

1 Tuesday, 17 December 2024

2 [Status Conference]

3 [Open session]

4 [The accused entered the courtroom]

5 [The Accused Kuci appeared via videolink]

6 [The Accused Thaci appeared via videolink]

7 --- Upon commencing at 2.00 p.m.

8 JUDGE MASSELOT: So good afternoon and welcome, everyone, to
9 this first Status Conference in this case.

10 Madam Court Officer, could you please call the case.

11 THE COURT OFFICER: Good afternoon, Your Honour. This is file
12 KSC-BC-2023-12, The Specialist Prosecutor versus Hashim Thaci,
13 Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuci.

14 JUDGE MASSELOT: Thank you, Madam Court Officer.

15 Before asking those present in the courtroom or attending the
16 hearing via video-conference to introduce themselves, may I kindly
17 ask everyone to adhere to the following rules in order to make
18 courtroom proceedings smooth.

19 Please talk slowly and clearly and wait five seconds before
20 responding to me or a party in order to allow the interpreters to
21 finish interpretation.

22 In light of the fact that some are participating in this hearing
23 physically and others remotely via video-conference and that we have
24 six parties in this case, and with a view to allowing everyone to
25 follow the proceedings, please do not speak at the same time and wait

1 to be given the floor and to switch on your microphone.

2 And last, should any party or representative of the Registry
3 wish to take the floor to raise a specific issue or respond to
4 anything that has been said, please stand up if you are in the
5 courtroom or raise your hand if you are attending the hearing
6 remotely via video-conference.

7 In case of any technical difficulty, please raise your hand.
8 Should there be a disconnection, we will do our best to reconnect
9 immediately or, should the issue not be fixed immediately, I may
10 adjourn the hearing for a couple of minutes to ensure that the line
11 is reconnected.

12 I will now ask the Prosecution, the Defence, and the Registry's
13 representatives to present themselves and their representative teams,
14 starting with the Specialist Prosecutor's Office.

15 MR. HAFETZ: Good afternoon, Your Honour. Josh Hafetz on behalf
16 of the SPO, and I'm joined today by my colleagues Gaia Pergolo,
17 Fabian Unser-Nad, Eleonore Coeuret, and Line Pedersen.

18 JUDGE MASSELOT: Thank you, Mr. Prosecutor.

19 May I ask the Defence to introduce themselves, starting with the
20 Defence for Mr. Thaci, who is attending the hearing remotely, please.

21 MS. MENEGON: [via videolink] Good morning, Your Honour. My name
22 is Sophie Menegon, and I am co-counsel for Mr. Thaci. Thank you.

23 JUDGE MASSELOT: Thank you, Counsel Menegon.

24 For the record, I note that your client, Mr. Thaci, is also
25 attending this hearing via video-conference.

1 Can you hear us, Mr. Thaci?

2 THE ACCUSED THACI: [via videolink] [Interpretation] Yes, I can.

3 JUDGE MASSELOT: Very good. Thank you.

4 For the Defence of Mr. Smakaj, please.

5 MR. MARTENS: Good afternoon, Your Honour. My name is
6 Bas Martens. I am the Defence for Mr. Smakaj.

7 JUDGE MASSELOT: Thank you, Counsel Martens. And for the
8 record, I note that your client, Mr. Smakaj, is present in the
9 courtroom.

10 May I now ask the Defence of Mr. Fazliu to introduce themselves,
11 please.

12 MR. PESTMAN: Thank you, Your Honour. Good afternoon. My name
13 is Michiel Pestman. I am Duty Counsel for Mr. Fazliu.

14 JUDGE MASSELOT: Thank you, Counsel Pestman. And for the
15 record, I also note that your client, Mr. Fazliu, is present in the
16 courtroom.

17 For the Defence of Mr. Kuci, please, who is attending the
18 hearing remotely.

19 MR. ADMIRAAL: [via videolink] Good afternoon, Your Honour. My
20 name is Alexander Admiraal, and I am Duty Counsel for
21 Mr. Hajredin Kuci.

22 JUDGE MASSELOT: Thank you, Counsel Admiraal.

23 For the record, I note that your client, Mr. Kuci, is also
24 attending this hearing via video-conference.

25 And could the Registry please confirm who is present in the

1 room.

2 THE REGISTRAR: [via videolink] Good afternoon, Your Honours. I
3 am present here at the remote location with Mr. Kuci, and myself,
4 Head of Court Management Unit, with the Court Officer from Court
5 Management Unit also present.

6 JUDGE MASSELOT: Thank you, Mr. Court Officer.

7 And the Defence of Mr. Kilaj, please.

8 MR. EDWARDS: Good afternoon, Your Honour. Iain Edwards for
9 Mr. Kilaj.

10 JUDGE MASSELOT: Thank you, Counsel Edwards.

11 For the record, I note that your client, Mr. Kilaj, is also
12 present in the courtroom.

13 Now I turn to the Registry, please.

14 MR. NILSSON: Good afternoon, Your Honour. And good afternoon,
15 colleagues. Jonas Nilsson, Deputy Registrar. I'm here together with
16 Whitney Price, legal counsel.

17 JUDGE MASSELOT: Thank you. And last, for the record, I am
18 Marjorie Masselot, Pre-Trial Judge for this case.

19 I recall that on 10 December 2024, I scheduled this first
20 Status Conference, pursuant to Rule 96(1) of the Rules of Procedure
21 and Evidence, and asked the parties to provide written submissions on
22 the items listed in the annex to the Scheduling Order and all topics
23 deemed necessary.

24 Accordingly, the Registrar and the Specialist Prosecutor
25 submitted their representative observations last Thursday, which was

1 12 December 2024, and the Defence for Mr. Thaci and Kilaj submitted
2 their respective observations last Friday, 13 December 2024.

3 I wish to thank the parties for their written submissions
4 despite the tight deadlines.

5 The purpose of our hearing today is twofold: First, to review
6 the status of the case and organise exchanges between the parties;
7 and second to allow Mr. Thaci and Smakaj to enter a plea, pursuant to
8 Rule 92, should they wish so. For time management purposes, may I
9 ask the Thaci Defence and the Smakaj Defence whether Mr. Thaci and/or
10 Smakaj will enter a plea today.

11 Counsel Menegon.

12 MS. MENEGON: [via videolink] Thank you, Your Honour. At this
13 stage, my client does not wish to enter a plea.

14 JUDGE MASSELOT: This is well noted. Thank you.

15 [Microphone not activated].

16 MR. MARTENS: The same situation here. Thank you.

17 JUDGE MASSELOT: Well noted. Since you have both chosen not to
18 enter a plea, Mr. Thaci and Smakaj, today, I recall my direction set
19 out in the order setting the date for today's Status Conference, and
20 I will invite you to place your plea, if any, on the record in
21 written form by 7 January 2025 at 12.00.

22 Should you decide not to avail yourself of this right, I will
23 enter a plea of not guilty on your behalf on the same day and proceed
24 pursuant to Rule 95.

25 The main reason of our gathering today, as already said, is then

1 to organise the exchange of evidence between the parties in order to
2 ensure the expeditious preparation for trial. I wish to recall that
3 we are still at an early stage of the disclosure process, which will
4 be fully initiated with a decision setting a legal framework for the
5 disclosure of evidence. I shall issue this decision following
6 today's hearing on Friday, 20 December 2024.

7 I am also aware that the Defence teams may not be able to
8 respond to all questions set forth in the agenda for today's
9 Status Conference. At this early stage, I'm, of course, not
10 expecting a response to each of these questions on the agenda but
11 that each party diligently engages in the process we initiate today.

12 I will now follow, as an agenda for this hearing, the annex to
13 the Scheduling Order convening this conference.

14 I have received and read the respective submissions filed by the
15 SPO and the Defence for Mr. Thaci and Kilaj. May I kindly ask the
16 parties concerned and the Registry representatives not to repeat
17 their written submissions in today's hearing. Rather, if you wish to
18 supplement them, where necessary, or to add a new element to the
19 discussion, please make concise and succinct submissions.

20 The Defence for Mr. Smakaj -- I will just finish my sentence and
21 give the floor to Mr. Thaci.

22 The Defence for Messrs Smakaj, Fazliu, and Kilaj are invited to
23 make any submission they may have in a concise fashion, if they so
24 wish.

25 Mr. Thaci, you have raised your hand, and I give you the floor.

1 THE ACCUSED THACI: [via videolink] [Interpretation] Thank you,
2 Your Honour. As mentioned by my counsel, before making this
3 statement, I wanted to add something in this early stage of the
4 proceedings and for it to go smoothly.

5 You know very well that in November 2020 an indictment was
6 issued against me just three months before I was re-elected president
7 of the country. Now, ten days ago, the Prosecution issued another
8 indictment just two months before the parliamentary elections in
9 Kosovo. I want to explain once again: I'm not part of any political
10 race and nor do I have any political ambitions to become president,
11 prime minister, or member of the parliament or any other public
12 function. I reiterate that I'm not an obstacle, and I do not pose
13 any danger or risk, politically speaking, or to any governing
14 project.

15 All my life, I have invested to the future of Kosovo, to the
16 vision of its membership in NATO and alliance with the United States.

17 I want to reiterate and underline the necessity to respect the
18 constitution and the laws of Kosovo in this courtroom. Failure to
19 respect the Kosovo constitution and legislation by the parties in
20 this courtroom poses a risk to the democracy in Kosovo, to the faith
21 of the citizens of Kosovo in this institution. That's why I appeal
22 to everybody to abide by the constitution, rules, and laws in this
23 courtroom as well.

24 Thank you.

25 JUDGE MASSELOT: Thank you, Mr. Thaci. This is now on the

1 record. And it was already on the record of your Initial Appearance
2 hearing, if I'm not mistaken.

3 I would like now to remind the parties to give prior notice
4 should any submission require the disclosure of confidential
5 information so that we can go into private or closed session.

6 Lastly, I have taken note of various reclassification requests
7 made by the parties. I will provide certain clarifications and oral
8 rulings in the course of today's hearing on that matter.

9 Let's now move to the first item on our agenda which relates to
10 general questions.

11 Before I give the floor to the parties, I will recall the
12 general principles of disclosure in the legal framework of the
13 Specialist Chambers as they have been enshrined in previous
14 jurisprudence.

15 Disclosure is an *inter partes* process in electronic form,
16 organised and facilitated through the Registry's Court Management
17 System. Disclosure shall be a priority for the Prosecution at this
18 stage, and the parties shall disclose evidence of true relevance to
19 the case and not the greatest volume of evidence. That is the
20 essence of the process we are now initiating.

21 In view of the publicity principle, evidence is registered as
22 public unless there are reasons to classify otherwise. The
23 disclosing party determines the appropriate level of classification
24 of evidentiary items on a case-by-case basis.

25 Moving now to the general questions addressed to the

1 Specialist Prosecutors.

2 I have asked the Specialist Prosecutor's Office to respond to
3 the first set of general questions in the agenda, notably on the
4 status of its investigations, point 1(a); in particular forensic
5 investigations, point 1(b); on the type and amount of evidence it
6 intends to use in the proceedings, point 1(d); the use of special
7 software or tools to access evidence, point 1(e); and how many
8 witnesses it relied upon for the Confirmed Indictment and intends to
9 call at trial, point 1(f); and, lastly, when disclosure can be
10 expected to be concluded, point 1(g).

11 In the interest of time, I will summarise briefly the SPO's
12 submission as follows: That several investigative steps remain
13 pending and may generate additional evidence to be used in the
14 present case, including the review of certain evidence by a third
15 party before the SPO can actually access it.

16 Judicial authorisation for the forensic examination of the
17 evidence seized from Mr. Fazliu on 4 December 2024, which I note
18 actually that this request was notified this morning, and it's filing
19 F88, and I will get back to that later during this hearing.

20 The SPO is furthermore awaiting certain forensic analysis
21 results of evidence seized from Mr. Kilaj, and that once the SPO is
22 able to access the content of this evidence, it will promptly
23 complete its review and make all applicable disclosures under the
24 Rules. In this context, the SPO clarifies that it has two
25 evidentiary items in its possession for which examination remains

1 outstanding, and that it has requested appropriate prioritisation
2 from the external forensic institute.

3 Related to these specific submissions, I have taken note of
4 Mr. Kilaj's concerns that the pre-trial schedule for this case may be
5 delayed because the SPO has not yet gained access to Mr. Kilaj's
6 electronic devices. He pleads that no further indulgence to complete
7 this analysis be granted so that the expeditious pace of the
8 pre-trial proceedings be maintained.

9 In the Confirmed Indictment, the SPO relied on one witness. It
10 intends to call three witnesses at trial, but this number is subject
11 to change. The SPO intends to use in these proceedings: One, audio
12 recordings; two, evidence recovered from electronic devices including
13 mobile phones; three, call data records; four, official records from
14 the KSC Detention Centre; and, five, physical evidence recovered
15 during search and seizure operations.

16 For accessing the content of electronic devices, the SPO will
17 provide the Defence with the software required to access it or
18 certain licensed software will be made available.

19 Related to these specific submissions, I've also taken note of
20 Mr. Kilaj's concerns that only material which the SPO intends to rely
21 upon or that is potentially exculpatory should be disclosed to the
22 co-accused to avoid unnecessary breaches of Mr. Kilaj's right to
23 privacy.

24 In light of the aforementioned pending investigative steps, the
25 SPO cannot yet indicate when the disclosure of evidence and

1 information in this case can be concluded.

2 Having now summarised the submissions on these general
3 questions, I will now give the floor to the SPO to supplement its
4 submissions if necessary. In this context, I invite the SPO to
5 address the concerns raised by the Defence of Mr. Kilaj to the extent
6 possible. I also seek clarification as to your submissions in
7 paragraph 6 of your submission, namely whether the two items
8 currently in the SPO's possession for which examination is
9 outstanding involves Mr. Kilaj or someone else.

10 Mr. Prosecutor, you have the floor.

11 MR. HAFETZ: Thank you, Your Honour.

12 I'll answer your last question first. Mr. Kilaj's phone that
13 you referred to is one of those two items. That's currently in our
14 possession awaiting processing. The other is the phone you
15 referenced earlier, Mr. Fazliu's phone, for which we've submitted our
16 request for further examination.

17 Unless there are more specific questions from Your Honour, I
18 don't have anything to add other than to address the point you raised
19 for Mr. Kilaj about the treatment of the disclosure of his phone.
20 And I would just say right now that's -- his concern is noted. We
21 will engage with all of the counsel for anyone for whom we've seized
22 a phone and engage with them on that issue. We may take a different
23 view of the issue, but we will work with them on that issue.

24 And as far as Mr. Kilaj is concerned, it's premature for the
25 reason Your Honour has already mentioned. We won't be disclosing his

1 phone right now because we're not in a position to. Thank you.

2 JUDGE MASSELOT: Thank you, Mr. Prosecutor.

3 I will now turn to the Defence and seek their concise
4 submissions, if any, starting with the Defence for Mr. Thaci.

5 MS. MENEGON: [via videolink] No observations, Your Honour.
6 Thank you.

7 JUDGE MASSELOT: Thank you, Counsel Menegon.
8 Counsel Martens, you have the floor.

9 MR. MARTENS: Thank you, Your Honour. I have special
10 observations on questions 1(h) and (i) and (j), and I think I'll
11 reserve that point when you get to the agenda on those points, or
12 not, or would you like me to make my positions clear at this moment?

13 JUDGE MASSELOT: Are you under the general questions?

14 MR. MARTENS: General questions, yes --

15 JUDGE MASSELOT: Yes.

16 MR. MARTENS: -- but on 1(h) and (i) and (j), because you ended,
17 I think, at number (g).

18 JUDGE MASSELOT: No, I think this is the moment then.

19 MR. MARTENS: Okay. Thank you very much.

20 Your Honour, all present, 14 months ago Mr. Smakaj's house was
21 searched on October 30, 2023. 12 months ago and two days, to be
22 exact, SPO issued an indictment against Mr. Smakaj. And it was on
23 July 1st this year, six months ago, that the SPO sought an arrest
24 warrant from the Single Judge of the Kosovo Specialist Chambers.

25 On November 29th, the indictment was confirmed against

1 Mr. Smakaj and others. And on December 9th, Mr. Smakaj made his
2 first appearance, all as you know.

3 Meanwhile, Mr. Smakaj has been deprived of his liberty for
4 almost two weeks. Since then, the Defence has received about 80
5 documents in this case. Only the indictment gives us an indication
6 of the charges against Mr. Smakaj. Evidence has not been released
7 yet by SPO.

8 Talking about evidence. There is a document, number 69, that
9 gives us some insight on evidence, but everything concerning
10 Mr. Smakaj has been completely blacked out, especially concerning
11 documents that were seized during the search. Information about
12 phone records is very limited. Therefore, and reacting on general
13 questions 1(h) and (i), the Defence at this moment cannot yet make
14 any investigative or other requests relevant to the Defence but
15 reserves the right to do so on a later date.

16 Reacting to the Prosecution submissions and Defence position on
17 number 1(j) of the general questions. The SPO states that the
18 investigation is, and I quote, "largely complete. There are still
19 steps to be taken in the investigation. Third party review or of
20 certain evidence regarding legal privilege is necessary."

21 The Defence asks SPO to indicate whether such a review should
22 also take place in the case against Mr. Smakaj. It seems quite
23 possible that all the evidence where no questions of legal privilege
24 are involved could and should be released immediately. The SPO in
25 Mr. Smakaj's case has had, in our opinion, ample time, as mentioned

1 in my introduction, perhaps more than a year, to examine and possibly
2 review confiscated evidence to comply with legal privilege rules.

3 SPO submits that it is ready to release all material covered by
4 Rule 102(1)(a) immediately. And the Defence requests Your Honour to
5 decide that this will be done today, leaving us a few days before the
6 Christmas recess to review it and to file any submissions, if
7 necessary.

8 SPO states its willingness to submit other evidence covered by
9 Rule 102(1)(b) on a rolling basis from December 20th, that's next
10 Friday. Also on this point, the Defence requests Your Honour to
11 decide that SPO should release their material as early as today for
12 the same reason.

13 There is an objection to releasing evidence on a rolling basis.
14 The Defence takes the position that all available material,
15 accusatory as well as exonerating, should be handed over to the
16 Defence immediately so that an adequate Defence can be prepared which
17 is more pressing now that Mr. Smakaj has been deprived of his
18 liberty.

19 As far as the material covered by Rule 102(3), material required
20 for the Defence, it is noted that SPO is brief but also quite vague
21 about what is in its possession. Again, the Defence objects to the
22 issuance of that material on a rolling basis. It is imperative that
23 exculpatory evidence in possession of SPO will be released
24 immediately as soon as today.

25 The Defence also advocates that other seized property which is

1 not needed for the investigation be returned to Mr. Smakaj
2 immediately.

3 Delay in issuance of the evidence can be done immediately also
4 by the security in the secure electronic data sharing system sets so
5 that even Mr. Smakaj can review all the evidence himself as soon as
6 possible. Thank you.

7 JUDGE MASSELOT: Counsel Martens, it was my mistake. Indeed,
8 those items were supposed to be discussed a bit later. However, this
9 is not an issue at all since this is on the record, and you may get
10 the floor on those issues back a bit later.

11 MR. MARTENS: Thank you, Your Honour.

12 JUDGE MASSELOT: In any case, it is well noted.

13 I will give the opportunity to the SPO, if this is fine for you,
14 to respond when we get there or do you wish to take the floor now?

15 MR. HAFETZ: Happy to respond when we get there, Judge.

16 JUDGE MASSELOT: This is well noted.

17 I will then continue on the general questions I had raised
18 previously and give the floor to Counsel Pestman.

19 MR. PESTMAN: Thank you very much, Your Honour.

20 I had a couple of questions and some remarks.

21 JUDGE MASSELOT: Sorry to interrupt you, counsel. Just to
22 specify that I will, of course, address later on this morning's
23 filing, F88, later in the hearing, which relates specifically to
24 Mr. Fazliu.

25 MR. PESTMAN: Okay. So that's the filing you just mentioned

1 about his phone? Yeah. I haven't seen that filing yet. I was only
2 introduced to the mysterious Workflow system yesterday afternoon, and
3 I have not gained access to it yet. I'm just telling you so if you
4 expect me to have read anything that has only been filed in that
5 particular system, I have not been able to read it yet.

6 JUDGE MASSELOT: All right. Just one observation, then. This
7 has been filed, indeed, confidentially, so you shall have access to
8 it. For any logistical issues or IT issues, I kindly ask you to
9 liaise as soon as possible with the Registry to make sure that this
10 doesn't become an issue, and I invite you to do so.

11 MR. PESTMAN: Yeah.

12 JUDGE MASSELOT: Do you wish, Mr. Deputy Registrar, to take the
13 floor?

14 MR. NILSSON: No need, Your Honour. Just to say we are
15 available to assist after the hearing immediately.

16 MR. PESTMAN: Okay.

17 JUDGE MASSELOT: I give the floor back, Counsel Pestman.

18 MR. PESTMAN: Yeah, thank you very much. I will contact the
19 Registrar after this hearing.

20 So I won't be able to say a lot about that particular filing
21 because I haven't seen it yet.

22 With regard to point 11 in the Prosecution's submissions for
23 this particular hearing, I understand -- that was in response to
24 question (f), 1(f) of the agenda. I understand that the Prosecution
25 intends to rely on the statement of -- or that's the Confirmed

1 Indictment. No, that -- that the SPO anticipates that it will call
2 at least three witnesses to testify at trial.

3 I'm just curious to know to which subcases, I don't know how to
4 call them, these particular three witnesses will -- in which cases,
5 they will be subcases, they will be called to testify. Is it in all
6 cases of all the accused or is it going to be in specific subcases?
7 If so, are they, those three witnesses, going to be called in the
8 case of my client or in the case of the others?

9 That was my question with regard to the submissions of the
10 Prosecutor.

11 And in response to your questions, Your Honour, in (h), (i), and
12 (j), I can be very brief. I'm not in the position to answer any of
13 those questions.

14 JUDGE MASSELOT: We'll get there. We'll get there.

15 MR. PESTMAN: Okay, yes. Thank you very much.

16 JUDGE MASSELOT: Thank you, counsel.

17 Shall I give the floor to Counsel Admiraal before giving you the
18 floor, Mr. Prosecutor?

19 MR. HAFETZ: That's fine, Your Honour. Thank you.

20 JUDGE MASSELOT: So, Counsel Admiraal, the floor is yours.

21 MR. ADMIRAAL: [via videolink] No observations, Your Honour.

22 JUDGE MASSELOT: Well noted.

23 And, Counsel Edwards, please. Should you have any supplement to
24 your written submissions, you have the floor.

25 MR. EDWARDS: Only on one point, Your Honour. We rely on what

1 has been set out in our submissions. The only thing I'm going to say
2 is that whilst it's encouraging to hear the Prosecution stating that
3 they'll engage with all counsel for anyone from whom a phone has been
4 seized, that they will work with us on the issue of disclosure, in my
5 submission it's not right for the Prosecution to say that it is
6 premature to engage in the discussion of the -- simply of the issue
7 of what in each phone should be disclosed to all Defence teams. It
8 is a matter of principle that only evidence of relevance to a case is
9 disclosed.

10 And on Mr. Kilaj's behalf, it would be my submission that
11 holiday photos, text messages about what to buy -- what needs to be
12 bought at the supermarket that afternoon is simply not relevant.
13 There is no basis whatsoever in principle for anything other than
14 material that is relevant to this case to be disclosed, and to
15 suggest that it's premature to even engage in that discussion, that
16 simply cannot be right.

17 JUDGE MASSELOT: Thank you, counsel.

18 Counsel Pestman, yes.

19 MR. PESTMAN: I -- having heard my colleague, I hadn't even
20 realised that the information that was on my client's phone or is on
21 my client's phone could be disclosed in the other cases as well. Is
22 there going to be one big disclosure in all cases, or are there going
23 to be separate disclosures in certain cases? In any way, my client's
24 telephone, whatever is disclosed, should stay in my client's case and
25 not be distributed to other cases as well.

1 JUDGE MASSELOT: Mr. Prosecutor, you have the floor.

2 MR. HAFETZ: Your Honour, I can address this now or later, but
3 if we're going to do it now, as I said earlier, we'll engage with the
4 parties on the disclosure of phones seized from individuals. I'll
5 note two things. Again, as to Mr. Kilaj, what I said was, and what I
6 stand by, as to his client, the issue is premature because we
7 wouldn't be disclosing anything in this first round of 102(1)(b),
8 which is what prompted the discussion in the first place. So it is
9 premature.

10 Secondly, I take issue with and just note we are aware of our
11 disclosure obligations. Nothing I said or we have said in a filing
12 about what we were going to be producing and disclosing
13 102(1)(b)-wise in any way undermines or undercuts our knowledge of
14 our obligation. Clearly, anything that is relevant or anything that
15 is potentially exculpatory will be disclosed to him under the Rules
16 and to all accused.

17 And it is -- for other counsel's note, I will note this is one
18 case. So there are groups charged within a case but this is one
19 case. It's under one name, one caption, five accused.

20 So we will in short order engage with counsel on the issue of
21 their feelings about the disclosure of their phones to the extent
22 we're talking about their phones. There are other phones that were
23 seized in the case that have evidence on them. And we'll engage and
24 we'll determine the best course forward to get everybody the evidence
25 that they're entitled to. But it's not clear that counsel's point is

1 correct about the nature of how phones should be handled here. And
2 so we will deal with that in short order.

3 JUDGE MASSELOT: Thank you, Mr. Prosecutor.

4 Counsel Edwards, I see that you already stood up. I had noticed
5 that Mr. Deputy Registrar had wanted to get the floor. Maybe this
6 will [Microphone not activated].

7 MR. NILSSON: Very short, Your Honour. Just to clarify. F88
8 has indeed been submitted. It's been sent by e-mail to Duty Counsel
9 this morning, so counsel is not yet dependent on the mysteries of
10 Legal Workflow, but you have it in your inbox as the other
11 Duty Counsels. Thank you.

12 JUDGE MASSELOT: Well noted. Thank you, Mr. Deputy Registrar.
13 Counsel Edwards, please.

14 MR. EDWARDS: What I had to say was a response to my learned
15 friend's submissions. Nothing to do with the Registrar and
16 Duty Counsel's access.

17 Your Honour, the reason why we made the submissions that we did
18 at paragraph -- well, in our submissions, paragraph 17 in our
19 submissions, was a direct response to the way in which the
20 Prosecution made their submissions in paragraph 9, where they stated
21 that software would be -- I paraphrase, but software would be
22 provided to the Defence teams to allow access across the content of
23 each electronic device to allow the Defence to access and conduct
24 full searches across the content of the mobile device.

25 It was in that context that we wanted to place a marker now that

1 any suggestion that the full content of Mr. Kilaj's mobile device or
2 devices would be available and accessible and searchable by the other
3 Defence teams would be vehemently opposed because evidence that is
4 not relevant need not be disclosed. That's why we made the
5 submission that we did.

6 But if my learned friend is stating that they're aware of their
7 disclosure obligations, and I've no doubt that they are, then
8 hopefully the matter won't arise. But if it does arise, it will be
9 dealt with robustly by us.

10 JUDGE MASSELOT: Response? No response? No reply?

11 We will, thus, move on to point 1(c) of the agenda. I have also
12 asked the Registry to respond to the question whether forensic
13 examinations of certain evidence transmitted to the Registry upon
14 seizure of the SPO will be requested or are ongoing, how much and
15 what type of material it concerns, if such examination can be
16 prioritised, and how much time is needed to complete the analysis.
17 This is point 1(c).

18 I summarise the Registry's submission that concerns primarily
19 Mr. Kuci, and I stay as generic as possible not to reveal any
20 confidential information since we are in a public session.

21 The Registry submits that it handed a number of evidentiary
22 items to the external forensic institute and provided said institute
23 with a priority list as proposed by the SPO. The external forensic
24 institute informed the Registry that, considering its case load, time
25 estimate for the completion of the analysis will be conveyed as soon

1 as possible.

2 The forensic analysis of materials seized from Mr. Kuci at an
3 earlier occasion is still ongoing. And the Registry inquired with
4 said institute whether a password for the seized electronic devices,
5 if available, would assist in the execution of the requested forensic
6 operations.

7 The Registry also conveyed further information and questions
8 provided by the external forensic institute regarding the items
9 seized from Mr. Kuci.

10 Lastly, the Registry seeks authorisation to liaise with the SPO
11 on whether any passwords are available for the electronic devices
12 seized from Mr. Kuci, if applicable, to assist the external forensic
13 institute in executing the forensic analysis. The submissions of the
14 Registry, including a list of seized devices and their corresponding
15 identification numbers, together with the chain of custody forms,
16 were made available to the Kuci Defence on Friday, 13 December 2024,
17 confidential and *ex parte*.

18 I would now like to give the floor to the Registry in case it
19 wishes to supplement its submissions.

20 MS. PRICE: Thank you, Your Honour. We would first like to note
21 that our written submissions are *ex parte*, but the Registry has no
22 objection to those submissions being made available to all Defence
23 teams. We defer to the Judge and the parties on this matter --

24 JUDGE MASSELOT: Sorry, there is a problem with the [Microphone
25 not activated].

1 MS. PRICE: Is there a problem?

2 JUDGE MASSELOT: [Microphone not activated].

3 MS. PRICE: Okay, great. I'll just restate that the Registry
4 has no objection to our confidential and *ex parte* submissions being
5 made available to all Defence teams, but we defer to the Judge and
6 the parties in that respect.

7 We have just two points in terms of substance to supplement our
8 submissions. The first point is that the external forensic institute
9 has conveyed to the Registry that they are, indeed, working on time
10 estimates, and they can provide those time estimates for completion
11 of all forensic activities by the end of this week, and we will file
12 those estimates in the case file.

13 And in terms of the second point, the external forensic
14 institute has clarified that, indeed, a password for the earlier
15 device seized from Mr. Kuci would be helpful if it is available.

16 And we will continue to liaise with the external forensic
17 institute on any additional questions.

18 Thank you, Your Honour.

19 JUDGE MASSELOT: Thank you very much.

20 I now turn to the SPO for any additional observations. I would
21 also like the SPO to confirm whether it remains available to provide
22 assistance and feedback on the questions raised by the external
23 forensic institute and the Registry, as summarised by the Registry in
24 its filing. In particular, could the SPO indicate if it is in
25 possession of any passwords that could expedite the analysis of the

1 seized evidentiary material as just mentioned by the Registry. And
2 if so, I kindly invite the SPO to share the passwords with the
3 Registry so that the passwords can be conveyed to the EFI.

4 MR. HAFETZ: Understood, Your Honour. And on the last point, we
5 will, if we have any, and we do, we will provide them to the Registry
6 in short order to provide to the external forensic institute. We
7 have them for at least two devices and we will provide those today.

8 Other than that, I have nothing to add other than we're aware of
9 the priority list. We are happy to engage and liaise with the
10 Registry to facilitate answers to questions raised by the external
11 forensic institute. But we do also in short order plan to submit a
12 further request to Your Honour regarding the prioritisation of the
13 devices that were seized from Mr. Kuci and the specific parameters of
14 the requested analysis of those documents -- excuse me, of those
15 materials.

16 JUDGE MASSELOT: Thank you, Mr. Prosecutor.

17 I now turn to the Kuci Defence.

18 Does the Defence have any observations at this point in time in
19 this context? Allow me to inquire, does Mr. Kuci agree to
20 communicate his passwords for the seized devices to the Registry in
21 order to allow the external forensic institute to examine them more
22 quickly?

23 Mr. Kuci, I emphasise that you are not obliged to do so, but it
24 would certainly help to expedite the disclosure process, also to your
25 benefit.

1 Counsel Admiraal first.

2 MR. ADMIRAAL: [via videolink] Thank you, Your Honour. We
3 already provided two passwords to the SPO. If the Registrar or the
4 SPO needs any other passwords, I will discuss that first with my
5 client.

6 JUDGE MASSELOT: All right. Does Mr. Kuci want to say
7 something?

8 THE ACCUSED KUCI: [via videolink] [Interpretation] Thank you,
9 Your Honour. I have provided the passwords that were requested, and
10 I am ready to provide all other passwords necessary. I have nothing
11 to hide.

12 JUDGE MASSELOT: This is well noted. Thank you, Mr. Kuci. And
13 I then invite you, through your counsel, to liaise with the Registry
14 in that respect.

15 I now turn to the questions that were primarily addressed to the
16 Defence, and those have already been dealt with by Counsel Martens to
17 a certain extent. I have asked whether at this point in time, and
18 without prejudice to the accused's right under the Law, the Defence
19 would be in a position to indicate: One, whether it will investigate
20 and how much time it will approximately require to conclude its
21 investigation, this was point 1(h); whether it will present any
22 grounds excluding criminal responsibility, point 1(i); and three,
23 whether it will present preliminary motions, point 1(j).

24 I summarise briefly the Thaci and Kilaj Defence written
25 submission I have received.

1 Both the Thaci and Kilaj Defence submit that they are not in a
2 position to provide any observations at this stage in respect to any
3 Defence investigations, absent receipt of any disclosure of evidence;
4 that they reserve their right to present any grounds excluding
5 criminal responsibility at a later stage; and absent any rule
6 102(1)(a) material, Mr. Thaci and Mr. Kilaj reserve their right to
7 file preliminary motions.

8 I recall once again that I do not expect the Defence to make
9 definitive submissions on these general questions at this early
10 stage. I also recall that the disclosure process is about to begin,
11 and that preliminary motions may be filed within 30 days from the
12 disclosure of all material referred to in Rule 102(1)(a) of the
13 Rules.

14 Counsel Menegon, I turn to you. Do you have anything to add to
15 the written submissions made on behalf Mr. Thaci?

16 MS. MENEGON: [via videolink] Thank you, Your Honour. I have no
17 further observations. We are waiting for the material in support of
18 the arrest warrant. Thank you.

19 JUDGE MASSELOT: Thank you, counsel.

20 I will now give the floor to the Defence for Mr. Smakaj on this
21 very same point. Do you join the submissions made by the Thaci and
22 Kilaj Defence as summarised, or do you wish to add something else?

23 Counsel Martens.

24 MR. MARTENS: Thank you, Your Honour. I join the positions of
25 the co-defendants. And as I just said in my earlier statement, we

1 are waiting for, in fact, the evidence to be disclosed as soon as
2 possible. Thank you.

3 JUDGE MASSELOT: Thank you, counsel.

4 I will now turn to the Defence for Mr. Fazliu with the very same
5 question. Counsel Pestman, you have the floor.

6 MR. PESTMAN: [Microphone not activated].

7 Thank you, Your Honour. It will probably not surprise you that
8 it's, in our view, premature to answer any of these questions now.
9 We're unable to do so as disclosure hasn't started yet, and we
10 reserve the right to file Defence preliminary motions within the time
11 set in the Rules and the Law.

12 And I also noticed that the Prosecutor hasn't answered my
13 questions about the witnesses yet. There was a question under your
14 question (f), paragraph 11 of the Prosecutor's submissions.

15 JUDGE MASSELOT: Thank you, Counsel Pestman. We will give the
16 floor in a few minutes to the Prosecutor, Mr. Prosecutor.

17 And I will now turn to Mr. Kuci's Defence. Do you join the
18 submissions made by the Thaci and Kilaj Defence as summarised, or do
19 you wish to add something else?

20 MR. ADMIRAAL: [via videolink] We wish to join the summaries and
21 don't have anything to add at the moment. We are waiting for the
22 disclosure of the evidence. Thank you.

23 JUDGE MASSELOT: Thank you, Counsel Admiraal.

24 And lastly, for the Defence of Mr. Kilaj, the same question,
25 Counsel Edwards.

1 MR. EDWARDS: Well, we've made our position clear in the
2 filings. Nothing to add.

3 Can I, however, make this point, because we passed on to Defence
4 submissions rather quickly after the last discussion. I have to say
5 I sort of broke out in a bit of a cold sweat when I heard that there
6 had been submissions from the Registry, submissions going to today's
7 Status Conference. I thought I'd missed it. It turns out I hadn't
8 missed it. It had just been filed *ex parte*.

9 There are submissions before Your Honour, there are submissions
10 that the SPO have had sight of coming from the Registry, and although
11 thus far everything seems to have related to Mr. Kuci only, the rest
12 -- we simply don't know what the Registry has had to say in terms of
13 submissions for this hearing. So it's troubling that it was filed
14 *ex parte* in the first place, especially, if it seems to be the case
15 that it doesn't need to be *ex parte*, that the Defence can have sight
16 of those submissions.

17 I don't want for today's hearing to -- I don't want us to waste
18 time. But, Your Honour, it may be the case that once we do have
19 sight of a reclassified set of submissions from the Registry for
20 today's hearing, that we'll have written submissions to make. But
21 we, on this side of the bar, are flying blind in terms of the
22 Registry's submissions, and it's rather unfortunate situation to
23 learn about it halfway through the Status Conference.

24 JUDGE MASSELOT: Well noted, Counsel Edwards. I will get to
25 this reclassification issue towards the end of the hearing. Let me,

1 indeed, since you are raising this, emphasise that I am currently
2 engaged in a reclassification process to make sure that in due course
3 you get -- all the Defence teams get access to the maximum of the
4 filings in this case. I'll get back to that.

5 All right. I thank the Defence for the submissions at this
6 stage and your position is, of course, very well noted.

7 Let us now move to the second item of our agenda, the supporting
8 material to the Confirmed Indictment and the Rule 86(3)(b) outline.

9 I have asked the SPO to provide specific information about:
10 One, the amount of Rule 102(1)(a) material, including breakdowns and
11 translation of such material, point 2(a) and (b); two, whether the
12 Rule 102(1)(a) material and the outline require redactions, this is
13 point 2(c); and three, whether the SPO is able to disclose such
14 material shortly after today's Status Conference or in any case ahead
15 of the 30-day time limit provided for in Rule 102(1)(a), namely
16 7 January 2025, point 2(d).

17 I again will now summarise briefly the SPO's submission in
18 writing that:

19 The SPO has provided a breakdown of the Rule 102(1)(a) material.
20 It also submits that it has taken a statement from Mr. Kilaj on
21 2 November 2023, the transcript of which in English and Albanian is
22 part of the Rule 102(1)(a) material and a copy of which was made
23 available to the Kilaj Defence in April 2024.

24 Both witness statements have been translated into Albanian.

25 Related to these two SPO submissions, I've taken note of

1 Mr. Kilaj's request for clarification as regards the number provided
2 by the SPO in the breakdown table.

3 Then back to the SPO's submissions. Some of the Rule 102(1)(a)
4 material requires redactions. However, the detailed outline
5 submitted with the SPO's indictment can be immediately disclosed to
6 the Defence on a confidential basis.

7 Lastly, the SPO is prepared to disclose all material falling
8 under Rule 102(1)(a) that does not require redactions immediately
9 following today's Status Conference. It is also prepared to disclose
10 the remaining Rule 102(1)(a) material requiring redactions following
11 the Pre-Trial Judge's decision on the adoption of the protocol
12 governing disclosure, which will occur by the end of this week.

13 Before I give the floor to the SPO, allow me to recall that the
14 SPO has to disclose the entirety of Rule 102(1)(a) as soon as
15 possible, but at least within 30 days of the Initial Appearances of
16 the accused, which took place on the 8th and 9th December 2024. I
17 also wish to recall once again that I intend to issue the
18 Framework Decision on Disclosure of Evidence, including the redaction
19 regime, by the end of this week.

20 As regards the Rule 86(3)(b) outline, I will reclassify it
21 shortly as confidential since it can be shared with the Defence
22 without redaction.

23 Further, allow me to include in your submissions,
24 Mr. Prosecutor, certain clarifications regarding the number you
25 provided in your submission, more specifically para 13.

1 First, you mentioned that you relied on one witness for the
2 purpose of the indictment, yet you indicate that you will disclose
3 four witness statements in English and Albanian. This is referring
4 to table A, row 3 from the top. Do these statements refer to one
5 witness or two witnesses, as you seem to suggest in para 15 of your
6 submissions?

7 Second, can you please clarify, as requested by the Kilaj
8 Defence, whether these indictment-supporting statements inculcate all
9 five accused or only some of them?

10 Third, is my assumption correct that Counsel Edwards received a
11 copy of the English version of Mr. Kilaj's statement taken on
12 2 November 2023? Has Mr. Kilaj received the Albanian version of this
13 statement? I'm referring to your footnote 2.

14 In addition, I note that the SPO has filed this morning a
15 request for protective measures related to Rule 102(1)(a) material -
16 this is filing F87 - classified strictly confidential and *ex parte*.
17 This request also contains submissions for the adoption of a protocol
18 on handling confidential information and contacting witnesses and
19 victims.

20 For the moment, I focus only on the protective measures request.

21 I understand that in this SPO request, F87, no protective
22 measures are requested *vis-à-vis* the Defence but the public. This
23 means that the disclosure of the indictment supporting material can
24 be effectuated within the prescribed time limit, without further
25 authorisation and subject to the Framework Decision on Disclosure. I

1 would be grateful for the SPO could confirm this.

2 Moreover, I note that you intend to file a confidential redacted
3 version. When do you intend to do so?

4 I will now give the floor to the SPO to supplement its
5 submission and provide clarifications as requested.

6 Mr. Prosecutor, the floor is yours.

7 MS. PERGOLO: Thank you, Your Honours. Starting with the first
8 question -- the last question concerning the protective measures.
9 Indeed, your understanding is correct. So the document can be
10 disclosed without redactions *vis-à-vis* the Defence.

11 And concerning the confidential redacted version of the
12 protective measure motion, this will be issued shortly after this
13 Status Conference in the coming days, but this week most certainly.

14 JUDGE MASSELOT: Sorry to interrupt. Can I take it as by the
15 end of this week?

16 MS. PERGOLO: Yes, certainly.

17 JUDGE MASSELOT: Well noted.

18 MS. PERGOLO: Thank you.

19 With regard to the Rule 102(1)(a) material, we just have a
20 couple of points to supplement our submissions. The first concerns
21 the query that was raised by counsel for Mr. Kilaj in their
22 submissions F00083 at paragraph 21, which was also summarised by
23 Your Honour earlier. The SPO clarifies that for the purposes of the
24 Confirmed Indictment, it relied on the statements of one witness.
25 These are two statements emanating from the same witness, and the

1 package also includes the Albanian translations of the statements.
2 That's why the number of items is listed as four in the table
3 provided in our submissions.

4 Also to clarify for the benefit of counsel, and this is a point
5 also that was raised earlier, the statements are relevant to all
6 charges and all accused in this case, and this applies also to the
7 other witnesses that the SPO intends to call to testify at trial.

8 Concerning the disclosure of the materials supporting the
9 indictment, we are currently conducting final checks on the package,
10 and we anticipate being in a position to disclose the unredacted
11 materials that are part of the Rule 102(1)(a) package tomorrow.

12 And for the benefit of Your Honour and the colleagues, I will
13 provide a breakdown of these items. Out of the 185 items comprising
14 the Rule 102(1)(a) package, 123 will be disclosed without redactions.
15 So will be disclosed, as I mentioned, as of tomorrow. The remaining
16 items, which are 62, will require limited standard redactions which
17 will be applied in line with Your Honour's forthcoming decision on
18 disclosure framework.

19 And this is it for our submissions. Thank you.

20 JUDGE MASSELOT: Thank you, Madam Court Officer.

21 I now turn to the Defence and seek their concise submissions, if
22 any, starting with the Defence for Mr. Thaci.

23 MS. MENEGON: [via videolink] No observation, Your Honour. Thank
24 you.

25 JUDGE MASSELOT: Thank you, Counsel Menegon.

1 Counsel Martens, you have the floor.

2 MR. MARTENS: No comments at this moment. Thank you.

3 JUDGE MASSELOT: Thank you, Counsel Martens.

4 Counsel Pestman, you have the floor.

5 MR. PESTMAN: I have no comments. Thank you.

6 JUDGE MASSELOT: Thank you, counsel.

7 [Microphone not activated]. Counsel Admiraal, you have the
8 floor. [Microphone not activated].

9 MR. ADMIRAAL: [via videolink] No, sorry, I didn't hear you,
10 Your Honour. No comments.

11 JUDGE MASSELOT: This is noted. Thank you, counsel.

12 Counsel Edwards.

13 MR. EDWARDS: Mr. Kilaj appears to have been demoted from third
14 on the indictment now to fifth on the indictment. I don't know if
15 that's just for the purpose of today's Status Conference or if that
16 is now a more permanent fixture.

17 Yeah, I just wanted to seek clarification about one matter that
18 the Prosecution -- I think this has been dealt with publicly. The
19 Prosecution at paragraph 11 of their submissions say that they
20 anticipate to call evidence from at least three witnesses to testify
21 at trial. So presumably this is the single witness whose evidence
22 underpinned the indictment and two others.

23 The Prosecution then say at paragraph 20 anticipating obtaining
24 additional statements from several witnesses. Is that just vague
25 draftsmanship, or is the reality that it is very definitely more than

1 a total of three witnesses that the Prosecution seek to rely on? And
2 have statements been taken, in fact, how many, and when can they be
3 disclosed? Is there any reason why they can't be disclosed
4 immediately?

5 Thank you.

6 JUDGE MASSELOT: Mr. or Madam Prosecutor, you may wish to
7 respond to that.

8 MR. HAFETZ: I'll take this one, Judge.

9 It says at least three, and that's true, we intend to call at
10 least three witnesses, including the one that's named in the -- or
11 used -- relied upon in the confirmation package. And so those
12 statements from that witness my colleague just described will be
13 disclosed in the 102(1)(a) package.

14 There are, as we noted in paragraph 20, several, meaning more
15 than -- two or more, whom we anticipate we may take statements from.
16 We don't have statements from them now, and that's why we anticipate
17 it, and we will turn those over in due course, if indeed we do take
18 them and they are going to testify. We will disclose any statements
19 we're obligated to disclose by the Rules in due course, as prescribed
20 under the Rules.

21 JUDGE MASSELOT: May I just put a question to you I have already
22 put but I got no response to it, I'm afraid, which was whether
23 Mr. Kilaj received the Albanian statement. Could you please confirm
24 that?

25 MR. HAFETZ: Your Honour, apologies for not responding to that.

1 *Inter partes* after Mr. Kilaj's arrest last year, we fielded some
2 questions from Mr. Edwards, and we in due course, I believe, gave him
3 everything he asked for. And if I'm misspeaking, I apologise. I
4 don't know standing here today whether we gave him the Albanian
5 version. I can confirm that immediately after this. But we gave him
6 the version or versions he asked for. He may know, but I'm happy to
7 check that afterwards.

8 JUDGE MASSELOT: Thank you.

9 MR. HAFETZ: [Microphone not activated] ... we did provide a
10 copy of the actual interview itself, the recording of the interview.

11 JUDGE MASSELOT: Thank you. I will --

12 MR. EDWARDS: If Your Honour is interested in hearing from me,
13 yes, we have received --

14 JUDGE MASSELOT: You have the floor, Counsel Edwards.

15 MR. EDWARDS: Thank you very much, Your Honour. We're in a good
16 position to be able to answer Your Honour's question if the
17 Prosecution isn't immediately. Yes, we received transcript in both
18 Albanian and English.

19 JUDGE MASSELOT: Thank you very much, counsel.

20 I will now enter three oral rulings.

21 My first oral ruling concerns the reclassification of the
22 Rule 86(3) (b) outline.

23 Following the SPO request, I hereby instruct the Registry to
24 lift the *ex parte* marking and reclassify the outline, filing number
25 F00028/A02, currently classified as strictly confidential and

1 *ex parte*, as confidential and pursuant to Rule 82(5) of the Rules.

2 This concludes my first oral ruling.

3 My second oral ruling concerns the disclosure of Rule 102(1)(a)
4 material that does not require redactions.

5 Having heard the parties, in particular the SPO's submission
6 that it can immediately proceed to disclose the material which does
7 not require redactions, I hereby instruct the SPO to proceed and
8 disclose such material immediately after today's Status Conference.
9 The remaining material that requires redaction will be governed by
10 the Framework Decision on Disclosure.

11 In any event, the SPO is expected to conclude its disclosure of
12 Rule 102(1)(a) material fully by 7 January 2025.

13 This concludes my second oral ruling.

14 And as to my third oral ruling, it concerns the SPO's submission
15 of a confidential and redacted version of F87.

16 And I hereby instruct the SPO to make such filing by Thursday,
17 19 December 2024 at the latest.

18 This concludes my third oral ruling.

19 And we now move to point 3 of the agenda, namely the additional
20 material the SPO intends to use at trial.

21 I have asked the Specialist Prosecutor's Office to indicate
22 whether it intends to disclose and rely on Rule 102(1)(b) material,
23 together with the breakdown of said material, point 3(a); the
24 estimated amount and type of this material, point 3(b); whether this
25 material requires redactions, point 3(c); when the SPO would be ready

1 to disclose such material, point 3(d); and whether the SPO can
2 disclose the material and related translations related to the witness
3 statements in the same disclosure batch, point 3(e).

4 I take note that, in its submissions, the SPO proposes to
5 disclose additional material falling under Rule 102(1)(b) of the
6 Rules on a rolling basis beginning 20 December 2024, and its
7 intention to disclose all such material, in any case, no longer than
8 30 days prior to the opening of the SPO's case.

9 The evidence to be disclosed beginning on 20 December 2024 will
10 include the forensic copies and corresponding Cellebrite reports for
11 multiple mobile phones, as well as the audio files containing the
12 audio recordings of the non-privileged detention centre visits cited
13 in the Confirmed Indictment. In this context, I note that the SPO
14 has promised to provide the Defence with detailed instructions on how
15 to create PDF versions of the full content of each Cellebrite report,
16 should the Defence desire to do so.

17 The SPO further submits that it anticipates to obtain witness
18 statements from several witnesses, which will be disclosed in English
19 and Albanian, additional transcripts of audio-visual material which
20 will be disclosed on a rolling basis, and one expert report.

21 The SPO alleges then that it cannot provide a time estimate when
22 the disclosure of material under Rule 102(1)(b) will be concluded.
23 However, it submits that it will present nearly all of the 102(1)(a)
24 material as exhibits at trial, as well as additional exhibits
25 consisting of, one, records from seized phones; two, audio-visual

1 materials, including audio recordings of non-privileged detention
2 centre visits to Mr. Thaci; three, records collected from mobile
3 phones; four, physical items, including documents seized during
4 search and seizure operations; five, official records obtained from
5 the KSC Detention Centre corroborating the date, time, and
6 participants of certain non-privileged visits; and, six, call data
7 records.

8 The SPO also submits that some of the Rule 102(1)(b) material
9 may require limited redactions.

10 Furthermore, the SPO proposes to disclose all Rule 102(1)(b)
11 material no longer than 30 days prior to the opening of its case but
12 does not propose a concrete deadline.

13 Lastly, the SPO commits to endeavour to disclose all materials
14 referred to in witness statements simultaneously with the related
15 statements, and disclose witness statements and their respective
16 translations in the same disclosure batch, to the extent that such an
17 approach will not cause undue delays to the disclosure process.

18 I also note the Kilaj Defence submission that in relation to
19 Rule 102(1)(b) material, disclosure is at the discretion of the
20 Pre-Trial Judge, but that such material must be served a minimum of
21 30 days before the opening of the Specialist Prosecutor's case.

22 I now invite the SPO to make any further supplemental
23 submissions on -- taking into account also the following questions:

24 First, can the SPO today give an approximation of the estimated
25 amount and type of material it intends to disclose?

1 Second, can the SPO today indicate how much of the
2 Rule 102(1) (b) material will require redactions.

3 And, third, I'm minded to adopt an expeditious path in order to
4 conclude the pre-trial phase in due time. In that regard, can the
5 SPO today provide a realistic time limit until when the
6 Rule 102(1) (b) material can be disclosed, notwithstanding Rule 102(2)
7 and Rule 118(2)? Would disclosure by 28 March 2025 or 30 April 2025
8 be a feasible and realistic date, mindful that the first notice of
9 the Rule 102(3) material is proposed to be submitted on 17 February
10 2025 in your submissions, which is impacted by the disclosure of
11 Rule 102(2) (b) material?

12 And last, any other details the SPO wishes to provide in
13 relation to this category of evidence.

14 Mr. or Madam Prosecutor, you have the floor.

15 MR. HAFETZ: Thank you, Your Honour.

16 For today, we're going to have to rely on our written
17 submissions regarding the end date of the process, and I say that
18 primarily because, as we've noted earlier today, there are a
19 significant number of devices recently obtained for which analysis
20 has yet to be done and even if the analysis is done. And I can be
21 more specific about this if Your Honour would like. But when the
22 analysis is done, some of that material - some of it - may be subject
23 to a third-party independent review to make sure that any privileged
24 material is screened out. So I am -- we cannot realistically provide
25 a date.

1 That said, I can say, as noted, that nearly all of the material
2 that is the 102(1)(a) material is going to be used as exhibits in the
3 trial, and that forms, I would say, a very significant portion of
4 what will be the SPO's exhibits at trial. And I can be more granular
5 about that if Your Honour wishes, but it's no secret that a vast
6 volume of the case is based on and comes from the recordings that are
7 going to be transferred over to the accused this week.

8 I will also note, I conferred with several of the counsel in
9 person before the hearing today to let them know. The recordings
10 will -- in this case, the audio recordings obtained from the
11 detention unit will be disclosed by necessity on external devices
12 because that is the way the SPO received them and that is also the
13 format which is truest to the format in which they were provided. So
14 they are just, quite frankly, not appropriate and can't be done
15 appropriately in Legal Workflow, at least in their entirety.

16 And so we will offer them and provide them and a copy to CMU as
17 well on -- making that available on Friday. I understand from
18 several of the Defence counsel they may not be available to collect
19 them on Friday so that process may be delayed, and that's totally
20 understandable. But we will have someone here, including over the
21 recess, to be able to turn them over if they're able to collect them.

22 And I also just want to note that as regards the 102(1)(b)
23 initial phone disclosures, we will hold off on disclosing those in
24 the immediate term so that we can, as discussed earlier, confer with
25 counsel now being apprised that not just Mr. Kilaj but others may

1 take issue with providing entire phones. So we do want to consult
2 with them *inter partes* before we turn over any whole phone to any
3 other accused.

4 JUDGE MASSELOT: Thank you, Mr. Prosecutor.

5 I will turn to the Defence and seek their concise submissions,
6 if any, starting with the Defence for Mr. Thaci.

7 MS. MENEGON: [via videolink] I have no particular observation at
8 this stage. But I just want to confirm our appreciation of the SPO's
9 will to disclose statements and associated exhibits of witnesses at
10 the same time for us. It's really helpful and contributes to the
11 expediency of the proceedings. Thank you.

12 JUDGE MASSELOT: And this is on the record. Thank you, counsel.
13 Counsel Martens.

14 MR. MARTENS: Thank you, Your Honour. I gave a submission
15 already in my introduction earlier about the 102(1)(b) evidence. A
16 question that keeps raising in my mind is the following: Is it the
17 situation at the SPO that work is still going on on this evidence so
18 it cannot be disclosed because of logistic issues, or is it part of
19 the strategy of SPO not to disclose the information because, for
20 example, the accused has to be confronted in an interview or
21 something like that about it?

22 I would say, again, this case has been going on *ex parte* for a
23 long time already. I would really submit that any evidence that's
24 readily available at this moment, which is -- doesn't need any work
25 logistically, like redaction or something like that, should and could

1 be disclosed earlier than by the end of March 2025. If it's, in
2 fact, in the files of the Prosecution at this moment, I would submit
3 that it would be disclosed at the same time with the 102(1)(a)
4 evidence in this case. Thank you.

5 JUDGE MASSELOT: Thank you, Counsel Martens.

6 Counsel Pestman, please.

7 MR. PESTMAN: Thank you. I had a question for the Prosecutor.
8 My client only speaks Albanian, cannot read English or any of the
9 other official languages of this Court. My question is will the
10 Albanian translations of the non-Albanian documents, will they be
11 handed over, disclosed simultaneously with the other documents or
12 with the original -- the documents in the original language?

13 I would appreciate it if they're handed over or disclosed at the
14 same time, the same moment, and not at different times during the
15 procedure. That was my only question.

16 JUDGE MASSELOT: And this is noted.

17 I will give the floor to the SPO in a few minutes to respond
18 also to the question put by Counsel Martens. Before that, I will
19 give the floor to Counsel Admiraal.

20 MR. ADMIRAAL: [via videolink] Thank you. Nothing to add.

21 JUDGE MASSELOT: Thank you, counsel.

22 Counsel Edwards.

23 MR. EDWARDS: Just a clarification, really, and an observation,
24 that at paragraph 22 where we say that disclosure to the Defence is
25 at the discretion of the Pre-Trial Chamber, of course, what we mean

1 is that the time limit for disclosure is to be set by the relevant
2 Panel and that's what's at the discretion of the Court.

3 And the other observation really is that whilst, of course, the
4 minimum prior to the opening of the Specialist Prosecutor's case for
5 disclosure of all outstanding material is 30 days, 30 days prior to
6 opening under Rule 102(1)(b), the closer we get to that 30-day limit,
7 the more likely it is that, if the disclosure is voluminous, the
8 Defence are obliged to make an application to adjourn the start of
9 the Prosecution case because the Defence hasn't had adequate time and
10 facilities to prepare for the Defence. It's not a submission. It's
11 just -- I'm just pointing out the obvious, I think. But that being
12 the case, we urge the Panel and, indeed, the Prosecution to complete
13 their disclosure well in advance of that 30-day minimum.

14 JUDGE MASSELOT: Thank you, Counsel Edwards.

15 May I give the floor back to the Specialist Prosecutor's Office,
16 knowing -- underlining that you got questions from Counsels Martens,
17 Pestman, and some observations also from Counsel Edwards. I give you
18 the floor.

19 MS. PERGOLO: Yes, Your Honours. Concerning the translations,
20 those will be provided in accordance with the Rules. So in the
21 102(1)(a) materials, they will be provided simultaneously where
22 available, and, of course, for -- the witness statements in the
23 102(1)(b) will be provided also at the same time.

24 I'm trying to see if I cover all of the questions that were
25 addressed to us.

1 And, again, I refer back to our submissions concerning the
2 disclosure of all the items. As we already committed, we will be
3 doing that on a rolling basis as soon as possible, and any -- the
4 timing of that, of course, will depend again on redactions and
5 technical matters and logistical matters, not at this stage of any
6 other considerations. Thank you.

7 JUDGE MASSELOT: Thank you, Madam Prosecutor.

8 I will now enter my fourth oral ruling regarding the material to
9 be disclosed under Rule 102(1)(b) that does not require any
10 redactions.

11 As will be set out also in the Framework Decision, the SPO is
12 instructed to begin with the disclosure of Rule 102(1)(b) material
13 that does not require any redactions as soon as practicable. A
14 deadline for the disclosure of the remaining material will be set in
15 the forthcoming Framework Decision.

16 This concludes my fourth oral ruling.

17 And let us now move to the next item on our agenda related to
18 the evidence material to Defence preparation, which is the
19 Rule 102(3) material.

20 I have asked the SPO to provide specific information about:
21 One, whether the SPO has in its custody, control, any material
22 falling under this Rule, this is point 4(a); two, the type and
23 estimated amount of said material, point 4(b); three, whether the
24 material will require redactions, this is point 4(c); and, four, by
25 when can the SPO provide notice to the Defence, and this is point

1 4(d) in the agenda.

2 I will again summarise briefly the SPO's submissions in this
3 regard.

4 The SPO informs the Defence and the Panel that it has such
5 material in its possession and will disclose it after the
6 Rule 102(1)(b) items and potentially exculpatory items have been
7 disclosed. It adds that the scope of the material is necessarily
8 impacted by, and to a large extent dependent upon, the witnesses and
9 evidence intended to be presented at trial, as well as the issues
10 between the parties. It can therefore not provide an accurate
11 estimate of the volume.

12 It further submits that some of the Rule 102(3) material will
13 require redactions.

14 And according to the SPO, the first notice of the Rule 102(3)
15 material can be submitted on 17 February 2025, with subsequent
16 detailed notices of the Rule 102(3) material being submitted on a
17 rolling basis.

18 Lastly, the SPO requests that the Pre-Trial Judge set the same
19 default timeline for the SPO to file materiality challenges as
20 applied in the *Januzi et al.* case, namely within 14 days of the
21 Defence indication.

22 The Kilaj Defence submits generally that Mr. Kilaj reserves his
23 right to seek an alternative relief to resolve particular issues that
24 are difficult at such an early stage of the proceedings to foresee
25 and that are not adequately covered by the said case

1 Framework Decision.

2 Before I give the floor to the Specialist Prosecutors, I would
3 like to remind the SPO that disclosure or inspection of evidence,
4 such as statements, documents, photographs, or tangible objects,
5 material to the Defence must be disclosed without delay, as per
6 Rule 102(3), third sentence.

7 The detailed notice of such material must include not only
8 information the SPO assesses to be potentially material to the
9 Defence preparation, but any material and evidence in the SPO's
10 possession which has not been disclosed under Rule 102(1)(a) and (b)
11 and 103 and which is relevant to the present case.

12 I also remind the parties that disputes as to the materiality of
13 the information, as claimed by the Defence, must be submitted
14 immediately to the Pre-Trial Judge for resolution, as per
15 Rule 102(3), fourth sentence.

16 I invite the SPO to supplement its submissions, if possible,
17 taking into account the following questions:

18 First, can the SPO today give a rough estimation of the type and
19 amount of material falling under Rule 102(3) that will be contained
20 in the first detailed notice dated 17 February 2025 to the Defence?

21 Second, can the SPO today give an indication of whether and how
22 many redactions will be required for the material to be likely
23 inserted in the first notice?

24 And, third, any other details the SPO wishes to provide.

25 Mr. or Madam Prosecutor, you have the floor.

1 MR. HAFETZ: Thank you, Your Honour. On the second question,
2 for the material we're talking about, while we don't and cannot give
3 a complete estimate of -- to answer Your Honour's question, the
4 redaction regime in this case should be rather limited, and so that
5 hopefully is not going to be a significant holdup. There will be
6 redactions to apply, but they're not going -- I don't anticipate
7 going to be very significant redactions.

8 The exact amount I cannot give you an answer on as per our
9 submission. The type, though, and the types of evidence we're
10 talking about really mirror the residual categories from the
11 102(1) (a) and 102(1) (b).

12 So to be more specific about that, it may be that there are some
13 102(3) type material from individual seized phones or phones
14 themselves. There may be some residual 102(3) material in the form
15 of transcriptions and translations of detention centre audio
16 recordings or audio recordings obtained from detention centre phone
17 calls and detention centre paper records. So really a mirror image
18 of whatever would be the residual categories of the types that we
19 identified of the 102(1) (b).

20 JUDGE MASSELOT: Thank you, Mr. Prosecutor.

21 I will now turn to the Defence and seek their submissions, if
22 any, starting with Counsel Menegon.

23 MS. MENEGON: [via videolink] I have no particular observation,
24 except that I would invite the Prosecution in the Rule 102(3) notice
25 to specify systematically the witness code of the witnesses concerned

1 by each item or the name of the accused when it's [Indiscernible]
2 seized from an accused. Thank you.

3 JUDGE MASSELOT: Thank you, counsel. This is now on the record.
4 Counsel Martens.

5 MR. MARTENS: Thank you, Your Honour. Well, as I just heard
6 that SPO says the 102(3) evidence is a mirror of 102(a) and (b), I
7 would ask the Prosecution why it should not be possible even -- also
8 because of the redaction regime is not very extensive, to provide
9 this evidence together with the other evidence to be disclosed this
10 week.

11 JUDGE MASSELOT: Thank you, counsel.
12 Counsel Pestman.

13 MR. PESTMAN: Thank you. I have no comments at this stage.

14 JUDGE MASSELOT: Thank you, counsel.
15 Counsel Admiraal.

16 MR. ADMIRAAL: [via videolink] Thank you. Nothing to add.

17 JUDGE MASSELOT: This is well noted.
18 And Counsel Edwards.

19 MR. EDWARDS: No, nothing to add. Thank you.

20 JUDGE MASSELOT: May I then give the floor back to the
21 Specialist Prosecutor to respond to Counsel Martens's question,
22 maybe.

23 MR. HAFETZ: Yes, Your Honour. And I apologise for not being
24 clear for my colleague. I'd point to our answer in paragraph 30 of
25 our filing. I really didn't mean to say exact mirror image. What I

1 was answering or attempting to answer was Your Honour's question
2 about the types of anticipated material. I cannot predict fully
3 today all types because some of them are, as we point out, dependent
4 on what becomes material through objections or arguments raised by
5 the Defence and as the -- and - and more importantly - as our
6 exhibits and the material we rely on takes final shape in the form of
7 the 102(1)(b) disclosures. So that is what I meant. I was simply
8 trying to answer Your Honour's question about what types of material.

9 I did not mean to provide either an exhaustive list. There are
10 other categories such as witness statements that could become subject
11 to Rule 102(3). I am not in position to answer that today. What I
12 have done is tried to answer the type and that largely -- the quantum
13 of categories we are talking about largely are drawn from the same
14 reserve.

15 JUDGE MASSELOT: Thank you, Mr. Prosecutor. Your submissions
16 have been noted. And as stated before, we'll issue the
17 Framework Decision setting deadlines and providing guidelines as to
18 the process of disclosing and challenging Rule 102(3) material in the
19 upcoming Framework Decision.

20 Let us now move to point 5 of our agenda, which is the Rule 103
21 material, which refers to exculpatory evidence.

22 I have asked the SPO to provide specific information about:

23 One, what is the amount and type of exculpatory material within
24 the meaning of Rule 103 of the Rules in the custody, control, or
25 actual knowledge of the SPO to date, and the breakdown thereof. This

1 is point 5(a) on our agenda.

2 And, two, whether redactions are necessary prior to disclosure.

3 And this is point 5(b) on the agenda.

4 I, again, will now summarise briefly the SPO's submissions in
5 that relation.

6 The SPO will disclose very shortly one package of potentially
7 Rule 103 material and other exculpatory material immediately
8 following application of any required redactions.

9 Before I give the floor to the SPO, I remind the SPO that it
10 must disclose immediately to the Defence any exculpatory evidence as
11 soon as it is in the custody, control, or actual knowledge of the
12 SPO, which may reasonably suggest the accused's innocence or mitigate
13 the guilt of the accused or affect the credibility or reliability of
14 the Specialist Prosecutor's evidence.

15 Disclosure of exculpatory evidence is a continuous obligation,
16 subject only to protective measures, where necessary.

17 I also inform the parties that I intend to keep an eye on the
18 effective implementation of the SPO's continuous obligation to
19 disclosures Rule 103 material.

20 Further, I invite the SPO to indicate: First, what is the
21 amount and type of exculpatory material in the first Rule 103
22 disclosure package? Is it possible to receive some more information?

23 And, second, is my assumption correct that this first batch of
24 exculpatory material will not require redactions?

25 And, third, any other details the SPO wishes to provide.

1 I will now give the floor to the SPO to supplement its
2 submissions and provide clarifications as requested.

3 Mr. Prosecutor, Madam Prosecutor, the floor is yours.

4 MS. PERGOLO: Thank you, Your Honour. So this first Rule 103
5 package will comprise three items. The three items are as follows:
6 There are two witness statements, and there is one Official Note of a
7 conversation with a witness. And none of these items require
8 redactions. Thank you.

9 JUDGE MASSELOT: Thank you.

10 I will now give the floor to the Defence to seek their concise
11 submissions on the redaction regime to be applied, if any, in the
12 sequence we have established in the Status Conference.

13 Counsel Menegon, you have the floor.

14 MS. MENEGON: [via videolink] Thank you. With regard to the
15 redaction regime, as indicated in our written submissions, we have no
16 objection to the application of the one adopted in the decision F76.
17 Thank you.

18 JUDGE MASSELOT: Well noted. Thank you.

19 Counsel Martens.

20 MR. MARTENS: Thank you, Your Honour.

21 Noting what SPO said about the 103 evidence, I would likely ask
22 you to rule that this evidence will be submitted to counsel by the
23 end of this week. Thank you.

24 JUDGE MASSELOT: This is well noted, counsel. Thank you.

25 Counsel Pestman.

1 MR. PESTMAN: So just to understand your question correctly,
2 you're asking me whether we agree -- or Mr. Fazliu agrees with the
3 proposed redaction framework as formulated in the Januzi decision?
4 That's correct? We have no objection to that particular framework.
5 Thank you.

6 JUDGE MASSELOT: Thank you, counsel.

7 Counsel Admiraal.

8 MR. ADMIRAAL: [via videolink] No objection, Your Honour.

9 JUDGE MASSELOT: Thank you.

10 Counsel Edwards.

11 MR. EDWARDS: No objection subject to the caveat set out in
12 paragraph 24 of our submissions, our written submissions.

13 JUDGE MASSELOT: This is well noted. Thank you.

14 Your submissions have been noted. And as stated before, I will
15 issue the Framework Decision providing guidelines as to the process
16 of disclosing Rule 103 material in the upcoming Framework Decision.

17 We will now move to the protected material under Rule 107.

18 I have asked the SPO a series of questions regarding the
19 material that it would tender into evidence, which has been provided
20 on a confidential basis and solely for the purpose of generating new
21 evidence. These are points 6(a) to (f) on our agenda.

22 I take note that, at the current stage, the material that the
23 SPO intends to tender as evidence at trial does not require any
24 Rule 107 clearances.

25 Mr. Prosecutor, is there anything that you would like to add on

1 this point?

2 MS. PERGOLO: No further submissions on this topic, Your Honour.
3 Thank you.

4 JUDGE MASSELOT: Thank you, Madam Prosecutor.

5 Given the clear submissions of the SPO, I look at the Defence to
6 see whether anyone wishes to take the floor in relation to Rule 107
7 material? I see that there are no submissions.

8 As stated before, I will issue the Framework Decision providing
9 guidelines as to the requirements of requesting the withholding
10 Rule 107 material in the upcoming Framework Decision, in the event
11 that such request would become necessary.

12 We are now moving to the proposed redaction regime, which is
13 point 7 of the agenda.

14 And I recall that I asked the parties whether they concurred to
15 apply the redaction regime that was adopted in Case 10, in the
16 Framework Decision on Disclosure of Evidence and Related Matters.

17 I take note that in their respective submissions, the SPO and
18 the Defence for Mr. Thaci agreed to adopt said redaction regime.

19 I further note that the Defence for Mr. Kilaj also agrees, in
20 principle, to apply said regime, but reserves the right to seek
21 alternative relief to resolve issues that are difficult at such an
22 early stage of proceedings to foresee. And we have already, to a
23 certain extent, discussed this matter.

24 Mr. Prosecutor, I see in your submissions, footnote 3, that you
25 propose block redactions to be applied to material of no relevance to

1 the present proceedings, where, for example, a transcript that
2 contains the testimony of two witnesses, only one of which has any
3 relevance to these proceedings. Is my understanding correct that you
4 propose a new category of standard redactions?

5 You have the floor.

6 MR. HAFETZ: To the extent that's necessary to cover those type
7 of redactions, Your Honour, then yes.

8 JUDGE MASSELOT: This is thus on the record.

9 And I will now turn to the Defence and seek their concise
10 submissions on the redaction regime to be applied, if any, in the
11 sequence we have established in the Status Conference. I also invite
12 the Defence to espouse their views on the creation of a new standard
13 category, or block redactions as the SPO called it, involving
14 information that is irrelevant to the present proceedings.

15 Counsel Menegon, do you wish to add something to the written
16 submissions that you have already made on behalf of Mr. Thaci?

17 MS. MENEGON: [via videolink] Thank you, Your Honour. I will
18 just reply to your queries regarding a new category. We will not
19 support the creation of such a category because even if the SPO would
20 consider that such information is not relevant because it does not
21 relate to a witness in our proceeding, the information before or
22 after the witness testimony can be relevant to assess the context in
23 which the statement was given and may help us to identify other
24 connected witnesses, for instance, if the witness testified in
25 another case related to the same or -- a linked connection.

1 So unless the redaction is required for the protection of the
2 identity of an individual, we do not support the creation of this new
3 category.

4 JUDGE MASSELOT: Well noted, counsel. Thank you.
5 Counsel Martens.

6 MR. MARTENS: Thank you, Your Honour. Yes, I follow counsel of
7 Mr. Thaci on this. We are not in support of any redactions in
8 general. Let's make that clear. Secondly, only if necessary to
9 protect the identity of certain persons but be as limited as possible
10 also, because the party who is deciding on what has to be redacted --
11 well, the Defence in that case has no saying about that, so I would
12 not support the new regime for redactions. Thank you.

13 JUDGE MASSELOT: Thank you, counsel.
14 Counsel Pestman.

15 MR. PESTMAN: Thank you very much.

16 I already explained that we support the regime or the framework
17 as suggested in the Januzi decision. We would not support the
18 suggestion to expand it. If I understand the Prosecutor correctly,
19 the only reason to delete certain parts of written documents is that
20 they're not relevant for the current case, and I don't think
21 irrelevance can be a reason to redact documents which are going to be
22 disclosed to the -- which should be disclosed to the Defence. So we
23 object.

24 JUDGE MASSELOT: Well noted, counsel.
25 Counsel Admiraal.

1 MR. ADMIRAAL: [via videolink] Yeah, thank you, Your Honour.

2 Same for us. I'd like to join Mr. Pestman's statement.

3 JUDGE MASSELOT: Well noted.

4 Counsel Edwards, I kindly ask you to formulate more specifically
5 your concerns with regard to the general redaction regime as set out
6 in the Case 10, the Januzi *et al.* case. Do you have any specific
7 observations as to the general mechanism? And it would help me to
8 take your views into account before I issue the Framework Decision on
9 Friday.

10 You have the floor, please.

11 MR. EDWARDS: Thank you, Your Honour. Can I start by saying
12 that in terms of the expansion of the regime in the way envisaged by
13 the Prosecution, I adopt the submissions made by my colleagues in
14 that regard.

15 Paragraph 24 of our submissions, if -- I jumped the gun by
16 referring to paragraph 24 earlier. I meant earlier to speak about
17 the disclosure regime. But in terms of the redaction regime, really
18 all that we were doing was highlighting that there may be difficult
19 cases where the pre-existing redactions regime isn't going to work.
20 And paragraph 24 is really just a holding position such that, in a
21 difficult case, we reserve our right to make specific submissions
22 about redactions in relation to a particular document, in relation to
23 a particular witness, if the fairness to the Defence is impacted in a
24 particular circumstance. That's all.

25 JUDGE MASSELOT: Well noted, counsel. Thank you for this

1 clarification.

2 Does the SPO wish to add something in relation to the general
3 objection to the creation of a new category?

4 MR. HAFETZ: Just briefly, Your Honour, to clarify, with some
5 detail, a little bit more what we're talking about.

6 If a transcript of a different trial contains in one day the
7 testimony of two different people, one of whom -- one witness is
8 squarely relevant to this case and the other has nothing to do with
9 it whatsoever, that's the type of block redaction in the main that
10 we're talking about. It has no business in this case. And so what I
11 said was, to the extent it's even necessary to create a category for
12 that, all we're trying to note here is that in the material we're
13 producing, materials that -- like that, which are not disclosable in
14 this case under any rule I'm aware of, will be block redacted.
15 That's all.

16 JUDGE MASSELOT: Thank you, Mr. Prosecutor. Your submissions
17 have been noted.

18 And as stated before, several times, I will issue the
19 Framework Decision providing guidelines as to the redaction regime to
20 be applied in this case.

21 We can now move to the last item on today's agenda, which is
22 point 8, and which is the procedure for disclosure; notably the use
23 of the case-specific categorisation in Legal Workflow for material
24 falling under Rule 102(1)(a) and (b) and Rule 104(1), (5), and (6) at
25 the time of disclosure of each batch of such material.

1 I take the SPO's submission that it will propose to the Defence
2 of each accused, based on a format similar to that adopted in the
3 Januzi *et al.* case, with a view to ensuring that any proposal
4 adequately reflects the circumstances of this particular case and
5 meets the needs of the parties, while also considering the resources
6 constraints of each.

7 It does not propose any further subcategories in the chart and
8 suggests that a consolidated Rule 109 chart be submitted 15 days from
9 the filing of any pre-trial brief.

10 As to the format of the Rule 109 chart, the SPO proposes the
11 adoption of the format used in the Januzi *et al.* case, as well as the
12 Gucati and Haradinaj, as well as Pjeter Shala cases. Notably, the
13 SPO proposes to limit the chart to Rule 102(1)(b) material, as
14 Rule 102(1)(a) material is already set out in the Rule 86(3)(b)
15 outline. I refer you to paragraph 42 of the SPO's submissions.

16 Lastly, the SPO informs the Pre-Trial Judge that *inter partes*
17 discussions are ongoing.

18 I further note that the Defence for Mr. Thaci agrees in
19 principle to engage into *inter partes* exchanges aiming at agreeing on
20 a specific case on a -- sorry, agreeing on a case-specific
21 categorisation in Legal Workflow, as adopted in the Januzi *et al.*
22 case, and the format of the consolidated chart, as used in said
23 cases.

24 Lastly, the Thaci Defence agrees with the SPO's proposal that
25 the consolidated disclosure chart be provided within 15 days from the

1 filing of any pre-trial brief.

2 I invite the SPO to supplement its submissions, if necessary.
3 If possible, please indicate where you stand with the *inter partes*
4 discussion on Rule 109 charts and when I can expect a response.

5 Mr. Prosecutor or Madam Prosecutor, you have the floor.

6 MS. PERGOLO: Thank you, Your Honour. So with regard to the
7 categorisation, the SPO agrees with the categories proposed and
8 identified by Your Honour in the agenda for this Status Conference,
9 and we do not wish at this stage to add any further subcategories.

10 I'll provide a brief update on the status of the *inter partes*
11 communications regarding the Rule 109 chart. Last week, the SPO
12 shared a model 109 chart with counsel for all the accused. We
13 received no objections to this model. We note that we have not heard
14 from counsel for Mr. Fazliu. But we will continue to engage in these
15 discussions and endeavour to reach a final agreement this week. And
16 I note that possibly the issues were due to the Legal Workflow system
17 or access-related problems. Thank you.

18 JUDGE MASSELOT: Thank you, Madam Prosecutor.

19 I now turn to the Defence and seek their concise submissions, if
20 any, in this context.

21 I invite the Defences to take into account the following four
22 questions:

23 Do you agree on the Rule 109 chart format used in the Januzi
24 *et al.* and other cases that have been mentioned?

25 Do you agree with the SPO proposal that the chart should

1 comprise only Rule 102(1)(b) material, given that the Rule 102(1)(a)
2 material is sufficiently analysed in the Rule 86(3)(b) outline?

3 And do you agree that a consolidated Rule 109 chart be filed 15
4 days after the submissions of any pre-trial brief?

5 Counsel Menegon, you have the floor to supplement the written
6 submissions on behalf of Mr. Thaci.

7 MS. MENEGON: [via videolink] Thank you. The SPO has sent us a
8 model chart by e-mail, and, indeed, we have confirmed our agreement
9 with this model. We have just indicated that we would appreciate
10 that in addition to the category "alleged conduct of the accused,"
11 the category "accused" be added with the reference to the name of
12 each relevant accused for each document in order that we will be able
13 to link the document to each accused easily.

14 And let me look at your other questions.

15 With regard to the content of the chart, I do think it would
16 still be useful that the chart refer to both Rule 102(1)(a) and
17 Rule 102(1)(b) material, especially since, for now, the list of
18 Rule 102(1)(a) material is pretty short, so I don't think it would be
19 too much effort for the SPO, but it would be helpful for us to have a
20 single document with the relevance of each item in one place.

21 And as indicated in our written submission, we do consider that
22 it's better that we have a delay of 15 days to file such chart after
23 the submission of our pre-trial brief. Thank you.

24 JUDGE MASSELOT: Thank you, Counsel Menegon.

25 I now give the floor to Counsel Martens.

1 MR. MARTENS: Thank you, Your Honour. Only one remark. I would
2 say that it would be very practical to add to the chart the
3 Rule 102(1)(a) material to give a complete outline of all the
4 evidence and other documents that are on the chart.

5 On your other questions, we will accept your ruling on that. I
6 think it's quite practical what has been suggested. Thank you.

7 JUDGE MASSELOT: Thank you, Counsel Martens.

8 I now give the floor to Counsel Pestman.

9 MR. PESTMAN: Thank you, Your Honour. The Prosecutor was right.
10 I haven't received a chart yet, so it was also -- I was -- I haven't
11 been able to respond to it. I don't know what the chart looks like,
12 so it's very difficult to say anything about the chart.

13 But I would like to stress that it's much easier to consolidate,
14 I've seen this word before in the submissions, to consolidate as much
15 as possible, so please include the supporting material as well in the
16 chart that we will eventually get. And I will continue, to quote
17 you, Your Honour, to diligently engage on this particular topic with
18 the Prosecution. Thank you.

19 JUDGE MASSELOT: Thank you, Counsel Pestman.

20 Counsel Admiraal, you have the floor.

21 MR. ADMIRAAL: [via videolink] Thank you. No objections,
22 Your Honour. Nothing to add.

23 JUDGE MASSELOT: Thank you, counsel.

24 Counsel Edwards.

25 MR. EDWARDS: Yes. We agree that the table should be -- the

1 chart should be as complete as possible. That would be preferable.
2 And Your Honour said that perhaps it's not necessary to have the
3 Rule 102(1)(a) material included because it's been sufficiently
4 analysed in the Rule 86(3)(b) outline. We can't really comment
5 because we haven't really seen the Rule 86(3)(b) outline, so we're at
6 a bit of a disadvantage. Thank you.

7 JUDGE MASSELOT: Well noted, counsel.

8 Does the SPO want to add something on that?

9 MS. PERGOLO: No, Your Honours. We stand by our submissions on
10 this. Thank you.

11 JUDGE MASSELOT: All right. Thank you for all your submissions.
12 Considering that there is no clear agreement yet, it's a bit early,
13 of course, on the format and subcategories on the disclosure chart, I
14 will establish the timing for joint submissions on this matter in the
15 Framework Decision.

16 And this concludes the submissions on point 8 of our agenda.

17 Before I give the floor to the parties to raise any other issues
18 they may deem necessary, allow me to address now the briefing
19 schedule related to filings F87 and F88, which are the SPO requests
20 that were filed and notified this morning, and inform in particular
21 the Defence about the ongoing reclassification exercise in this case
22 which I had announced at the beginning of this hearing.

23 As regards the briefing schedule for filing F87, I note that the
24 SPO will submit a confidential and redacted version thereof by
25 Thursday, 19 December 2024 at the latest. I'm seeking in particular

1 the views of the Defence on the protocol related to the handling of
2 confidential information and contacting witnesses and victims.

3 Given the upcoming Court recess, when would the Defence be in a
4 position to make submissions thereupon?

5 I give the floor now to Counsel Menegon.

6 MS. MENEGON: [via videolink] Thank you, Your Honour. Actually,
7 we have discussed with the SPO and also the Kilaj Defence about a
8 suspension of deadline during the winter recess, and I think all the
9 parties had agreed with that, so until 12 January. So I would
10 suggest that if we are given a deadline, it be imposed after the end
11 of the winter recess. Thank you.

12 JUDGE MASSELOT: Well noted, Counsel Menegon.

13 Counsel Martens?

14 MR. MARTENS: After the winter recess, Your Honour. Thank you.

15 JUDGE MASSELOT: Counsel Pestman.

16 MR. PESTMAN: Yes, thank you. I completely agree.

17 JUDGE MASSELOT: Counsel Edwards.

18 MR. EDWARDS: It won't surprise you to hear that we agree as
19 well.

20 JUDGE MASSELOT: [Microphone not activated].

21 MR. HAFETZ: No, Your Honour.

22 JUDGE MASSELOT: I forgot Counsel Admiraal, excuse me.

23 MR. ADMIRAAL: [via videolink] No problem. Same here. After the
24 winter.

25 JUDGE MASSELOT: I'm sorry. I apologise, counsel.

1 Mr. Prosecutor, sorry.

2 MR. HAFETZ: No objection, Your Honour.

3 JUDGE MASSELOT: [Microphone not activated].

4 I will now issue my fifth oral ruling concerning the briefing
5 schedule regarding the SPO request F87.

6 I hereby instruct the Registry to make observations on the SPO
7 request, if any, by Tuesday, 14 January 2025 at 4.00, and the
8 Defence, if they so wish, to respond to the confidential redacted
9 version of F87, and the Registry observations, as the case may be, by
10 Thursday, 16 January 2025. The SPO may reply by Tuesday, 21 January
11 2025.

12 This concludes my fifth oral ruling.

13 As already mentioned before this morning, the Pre-Trial Judge
14 and the parties have been notified of the SPO request F88, classified
15 as confidential, that concerns the Defence of Mr. Fazliu. I shall
16 not enter into the specifics of this request given its classification.

17 The related decision is F38 which is currently classified
18 strictly confidential and *ex parte*.

19 I inform the Defence of Mr. Fazliu that this decision will be
20 made available to the Defence in due course. I invite Mr. Fazliu's
21 Defence to inform me when they would be prepared to respond to this
22 request given the upcoming Court recess.

23 And, Counsel Pestman, I therefore give you the floor.

24 MR. PESTMAN: Your Honour, I find it very difficult to answer
25 that question. I have no idea what we are talking about.

1 JUDGE MASSELOT: This is a confidential filing. I know that you
2 had an issue with ...

3 MR. PESTMAN: It's strictly confidential, *ex parte*. Is that --
4 F38?

5 JUDGE MASSELOT: F88 is the Prosecution request that was filed
6 confidentially and notified this morning that relates to your client,
7 yes.

8 MR. PESTMAN: I haven't been able to look at that yet, so I
9 can't answer that question. I -- if you can show me the decision, I
10 can have a look at it now and respond later.

11 JUDGE MASSELOT: I think that in any case, it's 4.00, so it's
12 probably time to have a break to allow, of course, a change of the
13 tapes.

14 So what I would propose, Counsel Pestman, is that we will now
15 adjourn the hearing for half an hour, and this may allow you to
16 consult this filing, and then we will start with your submissions
17 thereon.

18 So we will now adjourn the hearing, and we will reconvene at
19 4.30.

20 --- Recess taken at 4.01 p.m.

21 --- On resuming at 4.33 p.m.

22 JUDGE MASSELOT: We are back in session. And I note for the
23 record that all parties and the Registry representatives are back in
24 the courtroom.

25 So, Counsel Pestman, could you read the SPO request F88 during

1 the break; and if so, could you please now inform me when you would
2 be prepared to respond to it given the upcoming Court recess? You
3 have the floor, counsel.

4 MR. PESTMAN: Yes, thank you. I note that this document is
5 marked confidential. I don't mind responding now, but maybe it is
6 necessary to go into closed session.

7 JUDGE MASSELOT: Well, you're not supposed to -- my question
8 relates to when you intend --

9 MR. PESTMAN: Okay. Just procedural.

10 JUDGE MASSELOT: Exactly.

11 MR. PESTMAN: Okay. So I won't be able to respond now. I
12 wasn't able to speak to my client in a confidential fashion during
13 the interval and so I haven't been able to ask him or ask for his
14 opinion on this particular document.

15 I do note that the decision F38 is mentioned in paragraph 1, 3,
16 4, 5, 6, 7 of the request, and that almost at every occasion special
17 reference is made to reasons as set out in that particular decision.
18 So it's also difficult to respond to the specific request without
19 having the underlying order.

20 JUDGE MASSELOT: Again, counsel, sorry to interrupt, but I'm not
21 requesting from you to respond to the --

22 MR. PESTMAN: Yeah.

23 JUDGE MASSELOT: To make any submissions --

24 MR. PESTMAN: Yeah.

25 JUDGE MASSELOT: -- specifically on this SPO request. Simply to

1 mention the timeline that would be yours --

2 MR. PESTMAN: Yes.

3 JUDGE MASSELOT: -- and when you think you could respond to it,
4 in particular in light of the Court recess.

5 MR. PESTMAN: Yes. I will be able to answer, or my successor in
6 this particular case will be able to answer, after having received
7 the decision I just mentioned, F38, and after the reception of that
8 document I think within a week I will be able to respond.

9 JUDGE MASSELOT: Thank you, counsel. You mentioned that you
10 could not discuss this matter with your client?

11 MR. PESTMAN: I was able to speak to him in court but it was not
12 a confidential meeting. We were not alone.

13 JUDGE MASSELOT: Okay. Can you turn off your microphone?

14 Does Mr. Deputy Registrar want to say a few words on this
15 matter?

16 MR. NILSSON: Just to say we will be able to accommodate a
17 meeting between client and Duty Counsel after the hearing, if that's
18 needed and wished. Thank you.

19 JUDGE MASSELOT: Thank you, Mr. Deputy Registrar.

20 I will thus -- now that I have your submission, Counsel Pestman,
21 I will issue my sixth oral ruling concerning the briefing scheduling
22 regarding the SPO request F88. And I hereby instruct the Fazliu
23 Defence, if it so wishes, to respond to said filing by Friday,
24 17 January 2025. The SPO may reply by Friday, 24 January 2025.

25 This concludes my sixth oral ruling.

1 I will now turn to the reclassification of other filings as,
2 indeed, this is a very important matter.

3 And as you have noted, and as already mentioned several times, I
4 have proceeded already to several reclassifications. I reclassified
5 the Confirmation Decision, F36, last Friday, and you should have
6 access to the unredacted version of said decision. I therefore
7 consider the Thaci and Kilaj Defence request thereon as moot.

8 As already mentioned also, there are a significant number of
9 relevant filings currently contained in the investigative file,
10 KSC-BC-2018-01, in relation to which I intend, in my capacity as
11 Single Judge, to instruct the Registry to copy into the Case 12
12 record for the proposed information of the Defence and, subsequently,
13 the Trial Panel. I have already taken steps to ensure that all
14 relevant filings be shared with the Defence, subject to any
15 restrictions which are necessary. Other filings in Case 12 record
16 will also be made available, subject to any necessary restriction. A
17 decision or decisions will be taken in due course but after Court
18 recess.

19 At this point, I would like to ask the parties whether they have
20 any observation as to reclassification of filings or any other issue
21 that they would like to raise. And I therefore remind the parties to
22 give prior notice should any submission require the disclosure of
23 confidential information so that appropriate measures may be taken.

24 Mr. Prosecutor.

25 MR. HAFETZ: Not at this time, Your Honour. Thank you.

1 JUDGE MASSELOT: Thank you, Mr. Prosecutor.

2 Counsel Menegon.

3 MS. MENEGON: [via videolink] Thank you. We would require
4 unredacted or less redacted version of all the filings notified in
5 the case before our appointment. For instance, I'm referring to F28,
6 Submission of Further Amended Indictment for Confirmation. It's
7 important for us to understand the process which led to the decision
8 on the confirmation of the indictment, so all the prior filings are
9 interesting to us. Thank you.

10 JUDGE MASSELOT: Thank you, Counsel Menegon.

11 Counsel Martens.

12 MR. MARTENS: Nothing further, Judge. Thank you.

13 JUDGE MASSELOT: Counsel Pestman.

14 MR. PESTMAN: Yes, thank you. I hope I understood you
15 correctly, but you did not mention, if I'm correct, F38. If I
16 understood correctly, I would like to add that to the documents that
17 could -- with the request of -- reclassify that particular order as
18 well.

19 JUDGE MASSELOT: Thank you, counsel.

20 Counsel Admiraal.

21 MR. ADMIRAAL: [via videolink] Nothing, Your Honour. Thank you.

22 JUDGE MASSELOT: Thank you.

23 Counsel Edwards.

24 MR. EDWARDS: Only this, Your Honour. Thank you for engaging so
25 proactively in the issue of reclassification, because in the 2018-01

1 file, we know that there's a huge number of *ex parte* filings.

2 I rise simply to ask if Your Honour would give consideration to
3 notifying the parties of the title of filings, even *ex parte* filings
4 that you decide not to reclassify. It would be helpful for us to
5 know what the title of these filings are in order for us to be able
6 to make an informed decision about what we might pursue in terms of
7 further reclassification requests. But I just leave it at that for
8 now.

9 JUDGE MASSELOT: Thank you, counsel.

10 In relation to Counsel Menegon's request, specifically on F28,
11 I've taken note of your request, and I will address it in due course.

12 In relation to Counsel Martens's -- sorry, no, Pestman, on F38,
13 this was mentioned before the break, counsel. It's on the record. I
14 assume that F38 will be available to the Defence in due course. This
15 was part of the material I referred to.

16 And I think I've responded to the issues that were put.

17 Is there any other issue? I see Counsel Menegon waving. Yes,
18 please, you have the floor.

19 MS. MENEGON: [via videolink] Thank you, Your Honour. As
20 indicated earlier, the Thaci and Kilaj Defence and the SPO have
21 agreed, subject to the Panel's approval, to a suspension of deadlines
22 during the winter Court recess, so from 23 December until 12 January,
23 with the exception of detention review filings. And in the event any
24 matter other than detention filings are considered to require more
25 urgent action, the filing party would indicate this in their

1 respective request with an accompanying justification. So we submit
2 this proposal to Your Honour in order that you confirm your eventual
3 agreement with such suspension of the deadlines or filing. Thank
4 you.

5 JUDGE MASSELOT: It is -- thank you, Counsel Menegon. It is my
6 understanding that all the parties agree on this matter and the Court
7 recess period, including the SPO, and I'm turning to you. Therefore,
8 indeed, I have taken note of this general agreement. And it's very
9 nice, actually, to end up a hearing with a general compromise, which
10 I'm really happy to see.

11 Is there any other matter that someone would like to raise or
12 could we conclude this hearing for today?

13 MR. HAFETZ: Nothing from us, Your Honour. Thank you.

14 JUDGE MASSELOT: I do not see anyone who wants to take the floor
15 anymore.

16 This will now conclude today's hearing. I recall that following
17 the written and oral submissions received prior to and during today's
18 hearing, I intend to issue the Framework Decision on disclosure by
19 the end of this week, so this Friday, with a view to expediting the
20 proceedings.

21 I wish to thank the parties and the Registry for their
22 attendance. And I also wish to thank very much, as always, the
23 interpreters, stenographers, audio-visual technicians, and the
24 security personnel for their assistance as they are the ones who are
25 making these hearings possible.

1 The hearing is now adjourned.

2 --- Whereupon the Status Conference adjourned
3 at 4.45 p.m.

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