

BEFORE THE PRE-TRIAL JUDGE
KOSOVO SPECIALIST CHAMBERS

Case No.: KSC-BC-2020-04

Before: Judge Nicolas Guillou, Pre-Trial Judge

Registrar: Dr Fidelma Donlon, Registrar

Date: 12 January 2022

Filing Party: Defence Counsel

Original Language: English

Classification: Public

THE SPECIALIST PROSECUTOR
v.
PJETËR SHALA

**Submissions Pursuant to the Pre-Trial Judge's Order Dated 20 December
2021 Concerning the Fifth Status Conference**

Specialist Prosecutor
Jack Smith

Counsel for the Accused
Jean-Louis Gilissen
Hedi Aouini

I. INTRODUCTION

1. The Defence for Mr Pjetër Shala (“Defence” and “Accused”, respectively) presents its submissions on the matters identified by the Pre-Trial Judge pursuant to the order issued on 20 December 2021.¹

II. SUBMISSIONS

2. On 20 December 2021, the Pre-Trial Judge decided to convene the Fifth Status Conference in this case on Friday, 14 January 2022.²
3. On the same date, the parties were instructed to submit written submissions on the issues identified for consideration by the Pre-Trial Judge in advance of the Fifth Status Conference.³
4. On 11 January 2022, the Specialist Prosecutor’s Office (“SPO”) filed its submissions for the fifth status conference.⁴

A. Disclosure and Translations

5. On 12 November 2021, the SPO released Disclosure Package 23 to the Defence under Rule 102(1)(b) of the Rules that comprised 15 items. On the same date, the SPO released Disclosure Package 24 under Rule 103 of the Rules which contained 96 items, some of which are particularly important for the Defence case and – in the view of the Defence – could have been earlier disclosed.⁵

¹ KSC-BC-2020-04, F00126, Order Setting the Date for the Fifth Status Conference and for Submissions, 20 December 2021 (“Order of 20 December 2021”). All further references to filings in this Motion concern Case No. KSC-BC-2020-04 unless otherwise indicated.

² Order of 20 December 2021, paras. 10, 13(a).

³ Order of 20 December 2021, para. 13(a).

⁴ F00127, Prosecution submissions for fifth status conference, 11 January 2022.

⁵ E-mail from the SPO to Defence Team, 12 November 2021, at 7:28 p.m. regarding Disclosure Packages 23 and 24. *See also* (with respect to Disclosure Package 23) F00100, Decision on Request for Authorisation to Disclose Additional Material under Rule 102(1)(b) of the Rules, 4 November 2021.

6. On 20 November 2021, Disclosure Package 25 was disclosed to the Defence under Rule 102(3) of the Rules consisting of 432 items.
7. On 30 November 2021, in Disclosure Package 26, the SPO disclosed under Rule 102(3) of the Rules 12 items, which were requested by the Defence on 2 November 2021 as items listed in the Prosecution's Rule 102(3) notice that were material for the preparation of the Defence case.⁶
8. On 15 December 2021, the SPO released Disclosure Package 27 under Rule 102(3), which contained 92 items which were requested by the Defence on 2 November 2021 as items listed in the Prosecution Rule 102(3) notice that appeared material to the Defence case.⁷
9. The Defence notes its concerns about the adequacy and sufficiency of the description of items in the Prosecution's possession as listed in the Prosecution's Rule 102(3) notice. The Defence notes in this respect that documents evidently relevant to the Defence case were not disclosed or identified in the Prosecution's Rule 102(3) notice and their existence was only notified to the Defence following consecutive requests.⁸ In the course of the forthcoming status conference, the Defence will invite the Prosecution to review its supplemental Rule 102(3) notice and provide additional information about the items listed therein.
10. In any event, the Defence notes that the parties are making efforts to resolve all issues related to disclosure, including issues related to translations and disclosure of audio and/or video recordings of interviews with witnesses, *inter partes*. The Defence has also made a request for translations and for prioritizing

⁶ E-mail from the SPO to Defence Team, 1 December 2021, at 1:45 p.m.

⁷ E-mail from the SPO to Defence Team, 15 December 2021, at 12:17 a.m.

⁸ See, for instance, the following items as listed in the Prosecution's supplemental Rule 102(3) notice: SITF00375011-00375014 RED, 091275-091398 RED, 091275-091387, SITF00372696-000372704, 090116-090117, and SITF00013041-00013042 RED.

the translation of specific material, which are being dealt with by the Prosecution.

11. Lastly, the Defence notes its intention to object pursuant to Rule 95(2)(e) of the Rules to the admissibility of evidentiary material that has been disclosed on the basis of Rule 102 of the Rules. The Defence will be able to do so as soon as it completes its review of material disclosed under Rule 102 of the Rules.

B. Points of Agreement on Matters of Law and Fact


12. The Defence confirms that no progress can be reported on the parties' discussions related to the possibility of submitting points of agreement on law and/or facts. The Pre-Trial Judge will be informed of any progress made in this respect in due course.

C. Defence Investigations and Next Steps

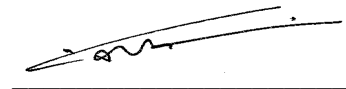
13. At the present stage, the Defence is unable to provide any information on the anticipated duration or status of its investigative activities. Despite some progress made, the Defence notes the serious difficulties it has encountered with conducting investigations in the field, particularly given the restrictions imposed by policies related to the pandemic.
14. Similarly, the Defence is unable to confirm at present whether it will make any request concerning unique investigative opportunities pursuant to Rule 99(1) of the Rules. The Defence expects that it will only be in a position to provide information on this matter once disclosure of the Prosecution's case is complete and its Rule 97(1) preliminary motions and related appeals have been definitively determined.

15. The Defence is unable to indicate at present whether it will provide notice of an alibi and/or any other grounds excluding criminal responsibility. The Defence needs to review the entirety of the evidentiary material disclosed by the Prosecution as well as the Prosecution's Pre-Trial Brief before taking a position on these matters.
16. For the same reasons, the Defence will confirm its intention to file a pre-trial brief and related material under Rule 95(5) of the Rules once it has had the opportunity to review the entirety of the disclosed material and the Prosecution's Pre-Trial Brief. At present, it is unable to indicate when it will be in a position to do.

Respectfully submitted,



Jean-Louis Gilissen
Specialist Defence Counsel



Hedi Aouini
Defence Co-Counsel

Wednesday, 12th of January 2022

The Hague, the Netherlands

Word count: 969