



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: 29 July 2022

Language: English

Classification: Public

Public Redacted Version of

**'Prosecution reply to Defence response to Prosecution second Rule 102(2) request',
KSC-BC-2020-04/F00232, filed on 12 July 2022**

Specialist Prosecutor

Jack Smith

Counsel for Pjetër Shala

Jean-Louis Gilissen

Counsel for Victims

Simon Laws

I. INTRODUCTION

1. The Specialist Prosecutor's Office ('SPO') hereby replies to the Defence submissions that the Request¹ is 'out of time'² and that the SPO has decided 'to change its case'.³

II. SUBMISSIONS

2. The Request was filed in a timely manner, promptly upon the probative value of the items in question becoming apparent,⁴ as soon as relevant third-party protective measures variations had been obtained, and well in advance of the transfer of the case to the Trial Panel. In fact, the Rule⁵ relied upon by the Defence⁶ – Rule 118(2) – regulates matters before a Trial Panel, after transfer of a case, thereby clearly reflecting the fact that potential changes are both envisaged and permissible at significantly more advanced stages of proceedings than the present.
3. The Defence contention that the SPO is attempting to change its case is simply untrue. The SPO is proposing the addition of W04305 because he narrates an event [REDACTED],⁷ relevant to, *inter alia*, [REDACTED]. There is no change in the charges in this case, rather the material in question will simply provide the Trial Panel with additional elements to assess evidence that is already part of this case.

¹ Prosecution request pursuant to Rule 102(2), to amend its witness and exhibit lists, and for protective measures, KSC-BC-2020-04/F00225, 23 June 2022, confidential ('Request').

² Response to the 'Prosecution request pursuant to Rule 102(2), to amend its witness and exhibit lists, and for protective measures, KSC-BC-2020-04/F00229, 4 July 2022, confidential ('Response'), paras 13, 17, 36.

³ Response, KSC-BC-2020-04/F00229, para.15.

⁴ This was following interviews conducted [REDACTED]. Further, and contrary to the Defence submissions (Response, KSC-BC-2020-04/F00229, para.15), these were not delayed investigative steps, the interviews in question were conducted directly as a result of [REDACTED].

⁵ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

⁶ Response, KSC-BC-2020-04/F00229, para.13.

⁷ See Request, KSC-BC-2020-04/F00225, para.12.

4. Further, the Defence's lengthy analysis of the evidence of [REDACTED],⁸ and submissions on the reliability of W04305's evidence, are misplaced at this stage of the proceedings. Assessments of weight and credibility are determinations to be made by the Trial Panel in light of the entirety of the evidence. For the reasons explained in the Request,⁹ the Trial Panel should be afforded the opportunity to do so in respect of the evidence offered by W04305.
5. The benefit for the Trial Panel in hearing the evidence of W04305 will come at no cost for the Accused's fair trial rights. As submitted in the Request, the events narrated by W04305 took place in a context well-known to the Defence, largely on the basis of [REDACTED].¹⁰ Adding W04305 to this case will thus not adversely affect the Defence's ability to prepare their case.¹¹

III. RELIEF REQUESTED

6. The SPO requests the Pre-Trial Judge to grant the Request.

Word Count: 496



Jack Smith

Specialist Prosecutor

Friday, 29 July 2022
At The Hague, the Netherlands.

⁸ Response, KSC-BC-2020-04/F00229, paras 27-32.

⁹ Request, KSC-BC-2020-04/F00225, paras 12-14.

¹⁰ Request, KSC-BC-2020-04/F00225, para.13.

¹¹ See ICTY, *Prosecutor v. Radovan Karadžić*, IT-95-5/18-T, 19 October 2011, para.9.