

1 Friday, 8 January 2021

2 [Status Conference]

3 [Open session]

4 [The accused not present]

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

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

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

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

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

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

15 MR. PACE: Good afternoon, Your Honour, and to everyone present
16 in the courtroom and remotely. Appearing for the Specialist
17 Prosecutor's Office today are Alex Whiting, Deputy
18 Specialist Prosecutor; Valeria Bolici, Prosecutor; Line Pedersen,
19 Case and Evidence Manager; and I am James Pace, Associate Prosecutor.

20 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

21 Now I turn to the Defence. And for the Defence who attend this
22 hearing remotely, I will call the lead counsel of each accused as
23 they are reflected in the case name, starting with counsel for
24 Mr. Gucati and then counsel for Mr. Haradinaj.

25 Mr. Rees, please.

1 MR. REES: [via videolink] Good afternoon, Your Honour. I appear
2 on behalf of Mr. Gucati. I'm assisted by Specialist Co-Counsel,
3 Mr. Huw Bouden.

4 MR. CADMAN: [via videolink] Good afternoon, Your Honour.
5 Toby Cadman appearing for Mr. Haradinaj, assisted by
6 Mr. Carl Buckley.

7 JUDGE GUILLOU: Thank you, counsel. And for the record, I am
8 Nicolas Guillou, Pre-Trial Judge for this case.

9 On 18 December I scheduled a hearing for today for two purposes:
10 First, to allow Mr. Haradinaj to enter a plea on the charges brought
11 against him by the Prosecutor and confirmed by the Pre-Trial Judge;
12 and second, to hold a Status Conference in this case.

13 I will begin with Mr. Haradinaj's plea. But before we proceed
14 with our agenda today, I would like to remind the parties that should
15 they wish to take the floor to raise a specific issue or respond to
16 anything that has been said, they shall stand up if they are in the
17 courtroom or raise their hand if they are attending the hearing via
18 video-conference.

19 Should anyone attending the Status Conference via
20 video-conference experience any technical difficulties, please inform
21 the Court Officer and myself immediately by waving your hand. And if
22 the connection with any of the remote participants fails, we will do
23 our best to reconnect immediately. If the issue cannot be resolved
24 immediately, I may have to adjourn the hearing for a couple of
25 minutes to ensure that the line is reconnected.

1 Let me first start with the plea hearing.

2 On 6 January, further to a request by counsel, I approved
3 Mr. Haradinaj's absence for the second part of this hearing but
4 ordered Mr. Haradinaj to appear in person or via video-conference for
5 the first part of this hearing for the purpose of entering a plea.

6 On the same day, counsel for Mr. Haradinaj informed me that his
7 client refused to attend the hearing for the purpose of entering a
8 plea.

9 Mr. Cadman, before I proceed, do you wish to add anything on
10 this topic?

11 MR. CADMAN: [via videolink] Your Honour, thank you. We had put
12 in writing the reason why Mr. Haradinaj had declined to attend. He
13 has instructed me that he is declining to attend on the basis of
14 protest the way he has -- perceives he has been treated, and that a
15 not-guilty plea can be entered on his behalf, and he has instructed
16 me to appear on that basis.

17 JUDGE GUILLOU: Thank you, counsel.

18 I take note of Mr. Haradinaj's refusal to appear before me, and
19 I hereby find that the conditions under Rule 68(4) of the Rules are
20 fulfilled for the first part of the hearing to proceed in his
21 absence.

22 Furthermore, by virtue of Rule 92(2)(f), I consider
23 Mr. Haradinaj's refusal to attend as a failure to enter a plea, and
24 therefore I hereby enter a plea of not guilty on his behalf on all
25 charges in the Confirmed Indictment.

1 That concludes the plea portion of this hearing. We will now
2 move on to the first Status Conference of this case.

3 My goal today is to review the status of the case and to
4 organise exchanges between the parties to ensure an expeditious
5 preparation for trial. In particular, I wish to discuss the status
6 of the Specialist Prosecutor's investigations, the estimated amount
7 of documentary and testimonial evidence the parties will want to
8 bring to trial, issues related to the disclosure of supporting
9 material to the indictment, additional material intended for use at
10 trial, exculpatory evidence and protected material, the procedure for
11 disclosure, the redaction regime to be adopted for the present
12 proceedings, and, finally, any other issues the parties may wish to
13 raise.

14 I thank the SPO and the Defence for their submissions. I will
15 invite the parties to present their views in a concise fashion about
16 each item on the agenda, which I will address individually. There is
17 no need for each party to repeat their written submission in detail.

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

21 Let me first move to the general questions.

22 Before I give the floor to the parties, I wish to remind them of
23 the general principles of disclosure in the legal framework of the
24 Specialist Chambers.

25 Disclosure is an *inter partes* process in electronic form

1 organised and facilitated through the Registry's court management
2 system. Disclosure shall be a priority for the Prosecution at this
3 stage, and the parties shall disclose evidence of true relevance to
4 the case and not the greatest volume of evidence.

5 In view of the publicity principle, evidence is registered as
6 public unless there are reasons to classify otherwise. The
7 disclosing party determines the appropriate level of classification
8 of evidentiary items on a case-by-case basis.

9 I first would like to hear from the Prosecution on this first
10 topic in the agenda, notably on the status of its investigations, on
11 the amount of evidence it intends to use in the proceedings, and on
12 how many witnesses it intends to call at trial.

13 Mr. Prosecutor, you have the floor.

14 MR. PACE: Thank you, Your Honour. I don't have much to add to
15 our written submissions, so I will give a little bit of a summary and
16 then I can respond to any questions yourself or the Defence may have.

17 As we noted, the investigations are ongoing. We propose a
18 deadline for disclosure, by which time we also propose to finish the
19 bulk of investigations subject to the caveat we put in, which is, of
20 course, investigations may go on throughout proceedings and then
21 appropriate applications can be made for disclosure or additional
22 evidence to be submitted.

23 In relation to the amount of evidence for trial, we noted that
24 the indictment supporting materials have all been disclosed, and
25 those were 114 items. We expect that that will constitute the bulk

1 of the evidence we will rely on at trial. However, as proposed in
2 our submissions, we will supplement that by our proposed deadline of
3 19 February should that be, of course, acceptable to Your Honour.

4 This week we also disclosed items which are under Rule 103, so
5 potentially exculpatory items. There were 67 items in the package;
6 62 of those items have already been disclosed as indictment
7 supporting materials. So essentially thus far the total amount of
8 items disclosed is 119.

9 In terms of witnesses at trial, we are, as we mentioned in our
10 filing, undertaking steps to conduct witness interviews, and at the
11 moment the estimate which we gave in our filing, which was up to a
12 maximum of 10 witnesses, still holds good in our regard.

13 I don't have anything in particular to add, unless Your Honour
14 has any questions.

15 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

16 Now let me turn to the Defence for their submissions on what the
17 Prosecution just presented and on the items listed in the general
18 questions of the agenda.

19 I note that the Defence for Mr. Haradinaj indicated that it
20 needs one to two months for investigations, while Defence for
21 Mr. Gucati stated that it was not possible to indicate an exact
22 amount of time for investigations. I also note that neither Defence
23 can indicate at this stage whether they will provide notice of alibi
24 or any other grounds excluding criminal responsibility.

25 Mr. Rees, please.

1 MR. REES: [via videolink] Your Honour, I have nothing to add to
2 that which is in our written submissions.

3 I would like the Specialist Prosecutor's Office, however, to
4 acknowledge the matters that we've raised in our written submissions
5 in relation to service of the documentation described in
6 Your Honour's confirmed decision on the indictment as Batch 1, Batch
7 2, and Batch 3, also referred to in the indictment as the first
8 disclosure, the second disclosure, and the third disclosure,
9 collectively described in the indictment as confidential information.
10 Is this Specialist Prosecutor's Office in a position to tell us today
11 when we can receive that material and an estimate as to how much
12 material is involved therein?

13 Once we have that material, that will allow us -- we will be in
14 a better position to be able to assist the Court in due course
15 regarding the length of time for Defence preparations.

16 JUDGE GUILLOU: Thank you, Mr. Rees.

17 Mr. Cadman, please.

18 MR. CADMAN: [via videolink] Your Honour, I would reiterate the
19 same points. We have indicated, as things currently stand, a rough
20 estimate of one to two months, but that's based on things as they
21 currently stand. We would obviously need to consider that in light
22 of additional material that the SPO intends to disclose by 19
23 February. So the one to two months is a rough estimate at this
24 stage, considering that there are still a significant number of
25 unknowns.

1 I would also repeat what Mr. Rees has said as far as Batches 1,
2 2, and 3. Both counsel for Mr. Gucati and Mr. Haradinaj have set out
3 in the written submissions clarification -- or seeking clarification
4 as to the timing for disclosure of this material. And so I would
5 merely repeat what Mr. Rees has said, and I don't have anything
6 further to add under this head at this stage.

7 JUDGE GUILLOU: Thank you, Mr. Cadman.

8 Mr. Prosecutor, do you want to address this question now or when
9 we go through each category of material? Maybe we can have a
10 discussion on this now, because it's just been raised by the Defence.

11 You have floor.

12 MR. PACE: Thank you, Your Honour.

13 So I will first address the submissions from the Haradinaj
14 Defence concerning the one to two months for investigation. I just
15 have a few points to make in that regard.

16 As Your Honour knows, the Specialist Prosecutor's Office
17 indicated that there should be no reason to proceed to trial in early
18 spring of this year, and the Haradinaj Defence responded by saying
19 early to mid-summer is more realistic.

20 When it comes to the Defence investigations, the Prosecution's
21 position is that, of course, they should be conducted and they should
22 be given every opportunity to do so. However, as I mentioned
23 earlier, the bulk of the material that we intend to rely on at trial
24 has by now already been disclosed. The Defence has known what this
25 case is about, essentially, from when the accused were arrested in

1 September last year, and the indictment was confirmed in December.
2 So when it comes to regulating or discussing the time and timing of
3 the Defence investigations, in our submission they should already be
4 ongoing and we don't expect that there should be several weeks or
5 months after the disclosure deadline, in particular in view of our
6 submissions that the bulk of material that we rely on has already
7 been disclosed.

8 I'll now turn to the submissions concerning the three batches.
9 All of us here and remotely know that the dissemination of
10 confidential and non-public material is what this case is about. The
11 Defence expects the Specialist Prosecutor's Office to hand over, so
12 to speak, the weapons which the accused used to commit the alleged
13 crimes. Doing so would run counter to the purpose for which the
14 proceedings were brought by the Specialist Prosecutor's Office and
15 confirmed in the indictment by Your Honour.

16 I note, in particular, that as recently as 24 December 2020, in
17 two separate decisions, Your Honour found that each of the accused,
18 the risk they may commit further crimes by threatening, intimidating,
19 or putting at risk potential witnesses through the disclosure of
20 confidential and non-public information remains. I also note that
21 the Specialist Prosecutor's Office has already provided an
22 investigator's declaration concerning the three batches which we are
23 discussing now as part of the indictment supporting material, so that
24 was this Monday.

25 All this being said, the Specialist Prosecutor's Office

1 continues to review the materials, including the three batches, in
2 light of its obligations, but the SPO does not intend to disclose the
3 portions of the three batches of documents that do not contain public
4 material to the accused. The SPO will, of course, make any necessary
5 applications in this regard in writing, bearing in mind the relevant
6 provisions under the law and the rules and will do so well before the
7 expiration of any deadline set for disclosure.

8 And to answer one other point raised by counsel for Mr. Gucati
9 in relation to the amount of material contained in the three batches,
10 I can refer counsel to the declaration I mentioned, which is the
11 investigator's declaration disclosed on Monday with the indictment
12 supporting materials, and that document contains a page count for
13 each of the three batches.

14 I have no further submissions on this point. As I said, we will
15 be making filings if and when necessary, but I'm open to any
16 questions from Your Honour.

17 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

18 Should there be any exculpatory material in these batches, would
19 they be disclosed, according to Rule 103?

20 MR. PACE: Although, as I said, the review remains ongoing, at
21 the moment the Specialist Prosecutor's assessment is that these
22 materials, the three batches, fall under Rule 102, not under
23 Rule 103, and accordingly certain provisions of the law and the rules
24 continue to apply. And here I'm referring, for example, to Rule 106
25 and to Article 21(6). But, of course, we will elaborate all of this

1 in our submissions.

2 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

3 I turn to the Defence.

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

5 MR. REES: [via videolink] Well, yes, obviously, there's a lot of
6 material, a lot of information there, and will take us some time to
7 digest exactly what the SPO's position is. But if we are going to
8 get some clarification in writing from the SPO as to their position
9 on this material, what material, if any, is going to be served as
10 evidence that they rely upon? What material they will identify for
11 disclosure to us and the basis of it, either under Rule 102 or 103,
12 or indeed which portions of it they do not intend to reveal to us at
13 all? When will we receive that clarification in writing from the
14 SPO?

15 JUDGE GUILLOU: Thank you, Mr. Rees.

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

17 MR. CADMAN: [via videolink] Certainly. I am quite happy to wait
18 for the Prosecutor to respond to what Mr. Rees has just requested.
19 Our request will be the same. I have expressed some concern that
20 we're being expected to go to trial under matters so fundamental that
21 are not going to be subject to disclosure. I fail to see how the two
22 defendants can possibly be afforded a fair trial in circumstances
23 where a substantial amount of the material is going to be withheld.

24 The other point I would like to make - and we can, of course,
25 come back to it - the suggestion that investigations should have

1 started by the Defence as long ago as September or December, I mean,
2 the matters that the Prosecutor have set out are wholly irrelevant.
3 If we are looking at recent disclosures and the fact that the -- not
4 the majority, but the fact that the additional material is not going
5 to be served until 19 February, how we can possibly commence
6 investigations when the material has not been disclosed? I fail to
7 see the point that the Prosecutor is seeking to make.

8 And the final point: The Prosecutor has indicated that they are
9 still conducting witness interviews, and I have to raise some concern
10 as to the Prosecutor's readiness to serve their case. I really think
11 there needs to be some clarification and some fairly strict timelines
12 set down for when the Prosecution is going to be serving their case.
13 We can't possibly be expected to commence our investigations in any
14 substance until we know the case against us.

15 JUDGE GUILLOU: Thank you, Mr. Cadman.

16 Mr. Prosecutor, do you want to answer the question of Mr. Rees
17 regarding the timing?

18 MR. PACE: I'll start by saying that no deadline has been set by
19 Your Honour in terms of disclosure. We propose a deadline, which is
20 19 February, which is a very early deadline. We disclosed the
21 indictment supporting material well in advance of when we absolutely
22 had to. We've already disclosed potentially exculpatory material.
23 So it is clear that the Prosecution is doing all that it can to
24 ensure the expeditiousness of proceedings.

25 This matter, the disclosure of the three batches, falls within

1 the realm of disclosure. Accordingly, those deadlines apply.

2 However, we should be able to file any necessary applications in
3 relation to the three batches within the next 15 days.

4 Would Your Honour like me to answer the other questions or the
5 other issues made by counsel?

6 The issue of a fair trial was raised, and the Prosecution's
7 position is that the disclosure of the batches has no impact on the
8 fairness of the trial as such. First of all, in the indictment
9 supporting materials, we already provided an investigator's
10 declaration which describes the content of the three batches, and
11 that is the material that was relied on in the indictment and the
12 material based on which Your Honour confirmed the indictment.

13 So the indictment against the accused has been confirmed without
14 the submission of those three batches of evidence. It's not that we
15 gave those three batches to Your Honour but not the Defence.

16 The trial is fair because the charges against the accused are
17 clearly set out in the indictment. If we are made to file pre-trial
18 briefs, we will elaborate there. There is an analysis chart annexed
19 to the indictment which, as we mentioned in our filing, could now be
20 provided to the Defence that will provide further notice. But just
21 to be clear, should Your Honour agree with the Prosecution that the
22 three batches, to the extent that they do not relate to public
23 information, do not need to be disclosed to the Defence, that would
24 not hinder the fair trial rights of the accused.

25 To provide some further clarity in relation to other matters

1 raised by the Defence, the interviews that I made reference to, those
2 are among the group of undertakings which we are currently
3 undertaking as we speak and also ones which, by the 19 February
4 deadline, we aim to provide all relevant evidence. So the 19
5 February deadline, subject to the caveats I mentioned earlier, is
6 when the Defence should have everything.

7 The Defence have raised again the question as to how they should
8 be expected to start their investigations, and I don't know if it was
9 lost in my submissions, but the bulk of the material we intend to
10 rely on has by now already been disclosed. The charges are clear.
11 There is every opportunity for the Defence to commence the
12 investigations. Of course, should we disclose further material,
13 additional investigations may be necessary. But in relation to
14 starting the investigations, the Prosecution does not understand why
15 the Defence cannot do so already or potentially could have done so
16 already.

17 Thank you.

18 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

19 Mr. Rees, please.

20 MR. REES: [via videolink] Yes. I hope the SPO takes cognisance
21 of our submission in writing that we will require them to prove that
22 the documentation within Batch 1, 2, and 3, as referred to
23 previously, is genuine and it contains protected information. We do
24 not accept that.

25 We have also asked them to disclose the seized CCTV footage of

1 the person or persons making the disclosure of that documentation to
2 the KLA War Veterans Association headquarters. Can Mr. Pace tell
3 us -- confirm to us that that will be done and be done by when,
4 please?

5 We've also raised in the notes, in our written submissions, the
6 fact that the indictment refers to "associates," "certain others,"
7 and "others" who are alleged to have participated in offences
8 subsequent to the disclosure of that material to the KLA War Veterans
9 Association headquarters. Again, can the SPO tell us when they will
10 identify those persons to us so that we can begin our preparations?

11 We are entitled to know fully the nature and cause of the
12 charges against Mr. Gucati, and until we do so, we are not in a
13 position to begin our preparations.

14 JUDGE GUILLOU: Thank you, Mr. Rees.

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

16 MR. CADMAN: [via videolink] Your Honour, just to re-emphasise
17 what has already been stated, what's in the written submissions, and
18 to join what Mr. Rees has said. I don't think that we're in a
19 position to put anything further forward until we have a greater
20 clarification from the Prosecution.

21 And just to re-emphasise my concern, as Mr. Rees has expressed
22 his concern, that how could we possibly be expected to prepare on the
23 basis of the material that is not going to be held -- that's going to
24 be withheld.

25 The Prosecution has said that we have a statement from an

1 investigator, having analysed that material. That doesn't answer the
2 question. That doesn't answer the question at all. What the
3 investigator says from what she has seen and analysed does not enable
4 us to make any determination and put forward a case as to whether the
5 information is protected information, which is the substance of the
6 case.

7 I really don't see how the Prosecution can persist with such a
8 position, and Your Honour will have to ensure that there is clarity
9 on the Prosecution's position before we go forward.

10 JUDGE GUILLOU: Thank you, Mr. Cadman.

11 Mr. Prosecutor, for a final reply on this matter.

12 MR. PACE: I'll take the points made in turn, starting with the
13 first, and I can respond simply by asserting that the Prosecution
14 will meet the burden and that it will establish that the documents
15 did contain confidential and non-public information.

16 In relation to the CCTV footage mentioned by counsel, the
17 disclosure is ongoing. As I said, although we have already disclosed
18 material, we did so well in advance of the deadlines so we should be
19 given some room to effect further disclosure.

20 Turning to the submissions both in writing of the Gucati Defence
21 and also today, insofar as the Gucati Defence is challenging the form
22 of the indictment, which, in our submissions, that is what it amounts
23 to when counsel speaks of the associates and other persons, pursuant
24 to Rule 97, reasoned submissions should be made in writing and the
25 SPO will respond accordingly.

1 On this note, I do have to take the time here in court to
2 clarify something made in those written submissions in this regard,
3 and that is that contrary to what, for us, are misleading submissions
4 made by the Gucati Defence, the Specialist Prosecutor's Office has
5 made no attack on any members of the media. The Specialist
6 Prosecutor's Office has, in fact, issued a public statement in which
7 it commended ethical journalists throughout Kosovo who refused to
8 publish the documents provided to them.

9 In our submission, this reference by the Defence, in conjunction
10 with the reference to who these associates or others named in the
11 indictment are by putting, or attempting to put, the media into play,
12 is an attempt to deflect attention from the charges which were
13 brought against the accused and not anybody else.

14 In relation to the points made about the disclosure of the
15 batches, I think I've exhausted all I have to say. I've made it
16 clear that we will file written submissions if and when necessary,
17 and we can take it from there. And I just, one final time, reiterate
18 that the main evidence, the crimes are caught on tape. There is
19 other evidence, sure. Most of that other evidence is with already
20 the Defence, and I will not get into a debate as to Defence
21 investigations and the ability to start or to have started them.

22 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

23 Does anybody want to respond or we will wait for your
24 submissions in due course? No.

25 Mr. Rees.

1 MR. REES: [via videolink] Well, I will say this, Your Honour:
2 We have referred to the fact that the indictment alleges others -
3 associates, certain others, and others - who are said to have
4 participated, and we note that in Your Honour's decision on the
5 confirmation of the indictment, Your Honour made it clear that the
6 SPO was accusing certain members of the press, broadcasters, and news
7 organisations as so participating.

8 And what I'm asking for at this stage is further information
9 disclosed to us so that we can understand fully the nature of the
10 case against us. I make it perfectly clear, as I did in the written
11 submissions, that we, the Defence of Mr. Gucati, refutes that attack
12 that's being made by the SPO upon the media and others in Kosovo, and
13 I am asking for the SPO to make clear who it alleges those persons
14 were so that we can fully and clearly understand, as we're entitled
15 to, the nature and cause of the charges against Mr. Gucati and can
16 prepare accordingly.

17 Until that's done, we are still not in a position to understand
18 clearly and fully the nature and cause of those charges.

19 JUDGE GUILLOU: Thank you, Mr. Rees.

20 Mr. Prosecutor, for a last intervention on this topic, and then
21 we move to the next item in the agenda, please.

22 MR. PACE: Yes. All I can say is to reiterate that the
23 counsel's submissions as to who these associates may or may not be,
24 in our opinion, is a matter to be filed in written submissions as one
25 of the preliminary motions, which there is still time for the Defence

1 to do, because we consider that to amount to a challenge to the form
2 of the indictment.

3 And in relation to the assertion in the written submissions
4 which counsel repeated now about, A, an attack by the Specialist
5 Prosecutor's Office on the media, I've already said my part. This is
6 absolutely not the issue. The issue is that the Specialist
7 Prosecutor's Office brought charges against the accused and that is
8 what Your Honour will be ruling upon.

9 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

10 Now, let me move to the second item in our agenda, which is the
11 supporting material to the indictment.

12 I take note that the SPO disclosed all indictment supporting
13 material to the Defence on 4 January 2021, together with Albanian
14 translations thereof, and that no redactions were applied to the
15 material. I invite the SPO to give any further submissions on the
16 disclosure of the supporting material to the indictment, notably on
17 the overall amount of evidentiary material and any other details that
18 the SPO wishes to provide.

19 Mr. Prosecutor.

20 MR. PACE: In terms of the disclosure of indictment supporting
21 material, as Your Honour mentioned, we have completely fulfilled that
22 obligation very early on in the day, which was last Monday. As set
23 out in our filings and as clear for the disclosure itself, there were
24 114 items. I have nothing further to add about the items as such,
25 unless, of course, Your Honour has questions. And I'm limiting my

1 submissions for now to the indictment supporting materials.

2 JUDGE GUILLOU: I just have one question here. Can you confirm
3 that the detailed outline doesn't need any redactions and then that
4 it can be reclassified?

5 MR. PACE: Yes, Your Honour. I note that we were invited to
6 make submissions about protective measures, I believe it was, by 6
7 January. We made no such submissions as foreshadowed in our 4
8 January filing. And that is, indeed, because for the purposes of
9 provision to the Defence on a strictly confidential basis the annex
10 to the indictment containing the analysis chart - let's call it
11 that - can be provided to the Defence. So we have no objection to
12 that. Your Honour can rule that that can be done immediately. To be
13 clear, to the Defence, not public.

14 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

15 I turn to the Defence now on the supporting material to the
16 indictment.

17 Mr. Rees, if you have any submissions.

18 MR. REES: [via videolink] Nothing to add to the position I've
19 set out in the written submission, Your Honour.

20 JUDGE GUILLOU: Thank you, Mr. Rees.

21 Mr. Cadman.

22 MR. CADMAN: [via videolink] Nothing to add, Your Honour. And
23 we've already indicated to the SPO that we're content with the draw
24 table that they have proffered as well.

25 JUDGE GUILLOU: Thank you, Mr. Cadman.

1 Now let me move to the additional material intended to be used
2 at trial.

3 I take note that the SPO is expecting to be ready to disclose
4 further material under Rule 102(1)(b) by 19 February 2021, or in any
5 case no later than 30 days prior to the opening of its case subject
6 only to any protective measures being granted.

7 I invite the SPO to give any further submissions on the
8 estimated amount and type of material it intends to disclose, the
9 redactions that will be required, and any other details the SPO
10 wishes to provide.

11 Mr. Prosecutor, you have the floor.

12 MR. PACE: I don't have much to add to the submissions. In the
13 written submissions, we highlighted that we would be disclosing
14 essentially more of the same type of material. The interviews could
15 lead to witness statements and of course those will be disclosed.

16 Redactions. For now the material that has been disclosed has
17 not required redactions. Moving forward, that may be the case, and
18 of course we will apply the redactions consistent with whatever
19 regime is adopted by Your Honour.

20 I can give a little bit of further indication, perhaps also to
21 appease counsel who raised this matter earlier, in terms of the
22 witness interviews we are conducting. And keeping it very general, I
23 can say that that will go to the impact of the actions or the alleged
24 actions of the accused. So the material that we have disclosed thus
25 far already captures the bulk of that which the Prosecution will rely

1 on in terms of the specific conduct of the accused. There may be
2 more, it would be of the same nature, but the bulk has already been
3 disclosed.

4 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

5 I turn to the Defence.

6 Mr. Rees.

7 MR. REES: [via videolink] Your Honour, in addition to the
8 written submission, I just want to reiterate that it's not clear to
9 us whether the SPO is proposing 19 February to disclose any material
10 as a result of their analysis of seized electronic items. If that is
11 so, then I have nothing further to add.

12 If they're suggesting that material that will be the outcome of
13 the ongoing analysis of seized electronic items that they referred to
14 in their paragraph 10 submissions, if that's excluded from that 19
15 February proposal, there should be a date set down for the SPO to
16 provide us with material that derives out of that analysis. In other
17 words, they should be given a target date to complete their analysis
18 of those seized electronic items.

19 JUDGE GUILLOU: Thank you, Mr. Rees.

20 Mr. Cadman.

21 MR. CADMAN: [via videolink] Thank you, Your Honour. Only to
22 just re-emphasise the point that's in the written submissions that we
23 do not consider 30 days before the opening of the Prosecution case to
24 be sufficient. We would ask that the Prosecution be directed to
25 serve their material as and when it's available, and that not to be

1 contingent upon when the start of the trial is likely to be.

2 JUDGE GUILLOU: Thank you, counsel.

3 Mr. Prosecutor, do you want to reply to the Defence?

4 MR. PACE: Turning to Mr. Gucati's counsel first, I confirm that
5 the self-imposed thus far deadline of 19 February, by that time we do
6 intend and hope to disclose the material related to the seized items.
7 That, of course, to some extent depends on third parties. And should
8 that become unrealistic, in due course we would notify Your Honour of
9 that issue.

10 In relation to the 30 days before the start of the trial raised
11 by counsel for Mr. Haradinaj, we have made our submissions in which
12 we said that 19 February we would be ready subject to, of course,
13 that being close to the start of proceedings. It is at this stage
14 premature to say that 30 days is not enough before trial after and --
15 of the disclosure because disclosure is ongoing.

16 However, as I've mentioned many times, the bulk of disclosure,
17 we believe, has already been effected thus far. There may be
18 additional material. And, of course, the 30 days being adequate or
19 not can be revisited in due course.

20 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

21 Let me now move to the next item in our agenda related to the
22 evidence material to Defence preparation, which is the Rule 102(3)
23 material.

24 I would like to remind the SPO that disclosure or inspection of
25 evidence, such as statements, documents, photographs, or tangible

1 objects material to the Defence must be disclosed without delay.

2 What is considered "material" to the preparation of the Defence must
3 be understood broadly.

4 I also remind the parties that disputes as to the materiality of
5 the information, as claimed by the Defence, must be submitted
6 immediately to the Pre-Trial Judge for resolution.

7 I take note that the SPO anticipates providing the Defence with
8 detailed notice of evidence material by 19 February 2021, like for
9 the previous category. I invite the SPO to indicate for this
10 category an estimation of the type and amount of material, the
11 redactions that will be required, and any other details that the SPO
12 wishes to add.

13 Mr. Prosecutor.

14 MR. PACE: Because the review is, of course, ongoing, and we are
15 at an early stage, anything I say now will be provisional, but I can
16 say that in terms of the type of material it will reflect that which
17 has already been disclosed. We've had quite a few audio-visual
18 exhibits accompanied by transcripts and translations. We've had some
19 documentary materials such as articles and that kind of thing. We
20 expect it to be more of the same in relation to type.

21 In relation to amount, I don't think I can actually provide an
22 estimate at the moment because that depends on not only what we are
23 reviewing for the purpose of Rule 102(3) but also for other purposes
24 of disclosure. But again, I don't expect large volumes of material
25 to be disclosed under this heading.

1 And the same can be said for redactions. Thus far we haven't
2 applied any redactions to any disclosed items. Items of a similar
3 nature, such as videos which are obtained from the public domain,
4 tend not to require any redactions. So should such material fall
5 under this rule, then redactions would not be necessary. If, on the
6 other hand, for example, witness statements are assessed by the
7 Prosecution to fall under this rule, then the redactions would be
8 necessary and we would make the application as instructed by
9 Your Honour.

10 JUDGE GUILLOU: Thank you.

11 Mr. Rees, please, do you have anything to add in this category?

12 MR. REES: [via videolink] No, I don't. Thank you, Your Honour.

13 JUDGE GUILLOU: Thank you, counsel.

14 Mr. Cadman, please.

15 MR. CADMAN: [via videolink] No thank you, Your Honour.

16 JUDGE GUILLOU: Thank you.

17 Let me now move to the Rule 103 material, which refers to
18 exculpatory evidence. I remind the Specialist Prosecutor that it
19 must disclose immediately to the Defence any exculpatory evidence as
20 soon as it is in the custody, control, or actual knowledge of the SPO
21 which may reasonably suggest the accused's innocence or mitigate the
22 guilt of the accused or affect the credibility or reliability of the
23 Specialist Prosecutor's evidence. Disclosure of exculpatory evidence
24 is a continuous obligation, subject only to protective measures when
25 necessary.

1 I take note of the SPO's submissions that a part of the
2 exculpatory material has been disclosed, together with the
3 Rule 102(1)(a) material. I also understand that a further segment of
4 such material has been disclosed on 6 January 2021. I invite the SPO
5 to indicate the amount and type of exculpatory material in its
6 custody, control, or actual knowledge, whether redactions will be
7 required, and any other details the SPO wishes to add.

8 Mr. Prosecutor.

9 MR. PACE: Just to clarify, Your Honour, the disclosure which
10 took place on Monday was exclusively of indictment supporting
11 materials. Those were 114 items. On Wednesday we released another
12 package which was exclusively of Rule 103 materials, so potentially
13 exculpatory; that consisted of 67 items. However, the first package,
14 the indictment supporting materials, already had 62 of them. So
15 essentially the new documents provided under Rule 103 are five.

16 We are well aware of our obligations under this rule, and we
17 are, of course, continuing our review. We are expecting that the
18 disclosure of the 67 items under Rule 103 is the bulk of our
19 disclosure under that rule. We will be in a position to disclose the
20 remainder of the items currently in the possession of the Prosecution
21 by the next week or two. But again, we do not expect that to be a
22 particularly voluminous disclosure under this rule.

23 As for redactions, once again, none have been required thus far.
24 I'm not certain whether they will be required for the other material
25 within the Prosecutor's possession at the moment. But, of course,

1 that will be made clear to us soon, and if necessary we will file a
2 request in that regard. And then, of course, for the material that
3 is not yet in our possession, that would be speculative at this stage
4 for my part.

5 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

6 I turn to the Defence.

7 Mr. Rees.

8 MR. REES: [via videolink] Nothing to add at this stage,
9 Your Honour.

10 JUDGE GUILLOU: Thank you, Mr. Rees.

11 Mr. Cadman, please.

12 MR. CADMAN: [via videolink] Nothing to add, Your Honour.

13 JUDGE GUILLOU: Thank you, counsel.

14 Let us now move to protected material, which is the Rule 107
15 material. I take note that the SPO foresees that a limited amount of
16 Rule 107 material information is potentially subject to disclosure
17 under Rule 102(3). I would like the SPO to notably indicate the
18 amount and type of material that still requires clearance, whether
19 the SPO has already taken steps to obtain the consent of the
20 information providers to disclose such material or whether such steps
21 are foreseen in the near future, whether the SPO intends to apply to
22 the Pre-Trial Judge to be relieved, in whole or in part, of its
23 obligations under Rule 102 and/or 103 of the Rules to disclose
24 initial material, and whether redactions will be required.

25 Mr. Prosecutor.

1 MR. PACE: As for the type of material, it is documentary, that
2 which we have identified thus far. Of course, there may be other but
3 it's becoming clear what kind of material we have disclosed will also
4 be reflected in that which we expect to disclose further.

5 In terms of whether the steps are ongoing, yes, they are
6 ongoing, and we are -- obviously, it is in our interest as well to
7 make sure that we receive the adequate responses. Again, this
8 necessarily depends a little bit on external parties. But should we
9 not be able to meet the deadline, we will notify the Judge well in
10 advance. We aim to do be able to do so, and we will communicate that
11 to our partners.

12 In terms of a request for relief of our obligations, it would be
13 premature for me to make an assertion as to whether or not that is
14 necessary at this stage, but, of course, if necessary we will make
15 one. Right now I don't think so. It could be later on.

16 And as for redactions, that again depends on the communication
17 of the external partners and the other review of material that is
18 ongoing.

19 JUDGE GUILLOU: Thank you.

20 Does the Defence have anything to add regarding this category of
21 material?

22 Mr. Rees.

23 MR. REES: [via videolink] No, thank you, Your Honour.

24 JUDGE GUILLOU: Mr. Cadman.

25 MR. CADMAN: [via videolink] Not at this stage, Your Honour.

1 JUDGE GUILLOU: Thank you very much.

2 Let us now move to the procedure for disclosure.

3 In its submission, the SPO indicates that it supports the
4 adoption of the regime similar to the one in the Mustafa case. I
5 invite the SPO to give further details on this topic and all the
6 parties to comment on the Rule 109(c) chart proposed by the SPO.

7 Mr. Prosecutor.

8 MR. PACE: Yes, Your Honour. I have nothing further to add to
9 the submissions. It seems that the chart which we sent out to the
10 Defence has been well received. We will, of course, engage in
11 further *inter partes* communications before we come back to you about
12 the chart that we addressed. But for now, I have nothing else to say
13 on this topic.

14 JUDGE GUILLOU: Thank you.

15 Mr. Rees, please.

16 MR. REES: [via videolink] Nothing to add, thank you.

17 JUDGE GUILLOU: Mr. Cadman.

18 MR. CADMAN: [via videolink] We've already indicated our position
19 on the chart, and we've indicated our position in written submissions
20 that the Mustafa ruling is the one that should be applied. Nothing
21 other than that, Your Honour.

22 JUDGE GUILLOU: Thank you very much.

23 And, Mr. Prosecutor, just to clarify, you have shared the same
24 type of chart as in the Mustafa case; correct?

25 MR. PACE: Yes, it is essentially identical. I believe that

1 there is one column which may be different from the Mustafa
2 proceedings. But in the main, it is the same. And, of course,
3 Your Honour will see it as soon as we have reached an agreement.

4 JUDGE GUILLOU: Thank you very much.

5 Now let us move to the last item in our agenda, which is the
6 redaction regime.

7 In adopting a redaction regime, it is necessary to ensure the
8 efficiency of the disclosure process while striking the right balance
9 between the duty to protect the interests of the victims and
10 witnesses and upholding the rights of the accused.

11 In its submission, the SPO requests that the Pre-Trial Judge
12 adopt the redaction regime applied in the Thaci et al case. Pursuant
13 to this regime, in order to avoid multiple redisclosures of the same
14 evidence, the disclosing party does not need to disclose their
15 relevant material concurrently with the request for non-standard
16 redactions.

17 I invite the SPO and the Defence to make further submissions on
18 this topic, and I specifically ask the SPO to explain the reasons why
19 it prefers the Thaci et al regime as opposed to the Mustafa regime
20 indicated in the order, given that the amount of redactions is
21 expected to be way more limited than in the Thaci et al.

22 And I would also like the SPO to indicate if their preference
23 for the Thaci et al regime also refers to the 10-day timeline for
24 submissions of the opposite party and Witness and Protection and
25 Support Office rather than the five days that we have in the Mustafa

1 regime.

2 Mr. Prosecutor.

3 MR. PACE: Yes, Your Honour, the sole reason or the sole reasons
4 that we expressed our preference for the Thaci et al regime is, in
5 fact, the issue that you've already highlighted, one of which is the
6 avoiding the redisclosure of items. As Your Honour said, and, of
7 course, the Specialist Prosecutor's Office concurs, it is envisioned
8 that there would be far less items disclosed in this case. However,
9 redisclosing the same item multiple times is always burdensome and at
10 times confusing. So, in our submission, it would be better if the
11 disclosure was made once and that would be after an application is
12 granted, should it be granted.

13 In terms of the timeline, of course, a 10-day timeline is
14 preferable. However, should Your Honour find the five-day timeline
15 more workable and appropriate, we would not object to that.

16 JUDGE GUILLLOU: Thank you, Mr. Prosecutor.

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

18 MR. REES: [via videolink] Well, Your Honour, in your original
19 order you made in preparation for this hearing, your order asks us to
20 consider the regime set out in paragraphs 73 to 89 of the framework
21 decision on disclosure of evidence and related matters in the case of
22 Mustafa. We don't raise any concerns about that matter and do not
23 object to that regime being applied, albeit we do say this: That, in
24 general, proceedings, the matter, are at a very early stage, so if
25 any issues of concern arises as matters progress, we reserve the

1 right to raise them at that stage.

2 In relation to the counterproposal from the SPO, we still don't
3 see that the SPO has answered the questions, frankly, that you've
4 just asked them, Your Honour, that there's no real justification
5 given in the context of this case. We say the procedure followed in
6 Mustafa should be applied at this stage by the SPO.

7 JUDGE GUILLOU: Thank you, Mr. Rees.

8 Mr. Cadman, please.

9 MR. CADMAN: [via videolink] Thank you, Your Honour. Our
10 position is the same. You had directed us to consider the redaction
11 regime in Mustafa and that's what we did. We had set out in the
12 written submissions we see no reason why the SPO has preferred that
13 in Thaci, and I agree they haven't given an answer to that.

14 We are perfectly satisfied with the redaction regime as set out
15 in Mustafa, and that's our position.

16 JUDGE GUILLOU: Thank you, counsel.

17 Mr. Prosecutor, just before you take the floor, I will just
18 emphasise that the two regimes are very, very close. I think the two
19 differences that I've pointed out in the introduction of this topic
20 were really the timeline, the five days that are ten days in the
21 Thaci regime, and the fact that you do not disclose twice at the
22 moment you make your submission. So I think the rest is exactly the
23 same.

24 Mr. Prosecutor.

25 MR. PACE: Yes, of course, we fully agree with what Your Honour

1 has just said. And I was going to say that, that they are basically
2 the same, so that's one reason.

3 I do note that in our submissions, at footnote 18, we did say
4 that we don't object to the Mustafa regime, subject to this one
5 difference, and the difference we pointed out is that about the
6 redisclosure. So that is the reason. We did give a reason as to our
7 preference for one over the other. However, it's not essentially a
8 very big deal for us. Should Your Honour prefer the Mustafa regime,
9 then that's not a major issue.

10 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

11 Mr. Rees.

12 MR. REES: [via videolink] I have nothing to add.

13 JUDGE GUILLOU: Thank you.

14 Mr. Cadman.

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

16 JUDGE GUILLOU: Thank you.

17 Before we discuss about the next Status Conference, at this
18 stage point I would like to ask the parties if they have any other
19 issues that they would like to raise. And I remind you the parties
20 to give prior notice should any submission require the disclosure of
21 confidential information.

22 Mr. Prosecutor.

23 MR. PACE: Yes, Your Honour. Two issues.

24 The first is -- I'm going to take this as an opportunity to
25 respond to submissions made in writing by the Defence for Mr. Gucati.

1 And in their written submissions, the Defence seems to imply the SPO
2 may have somehow been associated with the unknown individuals who
3 provided the confidential and non-public documents to the KLA War
4 Veterans Association, and they also cite to a European Court of Human
5 Rights case which essentially concerns entrapment.

6 And I just wanted to put it on the record that the SPO
7 unequivocally rejects this completely unfounded implication. As
8 alleged in the indictment, and as will be shown at trial, it's the
9 accused who have incited crimes and any attempt to deflect attention
10 from that matter will fail.

11 The second issue I wish to raise is just to note that in the
12 interests of the expeditiousness of proceedings, should Your Honour
13 be inclined to follow the procedure set out in Rule 72, the
14 Prosecution would not be opposed to such a ruling.

15 JUDGE GUILLOU: Thank you, Mr. Prosecutor. This is noted.

16 I turn to the Defence.

17 Mr. Rees, both on what the Prosecution just said and if you have
18 any other topic you'd like to raise, please.

19 MR. REES: [via videolink] I will simply repeat that which we
20 have put in our written submissions and that which we have repeated
21 earlier.

22 We put the Prosecution to strict proof that the documentation
23 seized and referred to as Batch 1, Batch 2, and Batch 3 previously is
24 genuine and contains protected information. And we have put in the
25 written submissions that we require the SPO to demonstrate the origin

1 and provenance of the same by way of an audit trail from the creation
2 of each of those documents to its arrival at the KLA War Veterans
3 Association headquarters.

4 In light of what has just been said on behalf of the SPO, I take
5 it that they have no issue with so demonstrating and that they will
6 do so and we will be able to scrutinise what has been asserted by the
7 SPO in those oral submissions. I look forward to receiving that
8 material so that we can scrutinise it and satisfy ourselves that what
9 has been so boldly asserted can be supported.

10 JUDGE GUILLOU: Thank you, Mr. Rees.

11 Mr. Cadman, please.

12 MR. CADMAN: [via videolink] Your Honour, thank you. Only to
13 just very briefly come back to the point of Rule 72. Obviously, this
14 will have to be something that we may come back to in the future.
15 Obviously, this is not a matter which is suitable for shortening of
16 procedures, but of course that may be something that we need to come
17 back to in due course.

18 So I have nothing further to add which hasn't been already
19 stated or is not in our written submissions of today.

20 JUDGE GUILLOU: Thank you, Mr. Cadman.

21 Mr. Prosecutor, do you want to add something? Briefly, please.

22 MR. PACE: Yes, very briefly, just in response to the counsel
23 for Mr. Gucati. All I will say is that the Prosecutor's Office is
24 confident it will meet its burden under the law and that it will
25 satisfy the requirements for the crimes with which the accused have

1 been charged.

2 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

3 I would like to ask the parties now for their views on a
4 suitable date for the next Status Conference. As the SPO indicated
5 that they would finalise disclosure of the Rule 102(1)(b) and
6 Rule 102(3) material by 19 February, I suggest that the second Status
7 Conference will be held on a date between 24 and 26 February.

8 So can the Defence and the SPO indicate their availability for
9 these dates?

10 I also note that in this regard that should counsel of the
11 accused wish to participate via video-conference, written notice to
12 the Registry must be provided 24 hours in advance of the relevant
13 hearing so that arrangements can be made.

14 Mr. Prosecutor.

15 MR. PACE: We will be available on the dates Your Honour
16 mentioned. Any of the dates will do.

17 JUDGE GUILLOU: Thank you.

18 Now I turn to the Defence.

19 Mr. Rees, please.

20 MR. REES: [via videolink] Your Honour, clearly we didn't have
21 notice of those proposed dates previously. At the moment each of
22 those dates would cause me difficulty, although I do not know to what
23 extent Mr. Bouden, Specialist Co-Counsel, can assist on those dates.

24 JUDGE GUILLOU: If I may, Mr. Rees, we can take some more days
25 to determine the exact date. But on the general idea of scheduling

1 the Status Conference after you receive all the material, a couple of
2 days after, is this something that seems suitable for you? Or do you
3 wish it to be before? Or do you need more time after you receive the
4 material? I think that's the main idea.

5 MR. REES: [via videolink] We're certainly content to have a
6 further Status Conference. To what extent we'll be in a better
7 position ...

8 JUDGE GUILLOU: Your microphone is off, Mr. Rees, I think.

9 MR. REES: [via videolink] Apologies.

10 JUDGE GUILLOU: Yes.

11 MR. REES: [via videolink] Certainly, Your Honour, we are more
12 than happy to have a further Status Conference in the weeks shortly
13 after 19 February. To what extent we will be in a position to assist
14 the Court further at that stage depends obviously on the material
15 that has been disclosed. It would be more convenient for me if any
16 further Status Conference around that date took place towards the end
17 of the following week, so perhaps 5 March.

18 JUDGE GUILLOU: Thank you, Mr. Rees.

19 Mr. Cadman, please.

20 MR. CADMAN: [via videolink] Your Honour, I'm available on the
21 latter date that Mr. Rees has mentioned, and I think we may need some
22 days after the disclosure to consider the position before the Status
23 Conference. So certainly it would be convenient to counsel for
24 Mr. Haradinaj the beginning of March rather than the end of February.

25 JUDGE GUILLOU: Thank you, Mr. Cadman.

1 Unless any party has anything to add, this concludes today's
2 public hearing. I thank the parties and the Registry for their
3 attendance, and I also thank the interpreters, stenographers,
4 audio-visual technicians, and security personnel for their
5 assistance.

6 The hearing is adjourned.

7 --- Whereupon the Status Conference adjourned at 4.02 p.m.

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