

1 Thursday, 17 December 2020  
2 [Status Conference]  
3 [Open session]  
4 [The accused appeared via videolink]  
5 --- Upon commencing at 11.00 a.m.

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

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

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

12 JUDGE GUILLOU: Thank you, Madam Court Officer.

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

16 Mr. Prosecutor.

17 MR. HARBACH: Good morning, Your Honour. For the Specialist  
18 Prosecutor's Office this morning in attendance are Mr. Jack Smith,  
19 who is the Specialist Prosecutor; directly behind me is Mr. Sebastian  
20 van Hooydonk, who is a Case Management Assistant with our office; to  
21 my right is Clare Lawson, the head of our Legal Office; at the end of  
22 this row is Mr. Alan Tieger, a Senior Prosecutor; and I am  
23 David Harbach, a Prosecutor with our office. Good morning,  
24 Your Honour.

25 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

1           Now, I turn to the Defence. And like I did for the last Status  
2 Conference, I will call the lead counsel for each accused as they are  
3 reflected in the case name, starting with counsel for Mr. Thaci, then  
4 counsel for Mr. Veseli, then counsel for Mr. Selimi, then counsel for  
5 Mr. Krasniqi.

6           May counsel introduce themselves and their team, starting with  
7 Mr. Hooper, please.

8           Mr. Hooper, I think your microphone is muted.

9           MR. HOOPER: [via videolink] Yes. Good morning, Your Honour.  
10 And may I also say good morning to Mr. Thaci.

11           I am representing Mr. Thaci today together with Mr. Pallaska.  
12 Thank you.

13           JUDGE GUILLOU: Thank you, Mr. Hooper.

14           Mr. Emmerson, please.

15           MR. EMMERSON: [via videolink] Good morning, Your Honour. This  
16 is Ben Emmerson on behalf of Kadri Veseli for today's hearing.

17           JUDGE GUILLOU: Thank you, Mr. Emmerson.

18           Mr. Young, please.

19           MR. YOUNG: Your Honour, good morning. For Mr. Selimi, myself,  
20 David Young. And today, I am assisted by my co-counsel, Mr. Geoffery  
21 Roberts. Thank you.

22           JUDGE GUILLOU: Thank you, Mr. Young.

23           Ms. Alagenda.

24           MS. ALAGENDRA: [via videolink] Your Honour, good morning.  
25 Venkateswari Alagenda together with Aidan Ellis for Mr. Krasniqi.

1 JUDGE GUILLOU: Thank you, Ms. Alagendra.

2 And for the record, I note that Mr. Thaci, Mr. Veseli,  
3 Mr. Selimi, and Mr. Krasniqi are not physically present in the  
4 courtroom but attend this hearing via video-conference.

5 Now I turn to the Registry, please.

6 MR. ROCHE: Your Honour, Ralph Roche, head of Judicial Services  
7 Division.

8 JUDGE GUILLOU: Thank you, Mr. Roche.

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

11 Before we proceed with our agenda today, I would like to remind  
12 the parties that should they wish to take the floor to raise a  
13 specific issue or to respond to anything that has been said, they  
14 shall stand up if they're in the courtroom or raise their hand if  
15 they're attending the hearing via video-conference.

16 And finally should anyone attending the Status Conference via  
17 video-conference experience any technical difficulties, please inform  
18 the Court Officer and myself immediately by waving your hand.

19 If the connection with any of the remote participants fails, we  
20 will do our best to reconnect immediately. If the issue cannot be  
21 resolved immediately, I may have to adjourn the hearing for a couple  
22 of minutes to ensure that the line is reconnected.

23 Now let me move to the recent procedural history of the case.  
24 On 8 December 2020, I scheduled this second Status Conference. I  
25 asked the parties to provide written submissions, if they so wished,

1 on the following topics: Disclosure, the status of the SPO  
2 investigations, the status of Defence investigations, the date for  
3 the third Status Conference, and any other matter they wished to  
4 raise.

5 The SPO did not submit any observations and two Defence teams  
6 submitted their observations on Tuesday, 15 December. I thank  
7 Mr. Hooper and Mr. Emmerson for their written submissions.

8 Before we carry on with today's agenda, I also wish to note that  
9 yesterday evening I issued a decision on certain procedural matters  
10 related to the review of detention and the deadline for filing of  
11 preliminary motions.

12 The purpose of our hearing today is to review the status of the  
13 case and to organise exchanges between the parties to ensure  
14 expeditious preparation for trial. In particular, I wish to discuss,  
15 first, the disclosure of evidentiary material, notably, if the  
16 parties are facing any difficulties and whether any further progress  
17 has been made *inter partes* in reaching agreement on the level of  
18 categorisation of disclosed material pursuant to Rule 109(c) of the  
19 rules, and the timing of submission of the related chart.

20 Second, whether an estimate date of completion can be provided  
21 for the SPO's outstanding investigations and when the SPO will be  
22 able to file its pre-trial brief and related material in light of the  
23 calendar set out in my Framework Decision on Disclosure.

24 Third, whether the Defence can provide information on the status  
25 of its investigations, on its intention to make request regarding

1 unique investigative opportunity, and if it intends to give a notice  
2 of an alibi or grounds for excluding responsibility.

3 And fourth, the date of the third Status Conference in this case  
4 and any issues the parties may wish to raise.

5 I will invite the parties to present their views in a concise  
6 fashion about each item, and I will ask the parties for their  
7 submissions in turn. I remind the parties to give prior notice  
8 should any submission require the disclosure of confidential  
9 information so we can go into private or closed session.

10 Now I invite the parties to follow the agenda set out for this  
11 Status Conference.

12 I first would like to hear from the Prosecution on the topics in  
13 the agenda related to disclosure of evidentiary material and the  
14 Rule 109(c) charts.

15 The floor is to the Prosecution. Ms. Lawson.

16 MS. LAWSON: Good morning, Your Honour.

17 With regard to the disclosure process, the SPO has now already  
18 disclosed 1.309 potentially exculpatory items pursuant to Rule 103.  
19 In addition, we have disclosed indictment supporting materials  
20 pursuant to Rule 102(1)(a) in both English and Albanian, and have  
21 also disclosed statements obtained from the accused, again pursuant  
22 to Rule 102(1)(a) and again in both English and Albanian.

23 The materials already disclosed pursuant to Rule 102(1)(a)  
24 comprise 1.764 items. In light of certain technical issues in  
25 generating those disclosure packages, which I will mention in a

1 moment, we're conducting a detailed cross-check to ensure that  
2 process is complete.

3 The SPO is committed to continuing to meet the rigorous  
4 disclosure timeline which has been set out. Looking to the immediate  
5 future, and in line with our commitment to rolling disclosure, we  
6 anticipate disclosing a second package of potentially exculpatory  
7 items shortly after the judicial recess.

8 With respect to difficulties encountered, there have been  
9 certain ongoing technical problems with the Legal Workflow. By way  
10 of example, the package of potentially exculpatory material was  
11 disclosed by the SPO at 1524 on 10 December and was available to the  
12 Chamber and the Defence teams in Legal Workflow from that time.  
13 However, due to a technical issue, no notification of the disclosure  
14 package was sent to recipients until one was manually generated the  
15 following day, after having made multiple unsuccessful attempts to  
16 resolve the technical problem.

17 Equally, the SPO experienced significant delays of up to 15  
18 hours in the upload of material to Legal Workflow. Problems were  
19 encountered regardless of the size of the disclosure package in  
20 question. And these type of issues are outside of the SPO's control.  
21 And, in fact, due to the nature of the Legal Workflow system, some of  
22 them are beyond the direct ability of Registry staff to remedy.

23 We are actively engaging with Registry and with relevant  
24 external contractors to identify and address the problems going  
25 forward, and we take this opportunity to sincerely thank relevant

1 Registry staff from CMU and from IT for their availability and  
2 assistance, including late into the night on a number of days.

3 The Thaci Defence also identified two additional points relating  
4 to metadata in their filing, and I will take this opportunity to  
5 address those points.

6 The first was in relation to record-type metadata and the second  
7 was in relation to originator metadata.

8 With regard to record-type, the SPO has been careful to try to  
9 provide meaningful document descriptions. So, for example, where an  
10 item is an interview or a video or a photograph, the description  
11 should state that fact. It is easy to sort the metadata according to  
12 file type also, for example, an .mp4 file as opposed to a PDF one,  
13 which again is a straightforward way of identifying from the existing  
14 metadata which are audio or video materials. Therefore, the metadata  
15 already available is easily searchable and sortable for these types  
16 of records. The time-consuming re-working and re-disclosure required  
17 to complete the record-type metadata field would be largely  
18 duplicative with the information which is already available to the  
19 Defence.

20 In respect of the originator or chain of custody, again, no  
21 order is required. The originator field specifies exactly where the  
22 SITF/SPO obtained the item in question.

23 The Thaci Defence provided two examples of originator metadata  
24 which they appear to consider inadequate. One is where the phrase  
25 "SPO Witness Interview" is used. That description is used where the

1 evidentiary item in question is the transcript of an SPO interview.  
2 So the item and origin is exactly what the metadata says it is. The  
3 second example highlighted was a particular library that was  
4 identified as the origin of an item. In that case, an SITF/SPO  
5 member went and identified and photographed the item at the library.  
6 So again, the origin is exactly as has been provided in the metadata.

7 There is no missing chain. There is no hidden intermediary.  
8 The originator field contains the individual or the organisation from  
9 which the item in question was obtained.

10 Of course, if there are particular metadata items or  
11 descriptions that appear unclear, we would be happy to see if we can  
12 provide any further explanation. And we submit that this would be  
13 most efficiently done on an *inter partes* basis so that we can have  
14 the opportunity to review the relevant entries.

15 Your Honour, would you like me to address Rule 109(c) as well or  
16 will we do that --

17 JUDGE GUILLOU: Yes.

18 MS. LAWSON: It was probably apparent to Your Honour from the  
19 Thaci Defence filing that there has not been further progress or  
20 agreement between the parties on the issue of Rule 109(c). The Thaci  
21 Defence submissions repeat the prior position outlined by the Selimi  
22 Defence, so essentially there has been no change.

23 The impasse that has been reached is a very simple one, though.  
24 It is exactly the clash between the ideal and the practicable. The  
25 SPO has been clear in prior submissions on this issue as to the

1 unpracticable burden that the Defence request would create and the  
2 consequent very significant impact on the disclosure timeline.

3 The Thaci Defence have now attempted to frame this as a matter  
4 of statutory interpretation and of entitlement. However, the  
5 relevant provision is clear. It is a requirement to do what is  
6 practicable. Moreover, the basic division into the four categories  
7 identified in Rule 109 is something which Your Honour has already  
8 accepted to be compatible with that rule in, for example, the Mustafa  
9 case.

10 Basically put, it is a choice between receiving the documents in  
11 a timely fashion or of receiving additional elaborate categorisations  
12 of very questionable utility, because again this categorisation is  
13 nothing but a supplementary tool to the many other navigational aids  
14 which the SPO will be providing pursuant to the rules. Thank you.

15 JUDGE GUILLOU: Thank you, Ms. Lawson.

16 Mr. Hooper, you have the floor. Mr. Hooper, microphone, please.

17 MR. HOOPER: [via videolink] It will come as little surprise to  
18 Your Honour to know that, in fact, my realm perhaps isn't entirely  
19 one of disclosure and the various form and formats that it takes, and  
20 I rely very much on Ms. Menegon for that. And so I will take up what  
21 my friend has just suggested, that there be further *inter partes*  
22 discussions in respect of the matter that she raised.

23 But having said that, Your Honour is, doubtless, familiar with  
24 the format of the schedule that's been accompanying the disclosure  
25 packages, whether that's been disclosure package 8 in respect of

1 exculpatory matters or the subsequent 9 to 12, incriminating  
2 material. And when one looks at the column headed "Categories" in  
3 respect of that, it is, as we submitted in our written submissions to  
4 you, wholly inadequate. You may as well not have anything in that  
5 column at all given the lack of pointer that the information there  
6 provides anyone looking at it.

7 After all, what is the objective of having that category there  
8 at all? It's to be of assistance, perhaps, clearly to those to whom  
9 the material is being disclosed and being disclosed by the party  
10 whose material it is, who's had the material often for very many  
11 years and is surely in the position with very little effort to  
12 provide the increased descriptions.

13 So, for example, where it describes the crime as underlying  
14 crimes, is that adequate? Which crimes? When it relates to the  
15 alleged conduct of the accused, we're back on that sort of job lot  
16 argument that the Defence raised in objection right at the outset of  
17 this case. Which accused? When it relates to contextual elements,  
18 why doesn't it specify whether that's even a crime against humanity  
19 or a war crime?

20 So when my friend says that we're pointing to the rules and to a  
21 statutory interpretation that somehow, in fact, implies too much  
22 request for detail, it surely merely conforms with, in fact, the  
23 wording of Rule 109(c). So I merely repeat paragraph 13 of our  
24 submissions, essentially, in respect of that.

25 In respect of disclosure, we do need, not only in respect of the

1 categories, further detail, but also the type of item that it is.  
2 And that doesn't appear in the Legal Workflow. I don't know what  
3 further tools my friend is talking about that are going to assist the  
4 Defence. This is the point of first reference when material is  
5 served on us, and we look to Legal Workflow for the specificity that  
6 we'd naturally expect.

7 In terms of an originator, chain of custody surely involves more  
8 than where a document was found. It's also literally the chain of  
9 custody of that document. And we'd need further detail in respect of  
10 that.

11 As I say, I don't know to what extent further discussions with  
12 the Prosecution are going to bear fruit. We're willing to enter into  
13 those discussions. Thank you.

14 JUDGE GUILLOU: Thank you, Mr. Hooper.

15 Now I turn to Mr. Emmerson, please.

16 MR. EMMERSON: [via videolink] I think Your Honour will be aware  
17 from the outset that, on behalf of Mr. Veseli, the Defence takes a  
18 simple position, which is that it is the Prosecution's obligation to  
19 meet the disclosure requirements of the applicable legislation and it  
20 is no part of the function of the Defence to assist them in doing so.

21 I have not, therefore, taken part in the discussions towards the  
22 formulation of the table of identification, nor do I think it's  
23 practical at this stage for the Defence to be asked to make informed  
24 submissions about the adequacy of disclosure. We have, as you heard,  
25 received something in excess of 3.000 documents in a very short space

1 of time. The only realistic response to that is to say: Of course,  
2 each and every one of those documents will require the most  
3 meticulous individual analysis and examination by the Defence. No  
4 responsible Defence counsel would delegate an analysis of relevance  
5 to the Prosecution. Indeed, I find it very difficult to understand  
6 how that type of process is likely to take matters very much further.

7 But having said that, once the analysis has been performed, when  
8 and if it becomes apparent that there are gaps in the disclosure or  
9 in the continuity, we reserve the right to make submissions on the  
10 implications of that. But in real terms, in the real world, the  
11 Defence, of course, is just beginning at the very foothills of the  
12 process of identifying the categories of material disclosed by the  
13 SPO, and obviously, for that reason, is not yet in a position to make  
14 informed submissions on the adequacy of the procedures being adopted.

15 I am not going to allow myself to be driven into the position of  
16 making piecemeal criticisms of an exercise that the Prosecution is  
17 conducting when we're not in a position to have analysed the  
18 material. This is the Prosecution's obligation. We sit back and we  
19 wait to see how they perform it.

20 So those are my submissions at this stage. In other words, it  
21 is premature to be asking the Defence to respond with complaints  
22 about the inadequacy of disclosure. They may be very much more  
23 detailed and deep than the ones that are capable of being made at  
24 this stage.

25 And in particular, you will note also that the Defence of

1 Mr. Veseli filed no submission on the extraordinarily extensive  
2 redaction applications that were made very recently. By the same  
3 token, it is impossible for us at this stage to make informed  
4 submissions on the relevance of those redactions or the underlying  
5 evidence, and I am not going to be driven into making ill-informed  
6 submissions at a premature point in the process. Thank you.

7 JUDGE GUILLOU: Thank you, Mr. Emmerson.

8 Now I turn to Mr. Young, please.

9 MR. YOUNG: Yes, Your Honour, thank you very much.

10 Your Honour, Your Honour asks the Defence are there any  
11 difficulties in relation to disclosure, and so I'm going to deal with  
12 this right now because we would submit, respectfully, that there are  
13 substantial difficulties in relation to the approach that the  
14 Prosecution have adopted.

15 Your Honour may remember at the last Status Conference when I  
16 addressed Your Honour, I addressed Your Honour on the importance of  
17 disclosure being meaningful and comprehensible given the fact that  
18 the right to fair and proper disclosure is synonymous with a right to  
19 a fair trial, and this is why the question that Your Honour has  
20 posed, with respect, is a very good one and so important.

21 And on the last occasion, I believe I warned against the danger  
22 of disclosure falling into, I think I described it as, a legal black  
23 hole of a computer, and sought to impress Your Honour on the need to  
24 properly categorise information.

25 Unfortunately, the Prosecution have fallen foul at the very

1 first hurdle in terms of disclosure, because the purported  
2 categorisation is of no use at all. The descriptions given in the  
3 disclosures, with respect, such as "Evidence to be Presented," or  
4 "Alleged Conduct of the Accused," are essentially meaningless, and  
5 clearly they do not fulfil, we would submit, the obligations upon the  
6 SPO under Rule 109.

7 For example, under Rule 109(a), as Your Honour knows, a party  
8 should be able to search electronically for relevant materials. And  
9 I ask rhetorically: How are the Defence able to search  
10 electronically when one's given it's "Evidence to be Presented"?

11 If you look at the wording of 109(c), Your Honour will be aware  
12 that the parties and the SPO in particular at this stage, as far as  
13 practicable, shall, so it's mandatory, "categorise the information in  
14 accordance with the charges in the indictment, with specific  
15 reference to the underlying crimes, contextual elements of the  
16 crimes, the alleged conduct ..." and so on.

17 The important point is it's clear, we would submit, from the  
18 reading of 109(c), this isn't about setting up the categories.  
19 They're there in 109. The point 109, as Your Honour can see it, is  
20 to categorise the information. We know what the categories are.

21 And Your Honour knows that in the Selimi filing of 27 November  
22 2020, we made specific submissions to Your Honour on Rule 109(c),  
23 explaining the type of information which should be included in the  
24 disclosures, and that's at page 2, paragraph 2 of our filing.

25 So we would submit, Your Honour, that disclosure needs to be

1 made in an organised fashion, it needs to be comprehensible, and it  
2 needs to be referable to the indictment allegations. So, for  
3 example, basic information such as type of crime, location, mode of  
4 liability, this is basic information.

5 And with respect, the Prosecution must know their case. They've  
6 been here investigating for many, many years. They have the relevant  
7 information. The SPO appear to have taken a deliberate policy or,  
8 with respect, strategic decision not to fulfil their disclosure  
9 obligations. And if this is permitted, it will have a seriously  
10 prejudicial and detrimental impact on Defence preparations and  
11 investigations, and it will exponentially increase the workload on  
12 the Defence.

13 My learned friend for the Prosecution sought to pray in aid the  
14 position in the Mustafa case. As I understand it, in the Mustafa  
15 case, the contradiction in distinction to this case, the Defence  
16 counsel there agreed with the SPO position. So with great respect,  
17 that's very easily distinguishable. So these are the submissions I  
18 make. Thank you.

19 JUDGE GUILLOU: Thank you, Mr. Young.

20 Now I turn to Ms. Alagenda.

21 MS. ALAGENDRA: [via videolink] Your Honour, thank you. May I  
22 defer to counsel Mr. Ellis to address the difficulties that we've had  
23 with the disclosure as well as the categorisation of the disclosure,  
24 Your Honour.

25 JUDGE GUILLOU: Absolutely.

1 Mr. Ellis, please.

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

3 Your Honour, whilst we appreciate the opportunity to update the  
4 Chamber this morning, we also have received, between the 11th and the  
5 15th of December, a very large amount of material. We're reading it,  
6 we're analysing it, and our investigations will start from that point  
7 when we have had the chance to properly read it and analyse all of  
8 it.

9 We're not in a position today to provide any more meaningful  
10 update than that, save to say that one thing we can address is the  
11 categorisation pursuant to Rule 109(c).

12 The reality is that there haven't been any further progresses  
13 between the parties as the matter comes before Your Honour this  
14 morning. We continue to support what was originally the Selimi  
15 Defence proposal in relation to categorisation, and the written  
16 submissions made on that by the Thaci Defence in writing before this  
17 hearing.

18 Two brief points. We would submit, first, that the wording of  
19 Rule 109(c) is clear and requires the disclosing party to categorise  
20 information in accordance with the charges in the indictment. And  
21 simply applying a label such as "Underlying Crimes" does nothing to  
22 categorise the information in accordance with the charges in the  
23 indictment. And in a case as large as this one, what is required is,  
24 surely, some link to the specific charge and the location.

25 And the second point, of course, Your Honour is that that must

1 follow from the purpose of Rule 109(c), which must be to assist the  
2 receiving party in categorising and understanding the information  
3 that is provided. And, again, a label such as "Underlying Crimes" is  
4 so broad and being applied to so many documents that it is really of  
5 very little assistance or practical utility at all.

6 Your Honour, those are our submissions.

7 JUDGE GUILLOU: Thank you very much.

8 Ms. Lawson, do you want to take the floor to respond to what has  
9 been said by the Defence?

10 MS. LAWSON: Thank you, Your Honour.

11 We clearly dispute the Selimi Defence characterisation that the  
12 SPO has not fulfilled its disclosure obligations. I have outlined in  
13 detail already the significant steps taken and the SPO position on  
14 the points that have been raised.

15 The specific link that's being requested in respect of  
16 categorisation will be provided in the form of the chart in respect  
17 of the Rule 102(1)(b) material. Thank you.

18 JUDGE GUILLOU: Thank you, Ms. Lawson.

19 Well, first, I take note that *inter partes* discussions will  
20 continue as regards the first item that has been discussed by  
21 Mr. Hooper. I also take note that there is still a disagreement  
22 between the parties on their interpretation of Rule 109(c). I invite  
23 the parties to continue to work on this matter, and I will see if a  
24 ruling is necessary on this issue in the following weeks.

25 Unless any party has anything to add on this topic, no, then I

1 will move to the second topic on the agenda, and I will turn back to  
2 the Prosecutor to ask about the status of its ongoing investigations.  
3 In particular, can you give an estimated date of completion of your  
4 outstanding investigations, and when, approximately, do you think you  
5 will be in a position to file your pre-trial brief and related  
6 material?

7 Mr. Tieger.

8 MR. TIEGER: Thank you, Your Honour. I'll address that, if I  
9 might.

10 With respect to the question of whether an estimated date of  
11 completion can be provided for investigations, I want to underscore  
12 that our investigative efforts will be governed by our statutory  
13 scheme, by the Rules of Procedure and Evidence which provide that  
14 after a certain stage of the proceedings, the use of witness  
15 statements and documents require judicial authorisation.

16 Now, this framework ensures that the expeditious preparation for  
17 trial is not disrupted while at the same time, consistent with the  
18 other ad hoc tribunals and the ICC, that investigations may continue.  
19 And there are many reasons in the interests of justice why  
20 investigations are permitted to continue, ranging from the appearance  
21 of a previously apprehensive witness who now finds the courage to  
22 provide information to the discovery of a previously hidden  
23 repository of important materials to attacks on witness credibility  
24 during trial of a dubious nature that need to be looked into. Those  
25 are just a few of the many, many examples that justifiably result in

1 and, indeed, I would say, mandate continuing investigation of a sort.

2 Now, I am aware of concerns that have arisen from circumstances  
3 where lengthy post-indictment investigations were viewed as resulting  
4 in a delay in commencing trial. That is clearly not the case here.  
5 Here it is the Prosecution seeking the expeditious arrival of a date  
6 upon which the results of further investigation will require judicial  
7 authorisation and thereby limit and restrict the scope of prospective  
8 investigations.

9 So, in short, while we are unable to put a date, and would not  
10 put a date, at the projected end of the investigation, it will not  
11 adversely affect the objective of an expeditious and fair trial and,  
12 indeed, in our submission, would enhance it.

13 I don't know if the Court wishes me to proceed to the second  
14 part of the inquiry immediately?

15 With respect, then, to our estimate of when we will be able to  
16 file our pre-trial brief and the related Rule 95 submissions, in this  
17 circumstance, based on our current projection of the commencement of  
18 a trial date in September, which we've explained to the Court, we  
19 would be prepared to file the pre-trial brief and the related  
20 materials in early July, that is, two to three months before the  
21 commencement of trial.

22 Now, I hasten to add the proviso that we view the framework of  
23 this institution as wholistic and integrated, and I've just explained  
24 how the Prosecution's investigative efforts are related to the  
25 progress of an imminence of trial, and those factors should not be

1 detached. So if that projected trial date were to shift, we would  
2 maintain our position of being able to submit those materials two to  
3 three months before trial, but they should not be artificially  
4 separated such that that submission was made and then a long, long  
5 period of time transpired before trial commenced.

6 Thank you, Your Honour.

7 JUDGE GUILLOU: Thank you.

8 I will now give the floor to the Defence on this topic of the  
9 SPO investigations.

10 Mr. Hooper.

11 MR. HOOPER: [via videolink] I noticed Mr. Tieger referred to two  
12 or three months before commencement of trial. I hope he doesn't know  
13 something that we don't know, but I've no other observations to make  
14 in respect of their investigations. Thank you.

15 JUDGE GUILLOU: Thank you, Mr. Hooper.

16 Mr. Emmerson, please.

17 MR. EMMERSON: [via videolink] Your Honour, I wouldn't take issue  
18 with the basic formulation that Mr. Tieger has put forward in  
19 relation to the need for the Prosecution, and indeed the Defence, to  
20 be able to continue investigations in certain circumstances as the  
21 process and, indeed, the trial itself proceeds. Of course there will  
22 be issues that arise ex improviso, unexpectedly, that need to be  
23 addressed.

24 What we would suggest is that there needs to be - and I'm going  
25 to use to the word loosely - a guillotine imposed at a reasonably

1 approximate point in time, which is the date beyond which, as  
2 Mr. Tieger points out, the judicial approval is necessarily required  
3 and that the presumption is that the Prosecution no longer is  
4 entitled to adduce evidence at will. And I don't think there is any  
5 dispute between us that there needs to be such a guillotine date; the  
6 question is when should it be.

7 And that leads me on to the second point, and it's one in which  
8 I do depart very firmly from Mr. Tieger and the position that the  
9 Prosecution has adopted now on more than one occasion; namely, that  
10 there is somehow an inextricable link between the progress of the  
11 Prosecution's investigation and disclosure obligations and the  
12 proximity of the trial date. I just want to analyse that briefly, if  
13 I may, for a moment, because it's come up now on several occasions.

14 What Mr. Tieger has just said to you is that the date on which  
15 the Prosecution should be required to nail its colours to the mast in  
16 a pre-trial brief, to state what its case really is, should be pegged  
17 to the date of trial and to be three months in advance.

18 Now, the underlying assumption, and I think the only possible  
19 inference from this, is that the Prosecution takes the view that it  
20 would be adverse to its interests if the Defence had more than three  
21 months to prepare the case once the Prosecution have fully identified  
22 the parameters of the evidence and charges and the way in which they  
23 want to relate the one to the other. And that is a cause for very  
24 serious concern.

25 Last time counsel for the Prosecution suggested that disclosure

1 dates should be brought backwards or forwards, and indeed pre-trial  
2 brief dates brought backwards or forwards, because of a likely  
3 realistic trial date, and we heard it just now from Mr. Tieger once  
4 again, he is saying we could be ready to file the pre-trial brief in  
5 June or July but only if there is going to be a trial in September.  
6 If the trial, in fact, is not until the following June or July, even  
7 though we would be ready in June or July this year, we want to hold  
8 it back. We want to disadvantage the Defence preparation by ensuring  
9 that it has no more than three months to prepare for trial.

10 Now, I'm sorry to have to say this, because I thought I'd  
11 flagged up the impropriety involved in that position at the last  
12 hearing, and I'm surprised to see a responsible Prosecutor continuing  
13 to make that as though it were somehow a respectable proposition for  
14 the Prosecution to take. He says we wouldn't want you to uncouple  
15 the date of trial from the date on which we must file our pre-trial  
16 brief or close the disclosure without judicial -- further judicial  
17 authorisation. But, in fact, it is a shocking submission to be  
18 making because there can't only be one reason for it, which is to  
19 restrict the ability of the Defence to fairly and properly test and  
20 answer the evidence, in other words, to impose a limit.

21 Now, if the rules or the law intended to say a fair trial  
22 requires the Defence to have short opportunity to defend the case,  
23 then they would say so. The fact that they don't is self-evidently  
24 consistent with the fundamental rules of natural justice, which is  
25 that the length of time it takes to investigate and prepare a case of

1 this complexity is determined by the volume and complexity of the  
2 material, not by some arbitrary deadline that the Prosecutor wants to  
3 impose to make life difficult for the Defence.

4 And just to put that in context, the suggestion here, serious  
5 suggestion here, is that the Prosecution's guillotine in the sense  
6 that the date on which it must finally identify its case, because, as  
7 we know, the relevance process that they are currently undergoing -  
8 we've seen that in relation to the first point of your agenda - is  
9 not a means of providing the Defence with substantive information.  
10 And, in any event, as I said earlier, it's no substitute for the fact  
11 that the Defence needs to determine relevance for itself. But there  
12 is a moment in the process when the Prosecution has to say and is  
13 required to say: This is our case. This is the case you have to  
14 meet.

15 And Mr. Tieger has told us now, very clearly, the Prosecution  
16 can do that, and therefore should be made to do that, by June or July  
17 of 2021. But to suggest that that's the only appropriate approach if  
18 there's a trial three months later is to imply that the period of  
19 time that the Defence should have between the clarification of the  
20 Prosecution case and the start of the trial should be three months.  
21 I want to put that in context.

22 Attached to our application for provisional release, you will  
23 find a very detailed piece of academic research into the functioning  
24 of the international criminal tribunals, both the ad hoc tribunals  
25 and the ICC, in terms of the scope and scale of their investigations

1 and the length of time it normally takes between first appearance in  
2 the tribunals and the start of the trial. It will be sufficient for  
3 me to tell you that the statistics show that at the ICTY the average  
4 length of time between first appearance and at the start of trial was  
5 3.6 years.

6 Now, that's an extremely long time. And it's absolutely right,  
7 of course, that efforts should be made by international tribunals to  
8 improve on that, and the ICC has improved on it. It's got the delay  
9 down to 2.3 years. But this is not about administrative delay. This  
10 is about how long it takes to conduct a proper investigation into  
11 cases of this gravity and complexity.

12 And most specifically, leaving averages aside, because, of  
13 course, they don't allow for the very particular natures of very  
14 different cases, there are two cases which are as closely parallel to  
15 this one as it is possible to get: The Limaj et al trial at the ICTY  
16 and then the Haradinaj trial at the ICTY. Both trials involved  
17 allegations of joint criminal enterprise against members of the  
18 Kosovo Liberation Army, in particular leaders, zone commanders in  
19 particular areas.

20 Unlike this case, they did not cover the whole of Kosovo or the  
21 two-year period of this indictment period, or indeed parts of  
22 northern Albania, nor were there four defendants. In each case,  
23 there were three defendants. The time-period was limited. In the  
24 Haradinaj case, it was six months. The geographical area was  
25 strictly limited. In Haradinaj, it was an area around Dukagjin

1 region, the Dukagjin operational zone, relatively, a small part of  
2 western Kosovo; and in the Limaj case, another comparatively confined  
3 area.

4 So in both cases you had a confined area, a much shorter period  
5 of time, and three defendants rather than four. And the time that  
6 was considered necessary for the preparation and presentation of the  
7 Defence investigation between first appearance and the beginning of  
8 the trial was 18 months in the case of Limaj and two years in the  
9 case of Haradinaj.

10 It is self-evident that those are basic minimums, and that in  
11 this case where there are more than a hundred murders on the  
12 indictment, each of which has to be individually investigated  
13 forensically, with witnesses and so forth, together with a vastly  
14 larger number of alleged unlawful detentions, all of which have to be  
15 investigated, the notion that the trial could begin three months  
16 after the Prosecution has prepared its trial brief is a joke. It's  
17 not just a just joke, though; it's a revelation of an attempt by the  
18 Prosecution, I regret to say, to railroad this into an unjust, unfair  
19 trial.

20 Of course, it goes without saying that we will not allow that to  
21 occur, and I can tell you now, whatever -- and this is not a matter  
22 of negotiation or bargaining. This is not a matter of indulgence to  
23 the Defence. It's a basic minimum legal right to have a fair trial.  
24 And a fair trial is one which, as the Statute, the Constitution, and  
25 the European Convention make clear, that begins after time and

1 facilities for the investigation and preparation of the defence.

2 And that, as I say, is not a matter of bargaining or of sucking  
3 and seeing. It's not an estimation. It's a basic minimum right.  
4 And given the accumulated experience of international criminal  
5 justice, the Prosecution cannot be serious in this suggestion, and,  
6 therefore, one has to ask oneself why it is being made.

7 We would suggest today is the day to sever that connection  
8 between the Prosecution's duty to disclose its case and file its  
9 pre-trial brief and the start date of the trial. Indeed, we would  
10 suggest that you should firmly reject the position taken by  
11 Mr. Tieger; that you should uncouple, consciously, deliberately, and  
12 in the interests of justice, the two sets of obligations; that you  
13 should take up the Prosecution on their commitment to serve their  
14 pre-trial brief by the earliest date that they are able to, which  
15 they have told us is June or July of next year, and then allow the  
16 Defence to make appropriate submissions based on the nature, scope,  
17 and extent of the case and the investigations that are required as to  
18 when a realistic start date should occur.

19 But the notion that the Prosecution should allow a sliding scale  
20 to be put in place which enables them to delay their disclosure  
21 obligations and their pre-trial brief in order to try to achieve a  
22 trial by ambush, which is what is going on here, I know, as the  
23 Pre-Trial Judge, Your Honour, you will stand firm and ensure that  
24 justice is not allow to be railroaded in that way.

25 Those are my submissions.

1 JUDGE GUILLOU: Thank you very much, Mr. Emmerson.

2 Mr. Young, please.

3 MR. YOUNG: Your Honour, I adopt entirely the submissions of  
4 Mr. Emmerson. I have nothing to add.

5 JUDGE GUILLOU: Thank you, Mr. Young.

6 Ms. Alagendra or Mr. Ellis.

7 MS. ALAGENDRA: [via videolink] Your Honour, we also adopt the  
8 submissions of Mr. Emmerson.

9 JUDGE GUILLOU: Thank you, Ms. Alagendra.

10 Mr. Tieger, do you wish to respond? Briefly, please.

11 MR. TIEGER: Thank you, Your Honour. Only to say briefly that  
12 Mr. Emmerson's submissions are predicated upon his view of the length  
13 of time required to move to trial, which is not usefully informed, in  
14 our submission, by comparative dates to lengthy ICTY experience.

15 We set out in our written submissions the reasons why we depart  
16 from that view, and I won't elaborate on those. I'll simply say that  
17 we reject the characterisation that our position in the earlier  
18 submissions reflects any attempt to subvert a fair trial. Quite the  
19 contrary. We consider that investigations and the results of  
20 investigations are very much in the interests of justice. They're  
21 built into the framework of our Rules of Procedure and Evidence, and  
22 the earlier submissions stand as a way to balance the approaches that  
23 lead, ultimately, to the fairest possible trial.

24 Thank you, Your Honour.

25 JUDGE GUILLOU: Thank you, Mr. Tieger.

1 I will definitely not set a date to start the trial today, but  
2 I've heard the parties on this important exchange and this will  
3 certainly be addressed in the next Status Conferences because it's a  
4 very important matter indeed.

5 Unless any other party has anything to say on this matter, I  
6 will then turn to the next point of the agenda, which relates to the  
7 Defence investigations.

8 I would like to turn to the Defence first, now. I am mindful  
9 that it might be premature at this stage for the Defence to be in a  
10 position to have a clear vision on its timeline, but I would  
11 nevertheless be interested to know if Defence want already, first,  
12 whether, based on the SPO's estimates on the ongoing disclosure of  
13 evidence process scheduled to continue until July 2021, the Defence  
14 can provide more information on the status of its investigations;  
15 then whether the Defence can provide information on any intention to  
16 make requests concerning unique investigative opportunities pursuant  
17 to Rule 99; and then whether the Defence can provide information on  
18 any intention at this stage to give notice of an alibi or grounds for  
19 excluding responsibility.

20 Mr. Hooper, please.

21 MR. HOOPER: [via videolink] Yes, thank you, Your Honour. And  
22 I'm very grateful that Your Honour has just used the words that you  
23 thought this query was, perhaps, premature, because indeed it is. We  
24 haven't begun to think of initiating investigations or addressing  
25 that, and I hope Your Honour will respect the reasons why that is,

1 because it is too early.

2 We've just received just the initial disclosures relating to the  
3 supporting material. We're still downloading that, let alone  
4 examining it and assuming a viewpoint on the basis of it.

5 In a way, your question raises the issues that Mr. Emmerson has  
6 eloquently addressed just a few minutes ago. When Your Honour first  
7 asked us, or we indicated on behalf of the Thaci Defence that we  
8 thought the beginnings, shall I put it like that, of a realistic  
9 trial date was in the summer of 2022, that wasn't, as it were, put  
10 down as a counterbalance to the Prosecution's ludicrous statement of  
11 six months with a view, perhaps, to Your Honour settling in the  
12 middle and therefore thinking that perhaps 12 months would be  
13 appropriate.

14 The 18 months was, in fact, quite clearly the very minimum that  
15 we foresaw at that stage was going to be necessary to begin, really,  
16 to see that we would have the necessary team and mechanics and  
17 investigators on the ground in order to be prepared for a trial that  
18 could conceivably start in the summer of 2022. I must say for our  
19 part, we very much echo what Mr. Emmerson said this morning.

20 And listening to Mr. Tieger, sitting here in my room in London,  
21 I have to almost pinch myself. Is he really saying this? Is he  
22 really saying this trial could take place in that way and in the same  
23 breath, talk about fair trial? It is inconceivable. And I must say  
24 I've come to this institution with my mind open, but I must say that  
25 the conduct of the Prosecution hitherto has been disappointing, to

1 put it mildly. And I'll say no more about it.

2 Your Honour, we haven't begun to put our investigatory team  
3 together. It's going to take a while. It's going to take a good 18  
4 months-plus to begin to investigate this case. And that's the  
5 reality of it.

6 Your Honour has indicated that Your Honour is not going to set a  
7 trial date today. I'm very grateful for that. And from what  
8 Your Honour said in terms of it will be the subject of discussion of  
9 future Status Conference, I feel confident that our submissions are  
10 not falling on stoney ground as far as Your Honour is concerned, and  
11 that this is a matter that's going to take many months to resolve.

12 I thank Your Honour.

13 JUDGE GUILLOU: Thank you, Mr. Hooper.

14 Mr. Emmerson, please.

15 MR. EMMERSON: [via videolink] We have taken some preliminary  
16 steps towards the process of establishing an investigatory mechanism.  
17 Obviously, the only document that we have at the moment which is  
18 remotely intelligible in terms of enabling our investigation team to  
19 start devising a strategy is the very recently disclosed lesser  
20 redacted version of the indictment. That is literally the high  
21 watermark of the case that we have. But it begins to give some  
22 indication of the number of incidents and, to some degree, the  
23 geography of some of them, as well as the names of certain  
24 identifiable individuals, although, of course, not the names of a  
25 significant number.

1           Based on that lesser redacted version of the indictment, it is,  
2 we say, quite apparent, as I said earlier, that the Defence will need  
3 to carry out very extensive investigations into each of the  
4 individual instances of forced disappearance, acts of ill-treatment,  
5 and murder alleged.

6           Can I just say that compared to other cases, this is rather an  
7 unusual one because in certainly every other case I've been familiar  
8 with at the ICTY or the ICC or, indeed, at the other regional  
9 tribunals, there has been a central allegation against the accused  
10 going beyond a mere attempt to associate together a vast number of  
11 individual crimes, in none of which any of them were involved.

12           This indictment is unprecedented in the sense that it is made up  
13 simply of a patchwork of a vast number of individual incidents which,  
14 so far as we can tell, are connected only to the extent that it is  
15 alleged that the people involved in them claimed at one stage or  
16 another allegiance to the emerging guerilla group that called itself  
17 the Kosovo Liberation Army.

18           And so it's a case where, unlike in many instances where the  
19 crime base itself is not usually a huge area of contest, each one of  
20 these requires an individual investigation and each one is  
21 necessarily going to require a critical examination before one can  
22 stand back, as the Prosecution invites the Trial Chamber to do, and  
23 view the implications of the total of the sum of the parts.

24           And so I say that -- I make that clear at this stage, because --  
25 and Mr. Tieger is right to say you can't compare it necessarily to

1 all of the other trials in the other tribunals, but actually the  
2 comparison, if anything, is one which points to a more thorough and  
3 detailed investigation in this case in which it will be, of course,  
4 vital for the Defence to cooperate with one another as far as  
5 possible to avoid the duplication of effort and expense and delay  
6 that would otherwise bedevil a case of this unusual nature.

7 That said, we have identified with a senior international expert  
8 from the national security field as supervisor of the Defence  
9 investigation for Mr. Veseli so that there will be an individual able  
10 to guarantee the integrity in every respect of the Defence  
11 investigations, and we have identified and appointed the senior  
12 investigator in Kosovo who is a qualified lawyer admitted to practice  
13 in Kosovo and is part of the Defence team.

14 We expect that we will be recruiting up to six individual  
15 investigators on the ground. In the Haradinaj case, we used an  
16 entire team of London Metropolitan police officers or former police  
17 officers to conduct the investigation. On this occasion, we propose  
18 one national security international supervising a team of qualified  
19 lawyers. And so that's -- that essentially is the scope.

20 Obviously, they need the opportunity to analyse the information  
21 that's a blizzard of documents that are being produced by the  
22 Prosecution at this moment in order to be in a position to start  
23 working out a scope. A scope needs a narrative to start with, and a  
24 narrative then needs priorities to be identified. And then you can  
25 start working out how you go about conducting individual witness

1 interviews and so forth.

2 If Mr. Tieger and his team think that we're going to start this  
3 trial without having conducted an investigation at least as thorough  
4 at the Prosecution's investigation, then I'm afraid he is sadly  
5 mistaken. I don't think any of the Defence teams in this case would  
6 participate in something that was being put forward as a charade of a  
7 trial, because anything short of a proper investigation of these  
8 allegations would be a charade of a trial.

9 So the reality is that once the SPO investigation -- once the  
10 SPO case is properly known, then it will be possible to begin  
11 devising in detail the scope and scheme for the Defence  
12 investigation. We would like to think that once we've got through  
13 the judicial recess, we will have a body of material from the  
14 Prosecution that we can begin to assimilate, analyse, and draw a  
15 narrative from, using the de-redacted indictment as the basis for  
16 that.

17 But let me reiterate what I said earlier on, which is that there  
18 are two phases to the Defence investigation. Phase 1, whilst the  
19 Prosecution investigation remains ongoing without any judicial  
20 scrutiny at all, lasts up until June, according to the timetable  
21 Mr. Tieger has envisaged. And in June or July, the guillotine comes  
22 down, and after that, the Prosecution must seek judicial  
23 authorisation to introduce any new evidence, and also at that time  
24 they are in a position to and should be required to file their  
25 pre-trial brief.

1           That's the moment at which the Defence can say: Right, we now  
2 know what the Prosecution case is and where it begins and where it  
3 ends, subject to a judicial extension. And from that point onwards,  
4 I can tell you, Your Honour, from experience, the minimum time  
5 required will be 12 months. I mean, that is -- I actually don't  
6 believe that we will get the trial started in real terms in July  
7 2022. I think it will probably be the end of 2022 or the beginning  
8 of 2023 when you take account of two things.

9           One is that the timeframe for investigation is inevitably going  
10 to be set back by the fact that the COVID vaccinations are not likely  
11 to be widely available until at least Easter of next year, and that  
12 does put -- propose very real problems in terms of availability of  
13 witnesses and conducting face-to-face investigations.

14           The other factor is, you know, I can tell you now that there  
15 will be Defence applications to you on jurisdiction. The Defence  
16 challenges to jurisdiction. And quite probably interim -- and  
17 interlocutory appeals, if necessary, on other issues.

18           So the minimum timeframe that's being put forward, which is six  
19 months while the Prosecution has unrestricted right to investigate,  
20 and 12 months once that right has come to an end and the pre-trial  
21 brief has been served, that is a realistic starting point given the  
22 circumstances. It also happens to come to 18 months, which is the  
23 minimum timeframe that we have been suggesting from the outset.

24           But I would entirely endorse Mr. Hooper's -- the marker that  
25 Mr. Hooper has laid down, which is that that is a basic minimum and

1 anything over and above that is -- or, rather, the risk of going  
2 beyond and above that is an ever-present one, having regard to two  
3 things: One is the likelihood of interim -- possibility of interim  
4 appeals; second, the COVID issue. But also the very point that  
5 Mr. Tieger makes.

6 And there's Mr. Tieger saying to you it's absolutely vital in  
7 the interests of justice that the Prosecution should be able to  
8 continue investigating even past the guillotine, albeit with judicial  
9 supervision. Well, the same is true for the Defence.

10 And so 18 months, absolute bear minimum. If that date is set,  
11 it's an optimistic date. We will, of course, keep the Pre-Trial  
12 Chamber fully informed of the progress of our investigations. But  
13 we're serious about doing this and doing it professionally, and we're  
14 ready to start in the new year.

15 So those are our submissions on Defence investigation.

16 JUDGE GUILLOU: Thank you very much, Mr. Emmerson.

17 Mr. Young, please.

18 MR. EMMERSON: [via videolink] Your Honour, we support and adopt  
19 the submissions of Mr. Hooper and Mr. Emmerson. Thank you.

20 JUDGE GUILLOU: Thank you, Mr. Young.

21 Ms. Alagenda.

22 MS. ALAGENDRA: [via videolink] Your Honour, we too adopt the  
23 submissions of Mr. Hooper and Mr. Emmerson. It's a very realistic  
24 position that the Defence is in, Your Honour, and 18 months, we feel,  
25 would be the minimum that we would require for investigations. That

1 is all, Your Honour.

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

3 Mr. Tieger, do you wish to respond?

4 MR. TIEGER: No, Your Honour. Thank you.

5 JUDGE GUILLOU: Thank you, Mr. Tieger.

6 Obviously, we're not going to decide today on the length of the  
7 investigations, but I take note of everything that has been said  
8 today. As I said before, we will certainly have further discussions  
9 on this matter in the next Status Conferences.

10 Talking about the next Status Conferences, I would now like to  
11 ask the parties on their views for a suitable date for the next  
12 Status Conference. And I remind everyone that in this regard, should  
13 counsel or the accused wish to participate via video-conference,  
14 written notice must be provided 24 hours in advance of the relevant  
15 hearing so that the Registry has the time to make the appropriate  
16 accommodations. And such notice should include the written consent  
17 of the accused.

18 Mr. Prosecutor.

19 MR. TIEGER: Thank you, Your Honour. Our position is that the  
20 next Status Conference should take place in January, which is  
21 consistent with our general view of the need for and value of  
22 frequent and regular Status Conferences at which the Court can both  
23 ascertain and guide progress of the case and the implementation of  
24 steps necessary by all parties toward trial.

25 Now, obviously this is true for all parties but I would

1 underscore that it may be particularly important in circumstances  
2 where such steps or even the answers to questions about when such  
3 steps may be taken are deferred on the basis that they're premature  
4 according to the party's own generous timetable about when trial  
5 should commence.

6 Under those circumstances, we submit that the Court would not  
7 wish to let long periods of time go by but rather set regular and  
8 frequent times to monitor progress and impose deadlines and prevent  
9 the estimations of a trial in the long distance future from becoming  
10 a self-fulfilling prophecy by virtue of steps not implemented when  
11 they could be.

12 JUDGE GUILLOU: Thank you, Mr. Tieger.

13 Mr. Hooper, please.

14 MR. HOOPER: [via videolink] Well, so far we seem to have been  
15 having Status Conferences at a monthly interval, and I'd have no  
16 objection and perhaps recommend that we have a Status Conference  
17 towards the end of January, in a month's time. Thank you.

18 JUDGE GUILLOU: Thank you, Mr. Hooper.

19 Mr. Emmerson, please.

20 MR. EMMERSON: [via videolink] May I echo Mr. Tieger's  
21 observation that a close trial and pre-trial management is an  
22 important part of this process in order that we can take a realistic  
23 appraisal of how long a trial takes. But the implication underlying  
24 his submission that this is somehow a timeframe pulled from the air  
25 or that the Defence are seeking to drag their heels is offensive and

1 wrong, and I would respectfully ask him to withdraw that suggestion.

2 We agree that a monthly Status Conference is a sound way of  
3 proceeding, and we are confident that we will be able to demonstrate  
4 to Your Honour, in detail, why the time estimate we have been given  
5 is the realistic one. And at some point in this process, the  
6 Prosecution will stop, give up making these absurd suggestions about  
7 trial in the middle of next year, but, obviously, they haven't quite  
8 got to that point yet.

9 The timetable for the next Status Conference, I would like to  
10 suggest on or about 14 January. As I've noted in our submissions for  
11 today's Status Conference on behalf of Mr. Veseli, an application for  
12 provisional release, a reasoned application at the request of the  
13 Prosecution has been filed. And we would ask you to set a timetable  
14 for the Prosecution to respond by 31 December, for the Defence to  
15 reply by 11 January, and for the next Status Conference to occur on  
16 14 January, at which we would invite you to hear oral submissions in  
17 support of the application for provisional release.

18 JUDGE GUILLOU: Thank you, Mr. Emmerson. I look forward to  
19 reading your application.

20 Just to inform you that I already addressed this matter in a  
21 decision that I issued last evening, especially on the timeline for  
22 the requests. But I will definitely look into your request, the one  
23 that has been filed.

24 Mr. Young.

25 MR. YOUNG: Your Honour, thank you. I would submit perhaps in a

1 month's time, Your Honour.

2 JUDGE GUILLOU: Thank you, Mr. Young.

3 Ms. Alagendra.

4 MS. ALAGENDRA: [via videolink] We too agree on a month's time,  
5 Your Honour.

6 JUDGE GUILLOU: Thank you very much.

7 A Status Conference will be scheduled in due course, but I can  
8 already tell you that I share your views that regular Status  
9 Conferences, probably around, I mean, one every month, is definitely  
10 something that I intend for the following months in this case to  
11 monitor the expeditiousness of the parties. And what I really want  
12 to avoid is that we waste time, is that time is wasted because there  
13 is no coordination. That is something that I want to avoid.

14 The parties need to have the time to do their investigation. We  
15 need a fair trial for sure, but I definitely want to be as  
16 expeditious as possible in the case, and the Pre-Trial Judge will be  
17 available for the parties to rule on any matter should it be  
18 necessary to ensure this expeditiousness.

19 I just want to note for the record that we've had, and we're  
20 still having, a little problem with the transcript which is  
21 apparently stopped for the moment, the realtime transcript. This  
22 will not prevent us to benefit from the transcript at the end of the  
23 hearing.

24 I see the Court Officer is mentioning something. Okay, so  
25 apparently it's just for me that the transcript is not working and it

1 works for the others, so I apparently it's been fixed for the others.  
2 So it be only some computers, so we'll try to fix that. But I can  
3 inform you that it will have no impact on the availability of the  
4 transcript at the end of this hearing.

5 At this point, I would like to ask the parties whether they have  
6 any other issues they would like to raise?

7 Starting with the Prosecution.

8 MR. TIEGER: No, Your Honour. Thank you very much.

9 JUDGE GUILLOU: Thank you, Mr. Tieger.

10 Mr. Hooper, please.

11 MR. HOOPER: [via videolink] Yes, there's three matters,  
12 essentially.

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 Can I pass to the second -- the second matter? This relates,  
3 Your Honour, to -- and we've received yesterday Your Honour's  
4 decision, or I saw yesterday Your Honour's decision, in respect of  
5 extending the time-period within which preliminary motions relating  
6 to jurisdiction or challenges to the indictment will need to be  
7 served.

8 There will be challenges in respect of both those matters, I  
9 anticipate, on behalf of Mr. Thaci. At the moment, Your Honour's  
10 extended that, and we're grateful for that, to the, I think, the  
11 10th, is it, of --

12 JUDGE GUILLOU: 10th of February.

13 MR. HOOPER: [via videolink] 10th of February. And, Your Honour,  
14 it was drawn to my attention - and can I share this with Your Honour  
15 and my learned friends - the position here might, in fact, be  
16 affected by Rule 97(2).

17 Now, Your Honour, 97(2) may need to be, in this context, seen in  
18 conjunction with Your Honour's order in relation to protective  
19 measures which effectively defers the disclosure of some matters in  
20 the course of that decision. So we're not going to get all the  
21 matters, because some of it's been put on hold while various  
22 decisions, further decisions are made in respect of that material.

23 And our Rule 97(2) reads that, as far as the accused is  
24 concerned, he may file preliminary motions in writing.

25 I'm looking now at 97(2):

1 "Such motions shall be in writing and shall be brought within  
2 thirty (30) days from the disclosure of all material and statements  
3 referred ..."

4 So "all material and statements," if that reading is correct,  
5 and if the Prosecution are not going to produce matters until 15  
6 January, as I understand, is the date established in respect of some  
7 matters, then that will give us 30 days from that date. In other  
8 words, we would win, as it were, another five days. So, Your Honour,  
9 that's the situation. I draw Your Honour's attention to it.

10 And I don't know if I could put it in this way, if Your Honour  
11 could reflect on that and come to a decision as to whether you agree  
12 with that interpretation or not. If you do agree, then we get  
13 another five days in which to lodge those particular matters.

14 The final matter, Your Honour, comes to this: Applications for  
15 interim release. Yesterday, or, rather, in the early hours of this  
16 morning, I received the Prosecution's response in their F149 filing,  
17 and in respect of that, the Prosecution response, as Your Honour may  
18 know, isn't a short one. It's 21 pages of argument, accompanied by  
19 over 200 pages of supporting material, which I haven't yet managed to  
20 access or read.

21 What I'm asking for is that, normally, a reply from the Defence  
22 at this stage would be a reply that would be submitted within five  
23 days, but I ask Your Honour, in fact, to vary that. The reasons I  
24 ask Your Honour to vary that is that, of course, this is a very  
25 significant matter. We've had a substantial filing, much more than

1 we'd anticipated now, I say, from the Prosecution on this matter, and  
2 it relates also to new matters that require a degree of examination,  
3 indeed investigation, on our part.

4 We're also, of course, in receipt of Your Honour's decision in  
5 relation to our requests to have an oral hearing in respect of  
6 interim release, and Your Honour's denied that. May I say that it  
7 will come as little surprise to Your Honour that's come as a  
8 disappointment and perhaps a matter of regret for us. Not only  
9 because perhaps, on balance, we perhaps thought or conjectured that  
10 Your Honour would, in fact, grant us an oral hearing based on our own  
11 experience and our own jurisdiction on these matters but also our  
12 experience of principles of orality in other international courts.  
13 So it did come as, at least, a regret.

14 But it means that, effectively, matters that we would have  
15 wanted to have brought before the Court in an oral hearing are now  
16 going to have to be contained in order to advance our previous  
17 arguments. They're not additional arguments. They're matters in  
18 support of our existing contentions that interim release should be  
19 granted. And we need more time, really, to get those matters  
20 together.

21 Your Honour will have been made well aware of the limitations of  
22 COVID, and what that has caused and is causing all of us, but  
23 particularly the Defence, because the Defence at this time -- the  
24 Defence at this stage are entering something of a bottleneck of  
25 activity, as Your Honour knows, because we're not only just receiving

1 all the supporting material with, in our submission, an inadequate  
2 description on the part of the Prosecution, et cetera, et cetera, and  
3 we're not only having to deal with that, but also having to, being at  
4 the early stages of a case, the foothills, as Mr. Emmerson has  
5 described it, we, all of us, are busy constructing our teams and  
6 liaising within those teams, we all have to now have to consider the  
7 position of complex preliminary motions, which there will be, and  
8 attend to that.

9 And my own intention having been to go to The Hague for next  
10 Monday and Tuesday in order to have face-to-face discussions with  
11 Mr. Thaci, that can't happen because of the COVID restrictions. As  
12 Your Honour knows, you can go to a hotel now in The Hague but you  
13 can't be fed, and this put a certain restriction on choices.

14 But not just that. It's quite apparent that the new  
15 restrictions, both in the Netherlands and here in London, have been  
16 introduced because of the extraordinarily ascending mortality rates  
17 caused by this dreadful disease. So we're having to be very, very  
18 cautious.

19 So there's a number of obvious factors that have come together  
20 here. I see that, and I think it's the Veseli case, because of the  
21 particular position that they're in in respect of interim release,  
22 that, I think, they have a, sort of, return date in terms of the  
23 final Defence filing of, I think, about 7 January. That takes us  
24 over the Christmas period and the slight hiccup of the new year.

25 And in those circumstances, I'd ask Your Honour to extend to us

1 the opportunity to fashion our reply and its supporting materials in  
2 the fullest way possible and to submit that at about the same time,  
3 in other words, just into the new year.

4 That's my application in respect of that. Thank you, Your  
5 Honour.

6 JUDGE GUILLOU: Thank you very much, Mr. Hooper.

7 Do I understand you correctly? You wish, in fact, to have a  
8 timeline similar to the one that is foreseen for the application on  
9 behalf of Mr. Veseli; correct?

10 MR. HOOPER: [via videolink] Yes, indeed. I latch myself onto  
11 that, though I appreciate we're in a slightly different position,  
12 because we filed earlier. But Your Honour has, as it were, to --  
13 would perhaps, to some extent, want to see the arguments gathered  
14 together, even though I know Your Honour will be looking very  
15 subjectively at each case quite separately. Thank you.

16 JUDGE GUILLOU: Thank you, Mr. Hooper. Does it mean that you  
17 also agree to waive the right for Mr. Thaci to have detention  
18 reviewed in the timeline of two months, because you need this time to  
19 prepare your response?

20 Sorry, microphone, please, Mr. Hooper.

21 MR. HOOPER: [via videolink] Oh, I'm sorry, I'd turned it off.  
22 I'd say yes to that, but I have to confess, I haven't been able to  
23 take instructions from Mr. Thaci on this issue. But judging by my  
24 conversations with him previously, I do not think that that will be  
25 a -- pose a difficulty. I don't know how I can liaise further than

1 that at the moment. He's listening to us.

2 I don't know if I can reach out to Mr. Thaci -- that's not  
3 Mr. Thaci, by the way, that's come up on the screen. But if I could  
4 relay to Mr. Thaci. But I don't know if Mr. Thaci would, in any  
5 event, want to just discuss this in this way.

6 Can I say to Your Honour that the answer to that is yes, but I  
7 will talk to Mr. Thaci one way or another, immediately after this  
8 Status Conference. And if I'm in any way amiss or wrong about what I  
9 believe to be my position and his position, I will come straight back  
10 to the Court and let Your Honour know.

11 JUDGE GUILLOU: Thank you, Mr. Hooper. It's exactly what I was  
12 going to suggest, so therefore it's perfect. Noted.

13 Mr. Emmerson, please, do you have anything to add?

14 MR. EMMERSON: [via videolink] Nothing to add, thank you.

15 JUDGE GUILLOU: Mr. Young?

16 MR. YOUNG: Yes, very briefly.

17 Your Honour, obviously, unless the Prosecution are not opposing  
18 the interim release application made by Mr. Selimi, I understand that  
19 the Prosecution are due to file, possibly, their response, if they  
20 are responding today, to our application for interim release.

21 All I say is that if that is the course and they are opposing  
22 and they do respond, then I would be grateful if Your Honour would  
23 give the Selimi team a similar extension to that of Mr. Thaci, if  
24 Your Honour is minded to grant Mr. Thaci's team further time to  
25 respond. Thank you.

1 JUDGE GUILLOU: And, Mr. Young, like I asked for Mr. Hooper,  
2 this would involve waiving the right of Mr. Selimi to have the  
3 detention reviewed according to the two-month regular timeline. Can  
4 we agree that you have an agreement, in theory, and after consulting  
5 with your client today you will get back to me if it's not the case?

6 MR. YOUNG: Yes, I'll do that as soon as possible. Thank you.

7 JUDGE GUILLOU: Thank you, Mr. Young.

8 Ms. Alagendra, do you have anything to add?

9 MS. ALAGENDRA: [via videolink] We are too are likely to ask for  
10 time to reply, Your Honour, just as the other teams have, for the  
11 interim release application, upon hearing from the Prosecution.

12 JUDGE GUILLOU: Thank you, Ms. Alagendra. Under the same  
13 conditions as I just mentioned?

14 MS. ALAGENDRA: [via videolink] Yes, Your Honour.

15 JUDGE GUILLOU: Thank you, Ms. Alagendra.

16 And, Mr. Hooper, I took note of the two other matters that you  
17 mentioned. Just for the first one, I just want to indicate that a  
18 confidential filing shall not be discussed in public session, so I  
19 cannot address the matter here. It will be dealt with in writing,  
20 but I definitely took note of the point you mentioned, and I have  
21 also asked the Court Officer to redact the reference in the  
22 transcript. But I will definitely take note of everything you said  
23 in future written written rulings.

24 And I also took note of what you asked for the future  
25 preliminary motions in terms of timeline as well, and it will be

1 addressed.

2 Unless any party has anything to add?

3 I see Ms. Lawson. Do you want to add anything? Ms. Lawson.

4 MS. LAWSON: Thank you, Your Honour. On the first matter raised  
5 by Mr. Thaci, I won't say anything further other than, as you noted,  
6 it's under litigation.

7 On the preliminary motions, we would not see any basis for an  
8 extension in relation to Rule 97(2). It's very clear the type of  
9 issues that preliminary motions are intended to address. They're  
10 intended to address the form of the indictment, jurisdictional  
11 challenges, and potential severance. The very limited material that  
12 has been put to a deferred ruling is unlikely to impact that in any  
13 way.

14 With respect to the extension requests for replies to the  
15 preliminary motion -- to the interim release motions, the SPO is  
16 strongly opposed to those requests. We have submitted our responses  
17 in respect of Mr. Thaci in good time yesterday, within the standard  
18 deadline, within the standard word count. We will be doing likewise  
19 today for Mr. Selimi and Mr. Krasniqi. And all parties were on  
20 notice of the importance of briefing fully in their initial filings,  
21 bearing in mind the limited scope for authorised replies as well,  
22 which may only address new issues arising. And, therefore, we oppose  
23 those requests. Thank you.

24 JUDGE GUILLOU: Thank you, Ms. Lawson.

25 Does anybody want to add anything?

1 Mr. Hooper.

2 MR. HOOPER: [via videolink] Well, merely to say, or resay, that  
3 the Prosecution response included new matters that have been raised,  
4 and those matters need investigation.

5 JUDGE GUILLOU: Thank you, Mr. Hooper.

6 I don't see anybody asking the floor. No. So this concludes  
7 today's hearing. I thank the parties and the Registry for their  
8 attendance. I also thank the interpreters, stenographers,  
9 audio-visual technicians and security personnel for their assistance.

10 The hearing is adjourned.

11 --- Whereupon the interview Status Conference at 12.33

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