

Wednesday, 24 February 2021

[Status Conference]

[Open session]

[The accused not present]

--- Upon commencing at 11.00 a.m.

JUDGE GUILLOU: Good morning and welcome everyone in and outside  
the courtroom.

Madam Court Officer, can you please call the case.

THE COURT OFFICER: Good morning, Your Honour. This is  
KSC-BC-2020-07, The Specialist Prosecutor versus Hysni Gucati and  
Nasim Haradinaj.

JUDGE GUILLOU: Thank you, Madam Court Officer.

Now I wouldn't kindly ask the parties to introduce themselves,  
starting with the Specialist Prosecutor's Office.

MS. BOLICI: Good morning, Your Honour, and to all attending  
this Status Conference both in court and remotely. Appearing for the  
Specialist Prosecutor's Office today are Alex Whiting, Deputy  
Specialist Prosecutor; James Pace, Associate Prosecutor;  
Line Pedersen, Case and Evidence Manager; and I am Valeria Bolici,  
Prosecutor with the SPO.

JUDGE GUILLOU: Thank you, Madam Prosecutor.

Now let me turn to the Defence, starting with Mr. Rees, please.

Mr. Rees, your microphone is mute.

MR. REES: [via videolink] Good morning, Your Honour. This is  
Jonathan Rees, counsel for Mr. Gucati, assisted by co-counsel

1 Mr. Huw Bowden.

2 JUDGE GUILLOU: Thank you very much, Mr. Rees.

3 Mr. Cadman, please.

4 MR. CADMAN: [via videolink] Good morning, Your Honour.

5 Toby Cadman for Mr. Haradinaj, joined by Mr. Carl Buckley, co-counsel  
6 for Mr. Haradinaj.

7 JUDGE GUILLOU: Thank you, Mr. Cadman.

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

10 Before we proceed with our agenda today, I remind the parties  
11 that should anyone attending this Status Conference via  
12 video-conference experience any technical difficulties, please inform  
13 the Court Officer and myself immediately by waving your hand. And if  
14 the connection with any of the remote participants fails, we will do  
15 our best to reconnect immediately. If the issue cannot be resolved  
16 immediately, I may have to adjourn the hearing for a couple of  
17 minutes to ensure that the line is reconnected.

18 On 17 February I scheduled the second Status Conference for this  
19 case. My goal today is to review the status of the case and to  
20 organise exchanges between the parties to ensure an expeditious  
21 preparation for trial. In particular, I wish to discuss disclosure,  
22 the status of the Specialist Prosecutor's investigations and  
23 scheduling of his pre-trial brief, the points of agreement on matters  
24 of law and fact, the status of the Defence investigations, the  
25 anticipated transmission of the case file pursuant to Rule 72(1) of

1 the Rules, when would the parties expect to be ready for trial, and  
2 setting a calendar for further steps before transmitting the case  
3 file.

4 I thank the SPO and the Defence for their written submissions.  
5 There is no need to repeat those submissions in detail, but I will  
6 invite the parties to respond to each other's written submissions in  
7 a concise fashion, following each item on the agenda, which I will  
8 address individually.

9 I remind the parties to give prior notice should any submission  
10 require the disclosure of confidential information so that we can go  
11 into private or closed session.

12 Before we start, I would like to address a number of preliminary  
13 matters. First, I take note of the application submitted on 23  
14 February by the Haradinaj Defence to hold the Status Conference in  
15 the absence of his client as stated also in the annexed declaration  
16 by Mr. Haradinaj. I note that this is in conformity with  
17 Rule 96(2)(c), and I instruct the Defence to submit such notices in  
18 the future as correspondence with Court Management, appending the  
19 necessary declaration.

20 Second, I take note of the request of the Haradinaj Defence for  
21 a disclosure of certain information regarding a diplomatic  
22 communique. I will issue a written decision in this regard, so this  
23 topic will not be addressed in today's Status Conference. If any of  
24 the parties wishes to respond to the Haradinaj submissions, you are  
25 invited to do so in writing by this Friday, 26 February.

1 Third, I will issue the following oral order for  
2 reclassification of filings:

3 Further to my order of 4 February 2021 and the SPO submissions  
4 of 19 February 2021, I hereby order the Registrar to: Reclassify as  
5 public F51, dated 19 October 2020; and in relation to the following  
6 strictly confidential filings, reclassify as confidential and remove  
7 the ex parte marking for Annexes 1 and 2 of filing F50, both dated 15  
8 October 2020; reclassify as confidential and make available only to  
9 the Haradinaj Defence filing Annex 6 of F50, dated 15 October 2020;  
10 reclassify as confidential and make available only to the Gucati  
11 Defence filing Annex 7 of F50, dated 15 October 2020; reclassify as  
12 confidential the following filings: F63, including both annexes,  
13 dated 30 October 2020; F74, dated 11 December 2020; Annex 1 of F75,  
14 dated 14 December 2020; F85 and its annex, dated 18 December 2020.

15 I further order the Defence for Mr. Gucati and the Defence for  
16 Mr. Haradinaj to file by Friday, 26 February 2021, public redacted  
17 versions of their submissions for the Status Conference, F137 and  
18 F138, respectively.

19 These orders also apply to any existing translations of the  
20 mentioned filings.

21 I would also like to recall that on 19 February the SPO  
22 disclosed Batch 7 under Rule 102(1)(b) and also filed its notice  
23 under Rule 102(3).

24 On 22 February I issued a decision regarding the SPO's request  
25 of non-disclosure of certain witness contacts.

1 And on 23 February, I issued a decision regarding the disclosure  
2 of the document batches seized from the War Veterans Association.

3 Lastly, and before we start, I recall that the preliminary  
4 motions filed by Mr. Gucati and Mr. Haradinaj, submitted on 2 and 4  
5 February, respectively, are currently pending determination.

6 Let's now move to the first item in our agenda, which is  
7 disclosure. I would like to hear from the Prosecution on the  
8 progress made in the disclosure of evidentiary material, in  
9 particular, in relation to Rule 102(1)(b) material. I note in the  
10 SPO's submission that disclosure under this Rule has been completed  
11 through Batch 7 of 19 February and that additional material under  
12 this rule may be disclosed further to third party requests by 9 April  
13 at the latest.

14 In this regard, I invite the Prosecution to address two issues  
15 raised by the Defence: The ten witnesses mentioned at the first  
16 Status Conference, and the manner in which disclosure took place so  
17 far, including the information accompanying the disclosure batches in  
18 Legal Workflow.

19 In relation to Rule 102(2), I note that the SPO does not  
20 currently anticipate disclosure under this rule. In relation to  
21 Rule 102(3), I take note of the SPO's submissions that, following the  
22 notice filed on 19 February, additional material under this rule may  
23 be disclosed further to third parties requests by 9 April at the  
24 latest.

25 In this regard, I invite the SPO to indicate whether this

1 timeline is affected by the decision on the batches seized from the  
2 War Veterans Association. I also take note of the Defence  
3 submissions regarding the scope of the notice under Rule 102(3), and  
4 I invite the parties to engage in *inter partes* discussions on this  
5 topic, following the timeline set out in the Framework Decision on  
6 disclosure. In particular, any items the Defence believe that should  
7 be part of the notice should be communicated to the SPO by 5 March,  
8 which is also the deadline for seeking access to items already on the  
9 list.

10 The SPO should seize me with any disputes as to the materiality  
11 of the evidence as provided in the Framework Decision.

12 In relation to Rule 103 material, I take note of the SPO's  
13 submissions in this regard, including that further material under  
14 this rule may be disclosed further to third party requests by 9 April  
15 at the latest.

16 In relation to Rule 107, 108, I take note of the SPO's  
17 submissions that further requests under these rules may be  
18 forthcoming but that they do not affect the tentative timeline.

19 I also note that the SPO is not in a position to indicate  
20 whether protective measures requests would come from the third party  
21 requests. I invite the Prosecution to indicate whether any such  
22 requests could be submitted by 19 March.

23 And, finally, and more generally, I would like to know whether  
24 the parties are facing or foresee any difficulties related to the  
25 remainder of the disclosure process.

1           Madam Prosecutor, you have the floor. And, again, it's not  
2           necessary to repeat everything you said in your written submissions,  
3           that I tried to sum up - I'm sorry if it was a bit long - but focus  
4           on the questions and especially on responding to the submissions of  
5           the Defence.

6           Madam Prosecutor, you have the floor.

7           MS. BOLICI: Thank you, Your Honour.

8           Starting for the disclosure obligations of the Prosecution's  
9           under Rule 102(1)(b), as recalled by the Pre-Trial Judge, on 19  
10          February the Prosecution discharged all of its disclosure obligations  
11          pursuant to these rules.

12          The Defence argues that the SPO has not completed its disclosure  
13          merely based on the fact that the SPO had transparently shared the  
14          intention, at the first Status Conference, of undertaking a number of  
15          additional witness interviews. The Defence submissions on this point  
16          is, however, ungrounded.

17          In relation to the very limited number of witnesses the SPO has  
18          currently determined will be included in its witness list, simply,  
19          there are no interview transcripts to be disclosed. Subsequently,  
20          there is no obligation for the SPO to interview all witnesses it  
21          intends to call to testify. Nevertheless, as amply anticipated in a  
22          number of SPO written submissions, the SPO intends to call to testify  
23          authors of declarations that have been already disclosed to the  
24          Defence, pursuant to Rule 102(1)(b) and/or Rule 103 of the Rules.  
25          These should address all of the Defence doubts on this point.

1 In relation to the Defence submissions concerning the modalities  
2 of the disclosure under Rule 102(1)(b), particularly put forward by  
3 the Defence for Mr. Haradinaj, I have to note that the submissions  
4 appear to be not meaningfully substantiated.

5 First, the disclosure packages do come with an index, reflecting  
6 ERN numbers, detailed descriptions of each disclosed items,  
7 categorisation for each item, pursuant to Rule 109(c) categories, and  
8 other metadata registered in Legal Workflow.

9 Upon an informal request from Mr. Haradinaj's Defence team, the  
10 SPO has reminded the Defence that the Legal Workflow allows any user  
11 to automatically generate such indexes in the form of Excel tables  
12 for any given disclosure packages. Not only, the SPO has even  
13 reminded the Defence of the operative steps to generate the index it  
14 was looking for, the steps consisting of nothing else than clicking  
15 on the relevant icon in Legal Workflow.

16 Counsel seems, unfortunately, not to have managed to do so, but  
17 the Defence difficulties appear to originate on this issue from a  
18 scarce familiarity with the electronic platform adopted by this  
19 Court, which channels all disclosures made by the SPO as prescribed  
20 by the rules.

21 The SPO has also suggested to the Defence of Mr. Haradinaj that  
22 if the SPO technical advice was not satisfactory, it might want to  
23 direct any request for assistance to the competent office within the  
24 KSC, possibly in order to receive a further Legal Workflow training.

25 Second, as already submitted at previous Status Conferences, and



1 lately again in writing on 1 February 2021, all disclosed items are,  
2 in fact, categorised according to Rule 109(c) categories in the  
3 metadata fields in Legal Workflow. Again, the claims of the Defence  
4 for Mr. Haradinaj that such categorisation has not been provided is  
5 without merit.

6 Third, any Defence argument on the timing for the submission of  
7 the Rule 109(c) chart appear to seek to relitigate a matter that has  
8 already been ruled upon by the Pre-Trial Judge with his decision of  
9 11 February 2021. These submissions should be dismissed since the  
10 Defence has provided no arguments warranting reconsideration. The  
11 SPO has nothing further to add, if not recalling its own written  
12 submissions on this matter and the reason underlying the  
13 Pre-Trial Judge's decision.

14 In relation to the next item of the agenda, Rule 102(2), I have  
15 nothing to add to the summary that has been provided by the Court,  
16 and I take note of the instructions provided by the Pre-Trial Judge  
17 in relation to the Defence written submission that appears to seek  
18 disclosure for items not included in the list provided by the SPO  
19 pursuant to Rule 102(3). That would conclude all required responses  
20 in relation to this point.

21 In relation to Rule 103, besides recalling the SPO written  
22 submissions as summarised by the Pre-Trial Judge, I would like to  
23 make just two points.

24 In relation to the recent Court protective measures decisions,  
25 filing number F00136 in particular, the Court has ordered the SPO to

1 disclose to the Defence a redacted version of certain materials. As  
2 subject to disclosure, these items will have to be categorised  
3 pursuant to Rule 103 or 102(1)(b), or there is even a category under  
4 102(3). So in relation to this decision, further additions to the  
5 three categories might be necessary.

6 I also want to highlight that, as indicated in the Prosecution  
7 written submission, need for further additions to any of these  
8 categories might come from the third parties' requests that have been  
9 indicated and also by the investigative work that the SPO will  
10 continue in the ordinary course throughout the proceedings, which the  
11 SPO does not foresee will impact in any way the conduct of the  
12 proceedings.

13 Just to be very clear, the SPO will be in a position to file its  
14 pre-trial brief and will be ready for trial whether the outstanding  
15 third parties' requests will be received within the timeline or not.  
16 And similarly, the SPO will be ready for trial shortly after the  
17 filing of its pre-trial brief regardless of the results of any  
18 additional investigative steps that it might undertake in the interim  
19 period.

20 One clarification in relation to the Rule 107 submissions is to  
21 be made in light of the most recent Court protective measures  
22 decisions. In light of this decision, the SPO does not foresee any  
23 longer the need to submit requests pursuant to Rule 107. In  
24 particular, there is Rule 107 information in the materials to be  
25 disclosed pursuant to the Court decision with filing number F00136

1 issued on 22 February. However, the authorised redactions adequately  
2 address the matter, which means that further provider approval is not  
3 needed to enable disclosure.

4 Similarly, in light of the most recent Court decision issued  
5 yesterday with filing number F00141, which confirmed that Batch 3 is  
6 not subject to disclosure, further provider approval for the  
7 disclosure of Rule 107 information contained in Batch 3 is not  
8 required.

9 Additional Rule 108 requests by 19 March 2021 will depend  
10 instead, inter alia, on which items from the SPO's Rule 102(3) list  
11 the Defence may seek to have access to. In particular, one of the  
12 items in the 102(3) list is a near copy of one of the seized items  
13 for which protective measures have been granted yesterday, so a  
14 protective measure request analogous to the one that has already been  
15 granted will have to be requested for this item should the Defence  
16 seek to have access to it.

17 I believe this concludes all required points to be touched upon  
18 in relation to the disclosure item on the agenda.

19 Thank you, Your Honour.

20 JUDGE GUILLOU: Thank you, Madam Prosecutor.

21 Now I turn to the Defence.

22 Mr. Rees, please.

23 MR. REES: [via videolink] Your Honour, can I begin by addressing  
24 what was said about the ten witnesses that were identified by the SPO  
25 at the first Status Conference.

1           It's not entirely clear to me what the SPO is saying. Is it  
2           their position that they will not be calling any witnesses at the  
3           trial, save for calling the makers of the declarations and their  
4           summaries as to the position? Could the SPO clarify what their  
5           position is, please?

6           JUDGE GUILLOU: Mr. Rees, if you agree, I will give the floor to  
7           Madam Prosecutor immediately so that she can respond to your question  
8           now before you continue.

9           MR. REES: [via videolink] Thank you.

10          JUDGE GUILLOU: Do you agree with that?

11          MR. REES: [via videolink] Please. Thank you.

12          JUDGE GUILLOU: Madam Prosecutor, please, that's not what I  
13          understood. I understand that, well, from what you said, that there  
14          is no transcript of previous interviews of these witnesses but you  
15          still intend to call them at trial. Is it correct?

16          MS. BOLICI: It's correct, Your Honour. You understand exactly  
17          in the terms that I put it. So there are witnesses that the  
18          Prosecutor intends to call for trial. These witnesses have not been  
19          interviewed. Nevertheless, they have issued declarations that have  
20          been included in the Rule 102(1)(b) materials that has already been  
21          disclosed to the Defence.

22          JUDGE GUILLOU: Thank you, Madam Prosecutor.

23          Mr. Rees, does it answer your question?

24          MR. REES: [via videolink] No. The only declarations that have  
25          been provided so far are from SPO officers. Is it the case,

1       therefore, that the SPO do not intend to call any witnesses other  
2       than SPO officers at the trial?

3             JUDGE GUILLOU: Madam Prosecutor.

4             MS. BOLICI: This is the current determination of the Office of  
5       the Prosecutor, Your Honour, as clarified twice already. Thank you.

6             JUDGE GUILLOU: Thank you, Madam Prosecutor.

7             Mr. Rees, you can proceed.

8             MR. REES: [via videolink] Well, I find that rather  
9       extraordinary, I have to say, and it's not how I understood the SPO  
10      to be approaching, in the first Status Conference, indicating that  
11      they were going to conduct witness interviews. It would be  
12      surprising if witness interviews were conducted with SPO officers. I  
13      had assumed that the SPO were intending to interview witnesses who  
14      claim, for example, to have been intimidated and that they would be  
15      calling such witnesses to give evidence on that point.

16            But I take it from what Ms. Bolici has now clarified, the SPO do  
17      not intend to call any such evidence.

18            JUDGE GUILLOU: Madam Prosecutor, do you want to add anything on  
19      this?

20            MS. BOLICI: I already clarified the SPO's position on this  
21      point. I just take the occasion to suggest that in light of this  
22      information, the Defence might very well reconsider his planned  
23      timeline to carry out Defence investigations. Thank you.

24            JUDGE GUILLOU: We move to this topic later in the Status  
25      Conference.

1 But, Mr. Rees, on this issue of disclosure, you can continue.

2 MR. REES: [via videolink] I certainly won't be reconsidering the  
3 timetable in light of that rather remarkable clarification from the  
4 SPO in the context of this prosecution.

5 Contrary to what has been said by the SPO, they have not  
6 complied with their disclosure obligations. There is, following  
7 Your Honour's rulings yesterday, further material that will have to  
8 be disclosed pursuant to both Rule 102(1)(b), 102(3), and Rule 103.

9 In relation to the Rule 102(3) notice that's been provided, that  
10 notice, of course, within the structure of the Rules of Procedure and  
11 Evidence, is a fundamental building block in the disclosure process.  
12 It is the notice by which the SPO sets out what material that has an  
13 impact upon the case, that touches upon the case, is in their  
14 possession. Whether or not that material is subsequently to be  
15 provided or made available or disclosed to the Defence, it is the  
16 notice which brings to the Defence's attention the material that the  
17 SPO has.

18 It has to be complete and it has to be detailed in the content  
19 of a schedule to allow the Defence to properly ascertain the nature  
20 of the material that's held and properly consider whether it is  
21 deemed material to the preparation of the Defence.

22 The context of this case, the SPO claims at least, is that the  
23 some 4.000 documents, approximately, of a confidential nature that  
24 have come from the SPO or its predecessor the SITF were improperly  
25 disclosed. Those documents, if the SPO is right, if they came from

1 the SPO itself, the SPO is bound to have a very significant amount of  
2 material which touches upon, is relevant to, and related to those  
3 documents, if they are indeed authentic and confidential.

4 The Rule 102(3) schedule that we've been provided with is a  
5 wholly inadequate document. It contains some 13 documents only, the  
6 description of which is so brief it gives no real indication as to  
7 the content of each of those documents, the relevance of them, and to  
8 what extent they may or may not otherwise assist in the preparation  
9 of the defence.

10 In relation to that point, I understand Your Honour's direction  
11 being that we are to raise these matters further with the SPO by  
12 5 March in *inter partes* correspondence, and if the matter is not  
13 resolved, for us then to return the matter for substantive argument  
14 before the Pre-Trial Judge.

15 We will, of course, follow that direction. But I have to say  
16 that I foresee nothing other than having to return to the Court in  
17 due course to argue about these matters in substance and in real  
18 detail, because the approach of the SPO throughout thus far has been  
19 dismissive and is suggestive of a Prosecution that does not take  
20 properly its disclosure obligations as is personally demonstrated by  
21 the wholly inadequate, frankly, paltry document that's been provided  
22 as a Rule 102(3) notice.

23 We have already set out in our written submissions at paragraph  
24 6 and 7 a list of some items which must be included in any  
25 Rule 102(3) notice. They are plain that it is material that must be

1 in the possession of the Prosecutor, falls within the definition of  
2 Rule 102(3) as applied by Article 21(6) of the Law, and there can be  
3 no doubt whatsoever, whether that material is subsequently made  
4 available for the Defence to see in its entirety or redacted or not  
5 at all on the basis of if there is a contest as to whether it's  
6 material to the preparation of the Defence, such material must be  
7 under Rule 102(3) notice which gives the Defence notice of the  
8 material in the possession of the Specialist Prosecutor's Office. We  
9 see, frankly, only further delay in resolving those matters.

10 We await to see, obviously, the material that will be disclosed  
11 pursuant to Your Honour's directions yesterday regarding both contact  
12 with witnesses and in relation to the material contained within  
13 Batches 1, 2, and 3. We obviously can't comment further on what  
14 subsequent investigations may flow or be required from disclosure of  
15 that material at this stage until we have received it.

16 The SPO itself, in its submissions for the second Status  
17 Conference, raises that there will be further additional items under  
18 Rule 102(1)(b), Rule 103, and additions to Rule 102(3), the notice,  
19 that it will make. It also indicates that there will be further  
20 material to be disclosed, Rule 107 material.

21 And, again, likewise, without any assistance in the written  
22 Prosecution submissions for a second Status Conference, we must  
23 reserve our position as to what impact that further disclosure will  
24 have upon our preparations until we have seen it, because there is no  
25 indication in the written submissions from the Prosecution as to the



1 nature of that material.

2 I'm not sure at this stage, Your Honour, whether Your Honour  
3 wishes anything further for me to address on the topic of disclosure.  
4 We are, we say - and we submitted this in writing, and what has been  
5 said by the SPO today only confirms this - we are at the fledgling  
6 stage of dealing with the disclosure process. The absence of a  
7 constructive dialogue from the SPO, seeking to engage properly and  
8 constructively with matters raised by the Defence in disclosure,  
9 indicates to us that, whereas we're at the outset of that disclosure  
10 process, we can only foresee further difficulties going on, trying to  
11 deal with that, a dismissive approach of the SPO.

12 Unless I can assist you further at this stage, Your Honour,  
13 those are the submissions I make in conjunction with, of course, the  
14 full written submissions that we made on disclosure in filing F00137.

15 JUDGE GUILLOU: Thank you very much, Mr. Rees.

16 Regarding the scope of the list of Rule 102(3) material, this is  
17 correct. I would first like the Defence to have a discussion with  
18 the SPO so that the SPO can supplement the list, or not, with the  
19 documents that you request.

20 And then according to Rule 103, it is up to the SPO to seize the  
21 Pre-Trial Judge if they refuse the disclosure of any document,  
22 including their inclusion in the 102(3) list.

23 Before I give the floor to Mr. Cadman, is there anything else  
24 you want to add generally on the disclosure process, because I know  
25 that some problems have been raised about the -- but I think it's in

1 Mr. Cadman's submissions, but on the use of Legal Workflow and the  
2 generation of Excel spreadsheets or any other more general problem,  
3 Mr. Rees? And then I'll give the floor to Mr. Cadman.

4 MR. REES: [via videolink] Yes, I've seen Mr. Cadman's detailed  
5 submissions on that point and I wholeheartedly adopt and support  
6 them.

7 If, as the SPO allege, it is so easy to produce a proper  
8 schedule to the material as they disclose it, then there's absolutely  
9 no reason why the SPO can't prepare that schedule and provide it to  
10 the Defence when the material is disclosed and to do that on a  
11 rolling basis with each new fresh disclosure.

12 For my part, I certainly have not found it easy to navigate my  
13 way through the disclosures as they have been made to us in the  
14 absence of a proper index from the SPO, so I adopt the position of  
15 Mr. Cadman.

16 JUDGE GUILLOU: Thank you, Mr. Rees.

17 Mr. Cadman, you have the floor.

18 MR. CADMAN: [via videolink] Thank you, Your Honour.

19 I think on the points that have already been raised in relation  
20 to the first questions of Rule 102(1)(b) and subsequent matters of  
21 disclosure, there's nothing further that I can add that Mr. Rees  
22 hasn't already stated, which is the joint position of the Defence,  
23 and which is not already contained in our written submissions. So I  
24 fully support and endorse his position.

25 I further must express some serious concern as to the absence of

1 any constructive debate and what appears to be a fairly dismissive  
2 and condescending attitude by the SPO to date. So just to bring that  
3 to Your Honour's attention that the likelihood is that we will have  
4 to come back because it's unlikely that there will be any  
5 constructive debate unless the SPO chooses to adopt a very different  
6 position to what has been adopted so far.

7 In terms of the Legal Workflow, Your Honour, I think the biggest  
8 difficulty is compounded by our separation from The Hague at present.  
9 It may well be easier to access certain additional tools that  
10 Legal Workflow has when we are actually in The Hague, but accessing  
11 it remotely, certainly from my side, has been incredibly difficult in  
12 terms of being able to download and access multiple files, when we  
13 have 379 files that we have to access remotely that we cannot print,  
14 we cannot save those files securely. So those difficulties are  
15 encountered.

16 And as Mr. Rees has said, if this system of creating an Excel  
17 spreadsheet, which I would like to thank the Prosecutor for pointing  
18 out in the way that she has how straightforward it is and that  
19 perhaps the Defence needs additional training, we have been able to  
20 identify how to do that, but that doesn't -- certainly from my side,  
21 it's not what I would expect from a schedule of evidence in other  
22 cases. Whilst it is a useful tool, it certainly doesn't replace what  
23 are the obligations placed on the SPO.

24 Your Honour, I don't want to repeat everything that Mr. Rees has  
25 said, and certainly I don't want to repeat what's in our written

1 submissions, but I am somewhat surprised by the sudden revelation  
2 that the SPO does not intend to call any witness of fact, as it now  
3 appears. That seems to be quite a departure from their position  
4 previously. Obviously, it's a matter for the Prosecution as to the  
5 case they put on, but it is difficult to understand how, in fact,  
6 they're going to prove the charges as they are laid without calling  
7 any witnesses of fact. But, of course, that's a matter for them.

8 In terms of the two orders that Your Honour has set down on the  
9 22nd and 23rd, obviously we will need to consider those and consider  
10 the extent to which the SPO complies with those orders until we are  
11 in a position to determine whether that satisfies, from the Defence  
12 perspective, the disclosure obligations, and so we may well have to  
13 come back once the SPO has responded to those orders in the timeline  
14 that Your Honour has set.

15 And, Your Honour, just as soon as final point, you mentioned at  
16 the outset the section or the part 6 disclosure in our written  
17 submissions. I take your point that you don't want to hear any oral  
18 submissions on that today and that you intend to issue an order by  
19 the end of this week.

20 Your Honour, we may be -- we may have to submit further written  
21 submissions on that in due course due to events having moved forward  
22 since the application was made. But, certainly, I will respect  
23 Your Honour's decision not to raise that in oral submissions today,  
24 and certainly I had intended to go into closed session if it was  
25 going to be raised today in any event.

1 JUDGE GUILLOU: Thank you, Mr. Cadman.

2 Regarding Legal Workflow, I think it's an important point  
3 because, having worked with Legal Workflow for several years now, it  
4 is a useful tool when you know how it works. And I completely  
5 understand that it might not be the easiest, especially from a  
6 distance.

7 So I would invite the Registry, and especially the Defence  
8 Office and the IT section, to provide any assistance. And whether  
9 it's in the form of a phone call or an online training, I think that  
10 would be much appreciated by the Defence counsel, because the idea of  
11 this electronic system is to avoid all the parties having to do all  
12 this list and it's automatically generated. Basically, the machine  
13 replaces the individual here for more expeditiousness and more  
14 efficiency.

15 So, Mr. Rees and Mr. Cadman, if you agree, I will ask the  
16 Registry to link up with you so that any improvement can be made, if  
17 needed, because there might also be some issues with the connections,  
18 because I think it's very important that you have a good access to it  
19 because this is a key for you to get any evidence in the case.

20 MR. CADMAN: [via videolink] Your Honour, if I may just add one  
21 very small addition to that.

22 One of the difficulties that the Defence is encountering so far,  
23 I know this is a matter that the Registry has raised, and that  
24 concerns us having the ability to be able to send documents to our  
25 clients who are currently detained, because there is no process for

1 privileged electronic communications with the detention facility.

2 I appreciate that may be something that the Registry will be  
3 looking at, but that is also going to hamper our ability to move  
4 forward with investigating and towards a sensible timeline, being  
5 able to take instructions from our clients.

6 JUDGE GUILLOU: Thank you, Mr. Cadman.

7 Mr. Rees, do you want to add anything?

8 MR. REES: [via videolink] Only this: Your Honour, I certainly  
9 agree that the Legal Workflow tool is a useful tool and does assist  
10 the parties. I have no doubt about that and no criticism is being  
11 made of the Legal Workflow system.

12 What I do suggest is that it would, nevertheless, still assist  
13 if the SPO put some human input into case preparation and provided an  
14 index with all material that they disclose. That is not an onerous  
15 task, according to Ms. Bolici and the SPO, because they say they have  
16 the tools to prepare one simply.

17 The Legal Workflow system itself and indeed the Registry itself  
18 are not responsible for the prosecution of these cases. The SPO is.  
19 And it is not much to ask the SPO to prepare a short index, setting  
20 out in an easily referable manner the material that they disclose to  
21 us. We can then use that index to very quickly identify the relevant  
22 materials on the Legal Workflow system. That's all that we ask for.

23 JUDGE GUILLOU: Thank you, Mr. Rees.

24 Madam Court Officer, I invite you to link up with the relevant  
25 sections of the Registry so that assistance can be provided in the

1 following days to the counsel, especially whether there is any  
2 improvement possible for the remote Legal Workflow access and also  
3 for any privileged communication between counsel and their clients.

4 I think there's been some improvement done regarding this last  
5 point, at least in another case, and I hope that this will be able to  
6 be done in this case as well.

7 Madam Prosecutor, do you have anything to reply to the Defence?  
8 Shortly, please.

9 MS. BOLICI: Yes, very briefly, Your Honour. I just want to put  
10 on the record that the SPO firmly rejects any allegation which is  
11 generic and unsubstantiated from the Defence that the Prosecution has  
12 adopted a dismissive approach in discharging its disclosure  
13 obligations.

14 The SPO has complied with all its disclosure obligations under  
15 all relevant rules, according to the timeline as set by the  
16 Pre-Trial Judge in the Framework Decision. I fail to see which kind  
17 of constructive approach the Defence wishes to seek beyond that. The  
18 SPO has received no request whatsoever from the Defence in relation  
19 to any of the steps undertaken in the course of the disclosure  
20 procedure besides the request from Mr. Haradinaj to provide the  
21 Defence with an index, which received a timely explanation by the SPO  
22 in relation to the possibility of automatically generating this  
23 index, which applies to the Defence for Mr. Haradinaj as to any other  
24 users of this platform that has been adopted by the Court.

25 That is all I need to reply for the moment.

1           Actually, if Your Honour allows one more issue, the Defence for  
2           Mr. Gucati seems to have misunderstood the Prosecution's submissions  
3           today in relation to disclosure under Rule 102(1)(b), under Rule 103,  
4           and under Rule 102(3), as well as under Rule 107.

5           The Defence alleges it is not clear which kind of additional  
6           items will have to be disclosed under these rules. The SPO has made  
7           very clear which kind of additional items will have to be disclosed  
8           under these rules both in writing and earlier today, identifying the  
9           sources that might determine this additional need. In particular, in  
10          relation to the decisions recently issued by the Pre-Trial Judge  
11          ordering the Prosecution to disclose redacted materials that have  
12          been subject to SPO requests, the SPO has explained that such  
13          materials, as subject to disclosure, will have to be categorised.  
14          This is the source of additional materials to be disclosed under each  
15          of the relevant rules.

16          I further clarified that there is no further request to be made  
17          under Rule 107, so all points made by the Defence of Mr. Gucati were  
18          based on a total misunderstanding of the Prosecution's submissions  
19          today and in writing.

20          JUDGE GUILLOU: Thank you, Madam Prosecutor.

21          Unless there is any request to reply, we will move to the second  
22          item in our agenda which is the SPO investigations submission of the  
23          pre-trial brief and the completion of disclosure.

24          In this regard, I take note of the SPO's submission that it  
25          expects to be in a position to file its pre-trial brief and related



1 material, together with its Rule 109(c) charts, and to complete  
2 disclosure under Rule 102, including disclosure resulting from third  
3 party requests, by 9 April 2021.

4 I further note the SPO's submissions that the only outstanding  
5 investigative step regards the third party requests. In this regard,  
6 I invite the SPO to indicate whether an estimated date of completion  
7 can be provided for the overall amount of evidentiary material.

8 Madam Prosecutor, you have the floor.

9 MS. BOLICI: Your Honour, as summarised by Your Honour, the SPO  
10 expects to be able to conclude all relevant disclosure by the time of  
11 the filing of its pre-trial brief. As said, we do expect to receive  
12 the replies to third parties requests within the set timeline.  
13 Nevertheless, should these replies not be received, this will not  
14 impact on the Prosecution's ability to file a pre-trial brief and to  
15 be ready for trial shortly thereafter.

16 I also wish to highlight that, as put forward in the written  
17 submission, the investigative work of the SPO will continue  
18 throughout the proceedings and full additional evidence relevant to  
19 this case may be recovered. In that event, the evidence will be  
20 disclosed to the Defence as provided -- and provided to the Court  
21 pursuant to the applicable provisions. The SPO does not foresee this  
22 impacting anyhow the speedy conduct of the proceedings. Thank you.

23 JUDGE GUILLOU: Thank you, Madam Prosecutor.

24 Now I turn to the Defence on this topic.

25 Mr. Rees.

1 MR. REES: [via videolink] Your Honour, all I can add is to  
2 reiterate our scepticism that disclosure will be complete by 9 April  
3 2021. We, of course, are still awaiting disclosure under  
4 Rule 102(1)(b), under Rule 103, and we are awaiting resolution of the  
5 concerns that we've raised about the Rule 102(3) list which may  
6 itself lead to further disclosure issues once that list is properly  
7 prepared in a complete and detailed form.

8 We hear what the SPO says about its claim to be able to serve  
9 the pre-trial brief by 9 April, but we are sceptical as to the  
10 assurance that disclosure will be completed by that date for the  
11 reasons that I've just set out. It is, of course, only once we've  
12 received the further material that will be forthcoming and there is  
13 proper resolution of the Rule 102(3) list issue that we will be in a  
14 better position to access disclosure going forward.

15 JUDGE GUILLOU: Thank you, Mr. Rees.

16 Mr. Cadman, please.

17 MR. CADMAN: [via videolink] Your Honour, nothing further to add  
18 that's not in written submissions and what Mr. Rees has already said.  
19 We have expressed our scepticism throughout the written submissions  
20 and we maintain that position.

21 JUDGE GUILLOU: Thank you, Mr. Cadman.

22 Then I will move to the next topic in the agenda which is the  
23 points of agreement on matters of law and fact.

24 I note that the parties have not yet entered into discussion  
25 regarding the possibility to submit points of agreement on law and/or

1 facts. I also take note of the timeline proposed by the SPO to reach  
2 agreement, if any, on such point by 26 March. Any points of law and  
3 fact not agreed upon by the deadline shall be left to the  
4 determination of the Trial Panel.

5 On this basis, I would like to hear from the parties whether  
6 they can submit a joint filing on any reached agreement by 2 April at  
7 the latest. I also wish to recall that there is no obligation from  
8 the parties to agree on matters of law and/or facts before trial.

9 Madam Prosecutor.

10 MS. BOLICI: Yes, Your Honour. As detailed in the submission  
11 for this Status Conference, the SPO is willing to submit proposed  
12 points of agreements to the Defence by 12 March. So subject to the  
13 availability of the Defence team to reply to any such submissions by  
14 the Prosecution, the SPO will certainly be in a position to file a  
15 joint submission by 2 April, as indicated by Your Honour. Thank you.

16 JUDGE GUILLOU: Thank you, Madam Prosecutor.

17 Mr. Rees.

18 MR. REES: [via videolink] Your Honour, we will not be able to  
19 comply with the timetable that's been proposed. We will still have  
20 disclosure outstanding on the timetable as presently put forward for  
21 disclosure to be made by the SPO by 9 April.

22 We can't possibly begin entering into discussions about  
23 agreement on points of law and fact in the absence of disclosure  
24 being completed. We are, of course, further hindered by the real  
25 difficulties we have in our own case preparation at the moment,

1 matters which are set out in detail in both -- in our written  
2 submissions in paragraph 26 onwards. Your Honour will be familiar,  
3 of course, with the difficulties that are be proposed -- that have  
4 been faced by those in countries with serious coronavirus  
5 restrictions on movement, and so on.

6 We are simply not in a position to be able to envisage  
7 compliance with the timetable on discussions on points of agreement  
8 of fact that is being proposed by the SPO. We think it is, again,  
9 wholly unrealistic of the SPO to propose that timetable.

10 JUDGE GUILLOU: Thank you, Mr. Rees.

11 Mr. Cadman.

12 MR. CADMAN: [via videolink] Your Honour, I would have to  
13 reluctantly agree. As Your Honour will see from our written  
14 submissions at paragraph 30 onwards, we set out in detail the very  
15 real difficulties that we have faced in moving things forward. And  
16 as Mr. Rees has said, we can't even begin to make proper preparations  
17 until disclosure is complete, as the current time scale of early  
18 April for completion of that. And that's assuming that we don't need  
19 to come back due to a lack of constructive dialogue and for potential  
20 non-compliance with the 22 and 23 February orders that Your Honour  
21 has given.

22 So the time scale that is being proposed, we are not in a  
23 position to make that as things currently stand.

24 JUDGE GUILLOU: Thank you, Mr. Cadman.

25 Madam Prosecutor, do you want to reply?

1 MS. BOLICI: Your Honour, very briefly. The Defence appears to  
2 have misunderstood the SPO submissions on this point. The disclosure  
3 has been completed as required by the rule and as directed by the  
4 Pre-Trial Judge. That's a fact and is not subject to any further  
5 assessment. The SPO has clearly highlighted which are the possible  
6 very limited items that might be subject to disclosure should the  
7 Prosecution get in possession of such items within the deadline set  
8 by the Court. There is no reason preventing the Defence from  
9 starting engaging in this case on the merits of this case based on  
10 the ample material, the extensive and complete material, that has  
11 been disclosed to the Defence according to the relevant timeline.

12 Besides that, I want to also observe that the Defence has been  
13 unable to provide an example of failure of constructive attitudes on  
14 the side of the Prosecution. However, the Prosecution is now in a  
15 position to highlight an example of lack of constructive attitude on  
16 the side of the Defence.

17 I acknowledge that both Defence teams consider that they will  
18 not be in a position to engage in considering any point of agreement  
19 on matters of law and facts prior to the exchange of the pre-trial  
20 brief. It appears that such position runs contrary to the goal of  
21 ensuring an expedited course of proceedings. All that's required to  
22 the parties is to consult on possible points of agreements on matters  
23 of law and facts as they might find out, through consultation, that  
24 such points of agreement can already be identified.

25 This would lead, in turn, to narrow the scope of the litigation,

1 which would ultimately result in saving time, including in the  
2 preparation of the Defence case.

3 Having acknowledged the Defence position, the SPO remains ready  
4 anyway to submit points of agreement on law and facts pursuant to  
5 Rule 95(3) and 156, according to the Court's directions and in the  
6 interest of the expeditiousness of proceedings.

7 MR. REES: [via videolink] Your Honour, I would like to respond  
8 to that, please.

9 JUDGE GUILLOU: Thank you, Madam Prosecutor.

10 Mr. Rees, you have the floor.

11 MR. REES: [via videolink] Your Honour has just seen a perfect  
12 example of the dismissive approach of the SPO to its disclosure  
13 obligations in this matter.

14 I raised at the first Status Conference, when there was no  
15 obligation on the Defence to do so, that there were two specific  
16 issues that we asked attention to be directed to. We asked the SPO  
17 to direct its attention to identifying all the material held by it  
18 which relates to the origin and provenance of the material contained  
19 within Batches 1, 2, and 3, including material as to its authorship,  
20 chain of custody, from creation to its arrival at the KLA WVA  
21 headquarters.

22 The approach -- the response to that from the SPO has been  
23 wholly dismissive, as demonstrated by the 13-item Rule 102(3) list,  
24 which is intended to suggest a complete list of all material touching  
25 upon this case that the SPO has in its possession. That list itself

1 is perfectly demonstrative of the dismissive approach of the SPO.

2 We also raised at the first Status Conference, without any  
3 obligation on us to do so but in order to give early notice to the  
4 SPO to engage with us and identify relevant material, that we would  
5 be looking to establish whether or not the SPO itself played any part  
6 in the three disclosures to the KLA WVA headquarters, referring in  
7 particular to an authority on entrapment, which Mr. Pace, at the  
8 first Status Conference, specifically referred to.

9 Your Honour can assess for Your Honour's self whether the SPO's  
10 approach to that has been dismissive or not. We say there has been  
11 no engagement by the SPO with the issues that we have raised thus  
12 far.

13 And the proposition from Ms. Bolici then, moments ago, that  
14 disclosure is complete runs contrary to the written submissions that  
15 the SPO has entered in relation to this very hearing. They have said  
16 in the hearing that they would be -- they would purport to complete  
17 disclosure by 9 April, and yet at the same time, proposed a timetable  
18 for discussions on points of agreement on law and fact which preceded  
19 their proposal to complete disclosure by 9 April.

20 We will not be bounced by the SPO into these proceedings taking  
21 place in an untimely and unseemly haste. We will ask, in accordance  
22 with Your Honour's direction, we will seek to have *inter partes*  
23 correspondence with the SPO prior to 5 March to see if there is a  
24 willingness on the SPO to engage in the matters that we have raised.

25 We are sceptical as to whether the SPO will, but we will hope

1 that they do. And we will hope that as part of that *inter partes*  
2 correspondence we will receive a full and complete Rule 102(3)  
3 notice, not the wholly inadequate document of some 13 items that has  
4 been provided thus far.

5 JUDGE GUILLOU: Thank you, Mr. Rees.

6 Does anybody else want to add anything? No.

7 So -- Mr. Cadman, briefly --

8 MR. CADMAN: [via videolink] Your Honour --

9 JUDGE GUILLOU: -- please, and on this issue of point of  
10 agreement on law and facts. We are not going to rediscuss the  
11 Rule 102(3) list. Really on this topic, Mr. Cadman.

12 MR. CADMAN: [via videolink] No, Your Honour, and I will be very  
13 brief. I can only emphasise and support what Your Honour has now  
14 seen, what the court has now seen, as the dismissive and  
15 condescending attitude that we are faced with. The SPO seems to  
16 think that the only obligation on them is to expedite these  
17 proceedings and that is their only obligation, and, quiet frankly, it  
18 is a ridiculous position to take.

19 These proceedings have to be conducted fairly, there has to be  
20 equality between the parties, and there is not, and Your Honour will  
21 undoubtedly have to rule on many of these issues. And, as Mr. Rees  
22 has said, the disclosure is not complete by Your Honour's own rulings  
23 in the last few days and by the SPO's own admission of 9 April.

24 The SPO needs to be reminded of what their obligations are in  
25 this case. It is not for the SPO to railroad the Defence, as



1 Mr. Rees as said, into a fast trial. Unfortunately, Your Honour, as  
2 attempts will be made to be constructive with the SPO, they need to  
3 approach these discussions constructively and sensibly.

4 JUDGE GUILLOU: Thank you, Mr. Cadman.

5 Very briefly, Mr. Rees, and only if it's related to the topic we  
6 are discussing, which is the points of agreements of law and facts,  
7 please.

8 You have the floor.

9 MR. REES: [via videolink] It is, Your Honour. I'd like to  
10 stress this: That we obviously see the advantage to all parties and  
11 the Trial Panel in a constructive discussion in due course when  
12 disclosure has been fully made and when investigations on both sides  
13 have been completed, including Defence investigations, in having a  
14 meaningful discussion to see whether agreement can be reached on  
15 points of law or points of fact. That, obviously, is an important  
16 stage in preparation of a trial that is both fair and runs  
17 efficiently.

18 And we wish for that to happen, but that must happen in a  
19 timetable that allows the Defence the time to conduct its  
20 investigations with disclosure having been properly and fully  
21 completed so that the Defence are aware of it, and then at that stage  
22 proper discussions taking place so that the Trial Panel can be  
23 presented, as far as possible, with agreed points of law and fact.  
24 That is all -- all we're asking for is an appropriate timetable to  
25 allow that to happen.

1 JUDGE GUILLOU: Thank you, Mr. Rees.

2 Let me just add a couple of points on this issue of agreements  
3 on points of law and facts.

4 First of all, I don't think full disclosure is needed to start  
5 the process. You can always agree on points that are very simple,  
6 such as the birth date of the accused, for example, or any other very  
7 simple matter. I don't think this needs to have the disclosure  
8 finalised, so I think this process can at least start.

9 Second, I also want to mention that regardless of the scope of  
10 the list of documents in Rule 102(3), there is already some material  
11 that has been disclosed. You have the Rule 102(1)(a) material that  
12 was disclosed with the indictment. There is also some material,  
13 Rule 102(1)(b). There is still a debate on the Rule 102(3), but I  
14 think the Defence can start this process.

15 Whether it will be totally finalised is another matter, but I  
16 think this process can start, and this is what I invite the parties  
17 to do with the SPO. I see that there is some tensions between the  
18 parties that is apparent in this courtroom. I invite them to, in  
19 good faith, discuss with each other, try to get to as much of an  
20 agreement *inter partes* related to the Rule 102(3) material. Try to  
21 engage in good faith, again, in the agreements on law and facts, and  
22 then I will rule on any matter that hasn't been settled, especially  
23 regarding the Rule 102(3) material.

24 And, finally, regarding the agreement on points of law and  
25 facts, this is completely in the hands of the parties. Nobody will

1 force you to make any agreement on this. And if the Defence do not  
2 want to agree on any points of law or facts, it is absolutely in its  
3 right to do so. So, really, on this, this is really a tool that is  
4 given to the parties to avoid litigating on some matters at trial,  
5 but this is absolutely not an obligation.

6 Now let me move to the next point of the agenda which is the  
7 Defence investigations.

8 I would like to first to thank the Defence teams for their  
9 submissions on this matter, and I would like to note that neither  
10 Defence team is in a position to indicate whether they will request  
11 unique investigative measures or give notice of an alibi defence at  
12 this stage.

13 I further invite the Defence to provide an update on the status  
14 of its investigations and approximately how much time it will need to  
15 finalise such investigative activities.

16 Mr. Rees, you have the floor.

17 MR. REES: [via videolink] Your Honour, we have set out, I hope  
18 quite candidly and in some detail, where the Defence is in terms of  
19 its investigations.

20 We have received some 3.000 pages or so of material since 4  
21 January, all of which, save for an almost insignificant amount, has  
22 been categorised as evidence that the SPO will be presenting. There  
23 is, we estimate, around 100 hours of footage that's been disclosed  
24 and categorised as evidence, so a significant amount of material that  
25 we have had to begin working our way through as since 4 January.

1           That material contains the identities of many persons who play a  
2           significant role in the events of the indictment. And we will, as we  
3           indicated at the first Status Conference, be looking to fully  
4           investigate those events and seek to interview each of the persons  
5           that we are able to identify as playing a significant role in those  
6           events from the evidence that's been disclosed.

7           We note, in passing, in the submissions, that that task, that  
8           task of identifying persons who have played a significant role in  
9           those events, has been made harder by the SPO refusing to  
10          particularise the individuals they refer to as, for example, "others"  
11          or "certain others" or "associates" or "certain parts of the media"  
12          or "certain parts of the public" in the indictment. If they had  
13          properly particularised it, that would have given us great assistance  
14          in that task of identifying relevant other persons.

15          We have to do that task from the material that's been provided  
16          to us without the assistance, at the moment at least, of such  
17          particulars in the indictment, although, as Your Honour has  
18          acknowledged at the outset, there is effectively an application of  
19          further and better particulars presently outstanding in the form of  
20          the motion relating to defects of the indictment.

21          We have, as Your Honour would expect, got on with the task of  
22          analysing that 3.000 pages of evidence and 100 hours of footage, and  
23          that has continued as we've been provided with the disclosures. That  
24          material didn't all come on 4 January. As Your Honour knows, it has  
25          come in different stages from that period onwards.

1           At the same time, the UK and the Netherlands have struggled with  
2           a huge surge in coronavirus cases. Kosovo itself has continued to  
3           see a higher rate of positive COVID tests at any point during the  
4           first half of last year when the global outbreak began. In the UK,  
5           we have been subject to very severe coronavirus restrictions that  
6           have placed real restrictions on movement both within the UK but  
7           also, of course, important for these purposes, internationally, and  
8           we anticipate those restrictions will continue for some time.

9           Very recently, the latest position appears to be that 21 June is  
10          something of a deadline, and it's very unlikely for us to see any  
11          changes to international travel restrictions taking place before  
12          then. We also understand there are restrictions in Kosovo in terms  
13          of a curfew which also likewise make witness interviews difficult for  
14          us to plan at this stage.

15          We, nevertheless, must carry out defence investigations and we  
16          will do so as quickly as we safely and legally can within the  
17          international restrictions that have been placed upon us. We have  
18          set out, in our written submissions, what we envisage to be a  
19          realistic timetable, and it is the following timetable that we  
20          propose:

21          We do so acknowledging that the 9 April date that's been  
22          proposed for the Prosecution to file its pre-trial brief effectively  
23          allows the SPO some 4 months from the confirmation of the indictment  
24          to prepare its pre-trial brief. Your Honour will see that the period  
25          that we proposed to allow for us to respond with a Defence pre-trial

1 brief - and we do intend to file a full and complete pre-trial brief  
2 which we hope will be of great assistance to the Trial Panel and will  
3 assist in a fair trial taking place - that the timetable we propose  
4 is less than the four months that the SPO have had from the  
5 confirmation of the indictment to prepare its trial brief.

6 We propose -- we ask for a timetable giving us until 2 July 2021  
7 for the submission of a Defence pre-trial brief, which is effectively  
8 just short of three months from the 9 April date for the Prosecution  
9 to file their pre-trial brief. That is assuming that they, indeed,  
10 do comply with that proposal.

11 JUDGE GUILLOU: Thank you, Mr. Rees.

12 Just one very small question, I think you mentioned - this is  
13 what I see in the transcript - the current restrictions for travel  
14 were postponed until 21 June. I think you meant 21 March probably.

15 MR. REES: [via videolink] No. My understanding of the position  
16 at the moment is there is no definite date for the lifting of  
17 restrictions on international travel in the UK, although they have  
18 proposed 21 June as a target date for a more relaxed approach to  
19 coronavirus restrictions taking place across the board.

20 JUDGE GUILLOU: Thank you, Mr. Rees.

21 Mr. Cadman, please.

22 MR. CADMAN: [via videolink] Your Honour, just to say that the  
23 timeline that has been proposed is a joint proposal for both Defence  
24 teams, and so we support the same timeline.

25 And, Your Honour, only to say that in addition to the

1 restrictions that have been proposed, there is also the great  
2 difficulty in the availability of flights. As is in our written  
3 submissions, we had intended to do a preliminary trip to Kosovo and  
4 the flights were cancelled 24 hours before departure. So it  
5 obviously makes it very difficult when flights are being cancelled as  
6 well as the additional restrictions.

7 And if we are able to actually travel to Kosovo, we are then  
8 further restricted in having to quarantine when we return to the  
9 United Kingdom. So it does put huge difficulties on our ability to  
10 move forward effectively, and so we would ask Your Honour to take  
11 that into account when considering the proposed timeline.

12 JUDGE GUILLOU: Thank you, Mr. Cadman.

13 Madam Prosecutor, do you want to add anything?

14 MS. BOLICI: Yes, very briefly, Your Honour.

15 In relation to the Defence reference to the number of items  
16 disclosed under Rule 102(1)(b) that are considered to be of a size  
17 difficult to manage, I just wish to reiterate that of the 379 items  
18 in the Rule 102(1)(b) list, 132 had already been disclosed to the  
19 Defence pursuant to Rule 102(1)(a), that is, like, as in the  
20 indictment supporting materials or in the course of the exculpatory  
21 evidence disclosure. So the Defence has been in possession of this  
22 material not since just a few days ago.

23 Furthermore, 79 of these items are audio-visual items, but 122  
24 are transcripts of these audio-visual items both in English and in  
25 Albanian. The majority of audio-visual items feature statements made

1 by one or both the accused and as such their contents is already  
2 well-known to the accused themselves.

3 The remaining items consist, inter alia, of reports, news  
4 articles, and other evidence obtained from the public domain,  
5 including translations of such materials. So given that the items in  
6 this residual category are mainly articles in Albanian and  
7 screenshots from open source materials, about half of the residual  
8 items comprise of translation of such materials.

9 The 379 items is by no means a large number to begin with, but  
10 when considering that much of this number is comprised of  
11 translation, then the number of items disclosed to the Defence under  
12 Rule 102(1)(b) is far lower and appears to be easily manageable.

13 I would like to further stress that there is no reason why  
14 investigations are not already underway, considering in particular  
15 that the Defence has been on notice of the SPO case since the time of  
16 the arrest, that the indictment-supporting material, as recalled by  
17 the Court, have been disclosed on 4 January, and the detailed outline  
18 mandated by Rule 86(3) of the Rules is available since 8 January.

19 And above all, I would like to recall that the scope of this  
20 indictment is very limited and identifies three key events, the press  
21 conferences held by the accused, which constitute the crux of this  
22 case and are recorded on tape.

23 On a different point of the Defence submission, the SPO has made  
24 clear wishes to reiterate once again that COVID is a real concern and  
25 must be taken extremely seriously, and the safety of staff, both the



1 SPO and the Defence, as well as that of witnesses, comes first.

2 At the same time, by looking at what this institution was able  
3 to accomplish in the year of this pandemic, and considering that  
4 other Defence counsels have already, in fact, begun investigating  
5 activities in Kosovo, the SPO respectfully submits that there are  
6 steps that can be undertaken. In particular, in the specific  
7 circumstances of this case where most of the information disclosed by  
8 the SPO has been obtained through open sources available to the  
9 Defence in the very same terms as they're available to the SPO and  
10 above all available worldwide without any need to engage in field  
11 missions.

12 In the specific circumstances of this case, where the indictment  
13 alleges that the accused have committed crimes through public,  
14 recorded appearances, the fact that the Defence has declined so far  
15 from starting engaging in the preparation of the defence appears hard  
16 to be attributed to the pandemic.

17 In relation to this, the proposed timeline for the submission of  
18 the Defence pre-trial briefs appears to be hardly compatible with the  
19 need for an expeditious conduct of the proceedings in light of the  
20 points that I just made. Thank you.

21 JUDGE GUILLOU: Thank you, Madam Prosecutor.

22 Does the Defence want to --

23 MR. REES: [via videolink] Yes, me, Your Honour.

24 JUDGE GUILLOU: -- reply? Yes, Mr. Rees, please.

25 MR. REES: [via videolink] The SPO responded, effectively, by

1 saying the Defence don't need any further time to investigate these  
2 matters; they're straightforward.

3 The SPO, of course, are asking for seven months from the date of  
4 arrest to service of their pre-trial brief. We're asking for a  
5 period of some three months to respond to their pre-trial brief, and  
6 we're asking to do so in circumstances where we've made clear from  
7 the outset that we intend to investigate issues, such as the  
8 authenticity and the confidentiality, as alleged, of the material in  
9 Batches 1, 2, and 3. We do not accept the bold proposition from the  
10 SPO that we should take their word for it.

11 And we have made clear from the outset that we intend to  
12 investigate the issue as to the circumstances in which those three  
13 batches came to make their way to the KLA War Veterans Association  
14 headquarters. At the moment, the SPO produced no evidence on that  
15 point, but we wish to investigate it and we will investigate it.

16 And we also intend to speak to witnesses who were present at  
17 each of the three events referred to by Ms. Bolici. I'll just pause  
18 there. The indictment is not limited to those three events  
19 whatsoever. The indictment begins by setting out that there was a  
20 period of some six months in total in which relevant matters were  
21 said or done, and the indictment itself, the counts of the  
22 indictment, as we understand the SPO's case, are not restricted to  
23 the events of the three conferences but also to events taking place  
24 in and around those three conferences.

25 We intend to speak to other witnesses who were present, who

1 played a part in events, and adduce evidence as to their motivations  
2 and their intentions and to do what the SPO again have announced  
3 today that they will not do, which is seek to -- we will seek to  
4 speak to witnesses about consequences, the extent that there were or,  
5 importantly, were not the consequences that the Prosecution allege in  
6 the indictment.

7 So there is a significant amount of investigative work that we  
8 intend to do and will do. We have not been able to properly commence  
9 that investigative work because of the restrictions that have been  
10 placed upon us resulting from the coronavirus global outbreak. We do  
11 not have the resources of the Specialist Prosecutor's Office.

12 It's in those circumstances that we say the timetable that we're  
13 asking for is both realistic and it is reasonable, and we'd ask  
14 Your Honour to take those matters thoroughly into account.

15 JUDGE GUILLOU: Thank you, Mr. Rees.

16 I don't see anybody else. No?

17 Mr. Cadman, please.

18 MR. CADMAN: [via videolink] Your Honour, just to reiterate the  
19 point, the SPO has referred to this being in relation to three key  
20 events, but Your Honour will be mindful of the fact that the  
21 timeline, as Mr. Rees as set out, details some six months prior to  
22 that. So it's not just matter of obtaining open source material that  
23 we can quickly conduct an investigation and be trial ready. Such a  
24 suggestion is unrealistic.

25 The other point is that the SPO has stated, that material of the

1 379 items, 132 of them have already been disclosed. That may be the  
2 case. We still have to check that because they're not -- when  
3 they're disclosed as part of a disclosure batch, it would be helpful  
4 if they are in separate disclosure batches of material already been  
5 disclosed. So the 132, it would have been helpful if they would have  
6 been disclosed as a separate disclosure batch that would actually  
7 enable us to do that.

8 The other point is that whilst this may relate to recordings and  
9 transcripts and related transcripts, we have to have those  
10 transcripts verified as to whether the translation is accurate. We  
11 can't simply just take the SPO's word for the fact that these are  
12 sufficient translations. There are, of course, in every language  
13 peculiarities in different dialects. We have to ensure that what's  
14 actually in the transcript actually represents what was stated. So  
15 it's not just a matter of taking the transcripts of three key events  
16 that were public events and preparing an investigation.

17 So I'd ask Your Honour to really take that into account when  
18 looking at whether it is realistic to move forward in the expedited  
19 manner in which the SPO is suggesting.

20 JUDGE GUILLOU: Thank you very much, Mr. Cadman.

21 Before we move to the next item in our agenda, let me just turn  
22 to the interpreters. I see that it is now nearly one hour and a half  
23 since we started. Is it possible that we continue for a further 10  
24 to 15 minutes?

25 THE INTERPRETER: Yes, Your Honour.

1 JUDGE GUILLOU: Thank you very much, and I thank the  
2 interpreters for giving us the opportunity.

3 Let me now move to the last two items in our agenda, which  
4 refers to the transmission of the case to the Trial Panel and when  
5 the parties expect to be ready for trial.

6 First, I note the Defence submission, that it objects to any  
7 proposal that this matter be tried by the Trial Panel consisting of a  
8 Single Judge. In this regard, I remind the Defence that any decision  
9 on the assignment of a Panel is the competence of the President and  
10 not the Pre-Trial Judge. My prerogative, under Rule 72, is simply to  
11 transmit the case file to a Trial Panel assigned by the President.

12 In this regard, I also note that transferring the case file to a  
13 Trial Panel after the disposal of the preliminary motions by the  
14 Appeals Chamber does not mean that the trial would start at the same  
15 time. It simply means that the remainder of the pre-trial process,  
16 including the finalisation of Defence investigations and filing of  
17 their pre-trial brief, would be overseen by the Trial Panel.

18 In light of this, I would like to hear the parties on the  
19 transmission of the case file to the Trial Panel around mid-April  
20 2021, pursuant to Rule 72 of the rules regarding expedited  
21 proceedings.

22 Madam Prosecutor.

23 MS. BOLICI: Thank you, Your Honour.

24 The SPO does not foresee any reason why the case file could not  
25 be transmitted to the Trial Panel as soon as currently pending

1 matters have been resolved, be it mid-April 2021 or even earlier than  
2 that. Thank you.

3 JUDGE GUILLOU: Thank you, Madam Prosecutor.

4 It cannot really be earlier than that, unless you file your  
5 pre-trial brief way earlier than that. I will just mention that  
6 because if we have your pre-trial brief on April 9, it will be  
7 impossible to send the case file to the Trial Panel before that.

8 Let me now turn to the Defence. Mr. Rees, please.

9 MR. REES: [via videolink] Your Honour, it seems to me the  
10 starting point is Rule 95 of the rules, which is the -- sorry, not  
11 Rule 95, my fault, Rule 98, sorry, which deals with transmission of  
12 the case file to the Trial Panel.

13 Rule 98(1) provides for the complete case file to be transmitted  
14 from the Pre-Trial Judge to the Trial Panel only after receiving the  
15 filings from the Specialist Prosecutor and the Defence pursuant to  
16 Rule 95(4) and (5), that's the rule in relation to pre-trial briefs.

17 So Rule 98 provides that, in the ordinary case, as it were, the  
18 case file will not be transmitted to the Trial Panel until there has  
19 been the exchange of pre-trial briefs by Prosecution and Defence.

20 Rule 72(1) does provide for the possibility of transmitting the  
21 case file otherwise than in accordance with Rule 98, so before the  
22 exchange of those pre-trial briefs, but only where there is an  
23 indictment in respect of offences under Article 15(2) and, more  
24 importantly for these purposes, where the case file is to be  
25 transmitted to a Trial Panel in accordance with Article 25(2) of the

1 Law.

2 It is not a general power to expedite submission of a case file  
3 prior to exchange of pre-trial briefs between Prosecutor and Defence.  
4 It is a power that applies only where the case file can be  
5 transmitted to a Trial Panel in accordance with Article 25(2) of the  
6 Law.

7 Article 25(2) of the Law provides that:

8 "For proceedings in relation to Article 15(2) crimes which are  
9 not classified as serious crimes under Article 22 of the Kosovo  
10 Criminal Procedure Code, Law No. 04\L-123, the Trial Panel may  
11 consist of a single judge."

12 So a discretion in those circumstances for the Trial Panel to  
13 consist of a Single Judge or, indeed, an usual Trial Panel under  
14 Article 25(1)(b) composed of three Judges and one reserve Judge, so a  
15 discretionary power in that case, a discretionary power mirrored in  
16 Rule 72 as to whether there is an expedited transmission of the case  
17 file for such a Trial Panel consisting of a Single Judge.

18 It seems to me, therefore, that there is a primary decision to  
19 be made before considering whether Rule 72 be used. The first  
20 decision to be made is whether this matter will be tried by a  
21 Trial Panel consisting of a Single Judge under Article 25(2) or by a  
22 full Trial Panel in this Article 25(1)(b), composed of three trial  
23 Judges and one reserve Judge.

24 Now, I acknowledge Your Honour observing that Your Honour's  
25 powers do not extend to assignment of Trial Panels and that's matter

1 for the President. In those circumstances, it would be our  
2 submission that it's premature to look at whether Rule 72 should be  
3 applied or not. The first decision that has to be made before any  
4 such consideration can be given is to whether the Trial Panel will be  
5 a Single Judge or a three-judge Panel.

6 In that respect, we note also that in the Directive on the  
7 Assignment of Judges it is made clear that such questions should be  
8 transparent. And as that is a listing decision, it is a  
9 discretionary decision, it does not follow the proceedings in  
10 relation to an Article 15(2) crime which is not classified as serious  
11 crimes under Article 22 of the Kosovo Criminal Procedure Code will be  
12 or must be tried by a Single Judge. As it's discretionary, there  
13 ought to be a discussion, if necessary with the President, with  
14 submissions being made by the parties on the point and the  
15 President to then rule, having heard argument on the matter, if  
16 indeed it is a matter for the President and not for Your Honour as  
17 Pre-Trial Judge.

18 I can say this, that our submission, as we've put it in writing,  
19 is that, in any event, we would submit - and we have provided an  
20 outline of what our submissions would be if there is, indeed, a  
21 proposal - that the matter be tried by a Trial Panel consisting of a  
22 Single Judge. We've set out in writing an indication of what our  
23 submissions would be if that situation did arise in paragraphs 39 to  
24 42 of our written submissions. And we do submit that in any event  
25 there is good sense in the organisation of a fair and, indeed,



1 efficient trial that Rule 98 requires at the point at which  
2 transmission to the Trial Panel takes places, a hand-over document  
3 summarising the arguments of the parties, the points of agreement,  
4 the evidentiary material produced by each party, suggestions as to  
5 the number and relevance of witnesses to be called, and questions of  
6 fact and law that are in dispute, there's good sense in that. And we  
7 won't be in a position to be able to do that until after the exchange  
8 of not only a pre-trial brief by the Specialist Prosecutor, because  
9 that would be one-sided, but after the exchange by certainly the  
10 Defence for Mr. Gucati and, as Mr. Cadman's made clear, the intention  
11 to submit a pre-trial brief on behalf of Mr. Haradinaj also. And we  
12 have set out submissions as a realistic timetable for that to take  
13 place already.

14 Those are my submissions, unless I can assist Your Honour with  
15 any particular point that I've raised there, in particular in  
16 relation to the operation of Rule 72 and Article 25(2).

17 JUDGE GUILLOU: Thank you, Mr. Rees.

18 Mr. Cadman, please.

19 MR. CADMAN: [via videolink] Thank you, Your Honour.

20 Of course, I don't want to repeat what Mr. Rees has said, and we  
21 fully support the proposition set out on behalf of Mr. Gucati as  
22 equally applicable to Mr. Haradinaj.

23 Your Honour, I would say this: And I'm, obviously, careful not  
24 to stray into matters not meaning to be discussed today. But,  
25 certainly, we would hope that a decision has not been made already as

1 to the composition of the Trial Panel and that we would have the  
2 opportunity to make submissions to the President before any decision  
3 is taken for the reasons that Mr. Rees has already stated of being of  
4 critical importance.

5 The only point I would say is that at this stage it is premature  
6 to be making that decision. We have proposed a third Status  
7 Conference to be held early April -- early to mid-April. At that  
8 stage a decision can properly be made as to whether it is appropriate  
9 to send the matter to a Trial Panel in whichever form that might be.

10 Your Honour, we've heard the term used repeatedly today,  
11 "expedited proceedings." I only say this: With some concern is that  
12 there does be -- that there appears to be an attempt to rush this  
13 forward before we are really ready. Obviously, this impinges upon  
14 the rights of the accused, and I would ask Your Honour to take that  
15 into account. It's not just that these proceedings should be  
16 expedited. These proceedings should be conducted fairly with  
17 equality between the parties. That really needs to be the overriding  
18 consideration in this, not just rushing forward for the purpose of  
19 having a trial before the Court.

20 So certainly our position would be it is premature. It should  
21 be decided in April as to the appropriate time and the appropriate  
22 format or composition of the Trial Panel.

23 JUDGE GUILLLOU: Thank you very much, Mr. Cadman.

24 Just a couple of things regarding the legal framework. First  
25 point, Rule 72(1) specifically mentioned at the end of the paragraph

1     that it is notwithstanding Rule 98(1), so it is an exception to  
2     Rule 98(1).

3             The second point I would like to mention is especially how the  
4     system, so to say, works, is that according to Rule 98(3), as  
5     Pre-Trial Judge, I provide notice to the President, and this is where  
6     the powers of the President, according to Article 25(2), are the  
7     powers of the President only, that are not the powers shared with the  
8     Pre-Trial Judge, of assigning a Panel. I just wanted to give this  
9     detail about the legal framework that we have between our Law and our  
10    Rules.

11            Madam Prosecutor, is there anything you would like to add?

12            MS. BOLICI: No, thank you, Your Honour.

13            JUDGE GUILLOU: I don't see any hands.

14            So at this point I would like to ask the parties whether they  
15    have any other issues they would like to raise? And, as usual, I  
16    remind the parties to give prior notice should any submission require  
17    the disclosure of confidential information so that appropriate  
18    measures can be taken.

19            Madam Prosecutor.

20            MS. BOLICI: Nothing else from the SPO, Your Honour. Thank you.

21            JUDGE GUILLOU: Thank you, Madam Prosecutor.

22            Mr. Rees.

23            MR. REES: [via videolink] Only this, Your Honour: In paragraph  
24    46 of our written submissions, we've set out -- because we understood  
25    the Court to ask about when a trial may take place, we have set out a

1 proposed timetable there that we'd ask the Court to consider. That  
2 takes into account both the ongoing work from the SPO with a further  
3 six weeks for them to serve their pre-trial brief, the ongoing  
4 disclosure issues that we envisage to take place, Defence  
5 preparations, and, of course, bearing in mind the holiday period that  
6 will take up August.

7 So we have proposed there a trial not before 30 August 2021.  
8 Obviously, that matter can be considered further, we understand, at  
9 the next Status Conference. But I just wanted to raise that we have  
10 replied to the request for submissions on that point.

11 JUDGE GUILLOU: Thank you, Mr. Rees.

12 Mr. Cadman, please.

13 MR. REES: [via videolink] Your Honour, once again just to  
14 confirm that the Defence are lying in line with that same proposal.  
15 That is a joint proposal for a realistic timeline for being  
16 trial-ready.

17 JUDGE GUILLOU: Thank you, Mr. Cadman.

18 I thank the parties for their submissions. We will now break  
19 for 20 minutes and resume the hearing at approximately 1.05,  
20 The Hague time. I will issue a couple of oral orders when we are  
21 back in session.

22 The hearing is adjourned.

23 --- Recess taken at 12.46 p.m.

24 --- On resuming at 1.05 p.m.

25 JUDGE GUILLOU: Having heard the parties on the proposed

1 calendar, I will hereby issue three oral orders:

2 First, by 9 April 2021 the parties are ordered to notify me by  
3 joint submission of any agreement on points of law and fact;

4 Second, by 9 April 2021, the SPO is ordered to file its  
5 pre-trial brief, witness and exhibit lists, as well as its  
6 Rule 109(c) disclosure chart, accessible to the Defence;

7 And, third, by 9 April 2021, the SPO is ordered to complete its  
8 disclosure under Rule 102 and to complete disclosure of any Rule 103  
9 material in its possession.

10 I would now like to ask the parties on their views for a  
11 suitable date for the next Status Conference to address any  
12 outstanding matters before the next steps. I would ask all the  
13 parties to have in mind the recess of Easter as well when you propose  
14 dates, please.

15 Madam Prosecutor.

16 MS. BOLICI: Thank you, Your Honour. The SPO will be available  
17 at the Court's convenience and would welcome a Status Conference to  
18 be scheduled in the second half of March. Thank you.

19 JUDGE GUILLOU: Thank you, Madam Prosecutor.

20 Mr. Rees, please.

21 MR. REES: [via videolink] I think in our written submissions,  
22 Your Honour, we proposed the week after Easter.

23 JUDGE GUILLOU: Thank you, Mr. Rees.

24 Mr. Cadman, please.

25 MR. CADMAN: [via videolink] Thank you, Your Honour. We've

1 requested the same. Mr. Buckley and I have another trial matter for  
2 the first two weeks of March, so that would take us out until at  
3 least the third week of March. So I think after Easter, the first  
4 week of April would probably be the most appropriate.

5 JUDGE GUILLOU: Thank you very much, Mr. Cadman.

6 You will receive a Scheduling Order that will include an agenda  
7 before the Status Conference in due course. I also invite the  
8 parties to make written submissions if they would like to raise any  
9 specific issues during the next Status Conference.

10 This concludes public today's hearing. I thank the parties and  
11 the Registry for their attendance. I also wish to thank the  
12 interpreters for their flexibilities, stenographer as well,  
13 audio-visual technicians, security personnel for their assistance.

14 The hearing is adjourned. Thank you.

15 --- Whereupon the Status Conference adjourned at 1.08 p.m.