



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: 31 March 2022

Language: English

Classification: **Public**

Order Setting the Date for the Seventh 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 4 March 2022, the sixth status conference was held.⁸ At this status conference, the Pre-Trial Judge, *inter alia*, set the tentative date for transmitting the case file to the Trial Panel to 31 May 2022, and adopted a calendar for a number of outstanding matters in relation to the pre-trial phase of the present case.⁹

II. APPLICABLE LAW

6. Pursuant to Article 21(6) of the Law, all material and relevant evidence or facts in possession of the Specialist Prosecutor’s Office (“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.

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, F00140, Pre-Trial Judge, *Order Setting the Date for the Sixth Status Conference and for Submissions*, 9 February 2022, public (“9 February 2022 Order”), paras 12, 15(b). The first, second, third, fourth and fifth status conferences took place on 23 April 2021, 21 June 2021, 23 September 2021, 15 November 2021 and 14 January 2022 respectively.

⁹ KSC-BC-2020-04, Transcript, 4 March 2022, public, pp 242-243.

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 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.

10. Pursuant to Rule 98 of the Rules, after receiving the filings from the Specialist Prosecutor and the Defence pursuant to Rules 95(4) and (5) and 97 of the Rules, and within thirty (30) days of any final decision on preliminary motions, the Pre-Trial Judge shall transmit to the Trial Panel a complete case file.

III. DISCUSSION

11. Having considered the views expressed by the Parties and Victims' Counsel as to the date of the seventh status conference to be held in the present case,¹⁰ the Pre-Trial Judge convenes the seventh status conference on Thursday, 14 April 2022, at 9:30 hours.

12. The Pre-Trial Judge will ask the Parties to provide updates, if any, on the outstanding issues detailed in the agenda for the sixth status conference,¹¹ and their written and oral submissions in relation to those issues.¹² 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 indicate whether there remain any outstanding issues regarding the disclosure of materials pursuant to Rule 102(1)(b) of the Rules, with the exception of the materials subject to its request under Rule 102(2) of the Rules;¹³

(b) Can: (i) the Defence indicate whether it has requested further items from the SPO's notice pursuant to Rule 102(3) of the Rules containing partially revised descriptions and, if so, whether such items have been disclosed;¹⁴ (ii) the SPO

¹⁰ KSC-BC-2020-04, Transcript, 4 March 2022, public, p. 243.

¹¹ 9 February 2022 Order, para. 13.

¹² KSC-BC-2020-04, F00150, Specialist Prosecutor, *Prosecution Submissions for Sixth Status Conference*, 17 February 2022, confidential (a public redacted version was submitted on 21 February 2022, F00150/RED); F00153, Specialist Counsel, *Submissions Pursuant to the Pre-Trial Judge's Order Dated 9 February 2022 Concerning the Sixth Status Conference*, 22 February 2022, public ("Defence Submissions for Sixth Status Conference").

¹³ KSC-BC-2020-04, Transcript, 4 March 2022, public, pp. 194-200; F00169, Specialist Prosecutor, *Prosecution Request Pursuant to Rule 102(2) and to Amend its Witness and Exhibit Lists*, 25 March 2022, confidential (a public redacted version was submitted on 28 March 2022, F00169/RED).

¹⁴ KSC-BC-2020-04, F00167, Specialist Prosecutor, *Prosecution Rule 102(3) Notice Containing Partially Revised Descriptions*, 18 March 2022, public, with confidential annex 1.

indicate when the aforementioned items will be disclosed in case that has not been done so far; and (iii) the Parties indicate whether there are any other outstanding issues relating to material falling under Rule 102(3) of the Rules, with the exception of the SPO request to amend its notice pursuant to Rule 102(3) of the Rules;¹⁵

(c) Can the SPO indicate whether any exculpatory evidence remains in its custody, control or actual knowledge that must be disclosed to the Defence pursuant to Rule 103 of the Rules, with the exception of the materials that are the subject of a request for protective measures;¹⁶

(d) Has the SPO made progress in the disclosure process with respect to material that is subject to restrictions under Rule 107 of the Rules, with the exception of the aforementioned request to amend its notice pursuant to Rule 102(3) of the Rules;¹⁷

(e) Can the SPO indicate whether it is on track to complete all its pre-trial disclosure obligations by no later than 22 April 2022, with the exception of any material subject to any requests regarding protective measures;¹⁸

(f) 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 by no later than 22 April 2022;¹⁹

(g) Have the Parties made any progress regarding *inter partes* discussions on the creation of witness entities in Legal Workflow;²⁰

¹⁵ KSC-BC-2020-04, Transcript, 4 March 2022, public, pp. 203-211; F00170, Specialist Prosecutor, *Prosecution Request to Amend its Rule 102(3) Notice*, 25 March 2022, public.

¹⁶ KSC-BC-2020-04, Transcript, 4 March 2022, public, pp. 211-214.

¹⁷ KSC-BC-2020-04, Transcript, 4 March 2022, public, pp. 214-215.

¹⁸ KSC-BC-2020-04, Transcript, 4 March 2022, public, p. 242.

¹⁹ Defence Submissions for Sixth Status Conference, para. 13.

²⁰ KSC-BC-2020-04, Transcript, 4 March 2022, public, pp. 200-203.

(h) Are the Parties facing or foreseeing any difficulties related to the disclosure process defined in the Framework Decision.

(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, and/or have any difficulties been encountered in relation to such matters.²¹

(3) SPO Investigations

(a) Can the SPO provide further information as to any additional investigative steps and when any such steps will be concluded.²²

(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;²³

(b) Can the Defence indicate whether or not it intends 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;²⁴

²¹ KSC-BC-2020-04, Transcript, 4 March 2022, public, pp. 215-217.

²² KSC-BC-2020-04, Transcript, 4 March 2022, public, pp. 217-225.

²³ KSC-BC-2020-04, Transcript, 4 March 2022, public, pp. 225-229.

²⁴ KSC-BC-2020-04, Transcript, 4 March 2022, public, p. 227.

(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 do so given the tentative date for transmitting the case file to the Trial Panel.²⁵

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

(a) Have the Parties finalised their *inter partes* discussions regarding the possibility of submitting points of agreement on law and/or fact pursuant to Rules 95(3) and 156 of the Rules, or can they confirm that no such agreement will be reached before the envisaged date for transmitting the case file.²⁶

13. 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 12 of the present order (as the case may be), as well as the topics discussed during the sixth status conference, any relevant matter not included in the agendas for the sixth and seventh status conferences, any difficulty related to the disclosure of evidentiary material, or any related matters by no later than Monday, 11 April 2022 (SPO and Victims' Counsel) and Tuesday, 12 April 2022 (Defence).

²⁵ KSC-BC-2020-04, Transcript, 4 March 2022, public, p. 227.

²⁶ KSC-BC-2020-04, Transcript, 4 March 2022, public, pp. 229-232, 243.

IV. DISPOSITION

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

(a) **DECIDES** to convene the seventh status conference in the presence of the SPO, the Defence and Victims' Counsel on **Thursday, 14 April 2022, at 9:30 hours**; and

(b) **ORDERS** the SPO, Victims' Counsel and the Defence to file written submissions on the matters set out in paragraphs 12 and/or 13 of the present order by **Monday, 11 April 2022, at 16:00 hours** (SPO and Victims' Counsel) and **Tuesday, 12 April 2022, at 16:00 hours** (Defence).



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Thursday, 31 March 2022

At the Hague, the Netherlands.