



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-04
Before: Pre-Trial Judge
Judge Nicolas Guillou
Registrar: Dr Fidelma Donlon
Filed by: Dr Fidelma Donlon
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Public Redacted Version of

**‘Report on the Arrest and Transfer of Pjetër Shala to the Detention Facilities’,
filing F00021, dated 16 April 2021**

Specialist Prosecutor’s Office

Jack Smith

Counsel for the Accused

Jean-Louis Gilissen

I. INTRODUCTION

1. Pursuant to the Decision on Arrest and Transfer,¹ the Registrar hereby reports to the Pre-Trial Judge on the arrest and transfer of Mr Pjetër Shala ('Mr Shala') to the Detention Facilities of the Specialist Chambers ('Detention Facilities') located in the Netherlands ('Host State').

II. PROCEDURAL HISTORY

2. On 12 June 2020, the Pre-Trial Judge issued a decision² confirming charges against Mr Shala under Articles 14(1)(c) and 16(1)(a) of the Law³.

3. On 12 June 2020, the Pre-Trial Judge granted the request by the Specialist Prosecutor's Office ('SPO') for an arrest warrant and transfer order.⁴ In the Decision on Arrest and Transfer, the Pre-Trial Judge directed the Registrar, in consultation with the SPO, to transmit the arrest warrant and transfer order to the competent authorities of the Kingdom of Belgium ('Belgium'), or any other Third State, as the case may be, for service and execution.⁵

4. The SPO submitted a redacted version of the Confirmed Indictment ('Redacted Confirmed Indictment') on 19 June 2020.⁶

5. On 30 July 2020, the Registrar requested via Note Verbale the cooperation of the competent Belgian authorities in the arrest of Mr Shala and his transfer to the detention facilities of the Specialist Chambers in the Host State.⁷

¹ KSC-BC-2020-04/F00008, Decision on Request for Arrest Warrant and Transfer Order ('Decision on Arrest and Transfer'), 12 June 2020, strictly confidential and *ex parte*, paras 29, 30(g).

² KSC-BC-2020-04/F00007, Decision on the Confirmation of the Indictment Against Pjetër Shala, 12 June 2020, strictly confidential and *ex parte*.

³ Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ('Law'), 3 August 2015.

⁴ KSC-BC-2020-04/F00008, para. 30(a)-(b).

⁵ *Ibid.*, para. 30(c).

⁶ KSC-BC-2020-04/F00010/A02, Annex 2 to Submission of Confirmed Indictment ('Redacted Confirmed Indictment'), 19 June 2020, strictly confidential and *ex parte*; *see also* KSC-BC-2020-04/F00007, paras 140(b), (d).

⁷ *See* KSC-BC-2020-04/F00011/A01, Annex 1 to Request for Authorisation to Disclose the Confirmed Indictment to the Competent Authorities of a Third State, 18 September 2020.

6. On 18 September 2020, the Registrar requested authorisation to disclose the Redacted Confirmed Indictment to the competent Belgian authorities for the purposes of cooperation in the arrest and transfer.⁸
7. On 2 December 2020, the Liège Council Chamber declared the arrest warrant issued by the Specialist Chambers enforceable pursuant to Article 86 of the Belgian Law on Cooperation.⁹
8. On 5 March 2021, the Belgian Federal Prosecutor's Office transmitted the arrest warrant and transfer order to the Belgian Federal Police for execution.
9. On 16 March 2021, the Registrar notified the Pre-Trial Judge that Mr Shala was arrested in Belgium by the Belgian Federal Police.¹⁰
10. On 17 March 2021, the Registrar further notified the Pre-Trial Judge that Mr Shala was pursuing legal remedies in Belgium and had filed an appeal pursuant to Article 86(1) of the Belgian Law on Cooperation.¹¹
11. The SPO submitted a lesser redacted version of the Confirmed Indictment ('Lesser Redacted Indictment') on 31 March 2021.¹²
12. On 7 April 2021, the Registrar notified the Pre-Trial Judge that the Belgian *Chambre des mises en accusation* (indictment division) had issued a judgment on 6 April 2021 declaring Mr Shala's appeal unfounded.¹³

⁸ KSC-BC-2020-04/F00011, Request for authorisation to disclose the Confirmed Indictment to the competent authorities of a Third State, 18 September 2020, strictly confidential and *ex parte*; KSC-BC-2020-04/F00012, Decision on the Registrar's Request for Authorisation to Disclose the Confirmed Indictment, 12 October 2020, strictly confidential and *ex parte*.

⁹ See KSC-BC-2020-04/F00014/A01, Annex 1 to the Interim Report on the Execution of the Order for Transfer of Pjetër Shala, pp. 56-70 (Consolidated version of Title VI^{ter} of Act of 29 March 2004 concerning the cooperation with the International Criminal Court and the international criminal tribunals) ('Belgian Law on Cooperation').

¹⁰ KSC-BC-2020-04/F00013, Notification of Arrest of Pjetër Shala Pursuant to Rule 55(4), 16 March 2021, strictly confidential and *ex parte*.

¹¹ KSC-BC-2020-04/F00014, Interim Report on the Execution of the Order for Transfer of Pjetër Shala, 17 March 2021, strictly confidential and *ex parte*.

¹² KSC-BC-2020-04/F00014/A01, Annex 1 to Submission of Lesser Redacted and Public Redacted Versions of Confirmed Indictment and Related Requests, 31 March 2021, strictly confidential and *ex parte*.

¹³ KSC-BC-2020-04/F00017, Further Report on the Execution of the Order for Transfer of Pjetër Shala, 7 April 2021, with supplement, KSC-BC-2020-04/F00018, 12 April 2021, strictly confidential and *ex parte*.

13. On 15 April 2021, following the conclusion of judicial proceedings in Belgium, Mr Shala was transferred to the Detention Facilities in the Host State, and the Registrar conditionally assigned Counsel to Mr Shala.¹⁴

III. REPORT

14. The Pre-Trial Judge directed the Registrar to submit a report on the arrest and transfer of Mr Shala, including any relevant details and information provided by the competent Belgian authorities or the SPO.

A. ARREST

15. Early on the morning of 16 March 2021, Mr Shala was placed under arrest by officers of the Belgian Federal Police [REDACTED]. The Belgian Federal Police performed a security search on Mr Shala, and no personal property was removed.

16. The SPO Investigation Operations Leader and other SPO staff members (collectively, 'SPO team'), together with an interpreter, were present for the arrest operation.¹⁵ The Belgian Federal Police and the SPO team wore facemasks throughout the arrest. Mr Shala was also provided with a facemask.

17. An officer of the Belgian Federal Police confirmed Mr Shala's identity and served him with certified copies (in both English and Albanian) of the Arrest Warrant, Transfer Order, and Redacted Confirmed Indictment.¹⁶ Mr Shala refused to sign to acknowledge service of those three documents and refused to take the documents provided to him at that time.

¹⁴ KSC-BC-2020-04/F00019, Notification of Reception of Pjetër Shala in the Detention Facilities of the Specialist Chambers and Conditional Assignment of Counsel, 15 April 2021, strictly confidential and *ex parte*.

¹⁵ Annex 2, SPO Report (Arrest).

¹⁶ Annex 1, Memoranda of Service; *see also* KSC-BC-2020-04/F00008/A01, Arrest Warrant for Mr Pjetër Shala ('Arrest Warrant'), 12 June 2020, strictly confidential and *ex parte*; KSC-BC-2020-04/F00008/A02, Order for Transfer to Detention Facilities of the Specialist Chambers ('Transfer Order'), 12 June 2020, strictly confidential and *ex parte*; KSC-BC-2020-04/F00010/A02, Redacted Confirmed Indictment, 12 June 2020, strictly confidential and *ex parte*.

18. The Belgian Federal Police also served Mr Shala with the 2 December 2020 order by the Liège Council Chamber declaring the Arrest Warrant enforceable pursuant to Article 86 of the Belgian Law on Cooperation.

19. After the Belgian Federal Police informed Mr Shala of his rights under Belgian law,¹⁷ the SPO Investigation Operations Leader further informed Mr Shala in English, translated into French by the interpreter, that a warrant had been issued for his arrest by the Specialist Chambers.

20. At 06:45, the SPO Investigation Operations Leader, in the presence of another SPO officer, informed Mr Shala in English of his rights under the framework of the Specialist Chambers, which were translated into French by the interpreter.¹⁸ The SPO officer informed Mr Shala, *inter alia*, that he has: the right to legal assistance of Specialist Counsel of his choice and to have Specialist Counsel assigned free of charge if he does not have sufficient means to pay for it; the right to notify or have notified a family member or another appropriate person of his choice about his arrest; and the right to remain silent and that any statement he makes shall be recorded and may be used in evidence. The SPO Investigation Operations Leader also provided Mr Shala with a hardcopy of Articles 21 and 41(4) of the Law, which had additionally been read aloud to him.

21. Mr Shala refused to confirm with his signature that he had been provided with information about his rights.¹⁹

22. Following his arrest, a search of Mr Shala's residence was conducted, during which Mr Shala was represented by Counsel appointed by the Registry.²⁰

23. At 09:15, following the search of his residence, the Belgian Federal Police officers transported Mr Shala to a technical hearing ('examination') before an examining

¹⁷ Annex 2, SPO Report (Arrest); *see also* KSC-BC-2020-04/A01, Annex 1 to Prosecution Report on Search and Seizure Pursuant to KSC-BC-2020-04/F00009, 30 March 2021, strictly confidential and *ex parte*, p. 3.

¹⁸ Annex 2, SPO Report (Information About Rights).

¹⁹ Annex 2, SPO Report (Information About Rights).

²⁰ *See* KSC-BC-2020-04, Prosecution Report on Search and Seizure Pursuant to KSC-BC-2020-04/F00009, 30 March 2021, strictly confidential and *ex parte*.

magistrate in Liège. Mr Shala informed the Belgian Federal Police that he did not desire medical assistance, and the Belgian Federal Police notified a trusted person of Mr Shala's choice that he had been deprived of his liberty.

24. At 09:58, Mr Shala requested the assistance of a lawyer, and the Belgian Federal Police launched the *Salduz* (legal aid) procedure. Mr Shala was provided with the assistance of a legal aid lawyer both before and during the examination.

25. The examination was conducted between 12:20 and 12:30, in the presence of the SPO Investigation Operations Leader. Mr Shala was provided with a written statement of his rights under Belgian law prior to the examination.

26. During the examination, Mr Shala indicated that he understood his rights and that he intended to lodge an appeal.

27. Following the examination, the Belgian Federal Policed transported Mr Shala to Lantin prison near Liège. At 14:25, Mr Shala was admitted to Lantin prison, where he was detained pending any appeal and the conclusion of legal proceedings in Belgium.

28. Mr Shala formally lodged his appeal on 16 March 2021, and hearings were conducted on 25 March and 1 April 2021 for the purpose of verifying a procedural issue raised by Mr Shala in his appeal.²¹

29. On 6 April 2021, the Belgian *Chambre des mises en accusation* (indictment division) declared Mr Shala's appeal unfounded.²²

30. Following the judgment on Mr Shala's appeal, the Registrar made the necessary arrangements for the prompt transfer of Mr Shala to the Detention Facilities, in accordance with the Decision on Arrest and Transfer.²³

²¹ See KSC-BC-2020-04/F00017, para. 7.

²² Ibid., para. 8; see also KSC-BC-2020-04/F00018/A01, Decision of Belgian *Chambre des mises en accusation* (English translation), p. 13.

²³ See KSC-BC-2020-04/F00008, paras 25, 30(f).

B. TRANSFER

31. On 15 April 2021, the transfer of Mr Shala from the custody of the Belgian Federal Police to the custody of the Specialist Chambers was executed by the Registry's mission security coordinator ('MSC'), accompanied by an interpreter and a medical doctor (collectively, 'escort team').²⁴

32. At 09:30, Mr Shala was transported by the Belgian Federal Police from Lantin prison to the transfer location at the border between Belgium and the Netherlands. Mr Shala was security searched prior to transport.

33. At 11:15, the Belgian Federal Police arrived at the transfer location, where they met the escort team.

34. At 11:35, [REDACTED].²⁵

35. Following [REDACTED], the transfer process commenced. The escort team wore facemasks throughout the transfer process.²⁶

36. The MSC confirmed Mr Shala's identity and ensured that Mr Shala received a new facemask and hand sanitiser gel.²⁷ The MSC also offered Mr Shala water [REDACTED].²⁸ [REDACTED].²⁹

37. The MSC explained the transfer process to Mr Shala and informed him of his rights, which were translated into Albanian by the interpreter, in the presence of two officers of the Belgian Federal Police.³⁰ The MSC informed Mr Shala, *inter alia*, that he has the right to legal assistance of Specialist Counsel of his choice and to have Specialist Counsel assigned free of charge if he does not have sufficient means to pay for it and the right to notify or have notified a family member or another appropriate person of his choice about the arrest and transfer. The MSC further informed Mr Shala

²⁴ Annex 3, Registry Report (Transport Log).

²⁵ Annex 3, Registry Report [REDACTED].

²⁶ Annex 3, Registry Report (COVID Checklist).

²⁷ Annex 3, Registry Report (COVID Checklist); Annex 3, Registry Report (Transport Log).

²⁸ Annex 3, Registry Report (Transport Log).

²⁹ Annex 3, Registry Report (Transport Log); Annex 3, Registry Report [REDACTED].

³⁰ Annex 3, Registry Report (Information About Rights).

that he would be allowed to call a family member and Counsel after his arrival at the Detention Facilities and notify them directly of his transfer.³¹ The MSC read aloud to Mr Shala his rights under Articles 21 and 41(4) of the Law and provided him with a hardcopy of those provisions.

38. Mr Shala refused to confirm with his signature that he had been provided with information about his rights.³² He stated that he did not recognise the Specialist Chambers, that it was an illegal court, and that everything should go through his Counsel. [REDACTED].³³

39. At 12:30, the MSC signed for the transfer of custody of Mr Shala from the Belgian Federal Police to the Specialist Chambers.³⁴ The MSC also signed for the transfer of Mr Shala's personal property.³⁵

40. At 13:04, the MSC served Mr Shala with a certified copy of the Lesser Redacted Indictment (in both English and Albanian).³⁶ Mr Shala refused to sign to acknowledge service.³⁷

41. At 13:11, the MSC transferred Mr Shala into the custody of the Transport and Support Service of the Dutch Prison Administration ('DV&O'), together with copies of the Lesser Redacted Indictment that had been served on him.³⁸ The personal property of Mr Shala was retained by the MSC and delivered directly to the Chief Detention Officer of the Detention Management Unit ('DMU') of the Registry at 16:49.³⁹

³¹ Annex 3, Registry Report (Transport Log).

³² Annex 3, Registry Report (Information About Rights).

³³ Annex 3, Registry Report (Transport Log).

³⁴ Annex 3, Registry Report (Transfer of Custody).

³⁵ Annex 3, Registry Report (Transfer of Custody).

³⁶ Annex 1, Memoranda of Service.

³⁷ Annex 3, Registry Report (Transport Log).

³⁸ Annex 3, Registry Report (Transport Log); Annex 3, Registry Report (Request for Transport).

³⁹ Annex 3, Registry Report (Transfer of Custody).

42. Mr Shala requested a short break before beginning the journey to the Detention Facilities.⁴⁰ At 13:25, the Belgian Federal Police departed the transfer location, and DV&O crossed the border towards the Netherlands.

43. At approximately 14:35, DV&O transferred Mr Shala into the custody of the Chief Detention Officer, who received Mr Shala into the Detention Facilities.⁴¹ DV&O reported to the MSC that there were no problems during transport.

44. The Chief Detention Officer promptly notified the Registrar, who immediately informed the Pre-Trial Judge⁴² and the Head of the Defence Office in accordance with Detention Rule 10, as well as the President and the Ombudsperson. The Registrar also informed the International Committee of the Red Cross.⁴³

45. Upon arrival at the Detention Facilities in the Host State, Mr Shala was processed in accordance with the Rules of Detention.⁴⁴

46. At 14:40, on request of the Specialist Chambers, the Belgian Federal Police delivered a letter (in English, Albanian, and French) from the Head of the Defence Office [REDACTED]. The letter provides information on Mr Shala's transfer, as well as information on his right to counsel and information on contacting Mr Shala at the Detention Facilities.⁴⁵

47. At 15:37, the Federal Prosecutor's Office informed Counsel of Mr Shala's transfer and provided Counsel with the same letter from the Head of the Defence Office. [REDACTED].

48. [REDACTED].⁴⁶

⁴⁰ Annex 3, Registry Report (Transport Log).

⁴¹ Annex 3, Registry Report (Request for Transport); *see also* KSC-BC-2020-04/F00019/A01.

⁴² KSC-BC-2020-04/F00019.

⁴³ *See* Agreement between the Kosovo Specialist Chambers and the International Committee of the Red Cross on Visits to Persons Deprived of Liberty Pursuant to the Jurisdiction of the Kosovo Specialist Chambers, 28 January 2019, para. 12(2).

⁴⁴ KSC-BC-2020-04/F00019/A01.

⁴⁵ Annex 3, Registry Report (Letter "To Whom It May Concern" from the Head of the Defence Office).

⁴⁶ Annex 3, Registry Report [REDACTED].

49. At 16:00, Mr Shala was given the opportunity to make a telephone call to a family member, and he did so.

50. The Chief Detention Officer then conducted an arrival interview with Mr Shala, with the assistance of an interpreter. During the arrival interview, Mr Shala was provided with the information and documentation referenced in Detention Rule 12.3. The Chief Detention Officer confirmed that Mr Shala had in his possession certified copies of the Arrest Warrant, Transfer Order, Redacted Confirmed Indictment, and Lesser Redacted Indictment.

51. At approximately 16:45, Mr Shala was also offered a consular visit, [REDACTED]. Mr Shala also declined a meeting with the Head of the Defence Office at that time.

52. At 16:46, the Registrar informed the Embassy of the Republic of Kosovo in The Hague and the Embassy of the Kingdom of Belgium in The Hague that Mr Shala had been transferred to the Detention Facilities in the Host State pursuant to an arrest warrant and transfer order.⁴⁷

53. [REDACTED].⁴⁸

54. [REDACTED].

55. At 11:30 on 16 April 2021, the Head of the Defence Office also spoke to Mr Shala by video-conference, along with the assistance of an interpreter. The Head of the Defence Office provided Mr Shala with information and documentation concerning the availability of legal assistance pursuant to Detention Rule 12.2 and confirmed that he had been provided with all relevant documents concerning legal aid, as well as a letter explaining his right to counsel, in both English and Albanian.⁴⁹

56. [REDACTED].

⁴⁷ Notes Verbales, Refs. KSC/NV2021/0016, KSC/NV2021/017, 15 April 2021.

⁴⁸ See KSC-BC-2020-04/F00019.

⁴⁹ Annex 3, Registry Report (Letter to the Accused from the Head of the Defence Office).

IV. CLASSIFICATION

57. This report is submitted as strictly confidential and *ex parte* pursuant to Rule 82(4) of the Rules.⁵⁰ The Registrar has no objection to this filing being reclassified as confidential in order to make it available to Mr Shala's Counsel, but requests the opportunity to review both the core filing and its annexes for redactions before they are reclassified.

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Dr Fidelma Donlon
Registrar

Thursday, 26 April 2021
At The Hague, the Netherlands

⁵⁰ Rules of Procedure and Evidence Before the Specialist Chambers ('Rules'), KSC-BD-03/Rev3/2020, as amended on 29 and 30 April 2020.