

1 Tuesday, 13 February 2024

2 [Open session]

3 [Status Conference]

4 [The accused entered the courtroom]

5 [The Accused Shala appeared via videolink]

6 --- Upon commencing at 10.05 a.m.

7 JUDGE GUILLOU: Good morning. And welcome, everyone in and  
8 outside the courtroom.

9 Apologies for the five-minute delay. We had a technical issue  
10 with IT.

11 Madam Court Officer, can you please call the case.

12 THE COURT OFFICER: Good morning, Your Honour. This is file  
13 KSC-BC-2023-10, The Specialist Prosecutor versus Sabit Januzi,  
14 Ismet Bahtijari, and Haxhi Shala.

15 JUDGE GUILLOU: Thank you, Madam Court Officer.

16 Now I will kindly ask the parties and participants to introduce  
17 themselves, starting with the Specialist Prosecutor's Office.

18 Madam Prosecutor.

19 MS. SHAHABUDDIN: Good morning, Your Honour. For the Specialist  
20 Prosecutor's Office, we have case and evidence management assistant  
21 Aniko Boldog, Senior Prosecutor Nathan Quick, and myself, Prosecutor  
22 Tazneen Shahabuddin.

23 JUDGE GUILLOU: Thank you, Madam Prosecutor.

24 Now I turn to the Defence, starting with the Defence of  
25 Mr. Januzi.

1 Mr. Rees, you have the floor.

2 MR. REES: [Microphone not activated]

3 JUDGE GUILLOU: Microphone, please.

4 MR. REES: Your Honour, I am Jonathan Rees, King's Counsel,  
5 Specialist Counsel of Mr. Sabit Januzi. I'm assisted by co-counsel  
6 Mr. Huw Bowden and also Mr. Muharem Halilaj.

7 JUDGE GUILLOU: Thank you, Mr. Rees.

8 Now I turn to the Defence of Mr. Bahtijari, please.

9 MS. GERRY: [via videolink] Good morning, Your Honour and  
10 everyone in and outside the courtroom. My name is Dr. Felicity  
11 Gerry, King's Counsel, and I am here on behalf of Mr. Bahtijari as  
12 his counsel.

13 JUDGE GUILLOU: Thank you, Ms. Gerry.

14 I note that --

15 MS. GERRY: [via videolink] It's actually Dr. Gerry, not Ms.  
16 It's Dr.

17 JUDGE GUILLOU: Thank you, Dr. Gerry. Is that okay?

18 MS. GERRY: [Via videolink] Thank you. Yes, thank you very much.  
19 It took me seven years to get it, so I do try and use it. Thank you.

20 JUDGE GUILLOU: I note that you are representing Mr. Bahtijari,  
21 and that the previous request related to the representation of the  
22 accused is moot. And I also note that Mr. Bahtijari is present in  
23 the courtroom for this Status Conference.

24 MS. GERRY: [via videolink] Thank you very much.

25 JUDGE GUILLOU: Now I turn to the Defence of Mr. Shala, please.

1 MR. CADMAN: [via videolink] Good morning, Your Honour.  
2 Toby Cadman, Specialist Counsel for Mr. Haxhi Shala. I am assisted  
3 today by Mr. John Cubbon, co-counsel.

4 JUDGE GUILLOU: Thank you, Mr. Cadman. And I also note that  
5 Mr. Shala is participating via video-conference for this Status  
6 Conference.

7 Finally, the Registry. Mr. Nilsson, you have the floor.

8 MR. NILSSON: Good morning, Your Honour. Good morning,  
9 colleagues. Jonas Nilsson, Deputy Registrar for the Registry today.

10 JUDGE GUILLOU: Thank you, Mr. Nilsson.

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

13 On 8 February, I scheduled this fourth Status Conference in this  
14 Case 10. My goal today is to review the status of the case and to  
15 further organise the exchanges between the parties to ensure an  
16 expeditious preparation for trial.

17 In particular, I wish to discuss, first, the issue of funding  
18 the Defence teams by the Ministry of Justice of Kosovo that has been  
19 raised by all Defence teams in their written submissions. Then  
20 disclosure of evidentiary material, the status of the  
21 Specialist Prosecutor's investigations, the points of agreement on  
22 matters of law and fact, the status of Defence investigations, the  
23 anticipated transmission of the case file, and when the parties  
24 expect to be ready for trial, and, finally, any other issues the  
25 parties may wish to raise.

1 I thank the parties for their submissions ahead of this Status  
2 Conference. And, as usual, I will invite the parties and the  
3 Registry to present their views in a concise fashion about each item  
4 in the agenda that I will address individually.

5 I'll remind the parties and the Registry that should any  
6 submission require disclosure of confidential information, prior  
7 notice should be given so we can go into private or closed session.

8 Before we move to the first item on the initial agenda, I would  
9 like to hear the parties and the Registry on the issue that has been  
10 raised by the Defence teams in their written submissions; namely, the  
11 funding of the Defence.

12 I note that, in its submission for the Status Conference, the  
13 Januzi Defence raised the issue of failures on the part of the  
14 Ministry of Justice of Kosovo as a result of which Defence funding is  
15 not yet in place with no timetable for resolution.

16 The Bahtijari Defence indicated that several requests for  
17 confirmation of funding were made to the Ministry of Justice of  
18 Kosovo. A funding meeting was scheduled last week, but it has been  
19 cancelled with no confirmation that funding will be received.

20 And I've been notified yesterday by e-mail that a meeting was  
21 supposed to be scheduled today, so I will invite counsel to give an  
22 update on this matter.

23 The Shala Defence also indicated that its investigations are  
24 subject to funding being guaranteed by the Ministry of Justice of  
25 Kosovo.

1           So I would like to hear from each Defence team what is the  
2           current situation, if there's been any update, and if there is a  
3           prospect of finding a solution soon. I invite the Defence to  
4           indicate if they have raised this issue with the Registry; and, if  
5           so, what solutions have been discussed. And I also specifically  
6           invite the Bahtijari Defence to indicate the reasons for its request  
7           to stay the proceeding for a month.

8           I will first give the floor to the Januzi Defence team, starting  
9           with Mr. Rees. Please, you have the floor.

10          MR. REES: Thank you, Your Honour.

11          Your Honour, the Law on Legal Protection and Financial Support  
12          for Potential Accused Persons in Trials before the Specialist  
13          Chambers, Law No. 05/L-054, requires the Kosovan state to provide  
14          legal protection and financial support covering the costs of the  
15          Defence and engagement of independent experienced counsel to any  
16          person who is accused of crimes alleged in proceedings before the  
17          Specialist Chambers through secondary legislation to be administered  
18          by the Ministry of Justice.

19          That Law specifically does so, recognising, it says in the  
20          preamble, the sacrifice, commitment and contribution made by the  
21          Kosovo Liberation Army and its soldiers in bringing freedom and  
22          independence for the people of Kosovo. And, secondly, reiterating,  
23          as it states in the preamble, its commitment, that is the commitment  
24          of the Republic of Kosovo, to protect the rights of all its citizens.

25          The relevant secondary legislation empowered by Law No. 05/L-054

1 is Administrative Instruction MoJ No. 8/2022. Under that  
2 administrative instruction, the Defence for Mr. Januzi made a request  
3 in accordance with its terms on 4 December 2023. Under the terms of  
4 the administrative instruction, the Ministry of Justice has ten days  
5 for the commission that it is obliged to have in place to respond to  
6 the request, to rule on it and deal with it.

7 We have repeatedly pressed the Ministry of Justice to deal with  
8 the request, firstly, within those ten days, and then subsequently at  
9 the Ministry of Justice's request via *inter partes* correspondence to  
10 delay the matter while they were addressing what we were told was a  
11 lack of numbers on the commission. So we were repeatedly given dates  
12 in which the commission would meet only to then be told that, in  
13 fact, they were going to delay it further. And that process has  
14 continued throughout December, January, February, even as recently as  
15 this week.

16 We have attempted to remain as cooperative as we can and have  
17 relied on the repeated assurances that things would be dealt with but  
18 to our failing, to our cost, because no meeting, as we presently  
19 stand here today, has yet communicated any decision to us.

20 And I can't -- Your Honour's asked for an update as to when the  
21 Defence expect this to be resolved. I can't give Your Honour that  
22 update because I can only convey to Your Honour what we've been told  
23 in the past, which is it's being dealt with imminently, for us only  
24 to find out that, in fact, it's been delayed again. So I am not in a  
25 position realistically to convey any timetable to Your Honour.

1 I can say that we were told that there would be another meeting  
2 scheduled this week, but whether that happens or not, we wait to see.

3 What I do invite Your Honour to do, as a matter of  
4 constructively assisting in us proceeding further with this, is to  
5 direct the Ministry of Justice to comply with its legal obligations  
6 under Law No. 05/L-054 and Administrative Instruction MoJ No. 08/2022  
7 as in force on 4 December 2023 when the application was made for  
8 legal expenses cover.

9 It seems to us, having considered it, that it's perfectly within  
10 the jurisdiction of the Specialist Chambers -- in fact, arguably  
11 falls exclusively within the jurisdiction of the Specialist Chambers  
12 to deal with because Law No. 05/L-054 and the relevant administrative  
13 instruction deal only with proceedings before the Kosovo Specialist  
14 Chambers. It deals with no other proceedings. And, of course, this  
15 Court has primary and exclusive jurisdiction over matters dealing  
16 with its own proceedings.

17 So I do invite the Court to give that direction to the Ministry  
18 of Justice.

19 If either the Court is not -- doesn't feel able to or not  
20 willing to, or does -- and -- and I would invite Your Honour, if  
21 Your Honour does make such a direction, to put a time limit on it and  
22 an urgent time limit in the circumstances. If there is failure to  
23 comply with us, it seems to us the next course of action is for us to  
24 seek a referral to the Constitutional Chamber.

25 And, again, we would invite the assistance of the Court in

1 ensuring that this matter is dealt with as expeditiously as possible  
2 by the Court making a referral itself to the Constitutional Chamber  
3 so that they can consider the issue if this failure to comply with  
4 the obligations that the Ministry of Justice has under  
5 Law No. 05/L-054 and Administrative Instruction No. 08/2022 as in  
6 force on 4 December 2023 continues.

7 Those are our submissions, and I hope that we move as promptly  
8 as possible to a position where this issue can be left behind and we  
9 can concentrate on other matters.

10 JUDGE GUILLOU: Thank you, Mr. Rees.

11 Now, I turn to the Bahtijari Defence. Dr. Gerry, please.

12 MS. GERRY: [via videolink] Your Honour, in the interest of  
13 expedition, may I adopt the submissions made by Mr. Rees and make the  
14 same requests that Mr. Rees has made on behalf of Mr. Bahtijari.

15 To answer Your Honour's questions when you opened this  
16 particular topic, we are in a similar position. We have made several  
17 requests of the Ministry of Justice to answer our application for  
18 funding. And when it became clear that the meeting that was not  
19 going to go ahead last week of the commission, I notified the  
20 Registry myself that there was a problem and the  
21 Specialist Prosecutor's Office, and I hope that those messages came  
22 through to Your Honour.

23 The role that I took was to let everyone know that there was a  
24 problem. As I understand it, last week there was due to be a  
25 commission meeting but one of the members had a family emergency, for



1 which, of course, I sent my best wishes to that person. I don't know  
2 who it was, and I hope it was not too unpleasant. And I made further  
3 requests as to when a meeting was to take place or whether funding  
4 would be confirmed.

5 At the point at which I made written submissions to Your Honour  
6 to delay the case for a month, I was not receiving any clear answer  
7 about the Defence funding, and I knew - I am absolutely confident -  
8 that Your Honour would wish to focus on the fair trial rights of the  
9 accused to ensure that they have equality of arms and suitable  
10 representation. I'm a senior member of my profession, and I take  
11 very seriously the importance of the fair trial rights of the  
12 accused.

13 I have relayed those opinions of mine to the Ministry of  
14 Justice, and the head of the relevant department indicated yesterday  
15 that there would be a meeting today of the commission. The phrases  
16 used in the e-mails by the head of that department to me indicate  
17 that they understand the urgency of the situation. There has never  
18 been an e-mail suggesting that funding will not be granted. It does  
19 appear that they need the commission to meet to tell us what that  
20 funding will be.

21 So as I sit here now, I don't know what the funding situation  
22 is. I'm hopeful there is the meeting today, and I am hopeful that my  
23 team will be funded.

24 In very short form, I can say this. That I cannot attract a  
25 Kosovan speaker to my team because a Kosovan speaker will not join an

1 unfunded team, which means that Mr. Bahtijari's right to an  
2 interpreter is affected. I should say that the Defence Coordination  
3 Office and the detention facility have been very helpful up to now,  
4 but I have been told that I'm not entitled to an interpreter,  
5 although they have provided one for all of my meetings with my  
6 client.

7 I have raised with Your Honour, and I don't wish to say much  
8 more in public session, but I have concerns about Mr. Bahtijari's  
9 health. I have raised three health issues with the detention unit.  
10 I haven't yet received a reply, but they've been very helpful so far.  
11 I would wish to have a health assessment of my client before I can  
12 say that he is fit to stand trial. I don't have any funding to  
13 obtain that health assessment.

14 I am currently online because I am not funded. So I have been  
15 working, certainly since I have access -- I was appointed on  
16 4 January and I had access to Workflow on 19 January, and I'm working  
17 as fast as one person can, as is humanly possible. But,  
18 unfortunately, without a team - and this is a case that requires a  
19 team - I am inhibited in the sense that I am plainly discharging my  
20 obligations as counsel with a very frustrating situation as far as  
21 funding is concerned.

22 There are a number of other issues as you can imagine. I'm sure  
23 with Your Honour's experience you understand how difficult it is to  
24 represent anyone, let alone in an international court, without any  
25 funding at all.

1 I should end with I have read the highly insulting submissions  
2 by the Specialist Prosecutor's Office. I don't propose to address  
3 those. If you ask me about them, I shall answer of course. I expect  
4 an apology for that appalling submission. And as a senior member of  
5 my profession regulated by two domestic jurisdictions and obligated  
6 to this Court and my client, I find it offensive that anyone would  
7 attack counsel rather than focus on the fair trial rights of the  
8 accused.

9 So my situation is this: I hope today there will be a grant of  
10 suitable funding for Mr. Bahtijari's team so that we can crack on and  
11 make sure there is no delay in this case on his part but to include a  
12 health assessment.

13 I suppose the only thing I can do today is to ask you to adjourn  
14 this Status Conference so that the Ministry of Justice reply with  
15 that direction that Mr. Rees has requested. Can we have a direction  
16 that they indicate the situation with funding and perhaps come back  
17 tomorrow so that we can give you a clearer update.

18 In the meantime, I'm a bit stuck, if I'm honest. It's cruel and  
19 unfair to Mr. Bahtijari, and we need the Court's help to make sure  
20 that Mr. Bahtijari's fair trial rights are observed.

21 Those are my submissions.

22 JUDGE GUILLOU: Thank you, Dr. Gerry.

23 Now, I turn to the Shala Defence with Mr. Cadman, please. You  
24 have the floor.

25 MR. CADMAN: [via videolink] Thank you, Your Honour. So the

1 position is this. I won't repeat anything that Mr. Rees or Dr. Gerry  
2 has already said in terms of what -- the communications with the  
3 Ministry of Justice. Obviously, that affects us as well.

4 What I can say is that certainly I have given an undertaking to  
5 Mr. Shala. Irrespective of the funding decision, the Defence  
6 continues. Obviously, we will need a decision by the Ministry of  
7 Justice. We have discussed with Mr. Shala if a negative decision is  
8 made by the Ministry of Justice, then we would need to then pursue  
9 legal aid funding through the Specialist Chambers.

10 But certainly as Mr. Shala is in detention, has been in  
11 detention now for two months, we certainly do not want to delay the  
12 situation any further. All I can say is that, as I said in our  
13 written submissions, of course, in terms of the long-term Defence  
14 investigations, it may have an impact depending upon on what decision  
15 is made as far as funding is concerned. But let me just repeat  
16 again, I have made it absolutely clear to Mr. Shala that that is not  
17 in any way going to impact the manner in which he is represented in  
18 these proceedings. That is an undertaking that we have given to him,  
19 and I fully recognise the obligations of which I am bound both within  
20 the framework of the Specialist Chambers and as a member of the Bar  
21 of England and Wales.

22 And, Your Honour, that's really all I can say at this stage.

23 JUDGE GUILLOU: Thank you, Mr. Cadman.

24 I will now give the floor to the SPO.

25 Sorry, I was hearing a translation. I think there was a

1 confusion with the channels.

2 I will give the floor to the SPO but just to address the request  
3 to stay the proceedings. We will not go into discuss about your  
4 request, I think it's F0173, that you filed yesterday and that has  
5 been raised by the Defence today. This will be dealt with written  
6 rulings and written submissions. But just on the request of the  
7 Bahtijari Defence to stay proceedings, please.

8 Madam Prosecutor.

9 MS. SHAHABUDDIN: The SPO would oppose any request to delay the  
10 proceedings in light of this funding issue that's been laid out for  
11 us in some more detail here today.

12 I think the main point here is that this Court, the Specialist  
13 Chambers, has a functional and comprehensive framework to handle  
14 funding and representation matters both in terms of potential legal  
15 aid and the appointment of Duty Counsel as stopgap procedures, and  
16 all of those rules are designed to ensure continuity of  
17 representation including the avoidance of delay.

18 And so without information about how particularly the Registry  
19 has been engaged with in a formal way as opposed to simply  
20 notification, which I understand has been made by at least one of the  
21 parties at issue today, the SPO can find no reason that anything  
22 should be delayed. As my colleague, the counsel for Mr. Shala has  
23 indicated, the obligations of counsel in this circumstance, whatever  
24 circumstances may arise, per the directive, are to fulfil their  
25 duties in the way they would at any other time.

1           And so the SPO would oppose the request for a delay made by  
2 counsel for Mr. Bahtijari.

3           JUDGE GUILLOU: Thank you, Madam Prosecutor.

4           Dr. Gerry, do you want to reply to the SPO on this issue?  
5 Specifically to the issue of your request to stay proceedings.

6           MS. GERRY: [via videolink] Yes. I do note that the  
7 Specialist Prosecutor's Officer did not refrain, as you requested,  
8 from making comments about the obligations of counsel. So I do note  
9 that the Specialist Prosecutor is still raising those issues in a  
10 public hearing, which I find extraordinary and offensive.

11           On the application to stay the proceedings for a month. In our  
12 submission, Mr. Bahtijari's fair trial rights should be recognised.  
13 That involves him needing a team that amounts to equality of arms  
14 with the Prosecution who have at least three people there today. It  
15 requires him to have a Kosovan member of the team. I have indicated  
16 it requires a health assessment. And all of that requires suitable  
17 funding from the Ministry of Justice who so far have not indicated  
18 there will be no funding.

19           The suggestion by the Specialist Prosecutor's Office that  
20 somehow there should be a stopgap of Duty Counsel, in my opinion --  
21 in my submission is appalling. The idea that Duty Counsel should  
22 appear as against the full Prosecutor's Office is not equality of  
23 arms.

24           We are not seeking to delay the process here. I have been in  
25 place, working in my position as counsel since 4 January, properly

1 representing Mr. Bahtijari, but the funding situation does not allow  
2 him to exercise his fair trial rights.

3 And in those circumstances, it is obvious, in our submission,  
4 that it will take at least a month to sort these things out. It  
5 isn't just a question of saying: Right, here's some money. Get on  
6 with it. It's about making sure that we have the health assessment,  
7 that we have a suitable team, that everyone is allocated to a task,  
8 and that we can respond properly to the suitable filings of the  
9 Specialist Prosecutor's Office rather than insults.

10 I appreciate that this Court would not wish to stay proceedings  
11 for a month, but in my submission, making sure that the fair trial  
12 rights of an accused person in this Court are properly protected and  
13 not violated will take a month. And in those circumstances, our  
14 submission in relation to a stay remains. During that month, of  
15 course, I would expect to have to give you, Your Honour, and the  
16 Registry and everybody else notice as to our position as far as  
17 funding is concerned, including another meeting tomorrow, another  
18 Status Conference tomorrow if necessary.

19 But our submission remains that this seems to have drifted, at  
20 the very least until I was appointed, and I have put my foot on the  
21 pedal, notified everyone that this is a crisis. It is a serious  
22 problem. It is serious enough to stay the proceeding for a month.  
23 And in order to ensure that Mr. Bahtijari's fair trial rights are not  
24 violated, it is my request that that happens, obviously with regular  
25 updates to this Court and to the Registry and everyone else.

1 Those are my submissions.

2 JUDGE GUILLOU: Thank you, Dr. Gerry.

3 Madam Prosecutor, you request the floor.

4 MS. SHAHABUDDIN: Yes, Your Honour. I would just seek to reply.

5 JUDGE GUILLOU: Briefly, please.

6 MS. SHAHABUDDIN: I can be brief.

7 I just want to point out that counsel refers to funding  
8 mechanisms that are provided through an administrative instruction of  
9 the Ministry of Justice of Kosovo. That lies outside of the  
10 framework of this Court, of the Specialist Chambers. What I didn't  
11 hear is any justification as to why counsel has not engaged with the  
12 Registry in order to make use of the framework --

13 MS. GERRY: [via videolink] I object --

14 MS. SHAHABUDDIN: -- the robust framework that --

15 MS. GERRY: [via videolink] May I object, please.

16 MS. SHAHABUDDIN: -- is in place with --

17 MS. GERRY: [via videolink] This counsel is insulting --

18 MS. SHAHABUDDIN: -- the Specialist Chambers.

19 MS. GERRY: [via videolink] -- me again.

20 JUDGE GUILLOU: Dr. Gerry, please, you will have the floor when  
21 I give you the floor. I will give you the opportunity to respond.  
22 But we'll first listen to Madam Prosecutor, then you will reply, and  
23 everyone will be able to listen to each other. Thank you very much.

24 MS. GERRY: [via videolink] Well, may I question --

25 JUDGE GUILLOU: No, you don't have the --



1 MS. GERRY: [via videolink] -- the direction that you gave --

2 JUDGE GUILLOU: You don't have the --

3 MS. GERRY: [via videolink] -- to the Specialist Prosecutor's  
4 Office --

5 JUDGE GUILLOU: You don't have the floor now.

6 MS. GERRY: [via videolink] -- that she is not to engage --

7 JUDGE GUILLOU: You don't have the floor now.

8 MS. GERRY: [via videolink] -- in submissions that insult  
9 counsel.

10 JUDGE GUILLOU: You don't have the floor. I am the one  
11 distributing the floor in this courtroom. Let me be very clear. You  
12 will have the floor to express yourself. Now the Prosecutor has  
13 asked to have the floor again. I gave her the floor. I told her to  
14 be brief, and I will give you the floor afterwards. But I will not  
15 tolerate that this courtroom becomes a place where everybody talks on  
16 each other and nobody understands anything. I want to hear what all  
17 of you have to say, and I cannot hear if you all speak on each other.

18 So please, Madam Prosecutor, proceed.

19 And, Dr. Gerry, you will have the floor afterwards.

20 MS. SHAHABUDDIN: I'll just complete my thought, which is that  
21 there is a fully functional comprehensive framework in place before  
22 the Specialist Chambers that would involve counsel making a formal  
23 request or application of the Registry and that would in some way  
24 address funding. There are various mechanisms to address funding  
25 within the scheme that is already in place before the Specialist

1 Chambers and doesn't involve the Government of Kosovo or any other  
2 outside funding scheme.

3 JUDGE GUILLOU: Thank you, Madam Prosecutor.

4 Dr. Gerry, now you have the floor. Please.

5 MS. GERRY: [via videolink] I'm aware of what funding mechanisms  
6 there are. I joined a case where, as I understood it, the funding  
7 would come from the Ministry of Justice. Nothing that the Ministry  
8 of Justice has communicated is to suggest otherwise. Those processes  
9 are in place. The Specialist Prosecutor keeps repeating the insults  
10 about me, and you ordered them not to make those submissions.

11 We are losing sight of the fair trial rights of Mr. Bahtijari.  
12 I understand what the funding mechanisms are. In my submission, the  
13 Ministry of Justice should honour its obligations. You should direct  
14 the Ministry of Justice to respond. We should have the opportunity  
15 to go to the Constitutional Court if their response is inadequate.  
16 If all of those routes for justice fail, then I understand what  
17 alternative routes there are.

18 In the meantime, my client's case was not progressed until I  
19 came into this case, and he is outstanding a Kosovan speaker and a  
20 health assessment and a proper team to represent him as a result of a  
21 funding crisis that violates his fair trial rights. In my  
22 submission, you should reject the arguments of the Specialist  
23 Prosecutor's Office, which are a thinly veiled attack on Defence  
24 counsel and highly inappropriate.

25 And I do invite this Court to have another Status Conference

1 tomorrow so that we can give you an update as to funding from the  
2 Ministry of Justice, please.

3 JUDGE GUILLOU: Thank you, Dr. Gerry.

4 I see another request for the floor.

5 MR. REES: Yes.

6 JUDGE GUILLOU: Mr. Rees, please.

7 MR. REES: I would like to address some of the thoughts, as they  
8 were put, of the Prosecutor from the SPO.

9 The Law on Legal Protection and Financial Support for Potential  
10 Accused Persons in Trials before the Specialist Chambers, Law No.  
11 05/L-054, together with the Administrative Instruction MoJ  
12 No. 08/2022, is part of the legal framework of the Republic of Kosovo  
13 that deals solely with these proceedings. There is an alternative  
14 route for legal aid funding that is provided under another scheme  
15 operated by the Defence Office.

16 And without going into the details, Your Honour no doubt will  
17 accept from me that we have been, as we have across three years now,  
18 been in very regular and open communication with the head of the  
19 Defence Office and those others who work for him. I am not going to  
20 go into the details of those discussions at the prompting of the  
21 Prosecution. It is wholly inappropriate for the Prosecution to enter  
22 into the arena in this way.

23 The two schemes do not run in alternative -- as direct  
24 alternative schemes. They complement each other. The first scheme  
25 has a different basis for criteria and assessment than the scheme

1 that is operated by the Defence Office here, which is a more limited  
2 scheme, has more limited application, and provides more limited  
3 support, not only in terms of resources but also in terms of who can  
4 properly access it.

5 Both the SPO and, of course, the Defence Office, and the  
6 Ministry of Justice, they are, each of them, organs of the Republic  
7 of Kosovo. It ill behoves the Prosecution in this way to seek to  
8 exploit the failures of another organ of the state of Kosovo, the  
9 Ministry of Justice, to the disadvantage of each of these three  
10 accused. Although, of course, my interests are focused on  
11 Mr. Januzi.

12 It is an abuse of the SPO's claimed legal independence to seek  
13 to interfere in the accused's right to have adequate time and  
14 facilities for the preparation of his or her defence and to defend  
15 himself or herself through independent Specialist Counsel of his or  
16 her own choosing and no one else. The Prosecution should not enter  
17 into matters that simply they have no locus to enter into.

18 Whether it's called a stay or whether it's called an adjournment  
19 or whether as we've put it in our submissions in relation to the  
20 fourth Status Conference, we are simply asking the Court to  
21 acknowledge the rights that the accused have to have adequate time  
22 and facilities for the preparation of their defence. To factor that  
23 in to the timetable, we all wish to reach the stage where trial  
24 preparation on both sides is complete and we can move to trial as  
25 quickly as possible, but there are difficulties that each side faces.

1 And Your Honour knows that although we haven't engaged in the  
2 substance of the Status Conference yet, the Prosecution have not  
3 complied with the timetable that Your Honour has set out in terms of  
4 preparation for trial despite their overwhelming imbalance in  
5 resources that they enjoy and take advantage of.

6 That is all I wish to say. I repeat the request for a direction  
7 to the Ministry of Justice from Your Honour with a timetable for them  
8 to comply with their obligations under Law No. 05/L-054 and  
9 Administrative Instruction MoJ No. 08/2022 as in force on 4 December  
10 2023 when the request was made on behalf of Mr. Januzi.

11 JUDGE GUILLOU: Thank you, Mr. Rees.

12 I do not -- oh, sorry. Madam Prosecutor, then. Very, very  
13 briefly, please.

14 MS. SHAHABUDDIN: Thank you, Your Honour. Just to add that the  
15 SPO is not seeking to interfere in any way. Rather, we're making  
16 submissions in furtherance of the fairness and expeditiousness of the  
17 proceedings with a view towards continuity in representation for all  
18 of the accused.

19 Regarding the administrative instruction from the MoJ, I just  
20 want to point out that, pursuant to Article 3-4 of our laws for the  
21 Specialist Chambers, laws not expressly incorporated shall not apply  
22 to the organisation, administration, functions or jurisdiction of the  
23 KSC.

24 The reason we bring up the comprehensive framework that is in  
25 place before the Specialist Chambers is to point out that there is no

1 reason, whatever the circumstances, for there to be any kind of gap  
2 or reduction in representation for any of the accused.

3 MR. REES: Your Honour.

4 JUDGE GUILLOU: Thank you.

5 MR. REES: May I --

6 JUDGE GUILLOU: Mr. Rees, very briefly.

7 MR. REES: Yes. I --

8 JUDGE GUILLOU: Please.

9 MR. REES: -- absolutely understand, and I did not wish to rise  
10 to my feet again, but Your Honour will understand that there is a  
11 very well understood protocol for submission, response, and then  
12 reply, which doesn't entitle the Prosecution to keep rising to their  
13 feet seeking to have the last word.

14 So if I may, I will seek to reply and then we can move on,  
15 Your Honour.

16 JUDGE GUILLOU: Yes. Briefly, please.

17 MR. REES: I will repeat it again. The relevant law is  
18 Law No. 05/L-054 and the Administrative Instruction MoJ No. 08/2022  
19 as in force on 4 December 2023. That is a piece of legislation  
20 passed by the Kosovan parliament, the statutory instrument that is  
21 authorised by it, passed by the Ministry of Justice, that deals  
22 solely with proceedings before the Kosovo Specialist Chambers. It  
23 deals with nothing else.

24 It is, I'm afraid to say, absurd to suggest that that  
25 legislation falls outside, as the Prosecution puts it, their laws in

1 this Chamber. And I know that Your Honour does not accept that for a  
2 minute.

3 Obviously, the framework that is set out in the Law of the  
4 Specialist Chambers and Specialist Prosecutor's Office and the Rules  
5 of Procedure and Evidence have necessarily been supplemented by other  
6 pieces of legislation. And, for example, I note that only very  
7 recently Your Honour ruled, based on a submission made by the SPO,  
8 that they were entitled to look at powers that existed under the  
9 Kosovan Criminal Procedure Code which were not specifically  
10 incorporated into the Law of the Specialist Chambers or, indeed, the  
11 Rules of Procedure and Evidence of the Specialist Chambers, in  
12 relation to arrests and what procedure can follow on arrest.

13 Of course, the framework, the legal framework of the Specialist  
14 Chambers incorporates the law that is created by the Kosovan  
15 parliament to, as it is put, provide legal protection and financial  
16 support, covering the costs of the defence and engagement of  
17 independent and experienced counsel to any person who is accused of  
18 crimes alleged in proceedings before the Specialist Chambers. And,  
19 accordingly, I ask Your Honour to make the direction that we have  
20 requested.

21 JUDGE GUILLOU: Thank you, Mr. Rees.

22 I do not see any other request for the floor. So before we move  
23 on to another topic, I will first -- I see -- sorry, Mr. Cadman. I  
24 didn't see that you had this yellow hand on the screen.

25 You have the floor, please. Briefly.

1 MR. CADMAN: [via videolink] Sorry, I had my hand up as well.

2 JUDGE GUILLOU: My apologies that I didn't see.

3 MR. CADMAN: [via videolink] Just to say that the request that  
4 has been made by Mr. Rees for a direction to the Ministry of Justice  
5 we also believe is necessary regardless of what decision is made  
6 going forward. There is still going to need to be a decision by the  
7 Ministry of Justice.

8 And, finally, just to -- and I'm sure Madam Prosecutor knows  
9 this very well. Just to remind her that each and every accused who  
10 has stood trial before this Court, and currently standing trial  
11 before this Court, are funded through the Ministry of Justice. So to  
12 suggest anything otherwise is somewhat disingenuous. I wanted to  
13 make that point. I'm sure everyone in this Court is well aware of  
14 that fact.

15 JUDGE GUILLOU: Thank you, Mr. Cadman.

16 This time I really do not see any request for the floor.

17 But before I give the floor to the Registry, I want to make  
18 clear that I will not leave this case hostage of the willingness of  
19 the Ministry of Justice of Kosovo to fund the Defence teams.  
20 Decisions need to be taken urgently if the ministry will or will not  
21 remunerate the Defence teams.

22 In the negative, or if the Ministry of Justice of Kosovo does  
23 not make any decision in the following days, we have a legal  
24 framework. We have a legal aid system that is to be triggered if the  
25 accused do not have the means to pay for their defence. If the



1 Ministry of Justice of Kosovo does not wish to contribute to the  
2 payment of the defence of the accused before the Kosovo Specialist  
3 Chambers, counsel shall be remunerated either by the accused or  
4 through the legal aid system.

5 But the most important now is, as mentioned by the Defence, that  
6 there is a decision from the Ministry of Justice of Kosovo. And for  
7 this I will now give the floor to the Registry to indicate, first, if  
8 the Defence teams have asked for any assistance on this matter --

9 MR. REES: Sorry, Your Honour, can I just address --

10 JUDGE GUILLOU: No, you --

11 MR. REES: -- something Your Honour said --

12 JUDGE GUILLOU: -- will have the floor after I give the floor to  
13 the Registry, please. Thank you.

14 Second, if you have had any contact with the Ministry of Justice  
15 of Kosovo on this issue.

16 Third, in case no contacts have been made, if you can reach out  
17 to the Ministry of Justice of Kosovo to inquire if, I would say  
18 within two weeks, the ministry can solve the situation with the  
19 Defence teams, and if you can report about the discussion with the  
20 ministry afterwards.

21 And, fourth, in the negative, how fast and under what conditions  
22 can counsel be assigned to ensure that the accused are duly  
23 represented.

24 Before I give you the floor, Mr. Registrar, we will hear from  
25 Mr. Rees so that you can prepare your submissions.

1 Mr. Rees, please. Briefly.

2 MR. REES: Yes, thank you, Your Honour.

3 Your Honour referred to the willingness of the Ministry of  
4 Justice to grant the request or otherwise. Clearly, Your Honour did  
5 not intend to encourage the Ministry of Justice to believe or be  
6 under the impression that its legal obligations are something that it  
7 is free to comply with or ignore depending on its willingness.

8 The law -- I can take Your Honour to it if Your Honour wishes.  
9 I don't know if Your Honour has seen it. But the law is perfectly  
10 clear. Mr. Januzi is entitled to legal expenses cover under the  
11 scheme that is created by Law No. 5/L-054 and the Administrative  
12 Instruction MoJ No. 08/2022 as in force on 4 December 2023.

13 All we're asking is for the ministry to comply with its legal  
14 obligations. It has no choice in the matter under its own legal  
15 framework under the Law of Kosovo of which this is a court of Kosovo.  
16 It is not a position that they have a choice in the matter.

17 One other matter. Your Honour did touch on one of the  
18 differences, and there are many, but one of the differences between  
19 the scheme that is created under Law No. 5/L-054 and the residual  
20 scheme, the fallback scheme that is operated here, and that's the  
21 issue of indigence.

22 So the two schemes are not mutually alternative. They  
23 complement each other. And in the first instance, Mr. Januzi who has  
24 made a request in accordance with the law is entitled to have that  
25 request grant under the law. There is no choice in the matter for

1 the Kosovo Ministry of Justice.

2 JUDGE GUILLOU: Thank you, Mr. Rees.

3 Mr. Nilsson, you have the floor.

4 Sorry, Dr. Gerry, very briefly then, because we need to move on.

5 MS. GERRY: [via videolink] Yes, I adopt the submissions made by  
6 Mr. Rees on the law. I also have a concern that you're calling on  
7 the Registry in open court without us being given advance notice of  
8 the information that the Registry may have.

9 In my submission, it's very difficult for us to deal with this  
10 without notice of the sort of information that you're about to  
11 receive from the Registry. May I suggest that you adjourn this  
12 Status Conference to tomorrow and the Registry provide that  
13 information to us in writing in advance so that we can consider it  
14 with our clients.

15 I have an appointment with my client at 2.15 tomorrow. The sort  
16 of information that the Registry may be supplying may well be issues  
17 that I need to discuss with him. So in my submission, it's not  
18 appropriate for us to receive this information from the Registry on  
19 the hoof, if you like. We should be given it notice so that we can  
20 deal with it.

21 I've certainly made my submission in writing in advance to stay  
22 for a month, and I would hope that the relevant respect to the  
23 Defence would be given from the Registry so that we'd have advance  
24 notice of what they can do. I certainly wrote to the Registry and  
25 explained the problem, and I haven't received a reply from the

1 Registry. In fact, the only reply I received was: Please don't  
2 e-mail the Registrar. You have to do it through the Defence  
3 Coordination Office.

4 So may I invite you not to ask the Registrar to make these  
5 submissions in open court and ask the Registrar to send written  
6 information to the Defence first that we can consider in a future  
7 Status Conference, please.

8 JUDGE GUILLOU: We will now hear the Registrar, and I will give  
9 you the opportunity to respond. And if you need more time to  
10 respond, we will assess that after I receive your oral submissions.

11 Mr. Nilsson, you have the floor, please.

12 MR. NILSSON: Thank you, Your Honour.

13 You have posed four questions to me, and I will try to answer  
14 them all.

15 Counsel for Mr. Bahtijari and counsel for Mr. Januzi have, of  
16 course, informed us about the fact they were in the process of  
17 securing funding from the Kosovo Ministry of Justice and that there  
18 were some problems or difficulties with that, as they have informed  
19 Your Honours about the same thing. That's the engagement that has  
20 been on that issue.

21 With regard to your second question, Your Honour, has there been  
22 any contact with the Ministry of Justice of Kosovo on this issue.  
23 There has not been. We have not been in contact with them.

24 You also inquired whether we could or Registry could reach out  
25 to them, to the Kosovo Ministry of Justice. If it assists, of

1 course, the Registry will be ready to do so to see what the  
2 outstanding issues are, to ensure that they -- to the extent we can,  
3 that any outstanding issues concerning legal aid are resolved.  
4 Although, I'm not sure whether we are passed such a measure  
5 considering the request that was done by the Defence today, but we  
6 certainly are willing to do it if it assists Your Honour.

7 With regard to your fourth question, under what condition a  
8 counsel can be assigned, we have touched upon that already now in the  
9 session. This process starts with the accused. An indigent or  
10 partially indigent accused before the KSC can submit a request for  
11 legal aid under the legal aid regulations. The burden to prove  
12 indigence or partial indigence is on the accused. So it's a formal  
13 application that requires -- or includes, I should say, in the  
14 application a declaration of means form, various consent forms so  
15 that -- authorising release of financial information and so on, so  
16 that the Defence Office can verify correctness of information  
17 provided by the accused. All these details are in the legal aid  
18 regulations.

19 Once a request is complete, the Registry -- Defence Office will  
20 transmit it to the Registrar for a decision. Before that's  
21 happening, an indigence assessment is being made. Once that inquiry  
22 into the accused's indigence is complete, the Registrar will take the  
23 decision on the legal aid request. And if it is concluded that the  
24 accused is indigent or partially indigent, then legal aid will be  
25 granted and counsel can be assigned. So that's the procedure.

1 In terms of the time, it's a little bit difficult to say. There  
2 are certain things, obviously, that are on the Registry side in terms  
3 of timing, but to a large extent also it depends on how quickly the  
4 information and the documentation by the accused can be provided.

5 That's, I think, what I have for you, Your Honour, unless you  
6 have any further follow-up question for me.

7 JUDGE GUILLOU: Thank you, Mr. Nilsson.

8 I will now give the floor to Mr. Cadman, who is requesting the  
9 floor.

10 Please.

11 MR. CADMAN: [via videolink] Thank you, Your Honour. Just to be  
12 clear, as I said from the outset, that we have not approached the  
13 Registry thus far on the basis that we have been exhausting, as far  
14 as we can, the funding arrangement with the Ministry of Justice. And  
15 at the point that the Ministry of Justice either refuses or doesn't  
16 provide adequate protection to Mr. Shala, we would then be making the  
17 appropriate applications through the Registry.

18 So I note that Mr. Nilsson made reference to the other two  
19 accused, and I just want to make clear the reason why we haven't  
20 approached the Registrar thus far.

21 JUDGE GUILLOU: Thank you, Mr. Cadman.

22 Mr. Rees, please.

23 MR. REES: Thank you.

24 I'm grateful, obviously, to the invitation from the Registry  
25 office that they would, if asked, speak to the Ministry of Justice.

1 But it does seem to us that there is a straightforward solution.  
2 It's that which we've invited the Court to do, which is to order the  
3 Kosovo Ministry of Justice by -- set a time limit, as swift a time  
4 limit as Your Honour wishes, because we all agree that -- certainly  
5 from my client's point of view, I do not want Mr. Januzi held hostage  
6 in this way any longer. So set a time limit as swiftly as possible  
7 for the Kosovan Ministry of Justice to comply with its legal  
8 obligations under Administrative Instruction No. 08/2022 as in force  
9 on 4 December 2023.

10 If they then refuse to -- because there is no discretion, there  
11 is no means testing Mr. Januzi as a Kosovan national, which is the  
12 only criteria, qualifies for it. If they refuse to, we will seek a  
13 legal remedy as Mr. Januzi is entitled to do in law if his legal  
14 rights are being subverted. He is entitled to seek a legal remedy.  
15 And in order to expedite matters, the next step we would see would be  
16 that we would seek a legal remedy, and it seems to us the appropriate  
17 venue for that would be the Constitutional Chamber, and they could  
18 rule on the legal obligations of the Ministry of Justice, and they  
19 can then make a binding, enforceable order.

20 And we would, in order to expedite matters further, because we  
21 want it to be dealt with as expeditiously as possible, at that stage  
22 invite Your Honour not only to give the direction that we ask  
23 Your Honour to give today, but if, in the event that they failed to  
24 comply by either refusing outright or refusing to pay in accordance  
25 with the administrative instruction, we would ask Your Honour to

1 expedite matters by making a referral by the Court to the  
2 Constitutional Chamber, which ought to allow the matter to appear  
3 before the Constitutional Chamber very expeditiously, promptly. And  
4 they can rule on the matter having heard argument, and the matter  
5 will then be resolved.

6 That is the course that we invite Your Honour to take today.

7 JUDGE GUILLOU: Thank you, Mr. Rees.

8 First, Dr. Gerry, and then the Prosecution.

9 Dr. Gerry, please.

10 MS. GERRY: [via videolink] Thank you, Your Honour. And thank  
11 you to the Registry for the information. I adopt the submissions  
12 made by Mr. Rees. They are -- I hope can be taken as the same words  
13 on behalf of Mr. Bahtijari.

14 I also raise this concern, that the combination of the Registry  
15 and the Specialist Prosecutor's Office appearing to push these  
16 proceedings towards Duty Counsel, as has been set out in writing by  
17 the Specialist Prosecutor's Office, and/or indigence risks this Court  
18 and Your Honour being complicit in the Ministry of Justice breaching  
19 its legal obligations.

20 This is not a situation that should be: Well, let's, by  
21 negotiation, just make sure they apply for legal aid. That's not how  
22 it works. And I would not wish Your Honour to be in a position where  
23 you are complicit in a breach of legal obligations by the Ministry of  
24 Justice and where those obligations, at least at present, are  
25 violating the rights to a fair trial of an accused person.



1           So we have serious concerns that everything that's going on in  
2           court at the moment is fuelling our arguments on the violation of  
3           Mr. Bahtijari's fair trial rights. We would invite you, as we have  
4           said before, to give the direction that Mr. Rees has requested also  
5           on behalf of Mr. Bahtijari and adjourn this Status Conference until  
6           we know the position of the Ministry of Justice and whether or not we  
7           have to take legal action if there's a refusal. Thank you.

8           JUDGE GUILLOU: Thank you, Dr. Gerry.

9           Madam Prosecutor.

10          MS. SHAHABUDDIN: I just wanted to take the opportunity to point  
11          out that, pursuant to Rule 201 of the Specialist Chambers Rules on  
12          Evidence and Procedure, before a Panel may issue orders to the Kosovo  
13          government, the rule sets out specific requirements, including the  
14          exhaustion of remedies as including before the Registrar, before any  
15          such application may be made or granted.

16          JUDGE GUILLOU: Thank you, Madam Prosecutor.

17          MR. REES: I can I tell Your Honour that I am exhausted. I have  
18          exhausted everything I can do to get the Ministry of Justice to give  
19          us a decision on the request in accordance with the law.

20          JUDGE GUILLOU: Thank you, Mr. Rees.

21          Mr. Nilsson, you asked for the floor, please.

22          MR. NILSSON: Thank you, Your Honour. Very briefly. Just in  
23          terms of response to the counsel for Mr. Bahtijari about somehow  
24          pushing the proceedings. That was not my intention with the  
25          submission. I was simply responding to the question you asked,

1 Your Honour, whether -- under what condition, how fast can counsel be  
2 assigned. That's all. The Registry has no -- takes no position  
3 beyond that. I just wanted to make that very clear.

4 JUDGE GUILLOU: Thank you, Mr. Nilsson.

5 Dr. Gerry, please.

6 MS. GERRY: [via videolink] Yes. If I may, I wasn't suggesting  
7 for a moment that that's what Mr. Nilsson was doing. What I was  
8 saying is there's risk that we have a combination of the Specialist  
9 Prosecutor's Office and this Court through the Registry risking the  
10 independence of Your Honour. So I wasn't seeking to insult  
11 Mr. Nilsson in any way. The point that I'm making is you have two  
12 organs of the state combining together risking Your Honour allowing  
13 the Ministry of Justice to fail in its legal obligation.

14 So I'm just identifying a risk rather than seeking to insult  
15 anyone, and I hope that that was clear in my submissions. And I'm  
16 sorry if it wasn't.

17 JUDGE GUILLOU: Thank you, Dr. Gerry.

18 I do not see any request for the floor on this matter.

19 I will make decisions on this at the end of the Status  
20 Conference. We will now move to the items of the agenda that concern  
21 the Specialist Prosecutor because, whatever is decided, I do not want  
22 the Prosecutor to stop working on the case, especially on disclosure  
23 and related matters.

24 I would like to hear from the SPO on the progress made in the  
25 disclosure of evidentiary material. I have taken note of the SPO's

1 written submissions on the issue of disclosure.

2 Regarding the Rule 102(1)(b) material, the SPO indicated that,  
3 with the exception of certain limited additional evidentiary material  
4 stemming from its ongoing investigation, it has completed its  
5 disclosures within the deadline set forth in the framework decisions  
6 on disclosure by 15 December 2023 and 19 January 2024 respectively.

7 With respect to Rule 102(3) material, the SPO indicated that  
8 thus far two of the three accused, Mr. Shala and Mr. Januzi, have  
9 requested disclosure of all items listed in the detailed notice.

10 The SPO envisages limited challenges to the materiality of  
11 evidence. It also indicates that the majority of the Rule 102(3)  
12 material will not require redactions.

13 Finally, the SPO does not anticipate making any request under  
14 Rule 107 of the Rules.

15 The Januzi Defence indicated in its written submissions that the  
16 SPO has not completed its disclosures within the deadline set forth  
17 in the Framework Decision on disclosure. It also considers that the  
18 Rule 102(3) notice is incomplete, and I invite the parties to make  
19 additional submissions on this topic.

20 Finally, regarding the objections to the admissibility of any  
21 evidentiary material that has been disclosed on the basis of Rule 102  
22 of the rules, the Januzi indicates that it cannot commit to being  
23 able to file its objection by 22 March 2024.

24 The Shala Defence indicates that it would be able to file its  
25 objection by Friday, 22 March 2024, provided that there will be no

1 further disclosures of Rule 102 material.

2 I invite the parties to provide submissions on these questions  
3 as I intend to rule on this matter at the end of this Status  
4 Conference.

5 Madam Prosecutor, you have the floor.

6 MS. SHAHABUDDIN: Thank you, Your Honour. As Your Honour noted,  
7 and as we provided in our written submissions for today's Status  
8 Conference, the SPO has completed -- has met, rather, its deadlines  
9 under the framework decisions as set forth by Your Honour with the  
10 exception of limited 102(1)(b) materials, which we have highlighted  
11 in a corresponding filing for Your Honour that we are seeking to have  
12 admitted.

13 I don't want to jump ahead, but I will preview, since it's  
14 related, that there are elements of the investigation that are  
15 ongoing but extremely limited in scope that have already been  
16 addressed by various decisions of Your Honour and requests by the  
17 SPO. And so we do anticipate that based on the results of those  
18 investigative measures, there may be some, again, very limited  
19 additional materials that we would seek to have disclosed pursuant to  
20 Rule 102(1)(b).

21 Regarding the indication from my colleague counsel for  
22 Mr. Januzi that the disclosures that have been made by the SPO are  
23 incomplete, we await further information regarding in what ways that  
24 is incomplete.

25 But specifically with regard to the Rule 102(3) notice which has

1 been provided being incomplete or deficient in some way, the first  
2 the SPO became aware of that position was in the submissions made by  
3 counsel, and we did attempt to then engage *inter partes*, and we have  
4 some indication now of what the perceived deficiency is. My proposal  
5 would be that we be given the opportunity to engage directly with  
6 counsel in order to find a resolution before this matter need be  
7 brought up to Your Honour directly. I'm hopeful that together we can  
8 sort out whatever, you know, difference of opinion or discrepancy  
9 there may be between our positions.

10 JUDGE GUILLOU: Thank you, Madam Prosecutor.

11 Mr. Rees, please.

12 MR. REES: Your Honour, I have a sense of déjà vu. The SPO, in  
13 their submissions, asserts that they've completed their disclosures,  
14 but they haven't. So my learned friend says they've completed their  
15 disclosures within the timeframe, but with the exception of not  
16 having completed them. We asserted in our submissions that they  
17 hadn't, and their response confirms that.

18 As to how limited or otherwise those outstanding matters are, we  
19 will wait to see. And we'll only know when they're dealt with and  
20 the SPO has completed its obligations. I'm perfectly happy to go  
21 *tête-à-tête* with my learned friend to see if we can progress matters  
22 *inter partes*. We're always there. And it only takes an e-mail to  
23 reach out to us, and we are more than happy to engage in that way, as  
24 we always have been.

25 I can say that in relation to the fact that the Rule 102(3)

1 notice is not complete, there's no mystery about it. And I struggle  
2 to understand where the SPO don't realise that their Rule 102(3)  
3 notice is not complete because they explain that there are ongoing  
4 investigative steps.

5 And, for example, I won't -- there's no need to go into private  
6 session, but I'll be careful with what I'm saying. Forensic copies  
7 of technological material, for example, have neither been served,  
8 they're not on the list of exhibits that are relied upon by the  
9 Prosecution, nor do they appear on the Rule 102(3) notice. There are  
10 other items of work that are ongoing that undoubtedly will be  
11 producing relevant material, if it hasn't been produced already, that  
12 the SPO will not rely upon. The fact of their investigations will  
13 produce relevant material.

14 And it does lead me back to earlier Status Conferences in other  
15 cases where not -- still not quite sure if the SPO do understand the  
16 purpose of the Rule 102(3) notice, what it does and what's supposed  
17 to be on it, but they ought to at least by now appreciate that all  
18 relevant material that is in their possession that they do not serve  
19 as evidence has to appear on the Rule 102(3) notice.

20 It's plain, because they haven't completed their disclosures in  
21 relation to evidence that they rely upon, that there also will  
22 undoubtedly have to be updates to and additions to the Rule 102(3)  
23 notice in due course.

24 Does Your Honour need me to address anything further in relation  
25 to this aspect of the agenda?

1 JUDGE GUILLOU: No.

2 MR. REES: I can -- if Your Honour wishes for further detail, we  
3 can go into private session. I can spell out, for example, some of  
4 the matters that do not appear on the Rule 102(3) notice at present.  
5 But I -- as far as I'm concerned, I'm content for the SPO to  
6 acknowledge the reality of the situation, which is that their own  
7 submissions make it clear that they have not complied with their  
8 obligations to serve evidence, and they've got ongoing investigative  
9 steps to take place, and that will lead to further updates to the  
10 Rule 102(3) notice, and for Your Honour to deal with that by way of  
11 appropriate direction.

12 JUDGE GUILLOU: I understand what you're referring to, but I  
13 will nevertheless ask the Prosecution.

14 Madam Prosecutor, do you wish us to go into private session so  
15 the Januzi Defence can walk you through evidentiary material in  
16 detail?

17 MS. SHAHABUDDIN: Your Honour, my preference would be not to get  
18 into the details regarding the ongoing investigative measures. You  
19 know, these are pending matters. We don't know yet what evidentiary  
20 material may come out of the steps that we're taking.

21 What I will say is the fact that there have been aspects of this  
22 investigation ongoing has been something that the SPO has openly  
23 addressed at, I believe, every single Status Conference that's been  
24 held for Case 10. When I refer to disclosures, you know, being  
25 complete, that is, of course, the disclosure of materials that are

1 currently in our possession. Where there is an ongoing  
2 investigation, I would think that it would be clear that there could  
3 be other materials coming.

4 And with regard to the Rule 102(3) notice, that notice is, of  
5 course, ongoing. And to the extent additional relevant materials  
6 come into the possession of the SPO, those materials would, of  
7 course, be added to that document.

8 JUDGE GUILLOU: Thank you, Madam Prosecutor.

9 Now, let me turn to Dr. Gerry, please.

10 MS. GERRY: [via videolink] Your Honour, frankly, I'm not sure I  
11 understand the Special Prosecutor's reply. She seems to be saying  
12 that notice is complete but not complete, so I hope that you will be  
13 able to fathom what she is trying to say.

14 Plainly, of course, on behalf of Mr. Januzi, we would like  
15 disclosure of all items. We would like to know that the notices are  
16 complete, but I am tied by the problems that I have. I have no team,  
17 no Kosovan speaker. I have no funds to provide the evidence to  
18 Mr. Bahtijari. He probably needs to have everything printed. I have  
19 no health assessment as to whether or not he is fit to stand trial,  
20 and I have concerns about his health. I can't possibly comply by  
21 22 March with the response that you request. It's simply not humanly  
22 possible in the absence of what I need to protect his fair trial  
23 rights. I can only ask that you change that date to 22 April and  
24 have another Status Conference to see how we're progressing. It's  
25 insurmountable on behalf of Mr. Bahtijari at the moment.



1 JUDGE GUILLOU: Thank you, Dr. Gerry.

2 Mr. Cadman, please.

3 MR. CADMAN: [via videolink] Thank you, Your Honour. So we've  
4 put in the written submissions our position. Obviously, it's subject  
5 to what further disclosure is going to be made as part of the ongoing  
6 investigations.

7 Of course, there is going to have to be a cut-off point at some  
8 stage that Your Honour is going to have to direct the SPO to comply  
9 with. What we have said is that as things currently stand, and I  
10 must echo Mr. Rees's concerns as to the inadequacy of what has been  
11 disclosed so far, and that's, obviously, a matter for Your Honour to  
12 rule on.

13 The only thing that I will flag at this stage just to put the  
14 SPO on notice is that we do intend to object, obviously, by way of a  
15 written filing, in respect of their most recent 9 February  
16 application. So I won't go into the details of what those objections  
17 will be now, but it does correspond to matters directly relevant to  
18 Mr. Shala. But, obviously, that will be by way of a written filing  
19 within the time allotted for us to respond.

20 JUDGE GUILLOU: Thank you, Mr. Cadman.

21 Madam Prosecutor, do you want to respond to the submissions of  
22 the Bahtijari and the Shala Defence?

23 MS. SHAHABUDDIN: I don't have anything to add, Your Honour,  
24 based on what I've already said here today.

25 JUDGE GUILLOU: Thank you, Madam Prosecutor.

1 I just want to remind the parties that if any Defence teams  
2 seeks to add any evidentiary material in their Rule 102(3) notice,  
3 they can raise this *inter partes* with the Prosecution first. That's  
4 always something that the parties can do.

5 MR. REES: There is one matter that I could raise --

6 JUDGE GUILLOU: Yes.

7 MR. REES: -- at this stage that I think would be helpful.

8 Your Honour may recall the first Status Conference that I  
9 appeared in this matter. It wasn't the first Status Conference as a  
10 whole. I think it might have been the second. I did raise with  
11 Your Honour an issue in relation to securing potential evidence,  
12 which we did in private session. And Your Honour made a direction  
13 for the Prosecution to, in effect, consider whether they would take  
14 those steps themselves. And they did, subsequent to that, make a  
15 request for authority to secure that evidence.

16 I'll give Your Honour the request number. It's F00143.

17 And they made that request on 5 January 2024. As far as I'm  
18 aware, I haven't seen a decision on that request. It's unopposed  
19 because obviously we prompted the request to be made. But can I ask  
20 the Court to issue a decision on that? I have taken it that because  
21 the SPO undertook to make that request, and they did make the  
22 request, that those steps are in hand.

23 JUDGE GUILLOU: Absolutely. I've indeed received this request,  
24 and a decision is imminent on this matter raised by the Prosecution  
25 because you raised it, indeed, in the second Status Conference. So

1 this is well noted.

2 I note that some Defence teams said that 22 March was possible,  
3 at least one Defence team. Another said that it was premature.

4 Dr. Gerry, you just mentioned that only one month later,  
5 provided that we have a Status Conference in between to make sure  
6 that the funding question has been resolved, would be possible.

7 If -- and I'm asking very openly to have this case moving. If I  
8 was to set a deadline one month after what I had planned, which is  
9 probably around 20 April, provided that we have a Status Conference  
10 to make sure that the funding issue has been resolved, would this be  
11 possible for the three Defence teams?

12 Let me start with Mr. Rees, then Dr. Gerry, then Mr. Cadman,  
13 please.

14 MR. REES: Well, I'm certainly grateful for the offer of  
15 extending the time limit beyond that timetable which Your Honour had  
16 in mind.

17 Can I put it this way: We will, of course, work as diligently  
18 and expeditiously as we can to meet whatever timetable Your Honour  
19 sets. So if Your Honour sets 22 April, we will obviously endeavour  
20 to comply with that. If there is any issue with us complying with  
21 that deadline of 22 April, we would then raise it either in a Status  
22 Conference or we will raise it, if necessary, via a filing.

23 JUDGE GUILLOU: Thank you, Mr. Rees.

24 Dr. Gerry, please.

25 MS. GERRY: [via videolink] Your Honour, my submissions are much

1 the same. I sort of plucked that date out of the air, a month after  
2 22 March, I don't even know if it's a Sunday, in my hope, on behalf  
3 of Mr. Bahtijari, that we will have confirmation from the Ministry of  
4 Justice today on behalf of funding. So, of course, I will do  
5 everything I possibly can to keep Mr. Bahtijari's case on track, and  
6 if we can have that date to work towards, I'm hopeful that it will be  
7 suitable. I just can't promise anything in my particular difficult  
8 circumstances in the moment. I really hope you understand. Thank  
9 you.

10 JUDGE GUILLOU: I fully understand. I'm trying to find  
11 practical solutions.

12 MS. GERRY: [via videolink] I can see that. Thank you very much.

13 JUDGE GUILLOU: Mr. Cadman, please.

14 MR. CADMAN: [via videolink] Thank you, Your Honour. You already  
15 have my submissions in respect of the previous date. Just to  
16 reinforce that my very clear instructions from Mr. Shala is he is in  
17 detention. He doesn't want these matters to drag on forever. But I  
18 think in the circumstances, an additional month is not unreasonable.

19 JUDGE GUILLOU: Thank you, Mr. Cadman.

20 I don't see any requests for the floor on this matter.

21 There is one last matter on disclosure that I will address  
22 today.

23 I note that in filing F00164 distributed yesterday morning, the  
24 SPO requested to be authorised to disclose certain limited additional  
25 evidentiary materials pursuant to Rule 102(1)(b) of the rules. These

1 further materials consist of a forensic image of a phone seized from  
2 Mr. Shala as well as extracts of records, including text messages and  
3 call log records taken from the forensic image of the phone.

4 According to the SPO, the analysis of the Shala phone that led  
5 to the further materials being generated had not been completed on  
6 15 December 2023, which was the deadline for disclosure under  
7 Rule 102(1) (b) of the rules.

8 The SPO indicates that the further materials are limited. They  
9 concern relevant material that is probative of the charges, and their  
10 prompt disclosure will allow for timely and effective Defence  
11 preparations.

12 And subject to my approval, the SPO has provisionally included  
13 the further materials on the exhibit lists as items 168 through 170.

14 I invite the SPO to make submissions on this matter as we refer  
15 to material that is useful for the Defence preparation.

16 Madam Prosecutor.

17 MS. SHAHABUDDIN: Thank you, Your Honour. I would chiefly rely  
18 on the written submissions in filing 164, specifically at paragraphs  
19 5 and 6. What I will add is this new material, what we call the  
20 further materials in the filing, falls very much under the category  
21 of materials that we anticipated would become available to us and  
22 then disclosed to the Defence subject to review for their materiality  
23 in this case.

24 And per that review, we have found information that we believe  
25 belongs on -- or should be disclosed, rather, pursuant to

1 Rule 102(1)(b) and that will be material to the preparation of the  
2 Defence, in addition to any use we might make of it at trial.

3 If Your Honour has any other questions, I would be happy to  
4 address those.

5 JUDGE GUILLOU: Thank you, Madam Prosecutor.

6 I will give the floor to the Defence on this request of the  
7 Prosecution.

8 Mr. Rees, please.

9 MR. REES: I don't think I have any submissions on this,  
10 Your Honour. Thank you.

11 JUDGE GUILLOU: Thank you, Mr. Rees.

12 Dr. Gerry.

13 MS. GERRY: [via videolink] No, thank you.

14 JUDGE GUILLOU: Thank you, Dr. Gerry.

15 Mr. Cadman, please.

16 MR. CADMAN: [via videolink] No, thank you, Your Honour. That  
17 was specifically the filing that I was referring to a moment ago in  
18 which we will be filing an objection to that.

19 JUDGE GUILLOU: Thank you, Mr. Cadman.

20 Let me now move to the next item in the agenda related to the  
21 SPO, which is the status of the SPO's investigations.

22 I first note that the SPO filed its pre-trial brief in Case 10  
23 on 2 February 2024, before the issuance of the joinder decision, in  
24 conformity with the timeline I ordered. I also note that yesterday  
25 it submitted its Rule 109(c) chart and witness and exhibit lists and

1 related requests for Rule 102(1)(b) disclosure.

2 In its written submissions, the SPO indicated that it is in a  
3 position to file an updated pre-trial brief this week, noting that  
4 only minimal changes are required from the previously filed in  
5 Case 10 to reflect the joinder of the two cases. The SPO specifies  
6 that certain steps remain outstanding, which the SPO will execute as  
7 expeditiously as possible.

8 Madam Prosecutor, do you want to add anything to your written  
9 submissions on this issue?

10 MS. SHAHABUDDIN: No, Your Honour. And I would just highlight  
11 that should the discussion on this matter require any elaboration  
12 regarding the SPO's investigation, I would anticipate asking that we  
13 move into private session. Thank you.

14 JUDGE GUILLOU: Thank you very much, Madam Prosecutor.

15 Let me turn to the Defence.

16 Mr. Rees, please.

17 MR. REES: I have no further submissions other than those on  
18 paper.

19 JUDGE GUILLOU: Thank you, Mr. Rees.

20 Dr. Gerry, please.

21 MS. GERRY: [via videolink] My submissions remain the same. I'm  
22 slightly hamstrung. I'll do my best to comply with my obligations as  
23 I always do.

24 JUDGE GUILLOU: Thank you, Dr. Gerry.

25 Mr. Cadman, please.

1 MR. CADMAN: [via videolink] Nothing to add on this point. Thank  
2 you, Your Honour.

3 JUDGE GUILLOU: Thank you, Mr. Cadman.

4 I see that it is 11.30, which is the usual cut-off time for the  
5 interpreters for a session, so we will now break for 25 minutes and  
6 -- let's say 30 minutes, and we'll reconvene at 12.00 for a very  
7 short session. Thank you very much.

8 The hearing is adjourned.

9 --- Recess taken at 11.30 a.m.

10 --- On resuming at 12.00 p.m.

11 JUDGE GUILLOU: We are back in the Status Conference.

12 For the next point in the agenda, I would like to turn to the  
13 Defence first because it relates to Defence estimates.

14 I included in the Status Conference Scheduling Order the status  
15 of the Defence investigation, intention to give notice of an alibi or  
16 other grounds for excluding responsibility, intention to make request  
17 concerning unique investigative opportunities, and whether the  
18 Defence intends to file a pre-trial brief and related material.

19 I understand from the discussions we had at the beginning of the  
20 Status Conference that some or all Defence teams might not be in a  
21 position to provide oral submissions today on this matter. So I will  
22 give the floor to the Defence, and I will let them decide if they  
23 want to make any oral submissions on this issue or wait for the  
24 funding situation to be resolved.

25 Starting with Mr. Rees, please.



1 MR. REES: Your Honour knows that our position is that until the  
2 funding issue is resolved, it's very difficult for us to commit to a  
3 timetable. Certainly in relation to paragraph 4(a)(1), status of our  
4 investigations, paragraph (ii), any intention to give notice of an  
5 alibi or any grounds for exclusion of responsibility, and intention  
6 to make requests concerning unique investigative opportunities, I  
7 would ask that we await until the next Status Conference where I hope  
8 that we would be in a position to be able to give clear assistance to  
9 the Court in relation to those matters.

10 In relation to the filing of a pre-trial brief, I can indicate  
11 that we do envisage that a Defence pre-trial brief will be filed  
12 together with related material under Rule 95(5). We have said in our  
13 written submissions that, in the circumstances, we cannot commit to  
14 the date of 12 April 2024 as initially proposed. I note that that,  
15 of course -- that date is, of course, earlier than the 22 April date  
16 that Your Honour has canvassed in relation to providing notice of  
17 objection to admissibility of evidentiary material during the course  
18 of this hearing.

19 In order to further matters, though, and to be constructive,  
20 which I know Your Honour wishes us to be, if Your Honour was to set a  
21 date the beginning of June to file a pre-trial brief, I would not  
22 object any further and work to that timetable.

23 JUDGE GUILLOU: Thank you, Mr. Rees.

24 Dr. Gerry, please.

25 MS. GERRY: [via videolink] [Microphone not activated].

1 JUDGE GUILLOU: Microphone, please.

2 MS. GERRY: [via videolink] You would think after all these years  
3 you'd remember to unmute yourself. I'm very sorry.

4 May I suggest 22 June? It's a little bit later than Mr. Rees.  
5 I have the health issues that I keep mentioning that will impact on  
6 my ability to take instructions. I'm also in a situation where it  
7 doesn't appear -- and I don't want to criticise Duty Counsel at all,  
8 but it doesn't appear that the sorts of investigations that one would  
9 wish to complete on behalf of a client have taken place in advance of  
10 my arrival. And I had access to the Workflow on 19 January largely  
11 because someone thought I was a man called Gerry instead of a woman  
12 called Gerry. There were problems with my access to the material.

13 So the sort of time that other teams have had to further the  
14 case, unfortunately, it hasn't been available to me on behalf of  
15 Mr. Bahtijari. Plainly, he and I meet regularly, and I am in a  
16 position to make those inquiries happen, produce the relevant  
17 paperwork, comply with my obligations, and do everything that you  
18 would wish me to do on his behalf. But realistically, it will take  
19 me longer particularly because I do have the concerns that I have  
20 about his health.

21 So I agree with Mr. Rees. I think I need more time. That's not  
22 to frustrate the Court in any way. It's being realistic. And so  
23 might I suggest 22 June so that we can have sufficient time to  
24 provide everything that we should be providing assuming my funding is  
25 in place today. I've checked my e-mails. I don't yet have anything

1 from the Ministry of Justice.

2 Again, I'm a little bit hamstrung. I'm very keen to help the  
3 Court. I think it's sensible to set a timetable. I will do my  
4 utmost to comply.

5 JUDGE GUILLOU: Thank you, Dr. Gerry.

6 Mr. Cadman, please.

7 MR. CADMAN: [via videolink] Your Honour has our written  
8 submissions on this point and the other questions that you asked in  
9 terms of Defence investigations and other applications that may be  
10 made. I don't seek to add anything further now. Only to say that we  
11 had put in the written submissions that our ability to abide by any  
12 deadline was subject to the Prosecution's updated amended pre-trial  
13 brief, which we've heard will be filed this week.

14 I do raise the issue that we -- whilst we have a joint case, we  
15 still have two separate operative indictments. So, obviously, that  
16 position is going to have to be resolved at some point. But at this  
17 stage, I'm not objecting to anything further in terms of the dates  
18 that have been discussed.

19 JUDGE GUILLOU: Thank you, Mr. Cadman.

20 I don't see any requests for the floor.

21 Let me move to the next item in our agenda, which is the  
22 agreement on points of law and fact.

23 I note that on 5 February 2024, the SPO circulated to all  
24 accused via *inter partes* e-mail a list of proposed agreed facts, but  
25 the Defence teams indicated that they were not able to respond.

1 I wish to recall to the parties that there is no obligation from  
2 the parties on agree on matters of law and fact before trial.

3 Madam Prosecutor, you have the floor on this topic.

4 MS. SHAHABUDDIN: I'll rely on our written submissions and just  
5 reiterate that if at any point counsel for any of the accused wish to  
6 engage with us on the draft that we've circulated regarding proposed  
7 points of agreement on fact or on law, we would be happy to engage in  
8 those discussions.

9 JUDGE GUILLOU: Thank you, Madam Prosecutor.

10 Mr. Rees, please.

11 MR. REES: Nothing further on my part.

12 JUDGE GUILLOU: Thank you, Mr. Rees.

13 Dr. Gerry, please.

14 MS. GERRY: [via videolink] Yes. I hope to be able to engage  
15 meaningfully with the Specialist Prosecutor. I'm still outstanding  
16 my apology for the filing in relation to me. And, of course, I will  
17 do my best to engage with the Specialist Prosecutor that is currently  
18 still insulting me, but I will do my best on behalf of my client.  
19 And if agreement is possible once I've taken instructions and he has  
20 had his health assessed, of course we will do our best to agree.

21 It would be helpful if the Specialist Prosecutor would  
22 apologise. I'm sure that would progress matters.

23 JUDGE GUILLOU: Thank you, Dr. Gerry.

24 Mr. Cadman, please.

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

1     communicated. I'm not sure if the SPO's had an opportunity to  
2     receive the e-mail that we sent this morning. We hadn't said that we  
3     wouldn't engage. We just hadn't responded to their 5 February  
4     request. We have responded to that setting out that we will happily  
5     engage, but obviously it's subject to certain matters that as of  
6     today's date still remain outstanding. I think it's in the interest  
7     of all parties that there is a discussion as soon as possible on  
8     these matters.

9             I would highlight that one of the issues that we have  
10     encountered in previous matters, certainly on agreement on the law,  
11     I'm not sure to what extent we will have agreement, but by having no  
12     agreement at this stage on what the elements for each of the offences  
13     that need to be proved, certainly Mr. Rees and I have had that  
14     discussion in a previous matter, that has caused difficulties in  
15     moving forward. Certainly, I would be open to having that  
16     discussion. Ultimately, it may be a matter for a judicial decision.

17             But certainly, there should be some agreement as to what the  
18     elements of the offences should be.

19             JUDGE GUILLOU: Thank you, Mr. Cadman.

20             Madam Prosecutor, do you want to reply?

21             MS. SHAHABUDDIN: Yes. I just want to reply briefly to counsel  
22     for Mr. Bahtijari to say that the SPO's filing was not an insult. It  
23     was not personal. It was made based on the applicable framework here  
24     at the Specialist Chambers and, you know, in service of fairness and  
25     expeditiousness. And as I've said, we stand ready to engage on the

1 legal issues here with counsel whenever any of the counsel so choose.

2 JUDGE GUILLOU: Thank you, Madam Prosecutor.

3 I don't see any request for the floor. So we will now move to  
4 the last topic in our agenda, which is the transmission of the case  
5 file to the Trial Panel. But I will not seek detailed submissions of  
6 the parties on this matter given that we haven't sorted out the first  
7 issue we discussed at the Status Conference.

8 So unless I see a request for the floor, this will be discussed  
9 during the next Status Conference, and I don't see any request for  
10 the floor.

11 At this point, I would like to ask the parties and the Registry  
12 whether there are any other issues they would like to raise, starting  
13 with the Prosecutor's Office.

14 Madam Prosecutor.

15 MS. SHAHABUDDIN: Nothing from the SPO, Your Honour.

16 JUDGE GUILLOU: Thank you, Madam Prosecutor.

17 Mr. Rees, please.

18 MR. REES: Yes, two matters. Facilities for remote legal  
19 consultations is the headline that we have given it in our written  
20 submissions for this conference. I can break that down into two  
21 elements.

22 Your Honour may recall that some time ago the SEDS system was  
23 set up to allow the transfer of digital material remotely between  
24 counsel and lay client at the Detention Management Unit. There is a  
25 real issue, it seems to us, in that at one end of the transfer the

1 folder system is full of material and yet it doesn't seem to be  
2 accessible to Mr. Januzi in the Defence Management Unit.

3 I attempted yesterday to take facility, a laptop with wifi  
4 access, to the Detention Management Unit so that myself and my lay  
5 client could look at the system together and see if there was a  
6 solution to this. But for reasons I understand, that was not  
7 allowed, although on an earlier occasion we were encouraged, in fact,  
8 to do that.

9 But be it as it may, I do ask that somebody at the Detention  
10 Management Unit sits down with Mr. Januzi and addresses this and  
11 either finds a solution to it or demonstrates what counsel and  
12 accused are doing wrong. I've been using the system for some time,  
13 so I, for my part, can't fathom what is taking place.

14 JUDGE GUILLOU: If I may, I will give the floor immediately to  
15 the Registry before you raise your second point so that --

16 MR. REES: Thank you.

17 JUDGE GUILLOU: -- we already have an answer on this point.

18 Mr. Nilsson, can you make submissions on this question and  
19 especially if help can be given to make sure that everything works  
20 properly. You have the floor.

21 MR. NILSSON: Thank you, Your Honour. Yes is the short answer.  
22 Assistance can be given. I hear about the problem for the first time  
23 now, so we'll reach out to whoever needs to be reached out to within  
24 the Registry to assist with this.

25 MR. REES: Thank you.

1 JUDGE GUILLOU: Thank you, Mr. Nilsson.

2 Mr. Rees, please, your second point.

3 MR. REES: The second matter returns to a topic that I did raise  
4 at the end of the last Status Conference, which is the provision of  
5 actually a physical room for consultations to take place in the  
6 Detention Management Unit.

7 And specifically, when -- in the last two remote legal  
8 consultations that have taken place, Mr. Januzi has been placed in  
9 front of a lavatory, something which we regard as, frankly, degrading  
10 and humiliating. He shouldn't be asked to undertake a legal  
11 consultation sat in front of a toilet. It's just not right. And  
12 that is a recent development. It hasn't happened until I think the  
13 beginning of this year. I'm not aware of it. I've never seen that  
14 take place anywhere and certainly not in the Kosovo Specialist  
15 Chambers before.

16 But placing Mr. Januzi in those circumstances for a professional  
17 legal consultation is degrading and it shouldn't happen again, in our  
18 respectful submission. I'd ask Your Honour to make that clear.

19 JUDGE GUILLOU: Thank you, Mr. Rees.

20 I will give the floor to the Registry. Are you aware of this,  
21 and what solutions can be provided so that it doesn't occur again?  
22 Mr. Nilsson.

23 MR. NILSSON: Thank you, Your Honour. Again, I hear it for the  
24 first time now. There is no -- it would be no obstacle for the  
25 counsel to reach out to us before if there are these issues. I'm



1 sure they will be resolved without any problems.

2 JUDGE GUILLOU: Thank you, Mr. Nilsson. I invite you then to  
3 continue the discussion with Mr. Rees to make sure that this issue  
4 doesn't come up again.

5 Mr. Rees, do you have any further submissions?

6 MR. REES: Only this, that I just find it remarkable that anyone  
7 ever thought that it would be appropriate, that it ever occurred to  
8 anyone to place Mr. Januzi in those circumstances. But, obviously, I  
9 welcome Mr. Nilsson's commitment to ensure that doesn't happen again,  
10 and no doubt, not only in relation to that aspect but in general,  
11 convey the message to the Detention Management Unit that due care and  
12 attention should be given to ensuring that those detained and in  
13 their custody are not treated in degrading fashion. Thank you.

14 JUDGE GUILLOU: Thank you, Mr. Rees.

15 Now, let me turn to Dr. Gerry, please. Any further submissions?

16 MS. GERRY: [via videolink] No, thank you.

17 JUDGE GUILLOU: Thank you, Dr. Gerry.

18 Mr. Cadman, please.

19 MR. CADMAN: [via videolink] Yes, Your Honour. One point that we  
20 had put in written submissions that hasn't been dealt with. I  
21 appreciate a point was put in for the Prosecution to respond to  
22 translation issues, which they have obviously responded to. Just to  
23 re-emphasise the point.

24 There is a practice of the Specialist Chambers to only provide  
25 core materials translated at appropriate times to accused appearing

1 before this Court. Just to remind ourselves that this is a national  
2 institution of the Republic of Kosovo. Mr. Shala is a citizen of the  
3 Republic of Kosovo. He doesn't speak English. He can only access  
4 that material in a language that he understands. And so I make the  
5 point that all material, as far as is possible, needs to be provided  
6 to him in a language which he understands so that I'm able to take  
7 instructions.

8 As Your Honour will be aware, having appeared in the Haradinaj  
9 and Gucati case, we are still receiving now material having been  
10 translated that should have been translated during the trial.

11 I raise that as a point of general concern that the Registry  
12 really needs to be pay attention to this. That we are not sitting in  
13 an international tribunal. This is a domestic court, and he is  
14 entitled to have all of that material translated in a language which  
15 he understands. That would be the first point.

16 I'm not expecting Your Honour to make any ruling on that. But  
17 all parties need to seriously consider that to ensure that his fair  
18 trial rights are respected.

19 The second point, leading on from what Mr. Rees has also stated,  
20 in terms of the general conditions of detention. There is a very  
21 real concern as to the recent decisions that have been taken by the  
22 chief of the DMU in terms of limiting family visits to a period of  
23 ten days per month. There is a procedure, and we have filed a formal  
24 complaint with the chief of the DMU. It may well be that that's  
25 going to come before you if no steps are taken.

1           Just to remind ourselves that Mr. Shala is an accused person.  
2           He's on remand. He's not serving a sentence. Having such  
3           limitations on his family visits we say is in breach of Article 8 of  
4           the ECHR, which of course this Court has to be mindful of. And  
5           subject to what decision is taken, we may have to come back to you.  
6           What I have put in the formal complaint to the chief of the DMU, it  
7           is not what others may or may not have done in the detention unit  
8           that should cause as any limitation or restriction on Mr. Shala's  
9           rights. He comes before us as a man who's entitled to be guaranteed  
10          the presumption of innocence. He has had no findings against him in  
11          the DMU. And forcing his family to confine their visits to a ten-day  
12          period is not always possible.

13           So I do ask that the appropriate authorities take this very  
14          seriously. And, obviously, if no decision is reached following our  
15          formal complaint, then we will have to bring that before Your Honour  
16          for a ruling.

17           JUDGE GUILLOU: Thank you, Mr. Cadman.

18           Madam Prosecutor requests the floor.

19           Briefly, please.

20           MS. SHAHABUDDIN: Just on the translation issue raised by  
21          counsel for Mr. Shala. I wanted to say that the Law on the Kosovo  
22          Specialist Chambers and the Rules of Procedure and Evidence provide  
23          for the translation requirements in order to ensure, you know, that a  
24          fair trial is made available to all accused. And I just want to note  
25          that in connection with the translations that do need to be prepared,

1 for instance, of all the evidence, all of that has been done  
2 oftentimes, you know, at full capacity at the SPO, under great time  
3 pressure, and we have ensured that all of those translations are  
4 prepared.

5 So pursuant to the law and the rules, there is no fair trial  
6 issue here.

7 JUDGE GUILLOU: Thank you, Madam Prosecutor.

8 Mr. Registrar, do you want to make any oral submissions?

9 MR. NILSSON: Thank you very much, Your Honour. As for the  
10 translations, the counsel might have been referring to evidentiary  
11 material, which is obviously for the Specialist Prosecutor's Office  
12 to respond to.

13 With regard to filings, I refer counsel to policy on translation  
14 and interpretation, the Registry Practice Direction, which sets out  
15 in some details the priorities for translation of different  
16 documents. We have, as we have done in previous cases, welcomed the  
17 Defence to reach out to us if there are certain documents that they  
18 would like to have prioritised in terms of translation, and we'll  
19 certainly take that into account, and more often than not I would say  
20 we have been able to accommodate that.

21 So if there are specific documents that are of concern, counsel  
22 is invited to address us.

23 That's with regard to translations.

24 With regard to the second matter raised as to visit conditions  
25 at the Detention Management Unit, as counsel indicated, this is

1 indeed subject of a complaint and is following that procedure, so I  
2 will not comment further on it for that reason. Thank you.

3 JUDGE GUILLOU: Thank you Mr. Nilsson.

4 I see that Mr. Cadman has requested the floor.

5 Mr. Cadman, please. Briefly.

6 MR. CADMAN: [via videolink] Just very briefly to respond to  
7 that. Obviously, reference to the legal framework of this  
8 institution is not sufficient if that legal framework is in breach of  
9 the obligations under the European convention, as Your Honour will be  
10 very much aware. Also, it's for all state institutions to organise  
11 themselves in such a way as that they are compliant with those  
12 obligations.

13 So the fact that it's contained in the rules or  
14 Practice Direction but still may be operating in breach of the ECHR  
15 is not a sufficient response. Again, I repeat, this is not an  
16 international tribunal. He is entitled to have this as a matter of  
17 international law for which these institutions are clearly bound.

18 JUDGE GUILLOU: Thank you, Mr. Cadman.

19 I don't see any request for the floor, so I will now issue oral  
20 orders on what we discussed earlier, and an oral order related to  
21 access rights in light of the joinder of the two cases.

22 I will now issue a first oral order.

23 Having heard the parties and noting the urgency of the issue  
24 concerning the funding of the Defence teams, I hereby order the  
25 Registry to make urgent contact with the Ministry of Justice of

1 Kosovo, emphasising the urgency of the issue, and to inquire on the  
2 funding status and anticipated time schedule for the ministry's  
3 decision and to report thereupon by Tuesday, 20 February 2024.

4 This concludes my first oral order.

5 I will now issue a second oral order.

6 Having heard the parties and considering the stage of the  
7 proceedings, that the pre-trial stage is ongoing, and that the case  
8 has yet to be transferred to the Trial Panel, I find that no  
9 prejudice is caused to the Defence at this stage by a continuation of  
10 the proceedings.

11 Furthermore, I note that the Registry has been tasked to speak  
12 with the Ministry of Justice of Kosovo in order to urgently resolve  
13 the question of funding.

14 I hereby reject the stay of proceedings requests at this stage.

15 This concludes my second oral order.

16 I will now issue a third oral order.

17 In light of the joinder of Case 10 and Case 11, and the  
18 discontinuation of the Case 11 case record, I find it appropriate to  
19 receive submissions concerning the access rights to be granted to the  
20 respective parties.

21 I hereby order the SPO to file its submissions by Tuesday,  
22 20 February 2024 and to address the following: One, what filings and  
23 decisions from KSC-BC-2018-01 since the filing of its submission of  
24 15 December 2023 on the transfer of filings, which are F00136 in  
25 Case 10 and F00020 in Case 11, can be made available to all three

1 accused; two, what filings presently classified as confidential in  
2 each respective case can be made available to all three accused;  
3 three, what filings presently classified as strictly confidential and  
4 *ex parte* in each respective case can be reclassified and made  
5 available to all three accused. Relatedly, if the SPO objects to the  
6 reclassification of the filings, whether it can file a confidential  
7 redacted version or indicate why it cannot be done. Four, what  
8 filings identified in the SPO's submissions regarding their  
9 reclassification of filings in Case 10, which are F00117 and F00090,  
10 can now be reclassified.

11 The Defence is instructed to respond to the SPO submissions, if  
12 it wishes, by Tuesday, 27 February 2024.

13 No reply will be entertained.

14 This concludes my third oral order.

15 And I will now issue a fourth oral order.

16 Having heard the parties, and considering any challenges by the  
17 Defence to the admissibility of evidentiary material that has been  
18 disclosed on the basis of Rule 102 of the rules, I hereby order the  
19 Defence to file their objections, if any, by 22 April 2024.

20 This concludes my fourth oral order.

21 This concludes today's public hearing. A further Status  
22 Conference will be scheduled in March in order to make sure that what  
23 we discussed this morning has been resolved.

24 And in the meantime, I thank the parties and the Registry for  
25 their attendance. And, as usual, I thank the interpreters,

1 audio-visual technicians, stenographers, and security personnel for  
2 their assistance.

3 The hearing is adjourned. Thank you.

4 --- Whereupon the Status Conference adjourned  
5 at 12.30 p.m.

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