

1 Friday, 20 May 2022  
2 [Status Conference]  
3 [Open session]  
4 [The accused appeared via videolink]  
5 --- Upon commencing at 3.30 p.m.

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

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

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

12 JUDGE GUILLOU: Thank you, Madam Court Officer.

13 First, on behalf of the Court, I would like to apologise for  
14 this delay. Unfortunately, there has been some connectivity problems  
15 between the Court and the outside world, which led to some  
16 difficulties to be able to hold this hearing. But it seems that  
17 everything has been now fixed, and I see everyone in the various  
18 screens, so we will be able to proceed.

19 I'd just inform all the accused and parties attending remotely.  
20 Please, inform the Court immediately if you have any connection  
21 problem, in case we have, again, problems with the connections this  
22 afternoon.

23 Now, I would kindly ask the parties and participants to  
24 introduce themselves starting with the SPO.

25 Mr. Prosecutor, please.

1 MR. HALLING: Good afternoon, Your Honour. Appearing for the  
2 SPO this afternoon are Senior Prosecutor Alan Tieger; head of  
3 investigations Ward Ferdinandusse; legal and disclosure expert  
4 Clemence Volle-Marvaldi; and I am Prosecutor Matt Halling.

5 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

6 Now let me turn to the Defence, starting with Mr. Kehoe, please.

7 MR. KEHOE: Good afternoon, Your Honour. Gregory Kehoe,  
8 Sophie Menegon, and Bonnie Johnston on behalf of President Thaci.  
9 Good afternoon.

10 JUDGE GUILLOU: Good afternoon. Thank you, Mr. Kehoe.

11 Mr. Emmerson, please.

12 MR. EMMERSON: [via videolink] Good afternoon, Your Honour, and  
13 to those inside and outside the courtroom. My name is Ben Emmerson,  
14 and I represent Kadri Veseli together in court with my co-counsel  
15 Andrew Strong and Annie O'Reilly; with Pascale Langlais, our legal  
16 associate; with Semir Sali, our legal associate; Hajredin Kuci, a  
17 legal advisor to the team; Gabriele Caon, an intern; and I am joined  
18 remotely by Kujtim Kerveshi, Head of Investigations in Kosovo.

19 JUDGE GUILLOU: Thank you, Mr. Emmerson.

20 Now I turn to Mr. Young, please.

21 MR. YOUNG: Good afternoon, Your Honour. David Young for  
22 Mr. Rexhep Selimi today. I'm assisted today by co-counsel  
23 Mr. Geoffrey Roberts, Dr. Rudina Jasini, and our intern Siera Skendo.  
24 Thank you.

25 JUDGE GUILLOU: Thank you, Mr. Young.

1 Ms. Alagendra, please.

2 MS. ALAGENDRA: Good afternoon, Your Honour. I'm  
3 Venkateswari Alagendra representing Mr. Krasniqi. And I'm appearing  
4 together with Aidan Ellis, co-counsel; Mr. Victor Baiesu, co-counsel;  
5 and Mentor Beqiri, legal associate, by videolink today.

6 JUDGE GUILLOU: Thank you, Ms. Alagendra.

7 Now I turn to the counsel for victims.

8 Mr. Laws, please.

9 MR. LAWS: Good afternoon to Your Honour and to everyone. I am  
10 Simon Laws. I'm Victims' Counsel in this case, appearing today with  
11 my co-counsel Maria Radziejowska.

12 JUDGE GUILLOU: Thank you, Mr. Laws.

13 And finally, Mr. Nilsson for the Registry, please.

14 MR. NILSSON: Good afternoon, Your Honour. Good afternoon,  
15 colleagues. Jonas Nilsson, Judicial Services Division, representing  
16 the Registry.

17 JUDGE GUILLOU: Thank you, Mr. Nilsson.

18 And for the record, I note that Mr. Thaci, Mr. Veseli,  
19 Mr. Selimi, and Mr. Krasniqi attend this hearing via  
20 video-conference.

21 And, for the record, again, I am Nicolas Guillou,  
22 Pre-Trial Judge for this case.

23 On 12 May 2022, I scheduled this twelfth Status Conference. I  
24 asked the parties to provide written submissions if they so wished.

25 On 18 May 2022, the SPO and three Defence teams submitted their

1 written submissions. I thank the parties for their written  
2 observations.

3 The purpose of our hearing today is, as usual, to review the  
4 status of the case and to discuss the topics in our agenda;  
5 specifically, disclosure, Defence investigations and next steps, and  
6 proposals for streamlining the case. I will invite the parties to  
7 present their views in a concise fashion about each item.

8 Before we move to the first item on the agenda, as a preliminary  
9 matter, I would like to clarify the briefing schedule for any request  
10 for leave to appeal my recent decision confirming amendments to the  
11 indictment.

12 I note that on 2 May 2022, I ordered the Thaci Defence and  
13 remaining parties to request certification to appeal the Confirmation  
14 of Amendments Decision and to provide submissions on the  
15 admissibility of such request by Monday, 23 May 2022.

16 I further note that on 10 May 2022, I ordered the SPO to file a  
17 response to the Veseli request for leave to appeal the Confirmation  
18 of Amendments Decision by Monday, 23 May 2022.

19 In light of the Thaci Defence's recent notification, which is  
20 F799, that it will not be filing a request for leave to appeal the  
21 Confirmation of the Amendments Decision, I would like to hear from  
22 the remaining Defence teams whether they intend to request leave to  
23 appeal and/or to provide submissions on the admissibility of such  
24 requests.

25 And I will start with the Selimi Defence team, and I will start

1 with Mr. Young, please.

2 MR. YOUNG: Your Honour, thank you. We're not making  
3 submissions.

4 JUDGE GUILLOU: Thank you, Mr. Young.

5 Ms. Alagendra, please.

6 MS. ALAGENDRA: We're not making submissions either,  
7 Your Honour.

8 JUDGE GUILLOU: Thank you, Ms. Alagendra.

9 Mr. Kehoe, I guess you don't --

10 MR. KEHOE: We stated our position --

11 JUDGE GUILLOU: Yes.

12 MR. KEHOE: -- in the filing, Your Honour.

13 JUDGE GUILLOU: Thank you.

14 Mr. Emmerson, would you like to mention anything?

15 MR. EMMERSON: [via videolink] No. I think unless Ms. O'Reilly  
16 has an issue she wants to raise.

17 JUDGE GUILLOU: Ms. O'Reilly.

18 MS. O'REILLY: Your Honour, as you know, we have filed our  
19 submissions, but those were filed before you issued that order. And  
20 so, as I stated in the submission, we just need clarification on the  
21 admissibility issue when you would have that addressed. Thanks.

22 JUDGE GUILLOU: Thank you very much.

23 In light of the parties' submissions, and in order to streamline  
24 the briefing schedule on this matter, I will issue my first oral  
25 order.

1 I order the SPO to provide submissions, if it so wishes, on the  
2 admissibility of Mr. Veseli's Rule 77 request in its response due  
3 Monday, 23 May 2022.

4 I further order the Veseli Defence to file its reply to the  
5 SPO's response by Friday, 3 June 2022, and to include therein any  
6 submissions on the admissibility of its leave to appeal request.

7 This concludes my first oral order.

8 Let us now move to the first topic that was listed in our  
9 agenda, which is disclosure.

10 I will give the floor to the parties on the disclosure of each  
11 category of material, as usual. So we will first start with the  
12 Rule 103 material, which is exculpatory material, as mentioned in the  
13 Scheduling Order; then, the Rule 102(3) material, which is material  
14 relevant to the case as listed by the SPO; and, finally, Rule 107  
15 material, which is protected material for which the consent of the  
16 provider is requested.

17 Let us start with the disclosure of exculpatory material today,  
18 given that it is the most important evidentiary material that is left  
19 to be fully disclosed to the Defence.

20 Since the last Status Conference, the SPO has disclosed more  
21 than 1.000 documents pursuant to Rule 103 across 14 disclosure  
22 batches, if I'm not wrong, given that the last batch has been  
23 disclosed this morning.

24 In its written submissions, the SPO indicates that it has  
25 finalised its initial review of exculpatory evidence in its

1 collection up to the end of January 2022. This includes the 2.500  
2 items whose review was ordered at the last Status Conference.

3 However, the SPO specifies that Rule 103 disclosures will  
4 necessarily continue as they would in all other cases of this nature,  
5 and the SPO indicates that it will conduct targeted searches  
6 throughout the proceedings to ensure that upcoming witnesses have all  
7 Rule 103 disclosures duly accounted for.

8 The Thaci Defence expressed its concern that such a significant  
9 amount of exculpatory material has only been disclosed by the SPO  
10 now. It also asks the SPO to confirm whether and what amount of  
11 exculpatory material remains in its custody, control, or actual  
12 knowledge, and when disclosure of such material currently in its  
13 possession will be completed.

14 The Veseli Defence and the Krasniqi Defence also request an  
15 order requiring the SPO to complete all Rule 103 disclosure by  
16 22 June 2022.

17 I invite the SPO to reply to the Defence questions and to  
18 indicate if there is evidence at its disposal since the end of  
19 January 2022 for which review for exculpatory material has to be  
20 performed. If so, can the SPO commit to do so before the next  
21 Status Conference.

22 Mr. Prosecutor, you have the floor.

23 MR. HALLING: Thank you, Your Honour. And, yes, we'll address  
24 all of the questions that you raised just now.

25 As accurately summarised, the SPO has completed a Rule 103

1 review of its collection from materials up to the end of January  
2 2022. And to date, overall, the SPO has disclosed over 5500 items  
3 under Rule 103 to the Defence teams.

4 We are preparing a protective measures request in respect of  
5 certain Rule 103 material, which we would file by the end of this  
6 month.

7 As to the Defence written submissions about completing Rule 103,  
8 and Your Honour mentioned the next Status Conference, yes, we can.  
9 We're in a situation where what's being reviewed is the more recently  
10 reviewed items. This is still going on, but this is kind of where  
11 Rule 103 is at this point. New things will come in, they will be  
12 reviewed for exculpatory information, and this is just, by rule,  
13 going to continue throughout the proceedings.

14 We're going to be able to finish reviewing the things received  
15 since January by the next Status Conference. We're intending to do  
16 that. So deadlines of the kind proposed in the Defence written  
17 submissions are, in our submission, not necessary.

18 When the SPO identifies information as falling under Rule 103,  
19 we're going to proceed to disclose it. And as we said in our written  
20 submissions, these new items are going to come in, and when they're  
21 assessed as relevant, they'll be disclosed accordingly.

22 We just want there to be no confusion about the fact that  
23 Rule 103 disclosure packages are going to continue, and existing  
24 items can always be potentially reassessed following the initial  
25 review. The scale and development of these kinds of cases makes it



1 important - and this reflects the best practices of the ICTY and the  
2 ICC as well - that there needs to be targeted re-reviews and searches  
3 throughout the proceedings in order to ensure that potentially  
4 exculpatory materials are fully accounted for. And we will be doing  
5 this going forward as a safeguard throughout the proceedings.

6 But the initial review is done, and the Defence has the Rule 103  
7 information it needs to write its pre-trial brief, conduct its  
8 investigations, and prepare for trial.

9 JUDGE GUILLOU: When you say "the initial review is done," it is  
10 done for material in your possession at the date of 31 January 2022.  
11 It is not done for the material that you obtained since that date;  
12 correct?

13 MR. HALLING: That's correct. And so we're reviewing, as we  
14 will going forward, the new received material. Your Honour mentioned  
15 by the time of the next Status Conference, that's a reasonable  
16 timeframe for us to do that.

17 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

18 Mr. Kehoe, please.

19 MR. KEHOE: Yes, Your Honour. Thank you.

20 One of the fundamental problems in the entire handling of this  
21 case by the SPO is their failure to do things promptly. The one  
22 thing that our clients looked at, my client and the other three, is  
23 to move this case along and bring it to trial promptly. We are  
24 still, years later, awaiting 103 material which Your Honour, on  
25 several occasions, has told the Prosecutor to release immediately.

1 "Immediately," in a common parlance, Judge, I am not trying to  
2 interpret this too broadly, means "now," not somewhere down the line  
3 when the SPO decides to do it. And I bring to your attention the  
4 delay of very significant witnesses that have just been given to us  
5 within the past several days and weeks.

6 Disclosure Package 249, disclosed 18 May 2022. There is  
7 information in there going back to 5 February 2015.

8 In Disclosure Package 248, disclosed the day before,  
9 17 May 2017, there are transcripts of interviews by the SPO in  
10 December 2019, February 2019, April 2019, and May 2019.

11 In Disclosure Package 242, disclosed on 13 May 2022, there are  
12 notes concerning meetings by the SPO in December 16th, 2016, and  
13 January 2017.

14 Now, that is not immediate.

15 Now, as to any argument that this information is not extremely  
16 important to my client and the other accused, these were OSCE  
17 personnel and UNMIK personnel, key individuals on the ground at the  
18 time that we're getting 103 material, Your Honour, years after this  
19 information has been provided to the SPO. I am sure, Your Honour,  
20 based on your edict to disclose immediately, years is not what  
21 Your Honour had in mind.

22 And what does this do? This causes immeasurably more time and  
23 effort to try to get into this exculpatory material that had been in  
24 the SPO file for years. There is simply no excuse for this, which is  
25 why we called upon an independent monitor to come in to examine this

1 103 material and to get it released to the Defence promptly. That  
2 simply has not happened.

3 And now we have some amorphous discussion about the potential  
4 for more 103 material after the initial set that goes from 2022 --  
5 January 2022. I mean, how much is that? How much more information  
6 do we have? What is the substance of that information? All of that  
7 impacts our clients as it pertains to time because they're the ones  
8 that are sitting in the detention unit. They're the ones that are  
9 suffering from this delay and want to bring this to trial, but we're  
10 not getting this exculpatory material.

11 I'm sure you understand the point, Judge, the point to get this  
12 immediately, as Your Honour has articulated and ordered on numerous  
13 occasions. But frankly, Your Honour, it's just not happening.

14 If we can address a particular 103 concern that we have. It has  
15 to do with our specific request of the SPO for evidence of contact  
16 with witnesses on their witness list with any organ of the Serbian  
17 state. That had to do -- we always asked for the evidence, the  
18 provenance of any evidence which demonstrates that the source of the  
19 SPO evidence and witnesses, directly or indirectly, is the Republic  
20 of Serbia or any of its organs. And we got an answer back from the  
21 SPO on that score, and we had made those requests back in March. We  
22 got an answer back from the SPO on 20 April 2022.

23 And this is what they argued:

24 "The SPO does not accept the proposition that evidence provided  
25 by the Serbian authorities or obtained with their assistance,"

1 whatever that means, "automatically falls under Rule 103. The SPO is  
2 entitled to seek the cooperation of third-party states pursuant to  
3 Article 55 of the Law, and such cooperation does is not affect the  
4 credibility or reliability of the SPO's evidence."

5 The SPO has an office in Belgrade. They don't have an office  
6 any place else. They are cooperating with the Serb authorities. And  
7 what do we know about how the Serb authorities have manufactured  
8 incidences in order to make our clients and the Kosovar Albanians --  
9 put them in a very poor light? We talked the last time about  
10 false-flag operations. My colleague, Mr. Young, will talk to you  
11 about the Panda incident. It was well reported from the latter part  
12 of 1998 where the Serbs went in and murdered Serb individuals, young  
13 men and women, and blamed it on the Kosovo Albanians.

14 And you say, rightly so, well, that was back in 1998. This is  
15 2022. Well, the story gets better. And if we can just briefly go  
16 through where we are now in this relationship between the SPO and the  
17 Serb authorities, keeping in mind that the foundational document for  
18 this Court is the Marty report. And what had been reported both in  
19 his book and in television media in Belgrade was that the former  
20 ambassador of Serbia to Switzerland was responsible with the Serb  
21 organs to give in excess of a thousand documents to Mr. Marty. They  
22 did that in secret back in 2009.

23 And the ambassador, Milan St. Protic says that the Marty report  
24 is largely based on the thousand pages that Mr. Marty received from  
25 the Serbs. And he notes, and this comes from one of his interviews

1 in one of the chat shows that was taking place in Belgrade:

2 "If it were not for the report of the Serbian War Crimes  
3 Prosecution, there would have been no Marty report."

4 He talked with pride how the Marty report was replete with the  
5 information that Mr. Marty had received from Serb research organs.

6 Fast-forward. What has happened most recently? What has  
7 happened most recently is the discovery of the assassination attempt  
8 of Dick Marty. We noted for -- that in our submission for pre-trial  
9 release. And what has happened as a result of that?

10 Well, what happened as a result of that was that the Serb  
11 authorities put out a contract to kill Mr. Marty and to blame it on  
12 the Kosovo Albanians, accomplishing two very important things.

13 JUDGE GUILLOU: Mr. Kehoe, we are talking about disclosure of  
14 exculpatory material --

15 MR. KEHOE: And what I am talking about, Judge, is why - why -  
16 their position is contrary to 103. Because of their relationship --

17 JUDGE GUILLOU: Very good.

18 MR. KEHOE: -- their relationship with the Serbs calls into  
19 question. And I've cited this many times, Judge. That it is 103  
20 material if the information affects the credibility or reliability of  
21 the Special Prosecutor's evidence.

22 So here we have a situation where the murder contract goes out  
23 on Dick Marty, Serb intelligence hires in a black ops operation a  
24 cut-out to get him -- to kill Mr. Marty. And when did this happen?  
25 This happened almost shortly after our clients were, in fact, brought

1 to The Hague in the late 2020. The contract goes out and the Swiss  
2 intelligence discover it.

3 And Mr. Marty, in his interview -- and if anybody questions  
4 whether or not this is a real threat, the Swiss intelligence services  
5 have put Mr. Marty in protective custody, and it's all in his  
6 interview: "The threat apparently comes from certain circles of Serb  
7 intelligence services who have asked the underworld, professional  
8 killers, to liquidate me simply to blame the Kosovars. They are part  
9 of the underworld. There are veterans who specialise in -- in  
10 warrant killings and commissions, so it doesn't take a lot of money  
11 to get him killed" --

12 JUDGE GUILLOU: Mr. Kehoe, please move to your argument  
13 regarding exculpatory material. We are talking about the schedule  
14 for the disclosure of exculpatory material. If the question is that  
15 you dispute the interpretation of the SPO of exculpatory material,  
16 then explain it. You don't need to get to the level of detail. We  
17 have a very busy Status Conference, and we are already starting an  
18 hour late. So please.

19 MR. KEHOE: And, Your Honour, the bottom line is this: To take  
20 a position that the relationship of the SPO with the Serb organs on  
21 any level is the same as the relationship with anyone else is  
22 specious. We are entitled to know the provenance of any document  
23 that the SPO is advancing in this courtroom that comes from Serb  
24 intelligence or any other investigative organs.

25 And the reason I needed to go through the Marty situation is

1 that the threat -- that the threat here, by the Serb intelligence  
2 services to infiltrate and obstruct justice in this case is ongoing.  
3 So, consequently, clearly, any document, any information that they  
4 are getting from the Serb intelligence service or from the  
5 prosecutor's office, given this historical background to turn this  
6 entire court upside-down, is 103 material, Judge. And that is the  
7 argument that we have.

8 And the reason why I needed to go through the Marty situation is  
9 to bring to Your Honour's attention that this is a clear and present  
10 danger to this Court. And the way to -- just one way, other than  
11 conducting an obstruction of justice case, one way is to ensure that  
12 the Prosecutor identifies every document that they got from the  
13 Serbs. Thank you.

14 JUDGE GUILLOU: Thank you, Mr. Kehoe.

15 I will give the floor to the SPO after all the Defence teams to  
16 respond on this argument. I think the main question here is the  
17 scope of the Rule 103 exculpatory material.

18 Mr. Emmerson, please.

19 MR. EMMERSON: [via videolink] Your Honour, can I deal with three  
20 issues.

21 The first, and I just -- this is a question of clarification.  
22 It's a request for clarification. Your Honour ordered at the last  
23 Status Conference that the documents in the possession or the  
24 information in the possession of the SPO up until the January cut-off  
25 line for that purpose, which I think was said to be about

1 two-and-a-half-thousand documents, should be reviewed and disclosed  
2 as relevant.

3 Now, we are told, in what may or may not be a carefully worded  
4 written and oral submission, that the review has been completed.  
5 What I would like clarification of is whether the Prosecution is  
6 asserting that it has disclosed everything that it is required to  
7 disclose under Rule 103 as a result of that review of material up to  
8 that date. Because what we are told is that it has been reviewed,  
9 certain material has been disclosed under Rule 103.

10 What we're not told in terms yet, perhaps that will be  
11 clarified, is whether the SPO has, in fact, complied with your order  
12 to disclose by 20 May all documents that are assessed as being  
13 disclosable under Article 103 following what we are told was a  
14 comprehensive review of those documents.

15 If what I've just said is not an accurate statement of the SPO's  
16 position, then they're invited to confirm the position and to explain  
17 why the deadline was not met and precisely to clarify where matters  
18 stand now.

19 Secondly, it's extremely important that the SPO is not permitted  
20 to slide into the practice of disclosing exculpatory material just  
21 before a witness is brought to court to give evidence. And I note  
22 that a new form of language has entered into the formulations put  
23 forward by the SPO. Of course, they have a continuing disclosure  
24 obligation through to the close of the evidence. And questions of  
25 relevance may change, and it's absolutely right that they should and



1 must review what they've disclosed so far by confirming, through a  
2 targeted search, whether there is anything material relating to a  
3 witness they're proposing to call that has come up since the trial  
4 began. That's an obvious corollary of the fact that disclosure of  
5 103 material is a continuing obligation.

6 So if that's all that the SPO is saying, then I'm sure there  
7 will be no difference between us. But our concern is that when we  
8 are speaking of targeted searches, the Prosecution is not conducting  
9 those searches now or has not completed those searches yet and is, in  
10 effect, allowing themselves an endless discretion.

11 So all I would like to ask is that you impose an order that if  
12 they have failed to conduct those searches by beginning of the trial,  
13 they should not be permitted to simply allow the process to go on.  
14 In other words, those searches need to be conducted as part of the  
15 present disclosure exercise so that insofar as the May 2022 deadline  
16 applies to material in the Prosecution's possession before January, I  
17 would like to invite Your Honour to clarify whether targeted searches  
18 of all relevant witnesses have been conducted on that material  
19 before -- or, rather, as part of the review and have been disclosed,  
20 because the language that's been used is open to a number of  
21 interpretations.

22 And whilst we accept that there's a continuing obligation after  
23 the trial begins, that is not an excuse for not conducting the  
24 disclosure exercise now. And if material is disclosed at trial which  
25 ought to have been disclosed at this stage of the proceedings under

1 the orders that have already been made, then that is something which  
2 is likely to generate significant delay in the trial process itself.  
3 It's self-evident that if we get materials the week before, we'll  
4 need an adjournment before we can deal with the witness.

5 And so I'm putting a marker down now that we would not expect  
6 any further material emanating from targeted searches that was other  
7 than material that had come into the possession of the Prosecution  
8 prior to the 20 May deadline insofar as it relates to material in  
9 their possession prior to the January period.

10 And, similarly, so far as the material which the Prosecution  
11 undertakes to review by the next Status Conference, the obligation is  
12 to review and disclose by the next Status Conference, not simply to  
13 review, and the review obviously includes targeted searches. The  
14 concern that we have is that the language being used is wide enough  
15 to accommodate a position where the SPO still has material that it's  
16 yet to disclose, and we've heard references to redacted material, no  
17 indication yet of the volume of material which should have been  
18 disclosed by 20 May with redactions being sought, if necessary, and  
19 the material which is currently being withheld.

20 We are also concerned that the shift in language to "reflect the  
21 best practice of the ICTY and ICC Prosecution offices," without  
22 citation, it is, in fact, being put forward -- I mean, why would it  
23 be necessary to raise the point, given that it's self-evident that  
24 the obligation is continuing, unless the SPO was seeking to provide  
25 themselves with a cover for not conducting that targeted search

1 exercise at this stage, which is what, in our submission, is required  
2 by Your Honour's order. So that's the second point.

3 And then the third point is simply to echo Mr. Kehoe's general  
4 submission that some of the material that has been disclosed under  
5 Rule 103 came into existence as long ago as 2015, 2017, including  
6 documents that were generated by the SPO themselves.

7 And, secondly, we hear the difference of view between Mr. Kehoe  
8 and the SPO in relation to whether material emanating from Serbia is  
9 inherently suspect, and we would simply point out that there is very  
10 clear evidence on the record from the ICTY trials that the Serbian  
11 intelligence service deliberately set out to corrupt the evidence  
12 that was called before the court. And one witness expressly  
13 acknowledged that that was the case, that he had been put up to  
14 testifying by the Serbian intelligence service and that the testimony  
15 he was giving was a lie.

16 So we don't accept for a moment the proposition that to the  
17 extent Serbia can be shown to have its fingerprints all over the  
18 evidence on which this indictment is based, that that could be  
19 anything other than the most relevant material for discrediting the  
20 Prosecution case.

21 Again, we have evidence on record in the ICTY that the RDB, the  
22 Serbian intelligence service, engaged in a whole -- from the senior  
23 Serbian intelligence official responsible for Kosovo, that they  
24 engage in a wide-scale practice of blackmailing, bribing, and  
25 threatening individuals into signing documents which would provide

1 testimony, no doubt some of which is likely to be sought to be  
2 adduced from the bar table by the Prosecution.

3 And so the provenance, if I can put it that way, of evidence  
4 emanating from Serbian officials, who are presumptively corrupt as  
5 far as these proceedings are concerned because they are inherently  
6 partisan and have set out to drive this process, and the SPO, we  
7 suggest, has been a willing vehicle for that manipulation.

8 And I just give Your Honour a couple of examples without  
9 referring to specifics. Amongst the material we have received, and  
10 it goes back a period in the region of five years or thereabouts, is  
11 information covering the reliance by the SPO on a convicted Serbian  
12 war criminal to provide data relevant to this investigation. And in  
13 addition, as Your Honour will know from the litigation on provisional  
14 release, one of the witnesses that the Prosecution continues to rely  
15 on as regards Mr. Veseli is a man called Nazim Bllaca, who is dead,  
16 and in relation to whom there has been publicly available evidence  
17 since 2019 that he was a Serbian asset. In other words, he was a  
18 paid asset of the Serbian intelligence service.

19 So leaving aside the other issues about his credibility, the  
20 notion that the SPO have failed to disclose material relevant to that  
21 through their Article 103 review of a witness whose credibility has  
22 to be very thoroughly tested, because he's not here to testify in  
23 person, that that material has still not yet been a part of the  
24 Prosecution's 103 disclosure.

25 So, overall, we suggest that there are a number of indications

1 here that the Court has been given a very carefully worded position  
2 designed to protect from disclosure the fact that the Prosecution's  
3 review of exculpatory material and its anxiousness to provide that  
4 material to the Defence is compromised by a determination to put  
5 forward a case that's been essentially -- or, rather, which includes  
6 material that is likely to have been manipulated by Serbian  
7 intelligence services is, in our submission, something which  
8 Your Honour should not permit. And certainly the clarification that  
9 we've sought is absolutely necessary, given that the -- first of all,  
10 that it's not clear to us that the material sought and reviewed as  
11 relevant has, in fact, been disclosed or how much of it remains to be  
12 disclosed.

13 And it's also, it seems to us, with respect, necessary for  
14 Your Honour to give an indication that the provenance of evidence  
15 that's come from the Serbian side, which, on past experience, even if  
16 it has passed through the Serbian war crimes prosecution, has  
17 resulted in the calling live of evidence which was recanted and  
18 proved to be a fabrication.

19 So we do respectfully ask for an indication that provenance, as  
20 regards Serbia, is in itself an Article 103 issue for any document,  
21 witness, or source that comes to the Court with that handicap.

22 And I should say that there is ample jurisprudence in the ICTY  
23 to the effect that that material is relevant for the Court when  
24 assessing the credibility of any witness. In other words, they're  
25 association with the counter-protagonist, in this case Serbia, and,

1 as I say, rather shockingly, the SPO's collaboration with a convicted  
2 Serbian war criminal as a reliable witness in this context, it all  
3 points to the conclusion that what has been flushed out in the  
4 correspondence between Mr. Kehoe and the SPO is a fundamental issue  
5 that needs to be resolved. And it needs to be resolved now, not at  
6 trial, because it governs the disclosure obligations -- the scope of  
7 those obligations as they rest on the SPO.

8 Those are my submissions.

9 JUDGE GUILLOU: Thank you, Mr. Emmerson.

10 I will ask the SPO to reply after all the Defence teams.

11 MR. HALLING: Yes, just if it would help the further Defence  
12 teams to get the clarification on Mr. Emmerson's first point now. We  
13 can do that if you'd like us to. Otherwise, we'll wait.

14 JUDGE GUILLOU: No, I will give you the floor for all the points  
15 that have been raised by the Defence teams. So if you can respond to  
16 Mr. Kehoe's argument about the scope of your 103 obligation, which is  
17 also a question asked by Mr. Emmerson in his third point, and then  
18 the two first points of Mr. Emmerson that are the -- if you have  
19 disclosed everything that you have reviewed and the scope and the  
20 timing of the targeted search, if my notes are correct.

21 Mr. Young, you have the floor.

22 MR. YOUNG: Your Honour, thank you very much. May I make it  
23 clear straightaway that we fully support the submissions of Mr. Kehoe  
24 and Mr. Emmerson.

25 The reality is that the recent media reports over the Marty

1 assassination plot should be of great concern to this Court and, with  
2 respect, to yourself. Given that the individual possibly most  
3 influential in the creation of this very building is now directly  
4 accusing elements of the Serbian intelligence services of seeking to  
5 falsely blame Kosovo for his own assassination, this should be  
6 something of real import that the Court concerns itself with.

7 I say that, Your Honour, I submit that because Your Honour will  
8 know very well that the most fundamental duty of any court of law is  
9 to protect its own process from abuse or from misuse, because, very  
10 simply, courts need to ensure the integrity of their own proceedings.  
11 And if they fail to do so, the proceedings have, with respect, no  
12 value.

13 To put this recent Marty allegation, which, frankly, is  
14 explosive, into context. It's right to point out that the recent  
15 Marty allegations, as Mr. Kehoe alluded to, are not isolated, but, in  
16 our respectful submission, form a part of a pattern and a much bigger  
17 picture which involves inferential collusion between the elements of  
18 the Serbian and Russian intelligence services to falsely blame Kosovo  
19 and the KLA and, effectively, the four accused.

20 In the immediate instance, we utterly support Mr. Kehoe's  
21 submissions because it's simply impermissible not to suggest that  
22 this sort of evidence with this provenance may not affect - may not  
23 affect - the credibility or the reliability of the evidence. The  
24 provenance is critical and *prima facie* it falls into category 103.

25 Three short points in relation to the bigger picture of the

1 false narrative. Firstly, Your Honour, as far back as December 1998,  
2 and according to the president of Serbia, who belatedly officially  
3 acknowledged this on behalf of the Serbian government, agents of the  
4 Serbian secret service in Kosovo's Peje, in what's called the Panda  
5 café massacre, murdered a group of six young Kosovo Serbs and the  
6 blame then being attributed falsely to the KLA.

7 The net result of that was that some days later, after this  
8 shocking incident of death, murder, and severe injuries, a number of  
9 young, innocent ethnic Albanians were arrested, taken into custody  
10 for almost a year before being released. Although the president,  
11 many, many years later acknowledged it was his own agents of his own  
12 secret service that were responsible.

13 The second part of the bigger picture which Your Honour really  
14 should take into account is the history of Serbian and Russian false  
15 claims of organ trafficking, because any cursory analysis of the  
16 Russian and Serbian claims of organ trafficking belie clear parallels  
17 in the Marty's report. The Russian claims in relation to Ukraine  
18 make it very clear that they mirror similar -- very similar sorts of  
19 claims by the Russian state.

20 And the Russian reports in the media of false claims and  
21 disinformation in relation to alleged Ukraine trafficking in human  
22 organs aren't simply isolated reports. Your Honour may have noticed  
23 that, in fact, the media reports in relation to Russian  
24 disinformation, which mirrors the false claims in the Marty report,  
25 are dated in 2014, 2017, 2019, and even in March this year.



1           So, finally, third point. When Your Honour is considering the  
2 Thaci and our Defence submissions in relation to 103 - and, indeed,  
3 of course, Your Honour has before you -- I don't believe a decision  
4 has been given as yet on the Thaci written filing in relation to an  
5 independent and impartial review over exculpatory materials - we do  
6 respectfully submit to you you might want to carefully consider the  
7 fact that the reason we're all here today in this court, in these  
8 proceedings, goes back to a motion for a resolution which was tabled  
9 by Mr. Konstantin Kosachev in the Council of Europe in April 2008.  
10 It was a resolution entitled "Inhumane treatment of people and  
11 illicit trafficking in human organs in Kosovo."

12           You may recall that Mr. Kosachev was one of the two Russian  
13 members of the signatories to the motion which he tabled. And,  
14 indeed, that motion led to the Dick Marty investigation, it led to  
15 the Dick Marty report, and it led to this court. A report based on a  
16 false narrative. And the ultimate question when you are considering  
17 these issues is to, perhaps -- perhaps this is one more for the  
18 historians than the lawyers, the judges, is to look at the source of  
19 the original false allegations provided to Mr. Marty who provided --  
20 who was provided information from Carla del Ponte Prosecutor's Office  
21 in 1998.

22           These are questions, and it's a bigger picture, that demands  
23 some answers. Thank you.

24           JUDGE GUILLOU: Thank you, Mr. Young.

25           Mr. Ellis.

1 MR. ELLIS: Your Honour, it will be me on the disclosure issues  
2 today. Very briefly, Your Honour, on this first point, the evidence  
3 from Serbia point, we strongly support the submissions that have been  
4 made by all Defence teams today.

5 The issue on 103, Your Honour, of course, is simply whether this  
6 is information which affects the credibility or reliability of the  
7 Specialist Prosecutor's evidence. And in our submission, the points  
8 made today about a continuum of Serbian interference in evidence,  
9 between the Panda café incident in 1998 running right through to  
10 Dick Marty very recently, strongly supports, in our submission, the  
11 position taken by Mr. Kehoe, on behalf of President Thaci, that this  
12 material ought to be disclosed. And once it's disclosed, of course,  
13 further steps can be taken thereafter to investigate it.

14 The second point I wanted to make, Your Honour, is very much  
15 related to the targeted searches issue that Mr. Emmerson raised.

16 The position at the last Status Conference was that the  
17 Prosecution explained that they were doing two things. They were  
18 doing an initial review of the evidence, and they were doing targeted  
19 searches. And what they said to the Court was that they were  
20 simultaneously proceeding with targeted searches related, for  
21 example, to the witness list as a means of ensuring that all  
22 potentially exculpatory items are identified and disclosed.

23 They carried on that the targeted searches were an additional  
24 measure to ensure that material is identified and is disclosed, and  
25 anticipated that further disclosures will be generated from those

1 searches. They were not in a position, as at the last hearing, to  
2 give Your Honour an estimate of the time to be taken in that aspect  
3 of their review, noting that they received potentially thousands of  
4 hits from a single name and each of them would need to be looked at.

5 Now, that's why it's a concern to the Defence, when we get to  
6 this Status Conference and the Prosecution's written submissions for  
7 this Status Conference which say that there are targeted searches  
8 but -- if I can just find them, but that the SPO, reflecting the best  
9 practices of the ICTY and ICC prosecution offices, as Mr. Emmerson  
10 noted without citation, "will conduct targeted searches throughout  
11 the proceedings to ensure that upcoming witnesses have all Rule 103  
12 disclosures duly accounted for."

13 So we've moved from this being something the Prosecution was  
14 doing simultaneously with their review to something that they're  
15 proposing to carry out for upcoming witnesses. In our submission,  
16 that's not acceptable. In our submission, the targeted searches, we  
17 were told last time they were being conducted at the same time as the  
18 initial review, plainly they should be because what the targeted  
19 searches are going to identify are things that are in the  
20 Prosecution's possession now. They don't need to be disclosed in a  
21 month's time when the witnesses come to testify. They're in the  
22 Prosecution's possession now, and at the last Status Conference the  
23 Prosecution was saying that they expected those searches to generate  
24 additional documents.

25 And that's why, respectfully, Your Honour, we seek a deadline.

1 We invite Your Honour to set a deadline today for the Prosecution to  
2 complete targeted searches, including the ones mentioned at the last  
3 Status Conference, based on the Prosecution's list of witnesses.

4 JUDGE GUILLOU: Thank you, Mr. Ellis.

5 Mr. Prosecutor, so on all the questions, I have at least one,  
6 two, three, four, five, six. The question of the scope your 103  
7 obligation that has been raised by, I think, all Defence teams; then,  
8 the specific question of Mr. Emmerson that I recalled a little  
9 earlier; and then the issue of the targeted searches simultaneously  
10 to your initial review or later; and the question or the proposal of  
11 Mr. Ellis to impose a deadline for the targeted searches.

12 You have the floor.

13 MR. HALLING: Thank you, Your Honour.

14 We'll start with Mr. Emmerson's clarifications. Just to be  
15 clear, there's no careful language here. When we said we finished  
16 the initial review, everything we've identified falling under  
17 Rule 103 either has been or will be disclosed by the end of today.  
18 The only exceptions are things that are going into the protective  
19 measures motion that we said we would file at the end of the month.  
20 So the review and the disclosure are going hand in hand.

21 On the targeted searches, there is not an initial review phase  
22 and a targeted search phase of what we are doing. The targeted  
23 searches, they are going on now, they will continue into the future,  
24 they're not just limited to witnesses. This is about vigilance.  
25 This is about us making sure that at all times we can give as full

1 account of Rule 103 as possible. So it's something that we think  
2 it's a best practice as an office to be doing throughout as a  
3 safeguard throughout the proceedings, but it's a safeguard of already  
4 reviewed material.

5 The only things that have not been reviewed yet are the things I  
6 mentioned to Your Honour earlier about the items since 31 January.  
7 And, as I said, we are doing this review. It will be finished. It  
8 will be finished next month. And we will keep doing it as new  
9 material comes in.

10 As to the scope of the Rule 103 obligations, Mr. Kehoe read out  
11 our position in court. That's our position. We consider these  
12 requests in relation to everything that has had any involvement of  
13 the Serbian authorities falling under Rule 103 to be an overbroad and  
14 unjustified request. And the Defence teams keep making this request  
15 in different contexts, and the latest version is now this information  
16 about Mr. Marty and this Serbian assassination plot in the media.

17 As Your Honour may be aware, this is not the first KSC Panel  
18 that has had to be confronted with this issue. In the  
19 Gucati/Haradinaj case, Trial Panel II was seized of a motion in the  
20 last two weeks about this very thing and wanting to reopen the  
21 evidence proceedings. And at paragraph 16 of decision  
22 KSC-BC-2020-07, F00610, this is what the Trial Panel said:

23 "The Reported Matters entail unverified allegations of  
24 impropriety on the part of Serbian authorities, which appear  
25 unrelated to the SPO's cooperation with such authorities ..."

1           Maybe there is more that the Defence teams have. But rather  
2           than sending us e-mails on this topic, or raising it off agenda items  
3           in the Status Conference where they don't really belong, what we  
4           would ask is that the Defence teams file a formal written request  
5           asking for disclosure of this information, presenting their full  
6           legal and factual basis, and we'll respond to that accordingly.

7           But in our view, this is not a failure in our appreciation of  
8           the scope of our Rule 103 obligations. This is an overbroad  
9           understanding of the Defence on the same.

10          JUDGE GUILLOU: Thank you, Mr. Prosecutor.

11          Mr. Kehoe, please.

12          MR. KEHOE: Your Honour, it's very unfortunate that this  
13          position has been taken by the SPO. They are in lockstep with Serb  
14          entities as part of investigating this case. They have a job  
15          application for people to get a job in Belgrade at their office. Do  
16          they have an office anywhere else? I submit to you I don't think  
17          they have an office in Prishtine, but they have an office in  
18          Belgrade.

19          They have approximately five witnesses from Serb organs that  
20          they intend to put on -- in the witness box. We have a litany of  
21          documents that undoubtedly come from the foundational report for this  
22          Court, i.e., the Marty report, that then went to the Special  
23          Investigative Task Force, and then that came here.

24          Counsel misunderstands the rule. If, in fact, evidence and  
25          information comes from an unreliable source, question, looking at

1 Rule 103, may that reasonably suggest or affect the credibility or  
2 reliability of the Specialist Prosecutor's evidence. May it affect.  
3 Clearly it does. We have a source of documents coming to the SPO,  
4 that the SPO is using routinely, that are coming from a source that  
5 is manufacturing evidence, that is making up stories, that is putting  
6 forth a litany of allegations, not the least of which is the organ  
7 trafficking allegation - that, of course, didn't make it to any  
8 indictment - that are central to this case.

9 Now, the big difference between this case and the Haradinaj case  
10 that was just finished was, that's clearly an obstruction case  
11 involving much different issues. These issues in this case go back  
12 to at least 1997 and before, during the entire time when the Serbs  
13 were involved, when they were gathering evidence, when they were  
14 putting all of this facetious -- all of this false testimony out  
15 there, these false documents out there, these false-flag operations,  
16 until one might think that with the court established that all of  
17 this would stop. And lo and behold, it does not.

18 What happens is that we still have yet more dirty laundry out  
19 there. Were they attempting to assassinate the person who was  
20 responsible for this court, blame it on the Kosovar Albanians, that's  
21 what the Swiss intelligence reported, blame it on the Kosovar  
22 Albanians, and, of course, to eliminate the one witness, Dick Marty,  
23 that could clarify all of this. A fundamental act of obstruction for  
24 this Court.

25 It is inconceivable that documents that are coming from the

1 Serbs, given the litany of falsity and improper conduct coming from  
2 the Serb governmental organs, that the provenance of those documents  
3 would not affect the credibility of the SPO's case.

4 To turn it another way: Given everything we know about what the  
5 Serb authorities were doing, how could the documents that the SPO has  
6 received and is using not affect the credibility of the SPO's case if  
7 those documents came from Serb governmental authorities?

8 I hate to repeat myself, Judge, so I will sit down. You  
9 understand that I am clearly just attempting to go back and get  
10 compliance by the SPO, despite their resistance, to the rule. Thank  
11 you.

12 JUDGE GUILLOU: Thank you, Mr. Kehoe.

13 Does --

14 MR. HALLING: Your Honour, apologies, before Mr. Kehoe -- just  
15 in case he wants to take the floor again. To correct the record, the  
16 SPO does not have an office in Belgrade. We just wanted to make that  
17 clear.

18 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

19 Mr. Emmerson, please.

20 MR. EMMERSON: [via videolink] Yes, I'll be brief, if I may.  
21 What I want to address is the mode for resolving this very clearly  
22 defined dispute between the Defence and the Prosecution.

23 Clearly, and it's rather, if I may say so, a weak argument, that  
24 the issues facing the Gucati Trial Chamber, when asked to reopen the  
25 evidence by reference to the false-flag attack on Dick Marty, are



1 very, very different from the issues facing the Prosecution in its  
2 disclosure obligations in this case not just because the case is  
3 fundamentally different, but because the reason that the Trial  
4 Chamber gave was that the allegation was unrelated to the SPO's  
5 cooperation with the Serbian intelligence and other sources.

6 The issue that we are pressing is that everything relating to  
7 that cooperation should be disclosed. In other words, at the very  
8 least, whether there was such cooperation and, if so, whether or not  
9 it -- what the details of it were.

10 May I put it this way: It is self-evident and fully established  
11 by the ICTY that if a witness comes to give evidence about issues  
12 concerning this conflict, then the fact that they were, at the time,  
13 whether officially or unofficially, affiliated with the Serbian state  
14 or its entities on the ground was plainly a relevant issue not just  
15 for disclosure, because the prosecution at the ICTY took it as  
16 routine that that information would be disclosed. But when the Court  
17 comes to consider what weight is to be attached to such a source, it  
18 is plainly and self-evidently material.

19 That doesn't necessarily involve, despite the fact that there is  
20 a huge amount of evidence of it, both in the past and in some of the  
21 material in this case, of manipulation and corruption on the part of  
22 certain elements of the Serbian apparatus, including the Prosecutor's  
23 office as regards the war crimes prosecution office through which  
24 this material is then handed on to the Prosecution.

25 But you don't even need to go that far. It's self-evident that

1 anything emanating from Serbia in the context of the conflict between  
2 Serbia and Kosovo, or between the KLA and the Serbian forces,  
3 emanates from a partisan source. It's obviously a partisan source by  
4 definition. And, therefore, the provenance is disclosable.

5 And if the Prosecution hasn't got that by now and hasn't been  
6 operating its disclosure obligations on that basis by now, then  
7 there's an urgent and very serious problem. Because since they're  
8 plainly wrong in the interpretation that they're applying, there's no  
9 way the Trial Chamber would allow a Prosecution like this to go off  
10 all the way through to the end based on witnesses who have been set  
11 up to give a testimony by the Serbian, let's say, intelligence  
12 service without that being disclosed.

13 So sooner or later, it's obviously going to become disclosable.  
14 But by then, the Prosecution will have conducted its disclosure  
15 exercise, as it currently is, without reference to that obligation.  
16 Why they would take such an obtuse stance is difficult for us to  
17 understand. Plainly, it will reveal the scope - that is clear - of  
18 the reliance by the SPO on tainted sources emanating from Serbia. It  
19 will provide that basis for analysis.

20 One has to ask the question: Why is the Prosecution trying to  
21 hide, in an obtuse interpretation of its obligations, the extent to  
22 which it is dependent on corrupt sources inside Serbia? You know,  
23 that is not the conduct of a responsible prosecutor. If the point  
24 was even arguable the other way, that that was not a relevant  
25 consideration, then the situation might be different.

1           But why, one has to ask, is the Prosecution adopting an obtuse  
2           and unarguable position in order to conceal from the Court and the  
3           public the extent to which its case is based on a partisan source? A  
4           partisan source which has descended into very grave corruption, not  
5           just through the false-flag operations which characterise their  
6           conduct of the conflict, but even the organ trafficking allegation  
7           itself -- obviously, I'm not going to repeat what's been said about  
8           that. But the only witness ever to have testified about the alleged  
9           removal of organs in this context is the witness I was referring to  
10          earlier on who subsequently admitted that it was an entire lie and  
11          that he'd been put up to saying it by the intelligence services of  
12          Serbia, and that he would now be dead if -- once they'd found out  
13          about it.

14          So on any view - on any view - the extent of the manipulation by  
15          Serbian sources of judicial processes concerned with this conflict  
16          has been huge. And the notion that the Prosecution are now trying to  
17          keep that from the Court, the parties, the accused, and those who  
18          follow these proceedings in Kosovo, and, indeed, in Serbia, is, in  
19          our submission, shocking, and it should be dealt with summarily.

20          In other words, we invite Your Honour to give an indication that  
21          the provenance of material that has been provided to the SPO by a  
22          Serbian source, in fact, a Serbian governmental source, that fact  
23          alone goes to its reliability because it is a partisan source. You  
24          don't need to make any findings about corruption or about the  
25          propensity for corruption, but the fact that it emanates from a

1 partisan source to the conflict is in itself sufficient to establish  
2 that the provenance is disclosable.

3 Serbia is continuing to mount a political campaign across the  
4 board aimed at defeating Kosovo's independent status, and the extent  
5 and manner in which they cooperate with the SPO in these proceedings  
6 is undoubtedly going to be affected by the political stances that  
7 Serbia has taken. So given that they're clearly not above  
8 manipulating judicial processes, because they've done it many times  
9 before -- this is not about the plan to assassinate Dick Marty, and  
10 that's just a particularly grave example of Serbian false-flag  
11 operations, all of which, in our submission, go to the fundamentals  
12 of this tribunal, because the whole tribunal was set up on the basis  
13 that it was to try Dick Marty's allegations.

14 We now know those allegations emanated from Serbia and that they  
15 were fabricated. There isn't a single, as Mr. Kehoe said, maintained  
16 allegation by the SPO that has organ trafficking at its heart. This  
17 whole thing was, from the beginning, an attempt by the Serbian  
18 sources, and we can clearly see the intelligence sources, because we  
19 know that from the evidence that's been given, to put up an entirely  
20 false case to justify this tribunal.

21 And if that isn't a reason for saying that the provenance of  
22 evidence that emanates from the Serbian side is disclosable, it's  
23 difficult to see what would be. So in our submission, this is  
24 something that you can rule on today on the basis of partisanship  
25 alone and on the basis that that is the approach that all of the

1 other tribunal constitutions agreed with.

2 If that is not the appropriate course or you don't think it is  
3 the appropriate course, there is no point in any further discussion  
4 between the parties because the Prosecution is conducting its  
5 exercise on an entirely false basis, and it's going to take them a  
6 very great deal of time to take them to go back and do it all again  
7 with correct guidance. So we would suggest if you don't feel able to  
8 give the indication clearly today so that we can get on with the  
9 disclosure exercise in a timely manner, then you should direct a very  
10 short timetable for the exchange of written submissions and rule on  
11 it that way.

12 JUDGE GUILLOU: Thank you, Mr. Emmerson.

13 Mr. Young, do you --

14 MR. YOUNG: Nothing to add.

15 JUDGE GUILLOU: Thank you, Mr. Young.

16 Mr. Ellis, please.

17 MR. ELLIS: Nothing to add either, Your Honour.

18 JUDGE GUILLOU: Thank you, Mr. Ellis.

19 Mr. Prosecutor, do you want to add anything?

20 Thank you very much.

21 On this topic, I would invite the parties to file written  
22 submissions. I invite the Defence to file submissions on this topic,  
23 bearing in mind that I will prioritise this question. And I invite  
24 the Defence to substantiate their request and the SPO to develop  
25 their arguments.

1 I also invite the parties to have in mind the existing  
2 jurisprudence of the international tribunals, and maybe also to have  
3 in mind the issues of having joint investigative teams with various  
4 countries, because this also would resonate in more recent  
5 investigations probably.

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

7 I remind the parties that at the Status Conference held on  
8 29 October 2021, I suspended the remaining Defence deadline for  
9 Rule 102(3) material.

10 Since the last Status Conference, the SPO indicated that it has  
11 disclosed more than 14.000 items, and that further packages are being  
12 prepared. It also foreshadows that materiality challenges and  
13 requests for redactions will be necessary in respect of certain  
14 Rule 102(3) requests in the near future.

15 I invite the SPO to indicate when it plans to make such filings.  
16 The SPO estimates that it will be in a position to address 40.000  
17 further requests between now and 22 July 2022. However, the SPO does  
18 not consider that Rule 102(3) is an area of the pre-trial disclosure  
19 process for which an ultimate deadline can be fixed and, therefore,  
20 opposes the proposal to set to 22 July 2022 for the SPO's review of  
21 this category of evidentiary material.

22 The SPO explains that at least one Defence team has now  
23 requested 97 per cent of the items on the original Rule 102(3)  
24 notice, creating very demanding disclosure obligations.

25 According to the SPO, full completion of their disclosure should

1 not serve to act as a procedural bar to transfer the case to the  
2 Trial Panel, and the disclosure process will continue into the trial  
3 phase.

4 Let me be clear. I remind the SPO that I previously ordered a  
5 procedural calendar according to which all Rule 102(3) disclosure was  
6 to be finalised before it files its pre-trial brief. The SPO did not  
7 raise any objections at the time.

8 I also remind the SPO that in all the other cases before the  
9 KSC, I systematically ordered the disclosure of Rule 102(3) to be  
10 finalised during the pre-trial phase in order, first, to allow the  
11 Defence to prepare its case before the trial starts; and, second, to  
12 prevent the Trial Panel to be obliged to stay proceedings to allow  
13 the Defence to perform specific investigations linked with the late  
14 disclosure of evidentiary material which would, of course, delay the  
15 proceedings before any Trial Panel.

16 Accordingly, I invite the SPO to indicate why it now considers  
17 that disclosure should continue through the trial phase, and why it  
18 is not in a position to fulfil its disclosure obligations by  
19 22 July 2022 as proposed in the Scheduling Order.

20 The Defence, in its submissions, remain concerned about the time  
21 taken by the SPO to meet its Rule 102(3) obligations and the backlog  
22 of Rule 102(3) disclosure yet to be completed. The Defence,  
23 therefore, supports the imposition of an ultimate deadline of  
24 22 July 2022 for the SPO's review of currently pending Defence  
25 requests, notably because the Rule 102(3) notice was submitted nearly

1 ten months ago. Without a firm deadline in place, Rule 102(3) is  
2 likely to drag on indefinitely, and delays in disclosure of  
3 Rule 102(3) material directly impede the Defence preparation of its  
4 case and, more generally, the case progression towards trial.

5 The Defence also indicates that it intends to make further  
6 targeted requests in the future.

7 Therefore, while the Veseli Defence is willing to commit to a  
8 deadline of 22 June 2022 to submit further bulk requests, the Thaci  
9 and the Krasniqi Defence do not support the reinstatement of  
10 deadlines for their own Rule 102(3) requests.

11 I inform the parties that I intend to set a deadline for the  
12 disclosure of the Rule 102(3) material already requested by the  
13 Defence according to Rule 95(2). I invite the SPO to provide  
14 detailed submissions on the time it needs to review and disclose the  
15 documents already requested by the Defence.

16 Mr. Prosecutor, you have the floor.

17 MR. HALLING: Thank you, Your Honour.

18 As regards the initial question that Your Honour raised about  
19 when we would be making filings for Rule 102(3) material that  
20 requires protective measures, we don't have any specific date in  
21 mind. We were intending to file a motion to that effect in the near  
22 future after the Rule 103 motion, which we understood to be the more  
23 urgent one that Your Honour requires.

24 As regards the calendar and also the practice of other cases  
25 that Your Honour has sat on and the time of our obligations, some



1 explanation is in order.

2 Our written submissions have set out an aggressive, but we think  
3 feasible, estimate for what we think a Rule 102(3) disclosure push  
4 would look like. In the interval from the tenth to the eleventh  
5 Status Conference, we disclosed something in the range of 8.000  
6 disclosures. In the interval to this Status Conference, it was  
7 14.000 disclosures. And now we're proposing to do 40.000  
8 disclosures.

9 We are taking this obligation seriously. There is a human limit  
10 and a resource limit on what we're able to do, and we wanted to  
11 stress two further points in this regard. First, as to why this  
12 takes as long as it does. And it relates to the Defence's written  
13 submissions as well, because the Defence links the length of the  
14 pre-trial disclosure process with the length of the accused's  
15 detention, and they also argue that disclosure is inadequate because  
16 of the heavy number of redactions that are applied.

17 All of these considerations are connected. We could disclose  
18 the entire contents of the Rule 102(3) notice today with the push of  
19 a button if full disclosure was the only consideration. The  
20 disclosure reviews, the checks, the redactions, the processing, they  
21 are put in place primarily to ensure that people are protected. And  
22 the necessitated of protective measures have been found time and time  
23 again in this case, born in large part by the climate of witness  
24 intimidation in Kosovo which informs the context of the obstruction  
25 risks found in the detention context.

1           And this climate persists into modern times as manifestly  
2 demonstrated by the findings in this Wednesday's Gucati and Haradinaj  
3 trial judgement.

4           What the Defence are seeking in their submissions, and we  
5 appreciate that Your Honour has made these kinds of orders before,  
6 but in this particular case, it's disclosure in an unreasonable  
7 timeframe given the scale of the case. And they're doing this  
8 because they are ignoring or rejecting the necessity of the  
9 protective measures which have been ordered.

10           Incidentally, and this relates to a submission of the Veseli  
11 Defence, our letter to the Defence teams did not say we are agreeable  
12 to a variation of protective measures so that counsel could look at  
13 the material without redactions. We said they were trying to  
14 reconsider necessary protective measures, and the Court can see the  
15 exact wording of our response in Annex 2 of the Veseli written  
16 submissions.

17           THE INTERPRETER: Could the counsel be asked to slow down,  
18 please.

19           MR. HALLING: I'm guided.

20           The second point we wanted to stress in this regard is we're not  
21 saying that Rule 102(3) is not important, but we're saying that the  
22 Defence teams are misrepresenting the importance of this particular  
23 notice in their preparations.

24           The Krasniqi Defence does this most clearly in their  
25 submissions. At paragraph 7(a) of F00807, they say this:

1 "Plainly, the Defence needs to be afforded a fair opportunity to  
2 review the disclosure of Rule 102(3) items which are, by definition,  
3 material to the preparation of the defence and Defence  
4 investigations, before drafting the Pre-Trial Brief."

5 That's not true. Rule 102(3) items are not material to the  
6 preparation of the Defence by definition. They are relevant to the  
7 case by definition. That is a lower standard and it's an extremely  
8 broad standard, following the directions Your Honour has set in this  
9 and other cases, and which the Appeals Panel has endorsed. And this  
10 means that the Defence teams are routinely selecting items that are  
11 highly unlikely to be material to their preparation, and they're  
12 disclosed nevertheless because it is generally more expedient to do  
13 that than to challenge them.

14 But any sort of expectation that the Rule 102(3) notice  
15 selections would actually be selective, which was something that may  
16 have been contemplated earlier in the pre-trial phase, has just not  
17 been borne out in practice. You can see this in some examples.

18 SITF 00441896 is one of a series of 15 selected KFOR reports  
19 whose description makes clear that they're about clearing asbestos  
20 from the KFOR barracks.

21 060207-TR-ET is an interview of W04371 selected by three Defence  
22 teams after the amended Rule 102(3) notice made clear that it had  
23 already been disclosed under Rule 102(1)(b).

24 SPOE00107708 is a disclosed photo of a salamander in a dug-out  
25 hole forming part of a collection of exhibits associated with a

1 witness contact, selected despite the description clearly saying it's  
2 a photo of a salamander in a dug-out hole.

3 The Defence is, of course, entitled to select whatever items it  
4 wishes from the Rule 102(3) notice. We will disclose them as quickly  
5 as we can. And as noted in our written submissions, we're aiming to  
6 accelerate this process.

7 Your Honour asked when can the items already selected be  
8 finalised. We aren't able to give a reliable estimate because of all  
9 the moving parts. Our capacity is about to increase substantially  
10 with the Rule 103 review finished, and we have promised an aggressive  
11 estimate of what we can do by the 22 July date indicated by  
12 Your Honour.

13 The point we wanted to stress is that what the Defence has put  
14 forward as conditions to writing a pre-trial brief are not real  
15 conditions. They are a wish list untethered to the statutory scheme.  
16 And you can actually see this most clearly in the Veseli Defence's  
17 written submission where they need to know the first six months of  
18 the SPO's witness order before they can write a pre-trial brief about  
19 the entire case. These are not logically connected things.

20 The full Rule 102(3) condition is also something that they want,  
21 and it's -- rather than something that they need to write their  
22 pre-trial brief, or, at least statutorily speaking, mindful of  
23 Rule 102(4), to even have this case transferred to the Trial Panel.

24 What the Defence need the most they have, and the rest will come  
25 on as accelerated a pace as we can sustain.

1 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

2 Mr. Kehoe, please.

3 MR. KEHOE: Your Honour, when the Prosecutor stands up and makes  
4 an argument like that, it can only be termed to be alarming, because  
5 virtually none of it is true.

6 The rule requires the disclosure of items which are deemed by  
7 the Defence to be material to its preparation.

8 The Prosecutor stands before Your Honour as if they have been  
9 meeting all their deadlines, that they have been complying with all  
10 of your orders, that they have been operating in a timely manner.  
11 You laugh, Judge, because it's ridiculous. It's ridiculous that  
12 counsel can stand before you and say, "Yes, we have been studiously  
13 complying with all of our discovery obligations." And he points to  
14 the fact, and I wrote this down, that disclosure is keyed to  
15 detention. Well, that's a fact. My client and the other three  
16 gentlemen have been sitting in here since November 2020 and want to  
17 move this case along to trial.

18 But one little fact that counsel left out was when this case  
19 first came before Your Honour in the fall of 2020, that the SPO told  
20 Your Honour, with a straight face, that this case would be ready to  
21 go to trial in the spring of 2021. A year ago. One year that they  
22 said they would be ready to go to trial and they have still not  
23 complied with their discovery obligations, the disclosure  
24 obligations. They still have not completed the 103 disclosures.  
25 They certainly are nowhere near meeting their 102(3) obligations.

1           And the comment of counsel that say that this has nothing to do  
2 with the pre-trial brief. I'm very happy counsel can get inside the  
3 head of the Defence and make that decision for us. But Your Honour  
4 said very clearly in the last proceeding that we had before you, when  
5 the Defence hasn't received all the disclosure, it's also difficult  
6 for the Defence to agree on facts.

7           We haven't received much of the disclosure, so all of this is  
8 tied together. The disclosure, what we can agree with in facts;  
9 disclosure concerning matters that have been redacted. It's all  
10 connected together. But for counsel to appear before Your Honour  
11 this far down the line, over two years after -- almost two years  
12 since the day these gentlemen were put in incarceration, that they  
13 have been complying with their discovery and disclosure obligations  
14 is nothing short of specious.

15           We need these documents. We have made requests that we haven't  
16 received. We did not willy-nilly or just on a spur of the moment ask  
17 for the documents under 102(3), Judge. My team doesn't have the time  
18 to read that nor are we inclined to do that.

19           So counsel needs to be ordered to get this done so this case can  
20 move along and go to trial, and stop with this nonsense that he puts  
21 before the Court that he's somehow complied with all of Your Honour's  
22 edicts as we've moved along the way in the entire year-plus spectrum  
23 that we've been here. It's nonsense. And we look to Your Honour for  
24 some help and some guidance to get this done so we can move this  
25 matter to trial.

1 JUDGE GUILLOU: Thank you, Mr. Kehoe.

2 Mr. Emmerson, please.

3 MR. EMMERSON: [via videolink] Your Honour, I'll deal with the  
4 question of the order of witnesses to be called in the first six  
5 months of the trial when we get to the point in the agenda that  
6 concerns the date for the pre-trial briefs for the Defence and the  
7 question of streamlining. Other than that, I'm going to hand over,  
8 if I may, to Ms. O'Reilly to deal with all remaining issues of  
9 disclosure.

10 JUDGE GUILLOU: Thank you, Mr. Emmerson.

11 Ms. O'Reilly, please.

12 MS. O'REILLY: Thank you, Your Honour. I just have a few points  
13 in response to Mr. Halling.

14 And, first of all, he mentioned that we had been requesting  
15 documents already disclosed and, you know, how audacious that is.  
16 But this is exactly why I've repeatedly asked to get item numbers and  
17 to have cross-referencing so that we know that those documents are  
18 already in our possession and we can strike them off the list. So,  
19 yes, indeed, that is why that has happened.

20 And as to the salamander, we didn't put the salamander on the  
21 list, the SPO did that. And it is the manner in which they  
22 approached this exercise that has caused us to do bulk requests in  
23 which the odd salamander gets into the mix. If they want to  
24 challenge the materiality of that, they can do that and we will  
25 respond. But that is a problem created by the SPO, not by us.

1 And, lastly, I would just point out that they still haven't said  
2 when they will -- actually will be in a position to comply with the  
3 disclosure of the items already requested. So I wonder if we might  
4 have a more specific answer on that in the next round of submissions.

5 That's about all I have to say for now, Your Honour. Thank you.

6 JUDGE GUILLOU: Thank you, Ms. O'Reilly. I haven't forgotten  
7 either.

8 Mr. Young.

9 MR. YOUNG: Thank you, Your Honour. Just two very short points.

10 Firstly, in relation to when the SPO should disclose this 102(3)  
11 material. I would simply welcome what Your Honour said, that, as I  
12 understand, Your Honour made it clear, your approach in other cases  
13 has been to ensure that the 102(3) material is dealt with pre-trial  
14 so the Defence can prepare which, frankly, is obviously a logical and  
15 sensible approach. It's of no use to the Defence to have it during  
16 or after a trial. It's clearly something we should have pre-trial.  
17 So the Prosecution's approach to this is utterly specious.

18 Second point. In relation to materiality, Your Honour may have  
19 noticed in their written filings recently, the Prosecution are now  
20 suggesting that they may in the near future outline some materiality  
21 challenges. Why now? Your Honour knows very well that over the last  
22 few Status Conferences one thing I've been routinely and consistently  
23 doing is to make it clear that there hasn't been a hint - a hint -  
24 that there was ever going to be a materiality challenge. Now, I'm  
25 still short of over 42.000 documents, and now they say we're going to



1 have a materiality challenge.

2 Why was the Court not put on notice to potential materiality  
3 challenges? That could have been dealt with a long time ago, and yet  
4 again they're wasting all our time.

5 JUDGE GUILLOU: Thank you, Mr. Young.

6 Mr. Ellis, please.

7 MR. ELLIS: Your Honour, I will try to be brief with the points  
8 in view of the time. But the first thing I do want to say is I don't  
9 accept for a moment that the submissions that we made were untrue to  
10 Your Honour.

11 If issue is being taken with us saying that 102(3) items are, by  
12 definition, material to the preparation of the defence, we took those  
13 wordings, of course, from the text of 102(3) themselves. So I don't  
14 accept for a moment that our filing was untrue.

15 Your Honour, the second point is simply the point made by  
16 Ms. O'Reilly, that it was, at the end of the day, the Prosecution  
17 that put these items on the list, conducting an initial review that  
18 these items were relevant. And we had submissions several Status  
19 Conferences ago where, I think, an e-mail was sent by, if memory  
20 serves, the Selimi Defence to clarify what test of relevance was  
21 applied. But in my submission, it is the Prosecution that composed  
22 this list and put forward that these documents met an initial test of  
23 relevance.

24 But what's more important than that, Your Honour, is that what  
25 we keep finding is that items that were previously put on the 102(3)

1 list suddenly pop up in the exculpatory 103 disclosure. So what's  
2 happened is once somebody has requested them from the 102(3) list,  
3 the Prosecution actually looks at them and it turns out they were  
4 exculpatory all along.

5 12 documents in disclosure Batch 249 were -- an exculpatory  
6 batch were previously on Rule 102(3) notice. Documents also  
7 appearing in exculpatory batches 234, 242, 243, 247, 248, 252, even  
8 today, I think.

9 Now, when the Prosecution stands up and says what's being asked  
10 for is not material, actually, each of these disclosure batches have  
11 contained things that were not just material to the preparation of  
12 the Defence but actually exculpatory.

13 Your Honour, the final thing. I just want to clarify the  
14 Krasniqi Defence position. I stood up at the last Status Conference  
15 and forecast that we would make two further Rule 102(3) requests.  
16 That we have done as we promised to do. We are, as things stand,  
17 finished. We don't propose to make any further Rule 102(3) requests  
18 unless, of course, something crops up unexpected, something once  
19 identities are revealed as the case progresses. So we would entirely  
20 support the Veseli Defence proposal for a deadline to be imposed for  
21 Defence requests, subject, of course, to a showing of good reason  
22 later in the day.

23 JUDGE GUILLOU: Thank you, Mr. Ellis.

24 Mr. Prosecutor, let me first acknowledge the fact that you have  
25 a lot of documents to disclose. It is true that the Defence has

1 requested a lot of documents, and I fully understand that it takes  
2 time to process the disclosure because you want to make sure that  
3 protection of witnesses and victims is ensured and you need to spend  
4 time on each document, so I fully understand that.

5 That said, the Defence is not responsible for the scope of the  
6 case. The scope of the case has been determined by the SPO. The SPO  
7 framed the case in such a way that you had to list a lot of material  
8 in the 102(3) list, but the Defence is not responsible for that.

9 Second thing. As I said in my introductory remarks on this  
10 category of material, I intend to send a clean case file to the  
11 Trial Panel. I do not want to send this case to a Trial Panel that  
12 would be consistently obliged to stay proceedings because the Defence  
13 would be disclosed specific information that would lead to new  
14 investigations. That would not be a good practice, and that would  
15 slow down the proceedings at a later stage.

16 So I intend to transmit a case file in which the Defence has had  
17 access to all the evidence it is entitled to get, and that includes  
18 Rule 102(3) evidence, at least the bulk of the general requests that  
19 they have made. As Mr. Ellis said, there could always be specific  
20 targeted requests based on the evolution of the case, but at least  
21 the bulk of the 102(3) has to be disclosed.

22 So I will, again, formulate the question that I had: When do  
23 you estimate that you can finalise the Rule 102(3) disclosures of the  
24 requests that have already been made by the Defence? If it is later  
25 than 22 July, you can give me a tentative date. This can actually be

1 a tentative date that could be moved if you realise that you need  
2 one, two, three, four more weeks. I perfectly understand that. I  
3 perfectly understand that it's a lot of work and that it's time  
4 consuming, but what the SPO needs to have in mind is that from the  
5 disclosure of the material depends the remainder of the pre-trial  
6 phase. Whether you like it or not, it has links with the Defence  
7 pre-trial brief, and then with the time I'm able to transmit the case  
8 to trial, and then when the trial can start.

9 To say it more clearly or more bluntly: The timeline of this  
10 case is in your hands, and it depends on the disclosure of the  
11 remaining categories of material.

12 So if you want to reply to me after the break because you want  
13 to consult internally, I perfectly understand that. But I said that  
14 I wanted to issue a target date for this procedural milestone, and I  
15 stick by what I said.

16 Mr. Prosecutor.

17 MR. HALLING: Thank you, Your Honour. We would like to consult  
18 after the break to give you a better indication of what Your Honour  
19 indicated. What Your Honour just said is helpful to us because it's  
20 talking about the bulk of the materials being disclosed, which is  
21 something that is going to be more feasible than getting every single  
22 item off the Rule 102(3) notice processed before the case is  
23 transferred to the Trial Panel.

24 So I just wanted to confirm that we'll review our proposal and  
25 see what we can give as a deadline, bearing that in mind.

1 JUDGE GUILLOU: To be clear, when I said "the bulk," I mean what  
2 has been requested by the Defence, not what they will request in the  
3 future. So I did not want to make a selection in what the Defence  
4 was proposing. So, again, my question is: When are you in a  
5 position to disclose and/or file any request for protective measures  
6 for the material for which you think it is necessary?

7 And I want a date for this for the material that has been  
8 already requested by the Defence. That is my question. Because this  
9 will be key for me to determine the timeline for this, and that will  
10 have an impact on the timeline on the Defence pre-trial brief, then  
11 the timeline of the transmission of the case, and then the start of  
12 the trial.

13 MR. HALLING: Understood, Your Honour. We'll get back after the  
14 break.

15 JUDGE GUILLOU: It is 5.07. If the interpreters allow me, I  
16 know you must be very tired, but we have a very, very small section  
17 on Rule 107 material that shouldn't last more than a couple of  
18 minutes.

19 If you prefer to have a break now, we can have a break. If not,  
20 we could continue with this.

21 THE INTERPRETER: Yes, Your Honour. We can continue. Thank  
22 you.

23 JUDGE GUILLOU: Thank you. I see a thumbs-up. Thank you very  
24 much. And I know you must be tired, but thank you very much for  
25 this, because with that we can -- apart from the last point, we can

1 continue with the disclosure.

2 Let us now move to Rule 107 material.

3 I note the SPO's submissions that it is continuing to actively  
4 work to complete discussions with Rule 107 providers. The SPO  
5 indicated that it's preparing two further Rule 107(2) applications,  
6 including conclusion of counterbalancing discussions as relevant. So  
7 I invite the SPO to make submissions on this topic; notably, on the  
8 timeline for the upcoming two Rule 107(2) applications.

9 Mr. Prosecutor.

10 MR. HALLING: Your Honour, we don't have a specific date by  
11 which we're going to file those Rule 107 requests at the moment. As  
12 Your Honour can appreciate, the more clearances that we get, those  
13 applications sort of evolve depending on when they are filed, and so  
14 ideally we'll be able to file them at a point where it's the smallest  
15 scope of issues for Your Honour to decide.

16 Beyond that, we are just continuing to try and resolve this  
17 matter.

18 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

19 Any Defence team want the floor on this? Mr. Kehoe.

20 MR. KEHOE: Generally, Your Honour, I don't say much about  
21 Rule 107 issues because I really don't know what we're talking about,  
22 but it seems like we're again expanding timeframes without counsel  
23 giving Your Honour some parameters as to when he's going to get these  
24 clearances. That's the problem, because that is the thread that runs  
25 through everything that we've been talking about today.

1 JUDGE GUILLOU: It is true. But what the Prosecutor just  
2 mentioned is also true, is that the more they get clearances, the  
3 less material they present in their request and the more is disclosed  
4 to the Defence.

5 Mr. Emmerson or Ms. O'Reilly, do you want -- Ms. O'Reilly.

6 MS. O'REILLY: Yes, Your Honour. That will be me.

7 I just wanted some clarification. So we're talking about two  
8 further Rule 107(2) applications being in progress, but there was a  
9 longer list of 107 applications that they had in a recent filing.  
10 And it's really just not clear to me right now what volume of  
11 material we're talking about, and set aside the issue of timing of  
12 this disclosure.

13 And I wonder if we could not even just get a rough estimate in  
14 terms of hundreds or thousands of pages from the SPO? And that's  
15 really about it. It's just about trying to complete this disclosure  
16 exercise so we can actually move forward to the Trial Panel at some  
17 point.

18 Thank you, Your Honour.

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

20 Mr. Young, please.

21 MR. YOUNG: No, thank you.

22 JUDGE GUILLOU: Thank you, Mr. Young.

23 Mr. Ellis, please.

24 MR. ELLIS: Nothing. Thank you, Your Honour.

25 JUDGE GUILLOU: Thank you, Mr. Ellis.

1 Mr. Prosecutor, do you want to reply to the question of the  
2 Defence?

3 MR. HALLING: Yes, briefly, Your Honour.

4 The issue with Rule 107 is not the pages. It's with the  
5 documents. So one clearance might clear a 10.000-page document, so  
6 it's not a good metric of the progress we make. The progress we make  
7 is with the providers which, for obvious reasons, we can't talk about  
8 in open session.

9 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

10 Ms. O'Reilly.

11 MS. O'REILLY: Just very quickly, Your Honour.

12 The volume of pages is an issue for us because we're the ones  
13 that have to read it. So I appreciate what you're saying, but we  
14 would still need that in order to prepare ourselves for trial. Thank  
15 you, Your Honour.

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

17 I invite the parties to continue these exchanges *inter partes*,  
18 because I think this, indeed, has an impact on the organisation of  
19 the Defence, and especially the time that it needs to dedicate for  
20 the analysis of this material.

21 Thank you very much to the interpreters for giving me these five  
22 minutes. We will now adjourn the hearing for, let's say, 20 minutes,  
23 and then we will resume with -- Mr. Prosecutor, do you need more time  
24 or 20 minutes is okay?

25 MR. HALLING: That should suffice, Your Honour.



1 JUDGE GUILLOU: In 20 minutes. And then we move to Defence  
2 investigations.

3 Given that we will only have one full session of an hour and a  
4 half, I invite the parties to be brief in their presentation.  
5 Otherwise, we will not be able to deal with the measures to  
6 streamline the case today. So I hope the parties will be able to be  
7 brief so that we can finalise the agenda today.

8 The hearing is adjourned.

9 --- Recess taken at 5.12 p.m.

10 --- On resuming at 5.34 p.m.

11 JUDGE GUILLOU: So, Mr. Prosecutor, before we proceed with the  
12 Defence investigations, you have the floor for the 102(3) material.

13 MR. HALLING: Thank you, Your Honour. I did predict that it  
14 would be difficult to reliably estimate, that turned out to be true,  
15 but we do have a timeframe for you. I can even share a couple of the  
16 considerations that came up in that discussion.

17 One is the scale of the Rule 102(3) notice. It's an order of  
18 magnitude bigger than all of the other cases, as Your Honour is  
19 aware. It's not necessarily the case that the size of a case  
20 correlates perfectly with the size of the Rule 102(3) notice. You  
21 might have a very big case with lots of Rule 102(1)(b) items, for  
22 instance. But this is certainly the case here.

23 We also have a huge scale of items that are selected. And it's  
24 true that some Defence teams are being more selective than others,  
25 but collectively, as we said, and Your Honour recalled, 97 per cent

1 of the items in this order of magnitude bigger notice have been  
2 selected.

3 But bearing all of this in mind, with the caveat that the  
4 requests freeze now, so looking at the requests that have come in as  
5 of this moment, and not accommodating future requests, we are  
6 currently projecting that we can finish the Rule 102(3) notice  
7 requests currently made by the end of September of this year.

8 The last point that we wanted to make in this regard is that we  
9 maintain our position -- we appreciate what Your Honour said, that  
10 you want this matter resolved before transferring the case to the  
11 Trial Panel, but it's a different matter as to when exactly the  
12 pre-trial brief is filed. We maintain our position it's not  
13 necessarily required to have this Rule 102(3) notice completed as a  
14 prerequisite to filing the pre-trial brief.

15 At the International Criminal Court, as a comparison, full  
16 disclosure is generally given three months before trial and generally  
17 after the pre-trial phase has finished entirely, including  
18 pre-confirmation briefs.

19 So it's admittedly a different statutory scheme in a different  
20 system. We just want to say that Your Honour's timetable for  
21 pre-trial briefs doesn't necessarily need to be tied to the timeline  
22 that we're indicating. But Your Honour has asked us for an estimate  
23 and this is our estimate.

24 JUDGE GUILLLOU: Thank you, Mr. Prosecutor.

25 Let us now move to the Defence investigations and next steps.

1 Today I will give the floor to the parties separately on each  
2 item related to Defence investigations. First, on the general status  
3 of the Defence investigations; second, on any potential request for  
4 unique investigative opportunity; third, on any notice of an alibi or  
5 grounds for excluding responsibility; fourth, on points of agreement  
6 on law and/or facts; fifth, on objections to the admissibility of  
7 evidentiary material disclosed; and, finally, on the Defence  
8 pre-trial brief.

9 I invite the Defence teams to be very concise for each item,  
10 because we are going to run out of time soon.

11 Let us start with the general status of the Defence  
12 investigations.

13 In its written submissions, the Defence indicates that it is  
14 continuing its investigations, including identifying potential  
15 witnesses, conducting investigative missions, and reviewing  
16 evidentiary materials disclosed by the SPO.

17 However, the Thaci Defence recalls that these investigations  
18 remain hampered by a number of factors outside of the control of the  
19 Defence; notably, the extensive redactions applied by the SPO, and  
20 the delayed and partial disclosure by the SPO.

21 The Krasniqi Defence also considers that certain investigations  
22 cannot be completed until after the SPO has completed its disclosure  
23 obligations.

24 So I would like the Defence teams to give a brief overview on  
25 the status of its investigations.

1 Mr. Kehoe, please.

2 MR. KEHOE: Yes, Your Honour. Would you like me to address all  
3 those issues at once, or would you take them one at a time?

4 JUDGE GUILLOU: One at a time.

5 MR. KEHOE: The first issue, Your Honour, and I think  
6 Your Honour clearly outlined our position, we are continuing with our  
7 investigation, but, mind you, the redactions not only in the  
8 indictment and the pre-trial brief and the -- more importantly, these  
9 witness statement are not only extensive, they're extremely,  
10 extremely voluminous. It makes it very difficult on matters to  
11 even -- even an instance when we were going through a transcript of  
12 one of the interviews, one of the items is referenced, a particular  
13 document is referenced in it. When we go to get the ERN number for  
14 that document, the entire document is blanked. So we don't even know  
15 what the witness is talking about. We have a witness talking about a  
16 document, but we can't even read it.

17 It makes it almost -- well, virtually impossible to find out  
18 exactly what they're talking about without that document.

19 Your Honour raised -- and I'm not here to go back into the  
20 protective measures, but, of course, you know 100 witnesses have  
21 protective measures at this point and remain anonymous. 65 are going  
22 to remain anonymous until 30 days before trial. That is an enormous  
23 - an enormous - undertaking for the Defence teams to get -- to  
24 investigate and look into 69 witnesses 30 days before trial. And  
25 then there is going to be the concomitant delays, that several

1 witnesses, I believe it's 24, are going to get -- will be revealed to  
2 us 30 days before their testimony, and I believe there are four  
3 others that are going to be triggered by their 30-day period, which  
4 makes it 28. And then there were two witnesses that we're never even  
5 -- ever going to get their identity. And I submit to Your Honour  
6 I've never been in a trial or a court proceeding in my life where  
7 that has been the case.

8           Nevertheless, Your Honour understands what the difficulty is  
9 investigating this matter. That's not to say we are not  
10 investigating this matter. We are investigating this matter, but we  
11 are truly, truly hampered by the extensive redactions that have been  
12 imposed on the witnesses and the witness statements.

13           That being said, my client and the other accused want to move  
14 this thing to trial if, in fact, you know -- sooner as opposed to  
15 later. But I have to tell Your Honour about the difficulties that  
16 come as a result of this.

17           And on a separate issue that we just received some clarification  
18 on yesterday, I had sent a letter some time ago to the OSCE with  
19 regard to certain information. And I recently received a letter back  
20 saying that the Registry was coming up with some type of protocol for  
21 this, to get these documents. I don't think that the SPO had to go  
22 through such an endeavour to try to look at these documents, but be  
23 that as it may.

24           And then I just got a note yesterday, through Ms. Menegon from  
25 the Registry, saying that requests had to be made through the Court

1 to look at OSCE documents. And I'm a bit lost on the entire  
2 procedure because none of this, that I could see, is in the rules,  
3 given the fact that I just sent a letter to the OSCE and the UN  
4 asking for that documentation.

5 But if there is some guidance that Your Honour can give us to  
6 expedite this. We need these OSCE documents as soon as possible, and  
7 we want to do what we need to do to get compliance with any edict  
8 this Court might rule on this score and to move this matter along as  
9 quickly as possible.

10 JUDGE GUILLOU: Thank you, Mr. Kehoe.

11 Mr. Emmerson, please.

12 MR. EMMERSON: [via videolink] The Defence investigations for  
13 Mr. Veseli is proceeding well and will continue over the summer. We  
14 expect to be ready to start a trial this year.

15 JUDGE GUILLOU: Thank you, Mr. Veseli.

16 Mr. Young, please.

17 MR. YOUNG: Your Honour, the Defence investigations are ongoing.  
18 In terms of reviewing the disclosed material, the pre-trial brief,  
19 and meeting persons of interest, as Mr. Kehoe has said, we are  
20 hampered severely by the -- and we don't seek reconsideration of your  
21 decisions in relation to protective measures, but the extensive  
22 anonymity orders and resulting redactions to the indictment and  
23 pre-trial brief do seriously impact upon our ability to investigate.

24 JUDGE GUILLOU: Thank you, Mr. Young.

25 Ms. Alagendra, please.

1 MS. ALAGENDRA: Your Honour, Defence investigations are ongoing,  
2 and I echo the difficulties that have been mentioned by Mr. Kehoe.  
3 We face a similar situation.

4 JUDGE GUILLOU: Thank you, Ms. Alagendra.

5 Mr. Halling, do you want to --

6 MR. HALLING: Just briefly. The only thing we wanted to say is  
7 that of the four Defence teams, only one of them gave any sort of  
8 meaningful update on the progress of its investigations, and even the  
9 Thaci Defence only talked about one thing.

10 It's a shame that we had to talk about Dick Marty and Serbia for  
11 almost an hour in order to have a such a concise discussion on this  
12 topic. And we would ask Your Honour to consider, at a future Status  
13 Conference, to change the agenda order, because this keeps happening,  
14 and the Defence need to give a more meaningful update on the progress  
15 of their investigations at a future Status Conference.

16 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

17 MR. EMMERSON: [Via videolink] Your Honour, may I --

18 MR. KEHOE: May I be heard on that comment on --

19 JUDGE GUILLOU: Very briefly, Mr. Kehoe.

20 MR. KEHOE: Very briefly. With the status of the investigation  
21 and these comments by Defence counsel about what the Defence is doing  
22 and not doing have no bearing on the failure of the SPO to meet their  
23 obligations and shouldn't be taken as such.

24 This investigation is moving along as quickly as it possibly  
25 can. All of these teams are working hard with all of the information

1 that the SPO has decided to redact and exclude so we couldn't move  
2 this case along more quickly, and that's the reality of these  
3 investigations.

4 JUDGE GUILLOU: Thank you, Mr. Kehoe.

5 MR. EMMERSON: [via videolink] May I just add one thing.

6 JUDGE GUILLOU: Very briefly, Mr. Emmerson.

7 MR. EMMERSON: [via videolink] It will be less than a breath, I  
8 promise you.

9 If what is being called for by the Prosecution is some sort of a  
10 detailed analysis of what the Defence is doing by way of  
11 investigation, then I am afraid the gentleman opposite is going to be  
12 sadly disappointed. There is no question of us disclosing the  
13 content of our investigations but merely the progress and timelines.

14 JUDGE GUILLOU: Thank you, Mr. Emmerson.

15 Let us now move to requests for unique investigative  
16 opportunity.

17 In their submissions, two Defence teams provide information on  
18 their intention to make requests concerning unique investigative  
19 opportunities pursuant to Rule 99(1) of the Rules.

20 The Thaci Defence indicates it will make such requests for a  
21 number of potential witnesses. The Thaci Defence anticipates that  
22 any such request will be submitted within the coming months in order  
23 that the depositions be taken before the end of the year.

24 The Veseli Defence has also identified individuals from the  
25 SPO's list for whom a request for unique investigative opportunity



1 may be made.

2 So I invite the Defence to give a timeline for these requests.

3 Mr. Kehoe.

4 MR. KEHOE: I will tell you, Judge, that we have, at this point,  
5 nine people that we want to depose before trial, and we do that  
6 because of age considerations and, most importantly, deteriorating  
7 health.

8 These events took place back in 1998, 1999, and some even before  
9 then, and some of the individuals who are on the ground there at the  
10 time, certainly some of the internationals, are now quite advanced.  
11 Now, I'm not wishing any ill-health on them, but the reality is that  
12 if, in fact, we are dealing with 1500 hours of a Prosecution case in  
13 their case alone, we are talking about looking at a Defence case  
14 years down the line. And some of these witnesses have opined that,  
15 for a variety of reasons, that their evidence should be secured now  
16 for health and just general well-being of any of these witnesses.  
17 And, again, some of them are in advanced stage and into their late  
18 80s.

19 So we will be presenting at least nine, and I suspect it may  
20 even be more than that, Judge, to put those matters before the Court,  
21 before the Trial Chamber. Much of that information concerning what  
22 we are going to testify to is tied to the UN documents, the OSCE  
23 documents, and the documents for which we've been trying to get and  
24 we have been unable to do so.

25 So it's -- one is going to follow the other. I intend to move

1 through this as quickly as I possibly can, but these witnesses have  
2 asked for the hard core documents, which is why I was back at the UN  
3 and the OSCE asking for these documents. And that's the process and  
4 the procedure that we are going through right now.

5 But I promise you, Your Honour, that it will be done as promptly  
6 as we get these documents, the witness can review them, we can get  
7 those health concerns, et cetera, and the reason why we should move  
8 ahead with this deposition before the Court as soon as possible.

9 As an aside, Judge, any guidance that Your Honour can give us as  
10 to how we should move this along, we would accept it gladly because  
11 we want to do this as quickly as possible so this matter can get to  
12 trial.

13 JUDGE GUILLOU: Thank you, Mr. Kehoe. This will be done in  
14 communication with the Registry, not in this Status Conference.

15 Mr. Emmerson, please.

16 MR. EMMERSON: [via videolink] I have nothing to add at this  
17 stage.

18 JUDGE GUILLOU: Thank you, Mr. Emmerson.

19 Mr. Young, please.

20 MR. YOUNG: No, thank you.

21 JUDGE GUILLOU: Thank you, Mr. Young.

22 Ms. Alagendra, please.

23 MS. ALAGENDRA: Your Honour, we are liaising with the other  
24 Defence teams, and should additional requests become necessary, we  
25 will make them in due course.

1 JUDGE GUILLOU: Thank you, Ms. Alagendra.

2 Let us now move to the notice of an alibi or grounds for  
3 excluding responsibility.

4 In their written submissions, the Defence reserve their right to  
5 give notice of an alibi or grounds for excluding responsibility.

6 The Thaci Defence is unable to provide further information now  
7 due to the scale of redactions in the indictment and the evidentiary  
8 material.

9 The Veseli Defence has proposed that the SPO allow Defence  
10 counsel, on a strictly confidential basis, to see redacted material  
11 relating to any direct allegation against the Defence in order to  
12 assist them on this matter.

13 The SPO indicated that this would require a variation of  
14 protective measures.

15 I invite the Defence to indicate when they will be able to give  
16 notice of an alibi or grounds for excluding responsibility.

17 Mr. Kehoe.

18 MR. KEHOE: Yes, Your Honour. Our position with regard to alibi  
19 defence on any of these items that are in the indictment remains the  
20 same. We can simply not give you an alibi concerning most of the  
21 matters that are here because of the massive redactions that the SPO  
22 has put before Your Honour.

23 Now, I will tell you frankly, Judge, that there will be an alibi  
24 defence on any number of items once we get clarity on these dates and  
25 places, because my client was certainly, during most of 1999,

1 visiting capitals throughout the world and dealing with  
2 internationals to try to bring peace to Kosovo in a diplomatic  
3 fashion. This is while a war is raging.

4 Now, where he was at all of those times, if I'm going to give an  
5 alibi defence, it's incumbent upon us to say on a particular day he's  
6 in Oslo or he's in London or he's in Geneva or Brussels, and I can't  
7 do that with what we have before us right now.

8 But I will say this again, Your Honour, we will, once we get  
9 clarity on these dates, times, and places, be able to present that to  
10 the Court.

11 JUDGE GUILLOU: Thank you, Mr. Kehoe.

12 Mr. Emmerson, please.

13 MR. EMMERSON: [via videolink] Your Honour, dates, times, and  
14 places, those are the issues that need to be clarified before we can  
15 be put on notice of any requirement to serve an alibi and so far as  
16 presence in a particular place at a particular time is what  
17 constitutes an alibi.

18 JUDGE GUILLOU: Thank you, Mr. Emmerson.

19 Mr. Young, please.

20 MR. YOUNG: Your Honour, at this stage we are unable to provide  
21 any information at this juncture due to the size of the unknown  
22 materials, so I really don't make any submissions today.

23 JUDGE GUILLOU: Thank you, Mr. Young.

24 Ms. Alagendra, please.

25 MS. ALAGENDRA: Your Honour, we reserve our right to give notice

1 of an alibi. We are unable to do that at this stage.

2 JUDGE GUILLOU: Thank you, Ms. Alagendra.

3 Let us now move to points of agreements on law and/or facts.

4 In its written submissions, the Thaci Defence indicates that it  
5 has accepted nine of the facts proposed by the SPO.

6 In order to expedite the process of reaching agreement on the  
7 SPO's proposed facts, the Thaci Defence invites the SPO to provide a  
8 lesser redacted version of the indictment and lesser redacted  
9 evidentiary materials as soon as possible.

10 The Veseli Defence indicates that it has taken under review a  
11 number of proposed agreed facts that do not appear to depend on the  
12 completion of Rule 103 disclosure and should be in a position to  
13 revert to the SPO on this issue within the coming days.

14 And the Krasniqi Defence is reviewing the SPO's proposed agreed  
15 facts but cannot respond more substantively until disclosure is  
16 completed.

17 I invite the parties to give a timeline for their discussions on  
18 this matter.

19 Mr. Kehoe.

20 MR. KEHOE: Your Honour, just to echo what you said in the last  
21 conference, that when the Defence hasn't received all disclosure,  
22 it's difficult for the Defence to agree on facts.

23 I think we're pretty much at the same place of talking about  
24 disclosure and agreeing on facts so you can contextualise these  
25 particular facts, which we will do to the extent that it can shorten

1 this trial and get it to trial. But without disclosures, it's  
2 impossible to contextualise. We still have 102(3) material to get,  
3 we have 103 material to get, and, of course, to the extent that the  
4 identities of 100 witnesses make the whole acceptance of facts  
5 problematic, that remains the same.

6 That being said, we will commit ourselves to looking at any  
7 facts that any other Defence teams, such as counsel just proposed,  
8 and see if we can go along with those at the appropriate time.

9 JUDGE GUILLOU: But you indicated in your written submissions  
10 that you already accepted nine facts, so --

11 MR. KEHOE: I accepted nine, Judge --

12 JUDGE GUILLOU: -- despite not having access to the whole  
13 disclosure, it doesn't prevent you from doing so.

14 MR. KEHOE: I did, Judge, and I think that's a wonderful gesture  
15 on our part that we did that. We'll get past the salamander issue  
16 and we now have nine facts that we've agreed to, so I thought that  
17 was magnanimous. Nevertheless, Judge, it is in our interests to do  
18 so to the extent that we could do it, Judge, and certainly we will  
19 look at any other factual agreements that other counsel have to  
20 advance, and we will make a determination whether or not we can  
21 accept it.

22 JUDGE GUILLOU: Thank you, Mr. Kehoe.

23 Mr. Emmerson, please.

24 MR. EMMERSON: [via videolink] We will have our response to the  
25 Prosecution on the proposed agreed facts by the end of this month, so

1 by the middle of next week.

2 JUDGE GUILLOU: Thank you, Mr. Emmerson.

3 Mr. Young.

4 MR. YOUNG: Your Honour, we're still actively reviewing the  
5 facts to determine whether or not we can agree to them. Clearly,  
6 we'll notify the SPO if and when that can happen.

7 In terms of law, the absence of any submissions on the law in  
8 the Prosecution pre-trial brief render it almost impossible to have  
9 any useful discussions on this point, but we will actively seek to  
10 make agreement where we can.

11 JUDGE GUILLOU: Thank you, Mr. Young.

12 Ms. Alagendra, please.

13 Mr. Baiesu.

14 MR. BAIESU: Yes. On the agreed facts, as we made the  
15 submission in our written filing, we cannot comment any further at  
16 this stage due to incomplete disclosure. We are actively reviewing  
17 and we will, in due course, update the Court.

18 JUDGE GUILLOU: Thank you, Mr. Baiesu.

19 Mr. Prosecutor, do you want to add anything on this topic? And  
20 are you inclined to make proposals on agreed points of law as well to  
21 answer the question of Mr. Young?

22 MR. HALLING: I mean, in this regard, Your Honour, we actually  
23 are on the record with a lot of the law. The entire preliminary  
24 motions litigation was a huge referendum, including our full position  
25 on many of the most important points of law in this case, so we

1 actually don't accept the submission that we aren't saying anything  
2 about the law.

3 We have to be on record with facts, law, evidence, to a much  
4 larger extent than the Defence teams at this point. I think our  
5 portion is pretty clear on a great many things, and it really is at  
6 this point -- we've sent dozens and dozens of agreed facts in March  
7 of last year for the Defence to come to us on what they actually can  
8 agree to with the state of disclosure and redactions and et cetera.  
9 It's really reached a point where us making further proposals doesn't  
10 look like it's going to be fruitful.

11 MR. KEHOE: Can I quickly respond to that, Judge?

12 JUDGE GUILLOU: Mr. Kehoe.

13 MR. KEHOE: And the reason why in many cases it's not fruitful  
14 is because what -- they are putting argumentative statements within  
15 their facts. I mean, they'll give this recitation from their  
16 indictment where there are redactions everywhere, and they will pluck  
17 out an individual sentence and put that in as an agreed fact.

18 Well, without the contextualising of what they're talking about,  
19 we cannot in good conscience agree to those facts. And if you look  
20 at what they propose and compare it to what they disclose, I think  
21 Your Honour will see exactly what I'm talking about.

22 So this whole idea that, once again, we've met our obligations  
23 and everything is crystal clear and we've done everything to move  
24 this along is just simply not accurate.

25 JUDGE GUILLOU: Thank you, Mr. Kehoe.



1 I don't see any request for the floor. So let us now move to  
2 the Defence pre-trial brief.

3 In their written submissions, the Defence teams indicated that  
4 they all intended to file a pre-trial brief. The Thaci Defence and  
5 the Veseli Defence considers that they should be in a position to  
6 file their pre-trial brief by 16 September 2022.

7 However, the Thaci Defence indicate that this is contingent on  
8 the SPO fulfilling all its disclosure obligation by 22 July 2022, and  
9 giving notice of the witnesses that it intends to call during the  
10 first six months of trial and the order in which it intends to call  
11 them by 22 July 2022.

12 The Veseli Defence considers that disclosure should be finalised  
13 on a tighter calendar and that the SPO should complete its Rule 103  
14 disclosure of new materials by the Court-imposed deadline of  
15 20 May 2022, and all other Rule 103 disclosure by 22 June 2022, and  
16 provide to the Defence all material requested pursuant to Rule 102(3)  
17 by 22 July with the understanding that the Defence completes its  
18 Rule 102(3) requests by 22 June 2022.

19 The Krasniqi Defence also considers that the date for the  
20 pre-trial brief is linked to the remainder of the procedural  
21 timetable; in particular, the date when the SPO completes its  
22 disclosure.

23 So I invite the parties to develop their arguments on this  
24 matter, and I also inform the parties that at the end of this hearing  
25 I intend to set a tentative date for the Defence to file its

1 pre-trial brief.

2 Mr. Kehoe, please.

3 MR. KEHOE: Yes, Your Honour. We're committed to filing our  
4 pre-trial brief on 16 September. Obviously, we need the disclosures  
5 that the SPO has committed itself -- or Your Honour has ordered them.  
6 They haven't committed themselves. Your Honour has ordered them to  
7 comply with in order to file this pre-trial brief.

8 But, Your Honour, the consideration of not only fulfilling its  
9 103, 102 obligations is also -- if we are going to move this case  
10 along, and we want to file a pre-trial brief, and we want to get this  
11 case to trial as soon as possible, and it's in everybody's interest  
12 to expedite this matter, give us the witnesses for the first six  
13 months in the order that they're going to proceed on. That's the  
14 easiest way to move this along without any unnecessary delays.

15 JUDGE GUILLOU: Thank you, Mr. Kehoe.

16 Mr. Emmerson, please.

17 MR. EMMERSON: [via videolink] Your Honour, I said I would come  
18 back to this question of the list of witnesses.

19 Essentially, the question was posed directly in Your Honour's  
20 agenda whether or not the Defence could meet a 16 September deadline.  
21 We've taken that as an invitation to look at the procedural  
22 consequences, which would, first was all, be referral to the  
23 Trial Chamber once that brief is filed, and then a sensible date for  
24 trial.

25 And so far as we are concerned, we certainly can meet the

1 16 September deadline for the pre-trial brief with all of the caveats  
2 that would go with it. For example, if material was disclosed  
3 subsequent to the pre-trial brief that was relevant, then we would be  
4 in a position to either amend or at least not be criticised for its  
5 absence at the time the pre-trial brief was submitted.

6 But the aim here is to have a pre-trial brief on 16 September to  
7 enable the trial to start in December. And since all attempts to  
8 impose discipline over the Prosecution's timetabling, and, frankly,  
9 over the undisciplined and lazy scope of the case, in other words,  
10 the strategy, as Your Honour said earlier, of determining the scope  
11 of the case in a manner which has lost, if it ever had, any focus at  
12 all, since those attempts to manage the Prosecution's conduct up  
13 until now have failed, the only effective way to get this moving is  
14 to attack it at the opposite end.

15 In other words, we will ask Your Honour to set a provisional  
16 trial date in December for the opening of the Prosecution case so  
17 that we can work backwards from that. 16 September fits conveniently  
18 within a three-month gap to enable that to occur.

19 Now, the reason why, first of all, disclosure must be complete,  
20 subject to any minor matters that are identified clearly in advance,  
21 is that gives us approximately six weeks or so following disclosure  
22 to finalise our pre-trial briefs.

23 Now, we can work with some difficulties around the edges, but  
24 it's time to move the case forward and to put the Prosecution under  
25 some real discipline with guillotines and time limits and sanctions

1 for failing to meet them. So, yes, 16 September would work well for  
2 a pre-trial brief for the Veseli team, but we are also insisting on a  
3 trial that starts within a period of approximately two years since  
4 they've been detained.

5 And so since we are in continual detention, this trial must  
6 start this year.

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

9 MR. YOUNG: Yes, very briefly.

10 Your Honour, the Defence is considering whether or not to file a  
11 pre-trial brief. As Your Honour understands, there is an invitation  
12 and it's not obligatory.

13 If the Defence does file a pre-trial brief, we would have  
14 proposed that the deadline of 16 September may be appropriate, but  
15 it's been conditioned, it's contingent, in our submission, on the  
16 conditions that were so clearly set out by the Veseli Defence in  
17 their written filing. Obviously, much will depend upon what  
18 Your Honour orders in terms of timelines for the disclosure of the  
19 Rule 102(3) materials, because the Defence have put forward one  
20 figure, and now you've been told by the Prosecution that they can  
21 give an undertaking to file it by the end of September.

22 So we're in Your Honour's hands. Thank you.

23 JUDGE GUILLOU: Thank you, Mr. Young.  
24 Mr. Ellis, please.

25 MR. ELLIS: Your Honour, very briefly on that. It's always been

1 our position that the pre-trial brief needs to be tied to the end of  
2 disclosure. And the 16 September, looking at the way Your Honour  
3 structured the order, was allowing a period of approximately two  
4 months between the end of disclosure and the Defence pre-trial brief.

5 That's still our position. We could do it within that two-month  
6 window. But if the Prosecution disclosure is slipping back, it has  
7 an effect on the Defence pre-trial brief as well. So my position is  
8 two months following disclosure.

9 JUDGE GUILLOU: Thank you, Mr. Ellis.

10 Mr. Prosecutor, if you can respond to the timeline and also to  
11 the proposals of some Defence teams to have access to the witness  
12 order that you intend to present at trial. Thank you.

13 MR. HALLING: We can address the witness order issue first,  
14 Your Honour.

15 We've actually said this at a previous Status Conference. The  
16 order of witnesses is very dependent on when exactly the trial  
17 commences, the sitting schedule of the Trial Panel, and the  
18 availability of our witnesses. So in our submission, the witness  
19 order is something that is better determined at the trial phase with  
20 the Trial Panel. So any witness order that we provide now, I mean,  
21 even understanding that it might be subject to change, it would be  
22 subject to change in so many various ways at this point that we don't  
23 think that that would be a meaningful order at this point.

24 As we said before, that witness order should also not be  
25 conditioned to the pre-trial brief.

1 Turning to the pre-trial brief, and this goes, again, to the  
2 submission I made earlier, that it would have been better to have had  
3 a longer discussion on this point, because many of the submissions  
4 you heard just now are simply unclear.

5 The Krasniqi Defence is the only Defence team that actually  
6 acknowledged how the 16 September deadline of Your Honour interplays  
7 with the end of September deadline I said just now. So when the  
8 Thaci and Veseli Defence teams say they can file on the 16 September  
9 if their conditions are met, I don't know what that means. Because  
10 the conditions that they want, we've already said what is possible  
11 within those conditions. So they actually haven't committed to any  
12 particular timeline to file their pre-trial brief.

13 The second point that we wanted to stress to Your Honours is  
14 that for many of these Defence agenda items, they talked a lot about  
15 the state of the redactions which, as Your Honour knows, goes to  
16 delayed disclosure witnesses. Many of them are delayed disclosure  
17 witnesses 30 days before trial. They're not going to get those  
18 redactions lifted at the point that any pre-trial brief would need to  
19 be filed. And we're concerned by some of these Defence submissions.  
20 When they say they need full disclosure, they're essentially creating  
21 a situation that can't ever exist, whereby they're waiting for  
22 redactions to be lifted to file a pre-trial brief that can't actually  
23 be filed before Your Honour.

24 MR. EMMERSON: [via videolink] May I respond to that?

25 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

1 Mr. Kehoe first.

2 MR. KEHOE: Your Honour, first of all --

3 JUDGE GUILLOU: And before I give you the floor, if you could  
4 also indicate what would be a possible date for your pre-trial brief  
5 if the SPO would finalise its 102(3) disclosure obligations at the  
6 end of September.

7 MR. KEHOE: Well, I would say generally, in accordance with what  
8 counsel said previously, normally you take two months after they  
9 complete their disclosures. But I trust -- based on the track record  
10 that we've had to date, I hope that the end of September is a  
11 realistic date and is not just a date that, you know, counsel is  
12 throwing out to appease Your Honour at this point.

13 So what we are looking for is we want full disclosure. Put  
14 aside the nonsense that you just heard. We want full disclosure so  
15 we can file the appropriate pre-trial brief and move this case to  
16 trial. That's what we're looking to do. Not some moving the chess  
17 pieces around the board for some type of obtuse argument. No. Just  
18 the order following Your Honour's -- what Your Honour is saying, what  
19 they're supposed to do, when they're supposed to do it, and we can  
20 file a pre-trial brief no later than two months after that.

21 And, by the way, Judge, I mean, with regard to the witness  
22 order, the witness order is very meaningful. Of course there are  
23 going to be changes in the witness. But to expedite this matter and  
24 to move it along, there is going to be a certain pattern that the  
25 Prosecution wants to follow. How do I know that? I did that for

1 almost 25 years as a prosecutor. You know the direction you're going  
2 to go, and, yes, there is going to be exceptions to it. But to say  
3 that there are exceptions and deletions and, as a result, the entire  
4 endeavour is not meaningful is just not accurate.

5 The Prosecution at this point, as they sit here, knows the  
6 direction their going to go in their prosecution and who in all  
7 likelihood they're going to put on in the first six months. That's  
8 all we're asking for. We're asking for it because that will enable  
9 us to move this case along in something less than the three years  
10 that counsel has put before your court with, I don't know, 1500,  
11 1600 hours of witness testimony.

12 JUDGE GUILLOU: Thank you, Mr. Kehoe.

13 Mr. Emmerson, please.

14 MR. EMMERSON: [via videolink] Two brief points in response to  
15 counsel for the SPO.

16 First of all, in his shrill and rather excitable submissions, he  
17 was trying to suggest that a date he pulled out of a hat just after  
18 consulting with colleagues over the short adjournment was such as to  
19 render our commitment to this Court meaningless because we couldn't  
20 complete it or deliver on it if the SPO itself claims that it can't  
21 meet its disclosure obligations by the date that's specified.

22 In other words, the cumulative breach of orders by the SPO is  
23 relied upon to cast doubt upon our commitment to file a pre-trial  
24 brief. I mean, not only is that completely illogical and it explains  
25 very clearly the need to start setting deadlines at the opposite end



1 of this process, but it was also expressed in a rather intemperate  
2 way.

3 The position is very clear. We will file our pre-trial brief on  
4 16 September even if the Prosecution has yet, by then, to fulfil its  
5 obligations in relation to the final disclosure material, all of  
6 which is relating to requests that have been given to date. All  
7 right?

8 So you're basically being faced with the submission: Because we  
9 don't keep to our obligations, you can't trust the Defence. Well, we  
10 will meet our obligation to have a pre-trial brief served on  
11 16 September, but the implications of that - and I'm glad to hear the  
12 SPO would find this useful - is that we need to know the start date  
13 of the trial. Because at that point, once we've filed our pre-trial  
14 brief, things ought to move very, very speedily to trial.

15 And since the Prosecution say, well, we can't give you a witness  
16 order until we've got a date for trial, we're going to invite you to  
17 set 16 December as the start date of the trial. That gives us 30  
18 days before then and the holiday period to look at the material  
19 that's been de-redacted the 30-day period before, which will be  
20 intense work, and it also gives us the opportunity, in those  
21 circumstances, to get from the SPO the order of the witnesses they  
22 intend to call. Otherwise -- I mean, if you think about the way this  
23 case is being prosecuted just in terms of scope, the sheer number of  
24 witnesses -- we're going to come on to streamlining in a second. But  
25 given the -- it's rather like a whale which eats -- digests krill.

1 You know, just opening its mouth and allowing the evidence to swim in  
2 with no process of proper filtration. Because the volume of  
3 material -- of -- of highly tangential material the Prosecution wants  
4 to include within its case makes it impossible for us to anticipate  
5 the work we need to do to be ready for trial without an indication of  
6 which witnesses are going to be called.

7 Since that's contingent on knowing when the trial starts,  
8 please, we would ask Your Honour to say, "Yes, 16 September, come  
9 what may," but equally the trial start on 16 December.

10 JUDGE GUILLOU: Thank you Mr. Emmerson.

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

12 MS. ALAGENDRA: No, Your Honour. Nothing to add.

13 JUDGE GUILLOU: Nothing to add.

14 I will issue an oral order at the end of this hearing on this  
15 topic.

16 Let us now move to the last topic on our agenda today, which is  
17 related to efficiency and expeditious of the proceedings.

18 In the Scheduling Order, I asked the parties whether they can  
19 provide an update on their *inter partes* discussions and present their  
20 proposals concerning the streamlining of trial proceedings.

21 In their written submissions, the parties appear to be in  
22 agreement that they all should be entitled to call evidence as they  
23 see fit within an overall hours limit.

24 The SPO indicated that it will significantly reduce its  
25 examination hours compared to its previous estimates. I invite the

1 SPO to give figures, if possible, on the number of hours it now  
2 foresees.

3 The Thaci Defence submits that the admission of testimonies in  
4 writing instead of *viva voce* may be a way to accelerate trial  
5 proceedings, particularly for witnesses whose testimonies are  
6 duplicates or who do not refer to any accused.

7 However, the Thaci Defence considers that its scope shall  
8 necessarily be limited, and the Defence will object to the admission  
9 of testimonies in writing which relate to the acts and conduct of the  
10 accused.

11 I invite the parties if they would all agree with this approach.

12 The Veseli Defence, supported by the Krasniqi Defence, proposes  
13 to set a timeframe for the parties to present their respective cases  
14 and proposes that the SPO should have one year to present its case  
15 with a possible extension of three months for unforeseen delays.  
16 According to the Veseli Defence, this would result in a two to  
17 three-year trial.

18 I invite the parties to indicate if they agree with this  
19 proposed general timeframe.

20 According to the written submissions filed before the Status  
21 Conference, *inter partes* discussions have not been successful on  
22 several other topics. For example, the SPO indicates that no Defence  
23 teams made a proposal to accept the admissibility of any evidence on  
24 the SPO's witness list. And, likewise, the SPO refuses some of the  
25 proposals of the Defence, such as permitting Defence counsel to

1 review redacted material, which would involve a request to reconsider  
2 prior protective measures; providing the Defence with a list of  
3 witnesses that it intends to call in the first six months of the  
4 trial, and we just discussed about that; cutting all allegations that  
5 do not involve the personal conduct of the accused or other named JCE  
6 members; or dropping any witnesses or crime site at this stage,  
7 considering that victims have waited 20 years to testify and need an  
8 opportunity to do so.

9 So I indicate that I've requested written submissions today, so  
10 this is not going to be the only forum for discussing about these  
11 issues. So I invite the parties to present their views briefly on  
12 this topic, knowing that it will also be discussed in the next Status  
13 Conference, but I figured it would be useful to have preliminary  
14 views of the parties on this.

15 Mr. Prosecutor.

16 MR. HALLING: Thank you, Your Honour. And just for the record,  
17 our intervention will actually only be oral today, so I can give you  
18 the full update of what we have on this topic.

19 And Your Honour summarised the submissions accurately. As set  
20 out in the written submissions, *inter partes* discussions have  
21 provided a consensus that the parties should be free to present its  
22 respective case subject to an established timeframe.

23 The overall length of the case or the overall length of the  
24 trial depends on the sitting schedule and how many breaks there are  
25 in the sitting schedule. So we would say that it's, again, not going

1 to be very efficient to try and divine such information. You really  
2 need the Trial Panel with the information that the Trial Panel has on  
3 the sitting schedule to determine that with precision.

4 As set out in the written submissions, the SPO is reducing its  
5 hours estimates internally. And, again, the Trial Panel is the best  
6 place to set that overall hours limit. The internal review is taking  
7 many factors into consideration. Your Honour mentioned a  
8 particularly important one, that there are victims who have been  
9 waiting over 20 years to testify and tell their stories in this case.

10 We would invite Your Honour to set a deadline shortly before the  
11 case is transferred to the Trial Panel in order for us to give a  
12 revised number on a streamlined overall hours estimate. Your Honour  
13 asked for figures. As an interim update, this isn't the end of the  
14 exercise, but the overall hours estimate is down 500 hours and is  
15 continuing to drop. Again, we're going to be continuing to do this  
16 up until the moment that the deadline that we just contemplated would  
17 be set.

18 As we said in our filing, the information that actually affects  
19 the scope of the Defence investigations, like the dropping of any  
20 witness or crime site, we wouldn't wait until the deadline that we  
21 have in mind. We would communicate that promptly to inform future  
22 Defence investigative decisions.

23 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

24 Mr. Kehoe, please.

25 MR. KEHOE: Yes, Your Honour. Certainly we accept a reduction

1 in the timeframe going from 1.863 hours to, I believe, something in  
2 the area of 1.363 hours. We previously asked the SPO if they were  
3 going to reduce the number of witnesses and the hours per witness,  
4 they did not respond to that. That, I believe, is something that the  
5 Court can impose, asking the number of witnesses and the hours for  
6 each of those particular witnesses.

7 We join in the Veseli submission with regard to a timeframe, a  
8 year to put on their case would be a more than sufficient time for  
9 this, give some structure to this so that we're not here till the  
10 next millennium. And just putting a year on for the SPO to put the  
11 case is appropriate, and the Defence can divide time accordingly  
12 depending on how much time that they get.

13 I know, Your Honour. I am not attempting to relitigate the  
14 protective measures issue. I'm not. I understand that that is a  
15 matter that's been decided. But that being said, some of the  
16 timeframes with regard to when the information is disclosed to us  
17 makes it difficult for timing. We want to move this case to trial as  
18 quickly as possible, and we have 24 witnesses that are going to  
19 get -- we are going to get information 30 days before trial; four  
20 witnesses that will be revealed contingent on something of the 24;  
21 and then 69 witnesses 30 days before trial.

22 It would expedite matters significantly, as we move into trial,  
23 if those timeframes were re-thought by the Court at some point to  
24 begin the disclosure on that information well before these 30-day  
25 trigger points. And if we consider that and we move it up, I do

1 believe that will expedite matters once we get in the courtroom and  
2 be ready to go. Thank you.

3 JUDGE GUILLOU: Thank you, Mr. Kehoe.

4 Mr. Emmerson, please.

5 MR. EMMERSON: [via videolink] Your Honour, I have very little to  
6 add on the first part of this analysis, which is should this be an  
7 overall hours limit imposed on the SPO or should it be an overall  
8 time limit on the presentation of the SPO's case.

9 Your Honour has the thrust of our argument, which is if the SPO  
10 is faced, as the Defence will be faced, with an absolute outer limit  
11 as to the time that they can present their case, subject to showing  
12 cause for an extension, that has the automatic effect of focusing  
13 minds on what is really necessary for the Trial Panel to decide this  
14 case.

15 And I entirely understand that my learned friend has to balance  
16 in the equation the rights of victims to have an opportunity to see  
17 justice being done.

18 You also have to bear in mind that the accused are in custody,  
19 and that is a countervailing consideration because the reasonable  
20 time guarantee in Article 6 of the European Convention presupposes a  
21 faster timetable for those in custody than those on bail. And more  
22 to the point, it presumes that the tribunal has adequate time and  
23 facilities to run the case efficiently once it's begun.

24 So at the end of the day, we would ask Your Honour to remember  
25 that if you accept our submission or if the Trial Chamber endorses

1 our submission that there should be an overall limit of months that  
2 the Prosecution has to put its case, the consequence will still be  
3 that if these men are acquitted at the end of the trial - and I  
4 certainly hope they will be - that they will have spent five years in  
5 custody. That's a pretty shocking state of affairs.

6 And, I mean, I'm not trying to relitigate the issue of  
7 provisional release because it's too late since we are in the final  
8 rundown to trial, if there are no further delays. We're facing the  
9 situation that we are. But that's five years before a verdict. And  
10 anything that contemplates going beyond that is, in our submission,  
11 unconscionable and would involve this Tribunal in breaching the basic  
12 principles of trial in a criminal matter within a reasonable time.

13 So it's not our fault the Prosecution has taken two years in  
14 discharging obligations when it said it could be ready for trial a  
15 year ago. It's not our fault that they've chosen to be  
16 indiscriminate in the number of witnesses that they are trying to  
17 pack in, that they're trying to fit, as the old expression in English  
18 goes, a quart to a pint pot. But to suggest that they are simply  
19 cutting the time for the existing witnesses, so the same number of  
20 witnesses to be called live but just trying to deal with them at  
21 double-quick speed, I am sure the interpreters and the transcribers  
22 will have something to say about that type of compression.

23 But be that as it may, it's not the exercise that the  
24 Prosecution needs to go through. The exercise it really needs to go  
25 through is to look at the evidence it's proposing to call, which



1 seems to be reflective of its understanding that it has an obligation  
2 to call anybody in Kosovo who has made any kind of complaint, because  
3 the allegations on the indictment cover the whole of Kosovo and the  
4 entirety of the conflict, regardless of connections to any of the  
5 accused. And that being the case, the only way to get the  
6 Prosecution to do its job properly is to impose a time limit on the  
7 presentation of their case.

8 We can't be talking about a situation where these men have been  
9 in custody six or seven years before the verdict. Otherwise, the  
10 impression will be rightly given that that is their punishment,  
11 guilty or innocent.

12 JUDGE GUILLOU: Thank you, Mr. Emmerson.

13 Mr. Young, please.

14 MR. YOUNG: Your Honour, very briefly, we wholeheartedly support  
15 the approach of the Veseli Defence, which we think is eminently  
16 sensible, to fix a fixed time-period of, say, one year and hold the  
17 Prosecution to that.

18 In terms of reducing the overall size and time for the case.  
19 Frankly, Your Honour, as Your Honour knows, the burden remains on the  
20 Prosecution. It's their case to suggest feasible, concrete, and  
21 realistic proposals for reducing the time of the presentation of the  
22 case. So we're really in their hands and hope that Your Honour will  
23 give them the direction that you can at this stage.

24 As far as a reduction of hours is concerned, that's welcomed.

25 JUDGE GUILLOU: Thank you, Mr. Young.

1 Mr. Ellis, please.

2 MR. ELLIS: Your Honour, as we indicated in our written  
3 submissions, we are still intending to file something in writing  
4 tonight on this issue. But we're strongly supportive of the  
5 proposals and the submissions made by the Veseli Defence and by  
6 Mr. Emmerson this afternoon.

7 The sort of reduction that the Prosecution is speaking about of  
8 500 hours, of course, it's welcome because it's something, but it's  
9 nowhere near enough. You're still looking at an extraordinarily  
10 lengthy Prosecution case running into at least three years if there's  
11 no delays. So we would say that's nowhere near enough, and we stand  
12 by the proposal for a one-year Prosecution case.

13 MR. HALLING: Your Honour, if there's one point where we could  
14 reply, although if Mr. Laws wants the floor first, I would cede it to  
15 him.

16 JUDGE GUILLOU: Mr. Halling, I will give you the floor, but  
17 please wait for me to give it to you.

18 And before giving it to you, I will give it to Mr. Laws, the  
19 counsel for victims.

20 MR. LAWS: Your Honour, thank you. We would like to make some  
21 submissions on this topic of streamlining, if we may.

22 JUDGE GUILLOU: Absolutely.

23 MR. LAWS: Your Honour, it really comes down to this. What we  
24 want to say is that the decision as to who should testify in this  
25 case has to be driven by what the real issues in the case are.

1           We're not in a position to affect the length of the case. We  
2           can't propose ways to reduce the scope of the evidence. That's going  
3           to be something that falls to the parties, and for that reason we  
4           haven't filed. But the victims are directly affected by the length  
5           of the trial in two ways.

6           First of all, some of them, as everybody knows, are also  
7           witnesses, and I hope that everyone would agree that none of those  
8           witnesses should be called unnecessarily. And, secondly, all of the  
9           participating victims are understandably anxious that the trial  
10          should be concluded as soon as possible.

11          So it's against that background that I'm just going to make  
12          these observations, if I may.

13          The area in which there is the most room for saving court time  
14          is in relation to the witnesses dealing with the crime base. And  
15          everybody is familiar with that phrase, but for those listening  
16          perhaps elsewhere, what I mean by that is the evidence in relation to  
17          the commission of the crimes themselves. So in this case, that is  
18          the abductions, the detentions, the mistreatment, and the murders.

19          And I do want to say that whatever may or may not be said about  
20          involvement of other states and reliability of evidence, at the end  
21          of this case there's going to have been a substantial body of  
22          evidence which has been scrutinised and which stands the test of that  
23          scrutiny and shows that there were indeed abductions, detentions,  
24          mistreatment, and murders. The issue will be is it properly linked  
25          to these accused.

1           So against that background, we welcome the SPO's plan to make  
2 greater use of Rules 153 to 155, and we welcome the Thaci Defence's  
3 willingness, as expressed in their filing, to consider the use of  
4 those rules.

5           But what we do want to say, for the record, is that there's an  
6 overlap between the streamlining issue and the last topic on the  
7 agenda today that we've just looked at; namely, the pre-trial brief.

8           If we look at Rule 95(5), we see what a Defence pre-trial brief  
9 is supposed to contain, and everybody in the court, again, knows  
10 this. But to spell it out, the pre-trial brief should identify the  
11 charges and matters that are in dispute, it should do so with  
12 reference to the paragraphs of the Prosecution's pre-trial brief, and  
13 it should give the reasons why those matters are in dispute. So it's  
14 a very specific requirement, which it's entirely -- it's voluntarily  
15 to adopt the invitation of the Court to file a pre-trial brief, but  
16 if one does, that's what's one is taking on by way of commitment.

17           And the reason that that's important to emphasise, we submit, at  
18 this point is this: If the pre-trial briefs follow the Rule 95(5)  
19 requirements, as I have no doubt that they will, then we should know,  
20 once they've been filed, much more precisely in relation to the crime  
21 base what's in dispute and what is not. And that should make the  
22 task of applying Rules 153 to 155 much easier and should make it  
23 possible, therefore, to streamline the case considerably once those  
24 pre-trial briefs have been served.

25           What we're really saying is that the decision about which

1 witnesses should be called mustn't take place in a vacuum. So the  
2 Thaci filing, for example, at paragraph 18 says that the Defence  
3 stresses that it's for the SPO to streamline its own case and to  
4 determine which witnesses it will call to testify. And that's, with  
5 respect, obviously right up to a point, but it shouldn't be happening  
6 in a vacuum.

7 What should be happening, we suggest, is that the decision that  
8 the Prosecution have to take, and, in due course, perhaps the  
9 decision that the Trial Panel has to take, should be a decision which  
10 is taken in the light of the real issues in the case.

11 So we would respectfully suggest that whatever progress can be  
12 made now by way of reducing hours, perhaps reaching agreement on some  
13 facts, is welcome, but this is a topic that should be revisited at a  
14 later date. And the list of witnesses giving oral evidence should  
15 reflect the true issues in the case; that's to say, the matters that  
16 are really in dispute.

17 That's all I wanted to say today on that topic. Thank you,  
18 Your Honour, for the floor.

19 JUDGE GUILLOU: Thank you, Mr. Laws.

20 Before I give back the floor to the parties, starting with the  
21 Prosecution, I invite the parties not to focus too much today on the  
22 question of calculating by hours or by year, because there is one  
23 variable that nobody knows for the moment, is how many days and how  
24 many hours a Trial Panel can sit, and this is something that needs to  
25 be examined. And once you have this variable, the number of hours

1 and the total length will be relatively similar, because  
2 mathematically, we will have the missing variable in the equation.

3 Mr. Prosecutor, you have the floor.

4 MR. HALLING: Thank you, Your Honour. And sorry for jumping the  
5 gun earlier.

6 But there is something that arose in the submissions that it's  
7 important that we address now, to borrow Mr. Emerson's language, to  
8 make a marker on it for future reference. And it goes mostly to what  
9 the Thaci Defence was saying about the delayed disclosure orders.

10 Your Honour has made these orders for 30 days before trial for  
11 these witnesses. The protective measures decisions that you have  
12 taken have all been cumulative in the sense that you have been  
13 considering the fairness of the trial with the overall protective  
14 measures. And we noted with concern in the written submissions, and  
15 it was repeated again on this agenda item, that the Thaci Defence  
16 seems to be saying that in the normal course of your delayed  
17 disclosure orders being lifted, they couldn't possibly start the  
18 trial in 30 days.

19 And it sounds like they're trying to reserve a postponement  
20 request before this trial can start, and that is going to  
21 fundamentally undermine any of our streamlining efforts. And we  
22 wanted to put that concern on the record.

23 Thank you.

24 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

25 MR. KEHOE: May I respond to that, Judge.

1 JUDGE GUILLOU: Mr. Kehoe, please.

2 MR. KEHOE: When Your Honour laid out your protective measures  
3 for all of these witnesses, I submit to Your Honour you had no idea  
4 that the Prosecution was going to come forward with 1.863 hours to  
5 put their case on. So that happened a long time ago that Your Honour  
6 made a decision at that particular time with regard to those  
7 witnesses, not conceiving, in a thousand years, that my good friends  
8 across the well were going to come in with that kind of timeframe to  
9 put their case on.

10 The suggestion we are making is if we are going to move this  
11 along and move this along quickly, not only pre-trial but also during  
12 the trial, we respectfully request that Your Honour rethink some of  
13 those disclosure timeframes, because, frankly, 69 witnesses 30 days  
14 ahead of time is going -- I don't know if it's going to delay things  
15 or not. It really depends on what those witnesses say. I've  
16 received so many blank sheets of blank, blank, blank, blank from the  
17 Prosecution, it's difficult to divine exactly what they're going to  
18 advance come trial time.

19 But dealing with the abstract and abstracting that they have  
20 chosen, I merely submit to Your Honour that if we want to expedite or  
21 a -- a way to streamline this case is to remove the 30-day timeframe  
22 and expand it out so when we do come to trial, things can move more  
23 quickly. I'm not reserving anything. I'm just giving a point of  
24 reference to Your Honour and to the Trial Chamber as a way we might  
25 move this more quickly.

1 Now, if during the course of the trial, 30 days prior to a  
2 witness testifying, I could conceive of situations where it's  
3 impossible to get an array of witnesses there that you can just  
4 digest within that period of time. We may be able to. I don't know  
5 what these witnesses are saying.

6 But if we're going to do things more quickly before and during  
7 the trial so, as Mr. Emmerson said, these gentlemen aren't spending  
8 all these years incarcerated before they receive a verdict, this is  
9 the way to do it.

10 JUDGE GUILLOU: Thank you, Mr. Kehoe.

11 Mr. Emmerson, please.

12 MR. EMMERSON: [via videolink] Your Honour, first of all, may we  
13 thank Mr. Laws for outlining so clearly the considerations from the  
14 point of view of the victims in this case he urges upon the Court.  
15 And I'd like, if I may, to respond in this way.

16 He says, we would submit quite rightly, that the question of  
17 which witnesses to call is something which should be, in his words,  
18 driven by the real issues in the case. In other words, based on  
19 experience, he is submitting disputes about particular events which  
20 are not linked to the accused may not require live evidence to be  
21 called.

22 The real issues in the case, and there being, obviously, no  
23 practical dispute that certain crimes were committed in different  
24 parts of Kosovo by various individuals, the real issue in the case is  
25 are the gentlemen in the dock party to a joint criminal enterprise



1 that encompasses the commission of those crimes or, otherwise, liable  
2 on one of the other modes of liability, such as command  
3 responsibility.

4 But with that said, he rightly points out that it's in the  
5 interests not just of the accused who are in custody but of the  
6 victims that he represents that the trial should be quick. In other  
7 words, that it should not be unnecessarily prolonged.

8 So far from the submission that was advanced to you on behalf of  
9 the SPO, that one of the issues you'll have to consider is that each  
10 of the victim witnesses should have the right to come to court and  
11 have their day in court, that is not what Mr. Laws is submitting on  
12 their behalf at all. And no support for that proposition comes from  
13 the victims.

14 Indeed, he specifically says in terms, he would hope it was  
15 unnecessary for victims to be called to testify and to re-live their  
16 experiences. So there seems to be a rather different approach taken  
17 to the rights of victims by the person whose job it is to represent  
18 their interests and the SPO who may be seen to be using this as a  
19 pretext to avoid a proper and disciplined approach to the preparation  
20 and presentation of their case. That's the first thing I want to  
21 say.

22 The second thing I want to say is that consistently with the  
23 casual flinging around of allegations against the Defence, at  
24 paragraph 14 of their written submissions, the SPO accused the Veseli  
25 Defence of bad faith by suggesting that the Prosecution -- one way

1 the Prosecution could cut its case would be to focus on the evidence  
2 alleged to connect the particular accused to the charges on the  
3 indictment.

4 That was said to be bad faith because it ignores the modes of  
5 liability that have been charged. Well, as you can see, it chimes  
6 exactly with the approach that's being urged upon you by the Victims.  
7 And obviously when allegations of bad faith -- that's a serious  
8 allegation to make. They get thrown around loosely by the  
9 Prosecution without censure with absolutely no basis at all. When  
10 the same submission is made by the Defence, we are accused of acting  
11 in bad faith. Whereas, in fact, what we were submitting was  
12 identical to the submission you've just heard, which is once it's  
13 clear -- and I understand entirely Mr. Laws' point that that clarity  
14 will be enhanced by the pre-trial brief. But, actually, the  
15 Prosecution knows their case, and they know the evidence against the  
16 accused that they rely upon, and they are perfectly capable of  
17 focusing their Prosecution case on the evidence they say implicates  
18 the accused.

19 Why don't they? Because if you take the evidence that they rely  
20 upon to implicate the accused, it comes to nothing. The hope that  
21 they have is that by ventilating all these allegations in full quite  
22 unnecessarily, that somehow the weight of the evidence brings their  
23 case home by the sheer volume and number of witnesses.

24 Let me put it another way to you. The suggestion here is that  
25 if you do what Mr. Laws has just suggested, or if the Trial Chamber,

1 in due course, orders the Prosecution to confine the evidence it  
2 needs to call live to the evidence against the individual accused  
3 connecting them to what they say is a joint criminal enterprise, the  
4 Prosecution resist that because they say: Since it's a joint  
5 criminal enterprise allegation, we should be able to call everything  
6 that we think is relevant, including the crime base, because, as put  
7 to you a moment ago by counsel for the SPO, the victims must have  
8 their day in court. They've waited 20 years for this.

9 Well, that is not the function of these proceedings. They must  
10 be conducted, of course, with the interests of the victims and the  
11 accused and the public interest all balanced. That's the difficult  
12 job of a trial chamber in any criminal case, to ensure that the  
13 triangulation of interests of alleged victim, accused, and the public  
14 interest are properly and fairly balanced.

15 But what it doesn't do is in any way support the notion that the  
16 Prosecution has liberty at large to take up three years of  
17 Prosecution time in calling irrelevant evidence. And that's the  
18 first thing I want to say about it.

19 The other thing I wanted to say about it is that it's important  
20 to understand the implication. So the Prosecution are saying: We  
21 want plenty of time, we want what was likely to run into three years  
22 to present our case because it's a case of joint criminal enterprise.  
23 And the Veseli Defence must be acting in bad faith when they say, as  
24 Mr. Laws just said, focus on the real issues, because, actually, the  
25 real issues, say the Prosecution, are the entirety of the evidence.

1 Well, it's worth considering what that means, because the  
2 position has been made -- has been argued at various points in these  
3 proceedings that, in reality, this is a prosecution of the Kosovo  
4 Liberation Army as a whole. In reality, the Prosecution's case is  
5 that the Kosovo Liberation Army itself was a joint criminal  
6 enterprise. In other words, in order to get home, they are seeking  
7 to prove that the liberation forces of an independent Kosovo counted  
8 as a joint criminal enterprise of which these defendants, because  
9 they occupied nominal positions in a nominal command structure, must  
10 also be a party and indeed in a leadership position.

11 They're on trial, as we've said many times before, because they  
12 were the leadership of the Kosovo Liberation Army, not because of any  
13 evidence against them individually. And the fact that the  
14 Prosecution resists so strongly a streamlining of its case to the  
15 effect that it would focus on what Mr. Laws calls the real issues in  
16 the case, namely, how do you connect these accused to a crime  
17 committed in a -- when they weren't in the country, in a completely  
18 different part of Kosovo to one that they'd ever visited, where  
19 there's no evidence of any order being made. The answer is,  
20 ultimately, the Prosecution is trying to put the Kosovo Liberation  
21 Army on trial and, as the Serbian government would very much like to  
22 see, to delegitimise their claim to independence.

23 Now, in reality - in reality - what has characterised the entire  
24 chaos with which the Prosecution has conducted its case -- and it's  
25 inevitable, we will all come back to the fact that they accused us of

1 lying when we said it wasn't going to be possible to have the trial  
2 begin in May of last year. I was accused of deliberately -- we were  
3 all accused of deliberately inflating the pre-trial period so as to  
4 improve our chances of applying for provisional release. And yet no  
5 apology, no retraction, no even shame for the way in which the  
6 Prosecution's conducting its case.

7 But right at the root of it it's that they've got no focus  
8 whatsoever in relation to these four accused. Why? Because these  
9 four accused are just symbolic. They're just members of the Kosovo  
10 Liberation Army in a nominally senior position. If they had to prove  
11 their case on the evidence against them, they wouldn't be able to do  
12 it, and they won't be able to do it. But they do need to be given  
13 some discipline because it would be a gross injustice for these men  
14 to sit in the dock for another three, four, five years while the  
15 Prosecution fiddles around and makes a complete mess of the whole  
16 case.

17 And then to find that what we can say right from the outset, the  
18 evidence that the Prosecution relies on against these individuals  
19 doesn't amount to a row of beans, and that's why they don't want to  
20 limit their case in that way.

21 JUDGE GUILLOU: Thank you, Mr. Emmerson.

22 I don't see any -- yes -- I think it's Mr. Laws first.

23 MR. LAWS: Very briefly, if I may. I certainly did not intend  
24 to support Mr. Emmerson's proposition as set out in the *inter partes*  
25 discussions, which amounts to limiting the scope of the Prosecution

1 case. That was not my intention at all in my submissions. And if I  
2 gave that impression, then I hope a reading of the transcript will  
3 show that it's not what I said.

4 It's not the scope of the case that needs to be limited. It's  
5 the way in which it is to be presented that needs to be carefully  
6 managed, and there's an important difference between those two  
7 situations. And I want to be clear about that. We're not saying  
8 that the crime base evidence should in some way be excised from the  
9 case or ignored. Not at all. Just that it should be dealt with in  
10 an efficient manner, and that is possible once the true issues have  
11 been identified.

12 JUDGE GUILLOU: Thank you, Mr. Laws.

13 Mr. Prosecutor.

14 MR. HALLING: Thank you. Also briefly, and also a correction  
15 for the record, the SPO is not charging the KLA as a whole, and  
16 Mr. Emmerson knows that, and we would ask him that he stops saying  
17 that. That's a dangerous submission to make and it's not true. And  
18 it is eerily similar to the statements made by the two gentlemen  
19 convicted on Wednesday. These people are charged as individuals, and  
20 the KLA is not being charged as an organisation, and we wanted to  
21 make that clear. Thank you.

22 MR. YOUNG: Your Honour, may I just say something.

23 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

24 So if we go for round three, it's Mr. Kehoe.

25 Very briefly, because it's late, and the interpreters, I think,

1 are exhausted.

2 MR. KEHOE: Your Honour, I understand that the Prosecution  
3 doesn't want to say that they are prosecuting the KLA, but they are.  
4 And all you have to do is read paragraph 35, which lists virtually  
5 everybody in the KLA throughout the entire country who was part of  
6 this joint criminal enterprise.

7 So to stand on this ceremony that "we're not charging the Kosovo  
8 Liberation Army" is just a specious argument. And I direct  
9 Your Honour to read at least paragraph 35, and it will make it very  
10 clear.

11 JUDGE GUILLOU: Thank you Mr. Kehoe.

12 Mr. Young.

13 MR. YOUNG: The Prosecutor is, with great respect, being utterly  
14 disingenuous in making the claim this isn't a Prosecution against the  
15 KLA. It's nonsense. It's clear that they are. Everywhere one sees  
16 in the KSC web site, there's a talk of the individual -- it's all  
17 about individual responsibility, not about an organisation. That's a  
18 patently false, disingenuous suggestion.

19 The only other point I make is just in terms of courtroom  
20 ethics. I would ask Your Honour to direct counsel for the  
21 Prosecution not to point like that. It's utterly unprofessional.

22 JUDGE GUILLOU: Thank you, Mr. Young.

23 I don't see any request for the floor. So let us now move to  
24 the date of the next Status Conference.

25 As indicated in my Scheduling Order, I intend to schedule the

1 next Status Conference on Thursday, 30 June 2022, at 1430 Hague time.  
2 As usual, I invite the parties to confirm their availability.

3 Mr. Prosecutor.

4 MR. HALLING: We're available, Your Honour.

5 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

6 Mr. Kehoe.

7 MR. KEHOE: Yes, Your Honour, we're available.

8 JUDGE GUILLOU: Thank you, Mr. Kehoe.

9 Mr. Emmerson.

10 MR. EMMERSON: [via videolink] Yes, Your Honour. But can I just  
11 take this opportunity to correct something that I said earlier. I  
12 think it's better to see it corrected as soon as possible.

13 In an earlier stage of the Status Conference, I misspoke and I  
14 indicated that Nazim Bllaca was dead. That is not correct. He is  
15 not dead. And the reason I'm mentioning it is because I've just been  
16 sent some -- some media coverage that has picked up on that remark.  
17 So that needs to be corrected as quickly as possible. Thank you very  
18 much.

19 JUDGE GUILLOU: Thank you. And the Status Conference, 30 June,  
20 is it okay?

21 MR. EMMERSON: [via videolink] Yes, absolutely.

22 JUDGE GUILLOU: Thank you, Mr. Emmerson.

23 Mr. Young.

24 MR. YOUNG: Fine.

25 JUDGE GUILLOU: Thank you, Mr. Young.



1 Ms. Alagendra.

2 MS. ALAGENDRA: We are available, Your Honour.

3 JUDGE GUILLOU: Thank you, Ms. Alagendra.

4 Mr. Laws.

5 MR. LAWS: Your Honour, we are available. Thank you.

6 JUDGE GUILLOU: Thank you very much. You will receive a  
7 Scheduling Order in due course.

8 At this point, I would like to ask the parties and participants  
9 whether they have any other issues they would like to raise.

10 Mr. Prosecutor.

11 MR. HALLING: Nothing further, Your Honour.

12 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

13 Mr. Kehoe.

14 MR. KEHOE: [Microphone not activated].

15 JUDGE GUILLOU: Thank you, Mr. Kehoe.

16 Mr. Emmerson.

17 MR. EMMERSON: [via videolink] Sorry. Nothing further.

18 JUDGE GUILLOU: Thank you, Mr. Emmerson.

19 Mr. Young.

20 MR. YOUNG: No, thank you.

21 JUDGE GUILLOU: Thank you, Mr. Young.

22 Ms. Alagendra.

23 MS. ALAGENDRA: Nothing further, Your Honour.

24 JUDGE GUILLOU: Thank you, Ms. Alagendra.

25 Mr. Laws.

1 MR. LAWS: Nothing from us. Thank you, Your Honour.

2 JUDGE GUILLOU: Thank you very much.

3 I will break for ten minutes and I will come back with the oral  
4 orders related to the matters I indicated earlier. See you in ten  
5 minutes.

6 --- Recess taken at 6.49 p.m.

7 --- On resuming at 7.02 p.m.

8 JUDGE GUILLOU: As indicated before the break, I will issue  
9 three further oral orders.

10 I will now issue my second oral order on Rule 103 material.

11 In light of the parties' submissions, I order the SPO, by  
12 30 June 2022, to complete its review of material obtained after  
13 January 2022 and to file protective measure requests or disclose  
14 material falling under Rule 103.

15 This concludes my second oral order.

16 I will now issue my third oral order on the disclosure of  
17 Rule 102(3) material.

18 In light of the parties' submissions, I order the SPO, in  
19 relation to currently pending Defence requests for the disclosure of  
20 Rule 102(3) material, to, first, finalise its processing of these  
21 requests; second, request protective measures or submit materiality  
22 challenges; and third, disclose all material not subject to  
23 protective measures requests or materiality challenges by  
24 30 September 2022.

25 This concludes my third oral order.

1           And I will now issue my fourth oral order on the deadline for  
2           filing Defence pre-trial brief.

3           In light of the parties' submissions, I order the various  
4           Defence teams to file their respective pre-trial brief by Friday,  
5           21 October 2022.

6           This concludes my fourth oral order.

7           This concludes today's hearing. I thank the parties and  
8           participants for their attendance. I wish to thank the interpreters,  
9           audio-visual technicians, security personnel, stenographer, for their  
10          assistance as usual. And the hearing is adjourned.

11                               --- Whereupon the Status Conference adjourned  
12                               at 7.04 p.m.

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