



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**In:** **KSC-BC-2020-06**

**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi,  
and Jakup Krasniqi**

**Before:** **Pre-Trial Judge**

Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Date:** 24 June 2021

**Language:** English

**Classification:** **Public**

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**Decision on Prosecution Request for Extension of Time Limit to Provide its  
Rule 102(3) Notice**

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Article 39(13) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 9(5)(a), 97(2) and 102(3) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this order.

## I. PROCEDURAL BACKGROUND

1. On 23 November 2020, the Pre-Trial Judge ordered, *inter alia*, that the Specialist Prosecutor Office ("SPO") provide a detailed notice of the evidence falling under Rule 102(3) of the Rules by Friday, 30 April 2021.<sup>2</sup>
2. On 24 March 2021, the Pre-Trial Judge extended the deadline for the SPO to provide the Defence with a detailed notice of evidence falling under Rule 102(3) of the Rules to Friday, 25 June 2021.<sup>3</sup>
3. On 18 June 2021, the SPO filed a request for an extension of time limit with respect to their Rule 102(3) notice ("Request").<sup>4</sup> That same day, the Pre-Trial Judge ordered the Parties to provide expedited responses and replies.<sup>5</sup>
4. On 22 June 2021, Jakup Krasniqi ("Mr Krasniqi") filed his response.<sup>6</sup>
5. On 23 June 2021, Kadri Veseli ("Mr Veseli") and Rexhep Selimi ("Mr Selimi") filed their respective responses.<sup>7</sup> The SPO did not file a reply.

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<sup>1</sup> KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

<sup>2</sup> KSC-BC-2020-06, F00099, Pre-Trial Judge, *Framework Decision on Disclosure and Related Matters* ("Framework Decision on Disclosure"), 23 November 2020, public, para. 99(f).

<sup>3</sup> KSC-BC-2020-06, Transcript of Hearing, 24 March 2021, public, p. 390, line 17 to p. 391, line 10.

<sup>4</sup> KSC-BC-2020-06, F00356, Specialist Prosecutor, *Prosecution Request for Extension of Time Limit to Provide its Rule 102(3) Notice*, 18 June 2021, public.

<sup>5</sup> KSC-BC-2020-06, F00359, Pre-Trial Judge, *Order for Expedited Responses and Replies*, 18 June 2021, public.

<sup>6</sup> KSC-BC-2020-06, F00364, Defence for Mr Krasniqi, *Krasniqi Defence Response to Prosecution Request for Extension of Time Limit to Provide Rule 102(3) Notice* ("Krasniqi Response"), 22 June 2021, public.

<sup>7</sup> KSC-BC-2020-06, F00367, Defence for Mr Veseli, *Veseli Defence Response to SPO Request KSC-BC-2020-06/F00356 (Extension of Time to Provide Notice Pursuant to Rule 102(3))* ("Veseli Response"), 23 June 2021, public; F00368, Defence for Mr Selimi, *Selimi Defence Response to "Prosecution Request for Extension of Time Limit to Provide its Rule 102(3) Notice"* ("Selimi Response"), 23 June 2021, public.

## II. SUBMISSIONS

6. The SPO requests an extension until 30 July 2021 for the provision of its Rule 102(3) notice.<sup>8</sup> The SPO submits that good cause for the extension is shown by the fact that Rule 102(3) material, which is residual in nature,<sup>9</sup> should occur at a stage of proceedings when disclosure pursuant to the other Rules is sufficiently advanced.<sup>10</sup> The SPO indicates that after conducting a “stock-taking” of the ongoing disclosure process it has become apparent that the Rule 102(3) notice must necessarily be provided after completion of the Rule 102(1)(b) disclosure in order to avoid duplication and ensure that resources are not diverted from the Rule 102(1)(b) disclosure exercise.<sup>11</sup> The SPO does not object to a consequent adjustment of the 20 August 2021 deadline for the Defence to request Rule 102(3) materials, should its own deadline be adjusted.<sup>12</sup>

7. Mr Krasniqi responds that he does not oppose the requested extension and would seek an equivalent adjustment to the deadline for the Defence to request Rule 102(3) materials.<sup>13</sup>

8. Mr Veseli opposes the Request because it was not brought in a timely fashion, is not supported by a showing of good cause, and is prejudicial to him.<sup>14</sup> Mr Veseli points to the fact that the Request was only brought a week before the designated deadline.<sup>15</sup> Mr Veseli argues that the overlapping nature of disclosures obligations and resource intensive nature of such obligations were clearly known to the SPO well in advance of its deadline.<sup>16</sup> Mr Veseli asserts that should the Request be granted the Defence will

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<sup>8</sup> Request, para. 1.

<sup>9</sup> Framework Decision on Disclosure, para. 26.

<sup>10</sup> Request, paras 1-2.

<sup>11</sup> Request, paras 3-6.

<sup>12</sup> Request, para. 7.

<sup>13</sup> Krasniqi Response, para. 3.

<sup>14</sup> Veseli Response, paras 2-9.

<sup>15</sup> Veseli Response, paras 3-4.

<sup>16</sup> Veseli Response, paras 5-7.

need to reassess its timetable for investigations.<sup>17</sup> Mr Veseli maintains that any further delays occasioned by the SPO while Mr Veseli remains in detention is unacceptable.<sup>18</sup> Mr Veseli requests that the Pre-Trial Judge reject the Request.<sup>19</sup>

9. Mr Selimi responds that he does not oppose the requested extension of time limit for the SPO and requests that the Defence deadline in relation to Rule 102(3) materials be extended to 24 September 2021.<sup>20</sup>

### III. APPLICABLE LAW

10. Pursuant to Rule 9(5)(a) of the Rules, the Panel may, *proprio motu* or upon a showing of good cause, extend or reduce any time limit prescribed by the Rules or set by the Panel.

11. Pursuant to Rule 102(3) of the Rules, the Specialist Prosecutor shall, pursuant to Article 21(6) of the Law, provide a detailed notice to the Defence of any material and evidence in his or her possession.

12. Pursuant to Rule 97(2) of the Rules, preliminary motions shall be disposed of within 21 days of the last submission.

### IV. DISCUSSION

#### a. Rule 102(3) Notice

13. The Pre-Trial Judge considers that, as the SPO has not completed its disclosure of Rule 102(1)(b) materials,<sup>21</sup> it will be more efficient if the disclosure process is amended such that the SPO provides its Rule 102(3) notice after the completion of disclosure under Rule 102(1)(b) in order to avoid duplication

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<sup>17</sup> Veseli Response, para. 8.

<sup>18</sup> Veseli Response, para. 9.

<sup>19</sup> Veseli Response, para. 10.

<sup>20</sup> Selimi Response, paras 3-4.

<sup>21</sup> KSC-BC-2020-06, F00218, Pre-Trial Judge, *Decision on Categorisation of Evidence Under Rule 109(c) and Related Matters*, 12 March 2021, public, para. 22.

through the inclusion of Rule 102(1)(b) material on the Rule 102(3) notice. While notice as to the SPO's inability to meet the requisite deadline could have been provided earlier, the Pre-Trial Judge considers that such a delay was occasioned by good faith efforts to meet the stipulated deadline. Furthermore, the Pre-Trial Judge emphasises the importance of disclosure being carried out attentively to avoid any issues arising from a harried drive to meet deadlines.

14. The Pre-Trial Judge does not consider that any prejudice towards the Defence will arise through the extension of the SPO's deadline for providing its Rule 102(3) notice.<sup>22</sup> A similar extension of time will also be granted to the Defence so that adequate time is provided for review of the SPO's Rule 102(3) notice. In addition, the bulk of the SPO's disclosure, pursuant Rules 102(1)(a) and 102(1)(b) of the Rules, will have been disclosed prior to the filing of the SPO's Rule 102(3) notice thereby providing no obstacle to the continuation of Defence investigations. Finally, the Defence is free to request Rule 102(3) material from the SPO any time after the Rule 102(3) notice has been provided, including before the time limit set in this decision.

#### b. Preliminary Motions

15. On 19 May 2021, the Pre-Trial Judge indicated that the decisions on preliminary motions shall be issued on Friday, 16 July 2021.<sup>23</sup> For organisational reasons, the Pre-Trial Judge varies this deadline to Thursday, 22 July 2021.

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<sup>22</sup> As to any impact on detention related matters, such arguments should be raised in the context of the periodic detention reviews conducted by the Pre-Trial Judge.

<sup>23</sup> KSC-BC-2020-06, Transcript of Hearing, 19 May 2021, public, p. 451, lines 16-17.

## V. DISPOSITION

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

- a) **GRANTS** the Request;
- b) **EXTENDS** the SPO's deadline for filing a Rule 102(3) notice to **Friday, 30 July 2021**;
- c) **EXTENDS** the Defence's deadline for requesting Rule 102(3) material to **Friday, 24 September 2021**;
- d) **ORDERS** the SPO, by **Friday, 15 October 2021**, or within three weeks of the Defence indication(s), whichever is earlier, to: (i) disclose or provide the Defence with access to the selected material that does not require redactions; and (ii) submit its request for protective measures, if any, in respect of the materials sought by the Defence and to disclose, as soon as possible, such material with redactions, if granted;
- e) **ORDERS** the SPO to seize the Pre-Trial Judge **within ten days of the Defence indication(s)** should a dispute as to the materiality of the evidence arise; and
- f) **INFORMS** the Parties and Participants that decisions on preliminary motions shall be issued on **Thursday, 22 July 2021**.



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**Judge Nicolas Guillou**  
**Pre-Trial Judge**

Dated this Thursday, 24 June 2021

At The Hague, the Netherlands