



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:** 9 September 2021

**Language:** English

**Classification:** Public

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**Public Redacted Version of Consolidated Decision on [REDACTED] and Request  
to Defer Disclosure Obligations**

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**Specialist Prosecutor**

Jack Smith

**Counsel for the Accused**

Jean-Louis Gilissen

**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Article 21(6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 81(1)(a)-(b), 95(2)(b), 102(1)(b), and 107(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 19 June 2020, further to a decision by the Pre-Trial Judge,<sup>2</sup> the Specialist Prosecutor submitted the Confirmed Indictment.<sup>3</sup>
2. On 16 March 2021, further to a decision and an arrest warrant issued by the Pre-Trial Judge,<sup>4</sup> Pjetër Shala ("Mr Shala") was arrested in the Kingdom of Belgium ("Belgium").<sup>5</sup>
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.<sup>6</sup>
4. On 30 April 2021, the Pre-Trial Judge issued the Framework Decision on Disclosure of Evidence and Related Matters ("Framework Decision"),<sup>7</sup> thereby,

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

<sup>2</sup> 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.

<sup>3</sup> 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 lesser redacted version and a further redacted version of the Confirmed Indictment were submitted on 31 March 2021, F00016/A01, confidential, F00016/A02, public.

<sup>4</sup> 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.

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

<sup>6</sup> 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.

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

*inter alia*, ordering the Specialist Prosecutor's Office ("SPO") to complete the disclosure of materials falling under Rule 102(1)(b) of the Rules by 30 July 2021.<sup>8</sup>

5. [REDACTED].<sup>9</sup>

6. On 31 July 2021, the SPO submitted a notice to the Pre-Trial Judge regarding the disclosure of its Rule 102(1)(b) materials, and further requested a deferral of its disclosure obligations in relation to certain items ("Deferral Request").<sup>10</sup> The Defence responded on 16 August 2021 ("Response").<sup>11</sup>

## II. SUBMISSIONS

7. The SPO submits that a small number of Rule 102(1)(b) materials are the subject of pending or forthcoming protective measures requests [REDACTED], and requests a deferral of its disclosure obligations regarding these items [REDACTED].<sup>12</sup> In addition, according to the SPO, 21 Rule 102(1)(b) items are subject to Rule 107 restrictions, and the SPO requests a deferral of its disclosure obligations for these items so as to process responses received from the providers to secure their clearance for disclosure and use at trial, including responses that require the implementation of redactions.<sup>13</sup> Finally, the SPO indicates that certain Albanian translations for prior witness statements are being processed and will be promptly disclosed upon completion, while the English language versions have already been disclosed.<sup>14</sup>

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<sup>8</sup> Framework Decision, paras 45, 92(c).

<sup>9</sup> [REDACTED].

<sup>10</sup> 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.

<sup>11</sup> KSC-BC-2020-04, F00062, Specialist Counsel, *Defence Response to Prosecution Request for Deferral of Disclosure Obligations*, 16 August 2021 (notified on 17 August 2021), public.

<sup>12</sup> Deferral Request, para. 2.

<sup>13</sup> Deferral Request, para. 3.

<sup>14</sup> Deferral Request, para. 4.

8. The Defence does not oppose the deferral of the SPO's disclosure obligations for the items that are the subject of pending or forthcoming protective measures requests [REDACTED].<sup>15</sup> In this regard, it requests to be granted access to the motions for protective measures, with appropriate redactions if necessary, as well as the opportunity to be heard before such protective measures, if granted, are applied in the present proceedings.<sup>16</sup> Furthermore, the Defence does not oppose the deferral of the disclosure of the 21 Rule 102(1)(b) items that are subject to Rule 107 restrictions.<sup>17</sup> Lastly, the Defence submits that it will request a variation of the time limit set in the Framework Decision to indicate which items among those listed in the SPO's detailed Rule 102(3) notice of evidence it seeks to have access to by way of disclosure or inspection (namely 17 September 2021), since the Deferral Request, if granted, will affect the ability of the Defence to comply with this time limit.<sup>18</sup>

### III. APPLICABLE LAW

9. Pursuant to Article 21(6) of the Law, all material and relevant evidence or facts in possession of the SPO which are for or against the accused shall be made available to him or her 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.

10. Pursuant to Rule 81(1)(a)-(b) of the Rules, once protective measures have been ordered by a Panel in respect of a witness, participating victim in other proceedings, or any other person at risk on account of testimony given by witnesses, such measures: (i) shall continue to have effect *mutatis mutandis* in any other subsequent proceedings before the SC or another jurisdiction unless and until they are varied in accordance

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<sup>15</sup> Response, para. 2.

<sup>16</sup> Response, para. 3.

<sup>17</sup> Response, para. 4.

<sup>18</sup> Response, para. 5.

with Rule 81 of the Rules; and (ii) shall not prevent the SPO from discharging its disclosure obligations under the Rules in subsequent proceedings, provided that the SPO notifies the Defence to whom disclosure is being made of the nature of the protective measures ordered and the obligation to abide thereby.

11. Pursuant to Rule 95(2)(b) of the Rules, the Pre-Trial Judge shall, *inter alia*, set time limits for disclosure and take any measures to ensure timely disclosure.

12. Pursuant to Rule 102(1)(b) of the Rules, within a time limit set by the Pre-Trial Judge, and no later than 30 days prior to the opening of the Specialist Prosecutor's case, the SPO shall make available to the Defence the following material: (i) the statements of all witnesses whom the SPO intends to call to testify at trial, in a language the Accused understands and speaks; (ii) all other witness statements, expert reports, depositions, or transcripts that the SPO intends to present at trial; and (iii) the exhibits that the SPO intends to present at trial.

13. Pursuant to Rule 107(1) of the Rules, if the Specialist Prosecutor has custody or control over information which has been provided on a confidential basis and solely for the purpose of generating new evidence, such information and its origin shall be protected under Article 58 of the Law. The initial material or information shall not be disclosed without the consent of the provider and shall, in any event, not be tendered into evidence without prior disclosure to the Accused.

#### IV. DISCUSSION

##### A. [REDACTED]

14. [REDACTED].<sup>19</sup>

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<sup>19</sup> [REDACTED].

15. [REDACTED].<sup>20</sup> [REDACTED].<sup>21</sup> [REDACTED].<sup>22</sup> [REDACTED].

#### B. DEFERRAL REQUEST

16. As to the materials that are the subject of pending or forthcoming protective measures requests [REDACTED], the Pre-Trial Judge considers that there is good reason to defer the SPO's disclosure obligations relating to these items in order to avoid defeating the purpose of the pending or forthcoming protective measures requests [REDACTED].<sup>23</sup> Furthermore, the Defence indicates that it does not object to the requested deferral. Accordingly, the SPO's disclosure obligations regarding the items enumerated in footnote 4 of the Deferral Request are deferred until the corresponding requests [REDACTED] have been determined.

17. Moreover, as has been previously determined, the Pre-Trial Judge will consider the rights of the Defence and balance them against the need for protective measures in connection with the continued application of any protective measures that are granted in the context of other proceedings.<sup>24</sup> It is further noted that, under Rule 81 of the Rules, the Defence is not provided with an opportunity to be heard as to whether such protective measures should continue to have effect in other proceedings. For this reason, the Pre-Trial Judge rejects the Defence request to be granted access to the pending or forthcoming protective measures requests [REDACTED] and to be heard before such measures, if granted, are applied in the present proceedings.

18. Regarding the 21 Rule 102(1)(b) items that are subject to Rule 107 restrictions, the Pre-Trial Judge observes that the SPO is processing the responses received from the providers and that the Defence does not object to the requested deferral. Therefore,

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<sup>20</sup> [REDACTED].

<sup>21</sup> [REDACTED].

<sup>22</sup> [REDACTED].

<sup>23</sup> [REDACTED].

<sup>24</sup> [REDACTED].

the Pre-Trial Judge authorises the deferral of the Prosecutor's disclosure obligations with regard to these items until this process is completed. That being said, the Pre-Trial Judge reminds the SPO to prioritise the processing of the responses of the information providers in order for disclosure to proceed expeditiously.

19. In relation to the Albanian translations for certain prior witness statements, the Pre-Trial Judge, noting that the English versions have been disclosed and the undertaking of the SPO that the translations are being processed, considers that a deferral of the Prosecutor's disclosure obligations regarding these items until the translations have been completed is warranted. However, as Rule 102(1)(b)(i) evidence shall be disclosed together with the requisite translations in order to enable the Defence to properly and timely prepare, the Pre-Trial Judge reminds the SPO of the need to prioritise the processing of the translations at issue.

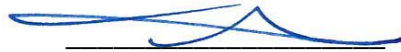
20. With regard to the Defence's indication that it will request a variation of a time limit defined in the Framework Decision, the Pre-Trial Judge will consider such a request in accordance with the applicable provisions if and once it is officially submitted and finds it unnecessary to address the Defence submissions any further.

21. Lastly, the Pre-Trial Judge observes that the Response is classified as public, whereas a confidential redacted version of the Deferral Request was made available to the Defence. Pursuant to Rule 82(4) of the Rules, unless otherwise ordered by a Panel, any response, reply or other filing related to the original filing shall bear the same classification. Therefore, the Response should have been classified as confidential. However, as the Response is framed in general terms and does not reveal any specific information arising from the Deferral Request, the Pre-Trial Judge considers, on an exceptional basis, that it is not necessary to reclassify the Response. The Defence is nonetheless instructed to abide by the provisions regulating the classification of filings in the future.

V. DISPOSITION

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

- (a) [REDACTED]; and
- (b) **GRANTS** the Deferral Request.



**Judge Nicolas Guillou**

**Pre-Trial Judge**

Dated this Thursday, 9 September 2021

At The Hague, the Netherlands.