

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 Kadri Veseli

Date: 10 December 2021

Language: English

Classification: Public

**Veseli Defence Submissions for
Ninth Status Conference**

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to the Pre-Trial Judge's Order,¹ the Defence for Mr Kadri Veseli ("Defence") hereby provides written submissions for the Ninth Status conference. The Defence reserves its right to present additional submissions orally at the upcoming Status conference.

II. SUBMISSIONS

A. Disclosure

2. The Defence submits that there remain a number of outstanding issues in relation to the SPO disclosure process and provides the observations as set out below.

i. Rule 102(1)(b)

3. The Defence notes that it has now been provided with more than 13 800 items disclosed under Rule 102(1)(b). Of these items, more than 11 100 were disclosed after the Rule 102(1)(b) deadline of 23 July 2021 – *i.e.* 80%. At the last Status Conference, the Pre-Trial Judge extended for a third time the deadline for completion of the 102(1)(b) disclosure.² At the time of filing the present submissions, the Defence does not know whether the SPO will meet this deadline or request a further extension. In any event, the Defence notes that the volume of Rule 102(1)(b) material disclosed in the past four months will delay the start of trial and prolong its length.
4. The Defence also notes that for a number of documents recently disclosed in Legal Workflow, the descriptions still provide for the name of witnesses and

¹ F00593, Order Setting the Date for Ninth Status Conference and for Submissions, 2 December 2021.

² Oral Order, Transcript of 29 October 2021, p. 753-754.

not for the witness pseudonym.³ Thus, searching for witness materials remains inefficient. This issue may be resolved by the completion of witness entities, however, given that this task has not yet been completed,⁴ the Defence is presently unable to assess whether all relevant documents have indeed been linked to the respective witnesses.

ii. *Rule 102(3)*

Disclosure process

5. The Defence has requested a total of 16 270 items from the SPO Rule 102(3) Notice through nine distinct requests that were submitted on a rolling basis.⁵ At the time of filing the present submissions, the Defence has only received 79 items. The Defence is unaware of any protective measures request or materiality challenge concerning any of the 16 191 remaining items that may have hampered the disclosure process.
6. The Defence recalls that, although the Pre-Trial Judge has suspended the deadlines for the disclosure of Rule 102(3) materials until the next Status conference, “the parties [were] expected to continue expeditiously towards the disclosure of Rule 102(3) material.”⁶ The Defence has complied with the Pre-Trial Judge’s instructions by submitting requests on a rolling basis – and expects to submit further requests following the same process for the foreseeable future.

³ E.g., one item in Package 118 that should refer to W04403 and W04839; one item in Package 122 that should refer to W04752; two items in Package 123 that should respectively refer to W04290 and W04410.

⁴ At the present time, 156 out of 327 entities have been created and relevant documents linked thereto.

⁵ 19 items on 26 August 2021; 2222 items on 16 October 2021; 2855 items on 19 October 2021; 2689 items on 22 October 2021; 2000 items on 8 November 2021; 2000 items on 12 November 2021; 2245 items on 15 November 2021; 893 items on 24 November 2021; 1347 items on 10 December 2021.

⁶ Oral Order, Transcript of 29 October 2021, p. 754.

7. The SPO thus far has not been able to meaningfully comply. Six weeks have passed since the last Status conference, and very little progress has been made. It is evident that the current process of disclosure for Rule 102(3) material remains cumbersome and ineffective.
8. To that end, the Defence has requested the SPO to provide information regarding the manner in which the documents on the Rule 102(3) index were identified for inclusion, with the hope that this may expedite the process of locating material documents on the list.⁷ However, the Defence reiterates that the indirect mode of liability alleged in the indictment, along with the broad scope of the allegations means that many of the 68 753 documents will be material to the preparation of the defence. The Defence anticipates requesting an additional 25 000 at a minimum.
9. For these reasons, the Defence invites the Pre-Trial Judge to reconsider his decision to maintain the current process⁸ and entertain an alternate procedure for the disclosure of Rule 102(3) material as proposed by the Defence at the Eighth Status conference.⁹
10. In the alternative, the Defence requests the Pre-Trial Judge to revisit the question of setting a firm deadline for Defence requests. The Party's assessment of the relevance of Rule 102(3) materials will necessarily evolve as the case becomes clearer and in particular in light of further disclosure of evidence, most notably, the disclosure of the identity of witnesses 30 days before trial or before testimony.

⁷ Email to SPO, 'Rule 102(3) Request – Veseli Defence,' 10 December 2021.

⁸ *Ibid.*, p. 754-755.

⁹ *Ibid.*, p. 680-693.

Translation

11. Additionally, the Defence wishes to raise the issue of translation of the Rule 102(3) materials. The SPO Rule 102(3) Notice contains items in a multitude of languages – at least eight which are not an official language of the KSC – in addition to the items that are either in Albanian or Serbian which are official languages of the KSC but not the working language of the present proceedings.¹⁰
12. Among the 79 items disclosed to the Defence to this day, 33 are in a language other than English.
13. The Defence recalls that the Pre-Trial Judge in the Framework Decision indicated that the “disclosing Party must ensure that the evidence, including witness statements, is disclosed in English, the working language of the proceedings”.¹¹ The Defence submits that “evidence” includes 102(3) materials to be disclosed to the Defence and respectfully requests that the Pre-Trial Judge order the SPO to disclose the requested materials in languages other than English along with an English translation. Should the SPO not currently have official translations of all requested materials, the Defence requests that the SPO disclose the draft translations in its possession – which the Defence assumes were used to evaluate the relevance of the materials to the present case.¹²

¹⁰ F00072, Decision on Working Language, 11 November 2021.

¹¹ F00099, Framework Decision on Disclosure of Evidence and Related Matters, 23 November 2020, para. 75.

¹² It is noted that, in its email to SPO of 10 December 2021 referenced above, the Defence requested the following: “For the documents requested – through the present request or any requests previously transmitted – please indicate and disclose an English translation of such documents (marked as draft or final) and please also indicate where an English translation does not presently exist.”

iii. Rule 103

14. The Defence remains concerned that the disclosure of potentially exculpatory materials is still outstanding and in particular that the SPO remains unable to assess when this process is likely to be completed.
15. The Defence submits that at this point, a deadline should be set for completion of the Rule 103 disclosure.

B. Translations

16. The Defence voices its general concern about the availability of translations of core filings into Albanian, and more particularly the availability of public filings in Albanian. At the present time, only 107 public filing items are available in Albanian, out of the 597 public filing items available in English. This inevitably limits the capacity of the people in Kosovo to follow the trial and thus infringes the public nature of the proceedings.

C. Defence investigations

17. The Defence is currently in the process of completing the first categorisation of the evidence disclosed by the SPO. Once completed, the Defence will be able to better understand the scope of the investigation required. The Defence notes in this regard that the efficient creation and execution of its investigation plan has been severely impacted by the continuous and voluminous disclosure received in the past five months. Moreover, as submitted previously, although the

Defence investigations have commenced, they remain severely impeded the zealous nature of the redactions/protective measures in place.

18. The Defence maintains that a substantial period of investigations will be required after the disclosure of the Pre-Trial Brief and related Rule 95(4) materials and the completion of the SPO disclosure process.
19. The Defence is not currently in a position to provide any information in relation to unique investigative opportunities (Rule 99(1)) or notice of alibi or grounds for excluding responsibility (Rule 95(5)) and reserves its right to do so at a later stage.

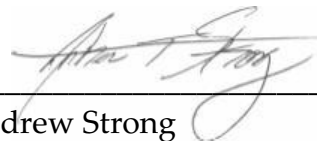
D. Tenth Status Conference

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

Word Count: 1423



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