

1 Tuesday, 16 February 2021

2 [Status Conference]

3 [Open session]

4 [The accused appeared via videolink]

5 --- Upon commencing at 11.00 a.m.

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

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

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

12 JUDGE GUILLOU: Thank you, Madam Court Officer.

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

15 Mr. Prosecutor or Madam Prosecutor.

16 MS. LAWSON: Good morning, Your Honour, and to all those  
17 joining. For the Specialist Prosecutor's Office this morning are  
18 Jack Smith, Specialist Prosecutor; Alan Tieger, Senior Prosecutor;  
19 David Harbach, Prosecutor; Marlene Haage, Legal and Disclosure  
20 Officer; and I am Clare Lawson, Head of the Legal Office. Thank you.

21 JUDGE GUILLOU: Thank you, Madam Prosecutor.

22 Now I turn to the Defence. May counsel introduce themselves and  
23 their team, starting with Mr. Hooper, please.

24 MR. HOOPER: [via videolink] Yes. Good morning, Your Honour.  
25 David Hooper, assisted this morning by Sophie Menegon and

1 Dastid Pallaska. Thank you.

2 JUDGE GUILLOU: Thank you, Mr. Hooper.

3 Mr. Emmerson, please.

4 MR. EMMERSON: [via videolink] Good morning, Your Honour, and to  
5 all those in court. This is Ben Emmerson, representing Kadri Veseli.

6 JUDGE GUILLOU: Thank you, Mr. Emmerson.

7 Mr. Young, please.

8 Mr. Young, your microphone is off. If you could repeat, please.  
9 Thank you.

10 MR. YOUNG: [via videolink] Forgive me. Can you hear me now?

11 JUDGE GUILLOU: I can hear you. Yes, please continue.

12 MR. YOUNG: [via videolink] Yes, thank you. This is David Young,  
13 representing Rexhep Selimi along with Mr. Geoffery Roberts. Thank  
14 you.

15 JUDGE GUILLOU: Thank you, Mr. Young.

16 And now Ms. Alagendra.

17 MS. ALAGENDRA: [via videolink] Good morning, Your Honour.

18 Venkateswari Alagendra, representing Mr. Jakup Krasniqi, appearing  
19 together with Mr. Aidan Ellis and Mr. Mentor Beqiri.

20 JUDGE GUILLOU: Thank you, Ms. Alagendra.

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

24 Now I turn to the Registry, please. Mr. Roche.

25 MR. ROCHE: Good morning, Your Honour. It's Ralph Roche, Head

1 of Judicial Service Division in the Registry. Thank you.

2 JUDGE GUILLOU: Thank you, Mr. Roche.

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

5 Before we proceed with our agenda today, I remind the parties  
6 that should anyone attending the Status Conference via  
7 video-conference experience any technical difficulties, please inform  
8 the Court Officer and myself immediately by waving your hand. And if  
9 the connection with any of the remote participants fail, we will do  
10 our best to reconnect immediately. If the issue cannot be resolved  
11 rapidly, I may have to adjourn the hearing for a couple of minutes to  
12 ensure that the line is reconnected.

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

14 On 3 and 9 February 2021, I scheduled this third Status  
15 Conference. I asked the parties to provide written submissions, if  
16 they so wished, on the following topics: Disclosure, translation of  
17 the Rule 86(3)(b) outline, the Rule 109(c) charts, the status of the  
18 SPO's investigations, the status of the Defence investigations, the  
19 points of agreement on matters of law and fact, the date of the next  
20 Status Conference, and any other matters they wished to raise.

21 On Monday, 8 February, the SPO and the Registry submitted their  
22 respective observations, and three Defence teams submitted their  
23 observation on Wednesday, 10 February. I thank the parties and  
24 participants for their written submissions.

25 The purpose of our hearing today is to review the status of the

1 case and to discuss the topics I just listed. I will invite the  
2 parties to present their views in a concise fashion about each item.  
3 I remind the parties to give prior notice should any submission  
4 require the disclosure of confidential information.

5 Now I invite the parties to follow the agenda set out for the  
6 Status Conference, and I will first start with the issue of  
7 disclosure. I would like to hear from the Prosecution on the  
8 progress made in the disclosure of evidentiary material, in  
9 particular with respect to Rule 102(1)(a) material, whether  
10 disclosure obligations with respect to this material have been  
11 fulfilled as you anticipated in your written submissions; with  
12 respect to the Rule 102(1)(b) material, how much of such material  
13 remains to be disclosed, and whether the SPO envisages filing  
14 protective measure requests.

15 I also wish the SPO to inform the Court whether there remain  
16 exculpatory evidence in the SPO's custody, control, or actual  
17 knowledge, and whether this material requires a judicial ruling on  
18 protective measures, and whether it is facing or foresees any  
19 difficulties related to the disclosure process, in particular, with  
20 respect to Rule 107 material.

21 And finally, I invite the SPO to respond to the points raised by  
22 Mr. Hooper in his submission about the identification of witnesses  
23 and the identification of material related to each witnesses.

24 Madam Prosecutor, you have the floor.

25 MS. LAWSON: Thank you, Your Honour.

1 With respect to Rule 102(1)(a) material, I can confirm that the  
2 final items were disclosed in disclosure package 21 on 12 February  
3 and that Rule 102(1)(a) disclosure is therefore complete.

4 Since the last Status Conference, the SPO has also disclosed two  
5 batches of Rule 102(1)(b) materials. Those are packages 16 and 22.  
6 In addition, as the Chamber is aware, on 5 February we filed a  
7 request for protective measures in respect of certain further  
8 Rule 102(1)(b) items. As indicated in our written filing,  
9 Rule 102(1)(b) materials are being worked through in a systematic  
10 way. There is still some way to go and there will be further such  
11 disclosures and further protective measures requests in the coming  
12 weeks and months in line with the Framework Decision.

13 The SPO is also continuing to fulfil its disclosure obligations  
14 under Rule 103 with respect to potentially exculpatory items, most  
15 recently in disclosure package 20 released on 11 February. We're  
16 continuing to review and prepare disclosure of further items pursuant  
17 to Rule 103.

18 It is foreseen that certain of those materials may require  
19 protective measures. We would expect that to be the case, although  
20 at this point no specific request is imminent.

21 With respect to Rule 107 material, discussion with a number of  
22 information providers is ongoing and that continues to be an area  
23 that we're actively working on. As indicated in our filing, in  
24 respect of one of those organisations, discussions are nearing  
25 completion, and we anticipate that a Rule 107 application will be

1 made.

2 And, as Your Honour invited, I will also take this opportunity  
3 to address the points raised in the Thaci Defence filing.

4 In respect of witness identification, allocation of a number to  
5 persons is something that happens as part of the SPO's investigative  
6 process. It is not determinative of whether or not the person will  
7 be relied upon at trial. However, all of the materials disclosed  
8 under Rule 102(1)(a) are materials which the SPO relied upon for the  
9 purposes of confirmation of the indictment and, as previously  
10 indicated, it is anticipated that the vast majority of those same  
11 witnesses would again be relied upon for trial.

12 With respect to the request to be provided with a witness list -  
13 next week, I believe, was the date proposed - I would simply note  
14 that relevant decisions are obviously still in process. The  
15 witnesses and evidence upon which the SPO intends to rely at trial  
16 will continue to be notified in due course in accordance with the  
17 disclosure timeline set out in the Framework Decision.

18 On the specific inquiry relating to the materials of three  
19 witnesses, the SPO has responded *inter partes* to that query. And in  
20 order to assist all Defence teams, last week we redisclosed nine  
21 Rule 102(1)(a) items with the relevant pseudonym mentioned in the  
22 description in order to facilitate linkage and identification.

23 The Thaci Defence further notes that certain exhibits shown to  
24 witnesses during the course of their interviews has not been  
25 disclosed. That is correct. What has been disclosed to date is

1 indictment supporting materials and the initial batches of  
2 Rule 102(1)(b) materials. Other items, including items that may have  
3 been shown to a witness during the course of various interviews, will  
4 be disclosed and linked in due course in accordance with the timeline  
5 in the Framework Decision.

6 It is, though, noted that the linking of certain items may  
7 implicate current or future protective measures decisions in that  
8 associating certain items to a particular witness could be  
9 identifying, and, therefore, linking of items is a process that may  
10 have to be completed in a graduated fashion.

11 Finally, with respect to the submissions on record type and  
12 originator fields, these are submissions that I responded to in some  
13 detail at the previous Status Conference, and without having  
14 acknowledged that prior explanation, the exact same metadata examples  
15 have now been repeated in this filing. I did also indicate at the  
16 hearing in December that the SPO is available to address any queries  
17 where originator metadata appears unclear for particular items and no  
18 such queries have been raised with us in the interim.

19 So I will simply repeat that the originator metadata disclosed  
20 indicates precisely the person or entity from which the SITF or SPO  
21 obtained the item. There is no missing chain or hidden intermediary,  
22 and we remain available to address any particular queries. Thank  
23 you.

24 JUDGE GUILLOU: Thank you, Madam Prosecutor.

25 Now I turn to the Defence, starting with Mr. Hooper.

1 Mr. Hooper, you have the floor.

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

3 May I say at the outset, I'm going to ask Sophie Menegon to deal  
4 with these issues. And when I say "issues," on the matters that  
5 you've raised in your order, there's a cluster of connected issues,  
6 whether that's running from your item 1 through, perhaps -- perhaps  
7 through translation, and definitely as far as Rule 3 -- sorry,  
8 Rule 109(c) chart and the subdivisions relating to that.

9 In terms of disclosure, there have been some specific  
10 difficulties that have mainly been addressed by the SPO when these  
11 difficulties have been pointed out, but there remain what I'd call a  
12 general problem, and that is this: That the way -- the system by  
13 which the SPO disclose material has not been done in a particularly  
14 helpful manner.

15 I'd go so far as to say, of the disclosure systems that we've  
16 been subject to at other similar courts and tribunals, this system is  
17 the least helpful. And that's a problem because, of course, the  
18 manner in which disclosure is made and the assistance that one gets  
19 from the disclosing party, particularly when there's a great amount  
20 of material as there is here, that assistance should be apparent -  
21 that is, it should be, if you like, a bit of a route map through the  
22 material that they're disclosing. And that assists the Defence to  
23 access and to mine that material to understand the case and  
24 ultimately to, of course, deal with it and to decide its priorities  
25 in terms of investigations.



1 In this case, there's 124 witnesses, I think, that have been  
2 disclosed. Most of those, of course, as you know, are under  
3 pseudonym. There's no summary provided. There's no five lines as to  
4 what each particular witness might go to. Each witness -- no witness  
5 is actually disclosed with an accompanying bundle of exhibits. I  
6 would have thought that was elementary, that if there's a witness,  
7 there should be a bundle of exhibits connected to that witness,  
8 rather than have us have to link the witness with particular  
9 documents.

10 There's a lack of detail in respect of the material that's -- in  
11 respect of the chart, a lack of detail that the SPO want to maintain.  
12 In their arguments, that's basically what they're saying. And the  
13 lack of metadata as to the Legal Workflow chart, of course, provides  
14 no anecdote or answer.

15 So there's a bundle of problems that, taken together, create a  
16 real problem.

17 In terms of details and more detail about our difficulties, can  
18 I pass you on to Sophie Menegon, with Your Honour's leave.

19 JUDGE GUILLOU: Absolutely.

20 Ms. Menegon, you have the floor.

21 MS. MENEGON: [via videolink] I thank you, Your Honour.

22 So first with regard to the identification of Prosecution  
23 witnesses, indeed, we have a difficulty because we have identified so  
24 far 124 witnesses who have been given a witness number. And so  
25 today, I understand that actually it doesn't mean that the

1 Prosecution intends on relying on them for the trial. But we've been  
2 disclosed also very numerous documents from statements, transcript of  
3 interview from other courts or investigative entities, and I think  
4 that the amount of persons who have provided a statement disclosed as  
5 incriminating evidence is more than 200.

6 So that's why we're asking, as soon as possible, for a list of  
7 at least potential witnesses who may be called by the Prosecution to  
8 testify in order to focus our investigation, because otherwise now we  
9 would have to investigate maybe 300 persons. It's really too much  
10 and also probably unnecessary and will also slow down the trial  
11 preparation.

12 Indeed, before the other courts, for instance, at the ICC, when  
13 the prosecution would disclose documents relating to a witness, it  
14 would allocate a witness number and a category, incriminating or  
15 exculpatory, so we would have a better idea of who may be called or  
16 not. Now we are really at a loss for this issue, so we request a  
17 clarification and not just a few months before the start of the  
18 trial. We request clarification now.

19 With regard now to the identification of material linked to each  
20 witness, indeed, we have a difficulty because, for now, the only  
21 information given to us is that in the description field of the  
22 document in Legal Workflow, the Prosecution would add the pseudonym  
23 of the witness, the witness number 123. But when we read the  
24 statement or transcript of interview of the witness, we see that they  
25 are shown several documents or they are bringing a document given to

1 the Prosecution, and we are not necessarily disclosed at the same  
2 time these documents with the witness number. For instance, for some  
3 witness, there is no reference to the documents they have given to  
4 the Prosecution, or there is a reference which is incomplete, or  
5 there is a reference and when we search in Legal Workflow we don't  
6 find it so the document has not been disclosed to us.

7 So what we request from now is that the Prosecution  
8 systematically, with each statement and transcript of interview of a  
9 witness - or an accused, actually - disclose all the documents given  
10 by the witness or commented by the witness and that they put in place  
11 a link with such witness. For instance, in the Legal Workflow, it's  
12 either in the title of the document given by the witness, it's a  
13 draft, or a new category, a new metadata in Legal Workflow with a  
14 link to the witness, because now we are losing a lot of time to try  
15 to identify the material that are going to each witness. And this is  
16 something really easy to do for the Prosecution, which would help the  
17 Defence to be more efficient and to be ready at an earlier stage.

18 Because in other courts, we had an easier way to find a  
19 connection between documents with witnesses. First, it was the  
20 description of the document in the title of the document, but when I  
21 saw the chain of custody, which was complete, like, from such witness  
22 to such SPO investigator, and the third way was that the Prosecution  
23 at each -- at the time of each disclosure package would submit an  
24 official filing, mentioning that today it's disclosing such a number  
25 of documents relating to such witness. So for us it would be also

1 more helpful to identify the relevance of the material disclosed.

2 So that's also why we reiterate today - and we understand the  
3 position of the Prosecution, we disagree - regarding the relevance of  
4 more the chain of custody. We would like a more precise chain of  
5 custody linked to each document.

6 For instance, there is one witness, I can give the witness  
7 number if you think it's -- if there's a need for it to be  
8 confidential, who has brought with him or her some death certificates  
9 of his family members. But in Legal Workflow, this death  
10 certificates are not linked to the witness. And I was just able to  
11 find the link thanks to a search of the last name of the witness.  
12 And it would have been quicker for me to identify this document if in  
13 the chain of custody it was indicated, like, "document given by the  
14 witness to the Prosecution." In the Legal Workflow, it's mentioned  
15 that it's a EULEX document, while we know this document has been  
16 given by the witness himself.

17 So this is a type of issue to which we are confronted which  
18 really slows down our work in reviewing the Prosecution material and  
19 also focusing on our investigations. I thank you.

20 JUDGE GUILLOU: Thank you, Ms. Menegon.

21 Before giving the floor to the SPO to respond, I would prefer to  
22 go through all Defence teams and then you will give a consolidated  
23 response, Madam Prosecutor, if you don't mind.

24 Mr. Emmerson, please, you have the floor.

25 MR. EMMERSON: [via videolink] Your Honour, may I say, first of

1 all that I entirely associate myself with the overview of the  
2 difficulties presented by Mr. Hooper and the more detailed analysis  
3 of some of the specific problems, which I think were just given as  
4 examples, by Ms. Menegon.

5 The situation, broadly speaking, is this: The way in which the  
6 disclosure exercise is being conducted is the most unhelpful way  
7 possible for enabling the Defence to begin effective defence  
8 investigations. It is indiscriminate, it is disorganised, and it is,  
9 frankly, at the receiving end, a chaotic amount of information that  
10 needs to be sifted and analysed in order to reconstruct what is or  
11 may be the Prosecution's actual case that we have to meet and  
12 therefore begin investigating.

13 I don't want there to be any misunderstanding about the enormity  
14 of the hurdle that is being created by the manner in which the  
15 Prosecution is carrying out its functions.

16 There are two possible readings to this. One is that they are  
17 extremely incompetent; I don't think that's correct. The other is  
18 that this is deliberate, and one sees, to some extent, the echo of  
19 that in the submission by the SPO this morning that linkages will  
20 need to be suppressed until a later stage.

21 We understand the need for witness protection, but what we do  
22 not understand is why we are expected to reconstruct the  
23 Prosecution's case from an indiscriminate volume of material which  
24 may or may not be relied upon in order to begin the process of our  
25 investigations. And there should be, again, no misunderstanding

1 about the knock-on effect this is going to have for the earliest date  
2 at which this case could conceivably be ready for trial.

3 Let me make it clear how we put this. Obviously, Your Honour,  
4 you were presented with organised material, presumably with some  
5 cover notes explaining the Prosecution's thinking, and linking the  
6 evidence that was presented to you in a coherent fashion to assist  
7 you in reaching your decision on confirmation. We, on the other  
8 hand, have no pre-trial brief from the Prosecution, and, as you heard  
9 on numerous occasions, the Prosecution wants to avoid giving us their  
10 pre-trial brief until the very last moment before trial to the extent  
11 of having submitted to you that if the trial date goes back so too  
12 should the pre-trial brief date go back, even though it could be  
13 ready as early as May or June of this year. Indeed, it should be  
14 ready or some guide should be ready now.

15 The Prosecution knows what its case is because they put it  
16 before you at the confirmation stage. What they're doing with us is  
17 unloading their database, having redacted important information that  
18 is necessary to enable us to understand it, and burying the relevant  
19 evidence amongst a mountain of material that may well be completely  
20 irrelevant.

21 The consequence of that -- I mean, this is not Defence moaning  
22 or procedural nitpicking. The fact is the consequence of that is  
23 that what the Defence has to do, and the only guide that the Defence  
24 currently has to what the Prosecution's case really is, is the  
25 indictment. And so we are required to sift through vast volumes of

1 material to try to figure out precisely what the Prosecution is  
2 trying to allege here.

3 There are, on our estimation, 34 different crime sites in the  
4 indictment, and, of course, each of them has its own chronology.  
5 None of that even has been properly analysed by the Prosecution.  
6 There is simply no guide through this morass of material that would  
7 enable the Defence to properly prepare an investigation brief.

8 We have an investigation team which has been on standby since  
9 1 January, and I now anticipate that it will take us until probably  
10 the end of March or mid-April to be able to have reconstructed from  
11 the material that has been dumped on us, without any guide at all, a  
12 proper analysis of what the Prosecution's case is probably going to  
13 be, and, therefore, how to brief our investigators to carry out their  
14 task.

15 I don't -- as I say, I don't know whether the Prosecution has  
16 simply lost sight of the fact that the efficient management of this  
17 case requires the Defence to be able to investigate effectively,  
18 efficiently, and in a manner that is focused on what the  
19 Prosecution's case is. I don't know whether what is happening here  
20 is that the Prosecution is so focused on the notion that the four  
21 accused must be convicted and all Defence -- all Prosecution  
22 witnesses must be redacted and over-redacted if necessary in order to  
23 make it as hard as possible for these accused to be effectively  
24 defended. I don't know if that is what is driving Mr. Smith's  
25 overall guidance of this case.

1 But I have to say that as the person ultimately responsible for  
2 the Prosecution's strategy, he has some questions to answer and it  
3 should be he who is standing up in court today, trying to defend what  
4 is an extraordinary and, in my experience in international criminal  
5 justice, unprecedentedly chaotic manner of disclosure to the Defence.

6 So I say that by way of background. Mr. Hooper described it as  
7 the absence of a route map. That's a polite way of saying that a  
8 vast amount of material has been dumped on us, and that we are trying  
9 to sift the relevant from the irrelevant, possibly rely -- witnesses  
10 the Prosecution will possibly rely on from those that they won't, and  
11 trying to reconstruct how they put their case.

12 Your Honour will understand, from his own analysis of the  
13 evidence, that the case against, for example, my client,  
14 Kadri Veseli, is wafer thin. It is based on -- the evidence so far  
15 disclosed against him is almost non-existent. There is almost no  
16 mention of him in the evidence, and there is no mention at all of him  
17 in the evidence committing any criminal activity.

18 So this is a case which is built out of tissue in an attempt to  
19 try to erect a joint criminal enterprise out of a multiplicity of  
20 different events that the Prosecution are trying to link together.  
21 Now, that is a paradigm example of a situation where you need to have  
22 a very clear understanding of how the Prosecution is trying to put  
23 its case, because you don't have any direct evidence against a  
24 particular individual accused disclosed at all. It is all going to  
25 be based on inferences said to be drawn from the totality of the



1 events that occurred in 34 different locations in which he was not  
2 said to be directly participating or even present.

3 And so I don't want to underestimate the injustice and  
4 incompetence of the way the Prosecution is handling this. It's not  
5 simply a question of management day to day or linking up witnesses  
6 with exhibits or properly filling in the form that cross-references  
7 witnesses to what it is they're said to say. These are all details.  
8 The overall problem is if the Prosecution really knows what its case  
9 is, why don't they tell us? Because until they tell us, we are  
10 simply in the dark.

11 Now, of course, what we're required to do by the way this case  
12 is being conducted - and it is being conducted in an extremely  
13 inefficient manner - but what we're required to do is to start the  
14 process all over again, to take this huge volume of material, to go  
15 through it and read it all, every word, again. To start with, you  
16 can't use search terms to analyse this material. Obviously, we've  
17 done that for Mr. Veseli, and that's why I'm able to say to you  
18 there's not a single scrap of evidence against him of a commission of  
19 a crime.

20 But beyond that, you have to read every single word in order,  
21 first, to understand what the Prosecution is -- what is the base from  
22 which the Prosecution might be trying to select material to put a  
23 case together. Then you've got to guess at what kind of case the  
24 Prosecution is trying to put and how, out of this vast morass of  
25 material, they intend to confect a candy-floss joint criminal

1 enterprise.

2 Now, those are significant hurdles to overcome. Of course,  
3 they'd be assisted if the Prosecution wasn't trying to put back the  
4 date for its pre-trial brief to the last possible moment, because  
5 that's the date at which they have to pin their colours to the mast  
6 and explain how, out of this vast morass of crimes committed by other  
7 people, they're trying to build a case against, in my case,  
8 Kadri Veseli, because there isn't one.

9 So the question I need to understand - and I'm asking it  
10 directly here now to Mr. Smith, and I would invite him to stand up  
11 and answer it - is how could it be that the Defence are in a position  
12 to investigate this until the Prosecution nails its colours to the  
13 mast and explains, out of this huge number of events, precisely,  
14 right now, here today, how it says this case is alleged to prove the  
15 guilt of these four accused.

16 Because if they're not able to tell us that, then we all need to  
17 reckon with the fact that the Defence are going to have to construct  
18 what they imagine the Prosecution case to be, of selecting some  
19 relevant from irrelevant material, with no assistance from the  
20 Prosecution, no guide, no organisation, and then try to investigate  
21 what they think the Prosecution case is going to be, only to find  
22 when the Prosecution files its pre-trial brief it probably is a  
23 different case, in which case we will have to start all over again.

24 So I don't want there to be any misunderstanding here. We, as  
25 Defence counsel from the British bar - and that accounts for quite a

1 number of us - have obligations of ethical responsibility to ensure  
2 that we do not participate in proceedings that begin to slide into a  
3 fundamental denial of justice.

4 Now, if this case carries on in the manner in which it is  
5 currently carrying on, and with the Prosecution continuing to  
6 absurdly suggest a date of trial for September, we are in a very  
7 difficult position. You will put us in a position of professional  
8 embarrassment. And that, I'm afraid, is not a position any of us  
9 wants to be in, because the consequences could be extremely serious  
10 for the conduct of these proceedings.

11 It is time, with great respect, Your Honour, for you to get a  
12 grip on the Prosecution's misbehaviour. Every single decision that  
13 they've taken - and we've heard them announce them this morning,  
14 we've heard them announce them in every Status Conference - is  
15 unquestionably, objectively designed to make defence preparation more  
16 difficulty. And the only inference I can draw from that is that the  
17 Prosecution knows that it hasn't got a case, or at least hasn't  
18 worked out what its case is yet, and is in a position that it wants  
19 to run this to the last possible moment before the absence of a case  
20 is properly analysed and disclosed.

21 So I would invite Mr. Smith to stand up now and explain how he  
22 expects the Defence to conduct or even begin effective investigations  
23 and why he has not been willing to state, in clear terms, precisely  
24 which of this evidence is relied upon and how it is said to prove the  
25 guilt of the accused.

1           Those are my submissions.

2           And in answer to the question when can the Defence investigation  
3 begin, which is on your agenda, the answer to that is: How long is a  
4 piece of string? When are the Prosecution going to get their act  
5 together and actually understand that they are ministers of justice  
6 designed to assist fair proceedings, which means assisting the  
7 Defence fairly to answer the allegations against them and investigate  
8 them properly, according to the genuine requirements of due process.

9           We've heard the Prosecution say numerous times, "Oh, we are  
10 deeply concerned to ensure the fairness of these proceedings to the  
11 Defence." I'm sorry, we do not believe that. As far as I am  
12 concerned, every decision and every methodology adopted by the  
13 Prosecution is a kind of tactic that, in my jurisdiction, would incur  
14 the censure of the court. The court itself, at this stage, would be  
15 intervening and calling the prosecution to account for why it is  
16 making the situation of defence preparation so difficult.

17           I'm putting this on the record now. I want to make it clear:  
18 The Prosecution took the opportunity of this Status Conference to go  
19 beyond the agenda that you had set and yet again reiterate a  
20 ludicrous trial date suggestion, and they're doing that whilst at the  
21 same time making even the beginning of the Defence investigation  
22 impossible.

23           Why are they doing that? I leave the inference for others to  
24 draw. But why did they choose to go beyond the Status Conference's  
25 agenda to reiterate this absurd trial date suggestion when you,

1     yourself, have just ruled in the provisional release applications  
2     that it is premature, and I know for other reasons that the position  
3     of the KSC generally is that the trial date must be fixed with the  
4     needs of the Defence taken into account and that it's well too early  
5     to decide on that at this stage. It will remain too early to decide  
6     on that until the Defence understands the case they have to meet.

7             So what the Prosecution begin --

8             JUDGE GUILLOU: Mr. Emmerson, because it is too early, it's  
9     exactly the reason why I would like --

10            MR. EMMERSON: [via videolink] I --

11            JUDGE GUILLOU: -- the parties not to raise this issue today,  
12     please. So if you can --

13            MR. EMMERSON: [via videolink] Exactly. I'm not raising it. I'm  
14     responding to the fact that the Prosecution have raised it beyond the  
15     scope of the agenda.

16            I'm simply saying that all the indications here are that this  
17     Prosecution is not being run according to the basic principles that  
18     should guide a Prosecutor, which is that the proceedings must be fair  
19     and intelligible to the Defence, that the accused must clearly  
20     understand the case they have to meet, and that they must have a  
21     proper opportunity to investigate and prepare their Defence.

22            It is patently obvious to me, as somebody who's practiced and  
23     sat as a judge in this field for many, many years, that the conduct  
24     of the Prosecution here is designed to railroad the Defence into a  
25     trial where they are not properly prepared. And I'm afraid, I have

1 to say, that in my jurisdiction that would be regarded as unethical  
2 conduct that would be controlled by the court at a very early stage.

3 Those are my submissions.

4 JUDGE GUILLOU: Thank you, Mr. Emmerson.

5 Now I turn to Mr. Young, please. You have the floor.

6 MR. YOUNG: [via videolink] Thank you, Your Honour. Your Honour,  
7 in the light of the detailed and cogent submissions which we have  
8 just heard from my learned friends Mr. Hooper and Mr. Emmerson, I  
9 have nothing to add. The submissions won't improve with repetition.

10 Your Honour has our written submissions on disclosure and we  
11 stand by them. That's all I say this morning. Thank you.

12 JUDGE GUILLOU: Thank you, Mr. Young.

13 Ms. Alagendra, you have the floor.

14 MS. ALAGENDRA: [via videolink] Your Honour, may I defer to  
15 counsel, Mr. Ellis, to address this matter of disclosure.

16 JUDGE GUILLOU: Absolutely.

17 Mr. Ellis.

18 MR. ELLIS: [via videolink] Your Honour, the issues that have  
19 been identified cogently will this morning by other Defence teams are  
20 ones which affect us all. All teams are equally handicapped by the  
21 way in which disclosure is being carried out in this case. And so I  
22 won't repeat the submissions, but we join very much with what has  
23 been said already by other Defence teams this morning.

24 JUDGE GUILLOU: Thank you, Mr. Ellis.

25 Now I turn to the Prosecution.

1 Madam Prosecutor.

2 MS. LAWSON: Thank you, Your Honour.

3 The Veseli Defence has just spoken with extreme generality about  
4 a purportedly chaotic volume of material that has been dumped with no  
5 guide. That is simply inaccurate.

6 Indeed, the Veseli Defence submissions appear to be nothing more  
7 than rhetoric. It is also a continuation of what we would submit to  
8 be inappropriate and overly personalised submissions that we have  
9 repeatedly heard from the Veseli Defence in multiple Status  
10 Conferences and which should not be tolerated before this Court.

11 The Defence has, in fact, been provided with a very specific  
12 guide to the disclosed material in the form of the Rule 86(3)(b)  
13 outline, which is precisely the guide which the Pre-Trial Judge  
14 received when assessing that same material.

15 Moreover, the materials are being disclosed pursuant to specific  
16 rules which clearly indicate whether the material is being relied  
17 upon by the Prosecution. We will be happy to return to comments on  
18 the status of preparations and investigations at the relevant agenda  
19 item.

20 With respect to the Thaci Defence submissions, I believe that I  
21 actually addressed each of those points in my initial remarks. The  
22 statements which have been disclosed are statements which, in the  
23 vast majority, we do intend to rely upon at trial.

24 Further, in due course, all other material, such as exhibits  
25 referenced in interviews, will be disclosed in accordance with the

1 outlined schedule.

2 And with regard to the Thaci Defence's reference to a summary of  
3 each witness, I believe he is referring to the type of summary that  
4 will be disclosed in accordance with Rule 95(4) at the appropriate  
5 time and in accordance with the timeline to be established. Thank  
6 you.

7 JUDGE GUILLOU: Thank you, Madam Prosecutor.

8 Would any of the Defence teams like to reply to the Prosecution?  
9 If so, please wave your hand.

10 Yes, Mr. Hooper, please.

11 MR. HOOPER: [via videolink] Am I unmuted? I think I am. Yes, I  
12 am.

13 JUDGE GUILLOU: We can hear you.

14 MR. HOOPER: [via videolink] Right.

15 JUDGE GUILLOU: Please proceed.

16 MR. HOOPER: [via videolink] Well, I hear Ms. Lawson saying she's  
17 addressed our concerns at the outset. She hasn't. The issue is a  
18 straightforward one: Can we have better and fuller details of the  
19 material that is being disclosed to us? Can we have a connection,  
20 clear connection now between a witness statement and any exhibits  
21 relating to that witness? Can we have the necessary connection  
22 between matters that are shown to potential witnesses in the course  
23 of their interviews when that material is disclosed to us?

24 I don't think any of what I've heard this morning from  
25 Ms. Lawson addresses any of the fundamental issues that we've raised,



1 and it's come to the point where I think Your Honour has to intervene  
2 in order to help the Prosecution, essentially, create a systematic  
3 approach to this that is genuinely helpful. Thank you.

4 JUDGE GUILLOU: Thank you, Mr. Hooper.

5 Mr. Emmerson, please.

6 MR. EMMERSON: [via videolink] I would just like to respond very  
7 briefly to the accusation just leveled at me, that I have made  
8 inappropriately personalised remarks that ought not to be permitted.

9 Unless there should be any misunderstanding, my submission - and  
10 we can call it a frontal attack if you like on the conduct of the  
11 Prosecution - is not directed at any one individual member of the  
12 Prosecution, except that Mr. Black (sic) is the Prosecutor and is  
13 therefore responsible for ensuring that the Prosecution conducts  
14 itself in a manner which is consistent not just with the rules in  
15 minute detail but with the need to ensure justice to the Defence, to  
16 ensure a fair trial, which is a principle that, clearly, the  
17 Prosecution has lost sight of.

18 And that is not, as I say, a personalised attack in any way. I  
19 am calling on him to stand up and take responsibility and explain  
20 precisely what is going on and why the Defence are being repeatedly  
21 put in this difficulty, and I am calling on the Judge - you,  
22 Your Honour - to take action, because the way the system works is,  
23 obviously, the judicial role is entirely independent and is intended  
24 to exercise constraints on both parties to ensure that justice is  
25 done.

1           And when it becomes apparent, as it is now apparent, that the  
2           Prosecution has a policy of conducting this case to make it as hard  
3           as possible for the Defence to investigate and meet the allegations  
4           against them within the proposed timeframe, it is time, with respect,  
5           as Mr. Hooper says, for the independent judiciary to intervene and  
6           start to put them straight, because if that doesn't happen one can  
7           see this trial becoming derailed by the time process.

8           None of us is anxious for this case to go on for years in the  
9           pre-trial stage, and equally, none of the British Defence counsel are  
10          able, under their ethical guidelines, to participate in a trial that  
11          is flagrantly unfair because of the timeline that's involved. So a  
12          line needs to be drawn which is reasonably down the middle.

13          We are not discussing time date -- times today, but what I said  
14          was not intended and should not be read as a personal attack on  
15          anyone. It's a collective attack on the Prosecution for the manner  
16          in which, as a matter of policy, they've clearly chosen to conduct  
17          this case. And the reason why I've singled out Mr. Black is because  
18          he's the Prosecutor and we've heard nothing from him to justify the  
19          way in which the case is being misconducted.

20          I just wanted to clarify. There's nothing personal about it.

21          JUDGE GUILLOU: Thank you, Mr. Emmerson.

22          Mr. Young or Ms. Alagendra, do you want to add anything?

23          MS. ALAGENDRA: [via videolink] No, Your Honour.

24          MR. YOUNG: [via videolink] Thank you, Your Honour. Simply this:

25          Your Honour will have seen in our submissions that we filed in

1 writing that we indicated that we had cooperated with the other  
2 parties to see whether there could be some agreement, particularly in  
3 relation to Rule 109(c) and the categorisation issue, but Your Honour  
4 will have noted that the time has come really where we implore  
5 Your Honour to make a decision, because it's an important decision,  
6 for the benefit of the parties.

7 So I am just reiterating it's very important, Your Honour, with  
8 respect that Your Honour makes a decision on this --

9 JUDGE GUILLOU: Absolutely.

10 MR. YOUNG: [via videolink] -- disclosure issue.

11 JUDGE GUILLOU: It is an item in the agenda today, so we will  
12 come back to that in a couple of minutes. And I agree with you.  
13 This is probably an issue that is very much linked with what has been  
14 discussed now and it's certainly a way to clarify the case to the  
15 benefit of everyone.

16 If there is nothing to add on this matter, unless the SPO wants  
17 to take the floor?

18 Yes, Madam Prosecutor. And briefly, please, for all the  
19 parties, because it's already 10 to 12.00.

20 MS. LAWSON: This will be very brief, Your Honour.

21 I just want to note that lines to be drawn must be based on  
22 accurate information, and the Veseli Defence's submissions, that they  
23 were left without a guide to the material, were entirely without  
24 foundation.

25 Finally, I would note that the Specialist Prosecutor's name is

1 obviously Jack Smith and not Mr. Black. Thank you.

2 JUDGE GUILLOU: Thank you, Madam Prosecutor.

3 I don't see any Defence team asking for the floor, so I will  
4 move to the second item in our agenda today, which is the translation  
5 of the Rule 86(3)(b) outline.

6 I have been informed that the translation of the outline is in  
7 progress, and I thank the Registrar for her filing on this issue.

8 I would like to hear from the Registry whether an estimate can  
9 be provided on when the translation will be completed and on any  
10 possibility of speeding up this process. And I would also like the  
11 Registry to inform the Court if there is any possibility that a  
12 smaller portion of the outline could already be provided to the  
13 Defence as requested by some Defence teams before 20 April 2021.

14 Mr. Roche, you have the floor.

15 MR. ROCHE: Thank you very much, Your Honour. As Your Honour  
16 has already noted, a filing was submitted on 8 February, reference  
17 number 192, and I would refer the participants to that filing.

18 The translation of the material in the 86(3)(b) outline has been  
19 granted the highest priority by language services unit within the  
20 Registry. A total of six translators, including revisors, are  
21 working on this material. The material is approximately 620 pages,  
22 and obviously that is a very significant amount of work. It has  
23 been, as I said, granted the highest priority, and it is estimated  
24 that all the work will be translated and revised by the end of May  
25 2021.

1           In response to the request, we are also ensuring that we will  
2     provide portions of the material when it is available, and we  
3     currently anticipate that 150 pages, approximately one quarter, will  
4     be fully available or revised and translated no later than 20 April.  
5     These are indicative timelines. They are realistic professional  
6     assessments based on the experience of the language services unit.  
7     And while we would hope that there may be some limited scope to bring  
8     the date forward, obviously the quality and professional requirements  
9     are such that it is a time-consuming exercise.

10          So I, in conclusion, would say that the full work or the full  
11     material will be available no later than the end of May, and the  
12     first tranche of approximately 150 pages should be available no later  
13     than 20 April. Thank you very much, Your Honour.

14          JUDGE GUILLOU: Thank you, Mr. Roche.

15          Does any of the Defence team wish to take the floor on this  
16     issue?

17          Mr. Young, you have the floor.

18          MR. YOUNG: [via videolink] Your Honour, thank you. Simply to  
19     say this, Your Honour: We appreciate the submissions of the Registry  
20     in relation to translation. Obviously, in a case like this, where an  
21     official and important language as Albanian, it's absolutely critical  
22     that the Defence have the documents translated into the accused's own  
23     language so that they can understand, read it, consider the material  
24     in good time, and so that the Defence lawyers can also understand the  
25     position too.

1           Now, Your Honour, my learned -- the Registry have just indicated  
2   that, in fact, this is given high priority, and talked about May, the  
3   end of May, in relation to this document. As Your Honour  
4   appreciates, this is one of the most important documents that the  
5   Prosecution have served on the Defence. This is but one document.  
6   There are thousands and thousands of documents. When it appears to  
7   be the case that one priority document may not be available until the  
8   end of May possibly, and it will not be until then that the accused  
9   will have in their own language a translation that they can read, is  
10   hugely concerning.

11           I appreciate it's a time-consuming exercise, but this simply  
12   goes to demonstrate very vividly and very clearly the issues we are  
13   facing in terms of the timeline. That's all I say.

14           JUDGE GUILLOU: Thank you, Mr. Young.

15           Mr. Ellis, you have the floor.

16           MR. ELLIS: [via videolink] Thank you, Your Honour. This is also  
17   an issue of particular concern to Mr. Krasniqi. He doesn't speak or  
18   read English, and therefore this isn't just some procedural matter.  
19   He really needs that document in Albanian in order that he can begin  
20   to appreciate and give instructions on the case that's being asserted  
21   against him.

22           And I do place on the record at this stage that this seems to be  
23   a part of what is capable of becoming a broader issue affecting these  
24   proceedings. There are around, I think, 289 filing items in the case  
25   at the moment. Out of those, around 65 have been translated into

1 Albanian. The documents that have been translated include things  
2 like the relatively short notifications of attendances at status  
3 conferences, and the documents which have not been translated into  
4 Albanian yet include important decisions like Your Honour's decision  
5 confirming the indictment, like Your Honour's decision concerning  
6 interim release.

7 And so we would say at this stage it's important that important  
8 decisions in the case are prioritised and translated into Albanian,  
9 and particularly that the outline document is translated as soon as  
10 possible.

11 JUDGE GUILLOU: Thank you, Mr. Ellis. I don't see any parties  
12 or participants requesting the floor.

13 I will just mention two things: The first to the Registry is  
14 should the outline be translated earlier than expected, or at least a  
15 segment of it, of course it would be much appreciated that this could  
16 be sent to the Defence team as soon as possible. And I also invite  
17 the Defence teams to link up with the Registry for prioritisation, as  
18 Mr. Ellis just mentioned. If there are filings that are critical or  
19 more important than others, I think it's an important practice to  
20 inform the Registry so that this, if it is possible, can be  
21 prioritised in terms of the translation workload.

22 Unless I -- no, nobody wants the floor, so I will move to the  
23 third item on our agenda today, which is the issue of the Rule 109(c)  
24 charts. It is actually linked with the first topic that we  
25 discussed, so I will not invite the parties to repeat everything that

1 has been said, because I think a lot has been said already in terms  
2 of the difficulties of the Defence and the disagreement with the  
3 Prosecution on this.

4 But I would like us to stay focused really is on the technical  
5 aspects of the charts, because this is certainly a way to respond to  
6 the debate that we have today.

7 I take it from the parties' written submissions that there is no  
8 agreement between the SPO and the Defence teams regarding, first, the  
9 level of subcategorisation of the disclosed material in the chart;  
10 notably, the question of including such subcategories as the relevant  
11 count on the indictment, the relevant underlying crime, the  
12 locations, which accused it concerned, or which modes of liability it  
13 refers to.

14 The second disagreement is the categorisation in the metadata  
15 fields in Legal Workflow with respect to each item disclosed.

16 The third disagreement is the category of material disclosed  
17 that should be supplemented by the Rule 109(c) chart, notably if it  
18 should also include exculpatory material.

19 And the fourth disagreement is the frequency in which such  
20 charts are provided, for instance, for each disclosure batch or only  
21 when or after the pre-trial brief are filed.

22 I also invite the SPO to give submissions on the impact on the  
23 Defence proposals to the disclosure calendar, notably, if it is to  
24 include subcategories and if such charts are to be provided with each  
25 disclosure batch or in a more regular basis than what the SPO



1 proposes.

2 Madam Prosecutor, you have the floor. And please, if I may ask  
3 to all the parties, to be as succinct as possible and really to focus  
4 on these technical aspects that I just mentioned. Thank you.

5 MS. LAWSON: Your Honour, I don't have a significant amount to  
6 add to our prior submissions and written filings on this matter. You  
7 are correct that there has been no further agreement and further  
8 progress is unlikely at this point.

9 I do want to clarify one point. The format of the chart itself  
10 is, in principle, agreed between the parties, I believe, including in  
11 respect of the counts, the locations, and the crimes, the modes of  
12 liability all being included in the chart that would be provided,  
13 according to the SPO's proposal at the time of the pre-trial brief.

14 What is not in agreement is providing that further  
15 subcategorisation at the time of each disclosure.

16 The proposal which the SPO has put forward mirrors and is  
17 consistent with the requirements of Rule 109(c). The question that  
18 remains is what is practicable. And, unfortunately, we are unable to  
19 do the further subcategorisations in a manner which is consistent  
20 with fulfilling our core functions in this and other cases.

21 With respect to the Defence's further submissions in writing, I  
22 would just note two points:

23 First, the Defence has received the Rule 86(3)(b) outline which,  
24 in respect of the vast majority of material already disclosed,  
25 provides detailed information on each of those categories, including

1 by reference to the charges, the crimes, the locations.

2 Second, the Selimi Defence submission that the subcategorisation  
3 work could effectively have been done in the time that it has taken  
4 to litigate it is not correct. I wish that were the case. And if it  
5 were so, we would have certainly done it. However, preparations for  
6 disclosure did not start at the date of the Initial Appearance but  
7 well in advance of that, and as a result of those preparations, we  
8 remain on course to meet the deadlines set out in the Framework  
9 Decision. Thank you.

10 JUDGE GUILLOU: Thank you, Madam Prosecutor.

11 Mr. Hooper, please.

12 Mr. Hooper, your microphone is mute. It is still mute. It is  
13 still mute. Now it's fine.

14 MR. HOOPER: [via videolink] Thank you. So the Prosecution is  
15 saying we don't want to do it their way, we want to do it our way.  
16 We can do it -- they can do it. They don't want to do it now.

17 They've got a system which has now been in place for, well,  
18 probably before the confirmation of the indictment, and they don't  
19 want to depart from it. Well, I hope they're not applying it to  
20 other cases. Mustafa is not a -- is certainly not applicable to this  
21 case because it is so radically different.

22 The core function of disclosure is, surely, to assist the  
23 Defence in finding its way through the evidence. Your Honour wishes  
24 us to address the technical matters.

25 Ms. Menegon, can I ask you to add any technical observations

1       that there might be? Thank you.

2               JUDGE GUILLOU: Ms. Menegon, you have the floor.

3               MS. MENEGON: [via videolink] Yes. Thank you, Your Honour.

4               I don't have much to add to our written submissions, because we  
5       reiterate our previous submissions. I just want to stress that,  
6       indeed, for us, it's very important to get a detailed chart at the  
7       time of each disclosure package, because, as we have noted, we are  
8       missing from now some information to connect the document to the  
9       witness related to the charges. So this will really help us to focus  
10      our review of the material and our investigations.

11              The Prosecution is saying that we don't need a chart now, I  
12      mean, at the time of each disclosure package, because we have the SPO  
13      outline. But this is a document of 600 documents. We may have 300  
14      witnesses to review and, like, more than 3.000 documents to review,  
15      so it's really, of course, difficult for us to make such a  
16      connection. And that is why, since the Prosecution is saying he has  
17      already made the kind of connection between the evidence and the SPO  
18      outline, to do it at the time of each disclosure package. I thank  
19      you.

20              JUDGE GUILLOU: Thank you, Ms. Menegon.

21              Mr. Emmerson, please.

22              MR. EMMERSON: [via videolink] Your Honour opened this agenda  
23      item by commenting that it is, to some extent, connected with the  
24      first item on the agenda, and I would certainly endorse that in the  
25      sense that at the absence of detail in the schedule and the

1 compliance by the Prosecution with 109(c) obligations is of -- it  
2 fits with the obstacles that are being presented to the Defence  
3 preparation.

4 May I simply say this: I want to focus on one aspect of the  
5 schedule. You will know that in previous hearings I have taken a  
6 very light touch in relation to involvement in the scheduling  
7 process, because I anticipated that when the Prosecution's evidence  
8 was disclosed, it would be disclosed in a form sufficiently coherent  
9 for us to know immediately what the Prosecution case was.

10 And the schedule, obviously, is a second-best way of doing that.  
11 It's a clue to, at least, to which witness -- or should be, to which  
12 witness relates to which incident, relevant to which place and count  
13 on the indictment. And so I want to just focus on that one issue in  
14 relation to the schedule at the moment, the first of your four  
15 disagreements, as you outlined them a moment ago.

16 May I stand back from that for a moment and look at what it  
17 means. I said earlier on that a large amount of material has been  
18 dumped on the Defence without a guide, and Ms. Lawson took me to task  
19 and accused me of being unfair on the Prosecution.

20 But let us just take this one example. Material has been  
21 disclosed in large, large quantities, but the Prosecution who must  
22 know -- this is the thing that I find difficult to understand when  
23 the Prosecution talks about this obligation to disclose being  
24 incompatible with its core functions. Indeed, the Prosecution must  
25 know what the witness is relevant to. They must know which incident,

1     which place, which particular event it goes to, never mind which  
2     count on the indictment, because the indictment counts, of course,  
3     are capsule counts which deal with incidents that took place in 34  
4     different locations. They must know themselves, because otherwise  
5     they wouldn't be producing the material in the way that they are.

6           Reeling back to what I said earlier on, when the case was put to  
7     you for confirmation, I don't know but I assume that you were given  
8     some guide through the material beyond the indictment.

9           And I say that because there's a very different practice in this  
10    tribunal to the other tribunals that I've experienced in terms of the  
11    detail that's provided in the indictment. The ICTY indictments very  
12    much represented something that looked like a pre-trial brief. So  
13    you would have the counts, each incident would be separately  
14    identified, it would be described. Of course, witness names might be  
15    redacted, but you would have a full explanation of the relevance of  
16    each witness to each allegation.

17          Here we have none of that. And the Prosecution's indication is  
18    the first time we will get that guide is when they serve their  
19    pre-trial brief. Not just because that's when they will give us  
20    their pre-trial brief but also because that's when they'll fill in  
21    the holes in the schedule. They won't do it before then.

22          Now, is that because they don't know? I find that, again, hard  
23    to believe, what the connections are, or is it because they are  
24    withholding that information from the Defence? It doesn't very much  
25    matter because either way the Defence can't start work on the

1 investigations until they know what the Prosecution case is.

2 So just on that first disagreement that you identified as a  
3 technical issue, I don't -- I don't really recognise this as a purely  
4 technical issue in the way that perhaps it's being approached by the  
5 Prosecution. I regard it as an issue going fundamentally to the  
6 justice of these proceedings. Not solely the categorisation but the  
7 lack of a proper description of the Prosecution's case.

8 I want to put -- in light of the position that the Prosecution  
9 takes, which, as I say, is incompatibility with the SPO's discharge  
10 of its core functions, which I take to be a resources argument, what  
11 that says is the Prosecution is nowhere near ready to state its case  
12 yet. And if that is the position, then what I would like to suggest  
13 to you, Your Honour, is that you order an early date for the service  
14 by the Prosecution of its pre-trial brief; in other words, the  
15 Prosecution to serve its pre-trial brief by beginning of April.

16 Of course, it can be amended prior to trial if new evidence  
17 emerges, but the Prosecution serve its pre-trial brief by the end of  
18 March, beginning of April, together with filling in the gaps that  
19 have been deliberately withheld from the information we need in the  
20 schedule, because that's -- they say the two are pegged. And then we  
21 can start talking about Defence investigations and planning for  
22 trial.

23 But we are at -- at the moment, the Prosecution is putting us in  
24 the position of walking into a blizzard and trying to find our way  
25 from A to B without a map. And so the time has come for the map.

1 And if they won't do it through the schedule, which, in any event, is  
2 very much a second-best way, the right solution is for you to order  
3 them to provide the sort of guide I assume they provided to you  
4 during the confirmation process, in the form of what the rules  
5 provide, namely, a pre-trial brief, and to order that to be served on  
6 the Defence in its initial form on 1 April.

7 And, thereafter, obviously it can be amended as the Prosecution  
8 achieves additional evidence, if it does. And I'm formally tabling  
9 that proposal in response to this item on the agenda.

10 Those are my submissions.

11 JUDGE GUILLOU: Thank you, Mr. Emmerson.

12 Mr. Young, please.

13 MR. YOUNG: [via videolink] Your Honour, thank you. Your Honour,  
14 we have nothing to add to our written submissions. We would  
15 respectfully submit that we've reached an impasse and the time has  
16 come for judicial intervention and a decision on the issue.  
17 Otherwise, we won't move forward. Thank you.

18 JUDGE GUILLOU: Thank you, Mr. Young.

19 Ms. Alagendra or Mr. Ellis.

20 MS. ALAGENDRA: [via videolink] Your Honour, Mr. Ellis will  
21 address this issue as well, with your leave.

22 JUDGE GUILLOU: Thank you, Ms. Alagendra.

23 Mr. Ellis, please.

24 MR. ELLIS: [via videolink] Your Honour, we too have addressed  
25 this issue in our written submissions and we stand by them. I will

1 supplement them only by saying this:

2       You have heard, Your Honour, the general complaint of the  
3 Defence teams, that the way in which material is being dumped on the  
4 Defence is unhelpful to Defence preparations. This rule is a  
5 specific example of a way in which the Prosecution could improve upon  
6 the position and actually provide the Defence with some useful  
7 assistance in navigating the amount of material that has been  
8 provided.

9       But for some reason, the Prosecution don't appear to want to do  
10 that until a pre-trial brief, which they are saying will be provided  
11 in quite some months' time. In our submission, the material should  
12 be provided, the further subcategorisations should be provided with  
13 each disclosure package, and the Defence need it at that point in  
14 order to be able to make use of it for investigations and for  
15 understanding the material that is provided.

16       In addition to that, we rely on our written submissions,  
17 Your Honour.

18       JUDGE GUILLOU: Thank you, Mr. Ellis.

19       Now I turn to the Prosecution, and I would specifically like to  
20 hear you on two things. The first one is the questions that I  
21 initially had in the introduction of this topic, which is what  
22 concrete impact it would have on the timeline - that's an important  
23 point - and if you could address the different disagreements, maybe  
24 not all of them, but at least if it was to be requested that we add  
25 subcategories or that these Rule 109(c) charts be provided more



1 regularly, whether it's with this disclosure batch or before the  
2 pre-trial brief.

3 And second, I would like you to raise the issue or the proposal  
4 made by Mr. Emmerson, which is to issue a pre-trial brief earlier  
5 than you projected so as to allow the Defence to benefit from the  
6 Rule 109 chart.

7 You have the floor, Madam Prosecutor.

8 MS. LAWSON: Thank you.

9 I believe it was -- the Selimi Defence is correct that we have  
10 reached an impasse, and it is an impasse between the ideal and the  
11 practicable.

12 The SPO proposal made is compliant with the requirements of  
13 Rule 109(c), and what we are now discussing is what can be done above  
14 those requirements. And we are making a resources argument, and  
15 we're making that because that is exactly the basis for what it is  
16 practicable for the office to do.

17 In respect of the Veseli Defence submissions, I would also refer  
18 him again to Rule 86(3) and to the record of filings in this case,  
19 which are available to him and which contain our Rule 86(3) (b)  
20 outline which was provided Chamber and has been provided to the  
21 Defence teams.

22 Turning to the questions that Your Honour specifically mentioned  
23 just now on timing, the subcategorisation with respect to  
24 Rule 102(1) (b) material is dependent upon the preparation of the  
25 pre-trial brief and in light of the timeline that has been set. It

1 will be several months before that is at an advanced stage which  
2 would facilitate generation of the chart from that, and the chart was  
3 designed and proposed specifically with that in mind.

4 With respect to Rule 103, it is true that I've been unable to  
5 give the Chamber a specific indication of the degree of delay that  
6 would result - for example, in terms of a number of months - and that  
7 is because that the task in question is one that we simply cannot do  
8 while continuing to meet our core functions, including core  
9 disclosure obligations in this and other cases.

10 In order to conduct such an exercise in a manner which accords  
11 with the requirement that exculpatory material be disclosed in a  
12 prioritised fashion, it is literally the case that almost no other  
13 work in the office across all cases would occur for a significant  
14 period of time.

15 I believe that addresses the questions, but if there was  
16 anything that I missed, I'm happy to assist.

17 JUDGE GUILLOU: Thank you, Madam Prosecutor. I don't see any  
18 Defence teams.

19 Yes, Mr. Emmerson, please.

20 MR. EMMERSON: [via videolink] I just note that there was no  
21 response to the suggestion that the Prosecution should be ordered to  
22 file its pre-trial brief in its initial form on 1 April.

23 Can I just add one thing -- and I am making that formal request  
24 of you, Your Honour, today. May I just add one thing? It is clear  
25 that the Prosecution says that compliance with the obligation that we

1 are requesting in relation to the first item, namely, a  
2 particularisation of the place and date and so forth of the incident  
3 concerned, it is clear, at a minimum, that the Prosecution regards  
4 that practically and on a resources basis as being inevitably linked  
5 to the date of the pre-trial brief. So be it. If that is in  
6 practical terms the reality, then we need to work with that reality.

7 But when it is said by the Prosecution that providing that  
8 information to the Defence would be incompatible at this stage with  
9 the performance of its core functions, I'm afraid this is a moment  
10 for judicial intervention to remind them that their core function is  
11 to state their case clearly to the Defence. That is one of their  
12 core functions. And it seems that the Prosecution is slightly lost  
13 in process and has lost sight of the fact of what really is their  
14 core function.

15 Their core function here is to be -- enable the Defence to  
16 understand the case it has to meet. So since no direct response has  
17 been given to that, I'm not going to invite you to infer that the  
18 Prosecution has waived its right to reply, because it's too important  
19 an issue, namely, that bringing forward the date of the pre-trial  
20 brief, to be dealt with that way. I note that you specifically asked  
21 for a response and you didn't get one, and I'd again perhaps give the  
22 Prosecution the opportunity to provide a response. But when it's  
23 said, "We can't give you weeks or months or days and how long it  
24 would take us to fill in the form," then I'm afraid they're saying to  
25 you, "We need judicial intervention. We can't tell you when we're

1 going to be ready."

2 So it is time, I'm afraid, for you to impose a date upon the  
3 Prosecution to state its case, which is what this means. And for  
4 that purpose, since the Prosecution has said, "We can't fill in this  
5 form accurately until we have completed our pre-trial brief" - and I  
6 understand that, because they want to formulate their case before  
7 they actually say which witness is relevant; fine - let's bring both  
8 dates together forward to the 1st April and then the Defence can get  
9 on with the job of investigating, and we can look at a trial date  
10 realistically at that point once we have the Prosecution's pre-trial  
11 brief. I mean, that is a practical and sensible way of proceeding,  
12 and I know the Prosecution will say, "Well, we can't be ready in that  
13 period of time."

14 But I'm afraid it's necessary for a judge in this situation to  
15 crack the whip on the Prosecution a little. They've had five years  
16 to prepare their case. It's rather surprising that they haven't got  
17 be a draft pre-trial brief ready now. I imagine that with a little  
18 effort they would be able to have a draft brief capable of being  
19 amended by 1 April. And that would speed matters up immeasurably.  
20 It would make these proceedings efficient. It would give you and us  
21 an opportunity to plan the trial date.

22 But without that and until that happens, we're all wading around  
23 in the mud. So I would really respectfully suggest that that  
24 submission requires a rather more detailed response than being  
25 brushed off by the Prosecution without an answer.

1 JUDGE GUILLOU: Thank you, Mr. Emmerson.

2 Ms. Lawson, do you want to respond to Mr. Emmerson on this?

3 MS. LAWSON: Yes, Your Honour, just briefly. Thank you.

4 It is clearly inaccurate that the Prosecution has failed to  
5 state its case. We have done so very clearly in the indictment and  
6 in the Rule 86(3)(b) outline, which for the third time I am inviting  
7 Veseli Defence counsel to read.

8 As for the timing of the pre-trial brief, we will be happy to  
9 address that at the relevant item in the agenda. Thank you.

10 JUDGE GUILLOU: Thank you, Madam Prosecutor.

11 We will now then move to the next item in the agenda, which is  
12 the SPO investigations.

13 I now turn back to the Prosecutor to ask about the status of its  
14 ongoing investigations. Could you confirm your estimate of July 2021  
15 or earlier for when you will be able to file your pre-trial brief in  
16 light of the protective measures decision and the disclosure  
17 calendar? And I stress that I do not invite the parties to give  
18 submissions on the date of the commencement of the trial today. I  
19 would like the parties to stick to the next steps and for the SPO, it  
20 will be the pre-trial brief.

21 Madam Prosecutor -- or Mr. Prosecutor, sorry.

22 MR. SMITH: Thank you, Your Honour, and good afternoon.

23 I would like to start by stating that I have intentionally  
24 sought to be circumspect in addressing the Court directly because I  
25 believe that the very able Prosecutors who handle and lead our cases

1 are best positioned to do that in most cases. So I can assure the  
2 Court that this will not be a regular practice where I address the  
3 Court on particular issues.

4 That having been said, when an important issue comes to my  
5 attention where I believe it's incumbent on me personally to make the  
6 position of my office clear, I will seek to lay out the position and  
7 the support that I see for it.

8 The issue of when the Court will order a pre-trial brief in this  
9 case and, while I will not address it in detail today, in our view  
10 the inextricably linked issue of when the trial will occur are such  
11 issues.

12 Now, as the Court is well aware from prior Status Conferences  
13 and also today, there is strong disagreement - that may be an  
14 understatement - between the Prosecution and the Defence on these  
15 issues. And while I disagree wholeheartedly with the Defence view, I  
16 absolutely support their right to make arguments.

17 If the Defence thinks it's to their advantage to get the  
18 pre-trial brief earlier and have the trial later, that is completely  
19 in their right to make that argument. However, there is a difference  
20 between having the right to make an argument and having it win the  
21 day when it is not supported by logic or by fact.

22 At previous Status Conferences, Your Honour, and this Status  
23 Conference as well, I have heard counsel for the Defence seek to  
24 impugn the integrity of my Prosecutors because of their arguments in  
25 favour of an expeditious trial date and a reasonable date for the

1 pre-trial brief. I ask this Court to take a different approach,  
2 because I have never believed that personalising an argument improves  
3 it.

4 Mr. Emmerson talks about the jurisdiction he's practiced in. I  
5 was taught as a young lawyer that arguing louder, more aggressively,  
6 or laced with personal invective does not make a losing argument a  
7 winner, nor does it do service to the maker of that argument. That  
8 is not how I practice law, that is not how my staff practice law, and  
9 we will not engage on this level.

10 I would, however, invite the Court to note when it sees that  
11 happening in this courtroom, because it should be a sign to  
12 Your Honour that there are not facts and law supporting an argument.

13 In this particular issue of the pre-trial brief, if this Court  
14 separates the merits - the merits - of the Defence argument from the  
15 inflammatory language and from the threats -- and I say "threats,"  
16 Judge. Twice this morning - Mr. Emmerson has done it in the past -  
17 he basically threatened the Court that he would not participate in  
18 the proceedings if he got rulings about the trial date that he didn't  
19 like.

20 If the Court gets past that and looks at the facts and the law,  
21 I think it will see that the Prosecution's position is the correct  
22 one, supported by the facts and the law.

23 Now, I want to make clear - we've made it clear in our filings,  
24 but I want to make it personally clear here today - it is an  
25 important and legitimate consideration to give the Defence the time

1 and resources they need to prepare for this trial. That is an  
2 absolute must. And it is in our interest as much as the Defence they  
3 have that time and that they have those resources.

4 But this Court has other considerations to consider in setting a  
5 trial date and in setting a pre-trial brief. One is the victims in  
6 this case and the witnesses in this case who have waited years for  
7 justice. A second is the reality, a reality we have been here for an  
8 hour and a half, a reality that has not been mentioned once today,  
9 that witness intimidation and obstruction of witnesses is a reality  
10 of this case and it will be a reality going forward. And the plain  
11 simple fact of the matter is that if there is a large gap between the  
12 entire disclosure of our case and that trial, that will endanger  
13 witnesses. That is a plain truth that in all of these issues we have  
14 talked about today has not been spoken.

15 And yes, there are protective measures, and, yes, there are  
16 redactions, but the Court has to understand that those are tools to  
17 mitigate risk; they cannot reduce it entirely. And if these  
18 witnesses, who have put their faith in this institution, come to this  
19 courtroom, take that stand, and tell their story, if they are left  
20 for months and months and months between the time of the pre-trial  
21 brief and trial, we are doing no service to them.

22 I would also note on this issue, Judge, when we talk about the  
23 notice the Defence has, Ms. Lawson has already addressed the degree  
24 of disclosure that we've given and that we intend to give and the  
25 schedule we intend to stick to. I would submit that the disclosure



1 procedures of this Court are as robust or more robust than any in the  
2 history of international criminal justice. They distinguish this  
3 Court from previous courts. The Defence can cite cases where trials  
4 took a great deal of time and where pre-trial briefs were filed far  
5 in advance of trial. This Court can do better. This Court must do  
6 better for the witnesses and for the victims and for the people of  
7 Kosovo.

8 I would also note the resources the Defence have in this case,  
9 because it is unique. The Defence has claimed at previous Status  
10 Conferences that they would need years to investigate the  
11 Prosecution's case. The fact is the Defence has as much resources as  
12 any defendants have had in a case like this. The government of  
13 Kosovo recently stated that they had set aside 20 million euros for  
14 the Defence of the accused, and that is in addition to, of course,  
15 the separate funding that this Registry has where a legitimate need  
16 is shown.

17 I understand fully that the Court does not want to have the  
18 entire discussion about a trial date today, but I think today's  
19 discussion shows that we need to give this Court and this Court needs  
20 to use every tool possible to manage this case going forward. And  
21 our position is that setting a pre-trial brief date and a trial date  
22 together, giving all sides foreseeability and keeping the time  
23 between them consistent with other tribunals of approximately three  
24 months, that that will be a management tool for the Court going  
25 forward.

1           If the Court rules on these issues against the Defence, the  
2           Defence has made every indication that they will resist those  
3           rulings. The best thing, the most fair thing to do right now is to  
4           set dates that are foreseeable and can be worked on now. Otherwise,  
5           I fear that the Defence seeking to delay this case is  
6           self-fulfilling.

7           And, again, I should note, I think very significant weight  
8           should be given to the history of witness intimidation in similar  
9           cases, a history that is acknowledged in previous filings by all  
10          parties to this Court.

11          The issue of when the pre-trial brief should be filed is part of  
12          a range of issues, some of which we've discussed today. And in each  
13          of these cases, the Defence has taken the position that history is  
14          the limit of the future, that what has happened in the past is the  
15          only guide for what we can do now. Just because things can take  
16          years to litigate does not mean they must.

17          The length of proceedings, Your Honour, in international  
18          criminal justice, has rightly and roundly been criticised as a  
19          serious problem. It hurts the credibility of institutions and the  
20          outcomes they produce. This is a very real and serious shortcoming  
21          and this Court is situated to address it. We should not have this  
22          ceiling be the basement. We should shoot for what this Court was set  
23          up to do, to give efficient proceedings the people in Kosovo can  
24          understand.

25          I have to say that I'm at a bit of a loss when I hear today from

1 Mr. Emmerson that our case is built out of tissue and that there is  
2 no evidence to the case despite the disclosure that Ms. Lawson has  
3 referenced, and yet in the same moment Mr. Emmerson and his  
4 co-counsel argue to the Court that they need years to prepare for a  
5 trial built out of tissue. That doesn't make any sense.

6 At our first court appearance in this case, the very first one,  
7 Mr. Emmerson gave a detailed, multi-pronged factual and legal  
8 presentation of Mr. Veseli's defence. This was done before he even  
9 had any disclosure from our office. Such a presentation would simply  
10 not be possible if the world were as the Defence argues it is.

11 The reality is the accused themselves have been aware of the  
12 gravamen of these charges for some time, and despite their  
13 protestations to the contrary, counsel are already well on their way  
14 to being prepared in this case.

15 In conclusion, Your Honour, I would note that each of the  
16 accused has very publicly, very clearly, and very forcefully  
17 proclaimed their innocence of all charges. Now, I want to be clear:  
18 They were certainly not required to do so. And I also want to be  
19 clear that the burden of proof in this case is on my office, not the  
20 accused. That is as it should be and as we want it to be.

21 That said - that said - I find it quite curious to be standing  
22 here today before you fighting to grant them their day in court,  
23 fighting to grant them their day to test our case, to put us to our  
24 burden. Your Honour, that is where we are.

25 Your Honour, we would ask the Court, consistent with our

1 previous filings, to cite an expeditious trial date, but with respect  
2 to the issue the Court's asked me to address, to set a trial date  
3 tied to a pre-trial brief that is consistent with past history in  
4 similar cases and consistent with the needs of protecting the  
5 witnesses in this case. I would submit that setting a trial date  
6 with the pre-trial brief is the best way to manage this case going  
7 forward so that a fair and public trial of the allegations of the  
8 accused can be had for the accused and for the people of Kosovo. And  
9 as it must - as it must - I am confident that this can be done in  
10 full respect of the defendants' rights.

11 Thank you, Your Honour.

12 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

13 May I ask the interpreters if they can proceed for a couple of  
14 minutes so that we have the responses of the Defence teams and then  
15 we will have a short break before continuing the agenda. But I would  
16 rather have the responses of the Defence on this issue now rather  
17 than breaking.

18 THE INTERPRETER: We can proceed Your Honour, yes.

19 JUDGE GUILLOU: Thank you very much. I am grateful to the  
20 interpreters and we can proceed.

21 So I would ask for the Defence teams for their responses, and  
22 please be relatively brief, because the interpreters have been  
23 working now for a long time and they deserve a rest if they want to  
24 be as efficient and precise as possible.

25 Mr. Hooper, please.

1 MR. HOOPER: [via videolink] Yes, well, a moment ago I was very  
2 happy to see Your Honour raise a yellow card to us all in respect of  
3 the issue of trial date. I was, therefore, more than surprised when  
4 Mr. Smith gets up and commits a deliberate foul in front of  
5 Your Honour, but there we are.

6 Now, I appreciate Mr. Smith probably came here this morning with  
7 a prepared statement and he sees his role, quite rightly, as leading  
8 from the front. Perhaps a little more focus from him and from  
9 everyone else might assist the Status Conference a little more.

10 Mr. Smith feels that his disclosure regime is the best of all  
11 possible worlds. Well, it isn't. I think if he put himself in our  
12 shoes, he'd quickly realise that. The disclosure is, as I think the  
13 point has been made already, less functional, less adequate than many  
14 of us have found in other institutions.

15 So today we've been talking about ways of balancing that to  
16 assist us. Not with the objective of putting off the trial date,  
17 which has become a bit of a mantra for the Prosecution. It's untrue.  
18 It's merely to assist us in respect of mining the information of the  
19 case.

20 And the suggestion has been made that, well, given that all else  
21 has failed in terms of the Prosecution's system, we're still left  
22 with the ability of their chart to indicate to us, in a helpful  
23 manner, ingredients of disclosure that otherwise are missing. And  
24 the Prosecution oppose that, as we've heard. And I think it was in  
25 that light that my friend for Mr. Veseli suggested, well, why not

1 bring forward the pre-trial brief, and that's now degenerated into an  
2 argument that the pre-trial brief, according to the Prosecution, is  
3 anchored to the trial date.

4 But I merely -- I don't want to go into that argument, but  
5 merely to question this: Why can't we have a redacted pre-trial  
6 brief if the concern is, as Mr. Smith says, principally one of  
7 protection of witnesses. And we know that this Court, there's been a  
8 steady mantra long before any of us came into these cases, long even  
9 before the SPO came into these cases, of witness intimidation,  
10 witness intimidation, witness intimidation. I'm not going to go into  
11 that, but it's more a mantra than perhaps proper substance in reality  
12 in terms of the principal people that we're concerned with in this  
13 case. And this isn't a case about Mr. Veseli, by the way. It's a  
14 case about four accused, not all of whom have had the experience,  
15 perhaps, of Mr. Emmerson in terms of conducting cases concerning the  
16 facts of Kosovo.

17 So where are we? I said I was very grateful to see Your Honour  
18 raise the yellow card in terms of trial date, and I know what  
19 Your Honour said today, you don't want it discussed. For our part,  
20 we merely want - that is, I think I can speak for all counsel - an  
21 assurance. Well, it's not an assurance. It's a reassurance, because  
22 we understand it's what's in Your Honour's mind anyway, but a  
23 reassurance from Your Honour that there's no question of discussing  
24 trial dates, and nor should there be, until the time is right and  
25 that Your Honour will put us all on notice so that we will have an

1 opportunity in contributing in a positive, fruitful way to that  
2 discussion.

3 Your Honour, those are all my comments on this matter. Thank  
4 you, Your Honour.

5 JUDGE GUILLOU: Thank you, Mr. Hooper.

6 Mr. Emmerson, please.

7 MR. EMMERSON: [via videolink] Yes, I'll try and be as brief as I  
8 can, obviously, bearing in mind that there was quite a lot in what  
9 Mr. Smith has just told the Court that needs to be addressed.

10 First of all, I should like to say that I think that his  
11 presence and his contribution to this discussion has immeasurably  
12 moved it forward in a number of respects, which I'm going to identify  
13 in just a moment, but certainly it's cast some significant light on  
14 the tactics that underlie the way the Prosecution is handling its  
15 case.

16 I want to deal first, as a matter of form, with the suggestion  
17 that I have been guilty for personalised ad hominem attacks.

18 Mr. Smith and his team, and I'm sure Your Honour, will be aware of  
19 the distinction between an attack on the conduct and ethics of the  
20 Prosecution and an attack on any individual. Mr. Smith happens to be  
21 the Prosecutor and is therefore responsible for the conduct of the  
22 institution of the SPO, and so perhaps he feels it personally when  
23 the SPO is attacked. But it is well within the rights of the Defence  
24 and, indeed, well within the proper conduct of proceedings to call  
25 out misconduct or strategies that are counterproductive to the

1 administration of justice when they see them by an institution.

2 There is nothing personalised about that, and I would make it  
3 absolutely clear to all concerned that in future when -- if there  
4 are -- I hope there won't but, but if there are such occasions when  
5 the Prosecution's conduct falls below the minimum standard, as it has  
6 here, then it will be my duty to bring that to the Court's attention.  
7 There is nothing remotely inappropriate about that.

8 Secondly, up until Mr. Black spoke -- Mr. Smith spoke -- I'm  
9 sorry, that's obviously a mental tick of mine and I apologise. Up  
10 until Mr. Smith spoke, my submission consistently has been the  
11 Prosecution are trying to railroad the Defence into a trial where  
12 they have the shortest possible time to effectively prepare, and I  
13 said on the basis of that, that I inferred was unethical conduct  
14 inconsistent with the repeated statements that the Defence must have  
15 adequate time and facilities.

16 There is, of course, an alternative explanation, which is that  
17 the Prosecution has just lost sight of its core function, which is to  
18 ensure the fairness of the proceedings; that it has become too  
19 partisan and too committed to one side of the triangulation of  
20 interests that are stake, that is, the interests of the victims, the  
21 interests of the accused, and the interests of justice; that the  
22 Prosecution simply has, not in bad faith but out of enthusiasm for  
23 its project, lost sight of the basic functions of a criminal justice  
24 system. That, therefore, may not go to their integrity but to their  
25 professionalism.



1           What Mr. Smith has just told us clarifies the matter beyond the  
2           slightest possible doubt. It is true what I said. He's just told us  
3           that I'm right, that the Prosecution are, indeed, trying to create a  
4           situation where the Defence doesn't really know the case it has to  
5           meet until the last possible moment, three months before the trial.

6           He's told us that because he says it's justified by the need to  
7           protect victims and witnesses, to leave the accused with the minimum  
8           possible time to prepare for trial. That is the policy. It is the  
9           policy. He's just told us that. So at least we don't need to be in  
10          any doubt anymore that the Prosecution is deliberately trying to  
11          create a situation where it doesn't give us information we need to  
12          prepare the case at this stage because it views it as being linked to  
13          the date of the trial and they want to make sure whatever else  
14          happens, that they don't give us that information until three months  
15          before the trial.

16          So that -- his intervention has very significantly taken us  
17          forward. We don't really need to argue whether that is evidence of  
18          unprofessionalism or a failure to properly recognise where the  
19          balance in the administration of justice lies, which is one of the  
20          most benign explanations, or ethical bad faith on the other. It  
21          seems less likely to be ethical bad faith now that Mr. Smith has  
22          stood up and owned it and told us that that is the Prosecution  
23          policy. They do want to hamper the Defence's ability to defend the  
24          case and to make sure that we have no more than three months before  
25          the trial to know what exactly the Prosecution's case is.

1 And that is not explicable by witness protection, because even  
2 after that date, there will be redactions. There will be  
3 anonymisations of witnesses giving evidence at the trial. So the  
4 notion that giving us the Defence (sic) case at an early stage,  
5 redacted suitably to protect witnesses, is going to somehow endanger  
6 witnesses is absolutely nonsense. There is no evidence, or at least  
7 none has been adduced in the provisional release applications, of any  
8 witness in this case being intimidated by anybody. So that isn't  
9 true. I mean, if it was, one would have imagined it would have been  
10 advanced by the Prosecution in one of the four provisional release  
11 applications.

12 Your Honour's decision on provisional release was based upon a  
13 general assessment of the overall collective risk that the accused  
14 might communicate with supporters. But so far, there is no -- and  
15 you've denied them provisional release to prevent that from  
16 happening. So, so far there is no evidence whatsoever about -- to  
17 support Mr. Smith's dramatic suggestion that, as we stand here today,  
18 there is witness intimidation going on.

19 But even if there were, at some point this trial has to be put  
20 on track, it has to be fair, and Mr. Smith's judgement of what is  
21 fair, namely, keep the Defence as much as possible in the dark till  
22 the last possible moment before the trial, that's the imperative,  
23 which he told you just now is guiding the Prosecution's policy in  
24 this case, and therefore explains all of their decisions that have,  
25 to me, appeared to be unethical and improper, it's deliberate, it's

1 intentional, it's being decided within the Prosecution as policy.

2 So now at least we know precisely what is at stake here. You,  
3 Your Honour, hold the reins, not the Prosecution. It's not for the  
4 Prosecution to say what is in the interests of justice in terms of  
5 allowing the Defence a fair trial. The notion that three months is  
6 enough time to properly investigate and prepare the Defence case once  
7 you know exactly how it is put is, in my respectful submission,  
8 absolutely, obviously wrong.

9 And so in those circumstances, you hold the reins, not the  
10 Prosecution. It is time for you to take from the Prosecution their  
11 control over the way these proceedings are being handled. We now  
12 know openly and fairly that the Prosecution is deliberately trying to  
13 delay all, as much as possible, the disclosure of any information,  
14 even in a redacted form, that might enable the Defence to properly  
15 prepare for trial until three months before the trial.

16 Well, we accept that the Prosecution has decided that it must  
17 link the disclosure of the information that we asked for in the  
18 schedule to the date of the pre-trial brief, and now the submission  
19 very clearly is to Mr. Smith: Thank you. We understand why you've  
20 been behaving in the way that you have up until now. We accept now,  
21 in the light of your explanation, that that does not show unethical  
22 conduct, merely an unprofessional lack of oversight and a blinkered  
23 approach to the Prosecution's interests. But you do not hold the  
24 reins. It is necessary for the Judge to make a balance. And in  
25 those circumstances, we would like you to provide the pre-trial brief

1 and the missing particulars from the schedule on 1 April. At that  
2 stage, the Defence can get on properly to prepare the case and we can  
3 set a trial date.

4 But now I do want to thank Mr. Smith for, as he said, mentioning  
5 the thing that hasn't been mentioned up till now. Not just that the  
6 Prosecution's policy is driven by so-called concerns about witness  
7 protection, but at least it's now admitted formally on the record  
8 that is the Prosecution's policy, to handicap the Defence to the last  
9 possible moment.

10 Now, obviously, we can have an argument about whether that's  
11 just and fair and where the line is to be drawn, but at least now we  
12 all understand that the Prosecutor himself -- that's why I asked for  
13 him to come and answer for it. The Prosecutor himself has owned that  
14 policy, and we can see now for all of the things that the Prosecution  
15 have tried to do, that explains them all, because that's why they  
16 won't give -- they won't give the pre-trial brief until just before  
17 the trial. That's why, when the trial date was suggested to be later  
18 than June, they wanted to move back the pre-trial brief date. That's  
19 why they won't fill in the details on the form. That's why the  
20 evidence is being disclosed in the manner in which it is.

21 Of course, we had the note -- the summary provided  
22 pre-confirmation, but that is not the same as what the Prosecution  
23 proper case is as it is put.

24 In answer to Mr. Smith's complaint that the Defence is saying  
25 that it's a case made out of tissue paper, why is it so difficult to

1 investigate, that is exactly why it's so difficult to investigate.  
2 Because if this were a case where an allegation was being made  
3 against Mr. Veseli that he committed this murder and that murder and  
4 tortured this person and that person, we would know what were the  
5 allegations we need to focus on and defend.

6 Instead, we have a multiplicity of events over 34 different  
7 areas, all of which have to be investigated as primary facts, as if  
8 they were 34 different crime bases, and then we need to try to infer  
9 how the Prosecution suggests that a man who wasn't present at any of  
10 them except one where he didn't do anything wrong is responsible for  
11 the acts of others.

12 Now, if he doesn't understand why that's a more difficult case  
13 to defend than a straightforward allegation where somebody murdered  
14 somebody else, then I'm afraid he needs perhaps to reflect on his  
15 prosecutorial experiences, because it's self-evidently a more  
16 difficult case to investigate and it's also self-evidently a case  
17 that needs a much clearer statement of the Prosecution's case.

18 So in order to conclude --

19 JUDGE GUILLOU: Yes, to conclude please, Mr. Emmerson.

20 MR. EMMERSON: [via videolink] I was just about to.

21 In order to conclude, having heard the explanation of Mr. Black,  
22 it is not necessary --

23 JUDGE GUILLOU: Mr. Smith.

24 MR. EMMERSON: [via videolink] Mr. Smith, I'm so sorry. It's a  
25 mental tick and I'll get over it in due course. Having heard the

1 explanation of Mr. Smith given in person, it is now unnecessary for  
2 the Defence to pursue the argument that the Prosecution's conduct is  
3 unethical. I leave that issue open, and I'm certainly prepared to  
4 pursue it if I see evidence of unethical conduct.

5 But now what we now have as a result of me having raised my  
6 concerns on that is an explanation from the Prosecution that I was  
7 right all along, and that it is their objective to steamroll the  
8 Defence into a trial that, in our submission, would be obviously  
9 unfair. And we now need to address the root cause of that problem,  
10 which is that the Prosecutor himself has taken it upon himself to  
11 decide what fairness requires, and, of course, that is a judicial  
12 decision, not a prosecutorial one.

13 JUDGE GUILLOU: Thank you, Mr. Emmerson.

14 I turn to Mr. Young, please.

15 MR. YOUNG: [via videolink] Thank you, Your Honour.

16 Just two short points in relation to what Mr. Smith has said.  
17 First one, Your Honour may have noted that Mr. Smith has just stated  
18 quite extraordinarily that the Defence in this case are seeking to  
19 delay this case.

20 I say "extraordinarily" for the simply reason that Your Honour  
21 knows, and we all know, the history of this case and how many years  
22 the Prosecution had to investigate this case. So, with respect,  
23 Your Honour knows very well the Defence are simply seeking to have a  
24 fair trial. For the Prosecutor to actually say we are seeking to  
25 delay the case when we've simply arrived into the proceedings only a

1 matter of a few months ago is quite extraordinary.

2 As far as the second point is concerned, Mr. Smith also made the  
3 point, that Your Honour may have noted, that Defence counsel are well  
4 on their way to being prepared on this case.

5 Now, with respect, Mr. Smith has no idea whatsoever of the state  
6 of the individual preparations of the Defence teams. And I remind  
7 Your Honour, and remind Mr. Smith, that we've only recently been  
8 instructed, and some of us are beginning to assemble our offices, and  
9 we are at the very beginning of seeking to properly prepare this  
10 case. So for Mr. Smith to make the sweeping submission, which was  
11 utterly in ignorance of the position, that we're well on the way to  
12 preparing the case, is something that really should never have been  
13 said and it's highly unfortunate.

14 That's all I say.

15 JUDGE GUILLOU: Thank you, Mr. Young.

16 Ms. Alagendra.

17 MS. ALAGENDRA: [via videolink] Your Honour, I join the  
18 submissions of the other Defence teams. I've nothing more to add.  
19 That's all, Your Honour.

20 JUDGE GUILLOU: Thank you, Ms. Alagendra, and thank you for  
21 being brief.

22 Mr. Prosecutor, do you want to reply to any of these  
23 submissions?

24 MR. SMITH: Nothing further, sir.

25 JUDGE GUILLOU: Thank you very much.

1           We are now going to have a short break of 15 minutes. We'll be  
2 back in the courtroom around 10 past 1.00, The Hague time.

3                     --- Recess taken at 12.56 p.m.

4                     --- On resuming at 1.14 p.m.

5           JUDGE GUILLLOU: Before we move to the next item in our agenda,  
6 which is the Defence investigations, I would just like to ask one  
7 question to the SPO about a point that has been discussed before, but  
8 just to clarify one thing.

9           On the issue of -- that was brought to the attention of the  
10 Court by Ms. Menegon on the disclosure of witness testimonies when  
11 are shown to this witness testimonies some documents and the  
12 possibility of having clearer, I don't know, links on Legal Workflow  
13 or possibility to identify these objects in a simpler way. Is there  
14 any technical possibility in Legal Workflow so that this could be  
15 made in a not-too-cumbersome way?

16           You can take a minute if you want to discuss amongst yourselves.

17           MS. LAWSON: Your Honour, I believe there is a manner of  
18 indicating it in Legal Workflow, and it would be our intention to do  
19 so. Some of the exhibits are documents that have been discussed  
20 during interviews have simply not been disclosed yet because they  
21 weren't part of the indictment supporting material and haven't so far  
22 been part of the Rule 102(1)(b) disclosure.

23           Noting the Defence's interest in them, we're obviously happy to  
24 try and prioritise and disclosure of such items in our ongoing  
25 disclosure process, and where possible, without compromising



1 protective measures and at an appropriate point, we will link such  
2 items.

3 JUDGE GUILLOU: Thank you very much.

4 Let me now move to the next item in our agenda, which is the  
5 Defence investigations, and for this item, I'd like to turn to the  
6 Defence first.

7 I am mindful that the Defence have started their investigations  
8 recently, but I would nevertheless be interested to know whether,  
9 based on the SPO's estimates, the Defence can provide more  
10 information on the status of its investigations, whether the Defence  
11 can provide information on any intention to make requests concerning  
12 unique investigative opportunities, pursuant to Rule 99(1) of the  
13 Rules, and whether the Defence can provide information on any  
14 intention to give notice of an alibi or grounds excluding  
15 responsibility.

16 Mr. Hooper, please.

17 MR. HOOPER: [via videolink] Thank you, Your Honour.

18 I can't help but feel that there's a profound fracture between  
19 the SPO and to some extent the Court's expectations of what the  
20 Defence can do or is doing and the reality. I can say that for all  
21 of us appearing before Your Honour there is a degree of experience of  
22 conducting investigations on behalf of defences.

23 First of all, I really want to spurn this suggestion that  
24 anything here is being structured in order to delay the trial.  
25 Again, I think that's a total misapprehension on the part of the SPO.

1 I don't know why or where they come from to reach that view or to  
2 proclaim it, as I understand it has been proclaimed to ambassadors  
3 and various people who aren't connected to this case, and that  
4 concerns me.

5 Let me say for my part, there's absolutely no suggestion of a  
6 seeking of delay. I can't even see what fruits delay would bring, to  
7 be honest.

8 I don't know why the Prosecution are flogging this to the extent  
9 that they are under the banner of expedition and fulfilling that  
10 requirement. I don't know what seriously really underscores the  
11 Prosecution's efforts here of repetition, as they've done and as they  
12 did in their submissions to you, on the matter, the issue that we are  
13 not allowed and shouldn't discuss. Perhaps by persistence and  
14 repetition they hope to influence Your Honour. That's my only  
15 conclusion. And I know Your Honour will resist that.

16 Anyway, I put that aside, that particular issue that should not  
17 be spoken of.

18 Investigations, the gulf between expectations and reality. I  
19 haven't started investigations. I repeat that: I haven't started  
20 investigations. If trial preparation was a 60-minute clock, I'm  
21 about four minutes into the case. I can't see investigations  
22 starting much before April, and I think I could say that even if  
23 there was not COVID, that might very well have been the case. But  
24 COVID is a particular shackle to our efforts, as you know.

25 It's not just a question of accessing the material presented in

1 the way that it has been to create difficulties. I say "to create  
2 difficulties," but that's been presented in a way that creates  
3 difficulties for the Defence. It's also just connecting with one's  
4 client, in my case Mr. Hashim Thaci. He sits patiently waiting for  
5 me to come to The Hague, and I hope to do so perhaps later this  
6 month.

7 May I say that in terms of connecting and discussing with a  
8 client, Zoom calls do not work. They're okay for a chat, and we have  
9 weekly and sometimes biweekly Zoom conferences, but it's certainly no  
10 manner of way to discuss the details of a case. And that, I suppose,  
11 is a COVID restriction.

12 As I said in our submissions to you, Your Honour, we recently,  
13 at the beginning of this month, appointed someone to assist us in  
14 leading investigations. I've yet to meet that person. They're in  
15 Switzerland. So, yes, there are difficulties, but don't think for a  
16 moment that that shows some level of indolence or incapacity or  
17 whatever on the part of Defence. It wouldn't be too surprising -- it  
18 isn't at all, in my experience, at this stage, what, three months, I  
19 think from disclosure, bulk disclosure in December, and we're two  
20 months in, for the Defence not, in fact, to be engaging in  
21 investigations.

22 I misspoke at the last Status Conference. I had to go to the  
23 transcript to check if the Prosecution was right when they said that  
24 I'd said it would take 18 months before I could start investigating.  
25 That was clearly misspoke. It must have been apparent to everyone,

1 given that we've all argued a trial should start in 18 months, that  
2 there would have been investigations by then.

3 But I can't see our investigations starting, and certainly not  
4 fruitfully starting, for a couple of months.

5 As for the other matters, similarly, I don't think it's a  
6 question of providing -- of determining unique investigative  
7 opportunities, or, indeed, the appropriateness of alibis,  
8 particularly where there's a joint criminal enterprise charge as  
9 opposed to specific offences on specific dates, until we've had a  
10 better overview of the evidence.

11 And so our submissions earlier on are very closely linked to all  
12 of that. But I don't want anyone to think that these delays are --  
13 should be viewed as unusual. They're not. They're certainly not a  
14 delaying tactic, and, in my experience, they accord with normal  
15 practice or normal procedure, the normal addressing of a case.

16 Thank you, Your Honour.

17 JUDGE GUILLOU: Thank you, Mr. Hooper.

18 I see that Mr. Krasniqi is requesting the floor.

19 Mr. Krasniqi, do you want to speak specifically now or can it  
20 wait for the other counsel for this round so that we don't interrupt  
21 between the Defence teams? Or do you really want to take the floor  
22 now?

23 I turn to the interpreters. I don't know if the interpreters  
24 have the feed live in English -- in Albanian in order to translate?

25 Sorry, Mr. Krasniqi, now the microphone seems to just start to

1 work. So if you can please repeat from the beginning so we can get  
2 the translation. Thank you very much.

3 THE ACCUSED KRASNIQI: [Interpretation] [via videolink] Well, I  
4 have some reaction to what was said by Mr. Smith, by the Prosecutor,  
5 while he was talking on behalf of the people in Kosovo.

6 On behalf of the people in Kosovo, on behalf of the citizens in  
7 Kosovo, I think that the people that are best vested to talk about  
8 them is us, the representatives of the people of Kosovo. Forty-five  
9 years of my life have been dedicated to freedom, to justice, and for  
10 the liberation of my nation from robbery.

11 In the elections of 1992, I was elected by the people of Kosovo  
12 as an MP in the Parliament of Kosovo, and it was a time that we were  
13 not allowed to constitute the assembly by the Serbian occupier. So  
14 after the liberation army, I've been represented in all the  
15 assemblies of the Kosovo people, and I have also been the  
16 representative of my people up until 2014.

17 And I would very wholeheartedly plea to the Prosecutor that if  
18 he were to speak on behalf of anyone or if he were to speak on behalf  
19 of the alleged crimes happening in Kosovo, it would be best for him  
20 to be the defender of the policies of crimes and genocide that were  
21 implanted by the Serbian regime against my people from 1986, 1987, of  
22 the 19th century. Therefore, I would plea to the Prosecutor not to  
23 speak on behalf of my people, not to speak on behalf of my nation,  
24 not to speak on behalf of the sacrifices of my people, because the  
25 people that are best vested to do that is us, is the representatives

1 of the people, not those that condemn the liberation army of the  
2 people of Kosovo; in particular, the latest war of my people for  
3 liberation, for freedom, for equality, and for the rule of law.

4 So we, my nation, we are, ourselves, we have been supported at  
5 the international level. We have liberated Kosovo and Kosovo is now  
6 an independent state, a free state, so a state that is free from the  
7 Serbian regime.

8 So this is all I wanted to say and this is all I have to share  
9 with you for the moment. Thank you very much for your attention.

10 JUDGE GUILLOU: Thank you very much, Mr. Krasniqi.

11 Then I will move back to the previous item and I'll give the  
12 floor to Mr. Emmerson, please.

13 MR. EMMERSON: [via videolink] Thank you, Your Honour. As you  
14 know, we've had a Defence investigation team on standby and, in fact,  
15 engagement since 1 January, and in particular you will be aware  
16 during the provisional release pleadings we were able to respond very  
17 quickly to some of the allegations that were specifically put against  
18 Mr. Veseli and obtain witness statements at short notice. So the  
19 team is there.

20 The problem, as Mr. Hooper has already indicated, is that we're  
21 not in a position to brief them as to what exactly they need to  
22 investigate. And that does get us into the point that Mr. Hooper  
23 made so eloquently, which is we just heard Mr. Krasniqi make a plea  
24 to Mr. Smith to stop invoking the people of Kosovo as though he were  
25 authorised to speak for them, and one understands why that might

1 cause offence, but I would equally ask the Prosecution, as Mr. Hooper  
2 has done, to stop making the spurious and unfounded suggestion that  
3 the Defence are trying to spin these proceedings out for some  
4 unspecified motive of their own.

5 At first it was suggested that that was a device to try to get  
6 provisional release by emphasising the length of time the trial will  
7 take. Well, that's no longer an issue because all four accused have  
8 been remanded in custody. And having been remanded in custody,  
9 naturally, the imperative on the Defence is to get this trial through  
10 as quickly as it can be got through, fairly and giving them an  
11 opportunity to properly defend themselves.

12 So the idea that, with four accused in custody, the Defence  
13 lawyers are trying for some reason to spin the case out indefinitely,  
14 it's -- as Mr. Hooper says, it's difficult to fathom what the  
15 Prosecution even thinks the motive would be for that strategy.

16 But again, I'm afraid it's consistent with the general approach  
17 that the Prosecution has taken, which we now have heard from  
18 Mr. Black eloquently articulated, that the best way to handle these  
19 proceedings with a nod and a wink is to rush them through with the  
20 Defence knowing as little as possible until the last minute.

21 So that -- but our position is very clear. We're -- I've had to  
22 stand my investigation team down because we can't afford to pay their  
23 salaries while we're doing nothing. But the earliest date that we  
24 can currently predict being able to instruct them is once we have  
25 digested the material and understood what we hope we understand the

1 Prosecution might be going to suggest its case is; in other words,  
2 that double-analysis process I discussed before.

3 And Mr. Hooper said a couple of months. I would say the very  
4 earliest for me would be the beginning or mid-April, which is much  
5 the same period of time. I'd set it as the beginning of April as a  
6 target, but I think, you know, like all targets, that's a little bit  
7 optimistic. But I would try to be ready to start them in the first  
8 two weeks or by the middle of April.

9 But like him, and this is certainly not for any tactical reason,  
10 we haven't started. We can't start. I know you introduced this item  
11 by saying the Defence are at an early stage of their investigations.  
12 Well, if you include the investigations relating to provisional  
13 release, then, yes, you could say we're at an early stage of our  
14 investigations. But there's been no investigation in relation to the  
15 substantive allegations, nor can there be until we know the case we  
16 have to meet.

17 And because the Prosecution insists on not telling us the case  
18 we have to meet in the detail that we require, we're having to do  
19 that for ourselves before we start the investigation process.

20 I do want to say, in that context, that the remarks that  
21 Mr. Black made this morning at least --

22 JUDGE GUILLOU: Mr. Smith.

23 MR. EMMERSON: [via videolink] I'm sorry?

24 JUDGE GUILLOU: Mr. Smith.

25 MR. EMMERSON: [via videolink] Mr. Smith, I'm sorry. I'm sure



1     you all know where the brain connection comes from, but it's -- Jack  
2     Black is a US actor and I can't seem to overcome that brain  
3     connection. I will work on it.

4             Mr. Smith this morning has at least lanced the boil to provide  
5     an explanation for the things that the Defence were puzzling over.  
6     He has proved that the Defence were right in their suspicions that  
7     there was some guiding mind behind the very odd way they were  
8     conducting these proceedings. And despite previous denials, which  
9     have been on the record, that the object was to hamper the Defence  
10    preparation until the last minute, that now is official stated  
11    policy.

12            So at least the Prosecution are no longer gas-lighting the  
13    Defence and the Court and they've admitted the policy openly. That's  
14    a huge step forwards because it enables the Court to grasp the  
15    nettle. And we now know what is the principle guiding the  
16    Prosecution's conduct. It's set out openly. And that is a very good  
17    way of lancing the boil, because, as they always say, sunlight is the  
18    best disinfectant.

19            Now that we have it out in the open, it's very clear that the  
20    judicial responsibility is to take the reins from the Prosecution.  
21    It's not for them to decide what the requirements of a fair trial  
22    demand; it's for the tribunal to decide that. You'd expect the  
23    Prosecution to lean a little bit in favour of their assessment.  
24    Unfortunately, they've usurped your function altogether by telling  
25    you that their resources require them, as a matter of primary

1 function, their core obligations and witness protection, to make the  
2 trial as unfair as possible.

3 So our defence investigation will probably begin around  
4 mid-April and that coincides rather comfortably with the date I've  
5 suggested that you must or should order the Prosecution to file its  
6 pre-trial brief and fill in the schedule so that our investigators  
7 can start, as they did in my previous Kosovo trials at the ICTY, from  
8 the pre-trial brief, and they can work to that and see what needs to  
9 be investigated.

10 I've met with my international supervisor, but I can't get to  
11 Kosovo under these current conditions because of COVID. And, of  
12 course, it would be ludicrous not to take the COVID situation into  
13 account until the vaccine distribution in Kosovo and in the  
14 United Kingdom has reached a tipping point and the disease is in  
15 recession.

16 I'm not allowed to travel to Kosovo and I, therefore, cannot  
17 meet my investigators in Kosovo. We can't -- and there's no point in  
18 going there anyway, because we don't have the Prosecution's pre-trial  
19 brief.

20 So all in all, investigations starts mid-April, Prosecution  
21 pre-trial brief, please, at the beginning of April, and then we can  
22 get a sensible trial on the tracks. It's not up to the Prosecution  
23 to decide what's a fair process. They've been usurping your function  
24 and it's time to put a stop to it.

25 Those are my submissions.

1 JUDGE GUILLOU: Thank you, Mr. Emmerson.

2 Mr. Young, please.

3 MR. YOUNG: [via videolink] Your Honour, thank you. I associate  
4 myself completely with the submissions of Mr. Hooper and  
5 Mr. Emmerson.

6 In our respectful submission, it's way to premature to entertain  
7 this or to even be able to speak cogently about it. Your Honour, the  
8 situation will depend upon resources, funding, and, of course,  
9 primarily, assuming funding and resources are available, upon our  
10 ability to read, understand, review, and analyse the Prosecution  
11 case. And we're many months from doing that.

12 Normally, an investigation wouldn't commence until the Defence  
13 have had adequate opportunity to consider the Prosecution evidence,  
14 analyse it, in order to make proper professional judgements over what  
15 needs investigating. So, with great respect, we would say it's way  
16 to premature to engage in a constructive discussion on this.

17 Thank you.

18 JUDGE GUILLOU: Thank you, Mr. Young.

19 Ms. Alagendra, please.

20 MS. ALAGENDRA: [via videolink] Your Honour, we join the  
21 submissions of learned counsel.

22 And additionally, the delay in receiving the translations, in  
23 our case, is greater because Mr. Krasniqi does not speak or read  
24 English, and this has affected the start of investigations for our  
25 Defence team. He will only be able to give us full instructions once

1 he has received the Albanian translations and reviewed them,  
2 Your Honour. Until then, we will not be able to start investigations  
3 fully.

4 And if I may add, Your Honour, at this stage we also cannot give  
5 any substantive update on the investigative opportunities or alibi,  
6 for these reasons.

7 JUDGE GUILLOU: Thank you very much, Ms. Alagendra.

8 May I ask the Registry, Mr. Roche, if you could just recall to  
9 all the counsel of their availability to travel during the pandemic,  
10 and especially to Kosovo, because I know that there are restrictions  
11 in some countries, whether to travel in the Netherlands or to Kosovo.  
12 But are you in a position to recall everyone what are the agreements  
13 that have been reached by this institution so that the counsel can  
14 travel?

15 Mr. Roche.

16 MR. ROCHE: Thank you, Your Honour. As we have previously been  
17 in discussion with some of the counsel directly regarding this issue,  
18 as holders of diplomatic identification from the Ministry of Foreign  
19 Affairs of the Netherlands, and also with privileges and immunities  
20 relevant to their roles in relation to travel to Kosovo, they are  
21 exempt from any travel bans. We can, of course, provide more  
22 detailed information and some contact details to counsel to allow  
23 them to progress this matter. Thank you.

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

25 I turn to the Prosecution. Do you have any submissions on the

1 Defence submissions? Thank you.

2 MS. LAWSON: Thank you, Your Honour. I will be brief.

3 The law and the rules set clear requirements in relation to  
4 disclosure, onerous obligations, and we are complying with them.  
5 What has been discussed otherwise in relation to disclosure are  
6 additional things that the Defence is seeking above and beyond what  
7 we are required to do.

8 Material presented to the Defence in disclosure has been  
9 presented in precisely the manner it was presented to the Chamber.  
10 The SPO policy is to have a disclosure timeline consistent with  
11 recognised standards for complex international cases and that is what  
12 we are putting forward.

13 In contrast to the significant work which the SPO has outlined  
14 here and in prior Status Conferences, and as is apparent from our  
15 ongoing disclosure, it is somewhat stark for the Defence teams to  
16 indicate that, despite the material they have been provided with, no  
17 investigations at all have commenced.

18 Far from usurping functions of the Chamber, what the SPO is  
19 doing is providing grounded and informed submissions to facilitate  
20 the Chamber's assessment.

21 With regard to the timing of the pre-trial brief, which  
22 Mr. Emmerson indicated was the starting point for investigations in  
23 cases he was involved with at the ICTY, I refer him to paragraph 15  
24 of our written submissions presented in advance of this Status  
25 Conference.

1 On the question of timing of the pre-trial brief in this case,  
2 the date which the SPO has indicated is the earliest possible date on  
3 which it could be provided, working rigorously.

4 Reference was also made to COVID. And by no means would I  
5 understate that it's a significant challenge for all of us, far  
6 beyond the context of these proceedings. However, progress can and  
7 must still continue. There are ways of continuing to work, which the  
8 Registry has helpfully just outlined. And the SPO has itself had to  
9 significantly adapt. The SPO has filed indictments, conducted  
10 multiple search and arrest operations, and continued to regularly  
11 conduct interviews. There are ways of working and we encourage the  
12 Defence to explore them. Thank you.

13 JUDGE GUILLOU: Thank you very much.

14 Does any Defence team want to take the floor?

15 Mr. Hooper, please. Mr. Hooper, your microphone is mute.

16 MR. HOOPER: [via videolink] Sorry about that.

17 JUDGE GUILLOU: Thank you.

18 MR. HOOPER: [via videolink] It may be trite for me to observe  
19 it, but -- the two matters I'm going to observe may seem a bit trite.

20 First of all, I don't know if there's anyone on the SPO benches  
21 who's ever conducted an ICL defence case, and perhaps if that is  
22 correct, because I don't think they have, then perhaps that might  
23 explain some of their misapprehensions about not only the Defence  
24 role but how we can and do go about it.

25 I suppose in a normal situation by this stage of a case, I'd at

1 least have visited Kosovo if only to familiarise myself with aspects  
2 of the geography. I think that's always an important aspect at the  
3 beginning of a case, and I haven't done that for obvious reasons.

4 I'm sure the MFA, the document that the Registry just referred  
5 to, is a very useful document, and I believe mine is winging its way  
6 to London as I sit here. But again, I'll say tritely: It doesn't  
7 actually protect us against COVID, which is the worry, particularly  
8 as I read in today's English Times that they've now uncovered a new  
9 mutation that has the disagreeable conjoinder of both the English  
10 mutation and the South African mutation. So I don't think COVID is  
11 done yet.

12 But, anyway, yes, I'm very happy to have received my jab a week  
13 or two ago. That gives me a bit more confidence in order to engage  
14 in investigations and participate in them, and that will be done, I  
15 hope, as soon as I'm in an appropriate position to do so. Thank you.

16 JUDGE GUILLLOU: Thank you, Mr. Hooper.

17 Mr. Emmerson, please.

18 MR. EMMERSON: [via videolink] I'm sorry. I just wanted to echo  
19 that last point. Diplomatic passage is not the issue. I don't  
20 really relish having to say this, but you know from previous  
21 correspondence that I'm not able to travel during the COVID pandemic  
22 for health reasons, and I am one of a number of people who are no  
23 doubt in that position.

24 And, frankly, whilst it is out of control in Kosovo as it is,  
25 and will no doubt be even worse in the coming months because there's

1 just been a general election in which many people have come into  
2 contact with one another in very close quarters, inevitably the  
3 process of getting into Kosovo and talking to your investigators on  
4 the ground is extremely difficult.

5 It's silly to talk about the fact that there are ways to work  
6 around it. Of course there are. We all know that. We're all now  
7 used to using video conferences for certain things. But what we  
8 can't do is get into Kosovo and prepare our defence with any of our  
9 teams.

10 But in any event, all of this discussion is academic until we  
11 know exactly what it is we're having to investigate. No responsible  
12 Defence counsel would set an investigator off with a set of papers  
13 and say, "Here, read these and do whatever you want by way of  
14 investigation." That's not how it works. We have to first analyse  
15 the evidence, which has only realistically been done after Christmas  
16 in detail, because, of course, at the same time we have been dealing  
17 with provisional release pleadings and jurisdiction and indictment  
18 challenges which have been filed in March, all of which has been  
19 hugely resource-intensive.

20 But at the same time, the process of digesting the evidence is  
21 taking an inordinate length of time because the Prosecution has a  
22 policy, we now know, of giving us as little information as possible  
23 and as shortly as possible before the trial.

24 And so I make no apology for not starting the defence  
25 investigation. I'm not going to waste money and resources and time



1     until I know what the case is I have to meet.

2             So I repeat my plea that this again is linked to you ordering  
3     the Prosecution to serve its pre-trial brief on 1 April. It's not  
4     true to say the date suggested is the earliest date possible. The  
5     Prosecution, no doubt, has a draft in existence already. They may  
6     not think it's perfect, but they can redact it or amend it later on.  
7     They offered originally to provide it in June. Bring it forward by a  
8     couple of months, and the trial will get on foot, on train, and we  
9     can get to a realistic early trial date.

10            If this carries on, we're going to be having this same  
11    conversation in nine months' time where we'll all still be saying  
12    it's premature to fix a trial date. You need to take, if I may  
13    respectfully say so, grip of the situation. Get the pre-trial brief  
14    out at the beginning of April, and then we can all get on to doing a  
15    proper job and a professional job, because I think all of us, Defence  
16    and Prosecution and, I've no doubt, the judiciary, want to see this  
17    trial regarded publicly as a really fair process. No one's going to  
18    believe the results if it isn't exceedingly fair.

19            But when the Prosecution has set sail with a policy that they  
20    now admit is designed to make this unfair, or at least to limit the  
21    ability of the Defence to prepare their case, it's obviously time for  
22    Your Honour's hand to be on the tiller and to resteer the course of  
23    the proceedings. Get them on track and let's all do a good,  
24    professional job and just show the international community that this  
25    court is worthy of its mandate.

1 JUDGE GUILLOU: Thank you, Mr. Emmerson.

2 I don't see any other Defence team asking for the floor. Then  
3 we will move to the last item on the agenda, which is the points of  
4 agreements on matters of law and fact.

5 The SPO indicated being in an advanced stage in preparing an  
6 agreed facts proposal to the Defence. Can you confirm that this is  
7 the case and when will you be in a position to do so,  
8 Madam Prosecutor?

9 MS. LAWSON: Thank you, Your Honour. I'll just respond very  
10 briefly to what was said on the previous item before moving to this  
11 one.

12 Counsel for Mr. Thaci doubted whether members of the SPO have  
13 conducted an ICL defence case. I can assure him that multiple  
14 members of the office have, including amongst those present in court  
15 today.

16 And I refer the Veseli Defence again to review the timing of the  
17 pre-trial brief in the Haradinaj case.

18 Turning to the agreed facts. We are indeed at an advanced stage  
19 internally in preparing a proposal, and we would envisage being able  
20 to provide that to the Defence teams for their consideration shortly.  
21 Thank you.

22 JUDGE GUILLOU: Thank you, Madam Prosecutor.

23 MR. EMMERSON: [via videolink] Can I just respond on one point of  
24 fact?

25 If Mr. --

1 JUDGE GUILLOU: Mr. Emmerson, very briefly --

2 MR. EMMERSON: [via videolink] Sorry.

3 JUDGE GUILLOU: -- please.

4 MR. EMMERSON: [via videolink] Very briefly. One point of fact  
5 that keeps being made about the pre-trial brief in the Haradinaj  
6 proceedings. The point that the Prosecution doesn't seem to have  
7 understood is that the indictment in Haradinaj, and all other ICTY  
8 proceedings, was a narrative indictment. In other words, it  
9 resembles a pre-trial brief. It enables you to go about  
10 understanding what it is you're alleged to have done and why, which  
11 incidents are supposed to have happened where and when, and precisely  
12 how it is said they're linked together.

13 That is not the practice of the Prosecution in this proceeding.  
14 Therefore, a pre-trial brief is essential. And that's why in these  
15 proceedings we need to have that information before the investigators  
16 begin. It's a different situation if the indictment was a full  
17 narrative indictment, but that, I regret to say, is not the practice  
18 of this tribunal.

19 So whichever way you look at it, we are hampered without that  
20 pre-trial brief, which is the next opportunity --

21 JUDGE GUILLOU: Thank you.

22 MR. EMMERSON: [via videolink] -- so that's the answer to that  
23 point.

24 JUDGE GUILLOU: Mr. Hooper, do you have anything to say to what  
25 the Prosecution said about the agreed facts? No.

1 Mr. Emmerson?

2 MR. EMMERSON: [via videolink] Yes, I'm grateful for whatever  
3 they provide to us as soon as they can provide it. We will not be  
4 able to respond, obviously, until we've done our investigation.

5 JUDGE GUILLOU: Thank you, Mr. Emmerson.

6 Mr. Young.

7 MR. YOUNG: [via videolink] Nothing to say, Your Honour. We look  
8 forward to receiving them. Thank you.

9 JUDGE GUILLOU: Thank you, Mr. Young.

10 Ms. Alagendra.

11 MS. ALAGENDRA: [via videolink] We will respond appropriately  
12 once we've seen the proposal, Your Honour.

13 JUDGE GUILLOU: Thank you, Ms. Alagendra.

14 I would now like to ask the parties about their views on a  
15 suitable date for the next Status Conference.

16 Madam Prosecutor.

17 MS. LAWSON: I would just like to make clear on the record that  
18 the Prosecution indictment is a narrative indictment. I don't have  
19 it directly in front of me, but it extends to approximately 50 pages.  
20 And in addition to the indictment, the Defence teams have received  
21 the Rule 86(3)(b) outline, which is not a document that is provided  
22 at any other institution.

23 On the timing of the next Status Conference, we encourage and  
24 invite continuing active oversight of the pre-trial process and would  
25 welcome a Status Conference in early March. Thank you.

1 JUDGE GUILLOU: Thank you, Madam Prosecutor.

2 Mr. Hooper, please.

3 MR. HOOPER: [via videolink] Is this on general matters? Sorry,  
4 I've lost the --

5 JUDGE GUILLOU: No, this is just on the date for the next Status  
6 Conference.

7 MR. HOOPER: [via videolink] Oh, yes. All right. Well, these  
8 also are time-consuming, both in preparation and, as we can see, in  
9 the event, and I'm just wondering whether we need them every four  
10 weeks. Perhaps every six weeks. I don't, in saying that, want it  
11 suggested that I'm delaying the trial. Thank you.

12 JUDGE GUILLOU: Thank you, Mr. Hooper.

13 Mr. Emmerson.

14 MR. EMMERSON: [via videolink] I understand both points of view.  
15 However, I think that at the moment there is a genuine need for  
16 muscularity of judicial intervention to ensure that these proceedings  
17 are put back on track, and so I would respectfully agree with the  
18 Prosecution that mid -- early to mid-March.

19 I don't know whether -- when Your Honour is going to rule on the  
20 date that the Prosecution must file its pre-trial brief or whether  
21 that ruling will be before the next Status Conference. But either  
22 way, while the Prosecution is continuing to veer off course and try  
23 and take the tribunal with it, obviously we need to ensure very  
24 frequent judicial intervention so that these issues can be publicly  
25 ventilated, and so that those who are observing the proceedings can

1 see that the Prosecution is not driving the judicial process but  
2 rather the other way around.

3 So, yes, mid-March, please.

4 JUDGE GUILLOU: Thank you, Mr. Emmerson.

5 Mr. Young.

6 MR. YOUNG: [via videolink] Your Honour, I agree mid-March would  
7 be appropriate.

8 JUDGE GUILLOU: Thank you, Mr. Young.

9 Ms. Alagendra.

10 MS. ALAGENDRA: [via videolink] We are available at the Court's  
11 convenience, Your Honour.

12 JUDGE GUILLOU: Thank you, Ms. Alagendra.

13 The next Status Conference will be scheduled in due course and  
14 you will, of course, receive an agenda before, as usual.

15 I invite the parties to make written submissions if they would  
16 like to raise any specific issue during the next Status Conference.

17 At this point I would like to ask the parties whether they have  
18 any other issues they would like to raise, and I remind the parties  
19 to give prior notice should any submission require the disclosure of  
20 confidential information.

21 In that regard, I take note of Mr. Hooper's submission that the  
22 issue of getting case material to the accused is being resolved, and  
23 I thank the Registry for that, and I hope it is going to be fully  
24 resolved very soon.

25 Mr. or Madam Prosecutor, any other matter you would like to

1 raise?

2 MS. LAWSON: No, thank you, Your Honour. Nothing further from  
3 the Prosecution.

4 JUDGE GUILLOU: Thank you.

5 Mr. Hooper.

6 MR. HOOPER: [via videolink] Yes. Can I start on a very positive  
7 note about the KSC and give my thanks to the Registry that's been  
8 consistently and positively very helpful whenever we've requested any  
9 or made any demand of it, and I include the Defence Office in respect  
10 of that, too.

11 But turning to the Registry, we raised with it -- all Defence  
12 counsel raised with the Registry the difficulties of accessing  
13 materials, as Your Honour has just referred, and I understand that  
14 the Registry is putting in place a computer link between, in my case,  
15 Mr. Thaci and the Defence Office that has been provided to us in  
16 The Hague. I don't think it will extend further than that at the  
17 moment, but -- and as I understand it, it's obviously just limited to  
18 documents, but it means that documents can be put onto a computer and  
19 shared in real-time with a client, which is a -- it's been in place,  
20 that system, at the ICC, I know, but it's being adopted or something  
21 similar. And I very much welcome that, and I thank the Registry with  
22 their prompt response to our request. Thank you.

23 JUDGE GUILLOU: Thank you, Mr. Hooper.

24 Mr. Emmerson, please.

25 MR. EMMERSON: [via videolink] I'd like, if I may, to echo the

1 comments of Mr. Hooper, not just in relation to the Registry and the  
2 Defence Office but also in relation to the Document Management  
3 Service. Our relationship with the court's administration has been  
4 exemplary, and so the comments that I have made in relation to the  
5 mishandling of this case by the Prosecution do not in any way extend  
6 to the management of the court staff.

7 If problems arise, as I suspect they will, in public about the  
8 perception of these proceedings, they will be laid solely at the door  
9 of the Prosecution and not at the door of the administration, who  
10 have done everything they can to ensure that the Defence are as  
11 equipped as they can be, but obviously are hampered by the attitude  
12 that's been taken by the Prosecution.

13 The second point I wanted to make is a question, actually. You  
14 indicated that prior to the next Status Conference, you would like to  
15 receive submissions on any item to be included in the agenda. I'd  
16 just like to have some clarification, if I may.

17 The submission has been firmly put on the record today  
18 requesting you to make an order about the pre-trial brief being  
19 served on 1 April. You've heard submissions by both parties on that.  
20 My view is that the pleadings have been dealt with and that the  
21 matter is ready for decision. But if you take a different view, then  
22 perhaps you would indicate that so that we can ensure that it is put  
23 on the agenda for the next Status Conference.

24 I would prefer, much prefer, that the matter is decided now so  
25 that we can all have an effective Status Conference in a month's time



1       instead of continuing in the current vein.

2           JUDGE GUILLOU: Thank you, Mr. Emmerson. That's absolutely  
3       correct. What I was referring to is if you wished to raise any new  
4       topic for the next Status Conference that hasn't been discussed today  
5       or at the previous Status Conference, please do so in writing. I  
6       wasn't referring to what has been discussed, I think, in a lengthy  
7       way and a detailed way, which I think is a very good thing, today.

8           Mr. Young, please.

9           MR. YOUNG: [via videolink] Nothing to add. Thank you,  
10       Your Honour.

11          JUDGE GUILLOU: Ms. Alagendra, please.

12          MS. ALAGENDRA: [via videolink] I've nothing to add, Your Honour,  
13       except my gratitude to the Defence Office and Registry for being so  
14       helpful.

15          JUDGE GUILLOU: Thank you, Ms. Alagendra, and thank you for  
16       conveying this to the Registry. I'm sure it's fully deserved.

17          Before we conclude today's hearing, I would like to organise  
18       matters in relation to the next review of detention by issuing the  
19       following oral order:

20          The respective Defence teams shall provide submissions on  
21       whether reasons for continued detention still exist by Friday,  
22       26 February; responses and replies to the submissions shall follow  
23       the timeline set out in Rule 76 of the Rules.

24          Finally, I would like to thank the Defence teams for submitting  
25       their video-link request 24 hours in advance of the scheduled

1 hearing. In the future, however, notifications with respect to use  
2 of video-link will not need to be filed before me. Correspondence  
3 with the Registry, which includes an annexed consent form, will be  
4 sufficient.

5 This concludes today's hearing. I thank the parties and the  
6 Registry for their attendance. I also wish to thank the interpreters  
7 for their flexibility with the timing; stenographers, same;  
8 audio-video technicians; security personnel, for their assistance.

9 This hearing is adjourned. Thank you.

10 --- Whereupon the Status Conference at 2.00 p.m.