

1 Friday, 20 September 2024  
2 [Pre-Appeal Conference]  
3 [Open session]  
4 [The appellant appeared via videolink]  
5 --- Upon commencing at 10.00 a.m.

6 JUDGE PICARD: Thank you. Please be seated.

7 Can you call the case, please.

8 THE COURT OFFICER: Good morning, Your Honour. This is file  
9 KSC-CA-2024-03, The Specialist Prosecutor versus Pjeter Shala.

10 JUDGE PICARD: Thank you.

11 Good morning and welcome, everyone. I'm Judge Picard,  
12 Presiding Judge in this case. Thank you. I will ask the parties and  
13 counsel for victims to introduce themselves and their teams, starting  
14 with the Specialist Prosecutor's Office.

15 MR. DE MINICIS: Good morning, Your Honour. For the SPO today  
16 appearing Line Pedersen, our Case Manager; Ella Palsenbarg, our legal  
17 intern; and Sarah Clanton and Filippo de Minicis, Prosecutors with  
18 the SPO.

19 JUDGE PICARD: Thank you.

20 Now I turn to the Defence.

21 MR. GILISSEN: Good morning, Your Honour. I am  
22 Mr. Jean-Louis Gilissen. I am here with my two co-counsel,  
23 Mr. Aouini and Ms. Leto Cariolou. We are here with an associate  
24 legal officer, Ms. Dzeneta Petravica; another associate legal  
25 officer, Ms. Kailin Chen; an assistant legal officer, Judit Kolbe;

1 legal assistant, Alana Goncalves; and a legal intern, Aloysia  
2 Mabomdzo.

3 I have to say we are here with Mr. Shala by videolink, of  
4 course. He appears from the detention centre. Thank you very much.

5 JUDGE PICARD: Thank you.

6 Next, I will turn to the counsel for victims. Can you introduce  
7 yourself.

8 MR. LAWS: Good morning, Your Honour. I am Simon Laws, counsel  
9 for the victims in this case, together with my co-counsel,  
10 Maria Radziejowska.

11 JUDGE PICARD: Thank you.

12 So I note that Mr. Shala is not physically present in the  
13 courtroom, but he is attending the hearing via video-conference.

14 Before we start, I would like to recall that Judge Ambos,  
15 Judge Jorgensen, and myself have been assigned --

16 [Trial Panel and Legal Officer confers]

17 JUDGE PICARD: I forgot to ask the Registry to introduce  
18 themselves.

19 Mr. Jonas.

20 MR. NILSSON: Thank you, Your Honour. I'm hiding back here.

21 JUDGE PICARD: Yes.

22 MR. NILSSON: Jonas Nilsson, Deputy Registrar for the Registry  
23 today. Thank you.

24 JUDGE PICARD: Thank you.

25 So before we start, I would like to recall that Judge Ambos,

1 Judge Jorgensen, and myself have been assigned to the Court of Appeal  
2 Panel to decide on the appeal against the trial judgment issued in  
3 this case on 16 July 2024. In accordance with Rule 178 of the Rules,  
4 the purpose of this Pre-Appeal Conference is to give the accused an  
5 opportunity to raise issues in relation to his detention, including  
6 his mental and physical condition.

7 To this end, on 4 September 2024, I issued an order on behalf of  
8 the Panel to convene this Pre-Appeal Conference and to set out the  
9 agenda to be followed during this hearing.

10 For today's session, I would like to remind everyone that a few  
11 rules must be observed at all times in order to have effective  
12 courtroom proceedings with an accurate record.

13 Bear in mind the necessity of an accurate interpretation, which  
14 requires a bit of additional time sometimes after you have finished  
15 speaking. Please rise to ask permission to speak and do not forget  
16 to use your microphones. This hearing is transcribed in realtime and  
17 will be reflected in a transcript available to the public. I remind  
18 counsel to give prior notice should any submission require the  
19 disclosure of confidential information so that we can go into private  
20 or closed session.

21 Today's hearing will be conducted in compliance with the agenda  
22 set forth in the Scheduling Order. I will first hear submissions  
23 related to the accused's detention. I will then invite the Registrar  
24 to make submissions on any further update on the progress made on the  
25 official translation of the trial judgment into Albanian and its

1 expected finalisation. I will finally hear submissions on any other  
2 issues.

3 In that regard, I recall that the Defence of Mr. Shala informed  
4 the Panel that they would like to address three issues.

5 I also note that the SPO and the Counsel for Victims indicated  
6 that they do not wish to raise any additional issues.

7 Accordingly, I will first invite the Defence to raise any issues  
8 related to the detention of the accused. I remind counsel to request  
9 that we go into private session should they wish to refer to any  
10 confidential information related to the health or any medical  
11 condition of the accused.

12 Now, counsel for Mr. Shala, you may proceed.

13 MR. GILISSEN: Thank you very much, Your Honour. Thank you very  
14 much.

15 So the first thing, perhaps, it's about the mental and physical  
16 condition of Mr. Shala. We have nothing special to say, to report  
17 about that, except the fact that, I am sure you are aware about the  
18 family situation of Mr. Shala and some problems he met with it. So  
19 there are some consequences on his morale. But, I can say he is  
20 absolutely able to appear before the Court and to attend this trial.  
21 So it's very clear.

22 Second, about the detention of Mr. Shala. I have to say, of  
23 course, we warned him with the new kind of rules at this stage of the  
24 procedure about the detention. And after all those explanations,  
25 Mr. Shala asked us to introduce a request. So we will deal with it

1 as soon as possible and in the better timing it's possible.

2 We are monitoring the situation with the very special situation  
3 of the family, and we will go back to you if it is necessary, of  
4 course. Thank you very much for your attention.

5 JUDGE PICARD: Thank you.

6 Mr. Prosecutor, would you like to say anything on this topic?

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

8 JUDGE PICARD: Victims' Counsel, would you like to say anything  
9 on this topic?

10 MR. LAWS: No, thank you, Your Honour.

11 JUDGE PICARD: Thank you.

12 With respect to the accused's continued detention during the  
13 appellate proceedings, I, on behalf of the Panel, recall that  
14 pursuant to Article 46(8) of the Law, unless the Trial or Court of  
15 Appeal Panel orders otherwise, a convicted person shall remain in  
16 custody pending an appeal.

17 I further recall the Appeals Panel finding in case number  
18 KSC-CA-2022-01 found that contrary to the phase prior to conviction  
19 in the first instance, where a Pre-Trial Judge or Trial Panel are  
20 required to conduct a bimonthly review of detention according to the  
21 Rules of Procedure and Evidence and the Law, this is no longer  
22 required during the appellate proceeding post conviction.

23 The next item on today's agenda pertains to any further update  
24 to the progress made on the official translation of the trial  
25 judgment into Albanian.

1 I already note that the unrevised translation of the trial  
2 judgment was filed on 4 September 2024. Could the representative of  
3 the Registrar's Office take the floor, please.

4 MR. NILSSON: Thank you, Your Honour. Indeed, I can confirm  
5 that the unrevised translation was finalised and filed on  
6 4 September. It was an unrevised translation, so it has not been  
7 formally served on Mr. Shala, but it's available to him and counsel  
8 through Legal Workflow. So that's F00847.

9 The revised translation is still expected by the end of October,  
10 last week of October. Thank you.

11 JUDGE PICARD: Thank you.

12 I will now turn to the last item on the agenda; namely, the  
13 three issues the Defence of Mr. Shala would like to address.

14 First, the fact that the public redacted version of the trial  
15 judgment is not available yet. Second, that the Defence intends to  
16 submit a request for an extension of both the word and time limit for  
17 filing its appeal brief. And, third, that the Defence would like  
18 some guidance with regard to any appeal against the Trial Panel's  
19 reparation order.

20 I will first turn to the second point, namely, that the Defence  
21 intends to submit a request for an extension of both the word and  
22 time limit for filing its appeal brief.

23 I remind the Defence that such requests shall be made in writing  
24 and filed sufficiently in advance to enable the Panel to rule on the  
25 application before the expiry of the relevant time limit. And I

1 remind everybody, although it's a confidential decision, that the  
2 decision was made yesterday about this specific topic.

3 So I don't know if you want to make any more submissions on  
4 that?

5 MR. GILISSEN: Thank you very much, Your Honour. So I think it  
6 could be an error, but I consider that that's a little bit  
7 [indiscernible]. I want to say that we have this problem of  
8 translation. Could be nice if Mr. Shala, because he would like be  
9 able to -- to utter some words to you to explain exactly the  
10 situation, and then I -- I will come back on this because I consider  
11 that problem of translation, the timing of consequences of this  
12 problem, and the request for an extension of time limit and limit of  
13 words are linked. And I'm able to explain it in a few words, of  
14 course. No reason to be long. But it could be nice, first, to hear  
15 Mr. Shala.

16 JUDGE PICARD: Okay. I will hear Mr. Shala. But then, I remind  
17 you that if you want to have another request for extension of time  
18 and word limit, perhaps you could submit a written request so that  
19 the Panel will rule on it, because I'm not going to rule on it today,  
20 on that topic.

21 MR. GILISSEN: Yeah.

22 JUDGE PICARD: But, of course, we will examine your request,  
23 your written request.

24 MR. GILISSEN: You are absolutely right. And you can be sure we  
25 are very fully aware of that.

1 JUDGE PICARD: Thank you.

2 MR. GILISSEN: And we will be very attentive to this  
3 [Overlapping speakers] ...

4 JUDGE PICARD: Thank you.

5 And, Mr. Shala, you want to say a few words?

6 THE APPELLANT: [via videolink] [Interpretation] Yes. Good  
7 morning and greetings.

8 Your Honour, I have a grave concern to raise. Regarding the  
9 previous hearing on the 16th, 17th, and 18th, in only three days we  
10 were able to find 213 words that had been changed. They were not  
11 errors in translation, but they were utterly different. I do not  
12 have the document in the Albanian language.

13 And having noticed how the proceedings unfolded, I was a bit  
14 baffled and inattentive, because I wasn't even -- I wasn't even aware  
15 that words could be changed into another one. But on the 15th, 16th,  
16 and 17th, we were able to certify that there were so many changes,  
17 and not simple errors, they're mistakes that distort the entire  
18 meeting.

19 I have not got the judgment in my possession, and I do not how  
20 would we be able to appeal given that the reasoning is there. There  
21 has been a judgment that has convicted me of murder, and I have never  
22 murdered anyone. However, given that the document has not been given  
23 to me officially to enable me to read it, to understand the reasoning  
24 as to why I have been convicted, so at this stage I do not know how I  
25 would be able to cooperate with my Defence lawyers for the appeal.



1           Where a suspect is convicted anywhere in the world, the judgment  
2           ought to be given to them in a language they understand. It has been  
3           given to me in English alone, so I am unable to be able to prepare.

4           There were -- nine victims were discussed during the trial, and  
5           at the end of the entire trial the Presiding Judge said there were 40  
6           victims all together. I do not know who these victims were, what  
7           I've been convicted of. I've been given responsibility I did not  
8           have, but that's what the Prosecution has chosen.

9           [REDACTED] Pursuant to In Court Redaction Order F16RED., and I  
10          have  
11          been given the responsibilities which should be enjoyed by a  
12          [REDACTED] Pursuant to In Court Redaction Order F16RED.  
13          [REDACTED] Pursuant to In Court Redaction Order F16RED. and with the  
14          reasoning that I had the autonomy of action. I am  
15          sorry, but that was not the case on this occasion. And that's all I  
16          had to say, and I thank you for giving me the floor.

17          JUDGE PICARD: Thank you, Mr. Shala. Just one thing. It  
18          seems -- I've heard that the unrevised translation was distributed to  
19          you, no? Is that true? I know it's not revised, it's not the final  
20          document, but still you can start working on it. Since the beginning  
21          of September you could start working on it.

22          As for what you say about hearings that took place on -- I don't  
23          know when exactly. I don't know exactly what you are referring to,  
24          which hearing you are referring to.

25          THE APPELLANT: [via videolink] [Interpretation] I meant the  
26          final one where I had the opportunity to have the floor, on the 15th,  
27          16th, and 17th. I can't recall when.

28          JUDGE PICARD: Okay. So I understand so that was the closing

1 submission at the trial? Yes. Okay.

2 So I hope that the translated judgment will come as soon as  
3 possible by the end of October.

4 I will now turn to the second point, namely --

5 MR. GILISSEN: Your Honour. Your Honour, may I? May I?

6 JUDGE PICARD: Yes.

7 MR. GILISSEN: Yes, thank you very much. So I want to say that  
8 we have the idea that for the Registry the possibility to issue a  
9 report explaining the Judges, the parties, the Victims' Counsel, with  
10 the difference between the unrevised version and the official and  
11 definitive version. A report about that could be very helpful for  
12 all of us. We could win a lot of time. It could be very, very nice  
13 for the efficiency of all of us. And I consider that because the  
14 translators are part of the Registry, the Registry is the best place  
15 to issue such a report. So that's my suggestion.

16 JUDGE PICARD: I see that the Registrar agrees.

17 MR. GILISSEN: I see it too.

18 JUDGE PICARD: And he will probably do his best to make a report  
19 on that subject?

20 MR. NILSSON: Thank you, Your Honour, yes. We will be able to  
21 make a comparable version so you can see what has been changed from  
22 one version to the other. Yes. No problem. Thank you.

23 JUDGE PICARD: Thank you.

24 So I will now invite the Defence to make submissions on the  
25 remaining issues, 1 and 3. Issue 1 is the fact that the public

1 redacted version is not available yet.

2 The second issue, we spoke it already. That is eventually a  
3 request for an extension of time limit and word limit. Okay.

4 So now the third point. Can you take the floor on the third  
5 point?

6 MR. GILISSEN: Yes, Your Honour. We would like to utter some  
7 words about the reparation procedure. And with your leave,  
8 Mr. Aouini is able to explain our position about that. Thank you.

9 MR. AOUINI: Good morning, Your Honours. I'm glad to appear  
10 before Your Honours today in this hearing.

11 Your Honours, I'll address the reparations order, and the  
12 remaining point will be the publicity of the trial judgment, which  
13 Ms. Cariolou will address later, unless Your Honour wants to address  
14 that point before?

15 JUDGE PICARD: Yes, I would. I would rather, yes.

16 MR. AOUINI: Okay. Then I will leave the floor to Ms. Cariolou  
17 to address that point, and I will be back for the reparations. Thank  
18 you, Your Honour.

19 MS. CARILOU: Your Honours, very briefly. As known, Mr. Shala  
20 was convicted on 16 July. And although the fact of his conviction  
21 and sentence is known, the reasoning in support of that conviction  
22 and sentence remains unknown to this day to all but the few  
23 privileged ones with access to the confidential version of the trial  
24 judgment.

25 And we would just like to express our concern, because not only

1 Mr. Shala would like to have a public redacted version of the trial  
2 judgment, and as it is his right to be tried in public, his family,  
3 his friends, other accused before this Tribunal and the lawyers, the  
4 academia, the media, and ultimately the public also has a right to be  
5 in a position to follow these proceedings.

6 And the fact that the trial judgment to this date, two months  
7 after it was issued, remains confidential, together with the fact  
8 that the final briefs remain confidential, a Notice of Appeal could  
9 not be filed in a public redacted version, it is a problem, together  
10 with the fact that the Defence was previously prevented from  
11 discussing in public certain aspects of this case, certain aspects of  
12 the Prosecution's case, which in the view of the Defence have been  
13 scandalous.

14 We just want to express our concern that these proceedings are  
15 very close to be conducted behind closed doors, which is not, of  
16 course, acceptable. We understand that it is not within your Panel's  
17 competence to issue the public redacted version, but we just wanted  
18 to share our concern about the situation.

19 Thank you, Your Honour.

20 JUDGE PICARD: Thank you. Yes, I agree with you that the  
21 proceedings and submissions filed before the Specialist Chambers  
22 should be public. But to the extent possible or when this is not  
23 feasible, that public redacted version of such filing should be made  
24 available in a timely manner. However, as the Defence is well aware,  
25 there are also security concerns which may constitute the exceptional

1 reasons for keeping some information confidential. And I recall the  
2 indication that was given by the Trial Panel on the day of the  
3 pronouncement of the trial judgment; namely, that the public redacted  
4 version of the trial judgment will be issued in due course. So it  
5 should be made, I repeat myself, available by the end of October.

6 And, in addition, the Panel has already taken steps to ensure  
7 that the appellate proceedings will be public *vis-à-vis* Mr. Shala and  
8 the public and will continue to do so. In that regard, I would like  
9 to remind the parties that the Notice of Appeal and related  
10 subsequent filings will have to be reclassified as public or made  
11 available through the filings of public redacted versions once the  
12 public redacted version of the trial judgment is issued.

13 In these circumstances, I do not consider that the fact that  
14 there is no public redacted version of the trial judgment would, at  
15 this stage, interfere with the accused's right to a public hearing.  
16 Also, we are all aware that this Pre-Appeal Conference is held in  
17 public.

18 So now, may I ...

19 [Trial Panel and Legal Officer confers]

20 JUDGE PICARD: So as far as I hear, I mean, it's not even sure  
21 that the public redacted version of the trial judgment will be issued  
22 by the end of October. So it might be hopefully before, but we don't  
23 know. So I can only say that it will be issued in due course, and I  
24 believe that the Registry is doing its best to issue it.

25 MR. GILISSEN: May I, Your Honour, with your leave, to add just

1 something. First, of course, we thank the Registrar for the effort  
2 to provide us with this unrevised document we received, and I'm sure,  
3 all of us, we are making a real effort to be able to work properly as  
4 soon as possible. And that's why I want to say and focus on the fact  
5 that the requests we will introduce about time limit and word limits  
6 will be introduced are a very reasonable asking. I have to say that.

7 But the very next few days, we have the feeling we could have a  
8 problem. When I say "we could have," I don't speak only about the  
9 Defence team but for all of us.

10 Of course, you can imagine we are, of course, following the  
11 other cases pending before the KSC, the Kosovo Specialist Chambers.  
12 And we have learned that some witnesses in a public hearing were  
13 talking in their testimony about what's happened in Kukes or about  
14 what is concerning Mr. Shala, and it seems obvious they continued in  
15 a non-public hearing to speak about that.

16 So we ask to the Prosecutor to be attentive to the situation,  
17 because he is not the judge but the one who is able to provide us  
18 with some elements if it is needed. But I'm a little bit afraid. We  
19 receive an answer to say no, there was no problem. And I trust the  
20 Prosecutor, but I know that the Prosecutor in the past confessed some  
21 difficulties sometimes with this kind of situation. And with a good  
22 faith, there is no discussion about that, an error could be  
23 committed.

24 So it could be nice if the Prosecutor could be able to take a  
25 look with a particular caution about that because some new

1 information, some information that could be used by the Defence in  
2 this appeal could appear. So that's why I would like to underline  
3 it.

4 And thank you very much to providing me the possibility to say  
5 that. Thank you very much.

6 JUDGE PICARD: Thank you.

7 Mr. Prosecutor, do you want to react?

8 MR. DE MINICIS: Just briefly that we are aware of our  
9 continuous Rule 103 obligations to disclose exculpatory materials, so  
10 we review the transcripts in the other cases to that end, and we will  
11 disclose any material that is *prima facie* exculpatory to the Defence.

12 On another unrelated note but just to clarify the record. I  
13 think page 12. I want to correct the fact that the pre-trial briefs  
14 have been filed publicly. There is a public redacted version of the  
15 Prosecution brief. There was a Defence version. Then, it's been  
16 ordered that that be reclassified as confidential. But as far as the  
17 Prosecution brief is concerned, there is a public redacted version on  
18 the record. The final trial brief, there is a public redacted  
19 version on the record.

20 JUDGE PICARD: Thank you.

21 [Trial Panel and Legal Officer confers]

22 JUDGE PICARD: Thank you. Now, the last question is the Defence  
23 request for guidance with regard to the appeal against the  
24 Trial Panel's reparation order.

25 I will hear you. Yes.

1 MR. AOUBINI: Thank you, Your Honour, for the opportunity to  
2 address this issue of importance to the Defence.

3 So on the reparations order issue, Your Honours -- and the  
4 potential appeal of that reparation order, Your Honours are well  
5 aware that since the conviction, the trial judgment convicting  
6 Mr. Shala on first instance, Trial Panel I has retained jurisdiction  
7 to issuing the reparations order, and this one would be expected in  
8 the next weeks or months. And, obviously, the Defence will be  
9 contemplating -- we are filing a notice we disagree with the trial  
10 judgment. We will seriously be contemplating appealing that  
11 reparation order.

12 Now, having a look at the Law and the Rules, we have a certain  
13 reading, and we will develop it before Your Honours in order to  
14 confirm it or clarify it, if necessary. Our reading of the Rules and  
15 particularly the Law on Article 44 seems to suggest that reparations,  
16 which is part of the article on punishments, is something akin to or  
17 part of sentencing.

18 If that understanding is correct, we understand, then, the  
19 assignment of the Appeals Panel to the appeals proceedings of the  
20 trial judgment will automatically include any reparation order. And  
21 so it will -- it is expected to cover that reparation order.

22 And this is the reason why we seek this guidance at this stage,  
23 at an early stage, before Your Honours. Our request is basically to  
24 clarify and issue guidelines on the applicable procedure to appeal  
25 that order when it comes to the issuance of a Notice of Appeal on



1 that reparation order and the brief as well as the time limits and  
2 the word limits applicable to that reparations orders appeal.

3 And this is mainly to avoid a situation where -- that is similar  
4 to what happened in the Mustafa case, where the reparations order was  
5 not discretely appealed on a separate notice, and a very slight  
6 mention of it was made in the brief, which was dismissed based on the  
7 fact that the reparations order was not appealed.

8 So if Your Honours have a different reading than ours and you  
9 believe that since the jurisdiction is still with the Trial Panel for  
10 that specific order to be issued, that decision to be ordered, and a  
11 new assignment will be needed at the point where that order is issued  
12 for an appeal procedure for it, we will need Your Honours to clarify  
13 that so we can seize the President at the moment that document is  
14 issued to seek the guidance at that moment and the timelines.

15 If Your Honours consider already that you have already the  
16 mandate to issue the guidelines and the modalities of that appeal, it  
17 will benefit everyone to have that clarification. If the applicable  
18 procedure for appealing a sentence is the one that is applicable to  
19 any reparation order, it has an impact on our timelines, the tasks,  
20 the focus -- the tasks that we need to undertake and the focus of our  
21 efforts.

22 Your Honours, this is the request that we are making in order to  
23 as early as possible be sure that we can exercise and defend  
24 Mr. Shala's right to challenge any decision issued by the Court in a  
25 timely and in an efficient manner.

1 I hope, Your Honour, our request is clear, but we're happy to  
2 make any further submissions.

3 JUDGE PICARD: Thank you for your views. Yes, your request is a  
4 little bit premature at the moment as no reparation order or judgment  
5 has been issued.

6 Does the Prosecutor wish to say something about --

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

8 JUDGE PICARD: No.

9 And the Victims' Counsel?

10 MR. LAWS: Well, we agree that it's premature. But at the same  
11 time, it is also our view that there is a lacuna in the rules in  
12 relation to the time limits and the procedure for appealing a  
13 reparations order.

14 We have our own view about that and what the outcome should be  
15 in terms of a decision by Your Honour and Your Honour's colleagues,  
16 but we'd suggest that it's something which is much better addressed  
17 in writing rather than orally. And it may be that a direction or  
18 perhaps an indication could be given that this matter should be fully  
19 briefed, and we'll address it in that way, with your leave.

20 JUDGE PICARD: Yes, I agree that something in writing would be  
21 easier. And the Appeals Panel will try to provide guidance quickly  
22 after the reparation order is issued.

23 Has anyone something to add? No. So unless anyone has  
24 something further to add, this concludes today's hearing.

25 I thank the parties, Counsel for Victims, and the Registry for

1 their attendance and contribution. I also thank the interpreters,  
2 stenographers, audio-visual technicians, and security personnel for  
3 their assistance.

4 The hearing is adjourned.

5 --- Whereupon the hearing adjourned at 10.35 a.m.

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