

BEFORE THE PRE-TRIAL JUDGE
KOSOVO SPECIALIST CHAMBERS

Case No.: KSC-BC-2020-04

Before: Judge Nicolas Guillou, Pre-Trial Judge

Registrar: Dr Fidelma Donlon, Registrar

Date: 17 June 2021

Filing Party: Defence Counsel

Original Language: English

Classification: Public

THE SPECIALIST PROSECUTOR
v.
PJETËR SHALA

**Submissions Pursuant to the Pre-Trial Judge's Order Dated 7 June 2021
Concerning the Second Status Conference**

Specialist Prosecutor:
Mr Jack Smith

Counsel for the Accused:
Mr Jean-Louis Gillissen
Mr Hedi Aouini

I. INTRODUCTION

1. The Defence for Mr Pjetër Shala (“Defence” and “Accused”, respectively) presents its submissions pursuant to the Order Setting the Date for the Second Status Conference, which was issued by the Pre-Trial Judge on 7 June 2021.¹

II. SUBMISSIONS

2. On 7 June 2021, the Pre-Trial Judge decided to convene the Second Status Conference on Monday, 21 June 2021.²
3. On the same date, the parties were instructed to submit written submissions on the issues identified for consideration by the Pre-Trial Judge in the Order of 7 June 2021 in advance of the Second Status Conference.³

A. Disclosure of evidentiary material

4. On 19 May 2021, the Specialist Prosecutor’s Office (“SPO”) released Disclosure Packages 5, 6 and 7 to the Defence. Disclosure Package 5 was disclosed under Rule 102(1)(a) and comprised 140 items. Disclosure Package 6 was disclosed under Rule 102(1)(b) and contained 11 items. Disclosure Package 7 was disclosed under Rule 103 and contained 75 items.
5. On 11 June 2021, the SPO released Disclosure Packages 8 and 9. Disclosure Package 8 was disclosed under Rule 102(1)(a) and Rule 102(3), containing 4 items. Disclosure Package 9 was disclosed under Rule 102(1)(a) and contained 9 items. These Disclosure Packages consisted of important material, including video footage from interviews of the Accused with investigating authorities as

¹ KSC-BC-2020-04, F00041, Pre-Trial Judge, Order Setting the Date for the Second Status Conference and for Submissions, 7 June 2021 (“Order of 7 June 2021”). All further references to filings in this Motion concern Case No. KSC-BC-2020-04 unless otherwise indicated.

² Order of 7 June 2021, p. 5.

³ Order of 7 June 2021, pp. 3, 5.

well as unredacted versions of material previously disclosed under Rule 102(1)(a) of the Rules in a significantly redacted form.

6. The Defence notes the Prosecution's position that it has completed its disclosure of material supporting the Indictment under Rule 102(1)(a) of the Rules on 19 May 2021.⁴ However, Disclosure Packages 8 and 9, both including material requested by the Defence which has been presented as supporting the Indictment, were only released to the Defence under Rule 102(1)(a) on 11 June 2021.
7. The Defence has requested the SPO to disclose audio or video recordings of interviews with witnesses it purports to rely on at trial and the parties are currently discussing this matter.
8. The Defence also notes the Second Request for Protective Measures submitted by the SPO on 11 June 2021.⁵ Its reply to the request will be set out in due course in a separate filing, however the Defence would like to make brief submissions at the status conference as to the impact of the proposed measures on the fairness of the proceedings and its ability to prepare for trial.⁶
9. The Defence repeats its request that all disclosure under Rules 102 and 103 should be disclosed in good time prior to the SPO filing of its Pre-Trial Brief. This would enable the Defence to properly assess the Prosecution's case and prepare for trial.
10. In addition, the Defence notes that (i) the heavy redaction of material disclosed to date; (ii) as well as the fact that the identity of a number of witnesses that

⁴ F00046, Specialist Prosecutor, Prosecution submissions for second status conference, 16 June 2021, para. 2.

⁵ F00043, Specialist Prosecutor, Second Request for Protective Measures, 11 June 2021 (confidential).

⁶ See Article 6 of the European Convention on Human Rights; Article 21(4)(c) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office.

will be called to testify has been withheld from the Defence, prevent it from receiving proper notice of the Prosecution's case.

B. Defence Investigations

11. The Defence confirms its intention to carry out investigations for the purposes of the presentation of its case. However, at present, the Defence is unable to provide any information on the anticipated duration or status of its investigative activities. The Defence will be in a position to advise on such matters once the disclosure of evidence process described in the Disclosure Decision is complete and the Defence has had a realistic opportunity to review and analyse the disclosed material.
12. Similarly, the Defence is not able to confirm at present whether it will make any request concerning unique investigative opportunities pursuant to Rule 99(1). The Defence will only be in a position to properly commence its investigations once disclosure of the SPO's case is complete and its Rule 97(1) preliminary motions, which will be filed in due course, have been definitively determined.

C. Notice of Alibi

13. The Defence is unable to indicate at present whether it will provide notice of an alibi and/or any other grounds excluding criminal responsibility. The Defence needs to review the entirety of the evidentiary material disclosed by the Prosecution as well as the Prosecution's Pre-Trial Brief before taking a position on these matters.

D. Conditions of Detention

14. The Defence would like to bring to the Pre-Trial Judge's attention that its concerns regarding Mr Shala's conditions of detention (specifically, insufficient provision of nutrition) have been adequately addressed by the Detention Management Unit.

E. Request for an Extension of Time to File the Defence Preliminary Motions under Rules 76 and 97 of the Rules

15. On 15 June 2021, the Defence submitted a request under Rule 76 of the Rules to the Pre-Trial Judge for an extension of time to file its preliminary motions pursuant to Rule 97 of the Rules.
16. The Defence intends to file two preliminary motions under Rule 97(1) of the Rules: the first challenging the jurisdiction of the Specialist Chambers; and the second alleging defects in the form of the Indictment. Rule 97(2) of the Rules provides that preliminary motions shall be brought within thirty days from the disclosure of all material and statements referred to in Rule 102(1)(a) of the Rules.
17. The Defence requests an extension of time pursuant to Rule 76 of the Rules so that the deadline for filing the above-mentioned preliminary motions be moved to the **11th of July 2021**. This would allow the Defence to properly perform its functions in this respect.
18. The Defence submits that the extension requested is justified given the following:
 - i. A “less redacted” version of the Indictment that allowed the Defence to have a better understanding of the charges against the Accused was only disclosed on 25 May 2021.⁷
 - ii. Disclosure Packages 8 and 9 were disclosed (under Rule 102(1)(a) of the Rules) only on 11 June 2021; as noted above, these include important material including video footage from interviews of the Accused with investigating

⁷ F000038, Submission of Further Lesser Redacted Version of Confirmed Indictment with confidential Annex 1, 25 May 2021 (confidential).

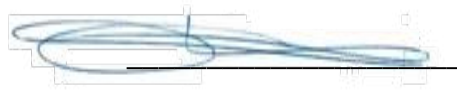
authorities as well as unredacted versions of material previously disclosed under Rule 102(1)(a) of the Rules in significantly redacted form.

- iii. The Defence faces lack of adequate resources at its disposal to prepare the preliminary motions. The lack of sufficient resources available to Mr Shala is a matter of great concern related to the effective protection of the rights of the Accused to adequate time and facilities for the preparation of his defence. An application requesting the reclassification of the complexity of the case and, in effect additional resources, was made on 29 April 2021 and is currently pending. Pending determination by the Registry of the complexity level of the case under the applicable Legal Aid Regulations, Mr Shala has only been allocated the bare minimum of Legal Aid Funds. As a result, the Defence team is forced to operate under limited resources. In addition to Lead Counsel and Co-Counsel, the Defence team consists of a Senior Legal Officer and a Legal Officer working on a part-time basis and has not been in a position to hire a case-manager or other supporting staff. In these circumstances, the Defence team, which has begun the laborious process of reviewing the disclosed material and preparing for trial, needs additional time to properly prepare and present its preliminary motions.
- iv. The Defence has done its utmost to ensure compliance with all the deadlines set so far in the proceedings. This is the first request for an extension made by the Defence to date. It is deemed necessary in the interests of justice as it will allow the Defence to have sufficient time to prepare its preliminary motions in a manner that can be of most assistance to the Pre-Trial Judge.

F. Third Status Conference

19. Pursuant to Rule 96 of the Rules, the Pre-Trial Judge can convene a status conference as deemed necessary. The Defence proposes that the next status conference in this case take place in September 2021.

Respectfully submitted,



Jean-Louis Gilissen
Specialist Defence Counsel



Hedi Aouini
Defence Co-Counsel

Thursday, 17th June 2021
The Hague, the Netherlands

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