



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:** 16 July 2021  
**Language:** English  
**Classification:** Public

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**Prosecution submissions for sixth status conference**  
**with confidential and *ex parte* Annex 1**

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**Specialist Prosecutor's Office**

Jack Smith

**Counsel for Victims**

Simon Laws

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Kadri Veseli**

Ben Emmerson

**Counsel for Rexhep Selimi**

David Young

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

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

*Item 1: Disclosure*

2. The SPO remains substantially on track with respect to Rule 102(1)(b) disclosure. Since the last Status Conference, six further packages of Rule 102(1)(b) materials have been disclosed.<sup>2</sup> In addition, the SPO has filed two further protective measures requests.<sup>3</sup>

3. In the coming week, further packages of Rule 102(1)(b) items will be disclosed, including additional witness statements as well as video and documentary evidence. A further request, relating primarily to documentary materials - and in particular materials which would be identifying of witnesses for whom protective measures have already been granted or sought - will be filed shortly.<sup>4</sup>

4. At this stage, the SPO identifies the following discrete matters which it anticipates will not be resolved by the 23 July deadline:

- a. Pending Variation Requests: as set out in the annex to this filing, the SPO is awaiting certain authorisations varying confidentiality or other protective measures conditions in relation to exhibits and/or witnesses the SPO intends to rely upon at trial. Such variations are necessary in order to obtain, or as applicable, disclose, the materials in question. To the extent possible redacted versions of such evidence, or substantively similar evidence, have been or will be disclosed by the deadline.

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<sup>1</sup> Order Setting the Date for a Sixth Status Conference and for Submissions, KSC-BC-2020-06/F00393, 12 July 2021, Public, ('Order')

<sup>2</sup> Disclosure Packages 37 (138 items), 38 (108 items), 40 (96 items), 41 (49 items; this was a re-disclosure of previously disclosed items correcting certain metadata), 42 (91 items) and 43 (26 items).

<sup>3</sup> KSC-BC-2020-06/F00339; KSC-BC-2020-06/F00387. Noting that the briefing schedule for KSC-BC-2020-06/F00387 may not be completed in time to allow a decision to be issued prior to 23 July 2021, the SPO is prepared to disclose the materials in question by the deadline with the proposed redactions provisionally in place. Following the decision, the SPO will promptly make any necessary adjustments.

<sup>4</sup> This request will also address certain redactions which have been applied to Rule 102(1)(b) materials by providers as a condition for their release pursuant to Rule 107.

Depending on the outcome of these pending requests, the SPO seeks authorisation to disclose the materials promptly upon their receipt.

- b. Pending Clearance Requests: the SPO has continued to vigorously engage with relevant entities and organisations with respect to remaining Rule 107 clearances, and very substantial progress has been made. Nonetheless, it is anticipated that pending clearance requests for approximately five international witnesses, as well as a relatively small number of documentary items and prior statements given to other law enforcement bodies, on which the SPO intends to rely will not be resolved by the deadline.<sup>5</sup> The SPO consequently requests authorisation to disclose these materials after 23 July 2021, and will do so promptly as soon as the necessary clearances are obtained.
- c. Expert Reports: the SPO intends to rely upon certain expert reports in this case, including in relation to forensic evidence. In light of the review and analysis required to be undertaken by the experts, and their currently forecast availability, the SPO requests authorisation to disclose expert reports together with its Rule 95(4) materials.
- d. Translations: the SPO will continue to provide translations of Rule 102(1)(b) materials as soon as they are available and corresponding redactions (as relevant) have been applied.<sup>6</sup>

5. The SPO is also substantially on track to provide the Defence with a Rule 102(3) notice by 30 July 2021. The Rule 102(3) notice will indicate remaining materials in the SPO's possession which are of potential relevance to the case and which have not already been disclosed pursuant to Rules 102(1) or 103 prior to that date.

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<sup>5</sup> The process involves time-consuming, multi-stage discussions. For example, in respect of one of the outstanding witnesses, three separate clearances are necessary, in sequence, from a relevant state and two international organisations with whom the witness is or was affiliated.

<sup>6</sup> In particular, the SPO is providing (i) English translations of all Rule 102(1)(b) material for which English is not the original language, and (ii) Albanian translations of all prior statements of witnesses the SPO intends to call to testify at trial.

6. Since the last Status Conference, three packages of potentially exculpatory items falling under Rule 103 have been disclosed.<sup>7</sup> 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. As outlined above, the SPO continues to work vigorously to conclude discussions with relevant organisations in relation to clearances and/or, as relevant, possible counterbalancing measures. Where, as part of the continuing Rule 103 review, potentially exculpatory information is identified in materials for which clearance has not been obtained, the SPO will proceed to make relevant applications.

8. Finally, the SPO expresses its gratitude for the continuing availability and efforts of the Registry to resolve ongoing difficulties<sup>8</sup> in the process for disclosure of materials through Legal WorkFlow.

*Item 3: SPO Investigations and next steps*

9. SPO investigations in fulfillment of its mandate are anticipated to continue for the foreseeable future. However, as previously outlined,<sup>9</sup> 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. Currently, there is no change in the SPO's estimate of mid-October for provision of Rule 95(4) materials (i.e. Pre-Trial Brief and witness and exhibit lists). The estimate may, however, need to remain under review, including in light of the pending clearances and, potentially, the demands of further litigation on the preliminary motions in this case.

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<sup>7</sup> Disclosure packages 35 (97 items), 36 (165 items) and 39 (260 items).

<sup>8</sup> For example, in one recent instance a Disclosure Package failed to load, either automatically or manually, into Legal WorkFlow and external assistance was required to resolve the matter. Such difficulties not only hinder disclosure of the particular disclosure package in question but significantly divert SPO resources.

<sup>9</sup> Prosecution submissions for fifth status conference, KSC-BC-2020-06/F00341, para.9.

Item 5: Points of Agreement

11. Since the last Status Conference, the Krasniqi Defence has (i) indicated agreement on four proposed facts relating to certain biographical data, and (ii) indicated that it will keep the remaining facts under review.<sup>10</sup> The SPO has not received a further response from any of the other Defence teams.

**Word count: 1,070**



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**Jack Smith**  
**Specialist Prosecutor**

Friday, 16 July 2021  
At The Hague, the Netherlands.

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<sup>10</sup> E-mail from Krasniqi Defence to SPO, 6 July 2021.