



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: 9 February 2022

Language: English

Classification: **Public**

Order Setting the Date for the Sixth Status Conference and for Submissions

Specialist Prosecutor

Jack Smith

Counsel for the Accused

Jean-Louis Gilissen

Counsel for Victims

Simon Laws

THE PRE-TRIAL JUDGE,¹ 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,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; a public redacted version of the corrected indictment was submitted on 16 November 2021, F00107/A01.

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. 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 14 January 2022, the fifth status conference was held.⁸
6. On 28 January 2022, the Specialist Prosecutor’s Office (“SPO”) submitted its Pre-Trial Brief and Lists of Witnesses and Exhibits;⁹ the SPO is due to submit its chart pursuant to Rule 109(c) of the Rules on 11 February 2022.¹⁰

II. APPLICABLE LAW

7. 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.
8. 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

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, F00126, Pre-Trial Judge, *Order Setting the Date for the Fifth Status Conference and for Submissions*, 20 December 2021, public (“20 December 2021 Order”), paras 15, 19(c). The first, second, third and fourth status conferences took place on 23 April 2021, 21 June 2021, 23 September 2021, and 15 November 2021 respectively.

⁹ KSC-BC-2020-04, F00135, Specialist Prosecutor, *Submission of Pre-Trial Brief, with Witness and Exhibit Lists*, 28 January 2022, public, with Annexes 1-3, strictly confidential and *ex parte*. On 31 January 2022, the SPO submitted confidential redacted versions of the Pre-Trial Brief and Lists of Witnesses and Exhibits, *see* F00136/A01, F00136/A02, F00136/A03. On 8 February 2022, the SPO submitted lesser redacted versions of the Pre-Trial Brief and List of Witnesses, *see* F00139, Specialist Prosecutor, *Submission of the Confidential Redacted Version of the Pre-Trial Brief, Witness List, and Exhibits List*, 8 February 2022, public, with Annexes 1-2, confidential.

¹⁰ KSC-BC-2020-04, Transcript, 23 September 2021, public, p. 92.

excluding criminal responsibility, including that of diminished or lack of mental capacity, intoxication, necessity, duress, and mistake of fact or law.

9. 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.

10. 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

11. Before all else, the Pre-Trial Judge recalls that the SPO submitted the indictment for confirmation in the present case on 14 February 2020, nearly two years ago.¹¹ According to the Law and the Rules, the Pre-Trial Judge shall ensure that the proceedings are not unduly delayed. The Parties shall, therefore, discharge their

¹¹ KSC-BC-2020-04, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Requests*, 14 February 2020, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

obligations pertaining to the pre-trial phase of the present case in an expeditious manner and, in the absence of a proposed time line for the completion of such obligations by the Parties, the Pre-Trial Judge will set a calendar to this end on the basis of Rule 95(2)(a) of the Rules.

12. Having considered the views expressed by the Parties as to the date of the sixth status conference to be held in the present case,¹² the Pre-Trial Judge convenes the sixth status conference on Friday, 4 March 2022, at 14:30 hours.

13. The Pre-Trial Judge will ask the Parties to provide updates, if any, on the outstanding issues detailed in the agenda for the fifth status conference,¹³ and their written and oral submissions in relation to those issues.¹⁴ In addition, the Pre-Trial Judge will request updates on the following matters from the Parties and/or Victims' Counsel, as the case may be:

(1) Disclosure

(a) Can the SPO confirm that it has fully completed its disclosure pursuant to Rule 102(1)(b) of the Rules – if not, can the SPO specify which materials remain outstanding and when such materials will be disclosed;¹⁵

(b) Can the SPO confirm that it has disclosed all materials requested by the Defence pursuant to Rule 102(3) of the Rules – if not, can the SPO specify which materials remain outstanding and when such materials will be disclosed;¹⁶

(c) Can the SPO (i) confirm that it has reviewed all material falling under Rule 102(3) of the Rules for exculpatory material, (ii) specify how many items

¹² KSC-BC-2020-04, Transcript, 14 January 2022, public, pp 184-185.

¹³ 20 December 2021 Order, para. 11.

¹⁴ KSC-BC-2020-04, F00127, Specialist Prosecutor, *Prosecution Submissions for Fifth Status Conference*, 11 January 2022, confidential; F00129, Specialist Counsel, *Submissions Pursuant to the Pre-Trial Judge's Order Dated 20 December 2021 Concerning the Fifth Status Conference*, 12 January 2022, public.

¹⁵ KSC-BC-2020-04, Transcript, 14 January 2022, pp 138-142.

¹⁶ KSC-BC-2020-04, Transcript, 14 January 2022, pp 144-147.

have been identified as exculpatory; and (iii) indicate whether such materials have been disclosed and/or whether it intends to submit a request for protective measures for such material and, if it is the latter, how many items are concerned and when such a request is forthcoming;¹⁷

(d) Can (i) the Parties indicate whether an agreement has been reached as to the description and/or disclosure of items contained in the SPO's (supplemented) notice pursuant to Rule 102(3) of the Rules that the Defence considers to be inadequate and/or items that, according to the Defence, have not been included in this notice; and/or (ii) the Defence specify whether it intends to present written submissions in connection with these matters and, if so, what relief it will be seeking and when such a request is forthcoming;¹⁸

(e) Does the SPO intend to file a request for authorisation to present an additional notice pursuant to Rule 102(3) of the Rules;¹⁹

(f) Does there remain any other 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 (besides the aforementioned materials arising from the SPO's review of the notice pursuant to Rule 102(3) of the Rules), does the SPO intend to submit a request for protective measures for such material and, if so, when is such a request forthcoming;

(g) 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 anticipate that a request for protective measures for any disclosure of such material is required, and, if so, when is such a request forthcoming;²⁰

¹⁷ KSC-BC-2020-04, Transcript, 14 January 2022, pp 149-150, 153-154.

¹⁸ KSC-BC-2020-04, Transcript, 14 January 2022, pp 154-173.

¹⁹ KSC-BC-2020-04, Transcript, 14 January 2022, pp 151, 173.

²⁰ KSC-BC-2020-04, Transcript, 14 January 2022, pp 151-152.

- (h) 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, and, if not, when does it expect to be in a position to do so;²¹
- (i) Have the Parties made any progress regarding *inter partes* discussions on the creation of witness entities in Legal Workflow;²²
- (j) Are the Parties facing or foreseeing any difficulties related to the disclosure process defined in the Framework Decision;
- (k) Can the SPO specify when it expects to be in a position to complete the disclosure of all materials pertaining to the pre-trial phase of the present proceedings.

(2) Translations

- (a) Have the Parties made any requests for prioritising the translation of specific filings or evidentiary materials, and has any progress been made in relation to such requests, including with regard to the translation of the SPO's Pre-Trial Brief, and/or have any difficulties been encountered in relation to such matters;²³
- (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.²⁴

²¹ KSC-BC-2020-04, Transcript, 14 January 2022, pp 152-153.

²² KSC-BC-2020-04, Transcript, 14 January 2022, pp 182-183.

²³ KSC-BC-2020-04, Transcript, 14 January 2022, pp 174-175.

²⁴ Framework Decision, para. 67; KSC-BC-2020-04, Transcript, 14 January 2022, p. 175.

(3) SPO Investigations

(a) Can the SPO provide further information as to any additional investigative steps, including whether any such steps can be completed by 1 April 2022.²⁵

(4) Defence Investigations and Next Steps

(a) Based on the SPO's estimates and the ongoing disclosure process, 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;

(c) Does the Defence envisage filing a pre-trial brief and related material under Rule 95(5) of the Rules and, if so, does it expect to be in a position to submit such a filing by 29 April 2022.

(5) Points of Agreement on Matters of Law and Fact

(a) Have the Parties finalised 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, if not, do the Parties expect to be in a position to finalise their discussions by 1 April 2022.²⁶

²⁵ KSC-BC-2020-04, Transcript, 14 January 2022, pp 176-178.

²⁶ KSC-BC-2020-04, Transcript, 14 January 2022, pp 180-181.

14. The Pre-Trial Judge further orders the SPO, Victims' Counsel and the Defence to file written submissions on any of the matters set out in paragraph 13 of the present order (as the case may be), as well as the topics discussed during the fifth status conference, any relevant matter not included in the agendas for the fifth and sixth status conferences, any difficulty related to the disclosure of evidentiary material, or any related matters by no later than Thursday, 17 February 2022 (SPO and Victims' Counsel) and Tuesday, 22 February 2022 (Defence).

IV. DISPOSITION

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

(a) **ORDERS** the SPO to submit a public redacted version of the Prosecution Submissions for Fifth Status Conference (F00127) or to indicate that this filing may be reclassified as public by no later than **Friday, 18 February 2022**;

(b) **DECIDES** to convene the sixth status conference in the presence of the SPO, the Defence and Victims' Counsel on **Friday, 4 March 2022, at 14:30 hours**; and

(c) **ORDERS** the SPO, Victims' Counsel and the Defence to file written submissions on the matters set out in paragraphs 13 and 14 of the present order (as the case may be) by **Thursday, 17 February 2022** (SPO and Victims' Counsel) and **Tuesday, 22 February 2022** (Defence).



Judge Nicolas Guillou

Pre-Trial Judge

Dated this Wednesday, 9 February 2022

At the Hague, the Netherlands.