

1 Thursday, 4 May 2023

2 [Open session]

3 [The accused appeared via videolink]

4 --- Upon commencing at 2.00 p.m.

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

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

7 THE COURT OFFICER: This is case number KSC-BC-2020-04, The
8 Specialist Prosecutor versus Pjeter Shala.

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.

10 Firstly, I would like to ask the parties and Victims' Counsel to
11 tell us who is present.

12 MR. DE MINICIS: Good afternoon, Your Honours. For the SPO,
13 Line Pedersen, case manager; and then Gaia Pergolo, Eva Wyler, and
14 Filippo de Minicis, Associate Prosecutors.

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

16 Victims' Counsel.

17 MR. LAWS: Good afternoon, Your Honour. I am Simon Laws,
18 representing the victims in this case, together with my co-counsel,
19 Maria Radziejowska.

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

21 Defence Counsel, you have the floor.

22 MR. GILISSEN: Thank you, Your Honour. Good afternoon,
23 Your Honours. I am Mr. Jean-Louis Gilissen. I appear with
24 Ms. Petravica, my case manager. And, of course, Mr. Shala is with us
25 by videolink from the detention centre. Thank you very much.

1 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence Counsel.

2 Mr. Shala, can you confirm to me that you can hear me fine?

3 THE ACCUSED: [via videolink][No interpretation]

4 PRESIDING JUDGE VELDT-FOGLIA: I've not heard a translation
5 although I heard the voice of Mr. Shala.

6 THE ACCUSED: [via videolink][Interpretation] Good afternoon. I
7 can hear you very well. Thank you.

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

9 We have convened this hearing this afternoon in order to issue a
10 number of oral rulings and an oral order on matters pending before
11 the Panel. We will also communicate to you the sitting schedule till
12 January 2024, and we will provide you with some references for the
13 record to the Albanian versions of two documents that were put to the
14 witness yesterday during the examination.

15 It will take a while, but the idea is that it will serve the
16 purpose of the expeditiousness of the proceedings.

17 I will start with the references. They are as follows, and I
18 will speak slowly because there are a lot of numbers involved. The
19 first reference is 059351-TR-ET, it is RED4, page 17, lines 8 till
20 10, and that corresponds to 059351-TR-AT, Part 3, RED4, and this is
21 page 19, lines 1 to 3.

22 And I see that in the English translation I should have added
23 Part 3.

24 And then the second reference is SITF00013047-SITF00013060 RED5,
25 page 13, and it corresponds to SITF00013075-SITF00013088 RED5,

1 page 13.

2 I turn now to the sitting schedule from August on, because till
3 July it was already shared with you. So considering that the
4 courtroom has to be shared with other Panels, we set the following
5 hearing dates: The first week that we will gather in August is the
6 21st to 25th; and then the second one is 18 till 22 September; then,
7 we will sit 2, 3, and 4 October; then we will sit the 23rd to 27th
8 October; then 20 November till 1 December; and then in January, from
9 the 15th till 19th January 2024.

10 Now the oral rulings and an oral order. There will be five in
11 total.

12 The Panel will first render an oral ruling on the
13 Specialist Prosecutor's motion for admission of evidence of Witness 1
14 pursuant to Rule 154 of the Rules of Procedure and Evidence. This is
15 filing 465 dated 20 March 2023.

16 In its request, the SPO seeks the admission into evidence of
17 prior written statements of Witness 1 taken by the SPO as well as
18 other related material subject to the fulfilment of the requirements
19 of Rule 154 of the Rules.

20 The SPO submits that the admission of the witness-related
21 material will enable a full evaluation of this witness while the
22 direct examination can focus on issues central to the case, on
23 refreshing the witness memory, contextualising questions, and
24 eliciting evidence in relation to important aspects of the witness
25 narrative. And this will, in turn, reduce the numbers of hours

1 necessary for the direct examination.

2 We received objections to the request by the Defence in filing
3 485. This was dated 14 April of this year. And the Defence submits
4 that in light of the background and history of this witness, as well
5 as the contradictions across his evidence, the material sought for
6 admission by the SPO is unreliable and should be found inadmissible
7 in order to ensure the accused's rights to a fair trial.

8 And in the alternative, should the Panel admit the material,
9 Defence also requests the admission into evidence of a set of items
10 that relates to the witness's character, credibility, and past
11 criminal history.

12 We have received a reply by the SPO, in filing 493, dated 24
13 April of this year, that the inconsistencies alleged by the Defence
14 in the material offered into evidence by the SPO are matters to be
15 explored by the Defence in cross-examination, if it so wishes, and to
16 be assessed by the Panel at the judgment stage. And with regard to
17 the items requested by the Defence for admission, the SPO contends
18 that this request is not validly made because it's contained in a
19 response. In addition, the SPO submits that the items do not meet
20 the admissibility threshold under Rule 138(1) of the Rules and it
21 should be rejected.

22 Well, at the outset, the Panel recalls that it is within the
23 discretionary power of this Panel to determine the most appropriate
24 form of testimony or modality of submission into evidence for each
25 witness and item of evidence that the parties seek to offer.

1 In this framework, Rules 153, 154, and 155 of the Rules are
2 alternative avenues to a full-fledged oral testimony, which regulates
3 specific and different scenarios, but have the common goal of
4 enhancing the expeditiousness and efficiency of the proceedings,
5 while maintaining the overall fairness.

6 In respect of Rule 154 of the Rules specifically, the Panel
7 considers that the rationale of this modality of submission of
8 evidence lies in offering into evidence the witness's prior
9 statements and related material and then proceeds into a test in
10 court, in a succinct matter, the accuracy of such evidence in the
11 presence of the witness concerned, who will then be cross-examined by
12 the Defence. And in this manner, Rule 154 of the rules allows
13 tangible time and resource savings by retaining the fairness of the
14 process and the rights of the opposing party to cross-examine the
15 witness meaningfully.

16 By submission of both the SPO and the Defence, Witness 1 is an
17 important and contested witness, and it cannot be ruled out in
18 advance that his anticipated evidence may contain potential
19 inconsistencies and contradictions. In addition, it would still
20 require a substantial amount of time, not less than eight hours
21 according to the SPO, to complete the process by which the witness
22 would attest in court as to the accuracy of its prior statements in
23 accordance with Rule 154(C) of the Rules.

24 And the Panel considers that given the nature of the witness's
25 anticipated testimony, including potential inconsistencies and

1 contradictions on different core matters of his evidence, the number
2 of prior statements that the parties will likely put to the witness,
3 as it emerged from their submissions, and the substantial amount of
4 time required by the SPO to complete its direct examination, this
5 witness evidence, in the view of the Panel, is not suitable for the
6 procedure under Rule 154 of the Rules.

7 And the Panel finds that the most appropriate form of offering
8 the evidence of Witness 1 is a full *viva voce* testimony, and for
9 these reasons we reject the SPO request and we order the SPO to call
10 Witness 1 to testify fully live.

11 The Panel will provide the SPO, the Defence, and
12 Victims' Counsel with the opportunity to fully explore any relevant
13 issue they deem appropriate and put to the witness any prior
14 statements and material they consider necessary. And in this regard,
15 the Panel recognises that the SPO may need more time than previously
16 envisaged. And accordingly, we order the SPO to submit, by Friday,
17 12 May of this year, an updated estimate for the examination of
18 Witness 1, taking into consideration that the witness will testify
19 fully live.

20 The Defence alternative request to introduce certain items is
21 moot.

22 And this concludes our oral ruling on this matter.

23 There is an oral ruling also on the Specialist Prosecutor's
24 request to amend the exhibit list. This is filing 488, dated
25 19 April 2023. And the SPO seeks to add to its exhibit list a set of

1 official records, photos, and a video of the alleged crime site,
2 which were collected following a visit to the site conducted by the
3 SPO earlier this year.

4 We saw that the Defence did not object to this request. This is
5 filing 498 from 1 May of this year.

6 And we did not receive anything from Victims' Counsel.

7 Now, the Panel is satisfied that the request is timely made, was
8 filed promptly upon receipt of the material. The Panel is of the
9 view that it can assist the Panel in understanding the alleged crime
10 site. And we note that there is no objection from the Defence.

11 We grant the request. And the SPO shall disclose this material
12 to the Defence and Victims' Counsel, if it has not already done so.
13 And we order you to file an updated exhibit list by Friday, 12 May.

14 We have taken note, Defence Counsel, of your submissions
15 regarding the crime site visits, and we refer to our decision on the
16 Conduct of Proceedings, which is filing 434, paragraph 74, where we
17 indicated how to proceed.

18 We don't consider that your response, Defence Counsel, which is
19 filing 498, can be reclassified as public without redactions because
20 it contains confidential information. And we would like to ask you
21 to review diligently the request before requesting a
22 reclassification. The information that is redacted in the request of
23 the SPO appears also in your response, and it shall remain
24 confidential.

25 And if you take issue with the redactions of the SPO, please

1 bring the issue to the Panel, and then we can discuss it.

2 MR. GILISSEN: As soon as possible, Your Honour.

3 PRESIDING JUDGE VELDT-FOGLIA: We order you, therefore, to file
4 a public redacted version of filing 498 by Friday, 12 May. So that
5 is next week.

6 And we also order you to file a public redacted version of
7 filing 437 by the same date, and we refer you to the decision 482,
8 paragraph 23(c) in this regard. And I don't give any further
9 information because of the nature of the filing.

10 This concludes the Panel's oral ruling on this matter.

11 Then the third is an oral order in which we set further
12 procedural steps for the presentation of evidence by
13 Victims' Counsel.

14 The Panel recalls, Victims' Counsel, that we have decided that
15 victims shall present their evidence, if any, after the SPO and
16 before the Defence. If victims wish to present their views and
17 concerns before the Panel, they shall also do so after the closing of
18 the SPO's case and before the presentation of the evidence by the
19 Defence. The presentation of evidence and views and concerns by
20 victims remains subject to any decision the Panel may issue under
21 Rule 130 of the rules. And we refer to our decision 433, paragraphs
22 38, 40, and 45, and decision 434, paragraphs 9 and 10. And we also
23 recall that we have decided to conduct the criminal proceedings
24 together with the reparation proceedings, so concurrently.

25 In order to organise the presentation of evidence by victims, if

1 any, the Panel gives the following directions to Victims' Counsel.
2 And these directions concern both the presentation of evidence for
3 the establishment of the truth and for the purposes of reparations,
4 should the Panel enter a conviction. And this is, of course, without
5 prejudice to the Panel's final determination on the guilt or
6 innocence of the accused and any reparation order that may stem
7 therefrom.

8 First of all, Victims' Counsel, we direct you to submit, by
9 30 June, a list of witnesses you propose to call, including expert
10 witnesses, both in relation to the establishment of the truth and for
11 the purposes of reparations. The list shall comply with the
12 directions already given by the Panel in decision 433, paragraph 42,
13 and decision 434, paragraphs 28, 32, 35, and 68.

14 And the Panel asks you, when you submit the list, to provide
15 specific observations on whether you intend to present expert
16 evidence on the physical, mental, and material harm allegedly
17 suffered by the direct victim, for the establishment of the truth or
18 for the purposes of reparations or both.

19 And the Panel is aware that you have already instructed an
20 expert psychologist, but we wish to know whether you also intend to
21 present expert evidence on the physical and material harm suffered by
22 the direct victim. And if not, you are requested to provide
23 observations on how you envisage the assessment of the physical and
24 material harm allegedly suffered by the direct victim to be made, if
25 any. And not least, you should also provide observations on how you

1 envisage the calculation of the compensation for the alleged harm
2 suffered to be made in financial terms, if any. And this includes
3 all types of harm and is without prejudice to the types and
4 modalities of reparations Victims' Counsel may ultimately request.

5 And in the same vein, we also direct you to make submissions on
6 whether you intend to present expert evidence on the mental and
7 material harm allegedly suffered by the indirect victims for the
8 purposes of reparations. And if not, you are requested, also here,
9 to provide observations on how you envisage the assessment of the
10 scope and extent of the alleged harm suffered by these victims to be
11 made, if any. Now, furthermore, you should also provide observations
12 on how you envisage the calculation of compensation for the alleged
13 harm suffered to be made in financial terms, if any. And this
14 includes all types of harm suffered and is without prejudice to the
15 types and modalities of reparations Victims' Counsel may ultimately
16 request.

17 Any and all expert reports shall be submitted no later than
18 30 June, and then you should also provide, together with the reports,
19 information on qualifications of the expert, including their CVs.

20 And if redactions should be necessary *vis-à-vis* any of the
21 parties, please make a request accordingly, in advance, so as to
22 allow the Panel to rule on it before the 30 June of this year
23 deadline.

24 And please also apply for any variation of the protective
25 measures granted to the victims, as may be necessary, to allow for

1 the disclosure of their identities and material to the experts,
2 specifying the precise material you seek to disclose.

3 The Defence shall have seven days from the notification of the
4 reports to challenge the qualifications of the experts of the
5 reports, and the SPO may also do so within seven days but only to the
6 extent that the reports relate to the establishment of the truth.
7 And for experts proposed to be called in relation to the
8 establishment of the truth, Rule 149 of the rules shall apply. For
9 experts called for the purposes of reparation, their evidence shall
10 be received and assessed as a general rule in writing. The Panel
11 refers in this regard to paragraph 10 of decision 425 in Case 05,
12 which is a public decision.

13 And, secondly, Victims' Counsel, we come to non-oral evidence.
14 We direct you to submit, by 17 July 2023, any non-oral evidence that
15 you seek to present, indicating whether it relates to the
16 establishment of the truth and/or reparations. And we recall that
17 victims are not required to furnish data on the cost of medical
18 treatments that they or their relatives underwent, or on other harms
19 of a financial or patrimonial nature, but if such data is available,
20 we ask you to provide it. And I refer, for example, to the testimony
21 of Witness 6 in court.

22 And if redactions should be necessary, please make a request
23 accordingly, in advance, as to allow the Panel to rule on it before
24 the 17 July 2023 deadline.

25 Lastly, should any of the victims participating in the

1 proceedings wish to present their views and concerns,
2 Victims' Counsel, you shall inform the Panel and request
3 authorisation accordingly also by 30 June 2023. And the directions
4 of the Panel we issued in decision 433, paragraph 42, and in decision
5 434, paragraph 28, 32, and 35, apply *mutatis mutandis* and to the
6 extent relevant.

7 We will address later the issue of timing and content of any
8 request for reparations, if any.

9 Victims' Counsel may present observations on this matter by
10 30 June 2023, and the Defence shall do so by 12 July 2023, including
11 any response to Victims' Counsel's submissions.

12 The Panel envisages that evidence by Victims' Counsel, including
13 expert evidence, and eventually any views and concerns of
14 participating victims, will be presented during the week of 21 to
15 25 August 2023. And should this not be possible, the presentation
16 should be made, at the latest, in the week of 18 to 22 September
17 2023.

18 Victims' Counsel, it's a lot, but is everything clear to you?

19 MR. LAWS: Your Honour, yes, it is. Thank you.

20 PRESIDING JUDGE VELDT-FOGLIA: And we are interested to know
21 where you stand with regard to the expert psychologist. Could you
22 give us an update on that? And if we need to go into private
23 session, we can do so.

24 MR. LAWS: I don't think we do, Your Honour. It is being
25 translated, the report. There are some steps that have to be gone

1 through after it's translated, and they will take a little time.
2 It's not a question of being able to serve the translation
3 straightaway, but it's well on the way.

4 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you for this
5 information.

6 This concludes the Panel's oral order on this matter.

7 We have a fourth oral ruling, and that concerns the observations
8 made by the Defence earlier this week regarding the scope and the
9 specificity of the charges. And I refer to the provisional
10 transcript page 1129, line 22, to page 1134, line 13, and page 1137,
11 line 17, to page 1140, line 25 of the draft transcript of the 1st and
12 2nd of May, for both the Defence submissions and the response of the
13 SPO.

14 The Panel recalls that issues related to the scope and the
15 specificity of the charges, and any defects in the form of the
16 indictment, should be litigated at the pre-trial stage of the case
17 pursuant to Rule 97 of the rules. The observations of the Defence
18 are, therefore, untimely. And moreover, these issues have been
19 litigated both before the Pre-Trial Judge and the Appeals Chamber and
20 have already been decided upon. And I refer to the decision IA004,
21 filing 8.

22 And at this stage, the Panel is of the view that it is for the
23 Defence to decide on which issues and aspects it wishes to
24 cross-examine and elicit evidence from the witnesses or, more
25 generally speaking, how to present its case. And we will, therefore,

1 not consider this issue any further.

2 We conclude our oral ruling on this matter.

3 And then we finally turn to the proposal made by
4 Victims' Counsel yesterday regarding the list of items to be used by
5 parties and Victims' Counsel during their questioning. And this was
6 page 1347, line 18, to page 1348, line 9, of yesterday's provisional
7 transcript.

8 And we understand that there is agreement between the SPO and
9 the Defence also on this point. I just wanted to have an explicit --
10 I see a nodding from the SPO.

11 MR. DE MINICIS: Yes, Your Honour. We do agree with that.

12 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel?

13 MR. GILISSEN: That's exactly the same, Your Honour.

14 PRESIDING JUDGE VELDT-FOGLIA: Yes. We heard it from
15 Victims' Counsel. It's good to have it on record from you, too.
16 Very well.

17 We welcome your proposal, Victims' Counsel, and we amend our
18 Decision on the Conduct of Proceedings, which is filing 434, and
19 specifically paragraph 48. The non-calling party shall issue a
20 presentation queue of items that will only contain the items that are
21 not already in the calling party's presentation queue for that
22 specific witness.

23 And this concludes our oral ruling also on this matter.

24 So we are done with the oral rulings and the order of the Panel.
25 We have given you an overview of the sitting schedule till January

1 2024, and we have given you the references that were still to be
2 given.

3 Before I will give you the floor to see if there's anything you
4 would like to discuss with the Panel at this point, I repeat, like we
5 already communicated, I think it was on Monday, that 19 May still
6 stands as a hearing day in case we need to discuss any procedural
7 matters. We could proceed with oral orders instead of filings in
8 writing. Maybe some issues arise just before the third evidentiary
9 block. And we will communicate the date on Tuesday, 16th, yes, if we
10 will be sitting on that Friday. And if we know it beforehand, of
11 course, we will share that information with you.

12 Yes, I will make my usual round.

13 Mr. Prosecutor, is there something you would like to --

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

15 PRESIDING JUDGE VELDT-FOGLIA: Very well.

16 Victims' Counsel.

17 MR. LAWS: Nothing from us either. Thank you.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

19 MR. GILISSEN: Nothing from us, too.

20 PRESIDING JUDGE VELDT-FOGLIA: Good.

21 Then we will see, if it will not be on the 19th, we will resume
22 at the end of May.

23 And then I thank you for the attendance of this hearing this
24 afternoon. And I thank the Court Management Unit for their
25 assistance throughout this week, and that also goes for our

1 interpreters, Mr. Stenographer, the security, and the audio-visual
2 booth.

3 The hearing is adjourned.

4 --- Whereupon the hearing adjourned at 2.33 p.m.

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