



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-04
The Prosecutor v. Pjetër Shala

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 30 May 2022

Language: English

Classification: Public

**Public Redacted Version of
Decision on Specialist Prosecutor's Rule 102(2) Request**

Specialist Prosecutor

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Simon Laws

THE PRE-TRIAL JUDGE,¹ pursuant to Articles 21(6) and 39(11) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 95(4)(b) and (c), and 102(1)(b) and (2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 19 June 2020, further to a decision by the Pre-Trial Judge,² the Specialist Prosecutor submitted the Confirmed Indictment.³
2. On 30 April 2021, the Pre-Trial Judge defined, *inter alia*, the calendar for disclosure, including the time limit for disclosing materials pursuant to Rule 102(1)(b) of the Rules, namely 30 July 2021.⁴
3. On 17 December 2021, the Specialist Prosecutor's Office ("SPO") filed its Pre-Trial Brief and related material, including a list of witnesses ("Witness List") and a list of exhibits ("Exhibit List").⁵

¹ KSC-BC-2020-04, F00001, President, *Decision Assigning a Pre-Trial Judge*, 14 February 2020, public.

² KSC-BC-2020-04, F00007, Pre-Trial Judge, *Decision on the Confirmation of the Indictment against Pjetër Shala*, 12 June 2020, strictly confidential and *ex parte*. A confidential redacted version and a public redacted version were issued on 6 May 2021, F00007/CONF/RED and F00007/RED.

³ KSC-BC-2020-04, F00010, Specialist Prosecutor, *Submission of Confirmed Indictment*, 19 June 2020, public, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential. A confidential, lesser redacted version and a public, further redacted version of the Confirmed Indictment were submitted on 31 March 2021, F00016/A01, confidential, and F00016/A02, public. A further lesser redacted, confidential version of the Confirmed Indictment was submitted on 25 May 2021, F00038/A01. Following the Pre-Trial Judge's decision on the Defence's motion challenging the form of the Confirmed Indictment, a corrected indictment was submitted on 1 November 2021, F00098/A01, confidential, and 16 November 2021, F00107/A01, public.

⁴ KSC-BC-2020-04, F00033, Pre-Trial Judge, *Framework Decision on Disclosure and Related Matters*, 30 April 2021, public, para. 45.

⁵ KSC-BC-2020-04, F00135, Specialist Prosecutor, *Submission of Pre-Trial Brief, with Witness and Exhibit Lists*, 28 January 2022, public, with Annexes 1-3, strictly confidential and *ex parte*. Confidential redacted versions of the Pre-Trial Brief, Witness List, and Exhibits List were submitted on 31 January 2022, F00136. Confidential, lesser redacted versions of the Pre-Trial Brief and the Witness List were submitted on 8 February 2022, F00139.

4. On 25 March 2022, the SPO sought leave to disclose the transcripts of its interviews with W04276, W04880, W04881, and W04882 (“Witnesses”) following the expiry of the time limits imposed by Rule 102(1)(b) of the Rules, and to amend its Witness List and Exhibit List accordingly (“Request”).⁶

5. On 6 April 2022, the Defence for Pjetër Shala (“Accused” and “Defence”) responded to the Request (“Response”).⁷

6. On 11 April 2022, the SPO replied to the Response (“Reply”).⁸

II. SUBMISSIONS

7. The SPO avers that the transcripts of its interviews with the Witnesses were not disclosed within the time limits imposed by Rule 102(1)(b) of the Rules because the investigative need to interview the Witnesses arose after the expiry of that deadline, namely [REDACTED].⁹ The SPO adds that, further to [REDACTED], it determined that [REDACTED] could assist the fact-finding process.¹⁰ According to the SPO, after locating them, it filed a request for international legal assistance with the competent national authorities, and it conducted interviews with W04880, W04881, and W04276 [REDACTED] and with W04882 [REDACTED].¹¹ The SPO also indicates that it will not be requesting protective measures for any of the Witnesses.¹²

⁶ KSC-BC-2020-04, F00169, Specialist Prosecutor, *Prosecution Request pursuant to Rule 102(2) and to Amend its Witness and Exhibit Lists*, 25 March 2022, confidential, paras 1-2, 6, 9, 11, 13. A public redacted version was submitted on 28 March 2022, F00169/RED.

⁷ KSC-BC-2020-04, F00175, Specialist Counsel, *Response to the “Prosecution Request pursuant to Rule 102(2) and to Amend its Witness and Exhibit Lists”*, 6 April 2022, confidential.

⁸ KSC-BC-2020-04, F00180, Specialist Prosecutor, *Prosecution Reply to Defence Response to Prosecution Request pursuant to Rule 102(2) and to Amend its Witness and Exhibit Lists*, 11 April 2022, confidential. In the Reply, the SPO, *inter alia*, clarifies that the references to W04480 and W04481 in the Request are incorrect, and that the correct numbers for these witnesses are W04880 and W04881.

⁹ Request, paras 1, 7.

¹⁰ Request, paras 3, 7.

¹¹ Request, paras 5, 7, 9.

¹² Request, para. 10.

8. The Defence opposes the Request as the SPO has not shown good cause for interviewing the Witnesses at such a late stage of the proceedings and given that granting the Request would prejudice the Defence.¹³ According to the Defence, the [REDACTED] has been known to the SPO at least since 2018 and, in any event, for a considerable time prior to [REDACTED] 2021, and [REDACTED] the course of proceedings conducted 20 years after the events described in the Confirmed Indictment is not an unforeseen event.¹⁴ It adds that the proposed last-minute additions to the Witness List and Exhibit List cause prejudice in that the Defence does not have sufficient time to prepare its case.¹⁵ In the alternative, the Defence emphasises that, should the Request be granted, it will need additional and, in any event, sufficient time to familiarize itself with the SPO's case.¹⁶

9. The SPO replies that it had neither knowledge nor indications that [REDACTED].¹⁷ In its view, the Defence's contention is based on [REDACTED] explanation of the effects that the beatings he suffered while detained [REDACTED], but there was no indication that [REDACTED].¹⁸ The SPO also contends that the Defence's contention that the SPO is attempting to amend its case is equally incorrect since the Witnesses provide primarily corroboration [REDACTED].¹⁹

III. APPLICABLE LAW

10. Pursuant to Article 21(6) of the Law, all material and relevant evidence or facts in possession of the SPO which are for or against the accused shall be made available to him or her before the beginning of and during the proceedings,

¹³ Response, paras 2-4, 7.

¹⁴ Response, para. 5.

¹⁵ Response, para. 6.

¹⁶ Response, para. 8.

¹⁷ Reply, para. 3.

¹⁸ Reply, para. 3.

¹⁹ Reply, para. 4.

subject only to restrictions which are strictly necessary and when any necessary counter-balance protections are applied.

11. Pursuant to Rule 95(4)(b) and (c) of the Rules, the Pre-Trial Judge shall order the Specialist Prosecutor to file, within a set time limit, the list of witnesses the Specialist Prosecutor intends to call and the list of proposed exhibits the Specialist Prosecutor intends to present.

12. Pursuant to Rule 102(1)(b) of the Rules, within a time limit set by the Pre-Trial Judge, and no later than 30 days prior to the opening of the Specialist Prosecutor's case, the SPO shall make available to the Defence the following material: (i) the statements of all witnesses whom the SPO intends to call to testify at trial, in a language the accused understands and speaks; (ii) all other witness statements, expert reports, depositions, or transcripts that the SPO intends to present at trial; and (iii) the exhibits that the SPO intends to present at trial.

13. Pursuant to Rule 102(2) of the Rules, any statements of additional SPO witnesses, which have not been set in the time period prescribed by the panel, and whom the SPO intends to call or testify at trial, shall be made available to the Defence as soon as possible and shall be accompanied by reasons for the late disclosure.

IV. DISCUSSION

14. The Pre-Trial Judge notes at the outset that Rule 118 of the Rules empowers a Panel, during the trial preparation, upon timely notice and a showing of good cause, to permit the amendment of the list of witnesses and exhibits filed pursuant to Rule 95(4)(b) of the Rules.

15. The Pre-Trial Judge further notes that, at the pre-trial stage, the Rules do not explicitly provide for such an amendment. However, the Pre-Trial Judge considers that he can rule on a request to amend the list of witnesses and exhibits at the pre-trial

stage, given that Rule 118 of the Rules allows for such a possibility at a later stage of the proceedings. In this regard, the Pre-Trial Judge considers that he is empowered to rule on the Request pursuant to Rule 95(2)(b) of the Rules, seeing as it ultimately concerns disclosure under Rule 102(1)(b) of the Rules and how such disclosure has been memorialised through the Witness List and Exhibit List. The Pre-Trial Judge will assess whether the SPO has shown good cause for the requested amendments.²⁰

16. As to the timeliness of the Request, the Pre-Trial Judge observes that: (i) the SPO had announced its intention to conduct additional investigative steps [REDACTED], of which the Defence took note;²¹ (ii) the Witnesses had to be located and international legal assistance had to be requested;²² (iii) the SPO interviewed the Witnesses [REDACTED] and submitted the Request [REDACTED],²³ and (iv) the Defence investigations remain ongoing and the case file is yet to be transmitted to the Trial Panel.²⁴ In these circumstances, the Pre-Trial Judge finds that the Request has been made in a timely manner.

17. In addition, the SPO has demonstrated good cause for disclosing the Witnesses' statements and amending its Witness List and Exhibit List. The reason is [REDACTED], the SPO was subsequently required to assess [REDACTED], and interviewing the Witnesses necessitated securing international legal assistance.

18. As to the Defence's argument that the SPO [REDACTED], the Pre-Trial Judge observes that, in the statements of [REDACTED] referred to by the Defence, [REDACTED] spoke of [REDACTED] the beatings allegedly inflicted on him, but these statements do not indicate [REDACTED].²⁵ The Defence's submission that

²⁰ See also KSC-2020-05, F00156/RED, Trial Panel I, *Public Redacted Version of Decision on the Specialist Prosecutor's Request to Amend its Exhibit and Witness Lists and Related Matters*, 16 July 2021, public, paras 16-18.

²¹ KSC-BC-2020-04, Transcript of Hearing, 14 January 2022, confidential, p. 177, lines 13-20.

²² Request, paras 3, 4, 7.

²³ Request, paras 5, 7, 9.

²⁴ KSC-BC-2020-04, Transcript of Hearing, 14 April 2022, public, p. 276, line 4 to p. 287, line 2; p. 300 lines 8-9.

²⁵ [REDACTED], pp. 38-40; [REDACTED], p. 23.

[REDACTED] is not an unforeseen event is also to no avail. In the absence of specific indications, it could not have been necessarily anticipated [REDACTED] on the basis of general considerations, [REDACTED]. Accordingly, the Defence's arguments are rejected.

19. Furthermore, the Pre-Trial Judge is not persuaded that the Request causes prejudice to the Defence. This is because the information provided by the Witnesses serves to corroborate the information [REDACTED], which has already been disclosed to the Defence. As a result, the addition of the Witnesses and their statements does not fundamentally affect the SPO's allegations against the Accused. In addition, the SPO is not requesting protective measures for the Witnesses.

20. For the same reason, the Pre-Trial Judge does not consider that the Defence requires additional time to prepare before transmitting the case file to the Trial Panel. In this regard, the Pre-Trial Judge further emphasises that, as mentioned, the SPO had already announced its intention to conduct additional investigative steps [REDACTED] - specifically that it would seek to [REDACTED], that it would take time to locate them and to secure international legal assistance, and that the additional evidence would corroborative in nature.²⁶ Therefore, the Defence, which took note of the SPO's submissions,²⁷ was already put on notice of the SPO's additional investigative activities and a forthcoming request regarding this matter. In addition, the procedural calendar relating to the transmission of the present case has been recently varied so as to, *inter alia*, afford the Defence additional time to prepare.²⁸ It follows that the Defence's argument must be set aside.

21. Therefore, the Pre-Trial Judge authorises the SPO to: (i) disclose the transcripts of its interviews with the Witnesses in English, together with any Albanian

²⁶ KSC-BC-2020-04, Transcript of Hearing, 14 January 2022, confidential, p. 176 line 17 to p. 177 line 10.

²⁷ KSC-BC-2020-04, Transcript of Hearing, 14 January 2022, confidential, p. 177 lines 13-20.

²⁸ KSC-BC-2020-04, Transcript of Hearing, 14 April 2022, public, p. 298 line 13 to p. 300 line 10.

translations, to the Defence; and (ii) amend its Witness List and Exhibit List by including the Witnesses and their related statements.

V. DISPOSITION

22. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- (a) **GRANTS** the Request;
- (b) **AUTHORISES** the SPO to disclose the transcripts of its interviews with W04276, W04880, W04881, and W04882 in English, together with any Albanian translations, to the Defence, and to amend its Witness List and Exhibit List by including W04276, W04880, W04881, and W04882 and their related statements;
- (c) **REJECTS** the relief specified in the Response; and
- (d) **ORDERS** the Defence and the SPO to submit public redacted versions of the Response and Reply, respectively, by no later than **Friday, 3 June 2022**.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Monday, 30 May 2022

At The Hague, the Netherlands.