

1 Wednesday, 28 October 2020

2 [Further Initial Appearance]

3 [Open session]

4 [The accused entered the courtroom]

5 --- Upon commencing at 3.00 p.m.

6 JUDGE GUILLOU: Good afternoon everyone in and outside the  
7 courtroom.

8 Mr. Court Officer, will you please call the case.

9 THE COURT OFFICER: Good afternoon, Your Honours. This is  
10 KSC-BC-2020-05, The Specialist Prosecutor versus Salih Mustafa.

11 JUDGE GUILLOU: Thank you very much, Mr. Court Officer.

12 Now I would kindly ask the parties and participants to introduce  
13 themselves, starting with the Specialist Prosecutor's Office, please.

14 MR. MICHALCZUK: Good afternoon, Your Honour. The Specialist  
15 Prosecutor's Office is represented today by the Specialist Prosecutor  
16 Jack Smith; myself, Cezary Michalczuk, Prosecutor of the SPO; on my  
17 left-hand side, Silvia D'Ascoli, Associate Prosecutor; and  
18 Clare Lawson, Team Leader, Legal Officer, for the SPO. Thank you.

19 JUDGE GUILLOU: Thank you very much.

20 Now I turn to the Defence, please.

21 MR. VON BONE: Yes, Your Honour, good afternoon. My name is  
22 Julius von Bone, counsel for Mr. Mustafa.

23 JUDGE GUILLOU: Thank you very much.

24 And I note that, for the record, Mr. Mustafa, your client, is  
25 also present in the courtroom.

1           For the record, I am Nicolas Guillou, Pre-Trial Judge for this  
2 case.

3           On 19 October I scheduled a hearing for today for two purposes:  
4 First, to allow Mr. Mustafa to enter a plea on the charges brought  
5 against him by the Prosecutor and confirmed by the Pre-Trial Judge,  
6 and second, to hold another Status Conference in this case.

7           I will begin with the accused's plea.

8           Mr. Mustafa, during your Initial Appearance on 28 September, I  
9 informed you of the need for you to plead guilty or not guilty on the  
10 charges brought against you in the confirmed indictment. In the  
11 exercise of your right, you indicated that you did not wish to enter  
12 a plea immediately at the Initial Appearance. I reminded you that,  
13 pursuant to Rule 92, you must enter a plea within 30 days of your  
14 Initial Appearance, and that if you fail to do so, I will enter a  
15 plea on your behalf of not guilty. Today marks the 30-day deadline.

16           Before we move forward, I would like to ask counsel for the  
17 accused whether you received the disclosure package from the  
18 Prosecutor, which was due on 23 October, in accordance with my  
19 Framework Decision on Disclosure of Evidence and Related Matters,  
20 issued on 9 October. For the record, this concerned the disclosure  
21 of material submitted by the Prosecutor in support of the confirmed  
22 indictment, as well as the confidential version of the detailed  
23 outline.

24           Mr. von Bone.

25           MR. VON BONE: Thank you very much, Your Honour.

1 I did receive those materials, and in good order. The issue of  
2 translation is an issue that I will address later in this Status  
3 Conference. But for the moment, I'm happy to receive those  
4 documents.

5 In addition, I want to express that Mr. Mustafa will have some  
6 introductory notes before he gives his plea. Thank you very much.

7 JUDGE GUILLOU: Thank you very much, counsel.

8 Mr. Mustafa, in a few moments I will ask you to enter a plea of  
9 either guilty or not guilty on each count of the confirmed  
10 indictment.

11 I would like to remind you that it's a very important decision.  
12 Should you wish to plead guilty on all or some of the counts, the  
13 proceeding in relation to those counts will go directly to a Trial  
14 Panel. There will be no evidence presented and no discussion on your  
15 guilt or innocence. In that case, the Trial Panel would simply  
16 determine whether your guilty plea was voluntarily made, whether you  
17 understand the consequences, and then move directly to sentencing.

18 Alternatively, should you wish to plead not guilty on all or  
19 some of the counts in the indictment, the pre-trial proceedings will  
20 continue in relation to those counts with a view to preparing for  
21 those counts to be litigated before a Trial Panel.

22 At trial, the Panel would admit evidence, hear from witnesses  
23 and receive submissions from the parties. The Trial Panel would then  
24 decide whether the Prosecutor has proven your guilt on those counts  
25 beyond reasonable doubt.

1 I will now ask you to enter a plea on each of the four counts in  
2 the confirmed indictment. I recall that these charges were already  
3 read out to you by the Court Officer during the Initial Appearance.

4 Mr. Mustafa, before you plead guilty or not guilty on each  
5 count, do you want the charges to be read out again today by the  
6 Court Officer?

7 And I'm just asking you if you want them to be read out. Not  
8 for the plea now and not for your introduction. Just if you want  
9 them to be read out again by the Court Officer.

10 Microphone, please.

11 THE ACCUSED: [Interpretation] Your Honour, before I express  
12 myself on pleading guilty or not guilty, I would wish to say a couple  
13 of words. As a matter of fact, I don't need anyone to once again  
14 read the indictment to me, because I properly understand the counts  
15 that I'm charged with. Thank you.

16 JUDGE GUILLOU: Perfect. It's noted.

17 So the Court Officer will not read again the charges. So before  
18 you plead, you now have the floor if you wish, but be concise.

19 THE ACCUSED: [Interpretation] Thank you very much, Your Honour.  
20 Thank you for giving me the floor.

21 JUDGE GUILLOU: If you can stand up, please.

22 MR. VON BONE: Excuse me, Your Honour, should the gentleman  
23 stand up?

24 JUDGE GUILLOU: Yes.

25 MR. VON BONE: Okay. I'll give him the thing.

1 JUDGE GUILLOU: Thank you, Mr. von Bone.

2 THE ACCUSED: [Interpretation] Your Honour, first and foremost  
3 allow me to thank you for giving me the floor to express myself on  
4 something which I'm totally convinced about and which I want to share  
5 with you.

6 The Specialist Chambers, dear Judge, Your Honour, dear ladies  
7 and gentlemen, so I'm the first citizen of the Republic of Kosovo  
8 appearing before these Chambers with a confirmed indictment. I wish  
9 to say a couple of words or, said in other terms, I wish to make a  
10 declaration, a statement, in front of you today.

11 I, the underlined, Salih Mustafa, a former warrior of freedom  
12 and a former soldier of the KLA in Kosovo, so entrusting very  
13 seriously in the oath that I've taken as a soldier of the KLA, and at  
14 the same time trusting the morals of my co-warriors as well, being  
15 convinced that the war for freedom and liberty by the KLA has been  
16 fair, inevitable, and at the same time indispensable because the  
17 long-standing occupation and the chauvinist and fascist occupation of  
18 the Serbs, with genocide dimensions run and directed by Slobodan  
19 Milosevic, as well as after many bloody wars of this person in  
20 Croatia and elsewhere in the region, myself and my people, I mean, we  
21 did not have many choices in front of us but to take to war.

22 So the choices out there were either to end up in the camps  
23 somewhere in eastern Europe, with no motherland, with no honour, with  
24 no freedom at all, or the other choice was to organise ourselves into  
25 a pandimensional resistance that culminated with the war of my

1 country for independence and for a democratic state.

2 Your Honour, fully trusting myself and my morals, my conviction  
3 as well as my character, so something that I have built over the  
4 course of life in service of my motherland and in service to the way  
5 to freedom, but at the same time in service of the democratic  
6 institutions of my state, by respecting and honouring the friend  
7 countries that have assisted us a great deal into achieving our  
8 liberty, by being strongly convinced of the fact that the KLA has  
9 never ever been a terrorist organisation or an organised criminal  
10 gang or enterprise but it has instead been a liberation army that was  
11 born out of the people and which has -- with a lot of sacrifices and  
12 a lot of will as well, and by giving the blood of the best of our  
13 boys and girls, has become a cornerstone of freedom that we enjoy  
14 today in Kosovo.

15 I really wish -- hope and trust that the Specialist Chambers  
16 would not be influenced by politics, be that the national politics or  
17 the international one, and neither would they be affected by certain  
18 interest groups and certain clans, by wishing for the Chambers to not  
19 be used by the enemies of my state against the nationals of my  
20 country and other official holders of my country, and by leaving  
21 aside those individuals or those groups of those individuals, be them  
22 locals or internationals, that for narrow political interests, for  
23 their wealth or other low interests just simply related to them, are  
24 affecting the real foundations of our freedom, that is, the fear war  
25 of the KLA.

1           And at the same time they tried to crucify the warriors of  
2 freedom and liberty by making and performing the task of Lucifer for  
3 as long as the narrow interest and the greed of certain people have  
4 troubled their minds, and at the same time they are taken over by  
5 hatred and by greed and they have sold their spirit to the devil.

6           So I cannot find any other more liquid words for this category  
7 of people, but just the noble words of Jesus Christ, so the words  
8 that he shared at the moment of his crucifixion. So he said, "God  
9 forgive them because they do not know what they are really doing."

10          Your Honour, I really wish to thank you for giving me this  
11 opportunity to issue this statement. So thank you so much for giving  
12 me this ample possibility to express myself.

13          And trusting in justice, in the democratic values as well, I  
14 really wish to make myself avail of this occasion to make an appeal  
15 of the Chambers, and I'm trying to appeal to the MPs of the European  
16 Parliament, to the MPs of the Kosovo Parliament, to the  
17 decision-making politicians of the European states, to the  
18 politicians of my motherland, Kosovo, and at the same time to the  
19 representatives of the justice system at the European level, to  
20 awaken their human awareness and consciousness, so democratic  
21 humanitarian consciousness, and to -- so to this selective Specialist  
22 Chambers that the annals of the European and international democracy  
23 is not recognised, it's not known. So I'm appealing to all these  
24 groups in order to extend the competences of these Chambers in order  
25 to investigate and in order to try and give justice to 1.932 killed

1 and massacred children, for 16 civil victims as well, for about  
2 20.000 mothers and sisters of ourselves who have been sexually  
3 violated, for the restitution and return of 1.500 nationals of Kosovo  
4 that are still missing and disappeared, for hundreds of mass graves  
5 that have been discovered from Belgrade up to Raska of Serbia, for  
6 450 massacres that have happened everywhere in Kosovo, and for  
7 colossal damages, material damages, that have been caused on the  
8 economic -- in the economies of the country but also on the social  
9 aspect of my country.

10 So as these are damages that have been caused by Serbia, because  
11 I'm quite convinced myself that the reconciliation of the peoples is  
12 not achieved by this way, and this is not the way on how to achieve  
13 reconciliation and that's obviously not the way, by victimising the  
14 victims once again.

15 Nor can peace and democratic prosperity in the Balkans and in  
16 Europe itself be reached by just trying to be good to the triangle,  
17 the autocratic, fascist and chauvinist triangle, that is composed of  
18 Aleksandar Vucic, Ivica Dacic, Aleksandar Vulin, who have been active  
19 stakeholders during the Milosevic times and now, as derivatives of  
20 that regime, are themselves transformed into role players and key  
21 actors into the rooms and audiences and premises. And also in  
22 today's developments, these people with their fascist policies are  
23 hampering and are attacking the freedom and liberty of my people. So  
24 my patriots in Sandzak and in eastern Kosovo are suffering because of  
25 them by negating the fundamental human rights, whereas, on the other



1 hand, so they are affecting all the Balkan countries that are  
2 building their pro-western European democracies.

3 In this mission, they are being supported by their traditional  
4 and their long-standing ally. Hoping that this -- these Chambers are  
5 going to produce justice and nothing else but justice. Although, I  
6 have not received a copy of the non-censored indictment and all the  
7 other relevant documents that are related to my case file, I wish to  
8 assure you, Your Honour, that in this legal struggle, in this legal  
9 endeavour with the Prosecution Office in front of these honoured  
10 Chambers, in every case and in every occasion I am going to make use  
11 of only the truth and nothing else but the truth, and I will try to  
12 serve justice and to serve the right approach.

13 I plead not guilty, and I'm ready to give my plea today. So I  
14 plead not guilty.

15 Thank you very much, indeed, for giving me the floor, Your  
16 Honour. Thank you for your patience and thank you for giving me the  
17 opportunity to address you, your distinguished excellencies. Thank  
18 you very much, indeed.

19 JUDGE GUILLOU: Thank you very much, Mr. Mustafa.

20 The Court has heard you. A lot of what you said was way beyond  
21 why we are here today, and I would like us to be focused on the case  
22 for which you are here today.

23 I heard at the end of your presentation that you wanted to plead  
24 not guilty. I have to ask you the question for each count, according  
25 to the procedure. So if you don't mind, I will ask you to stand up

1 again and I will ask you to plead for each count.

2 So, Mr. Mustafa, how do you plead on Count 1, charging you with  
3 the war crime of arbitrary detention?

4 THE ACCUSED: [Interpretation] Not guilty, Your Honour.

5 JUDGE GUILLOU: How do you plead on Count 2, charging you with  
6 the war crime of cruel treatment?

7 THE ACCUSED: [Interpretation] Not guilty, Your Honour.

8 JUDGE GUILLOU: How do you plead on Count 3, charging you with  
9 the war crime of torture?

10 THE ACCUSED: [Interpretation] Not guilty, Your Honour.

11 JUDGE GUILLOU: And finally, how do you plead on Count 4,  
12 charging you with the war crime of murder?

13 THE ACCUSED: [Interpretation] Not guilty, Your Honour.

14 JUDGE GUILLOU: Thank you, Mr. Mustafa. You may be seated.

15 Mr. Mustafa, as you have chosen to plead not guilty on all  
16 counts, the pre-trial proceedings will continue with a view to  
17 preparing the case for trial pursuant to Rule 95. This concludes the  
18 first part of our hearing today. We will now move to the second  
19 Status Conference in this case.

20 [Status Conference]

21 JUDGE GUILLOU: The Scheduling Order convening the Status  
22 Conference contained an agenda of issues which I wish to discuss with  
23 the parties today, alongside with any other matters the parties wish  
24 to raise.

25 However, before turning to this agenda, I would like to address

1 the Prosecutor's request for reconsideration of the order to file  
2 disclosure charts.

3 This request concerns my Framework Decision on Disclosure of  
4 Evidence and Related Matters of 9 October. In this decision, I  
5 ordered the Prosecutor, among other things, to file disclosure charts  
6 with each batch of incriminating evidence disclosed to the Defence  
7 under Rule 102(1)(b). The framework decision also informed the  
8 Prosecutor of my intention to request a consolidated version of these  
9 charts to be submitted at the end of the pre-trial proceedings.  
10 Similar orders would also be made to the Defence should he choose to  
11 disclose any evidence.

12 On 19 October, the Prosecutor requested that I reconsider this  
13 part of the framework decision. In the alternative, the Prosecutor  
14 requested that I certify this issue for appeal and grant suspensive  
15 effect to the order to file disclosure charts.

16 Additionally, after the resolution of this issue, the Prosecutor  
17 asked to be heard on the impact on the deadlines and requirements of  
18 the framework decision.

19 On 23 October I shortened the time limits for any response and  
20 reply which the parties may wish to file on this issue. I ordered  
21 the Defence to either respond in writing by yesterday, 27 October, or  
22 to make oral submissions in today's hearing. I also ordered the  
23 Prosecutor to respond either in today's hearing or in writing by  
24 tomorrow, 29 October.

25 Before I give the floor to the parties, I would like to

1 underline that this issue raised by the Prosecution in its request is  
2 very important and not new in international criminal procedure. It  
3 has an impact not only on the obligations of the parties, and  
4 especially on the Specialist Prosecutor, but also on the  
5 expeditiousness of the proceedings.

6 Mr. von Bone, I see that you have not filed any submissions in  
7 writing by the given deadline. Would you like to make oral  
8 submissions in response today?

9 Please do so. You have the floor.

10 MR. VON BONE: Yes, I do, Your Honour.

11 Thank you very much, Your Honour. The Defence has taken note of  
12 the order of the Pre-Trial Judge concerning the charts. The order  
13 was dated on 9 October and lies in the Framework Decision on  
14 Disclosure of Evidence and Related Material.

15 The Defence has also taken note of the Prosecutor's request for  
16 reconsideration of the order concerning the charts or, in the  
17 alternative, leave to appeal the order to file disclosure charts.

18 Indeed, Your Honour, the word or subject of charts does not  
19 appear in the Law, nor in the Rules of Procedure and Evidence. The  
20 SPO, Specialist Prosecutor's Office, states in his request that the  
21 Pre-Trial Judge failed to consider the legal framework before the  
22 Specialist Chambers relating to disclosure and case preparation and  
23 failed to give sufficient or any weight to relevant considerations.

24 Accordingly, says the SPO, the Pre-Trial Judge erred in the  
25 exercise of his discretion under Article 39 and Rule 95(2)(b). The

1 SPO states that reconsideration is necessary to avoid injustice,  
2 including undue and irreparable -- irreparability on the fairness and  
3 expeditiousness of the proceedings.

4 Now, Your Honour, before embarking on that issue, the Defence  
5 would like to make some observations regarding the possibility to  
6 appeal the impugned order. Both Article 45 of the Law as well as  
7 Rule 77(2) of the Rules of Procedure and Evidence set the same  
8 standard for an appeal. It should involve an issue which would  
9 significantly affect the fair and expeditious conduct of the  
10 proceedings for which, in the opinion of the Pre-Trial Judge, an  
11 immediate resolution by a Court of Appeals Panel may materially  
12 advance proceedings. Certification for appeal is therefore to be  
13 tested to this particular standard.

14 Next to this, there is the discretion of the Pre-Trial Judge  
15 under Article 39 of the Law. Article 39 states that the Pre-Trial  
16 Judge can make necessary orders or decisions to ensure the case is  
17 prepared properly and expeditiously for trial. It is the  
18 understanding of the Defence that orders of the Pre-Trial Judge must  
19 be viewed within this context.

20 The Defence believes that it is precisely this that was being  
21 envisaged by the Pre-Trial Judge when he made that order. Whether  
22 this is a matter of error in the exercise of the discretion under  
23 Article 39 of the Law remains to be seen or decided. But honestly,  
24 Your Honour, I do think that parties can and should be allowed to  
25 make submissions regarding an order where such order places a

1 particular burden on one or both of the parties.

2 That does not necessarily need to be before an order is given.  
3 Under Article 79(1) of the Rules of Procedure and Evidence, the  
4 Pre-Trial Judge can reconsider its own decision. This rule, in the  
5 view of the Defence, gives the opportunity for the current dispute.  
6 I do not think that any of the participants in this trial wishes to  
7 duplicate any material. That is not practicable for any of the  
8 parties.

9 I actually contacted the Prosecution in order to have a  
10 clarification about the word "chart" and what is actually meant by  
11 it. A detailed outline that was given recently looks a little bit  
12 like a chart, and it is obvious that making it places a burden on  
13 each of the parties.

14 In order to be practical, the Defence gives into consideration  
15 whether both the SPO and the Defence could maybe work out how a chart  
16 should look like and then present that to the Pre-Trial Judge. This  
17 should be done within a short timeframe and see whether the outcome  
18 would satisfy the Pre-Trial Judge's idea of how such a chart is or  
19 what it should look like.

20 I do believe, Your Honour, that Rule 79(1) would give a  
21 possibility to the Pre-Trial Judge to reconsider his order in the  
22 light of what parties would present to him. That may be *proprio motu*  
23 the order need not necessarily to be reconsidered but only to be  
24 adjusted or specified to the way how such chart should look like and  
25 what it should contain.

1           That is the submission that the Defence wishes to make on this  
2 issue. Thank you very much, Your Honour.

3           JUDGE GUILLOU: Thank you very much, Mr. von Bone.

4           I will now give the floor to the Prosecution. But before we  
5 proceed, I would just want to add two things:

6           The first one is that these charts are aimed not only at helping  
7 the Defence to understand the case, because then you can understand  
8 all the evidence that is disclosed, but it's also for all the Panels  
9 - especially the Trial Panel - in order to understand all the  
10 evidence that is disclosed as well.

11           And for the SPO, I think one point that was raised by  
12 Mr. von Bone that is very important is how such a chart would look  
13 like, because there are indeed different ways to do it. So you have  
14 the right to be creative in what you will present today.

15           I give you the floor.

16           MR. MICHALCZUK: Thank you very much, Your Honour. For this  
17 particular point, I will turn over to my colleague, Ms. Lawson.  
18 Thank you.

19           JUDGE GUILLOU: Thank you.

20           Ms. Lawson.

21           MS. LAWSON: Good afternoon, Your Honour. As my colleague  
22 mentioned, I am happy to address this.

23           The Specialist Chambers has a unique and rigorous disclosure  
24 regime which is reflected in the Law and the Rules. Rule 109(c)  
25 forms part of that framework and is itself a unique provision

1 compared to the frameworks applicable at other courts and tribunals.

2 As Your Honour noted, this issue is not new, and indeed we did  
3 make references in our written submissions to certain jurisprudence  
4 where we thought it may be of interest or instructive. However, the  
5 key question is how to apply this unique provision, Rule 109(c),  
6 before this unique institution, and most importantly, in this  
7 specific case.

8 What Rule 109(c) requires is categorisation as far as  
9 practicable. This is necessarily a fact-specific inquiry and our  
10 request for reconsideration is not about a point of principle, it's  
11 about ensuring we have the opportunity to provide the Court with  
12 relevant information that can help in giving effect to that rule in  
13 this case.

14 In fact, what's practicable within the meaning of Rule 109(c)  
15 will vary from case to case before the Specialist Chambers. What  
16 is -- what might work in a smaller case will not necessarily work in  
17 a larger case.

18 My submissions here will focus first on providing some of that  
19 additional information and context which the Court could not have  
20 been in a position to know at the time of making the order; and  
21 secondly, as alluded to by Defence counsel, potential solutions.

22 We have already had constructive conversations, a number of  
23 them, with Defence counsel on this topic, and the SPO actually shared  
24 in advance the general nature of the submissions we intended to make  
25 here today, because I can assure you that it is in our interests to



1 find a practicable solution appropriate for this case.

2 What we understand "practicable" to mean is fair and  
3 proportionate and what can reasonably be done with available  
4 resources, consistent with the overall disclosure framework and  
5 without compromising the expeditiousness of proceedings.

6 In terms of our office, it's a simple fact that the SPO is  
7 operating within significant resource constraints, as indeed is the  
8 Defence team. Even at maximum capacity, we have a limited overall  
9 staff and an even smaller legal team. None of the team here today,  
10 indeed, none of the lawyers in the SPO, have the luxury of being able  
11 to focus on just one set of proceedings.

12 I mention this only to make the point that where a significant  
13 additional burden arises beyond what was foreseen, there is a  
14 multiplier effect. Staff who must be reallocated to meet the new  
15 burden are taken away not only from priority tasks in this case but  
16 also from such tasks in other cases before the Court.

17 When I refer to "priority tasks," that's not simply a  
18 discretionary assessment that's been made by the  
19 Specialist Prosecutor. I'm referring to core functions under the  
20 legal framework which are necessary, indeed, mandated, in order to  
21 bring this and other cases expeditiously to trial.

22 It is apparent from the legal framework that Rule 109(c)  
23 contains an inherent level of flexibility around what is practicable  
24 and was never intended as the principal or even a principal  
25 disclosure tool. It is a categorisation insofar as practicable which

1 is supplementary to what is already a fulsome set of requirements  
2 mandated by the Rules and accompanied by stringent timelines.

3 Production of a detailed outline was obviously required at the  
4 confirmation stage pursuant to Rule 86, and we are pleased if it was  
5 of assistance to the Chamber and if it can be of assistance to the  
6 Defence now. However, the additional burden of continuing to produce  
7 such documents, as the Defence mentioned, is very, very significant.  
8 It is certainly not practicable for the SPO and, as we have  
9 submitted, would not be consistent with expeditious proceedings.

10 In this specific case, in addition to the transcripts of the  
11 accused, the indictment supporting material consisted only of the  
12 evidence of five witnesses, together with a relatively small number  
13 of documentary items. And even though the SPO was able to draw on  
14 significant analysis and work product that had already been done  
15 throughout the course of the investigation, preparation of the  
16 detailed outline itself still involved the work of six people over  
17 several weeks.

18 As outlined in the previous Status Conference, the remaining  
19 Rule 102(b) material is approximately double that size, involving at  
20 least 11 additional witnesses. We would consequently be  
21 contemplating an immediate delay of in excess of a month in these  
22 proceedings in order to produce the charts that were ordered with  
23 consequent knock-on effects for all other deadlines.

24 As I mentioned previously, the Rule 109 assessment will differ  
25 between cases before the Specialist Chambers, and our experience to

1 date demonstrates that in cases of larger scope, and again working  
2 from detailed existing analysis, it was an exercise that took many,  
3 many months.

4 Turning to solutions, hopefully it has been apparent from my  
5 remarks so far that the SPO is not fixated on a particular  
6 application of Rule 109. We will be as flexible as we can be within  
7 the constraints that we have.

8 At the time of issuing the decision, the Court would not have  
9 been aware of the categorisation of disclosed material which has  
10 already been done in Legal Workflow and the manner in which that  
11 enables parties and the Chamber to sort and navigate the material.  
12 However, in addition to that, we have been working to come up with  
13 alternative proposals on the format of charts that could assist both  
14 the Chamber, the Trial Panel, and the Defence, and we would be happy  
15 to continue working *inter partes* on that matter with the Defence.

16 If there are any further -- if there's any further information  
17 that would be of assistance to the Chamber, I'm happy to address it  
18 now or in written submissions, as appropriate. Thank you.

19 JUDGE GUILLOU: Thank you very much, Ms. Lawson.

20 Mr. Mustafa, this is a bit of a technical debate. I don't know  
21 if you understood everything, because it's a debate between lawyers  
22 all around here.

23 What we debate here is when the Prosecution will disclose  
24 evidence, how will they organise it and will they categorise it in a  
25 chart so that it's understandable for you, as the Defence. And vice

1     versa, if your counsel discloses evidence, how it is to be  
2     categorised so it is easily understandable by the Prosecution.

3             And as I was saying at the beginning, it's a question that we  
4     have in a lot of tribunals because the risk is to have a lot of  
5     evidence that is sent to each party without being explained,  
6     categorised, and then you have hundreds of pages and nobody exactly  
7     knows why they are disclosed. So this is -- for you and for the  
8     public, I thought this would be probably useful.

9             Mr. von Bone, is there anything you would like to add now after  
10    Ms. Lawson? And if I may, if I want to follow up on what was just  
11    mentioned, if there was an *inter partes* work on this, what would be  
12    the timeline for you? Would it be a question of days to find  
13    something acceptable, or would it would be a question of weeks? And  
14    how do you see it?

15            MR. VON BONE: Well, honestly, Your Honour, I think on that part  
16    I think we can work in days, as far as I'm concerned. I'm making  
17    myself available to address this issue and work out something that is  
18    practicable for not only the parties but obviously, ultimately, the  
19    Trial Panel that will need to visualise at some point the -- where do  
20    I place this particular part of evidence and where do I place that  
21    part of evidence.

22            I have seen one document, a detailed outline, and that looked to  
23    me very presentable. But if there is any other chart that would  
24    categorise that maybe, then that is maybe a useful thing. So we can  
25    work out some kind of format, send it to the Pre-Trial Judge, and

1 then if the Pre-Trial Judge believes that it is a practicable meaning  
2 of the word "chart," then the entire issue of appealing or whatever  
3 could be avoided.

4 And I think that each of the parties is interested in an  
5 expeditious trial, even if COVID issues might even hamper our  
6 investigations, of both parties, I would say that.

7 So I hope that the Trial Judge finds an option in the rule that  
8 I mentioned, maybe stay the order for a bit in order that we work out  
9 something and send it to you. That is, at least, the option I'm  
10 available to give.

11 Obviously, if I address some other issues, the Prosecution has,  
12 in any event, always more manpower than the Defence has in a case.  
13 So it will give a burden. However, I must say at the same time, that  
14 the type of issues that are brought about by the Defence concern  
15 maybe not the exact same and same amount of issues that the  
16 Prosecution is dealing with. After all, it is the Prosecution that  
17 needs to seek beyond reasonable doubt a conviction and, therefore,  
18 needs to prove that with evidence that is not only presentable but  
19 easily to be interpreted by the Defence and the Trial Panel.

20 I think that the order, therefore, could stay in place as long  
21 as maybe there is maybe a precision of it or an amendment in how it  
22 would look like. That would maybe avoid any procedural issues that  
23 we are then -- maybe at that time we can use for something else. I  
24 do not believe that it is a very extreme principal point that is here  
25 the issue. It is a practicable issue that I think that all the

1 parties wish to seek in order to have an expeditious trial. It is  
2 exactly that, what I'm sure that Your Honour envisaged with the order  
3 as well. So there is, in that case, I hope, no issue between the  
4 parties.

5 That being said, obviously, it is a lot of work. And even  
6 though it is a lot of work, such work can eventually help the rest of  
7 the trial to be much more expeditious. So I think there is also a  
8 responsibility for the parties to take that responsibility and say,  
9 "Well, here is what we're going to come up with, and is that a useful  
10 way of presenting it," so that during the trial, all the parties can  
11 say, "Oh, yeah, I can easily find this or that issue there."

12 This trial is a single person. There is not a joinder or any  
13 other type of case where there is sometimes three or more accused.  
14 So it is in that case the burden is relative. However, if that is  
15 already too much, then I think a workable solution should be at least  
16 given the opportunity to do that.

17 As I say, submissions can be, I think, in a Status Conference  
18 like this, also given like that, because I am sure that the Pre-Trial  
19 Judge will consider those issues carefully and, therefore, then say  
20 what is the most practicable solution for this matter.

21 Is there any other issue that I would want to address? At this  
22 point, not. I don't think that -- no, I don't think I have anything  
23 else. Thank you very much.

24 JUDGE GUILLOU: Thank you very much, Mr. von Bone.

25 I think we are all in agreement here that we want to have

1 disclosure that is both efficient and as detailed as possible so that  
2 everybody can understand the case. I think on this, there is an  
3 agreement.

4 What we want to avoid, and especially what I hear from the  
5 Specialist Prosecutor's Office, is they do not want this requirement  
6 to be counterproductive, meaning it will take so much time to do  
7 these charts that, in fact, it will have the opposite effect, meaning  
8 that instead of being more expeditious, it will be less expeditious  
9 because it will take a lot of time.

10 I will follow up with what you were saying, Mr. von Bone.

11 Ms. Lawson, if I may ask you a couple of questions.

12 First of all, for you, is the issue, the principal issue you  
13 have with the idea of a narrative in the chart like it is for the  
14 detailed outline, or is it the principle of producing any chart?

15 And the second question I have is you most certainly know that  
16 in Legal Workflow, which is the software we use to exchange evidence,  
17 there is an option to generate automatic charts in an Excel  
18 spreadsheet. Is it something that you could use, even if this chart  
19 is changed and you can add a couple of information? But is it  
20 something that would help in terms of workload if you were to produce  
21 these charts?

22 MS. LAWSON: Thank you, Your Honour. I confirm it's not a  
23 question of principle around charts.

24 We are -- indeed, the solutions that we are discussing with the  
25 Defence are in chart format, and the narrative is, obviously, one of

1 the very time-consuming aspects of the chart. However, what we are  
2 looking at is categorising the documents in chart format.

3 In terms of automatic generation of charts, we're certainly  
4 looking at technologies both that we have in our office and through  
5 Legal Workflow that would assist in creating them and assist both  
6 parties.

7 Finally, on timing, I can confirm, as the Defence indicated,  
8 that I think we'll be a matter of days that we can come back to you.  
9 We've already had some constructive conversations on the topic.

10 JUDGE GUILLOU: And if I may follow up on this, how many days do  
11 you think you need? Because you might have seen that I'm not the  
12 slowest usually. So is it a question of a week? Is it a question of  
13 two weeks? Because I wouldn't like this to delay the disclosure  
14 process for this case.

15 MS. LAWSON: We understand that. I think it would not be more  
16 than a week.

17 JUDGE GUILLOU: So today we are 28 October. Would Wednesday  
18 next week be a reasonable deadline for you?

19 MS. LAWSON: Yes, certainly, Your Honour. We will have come  
20 back to you within that timeframe.

21 JUDGE GUILLOU: So I will then issue an oral order to the  
22 Specialist Prosecutor's Office to come back to this Chamber with a  
23 proposal on the disclosure chart after consulting with the Defence,  
24 and I hope you will be able to make a proposal that is agreed upon by  
25 the Defence in the meantime. And in the proposal, if you can explain



1 what type of chart you would be able to produce with what type of  
2 information, that would be of much assistance.

3 MR. VON BONE: May I add something, Your Honour?

4 MS. LAWSON: Certainly, Your Honour.

5 JUDGE GUILLOU: Yes, Mr. von Bone.

6 MR. VON BONE: Yes. I hope that the chart can become, as we go  
7 along in the case, a living document in the sense that every once in  
8 a while we can make adjustments to a chart or say that this is the  
9 basic frame and if we have, maybe, experts or other issues that we  
10 can, you know, more or less have some adjustments to it, so that it  
11 is not that we fix ourselves Wednesday on one particular chart, and  
12 if it doesn't work, then at least it could be adjusted. I think it  
13 would be helpful for all the parties, especially also the Trial  
14 Chamber at some point.

15 Thank you very much, Your Honour.

16 JUDGE GUILLOU: Thank you, Mr. von Bone.

17 And I add to my oral order that, to the Specialist Prosecutor's  
18 Office, you can disregard the deadline of tomorrow for your reply,  
19 because this new order makes this response -- I don't think it's very  
20 useful to have your answer by tomorrow, because we've had this  
21 discussion today in court.

22 Is there anything to be said on this issue, Ms. Lawson?

23 Mr. von Bone? No. Thank you very much.

24 We will now move on to the agenda for today's Status Conference,  
25 as set out in the Scheduling Order.

1 I see that no written submissions were filed by either of the  
2 parties. I hope it means that everything went well in the disclosure  
3 process.

4 As I noted in the first Status Conference, my goal today is to  
5 review the status of the case and to organise exchanges between the  
6 parties to ensure an expeditious preparation for trial.

7 I will ask the parties for their submissions in turn, and I  
8 remind the parties to give prior notice should any submission require  
9 the disclosure of confidential information so that we can go into  
10 private or closed session.

11 So the first item is the disclosure difficulties. I would like  
12 first to hear from the Prosecutor on this first point of the agenda;  
13 namely, whether there have been any difficulties in the ongoing  
14 disclosure process.

15 Mr. Prosecutor.

16 MR. MICHALCZUK: Your Honour, thank you very much.

17 We are not experiencing any difficulties for now when it comes  
18 to the disclosure process. Last Friday, on 23 October, we disclosed  
19 to the Defence the disclosure package number 8, containing 82  
20 evidentiary items, including five redacted statements of witnesses.  
21 We also disclosed a detailed outline on confidential redacted and  
22 public redacted form, as required by Your Honour's framework  
23 decision. All this completed the SPO's disclosure obligation under  
24 Rule 102(1)(a).

25 On the same day, 23 October, last Friday, 2020, we also

1 disclosed disclosure package number 8 -- number 9, my apologies, Your  
2 Honour, under Rule 102(3), containing 11 items. We discussed that  
3 particular disclosure. This is a book in the Albanian language with  
4 some parts of that book translated into English. We discussed that  
5 issue during the first Status Conference on 5 October, and it is  
6 also -- it's already done.

7 We also sent an e-mail to the Defence on the same date,  
8 23 October, in the morning hours, explaining in detail the packages  
9 that we disclosed on that same day.

10 When it comes to difficulties, the only difficulty that we might  
11 face with regard to disclosure and the impact on the deadlines was  
12 discussed a few minutes ago between the Defence, the SPO, and Your  
13 Honour, and it deals with the provision of the charts. So everything  
14 hinges on that issue. We hope that it will not have any impact if  
15 our discussions go well, smoothly, as planned. Thank you.

16 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

17 Mr. von Bone, do you have any comments on this or did you face  
18 any difficulty with the disclosure process?

19 MR. VON BONE: Not in particular, as far as I am concerned.  
20 However, I have not been able to review all these documents at this  
21 point, and I'm not sure whether there are translations of it in the  
22 Albanian language.

23 Obviously, the book is what I've seen in English, but I hope  
24 that all the evidence that is going to be used in this trial as  
25 evidence concerning my client that would support any kind of

1 allegation, that that particular evidence should be certainly in  
2 Albanian for the accused, simply because otherwise I'm unable to work  
3 with my client himself. My Albanian is quite rusty or non-existent,  
4 as I would say. So I think it is important that we are able to  
5 discuss this.

6 So that's all that I -- I have not been able to check that. But  
7 if there would be any issues, then I would -- we have a joint  
8 communication line through an e-mail that I could write down the ERN  
9 numbers and check whether that particular thing is in Albanian  
10 available, and if so which ERN number that would be. So issues like  
11 that, I will try to do that *inter partes* as possible, then we -- I  
12 don't have any issue on that during a Status Conference.

13 But I want to stress once again for the Prosecution Office that  
14 it is important - extremely important, for my client - that he will  
15 get all the material in Albanian as far as that will support any type  
16 of allegation.

17 Thank you very much. That's all I have for this point.

18 JUDGE GUILLOU: Thank you very much, Mr. von Bone.

19 Mr. Prosecutor, do you wish to add anything on the translation  
20 question?

21 MR. MICHALCZUK: If I may, Your Honour, we fully understand the  
22 concerns of the Defence in this particular regard, and I would like  
23 to inform the Defence and Your Honour that the disclosed packages  
24 have been disclosed in the full translation into Albanian language.  
25 Thank you.

1 JUDGE GUILLOU: Duly noted. Thank you.

2 I will now move to the second topic of our Status Conference,  
3 which is the investigations of the Specialist Prosecutor's Office.

4 Mr. Prosecutor, I want to ask you about the status of your  
5 ongoing investigations. In particular, have you completed the  
6 investigative steps mentioned during the first Status Conference, and  
7 can you give an estimated date for the completion of the  
8 investigations?

9 You have the floor.

10 MR. MICHALCZUK: Yes, Your Honour. Thank you very much. The  
11 short answer to that question is no, we have not completed the  
12 investigations. There are still some limited investigative  
13 activities pending. We would not like to commit ourselves to any  
14 particular deadline when it comes to the completion of those  
15 investigations.

16 However, I would like to make absolutely clear that our  
17 investigation -- investigations that we are conducting, we are  
18 completing - and as I said, we are talking only about limited  
19 investigations - they are not going to impact in any fashion the  
20 timetable set by Your Honour when it comes to the disclosure, which  
21 is for us of paramount importance. So we are not going to, as I  
22 said, investigate a lot from now.

23 If there is any additional investigative steps that need to be  
24 taken at a later stage that go beyond the disclosure timelines,  
25 we'll, of course, inform Your Honour about that need, that necessity,

1 and we'll also be conducting our additional investigations fully  
2 complying with the Rules of Procedure and the Law.

3 Thank you, Your Honour.

4 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

5 Mr. von Bone, do you have anything to add on this topic?

6 MR. VON BONE: No, Your Honour, I have not. I have not.

7 JUDGE GUILLOU: Thank you, Mr. von Bone.

8 Mr. Prosecutor, when you say "additional investigations," is it  
9 a question of weeks or a question of months for the timeframe? I  
10 understand that, especially with COVID, it is difficult to set a  
11 deadline, but just to have an idea of how long this could take.

12 MR. MICHALCZUK: Your Honour, as I said before, I would like not  
13 to commit ourselves to any particular deadlines. It's for us very  
14 hard for the reasons related to the ongoing pandemic but also for  
15 other reasons beyond the control of the SPO that, unfortunately,  
16 might impact on our -- on the scope of the investigation. But as I  
17 said, these investigations are limited in scope and we'll try to  
18 complete all necessary investigative steps as soon as possible. And  
19 I want to again reiterate these investigations are not going to have  
20 any impact whatsoever on the timelines for disclosure.

21 JUDGE GUILLOU: Noted. Thank you very much, Mr. Prosecutor.

22 Now, I would like to raise the issue of the pre-trial brief.

23 Mr. Prosecutor, I would now like to ask you for an estimate of  
24 when you would be able to file your pre-trial brief and all the  
25 material pursuant to Rule 95. If you can already set a time for

1 this, keeping in mind the disclosure calendar set out in the  
2 framework decision in this case.

3 You have the floor.

4 MR. MICHALCZUK: Your Honour, with regard to that, indeed, we  
5 have a disclosure calendar set by yourself, which runs until late  
6 January 2021. We will try to do our best. We'll do our best to file  
7 the pre-trial brief and related material sometime in the end of  
8 February 2021. However, the main message I want to convey is that we  
9 would like to first complete with all our disclosure obligations and  
10 then file the pre-trial brief once we perform all our obligations  
11 stemming from disclosure that we have.

12 This indication, end of February, is just an indication. This  
13 deadline could move in either direction. Also, everything depends on  
14 the position of the Defence, because the last deadline is given for  
15 us and then the Defence must also take some positive steps. After  
16 they've done that, we'll know when we can finalise the disclosure and  
17 file the pre-trial brief. Thank you.

18 JUDGE GUILLOU: Thank you very much, Mr. Prosecutor.  
19 Counsel, do you have anything to add on this topic?

20 MR. VON BONE: No, Your Honour. Thank you very much.

21 JUDGE GUILLOU: Thank you.

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

24 Mr. von Bone, based on the information given by the Prosecutor  
25 in relation to the older points on the agenda and the disclosure

1 calendar set out in the framework decision, are you in a position to  
2 give any information on, first, the status of your investigations;  
3 second, any intention to give notice of an alibi or other grounds for  
4 excluding responsibility, pursuant to Rule 95, or any associated  
5 disclosure, pursuant to Rule 104; and third, any intention to make  
6 requests concerning unique investigative opportunities pursuant to  
7 Rule 99?

8 You have the floor.

9 MR. VON BONE: Yes, Your Honour, I do have some things to  
10 address in that matter.

11 As far as the status of the investigations is concerned, I  
12 should say that we have hardly started. Problematic is the issue of  
13 the COVID situation in the Netherlands. As of yesterday, there was a  
14 press moment of the prime minister and the minister of health, and it  
15 seems that the particular measures that have been taken, they are in  
16 place until probably somewhere in December. That makes it not so  
17 easy to do research in the sense of contacting witnesses,  
18 interviewing witnesses, experts, or doing any fieldwork.

19 Kosovo is, at this moment, an orange country - it's strange to  
20 say that in a country like the Netherlands, but Kosovo is the orange  
21 country, orange region - and problematic is actually more the  
22 Netherlands, which is a red region at this moment. So quarantine  
23 issues and so on, they are hampering. But I am envisaging, at least  
24 in the not so distant future, to do at least a mission which would  
25 take a little bit longer, and then see and then I can update you on



1 the status of those investigations and what they deliver.

2 As far as the notice of an alibi and grounds of excluding  
3 responsibility, at this point it is, as far as the Defence is  
4 concerned, still a little bit too early to give such notice, but we  
5 will. We have no disclosures at this moment yet to make pursuant to  
6 Rule 104(1) or 104(2) of the Rules. We will do that in due course.  
7 That is certainly going to be the case. But at this point I cannot  
8 make yet a particular time setting, frame, or whatever.

9 Then unique investigative opportunities pursuant to Rule 99(1),  
10 no, I do not have at this point a particular request regarding that.  
11 Obviously, that is in relation to the other investigations that we  
12 are trying to endeavour, and that will take probably a little bit  
13 more time even than the initial investigations that we will take.

14 So it's not much that I can give at this point, Your Honour, but  
15 I truly hope that the next Status Conference, if I may say something  
16 about that, could be a little bit in the more distant future so that  
17 it gives the Defence the opportunity to figure out a good moment to  
18 make a mission. Preparation of that mission is ongoing, but I must  
19 say that in order to do that properly and effectively, I need to make  
20 a proper timeframe in which I would do that. I would think it would  
21 take about 14 days, at least, to be over there on the first mission.  
22 And then, obviously, that will give some results.

23 So if the next Status Conference would be immediately in four  
24 weeks or so, I should say then I'd probably have nothing or I should  
25 be on a remote location in order to participate in that Status

1 Conference. So as far as I'm concerned, I hope that it would be  
2 somewhere in December rather than in November before we have any  
3 other Status Conference.

4 Thank you very much, Your Honour. If you wish, I have two dates  
5 which are quite impossible.

6 JUDGE GUILLOU: We'll come back to that in a moment.

7 MR. VON BONE: Okay. Thank you very much.

8 JUDGE GUILLOU: Thank you, Mr. von Bone.

9 Just one thing to add to what you said. I perfectly understand  
10 the constraints that you mentioned. Just when you know that you want  
11 to raise any of these issues, especially the defence of alibi, please  
12 do so at the earliest opportunity so that we don't delay the  
13 proceedings. I think that's the most important. I totally  
14 understand that you are not in a position to do it now, but as soon  
15 as you know, as soon as you can, if you can please then get back to  
16 this -- to the Court, that would be much appreciated.

17 MR. VON BONE: I will, Your Honour.

18 JUDGE GUILLOU: Thank you very much.

19 Mr. Prosecutor, do you have anything to add on this topic?

20 MR. MICHALCZUK: No, thank you. Nothing to do add. Thanks.

21 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

22 Next, would either of the parties wish to raise a topic that  
23 hasn't been dealt with, that we haven't dealt with today? Is there  
24 any specific topic that you would like to raise?

25 Mr. Prosecutor?

1 MR. MICHALCZUK: So we are not discussing the preferable date  
2 for the next Status Conference yet --

3 JUDGE GUILLOU: No, not yet. That's --

4 MR. MICHALCZUK: -- I understand?

5 JUDGE GUILLOU: -- the next item. So just if there is any other  
6 topic, especially related to disclosure, that you would like to  
7 raise.

8 MR. MICHALCZUK: Let me quickly consult with my colleagues if  
9 there is anything.

10 JUDGE GUILLOU: Of course.

11 [Prosecution counsel confer]

12 MR. MICHALCZUK: Your Honour, there is nothing at this point  
13 that we want to raise. Thank you.

14 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

15 We will wait a couple of minutes so that Mr. von Bone can have a  
16 discussion with his client.

17 [Defence counsel and accused confer]

18 JUDGE GUILLOU: Mr. von Bone.

19 MR. VON BONE: Thank you very much, Your Honour. We have no  
20 other issues.

21 JUDGE GUILLOU: Thank you very much.

22 Now, the last item is the date of the next Status Conference.

23 Mr. Prosecutor, do you have any submissions on the date that  
24 would be the most appropriate for the third Status Conference in this  
25 case?

1 MR. MICHALCZUK: Your Honour, on this issue, as per the  
2 Framework Decision on Disclosure, the Prosecution has got one  
3 obligation on 1 December. We have to disclose a detailed notice of  
4 evidence under Rule 102(3) of the Rules. So if this is the case -  
5 and this is the case, indeed - I would suggest to organise to hold  
6 the next conference in December, rather than November. But, of  
7 course, if the Defence is of the opinion that we should, or Your  
8 Honour, of course, that we should have a conference earlier, like  
9 November, maybe once per month, we will not, of course, oppose that.

10 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

11 Mr. von Bone, I think you said that December might be better.

12 MR. VON BONE: Yes.

13 JUDGE GUILLOU: What would be the best timeline for you?

14 MR. VON BONE: Possibly not before 9 December. And the date of  
15 16 December, please, not. I just have a personal eye issue that I  
16 need to address at that day. So that would be suitable also for the  
17 investigations, and at least I have a lot of space.

18 Thank you very much, Your Honour.

19 JUDGE GUILLOU: Thank you, Mr. von Bone.

20 Before we finish this hearing, Mr. Mustafa, I would just like to  
21 ask you if you have any comments about your detention conditions?

22 THE ACCUSED: [Interpretation] No, Your Honour. Everything is in  
23 order.

24 JUDGE GUILLOU: Thank you very much.

25 This concludes today's hearing. I thank the parties and the

1 Registry for their attendance. I also wish to thank the  
2 interpreters, stenographers, audio-visual technicians, and security  
3 personnel for their assistance. The hearing is adjourned.

4 --- Whereupon the Status Conference adjourned at 4.18 p.m.

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