



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: 13 September 2021
Language: English
Classification: Public

Prosecution submissions for seventh status conference

Specialist Prosecutor's Office

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Venkateswari Alagenda

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

Item 1: Disclosure

2. For reasons previously outlined,² the SPO does not consider there to be a basis for expanding sub-categorisations in Legal WorkFlow to Rule 102(1)(a) materials. Detailed guidance to those materials has already been provided by way of the Rule 86(3)(b) outline in this case, which includes a breakdown by, *inter alia*, count and site.

3. Since the last Status Conference, 24 further packages of Rule 102(1)(b) material have been disclosed.³ Further packages of Rule 102(1)(b) items are being processed for disclosure by the deadline of 27 September 2021. Outstanding Rule 102(1)(b) materials include: (i) the statements of three international witnesses, for which Rule 107 clearance is still pending; (ii) reports from three expert witnesses relating to forensic matters; and (iii) certain materials which were the subject of requests for variation of protective measures.⁴ While progress is being made, the SPO is not yet in a position to confirm whether all relevant clearances/variations will be obtained by 27 September 2021. It is anticipated that in respect of a prior testimony of at least one witness, where litigation is ongoing, an extension of deadline may be required.⁵ However, with one exception,⁶ the SPO confirms that no further protective measures requests in respect

¹ Order Setting the Date for a Seventh Status Conference and for Submissions, 8 September 2021, KSC-BC-2020-06-F00461 ('Order')

² For example submissions at Transcript of Status Conference of 21 July 2021, pp.489-491.

³ Disclosure packages 48 (125 items), 49 (183 items), 50 (28 items), 51 (500 items), 52 (500 items), 53 (1250 items), 54 (2000 items), 55 (146 items), 57 (408 items), 58 (366 items), 59 (105 items), 60 (343 items); 61 (143 items), 62 (319 items), 63 (305 items), 64 (1229 items), 65 (1 item), 66-69 (1367 items), 72 (1 item), 79 (37 items), 81 (7 items). Package 80 (15 items) was a redisclosure of previously disclosed Rule 102(1)(b) material, correcting certain metadata.

⁴ This includes (i) the prior testimony of one witness (whose SPO interview is anticipated to be disclosed by 27 September), variation is subject to ongoing litigation, and (ii) lesser redacted or unredacted versions of prior testimony of six persons (the testimony of each has already been disclosed in redacted form).

⁵ See Fn.4 item (i).

⁶ A limited number of E-redactions may be needed to certain of the expert reports where certain victims are referenced. Any such application will be made at the earliest possible time.

of Rule 102(1)(b) material will be necessary in order to complete disclosure of such material.

4. In light of the volume of materials at issue, translation of Rule 102(1)(b) materials will not be completed by 27 September 2021. All available translation resources continue to prioritise translation of such materials, and the SPO is disclosing translations as soon as they become available and once redactions, if relevant, have been applied. The SPO consequently requests an extension of deadline for disclosure of remaining translations. While it is not possible to provide a precise estimate of when such translations will be completed, the SPO will continue to disclose them as soon as available on a rolling basis.

5. Since provision of the SPO's Rule 102(3) notice,⁷ Defence teams have made five requests for access to Rule 102(3) material. Three of these have been processed and disclosed, and the remaining two are currently being reviewed and processed and will be addressed within applicable timelines.

6. Since the last status conference, four packages of potentially exculpatory items have been disclosed pursuant to Rule 103.⁸ 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, Rule 107 discussions with certain relevant organisations in relation to clearances and/or, as relevant, possible counterbalancing measures, remain ongoing. The SPO does anticipate that further Rule 107 applications will be forthcoming, and may arise, *inter alia*, in connection with requests for disclosure pursuant to Rule 102(3), ongoing Rule 103 review and/or in the event that clearance of outstanding Rule 102(1)(b) materials is made subject to certain restrictions/redactions.

Word count: 714

⁷ KSC-BC-2020-06/F00421.

⁸ Disclosure packages 56 (23 items), 71 (23 items), 73 (160 items) and 76 (22 items).



Jack Smith
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Monday, 13 September 2021
At The Hague, the Netherlands.