



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-04
Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon
Filing Participant: Specialist Prosecutor
Date: 26 April 2021
Language: English
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Public Redacted Version of

'Submission of Indictment for confirmation and related requests', filing KSC-BC-2020-04/F00002 dated 14 February 2020

with public redacted Annex 1

Specialist Prosecutor
Jack Smith

Counsel for the Accused
Mr Jean Louis Gilissen

A. INTRODUCTION

1. Pursuant to Article 38(4) of the Law¹ and Rule 86(2)-(3) of the Rules,² the Specialist Prosecutor's Office ('SPO') hereby files an indictment for confirmation against Pjetër SHALA aka 'Ujku' ('Wolf'), in respect of crimes committed in Kukës, Albania, in 1999 ('Indictment').³ The Indictment is submitted together with supporting material⁴ and a detailed outline demonstrating the relevance of the evidentiary material to each allegation.⁵

2. Mr SHALA was born on 17 September 1963 in Prizren, Kosovo. The Indictment and supporting material demonstrate there is a well-grounded suspicion⁶ that Mr SHALA has committed or participated in the commission of war crimes within the jurisdiction of the Specialist Chambers. The SPO accordingly requests the Pre-Trial Judge to confirm the Indictment.

3. Under Article 3(8)(a), for security reasons and the proper administration of justice, the SPO hereby invokes a change of venue to the Host State in respect of this and all future stages of proceedings arising from or related to the Indictment.

4. In addition, once the Indictment is confirmed, the SPO requests the Pre-Trial Judge to (i) issue an arrest warrant and order for the transfer of Mr SHALA, pursuant to Articles 39 and 41 and Rules 30-33, 37, 39, 48, 50, 53, 55, and 86(6)(b); (ii) pursuant to Articles 23, 35(2), and 39 and Rules 30, 80, and 88(2), order the non-disclosure of the Indictment, related documents or information to the public until further order; and (iii) pursuant to Articles 23, 35(2), and 39 and Rules 30, 80, and 105, order the interim

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev1/2017, 5 July 2017 ('Rules'). Unless otherwise indicated, all references to 'Rule(s)' are to the Rules.

³ See Annex 1. Pursuant to Rule 86(1), the Specialist Prosecutor has notified the President, who shall assign a Pre-Trial Judge in accordance with Article 33(1)(a).

⁴ The supporting materials have been submitted as a separate package through Legal Workflow.

⁵ See Annex 2. See also Rule 86(3)(b).

⁶ Article 38(4) and Rule 86(1). See also Kosovo, Criminal No.04/L-123, Procedure Code, 2012 ('CPC'), Article 19(1.12) ('Well-grounded suspicion – means filing an indictment. Possession of admissible evidence that would satisfy an objective observer that a criminal offence has occurred and the defendant has committed the offence').

non-disclosure of the identities of witnesses and victims in the supporting material until appropriate protective measures have been ordered.

B. REQUEST FOR ARREST WARRANT AND TRANSFER ORDER

5. The requirements under Article 41(6) for Mr SHALA's arrest and detention are fulfilled:

- i. The supporting materials establish a grounded suspicion⁷ that Mr SHALA has committed crimes within the jurisdiction of the Specialist Chambers, as charged in the Indictment and as required under Article 41(6)(a); and
- ii. All three enumerated alternate grounds under Article 41(6)(b) are satisfied in this case. There are articulable grounds to believe that (1) there is a risk of flight; (2) Mr SHALA will obstruct the progress of the criminal proceedings, including by influencing witnesses, victims or accomplices; and (3) the seriousness of the crime, or the manner or circumstances in which it was committed and Mr SHALA's personal characteristics, past conduct, the environment and conditions in which he lives or other personal circumstances indicate a risk that he will repeat the criminal offence or commit a crime which he has threatened to commit. Determination of such risks 'is a matter of assessing the possibility, as opposed to the unavailability that such risks materialise'.⁸

1. Mr SHALA poses a flight risk⁹

6. Once Mr SHALA learns of the crimes for which he is charged and of the corresponding penalties for those crimes, he has an incentive to avoid being tried and risk conviction. His incentive to flee may further be influenced by knowledge of the

⁷ Decision on the Specialist Prosecutor's Request for Arrest Warrant, KSC-BC-2018-01/F00032, 12 April 2019, Strictly Confidential and *Ex Parte* ('Arrest Warrant Decision'), para.18 (referring to the definition of 'grounded suspicion' in the CPC, namely, 'knowledge of information which would satisfy an objective observer that a criminal offence has occurred, is occurring or there is a substantial likelihood that one will occur and the person concerned is more likely than not to have committed the offence').

⁸ Arrest Warrant Decision, KSC-BC-2018-01/F00032, para.19.

⁹ Article 41(6)(b)(i).

publicly-reported convictions of his co-perpetrators Sabit GECI and Xhemshit KRASNIQI for crimes committed against detainees held by certain Kosovo Liberation Army ('KLA') members in Kukës.¹⁰

7. Mr SHALA also has the means and opportunity to evade justice. Mr SHALA is a resident and citizen of the Kingdom of Belgium. As such, he already lives in a jurisdiction in which the Specialist Chambers does not have any direct means to compel his appearance at trial. He has the right to move freely within the European Union and certain neighbouring countries. Furthermore, within the Schengen area, he would not encounter systematic border controls. Mr SHALA speaks fluent French and Albanian and would therefore be able easily to establish himself within French-speaking or Albanian-speaking communities if he were to leave Belgium. [REDACTED]. [REDACTED].¹¹

2. Mr SHALA may obstruct the progress of the criminal proceedings¹²

8. Mr SHALA's previous acts and conduct, including as set out below, demonstrate a risk that he might interfere with witnesses, victims or accomplices, and

¹⁰ See Kosovo, Basic Court of Mitrovica, *Case against X. KRASNIQI*, Case P.No.184/15, Judgement, 8 August 2016; Kosovo, District Court of Mitrovica, *Case against S. GECI*, Case P.No.45/10, Judgement, 29 July 2011.

¹¹ [REDACTED].

¹² Article 41(6)(b)(ii).

otherwise seek to obstruct proceedings. He also has the incentive, means and opportunity to do so.¹³

9. For example, once Mr SHALA is informed of the allegations contained in the Indictment, he may correctly deduce that the evidence against him concerning the events at Kukës [REDACTED].¹⁴ [REDACTED]¹⁵ [REDACTED].¹⁶ [REDACTED].¹⁷

10. Again, once Mr SHALA is informed of the allegations contained in the Indictment, [REDACTED]¹⁸ [REDACTED].¹⁹ [REDACTED] demonstrates there to be a risk that Mr SHALA would attempt to interfere with [REDACTED] potential witnesses, as well as otherwise obstruct proceedings.

3. There are grounds to believe that Mr SHALA may commit a crime

11. Beyond the inherent criminality of any attempt to interfere with the administration of justice, based on the statements made by Mr SHALA and the indicia provided by his past conduct, there is a real risk that he might commit other crimes, including through conduct similar to that alleged in the Indictment, in order to avoid being brought to account for the crimes charged, including use of physical violence or threats of violence, or attempt to procure or incite others to undertake acts of violence or make threats of violence [REDACTED] against potential witnesses.

4. Authorisation for search and seizure

12. Pursuant to Articles 35(2), 39(3) and 55 and Rules 30-33, 37 and 39,²⁰ the SPO requests that, as part of the arrest warrant, the Pre-Trial Judge authorises the

¹³ See paras 6-7 above.

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ See also Decision Authorising the Seizure of an Item, KSC-BC-2018-01/F00017, 11 March 2019, Strictly Confidential and *Ex Parte*, para.13.

authorities executing the arrest warrant²¹ to, in the presence of an SPO representative,²² (i) search the person of Mr SHALA, location of arrest and Mr SHALA's residence; and (ii) seize any evidence that is believed to have been used in, connected with or may be evidence relevant to the charged crimes, in particular, any evidence relevant to Mr SHALA's activities between 1998-1999, relationship or interactions with the victims or alleged accomplices, and/or the Kosovo Liberation Army ('KLA') and/or Provisional Government of Kosovo ('PGoK'), or members thereof. Such items may include records of contacts or meetings, diaries, logbooks, decisions, photographs, video and audio recordings, orders, instructions, directives, reports, policies, protocols or regulations, as well as computers, telephones and other devices that reasonably could be expected to contain relevant evidence.

13. There is grounded suspicion that Mr SHALA, a former KLA member, has committed crimes within the Specialist Chamber's jurisdiction,²³ and in turn, there is grounded suspicion that he may have relevant evidence on his person, at the location of his arrest or at his residence.²⁴ Further, in light of the risks of interference and obstruction, including as outlined above,²⁵ any evidence in Mr SHALA's possession may not otherwise be obtained and search and seizure in connection with his arrest may be the only effective means for the purposes of the investigation.²⁶

14. The resulting interference with Mr SHALA's rights to privacy and property is proportionate to the legitimate aim of the investigation, and the investigative measure does not negate the essence of those rights.²⁷ The SPO will provide necessary information and instructions to other authorities executing the search and seizure, in

²¹ Mr SHALA resides in Belgium. Belgium has agreed to cooperate with the Specialist Chambers and SPO. See Belgium, *Loi concernant la coopération avec la Cour pénale internationale et les tribunaux pénaux internationaux*, 29 March 2004 (last amended 11 July 2018) ('Belgian Cooperation Law'), in particular, Article 84(3) (concerning searches and seizures requested by the Specialist Chambers).

²² Belgian Cooperation Law, Article 85 (authorising the prosecutor to assist in execution of requested measures).

²³ See also para.5 above.

²⁴ Rule 37(2)(a), (3).

²⁵ See paras 6-11 above.

²⁶ Rules 31(1)(b), 37(1).

²⁷ Rule 31(1)(c).

a manner designed to exclude information of no foreseeable relevance, and in accordance with the safeguards outlined in Rule 39.

15. The SPO requests that retention of any evidence seized be authorised for (i) the time necessary to complete review of the evidence; and (ii) if deemed relevant, such further period of time as may be necessary for investigations and proceedings.

5. Transfer order and execution

16. In light of the SPO's invocation of a change of venue to the Host State,²⁸ the SPO requests that the Pre-Trial Judge order the transfer of Mr SHALA from Belgium²⁹ to the detention facility of the Specialist Chambers in the Host State, pursuant to Rule 50(2).

17. The SPO requests the Pre-Trial Judge to transmit the arrest warrant, with the authorisation for search and seizure, and transfer order to the Registrar for, in cooperation with the SPO, transmission to the appropriate authorities for execution.³⁰

C. REQUEST FOR INTERIM NON-DISCLOSURE OF WITNESS AND VICTIM IDENTITIES

18. As set out above, there are real risks of, *inter alia*, interference with witnesses and victims, which, pursuant to Rule 105, constitute exceptional circumstances justifying interim non-disclosure of the identities of witnesses and victims involved in these proceedings until appropriate protective measures have been ordered. Accordingly, [REDACTED], the SPO requests that the Pre-Trial Judge:

- i. Order that the name and identifying information of any witness or victim identified in the supporting material shall not be disclosed to the public;
- ii. Authorise the SPO to redact the identity and identifying information of, and assign provisional pseudonyms to, witnesses and victims named in the supporting material prior to disclosure to the accused or public; and

²⁸ See para.3 above.

²⁹ Belgian Cooperation Law, Articles 86-87.

³⁰ Rule 55(1).

- iii. Order that such interim non-disclosure continues until further order of the Pre-Trial Judge on application of the SPO or after hearing the SPO.

D. REQUEST FOR NON-DISCLOSURE OF INDICTMENT AND RELATED INFORMATION

19. Non-disclosure of the Indictment, and related information, at this stage is necessary to ensure the integrity of the proceedings, and the protection of witnesses and victims. As set out above, there are real risks of, *inter alia*, Mr SHALA's flight, interference with witnesses and victims, and commission of further crimes, which, pursuant to Rule 88(2), demonstrate good cause justifying the temporary non-disclosure of the Indictment, related documents and information to the public until further order.

E. CLASSIFICATION

20. This filing and its annexes are filed strictly confidential and *ex parte* in accordance with Rules 85(4) and 86(2).

F. RELIEF REQUESTED

21. For the foregoing reasons, the SPO requests that the Pre-Trial Judge:
- i. Confirm the Indictment;
 - ii. Issue an arrest warrant, authorisation for search and seizure, and transfer order, in the terms requested in Section B(4)-(5) above;
 - iii. Order the interim non-disclosure of witness and victim identities, in the terms requested in Section C above; and
 - iv. Order the temporary non-disclosure of the Indictment, related documents and information, in the terms requested in Section D above.

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Jack Smith

Specialist Prosecutor

Monday, 26 April 2021

At The Hague, the Netherlands.