



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 27 July 2022

Language: English

Classification: Public

Public Redacted Version of

'Prosecution request pursuant to Rule 102(2), to amend its witness and exhibit lists, and for protective measures', KSC-BC-2020-04/F00225, filed on 23 June 2022

Specialist Prosecutor

Jack Smith

Counsel for Pjetër Shala

Jean-Louis Gilissen

Counsel for Victims

Simon Laws

I. INTRODUCTION

1. Pursuant to Rule 102(2) of the Rules¹ and having obtained the necessary authorisation for variation of protective measures,² the Specialist Prosecutor's Office ('SPO') hereby seeks leave to disclose the transcripts of its interview with W04305, [REDACTED]. In addition, the SPO requests authorisation to amend its Rule 95(4) witness and exhibit lists so as to include W04305 and these related materials. For reasons of efficiency, the SPO includes an in-court protective measures request for W04305 in this filing, in the event its request to add the witness is granted.
2. The SPO is seeking the addition of W04305 at this time in light, in particular, of the evidence provided, [REDACTED]. As outlined below, (i) the SPO only recently received third-party authorisations necessary to making this application, (ii) the evidence in question is relevant to the case and would contribute to the establishment of the truth, (iii) the SPO has been diligent in providing notice of this evidence, and (iv) no undue prejudice to the Defence would arise.

II. PROCEDURAL BACKGROUND

3. On 11 January 2022, the SPO filed its submissions for the fifth status conference, in which it informed the Pre-Trial Judge that it needed to carry out some limited additional investigative steps.³ At the status conference of 14 January 2022, the SPO explained that these further investigations had become necessary [REDACTED]. These investigations involved interviewing [REDACTED].⁴
4. On [REDACTED], the SPO interviewed W04276, W04880, and W04881. On [REDACTED], it interviewed W04882.

¹ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD0-3/Rev3/2020, 2 June 2020 ('Rules'). All references to Rule or Rules herein refer to the Rules, unless otherwise specified.

² [REDACTED].

³ Prosecution submissions for fifth status conference, KSC-BC-2020-04/F00127, 11 January 2022, para. 10.

⁴ Confidential version of the Transcript of Case 04 Status Conference, 14 January 2022, p.176.

5. On 11 April 2022, the SPO informed the Pre-Trial Judge that, as a result of recently completed investigations, it would be requesting leave to disclose the evidence of an additional witness. It also informed the Pre-Trial Judge that in order to do so, it would first need to obtain variation of applicable protective measures from a third-party entity.⁵ On 26 April 2022, the SPO filed [REDACTED].
6. On 30 May 2022, the Pre-Trial Judge authorised the SPO to disclose the evidence of W04276, W04880, W04881, and W04882 and to amend its witness and exhibit list to include these witnesses.⁶ On 10 June 2022, the SPO submitted its amended witness and exhibit lists.⁷
7. On 20 June 2022, [REDACTED],⁸ [REDACTED].

III. SUBMISSIONS

A. TIMING OF THE REQUEST

8. The necessity of adding W04305 as a witness in this case became apparent after the recent interviews of W04276, W04880, W04881, and W04882, [REDACTED]. [REDACTED].⁹ W04305 is in a position to further elucidate [REDACTED].
9. After concluding the interviews [REDACTED], the SPO promptly informed the Pre-Trial Judge of its intention to file a Rule 102(2) request to disclose W04305's evidence, and took steps to obtain the necessary authorisation from [REDACTED]. As soon as it received the authorisation, it filed the present request.

B. DISCLOSURE OF ITEMS FALLING UNDER RULE 102(2)

⁵ Prosecution submissions for seventh status conference with strictly confidential and *ex parte* annex, KSC-BC-2020-04/F00181, 11 April 2022, paras 15-16.

⁶ Decision on Specialist Prosecutor's Rule 102(2) Request, KSC-BC-2020-04/F00205.

⁷ Submission of amended witness and exhibit lists with strictly confidential and *ex parte* Annexes 1-2, KSC-BC-2020-04/F00216, 10 June 2022.

⁸ [REDACTED].

⁹ [REDACTED].

10. Pursuant to Rule 102(2), the SPO hereby seeks leave to disclose the transcripts of the interview conducted by the SPO on [REDACTED] with W04305, [REDACTED], [REDACTED].
11. W04305 [REDACTED]. [REDACTED]. The SPO is also in possession of [REDACTED]. While the SPO requests authorisation to disclose all of these materials to provide the Defence with a complete record and pursuant to its obligations under Rule 102, the information relevant to KSC-BC-2020-04 ('Case 04') is [REDACTED].
12. This evidence concerns [REDACTED].¹⁰ This evidence provides context and corroboration to [REDACTED], [REDACTED], and [REDACTED].
13. The addition of W04305 to the witness list, and disclosure of materials related to him, will not cause any undue prejudice to the Defence noting that: (i) the volume of materials sought to be added, and in particular the relevant aspects thereof, are limited; (ii) the information in question is corroborative of facts and allegations already known to the Defence¹¹ and does not seek to amend or expand the charges in the case; and (iii) the SPO is making this request in a timely manner, at the earliest opportunity following necessary variations of protective measures and well in advance of transfer of the case to the Trial Panel.
14. W04305's evidence will benefit the Trial Panel's understanding of [REDACTED]. Considering [REDACTED], W04305's evidence will be valuable for the Trial Panel to establish the truth in this case.

C. REQUEST TO AMEND THE WITNESS AND EXHIBIT LISTS UNDER RULE 95(4)

15. Should the Pre-Trial Judge grant the SPO's request to disclose W04305's materials, the SPO also requests the Pre-Trial Judge to authorise the amendment of its witness

¹⁰ [REDACTED].

¹¹ [REDACTED].

and exhibit lists, under Rule 95(4), so as to include W04305, W04305's SPO interview, [REDACTED].

D. IN-COURT PROTECTIVE MEASURES

16. W04305 is [REDACTED].¹² [REDACTED]. [REDACTED].¹³ [REDACTED].¹⁴

17. [REDACTED]. Accordingly, the SPO requests that W04305 be identified only by the assigned pseudonym throughout all public proceedings; that his name and identifying information be redacted from the court's public records; that no records identifying the witness be disclosed to the public; and that W04305 testify with face and voice distortion and closed or private sessions for any in-court discussion or testimony identifying him.

18. All requested in-court protective measures are consistent with the rights of the Accused. The Accused and Defence would know the identity of the witness when he testifies and have access to his complete, undistorted evidence.

IV. CLASSIFICATION

19. This request is filed as confidential because it contains explicit references to evidence which is currently classified as confidential and [REDACTED].

20. A public redacted version of this filing will follow.

V. RELIEF REQUESTED

21. For the foregoing reasons, the Pre-Trial Judge is respectfully requested to:

- a. grant the SPO leave to disclose W04305's SPO interview, [REDACTED];
and, if the request is granted;

¹² See, for example, [REDACTED].

¹³ See, for example, [REDACTED].

¹⁴ See [REDACTED].

- b. grant the SPO leave to amend its Rule 95(4) witness and exhibit lists by adding W04305 and its related materials; and
- c. grant W04305 the in-court protective measures outlined above.

Word Count: 1,070



Jack Smith

Specialist Prosecutor

Wednesday, 27 July 2022
At The Hague, the Netherlands.