

1 Wednesday, 19 October 2022
2 [Trial Preparation Conference]
3 [Open session]
4 [The accused appeared via videolink]
5 --- Upon commencing at 9.46 a.m.

6 PRESIDING JUDGE VELDT-FOGLIA: Good morning.

7 Madam Court Officer, could you please call the case.

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

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

11 I would kindly ask the parties and the Victims' Counsel and the
12 Registry to introduce themselves, starting with the Specialist
13 Prosecutor's Office.

14 MR. DE MINICIS: Good morning, Your Honours. The SPO today is
15 represented by Alex Whiting, Deputy Specialist Prosecutor; Eva Wyler
16 and Gaia Pergolo, Associate Prosecutors; Daniel Mezei, our Case
17 Manager; and Clara Latorre-Salvador, our legal intern; plus myself,
18 Filippo De Minicis, Associate Prosecutor.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

20 Victims' Counsel, you have the floor.

21 MR. LAWS: Good morning, Your Honours. I'm Simon Laws, I
22 represent the victims in this case together with my co-counsel,
23 Maria Radziejowska.

24 PRESIDING JUDGE VELDT-FOGLIA: Good morning.

25 Defence Counsel.

1 MR. GILISSEN: Good morning, Your Honours. I'm Mr. Gilissen,
2 and I'm here Hedi Aouini, the co-counsel, and the second co-counsel,
3 Ms. Leto Cariolou. I'm here with the Case Manager of the team,
4 Ms. Dzeneta Petravica, and two other interns, Ms. Francisca De Castro
5 and Ms. Leili Zanjani. Thank you.

6 PRESIDING JUDGE VELDT-FOGLIA: Thank you. And for the record,
7 Mr. Shala is connected via videolink. Welcome.

8 I turn to the Registry.

9 MR. NILSSON: Good morning, Your Honours. Good morning,
10 colleagues. Jonas Nilsson, Judicial Services Division, representing
11 the Registry today.

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

13 Yesterday we ended the session with one issue pending. Related
14 to that matter, I also saw a filing this morning. That was also the
15 reason that we started a little bit later in order to have some more
16 time to read it.

17 Madam Court Officer, could you bring us into private session,
18 please.

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1 [Open session]

2 THE COURT OFFICER: Your Honours, we're in public session.

3 PRESIDING JUDGE VELDT-FOGLIA: Very well. Is there anything
4 else the parties, the Victims' Counsel and the Registry would like to
5 raise with the Panel?

6 MR. DE MINICIS: No, Your Honour. Thank you.

7 PRESIDING JUDGE VELDT-FOGLIA: No. Victims' Counsel.

8 MR. LAWS: No, thank you, Your Honours.

9 PRESIDING JUDGE VELDT-FOGLIA: Defence Counsel.

10 MR. GILISSEN: Nothing else. Thank you very much.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

12 MR. NILSSON: Nothing from the Registry. Thank you.

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

14 Now, what we will do is -- it was a very short session, but we
15 will take a break now and resume in about 20 minutes, and then we
16 will give a number of oral orders and also indicate if there will be
17 a decision of the Panel in writing. And these oral orders will be
18 regarding what we have been discussing during the Trial Preparation
19 Conference.

20 Then we will also inform the parties and the Victims' Counsel of
21 some decisions we would like to issue in the upcoming time and then
22 this hearing will be closed.

23 So, for now, we have a break, and the hearing is adjourned.

24 --- Recess taken at 10.03 a.m.

25 --- On resuming at 10.21 a.m.

1 PRESIDING JUDGE VELDT-FOGLIA: Welcome back, and I note that we
2 are in the same composition. And, if not, please. Yes, very well.
3 I see nodding faces.

4 Good. We take -- we put that on record.

5 Yes. The oral orders of the Panel. We will issue now a set of
6 oral orders. The first oral order concerns the SPO list of
7 witnesses.

8 Noting that the SPO intends to rely on expert evidence, as
9 indicated in filing 303 RED2, paragraphs 289 and 29, and during the
10 Trial Preparation Conference, the Panel orders the SPO to: Include
11 the expert witnesses on whose evidence the SPO intends to rely on its
12 list of witnesses; and provide information regarding the expertise or
13 qualifications for each of the experts. This all by Friday,
14 28 October. And the Panel highlights that, for completeness and
15 clarity, it wishes to have on the list of witnesses all witnesses
16 whose evidence the SPO intends to present at trial, irrespective of
17 whether they will be called to testify or they will give evidence
18 through other means provided by the rules.

19 This concludes the Panel's first oral order.

20 The second oral order concerns the presentation of the evidence
21 of the expert witnesses whom the SPO intends to rely on. Noting the
22 party's oral submissions on 18 October 2022 during the Trial
23 Preparation Conference, the Panel hereby directed the Defence to file
24 a notice pursuant to Rule 149(2) of the rules, should it so wish,
25 indicating whether it challenges the qualifications of the SPO expert

1 witnesses or the relevance of all or part of their reports, and if
2 so, which parts, and whether it wishes to cross-examine the expert
3 witnesses.

4 And this as soon as it will be two weeks after receiving the
5 filing by the SPO if they so wish to put expert witnesses on their
6 list. Yeah?

7 This concludes the Panel's second oral order.

8 The third oral order concerns the SPO requests to amend its
9 exhibit list by adding six documents, which is filing 312. The Panel
10 has taken note of the Defence response, that is filing 317, notified
11 this morning and its objections to the request. The Panel observes
12 that the SPO has identified the six documents following a review of
13 its evidentiary database for any remaining items that should have
14 been disclosed to the Defence with a view to disclosing them before
15 the trial, thereby showing due diligence.

16 The Panel considers: First, that the number of items the SPO
17 seeks to add is limited and the items themselves are not lengthy.

18 Second, the Panel is mindful of the SPO submissions that the
19 documents are corroborative of other evidence and would enable a more
20 comprehensive assessment of the evidence disclosed.

21 And the Panel considers that it is necessary to have the
22 documents for the determination of the truth.

23 Third, the information contained in a number of them is publicly
24 available and/or is also already known to the Defence through the
25 disclosure of other material as acknowledged by the Defence itself.

1 And, fourth, to the extent that the Defence makes submissions on
2 the probative value of the documents, the Panel stresses that it is
3 premature.

4 Lastly, the SPO has requested the amendment promptly upon
5 identifying the documents and well in advance of the commencement of
6 the trial.

7 For these reasons, the Panel is satisfied that the SPO has shown
8 good cause and provided timely notice within the meaning of Rule
9 118(2) of the rules, and grants the SPO request to amend its list of
10 exhibits. The Panel orders the SPO to disclose the six items to the
11 Defence and to file an amended exhibit list by no later than
12 28 October 2022.

13 This concludes the Panel's third oral order.

14 The fourth oral order concerns the SPO request for leave to add
15 85 documents to its Rule 102(3) notice, which is filing 303,
16 paragraph 15, as amended on 18 October 2022 during the Trial
17 Preparation Conference.

18 The Panel notes, first, that considering the overall volume of
19 material on the SPO's last amended Rule 102(3) notice, the proposed
20 number of items that the SPO seeks to add at this stage is limited.

21 Second, the Panel observes that such items may be material for
22 the preparation of the Defence. And, indeed, the Defence does not
23 object as such to their addition to the Rule 102(3) notice.

24 Lastly, the Panel has taken notice of the Defence submissions
25 regarding the timeliness of the request and it's mindful of the

1 accused's rights to have adequate time and facilities for the
2 preparation of his defence. Should the Defence consider some or all
3 of the 85 documents to be material to its preparation and should it
4 require more time following their disclosure, it may request -- it
5 may make a request to this effect.

6 And for these reasons, the Panel grants the SPO's request and
7 orders the SPO to file an amended Rule 102(3) notice by Friday,
8 21 October. Thereafter, the Defence shall indicate to the SPO which
9 items among the 85 it seeks to have access to by way of disclosure or
10 inspection by Friday, 4 November 2022.

11 Given that the SPO has indicated that no protective measures are
12 needed in relation to the above-mentioned documents, the SPO shall
13 disclose or provide access to the selected items identified by the
14 Defence by Wednesday, 9 November. And should the SPO wish to dispute
15 the materiality of any of the items requested by the Defence, it
16 shall seize the Panel by no later than Friday, 11 November.

17 And this concludes our fourth oral order.

18 The fifth oral order concerns the dual-status victim witnesses.

19 Noting the SPO's observations that they would welcome receiving
20 a list of the dual-status victim witnesses, which is filing 303,
21 paragraph 26, and Victims' Counsel's submissions that he has no
22 objections in this regard, this is filing 301, paragraph 15 and 16,
23 the Panel orders Victims' Counsel to file in the record of the case
24 by Friday, 21 October 2022, a list of the individuals who have dual
25 status as victims and witnesses in the present case. The list shall

1 be classified strictly confidential and *ex parte*, SPO and WPSO only.

2 Okay. The next point. The Panel has taken note of filing 316,
3 which is the Defence response to Victims' Counsel's submissions on
4 the need for the continued application of the protective measures
5 ordered for the victims participating in the procedure with the
6 request to disclose the identities of the victims participating in
7 the procedure to the Defence. Although such a request should not
8 have been done in response to a notice of the Victims' Counsel
9 following two orders by the Pre-Trial Judge, the Panel will consider
10 this response as a request exceptionally. But for reasons of
11 clarity, please, we should do this in another way to -- for reasons
12 of efficiency. And invites the Victims' Counsel and the Specialist
13 Prosecutor's Office to respond, if they so wish, to the requests
14 following the deadlines as provided for in Rule 76 of the Rules of
15 Procedure and Evidence, mindful that some of the victims have dual
16 status. The Trial Panel will take a decision in due course. Yes?

17 And this concludes the Panel's fifth oral order.

18 The sixth oral order concerns the adoption of a framework of the
19 handling of confidential information and contacts with witnesses
20 during investigations.

21 THE INTERPRETER: The interpreters kindly ask the Presiding
22 Judge to read slowly. We don't have the text. Thank you very much.

23 PRESIDING JUDGE VELDT-FOGLIA: I will do so. Thank you.

24 The sixth oral order concerns the adoption of a framework on the
25 handling of confidential information and contacts with witnesses

1 during investigations.

2 Noting the parties and participants' submissions made during the
3 Trial Preparation Conference, the Panel orders the SPO, the Defence,
4 and Victims' Counsel to make a joint request on the adoption of such
5 a framework, setting out the terms of the framework. The parties and
6 participants shall take the framework adopted in the other case,
7 filing 854, Case 06, as a starting point.

8 If and to the extent that the parties intend to request the
9 Panel to depart from the terms of the framework in that case, they
10 shall provide reasons in that joint request for the need to do so.
11 And if the parties and participants do not agree on all the terms of
12 the proposed framework, they shall set out their points of
13 disagreement in the joint request, providing the reasons for which
14 they disagree. And the joint request shall be filed by Wednesday,
15 15 November 2022.

16 And this concludes the Panel's sixth oral order.

17 And for the seventh and last oral order, I ask Madam Court
18 Officer to bring us into private session. And, correction, this is
19 not the last oral order.

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24 [Open session]

25 THE COURT OFFICER: Your Honours, we're in public session.

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

2 With regard to the framework on contact with witnesses, I
3 mentioned as the deadline Wednesday, 15 November, but 15 November is
4 a Tuesday, and in order to have no misunderstandings, I would say
5 Wednesday, 16 November.

6 And then our last oral order concerns the reparation
7 proceedings.

8 The Panel orders the Victims' Counsel and the Defence to file
9 written submissions, if they so wish, of course, whether reparation
10 proceedings shall be conducted in parallel with the criminal
11 proceedings; whether, in case of a conviction, the Panel should refer
12 victims to civil litigation in Kosovo, pursuant to Article 22,
13 paragraph 9 of the law, and Rule 167 of the Rules; or issue a
14 reparation order pursuant to Articles 22, paragraph 8, and 44,
15 paragraph 6 of the law.

16 The Panel orders the Defence and Victims' Counsel to file
17 written submissions, if they so wish, on the above-mentioned matters
18 by Friday, 11 November 2022.

19 And this concludes the Panel's oral orders.

20 Then, finally, I inform you that in the upcoming period, the
21 Panel intends to issue, *inter alia*, the following decisions: Of
22 course, the decision setting the date for the commencement of the
23 trial; a decision regarding victims participating in a procedure, and
24 for the Victims' Counsel and for the Defence, we will try to be
25 comprehensive, as far as we can, with regard to the information

1 necessary in this regard; a decision on witness familiarisation; a
2 decision on submissions/admissibility of evidence; and a decision, of
3 course, on the conduct of proceedings.

4 And, of course, there will be other decisions, but these are run
5 of -- some of the most important.

6 Very well. If there is no points you would like to raise with
7 the Panel - and that was a question I already put before, but now we
8 have had our oral orders and these decisions - I want to conclude
9 today's public hearing. I thank again the parties and the
10 Victims' Counsel and the Registry for their attendance. And I also
11 thank the interpreters - and my apologies for going too fast with the
12 oral orders - and the audiovisual booth and the security and our
13 stenographer for their assistance.

14 The hearing is adjourned.

15 --- Whereupon the hearing adjourned at 10.40 a.m.

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