



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: 6 April 2021
Language: English
Classification: Public

Prosecution response to the Veseli Defence request relating to the pre-trial brief

Specialist Prosecutor's Office

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1. On 24 March 2021, the Veseli Defence submitted that its prior request regarding the timing of the prosecution pre-trial brief ('Request')¹ had not yet been ruled upon.² After it was brought to the Veseli Defence's attention that the request had in fact been ruled upon by the Pre-Trial Judge, almost two-weeks previously on 12 March 2021,³ the Veseli Defence renewed its application for the SPO to be ordered to file its pre-trial brief, this time by 1 June 2021 ('Renewed Request' and together with the Request, the 'Requests').

2. The SPO has clearly indicated the earliest date upon which a pre-trial brief and related Rule 95(4) materials can be provided, and the reasoning for that timing.⁴ What the Veseli Defence in fact seeks is a complete inversion of the pre-trial process, in the form of a pre-trial brief before witness and exhibit lists have been finalised or related materials disclosed. Not only is such a request contrary to logic, to relevant practice, and to the applicable framework, but the Veseli Defence has provided no basis for such an extraordinary measure. Indeed, as the SPO has previously outlined,⁵ the submissions supporting the Requests were baseless and misleading.

3. Far from the Defence having been left without a 'guide' to the disclosed materials,⁶ or there being a need for the SPO to further 'state its case' at this time,⁷ the SPO has in fact provided a detailed, more than 50 page indictment and a 600 page Rule 86(3)(b) outline, together with the categorisations and sub-categorisations being provided through Legal WorkFlow.⁸ Having recently reassessed the adequacy of the

¹ In respect of this Request see Transcript of Status Conference dated 16 February 2021, pp.267-268, 271-273, 303, 317 (requesting that the Specialist Prosecutor's Office ('SPO') be ordered to file its Pre-Trial Brief by 1 April 2021).

² Transcript of Status Conference dated 24 March 2021, pp.364-365, 367 (re-characterising the request as being one to file the pre-trial brief by mid-June at the latest).

³ Transcript of Status Conference dated 24 March 2021, pp.369, 390. *See also* KSC-BC-2020-06/F00218.

⁴ Transcript of Status Conference dated 24 March 2021, p.363. *See also* Prosecution submissions for fourth status conference and request for adjustment of time limits, KSC-BC-2020-06/F00235, para.7.

⁵ Transcript of Status Conference dated 16 February 2021, pp.252, 256, 311.

⁶ *Contra*. Transcript of Status Conference dated 16 February 2021, pp.266, 268 (see also p.244).

⁷ *Contra*. Transcript of Status Conference dated 16 February 2021, p.273; Transcript of Status Conference dated 24 March 2021, p.365.

⁸ Transcript of Status Conference dated 24 March 2021, p.369.

Rule 86(3)(b) outline, the Pre-Trial Judge confirmed that it provides 'meticulous' guidance to the indictment supporting materials.⁹ In making the Renewed Request, the Veseli Defence made no reference to that key document.¹⁰

4. At the hearing on 16 February 2021, while reiterating the Request, Veseli Defence Counsel further claimed that, in the Kosovo cases he had been involved in at the ICTY, defence investigators had started from the pre-trial brief in order to see what needed to be investigated, and the same was necessary here.¹¹ In fact, the pre-trial brief in the Haradinaj case was filed less than six weeks before the start of that trial, and the deadline for its submission was adjusted each time the trial date was changed.¹² This further supports the SPO's submissions on the more general matter of the appropriate timing for the pre-trial brief.¹³ Notably, at the ICTY, there was not even any equivalent to the detailed Rule 86(3)(b) outline which the Defence in this case has received. In making the Renewed Request, the Veseli Defence provided no additional reasoning, beyond a submission that it would not make any admissions on agreed facts and would not provide any notice of alibi until after receipt of the pre-trial brief.¹⁴

5. The Renewed Request reflects nothing more than disagreement with the Pre-Trial Judge's decision on the Request, and is an unsupported attempt to seek reconsideration of it, by again baselessly seeking a pre-mature pre-trial brief. The unsubstantiated Renewed Request can and should be dismissed summarily, and, as outlined above, also fails on its merits.

⁹ Transcript of Status Conference dated 24 March 2021, p.369. *See also* KSC-BC-2020-06/F00218.

¹⁰ Indeed, almost three months after the initial appearance, Veseli Defence Counsel's attention had to be repeatedly drawn to the existence of the Rule 86(3)(b) outline at the status conference on 16 February 2021.

¹¹ Transcript of Status Conference dated 16 February 2021, p.303.

¹² Prosecution submission for third status conference, KSC-BC-2020-06/F00191COR, para.15.

¹³ *See, inter alia*, Prosecution submission for third status conference, KSC-BC-2020-06/F00191COR.

¹⁴ Transcript of Status Conference dated 24 March 2021, p.392 (referring back generically to 'today's submissions'), *see* p.382 (indicating that an 'early' pre-trial brief is needed because the Veseli Defence will refuse to make any admissions on agreed facts until after the pre-trial brief has been received), p.375 (indicating that a 'very early' pre-trial brief had been suggested because the Veseli Defence reserves its position on alibi notices until after receipt of the pre-trial brief), p.366 (submitting there is 'no real justification' for a delay in the pre-trial brief schedule), p.365 (simply repeating that the SPO must 'say what its case [...] is' in the form of a detailed pre-trial brief).

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Tuesday, 6 April 2021
At The Hague, the Netherlands.