



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

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 25 March 2022

Language: English

Classification: Public

Prosecution request to amend its Rule 102(3) notice

Specialist Prosecutor
Jack Smith

Counsel for the Accused
Jean-Louis Gilissen

Counsel for Victims
Simon Laws

I. INTRODUCTION

1. Pursuant to Article 21(6) of the Law,¹ Rule 102(3),² and to the Pre-Trial Judge's instructions,³ the Specialist Prosecutor's Office ('SPO') hereby requests leave to amend its Rule 102(3) notice.

II. PROCEDURAL BACKGROUND

2. On 3 September 2021, the SPO filed its Rule 102(3) notice.⁴
3. On 22 September 2021, the SPO submitted its supplemental Rule 102(3) notice.⁵
4. On 13 January 2022, the SPO submitted a revised supplemental Rule 102(3) notice containing amended descriptions and items which could not previously be listed due to Rule 107 restrictions.⁶
5. On 4 March 2022, further to an *inter partes* request by the Defence, the SPO informed the Pre-Trial Judge and the Defence that it would review its Rule 102(3) notice and revise the descriptions of the items contained therein, where deemed necessary.⁷
6. On 18 March 2022, the SPO filed a Rule 102(3) notice containing revised descriptions.⁸

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' herein refer to articles of the Law, unless otherwise specified.

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

³ Transcript of Fifth Status Conference, KSC-BC-2020-04, 14 January 2022, confidential, p.143.

⁴ Prosecution Rule 102(3) notice with confidential Annex 1, KSC-BC-2020-04/F00069, public.

⁵ Prosecution supplemental Rule 102(3) notice with confidential Annex 1, KSC-BC-2020-04/F00082, Public.

⁶ Prosecution Rule 102(3) notice containing additional supplements with confidential Annex 1, KSC-BC-2020-04/F00130, Public.

⁷ KSC Official Transcript of Status Conference (Open Session), KSC-BC-2020-04, 4 March 2022, pp.206, 208, 211-12, Public.

⁸ Prosecution Rule 102(3) notice containing partially revised descriptions with confidential Annex 1, KSC-BC-2020-04/F00167, public with confidential annex.

III. SUBMISSIONS

7. The SPO requests leave to amend its Rule 102(3) notice with 13 documents for which their Rule 107 status has been resolved in a manner which now enables their disclosure ('Additional Rule 102(3) Documents'). Eleven of these documents are intelligence reports concerning witnesses and other persons of interest in this case.⁹ One document is a report on crimes allegedly committed by the Kosovo Liberation Army ('KLA') in the Prizren area in 1999 attaching certain KLA structural charts prepared by KFOR,¹⁰ while the last document is also a KFOR-generated diagram of the organizational structure of the KLA.¹¹

8. The SPO additionally requests leave to add to its Rule 102(3) notice the ruling on the confirmation of the indictment and admissibility of evidence in the case against Sabit GECI and Riza ALIJA, dated 24 November 2010,¹² and the record of the hearing on the confirmation of the indictment in the same case, dated 22 October 2010 ('Confirmation Documents').¹³ While these documents are not evidentiary in nature, the SPO nevertheless requests to add them to its Rule 102(3) notice as they may provide context for evidentiary materials from that case that are already in the Rule 102(3) notice.

9. To the extent these documents are relevant to the case, their inclusion in the SPO's Rule 102(3) notice is required by Article 21(6) and Rule 102(3). No prejudice to the Defence will stem from the requested amendment of the Rule 102(3) notice, which concerns a limited number of documents potentially material to the preparation of the defence case.

⁹ 7004938-7004938; 7004939-7004947; 7004948-7004953; 7004957-7004958; 7004959-7004959; 7004960-700461; 7004962-7004963; 7004964-7004965; 7004966-7004967; 7004969-7004978; 7004979-7004983.

¹⁰ 7000797-7000823.

¹¹ SPOE00108514-00108559.

¹² SITF00018581-00018621.

¹³ SITF00018708-00018739.

10. Finally, the SPO also requests leave to amend its Rule 102(3) notice to include pictures of witnesses W03887, W04379, W04468, W04733, W04734, W04751, W04754, and W04755 ('Witnesses Photos').¹⁴ The SPO created these pictures from the video-recordings of these witnesses' interviews upon an *inter partes* request received from the Defence. By including these pictures in the Rule 102(3) notice, the Defence will be able to request them and they can be disclosed through the Legal Workflow platform, thereby leaving a traceable record of their disclosure.

11. This request is being made in accordance with the Pre-Trial Judge's instruction for the SPO to seek leave prior to supplementation of its Rule 102(3) notice.¹⁵ The SPO requests guidance as to whether that direction applies only to materials - such as certain of the present ones - which have previously been in the SPO's possession but are only being notified at this stage, or whether it is to be understood as a standing direction (that is also encompassing any new material which may be received in the office in the future and which falls within notice requirements in this case).

IV. RELIEF REQUESTED

12. Based on the foregoing, the SPO requests the Pre-Trial Judge leave to amend its Rule 102(3) list with the Additional Rule 102(3) Documents, the Witnesses Photos and the Confirmation Documents.

¹⁴ SPOE00325659-SPOE00325697.

¹⁵ Transcript of Fifth Status Conference, KSC-BC-2020-04, 14 January 2022, confidential, p.143.

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Jack Smith
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Friday, 25 March 2022

At The Hague, the Netherlands.