

1 Wednesday, 24 March 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
7 outside 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 And now I would kindly ask the parties and participants to
14 introduce themselves, starting with the Specialist Prosecutor's
15 Office.

16 Madam Prosecutor.

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

23 JUDGE GUILLOU: Thank you, Madam Lawson.

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

1 MR. HOOPER: [via videolink] Yes, good morning, Your Honour, and
2 other participants. David Hooper here today with Pierre Prosper.
3 Thank you.

4 JUDGE GUILLOU: Thank you, Mr. Hooper.
5 Mr. Emmerson, please.

6 MR. EMMERSON: [via videolink] Good morning, Your Honour.
7 Ben Emmerson for Kadri Veseli.

8 JUDGE GUILLOU: Thank you, Mr. Emmerson.
9 Mr. Young, please.

10 MR. YOUNG: [via videolink] Yes, good morning, Your Honour.
11 David Young for Mr. Rexhep Selimi, assisted by Geoffery Roberts.
12 Thank you.

13 JUDGE GUILLOU: Thank you, Mr. Young.
14 And Ms. Alagenda.

15 MS. ALAGENDRA: [via videolink] Good morning, Your Honour.
16 Venkateswari Alagenda, representing Mr. Jakup Krasniqi, together
17 with Mr. Aidan Ellis and Mr. Mentor Beqiri.

18 JUDGE GUILLOU: Thank you, Ms. Alagenda.

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

22 Now I turn to the Registry, please.

23 MR. ROCHE: Good morning, Your Honour. Ralph Roche from
24 Judicial Services Division.

25 JUDGE GUILLOU: Thank you, Mr. Roche.

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

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

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

12 On 17 March 2021, I scheduled this fourth Status Conference. I
13 asked the parties to provide written submissions, if they so wished,
14 on the following topics: Disclosure, the status of SPO
15 investigations, the status of Defence investigations, the points of
16 agreement on matters of law and fact, the schedule for filing
17 responses and replies to the preliminary motions, the date for the
18 fifth Status Conference, and any other matters they wished to raised.

19 On Monday, 22 March, the SPO and the Krasniqi Defence submitted
20 their observations. I thank the parties for their observations.

21 The purpose of our hearing today is to review the status of the
22 case and to discuss the topics I just listed. I would notably also
23 like to discuss the issues raised by the Thaci and the Krasniqi
24 Defence regarding disclosure.

25 I will invite the parties to present their views in a concise

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

4 Now I invite the parties to follow the agenda set out for this
5 Status Conference, starting with disclosure.

6 Since we have several matters to discuss regarding disclosure, I
7 would like to organise the discussion as follows:

8 First, I would like to hear a general update from the
9 Prosecution and the Defence on the progress made in relation to
10 disclosure; second, I would like to discuss specifically the Thaci
11 and Krasniqi Defence request for orders related to disclosure and the
12 related response and reply; and third, I would like to discuss the
13 SPO request that the deadline for the provision of the detailed
14 notice under Rule 102(3) be adjusted.

15 In order to have a focused discussion on these points, I would
16 like to kindly ask the parties to make their submissions on these
17 three topics at the appropriate time.

18 I would first like to hear from the Prosecution on the progress
19 made on the disclosure of evidentiary material in general, and this
20 is in particular with respect to Rule 102(1)(b) material, how much of
21 such material remains to be disclosed and whether the SPO envisages
22 filing protective measures requests by 6 April 2021.

23 I also wish the SPO to inform the Court whether there remains
24 exculpatory evidence in the SPO's custody, control, or actual
25 knowledge, and whether this material requires a judicial ruling on

1 protective measures.

2 And finally, whether the SPO is facing or foresees any
3 difficulties related to the disclosure process - in particular, with
4 respect to Rule 107 material - and whether any application pursuant
5 to this rule is imminent.

6 Madam Prosecutor, you have the floor.

7 MS. LAWSON: Thank you, Your Honour.

8 In terms of the general disclosure update, since the last Status
9 Conference, the SPO has disclosed two batches of Rule 102(1) (b)
10 material; that was Disclosures 23 and 24. We are continuing to work
11 through the remaining materials in a systematic manner. We filed our
12 fourth request for protective measures in respect of such materials
13 on 5 March, and we do envisage filing further such requests in
14 accordance with the schedule which the Chamber has outlined, the next
15 one being due, as you mentioned, on 6 April or by 6 April.

16 We are also making relevant adjustments to incorporate the
17 additional subcategorisations required pursuant to the Chamber's
18 recent decision on Rule 109(c).

19 In terms of volume, the prior statements of approximately half
20 of the indictment supporting witnesses have been processed at this
21 stage in the sense that they have already been disclosed or are part
22 of the currently pending protective measures request.

23 Review of potentially exculpatory material is also ongoing to
24 meet our continuing obligations. No protective measures requests in
25 respect of such material is currently imminent, but we will be making

1 further disclosures. It is likely in due course that a protective
2 measures request may be required in respect of such material.

3 The situation in relation to Rule 107 material remains unchanged
4 in the sense that discussions with relevant organisations remain
5 ongoing. As previously indicated, in respect of one organisation,
6 once discussions on possible counterbalancing measures have been
7 concluded, we do anticipate making a request, and we envisage that
8 there will be further such requests in respect of other
9 organisations.

10 And that's the general update.

11 JUDGE GUILLOU: Thank you, Madam Prosecutor.

12 Now I turn to the Defence. And as I mentioned, for now just on
13 the general point on disclosure. We'll come to the specific issues
14 in the requests filed by the Thaci and Krasniqi Defence team after
15 this first round.

16 Mr. Hooper, please.

17 MR. HOOPER: [via videolink] Thank you. I'll deal with all the
18 matters when we come to the more specific matters, if I may.

19 JUDGE GUILLOU: Thank you, Mr. Hooper.

20 Mr. Emmerson, please.

21 MR. EMMERSON: [via videolink] I've nothing to add at this stage.

22 JUDGE GUILLOU: Thank you, Mr. Emmerson.

23 Mr. Young, please.

24 MR. YOUNG: [via videolink] Nothing at this stage. Thank you.

25 JUDGE GUILLOU: Thank you, Mr. Young.

1 Ms. Alagendra.

2 MS. ALAGENDRA: [via videolink] Nothing at this stage,
3 Your Honour.

4 JUDGE GUILLOU: Thank you, Ms. Alagendra.

5 I would now like to discuss the Thaci and Krasniqi Defence
6 request for orders related to disclosure. It is filing F213 and
7 F228. I will follow the relief sought in the requests; namely,
8 first, the disclosure of material to which an accused or a witness is
9 referred in an interview; second, the ERN number of any exhibit
10 referred in an interview of an accused or witness; third, the
11 disclosure of audio-visual recordings of interviews of witnesses of
12 an accused; and fourth, the witness numbers for materials relating to
13 witnesses whose identity has been withheld from the Defence.

14 So first the Thaci and Krasniqi Defence request an order for the
15 SPO to disclose all material and documents referred to in an
16 interview of an accused or witness at the same time as disclosure of
17 such interview. The Defence request the SPO to provide complete
18 disclosure of all material commented upon by an accused within 14
19 days and by a witness within 28 days.

20 I understand from the SPO's response that it has now disclosed
21 the exhibits used during the interviews of Mr. Thaci. However, I
22 also understand from the reply of the Thaci Defence that, to date, it
23 has not received the exhibits shown to the other three co-accused in
24 their respective interviews.

25 I would like to ask the parties to provide any further update on

1 this matter. I notably would like the SPO to indicate when it
2 expects to disclose exhibits shown to the other three co-accused, and
3 if this can be done before the next Status Conference.

4 Madam Prosecutor.

5 MS. LAWSON: Thank you, Your Honour. I would like to make two
6 general points on this litigation before moving to the first relief
7 requested. They are procedural points but they are nonetheless
8 important in this context.

9 The first is that the matters raised in this litigation were
10 ones which the Defence teams chose not to bring to the SPO on an
11 *inter partes* basis, and that is despite the fact that we have been
12 responsive and accommodating to the extent possible in respect of all
13 requests and queries that have been addressed to us to date. The
14 majority of these issues could have been resolved in a much more
15 efficient manner had the Defence done so.

16 The second point I would like to raise is in relation to the
17 Thaci Defence reply. That filing far exceeds the scope of authorised
18 replies and constitutes an abuse of the Rule 76 mechanism, and it
19 should be disregarded accordingly. Instead of addressing any new
20 issues, the filing repeats information or attempts to impermissibly
21 supplement and refine prior submissions.

22 I will now turn to the first relief requested which was exhibits
23 associated with witnesses.

24 Having a complete witness package as soon as possible is
25 obviously ideal. Of course it is and no one is disputing that. The

1 SPO is in the process of providing the very materials that are being
2 requested, and we are doing so as quickly and as efficiently as is
3 possible in the circumstances. With the exception of two items, all
4 of the examples provided in the Defence filings of incomplete witness
5 packages are interviews that were disclosed as part of the indictment
6 supporting material.

7 Following the Initial Appearance and in accordance with the
8 rules, the SPO promptly disclosed indictment supporting material. It
9 has never been suggested that the indictment supporting material
10 comprised complete witness packages. The whole purpose of the
11 subsequent pre-trial disclosure process that we are currently engaged
12 in is to provide the additional materials intended to be relied upon,
13 including additional witness related materials which were not already
14 contained in the indictment supporting material, and that is what we
15 are doing.

16 Currently we are working on prior witness statements, and in due
17 course we will move to other witness-related exhibits. The SPO has
18 never refused to provide this material, and that characterisation by
19 the Thaci Defence is one of a number of misleading submissions in
20 their most recent filing. On the contrary, we are providing the
21 material as fast and efficiently as we can.

22 To be very concrete about what is being requested, the examples
23 provided in the annex to the Thaci Defence filing relate to 19
24 witnesses. Of those, for 11 of the witnesses, the items alleged to
25 be missing include prior statements. For example, if we look at just

1 the first page of the Thaci annex, the first, second, sixth, seventh,
2 and eighth items listed all relate to prior witness statements.
3 Similarly, in pages 1 to 3 of the Krasniqi Defence annex, it
4 identifies allegedly missing witness-related materials. Of the eight
5 witnesses identified, for six of them it is again prior statements
6 that are being requested.

7 We indicated at the last Status Conference, and we have done so
8 again in the context of this one, that we are currently specifically
9 working on providing prior witness statements. This litigation will
10 not enable that to happen any faster, and, in fact, it diverts
11 resources away from effecting disclosure.

12 As for other exhibits, consistent with the undertaking given on
13 an *inter partes* basis, all exhibits associated with Mr. Thaci's
14 interviews have been disclosed. Notably, out of the 54 exhibits, all
15 but six had already been disclosed before the Defence even raised the
16 query. It is anticipated that remaining exhibits associated with the
17 SPO interviews of the other accused will be provided very shortly.
18 In fact, it is likely to occur later this week or if not the start of
19 next week, and that will happen as soon as relevant translations are
20 completed.

21 If there is a disconnect between the parties on this issue, I
22 believe it is a failure to appreciate the very significant degree of
23 front-end processing required before an item reaches the point of
24 disclosure. We have a strict internal process involving, for
25 example, checking translation status, multistage redaction review

1 encompassing both standard and non-standard redactions, often across
2 different language versions, categorisation and tagging of the
3 document for other disclosure purposes, a final Rule 107 check to
4 ensure that the item in question is not subject still to any
5 restrictions, and the checking of descriptions, date, and other
6 relevant Legal Workflow metadata.

7 These steps cannot be bypassed or shortcut. It is, at the best
8 of times, a time-consuming, labour-intensive process, and there is no
9 way around that. This is certainly not the best of times. We are
10 doing it in a context where the majority of our staff continue to
11 work remotely without access to centralised software and databases.
12 This, obviously, hugely increases the logistical burden at every
13 stage of the process.

14 Notwithstanding that, we are continuing to regularly disclose
15 material in accordance with the applicable schedule and well in
16 advance of relevant deadlines. The Defence will be receiving the
17 remaining witness-related materials at the very earliest time that it
18 is possible for the SPO to provide them.

19 Would you like me to stop there and we can do this issue first?

20 Thank you.

21 JUDGE GUILLOU: Thank you, Madam Prosecutor.

22 Mr. Hooper, please.

23 MR. HOOPER: [via videolink] Thank you. And may I thank

24 Ms. Lawson as well.

25 First of all, can I make it quite plain that we, at least to the

1 extent that it's possible, understand that there are logistical
2 difficulties in terms of presentation of evidence within an
3 electronic court system, and that those difficulties are, doubtless,
4 aggravated for the Prosecution as much as they are for the Defence by
5 the difficulties, the health difficulties and restrictions that we
6 are all having to work under.

7 There may be, perhaps, in what's an increasingly non-collegiate
8 atmosphere, a failure for one side, to some extent, to understand the
9 other. However, all we seek, and seek without posturing, is a
10 disclosure system whereby the Prosecution provide the Defence with
11 accessible material. And I suppose at the root of this is that we
12 are currently being presented with a disclosure system that is
13 fractured and unhelpful and piecemeal, and this is something that I
14 think Your Honour has heard as a basis of concern from the Defence
15 consistently.

16 If we have a disclosure system which is, perhaps for various
17 reasons, to be a rolling disclosure system within parameters, time
18 parameters which now extend not just to May but to July, and looming
19 behind that an urgency dictated by the Prosecution as to early trial,
20 which, as you know, we strongly resist for all the good and practical
21 reasons that have been laid before you before, and that's
22 self-evident, but if we are going to have a rolling form of
23 disclosure, and we've got witnesses A, B, C, D, E, and F, say, at the
24 moment we're getting bits and pieces of A, B, C, D, E, and F. What
25 effect does that have on the Defence?

1 The Prosecution, I see, in the response to our filing say, well,
2 they're exaggerating, to put it mildly. I think their words were
3 rather more caustic than that in respect to the effect that has, the
4 knock-on effect that has on investigations. But the reality is, of
5 course, it all hinges and plays together.

6 If we're going to have rolling disclosure, isn't the most
7 practical way of dealing with it in terms of providing us, the
8 Defence, with sensible disclosure, accessible and complete, is to
9 deal with witness by witness by witness? Don't give us A, B, C, D,
10 and F in random manner. Give us witness A, packaged witness A, with
11 his interview, as most of them seem to have interviews with the SPO,
12 and the associated documents shown in that interview or associated
13 with the witness, and then we can review that witness, and we don't
14 have to return to that witness at some distant time in the future to
15 read what might be a lengthy interview now twinned with its exhibits.

16 I see the Prosecution made the point in their response that, of
17 course, Your Honour, when it came to confirming the indictment, was
18 able to read, for example, Mr. Thaci's interviews without the benefit
19 of having the exhibits. Well, that may be so, but Your Honour is
20 discharging a completely different task to us.

21 Your Honour, I said at the outset that I'd address general
22 matters as well at the outset, and I want to be succinct. And the
23 way that I've prepared these matters has been done with the
24 assistance of Sophie Menegon, who is our keeper of the gate and
25 rather better at this than myself. Unfortunately, she can't be here

1 today, perhaps because she had a baby a few days ago - and I wish her
2 congratulations on that, as she knows, and to baby Leo - but she's
3 watching me, I'm sure, with keen interest.

4 Can I go back, because it's all part and parcel of a problem,
5 and go back, if I may, with Your Honour, to the matters that were
6 raised, because this predates, of course, the recent or, relatively,
7 the last filing we made to Your Honour on this, and the only filing
8 we made on this, the matters raised at the Status Conference, the
9 third Status Conference, and in the filing that preceded it, F123.

10 Now, certain matters have, of course, been addressed. The
11 chart, for example, that's been resolved and I'm grateful to
12 Your Honour in respect of the order. Before stepping into the
13 disclosure matter, can I just touch on two matters that were raised
14 by Ms. Menegon on the last occasion and which Your Honour hasn't
15 ruled on, and we'd like a ruling, one way or the other, perhaps a
16 matter for Your Honour.

17 We suggested a provisional list of witnesses. The Prosecution
18 must have some idea of the witnesses they're likely to call. It'd be
19 helpful if we had that list, understanding that it is what it would
20 be, a temporary list.

21 Secondly, linking witnesses to documents in Legal Workflow, I'm
22 grateful to the Prosecution because they're now doing it, and my
23 thanks. However, there are some 3.000 documents, and some of them do
24 not have a number assigned. Some, I'm told by the Prosecution,
25 that's because they're subject to redactions through protection

1 orders. I've struggled to find how that explains it, because linking
2 a document to a number is hardly going to reveal anything.

3 But in any event, there's a need here for catch-up, because
4 previous disclosure by the Prosecution, 1(b) disclosure, hasn't had
5 the -- necessarily had documents linked to a witness through the
6 number, and we'd ask that the Prosecution engage in catch-up and
7 refile previous packages, having checked that they are, in fact, fit
8 for purpose, essentially.

9 Now, can I turn to -- in fact, actually, Your Honour, if I can
10 just turn, I think Your Honour has, and my friends have, a copy of
11 either our recent motion on disclosure, requesting disclosure and its
12 relief, or, if not that, the reply that was submitted yesterday.

13 JUDGE GUILLOU: Mr. Hooper, if I may, we will first now stick to
14 your first relief sought. You already raised this third or the
15 fourth, I can't remember the exact order. But if we can just --
16 we'll do another round of discussion about the others, if you don't
17 mind.

18 MR. HOOPER: [via videolink] Well, I'll tell you -- certainly, of
19 course, I'm entirely in Your Honour's hands. But I think if I was to
20 address the requested relief, I was going to do it in reverse order,
21 and Your Honour will see why, because it will cut out quite a lot of,
22 I think, subsequent discussion.

23 So, for example, I'll give you an example. The fourth request
24 on the order that Your Honour saw that we requested in terms of
25 relief was for the SPO to provide the witness numbers for all

1 materials, and they're doing it now. And I've really referred to
2 that, and we've merely asked them to catch-up.

3 So I can perhaps assist, Your Honour, perhaps, in respect of
4 four. In working backwards, I think, for example, if I can turn to
5 the audio-visual recordings request, it is undoubtedly the case that
6 the Defence are entitled to it, but I understand that there are
7 difficulties, because of redactions, perhaps, and it's not an
8 urgent -- it's not a priority. So that can go on a back burner as
9 far as we are concerned.

10 So, Your Honour, I've stepped over at least two of the four. I
11 hope that assists Your Honour rather than doesn't assist Your Honour.

12 And in respect of relief 2, this is a request that Your Honour
13 order the SPO to provide, it reads, "the complete and accurate ERN
14 numbers of any exhibit referred to in a witness interview." I
15 understand that one of the problems here is that the ERN numbers --
16 there is various -- some documents take multiple forms and have -- so
17 the same document, in other words, appears in different formats or
18 the same format but in different places and receives a different ERN
19 number. So when the Prosecution tried to link a document through an
20 ERN, it doesn't necessarily translate to the ERN number that we
21 expect, so we can't find it. So that seems to be a technical
22 difficulty due to repetition of documents.

23 What we simply suggest - there's 3.000 documents - is that the
24 Prosecution provide us, as they did, for example, with Mr. Thaci
25 recently, with a table of ERN numbers relating to each witness. I

1 don't anticipate that will be difficult. I'm sure they have it,
2 because it would have to necessarily be part of their system. And if
3 they do that, then we step over this problem.

4 So, Your Honour, I'm sorry, I sort of have gone backwards in
5 that, but I hope Your Honour sees why, that, in fact, matters that
6 have been raised and which through the filings have been discussed
7 can perhaps have a relatively easy answer to it.

8 Now, I notice in Mr. Smith's rather acerbic response to our
9 filing, he ends up on the note that the Defence should be cautioned
10 because we put our submission without first having sought to resolve
11 the matters *inter partes*. I don't find that a particularly
12 collegiate statement.

13 I know different systems and different lawyers from different
14 practices have different ways of appearing and responding to
15 opponents. I hope we can be a little more collegiate than that.
16 It's inappropriate.

17 He also accuses us, the Defence, the Thaci Defence, of
18 posturing. He suggests we are here to build up a record of problems
19 with disclosure. Well, I hope I'm right in saying I've never
20 postured. I'm not that lawyer. Our motion was born of frustration
21 at the manner disclosure is being done. And as I said at the outset,
22 it's piecemeal, random, and dictated entirely by what the Prosecution
23 want to do rather than what is acceptable and digestible for the
24 Defence. And they shelter behind Your Honour's December
25 Framework Decision inasmuch as they say, "Look, merely ask and we

1 give, and in any event, you'll all have everything in proper order by
2 May or July," as it now is. And we say, "Look, that's not an
3 acceptable form of disclosure." And I've said why at the outset of
4 my submission.

5 I don't think there's very much more that, Your Honour, I'd need
6 to say in respect of that. Your Honour has our filing and our reply.
7 And I'm afraid I must again disagree with Ms. Lawson, because our
8 reply isn't specious or anything like that. It's a proper addressing
9 of issues done in order to assist Your Honour.

10 We're not taking points. We're contradicting things that the
11 Prosecution have said in their response, we're putting the record
12 straight, we're trying to help Your Honour, and we're showing you and
13 demonstrating the difficulty. And the main difficulty that arises,
14 as I say, is our request, at item 1 of relief requested, that the SPO
15 disclose all materials and documents relating to an accused or
16 relating to a witness in an interview at the same time as the
17 statement or, as it is, interview.

18 And not only that, but inasmuch as this has not been followed to
19 date, we ask that that's done in respect to all SPO previous packages
20 of disclosure to provide disclosure of all and any material commented
21 upon by any accused within 14 days and in respect of any witness
22 within 28 days. And let's face it, we're now five months from the
23 time Your Honour agreed the indictment.

24 And the Prosecution, as I say, you know, say, oh, we haven't --
25 we deserve to be admonished because we haven't gone *inter partes*.

1 Well, we have gone *inter partes*. We've been consistently good on
2 *inter partes*.

3 But just take the Thaci material -- and it's a good example,
4 because it's so bog basic. Mr. Thaci, as our client, he's
5 interviewed. We ask for the exhibits that were shown to him in the
6 interview, the 6 or 700 pages of interview. He's shown numerous
7 exhibits. We can't make sense of the interview and we can't see the
8 accuracy and provenance of documents unless we're provided them.
9 It's obvious.

10 We asked -- we haven't got it in February. We asked the
11 Prosecution to provide it. They say they'll prioritise it. They'll
12 produce it. But we didn't get it, in fact, until after we served
13 that motion on them. We got it on the 17th, I think, or 18th of
14 March, so a few days ago. Bog basic stuff.

15 And as Your Honour knows, we haven't yet received the documents
16 that were shown to the other accused. And what's strange here, and
17 we refer to this in our reply, is that Ambassador Prosper, who was
18 counsel present through audio-visual link, because he was in the
19 States, and President Thaci, as he then was, made his way to The
20 Hague in order to be interviewed, they provided Ambassador Prosper
21 with a bundle of exhibits they were going to discuss in that July
22 interview on the understanding that he, Ambassador Prosper, gave the
23 SPO his undertaking not to copy it, you know, not to -- not
24 Photoshop, but scan it or whatever when it was on the screen, not
25 to -- you know, not to retain any part of it, and he kept to that.

1 So it's evident, isn't it, that back in July of last year, the
2 Prosecution had a bundle to hand with all the matters they were going
3 to present to Mr. Thaci. I mean, that's obvious, isn't it? So why,
4 when they served the interview, didn't they serve that? And I'm at a
5 loss to understand why not. It's nothing to do with COVID and
6 technical reasons. It's just a failure, really, to see -- they're
7 looking down the wrong end of the telescope at us.

8 So we came to you because a month later we still didn't have it.
9 And more to the point, I'd gone to The Hague to see Mr. Thaci and to
10 discuss the interviews, and I was amazed that three weeks afterwards
11 from my arrival, when I asked where were the exhibits for all these
12 interviews, they weren't there. So I said, "Right. Well, let's go
13 to the Judge and get this sorted out now," because if we don't go to
14 you, Judge, and if you don't make the right orders, we're going to
15 be, you know, going from pillar to post in terms of exhibits.

16 So those are my submissions in respect of the disclosure issue.
17 I'm sorry if I took a little longer than Your Honour may have hoped,
18 but it's difficult to deal with these matters succinctly. But I
19 think, you know, hopefully to one extent and whether a suitable or
20 sufficient order is all water under the bridge.

21 And I stress again, I'm not posturing and I'm not trying to set
22 up, you know, false targets or anything like that with the
23 Prosecution. Our submission, and I know this is shared with my
24 colleagues, is born out of a frustration at the way in which
25 disclosure is being done and we hope that it can be readdressed.

1 Thank you, Your Honour.

2 JUDGE GUILLOU: Thank you, Mr. Hooper. I trust you will be
3 shorter in the other rounds of discussion, then, but I think you
4 raised a lot of different -- a lot of important points.

5 MR. HOOPER: [via videolink] Well, Your Honour, I think that's
6 more or less all I'm -- well, I'll be very short on the other
7 matters. It's normally Mr. Emmerson, of course, who fills the sails
8 here, but I hope that, in fact, you know, I've taken a bit of wind
9 out of those.

10 Thank you very much.

11 JUDGE GUILLOU: Thank you, Mr. Hooper. And please convey my
12 congratulations to Ms. Menegon.

13 MR. HOOPER: [via videolink] She'll be delighted to hear. Thank
14 you.

15 JUDGE GUILLOU: Thank you, Mr. Hooper.

16 Mr. Emmerson, please, and if we can stick to the first relief
17 sought in the motion presented by the Thaci Defence, please.

18 Mr. Emmerson.

19 MR. EMMERSON: [via videolink] I've got very well little to add
20 in relation to that other than to adopt the submissions of
21 Mr. Hooper. Just one point, if I may. I've got two other issues on
22 disclosure that I'd like to raise at an appropriate time.

23 But just at this stage, the allegation by Mr. Smith that the
24 Defence of Mr. Thaci is seeking to lay an evidential foundation for
25 later complaints - in other words, to build up a record of disclosure

1 difficulties - is an allegation of bad faith, and it's not the first
2 time that the Prosecution has descended to making allegations that
3 proper conduct of the Defence in defending our clients according to
4 the law amounts to bad faith.

5 It was an argument raised during the provisional release
6 applications when it was said that the Defence estimative time
7 necessary to prepare for trial was artificially constructed in order
8 to mislead the Court into a view that a provisional release should be
9 granted on proportionately grounds. That is an extraordinary
10 submission to make about professional counsel. It obviously isn't
11 true because, as you know, our position remains the same despite the
12 fact that our clients' provisional release applications have been
13 refused. And as we predicted, the Prosecution is now before you,
14 asking for an extension of time to fulfil its obligations.

15 And I'm not going to say anything further about that at this
16 stage, but the idea - I just want to lay a marker down right now -
17 the idea that the proper conduct, the vigorous conduct of a Defence
18 case should be characterised as some form of obstruction of the work
19 of the Prosecution or the Tribunal reflects extremely badly, not just
20 on the Prosecution but on the Tribunal itself. And so I would ask
21 Mr. Smith to cease making such completely unfounded allegations about
22 proper conduct of the Defence both in relation to the most recent
23 application of Mr. Thaci but much more generally as well.

24 I will have a great deal further to say about that in the light
25 of certain information that has come into my possession at probably

1 at the next Status Conference. But I just want to lay down a formal
2 marker on the record that these suggestions that conduct by the
3 Defence, which is the proper representation of their client's best
4 interests in order to secure a fair trial, is to be characterised as
5 bad faith, it's a disgraceful allegation.

6 JUDGE GUILLOU: Thank you, Mr. Emmerson.

7 Mr. Young, please.

8 MR. YOUNG: [via videolink] Your Honour, I have nothing to add,
9 save to say that we adopt and endorse fully the submissions that have
10 been made by Mr. Hooper and by Mr. Emmerson.

11 Thank you.

12 JUDGE GUILLOU: Thank you, Mr. Young.

13 Ms. Alagendra.

14 MS. ALAGENDRA: [via videolink] Your Honour, we also adopt the
15 submissions made by Mr. Hooper and Mr. Emmerson. But may I defer to
16 Mr. Aidan Ellis to address Your Honour on the issues of disclosure
17 and the request that was made.

18 JUDGE GUILLOU: Absolutely.

19 Mr. Ellis, please.

20 MS. ALAGENDRA: [via videolink] Thank you, Your Honour.

21 MR. ELLIS: [via videolink] Thank you, Your Honour. I can be
22 very brief because the points have already been addressed by
23 Mr. Hooper.

24 But the reason we joined the Thaci request in relation to
25 disclosure is that we are encountering what is a real practical

1 obstacle when reviewing the material that is presented. Any lawyer
2 reading an interview by the Prosecution with a witness and coming
3 across a document referred to in it, surely the first thing any
4 lawyer does is to try to find that document to see what it is,
5 whether what the witness has said about it is credible, and time and
6 time again we're finding that we can't do that.

7 And at the heart of the problem is what Mr. Hooper characterised
8 as a piecemeal approach to disclosure. It would be far easier to
9 deal with this material if it was provided on a witness-by-witness
10 basis rather than, at the moment, we have the SPO interview, at some
11 point in the future we will get prior statements of witnesses, and at
12 some point further in the future we'll get another piece of the
13 jigsaw with other documents that are referred to in the interviews,
14 meaning that we have to keep going backwards and forwards to the
15 interviews with each new batch of disclosure that comes.

16 That really isn't assisting the Defence in this process at all,
17 and it's for that reason that we agree with the points made by both
18 Mr. Hooper and Mr. Emmerson, and we adopt those, Your Honour.

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

20 So before giving back the floor to the Prosecution, let us try
21 to resolve the difficulties raised by the Defence, in good faith, in
22 a collaborative manner, and if possible not in a too-confrontational
23 fashion.

24 So first I recall that in accordance with Rule 103 of the rules,
25 any potentially exculpatory information is to be disclosed

1 immediately as soon as it is in the custody, control, or actual
2 knowledge of the SPO. I also note that in accordance with my latest
3 ruling on the matter, the SPO has until 23 July to fulfil its
4 Rule 102(1)(b) disclosure obligations.

5 That said, I also agree with the Defence that fully grasping the
6 evidence provided by a witness can be particularly difficult without
7 being able to review all documents and material that the witness has
8 referred to in a statement or interview.

9 Therefore, in order for the Defence to be able to expeditiously
10 prepare for trial, it is useful for the SPO to prioritise the
11 disclosure of items referred to in witness statements and interviews
12 both when disclosing such material in the future as well as in
13 relation to those disclosed so far.

14 Moreover, I would like to encourage the SPO, to the extent
15 possible, to ensure that in the future witness interviews and their
16 respective translations are disclosed in the same disclosure batch.
17 This will help the Defence in being more expeditious in its work and
18 will be beneficial for the timeline of the pre-trial phase in
19 general.

20 Also in the future, should any of the Defence teams be unable to
21 locate an item referred to in a witness interview, they shall, first,
22 contact the SPO in this respect and only seize the Pre-Trial Judge if
23 the matter cannot be solved *inter partes*.

24 Madam Prosecutor, after this debate, do you wish to add anything
25 on this first relief sought in the Thaci Defence request, please?

1 MS. LAWSON: Thank you, Your Honour.

2 All I can do is repeat that the SPO is engaged in precisely that
3 exercise, of backfilling complete witness packages. We have
4 indicated that we would do so. We, of course, take note of
5 Your Honour's direction given just now, and we will continue to
6 prioritise doing so.

7 As for providing witness interviews in the same disclosure
8 package, that is something that we endeavour to do. There was a
9 small number of examples highlighted by the Krasniqi Defence where
10 that did not occur. Almost all of those examples were taken from
11 divisions between disclosure Batches 9 and 10. As you will recall,
12 those were disclosures relating to indictment supporting material
13 that were disclosed within three hours of each other and for which we
14 specifically encountered considerable technical difficulties in
15 generating the packages. It was never the SPO's intention that those
16 would be separate disclosure packages.

17 You had also indicated that, where possible, translations would
18 be contained within the same disclosure package. That is not always
19 going to be possible, because we are still working on translations of
20 prior witness statements and, therefore, Albanian translations are
21 likely to be disclosed at a later stage.

22 Insofar as Mr. Hooper's submissions related to other relief
23 sought, I will hold on those and address them later. I would like
24 to -- with respect to the submission that Defence counsel should be
25 advised to raise matters *inter partes* in the first instance, our

1 submission on that was supported by a huge amount of relevant
2 jurisprudence, as indicated in footnote 7 of our response. And, in
3 fact, Mr. Hooper's submissions here today have themselves highlighted
4 that many of these issues have been or can be addressed on an
5 *inter partes* basis.

6 With regard to Veseli Defence counsel's submissions on
7 allegations of good or bad faith, I am not going to descend into
8 engaging in that other than to note that it comes from a counsel who
9 has, himself, repeatedly made such baseless allegations against both
10 the SPO and individual members of the Office.

11 Thank you.

12 JUDGE GUILLOU: Thank you, Madam Prosecutor.

13 I don't see any request to take the floor again, so we will now
14 move to the ERN numbers.

15 MR. HOOPER: [via videolink] Yes, I'm waving furiously,
16 Your Honour.

17 JUDGE GUILLOU: Very briefly then, Mr. Hooper, because now we
18 are going to go through the three other reliefs of your request. So
19 very, very briefly.

20 MR. HOOPER: [via videolink] I'm glad to hear about the packaging
21 for each witness. There needs to be catch-up, too. That's all.

22 JUDGE GUILLOU: Thank you, Mr. Hooper.

23 Let me now move to the ERN numbers.

24 The Thaci and Krasniqi Defence request an order for the SPO to
25 provide a complete and accurate ERN number of any exhibit referred to

1 in an accused or a witness interview within the transcript of such
2 interview or statement. The Defence also requests that if this
3 approach has not been followed to date, any deficiencies shall be
4 remedied within four weeks.

5 I thank the Defence for raising this issue, as well as the SPO
6 for its explanations, and, as far as I understand, fixing the
7 problem. I would now like to ask the parties to confirm whether the
8 issue has been resolved.

9 Madam Prosecutor?

10 MS. LAWSON: Your Honour, I believe that this particular issue
11 has not yet been fully resolved. Item 4, which we will get to in due
12 course, has been resolved.

13 On this one, because all of the items referred to in interviews
14 have not yet been disclosed or were disclosed as part of indictment
15 supporting material, linkage of those items is not yet complete.
16 However, we will be disclosing those items as a matter of priority,
17 as Your Honour indicated, and we will be linking them to the relevant
18 witnesses, and the Defence will, consequently, be informed precisely
19 of the items in question, which I believe will address the concern.

20 The examples provided in the Thaci Defence filing were
21 difficulties encountered in identifying exhibits relating solely to
22 Mr. Thaci's interviews. Those items have all been disclosed together
23 with any relevant explanations. Paragraph 12 of the Thaci Defence
24 reply, which states that 54 exhibits used in Mr. Thaci's July
25 interview were only disclosed on 17 March, is, I'm afraid, an example

1 of another seriously misleading submission.

2 First, there were not 54 exhibits used during the July
3 interview; 15 exhibits were used in January and 39 were used in July.
4 Second, all of the exhibits used during the July interview were
5 disclosed as part of the indictment supporting material. They were
6 contained in disclosure packages 9 and 13 provided in December 2020.
7 And filing 12, which is available to the Defence, specifically
8 identified the exhibits related to the July interview.

9 Not only were these items disclosed but, as Mr. Hooper
10 indicated, the SPO has even provided the Defence on an *inter partes*
11 basis with a detailed chart listing each exhibit used with Mr. Thaci,
12 the ERN reference for it, the interview it was used in, and the
13 disclosure package it was disclosed in, so I'm afraid there really
14 was no excuse for the inaccuracy of that submission.

15 Other than that, as I indicated, I believe this issue will be
16 resolved as we continue to disclose related items and link them to
17 relevant witnesses.

18 Thank you.

19 JUDGE GUILLOU: Thank you, Madam Prosecutor.

20 On this issue of the ERN numbers, Mr. Hooper.

21 MR. HOOPER: [via videolink] Well, as I suggested earlier, an
22 antidote to the difficulties that have arisen would be for the
23 Prosecution to simply produce their table, or a table, of ERN numbers
24 associated with each witness. That gets rid of the problems and the
25 problems of duplication that I understand may be at root.

1 I don't accept Ms. Lawson's résumé of our paragraph 12, and it's
2 a fine line between, was it, 19 and 34 -- well, 54 exhibits were not
3 produced. And may I say I disagree with her about our filing 12.
4 There's been no clear trail linking interview exhibit with the
5 exhibit.

6 JUDGE GUILLOU: Thank you, Mr. Hooper.

7 Mr. Emmerson, please.

8 MR. EMMERSON: [via videolink] Nothing to add.

9 JUDGE GUILLOU: Thank you, Mr. Emmerson.

10 Mr. Young, please.

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

12 JUDGE GUILLOU: Thank you, Mr. Young.

13 Ms. Alagendra, please.

14 MS. ALAGENDRA: [via videolink] Mr. Ellis will address the issues
15 on disclosure, Your Honour.

16 JUDGE GUILLOU: Sorry, Mr. Ellis.

17 MR. ELLIS: [via videolink] Your Honour, we support the
18 submissions made on behalf of Mr. Thaci that it would be helpful to
19 provide, and indeed necessary for the Defence to understand the
20 material, to provide a table with the ERN numbers for each witness.
21 That would solve the problem, would it not?

22 JUDGE GUILLOU: Thank you, Mr. Ellis.

23 Madam Prosecutor, on this proposal of Mr. Ellis, and also do you
24 think the issue raised could be fixed before the next Status
25 Conference?

1 MS. LAWSON: As for the request for a table, this is not
2 something that we have available readily and it's not something that
3 we could just print off and provide. Otherwise, we would be happy to
4 do so. There is a degree of -- a significant degree of manual work
5 involved in this.

6 As I submitted, I do believe that once the items are disclosed
7 and linked to the witness, this will largely address the issue. And
8 if it doesn't, we will be happy to discuss anything further that may
9 be required at that stage in order to facilitate the Defence's
10 understanding.

11 And there was a second part to your question. Timing.
12 Timing --

13 JUDGE GUILLOU: Timing.

14 MS. LAWSON: -- before the next Status Conference. I'm not in a
15 position, actually, to answer that immediately without going back to
16 look at the volume of items at issue. In respect of items that have
17 already been disclosed, we will certainly consider carefully
18 internally as to whether that can be done. And if it can be done, we
19 will do it in respect of those items.

20 Thank you.

21 JUDGE GUILLOU: Thank you, Madam Prosecutor.

22 On this topic, I invite the parties to continue their
23 *inter partes* discussions so that the problem can be solved, if
24 possible, before the next Status Conference.

25 Let me now move to the third point raised in the Defence

1 submissions.

2 The Thaci and Krasniqi Defence request an order for the SPO to
3 disclose all audio-video recordings for all witness and accused
4 interviews. The Defence also requests that if this approach has not
5 been followed to date, all audio-video recordings relating to witness
6 and accused interviews shall be disclosed within four weeks.

7 I would like to hear the parties on this issue. I would notably
8 like the SPO to indicate whether such audio-visual recordings exist
9 for all witnesses, and I would also invite the SPO to further
10 elaborate on the practical and technical challenges that the
11 application of redactions to audio-video recordings may pose.

12 Madam Prosecutor.

13 MS. LAWSON: Thank you, Your Honour.

14 Again, this wasn't a matter that had been raised *inter partes*
15 and, indeed, it was a request that was made without indicating a
16 legal basis or any substantiation.

17 In respect of whether there are audio-video recordings for all
18 witness interviews, no, there aren't. There are audio-video
19 recordings for a majority of interviews that the office has
20 conducted. And where transcripts have been disclosed, they are
21 produced from audio-video recordings and consequently a recording
22 does exist.

23 The Thaci Defence, in their reply, seek to rely on one ICC
24 decision from 2010, and the reliance on that decision is misplaced
25 for a number of reasons.

1 First, the decision was effectively contradicted by subsequent
2 jurisprudence, including, amongst others, the multiple decisions
3 cited in paragraph 16 of our response. But second, and perhaps more
4 importantly, the Katanga decision in question related to disclosure
5 of audio recordings in a context where only a signed witness
6 statement had been disclosed and not a word-for-word transcript.
7 Here, the situation is very different as the Defence have been
8 provided with both English and Albanian transcripts, reflecting the
9 words spoken in the interview.

10 With regard to the practical difficulties involved, these are
11 relatively significant because any redactions that are being applied
12 to the transcripts that are being disclosed would necessarily also
13 need to be applied to the recordings in order to ensure that the
14 protective measures remained effective. That is not an easy thing to
15 do. It involves specialised software, which I don't believe the
16 office has, or at least not in a form that would facilitate us doing
17 this. And it applies not only where there is delayed disclosure of
18 protected witness but to all transcripts, even where standard
19 redactions apply. So this is not something that can be made readily
20 available.

21 I believe those are my submissions on that topic. There was one
22 point -- sorry, well, other than to just note that, of course,
23 Mr. Hooper has now indicated that this is not a priority for them
24 right now.

25 Thank you.

1 JUDGE GUILLOU: Thank you, Madam Prosecutor.

2 Mr. Hooper, please.

3 MR. HOOPER: [via videolink] Yes, I'm afraid I have to disagree
4 with Ms. Lawson again. I'm not picking on her. If she was part of
5 my team, I wouldn't have her having to carry the burden of everything
6 all the time, so I'm sorry.

7 But it's logical that if there's available audio, the Defence
8 should be provided it. And looking at selective jurisprudence
9 doesn't really help. The MICT, for example, the Mechanism, they
10 provide the audios. What's the point of them otherwise? Is it just
11 for the benefit of the Prosecution?

12 I know of a case, for example, where a word was translated from
13 one language into the English as "witness." In fact, the person
14 hadn't said "witness," they had said "person," but it is on the word
15 "witness" that they'd been indicted. So, you know, having the
16 ability to check is important.

17 The other thing is this: I agree. I understand those
18 difficulties. I've said some time ago that they actually can go on
19 the back burner, to some extent. But if you're going to read
20 through, perhaps, a lengthy interview and check it and you're going
21 to have an audio, then what you do is you play the audio and you
22 listen to the audio as you read the interview. So that's why you
23 want the audio when you get the interview. Otherwise, what's the
24 point of having these audios? It's to check accuracy.

25 The fact that we've got translations from Albanian to English, a

1 lot of the translations at this Court have not been particularly
2 good. We need the transcripts -- sorry, not the transcripts. We
3 need the ability to listen and to have people skilled in the language
4 to listen and not to have to keep going to the Prosecution to ask for
5 a particular tape at a particular time.

6 Thank you.

7 JUDGE GUILLOU: Thank you, Mr. Hooper.

8 Just a quick question, Mr. Hooper. Because you are, rightly so,
9 pointing the issue of the risk of errors in translation. Do you
10 really need the audio-visual for that? If you have the original
11 version, for example, in Albanian, and also the original version of
12 the transcript translated in English, wouldn't it be enough to check
13 any error related to translation?

14 Microphone, please. Microphone. Now we don't see your video,
15 so microphone and video, Mr. Hooper, please. I think -- now we see
16 you, but we don't hear you yet. No, your microphone is still off.
17 Sorry.

18 MR. HOOPER: [via videolink] I was going to say --

19 JUDGE GUILLOU: Yes, that's it.

20 MR. HOOPER: [via videolink] -- I was muted. Yes, I suppose so,
21 but it's so much easier to -- it's the longer path, isn't it, to do
22 it like that, transcript to transcript. We just don't know if, in
23 fact, the original transcript is accurately the transcript. We need
24 the audio.

25 JUDGE GUILLOU: Thank you, Mr. Hooper.

1 Mr. Emmerson, please.

2 MR. EMMERSON: [via videolink] Nothing substantial, other than to
3 make the rather obvious point that when you're listening to an audio,
4 particularly if the interview has been conducted via an interpreter,
5 it's no doubt possible that errors creep in the interpretation of the
6 person being interviewed's speech. So that you can only get from the
7 tape.

8 And so if one is dealing with an important passage where precise
9 words used are important to check, one of the things that's important
10 to check, from the Defence point of view, is whether or not the words
11 of the witness or interviewee were accurately translated in the
12 course of the interview.

13 JUDGE GUILLOU: Thank you, Mr. Emmerson.

14 Mr. Young, please.

15 MR. YOUNG: [via videolink] Yes, very briefly, just to say this:
16 Clearly Mr. Hooper and Mr. Emmerson are right in saying that we have
17 to check for accuracy. It's not simply about accuracy, although
18 that's crucial. It's also, when you're doing an audio-visual,
19 utterly crucial to consider the intonation and the demeanour of the
20 witness or the suspect, and a lot can be inferred on occasions from
21 intonation and demeanour. So it's essential to have that as well as
22 the ability to cross-check and cross-reference with the transcript,
23 because, as Mr. Hooper says, the transcript may be in error.

24 JUDGE GUILLOU: Thank you, Mr. Young.

25 Mr. Ellis, please.

1 MR. ELLIS: [via videolink] Your Honour, nothing to add. We
2 support the request for the reasons given by all three of my learned
3 colleagues.

4 JUDGE GUILLOU: Thank you, Mr. Ellis.

5 Madam Prosecutor, do you want to say anything?

6 MS. LAWSON: I would just like to provide one quick
7 clarification.

8 A number of the counsel have referred to the need to check
9 interpretation or translation, but for all interviews conducted in
10 Albanian, the transcripts provided are not translated transcripts.
11 The original Albanian spoken has been transcribed and disclosed, and
12 the original English spoken has been transcribed and disclosed. So
13 any interpretation or translation errors are apparent from the
14 transcripts which have been disclosed.

15 Thank you.

16 JUDGE GUILLOU: Thank you, Madam Prosecutor.

17 I intend to issue an oral order on this matter at the end of
18 this hearing.

19 Let me now move to the issue of witness numbers, which is the
20 fourth relief sought in the Defence request.

21 The Thaci and Krasniqi Defence request an order for the SPO to
22 provide the witness numbers for all materials and documents relating
23 to witnesses whose identities have been withheld from the Defence.
24 The Defence also request that if this approach has not been followed
25 to date, any deficiencies shall be remedied within four weeks.

1 I would first like to ask the SPO to confirm whether this,
2 indeed, has been done in all instances except for where it cannot be
3 done due to protective measure concerns, and I would also like the
4 SPO to confirm that the small number of instances where this has not
5 been done concerns witnesses for whom protective measures have
6 already been granted.

7 Madam Prosecutor.

8 MS. LAWSON: Yes, Your Honour, that is the case. As the Thaci
9 Defence indicated in their submissions on the first agenda item, the
10 SPO has addressed this matter and has done what was necessary in
11 order to provide codes for the small number of cases in which they
12 were not provided.

13 The Defence has indicated that catch-up needs to be done, but it
14 has actually already been done and was done as soon as the issue was
15 brought to our attention.

16 As indicated in our response, all but six Rule 102(1)(b) items
17 have already been disclosed with relevant witness codes. For those
18 six, they cannot be linked at this stage due to protective measures,
19 and they relate to witnesses for whom protective measures have
20 already been granted.

21 In respect of Rule 102(1)(a) material, we reviewed the
22 descriptions of all statements disclosed as part of that material.
23 And in Disclosure Package 25, we redisclosed 36 items with codes
24 included. So we reviewed not just the specific examples that have
25 been brought to our attention by the Defence but all statements of

1 protected witnesses that were included in indictment supporting
2 material, so do I believe that this issue has been resolved.

3 Thank you.

4 JUDGE GUILLOU: Thank you, Madam Prosecutor.

5 Mr. Hooper, please.

6 MR. HOOPER: [via videolink] Yes, it's been resolved. Thank you.

7 JUDGE GUILLOU: Thank you, Mr. Hooper.

8 Mr. Emmerson, please.

9 MR. EMMERSON: [via videolink] Nothing to add.

10 JUDGE GUILLOU: Thank you.

11 Mr. Young, please.

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

13 JUDGE GUILLOU: Thank you, Mr. Young.

14 Mr. Ellis, please.

15 MR. ELLIS: [via videolink] Nothing to add. Thank you,

16 Your Honour.

17 JUDGE GUILLOU: Thank you very much.

18 As a last point in relation to these filings, I note that the
19 Thaci Defence reply has been filed confidentially; however, the Thaci
20 Defence indicated that it has no objection to its reclassification as
21 public.

22 I would now like to ask the SPO whether they have any objection
23 to the reclassification of the filing F236 as public?

24 Madam Prosecutor.

25 MS. LAWSON: Your Honour, I believe it's paragraph 15 that

1 discusses examples of evidence of certain witnesses that had
2 previously been contained in the annex to the Defence's original
3 request, so we would, please, request that a public redacted version
4 be filed, redacting relevant portions of that specific paragraph. I
5 believe it's 15. Yes, it is.

6 Thank you.

7 JUDGE GUILLOU: Thank you, Madam Prosecutor.

8 Mr. Hooper, do you want to say anything on this?

9 MR. HOOPER: [via videolink] Well, just why does it need
10 redacting, number 15? I leave it to Your Honour, but it just refers
11 to witness numbers. There is no witness name there and there is
12 no -- you know, there's reference to a drawing or landmarks. There's
13 nothing that would lead anyone to identify anyone.

14 JUDGE GUILLOU: Thank you, Mr. Hooper.

15 Madam Prosecutor, do you want to elaborate on this point of
16 paragraph 15?

17 MS. LAWSON: Your Honour, the paragraph does describe specific
18 exhibits, drawings, photographs, and other items used with the
19 individual witnesses, including references to the ERNs of the witness
20 transcripts. This, obviously, is confidential information at this
21 stage. However, we leave it to Your Honour's discretion as to
22 whether or not you consider a redaction is necessary in this
23 instance. Thank you.

24 JUDGE GUILLOU: Thank you, Madam Prosecutor.

25 Very briefly, Mr. Hooper.

1 MR. HOOPER: [via videolink] Can my learned friend point out one
2 item, such as she's described?

3 JUDGE GUILLOU: Sorry, Mr. Hooper, can you repeat? I'm not sure
4 we all understood here. Maybe it was the broadcast.

5 MR. HOOPER: [via videolink] My friend refers to the fact that
6 there are specific items referred to, but can she point to one that
7 really could identify anyone? There's reference to an undisclosed
8 map. Is that actually -- or ten undisclosed photographs. Where on
9 earth? You see, I think the SPO seems to be going over the top with
10 redactions, and this is a typical example of the mentality.

11 I'd ask Your Honour to strain through this paragraph for
12 anything that could be slightly - slightly - revelatory.

13 JUDGE GUILLOU: Thank you, Mr. Hooper.

14 Madam Prosecutor, do you want to add anything? As you wish.

15 MS. LAWSON: No, Your Honour. I am leaving it to your
16 discretion. But I do note that there are, for example, direct quotes
17 from a witness' transcript. Thank you.

18 JUDGE GUILLOU: Thank you. I will rule on this matter.

19 I now turn back to the Prosecutor, because we are now going to
20 raise the last point in the disclosure item of the agenda related to
21 the disclosure calendar.

22 In its submission for the Status Conference, the SPO requests
23 that the deadline for the provision of the detailed notice under
24 Rule 102(3) be extended to Friday, 25 June 2021.

25 I would like to give the floor to the parties in relation to

1 this request, starting with the SPO.

2 Madam Prosecutor.

3 MS. LAWSON: Thank you, Your Honour.

4 In relation to the Rule 102(3) notice, the purpose of the
5 requested adjustment to deadlines is to enable the Rule 102(3)
6 process to fulfil its proper function in addressing all items
7 potentially material to Defence preparations after disclosure of
8 evidence intended to be relied upon at trial and of potentially
9 exculpatory items.

10 As such, it is necessary, as we have indicated both in prior
11 filings and in prior Status Conferences, for the SPO to be at a
12 relatively advanced stage of the Rule 102(1)(b) disclosure process in
13 order to provide the Defence with that notice. In fact, having the
14 processes run directly in parallel would significantly derail the
15 Rule 102(1)(b) and Rule 103 processes by resulting in duplicative
16 disclosures and conflicting deadlines for disclosure of the same
17 material.

18 It would not be an efficient use of the time for any of the
19 parties for the Defence teams to have to formulate requests or for
20 the SPO to be responding to those requests in respect of material
21 which may already be due to be disclosed pursuant to one of the other
22 rules.

23 Thank you.

24 JUDGE GUILLOU: Thank you, Madam Prosecutor.

25 Mr. Hooper, please.

1 MR. HOOPER: [via videolink] Nothing to add. Thank you,
2 Your Honour.

3 JUDGE GUILLOU: Mr. Emmerson, please.

4 MR. EMMERSON: [via videolink] Likewise, Your Honour.

5 JUDGE GUILLOU: Thank you.

6 Mr. Young, please.

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

8 JUDGE GUILLOU: Thank you, Mr. Young.

9 Mr. Ellis, please.

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

12 JUDGE GUILLOU: Thank you very much. I will issue an oral order
13 on this matter at the end of the hearing.

14 I now turn back to the Prosecution to ask about the status of
15 its ongoing investigations; in particular, whether you can provide a
16 further update on the estimated date of completion for outstanding
17 investigative steps, and whether you can provide an estimated time of
18 when you will be able to file your pre-trial brief in light of the
19 disclosure calendar set out in the Framework Decision and amended in
20 the Rule 109(c) decision.

21 And as I did last time, I stress that I do not invite any of the
22 parties to give submissions on the date of the commencement of the
23 trial today.

24 Madam Prosecutor.

25 MS. LAWSON: Your Honour, I will respect the direction you have

1 just given in terms of curtailing my submissions. I would simply
2 like to reiterate the importance of maintaining a reasonable
3 relationship between those deadlines.

4 And as indicated in our written submissions, we would envisage
5 being able to provide the Rule 95(4) materials by the second week of
6 September 2021 in the context in which that submission is given in
7 the written submissions.

8 The reason for this change in timing is, obviously, the revised
9 disclosure schedule necessitated by Your Honour's recent decision on
10 recategorisation, and given that the majority of the office's
11 resources will now continue to be primarily focused on disclosure
12 obligations up until, approximately, the end of July in accordance
13 with the schedule laid out, and taking of account of the additional
14 subcategorisation burden, that is the earliest date by which we would
15 envisage being in a position to produce those materials.

16 Thank you.

17 JUDGE GUILLOU: Thank you, Madam Prosecutor.

18 Mr. Hooper, do you want to add anything on this topic?

19 MR. HOOPER: [via videolink] Yes, I do. Yes, if I may.

20 I'm puzzled by the Prosecution's submission in respect of
21 investigations for two reasons:

22 First of all, what's the need for it at this stage, these
23 investigations? Here we are, if we look at the timeline,
24 coincidentally, today, 24 March, is 22 years since NATO started its
25 bombing offensive to stop the Serbian aggression against what was

1 later to become Kosovo. That was 22 years ago. Here we are in 2021
2 with an indictment that's been -- that appears labouriously laid
3 before you.

4 What is the need and the basis for the Prosecution conducting
5 further investigations? I mean, I assume it's in order to fatten up
6 a rather thin brief. And if that's the case, how can they say it
7 will no way in hinder the Court in setting a trial date? How can
8 they say that? These are purposeful, in my estimate, fattening up
9 investigations. How can they say that's not going to have a knock-on
10 effect on the trial date? But, anyway, I won't go any further into
11 that.

12 Thank you, Your Honour.

13 JUDGE GUILLOU: Thank you, Mr. Hooper.

14 Mr. Emmerson, please.

15 MR. EMMERSON: [via videolink] Your Honour, at the last Status
16 Conference you were kind enough to indicate that you did not require
17 a written filing in support of my application, made orally at the
18 last Status Conference, that you should exercise your authority to
19 disconnect the juncture that the Prosecution is seeking to maintain
20 between its pre-trial brief filing and the start date of the trial
21 without making any comment on the start date of the trial, because
22 you know the Defences' position on that question.

23 That issue remains outstanding, and I can hear from the
24 submissions made by the Prosecution this morning that they certainly
25 haven't heard the message that there needs -- as far as the Defence

1 is concerned, proper preparation means the earliest possible service
2 of the pre-trial brief.

3 I believe that the application was made to you on the last
4 occasion on the basis that it should be served at the earliest part
5 of the summer at the latest. We would maintain that and I would ask
6 you to rule upon it today. We are not going to engage in the
7 appropriate date for the start of the trial, but the importance of
8 the service of the pre-trial brief will not have escaped Your Honour.
9 It imposes, at least provisionally, some order on what has been
10 described to you, I think accurately, as somewhat piecemeal and, from
11 a Defence point of view, confusing basis on which the evidence is
12 being drip-fed and disclosed.

13 And so we would say the Prosecution needs, by mid-June at the
14 latest - we would say May, but mid-June at the latest - to nail its
15 colours to the mast and say what its case against these individual
16 accused is in the form of a detailed pre-trial brief. That's
17 entirely without prejudice to what the start date of the trial should
18 be.

19 I mean, we have warned from the outset against an objection by
20 the Prosecution that the timetables being put forward by the
21 Prosecution, generally, were inevitably going to result in slippage,
22 and here we are. They are resulting in slippage. But the
23 Prosecution continues to maintain, as Mr. Smith was constrained to
24 acknowledge at the last hearing, that it wishes only to file its
25 pre-trial brief at the last possible moment before the trial begins.

1 And so we appreciate Your Honour's injunction, and I'm certainly
2 not seeking to go behind it. In fact, quite the reverse. I'm
3 seeking that Your Honour should focus on the dates of the pre-trial
4 brief irrespective of the date of the trial, because the sooner we
5 have that, the sooner we know what the case is -- finally the case is
6 that we have to meet.

7 And that's -- you know, that's the process by which the defence
8 of a criminal accused operates. You need to know the case you have
9 to meet in detail in order to be able to ensure that your defence
10 preparation is properly targeted and prioritised. Obviously, it
11 doesn't necessarily have to wait until then before it begins, and
12 it's obviously substantially on foot, as far as the Veseli Defence is
13 concerned, already, subject to one matter I need to come back to at a
14 later stage.

15 But the issue, which is skated over in the Prosecution's
16 submission, is that there is no real justification at this stage for
17 a further delay in the pre-trial brief schedule, so we would invite
18 you to now rule on the application that was made on the last occasion
19 to fix an early date for the Prosecution to serve their pre-trial
20 brief so that everyone can be working towards that timetable.

21 I'm sorry to say that the Prosecution finds itself in
22 difficulties as the result of rulings that have been given by you in
23 the interests of justice in the disclosure process, but be that as it
24 may, we were echoing from the very outset the fact that these
25 slippages were bound to occur, and they shouldn't be an excuse at

1 this stage for the Prosecution to refuse to state its case.

2 What Mr. Smith made clear on the last occasion in person - as I
3 said, it was the end of a period of gaslighting where this was being
4 denied - was that it was the Prosecution's deliberate intention to
5 delay the pre-trial brief until as shortly as possible before the
6 trial, it says, on the basis of witness protection interests, but
7 that is obviously not a basis for failing to disclose the pre-trial
8 briefs or for delaying it, because the brief can be appropriately
9 redacted or drafted in a fashion that is consistent with the
10 protective measures requests that have been granted to date. So
11 that's a fanciful justification.

12 But the fact of the matter is there is no justification, I
13 haven't heard one advanced at all at any stage, for why the pre-trial
14 brief needs to wait until later in the year. It ought to be ready
15 pretty much immediately. It's a question simply of drafting. The
16 Prosecution, I hope, knows what its case is at this stage. It can
17 always be amended at a later stage.

18 Since it wasn't necessary, Your Honour ruled on the last
19 occasion, to make a filing on this point, I haven't done so, but we
20 are awaiting a decision and I would invite Your Honour to make it
21 today.

22 JUDGE GUILLOU: Thank you, Mr. Emmerson.

23 Mr. Young, please.

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

25 We support the submissions of Mr. Hooper and Mr. Emmerson. The

1 reality is, as Your Honour knows very well, that the Prosecution have
2 had over five years to investigate this matter, possibly considerably
3 longer, and so by now they should know what their case is.

4 To delay the pre-trial brief until September this year is wholly
5 unacceptable. The defendants are entitled to know how they put their
6 case and that that should be made available to the Defence in the
7 near future.

8 Thank you.

9 JUDGE GUILLOU: Thank you, Mr. Young.

10 Mr. Ellis or Ms. Alagendra.

11 MS. ALAGENDRA: [via videolink] Your Honour, we have nothing to
12 add other than adopting the submissions already made on this issue.

13 JUDGE GUILLOU: Thank you, Ms. Alagendra.

14 I turn to the interpreters. It is now 12.31 Hague time. Is it
15 possible to continue for an extra 15 to 20 minutes before we break?
16 This would allow us to break only once before the end of the hearing.

17 THE INTERPRETER: Yes, we can continue, Your Honour.

18 JUDGE GUILLOU: Thank you very much. I think you were
19 expressing a sign, but the glass is dark so I can barely see you
20 behind the --

21 THE INTERPRETER: Yes, Your Honour, we agree.

22 JUDGE GUILLOU: Thank you very much. So the interpreters agree,
23 so we will continue.

24 For the next point on the agenda related to Defence
25 investigations, I would like to turn to the Defence first -- oh, no.

1 Madam Prosecutor, you have something you -- you wanted to reply to --
2 sorry, excuse me. Please go ahead.

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

4 In relation to investigations, the SPO has a clear mandate and
5 will continue to investigate in accordance with that mandate. As the
6 Defence is aware, the office has multiple proceedings and
7 investigations ongoing.

8 As for the explanation for the adjustment in timing, I believe I
9 did provide that.

10 As for the Veseli request in relation to a pre-trial brief, the
11 Chamber has already ruled on that request in its decision on
12 categorisation issued on 12 March.

13 And in respect of the submissions that guidance is needed, the
14 Defence has a detailed narrative indictment of more than 50 pages.
15 The 600-page Rule 86(3)(b) outline, the Chamber recently had the
16 opportunity to reassess the adequacy of that document in the context
17 of the Categorisation Decision and reaffirmed that it provides
18 meticulous guidance for navigating the indictment supporting
19 materials.

20 In addition, the Defence have the Chamber's 260-page
21 Confirmation Decision and the detailed descriptions and
22 categorisations of evidence contained in Legal Workflow.

23 Thank you.

24 JUDGE GUILLOU: Thank you, Madam Prosecutor.

25 So we will now move to the Defence investigations, and I will

1 specifically ask the Defence whether, based on the SPO's estimates
2 and ongoing disclosure process, the Defence can provide more
3 information on the status of its investigations and whether the
4 Defence teams will be able to start their investigations by
5 mid-April; whether the Defence can provide information on any
6 intention to make requests concerning unique investigative
7 opportunities, pursuant to Rule 99; and whether the Defence can
8 provide information on any intention to give notice of an alibi or
9 grounds for excluding responsibility.

10 Mr. Hooper, please.

11 MR. HOOPER: [via videolink] In respect of the two latter
12 matters, I've nothing further to add to what was said previously,
13 that's alibi and special investigation opportunities.

14 In respect of investigations, I'd like to hand over to my
15 co-counsel, Ambassador Prosper.

16 JUDGE GUILLOU: Mr. Prosper, you have the floor.

17 MR. PROSPER: [via videolink] Thank you, Mr. Hooper.

18 I hope you can hear me. It's the middle of the night where I
19 am, so I have to whisper a little bit to not wake up the household.
20 But I think that's a little bit indicative of some of the challenges
21 that we're facing, Your Honour.

22 So to answer your question, we are not in a position to begin,
23 in earnest, in April for two reasons: One is process and one is
24 environment. Process is essentially everything that we've been
25 discussing regarding the disclosure, because we need to see the

1 information in order to know, you know, what to investigate.
2 Particularly when you have statements such as documents that are
3 being obtained from particular organisations, we don't know what
4 those organisations are and we don't know if the items are selective
5 or if there's a broader investigation that would be required.

6 I do want to say that the Prosecution said that we don't
7 appreciate the complexities of the front-end process. Well, I can
8 say personally that I do appreciate the complexities or when there
9 are not complexities of the front-end process, having been in their
10 shoes, and on many different levels. But I would ask the Prosecution
11 to appreciate the back-end complexities, which is the back-end
12 complexities that we are facing in our inability to fulfil our
13 responsibilities based on the lack of information.

14 I do want to note that this is more than just a procedural
15 issue. It is a human rights issue. And you can easily cite the
16 International Covenant on Civil and Political Rights, the UN Human
17 Rights Committee's General Comment 13, which all say that an accused
18 should have access to not only adequate time to prepare, but
19 facilities, and "facilities" is translated to documents.

20 So as long as the investigations continue, we don't know what we
21 need to be investigating. Understanding the Prosecution needs to
22 fulfil its mandate, if it's unrelated to us, please just tell us and
23 do what you need to do. But if the investigations continue as it
24 relates to us, then we will remain on this hamster wheel that we've
25 been on.

1 You know, I note -- my final point on process is that I note
2 that the Prosecution submitted to you nearly a year ago, Your Honour,
3 the indictment, and they say that they are still -- it's still
4 investigating. As Mr. Hooper said, we find that puzzling.

5 Now regarding the environment, I think it's important for
6 Your Honour to understand the challenges that we're facing. We have
7 a Defence team and we have not been able to meet. I'm unable to
8 travel. Obviously, it's due to the COVID issue. I can tell you that
9 our -- my government, the State Department has placed Kosovo on a
10 do-not-travel advisory. There are four categories: Travel, use
11 caution, well, we recommend you don't, and then do not. Kosovo is
12 placed in a do-not-travel category by the United States government.
13 I'm not sure what the French government or other governments are
14 doing, but I think it's important to understand those dynamics.

15 I also think it's important, as I said, to say that our Defence
16 team has not been able to sit down and meet and go over this
17 information because of the pandemic and these various issues. I've
18 not been able to see Mr. Thaci, my client, since before -- since
19 after he's been indicted and arrested. We don't have the abilities
20 to sit down and review documents with him, flip through pages,
21 discuss information, discuss witness statements, and this is all
22 because of this environment that we find ourselves in, an environment
23 that the Prosecution has recognised is also hampering them because
24 their people are working remotely.

25 We try to do things by way of Zoom with the client, but there

1 are challenges there. One is you can only do so much by way of
2 video-conference. You can't share documents and go over information.
3 Two, Zoom, as we know, is not secure, and we don't feel comfortable
4 engaging in sensitive information via Zoom. I know we're using it
5 here, but I know that the Prosecution themselves do not use Zoom when
6 they're conducting witness interviews. They rely on Microsoft Teams,
7 which is something that is more secure.

8 And I think the last main point that I want to say on this is
9 that until we are able to move and meet and begin to access the
10 documents and begin to have a proper environment that will allow us
11 to perform our mandate, we remain hampered. We can do some basic
12 work, which is reviewing the information the Prosecution is providing
13 us. But as I said, there are greater complexities on the Defence
14 side here, and there is a proactive investigation that needs to take
15 place. But as soon as we receive the information, we'll move
16 diligently and we can fill out some of the environmental issues as
17 the situation permits.

18 Thank you.

19 JUDGE GUILLOU: Thank you very much, Mr. Prosper.

20 Mr. Emmerson, please.

21 MR. HOOPER: [via videolink] Can I just come in just for one
22 moment to clarify.

23 JUDGE GUILLOU: Mr. Hooper, very quickly, then.

24 MR. HOOPER: [via videolink] Your Honour wanted to know whether
25 we were still on track in respect of, if not in earnest, at least

1 some preliminary investigation or visit, and I just say that we hope
2 to achieve something like that in April, which was Your Honour's
3 question.

4 Thank you.

5 JUDGE GUILLOU: Thank you, Mr. Hooper.

6 Mr. Emmerson, please.

7 MR. EMMERSON: [via videolink] We've obviously, from the Veseli
8 Defence, been conducting the triage process of going through the
9 Prosecution disclosure, trying to reconstruct our own version of what
10 the Prosecution pre-trial brief ought to look like, and making
11 assessments of where and what parts of the allegations require
12 priority investigation. So that process is underway.

13 The practical challenge of beginning an investigation is,
14 obviously, that in order to give access to our investigator to the
15 confidential documentation on the system, he needs to be first
16 appointed by the KSC as an investigator as part of our team. He has
17 or was about to file the documentation for admission to the team
18 process when he was diagnosed with COVID last week and has been
19 extremely ill since then. So this is a very practical example of the
20 effect of COVID on the conduct of the case. But hopefully he will be
21 well enough to complete the process within a couple of weeks' time,
22 and then he can be provided with the confidential documentation,
23 including the work product that we have produced from the SPO
24 disclosure, all of which, of course, is based on documentation and
25 material which, at the present time, remains confidential as far as

1 the public is concerned.

2 So that is the status of our Defence investigation. It's poised
3 to move from early triage into operational planning of priorities,
4 but it's currently stuck as the result of our lead investigator being
5 unavailable due to his illness.

6 On the subsidiary questions of alibi and special investigative
7 opportunities, it's too early to answer those questions at this stage
8 and so we reserve our position in relation to those. And that will,
9 I think, remain the position until after the Prosecution has served
10 us its pre-trial brief. I make that absolutely clear. Until we know
11 exactly how the Prosecution proposes to put its case, we will
12 certainly not be in a position to supply any alibi notices in
13 relation to particular allegations.

14 As I've observed before, alibi is always a challenging concept
15 in the context of an accusation based on JCE and command
16 responsibility, because presence at a particular time and place is
17 obviously less relevant in those contexts. But to the extent that
18 there are allegations in relation to Mr. Veseli's presence at
19 particular times and places, we reserve our position on alibi until
20 we know what the Prosecution's case really is, and that is one of the
21 reasons why I've suggested a very early date for the pre-trial brief.

22 Lastly - and I'm not sure exactly where this point fits into
23 today's agenda, but it may as well come now - the most recent
24 application for protective measures by the Prosecution is a good
25 example of something which, once our investigator is appointed, will

1 be potentially significantly high on his agenda, which is this:

2 The Prosecution has made an application that the prior
3 statements of certain witnesses - that's to say, prior statements
4 that they have made either in other proceedings or to other bodies or
5 to the SPO itself, unclear - should be withheld from the Defence
6 permanently and provided to the Trial Chamber so that the Trial
7 Chamber can take over cross-examination on behalf of the Defence.

8 Now, I think I'm right in saying - I mean, maybe I'm wrong in
9 saying this - but certainly in my experience, such an application is,
10 in practical terms, unprecedented. The notion that there may be
11 inconsistent witness statements made by a witness called to give
12 evidence and that those statements should not be served on the
13 Defence to enable them to test the witness' account, according to --
14 in relation to previous inconsistent statements or previous
15 apparently consistent statements with significant points of
16 difference, is an extraordinary derogation from not just the
17 disclosure obligations, from the basic fair trial obligations.

18 The idea that it can be delegated to the -- the Defence role can
19 be delegated to the Trial Chamber so that we are required to conduct
20 examination of the witness not only blindfolded but with one arm tied
21 behind our backs, is -- I mean, I find it extraordinary that the
22 Prosecution should even make such a suggestion, and certainly not
23 apparently appreciate the completely extraordinary nature of the
24 application it is making.

25 So we have, as you know, put before you a response in relation

1 to that, but may I just say, putting it firmly on the record, that
2 the appropriate solution, if the Prosecution can't conduct a trial
3 fairly with a particular witness - in other words, if a witness
4 cannot be fairly called, that is, subject to adversarial examination
5 with a full disclosure - then I'm afraid the Prosecution has to
6 abandon reliance on that particular witness. You cannot have a fair
7 trial proceeding without the Defence having access to prior
8 statements on the same subject by the witness concerned.

9 So I think it's a rubber-hits-the-road moment in terms of
10 disclosure, because that application is so extraordinary and shows --
11 portrays such a lack of understanding on the part of the Prosecution
12 of the requirements of a fair trial that, obviously, on a bit-by-bit
13 basis, we are confident that Your Honour will not accede to that
14 request, and certainly be gravely disappointed if you did.

15 But more fundamentally, that's exactly the mechanism by which an
16 investigation will be conducted. When there are previous statements
17 that have been made, tracing down where and when and to whom they
18 were made and whether they affect the credibility of the witness,
19 that is the Defence's job.

20 And so I know it's inconvenient for the Prosecution that these
21 accused have Defence counsel. It would be much easier if the case
22 just proceeded without them being defended. But, actually, we have a
23 job to do. And the complete lack of appreciation of what justice and
24 a fair trial involves is evident from that application.

25 So the answer to your question is we are poised to begin the

1 process of investigation at the earliest stages. We cannot,
2 obviously, complete it until we've seen the Prosecution's pre-trial
3 brief, and that's the point at which we can serve any notices that
4 were required to be served. Our investigator is currently indisposed
5 through COVID, but we hope will be better enough to be formally
6 appointed in the next two or three weeks, and at that stage we can
7 begin the process of providing him both with the original
8 confidential material and the work product that we have produced as a
9 result. But we are still at the stage of the foothills of the
10 investigation, and, apparently, the Prosecution doesn't think it's
11 necessary for us to see insistent witness statements in the past,
12 which I rather think is an indication of their approach to what a
13 fair trial requires. So those are my submissions.

14 JUDGE GUILLOU: Thank you, Mr. Emmerson.

15 Mr. Young, please.

16 MR. YOUNG: [via videolink] Your Honour, we have nothing to say
17 at this stage in relation to the issue of alibi or on special
18 investigative opportunities.

19 But in relation to the central question that Your Honour asked
20 as to whether or not it may be possible for the Defence to commence
21 investigations, I would respond in this way: That, in theory, some
22 investigations may be possibly commenced in April. However, we would
23 submit they would be slow for a number of fairly obvious reasons.

24 I will cite four examples of reasons why any investigations by
25 the Defence would be hampered. Firstly, due to the redactions in the

1 indictment; secondly, by reason of the extensive protective measures;
2 thirdly, by reason of what we would suggest, Your Honour, is an
3 inherent vagueness in the indictment which makes the majority of the
4 allegations difficult to investigate, even with the 600-odd page
5 outline document; and, fourthly, on a practical note, as one of my
6 learned friends has mentioned, it's right to say that any Defence
7 investigations will be significantly slowed by virtue of the global
8 pandemic and how it affects Kosovo and relevant areas.

9 Sadly, Kosovo has been affected, as have most parts of the
10 world, but unfortunately in Kosovo, it appears that there's no
11 vaccination programme rolled out yet, and Kosovo appears to be about
12 the only country in Europe that hasn't received any vaccines, I
13 think, at all to day. I think some were expected on 17 March, but
14 two days ago it was reported, not a single vaccine had arrived in
15 Kosovo. And that's something that's quite fundamentally important.

16 So I ask Your Honour to take these into consideration. But we
17 are making a start, but for obvious reasons, it will be slow.

18 Thank you.

19 JUDGE GUILLOU: Thank you, Mr. Young.

20 Ms. Alagenda.

21 MS. ALAGENDRA: [via videolink] Your Honour, as indicated in our
22 written submissions, we hope to start our investigations by the end
23 of April, but, of course, this is again subject to the difficulties
24 that have been highlighted to Your Honour by my learned friends just
25 before this, the pandemic and also the issues that we have with

1 translations and disclosure, Your Honour.

2 As for alibi and the unique investigative opportunities, we have
3 nothing to add from what we have said previously, except that we
4 reserve our position on that.

5 JUDGE GUILLOU: Thank you very much, Ms. Alagenda.

6 Madam Prosecutor, do you want to say anything on this? And,
7 really, on this topic, no need to go into details about the matters
8 that are currently litigated, like the decision on protective
9 measures. So, really, on the issue of the Defence investigations, if
10 you have any.

11 MS. LAWSON: I will curtail my submissions accordingly.

12 In that case, I can be very brief. All of the points raised by
13 the Defence counsel, we agree, are very good reasons why the Defence
14 could not complete an investigation at this stage, but no one is
15 expecting them to do that. All that is required is that the
16 investigations be started in a significant way, and the Defence are
17 certainly in a position to do that.

18 Thank you.

19 JUDGE GUILLOU: Thank you, Madam Prosecutor.

20 Let me now move to the points of agreement on matters of law and
21 fact.

22 During the previous Status Conference, the SPO indicated being
23 at an advanced stage internally in preparing an agreed facts proposal
24 and being able to provide that proposal to the Defence teams shortly.

25 Can you indicate whether the SPO has provided the Defence with

1 its proposals on points of agreement on law and/or facts, and when
2 the parties expect to be able to identify a list of issues subject to
3 dispute and one with issues not subject to dispute?

4 Madam Prosecutor.

5 MS. LAWSON: As indicated in our written submissions, the SPO
6 provided the Defence teams with its agreed facts proposal on 17
7 March. We would envisage being able to inform the Chamber of any
8 current points of agreement shortly after receiving Defence team
9 positions. We had requested those responses by 9 April, but we, of
10 course, take note of the Krasniqi Defence submission that they are
11 engaged in arranging for translation in order to facilitate
12 discussions with their client. We recognise that that may impact
13 timing and, therefore, I will defer to the Defence teams in terms of
14 when we will be in a position to give a indication to the Chamber.

15 Thank you.

16 JUDGE GUILLOU: Thank you, Madam Prosecutor.

17 Mr. Hooper, please.

18 MR. HOOPER: [via videolink] Yes, 31 pages of requested
19 admissions or, should I call them, points of agreement to be -- I
20 think, as my friend just said, they expected us to do that by 9
21 April. If they'd said the 1st of April, I'd have got the joke. It's
22 a bit "avril poisson," is it not? Is that realistic? Is that even
23 the beginning of a realistic Prosecution submission that they serve
24 31 pages of, effectively, facts to agree, on, what, the 17th of
25 March, and expect us, in the conditions that we're in, to agree that

1 bindingly in a matter of weeks? They can expect ours, realistically,
2 if they want realistic agreements on points of agreement, once we've
3 had the pre-trial brief. That's September.

4 Thank you.

5 JUDGE GUILLOU: Thank you, Mr. Hooper.

6 Mr. Emmerson, please.

7 MR. EMMERSON: [via videolink] That is exactly the position of
8 the Veseli Defence to this extent. I mean, I've been through the
9 document itself. It is full of quite contentious and extremely
10 vague -- vaguely drafted propositions. Frankly, any date before the
11 service of the pre-trial brief will simply get a no admission from
12 the Veseli Defence.

13 That is why I reiterate the need for an early pre-trial brief
14 and for this case to move forward. I have to emphasise that is
15 absolutely vital. So there will be no substantive progress as far as
16 the Veseli Defence is concerned before the pre-trial brief is served.
17 We don't accept it has to be September. We suggest it should be
18 much, much earlier, beginning of the summer, and that the Prosecution
19 should be directed to do their job.

20 JUDGE GUILLOU: Thank you, Mr. Emmerson.

21 Mr. Young, please.

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

23 We are actively considering, of course, the document that the
24 Prosecution have served upon us, but with great respect to the
25 Prosecution, the suggested proposal in their timeline is utterly,

1 utterly unrealistic. It's simply not serious, it's not credible, and
2 I do support what Mr. Hooper and Mr. Emmerson have said.

3 Thank you.

4 JUDGE GUILLOU: Thank you, Mr. Young.

5 Ms. Alagendra.

6 MS. ALAGENDRA: [via videolink] We stand by our written
7 submissions, Your Honour.

8 JUDGE GUILLOU: Thank you, Ms. Alagendra.

9 Madam Prosecutor, anything to add? Very briefly.

10 MS. LAWSON: Very briefly. Simply to say that if Defence
11 counsel consider the proposed facts to be contentious, they are
12 obviously at liberty to simply indicate that they do not agree to
13 that proposed fact. It is not a complex matter.

14 Thank you.

15 JUDGE GUILLOU: Thank you, Madam Prosecutor.

16 Let me now move to the procedural calendar relating to
17 preliminary motions.

18 The Defence filed 11 preliminary motions. In a previous
19 decision, I set Thursday, 1 April 2021 as the date for the SPO to
20 respond to these motions. In its submissions for the Status
21 Conference, the SPO indicated that it requests an extension of the
22 deadline for the responses to the preliminary motions to Friday,
23 23 April 2021.

24 I also note that, in its submissions for the Status Conference,
25 the Krasniqi Defence indicated that, considering the number and the

1 complexity of the preliminary motions, should the SPO seek a
2 reasonable extension of time for their response, the Krasniqi Defence
3 would not oppose it.

4 Having received the SPO's request for an extension of time, I
5 would also like to hear from the Defence teams what their position is
6 in relation to the SPO request and whether they would like to request
7 an extension of time for their respective replies.

8 Madam Prosecutor.

9 MS. LAWSON: Your Honour, I really don't have much to add to our
10 written submissions on this. We are seeking an extension to 23 April
11 for responding to the 11 preliminary motions filed. Considering the
12 volume of the motions and the questions at issue, we believe there is
13 good cause for this relatively modest extension.

14 Thank you.

15 JUDGE GUILLOU: Thank you, Madam Prosecutor.

16 Mr. Hooper, please.

17 MR. HOOPER: [via videolink] Yes, thank you, Your Honour. We
18 agree with the Krasniqi filing observations. Of course, it depend on
19 the responses that we get. And bearing in mind that Defence teams
20 generally do intend, as I understand it, to perhaps be on mission in
21 Kosovo at about -- in April at some time, with difficulties --
22 further difficulties attendant on that, I would ask that we be given
23 three weeks, the Defence, to reply to the Prosecution response, which
24 would take us to about 14 May.

25 JUDGE GUILLOU: Thank you, Mr. Hooper.

1 Mr. Emmerson, please.

2 MR. EMMERSON: [via videolink] I take the identical position. No
3 objection to the Prosecution's application for disclosure. 15 May
4 for Defence responses, please.

5 JUDGE GUILLOU: Thank you, Mr. Emmerson.

6 Mr. Young, please.

7 MR. YOUNG: [via videolink] Your Honour, likewise.

8 JUDGE GUILLOU: Thank you, Mr. Young.

9 Ms. Alagendra, please.

10 MS. ALAGENDRA: [via videolink] Three weeks is reasonable,
11 Your Honour, to reply. I'd ask for that.

12 JUDGE GUILLOU: Thank you very much. I will issue an oral order
13 on this matter at the end of the hearing.

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

16 Madam Prosecutor.

17 MS. LAWSON: The Prosecution will be available at the Court's
18 convenience any time in April. Thank you.

19 JUDGE GUILLOU: Thank you, Madam Prosecutor.

20 Mr. Hooper, please.

21 MR. HOOPER: [via videolink] I'd submit it's not necessary to
22 have one in April. A date after the final date of reply, 15 May,
23 around that time, would be appropriate. These are time-consuming, as
24 you know, and we also have investigations, perhaps, in April to make.
25 In any event, if there is a Status Conference, and if Mr. Thaci was

1 to choose not to attend, that is not through [videolink interruption]
2 any disrespect of the Court, it is because, of course, we are
3 discussing at length technical matters which he is not wholly
4 occupied with.

5 Thank you.

6 JUDGE GUILLOU: Thank you, Mr. Hooper.

7 Mr. Emmerson, please.

8 MR. EMMERSON: [via videolink] I would have thought after 15 May
9 would be a sensible time for the next Status Conference, by which
10 time hopefully things will be a little clearer.

11 JUDGE GUILLOU: Thank you, Mr. Emmerson.

12 Mr. Young, please.

13 MR. YOUNG: [via videolink] Your Honour, I agree, after mid-May
14 would be preferable.

15 JUDGE GUILLOU: Thank you, Mr. Young.

16 Ms. Alagendra, please.

17 MS. ALAGENDRA: [via videolink] I take the same position,
18 Your Honour. After 15 May would be suitable.

19 JUDGE GUILLOU: Thank you very much. You will receive a
20 Scheduling Order that will include the agenda before the next Status
21 Conference in due course. I also invite the parties to make written
22 submissions if they would like to raise any specific issues during
23 the next Status Conference.

24 At this point and before breaking, I would like to ask the
25 parties whether they have any other issues they would like to raise.

1 And as always, I remind the parties to give prior notice should any
2 submission require the disclosure of confidential information.

3 Madam Prosecutor.

4 MS. LAWSON: Not from the Prosecution, Your Honour.

5 JUDGE GUILLOU: Thank you, Madam Prosecutor.

6 Mr. Hooper, please.

7 MR. HOOPER: [via videolink] Just one matter. Can Your Honour
8 give us any idea when your colleagues in the Appeals Chamber will
9 provide their decision in respect of interim release? It affects us,
10 of course, in terms of what we're doing and where we are. We have to
11 respond, et cetera, et cetera. And I think we've got seven days or
12 so to renew any applications.

13 Thank you.

14 JUDGE GUILLOU: I don't have any information regarding that
15 point, Mr. Hooper. I would probably refer you to the Chamber itself,
16 but I am not in a position to answer your question.

17 Mr. Emmerson, please.

18 MR. EMMERSON: [via videolink] Nothing at this stage,
19 Your Honour.

20 JUDGE GUILLOU: Mr. Young, please.

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

22 JUDGE GUILLOU: Ms. Alagendra.

23 MS. ALAGENDRA: [via videolink] Nothing to add, Your Honour.

24 JUDGE GUILLOU: Thank you, Ms. Alagendra.

25 I thank the parties for their submissions. We will now break

1 and resume the hearing in 30 minutes, and upon our return, I will
2 issue a number of oral orders as indicated earlier.

3 The hearing is adjourned.

4 --- Recess taken at 1.04 p.m.

5 --- On resuming at 1.40 p.m.

6 JUDGE GUILLOU: Having heard the parties, I will issue a first
7 oral order.

8 I hereby order the SPO to disclose to the Defence the remaining
9 material shown to each of the accused during their respective
10 interviews before the next Status Conference.

11 This concludes my first oral order.

12 Having heard the parties, I will issue a second oral order on
13 the Thaci and Krasniqi Defence request for the SPO to disclose all
14 audio-video recordings for all witness and accused interviews.

15 I note that the legal framework of the Specialist Chambers does
16 not impose a specific obligation on the SPO to produce or to disclose
17 audio-visual recordings relating to witness and accused interviews.
18 In these circumstances, as a general rule, where audio-video
19 recordings of witness and accused interviews have been transcribed,
20 and those transcripts have been disclosed, the audio-video recordings
21 need not, in principle, also be disclosed as both the transcripts and
22 the audio-video recordings contain the same record of words used.

23 That being said, the lack of a specific provision relating to
24 disclosure of audio-video recordings does not exclude the possibility
25 of such material being disclosed by the SPO, in particular, if it

1 becomes apparent that such audio-video recordings are material to the
2 preparation of the Defence within the meaning of Rule 102(3) of the
3 rules, which covers all kinds of material subject only to the
4 restrictions of Rules 107 and 108.

5 In the present instance, the Defence argument relating to the
6 need for verification of the accuracy of the transcripts, without
7 more, is insufficient to justify the additional disclosure of
8 audio-video recordings since such verification can be conducted on
9 the basis of the disclosed Albanian and English version of the
10 transcripts.

11 Further, the Defence argument relating to the need for a
12 complete assessment of the witness is insufficiently substantiated
13 insofar as it remains a hypothetical and generic argument. In
14 particular, the Defence fails to substantiate why reliance on the
15 transcripts as opposed to the audio-video recordings does not enable
16 the Defence to assess the witness' expected testimony in a
17 comprehensive manner.

18 In these circumstances, having failed to establish the
19 materiality of the audio-video recordings, I hereby deny the Thaci
20 and Krasniqi Defence request for disclosure of all audio-video
21 recordings in addition to transcripts of witness and accused
22 interviews. If any Defence requests for disclosure of specific
23 audio-video recordings, shall follow the disclosure mechanism set out
24 in Rule 102(3), as further elaborated upon in the Framework Decision
25 on disclosure.

1 This concludes my second oral order.

2 I will now issue a third oral order on the classification of
3 filings.

4 I hereby order the Thaci Defence to file a public redacted
5 version of filing number 236 by Wednesday, 31 March 2021. In
6 particular, the Thaci Defence shall redact the references to specific
7 ERN numbers in footnotes 11, 12, 13, and 14 which relate to witnesses
8 for whom protective measures have been granted.

9 I also order the Krasniqi Defence to file a public redacted
10 version of filing number 228 by Wednesday, 31 March 2021.

11 This concludes my third oral order.

12 Following submissions that the parties made during the Status
13 Conference, I consider that all other issues and requests included in
14 filings 213 and 228 have been resolved. I also recall that the
15 Veseli Defence request that the SPO pre-trial brief be filed in April
16 2021 was rejected in my decision on disclosure charts, namely, F218.

17 I will issue a fourth oral order on the SPO request for an
18 extension of the deadline for the provision of the detailed outline
19 under Rule 102(3).

20 Having heard the parties on the matter, and pursuant to
21 Rule 95(a), I hereby order the SPO to provide to the Defence a
22 detailed notice of evidence falling under Rule 102(3) of the rules by
23 Friday, 25 June 2021; the Defence to indicate to the SPO by Friday,
24 20 August 2021, or at any time earlier, which items among those
25 listed in the detailed notice they seek to have access to by way of

1 disclosure or inspection; and the SPO, by Friday, 10 September 2021,
2 or within three weeks of the Defence indication, whichever is
3 earlier, to disclose or provide the Defence with access to the
4 selected material that does not require redactions and to submit its
5 request for protective measures, if any, in respect of the materials
6 sought by the Defence, and to disclose, as soon as possible, such
7 material with redactions if granted; and finally, the SPO to seize
8 the Pre-Trial Judge within ten days of the Defence indication should
9 it dispute the materiality of the evidence.

10 This concludes my fourth oral order.

11 I will finally issue a fifth oral order on the timeline for the
12 provision of responses and replies to the preliminary motions filed
13 by the Defence.

14 Having heard the parties on the matter, and pursuant to
15 Rule 95(a), I hereby order the SPO to provide its responses to the
16 preliminary motions filed by the Defence by Friday, 23 April 2021;
17 and the Defence to provide any replies to the SPO's responses by
18 Friday, 14 May 2021.

19 This concludes my fifth oral order.

20 This concludes today's public hearing. I thank the parties and
21 the Registry for their attendance. I specifically want to thank the
22 counsel who attended from another time zone, either very early or
23 very late.

24 I see that Mr. Emmerson you want to say something. Very
25 briefly, then, please.

1 MR. EMMERSON: [via videolink] Just in relation to the date for
2 the pre-trial brief and Your Honour's ruling in F218, paragraph 23.

3 What Your Honour ruled in that paragraph was that the
4 categorisation ruling was such that you saw "no reason to order the
5 SPO to file its pre-trial brief as early as April 2021" in the light
6 of the categorisation decision. Obviously, that still leaves open
7 the question of what date the Prosecution should provide the
8 pre-trial brief by, and you certainly did not endorse the
9 Prosecution's submission that that date should be linked to three
10 months before the start of the trial.

11 So I would therefore, in the light of that, and in the light of
12 today's submissions, renew my application, but this time for the
13 pre-trial brief to be served on the Defence by 1 June at the latest.

14 Thank you.

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

16 I thank the parties and the Registry. I thank the interpreters
17 for accepting to go beyond the usual one hour and 30 timeline. I
18 thank the audio-visual technicians, security personnel, for their
19 assistance.

20 The hearing is adjourned. Thank you.

21 --- Whereupon the Status Conference adjourned at
22 1.50 p.m.

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