

1 Friday, 15 December 2023

2 [Open session]

3 [The accused entered the courtroom]

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

5 JUDGE GUILLOU: Good morning, everyone inside and outside the
6 courtroom.

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

8 THE COURT OFFICER: Good morning, Your Honour. This is
9 KSC-BC-2023-11, The Specialist Prosecutor versus Haxhi Shala.

10 JUDGE GUILLOU: Thank you, Madam Court Officer.

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

14 Madam Prosecutor.

15 MS. SHAHABUDDIN: Good morning, Your Honour. For the Specialist
16 Prosecutor's Office, we have Julie Mann with case management;
17 Prosecutor Joshua Hafetz; and myself, Prosecutor Taz Shahabuddin.
18 Thank you.

19 JUDGE GUILLOU: Thank you, Madam Prosecutor.

20 And I turn to the Defence, please.

21 MR. VAN PUYENBROECK: Good morning, Your Honour. Laurens van
22 Puyenbroeck for the Defence acting, representing Haxhi Shala.

23 JUDGE GUILLOU: Thank you. I might make a mistake with the
24 pronunciation of your last name, so please forgive me in advance.
25 But it's van?

1 MR. VAN PUYENBROECK: Well, in Dutch, you pronounce it
2 van Puyenbroeck, but with a English or French accent, sometimes it's
3 pronounced van Puyenbroeck.

4 JUDGE GUILLOU: van Puyenbroeck. I'll try to do my best. So
5 forgive me if I make a pronunciation mistake.

6 MR. VAN PUYENBROECK: Both are good for me, Your Honour. Thank
7 you.

8 JUDGE GUILLOU: Thank you.
9 And now I turn to the Registry, please.

10 MR. NILSSON: Good morning, Your Honour. And good morning,
11 colleagues. Jonas Nilsson, Deputy Registrar for the Registry today.

12 JUDGE GUILLOU: Thank you, Mr. Nilsson.

13 And for the record, I note that Mr. Shala is also present in the
14 courtroom.

15 And I am Nicolas Guillou, Pre-Trial Judge for this case.

16 On 13 December I scheduled the first Status Conference in this
17 case for this Friday. My goal for today is to review the status of
18 the case and to organise exchanges between the parties to ensure an
19 expeditious preparation for trial.

20 In particular, I wish to discuss the status of the
21 Specialist Prosecutor's investigations; the estimated amount of
22 documentary and testimonial evidence the parties will bring to trial;
23 issues related to the disclosure of supporting material to the
24 indictment, which is what we call the Rule 102(1)(a) material; the
25 additional material intended for use at trial, which is the

1 Rule 102(1)(b) material; the evidence material to Defence preparation
2 obtained from or belonging to the accused, which is the Rule 102(3)
3 material; the exculpatory evidence, the Rule 103 material; and the
4 protected material, which is the Rule 107 material.

5 Then we'll also discuss the procedure for disclosure, the
6 redaction regime to be adopted for the present proceedings, and the
7 Special Prosecutor's joinder request, and finally, any other issues
8 the parties may wish to raise.

9 I thank the SPO for its submissions. And I also note that
10 Scheduling Order F00017 was notified to the Defence with a slight
11 delay and that made it impossible for you to file written
12 submissions, but please draw my attention to any point for which you
13 need more time so that we make sure that you have the opportunity to
14 make submissions.

15 I will invite the parties to present their views in a concise
16 fashion about each item in the agenda, which I will address
17 individually.

18 And, as usual, I remind the parties to give prior notice should
19 any submission require the disclosure of confidential information so
20 we can move into private or closed session.

21 Let me first move to the general questions. Before I give the
22 floor to the parties, I wish to remind them of the general principles
23 of disclosure in the legal framework of the Specialist Chambers.

24 Disclosure is an *inter partes* process in electronic form,
25 organised and facilitated through the Registry's Court management

1 system. Disclosure shall be a priority for the Prosecution at this
2 stage, and the parties shall disclose evidence of true relevance to
3 the case and not the greatest volume of evidence.

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

8 I would first like to hear from the SPO on this topic in the
9 agenda; notably, the status of its investigation, the type of
10 evidence it intends to use in the proceedings, and how many
11 witnesses it intends to call at trial.

12 Madam Prosecutor, you have the floor.

13 MS. SHAHABUDDIN: Regarding the investigation, it is ongoing.
14 However, we foresee that there are just a small number of additional
15 steps at this point involving the review of evidence already in our
16 possession that we estimate will take into January 2024. Of course,
17 I will say that with the caveat that if additional evidence comes to
18 light, we would, of course, need to consider that, and so we leave
19 room for that eventuality.

20 With regard to the type of evidence that we intend to present at
21 trial. We have documentary evidence that includes records from
22 seized telephones, specifically mobile telephones, call data records,
23 transcripts of various statements, as well as official notes from
24 witness contacts.

25 We have provided, in a written submission, a chart indicating

1 the specific volumes of different categories of information that will
2 form part of our 102(1)(a) material, and I am happy to provide any
3 additional detail that the Court may require.

4 Regarding the number of witnesses, the SPO relied upon the
5 statements of two witnesses in connection with its Confirmed
6 Indictment, and it intends to present their testimony at trial
7 currently. That is currently the extent of our witness list. That
8 being said, we would reserve the right to call additional witnesses
9 if such testimony would be necessary for the authentication of any of
10 our other evidence.

11 JUDGE GUILLOU: Thank you, Madam Prosecutor.

12 Let me turn to the Defence.

13 Do you have any submissions on this general point of the agenda,
14 counsel?

15 MR. VAN PUYENBROECK: Thank you, Your Honour.

16 Before making some remarks -- some general remarks regarding the
17 disclosure, I have a question for the Court regarding a possible
18 preliminary issue. But I don't know if it's the time now or maybe at
19 the end of the session. It regards the plea of Mr. Shala.

20 As you will have noticed at his Initial Appearance, he has
21 chosen not to enter a plea. Given the very limited information he
22 has been transferred up to date, he has conferred to me a very clear
23 position at this moment, and he would like to confirm that position
24 in court today.

25 So I don't know if it's possible. I know it -- I'm aware it's

1 not a disclosure-related issue, but I would like to point it out at
2 this moment.

3 JUDGE GUILLOU: Do you mean that your client intends to plead
4 today? This is -- do I understand correctly?

5 MR. VAN PUYENBROECK: Just to make a formal statement regarding
6 the plea as according to the rule foreseen.

7 JUDGE GUILLOU: Because I was planning to set another hearing
8 for the plea in January after the disclosure of the 102(1)(a)
9 material, so we could actually have the plea of your client today. I
10 don't see any problem. I'll ask the other party, but I don't see
11 this as an issue. Or we can have the plea -- the formal plea in
12 January and have a statement of your client today. I'm in your
13 hands.

14 MR. VAN PUYENBROECK: As I understood from him -- I will, of
15 course, leave the final decision in his hands, but as I understood
16 from him, he would like to make that -- he would like to express his
17 statement today regarding the plea.

18 JUDGE GUILLOU: His plea today. Then we will probably break at
19 some point and then we will continue with the plea of your client --

20 MR. VAN PUYENBROECK: Okay.

21 JUDGE GUILLOU: -- a little later in the session after we've
22 dealt with disclosure.

23 I will just ask the SPO if they have any opposition to having
24 the plea hearing today?

25 MS. SHAHABUDDIN: The SPO has no objection to that, Your Honour.

1 JUDGE GUILLOU: So we'll proceed with disclosure for now. And
2 in a second part of the Status Conference, we will have the plea
3 hearing then. Thank you.

4 MR. VAN PUYENBROECK: So if I could just make some general
5 remarks regarding the proposed timetable for disclosure.

6 I have taken notice of the proposed dates for disclosure, which
7 I see strictly adhere to the limits foreseen in the procedural rules.
8 But according to the Defence, limiting them seems justified and
9 necessary with the aim of making the Defence of Haxhi Shala as
10 effective as possible within the shortest possible timeframe.

11 So the Defence would ask in a general way that all these dates
12 would be shortened.

13 And if I may make some short clarifications regarding this
14 request. The Defence has taken notice of the intention of
15 Your Honour to adopt a speedy pace for the conclusion of the
16 pre-trial phase as expressed in the order setting the date for today,
17 and we acknowledge that, of course. And we are also thankful for the
18 fact that this first Status Conference is being organised so short
19 after the Initial Appearance.

20 But at the same time, we are hopeful - hopeful - that the
21 exchanges of today will allow for a swift disclosure. And with that,
22 I mean disclosure ahead of the deadline provided for in the
23 applicable rules. And according to the Defence, such a shortened
24 timeframe seems justified for three particular reasons.

25 First, since the arrest, Haxhi Shala has been given only very

1 limited information about the actual, concrete, precise elements on
2 which the suspicion for the alleged crimes is based. I am aware
3 there is, of course, the brief indictment. There is also the
4 Confirmation Decision of Your Honour. But both are, of course,
5 heavily reliant on the supporting material which has not been
6 disclosed so far.

7 Second, a speedy disclosure is also key to the issue of
8 detention on remand, and a speedy disclosure would allow the Defence
9 to assess possible motions in that respect. But surely such motions
10 such as the decision to the pre-trial detention itself should not be
11 taken lightly. That is the position of the Defence.

12 And before considering maybe submitting such motions, the
13 Defence intends to carefully examine all the relevant material, and
14 this further underlines the need for an expeditious disclosure.

15 And thirdly, and finally, this case is, of course, as we have
16 also just heard from the Prosecutor's office, is quite limited in
17 size, especially compared to other cases, both regarding the number
18 of witnesses the SPO is expecting to call as regarding the extent of
19 the supportive material itself.

20 So concluding, Your Honour, regarding these general remarks, I
21 dare to submit that I may expect or that -- that it may be expected
22 in such circumstances that the SPO makes a reasonable effort to
23 disclose or to speed up the disclosure process as much as possible.

24 And I thank Your Honour for taking these observations into
25 account when drafting your Framework Decision. I thank you.

1 JUDGE GUILLOU: Thank you very much, counsel.

2 Madam Prosecutor, we're going to discuss each deadline
3 separately because we will address each category of evidentiary
4 material separately, but do you have any comment on the general
5 remarks of the Defence, please?

6 MS. SHAHABUDDIN: Thank you, Your Honour. As set forth in our
7 written submissions, the SPO has proposed a very aggressive schedule
8 for itself in terms of disclosure. We contemplate everything being
9 to the Defence up through 102(3) material as of 26 January, and the
10 submission of the SPO's pre-trial brief on 2 February.

11 I'll point out that we are currently heading into a Court recess
12 which begins at the close of business today, and that our next
13 working day will be 8 January. So that is the reason for which we
14 propose that our 102(1)(a) material, as per the rule, be due 30 days
15 from the date of the Initial Appearance, which we would date as
16 11 January.

17 To the extent possible, the SPO is happy to produce materials --
18 disclose materials in advance of the various deadlines it has
19 proposed. That being said, we also await the Framework Decision in
20 particular because all of our materials will require some limited
21 number of at least standard redactions. The decision on protective
22 measures, the SPO has submitted a request regarding the adoption of
23 protective measures and a protocol regarding the contact with
24 witnesses.

25 JUDGE GUILLOU: Thank you very much.

1 Let us move to the next item in the agenda, which is the
2 supporting material to the indictment. So we will go into detail
3 about the deadline for each category of material.

4 So I take note that the SPO intends to disclose material falling
5 under Rule 102(1)(a) by no later than 11 January 2024. I also take
6 note that part of the SPO's material under this rule may require
7 protective measures.

8 I invite the SPO to give further submission on the disclosure of
9 this category of material, notably: The overall amount of this
10 category of material; whether translations into Albanian of witness
11 statements from the -- from whom the SPO intends to call to testify
12 at trial have been finalised; and any other detail the SPO wishes to
13 provide.

14 And I would also ask the SPO if it sees any possibility to
15 disclose this category of material earlier, given that this is
16 probably the most important material for the Defence at this stage,
17 and it also triggers a series of deadlines, especially preliminary
18 motions, which is also something that has potentially an impact on
19 the joinder.

20 Madam Prosecutor, you have the floor.

21 MS. SHAHABUDDIN: I'll begin by addressing the volume of
22 materials, which I think you'll find throughout my remarks today is
23 not extensive. But with regard to 102(1)(a) material, our total
24 number of items is 32. And that includes two witness statements,
25 three statements obtained from the accused, as well as a number of

1 reports and some audio-visual material and other documents.

2 With regard to the deadline, there are some limited number of
3 redactions that we would need to make. So a decision on protective
4 measures, for instance, would assist us in making early disclosure.
5 But to be entirely frank, with the upcoming recess, I'm not sure how
6 far in advance of the 11 January deadline we have proposed we could
7 make, you know, earlier disclosures. That said, we will certainly
8 endeavour to put together materials for the witnesses on as expedited
9 a basis as possible.

10 JUDGE GUILLOU: Do you see any possibility to disclose material
11 that do not need redactions earlier? Because I understand for
12 material that requires redactions. But if no redactions is required,
13 it should be pretty straightforward.

14 MS. SHAHABUDDIN: Yes. Yes, we can certainly work towards that
15 by beginning, you know, our processing immediately. I hesitate to
16 commit to any specific dates at this point just in light of the
17 recess, but we will certainly endeavour to do so and can do so.

18 The other thing I will mention which I think would be a key
19 piece of evidence for the Defence to begin examining is the forensic
20 images of phones that have been seized from the accused and from his
21 co-perpetrators as identified in the Confirmed Indictment. That
22 material is, indeed, ready and available for the Defence to pick up
23 just subject to coordination with our office.

24 JUDGE GUILLOU: Then I invite you to coordinate with the Defence
25 so that it can be done swiftly.

1 Thank you, Madam Prosecutor.

2 Counsel, please.

3 MR. VAN PUYENBROECK: Thank you, Your Honour. Specifically
4 regarding the 102(1)(a) material, the Defence would really like to
5 stress the need for a speedy disclosure. You have already asked the
6 question I had prepared; namely, if it would be possible to
7 immediately, as soon as possible, disclose the material not needing
8 redaction.

9 Of course, I understand the aspect of the recess. The recess is
10 an exceptional circumstance, but such is also the situation of my
11 client. The pre-trial detention in particular. So I would really
12 like to stress the need for an early disclosure regarding this type
13 of material.

14 I would intend to be a bit more lenient, as I may say so,
15 regarding the other types of material. But as you have already
16 pointed out, this is really an essential part for the Defence in
17 order for us to starting building our defence, so I would like to --
18 I will not reiterate my observations of earlier, but I would like to
19 stress them. I would like to ask the Prosecutor if it sees a
20 possibility to disclose this type of material, for example, in a
21 rolling process, before the recess, because that's, as you will have
22 understood, Your Honour, the essence of my request regarding this
23 material.

24 I thank you.

25 JUDGE GUILLOU: Thank you, Mr. van Puyenbroeck. We are in

1 agreement. The SPO will do its best to disclose the 102(1)(a)
2 material, the material without redactions as soon as possible and
3 with redactions no later than 11 January, but on a rolling basis, as
4 soon as you have the possibility to do so, so the Defence is in a
5 position to make any submissions, especially on detention.

6 Let us now move to the Rule 102(1)(b) material, which is the
7 material intended to use at trial.

8 I take note that the SPO proposes to disclose additional
9 material falling under Rule 102(1)(b) of the rules by 19 January or,
10 in any case, no later than 30 days prior to the opening of the SPO's
11 case.

12 I invite the SPO to give any further submissions on the
13 estimated amount and type of material it intends to disclose, the
14 redactions that will be required, and any other details the SPO
15 wishes to provide in relation to this category of evidence.

16 Madam Prosecutor.

17 MS. SHAHABUDDIN: [Microphone not activated]

18 JUDGE GUILLOU: Microphone, please.

19 MS. SHAHABUDDIN: Thank you, Your Honour.

20 The volume of the 102(1)(b) material the SPO plans to disclose
21 is currently 103 items, and the total number of pages is almost
22 6.000. It consists of approximately 15 witness statements. So
23 that's the broad contours of what we intend to disclose.

24 I note that we propose to make that disclosure approximately one
25 week after the 102(1)(a) deadline. Again, the material will consist

1 of documentary evidence such as records from seized mobile
2 telephones, audio-visual materials, as well as call data records.
3 And as I mentioned, the forensic images of the phones of the accused
4 and the two co-perpetrators identified in the Confirmed Indictment
5 who are the accused in Case 10, that material is already available
6 for the Defence to collect and examine.

7 The only additional comment I would make at this time is that it
8 is possible, given the ongoing investigation, that additional
9 evidence may be required to be disclosed pursuant to Rule 102(1)(b),
10 and that those materials may also then require translation and which
11 we would propose to complete within the timeframe that we have
12 proposed.

13 JUDGE GUILLOU: Thank you, Madam Prosecutor.

14 Mr. van Puyenbroeck, do you have any submissions on this?

15 MR. VAN PUYENBROECK: I have no particular submissions other
16 than those made in a general way, Your Honour, in the beginning.

17 Just maybe one question for clarification by the SPO. It has
18 mentioned, up till now, twice the aspect of an ongoing investigation.
19 It has made clear that it would be short, that it expects to be
20 short, but could it give somewhat more clarification, of course,
21 without going into detail?

22 I have understood this case is linked to another case, 2023-10.
23 There the investigation has been going on for a couple of months. I
24 have read some procedural documents relating to that case. There, in
25 October 2023, it was foreseen that the investigation would be

1 continued for three months. We are now three months further. So I
2 would like to hear, if that's of course possible by the -- of the
3 SPO, if it could give a more precise indication of the timeframe for
4 the conclusion of the investigation.

5 I thank you.

6 JUDGE GUILLOU: Thank you, Mr. van Puyenbroeck. I will let the
7 SPO respond on this, but I think you mentioned earlier that you were
8 not expecting the investigations to go beyond the month of January.

9 MS. SHAHABUDDIN: That's correct, Your Honour. Currently we --
10 our additional steps related to the ongoing investigation are limited
11 in nature and involve the examination of evidence, specifically
12 phones, already in our possession.

13 Our timeline depends in part on the Court, and we will proceed
14 as expeditiously as possible. But what I will say is that our
15 further investigation of this evidence is targeted, and so we do not
16 anticipate any issues with concluding our investigation in the first
17 month of next year.

18 JUDGE GUILLOU: Thank you, Madam Prosecutor.

19 Let us now move to the next item on our agenda today related to
20 evidence material to the Defence preparation, which is the
21 Rule 102(3) material.

22 I would like to remind the SPO that disclosure or inspection of
23 evidence such as statements, documents, photographs, or tangible
24 objects material to the Defence must be disclosed without delay. The
25 detailed notice of such material must include not only information

1 the SPO assesses to be especially material to the Defence
2 preparation, but any material and evidence in the SPO's possession
3 which has not been disclosed under Rule 102(1) (a) and (b), and
4 Rule 103, and which is relevant to the case.

5 I also remind the parties that disputes as to the materiality of
6 the information, as claimed by the Defence, must be submitted
7 immediately to the Pre-Trial Judge for resolution.

8 I take note that the SPO anticipates providing the Defence with
9 a detailed notice of Rule 102(3) material by 26 January 2024, so I
10 invite the SPO to indicate for this category an estimation of the
11 type and amount of material, the redactions that will be required,
12 and any other details the SPO wishes to provide.

13 Madam Prosecutor.

14 MS. SHAHABUDDIN: [Microphone not activated]

15 JUDGE GUILLOU: Microphone, please.

16 MS. SHAHABUDDIN: With regard to Rule 102(3) material, the SPO
17 will, of course, operate in accordance with the rules.

18 Regarding the nature of the material, we currently estimate that
19 the items will number less than 50, and possibly that it will also
20 consist of approximately 55 pages of materials. Though, of course --
21 oh, I'm sorry. Let me revise that on the record.

22 I'm sorry. All I'm prepared to say, actually, with regard to
23 the Rule 102(3) material, is that we have less than 50 items
24 currently identified but that our review is ongoing. And so I would
25 ask for some latitude in that regard. Though, we certainly don't

1 anticipate that number ballooning.

2 And what we have identified will not require further redactions,
3 so we are -- we fully anticipate being able to meet the deadline we
4 have proposed as to these materials.

5 JUDGE GUILLOU: Thank you, Madam Prosecutor.

6 Mr. van Puyenbroeck.

7 MR. VAN PUYENBROECK: I have no particular observations at this
8 point, Your Honour.

9 JUDGE GUILLOU: Thank you very much.

10 Let us now move to the Rule 103 material, which is the
11 exculpatory evidence.

12 I remind the SPO that it must be disclosed immediately to the
13 Defence as soon as it is in its custody, control, or actual
14 knowledge, and which may reasonably suggest that the innocence of the
15 accused or mitigate the guilt of the accused or affect the
16 credibility or reliability of the Specialist Prosecutor's evidence.

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

19 I note that the SPO is continuing its review of Rule 103
20 material. The SPO indicates that approximately 14 items have been
21 identified which are being prepared for immediate disclosure.

22 I invite the SPO to indicate the amount and type of exculpatory
23 material to this day, whether redactions will be required, and any
24 details the SPO wishes to provide.

25 Madam Prosecutor, please.

1 MS. SHAHABUDDIN: As Your Honour mentioned, currently the number
2 of items that the SPO has identified as falling under Rule 103 number
3 at 14. We expect that those items comprise approximately 55 pages.
4 Amongst those items, there are no statements or reports or
5 transcripts or audio-visual material. It purely consists of other
6 types of documentary materials which may prove exculpatory. And
7 those materials will require redaction but are being prepared for
8 disclosure.

9 JUDGE GUILLOU: Thank you, Madam Prosecutor.
10 Counsel, do you have any submissions?

11 MR. VAN PUYENBROECK: I have no particular observations at this
12 point, Your Honour. Thank you.

13 JUDGE GUILLOU: Thank you, Mr. van Puyenbroeck.

14 Let us now move to the protected material. I take note that, at
15 the current stage, the material that the SPO intends or has to
16 disclose pursuant to the rules do not require Rule 107 clearances.

17 Madam Prosecutor, would you like to add anything on this point?

18 MS. SHAHABUDDIN: Only that should any material be identified
19 which would fall under Rule 107 restrictions, the SPO will promptly
20 notify the Court.

21 JUDGE GUILLOU: Thank you, Madam Prosecutor.
22 Counsel?

23 MR. VAN PUYENBROECK: No observations. Thank you.

24 JUDGE GUILLOU: Thank you.

25 Let us now move to the procedure for disclosure, notably the use

1 of the case-specific categorisation in Legal Workflow for material
2 falling under Rules 102(1)(a) and (b), and Rule 104(1), (5) and (6)
3 at the time of disclosure of each batch of such material.

4 The SPO indicates that it can apply the case-specific
5 subcategories in Legal Workflow as indicated in Scheduling Order
6 F00017 in paragraph 21.

7 And if the Defence needs a bit more clarification, I will read
8 these categories in paragraph 21.

9 The subcategories suggested in the Scheduling Order are: One,
10 "Count 1," "Count 2," "Count 3," under the standard category
11 "Offences"; two, "commission," "co-perpetration," "agreement,"
12 "assistance," and "attempt," under the subcategory "alleged conduct
13 of the accused"; and, three, "Shala," under the category "accused."

14 Madam Prosecutor, do you want to add any specific details or are
15 you satisfied with this proposal?

16 MS. SHAHABUDDIN: The SPO is entirely satisfied with the
17 proposed categories, Your Honour.

18 JUDGE GUILLOU: Let me now turn to the Defence. And to give a
19 bit of context, these categories are aimed at helping the receiving
20 party so that it can immediately understand what it -- when each
21 piece of evidence is relevant for what aspect of the case.

22 Counsel.

23 MR. VAN PUYENBROECK: Thank you, Your Honour. The Defence can
24 agree with the proposed categorisation.

25 JUDGE GUILLOU: Thank you very much.

1 I take note that an agreement has been reached, and as a result,
2 I will issue a first oral order.

3 I hereby order the adoption of the case-specific
4 subcategorisation to be applied in Legal Workflow as indicated in
5 Order F00017, paragraph 21.

6 This concludes my first oral order.

7 Now I invite the parties to give further details on the
8 following questions, notably: Whether the parties can agree on a
9 model consolidated disclosure chart that satisfies the requirements
10 of Rule 109(c) of the rules; and whether the SPO and the Defence
11 agree to provide each other with a consolidated disclosure chart at
12 the time of the submission of the SPO pre-trial brief and the Defence
13 pre-trial brief respectively.

14 Madam Prosecutor.

15 MS. SHAHABUDDIN: The SPO agrees to the mutual provision of
16 Rule 109(c) charts, and would simply ask, as indicated in its
17 submission, that those charts be -- or that its chart be due 15 days
18 from the filing of its pre-trial brief in order to avoid any error
19 given the detail necessary in order to properly populate the chart.

20 JUDGE GUILLOU: Thank you, Madam Prosecutor.

21 Let me turn to the Defence.

22 Mr. van Puyenbroeck.

23 MR. VAN PUYENBROECK: Thank you, Your Honour. The Defence can
24 be brief at this point. It can agree with the proposed procedure.
25 Thank you.

1 JUDGE GUILLOU: Thank you very much.

2 I take note of the agreement of the parties on this matter. Now
3 let us move to the next item in the agenda, which is the redaction
4 regime.

5 In adopting a redaction regime, it is necessary to ensure the
6 efficiency of the disclosure process while striking a balance between
7 the duty to protect the interests of the victims and witnesses and
8 upholding the rights of the accused.

9 In their submissions, the SPO agrees to adopt the redaction
10 regime applied in Case KSC-BC-2023-10.

11 I invite the SPO and the Defence to make submissions on this
12 topic.

13 Madam Prosecutor.

14 MS. SHAHABUDDIN: The SPO agrees to adopting the redaction
15 regime set out in Case 10.

16 JUDGE GUILLOU: Thank you, Madam Prosecutor.

17 Mr. van Puyenbroeck.

18 MR. VAN PUYENBROECK: Defence also agrees, Your Honour. Thank
19 you.

20 JUDGE GUILLOU: Thank you, counsel.

21 I take note of the agreement of the parties.

22 Let us now move to the issue of joinder of Cases 11 and 10.

23 The SPO filed a request for a joinder of Case 11 with Case 10;
24 namely, the Specialist Prosecutor versus Sabit Januzi and
25 Ismet Bahtijari. This is filing F00016. The SPO equally filed such

1 a request in Case 10, which is filing F00132.

2 As a preliminary matter, I note that, pursuant to the rules, the
3 deadline for the Defence to respond to the SPO joinder request falls
4 during judicial recess, which starts on Monday, 18 December. As a
5 result, as I did in previous instances, I intend to modify the
6 briefing schedule to give adequate time to the Defence to prepare its
7 response.

8 In this context, I also note that yesterday, during the third
9 Status Conference in Case 10, I instructed the SPO to file a proposed
10 joint indictment of Cases 10 and 11 as well as a proposed joint
11 Rule 86(3) outline, which would also entail the disclosure of the
12 material underlying the proposed joint indictment.

13 Before I proceed, I invite the SPO and the Defence to make
14 submissions on this topic.

15 Madam Prosecutor, you have the floor.

16 Basically, my proposal is to align the briefing schedule and the
17 updated indictment to what has been decided yesterday in Case 10.

18 MS. SHAHABUDDIN: Certainly. Indeed, the SPO filed its joinder
19 request at the earliest possible opportunity precisely with the
20 intention in mind of aligning the cases as quickly as possible. And
21 the disclosure schedule that the SPO proposes today, indeed, brings
22 the cases into an alignment as of 26 January. Meaning that the same
23 disclosures at that point will have been made in both cases, and the
24 hope is that, from that point forward, the cases can move together at
25 pace.

1 With regard to what was set forth yesterday in Case 10 regarding
2 the filing of a proposed joint indictment, the SPO would simply
3 propose to file the same in both cases simultaneously.

4 JUDGE GUILLOU: Thank you, Madam Prosecutor.

5 Mr. van Puyenbroeck.

6 MR. VAN PUYENBROECK: Thank you, Your Honour. The Defence has
7 nothing to add at this moment. Thank you.

8 JUDGE GUILLOU: Thank you, counsel.

9 I will now issue a second oral order.

10 Having heard the parties, I find it appropriate to order the SPO
11 to file a proposed joint indictment of Cases 11 and 10, including the
12 Rule 86(3) outline and the supporting material.

13 I further find it appropriate to vary the time limits prescribed
14 by the rules to respond to the SPO joinder request, which is filing
15 F00016.

16 Accordingly, I hereby order, first, the SPO to file a proposed
17 joint indictment of Cases 11 and 10, including the Rule 86(3) outline
18 and the supporting material, by no later than 12 January 2024 at
19 1600 hours; second, the Defence to respond to the SPO joinder
20 request, which is filing F00016, by no later than 19 January 2024 at
21 1600 hours; and the SPO to reply by no later than 26 January 2024 at
22 1600 hours.

23 This concludes my second oral order.

24 Before we break for probably 15 minutes also in order to have
25 the plea hearing, I would like to ask the parties whether they have

1 any other issues they would like to raise today at the Status
2 Conference.

3 Madam Prosecutor.

4 MS. SHAHABUDDIN: Nothing from the SPO, Your Honour.

5 JUDGE GUILLOU: [Microphone not activated]

6 MR. VAN PUYENBROECK: Nothing from the Defence either,
7 Your Honour. Thank you.

8 JUDGE GUILLOU: Thank you, counsel.

9 And the Registry, please.

10 MR. NILSSON: Your Honour, you had asked us to make some
11 submissions on reclassification of certain filings. Would you like
12 them to be done now?

13 JUDGE GUILLOU: Absolutely.

14 MR. NILSSON: Then I will do them right now.

15 So the Registrar does not object to the reclassification of the
16 following filings to public: F00008, F00011, and F00012.

17 We further submit that Annex 1 to F00012 should retain its
18 confidential classification as it contains personal details of the
19 Duty Counsel.

20 As regards Annex 1 to F00011, the Registry will file a public
21 redacted version of the annex as soon as the core filing, so that is
22 F00011, is reclassified as public.

23 And, finally, with respect to F00015, the Registrar has no
24 objection to the report being reclassified as confidential so that it
25 can be made available to Mr. Shala's Duty Counsel, and will be

1 submitting confidential redacted versions of Annexes 1, 2, and 3 to
2 this filing. And we aim to do so today, as you have asked us to do.

3 In addition to that, with regard to F00015, we will also be
4 filing a public redacted version of the core filings, but we ask,
5 with your permission, to do that after the recess.

6 Thank you very much.

7 JUDGE GUILLOU: Thank you, Mr. Nilsson. This is noted.

8 We will now break for approximately 15 to 20 minutes and will
9 resume with the plea of Mr. Shala.

10 The hearing is adjourned.

11 --- Recess taken at 10.11 a.m.

12 --- On resuming at 10.29 a.m.

13 JUDGE GUILLOU: Before we move to the plea, I will issue an
14 order related to the Registry submissions just before the break.

15 I will now issue my third oral order.

16 Having taken note of the reclassification request from the
17 Registrar, I hereby order the reclassification as public of filing
18 F00008, F00011, without annexes, and F00012 without Annex 1.

19 I further order the reclassification as confidential of filing
20 F00015 without annexes and lift the *ex parte* marking.

21 This concludes my third oral order.

22 Let's now move to the plea.

23 Mr. Shala, during your Initial Appearance on Wednesday,
24 13 December, I informed you of the need for you to plead guilty or
25 not guilty on the charges brought against you in the Confirmed

1 Indictment. In the exercise of your right, you indicated that you
2 did not wish to enter a plea immediately at the Initial Appearance.

3 I reminded you that, pursuant to Rule 92, you must enter a plea
4 within 30 days of your Initial Appearance, and that if you fail to do
5 so, I will enter a plea of not guilty on your behalf.

6 Mr. Shala, if a few moments I will ask you to enter a plea of
7 either guilty or not guilty on each of the three charges in the
8 Confirmed Indictment. I would like to remind you that it is a very
9 important decision.

10 Should you wish to plead guilty on all or some of the counts,
11 the proceedings in relation to those charges will go directly to a
12 Trial Panel. There will be no evidence presented and no discussion
13 on your guilt or innocence. The Trial Panel would simply determine
14 whether your guilty plea was voluntarily made, whether you understand
15 the consequences, and then move to sentencing.

16 Alternatively, should you wish to plead not guilty on all or
17 some of the charges, the pre-trial proceedings will continue in
18 relation to those counts with a view to preparing for those counts to
19 be litigated before a Trial Panel.

20 At trial, the Panel will admit evidence, hear from witnesses,
21 and receive submissions from the parties. The Trial Panel would then
22 decide whether the Prosecutor has proven your guilt on those charges
23 beyond reasonable doubt.

24 I will now ask you to enter your pleas on each of the three
25 charges in the Confirmed Indictment. I recall that these charges

1 were already read out to you by the Court Officer during your Initial
2 Appearance.

3 Mr. Shala, before you plead guilty or not guilty on each charge,
4 do you want the charges to be read out again today by the
5 Court Officer?

6 THE ACCUSED: [Interpretation] No, Your Honour.

7 JUDGE GUILLOU: Thank you, Mr. Shala.

8 I will now ask you about your plea. Mr. Shala, how do you plead
9 on Count 1, charging you with the crime of obstructing official
10 persons in performing official duties by serious threat?

11 THE ACCUSED: [Interpretation] Absolutely not guilty.

12 JUDGE GUILLOU: How do you plead on Count 2, charging you with
13 the crime of obstructing official persons in performing official
14 duties by participating in the common action of a group?

15 THE ACCUSED: [Interpretation] Not guilty.

16 JUDGE GUILLOU: How do you plead on Count 3, charging you with
17 the crime of intimidation during criminal proceedings?

18 THE ACCUSED: [Interpretation] The same. Absolutely not guilty.

19 JUDGE GUILLOU: Thank you, Mr. Shala. You may be seated.

20 Mr. Shala, you have chosen to plead not guilty on all counts, so
21 the pre-trial proceedings will continue with a view to preparing this
22 case for trial, pursuant to Rule 95.

23 I would like to inform the parties that I intend to hold the
24 next Status Conference the week of 5 February. In relation to the
25 modalities of participation, I recall that should counsel of the

1 accused wish to participate via video-conference, written notice
2 shall be sent via e-mail to the Registry 24 hours in advance of the
3 relevant hearing so that arrangements can be made. Such notice
4 should include the written consent of the accused as the Defence did
5 for the Status Conference.

6 You will receive a Scheduling Order that will include the agenda
7 before the Status Conference. I invite the parties to make written
8 submissions if they would like to raise any specific issues in the
9 next Status Conference that is not already in the agenda.

10 Do the parties have anything to add?

11 Madam Prosecutor.

12 MS. SHAHABUDDIN: Nothing from the Specialist Prosecutor's
13 Office. Thank you, Your Honour.

14 JUDGE GUILLOU: Thank you, Madam Prosecutor.

15 Mr. van Puyenbroeck?

16 MR. VAN PUYENBROECK: The Defence has nothing to add,
17 Your Honour. Thank you.

18 JUDGE GUILLOU: Thank you, Mr. van Puyenbroeck.

19 Mr. Nilsson.

20 MR. NILSSON: Nothing further, Your Honour. Thank you.

21 JUDGE GUILLOU: Thank you very much.

22 This concludes today's hearing.

23 I thank the parties and Registry for their attendance. I thank,
24 as usual, the interpreters, audio-visual technicians, stenographers,
25 and security personnel for their assistance. And I wish everyone a

1 good holiday break for Christmas and New Year's, and we will see you
2 in the new year.

3 The hearing is adjourned.

4 --- Whereupon the Status Conference adjourned
5 at 10.37 a.m.

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