

1 Friday, 25 August 2023

2 [Open session]

3 [Defence Preparation Conference]

4 [The accused appeared via videolink]

5 --- Upon commencing at 2.30 p.m.

6 PRESIDING JUDGE VELDT-FOGLIA: Good afternoon. Welcome.

7 Court Officer, can you please call the case.

8 THE COURT OFFICER: Good afternoon, Your Honours. This is case
9 KSC-BC-2020-04, The Specialist Prosecutor versus Pjeter Shala.

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

11 Specialist Prosecutor's Office, who is present today for you?

12 MR. DE MINICIS: Good afternoon. For the SPO, Line Pedersen,
13 Federica Genovesi, Gaia Pergolo, and Filippo de Minicis.

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

15 Victims' Counsel.

16 MR. LAWS: Good afternoon, Your Honours. I am Simon Laws,
17 counsel for the victims in this case.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

19 Defence counsel, you have the floor.

20 MR. GILISSEN: Thank you very much, Your Honour. We are here
21 with Mr. Pjeter Shala from the detention centre. I am Mr. Gilissen.
22 I am here with my co-counsel, Mr. Hedi Aouini. Thank you very much.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

24 And for the record, Mr. Shala, can you confirm that you hear me
25 well?

1 THE ACCUSED: [via videolink][Interpretation] Yes, Your Honour.
2 I hear you well. Thank you.

3 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

4 Today the Panel will render a number of oral orders and
5 directions organising the presentation of the evidence by the
6 Defence, and we will give three oral rulings on requests pending
7 before the Panel. We take that opportunity to do that today.

8 We start with the directions concerning the presentation of
9 evidence by the Defence, and the present directions are issued
10 pursuant to Article 40(2) and (6) of the Law, Rules 116, 119, 121,
11 141, 144, and 145, 153 and 154 of the rules.

12 The first point, that concerns the Defence's list of witnesses.

13 The Panel has taken note, after yesterday's Defence Preparation
14 Conference, of the updated summaries of the expected testimonies of
15 Defence witnesses received yesterday by e-mail at 1446, and the SPO's
16 additional submissions of today, filing 624.

17 At the outset, the Panel notes that Rule 137 of the rules
18 provides that the party may submit evidence relevant to the case, and
19 pursuant to Rule 143(4) of the rules, the questioning of a witness
20 and presentation of evidence must be effective and avoid undue
21 consumption of time and resources.

22 And for the reasons that follow, the Panel orders the Defence to
23 remove the following witnesses from its list: The first one is
24 Witness 4454; the second one is Defence Witness 4-04; the third one
25 is Witness 2517; the fourth one we want you to remove is 2549; and

1 the last one is 4751, pursuant to Rule 119(3) of the rules.

2 Regarding Witness 4454, he is expected to testify about the
3 expulsion by Serbian police of persons from his village in March 1999
4 and that he was forced to flee to Albania. He was expected to
5 testify *inter alia* also about his time in the KLA in Kukes, Albania,
6 in April and May 1999, and that he went to the Kukes metal factory
7 twice before going to Burrel at the end of April 1999.

8 At this point in time, I think it's better that we go into
9 private.

10 Madam Court Officer, can you bring us into private session,
11 please.

12 [Private session]

13 [Private session text removed]

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1 [Open session]

2 THE COURT OFFICER: Your Honours, we are now in public session.

3 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

4 With regard to Witness 4454. We note that this witness stayed
5 at House 1 in Kukes and that he went to the Kukes metal factory only
6 twice before the end of April 1999. And as a result, the Panel finds
7 that this witness's expected testimony falls outside the material and
8 temporal scope of the charges and that it will not assist the Panel
9 in establishing the facts of the case and in its determination of the
10 truth.

11 Regarding Defence Witness 4-04, who would be expected to testify
12 about his times at the Kukes mobilisation centre in 1999, the Panel
13 finds that even following the submission of the revised summary, the
14 Defence has failed to show that the witness was at the Kukes metal
15 factory at the time relevant to the charges. In other words, the
16 Defence has failed to show that the witness's expected testimony,
17 that the accused was not a member of the 128 Brigade, and that he -
18 the witness - did not see the accused in Kukes is relevant for its
19 case.

20 Then we go to Witnesses 2517 and 2549, who would both be
21 expected to testify on the liberation of detainees [REDACTED] Pursuant
22 to In-Court Redaction Order F626RED.

23 [REDACTED] Pursuant to In-Court Redaction Order F626RED. The Panel
24 notes that neither of
25 them participated in the liberation of the detainees that they are
26 expected to testify about. Their expected evidence is repetitive of
27 the evidence of Witness 3881, who did participate. And the

1 background information they would provide will not assist the Panel
2 in assessing the particular facts of the case.

3 And lastly, we turn to Witness 4751, whose prior statement the
4 Defence envisages introducing under Rule 155 of the rules. The Panel
5 notes that the witness was stationed in Kukes for a few weeks in
6 April 1999, and that during his prior interview he was not asked any
7 questions about the accused. As a result, the Panel finds that his
8 evidence in this regard falls outside the temporal scope of the
9 charges and will not assist the Panel in establishing the facts of
10 the case and in its determination of the truth. In addition, the
11 Panel also finds that his evidence otherwise is repetitive of
12 evidence already heard by the Panel; for example, regarding the
13 existence of the two KLA points in Kukes.

14 In light of the above, the Panel finds that Witnesses 4454,
15 Defence Witness 4-04, Witness 2517, Witness 2549, and Witness 4751
16 shall be removed from the Defence list of witnesses.

17 This is without prejudice to the Panel limiting the further
18 number of witnesses later in the proceedings should it find their
19 anticipated evidence to be repetitive or irrelevant.

20 We direct you to file an updated list of the witnesses by
21 Tuesday, 29 August, next week, and also file in the case record, by
22 the same date, the revised witness summaries sent via e-mail
23 yesterday. Thank you for that.

24 Then the second direction concerns the time allocated to the
25 parties and Victims' Counsel for the examination of the witnesses.

1 The Defence has indicated that it needs 48.5 hours to examine
2 its witnesses. And following the removal of the five witnesses from
3 the list, we find it appropriate to allocate 40.5 hours to the
4 Defence for the presentation of its case. And this is without
5 prejudice to the Panel revising the overall allocation of time should
6 the evidence of some witnesses be introduced through Rule 153 or 154
7 or the Panel finding that the estimates for certain witnesses must be
8 revised.

9 The Panel expects the Defence to respect the time estimates
10 indicated for its examination of each witness and to inform the Panel
11 at the earliest opportunity if it needs less time than originally
12 envisaged. If you would need more time, of course that can also be
13 the case, please seek leave from the Panel sufficiently in advance.

14 The Court Management Unit shall inform the Panel, the parties,
15 and Victims' Counsel, via e-mail, at the end of each witness's direct
16 examination how much time the Defence has effectively used and, at
17 the end of each evidentiary block, how much time the Defence has used
18 in total for examination of all witnesses called to testify up to
19 that point.

20 We allocate to the SPO for its cross-examination of each Defence
21 witness the same amount of time effectively used by the Defence for
22 its direct examination.

23 And Victims' Counsel shall be allocated for his examination of
24 each Defence witness 25 per cent of the time effectively used by the
25 Defence. This is without prejudice to additional questions being put

1 by Victims' Counsel to elicit evidence for the purposes of the
2 reparation proceedings. And should you require more time, you shall
3 seek leave with the Panel as soon as possible.

4 And we reiterate our directions in paragraphs 20 to 23 of the
5 decision on the conduct of proceedings, which is filing 434, and we
6 recall our directions in 44 to 51 of that same decision.

7 Now we go to order of appearances of the witnesses.

8 Defence, we order you to schedule at least two witnesses during
9 the 6th evidentiary block. In other words, you should add one or
10 even two more witnesses to the witness you have already envisaged in
11 order to be able to fill all days. We hope that you endeavour to do
12 that. And please make all efforts to secure the testimonies of
13 additional witnesses and liaise with the Registry to this end. And
14 as we said yesterday, consider also whether the videolink can be of
15 help and could facilitate the appearances of additional witnesses.

16 You are required to file an updated order of appearance of
17 witnesses for the 6th evidentiary block by Friday, 1 September 2023.
18 We have taken note of your order of appearances of witnesses for the
19 7th evidentiary block, and the Panel directs you to file an updated
20 order of appearances of witnesses five weeks before we have the next
21 evidentiary block.

22 And should the order of the witnesses change thereafter due to
23 unforeseen circumstances, please inform the SPO, the
24 Victims' Counsel, and the Panel, and the Registry.

25 Then the next direction relates to Defence Witnesses 03 --

1 DW4-03 and DW4-06.

2 Regarding Defence Witness 4-03, the Defence orders the Defence
3 to prepare by Friday, 8 September, an updated CV containing more
4 complete information regarding the expertise and qualifications of
5 this witness, and especially the university or universities from
6 which he obtained his degrees, because they are not specified at all
7 in his report. He gives us a lot of information, but hardly anything
8 can be verified if we would like to just check. The institutions in
9 which he completed additional training from which he obtained the
10 certifications mentioned on page 2 of his expert report, which is
11 DPS00865, and as well as any other relevant information that serves
12 to substantiate his expertise and can be subject to objective
13 verification.

14 Then with regard to Defence Witness 4-06, the Panel notes that
15 "he is expected to testify that he was not in Albania from 15 April
16 1999 until 26 May 1999," and it is a quote from the summary of the
17 witness's expected testimony. And the Panel would like you, Defence
18 counsel, to be more specific regarding his whereabouts and to provide
19 us with additional information as to where he was exactly through
20 that time, including any supporting documents as indicated in the
21 updated summaries provided yesterday afternoon at the request of the
22 Panel.

23 It would be important to have that beforehand, so before this
24 witness is called to testify in order for parties, Victims' Counsel,
25 and the Panel to prepare also on that point. And I trust that you

1 can obtain this information from the witness, and you shall provide
2 this additional information by Friday, 1 September 2023.

3 Then we have the next point with regard to the videolink,
4 testifying via videolink - that's the fifth direction - or away from
5 the trial venue.

6 The Defence shall file any request for testimony to be conducted
7 via video-conference at least five weeks before the witness's
8 expected testimony so as to allow for the necessary practical
9 arrangements to be made. This does not apply for the witnesses
10 scheduled, of course, for the 6th block that is upcoming. Should you
11 decide, Defence counsel, to call any of them via videolink, you are
12 directed to liaise with the Registry and make a request to the Panel
13 as soon as you can, but no later than Friday, 1 September.

14 And regarding the examination of witnesses away from the trial
15 venue - although we noted your submissions that, for the moment,
16 there is none - we direct you to our directions in paragraph 33 of
17 filing 434, which is our conduct of proceedings decision.

18 Then we go to the directions regarding the 153 and 154
19 Rule applications. You have indicated that you intend to file
20 applications under Rule 153 of the rules for Witnesses 4405, 4441,
21 for Witness 4440, and for Witness 3881.

22 We order you to file any applications under Rule 153 of the
23 rules for these witnesses, so, for the sake of the record,
24 Witness 4405, Witness 4441, Witness 4280, and Witness 4440, by
25 Monday, 11 September 2023, and for Witness 3881 by Monday, 18

1 September 2023. So in a staggered way.

2 Applications under Rule 154 of the rules, should the Defence
3 decide to file any - we noted your submissions, of course, and we saw
4 the change, but just in case - shall be made no later than 30 days
5 prior to the testimony of the witnesses, and this will enable the SPO
6 and Victims' Counsel to respond and the Panel to rule on it in good
7 time.

8 Then the applications to summon witnesses, which is point 7. We
9 order the Defence to file any applications under Rule 121(3) of the
10 rules for Witness 4405, Witness 4441, 4280, and Witness 4440 by
11 Monday, 11 September 2023; and for Witness 3881, by Monday, 18
12 September 2023.

13 And, Defence counsel, a short explanation. We have decided to
14 proceed in parallel with your Rule 153 and 121(3) requests in the
15 interest of an expedient and efficient trial. So should any of your
16 153 requests be rejected, and we should decide to hear the witness
17 live, we need to be ready. So that's the reason that we direct you
18 to take the necessary steps in preparing your Rule 121(3) request.

19 And if you allow me, I make a short revision of this in-court
20 redaction order. Okay. Very well. We proceed.

21 Defence counsel, we direct you to include in your request, at a
22 minimum, the following: Specific and sufficient information
23 identifying the witnesses and their current place of residence;
24 information showing that you have attempted and failed to secure the
25 voluntary testimony of the witness and that the summons is necessary;

1 and information showing that the expected testimony is material to
2 your case.

3 If the Defence is not aware of the witness's current place of
4 residence and is unable to obtain it, it may request such information
5 from the SPO - and I see the SPO nodding - who may file the
6 information with the Panel on an *ex parte* basis, as also proposed by
7 you already yesterday, available to the Panel and the Registry only,
8 if need be. Yes, I see you also nodding. And that would make a flow
9 of information to the parties we -- or to the persons who need to
10 know it. Yes, thank you.

11 Then the eighth direction concerns the submission on non-oral
12 evidence.

13 We order the Defence to submit any applications for the
14 admission of any non-oral evidence, if it so wishes - and that also
15 includes material pursuant to Article 37 of the Law, as well as any
16 other material - no later than Friday, 29 September of this year.
17 And we recall our directions regarding the submission of material
18 through a witness, and we refer you to paragraphs 55 to 65 of the
19 decision on the submission and admissibility of non-oral evidence,
20 which is filing 461.

21 And we also direct the Defence to indicate by Monday,
22 4 September 2023, which parts of item ERN DPS00270 till DPS00863 -
23 I'm sure you know what this is - it considers relevant. Because now
24 it's a very large document with a lot of interesting information that
25 we would like to know specifically what are the relevant parts you

1 think.

2 Very well. Our previous direction - that is for all of you -
3 regarding the reclassification of transcripts following the
4 completion of each evidentiary block remains in place. So we will
5 continue with that, too.

6 This concludes our directions on the Defence case.

7 Then we will issue an oral order pursuant to Rule 119(5) of the
8 rules concerning your request, Defence counsel, to amend the exhibit
9 list. This is filing 618, paragraph 29 till 32.

10 You seek leave to add six items which relate to Witnesses 2549,
11 2517, and 4751. Four items constitute prior statements of the
12 witnesses, while the remaining two are reports signed by or related
13 to these witnesses.

14 And we have decided to reject the Defence request considering
15 that all three witnesses have since then been removed from the
16 Defence list and, therefore, the prior statements are not relevant
17 anymore. And the reports are equally not relevant to the charges as
18 they concern events that fall outside the temporal and territorial
19 scope of the Confirmed Indictment.

20 And this concludes the Panel's ruling.

21 Then we have a ruling concerning the request made by
22 Victims' Counsel on 17 July 2023 where you seek the admission of
23 non-oral evidence. This is filing 593. And this ruling is rendered
24 pursuant to Articles 37 and Article 40(6)(h) of the Law and
25 Rule 138(1) of the rules.

1 Madam Court Officer, can you bring us into private session,
2 please.

3 [Private session]

4 [Private session text removed]

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20 [Open session]

21 THE COURT OFFICER: Your Honours, we are now in public session.

22 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you.

23 A question to both parties and Victims' Counsel. At the very
24 late moment, before we started our hearing, an e-mail was sent to you
25 with a request regarding your availability in the first week after

1 the winter judicial recess. We have set -- we have set the hearings,
2 in principle, for 15 January, but we would like to know about
3 availability of the parties and of Victims' Counsel for that first
4 week.

5 We would be grateful if we could receive your availability as we
6 speak now, so I'll give you the floor. And if not, as soon as
7 possible.

8 Mr. Prosecutor.

9 MR. DE MINICIS: Thank you, Your Honours. The SPO is available
10 on those dates.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

12 Victims' Counsel.

13 MR. LAWS: Your Honours, yes. We'll certainly be available.

14 PRESIDING JUDGE VELDT-FOGLIA: Yes, thank you.

15 Defence counsel.

16 MR. GILISSEN: I'm afraid to have some problem, but I will try
17 to check the possibility and to manage and to provide some
18 information as soon as possible.

19 PRESIDING JUDGE VELDT-FOGLIA: Could that be on Monday?

20 MR. GILISSEN: I think it could be, yes.

21 PRESIDING JUDGE VELDT-FOGLIA: If it could be today, even
22 better.

23 MR. GILISSEN: Yes, yes.

24 PRESIDING JUDGE VELDT-FOGLIA: But if you could get back to the
25 Panel on Monday, that would be very much appreciated.

1 MR. GILISSEN: I will. Thank you.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

3 MR. AOUINI: Excuse me, Your Honour.

4 PRESIDING JUDGE VELDT-FOGLIA: You have the floor.

5 MR. AOUINI: Just one extra element regarding these dates.

6 Yesterday we have sent a request to the expert for the CV and
7 other documents. And as we received Your Honours' e-mail, we have
8 made the instruction and made the request for the availability of the
9 expert for the different dates. Maybe we won't have a response for
10 Monday, but we will do it as soon as possible. But this is something
11 that we can arrange in the meantime.

12 But as far as the team itself, by Monday, of course, Your
13 Honours will have the information. And we are trying to work out the
14 availability of the witness we expect to be on that block and update
15 Your Honours as soon as we have information. But requests have been
16 sent already on those new dates.

17 PRESIDING JUDGE VELDT-FOGLIA: What I understand from your
18 observation is that you were planning for the second week of January
19 to hear this expert witness.

20 MR. AOUINI: And the potential two other experts we are trying
21 to consult with on issues raised and evidence submitted by the
22 victims. So we are anticipating that the last block would be for
23 experts. This is the way.

24 We don't have any contact yet with the new experts. But for the
25 one that we already listed in our list, we already inquired with him

1 and we are waiting for a response as to availabilities for those
2 alternative dates. Thank you.

3 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

4 Very well. I will make a tour to see if there is any issue the
5 parties and Victims' Counsel would like to raise with the Panel.

6 Mr. Prosecutor, you have the floor.

7 MR. DE MINICIS: Thank you, Your Honour. Nothing from us.

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

9 Victims' Counsel.

10 MR. LAWS: Thank you, Your Honour. No, nothing from us.

11 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, is there
12 anything you would like to discuss with the Panel at this moment in
13 time?

14 MR. AOUINI: One discrete point, Your Honour, if you allow us,
15 regarding the applications which go in parallel between Rule 153 and
16 the Rules 121. Is it agreeable for Your Honours if we make those
17 combined applications in the same filings where one is the
18 alternative of the other, or would Your Honours wish to have two
19 separate ones? There is an interplay between the rules in the
20 current situation, so we can frame it in a way that if there is a
21 rejection or requirement for them to appear, then in the same filing
22 there is a prong that is alternative to the first one.

23 PRESIDING JUDGE VELDT-FOGLIA: It's always dangerous to have
24 different topics in one filing if it comes to responses and replies.
25 I prefer to have two separate filings, if that is not too difficult

1 for the Defence.

2 MR. AOUINI: Very well, Your Honour. We appreciate the
3 guidance. Thank you very much.

4 PRESIDING JUDGE VELDT-FOGLIA: And for me, it has a lot to do
5 with responses and replies. We want to have different tracks and to
6 have no confusion on what we are discussing in the different filings.
7 Very well. Thank you.

8 Anything else? No. Good.

9 Then we will resume the week of 18 September with the opening of
10 the Defence case. The exact dates will depend on the new order of
11 appearances you will be filing and which witnesses you can secure for
12 that week, and I've heard that you will endeavour to give us a full
13 week. The exact dates will then be communicated in due course.

14 I saw that you were lifting your hand. Is there something you
15 would like to add, Defence counsel?

16 MR. AOUINI: Just, Your Honour, to remind and put on the
17 transcript as a matter of notice that if there is the addition of one
18 witness, it will be the one that we indicated yesterday. That will
19 be the one that we will be endeavouring to add, and I think it's
20 DW4-01. If we succeed, that would be the one. As a matter of notice
21 of who the additional witness could be for that 6th block.

22 But, of course --

23 PRESIDING JUDGE VELDT-FOGLIA: Would it not be possible to bring
24 in any other witness? Because the gist of my request, to put it --
25 the gist of my request, of our direction, is one or two extra

1 witnesses just to be sure that we can use that whole week.

2 MR. AOUINI: I believe, Your Honour, if we add one more, we
3 might run the risk of not having sufficient time for that week.

4 PRESIDING JUDGE VELDT-FOGLIA: It was more seen as a reserve
5 witness just to be sure that the week is full and not only one
6 witness. So if it cannot be the witness that you are foreseeing that
7 you would like to add, I ask you to look for another witness. And I
8 don't want to bring problems to the order of witnesses you want to
9 call, because there could be a kind of logic in the way you want to
10 present your witnesses, but if it cannot be that witness you are
11 foreseeing -- and I urge you, and you are not held to do the
12 impossible, like I said yesterday, to see if somebody else could be
13 called. That's the guidance, the directions you receive from us.

14 MR. AOUINI: We will do every effort, Your Honours, and report
15 by 1 September as indicated. Thank you.

16 PRESIDING JUDGE VELDT-FOGLIA: Good.

17 Then we have come to the point that I thank the parties and
18 Victims' Counsel for their attendance, and our interpreters for their
19 interpretation. Thank you to the stenographer, and to the
20 audio-visual booth, and to our security.

21 The hearing is adjourned.

22 --- Whereupon the hearing adjourned at 3.17 p.m.

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