

1 Wednesday, 13 December 2023

2 [Open session]

3 [Initial Appearance]

4 [The accused entered the courtroom]

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

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

8 Before we start, in my decision setting the date for the Initial  
9 Appearance, I authorised a court photographer to take a few pictures  
10 of the accused. So I will ask the court photographer to proceed now  
11 for one and a half minutes, please.

12 Thank you, Madam Photographer.

13 Court Officer, can you please call the case.

14 THE COURT OFFICER: Good afternoon, Your Honour. This is case  
15 KSC-BC-2023-11, The Specialist Prosecutor versus Haxhi Shala.

16 JUDGE GUILLOU: Thank you very much.

17 Before asking those present in the courtroom to introduce  
18 themselves, I would like to remind everyone of a few rules that must  
19 be observed at all times in order to make courtroom proceeding  
20 smooth.

21 Please make sure that you activate your microphone before  
22 speaking and you switch it off as soon as you finish.

23 Talk slowly and clearly, as we have interpretation from and into  
24 Albanian and Serbian.

25 Wait five seconds before responding to me or a party or

1 participant in order to allow the interpreters to finish the  
2 interpretation.

3 What is said in this hearing is transcribed in realtime and will  
4 be reflected in a transcript available to the parties and to the  
5 public after this hearing.

6 I would also like to remind the parties that certain information  
7 in this case is subject to protective measures and confidentiality  
8 orders. Confidential information shall not be disclosed in open  
9 sessions. If any party or participant must go into private session  
10 and refer to any confidential information, please indicate the  
11 reasons.

12 Now I would kindly ask the parties and participants to introduce  
13 themselves, starting with the Prosecution office.

14 Madam Prosecutor.

15 MS. SHAHABUDDIN: Good afternoon, Your Honour. For the  
16 Specialist Prosecutor's Office, Prosecutor Tazneen Shahabuddin, and  
17 next to me is Prosecutor Joshua Hafetz.

18 JUDGE GUILLOU: Thank you, Madam Prosecutor.

19 Now I turn to the Defence, please.

20 MR. VAN PUYENBROECK: Good afternoon, Your Honour.

21 Laurens van Puyenbroeck on behalf of Mr. Haxhi Shala.

22 JUDGE GUILLOU: Thank you, counsel.

23 I note that your client, Mr. Shala, is also present in the  
24 courtroom.

25 Now I turn to the Registry, please.

1 MR. NILSSON: Good afternoon, Your Honour. Good afternoon,  
2 colleagues. Jonas Nilsson, Deputy Registrar, for Registry today.

3 JUDGE GUILLOU: Thank you, Mr. Nilsson.

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

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

8 Mr. Shala, will you please rise. Could you please tell us your  
9 full name.

10 THE ACCUSED: [Interpretation] My name is Haxhi Shala.

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

12 THE ACCUSED: [Interpretation] 17 March 1970.

13 JUDGE GUILLOU: And your place of birth?

14 THE ACCUSED: [Interpretation] Banje, Malisheve.

15 JUDGE GUILLOU: What is your citizenship or what are your  
16 citizenships?

17 THE ACCUSED: [Interpretation] Albanian from Kosovo.

18 JUDGE GUILLOU: And what is your current profession?

19 THE ACCUSED: [Interpretation] Military profession. Otherwise,  
20 I'm also a lawyer.

21 JUDGE GUILLOU: Thank you very much. You may be seated,  
22 Mr. Shala.

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

24 On 4 December 2023, in my capacity as Pre-Trial Judge, I  
25 confirmed the indictment submitted by the Specialist Prosecutor

1 against Mr. Shala charging him with the offences of: Count 1,  
2 attempt to obstruct official persons in performing official duties by  
3 serious threat; Count 2, attempt to obstruct official persons in  
4 performing official duties by participating in the common action of a  
5 group; and, Count 3, intimidation during criminal proceedings.

6 On 11 December 2023, the SPO arrested Mr. Shala in Kosovo, at  
7 which point he was served with the Confirmed Indictment. Mr. Shala  
8 was transferred to the detention facilities of the Kosovo Specialist  
9 Chambers in The Hague on 12 December 2023.

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

14 THE ACCUSED: [Interpretation] Yes, I speak Albanian.

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

19 If at any moment in the course of the proceedings you are not  
20 receiving interpretation, please draw my attention to it immediately.

21 Now let me explain the specific purpose of the Initial  
22 Appearance for the benefit of the accused and those joining us in the  
23 public gallery and following the proceedings online.

24 Today's hearing is not a trial. No evidence will be presented  
25 or debated. And the guilt or innocence of the accused will not be

1 discussed or decided.

2 The purpose of this Initial Appearance is regulated by  
3 Article 39 of the Law and Rule 92 of the Rules. According to these  
4 provisions, as Pre-Trial Judge, I shall: Have the charges in the  
5 Confirmed Indictment read to the accused in a language he understands  
6 and speaks; confirm that the accused understands the indictment;  
7 satisfy myself that the rights of the accused, in particular his  
8 right to counsel, are respected; inform the accused that, within 30  
9 days of today's hearing, he will be called upon to admit guilt or  
10 plead not guilty on each charge set out in the indictment. If the  
11 accused wishes to do so, he may immediately admit guilt or plead not  
12 guilty.

13 And, finally, I shall also set other dates, as appropriate, in  
14 performing my function as Pre-Trial Judge.

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

20 Mr. Shala, I will first ask you to confirm if you have received  
21 the Confirmed Indictment in a language that you understand and speak.

22 THE ACCUSED: [Interpretation] Yes, Your Honour. I have received  
23 it.

24 JUDGE GUILLOU: Thank you, Mr. Shala.

25 I will now ask Madam Court Officer to read out the charges of

1 the Confirmed Indictment as foreseen in Article 39 of the Law and  
2 Rule 92.

3 THE COURT OFFICER: Thank you, Your Honour.

4 1. In the Confirmed Indictment, the Specialist Prosecutor  
5 charges Mr. Shala with:

6 Count 1: Attempting to obstruct official persons in performing  
7 official duties by serious threat, punishable under Article 401(1)  
8 and (5) of the 2019 Kosovo Criminal Code and Article 15(2) of the  
9 Law;

10 Count 2: Attempting to obstruct official persons in performing  
11 official duties by participating in the common action of a group,  
12 punishable under Article 401(2) and (5) of the 2019 Kosovo Criminal  
13 Code and Article 15(2) of the Law; and

14 Count 3: Intimidation during criminal proceedings, punishable  
15 under Article 387 of the 2019 Kosovo Criminal Code and Article 15(2)  
16 of the Law.

17 2. These offences were committed between at least 5 and  
18 12 April 2023.

19 3. In relation to these offences, there is a well-grounded  
20 suspicion that Mr. Haxhi Shala is criminally responsible, pursuant to  
21 Article 16(3) of the Law, for:

22 a. Committing the offence under Count 3, pursuant to Article 17  
23 of the 2019 Kosovo Criminal Code;

24 b. Co-perpetrating with Mr. Ismet Bahtijari and Mr. Sabit  
25 Januzi the offences under Count 1 and 3, pursuant to Article 31 of

1 the 2019 Kosovo Criminal Code;

2 c. Assisting in the commission of the offences under Counts 1  
3 to 3, pursuant to Article 33 of the 2019 Kosovo Criminal Code;

4 d. Agreeing to commit with Mr. Ismet Bahtijari and Mr. Sabit  
5 Januzi the offences under Counts 1 to 3, pursuant to Article 35 of  
6 the 2019 Kosovo Criminal Code; and/or

7 e. Attempting to commit the offences under Counts 1 and 2,  
8 pursuant to Article 28 of the 2019 Kosovo Criminal Code.

9 Thank you.

10 JUDGE GUILLOU: Thank you, Madam Court Officer.

11 Mr. Shala, I wish to remind you that it is not the time to  
12 contest the charges but simply to acknowledge your understanding of  
13 the charges. You will have ample opportunity to challenge the  
14 charges with the assistance of your counsel.

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

17 THE ACCUSED: [Interpretation] Yes, Your Honour.

18 JUDGE GUILLOU: Thank you, Mr. Shala.

19 Now let me inform you of your rights before this Court.

20 The Law on the Specialist Chambers and the Rules of Procedure  
21 and Evidence guarantee you a number of rights. I will read out the  
22 most important ones.

23 First, you shall be presumed innocent until proven guilty beyond  
24 reasonable doubt.

25 In the determination of the charges against you, you are

1 entitled to a fair and public hearing, subject to any measures  
2 ordered for the protection of victims and witnesses.

3 You have the right to be informed promptly and in detail in a  
4 language which you understand of the nature and cause of the charges  
5 against you.

6 You have the right to have adequate time and facilities for the  
7 preparation of your defence and to communicate with the counsel of  
8 your own choosing.

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

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

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

14 You have the right to examine or have examined the witnesses  
15 against you and to obtain the attendance and examination of witnesses  
16 on your behalf.

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

19 You have the right not to be compelled to testify against  
20 yourself or to admit guilt.

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

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

25 You have the right to lodge preliminary motions to challenge the



1 jurisdiction of the Specialist Chambers, to allege defects in the  
2 form of the indictment, and to seek the severance of indictment.

3 You have the right to receive, within 30 days of today's  
4 hearing, the supporting material to the indictment submitted for  
5 confirmation.

6 You have the right to receive all statements of witnesses whom  
7 the Specialist Prosecutor intends to call at trial in the language  
8 you understand and speak, namely, Albanian.

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

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

19 You have the right not to be detained for an unreasonable period  
20 prior to the opening of your case, to request review of decisions on  
21 your detention, and to appeal such decisions directly before the  
22 Court of Appeal.

23 You have the right to appeal directly before the Court of Appeal  
24 a decision on preliminary motions challenging the jurisdiction of the  
25 Specialist Chambers.

1           You have the right to seek leave to appeal other decisions.

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

5           THE ACCUSED: [Interpretation] Yes, Your Honour.

6           JUDGE GUILLOU: Thank you, Mr. Shala.

7           THE ACCUSED: Thank you.

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

13           To this end, I have noted the Registrar's filing informing me of  
14 the assignment of Duty Counsel.

15           I also understand from the Registrar's filing that pending the  
16 appointment or assignment of counsel, you have been assigned  
17 Mr. Laurens van Puyenbroeck as Duty Counsel in accordance with  
18 Section 17(2) of the Directive on Counsel and Regulation 21 of the  
19 Legal Aid Regulations.

20           Mr. Shala, can you confirm that Mr. Laurens van Puyenbroeck has  
21 been assigned to you as Duty Counsel?

22           THE ACCUSED: [Interpretation] Yes, Your Honour. Until another  
23 decision, he will be my counsel.

24           JUDGE GUILLOU: Thank you, Mr. Shala.

25           It follows that the accused is presently represented by counsel.

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

3 Mr. Shala, within 30 days from today, you will be called upon to  
4 admit guilt or plead not guilty on each charge in the Confirmed  
5 Indictment. If you wish to do so, you may choose to immediately  
6 admit guilt or plead not guilty.

7 I would therefore like to ask you, Mr. Shala, if you had had the  
8 opportunity to discuss the charges in the Confirmed Indictment with  
9 your counsel, if you are prepared to enter a plea at this time. If  
10 it is the case, I invite you to stand up while you plead.

11 Mr. Shala.

12 THE ACCUSED: [Interpretation] Until I receive all the materials  
13 from the Prosecution, I can't declare myself about guilt or  
14 innocence. Thank you.

15 JUDGE GUILLOU: Thank you, Mr. Shala.

16 Considering that Mr. Shala has not entered a plea at this time,  
17 I would like to ask the parties to provide their preliminary views,  
18 if any, on the scheduling of a further hearing to enter a plea,  
19 starting with the Defence and then the Specialist Prosecutor's  
20 Office.

21 Counsel, please. On the scheduling for now. Just first --

22 MR. VAN PUYENBROECK: Thank you --

23 JUDGE GUILLOU: -- that point.

24 MR. VAN PUYENBROECK: -- Your Honour. I have no submissions at  
25 this moment regarding the scheduling.

1 JUDGE GUILLOU: Thank you, counsel.

2 Madam Prosecutor.

3 MS. SHAHABUDDIN: Thank you, Your Honour. Also no submissions  
4 as to scheduling.

5 JUDGE GUILLOU: Thank you, Madam Prosecutor.

6 A further hearing to enter a plea will be scheduled in due  
7 course.

8 Now let me move to the working language of the proceedings. In  
9 the scheduling decision for this Initial Appearance, I asked the  
10 parties to make oral submissions at today's hearing on the working  
11 language to be used in the present case according to Rule 8.

12 Could the parties indicate their preference, starting with the  
13 Specialist Prosecutor's Office.

14 Madam Prosecutor.

15 MS. SHAHABUDDIN: The Specialist Prosecutor's Office prefers  
16 English, Your Honour.

17 JUDGE GUILLOU: Thank you, Madam Prosecutor.

18 Counsel.

19 MR. VAN PUYENBROECK: The Defence sees no reasons to alter the  
20 current working language, Your Honour.

21 JUDGE GUILLOU: Thank you, counsel. I will issue a decision in  
22 due course on that matter.

23 In the scheduling decision for this Initial Appearance, I  
24 indicated that I intend to schedule, pursuant to Rule 96, the first  
25 Status Conference on Friday, 15 December 2023, at 9.30 a.m.

1           The purpose of the Status Conference will be to review the  
2           status of the case and to organise exchanges between the parties to  
3           ensure expeditious preparation for trial.

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

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

19          I would now like to ask the Defence whether it plans to  
20          participate to the first Status Conference on Friday in person or via  
21          video-conference.

22          Counsel.

23          MR. VAN PUYENBROECK: The Defence intends to appear in person.

24          Thank you, Your Honour.

25          JUDGE GUILLOU: Thank you, counsel. You will receive a

1 Scheduling Order during the course of the afternoon.

2 And I will also ask the parties for written submissions on the  
3 topics of the Status Conference and any other matters they would like  
4 to raise during the Status Conference on Friday. I intend to  
5 schedule Thursday, at 4.00 p.m., as the date for filing these written  
6 submissions.

7 After the Status Conference, I will issue a decision on the  
8 Specialist Prosecutor's disclosure obligations, in accordance with  
9 Rule 102, and on the redaction regime for the proceedings. And I  
10 invite the parties, and especially the Defence, to consult my  
11 previous decisions on these matters in other cases. But in any case,  
12 I will seek submissions from the parties before issuing this  
13 decision.

14 At this point, I would like to ask the parties whether they have  
15 any other issues they would like to raise, starting with the  
16 Specialist Prosecutor's Office.

17 Madam Prosecutor.

18 MS. SHAHABUDDIN: No other issues for today, Your Honour.

19 JUDGE GUILLOU: Thank you, Madam Prosecutor.

20 Now I turn to the Defence. Counsel.

21 MR. VAN PUYENBROECK: No other issues, Your Honour. Thank you.

22 JUDGE GUILLOU: Thank you, counsel.

23 I would like to ask the accused, before we end this hearing, if,  
24 Mr. Shala, you have any issue you would like to raise in relation to  
25 your arrest, the transfer to The Hague, or your detention.

1 Mr. Shala.

2 THE ACCUSED: [Interpretation] No, I have nothing to add.  
3 Everything is fine, Your Honour.

4 JUDGE GUILLOU: Thank you, Mr. Shala.

5 Finally, as you remain in detention, Mr. Shala, I would like to  
6 inform you that you may challenge your detention on remand in  
7 accordance with Rule 57. This will be dealt with in written rulings.

8 This concludes today's hearing. As usual, I thank the parties  
9 and participants for their attendance. I also thank the  
10 interpreters, stenographers, audio-visual technicians, security  
11 personnel for their assistance.

12 The hearing is adjourned.

13 --- Whereupon the Initial Appearance adjourned  
14 at 2.26 p.m.

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