

1 Monday, 15 November 2021
2 [Status Conference]
3 [Open session]
4 [The accused appeared via videolink]
5 --- Upon commencing at 9.00 a.m.

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

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

9 THE COURT OFFICER: Good morning, 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 would kindly ask the parties and participants to
13 introduce themselves, starting with the Specialist Prosecutor's
14 Office.

15 Mr. Prosecutor.

16 MR. O'DOWD: Thank you, Your Honour, and good morning.
17 Appearing today for the Prosecution are Legal Officer
18 Bernhard Kuschnik; Disclosure Officer Margaux Portier; and I am
19 Prosecutor Sean O'Dowd. Thank you.

20 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

21 Now, let me turn to the Defence.

22 Mr. Gilissen, please.

23 MR. GILISSEN: So good morning, Mr. President. I greet all
24 participants in the hearing. I am Mr. Gilissen from the Liege bar in
25 Belgium. I am assisting Mr. Shala who is with us by videolink, and I

1 am assisted by Mr. Aouini, my co-counsel; Ms. Leto Cariolou, and
2 Ms. Dzeneta Petravica.

3 Thank you very much.

4 JUDGE GUILLOU: Thank you very much, Mr. Gilissen. And I
5 confirm that Mr. Shala is attending the Status Conference via
6 videolink.

7 Let me now turn to the Registry.

8 Mr. Roche, please.

9 MR. ROCHE: Good morning, Your Honour. My name is Ralph Roche
10 from Judicial Services Division in the Registry. Thank you.

11 JUDGE GUILLOU: Thank you, Mr. Roche.

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

14 On 5 November, I scheduled the fourth Status Conference in this
15 case. My goal today, as usual, is to review the status of the case
16 and to organise exchanges between the parties to ensure an
17 expeditious preparation for trial.

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

23 I thank the SPO and the Defence for their submissions ahead of
24 the Status Conference. And, as usual, I would invite the parties to
25 present their views in a concise fashion about each item on the

1 agenda, which I will address individually.

2 Let us start with the first topic that was listed in the
3 Scheduling Order, which is disclosure.

4 As I did last time, I will give the floor to the parties on the
5 disclosure of each category of evidentiary material separately.
6 First, the Rule 102(1)(b) material, which is the evidentiary material
7 that the SPO intends to use at trial; then the Rule 102(3) material,
8 which is the material relevant to the case as listed by the SPO; then
9 the Rule 103 material, which is exculpatory material; and, finally,
10 the Rule 107 material, which is protected material for which the
11 consent of any provider is requested.

12 So let me start our agenda today with the disclosure of
13 evidentiary material the SPO intends to present at trial.

14 The SPO indicated in its written submissions that it was
15 preparing a disclosure of the additional Rule 102(1)(b) materials,
16 which were the subject of my 4 November 2021 decision. I invite the
17 SPO to indicate if the material has been disclosed, and I note that
18 there was a disclosure package on Friday, and I hope the SPO will
19 tell us that it was the case.

20 The SPO further indicated that there are currently fewer than 20
21 items for which discussions with Rule 107 information providers
22 remain ongoing. I also invite the SPO to clarify whether any of the
23 outstanding Rule 107 materials are evidentiary material the SPO
24 intends to use at trial.

25 I also invite the SPO to confirm that the remaining Albanian

1 translations have been finalised and disclosed, and that the expert
2 reports relating to forensic matters have been disclosed in October
3 according to the oral order I issued during the last Status
4 Conference.

5 Mr. Prosecutor, you have the floor.

6 MR. O'DOWD: Thank you, Your Honour.

7 Yes, Your Honour, I can confirm that Friday's disclosure did
8 include the balance of the Rule 102(1)(b) materials. With respect to
9 the Rule 107 materials that are outstanding, I can confirm that those
10 do not include additional 102(1)(b) materials. Those are 102(3)
11 materials.

12 With respect to the outstanding translations, they have been
13 disclosed, and the outstanding expert reports have also been
14 disclosed.

15 Thank you, Your Honour.

16 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

17 So I take from your submissions that you are entirely done with
18 the Rule 102(1)(b) material?

19 MR. O'DOWD: That's correct, Your Honour.

20 JUDGE GUILLOU: Thank you, Mr. Prosecutor. I like that.

21 Let me turn to the Defence.

22 Mr. Gilissen, do you want to comment on this or add anything?

23 MR. GILISSEN: Yes, Mr. President. Thank you very much.

24 So we received, very lately, but we finally received all the
25 documents announced by the Prosecutor.

1 As mentioned in our written submission, I just have to underline
2 the Defence of Mr. Shala is reserving its right to seize the
3 appropriate remedy for the prejudice that we suffer this late
4 discussion. But it's too soon, of course, to talk about that at this
5 stage.

6 I confirm we received the documents on the basis of
7 Rule 102(1) (b) in Package 17 related to the expert report.

8 So I don't know if it is time to talk about the notice or it's
9 too soon, Mr. President?

10 JUDGE GUILLOU: The next item in the agenda.

11 MR. GILISSEN: Okay, thank you very much.

12 JUDGE GUILLOU: So in a few minutes.

13 Thank you, Mr. Gilissen. Unless the SPO wants to add anything
14 on this? No.

15 So let me now move to the Rule 102(3) notice and evidentiary
16 material.

17 The SPO filed a supplemental Rule 102(3) notice on 22 September
18 2021. The SPO indicated, in its submissions, that it provided
19 further information to the Defence regarding the items listed in
20 accordance with the Defence request to this effect.

21 The Defence provided its initial Rule 102(3) indications on
22 7 and 15 October.

23 On 5 November, the SPO released to the Defence Disclosure
24 Package 22, containing 412 documents under Rule 102(3), of which 405
25 items relate to the Defence indications of 7 and 15 October.

1 The Defence provided additional Rule 102(3) indications on
2 2 November 2021, and the SPO indicated that it is currently reviewing
3 these materials and, at this time, anticipate disputing the
4 materiality of a small number of items.

5 The SPO also anticipates submitting requests for non-standard
6 redactions or protective measures, including for certain materials
7 requested by the Defence, pursuant to its Rule 102(3) indications.

8 I note that, in its written submissions, the Defence indicated
9 that *inter partes* discussions with the SPO were ongoing, notably, to
10 obtain additional information on the items on the Rule 102(3) list.

11 So I invite the parties this morning to give an update on the
12 disclosure of Rule 102(3) materials; notably, whether disclosure on
13 the basis of the Defence indications of 7 and 15 October 2021 has
14 been completed; second, the status on the parties' *inter partes*
15 discussions; and, third, a detailed indication about the timeline of
16 the future requests related to this category of material as announced
17 in the parties' submissions.

18 Mr. Prosecutor.

19 MR. O'DOWD: Thank you, Your Honour.

20 You have correctly summarised the SPO's position. The
21 disclosures of Rule 102(3) materials for the 7 and the 15 October
22 requests are ongoing, according to the schedule that's been set by
23 the Court. They are expected to be completed by this time.

24 Consistent with that schedule, Your Honour, with respect to the
25 *inter partes* communications, we continue to communicate regularly

1 with the Defence about issues as they arise, and we don't anticipate
2 any difficulties complying with the schedule set by the Court for the
3 remaining 102(3) items.

4 However, our review of those items is ongoing but, at this
5 point, we expect to proceed according to the schedule.

6 JUDGE GUILLOU: Can you give any indication on the timeline for
7 any requests for protective measures?

8 MR. O'DOWD: Yes, Your Honour. We would expect that a request
9 for protective measures would be filed by the end of this week.

10 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

11 Mr. Gilissen, do you share this positive and enthusiastic views
12 of the disclosure of the Rule 102(3) material?

13 MR. GILISSEN: Yes, I'm very proud to say I share this view, as
14 you say. Previously, the SPO provided us with the necessary
15 descriptions that we requested from them on 22 October. The Defence
16 provided its indication in due time. I don't have to repeat all the
17 information you provided before.

18 So this means that just now we have the dispute about
19 materiality or relevance on some documents required by the Defence.
20 We received a list from the SPO concerning 12 documents that the
21 Prosecutor considers as irrelevant. And we had discussion with the
22 SPO about the materiality of some documents, and the SPO provided us
23 with further explanation and description of the content of certain
24 documents.

25 And we have reached an agreement on a partial disclosure and/or

1 irrelevance from the items. The parties avoid by this process any
2 litigation on the matter. We are scheduled to meet very soon, it
3 means today, with the SPO to discuss the materiality of these items,
4 and I have hopefully to continue to avoid any litigation and to deal
5 with the matter in the most efficient manner.

6 Thank you very much, Mr. President.

7 JUDGE GUILLOU: Thank you very much, Mr. Gilissen. This is a
8 very good information to the Court.

9 Mr. Prosecutor, do you want to add anything or to comment on the
10 Defence submissions?

11 MR. O'DOWD: No, thank you, Your Honour.

12 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

13 Let us now move to the Rule 103 material.

14 In its written submissions, the SPO indicated that it had
15 disclosed three batches of Rule 103 materials to date and that review
16 of potentially exculpatory materials is still ongoing. I note that
17 there is also a new batch that has been disclosed on Friday.

18 I would like to know whether there remains any exculpatory
19 evidence in the SPO's custody, control, or actual knowledge that must
20 be disclosed to the Defence pursuant to Rule 103, and, as usual,
21 whether any requests for protective measures for such material is
22 imminent.

23 Mr. Prosecutor.

24 MR. O'DOWD: Thank you, Your Honour.

25 Yes, indeed, there was an additional batch of Rule 103 materials

1 disclosed on Friday. In fact, there have been three batches of
2 Rule 103 materials disclosed since the last Status Conference.

3 The SPO's review for potentially exculpatory materials is
4 ongoing. We continue to be mindful of our obligation to disclose
5 them on an ongoing basis, and we're also mindful of the Court's
6 directive from the last conference to move as quickly as possible,
7 and we are proceeding along those lines.

8 In terms of a request for protective measures, Your Honour.
9 There may be a request but none is imminent at this time.

10 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

11 Mr. Gilissen.

12 MR. GILISSEN: Thank you very much, Mr. President.

13 Exculpatory, it's a difficult word for a French-spoken person.
14 Exculpatory material we received from the SPO, an important batch of
15 exculpatory evidence on 2 November 2021. Last Friday, as you said --
16 on 12 November 2021. So we are busy with it, and I'm afraid to say
17 it's a little bit soon to take a position about it. But we have
18 already requested from the SPO some information and documents
19 following a recent exculpatory disclosure under Rule 103 in
20 Package 21.

21 So we are awaiting a response, and I am sure it will come as
22 soon as possible. We continue to discuss on this matter, and I am
23 sure we will find a solution between us.

24 Thank you very much.

25 JUDGE GUILLOU: Thank you, Mr. Gilissen.

1 Mr. Prosecutor, I hope that you will not disappoint the Defence
2 on this.

3 MR. O'DOWD: Understood, Your Honour. Thank you.

4 JUDGE GUILLOU: Especially on the timeline, as usual.

5 Thank you, Mr. Gilissen. Thank you, Mr. Prosecutor.

6 Finally, let us now move to the Rule 107 material.

7 In its written submissions, the SPO indicated that it has
8 further reduced the number of Rule 107 materials outstanding, and
9 that discussions with Rule 107 information providers remain ongoing
10 for currently fewer than 20 items.

11 The SPO also indicated that it will seek leave to supplement the
12 Rule 102(3) list to reflect recently cleared items, and that it is
13 the SPO continuing to engage with providers about the remaining
14 items.

15 I would like the SPO to give more details on the timeline for
16 future requests related to this Rule 107 material and also the
17 timeline on any future request to amend the list.

18 Mr. Prosecutor.

19 MR. O'DOWD: Thank you, Your Honour.

20 I don't have a precise timeline, unfortunately, on when the
21 Rule 107 negotiations with providers will be complete. Those are
22 ongoing and we are moving as quickly as possible on that.

23 With respect to the 102(3) notice. We expect to be in a
24 position to file a request for permission to disclose an additional
25 Rule 102(3) notice by the end of next week.

1 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

2 And you confirm that it's less than 20 items?

3 MR. O'DOWD: Yes, Your Honour. Confirmed.

4 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

5 Mr. Gilissen, please.

6 MR. GILISSEN: Yes, Mr. President. I take notice and, as usual,
7 the sooner the better.

8 Thank you very much.

9 JUDGE GUILLOU: Absolutely.

10 Let us now move to the issue of translations and of filing and
11 evidentiary material, which is the second item in our agenda today.

12 In its submission, the SPO indicated that it has not made any
13 request for prioritising - this is another hard one, Mr. Gilissen,
14 like "exculpatory" - the translations of specific filings of
15 evidentiary materials. I note that the Defence indicated in its
16 submissions that it has obtained a number of translations from the
17 SPO, and that the parties continue their discussions related to
18 translations *inter partes*.

19 I would like to hear the parties on any further issues regarding
20 translations, and I will start with the Defence translation.

21 Mr. Gilissen.

22 MR. GILISSEN: Thank you, Your Honour.

23 So this is always, we know, that a very difficult matter, a very
24 delicate one, the problem of translation, and I understand perfectly
25 the Registry on the problem they could have to face.

1 On a regular basis, we make requests to translate specific
2 filings on priority basis. Because we need for our work with
3 Mr. Shala, it's really a necessity, it's really a real need, and we
4 believe it is essential that the key decision could be translated
5 very quickly to fully inform the accused.

6 I provide you with just one example. No need for more. It's
7 about your decisions on the preliminary motion. Till now, these
8 decisions are not translated yet. Some people could say it's not a
9 real problem, of course. But it means that we were obliged to
10 discuss with Mr. Shala about the possibility of some appeal on these
11 decisions without the benefit of the full Albanian translation.

12 So it's a real difficulty. I repeat, I understand, of course,
13 the real difficulty we have always to face with the translation, but
14 I am sure that all together we will find a solution for the future.
15 It's a delicate situation to discuss with Mr. Shala. That's a
16 difficult matter, of course. And difficult in terms to try to
17 discuss with him. Even in French, he has to translate it for himself
18 in Albanian, so sometimes it's really difficult. I am sure I will be
19 heard by the Registry.

20 Thank you very much.

21 JUDGE GUILLOU: Thank you, Mr. Gilissen.

22 Mr. Prosecutor.

23 MR. O'DOWD: Thank you, Your Honour.

24 In addition to the materials our Defence colleagues have
25 identified, they have also flagged to us a list of items provided by

1 the Prosecution for which they sought translations. We have provided
2 them with all the translations we had in-house, and we have obtained
3 translations for all the materials we are obligated to translate
4 under the Framework Decision. All of those translations have now
5 been completed but for one -- well, one was completed today. All of
6 them had been completed and disclosed but for one. The remaining
7 item will be disclosed very soon.

8 For the rest of the items the Defence has inquired about, the
9 SPO has assessed that these are not the type of materials we're
10 obligated to translate under the Framework Decision. And, frankly,
11 we just don't have the in-house resources to do that. And so they've
12 indicated to us that they expect to identify some of these documents
13 as essential items, and we've invited them to raise them with us on a
14 case-by-case basis. And, of course, we're happy to have that
15 discussion when they do.

16 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

17 Before I give back the floor to the Defence, I will just ask the
18 Registry on an update on translation, and if you have any request for
19 prioritisation pending.

20 Mr. Roche, please.

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

22 As regards the two decisions that Mr. Gilissen referred to, the
23 decisions of Your Honour on the preliminary motions, they were filed
24 or issued on 18 October. They are currently being finalised, and
25 revised versions should be circulated on 26 November at the latest.

1 The initial indication we gave was the end of November, so we're on
2 course to exceed that deadline.

3 As regards the original requests made by the Defence. Unrevised
4 translations have been provided in both cases, and also we are
5 finalising the revised translation of the second request, which
6 should be distributed very very soon. And the revised translation of
7 the first submission or filing by the Defence has already been
8 revised and distributed.

9 Thank you.

10 JUDGE GUILLOU: Thank you, Mr. Roche.

11 Mr. Aouini, please.

12 MR. AOUINI: Thank you, Your Honour. Good morning to everyone.

13 Just to confirm what the Registry just submitted about the
14 timeline of the decision on preliminary motions. We were provided
15 with that deadline. And it has been in the past very useful to
16 receive drafts or unrevised translations, because we could have a
17 support with much more information than what we could explain to
18 Mr. Shala in order to make key decisions, like appealing a decision
19 or things of the sort. So I think we can leave it at that. And,
20 obviously, the sooner we can get even a draft translation will help
21 us in our day-to-day work with those kind of filings.

22 But I wanted to return to a specific issue that the SPO
23 mentioned about the translation of evidentiary material. As
24 Your Honour knows, we have made a table request to the SPO on
25 22 September to the SPO to help us with providing us the Albanian

1 translations or English translations of some evidentiary material
2 when they have them or to help us locate them.

3 Out of a total of around 61 items, we received around 21
4 translations. There are 40 translations for which, as the SPO
5 mentioned, they feel -- they believe, with regard to your
6 Framework Decision, that they are not obliged to translate. And
7 we're looking at your Framework Decision at paragraphs 64 to 67.

8 So we are clear that the translation of witness statements under
9 the Rule 102(1)(b) are those the SPO is required to translate. And
10 then the caveat, which is at paragraph 67, that is if the Defence
11 believes some of the items outside of the witness statements of
12 witnesses they intend to rely on at trial would prove essential to
13 the Defence, then we can make this request.

14 Now, we've ascertained what the SPO -- the SPO have been helpful
15 with providing more than what they are obliged to disclose when they
16 have that translation. So we appreciate that. And now we have
17 started a discussion about the extra material that is not strictly
18 under your Framework Decision on the obligation of the SPO to
19 disclose, but provided that we prove what is essential.

20 And here, we don't request anything yet from Your Honour. We
21 will engage in those discussions. Obviously, the word "essential"
22 might mean something different when Mr. Shala doesn't understand the
23 original language in which the documents are, which is English,
24 sometimes Serbian, also a language that Mr. Shala doesn't understand.
25 So we will start those discussions and maybe we will have a

1 checkpoint on the next conference on it.

2 We are trying to also minimise the impact and the burden by
3 resorting to our internal capacities in order to also move quickly
4 with the understanding of certain items on making decisions with
5 Mr. Shala, so we will get back to that, either with deadlines or with
6 specifications or clarifications about the Framework Decision in the
7 specific case of Mr. Shala, and probably on specific items that we
8 could justify more expansively.

9 So thank you, Your Honour.

10 JUDGE GUILLOU: Thank you, Mr. Aouini. Just one follow-up
11 question. About the material that you will ask the SPO to get a
12 translation that is not under the scope of the translations that are
13 compulsory in my Framework Decision, do you have an idea of the
14 amount of documents and the amount of pages? Because, of course,
15 it's different if we are talking about ten documents of five pages
16 each, or 300 documents of 100 each. Because then it's a completely
17 different exercise for the SPO and for the resources of the Court. I
18 mean, in the ballpark. I am not asking you the exact number, but
19 just to have a very broad idea on what are we talking about here.

20 MR. AOUINI: Thank you, Your Honour. Your Honour is totally on
21 point. We are not talking about thousands of items or hundreds.
22 From the initial request of the 22 September, we have come down to 40
23 items. We don't have the number of pages, exact number of pages. 40
24 items for which no translation exists, and we will have to translate
25 them either through the SPO or through the Registry services or

1 through our internal resources.

2 So those are as we stand, and those don't include, for example,
3 the expert reports or the additional items that have been disclosed.
4 So we are trying to deal with those items as we can with maximising
5 what we can do in terms of time and efficiency. We can report to you
6 that for the expert reports, we have been able to -- because we
7 believe those are very important, those include some Rule 103
8 material, so we deem it necessary to obtain, with our own resources,
9 summary translations and also, in the meantime, draft or unrevised
10 translations for us to be able to work, rather than engaging in a
11 more lengthy process.

12 As it stands on the ones that we have already initiated
13 discussions, we have around 40 items for which we will engage in
14 discussions about the essential character of these documents to
15 obtain them from the SPO. But that doesn't include the latest
16 disclosures of last week.

17 Thank you, Your Honour.

18 JUDGE GUILLOU: Thank you, Mr. Aouini.

19 Mr. Prosecutor, do you want to comment on this?

20 MR. O'DOWD: Thank you, Your Honour. Nothing further from the
21 Prosecution on this issue at this time.

22 JUDGE GUILLOU: But do you agree to engage in discussions with
23 the Defence on this?

24 MR. O'DOWD: Yes, Your Honour. Thank you.

25 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

1 Mr. Roche, do you want to add anything?

2 MR. ROCHE: Thank you, Your Honour. Just one piece of
3 information.

4 We would not, by default, always provide unrevised draft
5 translations when prepared, unless requested. But I can take
6 Mr. Aouini's comment as a standing request for all draft documents to
7 be provided, which we will do in future.

8 And as regards evidence. I mean, that is not something that the
9 Language Services Unit of the Registry would be involved in
10 translation under the appropriate administrative framework. We are
11 primarily responsible for filings. And, obviously, we are
12 concentrating on those. And there are no outstanding prioritised
13 requests apart from the ones that I mentioned, which will be ready by
14 26 November.

15 Thank you, Your Honour.

16 JUDGE GUILLOU: Thank you, Mr. Roche.

17 The Defence wants to add anything? No.

18 So let me now move to the third item in our agenda today, which
19 is the status of the SPO's investigations and next steps.

20 In its submissions, the SPO indicated that any additional
21 investigative steps will be completed before the filing of the
22 pre-trial brief, of its pre-trial brief. I would like the SPO to
23 confirm this.

24 Mr. Prosecutor.

25 MR. O'DOWD: Yes, Your Honour. We can confirm that. Thank you.

1 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

2 Do you want to add anything on your investigations or on the
3 pre-trial brief, for which the date has been set last time and which
4 I don't intend to change.

5 MR. O'DOWD: Thank you, Your Honour. Nothing further on either
6 of those issues at this time. Thank you.

7 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

8 Mr. Gilissen or Mr. Aouini, do you want to add anything on this?

9 MR. GILISSEN: No, thank you very much, Mr. President.

10 JUDGE GUILLOU: Thank you.

11 For the next point on the agenda, I'd like to turn to the
12 Defence, because it is the Defence investigations.

13 I note from the Defence written submissions its intention to
14 carry out investigations for the purpose of the presentation of its
15 case. The Defence indicated that it has entered into agreements with
16 persons that will be assisting its investigating efforts on the
17 ground and in the process of determining the principles, subject, and
18 timeline for its first investigative mission.

19 I invite the Defence to provide any additional information, if
20 it wishes, on this topic.

21 However, I also note from the Defence submissions that it
22 remains unable to provide any information on the anticipated duration
23 or status of its investigative activities until the disclosure
24 process is complete and the Defence have reviewed and analysed the
25 disclosure material.

1 I also note that the Defence, at this stage, is not able to
2 confirm whether it will make any request concerning unique
3 investigative opportunities and whether it will provide notice of an
4 alibi or any other grounds excluding responsibility.

5 Mr. Gilissen, I give you the floor to add more detail on these
6 submissions.

7 MR. GILISSEN: Thank you very much, Mr. President.

8 Actually, we finally, and I'm very proud to insist on this, we
9 finally find some really able person to assist on the ground, our
10 investigations. It was a difficult business, I explained it before,
11 but we are. So we are now focusing on the principal purposes of our
12 investigation and the timeline of this investigation.

13 We will be able to provide more specific information for the
14 next Status Conferences. But I remind, and you told it, that we will
15 be unable to provide some information, additional information, or
16 definitive position before the disclosure is complete and the SPO
17 pre-trial brief, of course. But things are on the run,
18 Mr. President.

19 Thank you.

20 JUDGE GUILLOU: Thank you, Mr. Gilissen.

21 Mr. Prosecutor, do you want to comment or add anything?

22 MR. O'DOWD: No, thank you, Your Honour.

23 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

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

1 I would like to hear if the parties have made any progress in
2 their discussions regarding the possibility of submitting points of
3 agreements on law and/or fact, pursuant to Rules 95 and 156 of the
4 rules.

5 In this regard, I note that the parties have conducted
6 additional discussions regarding potential of agreements on law and
7 facts. The SPO indicated in its submission that it expects to be in
8 a position to identify certain of these issues by the filing of the
9 SPO's pre-trial brief, and I also note from the Defence submissions
10 that it awaits the SPO's first formal proposal on possible points of
11 agreement.

12 Can the parties give an update on this topic? Starting with
13 Mr. Prosecutor.

14 MR. O'DOWD: Thank you, Your Honour.

15 Just very briefly, since our written submissions we have had one
16 additional *inter partes* discussion with the Defence on this issue.
17 These discussions continue. We continue to anticipate being in a
18 position to identify certain areas of agreement by the time of the
19 filing of the pre-trial brief, and we will submit formal proposals to
20 the Defence at a time when we think that's constructive.

21 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

22 Mr. Gilissen.

23 MR. GILISSEN: Yes, Mr. President, thank you very much. I
24 confirm, absolutely, the Prosecutor's statement. We'll still await a
25 formal proposal from the SPO, but we are having discussion on this

1 type of issue of facts and laws that could be debated as point of
2 agreement or point of dispute. So it's a little bit soon but in the
3 same, we are on the good way to proceed properly.

4 Thank you very much.

5 JUDGE GUILLOU: Thank you, Mr. Gilissen.

6 Before I give you the floor on any other matter, there is one
7 point I would like to raise, which is the issue of the calendar for
8 the next detention review.

9 I would like especially to have a discussion with the Defence,
10 to see with the Defence if it wishes to request a variation of the
11 procedural calendar for the next detention review.

12 According to the decisions issued last Wednesday, the Defence
13 shall file its submission on the next detention review of Mr. Shala
14 by no later than Friday, 17 December 2021; with responses and replies
15 following the timeline set out in Rule 75 of the rules.

16 Should the Defence decide not to file any submissions by the
17 aforementioned timeline, the SPO shall file submissions on the next
18 detention review of Mr. Shala's detention by no later than Thursday,
19 23 December 2021.

20 And Defence, if it wishes to do so, to file its submissions by
21 no later than 5 January 2022.

22 I note that these deadlines fall during the recess period, so I
23 would like to ask the Defence if it wishes to waive the right of
24 Mr. Shala to have his detention reviewed within the two-month
25 deadline in order to file its submissions after the recess period, or

1 it can be also, at least, the reply to the Prosecution.

2 And in case the Defence intends to file an appeal against the
3 last decision on detention, I would like the Defence to indicate if
4 it wishes to waive its right to have the detention of Mr. Shala
5 reviewed until the decision of the Appeals Chamber as it was done in
6 relation to the appeal against the first detention decision.

7 I can give you a couple of minutes so that you can discuss
8 within your team, and just let me know when you are ready.

9 [Specialist Counsel confers]

10 MR. AOUINI: Thank you, Your Honour.

11 JUDGE GUILLOU: Mr. Aouini, please.

12 MR. AOUINI: Thank you, Your Honour.

13 I understand the situation where the deadlines are on both
14 limits of the recess.

15 The position of the Defence is this. If Your Honour intends to
16 move before the deadline, then it will be agreeable for us because it
17 is to the benefit of Mr. Shala that his detention is reviewed before
18 the two months. So it's still within the two months but before, so
19 we do it before the recess.

20 But if the intention is to move it beyond the recess, so in the
21 next year, then we cannot engage in that without seeking firm
22 instructions of Mr. Shala, discussing that before with him, because,
23 obviously, it delays that next opportunity to seek the review of the
24 detention.

25 So if the process is moved before the recess, we can safely say

1 we can -- we welcome that, and we will be able to deal with it before
2 the recess, and no prejudice will be for Mr. Shala because he will
3 have his review of detention sooner than what is scheduled today.
4 But if it is the opposite, then we would need to come back with a
5 proposal after discussing with Mr. Shala.

6 Thank you, Your Honour.

7 JUDGE GUILLOU: Thank you, Mr. Aouini.

8 I don't intend to move the deadline before the recess, just
9 because if I was to do that I would have to, basically, start the
10 process nearly one month or five weeks before. Because when you add
11 all the deadlines in the procedural calendar, including the deadline
12 for me to issue the decision, then we would practically have to start
13 now, or at least in a couple of days. So it will be just after.

14 But I perfectly understand the need for you to confer with your
15 client. So what about this: I invite you to have discussions with
16 your client, and you make a filing on this issue, and if you can
17 include the two points that I mentioned - i.e., first, if you wish
18 the detention calendar to be moved, and, if so, by which date; and,
19 also, if you were to appeal the decision, if you also agree to waive
20 exactly like you did for the first appeal that you did, and it can be
21 both - and really, on this, I am in your hands.

22 I am just trying to help the parties so that we do not have
23 last-minute requests to postpone the deadline in the middle of
24 recess. I think it wouldn't be a good practice, and it wouldn't be
25 in the interests of Mr. Shala because it would create legal

1 uncertainty for his Defence team.

2 So take your time. But, I mean, as usual, when I say "take your
3 time," I do not mean take too much time, but if you can get back to
4 me in a couple of days by a written filing, that would be much
5 appreciated.

6 MR. AOUINI: Thank you, Your Honour.

7 Certainly, Your Honour, we are scheduled to meet with Mr. Shala
8 later this afternoon. This will be one of the key points of
9 discussions for today. We will be in a position to give you more
10 information on those two points. And we take fully your
11 observations, because in the last two reviews we were the one
12 responding to the detention, so it's more the second deadline that is
13 involved.

14 And needless to say, if we move all the deadlines then we will
15 still fall within the recess, unless we move everything by one month.
16 So we will try to put a filing before you explaining and making a
17 proposal on those two points.

18 Thank you, Your Honour.

19 JUDGE GUILLOU: Thank you, Mr. Aouini. And as you mention, it's
20 exactly that. It's the second deadline that is shorter and for which
21 it's probably better that it doesn't fall in recess, but I leave it
22 entirely up to you.

23 Mr. Prosecutor, do you have anything to add on this topic?

24 MR. O'DOWD: No, thank you, Your Honour.

25 JUDGE GUILLOU: Thank you very much.

1 At this point, I would like to ask the parties whether they have
2 any other issue they would like to raise? And, as usual, I remind
3 the parties to give prior notice should any submission require the
4 disclosure of confidential information so that we can move to private
5 or closed session.

6 Mr. Prosecutor.

7 MR. O'DOWD: Thank you, Your Honour.

8 The Prosecution has no additional issues to raise at this time.
9 Thank you.

10 JUDGE GUILLOU: Thank you, Mr. Prosecutor. I'm glad that you
11 haven't presented any request to postpone any of the deadlines.

12 Mr. Gilissen.

13 MR. GILISSEN: Thank you very much, Mr. President.

14 First, don't say you are in our hands. It's too delicate to
15 have a practice when the Judge is in our hands, but I understand the
16 idea. Thank you very much.

17 But, Your Honour, I thank you for allowing us to address very
18 briefly on the issues concerning the indictment and some changes in
19 the Confirmed Indictment.

20 I'm not comfortable, of course, to comment the situation
21 because, as you know, the corrected indictment issued by the SPO
22 1 November 2021 is still not public. So don't mind. I don't have
23 some comments or something to say about the intent. I just have to
24 regret that this very important document, which is a fundamental one
25 in the procedure, it's not public 15 days after its issuance.

1 It's not, of course, something that I reproach to the Registry.
2 It's the same thing as before. I understand perfectly the
3 difficulties. But the withdrawal by the SPO on the presence or
4 participation of Mr. Shala in some key elements on which key charges
5 in the first indictment was based are very important for Mr. Shala,
6 of course, for the procedure itself, of course, but particularly for
7 the people who follow the procedure. And, I mean, the family of
8 Mr. Shala, his friends, but the medias too, of course. And as you
9 know, in Kosovo this case a lot of people try to follow and are
10 speaking a lot about it.

11 In this consensus, I allow myself to insist that the public
12 version of the current corrected indictment be issued as soon as
13 possible, because the actual version of the indictment displayed on
14 the web site of the KSC and in the media does not reflect the reality
15 of facts or conduct allegedly attributed by the Prosecutor to
16 Mr. Shala. And I shall repeat that Mr. Shala denied them. So it's
17 very important, I'm sure.

18 And I would like to add that the correction in the new version
19 of the indictment should be debated during the next hearing or Status
20 Conference, [indiscernible] of the time the correction of the
21 indictment will be public.

22 So I thank you very much for hearing me.

23 JUDGE GUILLOU: Thank you, Mr. Gilissen.

24 Let me turn to the Prosecution on the public redacted version of
25 the indictment, as requested by the Defence.

1 [Specialist Prosecutors confer]

2 MR. O'DOWD: Thank you, Your Honour.

3 My understanding is that the SPO has filed the public redacted
4 version of the indictment. But if that's not reflected on the
5 docket, we will correct that post-haste.

6 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

7 So it seems that if it hasn't been done, it will be done very
8 quickly. And it's already done, you will have access to it. So it
9 seems that the problem will be solved very quickly.

10 Mr. Gilissen.

11 MR. GILISSEN: Yes, we checked just before the hearing. That's
12 why we were a little bit late. So if there is a problem, I'm sure we
13 will solve it.

14 Thank you.

15 JUDGE GUILLOU: Could it be that it has been filed but not put
16 on the web site? Could there be a delay?

17 Maybe I can turn to Mr. Roche, do you -- would it be possible?

18 MR. ROCHE: Thank you, Your Honour.

19 I would need to check the specific situation of this individual
20 document, which I can do quite quickly.

21 MR. O'DOWD: Your Honour, we are looking into the issue, and it
22 may well be an issue on our end. In which case, we'll correct that.

23 JUDGE GUILLOU: Mr. Aouini.

24 MR. AOUMINI: Thank you, Your Honour.

25 Just to confirm, we have double- triple -checked yesterday and

1 today. We are not in receipt of a distributed filing that is a
2 public version of the indictment. And, most importantly, on the web
3 site of the KSC, the indictment that is displayed is not the new one,
4 and it makes a big difference in key elements that are in the public
5 domain where we see the name of Mr. Shala, because it explains
6 certain elements that he believes are important to be known by the
7 public, where terms like "absence" or "inclusion" or "exclusion" is
8 involved.

9 We see no reason to have, in the public domain, contents that
10 are more than what Mr. Shala is faced in these proceedings.
11 Obviously he denies what is there, but there should be no case where
12 there is more than what he is accused of. So this change has to be
13 reflected. It's one of the most fundamental rights of Mr. Shala that
14 it is accurately -- and the target of this information is obviously
15 Kosovo, the close and distant background of Mr. Shala, and it has
16 some significant importance that might not be sensed in the same way
17 inside the courtroom as outside the courtroom.

18 So we appreciate that that be distributed for us to be able to
19 discuss it on a public hearing, because there is no reason and no
20 utility in discussing such matters in confidential hearings. And
21 that it is displayed in the web site, which is the vitrine of the
22 KSC.

23 So we thank you, Your Honour.

24 JUDGE GUILLOU: Thank you, Mr. Aouini.

25 I don't think that a corrected version has been distributed with

1 the public redacted version, so there might be a filing to do on the
2 SPO's side.

3 But I take from your submissions, Mr. O'Dowd, that you do not
4 oppose the idea of filing it asap. It's just like an oversight on
5 your part, maybe.

6 MR. O'DOWD: It's correct, Your Honour. We have no objection to
7 filing one asap.

8 JUDGE GUILLOU: Thank you. So I consider that the matter will
9 be resolved in the following two days, Mr. Prosecutor?

10 MR. O'DOWD: Yes, Your Honour.

11 JUDGE GUILLOU: And you will link with the Registrar so that the
12 updated public redacted version of the Confirmed Indictment be on the
13 web site instead of the former indictment?

14 MR. O'DOWD: Certainly, Your Honour.

15 JUDGE GUILLOU: Thank you. I consider this matter nearly
16 resolved, and I invite the Defence to get back to me by written
17 submissions if it is not the case at the end of the week.

18 MR. AOUINI: Just one last comment, maybe, Your Honour. For the
19 record, it's F98. And the sooner the better.

20 JUDGE GUILLOU: The sooner the better. Thank you, Mr. Aouini.
21 Does the SPO have anything to add?

22 MR. O'DOWD: No, thank you, Your Honour. No additional issues
23 at this time.

24 JUDGE GUILLOU: And, Mr. Gilissen, any other issue? Any
25 additional issue?

1 MR. GILISSEN: No, thank you very much, Your Honour. Thank you.

2 JUDGE GUILLOU: Thank you, Mr. Gilissen.

3 I would like to ask the parties for their views on the date of
4 the next Status Conference, which is currently pre-scheduled for
5 Friday, 14 January 2022.

6 Mr. Prosecutor.

7 MR. O'DOWD: Thank you, Your Honour. That date works for the
8 SPO.

9 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

10 Mr. Gilissen.

11 MR. GILISSEN: I will provide a definitive answer, because I'm
12 afraid to have a *cour d'assises* in Belgium at this time. But it's
13 not sure that it's on the 20 January. So I have to check, and, of
14 course, I will provide very, very fastly the answer.

15 Thank you.

16 JUDGE GUILLOU: And, as usual, the sooner the better.

17 Thank you, Mr. Gilissen. You will receive a Scheduling Order in
18 due course once I hear from you, Mr. Gilissen, if possible, in the
19 following days.

20 As usual, I invite the parties to make any written submissions
21 ahead of the next Status Conference if they would like to raise any
22 specific issue.

23 This concludes today's public hearing. I thank the parties and
24 the Registry for their attendance. And, as usual, I thank the
25 interpreters, stenographer, audio-visual technicians, and security

1 personnel for their assistance.

2 The hearing is adjourned.

3 --- Whereupon the Status Conference adjourned
4 at 9.52 a.m.

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