



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: 19 October 2021

Language: English

Classification: **Public**

Decision on Request to Vary the Time Limit for the Defence's Rule 102(3) Request

Specialist Prosecutor

Jack Smith

Counsel for the Accused

Jean-Louis Gilissen

THE PRE-TRIAL JUDGE,¹ pursuant to Articles 21(6) and 39(1) and (13) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 9(5)(a), 76, and 95(2)(b) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

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 16 March 2021, further to a decision and an arrest warrant issued by the Pre-Trial Judge,⁴ Pjetër Shala ("Mr Shala") was arrested in the Kingdom of Belgium ("Belgium").⁵
3. On 15 April 2021, upon conclusion of the judicial proceedings in Belgium, Mr Shala was transferred to the detention facilities of the Specialist Chambers in the Hague, the Netherlands.⁶

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 and F00016/A02. A further lesser redacted, confidential version of the Confirmed Indictment was submitted on 25 May 2021, F00038/A01.

⁴ KSC-BC-2020-04, F00008, Pre-Trial Judge, *Decision on Request for Arrest Warrant and Transfer Order*, 12 June 2020, confidential. A public redacted version was issued on 6 May 2021, F00008/RED. F00008/A01, Pre-Trial Judge, *Arrest Warrant for Mr Pjetër Shala*, 12 June 2020, strictly confidential and *ex parte*. A public redacted version was issued on 15 April 2021, F00008/A01/RED.

⁵ KSC-BC-2020-04, F00013, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 16 March 2021, public.

⁶ KSC-BC-2020-04, F00019, Registrar, *Notification of Reception of Pjetër Shala in the Detention Facilities of the Specialist Chambers and Conditional Assignment of Counsel*, 15 April 2021, confidential, para. 2, with Annexes 1-2, confidential. A public redacted version was submitted on 26 April 2021, F00019/RED.

4. On 30 April 2021, the Pre-Trial Judge issued the Framework Decision on Disclosure of Evidence and Related Matters.⁷
5. On 3 September 2021, the Specialist Prosecutor's Office ("SPO") submitted its notice pursuant to Rule 102(3) of the Rules ("Rule 102(3) Notice").⁸
6. On 14 September 2021, the Pre-Trial Judge, further to a request by the Defence for Mr Shala ("Defence"),⁹ varied the time-limit for the Defence to indicate to the SPO to which items from the Rule 102(3) Notice it seeks to have access by way of disclosure or inspection to 15 October 2021 ("Rule 102(3) Indication").¹⁰ In addition, further to a request by the SPO,¹¹ the Pre-Trial Judge varied the time-limits for the SPO pertaining to the Defence's Rule 102(3) Indication as follows: (i) the SPO shall seize the Pre-Trial Judge should it dispute the materiality of evidence on the basis of the Defence's Rule 102(3) Indication by no later than 29 October 2021 (or within two weeks of the Defence's Rule 102(3) Indication); (ii) the SPO shall disclose to or provide the Defence with access to the selected material that does not require redactions by no later than 12 November 2021 (or within four weeks of the Defence's Rule 102(3) Indication); and (iii) the SPO shall disclose materials requiring standard redactions or file any request for non-standard redactions/protective measures of selected material by no later than 26 November 2021 (or within six weeks of the Defence's Rule 102(3) Indication).¹²
7. On 22 September 2021, the SPO submitted a supplemental Rule 102(3) Notice.¹³

⁷ KSC-BC-2020-04, F00033, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 30 April 2021, public.

⁸ KSC-BC-2020-04, F00069, Specialist Prosecutor, *Prosecution Rule 102(3) Notice with Confidential Annex 1*, 3 September 2021, public, with one annex, confidential.

⁹ KSC-BC-2020-04, F00074, Specialist Counsel, *Defence Motion for an Extension of Time for its Rule 102(2) Request*, 9 September 2021, public.

¹⁰ KSC-BC-2020-04, F00078, Pre-Trial Judge, *Decision on Requests to Vary Time Limits and Order Setting the Date for the Third Status Conference and for Submissions*, 14 September 2021, public ("14 September 2021 Decision"), paras 16, 26(a).

¹¹ KSC-BC-2020-04, F00076, Specialist Prosecutor, *Prosecution Response to KSC-BC-2020-04/F00074 and Related Request for Modification of Deadlines*, 10 September 2021, public.

¹² 14 September 2021 Decision, paras 19, 26(b).

¹³ KSC-BC-2020-04, F00082, Specialist Prosecutor, *Prosecution Supplemental Rule 102(3) Notice*, 22 September 2021, public, with one annex, confidential.

8. On 23 September 2021, at the third status conference, the Pre-Trial Judge, *inter alia*, varied the time limits for the SPO to file its pre-trial brief to 28 January 2022, and its Rule 109(c) chart to 11 February 2022.¹⁴

9. On 13 October 2021, the Defence requested a variation of the time limit for its Rule 102(3) Notice to two weeks from the date on which the SPO will provide sufficient detail as to all items listed in the Rule 102(3) Notice (“Request”).¹⁵ According to the Defence, it requires additional time in light of the significant number of new items identified in the supplemental Rule 102(3) Notice and the lack of adequate information as to a great number of items listed therein.¹⁶ It submits that 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 clarifications by the SPO *inter partes*, and take an informed position as to the items it requires.¹⁷ The Defence adds that its request for sufficient particulars is still pending for over 1,000 items listed in the Rule 102(3) Notice.¹⁸

10. On 15 October 2021, the SPO responded to the Request (“Response”).¹⁹ The SPO indicates that it does not oppose the Request and additionally advises that the further information requested by the Defence for certain items on the Rule 102(3) Notice is anticipated to be provided not later than 22 October 2021.²⁰

¹⁴ KSC-BC-2020-04, Transcript, 23 September 2021, public, p. 92, lines 10-20.

¹⁵ KSC-BC-2020-04, F00086, Specialist Counsel, *Defence Request for Variation of Time Limit for its Rule 102(2) [sic] Request*, 13 October 2021, public, paras 1, 13, 15. Whereas the Defence refers to Rule 102(2) of the Rules, the Pre-Trial Judge understands the Defence to be requesting a variation of the time limit regarding its indication to the SPO under Rule 102(3) of the Rules.

¹⁶ Request, para. 13.

¹⁷ Request, para. 14.

¹⁸ Request, paras 7-11, 14.

¹⁹ KSC-BC-2020-04, F00087, Specialist Prosecutor, *Response to Defence Extension Request*, 15 October 2021, public.

²⁰ Response, para. 1.

II. APPLICABLE LAW

11. Pursuant to Article 21(6) of the Law, all material and relevant evidence or facts in the possession of the SPO which are for or against the Accused shall be made available to the Accused before the beginning of and during the proceedings, subject only to restrictions which are strictly necessary and when any necessary counter balance protections are applied.

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

13. Pursuant to Rule 76 of the Rules, applications for extension of time shall be filed sufficiently in advance to enable the Panel to rule on the application before the expiry of the relevant time limit.

14. Pursuant to Rule 95(2)(b) of the Rules, after the initial appearance of the Accused in accordance with Rule 92 of the Rules, the Pre-Trial Judge shall set time limits for disclosure of evidence, take any measure to ensure timely disclosure, and prepare a disclosure report for the Trial Panel.

III. DISCUSSION

15. The Pre-Trial Judge finds that good cause, warranting the requested variation, has been demonstrated in view of the significant number of new items included in the supplemental Rule 102(3) Notice and the Defence's outstanding request for further information regarding certain items listed in the Rule 102(3) Notice. Furthermore, the SPO does not object to the requested variation. The Pre-Trial Judge additionally finds that the Request has been filed sufficiently in advance of the expiry of the time limit

at issue, namely two days prior to the expiry of the original time limit.²¹ Noting the SPO's indication that it will provide the further information requested by the Defence by no later than 22 October 2021, the Pre-Trial Judge authorises the Defence to provide its Rule 102(3) Indication by no later than 5 November 2021.

16. In view of the authorised variation, the Pre-Trial Judge finds that the time-limits for the SPO pertaining to the Defence's Rule 102(3) Indication require to be extended accordingly. Therefore, the SPO shall: (i) seize the Pre-Trial Judge should it dispute the materiality of evidence on the basis of the Defence's Rule 102(3) Indication by no later than 19 November 2021 (or within two weeks of the Defence's Rule 102(3) Indication); (ii) disclose to or provide the Defence with access to the selected material that does not require redactions by no later than 3 December 2021 (or within four weeks of the Defence's Rule 102(3) Indication); and (iii) disclose materials requiring standard redactions or file any request for non-standard redactions/protective measures of selected material by no later than 17 December 2021 (or within six weeks of the Defence's Rule 102(3) Indication).²² These variations shall not affect the time limits for the SPO to file its pre-trial brief and Rule 109(c) chart.

17. Should the Parties consider that the time limits related to the disclosure of Rule 102(3) material require to be varied further, they shall submit any such requests prior to the following status conference on 15 November 2021.²³

²¹ The Parties are nonetheless encouraged to submit any such future requests several days in advance of the expiry of the time limit at issue so as to allow the opposing Party to respond and the Pre-Trial Judge to issue a decision prior to the expiry of the time limit for which variation is sought.

²² The SPO is encouraged to submit any requests for non-standard redactions/protective measures sufficiently in advance and not on the last day of the time limit so as to allow any such requests and the ensuing disclosure to be processed smoothly.

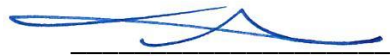
²³ KSC-BC-2020-04, Transcript, 23 September 2021, public, p. 102, lines 8-18.

IV. DISPOSITION

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

(a) **GRANTS** the Request and **ORDERS** the Defence to provide its Rule 102(3) Indication by no later than **Friday, 5 November 2021**; and

(b) **ORDERS** the SPO to: (i) seize the Pre-Trial Judge should it dispute the materiality of evidence on the basis of the Defence's Rule 102(3) Indication by no later than **Friday, 19 November 2021** (or within two weeks of the Defence's Rule 102(3) Indication); (ii) disclose to or provide the Defence with access to the selected material that does not require redactions by no later than **Friday, 3 December 2021** (or within four weeks of the Defence's Rule 102(3) Indication); and (iii) disclose materials requiring standard redactions or file any request for non-standard redactions/protective measures of selected material by no later than **Friday, 17 December 2021** (or within six weeks of the Defence's Rule 102(3) Indication).



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Tuesday, 19 October 2021

At the Hague, the Netherlands.