

**Case No.:** KSC-BC-2020-04  
**Specialist Prosecutor v. Pjetër Shala**  
**Before:** President of Kosovo Specialised Chambers  
Judge Ekaterina Trendafilova  
**Registrar:** Dr Fidelma Donlon  
**Date:** 27 October 2021  
**Filing Party:** Specialist Defence Counsel  
**Original Language:** English  
**Classification:** Public

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

---

**Defence Request for an Extension of Time to Appeal ‘Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers’**

---

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

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

## I. INTRODUCTION

1. On 19 October 2021, the Defence for Mr Pjetër Shala ('Defence') was notified of the 'Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers' ('Impugned Decision').<sup>1</sup> The Pre-Trial Judge rejected the submissions of the Defence pertinent to the jurisdiction of the Specialist Chambers regarding the modes of liability under a joint criminal enterprise ('JCE'), the war crime of arbitrary detention, and the applicability of customary international law ('CIL') in the present case.<sup>2</sup>
2. Pursuant to Rule 97(3) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ('Rules' and 'SC' respectively), appeals against decisions on preliminary motions that challenge the jurisdiction of the SC lie as of right. Where an appeal lies as of right, Rule 170(1) of the Rules sets the time limit to appeal at ten days following notification of the relevant decision.
3. The Defence requests variation of this time limit so that it be allowed ten additional days to file its appeal against the Impugned Decision.

## II. SUBMISSIONS

4. Pursuant to Rule 9(5)(a) of the Rules, the Defence submits that good cause exists for variation of the time limit provided in Rule 170(1) and requests an extension of ten days to file its appeal for the reasons set out below.
5. First, the Defence is currently facing a number of competing procedural obligations all of which are crucial for its case. On 19 October 2021, the Pre-Trial

---

<sup>1</sup> KSC-BC-2020-04, F00088, Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers, 18 October 2021. All further references to filings in this Motion concern Case No. KSC-BC-2020-04 unless otherwise indicated.

<sup>2</sup> F00088, Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers, 18 October 2021, paras. 81, 84 and 87, 89 – 97, 98-103.

Judge granted the Defence request for variation of the time limit to make its Rule 102(3) indication 'in view of the significant number of new items included in the supplemental Rule 102(3) Notice and the Defence's request for further information regarding certain items listed in the Rule 102(3) Notice'.<sup>3</sup> Specifically, the Pre-Trial Judge instructed the Defence to provide its Rule 102(3) indication by 5 November 2021.<sup>4</sup> In addition, on 19 October 2021 the Defence was notified of the 'Decision on Motion Challenging the Form of the Indictment' and the Defence request for certification to appeal this decision must be filed by 26 October 2021.<sup>5</sup> Similarly, the Defence request for certification to appeal matters arising in the Impugned Decision in respect of which certification is required must also be filed by the same date.

6. In addition to the above, the Defence has only a few days to file: (i) its submissions on the second review of detention of Mr Shala to be filed by 1 November 2021, as per the instructions of the Pre-Trial Judge in his 'Decision on Review of Detention'<sup>6</sup> and (ii) its response to the 'Request for authorisation to disclose additional Rule 102(1)(b) material'<sup>7</sup>, filed by the SPO, on 20 October 2021, which must be filed by 27 October 2021.
7. In view of the above multiple and simultaneous procedural obligations and despite its due diligence, the Defence is under considerable pressure that is caused by a chain of procedural events and delays for which it is not responsible.

---

<sup>3</sup> KSC-BC-2020-04/F00090, 'Decision on Request to Vary the Time Limit for the Defence's Rule 102(3)', 19 October 2021, para. 15. *See also*, F00033, Framework Decision on Disclosure of Evidence and Related Matters, 30 April 2021 ("Framework Decision on Disclosure"), para. 92(e).

<sup>4</sup> KSC-BC-2020-04/F00090, 'Decision on Request to Vary the Time Limit for the Defence's Rule 102(3)', 19 October 2021, para. 15.

<sup>5</sup> F00089, Decision on Motion Challenging the Form of the Indictment, 18 October 2021 (confidential).

<sup>6</sup> KSC-BC-2020-04/F00075, 'Decision on Review of Detention', 10 September 2021 (confidential) para. 49(c).

<sup>7</sup> KSC-BC-2020-04/F00091, 'Request for authorisation to disclose additional Rule 102(1)(b) material', 20 October 2021.

8. Second, the Defence points out the recent changes in the composition of the Defence Team which inevitably affect its present ability to be fully operational given the departure of one of the four core team members in August 2021 and until the new member of the team (who joined in October 2021) is fully acquainted with the proceedings.
9. Third, the intended appeal involves important, complex and weighty issues to be raised in one of the first cases before the SC challenging their jurisdiction. It also forms a core part of the Defence case that requires thorough consideration.
10. Fourth, the variation requested does not prejudice the SPO, which has indicated to the Defence that it does not intend to oppose it.

### III. RELIEF


11. For the above reasons, good cause exists for the requested variation to enable the Defence to prepare and file an appeal that properly addresses the demanding nature of the issues raised therein in a manner that can properly facilitate the Panel of the Appeals Chamber.
12. The Defence requests the Pre-Trial Judge to grant the Defence ten additional days to file its appeal against the Impugned Decision.

Word Limit: 839



**Jean-Louis Gilissen**

**Specialist Defence Counsel**



---

**Hedi Aouini**

**Defence Co-Counsel**