

1 Friday, 4 November 2022  
2 [Status Conference]  
3 [Open session]  
4 [The accused entered the courtroom via videolink]  
5 --- Upon commencing at 1.30 p.m.

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

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

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

12 JUDGE GUILLOU: Thank you, Madam Court Officer.

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

16 Mr. Prosecutor.

17 MR. HALLING: Good afternoon, Your Honour. Appearing for the  
18 SPO this afternoon are Alan Tieger, Ward Ferdinandusse,  
19 Sarah Clanton, Marlene Yahya Haage, Lea Smailagich-Ilic, and my name  
20 is Matt Halling.

21 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

22 Now I turn to the Defence.

23 Mr. Kehoe, please.

24 MR. KEHOE: Good afternoon, Your Honour. Gregory Kehoe,  
25 Sophie Menegon, and Bonnie Johnston for President Hashim Thaci.

1 JUDGE GUILLOU: Thank you, Mr. Kehoe.

2 Mr. Emmerson, please.

3 MR. EMMERSON: Good afternoon, Your Honour. I appear for  
4 Mr. Veseli, together with my co-counsel Mr. Andrew Strong,  
5 Ms. Annie O'Reilly, and Mr. Hajredin Kuci.

6 JUDGE GUILLOU: Thank you, Mr. Emmerson.

7 Mr. Young, please.

8 MR. YOUNG: Your Honour, good afternoon. I appear for  
9 Mr. Rexhep Selimi today with my co-counsel Mr. Geoffrey Roberts,  
10 Mr. Eric Tully, and Case Manager Nataliia Ryzhenko. And I'm pleased  
11 to welcome our new intern, Mr. Christian Vale who is here today.  
12 Thank you.

13 JUDGE GUILLOU: Thank you, Mr. Young.

14 Ms. Alagendra, please.

15 MS. ALAGENDRA: Good afternoon, Your Honour.  
16 Venkateswari Alagendra for Mr. Jakup Krasniqi. I appear with  
17 co-counsels Aidan Ellis and Victor Baiesu, and together with us today  
18 are Mentor Beqiri and Melissa Gregg, legal associates.

19 JUDGE GUILLOU: Thank you, Ms. Alagendra.

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

23 Now, I turn to the counsel for victims.

24 Mr. Laws, please.

25 MR. LAWS: Good afternoon, Your Honour. I'm Simon Laws

1 appearing for the victims in this case, together with my co-counsel,  
2 Maria Radziejowska.

3 JUDGE GUILLOU: Thank you, Mr. Laws.

4 And, finally, now I turn to the Registry.

5 Mr. Nilsson, please.

6 MR. NILSSON: Good afternoon, Your Honour. Good afternoon,  
7 colleagues. Jonas Nilsson, Head of Judicial Services Division in  
8 Registry, representing Registry today.

9 JUDGE GUILLOU: Thank you, Mr. Nilsson.

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

12 On 17 October 2022, I scheduled this 15th Status Conference. I  
13 asked the parties to provide with written submissions, if they so  
14 wished.

15 On 31 October, the SPO and the four Defence teams submitted  
16 their written observations.

17 The purpose of our hearing today is to review the status of the  
18 case and to discuss the topics in our agenda, specifically:  
19 Disclosure; translations; Defence investigations and next steps; the  
20 SPO's first 40 witnesses; and additional Defence requests filed in  
21 their written submissions.

22 Before I give the floor to the parties to present their views on  
23 each item, I confirm that I intend to transfer the case to a  
24 Trial Panel before the end of the year. I intend to rule on the  
25 pending requests, but I do not intend to rule on the non-urgent

1 requests that the parties would file between now and the transmission  
2 of the case in order not to delay the proceedings.

3 In any case, any pending request at the time of the transfer  
4 will be included in the handover document.

5 Let us now move to the first topic, which is disclosure.

6 Given the written submissions of the Defence, I will give the  
7 floor to the parties on the disclosure of different categories of  
8 remaining evidentiary material separately. First, the Rule 103  
9 material, which was not on the agenda but the Defence has made  
10 submissions on this category of material. Second, the Rule 102(3)  
11 material, which was also not in the agenda but the Defence indicated  
12 that there are a number of materials it requested prior to 20 May  
13 2022 which have not been disclosed by the SPO. And, third, the  
14 Rule 107 material, which is protected material for which the consent  
15 of the provider is requested.

16 Let us start with exculpatory material.

17 In its written submissions, the Defence raised the issue of  
18 ongoing late disclosure of exculpatory materials pursuant to  
19 Rule 103. The Defence notably made reference to two additional  
20 packages disclosed on 1 and 24 October 2022 that contain a  
21 significant number of new exculpatory items.

22 The Defence indicated that the vast majority of the materials  
23 had been in the SPO's collection for a significant amount of time  
24 and, by their own admission, had only recently been reassessed as  
25 falling under Rule 103.

1           The Thaci Defence and the Veseli Defence submit that it is  
2           necessary to make a finding of violation by the SPO of its Rule 103  
3           obligations and to reimpose a deadline for the SPO to finalise the  
4           assessment as exculpatory of any item in their current custody within  
5           one month.

6           The Krasniqi Defence also queried whether further exculpatory  
7           review of the supplemental Rule 102(3) notice is ongoing or will be  
8           conducted once Defence requests are made, as the SPO did in relation  
9           to the original Rule 102(3) notice.

10          I will first invite the Defence to present its views on this  
11          point, and then I will give the floor to the SPO.

12          Mr. Kehoe, please.

13          MR. KEHOE: Yes, Your Honour. Thank you and good afternoon.

14          Obviously the 103 disclosures have been late, continuously,  
15          notwithstanding Your Honour's admonitions on, I do believe, at least  
16          two or three occasions that you had advised that the SPO should turn  
17          this material over immediately and not when they get around to it.  
18          Unfortunately, it appears that they have been involved more in the  
19          latter than the former. And operating immediately, you know, even as  
20          late as October 24th -- excuse me, the disclosures on the 1st and the  
21          24th, you know, we have 99 out of 113 items that fall into the 103  
22          category.

23          I don't know exactly how we fix this, Judge, except for some  
24          type of sanction, because there are any number of items, and we're  
25          still not done with it, that continue to be turned over. And unless

1 the issue is pressed by the Court, by Your Honour, nothing seems to  
2 happen. And we can go through the history of that, but Your Honour  
3 is well aware of the history of that and I don't think we need to  
4 take the Court's time.

5 There are other issues that the Court -- that should be coming  
6 voluntarily from the SPO but nothing in our files reflects -- for  
7 instance, reflects the disclosure of information concerning  
8 witnesses. For instance, the relocation of witnesses.

9 We know that the SPO has been relocating witnesses. We know  
10 that as late as -- back in December 2020 Mr. Smith told diplomats  
11 that there were 37 relocation requests that had been made. How many  
12 more have been made? What other incentives have been given to  
13 witnesses to testify?

14 Now, as an analogy to this, those of us who were in the cases at  
15 the ICC involving the Kenya individuals, we saw dramatic changes in  
16 testimony between statements that were taken before and after they  
17 got their -- were relocated. Dramatically different.

18 So these are all 103 matters that go to the Prosecutor's case.

19 And we again searched this morning, and I discussed this with my  
20 colleagues this morning, and we have received no information on  
21 relocation requests or other incentives given to witnesses. That is  
22 a problem because we know it has been going on, and the Court  
23 shouldn't have to order the SPO to turn that information over. That  
24 information should be turned over.

25 They haven't even acknowledged they were doing it. The only

1 acknowledgement we have is that Mr. Smith made a public statement, or  
2 a statement, to diplomats back in December 2020.

3 The other issue that comes up -- and suffice it to say,  
4 Your Honour knows the back history on what we've done. This is a  
5 relatively new issue. [REDACTED] Pursuant to In-Court Redaction Order  
F1087RED.

6 [REDACTED] Pursuant to In-Court Redaction Order F1087RED.

7 [REDACTED] Pursuant to In-Court Redaction Order F1087RED.

8 [REDACTED] Pursuant to In-Court Redaction Order F1087RED.

9 [REDACTED] Pursuant to In-Court Redaction Order F1087RED.

10 Unfortunately, while we did get some disclosure here, we got  
11 quite a bit of this as well. You know, with -- where information  
12 concerning this person's background and what he was doing and where  
13 he was has been blocked out. Your Honour has seen this -- these  
14 types of disclosures before.

15 This is a very sensitive area. We need to investigate this  
16 matter thoroughly concerning this witness, and we ask for a prompt  
17 disclosure of all additional 103 information. [REDACTED] Pursuant to  
In-Court Redaction Order F1087RED.

18 [REDACTED] Pursuant to In-Court Redaction Order F1087RED.

19 [REDACTED] Pursuant to In-Court Redaction Order F1087RED.

20 [REDACTED] Pursuant to In-Court Redaction Order F1087RED.

21 [REDACTED] Pursuant to In-Court Redaction Order F1087RED.

22 Everything that this witness is saying about what transpired  
23 here is relevant. He's talking about the involvement of the Serb  
24 intelligence service. He's talking about getting individuals lining  
25 up witnesses --

1 MR. HALLING: Your Honour, I'm sorry. If we're going to  
2 continue discussing the contents of this statement, we'd ask it be  
3 done in private session.

4 JUDGE GUILLOU: Mr. Kehoe, I don't think it's necessary to go  
5 into that level of detail for the purpose of the Status Conference  
6 today.

7 MR. KEHOE: That's fine, Judge.

8 And suffice it to say that the SPO knows that there is  
9 additional material regarding this witness that they have refused to  
10 give us, and we would like full disclosure of everything concerning  
11 this matter that has been discussed and given to the SPO. This  
12 disclosure was given to us quite recently. We have been looking  
13 through it and trying to decide what we need. We want to do a  
14 thorough investigation, which is what we wanted to do before we come  
15 to any conclusions about this, but we need all the information from  
16 the SPO.

17 Thank you, Your Honour.

18 JUDGE GUILLOU: Thank you, Mr. Kehoe.

19 Mr. Emmerson, please.

20 MR. EMMERSON: Generally speaking, Ms. O'Reilly will be dealing  
21 with questions of Prosecution disclosure and, indeed, has one  
22 particular document she wanted to draw to Your Honour's attention.

23 But may I just touch upon the issue that's been raised by  
24 Mr. Kehoe just a moment ago. And as I do so, I will speak slowly and  
25 carefully in case anybody wants to suggest that I should move into

1 private session. I shan't be going into a great deal of detail. But  
2 if anybody has an issue to raise, I'll ensure that they have the  
3 opportunity to do that.

4 As regards the witness who has a numerical cypher, the issue  
5 extends not just to that witness but to what that witness says about  
6 another individual who is not the subject of a cypher or otherwise  
7 have been the result or given protective measures, *[REDACTED] Pursuant  
to In-Court Redaction Order F1087RED.*

8 *[REDACTED] Pursuant to In-Court Redaction Order F1087RED.*

9 *[REDACTED] Pursuant to In-Court Redaction Order F1087RED.*

10 *[REDACTED] Pursuant to In-Court Redaction Order F1087RED.*

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16 *[REDACTED] Pursuant to In-Court Redaction Order F1087RED.*

17 *[REDACTED] Pursuant to In-Court Redaction Order F1087RED.*

18 MR. FERDINANDUSSE: Your Honour.

19 JUDGE GUILLOU: Mr. Ferdinandusse.

20 MR. FERDINANDUSSE: I apologise. But it seems the Defence is  
21 here turning the world on its head. It's not for the Defence to  
22 throw out whatever in open session they think they want to, and it  
23 would be for the SPO to object. It is for the Defence to respect the  
24 rules on this issue, and I think --

25 MR. EMMERSON: Have I breached them so far, in your view? In

1 the Prosecution's view, have they be breached? Are you saying I've  
2 breached them?

3 MR. FERDINANDUSSE: I think this needs to go to private session,  
4 indeed.

5 JUDGE GUILLOU: Mr. Emmerson --

6 MR. EMMERSON: I'm happy to go into private session. There is  
7 one point I need to make.

8 JUDGE GUILLOU: Then we'll go into private session as a matter  
9 of precaution.

10 Madam Court Officer, can we go in private session, please.

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5 [Open session]

6 THE COURT OFFICER: Your Honour, we are now back in public  
7 session.

8 JUDGE GUILLOU: Thank you, Madam Court Officer.

9 Mr. Emmerson, please.

10 MR. EMMERSON: Your Honour, in light of the matters that have  
11 been discussed in closed session, may I indicate, formally on the  
12 record, that I'm making the following applications. Of course, they  
13 will be followed, where appropriate, with written applications.

14 The first, it can be dealt with as an oral order, I think, which  
15 is that Your Honour can, or should, rather, adjourn further  
16 consideration of the Rule 103 material relating to Serbian  
17 intelligence fabrication until you have received full briefings both  
18 from the Defence and the Prosecution explaining what, on the face of  
19 it, are an inexplicable course of events in relation to the matters  
20 raised in private session.

21 That will obviously encompass a -- Serbian intelligence. We  
22 will amend it for reasons I've touched on, to encompass Russian  
23 intelligence as well.

24 Secondly, we will ask for an order that Your Honour review  
25 provisional release decisions in all cases, certainly in Mr. Veseli's

1 case, in the light of certain evidence referred to in closed  
2 session - [REDACTED] Pursuant to In-Court Redaction Order F1087RED.  
3 [REDACTED] Pursuant to In-Court Redaction Order F1087RED.  
4 [REDACTED] Pursuant to In-Court Redaction Order F1087RED.  
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23 [REDACTED] Pursuant to In-Court Redaction Order F1087RED.

24 MR. FERDINANDUSSE: Your Honour.

25 JUDGE GUILLOU: Mr. Ferdinandusse.

1 MR. FERDINANDUSSE: It seems to me that the Veseli Defence is  
2 now just trying to draw out in public session with no good cause part  
3 of what we've been discussing in private session, because I don't  
4 take it we're now taking oral requests for disclosure at a Status  
5 Conference. I thought we were going to discuss the items on the  
6 agenda.

7 MR. EMMERSON: Thank you very much.

8 JUDGE GUILLOU: Mr. Emmerson, I think that you can conclude your  
9 submissions.

10 MR. EMMERSON: Absolutely. I think I have concluded them, in  
11 fact, before that interruption.

12 So, yes, those are the -- but the reason I'm raising it in this  
13 way at this stage is because it affects not just the 103 issue but a  
14 number of other issues which we had planned to raise as additional  
15 matters at the end of the case. But obviously it will require an  
16 oral order, or at least it can certainly be dealt with by way of an  
17 oral order, to suspend the continuation of the 103 analysis until  
18 these pleadings have been exchanged, as well as a procedure for a  
19 review of provisional release, which is due next week, which you  
20 cannot conduct until the Prosecution has given you the identities of  
21 all of the witnesses that emanate from the tainted source, Imeri.

22 So those are the issues of why it needs to be dealt with in the  
23 course of the orders made arising out of this session.

24 JUDGE GUILLOU: Thank you, Mr. Emmerson.

25 Just regarding your request to postpone the detention review. I

1 would need a very short filing from yourself with a waiver from your  
2 client, because the law mandates a review every two months, and I  
3 will only postpone my review if there is a written agreement of your  
4 client.

5 So just formally, I need a short filing with a waiver by your  
6 client.

7 MR. EMMERSON: Yes, and we're clearly not waiving it for two  
8 months. We're waiving it until Your Honour has had disclosure from  
9 the Prosecution. To the extent [Overlapping speakers] ...

10 JUDGE GUILLOU: [Overlapping speakers] Absolutely. Two months,  
11 I meant every two months. Not for [Overlapping speakers] ...

12 MR. EMMERSON: Yes, exactly.

13 JUDGE GUILLOU: I need the waiver with the specific timing for  
14 the proceedings to be on the record.

15 MR. EMMERSON: Thank you.

16 JUDGE GUILLOU: Thank you, Mr. Emmerson.

17 Mr. Young, please.

18 MR. YOUNG: Your Honour, very briefly.

19 In relation to the point that Your Honour made about 103 and the  
20 fact that some of the co-accused had made an application or a  
21 submission for a finding of violation of 103 material, we,  
22 respectfully, support that.

23 And, Your Honour, the reality is this. It's important that  
24 violations, breaches of 103 are formally recognised, with respect, by  
25 the Court. It's important that there is a judicial recognition of

1 these violations, especially, for example, to counter the argument  
2 that we get from time to time by those across the court, which is  
3 that their conduct is one of due diligence and that their conduct is  
4 diligent. And the reality is the indictment, as it were, in terms  
5 allegations of breaches of 103, is piling up. There are already  
6 references not just orally today but in the submissions that were  
7 made to Your Honour for this very hearing.

8 So we do say the Court cannot, with respect, remain silent. The  
9 Court has to make a judicial decision to mark these violations which  
10 are very serious because, as you know, of all the disclosure  
11 provisions, Rule 103 is probably the most important to the Defence  
12 because it goes to the guilt or innocence of an accused. It's  
13 exculpatory.

14 And so for these reasons, we do ask Your Honour to formally make  
15 findings, and we do support what Mr. Emmerson says, submits, that  
16 these issues may well go to what we suggest should be the case; in  
17 other words, a review of provisional release provisions, because it  
18 goes to the diligence of the Prosecution.

19 Thank you.

20 JUDGE GUILLOU: Thank you, Mr. Young.

21 Mr. Ellis, please.

22 MR. ELLIS: Thank you, Your Honour.

23 We support the submissions that have been made seeking a finding  
24 of breach of disclosure obligations for the reasons in the written  
25 filings. We also very strongly support the applications made orally

1 today for full disclosure of all matters that were addressed in  
2 closed session earlier.

3 It's such a serious matter that nothing less than full  
4 disclosure at this point could possibly suffice.

5 JUDGE GUILLOU: Thank you, Mr. Ellis.

6 Ms. O'Reilly, please.

7 MS. O'REILLY: I'll be very quick, Your Honour.

8 I just wanted to go back to this general issue of the disclosure  
9 batches that came late, the ones that were referenced in our  
10 submissions and those of Thaci's.

11 That contained various materials, including, mainly interviews  
12 that the SPO had carried out with international witnesses, so two  
13 OSCE witnesses, a KFOR witness, and one of their own witnesses, and  
14 I'm highlighting that because we previously pointed out the  
15 difference between those interviews in which the SPO was there, were  
16 aware of the 103 information as it was coming out, as opposed to 103  
17 information emanating, for instance, from EULEX proceedings.

18 There is a great deal of the former type of information in those  
19 two batches.

20 Now, you'll recall at the last Status Conference I mentioned  
21 that in September 2021 the SPO had said they were reviewing the  
22 102(3) index to make sure that they had removed all the 103 material  
23 from that and disclosed it to us.

24 Now, the vast majority of the items that were the subject of  
25 their most recent requests for protective measures for 103, I realise

1 this is a little bit complicated, but 121 items of the 136 items in  
2 F1055, those were from the 102(3) index. So what we are continuing  
3 to see is obvious Rule 103 information generated from interviews that  
4 the SPO carried out that should have been disclosed long ago but just  
5 remained on the 102(3) index.

6 Now, you'll also recall that there is a small amount of  
7 information that none of us have requested from the 102(3) index.  
8 Not very much, it has to be said, but there is some information there  
9 that has not been requested and, therefore, we have reason to believe  
10 has not been reviewed for 103 information.

11 Given how many 103 documents have come off that 102(3) list, I  
12 would simply ask you to order the SPO to review all items that we  
13 have not requested and disclose any 103 items to us.

14 Thank you, Your Honour.

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

16 Mr. Prosecutor, on the different points that have been raised by  
17 the Defence teams, especially this last point about the Rule 102(3)  
18 material that has not been requested by the Defence, and the request  
19 to get an extra review of this material.

20 You have the floor.

21 MR. HALLING: Your Honour, first of all, and I think it's clear  
22 from our disclosure procedure as to the last request, we have already  
23 reviewed this material for Rule 103. There is very little material  
24 left on the original relevance list that hasn't also been re-reviewed  
25 in the context of the 102(3) review.

1           We are not going to just start blindly reviewing items in order  
2 to see if there is Rule 102(3) content. If we get specific items  
3 selected from the list, following our normal procedure, we will  
4 re-review them. But we don't see any reason why we need to revisit  
5 this group of items that the Defence didn't even seem to want, off of  
6 the descriptions, as a judicially ordered thing.

7           On the broader issue that has been presented in the hearing  
8 today, in the SPO's submission, this is another attempt by the  
9 Defence to hijack the agenda of this Court and to make this about  
10 something other than what it is. We had a Daan Everts discussion in  
11 one of these hearings, and it had a lot of similar characteristics to  
12 it, and it ended up in a place where it was wildly overstated what  
13 the Defence was saying. This is going to end in that same place, and  
14 we need to see the application of the Defence to understand exactly  
15 what pieces of it they want.

16           And I'll leave it at that for now, and we'll respond when that  
17 application is filed.

18           JUDGE GUILLOU: Thank you, Mr. Prosecutor.

19           Mr. Kehoe, very briefly.

20           MR. KEHOE: Your Honour, I just have to --

21           JUDGE GUILLOU: We have many other points on our agenda today,  
22 and it's already one hour --

23           MR. KEHOE: [Overlapping speakers] ... very briefly, Your  
24 Honour. I just have to comment on that speech, this argument that  
25 was just made by counsel, about they're not supposed to go through

1 these documents to determine if there is 102(3) material. Yes, they  
2 are. The rule is very specific. Your Honour's rules have been very  
3 specific: If the information affects the credibility or reliability  
4 of the Prosecutor's evidence, that is 103 material.

5 So counsel's recitation of the law as to what their requirements  
6 are clearly - clearly - highlights the problem within the SPO and the  
7 review of these documents. They should be reminded to look back at  
8 103 as to what their obligation is. And, yes, they are supposed to  
9 go back through evidence and items and information in their  
10 possession - on their own, without Your Honour's order or prompting -  
11 and disclose Rule 103 material immediately, as Your Honour has noted  
12 on numerous occasions.

13 Thank you.

14 MR. EMMERSON: I don't --

15 JUDGE GUILLOU: Mr. Emmerson.

16 MR. EMMERSON: -- want to try Your Honour's patience at all, but  
17 I just want to comment on the second part of that response, which is  
18 the suggestion that the Prosecution don't know what it is they're  
19 being asked to give information about.

20 That is a misleading statement. We have just come out of  
21 private session in which I pointedly gave the opportunity to the  
22 Prosecution, including Mr. Tieger, three times, the opportunity to  
23 give the factual explanation that they already know, and they have -  
24 every time - chosen to try to avoid the question with specious  
25 arguments of various different kinds.

1           It's completely wrong to come out into open session and pretend  
2 something different happened.

3           JUDGE GUILLOU: Thank you, Mr. Emmerson.

4           We will now move to the next item within the disclosure item of  
5 the agenda, which is the Rule 102(3) material. And, again, it wasn't  
6 in the initial agenda, but it's been raised by the Defence in its  
7 written submissions; hence, the discussion about this today.

8           In its written submissions, the Thaci Defence indicated that  
9 there are a number of materials it requested prior to 20 May 2022  
10 which have not been disclosed by the SPO.

11           The Veseli Defence also indicated that it appears that there may  
12 be as many as 2.000 items yet to be disclosed.

13           According to the Krasniqi Defence, the SPO failed to disclose as  
14 many as 1.162 items to the Defence before the deadline of  
15 30 September.

16           The Defence also indicated that the way in which disclosure has  
17 been conducted makes it extremely cumbersome for the Defence to  
18 review them. As a result, the Krasniqi Defence indicated that it is  
19 not currently able to confirm that the SPO has disclosed, challenged  
20 materiality, or sought protective measures in relation to all  
21 requests from the original Rule 102(3) notice.

22           I invite the Defence to indicate if it has raised this  
23 *inter partes* with the SPO and what document it concerns.

24           The Selimi Defence also indicated that it has requested  
25 disclosure of all 8.711 items from the SPO's supplementary

1 Rule 102(3) list and requested that I set a deadline for disclosure  
2 of these documents.

3 The Krasniqi Defence also proposes a calendar related to the  
4 supplementary Rule 102(3) notice. It proposes an initial deadline of  
5 4 December 2022 for Defence requests for material from the  
6 supplemental Rule 102(3) notice, with the SPO to provide disclosure,  
7 request protective measures, and/or challenge materiality by  
8 4 January 2023.

9 I invite the parties to provide submissions on the latest  
10 disclosure of Rule 102(3) material, material that was requested after  
11 20 May and therefore not subject to the 30 September deadline, and on  
12 the proposed calendar proposal for the material from the SPO's  
13 supplementary Rule 102(3) list.

14 And we will start with the Defence.

15 Mr. Kehoe, please.

16 MR. KEHOE: Suffice to say, Your Honour, that this is another  
17 issue that has been extant and going on for any number of our  
18 conferences with Your Honour, and it still has not been  
19 satisfactorily complied with by the SPO.

20 And part of that reason is the fashion in which the information  
21 is being disclosed. We ask for information as they disclose it, and  
22 we ask for additional information. For some reason, that is  
23 inexplicable to me, and to the staff, I might say, that the  
24 information comes back with new item numbers, new ERN numbers, items  
25 being split into multiple parts. The disclosure on this score is

1 very confusing, to say the least.

2 We made a request for 6.000 items, as Your Honour knows, and we  
3 do believe we've gotten approximately 3.000, and we are attempting -  
4 diligently, and I can attest that the colleagues that are in the  
5 office today have been attempting - to find out exactly what the SPO  
6 has complied with and what they have not complied with and that that  
7 is not easy.

8 Today, when we were talking about this this morning, my  
9 colleague, Ms. Menegon sent an e-mail to -- or Ms. Johnston sent an  
10 e-mail to the SPO asking for any additional information on this  
11 score.

12 We're just trying to get the information. We're not trying to  
13 get into a long protracted argument about it. We just want the  
14 information.

15 Obviously their most recent disclosure, Your Honour wanted to  
16 know exactly where we were with the supplemental 103 disclosure that  
17 was made by the SPO, and we have requested an additional 6.000 items  
18 from that.

19 So suffice it to say, and I'm sure that this is a common refrain  
20 that you will get from our co-accused in this matter, that keeping  
21 track of exactly what we're getting and how we're getting it, in what  
22 form is difficult, and certainly there has been, as Your Honour knows  
23 from this many, many times it being brought up, Your Honour knows  
24 that there are delays that have been extraordinary over the months  
25 that we've been talking about this.

1 Thank you.

2 JUDGE GUILLOU: Thank you, Mr. Kehoe.

3 Ms. O'Reilly, please.

4 MS. O'REILLY: Your Honour, as regards *inter partes* discussions,  
5 we have been in contact with the SPO about these 2.000 items that we  
6 can't track down. Yesterday after we sent them a reminder, we were  
7 able to get some corrected information. So that number has come down  
8 to 790 items that we can't locate right now. We're still waiting on  
9 further corrected information from them. Once we have that, we're  
10 hopeful that it will come down further.

11 As regards the most recent 102(3) notice. Like the Selimi  
12 Defence, we've also requested everything. I think we can all agree  
13 that the 102(3) process that we followed last time wasn't great, and  
14 this seems to be a more efficient way of managing the process. So  
15 we've requested everything. And given that it's a much smaller  
16 amount than the original batch, it seems reasonable that they could  
17 disclose it by five to six weeks from now. But, of course, we'll  
18 have to hear submissions from the SPO on what's feasible.

19 Thank you, Your Honour.

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

21 Mr. Young, please.

22 MR. YOUNG: Yes, very briefly.

23 Your Honour correctly summarised the situation that we asked for  
24 a deadline in relation to these materials from the 102(3)  
25 supplementary list. And the reason we ask, or to add a bit of

1 context, simply because, and I am sure this is what Your Honour  
2 intends, we want to have these matters fully resolved before any  
3 transfer to the Trial Panel.

4 Thank you.

5 JUDGE GUILLOU: Thank you, Mr. Young.

6 Mr. Ellis, please. And just before you take the floor, I note  
7 that all the other Defence teams have made their requests for the  
8 102(3) supplemental notice, because in your submissions you ask for  
9 some time for your Defence team to request these documents. If you  
10 can indicate how much time you need, because all the Defence teams  
11 already have made their request regarding this supplemental notice.  
12 Sorry to interrupt.

13 MR. ELLIS: Let me tackle that straightaway, Your Honour.

14 The position, as we see it, is we've received this supplemental  
15 notice with, I think, 8.700-odd items on it. And what we want in  
16 common, I think, with all Defence teams is to find a procedure to  
17 manage that, ideally, as much as possible, before this gets to the  
18 Trial Panel, so that the new Trial Panel are not immediately greeted  
19 with what could be hundreds of protective measure requests or  
20 materiality challenges.

21 There are two ways to do that, Your Honour. One is that we  
22 could simply ask for everything on the list. I know that's what some  
23 of our colleagues have done. We appreciate that that approach did  
24 not find favour with the Court at the eighth Status Conference,  
25 almost a year ago, in relation to the original 102(3) notice.

1           The supplemental notice is, of course, much shorter, at 8.700  
2 items. We've also had the experience of a year's proceedings  
3 pre-trial going through the original 102(3) notice, and that was  
4 certainly a large part of the delay that we've all experienced.

5           So we would join a request for everything on the list, if the  
6 Court is content to proceed in that way -- everything on the  
7 supplemental list, if the Court is content to proceed in that way.  
8 If not, Your Honour, we would need to review the list item by item  
9 and make our requests.

10           We have, in fact, started that process, and we've made good  
11 progress. I asked for a month in the written submissions. I don't  
12 think we would need that long to go item by item. But it's still  
13 8.000 items, Your Honour. It would still take some time.

14           Given the size of the list, we envisage making one substantial  
15 request rather than doing it on a rolling basis. We can do that for  
16 8.000 items. We couldn't for 69.000 items. And so that's why,  
17 Your Honour, we would seek deadlines today so that we can manage what  
18 remains of this pre-trial process.

19           In relation to the original notice, Your Honour, we are still  
20 working through comparing the spreadsheets of what we've received  
21 with what we requested. If we identify issues, we will raise them  
22 *inter partes*, Your Honour.

23           JUDGE GUILLOU: Thank you, Mr. Ellis.

24           Mr. Prosecutor, please.

25           Unless, Mr. Kehoe, you want to supplemental your initial

1 submissions.

2 MR. KEHOE: Just -- my apologies, Judge. One supplement.

3 We, of course, support the application for a deadline as well.

4 Thank you.

5 JUDGE GUILLOU: Thank you, Mr. Kehoe.

6 Mr. Prosecutor, please.

7 MR. HALLING: Yes, the way I understand it, Your Honour, there's  
8 three parts that we're going to respond to.

9 The first part is actually quite straightforward. The items  
10 that were requested off the original Rule 102(3) notice that are not  
11 covered by the 20 May deadline are going to be disclosed in the next  
12 two weeks. They're in an advanced stage of processing.

13 So the other two items would then be the items that are alleged  
14 to be missing from the 30 September deadline and then the updated  
15 Rule 102(3) notice.

16 For the first point, we did a thorough check of all Rule 102(3)  
17 requests to confirm our compliance with the 30 September deadline.  
18 The results of that check are reflected in our 13 October 2022  
19 notification.

20 If the Defence considers that there are outstanding items, they  
21 have to first compare the missing items against the Excels that we  
22 sent on their request setting out how each item in each Rule 102(3)  
23 request was resolved. Once this is done, we would say that the next  
24 step should be for the Defence to come to us *inter partes* with any  
25 outstanding questions they have about allegedly missing items so that

1 we can look into the discrepancy.

2 The submissions made today overstate how much *inter partes*  
3 correspondence there has been on this. We've received very limited  
4 information from the Defence to date. Before today, we had only  
5 gotten information about eight specific ERNs identified by all four  
6 Defence teams. There are six identified by the Krasniqi Defence in  
7 their written Status Conference submissions, and I'm glad that it had  
8 a bigger effect than just the two items that they mentioned. But the  
9 Veseli Defence only gave two ERNs in their e-mail to us that  
10 referencing earlier.

11 We've checked these eight. Of the eight, three of them had  
12 their resolution clearly provided in the Excels. Three of them  
13 aren't disclosed under Rule 102(3) because they were actually  
14 disclosed under other rules, such that just typing the ERN into Legal  
15 Workflow would have resolved the question, and the other two are  
16 actually typos. One in an ERN, it was a typo on our part, but we  
17 disclosed the corrected one in time. The other was a typo in one of  
18 the Excels, and it was an item that was also correctly disclosed in  
19 time.

20 The Thaci Defence mentioned they sent another e-mail. They sent  
21 that just over an hour before the Status Conference. It had 16 items  
22 in an Excel. We've had time to check all of them. All 16 have their  
23 resolution clearly in the Excels provided to the Defence on  
24 14 October.

25 We appreciate that the Veseli Defence sent another e-mail to us.

1 They sent it very shortly before the Status Conference, and we need  
2 to evaluate that.

3 But we would ask that this be done for these items before any  
4 action is necessary to be taken by Your Honour.

5 As for the updated Rule 102(3) notice, this was filed on  
6 7 October 2022. No Defence team selected any items off of that  
7 notice until Monday, the day that their written Status Conference  
8 submissions were due, and then the Selimi Defence, indeed, asked for  
9 every single item off the notice. The Veseli Defence has done the  
10 same since. There's been a request from the Thaci Defence as well.

11 At this point, the SPO considers that there's really no reason  
12 for differentiating anymore between the Defence teams, when there are  
13 already two teams that have requested every item off the updated  
14 notice. The SPO is simply just going to review and process these  
15 items for all the Defence teams so there's no selection date  
16 necessary, in our submission.

17 As for a disclosure of protective measures deadline. The SPO's  
18 already working on the first disclosures following the selection of  
19 items from the Defence this week. We expect to disclose thousands of  
20 items in the next few weeks and will continue to do so on a rolling  
21 basis.

22 It's unreasonable for the Defence to wait nearly a month to  
23 select any items and then to seek to impose a deadline on the SPO  
24 that would necessitate its staff working through the winter recess to  
25 meet. We're expecting to be in a position to finish the disclosures

1 off this list by 31 January, regardless of whether any deadline is  
2 set.

3 So given the envisaged timing of when the case record is to be  
4 transferred, it is suggested that the Trial Panel be the one to  
5 decide whether there needs to be a deadline for disclosure of items  
6 off this notice.

7 Thank you.

8 JUDGE GUILLOU: Thank you, Mr. Halling.

9 Mr. Kehoe, please. Briefly.

10 MR. KEHOE: I smile, Judge, because counsel just said that they  
11 will be finished disclosing this on 31 January. Correct me if I'm  
12 wrong, Judge, but didn't they say they were going to be ready for  
13 trial in January? I think that in their disclosure they said they  
14 didn't object to the transfer of the Panel, and they will be ready  
15 for trial in January.

16 And now we're talking about having a disclosure on 31 January.  
17 I mean, please. I mean, we can't make those arguments. You can't  
18 come in here and tell Your Honour that they've complied with  
19 everything to the tee every time they came down the line. You had a  
20 September 30th deadline that Your Honour gave them, which how many  
21 times did that change? They filed a pleading on the 3rd saying, "Oh,  
22 we fulfilled all our obligations." And then they filed another one  
23 on the 13th saying, "Ah, well, you know, we really didn't. We made a  
24 mistake and we have some more stuff that should have been filed  
25 then."

1           So, please. I mean, this whole attitude that they have been  
2           complying with the 102(3) obligations to a tee throughout all of this  
3           is just not accurate, and I think Your Honour is fully aware of that.

4           You know, we're in favour of a deadline. Why? Because our  
5           clients want to get to trial. I know the Court wants to get this to  
6           trial. If we wait for heaven knows how long to get this, this trial  
7           will continue to be kicked back which is in nobody's interest.

8           So you can't come in and say I'm ready for trial in January, and  
9           then say our Rule 102(3) disclosures are going to be done the 31st  
10          January, which is essentially 1st February. I'm not the brightest  
11          person in the world but those dates simply don't work, which is why,  
12          I think, all of our -- my colleagues have asked for a date by which  
13          these disclosures need to be made.

14          JUDGE GUILLOU: Thank you, Mr. Kehoe.

15          I don't see, any -- no, Mr. Ellis, please.

16          MR. ELLIS: Your Honour, very briefly.

17          The reason we put 4 January was because that was one month from  
18          the deadline we were suggesting for Defence requests. Had we asked  
19          for three weeks, it would have been an even more unfortunate date.

20          But to ask for 31 January when, what we're talking about, is  
21          8.700 documents, in our submission, three months to disclose that  
22          number of items? At its peak over the summer, the submission was  
23          that 5.000 were being processed in a week. We would say it doesn't  
24          need to be pushed all the way to 31 January.

25          JUDGE GUILLOU: Thank you, Mr. Ellis.

1 Mr. Prosecutor, the problem with the 31 January deadline is that  
2 if you file any request for protective measures, the items will not  
3 be disclosed before March, the time for the parties to provide  
4 submissions and the time for the Panel to rule on your request.

5 Is there any possibility that the deadline can be set before  
6 31 January, or at least the deadline for the SPO, to request  
7 protective measures or submit materiality challenges?

8 MR. HALLING: So if I understand Your Honour's question, the  
9 question could be if the protective measures deadline for the items  
10 could be set slightly before 31 January.

11 JUDGE GUILLOU: Correct.

12 MR. HALLING: I mean, the more slightly before the better, but  
13 we could be able to accommodate that.

14 JUDGE GUILLOU: Thank you, Mr. Halling. This is noted.

15 We'll now move to the third category of evidentiary material to  
16 be discussed today, which is the Rule 107 material.

17 In its written submissions, the SPO indicated that it continues  
18 to engage with Rule 107 information providers concerning pending  
19 clearances; that the provider with the overwhelming majority of  
20 outstanding items indicated that the SPO last week cleared the  
21 majority of items, totalling 821 pages; and that once these items are  
22 received, there should be less than 50 items pending clearance, among  
23 which less than 25 contain exculpatory material.

24 The SPO also indicated that it anticipates filing two Rule 107  
25 applications by mid-November 2022, and that further clearance

1 decisions may prompt the need for further applications.

2 In its written submission, the Krasniqi Defence reiterated its  
3 request for an order imposing a deadline for the SPO to complete its  
4 Rule 107 disclosure, which should be resolved prior to the transfer  
5 of the case to a Trial Panel.

6 I invite the SPO, first, to give clarifications in its oral  
7 submissions and the Defence to present their views, if they wish.

8 Mr. Halling, please.

9 MR. HALLING: Yes, Your Honour.

10 In relation to the various points just mentioned. As for the  
11 items that were recently cleared, we received them on November 1st.  
12 So we have them. We're reviewing the materials that were cleared  
13 now.

14 In terms of whether --

15 JUDGE GUILLOU: Sorry, and did the -- in terms of numbers, it  
16 corresponds to what you indicated in your written submissions?

17 MR. HALLING: It does.

18 JUDGE GUILLOU: Thank you.

19 MR. HALLING: In terms of the prospect about setting a deadline  
20 for Rule 107 clearances. I mean, the evolution of the Rule 107  
21 clearances, as the condition set in our submission has been  
22 fulfilled, there is less than 50 uncleared items yet. The progress  
23 shows that no deadline is, strictly speaking, required. The SPO  
24 maintains that it will continue the Rule 107 negotiations, and  
25 subject to further directions from the Trial Panel file further

1 applications as needed.

2 JUDGE GUILLOU: Thank you, Mr. Halling.

3 Does any of the Defence teams want to make oral submissions?

4 Mr. Kehoe.

5 MR. KEHOE: Yes, Your Honour.

6 Your Honour said that they were -- I am not sure exactly what  
7 you noted was pending clearance, but I'm just looking at the SPO's  
8 filing in paragraph 3 that notes there are 200 items that are still  
9 pending clearance, in addition to whatever has been cleared before  
10 that we're awaiting disclosure on.

11 And in that, of course, there are 50 items -- additional items  
12 will remain after -- once the above provider completes its  
13 clearances, and then 25 of -- approximately -- less than 25, I guess,  
14 is the quote, of these items contain Rule 103 material.

15 Again, we're in the dark about the Rule 107 material, as is  
16 normal in this instance, but we would like some idea, number one, of  
17 how much information we are talking about; and, number two, we are  
18 most certainly interested in this 103 material, even if it's less  
19 than 25 items. I mean, is this 25 pages? Is this 25 documents?

20 That, I ask Your Honour to prioritise, going back to 103, that  
21 should be dealt with immediately. Because that's the information --  
22 we want to see all the information, but, obviously, the 103  
23 information is paramount.

24 Thank you.

25 JUDGE GUILLOU: Thank you, Mr. Kehoe.

1 Ms. O'Reilly, please.

2 MS. O'REILLY: Your Honour, the submission that no deadline is  
3 required is surely not a supportable one. I mean, is the suggestion  
4 that we're going to go to trial and this matter still hasn't been  
5 resolved? We do need a deadline. We do need a deadline that's  
6 sufficiently in advance of trial for us either to have the material  
7 or have counterbalancing items that go to the same substance of that  
8 material.

9 You know, it's very unclear what's going on here. We've had so  
10 little disclosure as to who these providers are, what the nature of  
11 this material is. Of course, none of us can have any trust in this  
12 submission that only 25 or less than 25 have exculpatory information  
13 in them. We need to know more and we need to know it as soon as  
14 possible.

15 Thank you, Your Honour.

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

17 Mr. Young.

18 MR. YOUNG: Nothing to add, save that we support a deadline.  
19 Thank you.

20 JUDGE GUILLOU: Thank you, Mr. Young.

21 Mr. Ellis, please.

22 MR. ELLIS: Your Honour, when pre-trial proceedings have been  
23 going on for two years, the fact that progress has been made recently  
24 is not a good reason not to impose a deadline.

25 Again, we seek to resolve this during this pre-trial phase and

1 not leave issues that could be resolved now hanging over for the  
2 Trial Panel.

3 JUDGE GUILLOU: Thank you, Mr. Ellis. This is noted.

4 Mr. Halling, do you want to add anything?

5 MR. HALLING: Just briefly, Your Honour. Because the Thaci  
6 Defence has, for the second agenda item point in a row, misread our  
7 written submissions.

8 We had recently gotten clearance as of the day of our written  
9 submissions, but we hadn't received the materials yet. So there were  
10 less than -- around 200 items, but now we've gotten the items and so  
11 that's why the number drops to where it is now.

12 In terms of the number of items that are Rule 103, we're hoping  
13 that the number is even less than the 25 we had in our written  
14 submissions on Monday, but the exact number depends on how the  
15 recently cleared pages were redacted.

16 So, I mean, a simple example: A cleared Rule 107 item that has  
17 Rule 103 content redacted in it isn't really cleared for Rule 103  
18 disclosure, and we may have to go back.

19 And so we're evaluating the new pages that we received just now.  
20 But as to the question about, you know, the SPO keeps making promises  
21 in this regard, we have made consistent progress on the Rule 107  
22 items clearances throughout these pre-trial proceedings, and we've  
23 now gotten down to a number that's well under a hundred, and we would  
24 ask that this process could continue and that it will naturally end  
25 in the place everyone wants, which is to have clear decisions and the

1 disclosures made with no need for further litigation.

2 JUDGE GUILLOU: Thank you, Mr. Halling.

3 MR. KEHOE: Just one last thing --

4 JUDGE GUILLOU: Mr. Kehoe, very, very briefly, please.

5 MR. KEHOE: Very briefly.

6 With all due respect to counsel, I am reading what he filed in  
7 paragraph 3, paragraph 3 on page 1 that he filed Monday:

8 "While as of this filing there are still approximately 200 items  
9 relevant to this case pending clearance ..."

10 I didn't make this up. That's what he wrote.

11 "Once the items above are received, that number is anticipated  
12 to be less than 50."

13 That's what he wrote. We are just trying to get a handle on  
14 what exactly is coming. We're trying to get a handle on the 103  
15 material. And, again, Judge, without going in and trying to find  
16 fault, we just want the information on a -- today or soon, as opposed  
17 to two months down, three months down the line. It's as simple as  
18 that.

19 It's similar to the application on the 102(3) material. We just  
20 want the information as soon as possible.

21 JUDGE GUILLOU: Thank you, Mr. Kehoe.

22 Before we go for a break, let us move to the next item in our  
23 agenda, which should be short, which is translations.

24 I note that the parties did not mention any translation issues  
25 in their written submissions. I invite the Registry to provide an

1 update on outstanding translations; in particular, if needed, on the  
2 progress of the translation of the further amended indictment and the  
3 Rule 109(C) chart and its supplement.

4 Mr. Nilsson.

5 MR. NILSSON: Thank you, Your Honour.

6 With regard to the Rule 109(C) chart, you will recall that in  
7 March the Defence for Mr. Krasniqi had requested translation of parts  
8 of that chart as a matter of priority. These translations were  
9 delivered in batches in April, May, and then finally in July. There  
10 have not been any further requests in relation to this or in relation  
11 to the revised chart.

12 With regard to the further amended indictment, I can report that  
13 the Albanian translation has been finalised and it's in the process  
14 of being served formally on the accused.

15 And beyond this, there are no other outstanding prioritised  
16 requests for translation.

17 Thank you.

18 JUDGE GUILLOU: Thank you, Mr. Nilsson.

19 Does anybody want to take the floor on this topic? I don't see  
20 any requests for the floor.

21 I see that it's nearly an hour and a half since we started. So  
22 before starting the next item in our agenda, which is Defence  
23 investigations, we will have a break.

24 We will reconvene in 20 minutes, at 3.20. The hearing is  
25 adjourned.

1 --- Recess taken at 2.59 p.m.

2 --- On resuming at 3.22 p.m.

3 JUDGE GUILLOU: Let us now move to the Defence investigations  
4 and next steps.

5 Firstly, I note that the Kosovar authorities have appointed a  
6 focal point, as requested by the Defence. I thank the Registry for  
7 its efforts on this matter.

8 In their written submissions, the Defence indicated that their  
9 investigations are continuing and are likely to continue after the  
10 transmission of the case to a Trial Panel.

11 On 21 October 2022, the four Defence teams filed their pre-trial  
12 briefs, according to the timelines I set.

13 I also take note that the Thaci request for unique investigative  
14 opportunities. And written decisions will be issued before the  
15 transmission of the case to the Trial Panel on this matter.

16 I also take note of the Thaci Defence, Veseli Defence, and  
17 Selimi Defence filings regarding notice of an alibi or grounds  
18 excluding responsibility.

19 I thank the Defence for their submissions on all these matters.

20 Regarding points of agreement on law and facts, the SPO  
21 indicated that it is currently reviewing a joint Defence proposal for  
22 agreed facts to assess whether pursuing additional agreements of  
23 facts or law would be worthwhile.

24 The Thaci Defence indicated that it has agreed to 18 facts with  
25 the SPO, and that at a minimum, it can file a notice setting out the

1 18 facts that have previously been agreed with the SPO.

2 The Selimi Defence indicated that it has not agreed to any  
3 further facts proposed by the SPO since the fourteenth Status  
4 Conference and considers discussions on this to have come to an end.

5 It also indicated that no discussions on the law are ongoing  
6 between the parties.

7 In any case, the SPO and the Thaci, Veseli, and Selimi Defence  
8 teams indicated that an agreed facts notice can be filed by  
9 18 November 2022.

10 I invite the parties to give details on their *inter partes*  
11 discussions on this matter, if they wish.

12 I also note that the four Defence teams do not currently foresee  
13 any difficulty in filing a notice of objections to the admissibility  
14 of evidentiary material, pursuant to Rule 95, by 18 November 2022.  
15 However, the four Defence teams further indicated that they will not  
16 focus on particular items but on categories of evidence which may be  
17 the object of specific challenges.

18 The Veseli, Selimi, and Krasniqi Defence teams further noted  
19 that their submissions on admissibility will necessarily be  
20 preliminary in nature.

21 I will now give the floor to the parties on all these issues  
22 related to Defence investigations, starting with the Defence.

23 Mr. Kehoe, please.

24 MR. KEHOE: Yes, Your Honour. Would you like to go through the  
25 series of them, or take them one at a time?

1 JUDGE GUILLOU: The series of them, not one at a time. Not like  
2 the previous time.

3 MR. KEHOE: That's fine.

4 JUDGE GUILLOU: Because I think most of what we discussed last  
5 time has already been discussed before or it's moot because the  
6 timeline has passed.

7 MR. KEHOE: Understood. Understood. Just seeking some  
8 instruction as to how you want these addressed.

9 Obviously, Your Honour, we continue to get additions to the  
10 SPO's witness list and witnesses. We've gotten another four  
11 witnesses and another 147 additional exhibits on that score. Some of  
12 those witnesses even are talking about issues that are outside of the  
13 scope of the indictment. This, of course, presents additional  
14 challenges to the Defence teams to investigate these matters, which  
15 I'm sure Your Honour appreciates.

16 We have 66 paragraphs, a significant number of paragraphs, in  
17 the indictment that have been redacted. There has been some -- a  
18 statement by the SPO on 28 October to say that 54 will be unredacted  
19 30 days prior to trial, and 12 30 days prior to the testimony.  
20 Your Honour, I would ask that that be revisited in the sense of  
21 there's no reason why at this juncture of this case all of these  
22 paragraphs in the indictment need to be redacted. This is  
23 significantly hampering any number of issues, not the least of which  
24 is a document -- an item that you and I, Your Honour, have become  
25 quite familiar with, notices of alibi, and the ability or inability

1 to do that.

2 Obviously you have seen our pre-trial brief that -- consistent  
3 with my prior comments to Your Honour that I tried to lay out where  
4 my client was - President Thaci - during operative timeframes.  
5 That's not your traditional alibi because I don't know when the  
6 allegations to say -- in the indictment say certain events took  
7 place. That's how I was hampered. But in good faith I tried to give  
8 an idea, as I had said to Your Honour previously, an idea of where my  
9 client was internationally through all the operative timeframes of  
10 this indictment.

11 Obviously, you know, we continue to talk about the disclosures  
12 and what we're going to get at the eleventh hour. I mean,  
13 obviously -- there are 98 confidential witnesses, 68 that we're going  
14 to hear about 30 days prior to trial, another 23 30 days prior to  
15 their testimony, and 46.000 pages of information. Obviously it's  
16 going to be a daunting task for us to get all of this done  
17 efficiently and completely prior to trial.

18 That has, obviously, and I don't want to re-argue this issue,  
19 Judge, obviously, has been significantly hampered by the witness  
20 protocol and our ability or inability to talk to various witnesses.

21 On that score, I think you have saw in our filing the request to  
22 remove the protocol for one of the witnesses that is on the SPO's  
23 list. He is going to be on our list. I'll gladly give you the  
24 number on the record, but it is, in fact, in our filing. We are  
25 going to ask for that because he is another individual, an elderly

1 gentleman, who is part of our deposition submission to Your Honour.

2 Progress on facts and law. Obviously, as Your Honour  
3 reiterated, we have 18 facts that we have agreed to. We have given  
4 135 facts to the SPO. I believe that was transmitted on Monday by  
5 the teams concerning crimes by the Serbs in 1998 and 1999.

6 With regard to the -- filing any notices concerning objections.  
7 We will obviously file objections, but they will be broad objections  
8 without going into the specifics. Why? Because of the witnesses  
9 that are involved and, of course, of the progeny of a lot of the  
10 information coming from the SPO to the extent that it comes from Serb  
11 intelligence sources or other organs of the Serb state, we are  
12 certainly not going to stipulate to anything in that regard. So that  
13 presents some difficulties without some disclosure coming from the  
14 SPO. But we will make our appropriate filing on the 8th, per  
15 Your Honour's instructions, and will explain exactly where we are on  
16 that score.

17 I think that covers everything that Your Honour outlined. If I  
18 missed something, please let me know.

19 JUDGE GUILLOU: Thank you, Mr. Kehoe.

20 Mr. Emmerson, please.

21 MR. EMMERSON: We've nothing to add to our written submissions.

22 JUDGE GUILLOU: Thank you, Mr. Emmerson.

23 Mr. Young, please.

24 MR. YOUNG: Again, nothing to add to our written submissions.

25 Thank you.

1 JUDGE GUILLOU: Thank you, Mr. Young.

2 Ms. Alagenda.

3 MS. ALAGENDRA: We have nothing to add, Your Honour.

4 JUDGE GUILLOU: Thank you, Ms. Alagenda.

5 Mr. Prosecutor, do you want to respond to the Defence  
6 submissions, whether their written submissions or the oral  
7 submissions of Mr. Kehoe. Please.

8 MR. HALLING: Certainly. It will be brief.

9 As to the point about agreed facts. As the SPO has mentioned,  
10 the SPO will evaluate those proposed facts and respond in time to  
11 file notices by 18 November.

12 Even now, it can be said that these proposed agreements aren't  
13 going to expedite this trial. Every single fact proposed relates to  
14 alleged crimes committed by Serbian forces, none of which are charged  
15 in this case.

16 As for most of the other submissions from Mr. Kehoe, the  
17 redactions to the indictment have been explained. There's a timeline  
18 for their lifting, and this is filing 1064, Annex 2. As has been  
19 discussed many times, these redactions are in place to preserve  
20 protective measures decisions.

21 And the Defence team can say that it's daunting for them, but  
22 it's something that they have to do. These are necessary protective  
23 measures. And unless there's a variance, the trial has already been  
24 thought through that it can still be fair and that they can still be  
25 sufficiently prepared. And so we will follow all directions to the

1 letter in terms of lifting these redactions, but the timeline is  
2 clear, and the consequences of what it means after they're lifted is  
3 clear.

4 JUDGE GUILLOU: Thank you Mr. Halling.

5 Mr. Kehoe, please.

6 MR. KEHOE: If I may respond to that, Judge.

7 We are well aware of our obligations. We have been following  
8 Your Honour's orders to a tee throughout all of this. There have  
9 never been any -- any indication of any threats to any witnesses  
10 whatsoever by my client or any of the other accused. We understand  
11 our obligations and we understand Your Honour's orders, and we are  
12 abiding by Your Honour's orders and respect those orders as officers  
13 of the Court.

14 That being said - that being said - this trial is supposed to be  
15 on an even basis, on a level playing field, and the fact of the  
16 matter is that with all of the information that the SPO continues to  
17 pile on with - nondisclosures, redactions, et cetera - the failure to  
18 disclose 103 material in a timely fashion, that level playing field  
19 has changed. And we have to be cognisant of that.

20 We will proceed based on the Court's orders, as we have been  
21 doing. But to have a full breadth of exactly what this case is at  
22 this point, with all of the information that we haven't had  
23 disclosed, it is not only daunting it is virtually impossible.

24 As one of my colleagues noted at the last hearing, 46.000 pages  
25 of information, which you know is important information, 30 days

1 before trial. We'll have to get through it somehow, some way, but to  
2 say that that is not a daunting proposition or any such  
3 non-disclosure immediately before trial, has it -- has happened in  
4 any other tribunal, is just not accurate, because it hasn't.

5 JUDGE GUILLOU: Thank you, Mr. Kehoe.

6 Mr. Halling, very briefly, please.

7 MR. HALLING: Yes, just when Mr. Kehoe mentioned proceeding on  
8 the Court's orders, as we are doing, I was reminded that there was  
9 one aspect of their submissions I didn't address. It was this  
10 request in relation to the contact protocol and the witness that they  
11 mentioned.

12 The Thaci Defence, despite what they just said. And,  
13 incidentally, with all Defence teams in this case, has never actually  
14 sought to contact a witness in accordance with the contact protocol  
15 ordered in this case. And the Thaci Defence failed to substantiate  
16 then, or in their written submissions, what prejudice is caused by  
17 working within a court-ordered procedure they have never attempted to  
18 follow even once.

19 This is another attempt to challenge or reconsider the protocol.  
20 If the Defence wants to contact the witness they mentioned, they  
21 should act in conformity with the court-ordered procedure.

22 MR. KEHOE: Let me respond to that, Judge.

23 JUDGE GUILLOU: Thank you, Mr. Halling.

24 Mr. Kehoe, please.

25 MR. KEHOE: The protocol requires us to have interviews with the

1 SPO present. Never in the history of the cases that I have been  
2 involved in where I have conducted investigations did I bring the  
3 other side into an interview to ask questions. We've outlined all of  
4 these issues that we find troubling with the protocol. Your Honour  
5 is well aware of that.

6 Those issues remain extant. Those issues are very significant  
7 issues that impact on the attorney-client privilege, the work product  
8 privilege, and how we are going to conduct this investigation.

9 Now, with regard to talking to witnesses. With that protocol,  
10 we are hampered to conduct our investigation under those  
11 circumstances. If the SPO thinks that that is the way it has to be  
12 or they don't think we can operate in any way other way, I beg to  
13 differ. The first way they can show their good faith in this is to  
14 walk away from the protocol as it pertains to the witness that we  
15 have laid out.

16 Now, I will tell you that this is a witness that is going to be  
17 a Defence witness. And as a consequence, the SPO cannot contact him  
18 either. They are not permitted to make any contact with him at all,  
19 because they are being informed he is a Defence witness.

20 So we can bypass all of these issues, lift the protocol with  
21 regard to this international professional witness, and, essentially,  
22 assist this case and move it along.

23 Thank you, Your Honour.

24 JUDGE GUILLOU: This will be decided by written ruling.

25 I don't see any request for the floor, so we will move to the

1 next topic in our agenda, which is the SPO witness list.

2 In its written submissions, the SPO indicated that it intends to  
3 provide a provisional list of its first 40 witnesses by 18 November  
4 2022, as ordered in the last Status Conference.

5 Regarding the Rule 153, 154, and 155 statements, the SPO  
6 indicated that it intends to file its first motion seeking to admit  
7 evidence under these rules before the commencement of the trial.

8 I invite the SPO to make any additional oral submissions on this  
9 matter.

10 Mr. Halling.

11 MR. HALLING: Your Honour, our written submissions covered all  
12 of these points. Unless the Court has specific questions, we have  
13 nothing further.

14 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

15 Mr. Kehoe, please.

16 MR. KEHOE: Yes, with regard to these witnesses. Obviously,  
17 some of these witnesses, and I am talking about the 153, 154, 155  
18 witnesses, that information is voluminous. At least one of these  
19 witnesses, and I believe it's -- I know it's a 154 witness that they  
20 have. It's literally 12 binders of information. And what we need to  
21 know is: What item in that witness statement are they going to put  
22 in under 154 upon which they will rely.

23 They can't be talking to the Court and saying, "Here are 12  
24 binders of information." If they are, we'll be reading this  
25 information from now until 2025.

1           So we ask, Judge, for some restrictions to tell us exactly what  
2 they're going to put in and don't leave this to the eve of trial.

3           JUDGE GUILLOU: Thank you, Mr. Kehoe.

4           MR. YOUNG: Yes, Your Honour, very --

5           JUDGE GUILLOU: Mr. --

6           MR. YOUNG: -- briefly, can I address you on that?

7           JUDGE GUILLOU: Mr. Emmerson, do you want to take the floor on  
8 this? No? Thank you, Mr. Emmerson.

9           Mr. Young, please.

10          MR. YOUNG: Yes, simply just to reinforce the point that was  
11 made by Mr. Kehoe.

12          Your Honour may not recall, but in the July Status Conference  
13 hearing, I think it was Mr. Roberts who was making oral submissions,  
14 but in our written submissions we made it quite clear that the  
15 Prosecution should be able to identify and disclose the documents  
16 that they will rely upon at trial. Obviously, save a lot of time,  
17 effort, and it would be a very important case management decision if  
18 Your Honour takes the view that there should be an order that they  
19 state, in terms, what documents they're going to rely upon, given  
20 that there are so many thousands, tens of thousands of documents.

21          So far, I don't believe we've had any response at all to our,  
22 with respect, sensible request.

23          JUDGE GUILLOU: Thank you, Mr. Young.

24          Ms. Alagendra or Mr. Baiesu, please.

25          MR. BAIESU: Not much to add. Just to agree and to endorse the

1 position taken by the Thaci Defence and the Selimi Defence.

2 It's a sea of information which includes multiple witness  
3 statements based on these three rules. And our early understanding  
4 by the Defence of the scope and of the magnitude of its motions will  
5 help, indeed, the Defence to prepare for these forthcoming motions.  
6 And it's a matter of good case management practice to have this  
7 information in advance.

8 JUDGE GUILLOU: Thank you, Mr. Baiesu.

9 Mr. Emmerson, please.

10 MR. EMMERSON: I apologise. I waived my right to make a  
11 submission too quickly.

12 We have raised in our submissions for today, under other  
13 matters, 4(b), the issue of statements under 153, 154, and 155, in  
14 relation to witnesses who have got multiple sources of evidence  
15 within the material.

16 And obviously there are witnesses for whom there are seven or  
17 apparently multiple, up to six, seven apparently conflicting  
18 documents which, if they're going to be tendered, have to be  
19 coherent. Otherwise, the Defence and the Trial Chamber and,  
20 presumably, in response, the Prosecution are going to be deciding at  
21 some later stage what version of events they're choosing to rely  
22 upon. And that's not a basis for any sound trial management, but  
23 above all, it can't possibly serve the interests of justice.

24 So what we're going to invite Your Honour to order is that for  
25 any witness under Rule 153 -- tendered under Rule 153, 154, or 155,

1 the Prosecution prepare a summary statement of the evidence it  
2 proposes to tender from that witness with all of the existing  
3 materials in front of the Trial Chamber by way of issue -- of  
4 material capable of testing the witness's credibility.

5 Now, obviously you can't get a signature from a witness that's  
6 dead or otherwise unable to sign. But the Trial Chamber does need to  
7 know what exactly from that witness's various utterings are relevant.  
8 It's very difficult in this case to find a witness who's given more  
9 than one version, where the versions are consistent as to important  
10 detail. I mean, all of these witnesses are replete where they've  
11 testified in other cases or where, indeed, material has been served  
12 which involves multiple interviews, replete with contradictions. And  
13 how is the Trial Chamber to make sense of that material and what is  
14 relied upon unless the Prosecution pins its colours to the mast?

15 So rather than asking them to say, well, which of these  
16 materials do we say we're relying on, because that will end up with a  
17 terrible mess. It really needs that each of these witness statements  
18 to be crystallised into an accurate summary from what the witnesses  
19 have said, which the Prosecution proposes to tender.

20 Now, there may be all sorts of difficulties with that. But at  
21 the end of the day, those are difficulties for the Prosecution to  
22 overcome. And if they can't overcome them, the witness is not  
23 admissible.

24 So it's a basic principle with any of these -- any witnesses  
25 tendered under any rule in a national or international court where

1 the witness is not available for testimony that anything that goes to  
2 the witness's credibility should be before the Trial Chamber, both at  
3 the time of deciding whether to admit the testimony and at the time,  
4 obviously, of deciding what weight to attach to it.

5 So this is not ready. The Prosecution is nowhere near ready to  
6 be filing applications under those provisions without being able to  
7 put forward a coherent statement from the witness that they seek to  
8 elicit. We, of course, are entitled to rely on all of the other  
9 material to draw to the Court's attention, both at the admissibility  
10 stage and at the final stage of assessment of the evidence, the  
11 various inconsistencies that are apparent on the documents that have  
12 been served. But at the moment, what the Prosecution is proposing,  
13 as far as we understand it, is to dump a vast amount of material on  
14 the Trial Chamber and say: There you are, you sort it out. And that  
15 is not the way to prosecute a case that is going to be coherent and  
16 manageable for the Trial Chamber.

17 And at the same time, if they are in a position to be making  
18 these applications -- I can't remember exactly when it was said that  
19 they would be being made. Before trial, I think, was the timeframe.  
20 Then they must be made together with the evidence that is said to  
21 justify their admission under the relevant rule. It's not just an  
22 assertion that they can do it. It has to be backed up by evidence of  
23 absence, illness, inability, which is available itself to be properly  
24 tested. I mean, each one of these witnesses will be the subject of  
25 vigorous challenge.

1           And as you will have seen from our pre-trial brief, there are  
2 witnesses that are relied on by the Prosecution in relation to the  
3 only instances in the brief where they allege the presence of  
4 Mr. Veseli in some probative way, although we've disputed in our  
5 brief for the reasons we've given that they take the Prosecution's  
6 case any further, but one thing that is absolutely certain is we've  
7 flagged up with those we know about why the Trial Chamber shouldn't  
8 admit those witnesses at all based on the other testimony they've  
9 given in other cases or other matters that are relevant to their  
10 credibility.

11           All of that needs to be litigated before the Trial Chamber  
12 before those statements are admitted and will be vigorously  
13 contested. So if by saying they'll be ready to dump a load of  
14 material on the Trial Chamber before trial, that is what's being  
15 suggested, that is not in compliance with the rule, and compliance  
16 with the rule requires a single coherent statement of what the  
17 witness's testimony relied upon by the SPO is, together with all of  
18 the evidence said to justify its admission under the relevant rule.  
19 In a witness package, coupled with the disclosure to the Defence and  
20 the Trial Chamber as available material to challenge that witness,  
21 everything that could possibly be said to go to the witness's  
22 credibility.

23           Now, I am glad to know that will be done before trial. It's  
24 reassuring. It certainly means that you need to put a time limit on  
25 it; for example, end of January, if the Trial Chamber is to have

1 liberty to begin a trial at any reasonable time next year.

2 This is not a minor point of the Prosecution's case. It's their  
3 answer to the fact that the indictment is overburdened. In other  
4 words, you will remember that there have been umpteenth discussions  
5 during the pre-trial phase about shortening, slim-lining the  
6 Prosecution's case. They have absolutely refused to reduce the scope  
7 of the indictment to that which they need in order to, in their view,  
8 focus on the accused, but instead insist on having evidence of every  
9 single allegation in the crime base, regardless of the fact that it  
10 has nothing to do with the accused, put into evidence. But in order  
11 to shorten their time limit, they've suggested that they will do this  
12 by the tendering of written evidence.

13 Well, all well and good, but then do it properly and do it in a  
14 timely fashion, because otherwise we're going to have another series  
15 of delays at the Trial Chamber's period that you have witnessed in  
16 the pre-trial period. And I'm sure the Trial Chamber will want to  
17 see the Prosecution arriving, once the case is transferred, with its  
18 tackle in order, as would we, so that we can assist the Trial Chamber  
19 in reaching those decisions.

20 I would just take the point about the indications that  
21 Your Honour has requested and ordered for the Defence to identify  
22 objections to admissibility, and on behalf of all Defence teams, I  
23 think, it's been acknowledged that we can do that by reference to  
24 categories but not by reference to witnesses, within the timeframe  
25 because, quite obviously, we don't have this material. We don't have

1 anything to fight at the moment because the Prosecution is just  
2 bandying numbers, 154, 155 around. We need properly reasoned case,  
3 and we would suggest absolute deadline should be the end of this  
4 year: 31 December.

5 And it means that their Christmas holidays are a bit shorter,  
6 tough.

7 JUDGE GUILLOU: Thank you, Mr. Emmerson.

8 Mr. Halling, on the Defence submissions, and especially on the  
9 suggestion to have a deadline that is earlier to the beginning of the  
10 trial for these materials to be provided.

11 MR. HALLING: Yes, Your Honour.

12 The numbers that I am bandying around are the Rules of Procedure  
13 and Evidence, and Mr. Emmerson's preferences are not a substitute for  
14 the Rules of Procedure and Evidence. There is no requirement in the  
15 Rules of Procedure and Evidence for making a comprehensive summary of  
16 the kind requested.

17 It is something within the discretion of the Trial Panel, and  
18 the Trial Panel may not agree with Mr. Emmerson. They may prefer to  
19 have a more comprehensive receipt of the evidence instead of a  
20 summary in order to determine the truth properly. They may  
21 differentiate between witnesses.

22 This is a matter for them to decide, including the question of  
23 deadlines as to when these applications will be filed. We have said  
24 we are going to file our first applications under these rules prior  
25 to the commencement of the trial. Just to be perfectly clear, the

1 applications are, amongst other things, going to specify the exact  
2 ERNs of the statements being tendered for the witnesses and provide  
3 all supporting materials necessary to meet the procedural  
4 prerequisites of those rules.

5 But there's no requirement as well that these applications need  
6 to be filed even before the commencement of the trial. These  
7 applications can be filed within whatever schedule the Trial Panel  
8 determines, and we think that this should be a matter for them to  
9 decide.

10 JUDGE GUILLOU: Thank you, Mr. Halling.

11 Mr. Emmerson, please.

12 MR. EMMERSON: Your Honour, the rule that Mr. Halling is  
13 referring to, the rules, collectively, all begin with a formulation  
14 that says, in slightly varying ways:

15 "The Panel may admit the written statement of a witness or the  
16 transcript of evidence of a witness."

17 Similarly, Rule 155:

18 "Evidence in the form of a written statement or any other record  
19 or otherwise expressed of what a person has said or a transcript of a  
20 statement made by a person."

21 They're references to something the Prosecution identifies as  
22 part of its case to be put before the Trial Chamber. That cannot be  
23 done if you just give the Trial Chamber a list of ERNs of, as  
24 Mr. Kehoe has said in one witness's case, 12 volumes of material.  
25 This is another dereliction of duty by this derelicting Prosecution.

1           They need to do their job, and that means they need to give the  
2 Trial Chamber a clear statement. It's perfectly clear from the  
3 wording of the language it does not envisage a document dump, and  
4 how, in any event, could that be any use to the Trial Chamber?

5           And why do we need a timetable? Because these guys can't be  
6 trusted in any way to be of assistance to the Trial Chamber or the  
7 Defence. They've been obstructive of the procedure all the way  
8 through. They've failed in their deadlines, they've failed in their  
9 duties, and as we've seen in closed session today they have, in some  
10 instances, deliberately suppressed evidence.

11           So we need to get on with this trial. These people have been in  
12 custody for a very long time for pre-trial period. And because the  
13 Prosecution isn't taking a sensible approach to the scale of its  
14 case, they're going to be in custody for at least another three years  
15 while the trial is ongoing.

16           It's no longer open to them to say we don't want a timetable, we  
17 don't want any rules imposed on us. They have clearly failed in the  
18 obligation to be professional prosecutors collectively and, in some  
19 cases, in this courtroom individually.

20           And in those circumstances, a deadline is essential. They must  
21 clearly identify exactly which passages they are relying upon for any  
22 witness and reduce it into a single document explaining where it  
23 comes from. And the remainder of the material is fine for a document  
24 dump. But how are we supposed to respond to an application under  
25 155, which, in their view, will be made collectively by reference to

1 ERN numbers. I mean, seriously? Is that what they regard as a  
2 professional way to go about things?

3 I mean, I do think, with the greatest of respect, Your Honour  
4 should be calling time on this nonsense.

5 JUDGE GUILLOU: Thank you, Mr. Emmerson.

6 I don't see any requests for the floor.

7 So before we move to the transmission of the case to a  
8 Trial Panel, I note that several Defence teams have made additional  
9 submissions.

10 In its written submissions, the Thaci Defence first requests a  
11 waiver for the framework. We already discussed about that. And I  
12 inform the Thaci Defence that I will rule on this request within the  
13 context of the request for unique investigative opportunity, but I  
14 take note of it.

15 The Thaci Defence, supported by the Veseli Defence, also  
16 requests an order requiring the SPO to systematically identify the  
17 portions of a lesser redacted document where redactions have been  
18 removed. The Defence submits that one possible method of achieving  
19 this would be to highlight in a distinctive colour the material which  
20 has been de-redacted. This proposal was read *inter partes* with the  
21 SPO in the course of the Legal Workflow Forum attended by  
22 representatives from each of the parties on 25 October 2022.

23 However, the SPO indicated that they would not be prepared to  
24 undertake this exercise as it was beyond the scope of what they are  
25 required to do.

1           So I first invite the SPO to indicate if this seems feasible or  
2 not, and when this could be done.

3           Mr. Prosecutor.

4           MR. HALLING: Your Honours, briefly in relation to this last  
5 matter.

6           It's not feasible. It would require quite a bit of work, in  
7 fact, because we would have to redo every single marked redacted  
8 version we've filed in this case.

9           I would also add, importantly, we are not obliged to do this,  
10 and it's not necessary to do this.

11           The redaction codes from Your Honour's Framework Decision,  
12 particularly that e-code for non-standard redactions, make clear what  
13 contents in the current redacted materials will be lifted. So where  
14 redactions will be lifted can be seen even now.

15           There are also a variety of software tools which can be used to  
16 compare changes into PDFs in the manner requested, though the  
17 technical modalities of this are a matter for the Defence to resolve,  
18 if this is something that they want. The Defence is responsible for  
19 understanding the contents of the materials disclosed. It's not for  
20 the SPO to do their work for them.

21           Unless there are any further questions on that, Your Honour,  
22 that's all we had on that point.

23           JUDGE GUILLOU: Thank you, Mr. Halling.

24           Before I give the floor to the Defence, let me ask the Registry.

25           Do you think the Registry could assist on this matter? Because

1 if I understand correctly, I think if there is a technical question,  
2 which is basically to have a software that allows a comparison  
3 between the two documents to identify what has been de-redacted, and  
4 there might be an IT solution to the Defence requests.

5 I mean, I guess you might not be able to answer on the spot,  
6 Mr. Nilsson, but at least do you think there is room for discussions  
7 within the Registry to see if you could assist the Defence on this  
8 matter, at least to identify a technical solution?

9 MR. NILSSON: Thank you, Your Honour.

10 You are correct, I will not be able to answer it on my feet, but  
11 we're happy to look into it.

12 Thank you.

13 JUDGE GUILLOU: Thank you, Mr. Nilsson.

14 Mr. Kehoe, please.

15 MR. KEHOE: Your Honour, we raise this because we were trying in  
16 an *inter partes* conversation to come up with a reasonable way to  
17 accommodate this.

18 The first issue that we need to address is that it is not  
19 infrequent that we receive a document from the SPO to say this is an  
20 unredacted document, without knowing what exactly has been lifted.  
21 Because large items have been redacted in these documents, as  
22 Your Honour knows, and we just get little bits and pieces.

23 It is not uncommon for us to go through that document all over  
24 again based on the SPO's statement that this has been unredacted.  
25 And it hasn't been. So we go through hundreds of pages of

1 information based on the statement of the SPO that this is now a  
2 statement in its unredacted form, and we have our staff going through  
3 them. At the end of the day, after all these hundreds of pages, it's  
4 the same document. And that has happened more than once to more than  
5 one of my colleagues going through this.

6 Now, what we simply asked is, obviously they have somebody in  
7 there that in that redacted portion is inserting something where once  
8 it said redacted. All we're saying is just highlight it. That's  
9 all. That's the easiest way to do it. If someone is going into this  
10 document and redacting it, what is the effort involved to either put  
11 it in yellow or put it in some other colour of their choosing?  
12 That's all we ask for. It's to alleviate this administrative concern  
13 coming from -- frankly, inaccurate information coming from the SPO  
14 where everybody is wasting time.

15 Well, if Mr. Nilsson has a solution to this, as he always does,  
16 Judge, I go back with Mr. Nilsson for a long time, I know that he  
17 will come up with an apt solution. That would be fine. That will be  
18 fine.

19 It's just something that would make it easier all the way around  
20 for us to understand what's been changed.

21 JUDGE GUILLOU: Thank you, Mr. Kehoe.

22 Mr. Emmerson, please.

23 MR. EMMERSON: Your Honour, I would just like to highlight, if I  
24 may -- I would just like to highlight, if I may, one sentence from  
25 Mr. Halling's submission:

1           "The Defence is responsible for understanding the content of the  
2 materials disclosed. It's not for the SPO to do their work for  
3 them."

4           It's the same attitude in relation to the Rule 155 and 156  
5 material. It's the same attitude we hear over and over again. No  
6 matter that it may assist the Defence to be trial ready. No matter  
7 that it may assist the interests of justice so that the Trial Chamber  
8 is approached by a Defence and Prosecution that are properly prepared  
9 and trial ready. No matter that it is in the interests of justice --  
10 indeed, that seems to be a disadvantage, from the Prosecution's point  
11 of view. All that matters is whether there is an obligation  
12 expressly in the rules requiring them to do it.

13           In any national jurisdiction, the object of the Prosecution, as  
14 part of its duties, is to serve as an officer of the court and to  
15 investigate and present to the Trial Chamber not only evidence that  
16 it chooses to rely on but evidence that may undermine its case. The  
17 role of a prosecutor, in any civilised society, nationally, is to  
18 serve the interests of justice. Not to serve the partisan interests  
19 of securing a conviction at any cost, however improper and however  
20 unethical.

21           Always, always, always. That is Mr. Halling's answer to  
22 everything, is: We don't have to do it. We're not going to help the  
23 Defence if we're not required to do so. And no thought is given to  
24 the fact that by obstructing the Defence - and this is, let's be  
25 clear, obstruction - as with everything else, as with the 155, it's

1 almost every time he rises to his feet, it's an answer in that  
2 character, and it's been the same in every hearing we've had, it's  
3 going to be Mr. Halling's motif, I suspect, as these proceedings  
4 continue, although hopefully he will have the wisdom to rethink it  
5 before he reaches the Trial Chamber. But the aim of a prosecutor  
6 should be to prosecute fairly.

7 This team has, singularly, in every respect, failed to do that  
8 so far. It needs to stop and it needs to be placed under a  
9 discipline and a timetable to do its job fairly. Not just in the  
10 interests of protecting, for example, Mr. Smith, as I get a request  
11 to go into private session just to keep Mr. Smith's name off the  
12 public transcript. It's not good stuff.

13 JUDGE GUILLOU: Thank you, Mr. Emmerson.

14 I don't see any request from the Defence.

15 Mr. Halling, do you want to add anything?

16 MR. HALLING: I think our submission on this point is clear,  
17 Your Honour.

18 JUDGE GUILLOU: Thank you, Mr. Halling.

19 Let us move now to another request from the Thaci Defence, also  
20 supported by the Veseli Defence.

21 In its written submissions, the Thaci Defence indicated that the  
22 SPO adapted a practice of notifying some people they interviewed that  
23 they were present in the capacity of a suspect because there are  
24 grounds to believe that they had been involved in the commission of a  
25 crime within the jurisdiction of the KSC.

1           According to the Defence, the SPO practice is prejudicial to the  
2 Defence and has resulted in significant psychological pressure on  
3 those designated as suspects.

4           The Defence also submits that the SPO should be ordered to  
5 advise all those who are no longer under investigation that they are  
6 no longer suspects.

7           So I invite the parties to provide their views on these issues,  
8 starting with the Defence.

9           Mr. Kehoe, please.

10          MR. KEHOE: Yes, Your Honour, thank you very much.

11          Your Honour summarised our position very succinctly. Obviously  
12 there are scores, and I say that not exaggerating, scores of  
13 witnesses in Kosovo, former KLA members who have been told that they  
14 are suspects by the SPO. Some haven't heard anything from the SPO in  
15 years. Never been informed that they're no longer suspects, don't  
16 know what their status is. And, of course, while we're doing our  
17 investigation, there is a fear, an apprehension of those witnesses,  
18 when we've talked to them, as to whether or not he or she is still a  
19 suspect.

20          Obviously we have the paragraph 35 where the SPO includes  
21 everybody in the KLA in this joint criminal enterprise. And that,  
22 frankly, Judge, has been supported by the scores of witnesses from  
23 the KLA in Kosovo who have been told by the SPO that they're  
24 suspects.

25          And putting aside paragraph 35, those same individuals are very

1 attuned to the recent statement by the SPO that the KLA is a  
2 secretive, non-state actor behind its public face, and that they  
3 operate with a code of silence instilled over time. And this is the  
4 Prosecution's submission of their revised witness list of 2 September  
5 2022.

6 So it's not just the description in paragraph 35 that we need  
7 not debate. It is this statement by the SPO, approximately two  
8 months ago, calling the KLA a secretive non-state actor who operates  
9 with a code of silence instilled over time.

10 Now, parenthetically, look at a particular individual who two  
11 years ago, three years ago, was told by the SPO that he or she was a  
12 suspect and continues to be a suspect, and they live with this.  
13 There is no indication as to what's going on. There is no further  
14 contact. But you can envision, Your Honour, what that witness's  
15 response is when we sit down and attempt to talk to him or her about  
16 the particular events at issue in this case.

17 Now, I'm aware of Rule 47 or individuals asking the Court to  
18 terminate an investigation for a suspect. And as an officer of the  
19 Court, I understand that I don't represent those individuals.  
20 However, there is an element of fairness and decency at this point to  
21 tell these people whether or not they are suspects. If they are no  
22 longer suspects, let them know so they can not only live their lives  
23 freely but, on our investigative level, enables us to talk to them  
24 without any fear on their part.

25 If they happen to come here and they testify, certainly they can

1 be cross-examined about anything he or she did. But to have this  
2 spectre and this cloud over these witnesses for years, and it's been  
3 years, is simply dampening any ability to talk to these people for  
4 their fear of what might come as a result of the SPO's conduct.

5 And the easiest way for this to be resolved is the SPO to come  
6 to Your Honour, and they can even do it *in camera, ex parte*, and say  
7 all of these individuals are no longer suspects, and then Your Honour  
8 can communicate it to us in due course. And then to the extent that  
9 we're dealing with these witnesses, we can let them know.

10 There is no rule that is squarely on this, Judge. It's just a  
11 matter of decency and fairness.

12 Thank you.

13 JUDGE GUILLOU: Thank you, Mr. Kehoe.

14 Mr. Emmerson, please.

15 MR. EMMERSON: Your Honour, I would put the point slightly  
16 differently, and perhaps take it a little further.

17 It's obviously relevant, when a witness comes to give evidence  
18 in these proceedings, whether they are giving evidence under threat  
19 of prosecution. That is clearly a factor that may influence their  
20 testimony in order to exculpate themselves from any risk, and they  
21 therefore undermine the reliability of what they have to say.

22 With the Sword of Damocles hanging over their head, that is a  
23 risk of distortion, necessarily, which needs to be disclosed,  
24 explored, and taken into account by the Trial Chamber. That's the  
25 background to this.

1 Any witness, and there are significant witnesses, who the  
2 Prosecution is proposing to call but who were cautioned at the  
3 beginning of their interview that they were suspected of being guilty  
4 of a crime, we need, obviously - we need, leaving aside what the  
5 witness needs - we need to know the basis on which they were  
6 suspected of a crime.

7 So I'm going to ask for a ruling that any witness that they  
8 propose to call who they cautioned at the beginning of the interview,  
9 they provide the Defence, first of all, with the reasonable grounds  
10 they had for suspecting that individual, properly articulated, at  
11 that time.

12 Secondly, we will need to know - and this is -- it can be -- it  
13 certainly is covered by the rules, because it's 103 material -  
14 whether the Prosecution still holds that view and that they are still  
15 suspected of involvement of a crime when they testify. It's  
16 self-evident that this material always, in any criminal trial, is  
17 disclosable. If somebody is a suspect but cooperated with the  
18 prosecution, it's absolutely *a fortiori* that there be disclosure of  
19 the nature of the relationship in order that the Defence can properly  
20 test it.

21 So, first of all, what were the grounds for the reasonable  
22 suspicion announced at the beginning of the interview. Second, is  
23 that suspicion maintained? Because if it is, then there is a risk  
24 that it will affect the witness's evidence. And, thirdly, if it  
25 isn't maintained, what has changed? Those are the three things for

1 every witness that was warned at the beginning of an interview. And  
2 that includes primarily, it's going to be relevant to the witnesses  
3 called to testify, but it's also relevant to the witnesses that they  
4 are proposing to adduce under Rule 155, et cetera. Because how can  
5 the Trial Chamber judge whether the witness is reliable without  
6 knowing if the Prosecution -- what the basis for the Prosecution  
7 saying they were suspected at the beginning of their interview, what  
8 the Prosecution's position is now for the purposes of trial, and if  
9 something has changed between those two periods on what basis has it  
10 changed?

11 Those are all matters they are absolutely required by law to  
12 disclose under Rule 103.

13 And I would also say that if a witness is currently suspected,  
14 there's been no material change of circumstances that has altered the  
15 Prosecution's position, or they're not able to point to one, then the  
16 witness obviously is at risk of prosecution. And that's extremely  
17 important, because then they need two things. They need to be  
18 cautioned at the beginning of their testimony they do not need to  
19 answer any questions if to do so would incriminate them, and they  
20 need to be separately legally advised. Those are the minimum  
21 requirements.

22 I trust the Prosecution has considered all this, and I'd like to  
23 hear their response.

24 JUDGE GUILLOU: Thank you, Mr. Emmerson.

25 Does one of the other Defence teams want to add anything on this

1 topic?

2 Mr. Young, please.

3 MR. YOUNG: Yes, thank you, Your Honour.

4 With great respect to the submissions made, we totally endorse  
5 them. Mr. Kehoe and Mr. Emmerson raise very legitimate concerns,  
6 very serious concerns, which can impact hugely upon the lives of  
7 individuals. Not knowing whether they are or are not a suspect,  
8 knowing whether they are or are not a witness, indeed, that was  
9 something that was raised in previous Status Conferences. But to  
10 leave individuals in this way when they've, no doubt, already taken a  
11 decision on dozens of individuals who are no longer suspects but  
12 still retain that status in their own mind is - is - and may well be  
13 potentially prejudicial to the Defence, because clearly it's going to  
14 impact upon the way these individuals may approach the Defence teams,  
15 if they are approached, in relation to Defence investigations.

16 So it has a concrete -- it may have a concrete prejudicial  
17 effect upon us as the Defence.

18 And Mr. Halling previously, in relation to the previous matter,  
19 was explaining how things were not feasible. There were no  
20 obligations on the Prosecution. And he explained that the conduct  
21 that we asked them to -- the route we asked them to go down was not,  
22 in fact, necessary. Mr. Kehoe mentioned, well, there may not be  
23 rules, but there has to be decent conduct, and they have to behave as  
24 officers of the Court.

25 Well, in fact, there are some provisions which are relevant to

1 this. And they come from this Court's own Code of Conduct. And I'm  
2 referring to the Code of Conduct for the Prosecutors and Counsel.  
3 And in the version I have, under Article 6(1):

4 "Counsel," that includes Prosecutors, "shall, within their  
5 respective roles in the proceedings, amongst other things, act in a  
6 manner compatible with fair trial principles and human rights  
7 standards."

8 And under Article 6(1) (g):

9 "... maintain the highest standards of professional conduct in  
10 the preparation and presentation of a case, take all reasonable steps  
11 to fulfil their obligations with the necessary knowledge and  
12 professional competency with respect to law and procedure."

13 With respect, this is directly apposite to what we are talking  
14 about here. We are talking about modes of conduct by the Prosecution  
15 which seems to fall below a threshold of decency, and it's also  
16 conduct that has a directly prejudicial effect upon us. It promotes  
17 a culture of fear, of ignorance, and it has a real impact upon us.  
18 So these are not theoretical questions that we're raising. They're  
19 very real issues.

20 And I submit that the points made by Mr. Kehoe and Mr. Emmerson  
21 are legitimate concerns that Your Honour should consider.

22 Thank you.

23 JUDGE GUILLOU: Thank you, Mr. Young.

24 Ms. Alagendra, please.

25 MS. ALAGENDRA: Your Honour, we, too, support the submissions

1 that have been made by my learned friends before me.

2 I don't intend to repeat what has been said, except that we also  
3 make the request for the rulings that Mr. Emmerson has made.

4 JUDGE GUILLOU: Thank you, Ms. Alagendra.

5 Mr. Emmerson, very briefly, please.

6 MR. EMMERSON: Yes, I will be very brief. But just before the  
7 Prosecution replies to this, I don't want there to be any  
8 misunderstanding and for Mr. Halling to respond that it's no part of  
9 the Defence's obligations to represent the witnesses. But that is  
10 absolutely clear. We're not here making submissions about the  
11 position of the witnesses or on their behalf.

12 It's a pure fair trial question with Article 103 disclosure.  
13 This is material that is -- clearly the Defence is entitled to as  
14 going to the witness's credibility and reliability. So it's a fair  
15 trial point primarily. And, critically, additional to that, it's not  
16 us representing the interests of the accused. There is an obligation  
17 on the Court to appoint and pay for independent legal representation  
18 for anybody the Prosecution has not changed its mind about and won't  
19 give an undertaking to.

20 Otherwise, you've got witnesses coming to give evidence not  
21 knowing whether or not what they say may be used against them in a  
22 future prosecution. I mean, Mr. Krasniqi and Mr. Selimi were both  
23 prosecution witnesses in previous proceedings in the ICTY, and the  
24 next thing you know they're in the dock here. And that's going to be  
25 the same for every one of the people they interviewed under caution.

1 And it's self-evident that it may well have influenced the nature of  
2 the testimony -- the account they have given in interview. But  
3 that -- I'm not re-arguing any of that.

4 The point is they have to be cautioned that they do not have to  
5 testify and they have to be separately represented, unless the  
6 Prosecution has made a considered decision to reverse its original  
7 reasonable suspicion. And if it has, we need to know on what that  
8 suspicion was based and what has happened to change it. Those are  
9 minimum legal requirements of disclosure on the Defence and their  
10 obligations on the trial court before the witness is called.

11 And it's not a question of -- I mean, I respect Mr. Kehoe's  
12 submissions and the submissions behind about compassion to the  
13 interests of the individuals. That's not our job. Our job is to  
14 ensure these trial proceedings are fair in the interests of our  
15 clients. And the problem they have is that they haven't addressed  
16 this question.

17 JUDGE GUILLOU: Thank you, Mr. Emmerson.

18 So now it's time for the SPO to address these questions.

19 Mr. Halling, please.

20 MR. HALLING: Yes, Your Honour.

21 And I'm going to suppress the instinct to comment on the  
22 interesting juxtaposition of some of the things Veseli Defence's  
23 counsel has said today and a lecture about decency directed at us.

24 But to focus on the agenda item at hand, a lot of the Defence  
25 submissions on this point are stemming from a misconception that we

1 are making a sort of subjective assessment when deciding whether  
2 people are suspects. Article 38(3) of the Law obliges us to inform  
3 anyone it interviews that there are grounds to believe that they  
4 committed crimes within the KSC's jurisdiction. If that condition is  
5 met, we have to give the suspect advisory. It's an objective test.  
6 It's a statutory obligation. It's not a scare tactic.

7 And truth be told, and contrary to what Mr. Kehoe was saying in  
8 his original submissions on this, not everyone in the KLA that was  
9 interviewed got the suspect admonition.

10 As Mr. Kehoe and Mr. Emmerson rightly recognise, and it's  
11 because it's true and inconsistent with their argument, suspects,  
12 indeed, have the right to contact the SPO under Rule 47 of the Rules  
13 should they wish to do so, but it's an entitlement of the person in  
14 question and not of the Thaci or the Veseli Defence on their behalf.

15 In terms of the request for disclosure and Rule 103 content,  
16 this is another unsourced request presented by the Veseli Defence in  
17 this hearing with no notice. And we would ask again that this be  
18 done in writing, they set out whatever jurisprudential basis they  
19 have for a requirement like this - one that I've at least never heard  
20 of before at any other institution - and that we will respond  
21 accordingly to that request.

22 JUDGE GUILLOU: Thank you, Mr. Halling.

23 Mr. Kehoe, please.

24 MR. KEHOE: Your Honour, it clearly is a tactic. These people  
25 have been told years ago that they are suspects. And I am not

1 challenging that the admonition had to be given to the individual  
2 person at the appropriate time. I'm not questioning that. Maybe it  
3 did, maybe it didn't, but they gave that admonition.

4 But it has been years since that admonition has been given, and  
5 these people are still under the spectre of being a suspect, without  
6 the SPO telling them that they're no longer a suspect.

7 So we have the interesting situation where the SPO, based on  
8 their conduct, in many cases years ago, is chilling the inclination  
9 of many of these witnesses, many, scores - I emphasise - scores of  
10 witnesses that have been told by the SPO that they are suspects, have  
11 chilled their inclination to sit down and talk about because they're  
12 afraid that the SPO is going to come back at them at some later date  
13 if, in fact, they testify for the Defence in some way, shape or form.

14 Is it really too much to ask that many, many of these KLA  
15 soldiers and fighters who have been given this suspect classification  
16 years ago, is it too much to ask to tell them that they're no longer  
17 suspects? To free them of this spectre?

18 Put aside Rule 47. It's what the SPO should be doing. You  
19 shouldn't leave these people hanging out, you know, on a tightrope  
20 for heaven knows how many years simply because it fits their needs.  
21 No. This is not the way courts of justice should operate.

22 I submit to you, Your Honour, these individuals, if they are no  
23 longer suspects, in good faith, should be told.

24 Thank you.

25 JUDGE GUILLOU: Thank you, Mr. Kehoe.

1 Mr. Emmerson, please.

2 MR. EMMERSON: Your Honour, I think there's some clear blue  
3 water emerging between myself and Mr. Kehoe. I am not associating  
4 myself with anything about what's in the interests of the witnesses  
5 themselves.

6 JUDGE GUILLOU: I understood that.

7 MR. EMMERSON: And, in fact, the response of Mr. Halling is  
8 telling because he rightly points out that some KLA witnesses were  
9 interviewed on the basis that they were suspects and some were not.  
10 And those that were, as Mr. Halling rightly points out, had to be  
11 cautioned because they met an objective test - objective, the word  
12 being objective test - imposed on the Prosecution that if, on  
13 evaluation, there were grounds to suspect them of committing a crime  
14 within the jurisdiction of the Court, they had to be cautioned.

15 Was it some subjective endorsement of the Prosecution? Quite  
16 right. Quite right. Therefore, they must be able to articulate what  
17 those objective grounds were. That's a requirement of the law. If  
18 called upon to have sorted the sheep from the goats, they must have  
19 the criteria they used in a particular witness's case for deciding  
20 that he or she was on the suspect side, not the other side.

21 And for Mr. Halling to say he's never heard of in any other  
22 procedure of an obligation to disclose to the Defence as relevant  
23 evidence, exculpatory potential evidence, that a witness is suspected  
24 of committing a crime that is, I'm afraid, a sign of his relative  
25 inexperience. Because it is an absolutely universal feature of every

1 single criminal justice system in the world, that material going to  
2 an individual's credibility is disclosable by the prosecution to the  
3 defence. And it's, in these proceedings, embodied in Rule 103, which  
4 is binding on him.

5 So I am not quite sure whether it's wetness behind the ears or  
6 something more serious going on over there. But if they really don't  
7 realise that they've got an obligation to disclose those grounds to  
8 the Defence, then there is a greater lack of legal expertise in the  
9 Prosecution than I'd feared up until now. It's obvious.

10 And if that's changed, we're obviously entitled to know what it  
11 is and why it's changed, because it's directly material to the  
12 charges against the accused on the indictment.

13 There are key witnesses who give evidence for the Prosecution  
14 about, for example, the organisation of the KLA General Staff. They  
15 were cautioned at the beginning of their interview, but they're no  
16 longer, it seems, suspected by the Prosecution. They no longer meet  
17 the objective requirements of suspicion of having committed a crime  
18 within the jurisdiction of the Tribunal because, presumably,  
19 otherwise they would be in the dock and not in the witness box. Or  
20 if a deal has been made that they should be a cooperating witness,  
21 that's disclosable.

22 I mean, I don't know what on earth is going on on that side of  
23 the courtroom, but this material is disclosable and it must be  
24 disclosed. And it must be disclosed now, as in before the trial  
25 begins, because it has a whole range of consequential implications on

1 the instruction of lawyers to represent those individuals and advise  
2 them of their right not to testify. And all of that could derail the  
3 entire proceedings if it arises in the middle of a trial.

4 Now since it's beyond self-evident, even, I hope, on reflection,  
5 perhaps he needs to read it up a little bit, for Mr. Halling, that  
6 that material is self-evidently disclosable and is required to be  
7 disclosed legally under the rules, I mean, I just don't understand  
8 how somebody who is speaking on behalf of the Prosecution should say  
9 there's no rule. But it is, of course, yet again a reversion by  
10 Mr. Halling to the stock and phrase term. He doesn't even think  
11 whether there is an obligation. He just says there's no obligation  
12 in those terms in the rules, so the Prosecution has to do nothing to  
13 ensure these proceedings are fair and just.

14 I suggest again it's time for Mr. Halling to review his  
15 approach.

16 JUDGE GUILLOU: Thank you, Mr. Emmerson.

17 Mr. Halling, do you want --

18 MR. KEHOE: Just one --

19 JUDGE GUILLOU: Mr. Kehoe, you already took the floor twice,  
20 please.

21 MR. KEHOE: Just one point of clarification.

22 My submission deals with KLA witnesses that are not only on the  
23 witness list but the scores of witnesses that are not on the witness  
24 list that have given the suspect admonition of which there are, as I  
25 say, scores. So it's not just witnesses that the Prosecutor intends

1 to call. It is all of the others that we have been dealing with.  
2 Thank you.

3 JUDGE GUILLOU: Thank you, Mr. Kehoe.

4 Mr. Halling, please.

5 MR. HALLING: Very briefly, Your Honour. As Mr. Emmerson  
6 decently said about me.

7 The question is not whether someone is a suspect being  
8 disclosed. Because the very premise of this question means that has  
9 already been communicated to the Defence. Nor is this a question  
10 about deals being made, which is a distinguishable point. What we  
11 are talking about now is whether the SPO has to generate material  
12 explaining why someone is a suspect and whether it maintains its view  
13 that someone is a suspect, just to disclose to the Defence. And  
14 there is a need to litigate this in writing, as we said before, and  
15 we'll respond when that application is filed.

16 JUDGE GUILLOU: Thank you, Mr. Halling.

17 I don't see any request for the floor.

18 So we will now move to the Veseli Defence concern in its written  
19 submissions regarding reclassification of evidentiary material.

20 The Veseli Defence requests that the SPO be ordered to provide  
21 individualised explanations for the documents it seeks to classify as  
22 confidential.

23 I note on this matter that the SPO made a filing yesterday  
24 following an order that I issued, I believe, in August, following a  
25 request from the Veseli Defence. And in the SPO's submissions, it

1 provides a list of documents that can be reclassified as public.

2 I will first give the floor to the Defence, if it wants to  
3 supplement -- if the Defence wants to supplement its written  
4 submissions, and then I'll give the floor to the SPO.

5 Ms. O'Reilly.

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

7 So just a quick update. This was filed obviously before we had  
8 that list of the documents that could be classified as public.

9 There are some batches where it, you know, is relating to, you  
10 know, two witnesses, and it's, therefore, possible to provide a  
11 generic description saying that, you know, this is pursuant to a  
12 decision, et cetera, et cetera. But when it's hundreds of documents,  
13 and you're just saying that it's being classified as confidential due  
14 to the context within which the information was obtained, the nature  
15 of the provider, and/or potential identification of SPO witnesses,  
16 and/or victims whose identity is not public, that's not sufficient.  
17 That doesn't tell us anything about the documents and why they have  
18 to be kept as confidential. Because by virtue of the use of the  
19 phrase "and/or," the justification doesn't even necessarily apply to  
20 the documents in that batch.

21 So that's the basis on which we're requesting more specific  
22 itemised explanations. And if it can't be done document by document,  
23 then it should be at least be done as regards categories of  
24 documents, and we absolutely shouldn't have this and/or formulation  
25 in the mix.

1 Thank you very much.

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

3 Mr. Prosecutor, please.

4 MR. HALLING: Your Honour, we've already addressed, I think, a  
5 lot of the matters raised in the written submissions in our filing of  
6 yesterday. All that we would say for the moment is that our  
7 disclosure packages is the category of items for which we apply a  
8 classification, and whether or not the classifications we give are  
9 sufficient or whether reclassification is warranted is a matter for  
10 the Trial Panel.

11 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

12 I don't see any requests for the floor on this matter.

13 Let us now move to the views of the parties on the transmission  
14 of the case to a Trial Panel and the necessity or not to schedule a  
15 Status Conference before the transmission.

16 I know that the parties do not foresee any difficulty in  
17 transferring the case to a Trial Panel before the end of the year.  
18 However, the Defence notes that, prior to the transfer of the case,  
19 the SPO must have compelled all outstanding disclosure obligations  
20 and decisions on protective measures or challenges to materiality of  
21 documents that shall have been rendered.

22 I also note that at this stage the parties do not foresee the  
23 need for a further Status Conference before the transfer of the case  
24 to the Trial Panel, so I invite the parties to give their views on  
25 this matter, starting with the Prosecution.

1 Mr. Halling, please.

2 MR. HALLING: Yes, Your Honour.

3 You've summarised our position accurately on all of these  
4 points. The only thing that we were going to say is that there are  
5 multiple Defence teams, in their written submissions, that talked  
6 about completing all outstanding disclosure obligations before the  
7 record is transferred.

8 Just, I mean, it's almost needless to say, there are certain  
9 disclosure obligations which, by necessity, we can't fulfil prior to  
10 transfer: The obligation to disclose lesser redacted versions of  
11 delayed disclosure witnesses 30 days before the trial commencement is  
12 another example; Rule 102(3), which is a continuing obligation that  
13 will run throughout the trial, is another.

14 That said, if the question is: Can the SPO comply with all  
15 disclosure deadlines, which it has prior to the record being  
16 transferred, we could say that we can and up to now we have.

17 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

18 Mr. Kehoe, please.

19 MR. KEHOE: Well, I think it would be a bit much to say that  
20 they have met all those disclosure obligations. I notice you're  
21 smiling, Judge, because nobody - nobody - can abide by that.

22 Your Honour, we don't foresee any reason why it can't be  
23 transferred. Obviously, we have our unique investigative  
24 opportunities motion that can be carried to the new Panel.  
25 Obviously, once again, I recognise that there will be disclosures

1 ongoing. But for all of we have been talking about today and the  
2 last Status Conference, et cetera, to get those items before  
3 Your Honour transfers the case sooner as opposed to later, that's  
4 what we ask for. But we don't anticipate any difficulty,  
5 Your Honour, transferring this case by the end of the year.

6 Thank you.

7 JUDGE GUILLOU: Thank you, Mr. Kehoe.

8 Mr. Emmerson, please.

9 MR. EMMERSON: There is one question which needs to be  
10 addressed, and that is the interplay between the issue that was  
11 discussed in closed session, the application that you suspend the  
12 further consideration of the Rule 103 order -- Rule 103 outstanding  
13 litigation in relation to Serbian intelligence manipulation, and  
14 whether Your Honour plans to deal with that before transfer because  
15 that, of course, will have a significant impact on the Prosecution's  
16 disclosure.

17 They've steadfastly refused for two years to disclose this  
18 material. Clearly, if we win this litigation, they're going to have  
19 to do their disclosure exercise all over again. According to them -  
20 again, I think it was Mr. Halling - it's not possible and the rules  
21 don't require it. Well, if they turn out to be wrong about that, and  
22 every other Trial Chamber dealing with Yugoslavia has always said  
23 that that is wrong, and that there is such an obligation, and the  
24 judgements make it very, very clear, but the Prosecution has refused  
25 to voluntarily comply with that, that is something that is going to

1 have a knock-on effect for disclosure.

2 And I'm tempted, and I'm sure it might have crossed  
3 Your Honour's mind to say, we'll leave that all to the Trial Chamber.  
4 But that's Mr. Halling's response to everything because he knows they  
5 can't complete their obligations within the legitimate timeframe so  
6 he's trying to suggest that everything should go off to the Trial  
7 Chamber, but that's not really the function of a pre-trial process.  
8 It's there to hand a case that's ready for trial over to the Trial  
9 Chamber.

10 So I'm going to suggest that Your Honour provide a timetable for  
11 the exchange of pleadings on the questions that were raised in closed  
12 session and an explanation from Mr. Tieger and others of what on  
13 earth's been going on, and that you then rule on the Rule 103 issue  
14 before transferring the matter so that the Prosecution is in the  
15 position to make good Mr. Halling's claim that it's not practicable  
16 so that when the case goes to the Trial Chamber they know that the  
17 Prosecution says -- frankly, I find it extraordinary, and I don't  
18 really believe it. But the Prosecution has said that that would  
19 require a complete re-examination of their disclosure exercise, which  
20 they jolly well have to justify to the Trial Chamber.

21 JUDGE GUILLOU: I think you can imagine my follow-up question,  
22 Mr. Emmerson.

23 MR. EMMERSON: Yes.

24 JUDGE GUILLOU: When will you be able --

25 MR. EMMERSON: Seven days.

1 JUDGE GUILLOU: Seven days?

2 MR. EMMERSON: Yes.

3 JUDGE GUILLOU: Thank you very much.

4 MR. EMMERSON: And may I say -- may I invite you to order the  
5 Prosecution to respond within seven days.

6 JUDGE GUILLOU: Thank you, Mr. Emmerson.

7 Mr. Young, please.

8 MR. YOUNG: We have nothing to add, thank you.

9 JUDGE GUILLOU: Thank you, Mr. Young.

10 Ms. Alagendra, please, or Mr. Baiesu.

11 MR. BAIESU: We do not foresee any difficulty in transferring  
12 the case before the end of the year, nor to appear before the Trial  
13 Chamber after the judicial recess and the handover.

14 For the Status Conference, we don't see the need to have one  
15 before the transfer of the case. Unless there are substantive  
16 matters requiring an oral hearing, we suggest that any notification  
17 or updates can be submitted before the Court in writing.

18 And the last thing, we would like to support the request  
19 Mr. Emmerson just made in relation to the outstanding Rule 103  
20 material.

21 JUDGE GUILLOU: Thank you, Mr. Baiesu.

22 Before I give the floor to the Victims' Counsel, Mr. Halling,  
23 can you just reply to the submissions by Mr. Emmerson regarding the  
24 briefing schedule regarding the 103 application?

25 MR. HALLING: Your Honour, we certainly have no objection to

1 Your Honour ruling on an application of this kind. Don't really  
2 understand why the briefing schedule needs to be condensed in order  
3 to do that, but we appreciate such matters are within the Court's  
4 discretion.

5 JUDGE GUILLOU: Thank you, Mr. Halling.

6 MR. EMMERSON: May I just respond?

7 JUDGE GUILLOU: Mr. Emmerson. Very briefly, please.

8 MR. EMMERSON: -- to that.

9 It needs to be truncated because in order for Your Honour to  
10 rule on it before the matter is transferred to the Trial Chamber, as  
11 the rules require, because otherwise the Prosecutor will then need to  
12 consider the implications for disclosure. So all of that needs to  
13 happen.

14 And I'm going to suggest that until Your Honour has ruled on  
15 that issue, we can't decide whether a further Status Conference will  
16 be needed in December.

17 JUDGE GUILLOU: Thank you, Mr. Emmerson.

18 Mr. Laws, please.

19 MR. LAWS: Thank you, Your Honour.

20 From our perspective, no difficulty at all in transferring this  
21 case to a Trial Panel before the end of the year. And, again, just  
22 from our perspective, no need for a further Status Conference.

23 Thank you.

24 JUDGE GUILLOU: Thank you, Mr. Laws.

25 Mr. Nilsson, do you want to add anything for the Registry?

1 MR. NILSSON: Nothing from the Registry, thank you.

2 JUDGE GUILLOU: Thank you, Mr. Nilsson.

3 At this point, I would like to ask the parties and participants  
4 whether they have any other issues they would like to raise?

5 Mr. Prosecutor.

6 MR. HALLING: Nothing further, Your Honour.

7 JUDGE GUILLOU: Mr. Kehoe, please.

8 MR. KEHOE: Just one issue, Judge.

9 Obviously you saw that our pre-trial brief has been filed  
10 timely. Obviously the information that's in there was open-source  
11 information or information that was provided by the SPO. You've seen  
12 all our docket numbers, ERN numbers so that, as a consequence, given  
13 those circumstances, and given the lack of information that we have  
14 yet to get from the SPO, we will not be filing a 109(C) chart at this  
15 time. And I do believe there's a date on the 7th -- excuse me, on  
16 Monday, but we will not be filing a chart.

17 JUDGE GUILLOU: Thank you, Mr. Kehoe.

18 Mr. Emmerson, please.

19 MR. EMMERSON: Nothing further.

20 JUDGE GUILLOU: Thank you, Mr. Emmerson.

21 Mr. Young, please.

22 MR. YOUNG: Nothing further, thank you.

23 JUDGE GUILLOU: Thank you, Mr. Young.

24 Ms. Alagendra, please.

25 MS. ALAGENDRA: Nothing further, Your Honour.

1 JUDGE GUILLOU: Thank you, Ms. Alagendra.

2 Mr. Laws, please.

3 MR. LAWS: Nothing further, Your Honour.

4 JUDGE GUILLOU: Thank you, Mr. Laws.

5 We will now break for approximately 25 minutes, and we will  
6 reconvene for a number of oral orders before we end this Status  
7 Conference.

8 The hearing is adjourned.

9 --- Recess taken at 4.37 p.m.

10 --- On resuming at 5.03 p.m.

11 JUDGE GUILLOU: Before we conclude today's hearing, I will issue  
12 my first oral order related to Rule 102(3) material requested by the  
13 Defence after 20 May 2022.

14 I order the SPO to finalise its processing of these requests by  
15 requesting protective measures, submitting materiality challenges, or  
16 disclosing all material not subject to protective measures requests  
17 or materiality challenges by 18 November 2022.

18 This concludes my first oral order.

19 I will issue my second oral order related to Rule 102(3)  
20 material from the supplementary Rule 102(3) notice.

21 In light of the parties' submissions, I order the SPO to  
22 finalise its processing of these requests by requesting protective  
23 measures, submitting materiality challenges, or disclosing all  
24 material not subject to protective measures requests or materiality  
25 challenges by 13 January 2023.

1 This concludes my second oral order.

2 I will issue my third oral order on the disclosure of Rule 103  
3 material.

4 I order the SPO to review its supplemental Rule 102(3) notice  
5 for exculpatory material and to disclose this material under Rule 103  
6 or request protective measures for such material by 16 December 2022.

7 This concludes my third oral order.

8 I will issue my fourth oral order on the reclassification of  
9 evidence.

10 Upon request from the Veseli Defence, filing F00766, I had  
11 ordered the SPO to review non-confidential evidentiary material and  
12 to indicate *inter alia* which material can be reclassified as public  
13 at this stage. This was filing F00934.

14 The SPO submitted that 8.076 non-confidential disclosed items  
15 can be reclassified as public, and that the remainder of the evidence  
16 must remain confidential so as to protect internal work products and  
17 provided restrictions, victims and witnesses to avoid prejudice to  
18 ongoing or future investigations, and to safeguard the public  
19 interest or the rights of third parties.

20 Having reviewed the annex to F01079, as presented by the SPO, I  
21 am satisfied that the evidence can be reclassified as public.

22 I hereby order the reclassification as public of the evidentiary  
23 items as set out in F01079-A01 and order the SPO to reflect this  
24 change of classification in Legal Workflow accordingly. The Registry  
25 is invited to assist the SPO as needed.

1           Relatedly, pursuant to Rule 82(5) of the Rules, I order the  
2 Registry to reclassify F01079-A01, and any translation thereof, as  
3 public.

4           This concludes my fourth oral order.

5           I will issue my fifth oral order on the briefing schedule to  
6 supplement filing F00877-COR.

7           I hereby order the Defence to file its supplemental submissions  
8 on Monday, 14 November 2022; the SPO to respond by Thursday,  
9 24 November 2022; and the Defence to reply, if any, by 29 November  
10 2022.

11          This concludes my fifth oral order.

12          And, finally, I will issue my sixth oral order.

13          I order the SPO, when submitting its list for the first 40  
14 witnesses to be called at trial, to indicate which part of the prior  
15 statements will be requested to be admitted under Rule 154.

16          This concludes my sixth oral order.

17          This concludes today's hearing and probably the last one before  
18 the transmission of the case, unless necessary.

19          As usual, I thank the parties and participants for their  
20 attendance. I thank very much the interpreters, audio-visual  
21 technicians, stenographer, and security personnel for their  
22 assistance.

23          The hearing is adjourned. Thank you.

24                               --- Whereupon the Status Conference adjourned  
25                               at 5.09 p.m.