



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-BC-2020-04**

The Specialist Prosecutor v. Pjetër Shala

Before: **Trial Panel I**

Judge Mappie Veldt-Foglia, Presiding Judge

Judge Roland Dekkers

Judge Gilbert Bitti

Judge Vladimir Mikula, Reserve Judge

Registrar: Fidelma Donlon

Date: 9 February 2024

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Public redacted version of

Decision on the Defence motion for a crime site visit, closing the evidentiary proceedings and giving directions on final briefs, request for reparations and closing statements

To be notified to:

Specialist Prosecutor

Kimberly P. West

Counsel for the Accused

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Victims' Counsel

Simon Laws

TRIAL PANEL I (Panel) hereby renders this decision on the Defence motion for a crime site visit, closing the evidentiary proceedings and giving directions on final briefs, request for reparations and closing statements.

I. PROCEDURAL BACKGROUND

1. On 10 and 18 October 2022, following an order from the Panel,¹ the Specialist Prosecutor's Office (SPO),² the Defence for Pjetër Shala (Defence and Accused, respectively)³ and Victims' Counsel⁴ made submissions on the necessity of a crime site visit⁵ and the timing of such a visit.

2. On 25 October 2022, the Defence filed a motion requesting a crime site visit (Defence Motion for a Crime Site Visit)⁶ and made supplementary submissions on

¹ KSC-BC-2020-04, F00289, Trial Panel I, [Decision setting the dates for trial preparation conferences and requesting submissions](#), 30 September 2022, public, with Annex 1, strictly confidential and *ex parte*, p. 6, Section B.

² KSC-BC-2020-04, F00303, Specialist Prosecutor, *Prosecution submissions in advance of the trial preparation conference* (SPO Submissions for Trial Preparation Conference), 10 October 2022, confidential, with Annexes 1-2, strictly confidential and *ex parte*, and Annex 3, confidential, paras 18-19. A public redacted version was filed on 11 October 2022, F00303/RED2; Transcript of Hearing, 18 October 2022, public, p. 345, line 13 to p. 347, line 11.

³ KSC-BC-2020-04, F00305, Defence, *Defence Submissions Pursuant to Order on Trial Preparation Conferences* (Defence Submissions for Trial Preparation Conference), 10 October 2022, strictly confidential and *ex parte*, paras 8-9. A public redacted version was filed on the same day, F00305/RED; Transcript of Hearing, 18 October 2022, public, p. 348, line 6 to p. 350, line 22.

⁴ KSC-BC-2020-04, F00301, Victims' Counsel, *Victims' Counsel Submissions for Trial Preparation Conference* (Victims' Counsel Submissions for Trial Preparation Conference), 10 October 2022, public, paras 8-10; Transcript of Hearing, 18 October 2022, public, p. 347, line 12 to p. 348, line 5.

⁵ Any references to the crime site shall be understood to refer to the alleged crime site; KSC-BC-2020-04, F00098/A01, Specialist Prosecutor, *Annex 1 to Submission of corrected indictment*, 1 November 2021, confidential, para. 6. A public redacted version was filed on 16 November 2021, [F00107/A01](#).

⁶ KSC-BC-2020-04, F00325, Defence, *Revised Version of Motion for a Crime Site Visit*, 25 October 2022, confidential.

10 January 2024.⁷ The SPO responded on 7 November 2022⁸ and 19 January 2024,⁹ respectively. Victims' Counsel did not file a response and the Defence did not file a reply.

3. On 9 February 2023, the Panel decided that reparation proceedings shall be conducted concurrently with criminal proceedings in the present case and that, in case of a conviction, it would not refer victims to civil litigation in Kosovo courts, but issue a reparation order itself.¹⁰

4. On 24 February 2023 and 29 November 2023, the Panel informed the Parties and Victims' Counsel that it took note of their submissions regarding the crime site visit and would take a decision at the appropriate time, following the presentation of all evidence in the case.¹¹

⁷ KSC-BC-2020-04, F00761, Defence, *Defence Supplementary Submissions to its Request for a Crime Site Visit* (Supplementary Submissions), 10 January 2024, confidential. The Panel shortened the time limits for responses and reply to 19 and 23 January 2024, respectively; see CRSPD154, Email from the Panel to the Parties and Victims' Counsel, sent through the Court Management Unit (CMU), on 12 January 2024, at 15:56, confidential.

⁸ KSC-BC-2020-04, F00338, Specialist Prosecutor, *Prosecution response to Defence motion for a crime site visit* (SPO Response), 7 November 2022, confidential.

⁹ KSC-BC-2020-04, F00777, Specialist Prosecutor, *Prosecution response to Defence supplementary submissions on crime site visit* (SPO Response to Supplementary Submissions), 19 January 2024, confidential. A public redacted version was filed on 22 January 2024, F00777/RED.

¹⁰ KSC-BC-2020-04, F00421, [Decision on reparation proceedings](#), 9 February 2023, public.

¹¹ KSC-BC-2020-04, F00434/RED, Trial Panel I, [Public redacted version of Decision on the conduct of the proceedings](#), 24 February 2023, public, para. 74; Transcript of Hearing, 29 November 2023, public, p. 3880, line 17 to p. 3881, line 7.

5. Between 27 March 2023 and 15 January 2024, the SPO,¹² Victims' Counsel¹³ and the Defence¹⁴ presented their evidence before the Panel. Both Victims' Counsel and the Defence presented evidence also for the purposes of reparations.¹⁵

6. On 30 June 2023 and 12 July 2023, the Panel received submissions from Victims' Counsel and the Defence on, among others, the timing and content of any request for reparations.¹⁶

7. On 25 October 2023, the Panel decided that, in the event of a conviction, it would determine the appropriate sentence with the pronouncement of the trial judgment.¹⁷

¹² The SPO presented its evidence between 27 March 2023 and 6 July 2023; see KSC-BC-2020-04, Transcript of Hearing, 27 March 2023, public, p. 609, lines 11-13; F00570, Specialist Prosecutor, *Prosecution notice of the closing of its case pursuant to Rule 129*, 6 July 2023, public.

¹³ The Panel heard two expert witnesses called by Victims' Counsel on 21 August 2023; see KSC-BC-2020-04, Transcript of Hearing, 21 August 2023, public, p. 2249, lines 13-16. Victims' Counsel has also presented evidence in writing; see KSC-BC-2020-04, F00558, Victims' Counsel, *Victims' Counsel's Submissions pursuant to the Order of 4 May 2023 setting further procedural steps for the presentation of evidence by Victims' Counsel* (Victims' Counsel Submissions on Presentation of Evidence), 30 June 2023, confidential, with Annexes 1-6, confidential. A public redacted version was filed on 15 August 2023, F00558/RED; F00598, Trial Panel I, *Decision on Victims' Counsel's request to call expert witnesses to testify*, 21 July 2023, public; F00593, Victims' Counsel, *Victims' Counsel's Request for admission of non-oral evidence*, 17 July 2023, confidential, with Annex 1, confidential; Transcript of Hearing, 25 August 2023, confidential, p. 2438, line 21 to p. 2441, line 6, containing the Panel's ruling on the 17 July 2023 request.

¹⁴ The Defence presented its evidence between 20 September 2023 and 15 January 2024; see KSC-BC-2020-04, Transcript of Hearing, 20 September 2023, public, p. 2450, lines 12-14; F00772, Defence, *Defence Notice of Closing its Case Pursuant to Rule 131 of the Rules*, 15 January 2024, public.

¹⁵ See e.g. Victims' Counsel Submissions on Presentation of Evidence, paras 9-19; F00716, Defence, *Defence Submission of an Expert Report for the Purposes of the Reparations Proceedings*, 13 November 2023, confidential, with Annex 1, confidential. A public redacted version of the main filing was submitted on 16 November 2023, F00716/RED.

¹⁶ Victims' Counsel Submissions on Presentation of Evidence, para. 57; F00585, Defence, *Defence Response to the Victims' Counsel's Submissions pursuant to the Order of 4 May 2023 setting further procedural steps for the presentation of evidence by Victims' Counsel with six confidential annexes* (Defence Response to Victims' Counsel Submissions on Presentation of Evidence), 12 July 2023, confidential, paras 3, 17. A public redacted version was filed on 14 July 2023, F00585/RED. See also Transcript of Hearing, 4 May 2023, public, p. 1360, lines 7-11.

¹⁷ KSC-BC-2020-04, Transcript of Hearing, 25 October 2023, public, p. 3153, line 9 to p. 3156, line 24.

8. On 22 January 2024, the Defence filed a request for an extension of time and word limit for its Final Trial Brief (Defence Extension Request).¹⁸ The SPO responded on 25 January 2024.¹⁹ Victims' Counsel did not respond and the Panel did not entertain a reply.²⁰

9. On 24 January 2024, the Panel called additional evidence, pursuant to Rule 132 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules), for the purposes of sentencing in case of a conviction.²¹

10. On 26 January 2024, the SPO informed the Panel that it did not intend to present evidence in rebuttal.²² The Defence also did not request to present evidence in rejoinder in relation to the evidence called by the Panel.²³

11. The present decision will address and give directions on: (i) the Defence Motion for a Crime Site Visit; (ii) the closing of the evidentiary proceedings; (iii) the filing of the Final Trial Briefs and statement on the impact of the alleged crimes on victims participating in the proceedings (Impact Statement), including the related Defence Extension Request; (iv) any request for reparations; and (v) closing statements.

¹⁸ KSC-BC-2020-04, F00780, Defence, *Defence Request for an Extension of Time and Word Limit for its Final Trial Brief*, 22 January 2024, public.

¹⁹ KSC-BC-2020-04, F00787, Specialist Prosecutor, *Prosecution response to 'Defence Request for an Extension of Time and Word Limit for its Final Trial Brief'* (SPO Response to Defence Extension Request), 25 January 2024, public.

²⁰ KSC-BC-2020-04, CRSPD160, Email from the Panel to the Parties and Victims' Counsel, sent through CMU, on 23 January 2024, at 18:22, confidential, shortening the time limit for responses and informing the Parties and Victims' Counsel that the Panel would not entertain a reply.

²¹ KSC-BC-2020-04, F00784/RED, Trial Panel I, [Public redacted version of Decision on Defence requests for admission of evidence \(F00770/COR and F00771\) and on evidence called by the Panel](#) (Decision on Defence Admission Requests and Evidence Called by the Panel), 24 January 2024, public, paras 24-25, 29(g).

²² KSC-BC-2020-04, F00789, Specialist Prosecutor, *Prosecution second submissions pursuant to Rules 127 and 133*, 26 January 2024, public.

²³ See [Decision on Defence Admission Requests and Evidence Called by the Panel](#), paras 27, 29(l), setting the deadline for the Defence for any such request to 26 January 2024. No request was made by the deadline.

II. APPLICABLE LAW

12. The Panel notes Articles 3(6), 21(4), 22(1), (3) and (11), and 40(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law), Rules 9(5)(a), 74, 76, 134, 135 and 159(6) of the Rules and Articles 36(1) and 45 of the Registry Practice Direction on Files and Filings before the Kosovo Specialist Chambers (Practice Direction on Files and Filings).²⁴

III. CRIME SITE VISIT

A. SUBMISSIONS

1. Defence

13. The Defence requests the Panel to conduct a crime site visit or, in the alternative, appoint a Single Judge from among its members to conduct such a visit and act as rapporteur.²⁵ The Defence singles out three specific sites within the Kukës Metal Factory that the Panel ought to visit: (i) an office in which allegedly two incidents of beatings occurred, located in what it terms the "Command Building" (Command Building Office); (ii) a room located [REDACTED] in the same Command Building, [REDACTED]; and (iii) what remains of the foundations of another building on the premises of the Kukës Metal Factory allegedly used to detain individuals (Alleged Detention Building).²⁶

14. The Defence argues that it is necessary to visit the three sites in order to: (i) appreciate the dimensions and layout of the rooms and whether they could fit the

²⁴ KSC-BD-15, Registrar, *Registry Practice Direction on Files and Filings before the Kosovo Specialist Chambers*, 17 May 2019, public.

²⁵ Defence Motion for a Crime Site Visit, paras 1, 7, 9-11; Supplementary Submissions, para. 33; Defence Submissions for Trial Preparation Conference, para. 8; *see further* Transcript of Hearing, 18 October 2022, public, p. 348, line 15 to p. 350, line 20.

²⁶ [REDACTED].

alleged detainees and all other persons allegedly present during the beatings; and (ii) assess the distance, angles and line of sight from the Alleged Detention Building to the entrance of the Kukës Metal Factory.²⁷ This is relevant, the Defence submits, to the factual allegations underpinning the charges of arbitrary detention, cruel treatment and torture, the existence of the alleged joint criminal enterprise and the credibility of SPO witnesses TW4-01 and W04733, considering also the testimonies of Defence witnesses W03887 and W04754 on the Command Building and the rooms inside.²⁸ The Defence concludes that a crime site visit is instrumental in the determination of the truth and is in the interests of justice.²⁹

2. SPO

15. The SPO submits that, while a site visit could be of assistance to the Panel, the evidence on record on the layout of the Kukës Metal Factory is sufficient to enable a proper assessment of the allegations set out in the (Corrected) Confirmed Indictment.³⁰ This evidence includes cadastral maps, photographs, a written record of the search of the site conducted in 2019, sketches drawn by witnesses and detailed descriptions provided by both SPO and Defence witnesses during their testimonies.³¹ The SPO adds that the line of sight from the Alleged Detention Building to the entrance of the Kukës Metal Factory is of minimal relevance at best and a site visit

²⁷ Supplementary Submissions, paras 16, 20-21, 23-24, 27-28.

²⁸ [REDACTED].

²⁹ Supplementary Submissions, paras 11, 18, 30; Defence Motion for a Crime Site Visit, para. 7.

³⁰ KSC-BC-2020-04, F00098/A01, Specialist Prosecutor, *Annex 1 to Submission of corrected indictment*, 1 November 2021, confidential, para. 6. A public redacted version was filed on 16 November 2021, [F00107/A01](#); SPO Response to Supplementary Submissions, para. 2; SPO Response, para. 2; SPO Submissions for Trial Preparation Conference, paras 18-19; Transcript of Hearing, 18 October 2022, public, p. 346, line 16 to p. 347, line 10.

³¹ SPO Response to Supplementary Submissions, paras 3-7.

would anyway not be of assistance as the building has been mostly destroyed.³² Thus, according to the SPO, a site visit is not necessary for the determination of the truth and the charges in the present case.³³

3. Victims' Counsel

16. Victims' Counsel submits that a crime site visit would facilitate the Panel's comprehensive understanding of the site of the Kukës Metal Factory, the facts of the case and the perspective of the victims who were allegedly detained and tortured there, but adds that such benefits must be weighed against security and cost considerations.³⁴

B. DETERMINATION

17. For the reasons that follow, the Panel finds that a crime site visit is not necessary for the determination of the charges in the present case and the establishment of the truth.

18. First, the Panel has received various pieces of documentary evidence which depict and describe the Command Building and the rooms inside. This includes: (i) cadastral maps of the Kukës Metal Factory, providing the total surface area of the Command Building;³⁵ (ii) a written record of a search conducted [REDACTED] at the premises of the Kukës Metal Factory, in 2019, which provides, among others, a description of the rooms in the Command Building, their layout, number, size and

³² SPO Response to Supplementary Submissions, para. 8.

³³ SPO Response to Supplementary Submissions, paras 2, 9.

³⁴ Victims' Counsel Submissions for Trial Preparation Conference, paras 9-10; Transcript of Hearing, 18 October 2022, public, p. 347, line 16 to p. 348, line 4.

³⁵ 065437-065439; 065437-065439-ET (marked as building "9-OFFICES").

furniture contained inside;³⁶ (iii) photographs of the rooms in the Command Building taken during the search;³⁷ and (iv) a video taken by W03887, in 1999, inside the Command Building.³⁸ This evidence altogether sufficiently allows the Panel to assess the measurements of the internal and external spaces, the size of the rooms in the Command Building, and the proportions of the furniture and materials found therein, taking also into consideration the presence of persons, as visible in photos and videos.

19. Second, the Defence has failed to substantiate how a site visit to [REDACTED] could assist the Panel in assessing the credibility of SPO witnesses TW4-01 and W04733 and what additional insight could the Panel gain from such a visit. The witnesses have stated themselves that [REDACTED],³⁹ [REDACTED], [REDACTED]⁴⁰ – [REDACTED]⁴¹ – [REDACTED].⁴²

20. Third, the Panel finds that the line of sight from the Alleged Detention Building to the main gate of the Kukës Metal Factory is a matter of limited relevance to the determination of the charges in the present case. To the extent that it is relevant to the assessment of TW4-01's credibility, the Panel observes that the line of sight can be established based on aerial photographs of the Kukës Metal Factory, which are before the Panel.⁴³

³⁶ 065418-065429-ET; 065418-065429-TR; 065417-065430. The Panel directs the Registry to assign exhibit numbers to these items, pursuant to KSC-BC-2020-04, F00461, Trial Panel I, [Decision on the submission and admissibility of non-oral evidence](#) (Framework Decision on Evidence), 17 March 2023, public, paras 42, 43, as they represent original handwritten and unredacted versions of items 065418-065429-TR-ET RED and 065418-065429-TR RED which are available to the Panel for its deliberations and judgment.

³⁷ 065613-065615-ET; 065613-065615; 065616-065657; SPOE40010264-40010559.

³⁸ 078252-01; KSC-BC-2020-04, Transcript of Hearing, 21 November 2023, public, p. 3289, line 3 to p. 3290, line 9; p. 3294, lines 5-15.

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ [REDACTED].

⁴² [REDACTED].

⁴³ See e.g. SPOE00330365-00330365.

21. In light of the above, the Panel finds that a crime site visit is not necessary for the determination of the charges and the truth in the present case and rejects the Defence Motion for a Crime Site Visit.

IV. CLOSING OF THE EVIDENTIARY PROCEEDINGS

22. The Panel notes that both Parties and Victims' Counsel have presented their evidence and there are no more witnesses to be called or additional evidence to be introduced. This includes evidence for the determination of the guilt or innocence of the Accused and for the purposes of sentencing in case of a conviction.⁴⁴ The Panel further notes that neither Party has presented any motions for rebuttal or rejoinder evidence.⁴⁵

23. Accordingly, pursuant to Rule 134(a) of the Rules, the Panel considers it appropriate to close the evidentiary proceedings in the present case.

24. The Panel further directs the SPO to provide it with an update, by **Friday, 16 February 2024**, regarding its inquiries with [REDACTED] as to whether the Accused has a criminal record there.⁴⁶

25. The Panel recalls, at this juncture, its previous direction to the Registry that, within two weeks of the closing of the evidentiary proceedings, it shall file in the case record a consolidated list of all items admitted or considered to be available to the Panel for the purpose of its deliberations and judgment. The Registry shall indicate,

⁴⁴ See paras 5, 7, 9 above.

⁴⁵ See para. 10 above.

⁴⁶ KSC-BC-2020-04, F00767, Specialist Prosecutor, *Notice of submission of criminal record of Pjetër SHALA and of further related inquiries*, 15 January 2024, confidential, paras 5-9. A public redacted version was filed on 17 January 2024.

as applicable, the portions of each item used in court with a witness who testified in the present case.⁴⁷

V. FINAL TRIAL BRIEFS AND IMPACT STATEMENT

A. DEFENCE EXTENSION REQUEST

1. Submissions

a. Defence

26. The Defence requests a 15-day extension of the time limit for the filing of its Final Trial Brief and a 15,000-word extension of the word limit.⁴⁸ It submits that good cause exists as: (i) it must thoroughly review the evidence presented at trial; (ii) it needs to develop submissions on complex issues related to the fairness of the proceedings; and (iii) it must further present submissions on sentencing.⁴⁹ The Defence submits that this is a matter of fairness towards the Accused as he is entitled to have adequate time and facilities to present his defence.⁵⁰

27. In addition, the Defence requests to be allowed to file its Final Trial Brief 5 days after receiving the SPO's Final Trial Brief and Victims' Counsel's Impact Statement.⁵¹ This, the Defence submits, would assure the Accused's right to be informed of the case against him and enable the Defence to properly respond to the SPO's submissions.⁵²

⁴⁷ [Framework Decision on Evidence](#), para. 66.

⁴⁸ Defence Extension Request, paras 1, 2, 5, 11.

⁴⁹ Defence Extension Request, paras 4, 8.

⁵⁰ Defence Extension Request, paras 2, 4.

⁵¹ Defence Extension Request, paras 1, 6, 8, 11.

⁵² Defence Extension Request, para. 6.

b. SPO

28. The SPO objects to the requested extension of time and the consecutive filing of the Final Trial Briefs, but does not object to an extension of the word limit, provided that it is granted the same extension.⁵³ The SPO submits that: (i) the requested extension of time is premature; (ii) the Defence is fully informed of the SPO's case, which closed more than six months ago; (iii) Rule 134 of the Rules clearly provides for the concurrent filing of the Final Trial Briefs; and (iv) both Parties and Victims' Counsel will have the opportunity to respond to their respective submissions during the closing statements, when the Defence will have the right to speak last.⁵⁴

2. Determination

a. Defence request for an extension of time and consecutive filing of the Final Trial Briefs and Impact Statement

29. Turning first to the Defence's request for a 15-day extension of the time limit to file its Final Trial Brief, the Panel is not persuaded that good cause exists to grant such an extension. The Defence should be able to review the evidence presented at trial and prepare its submissions within the time limit prescribed by the Rules, considering that: (i) the charges in the present case are limited to one location and a relatively short period of time of no more than 3 weeks;⁵⁵ and (ii) the volume of evidence presented is not exceptionally high when compared to other cases before this court.⁵⁶ Regarding

⁵³ SPO Response to Defence Extension Request, paras 2, 5, 6.

⁵⁴ SPO Response to Defence Extension Request, paras 3-4.

⁵⁵ [\(Corrected\) Confirmed Indictment](#), para. 31.

⁵⁶ See KSC-BC-2020-06, F01291, Specialist Prosecutor, *Prosecution Submission in advance of Specialist Prosecutor's preparation conference*, 14 February 2023, public, with Annexes 1-3, confidential and Annexes 4-6, strictly confidential and *ex parte*, para. 6 (stating that "[t]he SPO intends to seek admission of the evidence of 312 witnesses and projects an estimate of 545.5 hours to present its case"). The number of witnesses heard in this case is comparable to that in case KSC-BC-2020-05, where the Parties and

the Defence's argument that it also needs to present submissions on sentencing,⁵⁷ the Panel recalls that the Rules establish a presumption that the sentence be pronounced together with the trial judgment in case of a conviction.⁵⁸ Thus, the time limit prescribed by Rule 134(b) of the Rules for the filing of the Final Trial Briefs already accounts for submissions on sentencing. In sum, the Defence has not presented any case-specific circumstances that would justify an extension of the time limit prescribed by the Rules and has failed to show good cause for such an extension. No other facts or circumstances that could or should lead to a different conclusion have become apparent to the Panel either.

30. In the same vein, the Panel is not persuaded by the Defence's request to allow it to file its Final Trial Brief 5 days after the SPO's Final Trial Brief and Victims' Counsel's Impact Statement.⁵⁹ Rule 134(b) and (c) of the Rules clearly provides for the simultaneous filing of the Final Trial Briefs and Impact Statement. The practice of other courts and tribunals on this matter is of little relevance, as their rules differ from those of the Specialist Chambers, and the Panel must apply the Specialist Chambers' own legal framework.⁶⁰ The fact that the Rules set simultaneous time limits for all Parties and participants highlights that the Final Trial Briefs and Impact Statement are not meant to constitute an additional round of litigation on the charges and the evidence presented, but are meant to provide an overview of the Parties' and

Victims' Counsel filed their Final Trial Briefs and Impact Statement within the time limit prescribed by Rule 134 of the Rules; see KSC-BC-2020-05, F00494/RED3/COR, Trial Panel I, [Further redacted version of Corrected version of Public redacted version of Trial Judgment](#) (Mustafa Trial Judgment), 16 December 2022, public, paras 9, 13, 16-18.

⁵⁷ See Defence Extension Request, para. 4.

⁵⁸ See Rule 159(6) of the Rules; KSC-BC-2020-04, Transcript of Hearing, 25 October 2023, public, p. 3154, lines 17-23.

⁵⁹ See Defence Extension Request, para. 6.

⁶⁰ The Panel notes that there is no equivalent rule to Rule 134 of the Rules which sets specific time limits for closing trial briefs in the Rules of Procedure and Evidence of the International Criminal Court, on whose practice the Defence is relying.

participants' positions and arguments.⁶¹ The Parties and Victims' Counsel will have an opportunity to respond to each other's submissions during the closing statements where, pursuant to Rule 135 of the Rules, the Defence has the right to speak last.⁶²

31. The Panel also does not consider that this matter touches upon the Accused's right to be informed of the case against him. The Defence has had the Confirmed Indictment and the SPO's Pre-Trial Brief⁶³ since the pre-trial stage of the proceedings, has had an opportunity to challenge the form of the Confirmed Indictment,⁶⁴ which it did,⁶⁵ and has received all the evidence presented by the SPO throughout its case, which closed on 6 July 2023.⁶⁶ The Defence is fully aware at this point of the SPO's case.

32. For these reasons, the Panel rejects the Defence's request for an extension of the time limit and the consecutive filing of the Final Trial Briefs and Impact Statement.

33. That said, the Panel wishes to proceed with the reparation proceedings and receive related submissions in parallel with the submissions on the guilt or innocence of the Accused⁶⁷ and will take this into account when setting the time limits for the Final Trial Briefs and Impact Statement.

⁶¹ See similarly ICC, *Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15-1226, Trial Chamber IX, [Directions on Closing Briefs and Closing Statements](#), 13 April 2018, para. 3.

⁶² See Rule 135(1) and (4) of the Rules.

⁶³ KSC-BC-2020-04, F00135/A01, Specialist Prosecutor, *Prosecution Pre-Trial Brief*, 28 January 2022, confidential. A public redacted version was filed on 14 April 2023, [F00135/A01/RED](#).

⁶⁴ See Rule 97(1)(b) of the Rules.

⁶⁵ KSC-BC-2020-04, F00089, Pre-Trial Judge, *Decision on Motion Challenging the Form of the Indictment*, 18 October 2021, confidential. A public redacted version was issued on the same day, [F00089/RED](#).

⁶⁶ KSC-BC-2020-04, F00570, Specialist Prosecutor, *Prosecution notice of the closing of its case pursuant to Rule 129*, 6 July 2023, public.

⁶⁷ See para. 3 above and paras 41-46 below.

b. Defence and SPO requests for extension of word limit

34. Turning to the Defence's request for an extension of the word limit for its Final Trial Brief, from 30,000 to 45,000 words, the Panel is satisfied that the request has been made sufficiently in advance, as required by Article 36(1) of the Practice Direction on Files and Filings. The Panel is also satisfied that the Defence has shown good cause, as such an extension would enable it to address any (additional) issues related to the fairness of the proceedings, as it deems appropriate. Accordingly, the Panel grants the Defence's request for an extension of the word limit.

35. In the interests of justice and fairness, the Panel grants an equivalent extension of the word limit to the SPO, from 30,000 to 45,000 words, as requested, and to Victims' Counsel from 20,000 to 30,000 words, *proprio motu*.

B. DIRECTIONS ON THE FILING OF THE FINAL TRIAL BRIEFS AND IMPACT STATEMENT

36. Pursuant to Rules 9(5)(a) and 134(b) and (c) of the Rules and mindful of the above,⁶⁸ the Panel invites the SPO, the Defence and Victims' Counsel to file their respective Final Trial Briefs and Impact Statement by **Monday, 25 March 2024**.

37. The Panel reminds the Parties and Victims' Counsel that submissions in the Final Trial Briefs and Impact Statement should be focused and concise. The Panel expects the Parties and Victims' Counsel to concentrate on the facts, issues and circumstances relevant to their respective cases. The Parties and Victims' Counsel should avoid lengthy recitations of the procedural background, summaries of testimonies and

⁶⁸ See para. 33 above.

evidence heard by the Panel, and/or *verbatim* citations of the applicable law or precedents. Political statements shall be avoided.⁶⁹

38. The Panel directs the SPO to be as specific as possible in its Final Trial Brief on the locations (*i.e.* buildings, rooms) on the site of the Kukës Metal Factory where detainees were allegedly held, interrogated and/or mistreated and where the alleged murder victim died. The SPO shall identify and link the different locations with photographs and/or videos on the record, sketches drawn by witnesses, maps, any other relevant documentary evidence and the testimonies or written statements of witnesses.

39. Further, having determined that the sentence will be pronounced together with the trial judgment, in case of a conviction,⁷⁰ the Panel orders the Parties and Victims' Counsel to include in their Final Trial Briefs and Impact Statement, should they wish to do so, submissions addressing the following matters: (i) the factors relevant to the determination of the sentence, including the gravity of the alleged crimes and their consequences, the nature and extent of the Accused's involvement in the alleged crimes, the individual circumstances of the Accused and any aggravating and mitigating circumstances, as set out in Article 44(5) of the Law and Rule 163(1) of the Rules;⁷¹ (ii) any proposed sentence to be imposed pursuant to Rule 163(4) of the Rules; and (iii) any other relevant information that may assist the Panel in determining the appropriate sentence in case of a conviction.⁷²

⁶⁹ Similarly KSC-BC-2020-05, F00439, Trial Panel I, [Decision on the closing of the evidentiary proceedings and related matters](#) (Case 05 Decision Closing the Evidentiary Proceedings), 20 June 2022, public, paras 19, 21.

⁷⁰ See para. 7 above.

⁷¹ See also [Mustafa Trial Judgment](#), paras 782-793 ("Relevant Factors to Determine the Sentence"); KSC-BC-2020-07, F00611/RED, Trial Panel II, [Public Redacted Version of the Trial Judgment](#), 18 May 2022, public, with Annexes 1-3, public, paras 943-950.

⁷² See similarly [Case 05 Decision Closing the Evidentiary Proceedings](#), para. 17.

40. The Panel directs the Parties and Victims' Counsel to refer in their Final Trial Briefs and Impact Statement to the evidence admitted or available to the Panel for the purposes of its deliberations and judgment by its Evidence Registration Number (ERN).⁷³ The Parties and Victims' Counsel shall (nonetheless) ensure that they do not refer to evidence that has not entered the evidentiary record in accordance with the procedure set by the Panel.⁷⁴

VI. REQUEST FOR REPARATIONS

41. Recalling its decision that reparation proceedings shall be conducted concurrently with the criminal proceedings,⁷⁵ the Panel invites Victims' Counsel to formulate any request for reparations for the physical, mental and/or material harm⁷⁶ allegedly suffered by (each of) the victims participating in these proceedings, as applicable, by **Monday, 4 March 2024**.

42. When submitting his request for reparations, Victims' Counsel shall: (i) make submissions on the scope and extent of the harm suffered by each victim; (ii) formulate the request for reparations for each victim under the three types of harm mentioned above, as applicable; (iii) indicate the type and modalities of reparations requested (individual and/or collective; restitution, compensation, or other modalities of

⁷³ Rather than exhibit number.

⁷⁴ See [Framework Decision on Evidence](#).

⁷⁵ KSC-BC-2020-04, F00421, [Decision on reparation proceedings](#), 9 February 2023, public.

⁷⁶ On the definition of the different types of harm see KSC-BC-2020-04, F00123/RED, Pre-Trial Judge, [Public Redacted Version of First Decision on Victims' Participation](#), 15 December 2021, public, paras 28-33; F00064, Pre-Trial Judge, [Framework Decision on Victims' Applications](#), 1 September 2021, public, paras 39-43; KSC-BC-2020-05, F00517/RED/COR, Trial Panel I, [Corrected version of Public redacted version of Reparation Order against Salih Mustafa](#) (Mustafa Reparation Order), 6 April 2023 (date of corrected version 14 April 2023), public, with Annexes 1-4, strictly confidential and *ex parte*, paras 89-92.

reparations);⁷⁷ and (iv) indicate for each victim and each type of harm the sum of money they request to be awarded, if any, in case the Accused is found guilty.⁷⁸

43. Further, the Panel recalls that, in principle and save for exceptional circumstances, it will refrain from exceeding Victims' Counsel's request for reparations when setting the amount of Mr Shala's liability, if found guilty, and corresponding reparations awards.⁷⁹

44. The Panel has taken note of the Defence's submissions that it would not be "in a position to challenge" and "respond effectively to the submissions by Victims' Counsel on appropriate reparations prior to the Panel's definitive ruling on the guilt or innocence of the Accused".⁸⁰ The Panel considers that the Defence has failed to explain why exactly it could not challenge and respond effectively to a request for reparations, after having received such a request and considering that: (i) it is in possession of all the relevant evidence; (ii) has had an opportunity to put questions to the expert witnesses called by Victims' Counsel;⁸¹ and (iii) it has also engaged its own expert on material harm.⁸² The fact that Mr Shala may be acquitted on any or all of the charges brought against him may have an impact on the reparations awarded, but does not affect, as such, the Defence's ability to challenge and respond to any request for reparations in case of a conviction.

⁷⁷ [Mustafa Reparation Order](#), paras 104-112.

⁷⁸ See similarly KSC-BC-2020-05, F00468/RED, Trial Panel I, [Public redacted version of Decision setting the agenda for the hearing on the closing statements and related matters](#), 31 August 2022, public, paras 16-19.

⁷⁹ [Mustafa Reparation Order](#), para. 213.

⁸⁰ Defence Response to Victims' Counsel Submissions on Presentation of Evidence, para. 3.

⁸¹ KSC-BC-2020-04, Transcript of Hearing, 21 August 2023, public, pp. 2296-2328; F00687, Defence, *Defence Submission of Written Questions for Victims' Counsel's Expert Witness*, 11 October 2023, public, with Annex 1, confidential.

⁸² F00716, Defence, *Defence Submission of an Expert Report for the Purposes of the Reparations Proceedings*, 13 November 2023, confidential, with Annex 1, confidential. A public redacted version of the main filing was submitted on 16 November 2023, F00716/RED.

45. Accordingly, the Panel directs the Defence to respond to any request for reparations made by Victims' Counsel, if it so wishes, by **Monday, 25 March 2024**.⁸³

46. The above is without prejudice to the Panel's determination on the guilt or innocence of the Accused and any reparation order that may stem therefrom.

VII. CLOSING STATEMENTS

47. Pursuant to Rule 134(d) of the Rules, the Panel shall schedule a hearing for closing statements within twenty-one (21) days of the filing of the Final Trial Briefs and Impact Statement. Accordingly, the Panel finds it appropriate to schedule the hearing for the closing statements from **Monday, 15 April 2024 to Friday 19 April 2024**.

48. In order to properly organise the hearing, the Panel orders the Parties and Victims' Counsel to make submissions on the estimated time they seek for their respective closing statements by **Monday, 25 March 2024**. The Parties and Victims' Counsel shall include in their submissions a breakdown of the time needed to address issues concerning the guilt or innocence of the Accused, sentencing and reparations (the latter topic is limited to Victims' Counsel and the Defence).

49. In making the above submissions and in preparing their closing statements, the Parties and Victims' Counsel shall be mindful that the purpose of the closing statements is not to repeat arguments already contained in the Final Trial Briefs or Impact Statement. Instead, the Parties and Victims' Counsel shall focus on issues not yet addressed or shall respond to arguments made by the other Party or Victims' Counsel. Political statements shall be avoided.⁸⁴

⁸³ Although the time limit is the same, the Panel prefers to receive the Defence's Final Trial Brief and any response to Victims' Counsel's request for reparations as separate filings.

⁸⁴ See also [Case 05 Decision Closing the Evidentiary Proceedings](#), paras 22, 24.

50. The Panel recalls the order of the closing statements set forth in Rule 135(1) of the Rules. The Defence is invited to indicate by **Monday, 25 March 2024** whether Mr Shala will exercise his right to speak last, pursuant to Rule 135(4) of the Rules, third sentence. In addition, pursuant to Rule 135(3) of the Rules, the Panel may put questions to the Parties and Victims' Counsel at any time during the closing statements.⁸⁵

51. Pursuant to Rule 135(2) of the Rules, closing statements may refer to evidence admitted or available to the Panel for the purposes of its deliberations and judgment, its reliability, the credibility of witnesses, the record of the proceedings and the applicable law. The closing statements may also address matters related to sentencing and reparations. The Parties and Victims' Counsel shall refer to evidence by its ERN. Illustrative material and concise summaries of selected evidence, if based on the evidence mentioned, may be used.⁸⁶ Should the Parties and Victims' Counsel wish to use visual aids or other tools during the hearing on the closing statements, they shall communicate such material, through the Registry's Court Management Unit, by **Monday, 8 April 2024**.

VIII. DISPOSITION

52. For the above-mentioned reasons, the Panel hereby:
- a. **REJECTS** the Defence Motion for a Crime Site Visit;
 - b. **DECIDES** that the evidentiary proceedings in the case of the **Specialist Prosecutor v. Pjetër Shala** (KSC-BC-2020-04) are closed;

⁸⁵ See also [Case 05 Decision Closing the Evidentiary Proceedings](#), para. 23.

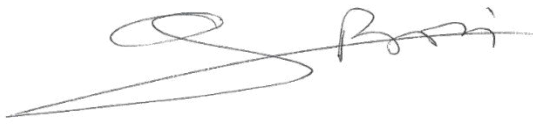
⁸⁶ Similarly [Case 05 Decision Closing the Evidentiary Proceedings](#), para. 23.

- c. **ORDERS** the SPO to provide the Panel with updated information regarding its inquiries with [REDACTED] as to whether the Accused has a criminal record there, by **Friday, 16 February 2024**;
- d. **ORDERS** the Registry to file a consolidated list of all items admitted or considered to be available to the Panel for the purpose of its deliberations and judgment, as set out in paragraph 25 of the present decision, by **Friday, 23 February 2024**;
- e. **REJECTS** the Defence Extension Request as specified in paragraphs 29-32 of the present decision;
- f. **GRANTS** the Defence and the SPO an extension of the word limit for their Final Trial Briefs, which shall not exceed 45,000 words, and **GRANTS** Victims' Counsel an extension of the word limit for his Impact Statement, which shall not exceed 30,000 words;
- g. **ORDERS** the SPO, the Defence and Victims' Counsel to submit their respective Final Trial Briefs and Impact Statement, complying with the directions set out in paragraphs 36-40 of the present decision, by **Monday, 25 March 2024**;
- h. **ORDERS** Victims' Counsel to formulate any request for reparations in accordance with paragraphs 41-43 of the present decision by **Monday, 4 March 2024**;
- i. **ORDERS** the Defence to respond to any request for reparations made by Victims' Counsel, if it so wishes, by **Monday, 25 March 2024**;
- j. **SCHEDULES** the hearing for the closing statements from **Monday, 15 April 2024 to Friday, 19 April 2024**;

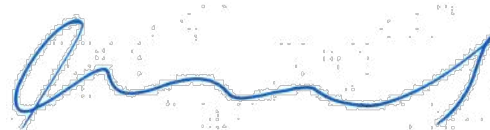
- k. **ORDERS** the Parties and Victims' Counsel to file submissions in accordance with paragraphs 48-50 of the present decision by **Monday, 25 March 2024**;
- l. **ORDERS** the Parties and Victims' Counsel to communicate any material that they wish to use during their closing statements through the Court Management Unit, by **Monday, 8 April 2024**;
- m. **ORDERS** the Defence and the SPO to file public redacted versions or request reclassification of their respective filings F00325, F00338 and F00761 by **Wednesday, 14 February 2024**;
- n. **ORDERS** the Registry to assign exhibit numbers to items 065418-065429-ET, 065418-065429-TR and 065417-065430, as directed in footnote 36 of the present decision; and
- o. **DECIDES** to cancel **Monday, 4 March to Friday, 15 March 2024** as hearing days.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Friday, 9 February 2024

At The Hague, the Netherlands.