

1 Friday, 30 April 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, can you please call the case.

9 THE COURT OFFICER: Good morning, Your Honours. 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 Mr. Prosecutor.

16 MR. HALLING: Good morning, Your Honour. Matt Halling,
17 Associate Prosecutor with the SPO. Appearing also today are
18 Alex Whiting, Deputy Specialist Prosecutor; James Pace,
19 Associate Prosecutor; and Line Pedersen, Case and Evidence Manager.

20 Thank you.

21 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

22 Now I turn to the Defence.

23 Mr. Rees, please.

24 MR. REES: [via videolink] Your Honour, my name is Jonathan Rees.
25 I appear on behalf of Mr. Gucati. I am assisted today by co-counsel,

1 Mr. Huw Bowden.

2 JUDGE GUILLOU: Thank you, Mr. Rees.

3 Mr. Cadman, please.

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

5 Toby Cadman for Mr. Nasim Haradinaj, joined by co-counsel Mr. Carl
6 Buckley, and Legal Assistant, Ms. Miriam Boxberg.

7 JUDGE GUILLOU: Thank you, Mr. Cadman.

8 And now I turn to the Registry, please.

9 MR. ROCHE: Good morning, Your Honour. It's Ralph Roche, Head
10 of Judicial Services Division.

11 JUDGE GUILLOU: Thank you, Mr. Roche.

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

14 On 22 April, I scheduled the fourth Status Conference for this
15 case. My goal today is to review the status of the case and to
16 organise exchanges between the parties to ensure an expeditious
17 preparation for trial.

18 In particular, I wish to discuss disclosure, the accused's
19 access to documents, agreements on points of law and facts,
20 translations, and the status of SPO and Defence investigations.

21 I thank the SPO, the Defence, and the Registry for their written
22 submissions. There is no need to repeat the submissions in detail,
23 but I will invite the parties to respond to each other's written
24 submissions in a concise fashion following each item of the agenda.

25 And, as usual, I remind the parties to give prior notice should

1 any submission require the disclosure of confidential information so
2 we can go into private or closed session.

3 Let's now move to the first item in our agenda, disclosure. I
4 would like to hear from the parties on the progress made in the
5 disclosure of evidentiary material.

6 Before I give you the floor, I would like to note the following:
7 I first note the SPO's submission that there has not been any
8 progress on the outstanding third party request. I also note that
9 the SPO indicated that it contemplated disclosure of -- it completed,
10 sorry, disclosure of all material in its possession falling under
11 Rule 102(1)(a), 102(1)(b), and Rule 103, and that the last item
12 subject to disclosure pursuant to Rule 102(3) will be disclosed
13 within the timeframe set in my recent 102(3) decision.

14 I further note that the SPO has now disclosed a further item,
15 including an annex chart, in compliance with my decision F171. In
16 this regard, I have three points to make.

17 First, I note that this item contains a list of errors
18 identified by the SPO in relation to a previous chart disclosed
19 pursuant to my decision F141. In relation to this, I intend to issue
20 an oral order today after having heard from the parties.

21 Second, I note that the aforementioned items were disclosed
22 under Rule 102(1)(b) despite the fact that the information forming
23 the object of these items has been determined to be disclosable under
24 Rule 102(3), so I invite the SPO to explain whether this means that
25 it intends to present these items at trial.

1 And third, I note that the item previously disclosed, which is
2 ERN 093492-093590, has been added to the SPO's list of exhibits filed
3 on 9 April. I also note that in a very recent filing the SPO
4 requests to add the new item, which is ERN 095162-095239 to that list
5 as well. In relation to this, I intend to issue an oral order today
6 after having heard from the parties.

7 I note that both Defence teams disagree with the SPO on the
8 completeness of the disclosure process. In particular, I note that
9 both Defence teams submit that the consolidated Rule 102(3) list
10 remains incomplete or unclear and that there are outstanding requests
11 in this regard, including from material not listed in the
12 consolidated notice.

13 I further note that the Haradinaj Defence raises the issue of
14 completeness of Rule 103 disclosure in view of the number of
15 individuals the SPO has spoken to and the information provided about
16 these statements.

17 I also note that the Haradinaj Defence consider that the SPO has
18 not carried out meaningful investigation and that further evidence
19 should be disclosed accordingly.

20 I further note that the Haradinaj Defence states that it is not
21 in possession of -- that it is not in a position to submit
22 objections, sorry, if any, to the evidentiary material disclosed
23 pursuant to Rule 102 while the disclosure is still ongoing. The
24 Gucati Defence submits that it will submit such objections to
25 disclosed evidentiary material, as identified, by 14 June 2021.

1 Before I finally give the floor to the parties, I remind
2 everyone that the request from the SPO related to the materiality of
3 certain documents requested by the Defence is pending. This will be
4 dealt with by written submissions, so I invite the parties not to
5 discuss about this request in detail today.

6 I would now like to hear the parties on the points I just
7 raised, including the two items disclosed further to F141 and F171
8 respectively, under which rule they be used at trial, and any
9 objections from the Defence to add 095162-095239 to the list of
10 exhibits;

11 Then, whether the SPO has completed disclosure under Rule 103
12 material by the designated deadline of 9 April 2021 or whether
13 further disclosure under this rule is expected, especially in view of
14 the aforementioned submissions by the Haradinaj Defence;

15 Whether the SPO has an estimate as to when, if at all, will the
16 third party request be resolved;

17 Whether the SPO intends to add evidence under Rule 102(2) and
18 can provide reason for the late disclosure, should that be the case;

19 And when does the SPO plan to communicate to me, as
20 Pre-Trial Judge, any non-redacted versions of the disclosed evidence
21 as ordered in the Framework Decision on Disclosure, F104, which is in
22 paragraph 80;

23 And, finally, any further points about the Defence's ability to
24 submit its objections, if any, to the evidentiary material disclosed
25 pursuant to Rule 102 as foreseen in Rule 95(2)(e);

1 And, finally, and more generally, I would like to know whether
2 the parties are facing any difficulties related to the remainder of
3 the disclosure process, in particular in relation to Rule 102(3)
4 material.

5 Sorry for this long introduction, but now that I've started to
6 set all the issues at stake for our Status Conference, I will give
7 you the floor, starting with you, Mr. Prosecutor. If you need to be
8 reminded of the different items, please get back to me. But you have
9 the floor for now.

10 MR. HALLING: Thank you, Your Honour. I will try. If I need
11 help, I will let you know.

12 First I'll turn my response to your question at the beginning
13 about these two declarations that you described as falling under
14 decisions 141 and 171.

15 The declaration under decision 141 is already on our list of
16 exhibits, so it was disclosed under Rule 102(1)(b) because, even
17 though it was ordered pursuant to a decision, we decided that we
18 wanted to use it on our list of exhibits.

19 The same is true for the declaration falling under decision 171,
20 with the difference being that it wasn't finalised until after the 9
21 April deadline had occurred, which is why we've submitted recently a
22 request to add that item to our list of exhibits. So this is why
23 those two items are disclosed under Rule 102(1)(b). And, as you
24 correctly pointed out, there were some errors in that first
25 declaration that are noted in the second one.

1 As regards Rule 103, yes - we've said it already - we believe
2 that we have disclosed everything falling under that rule, and we
3 note that the Haradinaj Defence questions whether we have done so in
4 the course of their Status Conference submissions. And I note in
5 particular this A7, B5, E redaction code in disclosure package 23 of
6 22 April 2021.

7 Your Honour's Framework Decision permits us to apply redactions
8 to materials on the basis of pre-approved categories. Categories A7
9 and B5 are standard redactions which we may apply without prior
10 judicial authorisation. Category 3 concerns non-standard redactions,
11 which do require judicial approval in order to apply.

12 When text is marked with each of these codes, it means that
13 there are three independent bases to redact the information in
14 question. These codes often apply together when the text concerns
15 sensitive information on witnesses that we do not intend to call.

16 It's unclear how the Haradinaj Defence jumps from the redaction
17 code identified in paragraph 7 of their submissions to a conclusion
18 that the redactions concern exculpatory information. Disclosure
19 Package 23 concerns disclosure of lesser redacted versions of two
20 items in accordance with Your Honour's decision, F00185, concerning
21 the disclosure of notes on contacts with witnesses who address the
22 impact of the accused's actions on them. They do not concern
23 witnesses to be called in case 7.

24 Your Honour identified four paragraphs requiring lesser
25 redactions, which we have now done. But Your Honour also granted the

1 overwhelming majority of the redactions that we applied, including
2 those with the A7, B5, E code identified by the Haradinaj Defence.
3 This code appears in several other similar notes that have been
4 disclosed.

5 As an example, nearly two months ago in disclosure package 8, we
6 disclosed 104 items to the Defence teams. All of them have that same
7 A7, B5, E code.

8 There is no potentially exculpatory information behind these
9 redactions. They have been accurately marked in accordance with your
10 Framework Decision and have been reviewed by Your Honour.

11 Turning to Rule 102(3), our consolidated Rule 102(3) notice was
12 filed in accordance with Your Honour's decision F00172. We reviewed
13 our collection and selected 184 items understood to be relevant to
14 the case within the meaning of Your Honour's decision. We have
15 included the 13 items from our original Rule 102(3) notice as well as
16 previously disclosed items identified in paragraphs 30 and 31 of your
17 decision.

18 As for new items, most of them fall into the following general
19 categories: One, social media posts and English translations,
20 generally from the accused, which are not relied upon as evidence and
21 are not exculpatory; two, SPO official notes, most of which explain
22 how open source materials were downloaded from the internet or how
23 seized items were handled; three, further information on seized items
24 and the analysis of them; four, international correspondence in court
25 filings derivative of information already included on our list of

1 exhibits; and, five, information withheld pursuant to decisions of
2 Your Honour, which we have since received your permission to
3 disclose.

4 As is hopefully clear from my description, we've applied a very
5 generous understanding of relevance in deciding what to put on this
6 notice. Your Honour has set a 21 April deadline, now passed, for the
7 Defence to file any final requests, quoting from your decision, "for
8 prior disclosure or inspection, including regarding any sufficiently
9 specified items not included in the consolidated detailed notice."
10 These last requests have been filed and they are pending your
11 resolution.

12 At this point, there is no pending disclosure issue for 146 of
13 the items on that consolidated notice, so about 80 per cent. So
14 those 146 items, some of which were broken down into further
15 sub-items before disclosure on Wednesday, they've either been
16 disclosed, disclosed with redactions, made available for inspection,
17 et cetera. Some are not to be disclosed, but pursuant to an order
18 that you have already given. The remaining 38 had their materiality
19 challenged or protective measures sought in filing F00190, which we
20 filed on Monday.

21 The Haradinaj Defence argues in its written submissions that the
22 Rule 102(3) consolidated notice was unclear because it contained
23 significant amount of material already disclosed and contained
24 unclear descriptions.

25 First, as I just mentioned, the Pre-Trial Judge, you've ordered

1 us to submit a consolidated, detailed notice comprising, and this
2 quotes, "all such material in evidence, including but not limited to
3 items disclosed following the Gucati Rule 102(3) items where they
4 meet the aforementioned requirements," and this is from paragraph 31
5 of the Rule 102(3) decision.

6 So we have been told to include certain already disclosed items
7 in the consolidated notice. We have also provided an *inter partes*
8 index which lists every item on the consolidated Rule 102(3) notice.
9 Whenever an item was disclosed previously, the disclosure package
10 that that document can be found was indicated in the index provided
11 to the Defence. There should be no confusion about the disclosure
12 status of any of the items on the consolidated notice at this point.

13 Second, the descriptions in the consolidated Rule 102(3) notice
14 were sufficient as filed. Nevertheless, when the Haradinaj Defence
15 reached out *inter partes* to ask for clarity on the descriptions of 41
16 of these items, we responded to them point by point within a day.

17 But the most important point on this is actually that after the
18 Gucati Defence selected all of the items on the consolidated
19 Rule 102(3) notice, we asked the Haradinaj Defence if they could
20 confirm whether all documents to be disclosed to Gucati would be
21 disclosed to Haradinaj also. The Haradinaj Defence said that this
22 made sense under the circumstances, and indeed all items disclosed on
23 Wednesday, by that 28 April deadline Your Honour set, that were
24 disclosed to the Gucati Defence were also disclosed in some form to
25 the Haradinaj Defence.

1 With this context laid out, the Haradinaj Defence is challenging
2 descriptions of items on a Rule 102(3) notice that they have already
3 received or were going to receive hours after that submission was
4 filed. They don't need the Rule 102(3) notice anymore in order to
5 understand these items.

6 As for requests for items not on the Rule 102(3) notice, the
7 litigation is now about whether or not to disclose these items. The
8 SPO has challenged the materiality of these three requests of the
9 Gucati Defence, most of which are hardly different to previous
10 requests which were already rejected by Your Honour in decision
11 F00172.

12 I wanted to focus on one aspect of it in particular today. The
13 Gucati Defence again requests information on how the accused acquired
14 the batches of information at the heart of this case. Such
15 information is completely immaterial to their preparations.

16 The indictment charges the accused with the unlawful
17 dissemination of confidential information. What matters is the
18 classification of the information that they held and what they then
19 did with it. How they got the information is not charged. It has no
20 relevance to the case at all.

21 We have made submissions before about the Defence proposition
22 that the SPO somehow gave these documents in order to incite or
23 entrap the accused. We have said repeatedly how this submission is
24 baseless, but we want to stress the point again in relation to our
25 disclosure obligations as well.

1 If the SPO possessed any evidence at all that the accused were
2 somehow incited or entrapped by our office, then this would have to
3 be affirmatively disclosed under Rule 103. It would not be a
4 Rule 102(3) issue. It would not be a thing that the Defence needed
5 to request. The fact that the Defence does not have any such
6 evidence speaks to the fundamental truth that no such evidence
7 exists.

8 Now, turning to Rule 102(2), as Your Honour noted, the only late
9 addition to the evidence list was recently filed, and it is that
10 declaration that was disclosed on 14 April 2021 and the translation
11 which was disclosed on Wednesday. This application has now been
12 filed, and for the reasons that are stated within it, we don't think
13 that any prejudice is caused by that addition. There is no other
14 additional evidence request that is envisaged at this time.

15 Your Honour asked about the third party requests. As we've
16 mentioned in our written submissions, we are trying our best to try
17 and secure a response. We are aware that any information that we
18 receive would fall under our disclosure obligations. We're also
19 aware that if we want to rely upon that information at trial, we
20 would need to file an application similar to the one that we filed
21 yesterday, and hopefully it will come soon.

22 As regards redacted versions of disclosed materials, we are
23 mindful of Your Honour's decision. And if there are any - it sounds
24 like there are - redacted versions where there is no corresponding
25 unredacted version, we will undertake to remedy them.

1 Unless there are any other questions that you have, I think that
2 addresses everything.

3 JUDGE GUILLOU: Maybe just a small clarification about the
4 charts. Do you intend to present them at trial, the recent charts
5 filed after my decisions?

6 MR. HALLING: Yes, we do. We have arranged to have those charts
7 prepared by Witness W04841, who we intend to call at trial. So we
8 have basically used the charts that you ordered as additional
9 declarations of that witness, and so the Defence is going to be able
10 to examine a witness in court as to those charts. And so that's how
11 we intend to present them at trial.

12 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

13 Let me now move to the Defence.

14 Mr. Rees, please.

15 MR. REES: [via videolink] Your Honour, firstly, in relation to
16 the issue of the requests for the SPO for leave to add evidence to
17 their exhibit list and to introduce the new declarations, I
18 acknowledge that Your Honour has said Your Honour wishes to make an
19 oral order in relation to those matters, but we were provided with
20 notice of these matters very recently. The request to add items to
21 the exhibit list was only filed yesterday, the day before this Status
22 Conference. So in accordance with the Rules, we are entitled to ten
23 days to respond to that motion in writing, and I would ask for the
24 opportunity to be able to do that.

25 I'm not in a position today to make oral submissions to

1 Your Honour on the point. It did not form part of Your Honour's
2 agenda for this meeting in the order setting the date for the fourth
3 Status Conference. Of course, it couldn't have formed part of
4 Your Honour's agenda because the SPO only served the request
5 yesterday, the day before this Status Conference.

6 So I would ask for Your Honour to allow us to time that we are
7 entitled to in the Rules to provide a written response to that
8 motion.

9 Your Honour, in relation then to the issue of disclosure,
10 whether the parties are facing any further difficulties, Your Honour
11 will appreciate that at the time I drafted the response to the order
12 setting the date for this Status Conference, we had received the
13 revised Rule 102(3) notice, which contained on it 148 relevant items
14 which, it is noted, is in contrast to the original notice that the
15 SPO provided which had only 13 items and which the SPO insisted -
16 incorrectly, but insisted - contained all that which was relevant and
17 had which not at that stage been disclosed. They were wrong about
18 that, and they were wrong by some margin, as we correctly predicted
19 when we described the original 13 item list as being paltry.

20 In those circumstances, Your Honour will appreciate that we will
21 remain sceptical about any ongoing assurances that the SPO continue
22 to make. We had at the time of drafting our written response to the
23 order setting the date for the fourth Status Conference responded to
24 the revised Rule 102(3) notice, as Your Honour had asked us to do in
25 Your Honour's decision on the scope of that notice, making requests

1 for material from it, and raising the deficiencies that we still saw
2 in the notice and providing further detail to the requests, which
3 Your Honour will previously recall had been described as Request A
4 and Request B. And in light of Your Honour's remarks in the decision
5 on the Rule 102(3) notice, we had added further specificity, further
6 specific details to the request to assist the SPO in dealing with it.

7 At the time of drafting the response to the fourth Status
8 Conference order, we had not received a response to those requests,
9 not even an acknowledgement that they had been received by the SPO.

10 It is right to say that we did receive on 29 April, so
11 yesterday, further disclosure of 153 items. That is in circumstances
12 where repeatedly during the three previous Status Conferences, and
13 specifically the last Status Conference, Your Honour has been assured
14 that disclosure was complete and that the SPO had fully complied with
15 their obligations to make disclosure. And yet the day before the
16 fourth Status Conference we are provided with 153 disclosed items.

17 I make no criticism, of course, for the fact they are disclosed,
18 but I raise it again because Your Honour will forgive us for
19 remaining sceptical in these circumstances when we are presented with
20 further assurances from the SPO that the disclosure exercise is
21 in-hand and complete.

22 We have also received, after the drafting of our written
23 submissions for this Status Conference, the confidential redacted
24 version of Prosecution requests and challenges which deal with some
25 of the outstanding disclosure issues that Your Honour asked to be

1 left for the purposes of this Status Conference to be dealt with in
2 accordance with the Rules and through written submissions.

3 Despite Your Honour asking for that to be done, the SPO today
4 makes further oral submissions. I will not go into those matters.
5 We will respond in writing to the confidential redacted version of
6 Prosecution requests and challenges, and we will respond in writing
7 within the time limit set down by the Rules, and we will respond in
8 detail for Your Honour's assistance in those matters.

9 But as far as the SPO today raises again the issue of
10 incitement, as they do, in the words of Shakespeare, Your Honour, it
11 seems to us to be a case of the SPO doth protest too much. We have
12 said from the outset that we will investigate the issue of
13 incitement, entrapment or, to use the words of the SPO themselves in
14 both earlier Status Conferences and in written submissions, a sting
15 operation. That remains a live issue and we request the SPO to deal
16 with disclosure properly by listing on the Rule 102(3) notice such
17 information and material they have that shows that material came from
18 an SPO member of staff or somebody associated with the SPO. We will
19 deal further with those matters in our written response in the
20 confidential redacted version of Prosecution requests and challenges,
21 Your Honour.

22 In relation to Your Honour's question about raising any
23 objections to evidentiary material disclosed, we have said in our
24 written response that we will aim to raise such objections as we have
25 identified therein by 14 June, which is the date that Your Honour has

1 currently set for the filing of a Defence pre-trial brief.

2 Clearly, the assessment of the admissibility of evidence is
3 always an ongoing process. We will do our best to identify such
4 objections as are clear by that stage. But if there are other
5 objections that arise subsequent that date, we will, of course, raise
6 them as soon as possible thereafter.

7 I make the same point in relation to the issue of disclosure,
8 Your Honour. We have done our best to raise, at the earliest of
9 stages throughout, such disclosure requests that we can identify for
10 the early resolution of issues. We did so, if Your Honour recalls,
11 at the very first Status Conference, and we will continue to do that.

12 But it is the case that disclosure and the obligations to make
13 disclosure that are contained within Articles 21(6) of the Law and
14 Rule 102(3) and Rule 103 of the Rules of Procedure and Evidence are
15 obligations on the SPO that continue throughout the proceedings and
16 cannot be made subject to a cut-off point.

17 Does Your Honour wish me to continue then to deal with the issue
18 of access to documents for the accused at this stage or to hear from
19 others?

20 JUDGE GUILLOU: No, this will be dealt with later in the Status
21 Conference. We have a specific item on this. So unless you have
22 anything else on disclosure specifically, Mr. Rees?

23 MR. REES: [via videolink] Nothing further at this stage, thank
24 you.

25 JUDGE GUILLOU: Thank you, Mr. Rees.

1 Now I turn to Mr. Cadman, please.

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

3 Let me start by saying that there is very little that I can add
4 that's not already contained in our written submissions and which
5 Mr. Rees has very eloquently put before Your Honour today, save to
6 say that we also take the position that we should be given the
7 opportunity to respond within the timeline set, and we intend to do
8 so.

9 Regarding the issue that the SPO has stated, this continual
10 insistence on incitement or some other allegation towards the SPO,
11 their assertion that no evidence exists that is disclosable,
12 Your Honour, as we have made very clear from the outset of the
13 beginning of these proceedings, the reason why there is no evidence
14 in the possession of the SPO is because they have not bothered to
15 conduct an appropriate investigation into the manner in which those
16 documents were leaked.

17 And we maintain that position, that it is central to the case.
18 It is central to the Defence preparation that any information in the
19 possession of the SPO is disclosed. And if no investigations have
20 taken place, Your Honour, I think we're entitled to an explanation as
21 to why no investigations have taken place.

22 What we have set out previously - and a list of 39 requests were
23 sent to the SPO - were based on our own preliminary investigations
24 which identified that the SPO had not carried out any effective
25 investigation, as one might expect in a case such as this, one which

1 the SPO continues to set as being the most serious charges.

2 So for that reason, you would -- one might think that it would
3 be incumbent on the SPO to actually carry out an effective
4 investigation as to how those documents were leaked, considering that
5 it has been raised now on repeated occasions that this is a matter
6 that the Defence will pursue and is entitled to pursue in putting
7 forward an effective defence. So those matters remain to be
8 considered.

9 Your Honour, we have set out what we believe to be our clear
10 position from paragraph 5 onwards. In relation to the first point
11 that we are considering now, those requests have been made. I have
12 to reinforce and repeat what Mr. Rees says, that we are effectively
13 being asked to accept the SPO's position on many of these issues at
14 face value, without scrutiny, and, as Mr. Rees has said, there is
15 real scepticism as to whether such reliance can be made.

16 We have stated that there is very real concern that these
17 matters are not being properly addressed and will require
18 Your Honour's intervention, and so these matters will need to be put
19 in the form of written submissions. We cannot simply accept the
20 SPO's position as stated without scrutiny. So those matters remain.

21 Your Honour, let me also just conclude on this first part of the
22 agenda by saying that, as Mr. Rees has said, this is not the first
23 time that the SPO has disclosed or has served a number of items the
24 day before a Status Conference. It makes it very difficult for us to
25 be able to put forward proper oral submissions to Your Honour on

1 these points without having proper time to consider it, and so we
2 will have to take the allotted ten days for us to be able to respond
3 to these points. And it is a most unsatisfactory way of this case
4 continuing to be managed.

5 Your Honour, I'll stop there. I will, obviously, come back on
6 the other matters that require some discussion, certainly the access
7 to documents and translation. And, Your Honour, let me apologise to
8 Your Honour for having served a further written submission this
9 morning, which I'm sure the parties and Your Honour will not have had
10 an opportunity to consider. That has been filed for your
11 consideration based on the submissions of the SPO and the Registrar,
12 but I can certainly come back to that as we deal with it later in the
13 agenda.

14 JUDGE GUILLOU: Thank you, Mr. Cadman. I think your filing has
15 been distributed literally one minute before I entered the courtroom,
16 so I haven't been able to even open it.

17 Mr. Prosecutor, do you wish to respond to the Defence? You have
18 the floor.

19 MR. HALLING: Yes, briefly, Your Honour, although without
20 Shakespeare quotes. I don't have the accent to do them justice
21 anyway.

22 JUDGE GUILLOU: Me neither.

23 MR. HALLING: We don't expect the Defence to accept at face
24 value what we are saying. We expect them to challenge what we have
25 said in filing -- the filing that we made on Monday that was notified

1 to the Defence on Wednesday. They are, of course, entitled to do so,
2 and the scrutiny is then exercised by Your Honour.

3 The only thing I wanted to address on this is just to correct
4 something that Mr. Gucati (sic) said just to be clear as to when
5 these items were disclosed.

6 The items that he was referencing that were disclosed yesterday
7 were actually disclosed on 28 April. And I emphasise that, because
8 28 April was Your Honour's deadline for when we had to disclose those
9 items for which we were not contesting materiality on the Rule 102(3)
10 notice.

11 I did mention a 146 number. The number that the Gucati Defence
12 mentions is slightly higher. The reason why, if you are interested -
13 and I mentioned this - is that some of the items were disclosed as
14 sub-items, meaning they were split into parts, before disclosed.
15 There were also limited items that in order to make sure both Defence
16 teams had a version, when the documents concerned personal
17 information of one accused or the other, we gave an unredacted
18 version to one Defence team and then a redacted version to both. So
19 that explains the discrepancy in the numbers, and the date was indeed
20 the date of your deadline.

21 The only other thing that I wanted to mention is what is
22 becoming a refrain, stated again now by the Haradinaj Defence, that
23 we have not sufficiently investigated this case. And I know that we
24 have said this before, and I'm going to keep it brief.

25 Our investigation has established that the charges against the

1 accused are warranted and that the evidence is sufficient to prove
2 their guilt beyond reasonable doubt. Our indictment has been
3 subjected to judicial scrutiny and confirmed. The pre-trial phase of
4 these proceedings is almost complete.

5 The Defence does not get to decide what the SPO should or should
6 not investigate, nor does it get to decide which witnesses we should
7 call or which evidence to present. It is our responsibility, as the
8 Prosecution, to present the evidence that we consider best to
9 discharge our burden of proof, and it will be ultimately for the
10 Trial Panel to decide whether this evidence is sufficient to convict
11 the accused.

12 This is not a trial about the SPO's investigative choices, and
13 Defence attempts to make it one detract from the purpose of these
14 proceedings. Thank you.

15 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

16 Let me turn to the Defence. Do you wish to add anything on this
17 first item in the agenda on disclosure?

18 Mr. Rees?

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

20 JUDGE GUILLOU: Mr. Cadman.

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

22 JUDGE GUILLOU: Thank you.

23 Just a few points on this first item on disclosure. I will not
24 issue any oral order on the SPO's request, given the request by the
25 Defence to benefit from the full ten days in order to reply in

1 writing. So we will deal with this request in written rulings as
2 foreseen by Rule 76.

3 Second, we will also deal with the recent SPO request on
4 materiality in written rulings. So, again, I invite all the parties
5 to follow the deadlines set in the rules on that.

6 And further, if I may, I invite the parties to continue their
7 *inter partes* dialogue. I see that it is not always easy. But,
8 nevertheless, I wish that everybody can continue in good faith, and I
9 also invite all the parties to seize me in writing in case of major
10 difficulty and, if possible, before the next Status Conference, so
11 that I can address these matters, if necessary, in a timely fashion
12 and especially in order to respect the calendar that I have set in
13 March, if we can, which I intend to do.

14 So this is it for disclosure. Let me -- ah, Mr. Rees.

15 MR. REES: [via videolink] Your Honour, before we move on to the
16 next item in agenda, can I raise a matter of practicality dealing
17 with the remote facility?

18 JUDGE GUILLOU: I think this will be dealt with, indeed, with
19 the other item in the agenda, because we'll have a discussion on the
20 accused's access to documents now, and I think your point will
21 certainly fit in this. Unless it's something completely unrelated,
22 but ...

23 MR. REES: [via videolink] Something completely unrelated. I
24 haven't given notice on it, but it relates to this Status Conference
25 and how we deal with it. If I may just explain very briefly,

1 Your Honour.

2 JUDGE GUILLOU: Please.

3 MR. REES: [via videolink] When those who are on the remote
4 facility are addressing the Court, we can't see you, Your Honour.
5 All we can see are those participants who are online, which makes it
6 difficult to properly engage with the Court because, as Your Honour
7 will appreciate, it is much easier to engage with the tribunal when
8 you can see the person you are addressing.

9 Is there any way that the Registry can address that, to stop the
10 image from moving away from Your Honour when those who are online are
11 addressing Your Honour?

12 JUDGE GUILLOU: I will give the floor to the Registry, but I
13 think the only way to do this is if we had from the courtroom several
14 Zoom connections, because I think at the moment you certainly have
15 what we call the floor connection, which is what is broadcasted,
16 basically, on the internet. Indeed, you don't have all the cameras.
17 So it would mean that, basically, we manage to have several Zoom
18 connections at the same time, and one with a camera on the bench,
19 probably, and even one on the different parties and participants.
20 But I don't know if it's feasible.

21 I will just briefly give the floor to -- Mr. Cadman, maybe you
22 want to add something before I give the floor to the Registry.

23 MR. CADMAN: [via videolink] Thank you, Your Honour. Not being
24 very technical myself, I think that there are ways in which the
25 gallery view can be managed so that all of those are present. I

1 think it is a difficulty when there are those physically present as
2 opposed to those appearing remotely.

3 So when Your Honour speaks I can see everyone, but as I'm
4 speaking now, even on gallery view, I can only see those appearing
5 remotely. But I think that there is a way that it can be manipulated
6 so that we are able to see, even if it's by way of a split screen.

7 JUDGE GUILLOU: Thank you, Mr. Cadman.

8 Mr. Roche, briefly, do you know if it is a possible? We're not
9 going to solve the matter today, but at least just to see if there's
10 a possibility.

11 I see Mr. Court Officer. Do you want to ...

12 THE COURT OFFICER: Your Honour, just to confirm that what
13 Mr. Cadman mentioned, it is indeed correct. Should counsel appearing
14 by Zoom select the gallery view, they should be able to see what is
15 being broadcasted by the Kosovo Specialist Chambers.

16 Thank you, Your Honour.

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

18 Mr. Roche, do you want to add anything on the matter?

19 MR. ROCHE: Thank you, Your Honour.

20 At this stage, I don't have anything to add to what has been
21 said by the Court officer, but we will look into the matter and
22 report back as expeditiously as possible.

23 Thank you.

24 JUDGE GUILLOU: Thank you, Mr. Roche. So I invite the Registry
25 to see if a solution is possible for the next Status Conference. We

1 will try to find a way. And I fully understand the Defence point,
2 because it is something I actually thought myself in a previous
3 Status Conference, because I thought that given what I see on my
4 screen, if it is the same thing you see on your screen, it must be a
5 bit difficult because you don't see the courtroom for sure. So we
6 will try to find a solution for the next Status Conference.

7 And I turn to the AV technician, who are probably going to hate
8 me for saying that, but I will ask them to do their best to find a
9 solution.

10 So --

11 MR. REES: [via videolink] Thank you, Your Honour.

12 JUDGE GUILLOU: -- unless there is anything else, I will move to
13 the second point on our agenda, which is the accused's access to
14 documents.

15 In its submission, the Registrar recalled that a secure
16 electronic data-securing system, or SEDS, has been put in place for
17 the electronic exchange of case-related materials between the accused
18 and their counsel. The system has been activated for both Defence
19 teams in this case.

20 However, according to the Gucati Defence, the SEDS system's
21 capacity is too low and needs to be expanded, and Legal Workflow
22 ought to provide the ability to download disclosure folders as a
23 whole or "en bloc" - now that I see that you refer to French
24 expressions in your filings, Mr. Rees - for onward transmission in a
25 single batch to the SEDS.

1 I also note that the Haradinaj Defence also considers that the
2 SEDS does not appear to be large enough to enable all of the evidence
3 to be uploaded, in particular, the video evidence, and therefore
4 requests the possibility to use alternative means, such as secured
5 USB sticks.

6 I also note that the Haradinaj Defence estimates that
7 communication between counsel and their client in the detention
8 facilities are currently complicated due to the glass partition
9 between defendant and counsel.

10 I, therefore, invite the Registry to first provide details on
11 the capacity of the SEDS system, on the possibility of using secure
12 USB sticks for transfer of information, and on communication between
13 defendant and counsel in the detention facilities.

14 Mr. Roche, you have the floor.

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

16 As you will be aware, the Registrar made a submission on this
17 matter on, I think, 28 April, and I will refer to that but also add
18 some additional points to address the questions that you have just
19 raised.

20 Firstly, dealing with the SEDS system, this is in place since
21 early March. I know that both counsel teams have signed up to it.
22 And the current capacity of the storage is 25 gigabytes per user, so
23 25 gigabytes per counsel and each member of counsels' team and also
24 for the accused. We have just now increased that to 100 gigabytes,
25 so that is a quadrupling of the capacity, which will allow,

1 obviously, for a significant greater degree of capacity.

2 More generally regarding the use of SEDS and the transfer of
3 files from Legal Workflow, during the training provided by Court
4 Management Unit to counsel, it was explained in detail how, on a
5 step-by-step basis, to transfer multiple documents from
6 Legal Workflow to the SEDS system. This is a very simple technical
7 matter involving, essentially, selecting all of the documents.

8 I would suggest that counsel who wish for further information
9 about how this process works contact the Court Management Unit, and
10 they will happily provide a walkthrough of the procedure.

11 As regards USB sticks, the current Registry IT security policy
12 restricts the bringing in of a number of items to the detention
13 facilities. This is quite a lengthy list of items, such as weapons,
14 explosives, medicines that aren't authorised, and that also includes
15 USB sticks.

16 I've engaged in some initial consultations with the Information
17 Technology Services Unit and also with the Detention Management Unit
18 to see if we could derogate from this general prohibition in order to
19 allow counsel to bring USB sticks for the purpose of, basically,
20 providing documents to their clients. This will require some
21 consultation with the relevant services of the Registry and also,
22 ultimately, as a matter to be discussed with the Registrar, who has
23 the authority to amend the current policy.

24 So we would be hopeful that this is something that could be
25 achieved without undue difficulty and in relatively short order, and

1 we will continue to look at that matter as a matter of urgency.

2 The next issue that Your Honour raised was regarding
3 communications between counsel and their accused in the detention
4 facilities.

5 In essence, the current measures are based on the independent
6 medical advice provided to the Registry by the medical service of the
7 Dutch prison service, and they're equally applicable to all of the
8 international tribunals who have detainees at Unit 4, being the
9 international unit of the PI Haaglanden. These measures will need to
10 continue because they are for the protection of all involved, and
11 they are basically a manifestation or an implementation of our duty
12 of care to protect the health of all person - accused, staff, counsel
13 and others - who are present in the detention facilities. And I
14 would say that they are necessary in order to allow counsel to have
15 in-person meetings with their clients at this time.

16 So I hope that this provides the information that you require.
17 Obviously, if you have any follow-up questions, I will endeavour to
18 answer them.

19 Thank you.

20 JUDGE GUILLOU: Thank you very much, Mr. Roche. And I note for
21 the record that your latest point is, of course, related to the COVID
22 pandemic. And I also thank the Registry for improving the system in
23 allowing up to 100 gigabytes. I think it might solve at least part
24 of the problem, especially when this relates to video evidence.

25 I will now give the floor to the Defence teams, starting with

1 Mr. Rees, please.

2 MR. REES: [via videolink] Your Honour, can I echo that it's very
3 helpful for the SEDS system capacity to be increased.

4 Can I just add actually that it seems to be working now in the
5 sense that I can see Your Honour as I'm addressing Your Honour -- oh,
6 no, it's not.

7 JUDGE GUILLOU: I think it depends on the -- now you will
8 probably see me.

9 MR. REES: [via videolink] Now I can see you.

10 JUDGE GUILLOU: So it depends on the person in the cabin there
11 who is editing the video and who is deciding if you will see me or
12 not. So there is still some improvement to be made, but I think what
13 you would like is to be able to see, basically, what you see at the
14 moment, plus the Zoom -- the full Zoom picture. So the AV still has
15 some homework to do for the next Status Conference, I'm afraid. But
16 please continue.

17 MR. REES: [via videolink] Your Honour, I will just return to
18 what I was saying.

19 So I am very grateful for the increase in the SEDS system
20 capacity. I won't -- there are some technical details that perhaps
21 it won't be fruitful for me to go into at this stage, but if I can
22 deal with that with a more general point rather than a matter of
23 detail.

24 Mr. Roche referred to the Legal Workflow training, assisting in
25 demonstrating how one can download a number of documents en bloc.

1 And, Mr. Roche, is right in that I underwent that training, and it
2 was very useful and I'm very grateful, because it did further my
3 knowledge of the Legal Workflow system. But even on the fix, if I
4 can use that term, that was suggested, it requires you to go into
5 each disclosure folder, you have to expand the number of files within
6 the folder that appears on the screen at any one point - the most it
7 can expand to is 100 - and then you have to click to select each of
8 those files and then go to the download function.

9 You can't do that for filings. Filings you have to individually
10 go to each one and select because, unlike with disclosures, the
11 filings have their own folder for each filing, as it were. So there
12 is no way that I can see of downloading filings en bloc. And we
13 are -- well, Your Honour is very familiar with the number of filings
14 that are already in place in this case.

15 And in terms of actually being able to transfer files from the
16 Legal Workflow system to the SEDS system, it would be, as I have put
17 in the written submission, very helpful indeed if there would be an
18 easier route so that you could simply select the disclosure folders
19 and copy them as folders or drag the folders across in the SEDS
20 system; and similarly if there was a way of downloading the filings
21 folder, because there is one overarching folder, again en bloc, that
22 would be of real assistance.

23 I am grateful to the efforts that have made thus far to
24 accommodate us, and it's certainly right that those responsible for
25 the system are very accommodating in listening to and responding to

1 issues raised, and I'd be grateful if there could be further
2 consideration given to that idea of being able to download folders as
3 a whole.

4 In relation to the conditions within the detention management
5 unit and being able to have access with Mr. Gucati, we, of course,
6 understand why the glass screen is in place. It does, nevertheless,
7 make it very difficult for us to have meaningful conferences with
8 Mr. Gucati and being able to -- well, Your Honour will understand how
9 important it is for a lawyer and lay client to be able to look at
10 documents together. That is very difficult when you are either side
11 of a glass partition. And not only a glass partition, but also a
12 glass partition that is embedded in a wall between lay client and
13 lawyer.

14 I know that Mr. Cadman has more detailed submissions to make
15 about that aspect, and I will simply endorse what Mr. Cadman has put
16 in writing, in his oral submissions on that point. I won't take it
17 any further.

18 JUDGE GUILLOU: Thank you, Mr. Rees.

19 So, on your first point, in fact, you would like a kind of
20 "ctrl A" selection of all the documents in order to be able to
21 download them all. I am not sure we are going to have a response
22 today, but I will invite the Registry to look into the matter.

23 You wanted to add something?

24 MR. REES: [via videolink] The "ctrl A" approach does work, but
25 it's still limited. It still means you have to go into each

1 individual disclosure folder. You then are presented with an option
2 of how many files within the disclosure you can see on the screen.
3 You can only "ctrl A" to select those that are displayed on the
4 screen, and the maximum that can be displayed at any one time is 100
5 files. It's better than I'd previously understood it, but it still
6 means that one has to go through the process of opening up each
7 folder, opening up each window within each folder. You can't do that
8 process, of course, for filings, because each filing has their own
9 separate folder.

10 I'm asking if consideration can be given to simply being able to
11 select the individual filings folder or the disclosure folder and
12 copying it as a folder.

13 JUDGE GUILLOU: Absolutely.

14 MR. REES: [via videolink] That's my request.

15 JUDGE GUILLOU: I will ask the Registry to look into the matter
16 and to get back to you as soon as they have an answer. I don't know
17 if it's currently possible, but if it's not, I think this could be
18 foreseen in the next update of the software --

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

20 JUDGE GUILLOU: -- which happens regularly. But it may entail
21 some technical difficulties, so I cannot promise that this will be
22 done in a very short timeframe.

23 Mr. Cadman, please.

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

25 I won't --

1 JUDGE GUILLOU: Sorry, Mr. Cadman. I was just being told that
2 now it seems that I appear on your screen, and that the AV has
3 apparently fixed the problem very quickly.

4 MR. CADMAN: [via videolink] Thank you, Your Honour.
5 Certainly -- yes, I can now see you, so thank you, Your Honour.

6 Your Honour, I don't want to belabour the point any more than is
7 already in the written submissions. Just to add a couple of points.

8 Obviously, we're very grateful for the increase to 100
9 gigabytes. That should certainly solved the problem of being able to
10 provide Mr. Haradinaj with the video footage that he needs to go
11 through.

12 What I would say, we appreciate all of the training that the
13 Registry and Court Management has provided, but it's not necessarily
14 a question of training. It's a question of how usable the system is.
15 And certainly what Mr. Rees has stated as far as the disclosures are
16 concerned, that's right. You have to go into each folder
17 individually and download each folder.

18 The problem that you also have is how that can then be
19 transferred en masse, because we're talking about high density
20 documents and video footage, so there are difficulties within that.

21 With the disclosures in particular, one of the difficulties that
22 we face is whilst the folder in which the documents are contained has
23 the file number and the file name, when you download the document in
24 PDF form, it only has the file name, so it doesn't -- it no longer
25 has the file number. So you have to, effectively, change the name of

1 every file in order for us to know what the file number is.

2 An easy route to this would be to have a separate folder which
3 actually has all documents inside it, not in subfolders but a single
4 folder that has all disclosures so that they can be downloaded en
5 masse. I think that would facilitate things enormously and save a
6 great deal of time.

7 Again, we're not trying to propose what's impossible or
8 unworkable. We just want to be able to make recommendations that
9 makes our job and everyone's job a lot easier.

10 I think it is more difficult for us, and I think that the Court
11 needs to understand, that it is more difficult for those who are not
12 permanently in the building. Working remotely through remote access
13 is not the same as being in the building, because on the few
14 occasions where I have been in the building, it is much easier to
15 move documents around and save them and use USB sticks to -- secure
16 USB sticks, as we've had support from the IT department to do so.

17 On the issue of USB sticks, the point that's raised in the
18 written submissions is that the material -- the video material
19 constitutes in excess of 50, 60 gigabytes. That cannot be done with
20 CDs, and so it has to be done with USB sticks. So I'm grateful for
21 Your Honour's indication.

22 I may be taking a huge advantage to ask if there's any way that
23 such policy can be implemented by Monday, because that's when I'm due
24 to see Mr. Haradinaj. I'm conscious of the fact that that's probably
25 unlikely, but if by any chance it can be done by Monday or Tuesday

1 next week, then it will facilitate our ability to move things
2 forward.

3 In terms of the access to the client, as Mr. Rees has said, and
4 whilst we do recognise that measures need to be in place for health
5 safety and the safety of all persons within the DNU, the fact that
6 all vaccinations are not scheduled to be completed until the end of
7 July means that it is completely unworkable for us to even
8 contemplate going to trial before September.

9 We do need to have full access to our client. We need to be
10 able to sit with them to go through videos, to go through documents,
11 and that is simply not possible with a full wall glass partition and
12 speaking to them through a telephone. It is simply unworkable.

13 The difference is if Mr. Haradinaj was brought to the court
14 today for today's hearing, I would have time with him in the holding
15 cell downstairs beneath the court, and I would not be separated by a
16 glass wall partition. What I had previously requested is if that is
17 possible for court hearings, why is it not possible for out-of-court
18 hearings so that we can properly prepare and move this case forward.
19 Otherwise, these matters are going to be delayed until the autumn.

20 And taking into consideration also the problems with
21 translation, which I understand is the next item on the agenda, that
22 is likely to increase the unlikelihood of being ready for trial
23 before the autumn.

24 JUDGE GUILLOU: Thank you, Mr. Cadman.

25 Does the SPO have anything to say on that? I don't think so,

1 but if you wish to.

2 MR. HALLING: Not on this point, Your Honour.

3 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

4 Mr. Roche, do you wish to respond to the Defence team,
5 especially regarding the questions that were raised on the timing of
6 the potential changes and on the USB sticks and on the difference of
7 policies between the court and the detention facilities?

8 Mr. Roche.

9 MR. ROCHE: Thank you, Your Honour.

10 As regards the potential change to the policy regarding USB
11 sticks, I will action this immediately and have already initiated
12 discussions as to whether a derogation could be made in time for
13 Mr. Cadman's visit on Monday. That ultimately, as I said, is a
14 decision outside my hands, but we will definitely do everything
15 feasible to have that matter resolved.

16 As regards the visits or the conditions in place in the
17 detention facilities, we have, obviously, made a submission on that,
18 and I would refer to that.

19 In terms of the ability to have face-to-face meetings at court,
20 that is something that is not done very regularly, and also the
21 timing and the security and the health considerations, particularly
22 the health and safety considerations, are materially different
23 between a short visit in the area of the court and in the detention
24 facilities.

25 I can look into that in a little bit more detail. Obviously,

1 this is the first time that this has been raised, but my initial
2 response to Your Honour is that there are material differences in
3 terms of the health and safety issues involved.

4 Thank you.

5 JUDGE GUILLOU: Thank you, Mr. Roche.

6 Mr. Cadman, please.

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

8 Just for the record, so there's no confusion, this is not the
9 first time it's been raised. It's been raised on a number of
10 occasions, the issue of whether conferences can be held in the court
11 premises. I raised this at the outset as an inconsistent practice in
12 different rules being applied on court days and non-court days, and
13 that's in communication with the Defence Office and with the
14 Registry.

15 JUDGE GUILLOU: Thank you, Mr. Cadman.

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

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

18 JUDGE GUILLOU: Thank you.

19 First, I will thank the Registry for all the efforts made in
20 order to solve the issues raised by the Defence in their discussions.
21 Whether it is the IT questions or whether it is in the detention
22 facilities, I wish to thank the Registrar for all the efforts made,
23 and I think some improvements have already been acknowledged by the
24 Defence today, so it's a good direction.

25 And then I will also thank the Defence and the Registry to

1 continue their discussions on the potential new improvements, whether
2 it is the number of gigabytes in the system or the availability of
3 other means of transfer of communication, and we will most likely
4 deal with this topic again in the next Status Conference if there are
5 still matters that are pending. But I thank the Registry in advance
6 for all their efforts.

7 Let me now move to the next item in our agenda today, which is
8 the agreement on points of law and fact.

9 I note that the SPO communicated to the Defence 39 proposed
10 agreed facts, and no response was received by the SPO.

11 I also note that the Gucati Defence estimates that an agreement
12 on points of fact is unlikely, except biographical details, the dates
13 of televised press conferences and speakers therein. I also take
14 note of the Haradinaj Defence submissions that it intends to confirm
15 the facts with which it is capable of agreement but only after the
16 end of the disclosure process and once instructions have been taken
17 from the accused on that matter.

18 I would like the parties to elaborate on the chances to identify
19 a list of issues subject to dispute and one with issues not subject
20 to dispute.

21 Mr. Prosecutor, you have the floor.

22 MR. HALLING: Thank you, Your Honour.

23 Our unsuccessful efforts to secure agreed facts are reflected in
24 our written submissions. It is, indeed, clear from at least the
25 Gucati Defence submission that no significant agreements will be

1 forthcoming.

2 You mentioned these three categories of information that the
3 Gucati Defence mentions might be able to lead to agreements. We do
4 note that all -- the proposals in relation to all three of those
5 categories were included in the 39 facts that were sent on March 12.

6 And we also note that the Haradinaj Defence indicates it still
7 needs to take instructions from the client on the issue.

8 We note that you set a deadline of 9 April in order to reach
9 these agreements. We remain available to have discussions on them.
10 It does require a minimum level of investment from the Defence, but
11 we are available.

12 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

13 Mr. Rees, please.

14 MR. REES: [via videolink] Your Honour, of course, did set a
15 timetable to begin the process, but Your Honour also stressed that it
16 was not an obligatory process. There was no obligation on any of the
17 parties.

18 We, as Your Honour is well aware, have been working hard in
19 relation to disclosure issues. Those matters will continue. They
20 are not resolved yet, as Your Honour knows. We will, of course,
21 engage in seeking to narrow the issues as far as possible for the
22 Trial Panel. We will do that.

23 But as we, in fact, I think, raised when this matter was
24 originally on the agenda for the second Status Conference, it is
25 difficult for us to meaningfully engage in that process in a way that

1 will, frankly, narrow the issues until we are close to our pre-trial
2 brief and then trial preparation being concluded.

3 In relation to the document that the SPO provided, it doesn't
4 refer to any points of law for agreement. It does refer to a number
5 of points of fact. I don't know if Your Honour has seen the
6 document, but they are not matters which significantly are going to
7 advance matters before the Trial Panel in any event. They are
8 relatively straightforward, albeit save for the areas that we
9 referred to in paragraph 13 of our written submissions and likely
10 that actually agreement will be reached on them in any event.

11 But we are conscious that we will do our best to try and narrow
12 issues down for the Trial Panel in due course as far as possible, and
13 it does seem to us that it is the point at which the pre-trial
14 Defence brief is served that we will be in a proper position to be
15 able to engage in meaningful discussions with the SPO about that at
16 that stage.

17 JUDGE GUILLOU: Thank you, Mr. Rees.

18 Mr. Cadman, please.

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

20 I don't think there's anything further that I could add that has
21 not already been said by Mr. Rees. I think we are mindful of the
22 importance of narrowing the issues for the Trial Panel. We will
23 endeavour to do so. There have been difficulties, as I've already
24 stated, as to being able to take instructions on some of these
25 issues. We will give our full attention to this.

1 There will almost certainly be issues that we want to put
2 forward to the SPO as agreed facts and positions of the law, just so
3 that the issues that are before the Trial Panel reduce the amount of
4 time that the trial needs to take. We don't need to litigate every
5 single point, and we will be reasonable when we have full and proper
6 access to our clients and we can take full instructions and respond
7 accordingly.

8 JUDGE GUILLOU: Thank you, Mr. Cadman.

9 Mr. Prosecutor, do you want to add anything on this topic?

10 MR. HALLING: Nothing further, Your Honour.

11 JUDGE GUILLOU: Thank you. Then this matter will probably be
12 finalised when you will file your pre-trial brief in June. I don't
13 anticipate that this matter will evolve before the next Status
14 Conference.

15 For the next point on our agenda related to translation, I will
16 first recall the directions given in paragraphs 62 to 64 of my
17 Framework Decision on Disclosure, F104, according to which:

18 It is acknowledged that the accused has a right under Article
19 21(4) (a) of the Law to be informed in a language he understands of
20 the nature and cause of the charges against him, in the present case,
21 Albanian. However, the right does not equate to an unfettered and
22 absolute right to receive all evidence, documents, and filings in the
23 accused's language. Translating the entire case file, including
24 evidence, would prejudice the right to be tried within a reasonable
25 time. Therefore, a balance must be achieved between these competing

1 rights in order to make proceedings fair and expeditious at the same
2 time.

3 As a result, the Rules establish that all statements of
4 witnesses whom the SPO intends to call to testify at trial shall be
5 made available in the language the accused understands and speaks.
6 All other evidence shall be submitted in English in accordance with
7 the Decision on Working Language, unless otherwise ordered by the
8 Pre-Trial Judge.

9 The free assistance of an interpreter together with counsel's
10 professional advice will assist the accused in understanding the
11 evidence and related filings that are not in Albanian. The Defence
12 may also request the SPO to provide the Albanian translation of
13 specific evidence, or part thereof, other than statements of
14 witnesses whom the SPO intends to call to trial to testify.

15 When making such requests, the Defence shall indicate the
16 reasons why it is essential to receive these pieces of evidence in
17 Albanian and why the accused is not in a position to appreciate the
18 content of such evidence with the assistance of an interpreter and
19 counsel's advice.

20 In the event of disagreement between the Defence and the SPO in
21 this regard, the Defence must seize the Pre-Trial Judge as soon as
22 possible.

23 Now as regards the present dispute, I note that according to the
24 SPO, it has completed all translations required by the Law to prepare
25 for the Defence.

1 I note from the Registry's submissions that all documents it is
2 required by Law to translate will be completed by 17 May 2021 when
3 the revision of the detailed Rule 86(3) outline will be completed.
4 The Registry also indicated that the translation of the SPO's
5 pre-trial brief, including witness and exhibit lists and the
6 Rule 109(c) chart, which were submitted by the SPO on 9 April 2021,
7 is planned to be completed by 15 June 2021, but the receipt of any
8 higher priority translation requests may affect this estimate.

9 I take note that the Gucati Defence would like me to set a
10 timeline for any requests for translation, and I also take note that
11 the Haradinaj Defence considers that the SPO pre-trial brief and
12 related material shall be translated as a matter of priority in order
13 for the accused to take an active part in the preparation of his
14 defence.

15 The Haradinaj Defence considers that without the translations of
16 the SPO pre-trial brief and related materials, if deadlines were to
17 be maintained how they currently stand, this will wholly undermine
18 and prejudice Mr. Haradinaj's right to adequately prepare his
19 defence.

20 So I would first like to hear from the Registry and then from
21 the parties about these issues, notably to determine if any practical
22 solution can be found to allow the Defence to benefit from any
23 translation of the SPO pre-trial brief before the current deadline,
24 for them to file their own pre-trial brief, for instance, if a
25 partial of unrevised translation can be made available earlier than

1 15 June 2021.

2 And I know saying that that the Registry will certainly think I
3 am pushing too much, but I will see if we can find a practical
4 solution today.

5 Mr. Roche, you have the floor, please.

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

7 As previously indicated in the Registrar's filing F00192, we
8 have given dates for the anticipated translation, which Your Honour
9 has recounted, so I won't repeat them again.

10 As regards the Prosecution pre-trial brief, that has almost
11 finished initial translation. The process of revision, obviously,
12 which leads us or brings us to the required standard, is ongoing.
13 But if Your Honour directs that an unrevised translation be provided
14 of the Prosecution pre-trial brief, that can be done by 7 May. That
15 is a document of 83 pages. And then the -- it has two annexes, the
16 witness and exhibits list, and the Rule 109(c) chart. Those are
17 nearing initial and we would hope to be able to provide unrevised
18 translations of those, not by 7 May but hopefully quite soon
19 afterwards. And as soon as I have a firm date, I can confirm that in
20 writing.

21 So the caveat would be that obviously, as unrevised
22 translations, they are subject to revision, potential amendment, and
23 correction. So the previously indicated date for fully revised
24 translations of the Prosecution pre-trial brief and the two annexes
25 would remain at 15 June, but an unrevised translation of the brief

1 can be provided by 7 May, with the annexes to follow soon afterwards.

2 Thank you, Your Honour.

3 JUDGE GUILLOU: Thank you very much, Mr. Roche, and thank you
4 for this concrete and practical proposal.

5 I will now give the floor to the SPO. Mr. Prosecutor, please.

6 MR. HALLING: Thank you, Your Honour.

7 We did want to talk a little bit about the translation framework
8 and the translation of the pre-trial brief in particular.

9 First, just as a preliminary point, and it doesn't even seem to
10 be a contested one, the SPO was only obliged to file the pre-trial
11 brief in English. There is no statutory entitlement to an Albanian
12 translation of the pre-trial brief, nor is one a prerequisite to the
13 Defence filing their own pre-trial brief.

14 Your Honour just now set out the framework for these kinds of
15 translation issues. Looking at the submission from the Haradinaj
16 Defence just before this Status Conference, it does seem to be less
17 categorical than the first submissions on what they think that they
18 are entitled to.

19 But we did want to stress that the statutory scheme does
20 identify only certain items that require translation. You gave a
21 similar list. They need to be able to understand the nature and
22 cause of the charges against them, the indictment, and the material
23 supporting the indictment, the statements of all witnesses whom the
24 Specialist Prosecutor intends to call to testify at trial, and later
25 the trial and appeals judgements in this case.

1 That the statutory scheme identifies discrete categories of
2 information for translation is proof enough that the SPO -- that not
3 everything that the SPO intends to rely upon requires translation.
4 All information to date falling under the categories just mentioned
5 has been disclosed -- the translations have been provided or about to
6 be provided, and the trial cannot be delayed due to translations
7 beyond those statutorily required.

8 In the circumstances of this case, the Prosecution's pre-trial
9 brief does not add much in the way of information that the accused
10 does not already have in Albanian. Much of the SPO's evidence in
11 this case consists of open-source statements of the accused,
12 disclosed in their original Albanian with English translation.

13 The accused does not require translation of the SPO's arguments
14 concerning the accused's own words in order for them to understand
15 the evidence against them. There is a comprehensive Rule 86(3)(b)
16 outline in this case, one which overlaps substantially with the
17 pre-trial brief, which will be available in Albanian next month,
18 according to the submissions of the Registry.

19 In the meantime, the Defence have translations of all statements
20 of witnesses that the SPO intends to call as well as Albanian
21 versions of over half of the SPO's exhibits. They can also solicit
22 the help of the Registry in prioritising certain translations, doing
23 spot oral translations. We take note of the Registry's submission
24 about unrevised translations and how the pre-trial brief could be
25 ready in that form even faster.

1 Even on the 15 June estimate given in the Registry's
2 submissions, that estimate seems to envisage translating all of the
3 annexes included with the pre-trial brief, which includes 58 pages of
4 witness and exhibit lists and a 72-page Rule 109 categorisation
5 chart. If the pre-trial brief alone were prioritised, even as a
6 revised translation, it might be available faster than 15 June, and
7 we wanted to mention this as well. In particular, there is nothing
8 in that 72-page Rule 109 categorisation chart that is not also in the
9 pre-trial brief. That chart contains the citations to the pre-trial
10 brief.

11 The Haradinaj Defence cannot reasonably expect this trial to
12 wait until every document in the case is translated to their
13 satisfaction. The accused have or are just about to have all the
14 translations that they need in order to prepare for this trial.

15 And this is the last point that I wanted to mention in relation
16 to this, because we've heard about possible delays in this in
17 conjunction with other issues and not being able to start until
18 autumn and already foreshadowing postponements. The Defence have had
19 the entire balance of this year to take instructions and to
20 investigate this case.

21 This case is small. It's concerning the acts and conduct of the
22 accused in just under a month. Again, much of the evidence derives
23 from the accused's own public statements, which the Defence cannot
24 reasonably say that they fail to understand. The Defence are
25 entitled to adequate time and facilities to prepare their defence,

1 but any reasonable observer listening to the conversation thus far
2 should conclude that the Defence is being given that adequate time
3 and facilities to prepare.

4 So to go to a question that you asked before the Status
5 Conference: Your Honour's timelines in the consolidated calendar are
6 reasonable, they remain so, and nothing has happened concerning
7 translations or anything else that would justify changing them.

8 Thank you.

9 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

10 I turn to the Defence.

11 Mr. Rees, please.

12 MR. REES: [via videolink] Your Honour, I'm going to adopt the
13 submissions made by Mr. Cadman on this point, if I may.

14 JUDGE GUILLOU: Absolutely. Thank you, Mr. Rees.

15 Mr. Cadman, please.

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

17 As you will be aware - and I do not need to belabour the point;
18 there are detailed submissions on this point - I think there is a
19 fundamental difference of opinion between the SPO and the Defence on
20 what is required. There is continual reliance on the statutory
21 requirements of what needs to be translated.

22 With the greatest respect, Your Honour, it's whether those
23 statutory provisions are consistent with the obligations of these
24 proceedings complying with the European Convention and other
25 international treaties.

1 As we know, this is an institution of the Republic of Kosovo.
2 It is not an international court. It is required to comply with the
3 constitution and, as part of the constitution, the international
4 treaties that form part of it.

5 So the issue is whether what is being provided is compatible
6 with the right under Article 6(3), taken with Article 6(1). Our
7 position is it is not. Our argument is not with the SPO. The SPO --
8 we take note it is not for the SPO to translate the pre-trial brief.
9 But in order for Mr. Haradinaj and Mr. Gucati to receive a fair
10 trial, there is more than just the indictment and supporting material
11 that requires to be translated. Otherwise, we cannot properly go to
12 trial.

13 The SPO has said we cannot reasonably expect this Court to wait.
14 Yes, we can, Your Honour, and it must. It must ensure that these two
15 individuals are able to prepare properly for trial in what is a very
16 serious matter. It may not be a significant matter to the SPO - as
17 we've heard, it's a relatively small trial as far as they're
18 concerned - but the defendants have the right to know the nature and
19 the cause of the allegations against them and the material that's
20 going to be presented.

21 Our submission is that the pre-trial brief forms an integral
22 part of that. We need to be able to take full instructions from the
23 defendants so that we are able to file our pre-trial brief in
24 response.

25 Your Honour has the written submissions. Again, I don't want to

1 go any further than that, but there is a fundamental difference of
2 opinion between what is required and what is reasonable in terms of
3 ensuring a fair trial. Our position is the way that it's currently
4 being managed, there is a very real risk that these defendants will
5 not receive a fair trial.

6 JUDGE GUILLOU: Thank you, Mr. Cadman.

7 Can you let me know if the proposal of the Registry, i.e., to
8 transmit to the Defence an unrevised version of the pre-trial brief
9 and related materials, or at least the pre-trial brief, by 7 May
10 would be useful for the preparation of the trial and for you, or do
11 you wish to have only a revised version?

12 MR. CADMAN: [via videolink] Your Honour, thank you.

13 And I am most grateful to the Registry for that indication, and
14 I'm conscious that I appear to be just complaining today, so I also
15 want to make sure that I'm giving credit where credit is due. We are
16 very grateful for that indication, and we would be willing to accept
17 the unrevised version.

18 Obviously, it is the pre-trial brief and the access that are
19 important, and the sooner we can have that, the sooner we can
20 properly prepare for trial.

21 JUDGE GUILLOU: Thank you, Mr. Cadman.

22 If I may make a suggestion to the Registry on this, I invite the
23 Registry to transmit this unrevised version. But at a later stage
24 when the revised version will be ready - and then I turn to the
25 interpreters who, some of them, are probably also translators - it

1 would be good to transmit to the Defence a version that includes the
2 corrections so that the Defence can clearly and quickly see if there
3 has been any corrections that are important or of a certain
4 significance. That will, I think, greatly benefit -- be a great
5 benefit for the Defence for their preparation, so I thank the
6 Registry if advance for that.

7 Is there any more or anything else to say on the translation?

8 Mr. Prosecutor.

9 MR. HALLING: Yes. As you can imagine, we could say a great
10 many things about how the statutory framework is compatible with the
11 European Court of Human Rights and the way that it has been applied,
12 and we could also note that the Rules have been specifically found to
13 be constitutional by the Specialist Constitutional Court of the KSC.

14 However, given that the Haradinaj Defence has foreshadowed
15 filing a written application in this regard, we'll reserve any
16 further responses to that until that is filed.

17 Thank you.

18 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

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

20 MR. CADMAN: [via videolink] Thank you, Your Honour. Not at this
21 stage.

22 JUDGE GUILLOU: Thank you, Mr. Cadman.

23 Mr. Roche, do you want to add anything after the exchanges of
24 the parties?

25 MR. ROCHE: No, thank you, Your Honour. And we note the

1 discussion regarding the unrevised translation of the Prosecution
2 pre-trial brief, and we'll progress that matter within the time scale
3 indicated.

4 Thank you.

5 JUDGE GUILLOU: Thank you, Mr. Roche. This is very much
6 appreciated.

7 I see that it is past 12.30, so we will take a short break of
8 approximately 20 minutes for the interpreters, and we will be back in
9 20 minutes for the last point on the agenda.

10 The hearing is adjourned.

11 --- Recess taken at 12.33 p.m.

12 --- On resuming at 12.52 p.m.

13 JUDGE GUILLOU: So we are now moving to the, I think, last point
14 on the agenda related to investigations.

15 I first note that the SPO indicated that it will continue to
16 investigate as needed, particularly in light of any evidence the
17 Defence elects to present, but the SPO foresees no investigative
18 activities that would impact the consolidated calendar.

19 I note that the Defence investigations are ongoing, and one
20 Defence team intends to organise another investigative mission at the
21 end of May.

22 I first invite the SPO to give an update on its investigation.

23 Mr. Prosecutor.

24 MR. HALLING: Thank you, Your Honour.

25 We actually have nothing further to add on this agenda item

1 beyond what Your Honour just summarised. If there are particular
2 questions that you have for us, we can answer them, but that's all
3 that we had on this topic.

4 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

5 I now invite the Defence to provide updates on the status of its
6 investigations, including the estimated overall amount and type of
7 evidence it intends to disclose to the SPO, and whether requests for
8 protective measures are envisaged. I also invite the Defence to link
9 with the Registry about any logistical issue related to their travels
10 to Kosovo. And finally, I invite the Defence to indicate whether
11 they are on target to meet the remaining deadlines set out in the
12 consolidated calendar and the decision on Rule 102(3) material.

13 Mr. Rees, please.

14 MR. REES: [via videolink] Your Honour, we have set out in
15 previous Status Conferences a description of the investigations that
16 we have undertaken and are continuing to undertake. We have a clear
17 timetable for our team to carry out to complete those investigations
18 and to comply with the deadlines that remain in the consolidated
19 calendar.

20 We have -- as we have put in our written response, we presently
21 envisage being able to meet those remaining deadlines in the
22 consolidated calendar, to remain on target to serve the pre-trial
23 brief as directed, and to be ready for trial, as we have indicated
24 previously in writing and in oral submissions, at some point after
25 the commencement of the week beginning 30 August.

1 That, of course, is subject to the ongoing issues that have
2 already been canvassed in the course of this Status Conference being
3 satisfactorily resolved, to the ongoing disclosure issues that are
4 yet to be determined, as Your Honour has already noted, and, of
5 course, to the resolution of the outstanding interlocutory appeal
6 relating to the indictment and any steps that flow thereafter. But
7 at this stage, as we have put in our written submission, we presently
8 envisage being able to meet those remaining deadlines.

9 Unless I can assist any further at this stage, Your Honour.

10 JUDGE GUILLOU: Thank you, Mr. Rees.

11 Mr. Cadman, please.

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

13 The position would be the same for Mr. Haradinaj's Defence. The
14 envisaged Defence investigative mission in May is a joint mission.
15 And I'm currently in Kosovo now, so we do expect to be on time,
16 subject to the matters that Mr. Rees has outlined.

17 JUDGE GUILLOU: Thank you, Mr. Cadman.

18 Mr. Prosecutor, anything to add? No.

19 Thank you very much. So now I would like to ask the parties on
20 their view on a suitable date for the next Status Conference to
21 address any outstanding matter before the transmission of the case
22 file.

23 I note that the Defence for Mr. Gucati expressed a preference
24 for Friday, 28 May, morning. So let me ask the parties if this would
25 be suitable for everyone.

1 Mr. Prosecutor.

2 MR. HALLING: Thank you, Your Honour. We're available for the
3 next Status Conference as the Court pleases, and the date mentioned
4 is fine. Thank you.

5 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

6 Mr. Rees, any second thoughts on 28 May?

7 MR. REES: [via videolink] No, thank you.

8 JUDGE GUILLOU: Thank you, Mr. Rees.

9 Mr. Cadman.

10 MR. CADMAN: [via videolink] We're available on that date,
11 Your Honour.

12 JUDGE GUILLOU: Thank you.

13 You will receive a Scheduling Order that will include the agenda
14 before the next Status Conference, but I can already tell you that I
15 intend to schedule it on 28 May.

16 And I invite the parties to make written submissions if they
17 would like to raise any specific issues during the next Status
18 Conference.

19 At this point I would like to ask the parties whether they have
20 any other issues that they would like to raise.

21 Mr. Prosecutor.

22 MR. HALLING: Nothing further, Your Honour.

23 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

24 Mr. Rees, please.

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

1 JUDGE GUILLOU: Mr. Cadman.

2 MR. CADMAN: [via videolink] Nothing from our side, Your Honour.
3 Thank you.

4 JUDGE GUILLOU: Thank you very much.

5 And finally I will now issue two oral orders:

6 First, I hereby issue an oral order on ERN 093492-093590,
7 disclosed to the Defence on 19 March 2021, pursuant to my order F141.
8 Given the errors identified by the SPO in relation to this item as
9 listed in ERN 095162-095239, I hereby order the SPO to prepare a
10 revised version of ERN 093492-093590, rectifying said errors and any
11 other inconsistencies, and disclose this revised version to the
12 Defence by 7 May 2021.

13 This concludes my first oral order.

14 Second, I hereby issue an oral order to the SPO regarding the
15 unredacted version of disclosed evidentiary material, if any.
16 Considering the advanced stage of the pre-trial proceedings and the
17 envisaged date for the transmission of the case file to the
18 Trial Panel, I hereby order the SPO to communicate to me, as
19 Pre-Trial Judge, by Friday, 18 June 2021, any unredacted version of
20 the evidentiary material disclosed under Rules 102(1)(b), 102(3), and
21 103 of the Rules in conformity with paragraph 80 of the
22 Framework Decision on Disclosure, which is F104.

23 This concludes my second oral order.

24 And this concludes today's public hearing. I thank the parties
25 for their attendance, and I thank the Registry for all the work that

1 they've already done and that they will continue to do in order to
2 facilitate the proceedings in the interest of a fair and efficient
3 trial.

4 And, as usual, I thank the interpreters, stenographers,
5 audio-visual technicians, and security personnel for their
6 assistance.

7 The hearing is adjourned. Thank you.

8 --- Whereupon the Status Conference adjourned
9 at 1.00 p.m.

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