

1 Friday, 23 April 2021
2 [Status Conference]
3 [Open session]
4 [The accused entered court via videolink]
5 --- Upon commencing at 11.00 a.m.

6 JUDGE GUILLOU: Good morning, everyone in and outside 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 to introduce themselves,
13 starting with the Specialist Prosecutor's Office.

14 Madam Prosecutor.

15 MS. IODICE: Good morning, Your Honour. Appearing today for the
16 Prosecution, Specialist Deputy Prosecutor, Mr. Whiting; Prosecutor
17 Sean O'Dowd; Marlene Yahya Haage, Legal Officer; and
18 Angel Langenberg, Case Manager.

19 Thank you.

20 JUDGE GUILLOU: Thank you, Madam Prosecutor.

21 Now I turn to the Defence, please.

22 MR. GILISSEN: Good morning, Your Honour. I am
23 Mr. Jean-Louis Gilissen, and I appear before your Court with
24 Mr. Hedi Aouini.

25 Thank you very much.

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

2 And for the record, I note that your client is appearing before
3 the Court via video-conference.

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

6 On 20 April, I scheduled the first Status Conference in this
7 case. My goal today is to review the status of the case and to
8 organise exchanges between the parties to ensure an expeditious
9 preparation for trial.

10 In particular, I wish to discuss the status of the
11 Specialist Prosecutor's investigations, the estimated amount of
12 documentary and testimonial evidence the parties will bring to trial,
13 issues related to the disclosure of supporting material to the
14 indictment, additional material intended to use at trial, exculpatory
15 evidence and protected material. Then we will discuss the procedure
16 for disclosure, the redaction regime to be adopted for the present
17 proceedings, and finally, any other issues the parties may wish to
18 raise.

19 I thank the SPO and the Defence for their written submissions,
20 especially within this short timeframe, and I will invite the parties
21 to present their views in a concise fashion about each item listed on
22 the agenda, which I will address individually.

23 I remind the parties that should any submission require
24 disclosure of confidential information, they should inform me so that
25 we can go into private or closed session.

1 Let me first move to the general questions. Before I give the
2 floor to the parties, I wish to remind them of the general principles
3 of disclosure in the legal framework of the Specialist Chambers.

4 Disclosure is an *inter partes* process in electronic form,
5 organised and facilitated through the Registry's court management
6 system. Disclosure shall be a priority for the Prosecution at this
7 stage, and the parties shall disclose evidence of true relevance to
8 the case and not the greatest volume of evidence.

9 In view of the publicity principle, evidence is registered as
10 public unless there are reasons to classify otherwise. The
11 disclosing party determines the appropriate level of classification
12 of evidentiary items on a case-by-case basis.

13 I would like to hear first from the Prosecution on this topic,
14 notably, on the status of investigations, the type of evidence it
15 intends to use in the proceedings, and how many witnesses it intends
16 to call at trial.

17 Madam Prosecutor.

18 MS. IODICE: Thank you, Your Honour.

19 As submitted in writing yesterday, we foresee very limited
20 investigative steps which will be taking place during the pre-trial
21 proceedings. We do not foresee that such investigative steps will in
22 any way delay the procedure.

23 As to the second point Your Honour asked, we will be
24 presenting -- we have already submitted four witnesses with the
25 indictment supporting materials, and we are foreseeing to present

1 about a maximum of eight additional witnesses. This will be -- this
2 has been also submitted in writing yesterday.

3 With regards to the third point Your Honour raised, we have
4 submitted already a breakdown of what is contained in the supporting
5 materials, and that is -- essentially covers mostly witness
6 statements, a number of other documents, which include reports,
7 orders, and other items, and we expect that the additional materials
8 to be presented after the supporting materials have been disclosed
9 will follow within those lines as well.

10 Thank you, Your Honour.

11 JUDGE GUILLOU: Thank you, Madam Prosecutor.

12 Now let me turn to the Defence for their submissions on what the
13 Prosecution just presented and on the general questions point of the
14 agenda of the Status Conference. We'll go in more detail later on
15 each category of evidence and on the procedure, so just for the
16 general questions here.

17 Mr. Gilissen.

18 MR. GILISSEN: Thank you very much, Your Honour. Thank you for
19 giving me the floor.

20 With your permission, I would like to address a quick, very
21 first point. I respectfully submit this is an important point,
22 because this is very special for us. We are a very brand new team of
23 Defence. And, of course, as you know, I'm sure you're aware about
24 the difficulties of this kind of situation.

25 Mr. Aouini and I, we all [indiscernible] -- we take care to

1 respond to the appointment of the first conference, but it's very
2 difficult to deal with the mass of information we receive. And I can
3 say just now that the very first point I would like to underline: We
4 are not, till now, a fully operational Defence team. I would like to
5 underline it. Okay. Thank you very much.

6 So with the first point of the document we received, the Defence
7 confirms its agreement and its intent to carry out investigations,
8 but we are not now able to provide any information on the anticipated
9 duration of its investigative activities.

10 The Defence is unable to indicate whether it will provide notice
11 of an alibi or any other grounds of excluding criminal
12 responsibility, but, of course, we will take contacts with the Court,
13 with the SPO, to provide the information till we could have
14 something.

15 The Defence confirms its intention to apply a case-specific
16 categorisation in Legal Workflow for any disclosure to the
17 Prosecution, and accepts the proposed adoption of the case-specific
18 subcategorisation in Legal Workflow. We would like to propose some
19 additional subcategories: One, criminal element; background; and on
20 the third element, location, other.

21 So the Defence is willing to consider any proposed model
22 consolidated disclosure chart. We received some information about
23 that. We are busy to discuss. We had a contact with the SPO about
24 these possibilities to adopt something in an agreement, and we have
25 the wish to inform you at the following Status Conference.

1 So the big issue, in my opinion, is disclosure of materials
2 supporting the indictment, Rule 102, because we received the proposal
3 well of the Prosecutor, of course, but we request that the evidence
4 supporting the indictment be disclosed as soon as possible, at least,
5 the very least, within 30 days of Initial Appearance of the accused.

6 Till now, it was a unilateral procedure, and we understand it
7 perfectly well, of course, but now we would like a total
8 contractually -- contradictory procedure. There is a number of
9 documents of procedure, the filings that we have that we have -- that
10 has been submitted to you, and we would like to obtain the filing and
11 any transcript of hearing about the procedures in the past to have a
12 fully view on the procedure. We would like to obtain all documents,
13 including the indictment, without any redaction, excepting,
14 excepting, of course, the ones concerning the witness.

15 But we have the opinion, and we submit respectfully, that the
16 name of the victims, and particularly the one who is alleged to be a
17 person who died, it's, of course, very important to know for
18 Mr. Shala. That's why we would like, with the exception of the
19 redaction concerning the witness, we would like to have an
20 unconditional, contradictory procedure about the past of this
21 procedure.

22 It means all the filings leading up to the arrest of Mr. Shala
23 and without any redaction, with the exception I told you just before.
24 I think these documents are really the ones who will enable us to
25 work effectively. That's the problem of the effectivity, of course.

1 You know it perfectly well.

2 So with your permission, Mr. Aouini will deal with a special
3 point concerning the disclosure of Rule 102(1)(b) material.

4 I thank you, Your Honour.

5 JUDGE GUILLOU: Thank you, Mr. Gilissen. We will go into the
6 details of each category, one after the other, so I will give you the
7 floor a little later, Mr. Aouini.

8 Mr. Gilissen, I perfectly understand that the Defence team is
9 not fully operational - I mean, it's just been a couple of days - and
10 I know I've been very fast scheduling this Status Conference, but let
11 me just give the reasons.

12 It's because we - and you, I think - want the SPO to disclose
13 evidentiary material as soon as possible. And in order for the SPO
14 to disclose the material, I have to issue a framework decision on
15 disclosure. And for me to issue this framework decision on
16 disclosure, I need your submissions, both from SPO and Defence, and
17 this is why I wanted to do it as early as possible, because this is a
18 condition for you to get all the material as soon as possible.

19 But I perfectly understand that, especially now, whether it's
20 the composition of the Defence team and your perspective on the case,
21 investigations, it's absolutely understood that it's not possible for
22 you to make any submissions on that.

23 And to be fully honest, the burden at this stage is definitely
24 more on the other side. It's definitely the SPO's duty to disclose
25 all the evidence at this stage. That is the key point in the Status

1 Conference.

2 Let me now move to the different categories of evidentiary
3 material, and we will start with the supporting material to the
4 indictment known as the Rule 102(1)(a) material.

5 I take note that yesterday the SPO disclosed one batch of
6 Rule 102(1)(a) material to the Defence, which includes non-witness
7 related indictment supporting materials as well as some statements
8 obtained from the accused. The SPO anticipates being able to
9 complete its disclosure by the end of the 30 days' statutory
10 timeframe.

11 The Defence requests that evidence supporting the indictment be
12 disclosed as soon as possible and at the very latest within 30 days
13 of the Initial Appearance of the accused.

14 I invite the SPO to give any further submissions on the
15 disclosure of the supporting material to the indictment, and notably
16 on the overall amount of evidentiary material, whether translations
17 into Albanian of witness statements whom the SPO intend to call at
18 trial have been finalised, and any other details the SPO wishes to
19 provide.

20 Madam Prosecutor, you have the floor.

21 MS. IODICE: Thank you, Your Honour.

22 Yes, indeed, we intend to move the disclosure process forward as
23 quickly as possible, and, as Your Honour noted, we started our
24 disclosure of Rule 102(1)(a) materials yesterday. The items
25 disclosed comprise a total of 22 items for 275 pages, five statements

1 of the accused, and 17 other documents, meaning, reports, political
2 declarations, authorisations, and other orders. This is part of the
3 total amount of indictment supporting materials that comprises 97
4 items for a total of 3.493 pages.

5 The total number of the statements of the accused included in
6 the indictment supporting material is 21 items. Each item -- each
7 statement might be comprised of several items. That's why the number
8 seems a little higher.

9 Regarding the translation, Your Honour, the translation has been
10 completed for some of the items. There are some translations that
11 are still pending and that will be, of course, done within the -- we
12 foresee that it will be completed within the statutory 30-day
13 deadline.

14 With regards to the witness-related materials, that disclosure
15 will be done as soon as possible once protective measure motions have
16 been addressed. So we foresee to also be ready to disclose very
17 quickly, but that will have to wait until protective measures have
18 been addressed.

19 Thank you, Your Honour.

20 JUDGE GUILLOU: Thank you, Madam Prosecutor.

21 Mr. Aouini, on this supporting material to the indictment.

22 MR. AOUINI: Thank you, Your Honour. Good morning to
23 Your Honour and to our learned colleagues, to everyone in the
24 courtroom, and around it.

25 Just briefly, as Your Honour mentioned, we are here today to

1 listen to what the SPO has to say about it. This is well-noted and
2 appreciated, that he's willing and committed to disclose the most
3 relevant documents as soon as possible and, if possible, well before
4 the 30-day deadline.

5 And we confirm that we are in receipt of the first batch of
6 102(1)(a) material. It was disclosed quite late in the evening. We
7 didn't have a good chance or a fair chance to have a look at it, but
8 I'm sure, as we get more operational and more effective, as we are
9 getting staffed, we will be able to deal with it. And that's the
10 most important thing. Thank you, Your Honour.

11 JUDGE GUILLOU: Thank you, Mr. Aouini.

12 And I also add to what I mentioned to Mr. Gilissen before, that
13 you simply remember my very long oral order on Monday with a lot of
14 0s. This also was a bit painful to hear for all of you, but this
15 also was to be able to unclassify a number of documentation so that
16 you could have access to them as soon as possible.

17 Let me now move to the second item on the agenda, which is the
18 supporting material to the indictment known as the Rule 102(1)(b)
19 material.

20 I note that yesterday the SPO disclosed one batch of Rule
21 102(1)(b) -- sorry. Excuse me. No, that is me messing up, with the
22 102(1)(a). I take note that the SPO expects to be ready to disclose
23 further material under Rule 102(1)(b) by 30 July 2021 or in any case
24 no later than 30 days prior to the opening of the
25 Specialist Prosecutor's case, subject only to protective measures

1 being granted.

2 The Defence requests that such material be disclosed as soon as
3 possible in both English and Albanian, and it submits that disclosure
4 of such materials 30 days prior to the opening of the Prosecution's
5 case would be inadequate.

6 I invite the SPO to give any further submissions on the
7 estimated amount and type of material it intends to disclose, the
8 redactions that will be required, and any other details the SPO
9 wishes to provide in relation to this category of evidence.

10 Madam Prosecutor.

11 MS. IODICE: Thank you, Your Honour. Yes, as submitted in
12 writing yesterday, the SPO plans to complete its Rule 102(1)(b)
13 disclosure obligation by 30 July 2021, in any event, 30 days before
14 the beginning of the Prosecution case and pending any translation.

15 As I anticipated at the beginning of the hearing, the number of
16 witnesses shouldn't exceed eight, and we expect that the additional
17 documents won't exceed a total of 54, for a complete amount of 100,
18 including also the indictment supporting materials.

19 With regards to translations, as we are continuing our review of
20 documents to identify the documents that will be falling within this
21 category, of course, that will also follow, and we expect that the
22 materials falling within witness statements will be translated by the
23 deadlines.

24 And with regards to Your Honour's last point regarding whether
25 we foresee redactions and protective measures, we do believe that it

1 is possible that some of the remaining witness-related material and
2 some of the documents may follow within the category that requires
3 protective measures or other type of redactions or may follow under
4 Rule 107 and may require special orders.

5 Thank you, Your Honour.

6 JUDGE GUILLOU: Thank you, Madam Prosecutor. Duly noted.

7 I turn to the Defence. Mr. Aouini.

8 MR. AOUINI: Thank you again, Your Honour.

9 Just a quick clarification point on this matter. We have noted
10 yesterday a slight discrepancy between paragraph 2 and paragraph 9 of
11 the submission of the Prosecutor in relation to the date mentioned as
12 30 July. In one paragraph, it seemed to mean that this would be the
13 date where it would be in a position to start making these
14 disclosures, and on the other, it seems to be the date where it's in
15 position to complete that disclosure. My learned friends were very
16 helpful today. We had a quick chat. We could clarify this. And
17 Ms. Iodice clarified it, so we appreciate that.

18 That's all we had to say on this.

19 JUDGE GUILLOU: Thank you, Mr. Aouini.

20 I understand it that it is when you will be done with the
21 disclosure of this material, correct, to avoid any misunderstanding.
22 But that's how I understood your submissions.

23 MS. IODICE: Yes, Your Honour. The materials will be provided
24 on a rolling basis until the final date of 30 July. Thank you.

25 JUDGE GUILLOU: Thank you, Madam Prosecutor.

1 Now let us move to the next item in our agenda today related to
2 the evidence material to the Defence preparation known as the
3 Rule 102(3) material.

4 I would like to remind the SPO that disclosure or inspection of
5 evidence, such as statements, documents, photographs, or tangible
6 objects material to the Defence, must be disclosed without delay.
7 The detailed notice of such material must include not only
8 information the SPO assesses to be potentially material to the
9 Defence preparation but any material and evidence in the SPO's
10 possession which has not been disclosed under Rule 102(1)(a) and (b)
11 and 103 and which is relevant to the case.

12 I also remind the parties that disputes as to the materiality of
13 the information, as claimed by the Defence, must be submitted
14 immediately to the Pre-Trial Judge for resolution.

15 I also take note that the SPO anticipates providing the Defence
16 with a detailed notice of the Rule 102(3) material by September 3,
17 2021. And I also note that the Defence for Mr. Shala requests that
18 evidence material to the preparation of its case be disclosed
19 immediately or as soon as possible or in any event by 22 May 2021.

20 I invite the SPO to, notably, indicate for this category an
21 estimation of the type and amount of material, the redactions that
22 will be required, and any other details the SPO wishes to provide.

23 Madam Prosecutor.

24 MS. IODICE: Thank you, Your Honour.

25 At this stage, as indicated in writing in our submissions

1 yesterday, we foresee this list to comprise not more than 3.000
2 documents. Of course, the review is ongoing and any -- we foresee
3 this to be the maximum number, but there could be differences.

4 We also foresee that a part of this material may require
5 redactions or protective measures requests. And as Your Honour
6 stated, we do propose to provide detailed notice to the Defence by
7 3 September 2021, upon completion of the Rule 102(1)(b) disclosure
8 obligations. This proposal is in line with the practice of this
9 Court, to have a disclosure process organised in a way that allows to
10 submit as last any residual information after the items to be
11 presented at trial and the items potentially or exculpatory have been
12 disclosed.

13 It is, in our submission, the most efficient way to proceed, and
14 the way that will avoid both delays and duplication of work. For
15 this reason, we submit that the date of 3 September is the most
16 practical date. Thank you.

17 JUDGE GUILLOU: Thank you, Madam Prosecutor.

18 Now, I turn to the Defence. Mr. Aouini --

19 MR. AOUINI: Thank you, Your Honour.

20 JUDGE GUILLOU: -- if you want.

21 MR. AOUINI: I think it's fair to say that it's probably a bit
22 too early to set dates or to make a definitive, or at least a
23 position, or an indication that is useful to Your Honour. I think
24 that as we get ourselves acquainted with the most relevant materials,
25 we will be able to see the impact and the content of the documents

1 and be able to come to the Prosecutor through our discussions as to
2 realistic estimates.

3 Obviously, in the abstract, it's very easy to say this date or
4 the other. We don't oppose in principle. It makes sense that it
5 might come at a later stage after the first two categories of
6 disclosure. It makes perfect sense. It will allow us to deal and
7 assess, especially with Mr. Shala, the essential documents. And I'm
8 sure if we identify documents that are material to us, we might
9 always stay in contact with the Prosecutor for a punctual disclosure
10 of certain material we get aware of.

11 Thank you, Your Honour.

12 JUDGE GUILLOU: Thank you, Mr. Aouini.

13 I think the parties are in agreement that this sequencing of
14 disclosure aims mainly at avoiding duplication, which I think is an
15 important point for efficiency.

16 Just one follow-up question to the Prosecution: Would you be
17 able to disclose this notice a little earlier, or would 3 September
18 be the earliest possible for you?

19 MS. IODICE: Your Honour, 3 September would be the earliest date
20 for us, also taking in consideration the summer recess and a few days
21 that are necessary to have a careful assessment of the materials so
22 that it can be effectively meaningful for the Defence. Thank you.

23 JUDGE GUILLOU: Thank you, Madam Prosecutor.

24 Let us now move to the next item in our agenda, which is the
25 exculpatory evidence known as the Rule 103 material.

1 I remind the Specialist Prosecutor that this evidence must be
2 disclosed immediately to the Defence as soon as it is in its custody,
3 control, or actual knowledge, which may -- as when it reasonably
4 suggests the accused's innocence or mitigate the guilt of the accused
5 or affect the credibility or reliability of the
6 Specialist Prosecutor's evidence.

7 Disclosure of exculpatory evidence is a continuous obligation,
8 subject only to protective measures where necessary.

9 I note that yesterday the SPO already disclosed a first batch of
10 potentially exculpatory material, so I invite the SPO to indicate the
11 amount and type of exculpatory material, whether redactions will be
12 required, and any other detail you wish to provide.

13 Madam Prosecutor.

14 MS. IODICE: Thank you, Your Honour.

15 Indeed, as indicated, the SPO has already started its Rule 103
16 disclosure obligations, and we've continued to fulfil this obligation
17 in accordance with the Rules and disclosed all its Rule 103 materials
18 within its custody, control, or actual knowledge.

19 With regards to yesterday's disclosure, I would like make a
20 correction to what was submitted in writing. The total number of
21 items was, in fact, 15, not 14. This is because we added the
22 Albanian version of one item and that changed also the total number
23 of pages disclosed to 1.045. There was one witness statement, and
24 the number of statements obtained from the accused was five and not
25 54, as incorrectly noted in our written submissions. The number of

1 transcripts parts were a total of two and the number of other
2 documents, six.

3 With regards to the remaining Rule 103 disclosure obligation,
4 the SPO will continue to review, and following any application for
5 redactions, wherever necessary, immediately disclose any such items
6 falling within this category. We do expect that some of the Rule 103
7 materials might require redactions, in particular pursuant to
8 Rule 108(1).

9 Thank you, Your Honour.

10 JUDGE GUILLOU: Thank you, Madam Prosecutor.

11 Mr. Aouini.

12 MR. AOUINI: Thank you, Your Honour.

13 We have nothing really to note regarding that. The obligation
14 of the Specialist Prosecutor is ongoing, continuous. Disclosure of
15 this material are statutorily mandatory and immediate, so we will
16 just leave it at that. Thank you.

17 JUDGE GUILLOU: Thank you, counsel.

18 Let me now move to the next category of material, which is the
19 protected material known as the Rule 107 material.

20 I take note that the SPO foresees that a limited amount of
21 material falling under Rule 102 and/or 103 is protected under
22 Rule 107. I would like the SPO to, notably, indicate the amount and
23 type of material that still requires clearance, whether the SPO has
24 already taken steps to obtain the consent of the information
25 providers to disclose such material or whether such steps are

1 foreseen in the near future, whether the SPO intends to apply to the
2 Pre-Trial Judge to be relieved in whole or in part of its obligation
3 under Rule 102 and/or 103 of the Rules to disclose the additional
4 material, and whether redactions will be required.

5 Madam Prosecutor.

6 MS. IODICE: Thank you, Your Honour.

7 Indeed, a limited amount of material may fall within this
8 category. It is not possible at this time to estimate exactly the
9 amount of material that might require Rule 107 -- that might fall
10 within the Rule 107 protected material. However, Your Honour, we
11 have taken steps for any material that has been identified. So far
12 we have taken steps to start the clearance process.

13 Of course, at this stage it is difficult to foresee whether we
14 will have to apply to be relieved of our obligation under Rules 102
15 and 103 until we have received responses from the providers.
16 However, we will promptly inform the Pre-Trial Judge should this
17 happen.

18 Thank you.

19 JUDGE GUILLOU: Thank you, Madam Prosecutor.

20 Now I turn to the Defence. Do you have any specific comment on
21 this category of material?

22 Mr. Aouini.

23 MR. AOUINI: None at this stage, Your Honour.

24 JUDGE GUILLOU: Thank you, Mr. Aouini.

25 Now we will move to the next item on our agenda, which is the

1 procedure for disclosure and, notably, the use of case-specific
2 categorisation in Legal Workflow for material falling under
3 Rule 102(1) (a), (b), and Rule 104(5) and (6) at the time of
4 disclosure of each batch of such material.

5 In its submission, the SPO indicates that subcategories
6 additional to the statutory categories foreseen by Rule 109(c) would
7 be of very limited assistance, if any, and would be a time-consuming
8 process.

9 The SPO also submits that a consolidated disclosure chart should
10 be provided within 15 days from the filing of any pre-trial brief.

11 The Defence accepts the proposed adoption of the case-specific
12 subcategorisation in Legal Workflow, and, as mentioned by
13 Mr. Gilissen earlier in this hearing, the Defence also proposes two
14 additional subcategories.

15 The Defence also requests to be provided with the consolidated
16 disclosure chart as soon as possible, and in any event well in
17 advance of the filing of the Prosecution's pre-trial brief, so that
18 it can properly prepare for trial.

19 I invite the parties to give further detail on this topic, and,
20 of course, especially on the subcategories in Legal Workflow that
21 have been recently implemented in another case.

22 Madam Prosecutor.

23 MS. IODICE: Thank you, Your Honour.

24 Yes, as submitted, it is the SPO's position that any subcategory
25 additional to the statutory categories foreseen by Article 109 -- by

1 Rule 109(c) will be of limited or no assistance to the Defence.

2 For example, should the subcategory "Pjeter Shala" be introduced
3 in this case, we cannot see any document that will contain the tag
4 for Pjeter Shala but not for accused. And similarly, for "location
5 Kukes," that being the only location, it will automatically be tagged
6 together. The same applies to some of the additional subcategories
7 proposed.

8 Because of the nature of the evidence in this case, it will
9 become clear that each item might cover almost all of the issues. It
10 will be only a very limited amount of items that might cover just one
11 issue or one underlying crime, for example.

12 We do understand that in a case with a larger amount of
13 evidence, this kind of categorisation may be effective. However, in
14 this case, we believe that it will be of no benefit to the accused.

15 Thank you, Your Honour.

16 JUDGE GUILLOU: Just a follow-up question, Madam Prosecutor.

17 I take your point for the location, but for the counts and for
18 the modes of liability, there are several counts that refer to
19 several crimes and there are also several modes of liability in the
20 indictment. So what about the subcategorisation related to these
21 topics?

22 MS. IODICE: Yes, Your Honour, as briefly mentioned, we believe
23 that each item might cover an extensive amount, for example, of
24 underlying crimes. Therefore, it might end up being tagged for all
25 of the underlying crimes and all the modes of liability, rendering,

1 effectively, the exercise not -- of no assistance to the Defence.

2 It's really by looking at the specificity of the case that we
3 can say in our view this will be of limited assistance, because of
4 the nature of the evidence, because of the limited timeframe of the
5 indictment, and the evidence to be presented.

6 Thank you.

7 JUDGE GUILLOU: Thank you, Madam Prosecutor.

8 Before giving the floor to the Defence, just a couple of
9 information on the context.

10 This issue of categorisation has been debated in other cases in
11 previous Status Conferences. We've had the questions of disclosure
12 charts, notably, when they had to be prepared SPO, what categories
13 they should include. And in another case, I ordered, actually, the
14 categorisation to be made directly in Legal Workflow through a recent
15 upgrade of the system which is done through categorisation that
16 allows not only to basically get the material in an organised way
17 through different Excel spreadsheets that can be generated within the
18 system, but also for any parties to search for evidence, combining
19 different categorisations so as to be able to search for evidence as
20 fast and expeditiously as possible.

21 So after this little reminder, I give the floor to the Defence.

22 MR. AOUNI: Thank you again, Your Honour.

23 And we fully take your point on the follow-up question regarding
24 the modes of liabilities and counts. It is mentioned in our
25 submissions. We would like to have those categorisations. We had a

1 small discussion this morning with our colleagues from the SPO. We
2 might discuss that further. But at this stage -- we don't expect to
3 litigate this, but at this stage, we cannot assume or presume the
4 absence of additional charges, the absence of joinder to other cases,
5 or any things of the -- any procedural events that might happen that
6 would render these categorisations absolutely essential.

7 So we take no firm position at this stage other than the ones we
8 made in our written submissions, and maybe we will be able to assist
9 you further at later conferences.

10 JUDGE GUILLOU: Thank you, Mr. Aouini.

11 Madam Prosecutor, do you want to add anything on this topic of
12 the procedure?

13 MS. IODICE: Yes, Your Honour, just one additional point.

14 I hope it is clear that what we are opposing is just
15 subcategories, because, of course, with any search and any filter
16 will still be possible for the four categories foreseen by
17 Rule 109(c). So that would remain a tool that the Defence would have
18 at its disposal.

19 Thank you.

20 JUDGE GUILLOU: Thank you, Madam Prosecutor.

21 Now, let us move to the last item on the agenda, which is the
22 redaction regime.

23 In adopting a redaction regime, it is necessary to ensure the
24 efficiency of the disclosure process while striking a balance between
25 the duty to protect the interests of victims and witnesses and

1 upholding the rights of the accused.

2 In their submissions, the SPO and the Defence both agree to
3 adopt the redaction regime applied in the Gucati and Haradinaj case.
4 I invite the SPO and the Defence to make further submissions on this
5 topic.

6 Madam Prosecutor.

7 MS. IODICE: Your Honour, we agree with Your Honour's proposal
8 to apply that redaction regime.

9 Thank you.

10 JUDGE GUILLOU: Thank you, Madam Prosecutor.

11 Mr. Aouini.

12 MR. AOUINI: Yes, Your Honour, our position, in principle, is
13 that the proposal seems absolutely reasonable and agreeable. Should
14 we later, at a later stage, discover something worth noting to
15 Your Honour, then we will not fail to do it. But as it stands, the
16 proposal seems agreeable to the Defence.

17 JUDGE GUILLOU: Thank you, Mr. Aouini.

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

20 Madam Prosecutor.

21 MS. IODICE: Thank you, Your Honour.

22 Just one final point regarding the provision of the Rule 109
23 chart. In the Prosecution submission, this chart requires a fully
24 finalised pre-trial brief in order to be produced, because it draws
25 from that analysis. And I just wish to note that while this would be

1 coming after the pre-trial brief, the accused would have at its
2 disposal the detailed outline, which contains, count by count, the
3 evidence relevant for each count, and, of course, every single item
4 disclosed will be similarly categorised. Therefore, there will be no
5 prejudice to the accused by receiving the chart after the pre-trial
6 brief.

7 Thank you.

8 JUDGE GUILLOU: And do you need the two full weeks, or would one
9 week be enough for this?

10 MS. IODICE: Your Honour, we do need the two full weeks.

11 Thank you.

12 JUDGE GUILLOU: You're very demanding today.

13 I turn to the Defence. Would you like to add anything or is
14 there any other issue you would like to raise in this hearing?

15 MR. AOUINI: Just on this specific point, maybe Mr. Gilissen has
16 some comments to make later on, but just on the issue of the chart.

17 Again, we agreed with the SPO to discuss that further. As we
18 know more about the case, the way it's been arranged and the way
19 things are going, then probably we'll come with a reasonable
20 suggestion. But in any case, what the Defence says is the deadlines
21 or the timelines that are applied to the SPO should be the same as
22 the Defence, at least in terms of margins.

23 Thank you, Your Honour.

24 JUDGE GUILLOU: This is noted.

25 Mr. Gilissen, do you have any other points you would like to

1 raise in this hearing?

2 MR. GILISSEN: No, thank you very much. Nothing else.

3 Thank you.

4 JUDGE GUILLOU: Thank you.

5 I would like to ask the parties now on their views about the
6 next Status Conference, especially what date.

7 I note in this regard that should counsel or the accused wish to
8 participate via video-conference, written notice shall be sent via
9 e-mail to the Registry 24 hours in advance of the relevant hearing so
10 that arrangements can be made, and such notice should include the
11 written consent of the accused, as the Defence actually did for this
12 Status Conference.

13 Madam Prosecutor, on the date of the next Status Conference?

14 MS. IODICE: Thank you.

15 We will be ready at Your Honour's convenience, Your Honour.

16 Thank you.

17 JUDGE GUILLOU: Thank you, Madam Prosecutor.

18 Now I turn to the Defence.

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

20 Concerning the setting of a new date for the next Status
21 Conference, we would benefit from a period of a few weeks where we
22 can finalise the set-up of the Defence team, as I told you at the
23 beginning of the hearing, and to deal with some urgent matters,
24 including the question of detention of Mr. Shala.

25 Thank you very much.

1 JUDGE GUILLOU: Thank you, Mr. Gilissen.

2 Do I take from your submissions that end of May or early June
3 would be appropriate for you, or do you need more time?

4 MR. GILISSEN: I think early June could be nice. In my opinion,
5 the best is the end of June. But if it is necessary, we will prepare
6 to be able to appear in the beginning of June.

7 Thank you.

8 JUDGE GUILLOU: Thank you, Mr. Gilissen. This is noted.

9 You will receive a Scheduling Order that will include the agenda
10 before the Status Conference.

11 And I also invite the parties to make written submissions if
12 they would like to raise any specific issue during the next Status
13 Conference.

14 This concludes today's hearing. I thank the parties and the
15 Registry for their attendance. I also, as usual, thank the
16 interpreters, stenographers, security personnel, and audio-visual
17 technicians for their assistance.

18 The hearing is adjourned. Thank you.

19 --- Whereupon the Status Conference adjourned at
20 11.50 a.m.

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