



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 June 2020  
**Language:** English  
**Classification:** Public

---

**Public Redacted Version of  
Decision on Request for Arrest Warrant and Transfer Order**

---

**Specialist Prosecutor**  
Jack Smith

**Counsel for the Accused**  
Jean-Louis Gilissen

**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Articles 35(3), 39(3), 41, 53, 54 and 55 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 50, 53, 55, 86(6)(b) and 208(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chamber ("Rules"), hereby renders the following decision.

## I. PROCEDURAL BACKGROUND

1. On 14 February 2020, the Specialist Prosecutor's Office ("SPO") submitted for confirmation a strictly confidential and *ex parte* indictment together with evidentiary material in support of the factual allegations and a detailed outline linking each item of evidentiary material to each allegation.<sup>2</sup>
2. On 28 February 2020, the Pre-Trial Judge ordered the SPO to file, *inter alia*, a revised indictment by 18 March 2020.<sup>3</sup>
3. On 18 March 2020, the SPO submitted a revised indictment for confirmation ("Revised Indictment").<sup>4</sup>
4. On 26 May 2020, the Pre-Trial Judge issued an order setting a target date for the issuance of the decision reviewing the Revised Indictment.<sup>5</sup>
5. On 10 June 2020, the President issued a decision invoking a change of venue to the Netherlands ("Host State").<sup>6</sup>

---

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

<sup>2</sup> KSC-BC-2020-04, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Requests* ("Initial Submission"), 14 February 2020, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

<sup>3</sup> KSC-BC-2020-04, F00003, Pre-Trial Judge, *Order to the Specialist Prosecutor Pursuant to Rule 86(4) of the Rules*, 28 February 2020, strictly confidential and *ex parte*.

<sup>4</sup> KSC-BC-2020-04, F00004, Specialist Prosecutor, *Submission of Revised Indictment for Confirmation and Related Requests* ("Second Submission"), 18 March 2020, strictly confidential and *ex parte* with Annexes 1-3, strictly confidential and *ex parte*.

<sup>5</sup> KSC-BC-2020-04, F00005, Pre-Trial Judge, *Order Setting Target Date for a Decision Pursuant to Article 39(2)*, 26 May 2020, strictly confidential and *ex parte*.

<sup>6</sup> KSC-BC-2020-04, F00006, President, *Decision Invoking a Change of Venue to the Host State* ("Decision on Change of Venue to the Host State"), 10 June 2020, confidential and *ex parte*.

6. On 12 June 2020, the Pre-Trial Judge confirmed the Revised Indictment (“Confirmation Decision”).<sup>7</sup>

## II. SUBMISSIONS

7. Along with confirmation of the Revised Indictment, the SPO requests, *inter alia*, the arrest and transfer of Pjetër Shala (“Mr Shala”).<sup>8</sup> To this end, the SPO asserts that the requirements of Article 41(6) of the Law have been met.<sup>9</sup> The SPO alleges that there is a grounded suspicion that Mr Shala has committed crimes within the jurisdiction of the Specialist Chambers.<sup>10</sup> The SPO further alleges that there are articulable grounds to believe that Mr Shala (i) is a flight risk;<sup>11</sup> (ii) may obstruct the progress of criminal proceedings, including by influencing witnesses, victims or accomplices;<sup>12</sup> and (iii) may repeat the criminal offence or commit another crime.<sup>13</sup>

8. Moreover, the SPO requests that the Pre-Trial Judge order his transfer from the Kingdom of Belgium to the detention facility of the Specialist Chambers in the Host State, pursuant to Rule 50(2) of the Rules.<sup>14</sup>

9. The SPO further requests that the arrest warrant and transfer order be transmitted to the appropriate authorities for execution.<sup>15</sup>

---

<sup>7</sup> 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*.

<sup>8</sup> Initial Submission, paras 4, 16-17, 21(ii). The SPO incorporates by reference its submissions made with respect to these requests in its Initial Submission, Sections B(4)-(5), see Second Submission, paras 7, 24(b).

<sup>9</sup> Initial Submission, para. 5.

<sup>10</sup> Initial Submission, para. 5(i).

<sup>11</sup> Initial Submission, paras 5(ii), 6-7.

<sup>12</sup> Initial Submission, paras 5(ii), 8-10.

<sup>13</sup> Initial Submission, paras 5(ii), 11.

<sup>14</sup> Initial Submission, para. 16.

<sup>15</sup> Initial Submission, para. 17.

### III. APPLICABLE LAW

10. Pursuant to Article 39(3) of the Law and Rule 86(6)(b) of the Rules, at the request of the Specialist Prosecutor, the Pre-Trial Judge may issue any orders and warrants as may be required for the preparation of a fair and expeditious trial.

11. Pursuant to Article 41(6)(a) of the Law, before an arrest warrant may be issued, the SPO must first demonstrate that there is a grounded suspicion that the person has committed a crime within the jurisdiction of the Specialist Chambers. Second, the SPO must prove that there are articulable grounds to believe that at least one of the three grounds in Article 41(6)(b) of the Law is present, namely that a person (i) is a flight risk; (ii) will destroy, hide, change or forge evidence of a crime or will obstruct the progress of the criminal proceedings by influencing witnesses, victims or accomplices; or (iii) will repeat the criminal offence, complete an attempted crime, or commit a crime that he or she has threatened to commit. Lastly, pursuant to Article 41(1), (4), and (5) of the Law, the issuance of the arrest warrant must be consistent with the fundamental rights provided for in Chapter II of the Constitution, and the person concerned must be informed of his/her rights under the Law with a view to exercising them before the Pre-Trial Judge.

12. Pursuant to Rule 53(2) of the Rules, the arrest warrant shall contain the following information: (i) the name of the person and any other relevant identifying information; (ii) specific reference to the crimes for which the person's arrest is sought; (iii) a concise statement of facts allegedly constituting those crimes; and (iv) where applicable, the detention facility of the Specialist Chambers where the person shall be transferred. Rule 53(3) of the Rules provides that the arrest warrant shall remain in effect until otherwise ordered by the Panel.

13. Upon issuance of an arrest warrant by the Specialist Chambers, Article 55 of the Law and Rules 50(2) and 208(1) of the Rules provide that the Pre-Trial Judge may request the transfer of the person concerned from the competent authorities of a Third

State to the Specialist Chambers pursuant to an arrangement of that State with the Specialist Chambers, an agreement of that State with Kosovo, or on the basis of reciprocity. Furthermore, Rule 55(3) of the Rules provides that where an arrest warrant relates to a person located or last known to be located in a Third State, which has not yet assumed an obligation to provide assistance, the Registrar shall transmit the request for cooperation, including the arrest warrant to the competent authorities of that State.

14. Pursuant to Article 35(3) of the Law, the police within the SPO shall have the authority and responsibility to exercise powers given to Kosovo Police under Kosovo law.

15. Pursuant to Rule 55(4) of the Rules, upon notification of the arrest by the competent authorities, the Registrar shall make the necessary arrangements, with the competent authorities and the Host State, for the prompt transfer of the arrested person to a detention facility of the Specialist Chambers.

16. Pursuant to Article 41(7) of the Law, persons subject to arrest warrants may be detained in detention facilities overseen by the Specialist Chambers and managed by the Registry near the seat of the Specialist Chambers in the Host State if proceedings are relocated thereto.

#### IV. DISCUSSION

##### A. JURISDICTION

17. The SPO seeks an arrest warrant and transfer order for Mr Shala, a Belgian national, for crimes under Article 14(1)(c) of the Law, committed against persons of Federal Republic of Yugoslavia citizenship, during the period from on or about 17 May 1999 until on or about 5 June 1999.<sup>16</sup> The Pre-Trial Judge recalls his findings

---

<sup>16</sup> Revised Indictment, paras 1, 6, 31.

that the requisite subject matter, temporal and personal jurisdiction requirements under Articles 6-7 and 9 of the Law have been met.<sup>17</sup>

## B. REQUIREMENTS OF ARTICLE 41(6) OF THE LAW

### 1. Crimes Allegedly Committed

18. The Pre-Trial Judge recalls that, when confirming the Revised Indictment, he found that there is a well-grounded suspicion that Mr Shala committed crimes within the jurisdiction of the Specialist Chambers, namely the war crimes of arbitrary detention, cruel treatment, torture and murder in violation of Article 14(1)(c) of the Law.<sup>18</sup> The Pre-Trial Judge therefore finds that the requirement of Article 41(6)(a) of the Law has been met.

### 2. Necessity of the Arrest

19. The SPO submits that the arrest of Mr Shala is necessary because there are articulable grounds to believe that all three risks envisaged under Article 41(6)(b)(i)-(iii) of the Law exist.<sup>19</sup> The Pre-Trial Judge recalls that the determination of such risks is a matter of assessing the possibility, as opposed to the unavailability that such risks materialise.<sup>20</sup>

20. With respect to flight risk, the Pre-Trial Judge considers Mr Shala's (i) awareness of the notification of the charges, as contained in the indictment to be served, and potential penalties;<sup>21</sup> (ii) awareness of publicly reported convictions of his alleged co-

---

<sup>17</sup> Confirmation Decision, para. 32.

<sup>18</sup> Confirmation Decision, paras 114, 120, 124, 128.

<sup>19</sup> Initial Submission, para. 5(ii).

<sup>20</sup> Similarly, ICC, *Prosecutor v. Bemba Gombo et al.*, ICC-01/05-01/13-558, Appeals Chamber, [\*Judgment on the appeal of Mr Aimé Kilolo Musamba against the decision of Pre-Trial Chamber II of 14 March 2014 entitled "Decision on the 'Demande de mise en liberté provisoire de Maître Aimé Kilolo Musamba'"\*](#), 11 July 2014, para. 107.

<sup>21</sup> Initial Submission, para. 6; Confirmation Decision, para. 140.

perpetrators;<sup>22</sup> (iii) residence in a jurisdiction in which the Specialist Chambers does not have any direct means to compel his appearance at trial;<sup>23</sup> and (iv) ability to travel freely to neighbouring countries and assimilate into communities in those countries, demonstrate that he has an incentive and the means to flee.<sup>24</sup> Moreover, [REDACTED].<sup>25</sup>

21. With respect to the obstruction of proceedings through the interference with victims and witnesses, the Pre-Trial Judge notes that Mr Shala [REDACTED].<sup>26</sup> Mr Shala also [REDACTED]<sup>27</sup> and therefore has increased means to interfere with them and, consequently, obstruct the progress of criminal proceedings.

22. With respect to the further commission of crimes, the Pre-Trial Judge notes that Mr Shala [REDACTED].<sup>28</sup>

23. In light of the foregoing, the Pre-Trial Judge finds that there are articulable grounds to believe that there is a risk that Mr Shala will flee, obstruct the progress of proceedings by influencing witnesses or victims, or commit a crime he has threatened to commit thereby necessitating his arrest and detention, in accordance with Article 41(6)(b) of the Law.

### C. COMPLIANCE WITH FUNDAMENTAL RIGHTS

24. The Pre-Trial Judge considers that nothing in the SPO's request for an arrest warrant and transfer order is *prima facie* inconsistent with the fundamental rights

---

<sup>22</sup> Initial Submission, para. 6; Kosovo, Basic Court of Mitrovicë/Mitrovica, *Case against XH. K*, P 184/2015, Judgment, 8 August 2016; Kosovo, District Court of Mitrovicë/Mitrovica, *Case against S. Geci et al.*, P 45/2010, Judgment, 29 July 2011.

<sup>23</sup> Initial Submission, para. 7; [REDACTED].

<sup>24</sup> Initial Submission, para. 7.

<sup>25</sup> Initial Submission, para. 7; [REDACTED].

<sup>26</sup> Initial Submission, paras 8-10.

<sup>27</sup> Initial Submission, para. 9; [REDACTED].

<sup>28</sup> Initial Submission, para. 10; F00002/A03, Annex 3 to Submission of Indictment for confirmation and related requests [REDACTED].

provided for in Chapter II of the Constitution. This also applies in case the SPO executes the arrest warrant and undertakes to adopt appropriate measures for the protection and due respect of relevant victims and witnesses and the fundamental rights of Mr Shala. To this effect, pursuant to Article 41(4) and (5) of the Law, and Rule 55(6) of the Rules, as soon as Mr Shala is in custody and falls under the jurisdiction of the Specialist Chambers, he shall be informed of all his rights under the Law with a view to exercising them before the Pre-Trial Judge as soon as practicable.

#### D. ORDER FOR TRANSFER TO DETENTION FACILITIES OF THE SPECIALIST CHAMBERS

25. For security reasons and the proper administration of justice, the SPO has invoked a change of venue to the Host State pursuant to Article 3(8)(a) of the Law.<sup>29</sup> In light of this venue change,<sup>30</sup> the Pre-Trial Judge considers it necessary that Mr Shala is transferred to the detention facilities of the Specialist Chambers, managed by the Registrar, in the Host State. Pursuant to Article 41(7) of the Law and Rule 55(4) of the Rules, the Registrar shall execute the order for transfer to the detention facilities of the Specialist Chambers in the Host State and make the necessary arrangements for the prompt transfer of Mr Shala.

#### E. EXECUTION AND SERVICE OF THE ORDERS

26. Given that, according to the information currently available, Mr Shala resides in the Kingdom of Belgium,<sup>31</sup> the Pre-Trial Judge orders the Registrar to transmit the arrest warrant and the transfer order to the competent Belgian authorities, who are requested to serve and execute the annexed arrest warrant and transfer order in presence of representatives of the SPO.

---

<sup>29</sup> Initial Submission, paras 3, 16.

<sup>30</sup> Decision on Change of Venue to the Host State, p. 3.

<sup>31</sup> Initial Submission, fn. 21.



27. If the SPO receives information about Mr Shala's travel, whether planned or ongoing, or that Mr Shala is present on the territory of any Third State, other than the Kingdom of Belgium, the SPO shall promptly provide such information to the Registrar. If the Registrar receives such information from a source other than the SPO, she shall promptly provide such information to the SPO. The Registrar shall then, having consulted the SPO, transmit the annexed arrest warrant and transfer order to the competent authorities of any Third State concerned, in conformity with Article 55 of the Law.

28. If information is received concerning Mr Shala's presence in Kosovo, it is recalled that pursuant to Article 35(3) of the Law, the police within the SPO has the authority and responsibility to exercise powers given to Kosovo Police under Kosovo law. It may therefore be considered a "competent authority" under Rule 49(1) of the Rules capable of executing and serving orders of the Specialist Chambers, including the annexed arrest warrant.<sup>32</sup> Pursuant to Rule 49(1) of the Rules, the Registrar shall transmit the transfer order in cooperation with the SPO. The SPO may, as appropriate and necessary, disclose the arrest warrant for the purposes of its execution.

29. Upon arrival to the detention facilities of the Specialist Chambers, or in any case before the initial appearance, the Registrar shall submit a report on the arrest and transfer of Mr Shala to the Pre-Trial Judge, including any relevant details and information provided by the competent State authorities or the SPO, and, in case the transfer is effectuated from a Third State other than the Kingdom of Belgium, any information regarding the basis on which that Third State has agreed or may have assumed an obligation to provide assistance to the Specialist Chambers.

---

<sup>32</sup> In notifying the Specialist Prosecutor of the present decision, together with the two annexes, through Legal Workflow, the transmission of the relevant documents to the Specialist Prosecutor is deemed fulfilled, in accordance with Rules 49(1) and 55(1) of the Rules.

## V. DISPOSITION

30. For the above reasons, the Pre-Trial Judge hereby:

- a. **GRANTS** the request for an arrest warrant (Annex 1);
- b. **GRANTS** the request for a transfer order (Annex 2);
- c. **DIRECTS** the Registrar, in consultation with the SPO, to transmit the arrest warrant and transfer order to the competent authorities of the Kingdom of Belgium, or any other Third State, as the case may be, for service and execution;
- d. **DIRECTS** the SPO to serve and execute the annexed arrest warrant in Kosovo, if applicable;
- e. **DIRECTS** the SPO to consult with the Registrar on the necessary arrangements to be made, including appropriate and necessary disclosure of the arrest warrant, for its execution and service;
- f. **DIRECTS** the Registrar to execute the transfer of Mr Shala to the detention facilities of the Specialist Chamber in the Host State; and
- g. **DIRECTS** the Registrar, upon arrival to the detention facilities of the Specialist Chambers, or in any case before the initial appearance, to submit a report on the arrest and transfer of Mr Shala, as further specified in paragraph 29.



**Judge Nicolas Guillou**  
**Pre-Trial Judge.**

Dated this Friday, 12 June 2020

At The Hague, the Netherlands.