



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: 21 February 2022

Language: English

Classification: Confidential

Public Redacted Version of
'Prosecution submissions for sixth status conference'

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I. INTRODUCTION

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

II. SUBMISSIONS

A. DISCLOSURE

a. Disclosure of documents falling under Rule 102(1)(b)

2. At the last Status Conference, the SPO informed the Pre-Trial Judge that it had completed its Rule 102(1)(b) disclosure with the exception of some items that were withheld.³

3. On 17 February 2022, the SPO disclosed to the Defence four of the withheld items.⁴ Further to this disclosure, 12 items on the SPO exhibits list remain withheld.⁵ Of these 12 items, the SPO is currently assessing whether immediate disclosure is possible for two additional items. Should it be determined that the reasons warranting withholding have ceased to exist, the SPO will disclose them to the Defence as soon as practicable.⁶ Ten remaining withheld items will be disclosed to the Defence 30 days before the start of the trial in accordance with the timeline authorised by the court.⁷

4. On 17 February 2022, the SPO also disclosed to the Defence a further prior statement of an existing witness under Rule 102(1)(b), and concurrently sought leave

¹ Order Setting the Date for the Sixth Status Conference and for Submissions, KSC-BC-2020-04/F00140, 9 February 2022 ('Order'), Public.

² Order Setting the Dates for the Sixth Status Conference and for Submissions', KSC-BC-2020-04/F00140, para 15(c).

³ Transcript, KSC-BC-2020-04, 14 January 2022, pp.138-140.

⁴ Prosecution notice of disclosure, KSC-BC-2020-04/F00147, 17 February 2022, confidential. Disclosure Package 34.

⁵ Annex 3 to Submission of Confidential Redacted Versions of the Pre-Trial Brief, with witness and exhibit list, KSC-BC-2020-04/F00136/A03, 31 January 2022 ('Exhibit List'), items 561-572.

⁶ Exhibit List, KSC-BC-2020-04/F00136/A03, items 571-572.

⁷ Confidential Redacted Version of the Second Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-04/F00053CONFRED, 12 July 2021, para.30a.

from the Pre-Trial Judge to add that document to its exhibit list. At the same time, the SPO re-disclosed a less redacted version of a document previously disclosed under Rule 102(1)(b).⁸

5. Further to *inter partes* communications with the Defence, the SPO is currently attempting to obtain a more complete transcription of its interviews with W04734, with respect to some instances where the answers of the witness were indiscernible. Once the new transcription is finalised, the SPO will review the transcript with a view to also reducing the number of standard redactions, if possible. It will then re-disclose the reviewed transcripts to the Defence.

6. Finally, and as detailed below, [REDACTED]. [REDACTED].

b. Disclosure and review of documents falling under Rule 102(3)

7. The SPO has disclosed all materials falling under Rule 102(3) requested by the Defence, with the exception of documents which are included in pending protective measures requests,⁹ and documents falling under Rule 107, for which more information is provided below.

8. At the time of this filing, the SPO has not completed the review of all materials falling under Rule 102(3) for potentially exculpatory information, but is on track to do so before the Status Conference scheduled for 4 March 2022.

9. The SPO has made significant progress in this review since the last status conference, and has reviewed over 80% of its Rule 102(3) materials for exculpatory content.

⁸ Prosecution notice of Rule 102(1)(b) disclosure and request to amend its exhibit list, 17 February 2022. At the time of the filing of these submissions, a filing number for this notice was not yet available. *See also* Disclosure Package 35.

⁹ KSC-BC-2020-04, Transcript, 14 January 2022, p.144.

10. Since the last status conference, the SPO has disclosed 359 potentially exculpatory items to the Defence. Based on the review to date, it is anticipated that further documents will be disclosed pursuant to Rule 103. The SPO is not in a position, at this stage, to indicate how many of these documents will require a request for protective measures, although it notes that many of them have already been disclosed with authorised redactions in other cases. The SPO aims to file a comprehensive request for protective measures after it has finished its review.

c. Descriptions of items in the Rule 102(3) list

11. With respect to the descriptions of items listed in the Rule 102(3) notice, the SPO maintains its position from the last status conference that they are sufficiently detailed.¹⁰ As communicated to the Defence during a recent *inter partes* meeting, however, the SPO is available to address specific Defence requests for clarification for specific items in that list. The SPO understands that an *inter partes* request for clarification with respect to some items in the Rule 102(3) notice is forthcoming.

d. Requests for amendment of the Rule 102(3) list

12. With respect to requesting authorisation to amend its Rule 102(3) list, the SPO has received clearance for one additional Rule 107 document from a third-party provider. Unless the Pre-Trial Judge directs otherwise, in the interests of efficiency for both the court and the parties, the SPO intends to only seek authorisation to supplement the Rule 102(3) notice in a more consolidated fashion, once additional clearances have been received.

c. Additional exculpatory disclosure

¹⁰ KSC-BC-2020-04, Transcript, 14 January 2022, p.144.

13. Apart from the review and anticipated disclosure as outlined above, the SPO is currently not aware of additional new potentially exculpatory material which is yet to be disclosed to the Defence.

14. The SPO however continues to conduct investigations, [REDACTED], as part of its mandate under the Law.¹¹ Should these investigations yield any materials which qualify as potentially exculpatory in the context of these proceedings, they will be promptly disclosed to the Defence pursuant to Rule 103.

d. Whether the SPO foresees any difficulties with the disclosure process

15. At present, the SPO does not foresee difficulties related to the disclosure process as defined the Framework Decision.¹²

e. Disclosure of documents falling under Rule 107

16. The SPO is in the final stages of its discussions with third party providers. As mentioned above, one additional document was cleared at the end of January 2022. For 12 documents, clearance has been denied, and the SPO will be filing a Rule 107(2) request in this regard. The SPO does not anticipate the need for a request for protective measures at this stage.

d. Creation of witness entities in Legal Workflow

17. The SPO has created witness entities in Legal Workflow and made them available to the Defence. The SPO will start linking the Rule 102(1) materials to the relevant witnesses. This process is ongoing and will be concluded before the start of the trial.

¹¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

¹² Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-04/F00033, 30 April 2021, Public.

e. Overall completion of the SPO disclosure obligations in the pre-trial phase

18. The SPO strives to complete its disclosure obligations as soon as possible. The SPO's efforts are currently focused on Rule 103 disclosure which will be completed before the status conference of 4 March 2022, with the exception of documents requiring protective measures. The SPO aims to file the necessary requests for protective measures before the next status conference, but actual disclosure of the documents subject to these requests may happen after it. The SPO will continue thereafter to run relevant searches and checks to ensure that all relevant potentially exculpatory content, in particular, has been identified and disclosed.

19. The timing of completion of the SPO's disclosure obligations will also depend on [REDACTED]. The SPO will be able to provide a more precise indication once it receives information from the competent national authorities [REDACTED].

B. TRANSLATIONS

20. The SPO disclosed four videos in Disclosure Package 34 on 17 February 2022. Of these four videos, one of them requires transcription and three require both transcription and translation.

21. The SPO has not received further requests for translation since the last status conference. The SPO maintains its general position that it is only obliged to provide translations in accordance with the rules set forth in the Framework Decision.¹³

C. SPO INVESTIGATIONS AND STEPS

19. [REDACTED] While the SPO has highlighted the urgency of the matter, the timing of its execution rests primarily with the competent authorities.

20. Provided the timing of the response from the authorities so allows, [REDACTED].

¹³ Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-04/F00033, 30 April 2021, Public, para. 67.

D. POINTS OF AGREEMENT ON MATTERS OF LAW AND FACT

21. The SPO and the Defence have recently had some preliminary *inter partes* discussions on how to most efficiently proceed on this matter. The SPO has started to draft a first set of proposed facts and anticipates being able to forward those to the Defence before the next status conference.

Word count: 1436



Jack Smith

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Monday, 21 February 2022

At The Hague, the Netherlands.