

1 Thursday, 23 September 2021

2 [Status Conference]

3 [Open session]

4 [The accused appeared via videolink]

5 --- Upon commencing at 9.00 a.m.

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

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

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

15 Mr. Prosecutor.

16 MR. O'DOWD: Thank you, Your Honour, and good morning. And good
17 morning to all present.

18 Appearing today for the Prosecution, our legal officer
19 Bernhard Kuschnik; Case Managers Angel Langenberg and Daniel Mezei.
20 And I'm Prosecutor Sean O'Dowd.

21 Your Honour, I would like to take a brief moment to acknowledge
22 that this is the last court appearance for Ms. Langenberg who will be
23 moving on. We thank her for her work. And I want to inform the
24 Court that Mr. Mezei will be taking over for her responsibilities in
25 this case.

1 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

2 And all the best for your future challenges.

3 MS. LANGENBERG: Thank you.

4 JUDGE GUILLOU: Now, let me turn to the Defence please,
5 Mr. Gilissen.

6 Microphone, please.

7 MR. GILISSEN: So I am proud to present to you Mr. Aouini, my
8 co-counsel, and a new person in our team, an intern,
9 Ms. Manon Mollaret. She is a French-spoken person from Marseille,
10 with a sun in the voice, if you understand exactly what I want to
11 mean. So we have Mr. Shala with us by videolink, and we are
12 complete, Mr. President. Thank you.

13 JUDGE GUILLOU: Thank you very much, Mr. Gilissen.

14 Mr. Roche, for the Registry, please.

15 MR. ROCHE: Good morning, Your Honour. I am Ralph Roche from
16 Judicial Services Division from the Registry. Thank you.

17 JUDGE GUILLOU: Thank you, Mr. Roche.

18 I note that Mr. Shala has waived his right to attend in person
19 this Status Conference and that he attends this hearing via
20 video-conference.

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

23 On 14 September, I scheduled the third Status Conference in this
24 case. My goal today, as usual, is to review the status of the case
25 and to organise the exchanges between the parties to ensure an

1 expeditious preparation for trial.

2 In particular, I wish to discuss disclosure of evidentiary
3 material, translations, the status of the Specialist Prosecutor's
4 investigations and the date of its pre-trial brief, the status of the
5 Defence investigations, the points of agreement on matters of law and
6 facts, the detention regime, and, finally, any other issues the
7 parties may wish to raise.

8 I thank the SPO and the Defence for their submissions ahead of
9 the Status Conference. And, as usual, I invite all the parties to
10 present their views in a concise fashion for each item on the agenda
11 that I will address individually.

12 Let me start with the first topic on our agenda today, which is
13 disclosure. I will give the floor to the parties on the disclosure
14 of each category of material separately, starting with the
15 Rule 102(1)(b) material, which is the evidentiary material that the
16 SPO intends to use at trial; followed by the Rule 102(3) material,
17 which is the material relevant to the case as listed by the SPO;
18 then, the Rule 103 material, which is exculpatory material; and,
19 finally, the Rule 107 material which is protected material for which
20 consent of the provider is requested.

21 Let me start our agenda today with the disclosure of evidentiary
22 material the SPO intends to present at trial.

23 The SPO indicated, in its written submissions, that it completed
24 its Rule 102(1)(b) disclosure except: The materials for which
25 protected measures requests have recently been ruled upon in Case 06

1 that are now being processed for disclosure and certain other such
2 requests that are pending in Case 06 and remaining Albanian
3 translations. And I note regarding these translations that I think
4 you have disclosed last night or this morning a further batch of
5 translation in Albanian.

6 The SPO also requests authorisation to disclose two forthcoming
7 expert reports relating to forensic matters pursuant to
8 Rule 102(1)(b). The SPO indicated that it anticipates being in a
9 position to disclose these reports, which have not yet been received,
10 by 8 October 2021.

11 So I will invite the SPO to indicate when the disclosure of the
12 materials for which protective measures requests have recently been
13 ruled upon in Case 06 will be completed, unless it has already been
14 completed. Then if the materials for which protective measures
15 requests are still pending in Case 06 fall under the scope of the
16 currently pending requests for protective measures in Case 06. Then
17 if the translations of the Rule 102(1)(b) material will be completed
18 by 25 September, as indicated in your written submissions. And,
19 finally, what are the reasons for the delay in finalising and
20 disclosing the expert reports given that the indictment in this case
21 has been filed more than 18 months ago.

22 Mr. Prosecutor, you have the floor.

23 MR. O'DOWD: Thank you, Your Honour. I'll take each --

24 JUDGE GUILLOU: Microphone, please.

25 MR. O'DOWD: Thank you, Your Honour. I'll take each of those

1 points in turn.

2 First with respect to materials that are subject to protective
3 measures. All materials -- all items that are subject to protective
4 measures that can be disclosed have now been disclosed. The
5 remaining items are the subject of a pending motion in another
6 matter.

7 Second, with respect to the remaining Albanian translations,
8 Your Honour correctly notes that we produced additional translations
9 yesterday, and that is the conclusion of the Albanian translations of
10 the prior witness statements under 102(1)(b).

11 Finally, with respect to the expert reports. The SPO has
12 previously identified to the Court the fact that there were a limited
13 number of investigative steps outstanding. These investigative steps
14 included following up on certain forensic reports that have already
15 been disclosed to the Defence. We had hoped to complete that process
16 by 30 July, and we were, in fact, able to make contact with the
17 relevant individuals and task them by 30 July but we did not receive
18 the reports at that time. So we seek leave of the Court to produce
19 additional 102(1)(b) materials on or before 8 October 2021.

20 JUDGE GUILLOU: Did you get the confirmation that the reports
21 would be finalised by that date, or is it a target date for you?

22 MR. O'DOWD: My understanding is that they will be received by
23 that date. My understanding is that one of them may have already
24 been received and is being processed into evidence and that we're
25 waiting for the second report.

1 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

2 Let me now turn to the Defence. On the Rule 102(1)(b) in
3 general, Mr. Gilissen.

4 MR. GILISSEN: Yes, Mr. President. Thank you very much,
5 Your Honour.

6 So I can confirm the presentation just made by the Prosecutor's
7 office. I think I can add that we had an agreement on a common table
8 identifying the documents which still seem to be a problem, as those
9 missing Albanian translations.

10 And I can take note that we will receive the two forthcoming
11 expert reports, and we will receive them by 8 October at least.

12 It can be taken note that within the interview of some
13 witnesses, we found some references about some annexes used by the
14 witness during their statements, and we didn't receive some of those
15 annex or we couldn't locate them in the disclosure received. Of
16 course, we had a talk with the SPO about that. Sometimes links
17 between some documents are not always very clear, and we cannot
18 always identify to which witness some documents relate.

19 So I think we will have an issue if all this problem in --
20 during our discussion, I can say, I am sure we will succeed to have
21 something very nice for everybody. Thank you very much.

22 JUDGE GUILLOU: Thank you, Mr. Gilissen.

23 Mr. Prosecutor, can you reply to the problems identified by the
24 Defence, please.

25 MR. O'DOWD: Yes, thank you, Your Honour.

1 First off, I want to start by saying we continue to have what we
2 view as a productive working relationship with Defence counsel. We
3 had a number of *inter partes* communications and an in-person meeting
4 last week that's helped us to try to identify issues and try to
5 resolve them wherever possible before bringing them to the Court.

6 In that spirit, the Defence provided us yesterday with a series
7 of issues they'd identified in connection with the disclosure
8 materials provided to date. That included identifying a number of
9 items for which they sought translations and a number of items for
10 which they sought additional clarification on whether there were
11 associated exhibits or annexes associated with transcripts that have
12 already been produced.

13 We're currently in the process of reviewing the information they
14 provided to us. We received it yesterday afternoon. We note that
15 some of the materials they've identified for which they're seeking
16 translations are materials that are not prior witness statements but
17 they're other types of documents. We expect to continue our
18 *inter partes* discussions with them to try to resolve these issues.
19 And if there are lingering issues, we'd bring them to the Court.

20 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

21 Mr. Gilissen, please.

22 MR. GILISSEN: Yes, thank you very much, Mr. President. I think
23 there is another point about this topic. It is a question of
24 audio-video recording of some witnesses' statements and interviews.

25 We are listing the reasons why some - and I insist some -

1 interviews are needed in the video format. I provide you some
2 example: Missing interpretation, indiscernible part of the statement
3 or interview, sometimes gesture of the witnesses in the description
4 of certain elements, and the use of camera to show some exhibits.

5 So it's limited, but we have the feeling it's really a need for
6 us. Our main objective is, of course, to avoid some litigation about
7 this disclosure of this particular audio-video linked. And I am
8 sure, I repeat it, we will come to an agreement on this. Thank you.

9 JUDGE GUILLOU: Thank you, Mr. Gilissen.

10 Do I take from the SPO and the Defence that they will continue
11 to work *inter partes* to solve these issues, and there is no request
12 at this stage from the Defence for any specific order? Is that
13 correct, Mr. Aouini?

14 MR. AOUINI: Good morning. Thank you, Your Honour.

15 On this topic, of course, we kind of -- in our discussions
16 *inter partes*, we are aware of the case law of the Tribunal about the
17 audio-video recordings, and we've taken note on that. And we came
18 into discussions with the SPO, on a reasonable manner, to engage in
19 discussions where provided some justifications that are other than
20 simply the verification of good transcriptions of audio-videos.

21 If we list in a non-exhaustive manner reasonable justifications
22 to taken the audio-video, then they would accede to our requests.
23 The ultimate aim, as Mr. Gilissen has said, is to avoid litigation on
24 that. And I think we've agreed on a manner on which we can progress
25 witness by witness. We've sent the first request yesterday to the

1 SPO, which they acknowledged, and we are very confident that in our
2 *inter partes* discussions we will come to the right solution and we
3 will be able to accede to those audio-videos which are important for
4 us and for our full understanding of the interviews of those
5 witnesses without having to come before Your Honour.

6 Thank you, Your Honour.

7 JUDGE GUILLOU: Thank you, Mr. Aouini.

8 Just one last question --

9 MR. AOUINI: Yes.

10 JUDGE GUILLOU: -- to the Defence. Do you have any opposition
11 to the expert reports, the forensic report to be disclosed by
12 8 October as requested by the Prosecution?

13 MR. AOUINI: At this stage, we don't see any problem. As
14 Your Honour knows, we are busy with a very big number of other
15 issues, so we can place that at the right moment when they are come.
16 8 October will come very soon, we believe, and we will have a lot to
17 do, and we will be in a position to deal with it if it comes by that
18 time. Thank you, Your Honour.

19 JUDGE GUILLOU: Thank you, Mr. Aouini.

20 Mr. Prosecutor, do you want to add anything on the 102(1)(b)
21 material?

22 MR. O'DOWD: Yes, just briefly, Your Honour. Thank you.

23 Consistent with Your Honour's oral decision in Case 06, our
24 position is that we're not required to produce audio-video recordings
25 of witness interviews for which we've produced transcripts. That

1 said, we've received the materials from the Defence yesterday. We're
2 currently reviewing it closely. We expect to continue our
3 *inter partes* discussions with them in hopes to resolve this issue.

4 JUDGE GUILLOU: I welcome these *inter partes* discussions, and I
5 hope you will find a common understanding soon.

6 Before we move to the next category of evidentiary material, I
7 will issue a first oral order.

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

9 Noting the SPO's request to be authorised to disclose expert
10 reports relating to forensic matters pursuant to Rule 102(1)(b) of
11 the Rules, and having considered the reasons identified by the SPO,
12 in particular, that the reports haven't been finalised as it was
13 initially planned, I hereby order the SPO to disclose the
14 aforementioned expert reports by no later than 8 October 2021.

15 This concludes my first oral order.

16 And, Mr. Prosecutor, should another extension of time be
17 required in relation to the disclosure of any Rule 102(1)(b) material
18 in the future, I remind you to seek judicial authorisation, as usual,
19 by way of an official filing.

20 Let us now move to the Rule 102(3), notice and evidentiary
21 material.

22 The SPO filed its Rule 102(3) notice on 3 September 2021.
23 However, the SPO indicated, in its written submissions, that it
24 foresees needing to supplement the Rule 102(3) notice in respect of
25 two categories of material: First, certain material subject to

1 Rule 107 restrictions, and this was already mentioned in the SPO
2 filing of its notice on September 3; and second, material identified
3 as a result of additional searches run by the SPO as part of a
4 verification exercise to ensure that all relevant items have been
5 captured.

6 The SPO has identified approximately 500 items which, if I
7 may, is over a third more than the number of evidentiary materials
8 initially listed in the notice.

9 Before giving the floor to the SPO, I would like to recall that
10 under our legal framework the Pre-Trial Judge set disclosure
11 deadlines after hearing the parties. The parties cannot, without
12 judicial authorisation, decide to supplement any category of
13 evidentiary material after the deadlines. This practice would
14 potentially not only delay the proceedings but also prevent the
15 opposite parties to conduct its trial preparation efficiently.

16 So I would like to hear the SPO on the reasons why such a high
17 number of evidentiary material has been identified only at this stage
18 of the proceedings.

19 I would also like the SPO to indicate if further searches are
20 foreseen in its database to supplement, again, the Rule 102(3)
21 notice.

22 I inform the parties that I do not intend to issue multiple
23 deadlines in the future about this category of evidentiary material.
24 So I would like the SPO to indicate if this time it has really
25 finalised its review, and when it will be able to provide a final

1 version of its Rule 102(3) notice.

2 Mr. Prosecutor, you have the floor.

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

4 JUDGE GUILLOU: Microphone, please.

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

6 Your Honour, the SPO has tried to take an expansive view in
7 identifying potentially relevant materials for inclusion in the
8 Rule 102(3) list.

9 As part of our efforts to identify all relevant materials, we
10 ran a series of search terms against our databases. In rerunning
11 checks to ensure that we captured all responsive materials, we
12 realised that certain search terms had not been run in a particular
13 database, resulting in the identification of these materials.

14 Your Honour, I note that our internal checks, our routine
15 internal checks would have caught this issue before the final filing
16 deadline but for the fact that our internal database was down during
17 the week beforehand, and so we were not able to check it and identify
18 this issue in advance. We should have identified it in advance.

19 We believe we now have identified all materials in our
20 possession, and we have now listed them on the supplemental
21 Rule 102(3) notice.

22 Of course, it is possible that in the course of reviewing our
23 records we will identify additional relevant materials, and we will
24 then seek leave from the Court to supplement, but we expect that
25 would be a very isolated situation.

1 JUDGE GUILLOU: Mr. Prosecutor, you have filed now this
2 supplemental notice. We cannot continue these proceedings with
3 multiple updates like you do. It's very difficult for the opposite
4 party to follow what you're doing.

5 And, again, this has to be done after leave from the Court. You
6 cannot supplement your notice like this every two or three weeks
7 every time you run a new check in your databases. I would like these
8 proceedings to be organised. I set deadlines. I always set
9 deadlines after hearing the parties, and especially the SPO. I most
10 of the time do not put deadlines that are contrary to the way you are
11 able to do things in all the cases.

12 But let me be clear: You cannot decide to file any disclosure
13 when you want, and especially when it's after the deadlines. If any
14 party was doing that, the proceedings would be chaos and they would
15 last probably two or three times what would be needed because the
16 other party would constantly ask for more time because there would be
17 new disclosures.

18 So I take from what you've been saying that you had an issue
19 with the database. I perfectly understand that and that's not an
20 issue. But what has to be clear, that you have to request leave from
21 the Bench before you file this new disclosure.

22 So now I hear that you think that most of the relevant items
23 have been included in the list, but I also hear that you might have
24 new evidentiary material in the future. If it is the case, then you
25 have to seek leave from the Court and you have to explain why these

1 materials haven't been put on the list.

2 MR. O'DOWD: Thank you, Your Honour. That is fully understood.

3 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

4 Now, I turn to the Defence.

5 Please.

6 MR. GILISSEN: Thank you, Mr. President. About the evidence in
7 the possession of the SPO that we request to access because they are
8 relevant to our preparation, we received the famous notice on the
9 date you point before. The party has agreed to have a common Excel
10 table to work on, and we will use it to make our indication under and
11 pursuant the Rule 102(3). It's more comfortable for everybody.

12 Of course, I take note that there is a lot of new interns. It's
13 really an additional lot, very important one. I don't want to say
14 just now we will -- we could be obliged to ask for some more time.
15 It's too soon. It depends on what we will receive. And I can just
16 say now that if we are able to make our indication sooner, it will be
17 done. But, of course, we have to discuss with Mr. Shala about all
18 the things we will receive. So it's a little bit soon to take
19 position.

20 JUDGE GUILLOU: Thank you, Mr. Gilissen.

21 Just one question for the transcript, because I think you
22 mentioned, "There -- there is a lot of new" -- I think you wanted to
23 say "items," and it has been transcribed as "interns," and I also
24 heard "interns." So just to correct and to make sure that we have
25 understood correctly. I think you meant "items," not a lot of new

1 interns.

2 MR. GILISSEN: That's sure. And I'm sorry. Sometimes my accent
3 in English is a dreadful one, I know it, but I try to improve it.
4 Thank you.

5 JUDGE GUILLOU: And the Bench appreciates that.

6 Let me turn to -- oh, Mr. Aouini.

7 MR. AOUINI: Yes, Your Honour, if you allow me, just to add some
8 more details on the notice itself. Maybe explain what Mr. Gilissen
9 was referring to.

10 We kind of agreed with the SPO on a -- sort of a new protocol
11 where we will share between us an Excel sheet of the table containing
12 the documents listed by the SPO. We suggested that to the SPO, in
13 order to streamline our discussions, where we would use a common
14 support, that is an Excel table where they can make initial
15 indications and they can make initial comments for us in order,
16 again, to avoid any litigations and reduce the bare minimum any
17 disputes on the materiality.

18 We believe that will be more effective and a better use of the
19 timeframe we have to resolve the Rule 102(3) notice. Obviously, we
20 regret the additional items that will be coming. We don't know the
21 impact of them, and we will be very attentive to whether some of them
22 will fall under other rules, like 102(1)(a) or 103, particularly. So
23 we will be attentive to that.

24 But our first indication is that, in the meantime, we will
25 probably come to the SPO with requests for additional information

1 about the descriptions that are contained in the notice. As
2 Your Honour knows, being in receipt of the notice in an annex, some
3 of the descriptions that we have and the information are only
4 contained in the titles and description of the documents. Some of
5 them are not helpful enough for us to assess, in an effective way,
6 whether it is relevant or relevant to a topic that is material to us.
7 And we will continue using the support we agreed upon with the SPO to
8 make all the initial discussions on those topics, request extra
9 information, and make initial indications.

10 As Mr. Gilissen said, if we are in the position to make
11 indications in batches or in stages, we will do that for a better and
12 more effective use of the time and not to encumber Your Honours also
13 with the filings if any disputes shall arise, and we will try to
14 reduce them to where we agree to not disagree, so to say.

15 So that's what we have to say on the notice. Obviously, if the
16 additional items are of a certain impact, we will come to you with a
17 reasonable request, bearing in mind that the process we are trying to
18 put in place will help us ultimately to come to you only when there
19 is an agreed dispute on materiality. Thank you, Your Honour.

20 JUDGE GUILLOU: Thank you very much, Mr. Aouini. And thank you
21 very much to both parties for setting such working methods. I think
22 it's in the interest of all the parties to be able to have this fluid
23 communication.

24 Mr. Prosecutor, before we move to the next category of material,
25 would you like to add anything, especially on the Defence

1 submissions?

2 MR. O'DOWD: Your Honour, I think this is the first we've heard
3 about the descriptions issue, and we look forward to continuing our
4 *inter partes* discussion on this issue as we are with the other issues
5 we've discussed. Thank you.

6 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

7 Let us now move to the Rule 103 material, which is exculpatory
8 material.

9 In its written submissions, the SPO indicated that it had
10 disclosed two batches of Rule 103 material to date, and that review
11 of potentially exculpatory materials is still ongoing.

12 I would like to know whether there remains exculpatory evidence
13 in the SPO's custody, control or actual knowledge that must be
14 disclosed to the Defence pursuant to Rule 103; and whether any
15 request for protective measures for such material is imminent.

16 Mr. Prosecutor.

17 MR. O'DOWD: Your Honour, the SPO has disclosed two batches to
18 date and review for potentially exculpatory material is ongoing. The
19 SPO recognises its ongoing obligation to disclose Rule 103 material,
20 and it will continue to search for and disclose such material as it
21 identifies it.

22 We suspect that there is additional Rule 103 material in our
23 possession. We are continuing to actively search for it and will
24 produce it on a rolling basis as we identify it.

25 We don't have motions for protective measures imminent, but we

1 would not be surprised if there are some that are identified given
2 the nature of the materials in our collection.

3 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

4 Mr. Gilissen or Mr. Aouini, please.

5 MR. GILISSEN: Thank you, Mr. President. Indeed, I can confirm
6 that we received two batches of Rule 103. We are waiting to receive
7 the rest of this material. I just can say the sooner, the better.
8 Thank you very much.

9 JUDGE GUILLOU: I think it's going to be the motto of today's
10 hearing: The sooner, the better. Thank you very much.

11 Mr. Prosecutor, do you want to add anything on this?

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

13 JUDGE GUILLOU: Finally, let us now move to the Rule 107
14 material.

15 In its written submissions, the SPO indicated that, apart from
16 the Rule 102(3) material discussed earlier, no other Rule 107
17 material of relevance to the case has been identified. I would like
18 to know whether the parties face any difficulties related to the
19 disclosure process with respect to this category of evidentiary
20 material.

21 Mr. Prosecutor.

22 MR. O'DOWD: Thank you, Your Honour. That is correct, that
23 there is no other Rule 107 material other than the material we've
24 discussed in the Rule 102(3) context.

25 With respect to that material, I would note that the total

1 number is now down to less than 30 documents that are still subject
2 to Rule 107 restrictions or potential Rule 107 restrictions.

3 And I would note for Your Honour, just for context, that the
4 majority of those documents relate to the issue of armed conflict as
5 opposed to other issues in the case. We're continuing to work with
6 providers to try to resolve these issues as soon as we can.

7 JUDGE GUILLOU: The sooner, the better.

8 Mr. Gilissen, please.

9 MR. GILISSEN: Mr. President, I cannot repeat the same. So very
10 embarrassed, but it's exactly the situation. Thank you very much.

11 JUDGE GUILLOU: Thank you, Mr. Gilissen.

12 Does any of the parties have anything to say on the disclosure
13 process? No? Yes? No? Okay.

14 So let us now move to the issue of translations of filings and
15 evidentiary material.

16 In its submission, the Defence indicated that it has made a
17 request for prioritising the translation of specific material, which
18 has been dealt with by the Prosecution.

19 I would therefore like to hear the parties on any further
20 difficulties regarding translation.

21 Let me start with the Defence.

22 Mr. Aouini.

23 MR. AOUINI: Thank you, Your Honour. As we previously said, we
24 have sent a correspondence to the SPO where we identified, in an
25 order of priority, the number of translations that we feel are

1 missing, either in Albanian or in English or both of them. This is
2 something we agreed upon and we are listing it in a table.

3 We are going to -- also, we are going to compare them and update
4 them as we receive disclosures and keep contact. Some of the
5 translation issues we face internally is for some categories of
6 documents emanating from specific entities; for example, documents in
7 different languages are present in different ERNs and not what we are
8 used to, having the same ERN with a code given the specific language.

9 And so for that we seek assistance every time we cannot locate
10 those documents, because we have the doubt whether we have it or not,
11 and we don't hesitate to list it in the table to the SPO because they
12 probably are more aware of where it is present. And so we are
13 hopeful to -- really to solve all problems or issues regarding
14 translations through this process. But we don't see any other
15 concerns as it stands right now. Thank you.

16 JUDGE GUILLOU: Thank you, Mr. Aouini.

17 Let me turn to the Prosecution.

18 Mr. Prosecutor.

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

20 Very briefly, I confirm we are in receipt of the list of
21 translation issues identified by the Defence yesterday. We look
22 forward to continuing our discussions about those issues in the hopes
23 of resolving them wherever possible. Thank you.

24 JUDGE GUILLOU: Thank you, Mr. Prosecutor. I take note that you
25 will continue to work *inter partes* on this. And, as usual, for the

1 translations, the sooner, the better.

2 I like your suggestion of today, Mr. Gilissen. I think I will
3 make it one of my key sentences for future hearings, especially when
4 I will turn on the right side of this -- on my right side of this
5 courtroom.

6 Let us now move to the third item on our agenda, which is the
7 status of the SPO's investigations and next steps.

8 In its submissions, the SPO confirmed that it seeks an extension
9 of time until 28 January 2022 for the filing of its pre-trial brief,
10 alleging the complexities of the case and the likelihood of
11 overlapping deadlines in other cases.

12 I recall that during the second Status Conference, the SPO
13 confirmed that it will be able to file its pre-trial brief by no
14 later than Friday, 19 November 2021.

15 Mr. Prosecutor, you filed an indictment in this case more than
16 18 months ago, and you are now asking to delay your pre-trial brief
17 to practically two years after the indictment was filed before me,
18 more than 23 months to be perfectly accurate.

19 Do you really need that much time to prepare your pre-trial
20 brief? Because I don't see a clear link between the disclosure of
21 the Rule 102(3) material, which is the material you are not intending
22 to use at trial, and the finalisation of your pre-trial brief, which
23 will refer to the material you intend to use at trial.

24 You also indicated, in your written submissions, that you wanted
25 to expand the period between the filing of the pre-trial brief and

1 the filing of the Rule 109(c) chart. I would like also you to please
2 indicate why the preparation of the chart cannot be prepared before
3 the filing of your pre-trial brief.

4 You have the floor.

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

6 Your Honour, we continue to believe that the requested period
7 for the filing of the pre-trial brief, until 28 January, is necessary
8 to fully address the legal and evidentiary issues involved. It's
9 largely a bandwidth issue. The resources required to respond to
10 these Rule 102(3) issues we're having with the Defence are
11 substantial, and we continue to think that it's appropriate to devote
12 sufficient workload to each of these streams and that that's
13 difficult to do simultaneously.

14 We will, of course, meet whatever deadline the Court sets, but
15 we continue to believe that's necessary. We've tried to preserve the
16 same distance, taking into account the judicial recess, between the
17 conclusion of the Rule 102(3) period and the filing of the pre-trial
18 brief.

19 But, again, we will meet whatever deadline Your Honour sets, but
20 we continue to believe this is necessary to fully address the issues
21 involved.

22 With respect to the Rule 109(c) chart. We've learned from
23 experience in other cases that it's impossible to compile the
24 information in the 109(c) chart until the pre-trial brief is
25 completed, and that's largely because the substance that's required

1 under 109 and under 95(4) are fairly similar. It requires the
2 Prosecution to set out and categorise and analyse the evidence it
3 intends to use, and so it's difficult to do one until the other is
4 completed.

5 Thank you, Your Honour.

6 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

7 Let me turn to the Defence, Mr. Gilissen, on the timeline of the
8 SPO pre-trial brief.

9 MR. GILISSEN: Yes, of course, Mr. President. I am obliged to
10 say that to file the pre-trial brief more than 23 months after the
11 indictment, it's a very long time. That's sure. So I want to stress
12 on this problem.

13 I understand perfectly well the difficulties, but it's a very
14 long time for Mr. Shala, who is, of course, indictee but is in jail
15 too. So I think Mr. Aouini will complete the idea. Thank you very
16 much.

17 JUDGE GUILLOU: Thank you, Mr. Gilissen.

18 Mr. Aouini.

19 MR. AOUMINI: Thank you, Your Honour.

20 Your Honour, our position is extensions of delays that are
21 reasonable based on what is going on the procedure. We would not
22 press too much at this stage, because we are using this time very
23 effectively, intensely, in getting prepared on our side.

24 We note, of course, and we thank you for the indications of
25 putting this deadline into context. We will not make further

1 submissions on this issue, but I will probably repeat the same word
2 of the day, that is, the sooner, the better. We take note of the
3 judicial recess and the reality of the working days towards -- the
4 calendar days when we go through a recess, either summer or winter
5 recess. But as Mr. Gilissen said, those are days that Mr. Shala is
6 spending in jail, and so the less before he starts his trial would be
7 the better, of course.

8 We indicated that we don't oppose any reasonable delay or
9 postponement of deadlines when they are reasonable and justified.
10 But we will leave it at that at this stage, because we have many
11 things that we are dealing with at the same time, and we are pretty
12 confident to advance in the meantime to be able to address the
13 pre-trial brief and the contents of it.

14 It is important for us to receive the most complete and clear
15 pre-trial brief and chart as possible, so that's also in the balance,
16 but we believe it could be done in a deadline that is shorter than
17 that. The SPO indicated he will meet the deadline Your Honour will
18 set, so we will wait for that.

19 Regarding the chart. We understand, technically, the difficulty
20 of putting together the references and the need to do it properly.
21 We have faced, as we mentioned yesterday, some issues where we could
22 locate or establish the links between documents, place the documents
23 in their context, and the links between documents and witnesses.

24 We believe the chart will be extremely important for us. We are
25 ready to accept an extra time for the benefit of the quality of the

1 chart. And, again, as we indicated in the first Status Conference,
2 we believe the same margins should be applied if the Defence should
3 file a pre-trial brief of its own.

4 So those are our submissions on the point. Thank you,
5 Your Honour.

6 JUDGE GUILLOU: Thank you, Mr. Aouini.

7 But to be clear, you do not oppose the request of the SPO to
8 postpone the date of the filing of its pre-trial brief. You take
9 note that you would rather have it sooner than later, but you do not
10 formally oppose the request. Correct?

11 MR. AOUINI: Exactly, Your Honour. It's not a full opposition.
12 It's not a full acquiescence, of course. Although, we have indicated
13 that in our filing, the word of the day, the sooner, the better. We
14 just put in context that we are using this time to advance on our
15 own. We are not wasting the time. And Mr. Shala, himself, is aware
16 of that. But, of course, this is additional notice and additional
17 material to the Defence that can only make our work more effective.

18 We will face the same issues of deadlines. We don't want to be
19 unreasonable, because we will have to provide the same kind of
20 information at some point. So these are the positions, and we leave
21 it in your hands to set the right deadline on that, but no later than
22 what the SPO asks for.

23 JUDGE GUILLOU: That, I would not allow. Thank you, Mr. Aouini.

24 Mr. Prosecutor, I think the Defence has a very constructive
25 approach. And if I may suggest a deal, he doesn't oppose to the

1 postponement to the deadline as long as disclosure is done
2 efficiently and in a cooperative manner and as long as the pre-trial
3 brief is also done in a detailed fashion so that they can prepare the
4 case as efficiently as they can.

5 Do you have any input you want to add after the Defence?

6 MR. O'DOWD: No, Your Honour. That's understood. Nothing
7 further from us.

8 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

9 I will issue another oral order.

10 Having heard the parties, I will issue a second oral order.

11 Noting the SPO's request to vary the time limits for its
12 pre-trial brief and its Rule 109(c) chart, and having considered the
13 reasons identified by the SPO, in particular, the need to sequence
14 the disclosure process and the filing of the pre-trial brief and the
15 Rule 109(c) chart, as well as the fact that the Defence does not
16 object to the requested variations on the basis that it prefers to
17 favour the quality of disclosure, I hereby order the SPO to submit
18 its pre-trial brief by no later than 28 January 2022; and to submit
19 its Rule 109(c) chart by no later than 11 February 2022.

20 This concludes my second oral order.

21 For the next point on the agenda, I would like to turn to the
22 Defence first.

23 I note from the Defence's written submissions its intentions to
24 carry out investigations for the purpose of the presentation of its
25 case. The Defence also flagged serious difficulties it has

1 encountered with conducting investigations in the field.

2 I invite the Defence to elaborate on these difficulties.

3 Mr. Gilissen, you also indicated in your written submissions at
4 this stage of the proceedings that you are not able to confirm, at
5 present, whether you will make any request concerning unique
6 investigative opportunities; that you are not able to indicate, at
7 present, whether you will provide notice of an alibi and/or any other
8 ground excluding criminal responsibility; and that you are not able,
9 at this stage, to confirm whether you will be filing your pre-trial
10 brief and related material and when you will be in a position to do
11 so.

12 Could you specify when you think you will be able to give a
13 timeline on these procedural steps, and do you need the SPO to file
14 its pre-trial brief before you are able to respond to any of these
15 questions?

16 Mr. Gilissen, please.

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

18 We were aware that things would not be easy in the area of the
19 investigations on the ground. I have to confess, we didn't know how
20 much more difficult they would be. We have to face some
21 difficulties, but I can say just now things are improving.

22 We found some investigators and the contact with them are really
23 a failure, so we lost a lot of time, really. But really things are
24 improving, because we have a new contact, and it seems to be a good
25 one.

1 I can explain the kind of difficulties we have to face, but I
2 prefer not to explain it in a public hearing, because it's a little
3 bit delicate. But that's really big problems, I can say. So the
4 best it could be to wait for the Prosecutor brief, because we will be
5 aware, fully aware, about all of the elements and that could be more
6 interesting for everybody.

7 So when we will be able to provide you some information, we will
8 come back, of course, to you. And I can say the sooner, the better,
9 Mr. President.

10 JUDGE GUILLOU: Thank you, Mr. Gilissen.

11 If you wish to address the Court either in private session or in
12 an *ex parte* filing, feel free to request it so we can discuss of any
13 problems that you face in your investigations. So I take it that you
14 are now trying to resolve them. But in the following weeks, feel
15 free to come back to me on these issues, because we can try to solve
16 the problems, and especially the practical problems, you may face on
17 the field.

18 Mr. Prosecutor, do you have anything to add to the Defence here?

19 MR. O'DOWD: No, thank you, Your Honour. Not at this time.

20 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

21 Let us now move to the next item in our agenda today, which is
22 the point of agreement on matters of law and fact.

23 I would like the parties to indicate if they anticipate being
24 able to identify a list of issues subject to dispute and one with
25 issues not subject to dispute.

1 In this regard, I note that the parties have entered into
2 preliminary discussions regarding the possibility of submitting
3 points of agreements on law or facts pursuant to Rule 95 and 156. I
4 would like the parties to indicate when they will be able to reach an
5 agreement on these issues.

6 Mr. Prosecutor.

7 MR. O'DOWD: Your Honour, we don't have a precise timeframe at
8 this time. We do expect that we would reach agreement on as many
9 issues as we're able to by the time of the filing of the pre-trial
10 brief, as contemplated in Rule 95.

11 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

12 Let me turn to the Defence.

13 Mr. Gilissen.

14 MR. GILISSEN: Yes, Mr. President. We started the discussion,
15 preliminary discussion with the SPO. We are waiting for the proposal
16 and propositions of the SPO. And when we will receive it, we have to
17 discuss it, of course, with Mr. Shala. And I suppose things could be
18 better when we receive it. It's impossible now to make more
19 statements, I think. So thank you.

20 JUDGE GUILLOU: Could you elaborate on the timing, Mr. Gilissen?
21 Do you think you will be able to reach an agreement after the SPO has
22 filed its pre-trial brief, or do you think this could be done before?

23 Mr. Aouini.

24 MR. AOUMINI: Thank you, Your Honour.

25 I think the SPO mentioned that he is optimistic that we would

1 reach as many agreements on points of law and fact by that time, by
2 the time of filing his pre-trial brief. Of course, the starting act
3 comes from the SPO. He will make the proposals to us as to points of
4 agreement of -- he seeks the agreement of Mr. Shala on points of law
5 or fact.

6 And Your Honour understands perfectly that the ultimate decision
7 on these issues will be Mr. Shala's decision. So we will wait for
8 those points. We will endeavour to promptly and efficiently submit
9 them to Mr. Shala and inform him about the consequences and context
10 of each point and possible impact on the conduct of the proceedings.

11 And as soon as we have his decisions on those points, then we
12 will communicate them to the SPO and probably report to Your Honour
13 on them. If I addressed your point, Your Honour? Yes, thank you.

14 JUDGE GUILLOU: Absolutely. Thank you, Mr. Aouini.

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

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

17 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

18 Let us move to the next topic on our agenda, which is detention.

19 I would like the Registry to provide an update on the detention
20 regime; notably, whether the meetings between counsel and the accused
21 in the detention facilities have now returned to the pre-pandemic
22 regime; and whether the Registry has resumed family visits of
23 immediate family members.

24 Mr. Roche, please.

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

1 As you may recall, on 9 September, the Registry filed
2 submissions relating to the conditions on detention. That was filing
3 73. So I won't repeat all the content. But in summary, face-to-face
4 meetings with counsel have been possible under pre-pandemic
5 conditions since 1 July and have been occurring, as I understand, on
6 a relatively frequent basis, without any issues raised to the
7 Detention Management Unit.

8 As regards in-person visits. Visits with close family members
9 have been possible since 15 July, and I understand one visit has
10 occurred. As of 6 September, other personal visits are also
11 permissible. And further visits, I understand, are scheduled for
12 Mr. Shala either in the course of this month or early next month.

13 So, thank you. If you have any further questions I will, of
14 course, answer them. Thank you.

15 JUDGE GUILLOU: Thank you, Mr. Roche.

16 Let me turn to the Defence. Do you want to flag any issue
17 related to detention?

18 Mr. Gilissen.

19 MR. GILISSEN: Thank you very much, Mr. President. It's always
20 a delicate issue, of course. And I would like to -- first, to thank
21 you, Registry, for the efforts and the indications they have made
22 today. We are constantly monitoring the situation with Mr. Shala.
23 He is very helpful for us, because he is able to provide us some
24 information, and we are particularly receptive in this issue he
25 raised. And we know he had to face some real problems.

1 But we are in regular contact with the Registry official,
2 including Mrs. Registrar, and really I want to thank them for the
3 availability because really it was very helpful for us and
4 particularly for Mr. Shala, of course. So I'm sure that the issue
5 will -- an issue will be found and a solution will be found. And the
6 condition will continue to improve with the goodwill of all the
7 parties involved.

8 So we are waiting for the future, but I have the feeling things
9 are better now. We have faced some incidents, but it's not now, my
10 opinion, time to talk about it in a public hearing. Thank you.

11 JUDGE GUILLOU: Thank you, Mr. Gilissen.

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

13 MR. ROCHE: Thank you, Your Honour. Just to say that the
14 face-to-face or one-on-one dialogue between the Registry and the
15 Defence has been mutually extremely beneficial to allow for the
16 resolution of issues in the quickest and most comprehensive manner.
17 Thank you.

18 JUDGE GUILLOU: Thank you, Mr. Roche.

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

21 Mr. Prosecutor.

22 MR. O'DOWD: Thank you, Your Honour. Nothing further from the
23 Prosecution at this time.

24 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

25 Mr. Gilissen.

1 MR. GILISSEN: Yes, Mr. President, I would like to introduce to
2 you one request. I am really sorry, because I know perfectly well I
3 am very late to make it and to introduce it.

4 With your leave, and under your control, that's sure, I take my
5 responsibility to explain to you the problem we are meeting.

6 So, as you know, we are just now in the process of finalising
7 our written reply to the SPO response to our preliminary motions.
8 And despite our best effort, we realise it will be short with the
9 word limit. And the issue concerns the two kinds of preliminary
10 motion we have put on table, and we would like to grant us an
11 extension of 2.000 words for all the replies in those preliminary
12 motion response.

13 Really, you have to be aware that we are sorry to introduce this
14 request so late, and it is really to try to succeed in the quality --
15 and the nature and the quality of our argument. It's the interest of
16 the quality of the debate itself, so that's why we introduce -- we
17 dare to introduce this request to you.

18 And I'm sure now we believe that 2.000 more words will allow us
19 to properly address the SPO's submission in an effective way, which
20 will assist you, Mr. President. Thank you very much.

21 JUDGE GUILLOU: Thank you, Mr. Gilissen.

22 Do I take from your request that you would like to be able to
23 reply to each response of the SPO with an extension of word limit, or
24 is it like one consolidated reply? And whether it's one or two,
25 would 5.000 words in total be sufficient for your reply?

1 [Specialist Counsel confers]

2 MR. AOUINI: Sorry, Your Honour. You might have understood that
3 we work as a "binome" as we say. So we will complete our request for
4 Mr. Gilissen.

5 We are intending to file two replies on each of the challenges,
6 the jurisdiction challenge and the indictment challenge. We're in
7 constant contact with our drafter. And despite our best efforts, we
8 believe we will not be comprehensive and address fully the
9 submissions of the SPO if we don't get this extension of word limits.
10 If we are allowed 5.000 words total per reply, that would be great.
11 If we get a little bit extra for the jurisdiction, that will be even
12 better.

13 Your Honour understands that the jurisdiction motion and reply
14 had more word limits in total. We leave it in your hands. The
15 extension will be beneficial for the quality and the substance that
16 we put in our reply, our replies.

17 Thank you, Your Honour.

18 JUDGE GUILLOU: So to be clear, you would like an extension for
19 each reply; and, second, you would like 5.000 words, and, if
20 possible, even more for the jurisdiction. Is that correct? And, if
21 so, what would you need? 6.000 words?

22 MR. AOUINI: It would be highly appreciated, Your Honour. We
23 are walking on eggs. So we know we are late with our request, so we
24 will appreciate any extension. We've been trying to condense and put
25 it. We are not succeeding. We understand it's a substantial

1 extension of word limits we are trying to put before you, but we
2 believe it's necessary for this important issue. We thank you for
3 your indulgence, Your Honour.

4 JUDGE GUILLOU: Thank you. If I may, the sooner is always the
5 better but the longer is not always the better for the product.
6 Being concise is also a quality.

7 Mr. Prosecutor, what do you have to respond to the Defence
8 request?

9 MR. O'DOWD: Your Honour, no objection to the Defence request
10 from the Prosecution. We'll defer to Your Honour about the
11 appropriate extension.

12 JUDGE GUILLOU: Thank you very much.

13 Do you want to add anything, Mr. Gilissen or Mr. Aouini? No?

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

15 JUDGE GUILLOU: Then I will rule on your request from the Bench,
16 given the timeline of your reply.

17 After having heard the request of the Defence, I will issue a
18 third oral order.

19 I consider that good cause constituting exceptional
20 circumstances to justify a variation of word limit for the replies to
21 the SPO response to the preliminary motions to challenge the
22 jurisdiction of the KSC and the form of the indictment have been
23 established.

24 In particular, I take note of the Defence need to fully argue
25 the complex issues arising from both preliminary motion responses.

1 I further note that on September 3, 2021, I granted a similar
2 request filed by the SPO, and that the SPO does not oppose this
3 request.

4 Accordingly, I authorise the Defence to file replies to the SPO
5 responses to the preliminary motions of the Defence not exceeding
6 6.000 words each.

7 This concludes my third oral order.

8 I would now like to ask the parties for their views on the next
9 Status Conference, which is currently pre-scheduled for 15 November
10 2021.

11 Mr. Prosecutor.

12 MR. O'DOWD: Thank you, Your Honour. We'll be available at the
13 Court's convenience and we are available on that date.

14 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

15 Mr. Gilissen, please.

16 MR. GILISSEN: Thank you. It's exactly the same, Mr. President.
17 It's perfect. Thank you.

18 JUDGE GUILLOU: Thank you, Mr. Gilissen.

19 You will receive a Scheduling Order that will include the agenda
20 before the Status Conference. I also invite the parties to make
21 written submissions if they would like to raise any specific issues
22 during the next Status Conference.

23 And I mention this especially for the Defence: If you face any
24 difficulties for your investigations, I will appreciate that you file
25 written submissions, *ex parte* if needed, so that we can have a

1 specific segment of the next Status Conference dedicated to this
2 topic.

3 Do the parties have anything else to add for today?

4 Mr. Prosecutor.

5 MR. O'DOWD: Nothing from the Prosecution, Your Honour. Thank
6 you.

7 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

8 Now I turn to the Defence, please.

9 MR. GILISSEN: Nothing to add, Mr. President. Thank you very
10 much.

11 JUDGE GUILLOU: Thank you. This concludes today's hearing. I
12 thank the parties and the Registry for their attendance. And, as
13 usual, I would like to thank the interpreters, stenographer,
14 audio-visual technician, IT technician, and security personnel for
15 their assistance.

16 The hearing is adjourned.

17 --- Whereupon the Status Conference adjourned at
18 10.04 a.m.

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