

1 Friday, 28 May 2021

2 [Status Conference]

3 [Open session]

4 [The accused not present]

5 --- Upon commencing at 11.00 a.m.

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

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

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

12 JUDGE GUILLOU: Thank you, Mr. Court Officer.

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

15 Madam Prosecutor.

16 MS. BOLICI: Thank you, Your Honour. For the Specialist
17 Prosecutor's Office, appearing today, Jack Smith,
18 Specialist Prosecutor; Matthew Halling, Associate Prosecutor;
19 James Pace, Associate Prosecutor; Artemis Chatzistavrou, Associate
20 Disclosure Officer; and I am Valeria Bolici, Prosecutor with the SPO.

21 JUDGE GUILLOU: Thank you, Madam Prosecutor.

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

23 MR. REES: Your Honour, my name is Jonathan Rees. I appear on
24 behalf of Mr. Gucati, and we are here en bloc today with
25 Mr. Huw Bowden and Ms. Eleanor Stephenson.

1 JUDGE GUILLOU: Thank you, Mr. Rees.

2 And now I turn to Mr. Cadman, please. I see that he is also en
3 bloc but remotely. Please, Mr. Cadman.

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

5 Toby Cadman for Mr. Nasim Haradinaj, joined by Mr. Carl Buckley and
6 Ms. Miriam Boxberg.

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

8 And now I turn to the Registry. Mr. Roche, please.

9 MR. ROCHE: Thank you, Your Honour. Ralph Roche, Judicial
10 Services Division.

11 JUDGE GUILLOU: Thank you, Mr. Roche.

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

14 On 20 May I scheduled the fifth Status Conference for this case.
15 My goal today is to review the status of the case and to organise
16 exchanges between the parties, as usual, to ensure an expeditious
17 preparation for trial.

18 In particular, I want to discuss: Disclosure, agreements on
19 points of law and facts, the status of Defence investigations, and
20 the accused's access to documents in the detention facilities of the
21 Kosovo Specialist Chambers.

22 I thank the SPO, the Defence, and the Registry for their written
23 submissions. And, as usual, there is no need to repeat your
24 submissions in detail, but I will invite the parties to respond to
25 each other's written submissions in a concise fashion, following each

1 item in the agenda.

2 As usual, I remind the parties to give prior notice should any
3 submission require the disclosure of confidential information so we
4 can go into private or closed session.

5 Before we discuss about disclosure issues, I would like to start
6 our hearing today with the last topic on our agenda, which is
7 detention issues, a topic that we discussed during the last Status
8 Conference. I would like to hear from the Registry and the parties
9 about the accused's access to documents and their interaction with
10 counsel in the detention facilities.

11 In her submissions, the Registrar recalled that a secure
12 electronic data sharing system, or SEDS, now operates effectively and
13 its storage capacity has been expanded to 100 gigabytes per user.
14 The Registrar is also evaluating the possibility to allow folders to
15 be moved by the parties from Legal Workflow to the SEDS directly, as
16 requested by the Defence during the last Status Conference, to
17 facilitate their communication with the accused.

18 I would like to thank the Registry for all their efforts to
19 facilitate the work of counsel in the context of the COVID-19
20 pandemic.

21 However, according to the Defence, the ongoing practical
22 difficulties in securing adequate facilities for preparation of the
23 defence is still a source of significant frustration because, first,
24 the Defence would prefer to use a USB hard drive to exchange
25 information with the accused in the detention facilities; and,

1 second, because communication between counsel and accused are still
2 made difficult by the fact that they remain separated by a glass
3 window with communication occurring through a telephone line only.
4 In this regard, I also note the submissions of the Haradinaj Defence
5 in F196.

6 I also note that the Haradinaj Defence indicated that the issue
7 of translations remained an ongoing concern that will affect the
8 ability to be trial-ready as planned.

9 I will, therefore, invite the Registry to provide details on
10 these matters; notably, if new medical guidelines are foreseen given
11 the evolution of the COVID-19 pandemic and the vaccination campaign.

12 I invite the Registry to indicate if it is possible explore
13 least restrictive solutions for meetings between the accused and
14 their counsel given the evolution of the pandemic or if it is still
15 too early given the current health situation.

16 And finally, I would also like the Registry to explore with the
17 medical officer the possibility to adapt the guidelines in the future
18 if accused and counsel are both fully vaccinated.

19 Let me first give the floor to the Registry. Mr. Roche, please.

20 MR. ROCHE: Thank you very much, Your Honour. I will seek to
21 address the issues that you raised one by one.

22 In terms of access to documents, as you have noted, the SEDS
23 system is operating effectively, and that is, to clarify, a system by
24 which detainees can access documents in a computer, an individual
25 computer in their cells. So that does not give them direct access to

1 documents during any face-to-face legal consultations with their
2 counsel.

3 In terms of access to documents during such legal consultations
4 in the detention facility, we have agreed, based on representations
5 from Mr. Rees, and we have provided him with a bespoke laptop and
6 placed some screens in the consultation room so that he and his
7 client may look at documents simultaneously in realtime. And,
8 obviously, if counsel for Mr. Haradinaj wished for such a solution,
9 we would be able to implement that at very short notice as well.

10 In terms of interaction between counsel and clients, the
11 restrictions in place at the detention facilities are solely and
12 wholly guided by the need to protect all people who attend the
13 detention facilities and also the accused from the pandemic. It is
14 based on independent, professional medical advice provided by the
15 medical officer of the Dutch prison service, who provides advice to
16 ourselves and also the other international tribunals who have
17 detainees at the international unit of the prison in Den Haag.

18 This is kept under constant review. This is a dynamic process
19 where, based on the evolution of the pandemic, as Your Honour has
20 described it, the restrictions are reviewed on a constant basis, and
21 it is very much the desired end goal of the Registry and the medical
22 officer that the existing necessary restrictions can be removed when
23 the pandemic conditions allow for that to be done.

24 In terms of vaccinations, the final second vaccination of
25 detainees is scheduled for 4 June, and that is, obviously, an

1 important factor but not the decisive one, because there are also
2 persons such as detention officers, staff, and other visitors to the
3 complex, and we need to also consider the potential impact upon them
4 of the potential of catching the virus and becoming infected.

5 So I can say in conclusion that this is a matter that we
6 appreciate the importance of, and it is one that we are engaging on
7 with the medical officer on a very frequent and intensive basis. And
8 as soon as the restrictions can be lifted, that will be done.

9 If Your Honour wishes, I can continue and talk about the folders
10 from Legal Workflow to the SEDS system and also translations?

11 JUDGE GUILLOU: Absolutely. Please proceed, Mr. Roche.

12 MR. ROCHE: Thank you, Your Honour.

13 As regards the transfer en bloc of folders from Legal Workflow
14 to the SEDS system, that is a matter that is ongoing. There are
15 technical issues. It is, sadly, beyond my technical knowledge to
16 explain to the Court in detail exactly what is involved, but the
17 relevant services of the Registry are working on this. It will take
18 some time, but it is being treated as a priority against the other
19 priorities for the maintenance and improvements of the Legal Workflow
20 system.

21 As regards USB sticks and their carriage into the detention
22 facilities, it is not possible to bring USB sticks, but we have found
23 a mitigation which I explained briefly earlier in terms of bespoke
24 laptop, which provides the same functionality in terms of access to
25 documents during legal consultations. And the SEDS system is the

1 safest and most secure method of the regular exchange of documents
2 between counsel and their clients. The USB stick is ultimately a
3 method of carriage of data, and the SEDS system is the most secure
4 method of achieving the same objective.

5 As regards translations, the previous indications of when they
6 would be ready have been adhered to, and the remaining translations
7 beyond those which are legally required to be provided to the Defence
8 will be provided to the Defence by no later than 15 June, as
9 previously indicated. And the Rule 86(3)(b) outline has also been
10 distributed on -- it was completed on 15 May and distributed on 18
11 May, as was previously undertaken.

12 I think that that addresses the issues raised by Your Honour,
13 but I just would like to conclude by saying that we understand the
14 importance of allowing -- of the need to remove the restrictions
15 currently in place at the detention facilities, and, as stated, this
16 is something that we are treating with the utmost seriousness and
17 continue to engage on a daily basis with the medical officer.

18 Thank you, Your Honour.

19 JUDGE GUILLOU: Thank you very much, Mr. Roche, for these
20 detailed submissions.

21 Now I turn to the Defence. Mr. Rees, please.

22 MR. REES: Your Honour, we are very grateful to the assistance
23 of the Registry, the Defence Office, and the IT team who, this week,
24 have engaged in a number of conversations with the Gucati team to try
25 and find workable solutions to allow the conferences that were

1 scheduled for this week to take place and to take place meaningfully.

2 The solution of the provision of a special laptop is very
3 welcome. That's of real assistance to us. The effectiveness of that
4 solution will be enhanced when, hopefully, the capability to copy
5 folders of material rather than individual files from the
6 Legal Workflow system onto the hard drive, because the hard drive and
7 the laptop will be the tool with which one can take the case
8 documentation into the detention facilities for conferences.

9 The erection of screens in the conference area in the detention
10 unit hasn't yet happened. It is planned to take place this
11 afternoon. Ms. Stephenson will go to assist from the Defence's
12 perspective in the installation of those screens to make sure that
13 that is a workable solution while counsel and detainee remain
14 separated by the glass partition.

15 The only other thing that I would wish to add, then, is this:
16 It's in relation to the relaxation in due course of the restrictions
17 which currently physically separates counsel from detainee and also
18 family visits to the detainee within the detention unit.

19 It does seem to us -- we're grateful for the indication of the
20 target date of 4 June to complete the inoculation programme within
21 the detention unit. We had understood, in fact, from the management
22 at the detention unit that all staff and detainees had, in fact,
23 already been fully inoculated, but, obviously, we will take
24 Mr. Roche's word for that. And we're grateful that if they haven't
25 been fully inoculated, they will be by 4 June.

1 We would -- whilst acknowledging that, of course, unexpected
2 events can happen, we would nevertheless invite the Court to set a
3 target date for the detention unit to lift that physical restriction
4 in place between counsel and detainee and also to allow family visits
5 to the detention unit.

6 It does seem to us reasonable that when all relevant parties are
7 fully inoculated that those restrictions are lifted, and setting a
8 target date at this stage, albeit -- of course, it can be reviewed in
9 due course if things take a turn for the worse, but setting a target
10 date will be of significant comfort to those within detention and
11 also to their families to allow them to start looking ahead and
12 planning for those visits in due course.

13 That would be our request at this stage.

14 JUDGE GUILLOU: Thank you, Mr. Rees.

15 Now I turn to Mr. Cadman, please.

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

17 Let me also express my gratitude to the Registry and Mr. Roche
18 for addressing some of the issues that we have raised. It is
19 regrettable that it has taken, unfortunately, so long for these
20 matters to be taken seriously and to be properly addressed.

21 I share Mr. Rees' comments that during my last visit with
22 Mr. Haradinaj, it was my understanding that he had, sadly, received
23 both vaccines and so had the majority of detainees. The problem was
24 with the prison guards. And as we had been informed previously, that
25 may not be completed until July, which obviously means that many of

1 these restrictions are not going to be lifted until July. And,
2 Your Honour, that is unacceptable.

3 We have previously been told by the Registry about the medical
4 advice. We have requested sight of that medical advice so that we
5 can determine whether it's necessary and proportionate and
6 potentially a challenge can be made. We have been told that it's not
7 a written advice; it's just part of a regular meeting with the
8 Registrar. We reiterate our request to actually have sight of that
9 so that we can determine whether that should, in fact, be challenged.

10 That being said, if the full restrictions are not going to be
11 lifted until July, that, of course, creates very serious problems
12 with Your Honour being able to transfer this to a Trial Panel at the
13 end of June. That seems to be highly unlikely as things currently
14 stand.

15 The issue with Legal Workflow, with the Registrar's submission
16 saying that this is working operationally and to a satisfactory
17 level, Your Honour, it is not. It is a very difficult system to work
18 with. We, of course, recognise having the files transferred and
19 being able to be directly transferred from Legal Workflow to SEDS
20 will be a welcomed addition. But as we've heard from Mr. Roche, that
21 is not complete. We don't know when it will be complete. There are,
22 of course, technical issues with that.

23 There has to be a system put in place where all of these matters
24 are given proper consideration. The SEDS system is a -- has, of
25 course, improved matters, and we're grateful to the Registry for

1 increasing that to 100 gigabytes. That almost certainly will have to
2 be reviewed now with the additional material that's been served that
3 we will get to when we discuss the matter of disclosure.

4 But the SEDS system and the changes to Legal Workflow are not a
5 replacement for being able to sit with our clients, go through the
6 material. Again, I'm hearing today for the first time that the
7 laptops and screens are being used, and, of course, that will improve
8 matters. But, again, I will visit Mr. Haradinaj on Monday and be
9 able to see for myself whether that is an adequate response, but
10 there does continue to be barriers.

11 Concerning the question of the USB sticks, it is highly
12 illogical if a CD-ROM can be taken into the detention unit and a
13 USB-C stick cannot, I don't see the rationale in that. I will get to
14 the other matter subject to Your Honour's recent ruling in relation
15 to video footage that we are now finally being given access to,
16 albeit not being able to take copies of. I will deal with that when
17 we deal with the question of disclosure.

18 But these are matters that in ordinary proceedings we would be
19 able to sit down with our clients, go through, analyse that material
20 together to take proper instructions. We're not able to do that. I
21 will, obviously, see what improvements have been made on Monday when
22 I see Mr. Haradinaj, but to be honest, Your Honour, at this current
23 stage I'm sceptical that proper measures are being put in place to
24 enable us to properly prepare for trial.

25 And, finally, the question of translation, there has, of course,

1 been some back and forth. We are grateful to the Registry for
2 fast-tracking the translation of the pre-trial brief, but, of course,
3 that's not the only document that needs to be required. We have to
4 remind ourselves, Your Honour, that this is not an international
5 tribunal. This is an institution of the Republic of Kosovo. The
6 individuals who are on trial are individuals -- are citizens of the
7 Republic of Kosovo and their language is Kosovo Albanian. They do
8 not speak English. They have a right for that material to be
9 translated.

10 Now, the points that have been made previously, that there is
11 only a legal obligation to translate certain material, that would
12 certainly be the case if a foreign national was being tried in a
13 foreign state. This is not the situation here. This is a citizen of
14 the Republic of Kosovo being tried before an institution of the
15 Republic of Kosovo, and so all material, all relevant material has to
16 be translated, and that is our position.

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

18 I will give the floor to Mr. Roche to reply to the Defence
19 teams, if, Mr. Roche, if you have anything to add. And I would also
20 like you to clarify, if possible, if the date of 4 June for the
21 vaccination, does it concern the accused only or does it also concern
22 the detention unit staff? And for the benefit of the Defence counsel
23 who are not based in the Netherlands, the Kingdom of the Netherlands
24 applies a rule for the distribution of the vaccine that is
25 practically only based on age, and this is mainly the reason why

1 there are still a lot of people who are not vaccinated, even if they
2 are in specific working environments.

3 Mr. Roche, please.

4 MR. ROCHE: Thank you, Your Honour.

5 As regards the operation of the SEDS system, counsel is free at
6 any time to engage with the Defence Office or -- yes, the Defence
7 Office is the best conduit, and we will endeavour to address any
8 issues. Any technical system involving remote access by a person not
9 physically present in The Hague is going to involve some technical
10 limitations, not least bandwidth, et cetera, but we have done and
11 will continue to do absolutely everything we can to address the
12 various concerns that have been addressed by counsel.

13 As regards the date for vaccinations, unfortunately, I don't
14 have the exact date for the finalisation of vaccination for the
15 detention officers. It is soon. It is after 4 June but not
16 significantly. A number of detainees have already received the
17 second inoculation. Obviously, I won't go into the specifics of who.
18 But the final, second vaccination for detainees will be completed by
19 4 June, with that for the detention officers soon afterwards.

20 But, again, I would point out that that is not the sole
21 criterion in this issue. There are a range of other factors which do
22 need to be taken into account. But at the risk of repeating myself,
23 this is something that we understand the importance and urgency of.

24 Thank you, Your Honour.

25 JUDGE GUILLOU: Thank you very much, Mr. Roche.

1 I take note of the requests from the Gucati Defence team to
2 issue a target date for the restrictions to be lifted. As I am
3 today, I am not in a position to determine this target date because I
4 haven't seen any medical advice from the medical officer, but I would
5 strongly advise the Registry to consult with the medical officer and
6 to issue either a target date or guidelines that will explain when
7 and under which condition the measures will be lifted, because I
8 think, as Mr. Roche said, this is a dynamic process. There is no
9 question that this is not here to stay. This is linked with the
10 current health situation, and there has to be clear parameters that
11 need to be taken into consideration to be able to decide on the
12 restrictions to be lifted.

13 Mr. Cadman, I see that you requested the floor. Please.

14 MR. CADMAN: [via videolink] Your Honour, as I had mentioned
15 earlier, we have not seen the medical advice. I now hear for the
16 first time that Your Honour has not seen the medical advice.
17 Clearly, you need to see the medical advice so that you can make the
18 determination on proportionality and necessity.

19 It is with concern that you are not being provided with that.
20 That was the only point I wanted to raise.

21 JUDGE GUILLOU: Thank you, Mr. Cadman.

22 Mr. Rees, do you have anything to add?

23 MR. REES: No, I echo Mr. Cadman's observation.

24 JUDGE GUILLOU: Thank you, Mr. Rees.

25 Mr. Roche, anything else to add?

1 MR. ROCHE: Thank you, Your Honour.

2 Just a final word that the approach of the Registry is to
3 advocate for lifting of restrictions. We are not, for example,
4 passively listening to the advice and accepting it, and our approach
5 is to say that we would want the restrictions to be lifted as soon as
6 they can responsibly be lifted, and we will continue to advocate for
7 such an approach.

8 Thank you.

9 JUDGE GUILLOU: So I feel that we all have the same objective.
10 Now it's a question of working closely with the medical officer so
11 restrictions can be lifted as soon as possible. And, in any case, we
12 will monitor the vaccination campaign so that this can be implemented
13 as soon as possible.

14 I don't see anybody requesting the floor on this issue, so we
15 will move now to the first item in our agenda.

16 I would like now to hear from the parties on the disclosure of
17 evidentiary material. We will start with the issue of the recent SPO
18 request for non-disclosure, which will be discussed in private
19 session. We will then move back to public session to discuss the
20 other matters related to disclosure and the remainder of the agenda.

21 Mr. Court Officer, can we please move into private session.

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24 [Open session]

25 THE COURT OFFICER: We are in public session, Your Honours.

1 JUDGE GUILLOU: Thank you, Mr. Court Officer.

2 So let us now move to the remainder of the disclosure process.

3 I first note that the SPO does not foresee any difficulties related
4 to the remainder of disclosure process. However, the SPO indicated
5 that on 7 May 2021 it received a partial response to a third party
6 request and that the relevant material was disclosed on 25 May 2021.

7 Accordingly, the third party request remains partly outstanding
8 and any material subsequently received will also be disclosed
9 pursuant to the applicable legal framework.

10 In their submissions, the Defence reiterated their concerns
11 expressed previously regarding continuing disclosure difficulties.
12 So I would like to hear from the parties whether they foresee any
13 other difficulties related to the remainder of the disclosure
14 process.

15 And I also note that the Defence for Mr. Gucati foresees being
16 able to submit objections to admissibility by 14 June, while the
17 Defence for Mr. Haradinaj submits that this is not possible, so I
18 invite the Defence to make any further submissions on this point as
19 well.

20 Let me first give the floor to the Prosecution.

21 Madam Prosecutor.

22 MS. BOLICI: Thank you, Your Honour.

23 So, first, we welcome the Gucati Defence's commitment to
24 indicate their objections to admissibility of evidence by 14 June.
25 Although, we note that the counsel indicated that details supporting

1 such objections would only be provided after that, it is not
2 indicated how long thereafter. And we simply submit, respectfully,
3 that the mere assertion that the admissibility of an item is objected
4 to is of little use for both the Court and the parties if the reasons
5 underlying those objections are not clarified. So we would encourage
6 the Defence to highlight such reasons rather than providing the mere
7 list of the items being objected.

8 In relation to the submissions from the Haradinaj Defence, I
9 note that counsel makes a general allegation that this will not be
10 possible because the materials, the relevant materials has not been
11 disclosed in time. The SPO has responded on a number of occasions,
12 recently in written submission, on such allegation confirming that
13 they are wholly ungrounded. In particular, I will refrain from
14 recalling once again on this occasion the SPO's compliance with the
15 timetable set by the Court, and the procedural history of this case
16 speaks for itself.

17 I just note, however, that the exhibit list has been filed on
18 9 April, according to the Consolidated Calendar, and that there has
19 been a single authorised addition since for good cause. Furthermore,
20 as previously highlighted, the bulk of the evidence in the exhibit
21 list was already part of the indictment supporting materials in
22 possession of the Defence since early January.

23 We submit, therefore, that there has been ample time to assess
24 admissibility issues, if any.

25 In relation to the 25 May disclosure, I note that the Defence

1 emphasised a number of pages of this disclosure of the materials
2 recently received by this third party.

3 First, I would like to recall that this disclosure has not come
4 unexpectedly, as instead submitted by the Defence. The SPO had
5 previously provided notice in at least three different Status
6 Conferences that there was one outstanding third party request and
7 that relevant material would be disclosed as soon as received.

8 I also wish to underline that the nature of this material is not
9 a collection of statements, is not a narrative that needs to be
10 assessed line by line by line. These are metadata, the print-out of
11 a database, and must be a string of numbers that should be treated as
12 such. So the impact that the Defence alleged this disclosure to have
13 on their preparation cannot certainly be measured in terms of number
14 of pages.

15 Thank you.

16 JUDGE GUILLOU: Thank you, Madam Prosecutor.

17 Now I turn to the Defence. Mr. Rees, please.

18 MR. REES: Your Honour, the position of the SPO is, frankly,
19 becoming mendacious. I will go through the history.

20 At the first Status Conference, a deadline of 19 February 2021
21 was set at the request of the Prosecution for them to complete
22 disclosure of all Rule 102(1), Rule 102(3), and 103 material. They
23 stated at that first Status Conference that they did not expect large
24 volumes of Rule 102 material to be disclosed.

25 At the second Status Conference on 24 February 2021, they told

1 Your Honour that on 19 February the Prosecution had discharged all of
2 its obligations under Rule 102(1)(b). By that stage, some 3.000
3 pages of evidence had been disclosed. They asked -- sorry, the
4 Defence asked at that stage because, although not great in volume,
5 3.000 pages - detailed transcript evidence with many hours of video
6 footage, and there were outstanding significant Defence
7 investigations that we predicted we would require to undertake - we
8 asked for 2 July 2021 as the deadline to file the Defence pre-trial
9 brief that we told Your Honour we intended to and we still intend to
10 file.

11 Following that second Status Conference, Your Honour issued the
12 Consolidated Calendar which brought forward the Defence proposal to
13 file the Defence pre-trial brief by 15 working days to 14 June. That
14 was, of course, on the basis that the SPO told Your Honour
15 unequivocally that all Rule 102(1) material had been disclosed.

16 At the third Status Conference, the Prosecution did refer to two
17 outstanding requests to third parties. They gave no indication as to
18 who those third parties were or what type of material it was or the
19 amount of material that was to be expected, nor did they even say to
20 Your Honour, to give Your Honour the assistance of saying, "Well, we
21 don't know how much material this might produce."

22 What they did state to you, Your Honour, at paragraph 8 of their
23 written submissions, was that the bulk of the SPO's disclosure had
24 been completed on 19 February 2021, and extraordinarily that phrase
25 is repeated today. I'm not sure in what sense the word "bulk" is

1 understood. It's clearly not a mathematical sense or indeed any
2 sense as normally understood, because the obvious impression that was
3 being painted for Your Honour and the parties was that whatever was
4 outstanding from these two additional third party requests would not
5 be of any great volume. And, indeed, reinforcing that impression,
6 they assured Your Honour that any further material that might come
7 would be disclosed by 9 April 2021.

8 The 9th April 2021 came and went. Your Honour will recall from
9 the last Status Conference that on, effectively, the eve of it, one
10 full working day before 23 April, there were a series of further
11 disclosures made to the Defence. These were made under Rule 102(3)
12 despite the fact that Your Honour had ordered all Rule 102(3)
13 material to be disclosed by 19 February 2021.

14 And I won't go through the history, lamentable as it is, of the
15 Rule 102(3) notice, because Your Honour will know it and know it
16 well.

17 Your Honour might also recall at the fourth status we said,
18 "Well, we've had these disclosures, they've been made on the eve of
19 the Status Conference," and we were busy responding to Your Honour's
20 order for the fourth Status Conference, preparing detailed written
21 submissions for the hearing itself, so we weren't in a position to
22 assist with the material that had been dropped on us.

23 Well, I can now, because that material ought to have been made
24 by 19 February. The 19th of February came and went, Your Honour
25 being assured by the Prosecution that all obligations had been met by

1 19 February, all Rule 102(3) material, there wasn't going to be much
2 of in volume, had already been disclosed. That material was 17 lever
3 arch files of material.

4 At the fourth Status Conference, while we had yet to assess the
5 material that had been dropped on us effectively on the eve of it,
6 Your Honour may recall that both myself and Mr. Cadman asked for some
7 consideration to be given before similar late disclosures are made on
8 the eve of Status Conferences. The Prosecution assured the Court
9 that Rule 102(1) material, Rule 102(1) disclosure was complete.

10 They did say that there was a single further request envisaged
11 to add to the exhibit list, and that related to the declaration of
12 Witness 04841, her declaration on 14 April 2021, which had been
13 disclosed by that stage. So we had a copy of that declaration which
14 Your Honour may recall the SPO indicated specifically that there was
15 one further request they envisaged to add to the exhibit list that
16 related to that declaration.

17 So despite their assertion again to Your Honour at the fourth
18 Status Conference, only one further addition to the exhibit list
19 envisaged, despite us requesting, not unreasonably, that the SPO try
20 and avoid making voluminous disclosures on the eve of Status
21 Conferences, despite the fact that they knew when we said to
22 Your Honour that we'd had disclosures on 28 April but we hadn't had
23 time to ascertain what was in there, they knew without telling
24 Your Honour or saying anything to Your Honour that that included a
25 very significant volume of Rule 102(3) material, 17 lever arch files

1 worth. They said nothing to Your Honour about that or the parties to
2 assist on the last Status Conference.

3 On the eve of this Status Conference, they double -- they double
4 up on that trick. And despite having had the material earlier in
5 May, they disclosed some 18.549 pages under Rule 102(1). And despite
6 assuring Your Honour that they only envisage one further request to
7 add to the exhibit list, that was in relation to the 14 April
8 declaration of W04841 on the last Status Conference, they disclosed
9 those 18.554 pages, saying they intended to add that to the exhibit
10 list via a request to come. And they also said that, in fact, there
11 is more material on its way, although - and this is very much part of
12 the pattern - they give no assistance, and they give no assistance to
13 Your Honour either, as to what that material is, how much it might
14 be.

15 They do try and give Your Honour another assurance, yet another
16 assurance, that that 18.549 page bundle that they seek to add to
17 their exhibit list is of no great significance, they say. Well,
18 Your Honour will forgive me if I reserve my judgement on the
19 significance or otherwise of that material, as a good lawyer should
20 do, until I have read it and I have analysed it and I have taken
21 instructions upon it. And I cannot do that in relation to
22 18.549 pages of complex, highly technical evidence quickly, and I
23 cannot rush and jump to, and I do not make any assurances to
24 Your Honour in those circumstances, of the significance of that
25 material or otherwise.

1 There have been repeated assurances that have been made to
2 Your Honour throughout these proceedings, relatively young as they
3 are, although the time is growing, repeated assurances from the SPO
4 that have turned out to be wrong and misleading. And I have
5 expressed scepticism at the last Status Conference and the conference
6 before that, and my scepticism continues not to be comforted but it
7 only grows.

8 We, of course, still have to deal with the 17 lever arch files
9 of material that was disclosed on the eve of the last
10 Status Conference. To add to those 17 lever arch files, we have
11 18.500 additional pages dropped on us on the eve of this
12 Status Conference that we now have to read, analyse, take
13 instructions upon, assimilate, and we await, we are told, further
14 material without any assistance as to what it is or the volume that
15 might come or even the candid acknowledgement from the SPO that they
16 don't know, if that is the case, how much further material there is
17 still to come that they will seek to add to their exhibit list.

18 It is time for the SPO to realise that they should be candid
19 with the Court about these matters. We know there is further
20 disclosure to come because Your Honour has ordered it.

21 One aspect of Your Honour's order rejecting the SPO's request to
22 withhold material related to search videos. At the time at which the
23 SPO addressed Your Honour, in writing and orally, about those search
24 videos, Your Honour was told - and, indeed, at the time Your Honour
25 ruled on it - Your Honour was told that, in fact, although there were

1 11 videos noted on the 102(3) notice, they were duplicates. So there
2 was, in fact, only two videos, two separate videos, one of which had
3 been duplicated ten times, I think.

4 Well, in fact, that's not right, because, following
5 Your Honour's order to give access to those videos, arrangements were
6 made to view them, and we were told that, in fact, a further eight
7 videos had been discovered. Now, of course, they have been made
8 available to us consequent to Your Honour's order. But it does
9 cause, again, further concern as to whether the SPO are properly
10 carrying out their obligations to, *inter alia*, list all relevant
11 material that they have in their possession on the Rule 102(3)
12 notice. These eight videos were not.

13 Why were they not discovered before yesterday? Why were they
14 not on the Rule 102(3) notice? Had any attempt properly been made to
15 identify all relevant material in Mr. Smith's possession to then put
16 on a detailed notice that is complete, comprehensive, and with
17 sufficient information for the Defence to be able to properly make
18 submissions as to whether any item on that list is material to the
19 Defence preparation?

20 There is to be, it follows, further additions to the Rule 102(3)
21 notice. Or at least if the SPO are serious about complying with
22 their disclosure obligations, there is to be a further version of the
23 Rule 102(3) notice. The fact of a further version follows from
24 Your Honour's orders to make disclosure.

25 For example, Your Honour has made orders to make disclosure in

1 relation to what was described as Gucati Request A. Gucati Request A
2 related to material that was absent from the Rule 102(3) notice that
3 the SPO were forced to provide after a dispute as to the adequacy of
4 what we termed the paltry 13 item Rule 102(3) notice, which
5 Your Honour ruled upon and, as a result of Your Honour's ruling,
6 expanded from 13 items to over, I think, approximately well over a
7 hundred. I think it was approximately 150.

8 None of the material that Your Honour has ordered to be reviewed
9 for disclosure purposes under Gucati Request A and to make disclosure
10 as per Your Honour's order appears on that Rule 102(3) notice and it
11 ought to have done. And, obviously, where a document is disclosed
12 that does not require recording under Rule 102(3) notice, any
13 contemporaneous note that is reviewed in accordance with
14 Your Honour's order and disclosure does not take place, that will, by
15 necessity, require an addendum to the Rule 102(3) notice in relation
16 to that material.

17 In relation to any further Rule 102(1) (b) material that we are
18 given notice of by way of e-mail informing us of the material that
19 was disclosed recently and turned out to be some
20 18-and-a-half-thousand pages, we ask Your Honour to order a deadline
21 for service of any material that the SPO intends to serve under
22 Rule 102(1) (b) together with a deadline for any further application
23 to add to the exhibit list. And we invite Your Honour to set a short
24 timetable, a short deadline to reflect the Court's requirement that
25 the time has come for the SPO's repeated assurances that their case

1 is complete. The time has come for those assurances finally to be
2 made good.

3 We have said -- we've said previously, we indicated at the last
4 Status Conference that we intended to meet the 14 June direction in
5 relation to the pre-trial brief, and we said at that
6 Status Conference that we intended to meet, at the same time, the --
7 to identify objections for admissibility at the same time.

8 In our written submissions, we express that we will not be ready
9 for the 14 June to serve the Defence pre-trial brief. We cannot be
10 in light of the way in which the SPO has handled their disclosure
11 obligations, making repeated assurances everything's complete and
12 then surprise after surprise. In particular, within the last month,
13 some 17 lever arch files and 18.500 additional pages have been
14 provided to us.

15 So we do ask the Court to lift the deadline for the Defence to
16 voluntarily file, and we do intend to voluntarily file, a Defence
17 pre-trial brief from its current date of 14 June. We have set out
18 that in order to assist, we can, nevertheless, attempt to list the
19 items of evidence on the exhibit list as it currently stands that we
20 intend to object to their admissibility.

21 That list, I can say here and now, will be many times longer
22 than the paltry 13-item original Rule 102(3) list. It will be a work
23 in itself of some length, and it will be time consuming. And I am
24 content that in that list we can have a column where, effectively in
25 a word or two, we can identify the general nature of the objection -

1 so, for example, hearsay - but we certainly will not be in a position
2 to draft motions, detailed submissions as to the objection on grounds
3 of admissibility to the evidence that we intend to object to.

4 We have yet to wrestle with 17 lever arch files and
5 18-and-a-half-thousand pages of highly complex technical evidence
6 that have been landed upon us in the course of the last month. So we
7 do -- in a spirit of trying to give assistance, as we have said in
8 our written submissions, we will aim to produce, as far as we're able
9 to, a list of such exhibits that we presently intend to object to
10 and, if necessary, identify with a word or two an objection, hearsay,
11 et cetera. And if it is understood on that basis, then Your Honour
12 can make that a target date.

13 In relation to when the Defence pre-trial brief itself may be
14 ready, it is difficult for me at this stage because of the state of
15 flux which this case presently is now in to meaningfully set out a
16 proposed timetable. Not only do we have the matters that I've
17 already raised to deal with, not only do we have the suggestion that
18 there is further material to come under Rule 102(1)(b) but without
19 any assistance as to how much or what it is, not only do we have the
20 further disclosure that Your Honour has ordered to the SPO to make,
21 that is to come, not only do we have the issue in relation to items
22 99 and so on, which Your Honour will understand the material I refer
23 to, not only do we have that material and the resolution, at least
24 provisionally, to come, we also, of course, still have an outstanding
25 appeal to the Court of Appeals Panel, with Your Honour's leave, in

1 relation to the scope of the indictment.

2 The consequences of that decision, until we receive it, we
3 cannot say. But Your Honour will readily see that there may be
4 consequences that flow in terms of the Defence preparation from that
5 decision, one way or the other.

6 But perhaps aiming to be of assistance, but encouraging the
7 Court to at least set this down provisionally but with some
8 understanding, if in due course these targets are not met, the
9 current date of 14 June might serve Your Honour as a proper deadline
10 for the SPO to deal with all outstanding matters and assure the Court
11 that's it. If they met that, and all other outstanding issues are
12 resolved by 14 June, 28 days after that would be 12 July, and we
13 will, of course, continue to work on such matters as we're able to at
14 this stage in the interim with a view on best-case scenario of being
15 able to file our voluntary Defence pre-trial brief on 12 July.

16 I think it is the case in relation to each of the parties that
17 it's proposed that there be a further Status Conference after service
18 of any pre-trial brief and before the transmission of the case file
19 to the Trial Panel, and perhaps -- two weeks after that date would be
20 Monday 26 July, before the holiday period, of course, for the -- the
21 holiday recess. So perhaps 26 July might be a convenient date on
22 that timetable for a further Status Conference, and, of course, at
23 that stage we can look to see whether, in fact, the SPO has been able
24 to resolve all outstanding matters accordingly.

25 Unless I can assist any further on these matters, Your Honour.

1 JUDGE GUILLOU: Thank you very much, Mr. Rees. I see that it's
2 already two hours -- you have 20 seconds.

3 MR. REES: Just very quickly, Ms. Stephenson has to go as well
4 at 1.00. And I think Your Honour was just about to refer to a short
5 recess, perhaps.

6 JUDGE GUILLOU: Absolutely. I apologise to the interpreters. I
7 wasn't -- I didn't expect that you were going to be that long,
8 Mr. Rees, so I thought we would be able to break earlier. So I
9 apologise to the interpreters. We're going to make a break of
10 20 minutes, and we'll be back in the courtroom in 20 minutes for the
11 remainder of this hearing.

12 The hearing is adjourned.

13 --- Recess taken at 1.02 p.m.

14 --- On resuming at 1.20 p.m.

15 JUDGE GUILLOU: Welcome back. We will continue with the issue
16 of disclosure with Mr. Cadman.

17 Just before we continue, Mr. Cadman, just to inform you that the
18 other Defence team has a flight to catch, so if you could be maybe
19 not brief but at least not too long. I think they would appreciate.
20 If not, I think they would be stuck in the Netherlands for the next
21 20 days which is something they might not appreciate.

22 Please proceed, Mr. Cadman.

23 MR. CADMAN: [via videolink] Your Honour, as my learned friend
24 and his team need to leave early, and as Mr. Rees has very kindly
25 dealt with pretty much every issue that I could have dealt with in

1 such a forceful and eloquent way, I will keep my submissions as brief
2 as I possibly can.

3 Let me start by saying that it is in Mr. Haradinaj's interest
4 that these matters are dealt with expeditiously, and certainly there
5 is no intention to delay these proceedings any further than
6 absolutely necessary. And, certainly, it is not the position of the
7 Defence to just then -- to extend these proceedings further than
8 absolutely necessary.

9 That said, the remark that was made in our written submissions
10 as to the feasibility of having the pre-trial brief completed by
11 14 June is, of course, a matter which is directly relevant to, as
12 Mr. Rees has said, the 17 lever arch files that were served before
13 the last Status Conference and the 18.000 pages' worth of documents
14 that have now been served. And whilst the Prosecutor may not
15 consider them to be relevant, as Mr. Rees has said, it is our
16 position that we will need to deal with them in detail. And I've
17 asked Mr. Buckley to deal with that point in particular.

18 But let me -- before we get into that, let me just make a few
19 remarks, some of which I've already made. One of the concerns that
20 we have is that there appears to be a recurring theme or a pattern in
21 many of these cases before the Specialist Chambers that gives us real
22 cause for concern. Arrests are made, indictments are filed long
23 before these cases are ready to proceed. Mr. Haradinaj has been
24 detained for eight months, and many of the defendants before this
25 Court are being detained for unnecessarily lengthy periods.

1 We see repeated flagrant disregard for transparency, for fair
2 trial and protection of human rights and fundamental freedoms, and
3 these are of concern. And the Defence are repeatedly accused of
4 seeking to delay these proceedings and making unnecessary demands of
5 the Prosecution, in particular, what investigations the SPO has
6 conducted. And these reasonable requests are dealt with, as I've
7 said before, with responses that can only be described as
8 condescension, and it is an inappropriate way for these proceedings
9 to be managed.

10 As I've said earlier today, the Prosecution seeks to bring a
11 case without disclosing material against our clients, not only to us,
12 to the Defence, Your Honour, but to you as well. We don't have
13 access to scrutinise that material, and the Prosecution seeks to rely
14 on witness accounts that we're not even going to be able to
15 cross-examine.

16 As I've said, and without going -- the need to go back into
17 closed session, the Prosecution is seeking to bring its case entirely
18 on evidence that is covered by anonymity, closed session, and voice
19 and face distortion. That means the entirety of their trial is
20 likely to be conducted in secret.

21 We've repeatedly requested that the Court recognise the Defence
22 is entitled to disclosure, and we have repeatedly made requests to
23 the Prosecution as to the manner in which the documents are said to
24 have been leaked. We do consider that to be a relevant matter, and
25 we're certainly entitled to investigate that as to a potential

1 defence that can be put.

2 The requests that we have made of the Prosecution have been met
3 with: These are matters of no relevance or they are matters relevant
4 to the trial. We have requested whether any action was taken against
5 SPO members who may or may not have been involved in the leaking of
6 such documents. We're entitled to know what investigations have been
7 conducted. We have been forced to investigate those matters
8 ourselves, and that is, of course, extending the time needed for
9 Defence investigations.

10 We are aware that a large number of SPO personnel whose
11 contracts were not extended immediately after the leak, that may or
12 may not be related to these proceedings. But, again, these are
13 matters that we are entitled to investigate and entitled to know what
14 the Prosecution has actually done. We consider it to be the lack of
15 an effective investigation by the SPO central to this case.

16 Now, the Prosecution, as I have said, will argue that it's
17 irrelevant or it's a trial issue. We do not consider it to be a
18 trial issue. There are real concerns as to chain of custody. There
19 is no statement from the officer who took custody of the material
20 that's said to have been leaked. That is a matter of concern.

21 Now, Your Honour made a ruling a matter of days ago as to the
22 ability for us to review video footage that related to the search and
23 seizure of material. We have been told that we are only able to
24 observe that material in the SPO premises in the presence of SPO
25 staff. We are allowed to take notes, but we are not entitled to take

1 possession of that video footage, and we are only able to present
2 outlines with notes.

3 We can't show them the footage so that they can identify who
4 they remember or what they remember to have happened. And,
5 Your Honour, this is a damning accusation of Specialist Counsel
6 before this Court. It is not the Defence that have held private
7 briefings with members of the diplomatic community and have discussed
8 these matters with parties outside of the court. Yet we are being
9 penalised as a result of the so-called confidentiality of these
10 matters, and it is of some concern.

11 Of course, we would have the opportunity to review the material,
12 and we will have an opportunity, if we deem appropriate, to appeal
13 your ruling, and to appeal your ruling in respect of what we consider
14 to be an error of the Gucati Requests B and C. Those are the
15 matters, as I mentioned, that are critical to the Defence
16 preparations, and so we have to be able to investigate those
17 frequently.

18 Your Honour, I make these as general observations that continue
19 to impact upon our ability to move this case forward, properly
20 forward within the timeline, the time schedule that Your Honour has
21 set. It is going to be very, very difficult to comply with the
22 deadline of, effectively, 16 or 17 days to deal with the filing of a
23 pre-trial brief. Of course, we fully intend to file a pre-trial
24 brief. We intend to deal with the question of admissibility of
25 evidence within that. We intend to deal with any agreement that can

1 be made as to the facts on the law as we have previously discussed
2 with the SPO. We are not in a position to do that at this stage. We
3 hope to be in a position to do that when we file the pre-trial brief,
4 but I think it is highly unrealistic to expect us to do that within
5 16, 17 days when we have 18.000 pages of documents that we do need to
6 consider.

7 I will stop there, Your Honour, as I know others need to leave.
8 I would just ask Mr. Buckley to deal with, very briefly, with the
9 question of the 18.000 pages.

10 JUDGE GUILLOU: Thank you, Mr. Cadman.

11 Mr. Buckley, please.

12 MR. BUCKLEY: [via videolink] Your Honour, I am grateful. I also
13 acknowledge the time pressures and I will be as brief as I possibly
14 can.

15 Your Honour, it's quite clear that what you are hearing this
16 morning is collective frustration on the part of both Defence teams
17 in terms of the manner in which this disclosure process has been
18 undertaken by the SPO.

19 The SPO has consistently submitted that it doesn't foresee any
20 issues with the disclosure process going forward and that is
21 something that it has submitted on previous case status hearings.
22 However, I would respectfully submit that it has become abundantly
23 clear that there are very real difficulties with disclosure going
24 forward, much as there has been previously.

25 Further, the SPO has previously sought to suggest that the

1 Defence are seeking to delay the case. Again, that position is as
2 wholly inaccurate then as it is now, and if anything, the position is
3 even more stark this morning than it has been previously. The
4 reality of the matter is what ought to have been a relatively
5 straightforward process has become significantly protracted and it
6 has been protracted solely down to this drip feed approach to
7 disclosure that we are all still suffering from.

8 Mr. Rees previously outlined how before the fourth Status
9 Conference a significant amount of further disclosure was made just
10 one day prior to that conference, approximately 17 lever arch files.
11 Using a generalised metric of 500 pages per file, that is
12 approximately 8.500 pages of disclosure.

13 Yet again, before this hearing, again further disclosure was
14 made and, as Mr. Rees outlined, the SPO doubled up in terms of its
15 page count and somewhere in the region of 18-and-a-half-thousand
16 pages of disclosure, which give us a total from two case status
17 hearings of 26- to 27.000 pages of disclosure. And I make no apology
18 for the strength of my submissions, Your Honour, but such an approach
19 ought not to be tolerated.

20 The SPO has continually sought to suggest at various stages that
21 its disclosure obligations are complete. Clearly, they are not.
22 Further, the SPO has sought to suggest that this case will be ready
23 to be transferred to the Trial Panel. Again, clearly it is not.
24 What the SPO have not maintained, however, is that the defendants
25 have an absolute right to a fair trial, and at this stage, that

1 guarantee has not been adhered to.

2 Dealing with the specifics of the most recent disclosure,
3 18-and-a-half-thousand pages need to be read. At the commonly
4 accepted metric of 2 minutes per page, that is 37.000 minutes,
5 618 hours, or 88 days. Now I accept that one individual is not
6 necessarily going to read all of it, and the initial assessment may
7 be split across a number of members of the team. However, it is
8 still a significant, massive time commitment.

9 I also note the SPO's submission that not all of those pages are
10 relevant. However, the SPO appears to be conflating opinion with
11 fact. It goes on to suggest that, namely, it need not be read line
12 by line. My apologies, Your Honour, but that is wholly inaccurate.
13 And, again, this is the difference between their opinion and the
14 fact. Regardless of whether the SPO deem those pages to be relevant,
15 the Defence are required to read every word of every page.

16 Both Defence teams have clear professional obligations to their
17 clients. Those professional obligations include considering all of
18 the evidence that is disclosed, each and every word of that evidence,
19 regardless of whether the SPO deem it relevant or need it for trial
20 or otherwise. That is not their decision to make.

21 I echo Mr. Rees's points in terms of the procedural history of
22 this case. And, again, the fact that this previous submissions of
23 the SPO are demonstrably inaccurate. And, therefore, to seek to
24 attach any blame to the Defence, and then further that it is the
25 Defence that is being difficult in this process, is wholly

1 disingenuous. This case is not ready to be transferred to the
2 Trial Panel, in our respectful submission, nor will it be whilst
3 there are still significant issues that fall to be addressed,
4 including the anticipated further disclosure of an unknown volume
5 alluded to by the SPO in their most recent submissions.

6 The SPO simply have to be clear on what it is that they have, on
7 what it is that they tend to disclose, not just subject matter but
8 volume. It has to be done so as to ensure that this matter can be
9 progressed expeditiously, something that they are summarily failing
10 to do at this stage. All of these issues directly affect the ability
11 of the defendant to prepare the case and, importantly, directly
12 affect the ability of the defendant's legal team to undertake those
13 necessary preparations, including the drafting of the pre-trial
14 brief.

15 Again, as has already been alluded to, at this stage, the
16 current date for the submission of the pre-trial brief simply can't
17 be met. If the previous assertions of the SPO had been correct, then
18 that deadline could have and would have been met. Unfortunately,
19 those previous assertions and every assertion since has been
20 incorrect.

21 Again, given the protracted nature of the disclosure process,
22 the ability to submit objections to evidence or otherwise is, again,
23 delayed. The exhibits list was disclosed on 9 April, and that is all
24 well and good, Your Honour; however, the process does not start and
25 end with the disclosure of the exhibits list. It is the disclosure

1 of the evidence itself that also informs the Defence case and informs
2 the decision on whether objections are to be raised or otherwise. It
3 is, therefore, not correct to suggest that everything is available on
4 9 April and therefore the process and timelines could be met, because
5 that is, again, incorrect.

6 I would respectfully ask Your Honour that we now be realistic
7 with any timeline that is imposed. We acknowledge our obligations to
8 deal with matters expeditiously and to ensure that this case proceeds
9 as it should. In the same vein, however, the SPO is subject to those
10 same obligations, obligations that they have failed to adhere to up
11 to this current date; and, thus, the Defence is precluded from
12 adhering to its obligations, not because it is being difficult, not
13 because it is seeking to delay matters, but it is simple natural
14 progression of that which has gone before.

15 Your Honour, I could address you at length on those matters,
16 but, again, because of time pressures, I conclude my submissions.

17 JUDGE GUILLOU: Thank you very much, Mr. Buckley.

18 I give back the floor to the SPO. And if you could also tackle
19 the point mentioned by Mr. Rees about the videos --

20 MS. BOLICI: Yes.

21 JUDGE GUILLOU: -- that would be much appreciated.

22 MS. BOLICI: Yes, thank you, Your Honour. I will address the
23 Defence allegations very briefly.

24 I understand that the Defence request an extension of the
25 deadline set for the filing of the pre-trial brief. They can do so

1 by showing good cause. For sure they cannot do so by misrepresenting
2 the procedural history of this case, which I do not intend to recall,
3 if not by confirming that the SPO complied with its deadlines step by
4 step, requested authorisation for each undertaken step, and
5 anticipated any issue both with the parties and with the Court.

6 On the last remark from the counsel for Mr. Haradinaj, yes, all
7 the materials that has been indicated on the exhibit list have, of
8 course, been disclosed prior to the filing of the exhibit list, so
9 this is not an issue and can hardly be disputed.

10 I would like instead to go back to the issue of the video
11 concerning the search and seizures.

12 Following Your Honour's order, we practically engaged with the
13 Gucati's Defence in order to organise the first viewings yesterday.
14 And when the videos were uploaded on the laptop that has been made
15 available to the Defence, it became apparent that the 11 items that
16 have been listed on the 102(3) notice are actually distinct pieces of
17 footage, distinct videos that do not duplicate each other.

18 Admittedly, there has been an error in the process of uploading
19 the videos in the evidentiary software so that the same videos have
20 been linked several times to different ERNs. All of the 11 videos
21 have been made available to the Gucati Defence yesterday, the same
22 conditions as indicated in Your Honour's recent decisions, and we are
23 in the process of disclosing the full package of videos to the Court
24 which we aim to do by today.

25 The Defence for Haradinaj has indicated that they will intend to

1 look at the videos as well on Monday, which has been arranged
2 already, and the Defence for Mr. Gucati indicated that they intend to
3 review the videos. So, again, that will be arranged as soon as the
4 relevant dates would be indicated.

5 That would conclude my submissions for this point. Thank you,
6 Your Honour.

7 JUDGE GUILLOU: Thank you, Madam Prosecutor.

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

9 MR. REES: [Microphone not activated] No, thank you.

10 JUDGE GUILLOU: Mr. Cadman?

11 MR. CADMAN: [via videolink] Your Honour, just to reiterate, and,
12 we can, of course, put it into a written submission, but our position
13 is it is wholly inappropriate for us to review those videos without
14 being able to go through them with our clients, without being able to
15 take full instructions on those. Of course, that relates to your
16 previous decision, and we will have to take the necessary steps in
17 relation to that.

18 But it is -- it is impossible for us to be able to take
19 instructions without being able to take possession of that video
20 footage, and we see no reason why counsel, who are members of the bar
21 of England and Wales, Specialist Counsel in this Court, cannot be
22 trusted to use -- to observe those video footage outside the Court
23 premises and --

24 JUDGE GUILLOU: Mr. Cadman, I've already ruled on that matter.
25 So either you file a request for a reconsideration or you file a

1 request for leave to appeal. These are the two possibilities. I
2 understand what you are saying, but I invite you to choose one or the
3 other if you wish to dispute my ruling.

4 MR. CADMAN: [via videolink] Which we've already indicated we
5 will, Your Honour.

6 JUDGE GUILLOU: Thank you, Mr. Cadman.

7 Madam Prosecutor, nothing else?

8 MS. BOLICI: [Microphone not activated].

9 JUDGE GUILLOU: Thank you.

10 We are going to move to the next item on the agenda, which is
11 the agreement on points of law and fact.

12 I note that the SPO communicated to the Defence a proposition on
13 agreed facts on March 12. No proposition to agree on points of law
14 has been made.

15 I also note that the Gucati Defence estimates that an agreement
16 on points of fact is unlikely, except biographical details, the dates
17 of televised press conferences and speakers therein. But both
18 Defence teams indicated that they will be in a better position to
19 identify any agreement on points of facts in their pre-trial brief or
20 after their pre-trial brief is filed.

21 So I take note that no agreement will be reached before the
22 Defence pre-trial brief. Do the parties wish to add anything on this
23 topic?

24 Madam Prosecutor.

25 MS. BOLICI: No. Thank you, Your Honour.

1 JUDGE GUILLOU: Mr. Rees? Do you mind --

2 MR. REES: No, thank you, Your Honour.

3 JUDGE GUILLOU: Thank you. It's for the transcript.

4 Mr. Cadman, please.

5 MR. CADMAN: [via videolink] No, Your Honour.

6 JUDGE GUILLOU: Thank you, Mr. Cadman.

7 Then we move to the next point on our agenda, which is the
8 Defence investigations.

9 I invite the Defence to provide updates on the status of its
10 investigation, including the estimated overall amount and type of
11 evidence it intends to disclose to the SPO, and whether requests for
12 protective measures are envisaged.

13 I note that the Defence do not intend to offer a defence of
14 alibi. I also note that the Defence have not finalised its position
15 at this stage regarding grounds excluding responsibility, and,
16 therefore, cannot comment in the positive or the negative in terms of
17 the Defence to be advanced. And, finally, I note that no request for
18 unique investigative measures is envisaged.

19 So I invite the Defence for their submissions on this matter and
20 to indicate if this also has an impact on their ability to meet the
21 current targets, but I think this has already been addressed in the
22 previous submissions of the Defence. So unless you want to add
23 anything related to your investigations, I think we've already
24 discussed that matter.

25 Mr. Rees, please.

1 MR. REES: No, Your Honour, I have nothing further to add than
2 that which I've set out in the written submission. Thank you.

3 JUDGE GUILLOU: Thank you, Mr. Rees.

4 Mr. Cadman, please.

5 MR. CADMAN: [via videolink] Your Honour, I take the same
6 position. Nothing I need to add further.

7 JUDGE GUILLOU: Thank you, Mr. Cadman.

8 Does the Defence want to say anything about this -- the
9 Prosecution, sorry.

10 MS. BOLICI: Just -- sorry. Thank you, Your Honour.

11 Just one clarification about Defence submissions on other
12 grounds excluding criminal responsibility pursuant to Rule 95(5),
13 because I recall that in the Consolidated Calendar, the Defence was
14 supposed to submit such information by 11 May, but there has been no
15 indication in the latest submission whether they intend or not at all
16 to submit such defence.

17 So it's just a request of clarification, whether any such
18 defence is going to be put forth, or there is a request for an
19 extension of this deadline, or the Defence is not yet in a position
20 to provide his opinion on that. Thank you.

21 JUDGE GUILLOU: Thank you, Madam Prosecutor.

22 My impression, and this is what I just mentioned, is that the
23 Defence is not in a position to do so despite the previous deadline,
24 given the disclosure issues that have been flagged by the Defence
25 earlier.

1 Is that correct, Mr. Rees?

2 MR. REES: That is correct. I could address Your Honour at some
3 length about how the operation of Rule 95 and how there is a
4 distinction between the voluntary invitation to submit a Defence
5 pre-trial brief, which requires some detail in the sense that there
6 are the requirements of general nature of the defence and then to
7 respond to the Prosecution pre-trial brief by paragraph, and the
8 compulsory requirement to give notice of specific defences.

9 In circumstances where we have said from the outset that we
10 intend to take up Your Honour's invitation to submit a voluntary
11 pre-trial brief, our defence will be set out in the pre-trial brief.
12 There will be no suggestion the SPO will not have notice of our
13 defence.

14 JUDGE GUILLOU: Thank you, Mr. Rees.

15 Mr. Cadman, do you want to add anything on this?

16 MR. CADMAN: [via videolink] Only to say, Your Honour, I believe
17 we've set that out in our written submissions already, that any
18 defence as such will be set out in the pre-trial brief.

19 JUDGE GUILLOU: Thank you, Mr. Cadman.

20 I would now like to hear the parties of their views on a
21 suitable date for the next Status Conference.

22 Madam Prosecutor.

23 MS. BOLICI: Your Honour, the SPO would welcome a further
24 Status Conference depending on the deadline that would be indicated
25 by the Defence on the submission of the pre-trial brief. It would be

1 meaningful to have a Status Conference after that time. Thank you.

2 JUDGE GUILLOU: Thank you, Madam Prosecutor.

3 Mr. Rees.

4 MR. REES: Your Honour, I've already set out my proposal for a
5 timetable, looking forward, but accepting that, even at this stage,
6 there is room for that -- those deadlines not to be met for different
7 reasons. Can go back over that, but that's my proposal at this stage
8 for Your Honour's assistance, and I hope it helps.

9 JUDGE GUILLOU: Thank you, Mr. Rees.

10 Mr. Cadman, please.

11 MR. CADMAN: [via videolink] Your Honour, having heard Mr. Rees
12 on his estimation of an appropriate timetable, we would support that.

13 JUDGE GUILLOU: Thank you, Mr. Cadman.

14 At this point I would like to ask the parties whether they wish
15 to raise any other issue.

16 Madam Prosecutor.

17 MS. BOLICI: Nothing for the SPO, Your Honour. Thank you.

18 JUDGE GUILLOU: Mr. Rees.

19 MR. REES: No, thank you, Your Honour.

20 JUDGE GUILLOU: And, Mr. Cadman.

21 MR. CADMAN: [via videolink] In the interest of time,
22 Your Honour, nothing further.

23 JUDGE GUILLOU: Thank you very much.

24 Unless the parties have anything to add, this concludes today's
25 hearing. As usual, I thank the stenographer, AV technicians, and

1 interpreters for their assistance, and security personnel as well.

2 And we will meet for a further Status Conference in due course.

3 The hearing is adjourned.

4 --- Whereupon the Status Conference adjourned at
5 1.47 p.m.

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