

1 Thursday, 5 March 2026

2 [Open session]

3 [The accused entered the courtroom]

4 [The Accused Thaci appeared via videolink]

5 --- Upon commencing at 9.30 a.m.

6 JUDGE GOSNELL: Madam Court Officer, would you call the case,
7 please.

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

11 JUDGE GOSNELL: Thank you. I note that four of the accused are
12 present in the courtroom, and I note that Mr. Thaci is joining us by
13 videolink. I understand a waiver will be sent shortly to the
14 Registry.

15 MS. MENEGON: Good morning, Your Honour. I will liaise with the
16 detention unit to ensure that, indeed. Thank you.

17 JUDGE GOSNELL: Thank you very much.

18 Are the appearances the same as yesterday from the Prosecution?

19 MR. HAFETZ: They are, Your Honour. Thank you. Good morning.

20 JUDGE GOSNELL: Good morning.

21 Any changes on the Defence side?

22 MS. MENEGON: None, Your Honour.

23 JUDGE GOSNELL: I see that Mr. Young is not here. Does anyone
24 know where Mr. Young is?

25 MR. REES: I'm afraid not. There's no change on our part, but I

1 was going to raise that. Obviously, Mr. Fazliu is present. There's
2 nothing else I can add.

3 JUDGE GOSNELL: Thank you.

4 Is there any member of the Fazliu Defence present?

5 Well, in light of Mr. Young's absence, I believe we're going to
6 have to - and should - adjourn for the moment. I would ask, please,
7 if there are any members on the Defence side who have contact details
8 for Mr. Young to please reach out to him, and I ask that any
9 information that's obtained be communicated to the Registry.

10 So for the moment, we'll stand --

11 [Single Trial Judge and Court Officer confers]

12 JUDGE GOSNELL: So for the moment we'll adjourn, but please do
13 stay in or near the courtroom, and we'll reconvene as soon as we can.

14 --- Break taken at 9.33 a.m.

15 --- On resuming at 10.26 a.m.

16 JUDGE GOSNELL: Good morning again.

17 Could we go into private session, please.

18 [Private session]

19 [Private session text removed]

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11 [Open session]

12 THE COURT OFFICER: Your Honours, we're in open session.

13 JUDGE GOSNELL: Could the witness be ushered into the courtroom,
14 please.

15 Mr. Rees, approximately how much time do you have with the
16 witness?

17 MR. REES: On the most optimistic basis, 20 seconds.

18 JUDGE GOSNELL: And I've received an e-mail indicating that
19 there are no other cross-examinations, so hopefully it will be
20 20 seconds.

21 Any redirect expected from you, Mr. Hafetz?

22 MR. HAFETZ: No, Your Honour.

23 MR. REES: Can I add that if I reach 21 seconds, could I invite
24 the Prosecution not to indicate that the clock has expired.

25 MR. HAFETZ: He can rely on that, Your Honour.

Witness: Christopher Kelly (Resumed) (Open Session)

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Cross-examination by Mr. Rees

1 [The witness takes the stand]

2 JUDGE GOSNELL: Good morning, Mr. Kelly. Welcome back to the
3 courtroom.

4 THE WITNESS: Good morning, Your Honour.

5 JUDGE GOSNELL: I remind you that you are still under oath.

6 THE WITNESS: Understood.

7 JUDGE GOSNELL: We'll complete the cross-examination this
8 morning, probably very briefly.

9 THE WITNESS: Very good.

10 JUDGE GOSNELL: Mr. Rees.

11 WITNESS: CHRISTOPHER KELLY [Resumed]

12 Cross-examination by Mr. Rees:

13 Q. Mr. Kelly, you may infer from the Judge's opening remarks that I
14 have undertaken to try to deal with this in record-breaking time. So
15 I'm going to put a proposition and I'm going to ask you if you agree
16 it, okay?

17 The last accessed date/time stamp records the last time a file
18 or folder was opened, read, or otherwise examined by the operating
19 system or by an application. Do you agree with that?

20 A. What operating system are we talking about?

21 Q. The operating system on a Windows laptop.

22 A. Those rules change for every incrementation of the operating
23 system. So Windows 7 is different from Windows 10, which is
24 different from now versions of Windows 11.

25 Q. Okay.

Witness: Christopher Kelly (Resumed) (Open Session)

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Cross-examination by Mr. Rees

1 A. If you can -- I'm happy to look at something and ...

2 Q. Let's put it as a general proposition. Would you agree with
3 that?

4 A. Generally, yes.

5 Q. Thank you.

6 JUDGE GOSNELL: Thank you very much, Mr. Rees.

7 Mr. Kelly, thank you very much for your testimony, which has now
8 concluded. Thank you for your time. And you'll now be escorted out
9 of the courtroom.

10 THE WITNESS: Thank you, Your Honour.

11 [The witness withdrew]

12 JUDGE GOSNELL: As indicated yesterday, I did wish to discuss
13 this morning some issues of scheduling, which we will do now.

14 Rule 129 provides that:

15 "When there are no more witnesses to be called or other
16 evidentiary material to be presented as part of the case of the
17 Specialist Prosecutor, he or she shall close his or her case."

18 We know there are no more witnesses to be called. Does the
19 Prosecution have any more evidence to present as part of its case?

20 MR. HAFETZ: Your Honour, no, not at this time. And if I may
21 just address you as to one small housekeeping matter. And I've
22 spoken to three of the Defence counsel this morning, and I believe --
23 I will not speak for them, but I believe there is no objection from
24 the three of them.

25 The last item I was discussing with Witness 9 was not formally

1 admitted yesterday. We checked it against the transcript and the
2 list, and I believe I actually incorrectly read the ERN, I elided a
3 6. So if -- with Your Honour's indulgence, and if there is no
4 objection, I would seek to admit under Rule 138 the last of the items
5 he reviewed, and I'm happy to read that ERN now. It's SPOE00366637.

6 JUDGE GOSNELL: Any objection from the Defence?

7 MR. MISETIC: No objection.

8 MR. REES: [Microphone not activated].

9 MR. EDWARDS: No.

10 MR. ADMIRAAL: No, thank you.

11 JUDGE GOSNELL: I see no objections from the Defence. So the
12 document is admitted as a confidential document.

13 MR. HAFETZ: Yes, as a confidential document. And I thank my
14 colleagues for that.

15 As to Your Honour's larger question, I just note --

16 JUDGE GOSNELL: Just a moment --

17 MR. HAFETZ: Yes.

18 JUDGE GOSNELL: -- Mr. Hafetz. I think the Registrar needs to
19 acknowledge that.

20 THE COURT OFFICER: Yeah, Your Honour, for the record, so
21 SPOE00366637 will be assigned Exhibit P211, and it will be
22 confidential.

23 JUDGE GOSNELL: Mr. Hafetz.

24 MR. HAFETZ: Thank you.

25 So to Your Honour's more global question, no, we do not

1 anticipate submitting any more evidence. Just noting, as Your Honour
2 has noted previously, there's the pending supplemental bar table
3 motion. There is our supplemental judicial notice. There is the
4 live Witness 8 issue, but that's to be briefed. And there is some
5 final report pending from the independent counsel. We do not, at
6 this stage, anticipate making any further requests of the independent
7 counsel, and at this stage don't see submitting any other evidence,
8 but we do need to look at her final report.

9 And then the last question is a subpart of that. There has been
10 some back and forth on the small issue of UTC timestamps from some of
11 the independent counsel's work. And I think the easiest way to
12 resolve this may be with an *inter partes* e-mail, with Your Honour's
13 permission, just asking simply to clarify an issue from her last
14 report, because it may be that it is quite clear to her and we're
15 just misunderstanding it. And we would copy the Defence on that,
16 copy the Court on that, and she may be able to dispense with that.
17 And barring that, we don't see anything else.

18 JUDGE GOSNELL: [Microphone not activated].

19 There are, indeed, a few evidential matters that are pending
20 with the Chamber that are yet to be decided. There's the issue of
21 Witness 8 that will need to be decided, and I can say that we would
22 intend to issue a decision on that matter by 19 March 2026. And we
23 also, as you just mentioned, have the pending Smakaj request for
24 redaction of transcripts, that's filing 747. And then we have the
25 supplementary bar table motion, filing 754. And filing 769 and 773

1 concerning recognition of additional facts of common knowledge. So
2 that's recognised.

3 But do I understand, Mr. Hafetz, that you are then saying that
4 you have - beyond that - no other evidence to present but subject to
5 reviewing the independent counsel's last report; is that correct?

6 MR. HAFETZ: That is correct, Your Honour.

7 JUDGE GOSNELL: Well, first of all, I'll turn to the Defence and
8 ask whether they have any submissions on that particular submission
9 from the Prosecution. And if not, that's perfectly fine.

10 MS. MENEGON: Your Honour, I would just note for the record that
11 we believe the SPO cannot close their case until it has either
12 reviewed whatever pending document or report from the independent
13 counsel or they make a firm decision that whatever is the outcome of
14 the independent counsel's report, they are not going to adduce any
15 further evidence. But the closure of the SPO case has to be the
16 final date by which they have tendered any -- any evidence that they
17 want in support of their case. Thank you.

18 JUDGE GOSNELL: Yes, thank you. Thank you for that submission,
19 Ms. Menegon.

20 Now, leaving aside the question of the closing and the exact
21 date of closing of the Prosecution case -- and I do remind everyone
22 that I did set the target date for that last Friday as being
23 12 March. But, again, that is a target date. I'd now like to try
24 and get some sense, if I can, from the Defence about the schedule
25 following the closure of the Prosecution case.

1 And can I, first of all, ask whether at this stage the Defence
2 can indicate whether they intend to bring a motion for no case to
3 answer in respect of any of the charges. I recognise that, under
4 130, that notification -- Rule 130, that notification is not required
5 to be given until the Prosecution case closes. And, of course, I
6 also understand that this is subject to some of the pending matters
7 that we just reviewed in terms of evidence outstanding.

8 But given those facts, can the Defence -- or subject to that,
9 can the Defence provide an indication about whether there will be any
10 no case to answer motions filed?

11 MS. MENEGON: As you have indicated, we reserve our position.
12 But I can already say that at this stage it is more unlikely.

13 MR. REES: I reserve my position if I may.

14 MR. EDWARDS: At this stage, we are unlikely to be making a
15 submission of no case.

16 MR. YOUNG: Your Honour, unlikely. Thank you.

17 MR. ADMIRAAL: Also unlikely. Thank you.

18 JUDGE GOSNELL: And in very general terms, and, again, I
19 understand fully that the Defence is not required to provide any
20 specificity or even to provide a specific indication at this point,
21 but can I ask whether the Defence teams are in a position at this
22 stage to indicate whether a Defence case will be presented?

23 I do have that position already from the Smakaj Defence, and I'm
24 grateful for that. But at this stage, are any of the other Defence
25 teams in a position to provide an indication?

1 MS. MENEGON: Obviously, our position is not definitive yet, but
2 at this stage it is likely. Thank you.

3 MR. EDWARDS: Yes, likely that we will put on a Defence case.

4 MR. YOUNG: Your Honour, the position is that the reality is if
5 a Defence case is called, it will be very short. And I will be
6 making an application for the Court to permit remote evidence be
7 called by videolink from Prishtine. Thank you. I understand that
8 21 days' notice has to be given, and notice will be given. Thank
9 you.

10 MR. ADMIRAAL: At this stage, it's unlikely, Your Honour.

11 JUDGE GOSNELL: And, again, subject to various caveats -- well,
12 perhaps I can just pose this question and then we will adjourn, and I
13 would ask you to please consult amongst yourselves on the Defence
14 side. But can I ask whether three weeks of court time would be
15 sufficient to hear all of the evidence that needs to be heard in
16 court from the Defence?

17 I won't ask you to come up with an answer right now, because
18 that would require you to consult in the courtroom, and so therefore
19 it would be premature. But I would just ask whether that period of
20 three weeks would be sufficient, and I'll ask you to please come back
21 with an indication, if you can, after the break, after you've
22 consulted with one another.

23 MS. MENEGON: [Microphone not activated].

24 JUDGE GOSNELL: Yes?

25 MS. MENEGON: Since you indicated yesterday that you planned to

1 discuss about the schedule, we did discuss the schedule with our
2 colleagues, and I can already indicate to you that *a priori*, of
3 course, we reserve our position, but the three weeks would be
4 sufficient for all the Defence teams. If any witnesses are called,
5 of course.

6 JUDGE GOSNELL: And would two weeks be sufficient?

7 MS. MENEGON: I would not be able to say that yet.

8 JUDGE GOSNELL: Thank you. That's fair enough.

9 And at this stage I think it would be useful to have an
10 update -- and we did receive this in written form, and orally as well
11 during the trial preparation conference before the start of trial.
12 But on reflection, it may be better to ask all of you to please
13 update in written form in some way, including if just by e-mail, to
14 provide an indication as to dates on which you are or would be
15 available during -- and let's assume it as taken that it would be a
16 three-week period during which evidence would be called by the
17 Defence.

18 So if I could kindly ask that an updated indication of
19 availability from Defence counsel be provided in that respect.

20 Mr. Hafetz, I assume the SPO is always available; is that
21 correct?

22 MR. HAFETZ: We are, Judge.

23 MR. REES: Can I thank Your Honour --

24 JUDGE GOSNELL: Yes, Mr. Rees.

25 MR. REES: -- for inviting us to provide information as to our

1 professional availability to the Court. It's appreciated.

2 JUDGE GOSNELL: Are there any other matters that anyone wishes
3 to raise at this point about scheduling?

4 MR. EDWARDS: Only this, Your Honour, and can I echo Mr. Rees's
5 thanks for Your Honour's preparedness to take into account
6 professional obligations elsewhere. This may be a cheeky question,
7 but are you able to -- is the Court able to indicate, even in broad
8 terms, the sort of period Your Honour has in mind between now and the
9 opening of the Defence case, even if in very broad terms, because
10 that may inform the information that we can provide to the Court.

11 JUDGE GOSNELL: Yes. I can say that I have consulted the
12 calendar that was adopted in Case 07 which -- it does have some
13 precedential value in terms of the size of the case, in terms of how
14 the period between the two cases was handled, how the Rule 130 motion
15 and decision was scheduled, and then the opening of the Defence case.

16 I can say that we won't be as fast as that. But -- and, again,
17 I will be happy to receive indications of availability from Defence
18 counsel, and I will be taking that into account. But in an ideal
19 world, I can say that the Chamber - the Court - would be hoping to be
20 able to start before the end of April.

21 MR. EDWARDS: Speaking on behalf of the Kilaj Defence, that's
22 extremely helpful. Thank you.

23 JUDGE GOSNELL: There are a couple of matters - one matter in
24 particular, the Fazliu application of yesterday - that I will need to
25 issue a ruling on.

1 At this point, I will adjourn for a period of 15 minutes. We
2 will return then, and there will be at least one oral order at that
3 time. So do please stay in or near the courtroom until then.

4 Thank you very much.

5 --- Break taken at 10.45 a.m.

6 --- On resuming at 11.01 a.m.

7 JUDGE GOSNELL: Welcome back.

8 I will now set some deadlines that govern the period prior to
9 the opening of the Defence case and various steps that need to be
10 taken to ensure the closure of the Prosecution case and the
11 disposition of any no case to answer motion that may be filed by the
12 Defence.

13 So this is an order and the following deadlines are set in
14 respect of these matters.

15 The independent counsel shall file her final report by no later
16 than 13 March 2026.

17 The SPO will be required to file any final motion for the
18 admission of evidence arising out of matters that may be dealt with
19 in that report and its Rule 129 notice by no later than
20 18 March 2026.

21 The Defence will be required to file any Rule 130 notification
22 by 19 March 2026.

23 Any motion in support of such a request or submissions in
24 support of such a request shall be filed by 25 March 2026. And any
25 response will be due by 1 April 2026.

1 That concludes this oral order.

2 Are there any further submissions -- oh, yes, one other very
3 important matter, which is the request by Mr. Fazliu for a variation
4 of the conditions of the Seventh Decision on Review of Detention,
5 which is filing 720.

6 So this is an oral order.

7 On reflection, there may be some matters that require private
8 session, so private session, please.

9 [Private session]

10 [Private session text removed]

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7 [Open session]

8 THE COURT OFFICER: Your Honour, we're in open session.

9 JUDGE GOSNELL: Do the parties have any other matters to raise
10 before we adjourn?

11 MR. HAFETZ: Just one very small matter, Your Honour, and
12 mindful of the deadlines you just imposed. On the matter of the
13 discrete issue of the timestamp clarification, is Your Honour all
14 right with us sending an *inter partes* request?

15 JUDGE GOSNELL: Yes.

16 MR. HAFETZ: [Microphone not activated].

17 JUDGE GOSNELL: Mr. Edwards.

18 MR. EDWARDS: Just a short matter, Your Honour. Does
19 Your Honour know when an order might be made pursuant to Rule 119,
20 Defence Case and Defence Preparation Conference? And presuming that
21 Your Honour makes an order under Rule 119, there will be a
22 Defence Preparation Conference within seven days after the provision
23 of that information. Is Your Honour able to give us any rough
24 indication of when those orders might be made so that we can organise
25 our own diaries, as it were?

1 JUDGE GOSNELL: I'm afraid in the absence of more specificity
2 about the 130 motions and about the potential timing of the start of
3 the Defence case, I'm not immediately able to give a specific timing
4 for that.

5 However, I would suggest that it would not be improper for
6 parties to participate in that conference by the means of technology
7 that are available in order to facilitate your participation and
8 appearance.

9 MR. EDWARDS: Much obliged.

10 JUDGE GOSNELL: Anything else?

11 MR. REES: [Microphone not activated].

12 JUDGE GOSNELL: Thank you.

13 We stand adjourned.

14 --- Whereupon the hearing adjourned at 11.11 a.m.

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