

1 Thursday, 14 April 2022

2 [Status Conference]

3 [Open session]

4 [The accused appeared via videolink]

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

6 JUDGE GUILLOU: Good morning, everyone. And welcome inside and  
7 outside the courtroom.

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

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

11 JUDGE GUILLOU: Thank you, Madam Court Officer.

12 Now I would kindly ask the parties and participants to introduce  
13 themselves, starting with the SPO.

14 Mr. Prosecutor, please.

15 MR. DE MINICIS: Good morning, Your Honour. Today for the  
16 Prosecution appearing are Bernhard Kuschnik, Associate Legal Officer;  
17 Margaux Portier, Associate Legal Officer; Valeria Bolici, Prosecutor;  
18 Moira van de Poel, intern; and Filippo de Minicis,  
19 Associate Prosecutor.

20 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

21 And now let me turn to the counsel for victims.

22 Mr. Laws, please. Mr. Laws, your microphone is muted, I think.  
23 Ah, so there is a problem with your voice. Now we still can't hear  
24 you. I see that your microphone is muted on the screen, it seems.  
25 And now your microphone is not muted on the screen, but I can't hear

1 you.

2 So let me turn to the AV booth. Madam Court Officer, can you  
3 check if the audio connection can be set up. Thank you.

4 Mr. Laws, can you hear me? So apparently there is a connection  
5 problem, so our technicians are going to work on it in the following  
6 minutes. In the meantime, can you let me know if you agree that I  
7 introduce you. You are Mr. Laws, you are the Counsel for Victims,  
8 and you are appearing alone on behalf of the victims today. And I  
9 see that you're nodding and that you're approving. Thank you,  
10 Mr. Laws. And we'll do our best so that you can speak in the  
11 following minutes.

12 But in any case, I can already see that you are connected with  
13 the audio, so you hear the hearing, which is, for the moment, the  
14 most important.

15 Let me now turn to the Defence.

16 Mr. Gilissen, please.

17 MR. GILISSEN: Thank you, Mr. President. I am Mr. Gilissen from  
18 the bar of Liege. I am here with Mr. Aouini, co-counsel of the Shala  
19 Defence team; and Mrs. Cariolu, who is our Case Manager. Thank you  
20 very much. Oh, and, of course, Mr. Shala is with us by videolink.

21 Okay, thank you.

22 JUDGE GUILLOU: Thank you, Mr. Gilissen. Mr. Shala waived his  
23 right to be present and is indeed with us via videolink this morning.

24 Let me turn to the Registry.

25 Mr. Nilsson, please.

1 MR. NILSSON: Good morning, Your Honour. Good morning,  
2 colleagues. Jonas Nilsson, Judicial Services Division in Registry.

3 JUDGE GUILLOU: Thank you, Mr. Nilsson.

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

6 On 31 March, I scheduled this seventh Status Conference in this  
7 case. My goal today is to organise the transmission of the case to  
8 the Trial Panel.

9 In particular, I wish to discuss disclosure of evidentiary  
10 material, translations, the status of the SPO's investigations, the  
11 status of the Defence investigations, the points of agreement on  
12 matters of law and fact, and, finally, any other issues the parties  
13 may wish to raise.

14 I thank the parties for their submissions. And, as usual, I  
15 invite the parties to present their views in a concise fashion about  
16 each item on the agenda, which I will address individually.

17 But before the matters included in the agenda for today's  
18 hearing, I would like to address one preliminary matter.

19 In filing F00171, the Defence indicated that, following the  
20 Court of Appeals decision of 11 February 2022, it inquired into the  
21 Government of Belgium's willingness and capacity to implement the  
22 conditions of provisional release it proposed through the  
23 Defence Office Coordination and the Registry.

24 The Defence further indicated that it was notified by the  
25 Immediate Office of the Registrar of the response by the Belgium

1 federal minister of justice on 30 March 2022.

2 However, the Defence has not attached the aforementioned  
3 correspondence to its submissions on the review of Mr. Shala's  
4 detention. I intend to order the Defence and the Registry to file  
5 this correspondence on the record for the purpose of the next  
6 detention review.

7 And before that, I would like to ask the parties and the  
8 Registry whether they have any submissions to make in this regard.

9 Mr. Gilissen, please.

10 MR. GILISSEN: I'm really sorry, Mr. President. That's my own  
11 fault. Really, I'm sorry. And we are making very fastly what we  
12 need to do. I'm sorry.

13 JUDGE GUILLOU: No need to be sorry, Mr. Gilissen. It can be  
14 cured very easily.

15 Mr. Nilsson, do you have any submissions on this?

16 MR. NILSSON: Thank you, Your Honour. No submissions from the  
17 Registry on this. Thank you.

18 JUDGE GUILLOU: Thank you, Mr. Nilsson.

19 Mr. Prosecutor.

20 MR. DE MINICIS: No submissions from the Prosecution,  
21 Your Honour.

22 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

23 Having heard the parties, I will now issue my first oral order.

24 I order the Defence to, in coordination with the Registry, file  
25 the correspondence with the Belgian authorities regarding their

1 willingness and capacity to implement the conditions of provisional  
2 release of Mr. Shala and, if applicable, any related correspondence  
3 in the record by no later than Tuesday, 19 April 2022.

4 In the event that the aforementioned correspondence and any  
5 related correspondence was addressed to the Registry, I order the  
6 Registry to file any such correspondence in the record by the same  
7 date.

8 Furthermore, in view of the nature of the information under  
9 consideration, these filings shall, if necessary, be classified as  
10 confidential.

11 Furthermore, I order the Registry, Defence, and the SPO, as the  
12 case may be, to file public redacted versions of the following filing  
13 relating to the review of Mr. Shala's detention by no later than  
14 20 April 2022. And this is for filing F00152, F00171, and F00177  
15 and, finally, F00184.

16 This concludes my first oral order.

17 Let's now move to the first topic that was listed in the  
18 Scheduling Order, which is disclosure.

19 As usual, I will give the floor to the parties on the disclosure  
20 of each category of evidentiary material separately. First, the  
21 Rule 102(1)(b) material, which is the material the SPO intends to  
22 present at trial; then, the Rule 102(3) material, which is the  
23 material relevant to the case as listed by the SPO; then the Rule 103  
24 material, which is exculpatory material; and, finally, the Rule 107  
25 material, which is protected material for which the consent of the

1 provider is requested.

2 Let me now move to the material the SPO intends to present at  
3 trial.

4 In its written submissions, the SPO indicated that it has  
5 completed its Rule 102(1)(b) disclosure with the exception of some  
6 items that are withheld pursuant to judicial authorisation and will  
7 be disclosed once the relevant protective measure expires.

8 The SPO also indicated that it will be disclosing some  
9 translations of items under this category further to a request by the  
10 Defence, lesser redacted versions of some statements, and a revised  
11 transcription and translation of the English version of the accused's  
12 SPO interview.

13 The SPO argues that none of these disclosures amount to new  
14 evidence, so the disclosure of Rule 102(1)(b) material shall be  
15 considered finalised. However, the SPO is still looking to add  
16 additional material for the presentation of its case.

17 The SPO filed a request pursuant to Rule 102(2) seeking leave to  
18 disclose transcripts of several witness interviews. The Defence  
19 opposes the request, arguing that the SPO has not shown good cause  
20 for interviewing such persons and putting them forward as proposed  
21 witnesses at such a late stage of the proceedings.

22 The SPO also indicated that, because of recently completed  
23 investigations, it would need to submit, still pursuant to  
24 Rule 102(2), the statements of one additional witness. At this  
25 stage, according to the SPO, those materials cannot yet be disclosed

1 because a variation of protective measures is first required from a  
2 third party entity. Once this variation has been obtained, the SPO  
3 indicated that it would file an application pursuant to Rule 102(2).

4 I will not rule on this Rule 102(2) request orally today, as I  
5 want to issue a consolidated decision with the upcoming request from  
6 the SPO.

7 I would, therefore, ask the SPO when it intends to file such a  
8 request, hoping that it will be in the following days.

9 I do not intend to entertain such requests after the end of  
10 April. The SPO case cannot be constantly evolving.

11 I also invite the SPO to confirm that no other Rule 102(1)(b)  
12 material is to be disclosed and to give a timeline for the population  
13 of witness entities on Legal Workflow; notably, if it will complete  
14 this prior to the beginning of the trial.

15 And, finally, I invite the Defence to make any submissions  
16 regarding the completion of witness entities in Legal Workflow and  
17 how this impacts its ability to prepare for trial.

18 Mr. Prosecutor.

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

20 In addition to our written submissions that Your Honour has  
21 accurately summarised, we can update Your Honour on the status of our  
22 Rule 102(2) application that we cannot file yet for the reasons  
23 summarised by Your Honour.

24 We have obtained -- we have already taken the first necessary  
25 steps. We obtained the consent of the interested parties, and we

1 have started preparing the required motion, which we believe -- we  
2 are confident we will be filing next week.

3 Then, Your Honour, it depends on the time that the third party  
4 entity will take to get back to us with regard to our ability, for  
5 our ability to disclose these additional statements, as we submitted  
6 in our written submissions.

7 We can assure Your Honour that the material is limited in its --  
8 both quantitatively and qualitatively. It concerns one witness. And  
9 it is, for the reasons we explained in our written submissions, very  
10 limited in scope, and so we don't foresee that this will create the  
11 need for any delay that could cause concern to Your Honour or to the  
12 Defence.

13 With regard to the witness entities, as asked by Your Honour, we  
14 have so far populated 10 witness entities out of 15. Now, of course,  
15 if Your Honour will be granting our Rule 102(2) motion that we have  
16 already filed, and possibly the one that we will be filing, then  
17 there will be additional witness entities to add, but we will  
18 certainly complete that process before the start of trial,  
19 Your Honour.

20 And I believe I have addressed all the points that Your Honour  
21 requested at this time.

22 JUDGE GUILLOU: Can you confirm that there is no Rule 102(1)(b)  
23 items to be disclosed?

24 MR. DE MINICIS: Yes, Your Honour. As stated in on our written  
25 submissions, the reasons. We're just trying to -- well, for example,



1 today we will be disclosing some translations, six translations of  
2 Rule 102(1)(b) material. It's actually four translations and two  
3 transcriptions of videos that were requested by the Defence, and so  
4 we will be disclosing them. But there is no new material, to our  
5 knowledge, that needs to be disclosed pursuant to Rule 102(1)(b),  
6 Your Honour.

7 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

8 Mr. Gilissen, please.

9 Mr. Aouini.

10 MR. AOUMINI: Good morning, Your Honour. Thank you very much.

11 Before we address this point, may I raise a preliminary point on  
12 the oral order Your Honour has made, if I'm allowed? We can get to  
13 it a little later, but we can deal with it right now before  
14 Mr. Gilissen makes any submissions on the points of Rule 102(1)(b).

15 JUDGE GUILLOU: Please proceed.

16 MR. AOUMINI: Thank you, Your Honour.

17 Simply to say, Your Honour, tomorrow and Monday will not be  
18 working days, and we are busy, at this stage, preparing and  
19 finalising a motion, a referral that will need to be filed today,  
20 which would certainly take us to the late hours of today. And next  
21 week, we have a deadline for a certification for appeal for the 20th.

22 So if we could seek your leave to move the deadlines Your Honour  
23 has put on oral order on page 4, line 17, to page 5, line 11, into at  
24 least the end of that week - meaning 22 April - to allow us, at least  
25 for the public redacted versions, to be able to deal with them

1 properly after we have submitted those other filings.

2 Thank you, Your Honour.

3 JUDGE GUILLOU: Mr. Aouini, just to be clear, your request is  
4 about the last part of my oral order, i.e., the public redacted  
5 version of your submissions? Not for the filing of the  
6 correspondence with Kingdom of Belgium; correct?

7 MR. AOUINI: Yes, Your Honour. We are pretty confident we will  
8 be able to file the annex without too much substance that needs to be  
9 put in. We will annex the files. We have the 19th to do that, and  
10 we will manage to make our certification within those two days. So  
11 it's about the public redacted versions of the four other filings  
12 that need to be submitted the following day. Just to do it properly,  
13 Your Honour.

14 Thank you.

15 JUDGE GUILLOU: Now when would be a -- when do you think you can  
16 finalise the public redacted version?

17 MR. AOUINI: By the end of the week, Your Honour. The 22nd. So  
18 it's two days more to be able to deal with them after we finalise  
19 other submissions.

20 JUDGE GUILLOU: Thank you, Mr. Aouini. I will deal with that  
21 later in the hearing, but I will most likely amend my oral order.

22 Now you can proceed with your submissions on the Rule 102(1)(b)  
23 material and the Rule 102(2) requests, please.

24 MR. AOUINI: Thank you. Mr. Gilissen will deal with these.  
25 Thank you, Your Honour.

1 JUDGE GUILLOU: Thank you.

2 Mr. Gilissen, please.

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

4 So about the disclosures. At point (a), we take notes about  
5 what told us, Mr. Prosecutor. I have almost nothing to add. But  
6 just one thing.

7 We have a request to add four witnesses and the evidence. I am  
8 sure my colleague can understand perfectly well the point. That's  
9 really the only thing I have to say.

10 About the point (b) (1), we requested from the SPO the  
11 communication of 580 items issued from the notice, pursuant to  
12 Rule 102(3).

13 JUDGE GUILLOU: This will be dealing with the next item,  
14 Mr. Gilissen. Now if we can just focus on the 102(1) (b) and the  
15 102(2), not what's in the notice, please.

16 MR. GILISSEN: Okay. So that's all.

17 JUDGE GUILLOU: Thank you, Mr. Gilissen.

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

19 MR. DE MINICIS: No thanks, Your Honour.

20 JUDGE GUILLOU: As usual, I would appreciate if your request  
21 could be filed as soon as possible. I understand the constraints you  
22 have with the third party. But if you are not able to file within  
23 the next, I would say, two weeks, I would appreciate if you can  
24 inform me, because then you will not wait for this to rule on your  
25 first 102(2) request.

1 MR. DE MINICIS: By all means, Your Honour, we'll keep  
2 Your Honour informed.

3 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

4 Let me now move to the next topic in our disclosure item of the  
5 agenda, which is the disclosure of evidentiary material relevant to  
6 the case, which is the Rule 102(3) material.

7 The Defence submitted an *inter partes* request with a list of 580  
8 documents selected from the SPO Rule 102(3) list, recently updated  
9 with partially revised descriptions.

10 The SPO, if I'm not wrong, disclosed a first batch of the  
11 documents requested by the Defence yesterday evening. However, the  
12 SPO indicated that a significant number of the remaining documents  
13 are yet to be reviewed and processed for disclosure, that the Defence  
14 also requested items that do not have revised descriptions and that  
15 could have been requested earlier, and that a substantial number of  
16 documents that form part of the Defence request will lead the SPO to  
17 seek protective measures.

18 I invite the SPO to give a timeline for their protective measure  
19 request, and if it can be filed before 6 May.

20 I also invite the SPO to confirm that it will not dispute the  
21 materiality of the documents for the Defence.

22 However, before giving the floor to the SPO on this point, I  
23 also note that, beyond the disclosure of material that are currently  
24 in the Rule 102(3) notice, the SPO is also asking to add new items to  
25 the list itself.

1           In filing F00170, submitted on 25 March 2022, the SPO seeks  
2    leave to amend its notice, submitted pursuant to Rule 102(3) of the  
3    Rules, with three categories of documents. The first category  
4    concerns 13 documents for which their Rule 107 status has been  
5    resolved in a manner which now enables their disclosure. The second  
6    category concerns the ruling on the confirmation of the indictment  
7    and admissibility of evidence in another case, dated 24 November  
8    2010, and the record of the hearing on the confirmation of the  
9    indictment in the same case dated 22 October 2010. And the third  
10   category relates to pictures of several witnesses which were  
11   requested by the Defence.

12           In filing F00176, submitted on 6 April 2022, the Defence  
13    responds that it does not oppose the SPO request but emphasises that  
14    it will need to be allowed sufficient time to review and analyse the  
15    proposed additional documents as well as the entirety of the material  
16    disclosed by the SPO.

17           I stress that the documents falling in the second category are  
18    from 2010, which is 12 years ago. I invite the SPO to explain why  
19    they had not been included in the SPO's notice under 102(3) before.

20           And finally I note that in its written submissions, the SPO  
21    indicated that it intends to make an oral application during this  
22    hearing to amend, again, its 102(3) notice with one more document.

23           So I invite the SPO to present its requests now and to justify  
24    why we are still discussing the Rule 102(3) list at such a late stage  
25    of the pre-trial proceedings.

1 I also invite the Defence to respond to the SPO request orally,  
2 as I intend to issue an oral order on the two SPO requests to amend  
3 the Rule 102(3) list at the end of the hearing today.

4 Furthermore, the Defence indicates that it is unable to take a  
5 definitive position regarding its intention to object to the  
6 admissibility of evidentiary material that has been disclosed on the  
7 basis of Rule 102(2) of the Rules and expects to be able to do so  
8 after the Prosecution disclosure is completed.

9 I invite the Defence to specify whether it has taken a position  
10 regarding any objections to the material already in its possession  
11 and whether it can give any further indication as to when it expects  
12 to file such objections, if any.

13 Mr. Prosecutor, you have the floor.

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

15 So as per your first question, we believe that we will be able  
16 to file our protective measure motion by 6 May, as requested by  
17 Your Honour.

18 As for the materiality of the items requested by the Defence.  
19 Your Honour, we would like to finish the review first. At this point  
20 in time, not having finished the review, we are not in a position to  
21 state whether we will take issue with the materiality of these  
22 documents.

23 JUDGE GUILLOU: Sorry, Mr. Prosecutor. Would you contest the  
24 materiality for the Defence of the documents? Are you also able to  
25 file any request before 6 May?

1 MR. DE MINICIS: Yes, Your Honour, we'll do our best to do so,  
2 should we decide to contest -- to object to the materiality of any of  
3 the requested items.

4 JUDGE GUILLOU: Thank you.

5 MR. DE MINICIS: Now, with regard to the request for amendment  
6 of the Rule 102(3) notice and the three categories identified by  
7 Your Honour, I will focus on the second category which Your Honour  
8 has specifically requested about.

9 Your Honour, these are documents which are devoid of evidentiary  
10 value. We understand they should have been included in the list  
11 originally. The case file is a large case file. And we have  
12 reviewed it, also further to the Defence's requests, for example, the  
13 Status Conference in January, to have the complete file in order to  
14 be able to navigate it more easily, and so we've conducted further  
15 reviews, and that's why these documents have been included just now.

16 With regard to the rest, to the remaining items in that request,  
17 Your Honour, I would just like to note that some of them were  
18 specifically requested by the Defence. These are the third category  
19 that Your Honour has identified, and so that's why we have included  
20 them there.

21 Now, with regard to our announced oral request, I do make this  
22 publication now, to add item with ERN SITF00014574-00014576. This  
23 item was also discovered further to a review of the case file or the  
24 previous case that dealt with some overlap between the case and the  
25 facts charged in this case, and we have now completed that review.

1 And it was a large case file. And we are now confident that we have  
2 now ascertained that every document contained therein was either --  
3 we either gave notice to the Defence or disclosed it through other  
4 rules, and this document remains outstanding.

5 It's a three-pages record, Your Honour, where the suspect  
6 exercises his right to remain silent. And so we request to be able  
7 to amend our list with that document as well so that if the Defence  
8 chooses to do so, they can request it.

9 And I think -- I believe this answers Your Honour's questions.

10 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

11 Let me turn to the Defence.

12 Mr. Gilissen, please.

13 MR. GILISSEN: Yes, Mr. President.

14 As I told you just before, we asked for the communication of 580  
15 items. We received yesterday some of them. So we don't receive yet  
16 all the documents. But, however, we know that this communication  
17 will be -- no issue. We will have, I am sure, the communication as  
18 soon as possible. So this is the first point I would like to focus  
19 on.

20 About the point (b)(ii), I just have to take note,  
21 Mr. President, I think so.

22 And for the other points, normally all seems to be all right.  
23 Everything seems to be in order.

24 I can add for the completeness that we share with the SPO a full  
25 board, as you know, concerning any pending issues, like translations,



1 missing documents. And if some small problem should still arise,  
2 procedure will enable us to resolve them without having to resort to  
3 the Chamber, which is undoubtedly a great advantage and a precious  
4 saving time for all of us, including you and the Chamber, of course,  
5 Mr. President.

6 So I don't know if you want to -- that I address other points.  
7 You talked about admissibility. I am ready to explain it.

8 I can say that we are already in a position to state I will  
9 intend to object to the admissibility of some material that has been  
10 disclosed on the basis of Rule 102 of the Rules. Honestly, and  
11 professional conscience oblige me, however, to emphasise, that the  
12 Defence, it's absolutely not in a position to do, so far, for  
13 22 April 2022.

14 Indeed, we need to be sure to have received a full disclosure  
15 before evaluating the time. We will need to determine all the items  
16 from which we will raise a challenge of admissibility. We can state  
17 that we have, of course, already started this very important work  
18 concerning the items that are already in our possession.

19 The preliminary challenge of the admissibility of certain  
20 elements of evidence to be used in the trial is, in my opinion, a  
21 delicate task which requires the utmost attention but also a lot of  
22 measures. This is the way I see this kind of problem.

23 I am aware that the case of Mr. Shala is neither the most  
24 voluminous or even the heaviest of those that your Chamber and the  
25 Court have to deal with. Some may even consider that the case is a

1 small one in comparison to the others, and this distinction may be at  
2 the root of some of the difficulties the Chamber has encountered in  
3 some occasions with the way the work was done by the SPO.

4 But I must emphasise that while the accusations against  
5 Mr. Shala are extremely severe, the questions that arise and the  
6 nature of the work to be done are of some -- of even the same nature.  
7 And in my opinion, in fact, fundamentally the same as in those that  
8 arise in the other heavier cases that the Court has to deal with.

9 So we are busy managing with a lot of information contained in a  
10 lot of documents where disclosure has not always been without  
11 difficulties, I should add that the knowledge and the study of some  
12 of this information reveals surprises of which the admissibility  
13 problem are part, are really part in.

14 And I provide just another example of the difficulties we have  
15 to face in this exercise. More specifically, sometimes the news in  
16 the media reveal some relevant and possible highly interesting  
17 information that could make their way into the admissibility  
18 discussions.

19 I guess Your Honour is well aware of the recent report regarding  
20 plots, a so-called plot against Mr. Dick Marty, who is the author of  
21 the report at the origin of the establishment of the KSC. This plot  
22 is reported as one plot made by the Serbian intelligence with the aim  
23 to fabricating or to forge some so-called evidence and to put the  
24 blame on the Albanian or the Kosovo's leaders.

25 So this is one information. But really, this is such an

1 information was some days ago absolutely - absolutely - unexpected,  
2 and now we have to deal with. It's just an example of the difficulty  
3 we have to deal with. This even could raise similar questions to the  
4 ones that seem to appear in the case of Mr. Shala.

5 It means, and that's what we have to face, some potential  
6 fabrication of forgery of information materials, evidence, with the  
7 aim to implicate some individual in some crimes. We were on the  
8 ground in Kosovo, and we have the surprise to understand some things,  
9 to see some things, to hear some things. We have, of course, to  
10 control this, Mr. President. I don't want to cry there is a problem  
11 or something like that. But really, that's a big deal.

12 We need, of course, some time to try to be fully aware about  
13 such an information because it could lead - it could lead - to raise  
14 a problem of admissibility of some elements, of course.

15 So in these conditions, what can I say more about this without  
16 the risk to be too long? All this explains and justifies that in the  
17 current state of things, and without having yet been able to read  
18 pieces and items that must reach us, or have just done so, we cannot,  
19 whatever our goodwill, commit to a date for the drafting concerning  
20 the question of challenge of admissibility of some materials that  
21 have been disclosed on the basis of Rule 102 of the Rules.

22 However, if you ask for a simple declaration of intention about  
23 a possible challenge of admissibility, I don't need more time, of  
24 course. I will and we will challenge some of the items disclosed by  
25 the SPO on the basis of Rule 102 of the Rules. If, however,

1 Your Honour expects a full detailed explanatory inventory of our  
2 future challenges on an individualised basis, I would invite  
3 Your Honour to accept to address this matter after the SPO has fully  
4 completed its disclosure obligations.

5 I hope I was not too long, Mr. President. Thank you.

6 JUDGE GUILLOU: Thank you, Mr. Gilissen.

7 Can I take from your oral submissions that you do not oppose the  
8 two SPO requests to amend its notice? That's what I understood from  
9 your submissions, but just to be clear that both for the one that has  
10 been filed in writing and the one that has been presented orally.

11 Mr. Aouini.

12 MR. AOUINI: Yes, thank you, Your Honour.

13 We confirm. We do not oppose part of the material that is  
14 listed as either cleared sources or things that -- or items that we  
15 have requested or originated the production of. So we will not  
16 oppose it. Of course, with the reservation that we need the time to  
17 put it in context and analyse it.

18 One slight -- one specific but important point I wanted to  
19 return to on the document from 2010.

20 Your Honour is aware our colleagues of the SPO are aware that we  
21 have made a very clear request from the outset that these documents  
22 as a unit, case files with reference numbers, could be communicated  
23 to us in their entirety. What troubles us, in one of our  
24 *inter partes* meetings with our colleagues, and finally in writing in  
25 paragraph 10 of the submissions of our colleagues, is that they seem

1 to understand that it is sufficient to list items from this case file  
2 or reference number for them to fulfil their duty on the point, where  
3 we have made it clear in an unequivocal request to access those  
4 documents. This is an example. This is part of one of the units  
5 that Your Honour is very well aware of, without needing to mention  
6 the specific case number. Our request is not only to add it to the  
7 notice but to receive it.

8 Now, I hear our colleagues saying that every item from that case  
9 file was either disclosed or listed, but this is not enough for us.  
10 We want to make sure because the descriptions and the reference  
11 numbers are not sufficient to identify that this item is part of that  
12 case file. That's why we made a general request, and this is the  
13 case for this case number, another case number, and at least three  
14 other investigations, one of which is of high importance because it  
15 directly relates to Mr. Shala.

16 So we repeat it, and put it on the record again, these  
17 documents, we need to have them. Not have them listed in the notice,  
18 because we can still miss them.

19 And Your Honour has noticed, the SPO have mentioned it, we have  
20 requested some items that were not re-described, for which there is  
21 no updated description.

22 And this is what we explained to Your Honour in the previous two  
23 or three conferences. As we advance, we can make links between  
24 numbers, we can make links between names, and as we read the material  
25 that is disclosed, the relevance becomes clear and becomes apparent

1 for some other items.

2 Since we are reviewing this notice, we identified those that are  
3 clearly relevant to us, in addition to those where a new description  
4 allowed us to identify the relevance for us. So we believe we are  
5 justified in making this request, and those are the necessary points  
6 we needed to make. Especially on the case files that need to reach  
7 us, not just be listed.

8 Thank you, Your Honour.

9 JUDGE GUILLOU: Thank you, Mr. Aouini.

10 If I understand correctly, you spoke both about the two SPO  
11 requests and about another matter for which I've already ruled. So  
12 for the matter for which I've already ruled, then you can present a  
13 request for a certification or a request for a consideration, but  
14 this matter is now set because I've already ruled on this.

15 But is it correct? Do I understand you correctly, that you were  
16 making reference to ...

17 MR. AOUINI: Your Honour, the point was about one item that was  
18 subject of the request. So we don't object to the SPO adding those  
19 items to his new notice, updated notice, but we make one specific  
20 point about documents belonging to one case file.

21 Our request, previous request, from the first deadlines, was  
22 that whenever the SPO has documents belonging to certain numbers that  
23 we specified, numbers of case files, then they should communicate it  
24 to us, not just list it, regardless of their request of today or  
25 Your Honour's ruling.

1 On the request to update the notes itself, we say we don't  
2 object, Your Honour. And regarding your ruling, we are not moving to  
3 challenge it. We are just making points on the smooth communication  
4 and to avoid any misunderstanding, to put it on the record. That's  
5 all we are trying to do.

6 Thank you, Your Honour.

7 JUDGE GUILLOU: Thank you, Mr. Aouini.

8 Mr. Prosecutor.

9 MR. DE MINICIS: Yes, Your Honour. First, I would notice that  
10 Victims' Counsel is now back. Yes.

11 Well, Your Honour, with regard to the issue of listing versus  
12 disclosing, the procedural framework provides for a system whereby we  
13 either choose to use a certain document in our case and, therefore,  
14 we disclose it pursuant to Rule 102; or else we list it in the  
15 notice, and then the Defence may request it.

16 So if there is to be a deviation from that procedure, we can  
17 consider it if Your Honour wishes us to do so. But as I stated  
18 earlier, we believe that we have now either disclosed, because  
19 pursuant to our Rule 102, or listed all the items in our possession  
20 belonging to these case files.

21 Other than that, Your Honour, I have nothing further to add.

22 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

23 Nothing to add on the Defence bench?

24 Mr. Aouini.

25 MR. AOUINI: Sorry, Your Honour, very quickly.

1           We have made the selection, the indication, from the notice,  
2 based on a part of the case file, to tell them: Regardless of the  
3 individual selections, we need everything from that case file. And  
4 this has been acknowledged from our colleagues. I believe they have  
5 done their best to do that. But we have made that selection to avoid  
6 any delays. Everything belonging to such a case file with such a  
7 number was requested out of the notice, so we are not inviting anyone  
8 to deviate from the procedure. We are just making it simple: To  
9 treat it as units. When they are complete units, to be treated  
10 together.

11           That's the point we want make.

12           JUDGE GUILLOU: Thank you, Mr. Aouini.

13           I will rule on these two requests at the end of the hearing.

14           Let us now move to the Rule 103 material.

15           In its written submissions, the SPO indicated that since the  
16 last Status Conference, it has disclosed a document pursuant to  
17 Rule 103 in disclosure package 42. According to the SPO, with the  
18 exception of materials currently subject to pending requests for  
19 protective measures, no other documents now remain to be disclosed to  
20 the Defence pursuant to Rule 103.

21           I invite the SPO to confirm that it has finalised its review and  
22 that all the Rule 103 material has been disclosed to the Defence.

23           Mr. Prosecutor.

24           MR. DE MINICIS: Yes, Your Honour. I can confirm that. Thank  
25 you.



1 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

2 Mr. Gilissen or Mr. Aouini on the exculpatory material.

3 MR. AOUMINI: We take note of the confirmation, Your Honour, and  
4 we appreciate it. Thank you.

5 JUDGE GUILLOU: Thank you, Mr. Aouini.

6 So I will now consider that this category of material has been  
7 fully disclosed.

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

9 On 6 April 2022, the SPO filed an application pursuant to  
10 Rule 107(2) informing myself that clearance had been denied to  
11 disclose a number of documents of marginal relevance to the case and  
12 cumulative nature with all the documents already disclosed to the  
13 Defence.

14 According to the SPO, there are no additional Rule 107 documents  
15 for which clearance remains pending.

16 I inform the parties that I will issue a written decision on  
17 this request in due course, and I invite the parties to take the  
18 floor if they want to add anything on this issue.

19 Mr. Prosecutor.

20 MR. DE MINICIS: Nothing further, Your Honour. Thank you.

21 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

22 Mr. Gilissen.

23 MR. GILISSEN: Yes, Mr. President. We take note. We just take  
24 note. Thank you.

25 JUDGE GUILLOU: Thank you, Mr. Gilissen.

1           Let us now move to the issue of translations of filings and  
2           evidentiary material.

3           In its submissions, the SPO indicated that it has completed the  
4           translation and transcription of the materials generated during its  
5           recent investigative activities. However, the Defence indicated in  
6           its written submissions that the translation of certain items has not  
7           been disclosed.

8           I would like to hear the parties on any further issues regarding  
9           translations. I also invite the parties to clarify if the problem  
10          faced by the Defence is a disagreement related to the extent of the  
11          translation obligations of the parties.

12          Let me start with the Prosecution.

13          Mr. Prosecutor.

14          MR. DE MINICIS: Yes, Your Honour.

15          As I mentioned earlier this morning, we will be disclosing today  
16          six documents, translations and transcriptions that were requested by  
17          the Defence.

18          We have received yesterday an e-mail where the Defence helpfully  
19          summarised the issues that they considered to be outstanding with  
20          regard to disclosure, and I understand that may also contain some  
21          translation-related issues.

22          We will be tending to that document without delay and provide  
23          the Defence with what we believe it is our obligation or through  
24          courtesy to provide.

25          JUDGE GUILLOU: Thank you, Mr. Prosecutor.

1 Mr. Gilissen, please.

2 MR. GILISSEN: Thank you, Your Honour.

3 As you know, we have at our disposal three sources of  
4 translation: From the Registry, from the Prosecutor, and from our  
5 own resources. And I have the pleasure to state that we don't have  
6 any problem now of translation, and I want to thank the Registry and  
7 the SPO about that. Really, it's a very nice situation.

8 Thank you.

9 JUDGE GUILLOU: Thank you, Mr. Gilissen.

10 Mr. Nilsson, do you want to add anything or flag any remaining  
11 issues regarding translations?

12 MR. NILSSON: No, thank you, Your Honour. I can just confirm  
13 that there are no outstanding prioritised requests for translations,  
14 as far as Registry is concerned.

15 Thank you.

16 JUDGE GUILLOU: Thank you, Mr. Nilsson.

17 And I'm glad to see that the issues have been resolved.

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

20 In its submissions, the SPO indicated that it has recently  
21 completed a number of additional investigative steps and has  
22 requested disclosure of the materials generated through these  
23 investigations.

24 The SPO specified that at this stage it has not determined the  
25 need for further investigations, so I invite the SPO to give an

1 update on this matter and to confirm that no further investigations  
2 are expected at this stage.

3 Mr. Prosecutor.

4 MR. DE MINICIS: Your Honour, I can absolutely confirm that,  
5 with the caveat that we've included in our written submissions.

6 If we could briefly go into private session, Your Honour, to  
7 update Your Honour on a little change in circumstances concerning  
8 something we informed Your Honour about in the past. It will take a  
9 very brief time.

10 JUDGE GUILLOU: Madam Court Officer, can we move to private  
11 session, please.

12 [Private session]

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17 [Open session]

18 THE COURT OFFICER: Your Honour, we are now back in public  
19 session.

20 JUDGE GUILLOU: Thank you, Madam Court Officer.

21 Mr. Aouini, do you wish to respond to the other points mentioned  
22 by the SPO in its recent submissions?

23 MR. AOUINI: No further points to make, Your Honour. We have  
24 made the slight points we needed to make. Other than that, we  
25 responded to the original request in writing and will continue to

1 monitor it that way.

2 Thank you.

3 JUDGE GUILLOU: Thank you, Mr. Aouini.

4 For the next point on the agenda related to Defence  
5 investigations, I will turn to the Defence first, as usual.

6 I note from the Defence written submissions that it is in the  
7 process of carrying out its investigations, but due to the  
8 significant delays in the disclosure process, the Defence is unable  
9 to indicate the anticipated duration of its investigative activities.

10 I also note that the Defence is again not at this stage able to  
11 confirm whether it will make any request concerning unique  
12 investigative opportunities and whether it will provide notice of an  
13 alibi or any other grounds excluding criminal responsibility.

14 In its written submissions, the Defence confirmed its intention  
15 to file a pre-trial brief, but indicated that at present it is  
16 impossible to provide an indication as to when it will be in a  
17 position to do so.

18 The Defence indicated that, in any event, it does not anticipate  
19 to be able to do so before mid-September 2022.

20 The Defence submissions on its investigations have roughly been  
21 the same for practically a year now, despite having now been  
22 disclosed most of the evidentiary material, the SPO pre-trial brief,  
23 as well as the Rule 109(C) charts.

24 At the last Status Conference, I set the tentative date for  
25 transmitting the case file to the Trial Panel to 31 May 2022.



1           Let me be clear: I do not intend to suspend the deadlines  
2 indefinitely. The parties have to work harder and faster and the  
3 case has to be transferred to the Trial Panel in a reasonable time.

4           I understand from its written submissions that the Defence  
5 considered that 31 May is premature, notably given the late  
6 disclosure from the SPO.

7           However, in its written submissions, the Defence does not  
8 clearly request a new deadline for the remainder of its pre-trial  
9 obligations, even though I specifically indicated that any request  
10 for postponing the tentative deadline for transmitting the case to  
11 the Trial Panel must be based on compelling reasons.

12           I intend to issue an oral order at the end of this hearing in  
13 order to set an updated procedural calendar, set a date for the  
14 Defence pre-trial brief, and set a date for the transmission of the  
15 case to the Trial Panel.

16           I will not change this calendar *proprio motu*. It is up to the  
17 parties to demonstrate that they need more time to finalise their  
18 pre-trial work. So I expect the Defence to indicate whether it is  
19 making a request to vary the current deadlines set previously; and,  
20 if so, to explain in detail the reasons to delay the current  
21 procedural calendar and to indicate how much time they need for each  
22 step before the transmission of the case to the Trial Panel.

23           And this applies to the time needed to make their final  
24 Rule 102(3) requests, if any; the time needed to finalise their  
25 investigation and to indicate if they will make any request

1 concerning unique investigative opportunities and whether it will  
2 provide notice of an alibi and/or any grounds excluding criminal  
3 responsibility; and the time needed to prepare their pre-trial brief,  
4 if any.

5 I invite the Defence to indicate if they need more time to  
6 prepare their oral submissions on the procedural calendar. In which  
7 case, I can break for 15 or 20 minutes for the Defence to prepare  
8 their oral submissions. Otherwise, I invite the Defence to provide  
9 their oral submissions on the procedural calendar immediately.

10 Mr. Gilissen or Mr. Aouini, do you want a break to prepare your  
11 oral submissions regarding the calendar, or are you able to present  
12 your requests, if any, now?

13 MR. GILISSEN: Mr. President, I think I have the possibility to  
14 explain our position first by oral and then to have some time to make  
15 a submission by writing, I think so. If you agree, I'm able to  
16 present some first steps about our position.

17 JUDGE GUILLOU: Mr. Gilissen, I'm afraid to say that I don't  
18 agree with this. I have set a procedural calendar --

19 MR. GILISSEN: Yes.

20 JUDGE GUILLOU: -- in the last Status Conference. For the  
21 moment, this calendar stands.

22 MR. GILISSEN: Yes, of course.

23 JUDGE GUILLOU: It's up to the parties now to demonstrate a  
24 compelling need if I need to change the deadlines. I will not  
25 suspend the deadlines like this. There is a procedural calendar. I

1 am very understandable of the Defence constraints, also of the last  
2 SPO disclosures, which is very unfortunate, especially because we are  
3 more than two years after the indictment has been filed, we are more  
4 than one year after the accused has been arrested, so I hope this is  
5 really the end of the disclosure phase.

6 We shouldn't be there at the moment. But I say it very clearly,  
7 I will revise the procedural calendar during this hearing. I will  
8 not postpone this. So if you need 15, 20, 30 minutes to prepare your  
9 submissions, I will gladly give you that time. But I expect you to  
10 present your case to postpone the deadlines and to tell me when you  
11 be able to file your pre-trial brief, how much time you need to  
12 finally answer the question about unique investigative opportunities,  
13 to finally answer the question if you will present an alibi or not.

14 I've asked these questions, I think, seven times since the  
15 beginning of the proceedings, and it's been like that for more than a  
16 year. We are all bound by the requirement of reasonable delay, and I  
17 intend to enforce it. So let me be clear: We are not going to leave  
18 this hearing with all the deadlines suspended without knowing where  
19 we are going and with the accused not knowing when his case will be  
20 transferred to the Trial Panel.

21 So I think I have been clear. Mr. Gilissen, I can break for 15,  
22 20, even 30 minutes, if you wish.

23 MR. GILISSEN: First of all, Mr. President, I just have to say  
24 we have a position we are able to explain about unique investigative  
25 opportunities.

1           We don't need time or something like that. There is no  
2           difficulties with that. And it is exactly the same. That's why I  
3           prefer to explain it by oral, of course, for the exclusion of  
4           responsibility. There is no need of that. It's not a problem. And  
5           I can state, just now, those points for us are over. That's sure.

6           For the rest, of course, I accept the opportunity to make a  
7           written submission and to answer to all the questions and explain the  
8           position of the Defence. Yes.

9           JUDGE GUILLOU: Mr. Gilissen, thank you for these two points.  
10          This is noted, both for the unique investigative opportunities, and  
11          for the Defence of alibi and grounds excluding responsibility.

12          For the procedural calendar, I would like some oral submissions.  
13          So I can break for 20 minutes, half an hour, and I will give you the  
14          floor when we are back, but I expect oral submissions today.

15          MR. GILISSEN: Just one thing. I didn't told you about alibi.

16          JUDGE GUILLOU: Sorry, excuse me.

17          MR. GILISSEN: Yes.

18          JUDGE GUILLOU: Then I withdraw what I mentioned for the record.  
19          This is for unique investigative opportunities and for grounds  
20          excluding responsibility. But not for alibi.

21          MR. GILISSEN: Exactly, Mr. President.

22          JUDGE GUILLOU: Thank you. This is clear. Now this is very  
23          clear on the record.

24          Shall we break for 30 minutes, and I will give you the floor to  
25          present your requests for the procedural calendar afterwards?

1 MR. GILISSEN: Very nice of you. Thank you.

2 JUDGE GUILLOU: So it is now 10.35 The Hague time. We will have  
3 a break and we will reconvene at 11.05.

4 The hearing the suspended.

5 --- Recess taken at 10.35 a.m.

6 --- On resuming at 11.05 a.m.

7 JUDGE GUILLOU: So, Mr. Gilissen, your submissions on the  
8 procedural calendar.

9 MR. GILISSEN: Yes, Mr. President. Thank you very much,  
10 Your Honour. I am a little bit astonished about the pressure put on  
11 us.

12 This file about Mr. Shala starts some years ago. During some  
13 years, the SPO has the possibility to prepare its case. That's  
14 normal. It's fair. And we are in charge of this case almost till  
15 one year, and I'm a little bit astonished and disappointed that you  
16 seem to think that we are not working very hard.

17 Of course, it is not the case. We do have to face a lot of  
18 difficulties. First, with the disclosure of the material of the SPO.  
19 And you know perfectly well they -- they had and they have a lot of  
20 difficulties. Even now the disclosure is not finished. More than  
21 this, the Prosecutor asked to add some witnesses, some new witnesses,  
22 and it seems that you are putting the pressure on us.

23 So we start with investigation. You know the real difficulties  
24 on the spot to be able to organise some team on the spot on the  
25 ground to deal with investigations. We started our investigations.

1 We were in Kosovo two weeks ago, I think so? Yes, two weeks ago. It  
2 was very fruitful. And we discovered some astonishing and surprising  
3 things, but not so surprising, because when we were reading some  
4 information provided by the SPO, we have some bad feelings about some  
5 witnesses or some elements. Even material elements.

6 And on the ground, we met some people, we were in this famous  
7 Kukes factory, and we will discover a lot of things, very, very  
8 interesting things. That's why we have the intent to continue our  
9 investigation even during the trial phase.

10 Now, we are able, that's sure, because it's a delicate business,  
11 of course, to take a position on some issue, and necessary diligence  
12 has been made, we are able to say that about this famous condition of  
13 responsibility we told just before, no question to raise something  
14 like that, some question about that.

15 We are more than 20 years after the fact, the alleged fact, with  
16 all the difficulties about the people. You know -- you are aware,  
17 perfectly aware that some people died. Some witnesses of the  
18 accusation died. It is exactly the same situation for the Defence,  
19 of course.

20 When we are going to the veteran association, to the government,  
21 to the people from the KLA, because we are obliged to speak with  
22 these people, of course, they are unable to provide documents. These  
23 documents existed, but they don't exist now because of the passage of  
24 time. And in one year, you really think -- you are really thinking  
25 that we are able to provide and to put a pre-trial brief? We are

1 just receiving the SPO pre-trial brief some days ago.

2 And when I read this pre-trial brief, I discover a lot, dozens  
3 of names of people. We are not really aware about that. We have, of  
4 course, to check, to control, to investigate about that. I think I  
5 consider that, really, it's a real problem of necessary diligence  
6 about that.

7 Moreover, all of us, there is nothing to hide. I am aware we  
8 have a huge problem - that's not an issue - a real problem with the  
9 body who is shown as a body of a brother, the brother of an important  
10 witness. So we had contact with some forensic experts, real ones,  
11 not my friend or the friend of Mr. Aouini, real ones, international  
12 experts, recognised as very competent, and we are waiting for the  
13 result. And, of course, the Defence of Mr. Shala depends on the  
14 results of these forensic answers, as a lot of things.

15 We are seeking some very astonishing element. The most  
16 important witnesses against Mr. Shala change a lot of time his  
17 statements. And we are very, very astonished that the investigators,  
18 even they didn't ask him why, why to change so many time of  
19 statements. And we have to control the links between this change,  
20 the life of this witness, and the other people, including in the  
21 pre-trial brief of Mr. Prosecutor, and we discovered a lot of things.  
22 When things evolve for this witness and for two other ones, the  
23 statement evolved too.

24 So, really, that's more than a big problem. And to ask us to  
25 take a position about admissibility, to take a position about some so

1 important thing as a pre-trial brief, at the moment, that the  
2 Prosecutor even doesn't finish to provide us with his own  
3 information, that, I consider, unrealistic.

4 And when we will receive all these documentation, all these  
5 statements, all these items, all these elements that the Prosecutor  
6 has, and it's his right, of course, to provide and to use during the  
7 trial -- the problem for us is not to receive it. Okay, we have.  
8 Now we have to read it. We have to analyse it. And I can say that  
9 we work more than a lot. Very hard. And it's not a question to work  
10 hard or not, it's a question to work accurately.

11 And, really, I can say that -- that's what I told you just  
12 before. The case of Mr. Shala could seem to someone to be a little  
13 one. Even, I suppose, if you compare with others, other cases, a  
14 tiny one. It's not. It's really an error to imagine that we are  
15 able to deal with this case without the obligation to meet all the  
16 kind of difficulties that, in the other case, the Defence, and,  
17 according to me and the Judges, has to meet.

18 So I consider we work a lot, we work hard, but we obtain some  
19 results. And that's why I don't want to bargain time. It's not a  
20 question of bargaining time. I don't need that. There is no reason  
21 to make anything. I consider that when the Prosecutor is able to  
22 close the disclosure, and in my opinion I take a look at the  
23 Prosecutor, he doesn't need many, many time. We are at the end of  
24 the process, I think so.

25 So to have the possibility to obtain our forensic expertise



1 result, to have the possibility to close the more important step of  
2 our investigation, and you are able to imagine we don't need more  
3 months and months. It's not a question of that. And to finish  
4 further reading and sometime, everybody must understand that, the  
5 obligation to proceed to a re-reading of documents.

6 Because that's really the big problem we have to face now in the  
7 disclosure. So when we receive some new documents -- okay, well, not  
8 some new documents. It's not a huge difficulty. But when you read  
9 it, and you read something very strange with what you read two weeks  
10 or two months before, you are obliged to re-read -- I don't know if  
11 the word exists in English? I suppose it exists. To re-read it and  
12 to make some links.

13 And sometimes it's very delicate to make some links, because,  
14 you know the Defence counsel, they are able to build a big story and  
15 to say, no, it's a scandal and so on. No, I don't think there is no  
16 scandal. There is a very delicate situation. And to understand, to  
17 understand all the elements of -- and you know perfectly well about  
18 what I'm trying to explain, war crimes. We are in a matter that's  
19 war crimes. It's not a simple deal of drugs on the street. That's  
20 really a big and real difficulty. And we know in which situation  
21 after no presence of Mr. Shala during a long time in Kosovo, what was  
22 really the situation of Mr. Shala when he was in Kosovo in 1999.  
23 Very, very difficult.

24 And I don't talk about the people we met. I talk about the  
25 witnesses of the Prosecutor. They say something very different, all

1 of us -- all of them, I'm sorry. All of them explained something  
2 very different.

3 So no question for us. It's a question of professionalism. To  
4 accept to go to the trial in this stage? It's not a claim. I don't  
5 say it's a shame. No, it's just we need some time. I think. I  
6 think. But with a very realistic vision of the things that we could  
7 be able to continue to work during May, June, July, and August.

8 And I don't have the intent, or even the idea, to ask for more  
9 time. I think we could be able to file, but it depends on the time  
10 to receive all the disclosure from the SPO, of course, but I just  
11 state before, in my opinion, we are at the end of the process. So if  
12 I don't commit a mistake, and I hate to commit a mistake, because if  
13 I commit a mistake you commit one too, of course, because of me.

14 So, in my opinion, we could really be in a position to issue a  
15 document about the challenge of admissibility for the beginning of  
16 September. What I call, I know it's not exactly the situation, but  
17 what I call the end for all of us of the recess, because we, of  
18 course, have the obligation to work during the recess. And I'm  
19 afraid to say that I have worked my holidays. No holidays, of  
20 course, when you deal with such a case.

21 And it seemed to me at mid-September we must be able to issue a  
22 document as a real pre-trial brief. I think it's reasonable. I  
23 think so.

24 I don't know if I have to add something? I tried to be very  
25 accurate. And, you know, it's not always easy for my poor little

1 English.

2 Thank you very much, Mr. President.

3 JUDGE GUILLOU: It is very accurate. Thank you very much,  
4 Mr. Gilissen, for these very detailed submissions.

5 Mr. Prosecutor, on the procedural calendar.

6 MR. DE MINICIS: Your Honour, just a few remarks before we state  
7 our position on the timeline variations sought by the Defence.

8 We, Your Honour, disclosed the core of our case before the end  
9 of summer 2021. Our case has not changed. So certain  
10 investigations, for instance, a trip to the metal factory, could have  
11 been undertaken at the time as well. Differences or claimed  
12 differences in the statements of our witnesses, if existing, they  
13 have been known to the Defence for some time.

14 Additional investigations that the SPO has had to conduct  
15 recently, as explained in our written submissions, were at the  
16 outcome of an unforeseen event. But I want to state clearly, and for  
17 the record, that they add no new facts to this case. The case of the  
18 SPO has not changed and will not change if Your Honour will decide to  
19 allow the SPO to disclose these additional statements.

20 Finally, when it comes to our Rule 102(3) notice. I don't think  
21 it should be an issue here, because we always abide to our  
22 obligations in that regard.

23 When it comes to the challenge on admissibility, while we, of  
24 course, understand the needs of the Defence to scrutinise the  
25 evidence that we intend to rely on for our case, that can also be

1 done at trial, Your Honour. There are procedures to take issue with  
2 admission of documents in written form or to object to the  
3 admissibility of documents that the SPO may choose to tender at  
4 trial. So we don't see that as an obstacle for the proceedings to go  
5 forward.

6 And having said that, Your Honour, what Mr. Gilissen is  
7 describing now, the difficulties that they're encountering, the  
8 challenges that we all encounter in preparing a case for trial when  
9 the facts happened more than 23 years ago, it's the work that needs  
10 to be done in a case for -- in a war crimes case, and these are  
11 challenges that we all have to face.

12 On this basis, Your Honour, I just wanted to ensure that the  
13 record was accurate, but we do not oppose a reasonable extension of  
14 the time that the Defence will be given by Your Honour to prepare  
15 their case. We just wanted to clarify the certain steps. For  
16 instance, the admissibility of evidence is not something that needs  
17 necessarily to be finalised now and at this stage.

18 And that, again, while there has been some disclosure in the  
19 recent months, the core of the Prosecution case has been disclosed  
20 months ago. That hasn't changed and it will not change if  
21 Your Honour allows the Prosecution to disclose the statements that  
22 we're now seeking to disclose pursuant to Rule 102(2).

23 Thank you, Your Honour.

24 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

25 Just before I give back the floor to the Defence, can you remind

1 me the date of your pre-trial brief?

2 MR. DE MINICIS: Your Honour, I believe it was filed on  
3 28 January 2022, but I will double-check now.

4 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

5 Mr. Aouini, please.

6 MR. AOUMINI: Thank you, Your Honour. That was the date it was  
7 filed before you. Not before us.

8 One specific point, Your Honour, about the pre-trial brief, and  
9 about what is intended to be used in trial. We have dozens and  
10 dozens of names and details in the pre-trial brief, and I think we  
11 mentioned that in the previous hearing. People who are not listed  
12 witnesses, or not listed victims, for which there is evidence, and  
13 for which there needs to be investigation, we should not limit  
14 ourselves to the number of witnesses proposed by the SPO because some  
15 of the names, some of the individuals, some of the details have been  
16 explored by the SPO.

17 And that's where the notice is important for us. The links.  
18 The evidence given by these names or by these individuals or about  
19 these individuals is something that needs to be in the scope of our  
20 investigation analysis for us to take those positions. It's not what  
21 the SPO has chosen to call or not to call. Even this decision-making  
22 is, for us, subject to investigation and analysis. Why you mention a  
23 certain fact or a certain individual in the pre-trial brief, you have  
24 interviewed this person and you're not calling him. It's also  
25 something to explore.

1           So all of these have to be taken into account in order to  
2 determine what Mr. Gilissen accurately described as the huge number,  
3 the huge volume of work that we need to do before we take certain  
4 positions in a diligent way.

5           This is the point we wanted to say about the core evidence. And  
6 what is core for us is probably different from what is core for the  
7 SPO.

8           Thank you, Your Honour.

9           JUDGE GUILLOU: Mr. Gilissen, please.

10          MR. GILISSEN: Just one more thing.

11          This is just an example, that you have to understand it. We  
12 asked to the SPO some documents on the basis on the list, documents  
13 that the SPO don't have the intent to use during the trial. And it's  
14 a very astonishing document for us, for Mr. Aouini and I, because  
15 it's a Serbian document in the Serbian language. I have to confess,  
16 my Serbian is a very poor one. My English too, you say, okay. But  
17 that's really a very, very poor one.

18          So we don't have a translator in Serbian. I can say this is an  
19 element of the Defence team. But I can say that we asked Mr. Shala  
20 to read the document, because he is able to read the document in  
21 Serbian, and he explained us a lot of things. Very interesting, but  
22 very astonishing things, about some forgery, including the document  
23 itself. Some witnesses spoke about some forgery, and so on and so  
24 on.

25          You are able to imagine I appreciate Mr. Shala a lot, but I want

1 to be sure to have a translator in place to have a real translation  
2 of the document. It takes a lot of time. What I told you, it was  
3 the news of yesterday. So that's why it's a huge difficulty to work  
4 properly in our defence.

5 But I told you, there is no reason to make anything and to make  
6 something idiot. I pretend, I have stated and I don't make and I  
7 think that nobody in my team of defence makes some idiot things, I  
8 think so. Till now, Mr. President. Till now. But I hope to  
9 continue. I hope to continue.

10 Thank you very much.

11 JUDGE GUILLOU: Thank you, Mr. Gilissen.

12 Mr. Prosecutor.

13 MR. DE MINICIS: Just very briefly, Your Honour.

14 Again, we do not oppose an extension, a reasonable extension.  
15 But the names that are in the pre-trial brief did not come out of the  
16 blue. They are included in evidence that was disclosed before the  
17 filing of the pre-trial brief.

18 Thank you.

19 JUDGE GUILLOU: And correct me if I'm wrong, I think the  
20 confidential redacted version of the pre-trial brief has been  
21 distributed to the Defence on 31 January 2022.

22 MR. DE MINICIS: That's correct, Your Honour.

23 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

24 Mr. Laws, first I'd like to put on the record that I've been  
25 told that there are still problems with the audio connection. Not

1 the audio to you but the audio from you. And I think it's a problem  
2 on your end, so it hasn't been fixed, unfortunately, during the  
3 Status Conference.

4 Do you wish to make any submissions on this? I will ask you to  
5 try to tell me yes or no doing this or that.

6 Unfortunately, I cannot hear you.

7 MR. LAWS: [via videolink] [Microphone not activated].

8 JUDGE GUILLOU: Do I understand you correctly that you do not  
9 want to make any submissions on this?

10 MR. LAWS: [via videolink] [Microphone not activated].

11 JUDGE GUILLOU: This is noted. Thank you, Mr. Laws.

12 I turn to the parties again. No.

13 So let us move to the next item on our agenda today, which is  
14 the points of agreement on matters of law and fact.

15 On 8 April 2022, the SPO made a filing to indicate the points of  
16 agreement on matters of law and fact with the Defence. I take note  
17 of this filing and the limited number of points of agreement between  
18 the parties.

19 I recall that the Status Conference of March 4th, I ordered the  
20 parties to finalise their *inter partes* discussions and submit their  
21 points of agreement on matters of law and fact by no later than  
22 8 April 2022. Therefore, unless the parties wish to apply for a  
23 variation of time limit, I will consider the filing of the SPO of  
24 8 April for the hand-over document.

25 Do the parties wish to add anything on this matter?



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

2 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

3 Mr. Aouini, please.

4 MR. AOUINI: Yes, one matter, Mr. President, for which there is  
5 agreement, but we need to put again on the record.

6 We have requested from the early stages of the pre-trial phase  
7 the audio-video versions of some witness interviews. We understand  
8 the SPO is working hard to technically make it possible while  
9 providing the transcriptions, but these videos are very important for  
10 our work with Mr. Shala. And so just to put it on the record that  
11 there is no request about it, but this is something we still expect  
12 to receive.

13 Thank you, Your Honour.

14 JUDGE GUILLOU: Thank you, Mr. Aouini.

15 Mr. Prosecutor, do you wish to give an indication on these  
16 audio-visual materials, please?

17 MR. DE MINICIS: Yes, Your Honour.

18 Some of the reasons why the Defence needed access to these  
19 videos was a number of parts of the transcript which were considered  
20 to be indiscernible or inaudible. We have created revised versions  
21 of the transcripts now, and we believe that a large part of these  
22 issues have been resolved.

23 There are other reasons why the Defence would like to have  
24 access to these videos, and one impediment we had, we were faced with  
25 in disclosing the videos, were the redactions in these videos, which

1 made it quite difficult to crop the videos in a lot of different  
2 parts in order to ensure that the redactions, both the standard ones  
3 and those authorised by Your Honour, were not frustrated by the  
4 disclosure of the videos.

5 Now, as Your Honour knows, we have been disclosing lesser  
6 redacted versions of these statements. We have done so with regard  
7 to -- well, yes, with two of the witnesses, 4734, and we will be  
8 doing so for the other witness that the Defence is seeking to obtain  
9 access to the videos.

10 So once we've done that, it may be easier for us to give the  
11 Defence access to these videos. I believe that this request was  
12 made, again, in the *inter partes* e-mail that we received yesterday.  
13 We haven't forgotten about it. We consider that we have solved part  
14 of it by providing revised transcriptions of these transcripts which  
15 were recently disclosed. We understand that where the need remains  
16 to be able to visualise some gestures done by the witnesses. We will  
17 be working to see whether we can, in fact, satisfy that request  
18 fully.

19 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

20 Do you want to add anything, Mr. Aouini?

21 MR. AOUINI: Not really, Your Honour. The second part was  
22 mentioned by our colleague, that is, the gestures, the pointing, and  
23 the showing of some elements that need to be visualised rather than  
24 read was the second part and that they are trying to deal with it, so  
25 we appreciate that.

1 Thank you.

2 JUDGE GUILLOU: Thank you, Mr. Aouini.

3 At this point, I would like to ask the parties whether they have  
4 any other issues they would like to raise.

5 Mr. Prosecutor.

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

7 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

8 Mr. Gilissen.

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

10 JUDGE GUILLOU: Thank you, Mr. Gilissen.

11 So in case we need to have a last Status Conference before the  
12 summer break, I had identified the date of Monday, 30 May, as a  
13 possible date where the courtroom is available, but I think the  
14 Defence indicated that, unfortunately, it is not available at that  
15 date.

16 So I will inquire about the availability of the courtroom. And  
17 in case we need to organise a Status Conference, the parties will be  
18 consulted in advance to make sure they can attend the Status  
19 Conference. So I will not ask for availability today.

20 I will now break for 30 minutes, and I will come back to issue  
21 an oral order regarding the procedural calendar. The hearing --

22 Mr. Aouini, you want to say something?

23 MR. AOUINI: Just a quick reminder, Your Honour, for another --  
24 the request we made to modified the deadline at the beginning.

25 JUDGE GUILLOU: I haven't forgotten it, and it will be in an

1 order modifying my first order that I've already prepared during the  
2 last break, and this will be issued after the second break in half an  
3 hour.

4 MR. AOUINI: Thank you, Your Honour.

5 JUDGE GUILLOU: It is now 11.36. We will resume in 30 minutes.  
6 The hearing is adjourned.

7 --- Recess taken at 11.36 a.m.

8 --- On resuming at 12.06 p.m.

9 JUDGE GUILLOU: Madam Court Officer, can you confirm that we're  
10 in public session?

11 THE COURT OFFICER: Yes, Your Honour, we are in public session.

12 JUDGE GUILLOU: Thank you, Madam Court Officer.

13 Before we adjourn this hearing, I will now issue two oral orders  
14 on the Rule 102(3) material and on the procedural calendar for the  
15 remainder of the pre-trial phase. But before doing so, I note the  
16 Defence request to postpone the time limit for submitting public  
17 redacted versions of filings related to the review of Mr. Shala's  
18 detention.

19 In view of the Defence competing deadlines, I vary the first  
20 oral order I issued during today's Status Conference insofar as it  
21 relates to the submission of the aforementioned filings.

22 Accordingly, I order the Registry, Defence, and SPO, as the case  
23 may be, to file public redacted versions of the following filings  
24 related to the review of Mr. Shala's detention by no later than  
25 22 April 2022, and this is for F00152, F00171, F00177, and F00184.

1           Having heard the parties, I will now issue my second oral order.

2           I consider that the SPO has demonstrated valid reasons for  
3 amending its notice under Rule 102(3) of the Rules on the basis of  
4 filing F00170 and its oral application at today's Status Conference.

5           First, as to filing F00170, I note that the documents falling in  
6 the first category were subject to restrictions under Rule 107 that  
7 have now fallen away, while the documents falling in the third  
8 category result from a request by the Defence.

9           Furthermore, also the documents falling in the second category  
10 are from 2010, I observe that there is a limited number of such  
11 documents and that they serve to provide context for evidentiary  
12 materials from another case that are already in the SPO's Rule 102(3)  
13 notice.

14           Lastly, the Defence does not object to this amendment.

15           In conclusion, I grant the SPO's request to amend its  
16 Rule 102(3) notice of the Rules by including the documents specified  
17 in footnotes 9 to 14 in filing F00170.

18           Second, as to the SPO's oral application to amend its notice  
19 under Rule 102(3) of the Rules by including document with ERN  
20 SITF00014574-00014576, I note that the application concerns one  
21 document that was discovered pursuant to a further review and that  
22 the Defence does not object to this amendment.

23           Therefore, I grant the SPO's request to amend its notice under  
24 102(3) of the Rules by including the aforementioned document.

25           This concludes my second oral order.

1           In this regard, I also note that the SPO requests guidance as  
2 whether my instruction to the SPO to seek leave prior to  
3 supplementing its Rule 102(3) notice applies only to materials that  
4 have previously been in the SPO's possession but are only being  
5 notified at this stage, or whether this instruction is to be  
6 understood as a standing direction that also encompasses any new  
7 materials which may be received by the SPO in the future and fall  
8 within notice requirements in this case.

9           Therefore, I confirm that my instruction covers any amendment of  
10 the SPO's Rule 102(3) notice, whether it is a result of material  
11 already in the SPO's possession or any new material received by the  
12 SPO.

13           Lastly, I will issue my third oral order varying the procedural  
14 calendar defined during the Status Conference of 4 March 2022 in view  
15 of the submissions made by the parties at today's hearing.

16           First, noting that I authorised the SPO to further supplement  
17 its notice under Rule 102(3) of the Rules, I order the Defence to  
18 make any request regarding the items, including in this notice  
19 pursuant to my aforementioned oral order, by no later than 29 April  
20 2022.

21           Second, the SPO shall submit any outstanding requests pertaining  
22 to the disclosure process - in particular, requests regarding  
23 protective measures - by no later than 6 May 2022, excluding the  
24 matter mentioned by the SPO in private session.

25           Third, noting the SPO's application for the an extension, the

1 SPO shall, with the exception of material subject to any request  
2 regarding protective measures or otherwise requiring judicial  
3 authorisation, complete all pre-trial disclosure obligations by no  
4 later than 27 May 2022 and shall submit a notice in the record of the  
5 present case providing a detailed overview of the entire disclosure  
6 process by the same time.

7 The Defence shall, pursuant to Rule 95(2)(e) of the Rules,  
8 submit any objections to the admissibility of evidentiary material  
9 that has been disclosed on the basis of Rule 102 of the Rules by no  
10 later than 22 July 2022.

11 In this respect, I note that the SPO has virtually completed its  
12 disclosure under Rule 102(1)(b), 103, and 107 of the Rules, while it  
13 has disclosed a significant amount of materials under Rule 102(3) of  
14 the Rules. In addition, the Defence indicated that it has commenced  
15 its assessment regarding the material already within its possession.

16 Lastly, this is without prejudice to the right of the Defence to  
17 challenge any evidence at trial.

18 Fourth, the Defence shall provide specific details as to notice  
19 of an alibi by no later than 1 July 2022.

20 Fifth, the Defence shall submit a pre-trial brief, if any, by no  
21 later than 15 August 2022. In this respect, I observe that the  
22 Defence refers to the volume of disclosed material in arguing that it  
23 cannot submit its pre-trial brief before mid-September at the  
24 earliest. However, the Defence has been in the possession of a  
25 significant amount of disclosed materials, the pre-trial brief, and

1 the Rule 109(C) chart for some time, which means that it has had a  
2 significant period of time to assess its position.

3 In addition, I note that pursuant to Rule 95(5) of the Rules,  
4 the Defence, should it choose to submit a pre-trial brief, shall  
5 indicate the accused's defence in general terms, the charge and  
6 matters disputed, and the list of potential witnesses without  
7 prejudice to any subsequent amendment.

8 Lastly, I set the tentative date for transmitting the case file  
9 to 31 August 2022.

10 This concludes my third and final oral order.

11 And this concludes today's hearing. As usual, I thank the  
12 parties and the Registry for their attendance. I also wish to thank  
13 the interpreters, stenographers, audio-visual technicians, and  
14 security personnel for their assistance.

15 The hearing is adjourned. Thank you.

16 --- Whereupon the Status Conference adjourned  
17 at 12.15 p.m.

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