



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: 11 April 2022

Language: English

Classification: Public

**Prosecution submissions for seventh status conference with strictly confidential and
*ex parte annex***

Specialist Prosecutor
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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

i. Disclosure of documents falling under Rule 102(1)(b) and Rule 102(2)

2. The SPO has completed its Rule 102(1)(b) disclosure, with the exception of some items that are withheld pursuant to judicial authorisation, and will be disclosed once the relevant protective measures expire. The SPO will also be disclosing some translations of items under this category further to a request by the Defence.

3. The SPO is currently endeavouring to disclose to the Defence revised versions of certain translations/transcriptions of previously disclosed Rule 102(1)(b) materials.

4. On 28 March 2022, the SPO disclosed revised transcripts of its interviews with W04734.³ The revision was carried out to reduce a limited number of instances where the witness's answers were not transcribed because they were indicated to be indiscernible or inaudible. When disclosing the revised transcripts, the SPO also lifted certain standard redactions which it no longer considered necessary. Certain standard redactions in W04734's other previous statements are similarly being lifted, and the SPO is in the process of disclosing those lesser redacted versions to the Defence.

5. The SPO will also disclose lesser redacted versions of statements, and a revised transcription and translation of the English version of Pjetër SHALA's SPO interview.

¹ Order Setting the Date for the Seventh Status Conference and for Submissions, KSC-BC-2020-04/F00172, 31 March 2022 ('Order'), Public.

² Order, KSC-BC-2020-04/F00172, para.12.

³ Disclosure 43.

6. None of these disclosures amount to new evidence. Disclosure of revised and lesser redacted materials will be beneficial to all parties in the proceedings, to Counsel for Victims, and to the Trial Panel.

ii. Disclosure of documents listed in the Rule 102(3) notice

7. On 1 April 2022, the Defence submitted an *inter partes* request with a list of documents selected from the SPO Rule 102(3) list recently updated with partially revised descriptions.⁴ The request lists 580 documents, and includes both documents for which descriptions were revised and documents for which they were not.

8. The SPO will be disclosing a first batch of the documents requested by the Defence before the status conference. A significant number of the remaining documents are yet to be reviewed and processed for disclosure. While the SPO does not oppose the request for documents the descriptions of which were not revised – and which could have therefore been requested earlier by the Defence – it will be seeking a proportionate extension of the 22 April 2022 deadline to complete their disclosure.

9. Finally, the SPO has identified a substantial number of documents which form part of the Defence request for which it will be necessary to seek protective measures.

iii. Additional document to be added to the Rule 102(3) notice

10. The SPO has reviewed the documents in its possession from the case file of the investigation against Sabit GEICI and Xhemshit KRASNIQI to ensure that all of the documents comprised therein had either be disclosed to the defence or had been listed in the Rule 102(3) notice.⁵ This review revealed that one document, a record of interview, has not yet been notified to the Defence. That three-page record is devoid of evidentiary

⁴ Prosecution Rule 102(3) notice containing partially revised descriptions with confidential Annex 1, KSC-BC-2020-04/F00167, 18 April 2022, public.

⁵ See in this respect the Defence's request made at the status conference of 14 January 2022, Transcript, KSC-BC-2020-04, p.146.

value, as the suspect exercised his right to remain silent.⁶ The SPO nonetheless intends to make an oral application at the status conference to further amend its Rule 102(3) list with this document, so that it can be requested by the Defence if they choose to do so.

iv. Disclosure of exculpatory evidence

11. On 25 March 2022, the SPO disclosed a document pursuant to Rule 103 in Disclosure Package 42.⁷ This document concerns a named member of the joint criminal enterprise alleged in the Corrected Indictment⁸ whose first and family names are misspelled in the document.⁹ For this reason, this document was not identified and disclosed earlier. The potentially exculpatory facts contained in this document were, however, already known to the Defence through prior Rule 103 disclosures.¹⁰

12. With the exception of materials currently subject to requests for protective measures, the SPO has not identified other documents remaining to be disclosed to the Defence pursuant to Rule 103.

v. Disclosure of Rule 107 materials

13. On 25 March 2020, the SPO sought leave to amend its Rule 102(3) notice with 13 documents for which their Rule 107 status has been resolved in a manner which now enables their disclosure.¹¹

14. On 6 April 2022, the SPO filed an application pursuant to Rule 107(2) informing the Pre-Trial Judge that clearance had been denied to disclose a number of documents of marginal relevance to the case and cumulative in nature with other documents already

⁶ Record of suspect hearing during an investigation, Case No. PPS 08/09, 10 June 2010, ERN SITF00014574-00014576.

⁷ SITF00016025-SITF00016042. An English translation was disclosed on 29 March 2022 in Disclosure Package 44.

⁸ Submission of corrected indictment with confidential Annex 1, KSC-BC-2020-04/F00098, 1 November 2021, confidential ('Corrected Indictment').

⁹ SITF00016025-SITF00016042, p.1.

¹⁰ See e.g. SITF00016001-00016003, disclosed on 12 November 2021 in Disclosure Package 24.

¹¹ Prosecution request to amend its Rule 102(3) notice, KSC-BC-2020-04/F00170, 25 March 2022, public.

disclosed to the defence. The SPO also informed the Pre-Trial Judge that there were no additional documents falling under Rule 107 which have been identified as subject to disclosure under the Law and Rules, and for which clearance remains pending.¹²

vi. Additional witness pursuant to Rule 102(2)

15. As a result of recently completed investigations, the SPO has determined that it will need to submit, pursuant to Rule 102(2), the statements of one additional witness. At this stage, those materials cannot yet be disclosed because a variation of protective measures is first required from a third-party entity. Once that variation has been obtained the SPO will file an application pursuant to Rule 102(2).

16. The addition of these materials - which relate to one discrete event and do not expand the scope of the charges – will cause no prejudice to the Accused at this stage. Further information on the materials in question are included in the strictly confidential and *ex parte* annex to these submissions.

vii. Completion of pre-trial disclosure obligations

17. As noted above, the Defence has recently requested 580 documents from the SPO Rule 102(3) notice. The SPO will thus be requesting the Pre-Trial Judge, at the status conference, for a proportionate extension of the 22 April 2022 deadline to complete their review, processing, and disclosure to the Defence, with the exception of documents requiring protective measures.

18. The SPO is not otherwise facing, nor does it foresee, any difficulty in completing the disclosure process in accordance with the regime set forth in the Framework Decision.¹³

¹² Prosecution Rule 107(2) request with strictly confidential and *ex parte* Annexes 1-12, KSC-BC-2020-04/F00174, 6 April 2022.

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

viii. Populating witness entities on Legal Workflow

19. The SPO will be populating five additional witness entities on Legal Workflow before the status conference, and will continue to do so on a rolling basis with a view of completing them prior to the beginning of the trial.

B. TRANSLATIONS

20. The SPO has completed the translation and transcription of the materials generated during its recent investigative activities.¹⁴

C. INVESTIGATIONS

21. The SPO has recently completed a number of additional investigative steps, and has requested disclosure of the materials generated through these investigations.¹⁵ The SPO has not – at this stage – determined the need for further investigations.

22. The SPO, however, continues to review its records and, if appropriate, conduct enquiries to ensure that it has exhausted all necessary investigative avenues and acquired all available evidence that can assist the fact-finding process in this case.

D. POINTS OF AGREEMENT ON MATTERS OF LAW AND FACT

23. On 8 April 2022, the SPO informed the Pre-Trial Judge of the outcome of the discussions with the Defence on points of agreements on matters of law and fact.¹⁶

¹⁴ See Prosecution request pursuant to Rule 102(2) and to amend its witness and exhibit list, KSC-BC-2020-04/F00169, 25 March 2022, confidential.

¹⁵ Prosecution request pursuant to Rule 102(2) and to amend its witness and exhibit lists, KSC-BC-2020-04/F00169, 25 March 2022.

¹⁶ Prosecution submissions on points of agreement on matters of fact with Confidential Annex, KSC-BC-2020-04/F00178, 8 April 2022.

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At The Hague, the Netherlands.