



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-04
Before: Pre-Trial Judge
Judge Nicolas Guillou
Registrar: Dr Fidelma Donlon
Date: 12 October 2020
Language: English
Classification: *Strictly Confidential and Ex Parte*

**Decision on the Registrar's Request
for Authorisation to Disclose the Confirmed Indictment**

Specialist Prosecutor

Jack Smith

Registrar

Fidelma Donlon

THE PRE-TRIAL JUDGE,¹ pursuant to Articles 4, 39(1), 39(12), and 55 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 23(8), 49(1), 198(1) and 208(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders the following decision.

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 12 June 2020, the Pre-Trial Judge confirmed an indictment against Pjetër Shala ("Mr Shala") for war crimes committed under Articles 14(1)(c) and 16(1)(a) of the Law.² The Pre-Trial Judge ordered the temporary non-disclosure of the indictment, but permitted the Specialist Prosecutor to disclose the (redacted) version or part thereof to authorities of Kosovo, a Third State or another entity, if deemed necessary for the purposes of an investigation or prosecution.³

2. Upon confirmation of the indictment, on 12 June 2020, the Pre-Trial Judge also ordered the arrest of Mr Shala and his transfer to the detention facilities of the Specialist Chambers, managed by the Registrar, in the Host State ("SC detention facilities").⁴ To this end, the Pre-Trial Judge directed the Registrar to transmit the arrest warrant and transfer order to the competent authorities of the Kingdom of Belgium, where Mr Shala resides, or any other Third State, as the case may be, for service and execution.⁵

¹ KSC-BC-2020-04, F00001, President, *Decision Assigning a Pre-Trial Judge*, 14 February 2020, public.

² KSC-BC-2020-04, F00007, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Pjetër Shala* ("Confirmation Decision"), 12 June 2020, strictly confidential and *ex parte*.

³ Confirmation Decision, paras 136, 138.

⁴ KSC-BC-2020-04, F00008, Pre-Trial Judge, *Decision on Request for Arrest Warrant and Transfer Order* ("Decision on Arrest and Transfer"), 12 June 2020, strictly confidential and *ex parte* with two Annexes strictly confidential and *ex parte*.

⁵ Decision on Arrest and Transfer, para. 30(c).

3. On 19 June 2020, upon order of the Pre-Trial Judge,⁶ the Specialist Prosecutor filed a strictly confidential, final version of the indictment as confirmed (“Confirmed Indictment”) and a redacted copy thereof.⁷
4. On 30 July 2020, the Registrar requested the cooperation of the competent Belgian authorities in the arrest of Mr Shala and his transfer to the SC detention facilities.⁸
5. On 13 September 2020, the competent Belgian authorities expressed their willingness to execute the Registrar’s request, subject to a number of caveats, including the receipt of a copy of the Confirmed Indictment against Mr Shala so that they may decide “whether the double jeopardy principle applies and whether the handing over should be conditional or not”.⁹
6. On 18 September 2020, the Registrar submitted a request to the Pre-Trial Judge for authorisation to disclose a strictly confidential, redacted version of the Confirmed Indictment to the competent Belgian authorities for the purposes of cooperation in the arrest of Mr Shala and his transfer to the SC detention facilities (“Request”).¹⁰

II. APPLICABLE LAW

7. Pursuant to Article 39(1) of the Law, the Pre-Trial Judge may issue any necessary orders or decisions to ensure the case is prepared properly and expeditiously for trial. Pursuant to Article 39(12) of the Law, the Pre-Trial Judge may seek cooperation of Third States as may be necessary for any of these purposes.

⁶ Confirmation Decision, paras 140(b), (d).

⁷ KSC-BC-2020-04, F00010, Specialist Prosecutor, *Submission of Confirmed Indictment*, 19 June 2020, strictly confidential and *ex parte*, with Annex 1 (Confirmed Indictment) and Annex 2 (Redacted Confirmed Indictment), strictly confidential and *ex parte*.

⁸ KSC-BC-2020-04, F00011, Registrar, *Request for Authorisation to Disclose the Confirmed Indictment to the Competent Authorities of a Third State (“Request”)*, 18 September 2020, strictly confidential and *ex parte*, Annex 1 (Note Verbale), strictly confidential and *ex parte*.

⁹ Request, Annex 2 (Response, Service Public Fédéral Justice), 31 July 2020, strictly confidential and *ex parte*, p. 4.

¹⁰ Request, para. 10.

8. In accordance with Articles 4 and 55 of the Law and Rule 208(1) of the Rules, the Registry may request the assistance and cooperation of Third States, as necessary for the investigation and prosecution of persons accused of committing crimes within the jurisdiction of the Specialist Chambers. Pursuant to Rule 23(8) of the Rules, the Registrar shall take all measures within his or her responsibility to ensure that decisions of the Specialist Chambers are executed. In accordance with Rules 49(1) and 198(1) of the Rules, the Registrar shall transmit all outgoing communications, including decisions or orders issued by the Specialist Chambers, to the competent authorities.

III. DISCUSSION

9. At the outset, the Pre-Trial Judge recalls that the disclosure of a non-public indictment or parts thereof by the Specialist Prosecutor to competent Third State authorities is permitted under Rule 88(3) of the Rules, where such disclosure is necessary for the purpose of an investigation or prosecution. In the case at hand, the Pre-Trial Judge authorised the Specialist Prosecutor to undertake such a disclosure, if necessary. In the Request, a comparable authorisation is sought by the Registrar, who has been directed by the Pre-Trial Judge, in conformity with Rule 49(1) of the Rules, to transmit the arrest and transfer orders in relation to Mr Shala to the competent authorities for the purpose of their execution.

10. The Pre-Trial Judge notes that, in response to the Registrar's request for arrest and transfer, the competent Belgian authorities have requested to be provided with a copy of the Confirmed Indictment in order to ascertain whether double jeopardy considerations apply. The Pre-Trial Judge considers that, as requested by the Registrar, the disclosure of a redacted copy of the Confirmed Indictment would be sufficient to address adequately the queries of the Belgian authorities. To this end, the Pre-Trial Judge finds it necessary that the Registrar consult with the SPO on disclosing

either the redacted version of the Confirmed Indictment as submitted by the SPO on 19 June 2020,¹¹ or another redacted version, as indicated by the SPO.

11. For the above reasons, the Pre-Trial Judge finds that the disclosure of a redacted version of the Confirmed Indictment to the competent Belgian authorities is necessary for the purposes of the Registrar carrying out her responsibilities in relation to the arrest of Mr Shala and his transfer to the SC detention facilities.

IV. DISPOSITION

12. In light of the foregoing, the Pre-Trial Judge hereby:

- a. Instructs the Registrar to consult with the SPO on the redacted version of the Confirmed Indictment to be disclosed to the competent Belgian authorities; and
- b. Authorises the Registrar to disclose such redacted version of the Confirmed Indictment to the competent Belgian authorities for the purposes of cooperation in the arrest of Mr Shala and his transfer to the SC detention facilities.



Judge Nicolas Guillou

Pre-Trial Judge.

Dated this Monday, 12 October 2020

At The Hague, the Netherlands.

¹¹ KSC-BC-2020-04, F00010/A02, Specialist Prosecutor, Annex 2 (Redacted Confirmed Indictment), strictly confidential and *ex parte*.