



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

In: KSC-BC-2020-06
Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon
Filing Participant: Specialist Prosecutor
Date: 22 March 2021
Language: English
Classification: Public

**Prosecution submissions for fourth status conference and request for adjustment
of time limits**

Specialist Prosecutor's Office
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1. In accordance with the Order,¹ the Specialist Prosecutor's Office ('SPO') hereby provides its submissions in advance of the fourth status conference.

Item 1: Disclosure

2. Since the last status conference the SPO disclosed two batches of Rule 102(1)(b) material.² The SPO is continuing to work through remaining Rule 102(1)(b) materials in a systematic manner, and is currently focused on providing the Defence with statements of witnesses it is intended to rely upon at trial. Of the approximately 150 witnesses relied upon in the indictment supporting materials, disclosure of prior statements of approximately half of those have either been completed or are the subject of the currently pending protective measures request.³ It is not currently possible to give a precise estimate of the total outstanding volume of Rule 102(1)(b) materials to be disclosed, noting that certain materials continue to be assessed for inclusion in the SPO's exhibit list – including, for example, the materials seized during searches of the Accused's residences.

3. The SPO filed its fourth request for protective measures on 5 March 2021. It is envisaged that, in accordance with the schedule outlined in the Framework Decision,⁴ and as amended by the Categorisation Decision,⁵ further protective measures requests relating to Rule 102(1)(b) material will be filed by 6 April 2021, as well as after that date. The SPO is also currently adjusting its internal Rule 102(1)(b) workplan in order to facilitate the additional sub-categorisation required pursuant to the Categorisation Decision, as well as liaising with Registry to facilitate creation of the relevant sub-categories in Legal Workflow.

¹ Order Setting the Date for a Fourth Status Conference and for Submissions, KSC-BC-2020-06/F00227, 17 March 2021, Public, ('Order')

² Disclosure 23, 12 March 2021 (20 items); Disclosure 24, 17 March 2021 (2 items).

³ 22 of the indictment supporting witnesses have no prior statements.

⁴ Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-06/F00099, 23 November 2020 ('Framework Decision').

⁵ Decision on Categorisation of Evidence Under Rule 109(c) and Related Matters, 12 March 2021, KSC-BC-2020-06/F00218, ('Categorisation Decision').

4. With respect to potentially exculpatory items falling under Rule 103, review of further material remains ongoing, and the SPO will continue to disclose any such material on a rolling basis. No protective measures request for such material is imminent.

5. In relation to Rule 107 material, as previously indicated, the SPO anticipates making an application under Rule 107 in respect of certain information obtained from one particular organisation once discussions relating to possible counter-balancing measures have concluded.⁶ Disclosure release discussions with a number of other organisations remain ongoing, and although those discussions have not yet been concluded it is foreseen that further Rule 107 requests may be required.

Items 2: SPO Investigations and next steps

6. As previously outlined, SPO investigations in fulfillment of its mandate are anticipated to continue for the foreseeable future.⁷ However, this should in no way hinder the court in setting a trial date in this case.

7. For the reasons previously outlined, and consistent both with the applicable framework and with established practice in complex international cases, a reasonable relationship must be maintained between the deadline for submission of Rule 95(4) materials and the commencement of trial.⁸ Taking into account the revised disclosure schedule outlined in the Categorisation Decision, as well as the additional categorisation burden imposed on the SPO pursuant to that decision, and on the basis that trial would commence within three months thereafter,⁹ the SPO envisages being in a position to submit its Rule 95(4) material (i.e. Pre-Trial Brief and witness and

⁶ The request in respect of this organisation will relate to less than 10 items.

⁷ Transcript of Status Conference dated 17 December 2020 ('Second Status Conference'), pp.198-199; Corrected version of Prosecution submissions for third status conference, KSC-BC-2020-06/F00191/COR, para.12.

⁸ Corrected version of Prosecution submissions for third status conference, KSC-BC-2020-06/F00191/COR, paras 13-17, 33.

⁹ This accords with commonly applied standards for complex international cases (*see e.g.* Corrected version of Prosecution submissions for third status conference, KSC-BC-2020-06/F00191/COR, paras 13-16).

exhibit lists) by the second week of September 2021 with trial to begin in December 2021.

Item 4: Points of Agreement

8. The SPO provided the Defence teams with its agreed facts proposal on 17 March 2021. The SPO has requested the Defence teams to indicate their agreement/disagreement to each of the proposed agreed facts by 9 April 2021. Provided that the Defence teams are in a position to do so, the SPO would anticipate being able to inform the Pre-Trial Judge of any current points of agreement shortly thereafter.

Item 5: Preliminary Motions Timelines

9. Pursuant to Rules 9(5)(a) and 76, the SPO requests an extension of deadline to Friday 23 April 2021 to respond to the preliminary motions filed by the Defence teams. Absent any adjustment to applicable deadlines the SPO responses would be due on 1 April 2021 (i.e. just 16 days from notification of the final three preliminary motions). Good cause exists for the relatively modest extension of deadline requested noting (i) the time which the Defence teams had for preparation of the Rule 97 motions,¹⁰ (ii) the number of motions filed (i.e. 11); (iii) the number of issues raised;¹¹ (iv) the length of the motions in question; and (v) the detailed nature and complexity of the points at issue.

Additional Matters: Rule 102(3) deadlines

¹⁰ The majority of Rule 102(1)(a) material had been disclosed by 15 December 2020, with all remaining items (for which consideration of protective measures had been deferred) disclosed by 12 February 2021.

¹¹ Many of the Rule 97 motions address multiple distinct issues. While there is a degree of overlap between certain of the motions, it is also apparent, including from express cross-referencing contained in them, that the Defence teams coordinated their approach in order to limit duplication and thereby maximise their individual authorised word limits.

10. Pursuant to the Categorisation Decision, the deadline for completion of Rule 102(1)(b) disclosure was extended from 31 May 2021¹² to 23 July 2021.¹³ However, no adjustment was made to the deadline of 30 April 2021 for the SPO to provide the Defence with detailed notice under Rule 102(3), or to the subsequent deadlines related to Rule 102(3) material.¹⁴

11. The SPO respectfully requests, pursuant to Rule 9(5)(a), that the deadline for the SPO to provide the Defence with detailed notice under Rule 102(3) be adjusted to 25 June 2021, with subsequent related deadlines revised accordingly. Good cause for doing so exists for the following reasons.

12. As previously indicated, 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.¹⁵ As noted in the Framework Decision '[t]he items to be included in the Rule 102(3) notice will comprise any residual evidence potentially material to the Defence's preparation, *after the items falling under Rule 102(1)(b) [...] have been disclosed.*'¹⁶ In light of the revised Rule 102(1)(b) disclosure schedule,¹⁷ the SPO anticipates that the identification of material falling under Rule 102(1)(b) will be near completion¹⁸ by 25 June 2021, allowing for exclusion of such items from the Rule 102(3) notice.

¹² Framework Decision, KSC-BC-2020-06/F00099, para. 99(e).

¹³ Categorisation Decision, KSC-BC-2020-06/F00218, para. 22.

¹⁴ Framework Decision, KSC-BC-2020-06/F00099, paras 65 and 99(f)-(i) provide that 'the Defence shall indicate to the SPO by Monday, 14 June 2021, or at any time earlier, which items among those listed in the detailed notice they seek to have access to, by way of disclosure or inspection. On the basis of such indication, the SPO shall, no later than Monday, 5 July 2021, or within three weeks of the Defence indication(s), whichever is earlier: (i) disclose or provide access to the selected material that does not require redactions; and (ii) submit its request for protective measures, if any, in respect of the material sought by the Defence'.

¹⁵ Prosecution Submissions for first Status Conference, 13 November 2020, KSC-BC-2020-06/F00076, para. 16.

¹⁶ Framework Decision, KSC-BC-2020-06/F00099, para.26 (emphasis added).

¹⁷ The revised Rule 102(1)(b) timetable adjusted the disclosure deadline by approximately 7 weeks, which is equivalent to the adjustment being requested in respect of the Rule 102(3) notice.

¹⁸ Categorisation Decision, KSC-BC-2020-06/F00218, para.22 (setting the deadline for the last Rule 102(1)(b) protective measures request for Friday, 4 June 2021).

13. Were the current Rule 102(3) deadlines to remain in place the Parties will be placed in an inopportune procedural situation whereby (i) the Rule 102(3) notice would be likely to be duplicative with material falling under Rule 102(1)(b) or Rule 103, and (ii) the Defence would need to indicate to the SPO which items from the Rule 102(3) notice they seek to have access to,¹⁹ while the SPO's disclosure under Rule 102(1)(b) would be ongoing. Practically, this would mean that the Defence could request under Rule 102(3) the disclosure of material which was due to anyway be disclosed under Rule 102(1)(b), with resulting conflicting deadlines and duplicative disclosure.²⁰ This situation would unnecessarily bifurcate efforts from all parties and have an impact on the efficiency and expeditiousness of the disclosure process.

14. Finally, the SPO welcomes continuing tight management of pre-trial proceedings in this case, and proposes that a further status conference be scheduled in April 2021.

Word count: 1,571



Jack Smith
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Monday, 22 March 2021
At The Hague, the Netherlands.

¹⁹ Framework Decision, KSC-BC-2020-06/F00099, paras 65 and 99(g) (indicating Monday, 14 June 2021).

²⁰ Framework Decision, KSC-BC-2020-06/F00099, paras. 65 and 99(h) (indicating Monday, 5 July 2021 for disclosure of Rule 102(3) items not requiring redactions, while pursuant to the Categorisation Decision the deadline for the disclosure of those same materials under Rule 102(1)(b) would be 23 July 2021).