



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: 22 April 2021

Language: English

Classification: Public

Prosecution submissions for first status conference

with Strictly Confidential and *Ex Parte* Annex 1

Specialist Prosecutor
Jack Smith

Counsel for the Accused
Mr Jean Louis Gilissen

I. INTRODUCTION

1. Pursuant to the Status Conference Order,¹ the Specialist Prosecutor's Office ('SPO') hereby provides written submissions on the agenda items identified by the Pre-Trial Judge,² and related matters.³

2. Certain of the information provided is necessarily provisional at this time. Nonetheless, the SPO anticipates being in a position to have fulfilled its Rule 102(1)(b)⁴ disclosure obligations by 30 July 2021, subject only to any applicable protective measures.

II. SUBMISSIONS

A. GENERAL QUESTIONS

3. A small number of investigative steps remain ongoing in this case. Depending on the outcome of those limited investigations, there is a likelihood that further evidence will be adduced. Nonetheless, the SPO does not currently foresee this impacting the speedy conduct of proceedings, and is working towards completing any remaining investigative steps during pre-trial proceedings.

4. The SPO anticipates presenting documentary evidence including, for example, reports, photographs, and contemporaneous KLA documents such as orders,

¹ Order Setting the Date for a Status Conference and for Submissions, KSC-BC-2020-04/F00024, 20 April 2021, Public ('Status Conference Order').

² Annex 1 to Order Setting the Date for a Status Conference and for Submissions, KSC-BC-2020-04/F00024/A01, 20 April 2021, Public.

³ Status Conference Order, para.20.

⁴ 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.

regulations and/or other publications. A more detailed, although preliminary, overview of the evidence to be presented is provided in Sections B and C below.

5. In addition, the SPO relied upon four (4) witnesses for purposes of the Confirmed Indictment, and intends to rely upon them again for trial. The SPO currently anticipates adding approximately eight (8) further witnesses to its witness list for trial, although the final number of witnesses could vary, including depending on the outcome of the remaining investigative steps.

B. RULE 102(1)(A): SUPPORTING MATERIAL TO THE INDICTMENT

6. Table A provides, to the extent possible, the details requested by the Pre-Trial Judge regarding the breakdown of Rule 102(1)(a) material:

Table A. Rule 102(1)(a) Material

Total number of items	97 (including translations)
Total number of pages	3493 (including translations)
Total number of hours/minutes of audio-visual material	0
Number of witness statements	8
Number of statements obtained from the Accused	21 items ⁵ (English, French and Albanian)
Number of transcript parts (not including transcripts of the Accused) ⁶	47
Number of reports	2

⁵ Transcripts are divided into parts, and each part represents an uploaded item. One of the Accused's statements is composed of three (3) items in video format (2 hours 16 minutes 27 seconds).

⁶ The transcripts of SPO interviews are divided into parts, and each part represents an uploaded item.

Number of audio/video material	0 ⁷
Number of photographs	0
Number of objects	0
Number of other documents ⁸	19

7. Translation into Albanian of certain indictment supporting material has been completed and those items in both English and Albanian, and to the extent no redactions are required, will be disclosed promptly. In particular, this week, the SPO will disclose one batch of Rule 102(1)(a) material to the Defence. This first disclosure includes non-witness related indictment supporting materials, as well as some statements obtained from the Accused.

8. For the remaining indictment supporting material, the SPO anticipates being able to complete its disclosure by the end of the 30-day statutory timeframe. Those remaining indictment supporting materials are primarily statements of the accused or witness-related materials. These witness materials will be the subject of protective measures requests, and consequently may require redactions.⁹

C. RULE 102(1)(B): ADDITIONAL MATERIAL INTENDED FOR USE AT TRIAL

9. In addition to the material falling under Rule 102(1)(a), the SPO intends to disclose further material under Rule 102(1)(b). The SPO expects to be ready to disclose the additional Rule 102(1)(b) material by 30 July 2021 or, in any case, no later than 30

⁷ But see fn.5 (in relation to statements of the accused).

⁸ This includes, for example, books, KLA communiqués or political declarations, military orders.

⁹ See Strictly Confidential and *Ex Parte* Annex 1.

days prior to the opening of the Specialist Prosecutor's case (subject only to any protective measures granted).

10. As noted above, the additional Rule 102(1)(b) material is currently anticipated to include the statements/testimonies of approximately eight (8) further witnesses.¹⁰ Transcription and translation of the statements of witnesses upon whom the SPO intends to rely at trial remain ongoing.

11. With regard to documentary evidence, the SPO is in the process of reviewing additional materials and anticipates presenting a total of approximately 100 exhibits at trial, consisting of the Rule 102(1)(a) materials and approximately 50 additional items. This preliminary estimate may vary depending upon, *inter alia*, the relevance of items recently seized and the results of further investigative steps. The exhibits are likely to include items produced by witnesses during the course of interviews, photographs, reports, video footage, and contemporaneous documents. Due to the ongoing review, it is not possible to provide an accurate estimate of volume at this time.

12. It will be necessary to apply redactions to forthcoming Rule 102(1)(b) disclosures. In respect of additional witnesses to be relied upon at trial, and in order to facilitate ongoing assessments, the SPO anticipates being in a position to file a second protective measures request by 11 June 2021.

13. While the SPO intends to provide Rule 102(1)(b) material in batches as and when it is available for disclosure, in order to ensure an efficient pre-disclosure review process, it is not at this time possible to commit to an earlier disclosure date in respect

¹⁰ See para.4 above. The final number of witnesses (including the decision on whether to call expert testimony) will depend on the outcome of the limited remaining investigative steps.

of any particular portion of these materials (such as, for example, those not requiring redaction).

14. In respect of Rule 102(1)(b) material,¹¹ the SPO will endeavour to disclose all documents and materials referred to in witness statements simultaneously with the respective statements, and to disclose witness statements—and, when available, their respective translations—in the same disclosure batch, to the extent such an approach will not cause delays to the disclosure process. Although, due to the complexity of the internal process leading to the disclosure¹² this may not always be possible.

D. RULE 102(3): EVIDENCE MATERIAL TO THE PREPARATION OF THE DEFENCE,
OBTAINED FROM OR BELONGING TO THE ACCUSED

15. The SPO anticipates providing the Defence with detailed notice of evidence material to it, pursuant to Article 21(6)¹³ and Rule 102(3), by 3 September 2021, upon finalisation of the disclosure of material falling under Rule 102(1)(b). The items in the Rule 102(3) notice will comprise any other residual information potentially material to the Defence after the items to be presented at trial¹⁴ and the potentially exculpatory items¹⁵ have been disclosed. Consequently, the small delay proposed between completion of Rule 102(1)(b) disclosure and provision of this notice is justified by the

¹¹ Rule 102(1)(a) disclosure will only comprise those items that formed part of indictment supporting materials.

¹² This process includes multi-level and multi-language redactions reviews as well as several checks on matters including translation, categorisation, protective measures assessment and Rule 107 restrictions

¹³ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' herein refer to articles of the Law, unless otherwise specified.

¹⁴ Rule 102(1)(b).

¹⁵ Rule 103.

need to carefully identify and review any material to be included, with a view to assessing its potential relevance to the case.¹⁶

16. The scope of Rule 102(3) material is necessarily impacted by, and to a large extent dependent upon, the witnesses and evidence intended to be presented at trial. It is therefore not possible to provide an accurate estimate of volume at this time. Nonetheless, based on ongoing review, the SPO anticipates the number of Rule 102(3) items to be less than 3000 in total.

17. The SPO expects that some of the Rule 102(3) material will require redactions, in particular pursuant to Rule 108(1).

E. RULE 103: EXCULPATORY EVIDENCE

18. This week, the SPO will disclose to the Defence a first batch of potentially exculpatory material.

19. Table B provides—to the extent possible—the details requested by the Pre-Trial Judge in respect of the Rule 103 material which will be disclosed to the Defence on 22 April 2021:

Table B. Rule 103 Disclosed to the Accused

Total number of items	14 (including translations)
Total number of pages	704 (including translations)
Total number of hours/minutes of audio-visual material	0
Number of witness statements	1

¹⁶ *The Prosecutor v. Hysni Gucati and Nasim Haradinaj*, KSC-BC-2020-07, Decision on Materiality of Information Requested under Rule 102(3) and Related Matters, 1 April 2021, Public, para.23.

Number of statements obtained from the Accused ¹⁷	54
Number of transcript parts (not including transcripts of the Accused) ¹⁸	2
Number of reports	0
Number of audio/video material	0
Number of photographs	0
Number of objects	0
Number of other documents ¹⁹	6

20. The SPO shall continue to review and, following application of any required redactions, immediately disclose on a rolling basis any Rule 103 material within its custody, control or actual knowledge.

21. The SPO expects that some of the Rule 103 material might require redactions, in particular pursuant to Rule 108(1).

F. RULE 107: PROTECTED MATERIAL

22. A limited amount of materials of potential relevance to this case, falling under Rules 102 and/or 103, is protected under Rule 107. The SPO is actively seeking remaining Rule 107 clearances in respect of such materials.

¹⁷ One of the Accused's statements is composed of three (3) items in video format (2 hours 16 minutes 27 seconds).

¹⁸ Transcripts are divided into parts, and each part represents an uploaded item.

¹⁹ This includes, for example, books, reports, articles, statements and transcripts.

23. At this stage, it is not anticipated that obtaining such clearances will jeopardise the timelines outlined. However, the SPO will promptly inform the Pre-Trial Judge should this assessment change.

24. The SPO may apply to be relieved of its obligation under Rules 102 and/or 103 to disclose an extremely limited number of materials protected under Rule 107, where clearance can not be obtained. In the event it makes such an application, the SPO will endeavour to propose appropriate counterbalancing measures.

25. The SPO expects that some of the Rule 107 material will require redactions, in particular pursuant to Rule 108(1).

G. PROCEDURE FOR DISCLOSURE

26. With regard to case-specific categorisation in Legal Workflow for material falling under Rule 102(1)(a) and (b) and Rule 104(1), (5) and (6), given the circumstances of this case, and specifically considering that the charges are brought against only one Accused, comprise only war crimes, and were allegedly committed only at one location, the SPO submits that sub-categories additional to the statutory categories foreseen by Rule 109(c) would be of very limited assistance, if any.

27. Further, and as also demonstrated by the Detailed Outline pursuant to Rule 86(3)(b), the nature of the evidence to be presented is such that many individual items of evidence are likely to apply to all crimes and all modes of liability, which might render any sub-categorisation falling under 'underlying crimes' and 'alleged conduct of the Accused' of limited or no utility to the Accused or his counsel. Such sub-categorisations, would therefore result into a time-consuming process which would result in little or no benefit.

28. Nonetheless, should the Defence find sub-categorisation of some of the Rule 109(c) categories of assistance, the SPO will endeavour to find a mutually agreeable solution.

29. The SPO would further agree to provide and be provided with a consolidated disclosure chart within 15 days from the filing of any Pre-Trial Briefs. The preparation and completion of a consolidated disclosure chart is a detailed process requiring a fully finalised Pre-Trial Brief, as analysis required to generate the chart would be drawn from that brief. A short delay between the filing of the Pre-Trial Brief and the submission of the chart would minimise any risk of oversight or error.

H. REDACTION REGIME

30. The SPO agrees to adopting the redaction regime outlined in the 'Framework Decision on Disclosure of Evidence and Related Matters' in KSC-BC-2020-07.²⁰

Word Count: 2036



Jack Smith

Specialist Prosecutor

Thursday, 22 April 2021
At The Hague, the Netherlands.

²⁰ Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-07/F00104, 22 January 2021, public, paras 68-84; Status Conference Order, para.20.