

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: 19 July 2021

Language: English

Classification: Public

Public Redacted Version of

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

06/F00401, dated 16 July 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 Sixth Status Conference in accordance with the Order Setting the Date for a Sixth 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 12 July 2021, the Pre-Trial Judge listed the Sixth Status Conference to take place on 21 July 2021 and ordered the Defence to provide written submissions, if they so wish, no later than 16 July 2021.²

III. SUBMISSIONS

A. DISCLOSURE

4. There remain outstanding issues from the previous Status Conference in relation to the disclosure of material seized during searches and the case-specific categorisation of disclosure on Legal Workflow.

5. At the previous Status Conference, the Defence questioned when materials seized during the searches at the start of November 2020 would be disclosed. The position of the SPO was that the material would be disclosed: if exculpatory

¹ KSC-BC-2020-06, F00393, Pre-Trial Judge, *Order Setting the Date for a Sixth Status Conference and for Submissions*, 12 July 2021, public.

² *Ibid.*, para. 15.

“[i]mmediately following review and processing”, or by the Rule 102(1)(b)³ deadline, or in the Rule 102(3) notice.⁴ The SPO further indicated that it would prioritise this disclosure “to the maximum extent [the SPO] can together with all other disclosure”.⁵ So far as the Defence are aware, none of these documents have been disclosed.⁶ In relation to exculpatory material, the Rule 103 obligation is to disclose it “immediately” and “as soon as it is in [the SPO’s] custody, control or actual knowledge”. The searches took place eight months ago. Despite the volume of material, there can be no justification for withholding exculpatory material for eight months. The SPO should be ordered to disclose any exculpatory material from the searches within seven days.

6. In relation to the case-specific categorisation of disclosure on Legal Workflow, the Defence invite the Pre-Trial Judge to re-consider ordering the SPO to apply the same categorisation to the Rule 102(1)(a) material. The purpose of categorisation on Legal Workflow is to facilitate searches using the specified categories, but the fact that only Rule 102(1)(b) material has been categorised significantly reduces the utility of these searches. In particular:-

- a. currently, no documents have been categorised as relevant to 19 of the 48 locations used as categories. That is presumably because the documents relevant to those locations are found within Rule 102(1)(a) material. A person searching using the categories on Legal Workflow would not find anything relevant to those locations;
- b. the result is that a person searching for documents relevant to a location must search (1) using the category on Legal Workflow to find Rule 102(1)(b)

³ Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”).

⁴ KSC-BC-2020-06, Transcript of Hearing, 19 May 2021 (“Transcript of 19 May 2021”), public, p. 411, lines 11–13.

⁵ *Ibid.*, p. 415, lines 7-9.

⁶ [REDACTED].

material and (2) using the SPO Outline document to identify Rule 102(1)(a) documents. That is cumbersome and slow. It significantly increases the time required to complete searches and increases the chance of searches not producing relevant documents;

- c. the only solution to this problem would be for all Rule 102(1) disclosure to be categorised in the same way on Legal Workflow. The Defence appreciate that the Pre-Trial Judge has already ruled that the SPO were only required to apply categorisation to Rule 102(1)(b) material.⁷ However, now that the system has been tried in practice and its deficiencies are clear, the Defence submit that this ruling should be revisited. It would clearly be in the interests of all parties and Chambers, to be able to find all documents relevant to a particular location simply by using the categorisation tool on Legal Workflow. The delay caused on each occasion multiple searches are required is likely to be greater than the time it would take to categorise Rule 102(1)(a) material.⁸

7. In addition, the Defence have reviewed the categorisations being applied to Rule 102(1)(b) material and note that the location names used as categories on Legal Workflow do not match the grouping of locations in the Indictment or the SPO Outline.

8. [REDACTED]. [REDACTED]. [REDACTED].⁹ [REDACTED]. [REDACTED].

9. Finally, the Defence believe that complete disclosure packages in relation to witnesses (i.e. containing all documents shown to the witness in interviews and all

⁷ KSC-BC-2020-06, F00218, Pre-Trial Judge, *Decision on Categorisation of Evidence Under Rule 109(c) and Related Matters*, 12 March 2021, public, paras 14-16, 20, 27(d).

⁸ *Ibid.*, para. 17.

⁹ [REDACTED].

prior statements of that witness) are still not available. With regard to protected witnesses that have provided statements and / or interviews at other courts or mechanisms, the Defence note that the witness numbers are only referred to in the descriptions of the documents on Legal Workflow. As the document titles on Legal Workflow do not reflect the relevant witness number, searching for material related to witnesses remains frustratingly slow. Moreover, for a number of witnesses whose identities have been disclosed to the Defence, the descriptions of the documents on Legal Workflow do not provide for the witness number. The Defence therefore propose that the Pre-Trial Judge revisit these issues and request that the SPO is ordered to amend the titles of the documents on Legal Workflow relating to a witness to include the witness number, or alternatively, order the SPO to produce and disclose a package for each witness containing all statements and / or interviews including documents and exhibits referred to the witness as previously suggested by the Defence at multiple Status Conferences.

B. TRANSLATIONS

10. The Defence have consistently raised concerns at Status Conferences about the availability of translations of core filings into Albanian.¹⁰ The lack of translations into Albanian is hindering Mr. Krasniqi's ability to participate fully in proceedings and to give instructions to the Defence. The Defence therefore welcome the inclusion of translations as an agenda item at the Status Conference.

¹⁰ KSC-BC-2020-06, F00196, Krasniqi Defence, *Krasniqi Defence Submissions for Third Status Conference*, 10 February 2021, public, paras 8-11, 23; Transcript of Hearing, 16 February 2021, public, p. 304, line 22 to p. 305, line 3; F00234, Krasniqi Defence, *Krasniqi Defence Submissions for Fourth Status Conference*, 22 March 2021, public, paras 9-10; Revised Transcript of Hearing, 24 March 2021, public, p. 379, line 25 to p. 380, line 1; F00313/RED, Krasniqi Defence, *Public Redacted Version of Krasniqi Defence Submissions for Fifth Status Conference*, KSC-BC-2020-06/F00313, dated 18 May 2021, 18 May 2021, public, paras 12-14; Transcript of 19 May 2021, p. 396, lines 10-13.

11. In relation to priority translations, the Defence note that the Decision on the Confirmation of the Indictment was provided in Albanian on 16 July 2021. It is welcome that the translation is now available, although it should not have taken eight months to provide the Decision on the Confirmation of the Indictment in a form that Mr. Krasniqi can read.

12. More broadly, the Defence are concerned that the resources currently allocated for translation into Albanian are not sufficient to cope with the material in this case. There are currently 548 filing items available in English, 99 of which are available in Albanian. At the time of the Fifth Status Conference, there were 420 filing items available in English and 67 available in Albanian. The backlog of untranslated filing items thus stands at over 440 filing items and has grown in the last two months. Given that the backlog is growing rather than shrinking, there is a real risk that the translations will fall further behind as the case progresses and as more filings are submitted.

13. Finally, the Defence highlight that the Pre-Trial Judge's decisions on preliminary motions (which are scheduled to be delivered on 22 July 2021) are priority items for translation into Albanian. It will not be possible for Mr. Krasniqi to participate effectively in the appellate process (whether as appellant or respondent) unless these critical decisions are available in Albanian.

C. DEFENCE INVESTIGATIONS

14. As submitted at previous Status Conferences, the Defence have commenced investigations but remain constrained by various factors including the ongoing coronavirus pandemic, the extent of redactions / protective measures and awaiting the completion of the SPO's disclosure obligations. The Defence are not in a position to provide any substantive update in relation to Rule 99(1) or Rule 95(5).

D. POINTS OF AGREEMENT ON MATTERS OF LAW AND FACT

15. The Defence have indicated their agreement to four points of fact [REDACTED]. The Defence have indicated to the SPO that the Defence will keep the remaining proposed agreed facts under review as the disclosure process continues.

E. DETENTION CONDITIONS

16. The Defence confirm that Mr. Krasniqi has been able to use [REDACTED] for the exchange of documents with the Defence and this is an improvement on the previous system.

F. NEXT STATUS CONFERENCE

17. The Defence will be available at the Court's convenience on 13 September 2021 and 14 September 2021.

Word count: 1,488



Venkateswari Alagenda

Monday, 19 July 2021

Kuala Lumpur, Malaysia.



Aidan Ellis

Monday, 19 July 2021

London, United Kingdom.