

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: 20 September 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
14 September 2021 Concerning the Third Status Conference**

Specialist Prosecutor
Jack Smith

Counsel for the Accused
Jean-Louis Gilissen
Hedi Aouini

I. INTRODUCTION

1. The Defence for Mr Pjetër Shala (“Defence” and “Accused”, respectively) presents its submissions on the matters identified by the Pre-Trial Judge pursuant to the order issued on 14 September 2021.¹

II. SUBMISSIONS

2. On 14 September 2021, the Pre-Trial Judge decided to convene the Third Status Conference in this case on Thursday, 23 September 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 advance of the Third Status Conference.³
4. On 17 September 2021, the Specialist Prosecutor’s Office (“SPO”) filed their submissions for the third status conference.⁴

A. Disclosure and Translations

5. On 18 June 2021, the SPO released to the Defence, under Rule 102(1)(b) of the Rules, Disclosure Package 10, which was composed of 14 items. On 31 July 2021, the SPO disclosed Disclosure Package 11 under Rule 102(1)(b) that comprised 251 items. On 1 September 2021, Disclosure Package 12 was released under Rule 102(1)(b) and contained 30 items. On 3 September 2021, the SPO filed its Prosecution Rule 102(3) notice with a confidential annex.⁵

¹ KSC-BC-2020-04, F00078, Decision on Requests to Vary Time Limits and Order Setting the Date for the Third Status Conference and for Submissions, 14 September 2021 (“Order of 14 September 2021”). All further references to filings in this Motion concern Case No. KSC-BC-2020-04 unless otherwise indicated.

² Order of 14 September 2021, paras. 22, 26(d).

³ Order of 14 September 2021, para. 26(e).

⁴ Prosecution submissions for third status conference, 17 September 2021.

⁵ Prosecution Rule 102(3) notice with confidential Annex 1, 3 September 2021.

On 15 September 2021, Disclosure Package 13 was disclosed to the Defence under Rule 102(1)(b) and contained 21 items.

6. The Defence notes that, at present, the parties are making efforts to resolve all issues related to disclosure, including issues related to translations and disclosure of audio and/or video recordings of interviews with witnesses, *inter partes*. The Defence has also made a request for prioritizing the translation of specific material, which is being dealt with by the Prosecution.

B. Points of Agreement on Matters of Law and Fact

7. The Defence confirms that the parties have entered into preliminary discussions as to the possibility of submitting points of agreement on law and/or facts and the Pre-Trial Judge will be informed of any progress made in this respect in due course.

C. Defence Investigations and Next Steps

8. The Defence confirms its intention to carry out investigations for the purposes of the presentation of its case. At the present stage, the Defence is unable to provide any information on the anticipated duration or status of its investigative activities. The Defence can only note the serious difficulties it has encountered with conducting investigations in the field.
9. 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) of the Rules. The Defence expects that it will only be able to commence its investigations properly once disclosure of the SPO's case is complete and its Rule 97(1) preliminary motions have been definitively determined.

10. 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.
11. For the same reasons, the Defence is unable to confirm whether it will be filing a pre-trial brief and related material and, if so, when it will be in a position to do so.

D. Fourth Status Conference

12. The Defence confirms its availability to attend a status conference on the 15th of November 2021.

Respectfully submitted,



Jean-Louis Gilissen
Specialist Defence Counsel



Hedi Aouini
Defence Co-Counsel

Monday, 20th September 2021

The Hague, the Netherlands

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