

**Case No.:** KSC-BC-2020-04  
**Before:** Pre-Trial Judge  
Judge Nicolas Guillou  
**Registrar:** Dr Fidelma Donlon  
**Date:** 3 June 2022  
**Filing Party:** Defence Counsel  
**Original Language:** English  
**Classification:** Public

**THE SPECIALIST PROSECUTOR**

v.

**PJETËR SHALA**

---

**Public Redacted Version of**  
**Response to the Prosecution Request Pursuant to Rule 102(2) and to Amend its**  
**Witness and Exhibit Lists**

---

**Specialist Prosecutor's Office:**  
Jack Smith

**Counsel for Mr Pjetër Shala:**  
Jean-Louis Gilissen  
Hédi Aouini

**Counsel for Victims:**  
Simon Laws QC

1. On 25 March 2022, the Prosecution filed a request for leave to amend its witness and exhibit lists pursuant to Rules 95(4) and 102(2) of the Rules of Procedure and Evidence (*'Rules'*).<sup>1</sup> The Prosecution sought to add four witnesses to its witness list, add the interview transcripts of such witnesses to its exhibit list, and disclose these transcripts pursuant to Rule 102(2) of the Rules arguing that *'the need to interview these witnesses arose after the expiry of [the] deadline [imposed by Rule 102(1)(b)]'*.<sup>2</sup>
2. The Defence for Mr Pjetër Shala (*'Defence'*) opposes the Request as the Prosecution has not shown good cause for interviewing such persons and putting them forward as proposed witnesses at such a late stage of the proceedings and granting the Request would prejudice the Defence.
3. Rule 118(2) of the Rules permits the amendment of the lists of witnesses and exhibits filed pursuant to Rule 95(4)(b) of the Rules *'upon timely notice and a showing of good cause'*.
4. Well-established jurisprudence of international criminal tribunals indicates that an approval of a party's request to vary its witness list must be in the interests of justice and take into account the potential prejudice to the Defence.<sup>3</sup> A chamber considering such requests must balance the Prosecution's duty to present

---

<sup>1</sup> KSC-BC-2020-04, F00169, Prosecution request pursuant to Rule 102(2) and to amend its witness and exhibit lists, 25 March 2022 (confidential) (*'Request'*).

<sup>2</sup> Request, paras. 1, 7.

<sup>3</sup> See, for instance, ICTY, *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-T, Decision on Prosecution's Motion for Leave to Amend the Rule 65ter Witness List and for Disclosure of an Expert Witness Report Pursuant to Rule 94bis, 31 August 2010, para. 4; ICTY, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Prosecution's Motion for Leave to Amend its Witness List to Add Witness KDZ597, 1 July 2010, para. 5; ICTY, *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-T, Decision on Prosecution's Motion to Substitute Expert Witness, 30 October 2009 (*"Perišić Decision"*), para. 6; ICTY, *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, Decision on Prosecution's Motion to Add Milan Đaković to the Rule 65ter Witness List, 21 May 2009, para. 6; ICTR, *Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73bis(E), 21 May 2004, para. 13.

available evidence to prove its case with the right of the accused to have adequate time and facilities to prepare a defence.<sup>4</sup>

5. The Defence submits that the [REDACTED] of proposed witness W04733 has been known to the Prosecution at least since 2018 and, in any event, for a considerable time prior to the witness's [REDACTED] in [REDACTED] 2021.<sup>5</sup> The [REDACTED] the course of proceedings conducted 20 years after the events described in the indictment cannot be treated as an *unforeseen* event. The four persons the Prosecution now intends to rely on must have been known to the Prosecution since the beginning of its investigations and it was obviously a conscious choice not to rely on their evidence for corroboration or any other purpose. The Prosecution fails to explain why these persons were not included in the original witness list. The Prosecution should face the consequences of its own strategic decisions and should not be allowed to amend its case at such a late stage of the proceedings against the Accused. In this respect, the Defence notes the expiry of the time limit set by the Pre-Trial Judge for disclosure of the Prosecution's witness and exhibit lists under Rules 95(4) and 102(1)(b) of the Rules.
6. Mr Shala is entitled to have adequate time to prepare his defence. While the Pre-Trial Judge has already set a tentative date for transmitting the case-file for trial,<sup>6</sup> the Prosecution is continuing to disclose material it intends to present at trial despite the expiry of the relevant time limits as provided by the Rules. The Defence inevitably will require additional time to analyse the disclosed material, conduct all necessary investigations and prepare its pre-trial brief before the case-file is transmitted for trial. The proposed last-minute additions to the

---

<sup>4</sup> *Perišić* Decision, para. 6.

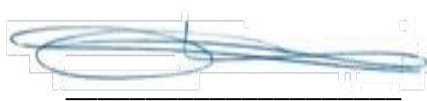
<sup>5</sup> See also Items 082892-TR-ET Part 3, pp. 38-40; 082892-TR-AT-ET Part 9, p. 23; KSC-BC-2020-04, F00102, Prosecution submissions for fourth status conference, 9 November 2021 (confidential), para. 10.

<sup>6</sup> Transcript of 4 March 2022, p. 242, lines 9-10.

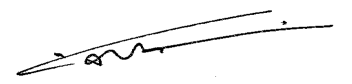
Prosecution's witness and exhibit lists cause prejudice in that the Defence simply does not have sufficient time to prepare its case.

7. For these reasons, the Defence invites the Pre-Trial Judge to reject the Request as it is neither timely nor based on good cause.
8. In the alternative, the Defence emphasizes that, should the Request be granted, it will need additional and, in any event, sufficient time to familiarize itself with the Prosecution's case as presented in its pre-trial brief, its amended Rule 95(4) witness and exhibit lists, the expected testimony of its witnesses, and the totality of the disclosed material.
9. This Response is filed confidentially in accordance with Rule 82(4) of the Rules.

Respectfully submitted,



**Jean-Louis Gilissen**  
**Specialist Defence Counsel**



**Hédi Aouini**  
**Defence Co-Counsel**

**Word count: 846**