

In: KSC-BC-2020-06
**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi
and Jakup Krasniqi**

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Defence Counsel for Jakup Krasniqi

Date: 18 May 2021

Language: English

Classification: Public

Public Redacted Version of

Krasniqi Defence Submissions for Fifth Status Conference, KSC-BC-2020-

06/F00313, dated 18 May 2021

Specialist Prosecutor

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Venkateswari Alagendra, Aidan Ellis

I. INTRODUCTION

1. The Defence for Jakup Krasniqi (“Defence”) hereby provide written submissions for the Fifth Status Conference in accordance with the Order Setting the Date for a Fifth Status Conference and for Submissions.¹

2. This filing is confidential [REDACTED]. The Defence will file a public redacted version shortly.

II. PROCEDURAL HISTORY

3. On 14 May 2021, the Pre-Trial Judge listed the Fifth Status Conference to take place on 19 May 2021 and ordered the Defence to provide written submissions, if they so wish, no later than 18 May 2021.²

4. On 11 December 2020, the SPO released disclosure package 8 to the Defence pursuant to Rule 103 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”).³ On 12 December 2020, the SPO released disclosure packages 9 and 10 to the Defence.⁴ Further disclosure packages were submitted on 14 December 2020,⁵ 15 December 2020,⁶ 19 December 2020,⁷ 22 December 2020,⁸ 15

¹ KSC-BC-2020-06, F00300, Pre-Trial Judge, *Order Setting the Date for a Fifth Status Conference and for Submissions* (“Order Fifth Status Conference”), 14 May 2021, public.

² *Ibid.*, para. 19.

³ Disclosure Package 8.

⁴ Disclosure Package 9, Disclosure Package 10.

⁵ Disclosure Package 11, 2 documents (Rule 102(1)(a)).

⁶ Disclosure Package 12, 2 documents (Rule 102(1)(a)).

⁷ Disclosure Package 13, 54 documents (Rule 102(1)(a)).

⁸ Disclosure Package 14, 2 documents (Rule 102(3)).

January 2021,⁹ 20 January 2021,¹⁰ 2 February 2021,¹¹ 11 February 2021,¹² 12 February 2021,¹³ 15 February 2021,¹⁴ 12 March 2021,¹⁵ 17 March 2021,¹⁶ 18 March 2021,¹⁷ 22 March 2021,¹⁸ 1 April 2021,¹⁹ and 28 April 2021.²⁰ The Defence have now received disclosure of around 3,882 documents.

III. SUBMISSIONS

A. DISCLOSURE

5. The Defence anticipate the case-specific categorisation ordered by the Pre-Trial Judge²¹ will ultimately prove to be a very useful resource. However, its utility at the moment is limited as many documents are yet to be categorised. For instance, no documents have currently been categorised as relevant to the following locations mentioned in the public redacted version of the Indictment: Gjilan/Gnjilane, Suharekë/Suva Reka, Ferizaj/Uroševac, Jabllanicë/Jablanica, and Novobërdë/Novo Brdo. An additional fifteen locations mentioned only in the confidential version of the Indictment currently have no documents categorised against them.

⁹ Disclosure Package 16, 22 documents (Rule 102(1)(b)).

¹⁰ Disclosure Package 17, 2 documents (Rule 102(1)(a)).

¹¹ Disclosure Package 18, 9 documents (Rule 102(3)).

¹² Disclosure Package 20, 488 documents (Rule 103).

¹³ Disclosure Package 21, 49 documents (Rule 102(1)(a)).

¹⁴ Disclosure Package 22, 23 documents (Rule 102(1)(b)).

¹⁵ Disclosure Package 23, 20 documents (Rule 102(1)(b)).

¹⁶ Disclosure Package 24, 2 documents (Rule 102(1)(b)).

¹⁷ Disclosure Package 25, 39 documents (Rule 102(1)(a)).

¹⁸ Disclosure Package 26, 27 documents (Rule 103).

¹⁹ Disclosure Package 27, 17 documents (Rule 102(1)(b)).

²⁰ Disclosure Package 31, 55 documents (Rule 102(1)(b)).

²¹ KSC-BC-2020-06, F00218, Pre-Trial Judge, *Decision on Categorisation of Evidence Under Rule 109(c) and Related Matters* (“Categorisation Decision”), 12 March 2021, public.

6. The Defence note that the SPO has until 23 July 2021 to apply the categorisation to Rule 102(1)(b) material that has already been disclosed.²² The Defence will only be able to assess whether there are any difficulties with the case-specific categorisation once this process is complete.

7. [REDACTED]. [REDACTED]. [REDACTED].

B. DEFENCE OBJECTIONS TO THE ADMISSIBILITY OF RULE 102 EVIDENCE

8. The Defence are likely to object to the admissibility of certain evidentiary material. However, the Defence are not yet in a position to file their objections for the following reasons. First, the disclosure of Rule 102 Evidence is not yet complete. The current deadline for the disclosure of Rule 102(1)(b) material is 23 July 2021.²³ Second, the material that has been disclosed is subject to extensive redactions which make it impossible for the Defence to understand the material in order to formulate objections. Third, the Defence do not currently know which witnesses the SPO intends to call at trial. If certain witnesses are not called to give oral evidence at trial, the Defence are likely to object to reliance on their prior written statements but that objection must obviously be predicated on knowing which witnesses are not giving oral evidence.

9. As to the format of the Defence objections, the Defence anticipate setting out their objections in a filing, accompanied by a table in the format suggested²⁴ (which will assist to group the objections by the nature of the challenge).

C. DEFENCE INVESTIGATIONS

²² Categorisation Decision, para. 22.

²³ *Ibid.*

²⁴ Order Fifth Status Conference, para. 16(2)(b).

10. As indicated at the previous Status Conference,²⁵ the Defence confirm that whilst investigations have commenced, the Defence remain hampered by travel related restrictions imposed in response to the COVID-19 pandemic. For instance, the Court will be aware that Malaysia imposed a national lockdown on 12 May 2021 which currently lasts until 7 June 2021, inevitably restricting Lead Counsel's ability to travel. Investigations are also currently restricted by the extent of the redactions imposed on the SPO's disclosure. As a result, the Defence are not currently able to provide any further update in relation to Rule 99(1) or Rule 95(5).

D. POINTS OF AGREEMENT ON MATTERS OF LAW AND FACT

11. The Defence have translated the SPO's proposed points of agreement into Albanian. The Defence continue to discuss the SPO's proposed points of agreement with Mr. Krasniqi. Many of the SPO's proposed points of agreement relate to alleged detention locations, in relation to which either the disclosure is currently incomplete or the disclosure documents are heavily redacted. The Defence are unlikely to be able to revert to the SPO until the disclosure process and the Defence investigation is more advanced.

E. ADDITIONAL ISSUE – TRANSLATIONS

12. The availability of key filings in Albanian remains a concern for the Defence. As of the date of filing these written submissions, searches on Legal Workflow indicate that 67 filing items are available in Albanian compared to 420 filing items which are available in English. As previously submitted, Mr. Krasniqi cannot read English and

²⁵ KSC-BC-2020-06, Revised Transcript of Hearing, 24 March 2021, public, p. 379, line 21 to p. 380, line 1.

his ability to participate in proceedings and give instructions is hindered by the lack of translations.

13. At previous Status Conferences, a particular concern was identified in relation to the translation of the Rule 86(3)(b) Outline. The Defence understood that the Registry was aiming to translate the first 150 pages of the Outline by 20 April 2021 and to complete the translation of the Outline by the end of May 2021.²⁶ It does not appear that the translation of the first 150 pages has been communicated to the Defence. The Defence seek an update on the progress of this translation.

14. Further, as suggested by the Pre-Trial Judge,²⁷ the Defence indicated to the Registry which filings the Defence regard as a priority for translation, including for instance the Decision on the Confirmation of the Indictment. The Defence understand that the Registry was aiming to complete the translation of these key filings before the end of June 2021. The Defence will continue to liaise with the Registry regarding these issues.

Word count: 1,179



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Tuesday, 18 May 2021

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²⁶ KSC-BC-2020-06, F00192, Registrar, *Registrar's Submission on Translations*, 8 February 2021, public, paras 3-4.

²⁷ KSC-BC-2020-06, Transcript of Hearing, 16 February 2021, public, p. 260, lines 18-21.