



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-04
The Specialist Prosecutor v. Pjetër Shala

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

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“Submission of the Registrar Pursuant to Rule 23(2) on COVID-19 Risk Mitigation Measures”, Filing F00022 dated 19 April 2021

Specialist Prosecutor’s Office

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I. INTRODUCTION

1. Pursuant to Rule 23(2) of the Rules,¹ the Registrar hereby submits representations to the Pre-Trial Judge on risk mitigation measures with regard to the novel coronavirus ('COVID-19') and the conduct of proceedings involving Mr Pjetër Shala ('the Accused').

II. PROCEDURAL HISTORY

2. On 12 June 2020, the Pre-Trial Judge issued a decision granting the request of the Specialist Prosecutor's Office ('SPO') for the arrest and transfer of the Accused to the Detention Facilities of the Specialist Chambers ('Detention Facilities') in the Netherlands ('Host State').²

3. On 17 March 2021, the Accused was arrested in Belgium by the Belgian Federal Police.³ Following the conclusion of judicial proceedings in Belgium, the Accused was transferred to the Detention Facilities in the Host State on 15 April 2021.⁴

III. DISCUSSION

4. This submission includes information regarding the COVID-19 risk mitigation measures in: (a) the Host State, with a particular focus on travel restrictions and support provided to those traveling on official business for the Specialist Chambers; (b) Kosovo; (c) the Detention Facilities, including during transport to and from the premises of the Specialist Chambers ('Premises') at Raamweg 47; and (d) the courtroom of the Specialist Chambers ('Courtroom').

¹ Rules of Procedure and Evidence Before the Specialist Chambers ('Rules'), KSC-BD-03/Rev3/2020, 2 June 2020.

² Decision on Request for Arrest Warrant and Transfer Order, KSC-BC-2020-04/F00008, 12 June 2020, strictly confidential and *ex parte*.

³ Report on the Arrest and Transfer of Pjetër Shala to the Detention Facilities, KSC-BC-2020-04/F00021, 16 April 2021, strictly confidential and *ex parte*, para. 9.

⁴ *Ibid.*, para. 13.

A. HOST-STATE

5. The government of the Host State has imposed a partial lockdown, including a curfew from 22:00 until 04:40, which remains in effect through at least 27 April 2021.⁵

6. The government has also recently introduced a step-by-step plan to reopen.⁶ The first step in the plan to reopen will only be implemented if there is a clear decrease in the number of COVID-19 patients being hospitalised. As part of the first step in the plan to reopen, a decision on whether to lift the evening curfew will be taken on 20 April 2021.⁷

7. Violation of the curfew that is currently in place carries a fine, although there are exceptions to the curfew, *inter alia*, if your employer requires you to leave your home for your work, or if you are travelling abroad or returning to the Netherlands.⁸ If a person needs to go outside during curfew hours for one of the permitted purposes, s/he must carry a self-declaration form and, where applicable, an employer's declaration form.⁹ The forms are not required for persons traveling to or returning from abroad, although those persons must present their travel documents to demonstrate that they are or have been traveling.¹⁰

8. The basic rules that currently apply to everyone in the Host State are to: stay at home as much as possible and limit contact with others; work from home unless this is impossible; avoid busy places; get tested and stay home if you have symptoms; wear a face mask, if you are aged 13 or over, in buildings and covered spaces that are accessible to the public, such as shops, airports, and petrol stations, as well as on public transport, in stations, on platforms and at bus and tram stops; stay 1.5 metres

⁵ See Government of the Netherlands, "Coronavirus measures in brief", <https://www.government.nl/topics/coronavirus-covid-19/tackling-new-coronavirus-in-the-netherlands/coronavirus-measures-in-brief> (last visited 19 April 2021).

⁶ See Government of the Netherlands, "Plan to reopen society", <https://www.government.nl/topics/coronavirus-covid-19/plan-to-reopen-society> (last visited 19 April 2021).

⁷ Ibid.

⁸ See Government of the Netherlands, "Curfew", <https://www.government.nl/topics/coronavirus-covid-19/curfew> (last visited 19 April 2021).

⁹ Ibid.

¹⁰ Ibid.

away from other people; and observe basic hygiene measures, such as regular hand-washing.¹¹

9. Restaurants, hotels, and shops remain subject to extensive restrictions.¹² Restaurants are closed, and only take away and delivery is permitted. Hotels can receive guests but hotel restaurants remain closed. The reopening of shops and restaurants will be considered as part of the step-by-step plan to reopen.¹³

1. Travel Restrictions

10. As a general matter, the government strongly advises against travel to the Host State unless it is strictly necessary.¹⁴

11. In addition, there is currently an entry ban in place in the Host State. For persons coming from a country that is part of the European Union ('EU') or the Schengen area, the entry ban does not apply. For those who are not nationals of an EU or Schengen area country, the EU entry ban does apply.¹⁵

12. If the entry ban applies then, generally, you can only travel to the Netherlands if you fall into one of the exemption categories.¹⁶ Persons who work for international organisations are exempt from the travel ban.¹⁷ [REDACTED].¹⁸

¹¹ Ibid.

¹² See Government of the Netherlands, "Corona: rules for the hospitality sector", <https://business.gov.nl/regulation/corona-rules-hospitality-sector/> (last visited 19 April 2021).

¹³ See Government of the Netherlands, "Plan to reopen society", <https://www.government.nl/topics/coronavirus-covid-19/plan-to-reopen-society> (last visited 19 April 2021).

¹⁴ See Government of the Netherlands, "Traveling to the Netherlands from Abroad", <https://www.government.nl/topics/coronavirus-covid-19/tackling-new-coronavirus-in-the-netherlands/travel-and-holidays/visiting-the-netherlands> (last visited 19 April 2021).

¹⁵ See Government of the Netherlands, "Checklist for travel to the Netherlands", <https://www.government.nl/topics/coronavirus-covid-19/visiting-the-netherlands-from-abroad/checklist> (last visited 19 April 2021).

¹⁶ See Government of the Netherlands, "EU entry ban and exemptions", <https://www.government.nl/topics/coronavirus-covid-19/visiting-the-netherlands-from-abroad/exemptions-to-the-entry-ban/eu-entry-ban-exemption-categories> (last visited 19 April 2021).

¹⁷ Ibid.

¹⁸ [REDACTED].

2. Support Provided by the Registry for Persons Traveling on Official Business to and from the Host State

13. Pursuant to Article 52 of the Law¹⁹ and Article 24 of the Host State Agreement,²⁰ Counsel and persons assisting Counsel enjoy certain privileges and immunities both in the Host State and in Kosovo. Counsel and their team members are notified that they enjoy such privileges and immunities via official letter.
14. To activate Counsel's privileges and immunities in the Netherlands, the Registry registers Counsel and their team members with the MFA. Thereafter, the MFA issues a diplomatic identification card ('MFA card') to Counsel and their team members.²¹
15. [REDACTED]. [REDACTED].²² [REDACTED].²³ [REDACTED].
16. [REDACTED].²⁴
17. [REDACTED].²⁵
18. [REDACTED]. [REDACTED].
19. [REDACTED]. [REDACTED].²⁶ [REDACTED].²⁷

¹⁹ Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ('Law'), 3 August 2015, art. 52; *see also* Law No. 03/L-033 on the Status, Immunities and Privileges of Diplomatic and Consular Missions and Personnel in Republic of Kosovo and of the International Military Presence and its Personnel, 20 February 2008, art. 5.

²⁰ Agreement between the Kingdom of the Netherlands and the Republic of Kosovo concerning the Hosting of the Kosovo Relocated Specialist Judicial Institution in the Netherlands ('Host State Agreement'), 15 February 2016, art. 24.

²¹ *See* Host State Agreement, art. 33.

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED]. The self-quarantine period in the Netherlands is 10 days upon arrival. Self-quarantine may be ended earlier with a negative COVID-19 test taken on the 5th day after arrival in the Netherlands. *See* Government of the Netherlands, "Self-quarantine upon arrival in the Netherlands", <https://www.government.nl/topics/coronavirus-covid-19/visiting-the-netherlands-from-abroad/self-quarantine> (last visited 19 April 2021); Government of the Netherlands, "When you don't have to self-quarantine upon arrival in the Netherlands", <https://www.government.nl/topics/coronavirus-covid-19/visiting-the-netherlands-from-abroad/self-quarantine/exemptions> (last visited 19 April 2021).

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ *See* Government of the Netherlands, "Negative COVID-19 test results and declaration required", <https://www.government.nl/topics/c/coronavirus-covid-19/visiting-the-netherlands-from-abroad/mandatory-negative-test-results-and-declaration> (last visited 19 April 2021).

20. The Registry's Defence Office provides Counsel and team members with the most up to date information regarding restrictions and lockdown measures in the Netherlands, upon request.

B. KOSOVO

21. On 6 April 2021, the government of Kosovo decided to impose new general and specific restrictions to combat the spread of COVID-19, including a curfew from 22:00 to 05:00.²⁸

1. Travel Restrictions

22. At the present time, the Kosovo authorities require foreign citizens entering Kosovo and traveling from high-risk countries to have a negative RT-PCR test for COVID-19 in the last 72 hours.²⁹

2. Support Provided by the Registry for Persons Traveling on Official Business to and from Kosovo

23. [REDACTED]. [REDACTED].

24. [REDACTED]. [REDACTED]. The Defence Office also provides Counsel and team members with general information about flight options to assist with planning travel to the region.

25. Upon request, the Defence Office will inform Counsel and team members where to find the most up to date information regarding COVID-19-related restrictions and lockdown measures in Kosovo.

²⁸ See Republic of Kosovo, Health Ministry, "Decision of the Government of the Republic of Kosovo on new anti-COVID measures 19", 6 April 2021, <https://msh.rks-gov.net/sq/vendimi-i-qeverise-se-republikes-se-kosoves-per-masat-e-reja-anti-covid-19/> (last visited 19 April 2021).

²⁹ Ibid.

C. DETENTION FACILITIES

26. The Medical Officer³⁰ regularly advises the Registrar and the Chief Detention Officer on public health measures in the Detention Facilities.

27. The Detention Facilities are located within [REDACTED] the Host-State prison, PI Haaglanden ('Prison'). [REDACTED].

1. Public Health Measures

28. Since the outbreak of the COVID-19 pandemic, the Medical Officer, [REDACTED], has continuously provided advice [REDACTED] to safeguard and promote the health of Detainees during the pandemic.

29. [REDACTED].

30. [REDACTED].

31. [REDACTED].

2. Visits with Detainees

32. [REDACTED].

33. Video visits with Counsel are strongly encouraged; nevertheless, in-person visits with Counsel that are of vital necessity are permitted in the Detention Facilities, subject to certain conditions.

34. In order to protect the health of Detainees and others in the Detention Facilities, no more than two visitors at a time are permitted to attend an in-person Counsel visit.³¹ Counsel are also required to answer public health questions and undergo a temperature check before being allowed entry into the Detention Facilities.³² Furthermore, Counsel are required to wear personal protective equipment ('PPE')

³⁰ Pursuant to Detention Rule 2.2, "Medical Officer" is defined as: "The responsible treating physician at the Detention Facilities, his or her deputy, or any other physician hired by competent authorities of the Host State for the purpose of providing medical treatment to a Detainee".

³¹ See Registry Instruction on General Restrictions on Visits Due to COVID-19, KSC-BD-35, 23 September 2020, sect. 5.1.

³² See Detention Management Unit ('DMU') Instruction on Security Requirements to Enter the Detention Facilities, KSC-BD-32, 23 September 2020, sect. 11.

while in the Detention Facilities, including for the duration of their visits, to disinfect their hands upon entry and to observe other hygienic and risk mitigation measures. Among these risk mitigation measures is the complete separation of Counsel and Detainees during in-person Counsel visits by means of a floor to ceiling wall, a portion of which is a glass window, which divides Detainees and Counsel into two separate rooms. Acoustic panels have been installed in both rooms, and Counsel and Detainees communicate through an audio connection. This complete separation serves to enable in-person Counsel visits in the Detention Facilities that are of vital necessity, which could not otherwise occur due to the current COVID-19 restrictions.

35. Visiting rooms are large and provided with appropriate ventilation. In between visits, visiting rooms are thoroughly disinfected and ventilated for a period of 15 minutes in order to eliminate any risk of contamination.

36. During in-person Counsel visits, paper documents required for the preparation of the defence may be shared between Counsel and Detainees through the Detention Officer assigned to the visit.³³ Documents may also be exchanged between Detainees and Counsel prior to a visit through the Secure Electronic Data Sharing Tool.³⁴

37. On advice of the Medical Officer, the Registrar has temporarily restricted in-person visits with family members and other personal visitors in the Detention Facilities. In lieu of in-person visits, the Registrar has authorised video visits with Close Relatives of Detainees.³⁵

38. The public health measures in place in the Detention Facilities are under constant review to determine whether they remain necessary and proportionate. [REDACTED].

39. [REDACTED]. [REDACTED].

³³ See Registry Instruction on General Restrictions on Visits Due to COVID-19, KSC-BD-35, 23 September 2020, sect. 5.

³⁴ See Registry Instruction on Secure Electronic Data Sharing Between Counsel and Detainees, KDC-BD-39, 4 March 2021.

³⁵ See Registry Instruction on General Restrictions on Visits Due to COVID-19, KSC-BD-35, 23 September 2020, sect. 2; Registry Instruction on Video Visits, KSC-BD-34, 23 September 2020.

3. Transport to and from Hearings

40. In order to limit external contact, the external transport of Detainees is limited to special and urgent circumstances. In those circumstances, the transport service of the Host State Prison Service ('DV&O') has put in place preventative measures for transport of Detainees to and from court hearings that are in line with the Host State measures.

41. [REDACTED].

D. COURTROOM

42. On the Premises at Raamweg 47, the risk mitigation measures are in line with Host State measures. For example, building occupancy levels are capped to enable physical distancing, and communal areas such as the staff and public entrances are also configured to comply with the 1.5-metre distancing principle. Walkway instructions and hand sanitising stations are also clearly visible upon entry and throughout the Premises, as well as cleaning instructions and cleaning stations in communal areas. The use of face masks for all personnel is obligatory while away from workstations, while transiting throughout the building, and in the common areas.

43. In terms of risk mitigation, the Courtroom and the Detention Facilities have the technical capability to provide secure video-conference broadcasting simultaneously in the Courtroom. In addition, the risk mitigation measures in the Courtroom itself are also in line with Host State measures. They include basic hygiene measures, such as hand sanitising before entry and exit and sanitising of equipment and furnishings before the start of each hearing and during any break between cases.

44. Courtroom seating has been reconfigured to maintain physical distance of 1.5 metres, along with the installation of polycarbonate shields. If those in the Courtroom cannot maintain 1.5-metre distance (for example if conferring with each other), a non-medical face mask must be worn.

45. No adjustment to the Judges' bench is required for hearings by the Pre-Trial Judge. Likewise, interpreter booths are wide enough to maintain the appropriate

physical distance. In the holding cells at Raamweg 47, a polycarbonate partition has been installed in the Counsel visiting room.

46. As part of the safety measures taken by the Specialist Chambers to reduce the general risk of transmission of COVID-19, visits to the Premises are temporarily limited.

47. The public gallery has been reconfigured to allow for a maximum of 20 seated guests, plus one wheelchair. In addition, the press area has been configured to facilitate a maximum of 14 persons in the press briefing area and an additional maximum of 6 persons at workstations in the media room.

48. Visitors to the Premises, including media, are required to pre-register and will be required to answer public health questions before being admitted to the Premises.

49. In the public entrance to the Courtroom, the registration and waiting areas, the public gallery, and the press area, 1.5-metre distancing and the wearing of non-medical face masks is required at all times.

E. CLASSIFICATION

50. This submission is filed confidentially pursuant to Rule 82(1)(b) and (3) of the Rules, as it contains personal health-related information, information on internal Registry procedures, and information on consultations and communications with external parties, which carry a reasonable expectation of privacy and non-disclosure. The Registrar has no objection to this filing being reclassified as public, but requests the opportunity to review the filing for redactions before it is reclassified.

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Dr Fidelma Donlon

Registrar

Friday, 30 September 2022

At The Hague, the Netherlands