

**Case No.:** KSC-BC-2020-04  
**Before:** Pre-Trial Judge  
Judge Nicolas Guillou  
**Registrar:** Dr Fidelma Donlon  
**Date:** 21 April 2023  
**Filing Party:** Defence Counsel  
**Original Language:** English  
**Classification:** Public with Confidential Annex

**THE SPECIALIST PROSECUTOR**

v.

**PJETËR SHALA**

---

**Public Redacted Version of  
Defence Pre-Trial Brief with Confidential Annex**

---

**Specialist Prosecutor's Office:**

Alex Whiting

**Counsel for Mr Pjetër Shala:**

Jean-Louis Gilissen

Hédi Aouini

Leto Cariolou

**Counsel for Victims:**

Simon Laws KC

Maria Radziejowska

## I. INTRODUCTION

1. The Defence for Mr Pjetër Shala (“Defence” and “Accused”, respectively) hereby files the Defence Pre-Trial Brief, pursuant to Rule 95(5) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”) and as ordered by the Pre-Trial Judge.<sup>1</sup>
2. The Accused denies that he committed, contributed, participated, or otherwise aided and abetted any of the crimes charged in the Indictment.<sup>2</sup> He denies membership of any joint criminal enterprise. He denies responsibility for the crimes charged in the Indictment. The Accused pleads not guilty of each, and every count set out in the Indictment.<sup>3</sup>
3. The Accused does not rely on the defence of alibi, or any special defence within the meaning of Rule 95(5) of the Rules.<sup>4</sup>
4. The Accused takes issue with all the matters raised in the Prosecution’s Pre-Trial Brief.<sup>5</sup>
5. In its Pre-Trial Brief, the Prosecution submits that the Accused “was present at the Kukës Metal Factory during the Indictment Period.”<sup>6</sup>

---

<sup>1</sup> KSC-BC-2020-04, T. 14 April 2022 p. 299; KSC-BC-2020-04, F00234, Public Redacted Version of Decision on Specialist Prosecutor’s Rule 102(2) and Related Requests, 20 July 2022, para. 46(e). All further references to filings in this Brief concern Case No. KSC-BC-2020-04 unless otherwise indicated.

<sup>2</sup> F00098, A01, Annex 1 to Submission of Corrected Indictment with confidential Annex 1, 1 November 2021 (confidential) (“Indictment”).

<sup>3</sup> T. 19 April 2021 p. 11.

<sup>4</sup> F00228, Defence Submissions on Alibi Pursuant to the Pre-Trial Judge’s Order Dated 14 April 2022, 1 July 2022 (confidential).

<sup>5</sup> F00139, A01, Annex 1 to Submission of Lesser redacted version of the ‘Confidential Redacted Version of the Prosecution Pre-Trial Brief’, dated 31 January 2022, 8 February 2022 (confidential) (“Prosecution Pre-Trial Brief”), paras. 1-80.

<sup>6</sup> F00139, A01, Annex 1 to Submission of Lesser redacted version of the ‘Confidential Redacted Version of the Prosecution Pre-Trial Brief’, dated 31 January 2022, 8 February 2022 (confidential) (“Prosecution Pre-Trial Brief”), paras. 1, 18.

6. Specifically, the Prosecution is alleging that, between 17 May 1999 and 5 June 1999, the Accused together with others arbitrarily detained, interrogated, and mistreated victims in the Kosovo Liberation Army (“KLA”) facilities at the site of a former metal works factory in Kukës, Albania.<sup>7</sup> The Prosecution states that, on [REDACTED] May 1999, the Accused participated in the transfer of prisoners to the Kukës Metal Factory.<sup>8</sup> It alleges that, on [REDACTED] May 1999, the Accused was at the Kukës Metal Factory and severely beat a number of detainees.<sup>9</sup> The Prosecution maintains that, after [REDACTED] May 1999, the Accused and others beat and humiliated detainees on ten to twelve separate occasions.<sup>10</sup> The Prosecution contends that, on [REDACTED] June 1999, a group including the Accused interrogated and savagely beat [REDACTED] detainees with metal bars, baseball bats, and guns.<sup>11</sup> It is alleged that, in the presence of the Accused, KLA members shot and wounded these detainees and that a group, including the Accused, continued severely mistreating these detainees despite their gunshot wounds.<sup>12</sup> It is also stated that one of these detainees was shot, was denied medical assistance, and died from his wounds the following day.<sup>13</sup>
7. The Defence reiterates that the burden of proof with regard to all of the above allegations concerning the Accused rests on the Prosecution alone, and that the Defence is not required to present a case or call any witness.
8. The essence of the Defence case is that the Accused visited the Kukës Metal Factory throughout the war for obtaining supplies on a few isolated occasions

---

<sup>7</sup> Prosecution Pre-Trial Brief, paras. 1, 18, 30, 42.

<sup>8</sup> Prosecution Pre-Trial Brief, para. 31.

<sup>9</sup> Prosecution Pre-Trial Brief, paras. 33, 47, 68.

<sup>10</sup> Prosecution Pre-Trial Brief, para. 54.

<sup>11</sup> Prosecution Pre-Trial Brief, paras. 59-63.

<sup>12</sup> Indictment, para. 23; Prosecution Pre-Trial Brief, para. 3.

<sup>13</sup> Indictment, para. 23; Prosecution Pre-Trial Brief, paras. 1, 3, 18, 61, 62.

and his visits were brief as he hurried to return to the front.<sup>14</sup> He denies the allegations made in the Indictment which seek to place him at the Kukës Metal Factory for prolonged periods of time and involve him in repeated savage beatings, interrogations, and severe ill-treatment that even led to the death of one detainee.

## II. CHALLENGES TO THE FAIRNESS AND INTEGRITY OF THE PROCEEDINGS

9. Article 31(1) of the Kosovo Constitution provides that “[e]veryone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.”

---

<sup>14</sup> ERN 083280-TR-ET Part 12, pp. 31, 34 (W04752 states that he never saw the Accused at the Kukës Metal Factory); ERN 063312-TR-ET Part 2 RED, pp. 17, 18 (W04404 never saw the Accused at the Kukës Metal Factory); ERN 065237-TR-ET Part 2 RED, pp. 8-9 (W04454 never saw the Accused at the Kukës Metal Factory); ERN 069899-TR-ET Part 2 RED, pp. 25, 26 (W04478 never saw the Accused at the Kukës Metal Factory); ERN SITF00013982-00014013 RED, p. 10, ERN 057637-TR-ET Part 4 RED, pp. 4, 5 (W04279, [REDACTED] (*see* ERN 058048-058112-ET (KLA documents Related to Brigade 128), pp. 1, 2), did not know the Accused while at the Kukës Metal Factory); ERN 077857-TR-ET Part 2 RED, pp. 12, 13 (W03887, who was [REDACTED] at the Kukës Metal Factory under the command of [REDACTED], does not recall the Accused being present at the Kukës Metal Factory); ERN 077862-TR-ET Part 3, pp. 24, 25 (W04697 does not recall the Accused being present at the Kukës Metal Factory); ERN 058048-058112-ET (KLA documents Related to Brigade 128: none of these official registers and organograms refers to the Accused); ERN 066614-TR-ET Part 2 RED, pp. 27, 28 (W04468 states that a person referred to as “UJKU” was in [REDACTED] in early May 1999); ERN 083524-TR-ET Part 5 RED2, p. 23 (W04754 confirms that the Accused was not part of any particular KLA unit or brigade); ERN 083280-TR-ET Part 12, pp. 31-33 (W04752 states that the Accused barricaded himself with other soldiers at [REDACTED] following the killing of a soldier there); ERN SITF00013916-00013945 RED, p. 9; ERN 083843-TR-ET Part 2 RED p. 18 (W04751 states that the soldier was killed at [REDACTED] on [REDACTED] May 1999); ERN 083280-TR-ET Part 12, p. 34 (W04752 never saw the Accused at the Kukës Metal Factory); ERN T000-3259-T000-3260-ALB and ENG Transcript, p. 141 (W04752 states that he met the Accused in [REDACTED] in May 1999); ERN 083524-TR-ET Part 5 RED2, p. 23 (W04754, who was stationed at the Kukës Metal Factory, states that for a long time the Accused was absent, he reported there following a long absence of one or one and a half months to request to be sent to the front, and may have stayed at Kukës one night and left); ERN 060124-TR-ET Part 2 Revised RED2, pp. 138-143; ERN 069883-TR-ET Part 3, p. 13; ERN 063296-063311, p. 3.

10. Article 31(2) of the Kosovo Constitution guarantees everyone's right to a fair and impartial public hearing as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.

(A) Lapse of Time Since the Alleged Events Described in the Indictment

11. The Indictment relates to alleged events that took place in May and June 1999, more than 23 years ago.
12. The astounding delay in bringing forward the charges set out in the Indictment is completely unjustified. The Prosecution has not even attempted to present any justification for it. A number of lead witnesses for the Prosecution are unavailable to testify and their evidence cannot be tested by the Accused in cross-examination<sup>15</sup>
13. The Accused cannot be expected to demonstrate his actual whereabouts during the Indictment period, which was 23 years ago. This is particularly the case in light of the circumstances prevailing in Kosovo and Albania at the time. The undue delay with which this case has been investigated and prosecuted is highly prejudicial. Witnesses that could have testified for the Accused are now deceased and documentary evidence that could have been relied upon has been definitively lost or destroyed. The Accused had no actual notice of any intention to bring charges against him in relation to the allegations set out in the Indictment, despite his previous questioning and co-operation with investigators and prosecuting authorities. The ability of the Accused to substantiate his whereabouts at the relevant time is severely inhibited by his long absence from Kosovo and Albania and the significant efforts he made to cut links with Kosovo since he [REDACTED] in Belgium.<sup>16</sup>

---

<sup>15</sup> The Defence refers, in particular, to W04733, W01448, and W04848. *See, e.g.*, ERN 106419-106419; ERN SITF00431529-00431531.

<sup>16</sup> *See, for instance*, ERN 074117-074129-ET Red, p. 4.

14. The delay constitutes sufficient ground to stay these proceedings as no fair trial can be held in these circumstances. The only appropriate remedy is a stay of proceedings.

(B) Prosecution Investigation

15. The investigation in this case was flawed, selective, and evidently did not aim at establishing the truth. The investigators' conduct has prejudiced the proceedings to such degree that the fairness of the whole trial is tainted. For instance, one of the persons referred to as a detainee at the Kukës Metal Factory according to the Prosecution's Pre-Trial Brief,<sup>17</sup> has explicitly stated in an interview with SPO officers, after denying the allegation put to him that he [REDACTED] had been detained at the Kukës Metal Factory, that a EULEX soldier had pointed a bayonet at him [REDACTED] so that he would give information that he had not seen.<sup>18</sup> A Prosecution witness who purportedly identified the Accused was shown, for the purposes of identification, a photograph which was cut from an image publicly available on the internet of a person holding an AK47 rifle on which the words "Wolf" in big letters were inserted. The investigators had "some doubts" about the photograph used in the identification process and "decided to ditch the whole documentation related to [it]".<sup>19</sup> Nonetheless, the Prosecution intends to rely on this identification at trial.<sup>20</sup>

---

<sup>17</sup> Prosecution Pre-Trial Brief, para. 30.

<sup>18</sup> ERN 059358-TR-ET Part 2, pp. 30, 31. Specifically, in an interview dated [REDACTED] April 2019 with the SPO, W04365 stated that a "EULEX soldier [...] had a [...] bayonet and he pointed it at [him] and [his] brother and he put it down on the table and he said 'Tell us, you know', and... and how can I hold ... 'How can you hold me responsible for something that I haven't seen?' And that's why I was saying ... and that's why I'm saying that EULEX heard us and harmed us and now we have some of that same stress from you." See ERN 059358-TR-ET Part 2, pp. 30, 31.

<sup>19</sup> ERN SITF00374536-SITF00374541 RED (Redacted version of Witness Statement of W01448); ERN SITF00374534-00374534 (EULEX, Officer's Report Re Meeting with W01448, Dated 21 April 2010).

<sup>20</sup> F00243, Annex 4 to Submission of amended witness and exhibit lists with strictly confidential and *ex parte* Annexes 1-2 and confidential redacted Annexes 3-4, p. 25, entries nos. 413, 415.

16. The investigators had leads as to important available witnesses that they failed to explore. It appears that persons with first-hand knowledge of the events related to the allegations made in the Indictment were not approached or questioned.<sup>21</sup>
17. It also appears that persons who had been questioned by the investigators had their statements and evidence set aside because they did not support the allegations the investigators tried to establish as true.<sup>22</sup>

---

<sup>21</sup> See, for instance, ERN 083219-TR-ET Part 3 RED3 p. 2; ERN 083219-TR-ET Part 4 RED3 pp. 4, 5 (referring to the presence of another person who was allegedly present during the beating incidents at the Kukës Metal Factory); ERN SITF00012758-SITF00012789 RED2, p. 2; ERN 058578-058582 RED2, para. 12 (friend of TW4-01 who was present when the [REDACTED] were arrested by the Serbs and taken away); ERN SITF00013736-SITF00013800 RED3, pp. 19, 20; ERN SITF00013852-00013869 RED3, p. 8; ERN SITF00013833-00013847 RED2, pp. 4-6 (person who allegedly participated in the ill-treatment of others at the Kukës Metal Factory and specifically participated in the shooting incident of the [REDACTED]); ERN U003-1373-U003-1381 RED2, p. 6; ERN SITF00013200-00013229 RED, p. 8; ERN 082892-TR-AT-ET Part 4 RED, p. 22 (person identified as beating and torturing detainees at the Kukës Metal Factory); ERN SITF00013852-00013869 RED3, p. 9; ERN 082892-TR-AT-ET Part 4 RED2, p. 22 (person described as one of the KLA commanders who were seen at the Kukës Metal Factory).

<sup>22</sup> ERN 057637-TR-ET Part 3 RED, pp. 11-12 (W04279 states that the document suggesting that the Accused was appointed by the KLA General Staff was falsified); ERN T000-3259-T000-3260-ALB and ENG Transcript, p. 141 (W04752 met the Accused in [REDACTED] in May 1999); ERN 083789-TR-ET Part 6 RED (W04762 who appears to have signed the official document appointing the Accused to a KLA command structure was never requested to authenticate this document ERN 083789-TR-ET Parts 1-10 RED); ERN 059362-TR-ET Part 2, p. 10 (W04364 denied that he was subjected to ill-treatment while detained at the Kukës Metal Factory); ERN 059358-TR-ET Part 2, pp. 15, 30-43 (W04365 denied being detained at the Kukës Metal Factory or being ill-treated there); ERN SITF00012986-00013002 RED (W04392 states that after she arrived at the Kukës Metal Factory together with the [REDACTED] they were detained and ill-treated but makes no reference to the Accused); ERN 064869-TR-ET Part 2 RED, p. 3 (according to W04733 (see ERN 082892-TR-AT-ET Part 4 RED2, pp. 29-31; ERN 082892-TR-AT-ET Part 8 RED, p. 7), W04440 was a [REDACTED] at the Kukës Metal Factory who [REDACTED] whereas she denies ever [REDACTED] at the Kukës Metal Factory); ERN 064874-TR-ET Part 2, pp. 5-7 (according to W04733, see ERN 082892-TR-AT-ET Part 4 RED2, pp. 29-31, W04441 was a [REDACTED] at the Kukës Metal Factory who [REDACTED] whereas she denies [REDACTED] at the Kukës Metal Factory); ERN 054757-TR-ET Part 4 RED, p. 10 (W04280 was stationed at the Kukës Metal Factory and stated that he did not know of any detainees there and never returned there after the date on which NATO entered Kosovo); ERN 063317-TR-ET PART 2 RED, p. 14 (W04405 states that he was never at the Kukës Metal Factory, whereas TW4-01 states that he saw W04405 there).

18. Lead proposed witnesses on whose account the allegations set out in the Indictment were based are not credible.<sup>23</sup> The inappropriate questioning of investigators that put particular case theories to proposed witnesses, renders their accounts entirely unreliable.<sup>24</sup>
19. There are serious indications that evidence the Prosecution will seek to rely on at trial has been fabricated.<sup>25</sup> There are also serious indications that the conduct

---

<sup>23</sup> ERN 091327-091330-ET RED (Records of statements taken from the defendant [REDACTED], in Case from [REDACTED] Court- – [REDACTED] - delivery documents of transmission of deferral and case file from [REDACTED] Court [REDACTED] in relation to perjury, and the making of false statements under oath); ERN 104147-104149 (Order of Deferral for Case No. [REDACTED], [REDACTED], dated, with respect to the deferral of the false testimony proceedings before the Court [REDACTED] against [REDACTED]).

<sup>24</sup> See, for instance, ERN 059358-TR-ET Part 2, p. 29 (“[Answer] So you’re saying that there was a prison there? [Question]. Yes, there was a prison in the KLA compound in Kukes.”)(emphasis added); ERN 059358-TR-ET Part 2, p. 32 (“Q. Did you know or have you subsequently learned the identities of any of the KLA members at Kukes? A. We learnt it from you, from EULEX. So just like you’re asking me questions, they were asking me questions, although their questions were more dangerous. They told me that... or they told us that there were deaths there, but I didn’t know of any. And regarding the prison that was there, I... I... there was no prison there that I know of. Maybe there was a prison there, but I have to say there wasn’t.”); ERN 059358-TR-ET Part 2, p. 38 (“A. So no, I... I can’t... I can’t stand being in this interview any longer because of the blood pressure and what I’m feeling right now. I [overlapping speakers] so... so there’s not... you’re doing the same thing to me that others did before. If you are genuinely interested in investigating the case and you want me to do what EULEX wanted me to do, to lie to you, to take responsibility for what happens to [REDACTED] because he’s lying, and to take responsibility for what happens to my family because of that, where am I supposed to go with it?”); ERN 105370-TR-ET part 2 pp. 9, 10 (SPO puts to the witness that [REDACTED] had encountered the Accused at the Kukës Metal Factory after she repeatedly failed to mention his name). See also ERN 105370-TR-ET part 2 p. 2 (during her interview with the SPO, the witness was reading a document containing “all the dates when he was taken away and kidnapped”).

<sup>25</sup> ERN U009-9398-U009-9398-ET (KLA document authorizing the Accused to “take the command structures to the front line of the Pashtrik Operational Zone. The Pashtrik 128 Assault Brigade” signed by Azem SYLA (Ministry of Defence), dated 20 March 1999); ERN 057637-TR-ET Part 3 RED, pp. 11-12 (W04279 states that the document suggesting that the Accused was appointed by the KLA General Staff was falsified); ERN 083524-TR-ET Part 5 RED2, p. 29 (W04754 suggests that the document referring to the appointment of the Accused by the KLA General Staff could have been “falsified”); ERN SITF00450258-00450259 RED2 (Redacted version of Investigative notes recording a meeting with [TW4-01] on [REDACTED] August 2003, concerning crimes at Kukës and other locations, which does not identify the investigators involved); ERN SITF00375001-00375009 RED (Redacted version of EULEX WCIU case synopsis of the Kukes case based on UNMIK documents including analytical assessments, dated 5 February 2009).



of the investigators has been inappropriate, which casts serious doubts on the reliability of evidence intended to be relied upon at trial.<sup>26</sup>

20. The above, taken in conjunction with the serious and substantiated complaints made about the serious corruption of EULEX investigators and prosecutors, taint the whole investigation and render the proceedings against the Accused unfair.<sup>27</sup>

*(C) Credibility and Reliability of Important Prosecution Witnesses*

21. Important evidence on which the Prosecution purports to rely on at trial is unreliable. One of the lead witnesses on whose account the Prosecution intends to rely on at trial was prosecuted for providing false testimony about the same events as those alleged in the Indictment.<sup>28</sup>

---

<sup>26</sup> See ERN 059358-TR-ET Part 2, pp. 30, 31.

<sup>27</sup> See, for instance, Speech by Malcom Simmons at Kosovo Parliamentary Committee Dated 12 July 2021, last accessed on: <https://www.youtube.com/watch?v=-XkIirNdk>, illustrating interferences in EULEX investigations and prosecutions, including in the case of Sabit Geci; reports about corruption at EULEX by former EULEX Prosecutor and whistleblower Maria Bamieh, for instance: Article by Rajeev Syal, Dated 3 July 2022, Foreign Office to pay GBP 423,000 to whistleblowing lawyer who lost job, The Guardian, last access on <https://www.theguardian.com/politics/2022/jul/03/foreign-office-to-pay-423000-lawyer-who-lost-job-maria-bamieh>; Article by Nate Tabak and Jeta Xharra, The case of Maria Bamieh, Prishtina Insight, Dated 7 November 2014, last accessed on <https://prishtinainsight.com/case-maria-bamieh/>.

<sup>28</sup> ERN 091327-091330-ET RED (Records of statements taken from the defendant [REDACTED], in Case from [REDACTED] - delivery documents of transmission of deferral and case file from [REDACTED] Court in relation to perjury, and the making of false statements under oath); ERN 104147-104149 (Order of Deferral for Case No. [REDACTED], [REDACTED] with respect to the deferral of the false testimony proceedings before the Court of [REDACTED] against [REDACTED]). See also [REDACTED], .

22. Several Prosecution witnesses have long criminal records,<sup>29</sup> including for violent offences as well as offences against the administration of justice.<sup>30</sup> Importantly, a lead Prosecution witness on whose proposed evidence the Prosecution's case appears to rely on heavily, has been developing his evidence as the investigation advanced.<sup>31</sup> It is of particular concern to the Defence that

---

<sup>29</sup> See, for instance, ERN SITF00372686-00372686 RED (Redacted version of EULEX WCIU Team 2, Letter concerning [REDACTED] detention situation at [REDACTED] Prison, dated [REDACTED] May 2010 (re: [REDACTED]), referring to [REDACTED] "serv[ing] a sentence"); ERN 103546-103547 RED, p. 1 (Information extracted from SPO internal document 093418-093419 dated 17 October 2014 regarding SPO/SITF conversations with [REDACTED], concerning a shooting); ERN 106805-106806 RED (Flash Report of the Republic of Kosovo Police, referring to [REDACTED] as a suspect for attempted murder who was sent to serve an imprisonment sentence but the Police could not find him); ERN 083537-TR-ET Part 1 RED, p. 7 (Redacted version of Audio-video recorded SPO witness interview of [REDACTED], referring to [REDACTED] imprisonment for stabbing); ERN 066614-TR-ET Part 1 RED, pp. 7, 8 (Redacted version of part 1 of the transcript of the SPO interview with Witness [REDACTED], dated 3 October 2019, referring to a sentence [REDACTED] served for theft/robbery); ERN 077857-TR-ET Part 1 RED, pp. 3, 4 (Redacted version of Transcript of interview with [REDACTED], dated 1 September 2020, referring to a 15-year imprisonment sentence for a public order offence); ERN 060664-TR-ET Part 1 RED2, p. 6 (Part 1 of the transcript of the SPO interview with witness [REDACTED], dated 28 May 2019, referring to a conviction for illegal possession of arms); ERN 105280-TR-ET Part 1 Revised RED, pp. 5, 6 (Redacted version of transcript of SPO interview of [REDACTED] (Part 1), dated 19 March 2022, referring to a conviction for beating); ERN SITF00012758-SITF00012789 RED, p. 4 ([REDACTED] stated that he "[REDACTED] for 3 and half years in [REDACTED] prison").

<sup>30</sup> ERN 091327-091330-ET RED (Records of statements taken from the defendant [REDACTED], in Case pending before the [REDACTED] Court – [REDACTED] – [REDACTED] - delivery documents of transmission of deferral and case file from [REDACTED] Court in relation to perjury and the making of false statements under oath); ERN 104147-104149 ([REDACTED] [REDACTED]). See also [REDACTED], is charged with making a false statement under oath in those proceedings], pursuant to [REDACTED] of the Kosovo Criminal Code").

<sup>31</sup> On [REDACTED] December 2009, in a statement given to officers of the District Public Prosecutor's Office in [REDACTED], [REDACTED] identified the Accused, Xhemshit Krasniqi, Sabit Geci, a person named Sylejman, a person with a red mark on his face, Enver Hoxha, and someone named "Bedri" as ill-treating a detainee at the Kukës Metal Factory. See ERN SITF00012758-SITF00012789 RED, pp. 12, 17. In statements given to EULEX investigators on [REDACTED] September 2010, [REDACTED] identified Xhemshit Krasniqi, Bedri, the Accused, and an individual named Enver Hoxha (who used the nickname "Van Dam"), as participants in the ill-treatment that was followed by shooting and had even stated that the Accused [REDACTED]. See ERN SITF00018804-00018807 RED, p. 2. On [REDACTED] March 2011, [REDACTED] testified that Xhemshit Krasniqi was present at Kukës at the [REDACTED] where he was ill-treated with iron bars, batons and rifles. See ERN SITF00019279-SITF00019312 RED2, pp. 22, 28, 31. On [REDACTED], [REDACTED] [REDACTED] that Xhemshit Krasniqi had not been present and denied ever having mentioned Xhmeshit Krasniqi in his previous statement or that he had ever seen him at the Kukës Metal Factory. See ERN SITF00431831-SITF00431886 RED, pp. 23-25, 27, 28, 41, 44. In statements given to the Specialist Prosecutor's Office investigators in April 2019, [REDACTED] stated that he changed his testimony "purposefully" because he was "angry and upset" at EULEX as, after [REDACTED], EULEX representatives promised to [REDACTED] but did not, he was unhappy with

there are indications that the particular witness was privy to inside information about the progress of the investigation.<sup>32</sup> There is evidence suggesting that [REDACTED] received money for giving false testimony or other benefits associated with testifying, for instance participation of family members in a witness relocation programme.<sup>33</sup> The irreconcilable contradictions in

---

the manner EULEX proceeded with the [REDACTED], and states that EULEX had threatened [REDACTED] when he [REDACTED]. *See* ERN 083219-TR-ET Part 1 RED2 (Redacted version of Transcript of SPO interview with [REDACTED], Part 1, 2 April 2019), pp. 19-23, 27. On 3 April 2019, [REDACTED] identified Xhemshit Krasniqi, “Van Dam” and two younger soldiers as present when he was ill-treated in [REDACTED] prior to being asked to [REDACTED] and confirmed that the Accused was not present, denying an earlier statement in which he had stated that the Accused had [REDACTED]. *See* ERN 083219-TR-ET Part 7 RED2, p. 8; ERN 083219-TR-ET Part 9 RED2, p. 2. [REDACTED] also developed his evidence significantly concerning the [REDACTED]. *See* ERN SITF00025097-00026024, pp. 9, 12 ([REDACTED] states that he has no knowledge about the [REDACTED]); ERN 058578-058552 RED, p. 4 (he heard that persons [REDACTED] to the [REDACTED] would be “messed up”; ERN 059730-TR-ET Part 5 Revised RED, pp. 8, 10 (he states that while in the [REDACTED] at the Kukës Metal Factory he heard that people would be [REDACTED])).

<sup>32</sup> ERN 083219-TR-ET Part 2 Revised, pp. 2, 8 ([REDACTED] was aware that the Accused was questioned by SPO investigators a few weeks before his own interview. *See* ERN 066864-TR-ET Part 1 RED (Questioning of the Accused by SPO investigators); ERN 093591-0983591 RED (Interview of [REDACTED] dated 17 March 2021, in which he stated for the first time to the SPO, immediately following the arrest of the Accused, that the Accused had transported him to the Kukës Metal Factory. *See also* F00013, Notification of Arrest of Pjetër Shala Pursuant to Rule 55(4), 16 March 2021; ERN SITF00012758 -SITF00012789 RED, p. 3 (where [REDACTED] previously stated that [REDACTED] had transported him [REDACTED] from the border to Kukës).

<sup>33</sup> ERN 103550-103550, p. 1 (“The EULEX prosecutor heard from investigators that they believed that [REDACTED] had received money to change his testimony”); ERN 083219-TR-ET Part 1 Revised p. 17 ([REDACTED] states that EULEX investigators had threatened his wife); ERN SITF00432531-SITF00432531 RED, p. 1 ([REDACTED] threatens not to testify unless he receives witness protection and states that he knows how to take revenge for the [REDACTED]); ERN 103550-103550, p. 1; ERN 060664-TR-ET Part 5, p. 3; ERN SITF00375418-00375425 RED, p. 2 ([REDACTED] and [REDACTED] demand a “written agreement” and state that they need to be relocated elsewhere); ERN SITF00446366-00446386 RED, p. 8; ERN 002162-002171, p. 4; ERN SITF00450258-00450259 RED2, p. 2; ERN 002162-002171, p. 4 (memo on a meeting on [REDACTED] November 2003 between [REDACTED], which refers to [REDACTED] request for written agreement on witness protection; ERN 004031-004032, p. 1; ERN SITF00012549-SITF00012557 RED2, p. 3 (EULEX summary report dated 16 April 2010, stating that the mother of [REDACTED] expressed interest in witness protection); ERN SITF00372689- 00372689 , p. 1 ([REDACTED] complains about EULEX and promised witness protection, states that witness protection was a prerequisite for the case to go to trial, threatens not to testify at trial if his request is not granted, and states that he knew how to get revenge for [REDACTED]); ERN SITF00432531-00432531 RED; ERN SITF00019992-SITF00020016 RED2, p. 25; ERN 5007244-5007250 RED, p. 2; ERN 058578-058582 RED2, p. 1 § 5 (reference that witness protection is a pre-requisite for [REDACTED] continued cooperation with SITF); ERN 059730-TR-ET Part 1 Revised RED, pp. 14-16; ERN 059730-TR-ET Part 5 Revised RED, pp. 19-24 ([REDACTED] expressed his disappointment with the protection offered by previous organizations; he requested a weapon and a permit and this request was refused).

[REDACTED] account as well as the information about his background and involvement in serious criminal activities suggest that [REDACTED] is someone willing to testify anything to serve his own interests. In these circumstances, the Prosecution's reliance on [REDACTED] irretrievably undermines the integrity of these proceedings.

(D) Unlawfully Obtained Evidence from the Accused

23. On 14 January 2016, 11 February 2019 and 12 February 2019,<sup>34</sup> the Accused was interviewed without a lawyer being present and without being afforded an opportunity to obtain legal advice prior to being questioned. This was in breach of his rights as a suspect. Any use of such statements against him would violate his right to a fair trial. The procedural flaws and violations of the Accused's rights as a suspect are also demonstrated by the fact that the transcript and audio-video recording of his questioning with the Prosecution and the Belgian Federal Judicial Police on 11 and 12 February 2019 are incomplete: important and substantial parts of the process have not been transcribed or recorded and the relevant digital files are corrupted and unusable.<sup>35</sup>
24. In any event and without prejudice, what the Accused described in those statements simply does not fit the alleged account of events the Prosecution describes in the Indictment and its Pre-Trial Brief.<sup>36</sup>

(E) Obstruction of Criminal Proceedings Against Core Witness for False Testimony

---

<sup>34</sup> ERN 074117-074129-ET Revised; ERN 066843-066855-ET Revised RED; ERN 066864-TR-ET Part 1 Revised; ERN 066864-TR-ET Part 2 Revised; ERN 066866-066882-ET Revised RED; ERN 066888-TR-ET Part 1 Revised.

<sup>35</sup> ERN 084260-084266 RED, p. 084261 (Official Note of the Belgian Federal Judicial Police, dated 21 September 2020); ERN 084260-084266 RED ("On 2 February 2020, [REDACTED], Specialist Prosecutor's Office, KOSOVO, informed me by telephone that a portion of the video file of the recorded interview with Pjetër SHALA (February 2019) was corrupted.").

<sup>36</sup> See, for instance, Prosecution Pre-Trial Brief, para. 2.

25. On [REDACTED], the Prosecution submitted to the [REDACTED] [REDACTED] of the false testimony proceedings pending against [REDACTED] due to the [REDACTED].<sup>37</sup> The Prosecution added that the false testimony proceedings in question [REDACTED] prior testimony on matters which are now the subject of ongoing proceedings before the KSC in [REDACTED] KSC-BC-2020-04 [REDACTED].”<sup>38</sup>
26. On [REDACTED], a [REDACTED] Judge granted the request ordering the deferral and transfer of [REDACTED], and suspending the [REDACTED] proceedings in that case.<sup>39</sup>
27. The Defence was not allowed to have access to the case file [REDACTED] that concerns the false testimony proceedings against a lead Prosecution witness in this case.<sup>40</sup> Its request [REDACTED] was refused by the [REDACTED] Judge.<sup>41</sup>
28. It is understood from information disclosed in the [REDACTED] that, since the proceedings against [REDACTED] in [REDACTED] were suspended and deferred to the [REDACTED], no further step was taken by the Specialist Prosecutor to prosecute [REDACTED].<sup>42</sup> This is despite the lapse of one year and eight months since the proceedings were deferred to the [REDACTED].<sup>43</sup>
29. There are sufficient grounds to question the Specialist Prosecutor’s impartiality due to his incompatible roles in the proceedings against the Accused in case KSC-BC-2020-04 and the false testimony proceedings against a lead Prosecution witness in case [REDACTED].

---

<sup>37</sup> [REDACTED].

<sup>38</sup> [REDACTED].

<sup>39</sup> [REDACTED].

<sup>40</sup> [REDACTED].

<sup>41</sup> [REDACTED]

<sup>42</sup> [REDACTED].

<sup>43</sup> [REDACTED].

30. In the present circumstances, a reasonable observer who is properly informed would have legitimate concerns as to the conduct of the Specialist Prosecutor. This is first because of the inherent conflict of interest due to the Specialist Prosecutor's role. Such reasonable observer would have legitimate doubts as to how the Specialist Prosecutor can, on the one hand, present [REDACTED] as a credible and reliable witness that is [REDACTED] to his case against the Accused and, on the other, prosecute [REDACTED] for false testimony.<sup>44</sup> There is an inherent conflict of interest manifested in the evident inconsistency of the Specialist Prosecutor's position and concurrent professional duties in the two cases. To date, the Defence objections as to the prejudice caused to these proceedings as a result have not been answered.<sup>45</sup>
31. Instead of supporting the [REDACTED] proceedings against [REDACTED] with a view to having them expedited and completed as soon as possible, which would be required in the interests of justice, the Specialist Prosecutor requested their suspension and deferral. This was presumably a conscious decision that took into consideration the evident conflict of interest arising by placing himself in the position of prosecuting a "central" Prosecution witness for false testimony.
32. This is also regardless of the obvious interest to have the proceedings against [REDACTED] completed within reasonable time and, in any event, before [REDACTED] is called to testify against the Accused.

*(F) Excessive Redactions, Unwarranted Delayed Disclosure of Identity of Core Prosecution Witness, Lack of Sufficient Time and Information on the Prosecution's Case and Violation of the Right to a Public Trial*

---

<sup>44</sup> [REDACTED].

<sup>45</sup> [REDACTED].

33. The Defence notes the difficulty in understanding important Prosecution submissions due to the excessive redactions in the versions of the Prosecution's filings that are disclosed to the Defence.<sup>46</sup> The redactions prevent the Defence from providing an effective response and being able to prepare the defence case.
34. The Defence reiterates that such redactions violate the right of the Accused to effectively defend himself and be informed of the Prosecution's case against him.
35. In addition, the Defence submits that the measure of delayed disclosure imposed in respect of TW4-04, TW4-11, TW4-02, TW4-05, W01978, W04381, W01158, W01743, W04738, W04736, W04737, W04739, W04352, W04452, W04455, W04460, W04752, W04748, W04747, W04372, W04489, W01157, W01743, W00994, W01504, W04260, W04491, W04753, W04487 deprived it of an effective opportunity to prepare its case, resulting in prejudice that the Pre-Trial Judge has refused to remedy by providing the Defence with adequate time to conduct and complete its investigations prior to trial.<sup>47</sup>

---

<sup>46</sup> See, for instance, F00035, Defence Response to the Prosecution Request for Protective Measures dated 30 April 2021, 7 May 2021 (confidential), para. 8; F00050, Defence Response to the Second Request for Protective Measures, 24 June 2021 (confidential), paras. 4-7; F00132, Defence Response to the 'Second Request for Protective Measures for certain information requested by the Defence Pursuant to Rule 102(3)', 21 January 2022 (confidential), paras. 3-6; F00137, Defence Response to the 'Request for Protective Measures for certain information requested by the Defence Pursuant to Rule 102(3)', F00111, 31 January 2022 (confidential), paras. 4-10; F00168, Defence Response to 'Request for protective measures for documents containing Rule 103 information with strictly confidential and *ex parte* Annexes 1-4', F00163 dated 4 March 2022, 21 March 2022 (confidential), paras. 6-10; F00173, Defence Response to the Confidential Redacted Version of 'Submissions pursuant to Filings KSC-BC-2020-04/F00159 and KSC-BC-2020-04/F00161', 31 March 2022 (confidential), para. 3; F00208, Defence Response to the Confidential Redacted Version of "'Request for protective measures for certain information requested by the Defence pursuant to Rule 102(3)', KSC-BC-2020-04/F00194", 2 June 2022 (confidential), paras. 6-8, 12.

<sup>47</sup> F00205, Decision on Specialist Prosecutor's Rule 102(2) Request, 30 May 2022 (confidential), paras. 20, 22; F00053, Confidential Redacted Version of Second Decision on Specialist Prosecutor's Request for Protective Measures, 12 July 2021 (confidential) paras. 16, 17; F00159, Confidential Redacted Version of Decision on the Specialist Prosecutor's First Request for Protective Measures for Rule 102(3) Materials Requested by the Defence, 1 March 2022 (confidential) paras. 26, 27; F00161, Confidential Redacted Version of Decision on the Specialist Prosecutor's Second Request for Protective Measures for Rule 102(3) Materials Requested by the Defence, 2 March 2022 (confidential) para. 11; F00182, Confidential Redacted Version of Decision on Deferred Items regarding the Specialist Prosecutor's First and Second Requests for Protective Measures for Rule 102(3) Materials Requested by the Defence, 12 April 2022

36. The automatic continuation of protective measures issued in other cases under Rule 81(1) of the Rules deprived the Defence of any realistic opportunity to address the Prosecution's submissions as to the particular circumstances in this case and any alleged specific risk to the proposed witnesses and the unidentified persons concerned that may result from the disclosure of identifying information to the Accused and/or his Defence team.<sup>48</sup>
37. Lastly, the Accused has repeatedly requested permission to file public redacted versions of his motions that concern significant aspects of his case that are being kept confidential regardless of the fact that most of the information concerned is available in the public domain.<sup>49</sup> The denial of leave to disclose to the public such elements constitutes a violation of the Accused's right to a public trial.

### III. VIOLATION OF ARTICLE 7 OF THE ECHR AND ARTICLE 33 OF THE KOSOVO CONSTITUTION

38. The Accused is being charged with the crime of arbitrary detention in a non-international armed conflict ("NIAC") as well as other crimes allegedly committed through a joint criminal enterprise ("JCE") on the basis of the KSC

---

(confidential) para. 21; F00195, Confidential Redacted Version of Decision on Request for Protective Measures for Documents Containing Exculpatory Information, 11 May 2022 (confidential), para. 16; F00235, Confidential Redacted Version of Decision on the Specialist Prosecutor's Third Request for Protective Measures for Rule 102(3) Materials Requested by the Defence, 21 July 2022 (confidential), paras. 11, 23.

<sup>48</sup> F00199, Defence Application for Leave to Appeal the Decision on Request for Protective Measures for Documents Containing Exculpatory Information, 18 May 2022 (confidential) paras. 6, 13- 18; F00218, Decision on Defence Application for Leave to Appeal the Decision on Request for Protective Measures for Documents Containing Exculpatory Information, 14 June 2022 (confidential).

<sup>49</sup> [REDACTED]; F00212, Request to Reclassify as Public the Defence Response to the "Prosecution Request Pursuant to Rule 102(2) and to Amend its Witness and Exhibit Lists", 7 June 2022 (confidential), para. 1; F00222, Defence Reply to Prosecution Response to the Request to Reclassify as Public KSC-BC-2020-04/F00175, June 2022 (confidential), paras. 9-13.



Law which was introduced in Kosovo sixteen years after events described in the Indictment.<sup>50</sup>

39. Neither the mode of liability of a JCE nor the war crime of arbitrary detention in NIAC formed part of the law of Kosovo that applied during the Indictment period.<sup>51</sup> The prosecution of the Accused on this basis proceeds in violation of Article 33 of the Kosovo Constitution and Article 7 of the ECHR.<sup>52</sup>
40. Prosecuting the Accused on the basis of domestic legislation penalizing conduct preceding such legislation violates the principle of legality and non-retroactivity, which are guaranteed by Article 33 of the Kosovo Constitution and Article 7 of the ECHR.

---

<sup>50</sup> Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("KSC Law"), adopted on 3 August 2015. F00054, Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC, 12 July 2021, paras. 4, 12, 31; KSC-CC-2022-16, F00001, Referral to the Constitutional Court Panel concerning the violation of Mr Shala's fundamental rights guaranteed by Article 33 of the Kosovo Constitution and Article 7 of the European Convention on Human Rights, 14 April 2022, paras. 3, 40.

<sup>51</sup> F00054, Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC, 12 July 2021, paras. 4-60; KSC-CC-2022-16, F00001, Referral to the Constitutional Court Panel concerning the violation of Mr Shala's fundamental rights guaranteed by Article 33 of the Kosovo Constitution and Article 7 of the European Convention on Human Rights, 14 April 2022, paras. 15-17, 64-68; Articles 210 and 181 of the 1974 Socialist Federal Republic of Yugoslavia Constitution; Articles 22, 25 (1), 26 and 142 of the Socialist Federal Republic of Yugoslavia Criminal Court; Supreme Court of Kosovo (UNMIK), *Case against Latif Gashi et al.*, AP-KZ no. 139/2004, 21 July 2005, pp. 6, 12; Supreme Court of Kosovo (UNMIK), *Case against Veselin Bešović*, AP-KZ no. 80/2004, 7 September 2004, pp. 18, 19; Kosovo, Basic Court of Mitrovicë/Mitrovica (EULEX), *Case against XH. K*, P 184/2015, Judgment, 8 August 2016, paras. 82-88; Kosovo, Court of Appeals (EULEX), *Case against XH. K*, PAKR 648/16, 22 June 2017, p. 10.

<sup>52</sup> F00054, Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC, 12 July 2021, paras. 2, 32; KSC-CC-2022-16, F00001, Referral to the Constitutional Court Panel concerning the violation of Mr Shala's fundamental rights guaranteed by Article 33 of the Kosovo Constitution and Article 7 of the European Convention on Human Rights, 14 April 2022, paras. 3, 18, 50 and 56; ECtHR, *Del Rio Prada v. Spain*, no. 42750/09 [GC], 21 October 2013, para. 116.

41. In addition, neither the mode of liability of a JCE nor the crime of arbitrary detention in a NIAC were penalized by customary international law at the time of the alleged commission of the crimes set out in the Indictment.<sup>53</sup>
42. The lack of clarity as to the applicable law violates the requirements of Article 33 of the Kosovo Constitution, interpreted in the light of Article 7 of the ECHR, as to the “quality of law”, accessibility, foreseeability, precision, and legal certainty.<sup>54</sup>
43. The KSC Law deviates substantially from the Kosovo Constitution and other substantive Kosovo criminal laws.<sup>55</sup> Article 3(2)(d) of the KSC Law provides that the KSC shall adjudicate and function in accordance with customary international law and that the latter is to be given superiority over domestic laws by virtue of Article 19(2) of the Kosovo Constitution. The Kosovo Supreme Court has held that Articles 210 and 181 of the SFRY Constitution applied which required criminal offences to be set out in a domestic statute.<sup>56</sup> To the extent that Article 12 of the KSC Law purports to grant primacy to CIL over the substantive criminal law of Kosovo, it is unconstitutional.
44. The misguided reference in Article 12 of the KSC Law to Article 7(2) of the ECHR cannot limit the principle of legality and the rule of retroactivity.<sup>57</sup> Article 7(2) of the ECHR intended to ensure the validity of prosecutions for war crimes

---

<sup>53</sup> F00054, Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC, 12 July 2021, paras. 12, 15, 26, 2, 287.

<sup>54</sup> F00054, Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC, 12 July 2021, paras. 12, 17.

<sup>55</sup> F00054, Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC, 12 July 2021, paras. 16, 17.

<sup>56</sup> Supreme Court of Kosovo (UNMIK), *Case against Latif Gashi et al.*, AP-KZ no. 139/2004, 21 July 2005, pp. 6, 12; Supreme Court of Kosovo (UNMIK), *Case against Veselin Bešović*, AP-KZ no. 80/2004, 7 September 2004, pp. 18, 19.

<sup>57</sup> F00054, Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC, 12 July 2021, paras. 2, 13, 14.

committed during the Second World War, after the Second World War, and does not constitute a general exception to the rule of retroactivity.<sup>58</sup> It cannot be applied in the present circumstances.<sup>59</sup>

45. Pursuant to Article 7 of the ECHR and Article 33 of the Kosovo Constitution, the Kosovo Specialist Chambers that are seized with this case must compare the two potentially applicable legal frameworks (the Constitution of the Federal Republic of Yugoslavia and the Kosovo Constitution) and apply the regime most favourable to the Accused.<sup>60</sup> Article 7 of the ECHR requires that “the criminal law must not be extensively construed to an accused’s detriment”.<sup>61</sup> Yet this is exactly what the Prosecution is doing in this case.
46. The Constitutional Court found premature the referral by the Accused of his complaints of a violation of Article 33 of the Kosovo Constitution and Article 7 of the ECHR.<sup>62</sup> It was held that, to be considered a “victim” in this respect, the Accused must be convicted, as opposed to merely “being charged”, pursuant to the mode of liability of JCE or with the crime of arbitrary detention.<sup>63</sup> The Constitutional Court Panel decided that, since the proceedings against the

---

<sup>58</sup> ECtHR, *Vasiliauskas v. Lithuania* [GC], no. 35343/05, 20 October 2015, paras. 187-190; ECtHR, *Maktouf and Damjanović v. Bosnia and Herzegovina* [GC], nos. 2312/08 and 34179/08, 13 July 2013, para. 72; ECtHR, *Kononov v. Latvia* [GC], no. 36376/04, 17 May 2010, para. 186.

<sup>59</sup> F00054, Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC, 12 July 2021, para. 14.

<sup>60</sup> F00054, Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC, 12 July 2021, paras. 16 (and references made therein), 28, 32; F00084, Defence Reply to the Prosecution Response to the Preliminary Motion of Pjetër Shala Challenging the Jurisdiction of the KSC, 24 September 2021, para. 29; IA002, F00003, Defence Appeal against Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers, 8 November 2021, paras. 9, 11-12.

<sup>61</sup> F00054, Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC, 12 July 2021, para. 32.

<sup>62</sup> KSC-CC-2022-16, F00004, Decision on Referral by Pjetër Shala to the Constitutional Court Panel Concerning the Fundamental Rights Guaranteed by Article 33 of the Kosovo Constitution and Article 7 of the European Convention on Human Rights, 6 July 2022, paras. 49, 50.

<sup>63</sup> KSC-CC-2022-16, F00004, Decision on Referral by Pjetër Shala to the Constitutional Court Panel Concerning the Fundamental Rights Guaranteed by Article 33 of the Kosovo Constitution and Article 7 of the European Convention on Human Rights, 6 July 2022, paras. 49, 50.

Accused are still pending, his complaints could not be definitely assessed at present.<sup>64</sup> The violation of Article 33 of the Kosovo Constitution and Article 7 of the ECHR has therefore not be remedied and is continuing as the trial proceeds.

#### IV. ALLEGED PRESENCE OF THE ACCUSED AT THE KUKES METAL FACTORY

47. The Accused had no role, official position, or involvement with the administration and/or operation of KLA activities centred at the Kukës Metal Factory. The Accused was not a member of Brigade 128. The Accused denies all the allegations made by the Prosecution in paragraphs 1 to 30 of the Prosecution Pre-Trial Brief.
48. The Accused visited the Kukës Metal Factory on very few and isolated occasions during the war when he returned from the front, mainly for supplies.<sup>65</sup> The Accused denies the allegations made by the Prosecution in paragraph 18 of the Prosecution Pre-Trial Brief.
49. The Defence contests the Prosecution's allegation that "*during* the Indictment Period", namely between 17 May 1999 and 5 June 1999, the Accused was at the Kukës Metal Factory.<sup>66</sup>
50. The need for specificity in the Prosecution's allegations concerning the acts and conduct of the Accused is one of the fundamental requirements of a fair trial that are guaranteed by the Kosovo Constitution and Article 6 of the ECHR. The impermissible lack of specificity in the Prosecution's case at this stage prevents the Accused from knowing the precise allegations against him and impedes his

---

<sup>64</sup> KSC-CC-2022-16, F00004, Decision on the Referral of Pjetër Shala to the Constitutional Court Panel Concerning Fundamental Rights Guaranteed by Article 33 of the Kosovo Constitution and Article 7 of the European Convention on Human Rights, 6 July 2022, paras. 49, 50.

<sup>65</sup> See n. 14 above.

<sup>66</sup> Prosecution Pre-Trial Brief, para. 18 (emphasis added).

ability to present alibi evidence and develop his defence case. In this respect, it is indicative that the Prosecution maintains that following the [REDACTED] of May 1999, the Accused acting in conjunction with others beat and humiliated detainees on “ten to twelve separate occasions”.<sup>67</sup> The lack of specificity as to the relevant dates and times of concrete incidents prevents the ability of the Accused to know the case against him in sufficient detail that would enable him to present evidence challenging the Prosecution’s allegations.

## V. THE CRIMES AND MODES OF LIABILITY CHARGED IN THE INDICTMENT

51. Despite the rigorous obligation for specificity, the language employed by the Prosecution in the Indictment and its Pre-Trial Brief is impermissibly vague and fails to state the material facts underpinning the charges with sufficient clarity and detail so as to *inform* the Accused of the charges against him.

### **Arbitrary Detention**

52. The Accused denies all allegations made by the Prosecution in support of Count 1 of the Indictment.<sup>68</sup>

53. The Accused has been charged with the war crime of arbitrary detention (Count 1) under Article 14(1)(c) of the KSC Law. However, the crime of arbitrary detention in a NIAC is not mentioned in Article 14(1)(c) of the KSC Law.<sup>69</sup> It was not prescribed as an offence in the law applicable to Kosovo in 1999.<sup>70</sup> Notably, in the case against an alleged co-perpetrator who was charged with illegal

---

<sup>67</sup> Prosecution Pre-Trial Brief, para. 54.

<sup>68</sup> The Accused denies all allegations made in paragraphs 31 to 41 of the Prosecution Pre-Trial Brief.

<sup>69</sup> F00054, Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC, 12 July 2021, paras. 4, 51.

<sup>70</sup> F00054, Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC, 12 July 2021, paras. 4, 46-51.

detention of civilians at Kukës in April, May, and [REDACTED] June of 1999, the Kosovo Court of Appeals held that “[u]nlawful detention of individual civilians is not penalized as a War crime against individual persons under any of the applicable statutes”.<sup>71</sup>

54. Furthermore, arbitrary detention was not considered a serious violation of Common Article 3 to the 1949 Geneva Conventions and its prohibition did not form part of customary international law in May and June of 1999.<sup>72</sup>
55. The Accused is charged with arbitrary detention in NIAC on the basis of the KSC Law which was introduced in Kosovo sixteen years after the Indictment Period. The KSC Law has been interpreted in this case in a manner that gives direct effect to CIL and criminalises conduct that did not constitute a criminal offence in the law applicable in Kosovo at the material time.<sup>73</sup> This violates the rights of the Accused under Article 33 of the Kosovo Constitution and Article 7 of the ECHR.

---

<sup>71</sup> Kosovo, Court of Appeals (EULEX), *Case against XH. K*, PAKR 648/16, 22 June 2017, p. 18. In this case the accused was charged and convicted before the Basic Court of Mitrovica of illegal detention as war crime under Article 142 of the SFRY Criminal Code. The Basic Court held that Mr X.K. “as a member of the KLA, in co-perpetration with S.G. and other KLA members, arrested and illegally detained ... and other unknown civilians in such center for a prolonged period of time, in K. (north of Albania) during April, May and through mid-June of 1999”. Kosovo, Basic Court of Mitrovicë/Mitrovica (EULEX), *Case against XH. K*, P 184/2015, Judgment, 8 August 2016. The Court of Appeals reclassified the charge of illegal detention as “coercion” and finally rejected it due to the expiration of statutory limitation. It also held that Article 142 of the SFRY Criminal Code, as amended on 30 August 1990, did not criminalize acts which did not cause grave bodily injuries or serious damage to the victims’ health. It was clearly found that “[u]nlawful detention of individual civilians is not penalized as a War crime against individual persons under any of the applicable statutes”. Kosovo, Court of Appeals (EULEX), *Case against XH. K*, PAKR 648/16, 22 June 2017, p. 18.

<sup>72</sup> F00054, Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC, 12 July 2021, paras. 4, 52-59.

<sup>73</sup> F00054, Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC, 12 July 2021, paras. 16, 33-36; IA002, F00003, Defence Appeal against Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers, 8 November 2021, KSC-CC-2022-16, F00001, Referral to the Constitutional Court Panel concerning the violation of Mr Shala’s fundamental rights guaranteed by Article 33 of the Kosovo Constitution and Article 7 of the European Convention on Human Rights, 14 April 2022, paras. 3, 11, 16, 21, 44; IA002, F00010, Decision on Pjetër Shala’s Appeal Against Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers, 11 February 2022, paras. 18, 19, 44. The Pre-Trial Judge found that “when adjudicating crimes under

56. The Prosecution's case as to specific role of the Accused in the alleged commission of the crime of arbitrary detention remains unclear.<sup>74</sup> The Accused cannot defend himself against such vague allegations as those contained in the Indictment and Prosecution Pre-Trial Brief.
57. The Accused did not deprive any person of his or her liberty at the Kukës Metal Factory. He did not arrest or detain any person.
58. The Accused did not participate in the transfer of [REDACTED] under guard and threat of death from a location in or around [REDACTED], to the Kukës Metal Factory.
59. The Accused did not participate in any act enforcing and continuing arbitrary detention at the Kukës Metal Factory.
60. The Accused did not intent and did not commit the crime of arbitrary detention as pleaded in the Indictment.

### **Cruel Treatment**

61. The Accused was not present at the Kukës Metal Factory in late May and/or June 1999.
62. The Accused denies all allegations made by the Prosecution in support of Count 2 of the Indictment.<sup>75</sup>

---

Article[s] 13 and 14 of the Law [...] the SC shall apply, first, CIL and, second, Kosovo law only insofar as it is expressly incorporated in the Law and complies with CIL." See F00088, Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers, 18 October 2021, para. 98.

<sup>74</sup> See Indictment, paras. 14-16; Prosecution Pre-Trial Brief, paras. 31-41; F00055, Preliminary Motion by the Defence of Pjetër Shala Challenging the Form of the Indictment, 12 July 2021 (confidential), paras. 39-44, 56, 60-64; IA004, F00004, Defence Appeal with Leave against the 'Decision on Motion Challenging the Form of the Indictment', 17 December 2021, paras. 13-25.

<sup>75</sup> The Accused denies all allegations made in paragraphs 42 to 65 of the Prosecution Pre-Trial Brief.

63. The Accused did not establish and maintain inhumane detention conditions at the Kukës Metal Factory. The Accused did not deprive any individual of his liberty without due process of law or otherwise and denies having any involvement in maintaining conditions of detention of any individual, including any involvement in providing detainees with food, water, ensuring hygienic conditions, access to sanitation and medical care.
64. The Accused did not “routinely assault” detainees at the Kukës Metal Factory either physically or psychologically and denies having participated in any interrogation or forcing detainees to coerced statements or forced labour.
65. The Accused was not aware of ill-treatment of detainees at the Kukës Metal Factory, had no position of authority at the Kukës Metal Factory, and could not take measures to prevent or curtail any violence or assist or ensure the humane treatment of detainees.
66. The Accused did not interrogate nor did he physically and psychologically assault a group of “[REDACTED] detainees at the Kukës Metal Factory” on or about [REDACTED] May 1999 or on any other occasion. The Accused never ordered [REDACTED] to beat [REDACTED] detainee on or about [REDACTED] May 1999 or on any other occasion. The Accused denies being present on or about [REDACTED] May 1999 at a scene in which KLA members ill-treated detainees.
67. The Accused denies beating a group of four male detainees with batons, metal bars, guns, a baseball bat and knives on or about [REDACTED] May 1999 or on any other occasion. The Accused did not beat and assault [REDACTED] on or about [REDACTED] May 1999 or on any other occasion. The Accused did not threaten or accuse [REDACTED] of collaborating with the Serbian authorities and/or not supporting the KLA on or about [REDACTED] May 1999 or on any other occasion.



68. The Accused was not present at the Kukës Metal Factory in June 1999.
69. The Accused did not interrogate and beat the [REDACTED] on or about [REDACTED] June 1999, either individually or in concert with anyone else.
70. The Accused did not intent and did not commit the crime of cruel treatment as pleaded in the Indictment.

### **Torture**

71. The Accused denies acting in concert with KLA members to inflict severe pain or suffering on detainees held at the Kukës Metal Factory in the instances described in paragraphs 18-24 of the Indictment with the aim of obtaining information or a confession, punishing, intimidating, coercing, or discriminating on any ground. The Accused never questioned any detainee or recorded a statement or confession at the Kukës Metal Factory.
72. The Accused denies all allegations made by the Prosecution in support of Count 3 of the Indictment.<sup>76</sup>
73. The Accused did not intent and did not commit the crime of torture as pleaded in the Indictment.

### **Murder**

74. The Prosecution's case as to the alleged specific role of the Accused in the alleged commission of the crime of murder remains unclear.<sup>77</sup> The Accused cannot defend himself due to the impermissibly vague allegations contained in the Indictment and Prosecution Pre-Trial Brief.

---

<sup>76</sup> The Accused denies all allegations made in paragraphs 31 to 41 of the Prosecution Pre-Trial Brief.

<sup>77</sup> See Indictment, paras. 28, 29; Prosecution Pre-Trial Brief, paras. 42-65.

75. The Accused denies all allegations made by the Prosecution in support of Count 4 of the Indictment.<sup>78</sup>
76. The Accused did not severely beat the [REDACTED] on or about [REDACTED] June 1999. The Accused was not aware and had no role in the alleged murder of [REDACTED]. The Accused was only informed of [REDACTED] death at a much later stage and long after the termination of the war.<sup>79</sup>
77. The Accused was not present at the Kukës Metal Factory in late May and/or June 1999.
78. The Accused did not intent and did not commit the crime of murder as pleaded in the Indictment.
79. It is also noted that two of the persons identified in the Indictment as participants in the JCE described therein, specifically [REDACTED], were prosecuted for killing [REDACTED] and have been acquitted.<sup>80</sup> These acquittals severely undermine the veracity of the allegations made in the Indictment.

### **The Alleged Individual Criminal Responsibility of the Accused**

80. The Accused denies participating in any JCE in general and the JCE described in the Indictment and Prosecution Pre-Trial Brief in particular. The Accused denies all allegations made by the Prosecution in support of this mode of liability.<sup>81</sup>

---

<sup>78</sup> The Accused denies all allegations made in paragraphs 31 to 41 of the Prosecution Pre-Trial Brief.

<sup>79</sup> ERN 074117-074129, pp. 074125 - 074126 (In his statements to the Belgian Federal Judicial Police, on 14 January 2016, the Accused stated that he had only learned about [REDACTED] death three or four years ago); ERN 066888-TR-ET Part 1 Revised, p. 160 (In his interview of 12 February 2019, the Accused stated that he found out that [REDACTED] had died, in 2016).

<sup>80</sup> See, inter alia, ERN 094938-095033 [REDACTED], p. 5; ERN SPOE00248071-00248128 [REDACTED], p. 2.

<sup>81</sup> Prosecution Pre-Trial Brief, paras. 71-77.

81. The applicable law on JCE and accessorial liability was not clear or foreseeable for the Accused at the time material to the Indictment.
82. The Defence submits that the pleading of the membership of the JCE in the Indictment, in particular the identity and the role of JCE members and tools, is impermissibly vague. In this respect, the Pre-Trial Judge noted “the relatively small size of the group making up the alleged JCE and the fact that the events underlying the charges are easily distinguishable.”<sup>82</sup> Due to the scale of the JCE and underlying events, the Prosecution is able and must identify the alleged co-perpetrators in its primary accusatorial instruments, the Indictment and its Pre-Trial Brief. The proceedings proceed in violation of the requirement that the prosecution must provide the Defence adequate notice of material elements of its case.
83. The Accused is effectively charged with a form of liability that is based on the attribution of criminal conduct to any number of unknown and unidentifiable members. Given that liability derives from the alleged acts of others, the lack of specificity on the identity of JCE members and tools is inherently prejudicial, gives insufficient notice on the material facts and elements related to the commission of the crimes charged in the Indictment, and prevents the Accused from knowing the Prosecution’s case to an adequate degree and preparing his defence. The Accused cannot be reasonably expected to defend himself against the allegation of the existence of a JCE whose size and members the Prosecution cannot even identify.
84. In addition, the Indictment attempts to specify the allegation that the Accused has *significantly contributed* to the common purpose at paragraph 11. Despite extending to four subparagraphs, paragraph 11 neglects to identify any concrete

---

<sup>82</sup> F00045, Decision on Pjetër Shala’s Request for Provisional Release, 15 June 2021 (confidential), para. 26.

act or omission of the Accused that is alleged to have significantly contributed to the JCE.

85. The Defence submits that the Accused is entitled to clear and precise notice of the concrete alleged acts imputed, so that he can prepare to defend himself against concrete and tangible allegations. The Prosecution's reliance on generic descriptions of alleged conduct without reference to any concrete incidents is impermissible.<sup>83</sup>
86. The mode of liability of JCE did not form part of Kosovo criminal law or the law of the Federal Republic of Yugoslavia at the time the alleged offences were committed in 1999.<sup>84</sup> It was also excluded from the KSC Law and was not established in CIL at the relevant time.<sup>85</sup>
87. JCE liability is not explicitly set out in Article 16(1)(a) of the KSC Law or elsewhere.<sup>86</sup> It cannot be assumed that the lack of any reference to JCE in the KSC Law is anything but a deliberate omission by the drafters of the KSC Law.<sup>87</sup>
88. The Accused could not foresee in 1999 that he may be committing a crime through the alleged participation in a JCE. Notably, JCE liability in CIL is generally considered as established by the ICTY Appeals Chamber judgment in the case of *Prosecutor v. Tadić*, which was only issued in July 1999.<sup>88</sup> The applicable law at the time was neither clear or precise and fails to meet the

---

<sup>83</sup> KSC-BC-2020-06, F00010, Order to the Specialist Prosecutor Pursuant to Rule 86(4) of the Rules, 2 July 2020, para. 16 and references cited therein.

<sup>84</sup> See F00054, Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC, 12 July 2021, paras. 25-28, 47.

<sup>85</sup> F00054, Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC, 12 July 2021, paras. 25-28, 33, 35.

<sup>86</sup> F00054, Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC, 12 July 2021, paras. 29-32.

<sup>87</sup> F00054, Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC, 12 July 2021, para. 31.

<sup>88</sup> ICTY, *Prosecutor v. Tadić*, IT-94-1-A, Appeals Chamber, *Judgement*, 15 July 1999.

requirements imposed as to the “quality of law” under Article 33 of the Kosovo Constitution and Article 7(1) of the ECHR. It is telling that the UK Supreme Court considered JCE liability “highly controversial and a continuing source of difficulty for trial judges” let alone for laymen.<sup>89</sup>

89. The Prosecution’s reliance on the most controversial form of JCE, JCE III, constitutes a particularly grave violation of Article 33 of the Kosovo Constitution and Article 7 of the ECHR. The Kosovo Court of Appeals held that: “finding the Defendant's co-perpetration in a murder at which he was not present proven on the sole basis of his *dolus eventualis*”, i.e. JCE III, would “violate the legality principle” as it would “stretch the meaning of co-perpetration beyond the boundaries set by Article 22” of the 1976 SFRY Criminal Code.<sup>90</sup> The Kosovo Court of Appeals has also held that JCE was “not one of the modes of criminal liability set in any of the applicable codes” and that even if it were applicable, foreseen in the law, applying JCE in Kosovo would be to the detriment of the defendants as the requirements for JCE III were “less explicit or demanding than the ones necessary for classic co-perpetration”.<sup>91</sup> The third form of JCE liability cannot be considered established in CIL; it cannot be ignored that JCE III has been rejected by the ECCC and the STL and was not included in the Rome Statute.<sup>92</sup> Prosecuting the Accused on the basis of JCE III violates Article 33 of the Kosovo Constitution and Article 7 of the ECHR.

90. The Accused is charged with the crimes referred to in the Indictment on the basis of the KSC Law which was introduced in Kosovo sixteen years after the

---

<sup>89</sup> *Jogee v. The Queen* [2016] UKSC 8; *Ruddock v. the Queen* [2016] UKPC 7, para. 81.

<sup>90</sup> Kosovo, Court of Appeals (EULEX), *Case against XH. K*, PAKR 648/16, 22 June 2017, p. 10; Kosovo, Basic Court of Mitrovicë/Mitrovica (EULEX), *Case against XH. K*, P 184/2015, Judgment, 8 August 2016, paras. 82-88.

<sup>91</sup> Kosovo, Court of Appeals (EULEX), *Case against J.D. et al.*, PAKR Nr. 455/15, Judgment, 15 September 2016, p. 45.

<sup>92</sup> F00054, Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC, 12 July 2021, paras. 37- 39 and references cited therein.

Indictment period. The KSC Law has been interpreted in this case in a manner that gives direct effect to CIL and criminalises conduct that did not constitute a criminal offence in the law applicable in Kosovo at the material time.<sup>93</sup> For all the reasons set out above, proceeding to trial in this case on the basis of the Indictment as it stands violates the rights of the Accused under Article 33 of the Kosovo Constitution and Article 7 of the ECHR.

91. The Accused denies that he has physically committed or aided and abetted any of the crimes set out in the Indictment. He disputes all allegations made by the Prosecution in support of these modes of liability.<sup>94</sup>

## VI. CONCLUSION

92. The Defence reiterates that the burden of proof with regard to the allegations made by the Prosecution rests on the Prosecution alone, and that the Defence is not required to present a case or call any witness.
93. The Accused denies responsibility for all crimes charged in the Indictment. The Accused pleads not guilty of each, and every count set out in the Indictment.<sup>95</sup>

**Word count: 11,768**

Respectfully submitted,

---

<sup>93</sup> IA002, F00010, Decision on Pjetër Shala's Appeal Against Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers, 11 February 2022, paras. 18, 19, 44. The Pre-Trial Judge found that "when adjudicating crimes under Article[s] 13 and 14 of the Law [...] the SC shall apply, first, CIL and, second, Kosovo law only insofar as it is expressly incorporated in the Law and complies with CIL." See F00088, Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers, 18 October 2021, paras. 82-87, 98.


<sup>94</sup> The Accused denies all allegations made in paragraphs 78 and 79 of the Prosecution Pre-Trial Brief.

<sup>95</sup> T. 19 April 2021 p. 11.



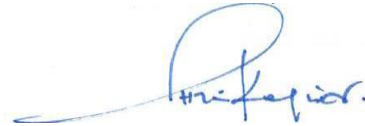
---

**Jean-Louis Gilissen**  
**Specialist Defence Counsel**



---

**Hédi Aouini**  
**Defence Co-Counsel**



---

**Leto Cariolou**  
**Defence Co-Counsel**

Friday, 21 April 2023

The Hague, the Netherlands