



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-BC-2023-11**
The Specialist Prosecutor v. Haxhi Shala

Before: **Pre-Trial Judge**
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 13 December 2023

Language: English

Classification: **Public**

Order Setting the Date for the First Status Conference and for Submissions

Specialist Prosecutor

Kimberly P. West

Duty Counsel for Haxhi Shala

Laurens van Puyenbroeck

THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rules 82(5) and 96(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules") hereby renders this order.

I. PROCEDURAL BACKGROUND

1. On 4 December 2023, the Pre-Trial Judge confirmed the indictment against Haxhi Shala ("Mr Shala" or "Accused") for offences under Article 15(2) of the Law,² and issued an arrest warrant for Mr Shala, as well as the order for transfer to the Detention Facilities of the Specialist Chambers ("SC") in the Hague, the Netherlands ("Decision on Arrest and Transfer").³

2. On 6 December 2023, the Specialist Prosecutor's Office ("SPO") submitted the indictment, as confirmed by the Pre-Trial Judge ("Confirmed Indictment").⁴

3. On 11 December 2023, Mr Shala was arrested by the SPO in Kosovo.⁵ On the next day, the Accused was transferred to the SC Detention,⁶ in accordance with the Pre-Trial Judge's Decision on Arrest and Transfer.

4. On 12 December 2023, the Pre-Trial Judge issued a decision to convene the initial appearance of the Accused on 13 December 2023.⁷ In said decision, the Pre-Trial

¹ KSC-BC-2023-11, F00001, President, *Decision Assigning a Pre-Trial Judge*, 20 November 2023, confidential.

² KSC-BC-2023-11, F00005, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 4 December 2023, confidential.

³ KSC-BC-2023-11, F00006, Pre-Trial Judge, *Decision on Request for Warrant of Arrest and Transfer Order*, 4 December 2023, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential.

⁴ KSC-BC-2023-11, F00007, Specialist Prosecutor, *Submission of Confirmed Indictment*, 6 December 2023, strictly confidential and *ex parte*, with Annex 1, confidential.

⁵ KSC-BC-2023-11, F00008, Registrar, *Notification of Arrest of Haxhi Shala Pursuant to Rule 55(4)*, 11 December 2023, strictly confidential and *ex parte*.

⁶ KSC-BC-2023-11, F00011, Registrar, *Notification of Reception of Haxhi Shala in the Detention Facilities of the Specialist Chambers*, 12 December 2023, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*.

Judge also informed the Parties of his intention to hold a first status conference on 15 December 2023 at 09:30 hours.⁸

5. On the same day, pending the appointment or assignment of Counsel, the Registrar assigned Laurens van Puyenbroeck as Counsel for Mr Shala,⁹ in accordance with Section 17(2) of the Directive on Counsel and Regulation 21 of the Legal Aid Regulations.

6. On 13 December 2023, the initial appearance of Mr Shala took place.¹⁰

II. APPLICABLE LAW

A. STATUS CONFERENCE

7. Pursuant to Rule 96(1) of the Rules, the Pre-Trial Judge shall convene a status conference as soon as possible after the initial appearance of the accused in order to, *inter alia*: (i) organise exchanges between the Parties and, where applicable, Victims' Counsel so as to ensure expeditious preparation for trial; and (ii) take steps to ensure that all necessary preparations are being conducted by the Parties in a timely and diligent fashion.

B. DISCLOSURE

8. Pursuant to Article 21(6) of the Law, all material and relevant evidence or facts in possession of the SPO which are for or against the accused shall be made available to the accused before the beginning of and during the proceedings, subject only to restrictions which are strictly necessary and when any necessary counter-balance

⁷ KSC-BC-2023-11, F00014, Pre-Trial Judge, *Decision Setting the Date for the Initial Appearance of Haxhi Shala and Related Matters* ("Decision on Initial Appearance"), 12 December 2023, public.

⁸ Decision on Initial Appearance, para. 19.

⁹ KSC-BC-2023-11, F00012, Registrar, *Notification of Assignment of Duty Counsel to Haxhi Shala*, 12 December 2023, strictly confidential and *ex parte*, with Annex 1, confidential.

¹⁰ See Decision on Initial Appearance, para. 22(a).

protections are applied. Pursuant to Rule 102(3) of the Rules, the SPO shall provide detailed notice to the Defence of any material and evidence in its possession.

9. Pursuant to Rule 102(1)(a) of the Rules, and subject to Rules 105, 106, 107, and 108 of the Rules, the SPO shall make available to the Defence and, where applicable, Victims' Counsel, as soon as possible and at least within 30 days of the initial appearance, the supporting material to the Confirmed Indictment as well as any statement obtained from the accused.

10. Pursuant to Rule 102(1)(b) of the Rules, within a time limit set by the Pre-Trial Judge, and no later than 30 days prior to the opening of the Specialist Prosecutor's case, the SPO shall make available to the Defence the following material: (i) the statements of all witnesses whom the SPO intends to call to testify at trial, in a language the accused understands and speaks; (ii) all other witness statements, expert reports, depositions, or transcripts that the SPO intends to present at trial; and (iii) the exhibits that the SPO intends to present at trial.

11. Pursuant to Rule 102(2) and (4) of the Rules, any statements of additional SPO witnesses, which have not been disclosed within the 30-day time limit prior to the opening of the Specialist Prosecutor's case and whom the SPO intends to call to testify at trial, shall be made available to the Defence as soon as possible, in a language the accused understands and speaks, and shall be accompanied by reasons for the late disclosure. Such disclosure shall be finalised during the pre-trial stage.

12. Pursuant to Rule 102(3) of the Rules, the SPO shall disclose to the Defence, upon request and without delay, any statements, documents, and photographs and allow inspection of other tangible objects in the custody or control of the SPO, which are deemed by the Defence to be material to its preparation, or were obtained from or belonged to the accused.

13. Pursuant to Rule 103 of the Rules, and subject to Rules 107 and 108 of the Rules, the SPO shall immediately disclose to the Defence any information as soon as

it is in its custody, control or actual knowledge, which may reasonably suggest the innocence or mitigate the guilt of the accused or affect the credibility or reliability of the SPO's evidence.

14. Pursuant to Rule 107(1)-(2) of the Rules, the SPO shall apply confidentially and *ex parte* to the Panel to be relieved in whole or in part of its obligation under Rules 102 and 103 of the Rules to disclose initial material if the information, of which it has custody or control, has been provided on a confidential basis and solely for the purpose of generating new evidence and for which it has not received the information provider's consent to disclose.

C. REDACTIONS

15. Pursuant to Article 23(1) of the Law and Rule 80(1) of the Rules, a Panel may order appropriate measures for the protection, safety, physical and psychological well-being, dignity and privacy of witnesses, victims participating in the proceedings, as well as other persons at risk on account of testimony given by witnesses.

16. Pursuant to Rule 80(4)(a)(i)-(iii) and (d) of the Rules, such measures may include the redaction of names and other identifying information in order to prevent disclosure to the accused and/or the public, where necessary, of the identity and/or whereabouts of a witness, a victim participating in the proceedings or of a person related to or associated with them.

17. Pursuant to Rule 108(1) of the Rules, the SPO may apply confidentially and *ex parte* to the Panel to withhold information in whole or in part where the disclosure of such information may, *inter alia*, prejudice ongoing or future investigations. Pursuant to Rule 108(6) of the Rules, the same applies *mutatis mutandis* to the Defence.

III. DISCUSSION

18. In light of the initial appearance of the Accused, the process of disclosure of evidence and material by the SPO to the Defence is expected to start promptly, in accordance with the above-mentioned legal framework and in a manner and time frame to be regulated by the Pre-Trial Judge. Mindful of the scope of the charges, including the underlying allegations, and the SPO's intention to join the present case with the case of *The Specialist Prosecutor v Sabit Januzi and Ismet Bahtijari*,¹¹ which is the same in scope, the Pre-Trial Judge is minded to adopt a speedy pace in order to conclude the pre-trial phase in due time. In order to facilitate this disclosure process for the benefit of the Parties, and in particular the Defence, the Pre-Trial Judge shall convene a status conference, as prescribed by Rule 96(1) of the Rules, in order to receive submissions regarding: (i) the items listed in the annex to this order; (ii) the redaction regime to be adopted in the present proceedings, as further specified in paragraph 20 below; and (iii) any other related relevant topic not covered by the annexed list of items, as deemed necessary by the Parties. Having considered the submissions of the SPO and the Defence during the initial appearance, the Pre-Trial Judge decides to hold the first status conference on **Friday, 15 December 2023, at 09:30 hours**.

19. Furthermore, the Parties are invited to make submissions, in writing, on any of the items listed in the Annex to this order or other related relevant topics they deem necessary, if they so wish. Where information cannot be shared with either Party for confidentiality and protection purposes, submissions may be made in writing *ex parte*. The information provided by the Parties will assist the Pre-Trial Judge when formulating the framework decision on disclosure of evidence and related matters, including time limits for disclosure.

¹¹ KSC-BC-2023-10, F000126, Specialist Prosecutor, *Prosecution Submissions for Third Status Conference*, 12 December 2023, confidential, para. 7.

20. The Pre-Trial Judge also considers it necessary to request observations from the Parties, in writing, regarding the regime of redacting information and evidence to be applied in this case along the lines set out in the “Framework Decision on Disclosure of Evidence and Related Matters” in KSC-BC-2023-10 (“Case 10”),¹² which was consistently applied in five different proceedings at the pre-trial stage.¹³ These observations will inform the Pre-Trial Judge when adopting a redaction regime that will ensure efficiency of the disclosure process by striking a balance between the duty to protect the interests of victims and witnesses while upholding the rights of the Accused under Article 21 of the Law.

21. Furthermore, considering that the Accused is charged with three different offences, involving five modes of liability, the disclosure of evidence shall proceed in an organised and efficient manner, making full use of the designated electronic system for disclosure available.¹⁴ An organised disclosure process will allow the Defence to prepare properly and expeditiously for the upcoming proceedings, increase the productivity and efficiency of the proceedings and, ultimately, enable the Trial Panel to receive the evidence in an orderly fashion. This is particularly applicable in the present case, where pre-trial proceedings should be concluded in a timely fashion. To this end, the Pre-Trial Judge considers it necessary to request observations from the Parties on whether: (i) the SPO, when disclosing batches of Rule 102(1)(a) supporting material and Rule 102(1)(b) evidence; and (ii) the Defence, when disclosing batches, if any, of material falling under Rule 104(1), (5), and (6) of the Rules, can adopt the following case-specific subcategorises in Legal Workflow, as adopted recently in Case 10: (i) “count 1”, “count 2”, “count 3” (under the standard

¹² KSC-BC-2023-10, F00076, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 24 October 2023, confidential, with Annex 1, public. A public redacted version of said decision was filed on the same day, [F00076/RED](#).

¹³ See KSC-BC-2023-10, F00022, Pre-Trial Judge, [Order Setting the Date for the First Status Conference and for Submissions](#), 9 October 2023, public, para. 21 and references therein.

¹⁴ See Rule 109(a) of the Rules; Court Management Unit, [Kosovo Specialist Chambers Legal Workflow User Guide](#), 15 April 2021, *limité*.

category “offences”); (ii) “commission”, “co-perpetration”, “agreement”, “assistance”, and “attempt” (under the standard category “alleged conduct of the accused”; and (iii) “Shala” (under the standard category “accused”).¹⁵ The Parties are also invited to make any proposals as to further sub-categories to be added, should they consider this necessary.

22. It is recalled that, while the Accused has the right to be present in person, pursuant to Rule 96(2) of the Rules, considering the technical nature of the topics to be discussed, the status conference: (i) may be attended by the Accused with Counsel participating via video-conference; (ii) may be attended by Counsel, with the Accused participating via video-conference; or (iii) may take place in the Accused’s absence, with Counsel present or participating via video-conference. These arrangements, however, necessitate the written consent of the Accused, after having received advice from his Counsel, in accordance with Rule 96(2) of the Rules.

23. Should Counsel wish to attend any of the upcoming status conferences in this case via video-conference, he shall comply with the requirements of Rule 96(2) of the Rules and the Registrar’s Practice Direction on Video Links (KSC-BD-23/COR), sufficiently in advance for the Registrar to take the appropriate steps, including to inform the Pre-Trial Judge.

24. Lastly, considering that the Accused is entitled to access certain filings in the case record (with redactions, if necessary), the Pre-Trial Judge considers it necessary, pursuant to Rule 82(5) of the Rules, to order the Registrar to either submit, by Friday, 15 December 2023, confidential and/or public redacted versions of the following

¹⁵ See KSC-BC-2023-10, Transcript of Hearing, 3 November 2023, public, p. 80, lines 5-11 referring to KSC-BC-2023-10, F00084, Specialist Prosecutor, [Prosecution Submissions for Second Status Conference](#), 31 October 2023, public, para. 9. See also KSC-BC-2020-06, F00218, Pre-Trial Judge, [Decision on Categorisation of Evidence Under Rule 109\(c\) and Related Matters](#), 12 March 2021, public, paras 19-20; KSC-BC-2020-04, F00024, [Order Setting the Date for the First Status Conference and for Submissions, 20 April 2023](#), public, para. 21. See also point 7 in the Annex to this scheduling order.

filings, or to request at the status conference their reclassification as confidential or public:

- F00008, currently classified as strictly confidential and *ex parte*;
- F00011 and F00011/A01, currently classified as strictly confidential and *ex parte*;
- F00012, currently classified as strictly confidential and *ex parte*, and F00012/A01, currently classified as confidential; and
- F00015, F00015/A01, F00015/A02, F00015/A02, currently classified as strictly confidential and *ex parte*.

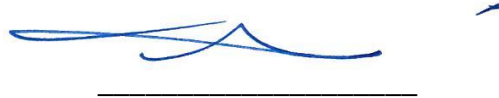
25. The Registrar is further ordered to reclassify decision F00004, currently classified as strictly confidential and *ex parte*, as public.

IV. DISPOSITION

26. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a. **DECIDES** to convene a status conference in the presence of the SPO and the Defence, in line with paragraph 18 above, on **Friday, 15 December 2023, at 09:30 hours**;
- b. **REQUESTS** the SPO and the Defence, if it so wishes, to provide written submissions on: (i) the items listed in the agenda for the status conference annexed to the present order; (ii) the redaction regime to be applied in the present proceedings; and/or (iii) other related relevant topics deemed necessary, by **Thursday, 14 December 2023, at 16:00 hours**;
- c. **ORDERS** the Registrar to either submit, by Friday, 15 December 2023, confidential and/or public redacted versions of the filings indicated in paragraph 24, or to request at the status conference their reclassification as confidential or public; and

d. **ORDERS** the Registrar to reclassify decision F00004, currently classified as strictly confidential and *ex parte*, as public.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Wednesday, 13 December 2023
At The Hague, the Netherlands.