed, serve their  
14   pre-trial brief on 26 November, so we have two weeks to digest it  
15   before we come in front of you again on the 15th and we can discuss  
16   just how sick this patient is; and that you also issue them an order,  
17   it should be 28 January or near thereafter, because they should know  
18   by then, justifying why each one of those witnesses needs to be  
19   called viva voce, because most Trial Chambers or pre-trial Chambers  
20   would be looking at this and thinking that number of witnesses needs  
21   to be cut by two-thirds.

22          JUDGE GUILLOU: Thank you, Mr. Emmerson.

23          Mr. Roberts, please.

24          MR. ROBERTS: Fortunately, Your Honour, I have very little to  
25   add to what's already been put across, so hopefully we still have

1 time.

2 My submissions are as set out in writing. I think they're  
3 entirely reasonable. I think there are good reasons which have been  
4 expanded upon in more detail by my colleagues as to why we need this  
5 before the next Status Conference. Otherwise, it's going to be the  
6 end of January before we're discussing anything, and any problems we  
7 have then get pushed further and further down the line. And,  
8 obviously, I don't need to echo my colleague's concerns about the  
9 length of detention that all of the accused have been suffering and  
10 will have been suffering by that point.

11 The only other thing that I would like to add, and this relates  
12 to the disclosure of the chart, is that we did actually suggest the  
13 categorisation early on so that they would be helped in that process.  
14 With the Prosecution having to categorise their evidence through  
15 Legal Workflow, they should have been able to understand what each  
16 piece of evidence related to. And had they actually followed all of  
17 our requests, they may well be in a better shape to complete their  
18 pre-trial brief on time than they claim to say.

19 So I don't want to say "I told you so," but that's clearly what  
20 I'm saying. Thank you.

21 JUDGE GUILLOU: Thank you, Mr. Roberts.

22 Mr. Ellis, please.

23 MR. ELLIS: Your Honour, it was filing 00097, paragraph 14:

24 "The SPO submits that trial in this matter should commence this  
25 summer or no later than September 2021."

1           When the Prosecution come here today and say they can't possibly  
2           prepare the pre-trial brief any earlier than 17 December and they  
3           need longer for the chart, we always have to come back to this  
4           filing. The position that was put before you at that time. How  
5           could that possibly be a true and genuinely made submission if they  
6           are unable to produce these documents any earlier?

7           We agree with the submissions that have already been made by the  
8           other Defence teams, and we support them. We would say, from a  
9           practical point of view, not the last day before the recess. It only  
10          takes something small to slip for there to be an issue with Workflow  
11          and we'll be left without the document for evening longer.

12          So we fully support the date set by the Selimi Defence and the  
13          reasons given for it.

14          JUDGE GUILLOU: Thank you, Mr. Ellis.

15          Mr. Prosecutor, briefly, please.

16          MR. QUICK: Yes, Your Honour. Thank you. Just a couple of  
17          things.

18          As for estimates being provided previously, they were provided  
19          in light of the circumstances existing at the time and the available  
20          information. It is inherent in the nature of things in proceedings  
21          like this that those circumstances may change, and there have been a  
22          number of circumstances in this case which have necessitated changes.

23          What we are telling the Court is that we are actively  
24          progressing all of the work streams necessary to a pre-trial process.  
25          There are multiple co-existing work streams which must, as part of

1 the regular pre-trial process, be completed before the case is ready  
2 for trial. Each of those matters are continuing to be expeditiously  
3 progressed in parallel to one another.

4 The Thaci and Veseli Defence appear to misunderstand the nature  
5 of the Rule 109(c) chart and of the pre-trial brief. The pre-trial  
6 brief will obviously have footnotes to the SPO's evidence. However,  
7 in addition to those footnotes and in addition to the  
8 subcategorisation in Legal Workflow, the SPO is being required to  
9 also provide this Rule 109(c) chart.

10 As for the relevance of the witnesses, that is the purpose of  
11 the final Rule 95(4) materials, including the final witness list, the  
12 final pre-trial brief, and the Rule 109(c) charts. Thank you, Your  
13 Honour.

14 JUDGE GUILLOU: Thank you.

15 Mr. Kehoe, very briefly.

16 MR. KEHOE: Just very brief, Judge.

17 The SPO is not being required to do anything. The rule tells  
18 them to do it. This is not something that's being imposed unjustly  
19 by someone on high. The rule says they're supposed to do it, and  
20 they have not successfully -- or explained why they can't give it to  
21 us when they give us the pre-trial brief.

22 I mean, most of the charges that they have here are -- this is a  
23 cut-and-paste indictment for charges that were litigated in other  
24 places like the ICTY, represented by my learned colleague to the  
25 left, where people were acquitted, and now we're seeing it all again

1 here. The same stuff, the same incidents, the same witnesses, I  
2 suspect.

3 So are they -- are we re-evaluating -- are they re-cooking that  
4 egg? Are they doing that all over again? I suspect not. The  
5 arguments given as to why this takes so long and the work streams,  
6 given the fact that they are just taking these other charges and then  
7 slapping them together in this indictment is just a specious  
8 argument, with all due respect, Judge. Thank you.

9 JUDGE GUILLOU: Thank you, Mr. Kehoe.

10 Madam Prosecutor, very briefly, then. You have, like, 20  
11 seconds.

12 MS. LAWSON: I will be extremely brief because my colleague and  
13 our written submissions have already covered the substance.

14 However, Mr. Emmerson's repeated personalised comments directed  
15 at individual members of the office, whether it be me, my colleague,  
16 or the Specialist Prosecutor, do not advance the submissions being  
17 made. They are entirely gratuitous and they fall far short of the  
18 conduct required from counsel.

19 MR. EMMERSON: I am not going to accept this and it's  
20 disgraceful to do it.

21 Every single time - every single time - Ms. Lawson stands up,  
22 she criticises me, and yet she can't take the slightest criticism of  
23 her own conduct. Oversensitive snowflake, sitting there, responding  
24 with absolute total lack of any compassion and total equanimity to  
25 the continued detention of these accused.

1 But above all, I do make an allegation against Mr. Black. He's  
2 out of control. He hasn't planned this Prosecution. It's no good  
3 saying, "Oh, they were rigid. The estimates were made on the basis  
4 of things as they seemed at the time." Come off it. We were all  
5 saying - if you were involved or read the transcripts, you'd know  
6 this - we were all saying those estimates are completely unrealistic.  
7 You need to build in there the capacity for what is really going to  
8 happen.

9 And now you're sitting here, asking this Judge to give you  
10 indefinite extensions that are going to force this trial into 2023.  
11 If you don't like personal criticism, then start acting  
12 professionally.

13 JUDGE GUILLOU: Let's move to the next topic in the agenda,  
14 which is the Defence investigations.

15 I would just like to hear if any of the Defence teams would like  
16 to give any update on its investigations?

17 Mr. Kehoe.

18 MR. KEHOE: I mean, yes, certainly, Judge. We will tell you  
19 that we have all of these documents that continuously come over the  
20 transom on a daily basis, and I said to Your Honour, 17 per cent of  
21 them came from -- since the last Status Conference. You're finding  
22 out where they're going in. You know, our folks are deployed, trying  
23 to figure out what these witnesses are talking about, because there  
24 is not a consistent numbering system within the documents. It's an  
25 inordinate amount of time to try to do that.

1 With regard to the investigation on the ground, putting aside  
2 any COVID issues, obviously, without a pre-trial brief and seeing  
3 what's the government's position on these charges and what are they  
4 actually alleging, I'm not saying that we're not investigating down  
5 there, but in the interests of speed and efficiency - and I know this  
6 comes at a cost, a financial cost - we have to know what they're  
7 actually alleging in order to focus that investigation, and we have  
8 not been able to do that.

9 I'm not saying that -- I'm not going to mislead the Court and  
10 say, "We're not doing anything," but I trust Your Honour understands  
11 that a focus comes when we're saying, "This is what our allegation  
12 is." And until we have that, we certainly can't give you a fulsome  
13 response to that.

14 Now I will say, as I said previously at the risk of repeating  
15 myself and what I said the last time, with regard to the alibi  
16 defence, it's just impossible at this point. We can revisit that  
17 down the line, and I'm sure we will, but we don't have an answer to  
18 that now.

19 JUDGE GUILLOU: Thank you, Mr. Kehoe.

20 Mr. Emmerson.

21 MR. EMMERSON: We have established a defence investigation  
22 office in Prishtina. We have a team set up, led by a senior  
23 solicitor, and we have a number of investigators. We're just waiting  
24 to find out what the case is. So they're on the payroll, but they  
25 don't know what they're supposed to be investigating because we

1 haven't received any meaningful case from the Prosecution whatsoever.

2 I want to make one thing clear: As counsel, I take  
3 responsibility for my team, and you're perfectly entitled to ask me,  
4 "What are you doing, and how are you progressing this?" I would just  
5 like to see some personal responsibility being taken on the other  
6 side of the courtroom.

7 And as far as we're concerned, we're in the situation where,  
8 doing the very best we can, and even without all of the material  
9 which is going for 68.000 documents, which we are going to have to  
10 request one way or another -- you know, I've done it in a generic  
11 way, but if we don't do it in a generic way, we'll make the requests  
12 sequentially for the lot of them now, because they're all potentially  
13 relevant to this waffle case. We need the same pool.

14 So, you know, it's impossible. How long is a piece of string?  
15 I can give you a pretty good certainty that since we can't start  
16 investigating till January at the earliest, possibly not even until  
17 after 28 January when we see the actual connections, because I  
18 suspect their pre-trial brief will not contain the information it  
19 needs to contain. Otherwise, they would serve them simultaneously.  
20 They're trying to buy some extra time to clarify their case.

21 But let's say we get started in the midst of winter, just after  
22 January. The best estimate I can give you is that we'd be looking  
23 realistically at a trial in January, February of 2023.

24 JUDGE GUILLOU: Thank you, Mr. Emmerson.

25 Mr. Roberts, please.



1 MR. ROBERTS: Nothing to add, Your Honour. We're all obviously  
2 very much in the same boat. We haven't progressed much further  
3 than -- much further than we had before. We are trying our best. We  
4 are, obviously, stymied in the same way as every other Defence team  
5 by the lack of knowing what the specific allegations are. So there  
6 is nothing I can particularly assist you with at this point. Thank  
7 you.

8 JUDGE GUILLOU: Thank you, Mr. Roberts.

9 Mr. Ellis, please.

10 MR. ELLIS: Yes, Your Honour. We're in the same position.  
11 We're in the same position. We adopt what others have said, Your  
12 Honour.

13 JUDGE GUILLOU: Thank you, Mr. Ellis.

14 I confirm to the parties that the next Status Conference will be  
15 held on 15 December, at 1430 Hague time. This is what I already  
16 mentioned in the previous Status Conference.

17 At this point, I would like to ask the parties if they have any  
18 other issues they would like to raise, starting with the Registry.

19 Maybe are you in a position to give details about the question  
20 that we had about translation, Mr. Roche?

21 MR. ROCHE: Thank you, Your Honour. Yes, the unrevised  
22 translation of document 5548 will be distributed after 1600 hours on  
23 Monday. Thank you.

24 MR. EMMERSON: Given the timing --

25 JUDGE GUILLOU: Mr. Emmerson, please.

1 MR. EMMERSON: Oh, sorry.

2 JUDGE GUILLOU: I give you the floor. So you have the floor,  
3 but ...

4 MR. EMMERSON: So I was just responding immediately to that.

5 Since we have a timetable of Monday to file, we will file the  
6 unofficial translated version that we're using. But, of course, by  
7 the time Your Honour considers it, the two will be together.

8 I have been asked if it would be possible - and I know this  
9 would normally be done in writing, but if I could ask - given the way  
10 the matter has been put by the SPO and the fact that Ms. Lawson  
11 hasn't withdrawn the imputation of impropriety, we are going to have  
12 to deal with that, and that requires some extra words. So can I ask  
13 you to grant us an extension for the reply?

14 JUDGE GUILLOU: How many words?

15 MR. EMMERSON: Can I ask Mr. Strong, who is primarily  
16 responsible, to give me the number.

17 MR. STRONG: [via videolink] Yes, I think an additional 1.500  
18 words should suffice.

19 JUDGE GUILLOU: Then I will issue a first oral order, and I will  
20 grant the request from the Defence for an extra 1.500 words for their  
21 reply.

22 MR. EMMERSON: Thank you.

23 JUDGE GUILLOU: This concludes my first oral order.

24 Madam Prosecutor.

25 MS. LAWSON: Just to respond to the Veseli Defence's last point.

1 It is not an allegation of impropriety that we're making. It's  
2 an indicator that the Veseli Defence --

3 JUDGE GUILLOU: Madam Prosecutor, you said that this was going  
4 to be dealt with in writing, so it's going to be dealt with in  
5 writing between the parties. But we're not going to raise this now.  
6 It's 6.28.

7 So, please, do you have any other material you would like to  
8 raise apart from this? You cannot ask Mr. Emmerson not to raise this  
9 kind of issue in the Status Conference and then raise them yourself.

10 So, please, do you have any other material you would like to  
11 raise?

12 MS. LAWSON: No further matters. Thank you, Your Honour.

13 JUDGE GUILLOU: Thank you, Madam Prosecutor.

14 Mr. Kehoe, please.

15 MR. KEHOE: Yes, Your Honour, we obviously had the issue of  
16 interim release. We had an adverse ruling from the appellate chamber  
17 the day before yesterday, or yesterday, concerning dealing with  
18 *[REDACTED] Pursuant to instruction from Pre-Trial Judge.*

19 *[REDACTED] Pursuant to instruction from Pre-Trial Judge.*

20 There was a dissent by Judge Jorgensen. Of course, Judge  
21 Jorgensen was on the initial Panel where there was some language in  
22 this regard by Judge Ambos. Judge Ambos was not on the last Panel;  
23 he was removed. And, of course, had Judge Jorgensen and Judge Ambos  
24 been on the last Panel, I suspect that we would have had a different  
25 ruling.

1           But as far as Your Honour is concerned - and I ask this in  
2 moving ahead with some of the questions that Your Honour has asked -  
3 can you give us some guidance as to what path we should follow for  
4 pre-trial release, given all of these delays, et cetera? There is a  
5 police report that Your Honour has ordered that is going to come to  
6 the fore that is being translated as we speak. But any guidance that  
7 Your Honour can give us on that score would be extremely helpful,  
8 given the time that these gentlemen have been -- my client has been  
9 incarcerated, and looks like there's going to be a significant period  
10 of time before this case goes to trial.

11           I know it's late, I know that's a lot to put on the table,  
12 Judge, but it's an extremely important issue we've been talking about  
13 basically all afternoon.

14           JUDGE GUILLOU: Guidance regarding the deadline for your  
15 submissions?

16           MR. KEHOE: No, just, what is -- is it sufficient? I mean,  
17 sufficiency seems to be the issue.

18           JUDGE GUILLOU: Exactly as I said to Ms. Lawson. This is not in  
19 the agenda. We are not talking about this matter. This is done via  
20 written ruling. So you can make a request, you can include this in  
21 your submissions, but this is not isn't the in the agenda. I repeat  
22 exactly what I said to the Prosecution.

23           MR. KEHOE: And it was under the table of "other issues," Judge,  
24 and I wanted to raise it and bring it to Your Honour's attention  
25 because it's something that's obviously seriously concerning my

1 client and the Defence teams, all.

2 JUDGE GUILLOU: Thank you, Mr. Kehoe.

3 Mr. Emmerson.

4 MR. EMMERSON: [Microphone not activated].

5 JUDGE GUILLOU: Thank you, Mr. Emmerson.

6 Mr. Roberts, please.

7 MR. ROBERTS: Nothing to add, Your Honour. Thank you.

8 JUDGE GUILLOU: Thank you, Mr. Roberts.

9 Mr. Ellis, please.

10 MR. ELLIS: Thank you, Your Honour. Nothing further.

11 JUDGE GUILLOU: Thank you, Mr. Ellis.

12 Mr. Laws, please.

13 MR. LAWS: [via videolink] Your Honour, thank you.

14 Just one matter which relates back to the working forum in  
15 relation to Legal Workflow and the establishment of legal entities.  
16 Just to put on the record that we would welcome being included in  
17 that working forum, please. Thank you.

18 JUDGE GUILLOU: Thank you, Mr. Laws. This is noted.

19 Before we end this hearing, I will issue a couple of oral  
20 orders. I already issued the first oral order, so I will issue my  
21 second oral order concerning the SPO's pre-trial brief and related  
22 material according to Rule 95(4) (a) to (c).

23 In light of the parties' submissions, and considering that we  
24 are nearing the completion of the disclosure of Rule 102(1) (b)  
25 material, I order the SPO to file its pre-trial brief and related

1 material, pursuant to Rule 95(4) (a) to (c) of the Rules, by  
2 17 December 2021.

3 I further order the SPO to file its Rule 109(c) chart by 28  
4 January 2022.

5 This concludes my second oral order.

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

8 I note in this regard that I will issue a decision on the SPO's  
9 eleventh and twelfth requests for protective measures after the  
10 1 November deadline for the disclosure of Rule 102(1) (b).

11 I further note that the SPO has indicated that the following  
12 Rule 102(1) (b) material is outstanding: One associated exhibit of an  
13 international witness for which Rule 107 clearance was denied; lesser  
14 or unredacted versions of transcripts and associated exhibits of  
15 three witnesses; and prior statements and associated exhibits for two  
16 witnesses subject to variation of protective measure requests.

17 Given the SPO's efforts to receive clearance for these remaining  
18 materials and its attempt to improve the efficiency of the  
19 translation process, I consider that good cause has been shown for  
20 the requested variation of the Rule 102(1) (b) deadline.

21 The current Rule 102(1) (b) deadline for the outstanding  
22 material, including material pending protective measures requests,  
23 is, therefore, varied and the SPO is ordered to disclose such  
24 material to the Defence as soon as possible and on a rolling basis  
25 but no later than 31 January 2022.

1 As regards translation of Rule 102(1)(b) material, I order the  
2 SPO to provide outstanding translations as soon as possible and on a  
3 rolling basis but no later than 31 January 2022.

4 This concludes my third oral order.

5 I will now issue my fourth oral order concerning deadlines in  
6 relation to Rule 102(3) material.

7 In light of the parties' submissions today, I suspend the  
8 Defence deadline to request the Rule 102(3) material. The current  
9 suspension for SPO deadlines in relation to 102(3) material remains.

10 In the meantime, before deadlines are re-established, the  
11 parties are expected to continue expeditiously towards the disclosure  
12 of Rule 102(3) material. This includes the Defence requesting items  
13 material to its preparation from the SPO's amended Rule 102(3) notice  
14 and the SPO processing these requests.

15 The deadline will be re-established at the next Status  
16 Conference unless otherwise ordered.

17 This concludes my fourth oral order.

18 And I can already indicate to the parties that we will continue  
19 the discussion on this material following the arguments raised by the  
20 Defence today at the next Status Conference.

21 I will now issue my fifth oral order on the Defence for  
22 Mr. Selimi's request concerning Rule 102(3) material.

23 In its submission of 27 October 2021, the Defence for Mr. Selimi  
24 requested that all items on the SPO's Rule 102(3) notice be disclosed  
25 without assessment of the materiality of the items.

1 I note that Rule 102(3) of the rules only obligates disclosure  
2 upon showing of materiality on the part of the Defence. This is due  
3 to the nature of this category of material and contrasts with the  
4 mandatory nature of disclosure in relation to supporting material to  
5 the indictment and material that the SPO intends to rely at trial.

6 I, therefore, find that disclosure of all items on the  
7 Rule 102(3) notice need to follow the process stipulated in the  
8 rules.

9 The Defence for Mr. Selimi's request on that point is,  
10 accordingly, rejected.

11 That concludes my fifth oral order.

12 I will now issue my sixth oral order on the Defence for  
13 Mr. Selimi's request for further categorisation, linkage, and review  
14 of disclosed material.

15 In its submission of 27 October 2021, the Defence for Mr. Selimi  
16 requested that translations, revised, or lesser redacted versions or  
17 documents with corrected metadata be linked in Legal Workflow to  
18 their original documents; that all documents linked to Mr. Selimi be  
19 reviewed again by the SPO; and witness entities be created for all  
20 witnesses on the SPO's preliminary witness list and relations be  
21 created in Legal Workflow between all statements and/or documents  
22 relating to a particular witness.

23 In order to facilitate Defence processing of disclosed material,  
24 I order the SPO, by 15 December 2021, to create witness entities in  
25 Legal Workflow to link statements or documents to the relevant



1 witness.

2 Finally, I invite the SPO and the Defence for Mr. Selimi and all  
3 other Defence teams, where applicable, to engage in *inter partes*  
4 discussions to review all documents categorised as linked to  
5 Mr. Selimi and review whether translations, lesser redacted versions,  
6 and corrected versions of documents are properly linked to their  
7 original in Legal Workflow.

8 I invite the parties to report to me on this issue in their  
9 submissions before the next Status Conference.

10 And this concludes my sixth oral order.

11 And I inform the parties that this is also going to be an item  
12 to be discussed at the next Status Conference.

13 This concludes today's hearing. I thank the parties and  
14 participants for their attendance.

15 I also wish to thank the interpreters, stenographer,  
16 audio-visual technician, and security personnel for their assistance.

17 And I just inform Mr. Kehoe that I will order the redactions of  
18 one sentence you mentioned just before the last -- during your last  
19 intervention, because it was mentioned, things that were not in the  
20 public domain yet, relating to some countries that you raised a  
21 little earlier.

22 MR. KEHOE: [Microphone not activated].

23 JUDGE GUILLOU: Thank you.

24 Yes, this hearing is adjourned. Thank you.

25 --- Whereupon the Status Conference at 6.39 p.m.