



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

In: KSC-BC-2020-05
The Prosecutor v. Salih Mustafa

Before: Single Judge Panel
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 05 October 2020

Language: English

Classification: Public

Public Redacted Version of

Prosecution Submissions for first Status Conference

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to the Status Conference Order,¹ the Specialist Prosecutor's Office ('SPO') hereby provides written submissions on the agenda items identified by the Pre-Trial Judge,² and related matters.³

2. Certain of the information provided is necessarily provisional at this time. Nonetheless, the SPO anticipates being in a position to provide complete witness and exhibit lists, and to have fulfilled related Rule 102(1)(b)⁴ disclosure, by 1 December 2020, subject only to any applicable protective measures.

II. SUBMISSIONS

1. General Questions

3. A small number of investigative steps remain ongoing in this case. Depending on the outcome of those limited investigations, there is a likelihood that further evidence will be adduced. However, the SPO does not foresee this impacting the speedy conduct of proceedings, as the remaining investigative steps are likely to be concluded during the preliminary stages of pre-trial proceedings.

4. The SPO relied upon five (5) witnesses for the purpose of the Confirmed Indictment, and intends to rely upon them again for trial. The SPO currently anticipates adding at least a further eleven (11) witnesses to its witness list for trial, although the final number of witnesses could vary, depending on the outcome of the remaining investigative steps.

5. In addition, the SPO anticipates presenting documentary evidence including, for example, reports, photographs, and contemporaneous KLA documents such as

¹ Order Setting the Date for a Status Conference, KSC-BC-2020-05/F00023, 30 September 2020, Public ('Status Conference Order').

² Annex 1 to Order Setting the Date for a Status Conference, KSC-BC-2020-05/F00023/A01, 30 September 2020, Public ('Annex 1').

³ Status Conference Order, KSC-BC-2020-05/F00023, para.21(b).

⁴ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). Unless otherwise indicated, all references to 'Rule(s)' are to the Rules.

orders, regulations and/or other publications. A more detailed, although preliminary, overview of the evidence to be presented is provided in Sections 2 and 3 below.

2. Rule 102(1)(a) Material (Indictment Supporting Material)

6. On 29 September 2020, the SPO disclosed two batches of Rule 102(1)(a) material to the Defence. This first disclosure - comprising, in terms of page count, more than half of all of the Rule 102(1)(a) material - included non-witness related indictment supporting materials, as well as all statements obtained from the Accused.

7. Table A provides, to the extent possible, the details requested by the Pre-Trial Judge regarding the breakdown of this (already disclosed) material:⁵

Table A. Rule 102(1)(a) Already disclosed to the Accused (Disclosure 2 and 3)

Total number of items	52
Total number of pages	1248
Total number of hours/minutes of audio-visual material	N/A
Number of witness statements	0
Number of statements obtained from the Accused	2 (comprising 18 transcript parts in both English and Albanian)
Number of transcript parts ⁶	18 (transcripts of the Accused in English and Albanian)
Number of reports	4
Number of audio/video material	0
Number of photographs	7
Number of objects	0

⁵ See Annex 1, KSC-BC-2020-05/F00023/A01, para.2, p. 2.

⁶ The transcripts of SPO interviews are divided into parts, and each part represents an uploaded item.

Number of other documents ⁷	23
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8. The remaining indictment supporting materials are all witness-related and comprise mostly statements and/or testimonies. This material, related to the five (5) witnesses relied upon by the SPO for the purpose of the Confirmed Indictment, will be the object of the SPO's first request for protective measures. That request will be filed within two weeks of the initial appearance of the Accused, as previously ordered by the Pre-Trial Judge.

9. The witness-related indictment supporting material will, consistent with the Pre-Trial Judge's prior provisional authorisation, require redaction of information that could lead to the identification of witnesses and victims, in addition to redaction of certain information falling within categories identified in the SPO's Redaction Observations.⁸ Such redactions are in the process of being completed. The SPO expects to be ready to disclose redacted versions⁹ of the remaining supporting material within the next two weeks or, in any case, by the expiry of the thirty (30) day period prescribed by the Rules.¹⁰

10. Translation into Albanian of indictment supporting material (including witness statements and transcripts) is virtually complete, and these translations will also be

⁷ This includes, for example, books, KLA communiques or political declarations, reports, military orders.

⁸ Observations on a redaction regime, KSC-BC-2020-05/F00024, 1 October 2020 ('Redaction Observations').

⁹ The provisional redactions applied would subsequently be reviewed and adjusted in accordance with the Pre-Trial Judge's decision of the SPO's forthcoming protective measures request and on the redaction regime to be applied.

¹⁰ Rule 102(1)(a); Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ('Law'), Article 39(5). Reference herein to 'Article(s)' are to 'Articles' of the Law, unless otherwise indicated.

disclosed within the 30 day timeframe provided for disclosure of indictment supporting materials.

11. Table B provides - to the extent possible - the details requested by the Pre-Trial Judge in respect of all Rule 102(1)(a) material which is yet to be disclosed:¹¹

Table B. Outstanding Rule 102(1)(a) material to be disclosed with redactions

Total number of items	52
Total number of pages	964 (English and Albanian)
Total number of hours/minutes of audio-visual material	N/A
Number of witness statements	8 (English and Albanian)
Number of statements obtained from the Accused	0
Number of transcript parts	36 (English and Albanian)
Number of reports	0
Number of audio/video material	0
Number of photographs	0
Number of objects	0
Number of other documents	8

3. Rule 102(1)(b) Material (Additional Material Intended for Use at Trial)

12. In addition to the material falling under Rule 102(1)(a), the SPO does intend to disclose further material under Rule 102(1)(b). The SPO expects to be ready to disclose the additional Rule 102(1)(b) material to the Defence by 1 December 2020 or, in any

¹¹ See Annex 1, KSC-BC-2020-05/F00023/A01, para.2, pp.2-3.

case, no later than 30 days prior to the opening of the Specialist Prosecutor's case, subject only to any protective measures granted.

13. The additional Rule 102(1)(b) material is currently anticipated to include the statements/testimonies of at least a further eleven (11) witnesses.¹² Transcription and translation of those statements/testimonies remains ongoing in respect of eight (8) witnesses. This is a labour intensive and time-consuming process, requiring careful review and revision.

14. With regard to documentary evidence, the SPO anticipates presenting approximately fifty (50) exhibits at trial. This preliminary estimate may be varied depending upon, *inter alia*, the relevance of items recently seized and the results of the limited further investigative steps. The exhibits are likely to include items produced by witnesses during the course of interviews, photographs, reports, contemporaneous documents, and video footage.

15. The Rule 102(1)(b) witness-related materials will require redactions of those parts that identify victims and witnesses, in line with the Pre-Trial Judge's prior provisional authorisation and/or any protective measures which may be granted, in addition to redaction of certain information falling within categories identified in the SPO's Redaction Observations. In this regard, the SPO intends to file a second request for protective measures concerning eight (8) of the additional witnesses. The SPO anticipates being in a position to file this second request for protective measures promptly after the SPO's first application for protective measures has been litigated and ruled upon.

4. Rule 102(3) Material (Evidence Material to Defence Preparation, and Material Obtained from or Belonging to the Accused)

¹² See para.4 above. The final number of witnesses (including the decision on whether to call expert testimony) will depend on the outcome of the limited remaining investigative steps.

16. The SPO anticipates providing the Defence with detailed notice of evidence material to it, pursuant to Article 21(6) and Rule 102(3), by 1 December 2020, upon finalisation of, and together with, the disclosure of material falling under Rule 102(1)(b). The items in the Rule 102(3) notice will comprise any other residual information potentially material to the Defence after the items to be presented at trial¹³ and the potentially exculpatory items¹⁴ have been disclosed.¹⁵

17. The SPO does expect that some of the Rule 102(3) material will require redactions, in particular pursuant to Rule 108(1).

5. Rule 103 Material (Exculpatory Evidence)

18. On 29 September 2020, the SPO disclosed to the Defence a first batch of potentially exculpatory material. The only redactions that were (provisionally) applied to this material were redactions to contact details and to protect the names of investigators.¹⁶

19. Table C provides - to the extent possible - the details requested by the Pre-Trial Judge in respect of the Rule 103 material disclosed to the Defence on 29 September 2020:¹⁷

Table C. Rule 103 Disclosed to the Accused (Disclosure 4)

Total number of items	61
Total number of pages	613

¹³ Rule 102(1)(b).

¹⁴ Rule 103.

¹⁵ The scope of Rule 102(3) material is necessarily impacted by, and to a large extent dependent upon, the witnesses and evidence intended to be presented at trial. It is therefore not possible to provide an accurate estimate of volume at this time. Nonetheless, based on ongoing review, the SPO anticipates the number of Rule 102(3) items to be significantly less than 1000 in total.

¹⁶ These redactions were applied provisionally in order to facilitate immediate disclosure. The redactions applied to the material were in line with the categories of redactions proposed in the Redaction Observations. The redactions will be reviewed as may be required, following the Pre-Trial Judge's ruling on a redaction system to be applied in this case.

¹⁷ See Annex 1, KSC-BC-2020-05/F00023/A01, para.5, p.4.

Total number of hours/minutes of audio-visual material	N/A
Number of witness statements	3
Number of statements obtained from the Accused	0
Number of transcripts	11
Number of reports	0
Number of audio/video material	0
Number of photographs	0
Number of objects	0
Number of other documents	47

20. The SPO is currently reviewing a second batch of potentially exculpatory material. That batch is also likely to require certain redactions, in particular pursuant to Rule 108(1). Any potentially exculpatory material identified in that material will be immediately disclosed following review and redaction.

21. The SPO shall continue to review and, following application of any required redactions, immediately disclose on a rolling basis any Rule 103 material within its custody, control or actual knowledge.

6. Rule 107 Material (Protected Material)

22. All relevant Rule 107 clearances have been obtained for material which the SPO currently anticipates tendering into evidence at trial in this case. All such clearances

have, as relevant, also been obtained for all material which has so far been identified as falling within Rule 102(3) or Rule 103.

23. The SPO will promptly inform the Pre-Trial Judge should any further material relevant to the case be identified which falls under Rule 107 restrictions.

7. Information to be provided by the SPO and the Witness Protection and Support Office ('WPSO')

24. [REDACTED]. [REDACTED]. [REDACTED].

25. The SPO anticipates that in-court protective measures will be necessary for certain of the additional witnesses who are to be relied upon at trial, and anticipates making a protective measures request in relation to them.¹⁸ Relevant information relating to remaining witnesses will be shared promptly with WPSO to facilitate relevant risk assessments.

26. This filing is submitted as strictly confidential and *ex parte* because it contains information regarding witness security issues. A public redacted version is being submitted simultaneously.

Word Count: 1917



Jack Smith
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Monday, 05 October 2020
At The Hague, the Netherlands

¹⁸ See para.15 above.