



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-BC-2020-04**
The Prosecutor v. Pjetër Shala

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

Registrar: Dr Fidelma Donlon

Date: 14 September 2021

Language: English

Classification: **Public**

**Decision on Requests to Vary Time Limits and
Order Setting the Date for the Third Status Conference and for Submissions**

Specialist Prosecutor

Jack Smith

Counsel for the Accused

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THE PRE-TRIAL JUDGE,¹ pursuant to Articles 21(6) and 39(1) and (13) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 9(5)(a), 76, and 95(2)(b) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision and order.

I. PROCEDURAL BACKGROUND

1. On 19 June 2020, further to a decision by the Pre-Trial Judge,² the Specialist Prosecutor submitted the Confirmed Indictment.³
2. On 16 March 2021, further to a decision and an arrest warrant issued by the Pre-Trial Judge,⁴ Pjetër Shala ("Mr Shala") was arrested in the Kingdom of Belgium ("Belgium").⁵
3. On 15 April 2021, upon conclusion of the judicial proceedings in Belgium, Mr Shala was transferred to the detention facilities of the Specialist Chambers ("SC") in the Hague, the Netherlands.⁶
4. On 30 April 2021, the Pre-Trial Judge issued the Framework Decision on Disclosure of Evidence and Related Matters ("Framework Decision").⁷

¹ KSC-BC-2020-04, F00001, President, *Decision Assigning a Pre-Trial Judge*, 14 February 2020, public.

² KSC-BC-2020-04, F00007, Pre-Trial Judge, *Decision on the Confirmation of the Indictment against Pjetër Shala*, 12 June 2020, strictly confidential and *ex parte*. A confidential redacted version and a public redacted version were issued on 6 May 2021, F00007/CONF/RED and F00007/RED.

³ KSC-BC-2020-04, F00010, Specialist Prosecutor, *Submission of Confirmed Indictment*, 19 June 2020, public, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential. A confidential, lesser redacted version and a public, further redacted version of the Confirmed Indictment were submitted on 31 March 2021, F00016/A01, confidential, F00016/A02, public.

⁴ KSC-BC-2020-04, F00008, Pre-Trial Judge, *Decision on Request for Arrest Warrant and Transfer Order*, 12 June 2020, confidential. A public redacted version was issued on 6 May 2021, F00008/RED. KSC-BC-2020-04, F00008/A01, Pre-Trial Judge, *Arrest Warrant for Mr Pjetër Shala*, 12 June 2020, strictly confidential and *ex parte*. A public redacted version was issued on 15 April 2021, F00008/A01/RED.

⁵ KSC-BC-2020-04, F00013, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 16 March 2021, public.

⁶ KSC-BC-2020-04, F00019, Registrar, *Notification of Reception of Pjetër Shala in the Detention Facilities of the Specialist Chambers and Conditional Assignment of Counsel*, 15 April 2021, confidential, para. 2, with Annexes 1-2, confidential. A public redacted version was issued on 26 April 2021, F00019/RED.

⁷ KSC-BC-2020-04, F00033, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 30 April 2021, public.

5. On 21 June 2021, the second status conference was held.⁸
6. On 31 July 2021, the Specialist Prosecutor's Office ("SPO") submitted a notice to the Pre-Trial Judge regarding the disclosure of its Rule 102(1)(b) materials to the Defence for Mr Shala ("Defence"), and further requested a deferral of its disclosure obligations in relation to certain items ("Deferral Request").⁹
7. On 3 September 2021, the SPO submitted its notice pursuant to Rule 102(3) of the Rules ("Rule 102(3) notice"), in which it, *inter alia*, indicated that this notice will be supplemented in due course, including to the extent that the SPO obtains additional clearances in respect of a number of items which cannot currently be listed due to restrictions under Rule 107 of the Rules.¹⁰
8. On 9 September 2021, the Pre-Trial Judge granted the Deferral Request ("Deferral Decision").¹¹
9. On 9 September 2021, the Defence requested the Pre-Trial Judge to vary the time limit for it to indicate to the SPO to which items from the Rule 102(3) notice it seeks to have access by way of disclosure or inspection, namely 17 September 2021,¹² until 15 October 2021 ("Defence Request").¹³

⁸ KSC-BC-2020-04, F00041, Pre-Trial Judge, *Order Setting the Date for the Second Status Conference and for Submissions*, 7 June 2021 ("7 June 2021 Order"), public; KSC-BC-2020-04, Transcript, 21 June 2021 ("21 June 2021 Transcript"), public.

⁹ KSC-BC-2020-04, F00057, Specialist Prosecutor, *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*, 31 July 2021 (notified on 2 August 2021), strictly confidential and *ex parte*. A confidential redacted version was submitted on 4 August 2021, F00057/CONF/RED.

¹⁰ KSC-BC-2020-04, F00069, Specialist Prosecutor, *Prosecution Rule 102(3) notice with Confidential Annex 1*, 3 September 2021 (notified on 6 September 2021), public, with one annex, KSC-BC-2020-04/F00069/A01, confidential.

¹¹ KSC-BC-2020-04, F00072, Pre-Trial Judge, *Consolidated Decision on Deferred Request for Protective Measures and Request to Defer Disclosure Obligations*, 9 September 2021, strictly confidential and *ex parte*. A confidential redacted version was issued on the same day, F00072/CONF/RED.

¹² Framework Decision, para. 92(e).

¹³ KSC-BC-2020-04, F00074, Specialist Counsel, *Defence Motion for an Extension of Time for its Rule 102(2) [sic] Request*, 9 September 2021, confidential, paras 5, 8. Whereas the Defence refers to Rule 102(2) of the Rules, the Pre-Trial Judge understands the Defence to be requesting a variation of the time limit regarding its indication to the SPO under Rule 102(3) of the Rules.

10. On 10 September 2021, the SPO responded to the Defence Request and further requested the Pre-Trial Judge to vary a number of related time limits (“SPO Request”).¹⁴ The Defence responded on the same day (“Defence Response”).¹⁵

II. APPLICABLE LAW

11. Pursuant to Article 21(6) of the Law, all material and relevant evidence or facts in the possession of the SPO which are for or against the Accused shall be made available to the Accused before the beginning of and during the proceedings, subject only to restrictions which are strictly necessary and when any necessary counter balance protections are applied.

12. Pursuant to Rule 9(5)(a) of the Rules, the Pre-Trial Judge may *proprio motu* or upon showing of good cause extend or reduce any time limit prescribed by the Rules or set by the Panel.

13. Pursuant to Rule 76 of the Rules, applications for extension of time shall be filed sufficiently in advance to enable the Panel to rule on the application before the expiry of the relevant time limit.

14. Pursuant to Rule 95(2)(b) of the Rules, after the initial appearance of the Accused in accordance with Rule 92 of the Rules, the Pre-Trial Judge shall set time limits for disclosure of evidence, take any measure to ensure timely disclosure, and prepare a disclosure report for the Trial Panel.

¹⁴ KSC-BC-2020-04, F00076, Specialist Prosecutor, *Prosecution Response to KSC-BC-2020-04/F00074 and Related Request for Modification of Deadlines*, 10 September 2021, confidential.

¹⁵ KSC-BC-2020-04, F00077, Specialist Counsel, *Defence Response to Prosecution Request for Modification of Deadlines*, 10 September 2021 (notified on 13 September 2021), confidential.

III. DISCUSSION

A. DEFENCE REQUEST

15. The Defence submits that good cause exists for the requested variation of the time limit for its indication to the SPO under Rule 102(3) of the Rules to: (i) enable it to make progress with its review of disclosed material and gain a comprehensive understanding of the case against Mr Shala; (ii) complete a thorough review of the material identified in the SPO Rule 102(2) [sic] notice and related research activities; and (iii) receive disclosure of the items subject to the Decision on Deferred Disclosure as well as the supplemented SPO Rule 102(2) [sic] notice.¹⁶ The SPO responds that it does not object to the requested variation as it will further allow the Defence to review the materials and make targeted requests in an efficient manner.¹⁷

16. The Pre-Trial Judge finds that good cause, warranting the requested variation, has been demonstrated on the basis that certain items are yet to be disclosed to the Defence since the SPO's disclosure obligations regarding certain Rule 102(1)(b) materials have been deferred and the SPO indicates that its Rule 102(3) notice will be supplemented in due course. Furthermore, the SPO does not object to the requested extension. The Pre-Trial Judge additionally finds that the Defence Request has been filed sufficiently in advance of the expiry of the time limit at issue, namely approximately one week before the original time limit for the Defence to provide its indication under Rule 102(3) of the Rules. Therefore, the Pre-Trial Judge authorises the Defence to indicate to the SPO to which items from the Rule 102(3) Notice it seeks to have access by way of disclosure or inspection by no later than 15 October 2021.

17. Moreover, the Pre-Trial Judge is satisfied that no confidential information is being revealed and, accordingly, orders the Registrar to reclassify the Defence Request as public pursuant to Rule 82(5) of the Rules.¹⁸

¹⁶ Defence Request, para. 6.

¹⁷ SPO Request, paras 1-2.

¹⁸ Defence Request, para. 9.

B. SPO REQUEST

18. The SPO avers that good cause exists to modify the time limits related to the Defence's selection of Rule 102(3) materials and to prepare its pre-trial brief and Rule 109(c) chart.¹⁹ It submits that additional time is required to review the Defence's Rule 102(3) selections, meet and confer with the Defence regarding any disputes over materiality in an attempt to avoid unnecessary litigation, identify any materials subject to protective measures in this or other cases, apply necessary redactions (including standard redactions), and process and disclose the requested materials.²⁰ As to the requested extension of the time limit to file its pre-trial brief, the SPO contends that it will be occupied through the end of November responding to the Rule 102(3) requests.²¹ It also asserts that, from experience in other cases, the process related to the Rule 109(c) chart cannot be started until the pre-trial brief is finalised and, to be properly accomplished, it requires a minimum of two weeks of preparation.²² On this basis, the SPO proposes the following time limits: (i) 29 October 2021 (or within two weeks of the Defence's Rule 102(3) indication) – deadline for the SPO to seize the Pre-Trial Judge should it dispute the materiality of evidence; (ii) 12 November 2021 (or within four weeks of the Defence's Rule 102(3) indication) – deadline for the SPO to disclose to or provide the Defence with access to the selected material that does not require redactions; (iii) 26 November 2021 (or within six weeks of the Defence's Rule 102(3) indication) – deadline for the SPO to disclose materials requiring standard redactions or file any request for non-standard redactions/protective measures of selected material; (iv) 28 January 2022 – deadline for the SPO to file its pre-trial brief; and (v) 11 February 2022 – deadline for the SPO to file its Rule 109(c) chart.²³ The

¹⁹ SPO Request, para. 3.

²⁰ SPO Request, para. 4.

²¹ SPO Request, para. 6.

²² SPO Request, para. 6.

²³ SPO Request, para. 5.

Defence responds that it does not oppose the SPO Request as the additional time is essential for the preparation of the Defence case.²⁴

19. As to the requested variations of the time limits pertaining to the Defence indication to the SPO under Rule 102(3) of the Rules, the Pre-Trial Judge finds that good cause, warranting the requested variations, has been demonstrated on the basis that, together with the aforementioned variation requested by the Defence, the SPO requires additional time to complete the procedural steps arising from Rule 102(3) of the Rules. The Pre-Trial Judge further observes that the Defence does not oppose the SPO Request and that it requires additional time to prepare its case. Moreover, the SPO Request has been filed sufficiently in advance of the expiry of the time limit at issue, namely approximately one week before the original time limit for the Defence to provide its indication to the SPO under Rule 102(3) of the Rules. Therefore, the Pre-Trial Judge authorises the SPO to: (i) seize the Pre-Trial Judge should it dispute the materiality of evidence by no later than 29 October 2021 (or within two weeks of the Defence's Rule 102(3) indication); (ii) disclose to or provide the Defence with access to the selected material that does not require redactions by no later than 12 November 2021 (or within four weeks of the Defence's Rule 102(3) indication); and (iii) disclose materials requiring standard redactions or file any request for non-standard redactions/protective measures of selected material by no later than 26 November 2021 (or within six weeks of the Defence's Rule 102(3) indication).

20. With regard to the requested variations of the time limits for submitting the SPO's pre-trial brief and its Rule 109(c) chart, the Pre-Trial Judge recalls that, pursuant to Article 39(1) of the Law, he has the independent obligation to ensure that the case is prepared properly and expeditiously for trial, which includes avoiding unnecessary delays. It is further recalled that the current time limit for the submission of the SPO's

²⁴ Defence Response, para. 2.

pre-trial brief, namely 19 November 2021, was proposed by the SPO itself.²⁵ The new time limit proposed by the SPO, that is 28 January 2022, amounts to an extension of time of more than two months. Accordingly, the Pre-Trial Judge finds it appropriate to defer his decision on these aspects of the SPO Request with a view to obtaining additional particulars regarding the reasons necessitating these requested variations during the upcoming status conference.

21. Furthermore, the Pre-Trial Judge is satisfied that no confidential information is being revealed and, accordingly, orders the Registrar to reclassify the SPO Request as public pursuant to Rule 82(5) of the Rules.²⁶ For the sake of consistency, the Registrar shall also reclassify the Defence Response, which also does not reveal any confidential information, as public. The Pre-Trial Judge also deems it appropriate to order the SPO to either submit a public redacted version of the Deferral Request or indicate whether the confidential redacted version of this filing may be reclassified as public without additional redactions.

C. ORDER SETTING THE DATE FOR THE THIRD STATUS CONFERENCE AND FOR SUBMISSIONS

22. Having considered the views expressed by the Parties as to the date of the third status conference to be held in the present case,²⁷ the Pre-Trial Judge convenes the third status conference on Thursday, 23 September 2021, at 09:00 hours.

23. The Pre-Trial Judge will ask the Parties to provide updates, if any, on the outstanding issues detailed in the agenda for the second status conference,²⁸ and their

²⁵ KSC-BC-2020-04, F00046, Specialist Prosecutor, *Prosecution Submissions for Second Status Conference* (“SPO Second Status Conference Submissions”), 16 June 2021, public, para. 8; 21 June 2021 Transcript, p. 53, lines 6-17.

²⁶ SPO Request, para. 9.

²⁷ 21 June 2021 Transcript, p. 64, line 22 – p. 66, line 8.

²⁸ 7 June 2021 Order, para. 11.

written and oral submissions in relation to those issues.²⁹ In addition, the Pre-Trial Judge will request updates on the following matters from the Parties and/or participants:

(1) Disclosure

- (a) When will the SPO complete its deferred disclosure obligations relating to Rule 102(1)(b) material on the basis of the Deferral Decision;
- (b) What are the reasons requiring the SPO to supplement its Rule 102(3) notice besides the need to obtain clearances in relation to restrictions under Rule 107 of the Rules, and when will the SPO obtain the clearances required under Rule 107 of the Rules so as to supplement its Rule 102(3) notice;
- (c) Does there remain exculpatory evidence in the SPO's custody, control or actual knowledge that must be disclosed to the Defence pursuant to Rule 103 of the Rules;
- (d) Has the SPO identified any other material that is subject to restrictions under Rule 107 of the Rules;
- (e) Does the SPO anticipate submitting any requests for protective measures, including regarding any Defence requests for the disclosure or inspection of items under Rule 102(3) of the Rules and/or items to be disclosed pursuant to Rule 103 of the Rules; and
- (f) Are the Parties facing or foreseeing any difficulties related to the disclosure process defined in the Framework Decision.

²⁹ SPO Second Status Conference Submissions; KSC-BC-2020-04, F00049, Specialist Counsel, *Submissions Pursuant to the Pre-Trial Judge's Order Dated 7 June 2021 Concerning the Second Status Conference* [sic], 17 June 2021, public.

(2) Translations

- (a) Can the SPO provide an estimate as to the timeline for processing the Albanian translations of certain prior witness statements as indicated in the Deferral Decision; and
- (b) Have the Parties made any requests for prioritising the translation of specific filings or evidentiary materials.

(3) SPO Investigations and Next Steps

- (a) Have the SPO's outstanding investigative steps been completed or can the SPO provide an estimated date of completion; and
- (b) What are the specific reasons requiring the SPO to request extensions of time to file its pre-trial brief and Rule 109(c) chart and does the SPO consider that more limited extensions of time are possible.

(4) Defence Investigations and Next Steps

- (a) Based on the SPO's estimates and the ongoing disclosure process (scheduled to continue until at least November 2021), can the Defence provide more information on the status of its investigations, any intention to make requests concerning unique investigative opportunities pursuant to Rule 99(1) of the Rules, and the time it anticipates to require to finalise its investigations;
- (b) Can the Defence provide more information on any intention to give notice of an alibi or grounds for excluding responsibility pursuant to Rule 95(5) of the Rules and any associated disclosure pursuant to Rule 104(1) and (2) of the Rules; and

(c) Does the Defence envisage filing a pre-trial brief and related material under Rule 95(5) of the Rules and, if so, when does it expect to be in a position to submit such a filing.

(5) Points of Agreement on Matters of Law and Fact

(a) Have the Parties entered into discussions regarding the possibility of submitting points of agreement on law and/or facts pursuant to Rules 95(3) and 156 of the Rules; and

(b) When do the Parties expect to be able to identify a list of issues subject to dispute and one with issues not subject to dispute.

(6) Detention Regime

(a) Can the Registrar provide any updates on the detention regime, including, but not limited to, counsel and family visitation policies.

24. Lastly, taking into consideration the courtroom availability in the following weeks, the Parties will be asked to indicate their availability on Monday, 15 November 2021 for the next status conference to be held in the present case.

25. The Pre-Trial Judge further orders the SPO and the Defence to file written submissions on any of the matters set out in paragraphs 20 and/or 23 of the present order (as the case may be), as well as the topics discussed during the second status conference, any relevant matter not included in the agendas for the second and third status conferences, any difficulty related to the disclosure of evidentiary material, or any related matters by no later than Friday, 17 September 2021 and Monday, 20 September 2021, respectively.

DISPOSITION

26. For the above-mentioned reasons, the Pre-Trial Judge hereby:

(a) **GRANTS** the Defence Request and **ORDERS** the Defence to indicate to the SPO to which items from the Rule 102(3) Notice it seeks to have access by way of disclosure or inspection by no later than **Friday, 15 October 2021**;

(b) **GRANTS** the SPO Request insofar as it relates to the requested variations of the time limits pertaining to the Defence indication under Rule 102(3) of the Rules and **ORDERS** the SPO to: (i) seize the Pre-Trial Judge should it dispute the materiality of evidence on the basis of the Defence's Rule 102(3) indication by no later than **Friday, 29 October 2021** (or within two weeks of the Defence's Rule 102(3) indication); (ii) disclose to or provide the Defence with access to the selected material that does not require redactions by no later than **Friday, 12 November 2021** (or within four weeks of the Defence's Rule 102(3) indication); and (iii) disclose materials requiring standard redactions or file any request for non-standard redactions/protective measures of selected material by no later than **Friday, 26 November 2021** (or within six weeks of the Defence's Rule 102(3) indication);

(c) **DECIDES** to defer his decision on the SPO Request insofar as it relates to the requested variations of the time limits for filing the SPO's pre-trial brief and its Rule 109(c) chart;

(d) **DECIDES** to convene the third status conference in the presence of the SPO and the Defence on **Thursday, 23 September 2021, at 09:00 hours**;

(e) **ORDERS** the SPO and the Defence to file written submissions on the matters set out in paragraphs 20, 23 and/or 25 of the present order (as the case may be) by **Friday, 17 September 2021** and **Monday, 20 September 2021**, respectively;

(f) **ORDERS** the Registrar to reclassify the Defence Request (KSC-BC-2020-04/F00074), the SPO Request (KSC-BC-2020-04/F00076), and the Defence Response (KSC-BC-2020-04/F00077) as public; and

(g) **ORDERS** the SPO to either submit a public redacted version of the Deferral Request (KSC-BC-2020-04/F00057) or indicate whether the confidential redacted version of this filing may be reclassified as public without additional redactions by no later than **Wednesday, 22 September 2021**.



Judge Nicolas Guillou

Pre-Trial Judge

Dated this Tuesday, 14 September 2021

At the Hague, the Netherlands.