



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:** 4 November 2021

**Language:** English

**Classification:** **Public**

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**Decision on Request for Authorisation to Disclose  
Additional Material under Rule 102(1)(b) of the Rules**

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**Specialist Prosecutor**  
Jack Smith

**Counsel for the Accused**  
Jean-Louis Gilissen

**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Articles 21(6), 39(1) and (13) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 9(5)(a), 95(2)(b) and 102(1)(b) 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 in the Hague, the Netherlands.<sup>6</sup>

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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 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. A further lesser redacted, confidential version of the Confirmed Indictment was submitted on 25 May 2021, F00038/A01. Following the Pre-Trial Judge's decision on the Defence's motion challenging the form of the Confirmed Indictment, a corrected indictment was submitted on 1 November 2021, F00098/A01, confidential.

<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.

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, *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. On 9 September 2021, the Pre-Trial Judge, further to a request by the SPO,<sup>9</sup> which was not opposed by the Defence,<sup>10</sup> authorised the SPO to defer its disclosure obligations under Rule 102(1)(b) of the Rules in relation to certain items.<sup>11</sup>
6. On 23 September 2021, the Pre-Trial Judge, further to a request by the SPO,<sup>12</sup> authorised the SPO to disclose two expert reports relating to forensic matters under Rule 102(1)(b) of the Rules by no later than 8 October 2021.<sup>13</sup>
7. On 20 October 2021, the SPO requested authorisation to disclose additional material under Rule 102(1)(b) of the Rules (“Request”).<sup>14</sup> The Defence for Mr Shala (“Defence”) replied on 28 October 2021 (“Response”).<sup>15</sup>

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

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

<sup>9</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, strictly confidential and *ex parte*. A public redacted version was submitted on 22 September 2021, F00057/RED.

<sup>10</sup> KSC-BC-2020-04, F00062, Defence, *Defence Response to Prosecution Request for Deferral of Disclosure Obligations*, 16 August 2021, public, para. 2.

<sup>11</sup> KSC-BC-2020-04, F00072/RED, Pre-Trial Judge, *Public Redacted Version of Consolidated Decision on [REDACTED] and Request to Defer Disclosure Obligations*, 9 September 2021, public, paras 16-19, 22(b).

<sup>12</sup> KSC-BC-2020-04, F00080, Specialist Prosecutor, *Prosecution Submissions for Third Status Conference*, 17 September 2021, public, para. 2.

<sup>13</sup> KSC-BC-2020-04, Transcript, 23 September 2021, public, p. 76, lines 8-15.

<sup>14</sup> KSC-BC-2020-04, F00091, Specialist Prosecutor, *Request for Authorisation to Disclose Additional Rule 102(1)(b) Material*, 20 October 2021, public, paras 2-3.

<sup>15</sup> KSC-BC-2020-04, F00097, Specialist Counsel, *Defence Response to ‘Request for Authorisation to Disclose Additional Rule 102(1)(b) Material’*, 28 October 2021, public.

## II. SUBMISSIONS

8. The SPO requests authorisation to disclose the following additional materials under Rule 102(1)(b) of the Rules, namely: (i) one additional witness statement of W04734; and (ii) ten associated exhibits for previously disclosed Rule 102(1)(b) statements.<sup>16</sup> The SPO further seeks authorisation to disclose to the Defence: (i) a signed cover page for the expert report disclosed on 8 October 2021; and (ii) the cover page for a previously disclosed witness statement of W04733.<sup>17</sup>

9. The Defence does not oppose the Request.<sup>18</sup> It adds that the vast majority of the material identified in the Request consists of material requested by the Defence in *inter partes* communications with the SPO.<sup>19</sup> The Defence, noting that material under Rule 102(1)(b) of the Rules should have been disclosed by 30 July 2021, further asserts that it reserves its right to seek an appropriate remedy for the prejudice suffered as a result of the delayed disclosure, once it has had an opportunity to review and assess the relevance of such material to its case.<sup>20</sup>

## III. APPLICABLE LAW

10. 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.

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<sup>16</sup> Request, para. 2.

<sup>17</sup> Request, para. 3.

<sup>18</sup> Response, para. 1.

<sup>19</sup> Response, para. 2.

<sup>20</sup> Response, paras 2-3.

11. 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.
12. 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.
13. 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.

#### IV. DISCUSSION

14. The Pre-Trial Judge observes that the additional witness statement of W04734 has been identified as falling under Rule 102(1)(b) of the Rules following its recent translation into English and that the ten associated exhibits for previously disclosed statements under Rule 102(1)(b) of the Rules have been identified following an *inter partes* request from the Defence.<sup>21</sup> In addition, the signed cover page for the expert report has been received recently by the SPO and the cover page for a previously disclosed witness statement of W04733 has been requested by the Defence.<sup>22</sup> Furthermore, the Request concerns a limited number of items, which relate to items previously disclosed by the SPO. The Pre-Trial Judge also notes that the Defence does not oppose the Request.<sup>23</sup> While the Request has been submitted after the expiry of the 30 July 2021 time limit, the items under consideration have been either recently

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<sup>21</sup> Request, footnotes 4-5; Response, para. 2.

<sup>22</sup> Request, footnotes 6-7; Response, para. 2.

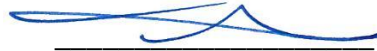
<sup>23</sup> Response, para. 1.

received by the SPO or requested by the Defence. Accordingly, the Pre-Trial Judge finds that good cause has been demonstrated warranting a variation of the 30 July 2021 time limit for the purposes of disclosing the items under consideration.

V. DISPOSITION

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

(a) **GRANTS** the Request.



**Judge Nicolas Guillou**  
**Pre-Trial Judge**

Dated this Thursday, 4 November 2021

At the Hague, the Netherlands.