

1 Wednesday, 9 June 2021  
2 [Trial Preparation Conference]  
3 [Open session]  
4 [The accused entered court]  
5 --- Upon commencing at 9.31 a.m.

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

8 Before we start, I would like to give the photographers the  
9 opportunity to make some pictures. Please proceed. Thank you.

10 Mr. Court Officer, could you please call the case.

11 THE COURT OFFICER: Good morning, Your Honours. This is case  
12 number KSC-BC-2020-05, The Specialist Prosecutor versus  
13 Salih Mustafa.

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

15 Before asking those present in the courtroom to introduce  
16 themselves, I would like to remind everyone of a few rules to be  
17 observed at all times.

18 Before speaking, make sure your microphone is activated and to  
19 switch it off when finished speaking. Speak slowly and clearly, as  
20 we have interpretation from and into Serbian and Albanian. In this  
21 way, the interpreters can do their work properly. And before  
22 intervening, wait five seconds in order to allow the interpreters to  
23 finish their previous sentence.

24 I would also like to remind the parties and Victims' Counsel and  
25 the Registry that certain information in this case is subject to

1 protective measures and confidentiality orders. This includes  
2 confidential information that has been redacted from the Confirmed  
3 Indictment concerning the identity of certain individuals, locations,  
4 places, and other information. Confidential information shall not be  
5 disclosed in open session.

6 I remind you to give me prior notice should any submission  
7 require the disclosure of confidential information so that we can go  
8 into private or closed session.

9 Now, I would kindly ask the parties, Victims' Counsel, and the  
10 Registry to introduce themselves, starting with the Specialist  
11 Prosecutor's Office.

12 You have the floor.

13 MR. MICHALCZUK: Thank you. Good morning, Your Honours. Good  
14 morning representatives of the Registry, the Defence, and the  
15 Victims' Counsel, and everybody present in this room and outside.

16 The Prosecution is represented today by Mr. Alex Whiting, Deputy  
17 Specialist Prosecutor; my colleagues, Filippo de Minicis,  
18 Associate Prosecutor; Silvia D'Ascoli, another Associate Prosecutor;  
19 and my name is Cezary Michalczuk, and I am a Prosecutor for this  
20 case.

21 Thank you, Your Honours.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

23 Now the Defence, please. You have the floor.

24 MR. VON BONE: Good morning [Microphone not activated].

25 Microphone, microphone.

1 Good morning honourable members of the Court, members of the  
2 Prosecution, the Registry, and the Victims' Counsel. My name is  
3 Julius von Bone. I'm the lead counsel of Mr. Salih Mustafa. I am  
4 accompanied by my team members. My team members are Mr. Betim Shala  
5 of the bar of Prishtine, and Mr. Fatmir Pelaj, who is an investigator  
6 and support staff.

7 Thank you very much, Your Honour.

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

9 For the record, your client, Mr. Mustafa, is also present in the  
10 courtroom.

11 Mr. Mustafa, I remind you that all rights under the Law and the  
12 Rules of Procedure and Evidence read to you by the Pre-Trial Judge at  
13 your first appearance continue to apply before this Panel, including  
14 your right to remain silent.

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

16 MR. ROCHE: Good morning, Your Honours and to everyone in the  
17 Court. My name is Ralph Roche, the head of Judicial Services  
18 Division in the Registry. I am here with the Registrar,  
19 Fidelma Donlon.

20 Thank you.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

22 For the record, my colleagues for Trial Panel I are  
23 Roland Dekkers, Gilbert Bitti, Vladimir Mikula, and my name is  
24 Mappie Veldt-Foglia, Presiding Judge for Trial Panel I.

25 I will give a short procedural history to introduce and give the

1 legal basis for today's hearing.

2 Oh, I'm sorry. Madam Victims' Counsel, I'm very sorry. I'm  
3 very sorry. Please, you have the floor.

4 MS. PUES: Good morning, Your Honours. Good morning everyone in  
5 court, from the Prosecution, the Defence team, the Registry. My name  
6 is Anni PUES. I am the Victims' Counsel. As you can see, at the  
7 moment I am appearing here on my own. The team is yet to be  
8 assembled, but that will happen shortly.

9 Thank you.

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you. And my apologies.

11 To repeat, I will give a short procedural history to introduce  
12 and give the legal basis for today's hearing.

13 On 5 May of this year, the President of the Specialist Chambers  
14 constituted Trial Panel I. It is composed of the aforementioned  
15 Judges and assigned them to the present case as soon as the case file  
16 would be transmitted by the Pre-Trial Judge.

17 On 7 May of this year, the Pre-Trial Judge transmitted the case  
18 file to the Trial Panel. And as of that date, the Trial Panel has  
19 been taken several decisions, including on the admission of victims  
20 participating in the procedures, on the nomination of experts, and on  
21 the review of the detention of the accused.

22 On 20 May, the Trial Panel has scheduled -- has issued a  
23 decision scheduling Trial Preparation Conferences on the 9th,  
24 the 10th, and 11th of June, including two closed sessions. In the  
25 same decision, the Panel requested the parties, Victims' Counsel, and

1 the Registry to file written submissions on a number of issues with a  
2 view to covering all relevant information to plan the next steps up  
3 until the commencement of the trial.

4 On 2 June 2021, the Panel received the submissions as requested.

5 Let me now inform you of the purpose of today's hearing. Today  
6 and the following days, we are sitting in what the Rules of Procedure  
7 and Evidence call Trial Preparation Conferences. These are hearings  
8 where we shall discuss on any issue that needs to be resolved prior  
9 to the start of the trial together with the SPO, the Defence,  
10 Victims' Counsel, and the Registry. Therefore, today we will not  
11 discuss the guilt or innocence of the accused, and we will not  
12 examine the evidence.

13 Tomorrow, there will also be an *ex parte* closed session with the  
14 SPO and units of the Registry. And thereafter, an *ex parte* closed  
15 session only with the SPO.

16 The agenda for today is as follows. First, we will go through  
17 the issues set out in the decision convening the Trial Preparation  
18 Conference to give the possibility, among others, to make  
19 observations; secondly, you will be given the possibility to raise  
20 any other point you deem necessary; and finally, I will inform you of  
21 the decisions the Trial Panel intends to issue in the coming period.

22 For the planning at a short period, it is my intention to  
23 continue until 11.00. Then, we will have a half-hour break till  
24 11.30. And then another session of one and a half hour, and then  
25 let's see where we stand. And, if needed, we will have our

1 one-and-a-half-hour break and then afterwards continue. That's how I  
2 plan it for today. Okay? I see everybody nodding. Good.

3 Before we start with point 1, I kindly ask you, for the  
4 efficiency of procedures, to adhere to the agenda as set out in our  
5 decision and, as far as possible, to refrain from repeating what has  
6 already been shared in your written submissions.

7 Okay. We will start with A, investigations and disclosure of  
8 evidence.

9 The Panel requested submissions from the Specialist Prosecutor's  
10 Office on the following issues: That is, the confirmation that its  
11 investigations and disclosure of incriminating evidence are  
12 completed; and we had certain questions with regard to exculpatory  
13 evidence.

14 The Panel would like to hear if there are additional  
15 observations in this respect.

16 You have the floor.

17 MS. D'ASCOLI: Thank you, Your Honours. I will be addressing  
18 this first part regarding investigations and the disclosure of  
19 evidence. I will not repeat, as you asked, the submissions that we  
20 made already. I need to add, though, a couple of additional  
21 information that surfaced compared to last week when we made our  
22 submission.

23 We refer to the fact that we were preparing an application to  
24 the Trial Panel to add certain items to its exhibit list, and we  
25 mentioned the -- two additional interviews that we had with the

1 Prosecution witnesses.

2 At the end of last week, there was a further addition, an  
3 additional witness interview which will result in the addition of an  
4 extra witness to the Prosecution witness list, and we will seize the  
5 Trial Panel in due course. We were planning to do that together with  
6 the application to add exhibits to the exhibit list, which will then  
7 comprise a request to both add exhibits, those that we mentioned in  
8 our submission, together with this additional witness.

9 If Your Honours request additional information about this, this  
10 information can be given in the *ex parte* session that we will have  
11 later on.

12 Also, as an update to what we have indicated in the written  
13 submission. The English and Albanian transcript of one of the two  
14 interviews we mentioned have been completed, so we expect to be able  
15 to disclose that - depending, also, on the Trial Panel's decision  
16 concerning the commencement of the trial - in due course. The  
17 transcription in -- both in English and Albanian of the other two  
18 interviews is ongoing but, as we said, we expect this to be ready no  
19 later than 21 June.

20 Another update that I have as well. As we had indicated in our  
21 written submission, pursuant to additional material under Rule 102(3)  
22 of the Rules, we indicated that the Prosecution would file a further  
23 updated Rule 102(3) notice before 9 June 2021. We have not done that  
24 yet, and we will do it either by the end of this week or early next  
25 week, because an additional item surfaced as a consequence of last

1 week's activities. And therefore, we will be adding this additional  
2 item too to the updated notice and file it together with the two ones  
3 that we previously mentioned.

4 Again, if requested by the Defence, none of the newly notified  
5 items will require redactions.

6 These are the additional information that we have compared to  
7 our written submissions. If Your Honours have any questions or  
8 require me to go into the details of any of this information, we are  
9 available.

10 PRESIDING JUDGE VELDT-FOGLIA: Okay, thank you. Thank you,  
11 Madam Prosecutor. For my understanding, you were referring to the  
12 Albanian and Serbian transcript that had been completed. To what  
13 were you referring to? What interview?

14 MS. D'ASCOLI: Yes, I was referring to the English and Albanian  
15 transcript of --

16 PRESIDING JUDGE VELDT-FOGLIA: The English? Okay. Therefore,  
17 I -- okay. The English and Albanian transcripts.

18 MS. D'ASCOLI: Yes, of the interview of Witness 1679.

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

20 Please, Defence counsel, you have the floor if you would like to  
21 comment on what has been submitted by the Prosecutor.

22 MR. VON BONE: Thank you very much, Your Honour. Just a brief  
23 update other than what we have filed in our submissions.

24 Is that we expect in the coming month there will be additional  
25 material filed and disclosed. As it looks, the next mission is about



1 to commence somewhere in the next week. And shortly after the end of  
2 June will be the first part when we disclose that. The end of July,  
3 for sure, will be the second part. And if there is any rest  
4 material, then we will do that afterwards.

5 So those are basically the issues that the -- the timeline and  
6 the timeframe that we have is -- pretty much remains the same for us.

7 I just want to briefly note that we have divided our schedules,  
8 my co-counsel and me. And, therefore, we try to work as efficiently  
9 as possible regarding the disclosure of material and the filing --  
10 and the filing thereof, actually.

11 Other than that, Your Honour, thank you very much. We have no  
12 further observations at this point.

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

14 I have some additional questions. The first one would be: Do  
15 you have any comments on what the Specialist Prosecutor Office has  
16 just submitted?

17 MR. VON BONE: No, Your Honour. I think there is no particular  
18 observation at the time.

19 PRESIDING JUDGE VELDT-FOGLIA: Okay. And with regard to the  
20 questions submitted to you in our decision, could you share, if  
21 possible, some more with regard to the nature of your investigations  
22 in the coming two, three months?

23 MR. VON BONE: Yes. The nature will be, once again, that we  
24 will research some extra material, we will interview a number of  
25 people. And our schedule is also a little bit depending on the

1 schedule of the people who we actually interview, but let me do it  
2 like this: We will work through the summer recess, and we expect  
3 that the last mission from my side would be the first week of August.

4 Then, I think, we will have for sure completed our  
5 investigations. We have set as a really last day 15 August, but I  
6 assume that we will be -- probably be available to do that earlier.  
7 It's just that would be falling, more or less, just after the summer  
8 recess, the first court date that would be the last cut-off date for  
9 ourselves, so to speak.

10 Obviously, not always people are always available, and that  
11 makes it sometimes difficult to interview those people who do not  
12 necessarily stay in Kosovo. So that's why it can take a little bit  
13 more time or different time in our time schedule.

14 PRESIDING JUDGE VELDT-FOGLIA: I understand.

15 MR. VON BONE: But, basically, that's our timeframe.

16 PRESIDING JUDGE VELDT-FOGLIA: And do you already have the  
17 trips --

18 MR. VON BONE: Yes.

19 PRESIDING JUDGE VELDT-FOGLIA: -- to --

20 MR. VON BONE: Yes, actually I --

21 PRESIDING JUDGE VELDT-FOGLIA: -- planned? I mean --

22 MR. VON BONE: Yes, yes, Your Honour. I'll tell you what the  
23 trips are.

24 First of all, the first trip was that my Defence counsel and my  
25 team came here. Just I thought it was a good idea to have everybody

1 complete. My trip will be next week, most probably Wednesday, and  
2 then a week or eight, nine days lasting, at the last. And then we  
3 expect to file material.

4 Then in July we have scheduled a mission in the second -- the  
5 second and the third week, actually. And the last scheduled trip  
6 would be, as I say, early August. So that would be the first week of  
7 August. So the second trip of July and the one after, which is the  
8 first week of August. The material that we compile from that, we  
9 would like to disclose at that time, at the end of all -- well, at  
10 the end of that trip. So it would be a week after the 15th or so or  
11 around that time.

12 PRESIDING JUDGE VELDT-FOGLIA: Okay, good.

13 MR. VON BONE: But then pretty much we will most probably have  
14 by that time completed our investigations.

15 Thank you very much, Your Honour.

16 PRESIDING JUDGE VELDT-FOGLIA: Okay, and then --

17 MR. VON BONE: Yes, am I done standing? Yes.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Thank you for this.

19 And I have an additional question: Why these investigations  
20 have not been performed in the pre-trial phase already?

21 MR. VON BONE: Yes.

22 PRESIDING JUDGE VELDT-FOGLIA: We know that there have been some  
23 very pertinent reasons, maybe are those.

24 MR. VON BONE: Yes.

25 PRESIDING JUDGE VELDT-FOGLIA: But you have the floor for --

1 because I thought they were finished when I was preparing for -- in  
2 the pre-trial phase. Or during the pre-trial phase I was reading the  
3 documents, and I was under the impression that everything had been  
4 done.

5 MR. VON BONE: Yes. Your Honour, I recall that I had one time  
6 an *ex parte* session, and during that session I -- I spoke about  
7 the -- a number of issues. And, actually, that was the reason why it  
8 was delayed or, in fact, started later. Without elaborating on what  
9 I have mentioned in that *ex parte* meeting, but that is basically what  
10 was the reason. That was the reason why it was delayed.

11 I would like -- I do not want to go into that issue right now,  
12 but I believe that I had only one *ex parte* session, and that was  
13 actually the reason why things were delayed.

14 PRESIDING JUDGE VELDT-FOGLIA: Okay. Good. These are the  
15 questions for now from the Trial Panel --

16 MR. VON BONE: Thank you, Your Honour.

17 PRESIDING JUDGE VELDT-FOGLIA: -- on this point. Thank you.

18 Mr. Prosecutor, or Madam Prosecutor, do you want to comment on  
19 the specific issues that the Defence counsel shared with us with  
20 regard to the investigation?

21 MS. D'ASCOLI: No, Your Honours. I don't have anything further.

22 PRESIDING JUDGE VELDT-FOGLIA: Okay, thank you.

23 Then we will go to the next point, the site visit. The SPO,  
24 Victims' Counsel, and Defence counsel have given their observations.  
25 While the SPO and the Defence counsel express doubts with regard to

1 the usefulness of a potential site visit, the Victims' Counsel  
2 favours it.

3 Do any of you wish to make further observations with regard to  
4 this point?

5 You have the floor, Mr. Prosecutor.

6 MR. MICHALCZUK: Thank you, Your Honour. Just to reiterate one  
7 point.

8 That if it is decided that this crime site visit is indeed  
9 necessary, and if the Trial Panel decides that it will assist the  
10 Panel with making their own assessment about the case, about the  
11 location, about geography of the place, as we said in our submission,  
12 we would be advising to organise it at the end of this trial after  
13 the Prosecution and the Defence have already presented their  
14 arguments.

15 So the reason for that being that the Court will already have  
16 before them a pretty good and solid understanding of the case. And  
17 if that visit takes place, the Judges or the Judge who will be  
18 delegated to perform such a site visit will be in the position to  
19 understand where the buildings were in April 1999. Currently, there  
20 is nothing there to see. That's why it's so relevant to understand  
21 the case first and then go there and picture the place for Your  
22 Honours.

23 Thank you.

24 PRESIDING JUDGE VELDT-FOGLIA: Okay, thank you.

25 Now let me turn to the Victims' Counsel. You have the floor.

1 MS. PUES: Yes. Thank you, Your Honour.

2 I have already expressed that I am in favour of a site visit. I  
3 do welcome the suggestion by the Specialist Prosecutor to potentially  
4 do this after the Prosecution case has been finished. Let me just  
5 add why I think this is so critical.

6 Visualising where suffering took place, visualising how,  
7 perhaps, the cold, the heat, the darkness, how all this might have  
8 felt to an injured body, to an injured soul in some cowshed if the  
9 allegations in the indictment are, indeed, correct, will be something  
10 that will be relevant for the responsibility and for the guilt that  
11 the Trial Chamber has to judge about.

12 Therefore, I think, yes, this is important, and I think also  
13 it's important that it is not just the parties who have an image in  
14 their minds but, indeed - and this is where we need to, perhaps,  
15 leave some of the adversarial mindset procedurally behind - where  
16 everyone involved needs to have that image.

17 So, therefore, I continue to welcome such a site visit.

18 Thank you.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

20 Defence counsel, you have the floor.

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

22 Well, we don't see anything in a crime site visit. I spoke  
23 earlier about an alleged crime site visit, but in the terminology  
24 that we use here it should be regarded as the same, obviously.

25 I think both Prosecution and the Defence have provided a lot of

1 material which give, I believe, a very good insight in how and -- how  
2 it looked like in that time.

3 As for a visit right now, there is nothing to see. So if there  
4 is no -- hardly. There is one little building standing, which is, in  
5 my perception, a relevant building as far as the alleged indictment  
6 is concerned. But, nevertheless, if we see that site, which we did  
7 by video, three-dimensional, a metre-by-metre scale representation,  
8 we have the photographs of the Prosecution who have, from all types  
9 of angles, shown that. So I think that we are more than enough  
10 prepared to go on trial without a visit necessary.

11 If the Victims' Counsel would like to visit the crime site, she  
12 is more than welcome to do that by herself, like the Prosecution and  
13 the Defence did, but I do not think that there is any particular  
14 issue which leaves anything undiscussed or unnoticed or whatever. I  
15 think, once again, both Prosecution and Defence provided more than  
16 enough material regarding that.

17 So, basically, that's our standpoint. We have submitted that as  
18 well. If there would be any visit -- regardless of the logistics, I  
19 think, that's another issue, if that would take place. I think,  
20 actually, then that should need to take place before any witness is  
21 being heard so that any witness who speaks about particular buildings  
22 or something, we have the material, we have the space, and so on, in  
23 that case that would need to be taking place before that, simply  
24 because I do not believe -- the Defence does not believe that when we  
25 do this at the end, and there is questions on how, or this, or that,

1 no. At that time, we can, in fact, propose to a witness or confront  
2 the witness or speak to a witness about that particular issue having  
3 visualised it beforehand.

4 But, I, therefore think that it is important that if such a  
5 decision would be taken, then it be done before any of the witnesses  
6 being heard and the Defence also would like to participate in that  
7 case, like any other party, of course, should participate in such a  
8 visit. So, basically we stand with our viewpoint. And I do not have  
9 anything to add.

10 I thank you very much, Your Honour.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

12 Then I conclude on this point B. However, I would like to go  
13 back to point A with regard to the request for an extra witness. In  
14 that aspect, I would like to know if you would be requesting  
15 protective measures for this witness.

16 MS. D'ASCOLI: No, Your Honours. We will not be requesting  
17 protective measures.

18 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you. Good.

19 Now, let us turn now to point C, conduct of proceedings. In our  
20 decision, it includes seven items, and I will go through each of them  
21 in sequence.

22 The first topic, the commencement of the trial and the opening  
23 statements. The Trial Panel has received submissions from -- by the  
24 parties and Victims' Counsel as to a tentative date for the  
25 commencement of the trial and as to the intention to make opening



1 statements, the order at the moment to give opening statements, and  
2 the duration, and whether visual-aids will be used.

3 We have taken due notice of that information, and we would like  
4 to give you the floor, if anything should be added.

5 Mr. Prosecutor.

6 MR. MICHALCZUK: Your Honour, this point is included in our  
7 submission. However, for the sake of the public, I would like to say  
8 that out loud anyway.

9 The SPO requests that the trial commences already in July. We  
10 indicated the date 12 July this year with the procedure as required  
11 by Rules 124 and 125, and the opening statement by the Prosecution,  
12 and this should follow -- this should follow by the presentation of  
13 the evidence by the SPO starting already from 15 July, or we would  
14 call for the date around 15 July.

15 The Prosecution is planning to examine two Prosecution witnesses  
16 before the summer recess, and it will continue with hearing other  
17 Prosecution witnesses shortly after the summer recess in September.  
18 So this is our position.

19 However, if Your Honours decide otherwise that the opening of  
20 the trial or adducing of evidence should commence in September, we  
21 would kindly ask that the opening speech, as well as the Prosecution  
22 witnesses, are -- the opening statement is made and the Prosecution  
23 witnesses are heard from September, if we cannot organise it earlier  
24 in the dates that I have already provided as one package.

25 We simply don't want to separate the opening argument from the

1 evidence that we will be adducing. And, if necessary, Your Honours,  
2 I will provide specific reasons during the session that deals with  
3 security later on tomorrow.

4 Thank you very much.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

6 Victims' Counsel, you have the floor.

7 MS. PUES: Yes, thank you, Your Honours.

8 As already indicated from the point of view of Victims, it is  
9 preferable to start after the summer recess.

10 I should add though that, obviously, victims want to see justice  
11 done. They waited for 22 years, and we, therefore, welcome very much  
12 the opportunity to start and to start with this case adequately  
13 prepared in a thorough manner and as efficiently and effective as  
14 possible, which, of course, is in the interests of all, and fairness  
15 of the proceedings have to be paramount.

16 However, for me it is necessary to go on a mission, which is not  
17 only in my hands. It's nothing I can just book and go and do, but  
18 it's something that will require rather complex organisations because  
19 of protective measures in place, and this, therefore, is an entire  
20 machinery in the background that needs to work. Doing so is,  
21 however, necessary for me to be able to fully and comprehensively  
22 represent the views of those I stand for, which is an entire group of  
23 people I have to speak for.

24 And, therefore, for a meaningful opening statement from my side,  
25 it is necessary to have some more preparation time.

1           Also, I should add that, in my view, the advantage of starting  
2           after the summer recess is that we, in that way, all fully prepared,  
3           can go straight into *medias res*, rather than having a small portion  
4           of the trial starting and then with a break. Having then a full,  
5           long comprehensive trial proceeding seems to me preferable.

6           Thank you.

7           PRESIDING JUDGE VELDT-FOGLIA: Thank you for that,  
8           Victims' Counsel. And the opening statement, when would you intend  
9           to present it?

10          MS. PUES: Well, obviously this would depend on when we do  
11          start. If the Trial Chamber decides to go ahead in July, I might  
12          have to defer, depending on all those unknowns yet. Otherwise, I  
13          would be happy to present the opening statement at the beginning of  
14          the trial before -- right after the Prosecution presented theirs.

15          PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you for that.

16          Yes, let me turn to the Defence now. The same questions or the  
17          same observations were asked to the Defence, and in addition I give  
18          you the floor, although you already commented on it in your  
19          observations on whether the accused intends to make a statement  
20          pursuant to Rule 142(1) of the Rules.

21          You have the floor.

22          MR. VON BONE: Thank you, Your Honour.

23          We will make an opening statement. It's -- it might be rather  
24          lengthy, but that is because I have included that exactly that  
25          possibility that the accused would make such a statement. So,

1       therefore, please do not think that I will be seven hours talking. I  
2       mean, that is not going to be the case.

3               PRESIDING JUDGE VELDT-FOGLIA: It's your opening statement.

4               MR. VON BONE: Yes, no, that is true, Your Honour, but I do not  
5       intend to speak, like, in speeches like so long.

6               I can follow the Prosecution in the sense that they would like  
7       to have an opening statement and then say, well, afterwards we start  
8       with the witnesses. That is an understandable thing. We do not  
9       agree on the timeframe. We think that is too short notice rather  
10      than -- and we have already planned some missions in that period.  
11      That would really make it very complicated, our work, to divide that  
12      part.

13              So that is why we do not prefer to start on the proposed date of  
14      the Prosecution but rather then start right after the summer recess.  
15      I think it's -- basically we will be having an ongoing thing rather  
16      than partition all kinds of elements of this trial. I think it's a  
17      more logic order to do it as much as possible in a row. I think the  
18      Victims need to be prepared or witnesses need to be prepared, all  
19      kind of things that need to go on, so I think it's better to work out  
20      first those details as well before we start.

21              And I think that -- before the summer recess. I think all these  
22      things would be better in place, in fact, if -- I mean, I speak about  
23      familiarisation, about logistics regarding witnesses. I think it  
24      would be quite a task, I think. Probably an impossible task to do  
25      that all before the 12 July disclosure would need to be done.

1 Actually, at the beginning of next week. So I do not think that that  
2 is a good course to go. It's better to move it after the summer  
3 recess. And, once again, we will not have any partition regarding  
4 that.

5 Is there anything else regarding that issue? No, Your Honour, I  
6 think I've covered it.

7 Thank you very much.

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

9 The Trial Panel will issue a decision in due course on this  
10 matter.

11 Let us move to the next item, that is point 2, the  
12 familiarisation of witnesses prior to testimony. We have received  
13 your observations. Thank you for that. The Panel has noted the  
14 proposal by the SPO for a familiarisation protocol, and in this  
15 protocol the parties, Victims' Counsel, and Registry should consult,  
16 I saw, to the extent possibly to consult and to jointly file, as far  
17 as possible, observations for this protocol.

18 The Trial Panel will invite you all now to comment, in addition  
19 to your observations in writing, but especially the Victims' Counsel  
20 and the Defence, on this proposal of the SPO.

21 The Prosecution has the floor on the familiarisation and related  
22 issues.

23 MR. MICHALCZUK: Thank you, Your Honour.

24 We have listed all our arguments and our position, I believe, in  
25 sufficient detail in our submission. If Your Honour has got -- or

1 Your Honours have got any questions, maybe for clarification of our  
2 position, I would be very happy to respond to any such questions. If  
3 not, I would like to say that this is our proposal as a complete one.  
4 We would be very happy to engage with the Registry, with the Defence,  
5 and with the Victims' Counsel on the possible agreeable parameters of  
6 such a protocol regarding both witness familiarisation and also how  
7 to proceed with a review of the prior statements of victims.

8 Thank you, Your Honour.

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

10 Victims' Counsel, you have the floor.

11 MS. PUES: Yes, Your Honours. In my view, indeed, it is -- I  
12 welcome the Prosecution proposals, and I think, indeed, we might have  
13 to liaise on a case-by-case basis depending on the witness in case --  
14 obviously I can only speak for those that will have dual status as  
15 those are the ones I represent here as victims.

16 For me, it is utterly important that we do whatever we can by  
17 familiarising, by introducing those victims to the court in a manner  
18 as humane and respectful as possible, because it is a daunting setup,  
19 and I am sure that together we can work our way through that.

20 At the moment, I don't have anymore observations to make on  
21 that. Thank you.

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

23 Good.

24 Let me turn to the Defence. You have the floor.

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

1           Actually, we have -- had yesterday a meeting with the  
2 Prosecution's Office, and this topic came also about, so we gladly  
3 engage in any kind of protocol or whatever.

4           And more in particular, I think it is always useful, as is the  
5 practice at the ICC very much, that there is sometimes a kind of a  
6 report from the WPSO, in this case, about whether the person is fit  
7 to testify, whether he has any issues that we, as parties, should be  
8 aware of, when we need to be aware of that.

9           But when there is in-court, or near-court assistance, as I  
10 always call it, just in order to make sure that that would go  
11 smoothly.

12           I have, from my own experience, had occasions in which witnesses  
13 can become complicated, and those complications should also be  
14 reported at that time by the WPSO, I believe. In no case a court can  
15 be held hostage by a particular witness because he has particular  
16 demands, and I've seen in many previous cases that sometimes people  
17 seek asylum or whatever reason before it becomes a witness as the  
18 witness is supposed to be a witness.

19           So I just -- I want to make sure that we have -- we are alert of  
20 anything, and that is why I think it is always useful to have some  
21 kind of report to the parties, and the Panel, of course - foremost,  
22 the Panel - that there are no particular issues regarding the  
23 witness, his demands, or his needs - especially his needs, I would  
24 say - that are -- that might impair his testimony.

25           What we all want is that, at the end of the day, a witness is in

1 court or via videolink, but that he appears, that he is able to  
2 question himself and that we -- that we as parties can question him.

3 So all to say that I think it is useful that there is some kind  
4 of familiarisation protocol in place and also that it is reported  
5 afterwards that, you know, everything is fine, go ahead, and there is  
6 no problems.

7 Thank you very much, Your Honour.

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

9 At this point I would like to move to item 3, the dual status  
10 witness as victims. The SPO and Victims' Counsel have been asked  
11 whether they have exchanged information, including with WPSO,  
12 relevant to identify which participating victim is also an SPO  
13 witness.

14 According to the submissions, that has been dealt in a  
15 satisfactory way, as I understood. However, the Trial Panel is  
16 interested to know, as far as possible, the result of this exchange.

17 So I would like to give the floor to Mr. Prosecutor on this  
18 matter.

19 MR. MICHALCZUK: Thank you very much, Your Honour.

20 Indeed, we have been engaged with the Victims' Counsel in the  
21 preliminary discussions on those dual status witness as victims. And  
22 I would like to use this opportunity to make reference to one of  
23 previous points that we made about the commencement of the trial and  
24 contacts of the Victims' Counsel with victims.

25 Our office will do our utmost to facilitate those contacts, if



1 necessary, before the dates that we mentioned, already in June and  
2 July. I don't want to delve into specifics of the days because, of  
3 course, we are talking about certain security considerations when it  
4 comes to those contacts. Most of these persons are in Kosovo, and we  
5 don't want to put them in unnecessary risk. But we will definitely  
6 assist Victims' Counsel with her contacts with those persons.

7 Thank you.

8 PRESIDING JUDGE VELDT-FOGLIA: Okay. And if I understood well,  
9 you shared, you just said, "preliminary discussions," so there has  
10 not been exchanged or organised anything yet on this point?

11 MR. MICHALCZUK: We haven't organised the most important thing,  
12 namely, the meetings, in-person meetings between the victims,  
13 witnesses, and the counsel. So this is what we have not still done.

14 PRESIDING JUDGE VELDT-FOGLIA: Okay.

15 Victims' Counsel, you have the floor.

16 MS. PUES: Thank you very much.

17 Indeed, you rightly heard the word "preliminary." This is an  
18 ongoing dialogue which hasn't been completed yet, and I understand  
19 that it is a very complex matter and, hence, I can't comment any  
20 further at this point about this.

21 PRESIDING JUDGE VELDT-FOGLIA: Okay. That's also an answer.  
22 Good.

23 Point 4 on our agenda, the presentation of evidence, witness  
24 evidence. Let me see. Yes. Regarding this issue, the SPO was  
25 requested to provide submissions on the examination of witnesses and

1 admission of prior statements. That's a short summary of what we  
2 asked. The Victims' Counsel was requested to make submissions on her  
3 intention to submit evidence and to call expert witnesses. And the  
4 Defence counsel was requested on his intention to present a Defence  
5 case. And the same questions we put to the SPO on witnesses and  
6 admission of prior statements.

7 Does any of the parties or the Victims' Counsel want to make  
8 additional statements on this -- observation on this point?

9 Mr. Prosecutor.

10 MR. MICHALCZUK: Your Honour, not really. Just for the benefit  
11 of the public again, I should say that the Prosecution will call 14  
12 plus one live witnesses. About this additional witness, we will talk  
13 during the closed session later on.

14 When it comes to one witness, as he is no longer available to  
15 give live in-court testimony, we will simply move to admit his  
16 previous statements, and the items we are looking at are no more  
17 than 15.

18 Thank you.

19 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you for that.  
20 Victims' Counsel, you have the floor.

21 MS. PUES: Yes, it has yet to be fully determined from my side  
22 an expert witness, possibly on the psychological effect of those  
23 experiences that some of the victims had to endure. Yet this, of  
24 course, comes with its own burden on victims, and therefore is a  
25 measure that really has to be very carefully thought about. And,

1       therefore, this process is one that can only be fully determined  
2       after having been able to meet in person face-to-face, because it  
3       does -- it is a human side that is involved here that requires very,  
4       very careful consideration from my side.

5             But I will let you know as soon as possible, because I don't,  
6       under any circumstances, want to delay anything there.

7             PRESIDING JUDGE VELDT-FOGLIA: That is very good to hear with  
8       regard to the delay or not wanting to delay.

9             So if I understand well, you say we might, we might call an  
10       expert witness on, but that is to be decided after having talked to  
11       the victims. Okay, good. Good. Clear.

12            Defence counsel, you have the floor.

13            MR. VON BONE: We have no other observations regarding this  
14       issue, Your Honour. If there is another expert witness coming, then,  
15       obviously, the parties will be able to question the witness. And  
16       that's all. And if there is an expert, then there is one; and if  
17       there is no one, then there is no one.

18            So other than the observation that we made, we have no further  
19       observations.

20            Thank you very much, Your Honour.

21            PRESIDING JUDGE VELDT-FOGLIA: Thank you for that.

22            This hearing of today is also to add and not to repeat, so it's  
23       good that we -- sometimes we highlight specific points that are  
24       important for today and also for the public, and some things we --  
25       have been clearly explained in your submissions and we have taken due

1 notice of that.

2 Point 5, the order of appearance of witnesses and issues related  
3 to the questioning of witnesses. Yes, with the -- for the SPO, we  
4 have received your submissions on appearance, if whether the list is  
5 final, and modality of witness testimony.

6 The Panel wishes to know if the SPO can give some more  
7 information on the order of appearance of the witnesses before it is  
8 known when the trial will start.

9 You have the floor, Mr. Prosecutor.

10 MR. DE MINICIS: Good morning, Your Honours.

11 The SPO stands by its submissions, also with regard to this  
12 question. We would -- rather, we would be in a position to finalise  
13 the list once the trial date is set, but we would be happy -- we can  
14 perhaps provide Your Honours with more information during the  
15 *ex parte* session that will follow this public session.

16 PRESIDING JUDGE VELDT-FOGLIA: Good.

17 MR. DE MINICIS: Yes. And on this point, the Prosecution has  
18 nothing further to add on the order of appearances and their  
19 subpoints, unless Your Honours have any questions for us.

20 PRESIDING JUDGE VELDT-FOGLIA: No, not. We don't have. Thank  
21 you. But -- good.

22 Does the Victims' Counsel have further observations on this  
23 point?

24 MS. PUES: Thank you. At this moment, not. Thank you.

25 PRESIDING JUDGE VELDT-FOGLIA: Now, the submissions on the

1 questions that were of a similar nature for the Defence, you will  
2 have the floor if you want to add.

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

4 Just as -- our investigations are ongoing. Regarding the order  
5 of the witnesses, we will have, at some point, an idea about which,  
6 more or less, go within the same line. So what we try to do is we  
7 try to group, more or less, the witnesses so that, I think, all the  
8 parties will have a -- kind of a logical order with what we are busy  
9 with and that we don't need to go from one particular witness to  
10 obviously an entire other witness.

11 And, also, we will, obviously, go back to our witnesses in order  
12 to see, obviously, for their time schedule whether they are available  
13 within a particular timeframe so that we can provide such a grouping.  
14 So I think it would be only logical and it becomes more efficient  
15 when we are busy with a particular issue which concerns particular  
16 witnesses which are in line with that issue, so that is what we are  
17 trying to do.

18 We will, obviously, have a result around when we have heard the  
19 last witnesses, but I'm sure that at the end of the summer recess we  
20 will be able to provide some kind of grouping for that.

21 Thank you very much, Your Honour.

22 PRESIDING JUDGE VELDT-FOGLIA: Kind of making blocks --

23 MR. VON BONE: Yes.

24 PRESIDING JUDGE VELDT-FOGLIA: -- would be favoured.

25 MR. VON BONE: Yes.

1           PRESIDING JUDGE VELDT-FOGLIA: -- in your view, yes. Okay,  
2 good. And we have --

3           MR. VON BONE: I speak for the Defence --

4           PRESIDING JUDGE VELDT-FOGLIA: Yes, that's what I -- I try to  
5 summarise.

6           MR. VON BONE: Yes, I just need to clarify things, yes.

7           PRESIDING JUDGE VELDT-FOGLIA: And I have one more question in  
8 this respect: The Trial Panel wishes to know whether the Defence  
9 could provide updated witness schedules in the event the order of the  
10 witness changes once the Defence case commences. By e-mail and on  
11 the record --

12          MR. VON BONE: Of course, Your Honour. We will, yes.

13          PRESIDING JUDGE VELDT-FOGLIA: Yes, we have received submissions  
14 on the scope and mode of questioning of witnesses by the parties and  
15 the Victims' Counsel. We have duly read them.

16          But, however, you will get the floor if you would like to add  
17 something on those points.

18          MR. DE MINICIS: Your Honours, not at the moment. We stand by  
19 our submissions which, we will believe, sufficiently clarifies our  
20 position on the issue.

21          Thanks, Your Honour.

22          PRESIDING JUDGE VELDT-FOGLIA: Thank you.

23          Now the Victims' Counsel. I see her nodding, and I say that out  
24 loud for the record.

25          MS. PUES: Thank you very much. At the moment, nothing to add.

1 Thank you.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

3 Defence counsel, you have the floor.

4 MR. VON BONE: No, Your Honour, on this particular issue we have  
5 made our submission clearly, I think, and our observation. Other  
6 than that, is that we believe that the rules actually do prescribe  
7 that the parties will go in particular order, and we believe that --  
8 that that is the way to conduct these hearings.

9 We believe that the rules concerning that issue are imperative  
10 to all the parties and to the Court.

11 Thank you very much.

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel. In  
13 addition, I have two specific questions for you.

14 One is the Specialist Prosecutor's Office made a proposal in  
15 paragraph 35 till 37 of its submissions on the use of a list of  
16 documentation to be used during examination and cross-examination.

17 It seemed to me in line with your proposal under paragraph 38.  
18 But for clarification and confirmation, I ask this question to you.

19 MR. VON BONE: One of those rare occasions that we agree with  
20 the Prosecution, Your Honour, is in this particular case. No  
21 offence.

22 No, just that I think it is just useful that we do that shortly  
23 before. Whenever that is, that is to be determined. Obviously,  
24 there is always some issue that, you know, might come up on the last  
25 moment or so, and then I think we can give each other a little bit

1 leniency regarding that. But in general, I think it would be useful  
2 to provide it beforehand, and it's also useful for the people of the  
3 Registry and the Court Officers who can prepare and say: Okay, this  
4 and that and that is going to be done. We will have no problems with  
5 it. I think it will be only more efficient in that manner.

6 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you for that. I  
7 have another question --

8 MR. VON BONE: Yes, Your Honour.

9 PRESIDING JUDGE VELDT-FOGLIA: -- for you. Could you give some  
10 clarification for our understanding on the remark in your proposal in  
11 paragraph 38, that most of the documentation -- I will read it out to  
12 you so that's easier:

13 "That most of the documentation will probably be evidence that  
14 has been tendered."

15 MR. VON BONE: Yes.

16 PRESIDING JUDGE VELDT-FOGLIA: And now the question is: What  
17 situations do you envisage where the documentation will not have been  
18 tendered? And do I understand well --

19 MR. VON BONE: Yes.

20 PRESIDING JUDGE VELDT-FOGLIA: -- that you mean that these are  
21 undisclosed documents that are not in Legal Workflow? Is that what  
22 you mean?

23 MR. VON BONE: If there might come up some particular document  
24 at any time of the stage of the proceedings.

25 PRESIDING JUDGE VELDT-FOGLIA: Okay, it can be everything.



1 MR. VON BONE: Obviously, we need to have a possibility to file  
2 that or disclose that material if that would benefit a particular  
3 witness. It can be because a witness comes up with something, for  
4 example, or -- whatever that is. And in that case, I believe it  
5 would be useful that we have in such cases a leniency. All the other  
6 documentation, as far as evidence is concerned, are obviously in the  
7 case file, so and -- which are in Legal Workflow.

8 Is that an answer to your question, Your Honour? Yes.

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

10 MR. VON BONE: Okay.

11 PRESIDING JUDGE VELDT-FOGLIA: That answers my question.

12 MR. VON BONE: Yes.

13 PRESIDING JUDGE VELDT-FOGLIA: Yes, that answers my question.  
14 And what I understand, that this proposal is -- would be for very  
15 exceptional --

16 MR. VON BONE: Yes, Your Honour.

17 PRESIDING JUDGE VELDT-FOGLIA: -- cases. Not the day before  
18 that we receive a list of --

19 MR. VON BONE: No, no --

20 PRESIDING JUDGE VELDT-FOGLIA: -- 28 documents.

21 MR. VON BONE: No, no. It can be only one item or, you know,  
22 some kind of miscellaneous thing that suddenly came up from wherever  
23 it came. Some issue that is in the actuality regarding something, we  
24 must be able to be flexible on those occasions.

25 PRESIDING JUDGE VELDT-FOGLIA: I have understood. Thank you.

1           At this point, I would like to move to point 6 on non-oral  
2 evidence. Are there any further observations on the admissibility of  
3 any non-oral evidence under Rules 102 and 104 of the Rules? I take  
4 it all together and then you have the floor.

5           MR. DE MINICIS: Your Honour, no, not at this time. Thank you.

6           PRESIDING JUDGE VELDT-FOGLIA: Thank you.

7           Victims' Counsel, you have the floor.

8           MS. PUES: Your Honour. No, thank you. No further observations  
9 to make.

10          PRESIDING JUDGE VELDT-FOGLIA: Thank you.

11          Defence counsel.

12          MR. VON BONE: No further observations, Your Honour.

13          PRESIDING JUDGE VELDT-FOGLIA: Thank you for that.

14          Yes, then the third issue of this same bullet is as to whether  
15 the Trial Panel should decide on the admissibility of the evidence at  
16 the time of its submission or if it can be deferred to the Judgement.

17          I see -- I note that the SPO, Victims' Counsel, and the Defence  
18 counsel have, if I may say so, concurring views on this point.  
19 Anyhow, are there any further observations on this issue?

20          MR. DE MINICIS: Your Honour, no, but for the fact that we are  
21 very strongly in favour of admissibility being determined at the time  
22 that an exhibit is tendered. And to the extent that the Court would  
23 require additional information to make that determination, procedures  
24 such -- such as those adopted at the ICTY, where an exhibit was  
25 marked for identification, could be adopted.

1 PRESIDING JUDGE VELDT-FOGLIA: Thank you for this addition.  
2 Victims' Counsel - excuse me - you have the floor.

3 MS. PUES: Thank you, Your Honour. Nothing further to add  
4 there. It's a good point that the Prosecution has made there.  
5 Thanks.

6 PRESIDING JUDGE VELDT-FOGLIA: Okay. Defence counsel, you have  
7 the floor.

8 MR. VON BONE: Nothing to add to our submissions, Your Honour.  
9 I think the point is clear.

10 PRESIDING JUDGE VELDT-FOGLIA: Yes.

11 At this point, I would like to move to point 7, judicial notice  
12 of adjudicated facts under Rule 175(2) of the Rules.

13 The first issue the Trial Panel asks submissions on, whether the  
14 Defence and the SPO have been discussing the possibility to request  
15 the party to take judicial notice of adjudicated facts. I understood  
16 that such discussions have yet not been finalised, and I would like  
17 to receive an update.

18 So I give the floor, to start with, to the SPO.

19 MR. DE MINICIS: Yes, thank you, Your Honour.

20 We met with Defence counsel -- with the Defence team yesterday  
21 and had a general discussion about this issue of the adjudicated  
22 facts.

23 PRESIDING JUDGE VELDT-FOGLIA: Yes.

24 MR. DE MINICIS: Of course, adjudicated facts are not like  
25 agreed facts, where we are seeking an agreement on these matters, so

1 it was a general discussion. And we have proposed to -- before  
2 filing -- the Prosecution will be filing its motion, and we will be  
3 informing the Defence beforehand of the facts we intend to seek  
4 judicial notice of.

5 And this is -- this was the extent of our discussion. And for  
6 the time being, no further communication apart from this are planned.

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

8 Is there something you would like to add, Defence counsel?

9 MR. VON BONE: No, Your Honour. I think that it's probably an  
10 ongoing discussion, and at some point we will get to an agreement or  
11 a disagreement, and then we'll --

12 PRESIDING JUDGE VELDT-FOGLIA: Communicate.

13 MR. VON BONE: Yeah, it will be -- obviously. Thank you very  
14 much.

15 PRESIDING JUDGE VELDT-FOGLIA: Good. Then the second issue, we  
16 asked submissions to the SPO on judicial notice of adjudicated facts,  
17 but more specifically.

18 And with reference to your submissions, Mr. Prosecutor, we have  
19 two further questions. Firstly, if you can anticipate which facts  
20 you would request the Trial Panel to take judicial notice of. We  
21 have read some of it. Secondly, when such a request could be made in  
22 the coming weeks. And if not, why not? And any other submissions.

23 MR. DE MINICIS: Yes, thank you, Your Honour.

24 With regard to the adjudicated facts we'll be seeking judicial  
25 notice of, we haven't yet finalised our selection but they will be

1 concerning the existence of an armed conflict in Kosovo at the time.  
2 The Prosecution believes that that -- it would be against the  
3 judicial economy to have to tender evidence about the existence of a  
4 conflict which has been in existence or which has been reliably  
5 adjudicated in several trials now.

6 And with regard to Your Honour's second question, the SPO  
7 believes it will be in a position to file this motion by the end of  
8 month.

9 PRESIDING JUDGE VELDT-FOGLIA: Good. Thank you very much.

10 Yes, also the Defence were asked to give submissions on this  
11 issue. And with reference to the Defence submissions, the  
12 Trial Panel has some further questions for you, too.

13 Firstly, the Trial Panel wishes to know if you can give an  
14 indication as to what adjudicated facts, from which proceedings, and  
15 how many you intend to put before the Trial Panel for judicial  
16 notice. And our second question is if you could present your request  
17 already in the coming weeks; and if that is not possible, if you  
18 could share your reasons why that could not be done. And then,  
19 thirdly, you have the floor for any other further observations.

20 MR. VON BONE: Your Honour, thank you very much.

21 Obviously, we will try, first, to get agreement on adjudicated  
22 facts with the SPO. That would be most useful, I think. They make  
23 their list, we have probably another list, or whether we want to use  
24 that or not. I cannot give an indication on how many of that would  
25 be. We have not really discussed those points yet.

1           So I think if it comes to my mind, it would be at the end of the  
2 month or so that we could, for example, say whether we have any  
3 adjudicated facts that are to be filed as far as the Defence is  
4 concerned. But in the first step, we will try to see what is it that  
5 the SPO has and whether we can agree on that. Because otherwise we  
6 are, you know, doubling our effort and it makes no sense to do the  
7 double work.

8           So if you -- in sum, we'll seek to see whether we can agree on  
9 adjudicated facts with the Prosecution Office. And if we have to add  
10 anything to that, we will. And if we can simply not agree on those  
11 issues, they need to be litigated. It's as simple as that.

12           The issue that we discussed also briefly was the issue that the  
13 Prosecutor just brought up, and the question is whether it is  
14 actually a legal fact or an adjudicated fact as such, so that's why  
15 we have not yet given thought about that.

16           But I think, to give you a timeline, at the end of June I think  
17 we would be able to present that, if we wish those facts to be seen  
18 as adjudicated facts.

19           PRESIDING JUDGE VELDT-FOGLIA: Okay.

20           MR. VON BONE: Was my answer clear?

21           PRESIDING JUDGE VELDT-FOGLIA: I will make a further question on  
22 this --

23           MR. VON BONE: Yes.

24           PRESIDING JUDGE VELDT-FOGLIA: -- topic. You will propose --  
25 you will try to propose by the end of the month a list of -- or make

1 a summary. A list of facts you would like the Trial Panel to take  
2 judicial notice of. Yes?

3 MR. VON BONE: Yes, whether we want to.

4 PRESIDING JUDGE VELDT-FOGLIA: Whether. But not the list?

5 MR. VON BONE: No, but --

6 PRESIDING JUDGE VELDT-FOGLIA: And would you --

7 MR. VON BONE: Whether we want to do that. And, if so, which.

8 PRESIDING JUDGE VELDT-FOGLIA: Okay. Then there will be also a  
9 which. If there will be an -- if the F is for the affirmative, then  
10 there will be also a list.

11 MR. VON BONE: Exactly, yes. And in the preliminary step, we  
12 will try to communicate with the SPO in order to see whether they  
13 listed issues that we can agree on so that we do not do the same work  
14 together.

15 PRESIDING JUDGE VELDT-FOGLIA: Okay, I leave this --

16 MR. VON BONE: Yes.

17 PRESIDING JUDGE VELDT-FOGLIA: -- this exchange between you --

18 MR. VON BONE: Obviously.

19 PRESIDING JUDGE VELDT-FOGLIA: -- of course. That is clear for  
20 me for now, but it's good to have a timeline. And also on -- well,  
21 yes, for the end of the month.

22 MR. VON BONE: Yes.

23 PRESIDING JUDGE VELDT-FOGLIA: Good. Because for now it was  
24 kind of indefinite --

25 MR. VON BONE: Yeah. No, no, no.

1           PRESIDING JUDGE VELDT-FOGLIA: -- and that was difficult to work  
2 with in our planning.

3           MR. VON BONE: No, no. We seek, obviously, issues that have  
4 been in Legal Workflow, and that's what we are trying to determine.  
5 Obviously outside Legal Workflow, there is a large amount of  
6 jurisprudence that might have facts that could be seen as adjudicated  
7 facts.

8           PRESIDING JUDGE VELDT-FOGLIA: No, good. Now, for us, it's  
9 important the timeline, and I see that you both are --

10          MR. VON BONE: Yes.

11          PRESIDING JUDGE VELDT-FOGLIA: -- prepared to be -- to do that  
12 by the end of the month.

13          MR. VON BONE: Absolutely.

14          PRESIDING JUDGE VELDT-FOGLIA: So that's important for us to  
15 know.

16          Good. Nothing to do add on this point anymore. No?

17          MR. DE MINICIS: No, Your Honour. Not at this time. Thank you.

18          PRESIDING JUDGE VELDT-FOGLIA: Okay. Good. Then, yes, these  
19 were the issues set out in the decision on the Trial Preparation  
20 Conferences.

21          However, there is another point raised by the Defence that  
22 should be discussed here. In the written submissions, the Defence  
23 raised the point whether and how when Defence team members or the  
24 accused are participating via video-link they can have a proper  
25 privileged conversation with their client.



1 I have asked Mr. Roche, head of Judicial Services of the  
2 Registry, to give information in this regard, and he is present here.

3 Mr. Roche, you have the floor.

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

5 In summary, this can be facilitated. If there is a necessity  
6 for Mr. von Bone to have a privileged conversation with his client,  
7 that can be facilitated, essentially, by telephone. So there is a  
8 mechanism whereby, if the Panel ordered a short recess for such a  
9 conversation to take place if one participate was not physically  
10 present in the courtroom, we would essentially ensure that there was  
11 a privileged telephone line which would be available adjacent to the  
12 court. So it would not involve any technical delays or any  
13 implementation measures. It is something that could be facilitated  
14 very, very quickly.

15 If you would like some more details, Your Honour, I can provide  
16 those. But in essence, it can be facilitated easily.

17 PRESIDING JUDGE VELDT-FOGLIA: Thank you for that. I will give  
18 the floor to the Defence counsel, and he might add to your -- some  
19 additional questions. Thank you for that.

20 MR. ROCHE: Thank you, Your Honour.

21 MR. VON BONE: Yes. Just, Your Honour, that in these brief  
22 recesses, sometimes it happens that I -- I'm with my client and  
23 discussing maybe something or some issue for after the recess. It  
24 can be sometimes a 15-minute break or whatever-break. And then in  
25 that particular case, if other participants would not be available, I

1 would like them to be available. If, for example, any of the other  
2 participants would be via video-link there, if that possibility  
3 exists outside court but in the building, that is actually --

4 PRESIDING JUDGE VELDT-FOGLIA: Okay. So that's how -- that's  
5 what I also understood, that you will be talking as a group of four  
6 people. That's what --

7 MR. VON BONE: Three or four people.

8 PRESIDING JUDGE VELDT-FOGLIA: Three or four people.

9 MR. VON BONE: Yeah.

10 PRESIDING JUDGE VELDT-FOGLIA: So you, one of your --

11 MR. VON BONE: My team members --

12 PRESIDING JUDGE VELDT-FOGLIA: -- members of the team.

13 MR. VON BONE: And my client.

14 PRESIDING JUDGE VELDT-FOGLIA: And Mr. Mustafa.

15 MR. VON BONE: Yeah, so --

16 PRESIDING JUDGE VELDT-FOGLIA: So a kind of Zoom meeting.

17 MR. VON BONE: Not necessarily Zoom.

18 PRESIDING JUDGE VELDT-FOGLIA: No, but --

19 MR. VON BONE: I mean, for example, if I'm present in the court  
20 and, for example, Mr. Shala would not be in court for some reason.  
21 He would join via video-link, and I would meet with Mr. Mustafa just  
22 outside here, how would he be able to participate in that?

23 PRESIDING JUDGE VELDT-FOGLIA: I will give the floor --

24 MR. VON BONE: That is the question.

25 PRESIDING JUDGE VELDT-FOGLIA: -- to Mr. Roche.

1 MR. VON BONE: It's just a practical matter.

2 PRESIDING JUDGE VELDT-FOGLIA: No, yeah, it's practical. But  
3 it's very -- it touches upon a very important right for the Defence.  
4 So, Mr. Roche, you have the floor.

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

6 Outside the courtroom, within the confines of the courtroom,  
7 there is no mechanism to have a Zoom or audio or video-conference.  
8 We had envisaged that this would happen via telephone, via secure  
9 telephone. It is possible to have a number of people on the same  
10 telephone call, so four, five, whatever is necessary.

11 But in terms of having a Zoom or a video-conference meeting,  
12 that is not something that can be currently organised at short  
13 notice.

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you for that.

15 MR. VON BONE: So I understand that it's through telephone  
16 conversation that somebody else is participating then, whether it be  
17 my own interpreter or whether it be my co-counsel, or -- or if he's  
18 here and I'm not here. I mean, things can happen. So just to have  
19 that possibility.

20 PRESIDING JUDGE VELDT-FOGLIA: Yes. Okay. But one way or  
21 another, there will be the possibility -- there must be, of course,  
22 the translation also provided for, so we will have -- I have my  
23 microphone on. So we will have the other person at the phone, the  
24 other team member at the phone, with a translator.

25 MR. ROCHE: Thank you, Your Honour. If translation is required,

1 we will ensure that that is available.

2 PRESIDING JUDGE VELDT-FOGLIA: Okay. And that can be organised.  
3 Thank you.

4 MR. VON BONE: Thank you very much. That concludes for us our  
5 question.

6 PRESIDING JUDGE VELDT-FOGLIA: Good. Thank you for informing  
7 us.

8 At this point, I would like to ask the parties and  
9 Victims' Counsel if they have other issues that they would like to  
10 raise.

11 MR. MICHALCZUK: Your Honours, at this point for this session  
12 we've got no other issues to raise.

13 Thank you.

14 PRESIDING JUDGE VELDT-FOGLIA: Victims' Counsel?

15 MS. PUES: Just very, very briefly, a practical measure of trial  
16 proceedings.

17 We have spoken about the potential start date. And it's very  
18 mundane, but if there is any indication of which days of the week you  
19 might intend to hold court sessions, that would be most useful for a  
20 lot of planning that has to go around. Yes.

21 So any indication that you could give would be very welcome.  
22 Thank you.

23 PRESIDING JUDGE VELDT-FOGLIA: We have taken due notice of your  
24 remark, and we will try to be -- we will try to make a planning, a  
25 schedule, as far as possible, of course. But in due course, because,

1 of course, we have been discussing this already, and it's of  
2 importance for everybody present in this courtroom and also outside  
3 this courtroom, for arranging, and there are, of course, other  
4 Panels, and other Panels might be using this courtroom at a certain  
5 moment in time, so planning is one of our important issues we have to  
6 deal with. So, yes, good.

7 Defence counsel, is there something you would like to --

8 MR. VON BONE: No further observations, Your Honour. Thank you  
9 very much.

10 PRESIDING JUDGE VELDT-FOGLIA: Okay, good. Thank you.

11 The parties and the Victims' Counsel can indicate in writing to  
12 the Trial Panel, and, of course, we still have to make a decision on  
13 when we start, but as a general part -- a general remark, I would  
14 like to say that if you think another Status Conference, or, as it is  
15 called, a Trial Preparation Conference, is needed, please indicate it  
16 to the Trial Panel.

17 And, finally, I inform you that prior to the opening of the  
18 case, prior to starting with the trial, we want -- we intend, the  
19 Trial Panel intends to issue the following decisions: Of course, a  
20 decision with regard to a tentative date for the commencement of the  
21 trial; a decision on the establishment of -- establishing the rights  
22 of the victims participating in the procedure - there will be a  
23 decision on that; and we will issue a decision on the conduct of  
24 proceedings. And, as a proposal from this side, the SPO and the  
25 Defence could see if they could make a joint filing on adjudicated

1 facts by 30 June, but that that I -- I put it for your consideration.

2 This concludes today's public hearing. I thank the parties, and  
3 the Victims' Counsel, and the Registry for their attendance. And I  
4 also wish to thank the interpreters and the stenographer and the  
5 technicians from the audio-visual booth, and also the security  
6 personnel for their assistance.

7 We will reconvene in a closed session with the SPO and certain  
8 units of the Registry. And that will be -- and I will have a short  
9 consultation with my colleagues, so I will turn off my microphone and  
10 [Microphone not activated].

11 [Trial Panel confers]

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you for your short  
13 patience.

14 We have decided that we will reconvene today in closed session  
15 with the SPO and the units of the Registry at 2.30, and we hope that  
16 everybody can be available at that moment in time.

17 MR. VON BONE: Your Honour, may I ask a question?

18 PRESIDING JUDGE VELDT-FOGLIA: Of course you may.

19 MR. VON BONE: Yes. So our further presence today is not  
20 required, I understand. And do I understand that tomorrow there will  
21 be no session where our presence is required?

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel. It's  
23 a pertinent question and a very good question.

24 Yes, tomorrow your attendance at the court will not be  
25 necessary, because we have finished our Trial Preparation Conference

1 in open session already today, and we had planned tomorrow in case of  
2 a necessity. And we have been all very diligent and efficient.

3 MR. VON BONE: Well, thank you very much, Your Honour. Much  
4 obliged.

5 PRESIDING JUDGE VELDT-FOGLIA: The hearing is adjourned.

6 --- Whereupon the Trial Preparation Conference is  
7 adjourned at 10.58 a.m.

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