

**Case No.:** KSC-BC-2020-04  
**Specialist Prosecutor v. Pjetër Shala**

**Before:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Date:** 16 August 2021

**Filing Party:** Specialist Defence Counsel

**Original Language:** English

**Classification:** Public

**THE SPECIALIST PROSECUTOR**  
**v.**  
**PJETËR SHALA**

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**Defence Response to Prosecution Request for Deferral  
of Disclosure Obligations**

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**Specialist Prosecutor's Office:**  
Jack Smith

**Specialist Counsel for the Accused:**  
Jean-Louis Gilissen  
Hedi Aouini

1. On 31 July 2021, the Prosecution requested the deferral of its disclosure obligations concerning “a small number of Rule 102(1)(b) materials relevant to this case which are the subject of pending or forthcoming protective measures requests in Case KSC-BC-2020-06 (“Case 6”)”.<sup>1</sup> The Defence received notice of this request when a confidential redacted version was filed on 4 August 2021.<sup>2</sup> The Prosecution requested limited deferral of its disclosure obligations until the protective measures requests have been ruled on in Case 6.<sup>3</sup>
2. While the Defence does not oppose the limited deferral requested, it reiterates that, according to Rule 80(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), any protective measures granted must be consistent with the rights of the Accused. Should the protective measures requested by the Prosecution in Case 6 be granted, they will apply in the present case by virtue of Rule 81(1)(a) of the Rules unless and until they are varied.
3. All information concerning the Prosecution requests for protective measures in Case 6 have been redacted from the version of the filing disclosed to the Defence.<sup>4</sup> In the event that the protective measures requested affect Mr Shala’s right to a fair trial,<sup>5</sup> the Defence requests to be granted access to the motions for protective measures relied upon by the Prosecution, with appropriate redactions if necessary, as well as the opportunity to be heard before such protective measures, if granted, are applied in the proceedings against Mr Shala. The Defence is concerned that the automatic application in the present

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<sup>1</sup> KSC-BC-2020-04, F00057, Confidential Redacted Version of Notice to the Pre-Trial Judge Regarding the Disclosure of Rule 102(1)(b) Materials and Request for Limited Deferral of Disclosure Obligations for Select Items, 4 August 2021 (confidential) (“Request for Limited Deferral of Disclosure Obligations”), para. 2.

<sup>2</sup> Request for Limited Deferral of Disclosure Obligations.

<sup>3</sup> Request for Limited Deferral of Disclosure Obligations, para. 2.

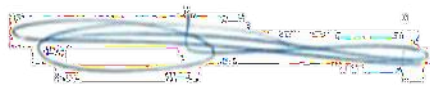
<sup>4</sup> Request for Limited Deferral of Disclosure Obligations, para. 2.

<sup>5</sup> For instance, in the event that the requested measures include anonymity of Prosecution witnesses or delayed disclosure of their identity to the Defence.

case of protective measures granted in other proceedings, without affording Mr Shala an opportunity to be heard and for the specific circumstances of his case to be considered, undermines the fairness of these proceedings.

4. The Prosecution has also requested the limited deferral of its disclosure obligations related to 21 Rule 102(1)(b) items that are subject to Rule 107 restrictions in order to secure their clearance for disclosure from the providers of such items. The Defence does not oppose the limited deferral requested in respect of these items.
5. Lastly, the Defence notes that, according to the Framework Decision on Disclosure of Evidence and Related Matters, it is expected to indicate to the Prosecution by 17 September 2021 which items among those listed in the Prosecution's detailed notice of evidence it seeks to have access to by way of disclosure or inspection.<sup>6</sup> The Defence notes that the Prosecution's request for deferral of its disclosure obligations at the present stage, if granted, will inevitably affect the ability of the Defence to comply with the deadline set in the Framework Decision. The Defence will be requesting a variation of this deadline in due course.

Respectfully submitted,



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**Jean-Louis Gilissen**

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<sup>6</sup> KSC-BC-2020-04, F00033, Framework Decision on Disclosure and Related Matters, 30 April 2021 ("Framework Decision"), p. 35. The Framework Decision also orders the SPO to provide the Defence with the detailed notice of evidence falling under Rule 102(3) of the Rules by 3 September 2021. *See* Framework Decision, p. 35.

**Specialist Defence Counsel**



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**Hedi Aouini**

**Defence Co-Counsel**

Monday, 16 August 2021

The Hague, the Netherlands

**Word count: 588**