

Case No.: KSC-BC-2020-04
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: Dr Fidelma Donlon

Date: 8 December 2023

Filing Party: Specialist Defence Counsel

Original Language: English

Classification: Public

THE SPECIALIST PROSECUTOR

v.

PJETËR SHALA

**Defence Urgent Request for Psychologist Visit and Notice of Request to Call
Evidence Relevant to Sentencing
with Confidential Annex 1**

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Victims

Simon Laws KC

Maria Radziejowska

Specialist Defence Counsel

Jean-Louis Gilissen

Hédi Aouini

Leto Cariolou

I. INTRODUCTION

1. The Defence for Mr Pjetër Shala (the “Defence” and the “Accused” respectively) hereby files this request to have Mrs Vanessa Milazzo, a registered psychological expert with the Belgian National Court Expert Registry, conduct special visits to the Accused on 18 December 2023 and 19 December 2023 (dates to be confirmed in consultation with the Detention Management Unit (“DMU”).
2. The Defence further provides notice that it will request to introduce evidence by Mrs Milazzo for the purposes of sentencing, in the form of a pre-sentence report produced based on these visits, and/or the live testimony of Mrs Milazzo before the Panel.

II. PROCEDURAL HISTORY

3. On 25 October 2023, the Panel directed the Defence to file any requests tendering evidence for the purpose of sentencing by the closing of its case.¹
4. On 29 November 2023, the Panel recalled its Order of 25 October 2023.² The Panel further indicated that it was appropriate to set 15 January 2024 as the target date for the closing of the Defence case.³
5. On 5 December 2023, the Defence made contact with Mrs Milazzo.
6. On 6 December 2023, the Defence met with Mrs Milazzo to discuss whether she would be available to conduct an assessment of the Accused, and on which dates.

¹ T. 25 October 2023, p. 3155 line 23 – p. 3156 line 3.

² T. 29 November 2023, pp. 3877-3880.

³ T. 29 November 2023, p. 3877 line 25 – p. 3878 line 2.

III. APPLICABLE LAW

a. Law and Regulations on Detainee Visits

7. Pursuant to Article 10(2) of the Registry Practice Direction on Detainee Visits (“the Practice Direction”), a detainee may receive visits from family members, other persons with whom they have a personal relationship, as well as specific categories of visitors, namely, consular representatives, ICRC representatives, the Ombudsperson, the Registrar or a Judge (or staff members acting on their behalf).⁴ The Practice Direction is silent on visits from physical and/or mental healthcare practitioners, however, the Kosovo Specialist Chambers website indicates that the Detention Management Unit (“DMU”) is responsible for providing for the well-being of detainees, and that detainees receive at least the same standards of health care that are generally available in the Netherlands.⁵
8. Applications for visits are governed by Article 11 of the Practice Direction, which requires any such application to be submitted to the Administrative Office for processing no later than fifteen calendar days prior to the date of the proposed visit.⁶

b. Law on Sentencing Materials

9. In accordance with Rule 163 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), in determining an appropriate sentence, the Panel shall consider mitigating factors, including the convicted person’s conduct after the act.⁷

⁴ KSC-BD-09-Rev1, Kosovo Specialist Chambers Practice Direction on Visits and Communications, 23 September 2020, Articles 20-23.

⁵ See “Treatment of Detainees”, available at <https://www.scp-ks.org/en/detention/treatment-detainees>, accessed on 7 December 2023.

⁶ Practice Direction, Article 11(3).

⁷ Rule 163(1)(a)(ii) of the Rules.

10. Pursuant to Article 141 of the Kosovar Law on Execution of Penal Sanctions,⁸ criminal courts may consider pre-sentence reports, which assist in identifying appropriate punishments for a convicted person in view of the objectives of rehabilitation and specific deterrence.

IV. SUBMISSIONS

11. Mrs Milazzo is a certified psychological expert, registered in the Belgian National Legal Expert Registry. Her CV is attached to this request as Annex 1.⁹ The Defence submits that Mrs Milazzo is an appropriate expert, who will facilitate the Accused's ability to discuss information regarding his mental state, the impact these proceedings have had on his life, and his conduct since from the time of the war until today.
12. The Defence intends to adduce evidence for the purposes of sentencing relating to the conduct of the Accused after the allegations, and specifically, to his mental health. The Defence submits that, in the event that the Accused is convicted of any charges in the confirmed indictment, such evidence will assist the Panel in properly considering relevant mitigating factors and allow for the imposition of a more just sentence.
13. The Defence notes the lacuna in the Practice Direction and DMU Instruction as it relates to visits from psychological experts, and thus seeks direction from the Panel in requesting permission for Mrs Milazzo to meet with the Accused.

⁸ Law NO. 04/L-149, *Law on Execution of Penal Sanctions*, approved based on Article 65(1) of the *Constitution of Kosovo*, 28 August 2013. The Defence notes the *Law on Execution of Penal Sanctions* applies to the execution of penal sanctions imposed by domestic and foreign courts in accordance with the Code of Criminal Procedure, Juvenile Justice Code, Law on Offence and international agreements, see Article 2.

⁹ The Defence notes that, though the current attachment is in French, an English translation is currently underway and will be disclosed to all Parties at the earliest possibility, with the expectation that the translation will be finalised, at the latest, by 11 December 2023.

14. The Defence additionally notes that Mrs Milazzo is available on 18 and 19 December 2023, and, in light of the requirement that visits are arranged fifteen calendar days in advance, requests the Panel to instruct the Registrar and DMU to allow for a waiver from such requirement. The Defence notes that it has acted expeditiously, as it was only on 29 November 2023 that the Panel set the target case for the closing of the Defence case, and that the Defence quickly identified an appropriate expert to conduct an assessment to submit for the purposes of sentencing.
15. Further, the Defence notes that, in order for Mrs Milazzo to properly conduct such assessment, she will be required to bring certain items to the visit, which are not listed in the exceptions provided for under Section 18 of the DMU Instruction. Namely, the Defence requests that she be allowed to bring a notebook and writing utensils for the purposes of taking notes of her conversations with the Accused.
16. Additionally, to properly conduct an assessment of the Accused, the Defence requests that Mrs Milazzo be granted at least three hours during each visit.
17. The Defence notes that, for the purposes of sentencing, it will seek to have admitted a pre-sentence report by Mrs Milazzo and/or request leave to call her to testify in person about her observations of the Accused in relation to appropriate punishments in light of his personal circumstances.

V. CLASSIFICATION

18. This Request is filed as public, with a confidential Annex.

VI. RELIEF REQUESTED

19. The Defence respectfully requests the Panel to instruct the Registrar and DMU to allow Mrs Milazzo to visit the Accused on 18 and 19 December 2023, and with items required to conduct a psychological assessment.

Word count: 1109

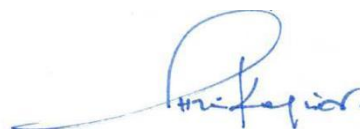
Respectfully submitted,



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Friday, 8 December 2023

The Hague, the Netherlands