

**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:** 6 August 2021

**Language:** English

**Classification:** Public

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**Public Redacted Version of**

**Krasniqi Defence Joinder to**

**Veseli Defence Request for an Amended Rule 102(3) Notice**

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**Specialist Prosecutor**

Jack Smith

**Counsel for Victims**

Simon Laws QC

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Kadri Veseli**

Ben Emmerson QC

**Counsel for Rexhep Selimi**

David Young

**Counsels for Jakup Krasniqi**

Venkateswari Alagendra, Aidan Ellis

## I. INTRODUCTION

1. On 5 August 2021, the Defence for Mr. Veseli filed their Request for an Amended Rule 102(3) Notice (“Veseli Defence Request”)<sup>1</sup> which requests the Pre-Trial Judge to order the Specialist Prosecutor’s Office (“SPO”) to amend its Rule 102(3)<sup>2</sup> notice and to populate an extra field to specify the relevance of each item of evidence to the case.<sup>3</sup>
2. The Defence for Jakup Krasniqi (“Defence”) are affected by the same issues identified in the Veseli Defence Request and therefore join in the submissions and relief requested in the Veseli Defence Request.
3. This filing is confidential [REDACTED].<sup>4</sup>

## II. SUBMISSIONS

4. Rule 102(3) requires the SPO to “provide detailed notice to the Defence of any material and evidence in his or her possession” and to “disclose to the Defence, upon request, any statements, documents [...] which are deemed by the Defence to be material to its preparation”.
5. Reflecting the terms of Rule 102(3), the Pre-Trial Judge ordered the SPO to provide the Defence with “a detailed notice of evidence falling under Rule 102(3)”

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<sup>1</sup> KSC-BC-2020-06, F00424, Veseli Defence, *Veseli Defence Request for an Amended Rule 102(3) Notice*, 5 August 2021, public.

<sup>2</sup> Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”).

<sup>3</sup> Veseli Defence Request, para. 1.

<sup>4</sup> KSC-BC-2020-06, F00421, Specialist Prosecutor, *Prosecution Rule 102(3) Notice with Confidential Annex 1 and Confidential Ex Parte Annex 2*, 31 July 2021, public, with Annex 1, confidential.

and, after the provision of that notice, ordered the Defence to indicate to the SPO which items from the list they seek to have access to.<sup>5</sup>

6. The Courts of Appeals Chamber has already held that the first step in the Rule 102(3) process is for the SPO to provide a “detailed notice” to the Defence and the second step is that the SPO must disclose to the Defence items from the list “which the Defence deems to be material to its preparation and has requested”.<sup>6</sup>

7. Two points emerge clearly from the text of Rule 102(3) and the above decisions. First, the SPO’s Rule 102(3) notice must be “detailed”. Second, the purpose of the Rule 102(3) notice is to enable the Defence to make an informed judgment about whether the documents on the list are material to its preparation.

8. On or around 31 July 2021, the SPO filed its Rule 102(3) notice, [REDACTED].<sup>7</sup> [REDACTED].

9. The descriptions of documents provided to the Defence in the SPO’s Rule 102(3) list are not detailed and do not permit the Defence to make any reasoned assessment of whether the documents are material to the preparation of the Defence. The clearest example is that [REDACTED]<sup>8</sup> [REDACTED]. [REDACTED]. Without that information, the Defence cannot reasonably be expected to assess whether [REDACTED] are material to the preparation of the Defence or not. Accordingly, the Defence support the Veseli Defence Request that the SPO should be ordered to

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<sup>5</sup> KSC-BC-2020-06, F00099, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 23 November 2020, public, para. 99(f)-(g).

<sup>6</sup> KSC-BC-2020-07, IA005/F00008/RED, Court of Appeals Chamber, *Public Redacted Version of Decision on the Appeals Against Disclosure Decision*, 29 July 2021, public, para. 38.

<sup>7</sup> KSC-BC-2020-06, F00421/A01, Specialist Prosecutor, *Annex 1 to Prosecution Rule 102(3) Notice*, 31 July 2021, confidential.

<sup>8</sup> [REDACTED].

provide a detailed Rule 102(3) notice containing an additional column explaining the relevance of each document.

10. The Veseli Defence Request is necessary in order that the Defence can participate in stage two of the Rule 102(3) process, assess which documents are material to the preparation of the Defence and request access to them from the SPO. The Defence owe an obligation to Mr. Krasniqi to review and analyse the documents potentially material to his defence. If the Rule 102(3) notice remains as drafted, the descriptions currently provided will only allow the Defence to rule out the materiality of a small number of documents. The result will be that the Defence request disclosure of a very substantial proportion of this list of [REDACTED], which will have an obvious impact on the future conduct of proceedings and timetable.

11. The Defence further note that it appears from the face of the Rule 102(3) notice that the SPO has already made an assessment of the relevance of each document. The final column of the table indicates that every document on it has been assessed to be relevant.

12. Accordingly, the Defence hereby joins the Veseli Defence Request and the relief requested therein.

**Word count: 735**



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**Venkateswari Alagendra**

Friday, 6 August 2021



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**Aidan Ellis**

Friday, 6 August 2021

Kuala Lumpur, Malaysia.

London, United Kingdom.