

1 Friday, 14 January 2022
2 [Status Conference]
3 [Open session]
4 [The accused appeared via videolink]
5 --- Upon commencing at 2.30 p.m.

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

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

9 THE COURT OFFICER: Good afternoon, Your Honours. This is
10 KSC-BC-2020-04, The Specialist Prosecutor versus Pjeter Shala.

11 JUDGE GUILLOU: Thank you, Mr. Court Officer.

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

14 Mr. Prosecutor.

15 MR. DE MINICIS: Good afternoon, Your Honour. Today for the
16 Prosecution are appearing Bernhard Kuschnik, Associate Legal Officer;
17 Marlene Yahya, Disclosure Officer; Daniel Mezei, our Case Manager;
18 and Moira van de Poel, our legal intern; plus myself, Filippo De
19 Minicis, Associate Prosecutor.

20 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

21 Now I turn to the Defence. Mr. Gilissen, please.

22 MR. GILISSEN: Yes. Good afternoon, Mr. President. I am
23 Mr. Jean-Louis Gilissen from the bar of Liege. I am assisted by
24 Mr. Aouini, you know him very well. And brand new, Your Honour,
25 Ms. Mariathereze Kokaj, she is coming from Albania. And we have

1 Mr. Shala who with us by videolink from the detention centre. Thank
2 you.

3 JUDGE GUILLOU: Thank you, Mr. Gilissen. And I note that
4 Mr. Shala has waived his right to be present in the courtroom, but
5 he's attending via video-conference.

6 Let me turn to the Registry.

7 MR. NILSSON: Thank you. Good afternoon, Your Honour.
8 Jonas Nilsson, Judicial Services Division, Registry.

9 JUDGE GUILLOU: Thank you, Mr. Nilsson.

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

12 On 20 December, I scheduled the fifth Status Conference in this
13 case. My goal today, as usual, is to review the status of the case
14 and to organise exchanges between the parties to ensure an
15 expeditious preparation for trial.

16 In particular, I wish to discuss disclosure of evidentiary
17 material, translations, the status of the Specialist Prosecutor's
18 investigations, the status of the Defence investigations, the points
19 of agreement on matters of law and facts, detention, and finally, any
20 other issues the parties may wish to raise.

21 I thank the SPO and the Defence for their submissions ahead of
22 the Status Conference. And, as usual, I will invite the parties to
23 provide their views in a concise fashion about each item of the
24 agenda, which I will address individually.

25 So let us start with the first topic on our agenda, which is

1 disclosure.

2 I will give the floor to the parties on the disclosure of each
3 category of evidentiary material separately, as we did last time.
4 The Rule 102(3) material first, which is the material relevant to the
5 case as listed by the SPO; the Rule 103 material, which is
6 exculpatory material; and the Rule 107 material, which is protected
7 material for which the consent of the provider is requested.

8 But before addressing the disclosure of this material, I noticed
9 that the SPO disclosed Rule 102(1)(b) material last night even though
10 it had confirmed that it had completed its disclosure of such
11 material at the previous Status Conference.

12 So, Mr. Prosecutor, could you please provide more details on
13 this recent disclosure package, please. Thank you.

14 MR. DE MINICIS: Will do, Your Honour.

15 So it's true that at the last Status Conference we announced
16 that we had finished our Rule 102(1) disclosure. And perhaps we were
17 imprecise in the sense that there were three items outstanding that
18 Your Honour authorised for the third disclosure in decision F72 in
19 this case pending a protective measure decision in Case 06.

20 So these are the documents that were the subject of that
21 decision and that, further to the issuance of that decision, we then
22 disclosed with the same protective measures in this case.

23 And this was three of the six documents disclosed yesterday. Of
24 the three, two were the English and Albanian transcription of a video
25 which had already been disclosed, Your Honour, as part of Package 11

1 on 31 July 2021. And the other one is the translation of the
2 relevant portion of SITF00020142, which was disclosed in Package 12
3 on 1 September.

4 JUDGE GUILLOU: And were these original disclosures made at the
5 request of the Defence, for the translation and the transcript, as
6 you mentioned, or did you do it --

7 MR. DE MINICIS: We did it because it was part of our
8 Rule 102(1)(b) obligations, Your Honour, and so we did it
9 autonomously, I believe.

10 JUDGE GUILLOU: And there is no specific reason why it has been
11 done now and not a couple of months ago?

12 MR. DE MINICIS: Your Honour, the specific reason in that
13 regard, I might need to get back to you on that one, Your Honour. At
14 the moment, I don't have a precise answer.

15 JUDGE GUILLOU: And a follow-up question. Can you now confirm
16 that there is no more Rule 102(1)(b) material left to be disclosed?

17 MR. DE MINICIS: Well, Your Honour, there are four items which
18 are also subject to the same decision, which in the case -- in a
19 separate Case 06 decision were, in fact, authorised to be withheld.
20 So we have not disclosed those, and we will be seeking authorisation
21 from Your Honour to withhold disclosure of these four items until the
22 reasons exist behind that protective measure.

23 JUDGE GUILLOU: And apart from these four items, no more items
24 to disclose; correct?

25 MR. DE MINICIS: Your Honour, I think, yes, I can positively

1 confirm that.

2 JUDGE GUILLOU: Thank you. This is noted.

3 MR. DE MINICIS: Thank you, Your Honour.

4 JUDGE GUILLOU: Does the Defence want to mention something just
5 on the Rule 102(1)(b) material, please?

6 Mr. Aouini.

7 MR. AOUINI: Good afternoon, Your Honour. And best wishes for
8 the new year to everyone.

9 Mr. Gilissen will make submissions on the disclosure in general.
10 But just on this specific point, maybe to be -- maybe I can be of
11 assistance, to bring some history.

12 During the first -- between the first and second Status
13 Conferences, and Your Honour will remember, we have made a request to
14 the SPO to disclose audio-video material of witness interviews. And
15 we provided justifications. So far we reached two witnesses for
16 which we requested this material. This is 102(1)(b).

17 Yesterday in the evening, we received a correspondence from the
18 SPO explaining that they are making an attempt by improving the
19 transcription of some videos to, let's say, overcome some of the
20 difficulties and the justifications that we have put to them to
21 request the audio-video.

22 So these may or may not be, because we didn't have a fair chance
23 to look at the disclosure itself. It might be two of the three items
24 our colleagues from the SPO are mentioning, and these are also --
25 it's important for us to put on the record, because we expect -- we

1 maintain our request to receive those audio-video materials. We
2 believe it is very important to receive them in the original
3 language, because gestures and some elements that cannot be
4 transcribed are involved in those materials.

5 So we expect to receive more 102(1)(b) material of items that we
6 received in an -- to put it generally, in an unsatisfactory manner.
7 So just to put that on the record. We might have to come back to
8 these issues, because we will make new requests for other witnesses
9 for audio-video. And also if things are not resolved with the two
10 that we already requested, then we might have to come back to you.

11 But there should be, if the SPO accedes to our request, some
12 more items disclosed that are part of what has been disclosed before.
13 Thank you, Your Honour.

14 JUDGE GUILLOU: Thank you, Mr. Aouini.

15 Mr. Prosecutor, do you want to add anything on these potential
16 requests?

17 MR. DE MINICIS: Yes, just to clarify that the items that we
18 disclosed yesterday are not related to the AV recordings that the
19 Defence had requested. We, at this point, don't have anything else
20 to add. There have been *inter partes* communications with the Defence
21 on that issue. We hope to continue these communications. And that's
22 all I have on this, Your Honour.

23 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

24 Then I invite the parties to continue their *inter partes*
25 discussion on this topic and to seize me in case of a litigation on

1 this matter, and to seize me as early as possible so that this can be
2 resolved.

3 So I hope that before the next Status Conference this will be
4 definitely over, so -- either through a discussion between the
5 parties or seizing myself, if needed.

6 Mr. Prosecutor, you want to add something?

7 MR. DE MINICIS: Yes, Your Honour, I want also to add that when
8 I said that we finished our Rule 102 disclosure, I mean in terms of
9 any new materials that may -- we are not going to disclose any new
10 materials. That, we're done with. However, the Defence requested a
11 number of translations, translations concerning Rule 102(1) material,
12 and we will be providing these translations to the Defence. We've
13 already instructed our language unit to work on these translations.

14 So when I said no more Rule 102 disclosure, I meant there are no
15 documents that the Defence does not have access to that will be
16 disclosed. But maybe translations or video recording that correspond
17 to transcripts that have already been disclosed.

18 JUDGE GUILLOU: This is noted, Mr. Prosecutor.

19 Let me continue our agenda today with the disclosure of
20 evidentiary material relevant to the case, which is the Rule 102(3)
21 material.

22 The SPO indicated, in its submissions, that it has not
23 challenged the materiality of any of the requested items from the
24 supplemented Rule 102(3) notice.

25 The SPO also confirmed that all requested materials from the

1 supplemented Rule 102(3) notice which did not require redactions or
2 required only standard redactions were already disclosed.

3 In its written submissions, the Defence, however, noted its
4 concern about the adequacy and sufficiency of the description of
5 items in the Prosecution's possession as listed in the Prosecution's
6 Rule 102(3) notice. The Defence also indicated that it would invite
7 the Prosecution to review its supplemental Rule 102(3) notice and
8 provide additional information about the items listed therein.

9 I note that the SPO's supplemental Rule 102(3) notice was
10 distributed this morning, and I shall say a new supplemental notice.
11 I take note of the fact that the additional items included in the
12 notice could not be previously listed due to Rule 107 restrictions
13 and that, therefore, the SPO was required to file a supplemental
14 notice.

15 However, at the third Status Conference, I specifically
16 indicated to the SPO that it should seek leave before filing a
17 supplemental Rule 102(3) notice. Thus, I again remind the SPO to, if
18 necessary, seek leave to supplement its notice in the future.

19 I invite the parties to give an update on the disclosure of this
20 category of materials. Notably, on the number of items that remain
21 to be disclosed by the SPO and the anticipated timeline for
22 completing the disclosure, on the need to possibly further supplement
23 the Rule 102(3) notice in the future, and on the *inter partes*
24 discussions and whether the parties anticipate resolving the issues
25 identified by the Defence in its submissions.

1 Mr. Prosecutor.

2 MR. DE MINICIS: Thank you, Your Honour.

3 Your Honour, on 5 and 25 November 2021, we have disclosed 837
4 Rule 102(3) documents that were part of Defence requests that
5 amounted to 1.071 documents. We have, at the same time, informed the
6 Defence with a table for the reason -- reasons for the known
7 disclosure of some of the items that they had requested. None of
8 them concerned the materiality of these items.

9 We consider that we have disclosed all the requested items to
10 the Defence, with the exception of those that we haven't and
11 explained to them why. So we don't -- we are of the view that there
12 are no outstanding items at the moment pending.

13 Now, with regard to the sufficiency and adequacy of the
14 descriptions of these items in the Rule 102(3). Your Honour, I note
15 that the new and updated Rule 102(3) list contains updated and
16 improved and more precise descriptions of these items which, however,
17 these updated descriptions, for the record, were notified
18 *inter partes* to the Defence on 22 October 2021. So these
19 descriptions have been available to them since that date, and we have
20 now formally put them on the record with the filing of the revised
21 Rule 102(3) list.

22 With regard to *inter partes* communication that continue not only
23 with respect to disclosure of 102(3) items but disclosure more
24 generally. On 23 December, we received a helpful e-mail from the
25 Defence summing up all the issues they considered outstanding. We

1 have, yesterday, responded to that e-mail, putting on the record our
2 position on this on these outstanding matters. Hopefully that will
3 be and can be the starting point of future discussions with the
4 Defence on these matters, Your Honour.

5 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

6 Mr. Gilissen, you have the floor.

7 MR. GILISSEN: Thank you, Your Honour. Thank you.

8 We confirm we don't have any knowledge of the SPO challenge to
9 the materiality of items we have selected from the notice. We had a
10 notable discussion with the SPO on this issue.

11 First of all, we discussed a few items with the SPO which gave
12 us further explanation of the content of certain items. And this
13 results in the disclosure of these items partially or completely
14 without any challenge to the materiality being made.

15 Concerning the second indication, there was disclosure of the
16 items selected without any material challenge or discussion.

17 And, third, we had a discussion on materiality with the SPO
18 regarding a few items which resulted in no agreement.

19 And now I can say we maintain our indication and selection for
20 these items because we believe that the items in question were
21 evidently relevant to us. The solution didn't result in a challenge
22 to materiality from the SPO, and we thank them - we thank them - for
23 the reasonable decision not to challenge the materiality of
24 evidentiary -- evidently and clearly relevant material.

25 JUDGE GUILLOU: Thank you, Mr. Gilissen.

1 Mr. Prosecutor, do you want to respond?

2 MR. DE MINICIS: No, Your Honour. Thank you. Nothing further.

3 JUDGE GUILLOU: Mr. Aouini, you want to add something?

4 Mr. Gilissen, your microphone is on.

5 MR. AOUMINI: Sorry, Your Honour. Just to put on the record one
6 discrete element.

7 As part of our indications in the notice, we have specified --
8 there is no issue at stake right now. But just to put it on the
9 record in case further on we come to a problem related to that.

10 In our indications -- on several occasions we have made
11 indications that are of the type of a selection of an entire case
12 file. When there is a reference number to a proceeding from a
13 different country or things of the sort that we requested, since the
14 descriptions are not exhaustive and not sometimes helpful, that we
15 receive the entire documents related to a case file that we believe
16 is relevant to us.

17 The SPO colleagues have indicated that they would try to do it
18 as much as possible, and that at sometimes they receive themselves
19 certain elements of case files in piecemeal fashion. But just to put
20 it on the record in case there is an element that we discover later
21 on that is missing that was part of a case file or a reference number
22 or an investigation that we requested as a whole and as a unit.
23 That's all. Thank you, Your Honour.

24 JUDGE GUILLOU: This is noted. Thank you, Mr. Aouini.

25 Mr. Prosecutor, do you want to specifically add something on

1 what has just been mentioned?

2 MR. DE MINICIS: No, Your Honour. I don't think we will add
3 anything on that point. Just something else on the Rule 102(3)
4 disclosure.

5 There are certain items that we haven't disclosed yet because
6 they are subject to protective measures requests that are pending
7 before Your Honour.

8 JUDGE GUILLOU: Absolutely.

9 So I don't see any request for the floor, so we will now move to
10 Rule 102(3) material.

11 In its written submissions, the SPO indicated that it has made
12 further progress and reviewed 30 per cent of the outstanding
13 documents mentioned in the supplemented Rule 102(3) notice for
14 potentially exculpatory content.

15 The SPO indicated that it plans to continue proceedings with
16 comparable pace and strive towards disclosing any remaining document
17 falling under Rule 103 as soon as possible.

18 Before I give the floor to the Prosecutor, I would like to
19 remind the SPO of its obligation to disclose exculpatory evidence
20 immediately as soon as it is in its custody, control or actual
21 knowledge, and only justifiable reasons, such as the need for
22 redactions, may prevent immediate disclosure. This means that the
23 disclosure of exculpatory material should not be done at the end of
24 the pre-trial phase.

25 I am a bit surprised, to be honest, that the SPO indicates that

1 it has only reviewed 30 per cent of the Rule 102(3) material. And I
2 invite the SPO to explain why it has not already finalised the
3 disclosure of Rule 102(3) material which is fundamental for the
4 Defence and fundamental for the Defence investigations and, thus, for
5 the timeline of the pre-trial phase.

6 I further invite the SPO to clarify whether the exculpatory
7 material disclosed last night covers the anticipated disclosure
8 referred to in its submissions. And I would also like to know more
9 generally whether any requests for protective measures for any
10 exculpatory material is imminent.

11 Mr. Prosecutor, you have the floor.

12 MR. DE MINICIS: Thank you, Your Honour.

13 In fact, since the filing of the submissions, we have made more
14 progress on the review of potentially exculpatory materials, and I
15 believe that we are now at about a 50 per cent rate of that mound of
16 materials. And the documents that we have disclosed last night where
17 -- there were some additional documents that we have found between
18 the filing of the submissions and yesterday, a very small number,
19 Your Honour, compared to the total number of the documents that we
20 have reviewed.

21 We'll continue to do so at as fast a pace as possible,
22 Your Honour, but we don't believe that it will take long. And we are
23 somewhat -- in this, we're guided by the fact that we have identified
24 a very small number of documents in the review so far. But we
25 continue to do so at our fastest pace, Your Honour, and disclose any

1 outstanding document as soon as possible.

2 JUDGE GUILLOU: You can imagine that when you tell me that you
3 believe that it's not going to be very long, and you tell me about
4 the fastest pace, I'm going to ask you about a timeline.

5 So instead of "as fast as possible" or "to the best of our
6 possibilities," I'd like to know when you will be done with this
7 review. If I do some math, you had reviewed 30 per cent before your
8 submissions earlier this week. So it means that in three days, you
9 managed to do 20 per cent. So if I apply this mathematical formula
10 to do the 50 per cent, I will probably have to multiply this by 2.5,
11 3 multiplied by 2.5.

12 So we can do the math and it should be done in the next two
13 weeks.

14 MR. DE MINICIS: Your Honour, the documents vary in size. There
15 are some documents that may be a hundred pages, a few hundred pages,
16 and some others just couple of them. So, yeah, that's why the
17 numbers sometimes may not give the full picture in terms of
18 percentage.

19 But we will do our best, and I am confident we will be able to
20 review all the documents within the timeline -- before the next
21 Status Conference but possibly within the timeline indicated by
22 Your Honour.

23 The fact is, Your Honour, there are competing deadlines this
24 month with the filing of the pre-trial brief and the Rule 109 chart
25 shortly after that. That's why I wouldn't want to commit to a

1 two-week timeline considering these other deadlines. But perhaps a
2 three- or four-week deadline, that would be absolutely workable,
3 Your Honour.

4 JUDGE GUILLOU: So can we agree that you will try to do it in
5 the next two weeks. It's reasonable to think that in the next three
6 or four weeks it will be done. And the absolute maximum timeline is
7 the next Status Conference?

8 MR. DE MINICIS: Yes, Your Honour. Thank you, Your Honour.

9 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

10 Let me turn to the Defence.

11 Mr. Gilissen.

12 MR. GILISSEN: Thank you, Your Honour.

13 Your Honour, I have some submissions concerning exculpatory
14 material. But with respect, I prefer to address them together with
15 the other elements when we come to the point (e) of your order
16 related difficulties faced and foreseen in the disclosure process.

17 I propose to make my submission in a more complete and
18 comprehensive way at this moment, please.

19 JUDGE GUILLOU: Absolutely. And let me stress again that as
20 long as the disclosure of exculpatory material is finished, the
21 Defence cannot efficiently prepare its case. So it's fundamental for
22 the timeline of the case in general that this is done as fast as
23 possible.

24 Finally, let us now move to Rule 107 material. In its written
25 submissions, the SPO indicated that it received clearance from the

1 information providers for additional items subject to restrictions
2 under Rule 107, partially in redacted form.

3 However, the SPO still awaits Rule 107 clearance for a small
4 number of items, so I would like the SPO to give more details on
5 these materials, the anticipated timeline for obtaining clearance and
6 completing disclosure, and the timeline of any request related to
7 Rule 107 material.

8 Mr. Prosecutor.

9 MR. DE MINICIS: Yes, Your Honour. We have, indeed, added seven
10 documents to the Rule 102(3) list for which we have recently received
11 clearance. There remains maybe twice as many for which clearance
12 remains outstanding with the document provider.

13 Now, Your Honour, it's difficult to indicate timelines when it
14 comes to discussions with the document providers because it's a
15 two-way discussion. So we may make a request, but then it needs to
16 be answered. So at the moment, I'm not able to provide a specific
17 timeline.

18 I can say that there are just about maybe 10 to 15, and that we
19 are in discussions with the documents providers, and we will seek
20 leave to file a new updated Rule 102(3) list when we get clearance to
21 list these additional documents.

22 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

23 Mr. Gilissen or Aouini, on the Rule 107 material.

24 MR. GILISSEN: Thank you very much, Your Honour.

25 We take notice. We do receive this famous notice. We need, of

1 course, some time to read it, to analyse it, and we will be able
2 after that to select some documents, and I suppose we will be able to
3 provide some information for the next Status Conference about that.
4 Thank you.

5 JUDGE GUILLOU: Thank you, Mr. Gilissen.

6 Before I move to translation, let me ask the parties if they are
7 facing difficulties related to the disclosure process in general.

8 I think, Mr. Gilissen, you wanted to make some remarks on this.

9 But before I turn to the Defence, Mr. Prosecutor, would you like
10 to make any general remarks on top of what you already mentioned.

11 MR. DE MINICIS: No, Your Honour. Thank you.

12 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

13 Mr. Gilissen, please, then.

14 MR. GILISSEN: Thank you very much.

15 With respect, Mr. President, you have the point (d) about the
16 Rule 95(2).

17 JUDGE GUILLOU: Absolutely. So you can present submissions for
18 both.

19 MR. GILISSEN: Okay. Thank you very much. So we do take note
20 and are waiting for the SPO, Your Honour, we start to discover and
21 identified evidentiary material that they are very likely to be
22 subject of admissibility challenge from the Defence.

23 But that being said, it is too soon to make any meaningful or
24 firm indication in this regard. I believe that once we will receive
25 a full and complete disclosure as well as the pre-trial brief and

1 chart from the SPO, we will be in a position to analyse the totality
2 of the SPO's case and start taking a position about that.

3 So the second issue is about Rule 102(3). As we know, this
4 concerns a notice concerning the documents in possession of the SPO
5 and documents that the SPO don't have the intent to use during the
6 trial. We received this SPO notice in due time, but very fastly we
7 had to face some issue, and we discussed with the SPO to find some
8 solution.

9 We select almost 1.200, I think so, 1.196 documents, on the
10 basis of the table issued by the SPO but we had some difficulties to
11 understand what really are some of the documents because the
12 description issue by the SPO was sometimes insufficient, I think so.

13 So by the way we received some batches and at the end of the
14 process, we received a batch of 400 documents in which we discovered
15 there were 96 items of exonerating material. And, indeed, we
16 discovered in a batch of disclosure on the basis of Rule 103 those
17 same 96 documents.

18 So I consider we do have a real issue. And I think it's more
19 than an issue. It's a real problem, Mr. President. Indeed, it means
20 that the duty and obligation of the SPO to review and disclose
21 immediately all the exculpatory material in its possession has not
22 been fulfilled properly. And we only received these 16 -- the 66
23 items -- 96, sorry, items as exonerating material after we have
24 selected them from the 102(3) notice.

25 I use the words "after our selection of documents," but maybe --

1 and it is a little bit terrible to say that. Maybe the word "because
2 we select the items from the Rule 102(3) notice." I am sorry to say
3 that, but the appearance could lead to such a conclusion. I don't
4 want to make some conclusion, because it could be an unfortunate
5 appearance.

6 But the fact is to focus on and my conclusion is in such
7 condition and circumstances, may I -- may we have full confidence in
8 the SPO treatment of the exonerating material according to his duty,
9 which are - I don't have to remind you, you remember us - immediate
10 disclosure and continuous review of the exonerating material.

11 This is not an attack against the SPO. I want to -- really to
12 underline this is not an attack. This is an alarming statement of
13 fact.

14 By the way, the SPO itself informed -- as you say, informed us
15 in this filing of yesterday that they review only 30 per cent of
16 these documents. And so I have to -- also issue to raise again.

17 The second issue concerns a related matter. It concerns a
18 notice issue by the SPO. More precisely, we have a huge problem with
19 the description - I want to focus again on this problem - of some
20 items.

21 Upon reading an analysis of the disclosed material, we
22 discovered that the quality of the description of many items are so
23 poor that we are able, I'm afraid, to say that it's insufficient or
24 even inadequate. Inadequate to be able to understand the real
25 content of some documents.

1 Of course, I will provide you with two examples to illustrate.

2 First example. I give you the ERN SITF00375011-00375014.

3 The description of the document mentions a DVD and a date, but
4 this is only after the review of the document selected that we
5 realise this document relates to a witness in the case. When I talk
6 about poor or insufficient or even inadequate description, we have,
7 I'm afraid, a good example. This, of course, should be included in
8 the description of the document in the notice.

9 Nothing among the hundreds or thousands of documents described
10 in the notice was able to alert us, and so we ask for it anyhow
11 fortunately. But we could have missed it without knowing what we
12 have missed.

13 So I do have a question, a real one, for every one of us: In
14 such condition, how many interesting, relevant, or important, maybe
15 exonerating material or items did we miss? That's the question when
16 we are busy to deal with things like this.

17 So the second example. I consider this is a very important one,
18 even if it is among many of others. ERN 091275-091387. The
19 description of these items was a very simple reference number to
20 certain proceeding, without any other description.

21 So we asked the SPO to improve their description, and we
22 receive, because we are cooperating, of course, we receive a new
23 description with very new detail that the document refers to a person
24 of great interest. So we were really lucky to have asked for a
25 better description and to have selected the document because the

1 topic of this document was of huge importance and high relevance.
2 This topic should, of course, be mentioned in the description and to
3 miss it would be extremely prejudicial to the Defence.

4 A third correlating matter lies in the fact that there are some
5 missing relevant material which were not listed in the SPO notice.
6 We can give you an example of this, a very simple one. We had
7 received a document which makes reference to one relevant item, and
8 this item is not in the notice despite the fact that this item is
9 evidently relevant for the Defence.

10 I don't want to be more precise because we are in open session
11 and I don't think we have to pass -- or the necessity to pass to
12 closed session. I just want to put it on the record because we are
13 discussing these items, among others, with the SPO.

14 All this to say -- because it's time to conclude. All this to
15 say we cannot continue to hope to be lucky and select the right items
16 and to hope not miss relevant items or element necessary for the
17 Defence.

18 So we would like to submit to you that the SPO should review its
19 102(3) notice for completeness and proper and exhaustive description
20 and a mandate to complete it as necessary for the effective and
21 efficient exercise of our right to the disclosure of all material
22 relevant to our Defence, especially since we are discovering as we go
23 that items are missing from the notice and/or improperly and
24 insufficiently described.

25 The risk for the Defence, and, in my opinion, for the procedure

1 itself, of course, is to miss some important or relevant document and
2 not to get access to them as a consequence of these shortcomings. So
3 our conclusion includes also the SPO notice remains and stay open for
4 the Defence. This means that there should be no deadline for the
5 Defence to select items from this notice.

6 This conclusion is not a wish. This is really the result of our
7 practice, of the practice we have undertaken during the past several
8 months. This conclusion is also the result of the reality of the
9 proceedings. As you know, Your Honour, as you know, after we have
10 completed all our selection in the notice, on the eve of our last
11 Status Conference, literally the night before, we received a
12 disclosure containing an extremely important documents regarding the
13 existence of an extremely interesting procedure concerning an
14 extremely relevant person.

15 This is was at this moment the deadline was -- has already
16 passed. So we have to avoid such a situation. And that's why the
17 topic of those documents lately disclosed will continue to be highly
18 relevant to the Defence, and we already placed on the record of the
19 proceedings that we make all legal reservations and we reserve our
20 right to come back to this issue after we get full disclosure as
21 asked to the SPO to all elements relevant to this topic.

22 And I thank you to accept to that things like this is in the
23 record. I will say no more at this stage, Your Honour, on this
24 issue, but simply to reiterate that the SPO should review its notice
25 for completeness, proper and exhaustive description, and the notice

1 should, in the interest of the integrity of the procedure itself,
2 remain open for the Defence. And this is the interest of everybody,
3 I think. So this must be understood as a positive opportunity for
4 all of us.

5 We have a new Prosecutor in the case. That's the occasion.
6 That's the occasion. Really. And I'm sure that all together we are
7 able to enforce and to make better the things, I think so.

8 Mr. President, I don't have to be more complete. I think you
9 understand perfectly well what I want to say. And if you have some
10 questions, I'm ready to answer. But, I suppose, we have the wish to
11 avoid to enter in a closed session. Thank you very much.

12 JUDGE GUILLOU: Thank you, Mr. Gilissen. I perfectly understand
13 the issues. I think you raised two points. The first is the
14 question of the review of the Rule 102(3) for exculpatory material.
15 This is what I mentioned a couple of minutes ago when I discussed
16 about the timeline. I think this is a question of timeline. This
17 should be done urgently. I think it's already very late in the
18 process for this, so this should be done urgently. And we already
19 had the discussion with the Prosecution that there is a commitment on
20 the Prosecution to do it in the next two weeks, if not in the next
21 three to four weeks, and an absolute deadline for the next Status
22 Conference.

23 And then there is another issue that you explained in more
24 detail which is the details in the description of each individual
25 item in the notice, which is something that has already been

1 discussed in other cases as well.

2 I will give the floor to the Prosecution, but let me add another
3 question to the Prosecutor. Do you see the possibility to add more
4 specifics to the notice following the examples that have been given
5 by the Defence, or do you consider that the notice is in itself clear
6 and you see no reason to supplement it?

7 I ask the question because I think that we at least need to have
8 a clear view today if there is a disagreement between the parties on
9 this, because if there is a disagreement, there probably needs to be
10 litigation and a decision because we cannot leave this for the end of
11 the pre-trial phase.

12 Mr. Prosecutor, you have the floor.

13 MR. DE MINICIS: Thank you, Your Honour.

14 Your Honour, we already discussed the issue of 103 disclosure,
15 so I won't rehash it.

16 With regard to the descriptions in the 102(3) list, we submitted
17 updated descriptions in October. And to the extent that the Defence
18 finds some of them still unsatisfactory, we encourage them to point
19 them out to us and we will be happy to provide additional
20 descriptions where the item in question so requires. But we oppose
21 the filing of a new 102(3) list, because we do believe that many --
22 that, in fact, if not the entirety of them, that generally the
23 descriptions are satisfactory.

24 Now, I do not take issue with what counsel said. There may be
25 some outstanding items that are not sufficiently identified. And so

1 I do encourage the Defence to get in touch with us, and we will
2 provide additional descriptions for these items, Your Honour.

3 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

4 So from what you just indicated, I take that you invite the
5 Defence to send the list of the items for which it requests more
6 detail.

7 Is this a solution that is satisfactory for the Defence? And if
8 not, what would the Defence request?

9 Mr. Aouini.

10 MR. AOUINI: Thank you, Your Honour.

11 Just to say that this is the obligation of the SPO, not ours.
12 We have done our part. And our discussions, we continue. It's been
13 very effective, and we've already resolved half of the problem.
14 We've sent requests for further description and better description
15 for around 1500 items for which the description is totally useless.
16 If you put me some numbers and slashes and some numbers and some
17 dates, we cannot know whether it's relevant for us or not. It's just
18 as simple as that at some point.

19 The real issue, and why we're bringing it after literally the
20 deadline for notice is closed for a few months and we are in the
21 reception of the items, is that we still discover when we look at the
22 content of the document that the description is not sufficient even
23 after updates. And this breaks the element of trust in the titles
24 that we are looking at to be able to select. That's the real issue.
25 And so it's really a combination. Since the SPO are reviewing their

1 notice for exculpatory material or any kind of review and analysis of
2 these items, if they can provide better descriptions, it would be
3 helpful for the Defence.

4 The other part of it is if you leave the notice open, then we
5 will have a chance as we identify certain items, sometimes, by the
6 reference that is mentioned in the content of one document, and then
7 we can go back to the notice and select everything that is with that
8 the same reference. This is the practice of what is happening.

9 So if we say we are too late to select new items while we
10 discover only later that this reference number is relevant or that
11 W number is relevant, then it is one of the two. Otherwise, we will
12 not be able to effectively exercise the right to access what is
13 relevant to us. We don't want it to be over-cumbersome, but we don't
14 want to have litigation afterwards.

15 We are looking, like, in a few months where we would say this
16 must have been better described for us to have it. We cannot have
17 missed it, and we should not have missed this item because of lack of
18 description or inadequacy of description. So this is what we are
19 trying to resolve, to be honest.

20 And maybe one slight point on the exculpatory material. Yes,
21 there is the problem of timeline. But there is also, and we want to
22 put it on the record, also the approach of what is exculpatory. We
23 had multiple discussions with our colleagues. It's been very helpful
24 on materiality on which is exculpatory. And the example Mr. Gilissen
25 made about the document we received making reference to another

1 document, this was exculpatory material making reference to more
2 general documents, for example.

3 We believe that if that is a source or a link to a document,
4 that is at least relevant to us. So the approach that the SPO has to
5 take is that the context has to be exculpatory and the general
6 background that we need to understand related to one exculpatory
7 information. We need to be in agreement with that and that they take
8 the more extensive approach possible to what is exculpatory.

9 They are not going to decide what is our line of defence or what
10 is relevant to us or the persons of interest or items of interest.
11 So they have to take this open view with exculpatory and also with
12 the relevant and material items, because some of the items are not in
13 the list and they should be there. And this is part of the reason
14 why we engage in these discussions and really trying to get the
15 position of each one to not misrepresent what is the position of the
16 other party.

17 This is a constructive approach that we are taking to not
18 mislead any -- any party not to mislead the other but, at the same
19 time, come to the solutions where we get what we believe we are
20 entitled to.

21 So these are the points we wanted to make. Thank you,
22 Your Honour.

23 JUDGE GUILLOU: Thank you, Mr. Aouini.

24 Mr. Gilissen, you want to add something?

25 MR. GILISSEN: Yes, thank you very much, Your Honour. Just to

1 add something, really, that's just an addition but it's a very
2 important one, I think so.

3 I would like not to be obliged to select all the items of the
4 notice, and I have the feeling that if things continue like that, I
5 will be obliged to make it just to avoid to -- to avoid such a
6 situation we don't have access to unimportant element or information.
7 That's really the purpose of what I say. Thank you very much.

8 JUDGE GUILLOU: Just a follow-up question to the Defence.

9 Have you finalised the choice of documents in the notice?
10 Because the deadlines that I set earlier were for November and
11 December, if my memory is correct. So we're already beyond these
12 deadlines. So are you requesting an extension or are you -- because
13 now, I mean, I think we have two debates at the same time: A debate
14 on the timelines, because you tell me that you want more time, and a
15 debate on how precise shall the list be.

16 I understand that these two are interconnected, because if the
17 list is not precise enough, you will tell me that you are not able to
18 select the documents correctly. But then you need a ruling for that,
19 because if the deadline is already passed, you ought to do it before
20 the expiration of the deadline.

21 Mr. Aouini.

22 MR. AOUINI: Thank you, Your Honour. I will try to simplify
23 things as much as possible.

24 The deadlines have passed. We have made the selections. We
25 requested additional descriptions and we got them, and we made our

1 best effort, and we even beat the deadline to make our indications in
2 batches and before the last day. The problem is that we are
3 realising, as we look at the content, the descriptions, even with
4 improvements, with the best efforts there, are still inadequate or
5 insufficient. That's part one.

6 Now we have a supplemental notice. And what our Defence is
7 requesting is that there should be a review for the completeness to
8 look at what's missing from the items and be listed in the notice and
9 for better descriptions since the review is ongoing, so that we
10 receive another notice from which we can have a new opportunity based
11 on a better analysis of what's been disclosed so far, and the PTB and
12 the other things, that we make new selections. And that's the
13 correlated part where Mr. Gilissen submits that there is no reason
14 for us to have a deadline to select items, because what we know is
15 relevant today might be complemented by what we analyse and know in
16 two or three months, and we will be more precise and more aware of
17 what could be relevant to us, and there are things that discover.

18 And Mr. Gilissen made a very extremely important example about a
19 new topic that we discovered after this deadline already finished for
20 us to select items, and we were lucky. And we should not work on
21 luck. We were lucky that we selected one item related to that topic,
22 but now we need everything on that topic. What if some other
23 documents are in the notice related to that topic? We need to
24 explore and get access everything related to this topic.

25 There shouldn't be a bar to the Defence to select what's

1 relevant to us, especially if we receive some documents after this
2 notice is closed. So for us it should be open, because the
3 descriptions we cannot trust at 100 per cent. We're all human. We
4 can only do as much as we can. And there are things that come up in
5 the course of the proceedings that make some element relevant while
6 we couldn't reasonably, with all the diligence and best effort,
7 identify it as relevant before.

8 Otherwise, the solution which is -- would be really unfortunate
9 and would defeat everything we have tried constructively together
10 with the SPO, is to select he everything from the notice. We
11 understand that there will be things -- I mean, I'll give you an
12 example. Mr. Shala has his last name as Mr. Shala, but Shala is also
13 a region. So not everything that is in the list will be material to
14 us, but we have to avoid selecting everything just to make sure. We
15 have to come up with a better solution together so that we don't miss
16 some important elements.

17 So a better description and open deadline, no deadline for
18 selection. Thank you, Your Honour.

19 JUDGE GUILLOU: Thank you, Mr. Aouini.

20 Mr. Prosecutor.

21 MR. DE MINICIS: Your Honour, as I said, I listened attentively
22 to the grievances that the Defence has presented now, but our
23 position remains that we have provided improved descriptions on
24 25 October, and we do believe that they are -- generally the
25 descriptions are adequate.

1 Now to the extent that -- again, there may be some descriptions
2 that are not, and we are prepared to provide a better description for
3 this. But we oppose the request to review, again, the entirety of
4 the 102(3) list to improve generally all the descriptions, because
5 many of the items -- our position is the vast majority of them are
6 more than sufficient to give notice of what the Defence may expect to
7 find in the document.

8 Now, when it comes to possibly missing documents, again, I
9 encourage the Defence to get in touch with us because there may be
10 many reasons why a document is not listed, one of them being that
11 perhaps we don't have that document in-house. I don't know. I'm
12 just speculating because I don't know what document the Defence has
13 found that is missing from the 102(3) notice.

14 But these are my answers to the Defence submissions,
15 Your Honour.

16 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

17 Do you want to add anything on the Defence side?

18 MR. GILISSEN: Mr. President, my dear colleague, you understand
19 what we are trying to seek is to avoid a catastrophe. I don't want
20 to discover a document insufficiently explained in the notice in two,
21 three, perhaps six months. That's only the purpose. It's not a
22 question to win time or something like that. That's why I consider
23 that if we want to avoid the possibility I ask all the documents on
24 the list of the notice, we have to find a solution.

25 And I think to let open this notice, in my opinion, is the best

1 way for all of us. But you have to decide, Mr. President, of course.

2 JUDGE GUILLOU: The result of what you ask, Mr. Gilissen, is
3 basically to suspend all the deadlines related to the
4 communication -- disclosure of evidentiary material for the
5 Rule 102(3) material. In practice, that's it. And basically that
6 you continue *inter partes* discussions with no deadlines, asking them
7 to supplement documents after documents.

8 The problem with that solution is that it's endless. It can
9 last six months, eight months, ten months. I cannot, as
10 Pre-Trial Judge, leave this without any deadline. This is just not
11 possible. Because if I do that, you will not be able to continue
12 your work, which is your investigations, because you will not have
13 had the disclosure of all the exculpatory material.

14 So, I mean, I'm sympathetic to the fact that you are trying your
15 best to find pragmatic solutions with the SPO, but at the same time,
16 I find it very complicated to suspend all the deadlines for this
17 category of material. So I think it's probably -- I mean, I think
18 there are two things here. I mean, for the updated Rule 102(3)
19 notice, the last one that has been filed, I mean for the new items,
20 of course, the previous deadlines do not apply.

21 But for the items that were already in the notice in October, I
22 mean, there are some that for which you have requested more
23 information; i.e., either you get the document or you get more
24 information in the description to decide if it's interesting or not.
25 I think that's totally logical. But for the documents that you

1 haven't requested -- for the ones you haven't requested neither to
2 supplement the description nor the document itself, is there an
3 issue?

4 Because this is where I'm not clear. Are you saying that, "No,
5 that's fine. Our problem is only the documents for which we've
6 requested more details"? Or is it also these documents that you
7 haven't requested but that you are not sure because you don't have
8 enough information? But for these -- I mean, you had a deadline to
9 request these documents. So if you didn't request *inter partes* to
10 the SPO to supplement the description, you should have gone to me,
11 then, to suspend the deadline or for an order to the SPO to do this.

12 You see my point? I mean, you had a deadline for this and it's
13 perfectly within your rights to ask more detail to the SPO. But if
14 you haven't asked anything for -- for documents, I don't see how I
15 can reinstate previous deadlines.

16 Mr. Aouini.

17 MR. AOUINI: I'm sorry, Your Honour. Maybe we've not been clear
18 enough. I'll try to resimplify.

19 The documents for which we didn't request better descriptions,
20 we didn't select. We gave the example of a reference to a procedure.
21 After the notice has closed -- and we have met this deadline. We
22 requested descriptions and we selected everything before the deadline
23 that Your Honour gave.

24 The issue is that if we discover today a new topic, a new
25 reference number, something new, and we find out that some of the

1 items related to this issue or topic or person is, in fact, in the
2 notice and we didn't select it, are we foreclosed from selecting a
3 document that is relevant to us? That's the main issue. That's why
4 we want it to be open, because it's not just 15 more documents in the
5 notice and then we can only select from those. Those can contain
6 information on persons, locations, anything that makes other items
7 relevant. And that's when we need to come back to the notice. I
8 mean, under your control, we're not trying to abuse the whole
9 process, it's not to abuse the notice process or to keep it
10 open-ended. No. Maybe we can skip one deadline and go further to
11 what the SPO announces as another notice that is common and then
12 after that time we have a firm deadline for everything on the notice.

13 But it's just to allow us to not miss something. And as the
14 Englishmen say, you don't know what you don't know. Sometimes a
15 description is -- you don't know what you have missed if you have
16 missed it. And sometimes we discover from other sources that there
17 is an information and it is related to one or two items in the
18 notice.

19 That's why we want a path to come back and request something
20 that is relevant to us. It could be without the notice. We can make
21 the request to the SPO regardless of the notice. And we do that.
22 Actually, we are doing that: Give us everything you have on this
23 topic, whether it's on the list or not, whether it's on the notice or
24 not. That could be an agreeable solution as well.

25 We understand your point that it can be endless, but at the same

1 time we have to be afforded a real opportunity to access everything
2 that we need. Thank you.

3 JUDGE GUILLOU: Thank you, Mr. Aouini. I think it's very
4 useful. Because from what you indicate, you're not talking about all
5 the items on the list. You are talking about if in the hypothesis
6 you were made aware of a new fact or notably through the disclosure
7 of exculpatory material, you wouldn't be barred from the possibility
8 to request a document that you couldn't know at the time would be
9 material for the preparation of the Defence.

10 MR. AOUINI: [Microphone not activated].

11 JUDGE GUILLOU: I get this.

12 Mr. Prosecutor -- or Mr. Gilissen.

13 MR. GILISSEN: Mr. President, just one thing.

14 JUDGE GUILLOU: Briefly, Mr. Gilissen.

15 MR. GILISSEN: I think the topic is a difficult one. That's
16 sure. I'm sure you understand and you share it, our point of view.
17 And I understand perfectly your point of view.

18 I think that we need, the parties need a decision of check and
19 balance about this problem. Because when we say not to close the
20 possibility to go on the notice, it's too simple, you understand it
21 now. You understood it perfectly well.

22 But I think it could be very nice to have a decision, a very
23 clear one. And for all of us, it's helpful in our relation. We have
24 good relation with the SPO, and I don't want to create a problem like
25 this. I am sure there is no intent in the SPO in the way treating

1 this information. It just could be a misunderstanding. But I don't
2 want to --

3 JUDGE GUILLOU: Mr. Gilissen, I interrupt you for a second,
4 because I see that the connection with Mr. Shala has been
5 interrupted.

6 MR. GILISSEN: Oh.

7 JUDGE GUILLOU: I've been told that the connection is being
8 re-established. If you can just wait for the connection is
9 re-established to you continue so Mr. Shala doesn't miss any moment
10 of the hearing.

11 Sorry, Mr. Gilissen.

12 MR. GILISSEN: No, I understand perfectly well.

13 JUDGE GUILLOU: But it's important that Mr. Shala can be
14 attending the hearing.

15 [Technical difficulties]

16 JUDGE GUILLOU: I see that the connection has been
17 re-established.

18 Mr. Gilissen, you can continue. And sorry for the interruption.

19 MR. GILISSEN: I understand absolutely the kind of difficulty
20 with the technic.

21 I was just focused on the fact that we do have very professional
22 contacts with the SPO. I would like to continue it like this.

23 And there was -- and I told you when I said there no attack, of
24 course, there was no intent from or to the SPO, no. That's only the
25 question to be sure that the procedure is really a fair one for

1 everybody. And I am sure for everybody if we discovered something
2 like a document that we consider, truly or falsely, that we consider
3 as very important but too late, it's really, really a pity for all of
4 us. Thank you.

5 JUDGE GUILLOU: Thank you, Mr. Gilissen.

6 Mr. Prosecutor, do you want to add anything?

7 MR. DE MINICIS: Just very briefly that should that situation
8 arise, the situation described by Mr. Aouini of a document that could
9 not have been discovered in time, we invite them to get in touch with
10 us. I am sure a solution will be found.

11 To the extent that it requires litigation before Your Honour,
12 then I think at that point that a sort of prejudice should be shown
13 in order for such request to be granted. But we don't believe so
14 far -- so far there's been no need to litigate these issues. So we
15 remain extremely available to discuss any such instance with the
16 Defence.

17 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

18 I don't think we can solve this matter at this hearing today.
19 However, I think it's important to address the concerns that the
20 Defence just presented. So I would invite the Defence to file
21 written submissions before me to basically present the difficulties
22 you face for the disclosure.

23 But I think it would be very useful if you could file these
24 submissions when the SPO has finalised the disclosure of exculpatory
25 material, because this can also help you with the problems that you

1 faced with identifying important documents in the notice. As long as
2 you haven't had the disclosure of the Rule 102(1)(b) and the 103, you
3 are not in a position to be aware of all the -- all the criterias
4 that you take into account to make your choice on the list.

5 So I invite you to continue discussions *inter partes*, that the
6 Prosecution informs you of the disclosure of exculpatory material,
7 and hopefully within two weeks or three, maybe three and a half,
8 Mr. Prosecutor, I invite the Defence to seize me at this time with an
9 update on the disclosure and any potential request. But I think it's
10 going to be more efficient if it's after the SPO has finalised its
11 review of Rule 103 material.

12 Unless there is -- Mr. Prosecutor.

13 MR. DE MINICIS: Your Honour, no. Just one, I think, answer I
14 owe you on the Rule 102(3) topic that we have discussed earlier. You
15 had asked me whether we foresee future amendments of the Rule 102(3)
16 notice, and I didn't answer you on that.

17 We foresee that that is possible if and when we obtain clearance
18 for the new Rule 107 documents. But also, Your Honour, the SPO
19 continues its investigations as part of its mandate. So if there are
20 any documents that are periodically acquired by the SPO, to the
21 extent that these documents are relevant to this case, we
22 periodically -- we may periodically need to update the Rule 102(3)
23 list.

24 JUDGE GUILLOU: This is noted.

25 Let us now move to the issue of translation of filings and

1 evidentiary material.

2 In its submissions, the SPO indicated that the parties continue
3 to be engaged in discussions about the translation of evidentiary
4 materials and that the SPO does not intend to rely at trial.

5 I know that the Defence indicated in its submission that it has
6 also made a request for translations and for prioritising the
7 translation of specific material. I would like to, therefore, hear
8 the parties on any further issues regarding translation.

9 Starting with the Defence first.

10 MR. GILISSEN: So, Mr. President, so far we didn't request any
11 translation of evidentiary material from the Registry. But we start
12 contact with some element of the Registry in this way. We will
13 inform you of the next Status Conference about the progress made in
14 this regard.

15 What we can say, it is so far we have been able to rely on our
16 internal resources in the matter. But with the reception of hundreds
17 of documents from the notice, we will certainly seize the assistance
18 of the Registry language services.

19 I have to add concerning the translation of filings, if you
20 remember, that the Registry provide us with draft translation of the
21 filing request as they have announced during the last session of the
22 Status Conference. We thank them for that and we confirm it is very
23 helpful for us.

24 Your Honour, I would add that the translation of the Prosecution
25 pre-trial brief in Albanian should be treated with high priority for

1 the Defence. I think so.

2 I have to continue to the point (b), Mr. President? Yes. Since
3 the last Status Conference we have discussed with our colleague of
4 the SPO, and during the recess we have reviewed the documents
5 concerned for which we don't have any translation. We have prepared
6 a small list of priority and submit it to the Prosecutor. I am sure
7 we will continue the discussion in view of obtaining the translation
8 of the most important ones.

9 So in the meantime, we request from the SPO the translation of
10 some documents of interest to us that we receive from our notice
11 indication. We made the request on an ad hoc basis, and our
12 colleagues from the SPO provide us with the translations in their
13 possession and we want to thank them for that. Thank you very much.

14 JUDGE GUILLOU: Thank you, Mr. Gilissen.

15 Mr. Prosecutor.

16 MR. DE MINICIS: Nothing, Your Honour. Thank you.

17 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

18 Mr. Nilsson, can you take note of the request of the Defence to
19 prioritise the translation of the SPO pre-trial brief in Albanian?

20 MR. NILSSON: Thank you, Your Honour. Yes, we'll take note of
21 this request. Thank you.

22 JUDGE GUILLOU: Thank you, Mr. Nilsson.

23 Let me now move to the third item in our agenda, which is the
24 status of the SPO's investigations and next steps.

25 Before discussing the matter further, I would like to ask the

1 SPO whether it is necessary to go into private session?

2 MR. DE MINICIS: Yes, Your Honour. To preserve the
3 confidentiality of the investigation, that will be necessary.

4 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

5 Mr. Court Officer, can we move to private session.

6 [Private session]

7 [Private session text removed]

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6 [Open session]

7 THE COURT OFFICER: We're in public session, Your Honours.

8 JUDGE GUILLOU: Thank you, Mr. Court Officer.

9 For the next point on the agenda, I'd like to turn to the
10 Defence first.

11 I note from the Defence's written submissions that it is still
12 unable to provide any information on the anticipated duration or
13 status of its investigative activities. I also note that the Defence
14 is not, at this stage, able to confirm whether it will make any
15 request concerning unique investigative opportunities, and whether it
16 will provide notice of an alibi or any other grounds excluding
17 criminal responsibility.

18 I invite the Defence to provide any additional information -
19 notably, a timeline for their investigations - or to indicate when it
20 anticipates to be able to do so.

21 Mr. Gilissen.

22 MR. GILISSEN: Thank you, Your Honour. We are happy to report
23 that we continue to advance in our investigation, but we have to face
24 some issues. And the very first one, as you are able to imagine, is
25 COVID-19.

1 And so some members of our team were victim of the disease,
2 themselves or their relatives. Unfortunately, one member of our team
3 even lost a very close relative recently. We extend one more time to
4 her our condolences. And the impact of the situation on the ground
5 affects our ability to work, to meet, to travel in the manner that we
6 envisage before the recess.

7 So that's really a huge problem. That being said, we still
8 could make some progress on different facets. We have already
9 identified the main and principal objective of our first mission on
10 the ground. And we are planning, on the basis of the informations we
11 receive from the ground, a first travel for our first mission at the
12 end of February or the beginning of March, depending, of course, of
13 the sanity condition on the ground.

14 We made an important preparatory work in that respect, and we
15 will continue to do in the next several weeks.

16 We also are engaging actively in contact with some experts who
17 could assist our case. We shall say no more at this stage, but we
18 will provide you with updates as necessary, perhaps, in the next
19 conferences. Thank you very much.

20 JUDGE GUILLOU: Thank you, Mr. Gilissen.

21 Mr. Prosecutor, do you want to respond?

22 MR. DE MINICIS: No, Your Honour. Thank you.

23 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

24 I invite the Defence to continue its effort. I know it's
25 complicated with the pandemic situation. Nevertheless, it is

1 important that you can proceed with your investigations as soon as
2 possible.

3 Let me move to the next item in our agenda today, which is the
4 points of agreement on matters of law and fact.

5 In this regard, I note that the parties have conducted their
6 discussions regarding potential points of agreement on law and on
7 facts. The SPO indicated, in its submissions, that it expects to be
8 in a position to identify certain of these issues by the filing of
9 the SPO's pre-trial brief. However, I note from the Defence
10 submission that no progress can be reported on the parties'
11 discussions related to the possibility of submitting points of
12 agreement on law and/or facts.

13 So can the parties then give an update on this topic and
14 especially on when they will be in a position to make submissions on
15 this matter.

16 Mr. Prosecutor.

17 MR. DE MINICIS: Your Honour, we plan to start working on a set
18 of facts to propose to the Defence for agreement further to the
19 filing of the pre-trial brief. And I think that that will get the
20 ball rolling. And once the Defence -- I understand they will -- they
21 also would be waiting for us to make the first move in that regard.

22 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

23 Mr. Gilissen.

24 MR. GILISSEN: Thank you very much. I have nothing to add.

25 Just it will be a pleasure to discuss about all these topics. Thank

1 you very much.

2 JUDGE GUILLOU: So I invite the SPO to get the ball rolling as
3 soon as possible after the pre-trial brief then.

4 I would now like to ask the Registry to give an update on the
5 COVID-19 situation and the mitigation measures in the detention
6 centre. In particular, if the regime has changed since the
7 Registry's fifth update on such measures.

8 Mr. Nilsson, please.

9 MR. NILSSON: Thank you, Your Honour.

10 So the latest formal update was on 1 December, so, indeed, I
11 have a short update for you today.

12 As you are aware, temporary measures were -- restricting visits
13 were applied at the end of November at the detention facilities.
14 Based on the medical officer's advice, in-person visits with family
15 members and counsel resumed at the facilities on 7 December.

16 Now, in light of the very serious COVID-19 situations in the
17 Netherlands and elsewhere, of course, the medical officer has advised
18 that we take a very cautionary approach to lifting the other
19 temporary restrictions for the moment. So the other restrictions
20 remain in place, and they will remain in place until at least
21 17 January, so that's next week, when there will be a review of these
22 measures.

23 So that is essentially where we are. The detainees are all
24 aware and have been informed about the -- the different stages of the
25 measures. The Registrar is continuously monitoring the situation and

1 engaging with the medical officer to facilitate the full lifting when
2 that is possible from safety and health perspective.

3 And, of course, we'll commit, as always, to keep Your Honour
4 informed about future developments. Thank you.

5 JUDGE GUILLOU: Thank you, Mr. Nilsson.

6 Does the Defence want to react to this update?

7 Mr. Gilissen.

8 MR. GILISSEN: No, thank you very much. It was very complete,
9 and thank you very much.

10 JUDGE GUILLOU: Thank you, Mr. Gilissen.

11 At this point, I would like to ask the parties if they have
12 other issues they would like to raise.

13 Mr. Prosecutor.

14 MR. DE MINICIS: Thank you, Your Honour. Nothing further from
15 the SPO.

16 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

17 Mr. Gilissen.

18 MR. AOUINI: It will be me, Your Honour.

19 JUDGE GUILLOU: Mr. Aouini.

20 MR. AOUINI: Yes.

21 JUDGE GUILLOU: Sorry.

22 MR. AOUINI: Just to put on the record one discrete item in
23 anticipation of the pre-trial brief.

24 After the first Status Conference, or maybe between the first
25 and second Status Conference, we spoke with our colleagues from the

1 SPO and we made the request that within Legal Workflow the witness
2 entities be created. This is something that has been very, very
3 helpful in previous experiences in tribunals using the
4 Legal Workflow.

5 We had discussions with our colleagues from the SPO about it,
6 and they agreed to do it. And at that point of time, they indicated
7 to us that this could only be implemented at a later point, which is
8 after the issuance of the PTB - pre-trial brief - and the chart.

9 So just put it on the record that we are in agreement for a long
10 time about it. We believe this will help us immensely to identify,
11 confirm or review the links that we have established from what was
12 disclosed to us before, and probably will help us further with the
13 analysis and understanding of what's in the notice, what's disclosed,
14 what's exonerating.

15 So just wanted to put it on the record. Thank you, Your Honour.

16 JUDGE GUILLOU: Thank you, Mr. Aouini.

17 Mr. Prosecutor, can you confirm your willingness to create these
18 witness entities. And I also take the opportunity of this discussion
19 to ask you to confirm that you will be filing the pre-trial brief and
20 the Rule 109(c) charts as planned.

21 Mr. Prosecutor.

22 MR. DE MINICIS: Your Honour, we most certainly confirm our
23 availability to list the witness entities. And we do confirm that we
24 will be filing the pre-trial brief and the Rule 109 chart by the
25 deadlines set by Your Honour, Your Honour.

1 JUDGE GUILLOU: Thank you, Mr. Prosecutor. This is noted.

2 I would like to ask the parties now for their views on the date
3 for the next Status Conference. The date that is foreseen is Friday,
4 4 March 2022 at 1430. I repeat, Friday, 4 March 2022 at 1430.

5 Would this be convenient for the parties?

6 Mr. Prosecutor.

7 MR. DE MINICIS: Yes, Your Honour. Thank you.

8 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

9 Mr. Gilissen.

10 MR. GILISSEN: I really have the wish to say yes, but it's a
11 little bit difficult because we -- we have the hope to be on the
12 ground at this moment. So it's not a reluctant yes, it's a perhaps
13 one, Mr. President. I will try to manage to be ready for this date,
14 because I know the -- the problem, of course, of the courtroom and so
15 on. Thank you.

16 JUDGE GUILLOU: Can we agree that you will get back to me
17 within, I don't know, two weeks to confirm me the date of your
18 mission? I mean, that's entirely up to you. But your availability
19 or not for 4 March. I mean, if you -- if the only option is for you
20 to go on the field for investigations, that's the priority. Don't
21 delay this. We'll find another moment. I don't want you to delay
22 your investigations for this. But it would be useful to have this
23 information as soon as possible, because, as you know, the courtroom
24 is pretty busy these days, so it would be useful so that we can find
25 a timeframe.

1 MR. GILISSEN: Sure. For sure. A maximum two weeks. I hope to
2 be able to provide you the information in one week maximum. Okay?
3 Thank you.

4 JUDGE GUILLOU: Thank you, Mr. Gilissen. This is much
5 appreciated.

6 You will receive a Scheduling Order that will include the agenda
7 before the next Status Conference after we have agreed on the date.

8 I invite also the parties to make written submissions if they
9 would like to raise any specific issues during the next Status
10 Conference.

11 This concludes today's hearing. I thank the parties and the
12 Registry for their attendance. And, as usual, I thank the
13 interpreters, stenographer, audio-visual technicians, and security
14 personnel for their assistance.

15 And I see that it's 1601, so I've been one minute too late for
16 the interpreters, but I hope they will forgive me.

17 The hearing is adjourned.

18 --- Whereupon the Status Conference adjourned
19 at 4.01 p.m.

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