

1 Friday, 22 March 2024  
2 [Open session]  
3 [Status Conference]  
4 [The Accused Januzi appeared via videolink]  
5 [The accused entered the courtroom]  
6 --- Upon commencing at 2.31 p.m.

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

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

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

13 JUDGE GUILLOU: Thank you, Madam Court Officer.

14 Now I will kindly ask the parties to introduce themselves,  
15 starting with the SPO.

16 Madam Prosecutor, please.

17 MS. SHAHABUDDIN: Good afternoon, Your Honour. For the  
18 Specialist Prosecutor's Office we have today Eléonore Coeuret,  
19 disclosure officer; Line Pedersen, case manager; Joshua Hafetz,  
20 Prosecutor; and myself, Tazneen Shahabuddin, Prosecutor.

21 JUDGE GUILLOU: Thank you, Madam Prosecutor.

22 Now I turn to the Defence, starting with the Defence of  
23 Mr. Januzi, please.

24 MR. REES: [via videolink] Your Honour, I appear on behalf of  
25 Mr. Januzi. I'm assisted by Mr. Huw Bowden, who is co-counsel, with

1 both online remotely. Mr. Januzi is present online also.

2 JUDGE GUILLOU: Thank you, counsel.

3 And I note indeed that you are attending online.

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

5 MS. GERRY: [via videolink] Good afternoon, Your Honour, and  
6 everyone in and around the court. I am Felicity Gerry, King's  
7 Counsel, counsel for Mr. Bahtijari, whom I believe is present in  
8 court in person whilst I am online.

9 JUDGE GUILLOU: Thank you, Dr. Gerry. And I note that  
10 Mr. Bahtijari is present in the courtroom for this Status Conference.

11 Now I turn to the Defence of Mr. Shala, please.

12 MR. CADMAN: Good afternoon, Your Honour. Toby Cadman,  
13 Specialist Counsel for Mr. Haxhi Shala, who is joined with us in the  
14 courtroom today. I'm assisted today by John Cubbon, co-counsel; and  
15 Admir Berisha, investigator.

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

17 Now I turn to the Registry, please.

18 MR. NILSSON: Good afternoon, Your Honour. And good afternoon,  
19 colleagues. For the Registry, Jonas Nilsson, Deputy Registrar.

20 JUDGE GUILLOU: Thank you, Mr. Nilsson.

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

23 On 14 March, I scheduled this Fifth Status Conference in this  
24 case. My goal today is, as usual, to review the status of the case  
25 to further organise exchanges between the parties and to ensure

1 expeditious preparation for trial.

2 In particular, I want to discuss: First, the issue of funding  
3 by the Defence teams that has been raised by all Defence teams in  
4 their written submissions; then, disclosure of evidentiary material;  
5 the status of the Specialist Prosecutor's investigations; the points  
6 of agreement on matters of law and facts; the status of the Defence  
7 investigations; the anticipated transmission of the case file and  
8 when the parties expect to be ready for trial; and, finally, any  
9 other issues the parties may wish to raise.

10 I thank the parties for their submissions ahead of this Status  
11 Conference. And, as usual, I will invite the parties and the  
12 Registry to present their views in a concise fashion about each item  
13 on the agenda, which I will address in turn. And as usual as well,  
14 we will move to private session if any confidential matter is to be  
15 discussed in this hearing.

16 Before we move to the issue of funding of the Defence, I note  
17 that the Bahtijari Defence has stressed the need for a health  
18 assessment of the accused. And in its submissions, the Bahtijari  
19 Defence indicates that Mr. Bahtijari has multiple health issues that  
20 require expert assessment in four contexts: His capacity to sign  
21 forms, his fitness to stand trial, his cognitive ability at the time  
22 of the alleged offences, and his health on transfer to the KSC.

23 I don't intend to discuss the details of the medical situation  
24 of the accused today as it relates to his privacy. However, I wish  
25 to invite the Bahtijari Defence to file a written *ex parte* request

1 seeking an expert medical assessment before me as early as possible  
2 detailing the type of health issues that the accused is facing in  
3 order to identify and appoint an expert with the appropriate medical  
4 qualifications; and also the type of assessment requested, notably if  
5 the assessment is to be made for the situation of Mr. Bahtijari since  
6 his transfer to the detention facilities of the Specialist Chambers  
7 or his situation at the time of the alleged offences or both.

8 And I thank the Bahtijari Defence in advance for this written  
9 request.

10 We will now move to the issue of funding of the Defence teams  
11 that has been raised by all the Defence teams ahead of this Status  
12 Conference.

13 Following our discussions in the last Status Conference, I asked  
14 the Registry for weekly updates on the situation. I note that the  
15 Defence teams raised this issue in each of their submissions.

16 In its written submissions, the Januzi Defence indicated that  
17 there has been no improvement since the Fourth Status Conference on  
18 this issue. It also raises the question of the amendment to the  
19 legal aid regime of the Specialist Chambers and indicates that it is  
20 contemplating legal challenge as the only potential remedy.

21 The Bahtijari Defence indicated that Mr. Bahtijari had been  
22 provided with the forms to request legal aid under the system of the  
23 Specialist Chambers and that he started filling the forms. However,  
24 according to the Bahtijari Defence, this is made difficult due to his  
25 health situation.

1           The Bahtijari Defence also submitted a request for a unique  
2           investigative opportunity in order to obtain financial resources for  
3           a team to investigate and obtain the material needed to complete the  
4           forms.

5           I wish to recall that Rule 99, which is the unique investigative  
6           opportunity, concerns the availability of an investigative act which  
7           presents a unique opportunity to secure evidence that may not be  
8           available subsequently at trial, and it is therefore not the  
9           appropriate legal basis in order to seek assistance to request legal  
10          aid with the Specialist Chambers.

11          However, I wish to make a suggestion with regard to the specific  
12          situation of Mr. Bahtijari as exposed by his counsel. I'd like to  
13          consider the possibility to have Mr. Bahtijari helped by either a  
14          representative of the Defence Office or a Duty Counsel of Albanian  
15          language for the limited purpose of assisting Mr. Bahtijari in  
16          completing the legal aid forms. This person who would assist  
17          Mr. Bahtijari could liaise, in this respect, with his family members  
18          as well as other relevant persons and entities to collect the  
19          required information and documents in order to unblock the current  
20          situations.

21          So I would like the Registry and, of course, the Bahtijari  
22          Defence, to make oral submissions on this proposal.

23          Finally, the Shala Defence also indicated that the funding  
24          situation is impacting its work.

25          So I would like to hear from each Defence team about the funding

1 situation, notably: Whether they have requested or they intend to  
2 request legal aid from the Specialist Chambers, and if they have,  
3 what is the status of their request; and then whether they have  
4 lodged an appeal against the decision granting remuneration from the  
5 Kosovo Ministry of Justice or the decision denying reconsideration of  
6 the amount of funding, and if it's the case, what is the timeline of  
7 the proceedings.

8 And I will start with Mr. Rees, please. You have the floor.

9 MR. REES: [via videolink] Let me deal with the position in  
10 relation to the Ministry of Justice's scheme, Your Honour.

11 Our application for funding was met with a decision that was  
12 wholly unreasonable. The amount that was offered was simply -- in no  
13 way could it be consistent with a sensible and good faith offer is  
14 the truth, I am sad to say. We appealed against the offer and  
15 received a refusal of the appeal with no reasoning whatsoever.

16 Our only course of action in relation to the Ministry of Justice  
17 is to bring an administrative review of that decision, and that is --  
18 that filing is being actively drafted as we speak.

19 Let me turn to the Registry's position.

20 Your Honour referred to the fact that at the Fourth Status  
21 Conference Your Honour requested the Registry to offer its assistance  
22 to try to resolve the funding crisis that has developed. Their  
23 response to that was to compound it and to make it worse. Nine days  
24 after the Fourth Status Conference, the Registry unilaterally,  
25 without any consultation, without any warning, without any

1 negotiation, without mentioning to Your Honour during the course of  
2 the Fourth Status Conference, announced cuts to the KSC's legal aid  
3 scheme amounting to 60 to 75 per cent of Defence funding. It is a  
4 figure that is gobsmacking. It is unprecedented. Cuts of 60 to  
5 75 per cent are simply unheard of.

6 That wholly unsustainable attack on the Article 6 fair rights  
7 Mr. Januzi, which requires this institution to offer to him adequate  
8 facilities for the preparation of his Defence and to uphold the  
9 principle of the equality of arms, which itself requires that the  
10 legal aid system allows Defence counsel to present Mr. Januzi's case  
11 before the Chamber under conditions which do not place him under  
12 substantial disadvantage *vis-à-vis* the SPO, that is a wholly  
13 unsustainable position to have taken, and even more outrageous in  
14 that there was no consultation before those cuts were announced.

15 Were cuts of 60 to 75 per cent of the budget of the SPO imposed  
16 at the same time? The investigative budget for this case, has that  
17 been subjected to cuts of 60 to 75 per cent of funding? Has the  
18 remuneration of my learned friends sitting in the courtroom to  
19 Your Honour's right, I think, those appearing for the  
20 Specialist Prosecutor, have they seen cuts of 60 to 75 per cent  
21 unilaterally imposed on their remuneration? What about Registry  
22 staff, have they been made subject to cuts of 60 to 75 per cent of  
23 their remuneration? Interpreters in the court, have they, like is  
24 suggested in relation to interpreters working for the Defence, are  
25 they being made subject to unilaterally imposed cuts of 60 to

1 75 per cent? What about Your Honour's remuneration? Does  
2 Your Honour face cuts of 60 to 75 per cent?

3 I had understood that it was a stated aim of the Kosovo  
4 Specialist Chambers that it would seek to uphold the highest  
5 standards of international criminal justice and the international  
6 criminal justice system, but the recent changes proposed to legal aid  
7 by the Registry sadly could not have moved further away from those  
8 standards.

9 Your Honour, and I congratulate Your Honour for this, is to be  
10 departing, and I wish Your Honour *au revoir*, to the International  
11 Criminal Court at some point in the near future.

12 The legal aid scheme now in place under the revised rules in the  
13 Kosovo Specialist Chambers amounts to at its best 30 per cent and at  
14 its worst only 10 per cent of the funding that is available in the  
15 International Criminal Court, the organisation that Your Honour is  
16 departing to join, for equivalent proceedings.

17 It is not only wholly unjustified, these cuts, but the Registry  
18 has not even attempted to justify them. It hasn't even had the  
19 decency to volunteer an explanation for offering these cuts, let  
20 alone consulting ahead of imposing them.

21 On Category 3, the funding that is proposed will remunerate no  
22 more than one and a half hours' work in one day on Mr. Januzi's case  
23 by his team of counsel, co-counsel, and one team member. That is the  
24 maximum time that we can spend remunerated on the new regulations on  
25 Mr. Januzi's case, no more than one and a half hours in a single day.



1 How it is envisaged we will be able to hold a trial when we will only  
2 be able to sit for one and a half hours in a day is, frankly, beyond  
3 me. And no one at the Registry has had the decency to seek to  
4 explain how they think that these new figures are in any way - in any  
5 way - reasonable or adequate.

6 After Your Honour exhorted us to seek the assistance of the  
7 Registry, which I know Your Honour meant in hoping that they would be  
8 able to seek to reach a constructive outcome with us, and I am sure  
9 that Your Honour never could have possibly imagined that the  
10 outcome -- I apologise for that, Your Honour, that the outcome would  
11 be, in fact, that they would announce unilaterally nine days later  
12 the most savage attack on their own legal aid scheme, but we did  
13 because we had hoped to reach a constructive and amicable resolution,  
14 seek to engage in taking some constructive steps that might be able  
15 to progress the matter.

16 So, for example, we have asked the Registry whether they will,  
17 in the first instance, undertake an assessment as to whether  
18 Mr. Januzi is eligible for legal aid. They've refused to do so.

19 We've asked them to give us an indication as to whether they  
20 categorise this case and will categorise it on a provisional basis,  
21 not binding, but an indication as to whether it be Category 1, 2, or  
22 3. They have refused to engage in any such discussion.

23 And we also asked them, in an attempt to see whether we could  
24 reach a speedy resolution, whether they would undertake -- leaving  
25 aside the difficulties with the Ministry of Justice's scheme, whether

1 the Registry would undertake to, in fact, apply the legal aid  
2 regulations as they applied when Mr. Januzi was charged, in fact, and  
3 still applied at the point at which I was last addressing Your Honour  
4 at the Fourth Status Conference and at which Mr. Nilsson addressed  
5 Your Honour at the Fourth Status Conference. The Registry refused to  
6 undertake that as well.

7 They have refused to engage in any constructive dialogue to seek  
8 to resolve these matters, and that has left us facing litigation in  
9 relation to the Ministry of Justice, and, indeed, having to bring  
10 litigation against the Registry as the only route that we have to try  
11 to ensure that Mr. Januzi has a fair trial.

12 We have set out a list of requests for disclosure from the  
13 Registry that will allow us to finalise our referral to the  
14 Constitutional Chamber against the Registry's decision to make those  
15 unilateral changes to the legal aid regulations without consultation.  
16 The questions we have asked are as follows: All communications as  
17 between the Registry, the Kosovan Ministry of Justice, and/or the  
18 Specialist Prosecutor's Office on Defence funding issues to be  
19 disclosed. We have asked for communications and recorded reasoning  
20 and any other evidence within the Registry, or the KSC more broadly,  
21 relating to the changes in Defence legal aid funding. We've asked  
22 for reasons why those legal aid funding changes were delivered so  
23 close to the change in approach to Defence funding by the Kosovan  
24 Ministry of Justice. We've asked whether the amendments to the  
25 Directive on Counsel, which were announced simultaneously with the

1 changes to legal aid, were made by the Registrar *proprio motu* or on a  
2 proposal by a Judge or by the independent representative body of  
3 counsel since those are the only permitted origins of an amendment to  
4 the directive. We've ask that if in any of the above cases, when was  
5 the proposal for the amendments first considered either to legal aid  
6 or to the Directive on Counsel and with precisely what justification.

7 We've asked that -- we've pointed out that the rates which are  
8 considered by the previous legal aid regulations, that is the rates  
9 that were in force when I last addressed Your Honour at the Fourth  
10 Status Conference, which were obviously regarded as representing  
11 adequate resourcing at that stage, have been cut by 60 to 75 per cent  
12 in the revised rules. And we asked, having pointed that out, what  
13 change in circumstances justified, in those nine days between the  
14 Fourth Status Conference and the announcement unilaterally of those  
15 cuts, such a precipitous and sudden shift in policy towards the  
16 resourcing of the Defence.

17 We've asked what consideration was given to the regimes for  
18 legal aid in other comparable international courts and tribunals.  
19 For example, as I've mentioned, what justification, we've asked, was  
20 considered for offering between at best 30 per cent and at worst  
21 10 per cent of the resources offered by the ICC for equivalent cases.

22 We've asked what input the Kosovan Ministry of Justice have into  
23 the amendment process of the legal aid regulations in the KSC. And  
24 we've asked for copies of all correspondence relating to the  
25 amendments between the Registrar and the Ministry of Justice both in

1 relation to the Registrar's scheme and the Ministry of Justice's.  
2 And acknowledging that they may wish to retain some of that  
3 correspondence itself, to set out, if they feel they can't disclose  
4 it, whether or not any such correspondence took place and with what  
5 frequency and what dates so that we can at least consider the overall  
6 position. And we've said that if the answer to that question is  
7 none, we've asked the Registry to explain the otherwise striking  
8 coincidence of timing between the Ministry of Justice's decision to  
9 cut funding in their scheme and the Registrar's decision 20 days  
10 later than the MOJ's cuts were imposed, but, as I've said before,  
11 nine days after the Fourth Status Conference in which they were  
12 absolutely silent on those imminent cuts.

13 We have pointed out that the combined effect of these cuts to  
14 the two schemes is to leave each of the individuals who are accused  
15 of contempt crimes before the Kosovo Specialist Chambers accused by a  
16 highly experienced, well-resourced SPO. And I take it, from the  
17 silence in the courtroom, that the SPO has not been facing anything  
18 like cuts of 60 to 75 per cent for their investigative budget or,  
19 indeed, their remuneration to their counsel and investigators. And  
20 yet, these accused are having to defend themselves against that  
21 highly experienced, well-resourced Specialist Prosecutor's Office,  
22 and yet have no recourse themselves to any adequate and reasonably  
23 funded Defence.

24 I ask, in the circumstances, that Your Honour direct the  
25 Registrar to give a detailed answer to each of those questions. They

1 haven't yet. They have ignored those requests and simply written to  
2 say: The legal aid regulations as revised are the legal aid  
3 regulations in force. Apply for legal aid or don't apply.

4 That is no response whatsoever to the questions that we've  
5 asked, not unreasonably, in relation to cuts that are swingeing and  
6 were imposed in the face of all norms of administrative and executive  
7 conduct, internationally regarded norms which require consultation to  
8 take place between the body proposing to make the changes and those  
9 parties that are affected directly and so significantly and seriously  
10 by them.

11 We seek disclosure of those questions because we are bringing  
12 litigation to challenge the way in which the Registrar has acted in  
13 this case. We say that the Registry has acted unlawfully, and we  
14 wish the Constitutional Chamber to rule on that. They can only do so  
15 if the Registry makes the disclosure that we have sought. And my  
16 request is that Your Honour, in order to progress these matters,  
17 directs the Registry to give a detailed, substantive response to each  
18 of those questions. You've got them set out for you, Your Honour, in  
19 the filing we've put in. The Registry, of course, has had them for  
20 some time in the correspondence not only that I've engaged in with  
21 the Registry but also other Defence teams. And I urge Your Honour to  
22 direct that they make such reply by 5.00 p.m. on Thursday, 28 March.  
23 That's next Thursday.

24 We will then progress finalising, perfecting our referral, and  
25 we will make it as soon as we can after the Easter break in light of

1 receipt of that disclosure.

2 Those are my submissions, Your Honour.

3 JUDGE GUILLOU: Thank you, Mr. Rees.

4 I will invite the Registry to respond to the questions after I  
5 give the floor to the other Defence teams, and especially on the  
6 question of disclosure of the requested information that was just  
7 raised by Mr. Rees.

8 Now I give the floor to Dr. Gerry, please.

9 MS. GERRY: [via videolink] Thank you, Your Honour. I too  
10 congratulate you on your appointment at the International Criminal  
11 Court. I rather hope you're not under pressure to progress this case  
12 in order to get out, but I imagine you'll feel happy when you do.

13 I, of course, adopt Mr. Rees's submissions in their entirety, so  
14 it doesn't require me to repeat every word that he has said. That I  
15 don't repeat what he has said does not reduce the force with which I  
16 make my submissions in this court.

17 Just to give an overview of the additional position, if you  
18 like, for Mr. Bahtijari so that you have the full picture. Starting  
19 with the Ministry of Justice. Application was made for funding in  
20 January more than once and completely ignored until a new law came in  
21 on 2 February, and the Ministry of Justice then decided that that law  
22 applied. And funding went from something like -- somewhere between  
23 20 and 70.000 a month, depending on the complexity of the case, to an  
24 offer of 1.000 euros a month, which doesn't pay for a Defence team at  
25 all. It doesn't pay for counsel, co-counsel, a Kosovan speaker, a

1 legal assistant, an admin assistant, and all the ordinary needs of  
2 someone before this Court who is currently facing 225 filings.

3 So we appealed that offer. We said, no, thank you, 1.000  
4 clearly isn't enough, and can you please recognise that Mr. Bahtijari  
5 also has health issues, so this is a particularly complex case.  
6 Mr. Bahtijari lives in a village with his wife. He's produced six  
7 children, one of whom is a soldier in Kosovo. He is a labourer.  
8 Every day he gets on a van and is taken to Prishtine to sometimes  
9 find work. Some days this is no work. And when he gets behind in a  
10 village shop because they can't afford to eat, sometimes he is given  
11 credit.

12 Without him, his wife has no income at all. She is currently  
13 not at home. His daughters are housewives with no income. His sons,  
14 two of them do not live in Kosovo, seeking work elsewhere because  
15 Kosovo is a poor country. The one son who is a soldier is doing his  
16 best to help me.

17 The Ministry of Justice is leaving this man with health issues,  
18 some of which Your Honour knows about, some of which I've listed in  
19 some of the confidential material, with a catalogue of physical and  
20 cognitive issues, with utterly inadequate funding. I have stayed  
21 with him because we have a good relationship. I am his counsel of  
22 choice. I have met his son. I have spoken to another son. I have  
23 spent 4.000 euros of my own money defending Mr. Bahtijari.

24 The Registry have visited him and given him forms. They have  
25 been no help at all. Going to see a sick man in prison to give him

1 forms, one of which is 28 pages long, is utterly hopeless and  
2 Kafkaesque: We've given him the forms. Fill them in and apply for  
3 legal aid. Here is a man who cannot remember his passport number,  
4 his identification number, his bank number, his mortgage account  
5 number, if it is his mortgage account. It might belong to somebody  
6 else. He has clearly evidenced issues relating to long-term  
7 dependency which is a significant problem within Kosovo, and we've  
8 provided Your Honour with some information about that. Again, I'm  
9 not going to go into the health issues because you've asked me not  
10 to. But they become relevant when one is considering how we assess  
11 the value of any property, how we obtain valuations that may be  
12 relevant for legal aid.

13 He and I are working our way through those forms, and we're  
14 doing quite well, but I need a team. I need a team. He trusts me.  
15 We get on. He has good days, sometimes, because he's given  
16 medication when he's in detention. When he arrived in The Hague, the  
17 duty lawyer -- and I've met the duty lawyer, and he's been very  
18 helpful to try and help me deliver a razor to Mr. Bahtijari. I've  
19 met him. But the duty lawyer had to go and see Mr. Bahtijari in  
20 isolation in full protective covers, full hazmat suit, because  
21 Mr. Bahtijari was so sick, and yet the Prosecutors came and asked you  
22 for a warrant and they say in disclosure they don't have any health  
23 disclosure. It's a truly shocking situation.

24 And in addition to the legal aid amounts being cut, the Registry  
25 are sitting there refusing to appoint me as Duty Counsel.



1 Your Honour's suggestion that, oh, let's adopt a Duty Counsel,  
2 someone else for Mr. Bahtijari to somehow meet and get on with and be  
3 in consulate with me in my submission is utterly illogical, because I  
4 am his counsel and everybody is refusing to pay me. I could be  
5 Duty Counsel.

6 In fact, on or about 6 or 8 January, and I'm sorry I don't have  
7 the date in front of you -- in front of me to give to you, I asked  
8 the Defence Office: Could you make me Duty Counsel until funding  
9 comes through? That's all I asked. Make me Duty Counsel until  
10 funding comes through. It was really simple. And yet Your Honour's  
11 suggestion is somehow to pay someone else to help me or not help me  
12 to fill in some forms that I'm already filling in when I'm in  
13 communication with the family.

14 And that is why I refer to the Registry as hopeless.

15 JUDGE GUILLOU: Dr. Gerry, I just mentioned that, to be crystal  
16 clear, to help him fill the form in Albanian because you -- from what  
17 I understand --

18 MS. GERRY: [via videolink] Yes, we're doing that. I'm doing  
19 that.

20 JUDGE GUILLOU: That is the only reason why I was suggesting it.  
21 It was to help so that basically the forms are filled so that you can  
22 basically work. I didn't mean in any way that it was to replace any  
23 of the counsel. It was to try to find a pragmatic solution to help  
24 fill in the forms.

25 MS. GERRY: [via videolink] But why not --

1 JUDGE GUILLOU: That was it.

2 MS. GERRY: [via videolink] But why not be me? You know, why not  
3 help me be funded? At the moment, I'm funding the Kosovo Specialist  
4 Chambers for you. It's madness. So I haven't been paid since  
5 January. I've asked for Duty Counsel funding. I've asked for  
6 emergency funding. I do suggest that this is a sufficiently unique  
7 situation because the investigations relating to his finances would  
8 also reveal his living situation at the time of the offences, so  
9 they're inextricably connected to the investigations that will be  
10 necessary for trial. So Rule 99 is actually quite interesting in  
11 this situation, which is why we've brought it to your attention.

12 So, ultimately, the Registry wander in, like Mrs. Overall with a  
13 couple of plates of two soups, with some forms and then wander out  
14 again. It doesn't help.

15 And there is a solution, which is I am here. The Court has  
16 kindly provided me with an interpreter. I was sent an e-mail by the  
17 Defence Office saying I wasn't allowed one, and I had to raise the  
18 fact that we had a right to an interpreter, and eventually I got one.  
19 So I have an interpreter when I see Mr. Bahtijari, and we do work  
20 through the forms. I don't need Duty Counsel to translate. I need  
21 investigations on the ground in Kosovo, and all I've had from the  
22 Defence Office is: Well, you can ask his family to do it. Which I  
23 am doing, but takes time. And the time that this is taking will  
24 delay the trial.

25 So while everybody else in court is being paid, and this Court

1 is incurring all the expenses for everybody else to be paid, that's  
2 going to carry on until I can get these forms completed. I'm  
3 confident that when I provide the forms in Kosovan Albanian that have  
4 been completed by Mr. Bahtijari with me as best we can, the first  
5 time round they will not be sufficient for the Registry because there  
6 are inquiries that need to be made on the ground in Kosovo.

7 So the Ministry of Justice have left their citizen who served  
8 his country, probably as a mechanic, who is not indicted with war  
9 crimes, who has never carried out an atrocity, who is a father,  
10 husband, and worker, they have left him high and dry. And the  
11 Registry is a triumph of process over humanity, and only Your Honour  
12 can help us.

13 I'm not going to leave him. If it's going to cost me thousands  
14 of my own money, I can't pay my mortgage, that's on this Court,  
15 because this man needs me and I seem to be the only one that  
16 recognises that. I really hope Your Honour does too, because this  
17 is -- it's terrible. It's terrible for me. It's terrible for him.  
18 It's terrible for his wife. And it's terrible for his children. And  
19 everybody knows he's sick and indigent. It is really, really  
20 obvious. The Prosecution have been cruel, the Registry are being  
21 cruel, the Ministry of Justice are being cruel, and this is your  
22 opportunity to give us equality of arms to investigate this man's  
23 defence to include investigating the matters that need to be on the  
24 legal aid forms.

25 I can only beg. I've come with my begging bowl to Your Honour

1 to find a fair solution that pays me, co-counsel, a Kosovan speaker,  
2 a legal assistant, an admin assistant, and a support person, the sort  
3 of appropriate adult that we're used to in our domestic courts who  
4 can support someone who is vulnerable.

5 Now, I won't talk about the health issues any further. He may  
6 or may not be fit to be tried. But, actually, he's entitled to  
7 independent expert reports. He is entitled to have us assess his  
8 medical records, which I've asked for many times and I still don't  
9 have because somebody's got a form out there that they won't give to  
10 me, so I can't help him fill it in. He's entitled for me to look at  
11 his medical records, which I don't have. So it's going to be  
12 difficult to set out to Your Honour exactly what the health issues  
13 are, I can do my best, and then to instruct the correct experts, who  
14 we've identified, who are Kosovan speaking, who are in Kosovo, who  
15 can fly in, if there's funding, to properly and independently assess  
16 him so that he can have the confidence that his privacy is maintained  
17 and he makes decisions about whether or not medical expert reports  
18 are placed before the Court, all of which requires funding.

19 It is an utterly unique situation that you have a sick person  
20 with no money to run his Defence, and counsel running and paying for  
21 it.

22 Those are my submissions.

23 JUDGE GUILLOU: Thank you, Dr. Gerry. Again, I will ask the  
24 Registry to respond to the oral submissions of Dr. Gerry.

25 Now, let me turn to Mr. Cadman, please.

1 MR. CADMAN: Thank you, Your Honour.

2 I won't repeat what's already been said, so I can be relatively  
3 brief.

4 What we've set out in our written submissions is, of course, the  
5 absence of funding is having and will have an impact on the way in  
6 which the defence is prepared for Mr. Shala, but we've also made it  
7 quite clear -- I made it quite clear on the last occasion, and it's  
8 clear within the written submissions, is that we recognise our  
9 obligation towards Mr. Shala to prepare his defence in the best way  
10 we can.

11 Obviously, we want the financial situation to be resolved, and  
12 we're confident that it will be resolved sooner or later. Hopefully  
13 sooner rather than later.

14 What I will respond to what Your Honour has asked for is what  
15 steps have been taken. As Mr. Rees has already said, the application  
16 was refused by the Ministry of Justice. Obviously, there is a legal  
17 obligation on the Ministry of Justice to provide Defence funding.  
18 The administrative instruction was amended, we say improperly, and  
19 certainly the Ministry of Justice had delayed making a decision in  
20 order to change the administrative instruction and to reduce the  
21 level of funding.

22 That was appealed. That appeal was refused. And now, we have  
23 30 days from the minister's decision to challenge that before the  
24 Kosovo courts, which we are doing. In our case, that's the 27th, so  
25 next week, 27th March, that's when the deadline for submitting before

1 the domestic courts to challenge the minister's decision. And we're  
2 confident that the Kosovo courts will deal with the application  
3 expeditiously knowing the impact that this has on these proceedings.

4 Earlier this week, we also submitted an application for  
5 Your Honour's consideration for emergency funding. I take note of  
6 Mr. Nilsson's submission in terms of the possibility for funding to  
7 be granted pending a decision on legal aid. The reason why we had  
8 made that application to Your Honour was because we didn't have a  
9 response -- an adequate response from the Registry, be it the Defence  
10 Office or through the Deputy Registrar, and so we felt it necessary  
11 to bring that to Your Honour's attention.

12 The legal aid forms have all been completed. We spent yesterday  
13 in the DMU with Mr. Shala, and, again, just finalising some of those  
14 documents that need to be filled. So the application can be  
15 submitted. Our position is that there is still an obligation on the  
16 Ministry of Justice, and what we are seeking is a temporary solution  
17 so that it doesn't impact on the timings that have already been  
18 discussed in relation to the transfer to a Trial Panel and the start  
19 of the trial.

20 Mr. Shala's very clear instructions to me is that he does not  
21 want this to delay the proceedings. He has been detained already for  
22 three months. What we don't want to see is this impacting on the  
23 ability to schedule the trial as currently envisaged. So my very  
24 clear instructions are that, notwithstanding a decision not having  
25 been made, that should not impact on his trial moving forward.

1           As I say, the situation will be resolved one way or another. If  
2           it's not, it will have an impact on all three accused. That's clear.  
3           But certainly if the Registry is able to provide emergency funding  
4           upon receipt of an application for legal aid as a temporary solution  
5           whilst we are challenging the minister's decision, then that  
6           obviously is the ideal situation.

7           JUDGE GUILLOU: Thank you, Mr. Cadman.

8           Just to be very clear. So I took note from Mr. Rees that you  
9           will challenge before the administrative courts of Kosovo the  
10          decision of the MoJ. I take it from your submissions, Mr. Cadman,  
11          that you're going to do the same.

12          Dr. Gerry, are you also challenging the decision of the Ministry  
13          of Justice before the Kosovo courts? It's just so that I have on  
14          record what are the appeals pending.

15          Mr. Cadman.

16          MR. CADMAN: One omission. Certainly the challenge that  
17          Mr. Rees has referred to in respect of a referral to the  
18          Constitutional Court in the Specialist Chambers refers to the  
19          decision of the Registry and the changing of the legal aid in the  
20          Registry. I'm not saying that we are not pursuing that at the same  
21          time.

22          Before the domestic courts, it is the decision of the Ministry  
23          of Justice.

24          JUDGE GUILLOU: No, absolutely. I'm just trying to make it  
25          clear on the record, in the transcript, what are the current appeals

1 pending or that are going to be lodged.

2 Dr. Gerry, do you also --

3 MS. GERRY: [via videolink] We want to lodge. I don't have a  
4 Kosovan lawyer on the ground because I don't have any money to pay  
5 somebody to help me issue in the Kosovan court. So I don't have  
6 anybody to help me in Kosovo on that issue either.

7 But what I have done is I've e-mailed the Ministry of Justice  
8 again simply to ask them to reconsider, and I have had a reply that  
9 that request would be forwarded. So I think what that will do is  
10 create a new date from which I might have some time to run, because  
11 I'm not -- much as I would love to file next week, I don't have the  
12 resources to do so, and I would have to argue that I could have a  
13 longer time limit because I didn't have the resources to do that.

14 I'm looking into how I might have the resources to do that. I  
15 haven't had a positive result in any direction in this case when it  
16 comes to funding, other than Mr. Bahtijari and I get on well and  
17 we're doing our best.

18 JUDGE GUILLOU: Thank you, Dr. Gerry. This is noted.

19 I'm now going to give the floor to the Registry, please.

20 And if you can respond to the three Defence teams. Mr. Nilsson,  
21 please.

22 MR. NILSSON: Thank you, Your Honour.

23 I will try to address all the matters that were raised as good  
24 as I can. Maybe just to say initially there has never been any  
25 refusal to respond. I think we attach copies of correspondence to



1 the weekly reports, so Your Honour will see yourself the  
2 correspondence. It has been in e-mail, formal correspondence and  
3 filings. Almost on a daily basis we are in contact with the Defence  
4 teams. So there has certainly been no refusal to respond. Counsel  
5 might not like the responses, but that's certainly another matter.

6 Because of the extensive communications, there's very little I  
7 can add in substance. In fact, when we met last time about six weeks  
8 ago, upon a question from you, Your Honour, I set out what was the  
9 avenue as far as the KSC legal aid system is concerned, and that is  
10 for an accused to seek legal aid and ask for an assignment of  
11 counsel. That was set out in court at that time. I have set it  
12 out -- or, rather, the Registry has set it out in several filings and  
13 letters and e-mails since then whilst in correspondence with the  
14 Defence. So we have come back to it if not daily, then at least  
15 several times a week since then.

16 The position has not changed. That is the position. That is  
17 the avenue to go. We have made some progress, I hear, from counsel  
18 in terms of filling in the forms.

19 But I do want to add also this. There has been no cuts in the  
20 legal aid for the accused in this case. There's been no cuts because  
21 there has been no decision to grant legal aid because there's been no  
22 application, there has been no request for legal aid. So that's the  
23 situation.

24 I cannot say, as I stand here today, whether the accused in this  
25 case should be granted legal aid, whether they will be granted legal

1 aid pursuant to the KSC legal aid system. I cannot say whether they  
2 will be granted or not. I cannot say whether they -- if they will be  
3 granted, what is the amount that they would receive. That is subject  
4 to a decision by the Registrar. This is also what I have set out.  
5 That decision will follow an indigence assessment into the assets,  
6 into the resources that the accused have. So that's the very clear  
7 position.

8 What I can say with absolute certainty, we are not getting any  
9 closer to a decision on legal aid until there is a request. Until  
10 there is a complete form filled in with all the required information,  
11 until we get that, we cannot approach a decision.

12 What I also can say with certainty is that if there is a  
13 decision, if we finally get to a decision on legal aid, there is an  
14 avenue to challenge that if the accused is not satisfied with the  
15 decision to grant, not to grant, or whatever amount to be granted.  
16 There is a procedure well established to set out for that purpose.

17 In the meantime, there are no disclosure obligations. There are  
18 no disclosures that is going to happen. Once we have a decision,  
19 that can be challenged, and we'll be happy to -- if that challenge  
20 happens, to respond at that time.

21 As for the instructions sought by the Januzi Defence today. If  
22 they are bringing matters before the Constitutional Court, the  
23 Chamber of the Constitutional Court of the KSC, we submit that it's  
24 for that Chamber, for that Panel to request any submissions and  
25 responses they would like also from the Registry so that it will be a

1 matter for them once that application is filed.

2 I think that's as far as I can take it. We have submitted  
3 several reports, the latest one filed yesterday and distributed this  
4 morning, I believe, which, again, does not include anything in  
5 particular new. It is perfectly possible to go back and look at the  
6 transcripts from the last Status Conference, and that is the position  
7 and it hasn't changed.

8 With regard to Your Honour's proposal to assist the Defence of  
9 Mr. Bahtijari to fill out the forms. The assistance provided so far,  
10 as counsel knows, is that we have provided interpretation for all  
11 visits with client. So far there has been, counsel will know better,  
12 but I think about 10 or 11 since the last Status Conference, of  
13 several hours.

14 The other assistance is -- we have provided is that the Head of  
15 the Defence Office has been with Mr. Bahtijari on more than one  
16 occasion, I think about at least two occasions, to both provide the  
17 forms, indeed, as counsel say, but also to go through them, go  
18 through the procedure on what is required. Only yesterday we offered  
19 again to the Defence of Mr. Bahtijari to go again to the detention  
20 unit and go through the forms.

21 There is a limit to how much assistance we can be of. There is  
22 information that we don't have, obviously, that it needs to come from  
23 Mr. Bahtijari or his family members. Counsel is already in contact  
24 with the family members. Of course, Mr. Bahtijari is in contact with  
25 family members. There we are of little help. But whatever help we

1 can do, certainly in interpretation, in providing information - what  
2 is meant by this or that in the form - that we will do for sure. We  
3 have done it before, we have offered it again, and the offer stands.

4 There were several submissions. I'm not sure if I managed to  
5 capture all of them in my response. I think I have. And if I  
6 haven't, certainly there is in -- in our written submissions. The  
7 fact that they are not the responses that counsel would like, that I  
8 cannot do much about, but those are the responses. Thank you.

9 JUDGE GUILLOU: Thank you, Mr. Nilsson.

10 Does the SPO want to make any submission on this issue? You  
11 don't need to rise. Just if you have any submissions. No? I don't  
12 see.

13 Does any Defence would like to add anything?

14 Mr. Rees --

15 MR. REES: [via videolink] Yes.

16 JUDGE GUILLOU: -- you have the floor.

17 MR. REES: [via videolink] Your Honour, ignoring everything  
18 that's been put in a request and responding by simply referring to  
19 matters that are wholly irrelevant to the subject of the request is  
20 not a response. That is properly described as refusing to deal with  
21 the request. It's ignoring it.

22 In one sense, Mr. Nilsson has now finally responded to that  
23 request for information because he has at least said, rather boldly,  
24 that there are no disclosures which will be made, he asserts. What  
25 sort of an executive or administrative body acts in that way? What

1 sort of body which purports to apply to itself the highest  
2 international standards operates without any consultation before  
3 making changes, and then after changes are made simply says: We will  
4 make no disclosure, we will give no information which led us to make  
5 those changes, we will give no justification or reason? What sort of  
6 a body acts in this way?

7 Mr. Nilsson urges an application for legal aid to be made. What  
8 worth? What worth is a grant from the Registry, a body which acts  
9 like it can change the rules unilaterally, without any consultation,  
10 and with impunity at any point it wishes?

11 Mr. Nilsson says rather incredibly that the position has not  
12 changed since the Fourth Status Conference. It's just -- it's a  
13 proposition which makes no sense. To describe the changes to the  
14 legal aid scheme as anything other than cuts of 60 to 75 per cent is  
15 just meaningless. How would Mr. Nilsson describe cutting the rates  
16 that are on offer from 60 to 75 per cent? How would he describe it?  
17 We will never know because Mr. Nilsson says there are no disclosures  
18 which will be made, because they will not engage in any sort of  
19 dialogue, they will not engage in providing any sort of  
20 justification. They ought to have done it beforehand. It's good  
21 practice to consult. But having not consulted, they won't engage in  
22 any dialogue thereafter.

23 As I said to Your Honour, the Registry is not interested in any  
24 sort of constructive steps to try to resolve this matter. They  
25 simply say: Take us to court. Well, there we are then. That's what

1 we'll do. We'll file before the Constitutional Chamber. We will  
2 then seek an order as to disclosure there, because they seem to feel  
3 that you, Your Honour, have no power to order them to provide us with  
4 the sort of information that one would expect, that I've requested,  
5 but it seems the Registry regard themselves as above and beyond  
6 Your Honour's jurisdiction.

7 I still repeat because I think -- Your Honour is the  
8 Pre-Trial Judge. Your Honour's powers include making sure that we  
9 can prepare for trial expeditiously, properly, so that we can have a  
10 fair trial. And it seems to me that the not unreasonable request  
11 I've made for a direction that the Registry does give us some of that  
12 information that we've requested is a perfectly proper direction that  
13 Your Honour can make, and I think Your Honour would bind the Registry  
14 if Your Honour made that direction.

15 Perhaps if Mr. Nilsson genuinely thinks that the Registry is  
16 above and beyond Your Honour's jurisdiction, Your Honour can make  
17 that direction and they can ignore it, and then we'll see what  
18 happens thereafter. But it does seem to me that if the parties here  
19 and Your Honour do wish progress to be made, they can make that  
20 disclosure before we file, and we can see where that takes us.

21 Those are my submissions.

22 JUDGE GUILLOU: Thank you, Mr. Rees.

23 Dr. Gerry, do you want the floor? Yes. Please.

24 MS. GERRY: [via videolink] Yes. Very briefly, if I may. If we  
25 condense what the Registry said is that they -- despite suggesting I

1 couldn't have an interpreter, eventually I've got an interpreter.

2 They have done that to help. I have an interpreter.

3 Secondly, they've said: We've been in and shown him the forms  
4 and taken him through them. We haven't filled them in. We didn't  
5 take a support person. He hasn't been assessed in terms of his  
6 capacity, his lucidity. We didn't have a doctor with us to make sure  
7 that he could cope with what we were doing. We took him some forms.  
8 We keep taking him some forms.

9 And when I tell them, "I've taken him some forms. Sometimes  
10 he's in pain and he can't fill in the forms." So all that the  
11 Registry do, no doubt being -- they're certainly being paid more than  
12 me. I'm on zero, no income since 4 January, plus it's costing me  
13 money. They are being paid to wander into a prison and hand over  
14 some forms and that's it.

15 And when I asked what system do you have to fund someone who  
16 can't fill in the forms, for example for health issues, the answer  
17 was none. There is no system, apparently, according to the Registry,  
18 to help somebody who needs investigations on the ground to fill in  
19 his legal aid forms. Now, that seems to me a lack of access to  
20 justice, a lack of equality of arms, justice not being seen to be  
21 done, the language of an abuse of process.

22 So there it is. My begging bowl is still out there. I'd be  
23 happy to be Duty Counsel, pending funding being obtained, and with  
24 the other members of a team to make sure that the investigations are  
25 carried out and the forms are completed. But in the meantime, the

1 Registry is no help at all.

2 JUDGE GUILLOU: Dr. Gerry, you mentioned that you ask for  
3 somebody on the ground to help. When I made this suggestion earlier,  
4 you said that you didn't want it. So --

5 MS. GERRY: [via videolink] No, no, no, I said that I didn't want  
6 Duty Counsel --

7 JUDGE GUILLOU: So maybe I misunderstood --

8 MS. GERRY: [via videolink] Yes.

9 JUDGE GUILLOU: -- but we need some clarity here.

10 MS. GERRY: [via videolink] Of course.

11 JUDGE GUILLOU: This is exactly the reason why I suggested that  
12 someone could be appointed to help fill in the form. You said: No,  
13 I don't need it. And now you say that you want the same thing that I  
14 proposed at the beginning.

15 MS. GERRY: [via videolink] I don't need help --

16 JUDGE GUILLOU: So do you need some --

17 MS. GERRY: [via videolink] -- filling in the form. Sorry, but  
18 he and I are working through the forms. I don't know if Your Honour  
19 is familiar with the forms. I don't know if you've ever seen the  
20 declarations of means form that runs to 28 pages.

21 So, for example, it will say: What's the name of all your  
22 children? When were they born? When did they first go to work?  
23 What do they do for their occupation? Some of those details aren't  
24 always possible, so I have to make inquiries.

25 And, for example, there is a house that he lives in with his



1 wife. It's an inherited house. You would have to have some  
2 investigation as to who is the lawful owner, what loans there are  
3 against the property, can the property be valued. I certainly know  
4 from my experience at the International Criminal Court, the Registry  
5 there required more than one valuation by an estate agent on the  
6 ground.

7 Now, if I had a team I could instruct people on the ground to  
8 make those inquiries. Yes, I would like that help, but I would like  
9 it as part of my team so that I can properly represent Mr. Bahtijari.  
10 So --

11 JUDGE GUILLOU: So to --

12 MS. GERRY: [via videolink] I can't express it anymore, that you  
13 should pay me and give me a team and I'll get on with it.

14 JUDGE GUILLOU: No, but it's just for me so that things are  
15 clear on the record. In fact, you do not need anyone to help fill in  
16 the form here. What you --

17 MS. GERRY: [via videolink] Correct.

18 JUDGE GUILLOU: -- would like is somebody within your team  
19 already who would, in Kosovo, be able to help for a certain number of  
20 assessments of information that are needed to fill the form. Does it  
21 correctly --

22 MS. GERRY: [via videolink] Yes.

23 JUDGE GUILLOU: -- sum up --

24 MS. GERRY: [via videolink] Yes.

25 JUDGE GUILLOU: -- your submissions?

1 MS. GERRY: [via videolink] It does. But may I add to that what  
2 I said earlier which is some of those inquiries will also be relevant  
3 to evidence that will be useful in the trial. So Defence  
4 investigations could take place all at once, which is why I said  
5 Rule 99 was quite interesting and useful to you.

6 So, for example, in a trial, you might want to tell the Court  
7 his personal situation. It might go to his intent or his conduct as  
8 to how he lives his daily life. That might include going to a café  
9 and drinking and so on.

10 So in a way, it's a false economy to say: Well, let's get  
11 someone on the ground solely to help fill in the forms. The  
12 practical reality is: Let's give Felicity Gerry a team, and she can  
13 crack on and get this case prepared, and that would include the sort  
14 of information that could be added to the forms.

15 And may I say, we have provided the form that demonstrates that  
16 he's indigent and says that he understands that if he does have any  
17 assets they can take him if he's discovered not to be indigent. So  
18 he's made that declaration. The Prosecution know where he lived. I  
19 think it's really obvious what this poor man is facing and fairness  
20 dictates that I have a team.

21 And when I say "help," not separate from me, and that I'm paid  
22 to do this. Even filing the filing with you for the health issues  
23 means that I can't do any other work. It's just not fair.

24 JUDGE GUILLOU: Thank you, Dr. Gerry.

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

1 MR. CADMAN: I'll just add one point just as a general  
2 observation, and it's not strictly limited to the question of  
3 funding, and that's the role of the Defence Office.

4 Now, we've heard a number of concerns being raised where support  
5 is not being given. When we are in this particular situation, having  
6 support from the Defence Office, which arguably is there to support  
7 the Defence, I think it's an obligation that the Defence Office needs  
8 to be reminded of.

9 And I will just give you one concrete example. I'm not based in  
10 The Hague. Obviously, when the trial starts I will be. But for the  
11 time being, I have to travel here. That currently is being funded by  
12 ourselves. We had to file a complaint to the chief detention officer  
13 or whatever his title might be. That has to be hand delivered. I  
14 couldn't do that because I'm not here. I asked for assistance from  
15 the Defence Office which was refused. They effectively said it's not  
16 really their role.

17 So I think the Defence Office needs to be reminded that they are  
18 here to support the Defence, and particularly in these special  
19 circumstances. That's the only point I would want to raise.

20 JUDGE GUILLOU: Thank you, Mr. Cadman.

21 I don't see any other request for the floor.

22 Mr. Nilsson, do you want to add anything? You have the floor.

23 MR. NILSSON: Thank you, Your Honour.

24 Just a few remarks with regard to what has been said. Just to  
25 make it clear, we will of course respond to any challenge to a

1 decision on legal aid that will come. We will respond to any request  
2 from the Constitutional Court Chamber that might or might not come.  
3 That is the proper procedure, and that's -- we have no issues with  
4 that, obviously.

5 The counsel for Mr. Bahtijari mentioned -- made a reference to  
6 funding for filling in the form or funding for applying for legal  
7 aid. So with the risk of stating the obvious, there is no legal aid  
8 for the purpose of applying for legal aid. So that's not part of the  
9 system. What, and I think -- perhaps we're also confusing it also a  
10 little bit with the indigence assessment, the investigation into the  
11 assets, and so on. That, of course, will be done by Registry and  
12 not -- once the application is in, once the forms are filled in, then  
13 that process will start, and that's clearly with the Registry and  
14 something that will be financed and done completely with the  
15 Registry.

16 Finally, with regard to the last remark, with regard to the role  
17 of the Defence Office to assist. There is no need for such a  
18 reminder. Thank you.

19 MR. REES: [via videolink] Your Honour, could I --

20 JUDGE GUILLOU: Mr. Rees, then very briefly, please.

21 MR. REES: [via videolink] Yes. Well, again, trying to be  
22 constructive then, Your Honour. Can I ask Mr. Nilsson that will he,  
23 on behalf of the Registry, accept an application for legal aid made  
24 at this stage without prejudice to any referral challenging the legal  
25 aid regulations as revised before the Constitutional Chamber,

1 accepting that any such application would not amount to  
2 acknowledgement that the revised legal aid regulations are lawful,  
3 accepting and undertaking to approach it on the basis that any such  
4 application would not amount to any sort of acceptance that the rates  
5 referred in the revised legal aid regulations are in any way  
6 whatsoever reasonable or adequate? Would Mr. Nilsson accept that an  
7 application can be made for legal aid on that basis so that we can  
8 have some funding to continue while we challenge the lawfulness of  
9 the regulations themselves?

10 JUDGE GUILLOU: Thank you, Mr. Rees.

11 Mr. Nilsson, are you in a position to answer the question,  
12 please?

13 MR. NILSSON: If a request for legal aid will be submitted, it  
14 will be processed like any other request. I'm not -- I don't think I  
15 have to acknowledge anything, and, more importantly, Mr. Rees doesn't  
16 need an acknowledgement from me on this. We will process the request  
17 like any other request. Thank you.

18 MR. REES: [via videolink] That -- that is a very --

19 JUDGE GUILLOU: Mr. Rees, please, briefly.

20 MR. REES: [via videolink] Well, yes, briefly, Your Honour. That  
21 is a very legalistic answer from Mr. Nilsson. I congratulate him on  
22 his lawyerly answer by not responding at all to the request.

23 The question was not whether they would process the application.  
24 The question is whether they would accept that the application was  
25 made without any prejudice to a referral to the

1 Constitutional Chamber, that they would accept that the application  
2 would be made without any acceptance on the applicant's part that the  
3 legal aid regulations as revised are lawful, and that they would  
4 accept that any such application would be made without any acceptance  
5 on the part of the applicant or, indeed, his team that the rates set  
6 out in the revised legal aid regulations are in any way reasonable or  
7 adequate. That's what the question is.

8 If Mr. Nilsson could answer that, I'd be grateful.

9 JUDGE GUILLOU: Mr. Rees, I mean, I can give the floor to  
10 Mr. Nilsson, but I think Mr. Nilsson doesn't want to answer your  
11 question or reply no. That's what I understood from his submissions.  
12 But I mean, I can ask him again.

13 MR. REES: [via videolink] Well, Your Honour, that's how I  
14 understood it as well. But I'm grateful that Your Honour at least --  
15 it's been made clear to Your Honour, that when the Registry says that  
16 they enter into dialogue, they enter into nothing of the sort. That  
17 was a "no" without saying it.

18 JUDGE GUILLOU: Mr. Nilsson, do you want to respond or do you  
19 want to add anything?

20 Mr. Nilsson, please.

21 MR. NILSSON: No, nothing to add. You understood me well.  
22 Thank you.

23 JUDGE GUILLOU: I see Mr. -- no, Ms. Gerry, please, very  
24 briefly.

25 MS. GERRY: [via videolink] Yes. Mr. Nilsson said, "We make

1 inquiries after the form is filled in," but I can probably deal with  
2 this with him by e-mail rather than taking up the Court's time, but  
3 there are matters within the form that they won't even investigate  
4 unless I can provide certain information.

5 A short example is if I don't give them a bank account number,  
6 they won't investigate that bank account. So I need to find out a  
7 bank account number. It's a very small example of what can take a  
8 long time if you don't have a team.

9 So don't take Mr. Nilsson's submissions as concrete. The forms  
10 don't lead to magic finance of the Registry to investigate.

11 JUDGE GUILLOU: Thank you, Dr. Gerry.

12 I don't see any request for the floor on this matter. So I take  
13 note of the submissions of the parties, especially on the pending  
14 appeals, future litigation on this matter both before the Kosovo  
15 courts and potentially here at the Specialist Chambers.

16 I see that there is now -- I don't see a lot of room for an  
17 approach consisting of - how can I say that? - resolving the issues  
18 without litigation, so this issue will probably be dealt with by  
19 written rulings from now on, because I think this is how it will  
20 probably end.

21 I invite everyone to act as quickly as possible on this matter,  
22 to provide information as fast as you can so that we can proceed in  
23 the fastest way in the interest of expeditiousness for the accused.

24 Now, let me move to the first item that was in the Scheduling  
25 Order, which is disclosure.

1 I would like to hear from the SPO on the progress made in the  
2 disclosure of evidentiary material. I have taken note of the SPO's  
3 written submissions on the issue of disclosure. Regarding the  
4 Rule 102(1)(b) material, the SPO indicated that it has already  
5 requested authorisation to disclose, pursuant to Rule 102(1)(b), the  
6 forensic image of a phone seized from Mr. Haxhi Shala as well as  
7 extracts of records, including text messages and call log records,  
8 taken from the forensic image of this phone.

9 I will further refer to the material generated from Mr. Shala's  
10 phone as "the further material."

11 According to the SPO, the analysis of Mr. Shala's phone that led  
12 to the further materials had not been completed on 15 December 2023,  
13 the deadline for disclosure according to Rule 102(1)(b) of the Rules.

14 The SPO also indicated that the further materials are limited,  
15 concern relevant material that is probative of the charges, and their  
16 prompt disclosure will allow for timely and effective Defence  
17 preparations.

18 Subject to my approval, the SPO has provisionally included the  
19 further materials on the exhibit list as items 168 through 170.

20 I note that the Shala Defence replied to the request in its  
21 written submissions from 19 February 2024 and opposes the SPO  
22 request. It indicates that the items the SPO intends to disclose do  
23 not achieve the threshold of *prima facie* relevance and that the  
24 retention of Mr. Shala's phone causes difficulty to the accused.

25 I invite the SPO and the Defence for Mr. Shala to supplement



1 their written submissions, if they wish, as I intend to rule on this  
2 request orally at the end of the Status Conference.

3 With respect to the Rule 102(3) material, I note that the  
4 evidentiary material has been disclosed except an item for which  
5 there is a challenge of materiality. And I inform the parties that I  
6 will rule on this request in due course by way of a written decision.

7 However, I also note that the SPO indicated that it anticipates  
8 filing further requests for authorisation to present a supplemental  
9 notice pursuant to Rule 102(3). I invite the SPO to give further  
10 details on the reason and the timeline for such requests and how it  
11 will affect the disclosure calendar.

12 Finally, the SPO does not anticipate making any request under  
13 Rule 107 and indicates that it is on track to complete its pre-trial  
14 disclosure obligation by no later than Friday, 12 April 2024. And,  
15 again, I would like to ask the SPO how this is possible if there is  
16 an updated Rule 102(3) list, but it will be for the SPO to tell us  
17 that.

18 The Januzi Defence indicates in its written submission that  
19 disclosure is not finalised. It notes that on 14 March 2024, the  
20 Prosecution provided notification of its intention to lift standard  
21 redactions to item 116599-TR and has stated that it will disclose the  
22 unredacted version as soon as practicable. However, according to the  
23 Defence, this has not been done yet.

24 I invite the SPO to provide submissions on this point, and  
25 notably if this has been done in recent disclosure packages that were

1 distributed yesterday.

2 The Bahtijari Defence indicates that it has requested documents  
3 related to the health of the accused to the SPO.

4 So I invite the parties to make submissions on the topic of  
5 disclosure generally, including the points that I've mentioned in my  
6 summary.

7 And I will start with the Prosecution office. Madam Prosecutor.

8 MS. SHAHABUDDIN: Your Honour, I'll start with where I think  
9 most of these inquiries, as far as the SPO is concerned, are centred,  
10 which has to do with the additional investigative steps that we have  
11 underway and may lead to the disclosure of additional materials under  
12 various rules of disclosure.

13 In addition to the further material identified by Your Honour,  
14 any further disclosures related to the recently authorised  
15 investigative measures will be disclosed as we identify them and then  
16 process and analyse them, subject, of course, to the Court's  
17 authorisation. And we foresee that we will make those requests  
18 either pursuant to Rule 102(1)(b) or, to the extent materials don't  
19 fall under that rule but would be potentially material, we would then  
20 provide notice of them under Rule 102(3).

21 Regarding Rule 102(3) and new materials received by the  
22 Specialist Prosecutor's Office, we were not intending to seek  
23 authorisation to file supplemental Rule 102(3) notice given our  
24 understanding of our ongoing obligation to assess incoming material  
25 for relevance and then to, as appropriate, notice them.

1 With regard to the SPO's representation in its written  
2 submissions that, subject to continuing forensic analysis, it is on  
3 track to complete its pre-trial disclosure obligations by or  
4 certainly no later than Friday, 12 April 2024, that representation is  
5 subject to the identification and processing analysis and then  
6 disclosure, of course, of new material that is still outstanding.

7 I will note that this material is limited. Much of that process  
8 is underway. And when we say that these disclosures will be made in  
9 due course, we -- without saying specifically when we'll be able to  
10 make further disclosures and determinations regarding where  
11 authorisation might be needed, we don't anticipate a very long  
12 timeline with regard to those materials.

13 Regarding the disclosure of lesser redacted materials per our  
14 filed notification as identified by counsel for Mr. Januzi, those  
15 disclosures of lesser redacted materials, specifically in relation to  
16 the transcript identified by Your Honour but also in relation to  
17 additional materials, were made yesterday in three disclosure  
18 packages numbered 19, 20, and 21. And we are happy to engage with  
19 our colleagues if any further request remains outstanding in relation  
20 to those materials.

21 Regarding the 102(3) requests that have come in from counsel for  
22 Mr. Bahtijari, with reference to the requests related to  
23 health-related issues, as we've indicated to counsel in *inter partes*  
24 correspondence, the Specialist Prosecutor's Office has already  
25 provided all responsive information that it is aware of, and also

1 specifically directed counsel for Mr. Bahtijari to at least one  
2 relevant item that was annexed to a filing. That, in our view,  
3 concludes that inquiry on our part.

4 We have also received another revised 102(3) related request  
5 from counsel for Mr. Bahtijari on Wednesday of this week, and we are  
6 currently reviewing it, and we have indicated the same to counsel.  
7 And we will respond *inter partes* once we have concluded our review.

8 Those are my submissions, unless you have further questions,  
9 Your Honour.

10 JUDGE GUILLOU: Thank you, Madam Prosecutor.

11 Now, let me give the floor to the Defence, starting with  
12 Mr. Rees, please.

13 MR. REES: [via videolink] Your Honour, there is a direction that  
14 I seek that a date is given to the SPO to conclude their forensic  
15 investigations and to serve any further Rule 102(1)(b) evidence or  
16 make disclosure, alternatively, under Rule 102(3) and/or 103.

17 On two Status Conferences now, the SPO has asserted that  
18 everything is complete except for the work that's not complete but  
19 without giving any indication to the Court as to when that work will  
20 be complete. They shrug their shoulders and say, well, it's not  
21 much, it won't take much time. Well, Your Honour should put a date  
22 on it, and they should be held to it.

23 In the same vein and would fall under the same target, but the  
24 telephone interrogations, both in terms of the handsets that have  
25 been interrogated and analysis of the data, that has been going on

1 for some considerable time now, and we have not had any further  
2 assistance from the Prosecution as to when they aim to conclude that  
3 work. Again, that needs to be given a firm date as a target.

4 One of the things that we need to do is to forensically  
5 interrogate the mobile phones of Witness 1 and his partner in due  
6 course. We do not accept the integrity or authenticity of the  
7 12 April audio recording that's been provided to us. And we will  
8 need [REDACTED] Pursuant to In-Court Redaction Order F229RED.

9 [REDACTED] Pursuant to In-Court Redaction Order F229RED.

10 [REDACTED] Pursuant to In-Court Redaction Order F229RED. three devices  
11 directly.

12 We will be seeking expert evidence on the matter. At the  
13 moment, we're in a position where we will have to try and find an  
14 expert to act *pro bono* because we neither have funding now and  
15 neither the Ministry of Justice or the Registry provide anything like  
16 funding that would assist with commercially obtaining an expert to  
17 interrogate those devices, but we need to and that is an issue that  
18 we'll have to address.

19 [REDACTED] Pursuant to In-Court Redaction Order F229RED.

20 [REDACTED] Pursuant to In-Court Redaction Order F229RED.

21 [REDACTED] Pursuant to In-Court Redaction Order F229RED.

22 [REDACTED] Pursuant to In-Court Redaction Order F229RED.

23 [REDACTED] Pursuant to In-Court Redaction Order F229RED.

24 [REDACTED] Pursuant to In-Court Redaction Order F229RED.

25 [REDACTED] Pursuant to In-Court Redaction Order F229RED.

It's for those reasons why I urge Your Honour to put a time

1 limit on the work that the SPO are doing and allow us to have access  
2 to those materials so that we can attempt to undertake our own  
3 investigations.

4 JUDGE GUILLOU: Thank you, Mr. Rees.

5 Before I give the floor to Dr. Gerry, just for the Prosecution,  
6 I will give you the floor later, but if you can -- and I'm saying  
7 this so that I don't forget. You can give some detailed -- a  
8 detailed timeline with expected dates for the end of your  
9 investigation following what Mr. Rees indicated, because it is true  
10 that you've been saying "in due course," or -- I don't have a lot of  
11 indication on when it will be ready. Is it in one week, one month,  
12 three months? I need some figures in your response, please, or at  
13 least an estimation.

14 But I will give the floor to the other Defence teams first, but  
15 it's so that I don't forget to remind this to you.

16 Dr. Gerry, please.

17 MS. GERRY: [via videolink] It's nice to know I'm so distracting  
18 that I might cause Your Honour to forget. I'll try not to be.

19 My submissions are the same. The Prosecution are clearly not  
20 ready. It would be good to have a date by which they say they're  
21 going to be ready. It's somewhat turgid hearing "we're ready" and  
22 then "we're not ready." So we agree, Your Honour should try and  
23 extract a date by which the Prosecution say they're going to be  
24 complete in their investigations.

25 I think there's a current date of 22 April for me to respond.

1 Plainly that can't be held to, so we would ask that that date push  
2 down to perhaps the end of May. Other than that, we've asked those  
3 two sets of inquiries of the Prosecution. We are deeply suspicious  
4 of the replies on health, and, obviously, much will depend on our own  
5 investigations.

6 The other matters, we've had the e-mail to say that they will  
7 look into it, and it is a follow up from a previous inquiry. So we  
8 are in communication. What will come of that, we'll see. I have a  
9 speaking suspicion they're running around trying to prove that he's  
10 not sick, but they're not going to tell me that either. So we'll  
11 see.

12 JUDGE GUILLOU: Thank you, Dr. Gerry.

13 Mr. Cadman, please.

14 MR. CADMAN: Well, Your Honour has dealt with some of the points  
15 I wanted to raise, and Mr. Rees has dealt with it in some detail.  
16 Obviously, we also have real concerns over the integrity of the  
17 recordings and join Mr. Rees's request that we be entitled to examine  
18 those devices and have access to the orders that have been applied  
19 for and granted in addition to that, because there are concerns, and  
20 I won't go into detail so that we don't have to go into private  
21 session, but certainly that there are concerns as to the integrity of  
22 the information that's being put forward.

23 One of the other requests that we will be making in due course  
24 is for the audio recordings of those interviews. There are certain  
25 matters that we will want to interrogate further which we can only do

1 if we have the recordings of the interviews. And as we know, the SPO  
2 records all of their interviews, so there's no reason why they can't  
3 be provided subject to certain necessary redactions.

4 Regarding what was disclosed yesterday as disclosures 19, 20,  
5 and 21, these are primarily matters that date back to May of last  
6 year. I think it's a reasonable question to ask why they are only  
7 being made available now. Effectively, the day before a Status  
8 Conference we suddenly have a lesser redacted or unredacted version  
9 of that material that we should have had a very long time ago, and  
10 it's just quite unacceptable.

11 JUDGE GUILLOU: Thank you, Mr. Cadman.

12 Madam Prosecutor, and if you can also respond to the submissions  
13 of the other Defence teams. Thank you.

14 MS. SHAHABUDDIN: I'd be happy to. I will just note that to the  
15 extent what I have to say is somewhat cryptic, it's just in an effort  
16 to keep this in open session for now. But I'm happy, at the  
17 conclusion of my response, to say more in private session.

18 JUDGE GUILLOU: You don't need to be cryptic about the timeline.  
19 I think there is no problem if we do that in public --

20 MS. SHAHABUDDIN: No, no --

21 JUDGE GUILLOU: -- session.

22 MS. SHAHABUDDIN: -- but I would like to address that in  
23 relation to specific steps that we have been taking. So with that  
24 goal in mind.

25 The initial results from the steps that were addressed in



1 Your Honour's decision KSC-BC-2023-10/F151 as well as  
2 KSC-BC-2023-10/F184, those steps have been undertaken. And the  
3 material that has come before us is being processed and analysed for  
4 relevance.

5 With respect specifically to decision F151, we anticipate  
6 seeking your authorisation, Your Honour, to disclose one additional  
7 item arising out of that process together with a report, as  
8 contemplated in the decision, detailing associated metadata and  
9 records as well as a related transcript. This item that I reference,  
10 to be a little less cryptic, is in fact the recording that counsel  
11 for Mr. Januzi and Mr. Shala have referenced that they would like to  
12 see.

13 We have not yet received the item from our forensic partner. We  
14 know it's coming and in short order. I can indicate, though, that  
15 the item is not new as such in that it is a version of the April 2023  
16 recording that has already been disclosed to Defence for all of the  
17 accused.

18 In respect to decision 184, we have received certain records,  
19 which counsel for Mr. Januzi will recall we requested at his request,  
20 and those records are currently being processed and reviewed. And we  
21 anticipate that once the processing is complete, we will be able to  
22 prepare them for disclosure in short order. And when I say "in short  
23 order," I mean in a matter of approximately two weeks at the longest.

24 I will also reference decision KSC-BC-2023-10/F155, which is in  
25 reference to the recently seized phones belonging to the accused

1 Mr. Januzi and Mr. Bahtijari, and I will say that the forensic phone  
2 images of those phones are currently being analysed. And we  
3 anticipate that the forensic images and the readable versions of the  
4 phone contents will be ready for disclosure to the Defence within the  
5 next two weeks. And those images will be provided in full such that  
6 the Defence has access to everything that we have access to.

7 With regard to the issue of the recently lifted redactions, all  
8 I will say in public session is that the information was previously  
9 redacted subject to requests of the SPO to the Court regarding  
10 reasons for the redactions. They have been recently lifted in light  
11 of developments in the case. Beyond that, I don't want to get into  
12 it. I just wanted to assure my colleagues that we are making every  
13 effort to lift redactions as we become more aware of the shape the  
14 Defence case is going to take and as investigative needs change on  
15 our end as well. So we are actively attempting to make more and more  
16 information available to the Defence for all the accused.

17 JUDGE GUILLOU: Thank you, Madam Prosecutor.

18 I don't see any request for the floor.

19 I will just ask the interpreters if I can have a couple of  
20 minutes before we break for the next point. It should be no more  
21 than five minutes.

22 THE INTERPRETER: That's fine with the interpreters,  
23 Your Honour.

24 JUDGE GUILLOU: Thank you very much.

25 Let me move to the next item in our agenda, which is the status

1 of the SPO's investigation. And maybe there will be an overlap with  
2 what has been said, this is why I think it will be very short.

3 I recall that the SPO already filed its pre-trial brief and its  
4 Rule 109(c) chart.

5 In its written submission, the SPO indicated that it made  
6 substantial progress with its ongoing investigation but that certain  
7 steps remain outstanding. At this time, the SPO does not believe  
8 that such steps, including processing, can be completed by 28 March  
9 2024. So I invite the SPO to give a timeline for the remainder of  
10 their investigations.

11 Madam Prosecutor.

12 [Specialist Prosecutors confer]

13 MS. SHAHABUDDIN: Yes. Well, I would just note that 28 March  
14 being next week, there are items that have very recently come into  
15 our possession that we just require more time for processing in order  
16 to make them available for disclosure.

17 And thus, you know, we would need, I think, until at least  
18 12 April, which is the date that we have put in our submission.

19 JUDGE GUILLOU: But, I mean, this is -- I mean, there is a  
20 difference between processing material that you have and disclosing  
21 it to the Defence. My question is more related to further  
22 investigations per se. Are you contemplating further investigation  
23 that will lead to new material in the future? So this is my main  
24 concern for the case.

25 MS. SHAHABUDDIN: No, Your Honour. That said, we're dealing

1 with an evolving situation when it comes to the facts that led to  
2 this prosecution in the first place, so I would never foreclose the  
3 possibility entirely. What I can say is that should there be any  
4 such change in direction, we would, of course, notify Your Honour or  
5 the appropriate Panel at the earliest possible opportunity.

6 But in terms of what we know now, the answer is no.

7 JUDGE GUILLOU: Thank you, Madam Prosecutor.

8 Do the Defence teams want to add anything on this matter? No?  
9 Okay.

10 I thank the interpreters for the extra minutes. We will now  
11 break for 15 minutes, and then we will come back for the remainder of  
12 the Status Conference.

13 The hearing is adjourned for 15 minutes.

14 --- Recess taken at 4.11 p.m.

15 --- On resuming at 4.28 p.m.

16 JUDGE GUILLOU: For the next point on the agenda, I'd like to  
17 turn to the Defence first.

18 I wish to hear the Defence submissions in light of the  
19 information given by the SPO on, first, the status of the Defence  
20 investigations; the intention to give notice of an alibi or any  
21 grounds for excluding responsibility; any intention to make requests  
22 concerning unique investigative opportunities; and whether the  
23 Defence intends to file a pre-trial brief under Rule 95(5).

24 I will not sum up the submissions of the Defence teams. I will  
25 give you the floor immediately, starting with Mr. Rees, please.

1 MR. REES: [via videolink] Your Honour, we set out our position  
2 in writing in the response to Your Honour's order for submissions.  
3 And nothing I've heard today from either the Registrar or the SPO  
4 impacts upon that or allows me to adjust those submissions, so I  
5 don't think I've got anything further to add, other than that which  
6 I've put in writing.

7 JUDGE GUILLOU: Thank you, Mr. Rees.  
8 Dr. Gerry, please.

9 MS. GERRY: [via videolink] The same. We've set everything out  
10 in writing.

11 JUDGE GUILLOU: Thank you, Dr. Gerry.  
12 Mr. Cadman, please.

13 MR. CADMAN: Our position remains unchanged as is in the written  
14 submissions. I can say Defence investigations are ongoing. We do  
15 intend to file a pre-trial brief. And nothing by way of alibi or  
16 grounds for excluding liability.

17 JUDGE GUILLOU: Thank you, Mr. Cadman.

18 Does the Prosecution want to make any submissions? No.

19 Let me move to the next item in our agenda, which is points of  
20 agreement -- agreement on points of law and facts.

21 I note that on 5 February 2024, the SPO circulated to all  
22 accused via *inter partes* e-mail a list of proposed agreed facts. I  
23 note from the written submission that there has been no agreement  
24 between the parties. As usual, I wish to recall the parties that  
25 there is no obligation to agree on law and facts before the trial.

1 I don't see the need to discuss about this today unless the  
2 parties want to make any additional submission on this matter. And I  
3 don't see any -- Mr. Cadman, please.

4 MR. CADMAN: I have spoken to the SPO during the break. We are  
5 on track to respond to the agreed facts, and certainly we will have a  
6 discussion with the SPO in due course on any discussions on agreed  
7 law.

8 JUDGE GUILLOU: Thank you, Mr. Cadman.

9 No request for the floor.

10 Let me now move to the next item in our agenda, which is the  
11 transmission of the case file to a Trial Panel and when the parties  
12 expect to be ready for trial.

13 In the Scheduling Order, I asked the parties' views on the  
14 transmission of the case file to the Trial Panel by Friday, 31 May  
15 2024. In their written submissions, the SPO indicated it does not  
16 oppose the transmission of the case file at that date, whereas the  
17 Defence considers this as unachievable due to the funding situation.

18 So I would like to hear the parties' views on this matter,  
19 starting with the Prosecution.

20 Madam Prosecutor.

21 MS. SHAHABUDDIN: Our position is as we laid it out in our  
22 written submissions. We can't speak to the issues, you know,  
23 confronting the various Defence teams. But from our perspective in  
24 terms of being trial ready, we don't anticipate any issue with the  
25 date proposed by Your Honour.

1 JUDGE GUILLOU: Thank you, Madam Prosecutor.

2 Mr. Rees, please.

3 MR. REES: [via videolink] Your Honour, we've set out our  
4 position quite clearly in the written submissions. Nothing I've  
5 heard today from the SPO or, perhaps more importantly, the Registrar  
6 in the circumstances affects that position. If anything, it makes me  
7 think that the timetable I set out in those written submissions is  
8 optimistic.

9 But I do not say anything further. That's the position I set  
10 out in terms of a timetable I estimated for the Fourth Status  
11 Conference, so I will maintain that position in the Fifth Status  
12 Conference. Unless there's anything further I can help you  
13 specifically with, Your Honour, those are my submissions.

14 JUDGE GUILLOU: Thank you, Mr. Rees.

15 Dr. Gerry, please.

16 MS. GERRY: [via videolink] Our submission is the same. That  
17 date is far too optimistic, particularly with Mr. Bahtijari's health  
18 issues. I think the Prosecution have said today that they may or may  
19 not be able to deal with section 102, 103 issues until 12 April. It  
20 did sound like it would be later than that.

21 It really isn't practical to reply for quite some time after  
22 that. Assuming either the Ministry of Justice steps up and provides  
23 funding next week or we can find some conditional funding based on  
24 some forms that we supply next week, we have to make all of our  
25 Defence investigations, we're still waiting on disclosure. It simply

1 isn't possible to transmit this case for trial at the end of May.

2 Obviously, my client wants this case to move quickly, but that  
3 has to be done in a fair and sensible way without putting the Defence  
4 under anymore undue pressure. You know that this looks like a  
5 coordinated attack on the Defence by everybody. We've had problems  
6 with the Prosecution, problems with the Ministry of Justice, and  
7 problems with the Registry. It would not be appropriate to put the  
8 Defence under pressure to prepare for transmission for trial for a  
9 man who hasn't even been assessed as to whether or not he's fit to be  
10 tried.

11 So in our submission, it would be wholly wrong to keep that  
12 date. That's not to suggest we won't work hard. We've already been  
13 doing that. I think you've heard some hours that I've spent with  
14 Mr. Bahtijari from the Registry themselves, clearly counting what I'm  
15 doing, which is interesting in itself, spending their time counting  
16 what I'm doing instead of supplying me with funding. It's just a  
17 nonsense to suggest that this case can be ready for transmission for  
18 trial at the end of May.

19 But, obviously, we'll work hard towards the next Status  
20 Conference, and maybe then you'll be able to see a suitable date. I  
21 simply don't think you can pick one today. We may be able to  
22 identify one at the next Status Conference.

23 JUDGE GUILLOU: Thank you, Dr. Gerry.

24 Mr. Cadman, please.

25 MR. CADMAN: Your Honour, in our written submissions we've set



1 out the general point that it should not be transferred prematurely.  
2 We haven't suggested any date. It's certainly not solely on the  
3 basis of funding that we raise those concerns. There are still  
4 matters that need to be resolved, certainly as far as disclosure is  
5 concerned.

6 And I haven't put in any dates because at this stage we simply  
7 don't know. All I've said is it shouldn't be done prematurely. It  
8 should be transferred when the case is ready to be transferred. But,  
9 certainly, our position is, and as I said at the outset of this  
10 Status Conference, it is Mr. Shala's very clear position that he does  
11 not want matters to be unduly delayed.

12 JUDGE GUILLOU: Thank you, Mr. Cadman.

13 I don't see a request for the floor on the SPO's side.

14 At this point I would like to ask the parties and the Registry  
15 if there are any other issues they would like to raise today?

16 SPO, no, I don't see the floor. Defence, I see -- Mr. Rees, no.  
17 Dr. Gerry, please.

18 MS. GERRY: [via videolink] Just very briefly on the medical  
19 assessment of Mr. Bahtijari. I think you invited me to make an  
20 application, if necessary, to the Court. May I reflect on that  
21 depending on where we get to with form filling rather than be  
22 bound -- I don't think you're ordering me to do that. I'm not  
23 ignoring the invitation, but I do want to see where I get to with  
24 forms next week.

25 So hopefully I'll be funded to obtain independent reports. I

1 think what I'm trying to ask is may I give an update about that at  
2 the same time as I give an update about the fee situation -- the  
3 funding situation next week in the weekly updates?

4 JUDGE GUILLOU: Absolutely. My aim is --

5 MS. GERRY: [via videolink] Thank you.

6 JUDGE GUILLOU: -- that if you ask me to order a medical  
7 examination, that I have also all the -- I don't want to go into  
8 private session, but all the specific information to appoint the  
9 correct medical professional. That's the important point.

10 MS. GERRY: [via videolink] Well, we're hoping to do that on  
11 behalf of Mr. Bahtijari independently. Obviously, I'm still waiting  
12 for his medical records. I supplied a consent to disclosure probably  
13 a month ago, but apparently it's not the right form, but I still  
14 don't get the form. Somebody's given him the form but not me the  
15 form. We go around in circles with forms.

16 But if someone gives me the form, I can help him fill it in.  
17 And so that might make some progress.

18 JUDGE GUILLOU: I think on a matter of health, the form has to  
19 be signed by the accused. This --

20 MS. GERRY: [via videolink] Yes, absolutely. But I can help him  
21 understand what he's signing. In the absence of a support person,  
22 I'm effectively helping him with those decisions. He needs help. I  
23 would suggest he needs assessment before that's done, but some days  
24 he has good days and I can hope that he's okay to sign the form. But  
25 at least if somebody gives me the form, I can help him.

1 JUDGE GUILLOU: Thank you, Dr. Gerry.

2 Mr. Cadman, you asked for the floor.

3 MR. CADMAN: Your Honour, it's just to really raise again the  
4 issue which is in the written submissions that we skipped over today,  
5 and that's the issue of translation.

6 I appreciate that this is probably a discussion that Your Honour  
7 and I have had previously, but just to restate the position: It  
8 shouldn't be for our convenience. It should be so that Mr. Shala can  
9 actually have access to all material. The policy of just translating  
10 core material doesn't allow an accused in these proceedings, a  
11 citizen of Kosovo sitting in a Kosovo court, to properly prepare his  
12 case. Everything has to be translated for him. We can't see just  
13 pick and choose what's translated.

14 I appreciate a decision has been made on the working language of  
15 these proceedings. But just to remind ourselves again, we're not  
16 sitting in an international court. We're sitting in a Kosovo court,  
17 and all material should be provided to Mr. Shala in Albanian. I  
18 anticipate what Your Honour's response will be, but I'm raising it.

19 JUDGE GUILLOU: And then you know what will be my response, then  
20 you can challenge my decision according to the legal framework of the  
21 KSC.

22 I don't see any request for the floor.

23 I will now issue several oral orders before we break.

24 Before I issue my first oral order, I have taken note of the  
25 SPO's notification concerning the lifting of the redactions

1 challenged by the Defence for Mr. Januzi and the Defence for  
2 Mr. Shala in their requests bearing numbers F00197 and F00211, namely  
3 filing number F00214 in the Case 10 record, as well as today's oral  
4 submissions. I note that, as a result, these requests have been  
5 rendered moot.

6 I will now issue my first oral order.

7 I note that the requests from the Defence for Mr. Januzi and the  
8 Defence for Mr. Shala bearing numbers F00197 and F00211 contain  
9 references to evidentiary material. As a result, I hereby order the  
10 Defence for Mr. Januzi and the Defence for Mr. Shala to submit public  
11 redacted versions of their respective requests bearing numbers F00197  
12 and F00211, both currently classified as confidential, no later than  
13 Thursday, 28 March 2024.

14 This concludes my first oral order.

15 I'd like to move now to reclassification request from the SPO in  
16 filing F00217.

17 Before doing so, I recall that I have already ordered the  
18 reclassification as public and/or confidential, as the case may be,  
19 of certain filings on Thursday, 21 March 2024.

20 As regards filing F00139 in the Case 10 records and F00026 in  
21 the Case 11 record, having considered the SPO's submissions, I find  
22 that the current classification shall be maintained until further  
23 order.

24 Moreover, I order the SPO to either request the reclassification  
25 as public of, or submit a public redacted version of, filing F00217.

1           Furthermore, noting the transfer of filing from the record of  
2           the investigation file to the record of Case 10, I hereby order the  
3           SPO to either request the reclassification of, or submit confidential  
4           redacted versions of, filings F00204, F00206, and F00208, currently  
5           classified as strictly confidential and *ex parte*, no later than  
6           Wednesday, 27 March 2024.

7           This concludes my second oral order.

8           Let me now move to another reclassification pending matter  
9           stemming from decision bearing number F00183. I will in this respect  
10          issue a third oral order.

11          Having considered the submissions of the Defence for Mr. Januzi  
12          in filing F00188 and of the SPO in filing F00191, I find that the  
13          litigation related to filings F00106, F00115, F00120, F00135, and  
14          F00138 shall remain confidential until further order.

15          This concludes my third oral order.

16          Let me turn to a final issue of classification.

17          I note that the Defence for Mr. Shala filed a request bearing  
18          number F00223 as confidential but does not state the reasons for  
19          doing so. I wish to remind the parties in this regard of the  
20          principle of publicity of the proceedings, as enshrined under  
21          Articles 21(2) and 39(6) of the Law. I further remind the parties  
22          that, pursuant to Rule 82(3) of the Rules, any filing classified as  
23          confidential or strictly confidential shall state the reasons for  
24          such classification, and whether and when it may be reclassified.

25          I will now issue my fourth oral order.

1           The Defence for Mr. Shala is instructed to either request in  
2 writing the reclassification of its filing bearing number F00223 or  
3 to specify the reasons for maintaining the current classification, in  
4 accordance with Rule 82(3) of the Rules, and to submit a public  
5 redacted version thereof.

6           This concludes my fourth oral order.

7           And, finally, I will now issue a fifth oral order with respect  
8 to the SPO's request to authorise the late disclosure of additional  
9 Rule 102(1)(b) evidentiary materials bearing number F00164.

10          I find at the outset that the SPO request complies with the  
11 procedure set out in Case 10 Framework Decision on Disclosure,  
12 bearing number F00076-RED, namely paragraph 44 and 45; and in the  
13 Case 11 Framework Decision on Disclosure, bearing number F00023,  
14 namely paragraphs 44 and 45.

15          Moreover, I have considered today's oral submissions as well as  
16 the written submissions of the SPO and the Defence for Mr. Shala in  
17 filings bearing numbers F00164, F00179, and F00187.

18          I pay heed in particular to the SPO's submissions with regard to  
19 the reasons for the late disclosure; namely that the analysis of the  
20 material had not been completed on 15 December 2023.

21          I am further persuaded by the SPO's submission with regard to  
22 the *prima facie* relevance of the material at issue.

23          In light of the foregoing, I find that good cause has been shown  
24 warranting the late disclosure of the additional Rule 102(1)(b)  
25 evidentiary materials.

1           Furthermore, having considered the state of the proceedings, I  
2 find that no prejudice is caused to the Defence by the late  
3 disclosure.

4           I hereby grant the SPO's request bearing number F00164, and  
5 authorise the SPO to disclose the additional evidentiary materials  
6 pursuant to Rule 102(1)(b) of the Rules.

7           I further order the SPO to either request the reclassification  
8 of, or submit a public redacted version of, its filing F00187.

9           This concludes my fifth oral order, and this concludes this  
10 Status Conference.

11           I thank the parties and participants for their attendance. And  
12 as usual, I thank the interpreters, stenographers, audio-visual  
13 technician, and security personnel for their assistance.

14           The hearing is adjourned.

15                                 --- Whereupon the Status Conference adjourned  
16                                 at 4.48 p.m.

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