

Case No.: KSC-BC-2020-04

Before: Trial Panel I

Judge Mappie Veldt-Foglia, Presiding Judge

Judge Roland Dekkers

Judge Gilbert Bitti

Judge Vladimir Mikula, Reserve Judge

Registrar: Dr Fidelma Donlon

Date: 10 October 2022

Filing Party: Defence Counsel

Original Language: English

Classification: Public

THE SPECIALIST PROSECUTOR

v.

PJETËR SHALA

**Public Redacted Version of the Defence Submissions Pursuant to Order on Trial
Preparation Conferences**

Specialist Prosecutor's Office:

Jack Smith

Specialist Counsel for the Accused:

Jean-Louis Gilissen

Hédi Aouini

Leto Cariolou

Counsel for Victims

Simon Laws QC

Maria Radziejowska

I. INTRODUCTION

1. Pursuant to the “Decision setting the dates for trial preparation conferences and requesting submissions with one strictly confidential and *ex parte* annex”,¹ the Defence presents its submissions on the matters identified by the Trial Panel.

II. SUBMISSIONS

2. On 30 September 2022, the Trial Panel instructed the Defence to present written submissions on the matters identified for consideration.

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

3. The Defence submits that at present the Specialist Prosecutor’s Office (“SPO”) has not completed its disclosures, including of exculpatory material, and the Defence investigations are still ongoing. It is expected that the Defence List of Potential Witnesses will be significantly revised and, as such, it is premature to comment on the order and modalities in which the Defence intends to present the evidence of its witnesses.

B. Investigations and Disclosure of Evidence

4. The Defence investigations have not been completed and are currently ongoing. The Defence will need to carry out further missions in the field and expects significant documentation from various entities. The Defence investigations are often exacerbated by various practical difficulties, including by practical difficulties on the ground. Nonetheless, its investigations are

¹ KSC-BC-2020-04, F00289, Decision setting the dates for trial preparation conferences and requesting submissions with one strictly confidential and *ex parte* annex”, 30 September 2022, paras. 11, 13(c). All further references to filings in these submissions concern Case No. KSC-BC-2020-04 unless otherwise indicated.

advancing but require additional time to be completed. The Defence expects that its investigations will have to continue while the SPO presents its case.

5. The Defence can confirm that it anticipates disclosing additional evidence and revising its Pre-Trial Brief and List of Potential Witnesses as its investigations progress.
6. The Defence would like to request an *ex parte* closed session to address the panel on matters related to its trial readiness. [REDACTED].
7. As to the possible adoption of a framework governing the handling of confidential information during investigations and contacts with witnesses, the Defence notes that, at present, there is an *inter partes* agreement on contacting SPO witnesses and victims as well as persons previously interviewed by the SPO. The Defence does not consider the adoption of a framework at this stage to be required.

C. Crime-Site Visit

8. The Defence requests a crime-site visit, which will assist the Trial Panel to assess the evidence in this case and its fact-finding duties. The Defence submits that the appropriate moment for such visit would be after the close of the Prosecution's case and prior to the opening of the Defence case. The Defence will make concrete proposals for multiple locations that should be visited during such visit in due course.
9. The Defence cannot confirm at present whether it will be presenting videos, 3D reconstruction, maps, and/or photographs of the crime site.

D. Conduct of the Proceedings

10. The Defence submits that, provided that the outstanding issues to be discussed at an *ex parte* hearing are resolved, it expects to be trial ready in January 2023.
11. The Accused does not object to the SPO reading a summary of the Corrected Confirmed Indictment at the opening of the Prosecution's case.
12. The Defence will be making an opening statement pursuant to Rule 126(2) of the Rules directly after the opening statements of the SPO and Victims' Counsel. The Defence reserves the right to make further submissions after the close of the Prosecution's case. The Defence cannot confirm at present how much time it will require for its opening statements and what visual or other tools will be required.
13. The Defence cannot confirm at present whether the Accused will make an unsworn statement pursuant to Rule 142(1) of the Rules.

E. Familiarisation of Witnesses Prior to Testimony

14. The Defence does not object to witness familiarisation conducted by the Witness Protection and Support Section of the Registry, which could include familiarisation of a witness with any prior witness statements he or she may have given. The Defence does not object to counsel for the Prosecution meeting Prosecution witnesses upon their arrival to the premises of the KSC and shortly before such witnesses are called to testify for an introductory meeting as part of the witnesses' familiarisation with the KSC proceedings. The Defence does object to counsel for the Prosecution or the Victims participating in these proceedings discussing the contents of a witness's anticipated testimony prior to the witness's testimony in court.

F. Presentation of Evidence by the Parties and Participants

15. The Defence can confirm that it will present a case. The Defence List of Potential Witnesses is not final, will be revised, and, as such, the Defence is unable at present to indicate the number of witnesses it intends to call. The Defence can however confirm that it intends to call expert witnesses. It cannot confirm at present the requested time for direct examination nor the order in which it intends to call the witnesses included in its List.
16. With regard to the defence of alibi, the Defence refers the Trial Panel to the Defence Submissions on Alibi Dated 1 July 2022.²
17. The Defence cannot confirm at present whether it will rely on the admission of prior witness statements or transcripts for the purposes of its case.

G. Non-Oral Evidence

18. The Defence can confirm that it intends to object to the admissibility of non-oral evidence disclosed by the SPO under Rule 102 of the Rules on multiple grounds, including on the basis of Rule 138(1) and Rule 138(2) of the Rules. The Defence refers the Trial Panel in this respect to the Annex to the Defence Notice of Objections to the Admissibility of Evidentiary Material Disclosed under Rule 102 of the Rules of 12 August 2022.³
19. The Defence submits that the admissibility of non-oral evidence should be decided at the time of its submission at trial when such evidence is tendered through witnesses in court and after the Parties have had an opportunity to make submissions. As to the admissibility of non-oral evidence through bar-table motions, the Defence submits that such motions should be categorised by

² F00228, Defence Submissions on Alibi Pursuant to the Pre-Trial Judge's Order Dated 14 April 2022, 1 July 2022 (confidential).

³ F00251, A01, ANNEX to "Notice of Objections to Admissibility of Evidentiary Material Disclosed Under Rule 102 of the Rules with strictly confidential Annex", 12 August 2022 (public with strictly confidential Annex).

subject-matter and presented after all witnesses called by the particular party who are testifying as to a particular subject-matter have been heard. This would allow the context and relevance of proposed non-oral evidence to be properly assessed and restrict the admissibility of non-oral evidence to matters that could not be heard in court. The Defence would object to having the admissibility of tendered material deferred to the judgment as in such case the Parties would not be able to know in advance of closing submissions the scope of the evidence before the Trial Panel.

H. Judicial Notice of Adjudicated Facts

20. To date, the SPO has not requested the Trial Panel to take judicial notice of adjudicated facts. The Defence does not intend to make any such request and expects the SPO to prove in court the entirety of its case.

I. Conduct of the Pre-Trial Proceedings

21. The Defence requests the Trial Panel to hold further status conferences before the commencement of the trial to facilitate the Parties' pre-trial preparation and ensure the efficiency of the proceedings.

Word count: 1250

Respectfully submitted,



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Monday, 10th of October 2022
The Hague, the Netherlands