

1 Thursday, 24 March 2022
2 [Status Conference]
3 [Open session]
4 [The accused appeared via videolink]
5 --- Upon commencing at 2.32 p.m.

6 JUDGE GUILLOU: Good afternoon, everybody in and outside the
7 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 very much, Madam Court Officer.

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

15 Madam Prosecutor, please.

16 MS. LAWSON: Good afternoon, Your Honour and to everyone
17 joining. For the Specialist Prosecutor's Office this afternoon are
18 Alan Tieger, Senior Prosecutor; Matthew Halling, Prosecutor; and I am
19 Clare Lawson, Senior Prosecutor. Thank you.

20 JUDGE GUILLOU: Thank you, Madam Prosecutor.

21 Now I turn to the Defence, starting with Mr. Kehoe, please.

22 MR. KEHOE: Good afternoon, Your Honour. Gregory Kehoe,
23 Luka Misetic, Dastid Pallaska, Sophie Menegon, Bonnie Johnston, and
24 my colleague Jonathan Greenblatt is on the video in the lower left
25 there, all on behalf of President Hashim Thaci. Thank you.

1 JUDGE GUILLOU: Thank you, Mr. Kehoe.

2 Mr. Emmerson, please.

3 MR. EMMERSON: [Via videolink] Good afternoon, Your Honour, and
4 to those following inside and outside the courtroom. In court today
5 are Annie O'Reilly, counsel; Pascale Langlais, a legal associate;
6 Semir Sali, a legal associate; Hajredin Kuci, legal advisor; and
7 Tess Hughes, who is supporting the Veseli Defence team. And I am
8 Ben Emmerson.

9 JUDGE GUILLOU: Thank you, Mr. Emmerson.

10 Mr. Young, please.

11 MR. YOUNG: [Microphone not activated].

12 JUDGE GUILLOU: Microphone, please.

13 MR. YOUNG: Is that better?

14 JUDGE GUILLOU: Definitely.

15 MR. YOUNG: Thank you.

16 So David Young representing Mr. Rexhep Selimi. And today I am
17 assisted by Mr. Geoffrey Roberts, co-counsel; Dr. Rudina Jasini,
18 co-counsel; and Natalia Ryzhenko; and Riva Gecaj. Thank you very
19 much.

20 JUDGE GUILLOU: Thank you, Mr. Young.

21 And now I turn to Ms. Alagendra, please.

22 MS. ALAGENDRA: [Via videolink] Your Honour,
23 Venkateswari Alagendra. And in the courtroom is Mr. Aidan Ellis,
24 Mr. Victor Baiesu, and Mentor Beqiri. And joining us online is also
25 Fauziah Mohd-Taib.

1 JUDGE GUILLOU: Thank you, Ms. Alagendra.

2 For the record, I note that Mr. Thaci, Mr. Veseli, Mr. Selimi,
3 and Mr. Krasniqi attend this hearing via video-conference.

4 And now I -- let me see. I think that counsel for victims,
5 Mr. Laws, is not currently attending the hearing.

6 Let me ask Madam Court Officer. Can you confirm that he is not
7 attending, and can you give an update on the situation on the
8 connection, if there is any problem, please.

9 [Trial Panel and Registrar confer]

10 JUDGE GUILLOU: Thank you. So the Court Officer informs me that
11 there has been difficulties to establish a connection with Mr. Laws
12 and that the connection is trying to be established. And I see that
13 Mr. Laws appears on screen as I speak.

14 [Trial Panel and Registrar confer]

15 JUDGE GUILLOU: So I am told that Mr. Laws is trying to connect.
16 The connection is still not properly established, but he apparently
17 can hear us on the phone at least.

18 So I will ask Madam Court Officer to give an update as soon as
19 you have more information.

20 Now I turn to the Registry. Mr. Nilsson, please.

21 MR. NILSSON: Good afternoon, Your Honour. Good afternoon,
22 colleagues. Jonas Nilsson, Judicial Services Division, Registry.

23 JUDGE GUILLOU: Thank you, Mr. Nilsson.

24 And for the record, I'm Judge Guillou, Pre-Trial Judge for this
25 case.

1 On 15 March 2022, I scheduled this Eleventh Status Conference.
2 I asked the parties to provide written submissions if they so wished.

3 On 22 March 2022, the SPO and two Defence teams provided their
4 written observations. I thank these parties for their submissions.

5 The purpose of our hearing today is to review the status of the
6 case and to discuss the topics in our agenda, specifically:
7 Disclosure, translations, SPO investigations, Defence investigations,
8 and proposals for stream-lining the case.

9 I will invite the parties to present their views in a concise
10 fashion about each item.

11 And let us now move to the first topic that was listed in the
12 Scheduling Order which is disclosure. I will give the floor to the
13 parties on the disclosure of each category of evidentiary material
14 separately, as I did in previous Status Conferences.

15 First, the evidentiary material emanating from other
16 proceedings; second, the Rule 103 material which is material relevant
17 to the case as listed by the SPO; third, Rule 103 material which is
18 exculpatory material; and finally, the Rule 107 material which is
19 protected material for which the consent of the provider is
20 requested.

21 Let us start with disclosure of evidentiary material emanating
22 from other proceedings.

23 In its written submissions, the SPO indicated that relevant
24 additional materials emanating from other proceedings are being
25 prepared for disclosure and/or notice in this case. The SPO

1 specified that the majority of such materials require extensive
2 redactions and related protective measures in order to make them
3 available in this case, and that a protective measure filing would be
4 submitted.

5 I would like the SPO to give a timeline for these protective
6 measures requests and to confirm that no other Rule 102(1) material
7 is to be disclosed to the Defence.

8 And before I give you the floor, Madam Prosecutor, I will just
9 have an update on Mr. Laws.

10 I see that Mr. Laws has now joined.

11 Mr. Laws, can you hear me?

12 MR. LAWS: [Via videolink] Your Honour, I can. Good afternoon to
13 Your Honour. And I'm very sorry for keeping the Court waiting.
14 There was technical issue, but I have in great assistance from the AV
15 booth and I am now with you. Thank you.

16 JUDGE GUILLOU: Thank you, Mr. Laws. And I was just going to
17 give the floor to the SPO for the first topic on the agenda.

18 Madam Prosecutor, please.

19 MS. LAWSON: Thank you, Your Honour.

20 We have nothing to add to our written submissions in respect of
21 the material from other cases. You summarised it correctly and we
22 will be preparing that filing. We would anticipate to be able to
23 make it in the first half of April.

24 With respect to Rule 102(1)(b) material, we can confirm to the
25 Court that the small number of items for which an extension request

1 had been granted have now been disclosed in package 201. There will
2 -- we would anticipate some further 102(1) disclosures, and we're
3 aware that we will have justify them and they will be subject to
4 scrutiny in accordance with Your Honour's decision. What I can
5 specifically mention now is we have identified an audio recording of
6 very poor quality which appears to correlate to a written statement
7 which has already been disclosed. And we have also identified a
8 handwritten note of an interaction with a witness which provides
9 additional detail to the information that has again already been
10 disclosed.

11 So we do anticipate a couple of items, and those are the two
12 that I can identify for the Court right now. We will make a relevant
13 application and we are aware it will be subject to scrutiny.

14 Thank you.

15 JUDGE GUILLOU: Thank you, Madam Prosecutor.

16 Mr. Kehoe, please.

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

18 As with all of these matters, timing, of course, is crucial. We
19 want to move ahead with us, as the Court does and the parties -- the
20 accused do.

21 My understanding with regard to the deadline for the disclosure
22 subject to third-party approval was the Court ordered by 31 March.
23 If I'm not mistaken that's next week. And I asked the Court if the
24 SPO is, in fact, going to make that deadline of the 31 March and the
25 -- any other information emanating from other proceedings, if we can

1 get a more definitive time as to when that would happen. They say
2 the first half of April. That's obviously three weeks. Is that the
3 outside or is that -- as often as the case here, is that going to
4 slip as well?

5 Suffice it to say we're just looking for a little bit more
6 definition here as we move forward so we can know how to operate.

7 JUDGE GUILLOU: Thank you, Mr. Kehoe.

8 Mr. Emmerson, please.

9 MR. EMMERSON: [Via videolink] Your Honour, Ms. O'Reilly will
10 deal with the disclosure issues, but may I just mention one thing. I
11 don't know whether it is reached Your Honour's notice yet or not, but
12 Mr. Veseli has to leave the Status Conference part way through
13 because he has a prescheduled call with his children.

14 I just raise that to notify Your Honour and make sure there's no
15 concerns about that.

16 And may I hand over to Ms. O'Reilly to deal with the disclosure
17 issues.

18 JUDGE GUILLOU: Thank you, Mr. Emmerson. There is no problem on
19 my side at all. I think there has been communication with the
20 Court Management Unit because a specific waiver needs to be signed
21 for the second part when Mr. Veseli will not be here, because the
22 waiver that has been transmitted is for remote attendance. So this
23 has to be arranged by the MU within the next hour, but I'm sure it's
24 not a problem at all.

25 MR. EMMERSON: [Via videolink] Thank you very much.

1 JUDGE GUILLOU: And thank you, Mr. Emmerson, for indicating this
2 today.

3 Ms. O'Reilly, on the disclosure of the first category material.

4 MS. O'REILLY: Yes, Your Honour. My only request is that you
5 set a deadline as the SPO has indicated they believe they will be
6 ready to file that submission by mid-April. So in order that there
7 isn't any more slippage, I would invite you just to order that they
8 file by mid-April.

9 As regards to the additional items, I think Ms. Lawson mentioned
10 two, so I would just like clarification that that is all we're
11 looking at right now in terms of further submissions as that wasn't
12 entirely clear.

13 Thank you.

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

15 Mr. Young, please.

16 MR. YOUNG: Your Honour, I would endorse the submission just
17 made by the Veseli team that there should be a deadline for the
18 material disclosure from the other proceedings. So I'm sure as are
19 aware, Your Honour, that I think at least 12 of the witnesses in the
20 other proceedings are also witnesses in this case. So for good case
21 management reasons, we do ask that Your Honour set a deadline.

22 JUDGE GUILLOU: Thank you, Mr. Young.

23 Mr. Ellis, please.

24 MR. ELLIS: Your Honour, I'm afraid it's going to be on most of
25 the issues today. We've got very little to add on this point,

1 though, save to note that, of course, 12 witnesses from the other
2 case and most of them finished giving evidence some time ago. So we
3 would see no need for this to be pushed significantly further back,
4 and we endorse the request for a deadline.

5 JUDGE GUILLOU: Thank you, Mr. Ellis.

6 Madam Prosecutor, do you want to respond and can you confirm
7 that the request will be filed in the first weeks of April for
8 protective measures, if any? And can you give more detail about the
9 timeline for the disclosure of the documents.

10 MS. LAWSON: Thank you, Your Honour.

11 With respect to the questions raised by the Defence, I believe I
12 already addressed them in my initial submissions. The items for
13 which the extension were granted have already been disclosed in
14 disclosure package 201.

15 And in response to Your Honour's question, I indicated the
16 anticipated timeline for the application that needs to be made. I
17 confirm that we do anticipate making it in the first half of April.

18 With respect to the other items I identified, yes, an
19 application is being prepared as we speak.

20 Thank you, Your Honour.

21 JUDGE GUILLOU: Thank you, Madam Prosecutor.

22 Let us now move to the Rule 102(3) material. I remember the
23 parties that at the Status Conference held on 29 October 2021, I
24 suspended the remaining Defence deadlines for Rule 102(3) material.
25 Since the last Status Conference, the SPO indicated that it has

1 disclosed a further seven packages of Rule 102(3) material,
2 comprising 5.298 items, but the numbers is actually higher now given
3 the recent disclosure packages filed in the past three days, I
4 believe.

5 The SPO also indicated it will continue to provide the Defence
6 with spreadsheets upon the completion of the processing of individual
7 Rule 102(3) requests, including the item numbers. However, according
8 to the SPO, the number of Rule 102(3) items disclosed over the past
9 seven weeks have been lower than forecasted. Indeed, according to
10 the Defence, only a minority of the items requested have been
11 disclosed so far, which hampers Defence investigations.

12 The Defence also indicated that it is not in a position to
13 determine how many items from the Rule 102(3) notice have been
14 disclosed overall because the SPO has recently disclosed a number of
15 items under Rule 103 that were requested under Rule 102(3) but failed
16 to link these items to the items listed on the Rule 102(3) notice.

17 The Defence request the SPO to provide a realistic estimate of
18 the time that it will take to -- for the SPO to complete disclosure
19 of all pending Rule 102(3) requests. And finally, the SPO considers
20 that the reimposition of deadlines for Rule 102(3) requests and
21 responses would not serve to advance the process at this time.

22 However, the Defence submits that stricter deadlines for
23 Rule 102(3) disclosure must be imposed on the SPO so as not to
24 further impede the Defence preparation for trial.

25 And finally, the Defence does not support reinstatement of

1 deadlines for own Rule 102(3) requests.

2 Madam Prosecutor, on this category of evidentiary material, you
3 have the floor.

4 MS. LAWSON: Thank you, Your Honour.

5 As you noted, the numbers have changed somewhat since our
6 written submissions. As it currently stands, since the last Status
7 Conference we have disclosed 19 packages of Rule 102(3) material
8 containing 8.284 items.

9 In addition, we filed three protective measures requests
10 relating to a Rule 102(3) request from the Krasniqi Defence and
11 two -- three of the Veseli Defence Rule 102(3) requests. And we have
12 engaged in *inter partes* discussions on materiality with both of those
13 Defence teams, which have resolved many issues. And we thank them
14 for that.

15 In particular, in respect of the requests which we had committed
16 to completing at the last Status Conference, I can confirm that the
17 Krasniqi request from the 7 October and the Veseli request from 16
18 October have both now been fully addressed, save only for the pending
19 protective measures requests and, with respect to the Krasniqi
20 Defence, the small number of items where materiality is still in
21 discussion.

22 In terms of the 25 Rule 102(3) requests that had been received
23 up to the date of the last Status Conference, 12 of those have now
24 been essentially completed and a further three are more than
25 75 per cent complete. And specifically, we would anticipate

1 completing two further Veseli Defence requests, the two which were
2 part of the recent protective measures motion, within approximately
3 the next three weeks.

4 For the requests that are complete, we will be providing the
5 relevant Defence teams with consolidated spreadsheets in relation to
6 those requests. And with respect to the submissions made by the
7 Veseli Defence on tracking where particular items might been
8 disclosed, especially under a different rule, this is information
9 which we specifically include in the spreadsheets that we provide to
10 facilitate tracking.

11 Apart from the progress being made, we are continuing to receive
12 new Defence Rule 102(3) requests. I believe there have been 11
13 further requests since the last Status Conference. There was an
14 additional one on 18 March, which we neglected to mention in our
15 written submissions, and a further one was received from the Thaci
16 Defence within the last hour.

17 Although there has been real progress made, including in the
18 filing of the protective measures requests, we recognise, as we did
19 in our written submissions, that Rule 102(3) disclosures during this
20 last period were less than we had internally forecast them to be, and
21 we are monitoring progress on a constant basis and diagnosing and
22 addressing issues in the process as soon as they arise.

23 In this instance, as we mentioned in the submissions, the
24 disclosure team was particularly impacted by COVID-related absences.
25 There were actually six members out -- of the team out at various

1 points of time due to illness of themselves or a close relative in
2 the past number of weeks, which I might add is almost the entire
3 team. So obviously it was an unusual and unfortunate confluence of
4 circumstances. But as soon as the impact of that became apparent and
5 resources allowed, we retrained other staff members of the legal team
6 to compensate with progressing of packages, and those disclosed on
7 Monday and Tuesday this week were a direct result of those corrective
8 steps. So we're continuing to take necessary measures to ensure the
9 pace of disclosures under Rule 102(3).

10 Thank you.

11 JUDGE GUILLOU: Thank you, Madam Prosecutor.

12 Mr. Kehoe, please.

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

14 Obviously, we have made several requests for Rule 102(3)
15 material. We have requested since the last Status Conference before
16 Your Honour a thousand documents. Today we have received none of
17 those -- none of those requests have been met. From the --
18 obviously, based on what my colleagues have written as well in
19 response to their requests, it is taking a significant period of time
20 to get these requests answered in some fashion.

21 We have no doubt, as our investigation continues, that we will
22 be submitting more requests for documents, which is, of course, the
23 logical -- the logical sequence of being out there conducting an
24 investigation. But given the fact that we want to move this case
25 ahead, we are very concerned with the delays inherent in providing

1 that information to us. We don't know if that information is just
2 going to satisfy us at that point or it's going to take us off in
3 another direction.

4 And our requests are not being done without thought among the
5 entire team about what we really want. We're not asking for
6 documents for the sake of asking for documents. That gets nobody --
7 that doesn't get anybody anywhere, as Your Honour knows.

8 So we are very concerned about that. We would like to see if
9 the Court can put some guide-lines in for the SPO as to when those
10 Rule 102(3) matters are going to be met.

11 As far as our obligations under 102(3), any deadline, it is
12 impossible to say and that should be left open at this point. There
13 is significant amount of witnesses, over a hundred witnesses, but we
14 don't even know who those individuals are. There are names being
15 redacted, locations being redacted. There's redactions in -- of
16 course, Your Honour has seen the indictment, how that has been
17 redacted. And once we get that information, is that going to bring
18 about yet more 102(3) requests? I have to believe, as I stand here
19 as an officer of the court, Your Honour, that it will.

20 So while I appreciate that there are some difficulties that the
21 SPO has raised, there are likewise the continuous difficulty on the
22 Defence side, who we collectively want to move this case along
23 because of no other reason our clients remain in custody while this
24 case is pending.

25 So any guide-lines that -- strict guide-lines that Your Honour

1 can give to move this case along and ensure that we're getting those
2 Rule 102(3) requests responded to in a timely manner is something
3 that we would ask the Court to do.

4 Thank you.

5 JUDGE GUILLOU: Thank you, Mr. Kehoe.

6 Ms. O'Reilly, please.

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

8 I will quickly go over the statistics as to where we're
9 currently at.

10 We have requested 1.019 items since the last Status Conference,
11 bringing our total to 20.506. So as you can see, we are also not
12 requesting everything. We are actually trying to target our requests
13 right now, you know, but that means going through the entirety of all
14 the incidents in the indictment, which makes it rather cumbersome.

15 And the SPO has disclosed a further 1.695 items. So that brings
16 their total of disclosure to 10.123 items which is actually about 50
17 per cent of what we've requested, so indeed there is more progress
18 being made which we do appreciate.

19 But we would estimate it would be need to be about two or three
20 times faster than it has been in the last period in order to be
21 useful to the Defence.

22 As regards the 102(3) versus 103 issue, that's appreciated that
23 the SPO has committed to disclosing those items numbers and fixing
24 the cross-referencing matter, as I understand it. But the problem
25 for us is that the indexes are coming months after the documents in

1 many cases, which means, for our case management purposes, it is
2 chaotic and we can't keep on top of the information. And given the
3 sheer deluge of information that is upon, that's just not working,
4 and I frankly don't understand why we couldn't get those item numbers
5 along with disclosure. So I'm hoping that is something that the SPO
6 might be able to address as to why it can't be done contemporaneously
7 with the disclosure of documents.

8 We will go into this in more detail and my colleague Mr. Strong
9 will likely address it, but it would really help if we were able to
10 stream-line the case now for the purposes of 102(3) disclosure. It
11 is actually a very time-consuming process trying to figure out what
12 we need from that list, so the sooner that the case can be cut, the
13 sooner we'll be able to complete our disclosure requests and get
14 those documents and move this case forward to trial.

15 The translations issue seems to have sort of fallen by the
16 wayside recently. Essentially, you know, our position is that the
17 framework decision says that evidence will be provided in the working
18 language of the Court. The SPO maintains that such a duty does not
19 exist and that they do not have English-language summaries of any of
20 the documents for which they haven't provided us full translations.
21 If that is the case, that's the case. But there is still a matter
22 here that needs to be resolved and I would propose to do that in
23 writing.

24 Thank you, Your Honour.

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

1 Mr. Young, please.

2 MR. YOUNG: Your Honour, we do appreciate the frank acceptance
3 by the Prosecution of the forecasts being out, and we appreciate the
4 difficulties that they mention in relation to staff absence and the
5 like, referring to that relating to the staff absences since the date
6 of the last Status Conference. However, Your Honour, what's more
7 troubling is that the Defence -- the Selimi Defence request was --
8 for 39.839 items was made on 1 November last year. And the second
9 one was made on 7 December for 12.957 items. So on the face of it,
10 the largest amount that we requested was some five months ago.

11 So with respect to the recent difficulties, there seems to be a
12 rather bigger problem of a system failure because this amount of
13 material has not been processed. And as far as I am -- I understand
14 it, I am not aware of any challenge to the materiality of the
15 documentation that we need, and we need it now.

16 Thank you, Mr. Young.

17 Mr. Ellis, please.

18 MR. ELLIS: Your Honour, in my submission, the most basic
19 information that we need in order to manage to process is know an
20 idea of how long it's going to take the Prosecution to process the
21 requests that have already been made. That was the submission, word
22 for word, that I made at the last Status Conference six weeks ago. I
23 wasn't successful on that occasion in persuading the Prosecution to
24 give an estimate in terms of time. The estimate we were given of
25 5.000 documents per week clearly hasn't been met to date if the total

1 over those weeks is some 8.000 only. Obviously, we appreciate the
2 problems that have been encountered with COVID and there will be no
3 specific criticism in relation to that from me.

4 But, Your Honour wants to move this case along. We see that
5 from the agenda items. We clearly want to move this case along as
6 well, and we have been progressing through the 102(3) notice, making
7 the requests that we want to make. And we've set in the written
8 submission that we anticipate two further requests which we'll try to
9 make before the next Status Conference.

10 But this is the sticking point right here, Your Honour. We have
11 got all these agenda items coming up about Defence investigations,
12 can the Defence file pre-trial brief before the summer. But in my
13 submission, the question is can the Prosecution disclose its
14 documents -- can it give us those documents that are material to our
15 preparation? When is that going to happen? We need an estimate.
16 Looking at the documents we have got to date that have been
17 requested, the Prosecution must have an idea for when this is going
18 to be capable of being provided to the Defence, and then we can all
19 take case management decisions from there.

20 But, at the moment, in my submission, many of the other agenda
21 items are going to become moot because we need to know are we talking
22 about two months, are we talking about three months, are we talking
23 about more than three months before disclosure is complete?

24 And I would request, Your Honour, again, we did it writing
25 before the Status Conference. Your Honour picked it up in your

1 summary earlier, so the Prosecution are on notice that we're going to
2 ask this: What's the estimate? When is this going to be done?

3 JUDGE GUILLOU: Thank you, Mr. Ellis.

4 Let me go back to the Prosecution. I would like you to respond
5 to the Defence submissions, and especially, I think, three points
6 that I would like to have your input on. First, is it possible to
7 disclose the item number along with disclosure of each package - I
8 think this was Ms. O'Reilly who mentioned that - so as to have this
9 information immediately, not a couple of weeks after, so as to
10 facilitate the analysis of the evidence.

11 The second point is also from Ms. O'Reilly. The translation of
12 the Rule 102(3) material and if you are also willing to resolve any
13 issues via written submissions.

14 And the third question, I will follow up on what has been said
15 by, I think, several, if not all, Defence teams, is would you be able
16 to give more a precise timeline for the pending requests, either
17 through a pace, which is basically the number of items per week, for
18 example, or even, if it is possible, a timeline for the requests that
19 are pending.

20 Madam Prosecutor.

21 MS. LAWSON: Thank you, Your Honour. I'll turn to the
22 Veseli Defence queries first.

23 As I think I mentioned at the last Status Conference, the volume
24 of disclosure packages going out and the multiple packages being
25 worked on at the same time does make it very difficult for us to

1 provide detailed additional information with cross-references, item
2 numbers, et cetera, for each package. It's information that we would
3 have to collate or, in some cases, manually input. We saw that the
4 Veseli Defence proposed a possible technical solution as well for
5 tracking during *inter partes* correspondence. We're looking into that
6 to see what is possible.

7 As for including the item numbers specifically, it's a technical
8 question that I'll need to receive input on and we will come back to
9 the Veseli Defence on it after this hearing.

10 But obviously, the more work that we do accompanying each
11 separate package, that is going to impact the pace of the packages
12 overall.

13 As for translations, if there is anything further to be
14 discussed *inter partes*, we're happy to do that. And, otherwise, if
15 there is a filing, we will obviously respond to the filing.

16 For the Selimi Defence, they're referring to a request made in
17 November which amounted to 40.000 items. Clearly that's almost
18 two-thirds of their entire list which was requested in one go, so I
19 don't think it would be a surprise that we haven't completed that
20 request. However, we are working on it.

21 They did subsequently prioritise certain items which they wanted
22 to receive, and we appreciate them doing that. Approximately 400 of
23 the items they prioritised have not been part of the original
24 request, but we are nonetheless working on the request and
25 specifically on the prioritised items, one-third -- over one-third of

1 which have already been disclosed and a substantial number of the
2 others are at an advanced stage of processing.

3 In relation to timelines and estimates, as I mentioned, since
4 the last Status Conference we've received 11 further requests. You
5 will have seen, for example, that the request received from the
6 Krasniqi Defence within past two weeks is almost double the size of
7 any previous requests they've made. And additional requests have
8 been forecast. Each request can be very significantly different in
9 terms of the review and processing time, based on its size, the
10 length of the materials, the nature of the documents sought, and, of
11 course, any overlap, the degree of overlap, if any, with prior
12 requests that have been made which facilitates us processing it in an
13 expedited manner.

14 So with these fluctuations, it is really not possible for me to
15 provide a meaningful estimate in terms of a date, but I can give an
16 indication of pace. And, in fact, although it may not have been
17 reflected in the disclosure packages, we did maintain the pace of
18 getting through approximately 5.000 items a week on average during
19 this period. As I caveated last time already, this doesn't
20 automatically translate into disclosures. First and foremost because
21 the vast majority of items actually require a second-level review for
22 redactions purposes, and we have learned from experience that that is
23 an essential quality control. That's not something that we can
24 dispense with. But equally, the packages themselves need to be
25 generated, metadata checked, et cetera, which prove to be a blockage

1 in the past number of weeks but which we are taking steps to correct.
2 So we hope to both catch the disclosures up with the reviews that
3 have already been done and to maintain our review pace.

4 Thank you.

5 JUDGE GUILLOU: Thank you, Madam Prosecutor.

6 Let us now move to the Rule 103 material. It seems to be --

7 MS. O'REILLY: Your Honour.

8 JUDGE GUILLOU: Sorry, Ms. O'Reilly.

9 MS. O'REILLY: Your Honour, if I could just make two further
10 submissions on 102(3).

11 JUDGE GUILLOU: Sure.

12 MS. O'REILLY: Sorry. First of all, with respect to the item
13 numbers, I just wanted to clarify, we actually haven't received any
14 item numbers going as far as back as October, so it is actually six
15 months, not a matter of weeks, five months. And that would actually
16 be very helpful to us. And I understand Ms. Lawson's point that it
17 would add time to preparing the disclosure batches, but we would be
18 much happier to wait that additional week, or however long, and get
19 those item numbers with the disclosure instead of getting them
20 without any item numbers for six months.

21 And a point that I forgot to make earlier, which is going back
22 to the issue I raised at the last Status Conference, about additional
23 material that is coming into the SPO's possession and control. My
24 position, our position is that that also has to be reviewed to
25 determine whether it's material that needs to be disclosed to the

1 Defence. I'm unaware of any legal provision that would state
2 otherwise, and so I would like clarification that that review is also
3 ongoing to put additional items on the Rule 102(3) list.

4 Thanks.

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

6 Madam Prosecutor, do you want to respond to that last point,
7 please.

8 MS. LAWSON: Yes, thank you, Your Honour.

9 Items that have been received or cleared up to the 31
10 January 2022 are in active review both for 102(3) notice purposes and
11 for 103 exculpatory disclosure purposes. As I think we'll probably
12 get to under next agenda item, that's the -- the review is an
13 advanced stage and once it is complete, we do intend to provide the
14 Defence with a supplementary notice in respect of residual items.

15 Thank you.

16 JUDGE GUILLOU: Thank you, Madam Prosecutor.

17 So since the last Status Conference, the SPO has disclosed seven
18 packages of potentially exculpatory items and further packages are
19 being prepared. And I think there is probably even more than that
20 because in the past days I think there have also been at least one
21 other package, if I'm not wrong.

22 According to the SPO, with respect to materials received or
23 cleared up to 31 January 2022, this review for exculpatory material
24 is more than 70 per cent complete, with approximately 2.500 items
25 remaining to be assigned for exculpatory review.

1 The SPO has also indicated that no further protective measures
2 request for this category of material is imminent.

3 The Defence indicated that it does not understand why this
4 material was not disclosed earlier and that it has a direct impact on
5 preparation and investigations.

6 In its submissions, the Krasniqi Defence specifically requested
7 the SPO confirm that has now disclosed all documents which state or
8 suggest that the KLA did not have the command and control structures
9 of a regular army, all documents which suggest that the situation in
10 Kosovo after June 12, 1999, was chaotic or anarchic, and all
11 documents which show that Mr. Krasniqi was outside Kosovo at any time
12 during the indictment period, including during the period
13 March-June 1999.

14 The Veseli Defence also requests that I set a timeline for
15 completion of Rule 103 material within next 30 days.

16 I remind the parties, as I did multiple times, that exculpatory
17 material must be disclosed, according to the wording of the rules, as
18 soon as it is in the SPO's custody, control, or actual knowledge.

19 So I specifically invite the SPO to indicate if it can commit to
20 a deadline for completion of the review for exculpatory material.

21 Madam Prosecutor.

22 MS. LAWSON: The SPO is fulfilling its obligations in relation
23 to Rule 103. We've been doing so in earnest for the very outset of
24 proceedings, and we're conducting the review diligently and
25 disclosing on a rolling basis.

1 Since the last Status Conference, we've disclosed eight
2 additional packages of Rule 103 materials containing 751 items.

3 As indicates in our written submissions, and as I also just
4 mentioned a short time ago, with respect to material received or
5 cleared up to 31 January 2022, we are over 70 per cent through that
6 review. There are approximately 2.500 items falling within that
7 range which remain to be reviewed for exculpatory content. And in
8 light of the fact that this item-by-item review is nearing
9 completion, we're simultaneously proceeding with targeted searches
10 related, for example, to the witness list as a means of further
11 ensuring that all potentially exculpatory items are identified and
12 disclosed.

13 Turning briefly to a couple of specific matters raised in
14 Defence filings in advance of this hearing, and as Your Honour
15 mentioned during the introduction, in paragraph 13 of their filing,
16 the Krasniqi referred to specific categories of items which you just
17 enunciated. The Defence had raised an *inter partes* query with us in
18 relation to those categories at the end of last week and we responded
19 earlier this week, on Tuesday. In the filing we see that it is now
20 framed as a request for confirmation that all items falling within
21 those categories have been disclosed, but bearing in mind that, as
22 Your Honour had directed at the last hearing, we did provide all
23 Defence teams with an *inter partes* update on the status and progress
24 of Rule 103 review and that update clearly indicated that there are
25 items yet to be reviewed, I'm not sure it's a serious question

1 because clearly it's not a confirmation that can be given until the
2 review is complete.

3 With respect to the request for a deadline, I was not intending
4 to address that at length and we submit that the Veseli Defence
5 should not be permitted to do so either. At the last hearing, Your
6 Honour had directed that request for disclosure remedies be submitted
7 in writing in order to facilitate full briefing and decision-making.
8 Two of the Defence teams, the Krasniqi Defence and the Thaci Defence,
9 did so, and one of the remedies sought was a deadline. So there has
10 been the opportunity for the Veseli Defence to make any additional
11 substantive submissions they wanted to make in relation to that
12 request, but they chose not to do so and just filed a short joinder
13 instead.

14 It is unclear to us what the request in these submissions is
15 intended to be, whether it is a supplement to that litigation or
16 whether it is a separate request. But in either case, it would
17 appear us to be inappropriate to now come a week after the filing was
18 due and to try to supplement should not be permitted and is also in
19 contravention of the direction that the matter was to be briefed
20 initially in writing.

21 If it is intended as an independent parallel request, it's even
22 more inappropriate. To immediately attempt to relitigate the exact
23 same issue again I would say is bordering on an abuse of process and
24 would warrant summary dismissal. However, in terms of Your Honour's
25 question as to when we will be finished, on the review side, in terms

1 of the systematic item-by-item review of the collection that we have
2 been conducting, we would accept that being largely complete by the
3 time of the next Status Conference. Whether all items identified
4 during that review will have been fully processed and disclosed is
5 not something that I can confirm.

6 However, in addition to the item-by-item review, I mentioned
7 we're conducting targeted searches as an additional measure to ensure
8 that material is identified and is disclosed. And we anticipate that
9 further disclosures will be generated from those searches, but I'm
10 not in a position today to give an estimate on that aspect of the
11 review, noting that we receive -- potentially thousands of hits can
12 be returned on a single name and each of them would need to be looked
13 at. But we remain happy to keep both the Court and the Defence
14 apprised on progress.

15 Thank you.

16 JUDGE GUILLOU: Thank you.

17 Mr. Kehoe, please.

18 MR. KEHOE: Yes, Your Honour. I have noticed that the new catch
19 word in many of the filings coming from the SPO is "largely
20 complete." I don't know what that means. Is it complete or not
21 complete? We are talking about thousands of more exculpatory
22 documents that, as Your Honour aptly pointed out, when it's in the
23 custody, control or actual knowledge of the SPO, custody and control,
24 there's supposed to disclose it immediately. That means as soon as
25 our clients were charged or came here in November of 2020 that

1 process should have -- if those documents are in their possession,
2 should have happened immediately. Immediately. And Your Honour gave
3 an admonition to SPO, if it wasn't the last Status Conference, it was
4 the one before that, about their failure to disclose the exculpatory
5 103 material promptly or immediately, and Your Honour insisted that
6 it should be done immediately.

7 I'm concerned on a variety of different levels that that simply
8 has not been done and continues not to be done. And it may very well
9 be, and we'll go into that in a bit, on the rather myopic approach
10 that the SPO has taken to the 103 material. The 103 material is not
11 just exculpatory material, as Your Honour has pointed out in prior
12 hearings, but it is, importantly, information that affects the
13 credibility or reliability of the Special Prosecutor's evidence.
14 Even if it does not mention these four gentlemen's names, if it
15 affects the credibility of the SPO's case, then it comes under
16 Rule 103. We're not hearing that, and I can explain that in some
17 detail.

18 But let's just talk about the immediately aspect of things,
19 Judge, of what immediately means and when things are being disclosed.
20 We received a Rule 103 package at the end of February, which I'm
21 grateful that we got, with Ambassador Eberhardt's [phoen] notice --
22 information was in that package. And there was another gentleman who
23 was a very well-respected intellectual and [REDACTED] Pursuant to In-
Court Redaction Order F750RED. by
24 the name of [REDACTED] Pursuant to In-Court Redaction Order F750RED.
who -- his information was turned over
25 pursuant to 103 because his interview with the SPO is, in fact,

1 exculpatory.

2 If we look at that interview, that interview was taken by SPO on
3 17 September of 2020. The 17th of September. We received it on 1st
4 of February of 2022. Approximately 16 months later.

5 Now, I understand for some documents there is some issue
6 concerning Rule 107 clearance. There was no such issue in this
7 interview. And I understand that there is issues concerning -- are
8 issues, I should say, concerning translations. There was no issue
9 concerning translations about *[REDACTED] Pursuant to In-Court Redaction*
10 *Order F750RED*. interview because it was
11 conducted in English. And I understand that there may be some issue
12 about, oh, people don't have actual knowledge about how exculpatory
13 this information is? We don't have that either because Ms. Lawson
14 conducted the interview.

15 So what possible reason could there be, while our clients sit in
16 jail, to wait 16 months, or almost 16 months, for disclosure of this
17 103 material? I can't think of one. Because certainly they knew it,
18 they knew it for a long time, and they elected not to turn it over to
19 the detriment of our client and, in fact, Judge, to the detriment of
20 the Court. Because as with much of this information -- putting aside
21 the trial, we have been advancing many arguments as to why our
22 clients should be released, and much of that went to the frailty of
23 the Prosecutor's case and they came back with any number of items
24 concerning what would happen if these four gentlemen were actually
25 released, completely unsubstantiated, et cetera.

And, again, the rhetorical question is: Would not Your Honour

1 want to know this exculpatory material when you're making a decision
2 on pre-trial release? Of course. Of course, the Court always wants
3 to be fully informed. There's no excuse for that.

4 16 months down the line since this interview was taken. Well
5 over a year and a half since our clients have been sitting in jail
6 while this is pending, and we don't get this for 16 months after the
7 fact? Is that -- is that the guide-line that we are operating under
8 for the SPO? That can't be what "immediately" means under the rule.
9 It can't be, I submit to Your Honour.

10 That is one aspect that is troublesome on the Rule 103 analysis
11 that is going on within the SPO, which, in fact, is one of the
12 reasons why we have asked for this independent party to review the
13 matter, but I understand that is *sub judice* and that's for another
14 time.

15 The second issue. There were several hundred KLA witnesses that
16 were apparently interviewed. 83 have been disclosed. Is there no
17 Rule 103 material in any of those hundred other witnesses that were
18 interviewed by the SPO? Because we haven't got it. We got the 83
19 but not the 100-plus that were interviewed on top of that. Now, I
20 know some them just elected not to testify as was their right. But
21 not all of them. Not all of them by a long shot. Where are those
22 statements, number one; and number two, is there no Rule 103 material
23 in any of those -- any information that undercuts the credibility of
24 the SPO's case? Of course, there is.

25 I mean, as we mentioned the last time, there are witnesses that

1 still have not been disclosed, Mr. Bukoshi, also, you know, Avni
2 Spahu, the former ambassador to the United States --

3 MS. LAWSON: Your Honour, please, this is gratuitous mentioning
4 of names of people who have been in contact with the SPO. We would
5 request a redaction order. Thank you.

6 MR. KEHOE: The -- Mr. Spahu's not the witness for Prosecution.
7 They don't have any ownership over this name. There is no protective
8 measures for Mr. Bukoshi.

9 JUDGE GUILLOU: I think you don't need to mention names for the
10 purpose of your demonstration for --

11 MR. KEHOE: Your Honour, I -- I will --

12 JUDGE GUILLOU: I think I -- I understand your point.

13 MR. KEHOE: I will move ahead without the names.

14 JUDGE GUILLOU: Thank you.

15 MR. KEHOE: Evidence that affects the credibility or reliability
16 of the SPO's evidence. We have received no information on Serb
17 false-flag operations. For one instance is this Panda operation in
18 December of 1998 where some Serb individuals were killed. It has
19 come out with President Vukic of Serbia that that was a false-flag
20 operation and was done, in fact, by Serbia. Does that undercut the
21 SPO's case, especially in large part is, number one, the SPO is
22 dealing with the Serbian security service for much of their evidence
23 coming through, who, of course, were the author of this ridiculous
24 organ harvesting allegation which never made it to the indictment but
25 which came to Serbia via Russia, who, by the way, is doing the same

1 thing in the Ukraine, but that is another story for another time.

2 I mean, where is that evidence on false-flag operations being
3 conducted by the Serb intelligence service or anyone else within the
4 Serbian government? Because that evidence clearly - clearly -
5 Your Honour, would undercut the credibility of the SPO's case.

6 Now, on this issue, and I harken back to a comment by the SPO
7 concerning their view of Rule 103 material -- and if you recall,
8 Your Honour, I presented or talked the last time about the letter
9 coming from the United States State Department to the chairman of the
10 Foreign Operations Committee of the United States Senate, where they
11 said there was no political structure in Kosovo or effective command
12 and control of the KLA. Their response is: Oh, we have searched our
13 files and that document is not in there. Why not? They made any
14 number of requests to the United States government for documents over
15 the years. Over the years this has been going on. And they didn't
16 make any requests for any documentation that affected the credibility
17 of their investigation? Because they say they didn't have this.

18 And by the way, did anybody have knowledge about this when they
19 went in and they were requesting documents from the United States?
20 Did they know about the document and make a decision that they didn't
21 want to take this document? That's a violation of Rule 103. And
22 this is not the only document. There is a CIA report, January 3rd, 3
23 January 2000, CIA going to -- publicly to the United States Congress
24 on an appropriations bill. Clearly 103 material.

25 The Central Intelligence Agency of the United States found that

1 the -- it says "UCK," but the KLA leadership does not appear to have
2 engaged in narcotics operations to support its activities during the
3 war. That came from the Central Intelligence Agency.

4 They also said: The KLA was not involved in terrorist
5 activities defined as premeditated politically motivated violence
6 perpetrated against non-combatant targets.

7 That is at the very heart of the Prosecution's case. Are they
8 saying they didn't have this and didn't know about this report by the
9 Central Intelligence Agency where they said no traffic and no -- and
10 that the leadership was not involved in terrorist activity? Or are
11 we taking a -- again, a myopic view as to what 103 material is? I
12 submit to Your Honour it's the latter. And we have to broaden our
13 horizons here and view as to what, in fact, is 103 material. And the
14 test over there should be if it hurts their case in any way, putting
15 aside these four individuals, it should be turned over. That is a
16 concern that -- that -- with all due respect, Your Honour, it needs
17 to be remedied promptly, given the rule that this information should
18 it be turned over immediately and not, in the case of a witness, 16
19 months late.

20 And I submit to Your Honour we need Your Honour's assistance to
21 ensure - ensure - that that is done as quickly as possible, today,
22 not when they decide in their rolling production to stand before this
23 Court and say, and I use this, "largely complete."

24 So, okay, "largely complete" means it will be complete when? As
25 my colleague noted with regard to the 102(3) requests, all this lack

1 of disclosure has a trickle-down effect as to exactly what we can
2 accomplish as we move forward with regard to our investigation.
3 Because we are significantly hampered in interviews, investigations,
4 document requests from third parties, all of that information with
5 the dilatory nature in which this information is coming across to the
6 Defence.

7 Your Honour, thank you very much on that score.

8 JUDGE GUILLOU: Thank you, Mr. Kehoe.

9 Ms. O'Reilly, please.

10 MR. EMMERSON: [Via videolink] I'm sorry. I'm sorry. On this
11 one question, Your Honour.

12 JUDGE GUILLOU: Mr. Emmerson.

13 MR. EMMERSON: [Via videolink] I omitted at the outset to
14 introduce of my colleagues who are joining remotely. One is
15 Kujtim Kerveshi, who is the head of the investigation, and the other
16 is Andrew Strong, who is the counsel advising on the investigation.

17 Can I allow Mr. Strong to develop our submissions on the 103
18 material.

19 And, yeah, I would echo the words that have been addressed to
20 you by Mr. Kehoe. And there are numerous strands of evidence which
21 are available in the public domain which confirm the sorts of
22 manipulation of evidence by the Serbian authorities, which included
23 the exhuming of mass graves of victims of Serbian violence and their
24 transport over the border into Serbia, where a lorry load was found
25 in the bottom of the river Danube and another very large number of

1 bodies repositioned outside a police base inside the Serbian
2 territory.

3 So there was -- I mean, the evidence will show there was a very
4 substantial clean-up operations conducted by Serbia which involved
5 manipulating evidence and -- again, it's open in the sense that its
6 been the subject of detailed evidence at trials at the ICTY that the
7 Serbian RDB were using a wide variety of tactics to obtain false
8 information, including torture, threats, and blackmail, all of which,
9 obviously, is exculpatory material that ought to be part of the
10 Prosecution's analysis given how much of its evidence has emerged
11 from Serbian intelligence sources. I mean, this is, in effect, a
12 case that largely depends on evidence that's previously been through
13 the Serbian intelligence mincer.

14 But with that said as a general introduction, can I hand over to
15 Mr. Strong to make our submissions on this aspect of the disclosure
16 problem.

17 JUDGE GUILLOU: Thank you, Mr. Emmerson.

18 Mr. Strong, please.

19 MR. STRONG: [Via videolink] Yes, thank you, Your Honour. We
20 have requested a deadline now because at the last two Status
21 Conferences, we invited the SPO to provide their best estimate as to
22 when we would expect Rule 103 disclosure to be complete. At the last
23 Status Conference, Your Honour directed the SPO to answer that
24 question. And that's at T896, line 3. They didn't do that.

25 I still don't hear an estimate from the SPO as to when we can

1 have that material in our possession. I hear that by the next Status
2 Conference, some further part of their review process will be
3 complete. But in terms of moving this case forward and allowing us
4 access to the information that we can use to plan our defence, that's
5 not helpful.

6 What I understand the SPO's chief problem here is that this
7 process is time-consuming, and it is complicated, and it involves
8 sifting through thousands of documents. And I am sympathetic to the
9 volume of information, because we're sifting through it as well, but
10 it strikes me as an indicator, as another indicator, that this case
11 is too large. That it -- it's been 16 months that we have been in
12 trial and that these men have been in prison. To be only 70 per cent
13 of the way done at this point suggests that something is wrong. The
14 math works out there. If they're taking 16 months to go 70 per cent,
15 that's another five months to go the remaining 30 per cent, and
16 that's where we submit, Your Honour, that a deadline is needed.

17 I think as a second point, there seems to be two different
18 categories of evidence that I want to just flag. One are the
19 existing databases that the SPO needs to search through, and I
20 imagine these are large tranches of information inherited from EULEX
21 or from cooperating governments. Those -- that category of
22 information needs to go through whatever process the SPO has
23 designed, and we submit it is probably too large and that's why it is
24 taking so long.

25 But there is a second category, Your Honour, of information that

1 the SPO has generated itself, right, where there is an interview
2 where the SPO is present in the room and a witness has given
3 exculpatory information. Now, for that category of information, it
4 seems very straightforward to disclose that to the Defence. And yet
5 that is precisely the type of information that we've received in the
6 last six weeks that has been taken three years ago. So for that
7 category of information, I don't understand how it can take three
8 years from having a Prosecutor sitting in the room eliciting
9 exculpatory information and for it to be turned over to the Defence,
10 to give any meaning to the language in the framework decision that it
11 must be turned over immediately.

12 So for all of those reasons, Your Honour, we think something is
13 not working efficiently here to be at this point in the trial and
14 still have this body of information to disclosed. As Your Honour has
15 pointed out, this is -- this is critical information for the Defence.
16 It is the centre target to form our defence stage and our defence
17 case.

18 And so for those reasons, Your Honour, we submit the time is
19 running and we need a deadline for this material.

20 JUDGE GUILLOU: Thank you, Mr. Strong.

21 MR. EMMERSON: [Via videolink] Your Honour, can I just add
22 something very briefly.

23 JUDGE GUILLOU: Very briefly because I cannot have all the team
24 talking --

25 MR. EMMERSON: [Via videolink] [Overlapping speakers] ... it will

1 just take a second. It will take a second.

2 I think the point that was being made by Mr. Kehoe and by
3 Mr. Strong is that there are things which any Prosecutor in this
4 trial ought to have disclosed, and there are things that we can't
5 help know about and they have been disclosed and adduced in court in
6 other proceedings.

7 I give you one example. Evidence that the Serbian forces on the
8 ground in Kosovo were issued with Chinese ammunition in order to make
9 situations where they had killed civilians look as though they were
10 committed by the KLA, which used Chinese ammunition as opposed to the
11 ammunition used by the Serbs.

12 So there is no question that there were very serious attempts by
13 the Serbs to implicate the KLA in crimes they did not commit. Now,
14 the question is why has that evidence not been closed yet? And we
15 have to hope that it's in the -- the 30 per cent that still remains
16 to be disclosed. Because as far as I know, it's not been disclosed
17 yet. I mean, it couldn't be -- it couldn't be more obvious that that
18 type of thing ought to be being disclosed because it goes directly to
19 the indictment, and yet it hasn't made its way through.

20 Now, is that because it is in the last 30 per cent? We think
21 highly unlikely but possible. We think it would betokens an approach
22 to disclosure by the Prosecution which is insufficiently rigorous
23 that none of this type of material has been disclosed voluntarily.
24 It's a no-brainer and it doesn't involve redaction, so there is
25 nothing that needs to be done. But it hasn't found its way through

1 the system.

2 So something is very seriously wrong. And obviously from our
3 point of view, any question that you ask us about Defence
4 investigations, the pre-trial brief, trial dates and so forth, we
5 have to wait and see what is in the 30 per cent and then we have to
6 find out why it is they haven't disclosed the material that we
7 already know about which ought to have been disclosed.

8 So I mean, realistically, this cries out for a guillotine, and
9 we need to see -- you know, we need the Prosecution to step up very
10 quickly if we're to be talking about a trial beginning any time in
11 the reasonably foreseeable future.

12 JUDGE GUILLOU: Thank you, Mr. Emmerson.

13 Mr. Young, please.

14 MR. YOUNG: Your Honour, as with our colleagues, we have grave
15 concerns about the Prosecution's disclosure position in relation to
16 the exculpatory material. As Your Honour knows very well, this
17 material goes to the innocence of the accused and has the ability to
18 change the complexion of the entire case.

19 The -- with respect to what Ms. Lawson said for the Prosecution,
20 Your Honour, I think we need to analyse what the Prosecution have
21 argued or told you. At paragraph 8 of their written filings, they
22 tell Your Honour that the review is more than 70 per cent complete,
23 with approximately 2.500 items remaining to be assigned for
24 exculpatory review.

25 Can we just explore a little what this means. Because my

1 understanding, this appears to suggest that, to date, they have made
2 decisions -- they have reviewed that material, this body of material,
3 some 70 per cent of the material, they have reviewed it, they've made
4 a decision on it, it is exculpatory so it has to be disclosed, so why
5 not disclose it now?

6 They appear to be saying, unless I've misread this completely,
7 that although they have finalized their position on 70 per cent of
8 the material, it is exculpatory, so it is important for the Defence,
9 but we are not going to disclose to you right now, in flagrant of the
10 rules. And the rules are there for a purpose. They seem to be
11 saying, oh, well, we still have another 2.500 items. Therefore,
12 we're going to delay disclosing what should be disclosed immediately
13 until we go through the other 2.500. Now, if that is anywhere near
14 correct, that is deeply, deeply troubling.

15 And I do very much support what Mr. Kehoe said particularly in
16 relation to the body of KLA evidence which appears to be undisclosed.

17 Your Honour, if Mr. Kehoe's theory is correct, it would appear
18 that there is a significant body of KLA evidence that's not been
19 disclosed. And as Your Honour knows, it is often more telling in a
20 trial not what evidence is called but sometimes what evidence is not
21 being called. And so, with great respect, if this body of material
22 exists - in other words, 103 material from large body of KLA members
23 - that is something that clearly ought to be disclosed immediately.

24 As for other matters, of course, if new -- I'm not suggesting at
25 any stage there should be a cut-off point for 103 material because it

1 has to continue, but if they have got it now, they disclose now.
2 They should be disclosing it today.

3 In the future, of course, if in further reviews they uncover new
4 material and it comes into their custody and control in the future,
5 then, of course, they can disclose later. But the point I think
6 we're all making is there's no reason to postpone and if you want to
7 hold the Prosecution to the rules of the procedure, there's only one
8 answer.

9 Thank you.

10 JUDGE GUILLOU: Thank you, Mr. Young. And I'll ask the SPO to
11 answer your specific question about the paragraph 8 of their
12 submissions, if there is delay to disclose what has been already
13 identified as exculpatory waiting for the remaining 2.500 items.
14 This is not how I interpreted their submissions, but I would like the
15 SPO to confirm it.

16 Mr. Ellis, please.

17 MR. ELLIS: Yes. Your Honour, a few words from me about the
18 issue of timings, and I do so knowing, of course, that there are
19 written filings before Your Honour that Your Honour is seized of and
20 will deal with in due course. But we are, after all, in a Status
21 Conference with Rule 103 fairly and squarely on the agenda. It is an
22 issue properly before you today, Your Honour, as well.

23 The Prosecution says they have disclosed some 750 items in the
24 last month, eight disclosure packages, pursuant to Rule 103. That's
25 not evidence of a Prosecution diligently performing its duties when

1 we're 16 months into the process. The fact that so much material,
2 eight packages, is coming in the last month is a problem, not a sign
3 of a system that is working.

4 And then when we look at what is still to come, we're told that
5 the item-by-item searches the Prosecution hopes to complete by the
6 next Status Conference. Well, that's proposed, I think, for the 16th
7 of May, which is another seven weeks away, Your Honour, so that in
8 itself is quite a chunk of time to be waiting for exculpatory
9 material.

10 We then have the targeted searches which were introduced in
11 written submissions and, I think, orally today. What exactly are
12 these targeted searches? Why haven't they be done previously? And
13 how long are we going to be waiting for those? And that then needs
14 to be fed in also when considering timings.

15 We have spoken already today about the Rule 102(3) process. If
16 we looking at 5.000 documents being processed a week for that, well,
17 there are 40.000 documents outstanding to the Krasniqi Defence alone.
18 So that is, what, eight weeks if the Prosecution is only working on
19 our Rule 102(3) disclosures. Add in however many thousands of
20 documents are outstanding to all my colleagues here, there is a real
21 problem with disclosure in this case, Your Honour. It is a real
22 problem because Mr. Krasniqi and the others are sitting there in
23 detention. They want matters to start moving. They want this case
24 to get going. And it is this disclosure that is the sticking point,
25 Your Honours, on all these issues, and that's why deadlines have been

1 sought.

2 JUDGE GUILLOU: Thank you, Mr. Ellis.

3 Madam Prosecutor, I invite you to respond to the four Defence
4 teams, and I would also like you to indicate if you have any
5 substantial disagreement with the scope of exculpatory material.
6 Because some Defence teams have presented the Rule 103 material as
7 items that are generated -- evidence that are generated by the SPO
8 itself, but there's also been references to evidence that should be
9 disclosed because it is generally referring to the KLA, and this
10 could also be by consequence -- give the Defence some evidence on the
11 appreciation of the organisation of the KLA, but also the question of
12 proactive research by the SPO for potential exculpatory evidence, and
13 I notable think of what Mr. Kehoe said about some documents.

14 So if you also have some views on the scope of your obligations
15 here, you are welcome to present them orally.

16 Madam Prosecutor.

17 MS. LAWSON: First, we're aware of the requirements of Rule 103.
18 I don't believe there is any significant disagreement regarding the
19 scope of what would be captured by it given our knowledge of the case
20 and our knowledge to date of Defence positions. So there's nothing
21 to be remedied, in our view, and the Defence doesn't advance matters
22 by simply reading the rule.

23 With respect to -- there was some specific examples mentioned.
24 The Veseli Defence mentioned Chinese ammunition, and I'm actually in
25 a position to indicate that information of that very nature is

1 anticipated to be in an upcoming disclosure package that has recently
2 been prepared.

3 So these are not items that being missed from our review. We
4 are aware of the scope. We are disclosing what we believe to be
5 within the scope of the requirements.

6 With respect to the initial submissions that were made by the
7 Thaci Defence, exculpatory disclosure is done relative to concrete,
8 confirmed charges against specific accused, so it's done relative to
9 a confirmed indictment, and it needs to be done in the context of a
10 protective measures regime applicable to a specific case.

11 Within that framework, we have been working through a large
12 collection of material. We have been disclosing it promptly on a
13 rolling basis in accordance with the framework and the directions
14 given.

15 The disclosure of 751 items since the last Status Conference
16 appears to be presented as some sort of an indication of a delay but
17 that's not the case. We have been consistent in our disclosures. We
18 can take other periods of time and see comparable levels of diligence
19 and productivity. In December 2020, we disclosed over 1.300 Rule 103
20 items. That's almost twice as many as in this recent period. In a
21 six-week period in June/July 2021, we disclosed 754 items. So
22 although we're, of course, allocating appropriate resources to
23 complete the process as expeditiously as possible, our efforts have
24 been consistent and the disclosures have been consistent.

25 The Thaci Defence submissions regarding contacts with the United

1 States government and the degree of cooperation or material that we
2 might have received is just entirely speculative. There is
3 absolutely no basis to think that the SPO has access to or possession
4 of the records of individual independent states in the manner that
5 they are suggesting.

6 A couple of the -- or at least one of the Defence teams
7 mentioned the 70 per cent and 30 per cent in a manner which I believe
8 was misleading or misunderstood the submission that we had made. It
9 is not 30 per cent of our entire collection that remains to be
10 reviewed. What we are referring to there is material that has been
11 received or cleared in the second half of last year and up 31
12 January 2021.

13 Similarly, the names and targeted searches was not mentioned for
14 the first time here or in our written submissions. It's something we
15 have mentioned in previous hearings and in previous written filings
16 and which we initiated in line with the finalization of our witness
17 and evidence lists.

18 The other point I think that was raised by the Veseli Defence
19 was the scope of the case, but that does not impact the scope of the
20 collection that needs to be reviewed for exculpatory content.

21 And, finally, I would make one procedural request going forward.
22 We're disclosing thousands of items. If the Thaci Defence or any of
23 the other Defence teams intend to speak about particular items, we
24 would request that fair notice be given to enable a meaningful
25 discussion. At the last hearing, the Thaci Defence expressly did not

1 provide such notice despite us having made *inter partes* contact with
2 them in advance and, frankly, it is deliberately sharp tactics. It's
3 done because they don't want a meaningful discussion, and they
4 especially don't want to be fact checked. But we saw at the last
5 hearing that counsel misquoted the document he purported to be citing
6 from. So we would request Your Honour make the direction going
7 forward that notice to be given if there is to detailed or specific
8 discussion, a detailed discussion of specific items, in the interests
9 of the fairness of the proceedings.

10 Finally, what was being said about the applicable framework and
11 especially the relevance of the materials in question to matters of
12 detention is simply not accurate.

13 Thank you.

14 JUDGE GUILLOU: Thank you, Madam Prosecutor.

15 Mr. Kehoe, please, very briefly.

16 MR. KEHOE: Very briefly, Your Honour.

17 I am shocked at what the SPO has just acknowledged. Counter --
18 contrary to their statement that they don't need a discussion about
19 the rule, it would appear that they do. And the word "immediately"
20 is somehow dropped off their radar screen as to when they are
21 responsible for disclosures. Because the individual that I just
22 talked to you about, that they want to redact his name, many other
23 individuals who I give to Your Honour, they are all prominent people.
24 They're not some small villager in some far-away place in Kosovo.
25 These are prominent individuals who could never have been missed.

1 Their names should not be redacted. Everybody knows those names.
2 Everybody knows that they had given statements. And still we don't
3 get that information, the first individual, 16 months down the line.

4 So, yes, I must direct my learned colleagues across the well as
5 to what the rule says, immediately.

6 But more shocking is, yes, there is a degree of speculation on
7 the part of the Defence as to what documents they receive from the
8 United States. We know they made document requests. We know they
9 made many document requests. And is the Prosecution at this point
10 conceding to this Court that they made no requests for information
11 that went to the structure of the KLA?

12 As far as quoting the document improperly, the document says:

13 "Moreover, there is no political structure in Kosovo or
14 effective command and control of the KLA."

15 I can give this to you. That's what I quoted last time. That's
16 what I quoted this time.

17 And is it the Prosecution's position in the search for the truth
18 that they weren't asking those questions during ten years of this,
19 and instead they looked at what they wanted to look at so they could
20 indict these gentlemen so they could sit in jail since November of
21 2020 for this trial that was supposed to start in April or May. But
22 we don't hear anything about that anymore.

23 Are they seriously saying that they did not ask the United
24 States Central Intelligence Agency or any other government: Give us
25 your information about KLA narcotics operations, and that the CIA

1 came back and said, There is no evidence to support that. Give us
2 your information that these four men were involved in some type of
3 terrorist activities. Tell us, Central Intelligence Agency. Because
4 they obviously came to the conclusion in January of 2000 that the KLA
5 was not involved.

6 And is the SPO standing before this Court and saying those
7 questions were not asked by the SPO during the course of these
8 investigations? Is that the search for the truth, Your Honour? Of
9 course, it's not. It's a search for you come to -- you come to a
10 particular conclusion and then you want to get evidence to support
11 that conclusion as opposed to what actually happened. That is the
12 logical conclusion to what counsel just said concerning this
13 documentation. Because it is shocking that they don't have it and
14 haven't asked for this and similar other documentation from other
15 governments.

16 Thank you, Your Honour.

17 JUDGE GUILLOU: Thank you, Mr. Kehoe.

18 MR. YOUNG: Your Honour, would you hear me briefly.

19 JUDGE GUILLOU: Mr. Young, please, briefly.

20 MR. YOUNG: Yes, thank you. Your Honour, just on the point
21 about the 70 per cent. I'm not sure, with respect to Ms. Lawson,
22 that she answered the question that I posed and Your Honour directed
23 towards her, unless I misunderstood it, of course.

24 As I understand it, the position suggested in writing is that
25 the review is 70 per cent complete. Again, what does that mean? Are

1 the Prosecution saying that, so far, we've completed 70 per cent of
2 the review of all of materials been in our custody and control?

3 If Ms. Lawson is saying, well, there is nothing now in our
4 custody or control that we've decided and having conducted review is
5 exculpatory, can Ms. Lawson confirm today, now, in court, that there
6 is nothing to disclose? She indicates that there are about 2.500
7 items remaining to be assigned for review. But would Your Honour try
8 and help us get an answer there, because I still don't think the
9 question has been answered.

10 Thank you.

11 JUDGE GUILLOU: Thank you, Mr. Young.

12 Madam Prosecutor, do you want to give additional submissions on
13 the question of the Selimi Defence, please.

14 MS. LAWSON: Yes. And indeed I realise I neglected to answer it
15 last time. I apologise for that.

16 The interpretation which the Selimi Defence put forward, their
17 understanding of my submissions was not correct. We have been
18 disclosing items identified during the review on a continuous basis
19 and, in fact, the much-talked-about disclosure package from
20 1 February included items from that very collection of material that
21 has been received or cleared more recently.

22 With respect to the Thaci Defence submissions, what we are doing
23 is a systematic item-by-item review. We're not sorting our review
24 based on the Thaci Defence's subjective assessment of who is a
25 high-profile person. And the submissions they just made are not the

1 logical conclusion. They're an entirely baseless jump to
2 conclusions. I think you'll see from the materials that have already
3 been disclosed and are in your possession that we're very interested
4 in receiving information going to the structure of the KLA.

5 That the Thaci Defence is quoting from a document that
6 apparently they have but we don't have and using that as a basis to
7 claim disclosure violations is instructive in itself.

8 Thank you.

9 JUDGE GUILLOU: Thank you, Madam Prosecutor.

10 MR. STRONG: [Via videolink] Your Honour, just one point.

11 JUDGE GUILLOU: Sorry, Mr. Strong, I didn't see that you had
12 requested the floor. Please, briefly.

13 MR. STRONG: [Via videolink] Of course. Just to say that after
14 all of that, I still don't have -- I may have missed it, but I don't
15 have a note as to what the Prosecution's best estimate for when we
16 can have the disclosure in our possession. And I think, Your Honour,
17 this is the third Status Conference that we've been pushing for it
18 and that's why we submit that a deadline is necessary.

19 So we'd love to have one, and in the absence, we do submit that
20 a deadline needs to be set.

21 JUDGE GUILLOU: Thank you, Mr. Strong.

22 So let me try a last attempt with the Prosecution.

23 I think, Madam Prosecutor, you mentioned that the Rule 103
24 disclosure would be, and I quote, "largely completed before the next
25 Status Conference."

1 Do you estimate that practically all exculpatory disclosure will
2 be done minus a few items, or do you think that the process will last
3 longer than the next six to seven weeks?

4 MS. LAWSON: Your Honour, I did address this in my initial
5 submissions to the Court. And on the review side, we do believe that
6 we will be largely -- will have largely completed the systematic
7 item-by-item review of the collection by the next Status Conference.
8 We are disclosing material as it is identified, so there will be
9 disclosures made up to and, I imagine, including that date, but I
10 imagine also after that date, as we process what gets identified from
11 the reviews. And separate to that is the searches I mentioned which
12 right now I really cannot give an accurate estimate on, given that,
13 you know, there are thousands of hits coming back from a single name
14 that need to be sorted through and there are hundreds of names that
15 need to be searched.

16 Thank you.

17 JUDGE GUILLOU: Mr. Kehoe, very, very briefly.

18 MR. KEHOE: Yes. Just very briefly one question that I would
19 ask Your Honour to ask the Prosecution.

20 And is there some reason why it took almost 16 months for this
21 interview that I talked about, that was turned over in February, that
22 was taken in March of 2000, 17 March 2000, was not turned over --
23 excuse me, 2020. I stand corrected. Was not turned over until
24 1 February 2022. It goes to everything Mr. Strong was talking about,
25 et cetera.

1 Is there some reason why counsel who took that interview did not
2 ensure that that 103 material was turned over immediately?

3 JUDGE GUILLOU: Then let me ask for a final question on
4 exculpatory material, Madam Prosecutor.

5 Is there a specific reason why this item was not disclosed
6 earlier?

7 MS. LAWSON: Your Honour, this goes directly to the request I
8 made earlier. If the Defence teams wish to discuss a specific item,
9 we need the opportunity to look into the circumstances of that item.
10 We're disclosing thousands of them. I can't immediately give the
11 history of the item. I can't tell you when it was transcribed. I
12 can't tell you -- like, it's not an answer that I can give on the
13 spot, and that's exactly why we made the request that we did.

14 Thank you.

15 JUDGE GUILLOU: So I invite the parties to continue discussions
16 *inter partes* and to refer about the matter in the next Status
17 Conference if needed.

18 I see that it is approximately one hour and a half since we
19 started. Let me turn to the interpreters. Do you allow me a couple
20 of minutes for the Rule 107 material so we finish the topic of
21 disclosure before the break?

22 I see that the interpreters give me a yes. Okay. Good.

23 Let us now move to Rule 107 material. I note the SPO submission
24 that it is continuing to actively work to complete discussions with
25 Rule 107 providers. The SPO indicated that significant further

1 progress narrowing the scope of remaining items and issues has been
2 made. The SPO indicated that it is preparing a number of further
3 Rule 107(2) applications reflecting where final determinations have
4 been reached. And in its written submissions, the Defence observe
5 that Rule 107 disclosure remains incomplete.

6 I invite the SPO to make submissions on this topic, notably on
7 the time-line for the upcoming Rule 107(2) applications.

8 Madam Prosecutor.

9 MS. LAWSON: We are focused on following up on the remaining
10 Rule 107 items. An overview of those was contained in filing 678.
11 And in terms of volume, they have narrowed further since that date on
12 the basis of the discussions.

13 We're currently working on 107(2) applications to submit to the
14 Court as you mentioned. One of those is we need to resolve ongoing
15 discussions with an individual state before we can make the
16 application, although it is largely prepared for submission as soon
17 as those discussions are complete. And there is a second request
18 which is being actively prepared in recent weeks, this week, next
19 week. There's a substantial amount of work involved in putting
20 together those requests in order to provide the Court with necessary
21 information to facilitate decision-making. So that's what we're in
22 the process of doing for that request.

23 Thank you.

24 JUDGE GUILLOU: Thank you, Madam Prosecutor.

25 Do the Defence want to --

1 MR. KEHOE: Yes, Your Honour, if I turn this over to Mr. Misetic
2 for some comment.

3 JUDGE GUILLOU: Sure. Mr. Misetic, please.

4 MR. MISETIC: Good afternoon, Your Honour. Very briefly. On
5 Rule 107 material, we just wanted to preserve our position and make
6 you aware that to the extent there are any Rule 107 applications with
7 respect to the Republic of Serbia, we do want to note this. It is
8 our position that evidence that has as its source or witnesses that
9 have as their source to the SPO, directly or indirectly, from the
10 Republic of Serbia or any of its organs, we would consider to be
11 Rule 103 material because, in our view, it affects the credibility
12 and reliability of the Prosecutor's evidence. And so the extent
13 there's an *ex parte* application for Rule 107 measures or protection
14 from disclosure, we would want to be heard on that because we think
15 it is critical and we do think it is critical Rule 103 material that
16 needs to be disclosed. If we need a full discussion of why that
17 applies with respect to the Republic of Serbia specifically, we're
18 prepared to do that for you, but I don't think we need to take time
19 doing that today.

20 Thank you, Your Honour.

21 JUDGE GUILLOU: Thank you, Mr. Misetic.

22 Ms. O'Reilly, please.

23 MS. O'REILLY: Yes, Your Honour, we would adopt those
24 submissions, indeed, we would be -- 103 material. And we would
25 definitely want to be heard.

1 Just with respect to what is outstanding on 107. We had asked
2 in response to the filing that Ms. Lawson referenced, which is F700,
3 for quantification of what is outstanding, and there hasn't been a
4 decision on that yet, as I understand, and there's been no voluntary
5 quantification by the SPO. So, again, just to reiterate how much are
6 we actually talking about? I would love an answer to that question.
7 This is all because we're trying to figure out how much time we need
8 to devote to disclosure review, investigation, and so forth, and
9 figure out when we can be ready for trial.

10 Thank you, Your Honour.

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

12 Mr. Young, please.

13 MR. YOUNG: No, thank you.

14 JUDGE GUILLOU: Mr. Ellis, please.

15 MR. ELLIS: We join previous submissions. Nothing to add,
16 Your Honour.

17 JUDGE GUILLOU: Thank you, Mr. Ellis.

18 Madam Prosecutor, do you want to respond to the Defence
19 submissions?

20 MS. LAWSON: Just very briefly. As the Court is already aware,
21 Serbia is not one of the entities or countries with which there are
22 outstanding Rule 107 issues.

23 Thank you, Madam Prosecutor.

24 I see that it's -- Mr. Misetic.

25 MR. MISETIC: Just for a clarification on the record. Our

1 position applies to any previous Rule 107 measures that may be
2 applying to the Republic of Serbia and we would want to be heard on
3 those as well. Just so that there's no misunderstanding.

4 Thank you.

5 JUDGE GUILLOU: Thank you, Mr. Misetic.

6 It's 4.08. We're going to have a break and we will reconvene at
7 4.35.

8 The hearing is adjourned.

9 --- Recess taken at 4.08 p.m.

10 --- On resuming at 4.37 p.m.

11 JUDGE GUILLOU: So before we move to the next topic in our
12 agenda, I would like to ask the parties to give an update on their
13 *inter partes* discussions on Legal Workflow and on the electronic
14 transmission of documents between the Defence and the accused with
15 SEDS.

16 I note that the Veseli Defence indicated that three issues have
17 been raised by the Defence regarding Legal Workflow.

18 First, the documents being disclosed in early packages now being
19 redisclosed with different titles, which significantly confuses and
20 impedes the Defence evidence view.

21 Second, documents requested under the Rule 102(3) notice being
22 disclosed under other rules without any indication that they are part
23 of the requested material from the Rule 102(3) notice.

24 And, third, the persisting discrepancies in the documents'
25 descriptions, for example, sometimes referring to a person's name and

1 other times referring to a pseudonym, greatly hampers the Defence's
2 capacity to run comprehensive searches in the disclosed material in
3 an efficient manner.

4 I also note that the Krasniqi Defence suffered significant
5 delays in the electronic transmission of documents between the
6 Defence and Mr. Krasniqi. I invite the other Defence teams to
7 indicate if they have recently faced the same issues.

8 So I will first give the floor to the Registry to give an update
9 on the discussions regarding Legal Workflow and the SEDS, and if the
10 problems raised by the Defence could be solved soon.

11 And before I give you the floor, I note that the public gallery
12 is closed. Is there a specific reason for that? No. And I see that
13 public gallery is now open.

14 So I will give the floor to Mr. Nilsson on this point,
15 Legal Workflow and SEDS, please.

16 MR. NILSSON: Thank you, Your Honour.

17 With regard to Legal Workflow and specifically the population of
18 the witness entities that you have asked about in your submission, I
19 can confirm that the Registry has inserted on the applicable
20 protective measures, including links to the decisions themselves. As
21 of yesterday this has been done for all of the witnesses. So that
22 work has been completed. And that is with regard to the witness
23 entities as far as the Registry is able to help. So that's with
24 regards to the Legal Workflow.

25 With regard to the SED issue, we received from the Krasniqi

1 Defence a communication about this -- the specific problem and we
2 looked into it. The system has been in place for approximately a
3 year and we had not seen any complaints of this kind before. When
4 looking into the logs, from what we can see, the material was put on
5 the folder, the relevant folder on 6 March, which is what the Defence
6 indicates, and it was accessible already the day -- the day after.
7 We have not been able to find anything else.

8 So there was a -- a period of a number of hours, which is normal
9 within that system, but not the length that the Defence has
10 indicated.

11 So that's where we stand. We are happy to discuss with the
12 Defence -- any Defence teams any further problems, and hopefully
13 we'll be able to do that between us and keep that out of your
14 attention in the future.

15 Thank you.

16 JUDGE GUILLOU: Thank you, Mr. Nilsson.

17 Does the Defence want to add anything on this topic?

18 Mr. Kehoe.

19 MR. KEHOE: Your Honour, if I may pass the floor to Mr. Ellis on
20 this score.

21 JUDGE GUILLOU: Yes. Just before, Mr. Ellis. Does any of the
22 other Defence teams want to say something about this? No, I don't
23 see any request for the floor.

24 So Mr. Ellis, please.

25 MR. ELLIS: Your Honour, on the specific issue of SEDS, let me

1 say at the outset, it was perhaps a little premature of me to put
2 that on the Status Conference agenda. After we made that submission,
3 we received the e-mails from the Registry that Mr. Nilsson has just
4 described, and we're content at the moment that that has resolved the
5 position. So no intervention needed from Your Honour. We're
6 grateful for the assistance from the Registry and will continue to
7 engage with them directly without the need to bring it to your
8 attention, I hope.

9 On the Workflow forums, it is fair to say they haven't quite
10 turned out to be the dynamic space for exchanging ideas that we had
11 perhaps dreamed of. Nonetheless, they are continuing to meet. It is
12 useful to have that opportunity to speak directly with the
13 Prosecution, with the Registry, with the representatives of victims
14 on the issues that are arising.

15 Nothing specifically to report in terms of resolution, but there
16 are various topics of discussion that are ongoing, a couple of issues
17 in which, I think, we await responses from the Prosecution, but we'll
18 continue to engage going forward on those issues.

19 And that's as it should be. It's a dialogue, and to that extent
20 it is ongoing.

21 In terms of witness entities, I think it's right to say there
22 are still some, particularly amongst the more recently disclosed
23 witnesses, where there are no relations at all for documents. And
24 that's something that we would invite a comment on from the
25 Prosecution, I think.

1 JUDGE GUILLOU: Thank you, Mr. Ellis. What you put in your
2 submissions, I put it in the agenda of the Status Conferences so ...

3 Madam Prosecutor, do you want to respond to the last question or
4 add anything more generally on the Legal Workflow forum?

5 MS. LAWSON: As the Registry mentioned, relevant protective
6 measures for witnesses have been populated and we are grateful to
7 them as always for their assistance with proceedings.

8 The SPO is now also populating witness names.

9 With respect to the matters mentioned in the Veseli Defence
10 filing, we did indeed receive those queries at the end of last week.
11 We're looking into the matters raised and I confirm we will revert to
12 the Defence teams on them.

13 In relation to the query just raised by the Krasniqi Defence, I
14 actually would invite *inter partes* contact on that because -- just to
15 identify who the witnesses are so that we can look into it. There
16 are items that were disclosed during the course of January which
17 we're in the process of linking actually this week, so it may be that
18 they fall within that category. And otherwise we will look into it.

19 Thank you.

20 JUDGE GUILLOU: Thank you, Madam Prosecutor.

21 Mr. Laws, do you want to mention anything about Legal Workflow?

22 MR. LAWS: [Via videolink] Your Honour, no. No. Thank you very
23 much.

24 JUDGE GUILLOU: Thank you, Mr. Laws.

25 Let us now move to the issue of translations of filing and

1 evidentiary material.

2 In its submission, the Krasniqi Defence indicated that there are
3 currently more than 1.100 filing items originally provided in English
4 but only 214 of them have been translated into Albanian.

5 So I would first like to hear from the Registry on the progress
6 made with regard to the translation of these items. Notably, whether
7 the parties have made any further urgent requests for translation and
8 whether the Registry can give an estimate for the translation of the
9 prioritised portions of the Rule 109(c) chart.

10 And I would like also to hear the parties on any further
11 difficulties regarding translations and if there are filings that
12 need to be prioritised.

13 I would first give the floor to the Registry. Mr. Nilsson,
14 please.

15 MR. NILSSON: Thank you, Your Honour.

16 We met earlier today with the Krasniqi Defence with regard to
17 the Rule 109(c) chart. And looking at the complexity and the size of
18 the material, the option that we came up with or the proposal that we
19 came up with that was accepted, I believe, by the Defence was that we
20 would provide unrevised translations and also to provide them in
21 batches of approximately 50 pages each. So that we will be able to
22 provide the translation as we go along during the next months. We
23 think that doing it in this way would be the speediest way of doing
24 it and that will take us, we think, for the moment, looking at the --
25 looking at the situation right now, that the last batch would be then

1 in September. So starting as soon as possible and the last batch in
2 September.

3 So that's where we stand with regard to that particular
4 translation.

5 Besides this, beyond this request, we don't have any outstanding
6 requests for priorities for translations.

7 Thank you.

8 JUDGE GUILLOU: Thank you, Mr. Nilsson.

9 Does the Defence want to add anything on the issue of
10 translation?

11 Mr. Ellis.

12 MR. ELLIS: Only to say that we agree with that account of the
13 meeting this morning. We're quite happy for it to be provided in
14 unrevised version and to be provided in batches is eminently
15 sensible. So it was productive.

16 Thank you.

17 JUDGE GUILLOU: Thank you, Mr. Ellis.

18 Mr. Laws, do you have any remarks on the issue of translations?

19 MR. LAWS: [Via videolink] No. No, thank you, Your Honour.

20 JUDGE GUILLOU: Thank you, Mr. Laws.

21 Madam Prosecutor, do you want to add anything?

22 MR. HALLING: Nothing from the SPO on this, Your Honour.

23 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

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

1 In its written submissions, the SPO indicated that its
2 investigation in this case is largely completed, and that no
3 currently contemplated steps implicate amendments to the indictment
4 or the SPO's overall case theory. Nor would they require resolution
5 before the case is transferred to the Trial Panel.

6 However, the SPO indicated that new investigative leads may be
7 discovered, and such leads may uncover evidence necessary for the
8 determination of the truth.

9 Witnesses may, for example, become unavailable and/or
10 uncooperative, justifying a reasonable opportunity to identify
11 substitute evidence.

12 I wish to remind the SPO that general investigation shall not
13 continue throughout the trial. Only investigations that are the
14 result of new events or information shall be performed.

15 As I said during the last Status Conference, Rule
16 102(4) confirms that only under exceptional circumstances can
17 additional evidence be disclosed and subsequently used at trial.

18 In its written submissions, the SPO considers that its
19 investigation is largely completed and no deadline is therefore
20 necessary.

21 However, the Defence submits that, at this point, I should fix
22 6 May 2022 as the date by which the SPO should complete its
23 investigation.

24 So I would like the parties to indicate whether a formal
25 deadline is necessary and, if so, what would be the exception for the

1 investigations that could be performed after this date.

2 Mr. Prosecutor.

3 MR. HALLING: Thank you, Your Honour.

4 You have accurately summarised our position and exactly why we
5 would say that no deadline is necessary.

6 Incidentally, "largely complete" is not our catch word, to use
7 Mr. Kehoe's phrasing. This was actually the way that Your Honour
8 described what was necessary for the level of completion of our
9 investigation on page 928 of the transcript at the last Status
10 Conference.

11 So unless Your Honour has any particular questions as to our
12 investigation, we have heard Your Honour's directions, we are aware
13 of the statutory restrictions that apply at this time, and we have no
14 further submissions.

15 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

16 Mr. Kehoe, please.

17 MR. KEHOE: Yes, Your Honour, I will speak just briefly and then
18 if I could hand the floor to Mr. Misetic for additional comments.

19 JUDGE GUILLOU: Then very briefly because --

20 MR. KEHOE: Very briefly, Judge. Very briefly. I know I'm very
21 wordy --

22 JUDGE GUILLOU: I am quite flexible but try to divide the topics
23 between you because if we double up, it becomes very, very long.

24 MR. KEHOE: If he talks too long, I will just pull him down,
25 Judge.

1 JUDGE GUILLOU: He is usually very short and very concise,
2 Mr. Kehoe.

3 MR. KEHOE: Judge, I just want to direct Your Honour's attention
4 back to what you said on 4 February on our last conference. And Your
5 Honour said, and this is on page 928: "The Defence cannot be
6 expected to prepare a defence on a case that is constantly evolving."

7 And we were talking about this issue. Something that is
8 constantly evolving. If, in fact -- when I first read the SPO's
9 comment about "largely complete." I don't know what that means,
10 other than it is complete. If it is complete, end it now. There is
11 no reason for this to go on any further. But the point of the matter
12 is and the reason why this has to be closed now is we constantly have
13 a constantly evolving Prosecution case, a case that's been going on
14 for ten years, and heaven knows our clients have been in custody
15 since November of 2020. That's the problem without listing a
16 deadline. If it's largely complete, give them a deadline and after
17 that it's over.

18 Mr. Misetic.

19 JUDGE GUILLOU: Mr. Misetic, please.

20 MR. MISETIC: Thank you, Your Honour. Just briefly. If there
21 is going be a debate about what "largely complete" means, our view is
22 Rule 98 requires you at some point to transmit the file to the
23 Trial Panel. Rule 108(1)(b) and (c) requires you to transmit the
24 evidentiary material to the Trial Panel. Our question is simply:
25 When will the Prosecution be in a position to state that the material

1 it wants you to submit to the Trial Panel is now complete and ready
2 for transmission?

3 So what is largely completely or what isn't, that is our
4 definition of what "complete" means.

5 Thank you.

6 JUDGE GUILLOU: Thank you, Mr. Misetic.

7 Ms. O'Reilly, please.

8 MR. EMMERSON: [Via videolink] Can I -- can I --

9 JUDGE GUILLOU: Sorry, Mr. Emmerson.

10 MR. EMMERSON: [Via videolink] I do apologise. can I address
11 Your Honour on this issue, in particular, because it is really a
12 fulcrum question, and you've said as much in the last Status
13 Conference.

14 Our position is relatively simple. No one is suggesting that 6
15 May would be a cut-off date that prevents Prosecution applying to the
16 Court for leave to adduce additional evidence, and you specifically
17 asked for submissions on what should be the test for -- regarding
18 evidence as fresh.

19 We make the point that there is already an unprecedented
20 mountain of evidence, much larger than any criminal -- international
21 criminal ever that has been put before you and is being disclosed to
22 us. There has to come a point where, as you have rightly
23 acknowledged, we can say, okay, that's the finite case we have to
24 meet. And for us to be having a discussion in March about -- March
25 2022, about when the Prosecution should finish serving its case is in

1 itself pretty staggering given the length of time that the
2 proceedings have been ongoing. And I venture to suggest the real
3 problem at the heart of this case is, number one, Mr. Black's
4 decision to make the --

5 JUDGE GUILLOU: Mr. Smith.

6 MR. EMMERSON: [Via videolink] Sorry?

7 JUDGE GUILLOU: Mr. Smith.

8 MR. EMMERSON: [Via videolink] I've done it again. Sorry.
9 Mr. Smith's decision to announce that he had filed a set of papers
10 before Your Honour and was intending to prosecute Mr. Thaci and
11 Mr. Veseli at a time when clearly the Prosecution was nowhere near
12 ready to prosecute. And what we have seen is that since the
13 confirmation and the detention of the accused, that -- the
14 Prosecution is doing the work that, to be honest, a responsible
15 Prosecutor and every other Prosecutor I have experienced in the
16 international arena would have done before issuing an indictment so
17 that the trial with people in custody can then proceed efficiently.
18 You know, we should have had the Prosecution's case full within a
19 matter of weeks of the defendant's arrest and thereafter not having
20 any further material without the permission of the Court.

21 In terms of the test, I think that's the key question, we would
22 submit that the right test is what is normally referred to
23 internationally as the fresh evidence test. In other words, it has
24 to be evidence to which the Prosecution did not have access to and
25 could not with reasonable diligence have had access to prior to 6

1 May. Therefore, it -- it is fresh in the sense that it is material
2 that has come into the Prosecution's possession in a wholly
3 unforeseen manner.

4 But they ought, most certainly, by 6 May, to have disclosed
5 everything that they have, subject to subsequent developments.

6 Now, why would the Prosecution resist a guillotine or a date
7 fixed for the introduction of that fresh evidence test? The answer
8 can only be that they anticipate that they're not going to meet the 6
9 May deadline or -- is it 6 May? Sorry. Let me just check my notes.
10 That they're going to -- yeah, 6 of May deadline. Because if they
11 are going to meet it, as they imply, they should have no objection to
12 the imposition of a fresh evidence test for after 6 May.

13 So it is quite -- it is actually quite a modest restriction on
14 the Prosecution's ability to prosecute this already indiscriminate
15 case -- indiscriminately prepared case. It just means that they've
16 got to stop just shovelling large amounts of evidence into their case
17 in the hopes that something will stick.

18 So we all know what the nature of the case is at the moment.
19 It's a lot of evidence that amounts to very little, and all of it has
20 to being investigated, nonetheless.

21 So, frankly, anything other than a 6 May cut-off deadline is
22 going to leave us talking to you about a trial starting well into
23 2022. If they can carry on during the summer adducing evidence that
24 they either had or had access to or could have, with reasonable
25 diligence, discovered way into the autumn, I'm afraid we won't be

1 able to file a pre-trial brief. We won't be able -- we have to know
2 the case we have meet. So I'm repeating myself which is always a
3 good sign I've reached a point where I should stop.

4 But those are our submissions fundamentally.

5 JUDGE GUILLOU: Thank you, Mr. Emmerson.

6 Mr. Young, please.

7 MR. YOUNG: Your Honour, I can be brief. The Prosecution say,
8 Your Honour, that there is no need for a deadline. If there was ever
9 a case which needed a deadline, it's this case. And for reasons I'm
10 sure Your Honour understands, if the Prosecution now say they are
11 confident that the investigation is largely completed, then I ask
12 rhetorically why they -- should they be fearful of a deadline?

13 We, too, support Mr. Emmerson's submission that there should be
14 a deadline, a cut-off date of 6 May, for good case management
15 reasons.

16 So we ask you to make that deadline and to take charge of this
17 matter.

18 JUDGE GUILLOU: Thank you, Mr. Young.

19 Mr. Ellis, please.

20 MR. ELLIS: Yes, Your Honour. We join those previous
21 submissions. We see no reason why there can't be a deadline imposed.
22 And in the light of all the issues we're having with the disclosures
23 as well dragging on longer, here is something where we can draw a
24 line and hopefully move things along.

25 JUDGE GUILLOU: Thank you, Mr. Ellis.

1 Mr. Prosecutor, on the deadline proposed by the Defence, the
2 fact that it would be 6 May, and also on the proposal to apply the
3 fresh evidence test made by Mr. Emmerson.

4 And if I understood you correctly, the deadline is already over
5 for you because you finalized your investigations, except if you were
6 to look for evidence due to unforeseen circumstances. So I think
7 you're not very far from Mr. Emmerson's proposal. But maybe I
8 misunderstood your submissions.

9 MR. HALLING: We'll first address the 6 May deadline.

10 Your Honour is correct that the reason why a 6 May deadline is
11 unnecessary is because of what we have already committed to. The
12 deadline would be to impose something to ensure that the
13 investigation was largely complete, and even discussion of things
14 like fresh evidence tests are a tacit acknowledgment that these kinds
15 of issues can arise at any point during the trial. In terms of what
16 the actual test would be, there are statutory provisions applicable
17 here and we would suggest that that be addressed if and when it
18 happens.

19 There are investigative steps listed in paragraph 12 of our
20 written submissions. These are not necessarily things that are
21 currently outstanding investigative steps. They are kinds of things
22 could that well happen with the ongoing progress of the trial. One
23 of them, for instance, is Defence witnesses and information being
24 disclosed which would necessitate further investigations, and I don't
25 think anyone here would say that that's happened yet or that it needs

1 to happen yet.

2 We have some other aspects of our investigation that are
3 concerning things like interviewing witnesses who have already been
4 interviewed on the SPO witness list or outstanding requests for
5 forensic information relating to murder victims in the indictment,
6 and these kinds of things, when they are ready, we will be in a
7 position to make a filing. But as we have said all along, this does
8 not affect scope of indictment and it doesn't affect the SPO's
9 overall case theory. These are details within matters that are
10 already within scope of the Defence's investigations.

11 The case that needs to be met by the Defence is the one in the
12 confirmed indictments, as informed in the Rule 86(3)(b) outline, and
13 the pre-trial brief, and the evidence that the SPO is using is that
14 disclosed under Rule 102(1)(b). And we are aware, and Ms. Lawson
15 already said it, that if we want to add Rule 102(1)(b) material at
16 this point, that additional or appropriate scrutiny from Pre-Trial
17 Judge would be applied.

18 Thank you.

19 MR. EMMERSON: [Via videolink] Your Honour, could I --

20 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

21 Mr. Kehoe first.

22 MR. KEHOE: Yes, Your Honour. At the outset, my learned friend
23 has said the question is about the SPO -- SPO has committed
24 themselves to something. What have they committed themselves to?
25 They haven't committed themselves to anything. They haven't

1 committed to a time-line. They're resisting the 6 May timeline. And
2 they didn't answer your question about the fresh evidence test.

3 Next, the bottom line at this point, Judge, is are they ready to
4 tell this Chamber to transfer this case, this file to the
5 Trial Panel? If they're not, they're still investigating, and if the
6 only thing that we're supposed to address is the indictment that's
7 before us, what is the need for the additional investigation?

8 Clearly they are trying to generate yet more information, more
9 of the piles of information we have, and they don't appear to be
10 anywhere near ready to tell Your Honour to transfer this file to the
11 Trial Panel.

12 Now, as far as their commitment to, they haven't committed to
13 anything. The bottom line is there must be an end. There must be an
14 end to this investigation.

15 And as Mr. Emmerson said, if, in fact, they pass the fresh
16 evidence test, we can address that at that point. But, now, this has
17 to be over. Again, to use Your Honour's words, they have a
18 constantly evolving case. And if it was not constantly evolving,
19 there would be no need for this additional investigation that they
20 are purportedly doing. Again, we submit to Your Honour to set a
21 deadline. At this point, after all this time, the 6 May is eminently
22 reasonable.

23 JUDGE GUILLOU: Thank you, Mr. Kehoe.

24 Mr. Emmerson, please.

25 MR. EMMERSON: [Via videolink] Your Honour, just two short points

1 in rejoinder.

2 First of all, if this were a Prosecutor who had met their
3 previous deadlines coming before you and saying, You ought to trust
4 us because we say we've done most of it already and we won't go very
5 much beyond that -- I am afraid this is a Prosecution that has
6 repeatedly misinformed the Court about time estimates from the
7 beginning, suggesting that this trial was going to start in June of
8 last year, onwards. Has repeatedly broken indications of when the
9 case was going to be prepared, with a cumulative result that there is
10 a mountain, a monstrous mountain of evidence which has not been
11 properly organised, sifted or focused, and we end up in a situation
12 where now the Prosecutor stands up and says, Well, you don't need to
13 give us a direction because we're the Prosecution.

14 But I am afraid that the past practice of the Prosecution in
15 this case is in itself a reason why you ought to very seriously
16 consider the imposition. It's not a deadline anyway. It's the
17 imposition of a fresh evidence test.

18 And, of course, we accept and the test acknowledges that if it
19 is material that has arisen what we used call *ex improviso*, in other
20 words, it's something that's come from evidence adduced by the
21 Defence or from something that emerges from a witness that was
22 unanticipated or anything that couldn't have been realistically
23 obtained before the 6th May and served, then -- then clearly that's
24 material which will likely satisfy the test. But it should require
25 at least an application to Your Honour or to the Trial Chamber, if we

1 get to that stage, when the Prosecution wants to adduce further
2 investigative evidence. And they'll clearly satisfy the test in the
3 sort of examples that they put in their note for today's hearing,
4 such as evidence emerging at trial. But what is in the end of the
5 day, what is the objection to the imposition of a rule that says:
6 After 6 May, you're going to need judicial permission on that test?

7 And, frankly, nothing that's been said on Prosecution side could
8 begin to address that issue, especially given the history and conduct
9 of these proceedings to date.

10 I won't go into that any further because Your Honour is very
11 familiar with it.

12 JUDGE GUILLOU: Thank you, Mr. Emmerson.

13 Mr. Prosecutor, on the question of the transmission of the case
14 file raised by Mr. Kehoe, and also I think there is a general
15 agreement that you all, and especially on the Prosecution side,
16 consider that you need judicial permission to disclose any further
17 Rule 102(1)(b) material, which means, in fact, that the deadline
18 already starts applying today because the -- basically, there should
19 be scrutiny by either myself as Pre-Trial Judge or by the Trial Panel
20 in the future to accept that this evidence is admitted so -- and
21 there will certainly be a test to be applied at that point. Am I
22 right, Mr. Prosecutor?

23 MR. HALLING: Fully correct, Your Honour. That's exactly our
24 position.

25 The only other thing that we wanted to say in response.

1 Mr. Kehoe misquoted Your Honour in the last Status Conference and
2 it's an important point. On page 928 of the transcript, Your Honour
3 says that Rule 102(4) confirms that objective. Your Honour said
4 something similar today.

5 "Only under exceptional circumstances can additional evidence be
6 disclosed and subsequently used at trial. The Defence cannot be
7 expected to prepare a defence on a case that is constantly evolving."

8 The Court did not say that the SPO case is constantly evolving.

9 Your Honour was talking about the disclosure obligations and the
10 purpose of provisions like Rule 102(4) in the abstract. The SPO
11 resists the notion that the case is evolving or has been constantly
12 evolving. And at that level, we have no problem with our
13 investigation as it stands being transmitted to the Trial Panel with
14 the guidance that Your Honour has just given.

15 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

16 I don't see any request -- Mr. Kehoe, very briefly, please.

17 MR. KEHOE: Just briefly, Judge. If that is true, then just let
18 it be done. Just shut this thing down, transfer the file, and move
19 to the fresh evidence test that they'll have to advance in front of
20 the Trial Chamber. That's the answer. I mean, we're talking about
21 words going back and forth. Constantly evolving. They're still
22 investigating. Of course it's constantly evolving. What are they
23 doing if they're investigating. They're trying to protract this case
24 out and find other things.

25 Shut this down, Judge, and make it -- transfer it to the

1 Trial Panel and have their investigation be done. And if they want
2 to change anything, the fresh evidence test is there.

3 JUDGE GUILLOU: Thank you, Mr. Kehoe.

4 For the next point on the agenda, I would like to turn to the
5 Defence first.

6 So regarding Defence investigations, I've heard that several
7 Defence teams have mentioned that as long as the disclosure not
8 completed, it is very difficult to propose any timeline, whether it's
9 for Defence pre-trial briefs or for the investigations in general.

10 Nevertheless, I would be interested to hear the Defence
11 regarding the status of their investigations. And any information
12 about timelines would be appreciated, even if I fully understand that
13 it's difficult to commit to a specific deadline today.

14 Mr. Kehoe.

15 MR. KEHOE: Yes, Your Honour. Let me be clear, we want to file
16 our pre-trial brief as soon as we can. We want to get this case to
17 trial as soon as we can. But to say that our investigation -- and
18 our investigation is ongoing and we are investigating,
19 notwithstanding all of the restrictions that we have. And we're
20 talking about a number of factors.

21 About the extensive redactions even to the indictment, to
22 witnesses' statements. The anonymous witnesses. We have 103 out of
23 their 326 witnesses that are in fact anonymous. We have continued
24 102(3) disclosures and, heaven knows, what is most important at this
25 point is the 103 disclosures that have not been given to the Defence.

1 It is difficult, if not impossible, for the Thaci Defence to give you
2 a timeline on that, Judge, because we have still have all of these
3 outstanding issues.

4 That being said, Judge, we are - we are - to the best of our
5 ability investigating this case in conjunction with our client on a
6 steady basis.

7 JUDGE GUILLOU: Thank you, Mr. Kehoe.

8 Mr. Emmerson, please.

9 MR. EMMERSON: [Via videolink] It's in fact going to be
10 Mr. Strong addressing this issue because he's the principal advisor
11 on the investigation.

12 JUDGE GUILLOU: Mr. Strong, please.

13 MR. STRONG: [Via videolink] Thank you, Your Honour.

14 So we have completed the initial review of the SPO's pre-trial
15 brief and I can address some issues we have with that in another
16 section of the Status Conference.

17 But to say that we have now done a -- completed a first
18 investigation trip to Kosovo. There are a couple impediments that
19 I've outlined in our submissions, but I wanted to spend a few minutes
20 on here, that we're finding in this investigation.

21 The first is trying to meet the scope of the Prosecution's case.
22 Your Honour, we have a professional obligation to prepare a defence
23 that meets the case that is brought against us. And here, as
24 Mr. Emmerson noted, the volume of information, certainly in my
25 experience, is unprecedented. I didn't want just to rely on my

1 experience and so we did survey 53 international criminal law cases
2 to try to get some guidance. I think we were clear that this is not
3 exhaustive, but to say that this case and the volume of information
4 is an outlier by any metric, whether it is trial hours, witnesses, or
5 the number of exhibits that are proposed. It is ten times the trial
6 hours of Sainovic case, ten times the exhibits of the Sainovic,
7 Djordjevic, and Stanistic cases. And those are the sort of flagship
8 ICTY cases involving the Serb ethnic-cleansing campaign in Kosovo.
9 So that's why we chose those as bench-marks.

10 But the point is, by any metric, this case is too big. And for
11 the investigation purpose, if it is to be cut down, we want to do it
12 sooner rather than later. So that -- so that the limited resources
13 that the Court has and that the Defence has are not spent tracking
14 down issues that will ultimately be dropped.

15 If the SPO is resolute in saying that this case shall not be cut
16 at all, then we would like to hear how they propose to deal with some
17 of the immutables here. There is just a math problem with 1.863
18 hours, if you divide that by four hours per day, dedicated only to
19 leading evidence, it comes out to something like 465 days.

20 Now, how many days with the court sit? There can be conflicts
21 with scheduling. That doesn't -- it doesn't calculate the
22 cross-examination. This is a very -- this is a math problem, and we
23 would like to hear how the SPO intends to solve it because we have a
24 client in custody that -- that is paying attention and sees the
25 potential for a ten-year trial looming on the horizon. And I think

1 nobody in this courtroom wants to see that happen. And so the sooner
2 we can address that, the better.

3 The second impediment we face, Your Honour, we dealt with
4 earlier but it's the late disclosure of Rule 103 material. I mean,
5 we had the experience just in the last six weeks where the Defence
6 has spent resources and time, sometimes months, trying to pin down an
7 issue that, you know, a 103 witness that gave an interview in 2019
8 can deal with in a matter of minutes. And given the size of this
9 case, that's not a workable path forward to -- to carry out an
10 investigation. And so that's another reason why we really need to
11 get that information in our possession as soon as possible.

12 The final point we make on timing, Your Honour, is that we've
13 heard the Prosecution say on a number of occasions that the Defence
14 case doesn't have to be complete to start trial, and we are open to
15 pursuing any avenue to expedite this trial. But if that is even to
16 be considered, we do need to know the order of the first batch of
17 witnesses that the Prosecution intends to call so that we can
18 allocate our time and energy accordingly.

19 We've asked for the first 30 witnesses, which is just a number
20 derived from the first 10 per cent of their case, and then first 107
21 witnesses, which is the 30 per cent. But we would like the specific
22 order of the first 30 witnesses so we can focus on them, and then the
23 general order, the general number for the first 30 per cent.

24 That's all with an eye towards trying to start this case sooner.
25 And that's where we're coming from, Your Honour.

1 Thank you.

2 JUDGE GUILLOU: Thank you, Mr. Strong.

3 Mr. Young, please.

4 MR. YOUNG: Yes, very briefly. Your Honour, the reality is that
5 Defence investigations are ongoing, but as my learned colleagues have
6 addressed you, we are being significantly hampered by issues that I
7 think you understand, Your Honour. As my colleague said, the scope
8 of the redactions to the indictments, redactions to the pre-trial
9 brief, redactions to the underlying material, the enormous number of
10 anonymous witnesses, the delays on SPO disclosure, particularly on
11 102(3).

12 Your Honour, Your Honour has heard earlier in this hearing that
13 we have identified tens of thousands of documents that we have deemed
14 to be material to the preparation of the Defence. We don't have
15 them. We're not clear when we're going to get them. So unless
16 there's going to be litigation of the materiality, and, *prima facie*,
17 they are material to preparation of our Defence and we don't have
18 them, it is difficult to talk about Defence investigations.

19 So there are a whole host of reasons why a lot more time is
20 required.

21 Thank you.

22 JUDGE GUILLOU: Thank you, Mr. Young.

23 Mr. Ellis, please.

24 MR. ELLIS: Yes, Your Honour. Like other Defence teams, we are
25 progressing our investigation. We're moving as fast as we can with

1 the constraints that we have. We, too, have had a recent
2 investigative mission to Kosovo. We've spoken to potential witnesses
3 both there and, indeed, elsewhere, and we have further investigations
4 planned in the near future.

5 But none of that undermines the position that I outlined in
6 earlier agenda items which is what needs to come first a completion
7 of Prosecution disclosure, and then we will be in a position to give
8 Your Honour much more meaningful input in terms of deadlines.

9 And we do join the submissions advanced by other Defence teams,
10 in particular, the submission advanced by Mr. Strong seeking early
11 disclosure of the first -- the identities of the first Prosecution
12 witnesses, because that seems to me to be an entirely sensible step
13 that would help us to target the investigation at those that will
14 come first.

15 JUDGE GUILLOU: Thank you, Mr. Ellis.

16 Let us move to the last topic --

17 MR. HALLING: Your Honour, could we be heard on that before we
18 move to the next agenda item.

19 JUDGE GUILLOU: Yes, sorry, you want to --

20 MR. HALLING: Yes. Just a few short responses and then one
21 longer one about the scope of the SPO's case, because it was directly
22 implicated by what the Veseli Defence argued under this agenda item.

23 It's obviously important that all the parties exercise diligence
24 in getting this case ready for trial. It is the Defence's
25 prerogative to investigate how much it wishes. But the transfer of

1 the case record to the Trial Panel cannot be conditioned on the basis
2 of investigations that the Defence could do and chose not to do.
3 There are also some things that have been inconsistent in the Defence
4 submissions in the past on this point. I direct Your Honour to pages
5 971 to 972 of the transcript, specifically as to the Thaci Defence's
6 previous submissions. And there are some things that were said just
7 now that are actually disguised reconsideration requests of
8 Your Honour's past rulings.

9 The redactions in the indictment, the pre-trial brief, and to
10 witness statements, the non-standard redactions have been judicially
11 authorised and they are applied on these documents. So the Defence
12 saying that they need this information in order to investigate is
13 kind of creating a loop where they are not ever going to investigate
14 until these procedural conditions are met and they won't be met until
15 30 days before trial, 30 days before testimony. Your Honour has set
16 the schedule for individual witnesses.

17 As to witness order, the order of SPO witnesses is heavily
18 dependent on when the trial commences, the Trial Panel's sitting
19 schedule, and the availability of witnesses at the scheduled time.
20 We would ask that that matter be deferred to the Trial Panel for it
21 to determine how and when to convey the order of witnesses.

22 But as I said, the main point I wanted to address here is on the
23 scope of the case. Your Honour, the indictment in this case was
24 confirmed. The SPO is entitled to a fair opportunity to present that
25 case. This opportunity is connected to proposed exhibits, to

1 examination hours, and to disclosure of evidence. The pattern of
2 criminal conduct exposed by the full array of charged crime sites is
3 particularly important in this case, noting, for instance, that the
4 ICTY Prosecution was found to have failed to establish a widespread
5 or systematic attack against the civilian population in the Limaj et
6 al. and Haradinaj et al. cases. And specifically, that is
7 paragraph 228 of the Limaj et al. trial judgement, and paragraph 122
8 of the Haradinaj et al. trial judgement, the first one, 3 April 2008.

9 The numbers, the statistics that the Veseli Defence presented to
10 Your Honour, both now and in their written submissions, on the
11 unprecedented nature of the SPO's case, they do not allow for a
12 meaningful comparison. The presentation of the statistics in this
13 manner, it is not only not meaningful, it is actually misleading.
14 And I can give you two reasons why.

15 First, as noted by the Veseli Defence itself in its written
16 submissions, these numbers in this annex that they have filed are for
17 admitted exhibits and they're not for items on the original list.
18 The current SPO list of exhibits reflects what could be admitted at
19 trial. But it can be anticipated that, like in all proceedings, the
20 actual number may end up being significantly less. As an example,
21 the Karadzic case referenced in the table, the over 6.600 items that
22 were admitted into evidence in that case. In contrast, the ICTY
23 Prosecution's list of evidence ended up exceeding over 23.000 items
24 as that trial went along.

25 The second point to mention is that the SPO sets out its

1 exhibits in a more long-form style than those of the ICTY or other
2 international Tribunals. Just as another example, one interview the
3 SPO has put on its list of exhibits is an interview with Witness
4 W00344, but it is not one item in our list. It is actually a
5 five-part interview with five PDFs and then it has five Albanian
6 translations and five Serbian translations attached to it.

7 So actually items 16 to 30 on our list of exhibits are just the
8 interview with this one witness.

9 The way in which an exhibit is counted has a dramatic effect on
10 the numbers Veseli Defence relies upon. This case, it is undoubtedly
11 big, but allegations that the case is unprecedented reflect more of
12 selective number-crunching than the actual scope of the case.

13 And notwithstanding all that, the SPO is mindful that
14 examination hours cannot simply be unlimited and we are not resolute
15 in this regard, and that we wanted to address under the streamlining
16 agenda item.

17 Thank you.

18 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

19 Mr. Kehoe, briefly, please.

20 MR. KEHOE: Just briefly, Your Honour. I'll just say one thing
21 briefly and then Mr. Misetic.

22 I think that counsel is completely missing the point. The point
23 is that the Defence has been significantly handcuffed in finding out
24 much of this information because of what the SPO did. They've put on
25 their list 360-plus witnesses for 1.863 hours. That is years in the

1 Prosecution case. Is there another case that has come up that is
2 anywhere remotely close to the hours advanced by the Prosecution? Of
3 course not. So the position that is taken by the SPO that this is
4 just another run-of-the mill case is absurd. Of course this is an
5 immense case -- if they want to cut this down, if they want to cut
6 this case down, give us a realistic list of witnesses. Because we
7 have talked to some of the witnesses on the list. They don't even
8 know they're witnesses on the list. Put aside the fact that they
9 never got consent for Rule 80 measures. They don't even know that
10 they are witnesses.

11 Get rid of those witnesses. The Prosecution is not going to
12 call them. They put this witness list together to try to lock us out
13 from them.

14 We are not saying that all the Ts and the Is have to be dotted
15 in the Defence investigation by the time this case starts. We have
16 never advanced that position. But we are working diligently with
17 significantly redacted information with a third of their witnesses
18 that we don't even know who they are. And that has always been our
19 position. If we want this to move more quickly, take all these
20 redactions out. How about give us a copy of the indictment, just to
21 Defence counsel --

22 JUDGE GUILLOU: Mr. Kehoe, all these redactions have been
23 judicially authorised --

24 MR. KEHOE: I understand, Judge.

25 JUDGE GUILLOU: -- and all my decisions can be appealed.

1 MR. KEHOE: Understood, Judge. But we are talking about some
2 kind of argument coming from Prosecution that we have not been
3 hampered by these restrictions.

4 Let me just turn it briefly to Mr. Misetic.

5 JUDGE GUILLOU: Mr. Misetic, please.

6 MR. MISETIC: Thank you, Your Honour. Just briefly to address
7 the point that we were somehow inconsistent in our position. I think
8 we are talking about the argument in the context of the protocol, and
9 there's been a misrepresentation of what our argument is. Our
10 argument isn't that we started our investigation in November and
11 December of 2020. It's that the Prosecution disclosed their
12 witnesses to us in November and December of 2020. And yet allowed us
13 or felt comfortable enough with us conducting an investigation,
14 including contacting their witnesses, until they filed the
15 application in December of 2020. That's was the only point we were
16 making. We did not say we started investigations back then.

17 And I would just say that this is really a matter of evidence.
18 They're in contact with the witnesses. If they come into information
19 that we were interviewing witnesses prior to the time that we said we
20 were, it is a simple matter of evidence and they can come forward
21 with the witness's evidence to confirm that we somehow misrepresented
22 something to the Court.

23 Thank you.

24 JUDGE GUILLOU: Thank you, Mr. Misetic.

25 Let me now move to the last topic on the agenda which is related

1 to efficiency and expeditiousness of the proceedings. And I note
2 that we've actually already started discussing on this point because,
3 Mr. Strong, you already presented orally what you indicated in your
4 written submissions which are concrete proposals to stream-line the
5 case.

6 In the Scheduling Order, I asked the parties, and this followed
7 what Mr. Emmerson said during the last Status Conference, whether
8 they would be in a position to conduct *inter partes* discussions
9 and/or file written proposals to stream-line trial proceedings that
10 will be included in the hand-over document provided for in Rule 98(e)
11 of the rules by the 12th Status Conference. I gave a couple of
12 examples of the measures that could be discussed. Notably,
13 time-limits for the presentation of the parties' cases and/or for the
14 questioning of witnesses, limitations on the number of witnesses or
15 the use of written evidence and bar table motions.

16 I will not recall what was in the Veseli submissions because,
17 Mr. Strong, you recalled them already. But I do not invite the
18 parties to discuss about the substance of these proposals now, but I
19 would like the parties first if they agree to conduct *inter partes*
20 discussions on this topic during the following weeks, and/or if they
21 can provide submissions on this topic before the next Status
22 Conference.

23 Mr. Prosecutor, please.

24 MR. HALLING: Thank you, Your Honour. The SPO remains open to
25 discussing any matter which will potentially stream-line the

1 proceedings and we're happy to do that on an *inter partes* basis.

2 I'll give a little bit more information even now as to what kind
3 of proposals that we have in mind. Because, in our submission, there
4 is really two principals paths to streamlining the proceedings.
5 There can be a reduction of number of issues in dispute and the SPO
6 can reduce the hours -- its hours estimates.

7 As to reducing the number of issues in dispute, no meaningful
8 progress has been made thus far. The SPO proposed 387 agreed facts
9 in March 2021. It received little substantive engagement until only
10 February 2022, and that engagement was primarily by way of
11 superficial queries for additional information on certain proposed
12 facts, what dates was this, who are these people, rather than any
13 affirmative proposal from the Defence as to what the dates could be,
14 et cetera.

15 JUDGE GUILLOU: Mr. Prosecutor, when the Defence hasn't received
16 all disclosure, it is also difficult for the Defence to agree on
17 facts. So once you will be done with disclosure, I will hear you
18 with great interest. But for now, I think it is quite difficult for
19 the Defence to conclude these discussions.

20 MR. HALLING: Absolutely. And to add to that, Your Honour, I
21 would also say the Defence don't actually have to agree to anything
22 in this case even once this information is provided. They don't need
23 to agree about the founding of the KLA before the charged time-frame
24 or any detail about the LDK, the date of its establishment, or Kadri
25 Veseli's birthday. Incidentally, these are all unagreed proposed

1 agreed facts.

2 But the Defence's current position, where it currently stands
3 does put a limit on how much stream-lining is possible. It would be
4 of great assistance if the Defence could, in a consolidated way,
5 before the next Status Conference, propose a consolidated list of
6 what relevant points of fact in law they are comfortable with
7 proposing, and whether they have any objections to the admissibility
8 of evidence that's currently on the list of exhibits.

9 And that last indication would inform a bar table motion that
10 the SPO would intend to file before the Trial Panel.

11 As to reducing the SPO's hours estimates, the SPO has undertaken
12 an internal initiative to significantly reduce the hours estimates in
13 this case. In particular, we will be reducing questioning time for
14 certain witnesses and will be eliciting more evidence through Rules
15 153 to 155 of the rules. As Your Honour can appreciate, this is an
16 exercise of careful balancing. The SPO is entitled to a reasonable
17 opportunity to prove the case as charged, and this opportunity is
18 informed by provisions like Rule 140(4) of the rules which limits the
19 use of statements of witnesses whom the Defence could not examine in
20 the trial judgement. And there are non-evidential factors as well
21 such as that there are some victims where it's very important to them
22 to actually tell their story directly to the Judges of the
23 Trial Panel. And this is also something we are taking into
24 consideration.

25 But the SPO is committing to shorten its estimated case. Even

1 though such matters will be discussed before the Trial Panel,
2 pursuant to Rule 118(1) of the rules, the SPO is endeavouring to
3 propose what reductions it can while the case is still before
4 Your Honour. We will be able to update the Pre-Trial Judge at the
5 12th Status Conference as to how many hours have been reduced to that
6 point and what the prospects are for further reductions.

7 Thank you.

8 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

9 Mr. Kehoe, please. And, again, no discussion of substance
10 today. It's really the process for longer discussion at the next
11 Status Conference.

12 MR. KEHOE: Yes, Your Honour. We have three rudimentary
13 suggestions. I mean, obviously, as Your Honour knows, three days
14 ago, we received yet another amended list, exhibit list that we now
15 have 16.298 items on the list and the page -- the pages on is 1.290,
16 amended again as of three days ago. So that is the exhibit list that
17 is now before Your Honour. We have 326 witnesses and, of course, we
18 have my favourite document, the 18.063 hours.

19 Clearly the Prosecution can limit this three ways. Let's take
20 the number of witnesses that they're not going to call, because
21 they're not going to call 326. All of those witnesses that we've
22 been talking to that they don't even know they're on a witness list,
23 the Prosecution's not calling them. All the exhibits attendant to
24 the testimony they can knock out. That would knock out the
25 witnesses, that would knock out the hours, and it would knock out the

1 exhibits. That's a first run through the SPO's case. And let's get
2 down to a case that we're actually going to litigate in this
3 court-house and we can begin to have a discussion. The ball is, to
4 use an expression, in their court and they have very, very concrete
5 things they can do to shorten this matter immediately.

6 Thank you, Your Honour.

7 JUDGE GUILLOU: Thank you, Mr. Kehoe.

8 Mr. Emmerson, please.

9 MR. EMMERSON: [Via videolink] I'll stay focused on the
10 procedural aspect, if I may.

11 We're more than happy to engage with the Prosecution as to the
12 process of reduction in the scope of its case, but I wouldn't want to
13 waste too much time on *inter partes* discussions that are unlikely to
14 prove fruitful. So I think the sensible course is we -- we will
15 ascertain what their position is, but we will file written
16 submissions for next Status Conference.

17 Our position - let me make it clear - is that the only way of
18 achieving some discipline in the presentation of the Prosecution case
19 is to do what all other international criminal Tribunals have done,
20 and to say, This is the length of time that the Prosecution has to
21 present its case, and it's for the Prosecution to decide which
22 witnesses it wants to focus on. One of the great disciplines of any
23 time-limit is that -- for trial is that it forces the party to whom
24 it applies to focus their minds. And whereas until now, it is
25 perfectly obvious that the approach of the Prosecution has been to

1 throw everything in the mix including the kitchen sink, that that is
2 not a responsible or even viable way of prosecuting a case.

3 So it is good to hear that there is some willingness to reduce
4 the estimate of hours. But fundamentally, what is going to be needed
5 is a fixed time-limit and leaving the Prosecution, then, to make a
6 decision as to the priorities.

7 Now, we -- if we one looks at -- I think the simplest question
8 -- way of going about it is to say: What does the Pre-Trial Judge or
9 the Trial Chamber consider to be a reasonable length of time for this
10 case to go on, bearing in mind that there are four defendants and,
11 therefore, any estimate attaching to the Prosecution's case needs to
12 be doubled, because there are four accused to answer the case. So --
13 at least doubled. But I'm saying that as a minimum.

14 So if, for example, the judicial officer making that decision,
15 whether it's yourself or the Trial Chamber, comes to the conclusion
16 that, you know, for an allegation like this, two years is how long a
17 trial should maximum go for -- two further years in custody or 18
18 months or whatever figure is chosen, half of that time belongs to the
19 Defence and the other half is the limit of how long the Prosecution
20 has to present its case.

21 It doesn't take me to convince Your Honour, because I think
22 we're probably all familiar with it from years of experience, is that
23 whilst the pips may squeak when you put the pressure on, in terms of
24 time, in end, the case will be much cleaner, much better presented,
25 and much leaner if the discipline is imposed. I mean, I know,

1 speaking as an advocate myself, when there's a time-limit on how long
2 you have to cross-examine a witness, you don't go on for hours and
3 hours, rambling around the houses and boring everybody until you get
4 to your main point. You get to your main point straight away.
5 That's the same approach that needs to -- the Prosecution -- I think
6 we all know that this has been unprofessionally prosecuted and that
7 the material that's been put in includes vast swathes of irrelevant
8 material in support of a case that doesn't have any real allegations
9 against -- in it.

10 But that be as it may, they're bound to squeal if a time-limit
11 is imposed on them. But in the end, they will be grateful for it
12 because it will help to clarify the issues on both sides by having a
13 clearly presented case. At the moment, honestly, from a Defence
14 point of view, reading the pre-trial brief and the evidence and the
15 other material that is coming through, it is befuddling why this case
16 is ever brought to trial.

17 JUDGE GUILLOU: Thank you, Mr. Emmerson.

18 Mr. Young, please.

19 MR. YOUNG: Your Honour, may I just say that we will also engage
20 with the Prosecution. We're always willing to do so.

21 As far as the other points made, I would simply endorse what
22 Mr. Kehoe and Mr. Emmerson said, and I don't think repetition helps.

23 JUDGE GUILLOU: Thank you, Mr. Young.

24 Mr. Ellis, please.

25 MR. ELLIS: Yes, Your Honour. It's very much the same position

1 from us. The record will show that we are always open to *inter*
2 *partes* discussions and this is no exception.

3 JUDGE GUILLOU: Thank you, Mr. Ellis.

4 Mr. Laws, please.

5 MR. LAWS: [Via videolink] Your Honour, thank you. This is a
6 topic in which we do have an interest, and I just wanted to say for
7 the record that we would also be very happy to take part in *inter*
8 *partes* discussions with a view to stream-lining the case.

9 Thank you.

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

11 I thank you the parties and participants for their willingness
12 to start discussions. And I agree with Mr. Emmerson, we -- this
13 shouldn't last for six months. I think that these *inter partes*
14 discussions need to be limited in time, and so I will invite all the
15 parties to finalize their discussion before the next Status
16 Conference.

17 And talking about the next Status Conference --

18 MR. EMMERSON: [Via videolink] Your Honour --

19 JUDGE GUILLOU: Sorry. Mr. Emmerson.

20 MR. EMMERSON: [Via videolink] -- just before you move forward.
21 Could you specify that *inter partes* discussions must be concluded
22 sufficiently far in advance of the next Status Conference for the
23 parties to have time to file written submissions. I think they're
24 almost certainly going to get into a submissions situation.

25 JUDGE GUILLOU: Point taken. I will issue an oral order on this

1 at the end of the Status Conference.

2 For the date of the next Status Conference, I initially intended
3 to schedule the next Status Conference on 16 May, but the date is
4 unfortunately not possible anymore. And so I intend to schedule the
5 next Status Conference on Friday, 20 May 2022, at 14.30, Hague time.
6 So I invite the parties, as usual, to confirm their availability.

7 Madam Prosecutor.

8 MS. LAWSON: Yes, Your Honour, we will be available at the
9 Court's convenience. Thank you.

10 JUDGE GUILLOU: Thank you, Madam Prosecutor.

11 Mr. Kehoe, please.

12 MR. KEHOE: Yes, Your Honour, we will be available. Thank you.

13 JUDGE GUILLOU: Thank you, Mr. Kehoe.

14 Mr. Emmerson, please.

15 MR. EMMERSON: [Via videolink] Yes, that's absolutely fine.

16 JUDGE GUILLOU: Thank you, Mr. Emmerson.

17 Mr. Young, please.

18 MR. YOUNG: We will be there. Thank you.

19 JUDGE GUILLOU: Thank you, Mr. Young.

20 Mr. Ellis, please.

21 MR. ELLIS: Yes, Your Honour, we will be here.

22 JUDGE GUILLOU: Thank you, Mr. Ellis.

23 Mr. Laws, please.

24 MR. LAWS: [Via videolink] Your Honour, yes, we will be there.

25 Thank you.

1 JUDGE GUILLOU: Thank you, Mr. Laws.

2 You will receive a Scheduling Order that will include the agenda
3 before the Status Conference in due course.

4 At this point, I would like to ask the parties or participants
5 whether they have any other issue they would like to raise.

6 Mr. Prosecutor.

7 MR. HALLING: Thank you, Your Honour. The only other issue that
8 we were intending to address was the Thaci Defence's proposed
9 supplemental submission on a witness contact protocol, which is
10 filing F00741. Doing so now would obviate the need for a written
11 response, but we're in Your Honour's hands if you like us to respond
12 now. It was referenced by the Thaci Defence in today's hearing.

13 JUDGE GUILLOU: It depends how -- do you want to take the floor
14 for a couple of minutes or do you need more than that?

15 MR. HALLING: I will say five minutes at the outmost.

16 JUDGE GUILLOU: It is 5.41. We are close to the end of the
17 Status Conference.

18 Mr. Misetic.

19 MR. MISETIC: Sorry. I just wanted to say that you should also
20 factor in that I'm almost certain we will have something to say.

21 JUDGE GUILLOU: You read my mind. That's what I was factoring
22 in.

23 I would rather you made written submissions, Mr. Prosecutor.

24 MR. HALLING: Happy to, Your Honour. That's all we have.

25 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

1 Mr. Kehoe.

2 MR. KEHOE: Just one issue, Your Honour, on the anonymous
3 witnesses that we have. We have any number of anonymous witnesses
4 with protective measures and many of these --

5 JUDGE GUILLOU: Who will not be anonymous until the end of the
6 proceedings because --

7 MR. KEHOE: Well, my point -- I just wanted to --

8 JUDGE GUILLOU: And who have been all authorised by myself,
9 Mr. Kehoe.

10 MR. KEHOE: Yes, Your Honour. No question. But with regard to
11 those witnesses, my understanding from media issues in Kosovo with --
12 many of those people have gone public with their position, and we ask
13 the Chamber to have the SPO review those witnesses. And if the
14 protective measures are no longer necessary, the Rule 80 protective
15 measures, that they be removed and we move accordingly with those
16 witnesses just as any other normal witness as opposed to one with
17 protective measures.

18 JUDGE GUILLOU: Thank you, Mr. Kehoe.

19 Madam Prosecutor, do you want to respond to Mr. Kehoe?

20 MS. LAWSON: Not at length, Your Honour. We obviously keep the
21 individual security situation and the individual circumstances of
22 witnesses under constant review.

23 Thank you.

24 JUDGE GUILLOU: Thank you, Madam Prosecutor.

25 Mr. Emmerson, please.

1 MR. EMMERSON: [Via videolink] Nothing, Your Honour.

2 JUDGE GUILLOU: Thank you, Mr. Emmerson.

3 Mr. Young, please.

4 MR. YOUNG: No, thank you.

5 JUDGE GUILLOU: Thank you, Mr. Young.

6 Mr. Ellis, please.

7 MR. ELLIS: Nothing further. Thank you, Your Honour.

8 JUDGE GUILLOU: Thank you, Mr. Ellis.

9 Mr. Laws, please.

10 MR. LAWS: [Via videolink] Nothing further. Thank you,
11 Your Honour.

12 JUDGE GUILLOU: Thank you, Mr. Laws.

13 Before we conclude today's hearing, I will issue three oral
14 orders. My first oral order concerns the reclassification of filing
15 F744.

16 On 22 March, in a written filing, the SPO requested the
17 reclassification of filing F744 as confidential. The SPO asserts
18 that information which was disclosed to the Defence on a confidential
19 basis should remain confidential, despite the potentially public
20 availability of any such information.

21 The Veseli Defence responds that filing F744 need not be
22 reclassified as confidential as the SPO interviewee is not a
23 protected witness and the SPO's relationship with the relevant
24 authorities is in the public domain.

25 The SPO replies that the Veseli Defence is not justified in

1 sidestepping the applicable legal framework and of its own initiative
2 reclassifying the confidential information contained in F744.

3 In light of the submissions of the parties, I find that, while
4 some general information regarding the matters concerned can be found
5 in the public domain, the details of these matters and/or
6 confirmation thereof remain confidential.

7 Therefore, I order the Registry to reclassify F744 as
8 confidential and file the public redacted version of the filing as
9 soon as possible.

10 This concludes my first oral order.

11 I will now issue my second oral order concerning proposals for
12 streamlining the case.

13 I invite the parties and parties to engage in *inter partes*
14 discussion on ways to streamline the case before 13 May 2022. I
15 order that proposals of the parties be filed by 20 May 2022.

16 Such proposal shall include, but are not limited to, the number
17 of witnesses to be called, the mode of testimony to be employed, the
18 use of written evidence and bar table motions, and time-limits for
19 the presentation of the parties' cases and/or for the questioning of
20 witnesses.

21 This concludes my second oral order.

22 I will now issue a third oral order on the disclosure of
23 Rule 103 material.

24 Mindful that disclosure of Rule 103 material is an ongoing and a
25 continuous process, I nevertheless order the SPO, by 20 May 2022, to

1 complete its review of the 2.500 items remaining to be assigned for
2 exculpatory review and disclose the material found to be exculpatory.

3 This concludes my third oral order.

4 And this concludes today's hearing. As usual, I thank the
5 parties and the participants for their attendance. I thank the
6 interpreters, stenographer, security personnel, and audiovisual
7 technicians for their assistance.

8 The hearing is adjourned.

9 --- Whereupon the hearing adjourned at 5.47 p.m.

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