

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: 10 December 2021

Language: English

Classification: Public

Krasniqi Defence Submissions

for Ninth 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 provides written submissions for the Ninth Status Conference in accordance with the Order Setting the Date for Ninth Status Conference and for Submissions.¹ The Defence reserves the right to develop additional submissions orally at the Status Conference.

II. RECENT PROCEDURAL HISTORY

2. On 7 October 2021, the Defence submitted its Second Request for Rule 102(3)² material, comprising 5,945 items. On 27 October 2021, the Defence submitted its Third Request for Rule 102(3) material to the Specialist Prosecutor’s Office (“SPO”), comprising 8,305 items.

3. On 29 October 2021, at the Eighth Status Conference, the Pre-Trial Judge issued oral orders including: extending the deadline for the Prosecution to complete Rule 102(1)(b) disclosure until 31 January 2022³ and suspending the deadlines applicable to Rule 102(3) material whilst finding that the “the parties are expected to continue expeditiously towards the disclosure of Rule 102(3) material”.⁴

4. On 2 December 2021, the Pre-Trial Judge listed the Ninth Status Conference to take place on 15 December 2021 and ordered the parties to provide written submissions, if they so wish, no later than 10 December 2021.⁵

¹ KSC-BC-2020-06, F00593, Pre-Trial Judge, *Order Setting the Date for Ninth Status Conference and for Submissions* (“Order”), 2 December 2021, public.

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

³ KSC-BC-2020-06, In Court – Oral Order, *Oral Order Concerning the SPO’s Deadline Related to Rule 102(1)(b) Material*, 29 October 2021, public.

⁴ KSC-BC-2020-06, In Court – Oral Order, *Order Concerning Deadlines in Relation to Rule 102(3) Material*, 29 October 2021, public.

⁵ Order, para. 18.

5. On 3 December 2021, the Defence submitted its Fourth Request for access to Rule 102(3) material to the Prosecution. The Request comprised 12,956 items.

6. At the time of filing, the Defence has not received the items requested in its Second and Third Rule 102(3) Requests or any response to its Fourth Request.

III. SUBMISSIONS

A. DISCLOSURE

Rule 102(3) Time Limits

7. The Defence notes the Pre-Trial Judge's indication that Rule 102(3) deadlines will be re-established at the next Status Conference unless otherwise ordered.⁶

8. In accordance with the Pre-Trial Judge's expectation, the Defence has continued to progress the Rule 102(3) process. Having submitted its Fourth Rule 102(3) Request, the Defence has now requested a total of 27,564 items from the Rule 102(3) Notice. The Defence is preparing further Requests.

9. The SPO, by contrast, has not continued expeditiously towards the disclosure of Rule 102(3) material. The SPO has not challenged the materiality of any of the items addressed in the Defence's Second and Third Rule 102(3) Requests or disclosed any of the requested material. These Requests were submitted 9 weeks ago and 6 weeks ago respectively. In light of the period of time which has passed, and the Pre-Trial Judge's previous indication that the parties should continue to progress the Rule 102(3)

⁶ KSC-BC-2020-06, In Court – Oral Order, Order Concerning Deadlines in Relation to Rule 102(3) Material, 29 October 2021, public.

process expeditiously, the Defence submits that the SPO should be ordered to disclose the relevant material by 14 January 2022.

10. As to the re-introduction of time-limits, imposing a deadline for Rule 102(3) Requests at any time prior to the completion of disclosure and lifting of redactions is likely to prejudice the Defence. If the Defence becomes aware that an item on the Rule 102(3) Notice is material once a redaction is lifted, there should be no barrier to the Defence requesting disclosure of that item.

11. If the Pre-Trial Judge does re-introduce a deadline at the Ninth Status Conference then, in accordance with its consistent position, the Defence will need a fair opportunity to assess the SPO's Pre-Trial Brief and Rule 102(1)(b) disclosure (including the provision of complete translations into English or Albanian) before completing its Requests for access to Rule 102(3) material. The Pre-Trial Judge has previously correctly recognised both the voluminous nature of the Rule 102(3) Notice and the link between the review of the SPO's Rule 102(1)(b) disclosure and the Defence assessment of the materiality of items on the Rule 102(3) Notice.⁷ The Defence submits that the deadline for Defence Rule 102(3) Requests should be no earlier than 31 March 2022 (two months after the SPO is scheduled to complete Rule 102(1)(b) disclosure).⁸

Legal Workflow

12. The Registry has arranged to meet with the Defence on 10 December 2021 to discuss issues relating to Legal Workflow. Following its previous proposals, and

⁷ KSC-BC-2020-06, In Court – Oral Order, Order on Defence Deadlines in Relation to Rule 102(3) Material, 14 September 2021, public.

⁸ This proposed date is, of course, contingent on the SPO meeting its deadline for disclosure of Rule 102(1)(b) material.

jointly with all Defence teams, the Defence is in the process of arranging a working forum meeting between the SPO, Victims, Defence and the Registry possibly prior to the Ninth Status Conference, or alternatively, in January. The Defence will be able to update the Pre-Trial Judge at the Status Conference.

Witness Entities

13. At the last Status Conference, the Pre-Trial Judge set 15 December 2021 as the deadline for the SPO to create witness entities in Legal Workflow to link statements or documents to the relevant witnesses.⁹ The Defence notes that the SPO has very recently begun to create witness entities in Legal Workflow. The Defence invites the SPO to explain the methodology being used to create entities and relations and provide the estimated date of adding all relevant information to the said entities on Legal Workflow.

B. TRANSLATIONS

14. An Albanian draft translation of the SPO's Provisional Witness List was provided to the Defence on 2 December 2021 (just under 6 weeks after the Provisional Witness List was provided on 22 October 2021).

15. The Defence has not made any further urgent requests for translation. However, the Defence repeats and emphasises the urgency of the translation of the Pre-Trial Brief and the related Rule 95(4) material into Albanian. The Defence notes that the SPO recently obtained an extension of the word limit for the Pre-Trial Brief to 150,000

⁹ KSC-BC-2020-06, In Court – Oral Order, Order on Selimi Defence Request for Further Categorisation, Linkage, and Review of Disclosed Material, 29 October 2021, public.

words.¹⁰ The Defence respectfully requests that the Registry provide an estimate of the time that it will take to translate 150,000 words into Albanian.

16. Mr. Krasniqi will not be able to provide his instructions on the Pre-Trial Brief and Rule 95(4) material until they have been translated. These translations are a critical step to enable the Defence investigation to advance. The Defence therefore requests that all possible steps are taken to expedite these translations.

C. DEFENCE INVESTIGATIONS

17. As submitted at previous Status Conferences, the Defence has commenced investigations but remains constrained by various factors including the ongoing pandemic (in relation to which travel restrictions and associated risks are currently worsening), the extent of redactions / protective measures and the ongoing disclosure process and disclosure review – including the time taken to review the Amended Rule 102(3) Notice, make requests for disclosure and actually review the Rule 102(3) material received from the SPO.

18. The Defence awaits the SPO's Pre-Trial Brief and related material and, indeed, the translation of the Pre-Trial Brief and Rule 95(4) material into Albanian. The Defence will not be in a position to offer a substantive update in relation to Rule 99(1) or Rule 95(5), particularly to provide notice of alibi and/or grounds excluding responsibility, until both the Pre-Trial Brief and related material have been received and reviewed and translated into Albanian. The Defence reserves the right to do so at a later stage.

¹⁰ KSC-BC-2020-06, F00600, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request for Variation of Word Limit*, 9 December 2021, public.

19. It remains the position of the Defence that in the light of the size and complexity of the case, the volume of disclosure and the ongoing travel restrictions, a substantial period of investigations will be required after the provision of the Pre-Trial Brief and Rule 95(4) material, the translation of these materials into Albanian and after completion of full disclosure (including of the Rule 102(3) material requested by the Defence). The recent extension of the word limit for the Pre-Trial Brief to 150,000 words highlights the amount of the time that it will take the Defence to read, review and analyse this document and prepare for trial.

D. NEXT STATUS CONFERENCE

20. The Defence will be available on 4 February 2022 at the Court's convenience.

Word count: 1,410



Venkateswari Alagendra

Friday, 10 December 2021

Kuala Lumpur, Malaysia.



Aidan Ellis

Friday, 10 December 2021

London, United Kingdom.