

1 Thursday, 14 December 2023

2 [Open session]

3 [The accused entered the courtroom]

4 --- Upon commencing at 11.30 a.m.

5 JUDGE GUILLOU: Good morning, everyone in and outside the
6 courtroom.

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

8 THE COURT OFFICER: Good morning, Your Honour. This is the file
9 number KSC-BC-2023-10, The Specialist Prosecutor versus Sabit Januzi
10 and Ismet Bahtijari. Thank you, Your Honour.

11 JUDGE GUILLOU: Thank you, Court Officer.

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

15 Madam Prosecutor.

16 MS. D'ASCOLI: Thank you, Your Honour. And good morning. The
17 Specialist Prosecutor's Office is represented by Taz Shahabuddin,
18 Prosecutor; Julie Mann, case manager; Maria-Cristina Manolescu, legal
19 intern; and myself, Silvia D'Ascoli, Prosecutor. Thank you.

20 JUDGE GUILLOU: Thank you, Madam Prosecutor.

21 Now I turn to the Defence.

22 Mr. Rees, please.

23 MR. REES: May it please Your Honour. I appear on behalf of
24 Sabit Januzi. Mr. Januzi is present. I'm assisted by co-counsel,
25 Mr. Huw Bowden, and team member Mr. Halilaj.

1 JUDGE GUILLOU: Thank you, Mr. Rees.

2 Mr. Sytema, please.

3 MR. SYTEMA: Thank you, Your Honour. My name is Henrik Sytema.
4 I'm a member of The Hague bar, representing Mr. Bahtijari as
5 Duty Counsel. Thank you.

6 JUDGE GUILLOU: Thank you, Mr. Sytema.

7 And now I turn to the Registry, please.

8 MR. REES: Before Your Honour does, I should say I'm terribly
9 sorry to Mr. Bowden Jr. I'm also assisted by team member
10 Mr. Daniel Bowden.

11 JUDGE GUILLOU: This is well noted and this is now in the
12 transcript.

13 Thank you, Mr. Rees.

14 Now I turn to the Registry, please.

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

17 JUDGE GUILLOU: Thank you, Mr. Nilsson.

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

20 On 8 December, I scheduled the third Status Conference for this
21 case. My goal today is to review the status of the case and to
22 further organise exchanges between the parties to ensure an
23 expeditious preparation for trial.

24 In particular, I want to discuss disclosure, the status of the
25 SPO's investigations, the points of agreement on matters of law and

1 fact, the status of the Defence investigations, issues related to the
2 Specialist Prosecutor's joinder request, the anticipated transmission
3 of the case file pursuant to Rule 72(1) and when the parties expect
4 to be ready for trial, IT and facilities issues raised by the Defence
5 for Mr. Januzi relevant to Mr. Januzi's preparation of his Defence,
6 and, finally, any other issues that the parties may wish to raise.

7 I thank the parties for their written submissions ahead of the
8 Status Conference. And, as usual, I invite the parties and the
9 Registry to present their views in a concise fashion about each item
10 on the agenda, which I will address individually.

11 I remind the parties and the Registry to give prior notice
12 should any submission require the disclosure of confidential
13 information so we can move into private session.

14 Let's move to the first item in our agenda, which is disclosure.
15 I would like to hear from the SPO on the progress made in the
16 disclosure of evidentiary material. I have taken note of the SPO's
17 submissions on the issue of disclosure. I note, in particular, that
18 the SPO indicated that it will complete its Rule 102(1)(b) disclosure
19 obligations by 15 December 2023.

20 The SPO specified that Rule 102(1)(b) disclosure is being
21 prepared in line with request F00108 and that it will seek
22 authorisation in court to proceed accordingly, pending a decision on
23 the request.

24 I note that decision F00131, in which I granted request F00108,
25 was issued yesterday. As a result, the SPO may proceed with

1 Rule 102(1)(b) disclosure in accordance with said decision.

2 Madam Prosecutor, do you want to add anything to your written
3 submissions on the issue of disclosure? And please note that the
4 submission on the request for joinder will be dealt with later in the
5 Status Conference today.

6 Madam Prosecutor.

7 MS. D'ASCOLI: Thank you, Your Honour. That's duly noted.

8 We took note of your decision, so we will proceed accordingly.
9 No problem with that. Maybe -- I don't have anything additional to
10 what was in our submissions, which Your Honour summed up. Maybe I
11 can just reply to a couple of issues raised by the Januzi Defence for
12 purposes of completeness.

13 So we noted that the Januzi Defence indicated that they had
14 encountered difficulties with the electronic files provided on
15 6 December. That's paragraph 2 of their submission. We discussed
16 the matter briefly before court. It should be possible, to our
17 understanding, to assess the content using the native application
18 that has also been provided. But, of course, we are happy to assist
19 further if that's not the case or if it doesn't work. So I just
20 wanted to confirm that.

21 Also, I wanted to add that a number of the requests that were
22 brought forward by the Januzi Defence, and I refer to paragraphs 3,
23 7, 2, and 12 of their filing, will be in the part of the
24 Rule 102(1)(b) package to be disclosed this Friday.

25 I'm happy to add anything else as a matter of clarification.

1 Thank you.

2 JUDGE GUILLOU: Thank you, Madam Prosecutor.

3 I will now give the floor to the Defence to discuss any
4 difficulties with the disclosure process, starting with the Defence
5 for Mr. Januzi.

6 Mr. Rees, please.

7 MR. REES: Your Honour has our submissions for today's Status
8 Conference, which we do set out a number of issues in relation to
9 disclosure that presently arise.

10 I won't take Your Honour through those line by line as I know
11 Your Honour will have read them, but there are aspects of them that I
12 wish to address. And in particular, I'd ask Your Honour to consider
13 making appropriate directions to the Prosecution to respond to them.

14 I know that there is a framework for disclosure in place, but it
15 does seem to us that the more expeditiously the disclosure matters
16 are raised and dealt with, the better. The framework for disclosure
17 that Your Honour has set, of course, sets out minimum limits for
18 meeting disclosure obligations. It doesn't prevent matters moving
19 more swiftly.

20 So we trust that requests for disclosure that we've made at this
21 stage are treated in the spirit in which they're meant, which is to
22 ensure that all parties move as quickly to a position where we can
23 deal with trial readiness as soon as possible.

24 In relation to the hard drive that was disclosed under
25 Rule 102(1) (b) containing three forensic images of three phones, I am

1 told that there should be software embedded on the hard drive that
2 will assist the Defence in viewing the material.

3 Other members of my team have attempted to look at it. We
4 haven't been able to. We were warned, in fact, when the hard drive
5 was handed over that the investigator who did that thought that we
6 wouldn't be able to access the material without expert assistance.
7 But in light of the information I've been told today, I will
8 personally go myself and look to see whether I can find any
9 executable programme to assist us in viewing it. If I have
10 difficulties with that, I will raise it with Ms. D'Ascoli, and I hope
11 that we will be able to resolve that one way or another.

12 There are, though, a number of matters that we have raised in
13 disclosure. Your Honour has a summary of them.

14 At paragraph 4 of our submissions, that relates to the request
15 for call data records for a witness. Your Honour will recall that I
16 raised that matter at the very -- the very first time I appeared
17 before Your Honour in this matter, at the second Status Conference,
18 and Your Honour invited the Prosecution to take appropriate steps to
19 secure that evidence.

20 No step has been taken thus far. And I would ask Your Honour to
21 repeat, in even more forceful terms, the request that Your Honour
22 made at the second Status Conference to the Prosecution. That
23 material should be obtained. It is specified by reference to a
24 request for call data in relation to other individuals, so there can
25 be no complaint that our request lacks specificity.

1 That matter should be attended to urgently.

2 The status as to disclosure, or otherwise, I accept is a matter
3 that can wait until, firstly, the SPO have obtained the material and
4 then reviewed it themselves. And, of course, that was the position
5 that Your Honour took at the second Status Conference, raising that
6 you wouldn't determine the issue of disclosure of it to the Defence
7 at that stage. In the first instance, it should be obtained and
8 secured. So I do ask for a repeat direction in relation to that
9 matter.

10 Then at paragraph 5 of our written submissions, there is a
11 summary of other requests that were made, in fact, on 5 November in
12 the form of *inter partes* correspondence. There is a list there of
13 items 5(a) through to (g).

14 Now, I am conscious that, in light of Your Honour's ruling
15 yesterday, we will get some of that material, I anticipate, tomorrow
16 as part of the further Rule 102(1)(b) disclosure. But there are
17 still other requests that are contained therein that we haven't had
18 direct responses to, despite being told, I think on 6 November, that
19 we would be receiving a full response in relation to those requests
20 as soon as possible.

21 At paragraph 7, there are requests. Paragraph 7(ii), I can
22 foresee that that should be attended to, and, in fact, effectively
23 has been in light of Your Honour's ruling yesterday, but there is
24 still the request at 7(i). I see no -- I don't understand -- we
25 haven't had a reason as to why there should be a delay in providing

1 confirmation of the very straightforward matter that we've sought
2 confirmation of and is repeated therein.

3 At paragraph 9, we refer to two outstanding matters of
4 litigation that Your Honour is already seized with relating to
5 disclosure. I'm conscious that in relation to one of those matters
6 the Defence has a target to reply to the response of tomorrow. We
7 will do that. But we await Your Honour's rulings and whatever
8 consequential effect follows thereafter.

9 I will leave the issues that are linked with the proposed
10 joinder application that relate to disclosure until a later stage in
11 this hearing, but the overall effect is -- firstly, I'd ask
12 Your Honour to assist with a direction for a full written response to
13 each of the requests that we've raised thus far in the *inter partes*
14 correspondence; and, secondly, the acknowledgement that, at this
15 stage at least, as far as the Defence are concerned, there hasn't
16 been much progress by way of disclosure since the last Status
17 Conference.

18 There is, we are told, to be substantial disclosure to take
19 place tomorrow. Exactly what that entails and the volume of it, the
20 nature of, and so on, we have to wait until we've received it. But
21 the effect is, at this stage, we find it very difficult to give
22 Your Honour any assistance as to the issue about disclosure, the
23 progress of it, and so on. We say it's premature.

24 Unless I can assist any further.

25 JUDGE GUILLOU: Thank you, Mr. Rees.

1 Mr. Sytema, please.

2 MR. SYTEMA: Thank you, Your Honour. Yeah, I guess I have to
3 refer to my *ex parte* submissions of earlier this week where -- in
4 which I indicated that my contribution to this discussion would be
5 very limited due to my position at this moment. I hope you
6 understand that.

7 In the meanwhile, I keep track of the good work the extending
8 Defence team of Mr. Januzi is doing, following their steps, and when
9 necessary I will follow them. But as to my contribution to the
10 discussion, as said, it will be very limited, also for the coming
11 matters you address today. Thank you.

12 JUDGE GUILLOU: Thank you, Mr. Sytema.

13 On the point you just mentioned, I don't see any reason why your
14 contribution should be limited. You are a Duty Counsel. You should
15 assume the full functions of your office. There is no limited
16 contribution in the framework for assistance of counsel. So I hear
17 your position, but *vis-à-vis* this Court, you are the lawyer of
18 Mr. Bahtijari and you should assume the totality of the functions
19 until further decision.

20 So there is no Defence that is not fully effective, and I think
21 this needs to be clarified, if it was not enough clear in our legal
22 framework.

23 Before I give the floor to the Prosecution, let me ask the
24 Registry. In case the Defence of Mr. Januzi has any difficulties to
25 use the mysterious software with the hard drive - I have no idea how

1 this works - is the Registry able to assist in providing IT advice to
2 the Defence team?

3 MR. NILSSON: The Registry will always be able to assist or will
4 try to assist as well as we can. We don't know, of course, more
5 about the software and what the problem is, but we will aim to
6 assist, if it please the Court.

7 JUDGE GUILLOU: Thank you, Mr. Nilsson. This means that in case
8 Mr. Rees is not able to access information himself despite his IT
9 skills, and if the discussion with the SPO is not sufficient to
10 provide further guidance, I invite the parties to consult with the
11 Registry so an IT specialist can assist in explaining how this
12 software works in order for the situation to be resolved.

13 Now I give the floor to the Prosecution to reply to the Defence
14 teams.

15 Please.

16 MS. D'ASCOLI: Yes, thank you, Your Honour.

17 Okay. I will start with the Defence request regarding our
18 replies to the *inter partes* correspondence, the one dated 5 November.
19 I think it should be obvious to the Defence from the content of our
20 filing the request for protective measure of Rule 102(1)(b) material,
21 F00108, why a certain part of that e-mail could not be answered to
22 before yesterday. And I think it is obvious also in light of
23 Your Honour's decision F00131 that a substantial part of those
24 requests will be, in fact, met tomorrow.

25 There are two other issues related to the *inter partes*

1 communication. We also communicated via e-mail on 13 December that,
2 in fact, we do not possess any audio-video-recorded copies of the
3 recordings specified in the Defence request, and that everything that
4 we possess, there is the official notes that the Defence is aware of,
5 will in fact be provided, those that are not available yet, tomorrow.

6 Additionally, with regard to the call data records for
7 Witness 0001, this has also been dealt with by way of an *inter partes*
8 communication. The SPO has informed the Defence that it is
9 considering, indeed, the request, that is also not under any
10 obligation to carry out any investigation on behalf of the Defence.
11 However, having received the reasons, we are considering the request.

12 This is for what concerns the call data records. However, as
13 Your Honour is aware, we did take steps to secure Witness 0001's
14 mobile, and further details about that are contained in Annex 2
15 F00126, that is, the SPO's submissions to this Status Conference. So
16 that should give a fuller picture to the Defence queries.

17 There was also a point in the request, this is paragraph 5
18 again, asking for copies of audio recording of the witness interviews
19 that we will be disclosing by way of transcripts tomorrow.

20 It is neither legally required, and nor it is the SPO practice,
21 to disclose the audio-videos of the transcribed interviews, and
22 these -- it's for a number of reasons, including practical
23 arrangements such as the labour-intensive process of applying any
24 redactions to the videos.

25 The Defence will receive the transcript of the interviews that

1 they refer to in paragraphs 5(a) and (b) of their submissions by the
2 deadline. That is, tomorrow, 15 December. Further considering the
3 scope of their requests and the limited redactions, if any, to be
4 transposed onto the videos of those same interviews, the SPO is
5 willing to make an exception to its practice and indeed provide the
6 videos of those transcripts. However, that cannot be done by
7 tomorrow, and it will be arranged as soon as possible. We believe
8 January 2024.

9 Regarding the Defence request in paragraph 5(g) and 7, well,
10 there's been a number of Rule 103 material provided on 16 November.
11 Additionally, with regard to the Defence request for confirmation
12 that Mr. Januzi has no criminal record, the SPO is not in a position
13 to confirm that, but it has now processed a report that we had -- we
14 procured about that. And while this will be part of the Rule 102(3)
15 package, of course, we are willing to disclose it earlier to the
16 Defence. We do not see any issue with that. Therefore, in advance
17 of the Rule 102(3) disclosure deadlines.

18 I think that concludes my additional remarks. Thank you.

19 JUDGE GUILLOU: Thank you, Madam Prosecutor.

20 Before I give the floor to the Defence, I would like some
21 certainty about the CDR. Can you confirm today that the preservation
22 of evidence and the evidence requested by the Defence regarding the
23 CDR is being requested by your office, which means that the Defence
24 do not need to make a specific request in that regard?

25 I say that because if you are not entirely sure, I will invite

1 the Defence to make a formal request before me so that this can be
2 dealt with before we have any risk of disappearance of evidence,
3 especially in this specific matter. That's the reason of my
4 question.

5 Madam Prosecutor.

6 MS. D'ASCOLI: Your Honour, yes. As I said, we are considering
7 that request. We are inclined to do it, but I cannot give a final
8 answer today. But, of course, the Defence has been informed by
9 Your Honour of otherwise the procedural step. We will reply, if it
10 is not by tomorrow, by early next week. But we don't see reasons to
11 further delay the final answer, which, however, I cannot give right
12 now.

13 JUDGE GUILLOU: So, Madam Prosecutor, I understand from your
14 submissions that it's not yet a commitment but that a firm answer
15 will be given to the Defence by tomorrow.

16 So would your office decide not to proceed with the CDR and the
17 material requested by the Defence, I invite the Defence to make a
18 formal request before me so I can rule on this matter.

19 That's clear for the parties?

20 MR. REES: That's clear, and I appreciate it.

21 MS. D'ASCOLI: That's clear. Thank you, Your Honour.

22 JUDGE GUILLOU: Thank you very much. And, of course, I invite
23 the Prosecutor to avoid unnecessary litigation.

24 Now, I will give the floor to the Defence to respond to the
25 Prosecutor's submissions.

1 Mr. Rees, please.

2 MR. REES: Yes. I'm grateful for the clarification received
3 from Ms. D'Ascoli as to some of those matters. In particular, the
4 fact that steps have been taken in relation to seizure of a phone,
5 one of the matters that we raised at the second Status Conference.

6 Can I raise this as a -- again, in the spirit of cooperation, to
7 allow matters to progress. Obviously, we understand that there are
8 occasions where the Prosecution will seek *ex parte* orders before the
9 Court. It doesn't seem -- it's never seemed to us, however, that
10 that means that there can't, for example, be communication, when a
11 matter is raised in *inter partes* correspondence, just to let us know
12 that matters are in hand and that the Prosecution are seeking an
13 *ex parte* order from the Court without going into necessarily the
14 content of the order or any of the detail.

15 That would be of assistance to us to know that matters are being
16 attended to, rather than being left completely in the dark until as
17 and when any such order is reclassified if an order is made. It
18 would be of assistance. And we, obviously, do understand that the
19 Prosecution -- there are times when the detail they can't divulge,
20 but communication of that nature would be of assistance.

21 We will wait to see what the response of the SPO is to the
22 matter that Your Honour has just dealt with, and I'm grateful for
23 Your Honour's direction in that regard.

24 I think the other matters that are raised, effectively, our
25 position is we need to wait until we've received further disclosure

1 before we can assist further.

2 JUDGE GUILLOU: Thank you, Mr. Rees.

3 Mr. Sytema, do you want to add anything?

4 MR. SYTEMA: No comments on this issue. Thank you.

5 JUDGE GUILLOU: Thank you, Mr. Sytema.

6 Madam Prosecutor, do you want to add anything on the matter of
7 disclosure?

8 MS. D'ASCOLI: No, Your Honour. Just to say that we did reply
9 to Mr. Rees's e-mail saying that we would give a substantial answer
10 as soon as possible, so we did not leave his e-mail unattended.

11 JUDGE GUILLOU: Thank you, Madam Prosecutor.

12 Let me now move to the second item on our agenda, which is the
13 status of the SPO's investigations.

14 In its written submissions, the SPO indicated that the review
15 and analysis of recent investigative activities has led to a few
16 additional steps that may run into January 2024.

17 Madam Prosecutor, do you want to add anything to your written
18 submissions on that issue?

19 Madam or Madam Prosecutor. You choose.

20 MS. SHAHABUDDIN: Thank you, Your Honour. No, we've provided
21 some detail regarding those few additional steps that we foresee
22 taking in the *ex parte* submission annex to our submission regarding
23 the Status Conference, and we would rely on those submissions rather
24 than saying more here in open court.

25 JUDGE GUILLOU: Thank you, Madam Prosecutor.

1 Now, I turn to the Defence.

2 Mr. Rees, do you want to make any submissions on this point?

3 MR. REES: Only this. Given that Your Honour has raised the
4 issue of timetabling, if we are allowed to meaningfully assist with
5 that, then it does require a degree of the Prosecution sharing what
6 plans that they have for us to be able to comment on. It's a matter
7 for them whether they do it or not.

8 I do make the point that, as of the second Status Conference,
9 the position was their investigation is effectively over and it will
10 be by the time of the third Status Conference. Now they're not. And
11 we -- and with hindsight perhaps, that assertion was relatively
12 surprising given the developments that have happened in the interim
13 period between the second and third Status Conference.

14 All I can say is that the Prosecution's investigations are not
15 concluded. And, again, for reasons we've set out in relation to
16 disclosure, it does seem to us to be premature to be raising issues
17 as to the timetable for trial, for example, when, as far as we know,
18 the Prosecution's investigations are ongoing. And how long it will
19 take for them to conclude, and, more importantly, from our point of
20 view, how long it will take us to deal with whatever the results are
21 of those, we're simply in the dark.

22 JUDGE GUILLOU: Thank you, Mr. Rees.

23 Any further investigations, indeed, can have an impact on the
24 timetable.

25 Mr. Sytema, please.

1 MR. SYTEMA: Thank you, Your Honour. I can only second
2 Mr. Rees's remarks on this. Much uncertainty in the future, in the
3 near future as well, so no serious comments can be made on this.
4 Thank you.

5 JUDGE GUILLOU: Thank you, Mr. Sytema.

6 Madam Prosecutor, do you want to add anything, especially on the
7 timeline of your investigations?

8 MS. SHAHABUDDIN: Without getting into further details, I will
9 just stress that we have identified a limited number of additional
10 steps that are necessary. We believe, you know, investigation is
11 dynamic, and, of course, this can change, and things have changed.
12 However, we do believe that a relatively short duration of additional
13 time is what is necessary here, and that's all really I can say at
14 this point.

15 JUDGE GUILLOU: Thank you, Madam Prosecutor.

16 For the next point on the agenda, I would like to turn to the
17 Defence first.

18 Before doing that, I wish to underline that I expect that the
19 SPO and counsels for the accused take adequate steps, if necessary,
20 and proactive steps, to ensure that the case proceed to trial
21 expeditiously, and I expect the parties to discuss in good faith any
22 issue arising, including access to evidence, in order to find
23 workable solutions and reach satisfactory agreements, and prepare in
24 due time for the transmission of the case file to trial.

25 I also invite the parties to seize me if such solutions or

1 agreement cannot be reasonably reached.

2 Now I wish to hear the Defence's submissions, in light of the
3 information given by the SPO in the course of this Status Conference,
4 on, first, the status of its investigations; second, any intention to
5 give notice of an alibi on a -- or other grounds for excluding
6 responsibility and any associated disclosure; third, any intention to
7 make requests concerning unique investigative opportunities; and,
8 fourth, the anticipated date for the filing of a pre-trial brief and
9 related material under Rule 95(5), if the Defence decides to do so.

10 And I will start for the Defence of Mr. Januzi.

11 Mr. Rees, please.

12 MR. REES: Yes. Your Honour, in Your Honour's written order
13 requesting the submissions, made it clear that Your Honour was to ask
14 whether the Defence is, or when it expects to be, in a position to
15 provide more information on the matters Your Honour's just referred
16 to.

17 We have, in our written response, given the uncertainties in
18 relation to not only disclosure but also, of course, the overall
19 scope of the case, and Your Honour has said that we will deal with
20 the issue as to potential joinder in due course, that we are not in a
21 position today to give Your Honour the assistance sought.

22 When we expect to be, well, perhaps I could put it this way: I
23 would hope that we would be able to by the fourth Status Conference.
24 But that does depend on the disclosure that's made tomorrow and the
25 other matters that have been raised thus far.

1 I can say this, and I have in our written submissions, we cannot
2 see us being in a position to file a pre-trial brief by Friday,
3 1 March. We do intend to at present. But given that we are still at
4 the very early stage of disclosure with the first real tranche of
5 disclosure to come tomorrow, I can't see that being a practical
6 target date for us.

7 And in relation to whether we intend to make requests concerning
8 unique investigative opportunities, again, I can't say at this stage.

9 We echo what Your Honour has said about the parties working
10 together to prepare as expeditiously as possible for the trial, and I
11 hope Your Honour will see from the proactive way that we have been
12 corresponding with the Prosecution that that's how we intend to
13 progress matters. But we are not in a position, I'm afraid, to
14 assist Your Honour with the detail of those matters at this stage.
15 Let's hope we are by the fourth Status Conference.

16 JUDGE GUILLOU: Thank you, Mr. Rees.

17 Mr. Sytema, please.

18 MR. SYTEMA: Thank you, Your Honour. The same goes for
19 Mr. Bahtijari's Defence. Our position is very much depending of
20 what -- of the nature of the evidence disclosed tomorrow and the
21 evidence that will be disclosed as a result of the investigative
22 steps that still have been underway, that are still ongoing. There
23 is also the matter of the proposed joinder of the case, Case 11. So
24 only after that, receiving that information, that evidence, the
25 Defence of Mr. Bahtijari would be able to enlighten further steps or

1 investigations from the side of the Defence. So the same goes for
2 Mr. Bahtijari. Thank you.

3 JUDGE GUILLOU: Thank you, Mr. Sytema.

4 Madam Prosecutor, do you want to make any submissions on this?

5 MS. SHAHABUDDIN: Nothing in reaction to what my colleagues in
6 the Defence have said other than we will continue to engage, of
7 course, as proactively as needed to move things forward, especially
8 in light of the disclosure that will be happening tomorrow.

9 JUDGE GUILLOU: Thank you, Madam Prosecutor.

10 I invite the parties to continue working proactively ahead of
11 the next Status Conference so that, as mentioned by the Defence, we
12 can be in a position to finalise the procedural calendar during the
13 next Status Conference. This, of course, means that any matters
14 related to disclosure should be dealt with as much as the parties can
15 before the next Status Conference.

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

18 I note that the parties have not yet entered into discussions
19 regarding the possibility to submit points of agreement on law and/or
20 facts. I also note that the SPO intends to initiate these
21 discussions with the Defence following the present Status Conference.

22 So I would like to hear from the parties whether they can agree
23 on a timeline to reach agreement, if any, on such points. I also
24 wish to recall that there is no obligation from the parties to agree
25 on matters of law and fact before trial.

1 Moreover, any points of law and fact not agreed upon by the
2 agreed deadline shall be left to the determination of the
3 Trial Panel.

4 Madam Prosecutor, you have the floor on this matter.

5 MS. SHAHABUDDIN: [Microphone not activated]

6 JUDGE GUILLOU: Microphone, please.

7 MS. SHAHABUDDIN: It is my office's intention to engage with my
8 colleagues in the Defence in the very short term. But to some
9 degree, I think the timing will be directed by my colleagues in the
10 Defence and their review of the evidence in light of the disclosure
11 that is being made, in addition to the materials they already have to
12 consider. But we will be reaching out very shortly.

13 JUDGE GUILLOU: If the Defence is in a position to do so, would
14 you be able to engage in discussions between, I would say, tomorrow
15 and the next Status Conference?

16 MS. SHAHABUDDIN: We do not anticipate any issue with engaging
17 before the next Status Conference. I'm not aware that we have a date
18 as of yet. But given that we intend to reach out very shortly,
19 certainly we can begin those conversations.

20 JUDGE GUILLOU: Thank you, Madam Prosecutor.

21 Now I turn to the Defence.

22 Mr. Rees, please.

23 MR. REES: It seems to me that the issue as to whether any facts
24 or points of law can be agreed is a matter that can develop
25 throughout the proceedings. We're certainly willing to engage in

1 discussions with the Prosecution whenever they seek to. And at
2 different stages, we may be willing to make an agreement at a later
3 stage that we're not in an earlier stage because of the way in which,
4 for example, disclosure develops or the way in which rulings sought
5 from the Court affect the position.

6 So we're very willing to engage in communication, *inter partes*
7 correspondence whenever my learned friends across the room wish to
8 contact us, telephone or e-mail. And we always look to narrow the
9 issues for the Trial Panel. We will do that not only at this stage
10 but we will continue to do it throughout proceedings.

11 Whether Your Honour wishes to put a formal timetable on that,
12 which necessarily provides for cut-off points, or whether Your Honour
13 is happy to leave it to Prosecution counsel and Defence counsel to
14 manage that so that the Trial Panel is assisted by focusing on the
15 issues that it needs to focus on, it's a matter for Your Honour. We
16 will look to condense matters whether with the assistance of a
17 timetable from Your Honour or not.

18 JUDGE GUILLOU: Thank you, Mr. Rees.

19 Mr. Sytema, please.

20 MR. SYTEMA: Thank you, Your Honour. I agree with the
21 submissions made both by the SPO and Mr. Rees. Mr. Bahtijari's
22 Defence is also in favour of a very practical handling of the case
23 and is willing to cooperate in any discussion that may lead to that
24 practical handling of the case. So we're willing to do so.

25 JUDGE GUILLOU: Thank you, Mr. Sytema.

1 Let me now move to the issue of joinder of Cases 10 and 11.

2 I note that, as announced by the SPO in its written submissions,
3 the SPO filed a request for joinder of Case 10 and 11; namely, filing
4 132.

5 The SPO equally filed such a request in the Case 11 file.

6 As a preliminary matter, I note that, pursuant to the Rules, the
7 deadline for the Defence for Mr. Januzi and for the Defence of
8 Mr. Bahtijari to respond to the SPO joinder request falls during
9 judicial recess, which starts on Monday, 18 December.

10 As a result, as I did in previous instances, I intend to modify
11 the briefing schedule to give adequate time to the Defence to prepare
12 their respective responses.

13 Before I proceed, I invite the SPO and the Defence to make
14 submissions on this topic.

15 Madam Prosecutor, you have the floor. So just on the briefing
16 schedule for the response of the Defence.

17 MS. SHAHABUDDIN: Your Honour, we certainly have no objection in
18 light of the timings and the way they're working out in conjunction
19 with the upcoming recess with whatever calendar you might propose.

20 JUDGE GUILLOU: Thank you, Madam Prosecutor.

21 Mr. Rees, please.

22 MR. REES: Well, obviously, we're very grateful for
23 Your Honour's consideration of our position and the interregnum of
24 the Christmas recess. So we're grateful for Your Honour making it
25 clear at this stage that we will be allowed more time to respond than

1 we would otherwise be allowed under Rule 76.

2 There are issues about disclosure, though, that I wish to raise
3 and really suggest that until those matters are dealt with, the
4 request itself is deficient. And I don't mean that pejoratively.
5 But in the first instance, we would submit that a proper request for
6 joinder should come with the proposed draft joinder indictment. The
7 request asks for the consolidation of the two indictments into one
8 new indictment. What is proposed as the new indictment ought to be
9 part of the request. It ought to be, at the very least, an annex to
10 it.

11 There ought to be, in our respectful submission, a new
12 Rule 86(3) outline -- 86(3)(b) outline which comes with the proposed
13 new joinder indictment because although the request submits, in very
14 broad terms, that the indictments are based on the same charges and
15 facts, there are some quite obvious differences in fact between both
16 the indictment in Case 10 and the indictment, or at least as far as I
17 can ascertain from the public redacted version because we haven't
18 actually been provided with the indictment for Case 11, even though a
19 request has purportedly been made to join our indictment to it.

20 There is an obvious difference with -- is apparent on the face
21 of the public redacted version of the indictment in Case 11. I can
22 go into that if Your Honour wishes me to, but one can -- an easy
23 reading of it will make that clear.

24 So the request itself, despite its bold assertions, doesn't seem
25 to me -- in short, both the proposed indictment ought to be part of

1 the request. A new 86(3)(b) outline should form part of it. It
2 ought to require disclosure of the evidence that is -- that was
3 behind the confirmation of the indictment in Case 11. That also
4 should be disclosed. Because its only by disclosure of those matters
5 that one can see whether the bold assertions that are made by the
6 request that the charges are the same, based on the same facts, is
7 made out.

8 I can't respond to a request in those bold terms without seeing
9 what, in fact, the Prosecution are suggesting is to be the proposed
10 joinder indictment, what they say the case would be, and a
11 demonstration that it is based on the same facts.

12 JUDGE GUILLOU: Mr. Rees, I invite you to raise all these
13 arguments in your written responses. I was just asking you for the
14 briefing schedule.

15 So are you happy that I extend the briefing schedule to one week
16 after the end of recess?

17 MR. REES: I would be very happy with that, but I would ask that
18 it comes with a corresponding direction that before we get to that
19 stage, the Prosecution provide us with a draft joinder indictment, a
20 draft Rule 86(3)(b) outline, and access to the Rule -- I'm afraid I
21 can't remember the rule off the top of my head. The rule --

22 JUDGE GUILLOU: 86(3).

23 MR. REES: -- that required the submission to Your Honour of the
24 evidence upon which the indictment was based for Your Honour to
25 consider confirmation in Case 11. Those matters should be made

1 available to us together with the request. Then, at that point, we
2 will be able to make a proper response.

3 So I would ask Your Honour to indeed extend the time for us to
4 reply to the request, but, in the interim, order the Prosecution to
5 make disclosure of those matters -- it's not disclosure. In fact,
6 it's part of their application.

7 JUDGE GUILLOU: Thank you, Mr. Rees.

8 Mr. Sytema, please.

9 MR. SYTEMA: Thank you, Your Honour. To answer your first
10 question, I'm also happy with the new schedule, considering the
11 coming holiday season. And for the rest, I agree with Mr. Rees's
12 remarks on that. So thank you.

13 JUDGE GUILLOU: Thank you, Mr. Sytema.

14 Let me give the floor to the Prosecution on Mr. Rees's point
15 about the consolidated indictment and Rule 86(3) outline.

16 You have the floor.

17 MS. SHAHABUDDIN: Thank you, Your Honour.

18 I'll just start by saying our request is very closely tied to
19 the requirements set out in Rule 89(1), and entirely proper and
20 complete the way it has been submitted. It's our position as the SPO
21 that based on the material cited in our request, including the
22 publicly redacted versions of both indictments, it's clear that this
23 is a case where joinder simply makes sense and that these cases very
24 naturally come together.

25 That said, of course, we foresee that a joinder will require the

1 presentation by the SPO of a proposed joint indictment for
2 confirmation, and that that would be accompanied by 86(3) outline and
3 materials for disclosure to the Defence teams in both cases. And so
4 in order to move things along and, indeed, in order to underscore our
5 position and highlight why it is a natural merger in this case to
6 join Cases 10 and 11, we would be happy to proceed and provide a
7 proposed joint indictment for confirmation as well as an 86(3)
8 outline.

9 JUDGE GUILLOU: When would you file the consolidated indictment
10 and consolidated outline?

11 MS. SHAHABUDDIN: I pause only because we are up against a
12 recess which begins at 5.00 p.m. tomorrow.

13 JUDGE GUILLOU: You can take your time ask consult your
14 colleagues, if needed.

15 MS. SHAHABUDDIN: Yes, yes.

16 JUDGE GUILLOU: You have --

17 MS. SHAHABUDDIN: If I could take --

18 JUDGE GUILLOU: We can pause for a --

19 MS. SHAHABUDDIN: -- a moment, Your Honour.

20 JUDGE GUILLOU: -- for a minute.

21 [Specialist Prosecutors confer]

22 MS. SHAHABUDDIN: Thank you for that time. We would propose
23 that we be asked to file the proposed materials by the end of our
24 first week back from recess. I don't have the date off the top of my
25 head, but I understand that we are back on January 8th, so by the --

1 towards end of that week. If we could have that time, that would
2 allow us time to prepare everything.

3 JUDGE GUILLOU: Thank you, Madam Prosecutor.

4 I will rule on the briefing schedule at the end of this Status
5 Conference.

6 Before we move to the next topic on the agenda, do you want to
7 add any observation related to your request for joinder?

8 Madam Prosecutor.

9 MS. SHAHABUDDIN: I'll just -- since I'm given the opportunity,
10 I'll highlight a few things, principles kind of guiding our approach
11 to the request in this case and in Case 11.

12 First, the SPO has made the request for joinder at the earliest
13 possible opportunity with a mind towards aligning the cases on the
14 fastest timetable possible in order to ensure that any adjustments
15 that may need to be made can be made at the very earliest stages of
16 the proceedings in both cases and to then allow the proceedings to
17 progress expeditiously, should Your Honour grant the request for
18 joinder.

19 JUDGE GUILLOU: Thank you, Madam Prosecutor.

20 I turn to the Defence.

21 Do you want to make any submissions on the joinder? Preliminary
22 submissions because you will, of course, have an opportunity to reply
23 in writing.

24 Mr. Rees.

25 MR. REES: Just very briefly, Your Honour. I'm very grateful to

1 the indication that the Prosecution agree that they will submit a
2 proposed joinder indictment, a new Rule 86(3)(b) outline to go with
3 their request for joinder.

4 I would ask that Your Honour set a timetable that -- I think the
5 end of the week of the 8th of January is the 13th of January, so I
6 would ask Your Honour to allow us time after 13 January to respond in
7 writing.

8 The rule that I was reaching for was Rule 102(1)(a), the
9 material upon which the indictment in Case 11 was confirmed. I would
10 ask for that also to be provided by the end of the week commencing
11 8 January as part of preparation for the joinder argument.

12 I'm content with the timetable that Your Honour sets -- will set
13 after those matters have been attended to. I'm grateful.

14 JUDGE GUILLOU: Thank you, Mr. Rees.

15 Mr. Sytema, please.

16 MR. SYTEMA: Thank you, Your Honour. No further comments. And
17 I guess the timetable won't be a problem for me.

18 JUDGE GUILLOU: Thank you, Mr. Sytema.

19 Madam Prosecutor, do you want to add anything?

20 MS. SHAHABUDDIN: Yes. Just to add that the provision of the
21 86(3) material that comprises part of our obligation under
22 Rule 102(1)(a), we would be happy to provide at the same time as we
23 provide the proposed joint indictment as well as the 86(3) outline.

24 JUDGE GUILLOU: Thank you, Madam Prosecutor.

25 Let us now move to the next item in our agenda. I would like to

1 hear the parties on the transmission of the case file to the
2 Trial Panel pursuant to Rule 72 of the rules regarding expedited
3 proceedings.

4 At the outset, I note that the SPO indicated that it does not
5 oppose the transmission of the case file to the Trial Panel by
6 15 March 2024 and that it could be ready for trial shortly
7 thereafter.

8 The Defence for Mr. Januzi said that it could not envisage the
9 transmission before May 2024 and trial before July 2024.

10 So I will give the floor to the parties to expand on their
11 written submissions.

12 Madam Prosecutor.

13 MS. SHAHABUDDIN: We don't really have anything to add,
14 Your Honour, beyond our submission in our filing. We aim to align
15 the cases in very short order, indeed, and don't foresee a problem
16 with the date set forth by Your Honour.

17 JUDGE GUILLOU: Thank you, Madam Prosecutor.

18 Mr. Rees, please.

19 MR. REES: The only thing I'll add is that the view expressed in
20 paragraph 16 of our submission is only reinforced by the discussions
21 that we've had today. There clearly is a significant amount of work
22 that the Prosecution both are undertaking in terms of their
23 investigations but also in terms of disclosure matters.

24 We have -- we're expecting significant disclosure tomorrow, but
25 there is also a phone that they're in possession of that we weren't

1 aware of previously, and that is a matter that is of obvious
2 significance to the preparation of our defence, how that phone is
3 analysed and the disclosure in relation to it. Then analysis of that
4 material.

5 There is the outstanding issue in relation to call data records
6 which, as yet, there's an uncertainty as to how that will progress.

7 The actual overall shape of the case, indeed, is not going to be
8 determined until, one would think, into February at the earliest.

9 So our prediction in paragraph 16 we think still holds good.
10 Obviously, these matters can be addressed again at the next Status
11 Conference when matters may be more clear.

12 And I know that Your Honour will address the potential for the
13 next Status Conference. I would say this: That the next Status
14 Conference, it does seem to me, is more likely to be productive if
15 they come after the resolution of some of the outstanding matters
16 that we've dealt with today.

17 JUDGE GUILLOU: Thank you, Mr. Rees. Well noted.

18 Mr. Sytema, please.

19 MR. SYTEMA: Thank you, Your Honour. The same goes for the
20 Defence of Mr. Bahtijari. We have the disclosure of the evidence
21 tomorrow. We have the disclosure of the next investigative steps.
22 We might have the effect of the joinder of the 11, number 11 case.
23 So there's much uncertainty about what this case -- how this case
24 will develop.

25 My opinion is that it's getting bigger and bigger by every week

1 or month passing. We don't know what effect the joinder of the case
2 might have, if ordered. There's also likely that the Defence in the
3 number 11 case has their wishes, and there are steps being taken. So
4 the time schedule we anticipated on in the earliest stages of this
5 case, I guess they're not very realistic anymore.

6 However, we are in favour of swiftly dealing with the case.
7 But, I guess, that's not very realistic anymore. Thank you.

8 JUDGE GUILLOU: Thank you, Mr. Sytema.

9 Let us now move to the next item in our agenda, which pertains
10 to issues raised by the Defence for Mr. Januzi regarding IT and
11 facilities available to Mr. Januzi for the preparation of his
12 Defence.

13 We will first discuss the issues raised by the Januzi Defence in
14 paragraph 17(a) and 17(c) of its written submissions; namely, the
15 issue of the Zoom subscription and the computer facilities, and we
16 will move into private session to discuss the point raised in
17 paragraph 17(b) of the Defence submissions.

18 Mr. Rees, I'll give you the floor now to discuss points 17(a)
19 and 17(c), please.

20 MR. REES: Yes, thank you. Well, they both really speak for
21 themselves. The rules provide that detainees in the detention unit
22 will be given access to adequate facilities to assist with the
23 preparation of the Defence. There are specific guidelines that make
24 it clear that includes access to computer facilities, a computer that
25 they can use. There is a procedure that was created during the

1 course of Case 07, in fact, which allowed for each detainee to have
2 access to a computer where there was their own -- they had access to
3 their own quarantined folder that would allow the transmission of
4 electronic material between counsel and detainee, and it's called
5 SEDS was the acronym that's been given to it.

6 In Mr. Januzi's case, he's completed the paperwork but hasn't
7 been provided yet with the computer facilities that would allow him
8 to use that system.

9 And the issue at 17(a), again, Your Honour will readily
10 appreciate the difficulties that have -- that that causes. We have
11 been using the free service that Zoom provides which allows for an
12 uninterrupted legal consultation of a maximum, I think, of 40 minutes
13 before you are summarily kicked off the system, and then one has to
14 go through the exercise of everybody dialling back in, finding the
15 link, and so on.

16 I know that Your Honour will be familiar with that as everyone
17 has become around the world.

18 The detention unit did previously have a paid subscription to
19 Zoom which avoided that issue, and the system worked very well. For
20 some reason, the subscription's been allowed to expire and hasn't
21 been renewed, and we don't know why that is.

22 It's -- nevertheless, it's an important matter because when we
23 are booking consultations that last for longer than that, you do lose
24 time having to start the conference all over again. So I do ask -- I
25 suggest that the matter should be dealt with.

1 At this stage, then, shall I go into paragraph 17(b) or does
2 Your Honour want to hear from the Registry at this stage?

3 JUDGE GUILLOU: No, I will first give the floor to the Registry,
4 and then we will move into private session for paragraph 17(b).

5 I will give the floor to Mr. Nilsson. I can just, before that,
6 indicate that the issue you've raised in 17(a) is not specific to the
7 Defence, and it's actually something that applies to everyone in this
8 institution recently.

9 Mr. Nilsson.

10 MR. NILSSON: Thank you, Your Honour. As you pointed out, yes,
11 since about two weeks or so, we've had some administrative
12 difficulties with the subscription, so this has prevented not
13 meetings to be held generally, but it has then forced us to have the
14 meeting for 40 minutes and then you have to redo them.

15 Counsel raised this issue yesterday at the detention unit with
16 Registry staff. And for the DMU, we have found an interim solution,
17 so that shouldn't be a problem going forward. So for counsel and
18 client this is resolved from now on.

19 JUDGE GUILLOU: So, Mr. Nilsson, I understand that the problem
20 has been resolved for the Defence but not for anybody else in this
21 institution; am I correct?

22 MR. NILSSON: For court hearings, you will have seen that that
23 has been resolved. And for you personally, Your Honour, we are
24 working on a solution still.

25 With regard to the second issue, if I may. Mr. Januzi, he has

1 been provided and has a computer in his cell for his personal use.
2 With regard to the SEDS system that was mentioned, again, yesterday
3 morning the -- counsel raised the issue with the staff at the
4 detention unit, that there was a problem -- technical problem with
5 the SEDS. So this was when we heard about it.

6 Following this, some action has been taken by Registry staff and
7 it has been now resolved, so you should have -- you should -- from
8 today, it should start working again. We just didn't know about it
9 before. Thank you.

10 JUDGE GUILLOU: Thank you very much, Mr. Nilsson. I see that
11 the problems are or will soon be resolved.

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

13 MR. REES: No, I'm grateful. I hope that Your Honour's problem
14 with Zoom is resolved shortly soon.

15 Can I raise the other matter, then, which I understand
16 Your Honour has ruled should be in private session?

17 JUDGE GUILLOU: Mr. Court Officer, can we move into private
18 session, please.

19 [Private session]

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23 [Open session]

24 THE COURT OFFICER: Your Honour, we are in open session. Thank

25 you.

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

2 At this point, I would like to ask the parties and the Registry
3 whether they have any other issue they would like to raise.

4 Starting with the Prosecutor's Office. Madam Prosecutor.

5 MS. D'ASCOLI: Nothing further from the Prosecution's side,
6 Your Honour. Thank you.

7 JUDGE GUILLOU: Now I turn to the Defence.

8 Mr. Rees, please.

9 MR. REES: No, thank you, Your Honour. Just to warn Mr. Nilsson
10 that I will shortly be en route to get hold of his IT specialist to
11 help me with that hard drive.

12 JUDGE GUILLOU: Mr. Nilsson is prepared.

13 Mr. Sytema, please.

14 MR. SYTEMA: Thank you, Your Honour. No further issues.

15 JUDGE GUILLOU: Thank you, Mr. Sytema.

16 Mr. Nilsson.

17 MR. NILSSON: Nothing further from Registry, other than that we
18 are prepared.

19 JUDGE GUILLOU: Thank you, Mr. Nilsson.

20 I will now issue a first oral order.

21 Having heard the parties, I find it appropriate to order the SPO
22 to file its proposed joint indictment and Rule 86(3) outline related
23 to Cases 10 and 11.

24 Furthermore, I find it appropriate to vary the time limits
25 prescribed by the rules to respond to the SPO joinder request, which

1 is filing F00132.

2 I hereby order, first, the SPO to file a proposed joint
3 indictment and Rule 86(3) outline, including Rule 86(3) material on
4 Cases 10 and 11, by no later than 12 January 2024 at 1600 hours.

5 Second, the Defence for Mr. Januzi and the Defence for
6 Mr. Bahtijari to respond to the SPO joinder request, which is filing
7 F00132, by no later than 19 January 2024 at 1600 hours.

8 And the third, the SPO to reply by no later than 26 January 2024
9 at 1600 hours.

10 This concludes my first oral order.

11 I would also like to inform the parties and the Registry that I
12 intend to hold the next Status Conference the week of 5 February
13 2024.

14 I recall in this regard that should counsel or the accused wish
15 to participate via video-conference, written notice shall be sent via
16 e-mail to the Registry 24 hours in advance of the relevant hearing so
17 that arrangements can be made, and such notice should include the
18 written consent of the accused before.

19 You will receive a Scheduling Order for the next Status
20 Conference in due course, and I invite the parties to make written
21 submissions if they would like to raise any specific issue during the
22 next Status Conference.

23 This concludes today's hearing. As usual, I thank the parties
24 and Registry for their participation. And I thank the interpreters,
25 stenographer, audio-visual technician, and security personnel for

1 their assistance.

2 The hearing is adjourned.

3 --- Whereupon the Status Conference adjourned
4 at 12.47 p.m.

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