



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: 18 October 2021

Language: English

Classification: Public

Order in Relation to Prosecution Request for Extension of Time Limit

Specialist Prosecutor
Jack Smith

Counsel for Victims
Simon Laws

Counsel for Hashim Thaçi
Gregory Kehoe

Counsel for Kadri Veseli
Ben Emmerson

Counsel for Rexhep Selimi
David Young

Counsel for Jakup Krasniqi
Venkateswari Alagenda

THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(13) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 9, 95(2)(b) and 102(3) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this order.

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 23 November 2020, the Pre-Trial Judge ordered, *inter alia*, the Specialist Prosecutor's Office ("SPO") to provide a detailed notice of the evidence falling under Rule 102(3) of the Rules ("Notice") by Friday, 30 April 2021.²

2. On 24 March 2021³ and 24 June 2021,⁴ the Pre-Trial Judge extended the SPO's deadline for filing the Notice.

3. On 31 July 2021, the SPO filed the Notice.⁵

4. On 8 and 14 September 2021, the Pre-Trial Judge, *inter alia*, ordered the SPO to prepare an amended Notice containing more specific descriptions by 22 October 2021, further amended deadlines in relation to the disclosure of Rule 102(3) material and reiterated that the SPO shall disclose or provide access to the selected material or submit a request for protective measures within three weeks of the Defence indication(s) and raise disputes as to the materiality of the requested Rule 102(3) material within ten days of the Defence indication(s).⁶

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

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

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

⁴ KSC-BC-2020-06, F00370, Pre-Trial Judge, *Decision on Prosecution Request for Extension of Time Limit to Provide its Rule 102(3) Notice*, 24 June 2021, public.

⁵ KSC-BC-2020-06, F00421, Specialist Prosecutor, *Prosecution Rule 102(3) Notice*, 30 July 2021, public, with Annex 1, confidential, and Annex 2, strictly confidential and *ex parte*.

⁶ KSC-BC-2020-06, F00460, Pre-Trial Judge, *Decision on the Defence Request for an Amended Rule 102(3) Notice*, 8 September 2021, public, para. 27; Transcript of Hearing, 14 September 2021, public, p. 625, line 24, to p. 626, lines 1-21.

5. On 7 October 2021, the Defence for Jakup Krasniqi requested disclosure of 5,945 items from the Notice (“Krasniqi Request”).⁷

6. On 14 October 2021, the SPO requested that, with respect to the Krasniqi Request, the Pre-Trial Judge grant: (i) a five-week extension to 23 November 2021 for any materiality challenge and (ii) to similarly extend the related deadline for disclosure and/or any protective measures by two weeks to 7 December 2021.⁸ The SPO also requests that the Pre-Trial Judge vary applicable deadlines for future Rule 102(3) requests to three weeks for any materiality challenge and six weeks for disclosure and/or any protective measures requests⁹ (collectively, “SPO Requests”).

II. APPLICABLE LAW

7. 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.

8. Pursuant to Rule 95(2)(b) of the Rules, the Pre-Trial Judge shall set time limits for disclosure.

9. 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. Such material shall be disclosed without delay. The Specialist Prosecutor shall immediately seize the Panel where grounds to dispute the materiality of the information exist.

⁷ KSC-BC-2020-06, F00527, Specialist Prosecutor, *Prosecution Request for Extension of Time Limit* (“Request”), 14 October 2021, public, para. 2.

⁸ Request, para. 6(a).

⁹ Request, para. 6(b).

III. DISCUSSION

10. In relation to the requested extensions of time, the Pre-Trial Judge notes that, on prior occasions, the SPO has made similar requests which have been granted.¹⁰ The continued requests for extensions of the SPO's deadlines in relation to Rule 102(3) material indicates that a more global discussion on the deadlines currently in place for the disclosure of Rule 102(3) material is necessary. This is indeed recognised by the SPO in its current request for the variation of applicable deadlines in relation to Rule 102(3) materiality challenges and for disclosure and/or any related requests for protective measures for such material.

11. The Pre-Trial Judge considers that the next status conference is the best forum for a discussion amongst the Parties and participants regarding the variation of SPO deadlines with respect to Rule 102(3) material. The Pre-Trial Judge further considers that, by the time of the next status conference, there will be a clearer picture as to the amount of Rule 102(3) material the Defence has requested. The Pre-Trial Judge will accordingly defer a decision on the SPO Requests until that time.

12. Until a decision is rendered on the SPO Requests, the Pre-Trial Judge suspends all SPO deadlines in relation to the materiality review and disclosure of Rule 102(3) material. Consequently, this suspension does not affect the SPO's obligation to submit an amended Notice and the Defence to indicate which items it seeks access by way of inspection or disclosure, as previously ordered. In the meantime, the Pre-Trial Judge encourages the SPO to work expeditiously on the disclosure of Rule 102(3) material until such time as a decision on the SPO Requests is rendered.

13. Finally, the Pre-Trial Judge requests that the Parties and participants include in their submissions for the next status conference any observations they wish to make on the SPO Requests, as the case may be.

¹⁰ KSC-BC-2020-06, F00487, Pre-Trial Judge, *Decision on Prosecution Request for Extension of Time*, 24 September 2021, public; F00499, Pre-Trial Judge, *Decision on Prosecution Request for Extension of Time*, 30 September 2021, public.

IV. DISPOSITION

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

- a) **DEFERS** his decision on the SPO Requests until the next status conference;
- b) **SUSPENDS** the SPO deadlines in relation to the Krasniqi Request and those related to the materiality review and disclosure of any future Defence requests for Rule 102(3) material until such time as the Pre-Trial Judge issues a decision on the SPO Requests; and
- c) **ORDERS** that the Defence and Victims' Counsel, make observations on the SPO Requests, if they so choose, in their submissions for the next status conference.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Monday, 18 October 2021
At The Hague, the Netherlands