



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: 5 November 2021

Language: English

Classification: **Public**

**Order Varying Time Limits for Certification Requests and
Setting the Date for the Fourth Status Conference and for Submissions**

Specialist Prosecutor

Jack Smith

Counsel for the Accused

Jean-Louis Gilissen

THE PRE-TRIAL JUDGE,¹ pursuant to Articles 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, 77(3) and 96(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this 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 in the Hague, the Netherlands.⁶

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. 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.

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.

4. On 30 April 2021, the Pre-Trial Judge issued the Framework Decision on Disclosure of Evidence and Related Matters (“Framework Decision”).⁷
5. On 23 September 2021, the third status conference was held.⁸ Further to a request by the SPO,⁹ the Pre-Trial Judge, *inter alia*, authorised the SPO to disclose two expert reports under Rule 102(1)(b) of the Rules by no later than 8 October 2021.¹⁰ The Pre-Trial Judge also varied the time limits for the SPO to file its pre-trial brief to 28 January 2022, and its Rule 109(c) chart to 11 February 2022.¹¹
6. On 18 October 2021, the Pre-Trial Judge issued the “Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers” (“Establishment and Jurisdiction Decision”) and the “Decision on Motion Challenging the Form of the Indictment” (“Indictment Decision”).¹²
7. On 19 October 2021, the Pre-Trial Judge, further to a request by the Defence for Mr Shala (“Defence”),¹³ varied the time-limit for the Defence to indicate to the SPO to which items from the SPO’s notice pursuant to Rule 102(3) of the Rules (“Rule 102(3) Notice”) it seeks to have access by way of disclosure or inspection to no later than 5 November 2021 (“Rule 102(3) Indication”).¹⁴ In addition, the Pre-Trial Judge, *proprio*

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

⁸ KSC-BC-2020-04, F00078, Pre-Trial Judge, *Decision on Requests to Vary Time Limits and Order Setting the Date for the Third Status Conference and for Submissions*, 14 September 2021, public, paras 22, 26(d) (“14 September 2021 Order”). The first and second status conferences took place on 23 April 2021 and 21 June 2021, respectively.

⁹ KSC-BC-2020-04, F00080, Specialist Prosecutor, *Prosecution Submissions for Third Status Conference*, 17 September 2021, public, para. 2.

¹⁰ KSC-BC-2020-04, Transcript, 23 September 2021 (“23 September 2021 Transcript”), public, p. 76, lines 8-15.

¹¹ 23 September 2021 Transcript, p. 92, lines 10-20.

¹² KSC-BC-2020-04, F00088, Pre-Trial Judge, *Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers*, 18 October 2021, public; F00089, Pre-Trial Judge, *Decision on Motion Challenging the Form of the Indictment*, 18 October 2021, confidential. A public redacted version of the latter decision was issued on the same day, F00089/RED.

¹³ KSC-BC-2020-04, F00086, Specialist Counsel, *Defence Request for Variation of Time Limit for its Rule 102(2) [sic] Request*, 13 October 2021 (“13 October 2021 Defence Request”), public.

¹⁴ KSC-BC-2020-04, F00090, Pre-Trial Judge, *Decision on Request to Vary the Time Limit for the Defence’s Rule 102(3) Request*, 19 October 2021, (“19 October 2021 Decision”), public, paras 15, 18(a).

motu, varied the time-limits for the SPO pertaining to the Defence's Rule 102(3) Indication as follows: the SPO shall: (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 19 November 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 3 December 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 17 December 2021 (or within six weeks of the Defence's Rule 102(3) Indication).¹⁵

8. On 26 October 2021, the Defence requested the Pre-Trial Judge to certify the Establishment and Jurisdiction Decision, insofar as it concerns certain findings arising from the Defence's challenges to the establishment of the SC, and the Indictment Decision (collectively "Certification Requests").¹⁶

9. On 4 November 2021, the Pre-Trial Judge, further to a request by the SPO,¹⁷ authorised the SPO to disclose additional material pursuant to Rule 102(1)(b) of the Rules ("4 November 2021 Decision").¹⁸

¹⁵ 19 October 2021 Decision, paras 16, 18(b).

¹⁶ KSC-BC-2020-04, F00094, Specialist Counsel, *Defence Application for Leave to Appeal the Decision on Motion Challenging the Form of the Indictment*, 26 October 2021, confidential; F00095, Specialist Counsel, *Defence Application for Leave to Appeal the Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers*, 26 October 2021, public.

¹⁷ KSC-BC-2020-04, F00091, Specialist Prosecutor, *Request for Authorisation to Disclose Additional Rule 102(1)(b) Material*, 20 October 2021, public.

¹⁸ KSC-BC-2020-04, F00100, Pre-Trial Judge, *Decision on Request for Authorisation to Disclose Additional Material under Rule 102(1)(b) of the Rules*, 4 November 2021, public.

II. APPLICABLE LAW

10. 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.

11. Pursuant to Rule 76 of the Rules, any response to a motion shall be filed within ten (10) days of the motion and any reply to a response shall be filed within five (5) days of the response.

12. Pursuant to Rule 77(3) of the Rules, the Pre-Trial Judge shall render a reasoned decision on a request for certification within seven (7) days of the last submission from the Parties or Victims' Counsel, where applicable, identifying the issue(s), if any, for which certification is granted.

13. Pursuant to Rule 96(1) of the Rules, following the first status conference after the initial appearance of the Accused, the Pre-Trial Judge shall subsequently convene status conferences as deemed necessary in order to: (i) organise exchanges between the Parties and, where applicable, Victims' Counsel so as to ensure expeditious preparation for trial; (ii) take steps to ensure that all necessary preparations are being conducted by the Parties in a timely and diligent fashion; and (iii) review the status of the case and allow the Parties and, where applicable, Victims' Counsel the opportunity to raise issues in relation thereto.

III. DISCUSSION

A. TIME LIMITS FOR CERTIFICATION REQUESTS

14. Pursuant to Rule 9(5)(a) of the Rules, the Pre-Trial Judge varies, *proprio motu*, the following time limits for the Certification Requests in view of the number of issues arising from these Requests: (i) the SPO shall file its response to the Certification Requests, if any, by no later than Wednesday, 10 November 2021; (ii) the Defence shall file its reply to the SPO's response, if any, by no later than Wednesday,

17 November 2021; and (iii) the Pre-Trial Judge will issue his decisions by no later than Monday, 29 November 2021.

B. STATUS CONFERENCE

15. Having considered the views expressed by the Parties as to the date of the fourth status conference to be held in the present case,¹⁹ the Pre-Trial Judge convenes the fourth status conference on Monday, 15 November 2021, at 09:00 hours.

16. The Pre-Trial Judge will ask the Parties to provide updates, if any, on the outstanding issues detailed in the agenda for the third status conference,²⁰ and their written and oral submissions in relation to those issues.²¹ In addition, the Pre-Trial Judge will request updates on the following matters from the Parties:

(1) Disclosure

(a) Has the SPO disclosed the additional materials pursuant to Rule 102(1)(b) of the Rules in accordance with the 4 November 2021 Decision;

(b) Has the SPO provided further information to the Defence regarding the items listed on the SPO's Rule 102(3) Notice, in accordance with the Defence's request to this effect,²² by 22 October 2021;²³

(c) Has the Defence provided its Rule 102(3) Indication by 5 November 2021;²⁴

¹⁹ 23 September 2021 Transcript, p. 102.

²⁰ 14 September 2021 Order, para. 23.

²¹ KSC-BC-2020-04, F00080, Specialist Prosecutor, *Prosecution Submissions for Third Status Conference*, 17 September 2021, public; F00081, Specialist Counsel, *Submissions Pursuant to the Pre-Trial Judge's Order Dated 14 September 2021 Concerning the Third Status Conference*, 20 September 2021, public.

²² 13 October 2021 Defence Request, para. 14.

²³ KSC-BC-2020-04, F00087, Specialist Prosecutor, *Response to Defence Extension Request*, 15 October 2021, public, para. 1.

²⁴ 19 October 2021 Decision, paras 15, 18(a).

- (d) Does the SPO anticipate disputing the materiality of evidence on the basis of the Defence's Rule 102(3) Indication by 19 November 2021 at the latest;²⁵
- (e) Does the SPO anticipate any difficulties in disclosing to or providing the Defence with access to the material requested by the Defence pursuant to its Rule 102(3) Indication that: (i) does not require redactions by no later than 3 December 2021 (or within four weeks of the Defence's Rule 102(3) Indication); and/or (ii) requires standard redactions by no later than 17 December 2021 (or within six weeks of the Defence's Rule 102(3) Indication);²⁶
- (f) 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;
- (g) Has the SPO identified additional material that is subject to restrictions under Rule 107 of the Rules;
- (h) Does the SPO anticipate submitting any requests for non-standard redactions/protective measures, including regarding any material requested by the Defence pursuant to its Rule 102(3) Indication in accordance with the 17 December 2021 time limit and/or items to be disclosed pursuant to Rule 103 of the Rules; if so, can the SPO indicate how much material would be affected by such requests; and
- (i) Are the Parties facing or foreseeing any difficulties related to the disclosure process defined in the Framework Decision.

²⁵ 19 October 2021 Decision, paras 16, 18(b).

²⁶ 19 October 2021 Decision, paras 16, 18(b).

(2) Translations

(a) Have the Parties made any requests for prioritising the translation of specific filings or evidentiary materials.

(3) SPO Investigations

(a) Have the SPO's outstanding investigative steps been completed or can the SPO provide an estimated date of completion.

(4) Defence Investigations and Next Steps

(a) Based on the SPO's estimates and the ongoing disclosure process (scheduled to continue until at least December 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 made progress in their discussions regarding the possibility of submitting points of agreement on law and/or fact 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.

17. Lastly, the Parties will be asked to indicate their availability for the next status conference to be held in the present case on 14 January 2022.

18. The Pre-Trial Judge further orders the SPO and the Defence to file written submissions on any of the matters set out in paragraph 16 of the present order (as the case may be), as well as the topics discussed during the third status conference, any relevant matter not included in the agendas for the third and fourth status conferences, any difficulty related to the disclosure of evidentiary material, or any related matters by no later than 16:00 hours on Tuesday, 9 November 2021 and Wednesday, 10 November 2021, respectively.

IV. DISPOSITION

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

- (a) **ORDERS** the SPO to file its response to the Certification Requests, if any, by no later than **Wednesday, 10 November 2021**, and the Defence to file its reply to the SPO's response, if any, by no later than **Wednesday, 17 November 2021**;
- (b) **DECIDES** to vary the time limit for issuing the decisions on the Certification Requests to, at the latest, **Monday, 29 November 2021**;
- (c) **DECIDES** to convene the fourth status conference in the presence of the SPO and the Defence on **Monday, 15 November 2021, at 09:00 hours**; and
- (d) **ORDERS** the SPO and the Defence to file written submissions on the matters set out in paragraph 16 of the present order (as the case may be) by 16:00 hours on **Tuesday, 9 November 2021** and **Wednesday, 10 November 2021**, respectively.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Friday, 5 November 2021

At the Hague, the Netherlands.