

BEFORE THE PRE-TRIAL JUDGE
KOSOVO SPECIALIST CHAMBERS

Case No.: KSC-BC-2020-04

Before: Judge Nicolas Guillou, Pre-Trial Judge

Registrar: Dr Fidelma Donlon, Registrar

Date: 13 October 2021

Filing Party: Defence Counsel

Original Language: English

Classification: Public

THE SPECIALIST PROSECUTOR
v.
PJETËR SHALA

**Defence Request for Variation of Time Limit
for its Rule 102(2) Request**

Specialist Prosecutor
Jack Smith

Counsel for the Accused
Jean-Louis Gilissen
Hedi Aouini

I. INTRODUCTION

1. Pursuant to Rule 9(5)(a) of the Rules, the Defence for Mr Pjetër Shala seeks variation of the time limit fixed by the Pre-Trial Judge as to its Rule 102(2) indication of the items listed in the Prosecution (“SPO”) Rule 102(3) notice that it seeks to have access.¹

II. PROCEDURAL HISTORY

2. On 3 September 2021, the SPO submitted its Rule 102(3) notice.² The SPO indicated that its notice would be supplemented in due course.³
3. On 9 September 2021, the Defence requested an extension of time for identifying the items listed in the Rule 102(3) notice it seeks to have access until 15 October 2021.⁴ On 10 September 2021, the SPO responded that it did not object to the Defence request and sought variation of a number of related time limits.⁵ On 14 September 2021, the Pre-Trial Judge granted the Defence request and instructed the Defence to indicate to the SPO which items from the Rule 102(3) notice it seeks to have access by 15 October 2021.⁶
4. On 17 September 2021, the SPO noted in its submissions filed in advance of the third status conference that it had to supplement its Rule 102(3) notice with

¹ KSC-BC-2020-04, F00078, Decision on Requests to Vary Time Limits and Order Setting the Date for the Third Status Conference and for Submissions, 14 September 2021, paras. 16, 26(a). All further references to filings in this Motion concern Case No. KSC-BC-2020-04 unless otherwise indicated.

² F00057, Notice to the Pre-Trial Judge Regarding the Disclosure of Rule 102(1)(b) Materials and Request for Limited Deferral of Disclosure Obligations for Select Items, 31 July 2021 (notified on 2 August 2021) (confidential redacted).

³ F00057, Notice to the Pre-Trial Judge Regarding the Disclosure of Rule 102(1)(b) Materials and Request for Limited Deferral of disclosure Obligations for Select Items, 31 July 2021 (notified on 2 August 2021) (confidential redacted).

⁴ F00074, Defence Motion for an Extension of Time for its Rule 102(2) Request, 9 September 2021 (confidential), paras. 5, 8.

⁵ F00076, Prosecution Response to KSC-BC-2020-04/F00074 and Related Request for Modification of Deadlines, 10 September 2021 (confidential).

⁶ F00078, Decision on Requests to Vary Time Limits and Order Setting the Date for the Third Status Conference and for Submissions, 14 September 2021, paras. 16, 26(a).

respect to material subject to Rule 107 restrictions and material identified in the course of its verification exercises.⁷ Specifically with regard to the latter, it noted that “certain search terms used to identify additional potentially relevant materials had inadvertently not been run on a particular database”.⁸ As a result, its review of material captured by such searches identified approximately 500 additional items falling within Rule 102(3).⁹

5. On 22 September 2021, the SPO filed a supplemental Rule 102(3) notice.¹⁰ It submitted that its revised notice would be further supplemented once additional clearances were obtained in respect of a number of items that are subject to Rule 107 restrictions.¹¹
6. At the status conference of 23 September 2021, the Pre-Trial Judge noted that the material identified by the SPO as a result of their additional searches amounted to “a third more than the number of evidentiary materials initially listed in the notice.”¹² The Pre-Trial Judge noted with concern that the practice of supplementing lists of evidentiary material after the deadlines fixed by him had expired would potentially delay the proceedings and prevent effective preparation for trial.¹³ The Pre-Trial Judge also informed the parties that he did not intend to issue multiple deadlines regarding this category of evidentiary material and requested the SPO to indicate when it would be able to provide a

⁷ F00080, Prosecution submissions for third status conference, 17 September 2021 (“Prosecution Submissions Dated 17 September 2021”), para. 3.

⁸ Prosecution Submissions Dated 17 September 2021, para. 3. *See also* Transcript 23 September 2021, p. 78.

⁹ Prosecution Submissions Dated 17 September 2021, para. 3. *See also* Transcript 23 September 2021, p. 78.

¹⁰ KSC-BC-2020-04, F00082, Prosecution supplemental Rule 102(3) notice with confidential Annex 1, 22 September 2021.

¹¹ KSC-BC-2020-04, F00082, Prosecution supplemental Rule 102(3) notice with confidential Annex 1, 22 September 2021, para. 1.

¹² Transcript 23 September 2021, p. 77.

¹³ Transcript 23 September 2021, p. 77.

final version of its Rule 102(3) notice.¹⁴ The SPO responded that, in principle, it had identified all material in its possession and has listed them on the supplemental Rule 102(3) notice.¹⁵ The Defence noted the difficulty it faces due to the inadequate description provided by the SPO as to a number of listed items that does not allow an assessment of their relevance for the Defence case.¹⁶

7. On 29 September 2021, the Defence requested additional information about a number of items listed in the SPO Rule 102(3) notice for the purposes of assessing their materiality to the Defence case.¹⁷
8. On 1 October 2021, the Defence submitted a further request for information as to several items listed in the SPO Rule 102(3) notice and gave the SPO a preliminary indication of the items it would seek access to in due course.¹⁸
9. On the same date, the SPO provided the Defence with a chart that included all items listed in its supplementary Rule 102(3) notice as that was filed on 22 September 2021.¹⁹
10. On 7 October 2021, the Defence formally requested access to a number of items included in the SPO notice and requested sufficient particulars as to a number of other items listed in that notice.²⁰ The Defence noted with concern that the vast majority of the items identified for the first time in the supplemental Rule 102(3) notice appeared material for the Defence case.²¹ Specifically, the Defence

¹⁴ Transcript 23 September 2021, p. 78.

¹⁵ Transcript 23 September 2021, p. 78. The SPO noted that it remains possible that it could identify additional relevant material but expected this to be a “very isolated situation”.

¹⁶ Transcript 23 September 2021, p. 82.

¹⁷ E-mail to the SPO by Defence Co-Counsel, 29 September 2021 at 11:23 a.m.

¹⁸ E-mail to the SPO by Defence Co-Counsel, 1 October 2021 at 12:50 p.m.

¹⁹ E-mail from the SPO to Defence Team, 1 October 2021 at 4:00 p.m.

²⁰ E-mail to the SPO by Specialist Counsel, 7 October 2021 at 12:16 p.m.

²¹ E-mail to the SPO by Specialist Counsel, 7 October 2021 at 12:16 p.m.

identified as material to its case 406 out of 470 items listed for the first time in the supplemental notice.²²

11. On 12 October 2021, the SPO provided the Defence with an updated version of its Rule 102(3) chart, which included 424 revised descriptions for items for which the Defence requested additional information.²³ The SPO confirmed that its review of additional items for which the Defence has requested additional information is ongoing.

III. SUBMISSIONS

12. Rule 102(2) of the Rules requires the SPO to provide “detailed” notice to the Defence of any material and evidence in its possession.²⁴ It also provides that the Defence may request disclosure or inspection of any material in the custody or control of the SPO which is deemed material to the Defence’s preparation.
13. In light of the significant number of new items identified in the SPO supplemental Rule 102(3) notice as well as the lack of adequate information as to a great number of items listed therein, the Defence requires additional time to indicate the material it needs access to. Specifically, the Defence requests that the Pre-Trial Judge allow the Defence to make its Rule 102(2) indication two weeks after the SPO provides the Defence with sufficiently detailed descriptions of all items listed in the SPO Rule 102(3) notice.
14. The Defence has made all possible effort in good faith to meet the deadline of 15 October 2021. Good cause exists for the requested variation as the additional time would allow the Defence to process the information provided in the original and supplemental Rule 102(3) notice, request all necessary

²² E-mail to the SPO by Specialist Counsel, 7 October 2021 at 12:16 p.m.

²³ E-mail from the SPO to Defence Team, 12 October 2021 at 9:48 p.m.

²⁴ KSC-BC-2020-06, Decision on the Defence Request for an Amended Rule 102(3) Notice, 8 September 2021, para. 19.

clarifications by the SPO *inter partes*, and be in a position to take an informed position as to the items it requires. To date, the Defence request for sufficient particulars is still pending for over 1,000 items listed in the SPO Rule 102(3) notice. The additional time requested would facilitate *inter partes* discussions and may prevent unnecessary litigation regarding access to Rule 102(3) material.

IV. RELIEF REQUESTED

15. For these reasons, the Defence respectfully seeks to make its Rule 102(2) request two weeks after the date on which the SPO provides sufficient detail as to all items listed in the SPO Rule 102(3) notice.

Respectfully submitted,



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Hedi Aouini
Defence Co-Counsel

Wednesday, 13 October 2021

The Hague, the Netherlands

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