

In: KSC-BC-2020-06
Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Counsel for Rexhep Selimi

Date: 27 November 2020

Language: English

Classification: Public

Defence Notification in relation to Rule 109(C)

Specialist Prosecutor
Jack Smith

Counsel for Hashim Thaçi
David Hooper

Counsel for Kadri Veseli
Ben Emmerson

Counsel for Rexhep Selimi
David Young

Counsel for Jakup Krasniqi
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1. Pursuant to the Pre-Trial Judge's instruction,¹ the Defence for Mr. Rexhep Selimi hereby notifies the Pre-Trial Judge that it has been unable to reach an agreement with the SPO in relation to the implementation of the SPO's obligation under Rule 109(C).
2. On 24 November 2020, the Defence wrote to the SPO proposing the following:

"1. At the time of making each disclosure, the Disclosing Party indicates, so far as practicable, and through the "Evidence categories" in Legal WorkFlow, whether the item in question relates to underlying crimes, contextual elements, conduct of the accused or, as applicable, evidence to be presented by the Specialist Prosecutor. This applies to all disclosed evidence. Further, each of these categories will be further subdivided into the following sub-categories and multiple sub-categories can be selected:

- a. Underlying crimes
 - i. Type of Crime eg. Illegal arbitrary arrests and detentions
 1. Location
- b. Contextual elements
 - i. Crimes against humanity (Indictment, paras 16-17)
 - ii. War crimes (Indictment, paras 18-31)
- c. Conduct of the accused
 - i. Joint criminal enterprise (Indictment paras 32-52)
 - ii. Superior Responsibility (Indictment paras 53-55)
- d. Evidence to be presented
 - i. Linked to the relevant item of evidence.

2. In addition, and in respect only of Rule 102(1)(b) material for the SPO and Rule 104(1), (5) and (6) material for the Defence, a chart in the form previously attached by the SPO which shall be generated from referencing contained in the parties' Pre-Trial Brief (if any) as well as all other material disclosed under these Rules, shall be provided."

3. The SPO rejected part 1 of the Defence proposal by email on 25 November on the basis that "the subcategories proposed cannot practicably be done at the time of each disclosure package" and that "this exercise would be excessively time consuming and would very significantly delay the disclosure process." Despite further communications, no agreement was reached between the SPO and the Selimi Defence on this issue.

¹ *Prosecutor v. Thaci et al.*, Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-06/F00099, 23 November 2020, para. 80.

4. The Defence considers that the phrase “categorise the information in accordance with the charges in the indictment, with specific reference to” in Rule 109(C) requires the subcategories proposed on 24 November. The Defence does not see how this subcategorization cannot be carried out at the time of each disclosure package through Legal Workflow. Any additional time taken now when preparing the disclosure packages by the SPO will save time later when the SPO prepares the chart at the time of filing of the Prosecution Pre-Trial Brief.

5. It would also greatly assist the Defence and the Pre-Trial Judge to understand and assess the submitted relevance of the material as it is being disclosed by the SPO in real time. By directing the SPO to categorise disclosure in this way through Legal Workflow, the parties will be able to, simply and expeditiously, create rolling categorization charts on a regular basis as the proceedings progress. This will significantly enhance and encourage good case management, allowing the parties to update the charts and follow the disclosure in a comprehensible manner.

Respectfully submitted on 27 November 2020,



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GEOFFREY ROBERTS
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