

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: 13 September 2021

Language: English

Classification: Public

Krasniqi Defence Submissions

for Seventh Status Conference

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 Alagenda, Aidan Ellis

I. INTRODUCTION

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

II. PROCEDURAL HISTORY

2. On 8 September 2021, the Pre-Trial Judge listed the Seventh Status Conference to take place on 14 September 2021 and ordered the parties to provide written submissions, if they so wish, no later than noon on 13 September 2021.²

III. SUBMISSIONS

A. DISCLOSURE

3. Between 20 July and 13 September, the Defence have received disclosure of 11,109 documents contained in 34 disclosure packages.³ Around 16,144 documents have been released to the Defence since the start of the case; more than two thirds of the documents have thus been disclosed in the last eight weeks. Many of the documents are themselves lengthy (the Defence have not found a way to estimate the total number of pages on Legal Workflow). Inevitably, the Defence are only in the very early stages of readings and analysing this large volume of material.

¹ KSC-BC-2020-06, F00461, Pre-Trial Judge, *Order Setting the Date for a Seventh Status Conference and for Submissions*, 8 September 2021, public.

² *Ibid.*, para. 15.

³ Up to and including Disclosure Package 82.

4. In relation to disclosure generally, the Defence are currently endeavouring to resolve or clarify a number of issues *inter partes* with the SPO. These comprise: the creation of relations between documents on Legal Workflow *inter alia* to produce witness packages; Legal Workflow upgrades; translations (a substantial number of disclosure documents have not been translated into English yet); the system being applied to the disclosure of redacted documents; and the allocation of pseudonyms to witnesses. The SPO responded to a Defence email on 12 September 2021. The Defence will continue to engage with the SPO on these issues and anticipate being able to update the Pre-Trial Judge on the progress of these discussions as appropriate at the next Status Conference.

5. In relation to the value of categorising Rule 102(1)(a)⁴ material on Legal Workflow, it remains the Defence position that this would be a valuable exercise for the reasons set out previously.⁵

6. A core problem in relation to disclosure remains that thousands of documents have been disclosed to the Defence with no explanation of the relevance of each document, limited identification of the witnesses to whom the documents are relevant and no detailed information on chain of custody. Explanatory emails from the SPO following disclosure batches have provided extremely limited information, often merely confirming the number of documents contained in the batch. As a result of the lack of explanation, the process of reading and analysing the documents has been and will continue to be much slower. It remains the view of the Defence that a provisional

⁴ Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”).

⁵ KSC-BC-2020-06, F00401/RED, Krasniqi Defence, *Public Redacted Version of Krasniqi Defence Submissions for Sixth Status Conference, KSC-BC-2020-06/F00401, dated 16 July 2021* (“Submissions Sixth SC”), 19 July 2021, public, para. 6; Transcript of Hearing, 21 July 2021 (“Transcript of 21 July 2021”), public, p. 485, line 23 to p. 486, line 19.

witness list and witness packages of documents are essential – and would be a higher priority for the Defence than the categorisation of Rule 102(1)(a) material.⁶

7. In relation to Rule 102(3) material, the Defence will apply for an extension of time to request access to materials from the Rule 102(3) Notice. There is good cause for an extension. The vast number of documents on the Rule 102(3) Notice, which must be assessed by the Defence one by one and about which the Defence must take instructions from Mr. Krasniqi, in itself justifies an extension. Moreover, the determination of the materiality of the documents depends in part upon the review of the SPO's disclosure. Documents on the Rule 102(3) Notice may well become material to the Defence investigation as a result of their connections to documents amongst the 11,109 documents recently provided to the Defence. Any requests that the Defence make at this stage for access to Rule 102(3) material cannot be final until all the disclosure has been scrutinised.

8. Accordingly with reference to the current deadlines:-

- a. the Defence will be able to request more details on the description of certain items on the Rule 102(3) Notice by the current deadline of 24 September 2021;
- b. the Defence may also be able to make some initial requests for access to material from the Rule 102(3) Notice by the current deadline of 24 September 2021;
- c. however, the Defence will not be ready to make all of its requests for access to material from the Rule 102(3) Notice (excluding those documents in

⁶ Submissions Sixth SC, para. 9.

relation to which further information is requested) by 24 September 2021. Indeed, the Defence submit that the deadline for requesting access to material from the Rule 102(3) Notice should in principle be after the last date for the SPO to disclose Rule 102(1)(b) material (which is not until 27 September 2021) and after the Defence have had fair opportunity to digest the recent voluminous disclosures.

B. TRANSLATIONS

9. The Defence continue to be concerned about the availability of translations of core filings into Albanian.⁷ At the time of the Sixth Status Conference, there were 548 filing items available in English, 99 of which were available in Albanian. At the current time, there are 684 filing items available in English, 114 of which are available in Albanian. The backlog continues to grow.

10. Further, the Pre-Trial Judge's three decisions on preliminary motions have yet to be translated into Albanian although these were identified by the Defence as priority items at the Sixth Status Conference.

11. On 8 September 2021, the Defence received an email from the Translation Request Management department inviting the Defence to identify priority items for translation. The Defence welcome this engagement and will respond.

⁷ 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 Hearing, 19 May 2021, public, p. 396, lines 10-13; Submissions Sixth SC, paras 10-13; Transcript of 21 July 2021, p. 501, lines 9-11.

C. DEFENCE INVESTIGATIONS

12. 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 the ongoing disclosure process and disclosure review. The Defence are not in a position to provide any substantive update in relation to Rule 99(1) or Rule 95(5) and reserve the right to do so at a later stage.

D. NEXT STATUS CONFERENCE

13. The Defence will be available at the Court's convenience on 29 October 2021.

Word count: 1,194



Venkateswari Alagenda

Monday, 13 September 2021

Kuala Lumpur, Malaysia.



Aidan Ellis

Monday, 13 September 2021

London, United Kingdom.