



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
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Prosecution submissions for fifth status conference

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 fifth status conference.

Item 1: Disclosure

2. All remaining materials shown to each of the Accused during their SPO interviews were disclosed on 1 April 2021.² Additionally, on 28 April 2021, the SPO disclosed a further batch of Rule 102(1)(b) materials.³ Since the last Status Conference, the SPO has also filed its fifth and sixth requests for protective measures, relating, cumulatively, to 30 witnesses. 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.

3. Disclosure review and redaction is – especially in the current circumstances where a majority of staff continue to work remotely – an extremely logistically complex and time-consuming exercise.⁶ The SPO is devoting the maximum available resources to it. Certain resources have been diverted to related tasks, including working on the linkage of exhibits referred to in disclosed witness statements, as requested by the Defence.⁷ The SPO is monitoring the pace of disclosure work, and is in the process of making relevant resource and process adjustments where necessary. While review remains ongoing, it is not possible to provide a precise estimate of the total outstanding volume at this time. It is, however, hoped that once current

¹ Order Setting the Date for a Fifth Status Conference and for Submissions, KSC-BC-2020-06/F00300, 14 May 2021, Public, ('Order')

² Disclosure 27.

³ Disclosure 31, 28 April 2021 (55 items).

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').

⁶ See Transcript of Fourth Status Conference, 24 March 2021, pp.329-330.

⁷ Resources were also diverted to the sub-categorisation project mentioned in para.4 below.

adjustments are implemented, a further update and forecast can be provided to the Pre-Trial Judge by mid-June 2021.

4. All material so far disclosed pursuant to Rule 102(1)(b) has been updated to reflect the additional sub-categorisation required pursuant to the Categorisation Decision. Significant time is being invested in continued testing and provision of feedback in relation to the sub-categorisation functionality.

5. As noted in prior submissions,⁸ the content of the Rule 102(3) notice is in large part contingent upon the progress of disclosure pursuant to the other Rules. As such, while good progress continues to be made on preparation of this notice, the SPO will be a position to provide a further realistic outlook following implementation of the adjustments mentioned above.

6. 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.

7. In relation to Rule 107 material, the SPO is working to conclude discussions with relevant organisations in relation to clearances and/or, as relevant, possible counterbalancing measures. As previously forecast,⁹ it is anticipated that a number of Rule 107 requests may be required once those discussions have concluded.

Item 2: Objections to admissibility

8. With respect to Defence objections to admissibility of evidentiary material, the SPO considers that the table format proposed by the Pre-Trial Judge would facilitate clarity for the parties and Panel.

⁸ Prosecution submissions for fourth status conference and request for adjustment of time limits, KSC-BC-2020-06/F00235, 22 March 2021, para.12.

⁹ Prosecution submissions for fourth status conference and request for adjustment of time limits, KSC-BC-2020-06/F00235, 22 March 2021, para.5.

Item 3: SPO Investigations and next steps

9. As previously outlined, SPO investigations in fulfillment of its mandate are anticipated to continue for the foreseeable future.¹⁰ However, this should not impact the pre-trial timeline as any disclosure resulting from subsequent or other investigations is adequately governed by the applicable framework.

10. With regard to Rule 95(4) material (i.e. Pre-Trial Brief and witness and exhibit lists), having assessed the degree to which all available resources are anticipated to be occupied with completing disclosure work in the coming months, and the fact that disclosure is currently forecast to continue into September 2021, the SPO now anticipates being in a position to submit its Rule 95(4) material by mid-October 2021.

Item 4: Points of Agreement

11. The SPO provided the Defence teams with its agreed facts proposal on 17 March 2021. Following the last status conference, on 7 April 2021, the Thaçi Defence affirmed *inter partes* the position it had outlined at the status conference that it does not anticipate being in a position 'to adequately respond' to the agreed facts proposal until having reviewed the SPO's pre-trial brief. On 9 April 2021, the Selimi Defence indicated *inter partes* that the agreed facts proposal remained under active consideration and that they anticipated being in a position to respond substantively by 30 April 2021. No further Defence responses or updates have been received by the SPO.

12. The SPO welcomes continuing active management of the pre-trial process and proposes that a further status conference be held in mid-June, during which, *inter alia*, the further disclosure update mentioned above could be provided.

Word count: 877

¹⁰ Prosecution submissions for fourth status conference and request for adjustment of time limits, KSC-BC-2020-06/F00235, 22 March 2021, para.6.



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Tuesday, 18 May 2021
At The Hague, the Netherlands.