

1 Wednesday, 19 May 2021

2 [Status Conference]

3 [Open session]

4 [The accused appeared via videolink]

5 --- Upon commencing at 11.02 a.m.

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

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

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

12 JUDGE GUILLOU: Thank you, Madam Court Officer.

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

15 Madam Prosecutor.

16 MS. LAWSON: Good morning, Your Honour, and to everyone joining.

17 For the Specialist Prosecutor's Office this morning are
18 Alan Tieger, Senior Prosecutor; David Harbach, Prosecutor;
19 Nathan Quick, Associate Team Leader; and Marlene Yahya Haage, Legal
20 and Disclosure Officer; and I am Clare Lawson, Head of the Legal
21 Office. Thank you.

22 JUDGE GUILLOU: Thank you, Madam Prosecutor.

23 Now I turn to the Defence. May counsel can introduce themselves
24 and their teams, starting with Mr. Prosper, please.

25 MR. PROSPER: [via videolink] Good morning. Pierre Prosper on

1 behalf of Mr. President Thaci, and I have with me Dastid Pallaska
2 here as co-counsel. Thank you.

3 JUDGE GUILLOU: Thank you very much, Mr. Prosper.

4 Mr. Emmerson, please.

5 MR. EMMERSON: [via videolink] Good morning, Your Honour, and to
6 everybody in the courtroom. I am appearing today on behalf of
7 Mr. Veseli together with my co-counsel, Mr. Nick Kaufman.

8 JUDGE GUILLOU: Thank you, Mr. Emmerson.

9 Mr. Young, please.

10 MR. YOUNG: [via videolink] Good morning, Your Honour.

11 David Young for Mr. Rexhep Selimi today. Thank you.

12 JUDGE GUILLOU: Thank you, Mr. Young.

13 And Ms. Alagendra, please.

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

15 Venkateswari Alagendra, appearing for Mr. Jakup Krasniqi together
16 with Mr. Aidan Ellis and Mentor Beqiri.

17 JUDGE GUILLOU: Thank you, Ms. Alagendra.

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

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

22 MR. LAWS: [via videolink] Good morning, Your Honour.

23 Simon Laws, assigned counsel for the victims in this case.

24 JUDGE GUILLOU: Thank you, Mr. Laws.

25 And now I turn to the Registry, Mr. Roche, please.

1 MR. ROCHE: Good morning, Your Honour. Ralph Roche, Judicial
2 Services Division.

3 JUDGE GUILLOU: Thank you, Mr. Roche.

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

6 Before we proceed with our agenda today, I remind the parties
7 that should anyone attending the Status Conference via
8 video-conference experience any technical difficulties, please inform
9 the Court Officer and myself immediately by waving your hand.

10 Let me now move to the recent procedural history of the case.

11 On 14 May 2021, I scheduled this fourth Status Conference. I
12 asked the parties to provide written submissions, if they so wished,
13 on the following topics: Disclosure, Defence objections to the
14 admissibility of Rule 102 evidence, the status of SPO investigations,
15 the status of Defence investigations, the points of agreement on
16 matters of law and fact, the date for the next Status Conference, and
17 any other matters they wished to raise.

18 On Tuesday, 18 May, the SPO, the Defence for Mr. Veseli, and the
19 Defence for Mr. Krasniqi submitted their written observations. I
20 thank these parties for their written submissions.

21 The purpose of our hearing today is to review the status of the
22 case and to discuss the topics I just listed. I will invite the
23 parties to present their views in a concise fashion about each item.
24 I remind the parties to give prior notice should any submission
25 require the disclosure of confidential information so that we can go

1 into private or closed session.

2 Before we start with our agenda, I would first like to thank the
3 parties for their responses and replies to the preliminary motions,
4 and I inform the parties that I will issue an oral order at the end
5 of the Status Conference regarding the time limit to issue my
6 decisions on the preliminary motions filed by the Defence.

7 And before we go through the agenda set out for the Status
8 Conference, I would also like to briefly discuss the issue of
9 translations.

10 I note that the Defence for Mr. Krasniqi raises the issue of the
11 translations, in particular the translation of the Rule 86(3)(b)
12 outline and the translation of filings which it has requested
13 priority.

14 I would first like to hear from the Registry on the progress it
15 has made with regard to the translation of these items. I note that
16 at the Status Conference held on 16 February 2021, the Registry
17 indicated that it could provide the first 150 pages of the
18 Rule 86(3)(b) outline, revised and translated, no later than 20 April
19 2021, and provide the full outline by the end of May.

20 Mr. Roche, I invite you to brief the Court on the timeline for
21 translation. You have the floor.

22 MR. ROCHE: Thank you very much, Your Honour.

23 As regards translations, we are maintaining progress. As
24 regards the intention or the desire to submit 150 pages by 20 April,
25 due to a number of factors, this has not proved possible. This is

1 primarily due to prioritisations in other cases which have taken some
2 of the resources from the Language Services Unit, and also the nature
3 of the work, it proved that it would be inefficient to focus on 150
4 pages rather than working through the entire document.

5 As regards the final revised translation, the date of 31 May is
6 still on course. We are finalising the documents now, and it will be
7 provided to the parties no later than 31 May.

8 As regards the other documents which have been prioritised for
9 translation, progress is also very positive. We will have a number
10 of those ready for distribution to the parties by mid-June.

11 The public redacted version of the confirmation decision, which
12 is approximately 300 pages in length, that will not be ready by that
13 time, but a number of the prioritised documents will be prepared by
14 mid-June.

15 Thank you, Your Honour.

16 JUDGE GUILLOU: Thank you, Mr. Roche. For the future, I invite
17 the Registry to provide updates to the parties when a deadline that
18 has been foreseen in court cannot be met.

19 Let me turn to the Defence, if one of the Defence have any
20 remarks on this issue of translation, starting with Mr. Prosper.

21 MR. PROSPER: [via videolink] Thank you, Your Honour. No
22 remarks.

23 JUDGE GUILLOU: Thank you, Mr. Prosper.

24 Mr. Emmerson, please.

25 MR. EMMERSON: [via videolink] Your Honour, I'd like to defer, if

1 I may, on these procedural questions to Mr. Kaufman.

2 JUDGE GUILLOU: Absolutely.

3 Mr. Kaufman, please.

4 MR. KAUFMAN: [via videolink] No remarks on that particular
5 issue, Your Honour.

6 JUDGE GUILLOU: Thank you, Mr. Kaufman.

7 Mr. Young, please.

8 MR. YOUNG: [via videolink] No remarks at this stage. Thank you.

9 JUDGE GUILLOU: Thank you, Mr. Young.

10 Ms. Alagendra, please.

11 MS. ALAGENDRA: [via videolink] We're grateful for the update,
12 Your Honour. No further remarks.

13 JUDGE GUILLOU: Thank you, Ms. Alagendra.

14 Unless the Prosecution has any remarks on this? No. Then I
15 will move to the first topic on the agenda, which is disclosure.

16 I would first like to hear from the Prosecution on the progress
17 made on the disclosure of evidentiary material, in particular,
18 whether the SPO has completed disclosure of the remaining material
19 shown to each of the accused during their respective interviews with
20 the SPO; what progress has been made in the disclosure of
21 Rule 102(1)(b) material by the SPO by the deadline of 23 July 2021,
22 and in particular, how much of such material remains to be disclosed
23 and whether the SPO envisages filing further protective measure
24 requests for the Rule 102(1)(b) material by 4 June 2021; then whether
25 the parties experienced any difficulties with the use of the

1 case-specific categorisation of the Rule 102(1)(b) material in
2 Legal Workflow as ordered in my Rule 102(9)(c) decision; then whether
3 the SPO is on track to provide the Defence with a detailed notice of
4 evidence falling under Rule 102(3) by Friday, 25 June 2021; whether
5 there remains exculpatory evidence in the SPO's custody, control, or
6 actual knowledge and whether this material requires a judicial ruling
7 on protective measures; and, finally, whether the SPO is facing or
8 foresees any difficulties related to the disclosure process, in
9 particular, with respect to the Rule 107 material and whether any
10 application pursuant to this rule is imminent.

11 Madam Prosecutor, you have the floor.

12 MS. YAHYA HAAGE: Good morning, Your Honour, and everyone in the
13 courtroom. I will give a brief update on the disclosure progress.

14 As mentioned in our submissions, all remaining material shown to
15 each of the accused during their SPO interviews has been disclosed on
16 April 1st, 2021. Additionally, since the last Status Conference, a
17 further batch of Rule 102(1)(b) material was disclosed on the 20
18 April, and two further protective measures were filed.

19 We do anticipate further protective measures requests to be
20 filed in relation to Rule 102(1)(b). All materials so far disclosed
21 under Rule 102(1)(b) has been updated to reflect the additional
22 subcategories pursuant to the categorisation decision. As mentioned
23 in our submissions, significant Registry and SPO resources have been
24 invested with the goal of maintaining -- of making these features
25 fully functional.

1 In the meantime, the SPO has worked with the Registry to ensure
2 that all previously disclosed material under the Rule 102(2)(b) would
3 reflect the subcategories, and for the disclosures done since then,
4 the SPO has updated the categories manually. We are continuing to
5 work with the Registry in resolving any technical issues, which would
6 then facilitate an increase in the pace in which the disclosure
7 packages can be released.

8 Good progress has also been made in the preparation of the
9 Rule 102(3) notice. However, its completion will, for reasons
10 mentioned in our prior submissions, be contingent to a certain degree
11 upon the progress of all of the disclosure.

12 We are also continuing the review of potentially exculpatory
13 material. We have recently made a protective measures request in
14 relation to a small number of documents identified during this
15 exculpatory review.

16 At this time, no further protective measures requests in
17 relation to such material is foreseen. However, we will continue to
18 disclose or seek protective measures as required in relation to
19 potentially exculpatory material identified.

20 Concerning Rule 107 material, we are similarly continuing active
21 discussions with a number of organisations in order to release this
22 material. As previously forecasted, it is still the case that we
23 expect certain requests pursuant to Rule 107 will be necessary
24 following the completion of these discussions. We are conscious of
25 the timing and have ensured that the relevant organisations are aware

1 of the deadlines in this case, and we will make those requests as
2 soon as we are in the position to do so.

3 We are now approximately two months from the 23 July date for
4 Rule 102(1)(b) disclosure. As such, this month we are conducting a
5 stock-taking, if you will, in terms of disclosure progress. We are
6 assessing the time and the resources that each task takes and
7 measuring it against a prediction of what remains to be done. This
8 will enable us to make adjustments where necessary. But because we
9 are in the middle of this exercise, I am not in the position to give
10 concrete estimates of production resulting from that exercise.
11 However, I can assure this Chamber that the maximum available
12 resources are being devoted to this task.

13 Much progress has already been made, some which is visible in
14 form of disclosure packages or protective measures requests. Some is
15 not yet visible but hopefully will be in the coming weeks. For
16 example, we anticipate that a further batch of Rule 102(1)(b) that
17 does not require protective measures will be disclosed shortly in the
18 coming weeks. We will also be disclosing a number of items requested
19 by the Defence very soon.

20 Good progress has also been made in linking exhibits referred to
21 in disclosed witness statements, as requested by the Defence. When
22 possible, we will aim to disclose complete witness packages, but if
23 this is not possible, we will not delay the disclosure.

24 As indicated in our submissions, we hope to be in a better
25 position to provide the Chamber with a more concrete perspective in

1 the Status Conference in June.

2 JUDGE GUILLOU: Thank you, Madam Prosecutor.

3 Before I give the floor to the Defence, just one follow-up
4 question on the detailed notice of Rule 102(3) material. I
5 understood that you made good progress, but do you anticipate being
6 able to meet this deadline or do you foresee a request to extend this
7 deadline?

8 MS. YAHYA HAAGE: Good progress has been made, but since we are
9 in the process of assessing a number of issues and the resources, we
10 will have to wait until we finish that process to be able to
11 determine if or when there's any impact.

12 JUDGE GUILLOU: So if I understood you correctly, it is still
13 your objective to meet this deadline but you cannot be sure for now;
14 is that correct?

15 MS. YAHYA HAAGE: We are in review.

16 JUDGE GUILLOU: This is noted. Thank you, Madam Prosecutor.
17 Now let me turn to the Defence on this issue of disclosure.
18 Mr. Prosper, please.

19 MR. PROSPER: [via videolink] Thank you, Your Honour.

20 As you can imagine, we are sorting through the material that has
21 been provided by the Prosecution, and, as has been pointed out by the
22 Prosecution, it is not complete. There is still some missing
23 information. We're seeing that there are exhibits that have been
24 referred to in various documents or statements that have not been
25 provided. So we're still trying to process this, but we do believe

1 that more information needs to be disclosed.

2 And there's some information that has been disclosed that has
3 been -- that is of poor quality and illegible, quite frankly, for us.
4 So we are putting together a table which we will then go back to the
5 Prosecution and try to see if we can sort this out, but I think it's
6 safe to say that it is not complete. Thank you.

7 JUDGE GUILLOU: Thank you, Mr. Prosper.

8 Mr. Emmerson or Mr. Kaufman. Mr. Emmerson.

9 MR. EMMERSON: [via videolink] Again, I'm deferring to
10 Mr. Kaufman on these issues from this point forwards.

11 JUDGE GUILLOU: Mr. Kaufman, please.

12 MR. KAUFMAN: [via videolink] Yes, thank you, Your Honour.

13 On this particular matter I would refer you to paragraph 2 of
14 our filing of yesterday; that's 315 in the case record. All I can
15 add, really, is that in our opinion a pre-trial brief is essential
16 and there's no substitute for that.

17 We're finding the use of the Legal Workflow software quite
18 cumbersome and time-consuming. It's not the best application, if I
19 can put it, for assessing the evidence remotely.

20 Now, I do have a more lengthy submission on the Rule 107 issue.
21 I listed it, actually, under our miscellaneous topics to be discussed
22 at the end of the Status Conference. I don't know whether
23 Your Honour wants to hear that submission now or later.

24 JUDGE GUILLOU: I am happy to hear the submission now, because
25 this is related to disclosure. So please, you can proceed. Thank

1 you.

2 MR. KAUFMAN: [via videolink] Thank you, Your Honour. And as we
3 mentioned in filing 315 submitted yesterday, we have corresponded
4 with the SPO on the issue of Rule 107 material with a view to
5 obtaining certain metadata which would not prima facie violate the
6 conditions of confidentiality applicable to such items of evidence.

7 Now, with what seems to be a rather worrying lack of urgency,
8 the SPO has been insisting that negotiations with the various
9 information-providers are ongoing and that discussions on possible
10 counterbalancing measures are yet to be concluded.

11 Now, this response is not new. It has now been given in a same
12 or a similar format at least four times. It leads us to believe that
13 little or no progress has been made by the SPO and that it is
14 encountering problems in the execution of its duty both to review
15 these so-called springboard materials for exculpatory evidence and to
16 make judicially approved counterbalancing measures thereof available
17 to the Defence in a timely fashion.

18 Now, the metadata which we requested from the SPO were not
19 designed, as I say, to pierce the veil of confidentiality but rather
20 to allow the Defence to be assured, firstly, that the SPO has been
21 attributing Rule 107 status to materials in a lawful matter; and,
22 secondly, that the SPO is actually cognisant of to quantity of
23 materials subject to this rule which it has in its possession.

24 With Your Honour's permission, I would just like to take a few
25 sentences to address what I believe to be the lawful use of Rule 107,

1 something which, in my opinion, is clear from the plain language of
2 the statutory provision itself.

3 Rule 107 is essentially the KSC equivalent of Article 54(3) (e)
4 of the Rome Statute, and those of us participating in this hearing,
5 although perhaps not today, such as Mr. Hooper, who are familiar with
6 the DR situation at the International Criminal Court, will be more
7 aware of the hazards associated with this particular prosecutorial
8 minefield.

9 To put it simply, there is a tendency of many prosecutors and
10 investigators that are often eager to prove their utility to seize as
11 much material as possible from whatever organization is willing to
12 provide, only thereafter, whether by lack of prosecutorial foresight
13 or because the information provided changes his mind, do they realise
14 that exonerating materials seized might not be disclosable either
15 because there is a risk of exposing a source or because it might
16 endanger the providing organisation's ongoing operations.

17 Rule 107 leaves no room for doubt that the prior conclusion of a
18 confidentiality agreement is a necessary prerequisite for the receipt
19 of this information. It cannot work the other way around; namely,
20 that the Rule 107 label is imposed on materials *ex post facto* after
21 their provision. If given willingly and without any demand of
22 confidentiality, the information-provider cannot at a later stage
23 demand that the information should be withheld.

24 Now, with all of this in mind, the Defence asked the SPO to
25 provide it with sufficient metadata to assess whether the materials

1 in its custody and purportedly subject to Rule 107 were, indeed,
2 supplied with a prior demand for confidentiality. The answer
3 received from the SPO did not differ substantially from the answers
4 given in the last two Status Conferences, and the fact that the SPO
5 is still not able, as they state, to provide meaningful figures as to
6 the quantity of such materials in their possession and whether they
7 contain relevant or exculpatory information is troubling to say the
8 least.

9 So in light of this, we believe that the time has arrived for
10 Your Honour to render a decision imposing strict timelines on the SPO
11 for discharging its disclosure obligations with respect to these
12 materials. We specifically invite Your Honour to order the SPO to
13 provide us as soon as possible with the same information that we
14 requested of it in *inter partes* communication; namely, the number of
15 items purportedly seized pursuant to Rule 107; the number of
16 organisations supplying such materials; the ERN numbers attached to
17 these materials; the date that these materials were created; and the
18 date that these materials were supplied to the SPO.

19 It is this metadata for which the SPO claims to be unable to
20 supply meaningful figures, and it is not clear why this is the case
21 if it has indeed been receiving these materials as it should.

22 Thank you, Your Honour.

23 JUDGE GUILLOU: Thank you, Mr. Kaufman.

24 Just one follow-up question, very briefly. The metadata you are
25 requesting are the ones you just listed at the end of your

1 presentation; is that correct? Or is there any other metadata that
2 you are thinking of?

3 MR. KAUFMAN: [via videolink] Thank you, Your Honour. Those are,
4 indeed, the metadata, and those metadata requests were communicated
5 to the Prosecution.

6 JUDGE GUILLOU: This is noted. Thank you, Mr. Kaufman.

7 OI'll give the floor to the Prosecution at the end, so we will
8 continue with the other Defence but I would invite the Prosecution to
9 respond to the arguments of Mr. Kaufman on the Rule 107 material.

10 Mr. Young, please.

11 MR. YOUNG: [via videolink] Your Honour, I have nothing to add,
12 save to say that, listening to Mr. Kaufman, I share his concerns.
13 Thank you.

14 JUDGE GUILLOU: Thank you, Mr. Young.

15 Ms. Alagendra, please.

16 MS. ALAGENDRA: [via videolink] Your Honour, may I defer to
17 Mr. Ellis on issues of disclosure.

18 JUDGE GUILLOU: Mr. Ellis, please.

19 MR. ELLIS: [via videolink] Thank you, Your Honour.

20 Only one additional point from me this morning, Your Honour, and
21 that relates to our concern about documents seized during the
22 searches which took place in November of last year.

23 Your Honour, we have not yet, I think, received any disclosure
24 of the documents that were seized. Insofar as those relate to
25 Rule 102(1) (b) material, it would be useful for our preparations to

1 know when in the programme of rolling disclosure the Prosecution
2 anticipates disclosing those particular documents.

3 But more pressingly, insofar as it relates to exculpatory
4 material, of course, the obligation in Rule 103 is to disclose that
5 material immediately. We understand there's a volume of material
6 involved. We understand there may be a need for translation of many
7 of those documents. But, nonetheless, the searches took place in
8 November. Six months have now passed, and it would be straining the
9 definition of immediacy at this point.

10 So we would seek immediate disclosure of those materials insofar
11 as they are exculpatory and an indication as to when the remainder of
12 the materials will actually be disclosed.

13 JUDGE GUILLOU: Thank you, Mr. Ellis.

14 I turn to the Prosecution now. And if you can respond to the
15 two points that we just heard from the Defence, first on the Rule 107
16 material and then on the documents seized during the search in
17 November.

18 Madam Prosecutor.

19 MS. LAWSON: Thank you, Your Honour.

20 With respect to Rule 107 first, what the Defence sought was
21 confirmation that Rule 107 applies to material received under
22 conditions of confidentiality and solely for the purpose of
23 generating new evidence. That confirmation was, indeed, provided in
24 the SPO's e-mail response, and there is no lack of clarity regarding
25 the conditions under which Rule 107 applies to material.

1 Second, the Defence sought a breakdown of certain metadata
2 relating to all items received by the SPO pursuant to Rule 107
3 conditions. The data was apparently sought in order for the Defence
4 to assure themselves as to the timely review of Rule 107 material.
5 However, simply put, the Defence has no entitlement to such
6 information, nor does the Defence have any legitimate purpose for
7 such information at this interim stage in the disclosure process.

8 It is not entitled to statistical information regarding evidence
9 collected by the SPO throughout the course of its multiple
10 investigations. Moreover, certain of the metadata requested by the
11 Defence would, in fact, violate the conditions under which the
12 material was received, such as, for example, the date of the
13 documents and in certain cases the ERN number may, in fact, violate
14 such conditions.

15 The SPO is devoting -- sorry. The SPO's obligations are to
16 ensure that material subject to disclosure in this case is either
17 disclosed or appropriate exemptions from disclosure are obtained.
18 With respect to Rule 107, the SPO is actively and vigorously engaging
19 with relevant institutions.

20 As my colleague indicated, we've ensured -- we are aware of the
21 applicable timelines, and we have ensured that the relevant
22 institutions are also aware of them. Even -- as indicated in our
23 e-mail response, even if the Defence were entitled to such data, no
24 meaningful figures are available at this time, and this is for two
25 reasons.

1 The first is that the SPO's disclosure review for identification
2 of material which is relevant to this case remains ongoing. Not all
3 materials received under Rule 107 conditions are necessarily relevant
4 to this case. And the second reason is, in fact, because of the very
5 active nature of the SPO's ongoing efforts with respect to Rule 107
6 material. The situation is dynamic and it is constantly changing.

7 In fact, just yesterday, a further significant batch of Rule 107
8 clearances was received, so it is literally the case that the figures
9 are changing on an almost daily basis.

10 As indicated in our written submissions, relevant applications
11 will be made as soon as the SPO is in a position to do so and to the
12 extent they prove necessary following completion of the discussions.

13 Turning to the second point and the inventory of seized items,
14 in addition to the inventory that was provided in relation to
15 Mr. Veseli and which was filed in accordance with Your Honour's
16 order, the SPO has also provided similar inventories to both the
17 Krasniqi and Selimi Defence teams. The seized items are still being
18 assessed for inclusion on the Prosecution's exhibit list or, indeed,
19 for whether they fall under other disclosure rules, including whether
20 they contain exculpatory information.

21 As was advised *inter partes* to the Krasniqi Defence, to the
22 extent that such materials are not disclosed under either
23 Rule 102(1)(b) or Rule 103, they will be listed in the Rule 102(3)
24 notice.

25 Review of the documents for disclosure purposes remains ongoing.

1 And as the Krasniqi Defence are aware and themselves acknowledged, it
2 is a significant volume of material. The index alone relating to
3 Mr. Krasniqi extended to approximately 160 pages.

4 Thank you.

5 JUDGE GUILLOU: Thank you, Madam Prosecutor.

6 So if I understand correctly on this last topic, what you
7 mention is that the Defence is going to get the material disclosed if
8 it's 103, immediately; if it's 102(1)(b), by the deadline of 23 July;
9 and if it's not one of these two, it's going to be in the notice in
10 the 25 June; correct?

11 MS. LAWSON: That is correct. Immediately following review and
12 processing, or by the Rule 102(1)(b) deadline, or if not in that then
13 it will be listed in the Rule 102(3) notice, correct.

14 JUDGE GUILLOU: And let me go back to the first topic you
15 addressed on the issue of the 107 material.

16 Mr. Kaufman was asking for me to put a deadline on this. What
17 would you have to say on that? And if there was a deadline, what
18 should be the timeline for this obligation to disclose the 107
19 material?

20 MS. LAWSON: Your Honour, our submission would be that those
21 deadlines already are in place. To the extent we seek to rely on
22 such information, we have a deadline in place and we are working
23 towards that. To the extent it contains exculpatory information, the
24 requirement is for us to disclose it immediately upon it being
25 available.

1 If at the time that we are disclosing the Rule 102 material it
2 appears that there remains exculpatory information subject to
3 Rule 107 which has not been released at that time, it would be our
4 intention to begin making applications at that point.

5 Thank you.

6 JUDGE GUILLOU: Thank you, Madam Prosecutor.

7 Let me turn back to the Defence. I will first give the floor to
8 Mr. Kaufman on this topic of the Rule 107 material. You have the
9 floor.

10 MR. KAUFMAN: [via videolink] Thank you, Your Honour.

11 Yes. With respect to the lack of entitlement criterion
12 mentioned by the learned Prosecutor, that is something new. I would
13 refer to paragraph 7 of our filing 315 in the case record.

14 The SPO response is set out there quite clearly. Had they
15 believed that we were not entitled to that information, they should
16 have said so right away. This is something new for the purposes of
17 the hearing this morning.

18 But we have put our concern on the record, and we've noted the
19 Prosecutor's comments with respect to meeting the deadlines in place.

20 Thank you.

21 JUDGE GUILLOU: Thank you, Mr. Kaufman.

22 I see that Mr. Prosper requested the floor. So, Mr. Prosper,
23 you have the floor. And after, I will give back the floor to
24 Mr. Ellis for the second matter.

25 Mr. Prosper, please.

1 MR. PROSPER: [via videolink] Yes, thank you, Your Honour.

2 I first would like to join the submission by Mr. Kaufman. But
3 on this issue of 107 information, I think it's important to note a
4 few things.

5 Having been on the other side of this and having been someone
6 who has been disclosing that type of information, it is fairly
7 straightforward, and as the Prosecution said, they just received
8 clearance yesterday on a batch, so there should be no reason for that
9 information not to flow -- to continue to flow and flow directly.

10 But the main point I want to make is I think it is important for
11 us to have an understanding of the agencies or the type of
12 information that is being sought, and the reason is as follows: Is
13 that the Prosecution does not have a monopoly on engaging other
14 organisations or other states for information. And if this Trial
15 Chamber seeks to have this move in an expeditious manner, then I
16 think it would be helpful for us to know what agencies have been
17 contacted. Otherwise, there will be a duplication and you'll have
18 the Defence teams independently going back to some of these same
19 organisations, asking for information again and again and again. And
20 not only will it delay the proceedings, but it will really test the
21 patience of cooperating agencies and states.

22 So I think we need to have at least a table to understand what
23 information has been sought, what information has been rejected, and
24 who has been contacted.

25 Thank you very much.

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

2 Mr. Ellis, if you allow me, I will give the floor to the
3 Prosecution on this particular point before I give you the floor.

4 Madam Prosecutor, on this issue of sharing the contacts with the
5 different agencies, you have the floor.

6 MS. LAWSON: First, I would say that the material which has been
7 sought will be available to the Defence as it is disclosed, and they
8 will be able to see it for themselves, as well as where it was
9 obtained from, and will therefore be able to avoid any duplication in
10 seeking the same information.

11 As to providing the identity at this stage of organisations that
12 we are engaged with, that would be in clear violation of Rule 107.

13 Thank you.

14 JUDGE GUILLOU: Thank you, Madam Prosecutor.

15 I don't see any request for the floor on this specific topic, so
16 I give the floor to Mr. Ellis on the other topic we just discussed.
17 You have the floor.

18 MR. ELLIS: [via videolink] Thank you, Your Honour. Very
19 briefly.

20 What does "immediately following processing" mean in this
21 context? This is material that the Prosecution has already had for
22 six months. In my submission, some more urgency is needed on this.

23 JUDGE GUILLOU: Thank you, Mr. Ellis.

24 Madam Prosecutor, is there any way this can be prioritised
25 within the deadlines that you have?

1 MS. LAWSON: Your Honour, we certainly are prioritising it, and,
2 indeed, we had to prioritise it in order to provide the lengthy
3 indexes to the Defence recently. It's a significant volume of
4 material which, relative to other material, is relatively recently
5 received. Processing, obviously, means translation and, as
6 applicable, review for redaction.

7 I can say that there is an awful lot on our plate to prioritise
8 right now. We are simply prioritising it to the maximum extent we
9 can together with all other disclosure.

10 Thank you.

11 JUDGE GUILLOU: This is noted. Thank you.

12 I don't see anyone requesting the floor on this topic, so we
13 will move to the second item in our agenda today, which is the
14 Defence objections to the admissibility of Rule 102 material and 102
15 evidence.

16 Let me ask the Defence whether they intend to object to the
17 admissibility of evidentiary material disclosed pursuant to Rule 102;
18 and if so, within which time limit. I would also like to hear from
19 the parties about the format to be adopted for these objections.

20 In the Scheduling Order, I have proposed a table format,
21 including information as to, first, the ERN number of relevant
22 evidentiary item; second, the disclosure package number; third, the
23 rule under which the relevant evidentiary item was disclosed; and
24 fourth, the nature of objection.

25 I invite the parties to let me know if they have any comments on

1 this suggested format, starting with the Defence.

2 Mr. Prosper, please.

3 MR. PROSPER: [via videolink] Thank you, Your Honour.

4 I'm trying to understand your question. Objection as to the
5 format that we will be proceeding, or you want a substantive response
6 to this question?

7 JUDGE GUILLOU: At this stage, would you have any comment on the
8 format that I suggested? Would this format suit you for future
9 objections? And are you now able to provide a timeline for these
10 objections or not?

11 MR. PROSPER: [via videolink] Yes. Actually, I think on both
12 issues, Your Honour, we're not in a position to respond primarily
13 because it's hard to, you know, object on issues of admissibility
14 when we have not seen the entirety of the package. So we need to
15 understand exactly how the information we are receiving fits
16 together, and once we have a comprehensive picture, we will be in a
17 position to form a conclusion as to what needs to be challenged on
18 admissibility and how it is to be challenged.

19 Again, this really comes back to the larger picture, and I do
20 not want to test the patience of this Court, but it comes back to
21 this issue of where we're getting everything piecemeal. The
22 Prosecution has been at this for nearly five years and should be
23 ready, and they filed the indictment with you over a year ago and
24 they are not ready. You know, they keep -- they complain, they say,
25 "Oh, we're trying to prioritise, we're busy, we have other things

1 going on." Then my question is then why did you file the indictment?
2 And now what's happening is you have put us in a position where our
3 clients have lost their liberty, they have lost their presumption of
4 innocence, because the Prosecution is not ready and we are sitting
5 there at their whim.

6 So it is very, very difficult for us to comment on a completely
7 incomplete picture, and this is very troubling and violative of
8 international norms and human rights instruments. And, again, I
9 apologise for testing your patience, but this is something that is
10 extremely troubling and needs to be remedied immediately.

11 Thank you.

12 JUDGE GUILLOU: Thank you, Mr. Prosper.

13 Mr. Kaufman or Mr. Emmerson on this specific topic on the
14 objections to the Rule 102 evidence?

15 MR. EMMERSON: [via videolink] I think you've heard enough from
16 me over the past Status Conferences as to the approach that we take
17 to the way in which the Prosecution is going about its disclosure
18 obligations, so I'm going to, again, defer to Mr. Kaufman. And that
19 goes from this point forwards for the management issues and the
20 implications that they have for the proper conduct of these
21 proceedings and the preparation of the Defence.

22 JUDGE GUILLOU: Thank you, Mr. Emmerson.

23 Mr. Kaufman, please.

24 MR. KAUFMAN: [via videolink] Thank you, Your Honour. Yes, on
25 this particular matter, we have addressed it comprehensively in

1 paragraph 3 of our filing 315 in the case record. I would only add
2 that we do not wish to be constrained by any tabular format. The
3 reason for this is quite simple. A trial is a dynamic process, and
4 we can't anticipate all objections in advance to the admissibility of
5 evidence.

6 I would join wholeheartedly Mr. Prosper's submission with
7 respect to not being able to produce any form of objection until
8 we've been disclosed the entirety of the Prosecution evidence.

9 Thank you very much.

10 JUDGE GUILLOU: Thank you, Mr. Kaufman.

11 Mr. Young, please.

12 MR. YOUNG: [via videolink] Yes, very briefly, I support what my
13 colleagues have simply said for the Defence. With respect, it's
14 premature to address the Defence comments on admissibility. With
15 respect, Your Honour, we would consider making our objections once we
16 know what the Prosecution case is, once the Prosecution tell us what
17 evidence, which witnesses and which exhibits they rely upon. So not
18 at this stage, Your Honour.

19 As far as table format is concerned, certainly we are able to
20 deal with it in table format at the appropriate time.

21 Thank you.

22 JUDGE GUILLOU: Thank you, Mr. Young. And on the different
23 categories I suggest to include in the table format, would you be in
24 agreement with that?

25 MR. YOUNG: [via videolink] Yes, we are happy to consider the

1 categories Your Honour has raised.

2 JUDGE GUILLOU: Thank you very much, Mr. Young.

3 Ms. Alagendra or Mr. Ellis, please.

4 MS. ALAGENDRA: [via videolink] Your Honour, our position is as
5 we state in paragraph 8 of our written submission. We are unable to
6 provide a timeline for this, and on that, I take the same position
7 that Mr. Prosper does.

8 Your Honour, on the table format, we have no problems submitting
9 the summary and grouping of the objections. However, in the
10 arguments, that should follow by way of a filing.

11 JUDGE GUILLOU: Thank you, Ms. Alagendra.

12 Let me now turn to the Prosecution. Do you have any comments on
13 this topic, Madam Prosecutor?

14 MS. LAWSON: As indicated in Your Honour's agenda, the
15 objections to admissibility at issue are those addressed in
16 Rule 95(2)(e). And to the extent objections to authenticity are
17 raised by the Defence at this stage, they would also be reflected by
18 the SPO pursuant to Rule 95(4)(c) in the exhibit list.

19 In the event of such objections, the SPO considers that the
20 table format proposed by Your Honour would be suitable and useful for
21 the parties and the Panel. It will obviously be for the Trial Panel
22 to set its own directions for the conduct of proceedings at trial and
23 to rule on questions of admissibility. As the SPO understands it,
24 Your Honour's proposal merely facilitates rather than constrains the
25 subsequent trial proceedings.

1 Thank you.

2 JUDGE GUILLOU: That's correct. Thank you, Ms. Lawson.

3 I don't see any Defence team requesting the floor, so we will
4 move to the next topic on the agenda, which is the SPO investigations
5 and next steps.

6 I would like to ask the SPO whether they can provide a further
7 update on the estimated date of completion of outstanding
8 investigative steps, and when the SPO will be able to file its
9 pre-trial brief and related material. And on that specific point, I
10 note that the SPO's new target date is now mid-October 2021,
11 according to their written submissions. And I also invite the SPO to
12 make any submissions on the procedural calendar in this case.

13 Madam Prosecutor, you have the floor.

14 MS. LAWSON: Thank you, Your Honour.

15 The SPO's submissions regarding investigations remain unchanged,
16 as indicated in our written submissions. Investigations and
17 fulfilment of the SPO's mandate are anticipated to continue for the
18 foreseeable future. However, this should not impact the pre-trial
19 timeline.

20 We are aware that after a certain point, to the extent the SPO
21 seeks to rely on additional evidence, judicial authorisation will be
22 required, and to the extent exculpatory material arises, it will be
23 automatically subject to disclosure.

24 As Your Honour noted, with regard to Rule 95(4) material, that
25 is the pre-trial brief and witness and exhibit lists, the SPO now

1 anticipates being in a position to submit that material by
2 mid-October 2021. As you indicated, this is a change from the
3 September estimate previously provided.

4 As we had emphasised in prior submissions, both at the last
5 Status Conference and in written filings, the September date was the
6 earliest possible date that the SPO could have envisaged providing
7 the material at the time. Since then, it has become apparent that
8 all available resources will be occupied with completing disclosure
9 work in the coming months. We are at a critical phase of that
10 process, as we have noted earlier in the hearing, and particularly
11 given the additional logistical burdens involved in it, it's proving
12 to be an all-consuming, office-wide endeavour.

13 Disclosure is currently forecasted to continue into September
14 2021, and it is in light of those factors that the SPO has provided a
15 revised estimate.

16 As for the procedural calendar going forward, our submissions
17 would remain, as they have done in both written filings and in
18 submissions we've made in prior Status Conferences regarding the
19 proposed timing following the submission of the Prosecution's
20 pre-trial brief.

21 Thank you, Your Honour.

22 JUDGE GUILLOU: Thank you, Madam Prosecutor.

23 Mr. Prosper, please.

24 MR. PROSPER: [via videolink] Thank you, Your Honour.

25 Your Honour, I think the only way for me to describe my reaction

1 is I'm baffled. The Prosecution says that -- begs our patience, and
2 that there's a lot of work before them, this is an office-wide
3 effort. I understand that. And it should be an office-wide effort,
4 because they have no other mandate than this. I'm not sure what else
5 they may be doing.

6 And it comes back to my point is why are we here if they are not
7 ready? Why are we here if investigations are continuing? There's a
8 fundamental human right due process issue that accused have a right
9 to know why and for what they are being charged, and we do not know.
10 The Prosecution continues to say, "Well, our investigations will
11 continue into the foreseeable future." What is the foreseeable
12 future?

13 I can actually see and programme out to 2030. Is that what
14 we're talking about? I think we need to have a timeline and a
15 deadline so that we know what is happening here. And, Your Honour,
16 you have already seen their dates are slipping. And I come back to
17 this point that we have people who are deprived of their liberty,
18 they're deprived of their right to, in a sense, due process, they're
19 deprived of the presumption of innocence. And the Prosecution is
20 taking its time. It just says, "Oh, please, Your Honour. It's an
21 office-wide effort. We're busy. We have a lot happening," while my
22 client, all of our clients are sitting in custody away from their
23 family, and they don't even know the totality of what they're charged
24 with because the Prosecution is not ready.

25 So there's a simple cure: So while the Prosecution continues

1 their investigation into the foreseeable future, perhaps we should
2 revisit the issue and release our clients from custody for the
3 foreseeable future. And then when the Prosecution is ready, we can
4 reconvene and start this all over again. But, Your Honour, and
5 please forgive me for my passion on this, but this is violating every
6 human right norm that is out there as it relates to fair trials,
7 whether it's from the ICCPR, the European Convention on Human Rights.
8 We really need to take a look at this, and it is a negative
9 reflection on this institution. And by allowing it to happen, it
10 will stain this institution going forward. Thank you very much.

11 JUDGE GUILLOU: Thank you, Mr. Prosper.

12 MR. EMMERSON: [via videolink] Your Honour, on this issue --

13 JUDGE GUILLOU: Mr. Emmerson.

14 MR. EMMERSON: [via videolink] -- I would like to say a few words
15 before handing over to Mr. Kaufman.

16 You may remember that at an early stage of these proceedings I
17 foresaw that the planned timetable by which the Prosecution was then
18 asking to start a trial in September was completely absurd. And I
19 was accused by the Prosecution -- in fact, I was also accused in a
20 private meeting by the President of the Tribunal, of having given a
21 falsely prolonged expectation for the trial -- pre-trial phase in
22 order to increase the chances of achieving provisional release.

23 That was the position that was being put in the pleadings. I
24 regret to say it was the position that the President communicated
25 herself to the EU heads of mission in a confidential meeting, of

1 which the details have leaked.

2 We are now in the situation where exactly what I said was going
3 to happen has come to pass. The Prosecution is now naming September,
4 the date it originally suggested we could start the trial, and,
5 indeed, insisted we could start the trial, and that any other time
6 estimate was an abuse by the Defence in order to try to persuade the
7 Court to try to grant provisional release, as to the date on which
8 the Prosecution will certify that it has served its material.

9 We still don't have any indication of when the pre-trial brief
10 was going to be served. It should have been served already. The
11 case should have been ready already. As Mr. Prosper has rightly
12 pointed out, these men are in custody. They're in custody on the
13 basis of the fact that the trial is supposed to be properly prepared
14 and presented and managed. And despite all the detail and
15 micromanagement that Your Honour has tried to do throughout this
16 process, the fact of the matter is that the Prosecution is a
17 shambles, and these men are being kept in custody indefinitely whilst
18 the Prosecution attempts to put its case in some sort of order.

19 Now, I'd like to add another factor into this equation. I don't
20 know whether Your Honour has yet had a chance to get to grips with
21 the preliminary motions, the responses, and the replies, but it will
22 be very obvious to anybody who has that there is a very real issue as
23 to whether this Court has jurisdiction to try joint criminal
24 enterprise as a mode of liability, command responsibility as a mode
25 of liability, or arbitrary detention as a substantive offence. These

1 are not issues that are going to go away lightly. It's fairly
2 obvious there's decisions -- a recent decision of the Serbian
3 Constitutional Court, which, if it was applied in these proceedings,
4 would have the effect that all of those allegations would be strike
5 out of the indictment. And it is, of course, completely unthinkable
6 that the Kosovo Specialist Chambers - a court of the Kosovo legal
7 system, not an international criminal court at all, but a court of
8 the Kosovo legal system - should treat defendants accused in the KLA
9 in a manner so obviously discriminatory as against the way in which
10 Serbian officials are being treated by their own constitutional
11 court.

12 The fact is that command responsibility, joint criminal
13 enterprise, and arbitrary detention were not crimes in Kosovo at the
14 time that the events that occurred. The Constitutional Court of
15 Serbia has recognised this and has held that people cannot be tried
16 for those allegations because they weren't crimes at the time. There
17 is no jurisdiction.

18 This Court, your Court, is in the same position, and to come to
19 an opposite conclusion would be a staggering injustice. So we're in
20 the situation where these individuals are sitting in custody with a
21 Prosecution in shambles, with no -- with a Prosecution accusing the
22 Defence of having acted improperly in trying to estimate the length
23 of the pre-trial phase when it itself was suggesting September,
24 October as a trial date, just at the start of this process, as a
25 basis for resisting provisional release, and on top of that we're

1 looking at a very real situation where, frankly, the only rational
2 outcome of the pre-trial preliminary investigations is that this
3 Court has no jurisdiction on joint criminal enterprise, command
4 responsibility, or arbitrary detention.

5 And that being the case, where does that leave the Defence? In
6 the case of Mr. Veseli, on the evidence that's been disclosed so far,
7 there is not a single allegation that he perpetrated a crime. There
8 is not a single allegation that he was a co-perpetrator. There is
9 not a single allegation that he incited or aided or abetted any
10 particular crime. There is no case against him if the jurisdictional
11 challenge is correct on the evidence that's been disclosed so far.

12 Now, maybe the Prosecution is holding something back. Maybe the
13 Prosecution is hoping something will come up. But you are sitting
14 here presiding over a set of proceedings in which four men have lost
15 their liberty for a very long period of time, despite the fact that
16 Mr. Veseli and Mr. Thaci were aware of this indictment six months
17 before it was confirmed, despite all the guarantee that have been
18 offered to the Court, and despite the fact that Mr. Veseli has, very
19 recently, had an -- and for which he is extremely grateful, a
20 compassionate period of release, which was extremely well managed on
21 all sides so that he could visit his very sick father.

22 We are in a situation now where the Prosecution -- it is the
23 Prosecution who has been very obviously acting improperly. And I
24 repeat, and I'm putting this on the public record today, not only did
25 the Prosecution wrongly accuse the Defence of deliberately suggesting

1 that the trial process must be extended, only now to come to the
2 Court to say they can't even disclose their case before the date they
3 said they were going to have it ready for trial - not only to that,
4 but the President of the Court, in the presence and with the
5 Prosecutor, at a private meeting, has made that allegation against
6 the Defence as well.

7 This situation is coming to a head. And I would like,
8 respectfully, to invite you to get a grip on the situation, ensure
9 that these men are not kept in custody any longer, order the
10 Prosecution to file a pre-trial brief immediately, and get the
11 preliminary motions dealt with as expeditiously as possible, because
12 otherwise you're going to find that this Court is sitting on four men
13 in custody for two or three years only to have it decided it had no
14 jurisdiction to put them there in the first place.

15 That is my general submission. And as far as the details are
16 concerned, I hand over to Mr. Kaufman.

17 JUDGE GUILLOU: Mr. Kaufman, please, briefly.

18 MR. KAUFMAN: [via videolink] Your Honour, I have nothing to add
19 to what Mr. Emmerson and Mr. Prosper have so eloquently put.

20 JUDGE GUILLOU: Thank you, Mr. Kaufman.

21 Mr. Young, please.

22 MR. YOUNG: [via videolink] Your Honour, yes, I would like to
23 address you on this, because, frankly, Your Honour, we've just heard
24 from the Prosecutor about the timeline, and I hope that that timeline
25 that you've just heard from the Prosecution is alarming to you,

1 because it's utterly unsatisfactory to have a timeline that is being
2 envisaged.

3 As Your Honour knows, the defendant is entitled to have adequate
4 time and facilities for the preparation of this Defence. One of the
5 most staggering statistics is the feature of the translation that you
6 dealt with at the start of this hearing, which is that possibly one
7 of the most important documents that has to be translated into
8 Albanian, the outline document of the Prosecution's case, still has
9 not been translated into Albanian.

10 And you may remember last time, Your Honour, at the last Status
11 Conference I mentioned how staggering and how difficult this is for
12 the Defence, because, as Your Honour knows, these accused are
13 entitled to consider the Prosecution evidence in their own language.
14 When they cannot even read probably one of the most important single
15 documents in Albanian, and we're now coming up to June, what does
16 that tell Your Honour, frankly, about the timeline when that is one
17 of many thousands of documents?

18 With respect to the translation services, they've tried to
19 prioritise that, but that one single most important document isn't
20 even translated and we're nearly in June. So, with respect, it's
21 utterly unsatisfactory. This should have all been prepared much
22 earlier, and, with respect, these issues are so serious in terms of
23 trial preparation and giving the Defence the opportunity to consider
24 the evidence. How can the Defence investigate when the defendants
25 themselves haven't even had the chance to know what the evidence is

1 in their own language and provide instructions to the Defence?

2 This is such a concerning issue, Your Honour. I would certainly
3 ask you to, when you review your decision in terms of custody or
4 release, it's something that should be, with respect, at the
5 forefront of your mind.

6 JUDGE GUILLOU: Thank you, Mr. Young.

7 Ms. Alagendra, please.

8 MS. ALAGENDRA: [via videolink] Your Honour, I echo what has
9 already been submitted by Defence counsels. I have nothing to add.

10 JUDGE GUILLOU: Thank you, Ms. Alagendra.

11 Before I give if floor to the Prosecution, I'd just like to
12 briefly respond to what has been said and to remind everybody in this
13 courtroom and beyond that all the accused are, of course, presumed
14 innocent, and this is something that we all need to have in mind.

15 Madam Prosecutor, you have the floor to respond to the Defence
16 teams.

17 MS. LAWSON: Thank you, Your Honour.

18 Yes, the SPO has, from the outset, established ambitious targets
19 for itself and continues to do so. We have also welcomed and
20 encouraged active management of the pre-trial process. We have done
21 that knowing that the main disclosure burden falls initially on
22 ourselves, and we are doing it in the interests of fair and
23 expeditious proceedings, and we are doing it to ensure that
24 disclosure to the Defence is completed at the earliest possible time
25 that it can be completed. It is the Prosecution which has been, and

1 continues, to actively push these proceedings forward.

2 The Defence have again made generalised submissions on status
3 and progress. However, the SPO has been and continues to make very
4 good disclosure progress. We've been making regular disclosures well
5 in advance of applicable deadlines. There is absolutely nothing
6 exceptional or in violation of rights or norms in terms of the
7 pre-trial progress in this case.

8 Finally, to the extent to which the Defence teams are raising
9 questions of detention. I would note that they recently waived the
10 opportunity to make submissions when the timing for a detention
11 review arose. Thank you.

12 JUDGE GUILLOU: Thank you, Madam Prosecutor.

13 Does any of the Defence team want to take the floor?

14 Mr. Emmerson, briefly then, please.

15 MR. EMMERSON: [via videolink] I will be brief.

16 When it is said that the Prosecution established ambitious
17 targets for itself, I really would like to revert to the submission
18 that I made, which was not responded to.

19 The Prosecution came before you repeatedly, and in written and
20 oral submissions, claiming that they would be ready for a trial in
21 September. They are now saying they are not ready even to disclose
22 their case for it to be investigated until September. That in
23 itself, as everybody has pointed out, is a cause of great concern
24 with four men in custody under an indictment which is the subject of
25 a challenge, which, as I say, at the very least, is strongly

1 arguable, to the jurisdiction of the Court on all of the main
2 allegations.

3 But - but - my main concern, that has not been responded to, is
4 that the Prosecution made an allegation repeatedly against the
5 Defence, and against me personally, as well as against counsel for
6 the other accused, that we were giving the Court an artificially
7 prolonged estimate of the pre-trial period in order to support the
8 merits of a provisional release application. That submission was
9 made to you orally several times. It was made to you in writing
10 repeatedly.

11 And, as I indicated earlier on, it was made by the President of
12 the Tribunal and Mr. Black personally --

13 JUDGE GUILLOU: Mr. Smith.

14 MR. EMMERSON: [via videolink] -- during a meeting with the EU
15 heads of mission, which is a matter of very grave concern which we
16 shall be taking up very shortly.

17 But leaving that aside, I await the apology for the Prosecution
18 this morning, please, the acknowledgement that they should never have
19 made that allegation, that the allegation was wrong and unfair, that
20 they withdraw it and they apologise for making it because, in fact,
21 as we predicted, the Prosecution is approximately a year behind the
22 time table it said it could be ready for.

23 In other words, there is no possible prospect of a trial taking
24 place at any time before the middle of next year on the timetable
25 that the Prosecution is now working to. We don't even know what we

1 have to investigate. We've got no idea. Do we have to investigate
2 the crime base when we don't even know if the Court's got
3 jurisdiction over joint criminal enterprise? Do we have to -- how
4 can we begin the process of investigation when there are no
5 allegations of perpetration or co-perpetration against my client?

6 The reality is you must now accept this trial could not possibly
7 begin before the middle of next year. And that being the case - that
8 being the case - the allegations that were made against us by the
9 Prosecution repeatedly during the phase running up to provisional
10 release and subsequently, and repeated by the President and Mr. Black
11 to the EU heads of mission, are false, are unfair, they should be
12 withdrawn, and there should be an apology.

13 I would invite the Prosecution to formally, now, withdraw them
14 and apologise.

15 JUDGE GUILLOU: Thank you, Mr. Emmerson.

16 Does any other Defence counsel want to take the floor? I don't
17 see any hands. Does the SPO want to respond? Yes --

18 MS. LAWSON: Just very briefly, Your Honour.

19 JUDGE GUILLOU: -- Madam Prosecutor. Very briefly --

20 MS. LAWSON: Thank you, Your Honour.

21 JUDGE GUILLOU: -- please.

22 MS. LAWSON: I can return to the ability of the Defence to
23 investigate as necessary under the following agenda item. However,
24 the information and materials already available to the Defence has
25 been outlined on multiple prior occasions, and we continue to

1 maintain that the timelines forecast by the Defence are inflated and
2 there is no reason why they cannot actively commence their
3 investigations. Thank you.

4 JUDGE GUILLOU: Thank you, Madam Prosecutor.

5 I don't see any hands, so we're going to move to the next topic,
6 which is the Defence investigations and next steps.

7 I would be interested to hear from the Defence on the status of
8 its investigation. In particular, whether based on the SPO's
9 estimates and the ongoing disclosure process the Defence can provide
10 more information on the status of their investigations, whether the
11 Defence can provide information on any intention to make requests
12 concerning unique investigative opportunity pursuant to Rule 99(1),
13 and whether the Defence can provide information on any intention to
14 give notice of an alibi or grounds for excluding responsibility.

15 Mr. Prosper, please.

16 MR. PROSPER: [via videolink] Thank you, Your Honour. I'll just
17 be brief.

18 I think for the foreseeable future we are, unfortunately, unable
19 to provide clarity on these issues until we receive more information
20 from the Prosecution. Thank you.

21 JUDGE GUILLOU: Thank you, Mr. Prosper.

22 Mr. Emmerson or Mr. Kaufman.

23 MR. EMMERSON: [via videolink] I'll deal with this, if I may.

24 Our investigation is in place. We are in a position to begin.

25 However, we have done the initial triaging and scoping exercise of

1 the evidence that has been served by the Prosecution. And as I've
2 underlined, to my surprise, I have to say, there is not a single
3 allegation against Mr. Veseli of any specific conduct that can be
4 investigated as a crime or participation in a crime.

5 So we are faced with a choice of either doing nothing or
6 investigating those very minor mentions where he appears in the
7 evidence in a non-criminal capacity, or investigating the entire
8 crime base at a time when we don't have the evidence and we don't
9 know what the jurisdiction of the Court is to try those allegations.

10 So the short answer to your question is: Only an insane Defence
11 would expend the resources, and I certainly couldn't advise anybody
12 on the Defence team to do that, investigating a crime base which, in
13 all likelihood, is beyond the jurisdiction of this Court. What we
14 can do is investigate the very limited references to Mr. Veseli in
15 the evidence, none of which involved the commission of a crime. But
16 as I say, the Prosecution, so far, has served no such evidence.

17 So unless they're holding it back, which would be a disgraceful
18 abuse of process, or unless they haven't got it, which seems likely,
19 there is no such evidence against Mr. Veseli. What investigation can
20 we do? It's true we can do the investigation of the entire crime
21 base, if that really is going to be necessary. But I hope if you've
22 read the responses, at least, to the jurisdictional challenge, you
23 will realise why no responsible Defence counsel could advise any
24 expenditure at the moment to go reinvestigating a hundred-plus events
25 in 42 different locations across Kosovo and Albania when there's

1 absolutely nothing, legally, to connect them to the alleged crimes
2 committed by the accused.

3 So that is our dilemma. As Mr. Prosper has said, what kind of
4 Prosecution issues an indictment when the circumstances are as they
5 are, and then insists on holding accused in custody and opposing
6 applications for provisional release? What kind of responsible
7 Prosecution does that? It indicates six months in advance in breach
8 of the rules that it is going to indict two people for reasons that
9 had no explanation in the order of Your Honour or in the reasons
10 given for it, then indict them when they are not ready for trial,
11 then give false estimates as to how long a trial can take place, and
12 then, after we find ourselves in a situation where you're asking us
13 what investigation we can do, at a time when it's completely
14 impossible for the Defence to know whether they have to investigate
15 almost nothing, which is the current situation, if the jurisdictional
16 challenges succeed - in other words, if this Court does -- follows
17 the same approach that was followed at the end of last year to the
18 very the same question by the Constitutional Court of Serbia, another
19 municipal court in exactly the same position as the Kosovo Specialist
20 Chambers, if you do the same thing they did and don't set about
21 treating Albanians in an entirely different way to Serbians who
22 allegedly committed crimes in Kosovo at the same time, in the same
23 conflict, at the same place, if there is to be parity - there will be
24 no trial on joint criminal enterprise, command responsibility, or
25 arbitrary detention because you don't have jurisdiction to try it.

1 So what is the Defence to do in this situation? Why are we
2 being asked, with the greatest of respect, about the status of
3 Defence investigations when the fact of the matter is that unless
4 this Court, a municipal court, and I think everybody associated with
5 the Kosovo Specialist Chambers - on the Prosecution side and in the
6 Registry - forget sometimes that you are a municipal court of Kosovo,
7 not an international criminal court. Your jurisdiction is
8 circumscribed by the constitution and in just the same way the
9 jurisdiction of the Serbian courts are circumscribed the
10 constitution.

11 Serbian and Albanian defendants are alleged to have committed
12 crimes in Kosovo at the same time in the same conflict subject to the
13 same law, because at the time the law that applied was the law of the
14 SFRY and the constitution --

15 JUDGE GUILLOU: Mr. Emmerson, sorry to interrupt you, but this
16 not the --

17 MR. EMMERSON: [via videolink] It is exactly the [Overlapping
18 speakers] ... with respect --

19 JUDGE GUILLOU: -- time and place to discuss the [Overlapping
20 speakers] ...

21 MR. EMMERSON: [via videolink] With respect.

22 JUDGE GUILLOU: -- preliminary motions.

23 MR. EMMERSON: With respect. With respect, it is exactly
24 relevant to your question.

25 JUDGE GUILLOU: No, no, we are talking about --

1 MR. EMMERSON: [via videolink] With respect, I --

2 JUDGE GUILLOU: -- your investigation, so I -- definitely, I
3 understood your point.

4 MR. EMMERSON: [via videolink] Good.

5 JUDGE GUILLOU: I took note of everything --

6 MR. EMMERSON: [via videolink] Now the --

7 JUDGE GUILLOU: -- but now we're not right now discussing in
8 detail about what is going to be the -- in my decisions on the
9 preliminary motions, so --

10 MR. EMMERSON: [via videolink] Well, if you've read the material,
11 you will see the difficulty, in which case, there is no point in
12 asking the Defence, with respect, what the status of our
13 investigation is again at any Status Conference.

14 JUDGE GUILLOU: No, no, I perfectly --

15 MR. EMMERSON: [via videolink] With respect --

16 JUDGE GUILLOU: -- I perfectly understood your argument.

17 MR. EMMERSON: [via videolink] -- we can't even begin to answer
18 the question until this Court has realised that it's acting in the
19 same status as the Serbian Constitutional Court.

20 JUDGE GUILLOU: Thank you, Mr. Emmerson.

21 Mr. Young, please.

22 MR. YOUNG: [via videolink] Yes, Your Honour, briefly. At this
23 stage, we're unable to assist Your Honour in terms of information on
24 Defence investigations. Suffice to say our team is expeditiously
25 going through all the Prosecution materials. At this stage, I can't

1 provide information on Defence investigations.

2 JUDGE GUILLOU: Thank you, Mr. Young.

3 Ms. Alagendra, please.

4 MS. ALAGENDRA: [via videolink] Your Honour, we stand by our
5 written submissions. We're unable to give any further update at this
6 stage.

7 JUDGE GUILLOU: Thank you.

8 Does the SPO want to take the floor on this topic? Yes,
9 Madam Prosecutor.

10 MS. LAWSON: Thank you, Your Honour.

11 The Veseli Defence have yet again put forward that they are
12 prevented from properly commencing investigations, including pending
13 completion of disclosure, which was one of the factors mentioned in
14 their written submissions. And at this time, they have also shifted
15 ground to make final appeals decisions on preliminary motions a
16 prerequisite to that.

17 As we have previously indicated, the reasons being put forward
18 may justify why the Defence investigations could not be completed,
19 they certainly do not justify why they could not be properly
20 commenced. And with regard to the lengthy submissions made by the
21 Veseli Defence, as Your Honour noted, this is not a hearing on
22 jurisdiction. Thank you.

23 JUDGE GUILLOU: Thank you, Madam Prosecutor.

24 I don't see any request for the floor again on this, so we'll
25 move to the fifth item on our agenda, which is the points of

1 agreement on matters of law and fact.

2 I would like the parties to indicate if they anticipate being
3 able to identify a list of issues subject to dispute and one with
4 issues not subject to dispute. I also invite the Defence to indicate
5 if such agreement could be reached before the filing of pre-trial
6 brief, or if they prefer not to engage in any agreement before the
7 filing of their respective pre-trial brief.

8 We will start with the Prosecution. Madam Prosecutor.

9 MS. LAWSON: The SPO provided the Defence teams with its agreed
10 facts proposal on 17 March. As indicated in our written submissions,
11 we've received certain *inter partes* updates on that matter from the
12 Thaci and Selimi Defence teams, but no substantive responses from any
13 of the Defence teams to date.

14 With regard to the Veseli Defence submissions in its written
15 filings. The SPO is, of course, aware of the necessity to prove its
16 case at trial and is not requesting assistance from the Defence in
17 that. Rather, in the interests of efficient proceedings, and in
18 accordance with the Rules and the direction of the Pre-Trial Judge,
19 we have put forward proposals for the Defence's consideration so
20 that, to the extent possible, the proceedings can be appropriately
21 focused.

22 As we have previously indicated, the Defence are free to simply
23 indicate agreement or disagreement on each of the proposals. Thank
24 you.

25 JUDGE GUILLOU: Thank you, Madam Prosecutor.

1 Mr. Prosper, please.

2 MR. PROSPER: [via videolink] Thank you, Your Honour. I think at
3 the outset our goal is to make this proceeding as efficient as
4 possible and to reach agreement where possible. We are in receipt of
5 this document that the Prosecution has referred to. I guess one
6 question at the outset is is that the totality? Do they expect this
7 document to change? Is this the final set of facts that they are
8 asking us to agree to? So I think it would be helpful to know that.

9 Absent that information then, that we're not in a position to
10 even properly consider that information. But again, I just want to
11 make clear that our goal is to make this as efficient as possible.
12 Thank you.

13 JUDGE GUILLOU: Thank you, Mr. Prosper.

14 Mr. Emmerson or Mr. Kaufman.

15 MR. EMMERSON: [via videolink] I'll deal with this very briefly.
16 The earliest date on which the Veseli Defence will entertain agreed
17 facts is after the service of the pre-trial brief by the Prosecution.

18 JUDGE GUILLOU: Thank you, Mr. Emmerson.

19 Mr. Young, please.

20 MR. YOUNG: [via videolink] Your Honour, we have been in
21 correspondence with the Prosecution in relation to this. We're still
22 actively considering the proposals, and we will respond as soon as we
23 are able. Thank you.

24 JUDGE GUILLOU: Thank you, Mr. Young.

25 Ms. Alagendra.

1 MS. ALAGENDRA: [via videolink] Your Honour, our position is at
2 paragraph 11 of our submissions. We stand by that.

3 JUDGE GUILLOU: Thank you, Ms. Alagendra.

4 Madam Prosecutor, do you want to respond?

5 MS. LAWSON: Just briefly to the query raised by the Thaci
6 Defence team.

7 At this time, these are the proposed facts that are being put
8 forward by the Prosecution for consideration. Of course as
9 proceedings progress, either the Prosecution or the Defence teams may
10 wish to discuss further points of agreement, but this is the final
11 list that is being put forward at this time. Thank you.

12 JUDGE GUILLOU: Thank you, Madam Prosecutor. I don't see any
13 request. Then we're going to move to the last item.

14 But before I give the floor to the parties on the date for the
15 next Status Conference, I note that, and this is something that has
16 been raised earlier, the Veseli Defence, the Selimi Defence, and the
17 Krasniqi Defence indicated in recent filings that they will not make
18 submissions on whether reasons for the continued detention of the
19 accused exist.

20 I inform the parties that, following the request from the Thaci
21 Defence, I extended the deadline for the submissions of the Thaci
22 Defence until 31 May 2021. I would like all the Defence counsel to
23 inform the Court whether they also wish me to extend the deadline for
24 their submissions, or if they prefer not to make any submissions as
25 indicated in their recent filings?

1 Mr. Emmerson, please.

2 MR. EMMERSON: [via videolink] Your Honour, in light of the
3 developments that have occurred, we had intended to raise the issue
4 of provisional release at an appropriate time between the first
5 review, that's the one that we are discussing now the extension of,
6 and the next review, because of course we can apply -- reapply for
7 provisional release at any time.

8 It seems, with respect, that given the way that the case is now
9 developing, it is appropriate for us to make submissions to you on a
10 detention review at this stage. And so if you're willing to extend
11 the deadline as regards Mr. Thaci's application, we would be grateful
12 for the opportunity to revise our position and put a submission to
13 you by the end of the month.

14 JUDGE GUILLOU: Thank you, Mr. Emmerson.

15 And do I understand correctly that the date of 31 May would suit
16 you as well?

17 MR. EMMERSON: [via videolink] Yes.

18 JUDGE GUILLOU: Thank you, Mr. Emmerson.

19 Mr. Young, please.

20 MR. YOUNG: [via videolink] Your Honour, forgive me. May I ask
21 if you can hear me, because the connection is very poor?

22 JUDGE GUILLOU: We can hear you, Mr. Young. Sometimes the image
23 is frozen, but your voice is always clear. If not, I would have
24 suspended the hearing.

25 MR. YOUNG: [via videolink] Thank you.

1 Well, Your Honour, may I say this: That we will [inaudible].

2 JUDGE GUILLOU: Sorry, Mr. Young. Of course, the moment I --

3 MR. YOUNG: [via videolink] [Inaudible].

4 JUDGE GUILLOU: Mr. Young, sorry. The moment I just said that,
5 your voice also froze. So if you could start again your submissions.

6 MR. YOUNG: [via videolink] [Inaudible] ... actively considering
7 this issue.

8 JUDGE GUILLOU: Sorry, Mr. Young. We haven't heard you because,
9 unfortunately, for the first time since the beginning of this
10 hearing, your voice also froze. So if you could repeat your
11 submissions, that would be much appreciated. Thank you.

12 MR. YOUNG: [via videolink] Yes, Your Honour. Sorry, I missed
13 that. There is a poor connection. I [inaudible].

14 JUDGE GUILLOU: We can't hear you anymore.

15 MR. YOUNG: [via videolink] [Inaudible] ... nothing to say.

16 JUDGE GUILLOU: Mr. Young, if I may suggest could you maybe just
17 inform the Court without the video? Because if you disconnect the
18 video, we should have a better quality for your voice, because we
19 haven't been able to hear you in the past minute.

20 MR. YOUNG: [via videolink] Okay. Yes, can you [inaudible].

21 JUDGE GUILLOU: We hear some words but not everything, so I
22 think it would be better without the video, because the broadband
23 probably will only be used for your voice, even though I'm not a
24 specialist on this, but that's what a year and a half of pandemic
25 taught me.

1 MR. YOUNG: [via videolink] Your Honour, I have nothing more to
2 add save to say that we will revert to you as soon as we can, if you
3 can hear me, in relation to the issue of provisional release, which
4 we are actively considering.

5 JUDGE GUILLOU: But on this, do you wish me to extend the
6 deadline for you so that you can file submissions, as I mentioned and
7 as Mr. Emmerson agreed to? Or do you prefer that to stay with what
8 you mentioned in your recent filing?

9 MR. YOUNG: [via videolink] Yes, if you --

10 JUDGE GUILLOU: And I say -- sorry.

11 MR. YOUNG: [via videolink] If you --

12 JUDGE GUILLOU: I say this because if it's the case I intend to
13 issue an oral order at the end of this hearing to clarify the matter.

14 MR. YOUNG: [via videolink] Thank you, Your Honour. It would
15 assist if you did extend the deadline at this stage, thank you.

16 JUDGE GUILLOU: Thank you, Mr. Young. And would 31 May suit you
17 for this?

18 MR. YOUNG: [via videolink] Yes.

19 JUDGE GUILLOU: Thank you, Mr. Young.

20 Ms. Alagendra, the same question.

21 MS. ALAGENDRA: [via videolink] We seek the same extension,
22 Your Honour, and 31 May suits us.

23 JUDGE GUILLOU: Thank you. Thank you, Ms. Alagendra. This is
24 noted. I will issue an oral order at the end of this hearing on this
25 matter.

1 I would now like to ask the parties on their views on a suitable
2 date for the next Status Conference.

3 Ms. Lawson for the SPO.

4 MS. LAWSON: We continue to welcome active management of the
5 pre-trial phase. And as indicated in our written submissions, we
6 propose that a further Status Conference be held in June. Thank you.

7 JUDGE GUILLOU: Thank you, Madam Prosecutor.

8 Mr. Prosper, please.

9 MR. PROSPER: [via videolink] Thank you, Your Honour. We're open
10 to a conference in June set by this Chamber.

11 The one request I have is if it is at all possible to do it in
12 your afternoon to give me a little more sleep.

13 JUDGE GUILLOU: The Court is very flexible, but the problem that
14 I face is one of the other counsel is on the other side of the
15 planet.

16 MR. PROSPER: [via videolink] Oh.

17 JUDGE GUILLOU: And it could be very, very late for her. So I
18 think we will engage in consultations through the Registry and see
19 the best possible timing for all of you. But what I've tried to do
20 so far is to manage the possibility of everyone to participate
21 knowing that for you, Mr. Prosper, it's certainly the least
22 convenient hour possible. But we'll definitely try to find the best
23 time slot for all the parties and participants.

24 MR. PROSPER: [via videolink] Thank you. Whatever works for
25 everyone. Thank you.

1 JUDGE GUILLOU: Thank you, Mr. Prosper.

2 Mr. Emmerson, please.

3 MR. EMMERSON: [via videolink] We agree for the proposal for
4 June.

5 JUDGE GUILLOU: Thank you, Mr. Emmerson.

6 Mr. Young, please. Mr. Young, on the date for the next Status
7 Conference?

8 MR. YOUNG: [via videolink] Your Honour, forgive me. I've missed
9 some of that due to the poor connection. Save to say that I would
10 ask for the next one not before the end of June. Thank you.

11 JUDGE GUILLOU: Thank you, Mr. Young.

12 Ms. Alagendra.

13 MS. ALAGENDRA: [via videolink] We welcome a June date,
14 Your Honour.

15 JUDGE GUILLOU: Thank you, Ms. Alagendra.

16 You will receive a Scheduling Order in due course. And, as
17 usual, I invite the parties to make written submissions if they would
18 like to raise any specific issue during the next Status Conference.

19 At this point I'd like to ask the parties if they have any other
20 matters they would like to raise. Of course, I remind the parties
21 and participants to give prior notice should any submission require
22 the disclosure of confidential information.

23 Madam Prosecutor.

24 MS. LAWSON: Nothing further. Thank you, Your Honour.

25 JUDGE GUILLOU: Thank you, Madam Prosecutor.

1 Mr. Prosper, please.

2 MR. PROSPER: [via videolink] Nothing further, Your Honour.

3 Thank you.

4 JUDGE GUILLOU: Thank you, Mr. Prosper.

5 Mr. Emmerson, please.

6 MR. EMMERSON: [via videolink] Nothing further.

7 JUDGE GUILLOU: Thank you, Mr. Emmerson.

8 Mr. Young, please.

9 MR. EMMERSON: [via videolink] I think Mr. Kaufman may have
10 something to add.

11 JUDGE GUILLOU: Oh, sorry. Mr. Kaufman, anything to add?

12 MR. KAUFMAN: [via videolink] Just one minute. Yes, Your Honour.

13 JUDGE GUILLOU: Mr. Kaufman, we can't hear you. I think you
14 disconnected your microphone. Mr. Kaufman? Yes, now we can hear
15 you.

16 MR. KAUFMAN: [via videolink] Yes, I do apologise, Your Honour.

17 I did raise two further issues in our filing 315. One regards
18 the Rule 106 materials. I should like to note that the SPO has,
19 indeed, been disclosing internal work product emanating from external
20 organisations, such as UNMIK, in particular, investigator's notes,
21 albeit when it suits the Prosecution case, of course.

22 In light of the SPO's *inter partes* response, which I cited in
23 filing number 315, I would just like to highlight two issues.

24 Firstly, we expect the search for material, either potentially
25 exonerating or relevant to the Defence, not to be subordinated to the

1 Prosecution's search for what it believes to be incriminating
2 material designed to enhance its case.

3 Secondly, experience has shown us that investigator's notes
4 often contain discussions, internal discussion, relating to a
5 witness' credibility or witness' preconditions for cooperation. Now
6 whilst such non-exculpatory information could arguably be immune from
7 disclosure as SPO or SITF internal work product, it would not, in our
8 opinion, be immune from disclosure if emanating from any other
9 external organisation, such as EULEX, UNMIK, the ICTY, or the Kosovo
10 Prosecution Service and thereafter inherited by the SPO.

11 The other issue which I raised in the filing was the draconian
12 way in which the SPO has applied redactions to the incriminating
13 evidence released under Rule 102 all in the name of witness
14 protection.

15 Now, of course, we're all aware of the purported rationale for
16 the Kosovo Specialist Chambers, but there is a limit as to how far
17 protective measures can be imposed without there being a fundamental
18 breakdown in the ability to conduct a fair and transparent trial. Of
19 course, I'm aware that many of these redactions are subject to the
20 oversight and the approval of this learned Bench.

21 Notwithstanding, in our response to the SPO's six requests for
22 protective measures - that's filing 295 in the case record - we did
23 provide a number for the quantity of witnesses for whom, according to
24 our calculation, delayed disclosure has now been requested. As it
25 stands, and if the SPO were to have its way, I believe that delayed

1 disclosure for up to 30 days before trial would be imposed for
2 something like 50 witnesses and delayed disclosure for 17-odd
3 witnesses until 30 days before their actual testimony.

4 Now, I seriously do question how the SPO expects the Defence to
5 conduct an investigation with such impediments being placed in its
6 way. Now, I'm the last person to make an accusation of unfair
7 tactics, but, intentional or not, we are rapidly being forced to the
8 conclusion that if the situation does not ameliorate, the fairness of
9 the proceedings must at some stage be challenged in the context of a
10 petition for a stay of proceedings. Thank you, Your Honour.

11 JUDGE GUILLOU: Thank you, Mr. Kaufman. I will give the floor
12 to the SPO to reply after the round of submissions by all the Defence
13 teams.

14 Mr. Young, please. Do you have anything else to add?

15 MR. YOUNG: [via videolink] Nothing to add, thank you.

16 JUDGE GUILLOU: Thank you, Mr. Young.

17 Ms. Alagendra.

18 MS. ALAGENDRA: [via videolink] Nothing further to add

19 Your Honour, thank you.

20 JUDGE GUILLOU: Thank you, Ms. Alagendra.

21 Madam Prosecutor, if you want to reply to the submissions of
22 Mr. Kaufman.

23 MS. LAWSON: Thank you, Your Honour. I would have thought that
24 these matters could both have been raised under the disclosure agenda
25 item.

1 However, in relation to Rule 106, as you will have seen from the
2 Prosecution e-mail which was quoted in the Defence filing, although
3 the Defence questions themselves were not provided to the Chamber,
4 the SPO has, indeed, confirmed that exculpatory information contained
5 in internal documents will be disclosed. I don't believe there's
6 anything controversial or in dispute on that matter.

7 With respect to redactions that are being applied, the
8 redactions are being applied to the extent necessary to protect
9 witnesses and other sensitive information, and they are subject to
10 judicial authorisation and careful scrutiny. We've previously heard
11 the Veseli Defence threaten, for other reasons, that they may refuse
12 to participate in the proceedings. Now, they are forecasting that
13 they could petition for a stay of proceedings.

14 It appears that generalised and often ill-founded claims are
15 being made almost as a matter of course couched in hyperbolic
16 language and accompanied by such threats. The Defence are obviously
17 free to seek such legal remedies as they consider necessary.
18 However, the proceedings remain subject to judicial oversight and
19 directions at all time.

20 JUDGE GUILLOU: Thank you, Madam Prosecutor.

21 Mr. Kaufman, do you want to reply?

22 MR. KAUFMAN: [via videolink] No, Your Honour. I have nothing
23 more to add. Thank you.

24 JUDGE GUILLOU: Thank you, Mr. Kaufman. I remind all the
25 parties that they can always raise objections to redactions according

1 to my Framework Decision on Disclosure.

2 Now I give the floor to Mr. Laws. Do you have any topic you
3 would like to raise, please?

4 MR. LAWS: [via videolink] Your Honour, thank you for thinking of
5 me. No, I have nothing to add at this stage. Thank you.

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

7 I see that it's already beyond the one hour and 30 minutes, so
8 we'll have a short break of 20 minutes, and I will come back to issue
9 a couple of oral orders. The hearing is adjourned.

10 --- Recess taken at 12.38 p.m.

11 --- On resuming at 1.00 p.m.

12 JUDGE GUILLOU: I will now issue two oral orders. The first
13 oral order relates to the issuance of my decisions on preliminary
14 motions.

15 I hereby order that pursuant to Rule 9(5), the time limit for
16 the preliminary motions to be disposed of is varied. The decisions
17 on the preliminary motions will be issued on Friday, 16 July.

18 This conclusions my first oral order.

19 Having heard the parties, I will issue a second oral order on
20 the submissions for continued detention.

21 I hereby vary the timeline for submissions and order the
22 respective Defence teams to file submissions on the continued
23 detention of Mr. Veseli, Mr. Selimi, and Mr. Krasniqi by Monday,
24 31 May, and the respective response and replies follow the timeline
25 set out in Rule 76 of the Rules.

1 This concludes my second oral order and this concludes the
2 public hearing for today.

3 I thank the parties and participants for their attendance. And,
4 as usual, I thank the interpreters, stenographers, AV technician, and
5 security personnel for their attendance. The hearing is adjourned.

6 --- Whereupon the Status Conference adjourned at 1.02 p.m.

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