



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:** 20 December 2021

**Language:** English

**Classification:** **Public**

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**Order Setting the Date for the Fifth Status Conference and for Submissions**

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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 39(1) and (13) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 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,<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; a public redacted version of the corrected indictment was submitted on 16 November 2021, F00107/A01.

<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. 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>

5. On 15 November 2021, the fourth status conference was held.<sup>8</sup>

## II. APPLICABLE LAW

6. 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 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. Pursuant to Rule 102(3) of the Rules, the SPO shall provide detailed notice to the Defence of any material and evidence in its possession.

7. Pursuant to Rule 95(5) of the Rules, after submission of the items under Rule 95(4) of the Rules, the Pre-Trial Judge shall invite the Defence to file a pre-trial brief within a set time limit. Moreover, within a time limit set by the Pre-Trial Judge, the Defence shall notify the SPO of its intention to offer a defence of alibi or any other grounds excluding criminal responsibility, including that of diminished or lack of mental capacity, intoxication, necessity, duress, and mistake of fact or law.

8. 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

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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> KSC-BC-2020-04, F00101, Pre-Trial Judge, *Order Varying Time Limits for Certification Requests and Setting the Date for the Fourth Status Conference and for Submissions*, 5 November 2021, public (“5 November 2021 Order”), paras 15, 19(c). The first, second and third status conferences took place on 23 April 2021, 21 June 2021 and 23 September 2021, respectively.

the case and allow the Parties and, where applicable, Victims' Counsel the opportunity to raise issues in relation thereto.

9. Pursuant to Rule 96(2) of the Rules, with the Accused's written consent after receiving advice from Counsel, a status conference may be conducted: (i) in the Accused's presence, with Counsel participating via video-conference; (ii) in Defence Counsel's presence, with the Accused participating via video-conference; or (iii) in the Accused's absence, with Counsel present or participating via video-conference. In addition, any request to attend the status conference via video-conference, shall be made directly to the Registrar, in accordance with the Registrar's Practice Direction on Video Links (KSC-BD-23/COR), sufficiently in advance for the Registrar to take the appropriate steps, including to inform the Pre-Trial Judge.

### III. DISCUSSION

10. Having considered the views expressed by the Parties as to the date of the fifth status conference to be held in the present case,<sup>9</sup> the Pre-Trial Judge convenes the fifth status conference on Friday, 14 January 2022, at 14:30 hours.

11. The Pre-Trial Judge will ask the Parties to provide updates, if any, on the outstanding issues detailed in the agenda for the fourth status conference,<sup>10</sup> and their written and oral submissions in relation to those issues.<sup>11</sup> In addition, the Pre-Trial Judge will request updates on the following matters from the Parties:

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<sup>9</sup> KSC-BC-2020-04, Transcript, 15 November 2021, public ("15 November 2021 Transcript"), p. 134.

<sup>10</sup> 5 November 2021 Order, para. 16.

<sup>11</sup> KSC-BC-2020-04, F00102, Specialist Prosecutor, *Prosecution Submissions for Fourth Status Conference*, 9 November 2021, confidential (a public redacted version was issued on the same day, F00102/RED); F00106, Specialist Counsel, *Submissions Pursuant to the Pre-Trial Judge's Order Dated 5 November 2021 Concerning the Fourth Status Conference*, 10 November 2021, public.

(1) Disclosure

- (a) Can the Specialist Prosecutor's Office ("SPO") confirm that it will not challenge the materiality of any items requested by the Defence for Mr Shala ("Defence") pursuant to Rule 102(3) of the Rules, and that it has provided the Defence with access to all such materials that: (i) do not require redactions by 3 December 2021 (or within four weeks of the Defence's request); and/or (ii) require standard redactions by 17 December 2021 (or within six weeks of the Defence's request);<sup>12</sup>
- (b) 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, and does the SPO intend to submit a request for protective measures for such material;
- (c) Has the SPO made progress in the disclosure process with respect to material that is subject to restrictions under Rule 107 of the Rules; does the SPO intend file a request for an additional notice pursuant to Rule 102(3) of the Rules in respect of such material;<sup>13</sup> and does the SPO anticipate that a request for protective measures for any disclosure of such material is required;
- (d) Can the Defence indicate whether it objects or intends to object pursuant to Rule 95(2)(e) of the Rules to the admissibility of any evidentiary material that has been disclosed on the basis of Rule 102 of the Rules;
- (e) Are the Parties facing or foreseeing any difficulties related to the disclosure process defined in the Framework Decision.

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<sup>12</sup> 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, public, paras 16, 18(b).

<sup>13</sup> 15 November 2021 Transcript, p. 113, lines 23-25.

(2) Translations

- (a) Have the Parties made any requests for prioritising the translation of specific filings or evidentiary materials, and have any difficulties been encountered in relation to such matters;
- (b) Have the Parties reached an agreement as to the translation of evidentiary materials, or parts thereof, other than statements of witnesses whom the SPO intends to call to testify at trial pursuant to the Framework Decision.<sup>14</sup>

(3) SPO Investigations and Next Steps

- (a) Has the SPO assessed whether additional investigative steps are required and, if so, can the SPO confirm that such steps have been or will be completed before the filing of its pre-trial brief;<sup>15</sup>
- (b) Are there any anticipated issues with the 28 January 2022 deadline for the filing of the SPO's pre-trial brief and related material pursuant to Rule 95(4)(a)-(c) of the Rules, and/or the 11 February 2022 deadline for providing the SPO's Rule 109(c) chart.<sup>16</sup>

(4) Defence Investigations and Next Steps

- (a) Based on the SPO's estimates and the ongoing disclosure process (scheduled to continue until at least January 2022), 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;

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<sup>14</sup> Framework Decision, para. 67; 15 November 2021 Transcript, p. 117, line 22 – p. 120, line 24.

<sup>15</sup> 15 November 2021 Transcript, p. 121, lines 20-25.

<sup>16</sup> KSC-BC-2020-04, Transcript, 23 September 2021, public, p. 92, lines 10-20.

- (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;
- (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;<sup>17</sup>

(6) Detention

- (a) Have any COVID-19 risk mitigation measures changed since the Registry's fifth update on such measures.<sup>18</sup>

12. The Pre-Trial Judge further orders the SPO and the Defence to file written submissions on any of the matters set out in paragraph 11 of the present order (as the case may be), as well as the topics discussed during the fourth status conference, any relevant matter not included in the agendas for the fourth and fifth status conferences, any difficulty related to the disclosure of evidentiary material, or any related matters by no later than 16:00 hours on 11 January 2022 and 12 January 2022, respectively.

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<sup>17</sup> 15 November 2021 Transcript, p. 124, lines 5-20.

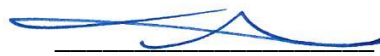
<sup>18</sup> KSC-BC-2020-04, F00119, Registrar, *Fifth Update to Submission of the Registrar Pursuant to Rule 23(2) on COVID-19 Risk Mitigation Measures*, strictly confidential and *ex parte*, 1 December 2021.

## IV. DISPOSITION

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

(a) **DECIDES** to convene the fifth status conference in the presence of the SPO and the Defence on **Friday, 14 January 2022, at 14 30 hours**; and

(b) **ORDERS** the SPO and the Defence to file written submissions on the matters set out in paragraphs 11 and 12 of the present order (as the case may be) by 16:00 hours on **Tuesday, 11 January 2022** and **Wednesday, 12 January 2022**, respectively.



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

Dated this Monday, 20 December 2021

At the Hague, the Netherlands.