



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: 12 October 2021
Language: English
Classification: Public

Prosecution submissions regarding the date for filing of a pre-trial brief

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1. In light of the Pre-Trial Judge's stated intention,¹ the Specialist Prosecutor's Office ('SPO') hereby provides submissions to facilitate the setting of a deadline for submission of the SPO's pre-trial brief. In particular, the SPO confirms that it would be in a position to file the pre-trial brief on 17 December 2021.

2. As outlined at the last Status Conference,² and previously foreshadowed,³ a number of very resource intensive workstreams in this case mean that the SPO is not in a position to file the pre-trial brief in October 2021.⁴ Those workstreams constituted a significant change impacting the estimate provided.⁵ They included: (i) preliminary motions litigation - for which each of the parties had to seek extensions of time before both the Court of Appeals and Pre-Trial Judge;⁶ and (ii) the review, processing and disclosure of multiple Rule 102(3) requests, again of a scope and volume giving good cause for extension of applicable deadlines.⁷ Rule 102(3) review and processing is anticipated to continue in an intensive manner through, at least, October and November 2021.⁸

¹ Transcript of Status Conference, 14 September 2021, p.612 (indicating that a deadline for submission of the SPO's pre-trial brief would be set at the latest during the next status conference in the case). *See also* Veseli Defence Request for a Deadline for SPO Pre-Trial Brief, KSC-BC-2020-06/F00510 ('Veseli Request').

² Transcript of Status Conference, 14 September 2021, pp.601-602, 610-611.

³ Transcript of Status Conference, 21 July 2021, p.509 (indicating that the October estimate for submission of a pre-trial brief could be impacted by upcoming workstreams for which it was then unknown how resource intensive they would be).

⁴ *Contra.* Veseli Request, KSC-BC-2020-06/F00510, paras 3, 6-7.

⁵ *Contra.* Veseli Request, KSC-BC-2020-06/F00510, para.3. At the time of the Status Conference on 21 July 2021, decisions on preliminary motions were yet to be issued and the nature and extent of any appeals, or requests for leave to appeal, were unknown. Similarly, the timing and scope of Defence Rule 102(3) requests were unknown.

⁶ Work on preliminary motions responses continued through 6 October 2021, when the SPO filed responses to two requests for leave to appeal relating to matters arising from decision KSC-BC-2020-06/F00450, having previously filed responses to seven motions addressing 81 different issues and/or grounds of appeal on 30 September 2021.

⁷ Ten Rule 102(3) requests were received up to 1 October 2021, and processing of certain of those requests is scheduled to continue to 29 October 2021. On 7 October 2021, the SPO received an 11th Rule 102(3) request, relating to 5,945 items, which is currently undergoing preliminary review.

⁸ Defence requests for access to Rule 102(3) material are anticipated to continue to 5 November 2021, with the current deadline for processing and review of such materials by the SPO being 26 November 2021 (Transcript of Status Conference, 14 September 2021, p.626).

3. The SPO has continued to actively progress all necessary pre-trial workstreams, including preparation of Rule 95(4) materials. For example, pending provision of complete Rule 95(4) materials, the SPO will provide the Defence with a preliminary witness list on 22 October 2021.⁹

4. Consequently, having carefully considered competing deadlines in the case and available resources, the SPO confirms that it will be in a position to file the pre-trial brief on 17 December 2021. In light of the competing deadlines, and related resource constraints, outlined above, it is not anticipated that a completed pre-trial brief could be filed prior to that date. However, the timeline indicated remains consistent with the expeditious preparation of the case for trial, and concurrent with completion of other necessary pre-trial processes.¹⁰

5. Separately, noting the volume of materials disclosed in this case under Rule 102(1) - amounting to in excess of 9,500 items – the SPO requests an extension of deadline for filing of the Rule 109(c) chart. Currently, the chart would be due to be filed within 15-days from filing of the pre-trial brief.¹¹ From experience in other cases, the SPO has determined that preparation of the chart cannot commence until the pre-trial brief has been finalised. Upon completion of the pre-trial brief, substantial processing time is required to: (a) isolate and de-duplicate evidentiary references in the pre-trial brief; (b) cross-check the materials cited in the brief against metadata the SPO's internal database; and (c) review, edit, reformat and process such information for inclusion in the Rule 109(c) chart. Even in cases of much smaller scope, where fewer documents are at issue, preparation of the chart – large parts of which must be generated manually – is a time-consuming exercise. The SPO therefore requests that, should the Pre-Trial Judge be minded to set the deadline for filing of the pre-trial brief for 17 December 2021, that the deadline for submission of the Rule 109(c) chart be set

⁹ Transcript of Status Conference, 14 September 2021, p.626.

¹⁰ For example Rules 97(2) and 98(1) relating to determination of preliminary motions.

¹¹ Decision on Categorisation of Evidence Under Rule 109(c) and Related Matters, KSC-BC-2020-06/F00218, para.27(g).

for 28 January 2021.¹² Or, should the pre-trial brief deadline be set for some other date, the SPO requests a minimum of 30-days from that date for submission of the Rule 109(c) chart.

Word count: 867



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Tuesday, 12 October 2021
At The Hague, the Netherlands.

¹² This date also takes account of certain official holidays falling during the judicial recess period.