

1 Monday, 19 April 2021

2 [Initial Appearance]

3 [Open session]

4 [The accused entered court]

5 --- Upon commencing at 3.00 p.m.

6 JUDGE GUILLOU: Good afternoon, and welcome everyone in and
7 outside the courtroom.

8 Madam Court Officer, can you please call the case.

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

11 JUDGE GUILLOU: Thank you, Madam Court Officer.

12 Before asking those present in the courtroom to introduce
13 themselves, I would like to remind everyone of a few rules that must
14 be observed at all times in order to make courtroom proceedings
15 smooth.

16 Please make sure you activate your microphone before speaking
17 and switch it off as soon as you're finished. Talk slowly and
18 clearly as we have interpretation from and into Albanian and Serbian.
19 Wait five seconds before responding to me or a party or a participant
20 in order to allow the interpreters to finish the interpretation.

21 What is said in this hearing is transcribed in realtime and will
22 be reflected in a transcript available to the parties and to the
23 public after this hearing. I would also like to remind the parties
24 that certain information in this case is subject to protective
25 measures and confidentiality orders. This includes confidential

1 information that has been redacted from the Confirmed Indictment as
2 to the identity of certain individuals, dates, locations, and other
3 information.

4 Confidential information shall not be disclosed in open session.
5 If any party or participant must go into private session and refer to
6 any confidential information, please indicate the reasons.

7 Now, I would kindly ask the parties and participants to
8 introduce themselves, starting with the Specialist Prosecutor's
9 Office.

10 Madam Prosecutor.

11 MS. IODICE: Thank you, Your Honour. Good afternoon. Appearing
12 for the Prosecution today, the Specialist Prosecutor Jack Smith;
13 Associate Legal Officer Bernhard Kuschnik; Case Manager
14 Angel Langenberg; and I am Associate Prosecutor Vega Iodice.

15 JUDGE GUILLOU: Thank you, Madam Prosecutor.

16 Now I turn to the Defence, please.

17 MR. GILISSEN: Thank you, My Honour. I am
18 Mr. Jean-Louis Gilissen from the Bar of Liege in the south of
19 Belgium. I am a French-spoken person, and I hope an English-spoken
20 too. And I have the privilege to appear before your Tribunal with
21 Mr. Aouini, Hedi Aouini. He comes from Tunisia and he's part of the
22 Tunis bar. Thank you very much.

23 JUDGE GUILLOU: Thank you, Mr. Gilissen. Your client,
24 Mr. Shala, is also present in the courtroom, for the record.

25 Now I turn to Madam Registrar, please.

1 THE REGISTRAR: Good afternoon, Your Honour. Fidelma Donlon,
2 Registrar.

3 JUDGE GUILLOU: Thank you, Madam Registrar.

4 And for the record, I am Nicolas Guillou, Pre-Trial Judge for
5 this case.

6 The accused is appearing today for the first time before these
7 Specialist Chambers, following the indictment confirmed against him.

8 Mr. Shala, would you please rise.

9 Could you please tell us your full name?

10 THE ACCUSED: [Interpretation] Pjeter Shala.

11 JUDGE GUILLOU: What is your date and place of birth?

12 THE ACCUSED: [Interpretation] 17 September 1963, Prizren.

13 JUDGE GUILLOU: And what is or what are your citizenship?

14 THE ACCUSED: [Interpretation] I am citizen of Belgium.

15 JUDGE GUILLOU: Do you have any other citizenship?

16 THE ACCUSED: [Interpretation] No, only the one of the country
17 where I was born and the Belgian one.

18 JUDGE GUILLOU: Thank you, Mr. Shala. You may be seated.

19 Let me now move to the procedural history of the case.

20 On 12 June 2020, in my capacity as Pre-Trial Judge, I confirmed
21 the indictment submitted by the Specialist Prosecutor against the
22 accused, charging him with the war crimes of: Count 1, arbitrary
23 detention; Count 2, cruel treatment; Count 3, torture; and Count 4,
24 murder.

25 On 16 March 2021, the Belgian authorities arrested the accused

1 in Belgium, at which point he was served with the Confirmed
2 Indictment. Following his arrest, Mr. Shala formally filed an
3 appeal, pursuant to Article 86(1) of the Belgium Law on Cooperation.
4 This appeal was rejected by the Court of Appeal of Liege on 6 April
5 2021. Mr. Shala was transferred to the detention facilities of the
6 Kosovo Specialist Chambers in The Hague on 15 April 2021.

7 Mr. Shala, before we proceed any further, I have to make sure
8 that you can follow the proceedings in a language that you understand
9 and speak. Can you confirm that you understand and speak Albanian?

10 THE ACCUSED: [Interpretation] Yes.

11 JUDGE GUILLOU: Thank you, Mr. Shala. By this I am satisfied
12 that you can follow the proceedings in Albanian, a language that you
13 understand and speak, in accordance with Rule 92 of the Rules of
14 Procedure and Evidence.

15 If at any moment during the course of the proceedings you are
16 not receiving interpretation, or if you do not understand a specific
17 word, please draw my attention to it immediately.

18 THE ACCUSED: [Interpretation] Thank you, Your Honour.

19 JUDGE GUILLOU: Thank you, Mr. Shala.

20 Now allow me to explain the purpose of this Initial Appearance
21 for the benefit of the accused and those joining us in the public
22 gallery and following the proceedings online.

23 Today's hearing is not a trial. No evidence will be presented
24 or debated, and the guilt or innocence of the accused will not be
25 discussed or decided. The purpose of this Initial Appearance is

1 regulated by Article 39 of the Law and Rule 92 of the Rules.

2 According to these provisions, as Pre-Trial Judge, I shall:
3 Have the charges in the Confirmed Indictment read to the accused in a
4 language he understands and speaks; confirm that the accused
5 understands the indictment; satisfy myself that the rights of the
6 accused - in particular, his right to counsel - are respected; inform
7 the accused that within 30 days of today's hearing he will be called
8 upon to admit guilt or plead not guilty on each charge set out in the
9 indictment - if the accused wishes to do so, he may also immediately
10 admit guilt or plead not guilty; and finally, I shall set all the
11 dates as appropriate in performing my functions as Pre-Trial Judge.

12 I expect the parties to adhere to these matters, which I will
13 address in turn. Should either party wish to discuss any other
14 matter not expressly foreseen in the context of the Initial
15 Appearance, they're invited to do so in writing by making a filing
16 before me.

17 First, may I ask you, Mr. Shala, to confirm that you have
18 received the Confirmed Indictment in a language that you understand
19 and speak?

20 THE ACCUSED: [Interpretation] Yes.

21 JUDGE GUILLOU: Thank you, Mr. Shala.

22 I will now ask Madam Court Officer to read out the charges in
23 the Confirmed Indictment as foreseen in Article 39 and Rule 92.

24 Madam Court Officer, you have the floor.

25 THE COURT OFFICER: Thank you, Your Honour.

1 In the Confirmed Indictment, the Specialist Prosecutor charges
2 Mr. Pjeter Shala with:

3 Count 1: The war crime of arbitrary detention under Article
4 14(1)(c) of the Law, committed in a former metal works factory
5 located in Kukes, Albania, between approximately 17 May 1999 and 5
6 June 1999;

7 Count 2: The war crime of cruel treatment under Article
8 14(1)(c)(i) of the Law, committed in a former metal works factory
9 located in Kukes, Albania, between approximately 17 May 1999 and 5
10 June 1999;

11 Count 3: The war crime of torture under Article 14(1)(c)(i) of
12 the Law, committed in a former metal works factory located in Kukes,
13 Albania, between approximately 17 May 1999 and 5 June 1999; and

14 Count 4: The war crime of murder under Article 14(1)(c)(i) of
15 the Law, committed in a former metal works factory located in Kukes,
16 Albania, on or about 5 June 1999.

17 In relation to these crimes, there is a well-grounded suspicion
18 that Mr. Shala is criminally responsible, pursuant to Article
19 16(1)(a) of the Law for:

20 physically committing the crimes under Counts 1 to 3;
21 committing, as a member of a joint criminal enterprise, the
22 crimes under Counts 1 to 4, and, alternatively for Count 4,
23 committing, as a member of the aforementioned joint criminal
24 enterprise, the crime of murder, by being aware that such a crime
25 might be perpetrated in carrying out the common purpose of the joint

1 criminal enterprise and by willingly taking that risk; and
2 further and alternatively, aiding and abetting the crimes under
3 Counts 1 to 4.

4 Thank you.

5 JUDGE GUILLOU: Thank you, Madam Court Officer.

6 Mr. Shala, I wish to remind you that this is not the time to
7 contest the charges but simply to acknowledge your understanding of
8 the charges. You will have ample opportunity to challenge the
9 charges with the assistance of your counsel.

10 Mr. Shala, did you understand the charges contained in the
11 Confirmed Indictment as read out by Madam Court Officer?

12 THE ACCUSED: [Interpretation] Yes, Your Honour, I did understand
13 them, but they seem ridiculous to me.

14 JUDGE GUILLOU: Thank you, Mr. Shala.

15 Now, let me inform you of your rights before this Court. The
16 Law on the Specialist Chambers and the Rules of Procedure and
17 Evidence provide you with a number of rights. I will read out the
18 most important ones.

19 First, you shall be presumed innocent until proven guilty beyond
20 reasonable doubt.

21 In the determination of the charges against you, you are
22 entitled to a fair and public hearing subject to any measure ordered
23 for the protection of victims and witnesses.

24 You have the right to be informed promptly and in detail in a
25 language which you understand of the nature and cause of the charges

1 against you.

2 You have the right to have adequate time and facilities for the
3 preparation of your defence and to communicate with the counsel of
4 your own choosing.

5 You have the right to be tried within a reasonable time.

6 You have the right to be tried in your presence and to defend
7 yourself through your counsel.

8 You have the right to have counsel assigned to you and without
9 payment if you do not have sufficient means to pay for it.

10 You have the right to examine or have examined the witnesses
11 against you and to obtain the attendance and examination of witnesses
12 on your behalf.

13 You have the right to have the free assistance of an interpreter
14 if you cannot understand or speak the language used in the court.

15 You have the right not to be compelled to testify against
16 yourself or to admit guilt.

17 You have the right to remain silent and no adverse inference
18 shall be drawn from your silence.

19 You have the right to make unsworn statements relevant to the
20 case, and you may appear as a witness under oath.

21 You have the right to lodge preliminary motions to challenge the
22 jurisdiction of the Specialist Chambers, to allege defects in the
23 form of the indictment, and to seek the severance of the indictment.

24 You have the right to receive, within 30 days of today's
25 hearing, the supporting material to the indictment submitted for

1 confirmation.

2 You have the right to receive all statements of witnesses whom
3 the Specialist Prosecutor intends to call at trial to testify in the
4 language that you understand and speak; namely, Albanian.

5 You have the right to receive immediately any information which
6 may reasonably suggest your innocence or mitigate your guilt or
7 affect the credibility or reliability of the Specialist Prosecutor's
8 evidence as soon as the information is in his custody, control, or
9 actual knowledge.

10 You have the right that all material and relevant evidence of
11 facts in possession of the Specialist Prosecutor be made available to
12 you before the beginning and during the proceedings. This right is
13 only subject to restrictions which are strictly necessary and when
14 any counterbalancing protections are applied.

15 You have the right not to be detained for an unreasonable period
16 prior to the opening of the case, to request review of decisions on
17 your detention, and to appeal such decisions directly before the
18 Court of Appeal.

19 You have the right to appeal directly before the Court of Appeal
20 a decision on preliminary motions challenging the jurisdiction of the
21 Specialist Chambers.

22 And you have the right to seek leave to appeal other decisions.

23 Mr. Shala, you heard the most important rights that you enjoy in
24 accordance with the applicable legal framework of the
25 Specialist Chambers. Do you understand these rights, Mr. Shala?

1 THE ACCUSED: [Interpretation] Yes, Your Honour, but I have one
2 question. I was -- I also appeared in front of The Hague tribunal
3 2004, 2005, 2007, and before a EULEX tribunal later than that. There
4 was no need for this type of arrest. A summons would have been
5 enough for me to appear before the Court. Thank you.

6 JUDGE GUILLOU: Thank you, Mr. Shala. Duly noted.

7 I wish to inform you that, according to Article 21(5) of the
8 Law, you may not represent yourself because you are currently in
9 detention. Representation by a Specialist Counsel is therefore
10 mandatory. It is my duty, as Pre-Trial Judge, to ensure that your
11 right to counsel is respected.

12 To this end, I have noted the Registrar's filing informing me of
13 the assignment of Mr. Gilissen. I also understand from the
14 Registrar's report, and from Mr. Jean-Louis Gilissen's submissions
15 today, that you are represented not only for the purpose of this
16 Initial Appearance but for the entire duration of the proceedings, in
17 accordance with Section 14 of the Directive on Counsel.

18 Mr. Gilissen, can you confirm that this is the case and that
19 you've been assigned to represent Mr. Shala for the entirety of the
20 proceedings?

21 MR. GILISSEN: Yes, Mr. President. Yes.

22 JUDGE GUILLOU: Thank you, Mr. Gilissen. I am therefore
23 satisfied that the accused is presently represented by counsel.

24 I will now turn to the possibility for the accused to enter a
25 plea, if any, in accordance with Rule 92.

1 Mr. Shala, within 30 days from today, you will be called upon to
2 admit guilt or plead not guilty on each charge in the Confirmed
3 Indictment. If you wish to do so, you may choose to immediately
4 admit guilt or plead not guilty. I would, therefore, like to ask
5 you, Mr. Shala, if you have had the opportunity to discuss the
6 charges in the Confirmed Indictment with your counsel and if you are
7 prepared to enter a plea at this time today. If this is the case, I
8 invite you to stand up while you plead.

9 THE ACCUSED: [Interpretation] Thank you, Your Honour. I don't
10 feel I have committed any crimes besides defending my fatherland and
11 my people. I plead not guilty, completely.

12 JUDGE GUILLOU: Thank you, Mr. Shala. This is noted.

13 Now let me move to working language of the proceedings. In the
14 Scheduling Order for this Initial Appearance, I asked the parties to
15 make oral submissions at today's hearing on the working language to
16 be used in the present case, according to Rule 8.

17 Could the parties indicate their preference, for the record?

18 Madam Prosecutor.

19 MS. IODICE: Thank you, Your Honour. Yes, the working language
20 should be English.

21 JUDGE GUILLOU: Thank you, Madam Prosecutor.

22 Mr. Gilissen.

23 MR. GILISSEN: Yes, Your Honour, the working language should be
24 English, and, of course, translation in Albanian. Thank you.

25 JUDGE GUILLOU: Thank you, Mr. Gilissen. I will issue a

1 decision in due course on this matter.

2 As indicated in the order scheduling this Initial Appearance, I
3 will schedule a Status Conference, pursuant to Rule 96, to be held
4 shortly after the present Initial Appearance.

5 The purpose of the Status Conference will be to review the
6 status of the case and to organise exchanges between the parties and
7 to ensure expeditious preparation for trial.

8 Mr. Shala, I wish to remind you that you have the right to
9 attend the Status Conference with your counsel. However, with your
10 written consent, and after receiving advice from your counsel,
11 pursuant to Rule 96(2), the Status Conference may be attended by you
12 in person with your counsel participating via video-conference link;
13 by your counsel, with you, Mr. Shala, participating via
14 video-conference link; and it may also take place in your absence
15 with your counsel present or participating via video-conference link.

16 I remind everyone in this regard that should counsel of the
17 accused wish to participate via video-conference, written notice must
18 be provided 24 hours in advance of the relevant hearing so that the
19 Registry has time to make the appropriate accommodations. Such
20 notice shall be sent via e-mail to the Registry and should include
21 the written consent of the accused. The Registry will then file
22 these e-mails as correspondences on the record of the proceedings.

23 I would now like to ask the parties on their views for whether
24 Friday, 23 April, at 11.00 a.m., is a suitable date and time for the
25 first Status Conference in these proceedings, and I will also

1 specifically ask the Defence if they would like to attend in person
2 or if they plan to participate via video-conference?

3 But first, Madam Prosecutor.

4 MS. IODICE: Thank you, Your Honour. Yes, we will be available
5 on Friday, at 11.00 a.m.

6 JUDGE GUILLOU: Thank you, Madam Prosecutor.

7 Mr. Gilissen.

8 MR. GILISSEN: Yes, Your Honour, we will both be available for
9 the Friday Status Conference. Thank you.

10 JUDGE GUILLOU: And will you be here in person or will you
11 participate via video-conference?

12 MR. GILISSEN: I think in person.

13 JUDGE GUILLOU: In person. Thank you. This is noted. I intend
14 to schedule the Status Conference on Friday, 23 April, at 11.00 a.m.

15 You will receive a Scheduling Order that will include the agenda
16 in due course. I will also ask the parties for written submissions
17 on the topics of the Status Conference and any other matter that they
18 would like to raise during the Status Conference.

19 I intend to schedule Thursday, 22 April at noon as for the date
20 for the filing of these written submissions.

21 After the Status Conference, I will issue a decision on the
22 Specialist Prosecutor's disclosure obligations in accordance with
23 Rule 102 and on the redaction regime for the proceedings. Before I
24 issue this decision, I will seek submissions from the parties and I
25 recommend that the parties review my Framework Decision on Disclosure

1 in other cases before the Specialist Chambers before making their
2 written submissions.

3 At this point, I would like to ask the parties whether they have
4 other issues that they would like to raise. And, as usual, I remind
5 the parties to give prior notice should any submission require the
6 disclosure of confidential information so we can go into private
7 session or closed session.

8 Madam Prosecutor.

9 MS. IODICE: Thank you, Your Honour. No further issues from our
10 side.

11 JUDGE GUILLOU: Thank you, Madam Prosecutor.

12 Mr. Gilissen.

13 MR. GILISSEN: Yes, Your Honour. We don't have any issue to
14 submit to you. Thank you.

15 JUDGE GUILLOU: Thank you, Mr. Gilissen.

16 I would also like to ask the Accused, Mr. Shala, if you have any
17 issue you would like to raise in relation to your arrest, transfer,
18 or detention.

19 THE ACCUSED: [Interpretation] No, Your Honour, besides what I
20 said earlier, that this seems ridiculous. My counsel will represent
21 me. Thank you.

22 JUDGE GUILLOU: Thank you, Mr. Shala.

23 Before we conclude today's hearing, I would like to issue the
24 following oral order on reclassifications:

25 Considering that regard must be paid to the right of the accused

1 to a public trial as well as to the duty to provide for the
2 protection of victims and witnesses, I hereby order the Registry to
3 reclassify F00003, F00005, and F00012 as public; and F00009 as
4 confidential.

5 I further order the SPO to file by 26 April 2021 confidential
6 redacted and/or public redacted versions of the following filings or
7 to indicate whether they can be reclassified as confidential or
8 public or whether their current classification must be retained:
9 F00002, including Annexes 1 and 3; F00004, including Annexes 1 and 3;
10 F00010, including Annex 2; F00011, including annexes; F00015,
11 including annexes; and F00016.

12 In addition, I order the Registry to file by 26 April 2021
13 confidential redacted and/or public redacted versions of the
14 following filings, or to indicate whether they can be reclassified as
15 confidential or public, or if their current classification must be
16 retained: F00013; F00014, including annex; F00017, including annex;
17 F00018, including annex; F00019, including annexes; F00021, including
18 annexes; and finally F00022.

19 This concludes my oral order.

20 Finally, I would like to remind the SPO that they have two weeks
21 from this Initial Appearance to file their first protective measure
22 request. Should the SPO be available to file their request before
23 this two-week deadline, that would be much appreciated. Thank you
24 very much in advance.

25 Mr. Shala, as you remain in detention, I also would like to

1 inform you that you may challenge your detention on remand in
2 accordance with Rule 57. This will be dealt with in written rulings.

3 This concludes today's hearing. I thank the parties and the
4 Registry for their attendance, and, as usual, I thank the
5 interpreter, stenographers, audio-visual technicians, and security
6 personnel for their assistance.

7 The hearing is adjourned. Thank you.

8 --- Whereupon the Initial Appearance adjourned at 3.31 p.m.

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