

1 Friday, 4 March 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 and welcome everyone in and
7 outside the courtroom.

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

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

11 JUDGE GUILLOU: Thank you, Madam 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 the
16 Prosecution is represented by Alex Whiting, Deputy
17 Specialist Prosecutor; Margaux Portier, Associate Disclosure Officer;
18 Artur Sirbu, Associate Legal Officer; and Moira van de Poel, our
19 legal intern. And myself, Filippo de Minicis, Associate Prosecutor.

20 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

21 Now I turn to the Defence.

22 Mr. Gilissen, please.

23 MR. GILISSEN: Thank you and good afternoon, Your Honour. Good
24 afternoon to my colleagues, including Mr. Simon Laws, who we are
25 seeing for the first time, and for all the people who are inside the

1 courtroom and in the public gallery.

2 So I am Mr. Jean-Louis Gilissen, counsel of Mr. Shala, who is
3 with us today by videolink. And, as usual, I appear before the Court
4 with Mr. Hedi Aouini, my co-counsel. We are assisted by
5 Ms. Dzaneta Petravica, our teams manager; and Ms. Anca Ioana Popescu,
6 our last intern. We are here to assist Mr. Shala, and we are at your
7 disposal, Mr. President.

8 JUDGE GUILLOU: Thank you, Mr. Gilissen.

9 And for the record, I note that Mr. Shala doesn't attend the
10 hearing in person but attends via videolink.

11 Now I turn to the Victims' Counsel.

12 Mr. Laws, please.

13 MR. LAWS: [via videolink] Good afternoon, Your Honour, and to
14 everyone. I am Simon Laws, and I am assigned counsel for the
15 participating victim in this case.

16 JUDGE GUILLOU: Thank you, Mr. Laws.

17 And now I turn to the Registry. Mr. Nilsson, please.

18 MR. NILSSON: Good afternoon, Your Honour. Jonas Nilsson,
19 Judicial Services Division, representing Registry today.

20 JUDGE GUILLOU: Thank you, Mr. Nilsson.

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

23 On 9 February, I scheduled the sixth Status Conference in this
24 case. My goal today is to review the status of the case and to start
25 preparing the transmission of the case to the Trial Panel. In

1 particular, I wish to discuss disclosure, translations, the status of
2 the Specialist Prosecutor's investigations, the status of Defence
3 investigations, the points of agreement on matters of law and facts,
4 and, finally, any issues the parties may wish to raise.

5 I thank the SPO and the Defence for their written submissions
6 ahead of this Status Conference. And, as usual, I will invite the
7 parties to present their views in a concise fashion about each item
8 on the agenda, which I will address individually.

9 But before addressing these matters, I would like to discuss two
10 preliminary matters.

11 The first matter is the latest Defence request for extension of
12 time for detention submissions, which is filing F00160. I recall
13 that, in line with the decision of the Court of Appeals of
14 11 February 2022, I invited the Defence to inquire into the
15 willingness and capacity of the Kingdom of Belgium to implement any
16 conditions of release it has proposed and/or any additional
17 conditions.

18 In the same decision, I further ordered the Defence to provide
19 submissions on the next review of detention of Mr. Shala by no later
20 than 2 March 2022.

21 In this regard, I note that the Defence requests an extension of
22 four weeks to submit its submissions for the next review of detention
23 of Mr. Shala so as to obtain and assess the position of the Belgian
24 government, as well as to provide the Defence position on these
25 matters.

1 I would like first to ask the SPO whether it has any submissions
2 to make in this regard.

3 Mr. Prosecutor.

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

5 The SPO does not oppose the Defence's request for postponement
6 of the filing of the detention review.

7 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

8 Mr. Gilissen, do you want to add anything, or Mr. Aouini, to the
9 written filings? It's not necessary to repeat. It's just if you
10 have anything to add.

11 MR. AOUBINI: Thank you, Your Honour. And good afternoon to
12 everyone.

13 Just to point that we received a preliminary response pertaining
14 to logistics, so we have to go through a different channel which is
15 accepted by the Kingdom of Belgium. We have processed with the
16 sending of the new correspondence in that regard, and we think that
17 our submissions will be more effective once we receive a response.

18 Thank you, Your Honour.

19 JUDGE GUILLOU: Thank you, Mr. Aouini.

20 Having heard the parties, I will issue a first oral order.

21 I note that the Defence has not yet been able to obtain
22 information and make satisfactory progress with its inquiries with
23 the Belgian authorities.

24 I further consider that this information and the Defence
25 submissions I required to address the decision of the Court of

1 Appeals of 11 February 2022 and to review Mr. Shala's detention.

2 Lastly, I have taken note of the fact that the SPO does not
3 object to the requested extension.

4 In these circumstances, I consider that good cause within the
5 meaning of Rule 9(5)(a) of the Rules has been demonstrated warranting
6 the requested extension.

7 In this regard, I observe also that Mr. Shala has waived his
8 rights to have his detention reviewed before the expiry of the
9 two-months time limit set out in Article 41(10) of the Law and
10 Rule 57(2) of the Rules.

11 Accordingly, I hereby order the Defence to provide its
12 submissions by no later than Wednesday, 30 March 2022. The response
13 and reply shall be submitted in accordance with the timeline set out
14 in Rule 76 of the Rules.

15 This concludes my first oral order.

16 The second matter I would like to discuss is the request from
17 the Victims' Counsel, which is filing F00151.

18 And for this, Madam Court Officer, can we go into private
19 session, please.

20 [Pre-Trial Judge and Court Officer confer]

21 JUDGE GUILLOU: So, Mr. Laws, I am informed that due to the fact
22 that you attend remotely, unfortunately, you cannot attend a private
23 session, which is problematic, because this concerns the request that
24 you made in filing F00151.

25 So I'm unable to give you the floor on this, but I think you do

1 not need to add anything to this filing. I will probably ask the
2 parties if they have anything to respond to this filing. If they
3 have, we will not have a discussion today and this will be done by
4 written rulings. If they don't have anything to respond, then an
5 oral ruling is possible. And I may give a couple of minutes to the
6 parties if they want to review the filing.

7 No, I see the Prosecutor who tells me that he's ready.
8 Mr. Prosecutor, just very generally, no detail about the filing, just
9 if you have any comment on this, please. And if you have, then we
10 will not proceed.

11 MR. DE MINICIS: We support the relief requested by
12 Victims' Counsel, Your Honour.

13 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

14 Mr. Gilissen.

15 MR. GILISSEN: Yes, Mr. President. We defer to the wisdom of
16 the Court. Thank you.

17 JUDGE GUILLOU: Thank you very much, Mr. Gilissen. Thank you to
18 the parties.

19 I will now move into private session, and I will ask the
20 Registry to keep the transcript for Mr. Laws.

21 [~~Private session~~] Pursuant to instructions of
22 Pre-trial Judge CRSPD#21 reclassified to PUBLIC

23 THE COURT OFFICER: Your Honours, we are now in private session
24 and the outgoing audio is muted to Mr. Laws.

25 JUDGE GUILLOU: Thank you, Madam Court Officer.

I will now issue my second oral order.

1 Considering that the victim participating in the proceedings
2 confirms that he seeks anonymity towards the accused and the Defence,
3 I hereby order the continued application of the protective measures
4 under Rule 84(d) and (e) (i) of the Rules for the reasons identified
5 in paragraphs 37 to 40 of my decision of 15 December 2021 without
6 prejudice to the variation of these measures at a later stage,
7 including by the Trial Panel, if and when the need arises.

8 Furthermore, Victims' Counsel shall submit a public redacted
9 version of filing F00151 without delay.

10 This concludes my second oral order.

11 And, Madam Court Officer, we can move back to public session.

12 [Open session]

13 THE COURT OFFICER: Your Honours, we are back in public session.

14 JUDGE GUILLOU: Thank you, Madam Court Officer.

15 Let's now move to the first topic that was listed in the
16 Scheduling Order, which is disclosure. I will give the floor to the
17 parties on the disclosure of each category of material, as usual,
18 starting with the Rule 102(1) (b) material, which is the material the
19 SPO intends to present at trial; the Rule 102(3) material, which is
20 the material relevant to the case as listed by the SPO; the Rule 103
21 material, which is exculpatory material; the Rule 107 material, which
22 is protected material for which the consent of the provider is
23 requested.

24 Just before doing so, I noticed that disclosure package 36,
25 which was released by the SPO on 23 February 2022, does not contain

1 any documents.

2 Could the SPO elaborate on the reasons why this disclosure
3 package was empty so we have explanations on the record?

4 Mr. Prosecutor.

5 MR. DE MINICIS: Most certainly, Your Honour.

6 As we have already informed the Defence, we withdrew disclosure
7 of two previously disclosed items that were disclosed in January.
8 And my understanding is that the withdrawal of these two documents
9 from the Legal Workflow system prompted the release of an empty
10 disclosure package; that would be package 36.

11 We did not mean to include anything in that package. We just
12 withdrew items and that was the technical consequence of that action
13 on our side.

14 I hope that satisfies the Court.

15 JUDGE GUILLOU: So it is a function of Legal Workflow that could
16 be improved.

17 Mr. Nilsson, do you want to add any explanations, as the Legal
18 Workflow master in this courtroom.

19 MR. NILSSON: If I'm the Legal Workflow master in this room, we
20 have a problem.

21 No, I've nothing to add on this, unfortunately.

22 JUDGE GUILLOU: Maybe if you could follow up and see if this
23 kind of function could be deactivated for the future, because there
24 is no need to have an empty disclosure package because I guess it
25 triggers a lot of questions from the parties and from the Bench,

1 obviously.

2 MR. NILSSON: Most certainly, Your Honour. We will follow up.
3 Thank you.

4 JUDGE GUILLOU: Thank you Mr. Nilsson.

5 Let us now move to the material the SPO intends to present at
6 trial.

7 I thought we would be done with this category of material, but
8 unfortunately it seems that it's not the case. Because on
9 17 February 2021, the SPO gave notice of disclosure of one new item
10 falling under Rule 102(1)(b) and further sought leave to add this
11 item to the list of materials to be relied upon at trial.

12 On 2 March, the Defence indicated that it does not oppose the
13 request but that, as a result of the delayed disclosure, it has to
14 reassess the material it has already processed which causes delays in
15 the preparation of its case.

16 The Defence also noted that it reserved its right to seek an
17 appropriate remedy for the prejudice suffered as a result of the
18 delayed disclosure.

19 At the outset, I note that the time limit for the disclosure of
20 material falling under Rule 102(1)(b) of the Rules has expired.
21 Thus, as opposed to disclosing the item in question, the SPO should
22 have first requested permission to do so.

23 The parties cannot decide on their own timeline. We have a
24 legal framework, and I intend to enforce it.

25 So I will ask the SPO to recall its submissions and the Defence

1 to respond. And, first, could the SPO indicate if we need to go into
2 private session to address this matter?

3 MR. DE MINICIS: I don't think that will be necessary,
4 Your Honour. I think I can make my submissions in public session.

5 JUDGE GUILLOU: Thank you. Then you can proceed,
6 Mr. Prosecutor.

7 MR. DE MINICIS: Your Honour, with the Court's leave, I will
8 address this issue briefly. But at the outset, I would just like to
9 remark the fruitful *inter partes* cooperation that we have enjoyed
10 with the Defence since the last Status Conference. Thanks to
11 frequent, frank, and open communications, and thanks to the Defence's
12 professionalism, we have been able to resolve a number of issues
13 *inter partes*. We look forward to continuing to do so, as the
14 proceedings proceed towards the trial stage.

15 Now coming to Your Honour's question. The Prosecution is aware
16 of the deadlines imposed by Your Honour, including that for the
17 disclosure of Rule 102(1) materials. We felt it was our obligation
18 to disclose this document. And as we explained, this handwritten
19 document was translated and processed for disclosure as soon as it
20 became apparent that the report that we had disclosed concerning
21 these handwritten notes did not contain all the information contained
22 in the notes.

23 Now, this was a highly unusual situation, Your Honour, because
24 generally these handwritten notes essentially reproduced a verbatim
25 record of the first meeting that SITF staff had with that witness.

1 It was a situation that we did not expect.

2 Upon review of these notes, we realised that, in fact, these
3 notes were an almost verbatim record of the meeting. We went to
4 compare them with what we had disclosed, and we realised that we owed
5 the Defence more information than was contained in the notes, and
6 that's why we proceeded to the disclosure, requesting leave to add
7 them to our exhibit list.

8 But we understand that Your Honour's preference in this regard
9 and instructions are to request leave should any further disclosure
10 become necessary, and we'll certainly be doing so.

11 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

12 Mr. Gilissen, please.

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

14 On the disclosure on Rule 102(1)(b), we received a disclosure of
15 some of the withheld items from the SPO. It contains 12 items
16 covered by the 12 July decision, and we are waiting for the fate of
17 two of them. All we can say at this stage is that we encourage the
18 SPO to reassess the need of withholding its items to avoid any kind
19 of difficulties 30 days before the trial, because we could have some
20 problem to discover some new elements, and I would like to avoid this
21 situation.

22 So it leads me to my second point, the second point concerning
23 the disclosure of a previous statement of a witness. We didn't
24 oppose to the addition to the list of exhibits of these new items
25 because, despite the late disclosure, because this was a very late

1 disclosure, we believe that this document will be relevant for the
2 Defence. But we have to note that this late addition to exhibit list
3 should be treated with high conscious.

4 The reality, Your Honour, that we always are in a situation
5 where we have to reassess this prior statement in light of all the
6 other statements already received before concerning this witness.
7 And I would like everyone to realise this is prejudicial for the
8 Defence, I want to say, for its efficient preparation for the trial.

9 My final point on this issue is that I kindly, but strongly,
10 invite the SPO to carefully review the material for the disclosure
11 under Rule 103, because we believe these items should have been
12 disclosed of exonerating material at an even earlier stage. This
13 would have been better for our organisation. I regret to be obliged
14 to come back on works already made, but I understand all the
15 difficulties we have all to face.

16 Thank you, Mr. President.

17 JUDGE GUILLOU: Mr. Gilissen, do you wish to ask for any remedy?

18 MR. GILISSEN: The damage is done, Mr. President. Now we just
19 have the hope to receive in the proper way all the documents we have
20 to receive.

21 JUDGE GUILLOU: Thank you, Mr. Gilissen.

22 Mr. Prosecutor, do you want to reply?

23 MR. DE MINICIS: Briefly, Your Honour.

24 We don't accept that the prejudice that counsel states stem from
25 this disclosure. It's, in fact -- we don't accept that there was any

1 prejudice.

2 A note of the meeting with this witness was already disclosed to
3 the Defence.

4 Now, it is true that the handwritten notes contain more details,
5 but these are details that were already contained -- this information
6 is already contained in other statements of this witness. To the
7 extent that there may be details that were not contained there --
8 we're talking about details, Your Honour. There's no new facts.
9 It's not a change of direction of the Prosecution case. So when we
10 hear about prejudice, we are sceptical and we actually take issue
11 with that and reject the proposition.

12 JUDGE GUILLOU: Mr. Aouini, very briefly then, please.

13 MR. AOUMINI: Thank you, Your Honour.

14 We don't accept the recognition and acknowledgement of a
15 prejudice, and we can tell Your Honour at this stage we identified at
16 least three discrete facts or elements that we did not see in other
17 statements.

18 Mr. Gilissen has pointed that we believe -- and this is the
19 reason we have to put it in the record, that we didn't oppose this
20 document, the addition to the exhibit list, is that it is relevant
21 for the Defence. And we invited the SPO to reassess whether it
22 should be disclosed under the Rule 103.

23 We have multiple statements from this witness. And without
24 having the full picture of all the elements in their chronology,
25 having a late disclosure of one document in the middle of the

1 chronology leads us and forces us to reassess a number of issues.
2 This is not an easy task. And the prejudice is there on one part if,
3 indeed, this is Rule 103 material it should have been disclosed way
4 before. And, of course, because we do not accept that the deadline
5 should be skipped in the disclosure of material that will be used at
6 trial.

7 This is our basic right, Your Honour. Once we assess with other
8 things the extent of the prejudice and the impact of this late
9 disclosure, this is a discrete fact, it's a couple of items. But in
10 general, when we put this in a general context, we can move
11 Your Honour for a remedy. But not on a single occurrence. This is
12 not our practice.

13 Thank you, Your Honour.

14 JUDGE GUILLOU: Thank you, Mr. Aouini.

15 Having heard the parties, I will issue a third oral order.

16 I note that while the newly disclosed item contains some
17 additional information, the primary information contained in this
18 item had already been provided to the Defence by means of an item
19 previously disclosed in accordance with the relevant time limit.

20 Furthermore, the Defence does not object, as such, to the
21 disclosure.

22 In addition, I observe that the SPO has disclosed merely one
23 item, and the case file is yet to be transmitted for trial.

24 On this basis, I consider that this allows sufficient time for
25 the Defence to assess this disclosure, even though it indicates that

1 it will lead to a delay.

2 In these specific circumstances, I grant the SPO's request to
3 add this item to the list of materials to be relied upon at trial.

4 Furthermore, the SPO shall submit a public redacted version of
5 filing F00149 without delay.

6 Similarly, the Defence shall submit a public redacted version of
7 its response, which is filing F00162, after receiving the public
8 redacted version of the SPO's request.

9 And this concludes my third oral order.

10 Mr. Prosecutor, I've previously underlined the necessity of
11 seeking judicial authorisation regarding disclosure-related matters
12 to the SPO. I emphasise that I don't intend to entertain any
13 disclosure matters in relation to which the SPO proceeds on its own
14 motion prior to requesting judicial authorisation, and I hope this is
15 clear.

16 MR. DE MINICIS: This is understood, Your Honour.

17 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

18 Before we move to the Rule 102(3) material, I would like to ask
19 the parties if they have any submissions on the new witness entities
20 created in Legal Workflow.

21 In its written submissions, the SPO indicated that it will start
22 linking their Rule 102(1) material to the relevant witnesses. It
23 also noted that the process is ongoing and will be concluded before
24 the start of the trial.

25 The Defence indicated that these entities, in their current

1 form, are of little use as they do not link the disclosed material
2 with the proposed witnesses in question.

3 I would like the parties to indicate if *inter partes* discussions
4 are ongoing on this topic, and if the Defence is satisfied with the
5 presentation of the witness entities in Legal Workflow, and the pace
6 of the linkage by the SPO.

7 I would like to give advance notice to the parties that I intend
8 to set a deadline for the completion of *inter partes* discussions on
9 this matter at the end of today's Status Conference.

10 I further invite the Defence to indicate if they intend to seize
11 me on this matter.

12 Mr. Prosecutor first.

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

14 We pretty much stand our written submissions in that the linking
15 is in the works. We have, I understand, five witnesses which are
16 almost ready to be released with the related and associated documents
17 and exhibits, and we'll be doing so as soon as possible.

18 This is the extent of the update that I can give Your Honour at
19 this time.

20 JUDGE GUILLOU: And I'm sure you know what's the question
21 coming.

22 MR. DE MINICIS: Yes.

23 JUDGE GUILLOU: What does "as soon as possible" mean? Because,
24 as we all know, when you put "as soon as possible" in any piece of
25 rule or regulation, it doesn't mean much. So I always prefer to have

1 a number.

2 MR. DE MINICIS: Your Honour will be pleased to hear that "as
3 soon as possible" means next week.

4 JUDGE GUILLOU: I am pleased to hear that. Thank you,
5 Mr. Prosecutor.

6 Mr. Aouini.

7 MR. AOUINI: Thank you, Your Honour.

8 Just to confirm that on the day of the release of the witness
9 entities, empty folders at that stage, we happened to have a meeting
10 with our colleagues from the SPO and we addressed this matter. We
11 came to the agreement that they will not only populate the witness
12 entities with the full names, last names and first names, which is
13 important for us, but also - and most importantly - make the linkage
14 between the documents, which is the purpose of these witness
15 entities.

16 We welcome this new information, that we have part of the
17 witness entities that will be disclosed next week, and we welcome
18 your deadline for the matter to speed up. But we are in agreement
19 that it is a matter of high importance between the parties.

20 Thank you, Your Honour.

21 JUDGE GUILLOU: Thank you, Mr. Aouini.

22 Just a follow-up question to the Prosecution. You mentioned
23 that it is going to be next week for five witnesses. And for the
24 other witnesses?

25 MR. DE MINICIS: Your Honour, for the other witnesses, at the

1 moment I'm not in a position to give an exact date, but we will be
2 working continuously on this matter, and we will be releasing
3 witnesses -- we will be linking documents to the already released but
4 somewhat empty at the moment witness entities as we proceed and as
5 soon as possible. This time for "as soon as possible" I do not have
6 any more precise indication.

7 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

8 If you could keep the Defence informed about the pace of the
9 linkage, that would be much appreciated so that the Defence can take
10 this into consideration, if they have any comment both on the linkage
11 itself and the pace of the linkage.

12 MR. DE MINICIS: We will certainly do so, Your Honour.

13 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

14 Let us now move to the disclosure of evidentiary material
15 relevant to the case, which is the Rule 102(3) material.

16 The SPO indicated in its written submissions that it has
17 disclosed all materials falling under Rule 102(3) requested by the
18 Defence, with the exception of documents which are included in the
19 pending protective measure requests and documents falling under
20 Rule 107.

21 Given that I ruled on the two outstanding protective measure
22 requests earlier this week, I invite the SPO to confirm that only
23 disclosure of documents falling under Rule 107 and the items for
24 which I decided to defer my decision this week is pending for the
25 Rule 102(3) material requested by the Defence.

1 In its written submissions, the Defence indicated that the
2 parties are making efforts to resolve *inter partes* all issues arising
3 related to disclosure. However, the Defence repeated its concern
4 about the insufficiency of the description of some of the items
5 listed in the Prosecution's Rule 102(3) notice.

6 It also noted that important material was only identified
7 following a number of requests to the SPO.

8 The SPO, on the contrary, still considers that the notice is
9 sufficiently detailed and confirmed its availability for *inter partes*
10 discussions to clarify the description of some items on a
11 case-by-case basis.

12 I welcome these *inter partes* discussions, but they cannot last
13 forever. Disclosure of Rule 102(3) material has been ongoing for
14 nearly half a year now, and it's now time to finalise these
15 discussions.

16 So, as I did earlier, I would like to give advance notice to the
17 parties that I intend to set a deadline for submissions of any
18 request regarding the disclosure process. And I further invite the
19 Defence to indicate if they wish to file any request regarding the
20 description of the items listed in their Rule 102(3) notice or any
21 other request related to the disclosure process.

22 Mr. Prosecutor.

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

24 With regard to the disclosure of the items on the Rule 102(3)
25 list, I can confirm that we will be disclosing the items ruled upon

1 by Your Honour in the two protective measure decisions within the
2 deadline and according to the modalities as set by Your Honour.

3 And that there are a number of Rule 107 documents. We'll be
4 discussing those later in the agenda. But they will also be added,
5 now that we've obtained clearance, to the Rule 102(3) list, after
6 seeking leave to do so.

7 But we've also found another document which does not fall under
8 Rule 107 and that was requested by the Defence but that we have not
9 disclosed. We will be -- the Defence is informed and we will be
10 disclosing this document as soon as possible. It's a document in
11 Serbian language which we will be providing with a translation, and
12 we will be disclosing that without delay, Your Honour.

13 With regard to the descriptions of the items on the Rule 102(3)
14 list, we --

15 JUDGE GUILLOU: Mr. Prosecutor, just before we move to the
16 description, if you don't mind, is there any reason for this late
17 disclosure, first; and, second, can you confirm that you don't
18 dispute the materiality for the Defence?

19 MR. DE MINICIS: I can confirm that we do not dispute the
20 materiality for the Defence.

21 The document, Your Honour, we were waiting for a translation,
22 and it should have been included in a previous disclosure, and it was
23 not.

24 JUDGE GUILLOU: Thank you. You can proceed with the
25 description --

1 MR. DE MINICIS: Yes.

2 JUDGE GUILLOU: -- of the items.

3 MR. DE MINICIS: With regard to the descriptions, Your Honour,
4 further to additional discussions with the Defence we have reached an
5 agreement. And we will be reviewing the outstanding documents in our
6 Rule 102(3) list which have not yet been requested by the Defence or
7 otherwise disclosed to them; for instance, pursuant to Rule 103. We
8 have communicated to them that we will be beginning this work without
9 delay, and we will be in a position to inform them when -- and
10 Your Honour, of course, when a revised list -- revised description
11 for these outstanding items will be ready.

12 So we believe that by the end of next week, we will be in a
13 position to have a fairly precise indication of when we can provide
14 these revised descriptions to the Defence.

15 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

16 Mr. Gilissen, please.

17 MR. GILISSEN: Thank you, Mr. President.

18 About the disclosure on Rule 102(3), the notice of items
19 relevant to the Defence, and purely on this basis, we can report that
20 we have selected the items that the SPO list, its supplemental list,
21 and we receive all of them. We received all of them in the
22 Package 32 on 8 February 2022.

23 So what remains now, as you say, we are waiting for the material
24 that we selected and for which protective measures are involved.

25 We just have to add that we held fruitful *inter partes*

1 discussions, as you know. And our colleague of the SPO, we are
2 discussing about the description of the items. That's a big issue,
3 of course. And the notice. And about other things. But I think we
4 will continue to endeavour our situation and discussions, that's
5 sure. I am very confident about this. I think we are in progress in
6 this situation.

7 Thank you.

8 JUDGE GUILLOU: Mr. Gilissen, can you confirm that you will not
9 have more Rule 102(3) items requests from the notice that the
10 Prosecution sent you?

11 MR. GILISSEN: [Microphone not activated].

12 JUDGE GUILLOU: Sure. Mr. Aouini, please.

13 MR. AOUINI: Thank you, Your Honour.

14 Just for the technical issue. And after the discussions we had
15 today with our colleagues of the SPO informing us that they acceded
16 to our request to review the descriptions of the items that we have
17 not selected. So this was the main issue we had in the last Status
18 Conference.

19 Obviously we commend our colleagues' reasonableness and courtesy
20 in acceding to our request, which is fair. We have proceeded with a
21 list of examples of why we need specifics in certain items. Now that
22 we will receive new descriptions of items that we have not selected,
23 we should be allowed some time, because this is what we wanted to
24 avoid, to miss documents due to lack of descriptions. We will need
25 some time to review them and point to the documents that we would

1 have otherwise selected.

2 So at the time we will receive a new update, that would be a
3 timeframe to set for us to select from.

4 And, as Your Honour knows, for the supplementary list, we acted
5 without deadlines but we acted very quickly, both in terms of
6 selection of the documents and disclosure from the other side. So
7 we're endeavouring.

8 Thank you, Your Honour.

9 JUDGE GUILLOU: Thank you, Mr. Aouini.

10 Let's talk timelines then. Mr. Prosecutor, when will you be
11 able to provide the Defence with an updated list?

12 MR. DE MINICIS: Your Honour, we will be in a position to have
13 that estimate once we start working on this review and we see at what
14 pace we can proceed with the resources we have.

15 As I said, I think that by the end of next week we'll be able to
16 provide a fairly, hopefully accurate, estimate, which we'll be happy
17 to inform Your Honour about as well, if Your Honour would like that.

18 JUDGE GUILLOU: So end of next week you will be able to inform
19 me of --

20 MR. DE MINICIS: And the Defence.

21 JUDGE GUILLOU: -- and the Defence of when your updated notice
22 will be able to be finalised; correct?

23 MR. DE MINICIS: Yes, Your Honour. There are approximately 1700
24 items that have not been requested by the Defence or otherwise
25 disclosed by the Prosecution *proprio motu*. So that might take a bit

1 of time. It requires opening documents and we need to take stock of
2 the situation and evaluate the time that the task requires.

3 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

4 Mr. Aouini or Mr. Gilissen, how long do you think you will need
5 once you get the updated list? But then, of course, it depends if
6 there is one general update or if it's updated piece by piece.

7 MR. AOUINI: Your Honour, we proceeded with an Excel spreadsheet
8 in the first parts of the process of the notice. If we receive
9 batches of updates, we can proceed with those. Obviously, we will
10 try to move as soon as possible to select those that are relevant to
11 us.

12 For the complete notice, we had around four weeks or six weeks.
13 We believe that two weeks, this is probably half of the amount. We
14 have gone through a lot them, but we have to go through them with
15 fresh eyes. So maybe two weeks after we received the updated list
16 could be sufficient for us to make our selections.

17 JUDGE GUILLOU: Thank you, Mr. Aouini.

18 Mr. Prosecutor, do you --

19 MR. AOUINI: Sorry.

20 JUDGE GUILLOU: Sorry.

21 MR. AOUINI: Sorry, Your Honour. I had one more point on the
22 notice.

23 JUDGE GUILLOU: Please --

24 MR. AOUINI: -- and on the descriptions.

25 There is one pending issue we are still discussing with the

1 SPOs. We didn't receive a number of the items we have selected
2 because they are contained in some other documents, or duplicates of
3 other documents, and we are continuing the discussions with the SPO
4 to indicate for which items there are duplicates of.

5 This helps us to ascertain what we have because sometimes the
6 descriptions is not complete, and the description of a full document
7 is not the same as the extract of it. This helps our process as well
8 to speed up the -- and be -- and to make it more sufficient.

9 Just to put it on the record. Thank you.

10 JUDGE GUILLOU: And last question on this category of items.

11 Do the parties think they can resolve everything *inter partes*?
12 I mean, do you think that you are able to satisfy the Defence
13 expectations in terms of precision for the notice; and, on the other
14 side, do you expect that the Prosecution will be able to provide you
15 with enough information and deliver it in a timely fashion so that
16 you can finalise your investigations in a reasonable timeframe?

17 Mr. Prosecutor.

18 MR. DE MINICIS: Yes, Your Honour. The Defence requests so far
19 have been reasonable, so we have no doubt that -- we have no reason
20 to believe that we won't be able to answer them in a satisfactory
21 manner.

22 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

23 Mr. Aouini.

24 MR. AOUMINI: Yes, thank you, Your Honour.

25 The big news and the game changer came today, where the SPO

1 accepted to update the descriptions. We believe this was the biggest
2 holdup that could lead us to seize you with a request for rulings.
3 So we are very optimistic that we will resolve it out of court. We
4 are convinced that we will be able to do it.

5 Thank you, Your Honour.

6 JUDGE GUILLOU: Thank you, Mr. Aouini.

7 Let's be optimistic then, especially in terms of the time needed
8 to update the description of the 17.000 documents. And I'm
9 especially looking at the disclosure officers in the back, because a
10 lot of things will rely on your efficiency.

11 Let us now move to the Rule 103 material.

12 In its written submissions, the SPO indicated that it had not
13 completed the review of all material falling under Rule 102(3) for
14 potentially exculpatory material but was on track to do so before
15 today.

16 So I invite the SPO to give an update on their review, and I
17 strongly hope that the SPO can confirm that it is now finalised with
18 the review of exculpatory material.

19 I also invite the SPO to indicate if protective measures are
20 requested for this category of material, given that it indicated in
21 its written submissions that it aimed to file a comprehensive request
22 for protective measures after it has finished its review.

23 And, finally, I invite the SPO to indicate whether it has
24 additional exculpatory material to be disclosed to the Defence.

25 Mr. Prosecutor.

1 MR. DE MINICIS: Your Honour, before I begin, just a matter, for
2 the record to be correct. The descriptions that we need to review
3 are not 17.000 but 1700. I know that Your Honour probably understood
4 us, but the record now speaks about a much larger number and so I
5 wanted to be clear that it's, in fact, ten times less than that.

6 JUDGE GUILLOU: I was probably scaring everybody with this, but
7 it's indeed 1700, which means that it can be ten times faster, no?

8 MR. DE MINICIS: Your Honour.

9 JUDGE GUILLOU: So it's actually good news for the pace of our
10 proceedings.

11 MR. DE MINICIS: Now, Your Honour, with regard to the disclosure
12 of exculpatory items, we have completed our review and disclosure of
13 exculpatory material contained in the Rule 102(3) notice.

14 We have concurrently, today, filed a request for protective
15 measures for five items. Now, we have filed it late this morning, so
16 it hasn't been distributed yet, but I understand distribution is in
17 the works, and we are hopeful it will be distributed to Your Honour
18 today. The request is filed *inter partes* and strictly confidentially
19 so far. We'll be following up with a confidential redacted version
20 without delay.

21 So with regard to documents that we have not disclosed to the
22 Defence, we are not aware at the moment of other potentially
23 exculpatory materials. Of course, with the caveat that the office
24 continues to investigate, and so there will be reviews periodically.
25 But, at the moment, Your Honour, we can communicate that we have

1 finished this review and disclosure, apart from the five items that
2 Your Honour will have to rule on.

3 JUDGE GUILLOU: Thank you, Mr. Prosecutor. This is excellent
4 news. And I just checked. I still haven't receive the request, but
5 I'm sure it's going to be processed before the deadline.

6 Mr. Gilissen or Mr. Aouini? Mr. Gilissen.

7 MR. GILISSEN: Yes, thank you, Your Honour.

8 For the exonerating material, we take note of the progress of
9 the SPO and its review of the notice for this exonerating material.
10 We received 380 documents. But yesterday and today, we received
11 more. We received Package 38, 39. It means 111 items yesterday and
12 25 today. So things are running, I can say.

13 And our colleague, before yesterday, informed us that a similar
14 number of items should be expected in future, so I suppose we will be
15 busy with, among the others, all these elements of voluminous
16 materials already received and, of course, the one yet to be
17 received. So the next week could be very busy.

18 Thank you.

19 JUDGE GUILLOU: Thank you, Mr. Gilissen.

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

21 MR. DE MINICIS: Yes, Your Honour. Just one thing I wanted to
22 clarify. I should have done it earlier.

23 The 111 items that were part of one of the two packages were
24 documents that we had already disclosed to the Defence, and we
25 repackaged them under Rule 103. So these were not new documents.

1 JUDGE GUILLOU: And they had been disclosed under Rule 102(1)(b)
2 or 102(3)?

3 MR. DE MINICIS: 102(3), Your Honour.

4 JUDGE GUILLOU: 102(3), okay. Thank you for this precision,
5 Mr. Prosecutor.

6 Let us now move to the Rule 107 material. In its written
7 submissions, the SPO indicated that one additional document was
8 cleared at the end of January 2022. However, for 12 documents
9 clearance has been denied, and the SPO will be filing a Rule 107(2)
10 request in this regard.

11 I would like the SPO to give more details on this material, the
12 anticipated timeline for obtaining clearance and completing
13 disclosure, and the timeline of any request related to Rule 107
14 material.

15 Mr. Prosecutor.

16 MR. DE MINICIS: Yes, Your Honour. Since our written
17 submissions, we have learned that more documents have been cleared.
18 We are talking about approximately ten documents cleared under
19 Rule 107, and approximately the same number of documents for which
20 clearance has been denied.

21 So as we announced, a Rule 107(2) application is forthcoming in
22 that regard, as required by the rules, in which we will be listing
23 the documents for which clearance has been denied, as well as
24 documents that have been -- for which clearance has been provided
25 with redactions applied by the provider.

1 These documents, approximately, as I said, ten, will, of course,
2 be added through the appropriate procedural avenue to the Rule 102(3)
3 list. We expect to be able to work on these two filings in the
4 coming weeks as soon as practicable, considering concurrent
5 obligations, some of which we will be discussing further down in the
6 agenda.

7 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

8 Mr. Aouini, please, do you want to -- or Mr. Gilissen, do you
9 want to add anything?

10 MR. GILISSEN: Mr. President, we just take note. We are waiting
11 for. That's all.

12 JUDGE GUILLOU: Thank you, Mr. Gilissen.

13 Let us now move to the issue of translations of filings and
14 evidentiary material.

15 In its submissions, the SPO indicated that it has not received
16 further requests for translation since the last Status Conference.
17 The SPO also maintains its general position that it is only obliged
18 to provide translations in accordance with the rules set forth on the
19 Framework Decision on disclosure.

20 I would like to hear the parties on any further issues regarding
21 translations, and I specifically invite the Defence to indicate if it
22 intends to file any request regarding translation of items listed in
23 the Rule 102(3) notice.

24 Mr. Prosecutor first.

25 MR. DE MINICIS: Yes, Your Honour. I do have an update for the

1 issue of translations compared to what we submitted in writing, which
2 is that the translation and transcription of videos that we disclosed
3 in Package 34 are now ready, and we will be disclosing them to the
4 Defence shortly.

5 Further, the Defence has sent an *inter partes* request for
6 translation of four items, two of which we have disclosed pursuant to
7 Rule 102(1)(b), and the other two pursuant to Rule 103. These
8 translations are also ready and will be disclosed shortly.

9 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

10 Mr. Gilissen, please.

11 MR. GILISSEN: Yes, Mr. President.

12 We have to report that we recently requested from the SPO a
13 translation of a number of documents on Rule 102(1)(b). We received
14 these documents, and we want to thank our colleagues from the SPO for
15 that.

16 So more recently, we requested translation of two documents on
17 the same basis. And the SPO indicate that they will provide us with
18 some Albanian translations. So it is very useful for them and nice.
19 Thank you, really, I thank the Prosecutor for that.

20 Finally, as a matter of courtesy, we request translation of
21 documents disclosed under Rules 102(3) and 103, and the SPO indicates
22 their agreement to provide us with full or in-part translation. We
23 thank them for the professional courtesy.

24 That's really a pleasure to try to work in such conditions. I
25 want to underline this.

1 Thank you.

2 JUDGE GUILLOU: Thank you, Mr. Gilissen.

3 Mr. Nilsson, any submissions related to translations? Is there
4 any backlog in what has been requested by any of the parties?

5 MR. NILSSON: No. Just maybe an update, Your Honour.

6 So the pre-trial brief which was filed at the end of January,
7 that has been translated. Upon request, it was provided to the
8 Defence already on 9 February, and it has then later been revised and
9 filed on 25 February.

10 And as far as the Registry is concerned, there are no
11 outstanding prioritised requests for translations.

12 Thank you.

13 JUDGE GUILLOU: Thank you, Mr. Nilsson.

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

16 Before discussing the matter further, I would like to ask the
17 SPO whether it is necessary to go into private session in this
18 matter.

19 MR. DE MINICIS: Your Honour, it might be prudent to do so.

20 JUDGE GUILLOU: Madam Court Officer, can we go into private
21 session, please.

22 [Private session]

23 [Private session text removed]

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15 [Open session]

16 THE COURT OFFICER: Your Honours, for the record, we are now
17 back in public session. And we had moved already to private session
18 when counsel for the Prosecution stood up. Thank you.

19 JUDGE GUILLOU: Thank you, Madam Court Officer. It was probably
20 one of the shortest private sessions ever in this court.

21 Mr. Prosecutor, you can proceed.

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

23 We have taken the necessary steps, from our side, to carry out
24 any outstanding measures and steps as soon as possible. Your Honour,
25 we are now waiting to hear back from the competent authorities, and

1 we will be ready to begin as soon as we receive this response.

2 Now, the timing of this response is not something that we can
3 control. Although, we've done all we can to ensure that this
4 response can come in the shortest possible time. Realistically,
5 Your Honour, we are hoping that we will be finished with this
6 investigation within the next two months. Hopefully less. Again, it
7 really depends on the timing of the response that we receive from the
8 competent authorities. As soon as we receive this response, we are
9 ready to start.

10 We believe that the completion of these investigations will not
11 take long. And as soon as completed, we will start processing any
12 evidence that these investigations generate for the prompt disclosure
13 to the Defence.

14 Now, I'd like to stress, Your Honour, that the evidence that we
15 expect will come out of these limited investigations will not change
16 the character of the Prosecution case and will not force the Defence
17 to rethink their case and strategy. As we stated before, this
18 evidence is -- we expect this evidence to be of corroborative
19 character, and for these reasons it is our position that these
20 pending limited investigative steps should not prevent the
21 proceedings from continuing to follow their course towards the trial
22 stage.

23 That concludes my submissions on this issue, Your Honour.

24 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

25 First of all, I'm a bit surprised, because in your written

1 submissions you mentioned the date of April, I think, early April, if
2 my memory is correct. So I was expecting that you would be done
3 earlier than that. Do you really need two months; do you think?
4 Because that's quite long, given where we are in the proceedings.

5 And the second thing is that I understand that you are not going
6 to be able to complete a new case from now, but, again, I stress that
7 we are more than two years after the indictment has been filed, and
8 we are nearly one year after the arrest of the accused. So I am a
9 bit surprised, to say the least, that we are still in this phase at
10 the moment.

11 MR. DE MINICIS: Your Honour, we understand the Court's concern.
12 And our time indication of two months is just not to give
13 expectations on matters that are somewhat out of our control.

14 As -- if we may go into private session, Your Honour, perhaps I
15 could explain myself a bit better.

16 JUDGE GUILLOU: Then we will move to private sessions for these
17 explanations.

18 Madam Court Officer, if you can proceed.

19 [Private session]

20 [Private session text removed]

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1 [Private session text removed]

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11 [Open session]

12 THE COURT OFFICER: Your Honour, we are back in public session.

13 JUDGE GUILLOU: Thank you, Madam Court Officer.

14 Mr. Gilissen, please.

15 MR. GILISSEN: Yes, Mr. President.

16 I can say we take note, but it's a little bit insufficient.

17 This is the real problem of this procedure. We are more than
18 20 years after the alleged facts. I understand absolutely the
19 problem of the Prosecutor, because, of course, we are meeting the
20 same.

21 So now it's long. And it seemed to me that a judicial control
22 could be a nice thing, because, really, I know that it's a delicate
23 question, and it's now very long, of course.

24 Thank you very much.

25 JUDGE GUILLOU: Thank you, Mr. Gilissen.

1 Mr. Prosecutor, in your written submissions filed on
2 17 February, you indicated that the SPO will endeavour to conclude
3 its additional investigative steps by 1 April 2022. So this is now
4 an old timeline that you cannot follow. Is it how I should
5 understand your submissions?

6 MR. DE MINICIS: Your Honour, we are still aiming for that
7 timeline, but I decided to give an update to the Court that takes
8 into account that what we're aiming for is not something that is
9 completely within our control. We're aiming for that. We're hopeful
10 that that can happen within that timeline, and we've taken all the
11 steps that we could in order to put the competent authorities in a
12 position to get back to us as soon as possible, by providing detailed
13 information, what we need, and other steps that our experience
14 teaches us enables competent authorities to respond more promptly to
15 these types of requests.

16 But that is, Your Honour, the extent of what we can do. And
17 we're just waiting to hear back from them. That's why today I
18 provided an estimate which may have surprised Your Honour, but it is
19 realistically it could be possible. Although, we hope not.

20 JUDGE GUILLOU: Thank you, Mr. Prosecutor. But you understand
21 that when you continue your investigations for two more months, it
22 means that in two months we're going to have new 102(1)(b) material
23 potentially disclosed to the Defence. Then it means that the Defence
24 cannot conclude investigations, which means that they cannot finalise
25 their pre-trial brief, which means that transmission of the case is

1 delayed by exactly the same number of months.

2 So that's what it means in practice. I mean, I understand the
3 reasons that you mentioned. But, still, I want to insist on the fact
4 that it has huge implications not only on the investigations but on
5 every step that has to follow in the pre-trial proceedings.

6 MR. DE MINICIS: Your Honour, again, I am hesitant to commit to
7 any specific date even though I understand the importance of that and
8 I understand why Your Honour is insisting that we are as precise as
9 possible. But I'm hesitant because, as I said, it is something which
10 is not fully within our control.

11 Now, when I said two months, in my mind I had also that within
12 this timeline we will complete also the disclosure-related steps to
13 these investigations. But, again, Your Honour, it is something that
14 -- I don't like to promise something that I can't control. And this
15 is the case, Your Honour, in which some parts of this process are
16 outside of our control. But we have done our best to ensure that the
17 other parties are in the best possible position to act quickly.

18 We can endeavour to keep Your Honour informed of any progress on
19 this front as soon as we receive information.

20 JUDGE GUILLOU: That would be much appreciated. I would also
21 invite you to inform the Defence as well.

22 Mr. Gilissen, you want to add something?

23 MR. GILISSEN: Yes, Mr. President. I want a fair trial for
24 Mr. Shala, and I want to be fair with the Prosecutor. But I have to
25 say I'm not convinced with the necessity of such investigation at

1 this moment. I am not sure that's really a necessity, and that's why
2 I consider that a judicial control could be a necessity and have real
3 necessity. Thank you.

4 JUDGE GUILLOU: Thank you, Mr. Gilissen.

5 Just one last remark, Mr. Prosecutor. In your two-months
6 timeframe, don't forget to include the time you have to factor in to
7 request the authorisation to disclose new Rule 102(1)(b) material.

8 MR. DE MINICIS: Your Honour, that is understood.

9 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

10 For the next point on the agenda related to Defence
11 investigations, I would like to turn to the Defence first.

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

19 In its written submissions, the Defence confirmed its intention
20 to file a pre-trial brief in due course but indicated that, at
21 present, it is impossible to provide an indication as to when it will
22 be in a position to do so.

23 As indicated in my Scheduling Order, I intend to set a timeline
24 for the next steps for the pre-trial phase. It is true that there
25 are a few items that have been recently disclosed to the Defence, but

1 the Defence now received the pre-trial brief from the SPO and a very
2 substantial part of the evidentiary material. So there is no reason
3 now for the Defence to delay its investigations.

4 So I invite the Defence to provide any additional information
5 and, notably, a clear timeline for its investigations and the
6 submission of a pre-trial brief, if any.

7 Mr. Gilissen, please.

8 MR. GILISSEN: Yes, Mr. President. We already have started with
9 our investigation and proceed with important steps. That's a very
10 big point in my opinion, Mr. President. However, we still have to go
11 on the ground during the months of March and April for investigation
12 for more important steps.

13 As I told you, as I said, we are working more than 20 years
14 after. To find some documents now, that's very painful and very
15 difficult. To find some witnesses in live could be a delicate
16 business too. And to find a reliable witness, it's a huge, difficult
17 business.

18 So I understand, of course, the will and the willing to proceed.
19 We are proceeding. And, really, that's really difficult. The
20 Prosecution's own investigation till some years. We're just starting
21 till some weeks in very high, difficult conditions. We had the
22 disease. We have some forbidden area where it was impossible to go.
23 So we need time. I don't say we need some years, of course, or even
24 some very important months, but really we need it. We need because
25 almost every day when we are on the ground, we discovered some

1 elements that could be really interesting for the Defence of
2 Mr. Shala.

3 And I want to say that in the meantime, we have made some
4 progress with the forensic part of our investigations. We expect to
5 continue this very important work during the next months and to be
6 able to tailor and focus our investigation when we have analysed and
7 processed all the material disclosed in the case. It's, as you said,
8 Mr. President, it's the next -- of course, it's still a difficult
9 task.

10 So that's why it is, in my opinion, totally premature now to be
11 able to have a concrete idea at this stage about the possible alibi
12 defence, but it could be. It could be. We are gathering some
13 elements. But an alibi defence is something very difficult, because
14 it must be a whole and not in part and not a puzzle. That's why we
15 need some time to be on the ground.

16 And it is the same about unique investigative opportunity. This
17 is the same about any commitment concerning the filing of a pre-trial
18 brief. We know and can confirm our intention to submit a pre-trial
19 brief on behalf of Mr. Shala. But in all honesty and transparency, I
20 can say that any discussion about a possible date concerning a PTB
21 now is totally unrealistic at this stage, because just what I said
22 before.

23 I don't say we need a lot of months, but things are building.
24 And so lately, more than 20 years after, of course, the process is
25 slow. I make my best for a process that's not too slow,

1 Mr. President. Thank you.

2 JUDGE GUILLOU: Thank you, Mr. Gilissen. You just said, and I
3 read the transcript, "I don't say we need a lot of months." Should I
4 interpret that as a few months will be sufficient?

5 MR. GILISSEN: A few months, Mr. President? What is the size of
6 a few months? So, in my opinion, before two, perhaps three months,
7 it seem to me. It's difficult. But I will be able, in my opinion,
8 to answer more properly during mid-May. I think so. I think we
9 could have a real possibility to provide a real quality answer.

10 JUDGE GUILLOU: Mid-May is already in two, three months,
11 Mr. Gilissen.

12 MR. GILISSEN: Yes, Mr. President. I know perfectly well. But
13 I can say even in public we have to go on the ground in March, in
14 April. If we succeed, if we will succeed in our research, no need
15 more. But it's a possibility to go one more time on the ground, it's
16 a possibility, and I don't want to hide it to Your Honour. Thank
17 you.

18 JUDGE GUILLOU: Thank you, Mr. Gilissen. So I take from your
19 submissions that you need at least two months, and then within two
20 months you will know if you need more; correct? Thank you,
21 Mr. Gilissen.

22 Mr. Prosecutor, do you wish to make any submissions?

23 MR. DE MINICIS: No, Your Honour. We don't have anything to
24 add. Thank you.

25 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

1 Mr. Aouini, you want to add anything?

2 MR. AOUINI: A couple of points, Your Honour. Two facts.
3 Important facts.

4 We received the PTB, and there are a lot of names in the PTB,
5 and there is evidentiary material in the PTB --

6 JUDGE GUILLOU: Just for the public, "PTB" is pre-trial brief,
7 so everybody understands.

8 MR. AOUINI: Pre-trial brief, sorry, Your Honour.

9 A number of names, to put it as general as possible, are
10 mentioned in the pre-trial brief for which there is evidentiary
11 material and for which there needs to be investigation. And so the
12 number of witnesses that the SPO chose to call in the trial is not
13 the only indication of what is needed for us to present and to frame
14 our defence.

15 This is a highly important element that we need to put on the
16 record.

17 The other element, Your Honour, is that Mr. Shala has spent the
18 last 20 years outside of the ground, which is an enormous factor in
19 our processes.

20 Those are the two points that we wanted to add and put on the
21 record in relation to the investigations. Thank you, Your Honour.

22 JUDGE GUILLOU: Thank you, Mr. Aouini.

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

25 We discussed this topic in several Status Conferences already,

1 but the parties have always indicated that they were not in a
2 position to make any progress on this issue so far. I note that the
3 parties have recently had some preliminary *inter partes* discussions
4 on how to most efficiently proceed on this matter. So the discussion
5 seems to be limited to the process, at this stage, and not to the
6 substance.

7 Again, this is nearly a year after the pre-trial phase begun, so
8 the SPO has started to draft a first set of proposed facts and
9 anticipates being able to forward those to the Defence before the
10 next Status Conference, if I understood correctly from the SPO's
11 written submissions.

12 But I want to stress to the parties that it is now time to
13 conclude these discussions. Either the parties are able to agree,
14 and this is the recorded in the case file, or they are not. And I
15 will take note of this in the hand-over document, but we will not
16 delay the proceedings for this, which is not necessary to go for
17 trial.

18 So I invite the parties to give a clear timeline for completing
19 their discussions. And I would also like to give advance notice to
20 the parties that I intend to set a deadline today in relation to this
21 matter at the end of the Status Conference.

22 Mr. Prosecutor.

23 MR. DE MINICIS: Yes, Your Honour. We have sent a set of facts,
24 proposed facts for agreement to the Defence, on February 22. And so
25 we are waiting for their response on these facts. And depending on

1 the response, there may be more attempts at finding further
2 agreement, but it's also possible that we will leave it at that.

3 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

4 Is your proposal exhaustive or are you going to make another
5 proposal?

6 MR. DE MINICIS: Well, Your Honour, as I said, we proposed a
7 number of facts for agreement that we consider, perhaps, to be more
8 palatable as a first attempt. And whether the Prosecution, and
9 perhaps the Court, wants to devote more time to attempt to propose
10 more facts I think will depend on the agreement that we manage to
11 reach on these facts which may be characterised as, perhaps, less
12 controversial, at least from the SPO's point of view.

13 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

14 Mr. Gilissen, please.

15 MR. GILISSEN: Thank you, Your Honour. We received a first list
16 of proposed point of agreement from our colleague of the SPO, and
17 that's a big issue. It is the first list or not.

18 I want to thank my colleague because we received an Albanian
19 translation of the list, and it's very simple for us to discuss with
20 Mr. Shala. On this list, I am able to say we will be able to provide
21 some answers in one week. I don't need more time, I think so. So
22 for the rest, it depends if there is a second list, of course,
23 Mr. President.

24 JUDGE GUILLOU: Thank you, Mr. Gilissen.

25 Mr. Prosecutor.

1 MR. DE MINICIS: Your Honour, I maintain my position that
2 whether there be a second list and a second attempt will depend on
3 the answer on the first attempt.

4 JUDGE GUILLOU: So this is a cliff-hanger. Nobody knows what's
5 going to happen. But I appreciate that the parties have moved on
6 since their written submissions, that the proposals has -- made a
7 formal proposal to the Defence, and I appreciate, Mr. Gilissen, that
8 you mentioned that one week should be enough for being able to get
9 back to the SPO on this matter.

10 So I invite the parties to keep this pace so the points of
11 agreements on matters of law and fact can be finalised within the
12 following weeks.

13 At this point, I will break for probably 25 minutes in a couple
14 of minutes. But before that, I would like to ask the parties whether
15 they have any other specific issues they would like to raise, issues
16 that were not on the agenda today.

17 Mr. Prosecutor.

18 MR. DE MINICIS: No, Your Honour. We don't. Thank you.

19 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

20 Mr. Laws, would you like to raise any specific issue?

21 MR. LAWS: [via videolink] Your Honour, no, thank you. We have
22 no submissions in relation to the topics on today's agenda. Thank
23 you.

24 JUDGE GUILLOU: Thank you, Mr. Laws.

25 Mr. Gilissen, please.

1 MR. GILISSEN: So, Mr. President, I would like now to raise the
2 issue concerning a particular procedure concerning a particular
3 witness.

4 JUDGE GUILLOU: Do you wish us to move into private session,
5 Mr. Gilissen?

6 MR. GILISSEN: Absolutely, Mr. President. Thank you very much.

7 JUDGE GUILLOU: Madam Court Officer, can we move into private
8 session, please.

9 [Private session]

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21 [Open session]

22 THE COURT OFFICER: Your Honour, we are back in public session.

23 JUDGE GUILLOU: Thank you, Madam Court Officer.

24 Before we adjourn this hearing, I will now set a tentative
25 calendar for the remainder of the pre-trial phase.

1 I remind the parties that in the order convening the present
2 Status Conference, I announced that in the absence of a proposed
3 timeline for the completion of the parties' pre-trial obligations, I
4 intended to set a calendar to this end on the basis of Rule 95(2) (a)
5 of the Rules.

6 In this regard, I note: First, that the SPO submitted the
7 indictment for confirmation in the present case on 14 February 2020,
8 now more than two years ago; that the indictment was confirmed on
9 12 June 2020; and that Mr. Shala was arrested on 16 March 2021 in the
10 Kingdom of Belgium and consequently transferred to the detention
11 facilities of the Specialist Chambers in The Hague on 15 April 2021.

12 I also emphasise that the charges brought against Mr. Shala are
13 of relatively limited scope.

14 Second, that the SPO has, in principle, completed its disclosure
15 of materials under Rule 102(1) (b) of the Rules with the exception of
16 anything to be disclosed related to their investigations; that the
17 disclosure process pursuant to Rule 102(3) of the Rules is nearing
18 completion; and that the SPO has reviewed its list of items pursuant
19 to Rule 103 of the Rules for exculpatory information and it has
20 disclosed significant numbers of such items.

21 And, third, I ruled -- that I ruled on the Defence preliminary
22 motions on 18 October 2021, and that the Court of Appeals upheld
23 these decisions on 11 and 22 February 2022.

24 Nonetheless, I note that despite the passage of a significant
25 period of time and, notwithstanding the progress achieved, a number

1 of pre-trial obligations and issues remain outstanding. In this
2 regard, I note, in particular, that: First, the Defence continues to
3 express concerns about the sufficiency of the description of some of
4 the items listed in the Prosecution's Rule 102(3) notice even though
5 the parties have made some progress in their discussions.

6 Second, that the Defence intends to object pursuant to
7 Rule 95(2)(e) of the Rules to the admissibility of evidentiary
8 material that has been disclosed on the basis of Rule 102 of the
9 Rules.

10 Third, that the SPO is continuing to run searches and checks to
11 ensure that all relevant potentially exculpatory content, in
12 particular, has been identified and disclosed.

13 Fourth, that the SPO continues to conduct investigations.

14 Fifth, that the Defence is unable to confirm, at present,
15 whether it will make any requests concerning unique investigative
16 opportunities pursuant to Rule 99(1) of the Rules.

17 Six, that the Defence is unable to indicate at present whether
18 it will provide notice of an alibi and/or grounds excluding criminal
19 responsibility.

20 Seventh, the Defence confirm its intention to file a pre-trial
21 brief in due course.

22 And, lastly, that the parties have indicated that they will
23 conduct *inter partes* discussions in the coming weeks.

24 In these circumstances, I take note of the fact that the parties
25 consider that they're not in a position to specify a timeline for a

1 number of pre-trial obligations. However, I remind the parties of
2 the accused's right to be tried within a reasonable time under
3 Article 21(4) (d) and the functions of the Pre-Trial Judge laid down
4 in Article 40 of the Law and Rule 95 of the Rules, in particular the
5 power to issue any necessary orders to ensure the case is prepared
6 properly and expeditiously for trial.

7 Therefore, I issue my fourth oral order on the procedural
8 calendar for the remaining steps of the pre-trial phase.

9 First, I set the tentative date for transmitting the case file
10 to the Trial Panel to 31 May 2022. In this regard, I wish to
11 emphasise that, while this is a tentative date, any request for
12 postponement must be based on compelling circumstances.

13 Second, the SPO shall submit any outstanding requests pertaining
14 to the disclosure process - in particular, requests concerning
15 protective measures - by no later than 18 March 2022. The Defence
16 shall submit any requests pertaining to the disclosure process by no
17 later than 8 April 2022. This deadline shall also apply to any
18 request the Defence wishes to make regarding the matter raised in its
19 submissions in private session before the break.

20 Third, the SPO shall, with the exception of any material subject
21 to any request regarding protective measures, complete all its
22 pre-trial disclosure obligations by no later than 22 April 2022, and
23 it shall submit a notice in the record of the present case providing
24 a detailed overview of the entire disclosure process by the same
25 time.

1 And, finally, the parties shall finalise their *inter partes*
2 discussions and submit their point of agreements on matters on law
3 and fact by no later than 8 April 2022.

4 This concludes my fourth and final oral order.

5 Before we adjourn this hearing, I would like to ask the parties
6 for their views on the date for the next Status Conference, which
7 could be scheduled on Thursday, 14 April 2022, at 9.30 a.m.

8 Mr. Prosecutor.

9 MR. DE MINICIS: We'll be available at that time, Your Honour.

10 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

11 Mr. Laws, please.

12 MR. LAWS: [via videolink] Your Honour, yes, I'll be available at
13 that time. Thank you.

14 JUDGE GUILLOU: Thank you, Mr. Laws.

15 Mr. Gilissen, please.

16 MR. GILISSEN: Yes, Mr. President. May I provide a full and
17 complete answer on Monday?

18 JUDGE GUILLOU: Absolutely. You may --

19 MR. GILISSEN: Thank you very much.

20 JUDGE GUILLOU: If you can indicate this to the Court Management
21 Unit, and we will either confirm this to all the parties or try to
22 identify another date if possible.

23 MR. GILISSEN: Okay. Thank you very much. Kind of you.

24 JUDGE GUILLOU: Thank you, Mr. Gilissen.

25 You will receive a Scheduling Order in due course that will

1 include the agenda before the Status Conference, as usual.

2 And this concludes today's hearing. I thank the parties and the
3 participants for their attendance. And, as usual, I thank the
4 interpreters, audio-visual technician, stenographers, and security
5 personnel for their assistance.

6 The hearing is adjourned.

7 --- Whereupon the Status Conference adjourned
8 at 4.45 p.m.

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