

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 Kadri Veseli

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Veseli Defence Submissions for the Fifth Status Conference

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I. INTRODUCTION

1. Pursuant to Rule 96(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers and pursuant to paragraph 15(b) of the *Order Setting the Date for a Fifth Status Conference and for Submissions*,¹ the Defence for Mr Kadri Veseli (“Defence”) hereby presents its submissions on those topics highlighted for its consideration by the Pre-Trial Judge in advance of the **Fifth Status Conference** scheduled for 19 May 2021. The Defence also adopts its previous submissions made before earlier status conferences.²

II. DISCUSSION

2. Disclosure:

- The case-specific categorization of Rule 102(1)(b) material in Legal Workflow is of virtually no assistance to Defence preparation. Despite providing sub-categories for items of evidence in so far as they relate to various elements of the indictment, these fields have, so far, been sparsely populated. The use of Legal Workflow by remote access is cumbersome and, time consuming. In essence, the Legal Workflow software does not facilitate the transparent presentation of the SPO case. This is a There can be no substitute for a comprehensive and hyperlinked pre-trial brief to be submitted pursuant to Rule95(4).
- The Defence proposes to raise its concerns with respect to information subject to the provisions of Rule 107. The Pre-Trial Judge is referred to paragraph 7 of this filing.

¹ KSC-BC-2020-06-F00300.

² KSC-BC-2020-06-F00087 and KSC-BC-2020-06-F00145.

3. Defence objections to the admissibility of Rule 102 evidence:
- Rule 102 evidence comprises “statements of all witnesses whom the Specialist Prosecutor intends to call to testify at trial”, other witness statements, expert reports, depositions, transcripts and exhibits. One of the principal tests for objecting to the admissibility of evidence is whether its prejudicial effect outweighs its probative value. Such an examination of the evidence is totally impossible at the present stage in light of the heavy redaction of materials which the SPO has disclosed and the inability to assess relevance in the context of the entire SPO case. Accordingly, the Defence does not contemplate being able to raise objections to evidence until the maximum state of prosecution pre-trial disclosure has been reached; namely, the entirety of evidence to be presented at trial. Nor does the Defence contemplate being able to raise objections to a specific item of evidence until protective measures with respect to such material have been authorised in the format to be applied at trial.
 - The Defence does not wish to be procedurally constrained by the need to raise objections to the admissibility of evidence in tabular format – especially since it is of the opinion that decisions on admissibility are best taken by the Trial Panel. Indeed, the Defence would not want to be in a position where its objections to a particular item of evidence are not considered because of a failure to raise them in tabular format. The requirement for tabulating objections to evidence would necessitate the allocation of additional manpower and time which is not feasible in a dynamic trial process. As a counterbalancing measure, where the Defence proposes to object to the entirety of a witness’s evidence, it will endeavour, in the spirit of comity, to provide the SPO with sufficient notice in advance in order to avoid unnecessary expense being incurred should the objection be upheld.

4. Defence investigations and next steps:

- The Defence cannot properly commence its investigations until it has received full disclosure of the SPO's case and until the issues of jurisdiction and constitutionality raised in the context of the Rule 97(1) preliminary motions have been decided and all avenues of appeal exhausted. The Defence cannot be expected to allocate its resources appropriately without knowing where the burden of purportedly incriminating evidence may lie and without knowing against what mode of liability it is required to defend.
- Without full knowledge of the SPO's case, the Defence is also not able to foresee the need, at this stage, for any unique investigative opportunity.
- For the same reasons, the Defence should not be expected to provide an alibi until it has been provided with all information detailing how the SPO places Mr Veseli at the scene of alleged crimes.

5. Points of agreement on matters of law and fact

- The Defence is currently only in a position to agree various details concerning Mr Veseli's personal history and other matters which are of judicial notice.
- The Defence cannot agree to matters of law until the Rule 97(1) preliminary motions have been decided and all avenues of appeal exhausted.
- The Defence cannot agree to matters of fact until it has received full disclosure of the SPO case and is in a position to assess where the SPO's evidence in support of its indictment is deficient. The Defence will not assist the SPO to

make out its case; the SPO brought the charges and it is the SPO which must prove them.

6. The date for the next status conference

- The Defence proposes that a status conference should be held at least once a month.

7. Other issues

The Defence will address three issues not listed among the discrete topics identified by the Pre-Trial Judge:

- The disclosure process with respect to Rule 107 material: This has been the subject of *inter partes* communication. The Defence will address the SPO's mail of 11 May 2021 which stated as follows:

“We confirm that Rule 107 is applicable to materials obtained under condition of confidentiality for the purpose of generating new evidence.

We are currently in the ongoing process of identifying materials which are relevant to the case and/or potentially exculpatory. As such, while this process remains ongoing, we are unable to provide any meaningful figures at this time. We can assure you that once relevant processes have been exhausted, should clearance not be obtained, we shall seize the chamber promptly in accordance with Rule 107”.

- The disclosure process with respect to Rule 106 material: This has, also, been the subject of *inter partes* communication. The Defence will address the SPO's mail of 12 May 2021 which stated as follows:

“In accordance with Rule 103, the SPO is required to disclose all exculpatory information in its custody, control or actual knowledge, subject to Rules 107 and 108. This includes exculpatory information recorded in internal work product.

As previously advised, the review for potentially exculpatory and/or relevant material remains ongoing. To the extent exculpatory information is identified, it shall be disclosed. To the extent information is identified as relevant to the case, is not otherwise subject to disclosure under Rules 102(1) or 103, and does not fall within one of the exceptions to disclosure under the rules, it shall be notified in accordance with Rule 102(3)”.

- The zealous nature of redactions applied to disclosed evidence: The SPO's redactions, albeit authorized by the Pre-trial Judge, will not only prevent a timely Defence investigation but are currently preventing the Defence from learning the true nature of the SPO's case. This manifestly unfair and Kafkaesque state of affairs could lead to a petition for a stay of proceedings.

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