

In: KSC-BC-2020-06

Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Counsel for Rexhep Selimi

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Selimi Defence Submissions for Eighth Status Conference

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I. INTRODUCTION

1. The Defence for Mr. Selimi hereby files submissions in response to the Order of the Pre-Trial Judge scheduling the Eighth Status Conference¹ as well as the Order in Relation to Prosecution Request for Extension of Time Limit.²
2. The system for Rule 102(1)(b) disclosure has been disorganised and prejudicial to the Defence. The SPO has conspicuously failed to use the Legal Workflow system to disclose such materials in a consistent and effective manner. Specific directives must now be issued for this to be rapidly and thoroughly improved.
3. It is also now beyond question that the Rule 102(3) disclosure regime is not fit for purpose. Transposing a purportedly simplified disclosure regime onto the most wide-ranging alleged JCE that the SPO could possibly charge (and to which it refuses to commit itself after a year of pre-trial proceedings) has brought about nothing but delay, confusion and wasted time and resources. Practice demonstrates that despite the best intentions behind Rule 102(3), a wholly new approach must be considered by the Pre-Trial Judge in relation to disclosure of information pursuant to this provision.
4. Prompt and concrete action in line with the requests set out herein must therefore be ordered by the Pre-Trial Judge to avoid the very real risk that proceedings are further delayed while Mr. Selimi remains in pre-trial detention.

II. SUBMISSIONS

A. Disclosure by the SPO

1. Rule 102(1)(b)³

5. The procedural history of this case demonstrates that despite repeated assertions to the contrary, the SPO indicted Mr. Selimi well before it was able to understand let alone comply with its disclosure obligations. While the Defence casts no doubt on the motivation of the SPO in this regard, its seemingly staggering obliviousness to the true scope of its disclosure obligations is no excuse, and no assistance to Mr. Selimi.

¹ KSC-BC-2020-06-F00531, Order Setting the Date for Eighth Status Conference and for Submissions, 18 October 2021 (“Order”).

² KSC-BC-2020-06-F00528, Order in Relation to Prosecution Request for Extension of Time Limit, 18 October 2021 (“Order on Extension”).

³ Order, para 16(1)(a).

6. In the Framework Decision on Disclosure, the Pre-Trial Judge:

“d. ORDERS the SPO to disclose any other material falling under Rule 102(1)(b) of the Rules, which does not require redactions, on a rolling basis; e. ORDERS the SPO to complete the disclosure of all material falling under Rule 102(1)(b) of the Rules by Monday, 31 May 2020.”⁴

7. That deadline expired almost five months ago yet the SPO continues to disclose Rule 102(1)(b) documents to this day and will continue to do so after the eighth status conference has concluded. Indeed, as conceded at the last status conference, the SPO is still unable to provide a definitive answer as to how much material still needs to be disclosed under this Rule.
8. While the Defence fully recognises that the SPO has sought and been granted extensions to disclose Rule 102(1)(b) material, the cumulative effect of these extensions to the applicable Rule 102(1)(b) deadline in the Framework Decision is substantial and undermines the very purpose behind this provision, namely to provide clarity to the Defence as to the evidence that could be relied upon by the SPO before the Pre-Trial Brief is filed. While the SPO is not required to specify which actual witnesses it will rely upon until the witness list is filed in accordance with Rule 95, the prior completion of Rule 102(1)(b) disclosure is a fundamental predicate step which must be rigorously complied with for the Defence to be able to at least understand the nature and cause of the Prosecution case.
9. Any delays in providing Rule 102(1)(b) disclosure therefore inevitably results in concomitant limitations on the Defence’s ability to review the material relied upon by the SPO against Mr. Selimi. Coupled with the extensive redactions to materials disclosed under Rule 102(1)(b) which have resulted in more than half the statements that the SPO seeks to rely upon being redacted to some extent and often almost in their entirety, completely thereby rendering them all but useless for Defence preparation, it is self-evident that the ability of the Defence to prepare is significantly compromised. Indeed, the Defence is prejudiced even further by the slapdash way in which disclosure has been effected.

⁴ KSC-BC-2020-06-F00099, Framework Decision on Disclosure of Evidence and Related Matters, 23 November 2020, paras. 99(d)-(e).

10. First, the overall disclosure processes of Rule 102(1)(a) and (b) materials employed by the SPO have been nothing short of chaotic and conspicuously fail to use the capabilities of the Legal Workflow system to assist the Defence in understanding the Prosecution's case. Revised versions of already disclosed evidence, lesser redacted versions of documents and even disclosure of already disclosed documents but with corrected metadata which are re-disclosed by SPO are neither:
- (i) mentioned as previously disclosed in earlier batches in the "Disclosure history" part of the metadata of the document on LWF; nor,
 - (ii) linked in any other way on LWF to the previously disclosed versions, in particular by creating "Relation" in the metadata of these documents on LWF.⁵
11. For instance, Batch 82 which contained 14 documents and was disclosed under Rule 102(1)(a) on 13 September 2021, contains revised versions of already disclosed transcripts, a lesser redacted version of a document, an already disclosed document with corrected metadata and material related to an already disclosed statement of the Accused. Yet none of these documents was linked to its corresponding previously disclosed version thereby requiring the Defence to use its own resources to locate the previous versions and substitute them with the revised, corrected or lesser redacted versions.
12. Similarly, disclosed documents which contain a translation of already disclosed documents are not always identified as "Is Translation?" in the metadata of the document on LWF. For instance, document SPOE00119162-SPOE00119163-ET which is a translation of the document disclosed under SPOE00119162- SPOE00119163 is neither identified as a translation nor linked to the original version of the document which significantly complicates the task for the Defence to associate these documents with each other. Again, this is a simple and effective method of providing disclosure in an

⁵ See KSC Legal Workflow User Guide, 31 July 2019, Linking items in LW/Creating Relations at pp. 68-70, in particular the LWF Guide helpfully provides that "All items in LW can be connected to each other by creating relations. Relationships are kind of 'connections' which can be created between two objects in LW, such as: issues, facts, witnesses, evidentiary material. Examples of relations are: witness-evidence, original-translated document, original-redacted document, etc."

efficient manner and is set out clearly in the LWF manual.⁶ This is far from an isolated example.

13. In addition, translations are not linked through "relations" option on LWF with the original document and the disclosure batch where the original of the document has been already disclosed is not mentioned/provided in the "Disclosure History" in the metadata of the document on LWF. Thus, it is for the Defence to establish when and in what batch was the original document disclosed.
14. While the Defence was able to locate the specific examples mentioned above, each time this occurs each Defence team must undertake the same process, rather than the SPO completing this at the point of disclosure. Multiplying this by the many thousands of documents that have been disclosed by the SPO, and will continue to be disclosed, creates substantial additional work for the Defence.
15. Unless concrete action is taken now to rectify this, the problem will continue and grow, thereby causing further prejudice and potential delay in proceedings. The statements and associated prior statements of 323 witnesses, which have been disclosed in a redacted format will be re-disclosed in lesser or unredacted format at different stages from the provision of the Rule 95 list of witnesses onwards. In addition to other revised or corrected versions of documents which are re-disclosed in the future, this will exponentially increase the time necessary for Defence preparation.
16. Second, categorisation of the disclosed documents in accordance with the Pre-Trial Judge's Decision on Rule 109(c)⁷ on LWF is not always done diligently and accurately. As explained at length by the Pre-Trial Judge, the very purpose of such categorisation is explained as follows:

“18. [...] If no case-specific categorisation was adopted for the material falling under Rule 102(1)(b) and Rule 104(1), (5) and (6) of the Rules, the pre-trial proceedings may be significantly delayed due to the time spent by both Parties in understanding and linking the evidence disclosed to the alleged crimes

⁶ Ibid, Uploading translations at p.26, in particular the LWF Guide provides that “As also explained in the LS Requests chapter, all parties need to upload and (re-)disclose translations of Evidentiary Material. This upload and disclosure is done following exactly the same steps that are followed for upload and disclosure of Evidentiary Material. What is different, however, is that the box ‘Is Translation’ of the metadata must be ticked.”

⁷ KSC-BC-2020-06-F00218, Decision on Categorisation of Evidence Under Rule 109(c) and Related Matters, 12 March 2021 (“Rule 109(c) Decision”).

(context and/or underlying crimes) or modes of liability in this case. The delays caused by the analysis of the receiving Parties are likely to be more substantial than the time required for each Party to undertake the case-specific categorisation adopted by the present decision. In this respect, the Pre-Trial Judge must assume that the disclosing Party has analysed the evidence before its disclosure under any of the applicable rules, and, therefore, should not further delay the disclosure process.”⁸

17. Yet, the implementation of categorisation of documents in Legal Workflow is called into question. As evidenced by the following examples:

- (i) 0081-1077-0081-1086: This statement contains no mention of Mr. Selimi, nor does it contain any allegations in relation to alleged crimes committed by the KLA or crimes sites pertaining to the indictment. It is merely a recount of encounters with Milosevic, Milutinovic, and Sainovic about Kosovo, the Rambouillet Conference and, ironically enough, the horrific crimes perpetrated by the FRY forces in Kosovo. Yet, the SPO has categorised this evidence as linked to Rexhep Selimi, as well as to various crimes sites. Moreover, this has also been tagged as being linked to JCE III and all underlying crimes.
- (ii) 0302-4854-0302-4856: This document contains no mention of Mr. Selimi, nor does it mention crimes allegedly committed by the KLA or crimes sites pertaining to this indictment. Yet, the SPO has categorised this evidence as linked to Rexhep Selimi, as well as to crimes sites provided in the indictment. Moreover, this has also been tagged as being linked to JCE III and all underlying crimes.
- (iii) 049205-TR-ET Part 1 RED; 054087-054088 RED & SITF00055808-00055809 RED: All three of these pieces of evidence concern an incident in which Mr. Selimi allegedly personally participated. However, the witness providing this information does not mention Mr. Selimi in any part of these statements/notes and did not identify Mr. Selimi as one of the suspects present at location.

⁸ Rule 109(c) Decision, para. 18.

(iv) 051761-051764-ET RED: This witness statement is linked to Mr. Selimi by the SPO and while it mentions the General Staff, no specific reference to Mr. Selimi is made.

18. These limited examples amply demonstrate that the categorisation of Rule 102(1)(b) evidence by the SPO is not being implemented properly. Although the SPO must “naturally be in a position to identify which elements of the charges each piece of disclosed evidence intends to prove or disprove”⁹ it is conspicuously failing to transmit that information to the Defence. The categorisation employed is nothing more than a lottery.
19. If the evidence of Mr. Selimi’s alleged personal participation in crimes or contribution to the JCE was so obvious, it would be wholly unnecessary to rely on irrelevant evidence in order to support such allegations. The crucial aspects of the SPO’s case must therefore be so vague that the SPO is unable, with all the will in the world, to identify the evidence which it wishes to prove its case. This transmits one fundamental message: that the SPO does not sufficiently know the case it is seeking to prove.
20. Third, the SPO has failed to consistently and effectively disclose witness statements and exhibits either related to that witness or shown to them during the interview or production of the resulting statement (“associated documents”). The associated documents have neither been disclosed in the same batch, nor are they linked to each other, or even to the statement to which they purportedly relate.
21. This issue was raised previously in writing,¹⁰ to which the SPO stated that items that have been shown to a witness during the course of various interviews, would be disclosed and linked in due course.¹¹ Having subsequently reiterated that it had made good progress in linking exhibits referred in disclosed witness statements, as had been requested by the Defence, the SPO aimed to disclose complete witness packages unless it delayed the disclosure process.¹² However, to date, the Defence has been unable to identify any exhibits that have been linked to interviews by creating relations.

⁹ Rule 109(C) Decision, para. 19.

¹⁰ KSC-BC-2020-06-F00213, Thaçi Defence Request for Orders related to Disclosure with Confidential Annex 1, para 8; See also KSC-BC-2020-06-F00228, Krasniqi Defence Joinder to Thaçi Defence Request for Orders related to Disclosure with Confidential Annex 1, paras. 4-5.

¹¹ KSC-BC-2020-06, Public Transcript of Hearing, 16 February 2021, p. 236, lines 2-5.

¹² KSC-BC-2020-06, Public Transcript of Hearing, 19 May 2021, p. 401, lines 20-23.

22. An example of this is that the SPO's interview of W04757 was disclosed by the SPO to the Defence in Batch 37 (disclosed on 30 June 2021) and the exhibits shown to W04757 during the interview were disclosed at least in batches 36, 62, 67, 22, 9 and 20, without any information within the Legal Workflow system to demonstrate that fact.
23. Yet it is perfectly possible to create relations between documents and entities in Legal Workflow.¹³ This facility has not disappeared from the system. It would allow relations to be easily created by the SPO between associated documents and witness entities so that the documents can be properly match up to the relevant witness. Although raised before an earlier status conference¹⁴ the SPO has failed to create and disclose Prosecution Witnesses as "Entities" folder in Legal Workflow and so naturally no evidence thus far has been linked to entities despite the provision of witness packages being a long-standing objective of the SPO¹⁵ in terms of discharging its disclosure obligations.
24. Now that the SPO has also helpfully provided its provisional list of 323 witnesses¹⁶ nothing should stop it from finally creating a witness entity in Legal Workflow for each of these witnesses and linking the requisite associated exhibits to each entity. This approach should be of minimal additional work for the SPO, considering that they must know full well why each witness was included therein and have a detailed list of each associated document.
25. As set out in concrete terms above, the Legal Workflow system was specifically designed to facilitate effective and efficient disclosure of Rule 102(1)(a), (b) and Rule 103 materials. If used correctly, it greatly assists the parties, and at the current stage in particular the Defence, to fully review and analyse the case put forward by the SPO. However, the output of Legal Workflow can only reflect the quality of the information input into the system by the SPO and it certainly cannot auto-generate metadata without user input. Unless and until the improvements requested above are ordered by the Pre-Trial Judge and implemented by the SPO, the disclosure process will continue to be riddled with problems and severely prejudicial to the Defence's ability to prepare.

¹³ See KSC, Legal Workflow User Guide, Witness Entity and disclosure of witness details, pp. 49-53. See also KSC, Legal Workflow User Guide, Linking items in LW/Creating relations, pp. 68-71.

¹⁴ KSC-BC-2020-06-F00194, Taçi Defence Submissions for Third Status Conference, 10 February 2021, para. 9.

¹⁵ KSC-BC-2020-06, Public Transcript of Hearing, 24 March 2021, p. 327, lines 24-25.

¹⁶ KSC-BC-2020-06-F00542, Prosecution submission of preliminary witness list with strictly confidential and ex parte Annex 1 and confidential Annex 2, 22 October 2021.

2. Rule 102(3)

26. Rule 102(3) provides in full that:

“The Specialist Prosecutor shall, pursuant to Article 21(6) of the Law, provide detailed notice to the Defence of any material and evidence in his or her possession. The Specialist Prosecutor shall disclose to the Defence, upon request, any statements, documents, photographs and allow inspection of other tangible objects in the custody or control of the Specialist Prosecutor, which are deemed by the Defence to be material to its preparation, or were obtained from or belonged to the Accused. Such material and evidence shall be disclosed without delay. The Specialist Prosecutor shall immediately seize the Panel where grounds to dispute the materiality of the information exist.”

27. In the Framework Decision, the Pre-Trial Judge summarised the situation at that time in November 2020, based on the SPO submissions, in the following terms:

“Regarding Rule 102(3) material, the SPO expects to be able to provide the Defence with a detailed notice of evidence that may be material to their preparation by 30 April 2021. The items to be included in the Rule 102(3) notice will comprise any residual evidence potentially material to the Defence’s preparation, after the items falling under Rule 102(1)(b) of the Rules and the potentially exculpatory items falling under Rule 103 of the Rules have been disclosed. Based on its ongoing review, the SPO submits that there will be close to 100,000 Rule 102(3) items, and that a significant percentage thereof will require redactions.”¹⁷

28. The Pre-Trial Judge also held in the Framework Decision that:

“62. [...] The formulation material to the Defence preparation shall be construed broadly and refers to all documents and objects of relevance to the preparation of the Defence case, in the exercise of the Accused’s rights under the Law and the Rules. What is relevant in this context should not necessarily be limited by the temporal scope of the Confirmed Indictment nor should it be confined to material relevant to countering the SPO’s case. The Defence preparation is also a broad concept and need not be limited to what is directly linked to exonerating or incriminating evidence, or related to the SPO’s case.

63. As expressly stipulated by Rule 102(3) of the Rules, an indication as to the materiality of any such items is to be made by the Defence, based on each team’s strategy, and is not contingent on the SPO’s determination on behalf of the Defence. To this effect, the SPO shall prepare and disclose a detailed notice of all material and evidence in its possession without delay, as prescribed by Rule 102(3) of the Rules.”

¹⁷ Framework Decision, para. 26.

29. After various delays, the list of documents ultimately disclosed to the Defence on 31 July 2021 contained 68,753 items. These items constituted material and evidence that the SPO considered to be “relevant to the case”.¹⁸ Therefore, the SPO had already made a preliminary assessment and reduced the evidence to be provided down from the approximate 100,000 items notified to the Pre-Trial Judge in November 2020, by around 30%.
30. However, although certain items on the Rule 102(3) list provided sufficient information for the Defence to assess materiality, for a significant number the Pre-Trial Judge agreed that the descriptions were so vague that they “effectively prevented [the Defence] from understanding the relevance of said items to the case, and, accordingly, to assess the materiality to their preparation.”¹⁹ The Defence then collectively sought further information on 24,842 items from the Rule 102(3) list from the SPO on 24 September 2021. On the same day, the Defence requested 123 items from the Rule 102(3) list that were related to Mr. Selimi.
31. On 14 October 2021, having received various Rule 102(3) requests, the SPO requested the Pre-Trial Judge to extend the deadlines for all Rule 102(3) requests from the Defence (“SPO Request”). This was provisionally granted by the Pre-Trial Judge on 18 October 2021 by holding that a decision on the SPO Requests would be deferred until the next status conference and suspending all SPO deadlines until a decision is issued by the Pre-Trial Judge on the SPO Request.²⁰
32. The Defence also intends to submit a further preliminary request for 39,839 documents from the Rule 102(3) list that it has identified as being potentially relevant to the preparation of the Defence in accordance with the interpretation given by the Pre-Trial Judge in the Framework Decision before the status conference. This excludes the items for which the Defence sought further information on 24 September 2021. When that list has been further reviewed by the Defence an additional request will be made. Further, the Defence reserves the right to request further items from the list if it turns out in due

¹⁸ KSC-BC-2020-07, IA005-F00008-RED, Court of Appeals Panel, Public Redacted Version of Decision on the Appeals against Disclosure Decision (Disclosure Appeals Decision), 29 July 2021, public, para. 38, confirming the Pre-Trial Judge’s interpretation in the same case, F00172/RED, Pre-Trial Judge, Public Redacted Version of the Decision on Materiality of Information Requested under Rule 102(3) and Related Matters (“Case 07 Materiality Decision”), 1 April 2021, public, para. 22.

¹⁹ KSC-BC-2020-06-F00460, Decision on the Defence Request for an Amended Rule 102(3) Notice, 8 September 2021, para. 20.

²⁰ KSC-BC-2020-06-F00528, Order in Relation to Prosecution Request for Extension of Time Limit, 18 October 2021.

course that they are relevant for the Defence. Overall, it is anticipated that the Defence will request approximately between 50,000 and 60,000 of the items in the Rule 102(3) list.

33. The Defence recognises the extensive size of this request and the anticipated time that it will take for the SPO to review and disclose such documents, and to seek redactions thereto where relevant. However, Mr. Selimi was an alleged member of a Joint Criminal Enterprise that spanned at least from March 1998 to September 1999 to “gain and exercise control over all of Kosovo by means including unlawfully intimidating, mistreating, committing violence against, and removing those deemed to be opponents” at more than forty distinct locations together with:

“KLA and PGoK political and military leaders, including other General Staff members; PGoK ministers and deputy ministers; KLA zone commanders, deputy zone commanders, and other members of zone command staffs; brigade and unit commanders; commanders and members of the KLA and PGoK police and intelligence services; and other KLA soldiers and PGoK officials.”²¹

34. Given the vast, and inherently vague nature of this alleged collection of JCE members and their alleged crimes, the Defence must assume that any member of the KLA could potentially therefore be either a member of the alleged JCE or a Tool used by it to commit a vast and unspecified number of crimes either as part of the JCE or as a foreseeable consequence of it. In such circumstances, it is Counsel’s ethical duty to seek relevant documentation to these allegations. It was the choice of the SPO to charge the JCE in such an open-ended and vague manner, it must live with the consequences of that decision.
35. Moreover, as explained above, the SPO has not included within the Rule 102(3) list its entire evidentiary holdings but has instead already made a preliminary determination as to the potentially relevant documents to this case before providing that list to the Defence. The Defence is therefore quite rightly starting from the principle that the SPO, which is presumed to know the evidence as a whole and the relevance of what it has disclosed, has made an accurate and good faith assessment in that regard.

²¹ Indictment, para. 35. “Alternatively, some or all of these individuals were not members of the joint criminal enterprise, but were used by members of the joint criminal enterprise to carry out crimes committed in furtherance of the common purpose (together with the JCE Members, collectively ‘JCE Members and Tools’).

36. The Defence notes that the SPO has been thus far fundamentally unable to deal with the requests already submitted by the Defence. As of the date of filing, the Defence has not been disclosed the initial 123 documents that were requested on 24 September 2021. This represents approximately 0.2% of the total number of documents on the Rule 102(3) list. This inspires little confidence that the SPO is willing or able to even approach fulfilling its disclosure obligations in an effective manner.
37. Further to *inter partes* correspondence, the SPO also confirmed that Rule 102(3) materials will be disclosed only to the requesting Defence team unless otherwise specified or requested by the Defence. Given the similarity and overlapping nature of the allegations against the accused, under the current system it is entirely likely that the SPO will therefore have to disclose documents in multiple different disclosure batches into different combinations of accused. Given the multiple disclosure issues that have arisen so far in these proceedings, the Defence's confidence in the SPO's ability to do so effectively is minimal at best.
38. A year into pre-trial proceedings, the envisaged system for Rule 102(3) disclosure has demonstrated itself to not be fit for purpose. The vast scope of documents which could be relevant to the Defence in these proceedings, different from those involving smaller cases involving single accused or contempt proceedings, means that the three-step process envisaged by the Pre-Trial Judge in this case,²² unfortunately and inadvertently requires an amount of time and effort of both the Defence and Prosecution that is wholly disproportionate to any benefit gained.
39. The most effective and efficient manner of proceeding is therefore for the SPO to immediately disclose, in full, all 68,753 items included on the Rule 102(3) list. This would actually and effectively reflect the prior identification by the SPO of these documents as being relevant to this case in line with the Pre-Trial Judge's Rule 102(3) Decision and reflects the process at other Tribunals where such materials are *proprio motu* identified and disclosed by the SPO. It also results in various advantages:
- a. Disclosing Rule 102(3) documents to all teams obviates the need for separate disclosure batches for each team, thereby facilitating SPO disclosure and maintaining the confidentiality of Defence investigations;

²² KSC-BC-2020-06-F00460, Decision on the Defence Request for an Amended Rule 102(3) Notice, 8 September 2021, para. 18 ("Rule 102(3) Decision").

- b. Any requests by the SPO for redactions to Rule 102(3) materials would be able to be filed once in relation to all teams, with responses by teams that may have an interest in the related materials which were the subject of the requests;
 - c. No further efforts or litigation would have to be undertaken by either party regarding the level of detail in the Rule 102(3) list as the materials would be directly disclosed; and,
 - d. Requests for other Rule 102(3) materials in the future which had not previously been requested would not be necessary as everything would already be disclosed.
40. This request has not been made lightly. The Defence hoped that the system implemented for Rule 102(3) disclosure would facilitate the identification and disclosure of relevant documents to the Defence and allow the SPO to conduct its remaining Rule 102(1)(a) and (b) obligations in an effective manner. It has sadly done neither. No further delays to the disclosure of this material can be countenanced.

3. **Prosecution Pre-Trial Brief**²³

41. The Prosecution proposal that it would be in a position to file its pre-trial brief in this case on 17 December 2021,²⁴ is again woefully inadequate. Despite this issue being discussed extensively during the status conference on 14 September 2021, this proposal did not materialize until a further written request by the Veseli Defence was submitted on 8 October 2021 seeking that it be provided by 31 October 2021.²⁵
42. The arguments put forward by the SPO in for effectively seeking a further six weeks than the deadline requested do not withstand examination.
43. First, the litigation over preliminary motions has largely been completed and nothing would have prevented the SPO from drafting essentially purely legal submissions on jurisdiction concurrently with preparing the pre-trial brief, an inherently fact-based task.

²³ Order, para. 16(3)(b).

²⁴ KSC-BC-2020-06-F00520, Prosecution submissions regarding the date for filing of a pre-trial brief, 12 October 2021.

²⁵ KSC-BC-2020-06-F00510, Veseli Defence Request for a Deadline for SPO Pre-Trial Brief, 8 October 2021, para. 6.

44. Second, the SPO has shown itself to be conspicuously unable to adhere to the applicable deadlines for even the extremely limited Rule 102(3) disclosure request submitted by the Defence. The deadlines for such disclosure also appear to be indefinitely suspended. Consequently, nothing is preventing the SPO from using the resources that have been freed up by this suspension to concentrate fully on preparing the pre-trial brief.
45. Third, and most importantly, the Prosecution pre-trial brief has been discussed in detail at every status conference held in this case. Its fundamental importance to these proceedings cannot be overstated, especially considering the vague and generic allegations included in the Indictment. Without the pre-trial brief, and the resulting disclosure of the names of some protected witnesses at that time to the Defence, Defence investigations are also necessarily limited. It must have been clear to everyone in the SPO that the pre-trial brief was therefore the absolute priority for the SPO, after disclosure of Rule 102(1)(b) and Rule 103 material.
46. By contrast, Rule 102(3) materials are of secondary importance at this stage. Indeed, until the Defence receives the Prosecution pre-trial brief, a proper assessment of the importance of Rule 102(3) materials is significantly more complicated.
47. Therefore, in terms of prioritization, and given the above request regarding Rule 102(3), the Defence requests that all available SPO resources are directed towards the production of the Prosecution pre-trial brief as soon as possible and by 26 November 2021 at the latest. This is a reasonable request given the circumstances and also ensures that the Defence is provided with the brief well before the KSC winter recess (rather than on its last working day before the recess) and may therefore make sufficient use of the information contained therein before the recess commences.

III. CONCLUSION AND RELIEF REQUESTED

48. For the reasons set out herein, and in order to achieve concrete and practical solutions which move the pre-trial proceedings toward trial in an expeditious and fair manner, the Defence requests the Pre-Trial Judge to:

- a. In relation to materials disclosed under Rule 102(1)(a) and (b):
 - i. Specify in Legal Workflow which documents are translations, revised or lesser redacted versions of previously disclosed materials and of those which have corrected metadata and link them to the original document;

- ii. Review all documents categorised as linked to Mr. Selimi and correct those documents incorrectly categorised before re-disclosing them; and,
 - iii. Create and witness entities for all 323 potential witnesses on the SPO's list and create relations in Legal Workflow between all statements and/or documents of those witnesses or shown to them during their interviews.
- b. Disclose all items on the SPO's Revised Rule 102(3) list; and,
 - c. File the SPO pre-trial brief by Friday 26 November 2021 at the latest, together with the other obligations under Rule 95.

Word count: 5179

Respectfully submitted on 27 October 2021,



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