



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

In: KSC-BC-2020-07
Specialist Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 23 February 2021

Language: English

Classification: Public

Prosecution Submissions for second Status Conference

Specialist Prosecutor's Office

Jack Smith

Counsel for Mr Gucati

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Toby Cadman

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

2. The SPO has complied with the Framework Decision³ and, subject to pending protective measures requests, has fulfilled its disclosure obligations. As previously indicated,⁴ the SPO sees no reason why trial in this matter could not be scheduled to commence in the spring of this year.

II. SUBMISSIONS

Disclosure

3. Pursuant to the Framework Decision,⁵ on 19 February 2021, the SPO disclosed 379 items pursuant to Rule 102(1)(b);⁶ 132 of which had already been disclosed to the Defence pursuant to Rule 102(1)(a) and/or Rule 103. Of the 379 items, 79 are audio-visual items, 122 are transcriptions of such audio-visual items in Albanian and

¹ Order Setting the Date for the Second Status Conference and on Related Matters, KSC-BC-2020-07/F00129, Public, 17 February 2021, para.9 ('Status Conference Order').

² Status Conference Order, KSC-BC-2020-07/F00129, paras 7-8.

³ Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-07/F00104, Public, 22 January 2021 ('Framework Decision').

⁴ Prosecution Submissions for first Status Conference, KSC-BC-2020-07/F00104, Public, 5 January 2021, para.2.

⁵ Framework Decision, KSC-BC-2020-07/F00104, paras 44, 48, 85(b), 85(c).

⁶ 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.

English, and the remaining items consist, *inter alia*, of reports, news articles, and other evidence obtained from the public domain, including translations of such material.

4. On 19 February 2021, the SPO also provided the Defence with detailed notice of evidence under Rule 102(3) comprising of 13 items.⁷

5. The SPO has two outstanding requests to third parties ('Third-Party Requests') which may result in the production of relevant material. As such, and/or as a result of recent or pending protective measures decisions, it is possible that the SPO may disclose a limited number of additional items under Rule 102(1)(b) or Rule 103, or make limited additions to the Rule 102(3) list. It is currently unclear whether protective measures will be required in relation to material which may result from the Third-Party Requests. The SPO expects to be able to disclose all such items by the 9 April 2021 deadline set for the filing of the Pre-Trial Brief.⁸ At the same time, the investigative work of the SPO will continue in the ordinary course throughout the proceedings, and, therefore, additional evidence relevant to this case may be uncovered. In that event, the evidence will be disclosed to the Defence and provided to the court pursuant to the applicable provisions. The SPO does not foresee this impacting the speedy conduct of proceedings.

6. The SPO does not currently anticipate any disclosure under Rule 102(2).

7. On 12 February 2021, the SPO disclosed 33 items under Rule 103. 22 of these items are revised versions of previously disclosed transcripts of audio-visual material. 30 of these items came into the SPO's possession after 29 January 2021,⁹ while for the remaining three the relevant transcriptions/translations only became available after

⁷ See Specialist Prosecution's Rule 102(3) notice, KSC-BC-2020-07/F00133, Public, 19 February 2020.

⁸ Status Conference Order, KSC-BC-2020-07/F00129, para.7(2)(b).

⁹ In the Framework Decision, the Pre-Trial Judge ordered the SPO to disclose any remaining batches of Rule 103 material currently in its possession by 29 January 2021 and any future batches immediately and on a rolling basis, Framework Decision, KSC-BC-2020-07/F00104, paras 51, 85(h).

that date. In total, the SPO has disclosed 115 items under Rule 103, 114 of which have also been disclosed under Rule 102(1)(a) and/or Rule 102(1)(b).

8. Subject to paragraph 5 above, the SPO does not anticipate making late additions to the detailed notice under Rule 102(3) or further disclosure under Rule 103. Any such addition or disclosure would be limited.

9. The need for any requests pursuant to Rule 107 and/or Rule 108 by 19 March 2021¹⁰ depends, *inter alia*, on recent or pending protective measures decisions, and on which items from the SPO's Rule 102(3) list the Defence may seek to have access to. For example, there is Rule 107 information in the material to be disclosed pursuant to decision KSC-BC-2020-07/F00136. However, the authorised redactions adequately address that issue in a manner which means further provider approval is not needed to enable its disclosure.¹¹

10. The SPO foresees no difficulties in relation to the remainder of the disclosure process.

SPO investigations, submission of the Pre-Trial Brief and completion of disclosure

11. The only outstanding investigative steps which are currently incomplete are those relating to the Third-Party Requests.

12. The SPO expects to be in a position to file its Pre-Trial Brief and related material, together with its Rule 109(c) chart, and to complete disclosure under Rule 102, including any disclosure resulting from the Third-Party Requests, by 9 April 2021.

Points of agreement on matters of law and fact

13. The Parties have not yet entered into discussions regarding the possibility to submit points of agreement on law and/or facts pursuant to Rules 95(3) and 156. The SPO will submit proposed points of agreement to the Defence by 12 March 2021 and

¹⁰ Status Conference Order, KSC-BC-2020-07/F00129, paras 7(1)(e), 10(c).

¹¹ Batch 3, which – as the SPO has previously outlined – is not subject to disclosure, also contains Rule 107 information.

request that the Defence provide its views thereon by 19 March 2021. As such, subject to the Defence's agreement to the proposed schedule, the Parties could identify a list of issues not subject to dispute by 26 March 2021.

Anticipated transmission of the case file pursuant to Rule 72(1) of the Rules

14. The SPO does not foresee any reason why the case file could not be transmitted to the Trial Panel as soon as currently pending matters have been resolved.¹²

When would the Parties expect to be ready for trial

15. Should the case file be transmitted to the Trial Panel as outlined above, the SPO would be ready for the trial to commence shortly thereafter.

The date of the next Status Conference

16. The SPO will be available at the court's convenience for the next Status Conference.

Word Count: 1,017



Jack Smith
Specialist Prosecutor

Tuesday, 23 February 2021
At The Hague, the Netherlands

¹² Status Conference Order, KSC-BC-2020-07/F00129, paras 7(5).