



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

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

**Before:** Trial Panel I  
Judge Mappie Veldt-Foglia, Presiding Judge  
Judge Roland Dekkers  
Judge Gilbert Bitti  
Judge Vladimir Mikula, Reserve

**Registrar:** Dr Fidelma Donlon

**Filing Party:** Specialist Prosecutor

**Date:** 10 October 2022

**Language:** English

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**Public redacted version of**

**'Prosecution submissions in advance of the trial preparation conference, with strictly confidential and *ex parte* Annexes 1- 2 and confidential Annex 3'**

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**Counsel for Victims**

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## I. INTRODUCTION

1. Pursuant to the Decision,<sup>1</sup> and Rules 116-118,<sup>2</sup> the Specialist Prosecutor's Office ('SPO') hereby files submissions on the topics identified by the Trial Panel ('Panel') in advance of the trial preparation conferences scheduled for 18 to 21 October 2022.

## II. SUBMISSIONS

### A. INVESTIGATIONS AND DISCLOSURE OF EVIDENCE

#### 1. Investigations

2. The SPO considers its investigations to be completed. It is currently conducting a final review of the evidence it intends to use at trial to determine if any limited, final investigative steps may be necessary and would ultimately assist the Panel in determining the charges in this case. Any such investigations would be limited to clarifying facts already disclosed to the Defence.

3. Further to the filing of the Defence Pre-Trial Brief, the SPO is also considering whether supplemental investigations are necessary in light of the witnesses the Defence intends to call at trial.<sup>3</sup> Any such investigations, should the SPO decide to carry them out, only concern a potential rebuttal case.

#### 2. Disclosure of Evidence

##### (a) Disclosure of further incriminating evidence

###### *Items withheld from the exhibit list*

4. The SPO has been authorised to withhold a number of items from its Rule 102(1)(b) list until the identity of the witnesses these items relate to is revealed to the Defence. These items concern witness W04436, whose identity is currently

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<sup>1</sup> Decision setting the dates for trial preparation conferences and requesting submissions with one strictly confidential and *ex parte* annex, KSC-BC-2020-04/F00289, 30 September 2022, public ('Decision').

<sup>2</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

<sup>3</sup> See Annex to Defence Pre-Trial Brief with Confidential Annex, KSC-BC-2020-04/F00265, 5 September 2022.

scheduled to be disclosed to the defence 30 days before the start of trial.<sup>4</sup> Having reviewed this witness as well as delayed disclosure witnesses W04366 and W04380, the SPO is prepared to disclose their identities to the Defence, as well as all delayed disclosure associated exhibits, in advance of the expiration of the applicable protective measures. The SPO will file a request for variation of protective measures to this effect in advance of the trial preparation conference.

5. The remaining withheld items are two videos [REDACTED].<sup>5</sup> These documents bear extremely limited relevance to the present case, and the SPO has assessed that they can be disclosed at this stage without compromising the safety of any persons. It will request variation of protective measures to this effect in advance of the trial preparation conference.

*Items which the SPO intends to add to its exhibit list*

6. As the pre-trial stage of the proceeding moved to a close, the SPO carried out a review of its evidentiary database with the aim of capturing any newly processed material which may be disclosable in the case. The SPO conducted this review also in light of the authorisation to add W04305 to the SPO witness list granted on 20 July 2022 ('Rule 102(2) Decision').<sup>6</sup> Finally, the review sought to ascertain if there remained any items part of the SPO collection which should have been notified or disclosed to the Defence, with the aim of providing notice of these items and disclosing them before the start of trial. This review is now complete.

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<sup>4</sup> Second Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-04/F00053, 12 July 2021, strictly confidential and *ex parte*, para.30a. These are items 561 to 570 in Annexes 2 and 4 to the Submission of amended witness and exhibit lists with strictly confidential and *ex parte* Annexes 1-2 and confidential redacted Annexes 3-4, KSC-BC-2020-04/F00234, 29 July 2022.

<sup>5</sup> Items 571 and 572 in Annexes 2 and 4 to the Submission of amended witness and exhibit lists with strictly confidential and *ex parte* Annexes 1-2 and confidential redacted Annexes 3-4, KSC-BC-2020-04/F00234, 29 July 2022. *See* Tenth Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00467, 13 September 2021, para.21(b).

<sup>6</sup> Decision on Specialist Prosecutor's Rule 102(2) and Related Requests, KSC-BC-2020-04/F00234, confidential.

7. Further to this review, the SPO has discovered one additional document pertaining to W04436, [REDACTED] disclosable under Rule 102(1)(b).<sup>7</sup> Rule 112 requires the SPO to disclose this document without delay. However, disclosing this document prior to the variation of protective measures for W04436, discussed above, would require filing a request for protective measures in relation to this document and its subsequent disclosure in redacted form. In this regard, the SPO requests guidance from the Panel as to whether it would be preferable to wait for the Panel's ruling on the upcoming motion for variation of protective measures before disclosing the photo board identification, without non-standard redactions, should the motion be granted.

8. The SPO has also found two documents that qualify as previous statements of W04305. Pursuant to Rule 112, the SPO will disclose these documents to the Defence before the Trial Preparation Conference.

9. The SPO has also located a [REDACTED], and seeks to add it to its exhibit list. The information contained in this document is already known to the Defence.

10. Finally, the SPO also seeks to add to its exhibits list [REDACTED], which has already been disclosed pursuant to Rule 103 in April 2022.<sup>8</sup>

11. The SPO will file a request to amend its exhibit list before the trial preparation conference, and, if granted, it will promptly disclose these documents to the Defence.

#### (b) Disclosure of materials falling under Rule 103

12. During the recently completed review of its database, the SPO has identified 18 documents disclosable under Rule 103. Seven of these documents became disclosable under Rule 103 after the granting of the Rule 102(2) Decision, as they concern W04305, who was added to the SPO witness list on 29 July 2022.<sup>9</sup> Eight documents contain

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<sup>7</sup> The photo board does not include any picture of the Accused.

<sup>8</sup> SITF00447754-00447758.

<sup>9</sup> Submission of amended witness and exhibit lists with strictly confidential and *ex parte* Annexes 1-2 and confidential redacted Annexes 3-4, KSC-BC-2020-04/F00243, 29 July 2022, public.

information on W04734 the substance of which is already known to the Defence through other disclosed documents. Two other documents contain potentially exculpatory information in relation to witnesses W04755 and W04848.

13. One last document concerns the health of W01984, and was acquired by the SPO in June 2022 to facilitate the Panel's assessment of a forthcoming request to admit the witness's evidence pursuant to Rule 155. In considering the information contained in that document, the SPO has determined that it could also be disclosable under Rule 103.

14. None of these documents will require a request for protective measure before their disclosure.

(c) Disclosure of materials falling under Rule 102(3)

15. The SPO has identified 108 documents potentially disclosable under Rule 102(3) and requests leave to include them in an updated Rule 102(3) which the SPO will be ready to file immediately after receiving leave to do so by the Panel.

16. The SPO will be prepared to inform the panel at the trial preparation conference if any of the materials contained on the list, if requested by the Defence, will require a request for protective measures prior to disclosure. Given the relatively small number of items on this list, the SPO is prepared to disclose them expeditiously if requested by the Defence.

**3. Handling of confidential information during the investigation**

17. The SPO is of the view that the framework adopted in Case KSC-BC-2020-06<sup>10</sup> should also be adopted, *mutatis mutandis*, for witnesses in this case. As submitted on 2 September 2022, and for the reasons stated therein,<sup>11</sup> the SPO requests that the same

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<sup>10</sup> Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party and a Participant and Witnesses of the Opposing Party or of a Participant, KSC-BC-2020-06/F00854, 24 June 2022, public.

<sup>11</sup> Prosecution submission concerning items subject to Rule 81(1)(a) protective measures with strictly confidential and *ex parte* Annexes 1-3, KSC-BC-2020-04/F00261, 2 September 2022, strictly confidential and *ex parte*, paras 75-77. The confidential redacted version was filed on 5 September 2022.

framework be adopted with respect to any witness included in that request whose identity is notified to the Defence.

#### B. CRIME SITE VISIT

18. The SPO believes that a site visit could be of assistance to the Panel. Such a visit would show, as will other evidence offered by the prosecution at trial, that the site of the alleged crimes is relatively small and confined.

19. The SPO will submit in evidence, either through witnesses or in written form, photographs, sketches produced by witnesses, and a diagram of the Kukës Metal Factory. These materials enable a clear understanding of both the location and layout of the Kukës Metal Factory, and of the location of the rooms used to detain the victims.

#### C. COMMENCEMENT OF TRIAL AND OPENING STATEMENTS

20. The SPO defers to the Trial Panel with respect to the start date for trial, and will be prepared to begin whenever that date is set.

21. The SPO intends to make an opening statement during which it will use a small number of visual aids (maps and photographs). It foresees that the opening statement will take no longer than two hours.

#### D. FAMILIARISATION OF WITNESSES PRIOR TO TESTIMONY

22. The SPO recalls its position taken in Case KSC-BC-2020-05 with respect to witness preparation sessions between the calling party and a witness, which albeit not regulated by the Rules, have been permitted by Kosovo courts and widely adopted before international and hybrid tribunals.<sup>12</sup>

23. While maintaining its position with regard to the advantages offered by this practice – in any case, but particularly in cases conducted in a climate of witness intimidation – the SPO is cognizant of the Panel’s position on this matter, which is set

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<sup>12</sup> Prosecution Submissions pursuant to KSC-BC-2020-05/F00123 with Strictly Confidential and *ex parte* Annexes 1-2, KSC-BC-2020-05/F00130, 2 June 2021, public, paras 17-22.

out in its decision on witness familiarisation issued in KSC-BC-2020-05.<sup>13</sup> In the circumstances of this case, the SPO has no objection to the adoption of the same regime of witness familiarisation in this case.

#### E. DUAL STATUS WITNESSES-VICTIMS

24. The SPO and Victims' Counsel have exchanged some information on the persons who currently hold the dual status of witnesses-victims. [REDACTED].<sup>14</sup>

25. The SPO has also learned, through its regular contact with its witnesses, that a number of them have applied to participate as victims in this case, and understands that they are among the victims admitted on 11 August 2022 and 19 September 2022.<sup>15</sup>

26. The SPO considers a transparent exchange of information with Victims' Counsel on this topic beneficial. With the Panel's leave, the SPO would welcome the opportunity to receive from Victims' Counsel a list of the individuals holding this dual-status. The SPO remains available to provide further assistance to Victims' Counsel throughout the trial as it may be necessary to ensure the protection and effective participation of witnesses-victims in this case.

#### F. PRESENTATION OF (WITNESS) EVIDENCE

##### **1. List of witnesses and exhibits and order of proof**

27. The SPO has decided to reduce the number of witnesses listed in its List of Witnesses,<sup>16</sup> and it no longer intends to call W04754, W03887, and W04826. Further to this change, the SPO intends to call 12 live witnesses. For one of them, the SPO will request admission of his SPO and other prior interviews, pursuant to Rule 154.

28. The SPO does not foresee the need to call an expert witness, and intends to submit relevant forensic reports of W04826 in writing pursuant to Rule 149. Together

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<sup>13</sup> Decision on witness familiarisation, KSC-BC-2020-05/F00150, 9 July 2021, public, paras 35-43.

<sup>14</sup> First Decision on Victims' Participation, KSC-BC-2020-04/F00123, 15 December 2021, confidential.

<sup>15</sup> Second Decision on Victims' Participation, KSC-BC-2020-04/F00249, 11 August 2022, confidential; Third Decision on Victims' Participation, KSC-BC-2020-04/F00279, 19 September 2022, confidential.

<sup>16</sup> Annex 1 to Submission of amended witness and exhibit lists with strictly confidential and *ex parte* Annexes 1-2 and confidential redacted Annexes 3-4, KSC-BC-2020-04/F00243/A01.



with the expert reports of the autopsy of the alleged murder victim in this case,<sup>17</sup> the SPO intends to submit two reports on the medical examination of W04733<sup>18</sup> and W04734,<sup>19</sup> together with the transcript of W04826's interview in a previous case.<sup>20</sup>

29. The SPO will also seek admission of the DNA identification report of the Prague Criminology Institute,<sup>21</sup> and the further report compiled by Prof. William H. Goodwin.<sup>22</sup>

30. An amended list of witnesses, specifying the proposed modalities of the witnesses' testimonies and their tentative order of appearance, is enclosed in strictly confidential and *ex parte* Annex 1 to this filing.<sup>23</sup> With regard to the order of appearance, it may be subject to adjustments depending on witness availability and on other considerations that may acquire relevance as the trial progresses. The SPO will inform the Panel, the Defence, and Victims' Counsel promptly should it decide to make changes to the proposed order.

31. With the exception of the documents discussed under Section A above, at this stage the SPO does not seek further amendments to its List of Exhibits.<sup>24</sup>

## **2. Request for the admission of evidence pursuant to Rules 153-155**

32. The SPO intends to request the admission of the evidence of four witnesses pursuant to Rule 155, as specified in Annex 1 to this filing. Three of these witnesses (W04733, W01448, W04848) are deceased, while another one (W01984) has been assessed by Witness Protection and Support Office ('WPSO') as unfit to testify at trial, also on the basis of medical documentation provided by the SPO. The SPO foresees

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<sup>17</sup> 031049-031095 RED2; 103427-103428a; 102443-102471 RED.

<sup>18</sup> SITF00019793-00019810.

<sup>19</sup> SITF00019134-SITF00019147 RED2.

<sup>20</sup> SITF00019127-SITF00019133.

<sup>21</sup> SITF00012453-00012464.

<sup>22</sup> 103373-103387.

<sup>23</sup> A confidential redacted version is attached in Annex 3.

<sup>24</sup> Annex 1 to Submission of amended witness and exhibit lists with strictly confidential and *ex parte* Annexes 1-2 and confidential redacted Annexes 3-4, KSC-BC-2020-04/F00243/A02.



that in addition to these witnesses' statements,<sup>25</sup> it will submit into evidence a number of associated exhibits which are already listed in its list of exhibits, with respect to which a final determination will be reached at the time of the filing of the relevant requests.

33. As anticipated above, the SPO also intends to request admission of a number of statements of W04734 pursuant to Rule 154,<sup>26</sup> together with a number of exhibits associated to these statements, in relation to which a final determination will be reached at the time of the filing of the relevant request.

#### G. OBJECTIONS TO THE ADMISSIBILITY OF NON-ORAL EVIDENCE

34. On 19 September 2022, the Defence disclosed three media articles and a video.<sup>27</sup> [REDACTED]. Should the Defence seek to submit these materials in evidence, the SPO will object to their admissibility for lack of relevance and probative value. The SPO reserves the right to make further submissions on their admissibility once the Defence makes submissions on their reliability, relevance, and probative value under Rule 138.

#### H. JUDICIAL NOTICE OF ADJUDICATED FACTS

35. The SPO intends to request the Panel to take judicial notice of no more than 150 adjudicated facts under Rule 157(2). The SPO does not foresee, also on the basis of discussions had with the Defence, during the pre-trial phase, with a view of reaching agreement on matters of fact or law,<sup>28</sup> that it will be possible to agree on a joint filing. The SPO will submit its request under Rule 157(2) before the start of trial.

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<sup>25</sup> At this stage, the SPO plans to seek admission of eight statements of W01448, including three photo board identification reports; two statements of W04848; four statements of W01984; and nine of W04733. A final determination on the statements that will be tendered through Rule 155 will be made at the time of the filing of the motion.

<sup>26</sup> While the SPO has not yet reached a final determination on the number of statements it will submit through Rule 154, it is currently considering approximately ten statements.

<sup>27</sup> DPS00001-DPS00005; DPS00006-DPS00041; DPS00042; DPS00043-00048.

<sup>28</sup> Prosecution submission on points of agreement on matters of fact with Confidential Annex, KSC-BC-2020-04/F00178, 8 April 2022, public.

### III. CLASSIFICATION

36. These submissions are filed confidentially as they refer to the content of evidentiary material recently disclosed by the defence the content of which is not public. A public redacted version will be filed contextually.

**Word count: 2692**



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**Jack Smith**

**Specialist Prosecutor**

Monday, 10 October 2022

At The Hague, the Netherlands.