

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 April 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 31 March 2022
Concerning the Seventh Status Conference

Specialist Prosecutor
Jack Smith

Counsel for the Accused
Jean-Louis Gilissen
Hédi Aouini

Counsel for Victims
Simon Laws QC
Maria Radziejowska

I. INTRODUCTION

1. Pursuant to the order issued by the Pre-Trial Judge on 31 March 2022,¹ the Defence for Mr Pjetër Shala ('Defence' and 'Accused', respectively) presents its submissions on the matters identified by the Pre-Trial Judge.

II. SUBMISSIONS

2. On 31 March 2022, the Pre-Trial Judge decided to convene the Seventh Status Conference in this case on 14 April 2022 and instructed the parties to file written submissions on the matters identified for consideration.²
3. On 11 April 2022, the Specialist Prosecutor's Office ('SPO') filed its submissions for the Seventh Status Conference.³

A. Disclosure and Translations

4. On 21 February 2022, the Defence requested the SPO to provide an Albanian translation of items numbered 102443-102471 RED, 102472-102482 RED, and 057637-TR-ET Parts 1 - 9 RED, and an English translation of the exculpatory parts of item no. 0189-2599-0189-2785, as those were identified by the Defence.⁴ On 25 February 2022, the SPO informed the Defence that it will be providing the Defence with Albanian translations of items numbered 102443-102471 RED, 102472-102482 RED, and 057637-TR-ET Parts 1 - 9 RED and that extracts of item numbered 0189-2599-0189-2785 are currently being translated into English and

¹ KSC-BC-2020-04, F00172, Order Setting the Date for the Seventh Status Conference and for Submissions, 31 March 2022 ('Order of 31 March 2022'). All further references to filings in this Motion concern Case No. KSC-BC-2020-04 unless otherwise indicated.

² Order of 31 March 2022, paras. 12, 13 and 14(a)(b). *See also* Transcript of 4 March 2022, p. 243.

³ F00181, Prosecution submissions for seventh status conference with strictly confidential and *ex parte* annex, 11 April 2022.

⁴ Email to the SPO by the Defence, 21 February 2022, at 2:47 pm.

will be disclosed as soon as they are available.⁵ To date, these translations have not been disclosed.

5. On 25 February 2022, the SPO released to the Defence Disclosure Package 37 under Rule 103 of the Rules consisting of 21 items.⁶
6. On 3 March 2022, the SPO released to the Defence Disclosure Package 38, disclosing 111 items pursuant to Rule 103 of the Rules.⁷
7. On 4 March 2022, Disclosure Package 39 was disclosed under Rule 103 of the Rules, consisting of 25 items that had been listed in the SPO's Rule 102(3) Notice.⁸
8. On 7 March 2022, the Defence requested the SPO to disclose an Albanian translation of items numbered 083789-TR-ET Parts 1 - 10 RED and 7004541-7004553.⁹ On 8 March 2022, the SPO informed the Defence that it does not have Albanian translations of these items.¹⁰
9. On 10 March 2022, the SPO informed the Defence that associated exhibits and prior statements of five witnesses were linked to their corresponding witness entities in Legal Workflow.¹¹ The Defence notes that these witness entities concern only five out of fifteen witnesses for which witness entities were

⁵ Email to Defence Counsel by the SPO, 25 February 2022, at 9:57 am.

⁶ Email to Defence Counsel by the SPO, 25 February 2022, at 2:07 pm.

⁷ Email to Defence Counsel by the SPO, 3 March 2022, at 4:57 pm; email to Defence Counsel by the SPO, 4 March 2022, at 5:25 pm.

⁸ Email to Defence Counsel by the SPO, 4 March 2022, at 11:06 am; email to Defence Counsel by the SPO, 4 March 2022, at 5:25 pm.

⁹ Email to the SPO by the Defence, 7 March 2022, at 12:10 pm.

¹⁰ Email to Defence Counsel by the SPO, 8 March 2022, at 6:21 pm.

¹¹ Email to Defence Counsel by the SPO, 10 March 2022, at 3:20 pm *concerning* W03887, W04751, W04848, W04468, and W04755.

created in Legal Workflow on 15 February 2022.¹² The Defence reiterates that complete disclosure of information related to all witness entities in Legal Workflow is essential for its ability to prepare for trial.

10. On 14 March 2022, the SPO released Disclosure Package 40, disclosing to the Defence 109 items pursuant to Rule 102(3) of the Rules, which had been requested by the Defence and were subject to protective measures.¹³ The SPO informed the Defence that two pages from one item were not disclosed because they remain subject to protective measures in another case.¹⁴
11. On 17 March 2022, the Defence requested the SPO to disclose an Albanian translation of item numbered 063317-TR-ET Parts 1-3. On the same date, the SPO responded that it does not have an Albanian translation of this item.¹⁵
12. On 18 March 2022, in response to requests made by the Defence to this effect the SPO filed a revised version of its Rule 102(3) notice, which includes 371 revised descriptions of the items listed in the notice.
13. On 25 March 2022, the SPO released Disclosure Package 41 to the Defence that, due to technical issues, did not contain any documents. On the same day, Disclosure Package 42 was released that contained one document, which was disclosed pursuant to Rule 103 of the Rules.¹⁶
14. On 25 March 2022, the SPO filed a request to amend its Rule 102(3) notice seeking leave to add 15 documents as well as photographs of eight proposed

¹² See F00153, Submissions Pursuant to the Pre-Trial Judge's Order Dated 9 February 2022 Concerning the Sixth Status Conference, 22 February 2022, para. 9 concerning W04734, W04380, W01984, W04436, W04366, W01448, W04733, W04379, W04468, W04826, W03887, W04751, W04848, W04755, and W04754.

¹³ Email to Defence Counsel by the SPO, 14 March 2022, at 10:35 pm.

¹⁴ Email to Defence Counsel by the SPO, 18 March 2022, at 3:45 pm (concerning SITF00372853-00372856).

¹⁵ Email to the SPO by the Defence, 17 March 2022, at 1:43 pm; Email to Defence by the SPO, 17 March 2022, at 5:36 pm.

¹⁶ Email to Defence Counsel by the SPO, 25 March 2022, at 8:18 pm.

witnesses which were taken from the video-recordings of their interviews upon a request to this effect by the Defence.¹⁷ The Defence did not oppose the Prosecution's request but emphasized, in response, that it will need to be allowed sufficient time to review the Prosecution's disclosures before it can be expected to be trial ready.¹⁸

15. On 28 March 2022, the SPO released Disclosure Package 43 to the Defence by which it disclosed 19 items under Rule 102(1)(b) of the Rules, including revised interview transcripts of W04734.¹⁹
16. On 29 March 2022, the SPO released to the Defence Disclosure Package 44 pursuant to Rule 103, which consisted of a translation of the document disclosed in Disclosure Package 42.²⁰
17. On 30 March 2022, the SPO released to the Defence Disclosure Package 45 pursuant to Rule 102(3) of the Rules, which contained three items disclosed further to clarifications submitted by the SPO to the Pre-Trial Judge regarding protective measures that had been sought by the SPO.²¹
18. On 1 April 2022, the Defence requested disclosure of 580 items listed in the SPO's revised Rule 102(3) notice.²²
19. The parties continue to make efforts to resolve issues related to translations and audio and/or video recordings of witnesses' interviews *inter partes*.²³

¹⁷ F00170, Prosecution request to amend its Rule 102(3) notice, 25 March 2022, paras. 7, 8 and 10.

¹⁸ F00176, Response to the 'Prosecution request to amend its Rule 102(3) notice', 7 April 2022.

¹⁹ Email to Defence Counsel by the SPO, 28 March 2022, at 2:59 pm.

²⁰ Email to Defence Counsel by the SPO, 30 March 2022, at 2:38 pm.

²¹ Email to Defence Counsel by the SPO, 30 March 2022, at 5:03 pm. *See also* F00166, Confidential Redacted Version of 'Submissions pursuant to Filings KSC-BC-2020-04/F00159 and KSC-BC-2020-04/F00161', 18 March 2022 (confidential).

²² Email to the SPO by the Defence, 1 April 2022, at 4:33 pm.

²³ *See, for instance*, the requests for translations of items numbered 102443-102471 RED, 02472-102482 RED and 057637-TR-ET Part 1-9 RED, and 0189-2599-0189-2785.

20. 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. However, due to the fact that the Prosecution is continuing its efforts to discharge its disclosure obligations and that a substantial number of items have been disclosed in significantly redacted form, the Defence at present is unable to take a definitive position regarding its intention to object and expects to be able to do so after the Prosecution's disclosures are completed.

B. Defence Investigations and Next Steps

21. The Defence is in the process of carrying out its investigations. Due to the significant delays in the disclosure process, the Defence is unable to indicate the anticipated duration of its investigative activities. In addition, the substantial redactions in significant disclosed material severely impede the Defence investigations. The Defence will be in a better position to inform the Pre-Trial Judge of the duration of its investigation plan after the SPO's disclosures (and their review by the Defence) has been completed. For instance, it is essential for the Defence that it receives the information requested as to the witness entities in Legal Workflow. In any event, the Defence is concerned that it will be unable to complete its investigations before the start of trial.
22. The Defence is unable at present to confirm whether it will make any request concerning unique investigative opportunities pursuant to Rule 99(1) of the Rules or indicate whether it will provide notice of an alibi and/or any other ground excluding criminal responsibility pursuant to Rule 95(5) of the Rules. The Defence needs to review the evidentiary material disclosed by the Prosecution before taking a position on these matters.
23. The Defence confirms its intention to file a pre-trial brief in due course. However it stresses the significant volume of important material recently

disclosed and that the Prosecution's disclosures are continuing. It is indicative that, from 25 February 2022 until 31 March 2022, the Prosecution has disclosed 290 items, including 20 items disclosed under Rule 102(1)(b) of the Rules. As a result of the revisions to the Prosecution's Rule 102(3) notice, the Defence has requested additionally 580 items.

24. The Defence also notes that additional material might be disclosed by the Prosecution should the latter's request dated 25 March 2022 to amend its witness and exhibit lists be granted.²⁴
25. For these reasons, the Defence notes that, at present, it is impossible to indicate when it will be in a position to file its pre-trial brief and in any event it does not anticipate to be able to do so prior to mid-September 2022.
26. In light of these circumstances, the Defence invites the Pre-Trial Judge to consider revising his decision to transmit the case-file to the Trial Panel by 31 May 2022 so that the Defence is afforded sufficient time to prepare its case prior to the start of trial.²⁵

C. Points of Agreement on Matters of Law and Fact

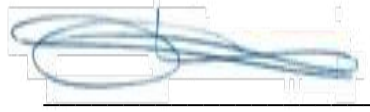
27. The Defence confirms that *inter partes* discussions on a first set of proposed agreed facts by the SPO have resulted in an agreement as to one point as indeed was indicated in the Prosecution's submissions dated 8 April 2022.²⁶ The Pre-Trial Judge will be informed of any further progress made in this respect in due course.

²⁴ F00169, Prosecution request pursuant to Rule 102(2) and to amend its witness and exhibit lists, 25 March 2022 (confidential).

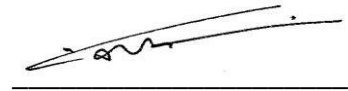
²⁵ Transcript 4 March 2022 (confidential), p. 242, lines 9-12.

²⁶ F00178, Prosecution submissions on points of agreement on matters of fact with Confidential Annex, 8 April 2022.

Respectfully submitted,



Jean-Louis Gilissen
Specialist Defence Counsel



Hédi Aouini
Defence Co-Counsel

Tuesday, 12th April 2022
The Hague, the Netherlands

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