

1 Tuesday, 18 October 2022
2 [Trial Preparation Conference]
3 [Open session]
4 [The accused entered court]
5 --- Upon commencing at 9.00 a.m.

6 PRESIDING JUDGE VELDT-FOGLIA: Good morning and welcome to the
7 first Trial Preparation Conference in this case.

8 I will now give the opportunity for the photographer to take
9 some pictures. Please proceed.

10 Thank you.

11 Madam Court Officer, please call the case.

12 THE COURT OFFICER: Good morning, Your Honours. This is case
13 KSC-BC-2020-04, The Specialist Prosecutor versus Pjeter Shala.

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.

15 Before asking those present in the courtroom to introduce
16 themselves, I would like to remind everyone of a few rules we have to
17 observe at all times. So, please, before speaking make sure you
18 activate your microphone and you switch it off when you have finished
19 with what you have to say. We have interpretation from Albanian and
20 Serbian, so please speak slowly and clearly. And before intervening,
21 wait five seconds in order to allow the interpreters to finish the
22 interpretation of the previous sentence, and this is a hard one. So
23 please wait and then -- because, if not, we have overlapping
24 speakers, and that's really problematic.

25 I would also like to remind the parties and Victims' Counsel and

1 the Registry that certain information in this case is subject to
2 protective measures and confidentiality orders. This confidential
3 information shall not be disclosed in open session and I remind you
4 to give me prior notice should any submission require to go -- should
5 require the disclosure of confidential information, then we can go
6 into private or closed session.

7 Very well. I would kindly ask the parties, Victims' Counsel,
8 and the Registry to introduce themselves, and we start with the
9 Specialist Prosecutor's Office. You have the floor.

10 MR. DE MINICIS: Good morning, Your Honours. Today the
11 Prosecution is represented by Alex Whiting, Deputy Specialist
12 Prosecutor; Gaia Pergolo, Associate Prosecutor; Eva Wyler, Associate
13 Prosecutor; Daniel Mezei, our Case Manager; Giulia Bianchi, our legal
14 intern; and myself, Filippo De Minicis, Associate Prosecutor.

15 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Prosecutor.
16 Victims' Counsel you have the floor.

17 MR. LAWS: [Microphone not activated].

18 PRESIDING JUDGE VELDT-FOGLIA: Please activate your microphone.

19 MR. LAWS: Forgive me. Early mistake. Do forgive me. I'm
20 Simon Laws, I'm Victims' Counsel in this case. And I'm joined today
21 by my co-counsel, Maria Radziejowska.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you.
23 Defence, you have the floor.

24 MR. GILISSEN: [Microphone not activated].

25 PRESIDING JUDGE VELDT-FOGLIA: Could you activate your

1 microphone.

2 MR. GILISSEN: Sorry.

3 PRESIDING JUDGE VELDT-FOGLIA: You have to get accustomed to it.
4 It will work in some days, no doubt.

5 MR. GILISSEN: Yes, thank you. I'm Mr. Jean-Louis Gilissen,
6 from the Bar of Liege. I'm the Belgium one and I am afraid a
7 French-spoken person but I made an effort in English sometime. I am
8 here with my co-counsel, Mr. Aouini; the second co-counsel,
9 Ms. Cariolou; and the Case Manager, Ms. Dzeneta Petravica. We have
10 the pleasure with us two interns from the Paris university from
11 France and the team is complete. I think so.

12 Thank you very much.

13 PRESIDING JUDGE VELDT-FOGLIA: And, for the record, your client,
14 Mr. Shala is also present in the courtroom.

15 MR. GILISSEN: Yes, of course. Last but not least, Mr. Shala
16 can with us. I hail him. Thank you very much.

17 PRESIDING JUDGE VELDT-FOGLIA: Very well.

18 Mr. Shala, I remind you that all rights under the law and the
19 rules as they were read to you by the Pre-Trial Judge at your first
20 appearance continue to apply before this Panel, including your right
21 to remain silent.

22 Now I turn to the Registry. Please, you have the floor.

23 MR. NILSSON: Good morning, Your Honours. Good morning,
24 colleagues. Jonas Nilsson, Judicial Services Division, representing
25 the Registry today.

1 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

2 And, for the record, my colleagues are Judge Roland Dekkers,
3 Judge Gilbert Bitti, and Judge Vladimir Mikula. And my name is
4 Mappie Veldt-Foglia, and I am the Presiding Judge for Trial Panel I.

5 I will give a short procedural history to introduce today's
6 hearing and to give the legal basis for it.

7 28 January of this year SPO submitted pre-trial brief. On
8 29 July of this year, the SPO amended its list of witnesses. It was
9 again amended on 10 October and filed an amended list of exhibits.
10 On 5 September, the Defence filed its pre-trial brief and sent us a
11 provisional list of witnesses. Yes, I see you nodding. And we have
12 several decisions admitting in total eight victims participating to
13 the proceedings, and we will refer to them as Victims 01/04 till
14 08/04.

15 And on 15 September of this year, the President of the
16 Specialist Chambers assigned Trial Panel I to the present case upon
17 transmission of the case file by the Pre-Trial Judge, and that
18 happened on 21 September of this year when the Pre-Trial Judge
19 transmitted the case to Trial Panel I.

20 We issued as Trial Panel on 30 September a decision scheduling
21 Trial Preparation Conference on today, tomorrow, and Thursday, and
22 with reserve day Friday, including an *ex parte* closed session. And
23 in that decision we requested the parties, the Victims' Counsel, and
24 the Registry to file written submissions on a number of issues with a
25 view to gathering information to plan the next steps for the

1 commencement of the trial.

2 We have received your submissions on 10 October as requested,
3 and we have granted to the Defence the 13 October request for an
4 *ex parte* hearing with the Panel and the correspondence dated
5 13 October of this year, CRSPD 42 at 11 minutes past 4.00, e-mail
6 from Trial Panel I to CMU regarding the Defence *ex parte* session. I
7 mention it here because in that way we have put it on record and it's
8 not somewhere in the system, hidden.

9 Let me now inform you of the purpose of today's hearing.

10 Today and the following days we will be sitting here in session
11 what the Rules of Procedure and Evidence call the Trial Preparation
12 Conferences. These are hearings - and I say this also for the public
13 - where the Trial Panel shall discuss and gather all the information
14 that is needed to start the trial. We will do that together with the
15 SPO, the Defence, the Victims' Counsel, and the Registry.

16 So, therefore, today, we will not discuss the guilt or innocence
17 of the accused, nor will we examine any evidence.

18 Regarding the schedule for the upcoming days, the Panel notes
19 that there has been a change with regard to tomorrow afternoon. The
20 Panel will not sit tomorrow in the session from half past 2.00 till
21 4.00.

22 As announced in the decision scheduling the Trial Preparation
23 Conference, there will be an *ex parte* closed session with the SPO,
24 the Registry, including the Witness Protection and Support Office,
25 and, as already indicated, we will have an *ex parte* closed session

1 with the Defence.

2 The agenda for today is as follows. We will first go through
3 the list of the issues set out in the decision. You will be given
4 the opportunity to make further observations, and we will have some
5 questions on several topics. You will be given also the possibility
6 to make any points you deem necessary. And finally, we will issue a
7 number of oral orders and we will inform you of the decisions, some
8 of the decisions, the Panel intends to issue in the upcoming period.

9 Good.

10 Before we start our discussion, I would kindly ask you to follow
11 the agenda as set out in our decision and refrain, of course, as much
12 as possible, from repeating things that have already been submitted.

13 Let me see. First point on the agenda. This was the
14 investigations and the disclosure of evidence.

15 We requested submissions from the Specialist Prosecutor's Office
16 on the following issues. That was the confirmation by the SPO that
17 the investigation and the disclosure of incriminating evidence in
18 this case have been completed. And we requested submissions on
19 whether the SPO intends to close to Defence further exculpatory
20 evidence under Rule 103 of the Rules or further material evidence
21 under Rule 102(3) of the Rules, and some related questions.

22 Yes. Before I will give you the floor to make further
23 submissions, if any, Mr. Prosecutor, I would like to go into private
24 session because we have to discuss something which was redacted in
25 your filing.

1 So, Madam Court Officer, could you bring us into a private
2 session, please.

3 [Private session]

4 [Private session text removed]

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23 [Open session]

24 THE COURT OFFICER: Your Honours, we're in public session.

25 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.

1 MR. DE MINICIS: Your Honours, it's my understanding that the
2 documents mentioned in paragraph 12 of our submissions have in fact
3 been disclosed last Friday. And I believe I could give you the
4 disclosure package number which would be number 87.

5 PRESIDING JUDGE VELDT-FOGLIA: And a further remark -- thank you
6 for your observation and for this information. And could it be
7 further clarified why it was disclosed now and not at an earlier
8 moment? I can imagine that is a legitimate question from the side of
9 the Defence.

10 MR. DE MINICIS: Yes, Your Honour. We have -- at the end of --
11 towards the end of the pre-trial phase and as we were moving towards
12 the trial phase of the proceedings, we decided to conduct an audit of
13 our disclosure to capture any newly acquired documents, but as well
14 to make sure that we had, in fact, disclosed all documents. We had
15 fully complied with our obligations. We found a limited number of
16 documents, some of which, for example, became disclosable only as of
17 recently. For example, with the additional of the witness in our
18 witness list on 29 July. And these are -- I would say the bulk of
19 the Rule 103 disclosure that we've just released.

20 Other documents concern fairly recent communications with our
21 witnesses. A small number of them, we had been in possession for
22 some time but we had not captured them in our earlier disclosure
23 exercises.

24 I have to say that some of the information contained in these
25 documents is -- I would say the vast part of that is duplicatable

1 information which was already known to the Defence. For instance,
2 was information that was conveyed to us by one of our witnesses
3 during phone conversations that we had with the witness, and we have
4 disclosed further notes of this conversations or information which
5 was largely already known was also repeated.

6 So for completeness, we have disclosed these documents.

7 So to sum up, Your Honours, this Rule 103 disclosure exercise,
8 it's a mix of documents that only as of recently have become
9 disclosable under the rule and other documents which we have found
10 doing an audit exercise of our earlier disclosure.

11 PRESIDING JUDGE VELDT-FOGLIA: Yes. Thank you, Mr. Prosecutor.

12 You mentioned some of the documents related -- are related to a
13 witness? Did you just say that? Yes.

14 MR. DE MINICIS: Yes, Your Honour. If you want, I can give you
15 a breakdown of the documents and their relevance, an update to our
16 written submissions.

17 PRESIDING JUDGE VELDT-FOGLIA: Yes, I see that you here refer to
18 the additional witness on your witness list on 29 July.

19 MR. DE MINICIS: That's correct.

20 PRESIDING JUDGE VELDT-FOGLIA: Just without being too insistent,
21 but that was end of July and we're now talking about half of October.
22 So the Panel was just wondering why, taking into account that two and
23 a half months had passed by, it was disclosed now. But you have said
24 you have done an audit. And we just want to make the point that some
25 time has passed before sharing it.

1 MR. DE MINICIS: We understand the past concern, Your Honours.
2 Thank you very much.

3 PRESIDING JUDGE VELDT-FOGLIA: Is there something you would like
4 to add in regard to Rule 103?

5 MR. DE MINICIS: To Rule 103, no, Your Honour. We have some
6 updated numbers concerning the 102(3), if Your Honour would like to
7 hear submissions on that.

8 PRESIDING JUDGE VELDT-FOGLIA: Yes, very well. We have seen
9 that have you identified 108 documents, potentially disclosable, and
10 you request leave to include them in an updated Rule 102(3) notice.
11 This is paragraph 15 of the filing 303. And what we would like to
12 hear you from, and I see that you already have some additional
13 observations, what your additional observations are and especially if
14 you will require protective measures for any more of the documents
15 before disclosure. And after that, I will give the floor to the
16 Defence. Because what I will do is I will give them the floor to
17 react on both 103 and 102(3).

18 Defence Counsel, then you can give your responses or your
19 observations all at once.

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

21 We have reduced the number that we had announced in our written
22 submissions to 85 documents. We did that by screening out duplicates
23 of the documents and by checking whether, in fact, some of these
24 documents had already been disclosed because duplicates of others,
25 and so the number is now 85.

1 No request for protective measures would be necessary for any of
2 the documents should the Defence elect to request disclosure.

3 And also these documents, we have found them further to the
4 audit that we have recently completed.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Prosecutor.

6 Very well. Defence Counsel, you have the floor, if you would
7 like to respond.

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

9 Your Honours, I cannot hide, of course, I'm a little bit -- and
10 I have to confess it, I have a discomfort with the position of the
11 Prosecutor. That's sure. That's sure. And I'm afraid that's part
12 of a hole. I have the feeling with some changing, with some wish to
13 withdraw some witness, and particularly on this point to the will to
14 add some document, and that's not new documents, of course. If it
15 was new documents, we are ready to talk about and to explain, to
16 express our view and even concern about that. But it is not new
17 documents. And I have a strong feeling and some bitter feeling about
18 the way to continue this disclosure as if the pre-trial procedure was
19 not over. And, really, we have to face a lot of difficulty with
20 that.

21 Now it's time for the Prosecution's Office, for the Specialist
22 Prosecutor to understand we are in a trial, in a real one, not a
23 pre-trial. And it could be, I consider it could be unfair to oblige
24 us to walk on moving sand, because we are walking on moving sand. We
25 start our investigations on the basis of the documents we received.

1 And you know exactly what is the difficulty to receive some
2 documents, particularly at this stage of the proceedings. We have to
3 receive it, we have to read it, we have to analyse it. We have some
4 time to translate it, to be able to make the analysis with Mr. Shala
5 himself, and try, of course, to make the best decision what we
6 consider, right or wrong, the best answer. Sometime, no problem. I
7 have to say, no problem. But in the past, we know that we met a lot
8 of difficulties.

9 I have to remember all the people here that almost 500 documents
10 were lost and provided to the Defence very late. We have a big -- a
11 huge difficulty with the way that some documents were presented, and
12 we lost a lot of time, all of us. The Pre-Trial Judge lost a lot of
13 time.

14 And I am afraid that we are now, if I understand well, and I am
15 afraid I understand very well, in the continuation of this situation.
16 Sometimes, I say there was no problem, no issue. Sometime we are
17 obliged to go on the ground to make some investigation with the new
18 information. And sometimes that's worst. We are obliged to re-read
19 some documents with a new enlightenment issued by the so-called new
20 document.

21 So, really, I think, and I sustain respectfully, now it's
22 enough. You have to draw a line. I consider that this new situation
23 from a procedural point of view, we have to consider that the
24 deadline is so -- is -- we are -- it's gone. We are in such a
25 situation that's enough.

1 What is a trial? What is a trial? It cannot be a trap. It
2 cannot resemble to an ambush.

3 I don't say this is the wish of the Prosecutor. Of course. I
4 want to be very clear. But it could look like even without
5 intention. I told you we have the feeling we are walking on moving
6 sand and waste a lot of energy, a lot of minutes on some reading of
7 documents, on some investigation which we have to re-start.

8 May I say, take care, because if we have the feeling we are
9 walking on moving sand, you could move on a swamp. That's all the
10 difficulties.

11 The Prosecutor is the engine of the procedure. He is the one
12 who decides to start, to issue an indictment, to ask for the
13 confirmation of the indictment, who asks for the arrest of Mr. Shala.
14 He is a detainee now since 18 months. And we receive some day just
15 before the start of this conference some documents, and it's not new
16 documents.

17 So I don't have to be longer, I think so. You understand
18 perfectly well what is my uncomfort. And I just underline as a
19 conclusion, I am afraid that this part of the problem, this part of
20 this issue is just a part of a wall -- of a hole, as I say, a hole.
21 A real big issue that concerning in reality not the wish to catch the
22 possibility to complete the evidence but to change its mind. To
23 change the reality of the case.

24 So I think that I have nothing to add. Just one thing, with
25 your permission. We issue a PTB, a pre-trial brief, I have to say.

1 We were not obliged to issue it. And we make the choice, to be
2 clear, because our relation, and I want to focus on them and
3 underline it, our very professional, the high-quality professional
4 relationship. And we decided to be very clear, to explain exactly
5 what is the position of the Defence at this stage. And we have a
6 feeling, perhaps a bad feeling - I hope so - that there was something
7 new in the position of the Prosecutor, in the Prosecutor's position,
8 that to change, I don't know if it is the angle, the strategy, but
9 even perhaps the case. But I have the possibility, I will have the
10 possibility to utter some words about that, about the rest of the
11 point for this conference.

12 Thank you very much.

13 I just think that Mr. Aouini would like to add something. Thank
14 you very much.

15 MR. AOUMINI: Thank you, Mr. Gilissen.

16 Good morning, Your Honours.

17 Just by way of example on specific points of the Rule 103
18 disclosure. Your Honour, just to remind everyone and put on the
19 record that the deadline that was put by the Pre-Trial Judge for the
20 completion of all disclosure obligations is 27 May. And after that,
21 we received a number of notices of additional exculpatory
22 disclosures.

23 And to give an example to Your Honours on the impact of these
24 late disclosures, referring to the paragraph 12, and I shall not
25 mention the pseudonym of the witness because we're in public session.

1 But specifically on this disclosure 87, the Prosecutor says that the
2 information is known to the Defence. This is, in fact, not entirely
3 true.

4 And we have a couple of examples where we received this
5 disclosure last Friday and we acquired information for which we have
6 sent correspondence to the SPO requesting this information to be --
7 to enable us, with the addition of a witness, to explore certain
8 information and make investigations, for which we received negative
9 responses. And last Friday, we received that information in
10 exculpatory material.

11 So all the time and resources we have put into trying to acquire
12 this information ourselves, and to be honest with Your Honours, we
13 were preparing motions about this information that would allow us to
14 acquire further information, is a perfect example that when documents
15 would have been disclosed on 29 July or shortly thereafter, as it is
16 the rule under Rule 103 to be immediate disclosure, it would have
17 allowed the Defence to gain a lot of time and direct its efforts
18 towards an information that was otherwise available. This is by way
19 of example.

20 The same goes for the notice 102(3). We had multiple additional
21 notices. Is it really the time to make a final review when the
22 deadline for this final review -- and we have requested after those
23 extra notices from the SPO to conduct this review and they assured us
24 that they're doing it and they have done it. Today, 108 documents
25 coming into our hands will have to be analysed, reassessed against

1 what we know already from the case and will engage further analyses
2 and investigations.

3 This is, by way of example, the impact of late disclosures.

4 Thank you, Your Honours.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence Counsel.

6 Mr. Prosecutor, I give you the floor for a reaction you will
7 surely have.

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

9 Your Honour, the Prosecution case has not changed. We have
10 dropped -- decided to drop a couple of witnesses. It is entirely
11 normal going into trial to focus the case more. I think it is also
12 in the interests of judicial economy to do that.

13 With regard to the new documents that we have added, now I think
14 perhaps counsel is referring to the request to amend our
15 Rule 102(1)(b) list. Those would be the only documents that we would
16 add to our case for the presentation. And we requested the addition,
17 Your Honour, of four documents.

18 One of them was already known to the Defence. It had been
19 disclosed. And we have explained the reasons why that now we want
20 to, in fact, also disclose it under Rule 102(1)(b).

21 Two documents concern the witness that was added at the end of
22 July. The Prosecution has also explained that it probably does not
23 intend to use these documents at trial but disclosed them and wants
24 to add them to its exhibit list for completeness and just for
25 fairness to the Defence.

1 And one last document is a -- there is a report of a -- that is
2 largely corroborative information already known to the Defence, and
3 there is a photo board identification that -- where a witness
4 provides visual identification of people he had already identified
5 among the alleged perpetrators of his abduction and mistreatments.
6 We don't think that this adds much. In fact, the case, as I stated,
7 did not change, and the number documents added there is limited.

8 In respect to Rule 102(3), of course, Your Honours, these are
9 not documents that the Prosecutor intends to use at trial. We gave
10 notice to the Defence because we're obliged to do so. The documents
11 that are relevant, they're not necessarily all material to the
12 preparation of the Defence case. And when we receive -- should they
13 request their disclosure, we'll also make that assessment.

14 And finally, with respect to Rule 103, I am not sure what
15 documents counsel was referring to because it was rightly cautious
16 not to mention the witness, but the documents that we have disclosed
17 further to the addition of the July witness, it does take some time
18 to review our records further to the additional witness and to locate
19 the documents, Your Honour. That was also during the -- it coincided
20 with the summer recess when there was less staff doing the review.
21 But we have disclosed them -- as soon as we found them we started
22 processing them and we have now disclosed them.

23 I think this concludes my response to counsel.

24 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Prosecutor.

25 Defence Counsel, we will do a further round. Let us divide. We

1 have the amendment of the request for the amendment of the list of
2 exhibits. I want to discuss that later on.

3 To be clear, you were not discussing that, for my understanding.

4 MR. AOUINI: No, Your Honour. We were discussing the disclosure
5 of last Friday, disclosure 87. I can give you the ERN, I think --

6 PRESIDING JUDGE VELDT-FOGLIA: No, no, no, no, that's clear. So
7 we're not discussing that, because I was under the impression that
8 Mr. Prosecutor was asking that.

9 So for me, now it's important to state that you oppose to the
10 SPO adding the 85 documents. Not 108, 85 documents? Am I right?

11 MR. DE MINICIS: [Microphone not activated].

12 PRESIDING JUDGE VELDT-FOGLIA: 85 documents to the Rule 102(3)
13 notice, even if they could be material for your Defence.

14 Is that your position?

15 MR. AOUINI: This is not the position, Your Honours. Because
16 what is relevant for us, we have to look at it and we have to
17 investigate.

18 Our submission on that point of the notice was that this is too
19 late to engage a new -- reassess what we received and reengage and
20 reassess our analysis and investigations. So it's the prejudice
21 resulting from the delay, that after 18 months we receive another
22 notice where the review should have been done by 27 May. That is the
23 notice submissions.

24 The exonerating material -- we are not saying that we should not
25 receive those notice. Because it is relevant to us. But we are put

1 in a position where we have to deal with it later that we should
2 have. What we are saying is that we should have received this notice
3 and this review should have been conducted before the transmission to
4 the Trial Panel to allow us to be more certain what is in the case
5 and what we should explore as a matter of priority and interest to
6 the Defence. That is the notice submissions.

7 The other submission is the exonerating material for which we
8 have requested some information, and the submission of the SPO, with
9 all due respect, is not entirely accurate that all the information is
10 something that is known to the Defence. In fact, totally to the
11 opposite. There were information that we sought from the SPO and
12 they responded that they did not have or could not give us, and then
13 we received them this Friday.

14 Thank you, Your Honour.

15 PRESIDING JUDGE VELDT-FOGLIA: Okay. Good.

16 Yes, I see -- I'm looking at -- I can give one more round
17 because I want to make everything clear and not leave it in the air.
18 It is not clear for us yet if we will have an oral order or that we
19 will give you a written decision on this point.

20 But I will allow Mr. Prosecutor to give a reply to what the
21 Defence has said, and then I will give the floor to the Defence.

22 MR. DE MINICIS: Yes, just briefly, Your Honour. Thank you very
23 much.

24 First of all, when it comes to prejudice, we don't agree that --
25 I mean, prejudice needs to be shown. So if the Defence -- further to

1 review of the materials, if we will be allowed to issue this updated
2 relevance list, if the Defence then finds specific documents
3 disclosure which is prejudicial to them, then they can make
4 submissions about that and we will respond.

5 So I think it is early and premature to talk about prejudice,
6 and we reject the submission on that point.

7 With regard to the Rule 103 disclosure, it is really difficult
8 to respond now because I'm not clear about the nature of the
9 information that counsel is talking about. What I want to say is
10 that we stated that the information that we provided to them, that
11 the information disclosed in the Rule 103 documents with regard to
12 one witness, and I'm not sure it's the same witness that the Defence
13 is talking about now, was largely to the Defence, not entirely known
14 to it. But I am also uncertain as to whether we are actually talking
15 about the same witness. It is difficult to continue this discussion
16 in the abstract, Your Honour.

17 PRESIDING JUDGE VELDT-FOGLIA: We will go into private session
18 because I want to have this sorted out and to make it clear, because,
19 either way, if we have to do an oral order or we have to give a
20 decision in writing, I must know where you both stand.

21 So, Madam Court Officer, could you bring us into private,
22 please.

23 [Private session]

24 [Private session text removed]

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1 [Private session text removed]

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13 [Open session]

14 THE COURT OFFICER: Your Honours, we're in public session.

15 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.

16 You have the floor, Defence Counsel.

17 MR. GILISSEN: Thank you very much, Mrs. President.

18 So about this notice, it's a difficult situation for us. There
19 are rules, and there are delays, and we know perfectly well the
20 Prosecutor is out of time for this notice. That's sure.

21 What we ask for is, really, to ask you to guarantee our
22 effective right of defence. That's always the same thing with the
23 right of defence. The defenders, the pleaders, the lawyers use of
24 [indiscernible] this -- always this argument. But this is really a
25 problem of effectiveness in our -- in our use of our right.

1 I explain you, of course, the real prejudice we have. We don't
2 have time to deal with some documents now. It's too late. What we
3 are asking for is to have a guarantee of the primacy of the law.
4 That is really the point.

5 I hear my dear colleague to say it is premature to talk about
6 the prejudice. This case in investigation since more than 20 years.
7 Please. The choice of the Prosecutor is to issue an indictment 18
8 months ago. And we are always, that's the nature of the procedure,
9 late. That's why a pre-trial proceeding has been set up. And now
10 it's enough. We have to deal and to go to a trial with a case that
11 everybody knows. And not to add some document, excepting new
12 documents, of course --

13 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, I'm going to
14 interrupt you. You made your point and I've heard you. So if there
15 is a new argument we should consider in this respect, I will give you
16 the floor.

17 MR. GILISSEN: Oh, I understand you perfectly well. But I think
18 you understand perfectly well this is the point.

19 PRESIDING JUDGE VELDT-FOGLIA: We do.

20 MR. GILISSEN: I just wanted to underline it. So thank you very
21 much.

22 PRESIDING JUDGE VELDT-FOGLIA: Go to the next point and we leave
23 pending the point of the -- from the SPO, and you will be able to
24 respond on this point as soon as the SPO will have come back with
25 this further information.

1 Then we turn to the Defence. Yes, we asked submissions on --
2 Defence Counsel, on your further investigations. We noted that they
3 have not been completed and are currently ongoing, and that you will
4 have to go -- and we asked whether you could anticipate disclosing
5 additional evidence. And I would like to know from the Defence if
6 there are additional observations. We will, of course, be discussing
7 a part of this during the *ex parte* hearing, if you choose to do so.
8 However, whatever you can share in public session it has our
9 preference, but with all the restrictions and limitations that are
10 inherent to your investigations.

11 So, Defence Counsel, the floor is yours. And I will be coming
12 back to specific parts of your preparation at several movements
13 today.

14 MR. GILISSEN: So, of course, Mrs. President, Your Honours, I
15 have to be very careful on such a point. That's sure. That's sure.
16 I just can say in public, and I want to say that in public, it is
17 very difficult for us to provide you effective information about that
18 at a moment when the Prosecutor didn't finish his own disclosure, of
19 course. So in public, I think that all the information I could
20 provide you, I say in public.

21 Thank you.

22 PRESIDING JUDGE VELDT-FOGLIA: And is there information you
23 could share with us in a private session but with all of us here
24 present? That -- okay. Then we go -- because the *ex parte* hearing,
25 I would like to reserve it for subjects really that should be

1 discussed only with the Panel and nobody else present.

2 MR. GILISSEN: I think -- I think it's better. Thank you very
3 much.

4 PRESIDING JUDGE VELDT-FOGLIA: Then we go into private session.

5 Madam Court Officer, could kindly bring us into private session.

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6 [Open session]

7 THE COURT OFFICER: Your Honours, we're in public session.

8 PRESIDING JUDGE VELDT-FOGLIA: But, Defence Counsel -- yeah,
9 more generally speaking, let us stick to the agenda. That is what I
10 think is important to do.

11 Yes, next point. We requested your submissions on the adoption
12 of a framework governing the handling of confidential information
13 during investigations and contact with witnesses, taking into account
14 ...

15 Defence Counsel.

16 MR. AOUINI: Apologies to interrupt. On the agenda,
17 Your Honour, I think we didn't hear the SPO speak about his point on
18 the agenda, on the investigations and their completeness, and they
19 moved directly to the Rule 102, 103. And I believe it is important
20 for the record that they mention at which stage if there are any
21 information about their investigations.

22 Apologies again for interrupting, Your Honour.

23 PRESIDING JUDGE VELDT-FOGLIA: Please, I did -- we asked
24 submissions from both parties and the Victims' Counsel and also we
25 requested information from the Registry on specific points. And what

1 the Panel is doing now is discussing topics we think that we need to
2 proceed with the case. And I noted, and I think that is public, that
3 is paragraph 3 of filing 303, the SPO considers its investigation to
4 be completed. Investigations would be limited to clarifying facts
5 already disclosed to the Defence. And then we moved to the two
6 specific points regarding Rule 103 and Rule 102(3).

7 So in the view of the Panel, there was no need to ask the SPO if
8 there are further investigations because I have it black on white
9 that they are not doing further investigations. But for the Defence
10 and -- I can ask the question out loud here in the court again. But
11 this is the remarks we got from the SPO.

12 Mr. Prosecutor, is there something you would like to comment on
13 this?

14 MR. DE MINICIS: No, that's correct, Your Honours. We didn't
15 make any submissions because we didn't understand the Panel needed
16 further submissions on this issue. In the paragraphs 2 and 3 of our
17 submissions, as Your Honour has specified, we have completed our
18 investigations, with the caveat that we are assessing, as Your Honour
19 has recalled, whether the need of -- the need for limited final
20 investigative steps may be necessary for clarification purposes.

21 But that is all.

22 PRESIDING JUDGE VELDT-FOGLIA: Hmm.

23 MR. DE MINICIS: That is what is in our written submissions.

24 PRESIDING JUDGE VELDT-FOGLIA: Yes, that is what I saw. But
25 then what -- what can we expect then? That's what I then ask you.

1 Is there something to expect?

2 MR. DE MINICIS: Well, Your Honours --

3 PRESIDING JUDGE VELDT-FOGLIA: It's an open question. I don't
4 know -- but if you say that finalising investigation, then ...

5 MR. DE MINICIS: Your Honour, well, of course, as per our
6 office's mandate under Article 35 of the Kosovo Specialist Chambers
7 law, we -- the SPO continues conducting its investigations, it's a
8 continuous obligation. We are also aware of the fact that to
9 introduce new evidence after the trial has started, the rules set a
10 specific framework, judicial authorisation is required. And we'll of
11 course follow the procedure set forth in the rules, if we indeed
12 investigate and gather additional relevant evidence.

13 Now, with regard to examples of what we might be investigating
14 -- Your Honour, could we perhaps briefly move into private session as
15 we discuss the nature of these investigations.

16 PRESIDING JUDGE VELDT-FOGLIA: Very well, yes.

17 Madam Court Officer, could you bring us into private session,
18 please.

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16 [Open session]

17 THE COURT OFFICER: Your Honours, we're in public session.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.

19 Yes, point F. I already -- I was halfway my sentence. We have
20 requested submissions with regard to this framework governing the
21 handling of confidential information during investigations and
22 contact with witnesses, which is also available in another case. And
23 we requested -- we note that there is a disagreement between the
24 parties on this point. I noted that the SPO is in favour of such a
25 framework, and the Defence does not consider it necessary at this

1 stage. And I noted that the SPO is of the view that the framework
2 already adopted should *mutatis mutandis* be adopted for the witnesses
3 in this case and also for the witnesses who are subject to the SPO's
4 request in filing 261, and that the Defence does not consider it
5 necessary to adopt such a framework, and they noted that there is
6 *inter partes* agreement on this matter.

7 And I noted that the Victims' Counsel has put on record his full
8 support for this framework.

9 The question from the Panel is for now if we could receive - if
10 that is available in written form - a copy of this *inter partes*
11 agreement on contacting the witnesses and victims as well as persons
12 previously interviewed by the SPO.

13 Defence Counsel.

14 MR. AOUINI: Thank you, Your Honour. There is no such written
15 agreement. It is more of a gentlemen's agreement. Because of the
16 size of the case, number of the witnesses, we came to the SPO in the
17 beginning of the case asking how should we approach any of their
18 witnesses or the people listed in their witness list or people they
19 have interviewed. And we agreed that we come to them first if we
20 need to speak to them, and they agreed it that, with the exception of
21 protected witnesses.

22 They can correct me if I'm wrong.

23 And we have done that for one particular witness without any
24 difficulties through Mr. Prosecutor who gave us the contact details
25 and was informed of our wish and, generally speaking, what we wanted

1 to do.

2 This is more objectively about some locations that we needed to
3 visit. I think you will understand what we are talking about.

4 We have also approached the SPO to get in contact with one
5 person that is not on the witness list, and they provided us with
6 their contact details and asked this witness if he wanted to meet the
7 Defence, for which the witness refused, and we didn't have any
8 contact with that person.

9 And we believe with regard to the size and the number of the
10 witnesses and also the intentions of the Defence, amongst the
11 witnesses that are still alive, still available, and could be
12 contacted by the Defence, that the way we are proceeding on a
13 case-by-case basis with the agreement, consent information, knowledge
14 of the SPO, is workable so far. And this is why we believe there is
15 no need to encumber the procedure with such a heavy framework, but we
16 are open to discussions. If Your Honours wish us to discuss with the
17 SPO based on this framework something that would be more adapted to
18 our case, we are open to it. We can come probably discuss it with
19 the SPO and come with something that is joint, or we can give the
20 benefit of the practice that has been without problems, I believe, so
21 far, we'll give it a chance because it has been working. And the
22 intention of the Defence is not to interview any more, maybe
23 exceptionally. We can even inform the Panel about it and we go on
24 that basis, on a case by case, which would be maybe lighter.

25 If Your Honours are in favour of a more strict protocol, we are

1 open to discussing it, coming with either joint proposals or
2 different arguments on both sides on how we should adapt this.

3 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence Counsel.

4 MR. AOUBINI: Thank you, Your Honour.

5 PRESIDING JUDGE VELDT-FOGLIA: Mr. Prosecutor, do you have any
6 further submissions or comments on this?

7 MR. DE MINICIS: Yes, Your Honour. Indeed, we did have an
8 agreement with the Defence, an oral agreement, that they could
9 contact witnesses who were not protected witnesses or victims in this
10 case. And we have facilitated contacts for the Defence during the
11 investigative phase.

12 However, as the proceedings move towards the trial phase, more
13 information is disclosed, and also the risk of interferences with
14 witnesses may increase, as the, for example, scheduled testimony
15 approaches.

16 So at this stage we consider that the discussion adopted in the
17 other case provides a workable framework for contacts with witnesses
18 going forward. That's why we have expressed our view that from this
19 stage on, in spite of -- we had agreement with Defence as they
20 stated, but from now on, it would be appropriate to adopt the
21 framework provided for in the Case 06 decision.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Prosecutor.

23 Victims' Counsel, you have the floor.

24 MR. LAWS: Your Honour, thank you. I won't repeat the
25 submissions that I made in writing, expressing our support for the

1 framework.

2 But may I just add this. Defence Counsel is quite right that a
3 gentlemen's arrangement may work perfectly well in terms of giving
4 one another notice of intention to approach a witness, but the
5 framework goes much further than that. The framework mandates the
6 recording of any interview that is to take place between, in this
7 example, Defence Counsel and the witness. And for the reasons that
8 have been explained very fully in Case 06, we take the view that that
9 is an important safeguard in a case of this kind.

10 And so the informal procedure may work very well if one is not
11 dealing with, for example, a dual-status witness who has, shall we
12 say, a complicated history. But we would say that, in this case, we
13 would want the framework to be adopted as it has been in Case 06. If
14 that is limited to dual-status witnesses, then so be it. We would
15 want at least that protection, please.

16 Thank you.

17 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Victims' Counsel.

18 Defence Counsel, we already give you -- I already gave you the
19 floor because I had a specific question. Is there something you
20 would like to as in this respect?

21 MR. AOUBINI: Thank you, Your Honour.

22 Just to say that the -- just commenting on the specific point of
23 interviewing witnesses, that is taking -- sort of taking an interview
24 or a statement. And this is one of the submissions we made, we don't
25 have that intention, especially for the dual-status victims.

1 As Your Honours know -- maybe we need to move to private session
2 to give a little bit more information on that.

3 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, could you
4 kindly bring us into private session, please.

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10 [Open session]

11 THE COURT OFFICER: Your Honours, we're in public session.

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.

13 We will take a break of half an hour. I kindly ask you to be
14 back five minutes before 11.00, and then we will continue with the
15 next topic, which will be the visit to the alleged crime site. I
16 would like to hear your considerations on that topic.

17 Very well. Thank you. The hearing is adjourned.

18 --- Recess taken at 10.26 a.m.

19 --- On resuming at 10.55 a.m.

20 PRESIDING JUDGE VELDT-FOGLIA: Welcome back. We will continue
21 now till 12.30. That's the programme for today. And then we will
22 adjourn the hearing till tomorrow morning, 9.30. Good.

23 Yes, next point on the agenda. The site visit pursuant to
24 Rule 74 of the rules. The SPO, the Victims' Counsel, and the Defence
25 Counsel have given their observations. The parties and Victims'

1 Counsel each consider that a crime visit to be of assistance to the
2 Panel.

3 The SPO makes reference to other evidence that would similarly
4 inform the Panel about the location and the layout of the crime site.
5 I noted that the Defence requests a crime site visit. And the
6 Defence would propose multiple locations that should be visited. And
7 I noted that the Victims' Counsel considers that a crime site visit
8 could be highly beneficial to the Trial Panel but -- or maybe not a
9 but, while acknowledging that this benefit must be weighed against
10 security and cost considerations.

11 I will do a round to all -- with all of you, starting with the
12 SPO. Do you have any additional clarifications or observations on
13 this point that you would like to share with the Panel on this
14 matter?

15 I see you nodding. Please, Madam Prosecutor.

16 MS. PERGOLO: Yes, Your Honours. Thank you. So while, as
17 explained in our written submissions, we do believe that a site visit
18 will be of assistance to the Panel, the SPO thinks that the best
19 time, the most beneficial time to conduct such a visit would be at
20 the end of the presentation of the evidence by the SPO,
21 Victims' Counsel, and the Defence. And this is so because, by that
22 time, the Panel will be in a good position to have an understanding
23 of the entire evidence presented in this case by all parties and
24 participants and will be best equipped in its observation of the
25 site.

1 However, Your Honours, we are mindful of a number of
2 conversations connected with such a visit, including security, cost,
3 and logistics. So in this regard, we, of course, leave this
4 assessment to the Registry, pursuant to the practice direction on
5 site visit, and, of course, to any determination of the Panel.

6 We, however, believe that even if these considerations were to
7 weigh against such a visit, the Panel would be able to get a good
8 understanding of the site through the evidence that the SPO will
9 present and put forward during trial.

10 Thank you very much.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor.

12 Victims' Counsel, I would like to give you the floor on this
13 point too, and my specific question was -- would be, because you
14 referred to specific jurisprudence on this point, what this case
15 makes it so special that we should go there.

16 MR. LAWS: I'm not going to make submissions that there's
17 anything so special about this case that mandates the Trial Panel
18 making this journey. That is not what he have sought to argue. We
19 have drawn to your attention what we hope is some helpful commentary
20 by other Judges on the benefits of a site visit, and in particular,
21 we hope helpfully, we canvassed the views of the individual most
22 directly affected by what went on there, who will be testifying in
23 this case, and we've communicated to you his view, which is that he
24 thinks it would certainly assist you. And it's fair to balance that
25 by saying that even he acknowledges that there may be security

1 implications for Your Honour and Your Honour's colleagues in so
2 doing.

3 So we have made our submissions, and I shan't repeat them here,
4 and I hope that's clear.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Victims' Counsel.

6 Defence Counsel, the questions of the Panel in this regard are
7 somehow more specific. And for us, the question arises if this can
8 be done in public or we should go into private session, because my
9 question would be a little bit more specific what you -- based on
10 your submissions, what -- the exact topics and locations it is you
11 think that would be clarified by such a visit.

12 MR. GILISSEN: So I think my answer could be in public,
13 Your Honour.

14 PRESIDING JUDGE VELDT-FOGLIA: Okay. Good.

15 MR. GILISSEN: So as you know, we fully agree with the
16 assistance and the utility of such a visit. It could not be of
17 benefit for the Court; it will be, that's sure. We were on the spot
18 and we have really a different view. When you have a view with the
19 pictures with the sketches and so on, it's not the same. A lot of
20 things can be induced by this visit, I'm sure of that.

21 For us, two issues are very important. Places that we could go
22 to see. As you know, in the case there is two other places that
23 could be interesting to go, but we have the occasion to furnish some
24 further observation about that, written observation, if you want.
25 And the other thing is the moment of the visit. We have the feeling

1 the best is to hear the case of the Prosecutor and then to go on the
2 spot before the presentation of the case of the Defence case. That's
3 what I have to say in my opinion in public. But I'm ready to try to
4 answer to the question you could have.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence Counsel.

6 Yes, my question requires a -- the answer to my question
7 requires a little bit more specificity, so I leave it to you to go
8 into private session or to do it in the *ex parte* hearing. And I have
9 a preference, of course, for a private session because I would like
10 all the colleagues to share in your observations.

11 But that I leave it to the Defence.

12 MR. GILISSEN: Yes, I think we could be able to answer in
13 public, I think so, and you stop me if --

14 PRESIDING JUDGE VELDT-FOGLIA: In private you mean?

15 MR. GILISSEN: -- I made some difficulty. But I think we can --
16 we're able to explain in public, I think so.

17 PRESIDING JUDGE VELDT-FOGLIA: Yes? Okay. Because I would like
18 to know more a little bit more -- not a little bit. I would like to
19 know more about what locations you think we -- your answer, your
20 observations for us are kind of general and I would like to know
21 where the specific problems are. Because maybe if there are specific
22 problems or a specific point you would like us to discuss, we could
23 also look or you could look into, or maybe the SPO could look into,
24 alternatives that could also assist the Panel to get a better view of
25 the location. Because, it's rightly said so, there are different

1 considerations we have to take on board, and one of them is also
2 expediency. And a visit of this kind - and if it is necessary, we do
3 it - encompasses a lot of logistic and security issues, let alone the
4 financial issue.

5 MR. GILISSEN: Yes, of course, the security issue, it's a
6 huge -- a huge issue, that's sure.

7 But we have the feeling that if we want to be able to understand
8 perfectly well the chain of command and who is who in this famous
9 Kukes town, we do have, of course, to go on the former metal fabrique
10 of Kukes. But also we saw in the Prosecutor's case, there is another
11 place, a house, where the command of -- the commander of Brigade 128
12 took place. And these people, that's sure, have some contacts. So
13 if we want to have a clear view of this situation of the chain of
14 command, it could be nice to see where is the house, the distance,
15 and to have a lot of information about that. And it is the same with
16 the cemetery. The cemetery, I don't have to provide some more
17 information. I'm sure you are aware about which cemetery I'm talking
18 about. And in my opinion, it could be very interesting to have a
19 clear view with the distance, with the conditions, and so on.

20 Thank you.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence Counsel. Very
22 well.

23 We go to the next topic. We conclude this one. The conduct of
24 proceedings, which is point C. These are seven items under C and I
25 will go through each of them in sequence.

1 The first topic is the commencement of trial and the opening
2 statements. We received submissions by the parties and the
3 Victims' Counsel on this point A till F.

4 I'm not going to read them all. They are sufficiently in the
5 agenda. And for us, for the Panel, it is important, are there any
6 additional steps that need to be finalised by the parties and
7 participants in order for them to be prepared for the opening of the
8 case and to give their opening statements?

9 So that is a more limited formulation than to be ready to start
10 with the different cases, but -- so, yes, are there any additional
11 steps that need be finalised by the parties and participants in order
12 for them to be prepared for the opening of the case and to give their
13 opening statements.

14 And, yes, then with regard to the Defence -- I will give you the
15 floor. I will start with the SPO. If you could try be to more
16 specific on point E, if -- so how much time the opening statement
17 will require. And I'm not talking about hours, but I would like to
18 know if it is a morning, an afternoon or a whole day.

19 And with regard to point F, if -- several questions regarding
20 the intention of the accused to make or not an unsworn statement.

21 And if you don't know it yet, I would like to know by when you
22 will know.

23 Okay. We will first hear from the SPO.

24 Madam Prosecutor, you have the floor.

25 MS. PERGOLO: Thank you, Your Honours. We don't have any

1 further submissions compared to our -- what we submitted already in
2 writing. With regard to the next steps you were asking about, the
3 SPO will, and my colleagues will comment further on this later on,
4 intend to file a motion for adjudicated facts and something
5 concerning the admissibility of evidence. So I think this will be
6 the next upcoming steps before the commencement of the trial.

7 Other than that, we are ready to begin whenever a trial date is
8 set.

9 Thank you.

10 PRESIDING JUDGE VELDT-FOGLIA: Victims' Counsel, you have the
11 floor.

12 MR. LAWS: We will also be ready to begin whenever the
13 Trial Panel orders that the trial should begin. And there is nothing
14 that we need to do apart from finalising the details of our opening
15 statement, but we will be able to do that in good time for the start
16 of the trial, whenever it is.

17 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Victims' Counsel.
18 Now it's the turn for the Defence.

19 Defence Counsel, you have the floor.

20 MR. GILISSEN: Thank you very much. So the first thing I have
21 to say, it is amazing to hear that the Prosecutor is ready to start
22 the trial and he doesn't finish his disclosure of the proof. So
23 that's amazing to see, yes, we are ready, and they ask for a lot of
24 things and with consequences for the Defence. I don't have to go
25 back to what I said at the beginning of the hearing at this moment

1 about that.

2 But that's sure. That's -- I consider very amazing, because
3 there is no need to oblige the Defence to support, to work with new
4 elements disclosed so lately and to say we are ready and the other
5 one are not, of course. It depends on what we have to receive.
6 That's the first point.

7 The second point, of course, is, yes, we have the intent to make
8 some opening statements and it depends, of course, of the time the
9 Prosecutor needs. Because I suppose if he need two hours, it seems
10 it's almost two hours, we have a clear idea of what they want to talk
11 about. And we have the intent to talk about two. So two hours, it's
12 enough, I think so.

13 But I have a big concern about the time that the legal
14 representatives, my dear colleague from the Legal Representatives of
15 Victims asked for two hours. It's a delicate question. In the
16 internal procedure, the legal representatives are not parties. They
17 have to explain their view and concern two hours is -- I'm afraid it
18 could be, it could resemble to like -- like the wish to be a
19 Prosecutor bis, and it cannot be a question of that.

20 I was Legal Representative of Victims before the ICC, in the
21 very first case of the ICC. At the end of three years of trial, the
22 Panel provided me 30 minutes to explain the view and concern at the
23 end of the trial. So when I hear the wish, I understand it, I fully
24 understand it, the wish to have at the beginning, at the commencement
25 of trial two hours, really, we have to be careful with that. And I

1 would like to hear my dear colleague from the representation of
2 victims about that. Two hours is more than the time that the
3 Prosecutor himself asked for. So that's something very special, I
4 think so.

5 And on the third point, yes, Mr. Shala have the wish to make a
6 statement. I don't know it will be a short statement, but not too
7 long, that's sure. Thank you.

8 PRESIDING JUDGE VELDT-FOGLIA: So he will give an unsworn
9 statement, that is what you are saying now.

10 MR. GILISSEN: Yes, of course, Mrs. President.

11 PRESIDING JUDGE VELDT-FOGLIA: Okay. Very well. And the
12 decision with regard to the duration of the opening statements is an
13 issue which is, of course, in the hands of the Trial Panel to decide
14 upon the amount of time that will be allocated. So it is not
15 something that I further want to discuss here. I just want to hear
16 from the parties and the Victims' Counsel what duration is the
17 intent, and I don't want to have a further discussion on that matter.

18 MR. GILISSEN: Okay. That's sure. Thank you very much.

19 PRESIDING JUDGE VELDT-FOGLIA: Very well. We will issue a
20 decision in due time regarding the date for the commencement of the
21 trial.

22 We go to the second topic and that is the familiarisation of
23 witnesses prior to testimony.

24 We have received your respective observations on this issue. I
25 will not give a summary on it. Yes.

1 The Trial Panel would like to know if there are any further
2 observations on the matter of the familiarisation.

3 MS. PERGOLO: No further observations from the SPO. Thank you,
4 Your Honours.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you.
6 Victims' Counsel.

7 MR. LAWS: Nothing from us. Thank you, Your Honour.

8 PRESIDING JUDGE VELDT-FOGLIA: And Defence Counsel.

9 MR. GILISSEN: Just to say let's be clear and definitive about
10 the fact that we are, of course, against witness proofing. That's
11 the only thing I want to focus on. Thank you very much.

12 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you.

13 The third item is the dual-status witness victims. The SPO and
14 the Victims' Counsel have been asked whether they have exchanged
15 information, including with WPSO, relevant to identify which
16 participating victim is also an SPO witness. And we noted the SPO
17 request to receive from Victims' Counsel a list of individuals
18 holding this dual status, and we noted that the Victims' Counsel has
19 no objection to provide a written list in order that the matter is
20 clear. And I also noted that the Victims' Counsel has no objection
21 to the disclosure of this information to WPSO.

22 Is there something that the SPO would like to say in this
23 regard, something to add?

24 MS. Wyler: No further submissions. Thank you.

25 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you.

1 Victims' Counsel, is there something you would like to add.

2 MR. LAWS: Your Honour, only this. If the Panel approves that
3 course and gives us authorisation, we can do that today.

4 PRESIDING JUDGE VELDT-FOGLIA: At the end of this hearing - I
5 don't think it will be today, but that will be tomorrow - we will
6 give some oral orders and maybe some directions, depending on the
7 need to give an oral order, and then we will clarify that point.

8 MR. LAWS: Thank you, Your Honour.

9 PRESIDING JUDGE VELDT-FOGLIA: Yes. Item 4, that is the
10 presentation of evidence, also witness evidence.

11 The SPO was requested to give some further information on this
12 item. Due to the nature of this item, I would like to go into
13 private session.

14 Madam Court Officer, could you bring us into private session.

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25 [Open session]

1 THE COURT OFFICER: Your Honours, we're in public session.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.

3 Very well. Mr. Prosecutor, we note that you intend to submit
4 expert evidence pertaining to a witness, an expert, and an institute
5 and we would like to receive clarifications as follows: Through
6 which procedure you intend to seek admission of the transcripts of
7 this witness interview in a previous case, if you intend to rely on
8 the evidence of this witness as an expert witness, and why the person
9 is not on your amended list of witnesses, and through which procedure
10 you intend to seek admission of the reports of the institute and the
11 other person.

12 Once again, the Panel notes that the experts who are the authors
13 of these reports are, for the moment, not on your amended witness
14 list.

15 And before giving you the floor, Mr. Prosecutor, the Panel also
16 recalls that Rule 149 of the Rules foresees experts not to be called
17 only if the parties are in agreement on that. And if there is no
18 agreement, a report cannot be submitted without the expert being
19 called to testify in court.

20 You have the floor, Mr. Prosecutor.

21 MR. DE MINICIS: Thanks, Your Honour. I'll try to address all
22 the points raised by the Court.

23 As a first point, we propose to tender the expert reports
24 pursuant to Rule 149 because we did not receive an objection,
25 pursuant to paragraph 2 of the rule, within seven days of their

1 disclosure. Of course, we understand the Panel still retains
2 discretion to request the witness to appear. In that regard, we
3 stand ready to call the witnesses to testify in court.

4 We consider the Witness -- just a second, Your Honour, I need to
5 see the number - 4826 to be an expert witness and its report
6 therefore to be an expert report falling under Rule 149. We also
7 consider the testimony given by this witness in another case to be
8 essentially part of the same report and to qualify as an expert
9 report, because it's evidence given by an expert which relates
10 directly to and comments upon the expert report.

11 Therefore, we would seek admission of the same report under the
12 same rule.

13 The fact that the witness -- the expert and the DNA expert are
14 not on our witness list, we would be happy to amend it if the Court
15 wishes us to do so. On consideration of our proposal to simply
16 tender the reports, we have decided not to add them to the list as
17 witnesses, but we have, of course, provided notice in our submissions
18 that we will intend to rely on our evidence. But if the Court has a
19 preference for us to include them in our amended witness list, we are
20 prepared to file a corrected version shortly.

21 Is there anything that -- else that I failed to respond to,
22 Your Honour, or does that address all the Court's questions?

23 PRESIDING JUDGE VELDT-FOGLIA: I think essentially what I --
24 what I understood is that you say you are -- that the SPO is ready to
25 add the different witnesses as expert witnesses to the list of

1 witnesses of the SPO in order to follow the procedure under 149 if
2 the Panel wants to have them in court.

3 Is that what you are saying?

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

5 PRESIDING JUDGE VELDT-FOGLIA: I noted that that is the position
6 of the SPO.

7 Yes, Defence Counsel, do you wish to respond?

8 MR. GILISSEN: So I'm happy with the answer of the Prosecutor.
9 I don't know if have something to add. Just one thing. Those
10 reports will be part of the debate. And you know, you are aware that
11 we ask for some experts to see these reports, so there is a lot of
12 things. That's why we insist, of course, to have someone -- the
13 expert witnesses to come. And welcome for the new information the
14 Prosecutor is ready to summon them. That is marvelous.

15 Thank you very much.

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence Counsel.

17 Mr. Prosecutor, is there something that you would like to add?

18 MR. DE MINICIS: Your Honour, not specifically. We will call
19 the witnesses if the Panel requests us to do so, but we maintain the
20 position that tendering the expert reports will suffice in this
21 regard.

22 We also would like to add that proof of death of the victim --
23 that the Prosecution will prove the death of the alleged victim
24 irrespective of the tendering of the forensic evidence. That, of
25 course, adds more elements for the Panel to consider, but there will

1 be other direct evidence of the death of the alleged victim in this
2 case without relying on the expert report.

3 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you.

4 Let us now return to other witness submissions the Panel
5 received under the same item.

6 Victims' Counsel was likewise requested to make submissions on
7 presentation of evidence and the view and concerns of the victims
8 participating in the proceedings.

9 In addition to your written submissions, Victims' Counsel, the
10 Panel has the following questions. And please bear in mind that we
11 are in public session, so please do indicate if you see a need to go
12 into private session to elaborate on any of these questions.

13 First, do you indicate at this stage to call any witnesses?
14 That would be our first question.

15 Could you clarify for what specific purpose the clinical
16 psychologist specialising in trauma would be called? We have an idea
17 but I would like to have it more specific.

18 Do you intend to present other expert reports with regard to
19 harm allegedly suffered by victims participating in the proceedings?

20 And this is not so much on evidence but on another important
21 topic in this -- connected to the proceedings. Does Victims' Counsel
22 intend to make request for reparations, including compensation, to be
23 considered by the Panel in case there is a conviction?

24 And later on, we will discuss the question of referral to Kosovo
25 courts, or not, and also if we should do the proceedings, the

1 reparation proceedings, if any, at the same time as the criminal
2 proceedings.

3 But for now, these are the questions I would like to pose to
4 you, Victims' Counsel.

5 MR. LAWS: Thank you, Your Honour. Make I take them in turn.

6 The question to we intend to call any witnesses. The answer
7 that we have given at paragraph 17 of our written submissions is not
8 intended to be unnecessarily cryptic, but the position is that the
9 Panel is going to hear evidence from many of the witnesses who would
10 otherwise be relevant for us to call in the course of the Prosecution
11 case. And our view is that it is very unlikely that we will call
12 additional lay witnesses, if I can call them that, non-experts, after
13 the Prosecution case has been heard.

14 We may, as we've indicated, want to call one or more victims to
15 present their views and concerns, but obviously comes under a
16 different category.

17 The clinical psychologist that we have in mind is somebody who
18 has testified in other international proceedings in relation to harm,
19 and it's that topic that we would be focusing on, and that is in
20 relation to one individual.

21 PRESIDING JUDGE VELDT-FOGLIA: That was the information I was
22 looking for, if it was specifically linked to one of the victims.

23 MR. LAWS: To one individual. And it's probably better if I
24 don't specify at this stage which one it is, but it probably -- an
25 informed guess is very likely to be correct on that score.

1 PRESIDING JUDGE VELDT-FOGLIA: Thank you for this additional
2 information.

3 MR. LAWS: Other expert reports, in addition to the
4 psychologist, the answer is no.

5 And whether we will make a request for reparations, including
6 compensation, the answer is yes.

7 Your Honour, we have obviously followed the proceedings in
8 Case 05 and we wondered whether it would be right for us to add to
9 the list of topics for these hearings the issue of reparations, and
10 we rather took the view that the Panel was likely to be issuing
11 guidance in respect of reparations anyway and we thought it best to
12 wait for that to come.

13 So, yes, we will, but it is obviously a large-ish topic which we
14 can, I hope, find time to discuss later in the proceedings.

15 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Victims' Counsel, for
16 the answers.

17 Defence, would you like to comment on any of this?

18 MR. AOUINI: Yes, Your Honour. Thank you.

19 As to the topic of the calling of witnesses, maybe the only
20 remark we can make is that Your Honours will have to look at the
21 dual-status issue and the disclosure of the identities of victims to
22 the Defence. And as my learned colleague has said, I would say more
23 basic than an educated guess would lead to the information that you
24 need to be able to understand the extent, obviously. What we can say
25 in general is the Defence is opposed to any duplication of evidence,

1 but that will become clear.

2 One issue that I will need to move to quickly is the presence of
3 VPPs to present their views and concerns, and that's where the
4 identity of those victims, which is an issue under your consideration
5 by filings at the moment. And that's why I raised -- I will
6 probably, being in a public hearing, limit ourselves to the
7 submissions that we filed yesterday that will be in your possession
8 to understand that this will not be practical if the identity of
9 victims is not shown to the Defence.

10 As far as the experts, the clinical psychologist, of course, we
11 will wait to see the request and have a little bit more information
12 to be able to take a position. This is obviously tied to the issue
13 of prejudice, harm, and potential reparations. So the framework and
14 the guidance and the settings that you will establish, whether closer
15 to what the ICC does or whether closer to what the STL does, that in
16 the judgement you will issue, to a certain extent, conclusions on
17 potential, if any, harm and prejudice that would be used at the
18 national courts. That will be an issue that could guide us in taking
19 the position to see the extent of the anticipated evidence and the
20 appropriateness of the evidence, because this is the case of
21 Mr. Shala and it's the criminal proceedings that take the priority.
22 And we are open to all relevant factors, but it has to remain the
23 principle that any submissions from Victims' Counsel should not put
24 undue and excessive burden on the proceedings.

25 Those are all my submissions, Your Honour. Thank you.

1 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence Counsel.

2 With regard to the question of the Panel on the expert reports
3 with regard to the harm allegedly suffered by the victims
4 participating in the proceedings, as we are referring -- no, no.

5 I would like to make one remark on that. I did not mention that
6 report in the framework of reparation proceedings because it is still
7 to decide how we are going to approach this issue. This is another
8 case, and I first want to hear your views on that. So that's one
9 point.

10 But we used or it was presented in Case 05 also for the criminal
11 proceedings, to establish whether or not there was harm,
12 independently harm related to the alleged counts as they were
13 presented to us in that case.

14 So it's not only for reparation purposes but also for the
15 criminal proceedings. And that's the reason that in this framework I
16 ask the question to the Victims' Counsel. But I do agree with you
17 that it could also be of relevance, of course, for the possible
18 reparation proceedings.

19 And therefore that question came before the question if
20 they will be asking for reparation.

21 Just to clarify that it has a double scope. That was my only
22 point I wanted to make.

23 Victims' Counsel, is there anything that you would like to add
24 in addition to -- or in reaction to what the Defence Counsel has
25 said?

1 MR. LAWS: No, thank you.

2 PRESIDING JUDGE VELDT-FOGLIA: Okay, good.

3 Your points are duly noted.

4 Defence Counsel, you were requested to provide further and more
5 specific information regarding your Defence case. You confirmed that
6 you would present, of course, a case.

7 I would like to know some more but that we decided that we do
8 that in the *ex parte* hearing, so I leave it for now.

9 Yes, we go to point 5, which is the order of appearances and
10 issues related to the questioning of witnesses.

11 I had a question if the witness list is final and the modality
12 of the witness testimony with regard -- this is the question for the
13 SPO. I would say that part of an answer has been given in the sense
14 that -- I understood that it was final but we are -- it's depending
15 on the expert witnesses, if it would be final.

16 But I leave the floor to you instead of giving the answer for
17 you, Mr. Prosecutor.

18 MR. DE MINICIS: Your Honour, your understanding is correct.
19 There is one further submission we need to make and it is that we had
20 proposed to hear the evidence of our witnesses live, with the
21 exception that we mentioned earlier on and that we [indiscernible]
22 submissions if so required. Although that is also a live way of
23 testimony.

24 However, further to recent communication with some of our
25 witnesses, it is possible that the SPO will seek, pursuant to Rule

1 144, to hear the testimony of one or more of them through a
2 video-conference link as provided for by the rules.

3 So this is the update I wanted to give to the Chamber.

4 We are still assessing the need for that and would be prepared
5 to provide a final answer on that matter in the foreseeable future,
6 soon.

7 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you, Mr. Prosecutor.

8 And one question more. Can you confirm that the order of the
9 witnesses on the list of witnesses is the order the SPO intends to
10 call these witnesses.

11 MR. DE MINICIS: Your Honour, to the extent that that
12 confirmation can be given at this stage, yes, I do.

13 PRESIDING JUDGE VELDT-FOGLIA: Okay.

14 MR. DE MINICIS: But, of course, as we anticipate in our
15 submissions, there is also the possibility of some adjustments being
16 required.

17 PRESIDING JUDGE VELDT-FOGLIA: Yes. It's good that you mention
18 it but it goes without saying, just to see the type of -- yeah. From
19 the order the Panel can also deduct and it also helps with planning
20 issues.

21 Do you have any further observations? No.

22 MR. DE MINICIS: No. No, thank you, Your Honour.

23 PRESIDING JUDGE VELDT-FOGLIA: Okay. With regard to item 5,
24 does the Victims' Counsel have any submissions, further submissions?

25 MR. LAWS: Nothing further. Thank you, Your Honour.

1 PRESIDING JUDGE VELDT-FOGLIA: Okay. Very well.

2 And, yes. For the Defence, I will ask you to give some further
3 submissions, if you have them, on this point, and from what we have
4 been discussing, an order of witnesses is too early. Do I understand
5 that rightly? Or is the order you have presented on your provisional
6 list an order you think will stand?

7 MR. AOUINI: Thank you, Your Honour.

8 You have correctly understood that it is completely premature
9 for us. We will keep contacts. The aim is to furnish this list and
10 then see the order. I think we're far away from that moment and we
11 will be more and more informed as time goes.

12 But one submission maybe on the order and the modalities of
13 presentation of the witnesses from the SPO, if wish to hear us on
14 this matter.

15 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated].

16 MR. AOUINI: Yes. We have strong and categorical oppositions to
17 at least one modality, I would say the Rule 154, I will say no more,
18 way of presenting witness evidence.

19 And this goes back to the theme -- I'll try to be careful,
20 Your Honour, to be able to make the submissions in public. It goes
21 to the general theme that Mr. Gilissen has presented from the
22 beginning of the hearing, that -- we will make, of course, written
23 submissions about this, but we believe that this is a sort of a
24 preliminary or important question that we have to discuss and rule on
25 before we go in the trial and to know on which basis we are

1 advancing. This has a huge impact on the Defence preparations, the
2 withdrawal of those witnesses. The change in the modality of
3 presentation of witnesses have a huge impact on the way the Defence
4 has proceeded for several weeks and months in order to prepare its
5 defence and the modality of the presentation of its defence.

6 If you wish more details, if you wish for more details, we can
7 give them but only in private session, Your Honour. But the general
8 point is you will have to look at the particular circumstances of
9 each individual witness in order to determine what is best for the
10 interests of the justice, in terms of the modality of hearing that
11 evidence, either compared to the general case and also the
12 availability of evidence on certain topics.

13 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel, I propose that
14 in order for you to be more specific, because I understand your
15 general point, we can go into private and then you can in a concise
16 way give your observations.

17 What I prefer not to have is a concrete going into details
18 because, really, it's not the moment now. But I am interested to
19 hear your observations with regard to modalities without getting too
20 concrete, because we are not there yet.

21 Madam Court Officer, could you bring us into private, please.

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14 [Open session]

15 THE COURT OFFICER: Your Honours, we're in public session.

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.

17 Okay, point 6. It's on non-oral evidence. I note, the Panel
18 notes the SPO's intention to object to admissibility of three items
19 should the Defence seek to submit them into evidence pursuant to Rule
20 138 of the rules. We also note that we did not receive written
21 submissions from the SPO on the question as to whether, taking into
22 the account the practice in Case 05, the admissibility of non-oral
23 evidence should be decided of its submission at trial or whether it
24 can be deferred to the judgement.

25 We would like to hear your position in this regard.

1 We noted that the Victims' Counsel does not object to any of the
2 non-oral evidence and has no opposition to the adoption of the
3 position on the submission and the admissibility of evidence from
4 Case 05. And we noted that the Defence will object to admissibility
5 of non-oral evidence disclosed by the SPO under Rule 102 of the
6 rules, and we were referred to the previous submissions in this
7 regard. And we also noted that the Defence submits that it objects
8 to a system as provided for in the decision on the submission and the
9 admissibility of evidence in Case 05.

10 We have seen your -- we have noted your positions. We have
11 taken due notice of that, with the exception of the SPO. I invite
12 the parties and the Victims' Counsel, if necessary, to give
13 additional observations.

14 Mr. -- or Madam Prosecutor. Madam Prosecutor, you have the
15 floor.

16 MS. WYLER: Thank you, Your Honours. And apologies for our
17 oversight not to take position on the question of point in time in
18 the proceedings when admissibility of the oral evidence should be
19 decided on.

20 The SPO remains of the position that the admissibility of the
21 oral evidence should be decided at the time of its admission at trial
22 rather than defers its decision to the judgement in terms of the
23 actual process. The SPO defers to the Panel's previous practice set
24 out in the decision of the submission and the admissibility of
25 evidence in Case 05.

1 With regard to the objection to admissibility of non-oral
2 evidence, we don't have any additions to our written submissions.

3 Thank you.

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

5 For the Defence team, do you need some time to confer? Because
6 it is kind of disturbing to hear voices on my left-hand side. So
7 please.

8 Yes, Victims' Counsel, would you like to add anything in this
9 regard?

10 MR. LAWS: Your Honour, we have nothing to add on this topic.
11 Thank you.

12 PRESIDING JUDGE VELDT-FOGLIA: Okay.

13 Defence Counsel, do you have any additional observations as to
14 the one you provided to the Panel in your submissions?

15 MR. AOUNI: Not really, Your Honour. The main point is that we
16 have a strong preference that admissibility rulings come on an
17 ongoing basis during the trial so we know at the time we make our
18 final submissions what is in the evidence that we need to respond to
19 exactly.

20 Thank you, Your Honour.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

22 Point 7, which is judicial notice of adjudicated facts under
23 Rule 157(2) of the rules. The Panel took notice of the position of
24 the parties in their written submissions. Are there any further
25 comments by the SPO or the Defence? And if not, we will go to the

1 next item on the agenda.

2 Mr. Prosecutor.

3 MS. WYLER: No further submissions on that. Thank you.

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor.

5 Defence, do you have any submissions in this regard?

6 MR. GILISSEN: No, Mrs. President. No, thank you.

7 PRESIDING JUDGE VELDT-FOGLIA: No? Thank you.

8 Then these were the issues set out in the decision on the
9 Trial Preparation Conferences for the general agenda.

10 There is one more point I would like to discuss, and that is
11 with the Victims' Counsel and the Defence. It is the following. We
12 recall that in Case 05, the Panel has decided to conduct a
13 reparations proceedings in parallel with the criminal proceedings,
14 and the Panel has also decided that in case of a conviction it will
15 not refer victims to civil litigation in Kosovo, pursuant to Rule --
16 to Article 22, paragraph 9 of the law and Rule 167 of the rules. But
17 in that case -- in case of a conviction, it will issue a reparation
18 order pursuant to Article 22, paragraph 8, and Article 44,
19 paragraph 6 of the law.

20 And the relevant filing is 310 in Case 05, redacted.

21 We intend to follow the same approach in the present case.

22 However, we would like to receive observations from the Defence and
23 Victims' Counsel on this matter.

24 Victims' Counsel, do you wish to make observations at this point
25 or do you prefer to file written submissions?

1 And the same goes for, later on, the Defence Counsel.

2 MR. LAWS: We would very much prefer to file written
3 submissions, please. Thank you.

4 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you.

5 Defence Counsel, the same question for you. Do you want to make
6 observation at this point in time or would you like to make them in
7 writing like --

8 MR. GILISSEN: I fully agree with my colleague. Thank you very
9 much.

10 PRESIDING JUDGE VELDT-FOGLIA: Good. There is one other point
11 raised by the Victims' Counsel that should be discussed here.

12 Yes. You requested, Victims' Counsel, the Trial Panel to
13 consider whether it's appropriate for you to be invited to any part
14 of the *ex parte* closed session with the SPO, WPSO, and the Registry
15 if such discussion will involve arrangements for dual-status
16 witnesses. We carefully examined your submissions and we are of the
17 view that the nature of the discussion with the Defence is such that
18 it does not necessitate the presence of the Victims' Counsel during
19 any part of the *ex parte* hearing.

20 So that was our view.

21 MR. LAWS: Thank you, Your Honour. So be it.

22 PRESIDING JUDGE VELDT-FOGLIA: Very well. At this point, I
23 would like that ask the parties and the Victims' Counsel whether they
24 have other issues that they would like to raise with the Panel.

25 MR. DE MINICIS: Your Honours, briefly. I just would like to

1 get back to that -- to the Panel with that answer that I did not
2 provide earlier about disclosure and some remarks made by Defence
3 Counsel.

4 PRESIDING JUDGE VELDT-FOGLIA: Yes, you will be given the floor.
5 In general, there is an outstanding point still but -- because I'm
6 looking at the time. Tomorrow we will be giving oral orders. The
7 point that is still left to discussion which was done in private
8 session, that can be done also tomorrow morning.

9 So I say to the Defence that we can postpone that to tomorrow
10 morning.

11 But, yes, you have the --

12 MR. DE MINICIS: So should I proceed now with this --

13 PRESIDING JUDGE VELDT-FOGLIA: Well, if you can proceed, then
14 you have the floor. But I -- I wanted to stress that we prefer
15 completeness over --

16 MR. DE MINICIS: Yes. Your Honour, just -- I'll be brief and
17 also just for the sake of having the record completely straight. I
18 will do this in public session. We don't need to go into private.
19 At page 17, line 19 and 21 of the provisional transcript today,
20 Defence Counsel stated that they sought information from us and we
21 responded that we did not have it, but then received this information
22 this Friday. I think that -- referring to the disclosure we did on
23 Friday, 14 October.

24 And for further information on the issue, Your Honour, in
25 private session it was discussed at page 19, lines 12 to 18 of the

1 provisional transcript.

2 I think that here Defence Counsel may have inadvertently
3 conflated two different issues and two different requests, with the
4 risk that it may have sounded as if we had stated that we did not
5 have certain exculpatory information but then we provided it.

6 On 24 August, Your Honour, 2022, the Defence asked if we were in
7 possession of any criminal record with respect to the witness that we
8 have discussed in private session. We responded that we would review
9 our database and should we find any such record, we would disclose
10 it.

11 The Defence followed up on 6 October asking how the review was
12 going and we responded that the review was completed and we would be
13 disclosing the records they requested shortly. We did so on
14 14 October.

15 A different request was e-mailed to us by the Defence on
16 22 September, where they requested the name of the country of
17 residence of that witness, to which, rightly, we responded that we
18 were not in a position to provide that information. That is also --
19 because we don't do that without the consent of the witness and there
20 were also issues of protective measures issued by a previous
21 institution, the extent of which -- to extent -- and we were not
22 clear as to whether that was information we could provide.

23 So I just wanted to make it clear, the information that we say
24 we could not provide concerned the country of residence of that
25 witness. The information of exculpatory nature was disclosed to the

1 Defence after a completion of our review.

2 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated].

3 Defence Counsel, are you in a position to reply now?

4 MR. AOUINI: [Microphone not activated] Certainly, Your Honour,
5 and apologies for our mistake. [Indiscernible] we said they were not
6 in a position, not in a possession of the document. They were not in
7 a position to give us this information. And we requested that
8 information also during an informal meeting with the SPO.

9 Our submission was about the impact of receiving an information
10 on the conduct of our investigations. We're not suggesting any
11 inappropriate behaviour on the SPO on this particular issue, and we
12 are sorry if they understood it that way. But we were giving an
13 example of a piece of information on one document, because we were
14 looking at those kind of disclosures, their impact for one single
15 document or a piece of information on what we engage our time and
16 resources.

17 Thank you.

18 PRESIDING JUDGE VELDT-FOGLIA: I understood your submissions in
19 that way. Thank you.

20 So no further submissions from the part of the SPO? Thank you.

21 Victims' Counsel.

22 MR. LAWS: Your Honour, may I raise one matter that has arisen
23 today, and I'm not suggesting that it necessarily needs to be
24 resolved today but it may be useful for it to be on the agenda for
25 resolution at some stage.

1 And it's this. It goes back to something that Defence Counsel
2 said in the context of my request for time for my opening.

3 Just to have it clear, I have in fact said that it will take not
4 more than two hours. I can't say precisely how long it's going to
5 be, but I've given an outside limit. And Mr. Gilissen's discomfort
6 at the prospect of Victims' Counsel making an opening of that length
7 prompts me to raise the issue of the content of my opening. And it
8 may be useful for us to have that resolved before I find myself,
9 shall we say, making an opening that causes Mr. Gilissen even further
10 discomfort than he already has.

11 And what I mean by that is that it may be useful for us to
12 discuss that in the light of the decision on victims procedural
13 rights during trial that this Trial Panel issued in Case 05. And for
14 the record, it's F00152. And it may be that we would both benefit
15 from looking at that decision and perhaps returning to this topic
16 tomorrow.

17 So I raise it at this stage because, let me be clear about it,
18 in the very particular context of this case, I do intend to address
19 the Panel in my opening on matters that bear upon the issue of guilt
20 or innocence. And I shall be doing that for what we submit are very
21 good reasons and consistent, we say, with the decision that's been
22 issued in Case 05.

23 So we're going to benefit from having resolved that before the
24 day comes. I'm not saying we do it now, but I'm saying we should
25 have it in our minds.

1 Thank you.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Victims' Counsel.

3 In due time, this Panel will issue a decision on the rights of
4 the victims participating in the trial proceedings, and we will
5 clearly set out what we think could be addressed in also the opening
6 statements. So I don't intend, in principle, to have a discussion on
7 that matter. Our guidance on that matter will be clear, and then I
8 leave it to the Victims' Counsel to adhere to the instructions of the
9 Panel, which we will be, in time, if it -- and I don't think that any
10 of that matter will happen, but if in court it seems that it goes
11 otherwise, then we can always mention it. But I think that our
12 instructions on that matter will be clear and I don't think it's
13 necessary to discuss the content in court.

14 But I see it as instruction for the Panel as -- or for the Panel
15 to be even maybe more clear than we already think we have been in our
16 decision.

17 MR. LAWS: Yes, I intend it more as a courtesy to Mr. Gilissen,
18 in fact, to be transparent about what I intend to do. And, of
19 course, if the Panel's directions to me are not consistent with my
20 plans, of course, I will change them. But as I have read the
21 decision in Case 05, and having seen the way in which
22 Victims' Counsel addressed the Panel both in opening and in closing
23 in Case 05, my current view is that what I propose to do is entirely
24 in keeping with that. So I'm not suggesting that we have a
25 discussion about the details of the content, but I have given, I

1 hope, fair notice of what I regard as the proper scope of that
2 address.

3 Thank you.

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Victims' Counsel.
5 Your position is clear.

6 Defence Counsel, is there something you would like to raise with
7 the Panel at this point in time?

8 MR. GILISSEN: Mrs. President, with your explanation, of course,
9 I have nothing to add. Thank you very much.

10 PRESIDING JUDGE VELDT-FOGLIA: The parties and the
11 Victims' Counsel can indicate to the Trial Panel in writing if they
12 think other preparation conferences in the near future are necessary
13 before the beginning of the trial. You can always file a request of
14 that kind.

15 Very well. We were scheduled to continue today till 12.30.
16 What we will do is we -- I will -- after -- I will set out for
17 tomorrow what we are going do.

18 Tomorrow we will come back to a part of what we were not able to
19 discuss today and because we did it in private session, I don't
20 mention the content but we are all aware what that was. And the
21 Panel will give some oral orders, and we will give you an overview of
22 some of the important decisions we think we will be issuing before --
23 in the near future. And if any other topic arises in this afternoon,
24 we will discuss that further tomorrow. Because the important scope
25 is that everything that needs to be discussed is discussed in these

1 days.

2 Okay. Very well. I thank the parties and the Victims' Counsel
3 and the Registry, who has been present but has not received the
4 floor, for their attendance. I thank the interpreters for their
5 interpretation, and our stenographer and the audio-visual technicians
6 and the security for their assistance.

7 The hearing is adjourned.

8 --- Whereupon the hearing adjourned at 12.23 p.m.

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