

1 Monday, 7 October 2024
2 [Open session]
3 [Trial Preparation Conference]
4 [The Accused Januzi and Bahtijari appeared
5 via videolink]
6 [The Accused Shala entered court]
7 --- Upon commencing at 9.30 a.m.

8 PRESIDING JUDGE VELDT-FOGLIA: Good morning, and welcome,
9 everyone.

10 Court Officer, could you please call the case.

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

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

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

18 Mr. Prosecutor, you have the floor.

19 MR. HAFETZ: Good morning, Your Honour. Thank you. Joshua
20 Hafetz on behalf of the Specialist Prosecutor's Office, and I'm
21 joined by my colleagues today, Specialist Prosecutor Kimberly West,
22 seated behind me; to my left, Associate Prosecutor John Devaney; and
23 case managers Line Pedersen and Aniko Boldog. Thank you.

24 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Very well.

25 Now the Registry. Deputy Registrar, you have the floor.

1 MR. NILSSON: Thank you. Good morning, Your Honours, and good
2 morning, colleagues. Jonas Nilsson, Deputy Registrar. I'm here with
3 Whitney Price, legal counsel representing the Registry today. Thank
4 you.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

6 Now I turn to the Defence. And could you kindly ask -- add to
7 your introduction who of your team is participating remotely or is
8 present in the courtroom, and likewise for your client, because today
9 we have a kind of hybrid court.

10 We will start with the Defence for Mr. Shala.

11 MR. CADMAN: Good morning, Your Honour. Toby Cadman,
12 Specialist Counsel for Mr. Haxhi Shala, who is in the courtroom with
13 us. All of our team are present in the courtroom and none of our
14 team is appearing remotely. Mr. John Cubbon, to my left, is
15 Specialist Co-Counsel; behind me, Ms. Isabella Kirwan, legal
16 associate; and to the far end, Mr. Admir Berisha, investigator.

17 PRESIDING JUDGE VELDT-FOGLIA: Very well.

18 Now I turn to the Defence for Mr. Bahtijari. Who will be taking
19 the floor? Lead counsel?

20 MS. GERRY: [via videolink] Yes, it's Felicity Gerry here,
21 Specialist Counsel for Mr. Bahtijari; co-counsel, Ms. Carrin, is in
22 person in court; also online with me are Phillipa Stafford and
23 Caitlin Delaney, who are administrative assistants merely observing
24 today; and Cassandra Le Good, who is an intern merely observing
25 today.

1 And I should have said good morning, Madam President, and good
2 morning to everyone in the courtroom. Thank you.

3 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

4 Now I turn to the Defence for Mr. Januzi. You have the floor.

5 MR. REES: [via videolink] Your Honour, my name is Jonathan
6 Elystan Rees, King's Counsel. I appear remotely on behalf of
7 Mr. Januzi today. I am joined by co-counsel, Mr. Huw Bowden. He is
8 also joining remotely as is Mr. Januzi who is in the DMU.

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you. That's all noted.

10 Mr. Shala -- no, no, please, you can remain seated. Mr. Shala,
11 Mr. Bahtijari remotely in the video connection, and Mr. Januzi, I
12 remind you that all rights under the Law and the Rules, as they were
13 read to you by the Pre-Trial Judge during the first appearance,
14 continue to apply before this Trial Panel, including your right to
15 remain silent.

16 Very well. My colleagues for Trial Panel I are Judge
17 Roland Dekkers, Judge Gilbert Bitti, and Judge Vladimir Mikula,
18 Reserve Judge. And I am Judge Mappie Veldt-Foglia, Presiding Judge
19 for Trial Panel I.

20 I will give a short procedural history to introduce today's
21 hearing.

22 On 4 September 2024, the Pre-Trial Judge transmitted the case
23 file to Trial Panel I assigned by the President of the Kosovo
24 Specialist Chambers for this case.

25 On 24 September, the Panel issued a decision scheduling Trial

1 Preparation Conferences on the 7th, the 8th, and the 9th and, if
2 necessary, on 10 and 11 October of this year. In the same decision,
3 the Panel requested the parties and the Registry to file written
4 submissions on a number of issues with a view to gathering all
5 relevant information to the plan next steps for the start of this
6 trial.

7 We received your submissions on the 1st and 2nd October.

8 And so the purpose of this week's hearing is the expeditious
9 preparation of the trial as foreseen in the Rules of Procedure and
10 Evidence, and we will do that together with the SPO, with the
11 Defence, and the units of the Registry.

12 The intention is to gather further submissions in addition to
13 the written ones already received on any issue that needs to be
14 resolved in order to be able to start the trial, if possible, in
15 November 2024. And given the limited scope of the case, the limited
16 evidential record, and the steady progress of the case from the
17 pre-trial to its transfer to the Panel, and considering that three
18 accused are in detention since October and December of last year, the
19 Panel expects the parties to be trial ready in the very near future.

20 This Panel has an obligation to efficiently manage the
21 proceedings to ensure a fair and expeditious trial, and the Panel
22 will take the necessary steps to do so, and we expect the full
23 collaboration of all parties and the Registry.

24 Regarding the scope of this week's hearing, I trust it's clear
25 that today we will not discuss the guilt or innocence of the accused

1 and that we will not examine the evidence.

2 Okay. Our schedule for the upcoming days.

3 I recall the schedule as foreseen in our decision scheduling the
4 Trial Preparation Conference, filing 479, paragraph 11. We will kick
5 off today with four sessions of one and a half hours. We have a
6 one-hour break at 1.00 till 2.00. And this schedule, if needed, we
7 will follow that also on Tuesday and Wednesday. And by using four
8 sessions a day, we maximise the possibility that all
9 Specialist Counsels can attend as much as possible of the Trial
10 Preparation Conference.

11 Okay. Agenda is as follows: First, we will invite the parties
12 and the Registry to present their further submissions about the items
13 on the agenda. I will address each of them individually. And please
14 don't repeat any submissions that have already been submitted in
15 writing, and kindly present your further submissions in the order I
16 will address them in order to keep everything as organised as
17 possible.

18 Secondly, I will address some additional issues that came up
19 last week.

20 Thirdly, you will be given the possibility - both parties and
21 the Registry - to raise any other points that are not on the agenda
22 in the decision scheduling the Trial Preparation Conferences, and
23 kindly save your additional points for that moment.

24 And, finally, we will issue a number of oral orders, and we will
25 inform you of the decisions this Panel intends to take in the

1 upcoming period. And these oral orders will certainly not be issued
2 today.

3 Very well. I remind the parties and the Registry to give the
4 Panel prior notice should any submission require the disclosure of
5 confidential information. We can, in that way, go into private or
6 closed session.

7 We have people participating in the courtroom and via
8 video-conference, and please only take the floor when I have
9 explicitly given you the floor. People talking over each other
10 results in a record of the hearing that is incomplete and unclear,
11 and it does not allow to understand each other, and that is one of
12 the main purposes of today's hearing.

13 If the people participating via video-conference would like to
14 be given the floor, and I will be giving you floor very often today
15 to hear further submissions, but if there would be an additional
16 moment, please raise the icon of the hand, and then I will give you
17 the floor.

18 Very well. Then we will start with the first point on the
19 agenda. Those are the investigations and disclosure of evidence.

20 We instructed the Specialist Prosecutor's Office to confirm
21 whether its investigations and the disclosure of incriminating
22 evidence in this case have been completed.

23 Mr. Prosecutor, we have noted your submissions as to the
24 disclosure of this further incriminating evidence. I will give a
25 short summary, and I will not be doing that with all the submissions

1 given to us, but for the purpose of this topic I think it's
2 important.

3 We noted, Mr. Prosecutor, that the SPO will shortly file a
4 request to the Panel to add a number of items to its exhibit list.
5 Then, there are some items that are not yet in the possession of the
6 SPO that will be disclosed and added to that same exhibit list as
7 already authorised by the Pre-Trial Judge. And, thirdly, there has
8 been a review of the disclosed items and that has led to some
9 additional disclosures in the last month.

10 I see you nodding.

11 And the SPO does not currently anticipate any further
12 disclosures beyond those mentioned. Very well.

13 We have some further questions. We seek submissions from the
14 SPO as to what extent any of the resent disclosures in September,
15 after the case was transferred to trial, contains new information not
16 previously disclosed to the Defence as opposed to new versions or
17 translations of previously disclosed material. I refer to your
18 footnote 8 and 9, filing 491, and your latest disclosures, 48 and 49,
19 which were not yet in your submissions.

20 And then we also seek the views of the Specialist Prosecutor's
21 Office on the Defence submissions for Mr. Januzi, which is filing
22 495, paragraph 5 and paragraph 18, regarding this request to disclose
23 certain items and the apparent refusal of the SPO.

24 Is it clear enough to what I'm referring, Mr. Prosecutor?

25 MR. HAFETZ: It is, Your Honour.

1 PRESIDING JUDGE VELDT-FOGLIA: Okay. Very well.

2 Mr. Prosecutor, do we need to go into private session for your answer
3 or can we remain in public?

4 MR. HAFETZ: For the first answer, certainly we can remain in
5 public session. And depending on the level of detail for the answer
6 to your second question, we may need to move to private session, but
7 I think I may be able to address that in public session.

8 PRESIDING JUDGE VELDT-FOGLIA: Okay. I would say regarding the
9 second issue, so complete as possible, because it's also a request
10 that --

11 MR. HAFETZ: Understood.

12 PRESIDING JUDGE VELDT-FOGLIA: -- is laying before us.

13 So, Mr. Prosecutor, you have the floor.

14 MR. HAFETZ: Thank you, Your Honour.

15 In terms of the first question and the new material that you
16 asked about, the vast majority, if not all of it, has already been
17 disclosed and is being re-disclosed under a different rule for notice
18 purposes, essentially.

19 On the second question, I think it's important that we are all
20 operating from the same set of facts, and this has been put into our
21 submissions, and it's also been put in *inter partes* communications.
22 And if there's any lack of clarity, I'd like to clear it up now.

23 The two devices, which are phones, for which counsel for
24 Mr. Januzi is requesting the SPO to provide access are not in the
25 SPO's possession. They're in the possession of an -- at this point,

1 Your Honour, based on the level of detail I'm going to provide, I
2 think it might be best to move into private session.

3 PRESIDING JUDGE VELDT-FOGLIA: Very well.

4 Court Officer, could you please bring us into private session.

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16 [Open session]

17 THE COURT OFFICER: Your Honours, we're in public session.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much,

19 Madam Court Officer. Very well.

20 So at this stage, we have received a proposal from the
21 Specialist Prosecutor's Office to reach out to the Defence teams to
22 discuss the pending issue and to see if an agreement can be reached
23 on what questions are pending and on an order to the Court to be
24 made regarding the -- the investigations made and the questions posed
25 to us.

1 I leave it for now here. There's nothing on the table of the
2 Panel yet. But we applaud that there is this *inter partes*
3 outreaching, and I hope that this spirit of cooperation will continue
4 because that is the way we can go forward in a fair and expeditious
5 way in this trial. And that's the ultimate scope. Very well.

6 Next point on the agenda.

7 The Panel requested the Specialist Prosecutor's Office to
8 indicate whether it intends to disclose to the Defence further
9 exculpatory evidence under Rule 103 or further material or evidence
10 under Rule 102(3) of the Rules; and if so, how many items and when.
11 And we asked the SPO if it intended to request protective measures
12 for this material and evidence; and if so, when.

13 Very well. This point on the agenda. We have noted your
14 submissions, Mr. Prosecutor, with regard to Disclosure Package 42 and
15 Package 44, and that newly discovered potentially exculpatory items
16 will be disclosed to the Defence without delay on a rolling basis.
17 Very well.

18 We also noted your submissions regarding Rule 102(3) and
19 Rule 109(c) of the Rules. We would like to hear from the SPO if
20 there are any additional observations on this topic.

21 MR. HAFETZ: Thank you, Your Honour. There are no additional
22 observations or submissions at this point.

23 PRESIDING JUDGE VELDT-FOGLIA: Good. Then we leave it here for
24 the moment.

25 Yes. Then we come to the point under (c). The Panel requested

1 submissions from the Defence teams on whether they have completed
2 their investigations. And if this is not the case, whether they
3 anticipate carrying out further investigations, and approximately how
4 much time they will need to finalise such investigative activities.

5 Before we give the floor to the Defence, I want to recall what I
6 said at the beginning of today's hearing. The scope of this case is
7 limited. We have procedure going on for a year as regards Mr. Januzi
8 and Mr. Bahtijari, and ten months as regards Mr. Shala. They have
9 been detained. Therefore, at this stage of the proceedings, we would
10 -- or we expect to receive concrete estimates as to the completion of
11 the Defence investigations in order to ensure that the trial is
12 conducted expeditiously.

13 If there is a need when you give your submissions to go into
14 private session, please inform the Panel.

15 Regarding the submissions, in short, we noted for the Shala
16 Defence that investigations are ongoing and that the Defence is not
17 in a position to specify how much time it will need to finalise such
18 investigative activities.

19 And then for the Bahtijari Defence, we noted - also in short -
20 that investigations are ongoing -- sorry, my apologies. For the
21 Bahtijari Defence, we noted that you have nearly completed the
22 investigations. One month will still be required. And we have
23 received a list of witnesses last Friday, filing 502.

24 And for the Januzi Defence, we noted that it anticipates
25 carrying out further investigations. And I note that both field

1 investigations to be completed by 11 November, and some digital
2 examinations. Yes. And I will not go into further details, but
3 those were the two points I noted.

4 Defence counsel for Mr. Shala, could you indicate, based on the
5 investigation you have now, how much time you would still need for
6 the investigations.

7 MR. CADMAN: Certainly, Your Honour. At the time of filing the
8 written submissions, obviously, we wanted to identify what matters
9 were to be discussed today which would give us an indication as to
10 what further investigations were required. Certainly, our position
11 is that any investigations will be completed by the target date of
12 11 November for the start of the trial.

13 Of course, the extent to which the Prosecution presents their
14 case may have an impact on further investigations that we need to
15 undertake. But certainly we will be in a position in advance of 11
16 November to give an indication as to what Defence witnesses we intend
17 to call. I can certainly say at this stage that it is anticipated
18 that Mr. Shala will give evidence in the presentation of a Defence
19 case, and that there would be no more than three or four witnesses,
20 which would be very short witnesses, to be called, one of whom is
21 expected to be an expert witness. We will be able to, on a rolling
22 basis between now and 11 November, confirm that position as to the
23 extent to the Defence case that would be presented. But, of course,
24 a lot of that does depend upon matters that are ongoing, the
25 *inter partes* communications that we will now have with the

1 Prosecution, but we certainly don't expect it to extend past 11
2 November.

3 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel. That
4 was helpful.

5 Defence counsel for Mr. Bahtijari, is there something you would
6 like to add in addition to my summary?

7 MS. GERRY: [via videolink] No, thank you. We're aiming to be
8 complete by 2 November. We're going to try and take a lot of
9 statements in writing because that will be even more efficient. And
10 as you know from our written submissions, there are still some names
11 that we haven't provided to the Court, so we hope to do that by
12 2 November so that you can have a final conclusive list. We're
13 hoping there won't be any slippage. We'd definitely have completed
14 our investigations by 11 November. We're confident we can do that.
15 I hope I'm not overconfident.

16 I say all of that excluding issues around medical evidence,
17 which I don't propose to mention now unless you wish me to. That
18 relates to everything else.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel for
20 Mr. Bahtijari. You mentioned the date of 2 November. That is a
21 Saturday and that --

22 MS. GERRY: [via videolink] Oh, sorry.

23 PRESIDING JUDGE VELDT-FOGLIA: No, no, for my understanding,
24 that is a date -- because I went through all the filings to see this
25 date of 2 November, it's a deadline you have put to the Defence team

1 for Mr. Bahtijari, if I understand well?

2 MS. GERRY: [via videolink] We gave it to ourselves, yes. I
3 hadn't quite realised it was a Saturday, but we've given it to
4 ourselves. That's why I qualified it with there might be a little
5 slippage, but we're aiming to be ready by 11 November.

6 PRESIDING JUDGE VELDT-FOGLIA: Thank you. That is clear now
7 also to us. So --

8 MS. GERRY: [via videolink] I'm sorry you had to go through other
9 material. I do apologise.

10 PRESIDING JUDGE VELDT-FOGLIA: You don't have to apologise.
11 Part of our work, of course.

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

13 PRESIDING JUDGE VELDT-FOGLIA: It was just that 2 November --
14 just to point that out. Thank you very much.

15 MS. GERRY: [via videolink] Sorry. Thank you.

16 PRESIDING JUDGE VELDT-FOGLIA: Very well.

17 Specialist Counsel for Mr. Januzi, I noted that your
18 investigations further encompass some expert examinations on
19 evidence. We discussed it before, and there will be an *inter partes*
20 discussion partly on this. How long -- because you are also
21 foreseeing other expert investigations, how long do you expect that
22 these investigative steps will take?

23 MR. REES: [via videolink] Before I answer that, Your Honour, can
24 I revert back to the SPO's position and the questions asked about
25 their remaining matters before they are trial ready?

1 PRESIDING JUDGE VELDT-FOGLIA: Let me see.

2 MR. REES: [via videolink] I --

3 PRESIDING JUDGE VELDT-FOGLIA: No, a moment, please, just to
4 read again what you have said.

5 "Before I answer that, Your Honour, can I revert back to the
6 SPO's position and the questions asked about their remaining matters
7 before they are trial ready?"

8 MR. REES: [via videolink] It obviously --

9 PRESIDING JUDGE VELDT-FOGLIA: No, I want to know how long -- or
10 I -- we want to know when you will be -- your team will be trial
11 ready and what investigative --

12 MR. REES: [via videolink] Yeah, I --

13 PRESIDING JUDGE VELDT-FOGLIA: No, wait. Let's not talk over
14 each other. I will give you the floor. How much time you foresee
15 you will still need.

16 MR. REES: [via videolink] Yeah, I understand --

17 PRESIDING JUDGE VELDT-FOGLIA: If that's --

18 MR. REES: [via videolink] -- that, Your Honour.

19 PRESIDING JUDGE VELDT-FOGLIA: Please, I will give you the
20 floor.

21 So if you think that going back to the position of the
22 Specialist Prosecutor's Office will assist your answer to the Panel
23 when you think you will be trial ready, then, of course, we can go to
24 that point. And if not, I would rather not discuss it now.

25 MR. REES: [via videolink] Yes, thank you. Your Honour,

1 obviously, I'd asked to go back to that point because it assists with
2 the answer to the question that Your Honour asked me.

3 The submissions in writing that the SPO submitted ahead of this
4 Trial Preparation Conference said, at paragraph 3, that they envisage
5 the service of further evidence. Three items in particular are
6 referred to.

7 The second item under II appears to be relatively short. I'm
8 not overly concerned about that. But the other two matters are
9 potentially matters of -- that may require further investigations on
10 our behalf and relate to the issue of potential expert evidence. The
11 first item talks about reports that the SPO has received from the
12 external forensic institution looking at telephones seized from the
13 three accused. The third item referred to cell site data and the use
14 of maps.

15 Now, those matters are potentially -- we can understand why the
16 SPO are looking to serve such material, but I need to know when we're
17 going to have that before I can answer the question that Your Honour
18 posed to me in relation to our expert investigations, how long we are
19 going to take before we can deal with that material.

20 So I would ask the Court to invite the SPO to say when we will
21 receive that evidence that they envisage serving on us.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel. For
23 next time, please don't interrupt me when I'm talking. It doesn't
24 help our exchange.

25 Having said that, I will invite the SPO to give an answer to

1 your question. But apart from that, if we leave aside the question
2 you have posed to the Specialist Prosecutor's Office, how much time
3 do you think you will need to conclude your investigative actions?

4 MR. REES: [via videolink] Well, the second body that has made it
5 difficult for us to provide a straight answer to that question is,
6 I'm afraid, the Registry.

7 At the outset of this hearing, Your Honour, you invited all
8 parties - not only the SPO and the Defence but also the Registry - to
9 work cooperatively and collaboratively to ensure that the trial can
10 be brought on as quickly as possible. And I join Your Honour in
11 exhorting all my colleagues, both the Prosecution and Defence, but
12 also the Registry to join in that exhortation.

13 I have to say that in my years of experience, I have never had a
14 case in which trial preparation has been so difficult and dealings
15 with funding being so obstructive --

16 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel --

17 MR. REES: [via videolink] -- as in --

18 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel --

19 MR. REES: [via videolink] -- this case, Your Honour.

20 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, we will not go
21 into this part. I want to know from you if you can inform the Panel
22 on the finalisation of your investigative steps.

23 We are aware of the discussions that have been going on. I
24 don't want them to be repeated now in court because I want to use our
25 court time to focus on what we have to do. We have to prepare this

1 case for trial. And I see and I've listened and I've read the
2 consultations and the exchanges that have been going on. But for
3 now, for me it's really important, Mr. Rees, to understand where you
4 stand and what you see in terms of time issue. That's what I want to
5 discuss.

6 If there's something on the table that this Panel should decide
7 on, we will do that, but it will not help us any further if we are
8 going to repeat, and I say that with all due respect, that part of
9 the discussions. What do you need to finalise. That's what I want
10 to know. What do you need to finalise your investigations. Because
11 we --

12 MR. REES: [via videolink] We need the Registry to agree,
13 Your Honour, that we can travel and carry out our investigations --

14 PRESIDING JUDGE VELDT-FOGLIA: No, we are not going -- we are
15 going to private now.

16 Madam Court Officer, could you bring us into private session,
17 please.

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25 [Open session]

1 THE COURT OFFICER: Your Honours, we're in public session.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Court Officer.

3 Defence counsel for Mr. Shala, I see you would like to have the
4 floor, but I will first make a remark and then I will give you the
5 floor.

6 Yes, Defence counsel for Mr. Januzi, we have been now in private
7 session, but I note for now that you're not in a position, awaiting
8 the further information that you will be provided with by the SPO, to
9 give an estimation of when the investigations will be finalised. I
10 can say that you will be doing investigative steps -- investigation
11 steps in the field -- investigations in the field that will take you
12 about five days.

13 MR. REES: [via videolink] That's [Overlapping speakers] ...

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

15 And we have discussed that the Registry has made the point in
16 private session that there are funds available for all Defence teams
17 amounting to an amount of money to do expert investigations. So that
18 can be used for any type of investigation you need to do.

19 MR. REES: [via videolink] I understand that.

20 PRESIDING JUDGE VELDT-FOGLIA: Okay.

21 MR. REES: [via videolink] It's also --

22 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, I'm just making
23 a summary. It's not that I'm inviting you to talk. I think it's
24 very important that part of our discussion that has been done in
25 private is also shared with the public. And I realise that part of

1 our discussion could be done in public but because of some topics had
2 to be done in private. I just want to share that with the people who
3 are following these proceedings.

4 Mr. Rees, I propose that you can submit your request to the
5 Registrar with regard to the funding at the earliest possibility,
6 because that -- again, that can be done today, so we don't have to
7 wait for any evidence to be disclosed to the Defence parties.

8 MR. REES: [via videolink] Well, Your Honour, it's our position
9 that -- well, obviously, the Registry requires us to submit a plan of
10 activities, including what we intend to do in relation to any
11 independent external investigators. We have to obtain prior approval
12 effectively. And nothing wrong with that, that is understandable,
13 and I don't take any objection to that. But that requires us to
14 obtain an expert to provide us with a quote for the cost of the work.
15 The quote depends on the extent of the work that we're asking him to
16 do. The SPO are telling us that within seven days we will be
17 receiving further material relating to our phones.

18 I've heard very well what Mr. Hafetz has to say, in his view,
19 and I'm not going to repeat it, Your Honour, as to the nature of that
20 material. But you will understand that we, as part of the Defence,
21 would like to see the material ourselves to consider the nature of it
22 and to what extent it requires further work. That will be provided
23 to us in seven days.

24 As I have said to Your Honour in closed session, we will
25 immediately look at that material. We will immediately assess what

1 work is required. We will immediately then obtain a quote from an
2 expert that we want to look at the hard drives together with this
3 material. And then we will immediately ask the Registry to give its
4 immediate approval. And we will do that in order to act as
5 expeditiously as possible as we have been throughout proceedings.

6 We could have --

7 PRESIDING JUDGE VELDT-FOGLIA: No --

8 MR. REES: [via videolink] -- at an earlier stage, Your Honour,
9 asked for approval previously, but we were told, contrary to the
10 guidance on the administration of legal aid, that no services could
11 be provided before a contract enters into force.

12 But we are where we are. We will undertake to take those steps
13 immediately --

14 PRESIDING JUDGE VELDT-FOGLIA: Okay.

15 MR. REES: [via videolink] -- as soon as the SPO --

16 PRESIDING JUDGE VELDT-FOGLIA: Now we don't --

17 MR. REES: [via videolink] -- discloses that --

18 PRESIDING JUDGE VELDT-FOGLIA: No, no, we don't have to --

19 MR. REES: [via videolink] -- material.

20 PRESIDING JUDGE VELDT-FOGLIA: No, no, I don't give you the
21 floor anymore. We are not going to repeat ourselves. Once is
22 enough. I heard what you're saying and I heard that you want to do
23 it expeditiously. But please don't take up the time in this way.

24 MR. REES: [via videolink] No, I'm grateful, Your Honour. I
25 won't --

1 PRESIDING JUDGE VELDT-FOGLIA: No, no. No.

2 Very well. We're going to the next point, and that is point D.
3 And -- oh, you're right. Yes, thank you.

4 Defence counsel for Mr. Shala, you have the floor. Apologies
5 that I forgot you about you.

6 MR. CADMAN: Thank you, Your Honour. I don't want to extend the
7 conversation any more than is absolutely necessary, but just as a
8 very, very short point. Mr. Rees is correct on the point that what
9 we have so far is inaccessible and through no fault, and I'm not
10 pointing the blame at the SPO. The format in which it's been given
11 to us, we have been unable to access the hard drives because there's
12 so much data that it just crashes the system over time.

13 Now, that may well be the executable file that we have through
14 Cellebrite is not a full license so we cannot open it. Now, there
15 may well be a very simple explanation to that and a very simple
16 solution. It may well be providing the Defence teams with a full
17 license so that we can actually access the material even if it's here
18 in these facilities so that we can actually see what's on those
19 drives and we can identify whether we even need to instruct an
20 expert.

21 So my request would be if a full license is required, each
22 Defence team should be provided with a full license so they can
23 access that material. If that is not the case, then there has to be
24 a solution provided by the SPO that enables us to be able to access
25 the material so we can make that determination.

1 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much, Defence
2 counsel. Allow me this question: When did the Defence parties
3 receive this material?

4 MR. CADMAN: So we've received it on a number of --

5 PRESIDING JUDGE VELDT-FOGLIA: Yes.

6 MR. CADMAN: -- different occasions. A further drive has been
7 provided to us today.

8 We have tried, we have had our own experts trying to access the
9 material. It's just been unsuccessful in the way that it's been
10 provided to us.

11 PRESIDING JUDGE VELDT-FOGLIA: I will ask -- thank you, Defence
12 counsel.

13 Mr. Prosecutor, when was this provided to the Defence?

14 MR. HAFETZ: Your Honour, I apologise. I don't have the exact
15 date --

16 PRESIDING JUDGE VELDT-FOGLIA: Less or more.

17 MR. HAFETZ: -- of each disclosure, but for several of the
18 phones it's, frankly, quite some time ago. So I am confused as to
19 why this issue is being raised now, but I can get you the exact dates
20 after our next break.

21 PRESIDING JUDGE VELDT-FOGLIA: No, it's just what I would like
22 to invite parties that -- in this courtroom I prefer to not go into
23 technicalities. What I would like is that there is an *inter partes*
24 exchange to open these files. And what for me is still not very
25 clear is why this topic is discussed now, because I would -- this is

1 something that should be done in the spirit of cooperation. If you
2 realise you cannot open it, you go to the SPO and you discuss it with
3 the SPO in order to have it opened.

4 So I leave it for now here, and I urge the parties to get it
5 organised. I mean, I think we close the discussion here.

6 MR. CADMAN: Absolutely, Your Honour. And this is material that
7 has been disclosed some time ago, but these are issues that we have
8 raised with the SPO previously. So it's not a matter that, you know,
9 that we haven't attempted to resolve it, but certainly in the spirit
10 which is coming out today, perhaps we can have a further
11 discussion --

12 PRESIDING JUDGE VELDT-FOGLIA: Yes.

13 MR. CADMAN: -- with the SPO and resolve this.

14 PRESIDING JUDGE VELDT-FOGLIA: I see a raised hand from Defence
15 for Mr. Bahtijari. You have the floor.

16 MS. GERRY: [via videolink] Just very -- thank you. Just very
17 quickly, I did manage to download Cellebrite. I notified the SPO. I
18 have been able to access the phones. But the advice from IT in the
19 building is that the computers within the building are not strong
20 enough to hold the Cellebrite. Mine just about holds it if I don't
21 use it for too long, and it may well be that the computers that have
22 supplied to counsel for the other defendants are just not strong
23 enough.

24 So I asked for a new computer that would be strong enough. I
25 didn't get one. So we're muddling along. So if the solution is to

1 have a better computer in the office, we'd like that solution.

2 PRESIDING JUDGE VELDT-FOGLIA: Okay.

3 MS. GERRY: [via videolink] But the software is on the hard
4 drives that we've been provided with. But if you download it, it
5 take about -- well, you have to leave it for about 12 hours overnight
6 and then you can sort of access, but it's better to have a computer.

7 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

8 MS. GERRY: [via videolink] Nothing else to say. I just thought
9 that might be helpful.

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel for
11 Mr. Bahtijari.

12 I also would say these kind of technicalities, I think they are
13 very helpful, but I prefer not to have them discussed during Court
14 time. That's really -- I think it's a pity of the time. But it is
15 helpful. So I would -- all these technical information shared with
16 your colleagues and with the relevant people at the premises to
17 further to -- to make it work. Very well.

18 No hands. I do a double-check. Good.

19 Next topic. The Panel asked Defence teams on whether and when
20 they can already anticipate disclosing evidence and amending their
21 respective pre-trial briefs and/or their list of potential witnesses.
22 Very well.

23 Defence counsel for Mr. Shala, I noted from your submissions
24 that you would give the Panel an update on the need to disclose
25 evidence, the need to amend the Defence pre-trial brief and/or the

1 list of potential witnesses.

2 Before I give you the floor, would you like to go into private
3 session for your submissions or do you prefer to stay in public?

4 MR. CADMAN: We can stay in public session.

5 PRESIDING JUDGE VELDT-FOGLIA: You have the floor.

6 MR. CADMAN: Certainly, the point that was put in the written
7 submissions was an abundance of caution and depending on what
8 happened between then and now.

9 Certainly, I've indicated what the Defence witnesses
10 requirements would be. I think we've set out our position as far as
11 disclosure is concerned. I don't think we need to add to that today.
12 And, certainly, at this stage we haven't taken a decision as to
13 whether any amended pre-trial brief would need to be filed.

14 But it was -- the point was made at the time, depending what had
15 happened between then and now, as to whether any amendment to the
16 pre-trial brief would be required. Certainly, I don't think we
17 anticipate filing any amended pre-trial brief at this stage.

18 PRESIDING JUDGE VELDT-FOGLIA: "The Defence is not in a position
19 to say whether and when as a result of these investigative
20 activities" -- yes, it's yours:

21 "... it can anticipate disclosing evidence and amending its
22 pre-trial brief and/or its list of potential witnesses. An update
23 will be provided at the Trial Preparation Conference."

24 So that's the reason that I ask you if you have any information
25 to share with us.

1 MR. CADMAN: Other than what I've said already, nothing further.
2 What we can certainly indicate, as I have already said, it may well
3 be just an addendum to the pre-trial brief is necessary which is just
4 setting out any -- certainly any Defence disclosure which will be
5 required and setting out the Defence witnesses, as I've indicated,
6 prior to 11 November.

7 Obviously, we'll do that as quickly as we possibly can. We're
8 not in a position today to set out those witnesses and what their
9 evidence will go to, but certainly that will be done as soon as
10 practicable and certainly before 11 November.

11 PRESIDING JUDGE VELDT-FOGLIA: Okay. I must confess that I had
12 hoped for a little bit more elaborate update today, but I note it for
13 now. Yes, thank you very much.

14 Specialist Counsel for Mr. Bahtijari, the Panel has taken note
15 of your submissions. We have the following questions for you: Do
16 you intend to disclose evidence? Do you foresee the need to amend
17 your further updated pre-trial brief? And I note, again, that we
18 have received your witness list, which is not final, as I see it, but
19 there is a list last week.

20 And then in addition to this, two questions regarding the
21 evidence to disclose and amendment of your pre-trial brief. If you
22 could clarify your submissions regarding the assessment for the need
23 for closed session submissions in paragraph 494, paragraph 11.

24 MS. GERRY: [via videolink] I don't have that in front of me at
25 the moment --

1 PRESIDING JUDGE VELDT-FOGLIA: No, I can.

2 MS. GERRY: [via videolink] -- so just bear with me a second.

3 PRESIDING JUDGE VELDT-FOGLIA: Of course.

4 MS. GERRY: [via videolink] I'm sorry.

5 PRESIDING JUDGE VELDT-FOGLIA: No, don't worry. You --

6 MS. GERRY: [via videolink] The remote desktop sometimes drops
7 out quickly.

8 PRESIDING JUDGE VELDT-FOGLIA: I don't want to read it out, so
9 we can go into private session for this -- for the answer to this
10 question, and then I can read it out for you.

11 But the other two questions, I give the floor to you.

12 MS. GERRY: [via videolink] On disclosure, we have communicated
13 with the Prosecution about proposed agreed facts in relation to
14 recordings on phones. That's going to be capable of agreement.

15 On the contents of our client's phone, we're just
16 double-checking some of that content, and we did set out that we
17 think that some additional content can probably be capable of
18 agreement. For example, our client around the time of April 2023 is
19 Googling the weather and not the Court. So there will be a little
20 bit of additional evidence that comes from the Prosecution material.

21 Otherwise, any disclosure from us will be through witnesses, and
22 we will endeavour to give as much of that information in advance. We
23 don't anticipate updating our further updated pre-trial brief. We
24 did three. We did that to try and get disclosure. There are still a
25 couple of things outstanding that we probably want to deal with in

1 private session. And closed session, in my mind, without reminding
2 myself of that paragraph, relates largely to Mr. Bahtijari's health.

3 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you very much. We
4 will go into private session just to further clarify this point.

5 MS. GERRY: [via videolink] Thank you, Your Honour. I'm sorry I
6 don't have it in front of me at the moment. I'll try and fix that.

7 PRESIDING JUDGE VELDT-FOGLIA: Court Officer, could you please
8 bring us into private session.

9 [Private session]

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5 [Open session]

6 THE COURT OFFICER: Your Honours, we're in public session.

7 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

8 Now we go to the Specialist Counsel for Mr. Januzi. I noted
9 from your submissions that you don't know when you will be in a
10 position to disclose further evidence and amend your pre-trial brief
11 and your list of potential witnesses. Do you want to make any
12 submissions on the item of the agenda topic in addition to what we
13 have been discussing up till now?

14 MR. REES: [via videolink] Yes. Let me try and assist in this
15 way, Your Honour.

16 We have said, and we maintain this, that providing everything
17 goes smoothly from here on, we hope to have carried out our field
18 investigations by 11 November. We will -- if that happens, I can
19 undertake that we will provide any updated pre-trial brief and list
20 of witnesses by 18 November. I hope that assists.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Specialist Counsel.

22 Before we proceed to the next point on this matter, the Panel
23 stresses that it foresees that if the SPO, and we will discuss that
24 later on after the break, would be able to finalise its case in
25 November 2024, and we will get into more detail on the possibilities

1 regarding the start and ending of the SPO case when we discuss the
2 next item regarding the conduct of proceedings, the commencement of
3 the trial, and the planning in this regard. But that is for after
4 the break.

5 So if the SPO would be able to finalise its case in November
6 2024, the Defence cases could start in December 2024, subject, of
7 course -- and I note the submissions also of the Defence teams,
8 subject to any decision on Rule 130 of the Rules.

9 So, therefore, the Defence teams are expected to prepare with
10 this timeline in mind. And the Defence teams are invited to liaise
11 who will present its Defence case - and this is all if, if, and if -
12 who is to present its case first. In principle, we could leave that
13 for the Defence teams. And if not, the Panel would take a decision
14 on that. But we come to this further on. I just wanted to give this
15 before -- as an intention of this Panel.

16 Then we have one last point regarding the *ex parte* closed
17 sessions.

18 We received the submissions of the parties, we noted them, and I
19 don't think it's necessary to go into them at this moment.

20 So then we are a little bit before 11.00. And I think it's a
21 good moment to adjourn the hearing for 30 minutes. We will see each
22 other back at 11.30.

23 The hearing is adjourned.

24 --- Recess taken at 10.53 a.m.

25 --- On resuming at 11.30 a.m.

1 PRESIDING JUDGE VELDT-FOGLIA: Welcome again after the break.

2 I will call appearances. If there have been no changes, it
3 suffices that you indicate that that is the case.

4 Yes, Mr. Prosecutor, I start with you.

5 MR. HAFETZ: Thank you, Your Honour. All present from earlier
6 this morning, other than the Specialist Prosecutor has returned to
7 other duties. Thank you.

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

9 Deputy Registrar, you have the floor.

10 MR. NILSSON: Thank you, Your Honour. No changes from the
11 Registry.

12 PRESIDING JUDGE VELDT-FOGLIA: Very well.

13 Then I go to the Defence teams, and I start with the Defence
14 counsel for Mr. Shala.

15 MR. CADMAN: No changes, Your Honour.

16 PRESIDING JUDGE VELDT-FOGLIA: Very well. Then I go to the
17 Defence counsel of Mr. Bahtijari.

18 MS. GERRY: [via videolink] No changes. Thank you, Your Honour.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

20 And then the Defence counsel for Mr. Januzi. You have floor.

21 MR. REES: [via videolink] No changes. Thank you, Your Honour.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Very well.

23 Then we continue with the next point on our agenda which is the
24 conduct of proceedings. It includes several items, and I will go
25 through them in sequence.

1 The first point is the commencement of trial and opening
2 statements.

3 The Panel has received submissions from the parties as to the
4 date for the commencement of the trial. We have taken note of these
5 submissions. The SPO is prepared to begin trial on Monday,
6 11 November 2024.

7 We know that the Defence for Mr. Shala and for Mr. Bahtijari do
8 not oppose to the date of 11 November 2024 for the commencement of
9 the trial.

10 And we received submissions for the Defence for Mr. Januzi. It
11 was indicated on Tuesday, 1 October, that there were no submissions
12 to make as to the date of 11 November for the commencement of the
13 trial. We have received an e-mail on Thursday, 3 October, that the
14 Januzi Defence may raise whether an alternative date could be
15 accommodated for the Prosecution opening due to a new judicial
16 commitment of Specialist Counsel Rees on 11 and 12 November 2024.
17 And we received an e-mail on Friday, the 4th, at 12.47, that the
18 Defence for Mr. Januzi would request at the Trial Preparation
19 Conference to move the Prosecution opening statement to 13 November
20 because a previous commitment on 13 November had been lifted from his
21 diary.

22 Now, thank you very much for these submissions. Noting that the
23 SPO is prepared to begin trial in November 2024, and in order to take
24 full advantage of all preparations, the Panel intends to anticipate
25 the commencement of the trial to Friday, 8 November, and asks parties

1 to ensure their availability for that day to give their opening
2 statements. And this includes having co-counsel for the Defence to
3 appear instead of the counsel if lead counsel is unavailable.

4 The Panel further intends to use the full week of the 11th till
5 15th November for trial hearings and asked parties to ensure their
6 availability for that week.

7 We will come back on this later in private session or in public
8 session, depending what we can discuss in public, but this is, with
9 regard to the commencement of the trial and the opening statements
10 and even hearing the witnesses, what the intention of the Panel is at
11 this moment in time.

12 Yes, we will go further to some other issues, and then we can
13 further discuss this intention of the Panel. Very well.

14 The Panel instructed the Defence teams to indicate whether the
15 accused object to the SPO reading a summary of the indictment at the
16 opening of the case instead of the indictment in its entirety. And
17 the Panel notes that the Shala and the Bahtijari Defence don't oppose
18 to the SPO reading a summary of the indictment at the opening of the
19 case. However, the Defence team for Mr. Januzi would like to receive
20 a copy of the proposed summary in advance with the possibility to
21 object thereafter.

22 Mr. Prosecutor, you have the floor if you would like to respond
23 to the Defence for Mr. Januzi on this point, on this proposal.

24 MR. DEVANEY: Your Honour, only short further submissions.
25 We've noted the position of the Januzi Defence, and we will consider

1 it and remain in contact.

2 PRESIDING JUDGE VELDT-FOGLIA: Could you be a little bit more
3 concrete?

4 MR. DEVANEY: Just, Your Honour, that we understand that is a
5 request and we will evaluate it. We don't see a large problem
6 potentially with providing them a copy of the summary, which they can
7 object to later in court in any case.

8 PRESIDING JUDGE VELDT-FOGLIA: Yes. A possibility could be,
9 although I think it's the prerogative in principle of the Specialist
10 Prosecutor's Office, to formulate the charges. But we could proceed
11 with reading the charges as formulated and read out in the pre-trial
12 phase during the Initial Further Appearance. And that text, if I
13 understood well, is taken verbatim from the amended indictment. And,
14 of course, we can also read the whole indictment if the Defence so
15 wishes.

16 But I note the observations of the SPO.

17 MR. DEVANEY: Thank you, Your Honour. And we note your
18 suggestion regarding the previous reading of the document. Thank
19 you.

20 PRESIDING JUDGE VELDT-FOGLIA: Good.

21 Defence counsel for Mr. Januzi, is there something you would
22 like to add in this respect?

23 MR. REES: [via videolink] We hope that the suggestion was a
24 sensible one, that we would, if we see a summary in advance, not have
25 an issue as long as the terms of it could be agreed. In the absence

1 of the Prosecution agreeing that course of action, then we will
2 request that the indictment be read in full. So it's a matter for
3 the Prosecution. If they wish to read the summary, they can provide
4 a copy to us, and we'll deal with it on an *inter partes* basis,
5 Your Honour.

6 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Specialist Counsel.
7 And the text as read out during the initial and further appearances,
8 would that suffice?

9 MR. REES: [via videolink] I'd have to review it. If that's the
10 Prosecution's proposal, then we'll review that and we'll indicate in
11 writing whether that suffices or not.

12 PRESIDING JUDGE VELDT-FOGLIA: We note your observations. Thank
13 you for that. We will issue an order on this matter or we will give
14 further directions in our decision on the conduct of proceedings.
15 Very well.

16 Then I take points C and D together. We requested the SPO and
17 the Defence teams to indicate whether they intend to make an opening
18 statement pursuant to Rule 126(1) of the Rules and related matters.

19 We have taken note of the submissions of the parties, and I
20 leave it for here without summarising them.

21 We also requested the Defence to indicate whether the accused
22 intend to make unsworn statements pursuant to Rule 142(1) of the
23 Rules; and if so, whether this will take place together with the
24 Defence opening statements or at a later stage. We have taken note
25 of the Defence submissions as to whether the accused intend to make

1 an unsworn statement and, in the affirmative, when. So that's noted.

2 Thank you for that.

3 Then the second topic, that is familiarisation of witnesses
4 prior to testimony.

5 We have received your submissions on this issue, and we have
6 taken note of the submissions of the SPO regarding the advantages of
7 witness preparation. The Panel notes the Shala Defence has no
8 objection to the guidelines on witness familiarisation adopted by the
9 Panel in Case 04. We also noted that the Defence for Mr. Bahtijari
10 indicated that it is content to follow the usual practice. And we
11 also noted -- yeah, that's what we noted.

12 And the Panel would like to underline, in respect to your
13 submissions, Defence counsel for Mr. Bahtijari, in paragraph 20 in
14 submissions 494, that all witnesses called to testify live in court
15 go through the familiarisation process if the Panel decides to
16 continue with its prior approach. Very well.

17 We note that the Defence for Mr. Januzi did not express itself
18 on this matter.

19 Defence counsel for Mr. Januzi, is there something you would
20 like to add in this respect? I see --

21 MR. REES: [via videolink] No.

22 PRESIDING JUDGE VELDT-FOGLIA: -- you saying --

23 MR. REES: [via videolink] [Overlapping speakers] ...

24 PRESIDING JUDGE VELDT-FOGLIA: -- no. Thank you.

25 And then the Registry makes no further submissions on the

1 approach taken by the Panel in Case 04 and 05. And we noted the
2 annex to the submissions, the guidelines, and the instructions of
3 WPSO has developed on the support it provides to witnesses prior,
4 during, and after the testimony. Thank you for that.

5 Having said that, I proceed to the next topic, unless there is a
6 point with regard to familiarisation one of the Defence teams or the
7 SPO wants to make.

8 MR. CADMAN: I presume we're just dealing with familiarisation
9 at this stage --

10 PRESIDING JUDGE VELDT-FOGLIA: Yes.

11 MR. CADMAN: -- not preparation.

12 PRESIDING JUDGE VELDT-FOGLIA: No, no, no, no, no.

13 MR. CADMAN: In that regard, I have nothing further to add.

14 PRESIDING JUDGE VELDT-FOGLIA: No. In case there was any
15 unclarity, Defence counsel for Mr. Shala, the Prosecution has pointed
16 out some of the advantages they see in preparing the witnesses, and I
17 noted that we have seen that. Very well.

18 Let me see. Yes, third topic, that is the presentation of
19 witness evidence and non-oral evidence by the parties. Under A, we
20 instructed the SPO to confirm that its list of witnesses and the
21 requested time for direct examination of those witnesses and its list
22 of exhibits are final.

23 And we have taken note of your submissions. And in particular,
24 we note that the SPO has reduced the estimated duration of
25 examination of witnesses it intends to call. We have seen the public

1 redacted version of your submissions, and we also saw that you have
2 made public the number of witnesses the Specialist Prosecutor's
3 Office intends to call.

4 So I was going to ask you if we had to go into private, but this
5 can be disclosed. So very well.

6 So we have two witnesses on the list.

7 With regard to the estimated duration of the examination
8 proposed by the SPO, I refer the Defence for Mr. Bahtijari to the
9 annex of the submissions of the filings of the Specialist
10 Prosecutor's Office where they gave an indication of how long the
11 intended examination-in-chief will take.

12 Mr. Prosecutor, would you like to make any further submissions
13 on this matter?

14 MR. HAFETZ: Very briefly, Your Honour. Thank you.

15 Our list is, as we said, the list of two witnesses, is final
16 with one caveat that I think can be inferred from the filing, but
17 just to make it more explicit, because I know the Court is very
18 focused on efficiency and timing and planning, and for the Defence as
19 well. There are several pieces of evidence, some of which have been
20 discussed already today, that are on the exhibit list which the
21 Defence has already indicated they're going to challenge on a variety
22 of grounds and that we expect them to flesh out and file on, to the
23 extent they haven't already, and some of them are fairly detailed
24 already.

25 We noted in our filing that we intend -- and I can say now it

1 will be within two weeks. We intend to file with the Panel requests
2 for the admission of certain of this evidence, which is documentary
3 evidence. Most of it is -- just to be clear about what we're talking
4 about, most of it is evidence extracted from mobile phones.

5 PRESIDING JUDGE VELDT-FOGLIA: Okay. But this is admissibility
6 of evidence. We will be dealing with it later.

7 MR. HAFETZ: But the only reason I'm --

8 PRESIDING JUDGE VELDT-FOGLIA: No.

9 MR. HAFETZ: -- raising it now, Your Honour --

10 PRESIDING JUDGE VELDT-FOGLIA: Okay.

11 MR. HAFETZ: -- is it informs the finality of the question. I
12 just want a caveat that should the SPO need an additional witness or
13 witnesses to explain or respond to challenges in the Court's view to
14 gain admissibility of that evidence or for the Court to make the most
15 informed decision, it is possible that we would seek to amend the
16 witness list with those one or two witnesses that would be necessary
17 for that purpose.

18 That's why I flag it now. It is our view, which is why we're
19 doing it, that the motion that we make within two weeks will be
20 sufficient without calling a live witness to admit that evidence.
21 But I just wanted to flag for the Court that potential eventuality.
22 And otherwise the list is -- we view as final.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Prosecutor. Yes.

24 The Defence teams were instructed to confirm if -- their
25 intention to present a case. Now, we noted that each Defence team

1 intends to present a case.

2 And we also asked the Defence to provide information as to the
3 status of their respective list of witnesses and the requested time
4 for direct examination of their envisaged witnesses, and as well
5 whether they intend to request admission of prior statements or
6 transcripts in lieu of oral testimony under Rule 153 to 155 of the
7 Rules.

8 Very well. We have already received some information in this
9 respect from the Defence teams. I will come to that later.

10 I will now first note a request of the Defence for Mr. Januzi to
11 request a witness summons.

12 Defence counsel for Mr. Januzi, you intend to -- do I understand
13 well that you intend to present a request for witnesses to be
14 summonsed?

15 MR. REES: [via videolink] I do.

16 PRESIDING JUDGE VELDT-FOGLIA: Yes, thank you. On this matter,
17 Specialist Counsel, you would first need to present a final witness
18 list as well as a summary of their intended testimony. And that goes
19 for, of course, all Defence teams. And after our assessment of the
20 list of witnesses, the questions of the summons will be addressed if
21 still relevant.

22 So a request of this kind at this stage of the procedure is
23 premature.

24 MR. REES: [via videolink] Can I ...

25 PRESIDING JUDGE VELDT-FOGLIA: Of course, please. You have the

1 floor.

2 MR. REES: [via videolink] I do understand what Your Honour has
3 said. Obviously, the three witnesses that I've indicated we intend
4 to seek a witness summons in relation to are -- two of them are
5 officers of the SPO, one is an officer of an independent external
6 forensic investigation unit.

7 I can put aside for the moment the external investigator because
8 whether or not we need a witness summons in relation to that official
9 may result -- may depend on the *inter partes* discussions that
10 Mr. Hafetz raised relating to the two mobile phones at the very
11 outset of the day. I'm hopeful, therefore, that those will bear
12 fruit and we don't need to worry about that third official who is
13 external to the SPO.

14 The other two are SPO officers. And the reason why we've raised
15 at this early stage the prospect of a witness summons is because we
16 have asked on an *inter partes* basis for the Prosecution to make those
17 two officers available to give evidence. They can either call them
18 and engage in direct examination with them before we then
19 cross-examine or they can tender them for cross-examination
20 straightaway, and they've indicated that they're not willing to do
21 that without an order.

22 The other course of action would be for them to make the two
23 officers available for us to conduct interviews with. If they do
24 that, we can then prepare a summary of what we anticipate that they
25 would say as Your Honour has requested. But unless they make those

1 two officers available to us, then we're not going to be able to go
2 through the process of submitting an application together with a
3 summary of the evidence that they can give. We will only be able to
4 draw -- to rely, for the purpose of the application, on the
5 circumstances which we know we can establish that they can speak to.
6 Exactly what they are saying, we would have to wait until their
7 evidence.

8 But I would -- the Prosecution are well aware of the issues that
9 we seek to speak to these two witnesses about. And it would be
10 another course of action that could resolve this if the SPO takes
11 statements from those two officers as to the circumstances that are
12 referred to in the pre-trial brief, and then we can see what those
13 statements say and take it from there.

14 But at the moment, the SPO are not engaging with us so that we
15 have to raise at this early stage with the Court, well, it looks like
16 we're going to be left with no option other than simply to ask the
17 Court to order the two witnesses into the witness box, and we will
18 explore their evidence as they give evidence itself.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

20 Is there something the Specialist Prosecutor's Office wants to
21 submit?

22 MR. HAFETZ: Your Honour, the only thing I would add is I think
23 the course the Panel has set forth is the proper course. And we'd
24 only ask, if such written submissions are ultimately made, that we be
25 entitled to respond in writing before a decision is made.

1 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Very well.

2 Yes. Now --

3 MR. REES: [via videolink] Your Honour.

4 PRESIDING JUDGE VELDT-FOGLIA: Yes, you have the floor, Defence
5 counsel for Mr. Januzi.

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

7 Well, Mr. Hafetz's response does not help take the matter
8 further one way or the other. I've raised two potential courses of
9 action for the SPO to consider which will help further the
10 preparation of this trial and so that we can expeditiously progress
11 from opening statements to evidence to closing the Prosecution case
12 and then moving on to the Defence case.

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you for setting out the
14 order of things. Defence counsel for Mr. Januzi, I have noted your
15 submissions. I have heard very well what you have said, also what
16 the Specialist Prosecutor's Office has said, and we will consider it.
17 And I have also indicated, for now, what the Panel would see as an
18 appropriate course of action.

19 But we take your submissions on board, and if there is a need,
20 we will come back on this.

21 Very well. Next point -- or not the next point. You were asked
22 - and I'm talking to the Defence teams - to get back to us as regards
23 the status of your list of witnesses. And we have noted them. We
24 have been receiving them during today's hearing.

25 And I would like to invite the Defence teams to share your views

1 on submitting by Monday, 4 November, a list of witnesses with the
2 relevant information. And "with the relevant information," I mean a
3 list of witnesses, a summary of what they will be testifying on, the
4 time you think -- you consider that will be needed for examination,
5 or whether you want to file it through Rule 153 till 155, and the
6 modalities. I mean, a complete list of witnesses like has been
7 submitted by the Specialist Prosecutor's Office to its submissions of
8 the Trial Preparation Conference in the annex.

9 So Monday, 4 November, or an alternative date, bearing in mind
10 that with all the -- I know the -- in Dutch we would say *mitsen en*
11 *maaren*. But with all questions pending, we consider the Defence
12 cases to begin as soon as December 2024.

13 I will first give the floor to the Defence counsel for
14 Mr. Shala. Please.

15 MR. CADMAN: Your Honour, I think 4 November is entirely
16 reasonable, and certainly we will work to that.

17 Obviously, as the SPO has indicated, they're going to be making
18 a filing in seven days as to what they're going to be adding to the
19 exhibit list. We have been in communications previously as to who
20 they're calling as witnesses. Obviously, it's a matter for the
21 Prosecution as to how they present their case.

22 As we know, they're only calling two witnesses. That may be
23 adjusted depending upon their filing. And, obviously, how we respond
24 will depend upon their written submissions. But certainly, I see no
25 reason why 4 November the Shala Defence cannot provide to the Court

1 with what you have directed.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel for
3 Mr. Shala.

4 Then, Defence counsel for Mr. Bahtijari, you have the floor if
5 you would like to make further submissions.

6 MS. GERRY: [via videolink] No further submissions. 4 November
7 is fine. Thank you.

8 PRESIDING JUDGE VELDT-FOGLIA: Very well.

9 And Defence counsel for Mr. Januzi, you have the floor.

10 MR. REES: [via videolink] We can't comply with 4 November,
11 Your Honour. We -- I suggested before the break the 18th November,
12 and I would maintain that date as the earliest possible target for
13 us, assuming everything goes smoothly.

14 We are, as I mentioned earlier, I won't go into the details
15 because Your Honour has asked me not to, but in negotiations with the
16 Registry about arranging our investigations in the field. The
17 timetable for those investigations will not have begun by 4 November
18 necessarily because of the policy of the Defence Office.

19 So we won't have been -- we won't be in a position to do it by
20 4 November. We will be in a position to deal with it by 18 November.

21 PRESIDING JUDGE VELDT-FOGLIA: We have noted your submissions.

22 MR. REES: [via videolink] My --

23 PRESIDING JUDGE VELDT-FOGLIA: We have noted your submissions.

24 I heard a "my"?

25 MR. REES: [via videolink] I -- I would just add one final thing.

1 I don't envisage that being a problem with the ultimate target that
2 Your Honour said, which is the Defence cases beginning, and even
3 concluding, in December of this year.

4 PRESIDING JUDGE VELDT-FOGLIA: Okay. Yes. Very well.

5 Mr. Prosecutor, you have the floor.

6 MR. HAFETZ: Thank you, Your Honour. And my apology for the
7 interruption.

8 Just to make sure there is no lack of clarity, and I apologise
9 if it was my lack of clarity. To counsel for Mr. Shala's point, our
10 submissions on the -- for the motions of evidence would be within 14
11 days, not one week. We anticipate making those within 14 days.

12 PRESIDING JUDGE VELDT-FOGLIA: The seven days was with regard to
13 the evidence you would like to add to the exhibit lists on the datas
14 from the telephones.

15 MR. HAFETZ: Yes. Thank you for that, Your Honour. And if I
16 may, just one point of clarity on that which actually may expedite
17 that further.

18 During the break, it occurs to me, since we have everything but
19 item (iii) of those items, it may be most efficient for us,
20 especially since there seems to be a delay in accessing the
21 information without that -- those reports, we could file our request
22 to amend the 102(1)(b) lists for those two items. For the things we
23 do have, we could file that by tomorrow morning and then disclose
24 them, and then file a separate one for the missing item. That may
25 expedite things and move it along a bit.

1 PRESIDING JUDGE VELDT-FOGLIA: Everything, Mr. Prosecutor, and
2 Defence teams, that can expedite in a fair way -- you're not going to
3 rush. Let me insist on that. But if we can expedite, we really
4 should work to it. Thank you.

5 MR. HAFETZ: So we will do that.

6 PRESIDING JUDGE VELDT-FOGLIA: Okay. Good.

7 Yes, I see Mr. Cadman nodding. And also the other Defence
8 teams, there cannot be other than approval, of course. The sooner,
9 the better. And I see Mr. Rees nodding. And if I could receive a
10 nod of the Defence counsel for Mr. Bahtijari. Yes. Very well.

11 Next point. The Defence teams have been asked whether they
12 intend to offer a defence of alibi. We have taken note of your
13 submissions.

14 Can the Defence for Mr. Januzi confirm it will not present an
15 alibi defence?

16 MR. REES: [via videolink] No, we won't be providing an alibi
17 defence.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

19 Now, the next topic is the order of appearances and issues
20 related to the questioning of witnesses.

21 The SPO was instructed to file written submissions as regards
22 the order in which it intends to call the witnesses included in the
23 SPO list of witnesses and the modalities of the witness testimonies -
24 live or videolink - and the possibility for a first witness, we said
25 then, to be heard during the week of 11 to 15 November 2024 following

1 any opening statements by the parties.

2 We have taken note of the SPO's readiness to begin with a
3 witness testimony following completion of the opening statements.

4 Considering the number of witnesses - two, which is now public -
5 and the estimated time for examination of witnesses requested by the
6 SPO, we would like to receive the SPO's views as to the possibility
7 to hear said witnesses - so both, and then both examination and
8 cross-examination and whatever comes after - in the week of 11th till
9 15th November while starting on Friday, 8 November, with the opening
10 statements. So if it's possible from the logistics point and other
11 point of view. Content related.

12 MR. DEVANEY: Yes, Your Honour. At this time, that works for
13 us.

14 PRESIDING JUDGE VELDT-FOGLIA: Okay. Very well.

15 And the Registry, I would like to invite you to make
16 submissions, if any, from an operational point of view if this would
17 be feasible.

18 MR. NILSSON: Thank you, Your Honour. Yes, very shortly. It's
19 feasible for the Registry to facilitate the presence of the two
20 witnesses during that week.

21 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you for that.

22 The Panel would require the availability of the Defence teams
23 for Friday, 8 November, and the whole week of November, in order to
24 try to finalise the SPO case in that week, and that would include the
25 14th and 15th November. This would allow the Specialist Prosecutor's

1 Office to conclude -- and I have heard the possibility of a third
2 witness. And we are planning here, because to govern is to look
3 ahead, we say in Dutch. That's the only way we can make things work.
4 This would allow the SPO to conclude the presentation of its evidence
5 in the week from the 11th till 15th November.

6 And we therefore ask the parties - the Defence teams - to ensure
7 and to confirm their availability for not only the 8th, which is the
8 Friday, but also the entire week from Monday, 11th, till Friday, 15th
9 November 2024. And we would kindly receive your confirmation by
10 tomorrow, 1.00. Very well.

11 Submissions on questions regarding the order of appearance and
12 issues related to the question of witnesses were requested from the
13 three Defence teams. And the Defence teams responded that for now
14 you're not in a position, but we have heard when you will be in a
15 position, so we noted that. In our directions and oral orders, we
16 might come back to this specific issue.

17 Next topic, and that is the last topic on our agenda for the
18 submissions -- I will give you the floor, please allow me --

19 MR. CADMAN: [Microphone not activated].

20 PRESIDING JUDGE VELDT-FOGLIA: Yes, this will be the last topic
21 from the agenda in the decision we sent to you regarding the Trial
22 Preparation Conference.

23 Defence counsel for Mr. Shala, you have the floor.

24 MR. CADMAN: The only comment I would make on the order of
25 presentation of the Prosecution witnesses, certainly we can indicate

1 what we believe would be the amount of time required for
2 cross-examination as far as Mr. Shala is concerned for each of those
3 witnesses.

4 But what I would not want to see is for us trying to make sure
5 we fit everything in that week, and then have one of the witnesses,
6 potentially the second witness, dealt with partly in November, partly
7 in December. Just for the Panel to be conscious that it is desirable
8 for the witness, both examination-in-chief and cross-examination, to
9 be dealt with within that same time period. So if that means it has
10 to go off to December, I think that would be the preference rather
11 than breaking it off partly in November, partly in December, if that
12 makes sense.

13 PRESIDING JUDGE VELDT-FOGLIA: I'm looking again.

14 What the Panel intends to do, maybe that would be the clearest
15 thing, that we would do the cross-examination -- we would examine the
16 first witness completely, and then we would proceed -- all Defence
17 teams, and then we would proceed to the second witness. That is how
18 we intend to proceed.

19 And if that -- the idea would be, the planning would be that
20 that could fit in that week. And if it for one reason or the
21 other -- or we foresee already on beforehand that it would not work
22 out in that way, then, of course, we -- I already told you we are not
23 going to rush.

24 MR. CADMAN: [Microphone not activated].

25 PRESIDING JUDGE VELDT-FOGLIA: Yeah, clear?

1 MR. CADMAN: I'm grateful.

2 PRESIDING JUDGE VELDT-FOGLIA: Very well.

3 Then we go to the last item on the agenda which is the non-oral
4 evidence.

5 The Panel requested submissions by the parties as to whether the
6 admissibility of non-oral evidence should be decided at the time of
7 its submission at trial or whether it can be deferred to the judgment
8 after giving parties an opportunity to make submissions, if they wish
9 to do so, on the admissibility of any such items.

10 We have taken note of the submissions of the Specialist
11 Prosecutor's Office. We have some further questions. And you have
12 already given us a heads-up on this, but because of the detail of the
13 questions, I would like to go into private session, and then we can
14 see if the matter is prone to be discussed in private or that we can
15 revert back to public.

16 Court Officer, can you bring us into private session, please.

17 [Private session]

18 [Private session text removed]

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19 [Open session]

20 THE COURT OFFICER: Your Honours, we're in public session.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.

22 I repeat, for the sake of publicity, that Defence counsel for
23 Mr. Shala was asked for -- to give further submissions, if any, with
24 regard to his submissions in filing 482, paragraph 19. And he
25 indicated that the point is clear and, in addition, there's no need

1 to make any further submissions than set out in his submissions for
2 the Trial Preparation Conference.

3 My next question will be for Defence counsel for Mr. Bahtijari.
4 We note that you also will seek exclusion of certain items, and that
5 you consider that such challenges should be decided before the
6 testimony of the witnesses.

7 Defence counsel, do you want to make any further submissions in
8 this respect?

9 MS. GERRY: [via videolink] Yes, we do. And as I understand it,
10 the Prosecution are going to make motions in those respects, so we
11 would like to reply to those motions in more detail than we've given
12 you up till now, please.

13 PRESIDING JUDGE VELDT-FOGLIA: You will be given -- we will
14 litigate this, as foreseen in the Rules of Procedure and Evidence,
15 with the -- the moving party, with submissions, response, and reply.

16 MS. GERRY: [via videolink] Very grateful. Thank you. Nothing
17 else to add.

18 PRESIDING JUDGE VELDT-FOGLIA: Noted.

19 And then Defence counsel for Mr. Januzi, if you would like to
20 make further submissions in addition to your reference to the
21 pre-trial brief, and I refer to paragraphs 65(b), (c), and (d),
22 regarding the admissibility and your opposition to them.

23 MR. REES: [via videolink] Yeah. Well, in relation to the
24 matters we've set out at paragraph 65(b), (c), and (d), as I
25 understand it from Mr. Hafetz, the Prosecution are now agreeing to

1 make a motion to admit their exhibited materials. Rather like my
2 colleagues Ms. Gerry and Mr. Cadman, I think the best course would be
3 for me to wait to see what those motions say, and I will reply to
4 them in accordance with the Rules of Procedure and Evidence.

5 The Prosecution has seen the issues that we have raised in our
6 pre-trial brief. We know that because Mr. Hafetz has just
7 acknowledged that shortly before. So we will await their motions.

8 We agree with the Prosecution and my learned friends that
9 admissibility in this case should be determined before the relevant
10 witness is testifying.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

12 Now, this concludes the issues set out in the decision on the
13 Trial Preparation Conferences.

14 I will address some further points in addition to what we have
15 discussed. Yes, the late submission of filings and related issue.

16 First, the Panel notes that the Defence for Mr. Januzi files its
17 submissions for today's hearings, filing 495, on the day after the
18 deadline set by the Panel and without requesting an extension of
19 time.

20 We also noted that the Defence for Mr. Bahtijari filed, without
21 requesting leave, further submissions for today's hearing on Friday,
22 the 4th, which is three days after the deadline set by the Panel.
23 And we also note that the Defence for Mr. Bahtijari did not make a
24 filing on the record with information as to the presence of counsel,
25 co-counsel during the hearings foreseen up until 20 December 2024 as

1 ordered in its decision 479, paragraph 32(b), and sent an e-mail with
2 that information.

3 We urge the Defence to abide by the deadlines and orders or
4 directions set by the Panel on any given matter and to resort to the
5 legal avenues provided under the Rules for the extension of time
6 limits in case it's not in a position to meet the established
7 deadlines.

8 And we stress in particular that we will exercise our discretion
9 under Rule 9 of the Rules to dismiss or -- to consider or to dismiss
10 future filings submitted out of time. The parties are put on notice
11 that by not abiding by the directions set by the Panel, their
12 submissions and requests may, as a result, not be considered by the
13 Panel.

14 Then there is the next point, that is the reclassification
15 orders. And for this part of the session, I would like to ask the
16 Court Officer to move us into private session.

17 [Private session]

18 [Private session text removed]

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7 [Open session]

8 THE COURT OFFICER: Your Honours, we are in public session.

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

10 I saw a hand of the Defence for Mr. Bahtijari, but now the hand
11 has disappeared. I assume that there's no point --

12 MS. GERRY: [via videolink] Yes, I was going to give an
13 explanation but I don't think it's necessary. I hear Your Honours'
14 orders. You know my personal circumstances last week. I don't think
15 it needs a submission today, and I put my hand back down.

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

17 At this point, I would like to ask the parties whether they have
18 other issues that they would like to raise. And please be mindful if
19 it can be done in public or in private session.

20 And I will start with the Specialist Prosecutor's Office.

21 MR. HAFETZ: Nothing other, Your Honour, than just to make the
22 Court aware that per the Bahtijari request in the submissions for
23 this conference regarding the potential need for a site visit, we
24 have spoken *inter partes* with counsel, and I am optimistic that we
25 will be able to resolve the information -- obtaining the information

1 that counsel has requested, and it might obviate the need for her
2 request for a site visit. So we'll continue to work forward on that.
3 Otherwise, nothing from us.

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much for that.
5 And we applaud this *inter partes* approach to different requests that
6 are outstanding without bringing on board the Panel.

7 Is there something -- are there any further submissions from the
8 Registry?

9 MR. NILSSON: Thank you, Your Honour. Nothing further from the
10 Registry.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

12 Then I go to Defence counsel for Mr. Shala. You have the floor
13 if you would like to make further submissions.

14 MR. CADMAN: Thank you, Your Honour. Only one point which
15 hasn't been dealt with which is the question of witness preparation.

16 Now, obviously, we have made written submissions on that basis.
17 We oppose any form of witness preparation, and actually refer to this
18 Panel's previous decision in the Salih Mustafa case as the
19 appropriate course of action in this matter. We can, of course, put
20 in further submissions as required, but I just know it wasn't dealt
21 with today.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel, for
23 your submissions. I said today earlier the Panel notes that the
24 Shala Defence has no objection to the guidelines on witness
25 familiarisation adopted by the Panel in Case 04. So I thought I

1 dealt with it sufficiently. If you want to say anything further ...

2 MR. CADMAN: Well, Your Honour, there is a difference between
3 witness familiarisation with the Witness Protection Unit and witness
4 preparation as may have been proposed. Maybe I've misread that, but
5 certainly that was matter that we had addressed in the written
6 submissions.

7 PRESIDING JUDGE VELDT-FOGLIA: Yes, I've seen that. But what I
8 understood was that you don't oppose, you favour, the line --

9 MR. CADMAN: Yes.

10 PRESIDING JUDGE VELDT-FOGLIA: -- adopted --

11 MR. CADMAN: Yes.

12 PRESIDING JUDGE VELDT-FOGLIA: -- this Panel. And it was my
13 intention with this phrase I just read out to you to make the point
14 that that was your position. So I think that we have dealt with it
15 and we have taken note of your submissions.

16 MR. CADMAN: I'm grateful for the clarification, Your Honour.
17 Thank you.

18 PRESIDING JUDGE VELDT-FOGLIA: Then I go to the Defence for
19 Mr. Bahtijari. Are there any issues you think we should discuss at
20 this moment in time?

21 MS. GERRY: [via videolink] Very short issues.

22 Firstly, the site visit. We are in communication. The issues
23 have gone on for quite a long time, but I think we're much closer
24 than we were before, so I'm confident that can be resolved as well.
25 So we'll take the applause. Thank you very much.

1 Secondly, we would like the opportunity to make more detailed
2 submissions on witness preparations as aside from familiarisation and
3 to make those in writing with the appropriate authorities and cases
4 to assist the Court. That would be our preferred approach, if the
5 Court is -- would welcome further written submissions. Our
6 submissions at the moment in the documents for this hearing were
7 somewhat short, and we don't believe we've provided you with
8 everything that you would need.

9 So I understand what you've just expressed to counsel for
10 Mr. Shala, but that would be our preferred position, that you
11 timetable some submissions on the question of preparation, not least
12 because it's inextricably linked to the question of whether or not
13 the Prosecution documents are admissible. The Prosecution are
14 seeking to rely on documents that it's likely that they would put to
15 the witness in preparation. So it's our submission that probably the
16 best way to do things would be when the Prosecution make their
17 submissions about admissibility in their motions, that that should
18 include preparation. Because if certain documents are excluded, in
19 our submission they should not be put to the witness before the
20 witness gives evidence.

21 So that's -- our submission is the question of witness
22 preparation should be included in the motions and the responses that
23 relate to the exclusion of those documents prepared by members of the
24 Specialist Prosecutor's Office and their related operatives, I'll
25 call it that.

1 The third issue relates to medical. I'm not going to say
2 anything that need make us go into private session. I'm only going
3 to say it in this short way, that we have seen a strictly
4 confidential decision, and the consequence of that is we will try
5 somehow to obtain some medical evidence ourselves. And if that's
6 possible, I'm just giving -- if it's appropriate for me to give the
7 Court notice, or at least I'll adopt the Prosecution word "flagging,"
8 that may take a little bit longer than 2 November.

9 We will do our best to achieve that by 2 November, but it may
10 take a little longer, and we'll keep the Court updated on that
11 progress, every -- needs for approval and so forth. So I don't want
12 to go into detail in public session, but we will do our best to
13 obtain that ourselves and obtain it as quickly as possible.

14 We have identified someone. There will be a question as to cost
15 and availability.

16 Those are the three matters that we would wish to mention now.
17 Thank you.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel for
19 Mr. Bahtijari. We take note of what you just said regarding the site
20 visit.

21 Regarding the witness preparation, what I do understand is in
22 our trial preparation decision we mentioned familiarisation. And now
23 I understand better why the Defence wishes to make any further
24 observations on preparation. We will look into that. And if we
25 consider it necessary, then we will give you some additional time to

1 express your views on that, too.

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

3 PRESIDING JUDGE VELDT-FOGLIA: And that also goes for Defence
4 counsel for Mr. Shala. Yeah? Good. Very well.

5 Then it's the turn for Defence counsel for Mr. Januzi.
6 Specialist Counsel, you have the floor.

7 MR. REES: [via videolink] Thank you, Your Honour. I take the
8 same position in relation to issues on familiarisation as those
9 raised by Ms. Gerry and Mr. Cadman earlier.

10 The only other matter that I'd wish to ask the Court about is
11 what the plan is for the rest of this week. And in particular, can I
12 seek some clarification as to what the Court wishes us to do about
13 the proposal to sit on 8 November through to the 11th to the 15th. I
14 understood that the Court wants us to indicate our position as
15 regards availability and the appropriateness of beginning opening
16 statements and, indeed, the evidence during that period and indicate
17 that by a time tomorrow.

18 Does Your Honour wish that to be indicated by way of a filing or
19 is an e-mail to the Court Officer sufficient?

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you. I think I've been
21 clear. Tomorrow at 12.00, it's a confirmation of your availability.
22 It's not an invitation.

23 And, secondly, a filing is important to make because we want to
24 have everything on record. And the problem is with e-mails, that
25 they are not on record. And so we also try to minimise. Sometimes

1 it is necessary. But the less we do in e-mails, the more we serve
2 the public interest. That's the only reason.

3 And I do understand, Mr. Rees, that it is more cumbersome to
4 make a filing than an e-mail, but then it would just go into the dark
5 holes of --

6 MR. REES: [via videolink] I understand, Your Honour. Thank you
7 for that clarification. It was all I sought.

8 And are we continuing to sit tomorrow and Wednesday as well?

9 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, you're getting
10 ahead --

11 MR. REES: [via videolink] Ah.

12 PRESIDING JUDGE VELDT-FOGLIA: -- because, of course --

13 MR. REES: [via videolink] I --

14 PRESIDING JUDGE VELDT-FOGLIA: -- this Panel --

15 MR. REES: [via videolink] I'll wait.

16 PRESIDING JUDGE VELDT-FOGLIA: -- will indicate what the
17 schedule is. You must trust me on that. So very well.

18 All parties and Registry have indicated that -- for now, that
19 there's nothing else to discuss with the Panel. So that means that
20 for today we -- I will adjourn, and we will meet again tomorrow at
21 11.30, so for the last session. We will prepare any oral orders that
22 need to be prepared, directions given.

23 And then after the oral orders, we will indicate what the
24 decisions will be -- or which decisions this Panel intends to further
25 issue in the upcoming weeks so that you -- so that's clear for you.

1 And -- no, I said 11.30, but that's not a good idea. We will
2 meet at 2.00, 2.00. Sorry for that. 2.00. And I think this -- yes,
3 tomorrow, 2.00, we will give our oral orders. We will indicate what
4 decisions we will be issuing, and then we are to close in that moment
5 the Trial Preparation Conference. And so, for now, we have been very
6 efficient, I must say, this morning. Thank you for your
7 collaboration.

8 I thank the parties. I thank the Registry for their attendance.
9 I thank the interpreters and our stenographer and the audio-visual
10 technicians and our security personnel for their assistance.

11 And also, again, I'm very pleased for this *inter partes* positive
12 spirit in which all teams and the SPO is trying to make these
13 proceedings go forward.

14 Okay. The hearing is adjourned.

15 --- Whereupon the Trial Preparation Conference
16 adjourned at 12.35 p.m.

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