

1 Friday, 4 February 2022  
2 [Status Conference]  
3 [Open session]  
4 [The accused entered the courtroom via videolink]  
5 --- Upon commencing at 2.30 p.m.

6 JUDGE GUILLOU: Good afternoon, everyone, and welcome.  
7 Court Officer, could you please call the case.

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

11 JUDGE GUILLOU: Thank you, Madam Court Officer.

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

14 Madam Prosecutor.

15 MS. LAWSON: Good afternoon, Your Honour, and to those joining  
16 both in the courtroom and remotely. For the Specialist Prosecutor's  
17 Office this afternoon are Alan Tieger, Senior Prosecutor;  
18 Ward Ferdinandusse, Head of Investigations Prosecutions; Marlene  
19 Yahya Haage, Legal and Disclosure Officer; and also joining us this  
20 afternoon are SPO interns Mia Vukovic and Ruth del Pino. And I am  
21 Clare Lawson, Senior Prosecutor.

22 JUDGE GUILLOU: Thank you, Madam Prosecutor.

23 Now let me turn to the Defence.

24 Mr. Kehoe, please.

25 MR. KEHOE: Yes, good afternoon, Your Honour. Gregory Kehoe on

1     behalf of President Hashim Thaci, along with Pierre Prosper,  
2     Dastid Pallaska, Sophie Menegon, and down in the third row is Bonnie  
3     Johnston. Thank you. Oh, I forgot. And the good-looking fellow up  
4     there on the left with the beard is Jonathan Greenblatt.

5             JUDGE GUILLOU: Thank you, Mr. Kehoe.

6             Let me turn to Mr. Emmerson, please.

7             MR. EMMERSON: [via videolink] Good afternoon, Your Honour, and  
8     to all of those in the courtroom and beyond. I appear this afternoon  
9     on behalf of Mr. Veseli, assisted in the courtroom by  
10    Mr. Andrew Strong, Counsel; Ms. Annie O'Reilly, Counsel; Mr. Kujtim  
11    Kerveshi, Counsel; and Ms. Pascale Langlais as Case Officer. We are  
12    also joined today by [indiscernible] Hajredin Kuci.

13            JUDGE GUILLOU: Thank you, Mr. Emmerson.

14            Mr. Young, please.

15            MR. YOUNG: Your Honour, good afternoon. I appear for  
16    Mr. Rexhep Selimi, and I am assisted today by Mr. Geoffrey Roberts,  
17    Dr. Rudina Jasini, and Ms. Furtuna Sheremeti. Thank you.

18            JUDGE GUILLOU: Thank you, Mr. Young.

19            And Ms. Alagendra who is in the courtroom.

20            MS. ALAGENDRA: Finally. Good afternoon, Your Honour.  
21    Venkateswari Alagendra for Mr. Krasniqi, together with  
22    Mr. Aidan Ellis, Counsel; and Mr. Victor Baiesu, Counsel; and we have  
23    our Legal Associate, Mr. Mentor Beqiri.

24            JUDGE GUILLOU: Thank you, Ms. Alagendra.

25            And from the record, I note that Mr. Thaci, Mr. Veseli,

1 Mr. Selimi and Mr. Krasniqi are not physically present in the  
2 courtroom but attend this hearing via video-conference.

3 Now I turn to the counsel for victims.

4 Mr. Laws, please.

5 MR. LAWS: [via videolink] Good afternoon, Your Honour, and good  
6 afternoon to everybody joining us today. I'm Simon Laws and I'm  
7 counsel for the victims in this case.

8 JUDGE GUILLOU: Thank you, Mr. Laws.

9 And, finally, I turn to the Registry.

10 Mr. Nilsson, please.

11 MR. NILSSON: Good afternoon, Your Honour, Jonas Nilsson,  
12 Judicial Service Division, Registry.

13 JUDGE GUILLOU: Thank you, Mr. Nilsson.

14 And from the record, I am Nicolas Guillou, Pre-Trial Judge for  
15 this case.

16 On 22 January, I scheduled this tenth Status Conference. I  
17 asked the parties to provide with written submissions if they so  
18 wished.

19 On 1 February 2022, the SPO, three Defence teams, and the  
20 Registry submitted their written observations.

21 The purpose of our hearing today is to review the status of the  
22 case and to discuss the topics in our agenda; specifically,  
23 disclosure, translations, SPO investigations, and Defence  
24 investigations. As usual, I will invite the parties to present their  
25 views in a concise fashion about each item.

1 But before we go into matters pertaining to disclosure, I would  
2 like to address the Thaci Defence request to be heard on matter  
3 relating to pre-detention review and to the SPO's submissions on  
4 handling confidential information and the parties' contact with  
5 witnesses.

6 With respect to detention review, I invite the Thaci Defence to  
7 make its request in the context of the next detention review. As  
8 regards the SPO's submissions concerning the handling of confidential  
9 information and the parties' contact with witnesses, I asked the  
10 Registry for submissions, which were filed yesterday and distributed  
11 this morning.

12 I invited the parties to reply to these submissions in writing  
13 by 14 February 2022.

14 I would like the parties to present their views now on whether  
15 additional oral arguments are necessary, or whether they prefer  
16 *inter partes* discussions at this stage, as suggested by some of the  
17 Defence teams. Then the degree to which such a hearing could be  
18 conducted in public. And, finally, whether the parties would be  
19 available on Tuesday, 22 February, in the afternoon, if such a  
20 hearing would be scheduled.

21 I will first ask the Defence for their views on this matter,  
22 starting with the Thaci Defence team which made the request  
23 originally.

24 Mr. Kehoe.

25 MR. KEHOE: Yes, Your Honour, thank you for the floor. We

1 absolutely would like a hearing to discuss this --

2 JUDGE GUILLOU: I think your microphone is -- oh, no, sorry.

3 MR. KEHOE: Is it not on?

4 JUDGE GUILLOU: No, it is the other one. No, sorry, I think  
5 that's good. I was only looking at the other one.

6 MR. KEHOE: Oh, okay. The wires kind of extend a bit.

7 We absolutely would ask the Court for a hearing on this matter.  
8 We think it's crucial. We think the positions suggested by the SPO  
9 is an invasion of the Defence camp, it's an invasion of the  
10 attorney-client privilege, and it is just unsupportable. And we must  
11 discuss this matter because what they have put on the table for  
12 Your Honour to consider is completely untenable and will not allow  
13 the Defence to vigorously defend our clients the way they should be  
14 defended, with the SPO sitting across the table with regard to these  
15 witnesses.

16 So, yes, we will -- I will check my schedule on the 22nd, Judge.  
17 If I can just do that at the break. But the Thaci team absolutely  
18 categorically would request a hearing on that issue.

19 With regard to the pre-trial detention matters, Judge. I put  
20 that on simply because, obviously, there's an appeal *sub judice* at  
21 this point. However, given that we will probably be back before  
22 Your Honour, we were looking for some guidance from Your Honour.  
23 Some guidance as to what Your Honour wanted, whether it was  
24 submissions made by the Kosovo police that the SPO decided to  
25 criticise and cause to be somewhat corrupt without doing it in

1 public, of course, behind closed doors and confidential issues. And  
2 our submission on that issue is yet another hearing on that issue so  
3 Your Honour can ask anybody from the Kosovo police, or any third  
4 party country, questions about any arrangement for pre-trial release.  
5 It's impossible to give every piece of information that Your Honour  
6 may want.

7 Your Honour asked questions of the Kosovo police, answers were  
8 provided, and Your Honour wrote, in its last decision, that there  
9 were some questions with regard to that information. I understand  
10 that the Court has questions. The proper methodology, I submit to  
11 Your Honour, is bring those people here, sit them down in the witness  
12 box, and ask them questions on the methodology that they will employ,  
13 be it the Kosovo police or any third party country. That's all we're  
14 asking for at this point, Judge.

15 And that type of approach is something that I think will be very  
16 helpful for the Court and will clarify any lingering questions that  
17 the Court may have, and I would ask the Court if we could do that as  
18 soon as possible.

19 JUDGE GUILLOU: Thank you, Mr. Kehoe.

20 Mr. Emmerson, please, on the proposal to schedule a hearing  
21 specifically for the SPO request on handling confidential  
22 information.

23 MR. EMMERSON: [via videolink] Yes, on both of the requests made  
24 by Mr. Kehoe, we enthusiastically support the position he's advanced.

25 As regards the second point, as you will recall, I've been

1 making the argument since the first provisional release application  
2 that Your Honour can't rule on that without having heard from the  
3 director of police. And [indiscernible] that was one of the grounds  
4 of appeal that resulted in the first decision being turned down and  
5 [indiscernible] has been a live issue ever since. And each time, I  
6 mean, the appeal has all been turned on the fact that you didn't do  
7 enough to inquire. And that was the second appeal. But, I mean, at  
8 the end of the day, you put that right and show an open judicial mind  
9 by hearing the witness whose evidence you have found to be  
10 insufficient in some form or another.

11 So we would strongly support both applications for a hearing and  
12 22 February is entirely convenient.

13 JUDGE GUILLOU: Thank you, Mr. Emmerson.

14 Mr. Young, please.

15 MR. YOUNG: Your Honour, likewise we strongly support the  
16 submission of Mr. Kehoe on behalf of Mr. Thaci.

17 There's no reason why we can't have a hearing in public. This  
18 is a discussion. These are submissions on law. In fact, if we have  
19 a public hearing, it will be a very straightforward way to narrow the  
20 issues quickly and efficiently. And so I applaud Your Honour for  
21 considering this course and setting the date.

22 As far as the date is concerned, 22 February is convenient to  
23 us.

24 Thank you.

25 JUDGE GUILLOU: Thank you, Mr. Young.

1 And Ms. Alagendra, please.

2 MS. ALAGENDRA: Your Honour, we support the position taken by  
3 all Defence teams for the reasons they have given as well.

4 On the date, Your Honour, could we come back after the break  
5 with? I'm grateful.

6 JUDGE GUILLOU: Thank you, Ms. Alagendra.

7 Madam Prosecutor, please.

8 MS. LAWSON: Thank you, Your Honour.

9 On contact with witnesses and confidential information.  
10 Submissions have already been made in writing, and there is the  
11 opportunity for the parties to now reply further in light of the  
12 Registry's submissions that were notified earlier today. However,  
13 should Your Honour consider a hearing necessary, having received  
14 those further submissions, we would be available on 22 February.

15 Thank you.

16 JUDGE GUILLOU: Thank you, Madam Prosecutor.

17 And let me turn to Mr. Laws, please.

18 MR. LAWS: [via videolink] Thank you, Your Honour.

19 Your Honour, we are neutral as to whether the further  
20 submissions should be made orally or in writing. But we are not  
21 neutral about the outcome of those discussions, because this is a  
22 matter of great importance to the victims, who are also witnesses in  
23 this case.

24 So we're happy to do it either way. 22 February, if it's  
25 determined that there's to be an oral hearing, is a date that's



1 convenient to us.

2 Thank you.

3 JUDGE GUILLOU: Thank you, Mr. Laws.

4 Mr. Nilsson, do you want to take the floor on this?

5 MR. NILSSON: Thank you, Your Honour.

6 No, nothing to add. We are always available for a hearing.

7 JUDGE GUILLOU: Thank you, Mr. Nilsson.

8 So I invite the parties to reply to the Registry's submissions  
9 in writing before 14 February, and to inform the Court Management  
10 Unit about your availabilities on the 22nd, and I will make a  
11 decision shortly after 14 February to schedule - or not - a hearing  
12 based on your written submissions.

13 Let us now move to the first topic that was listed in the  
14 Scheduling Order, which is disclosure. And, as usual, I will give  
15 the floor to the parties on the disclosure of each category of  
16 material separately.

17 First, the 102(1)(b) material, which is the material the SPO  
18 intends to use at trial. I also invite the parties to give an update  
19 on the witness entities in Legal Workflow during this round of  
20 discussion.

21 Second, the Rule 102(3) material, which is the material relevant  
22 to the case, as listed by the SPO.

23 Third, the Rule 103 material, which is exculpatory material.

24 And, finally, the Rule 107 material, which is protected material  
25 for which the consent of the provider is requested.

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

3           At the Status Conference of 29 October 2021, I extended the  
4 deadline for the disclosure of outstanding Rule 102(1)(b) material  
5 and the translation of such material to 31 January 2022.

6           During the last Status Conference, the SPO indicated that  
7 disclosure of the English translation of 496 items and the Albanian  
8 translation of 545 items remained outstanding. The SPO also  
9 mentioned that less than ten items of Rule 102(1)(b) were still to be  
10 disclosed.

11           In its written submissions, the SPO indicated that since the  
12 last Status Conference, it disclosed three Rule 102(1)(b) disclosure  
13 packages containing new material, and three packages containing  
14 translations of previously disclosed Rule 102(1)(b) material.

15           I note that the number of items disclosed is substantially  
16 higher than what was expected.

17           The SPO considers that it has now completed disclosure of  
18 existing Rule 102(1)(b) materials, including translations, subject to  
19 any future ruling on the last SPO request on protective measures and  
20 with the exception of the audio-visual recording of -- and two  
21 associated exhibits addressed in the Extension Decision I issued on  
22 Monday.

23           The SPO also indicated that it intends to make related  
24 disclosure pursuant to Rule 102(2) in relation to the evidence of two  
25 witnesses and will do so as soon as the relevant transcripts are

1 available.

2 In its submissions, the Thaci Defence requests that the SPO  
3 confirm whether disclosure pursuant to Rule 102(1)(b) has now been  
4 completed. In particular, English translations of all documents  
5 disclosed as incriminating by the SPO, and all items mentioned in  
6 witness statements and interviews.

7 I invite the SPO to respond to the Defence interrogations, to  
8 present their submissions on the discrepancy between the amount of  
9 material disclosed and the previous estimates during the last Status  
10 Conference, and to provide a best estimate for obtaining the relevant  
11 transcript for the Rule 102(2) witnesses and making an application on  
12 this matter.

13 Finally, I would also like the parties to give an update on  
14 their *inter partes* discussions on the witness entities that have been  
15 created in Legal Workflow. On this topic, I note that certain  
16 additional metadata, including modes of testimony and linking all the  
17 relevant filings as the case progresses, will be added by the  
18 Registry. However, I note the persistent concern of the Defence on  
19 this tool and their demand to populate the witness entities with  
20 additional information, such as the witness's name, date of birth,  
21 and protective measures.

22 I invite the parties to present their submissions on these  
23 issues; in particular, for the SPO to explain their concerns with  
24 respect to populating these witness entities.

25 Madam Prosecutor.

1 MS. LAWSON: Thank you, Your Honour.

2 As the Court is aware, there are a very small number of items  
3 held by third parties for which an extension has been granted. As  
4 you mentioned, that is two associated exhibits and accompanying  
5 recordings for certain already disclosed transcripts. Otherwise, the  
6 SPO has completed disclosure of existing Rule 102(1)(b) materials,  
7 including translations, and that was by way of Disclosure Packages  
8 154 to 159.

9 I'm pleased to also be able to provide the Court with an update  
10 in relation to the outstanding items. Yesterday we received official  
11 confirmation that the third party entity in question that has the  
12 recordings is now in a position to release those recordings to us.  
13 Similarly, yesterday we were also informed that one of the two  
14 associated exhibits has been cleared. So we expect to receive each  
15 of those items shortly and will proceed to disclose them once  
16 received. That means there's now only one item left to be resolved.

17 As Your Honour mentioned, there are a couple of other matters  
18 that we mentioned in our -- there was one other matter that we  
19 mentioned in our written submissions for the awareness of the Court.  
20 That was the Rule 102(2) disclosure and related filing that we intend  
21 to make.

22 My understanding is that we are only awaiting the Albanian  
23 translation of one of those interviews now, so we would expect that  
24 to be ready in the near future. And as soon as it is, we'll be able  
25 to make the application. "The near future" in this context hopefully

1 means next week when we would receive it.

2 JUDGE GUILLOU: You anticipated my question.

3 MS. LAWSON: Yes, Your Honour.

4 And there is one other matter that I would mention for the  
5 awareness of the Court and the parties. And that is, obviously, that  
6 trial proceedings are ongoing before Trial Panel I, and that is  
7 continuing to generate certain materials that fall within our  
8 disclosure obligations. The Prosecution case in that trial was  
9 closed earlier today, and so, where necessary, we'll be sure to  
10 continue to fulfil any disclosure obligations in this case arising  
11 out of those proceedings.

12 With regard to witness entities. The SPO released all of the  
13 witness entities in December 2021, and those witness entities have  
14 prior statements and associated exhibits linked to them. The  
15 Registry has also confirmed during *inter partes* discussions that  
16 consistent with practice in other cases and before other courts, as  
17 proceedings progress, it will update certain additional metadata and  
18 link relevant filings.

19 The SPO does not actually have the technical capability to  
20 upload further metadata to the witness entities in Legal Workflow.  
21 However, as indicated in our written submissions, we are happy to  
22 arrange to provide the Registry with witness names and filing numbers  
23 of relevant protective measures decisions to assist them in adding  
24 such information. And this was indicated in *inter partes*  
25 communications that the Registry would be in a position to do so once

1 we provide them with that information.

2 Thank you.

3 JUDGE GUILLOU: Thank you, Madam Prosecutor.

4 Mr. Kehoe, procedures.

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

6 Several items, of course, consistent with Your Honour's question  
7 about why there was an estimate made of 102(1)(b) disclosures that  
8 were going to be made and it was significantly higher than that.

9 We have received since the last conference Rule 102(1)(b)  
10 matters, 1.954. On Monday, this past Monday, 31 January, we  
11 received -- of the 1.954, we received 1.613. So as far as this being  
12 a rolling production of 102(1)(b) material consistent with the OTP's  
13 practice, this document production dump is given to us on the eve of  
14 a conference before Your Honour.

15 That being said, counsel has said that they have fulfilled their  
16 102(1)(b) requirements. Of course, going to the trial that's before  
17 Trial Panel I, the Salih Mustafa matter, I do believe that there was  
18 a decision by that Chamber essentially bringing it back to this  
19 Chamber with regard to those disclosures. And we are talking about  
20 transcripts and exhibits.

21 We have received none of that. That trial has been going on for  
22 some period of time. So when they say they've completed their  
23 102(1)(b) disclosures, that's just simply not accurate because we  
24 have not received that.

25 With regard to the rest of the 102(1)(b), there was another item

1 that was filed by the Prosecutor on Monday talking about redacting  
2 documents. And the Prosecution now seeks to add 132 documents -  
3 statements, and exhibits - that they maintain that they overlooked,  
4 and they're looking for protective measures in that regard too. They  
5 have redacted these documents unilaterally. Not asking the Court.  
6 They just have redacted the documents which is, frankly, the MO for  
7 the Prosecutor's Office.

8 Obviously in terms of the pre-trial brief, which we all know  
9 that the Prosecutor was scheduled to file that brief per  
10 Your Honour's order on 17 December. Did the Defence receive that  
11 document on 17 December? No. We did not receive that document until  
12 21 December, some four days later.

13 There was no request of this Court to delay disclosure of that  
14 pre-trial brief to the Defence. The Prosecutor, consistent with  
15 their conduct, just did it on their own. Didn't pay any attention to  
16 Your Honour's order and just did it. They filed the brief on the  
17 17th, they filed it under seal, and we didn't get it, the redacted  
18 copy, until the 21st in complete violation to Your Honour's order.

19 But be that as it may. They now come here, the exhibit list  
20 deadline -- again, Your Honour ordered that exhibit list deadline to  
21 be 17 December, if my memory serves me correctly. And now they're  
22 adding another 132 documents - statements and exhibits well after -  
23 well after - the period of time that they were ordered to disclose  
24 it, unilaterally redact these documents but they want to now add it  
25 all to the witness list as 102(1)(b) exhibits.

1           Deadlines don't seem to mean anything to the SPO. They don't --  
2   you know, Court's orders mean little to what they are going to do and  
3   how they're going to disclose matters. At least - at least - they  
4   could have asked the Court, and I assume they knew this was the case  
5   prior to 31 January, whether they could redact these documents. But  
6   they didn't and they just did it on their own.

7           And now we have these 132 more exhibits floating in the ether  
8   some place that are redacted consistent with how the SPO redacts  
9   everything.

10          With regard to the actual Legal Workflow, Your Honour. I am  
11   going to bow to the Krasniqi team to answer Your Honour's questions  
12   in that regard because, frankly, they're smarter and better schooled  
13   on this issue than I am. And at the risk of misleading you with  
14   something I'm not completely educated on, if I can turn to the  
15   Krasniqi Defence on that score at the appropriate time, now or  
16   whenever, to address that matter.

17          I do believe I have addressed all of Your Honour's points.

18          JUDGE GUILLOU: Thank you, Mr. Kehoe.

19          Mr. Emmerson, please.

20          MR. EMMERSON: [via videolink] I am going to ask Annie O'Reilly  
21   to present the Veseli submissions on disclosure, please.

22          JUDGE GUILLOU: Thank you, Mr. Emmerson.

23          Ms. O'Reilly, please.

24          MS. O'REILLY: Thank you, Your Honour.

25          We adopt the submissions made by the Thaci Defence. And we'd



1 just like to add, while we're here, there's no great place to put  
2 this. The request that the Prosecution made, the 102(1)(b) request  
3 on Monday, in paragraph 3 states that those further materials were  
4 either obtained between late 2021 and January 2022 or simply  
5 overlooked.

6 So I just wanted to make clear, with respect to those materials  
7 that are coming into their possession all the time, we need  
8 assurances that those are also being reviewed for disclosure under  
9 other rules, such as 103 and 102(30). We haven't had any update to  
10 the 102(3) list since it was disclosed last summer, and that seems  
11 slightly incredible. So we just wanted to make sure that that  
12 process is ongoing, that they are continuing to identify materials  
13 that are disclosable under other rules.

14 Other than that, no further submissions from us.

15 With regards to the Legal Workflow. Yes, we've started the  
16 *inter partes* forum. There is not much to add on that. It's not a  
17 very useful system. We're trying to see if there is scope for  
18 improvement. So far, not much to report.

19 Thank you.

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

21 Mr. Kehoe, briefly.

22 MR. KEHOE: Your Honour, did you want our commentary on the  
23 Rule 102(3) issues now or -- okay, thank you.

24 JUDGE GUILLOU: Later.

25 Mr. Young, briefly.

1 MR. YOUNG: Yes, Your Honour, briefly.

2 We do also support the submissions in relation to the Thaci  
3 Defence on this issue.

4 There is one additional point I would like to raise. The  
5 Prosecutor has just addressed you this morning -- or this afternoon,  
6 and has properly - quite properly - accepted that the Prosecution  
7 hold 102(1)(b) disclosure obligations in relation to the materials in  
8 the previous trial proceedings in this Court.

9 The only matter I raise now for Your Honour, given the  
10 situation, the deadline and timelines, is that this material should  
11 be disclosed very quickly. So I ask Your Honour to set a deadline  
12 for the Prosecution to disclose these materials to the Defence,  
13 because, as Your Honour will appreciate, the 102(1)(b) material, in  
14 the previous KSC proceedings, are, effectively, akin to witnesses's  
15 prior testimony. So we should have that as soon as.

16 And so I ask Your Honour to set a date.

17 Thank you.

18 JUDGE GUILLOU: Thank you, Mr. Young.

19 Ms. Alagendra, please.

20 MS. ALAGENDRA: Could Mr. Ellis address the issues on  
21 disclosure, Your Honour.

22 JUDGE GUILLOU: Sure.

23 MS. ALAGENDRA: Thank you.

24 JUDGE GUILLOU: Thank you, Ms. Alagendra.

25 Mr. Ellis, please.

1 MR. ELLIS: Thank you, Your Honour.

2 We support the submissions that previous Defence teams have made  
3 on these issues.

4 In relation to the working forum. It's right that, as  
5 Ms. O'Reilly said, the first meeting has happened. It didn't solve  
6 all of the issues. But the next meeting has been scheduled, and we  
7 will try to progress the *inter partes* process a little further before  
8 we bring matters back to Your Honour.

9 JUDGE GUILLOU: Thank you, Mr. Ellis.

10 Let me turn to the Registry.

11 I guess you've attended the Legal Workflow meeting. Do you see  
12 room for improvement, especially following what Madam Prosecutor said  
13 about the fact that you could populate the witness entities,  
14 according to what Ms. Lawson indicated?

15 MR. NILSSON: Thank you, Your Honour.

16 Yes, regard to -- it's correct you have summarised the position  
17 well, and Ms. Lawson as well.

18 As for the witness entities, there is certain metadata that will  
19 be provided and will be dealt with by the Registry. I'll add maybe,  
20 as a clarification, that this metadata includes protective measures,  
21 which the Registry will also be in a position to add to it. So  
22 that's as far as it can go.

23 And this will be -- well, besides the protective measures, where  
24 there is certain information available, of course, already now, much  
25 of this will be as the case progresses and the witnesses will testify

1 and so on.

2 Thank you.

3 JUDGE GUILLOU: Thank you, Mr. Nilsson.

4 Let me turn to the Prosecution. Madam Prosecutor, if you could  
5 respond to the Defence question; notably, the redacted exhibits.  
6 The, basically, unilateral redactions. Then the question about the  
7 new documents that have been disclosed, have they been reviewed for,  
8 notably, Rule 103, i.e., to determine if they are exculpatory. And  
9 also for the proposal to set a deadline to disclose materials that  
10 was raised by Mr. Young. And any other matter you would like to  
11 respond to also.

12 Thank you.

13 MS. LAWSON: Thank you. And I, in fact, neglected to respond to  
14 your initial question on the discrepancy on numbers, and I will do so  
15 now.

16 At the time of the last Status Conference, what we were aware of  
17 was one associated exhibit and the lesser redacted or unredacted  
18 materials disclosed in Packages 154, which had two items, and 155,  
19 which had seven items.

20 As indicated in our written filing on Monday, that's filing 670,  
21 the additional 60 items, plus translations, the 132 includes  
22 translations, we identified as not having been included in prior  
23 disclosure packages during the additional verifications we conducted  
24 while finalising the Rule 95(4) materials and preparing the  
25 Rule 109(c) chart. And these have since been promptly disclosed on

1 the 31 January deadline.

2 It is correct that we disclosed some of those items with  
3 redactions provisionally in place, while we simultaneously made an  
4 application to the Court on Monday. And we did that in order to  
5 provide them to the Defence teams at the earliest possible  
6 opportunity.

7 With respect to the figure of 1.954 items quoted by the Thaci  
8 Defence. That obviously includes translations of previously  
9 disclosed materials. And in some cases, there are multiple  
10 translations associated with a single original item which, in part,  
11 explains the discrepancy in numbers. But that number quoted is also  
12 slightly misleading in this context, because it includes the 341  
13 items included in Disclosure Package 137, and that disclosure package  
14 was the materials resulting from lifting of delayed disclosure  
15 protections for certain witnesses which fell at the same time as our  
16 filing of the pre-trial brief and related materials.

17 In relation to the new documents which are being received in the  
18 office. Those are, indeed, being reviewed for disclosure under other  
19 rules. We'll come to it, I'm sure, in the context of Rule 103 and  
20 other matters. But those are, in fact, the documents that we're  
21 currently focusing our Rule 103 review on; that is, materials  
22 received in the past approximately seven months in the office.

23 And in relation to materials from Trial Panel I. Certain  
24 materials from that case have, in fact, already been disclosed to the  
25 Defence in this case. And as I mentioned, the Prosecution case

1 closed earlier today, so we will be now promptly reviewing all the  
2 materials generated by those proceedings, preparing them for  
3 disclosure in a timely manner. I don't immediately have the volume  
4 and wouldn't be able to give an estimate, but we will do it promptly.

5 Finally, in relation to the pre-trial brief. It was filed on  
6 Friday, 17 December, in accordance with the deadline given. And it  
7 was notified on Monday, 20 December, in accordance with normal  
8 practice being the next business day. And then the confidential  
9 redacted version was notified to the Defence teams the very following  
10 day after that. It was obviously a very voluminous filing with three  
11 large annexes which required careful redaction.

12 Thank you.

13 JUDGE GUILLOU: Thank you, Madam Prosecutor.

14 Mr. Kehoe, please.

15 MR. KEHOE: Yes, Your Honour, obviously the Prosecutor misses my  
16 point. The point is that with regard to the brief that if they're  
17 going to decide not to file it with the parties in a timely manner,  
18 they should ask permission of Your Honour to do so. They didn't.  
19 They just decided to do what they wanted to do when they wanted to do  
20 it and how they wanted to do it. They didn't.

21 What is the point of having a Court Order when Your Honour  
22 orders for that document to be filed with Your Honour's complete  
23 understanding that it's going to be given to the Defence and it's  
24 not? Without asking Your Honour for permission to give it four days  
25 later. It's not. They just do what they want to do. And why wasn't

1 it given to us on Monday if they decided to do it on the 17th  
2 evening? They didn't do that either.

3 This is just a pattern here of the Prosecutor doing what they  
4 want to do. And then it just goes back to what we were talking about  
5 before. Their addition of these 132 documents that they just  
6 unilaterally redact. They didn't have the foresight -- and this a  
7 rhetorical question: They didn't have the foresight to ask  
8 Your Honour's permission to do that prior to 31 January, that "We  
9 have additional redactions that we want to turn over by 31 January,  
10 is it okay with the Court if we redact that?" No, they didn't do  
11 that.

12 Keep in mind that the date that Your Honour ordered that the  
13 exhibit list would be cut off was December 17th.

14 With regard to the Salih Defence, the reason why we ask for the  
15 Salih Mustafa Defence - that's the case in front of -- case 05 - was  
16 because it's the same crime base or one of the crime bases alleged  
17 here and there are some items that have been given. But with regard  
18 to everything that happened during the course of that trial, all of  
19 those witnesses and exhibits, we have not received those. Let us be  
20 clear. We have not.

21 And that's all I have on this matter. Thank you.

22 JUDGE GUILLOU: Thank you, Mr. Kehoe.

23 Ms. O'Reilly.

24 MS. O'REILLY: No further submissions from us, Your Honour.

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

1 Mr. Young.

2 MR. YOUNG: No, thank you.

3 JUDGE GUILLOU: Mr. Ellis.

4 MR. ELLIS: No, thank you, Your Honour.

5 JUDGE GUILLOU: Thank you.

6 Just for the record, I think the SPO pre-trial brief was filed  
7 on Friday, 17th evening, and the confidential redacted version was  
8 filed on Tuesday, the 21st. So it is true that it is four days  
9 later, but it's, in practice, probably one or two working days;  
10 correct?

11 MR. KEHOE: This is true, Judge. But it is emblematic of a  
12 larger pattern and problem. If they had come to Your Honour with  
13 permission to do that, we would be having a different conversation.  
14 But that didn't happen. The Court wasn't given the respect of  
15 allowing the SPO to delay the redacted disclosure until the 21st.

16 JUDGE GUILLOU: Thank you, Mr. Kehoe.

17 I think in future decisions, I will explicitly mention that the  
18 confidential version shall be filed the same day as the strictly  
19 confidential version.

20 Let us now move to the Rule 103 notice and evidentiary material.

21 I remind the parties that at the Status Conference on 29 October  
22 2021, I suspended the remaining Defence deadlines for Rule 102(3)  
23 material. Since the last Status Conference, the SPO indicated that  
24 14 Rule 102(3) disclosure packages have been released containing more  
25 than 14.300 items.



1           The SPO also indicated that the pending requests are not being  
2 processed in a strictly chronological order but rather in, and I  
3 quote, "the most efficient way for the SPO." It is currently  
4 preparing a number of requests for protective measures in respect of  
5 certain items identified so far, and it has begun to engage with  
6 relevant Defence teams regarding the materiality of a limited number  
7 of other requested items.

8           Regarding the disclosure timelines of Rule 102(3) material, the  
9 SPO considers that were the proposed deadline of 4 March 2022 to be  
10 imposed for the Defence to complete all requests for items from the  
11 Rule 102(3) notice, there is a significant risk that an unnecessary  
12 burden would be placed on all the parties.

13           The Defence also submits that no deadline should be  
14 re-established for requesting such material. The Defence indicates  
15 that some items might become relevant in ways which could not  
16 reasonably be anticipated at this stage. They should, therefore, not  
17 be prevented from making subsequent Rule 102(3) requests when the  
18 need arises.

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

22           However, some Defence teams have also indicated that they could  
23 be in a position to propose a deadline for Rule 102(3) disclosure at  
24 the next Status Conference.

25           Finally, I also note that the Krasniqi Defence supports the

1 reintroduction of practical deadlines for the SPO to respond to  
2 Rule 102(3) requests, and it notably requests that deadline should  
3 also be imposed on the responses to Rule 102(3) requests which have  
4 already been made.

5 The Krasniqi Defence also requests the SPO to provide the  
6 Defence with a copy of a master Rule 102(3) spreadsheet with each  
7 disclosure batch in order that all parties can keep track of which  
8 items have been disclosed and which remain outstanding.

9 I would like the parties also to explain what were the result of  
10 their *inter partes* discussions on this matter and, more generally, on  
11 the disclosure calendar of this category of material.

12 Madam Prosecutor.

13 MS. LAWSON: Thank you, Your Honour.

14 In relation to Rule 102(3) disclosure. As you mentioned, since  
15 the last Status Conference, and at the time of our written  
16 submissions, we had disclosed 14 further packages containing in  
17 excess of 14.300 items. And as we have done consistently over the  
18 past three weeks, there were further packages disclosed today which  
19 contain over 3.000 additional items.

20 As explained in our written submissions, the pending requests  
21 are not being processed in a strictly chronological order, and that  
22 is for a number of reasons. Firstly, so that each of the Defence  
23 teams receive a portion of material on a regular basis. Secondly, so  
24 that material which we can more easily or quickly process and provide  
25 to the Defence is made available as soon as we can. And, thirdly, it

1 assists us in the redaction process to have material of a similar  
2 nature all coming from the same case files reviewed together in order  
3 to ensure consistency in protective measures.

4 For example, it is the case that certain earlier requests for  
5 the Krasniqi Defence are not yet completed, but we've already  
6 addressed almost 80 per cent of the requests that were received on  
7 13 January. And similarly, we received a tenth Veseli request for  
8 slightly over 3.200 items three days ago, on 1 February, and today we  
9 already disclosed approximately 90 per cent of those requested items  
10 in Disclosure Package 163.

11 So what we're aiming to do is to provide the materials as soon  
12 as we possibly can, even if it's not strictly in the order in which  
13 the requests were received.

14 While we do not concede the materiality of many of the items  
15 requested, we've chosen to challenge materiality as little as  
16 possible. And this is both in order to provide the Defence with  
17 maximum disclosure and to minimise litigation. So as indicated in  
18 our written submissions, we are engaging in discussion of the  
19 materiality of certain items. It's a relatively small number, with  
20 Defence teams, and we do anticipate making protective measures  
21 requests for certain other materials.

22 As Your Honour summarised with respect to the proposed schedule  
23 of deadlines for Rule 102(3) requests and disclosures, we are  
24 concerned about such a timeline being imposed from two perspective.  
25 The first is that we believe it would result in large further

1 requests for materials that might not otherwise be sought at all.  
2 Due to the broad nature of the relevance criterion, there are many  
3 items on the Rule 102(3) notice that are of only tangential  
4 relevance, at best, to the case. However, imposing a deadline may  
5 lead the Defence teams to request almost all items on the notice if  
6 they believe they would otherwise be precluded from doing so, and  
7 this would result in an excessive burden on all parties.

8 And relatedly, from the SPO's perspective, we're continuing to  
9 balance a lot of competing priorities, and new requests and  
10 deadlines imposed in respect of Rule 102(3) materials would certainly  
11 compromise other ongoing reviews, including our efforts to complete  
12 review of exculpatory material. This is something we'll be coming to  
13 shortly on the agenda. And certainly that review should take  
14 priority to processing the, if you like, more residual items on the  
15 Rule 102(3) notice.

16 So as mentioned in our written submissions, we would request  
17 that these type of deadlines for requests or for processing not be  
18 put in place at this time, and we would certainly request that  
19 materiality and protective measures reviews not be bifurcated if a  
20 timeline were to be imposed, as this would definitely result in  
21 inefficiencies in the review process.

22 I believe there was one other aspect under this that you wished  
23 me to address.

24 JUDGE GUILLLOU: I think it was the question of the Krasniqi  
25 Defence of providing the Defence teams with a master Rule 102(3)

1 spreadsheet in order for them to understand what was already  
2 disclosed and what was missing, because the disclosure packages that  
3 you file do not correspond to each request.

4 MS. LAWSON: Yes, thank you.

5 So we do already provide a spreadsheet after disclosure for a  
6 particular request has been completed, and this spreadsheet includes  
7 information on any items which have not been disclosed; for example,  
8 if the request was withdrawn after discussions on materiality, if we  
9 have put in a protective measures request for the item, or if it's a  
10 duplicate.

11 And as requested items are being disclosed in batches of  
12 disclosure packages, going forward we will also include information  
13 in that spreadsheet as to which disclosure batch the item was in once  
14 the request has been completed. One of the Defence teams had  
15 requested us to add item numbers from the Rule 102(3) notice to the  
16 spreadsheet, and we confirmed that we will also be able to do that  
17 going forward.

18 However, we're not in a position to provide these type of  
19 spreadsheets with each individual disclosure package being released,  
20 because many of the documents in batches are being worked on in  
21 parallel and the spreadsheets are not automatically generated. They  
22 do take time to prepare.

23 But what I would note is that save in the case of disclosures  
24 following protective measures decisions, like the one which we  
25 disclosed to the Thaci Defence earlier today, we don't mix documents

1 from different requests in the same disclosure package. So each  
2 Rule 102(3) disclosure package we release relates to a single  
3 request, and we do already send the Defence teams e-mails indicating  
4 which request a disclosure package relates to. So tracking what has  
5 been received on an interim basis is something that the Defence teams  
6 are already in a position to do themselves.

7 Thank you.

8 JUDGE GUILLOU: Thank you, Madam Prosecutor.

9 Mr. Kehoe, please.

10 MR. KEHOE: Yes, Your Honour, I will get into a -- talk about  
11 the substance of Rule 102(3) items as we move forward. But I heard  
12 with interest the Prosecutor's comment, that they made their  
13 disclosures to us today, along with others, in our package. And I  
14 certainly would like to share those disclosures with you document by  
15 document, and you can see from there.

16 Because here is disclosure number 1: Page 2 of disclosure  
17 number 1; page 3; page 4; page 5; page 6; page 7; page 8. That's  
18 disclosure number one for our 102(3) request.

19 Here's the next disclosure. That's only two pages, but equally  
20 efficient use of black ink. And let the record reflect that is  
21 nothing on any of these documents.

22 The third disclosure. That's only one page. That's completely  
23 blank.

24 Our next document, the same. This is only two.

25 So when we make 102(3) disclosures, and we have tried to make

1 102(3) requests in a limited fashion, unfortunately this is what  
2 we're getting back. This is -- when counsel talked about their  
3 disclosures today, that she said they made 103 disclosures today,  
4 this is what they disclosed to us.

5 With regard to the 103 matter, we have several requests that we  
6 still have that have been made and left -- remain unanswered. And  
7 there will be further requests under 102(3), not only in addition to  
8 the information that just came in last Monday, the 1900-whatever it  
9 is documents. 1.961. But also the rolling information that needs to  
10 come with regard to items that are in the pre-trial brief and in the  
11 indictment.

12 And I raise a question to Your Honour. In paragraph 112 of the  
13 brief, they charge my client and Mr. Veseli with improper conduct  
14 concerning activities that took place in June 1998. The rest of the  
15 information, redacted: Where it was, when it was, who it was.  
16 Everything is redacted. How are we supposed to put together a 102(3)  
17 request -- and that's just one example, I should say. There are  
18 hundreds of them throughout the document, and heaven knows how many  
19 there are throughout the indictment.

20 How can we cogently make a request in defence of our clients  
21 with that type of information still redacted? I have no idea what to  
22 ask with regard to that, Judge. Other than to say what happened in  
23 June of 1998 that you're redacting? And what I'm probably going to  
24 get back is this: Black, blank pages.

25 There are still 106 anonymous witnesses, which at some point I

1 submit to Your Honour that we'll maybe know about, maybe prior to  
2 trial, maybe 30 days or some weeks before the witness testifies. All  
3 of that information, once we find out who that person is, will  
4 generate 102(3) material.

5 So we have this ongoing lacuna of what we should have and what  
6 we do have, and we're still getting information as it comes long, as  
7 counsel just reflected not only last Monday but the submissions they  
8 have with the additional documents that they want to put on their  
9 exhibit list.

10 So any deadline at this point, Your Honour, is completely  
11 premature. We have no idea exactly what we're answering for on  
12 behalf of my client and many different instances without having  
13 facts.

14 So with regard to holding the date in abeyance, this is probably  
15 the one thing that we agree with, with the SPO -- it's good to find  
16 agreement some place, Judge. That we should hold that date in  
17 abeyance, because we simply cannot meet a timetable that would, say,  
18 March 4 or whatever it happened to be.

19 Thank you.

20 JUDGE GUILLOU: Thank you Mr. Kehoe.

21 Mr. Emmerson or Ms. O'Reilly.

22 MR. EMMERSON: [via videolink] Yes, it would be for Ms. O'Reilly  
23 to add anything she wishes.

24 JUDGE GUILLOU: Thank you, Mr. Emmerson.

25 Ms. O'Reilly.



1 MS. O'REILLY: Thank you, Your Honour.

2 So as regards the statistics. We have now requested 19.487.  
3 And as of a couple of hours ago, we now have 8.428 of those  
4 Rule 102(3) documents.

5 Our primary position, lest it be unclear from our submissions,  
6 is that no deadline should be imposed. However, if you are minded to  
7 force a deadline, as it were, we'll address that at the next Status  
8 Conference. But Ms. Lawson is absolutely right, that if you impose a  
9 deadline on us, then we will request pretty much everything, because  
10 it's the only way that we'll be able to cope under that short amount  
11 of time.

12 I just wanted to add that we have, so far, not received any of  
13 the spreadsheets that Ms. Lawson mentioned. That may be because they  
14 have not, so far, completed any of our requests. So I would like  
15 clarification on that.

16 Also, even if there is a deadline imposed, what we were trying  
17 to clarify in our submission is that it won't be a hard deadline  
18 because there will be changes as to what is material based on what we  
19 know about the case. So we will still need to make some requests  
20 after the deadline passes.

21 But, moreover, that works in both directions insofar as the SPO  
22 will also have to continue to add documents to their Rule 102(3)  
23 list, which is the point I was trying to make earlier, when they come  
24 into receipt of material that is not exculpatory and they don't  
25 intend to rely on that falls into this, you know, broad unused

1 material category.

2 So, in that sense, that's another complication. That means it's  
3 not really possible to set a hard deadline on this anyway.

4 So those are our submissions as regards that aspect of 102(3).

5 Thank you, Your Honour.

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

7 Mr. Young, please.

8 MR. YOUNG: Yes, Your Honour, briefly. We do support the  
9 submissions made by the Thaci Defence.

10 To give Your Honour an idea of the scale of the 102(3)  
11 situation. As far as we are concerned, on behalf of  
12 Mr. Rexhep Selimi, we have requested around 52.000 items. We have  
13 received around 9.000 items disclosed so far under 102(3). And given  
14 what my learned friend for the Prosecution said that, to date,  
15 they've not been challenging or been challenging materiality as  
16 little as possible, if that's the case going forwards, then the  
17 reality, Your Honour, is that we're looking at receiving possibly up  
18 to 43.000 new sets of materials.

19 Thank you.

20 JUDGE GUILLOU: Thank you, Mr. Young.

21 Mr. Ellis, please.

22 MR. ELLIS: Your Honour, in my submission, the most basic  
23 information that we need in order to manage this process is to know  
24 an idea of how long it's going to take the Prosecution to process  
25 requests that have already been made. And I understood from the

1 transcript of the last Status Conference that the Prosecution hope to  
2 be able to more concretely forecast those matters for Your Honour  
3 today.

4 We've set out, in our written submissions, the history of the  
5 requests that we've made and the responses that we have received.  
6 Let me just dwell a moment on the second request made by the Krasniqi  
7 Defence. That was made on 7 October. It related to some 5.945  
8 documents. We've received responses split, I think, across five  
9 different disclosure batches to date.

10 As at the last Status Conference, the indication on transcript  
11 page 794 was that the Prosecution expected to disclose the remainder  
12 of that material in January. And then on 29 January, we receive an  
13 e-mail telling us that the Prosecution hopes to correspond with us  
14 about materiality of around less than a hundred of the remaining  
15 documents within the next couple of weeks.

16 So what we have here is a request made now almost four months  
17 ago still unanswered and still with the pending possibility of  
18 correspondence about materiality or redactions to come. That's only  
19 one request. It was our second request. In terms of the total  
20 volume documents requested, it's one of the more modest one at just  
21 under 6.000 documents.

22 But there is, here, in my submission, a very real concern that  
23 if there are no deadlines on this process, then the process is going  
24 to continue for some considerable period of time with all the  
25 implications that that has for Defence investigations and for the

1 future management of the case.

2 So we fully support what other Defence teams have said about the  
3 impracticability of setting a deadline for Defence requests, but we  
4 do invite some supervision of how long it is taking the Prosecution  
5 to respond to the requests that are made. And we put it in the  
6 written submissions to suggest practical deadlines be imposed.

7 We're not standing here insisting on a response within three  
8 weeks, but we do say some sort of deadline would focus minds and  
9 maybe we would begin getting through the end of this mountain of  
10 Rule 102(3) disclosure.

11 JUDGE GUILLOU: Thank you, Mr. Ellis.

12 Madam Prosecutor, are you able to give some information about  
13 the timeline for processing the Defence requests as indicated by  
14 Mr. Ellis? I'm not asking you a specific date, of course, given the  
15 amount of material, but in the ballpark how long are we looking at?

16 You have the floor. Thank you.

17 MS. LAWSON: Yes, Your Honour.

18 Minds are very focused in the SPO, and we are reviewing and  
19 processing the materials intensively. Currently we're getting  
20 through approximately 5.000 items a week, on average. So I can't  
21 give an overall estimate. We've obviously received requests as  
22 recently as this week, and we've turned them around this week.

23 So we really are providing the materials as fast as we can  
24 provide them and doing so in a manner that we consider to be as  
25 efficient as possible in order to get the requests addressed. I

1 think that's all I can say on that.

2 In relation to the Veseli Defence query on spreadsheets, we will  
3 revert to you *inter partes* on that after this hearing.

4 And in relation to protective measures. As both the Chamber and  
5 the Defence teams are aware, we've been making protective measures  
6 requests for as few documents as possible from the Rule 102(3)  
7 notice. The documents disclosed today were the result of a request  
8 for redactions necessary to give effect to existing protective  
9 measures. There is no lacuna between what the Defence teams should  
10 be receiving and what they have. We've been disclosing exactly what  
11 they should have, in accordance with the delayed disclosure timetable  
12 in place.

13 Thank you.

14 JUDGE GUILLOU: Thank you, Madam Prosecutor.

15 5.000 documents a week, I think everybody can do the math. I  
16 think if we have, let's say, 30.000 documents pending, it's  
17 approximately six weeks. So this is where we should be at the next  
18 Status Conference.

19 Or am I too optimistic, Madam Prosecutor?

20 MS. LAWSON: I think that might be slightly optimistic,  
21 Your Honour, because there are a significant degree of checks that  
22 need to be done on each package and review before it can go out. So  
23 while we're getting through 5.000 in terms of review, there is  
24 furthering processing before they can immediately appear.

25 Thank you.

1 JUDGE GUILLOU: Thank you, Madam Prosecutor.

2 And on the request from the Krasniqi Defence team to reinstate  
3 specific deadlines for their request to be processed, do you have any  
4 submissions on this?

5 Mr. Prosecutor.

6 MR. FERDINANDUSSE: Your Honour, if you find it necessary to  
7 impose a deadline for this specific Krasniqi request, we suggest it  
8 will be that we finish that request before the next Status  
9 Conference. But that is what the SPO will do regardless of a  
10 deadline.

11 Thank you.

12 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

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

14 So I take note that it is premature to re-instate any deadline  
15 for the Rule 102(3) material. That said, I invite the parties to  
16 continue the discussion *inter partes* both for the processing of the  
17 material, that is, the scope of the existing requests, and for the  
18 future requests that the Defence are going to the send to the  
19 Specialist Prosecutor's Office.

20 I will not set a deadline to the SPO for the processing of their  
21 request at this Status Conference, but I invite the SPO to process  
22 the existing requests, and especially the ones that have been filed  
23 in October, as fast as possible. And as, Mr. Prosecutor, you  
24 indicated, that these requests are processed before the next Status  
25 Conference.

1           Let us now move to the Rule 103 material. Since the last Status  
2 Conference, the SPO disclosed two further packages of potentially  
3 exculpatory items. The SPO has --

4           MR. FERDINANDUSSE: I apologise, Your Honour.

5           JUDGE GUILLOU: Mr. Prosecutor.

6           MR. FERDINANDUSSE: I had to find the passage in the transcript.

7           I would like to point out that I talked about the specific  
8 Krasniqi request, and that I believe in October the request for more  
9 than 40.000 items has also been filed, which is in a category of its  
10 own due to its size. But, obviously, we will be processing this  
11 request and finish what we can as soon as possible.

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

13          Let me continue about the exculpatory material.

14          So the SPO indicated in its written submission that no  
15 protective measures request for this category of material is  
16 imminent. However, the SPO did not give an estimate on the time  
17 needed to finalise its review of exculpatory evidence.

18          In its submissions, the Thaci Defence requests that the SPO  
19 confirm, first, whether and what amount of exculpatory evidence  
20 remains in its custody, control, or actual knowledge, and when  
21 disclosure of such material currently in its possession will be  
22 completed.

23          The Veseli Defence also requests, first, that the SPO provide  
24 its best estimate of amount of Rule 103 material currently in its  
25 possession; and, second, to provide a date representing the SPO's

1 best estimate as to when it will complete disclosure of all Rule 103  
2 material currently in its possession.

3 I would like the SPO to answer these Defence questions. I  
4 stress that exculpatory material must be disclosed, according to the  
5 wording of the rules, which is as soon as it is in the SPO's  
6 "custody, control, or actual knowledge."

7 Such evidence is absolutely crucial for the Defence  
8 investigation and, thus, for the expeditiousness of the case.

9 Madam Prosecutor, you have the case.

10 MS. LAWSON: Thank you, Your Honour.

11 As you noted, since the last Status Conference we have disclosed  
12 two further packages of potentially exculpatory material. That's  
13 Packages 152 and 160. And as outlined in our written submissions,  
14 we're working to complete exculpatory reviews of material held.

15 Review is currently focused, in particular, on materials that  
16 were either received by the office or otherwise cleared for  
17 disclosure purposes within approximately the past six or seven  
18 months. And, in addition, in light of the finalisation of the  
19 witness list in December 2021, we are organising certain additional  
20 focused exculpatory reviews and searches related to that.

21 In respect of the progress, the current status. We are now over  
22 50 per cent through review of the more recently received or cleared  
23 items. So it would be hard to give an estimate, but the review is  
24 continuing at a rapid pace for those items. And the results of the  
25 reviews that have been conducted have either been disclosed. We've



1 disclosed 21 packages to date of Rule 103 materials, or they're being  
2 processed for disclosure, including conducting redaction reviews, or  
3 they're being collated for a protective measures request, and we're  
4 aiming to collate those materials as much as possible in the  
5 interests of judicial efficiency overall.

6 The one other item I would mention in relation to Rule 103 is  
7 that in preparation for this Status Conference, we recalled that in  
8 recent hearings the Thaci Defence had expressed interest in receiving  
9 materials of a particular individual. And given that quite a number  
10 of the materials currently under review relate to international  
11 witnesses, we did contact the Defence yesterday to ask whether they  
12 would like us to prioritise review of any particular item. The  
13 response we received was that they would be raising the matter in the  
14 Status Conference today, but I currently have no further information  
15 in relation to that.

16 Thank you.

17 JUDGE GUILLOU: Thank you, Madam Prosecutor.

18 Mr. Kehoe, please.

19 MR. KEHOE: Thank you, Your Honour.

20 This is, of course, an issue that I have addressed with  
21 Your Honour several times over the past conferences. But let me  
22 raise a larger issue with Your Honour that will dove-tail with this.  
23 And it goes to Rule 62. And Rule 62 talks about the duties of the  
24 Specialist Prosecutor. And the rule says:

25 "In performing his or her functions, the Specialist Prosecutor

1 shall contribute to the establishment of the truth of the Specialist  
2 Chambers."

3 "... the truth of the Specialist Chambers."

4 Well, Your Honour, were you ever informed by the Office of the  
5 Prosecutor, during your confirmation hearing, during the hearings  
6 concern -- during the submissions concerning the Defence's motion for  
7 pre-trial release? Were you ever informed, Your Honour, that a  
8 senior OSCE diplomat had advised the Prosecutor four years ago - four  
9 years ago - that the criminal activities post-June 1999 -- the  
10 criminal activities charged in this case, the criminal activities  
11 post-June 1999 were committed by individuals who sought a chance to  
12 gain personal benefit and was not - was not - part of an organised  
13 campaign from the Albanian leadership.

14 Four years ago. And we will go through the rest of this.

15 The individual who gave this information was Ambassador Daan  
16 Everts. And who is Daan Everts? He's been a Dutch diplomat since  
17 the early 1980s in the Ministry of Foreign Affairs here in The Hague  
18 and elsewhere. He was posted as head of ECMM in Zagreb shortly after  
19 the end of the war in the former Yugoslavia, and then he was posted  
20 as the head of OSCE in Tirana shortly thereafter.

21 And in July 1999, Ambassador Everts took over the OSCE mission  
22 in Prishtine for the entire country for the implement of the peace  
23 plan and to bring the police up to gear and to work with UNMIK and  
24 with EULEX to bring about peace and stability in the country.

25 And what did he tell the SPO four years ago? Well, I just

1 reiterated that Everts' view was that the violence post-1999 was not  
2 part of an organised campaign from the Albanian leadership.

3 What else did he tell them? If I may:

4 "In my view, it would be incorrect to call it systematic,  
5 organised harassment and to infer that it was directed from above.  
6 Rather, I view the situation as one of impunity and permissiveness  
7 where people to pursue ulterior goals, whether ethnic revenge,  
8 political control, or material gain."

9 With regard to my particular client, would Your Honour not  
10 wanted to have known what this ambassador had to say with regard to  
11 my client, Mr. Thaci, who interfaced with Ambassador Everts  
12 throughout this time-period? And wouldn't you have wanted to know  
13 this when you were reviewing and weighing the application by the  
14 Prosecutor for pre-trial release? Put aside reasonable doubt and  
15 guilt or innocence.

16 Talking about Mr. Thaci:

17 "I cannot see any reason or motive why Thaci would have wanted  
18 the KLA to commit ethnic violence, as it would have damaged his  
19 international standing. In my view, there was a disconnect between  
20 the crimes and the central Kosovo Albanian leadership."

21 None of this was turned over to us when we were going back and  
22 forth and discussing this evidence. None of this was given to  
23 Your Honour. None. And they've had this information for four years.  
24 While these four gentlemen sit in jail since November 2020, they sat  
25 on information that they turned over February 1st. And we'll get to

1 the reason why they turned it over then.

2 One would ask Ambassador Everts: So why did this happen? Why  
3 did this take place? Well, he had an answer for that as well.

4 "In my view, the main problems were the absence of the media and  
5 enforcement mechanisms, such as the police."

6 He's talking about the violence on the ground after July of  
7 1999, and he says the reason why this went on was -- the major  
8 problem was there was no police. And who was responsible for setting  
9 up the police? The UN, OSCE, UNMIK. Not the four gentlemen that sit  
10 before Your Honour. Not the Kosovo leadership. This was a  
11 Chapter VII situation under the UN Charter where they had no power to  
12 run a police force. It was the internationals running the police  
13 force.

14 And how about my client individually? Was he the person that  
15 was in charge of this? Would you not have wanted to know this when  
16 talking about the Rambouillet conference?

17 "Thaci's total lack of control ..."

18 Total lack of control.

19 "... is why the KLA had people like Drini, Remi, and Ramush in  
20 leadership roles."

21 So he's saying he had total lack of control, he didn't -- had no  
22 motive whatsoever to have violence on the ground, he saw no proof  
23 that there was a vertical ordering coming from on top to the violence  
24 on the ground, and again that he had no motive to do so because he  
25 didn't have the power to control this, the other KLA members,

1 especially in the outlying areas.

2 Let's continue. That's not the only item he mentions in that  
3 regard.

4 JUDGE GUILLOU: I think I get your point. I think what is  
5 important for us today is the procedural point you want to make, that  
6 this is Rule 103 material and should have been disclosed earlier.

7 MR. KEHOE: Well, Judge, I think one last item that Your Honour  
8 should take into -- not that it should be disclosed earlier. That  
9 these men should be released. That you have before you reasonable  
10 doubt in this document. And as a consequence of that, Your Honour,  
11 these four men should be released, based on a document that they sat  
12 on for four years.

13 If I go back to Rule 62, this is supposed to be a tribunal that  
14 seeks the truth. And the Specialist Prosecutor is supposed to be  
15 seeking the truth. Yet Your Honour never had this document. And we  
16 never had it until Tuesday. And we got on it -- and I will get into  
17 how we got it on Tuesday as a result of Ambassador Everts' efforts  
18 and putting pressure on the Office of the Prosecutor to try to get  
19 that document, which they refused to turn over to him.

20 And, quite disturbing -- and, by the way, we're going to get  
21 into it. This isn't the only one they haven't turned over. I mean,  
22 that -- let's just [indiscernible]. But what's the most disturbing  
23 is, and I believe Your Honour should examine this, is the statement  
24 by -- that was insisted to be included by Ambassador Everts  
25 concerning the conduct of this investigation by the SPO.

1           And he wrote in his statement, talking about the interviewing  
2 process coming from the SPO:

3           "While every single paragraph is accurate as written and can  
4 stand as it is, the totality of the statement seems to reflect a  
5 lesser interest in exculpatory than incriminating information."

6           If he was sitting here before you, Judge, he would tell you what  
7 he told us, that the only thing that they were interested in, the  
8 SPO, was garnering what they considered to be inculpatory facts as  
9 opposed to exculpatory. How can they be fulfilling their Rule 62  
10 obligations with such an approach?

11           And as I noted, Judge, this is not an isolated incident.

12           By the way, with regard to what they didn't turn over, I'm sure  
13 they didn't turn over a letter they got from the United States State  
14 Department during this same timeframe dated 4 May 1999, from  
15 Barbara Larkin, the Assistant Secretary of Legislative Affairs, to  
16 Senator Mitch McConnell, Chairman of the Foreign Operations  
17 Committee.

18           What the United States in an official document tell a ranking  
19 senator in the United States Senate:

20           "There is no political structure in Kosovo or effective command  
21 and control of the KLA."

22           They had this document. Did they turn it over? No. And I'd  
23 gladly give Your Honour a copy of this letter if Your Honour would  
24 like to see it, because I do have extra copies here.

25           There are any number of individuals that they haven't turned

1 over.

2 In paragraph 13 of the indictment, the prime minister -- former  
3 prime minister of Kosovo was an individual by the name of  
4 Bujar Bukoshi, B-u-k-o-s-h-i. Mr. Bukoshi talked to the SPO. The  
5 interview ended with the statement questioned by the SPO  
6 interrogator:

7 "Oh, you must be friends with Hashim Thaci, aren't you?"

8 We never received that document. We never received any notes of  
9 any interview, whether or not he signed a document. He's mentioned  
10 in the indictment. We've received nothing.

11 Hundreds, hundreds of KLA soldiers were called to give  
12 statements. Where are all those statements? Where are those  
13 statements of what they said?

14 We've got statements that the Prosecutor has put on their  
15 witness list that they believe are inculpatory. Where are the rest  
16 of them? Literally hundreds of people were called to be examined by  
17 the Prosecutor.

18 The most egregious matter here is the situation with  
19 Ambassador Everts. Here is an ambassador, a ranking ambassador for  
20 OSCE. I submit to Your Honour that when the Prosecutor was talking  
21 to ambassadors in a private meeting and talking about how terrible my  
22 client was and that my client was going to spend the rest of his life  
23 in jail, that he never informed them, "Oh, oh, did Mr. Smith say" --  
24 oh, by the way, by the way, what are you? Ambassador folks -- well,  
25 he says, really, you know, Thaci is not guilty and there really was

1 no top-down involvement here, and this was just a grass-roots  
2 movement.

3 Do you think he told those people that? No. Of course, he  
4 didn't. He didn't even tell you. He didn't even tell you that the  
5 evidence that they had in their possession proves that they are not  
6 guilty, that there is a reasonable doubt concerning all of these.  
7 But they keep and they hold him in jail indefinitely.

8 What's the resolution here, Judge? There is one resolution we  
9 put on the table. That the search through exculpatory material,  
10 anything that's marginally exculpatory has to be done by an impartial  
11 tribunal, because the SPO can't be trusted to do it. They cannot be  
12 trusted to do it. And they haven't done it. If they stand before  
13 you and say, "Well, you know, we gave the information concerning, you  
14 know, Everts as soon as we know," nonsense. Nonsense.

15 They had the -- well, first of all, they knew about this years  
16 ahead of time. Did they come to Your Honour and say, "You know, we  
17 have to delay disclosure of this exculpatory material?" No. Did  
18 they have the green light to disclose this material? Even by their  
19 own admission they had it. Earlier, in 2021 at the latest, and the  
20 rest of the OSCE witnesses that they think are inculpatory were  
21 turned over. Were turned over in August 2021. The only one they  
22 left out was him. Why? Why did they leave him out?

23 And why did it take Ambassador Everts to go to the Specialist  
24 Prosecutor's Office and request his statement on numerous occasions  
25 over the telephone and ratcheted this up as early as this Monday for



1 them to come back in a series of e-mails, which I can provide to  
2 Your Honour, telling Ambassador Everts no, you can't -- an  
3 international ambassador, "You can't have your statement, it's not  
4 our practice, and the rules say we can't give it to you." I mean,  
5 who knows what rule that is.

6 So where are we, Judge? Where are we? Your Honour has stressed  
7 several times about the need for them to go through and find their  
8 exculpatory material. Is there anything more exculpatory than this  
9 statement by Ambassador Everts that they've known about for years?  
10 If there is, we're in serious trouble.

11 And what we don't know, because Everts' statement has,  
12 essentially, been forced out of them, we don't know how much more  
13 information there is that they haven't disclosed. They've been in  
14 jail since November 2020. This is now February 2022. And we were  
15 just given this information on 1 February 2022, while these four  
16 gentlemen sit at the detention unit, while they hide behind their  
17 refusal to talk in public about what they say about the Kosovo police  
18 and pre-trial release and refuse to give exculpatory information  
19 until they're forced to do so? It's got to stop, Judge. With all  
20 due respect, it has to stop.

21 And I submit to Your Honour -- and I just want to have my  
22 colleague Ambassador Prosper add a few comments.

23 I submit to Your Honour -- I don't know what the schedule is of  
24 the Court. But there has to be an impartial magistrate involved in  
25 this disclosure process with the SPO, because they simply cannot be

1     relied on and trusted to give full disclosure in a timely manner to  
2     ensure that these four gentlemen are not spending one second more  
3     than they should in the detention unit.

4             And if I can just turn the floor over, with the Court's  
5     permission, briefly to Ambassador Prosper.

6             JUDGE GUILLOU: Thank you, Mr. Kehoe.

7             Briefly, Mr. Prosper, because Mr. Kehoe already took the floor  
8     for more than 15 minutes.

9             MR. PROSPER: Well, Your Honour, I'll be as brief as I can, but  
10    this is a critical matter, and I ask your indulgence.

11            As you know, I don't take the floor much in these proceedings,  
12    as we have my able colleague here, but I feel the need to address  
13    this issue because this matter has grave implications. It has  
14    implications which are broader than these proceedings, broader than  
15    the KSC. The implications are such that it shatters, it shakes the  
16    foundation of the international justice system.

17            Now, I'm uniquely positioned to speak on this issue because as  
18    you know, in my background, I've been involved in every single  
19    tribunal that has been created since Nuremberg. I either  
20    participated, negotiated, created, was consulted, or oversaw each  
21    tribunal. That includes the ICTR, the ICTY, East Timor,  
22    Sierra Leone, Cambodia, the ICC, Serbia, Bosnia, Iraq, Lebanon, I've  
23    helped consult in their creation. And now this.

24            These tribunals are built on trust. Trust. They are supposed  
25    to be the gold standard for the world. They are supposed to be a

1 model that domestic systems look up to and should aspire to become.  
2 Political leaders universally want to set a goal for people to say if  
3 you can be like the KSC, like these tribunals, they will not be  
4 needed. Nations, governments, put their faith in these proceedings  
5 because they're supposed to be beyond reproach. They're supposed to  
6 be proceedings that can survive scrutiny, legal, political, and  
7 historical.

8 Nations such as Kosovo have ceded their sovereignty, ceded their  
9 sovereignty, voluntarily based on this trust, the trust of the  
10 establishment of the truth. They're supposed to operate with the  
11 highest, highest integrity. And what has happened here is the  
12 Prosecution has betrayed that trust. The Prosecution has betrayed  
13 their duty to establish the truth.

14 When they approached you for confirmation, they gave you a half  
15 story. A half story which has led us to where we are today. In  
16 their zeal for victory, in their zeal for prosecution, they have lost  
17 sight of the most critical function of the Office of the Prosecutor,  
18 and that is the pursuit of justice. What is fair and what is right.

19 Instead of letting the facts lead to the outcome, they've  
20 decided to bend the facts for their desired purposes. Now, this is a  
21 human rights violation, if you think about it. If you look at all  
22 the human rights instruments, you start with the universal  
23 declaration, what was the common theme or purpose behind this? It's  
24 to prevent abuse of power. It's to protect individuals. It's to  
25 protect accused persons from rogue prosecutions, rogue judicial

1 systems. The purpose is to establish standards so that the truth and  
2 fairness will prevail.

3 Now, the Office of the Prosecutor has been operating without  
4 oversight. As you know from your experiences, one of the big debates  
5 for international tribunals is the question of oversight, because  
6 everyone's afraid of what is happening here where you have a  
7 prosecutor's office operating on its own whim, unaccountable to  
8 anyone. As my colleague has said, disclosing when they wish, filing  
9 when they wish, sitting on critical exculpatory information for four  
10 years and not even giving it to you - to you. It's a deception, a  
11 deception that needs to be corrected.

12 Imagine if what we are talking about happened in a domestic  
13 system. Just imagine the condemnation that would occur from human  
14 rights groups, from governments, from overseeing international  
15 tribunals. They would say how dare you withhold critical, credible  
16 exculpatory information. And as my colleague said, this is just what  
17 we know. This is only what we know.

18 So what we have here, as I said, this is something larger than  
19 this tribunal. Because if this is allowed to continue, ask yourself  
20 this question: What country in the future, what country in their  
21 right mind will ever agree to an international or hybrid tribunal  
22 when they learn of the behaviour of hiding exculpatory information,  
23 when they learn of the behaviour of not pursuing the truth, the  
24 establishment of the truth, when they learn of the behaviour of  
25 deceiving the Court, who would want to be part of an international

1 tribunal?

2 So, Your Honour, this is a large issue that needs to be  
3 corrected. The KSC has lost its way. And if this is not corrected,  
4 the legacy of this Court, the legacy of the officials, the legacy of  
5 international justice will forever irreparably be harmed. So let's  
6 put this into context. This is not just a little issue that needs to  
7 be addressed in a Status Conference. This is much larger.

8 Thank you for your time.

9 JUDGE GUILLOU: Thank you, Mr. Prosper.

10 I'll give the floor to the SPO after I give the floor to the  
11 other Defence teams to respond to the arguments.

12 May I just turn to the interpreters. Do you allow me to  
13 continue for a couple of minutes so we can finish the debate on this  
14 category of disclosure material?

15 I see the Court Officer saying yes, so thank you very much.

16 Let me turn to Mr. Emmerson, please.

17 MR. EMMERSON: [via videolink] I'll be brief, if I may. There  
18 are two issues that I want to touch upon, but the first I'm going to  
19 leave until the "any other business" section, and it relates to where  
20 we stand in terms of the Prosecution Serb witnesses. That to say,  
21 even though when there remains considerable uncertainty about the  
22 unserved evidence of which the statement of the ambassador of the  
23 OSCE is a good example, but the numbers you've been quoted this  
24 morning make it fairly clear that we won't get to a certainty about  
25 the Prosecution's case and the scope of it for at least another few

1 months.

2 But what I want to do with you, sir, at the end in the "any  
3 other business" section is just to spend a moment or two tracing  
4 through the implications of the way the Prosecution is proposing to  
5 put its case and the number of witnesses it is proposing to call.  
6 But I think that is -- although it touches on some of these issues, I  
7 think that's best dealt with at the end.

8 And on the detailed questions of exculpatory, I'll just give  
9 Annie O'Reilly an opportunity in case there's anything she wishes to  
10 add. But otherwise, I will return to the main issue that I wanted to  
11 raise with Your Honour at the end of the Status Conference.

12 JUDGE GUILLOU: Thank you, Mr. Emmerson.

13 Ms. O'Reilly.

14 MS. O'REILLY: Your Honour, I'll be brief. We join the  
15 submissions made by the Thaci Defence. The issue of Rule 103  
16 disclosure is very serious, and as we have previously raised in  
17 protective measures submissions, we have no faith in the SPO's  
18 identification of 103 materials. I would say their ability to, but  
19 given their experience on the other side of the courtroom, I don't  
20 think that would really be credible. They are simply not disclosing  
21 103 material to us that we are entitled to.

22 We are aware of other witnesses who fall into the category of  
23 Mr. Everts that have also not been disclosed to date that are  
24 providing -- have provided potentially exculpatory information. So I  
25 would just like to underline that this is an incredibly serious

1 matter that really goes to the heart of the fairness of this trial.

2 As regards to our request for some clarity as to how much 103  
3 material there might be, we would note that we still have not  
4 received an answer to this. We were told that there have been 21  
5 packages disclosed so far. For the sake of the record, that comes to  
6 a total of 3.583 items. But that -- we don't know if they've  
7 reviewed everything that they've received up until recently. All  
8 we've been told today is that they've gone through 50 per cent of the  
9 materials that they've recently received.

10 So we would request some more specific information in response  
11 to our question. Thank you, Your Honour.

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

13 Mr. Young, please.

14 MR. YOUNG: Yes, Your Honour, I can be brief as well.

15 What Mr. Kehoe on behalf of Mr. Thaci has related to you is  
16 extraordinarily serious. We support and endorse every submission the  
17 Thaci team make, and it must be apparent to Your Honour how serious  
18 this issue is. Indeed, Your Honour, at the start of the discussion  
19 on 103 materials, rightly acknowledged that the important words in  
20 Rule 103 were "as soon as," and as Your Honour knows, and Your Honour  
21 is rightly nodding, the words then follow "the Specialist Prosecutor  
22 shall immediately disclose to the Defence any information as soon as  
23 it is in his or her custody, control, or actual knowledge which may  
24 reasonably suggest the innocence or mitigate the guilt of the accused  
25 or affect the credibility or reliability of the

1 Specialist Prosecutor's evidence."

2 Now, Your Honour rightly described this category of disclosure  
3 as absolutely crucial for the Defence investigations, and the  
4 material that Mr. Kehoe has referred to clearly falls well under that  
5 category.

6 Now, there are a number of disturbing things about what we have  
7 heard in relation to this, but Your Honour will have noted that  
8 Mr. Kehoe explained this particular extraordinarily important  
9 document from an extremely senior international figure. That  
10 document was a document produced by the Prosecutors themselves in  
11 January and March 2018, over four years ago. So, with respect,  
12 difficult to see how they weren't aware of it given that they were  
13 the ones that produced it.

14 And Your Honour will know very well that 103 is subject only to  
15 two restrictions where delayed disclosure can be made. And these are  
16 very specific ones under Rule 107 and 108 which do not appear to  
17 apply or appear not to apply in this situation, because if they had  
18 applied, the Prosecution would have had to apply to you formally  
19 *ex parte* and confidentially in an application and you would have  
20 knowledge of that.

21 In the absence of any application to Your Honour, then there  
22 seems to have been a gross, substantial and egregious violation of  
23 the disclosure rules which are so important to the Defence. And for  
24 these reasons, we ask Your Honour to take this particularly seriously  
25 and to follow the Thaci submissions in relation to what they



1 requested, which were very clearly set out.

2 So I have nothing else to say. This is a very serious matter.

3 JUDGE GUILLOU: Thank you, Mr. Young.

4 Mr. Ellis, please.

5 MR. ELLIS: Yes, Your Honour. We, too, join in what has been  
6 said already, particularly -- by all three Defence teams, and  
7 particularly Thaci Defence.

8 This is a matter that concerns us all, Your Honour. Certain  
9 passages have been read from the statements of Mr. Everts. They're  
10 exculpatory not only for Mr. Thaci, for all the accused, and  
11 certainly for Mr. Krasniqi. We are deeply concerned that these  
12 statements were not turned over at a far earlier stage in the  
13 proceedings.

14 We cannot understand how this can fit with the Rule 103  
15 obligation to do so immediately or as soon as in the Prosecution's  
16 control. And that is what this must come down to, the wording of the  
17 rule. And it appears not to have been complied with in a very  
18 serious way.

19 We are also concerned that this is one example that's been given  
20 to Your Honour. Glancing through disclosure batch 160, which was the  
21 one disclosed on 1 February, one can see at a cursory glance  
22 statements taken by the Special Investigative Task Force in 2014,  
23 interviews carried out by this Prosecution in September of 2020.  
24 None of those documents can be said to have been turned over to us as  
25 soon as they were in the Prosecution's possession.

1           They were in the Prosecution's possession when they arrested  
2 these men. They should have been turned over shortly after that.  
3 And we, again, emphasise the seriousness of this, Your Honour, and we  
4 look to Your Honour to protect our clients' rights in this regard.

5           JUDGE GUILLOU: Thank you, Mr. Ellis.

6           Let me turn back to --

7           MR. EMMERSON: [via videolink] Your Honour, before Your Honour  
8 continues, could I --

9           JUDGE GUILLOU: Mr. Emmerson, yes.

10          MR. EMMERSON: [via videolink] I do apologise, but could I invite  
11 you, please, to ask the Prosecution now to explain the circumstances  
12 upon which that document was withheld for this length of time.

13          JUDGE GUILLOU: Thank you, Mr. Emmerson.

14          So, Madam Prosecutor, you have the floor, both to respond to the  
15 specific document that was partially read by Mr. Kehoe, the reasons  
16 for such a late disclosure, and more generally on the disclosure  
17 process for the Rule 103 material.

18          You have the floor.

19          MS. LAWSON: Thank you.

20          In relation to the Rule 103 material status and the Veseli  
21 Defence query on that. Yes, prior material such as that on the  
22 Rule 102(3) notice has undergone an exculpatory review. We're now  
23 reviewing material more recently received or cleared, and as I  
24 mentioned, we are over 50 per cent through that review.

25          Turning to the Thaci Defence. If I understand their submissions

1 correctly, Mr. Everts's statement appears to be the item that they  
2 were interested in. I'm obviously only learning that now for the  
3 first time, as I am only learning now that Mr. Everts has any  
4 connection to the Thaci Defence team. This, obviously, hampers my  
5 ability to respond with any degree of specificity on this one item  
6 out of the over 170 that were included in recent Rule 103 disclosure  
7 packages.

8 What I can say is, first, that the Defence have chosen to quote  
9 very selectively from the views of one individual. Should the  
10 Defence choose to present that evidence at trial, its value will be  
11 assessed in the context of other evidence.

12 Second, recent Rule 103 packages were determined by ongoing  
13 review and not by any outside query.

14 As to the timing, for many of the materials disclosed in recent  
15 103 packages, we would have initiated clearance requests as early as  
16 2019. We've been diligent in seeking clearances, in following up  
17 with providers, and in subsequently making relevant disclosures.  
18 What disclosure of this item does reflect is that the SPO is  
19 correctly identifying and disclosing exculpatory material. Much  
20 additional exculpatory material has already been disclosed, and  
21 additional exculpatory material will be disclosed. That information  
22 can be used by the Defence to develop their Defence cases or identify  
23 leads. That's the purpose of the disclosure.

24 As I mentioned, evidence the Defence choose to bring will be  
25 considered in the context of trial, will be weighed against all the

1 other evidence, including that presented by the Prosecution.

2 Mr. Kehoe also referred to a second specific interview, and I  
3 can say that he has inaccurately summarised it.

4 From the responses we received during -- both to our indications  
5 at the last Status Conference and our recent *inter partes*  
6 communications, it would appear that the Defence are less interested  
7 in actually receiving these items than in making submissions about  
8 them. We will continue our review and disclosure of potentially  
9 exculpatory information as we have been doing, and we're working  
10 intensively to complete it. Thank you.

11 JUDGE GUILLOU: Thank you, Madam Prosecutor.

12 Briefly, Mr. Kehoe, please.

13 MR. KEHOE: [Microphone not activated].

14 JUDGE GUILLOU: Microphone.

15 MR. KEHOE: Yes, sorry. It is difficult to stand by and listen  
16 to what the Prosecutor just said.

17 What I gave Your Honour was I read what the Prosecutor turned  
18 over. "Everts' view was that the criminal activities post June 1999  
19 were committed by individuals who sought a chance to gain personal  
20 benefit and was not part of an organised campaign from the Albanian  
21 leadership."

22 This is not some commentary by the Thaci team that is trying to  
23 take some debate about the disclosure. This is the problem, that it  
24 wasn't disclosed. When Your Honour was making rulings on the  
25 pre-trial release of these four gentlemen, would Your Honour not want

1 to know that an OSCE ambassador that ran the OSCE office during the  
2 operative timeframe of this indictment said that he -- that this  
3 violence was not part of some plan by the Albanian leadership, that  
4 my client, Hashim Thaci, had no motive to encourage this type of  
5 conduct.

6 I am paraphrasing. I'll gladly read once again, Your Honour,  
7 which I did before. It wasn't Greg Kehoe talking. What I read to  
8 you was from the statement. But I will gladly re-read what is in  
9 this statement and this exculpatory information. It's an outrage  
10 that they sit there smugly and don't take responsibility for keeping  
11 these four men in jail when they had documentation before them that  
12 indicated there was a reasonable doubt about this case.

13 And how about their arguments that if you release any of these  
14 four men, they're going to go down and wreak havoc in Kosovo, when  
15 they said -- their witness that they took the statement from,  
16 Ambassador Everts said, there is no incentive for Mr. Thaci to do any  
17 such thing and what would happen in their relationships to the  
18 internationals.

19 This document wasn't turned over in the due course of their 103  
20 case. I can tell you exactly what happened. Let's back up. The  
21 OSCE witnesses that were inculpatory were all turned over -- they got  
22 clearances and they were turned over in August 2021. We've had two  
23 pre-trial detention motions since then.

24 Everts' at the latest - at the latest - was received at that  
25 point. They even say -- they even say in their memo that clearances

1 were received in the second half of 2021, August 2021. So it's okay,  
2 gentlemen, to stay in jail for August, September, October, November,  
3 December, January, until the SPO decides to get around to turn this  
4 document over. And why did they turn it over?

5 And, by the way, Judge, the Thaci Defence has got no  
6 relationship with Ambassador Everts. Ambassador Everts is a  
7 gentleman that came out in these OSCE reports.

8 Ambassador Prosper called him on the phone. That's how it  
9 happened. He called him on the phone and said can we chat. As far  
10 as any relationship with the Thaci Defence, there is no relationship.  
11 And if he sat here before you, he would tell you that. But we talked  
12 to him as a result of that. And it was as a result of our first  
13 conversation with Ambassador Everts, where he expressed some surprise  
14 that we did not have his statement, that he articulated this: "I  
15 think I'm going to contact the SPO to see if I can get my statement."

16 That's what he told us. We have no control over Ambassador  
17 Everts. This is an international ambassador of some stature,  
18 Your Honour.

19 And that's what he did. He attempted to contact the Prosecutor  
20 who took it, who apparently had left the office. He then attempted  
21 to contact people in the office that he knew. That gentleman said,  
22 "I'm going to see what I can do." And when was that? The last  
23 conversation of the person inside the Prosecutor's Office,  
24 Mr. Bennett, as to turning this document over, was Monday. Monday.

25 And it was at that point that the SPO concluded that they had

1     been caught, that they had been caught in not disclosing 103  
2     material, material that at very minimum, under the best of  
3     circumstances from anything the Prosecutor said, will certainly  
4     effect the credibility or reliability of the Specialist Prosecutor's  
5     evidence.

6             And it was thereafter that he tried to get it that the SPO said,  
7     "We're not going to give it to you." And then, oh, okay, then  
8     graciously, within 24 hours, it just happens to be uploaded. Just  
9     happens, miraculously, out of the ether. This document that is such  
10    an issue happens to be uploaded. Oh, it's just the natural course of  
11    things. Nonsense. This is nonsense. Does anybody believe that  
12    story? Of course not. Of course not. They turned it over because  
13    they had been caught.

14            And the problem here, Judge, is not necessarily the document.  
15    The problem is that those four men are still sitting in jail while  
16    they sat and didn't turn anything over until they got caught. That  
17    is the problem. Putting aside the problems that Ambassador Prosper  
18    outlined, that is the problem for my client and these gentlemen's and  
19    ladies' clients.

20            And I submit to Your Honour that based on this alone, there is  
21    reasonable doubt and this Court should release these gentlemen on any  
22    conditions that Your Honour wants but release them, because a senior  
23    member of the international community has put everything that the SPO  
24    has leveled in this indictment in doubt, in reasonable doubt. And  
25    you can't hold somebody in jail indefinitely based on that.

1 Thank you.

2 JUDGE GUILLOU: Thank you, Mr. Kehoe.

3 MR. KUSCHNIK: Your Honour, can I --

4 JUDGE GUILLOU: Mr. Prosecutor, very briefly, please.

5 MR. KUSCHNIK: I only have a very brief question, just to get  
6 the record clear, to the Defence. You just made a submission that  
7 there is no relationship between Mr. Everts and the Thaci Defence.  
8 Is it your submission that there is no relationship -- does that  
9 include Mr. Thaci or are you separating the Thaci Defence from  
10 Mr. Thaci? Is it your submission that there's no relationship  
11 between Mr. Everts and Mr. Thaci?

12 MR. KEHOE: I will tell you, they want to accuse us of some type  
13 of improper contact? I'll take that on all day long. All day long.  
14 The contact with Mr. Everts came about because we were reviewing  
15 these documents to see who was in the theater at the time. There is,  
16 in fact, a book that was written by the OSCE which has two sections  
17 to it. And what happened? What happened with regard to Mr. Everts?  
18 There was no -- I don't want to even say this. There was no  
19 instruction from our client to contact Ambassador Everts.

20 We went through who the ambassadors and the internationals were,  
21 and, guess what, Judge, we have a member of our team who worked in  
22 the international community, Ambassador Prosper, and Ambassador  
23 Prosper was the gentleman who contacted Ambassador Everts and we  
24 started this conversation. Period.

25 JUDGE GUILLOU: That's noted. Thank you.



1 MR. KUSCHNIK: I'm not at all making any allegations. I'm --

2 MR. KEHOE: Yes, you are. Stop.

3 MR. KUSCHNIK: I'm just asking a question to understand your  
4 submission, and you didn't answer the question.

5 MR. KEHOE: Don't ask a question like that if you're not trying  
6 to level some personal allegation.

7 JUDGE GUILLOU: Please, please, please --

8 THE INTERPRETER: Could the speakers please not overlap because  
9 it's impossible to have an accurate transcript if you overlap. Thank  
10 you very much on behalf of the interpreters.

11 JUDGE GUILLOU: It's very wise and I advise all the parties to  
12 follow this advice.

13 Now, let me, before we go into a short break -- do you want to  
14 say something? If so, very quickly.

15 MS. LAWSON: I do briefly want to respond on process because  
16 what the Thaci Defence said --

17 MR. EMMERSON: [via videolink] I'm so sorry. I've been trying to  
18 get the floor for a while.

19 JUDGE GUILLOU: Sorry, Mr. Emmerson. Let me first give the  
20 floor to Madam Prosecutor. I'll give you --

21 MR. EMMERSON: [via videolink] Except she might want to deal with  
22 the point I'm going to raise. That's it.

23 JUDGE GUILLOU: Madam Prosecutor, can I give the floor to  
24 Mr. Emmerson?

25 Very briefly, Mr. Emmerson, please.

1 MR. EMMERSON: [via videolink] Yes. It's a very brief point.

2 A number of the counsel for the accused, including Ms. O'Reilly  
3 on behalf of the Veseli Defence, asked for a clear indication of how  
4 much exculpatory material is still in the possession of the  
5 Prosecution without having been disclosed. And it's crucial that we  
6 know that because we're about to move onto an agenda item about  
7 Defence preparation. And, you know, I'll be dealing with the volume  
8 of material which we're having to deal with still yet to come,  
9 particularly, as you're rightly say, the exculpatory material which  
10 is vital for planning the Defence investigation.

11 We can't leave this Status Conference without a number from the  
12 Prosecution. They must know what they've got.

13 JUDGE GUILLOU: Thank you, Mr. Emmerson.

14 Madam Prosecutor.

15 MS. LAWSON: Thank you, Your Honour. I did just briefly want to  
16 respond in terms of process because what the Thaci Defence said is  
17 not correct. The Rule 103 packages were prepared last week as part  
18 of ongoing review and disclosure.

19 And as for its weight, as Mr. Kehoe said himself, they are  
20 positing the views of one individual against a substantial body of  
21 other evidence. Thank you.

22 JUDGE GUILLOU: Thank you, Madam Prosecutor.

23 So before we have a short break, first I want to invite the SPO  
24 to continue its review of material as fast of possible. And as I  
25 said earlier, it has to be the priority. Exculpatory material has to

1 be the priority. It is essential for the Defence and it is also  
2 essential for the Court that these documents, items are disclosed as  
3 soon as possible.

4 I also ask the SPO to inform the Defence *inter partes*, and then  
5 the Bench before the next Status Conference, of the state of review  
6 of the material that the SPO has under its control or possession. It  
7 is important for the Defence to know exactly where we are. I note  
8 that you've indicated that 50 per cent of the material had been  
9 reviewed. I don't think it fully answers the question of the Defence  
10 in terms of number. So I invite you to continue the discussion and  
11 to inform regularly the Defence on the quantity of material that  
12 still needs to be reviewed.

13 And, finally, I note that the Thaci Defence indicated that one  
14 option could be to have a third party examining the material in order  
15 to determine if exculpatory material would be in the possession of  
16 the SPO. I invite the Thaci Defence for a written filing on this  
17 issue, if it wishes, especially on which legal basis and which  
18 modalities because this will have to be dealt with in written rulings  
19 given the complexities of such a proposal.

20 MR. KEHOE: Yes, Your Honour.

21 JUDGE GUILLOU: Thank you, Mr. Kehoe.

22 We are going to have a short break. It is 4.26. I remind the  
23 parties that, as usual, we have to finish at 6.00 p.m. at the latest,  
24 so I invite all the parties to be brief at the second part.

25 We are going to resume at 4.50 Hague time. 4.50 Hague time.

1 The hearing is adjourned.

2 --- Recess taken at 4.27 p.m.

3 --- On resuming at 4.51 p.m.

4 JUDGE GUILLOU: So let us move to the last category of  
5 disclosure, which is the Rule 107 material.

6 I note that, in its submissions, the SPO is continuing to  
7 actively work to complete discussions with Rule 107 providers. The  
8 SPO notably indicated that two filings would be soon be submitted  
9 once relevant discussions with providers in relation to any proposed  
10 counterbalancing measures to be proposed in those applications are  
11 concluded.

12 I invite the SPO to make submissions on this category of  
13 material.

14 Madam Prosecutor.

15 MS. LAWSON: We are very much working to complete discussions  
16 with relevant Rule 107 providers. For those with whom clearance  
17 decisions are outstanding, we continue to be in contact with many of  
18 them multiple times a week, often going through individual documents  
19 with them in a detailed manner. And as a result of these efforts,  
20 significant further progress has been made. And for the vast  
21 majority of items, clearance decisions have been reached.

22 Yesterday we submitted a Rule 107(2) request, which was notified  
23 this morning as filing 678, in respect of 21 documents which had  
24 ultimately been denied clearance by two providers. There are further  
25 Rule 107(2) requests that are being prepared, and for one we're

1 completing discussions on possible counterbalancing measures, as you  
2 mentioned.

3 The filing we submitted yesterday also contains an overview of  
4 the providers that we remain in discussion with. So as the Court  
5 will have seen, relatively speaking, this is not a large number of  
6 items. We hope, and based on timelines that have been indicated to  
7 us, we do, in fact, expect to conclude many of those discussions in  
8 the coming weeks.

9 Should there be a need for any further application at that time,  
10 we will do so.

11 Thank you.

12 JUDGE GUILLOU: Thank you, Madam Prosecutor.

13 Do the Defence teams want to take the floor on this category of  
14 material?

15 Mr. Kehoe.

16 MR. KEHOE: We have nothing on this issue, Your Honour.

17 JUDGE GUILLOU: I don't see any requests for the floor.

18 Okay. So then I will move to the next item on our agenda, which  
19 is the issue of translations of filings and evidentiary material.

20 I would first like to hear from the Registry on the progress  
21 made with regard to the translation of these items. Notably, whether  
22 the parties have made any further urgent requests for translation,  
23 and whether the Registry can give an estimate for the translation of  
24 the SPO pre-trial brief and related material, and Rule 109(c) chart.

25 I would also like to hear the parties on any further

1 difficulties regarding translations, and if there are any filings  
2 that needs to be prioritised.

3 I will first give the floor to the Registry. Mr. Nilsson,  
4 please.

5 MR. NILSSON: Thank you, Your Honour.

6 So as set out in our written submissions, translation of the  
7 pre-trial brief is well on track and a revised Albanian translation,  
8 both the strictly confidential and the confidential redacted version,  
9 will be finalised by 18 February. By the same date, we will have  
10 completed the unrevised translation of the witness list. And beyond  
11 this, there are no outstanding prioritised requests before the LSU.

12 With regard to the Rule 109(c) chart that you had asked about as  
13 well, Your Honour, we set out in the written submissions the  
14 challenges with regard to this document. I will not repeat those  
15 submissions, but should -- just maybe to add, that should there be a  
16 request for prioritising this document we would ask the parties to be  
17 as specific as they can be when it comes to which pages and which  
18 sections that is of most interest for them, and that will assist,  
19 greatly to bring some focus to that translation task. Again, only if  
20 there is a wish to make this a priority.

21 Thank you.

22 JUDGE GUILLOU: Thank you, Mr. Nilsson.

23 Mr. Kehoe, please.

24 MR. KEHOE: Yes, Your Honour, we have nothing further on this  
25 topic. We understand the position of the Registry, and we, of

1 course, will prioritise items as requested by Mr. Nilsson.

2 JUDGE GUILLOU: Thank you, Mr. Kehoe.

3 Mr. Emmerson, please.

4 MR. EMMERSON: [via videolink] Unless there is an indication from  
5 either of my trial colleagues that there is any issue they wish to  
6 raise, I don't think there is anything that we need to address,  
7 Your Honour.

8 JUDGE GUILLOU: Thank you, Mr. Emmerson.

9 Mr. Young, please.

10 MR. YOUNG: No, thank you.

11 JUDGE GUILLOU: Thank you, Mr. Young.

12 Mr. Ellis, please.

13 MR. ELLIS: Your Honour, we would regard the Rule 109(c) chart  
14 as a priority of ours.

15 We'll consider the point made by my learned colleague for the  
16 Registry as regards prioritisation. My initial view would be it's a  
17 very difficult document for us to prioritise, and Mr. Krasniqi would  
18 need to see all of it, but we will give that further thought,  
19 Your Honour.

20 JUDGE GUILLOU: Thank you, Mr. Ellis.

21 Mr. Laws, do you want to mention anything on that topic?

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

23 JUDGE GUILLOU: Thank you, Mr. Laws.

24 Now let me turn back to the SPO to ask about the status of its  
25 ongoing investigations.

1           Since the last Status Conference, the SPO filed its pre-trial  
2 brief and related material pursuant to Rule 95.

3           It also filed its Rule 109(c) chart on 28 January 2022 as  
4 ordered.

5           In its written submissions, the SPO indicated that SPO  
6 investigations in fulfilment of its mandate are anticipated to  
7 continue for the foreseeable future. However, the SPO did not  
8 indicate whether investigations could be completed by 4 March 2022,  
9 as I suggested in the Scheduling Order.

10          I would like to insist on the fact that the factual basis of the  
11 case of the SPO shall be set before trial and that SPO investigations  
12 in this case should largely be completed by the time the case is  
13 transmitted to the Trial Panel. General investigations should not  
14 continue throughout the trial. There needs to be a case file that is  
15 properly transmitted to the Trial Panel.

16          Rule 102(4) confirms that objective. Only under exceptional  
17 circumstances can additional evidence be disclosed and subsequently  
18 used at trial. The Defence cannot be expected to prepare a defence  
19 on a case that is constantly evolving.

20          So I would like the SPO to indicate whether it can provide a  
21 further update on the estimated date of completion for outstanding  
22 investigative steps and the nature of these investigations. I also  
23 invite the Defence to present their views on this topic.

24          Madam Prosecutor, please.

25          MS. LAWSON: Thank you, Your Honour.



1 We have heard your direction just there, and we confirm we are  
2 aware of that framework. However, I don't have much to add to the  
3 submissions that we've made at previous Status Conferences. It  
4 remains the case that it is the responsibility of the office to  
5 continue to investigate within its mandate, and should such further  
6 investigations result in material we seek to rely on we're aware that  
7 judicial authorisation will be required; or, if the material is  
8 exculpatory, that could obviously only assist the Defence, and we  
9 would otherwise comply with any disclosure obligations.

10 Thank you.

11 JUDGE GUILLOU: Thank you, Madam Prosecutor.

12 Mr. Kehoe, please.

13 MR. KEHOE: Your Honour, consistent with Your Honour's statement  
14 to finish this investigation. Obviously that has to be done. This  
15 can't go on forever. And I remind the Court of our *ore tenus* motion  
16 under Rule 47 to terminate the investigation, if they're out there  
17 investigating some other matters. It's been going on for some a  
18 significant period of time. The law in Kosovo permits it to go for a  
19 very limited time. We are well past that.

20 So we reiterate our *ore tenus* motion, which we'll gladly put in  
21 writing, to terminate this investigation under Rule 47.

22 JUDGE GUILLOU: Thank you, Mr. Kehoe.

23 Mr. Emmerson, please.

24 MR. EMMERSON: [via videolink] Your Honour, first of all, we're  
25 grateful for the instruction that Your Honour has just given, which

1 at least provides the certainty that there will be an endpoint to  
2 this exercise. Obviously all of this has an implication both for the  
3 Defence investigation and for the process of referral to the Trial  
4 Chamber, when that should be. And as Your Honour made the point a  
5 moment ago, that process needs the transmission of a complete case  
6 file with the substantive allegations properly clarified.

7 And I'm going to be saying something, as I said to you earlier  
8 on, about what the case file is currently going to look like and  
9 whose responsibility it is to prune it down.

10 JUDGE GUILLOU: Thank you, Mr. Emmerson.

11 Mr. Young, please.

12 MR. YOUNG: Your Honour, nothing to add. Your Honour may  
13 remember that -- I think it was the first Status Conference -- yes,  
14 you've got it. I used the guillotine word, a French word. And it's  
15 about time that we knew the date of the execution.

16 JUDGE GUILLOU: Thank you, Mr. Young.

17 Mr. Ellis, please.

18 MR. ELLIS: Yes, Your Honour. We agree with that. We've heard  
19 exactly the same submission from the Prosecution at probably every  
20 Status Conference in this case. It cannot go on indefinitely,  
21 Your Honour.

22 JUDGE GUILLOU: Thank you, Mr. Ellis.

23 Madam Prosecutor, do you want to add anything?

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

25 JUDGE GUILLOU: Let me just stress that we have a legal

1 framework, and additional evidence will only be admitted with a very  
2 strict scrutiny from the Panel and really in exceptional  
3 circumstances. I think it has to be clear on the record.

4 Let me now move to the next point on the agenda, which is  
5 Defence investigations.

6 Having received the SPO pre-trial brief and the Rule 109(c)  
7 chart, as well as the majority of the Rule 102(1)(b) material, I  
8 would be interested to hear the Defence regarding the status of their  
9 investigations; in particular, whether they can provide information  
10 on the status of their investigations, whether the Defence has any  
11 intention to make requests concerning unique investigative  
12 opportunities, whether the Defence can provide information on any  
13 intention to give notice of an alibi or grounds for excluding  
14 responsibility, whether the Defence can provide a best estimate of  
15 when it would be prepared to file its pre-trial brief.

16 I note the Defence submissions that difficulties remain with  
17 respect to investigations. However, even if the Defence is not in a  
18 position to give details on their investigations and upcoming  
19 requests, I invite the Defence to provide an estimate on the expected  
20 length of their investigations and when it anticipates being in a  
21 position to file its pre-trial brief and related material.

22 And I also invite the Defence to indicate if they do not wish to  
23 file a pre-trial brief, according to Rule 95(5).

24 Mr. Kehoe, please.

25 MR. KEHOE: Yes, Your Honour. You outlined some of the problems

1 there are extant with regard to this investigation, not the least of  
2 which is the ongoing COVID pandemic, but also take into consideration  
3 the extensive amount of information we have received over the past  
4 month or so, not the least of which is on January 31st. Take that on  
5 top of something I highlighted previously, which was there are 326  
6 proposed witnesses, 106 are anonymous, that we don't even know who  
7 they are. And we may get some prior to trial. It looks like we're  
8 going to get some in the middle of trial.

9 It makes this investigation extremely difficult. That's not  
10 saying that we're not in the field attempting to investigate this,  
11 Your Honour. We are. But it is much more time consuming with those  
12 type of constraints, because if we knew what the information was  
13 concerning many of the allegations, certainly these crime-based  
14 allegations, we could dispense with them somewhat quickly in many  
15 instances, I'm sure. But we're in the unfortunate position of trying  
16 to guess exactly what transaction they're talking about and going  
17 from there. Extremely time consuming. Extremely time consuming,  
18 that in conjunction with the trial brief, with the amount of  
19 information that was in the 109(c) chart. I'm sure Your Honour can  
20 understand exactly how long it's going to take.

21 Can I give you an estimate at this point as to how long that  
22 investigation is going to be? I can't. I maybe will try to revisit  
23 that during the next Status Conference, Your Honour. I will give you  
24 my word we will go through the investigative team and try to talk to  
25 them as to how much time they think they need. I think that their

1 estimate is going to be quite extensive, but I don't want to speak  
2 for them before I get a firmer or more definitive statement as to how  
3 long it's going to be.

4 With regard to the Rule 99(1) issues and taking testimony from  
5 individuals, we are in the process of attempting to do that now, and  
6 I think that is going to come before Your Honour, or maybe a  
7 three-Judge Panel, or the Trial Panel, I'm unsure, relatively soon,  
8 because given that the Prosecution has put 18.064 hours on the table,  
9 as far as how long this case is going to be, and I know Mr. Emmerson  
10 is going to address that issue.

11 Some of these individuals are not -- with all due respect to  
12 them, are not young. And not Mr. Young. I meant in ages. In years.  
13 So some decisions are going to have to be made in the very near  
14 future concerning some of those witnesses that are of advanced age.  
15 I wish them a long life, Judge. I don't wish them any ill. But the  
16 practicalities are such that if this trial is going to go on which --  
17 what looks like years, then we're going to have to take some measures  
18 to secure that testimony. We have not done that definitively yet,  
19 but I just want to put it on the table so that Your Honour can  
20 consider that we will, in fact, do it.

21 With regard to the alibi Defence, I can tell you that much --  
22 again, we go back to amount of redactions and we go back to all the  
23 information that's in the indictment that we don't know.

24 What I can tell Your Honour at this point is that my client was,  
25 Mr. Thaci was out of the country for long periods of time throughout

1 the 1998/1999 period when, I assume, because we don't have dates,  
2 that some of this activity took place in Kosovo. So to the extent  
3 that that comes into play, when we have a more definitive date  
4 timeframe from the SPO, I am sure that we will be putting forth an  
5 alibi Defence on various transactions. I am sure of that. I just  
6 don't know which ones they are.

7 JUDGE GUILLOU: Thank you, Mr. Kehoe.

8 Mr. Emmerson, please.

9 MR. EMMERSON: [via videolink] Yes, I'm going to ask Mr. Strong  
10 to present our submissions on the Defence investigation. He is, as I  
11 said earlier on, here -- there, rather, in court with counsel  
12 Kujtim Kerveshi who is also heading up the Kosovo-based investigation  
13 and advising on that.

14 JUDGE GUILLOU: Thank you, Mr. Emmerson.

15 Mr. Strong, please.

16 MR. STRONG: Yes, thank you, Your Honour.

17 The Veseli Defence has started its investigation, as we've  
18 stated at previous Status Conferences. We face similar issues as the  
19 one my colleague, Mr. Kehoe, outlined.

20 And I think, more importantly, the investigation is proceeding  
21 in fits and starts where we'll start down a road with an issue, and  
22 then we'll get a batch of disclosure that's 2.000 documents and we'll  
23 have to stop and process it, and it reshapes how we're thinking about  
24 the issue. So that's a challenge. Along with just the scope of the  
25 case.

1 I am sure Your Honour has seen with the pre-trial brief there  
2 are 16.000 proposed exhibits that we're currently working through.  
3 As you just heard with Rule 103, we're still waiting for, I believe,  
4 about 50 per cent of the material that they still need to review.  
5 And we still don't have an estimate as to when we can expect to have  
6 that material, which is going to form the foundation of our Defence  
7 case and our Defence strategy and our investigation plan.

8 So we will make all efforts to continue this investigation under  
9 those circumstances. But given that reality, we're not in a position  
10 to provide an estimate in terms of when we could reasonably expect it  
11 to end. We don't see a need at the moment for a special  
12 investigative opportunity; however, we reserve the right that that  
13 could change should the need arise. And I think with the other  
14 issues, just we can wrap them up all in one submission here, that the  
15 position remains largely the same.

16 Until we see more of the 103 material and have had more time to  
17 go through the volume of the Prosecution's disclosure, we're not in a  
18 position to put a reasonable estimate in front of you.

19 Thank you.

20 JUDGE GUILLOU: Thank you.

21 MR. EMMERSON: [via videolink] Can I just add one point of detail  
22 which --

23 JUDGE GUILLOU: Mr. Emmerson.

24 MR. EMMERSON: [via videolink] -- I just wanted to ensure that  
25 Your Honour had in mind. Which is that you've asked us to do our

1 best to give you an estimate of how long the investigation is liable  
2 to take, and obviously we're keen to do that at the earliest possible  
3 moment.

4 But if you take the issue that you have just earlier on ruled  
5 upon in relation to the witness protocol - in other words, written  
6 submissions, possibly followed by an oral hearing on the 22nd - the  
7 outcome of what is agreed on in that respect is going to have a  
8 massive impact on how long things take. Because if you -- I'm sure  
9 you're very familiar with the process that's envisaged by the  
10 protocol, but it involves us writing to the Prosecution, who will  
11 write to the witness, see if they've got any objection, and then make  
12 an assessment and, if appropriate, organise a meeting where the  
13 witness has to travel at their own expense to The Hague, and then  
14 finally can meet us in the presence of the Prosecution.

15 Well, that's an extraordinary handicap for any Defence to be  
16 under. I've never heard of anything remotely resembling it anywhere  
17 with no evidential basis. Just a presumption that that is the  
18 approach that's going to be taken. You know, the Prosecution have  
19 interviewed all these people on their own and have made decisions,  
20 apparently, about which ones they were going to sit on, like the  
21 ambassador's witness statement. But the Defence must play their hand  
22 entirely open. Well, that's going to have an impact on whether we  
23 have a fair trial because it's going to have an impact on whether we  
24 think it's appropriate to interview a witness if we have to have the  
25 Prosecutor sitting in on the Defence case. And, you know, clearly if



1 there were real concerns about a witness, then there could be  
2 alterations made.

3 But my point is a simple one. Is that, you know, the  
4 investigation might be one that takes nine months or 12 months if  
5 there was no such argument. But if we're going to work in that  
6 protocol, I would have thought you're looking at a two and a half  
7 year investigation. A massive impact on the pre-trial period.

8 JUDGE GUILLOU: Thank you, Mr. Emmerson.

9 Mr. Young, please.

10 MR. YOUNG: Yes, Your Honour, very briefly.

11 In relation to Defence investigations, as I mentioned on the  
12 last occasion, and we've commenced investigations. All I can say is  
13 they will clearly be -- this will clearly be a lengthy process, and  
14 it's very difficult to give an estimate as to how long Defence  
15 investigations will take, particularly given what we mentioned  
16 earlier, that there's still -- one, there's still a huge amount of  
17 material to analyse and digest.

18 We just received, as Your Honour knows, the pre-trial brief. So  
19 we are diligently reviewing the pre-trial brief. The underlying  
20 materials, that task in itself will take months, frankly. And in  
21 relation to disclosure generally, Your Honour knows that there's  
22 still a massive amount that we still don't have. And if we're going  
23 to be given the 102(3) materials that we've asked for, that's another  
24 42, 43.000 additional materials, sets of materials. So it's very  
25 difficult to say at this stage. All I can say is we are very

1 diligently going through everything we can as quickly as we can.

2 And as far as a Defence pre-trial brief is concerned, frankly,  
3 it's difficult to say now in the light of what I've just mentioned as  
4 to when we'd be in the position to draft one.

5 JUDGE GUILLOU: Thank you, Mr. Young.

6 Ms. Alagendra, please.

7 MS. ALAGENDRA: [Microphone not activated].

8 JUDGE GUILLOU: Microphone, please.

9 MS. ALAGENDRA: Your Honour, our investigations have commenced.  
10 They're ongoing. But it's too early for us to give any estimate as  
11 to how long it's going to take and as to when we'll be able to submit  
12 our pre-trial brief.

13 Our position remains as has been submitted by counsels for the  
14 other three teams. For this reason, we are unable to give any update  
15 at this point. Probably by the next Status Conference, Your Honour.

16 JUDGE GUILLOU: Thank you, Ms. Alagendra.

17 I invite the Defence teams to try to give their best estimate at  
18 the next Status Conference, as proposed by Mr. Kehoe, taking into  
19 consideration the constraints that you all explained in your written  
20 submissions as well.

21 Madam Prosecutor, do you want to say anything on this topic?

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

23 We provided the Defence with a list of over 300 proposed agreed  
24 facts in March 2021. Excluding translations, we disclosed  
25 approximately 95 per cent of Rule 102(1)(b) materials over five

1 months ago. That is, on or before 18 August. All of which was  
2 subcategorised in Legal Workflow. We provided a provisional witness  
3 list, including summaries, in October 2021, and we provided our  
4 pre-trial brief, witness, and exhibit lists in December 2021.

5 And we remain available to the Defence teams to discuss any  
6 points of agreement.

7 Thank you.

8 JUDGE GUILLOU: Thank you very much. I don't see any request  
9 for the floor.

10 Let us now move to the date of the next Status Conference. I  
11 confirm to the parties --

12 MR. EMMERSON: [via videolink] I'm so, sorry, Your Honour.  
13 But --

14 JUDGE GUILLOU: Mr. Emmerson.

15 MR. EMMERSON: [via videolink] -- as I indicated to you earlier  
16 on, I have a significant matter to raise with you under any other  
17 business.

18 JUDGE GUILLOU: I know, don't worry.

19 MR. EMMERSON: [via videolink] Oh, okay.

20 JUDGE GUILLOU: This will be after the date for the next Status  
21 Conference. I haven't forgotten.

22 Now, I just want to confirm that I intend to schedule the next  
23 Status Conference on Thursday, 24 March 2022, at 14.30 Hague time.  
24 So I invite the parties to confirm their availability.

25 Madam Prosecutor.

1 MS. LAWSON: Yes, Your Honour. We will be available. Thank  
2 you.

3 JUDGE GUILLOU: Thank you, Madam Prosecutor.  
4 Mr. Kehoe.

5 MR. KEHOE: Yes, Your Honour, we will be available. And as for  
6 the 22nd of February, we will be available for that date as well.

7 JUDGE GUILLOU: Thank you, Mr. Kehoe.  
8 Mr. Emmerson, please.

9 MR. EMMERSON: [via videolink] Yes, we'll be available.

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

12 MR. YOUNG: Yes, we'll be there.

13 JUDGE GUILLOU: Thank you, Mr. Young.

14 Ms. Alagendra, please.

15 MS. ALAGENDRA: We are available, Your Honour, on 24 March, as  
16 well as 22 February.

17 JUDGE GUILLOU: Thank you, Ms. Alagendra.

18 Mr. Laws, please. Mr. Laws?

19 MR. LAWS: [via videolink] Your Honour, yes, we're available  
20 then. Thank you.

21 JUDGE GUILLOU: Thank you, Mr. Laws.

22 Mr. Nilsson.

23 MR. NILSSON: Thank you for asking, Your Honour. I will  
24 certainly be available.

25 JUDGE GUILLOU: You are administering the courtroom, so if you

1 are not available, we cannot organise any hearing.

2 You will receive a Scheduling Order that will include an agenda  
3 before the next Status Conference, as usual.

4 Now at this point I would like to raise the parties and  
5 participants whether they have any other issues they would like to  
6 raise.

7 And Mr. Emmerson already indicated that he wanted to raise a  
8 specific point, but let me go through the usual order.

9 Madam Prosecutor.

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

11 JUDGE GUILLOU: Thank you, Madam Prosecutor.

12 Mr. Kehoe.

13 MR. KEHOE: Your Honour, just the two items that I had talked  
14 about before, the pre-trial detention issue and, obviously, the  
15 22 February hearing are the two issues that I wanted to address. The  
16 most important, of course, being guidance from Your Honour on  
17 pre-trial release.

18 JUDGE GUILLOU: Thank you, Mr. Kehoe.

19 Mr. Emmerson, you have the floor.

20 MR. EMMERSON: [via videolink] Can you hear me? Yes, good.

21 Well, I'm grateful to Your Honour for ensuring that there is  
22 sufficient time for me to address this question. I think it is a  
23 rather important question now that we have the Prosecution's  
24 pre-trial brief, and, as has just been said by the Prosecution, a  
25 significant sense of the shape of its case, there is important stuff

1 still outstanding. But there is sufficiently disclosed to enable me  
2 now to take stock of the situation and to make some general  
3 submissions about the scope and scale of the Prosecution case.

4 Your Honour will remember that at an earlier hearing I had --  
5 perhaps, I think, on more than one occasion - anticipated that we  
6 were heading towards an unmanageable trial and that a solution needed  
7 to be devised for whether it is your responsibility to impose  
8 discipline on the Prosecution or the responsibility of the Trial  
9 Chamber. But one way or another, something has to give.

10 And because the Tribunal is working out its own processes for  
11 the first time, there isn't a track record of experience. At the  
12 ICTY, generally speaking, the Trial Chamber would impose a limit on  
13 the number of hours and would require a general timetable that no  
14 witness should take more than half an hour unless the party wishing  
15 to question them had made an application -- or raised an application  
16 to the Judge.

17 So there are various things that can be done and, importantly,  
18 were done at the ICTY to maintain some sort of control. Now,  
19 obviously, as you know, in some of the cases even that was  
20 insufficient. So, for example, Milosevic died during his trial  
21 because it had generally gone on so long because the prosecution in  
22 that case decided to try all three countries - in other words,  
23 Serbia's crimes or Milosevic's alleged crimes - in relation to  
24 Croatia, Bosnia, and Kosovo in one joint trial.

25 But with that introduction, and I anticipate that the

1 submissions I make are going to be met with the response, well, this  
2 isn't the ICTY. We are deliberately set up to do better than the  
3 ICTY. Which was the submission they made, if you'll remember, when  
4 arguing that they would trial-ready in June 2020. I drew your  
5 attention to the timeframes that were taken in pre-trial proceedings  
6 in a whole range of cases at the ICTY and ICC, and I predicted that  
7 we would get to the end of last year and not be ready to start a  
8 trial, and based on the careful analysis of the practices and the  
9 time taken in the other cases. Well, this is water under the bridge  
10 now. We've moved through the pre-trial period -- we're moving  
11 through the pre-trial period. My only concern is that these accused  
12 were denied provisional release on the basis of a false  
13 representation to you of what the pre-trial period would be.

14 I am inviting you and the Prosecution not to make the same  
15 mistake again, because it's undeniable that the Prosecution has  
16 failed to get a grip on its case and, as a result, it's completely  
17 out of control. It's partly the consequence of them not having any  
18 direct evidence of crimes committed, incited, or participated in by  
19 any of the accused. It's all built on inference and argument from  
20 events that none of the accused were actually involved in any way.

21 And I think that does make it a more difficult case for the  
22 Prosecution to advance and, therefore, a tendency is to throw in  
23 everything, including the kitchen sink, the baby, and the bath water,  
24 and throw it all in one big mosh and hope that it lands. But the  
25 result of that process? Just let's look at it for a moment.

1           The Prosecution has put time estimates for oral testimony on the  
2 witnesses that it is intending to call. I think I'm right in saying  
3 that cumulatively those time estimates come to something over 1.300  
4 hours on Prosecution direct examination only. Right? So to put that  
5 in perspective, in the Milosevic case the Prosecution used a total of  
6 360 hours to present its case, which included Defence examination of  
7 Prosecution witnesses.

8           So unlike the Prosecution in our case, which is asking for 1.300  
9 hours for only direct examination. In the Milosevic case, the  
10 Prosecution used 360 for direct and cross-examination of their case,  
11 and the case as a whole took two years. Right? So we're beginning  
12 to see 1.300 hours for this Prosecution, 360 hours for Milosevic, and  
13 that case took two years before Milosevic died, but he died during  
14 the defence case.

15           In the Prlic case, the Prosecution used a total of 296 hours, so  
16 less than Milosevic, to present its case over approximately one year  
17 and nine months. And one of the best timed cases was actually the  
18 Kosovo crimes against humanity case in which five Serbian political  
19 military, paramilitary, and policing leaders were all put on trial  
20 for jointly committing crimes against humanity in Operation  
21 Horseshoe, which was the Operation by which Serbia encased the Kosovo  
22 Albanian population with a horseshoe of armed forces and then  
23 travelled through the country -- this is in the immediate aftermath  
24 of the NATO bombing, travelled through the country, driving Albanian  
25 civilians across the borders to Macedonia -- Macedonia, Montenegro,



1 and Albania. So a very, very significant trial in the same territory  
2 that we are talking about. And the lead case in that is Sainovic or  
3 Milutinovic case in the Prosecution used 166 hours, so one-tenth of  
4 what the Prosecution is asking for here, across approximately ten  
5 months. So they did very well in that case. I accept that.

6 But the [indiscernible] interestingly, in those three case, is  
7 consistent, there is a pattern. With the very tightly managed way  
8 that the ICTY handled these cases, there's a broadly consistent  
9 pattern with a relationship between the number of witnesses, the  
10 number of hours, and how long the trial takes.

11 And at that rate, if you apply to the witnesses that the  
12 Prosecution have put forward in this case, it would last something  
13 like 120 months. The Prosecution case would last approximately 120  
14 months. So, you know, somewhere near 10, 11 years for the trial.

15 And supposing that there is a Defence case, cut to its absolute  
16 minimum, that would be likely to be 18 months, two years. So you're  
17 talking about a 15-year potentially, 14-, 15-year trial.

18 Now, in addition to the witnesses on their list, the Prosecution  
19 has proposed 16.000 exhibits and the total number of witnesses being  
20 345. But the figures I gave you in hours were for those they have  
21 indicate they intend to call viva voce. And it's no good the  
22 Prosecution saying, "Well, if the Defence was prepared to agree all  
23 this, then we wouldn't need to call any of the evidence in the case.  
24 We'd just do it on paper." Well, we're not and that's not going to  
25 happen. So the Prosecution needs to be in a position to buckle up

1 and prove its case.

2 If the case it's trying to set out to prove now is one that is  
3 permitted to go to trial, it will last at least ten and probably more  
4 than 12 years. Now, that cannot be in the interests of justice. It  
5 undermines international criminal law fatally. It undermines  
6 anything good that this Court is trying to do. It undermines the  
7 justice for the accused as well as justice for the victims as well as  
8 justice for the witnesses. It's a disastrous proposition and it  
9 makes the Court a laughing stock. Let's be honest. There's already  
10 serious concern about the way the Court is conducting itself, but  
11 that would make the Court a laughing stock.

12 So somebody is going to have to tell the Prosecution how to run  
13 their case and how to cut it down to a manageable level. This is  
14 meat and drink for Judges in international criminal courts. They do  
15 it all the time. That's the way the system works. And if it doesn't  
16 work that way, these trials are not achievable. So, Your Honour,  
17 unless you do something about this, this will be the last  
18 international criminal tribunal that is set up.

19 And as far as that's concerned, we've begun the process of  
20 trying to see how you would edit the Prosecution case. But the  
21 problem is that what they are putting forward as their case -- and  
22 bear in mind, as I said at the outset, none of these are witnesses  
23 who make any direct accusations against any of the accused; they are  
24 just random people who have been picked out to give evidence about  
25 specific crimes that have no connection to the accused.

1           And if you listen -- remind yourself about the comment made by  
2           the ambassador that Mr. Kehoe was talking about earlier on, you can  
3           see there are two points of view; that certainly the point of view  
4           that's been taken by the ICTY in all of the Kosovo cases and the  
5           judgements, if you read them, and by the ambassador and many other  
6           people very deeply familiar with Kosovo, is that the crimes that were  
7           being committed on the ground had no central control whatsoever.  
8           This was just the product of a lawless situation and lots of weapons  
9           around and people settling old scores and the outpouring of anger and  
10          fear in the context of an arguably genocidal Serbian campaign, but  
11          certainly one that could have depended on crimes against humanity  
12          village by village as the Kosovar Albanian population were massacred  
13          and forced, those who remained, closer and closer to the border so  
14          that the whole place could be ethnically cleansed of its Kosovar  
15          Albanian population. That was what we -- the context in which these  
16          allegations are being made.

17          So, you know, we know what the territory of the arguments at  
18          trial are going to be, but for the consequence of that to be that the  
19          Prosecution just has put anything into the case to the point there's  
20          no regard being given to how long the trial is going to take, at the  
21          end of the day, you know, the question is -- let's take Mr. Veseli.  
22          You know, we look at the sentences that were passed down to the  
23          Serbian conspirators who themselves had ordered the killing of  
24          thousands and thousands and thousands of Kosovar Albanians, and the  
25          driving of the remainder out of Kosovo so that they could never

1 return, the destroying of their homes and their crops and their  
2 animals, and the removal of their documents and the filing of their  
3 car number plates, the removal of anything that could establish a  
4 connection with the right of return, they were all convicted of  
5 crimes against humanity in that period. And the sentences that they  
6 were given, you know, varied from sort of ten years to 15, more or  
7 less.

8 So, you know, essentially what you -- if you don't step in and  
9 act, and, you know, the history - I'm sure you won't challenge me in  
10 saying this - is that you have been, generally speaking, giving the  
11 Prosecution enormous latitude so far and that's why we're in this  
12 mess, right? That's why we're in this state because you haven't held  
13 the Prosecution to a tight enough -- a series of rules. And, you  
14 know, when they choose to do what they want to do, just in complete  
15 violation of the rules, you never hold them to account.

16 So this is an opportunity to do something about the situation.  
17 You, I suggest, cannot properly send a case to the Trial Chamber  
18 which is technically due to last ten years to try. So we have to  
19 decide next what is the procedure for resolving this. Are you going  
20 to send a ten-year trial to the Trial Chamber and let them have to  
21 deal with it, or are you going to do something about it now?

22 Now, I'm happy to put -- obviously, I am not suggesting you make  
23 any decisions on this on the basis of oral submissions, but I don't  
24 want to waste a lot of time putting a written submission to you if  
25 you're going to turn around and say, "This is not my function." So I

1 would like you to give an indication today whether you accept it as  
2 part of your function to give the Prosecution a limit in terms of  
3 time, in terms of volume, in terms of number of witnesses, in terms  
4 of categories of case, in terms of how they are going to make this  
5 case work or not. Because if you don't accept you have that  
6 jurisdiction, let's not waste any time. I'll appeal your ruling and  
7 we'll go that way.

8 So I'd like a ruling in principle today, if possible, but not  
9 necessarily a ruling, about whether you consider yourself to have the  
10 jurisdiction to impose limits on the number of witnesses and the  
11 number of hours that the Prosecution is entitled to claim for  
12 purposes of presenting its trial. Every other tribunal does it. If  
13 you don't do it, you will create this case as an absolute car crash.  
14 It already is in this situation.

15 It is an extraordinary situation where a Prosecution has broken  
16 all the rules and broken all its deadlines and lied to the Court  
17 about what was going to happen in terms of how long the case was  
18 going to take pre-trial, deliberately categorising underestimates in  
19 flagrant violation or in flagrant opposition to the known facts and  
20 to experience of other courts, because I'm sure the Prosecution think  
21 they're better than the prosecution in every other court, but they're  
22 not good enough to put a case forward that can sensibly and  
23 realistically be tried.

24 Why should Mr. Veseli even go for trial? At the end of the day,  
25 if he's going to serve ten years in prison, you might as well just

1 let him get on with it, because whether he's convicted or acquitted,  
2 you'll get ten years of his liberty or more, because he's already two  
3 years in prison.

4 This is a travesty, and so I would invite you to accept your  
5 true responsibility to hold this case to -- to put it in some sort of  
6 order. And, obviously, if you choose not to do that, then it's your  
7 responsibility that this situation is completely out of control.

8 So could you please give us an indication how you would like  
9 this dealt with?

10 JUDGE GUILLOU: Thank you, Mr. Emmerson.

11 I will continue the round. Just on your question, I'm not going  
12 to make any ruling on this today, especially in the "any other  
13 business" category of a Status Conference. This is a very serious  
14 matter for which there will need to be written rulings, as you just  
15 mentioned. There are ways to streamline proceedings. These  
16 responsibilities are shared between the Pre-Trial Judge and the Trial  
17 Chamber, and everybody will have to take his or her responsibility on  
18 this. But this cannot be done --

19 MR. EMMERSON: [via videolink] Yes, but we need to know --

20 JUDGE GUILLOU: -- done at 5.34 --

21 MR. EMMERSON: [via videolink] I am not inviting you to do that.

22 JUDGE GUILLOU: -- in a Status Conference.

23 MR. EMMERSON: [via videolink] I would --

24 JUDGE GUILLOU: But these matters are definitely going to be  
25 addressed and streamlining the procedure, and efficient procedures

1 are definitely an important part of our function --

2 MR. EMMERSON: [via videolink] It's not streamlining.

3 JUDGE GUILLOU: -- and this will be --

4 MR. EMMERSON: [via videolink] It's ten times larger than the --

5 JUDGE GUILLOU: -- addressed. Thank you, Mr. Emmerson.

6 Let me give the floor to Mr. Young, please.

7 MR. FERDINANDUSSE: Your Honour, I'm standing for a point of  
8 order, please, and it will be brief.

9 JUDGE GUILLOU: Can you wait for the last Defence team? I will  
10 give you the floor and you can make your point once I finish with the  
11 other Defence teams, please. Thank you.

12 Mr. Young.

13 MR. YOUNG: Nothing to add.

14 JUDGE GUILLOU: Thank you, Mr. Young.

15 Ms. Alagendra.

16 MS. ALAGENDRA: Nothing to add, Your Honour.

17 JUDGE GUILLOU: Thank you, Ms. Alagendra.

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

19 MR. LAWS: [via videolink] Nothing from me. Thank you,  
20 Your Honour.

21 JUDGE GUILLOU: Thank you, Mr. Laws.

22 Mr. Prosecutor, you have the floor. Thank you for waiting.

23 MR. FERDINANDUSSE: It is just a very brief point of order, but  
24 I have noted before that we sometimes find ourselves in the situation  
25 that the Defence teams are making increasingly wild allegations,

1 allegations that they know not to be true, but we then run out of  
2 time or are about to run out of time and therefore we are required to  
3 be swift in our responses.

4 I would like there to be a situation that if we have to listen  
5 to allegations of these kind that are not on topic, that go on for  
6 longer and longer and are completely beside the point, that certainly  
7 there will be enough room to respond because this is no way to run a  
8 Status Conference if there is no limit as to what is done and what is  
9 discussed. Thank you.

10 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

11 I invite the parties to mention in advance when they want to  
12 raise specific topics. And in such a topic, which is the efficiency  
13 of the proceedings, we have a legal framework. This will be dealt  
14 with by written rulings. They are powers of the Pre-Trial Judge,  
15 notably, in the hand of a document; they are powers of the Trial  
16 Chamber, so that procedures are managed efficiently.

17 Madam Prosecutor, you wanted to add something.

18 MS. LAWSON: Thank you, Your Honour. Just my colleague  
19 responded on the point of order there. I would like to respond in  
20 substance.

21 What I would say is that purely mathematical comparisons of the  
22 type presented by the Veseli Defence in their written submissions and  
23 again here today are of very limited assistance.

24 The Defence named some specific cases by way of example. One of  
25 those was the Sainovic case. Even a cursory look at the Sainovic



1 trial schedule shows that between July 2006 and May 2007, the ten  
2 months during which the Prosecution case was being presented, there  
3 were four entire months when it appears that the court did not sit at  
4 all and other months in which the court sat very few days. For  
5 example, in April 2007, it was only three days of the entire month.  
6 Therefore, for five of the ten months the court essentially did not  
7 sit. So what I would say is a significant degree of care is required  
8 in attempting to make any such extrapolations.

9 As for the ICTY generally, different Chambers took different  
10 approaches to trial management. However, the submission that,  
11 generally speaking, no witness at the ICTY could take more than half  
12 an hour is not an accurate reflection of ICTY practice.

13 With regard to this case, the scope of evidence and manner of  
14 presentation are matters which the Trial Panel will be empowered to  
15 address in due course in accordance with Rules 117 and 118. However,  
16 let me be clear. The SPO will be presenting an efficient case. We  
17 need to balance factors, including the burden of proof and the  
18 interests of victims and witnesses in getting to give their account  
19 of events to the Court. However, we will do so in a manner which is  
20 balanced and efficient, as we have done in other cases before this  
21 Court to date, and will certainly not be the range of years being put  
22 forward by the Veseli Defence.

23 More fundamentally, however, matters are being taken here in the  
24 wrong order. The SPO is not in a position to assess ways in which to  
25 make the trial more efficient without knowing what it is that the

1 Defence agrees to and what it disputes. We provided proposed agreed  
2 facts in March 2021. That's almost a year ago. And we understand  
3 from the written submissions the Defence teams are still considering  
4 these, and we're very happy to discuss them.

5 Similarly, should the Defence teams choose to file pre-trial  
6 briefs, we would want to carefully review them. So we hope that  
7 relevant information will be available for the Trial Panel to make  
8 decisions pursuant to Rule 118.

9 Finally, now is not the time or place to debate the merits of  
10 the case. That will again be determined at trial before the  
11 Trial Panel. However, contrary to the Veseli Defence submissions,  
12 the evidence disclosed and summarised in the Prosecution's pre-trial  
13 brief is clear about the responsibility of the four accused for the  
14 crimes charged. It includes contemporaneous statements of intent and  
15 knowledge, both written and oral; it includes clear evidence of  
16 contribution and participation; and in respect of Mr. Veseli in  
17 particular, there is also evidence of the very central involvement of  
18 the intelligence bodies over which he presided in implementing the  
19 common criminal purpose.

20 Thank you.

21 JUDGE GUILLOU: Thank you, Madam Prosecutor.

22 I don't see any requests for the floor, so -- Mr. Kehoe, just  
23 briefly.

24 MR. KEHOE: Just one very, very brief comment which is a comment  
25 on the efficiency and their call for agreed fact, et cetera.

1           Let me remind the Prosecution that 106 witnesses are anonymous.  
2   106 viva voce witnesses are anonymous. Again, a rhetorical question:  
3   Does the Prosecution think that makes it difficult, on behalf of the  
4   Defence, to assess agreed facts? What do they think? Of course.

5           We have an indictment that is redacted on events and dates and  
6   times and people for which we cannot put our arms around that. I  
7   can't even discuss it with my client.

8           It's an absurd proposition, with all due respect, Judge, to say  
9   that we are ready to do this trial, we have thrown these facts and  
10   circumstances out, and that the burden is on the Defence, given what  
11   they presented to us. Thank you.

12           JUDGE GUILLOU: Thank you, Mr. Kehoe.

13           I don't see any requests for the floor, so this concludes  
14   today's hearing. I thank the parties and participants for their  
15   attendance. As usual, I thank the interpreters, stenographers,  
16   audio-visual technicians, and security personnel for their  
17   assistance.

18           We will meet on 24 March, and I will also inform you if we  
19   convene for a hearing on 22 February once I've received the written  
20   submissions of all the parties.

21           The hearing is adjourned.

22                           --- Whereupon the Status Conference at 5.42 p.m.

23

24

25