



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-BC-2020-04**
The Specialist Prosecutor v. Pjetër Shala

Before: **Pre-Trial Judge**
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 20 April 2021

Language: English

Classification: **Public**

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

Specialist Prosecutor
Jack Smith

Counsel for the Accused
Jean-Louis Gilissen

THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(13) of the Law 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 12 June 2020, the Pre-Trial Judge confirmed the indictment against Pjetër Shala ("Mr Shala" or "Accused").²
2. On 19 June 2020, the Specialist Prosecutor's Office ("SPO") submitted the Confirmed Indictment,³ with redactions as authorised by the Pre-Trial Judge.⁴
3. On 16 March 2021, Mr Shala was arrested in the Kingdom of Belgium ("Belgium") by Belgian Police in the presence of representatives of the SPO.⁵
4. On 15 April 2021, upon conclusion of judicial proceedings in Belgium, Mr Shala was transferred to the detention facilities of the Specialist Chambers ("SC") in The Hague, the Netherlands.⁶
5. On 15 April 2021, pending completion of the indigence assessment, the Registrar conditionally assigned Jean-Louis Gilissen as Counsel for Mr Shala, in

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* ("Confirmation Decision"), 12 June 2020, strictly confidential and *ex parte*.

³ KSC-BC-2020-04, F00010/A02, Specialist Prosecutor, *Indictment*, 19 June 2020, strictly confidential and *ex parte*.

⁴ Confirmation Decision, para. 140(c).

⁵ KSC-BC-2020-04, F00013, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 16 March 2021, strictly confidential and *ex parte*.

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, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*, para. 2.

accordance with Section 14(3) of the Directive on Counsel and Regulation 11 of the Legal Aid Regulations.⁷

6. On 19 April 2021, the initial appearance of Mr Shala took place.⁸ During the hearing, the Accused stated that he understands and speaks Albanian.⁹ Moreover, the Defence indicated that it would be available for the first status conference to be held on Friday, 23 April 2021, at 11:00 hours.¹⁰

II. APPLICABLE LAW

A. STATUS CONFERENCE

7. Pursuant to Rule 96(1) of the Rules, the Pre-Trial Judge shall convene a status conference as soon as possible after the initial appearance of the Accused in order to, *inter alia*: (i) organise exchanges between the Parties and, where applicable, Victims' Counsel so as to ensure expeditious preparation for trial; and (ii) take steps to ensure that all necessary preparations are being conducted by the Parties in a timely and diligent fashion.

B. DISCLOSURE

8. 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

⁷ 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, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*, para. 3.

⁸ KSC-BC-2020-04, Draft Transcript, 19 April 2021 ("19 April 2021 Transcript"), public.

⁹ 19 April 2021 Transcript, p. 4, lines 7-14.

¹⁰ 19 April 2021 Transcript, p. 12, line 23 to p. 13, line 18.

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.

9. Pursuant to Rule 102(1)(a) of the Rules, and subject to Rules 105, 106, 107, and 108 of the Rules, the SPO shall make available to the Defence and, where applicable, Victims' Counsel, as soon as possible and at least within 30 days of the initial appearance, the supporting material to the Confirmed Indictment as well as any statement obtained from the Accused.

10. Pursuant to Rule 102(1)(b) of the Rules, within a time limit set by the Pre-Trial Judge, and no later than 30 days prior to the opening of the Specialist Prosecutor's case, the SPO shall make available to the Defence the following material: (i) the statements of all witnesses whom the SPO intends to call to testify at trial, in a language the Accused understands and speaks; (ii) all other witness statements, expert reports, depositions, or transcripts that the SPO intends to present at trial; and (iii) the exhibits that the SPO intends to present at trial.

11. Pursuant to Rule 102(2) and (4) of the Rules, any statements of additional SPO witnesses, which have not been disclosed within the 30-day time limit prior to the opening of the Specialist Prosecutor's case and whom the SPO intends to call to testify at trial, shall be made available to the Defence as soon as possible, in a language the Accused understands and speaks, and shall be accompanied by reasons for the late disclosure. Such disclosure shall be finalised during the pre-trial stage.

12. Pursuant to Rule 102(3) of the Rules, the SPO shall disclose to the Defence, upon request and without delay, any statements, documents, and photographs and allow inspection of other tangible objects in the custody or control of the SPO, which are deemed by the Defence to be material to its preparation, or were obtained from or belonged to the Accused.

13. Pursuant to Rule 103 of the Rules, and subject to Rules 107 and 108 of the Rules, the SPO shall immediately disclose to the Defence any information as soon as it is in

its custody, control or actual knowledge, which may reasonably suggest the innocence or mitigate the guilt of the Accused or affect the credibility or reliability of the SPO's evidence.

14. Pursuant to Rule 107(1)-(2) of the Rules, the SPO shall apply confidentially and *ex parte* to the Panel to be relieved in whole or in part of its obligation under Rules 102 and 103 of the Rules to disclose initial material if the information, of which it has custody or control, has been provided on a confidential basis and solely for the purpose of generating new evidence and for which it has not received the information provider's consent to disclose.

C. REDACTIONS

15. Pursuant to Article 23(1) of the Law and Rule 80(1) of the Rules, a Panel may order appropriate measures for the protection, safety, physical and psychological well-being, dignity and privacy of witnesses, victims participating in the proceedings, as well as other persons at risk on account of testimony given by witnesses.

16. Pursuant to Rule 80(4)(a)(i)-(iii) and (d) of the Rules, such measures may include the redaction of names and other identifying information in order to prevent disclosure to the Accused and/or the public, where necessary, of the identity and/or whereabouts of a witness, a victim participating in the proceedings or of a person related to or associated with them.

17. Pursuant to Rule 108(1) of the Rules, the SPO may apply confidentially and *ex parte* to the Panel to withhold information in whole or in part where the disclosure of such information may, *inter alia*, prejudice ongoing or future investigations. Pursuant to Rule 108(6) of the Rules, the same applies *mutatis mutandis* to the Defence.

III. DISCUSSION

18. In light of the initial appearance of the Accused, the process of disclosure of evidence and material by the SPO to the Defence is expected to start promptly, in accordance with the above-mentioned legal framework and in a manner and time frame to be regulated by the Pre-Trial Judge. In order to facilitate this disclosure process for the benefit of the Parties, and in particular the Defence, the Pre-Trial Judge shall convene a status conference, as prescribed by Rule 96(1) of the Rules, in order to receive submissions regarding: (i) the items listed in the annex to this order; (ii) the redaction regime to be adopted in the present proceedings, as further specified in paragraph 20, below; and (iii) any other related relevant topic not covered by the annexed list of items, as deemed necessary by the Parties. Having considered the submissions of the Defence during the initial appearances, the Pre-Trial Judge decides to hold the status conference on Friday, 23 April 2021.

19. Furthermore, the Parties are invited to make submissions, in writing, on any of the items listed in the annex to this order or other related relevant topics they deem necessary, if they so wish. Where information cannot be shared with either Party for confidentiality and protection purposes, submissions may be made in writing *ex parte*. The information provided by the Parties will assist the Pre-Trial Judge when formulating the framework decision on disclosure of evidence and related matters, including time limits for disclosure.

20. The Pre-Trial Judge also considers it necessary to request observations from the Parties, in writing, regarding the regime of redacting information and evidence to be applied in this case along the lines set out in the “Framework Decision on Disclosure of Evidence and Related Matters” in KSC-BC-2020-07.¹¹ These observations will inform the Pre-Trial Judge when adopting a redaction regime that will ensure

¹¹ KSC-2020-07, F00104, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 22 January 2021, public, paras 68-84.

efficiency of the disclosure process by striking a balance between the duty to protect the interests of victims and witnesses while upholding the rights of the Accused under Article 21 of the Law.

21. Furthermore, considering that the Accused is charged with four different crimes, involving three modes of liability, the disclosure of evidence shall proceed in an organised and efficient manner, making full use of the designated and recently updated electronic system for disclosure available.¹² An organised disclosure process will allow the Defence to prepare properly and expeditiously for the upcoming proceedings, increase the productivity and efficiency of the proceedings and, ultimately, enable the Trial Panel to receive the evidence in an orderly fashion. To this end, the Pre-Trial Judge considers it necessary to request observations from the Parties on whether: (i) the SPO, when disclosing batches of Rule 102(1)(a) supporting material and Rule 102(1)(b) evidence; and (ii) the Defence, when disclosing batches of material falling under Rule 104(1), (5), and (6) of the Rules, should the Defence choose to disclose any, can adopt the case-specific sub-categorisation in Legal Workflow, including the following information: (i) contextual elements: “war crimes”; (ii) underlying crimes: “count 1”, “count 2”, “count 3”, “count 4”, “all”; (iii) location: “Kukës”; (iv) alleged conduct of the accused: “direct commission”, “JCEI”, “JCEII”, “JCEIII”, “aiding and abetting”, “all”; (v) Accused: “Pjetër Shala”.¹³ The Parties are also invited to make any proposals as to further sub-categories to be added, should they consider this necessary.

22. It is recalled that, while the Accused has the right to be present in person, pursuant to Rule 96(2) of the Rules, considering the technical nature of the topics to

¹² See Rule 109(a) of the Rules; Court Management Unit, *Kosovo Specialist Chambers Legal Workflow User Guide*, 15 April 2021, *limité*, available at <<https://kosmos.scp-ks.org/JSD/CMU/Documents/20210415-KSCLW-UserGuide-v1.1-LIMITE.pdf>>.

¹³ See, similarly, KSC-BC_2020-06, F00218, Pre-Trial Judge, *Decision on Categorisation of Evidence Under Rule 109(c) and Related Matters*, 12 March 2021, public, paras 19-20. See also point 7 in the Annex to this scheduling order.

be discussed, the status conference: (i) may be attended by the Accused with Counsel participating via video-conference; (ii) may be attended by Counsel, with the Accused participating via video-conference; or (iii) may take place in the Accused's absence, with Counsel present or participating via video-conference. These arrangements, however, necessitate the written consent of the Accused, after having received advice from his Counsel, in accordance with Rule 96(2) of the Rules.¹⁴

23. Should Counsel wish to attend any of the upcoming status conferences in this case via video-conference, he shall comply with the requirements of Rule 96(2) of the Rules and 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.

IV. DISPOSITION

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

- a. **DECIDES** to convene a status conference in the presence of the SPO and the Defence, in line with paragraph 18 above, on **Friday, 23 April 2021, at 11:00 hours**; and
- b. **REQUESTS** the SPO and the Defence to provide written submissions on:
(i) the items listed in the agenda for the status conference annexed to the present order; (ii) the redaction regime to be applied in the present proceedings; and/or (iii) other related relevant topics deemed necessary, by **Thursday, 22 April 2021, at 12:00 hours**.

¹⁴ 19 April 2021 Transcript, p. 12, lines 8-22.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Tuesday, 20 April 2021
At The Hague, the Netherlands.

Annex 1 to
Order Setting the Date for the First Status Conference and for Submissions

Public

Agenda for the Status Conference and/or Written Submissions

Information to be provided by the Specialist Prosecutor's Office ("SPO") and the Defence, as the case may be:

1. General Questions:

- a) Is the SPO's investigation in this case still ongoing and, if so, whether and how this will impact the speedy conduct of the proceedings;
- b) What is the overall amount of evidence that the SPO is currently in possession of and intends to use for the purpose of these proceedings;
- c) How many witnesses did the SPO rely upon for the purposes of the Confirmed Indictment and does it intend to rely upon them at trial; and how many witnesses does the SPO intend to add to the list of witnesses for the purpose of trial;
- d) If the Defence wishes to contribute: at this stage, and without prejudice to the Accused's rights under the Law, whether the Defence foresees to investigate and approximately how much time it will require to conclude its investigative activities; and
- e) If the Defence wishes to contribute: at this stage, and without prejudice to the Accused's rights under the Law, whether the Defence can indicate if it will provide notice of alibi or any other grounds excluding criminal responsibility.

2. Rule 102(1)(a) Material (Supporting Material to the Confirmed Indictment)

- a) The overall amount of such material, including a breakdown thereof (number of witness statements, statements obtained from the Accused, transcripts, reports, other documents, audio/video material, photographs, objects),

including the total number of pages and the length of any audio/video material, where applicable;

- b) Whether translations into Albanian of witness statements whom the SPO intends to call to testify at trial have been finalised or, if in progress, when such translations are expected to be completed;
- c) Whether the Rule 102(1)(a) material and the Detailed Outline require redactions; and
- d) Whether the SPO would be prepared to disclose to the Defence parts of the material falling under this provision ahead of the 30-day deadline provided for in Rule 102(1)(a) of the Rules.

3. Rule 102(1)(b) Material (Additional Material Intended for Use at Trial)

- a) An indication as to whether the SPO intends to disclose, in addition to material falling under Rule 102(1)(a) of the Rules, material falling under Rule 102(1)(b) of the Rules, including:
 - statements of witnesses whom the SPO intends to call to testify at trial, including whether their translations into Albanian have been finalised or, if in progress, when such translations are expected to be completed;
 - other witness statements, expert reports, depositions, or transcripts that the SPO intends to present at trial; and
 - exhibits that the SPO intends to present at trial.
- b) If the SPO intends to disclose such material, an indication of the estimated amount and type thereof, including the number of pages and the length of any audio/video material, where applicable;

- c) Whether the Rule 102(1)(b) material will require redactions;
- d) When the SPO would be prepared to disclose to the Defence the material falling under this provision; and
- e) Whether, in order for the Defence to be able to expeditiously prepare for trial, the SPO can endeavour to disclose all documents and material referred to in witness statements, taken either by the SPO or another entity, simultaneously with said statements, as well as to disclose witness statements and their respective translations in the same disclosure batch.

4. Rule 102(3) Material (Evidence Material to Defence Preparation, Obtained from or Belonging to the Accused)

- a) An indication as to whether the SPO intends to make available to the Defence any material in its custody or control falling under Rule 102(3) of the Rules, including any statements, documents, photographs, or other tangible objects which may be deemed by the Defence to be material to its preparation, or were obtained from or belonging to the Accused;
- b) If the SPO has such material in its custody or control, an indication of the type and estimated amount thereof, including the number of pages and the length of any audio/video material, where applicable;
- c) Whether Rule 102(3) material will require redactions; and
- d) When the SPO would be prepared to provide detailed notice of such material to the Defence.

5. Rule 103 Material (Exculpatory Evidence)

- a) An indication of the amount and type of exculpatory material within the meaning of Rule 103 of the Rules in the custody, control or actual knowledge of the SPO to date, and a breakdown thereof (number of witness statements, transcripts, reports, other documents, audio/video material, photographs, objects), including the total number of pages and the length of any audio/video material, where applicable; and
- b) If the SPO possesses such material, whether redactions will be required prior to immediate disclosure.

6. Rule 107 Material (Protected Material)

- a) An indication whether the SPO has custody or control over material that it intends to tender into evidence which has been provided on a confidential basis and solely for the purpose of generating new evidence, including an indication of the estimated amount and type thereof, including the number of pages and the length of any audio/video material, where applicable;
- b) In case the SPO intends to disclose such material, whether the material falls under Rules 102(2) and/or 103 of the Rules;
- c) An indication whether and for which material the SPO intends to seek the consent of information providers and when receipt of such consent can be expected; whether the SPO has already taken steps to obtain the consent of the information providers to disclose such material or whether such steps are foreseen in the near future;

- d) An indication whether the SPO intends to apply to the Pre-Trial Judge to be relieved in whole or in part of its obligation under Rules 102 and/or 103 of the Rules to disclose the initial material;
- e) An indication whether, if such material is to be disclosed, redactions will be required; and
- f) An indication whether, if such material cannot be disclosed, other counterbalancing measures pursuant to Rule 108(2) of the Rules will be requested, including which type of material may be affected thereby.

7. Procedure for Disclosure

- a) Whether the Parties can apply, in addition to the generic categories set out in Rule 109(c) of the Rules,¹ case-specific categorisation in Legal Workflow for material falling under Rule 102(1)(a) and (b) and Rule 104(1), (5) and (6) of the Rules at the time of disclosure of each batch of such material, in accordance with the following categories: (i) contextual elements: “war crimes”; (ii) underlying crimes: “count 1”, “count 2”, “count 3”, “count 4”, “all”; (iii) location: “Kukës”; (iv) alleged conduct of the Accused: “direct commission”, “JCEI”, “JCEII”, “JCEIII”, “aiding and abetting”, “all”; (v) Accused: “Pjetër Shala”;
- b) Whether the Parties wish to make any proposals as to further sub-categories to be added, in addition to those set out under point (a) above, should they consider this necessary;
- c) Whether the Parties can agree on a model consolidated disclosure chart that satisfies the requirements of Rule 109(c) of the Rules and includes the

¹ Underlying crimes, contextual elements of the crimes, alleged conduct of the Accused, evidence to be presented by the Specialist Prosecutor.

aforementioned case-specific categories to be discussed at the Status Conference; and

- d) Whether the Defence agrees to be provided with this consolidated disclosure chart at the time the SPO Pre-Trial Brief is submitted; by analogy, whether the SPO agrees to be provided with this consolidated chart at the time of filing of the Defence Pre-Trial Brief.