

**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: 22 February 2022

Filing Party: Defence Counsel

Original Language: English

Classification: Public

**THE SPECIALIST PROSECUTOR**  
**v.**  
**PJETËR SHALA**

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**Submissions Pursuant to the Pre-Trial Judge's Order Dated 9 February 2022  
Concerning the Sixth Status Conference**

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**Specialist Prosecutor**  
Jack Smith

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

**Counsel for Victims**  
Simon Laws

## 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 9 February 2022.<sup>1</sup>

## II. SUBMISSIONS

2. On 9 February 2022, the Pre-Trial Judge decided to convene the Sixth Status Conference in this case on 4 March 2022 and instructed the parties to submit their position on various issues identified for consideration.<sup>2</sup>
3. On 17 February 2022, the Specialist Prosecutor’s Office (‘SPO’) filed its submissions for the Sixth Status Conference.<sup>3</sup>

### A. Disclosure and Translations

4. On 13 January 2022, the SPO disclosed Disclosure Package 28 under Rule 102(1)(b) of the Rules consisting of six items as well as Disclosure Package 29, consisting of 20 items released pursuant to Rule 103 of the Rules.<sup>4</sup>
5. On 17 January 2022, the SPO disclosed under Rule 102(3) of the Rules Disclosure Package 30, consisting of six partial translations into English of item no. 091275-091398.<sup>5</sup>
6. On 7 February 2022, the SPO released Disclosure Package 31 under Rule 102(1)(b) of the Rules, disclosing 10 items which included lesser redacted

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<sup>1</sup> KSC-BC-2020-04, F00140, Order Setting the Date for the Sixth Status Conference and for Submissions, 9 February 2022 (“Order of 9 February 2022”). All further references to filings in this Motion concern Case No. KSC-BC-2020-04 unless otherwise indicated.

<sup>2</sup> Order of 9 February 2022, paras. 15(b), 15(c).

<sup>3</sup> F00150, Prosecution submissions for sixth status conference, 17 February 2022 (confidential).

<sup>4</sup> Email to Defence Counsel by the SPO, 13 January 2022, at 8:25 pm; Email to Defence Counsel by the SPO, 13 January 2022, at 8:27 pm.

<sup>5</sup> Email to Defence Counsel by the SPO, 17 January 2022, at 12:44 pm.

versions of statements of W01984 and W04379 and three translations into Albanian of previously disclosed items.<sup>6</sup>

7. On 8 February 2022, the SPO disclosed Disclosure Package 32 under Rule 102(3) of the Rules, containing seven documents requested by the Defence, some of which carried redactions applied by the provider.<sup>7</sup>
8. On 11 February 2022, the Prosecution released Disclosure Package 33, disclosing 359 items under Rule 103 of the Rules.<sup>8</sup> With regard to the SPO's disclosure of Rule 103 material, the Defence takes note that the Prosecution's review of material in its possession for possible disclosure as exculpatory is expected to be finalized by the next status conference. The Defence reiterates that it is only after all such material has been disclosed and analysed that it will be in a position to make effective progress with the preparation of its case.
9. On 15 February 2022, the SPO informed the Defence of the creation of "witness entities" in Legal Workflow.<sup>9</sup> The Defence notes that these entities in their current form are of little use as they do not link the disclosed material with the proposed witnesses in question. This concern was raised *inter partes* and the SPO has undertaken to link (in Legal WorkFlow) the disclosed material with these entities. Completion of this process is vital for the ability of the Defence to prepare for trial.
10. On 17 February 2022, Disclosure Packages 34 and 35 were disclosed to the Defence under Rule 102(1)(b) of the Rules containing 4 items each.<sup>10</sup>

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<sup>6</sup> Email to Defence Counsel by the SPO, 7 February 2022, at 9:46 pm.

<sup>7</sup> Email to Defence Counsel by the SPO, 8 February 2022, at 5:17 pm.

<sup>8</sup> Email to Defence Counsel by the SPO, 11 February 2022, at 7:23 pm.

<sup>9</sup> Fifteen emails were sent to Defence Counsel by the SPO on 15 February 2022, between 8:45am and 8:58am concerning W04734, W04380, W01984, W04436, W04366, W01448, W04733, W04379, W04468, W04826, W03887, W04751, W04848, W04755 and W04754.

<sup>10</sup> Email to Defence Counsel by the SPO, 17 February 2022, at 12:38 pm; Email to Defence Counsel by the SPO, 17 February 2022, at 5:30 pm.

11. The Defence repeats its concerns about the sufficiency of the description of some of the items listed in the Prosecution's Rule 102(3) notice and notes that important material was only identified and/or disclosed following a number of requests to the SPO for additional information and/or disclosure. The Defence welcomes the SPO's readiness to consider *inter partes* specific requests for improved particulars on a case-by-case basis and notes its intention to seek additional information on particular items from the SPO.
12. The Defence notes that the parties are making efforts to resolve *inter partes* all issues arising related to disclosure, including disclosure of translations and audio and/or video recordings of interviews with witnesses.<sup>11</sup>
13. 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 the material disclosed under Rule 102 of the Rules.

## **B. Defence Investigations and Next Steps**

14. At the present stage, the Defence is unable to provide any information on the anticipated duration or status of its investigative activities. 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. Nonetheless, the Defence is planning to conduct its first field trip in the next few weeks.
15. 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

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<sup>11</sup> On 21 February 2022 the Defence requested from the SPO the Albanian translation of three documents (items numbered 102443-102471 RED, 02472-102482 RED and 057637-TR-ET Part 1-9 RED) and an English translation of another document (item numbered 0189-2599-0189-2785).

information on this matter once disclosure, review and analysis of the material disclosed in support of the Prosecution's case is complete.

16. 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 and relied upon in the Prosecution's Pre-Trial Brief, which was filed on 31 January 2022, before taking a position on these matters.<sup>12</sup>
17. The Defence confirms its intention to file a pre-trial brief in due course but reiterates that at present it is impossible to provide an indication as to when it will be in a position to do so. The Defence notes in this respect that important material for the Defence case is still being disclosed. For instance, it is indicative that on 17 February 2022 the Prosecution disclosed material under Rule 102(1)(b) of the Rules. The recent disclosures have a significant impact on the preparation of the defence case and the fact that the SPO's disclosure of exculpatory material is not yet complete highlights how premature it is at present for the Defence to commit to a date when it can definitively put forward a Defence case.
18. Lastly, the Defence would like to notify the Pre-Trial Judge and the SPO of its intention to raise a sensitive matter in closed session at the forthcoming status conference.<sup>13</sup>

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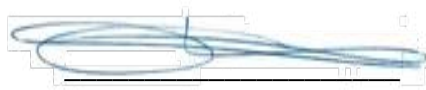
<sup>12</sup> F00136, Submission of the confidential redacted version of the Pre-Trial Brief, Witness List, and Exhibits List, 31 January 2022.

<sup>13</sup> See Transcript 14 January 2022 (confidential), p. 156, lines 10-13.

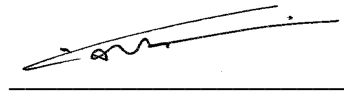
**C. Points of Agreement on Matters of Law and Fact**

19. The Defence confirms that fruitful discussions have taken place *inter partes* as to how to proceed on this matter. The Pre-Trial Judge will be informed of any progress made in this respect in due course.

Respectfully submitted,



**Jean-Louis Gilissen**  
**Specialist Defence Counsel**



**Hédi Aouini**  
**Defence Co-Counsel**

Wednesday, 22nd of February 2022

The Hague, the Netherlands

**Word count: 1263**