



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-04

The Specialist 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: 24 February 2023

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Decision on the conduct of the proceedings

To be notified to:

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TRIAL PANEL I (Panel) hereby renders this decision on the conduct of the proceedings.

I. PROCEDURAL BACKGROUND

1. On 10 October 2022, further to an order from the Panel,¹ the Specialist Prosecutor's Office (SPO),² the Defence for Pjetër Shala (Defence and Accused respectively),³ Victims' Counsel⁴ and the Registry⁵ made submissions on, among others, matters related to the conduct of the proceedings.

2. On 18, 19 and 20 October 2022, the Panel held trial preparation conferences, where the Parties, Victims' Counsel and the Registry made further submissions.⁶

3. On 28 October 2022, further to an order from the Panel,⁷ the SPO filed an amended list of witnesses.⁸

¹ KSC-BC-2020-04, F00289, Trial Panel I, *Decision setting the date for trial preparation conferences and requesting submissions* (Decision on Trial Preparation Conferences), 30 September 2022, public, with Annex 1, strictly confidential and *ex parte*.

² KSC-BC-2020-04, F00303, Specialist Prosecutor, *Prosecution submissions in advance of the trial preparation conference* (SPO Submissions), 10 October 2022, confidential, with Annexes 1-2, strictly confidential and *ex parte*, and Annex 3, confidential. A public redacted version was filed on 11 October 2022, F00303/RED2.

³ KSC-BC-2020-04, F00305, Defence, *Defence Submissions Pursuant to Order on Trial Preparation Conferences* (Defence Submissions), 10 October 2022, strictly confidential and *ex parte*. A public redacted version was filed the same day, F00305/RED.

⁴ KSC-BC-2020-04, F00301, Victims' Counsel, *Victims' Counsel Submissions for Trial Preparation Conference* (Victims' Counsel Submissions), 10 October 2022, public.

⁵ KSC-BC-2020-04, F00304, Registry, *Registry Submissions for Trial Preparation Conferences* (Registry Submissions), 10 October 2022, public, with Annex 1, confidential, and Annexes 2-14, strictly confidential and *ex parte*.

⁶ KSC-BC-2020-04, Transcript of Hearing, 18 October 2022, public, pp. 301-391; Transcript of Hearing, 19 October 2022, public, pp. 392-409; Transcript of Hearing, 19 October 2022, confidential and *ex parte*, pp. 410-457; Transcript of Hearing, 20 October 2022, confidential and *ex parte*; pp. 458-473; Transcript of Hearing, 20 October 2022, confidential and *ex parte*, pp. 474-496.

⁷ KSC-BC-2020-04, Transcript of Hearing, 19 October 2022, public, p. 401, line 6 to p. 401, line 19.

⁸ KSC-BC-2020-04, F00331, Specialist Prosecutor, *Prosecution notice of filing of amended witness list and request to amend its exhibit list*, 28 October 2022, confidential, with Annexes 1 and 2, confidential. The list of witnesses is contained in Annex 1, F00331/A01 (F00331/A01, SPO List of Witnesses).

4. On 26 January 2023, the Panel set the commencement date of the trial, gave directions on the opening statements and set the date for the commencement of the presentation of evidence.⁹

5. On 2 and 3 February 2023, the SPO confirmed the order of appearance of its witnesses scheduled to testify during the first evidentiary block and filed an updated overall order of appearance of witnesses.¹⁰

6. On 24 February 2023, the Panel issued the Decision on victims' procedural rights during trial and related matters (Decision on Victims' Rights).¹¹

II. APPLICABLE LAW

7. The Panel notes Articles 21(2) and 40(2) and (6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 82, 84(1), 104(1), 116, 120, 127, 141, 143-146, 149, 151 and 153-157 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules).

III. DIRECTIONS

8. The following constitute the Panel's initial directions on the conduct of the proceedings. Issues left unaddressed in the present decision and which require the Panel's intervention will be dealt with in the course of the trial. Generally, the Panel has not addressed issues already regulated in the Kosovo Specialist

⁹ KSC-BC-2020-04, F00405, Trial Panel I, *Decision on the date for the commencement of the trial, evidence presentation and related matters*, 26 January 2023, public.

¹⁰ KSC-BC-2020-04, F00410, Specialist Prosecutor, *Prosecution submission on order of appearance of witnesses*, 2 February 2023, confidential, with Annex 1, confidential; F00412, Specialist Prosecutor, *Prosecution submission of corrected order of appearance of witnesses*, 3 February 2023, confidential, with Annex 1, confidential, containing the updated order of appearance of witnesses (F00412/A01, SPO Order of Appearance of Witnesses).

¹¹ KSC-BC-2020-04, F00433, Trial Panel I, *Decision on victims' procedural rights during trial and related matters*, 24 February 2023, confidential.

Chambers' (SC) legal framework or in the relevant Practice Directions and Registry Instructions.

A. ORDER OF PRESENTATION OF EVIDENCE

9. In accordance with Rule 127(2) of the Rules and the Decision on Victims' Rights,¹² evidence at trial shall be presented in the following sequence:

- (i) evidence called by the SPO;
- (ii) evidence called by Victims' Counsel, as ordered by the Panel, if any;
- (iii) evidence called by the Defence;
- (iv) evidence called by the Panel pursuant to Rule 132 of the Rules, if any;
- (v) SPO evidence in rebuttal, with leave of the Panel; and
- (vi) Defence evidence in rejoinder, with leave of the Panel.

10. While not considered evidence for the purposes of the trial judgment, Victims' Counsel may also request authorisation for victims he represents to directly address the Panel, not as witnesses, but to present their views and concerns as victims.¹³ If authorised, victims shall address the Panel after the closing of the SPO's case, following the Panel's decision pursuant to Rule 130 of the Rules, if any, and before the presentation of evidence by the Defence.

B. LENGTH OF PRESENTATION OF EVIDENCE

11. The following directions concern the presentation of evidence called by the SPO. Mindful of their submissions,¹⁴ the Panel will issue directions regarding the presentation of evidence by Victims' Counsel, if any, as ordered by the Panel, and by the Defence at a later stage of the proceedings.

¹² Decision on Victims' Rights, paras 37-40.

¹³ See Decision on Victims' Rights, para. 45.

¹⁴ Victims' Counsel Submissions, paras 17-21; Defence Submissions, para. 15.

1. Allocation of Time to the SPO

12. The SPO has indicated that it intends to rely on 19 witnesses at trial, 14 of whom are envisaged to testify live, including via video-conference.¹⁵ The SPO estimates that it needs 53.5 hours to examine its witnesses.¹⁶

13. The Panel considers that the estimate provided by the SPO is reasonable and sets **53.5 hours** as the time available to the SPO to present its case.¹⁷ Should the SPO require more time for the overall presentation of its case, it shall seek leave from the Panel sufficiently in advance. The Panel expects the SPO to respect the time estimates indicated for its examination of each witness and to inform the Panel at the earliest opportunity if it needs less time than originally envisaged.¹⁸

14. This is without prejudice to the Panel limiting the number of witnesses later in the proceedings or concluding that estimates for certain witnesses need to be revised. This could be the case if, for example, a witness's anticipated testimony is irrelevant or repetitive. The Panel recalls in this regard its obligation under Article 40(2) of the Law to ensure that the trial is fair and expeditious and that the proceedings are conducted with full respect for the rights of the Accused.

15. The Court Management Unit (CMU) shall inform the Panel, the Parties and Victims' Counsel, *via* email:

(i) at the end of each witness's direct examination, how much time the SPO has effectively used; and

¹⁵ F00331/A01, SPO List of Witnesses; F00412/A01, SPO Order of Appearance of Witnesses; KSC-BC-2020-04, F00425, Specialist Prosecutor, *Prosecution request for video-conference testimony for TW4-04, TW4-10, and TW4-11*, 13 February 2023, strictly confidential and *ex parte*. A confidential redacted version was filed the same day, F00425/CONF/RED; F00427/CONF/RED, Specialist Prosecutor, *Confidential Redacted Version of 'Prosecution notification concerning W04379'* (SPO Notification Concerning W04379), 16 February 2023, confidential.

¹⁶ F00412/A01, SPO Order of Appearance of Witnesses. This estimate may change in light of the SPO Notification Concerning W04379.

¹⁷ However, *see* paras 21, 39-41 below.

¹⁸ F00412/A01, SPO Order of Appearance of Witnesses, pp. 2-4.

(ii) at the end of each evidentiary block (or, for hearing days that fall outside of set evidentiary blocks – as envisaged in paragraphs 25 and 26 below – at the end of each day), how much time the SPO has used, in total, for its examination of all witnesses called to testify up to that point.

2. Allocation of Time to the Defence

16. Although the Defence does not bear the burden of proof, in the interest of fairness, the Panel allocates to the Defence for its cross-examination of each SPO witness the same amount of time as effectively used by the SPO for its direct examination of said witness.¹⁹ Should the Defence require more time for the questioning of a witness, it shall seek leave of the Panel as soon as possible.

17. The above direction does not apply to witnesses whose written statements and/or transcripts are introduced into evidence in lieu of direct examination, pursuant to Rule 154 of the Rules. For planning purposes, the Defence shall inform the Panel before the start of its cross-examination of Rule 154 witnesses how much time it needs for its questioning.

3. Allocation of Time to Victims' Counsel

18. Consistent with the victims' role in the proceedings, Victims' Counsel shall be allocated for his examination of each SPO witness 25 per cent of the time effectively used by the SPO for its direct examination of said witness. However, taking into consideration that criminal proceedings and reparations proceedings will be conducted concurrently,²⁰ the above is without prejudice to questions being put by Victims' Counsel to elicit evidence for the purposes of the reparation proceedings.

¹⁹ However, *see* paras 21, 39-41 below.

²⁰ KSC-BC-2020-04, F00421, Trial Panel I, *Decision on reparation proceedings*, 9 February 2023, public, para. 25(a).

19. Accordingly, the Panel recalls that it is first and foremost the responsibility of the SPO to question witnesses with regard to the constitutive elements of the crimes and modes of liability charged, whilst it is first and foremost the responsibility of Victims' Counsel to elicit from witnesses any information relevant for the reparation proceedings.²¹ Should Victims' Counsel require more time for the questioning of a witness, he shall seek leave of the Panel as soon as possible.

C. EFFECTIVE USE OF COURTROOM TIME

20. Considering the limited availability of the courtroom,²² which has to be shared with other Panels, the Panel urges the Parties and Victims' Counsel to organise their presentation of evidence in a manner that maximises the use of available courtroom time.²³ To the extent possible and foreseeable, courtroom days shall not be left unused.

21. Questioning must always be conducted in the most efficient manner possible. The Parties and Victims' Counsel shall focus their questioning on eliciting evidence that goes to the constitutive elements of the crimes and modes of liability charged, or other facts essential to the determination of the guilt or innocence of the Accused, matters that go to the credibility or reliability of the evidence, the harm suffered by victims, sentencing in case of a conviction, and reparations. Where questioning is deemed inefficient, it will be restricted, even if such questioning does not exceed the time estimated and/or allocated.²⁴ The Panel will

²¹ Decision on Victims' Rights, para. 48. *See also* KSC-BC-2020-05, F00170, Trial Panel I, *Decision on the conduct of the proceedings* (Case 05 Conduct of Proceedings), 26 August 2021, public, para. 19.

²² A regular court day is divided into three sessions of one and a half hours with breaks between the sessions (09:30-11:00; 11:30-13:00; 14:30-16:00). A fourth session (16:30-18:00) may be organised, in exceptional circumstances, once a week.

²³ The Panel notes with approval the SPO's scheduling of its witnesses in the first evidentiary block; KSC-BC-2020-04, F00410, Specialist Prosecutor, *Prosecution submission on order of appearance of witnesses*, 2 February 2023, confidential, with Annex 1, confidential, paras 2-6.

²⁴ Rule 143(4) of the Rules; Case 05 Conduct of Proceedings, para. 28.

not tolerate testimonies on facts irrelevant to the charges. The Parties and Victims' Counsel also have a responsibility to ensure that witnesses remain focused in their answers.

22. Further, the Parties and Victims' Counsel shall always be prepared to continue with the case, even if less time than estimated is required for a particular witness. If several witnesses are scheduled to testify in a given week or evidentiary block, unless otherwise indicated, the Panel expects to immediately continue with the examination of the next witness after the examination of the previous witness is concluded.

23. When scheduling their witnesses, the Parties and Victims' Counsel shall take into account the time allocated to the other participants for their questioning, as well as any possible questioning by the Panel.

D. WITNESS ORDER

24. The Panel recalls that it has set the following hearing dates for the first four evidentiary blocks:

- 27 March 2023 to 31 March 2023 (first evidentiary block);
- 1 May 2023 to 5 May 2023 (second evidentiary block);
- 30 May 2023 to 9 June 2023 (third evidentiary block); and
- 26 June 2023 to 28 June 2023 and 30 June 2023 to 7 July 2023 (fourth evidentiary block).²⁵

25. Noting the Parties and Victims' Counsel availability,²⁶ the Panel further sets **Friday, 19 May 2023** and **Friday, 16 June 2023**, as additional hearing dates, and cancels **Friday, 30 June 2023** as a hearing day.

²⁵ Decision on the date for the commencement of the trial and evidence presentation, paras 15, 18(e).

²⁶ KSC-BC-2020-04, Transcript of Hearing, 22 February 2023, confidential.

26. Further evidentiary blocks will be communicated at the appropriate time *via* CMU. In addition, further hearing dates may be set outside of the above-mentioned evidentiary blocks should the courtroom become available. While such dates will be set in consultation with the Parties, Victims' Counsel and the Registry, the Panel expects them to be ready to proceed with the case if witnesses are available to testify.

27. Having taken note of the SPO's confirmed order of appearance of witnesses for the first evidentiary block,²⁷ the Panel directs the SPO to file an updated order of appearance of witnesses for each of the subsequent evidentiary blocks at least 30 days before the start of each block.²⁸ For witnesses who are scheduled to testify on hearing days that fall outside of a set evidentiary block – as envisaged in paragraphs 25 and 26 above – the SPO shall inform the Defence, Victims' Counsel, the Registry and the Panel of the names of the witnesses at least 30 days prior to their scheduled testimony. Should the order of witnesses change thereafter, due to unforeseen circumstances, the SPO shall immediately inform the Defence, Victims' Counsel, the Registry and the Panel.

28. Victims' Counsel and the Defence shall provide an overall order of appearance of witnesses when filing their (final) lists of witnesses, if any. Corresponding deadlines for the filing of the (final) lists of witnesses will be set later in the proceedings. The directions set out in paragraph 27 above shall apply *mutatis mutandis* to Victims' Counsel and the Defence.

²⁷ KSC-BC-2020-04, F00410, Specialist Prosecutor, *Prosecution submission on order of appearance of witnesses*, 2 February 2023, confidential, with Annex 1, confidential; F00412/A01, SPO Order of Appearance of Witnesses.

²⁸ This applies to the second, third and fourth evidentiary blocks, as well as future evidentiary blocks. The deadline set in this decision is without prejudice to the calling entities' obligation to provide the Witness Protection and Support Office (WPSO) with a complete Witness Information Form for each witness as soon as practicable and, in any event, no later than 35 working days prior to the day the witness is required to testify; KSC-BD-42/Rev2, Registry Instruction. WPSO Guidelines on Services to Witnesses Appearing Before the Specialist Chambers, 7 October 2022, Section 4(1), annexed as Annex 1 to Registry Submissions, pp. 24-34.

E. EXAMINATION BY VIDEO-CONFERENCE AND EXAMINATION AWAY FROM
THE TRIAL VENUE

29. The Panel considers that in-person testimony and testimony by video-conference pursuant to Rule 144 of the Rules are equal options to give live testimony under the SC legal framework.²⁹

30. The Panel notes the SPO's request that the testimony of three witnesses be received via video-conference.³⁰ The Parties and Victims' Counsel are directed to file any other requests for testimony to be conducted under Rule 144 of the Rules at the earliest opportunity, and no later than 30 days before the witness's expected testimony, so as to allow for the necessary practical arrangements to be made.³¹

31. The Parties and Victims' Counsel are given a certain degree of flexibility in deciding whether they wish for witnesses to appear in person or by video-conference and making the appropriate request to the Panel in this regard. This is however subject to countervailing considerations, including the logistical burdens on the Registry and the Panel's obligation under Article 40(2) of the Law to ensure that the trial is fair, expeditious and conducted with due regard for the protection of victims and witnesses. Furthermore, it is of utmost importance that the venue chosen for the conduct of the testimony by video-conference is conducive to the giving of truthful and open testimony and to the safety, physical and psychological well-being, dignity and privacy of the witness, as provided in Rule 144(2) of the Rules. Consequently, the Panel reserves its right to reassess the mode of testimony proposed by the calling entity and to decide otherwise whenever it considers necessary.³²

²⁹ See also Case 05 Conduct of Proceedings, para. 24.

³⁰ KSC-BC-2020-04, F00425, Specialist Prosecutor, *Prosecution request for video-conference testimony for TW4-04, TW4-10, and TW4-11*, 13 February 2023, strictly confidential and *ex parte*. A confidential redacted version was filed the same day, F00425/CONF/RED.

³¹ See further KSC-BD-23/COR, Registrar, *Registry Practice Direction on Video Links*, 5 August 2020, public.

³² See also Case 05 Conduct of Proceedings, para. 25.

32. The SPO shall indicate, when filing the updated order of appearance of witnesses, as specified in paragraph 27 above, whether a witness is envisaged to testify via video-conference. Likewise, Victims' Counsel and the Defence shall include such information in their (final) lists of witnesses, if any.

33. As regards the examination of witnesses away from the trial venue, pursuant to Rule 145 of the Rules, the Parties and Victims' Counsel are directed to file any requests for testimony to be conducted under the aforementioned rule at the earliest opportunity, as soon as the witness's inability to appear becomes apparent, so as to allow for the necessary practical arrangements to be made.

F. IN-COURT PROTECTIVE AND SPECIAL MEASURES

34. To date, 12 SPO witnesses have been granted in-court protective measures.³³ Any additional SPO requests for in-court protective measures shall be made no later than 30 days prior to the witness's expected testimony. Any responses and replies shall follow the time limits set out in Rule 76 of the Rules.

35. Victims' Counsel and the Defence shall make requests for in-court protective measures, if any, for the witnesses they intend to call, at the latest, when filing their (final) lists of witnesses.

³³ KSC-BC-2020-04, F00036/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of First Decision on Specialist Prosecutor's Request for Protective Measures*, 17 May 2021, confidential, paras 5, 6, 9(a); F00053/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Second Decision on Specialist Prosecutor's Request for Protective Measures*, 12 July 2021, confidential, paras 16-17, 30(a), (c); F00072/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Consolidated Decision on Deferred Request for Protective Measures and Request to Defer Disclosure Obligations*, 9 September 2021, paras 15, 22(a); F00234, Pre-Trial Judge, *Decision on Specialist Prosecutor's Rule 102(2) and Related Requests*, 20 July 2022, confidential, para. 46(g). A public redacted version was issued on 8 August 2022, F00234/RED; F00247, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request for Protective Measures for [REDACTED]*, 8 August 2022, confidential, para. 13(b).

36. With regard to special measures under Rule 80(4)(c) of the Rules, the Panel shall determine the need for any such measures following receipt of the vulnerability assessment made by the Witness Protection and Support Office.³⁴

G. ORDER AND MODE OF QUESTIONING OF WITNESSES

37. In accordance with Rule 127(3) of the Rules and the Decision on Victims' Rights,³⁵ witnesses shall be examined in the following order:

- (i) witnesses called by the SPO shall be first examined by the SPO, followed by Victims' Counsel, and then cross-examined by the Defence;
- (ii) witnesses called by Victims' Counsel, as ordered by the Panel, shall first be examined by Victims' Counsel, then by the SPO, and finally by the Defence;
- (iii) witnesses called by the Defence shall first be examined by the Defence, then cross-examined by the SPO, and then examined by Victims' Counsel; and
- (iv) witnesses called by the Panel *proprio motu* shall first be questioned by the Panel, then by the SPO, followed by Victims' Counsel, and finally by the Defence.

38. In accordance with Rule 127(3) of the Rules, the Panel may allow redirect examination as deemed necessary. Moreover, the Panel may, at any stage, put any question to a witness. Furthermore, before the questioning of a witness, the Presiding Judge may give him or her the possibility to present a free narration of the events he or she has been called to testify about. Such a possibility may also be given to a witness during or after questioning by a Party or Victims' Counsel, at the Presiding Judge's discretion.

39. The examination of witnesses is to be carried out in accordance with Rule 143 of the Rules. The necessity or propriety of any particular question will be dealt

³⁴ The Panel will issue further guidance in its decision on witness familiarisation.

³⁵ Decision on Victims' Rights, paras 47, 49.

with on a case-by-case basis, noting the Panel's and the Presiding Judge's powers pursuant to Article 40(2) and (6) of the Law and Rule 143(4) of the Rules.

40. When resorting to Rule 154 of the Rules, the Panel expects the calling entity to streamline its questioning considerably, in light of the fact that this provision allows for the formal submission of the witness's written statement(s) and/or transcript(s) in lieu of direct examination.

41. Furthermore, all questioning shall be conducted in a focused, precise and succinct manner. The Parties and Victims' Counsel are strongly encouraged to avoid long and compound questions. As provided also above, questioning must always be conducted in the most efficient manner possible. In accordance with the Presiding Judge's powers under Rule 143(4) of the Rules, where questioning it is deemed inefficient, it will be restricted.³⁶ The Parties and Victims' Counsel shall, in principle, examine witnesses by way of neutral questioning. Leading and closed questions may only be permissible when they are conducive to the expeditiousness of the proceedings and the determination of the truth, under the control of the Presiding Judge pursuant to Rule 143(4) of the Rules.³⁷

42. Any objections raised to a question must be limited to the purposes set out in Rule 143(4) of the Rules. Furthermore, considering the *proprio motu* powers of the Presiding Judge under the aforementioned rule, the Parties and Victims' Counsel shall raise objections only when absolutely necessary. Any objections must be raised with the Panel at the time a question is asked and be brief and specific, explaining how the objection relates to the purposes set out in Rule 143(4) of the Rules. The entity making an objection has the responsibility to:

(i) request going into private or closed session before presenting it, if necessary, and to inform the Panel of the reasons for doing so; and

³⁶ See para. 21 above.

³⁷ See also Case 05 Conduct of Proceedings, para. 29.

(ii) indicate, before making any substantive submission on its objection, whether it is appropriate to discuss the reasons for objecting in the presence of the witness, so as to provide the Presiding Judge with an opportunity to decide if the matter is best dealt with in the absence of the witness. The Presiding Judge will decide on a case-by-case basis on any objections.

43. The Registry shall inform the Panel, *via* email, one day in advance of each witness's scheduled testimony, whether the witness speaks and/or understands English.

H. USE OF MATERIAL DURING THE QUESTIONING OF WITNESSES

44. As a general rule, the Parties and Victims' Counsel may only use during their questioning of a witness material which has been disclosed and notified in Legal Workflow. If the material has not been previously disclosed, the Parties or Victims' Counsel, as the case may be, shall:

(i) promptly disclose the material in Legal Workflow, at the latest when providing their list(s) of material to be used, as directed in paragraphs 45 and 48 below; and

(ii) seek leave from the Panel to use such material, indicating why the material has not been disclosed before. The request for leave shall be made *via* email to the Panel, copying CMU and the other entities, when providing the list(s) of material to be used. Any objections shall be made following the time limits set below, in paragraphs 47 and 49. The Panel will rule on the request prior to the material's intended use.

45. At least five (5) working days before the commencement of a witness's testimony, the calling entity shall:

(i) release in Legal Workflow a presentation queue containing the material to be used during its examination of the witness; and

(ii) provide the Panel, CMU and the non-calling entities with a list, *via* email, of said material.

46. The list shall indicate:

- (i) any passages intended to be used within any document longer than two pages;
- (ii) the ERN number under which the material can be found in Legal Workflow;
- (iii) the date of disclosure and corresponding disclosure package(s);
- (iv) whether it intends to submit the material into evidence; and
- (v) whether the material may be broadcasted to the public. Identification evidence – such as photographs of the Accused or of the alleged crime site – shall, in principle, not be broadcasted to the public.

47. This list is solely for notice purposes and does not constitute the formal submission of any document. Any objections to the use of such material shall be notified within three (3) working days, *via* email, to the Panel and all other entities.

48. At least one (1) working day before the commencement of a witness's testimony, the non-calling entities shall:

- (i) release in Legal Workflow a presentation queue containing the material to be used during their respective questioning of that witness, if any; and
- (ii) provide the Panel, CMU and the other entities with a list, *via* email, of said material, containing the information set out in paragraph 46 above.

49. Any objections to the use of such material shall be notified, *via* email, to the Panel and all other entities before the end of the examination by the calling entity.

50. When referring to any material during a witness's testimony, the questioning entity shall:

- (i) clearly identify such material by the relevant ERN number (ERN range, where applicable) and indicate the relevant page and/or paragraph number(s);
- (ii) where transcripts are concerned, the questioning entity shall also identify the specific line(s) being quoted or referred to; and
- (iii) call up the material on the screen and indicate whether it may be broadcasted to the public. Where both an English and an Albanian version exist, both versions shall be called up.

51. As regards the use of speech in audio-visual material during hearings, the entity intending to use such material shall indicate the ERN number of the corresponding English language transcript.³⁸ The court interpreters shall be sufficiently informed of which part of the transcript corresponds to which part of the audio-visual material being played. In such situations, the interpreters will read out only the relevant part of the provided English transcript into the record and are not required to directly interpret the audio-visual material. Should the Parties or Victims' Counsel disagree with the accuracy of the transcription read out in court, they may request corrections in accordance with the procedure established in the Registry Instruction on Requesting Translation, Interpretation and Verification Services.³⁹

I. USE OF PRIVATE AND/OR CLOSED SESSIONS

52. Insofar as possible, witness testimony shall be given in public.⁴⁰ To the extent possible, the Parties and Victims' Counsel are directed to group identifying

³⁸ KSC-BC-2020-04, F00025, Pre-Trial Judge, *Decision on Working Language*, 21 April 2021, public, paras 15, 17.

³⁹ KSC-BD-14/COR, Registrar, *Registry Instruction on Requesting Translation, Interpretation and Verification Services*, 30 May 2019, public.

⁴⁰ Article 21(2) of the Law.

questions together to avoid repeated recourse to private and/or closed session. Requests and their justification for private and/or closed session shall be made in a neutral and objective way, if possible, referring to the topics that will be covered. The justification shall be given either in public session, if possible, or otherwise at the beginning of the private or closed session requested. It is the responsibility of the questioning entity to request moving back to public session when the reasons necessitating a private or closed session are no longer present. The aforementioned is without prejudice to the Panel's assessment during a witness's testimony as to whether private or closed sessions are necessary.

J. IN-COURT REDACTIONS

53. Requests by the Parties and/or Victims' Counsel made during a hearing to redact part of what was inadvertently said in public session should be made via email, so as not to attract undue attention to any confidential information. The email shall be sent to the Panel's email address ([REDACTED]), copying the Court Officer and representatives of all other entities present in the courtroom.⁴¹ The request must clearly identify the word(s) to be redacted and the timestamp(s), page(s), and line number(s) of the real-time transcript. Such requests must be made as soon as possible, and no later than fifteen (15) minutes after the information was revealed. The entities present in the courtroom shall have five (5) minutes to object, if they so wish. Subsequently, the Presiding Judge will rule on the request.

54. Should the Parties or Victims' Counsel consider it necessary, they may also request the Panel to go into private session and make an oral request for the issuance of a redaction order, identifying the word(s) to be redacted and the timestamp(s), page(s), and line number(s) of the real-time transcript.

⁴¹ The Parties and Victims' Counsel shall consult *inter partes* and inform each other which member(s) of their respective teams shall be copied on such email communication.

55. The Parties' and Victims' Counsel's agreement on any redaction is not binding on the Panel and the aforementioned procedure is without prejudice to the Panel's *proprio motu* power to decide on the need for any redactions. Moreover, due to the impracticability of making a detailed assessment during or shortly after a hearing, any applied in-court redactions are also without prejudice to a subsequent revised assessment by the Presiding Judge.

K. SELF-INCRIMINATION BY A WITNESS

56. The Parties and Victims' Counsel, as applicable, shall, where foreseeable, give notice about potential requests for assurances pursuant to Rule 151(3) of the Rules. Noting that the presentation of evidence will commence on Monday, 27 March 2023, the Panel sets the deadline for any such requests pertaining to witnesses called by the SPO to **Wednesday, 15 March 2023**. Victims' Counsel and the Defence shall provide such notice in their (final) lists of witnesses, if any.

57. The Registry shall make all necessary arrangements for the provision of independent legal advice to witnesses who may be at risk of incriminating themselves during their testimony.⁴² Unless otherwise ordered by the Panel, Victims' Counsel shall provide such advice for dual status witnesses-victims. This is without prejudice to the Panel's assessment of whether assurances pursuant to Rule 151(3) of the Rules will be granted.

58. Counsel advising a witness who may be at risk of self-incrimination shall seize the Panel, sufficiently in advance, of any application for assurances under Rule 151(3) of the Rules, if required. The Parties and Victims' Counsel, as applicable, shall be notified of such an application and the SPO shall, as soon as possible and no less than two (2) working days prior to the testimony of the witness concerned, provide its views *ex parte* pursuant to Rule 151(3) of the Rules, so as to allow the Panel to rule on the matter before the commencement of the

⁴² See also Rule 151(4) and (6) of the Rules.

witness's testimony. The advising counsel shall be responsible for informing the witness, *inter alia*, of the provisions of Article 15(2) of the Law and Rule 65 of the Rules.

L. EXPERT WITNESSES

59. At the outset, the Panel recalls that expert witness reports or parts thereof may be admitted into evidence without calling the experts to testify in person if the opposing Party accepts the reports or parts thereof, as provided in Rule 149(3) of the Rules.⁴³ However, if the opposing Party does not accept the reports or parts thereof or wishes to cross-examine the expert witnesses, the experts shall be called to testify in person, as provided in Rule 149(2) and (4) of the Rules.

60. The SPO has indicated that it intends to rely on the evidence of three (3) expert witnesses.⁴⁴ Following an order from the Panel and pursuant to Rule 149(2) of the Rules,⁴⁵ the Defence has indicated that it challenges the qualifications of one witness, does not accept the reports of any of them, and intends to cross-examine all of them.⁴⁶ Accordingly, the Panel finds that the expert reports may not be admitted into evidence without the SPO calling the experts to testify in person and directs the SPO to do so.

61. When examining the expert witnesses, in order to ensure the efficiency of the proceedings, the SPO shall streamline its questioning and avoid eliciting information that is already available in the witnesses' reports and that would be repetitive. The SPO shall focus its questioning on clarifying and complementing the witnesses' reports, as necessary. Following its examination of each expert

⁴³ See also KSC-BC-2020-04, Transcript of Hearing, 18 October 2022, confidential, p. 359, lines 16-20.

⁴⁴ SPO Submissions, paras 28-29; KSC-BC-2020-04, Transcript of Hearing, 18 October 2022, confidential, p. 359, line 1 to p. 364, line 3; F00331/A01, SPO List of Witnesses, p. 5; F00412/A01, SPO Order of Appearance of Witnesses, p. 3.

⁴⁵ KSC-BC-2020-04, Transcript of Hearing, 19 October 2022, public, p. 401, line 20 to p. 402, line 7.

⁴⁶ KSC-BC-2020-04, F00348, Defence, *Defence Notice on Evidence of Prosecution's Expert Witnesses*, 14 November 2022, confidential, with Annex 1, confidential.

witness, the SPO shall seek the admission of the witness's reports and any associated material, orally, in court.

62. The witnesses shall thereafter be questioned by Victims' Counsel, if he so wishes, and cross-examined by the Defence. The Panel will decide on the admissibility of the expert reports following the experts' testimonies and questioning, as provided in Rule 149(4) of the Rules.

63. The procedure set out in Section III.G above in relation to the order and mode of questioning of witnesses shall, unless otherwise ordered, apply *mutatis mutandis* to the examination of expert witnesses.

64. To the extent that Victims' Counsel and the Defence also intend to rely on expert witnesses, as indicated,⁴⁷ the above directions apply *mutatis mutandis* to them.

M. RULES 153-155 OF THE RULES

65. At the outset, the Panel recalls that Rules 153 and 154 are useful tools to expedite and streamline the proceedings and, considering the limited availability of the courtroom, strongly encourages the Parties and Victims' Counsel to rely on them.⁴⁸

66. The SPO indicates that it intends to seek the admission of the written statements and/or transcripts of one (1) witness under Rule 154 of the Rules and five (5) witnesses under Rule 155 of the Rules.⁴⁹

⁴⁷ Victims' Counsel Submissions, para. 19; Defence Submissions, para. 15; KSC-BC-2020-04, Transcript of Hearing, 18 October 2022, public, p. 365, line 17 to p. 366, line 4.

⁴⁸ Decision on Trial Preparation Conferences, Section C. 4. b, c, f. *See also* KSC-BC-2020-05, F00169, Trial Panel I, *Decision on the submission and the admissibility of evidence*, 25 August 2021, public, para. 29.

⁴⁹ SPO Submissions, paras 32-33; F00412/A01, SPO Order of Appearance of Witnesses; SPO Notification Concerning W04379.

67. The Panel orders the SPO to file any applications under Rules 153, 154 and 155(1) of the Rules by **Monday, 20 March 2023**.⁵⁰ The Defence and Victims' Counsel may respond and raise objections, if any, by **Friday, 31 March 2023**. The SPO may reply, if it so wishes, by **Thursday, 13 April 2023**.

68. The Defence and Victims' Counsel are instructed to file applications under Rules 153, 154 and 155(1) of the Rules, at the latest, when filing their (final) lists of witnessed.

69. The above time limits do not preclude later applications under Rule 155(1) of the Rules should a witness become unavailable. Any applications under Rule 153 or Rule 154 of the Rules past these time limits shall be accompanied by reasons for the late filing. Applications under Rule 154 of the Rules shall in no case be made later than 30 days prior to the testimony of the witness, so as to enable the opposing Party and Victims' Counsel, as the case may be, to respond and the Panel to rule on the application in good time.

N. ALIBI

70. Having taken note of the Defence's submissions on alibi,⁵¹ the Panel instructs the Defence to file its notice to the SPO, as provided in Rule 104(1)(a) of the Rules, no later than **Thursday, 6 April 2023**, if it intends to offer a defence of alibi.

O. AGREED FACTS

71. The Panel takes note of the points of agreement between the Parties.⁵²

⁵⁰ The Panel understand that the SPO does not intend to seek the admission of written statements and/or transcripts in lieu of direct examination under Rule 154 of the Rules for witnesses scheduled to testify in the first evidentiary block; F00412/A01, SPO Order of Appearance of Witnesses, p. 2.

⁵¹ Defence Submissions, paras 15-16; 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, confidential, para. 5 *et seq.*

⁵² KSC-BC-2020-04, F00178, Specialist Prosecutor, *Prosecution submissions on points of agreement on matters of fact*, 8 April 2022, public, with Annex 1, confidential.

P. FACTS OF COMMON KNOWLEDGE

72. The Panel directs the SPO to file any request under Rule 157(1) of the Rules, if it so wishes, by **Friday, 14 April 2023**.

Q. ADJUDICATED FACTS

73. Noting the SPO's submissions that it intends to request the Panel to take judicial notice of adjudicated facts under Rule 157(2) of the Rules,⁵³ and the Defence's submissions that it does not intend to do so,⁵⁴ the Panel directs the SPO to file any request under Rule 157(2) of the Rules by **Friday, 14 April 2023**.

R. CRIME SITE VISIT AND 3D MODEL

74. The Panel has taken note of the Parties' and Victims' Counsel's submissions regarding a crime site visit.⁵⁵ The Panel considers that a ruling on this matter at this stage would be premature and will, accordingly, address it at the appropriate time.

75. The Panel further directs the SPO to submit in the record of the case, by **Friday, 3 March 2023**, the 3D model of the alleged crime site, made available to the Panel, the Defence and Victims' Counsel *via* email on 13 February 2023. This is for record keeping purposes only. The 3D model does not constitute evidence, but supporting material for the SPO's opening statements.⁵⁶

⁵³ SPO Submissions, para. 35; KSC-BC-2020-04, Transcript of Hearing, 18 October 2022, public, p. 352, lines 2-6.

⁵⁴ Defence Submissions, para. 20.

⁵⁵ SPO Submissions, paras 18-19; Defence Submissions, paras 8-9; Victims' Counsel Submissions, paras 8-10; KSC-BC-2020-04, Transcript of Hearing, 18 October 2022, public, p. 345, line 23 to p. 350, line 22; F00325, Defence, *Revised Version of Motion for a Crime Site Visit*, 25 October 2022, confidential; F00338, Specialist Prosecutor, *Prosecution response to Defence motion for a crime site visit*, 7 November 2022, confidential.

⁵⁶ KSC-BC-2020-04, Transcript of Hearing, 21 February 2023, confidential.

S. RECLASSIFICATION OF FILINGS AND TRANSCRIPTS

76. Mindful of the principle of publicity of the proceedings, the Panel gives the following directions on the reclassification of filings and transcripts.

77. As provided in Rule 82(3) of the Rules, when making a filing classified confidential or strictly confidential, the Parties, Victims' Counsel and the Registry, as the case may be, shall state the reasons for such classification. The filing entity shall also indicate when it does not object to the reclassification of the filing.

78. The Parties, Victims' Counsel and the Registry shall file public and/or confidential redacted versions, as the case may be, preferably and to the extent possible, at the same time as the original filing, or otherwise within three (3) days after the original filing was made. Where the basis for the original classification no longer exists, the filing entity shall request reclassification, as provided in Rule 82(5) of the Rules.

79. Further, as provided in Rule 84(1) of the Rules, the Panel considers it appropriate to order the Parties, Victims' Counsel and the Registry⁵⁷ to undertake a revision of the transcripts pertaining to:

- (i) the testimonies of SPO witnesses, within two (2) months of the closing of the SPO's case;
- (ii) the presentation of views and concerns by victims and the testimonies of witnesses called by Victims' Counsel, as ordered by the Panel, if any, within one (1) month of their completion; and
- (iii) the testimonies of Defence witnesses, if any, within one (1) month of the closing of the Defence's case.

80. The Parties, Victims' Counsel and the Registry shall liaise with each other and file consolidated submissions following the above timelines, making joint

⁵⁷ To the extent that portions of the transcripts concern the role and functioning of the Registry.

proposals for the lifting of redactions/reclassification of transcripts. They shall provide the reasons why the redaction/classification is no longer necessary, which should be sufficiently detailed and specific to enable the Panel's determination. The Parties, Victims' Counsel and the Registry shall ensure that they do not request to apply redactions to or reclassify as confidential transcripts or parts thereof that are already public. Importantly, the Parties, Victims' Counsel and the Registry shall ensure that their proposals are consistent within and across transcripts.

81. Should the Parties, Victims' Counsel and the Registry disagree on discrete portions of any transcript, they shall specify this in the joint submissions and provide the reasons for their disagreement. The Panel will ultimately decide on the lifting of redactions and/or reclassification of transcripts pursuant to Rules 80(1) and 84(1) of the Rules.

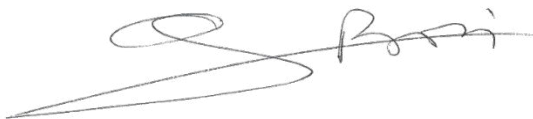
IV. DISPOSITION

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

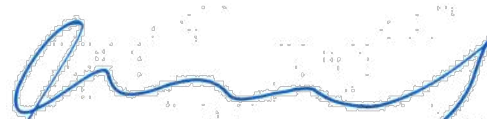
- a. **ADOPTS** the above directions concerning the conduct of the proceedings;
- b. **INSTRUCTS** the Parties, Victims' Counsel and the Registry, as the case may be, to comply with the deadlines set out above;
- c. **SETS Friday, 19 May 2023** and **Friday, 16 June 2023**, as additional hearing dates, and **CANCELS Friday, 30 June 2023**, as a hearing day;
- d. **ORDERS** the SPO to submit in the record of the case, by **Friday, 3 March 2023**, the 3D model of the alleged crime site, as specified in paragraph 75 of the present decision; and
- e. **ORDERS** the Registry to reclassify F00178/A01, currently classified as confidential, to public.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Friday, 24 February 2023

At The Hague, the Netherlands.