

1 Thursday, 8 September 2022
2 [Status Conference]
3 [Open session]
4 [The accused attended via videolink]
5 --- Upon commencing at 1.30 p.m.

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

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

9 THE COURT OFFICER: Good 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 And now I will kindly ask the parties and participants to
14 introduce themselves, starting with the Specialist Prosecutor's
15 Office.

16 Mr. Prosecutor.

17 MR. TIEGER: Good afternoon, Your Honour. Good afternoon to
18 all. Appearing on behalf of the Specialist Prosecutor's Office today
19 are Matt Halling, Earl Sullivan, Clemence Volle-Marvaldi, and I am
20 Alan Tieger.

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 on behalf of

1 President Hashim Thaci.

2 JUDGE GUILLOU: Thank you, Mr. Kehoe.

3 Mr. Emmerson, please.

4 MR. EMMERSON: [via videolink] Good afternoon, Your Honour, and
5 those inside and outside the courtroom. My name is Ben Emmerson. I
6 am representing Mr. Veseli today together with Mr. Andrew Strong and
7 Ms. Annie O'Reilly in the courtroom as co-counsel; Mr. Semir Sali and
8 Mr. Hajredin Kuci in the courtroom as legal associates; and
9 Ms. Tess Hughes and Ms. Gabriele Caon as legal assistants.

10 JUDGE GUILLOU: Thank you, Mr. Emmerson.

11 Now I turn to Mr. Young, please.

12 MR. YOUNG: Good afternoon, Your Honour. Today I am assisted by
13 Dr. Rudina Jasini, co-counsel; Mr. Eric Tully, co-counsel; also by
14 Ms. Riva Gjecaj. Thank you.

15 JUDGE GUILLOU: Thank you, Mr. Young.

16 And finally, Mr. Ellis, please.

17 MR. ELLIS: [Microphone not activated]

18 JUDGE GUILLOU: Microphone, please.

19 MR. ELLIS: I apologise.

20 Good afternoon, Your Honour. Mr. Krasniqi represented by my
21 co-counsel, Mr. Victor Baiesu, our support team member Fauziah Mohd
22 Taib; by videolink, Mentor Beqiri; and I'm Aidan Ellis.

23 JUDGE GUILLOU: Thank you, Mr. Ellis.

24 For the record, I note that Mr. Thaci, Mr. Veseli, Mr. Selimi,
25 and Mr. Krasniqi are not physically present in the courtroom but

1 attend this hearing via video-conference.

2 Now I turn to the counsel for victims, Mr. Laws, please.

3 MR. LAWS: [via videolink] Good afternoon to Your Honour and to
4 everyone. I am Simon Laws representing the victims in this case,
5 together with my co-counsel, Maria Radziejowska.

6 JUDGE GUILLOU: Thank you, Mr. Laws.

7 And for the Registry, Mr. Nilsson, please.

8 MR. NILSSON: Good afternoon, Your Honour. And good afternoon,
9 colleagues. Jonas Nilsson, Judicial Services Division. I am also
10 assisted by many but they're all outside the courtroom.

11 JUDGE GUILLOU: Thank you, Mr. Nilsson. One second, please.

12 [Trial Panel and Court Officer confers]

13 JUDGE GUILLOU: Thank you. And for the record, I just had a
14 quick discussion with the Court Officer because apparently there are
15 some minor problems with the internet feed, so please let me know if
16 there is any problem with your connection and I will break the time
17 for the connection to be settled. But for the moment, I am told that
18 it is very minor, and it doesn't impact the audio transmission of the
19 hearing. So we will continue unless you indicate to me that the
20 connection doesn't work anymore.

21 On 30 August 2022, I scheduled this fourteenth Status
22 Conference. And as usual, I asked the parties to provide written
23 submissions if they so wished.

24 On 5 September, the SPO and three Defence teams submitted their
25 written observations.

1 The purpose of our hearing today is to review the status of the
2 case and to discuss the topics in our agenda, and specifically,
3 disclosure, the SPO's updated witness list, Defence investigations
4 and next steps, and Victims' Counsel's submissions, if any.

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

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

8 At the outset, I note that the SPO indicated that the expert
9 reports disclosed for experts on the witness list are final to the
10 extent that no further information is sought from these experts at
11 present. The SPO also indicated that it is mindful that it must
12 seize the Pre-Trial Judge should it seek to call any additional
13 experts.

14 I also recall that at the Status Conference held on 15 December
15 2021, I took notice of the Defence Rule 149(2) notices. I indicated
16 that this would be included in my handover document to the
17 Trial Panel so the Trial Panel can take these matters into
18 consideration when determining the witness's expert status or the
19 admissibility of the expert witness reports pursuant to Rule 149(4)
20 of the Rules.

21 Therefore, I consider that we do not need to discuss this issue
22 any further during our hearing today.

23 I will also, as usual, give the floor to the parties on the
24 disclosure of each category of evidentiary material separately.
25 First, the Rule 103 material, which was not in our agenda, but I

1 would like to hear the SPO on a recent disclosure package, which is
2 Disclosure Package 418, comprising exculpatory material.

3 Second, the Rule 102(3) material, which is material relevant to
4 the case as listed by the SPO.

5 And, third, Rule 107 material, which is protected material for
6 which the consent of the provider is required.

7 So let us start with exculpatory material. At the last Status
8 Conference, the SPO indicated that it had complied with its
9 disclosure obligation regarding exculpatory material and that it had
10 reviewed and disclosed all of its Rule 103 material through 16 June
11 2022.

12 On 26 August 2022, I rejected a Defence request for a finding of
13 non-compliance with the SPO's disclosure obligations. However, I
14 ordered the SPO to file a comprehensive disclosure report by no later
15 than Friday, 7 October 2022, first, to indicate whether it still
16 encounters substantive difficulties in carrying out the disclosure of
17 exculpatory material; and, second, to provide a detailed explanation
18 of how it conducts the review of documents in its possession for
19 identifying Rule 103 material, how it determines which documents
20 should be disclosed pursuant to Rule 103 of the rules, and how it
21 plans and executes the release of disclosure packages.

22 Since I issued the decision, the SPO released Disclosure Package
23 418, which contains many new disclosures that, according to the
24 Krasniqi Defence, are obviously exculpatory. The Krasniqi Defence
25 also indicates that the late disclosure of hundreds of exculpatory

1 documents is yet further evidence that the SPO has not been fully
2 diligent in its disclosure obligations and that Defence
3 investigations and preparations for the pre-trial brief are
4 prejudiced by this delay.

5 So I will first ask the SPO to explain the reasons for this late
6 disclosure.

7 Mr. Prosecutor.

8 MR. HALLING: Good afternoon, Your Honour. Thank you. I'll
9 address this point.

10 As Your Honour mentioned, the SPO's disclosed one further
11 package of Rule 103 material since the last Status Conference. The
12 overwhelming majority of these items, I think it's over 280 of the
13 304, if you include translations, were items that were reassessed as
14 being Rule 103 in the course of the Rule 102(3) review being
15 conducted in anticipation of Your Honour's 30 September deadline.
16 There were also some items that were found to have been inadvertently
17 missed following SPO verification checks. This was only six of the
18 items in the package, one had two parts.

19 As to Your Honour's reference to the Krasniqi Defence's
20 submission about obviously exculpatory content. The Defence cannot
21 substantiate any prejudice to its preparations. And just to take an
22 example, the first one in the footnote where the Krasniqi Defence
23 says that in their written submission. It was an item from 2018 said
24 to be obviously exculpatory. This was one of the reassessed items in
25 the course of the Rule 102(3) review, and the reassessment was made

1 because it's a statement of a witness, and at paragraph 22 of this
2 statement, the witness says he was treated well in detention and
3 that's what caused the Rule 103 determination to change.

4 If you read the full statement, this witness also says he was
5 kidnapped by the KLA, he was held in detention for a week, he had a
6 hood over his head and his hands tied for all moments of his
7 detention except for when he was eating and drinking. And he was
8 told after his release that he was suspected of being a KLA spy
9 because he was the only person with his occupation that they
10 released. And this is from a combined reading of paragraph 6, 14,
11 and 19 of the cited statement the Krasniqi Defence mention.

12 Even the statement in paragraph 22 that I mentioned, the exact
13 words are meaningful. It says: "He was treated well, not beaten or
14 tortured." This was the item that was reassessed and called
15 obviously exculpatory.

16 All too often the impact of Rule 103 disclosures is argued by
17 the Defence on the basis of timing alone. When did the SPO get this
18 and when it was disclosed. But the actual Rule 103 content or how
19 difficult it is to actually process the content at the time it's
20 disclosed gets lost in a formalistic analysis of that kind, and it's
21 critical towards evaluating the SPO's Rule 103 assessment method or
22 what prejudice, if any, is caused to the Defence.

23 The Defence has these documents in the package under Rule 103.
24 They can use them however they wish. If they want to use the
25 document that I mentioned, because it's obviously exculpatory, we

1 will certainly respond whenever they attempt to do that during trial.
2 But in our submission, no further action is required in relation to
3 this disclosure. We are mindful of Your Honour's direction to
4 prepare the report that you mentioned, and we will do so by
5 October 7th.

6 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

7 Mr. Kehoe, please, on this topic.

8 MR. KEHOE: You know, Your Honour, with all due respect, the
9 attitude of the SPO, when it has come to Rule 103, continues to be
10 quite alarming. After all of Your Honour's admonitions as to the
11 identification diligently and expeditiously, we just heard an
12 attitudinal speech by the SPO concerning their disclosures.

13 Now, I know the Krasniqi team has some additional comments to be
14 made about this, but this disclosure was made on 31 August, Judge.
15 It related to Special Investigating Task Force interviews from 2013,
16 2014, 2015. SPO transcripts, not the Special Investigative Task
17 Force, SPO transcripts from 2018, 2019, March and April and May and
18 September, October, and January of 2020, as well as newspaper
19 articles going back to 1999.

20 Why do we continue to, it seems, wrestle with the SPO for them
21 to comply with Your Honour's orders to do this immediately?
22 Immediately is not when you get around to it. Immediately is not an
23 attitude to come into this court as if they've been complying with
24 Your Honour's orders diligently over the past several years.

25 I submit to Your Honour, based on your orders, that they have

1 not.

2 Now, I'll turn the floor over to my colleagues, but the attitude
3 that they have here is alarming and there is yet no answer why these
4 late disclosures continue to come, and we certainly don't know how
5 many are coming on the horizon. Now, we have a lot of other items
6 that are going to be disclosed 30 days before trial, and we'll talk
7 about those down the line based on the SPO's submission yesterday.

8 But nevertheless, the question why this is happening remains
9 outstanding and unanswered, notwithstanding somewhat of an aggressive
10 response to Your Honour's interrogatory at the outset.

11 JUDGE GUILLOU: Thank you, Mr. Kehoe.

12 Mr. Emmerson or Ms. O'Reilly.

13 MR. EMMERSON: [via videolink] Your Honour, Ms. O'Reilly will
14 deal with all the disclosure issues at this stage.

15 JUDGE GUILLOU: Thank you, Mr. Emmerson.

16 Ms. O'Reilly, please.

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

18 I just want to point out that this issue actually came up, this
19 issue of whether there was 103 material on the 102(3) list, last
20 September, so one year ago. And at that Status Conference,
21 Mr. Emmerson and counsel for the Prosecution got into a discussion, a
22 back and forth, about whether or not there could still be 103
23 material on the 102(3) list, and whether indeed the 102(3) list, the
24 items on it had been reviewed by a human eye. And we were assured
25 that they had indeed been reviewed by human eye for the purposes of

1 materiality but that there was still a subset of data that had not
2 been fully reviewed for exculpatory material. And that's at
3 page 583.

4 Now, I would just like to recall that 103 material is supposed
5 to be disclosed immediately. Last September, the accused had been in
6 detention for almost a year, and they were still telling us that they
7 had to review some of those materials for 103 but that material would
8 be handed over soon. We're now one year later, and we've just had
9 280 documents from that list disclosed to us under 103.

10 So, Your Honour, it's our submission that they absolutely have
11 not complied with their 103 disclosure obligations and that there is
12 a clear pattern of them failing to do so. Thank you.

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

14 Mr. Young, please.

15 MR. YOUNG: Your Honour, very briefly.

16 It's apparent from what the Prosecutor has said, respectfully,
17 that he, it appears, to be relying upon the complexity of the task in
18 hand in categorising exculpatory evidence.

19 Frankly, Your Honour, we submit that's no excuse at all. The
20 complexity of the process is no excuse for late disclosure. And if I
21 recall correctly Your Honour's words when introducing this topic this
22 afternoon, Your Honour mentioned that we're coming on to deal with
23 late disclosure in relation to this package. Given that that was
24 Your Honour's words to describe the timing of the disclosure, may I
25 invite Your Honour to consider making a finding of a violation of

1 103. Thank you.

2 JUDGE GUILLOU: Thank you, Mr. Young.

3 Mr. Ellis, please.

4 MR. ELLIS: Your Honour, what I detect in the Prosecution's
5 response a moment ago was a conflation of two, what we say, are
6 distinct issues: The question of timing and the question of
7 prejudice.

8 What Rule 103 requires, in our submission, is very simple. It
9 requires immediate disclosure of exculpatory material. It requires
10 that disclosure as soon as it's in the possession of the Prosecutor.
11 The question of prejudice may come into the equation later when
12 Your Honour is considering what remedy may be available. But as to
13 the obligation on the Prosecution in terms of disclosure, it's very
14 clear. It's an obligation to disclose immediately, as soon as, and
15 that is simply analysed on the basis of when did you receive the
16 material and when have you eventually turned it over to the Defence.

17 Now, the problem here is that we get a very clear statement from
18 the Prosecution at the thirteenth Status Conference on 13 July, and
19 Your Honour summarised it accurately in opening the point. We're
20 assured at that point that the exculpatory review has taken place,
21 the documents have been reviewed and disclosed, both. What remained,
22 Mr. Halling said on that occasion, was vigilance. Vigilance.

23 304 items come out of the woodwork after that point. These are
24 not short items. We have put them together. We think 8.000-odd
25 pages given to the Defence in batch 418. I do stand by the

1 submission that the documents include documents that are obviously
2 exculpatory. It is baffling to me that anyone in the Prosecution can
3 have reviewed any of these documents and not realised that they were
4 exculpatory.

5 We have statements, and I don't want to go into the detail in
6 open session, but there are statements from KLA members of units who
7 are asked about the role of General Staff and who respond that they
8 were very much independent, the General Staff. They are asked
9 whether the General Staff -- whether they had to inform the
10 General Staff before taking part in an attack. The response: No.
11 Anybody looking at that, anybody knowing the issues in this case
12 would immediately see it's exculpatory material which should have
13 been turned over to the Defence immediately and it was not.

14 So on the short issue of whether there are still violations of
15 103, we say clearly there are.

16 This has been before Your Honour already. Your Honour has
17 already found that the Prosecution have not been fully diligent.
18 Those words were used in our filing, but quoting directly from
19 Your Honour's recent decision on the matter. Your Honour has already
20 strongly urged the Prosecution to abide by its obligations in the
21 future, and we, obviously, echo that.

22 We would urge the Prosecution to use the review that is coming
23 up, that Your Honour rightly ordered, as an opportunity to genuinely
24 look at their processes to see what has gone wrong in the past and to
25 make sure that it stops happening because we need this material. We

1 needed it months ago. My client's been in detention for 22 months
2 whilst we wait for this material, but it should not carry on
3 happening as the pre-trial phase draws to a close.

4 JUDGE GUILLOU: Thank you, Mr. Ellis.

5 I will give the floor to the Prosecution. But before that, we
6 will make a very short break. We'll stay in the courtroom. It is
7 for the audio-visual technician to check the internet connection with
8 the DMU to make sure that the transmission is functioning well. So
9 let's wait for one or two minutes. We'll see if we need to break for
10 a longer time, but at least for a couple of minutes now.

11 Thank you for your patience.

12 And I invite Madam Court Officer to update me as soon as you can
13 on this issue.

14 [Trial Panel and Court Officer confers]

15 JUDGE GUILLOU: For the record, we are reconnecting with the
16 DMU. And I hope this time everything will be working properly.

17 I am told that the connection seems to work well now. As I
18 mentioned before, I invite any party or participant to indicate if
19 there is a connection problem on their side. But now we're going to
20 resume the hearing.

21 Mr. Prosecutor.

22 MR. HALLING: Thank you, Your Honour.

23 We don't really have that much to add beyond what we've said
24 already. But just to say we take Rule 103 very seriously. We take
25 the word "immediately" in that provision very seriously. And the

1 premise of how this latest disclosure package occurred, items that
2 had been reviewed once but which we are, in the course of the
3 Rule 102(3) review, checking them again, is proof that we are taking
4 this seriously.

5 We want to make sure that it's done right and that everything is
6 order for the Defence so that they are prepared for trial. And we
7 wanted to say that again today, and just ask that some perspective be
8 given. There were 280 items of the kind I described in the last
9 package. There were 67.000 items selected by the Defence on the
10 Rule 102(3) notice.

11 We understand that there is interest in our methods on Rule 103
12 and we will revert back to the Pre-Trial Judge on October 7.

13 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

14 I invite the SPO to give detailed explanations about the reasons
15 why this disclosure package was disclosed after the deadline in your
16 report that I expect before 7 October, and we will take it from there
17 about this disclosure package.

18 Let us now move to the Rule 102(3) material. I remind the
19 parties that at the last Status Conference held on 13 July 2022, I
20 did not change the deadline of 30 September for the SPO to submit
21 protective measure requests, to challenge materiality of the
22 evidence, and to disclose all material not subject to protective
23 measure requests or materiality challenges by 30 September 2022.

24 In the last Status Conference, I also ordered the SPO to
25 supplement its Rule 102(3) notice by 7 October 2022.

1 Since the last Status Conference, the SPO indicated that it has
2 disclosed over 12.300 Rule 102(3) items in response to Defence
3 requests, not including redisclosures.

4 According to the SPO, approximately 80 per cent of the total
5 number of selected Rule 102(3) items across Defence requests have now
6 been resolved, leaving just over 11.000 unique items remaining to be
7 disclosed.

8 The SPO indicates that it will meet the 30 September and the
9 7 October deadlines.

10 I also note that *inter partes* discussions on materiality have
11 led to the withdrawal of Defence requests in relation to some of the
12 Rule 102(3) material.

13 I thank the parties for their joint efforts on this matter, and
14 I invite them to continue these discussions *inter partes* as much as
15 they can.

16 The SPO indicated that it anticipates making materiality
17 challenges for fewer than 400 of the over 67.000 items selected by
18 the Defence. According to the SPO, applications on materiality and
19 for protective measures will be submitted on a rolling basis whenever
20 possible.

21 In its submissions, the Selimi Defence recalled the necessity
22 for the SPO to provide consolidated spreadsheets for the individual
23 Rule 102(3) requests once completed, tracking where particular items
24 might have been disclosed, especially under a different rule.

25 The Selimi Defence also requests that I order the SPO to

1 provide, at the very least, and as soon as possible, an approximated
2 figure of the expected materiality challenges and to which Defence
3 team or teams these challenges may pertain, and to bring forward the
4 deadline so it is sufficiently in advance of the Defence pre-trial
5 brief.

6 The Krasniqi Defence also requests the SPO to engage on
7 materiality and protective measures issues sufficiently in advance of
8 the deadline so as not to disrupt the ongoing timetable.

9 I invite the SPO to indicate if it is able to start filing at
10 least some of its materiality and protective measure requests before
11 the 30 September 2022 deadline.

12 In its written submissions, the Veseli Defence also raised the
13 issue of the disorganisation of the case file, notably: the
14 unavailability of translations, and the lack of link between the
15 evidentiary item and the translation of this item that already exists
16 in Legal Workflow.

17 The Veseli Defence underscores the impossibility of the task of
18 assessing a case file of this size where translations of important
19 documents are not available or not readily apparent, and descriptions
20 and other metadata are incomplete or inaccurate.

21 I invite the SPO and the Registry, if necessary, to indicate how
22 this translation issue can be solved, especially how to make sure
23 that translations that have already been made can be easily
24 accessible for the parties.

25 Mr. Prosecutor.

1 MR. HALLING: Thank you, Your Honour.

2 Your Honour summarised our submissions accurately. In terms of
3 the overall pace to meet the 30 September deadline, we remain on
4 track. The only issue that arose since our written submission - I
5 would barely even call it an issue, but just a report - is that
6 certain of the Thaci Defence's Rule 102(3) requests submitted before
7 the 30 September deadline was set, one of which joined by the
8 Krasniqi Defence, they are incomplete in that they indicate topics
9 that they're interested in without actually specifying the items on
10 the Rule 102(3) notice.

11 We reached out to the Thaci Defence last week about this matter.
12 No complaints were raised. They said they would get back to us this
13 Friday, and that's fine. As long as the items are provided by
14 Friday, we fully expect to be able to provide them by September 30th.

15 In terms of the point about providing an approximate figure for
16 materiality challenges. We gave one in our written submissions. We
17 were anticipating a maximum of 400 items. It may drop more depending
18 on *inter partes* correspondence, but we tried to give a conservative
19 number of the most it will be.

20 In terms of against which Defence teams the materiality
21 challenges will be directed against, it will generally be argued that
22 the item is immaterial for all four Defence teams.

23 This was not a question asked by Your Honour in the Status
24 Conference submissions order, but if you're interested in how many
25 items we're projecting for protective measures or withholding that

1 haven't been filed yet, we're estimating about 350 further items.

2 As to the question about whether at least some protective
3 measures requests can be filed before 30 September, yes, this is what
4 we're trying to do. We're hoping even to have one by the end of next
5 week just to sort of start them going, and we remain confident that
6 we can do them all by 30 September.

7 As to the points made by the Veseli Defence about the case file.

8 The SPO is providing all of the information in its disclosure
9 metadata that it's statutorily required to provide, and the Veseli
10 Defence's own submissions do show that they are able to make links
11 within the record. There are actually no examples in the Veseli
12 Defence's bullet points provided of any inaccurate metadata, contrary
13 to what's said in paragraph 7 of their Status Conference submissions.

14 And in the second bullet point in their submissions on this
15 point, they actually say that there are two items that are linked to
16 each other that, in fact, are not. If you look at the first two ERNs
17 in paragraph 6, bullet point 2, they're actually two different items
18 that were correctly not linked. They even have different dates.
19 Even without knowing Albanian, you can see this.

20 As to Your Honour's question about translations.

21 We are providing linked translations whenever we make them,
22 whenever the SPO makes the translation they're always linked, and for
23 all items where we are obliged to provide a translation. And we are
24 making those links in the relations field in Legal Workflow.

25 We are also linking every translation in Legal Workflow when we

1 have identified a link. And one caveat in this regard is that unless
2 we have made the translation ourselves, we are generally not making
3 links for partial translations. We think that precision is important
4 in this regard, and we aren't going to link two documents together if
5 one is only a partial of another and there is a translation. And
6 some of the Veseli Defence's examples are talking about two items
7 that actually aren't exactly the same, and that explains why links
8 aren't created.

9 The ERNs themselves also create a link, especially for the
10 translations we create ourselves. Just as an example, the filing
11 where we have the ET at the end of our ERN ranges, that is always
12 linked to a base ERN of some other documents with an AT or with no
13 marking of that kind. These are also links made in the record.
14 There are actually over 4500 disclosed items with an ET designation.
15 So we are linking translations when we can.

16 We are -- as we've said before, we are not under any obligation
17 to translate all Rule 102(3) materials for the Defence, and we're not
18 obligated to identify duplicate information that might be within
19 parts of them. We have agreed to disclose translations when we have
20 them. But at the end of the day, it's for the Defence to organise
21 this material.

22 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

23 Mr. Kehoe, please.

24 MR. KEHOE: Yes, thank you, Your Honour. This, of course, is an
25 ongoing issue that's been going on for well over a year on these

1 disclosures.

2 Yes, there have been disclosures of 102(3) material. With
3 regard to the requests that we have made, 34 per cent of our requests
4 remain outstanding. That's well in excess of -- well, in excess of
5 6.300 documents have yet to be released and that, based on what
6 counsel just noted, are going to be disclosed by 30 September.

7 It's interesting to look at these individual issues
8 parenthetically, and I certainly understand why Your Honour does so,
9 but I am sure you understand the difficulty with getting this amount
10 of material in conjunction with hundreds of 103 documents that they
11 disclosed on 31 August for us to digest and go through and argue on
12 materiality and still meet the 21 October 2022 deadline for our
13 pre-trial brief, which we will make.

14 That is a very, very difficult endeavour.

15 Now, to the extent that they are willing to address all of these
16 disclosures, these 102(3) disclosures on a rolling basis, I urge them
17 to do it now so we can address materiality issues and get that
18 information to us so if it's of use to the Court, in our pre-trial
19 brief the Court will have that document and our explanation.

20 So we have engaged on materiality issues. The Prosecution has
21 come back to the Thaci team on one materiality issue, and we withdrew
22 that materiality request. The other requests counsel was just
23 speaking of, we are responding tomorrow. There will be a request for
24 some of those documents and a withdrawal of other documents. So we
25 will work through this issue.

1 But to get all of this dumped at the 11th hour on 30 September,
2 albeit within the deadline Your Honour laid out, and, plus,
3 incorporate it into the 21 October deadline for our pre-trial brief,
4 I'm sure you're going to understand, Your Honour, is challenging, to
5 say the least.

6 So nevertheless, at this point if we could get as much of this
7 material on a rolling basis as quickly as we can, that would be very
8 helpful for all parties but most helpful for the Court as we're
9 putting together our pre-trial brief.

10 With regard to the translation issue, I'll leave that to my
11 colleagues on the Veseli team to address.

12 Thank you, Your Honour.

13 JUDGE GUILLOU: Thank you, Mr. Kehoe.

14 Ms. O'Reilly, please.

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

16 And the main issue here is that the Prosecution doesn't actually
17 seem to know what they have. And that -- I mean, this is -- yes,
18 there are organisational issues which I will get to in a moment. But
19 they were supposed to put the indictment together based on the
20 evidence, and both the inculpatory and exculpatory evidence. And it
21 appears, from looking through their disclosures, that they don't know
22 the entirety of the material. We're still getting 103 information.

23 So that's -- I mean, that's the real concern here, is that we
24 are continuing to get 103 information that undermines their
25 indictment that they apparently didn't know they had two years after

1 the indictments were issued.

2 But as to the organisational issues, I'll just say a few points.
3 First of all, as to us not actually including any examples of
4 inaccurate metadata. I might refer Mr. Halling to the e-mail we sent
5 the SPO two days ago about inaccurate pseudonyms. There are plenty
6 examples of inaccurate metadata to be had, but that's just one of
7 them.

8 As for partial translations not being linked because they're not
9 exactly the same document.

10 All I can say is it would be very helpful to us if the partial
11 translations were linked, and I'm actually sure helpful to the
12 Prosecution as well.

13 Mr. Halling said in relation to his submissions on 103 evidence
14 that he wants to make sure that everything is done right and
15 everything is in order for the Defence so that we can commence trial.
16 I don't understand why that applies to 103 disclosure but not to
17 102(3) disclosure.

18 I'll leave it there for now, Your Honour. Thank you.

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

20 Mr. Young, please.

21 MR. YOUNG: Your Honour, thank you.

22 Your Honour, we are -- first of all, let me say, we're grateful
23 for the figure. At least we've asked for a figure and we've not got
24 a figure. We have a figure of 350, which is some progress, but it's
25 an alarming figure particularly at this stage of proceedings.

1 As Your Honour will know from the wording of Rule 102(3), the
2 last sentence, reads:

3 "The Specialist Prosecutor shall immediately" - immediately -
4 "seize the Panel where grounds to dispute the materiality of the
5 information exist."

6 Well, now we're on notice. Now we're on notice in September
7 2022 that there are going to be materiality challenges for a very
8 large body of materials which, on the face of it, will involve
9 extensive litigation. So it's helpful to know for our planning and
10 resource purposes, but Your Honour may be alarmed by that figure
11 because it will take some while to litigate these issues. Thank you.

12 JUDGE GUILLOU: Thank you, Mr. Young.

13 Mr. Ellis, please.

14 MR. ELLIS: Your Honour, as it stands, we welcome the indication
15 from the Prosecutor that they are going to comply with the deadline
16 by 30 September.

17 Of course, there's not going to be another Status Conference
18 between now and then. So if there is going to be any issue with
19 regards to that deadline, we very much hope it's going to be
20 identified today in open court, in public, and not in a filing
21 shortly before that deadline.

22 As best as we can assess the figures, and for all the reasons
23 identified in our filings, it's difficult for us to know exactly how
24 many items are outstanding. Items are split when they are disclosed
25 to us. Additional translations are provided when they are disclosed

1 to us.

2 As best we can tell, we think we're waiting for at least 12 --
3 12.500 items still to be disclosed. And putting that in context, if
4 the Prosecution has disclosed 12.300 items since the last Status
5 Conference in seven or eight weeks, clearly there is going to be a
6 significant surge in the pace of disclosure in the next three weeks.

7 Having said that, we note the submission that the Prosecution is
8 on track. I'm sure, like a long-distance runner hearing the bell as
9 they round for the last lap, there is even now a sprint for the line
10 in the Prosecution disclosure team. This was, of course, a deadline
11 that they themselves suggested. Much of this material we have been
12 waiting for for many months.

13 In September 2022, we've had disclosure batches relating to our
14 third Rule 102(3) request, our fourth 102(3) request, the fifth, the
15 sixth, the seventh, the eighth. It's all coming together in rather a
16 haphazard manner. We look forward to it being completed,
17 Your Honour.

18 JUDGE GUILLOU: Thank you, Mr. Ellis.

19 I think we all note from the disclosure packages that are
20 notified on Legal Workflow that disclosure is continuing, so I hope,
21 Mr. Prosecutor, that you will not wait for 30 September to disclose
22 the 11.000 documents but you will continue to disclose them on a
23 rolling basis. Can you reassure the Defence for this? I've actually
24 seen that you disclosed probably seven or eight packages today,
25 between 11.00 and 1.15.

1 MR. HALLING: Correct. Yesterday as well, Your Honour. And we
2 will continue to do so.

3 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

4 Mr. Nilsson, is there any way to help the Defence with the issue
5 of translation? Because I understand that if it's not the same
6 document, the Prosecution does not want to make any link. But is
7 there any way to help the Defence to identify when at least part of a
8 document has already been translated?

9 MR. NILSSON: Thank you, Your Honour. It might be difficult for
10 the Registry to do it because we are not familiar with the
11 documentation, so we would -- most likely will have to turn to the
12 Specialist Prosecutor's Office to get the relevant information. So I
13 am not sure we will be helpful in that respect.

14 If there are, somehow on an exceptional basis, documents that
15 are not translated and need to be translated on an urgent basis,
16 we'll endeavour to assist as much as we can, of course.

17 With regard to the -- specifically in regard to the linking of
18 the originals and the translation. The feature is there, as my
19 colleague has indicated, and it's being used as well. To the extent
20 there are any technical problems with it, certainly we will be able
21 to assist with that. We have received no reports or complaints about
22 that particular feature of it, and there has been no indications
23 today that there are any problems with it.

24 So, yes, that's as far as I can take it, Your Honour.

25 JUDGE GUILLOU: Thank you, Mr. Nilsson.

1 I don't see any party requesting the floor, so we will move to
2 the Rule 107 material.

3 At the last Status Conference, the SPO indicated that there were
4 approximately 400 items for which clearance decisions remain
5 pending. I note the SPO's submissions that it has made significant
6 progress with a specific provider since the last Status Conference,
7 securing clearance for half the pages provided with Rule 107
8 restrictions.

9 The SPO also indicated that the other half of these pages is
10 scheduled to be processed by the provider by the end of September
11 2022, and that once this occurs, there will be less than 50 Rule 107
12 items whose clearance remains outstanding.

13 In its written submissions, the Krasniqi Defence requests that I
14 set a deadline for the completion of Rule 107 disclosure, while the
15 Selimi Defence requests that I direct the SPO to provide not just a
16 status update on the requests but also a specific breakdown of the
17 nature of the documents in terms of which disclosure rule they fall
18 under.

19 So I invite the SPO to give clarifications, especially, if it's
20 possible, on the last questions of the Selimi Defence in its oral
21 submissions.

22 Mr. Prosecutor.

23 MR. HALLING: Thank you, Your Honour.

24 And, yes, again, as seen from our written submissions, we are
25 continuing to make good progress. There is always the issue that

1 it's not fully within our control how quickly we can make that
2 progress, but that is indeed the estimates that we have given.

3 Cleared Rule 107 items, in terms of kind of rough
4 categorisations in terms of what's being cleared and what remains to
5 be cleared, they're generally going to go on the updated Rule 102(3)
6 notice or, if they're cleared after 7 October, on whatever the next
7 updated Rule 102(3) notice will be.

8 There are very few items within the uncleared group, I think
9 it's even less than 25, that have any sort of Rule 103 content.
10 Consistent with our statutory obligations, as soon as those Rule 103
11 items are cleared, they are disclosed immediately.

12 JUDGE GUILLOU: Sorry, Mr. Prosecutor. So that it's very clear
13 for all the parties, when you talk about "the uncleared group," you
14 mean the 50 that will remain at the end of this month, hopefully, or
15 you mean the 400?

16 MR. HALLING: I mean the 400, Your Honour. So I mean including
17 the items that were recently cleared and the ones we're hoping to
18 have cleared but have not been cleared as of this moment.

19 JUDGE GUILLOU: Thank you for the clarification.

20 MR. HALLING: Yes. And so unless Your Honour has any other
21 questions on the progress of that, those are our submissions.

22 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

23 Mr. Kehoe, please.

24 MR. KEHOE: Yes, Your Honour, what was not clear to us is the
25 volume of these documents. And Your Honour has been talking about

1 documents. Well, in various items, the SPO have talked about pages
2 and documents. Are we talking about 50 documents or is there some
3 other large number of pages? And that is not clear to us based on
4 some inconsistencies in those descriptions.

5 So we would ask for a clarification. Obviously, it's 107
6 material. So we're a bit in the dark as to the nature of that.

7 And what also remains outstanding, and this is outstanding, I
8 believe, since July, the SPO has asked the Court to relieve it of its
9 Rule 107 obligation or its disclosure obligations of a certain amount
10 of documents. Certainly, Judge, and we haven't seen these documents,
11 if these are Rule 103 documents, that is certainly going to be
12 done -- any decision to limit their disclosure obligations is given
13 it to the prejudice of the Defence.

14 Again, we're in the dark about what these documents say, if they
15 are Rule 103, et cetera. So if there is some methodology for some
16 *in camera* examination by the Defence in conjunction with the Court as
17 to whether or not we can even make a Rule 103 request of the Court,
18 we would welcome that procedure in any fashion Your Honour would --
19 would have to safeguard the Rule 107 provider and to not disclose
20 this to any other individuals, at the same time safeguarding the
21 rights of our clients. Thank you.

22 JUDGE GUILLOU: Thank you, Mr. Kehoe.

23 Ms. O'Reilly, please.

24 MS. O'REILLY: Your Honour, I've nothing particular to add
25 except that we would support a deadline, and, indeed, would have

1 supported a deadline some time ago. Thank you.

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

3 Mr. Young, please.

4 MR. YOUNG: In fact, to Mr. Tully now. Thank you.

5 JUDGE GUILLOU: Mr. Tully, please.

6 MR. TULLY: Thank you, Your Honour. I'll be very brief. And
7 I'm grateful to the Prosecution for the clarification they have given
8 us in terms of the categorisation of the items.

9 But to just be a stickler, I have noticed that Your Honour has
10 some problems with clarity as exactly what's going where. We share
11 your pain. I also noticed that the answer that Mr. Halling gave was
12 somewhere roughly around 25.

13 If we can get the exact number and a little bit more specificity
14 on exactly what's going to be happening, because, Your Honour, the
15 way it is at the moment, with the number of items that have now been
16 discussed in terms of Rule 102(3), if I'm correct, we are talking
17 about 400 items for materiality, and I believe the figure of 350
18 further items for protective measures was mentioned.

19 Now, just not to go back on the same issue that was already
20 discussed, but with the materiality challenges, we will attempt to
21 deal with that *inter partes*. The last process was very smooth. We
22 hope the next one can be as smooth.

23 But looking at the timing, those plus the 25, which might not
24 seem like a huge amount of numbers, becomes a very big number when
25 you're talking about three weeks before a deadline or one week before

1 a deadline.

2 I don't want to talk too much about anything that sounds like a
3 sob story, but we are of limited resources, Your Honour. It's
4 traditionally the way it is. The Defence, we allocate our resources
5 based on need, based on upcoming plans, deadlines, et cetera. So
6 knowing with any bit of clarity what's going to come down the
7 pipeline, because I'm getting quite nervous seeing these large
8 numbers, then we can move around internal deadlines. And on that, I
9 note that in the SPO's submissions in relation to Rule 102(3) they
10 said:

11 "The continued feasibility of estimate proportion importantly
12 depends on no new resource-intensive obligations compromising SPO's
13 progress."

14 Well, that cuts both ways, Your Honour. We're in the same boat.
15 And we're not asking for resource-intensive obligations to be
16 enforced on the SPO.

17 And I know we asked for an order. But to be honest,
18 clarification by e-mail by the end of today or by lunchtime tomorrow,
19 I believe, would be reasonable. They categorised the documents
20 months ago, years ago, they should have that number at hand, and we
21 would like to receive that within the next 24 hours.

22 Thank you, Your Honour, those are my submissions.

23 JUDGE GUILLOU: Thank you, Mr. Tully.

24 Mr. Ellis, please.

25 MR. ELLIS: Your Honour, we stand by our request for a deadline.

1 Our thinking is simply is this. The pre-trial phase in this
2 case has been going on now for 22 months. For all of that time, my
3 client -- our clients have been in detention. We need matters to
4 move on. We're determined to meet our 21 October deadline for the
5 pre-trial brief. We would like to be able to use the Rule 107
6 material in that.

7 At every Status Conference, we have heard that the Prosecution
8 are actively working on obtaining the clearances, going back to the
9 very first Status Conference, if minds can stretch back that far. We
10 would say the time has come to give a deadline for this, and we would
11 like that as a practical way of moving forwards.

12 JUDGE GUILLOU: Thank you, Mr. Ellis.

13 I'll give the floor back to the Prosecution.

14 Mr. Prosecutor, are you able to give further detail, especially
15 about the number of pages, for the Rule 107 material, to give a
16 little more specificity as was requested by the Selimi Defence, and
17 more generally, because I think what Mr. Tully said is actually a
18 good summary of what will be left to be discussed towards the end of
19 September. In fact, we have 800 items for which there will probably
20 be discussion, *inter partes* or before me, which is 400 items for
21 materiality, 350 for protective measures, and 50 for Rule 107
22 clearance.

23 If you can also give the Defence an idea of the number of pages
24 for each of these categories. I understand you cannot do it
25 immediately, but either after the break or, as suggested by

1 Mr. Tully, by tomorrow, I think this would be much appreciated by not
2 only the Defence but probably everybody in this courtroom, especially
3 for planning purposes.

4 Mr. Prosecutor.

5 MR. HALLING: Thank you, Your Honour. We'll see what we can do
6 to get some numbers together that we can actually share. The only
7 thing -- I think it's understood, but just to clarify. The 400 and
8 the 350 numbers are unrelated to the Rule 107 items, and the Rule 107
9 items are themselves unrelated to the 30 September deadline. So
10 these are all things that are going to on appear on an updated
11 relevance list once cleared. And again, we're also hopeful of what's
12 happening in September but hasn't happened yet with the larger
13 information provider.

14 JUDGE GUILLOU: And if I may also add to what I said that I
15 think the Defence will be interested to know, the number of pages for
16 the Rule 107 documents that you will obtain clearance for until the
17 end of the month, because that also is, I think, something to factor
18 in, because those are not -- neither in the 400 for materiality, 350
19 for protective measures, and, of course, not for the 50 that will be
20 remaining.

21 MR. HALLING: We can endeavour to send an e-mail to the Defence
22 teams, and we can cc Your Honour's legal staff with what statistics
23 we are able to give, and we can do that by tomorrow.

24 JUDGE GUILLOU: This is much appreciated. Thank you,
25 Mr. Prosecutor. I don't see any requests for the floor, so we will

1 move now to the SPO updated witness list.

2 At the last Status Conference, I ordered the SPO to file a
3 witness list which updates the mode of questioning and presentation
4 time for each witness.

5 On 2 September, the SPO submitted its revised witness list. The
6 SPO's overall case is now 709 hours, and there are now 196 proposed
7 Rule 154 witnesses, and 83 more are proposed to provide evidence
8 entirely in writings, and applications to introduce these materials
9 will be filed before the Trial Panel.

10 I invite the SPO to give any further details if necessary.

11 I also note that the Veseli Defence reiterates its requests for
12 the SPO to provide the Defence with, first, the first 32 witnesses it
13 intends to call in the order it reasonably expects to call them; and,
14 second, the first 107 witnesses it intends to call.

15 The Selimi Defence also requests that I order the SPO to provide
16 a provisional list of witnesses without prejudice to further
17 amendments or variations for the first three months of trial and
18 within a set deadline. According to the Selimi Defence, such a list
19 will allow the Defence to organise and focus its investigative
20 efforts on a compartmentalised group of witnesses out of the hundreds
21 currently listed for appearance by the SPO.

22 In the last Status Conference, the SPO indicated that it was not
23 in a position to give this information at this stage. I invite the
24 SPO to indicate when it would be able to give this information to the
25 Defence.

1 And, finally, the Selimi Defence also indicated that it remains
2 unclear to the Defence whether or not the SPO has made every person
3 on its witness list aware of the fact that they are to be called as
4 SPO witnesses, and the Defence requests that I order the SPO to make
5 this notification at the earliest opportunity and within a set
6 deadline; or, in the alternative, to clarify whether and how many of
7 its witnesses have been informed of this fact.

8 I invite the SPO to give clarification on this question as well.
9 Mr. Prosecutor, please.

10 MR. TIEGER: Thank you, Your Honour. Let me take those in
11 order, and I believe I can be relatively brief for a number of
12 reasons.

13 First of all, I don't believe at this point there is anything to
14 add to the written submissions we made in respect of our witness
15 list.

16 Second, with respect to the inquiry concerning advance notice of
17 the order of witnesses. As the Court indicated, that's a reiteration
18 of a request that was discussed on several previous occasions, so I
19 think I can be concise in identifying what was said before. And the
20 bottom line on that was the Prosecution noted the various factors
21 militating against such a request and the fact that the untimely and
22 ill-founded nature of that request was reflected in the practice of
23 every comparable institution, which only provided for such a
24 provision after the matter had been transferred to the Trial Chamber
25 because that was the time at which the various uncertainties which

1 made the provision both unfeasible and, in fact, irresponsible would
2 be resolved.

3 So our response is still consistent. The timeliness is still
4 tied to the transfer of the case to the Trial Chamber when those
5 issues can be resolved.

6 Insofar, Your Honour, as the issue of whether or not the
7 Prosecution has notified those on the witness list of their position
8 on the list.

9 I would note, as I -- well, we may have done before, but I'm not
10 sure if it came up, there is clearly nothing in the rules that calls
11 for that. The justification offered by the Selimi Defence, I would
12 say, is clearly speculative, and I would even suggest
13 counterintuitive. As in previous cases of this size and nature,
14 there may well be some witnesses whom the Prosecution may choose to
15 summons to appear as witnesses when that time comes. But in any
16 event, how and why the Prosecution chooses to manage its witness list
17 I think has always been within the province of the Prosecution and
18 should remain so.

19 Thank you, Your Honour.

20 JUDGE GUILLOU: Thank you, Mr. Tieger.

21 Mr. Kehoe, please.

22 MR. KEHOE: I believe it is an alarming statement that, in fact,
23 there are a litany of witnesses that are on this witness list that
24 have no idea that they are on the witness list. You know, prior to
25 the witness protocol, I can tell you to a person that none of the

1 witnesses that we spoke to knew that they were on any witness list
2 whatsoever.

3 So that is where we are with regard to the communication between
4 the SPO and witnesses that are in the field.

5 The second issue with regard to the witnesses themselves.
6 Obviously, it's an interesting list. And if you look at the list,
7 one might think that there are 326 witnesses and if -- based on the
8 list that was filed. And if you went to that conclusion, which I
9 initially did, you and I collectively and everybody else would be
10 incorrect, because there have been numbers removed without any
11 recounting throughout this document. So if you look, for instance,
12 at the first page, we jump from Witness 21 to Witness 23, and somehow
13 Witness 22 is no longer on the list but is still part of the
14 accounting to 326. And the same is true throughout this document as
15 a whole.

16 The document, of course, maintains at this point, and I don't
17 know if this is the subject of Your Honour's inquiry of counsel that
18 hasn't been spoken of, but we are still talking about 709 hours of
19 trial time for the Prosecution's case. And if I go back to, harken
20 back to Mr. Emmerson's numbers that he gave to Your Honour some time
21 ago, for instance, on the Milosevic case, I believe that is double
22 the time that has been set forth by Mr. Emmerson in his explanation
23 of exactly, you know, what is going on with this particular witness
24 list.

25 If you look at what the Prosecution has filed, publicly, I might

1 add, they file everything else under seal and they don't want to talk
2 about things that are uncomfortable, but they file this document
3 publicly to talk about where they are here. They attempt to give
4 some explanation why they need to be more expansive in their time as
5 need be. At the same time, refusing to give the Defence some idea of
6 where they plan on going for the first three months of trial.

7 I mean, I ask this question rhetorically: For a case that has
8 been going on for years, literally years, that the Prosecution
9 doesn't have any idea approximately of the first three months worth
10 of witnesses that they plan on putting on? I find that, having been
11 in this business for 40 years, on both sides of the aisle,
12 inconceivable. Of course they know who they're going to call. Of
13 course they have an idea. That doesn't mean there can't be additions
14 and deletions. Someone's ill, someone can't make it, someone passes
15 away, God forbid. We all have been through those instances in
16 trials.

17 But the fact that they don't have an idea or can't tell this
18 Court and the Defence who they're going to call or have no idea who
19 they're going to call in the first three months is inconceivable.

20 I would welcome, as an aside, and if I may, Judge, I would
21 welcome their -- at least their admission that they now admit that
22 they are trying the Kosovo Liberation Army. In paragraph 33 of this
23 document, they note that the Kosovo Liberation Army operates as a
24 secret non-state actor behind its public face, consistent with what
25 they wrote in paragraph 35, and contrary to comments in this

1 courtroom that, in fact, it is the KLA itself that's on trial.

2 And what's disturbing about this document, Judge, after
3 everything that has happened and all of the submissions that we have
4 made to Your Honour concerning pre-trial release -- and, mind you,
5 once again, this -- we're already at a hour and we haven't brought
6 this up, our clients have been in custody since November 2020, the
7 Prosecution has the temerity to say in paragraph 4:

8 "Many significant witnesses in this case are loyal to the
9 accused or are intimidated and afraid to testify."

10 And I'm sure based on something, an allegation like that, that
11 there would a footnote of information, that there would be something
12 at the bottom of the page. They have a lot of footnotes here, Judge.
13 Is there any -- anything in this document to support that specious
14 allegation that witnesses are afraid and intimidated and are afraid
15 to testify in this court?

16 Certainly, Judge, if that had come before the SPO in the two
17 years -- almost two years that our clients have been in custody, it
18 would have come to your attention. No. No. It's never been brought
19 to your attention. It's never been brought to anyone's attention
20 because it didn't happen. But they put it in a public document, and
21 don't expect anybody to react to it while trying to prejudice our
22 clients while they're trying to prepare this case.

23 And how about this one, Judge? You know, as far as their time
24 that they need, victims have been waiting over 20 years to tell their
25 story before the Court. They cannot be deprived of this opportunity

1 simply to hurry the proceedings.

2 Our clients have been in jail since November 2020. Hurry the
3 proceedings? And, what, they're going to plan on going another
4 several years in trial because the victims have been waiting to years
5 to testify? P.S., Judge, some of the witnesses that they have on
6 this list have testified seven times. Seven times. And they've
7 testified at international courts. Several of these witnesses have
8 testified in the ICTY, the UNMIK. They've testified in EULEX courts,
9 both in Kosovo, and they're testifying here. That's four
10 international courts, putting aside the domestic courts in Kosovo.

11 So meanwhile, they're attempting to lay this horrific blame on
12 our clients, cite nobody, bring nothing before this Court about it to
13 justify it except to smear these men, and then say, "Oh, we need more
14 time, Judge, because everybody's been waiting a long time." That's
15 the justification. Our clients are waiting a long time.

16 And who took 20 years to bring this case? Certainly not our
17 clients. And who took even years since this institution has been put
18 forth to bring an indictment before Your Honour for -- to be verified
19 and to be submitted? The SPO. Not these defendants.

20 So I take great umbrage of the position that the SPO attempts to
21 put forth before this Court that somehow they shouldn't be delayed,
22 and somehow there has been some intimidation of witnesses by the
23 accused, and somehow they should be given more leeway than they
24 already have to bring this case.

25 I don't want to go any further on this, Your Honour. I can talk

1 about this document at some length, but I know Your Honour has got
2 some other pressing needs to talk about. Thank you.

3 JUDGE GUILLOU: Thank you, Mr. Kehoe.

4 Mr. Emmerson, please.

5 MR. EMMERSON: [via videolink] Emmerson, thank you, My Lord. I
6 would like to take up just one aspect of the submissions that
7 Mr. Kehoe has just made to you, and then deal with two other short
8 points if I may.

9 Leaving, for a moment, aside the allegation of intimidation, the
10 unsubstantiated -- unalleged allegation of intimidation so far as the
11 Defence are aware of witnesses, one of the themes that runs heavily
12 through the SPO's written submission is the suggestion that out of
13 loyalty to the accused, some of the witnesses that the Prosecution
14 wishes or intends to call will be inhibited from testifying by "a
15 code of silence instilled over time."

16 And based on that, the suggestion is that many significant
17 witnesses in this case who are loyal inescapably would be reluctant
18 or unwilling to testify or acknowledge other -- prior statements and
19 so forth. And in support of their submissions, there's a footnote
20 reference both to President Thaci's interviews describing lack of
21 organisation within the Kosovo Liberation Army and to Mr. Veseli's
22 statement made upon arrest and referred to in open court at his first
23 appearance, and the passage quoted says: "... I am ... confident
24 that when the judges have heard all the evidence [in this case],
25 "they will conclude beyond reasonable doubt that the Kosovo

1 Liberation Army was a people's movement, an uprising in self-defence,
2 with brave men and women doing their ... best, in almost impossible
3 circumstances, without formal structures, to protect the civilian
4 population against a carefully planned and genocidal military
5 onslaught by Serbian forces."

6 Now, the SPO what has chosen not to cite from that statement was
7 Mr. Veseli's very clear message to those within Kosovo who might be
8 tempted, out of misguided loyalty, to withhold their cooperation,
9 that he sent a very clear and explicit message to them that all
10 should cooperate with these Chambers, with the Kosovo Specialist
11 Chambers, and no one should think that withholding their cooperation
12 was a cause that was assisting the accused.

13 And he, having seen this written submission, referring to codes
14 of silence, loyalty to the accused, and, therefore, an inevitable
15 reluctance to cooperate, he has asked me specifically to reiterate
16 that part of his statement made following his arrest and at his first
17 appearance, that he calls upon those whose testimony is required or
18 requested to be put before this tribunal to cooperate in every
19 respect.

20 And it's absolutely necessary to correct the record in that way,
21 because selective quotations by the SPO designed to build a skewed
22 and unfair impression of the situation, as this case is closing its
23 pre-trial stage and ready to be brought before the Trial Chamber, is
24 -- it's not what one would hope for from the best of prosecutors.
25 Let me put it that way.

1 The other aspect which rather reinforces this is -- relates to
2 witnesses who are not being called and witnesses who are proposed to
3 be called, but can I deal with those under my submissions on the
4 overall structure as it is proposed.

5 So Your Honour's already pointed out that the SPO now propose to
6 reduce the number of hours within which it calls the same case. And
7 it's been the Prosecution's position at a number of Status
8 Conferences that it will not countenance any reduction in the scope
9 of its case to make this trial manageable, but instead will fiddle --
10 no, that's not the right expression. I apologise. Instead will make
11 decisions about the modes of testimony which should be used in order
12 to present something which appears a more realistic and reasonable
13 time estimate overall. And the net result is a reduction of what the
14 Prosecution says it will need in terms of oral evidence, having
15 regard to the reliance particularly on Rules 153 and 154.

16 I'd like to place it on the record that this is very obviously a
17 false economy, particularly as regards Rule 154. The procedure, as
18 Your Honour will know, for 154 witnesses is that a written document
19 is tendered and adopted and then the witness is made available for
20 cross-examination.

21 The general practice in other tribunals is where a witness is
22 made available for cross-examination solely on a document which has
23 been tendered to stand in lieu of their evidence-in-chief, the
24 Defence are allowed, approximately, if a rough timeframe is used by
25 the Trial Chamber, twice the time that they would be allowed if the

1 witness had given evidence-in-chief and was being cross-examined.

2 I mean, that may not be the approach that this Trial Chamber
3 takes, but the point is the same, which is that what the
4 Prosecution -- if you take one witness, just in the abstract, a
5 hypothetical witness, what the Prosecution is doing is transferring
6 to the Defence the same timeframe. So if the witness is expected
7 originally to take 15 hours, let us say, the Prosecution will now put
8 them forward and take five minutes, or put them forward and take an
9 hour or maybe two hours, and then leave the Defence the
10 responsibility of eliciting the evidence in a manner which is
11 properly tested before the Trial Chamber.

12 So although the 709 result looks better than the original
13 numbers, in reality what they're seeking to do is to place the
14 responsibility on the Defence so that they can say: Well, we kept
15 within 700 hours. The fact that in reality it took twice or three
16 times that long to complete the Prosecution case, that's not our
17 fault. We used Rule 153.

18 And so on any view, the economies that result from that are a
19 chimera. They don't, in fact, reduce the length that they will take
20 in trial terms for the Prosecution's case to elicited and examined.
21 So it's a false economy. It's also -- it also presents a false
22 picture of the extent of the case as it will necessarily play out at
23 trial. It will inevitably be very much longer because of the methods
24 that the Prosecution is choosing to use.

25 So I want to make that point now because the adamant

1 determination not to adopt any focus in its presentation of the case,
2 not to shape it or provide it in a manner that a Trial Chamber can
3 get to grip with and understand what the Prosecution is trying to
4 prove, understand who are the main witnesses alleged to implicate
5 each of the defendants in one way or another, nothing has been done
6 or is proposed to be done to promote that very obvious forensic
7 objective of the trial process.

8 Instead, we are still in the position where the Prosecution
9 throws everything, including the kitchen sink, into the Prosecution
10 case. And all it has done is rejigged the time as between the two.

11 We remain as committed as we were before to the proposal that
12 the Prosecution should be allocated one year to present its case and
13 the Defence one year, collectively between the four accused, to
14 present the Defence case. That is the only way that this trial can
15 be made manageable. And the time limit has the inestimable advantage
16 of forcing the Prosecution to do the job it is obviously so reluctant
17 to do, which is to critically examine its own case and put forward
18 something which is forensically comprehensible and can be tested.

19 So we don't see any significant progress in the steps that the
20 Prosecution outlined in this document. Indeed, it's a confirmation
21 of a dogged unwillingness to assist the Trial Chamber to manage this
22 trial.

23 So I'm not inviting Your Honour to make a ruling, because,
24 obviously, this is a matter that is going to need to be addressed by
25 the Trial Chamber in fairly short form fairly early on after

1 referral, but it would be completely wrong if I failed to place on
2 the record the analysis which we say follows inevitably from this,
3 which is the Prosecution has failed to hear the need to make this
4 case manageable and is moving around the deck chairs on the Titanic
5 in order to make it appear that the boat is still afloat.

6 So that's the first thing.

7 Turning to 153. We now have 83 witnesses whom it is proposed
8 should be tendered in writing but without giving any oral testimony
9 or being cross-examined on behalf of the accused.

10 Now, two things arise from that. One is, of course, the Trial
11 Chamber has to allocate less weight to a witness who cannot be
12 examined orally. That's the rules. That's the law. It doesn't mean
13 that they are of no value, but it makes it extremely difficult to
14 evaluate their testimony.

15 The second side to that is that the Prosecution's obligations of
16 disclosure in those circumstances are much, much higher than -- in
17 terms of a disclosure adverse to credibility than would necessarily
18 be the case for witnesses who are being called to testify, because
19 the Prosecution must - and this again is the law - disclose to the
20 Trial Chamber and to the Defence anything that it has or could gain
21 access to which might adversely impact the credibility of the witness
22 whose statement they are tendering. Otherwise, they may not lawfully
23 tender it.

24 And that's crucial. Why the additional hurdle? Because since
25 it can't be examined orally and the witnesses can't be tested orally,

1 the Prosecution must satisfy the Trial Chamber that they -- the Trial
2 Chamber and the Defence have everything possible to evaluate what
3 weight, if any, should be attached to the statement or transcript of
4 a witness who is, for whatever reason, either through death or
5 alleged intimidation -- so far, as Mr. Kehoe has said, there has been
6 no allegation of intimidation, so we're slightly -- well, we're
7 interested to see what the basis for the 153 applications is going to
8 be.

9 Obviously if somebody is dead, that's the basis for it. But
10 it's witnesses that fall outside that category where the Prosecution
11 is trying, in effect, to have the benefit of evidence of a witness
12 without that witness being open to effective or, indeed, any
13 challenge as to their credibility.

14 So I lay down a marker there, that if the Prosecution thinks 153
15 is the simple route to pretending to have cut down its case, I'm
16 afraid the reverse is true. There will be a far heavier duty of
17 disclosure as regards those witnesses and that must be performed now.
18 It must be performed now because the Trial Chamber is going to need
19 to decide objections to admissibility at an early stage.

20 And objections to admissibility on Rule 153 evidence fall in two
21 categories. One, has the Prosecution disclosed everything? Not just
22 that it has but that it could gain access to that could adversely
23 effect the credibility of the witness, number one. And, number two,
24 have they satisfied the requirements of Rule 153; and if so, how are
25 they seeking to prove that? Now, we make it clear now we make a

1 general challenge, and we will be mounting a general challenge to all
2 153 attempts by the Prosecution requiring proof of the disclosure
3 obligation and proof of the requirements of 153 to be cross-examined,
4 if necessary, if it's suggested that a witness is intimidated, and
5 all of that evidence must be disclosed as soon as the case is
6 transferred so that the proper challenges to admissibility could be
7 made at the proper time.

8 And then finally, the last point I wanted to make, and it's just
9 a question of the flavour of the approach that's being taken and
10 whether it has the feel of a Prosecution that is being guided by its
11 role as a Ministry of Justice. In other words, to help the Trial
12 Chamber seek the truth rather than as a partisan party to proceedings
13 designed to skew the evidence at all costs in favour of the
14 Prosecution's thesis.

15 So we have one witness - and I won't read out the cypher, we
16 don't have a name, but I won't read out the cypher because I don't
17 think it's helpful at this stage - for whom the Prosecution proposes
18 to allow 16 hours for testimony-in-chief. That's, I think, the
19 longest witness that they propose to call. At the moment we have a
20 cypher and a vanilla two, three-paragraph summary which doesn't say
21 anything. We have no transcript and we have no detailed Rule 154
22 statement.

23 Now, is this one of the witnesses that the Prosecution thinks
24 that it will need extra time for because they're unlikely to testify
25 and the hope is that they'll be able to prod them into -- we have no

1 idea. What we do know is that the Prosecution is asking for the
2 maximum time for a KLA insider witness for whom we have no meaningful
3 evidence to assess. And that raises concerns about ambush.

4 Is the Prosecution here really disclosing its case, or has it
5 held back this witness with 16 hours evidence-in-chief, who we, the
6 Defence, have obviously no opportunity to prepare for, in a manner
7 which is less than consistent with prosecuting fairly?

8 By the same token, the SPO has now dropped from its witness list
9 a key international witness, *[REDACTED] Pursuant to Order F960RED.*, a
man who was
10 closely involved at every stage in Kosovo during the relevant times,
11 who can give independent and genuine assessments, but who has
12 recently criticised the SPO for the way that they are conducting
13 these proceedings.

14 Has he been dropped out of spite? Has he been dropped because
15 his evidence was not relevant? That seems most unlikely. Or has he
16 been dropped because the Prosecution is concerned that in the end and
17 overall he might well support the Defence thesis that this suggestion
18 of a secret army within an army and the nonsense about there being a
19 secret code and so forth is utterly divorced from the reality that
20 was experienced by those on the ground?

21 Now, it doesn't lie in my mouth, in principle, to be complaining
22 that the Prosecution has dropped witnesses, because that's what we
23 think they need to do to make the trial manageable and real. But we
24 are left with the overall impression, and I would invite -- I'm sure
25 the Trial Chamber will read these submissions. We'll invite the

1 Trial Chamber to note that the overwhelming impression is the
2 Prosecution still doesn't know what its own case is supposed to be
3 but is hoping for something to come up and is therefore seeking to
4 put everything possible in front of the Trial Chamber and see where
5 the cards fall. But what they will do along the way is keep back
6 secret witnesses, their longest proposed time estimate, with no
7 information to the Defence enabling them to prepare, and abandon
8 witnesses they know are likely to support the Defence case.

9 Is this the sort of conduct one would expect to see from a
10 Prosecution that genuinely was seeking to assist the tribunal to
11 reach a just result, or one that is genuinely seeking to justify its
12 own existence and the delay which the case has suffered from?

13 Those are our submissions and my only submission for today.

14 JUDGE GUILLOU: Thank you, Mr. Emmerson.

15 Mr. Tully, please.

16 MR. TULLY: Thank you, Your Honour. I will deal specifically
17 with our orders, the two that you mentioned and you summed up
18 accurately.

19 I will not be as polite as Mr. Emmerson, and I will jump around
20 a little bit in the agenda, but just very briefly.

21 I'd just like to note that you're raising this under the issue
22 with regard to Prosecution witness list for understandable reasons.
23 But where we put it in our written submissions was in an update on
24 the Defence investigations. And there is a reason for that. As we
25 have received from the Prosecution's update state -- excuse me,

1 update in its written submissions for today, we have been updated on
2 the redactions that we expect to face. Now, this is also an issue
3 that will be dealt with later. I'm not going to deal with it in
4 detail here.

5 But we noted that our investigations, and this is a repetition
6 of something that Mr. Roberts addressed the Court on last time he was
7 here in July, which is that our investigations are continuing well
8 but there are two main obstacles to that.

9 The first one is that the -- the obvious delay caused by the
10 nature of the witness contacts framework. I'm not going to
11 relitigate that. I'm reliably informed by our hardworking evidence
12 review assistant, Ms. Gjecaj, that our appeal will be on time. And
13 also our extensive redactions also not being relitigated.

14 But we did notice in the Prosecution submissions that there are
15 10.000 new items expected 30 days before trial, and there are 36.000
16 documents that are affected by non-standard redactions. 30 days
17 before trial, Your Honour. That's pretty close.

18 I note Mr. Tieger's point that there is nothing in the rules
19 that forces them to do any of these things that we've asked for. We
20 know that. There's a reason that we asked for your order,
21 Your Honour. Under Article 39(13) of the laws, I'm sure everybody's
22 aware, but just for the benefit of the transcript:

23 "The Pre-Trial Judge may, where necessary, at the request of a
24 party or Victims Counsel or on his or her own motion, issue any other
25 order as may be necessary for the preparation of a fair and

1 expeditious trial."

2 So this is the context in which we're making these orders. All
3 of the above in mind.

4 So turning first to the renewal of our request for an order on
5 the notification of witnesses. This was asked by Mr. Roberts at the
6 last Status Conference, and we didn't really receive a clear answer,
7 hence our renewed interest in it. We are more interested in it today
8 having heard the Prosecution's response.

9 So we're not trying to badger the Prosecution with the same type
10 of requests over and over again. And Mr. Tieger might not be
11 impressed by them, but the delays we are concerned with, given the
12 context in which our investigations are taking place, is that if
13 witnesses are unaware that they are SPO witnesses, leaving aside the
14 alarm that that causes Mr. Kehoe, that we share, and the trial -- and
15 our investigation continues, if a witness is informed and they don't
16 want to testify, which, out of the hundreds that we are talking
17 about, that could well happen several times, the SPO must then decide
18 to subpoena the witness, or the witness might decide that they're not
19 coming and the SPO might drop that witness for whom we've prepared
20 and we've devoted our limited resources to go and investigate.

21 This is the nature of the request. It's nothing more than that.
22 There is nothing sinister about it. And we are simply trying to deal
23 with problems before they arise during our investigations so that we
24 can prepare efficiently for trial. Hence the reason that we're
25 coming to you under your powers to issue such an order.

1 One imagines that the request is pretty simple. They've chosen
2 the witnesses. They tell us the witnesses are all coming. The case
3 is ready to go. They're ready to sit five days a week every day of
4 the -- every week of the year, for as many years as it takes to have
5 this case ready, yet they still can't tell us if they've told all of
6 the witnesses if they're coming. And all we asked for was
7 clarification as to whether they did that or not, and they can't give
8 us that. That to us seems suspicious and unreasonable, Your Honour.

9 So turning to the provisional witness list. I'll be brief on
10 this. The key word there is provisional. As we've said in the
11 written submissions, this is without prejudice to amendment, to
12 subsequent change. We understand that it's difficult. We understand
13 that this is early stages. But again, given the context of the
14 redactions and the process we have to go through to talk to these
15 witnesses, any type of clarification as to what areas of the hundreds
16 of witnesses we should be looking in is well received.

17 We might receive something and they say this is 50 per cent
18 accurate, this is 40 per cent accurate. Anything, anything at all,
19 because we are still in the dark. The constant theme of the
20 submissions today have been clarity. We're in the dark so often on
21 so many things that could easily be resolved. Yes, there isn't a
22 rule to follow that forces them to do, but Your Honour can make an
23 order to make them do it.

24 And one of the things that I will note is that Mr. Tieger
25 mentioned various uncertainties that hamper their ability to give us

1 this information. One of the uncertainties that was mentioned at the
2 last Status Conference, I believe twice, was the Defence pre-trial
3 brief.

4 Now, Your Honour, we can't take submissions like this seriously.
5 The Defence pre-trial briefs will, in accordance with the rules,
6 generally set out the case as required. It's not a document of
7 notification of the case in the same way that the SPO or OTP and
8 other institutions is. It will inform the nature of the case. It
9 will fulfil all the requirements of Rule 95. But it cannot possibly
10 be revelatory to a degree that it can hold up the entire process of
11 witness selection, unless they're talking alibi information, which,
12 having investigated the case for seven years, one would imagine
13 they're well on top of. But nevertheless, I note that Rule 104(2)
14 allows specifically for rebuttal evidence to the Prosecution to do
15 that, and that doesn't happen at the start of the case.

16 Those are my observations for now, Your Honour. We renew and
17 maintain our request for those orders. Thank you.

18 JUDGE GUILLOU: Thank you, Mr. Tully.

19 Mr. Ellis, please.

20 MR. ELLIS: Thank you, Your Honour. I will be brief, because I
21 want to adopt expressly much of what has been said before. In
22 particular, I associate the Krasniqi Defence strongly with the
23 observations made by Mr. Emmerson in his submissions made on behalf
24 of Kadri Veseli.

25 On the issue of streamlining. What has happened is that the

1 Prosecution have come up with a headline figure saying that they've
2 reduced their number of hours of direct examination to 709. What
3 that does not reflect is the total amount of time that the
4 Prosecution case will take once cross-examination, re-examination are
5 taken into account.

6 It is, as Mr. Emmerson said, very obviously a false economy,
7 because what is going to happen is that the Prosecution will try to
8 introduce their evidence in writing, passing the burden on the
9 Defence to cross-examine for longer. And so what we're looking at
10 with still a witness list of 319 witnesses, I think, the last count,
11 is still a trial that is going to take years. A Prosecution case
12 that is going to take years. It is not the streamlining that we were
13 looking for.

14 It may not be an issue that can be resolved today. It's
15 classically a Trial Panel issue, but we place it on record now that
16 this is not the reduction that was needed to transform this into a
17 manageable trial.

18 And we will, of course, respond to the 153, the 154, the 155
19 motions when they come in. We note the Prosecution plans to make
20 them to the Trial Panel. We'll respond at the appropriate time.

21 Separately, we do not understand the submission that it would be
22 untimely for the Prosecution now to identify the first 30, 32
23 witnesses it intends to call. We may be in the pre-trial phase of
24 the case still, but we are certainly not in the early stages of this
25 case. We have been going for 22 months now. It is inconceivable

1 that the Prosecution do not know which witnesses they want to put on
2 first. But what they prefer to do is to leave us with a list of 319
3 names, trying to prepare for everybody, without the focus that we
4 could bring to the preparations if we knew who was coming first.

5 It's an entirely reasonable request. We don't need to wait for
6 the Trial Panel to be impanelled before looking at this. It will
7 help everybody move this case forwards.

8 Your Honour, there would be further submissions in relation to
9 1(F) on your agenda in relation to the number of pages of material to
10 come 30 days before trial, but do I understand correctly that's a
11 later agenda item? Okay.

12 JUDGE GUILLOU: Thank you, Mr. Ellis.

13 Mr. Prosecutor, on the various points and questions raised by
14 the Defence, please.

15 MR. TIEGER: Well, Your Honour, I don't know if I'll able to
16 address them all, and I don't want to address them necessarily in
17 order in any event so -- but let me take a stab at it.

18 Mr. Kehoe began by indicating that he was shocked - shocked - to
19 discover that the Prosecution considered that there was a climate of
20 intimidation surrounding this case. I think that's been an issue
21 which has been part of this case from the outset in various forms.

22 With respect to reflections of intimidation of any sort or
23 reflections of loyalty, the materials that the Prosecution has
24 disclosed are replete with examples of that. It will emerge during
25 the course of trial on various occasions. But it's no surprise to

1 anyone. And I would suggest that to act as if this has come up for
2 the first time by virtue of relatively anodyne observations, in our
3 submission, is not an accurate reflection of where we've been up to
4 now and unhappily where we may be.

5 The particular provisions in our submission that gave rise to
6 the allegations that we were accusing the various accused, and in
7 particular Mr. Thaci, of intimidating persons or calling upon their
8 loyalty were observations about the general nature of organisations
9 such as the KLA and the birth of those organisations and the
10 development of those organisations. It seems to me illuminating that
11 -- to the extent it was self-evident, as we argued, that such
12 organisations give rise to loyalties that are reflected in silences
13 in the face of crimes, that that is seen as being the responsibility
14 of the various accused.

15 That seems to me something of a tacit admission of the role of
16 the accused in those organisations.

17 What the Prosecution was saying is that the expectation of how
18 this case will unfold when witnesses are called is informed by a
19 number of factors, including previous cases, including the materials
20 that we've submitted in support of the indictment, and that are
21 statements of the various witnesses which the Defence has, and the
22 logic surrounding such organisations. And the defensiveness of the
23 responses to that submission is telling in itself.

24 I wanted to respond to something the Veseli Defence said. I
25 want to note that we went through a comprehensive and fairly

1 painstaking review of the witnesses in order to arrive at the list we
2 came to now. It wasn't simply a blanket conversion of the previous
3 list. It was a reassessment. And the figures outlined in our
4 submission are a reflection of that reassessment, and it is no
5 different than the kinds of witness lists that have been seen in
6 comparable institutions in the past, and they have to be judged and
7 assessed on that basis.

8 So an attempt to characterise that as a mere sleight of hand
9 transformation is, in fact, inaccurate.

10 With respect to the overall scope of the case and the size of
11 the case. I recall that sometime ago, I think it was two -- not the
12 last Status Conference but the previous Status Conference, the Veseli
13 Defence made the point that the size of the witness list and the size
14 of the case was a reflection of a Prosecution effort to snow the
15 Trial Chamber and the finders of fact with a list of horrors, and
16 thereby somehow mask the absence of evidence of linkage of the
17 accused to the offences.

18 In fact, it's quite the contrary. Now, let me point out that in
19 the Rule 86(3)(b) submission of hundreds of pages in the pre-trial
20 brief, there is a litany of references and supportive material to
21 various factors indicating the linkage of the accused to the crimes,
22 including the fact that the General Staff was at the very top of an
23 increasingly organised structure which was setting policy and giving
24 orders from the very beginning of the indictment period, in fact,
25 that the accused were driving forces within the General Staff, that

1 they were key figures in the formulation and implementation of the
2 common criminal purpose, including through orders and oversight. But
3 also that these objectives and their responsibility was reflected in
4 the duration and extent of the implementation of the policy by
5 subordinates of the accused.

6 These cases, war crimes cases, cases of this type, are large not
7 because Prosecutors delight in piling on with many stories of tragedy
8 and horror and blood. Although, unhappily that is part of the
9 picture of these cases. But because the scale of the crimes is
10 itself a key factor in demonstrating the existence and implementation
11 of the policy through subordinates.

12 And when you add to that the evidential requirements of
13 establishing command and control and notice and ratification and
14 other aspects of the existence of the policy, the cases are
15 necessarily large, and you'll see that time and time again. There is
16 nothing unusual about the size of this case.

17 So I would simply underscore that the success of the
18 post-Nuremberg efforts to combat impunity have been in large part
19 because of a determination to overcome the previous idea that cases
20 of this type could not be tried. They can be tried, they have been
21 tried, and they will be tried, in part through the mechanisms of
22 efficiency that have been developed over time.

23 And in that respect, I want to respond to a couple of the
24 submissions that suggested that Rule 154 was a false economy because
25 it's simply a transfer of the timing from one side of the courtroom

1 to another. That has not been the case. It's not the case. You can
2 follow the development of the trial procedures in cases of this type,
3 and you'll see the increasing reliance in every institution on a
4 Rule 154 equivalent because of its efficiency.

5 And in formulating our list, we have been attentive to the best
6 practices of those institutions and guided by their success. And
7 that's what is reflected in our list. And to suggest somehow that
8 every institution before now has been misguided and has been engaged
9 in chimerical effort and fooling themselves about how much time has
10 been consumed or saved by those procedures is false.

11 With respect to the submissions about the order of witnesses. I
12 think the Selimi Defence suggested that there was -- acknowledged
13 that there was nothing in the rules. And I would simply underscore
14 there is nothing in the rules for a very good reason, and those
15 reasons were articulated previously. It's untimely because there are
16 many considerations that go into the formulation of a witness order
17 that have not been resolved yet. Again, I don't want to get too
18 deeply into it. That's been explained repeatedly and the Court is
19 aware of that.

20 And finally, in the time I -- oh, two more points. I'm sorry to
21 be up here so long.

22 I think the Veseli Defence juxtaposed, not for the first time,
23 the heroism of many KLA members against the charges in this
24 indictment. And I simply want to point out those are not mutually
25 exclusive.

1 The indictment and the fact that persons within the KLA used
2 their positions of leadership to formulate and implement a particular
3 policy, which was actualised through certain parts of their
4 subordinate staff, does not gainsay in any way the fact that
5 simultaneously people were fighting for a cause they believed in in
6 an honourable way.

7 And in a related manner, I'd like to address a little more
8 fulsomely than we have before the continuing claim that the
9 Prosecution has criminalised the KLA, is charging that the KLA itself
10 is a criminal organisation, that every member of the KLA is somehow a
11 member of the joint criminal enterprise. That, Your Honour, is quite
12 false for reasons that those who have advanced it in court know or
13 certainly should know.

14 And let me explain why, and I'm sorry to take so much time.
15 They've cited paragraph 35 over and over again. Now, first of all,
16 paragraph 35 expressly makes the point that persons in the bodies
17 mentioned who might have been JCE members might not have been at all
18 and might instead have been used by JCE members and, therefore, not
19 part of it. In short, it may be the case that none of the persons
20 within those bodies were members of a JCE.

21 And even the most uninformed but intellectually honest reading
22 of that paragraph would lead any reader to that conclusion.

23 But this is a standard pleading paragraph used in leadership
24 cases over and over again that identifies the structures which may
25 have included members or tools of the JCE, and I would suggest that

1 anyone who practices law at this level knows that or should know
2 about it.

3 For example, the Seselj indictment was one of many that
4 essentially mirrored this pleading approach. A charge that Seselj
5 participated in a joint criminal enterprise, including Milosevic,
6 Kadijevic, and others, "and other members of the Yugoslav People's
7 Army, the Territorial Defence, the TOs of Serbia and Montenegro, and
8 the police forces," and so on and so on.

9 And Seselj challenged this pleading, including with respect to
10 the pleading of participants, and the Trial Chamber found that the
11 form of pleading was both common and acceptable, and it found that
12 the accused's argument that the indictment included "a few million
13 participants" was "totally false and groundless."

14 And on appeal, the accused, Mr. Seselj, challenged the
15 indictment and the joint criminal enterprise. The Appeals Chamber
16 recalled that the Trial Chamber had addressed that and noted that his
17 challenges were merely repetitive and, accordingly, dismissed his
18 challenges to the indictment.

19 Now, counsel for Mr. Veseli, as we know, was a judge in the
20 appeal, and as such, he himself confirmed that it is totally false
21 and groundless to claim that this formulation embraces the entirety
22 of the forces that may have included members of the JCE.

23 MR. EMMERSON: [via videolink] I'm sorry to interrupt, but this
24 is completely inappropriate.

25 First of all --

1 JUDGE GUILLOU: Mr. Emmerson --

2 MR. EMMERSON: [via videolink] I'm sorry, but I'm being
3 [indiscernible] in open court. I would like to have an opportunity
4 to respond before it gets [Overlapping speakers] ...

5 MR. TIEGER: Mr. Emmerson will have his opportunity,
6 Your Honour, please.

7 JUDGE GUILLOU: You will.

8 But, Mr. Tieger, I invite you to be brief. And also we are not
9 at trial, so I am not asking for any argument regarding the JCE at
10 this stage. We are talking about the witness list and the requests
11 that have been made in written submissions by the Defence which have
12 been discussed by the Selimi Defence, especially.

13 So no need to enter this discussion about the JCE at this stage.
14 So I invite you to be brief, Mr. Tieger.

15 MR. TIEGER: Fine, Your Honour. And I will be brief.

16 I also would have thought there would be no need to address
17 that. I raise this in response to what was said not for the first
18 time --

19 MR. EMMERSON: [via videolink] Not by me. I didn't say --

20 MR. TIEGER: -- in this courtroom.

21 MR. EMMERSON: [via videolink] -- anything of the sort. Perhaps
22 you would like to look at the transcript.

23 MR. TIEGER: And I did it in light of previous -- in fact,
24 multiple previous articulations of this false position, to my
25 recollection, by virtually every team in the courtroom.

1 So that's all I have, Your Honour. I'm sorry I took so long.
2 Thank you for your time.

3 JUDGE GUILLOU: Thank you, Mr. Tieger.

4 Mr. --

5 MR. KEHOE: Your Honour, I would like to comment just briefly.

6 JUDGE GUILLOU: So very briefly for each Defence team, and I
7 invite you to be very brief because we are already at 25 minutes past
8 the break for the interpreters. And we are not going to discuss
9 about the -- what should be discussed at trial.

10 We are here to discuss about the witness list, and it's only if
11 there is a link with the witness list that you are allowed to make
12 any further submissions, Mr. Kehoe.

13 MR. KEHOE: And the link to the witness list is what counsel
14 just said from his filing about this climate of intimidation, that
15 reflections of loyalty that are replete through this. That's what
16 they're putting in here. That's what they argued.

17 But what interesting, Judge, every time they got the opportunity
18 to support their submission to you, Your Honour, in opposition to our
19 pre-trial release motion and support those allegations, they refused.
20 They didn't want an open hearing. They didn't want a hearing at all.
21 They didn't want to put out for everybody to see what their evidence
22 of intimidation was, what their loyalty reflections are throughout
23 this, because, of course, the KLA is an organisation that has its
24 silences and its loyalties. But, you know, we, the Prosecution,
25 aren't indicting the KLA under paragraph 35. Oh, we're just doing it

1 in the submission before Your Honour.

2 It's outrageous. That's the outrageous part that they are
3 laying out here. This climate of intimidation, this climate of evil,
4 that they want to permeate this trial for, and when they're asked to
5 put it before the Court, they don't do it. And to the extent they
6 give anything to Your Honour, they put it in a confidential document.

7 Was this document confidential? No. No. Why? And why every
8 time we press them to bring forth this climate of intimidation
9 information so our clients could be released did they refuse? It's
10 quite simple. Because they don't have it. And God forbid they
11 should bring exculpatory information, Rule 103 information before
12 Your Honour that we've addressed before. We won't go into that, but
13 we've talked about *[REDACTED] Pursuant to Order F960RED*. being taken off
14 the list. Of
15 course he's got Rule 103 information. He has been a witness for the
16 SPO for years. Was his information ever brought to Your Honour? No.
17 No.

18 Why is this information that is potentially even-keeled and
19 helpful to the Defence never brought before your Court? It does
20 raise one's eyebrow, does it not? Everything that Mr. Emmerson noted
21 before should raise one's eyebrows as a perspective that the SPO is
22 taking in this matter.

23 I know Your Honour doesn't want me to go on extensively, and I
24 will cut short my arguments.

25 But their position on this intimidation and this climate of fear
is outrageous because it's unsubstantiated, and any time they're

1 given the opportunity to substantiate it they don't do it. And
2 again, they did it again, because when they put it in this pleading,
3 what did they cite? They cited a lot of other things in the
4 footnotes but didn't cite any support for that.

5 JUDGE GUILLOU: Thank you, Mr. Kehoe.

6 Mr. Emmerson, briefly, please.

7 MR. EMMERSON: [via videolink] Very, very briefly. I'm not going
8 to respond to Mr. Tieger's tendentious submission comparing the KLA
9 to the Serbian genocidaires, but I will simply say, leaving aside
10 paragraph 35 that he found himself trying to rely upon in the Seselj
11 judgement, paragraph 3 of the submission about the witness list reads
12 as follows, and it's signed by Mr. Smith:

13 "The Kosovo Liberation Army operated as a secret, non-state
14 actor behind its public face."

15 That is the essence of the submission that was being dealt with,
16 and I certainly didn't make any submissions in relation to it.

17 Now as far as the substance is concerned, I'd just like --
18 perhaps we can all take some time in the break, but I would just like
19 to, first of all, invite Your Honour to consider asking Mr. Tieger,
20 yes or no, does the Prosecution know which are the 30 witnesses it
21 intends to call? Does it know that? In other words, is it a
22 decision that has been made, at least in broad terms, inside the
23 Prosecution that is being withheld from the Defence for tactical
24 reasons, or is it that the Prosecution does not yet know who it
25 intends to call to open its case?

1 JUDGE GUILLOU: Thank you, Mr. Emmerson.

2 The answer to this after the break, unless there -- Mr. Tully,
3 very briefly, then.

4 MR. TULLY: Very, very, briefly, Your Honour. My apologies to
5 our very hardworking interpreters.

6 I just want to point out that in terms of the lack of rule for
7 this particular order. Well, the reason that Article 13 exists is to
8 add a human interpretation of a situation for good judgement. And
9 this is the reason that I recontextualised my submissions to point
10 out the delays that we face. There's an overwhelming delay. We face
11 it now, we'll face in the future. We continue to face it, and we
12 continue to receive absolutely nothing from the Prosecution to help
13 us with our investigations. This is why I asked for your
14 intervention, Your Honour. Thank you.

15 JUDGE GUILLOU: Thank you, Mr. Tully.

16 Mr. Ellis.

17 MR. ELLIS: Your Honour, very briefly. Anyone listening to the
18 Prosecution's submissions could be forgiven for thinking that the
19 Prosecution is concerned that its witnesses are not going to come up
20 to proof and is trying to get excuses in early without evidence.

21 JUDGE GUILLOU: Thank you, Mr. Ellis.

22 It is now 3.30. We will reconvene at 3.55, a 25-minute break.

23 --- Recess taken at 3.31 p.m.

24 --- On resuming at 3.55 p.m.

25 JUDGE GUILLOU: So let us now move to the Defence investigations

1 and next steps.

2 I will give the floor to the parties separately on each item
3 related to Defence investigations, like we did for the past two
4 Status Conferences, I believe.

5 First, the status of the Defence investigations; second, on any
6 potential request for unique investigative opportunities; third, on
7 any notice of an alibi or grounds for excluding responsibility;
8 fourth, on points of agreement on law and/or facts; fifth, on
9 objections to the admissibility of evidentiary material disclosed;
10 and, finally, whether and when the parties expect to be able to
11 identify the list of issues subject to dispute and one with issues
12 not subject to dispute, if any.

13 I invite the parties to be concise on each item, and we will
14 start with the general status of the Defence investigations.

15 In their submissions, the Veseli Defence, the Selimi Defence,
16 and the Krasniqi Defence indicated that they do not foresee, at this
17 stage, any difficulty in filing their respective pre-trial brief on
18 21 October. The Defence also indicates that their investigations are
19 ongoing but are hampered by a number of factors outside the control
20 of the Defence; notably, the witness protocol and the redactions to
21 the indictment.

22 So I invite the parties to give an overview of their
23 investigations, starting with Mr. Kehoe, please.

24 MR. KEHOE: Thank you, Your Honour. Would you prefer it if we
25 can just take it issue by issue or -- and then we'll just go around?

1 Yes, Your Honour.

2 Obviously, our investigation is continuing. Has it been
3 hampered? Yes, by -- among other things, the witness protocol has
4 significantly hampered us in the sense that we've had many witnesses
5 that we have been unable to speak with because, obviously, we respect
6 the protocol. I know it's on appeal at this point, Judge, but we've
7 abided by Your Honour's order, and we have -- even though there have
8 been contacts, I will tell you as an officer of the court,
9 [indiscernible] having contacts with some of those witnesses, those
10 contacts have ceased upon -- once your order.

11 That being said, that is a difficulty for us.

12 What is another difficulty that I want to bring to Your Honour's
13 attention, and we kind of glossed over it a little bit on the
14 witnesses, and I know that Mr. Tully was talking about getting back
15 to it sooner, is this new revelation on disclosures by the SPO. And
16 in their submission, they noted that they have 68 witnesses where
17 disclosure has been identified 30 days prior to trial and 46.000
18 pages of material to be disclosed.

19 Now, that is then broken down to 10.000 new pages. 25.000 pages
20 from existing non-standard redactions will be lifted, and 11.000
21 pages when non-standard redactions are requested before the
22 Pre-Trial Judge. That is an enormous amount of material to give to
23 anyone 30 days before trial. We compound that with the fact that we
24 don't know who is going to be testifying at the outset of this trial
25 because the SPO has refused to let us know.

1 So it's an enormous difficulty in that period of time to deal
2 with 68 witnesses and then 46.000 pages.

3 Now, 10.000 pages are new pages. But even the redacted pages,
4 Your Honour, and I was going through this the past few days with my
5 team and my client, many, many of those statements are virtually
6 entirely redacted, such that you don't know names, you don't know
7 dates, you don't know places, and you may have some obscure
8 allegation in there, which is -- basically any information coming
9 from witness statements of that nature is like getting a new witness
10 statement. You're going to have to read it all from the beginning to
11 decipher exactly what is going on here and where these people are
12 fitting into the Prosecution's case.

13 That being said, Judge, of the 98 witnesses, of course, 68 --
14 excuse me, 23 additional are going to remain anonymous until 30 days
15 before their testimony. And then we have four witnesses who are not
16 going to be identified until two other witnesses are identified. One
17 that is only going to be identified to the defendant and not to the
18 accused. And two witnesses that we're never going to get the
19 identities from.

20 So, again, without looking at all of these issues
21 parenthetically but looking at it as a whole in preparation of this
22 case, it is a very difficult proposition at this point to conduct
23 this investigation with the protocol restrictions and these types of
24 disclosures given to us at the 11th hour for us to decipher, going to
25 trial without any movement by the SPO on removing redactions or on

1 who they're going to call for the first three months of trial.

2 I know Your Honour has made those decisions before, and I don't
3 intend to belabour the point. But Your Honour asked how's the
4 Defence investigation is going. That's how it's going. We are
5 continuing to investigate, and we will continue to investigate.

6 And I have some other issues concerning some of the witnesses.
7 And we talked about [REDACTED] Pursuant to Order F960RED. being taken
8 off the list. We
9 will re-engage with [REDACTED] Pursuant to Order F960RED.

10 But one of the questions we have with the Court is what do we do
11 with dual witnesses? We have -- there are witnesses that are on the
12 SPO's list that are going to be witnesses for the Defence. Do we
13 gauge with the protocol? If the protocol is there, does the
14 Prosecution, if they intend on talking to these people - and by the
15 way, they haven't spoken to them in years - is the Defence entitled
16 to be present there? And if the Prosecution interviews that person,
17 is it going to be videotaped with the Registrar? How are we going to
18 engage in this, and how are we going to solve this issue, because it
19 is an issue for us.

20 And, Your Honour, I wanted to bring it up to you, because,
21 obviously, I don't want to transgress and do anything that is counter
22 to the order that you have. But I can tell you, and I can tell you
23 in closed session, who that witness is, and we can go from there.
24 But there is a witness that is on their witness list that is going to
25 be a Defence witness.

I have comments on the other issues that Your Honour set forth.

1 I cede the floor to my colleagues and I can go back with those other
2 issues in a seriatim form at the appropriate point.

3 JUDGE GUILLOU: Thank you, Mr. Kehoe.

4 Mr. Emmerson or Mr. --

5 MR. EMMERSON: [via videolink] Mr. Strong will deal with the
6 Defence investigations.

7 JUDGE GUILLOU: Mr. Strong, please.

8 MR. STRONG: Thank you, Your Honour.

9 Just back to the comments, our investigation is also moving
10 forward. We have raised challenges in prior Status Conferences and
11 they remain. Nonetheless, we're determined to meet the pre-trial
12 brief deadline and carry on as best we can.

13 Just a note on the challenges that we're echoing from the Thaci
14 team. What I hear are the extent of the redactions, and that's
15 something that is also a challenge for us. The scope of this case is
16 also something that we're wrestling with. I was informed this week
17 by our Case Manager that we've crossed the ominous threshold of
18 1 million pages of disclosure that's been served on the Defence. And
19 so we are in the process of understanding and processing that, but
20 that is -- that is another challenge.

21 That then coincides with what my colleague just mentioned.
22 There is an additional 45.000 pages that are going to be made
23 available 30 days before the trial. And we have the witness protocol
24 to contend with.

25 Your Honour, and so with those burdens on the Defence, that's

1 one of the reasons we've come to you and asked for the Prosecution to
2 make their case clear for the first set of witnesses. And, again, we
3 don't need to be dogmatic about it, but if we can get an
4 understanding of generally where they're coming from to start the
5 case, that allows us, in this sea of information, to have an anchor
6 to advance our understanding of the case and advance our
7 investigation in a meaningful way. So that's to reiterate that
8 request.

9 Just as a second note. We put into our submissions a request
10 for clarification on Rule 201, and I'm happy to leave that for
11 another part of the Status Conference. But I do want to circle back
12 to that because we have a number of these requests ready to go, and I
13 want to make sure that we raise this matter in a sensible way now
14 rather than later. Thank you.

15 JUDGE GUILLOU: I have a specific point on this request.

16 Mr. Young, please.

17 MR. YOUNG: In fact, Your Honour, before Mr. Tully addresses you
18 on Defence investigations, could I briefly come back to one short
19 point which was raised before the break, which is on the Defence
20 request for notification of the first couple of months evidence of
21 witnesses. Would you hear me briefly on that?

22 JUDGE GUILLOU: You have 30 seconds.

23 MR. YOUNG: Well, Your Honour, the point is simply this.

24 Mr. Tieger states that the trial will be held in the mechanisms of
25 efficiency, but the Prosecution say how and when the Prosecution

1 chooses to manage their witnesses is a matter for them.

2 It's not, Your Honour. That's why you and the other Judges are
3 here. You are there, obviously, to manage the trial and to ensure a
4 fair trial. How fair or efficient a trial is it, in a case of this
5 side and magnitude, if the Prosecution aren't even prepared to give
6 us their first batch of witnesses that they intend to start with?

7 Even, Your Honour, with respect to national jurisdictions on
8 three to four, five-day trials, it's very, very commonplace and good
9 professional practice for the prosecution to disclose the first
10 witnesses they call in the first week or two weeks of trial. Here we
11 are in one of the largest cases in the world and the Prosecution are
12 refusing to give us disclosure. It's simply not efficient and it's
13 totally unfair.

14 And so I do implore Your Honour to recall and consider
15 Article 39 of the Rules where you, yourself, where you're requested
16 to make an order to interfere here and make an order that we have
17 this disclosure. It's what we're entitled to. We're entitled to
18 know if they're starting with a particular crime scene or alleged
19 zone, which zone, which crime scene, to give us some advance notice.
20 It's only reasonable. It's fair.

21 When you have so many witnesses. When you have 300-odd
22 witnesses, to make us guess whether they're going to start with
23 Witness 280 or Witness 1 to 5, it's just utterly unreasonable. Good
24 case management dictates that Your Honour insist that they disclose
25 to the Defence, for the purposes of efficiency, who we start with.

1 Otherwise, our rights are not being respected. We don't have the
2 opportunity to focus our efforts, channel them where they should be
3 channelled because we have to be considering all the 300 when they
4 know full well it's going to be Witnesses 1 to 10.

5 It's a reasonable request and I ask you to make the order.

6 JUDGE GUILLOU: Thank you, Mr. Young.

7 Mr. Tully, please.

8 MR. TULLY: Your Honour, very briefly. I've already touched on
9 this topic in my submissions, so I won't go back over it.

10 Generally speaking, our submissions regarding this area of the
11 agenda are not incredibly changed from last time. I can confirm, as
12 you have in your summary, that we will be filing a pre-trial brief.
13 I've realised that we were slightly coy about it last time, but that
14 was for good reason.

15 We don't see any issues in filing in that time, with caveats
16 that Mr. Roberts went over last time.

17 But I do note, just for the sake of underlining, that the
18 redactions is something that is -- excuse me, the delayed disclosure
19 items and the non-standard redactions are something that concerns us
20 greatly. Just to talk about the numbers, that's 10.000 new items,
21 36.000 documents that are affected by non-standard redactions, is
22 that this is effectively the size of what would be a complex criminal
23 trial in a domestic jurisdiction, 30 days before trial.

24 We reserve our position on that. It may be the case that we
25 make applications for more time. We'll decide closer to the time.

1 But just to give you a heads-up on that and to give the Prosecution a
2 heads-up on that too.

3 I don't have anything else to add to that except that we
4 continue well with our investigations despite the obstacles we face
5 and we will continue to do so in the future. And we fully expect to
6 meet that deadline that you have set for the pre-trial brief. Thank
7 you, Your Honour.

8 JUDGE GUILLOU: Thank you, Mr. Tully.

9 Mr. Ellis, please.

10 MR. ELLIS: Your Honour, our positions on each of these agenda
11 items are as set out in our written submissions.

12 In relation to the pre-trial brief date, our investigation is
13 ongoing. We are facing the same challenges as all other teams. But
14 that said, we intend to file on 21 October. And, of course, if
15 anything changes on that, we will let the Court know at the earliest
16 opportunity. But we intend to file on that date.

17 I did say before the break that I wanted to come back to this
18 1(F) on the agenda in relation to the delayed disclosure, and it's
19 now been raised by others.

20 I think I can state our position on it quite clearly for the
21 record, Your Honour. If 46.000 pages are disclosed to the Defence
22 30 days before trial, we cannot have a fair trial. That's my
23 position on it.

24 Just to try and explain that. No one can prepare that volume of
25 material in 30 days. It would require us, if I were doing nothing

1 else, to read 1.500 pages every day of that 30-day period, and that's
2 just to have read everything once. It's not to analyse. It's not to
3 investigate. It's not to prepare opening speeches. It's not to
4 prepare questions for witnesses. It is a wholly unacceptable, in my
5 submission, amount of material to give to the Defence at a late
6 stage.

7 I appreciate this is going to be met with the response that I am
8 relitigating issues that have previously been decided. But,
9 Your Honour, what has happened in this case is that protective
10 measures have been dealt with on a rolling basis. At no stage has
11 anybody been told how many pages were left outstanding until 30 days
12 before trial. So we learned for the first time this week that the
13 total amount is going to be something like 46.000 pages. How can any
14 team cope with that, Your Honour? And that is something I invite the
15 Court to take into account in any pending requests. And like my
16 learned friend Mr. Tully, we reserve all rights to make further
17 applications if needed. But it should be clear to everybody 46.000
18 pages cannot be a fair procedure.

19 JUDGE GUILLOU: Thank you, Mr. Ellis.

20 MR. KEHOE: Before the Prosecution mentions, Judge, I didn't say
21 that --

22 JUDGE GUILLOU: Mr. Kehoe.

23 MR. KEHOE: [Overlapping speakers] ... answer one of your
24 questions about the pre-trial brief, of course. We are going to file
25 a pre-trial brief by 21 October. I neglected to say that.

1 And with regard to what my learned friends were just talking
2 about, the 68 witnesses and 46.000 pages. We would ask for leave --
3 I know Your Honour gave that order of 30 days before trial. There
4 have been a lot of items that have been taken into account since that
5 time. That order was made long before we had this, let's just say,
6 something less than satisfactory disclosure. So we ask Your Honour
7 to consider expanding that time to a period of at least 60 days.

8 JUDGE GUILLOU: Thank you, Mr. Kehoe.

9 Let us now move to requests for unique investigative
10 opportunities.

11 In its written submissions, the Veseli Defence indicated that it
12 intends to request measures to preserve evidence under Rule 99.
13 However, considering the need to carry out further preliminary
14 investigations relating to such opportunities, ongoing litigation,
15 and on other matters, and the deadline for the filing of its
16 pre-trial brief, the Defence is unable to commit to such filing
17 requests by 28 October 2022.

18 I note that the Selimi Defence team and the Krasniqi Defence
19 team do not currently intend to make any request concerning unique
20 investigative opportunities.

21 I invite the Thaci Defence team to indicate if they still intend
22 to make any Rule 99 applications and to give details on how many
23 measures they will request.

24 And in light of the preparation required for any unique
25 investigative opportunity, and so as not to delay the transmission of

1 the case to the Trial Panel, I invite the Defence, or at least the
2 Defence teams that intend to file a Rule 99 application, to indicate
3 if it would be in a position to file a notice indicating their intent
4 to file such request by 7 October 2022. Such notice would include
5 the type of measures to be requested, the location where the measure
6 is to be carried out, and the number of witnesses to be interviewed,
7 if any. So only these information.

8 These notices would be made without prejudice to any future
9 determinations on the matter. And then a request pursuant to Rule 99
10 of the rules justifying a need for such measures would then be filed
11 at a later stage. And I think 28 October is probably the last date
12 that is still manageable in order for the case to be transferred for
13 trial in a reasonable delay.

14 Mr. Kehoe, please.

15 MR. KEHOE: Yes, Your Honour. We do intend to explore Rule 98
16 procedures. Obviously, this was 24 years ago. We stand here today
17 at three witnesses at least who would have testified very positively
18 for my client, Secretary Albright, secretary of the United States,
19 Ambassador Holbrooke, Senator Robert Dole, at least those three had
20 all said very positive things about my client and would have
21 testified had they had the opportunity. Of course, they've -- the
22 three are now deceased.

23 And what our proposal, Your Honour, is nine elderly witnesses,
24 elderly, between the late 70s and, frankly, the late 80s, and in
25 various degrees of health, they're critical witnesses, they're

1 international witnesses who were present on the ground, and what we
2 advance to Your Honour is I certainly can give the list to
3 Your Honour by 7 October, I believe, you delineated. Certainly I can
4 meet that.

5 What I wanted to come to the Court today to discuss was the
6 fashion under 99(3) that we should proceed. Because the rule,
7 Rule 99(3), says the depositions upon request of the parties are done
8 with the participation of the Pre-Trial Judge or Judge assigned by
9 the President in a unique opportunity.

10 So it would -- I submit to Your Honour that, under these
11 circumstances, for a variety of reasons, not the least of which is
12 economy and time, is that we take these depositions, and hopefully
13 here in The Hague in this courtroom, checking with the witnesses,
14 depending on their health, but hopefully in The Hague here in the
15 courtroom, before the Trial Panel, or at least if the
16 President nominates one Judge from the Trial Panel.

17 We would have some efficiencies there in the sense that you
18 would have, obviously, a taped interview, and the person would be
19 seen by one of the Trial Judges. And, of course, once down the line
20 the other Judges could view it. But the other value of having one of
21 the Trial Judges there while we do this deposition is their ability
22 to examine that witness, ask questions, as the Bench always does in
23 proceedings such as this in my experience.

24 So in my submission, and we will become more formal about how it
25 would go, it would seem to us that the most efficient way is to begin

1 these depositions prior to the start of trial for these elderly
2 people with a nomination of a Judge by the President, hopefully one
3 of the Trial Panel, so they can hear these critical witnesses. The
4 Trial Chamber can participate with at least one witness -- one Judge,
5 and it will save time down the line having to bring those people back
6 and forth.

7 But the critical issue here is we're now looking at a trial that
8 is several years down the road. These are not witnesses, except for
9 one, that is on the witness list of the Prosecution, and is something
10 that the Defence is going to have to put on.

11 So I'm here, Your Honour, in large part seeking your guidance on
12 that score, and submitting to Your Honour that the procedure that I
13 outlined for having the President nominate a Judge so we can take
14 these depositions might be the most efficient way to complete this
15 task.

16 I don't pretend to have a corner on the market or the answers in
17 this regard, Judge. But that's what I -- as I see it, and as I go
18 through, on the importance of taking these witnesses, and having the
19 participation of the -- one member of the Trial Chamber at least, and
20 as well as time and resources, it would appear, and I submit to
21 Your Honour, that is the way we should go.

22 But on the short answer, on 7 October, will we provide a list of
23 people? I'm not sure if Your Honour wants that in a confidential
24 form or an open filing? It can be either way as far as we're
25 concerned. But we would ask that the Court consider how we're going

1 to proceed under these circumstances.

2 JUDGE GUILLOU: Thank you, Mr. Kehoe. Can you make this filing
3 before 7 October?

4 MR. KEHOE: Well, yes, I probably could, Judge, if I contact all
5 these folks, and -- but my issue here, Judge, depending on the health
6 of some of these individuals, I just have to check whether or not,
7 for instance, they can fly here on their own accord or this has to be
8 done with some type of Zoom circumstances or Zoom equipment,
9 et cetera. I haven't covered that particular track yet, but I will.

10 But if I could just have leave to the 7th on it, Judge, I would
11 appreciate it. If I can do it before that, I certainly will. As an
12 officer of the court, I will try to do it as soon as I can. But
13 given the fact that I need a little leeway here time-wise, I would
14 ask for the 7th and try and do it before that.

15 JUDGE GUILLOU: Thank you, Mr. Kehoe.

16 Mr. Strong, please.

17 MR. STRONG: Yes, Your Honour. We have, at most, a very small
18 amount of these opportunities that we're going to pursue. We can
19 certainly meet the 7 October deadline. Our submissions were
20 predicated on attempting to clear the deck in front of the pre-trial
21 brief, which has our attention at the moment. That will certainly
22 second it to our determination not to delay these proceedings and get
23 to trial as soon as possible.

24 So if 7 October is the date that will not delay proceedings, we
25 will make sure to commit to that date. Thank you, Your Honour.

1 JUDGE GUILLOU: Thank you, Mr. Strong.

2 I suppose the two other Defence teams don't have anything to add
3 on this matter?

4 MR. TULLY: Just for the sake of getting the position down on
5 the transcript, Your Honour. No, our position has been that we don't
6 have any unique opportunity. We don't envisage any in our future,
7 and that remains the case. So I can leave it to Mr. Krasniqi to
8 confirm.

9 JUDGE GUILLOU: Thank you, Mr. Tully.

10 Mr. Ellis.

11 MR. ELLIS: Yes, we don't currently intend to make any such
12 application, Your Honour.

13 JUDGE GUILLOU: Thank you, Mr. Ellis.

14 Just for clarification, both for Mr. Kehoe and Mr. Strong, would
15 you be in a position to make a Rule 99 request before the 7th?
16 Because I think that, from what you indicate, you already know who
17 you would like to have interviewed, so I'm even wondering could I set
18 a deadline for the Defence to file their Rule 99 application to the
19 7th October?

20 MR. KEHOE: To file the application? That is going to be a
21 little bit more difficult, because we're going to need some time to
22 go through things with some of these witnesses. We have some
23 third-party countries that have their own concerns about this type of
24 discussion. I'm sure Your Honour can understand that. Various
25 countries want this entire matter, chapter and verse I might add, to

1 be run through their ministry before they okay, number one, that it
2 can be done, which I think we'll be able to do, but it's the scope of
3 that that the ministries are concerned with in these various
4 countries, what exactly are we getting into in this regard.

5 With regard -- and in that vein, one of the witnesses that is on
6 the Prosecution's witness list, one of the ministries is requesting
7 the witness statement. And they participated in that witness
8 statement being given to the Prosecution, and they want a copy of the
9 witness statement. And we told them, "We are not in a position to
10 give you a copy of the SPO's witness statement." Nevertheless, we
11 would ask to do that for that witness that's on their list that is
12 going to be one of our witnesses, but this is one of the kernels of
13 the protocol that we need to wend our way through.

14 JUDGE GUILLOU: Thank you, Mr. Kehoe.

15 Mr. Strong.

16 MR. STRONG: We always would respectfully request that the 7th
17 be the earliest date set. Thank you.

18 JUDGE GUILLOU: Thank you, Mr. Strong.

19 Let us now move to the notice of an alibi and grounds for
20 excluding responsibility.

21 In its written submissions, the Veseli Defence indicated that it
22 currently intends to provide notice of alibi and is willing to commit
23 to the deadline of 28 October 2022 to provide the relevant
24 information pursuant to Rule 95.

25 The Selimi Defence also currently envisages potentially needing

1 to give notice of an alibi or grounds for excluding responsibility.

2 And the Krasniqi Defence intends to address issues of alibi and
3 any other grounds excluding responsibility within its pre-trial
4 brief, but it indicated it is unlikely to be possible for the Defence
5 to provide a complete Rule 95(5) notice and any associated disclosure
6 by 28 October 2022.

7 All Defence teams have also raised the issue of redactions in
8 the indictment and the difficulty to file their notice.

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

11 And on the issue of redactions to the indictment, I invite the
12 SPO to indicate whether they could provide a table that would
13 indicate when each of the redactions in the indictment would be
14 lifted pursuant to the current protective measures regime in place.

15 Mr. Kehoe, please.

16 MR. KEHOE: Yes, Your Honour. We have addressed this issue in
17 several prior pre-trial conferences with Your Honour. And, yes, are
18 going to assert an alibi defence because -- yes. My client, during
19 the -- just take, for instance, a timeframe between the end of
20 Rambouillet conference in February through the spring was in Europe
21 meeting with international leaders in Oslo and Vienna and Paris, you
22 know, London, et cetera.

23 So the problem we have is, looking at the particular charges in
24 the indictment, many, many, many, many of them, and I can't count
25 them all up, they're all so many, the redactions are so extensive, we

1 can't even tell when these events took place and where.

2 So when we get these redactions lifted, or we can get a more
3 complete piece of information that's going to give us time, place,
4 and dates of things, we'll be able to file an alibi defence. But
5 until that, we cannot.

6 JUDGE GUILLOU: Thank you, Mr. Kehoe.

7 Mr. Strong, please.

8 MR. STRONG: Yes. I don't have too much more to add to our
9 written submissions. We believe we have identified at least two
10 areas that may be possible, but we will have to adjust based on how
11 the redactions unfold as they unfold.

12 We would strongly support seeing a table to understand when
13 redactions will be lifted and lifted across all instruments, the
14 indictment, pre-trial brief, as well as the witnesses' evidence.
15 Thank you, Your Honour.

16 JUDGE GUILLOU: Thank you, Mr. Strong.

17 Mr. Young, please.

18 MR. YOUNG: Yes. Your Honour, I'd just reiterate the points
19 made by Mr. Kehoe. Given the extensive redactions, it's difficult to
20 say when we can disclose whether we will, in fact, serve a notice of
21 alibi. It will depend upon what's in the unredacted material that we
22 are disclosed at some stage, and so that's why we use the words
23 envisage potentially needing to give notice. We can't say we will
24 because we don't know at this stage. Thank you.

25 JUDGE GUILLOU: Thank you, Mr. Young.

1 Mr. Ellis, please.

2 MR. ELLIS: Yes, with the material that we have, we'll do the
3 best we can to address in our pre-trial brief. There are,
4 inevitably, matters subject to redactions that can't be addressed by
5 any Defence team at this stage. And so we would also support a table
6 from the Prosecution indicating when those will be lifted.

7 JUDGE GUILLOU: Thank you, Mr. Ellis.

8 Mr. Kehoe.

9 MR. KEHOE: Your Honour, just -- Mr. Ellis reminding of one
10 thing concerning the pre-trial brief.

11 In our pre-trial brief, we are going to have an extensive area
12 of our client's travels throughout Europe. Well, that -- is that
13 technically an alibi defence under the rule? I'm not sure. But
14 nevertheless, it's going to give everybody an idea where our client
15 was during many different timeframes that are addressed during the
16 course of this indictment.

17 So I'm not trying to keep it too close to the vest, but I
18 thought that Your Honour should know that that will be part of our
19 trial brief.

20 JUDGE GUILLOU: Thank you, Mr. Kehoe.

21 Mr. Prosecutor, on the possibility to have a table as I
22 mentioned initially.

23 MR. TIEGER: Your Honour, you'll appreciate this is a
24 seat-of-the-pants projection, but, yes, I think it's possible, and we
25 would endeavour to have it by the end of next month.

1 JUDGE GUILLOU: So by the end of October?

2 MR. TIEGER: Yes.

3 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

4 Let us now move to points of agreement on law and/or facts.

5 In its written submissions, the Veseli Defence indicated that it
6 rejected the two remaining proposed facts that were outstanding as of
7 the last Status Conference, and it does not anticipate accepting
8 further proposed agreed facts.

9 The Selimi Defence is still actively reviewing facts to
10 determine whether or not it can agree to them, and notes the exchange
11 of correspondence on certain facts between all the teams which may
12 facilitate agreement on some issues.

13 And the Krasniqi Defence has agreed to eight facts in total. A
14 notice summarising these and any additional points of agreement could
15 be prepared by 28 October 2022.

16 The Veseli Defence and the Krasniqi Defence also indicated that
17 they intend to submit a list of proposed agreement -- agreed facts to
18 the SPO and will endeavour to do so in sufficient time so that the
19 resulting *inter partes* discussions could also be concluded by
20 28 October 2022.

21 I invite the parties to give a timeline for their discussions on
22 this matter and to confirm any agreement can be finalised by
23 28 October.

24 Mr. Kehoe, please.

25 MR. KEHOE: Yes, Your Honour. We have agreed to 18 facts in

1 total. And at this point -- I mean, obviously we'll continue our
2 discussion. But, again, agreed facts depend on a fulsome
3 understanding of the Prosecution's case which, needless to say, I
4 don't mean to belabour the point, we don't have, not only with the
5 redactions, but we're getting 68 new witnesses 30 days before trial
6 and another 46.000 pages of documents. It makes it very difficult --
7 that type of disclosure, or lack of disclosure, makes it very
8 difficult for us to agree on facts.

9 That being said, we will continue to endeavour to do that. We
10 are putting together some agreed facts concerning crimes by the Serb
11 authorities, be it the Yugoslav Army or the MUP or Serb
12 paramilitaries, which engaged in many, many, many crimes killing
13 thousands of people during the operative timeframe of this
14 indictment. We will give those agreed facts to the Prosecution for
15 them to agree to. Whether or not that's completed by the 28th, I'm
16 not sure. We'll endeavour to do so. But we should be able to give
17 at least a preliminary idea of those Serb crimes for the Prosecution
18 to agree to relatively shortly.

19 JUDGE GUILLOU: Thank you, Mr. Kehoe.

20 Mr. Strong, please.

21 MR. STRONG: Yes, just to echo those comments. I think we're
22 nearly there, in terms of getting the agreed facts sorted between our
23 Defence teams. We hope by the end of this month to have something in
24 a shape to send over to the Prosecution. And we hope it's relatively
25 not contentious, in the sense that it's going to be mostly

1 contextual, and much of it will be drawn from sources that have
2 either been litigated at the ICTY or are pretty securely documented.

3 So, yes, we hope that by the end of the month that can be handed
4 over and it will provide plenty of time for *inter partes* discussions,
5 Your Honour. Thank you.

6 JUDGE GUILLOU: Thank you, Mr. Strong.

7 Mr. Tully, please.

8 MR. TULLY: Your Honour, yes.

9 Mr. Strong has spoken really for us. This is a Defence-wide
10 initiative. We're all working very hard on making sure that
11 everything is concise and sourced well enough that the Prosecution
12 can agree to it. The timelines given are accurate. We're in the
13 same boat. Thank you, Your Honour.

14 JUDGE GUILLOU: Thank you, Mr. Tully.

15 Mr. Ellis, please.

16 MR. ELLIS: I have nothing to add to that, Your Honour.

17 JUDGE GUILLOU: Thank you, Mr. Ellis.

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

19 MR. TIEGER: No, thank you, Your Honour.

20 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

21 Let us now move to objections to the admissibility of
22 evidentiary material disclosed.

23 In their written submissions, the Defence teams indicate that
24 they are not in a position to commit to a deadline for raising
25 further objections to the admissibility of evidence.

1 I invite the parties to indicate when they will be in a position
2 to do so, even very briefly and not with a very strong level of
3 detail.

4 Mr. Kehoe.

5 MR. KEHOE: Again, Judge -- I'm sorry, Judge, I didn't know if
6 that was on or not.

7 Obviously, given where we are on the disclosure and the
8 redactions and the charging document, having some agreement on
9 evidentiary material and the admissibility of that material, we just
10 can't make that at this point.

11 We don't know what documents are going to be -- try to be
12 tendered across the bar or through a witness or through which witness
13 this is going to be tendered. We don't have any idea about the
14 provenance of many of these documents. As Your Honour knows, we had
15 made 103 requests concerning documents coming from the Serb
16 authorities, Serb governmental authorities, be it the intelligence
17 arm, be it their war crimes arm, or any other arm of the Serbian
18 government, because of the doctoring and provenance -- the doctoring
19 and false documents coming from the Serb authorities that have been
20 detailed in many other courts.

21 It's important for us to understand the provenance of the
22 documents that are being offered; i.e., where did you get them?
23 Because if you got them from Serb authorities, they have been called
24 into question on a variety of different levels. We haven't had that
25 ability.

1 And last but not least, at this point, given our inability to
2 interview many of the witnesses on the SPO's witness list because of
3 the protocol, we've been unable to verify a variety of different
4 documents which may have been signed by them.

5 So at this point, I can't give you a date, and certainly not by
6 28 October, for a decision in that regard or agreement, if you will.

7 JUDGE GUILLOU: Thank you, Mr. Kehoe.

8 Mr. Strong, please.

9 MR. STRONG: Yes, I have very little to add, other than to join
10 those comments.

11 As I understand it, there are roughly 18.000 exhibits proposed
12 by the Prosecution at the moment. My understanding is that on that
13 list there are duplicates and the list is not in a final, final form.
14 At a very minimum, we would like to see those duplicates be addressed
15 and understand where the exhibits are going to be substantiated, so
16 how they're going to be tendered. Thank you, Your Honour.

17 JUDGE GUILLOU: Thank you, Mr. Strong.

18 Mr. Tully, please.

19 MR. TULLY: Really nothing else to add, Your Honour. We join
20 the comments. And we also echo the comments that we would need to
21 know further as to what the SPO is relying on at trial. It is
22 certainly not those thousands of documents. It will be far lower.
23 The closer we get to that number, then -- we can maybe have a
24 discussion then, but not right now.

25 JUDGE GUILLOU: Thank you, Mr. Tully.

1 Mr. Ellis, please.

2 MR. ELLIS: Yes, Your Honour, it's essentially the same
3 position, in that we're not able to deal with it right now.

4 In relation to witness-related materials, the Prosecution have
5 indicated that they will be making Rule 153, Rule 155 applications to
6 the Trial Panel. It's at the point they make those applications that
7 we'll see the material in support of that. There is very likely to
8 be opposition to those, but we can't make the opposition first. We
9 have to see the application.

10 And it's a similar position in relation to other exhibits. We
11 wait to see how the Prosecution is actually going to adduce this
12 material, whether it's through a witness or whether it's simply a bar
13 table motion. These are, we would have thought, Trial Panel matters.

14 JUDGE GUILLOU: Thank you, Mr. Ellis.

15 Let us now move to the list of issues subject to dispute and one
16 with issues not subject to dispute.

17 In its written submission, the Selimi Defence indicated that it
18 does not foresee creating a list of issues subject to dispute and
19 those not subject to dispute beyond the agreed facts.

20 The Krasniqi Defence also indicated that the preparation of a
21 separate list of issues in dispute and not in dispute in addition to
22 the notice of agreed facts discussed before is unlikely to assist the
23 Trial Panel in this case.

24 I invite the parties to present, briefly, their views on this
25 topic.

1 MR. KEHOE: Your Honour, I think it's very unlikely that we'll
2 be able to agree to such an item at this point, consistent with what
3 my colleagues have said.

4 JUDGE GUILLOU: Thank you, Mr. Kehoe.

5 Mr. Strong, please.

6 MR. STRONG: We have nothing to add beyond our submissions,
7 Your Honour. Thank you.

8 JUDGE GUILLOU: Thank you, Mr. Strong.

9 Mr. Tully, please.

10 MR. TULLY: Nothing beyond the submissions, Your Honour. Thank
11 you.

12 JUDGE GUILLOU: Thank you, Mr. Tully.

13 Mr. Ellis, please.

14 MR. ELLIS: Everything that we haven't agreed is disputed,
15 Your Honour. And you've heard what we've agreed, it's very limited.

16 JUDGE GUILLOU: That makes it very clear. Thank you, Mr. Ellis.

17 And finally, let's now move to the Veseli Defence request of an
18 appointment of a focal point for Kosovar institutions.

19 In its written submissions, the Veseli Defence raised the
20 possibility of the appointment of a single representative within the
21 Kosovo government to serve as focal point to expedite Defence
22 requests for assistance and information.

23 I invite the Defence to present its proposal, and I will also
24 give the floor to the Registry to indicate if it seems possible and
25 appropriate.

1 Mr. Strong.

2 MR. STRONG: Thank you, Your Honour.

3 This request came out of where we are in our Defence
4 preparation. We have a number of Rule 102 requests ready to send to
5 the relevant authorities in Kosovo. Before we did, we thought it was
6 sensible to raise the matter here, both because of volume of
7 information in this trial is likely to result in a significantly
8 higher number of requests that has the potential of overwhelming both
9 the Defence and judicial resources and as well to try to be sensitive
10 to transmitting confidential information. So those are the two
11 reasons behind this request.

12 We think that there would be a significant efficiency in
13 creating a single focal point to capture all Defence requests in this
14 regard. And I think that's particularly the case as we move into
15 trial and we're getting information that is going to form the basis
16 of this request 30 days before the witness comes to testify.

17 What we want to avoid is a situation where we're waiting on
18 information from a relevant authority while a witness is in the box
19 and we either have to delay the trial or re-call the witness when we
20 get the information.

21 So that's the position. I think that efficiency gives
22 Your Honour the power to do it under Rule 95(2). And we -- I think
23 we're in Your Honour's hands in terms of ultimately how this looks,
24 but we would like some indication as soon as possible if you're
25 inclined to move forward with this proposal or decline it, because we

1 do need to get on with making these requests, even if it is on a
2 case-by-case basis, as soon as quickly as possible.

3 JUDGE GUILLOU: Thank you, Mr. Strong.

4 Any other Defence team wants to add anything on this matter?

5 Mr. Kehoe.

6 MR. KEHOE: Yes, Your Honour, if I can echo Mr. Strong's
7 concerns.

8 Our concern, well, our issue here is when we have gone to the
9 Kosovo authorities looking for files on criminal cases, they advised
10 us that the entire hard copy file had been given to the SPO for a
11 variety of files that we've asked for and that they're in the custody
12 of the SPO.

13 With regard to those files taken from the Kosovo authorities, it
14 may be best for the Court to fashion a room here and -- for the SPO
15 to take all the files that they got from the Kosovo authorities, put
16 them in a room, and let us look at them. And if something needs to
17 be copied, we can take it up from there. And, of course, we can have
18 somebody in the Registrar seated there as we go through them to
19 ensure that none of these documents are destroyed.

20 It really doesn't make a difference to us. We just can't get to
21 the documents or look at the documents anymore because they're gone.
22 And it seemed to us it's a remedy that -- based on -- in my career
23 over the years when I've been doing this, that was a remedy that a
24 court often fashioned, by just taking these files, putting them in a
25 room, and telling the parties: If you're looking at these dossiers,

1 here they are, look at them, and we can take care of any copying,
2 et cetera, from there.

3 I offer that as a suggestion, as a possible suggestion to
4 augment what my learned friend put before Your Honour, but we have to
5 fashion this in some way.

6 My concern is that any request made by us or Veseli, because we
7 made the request, going back to the Kosovo authorities is going to be
8 quite simple: We don't have it anymore. The SPO does.

9 JUDGE GUILLOU: So this is an additional request to the request
10 of the Veseli Defence, in fact?

11 MR. KEHOE: Judge, I'm just looking to find a way through. I
12 mean, we can -- if Your Honour wants to nominate somebody to navigate
13 this fish weir and so we get to where we want to be, if it means that
14 person dealing with the authorities or that person putting those
15 documents in an office here at the KSC for us to look, I don't think
16 we much care the fashion in which it's done as long as we have the
17 ability to look at those documents.

18 JUDGE GUILLOU: Thank you, Mr. Kehoe.

19 Mr. Tully, please.

20 MR. TULLY: Yes, thank you, Your Honour. We support in full the
21 submissions of our colleagues from the team from Mr. Veseli and the
22 -- hadn't considered up until now, but the alternative suggested by
23 Mr. Kehoe.

24 If I can just offer, with my support, generally to the
25 submissions, I do have some experience with a system similar to this.

1 In the STL -- I'm not sure if it was something known outside of the
2 Defence. But in the STL, the way the ORA [phoen] phase worked was
3 that there was a focal point within the Chambers. I am sure you're
4 well aware yourself, Your Honour.

5 This helped quite a lot with confusion that we had at the start.
6 We wrote hundreds, at least tens, possibly into the hundreds of RFAs
7 that got lost in the meantime simply because they came across the
8 desk of a person who said, "Well, I don't have to deal with this."
9 Even though it was a judge who was receiving, this wasn't the way the
10 system worked.

11 So in our submission, it would help a lot if there was one
12 person who it's now known to the rest of the officials, whoever they
13 may be, that this person will be coming to them with the request,
14 that it's from the Defence, and that it's been approved by the Court.
15 Because the direct approach, especially from someone from the
16 Defence, can put officials in these institutions on high alert,
17 fearing that there is some sort of impropriety to the request no
18 matter how reasonable it is.

19 So in our submission, we would find that the method proposed by
20 counsel for Mr. Veseli is the most reasonable one having seen it in
21 action. It has its own problems, but we believe it is very
22 reasonable in these circumstances.

23 Thank you, Your Honour.

24 JUDGE GUILLOU: Thank you, Mr. Tully.

25 Mr. Ellis, please.

1 MR. ELLIS: We too support, Your Honour.

2 JUDGE GUILLOU: Thank you, Mr. Ellis.

3 Mr. Nilsson, can you give us your thought on these proposals
4 please?

5 MR. NILSSON: Thank you, Your Honour.

6 So with regard to the requests or the proposal by the Defence
7 for Mr. Veseli, you ask whether it's appropriate. We see no problem
8 with it. In fact, we see great advantages with the system that is
9 described. So that's the first thing.

10 What we would like to add, though, is that the way we see it is
11 that this is an internal matter for the Kosovo authorities in how
12 they organise themselves in responding to requests from the parties.
13 So we might not have much influence in that respect. We would still
14 like to be helpful. If it is of assistance, the Registry would offer
15 to reach out to the Kosovo authorities to see whether there is a
16 possibility, if there is a willingness on the authority's side to
17 appoint someone. Thank you.

18 JUDGE GUILLOU: Thank you, Mr. Nilsson.

19 Then I invite the Registry to, indeed, reach out to the relevant
20 authorities and to try to find a practicable solution as you have
21 just indicated, and we will try to set up a solution like that
22 without any order at first. And then I invite you to report to me in
23 case there is no solution that is found in the discussions you have
24 with the Kosovo authorities.

25 MR. NILSSON: Thank you, Your Honour. We will do so.

1 JUDGE GUILLOU: Thank you, Mr. Nilsson.

2 Mr. Strong.

3 MR. STRONG: Yes, Your Honour, could I just invite some time
4 framework to be added to this, because we are late in the day in
5 terms of where we are in the trial process. We have these requests
6 ready to go. This does not need to be a binding -- this should be a
7 suggestion rather than something that's binding, but it's so that we
8 can follow-up and say, you know, in two weeks' time, where are we.
9 Thank you.

10 JUDGE GUILLOU: Thank you, Mr. Strong.

11 I think that this should be done as a matter of priority,
12 Mr. Nilsson. So I invite you to start the discussions tomorrow or
13 early next week at the latest, and try to get back to the Defence
14 within a two-weeks' timeframe maximum. Do you think it's
15 foreseeable? Provided that you get the relevant and the pertinent
16 information, of course.

17 MR. NILSSON: From the Registry's side, there is no problem. I
18 think in a matter of days we could reach out to the Kosovo
19 authorities. I cannot say too much about when we will get a
20 response, but we will push for a response as quickly as possible, of
21 course.

22 JUDGE GUILLOU: Thank you, Mr. Nilsson.

23 Mr. Kehoe.

24 MR. KEHOE: [Microphone not activated]

25 JUDGE GUILLOU: Microphone, please.

1 MR. KEHOE: [Microphone not activated] -- Mr. Nilsson in this
2 regard. It may expedite matters that Mr. Strong has put forth.

3 I think we can expect that the Kosovo authorities are going to
4 say, "We don't have it anymore, Mr. Nilsson." And they're going to
5 say that it's with the SPO. That has been our -- the answer that
6 we've received on several occasions concerning files.

7 So if that's the case, and I'd be surprised were it not the
8 case, what are our next steps from there, which is why I put on the
9 table our viewing-room, if you will, suggestion. But I do think that
10 that's what they're going to tell you, at least at the outset, maybe
11 not for all these files but for quite a few of them.

12 JUDGE GUILLOU: Mr. Nilsson, do you want to mention anything?
13 Or, Mr. Prosecutor, do you want to ...

14 MR. TIEGER: Yes, I -- it just appeared to me that Mr. Kehoe is
15 putting the cart slightly before the horse. I understand that
16 Mr. Nilsson's task was going to be to inquire in response to
17 Mr. Strong's request with regard to a focal point. Should that be
18 successful, then other steps could presumably follow.

19 But I think the point that Mr. Kehoe raised is slightly
20 premature.

21 JUDGE GUILLOU: Mr. Kehoe.

22 MR. KEHOE: There is no question I'm putting the cart before the
23 horse. I don't think -- we agree on a point. I think there is peace
24 in the world. But what I'm trying to do is pass on to Mr. Nilsson
25 the benefit of our experience in a fashion that he shouldn't be

1 surprised if that's the case so that we can expedite this concern and
2 get these documents into place.

3 So if in fact that is, and the expectation level, at least
4 50/50, is going to be that that's what they're going to tell him,
5 what's our next step, and do we have to wait another two weeks to get
6 moving once that -- Mr. Nilsson gets that response. That's my only
7 point. And that is putting the cart before the horse, but I'm
8 confident, based on our conversations with those folks, that that's
9 going to be their position.

10 JUDGE GUILLOU: So we will first wait for the outcome of the
11 discussions of the Registry with the Kosovo authorities. And then
12 based on what these discussions will lead us to, we will assess the
13 situation at that time.

14 So let us now move to the last topic in our agenda, which is
15 related to the representation of the victims in the case.

16 In the Scheduling Order, I invited the Victims' Counsel to
17 indicate whether he can already anticipate whether he wishes to
18 present evidence, and if so, in relation to which issues. And
19 further, whether any of the participating victims wish to present
20 their views and concerns.

21 My aim is to include the victims' representative views in the
22 handover document. I invite the Victims' Counsels to make any
23 general suggestions on this issue if he wishes at this stage.

24 Mr. Laws, please.

25 MR. LAWS: Your Honour, thank you very much. And I can make

1 some submissions which I hope will be helpful.

2 The position, as of today, is that we certainly do intend to put
3 material before the Trial Panel if we are permitted to do so. We
4 think it's likely that we'll apply to call evidence under Rule 114(5)
5 with the leave of the Panel, and it's likely that that evidence will
6 be oral, that it will be documentary, and quite possibly expert.
7 This evidence will, of course, be focused on the impact of the crimes
8 on the victims participating in the proceedings.

9 We think it is likely that we will present some material by way
10 of views and concerns, and we certainly think that it's possible
11 there may be other areas of the case that we will want to address by
12 way of evidence too.

13 So I hope that's helpful. We'll certainly be calling material
14 of one kind or another going to perhaps more than one topic. But as
15 Your Honour knows, there are 50 further victims recommended for
16 admission to these proceedings by the Victims Participation Office,
17 and there are, as we understand it, possibly more to come after that.

18 So at the moment we don't know what evidence those further
19 victims may offer, or what issues may arise from their involvement,
20 or what views or concerns they may wish to share with the Panel. So
21 I hope the Court will understand that at the moment we're only able
22 to give limited assistance, but I hope that's at least of some help.

23 JUDGE GUILLOU: Thank you, Mr. Laws. This is very useful for me
24 to put in the handover document.

25 Let us move to the date of the next status -- Mr. Kehoe.

1 MR. KEHOE: If I may, Judge. If Mr. Laws, does he have an idea
2 of how many witnesses we're talking about at this point? An
3 estimate?

4 JUDGE GUILLOU: Mr. Laws, do you want to reply to the question?

5 MR. LAWS: Well, as I said, we've got 50 pending applications
6 and more to come, so it would be quite wrong for me to speculate at
7 this stage.

8 JUDGE GUILLOU: Thank you, Mr. Laws.

9 Let us now move to the date of the next Status Conference.

10 MR. KEHOE: If I may, Judge, I had an issue to bring up to
11 Your Honour's attention in the spirit of other topics.

12 JUDGE GUILLOU: I will give you the floor in due course.

13 MR. KEHOE: You tell me.

14 JUDGE GUILLOU: Unless it's about the Victims' submissions.

15 MR. KEHOE: No, Your Honour.

16 JUDGE GUILLOU: Then --

17 MR. KEHOE: It's about some other procedural matters.

18 JUDGE GUILLOU: Then in a couple of minutes.

19 Let us move to the date of the next Status Conference. In the
20 Scheduling Order, I suggested Tuesday, 18 October, as the potential
21 date for the next Status Conference. However, two Defence teams
22 indicated their preference for a date after the filing of their
23 pre-trial brief.

24 So I invite the parties to indicate what week would suit them
25 best for the next Status Conference.

1 Mr. Prosecutor.

2 MR. TIEGER: I think we've previously indicated consistently
3 that we're available at the Court's convenience. It's the same.

4 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

5 Mr. Kehoe.

6 MR. KEHOE: And, Your Honour, consistent with, I believe,
7 information transmitted to your Chambers, the week of the 24th, just
8 the following week after we finish filing our pre-trial brief would
9 be fine with us.

10 JUDGE GUILLOU: Thank you, Mr. Kehoe.

11 Mr. Emmerson, please.

12 MR. EMMERSON: [via videolink] Likewise. Immediately or as soon
13 as is convenient after the filing of the pre-trial brief, if that's
14 acceptable to Your Honour.

15 JUDGE GUILLOU: Thank you, Mr. Emmerson.

16 Mr. Young, please.

17 MR. YOUNG: Your Honour, again the week of the 24th would be
18 ideal. Ideally, on the 25th or a date later that week. Thank you.

19 JUDGE GUILLOU: Thank you, Mr. Young.

20 Mr. Ellis, please.

21 MR. ELLIS: Yes, the same position, Your Honour. That week.

22 JUDGE GUILLOU: Thank you, Mr. Ellis.

23 Mr. Laws, please.

24 MR. LAWS: Yes, we'll certainly be available that week,
25 Your Honour. Thank you.

1 JUDGE GUILLOU: Thank you, Mr. Laws.

2 You will receive a Scheduling Order that will include the agenda
3 before the Status Conference, but I will make sure to inform you of
4 the date via CMU in the following days.

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

7 Mr. Prosecutor.

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

9 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

10 Mr. Kehoe.

11 MR. KEHOE: Yes, Your Honour. I have two issues.

12 The first issue with regard to witnesses. I would ask the SPO
13 to view some of the public statements by some of their witnesses.
14 I'm not sure if these are the protected witnesses or not, but there
15 have been some people giving statements in the public. If they
16 happen to be protected witnesses, there should be some concern or
17 their protective measures should be removed.

18 JUDGE GUILLOU: This can be done *inter partes* with the SPO, I
19 believe.

20 MR. KEHOE: Yes, Your Honour.

21 JUDGE GUILLOU: Thank you. And your second point, Mr. Kehoe?

22 [REDACTED] Pursuant to Order F960RED.

23 [REDACTED] Pursuant to Order F960RED.

24 [REDACTED] Pursuant to Order F960RED.

25 [REDACTED] Pursuant to Order F960RED.

1 [REDACTED] Pursuant to Order F960RED.

2 [REDACTED] Pursuant to Order F960RED.

3 [REDACTED] Pursuant to Order F960RED.

4 [REDACTED] Pursuant to Order F960RED.

5 [REDACTED] Pursuant to Order F960RED.

6 [REDACTED] Pursuant to Order F960RED.

7 [REDACTED] Pursuant to Order F960RED.

8 [REDACTED] Pursuant to Order F960RED.

9 [REDACTED] Pursuant to Order F960RED.

10 [REDACTED] Pursuant to Order F960RED.

11 [REDACTED] Pursuant to Order F960RED.

12 [REDACTED] Pursuant to Order F960RED.

13 [REDACTED] Pursuant to Order F960RED.

14 [REDACTED] Pursuant to Order F960RED.

15 [REDACTED] Pursuant to Order F960RED.

16 [REDACTED] Pursuant to Order F960RED.

17 [REDACTED] Pursuant to Order F960RED.

18 [REDACTED] Pursuant to Order F960RED.

19 [REDACTED] Pursuant to Order F960RED.

20 [REDACTED] Pursuant to Order F960RED.

21 [REDACTED] Pursuant to Order F960RED.

22 [REDACTED] Pursuant to Order F960RED.

23 [REDACTED] Pursuant to Order F960RED.

24 [REDACTED] Pursuant to Order F960RED.

25 [REDACTED] Pursuant to Order F960RED.

1 [REDACTED] Pursuant to Order F960RED.

2 JUDGE GUILLOU: Thank you, Mr. Kehoe.

3 Mr. Emmerson, please.

4 MR. EMMERSON: [via videolink] Nothing further. Thank you,
5 Your Honour.

6 JUDGE GUILLOU: Thank you, Mr. Emmerson.

7 Mr. Tully.

8 MR. TULLY: That's it from us, Your Honour. Thank you.

9 JUDGE GUILLOU: Thank you, Mr. Tully.

10 Mr. Ellis, please.

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

12 JUDGE GUILLOU: Thank you, Mr. Ellis.

13 Mr. Laws, please.

14 MR. LAWS: Nothing to add. Thank you, Your Honour.

15 JUDGE GUILLOU: Thank you, Mr. Laws.

16 So we will now break for 20 minutes. And I will come back after
17 the break with a couple of oral orders on the matters we discussed
18 today. The hearing is adjourned.

19 --- Recess taken at 4.59 p.m.

20 --- On resuming at 5.20 p.m.

21 JUDGE GUILLOU: Before we conclude today's hearing, I will issue
22 my first oral order related to unique investigative opportunities.

23 In light of the parties' submissions, I order the Defence to
24 file a notice of any investigative opportunities by 7 October 2022,
25 including any information necessary for their preparation, should a

1 request be granted, such as the type of measures requested, location
2 where the measure is to be carried out, the number of witnesses to be
3 interviewed, if any, and the recommended procedure for carrying out
4 the measure. Requests justifying the need for such measures shall be
5 filed by 28 October 2022.

6 This concludes my first oral order.

7 I will now issue my second oral order concerning notices of
8 alibi.

9 In light of the parties' submissions, I order the Defence to
10 file notices of alibi or grounds for excluding responsibility to the
11 extent possible pursuant to Rule 95(5) of the Rules by 28 October
12 2022.

13 This concludes my second oral order.

14 I will now issue my third oral order concerning points of
15 agreement on law and/or facts.

16 In light of the parties' submissions, I order, pursuant to
17 Rule 95(3) of the Rules, the parties to file notices indicating where
18 points of agreement on issues of law and/or facts have been reached
19 in relation to their respective proposals by 18 November 2022.

20 This concludes my third oral order.

21 I will now issue my fourth oral order concerning objections to
22 the admissibility of evidentiary material.

23 I order, pursuant to Rule 95(2)(e) of the Rules, the Defence to
24 provide by 18 November 2022 any objections regarding the
25 admissibility of evidentiary material disclosed to the extent

1 possible.

2 This concludes my fourth oral order.

3 I will now issue my fifth oral order concerning redactions in
4 the indictment.

5 I order the SPO to file by 28 October 2022 a notice on the
6 record of when each redaction in the indictment is scheduled to be
7 lifted according to the current protective measures regime.

8 This concludes my fifth oral order.

9 And I will now issue my sixth oral order.

10 I order the SPO to file a provisional list of the first
11 40 witnesses it intends to call at trial by 18 November 2022.

12 This concludes my sixth oral order.

13 This concludes today's hearing. As usual, I thank the parties
14 and participants for their attendance, the audio-visual technicians,
15 the interpreters, security personnel for their assistance. And the
16 hearing is adjourned.

17 --- Whereupon the Status Conference adjourned
18 at 5.24 p.m.

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