



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-04

The Prosecutor v. Pjetër Shala

Before: Trial Panel I

Judge Mappie Veldt-Foglia, Presiding Judge

Judge Roland Dekkers

Judge Gilbert Bitti

Judge Vladimir Mikula, Reserve Judge

Registrar: Fidelma Donlon

Date: 30 September 2022

Language: English

Classification: Public

**Decision setting the dates for trial preparation conferences and requesting
submissions**

with one strictly confidential and *ex parte* annex

Specialist Prosecutor

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Counsel for the Accused

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Witness Protection and Support Office

Head of Witness Protection and Support
Office

Victims' Counsel

Simon Laws

TRIAL PANEL I (Panel) hereby renders this decision setting the dates for trial preparation conferences and requesting submissions.

I. PROCEDURAL BACKGROUND

1. On 28 January 2022, the Specialist Prosecutor's Office (SPO) submitted its Pre-Trial Brief¹ and on 29 July 2022, with the Pre-Trial Judge's authorisation,² the SPO submitted an amended list of witnesses (SPO List of Witnesses) and an amended list of exhibits (SPO List of Exhibits).³
2. On 5 September 2022, the Defence submitted its Pre-Trial Brief and a provisional list of witnesses (Defence List of Potential Witnesses).⁴
3. On 15 December 2021, 11 August 2022 and 19 September 2022, the Pre-Trial Judge issued three decisions admitting in total eight victims to participate in the proceedings, namely Victims 01/04, 02/04, 03/04, 04/04, 05/04, 06/04, 07/04 and 08/04.⁵
4. On 21 September 2022, the Pre-Trial Judge transmitted the case file to the Panel.⁶

¹ KSC-BC-2020-04, F00135/A01, Specialist Prosecutor, *Annex 1 to Submission of Pre-Trial Brief, with witness and exhibit lists*, 28 January 2022, strictly confidential and *ex parte*. A confidential (lesser) redacted version was filed on 8 February 2022, F00139/A01.

² KSC-BC-2020-04, F00234, Pre-Trial Judge, *Decision on Specialist Prosecutor's Rule 102(2) and Related Requests*, 20 July 2022, confidential, paras 31, 46(a), (b). A public redacted version was filed on 8 August 2022, F00234/RED.

³ KSC-BC-2020-04, F00243, Specialist Prosecutor, *Submission of amended witness and exhibit lists*, 29 July 2022, public, with Annexes 1-2, strictly confidential and *ex parte*, and Annexes 3-4, confidential redacted. Confidential redacted versions were filed the same day, F00243/A03, F00243/A04.

⁴ KSC-BC-2020-04, F00265, Defence, *Defence Pre-Trial Brief* (Defence Pre-Trial Brief), confidential, with one confidential annex.

⁵ KSC-BC-2020-04, F00123, Pre-Trial Judge, *First Decision on Victims' Participation*, 15 December 2021, confidential. A public redacted version was issued the same day, F00123/RED; F00249, *Second Decision on Victims' Participation*, 11 August 2022, confidential. A public redacted version was issued the same day, F00249/RED; F00279, *Third Decision on Victims' Participation*, 19 September 2022, confidential. A public redacted version was issued the same day, F00279/RED.

⁶ KSC-BC-2020-04, F00284, Pre-Trial Judge, *Decision Transmitting the Case File to Trial Panel I*, 21 September 2022, public, with Annexes 1-3, strictly confidential and *ex parte*.

II. APPLICABLE LAW

5. The Panel notes Articles 21, 23 and 40(2) and (6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 116-119 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules).

III. DISCUSSION

6. Pursuant to Articles 21, 23 and 40(2) and (6) of the Law and Rules 116(1), (3), (4) and 117 of the Rules, the Panel can take any necessary measures to ensure the fair and expeditious preparation and conduct of the trial. Such measures include, among others: adopting procedures, modalities and directions for the conduct of the trial proceedings; setting deadlines for the Parties and participants to file motions prior to the commencement of the trial; verifying that the disclosure obligations of the Parties have been met; and ensuring appropriate protective measures for witnesses and victims participating in the proceedings.

7. The Panel also considers that, pursuant to Article 39 of the Law and Rules 95 and 98 of the Rules, it is primarily incumbent on the Pre-Trial Judge to prepare the case for trial, including, *inter alia*, by determining the working language of the proceedings; deciding on the legal framework governing the application and admission of victims to participate in the proceedings; establishing a regime and calendar governing the disclosure of evidence and redaction of material; authorising protective measures for witnesses and victims; and, generally, adopting any other procedures to ensure that the Parties and the case file are trial-ready. Therefore, unless otherwise decided by the Panel *proprio motu* or upon request by the Parties or Victims' Counsel, the Panel does not intend to modify or decide anew on any matter already decided upon by the

Pre-Trial Judge. Accordingly, the Pre-Trial Judge's rulings continue to apply before the Panel.

8. In accordance with Rules 116-119 of the Rules and with a view to ensuring the expeditious preparation of the trial, the Panel considers it appropriate to convene trial preparation conferences on **Tuesday, 18 October 2022, from 09:00 to 12:30 hours, Wednesday, 19 October 2022, from 09:30 to 16:00 hours, Thursday, 20 October 2022, from 09:30 to 17:30 hours and Friday, 21 October 2022, from 09:30 to 15:00 hours, as a reserve day.** The Panel notes in this regard that although the Rules provide for different and successive preparation conferences (Rule 117: Trial Preparation Conference, Rule 118: Specialist Prosecutor's Preparation Conference and Rule 119: Defence Preparation Conference), Article 40(2) of the Law gives the Panel discretion to organise the proceedings as it deems fit to facilitate their fair and expeditious conduct. The Panel is of the view that, in the present circumstances, grouping the different preparation conferences together is the most appropriate and efficient way to proceed as it allows the Panel to gather all the submissions it needs for its directions on the conduct of the proceedings at once. If necessary, the Panel may thereafter hold further status conferences either at the request of the Parties or Victims' Counsel, or *proprio motu*.⁷

9. In order to facilitate the preparation of the conferences and to ensure their efficient conduct, the Panel seeks submissions from the SPO, the Defence, Victims' Counsel and the Registry / Witness Protection and Support Office (WPSO) on the agenda items set out below and in the annex to the present decision, as relevant.

⁷ See also KSC-BC-2020-05, F00123, Trial Panel I, *Decision setting the dates for trial preparation conferences and requesting submissions* (Mustafa Decision setting the dates for trial preparation conferences), 20 May 2021, public, para. 8, with Annexes 1-2, strictly confidential and *ex parte*.

A. INVESTIGATIONS AND DISCLOSURE OF EVIDENCE

- a. Confirmation by the SPO that its investigations and the disclosure of incriminating evidence in this case have been completed;
- b. Whether the SPO intends to disclose to the Defence further exculpatory evidence under Rule 103 of the Rules or further material or evidence under Rule 102(3) of the Rules – not subject to the pending request⁸ – and, if so, how many items and when; in addition, does the SPO intend to request protective measures for this material or evidence and, if so, when;
- c. Whether, at this stage, the Defence can already anticipate carrying out further investigations and approximately how much time it will need to finalise such investigative activities;
- d. Whether, at this stage, as a result of these investigative activities, the Defence can already anticipate disclosing additional evidence and amending its Pre-Trial Brief and/or the Defence List of Potential Witnesses;
- e. Whether the Defence requires an *ex parte*, closed session in the near future in order to address the Panel on matters related to its preparation for trial and, if so, what are the matters concerned; and
- f. Submissions by the Parties on the adoption of a framework governing the handling of confidential information during investigations and

⁸ KSC-BC-2020-04, F00261, Specialist Prosecutor, *Prosecution submissions concerning items subject to Rule 81(1)(a) protective measures*, 2 September 2022, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*. A confidential redacted version was filed on 5 September 2022, F00261/CONF/RED.

contacts with witnesses, taking into account the framework adopted in Case KSC-BC-2020-06.⁹

B. CRIME SITE VISIT

- a. Submissions by the Parties and Victims' Counsel on the necessity of a crime site visit for the proper administration of justice, as envisaged by Rule 74 of the Rules, and the timing of any such visit; and
- b. Whether the Parties are in a position to submit into evidence videos, 3D reconstructions, maps and/or photos of the crime site.

C. CONDUCT OF PROCEEDINGS

1. Commencement of Trial and Opening Statements

- a. Submissions by the Parties and Victims' Counsel as to a tentative date for the commencement of the trial;
- b. Whether the Accused objects to the SPO reading a summary of the Corrected Confirmed Indictment¹⁰ at the opening of the case, instead of the indictment in its entirety,¹¹ with a view to promoting efficiency;
- c. Whether the SPO intends to make an opening statement pursuant to Rule 126(1) of the Rules and, if so: (i) how much time will it require; and (ii) will visual aids or other tools be used;

⁹ KSC-BC-2020-06, F00854, Pre-Trial Judge, *Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant*, 24 June 2022, public; F00939, Pre-Trial Judge, *Decision on Defence Requests for Leave to Appeal Decision F00854*, 26 August 2022, public.

¹⁰ KSC-BC-2020-04, F00107/A01, Specialist Prosecutor, *Annex 1 to Submission of public redacted version of corrected Indictment*, 16 November 2021, public.

¹¹ Rule 124(2) of the Rules.

- d. Whether Victims' Counsel intends to make an opening statement pursuant to Rule 126(3) of the Rules and, if so: (i) how much time will he require; and (ii) will visual aids or other tools be used;
- e. Whether, at this stage, the Defence can already anticipate whether it will make an opening statement pursuant to Rule 126(2) of the Rules and, if so: (i) will such opening statement be given directly after the opening statements of the SPO and Victims' Counsel, if any, or after the closing of the SPO case and before the opening of the Defence case; (ii) how much time will the Defence require; and (iii) will visual aids or other tools be used; and
- f. Whether, at this stage, the Defence can already indicate whether the Accused intends to make an unsworn statement pursuant to Rule 142(1) of the Rules and, if so, whether this will take place together with the Defence opening statement or at a later stage.

2. Familiarisation of Witnesses Prior to Testimony

The Panel intends to issue directions on witness familiarisation prior to testimony in due course. The Parties, Victims' Counsel and the Registry / WPSO may make submissions on this matter, if they so wish, taking into account the Panel's previous practice.¹²

3. Dual Status Witnesses-Victims

Whether the SPO and Victims' Counsel have exchanged information in order to identify which participating victims are also SPO witnesses and

¹² See KSC-BC-2020-05, F00150, Trial Panel I, *Decision on witness familiarisation*, 9 July 2021, public.

vice versa and, if not, whether they plan to do so or otherwise have objections to any such communication or disclosure of information, including to WPSO.

4. Presentation of (Witness) Evidence by the Parties and Participants

- a. Confirmation by the SPO of the number of witnesses it intends to call, confirmation that the SPO List of Witnesses¹³ and SPO List of Exhibits¹⁴ are final, what is the requested time for direct examination of those witnesses and whether the SPO intends to call expert witnesses;
- b. Whether the SPO intends to request the admission of prior statements or transcripts in lieu of oral testimony under Rules 153-155 of the Rules, other than as already indicated in the SPO List of Witnesses, under which specific provision, in relation to which witnesses and how many items are concerned. While it is, in principle, for each Party to determine the organisation and evidence presentation of its case, the Panel recalls that Rules 153 and 154 are useful tools to expedite and streamline the proceedings and strongly encourages the SPO to rely on said rules to the greatest extent possible;
- c. Whether, at this stage and subject to Rule 114(5) of the Rules, Victims' Counsel can already indicate whether he intends to submit evidence, call (expert) witnesses and/or participating victims to testify, or request that victims be permitted to present their views and concerns where their

¹³ KSC-BC-2020-04, F00243/A01, Specialist Prosecutor, *Annex 1 to Submission of amended witness and exhibit lists*, strictly confidential and *ex parte*, pp. 2-4. A confidential redacted version is available as *Annex 3 to Submission of amended witness and exhibit lists*, F00243/A03.

¹⁴ KSC-BC-2020-04, F00243/A02, Specialist Prosecutor, *Annex 2 to Submission of amended witness and exhibit lists*, strictly confidential and *ex parte*. A confidential redacted version is available as *Annex 4 to Submission of amended witness and exhibit lists*, F00243/A04.

personal interests are affected; and, if so, what is the requested time for the direct examination of said witnesses/victims or for the presentation of their views and concerns.¹⁵ The Panel also invites Victims' Counsel to consider relying on Rules 153 and 154 should he intend to call witnesses. This is without prejudice to any further changes to be communicated sufficiently in advance of the end of the SPO case;

- d. Whether, at this stage, the Defence can indicate, pursuant to Rule 119 of the Rules, whether it intends to present a case, whether the Defence List of Potential Witnesses is final,¹⁶ whether the Defence can indicate the number of witnesses it intends to call, whether it intends to call expert witnesses and what is the requested time for direct examination of the witnesses. This is without prejudice to any further changes to be communicated sufficiently in advance of presenting the Defence case, if any;
- e. Taking into consideration Rule 104(3) of the Rules, whether the Defence intends to offer a defence of alibi;¹⁷ and
- f. Whether the Defence intends to request the admission of prior statements or transcripts in lieu of oral testimony under Rules 153-155 of the Rules and, if so, under which specific provision, in relation to which witnesses and how many items are concerned. The Panel reiterates its previous guidelines regarding Rules 153 and 154 of the Rules and strongly

¹⁵ See KSC-BC-2020-05, F00152, Trial Panel I, *Decision on victims' procedural rights during trial*, 12 July 2021, public, para. 37.

¹⁶ KSC-BC-2020-04, F00265/A01, *Annex to Defence Pre-Trial Brief*, 5 September 2022, confidential.

¹⁷ KSC-BC-2020-04, F00228, Defence, *Defence Submissions on Alibi Pursuant to the Pre-Trial Judge's Order Dated 14 April 2022*, 1 July 2022; Defence Pre-Trial Brief, para. 3.

encourages the Defence to consider relying on said rules to the greatest extent possible.

5. Order of Appearance and Issues Related to the Questioning of Witnesses

- a. Submissions by the SPO as regards the order in which it intends to call the witnesses included in the SPO List of Witnesses and the modalities of the witnesses' testimonies (live or video-link);
- b. Whether, at this stage, and subject to Rule 114(5) of the Rules, Victims' Counsel can already indicate the order in which he intends to call (expert) witnesses, and/or participating victims to testify or to present their views and concerns, if any, and the modalities of testimony / presentation of views and concerns (live or video-link). This is without prejudice to any further changes to be communicated sufficiently in advance of the end of the SPO case; and
- c. Whether, at this stage, the Defence can already indicate the order in which it intends to call the witnesses included in the Defence List of Potential Witnesses and the modalities of the witnesses' testimonies (live or video-link), without prejudice to any further changes to be communicated sufficiently in advance of presenting the Defence case.

6. Non-Oral Evidence

- a. Whether the SPO intends to object to the admissibility of any non-oral evidence under Rule 104 of the Rules and, if so, what is the nature of the objections;

- b. Confirmation that the Defence intends to object to the admissibility of non-oral evidence disclosed under Rule 102 of the Rules¹⁸ and what is the nature of the objections;
- c. Whether Victims' Counsel intends to object to the admissibility of non-oral evidence under Rules 102 or 104 of the Rules and, if so, what is the nature of the objections; and
- d. Submissions by the Parties and Victims' Counsel, taking into account the Panel's previous practice,¹⁹ as to whether the admissibility of non-oral evidence should be decided at the time of its submission at trial or whether it can be deferred to the judgment, after giving the Parties and Victims' Counsel an opportunity to make submissions, if they wish to do so, on the admissibility of any such items.

7. Judicial Notice of Adjudicated Facts

Whether the Parties intend to request, jointly or separately, that the Panel takes judicial notice of adjudicated facts under Rule 157(2) of the Rules and, if so, when do they intend to make such request(s) and for how many facts.

10. In addition to the above topics, the Panel considers it appropriate to hold an *ex parte*, closed session, with the SPO, WPSO and a representative of the Registry, to discuss certain issues concerning witness protection. Such a session shall take place

¹⁸ KSC-BC-2020-04, F00251, Defence, *Notice of Objections to Admissibility of Evidentiary Material Disclosed Under Rule 102 of the Rules*, public, with one strictly confidential annex.

¹⁹ KSC-BC-2020-05, F00169, Trial Panel I, *Decision on the submission and the admissibility of evidence*, 25 August 2021, public.

after the discussions with the Defence and Victims' Counsel have been exhausted and shall be guided by the topics listed in the annex to the present decision, without prejudice to the Panel asking any other questions that it considers appropriate.

11. The Parties, Victims' Counsel and the Registry / WPSO are ordered to file written submissions on the above matters, as well as the matters listed in the annex to the present decision, as relevant to them, by **Monday, 10 October 2022, at 16:00 hours**. Should the Parties or Victims' Counsel wish to raise further matters in addition to those mentioned by the Panel, they are invited to do so in their submissions. Similarly, if they wish the Panel to hold further status conferences before the commencement of the trial, they are instructed to raise this matter in their submissions, including also the topics they wish to discuss and the timing of the status conference(s).

12. Lastly, the Panel recalls that, pursuant to Article 40(6)(a) of the Law, it can exercise any functions or powers of the Pre-Trial Judge as referred to in Article 39 of the Law, including taking necessary measures for the expeditious preparation of the trial, such as holding status conferences with the modalities of participation set out in Rule 96 of the Rules.²⁰ Accordingly, while Mr Shala and his Counsel have the right to be present in person, pursuant to Rule 96(2) of the Rules, the status conference: (i) may be attended by the Accused with Counsel participating via video-conference; (ii) may be attended by Counsel, with the Accused participating via video-conference; or (iii) may take place in the Accused's absence, with Counsel present or participating via video-conference. These arrangements, however, necessitate the written consent of the Accused, after receiving advice from his Counsel, in accordance with Rule 96(2) of the Rules, and in line with the practice adopted during the pre-trial stage of the proceedings.

²⁰ See also *Mustafa* Decision setting the dates for trial preparation conferences, paras 15-16.

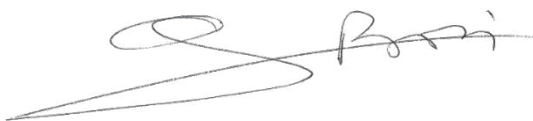
IV. DISPOSITION

13. For the above-mentioned reasons, the Panel hereby:

- a. **DECIDES** to convene a trial preparation conference, in public session, in the presence of the SPO, the Defence, Victims' Counsel and the Registry / WPSO on **Tuesday, 18 October 2022, from 09:00 to 12:30 hours, Wednesday, 19 October 2022, from 09:30 to 16:00 hours, Thursday, 20 October 2022, from 09:30 to 17:30 hours and Friday, 21 October 2022, from 09:30 to 15:00 hours, as a reserve day;**
- b. **DECIDES** to convene a trial preparation conference, *ex parte* and in closed session, in the presence of the SPO, WPSO and a representative of the Registry, as soon as the above-mentioned session is completed, on the dates mentioned above; and
- c. **ORDERS** the SPO, the Defence, Victims' Counsel and the Registry / WPSO, to file written submissions as specified in paragraph 11 of the present decision by **Monday, 10 October 2022, at 16:00 hours** at the latest.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Friday, 30 September 2022

At The Hague, the Netherlands.