

Case No.: KSC-BC-2020-04
Specialist Prosecutor v. Pjetër Shala

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 9 September 2021

Filing Party: Specialist Defence Counsel

Original Language: English

Classification: Confidential

THE SPECIALIST PROSECUTOR
v.
PJETËR SHALA

Defence Motion for an Extension of Time for its Rule 102(2) Request

Specialist Prosecutor's Office:
Jack Smith

Specialist Counsel for the Accused:
Jean-Louis Gilissen
Hedi Aouini

I. INTRODUCTION

1. In his Framework Decision on Disclosure, the Pre-Trial Judge instructed the Defence to indicate to the Specialist Prosecutor's Office ("SPO") by the 17th of September 2021 which items among those listed in the SPO's Rule 102(2) notice it seeks to have access to by way of disclosure or inspection.¹
2. The Specialist Prosecutor's Office ("SPO") filed its notice on 3 September 2021.² The SPO noted that its notice "will be supplemented in due course, including to the extent that the SPO obtains additional clearances in respect of a number of items which cannot currently be listed due to Rule 107 restrictions."³
3. By way of background, the Defence notes that on 31 July 2021, the SPO had requested the limited deferral of its disclosure obligations concerning a number of Rule 102(a)(b) material subject to protective measures requests in another case, a number of Rule 102(1)(b) items that are subject to Rule 107 restrictions as well as certain Albanian translations of prior witness statements.⁴ In its

¹ KSC-BC-2020-04, F00033, Framework Decision on Disclosure of Evidence and Related Matters, 30 April 2021 ("Framework Decision on Disclosure"), para. 92(e). All further references to filings in this Motion concern Case No. KSC-BC-2020-04 unless otherwise indicated. Although the Framework Decision on Disclosure describes the procedure under the Rules that allows the defence to request disclosure or inspection of material in the SPO's possession as falling within the scope of Rule 102(3) of the Rules, the Defence notes that the relevant procedure is provided for in Rule 102(2) of the Rules, which specifies that "[t]he Specialist Prosecutor shall, pursuant to Article 21(6) of the Law, provide detailed notice to the Defence of any material and evidence in his or her possession. The Specialist Prosecutor shall disclose to the defence, upon request, any statements, documents, photographs and allow inspection of other tangible objects in the custody or control of the Specialist Prosecutor, which are deemed by the Defence to be material to its preparation, or were obtained from or belonged to the Accused."

² F00069, Prosecution Rule 102(3) notice with confidential Annex 1, 3 September 2021.

³ F00069, Prosecution Rule 102(3) notice with confidential Annex 1, 3 September 2021, para. 1.

⁴ F00057, Confidential Redacted Version of Notice to the Pre-Trial Judge Regarding the Disclosure of Rule 102(1)(b) Materials and Request for Limited Deferral of Disclosure Obligations for Select Items, 4 August 2021 (confidential) ("Request for Deferred Disclosure"). The Request was filed confidentially and *ex parte* and the Defence was only given notice of it on 4 August 2021.

Response, the Defence noted that the requested deferral will inevitably affect its ability to comply with the deadline set for 17 September.⁵

4. In his Decision on Deferred Disclosure,⁶ the Pre-Trial Judge granted the SPO request for deferred disclosure of an unidentified number of items until the relevant protective measures requests are determined in another case.⁷ The Pre-Trial Judge also allowed deferred disclosure of the items subject to Rule 107 restrictions until the SPO has processed the providers' responses as well as deferred disclosure of a number of Albanian translations for certain prior witness statements.⁸
5. Pursuant to Rule 9(5)(a) of the Rules, the Defence seeks variation of the time limit concerning its Rule 102(2) request as set in the Framework Decision on Disclosure. Specifically, the Defence requests an additional 4 weeks to prepare and file its request.
6. Good cause exists for the variation as the requested additional time is necessary to: (i) enable the Defence to make satisfactory progress with its review of disclosed material and gain a comprehensive understanding of the case against Mr Shala; (ii) complete a thorough review of the material identified in the SPO 102(2) notice and related research activities; (iii) receive disclosure of the items subject to the Decision on Deferred Disclosure as well as the supplemented SPO Rule 102(2) notice. The additional time is absolutely required to allow an

⁵ F00062, Defence Response to Prosecution Request for Deferral of Disclosure Obligations, 16 August 2021, para. 5.

⁶ F00072, Confidential Redacted Version of Consolidated Decision on Deferred Request for Protective Measures and Request to Defer Disclosure Obligations, 9 September 2021 (confidential) ("Decision on Deferred Disclosure").

⁷ The Pre-Trial Judge noted that these items were enumerated in footnote 4 of the Request for Deferred Disclosure the contents of which were not disclosed to the Defence in the redacted version of the request that was made available to it. *See* Decision on Deferred Disclosure, para. 16.

⁸ Decision on Deferred Disclosure, paras. 18, 19.

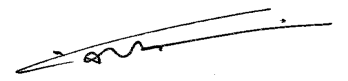
informed indication as to the material the Defence needs to access for the preparation of its case.

7. No prejudice is caused to the Prosecution, which has indicated to the Defence that it does not oppose the variation requested.
8. For these reasons, the Defence respectfully requests the Pre-Trial Judge to find that good cause exists pursuant to Rule 9(5)(a) of the Rules for variation of the time limit set in the Framework Decision on Disclosure, and order that the Defence Rule 102(2) request for disclosure or inspection be filed by the 15th of October 2021.
9. The present request is filed as confidential pursuant to Rule 82(3) and(4) of the Rules for the sole reason that it relates to the Prosecution's Request for Deferred Disclosure, which was filed confidentially. The Defence invites the Pre-Trial Judge to reclassify this filing as public in light of Mr Shala's right to a fair and public hearing.

Respectfully submitted,



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Hedi Aouini
Defence Co-Counsel

Wednesday, 9 September 2021

The Hague, the Netherlands

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