



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:** 1 February 2022  
**Language:** English  
**Classification:** Public

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**Prosecution submissions for tenth status conference**

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1. In accordance with the Order,<sup>1</sup> the Specialist Prosecutor's Office ('SPO') provides its submissions in advance of the tenth status conference.

### Status Conference Submissions

#### Item 1:<sup>2</sup> Disclosure

2. Since the last Status Conference, the SPO has disclosed three Rule 102(1)(b)<sup>3</sup> disclosure packages containing new material,<sup>4</sup> and three packages containing translations of previously disclosed Rule 102(1)(b) materials.<sup>5</sup> In addition, on 17 December 2021, the SPO disclosed two packages of lesser redacted or unredacted, previously disclosed, materials, in accordance with the timeline for lifting of protective measures for certain witnesses.<sup>6</sup> With the exception of the audio-visual recordings and two associated exhibits addressed in the Extension Decision,<sup>7</sup> and subject to any future ruling on a recent protective measures request,<sup>8</sup> the SPO has completed disclosure of existing Rule 102(1)(b) materials, including translations.

3. Nonetheless, as previously indicated,<sup>9</sup> the SPO does intend to submit a filing, and make a related disclosure, pursuant to Rule 102(2), in relation to the evidence of two witnesses, and will do so as soon as relevant transcripts are available.

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<sup>1</sup> Order Setting the Date for Tenth Status Conference and for Submissions, 25 January 2022, KSC-BC-2020-06-F00655 ('Order').

<sup>2</sup> The numbering follows that indicated in the Order.

<sup>3</sup> Rules Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

<sup>4</sup> Disclosure Packages **154** (see related filing KSC-BC-2020-06/F00665; containing 2 items); **155** (containing 7 items (lesser or unredacted version of previously disclosed transcripts)); **157** (see related filing KSC-BC-2020-06/F00670; containing 55 previously undisclosed items and related translations).

<sup>5</sup> Disclosure packages **156** (containing 517 items), **158** (containing 84 items) and **159** (containing 871 items).

<sup>6</sup> Disclosure packages 136 (71 items) and 137 (341 items).

<sup>7</sup> Decision on Specialist Prosecutor's Request for Extension of Time, KSC-BC-2020-06/F00667RED ('Extension Decision').

<sup>8</sup> KSC-BC-2020-06/F00670. To facilitate proceedings, and provide the Defence with the items in question as early as possible, the SPO has disclosed the items with the proposed redactions provisionally in place. The SPO will make any necessary adjustments, and re-disclosure, in light of the Pre-Trial Judge's decision.

<sup>9</sup> In order to provide maximum notice to the Defence the witnesses in question were included in the witness list, where it was also indicated that a relevant filing would be forthcoming. KSC-BC-2020-

4. In relation to Rule 102(3) disclosure, since the last Status Conference, the SPO has so disclosed 14 packages, containing in excess of 14,300 items,<sup>10</sup> with further disclosure packages being prepared for release. The pending requests are not being processed in a strictly chronological order so that (i) each of the Defence teams receive a portion of material on a regular basis, (ii) material which can more quickly or easily be made available is provided as soon as it is possible to do so, rather than waiting for all other items to be processed before it, and (iii) so that material of a similar nature, or relating to a particular case file, can be processed together to ensure consistency of approach in terms of redactions, where necessary. Further, the SPO is (i) currently preparing a number of requests for protective measures in respect of certain items identified so far, and (ii) has begun to engage with relevant Defence teams regarding the materiality of a limited number of other requested items. For example, out of the Krasniqi Defence request for 5,945 items, the SPO anticipates seeking protective measures or discussing further the materiality of less than 100 of those items. This is consistent with the approach the SPO has taken, across requests, of maximising disclosure to the Defence and limiting litigation to the extent possible. Meanwhile, disclosure review and processing of the remaining outstanding items is also being intensively progressed. As previously forecast, the SPO was able to allocate additional resources to that review in January, and anticipates being able to continue that

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06/F00631RED, pp.560-561. *See similarly* KSC-BC-2020-06/F00542/A02, pp.394-395. Consistent with Rule 102(2), the SPO will fully explain the timing of the application in the forthcoming filing.

<sup>10</sup> Disclosure packages **135** (16 December 2021; 9 items; provided to Selimi Defence); **138** (17 December 2021; 1 unredacted version of a previously disclosed item; resulting from the lifting of protective measures; provided to the Thaçi Defence); **139** (18 December 2021; 140 items; provided to Veseli Defence); **141** (18 December 2021; 4,315 items; provided to the Krasniqi Defence); **143** (20 December 2021; 1,170 items; provided to Veseli Defence); **144** (23 December 2021; 933 items; provided to the Veseli Defence); **145** (21 January 2022; 511 items; provided to the Selimi Defence); **146** (21 January 2022; 564 items; provided to the Krasniqi Defence); **147** (21 January 2021; 3,275 items; provided to the Selimi Defence); **148** (27 January 2022; 230 items; provided to the Veseli Defence); **149** (27 January 2022; 234 items; provided to the Krasniqi Defence); **150** (27 January 2022, 1,209 items; provided to the Veseli Defence); **151** (28 January 2022; 1719 items; provided to the Krasniqi Defence), **153** (28 January 2022; 2 items; Selimi Defence).

intensive effort. However, in addition, the SPO has received three further Rule 102(3) requests since the last status conference.<sup>11</sup>

5. With regard to the timeline proposed in the Order, and taking account of submissions previously made by the Defence teams,<sup>12</sup> the SPO considers that were a deadline of 4 March 2022 to be imposed for the Defence to complete all requests for items from the Rule 102(3) notice, there is a significant risk that an unnecessary burden would be placed on all parties. This would result from the Defence making large requests, all at once, for any remaining items on the list, simply in order to avoid being barred from subsequently doing so. Without such a deadline, it might in fact be the case that - upon further review - many such items would not otherwise be considered necessary or requested at all. Bearing in mind the nature of Rule 102(3) material - being residual items in the SPO's possession following disclosure of Rule 102(1)(b) and 103 materials, which are relevant to the case as broadly interpreted in the jurisprudence of the KSC - at this stage, the SPO considers that the request and disclosure of items from the Rule 102(3) notice is best considered as a process.<sup>13</sup>

6. However, should the Pre-Trial Judge consider it necessary to apply a schedule of deadlines to future Rule 102(3) requests and responses, based on experience to date, the SPO requests that materiality and protective measures assessments not be bifurcated in the manner proposed. Were materiality challenges to be required within three weeks of the request date, the SPO would need to dedicate its resources to doing an initial screening review of all requested items for materiality purposes, before turning to then re-reviewing all the items again, this time for protective measures purposes.<sup>14</sup> Such a process would result in significant inefficiencies, as compared to

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<sup>11</sup> Request from Krasniqi Defence on 13 January 2022; Request from Thaçi Defence on 17 January 2022; Request from Veseli Defence on 1 February 2022.

<sup>12</sup> *For example* Veseli Defence Submissions for Ninth Status Conference, KSC-BC-2020-06/F00613, paras.9-10 (seeking all items from the Rule 102(3) notice to be disclosed or, in the alternative, no deadline to be imposed); Thaçi Defence Submissions for Ninth Status Conference, KSC-BC-2020-06/F00608, para.5; Transcript of 29 October 2021, p.676 *et seq.*

<sup>13</sup> *See also* Rule 102(4) (not referencing Rule 102(3)).

<sup>14</sup> It is noted that the protective measures review involves two levels of review, and therefore the items would in effect end up being review three times under such a timeline.

the assessment of materiality and the need for redactions (if any) being conducted in a combined review. Ultimately, however, the SPO is not in a position to address proposed timelines without knowing both the scope of material that would be requested and of any additional obligations impacting disclosure and language resources which may result from other matters currently under discussion.

7. Further *inter partes* communication has taken place regarding the translation of Rule 102(3) materials. In particular, the SPO has confirmed to the Defence that when items are requested from the Rule 102(3) notice, the SPO has consistently sought to provide any available translation together with the requested item at the time of making disclosure. Two of the initial Rule 102(3) packages have been identified for which translations were not included, and the SPO has advised the Defence that those packages will be reviewed and any additional available translations for the items requested in them will be provided. The SPO has also explained that it is not in possession of summaries which could be made available to the Defence, as relevant reviews were conducted by staff with appropriate language skills and/or with the assistance of sight translations.

8. The practice of simultaneously disclosing any available English translations of material requested pursuant to Rule 102(3) reflects the SPO's proactive commitment towards providing such additional reasonable assistance that it can to the Defence teams to facilitate their preparations and review. The SPO does not, however, have resources to now prepare additional translations of materials on the Rule 102(3) notice, many of which are of, at best, tangential relevance to the case, given the broad manner in which the relevance criterion is to be applied.<sup>15</sup> Nor would such a requirement be consistent with the disclosure framework established to date, or the practice at other courts applying an equivalent disclosure regime.<sup>16</sup> Finally, the SPO does not have

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<sup>15</sup> See para.5 above.

<sup>16</sup> Decision on Working Languages, KSC-BC-2020-06/F00072, para.8 (specifying that filings and annexes/supporting material 'or other evidence upon which the Parties or participants *rely*' (emphasis added) must be provided in English); Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-06/F00099, paras 75-77 (recalling, with reference to the Decision on Working

information regarding any items, which - upon receipt and preliminary review - Defence teams have deemed to be sufficiently material such as to warrant obtaining further translation assistance in relation to.<sup>17</sup>

9. Since the last status conference, one package of potentially exculpatory items has been disclosed pursuant to Rule 103,<sup>18</sup> with a second package currently being finalised for imminent disclosure. Potentially exculpatory material has consistently been disclosed on a regular basis once identified (and redacted or cleared for disclosure, as necessary). Mindful of the stage of proceedings, and the Pre-Trial Judge's prior direction,<sup>19</sup> the SPO is allocating appropriate resources to complete review of outstanding materials. The SPO is currently working to complete reviews of, in particular, materials received by the office since the date of compilation of the SPO's Rule 102(3) notice, or material for which clearance has been received since that date. Additional reviews and searches are also being organised in light of finalisation of the SPO's witness list in December 2021. The SPO will continue to disclose any material identified on a rolling basis. A request for protective measures in respect of a small number of items has recently been made.<sup>20</sup> No further protective measures request is imminent at this time; in the interests of judicial efficiency any such requests will be collated to the extent possible.

10. The SPO is continuing to complete discussions with Rule 107 providers. As previously indicated, to the extent that determinations have already been reached denying clearance an application pursuant to Rule 107(2) will be submitted. Two such filings are currently being prepared, and will be submitted once relevant discussions

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Languages, that evidence be disclosed by a party in English; and the statements of all witnesses the SPO intends to rely upon additionally be provided in Albanian). *See for example* STL, STL, Public Redacted Version of 'Decision on Sabra Motion for Effective Compliance With the Prosecution's Disclosure Obligations and Request for an Extension of Page Limit, dated 27 September 2013, 21 October 2013, paras 53-55.

<sup>17</sup> *See similarly* STL, Public Redacted Version of 'Decision on Sabra Motion for Effective Compliance With the Prosecution's Disclosure Obligations and Request for an Extension of Page Limit, dated 27 September 2013, 21 October 2013, para.55.

<sup>18</sup> Disclosure package **152** (45 items).

<sup>19</sup> Transcript of Status Conference dated 15 December 2021, pp.816-817.

<sup>20</sup> KSC-BC-2020-06/F00653CONFRED.

with providers in relation to any proposed counter-balancing measures to be proposed in those applications are concluded.

11. With respect to the population of witness entities in LWF, the parties have engaged in further *inter partes* discussions, including in the context of LWF Forum meetings - the first of which was held on 18 January 2022, with the participation of all parties and participants, as well as the Registry. The SPO has created witness entities, which were released in December 2021 with statements and associated exhibits linked to them. Additional information, such as names, mode of testimony and protective measures, is already available in the Rule 95(4) materials. Nonetheless, the SPO is engaging in discussions with the other parties, participants, and Registry, with a view to arranging for names to also be uploaded to the LWF witness entities, and information on protective measures to be provided to the Registry to facilitate their linking of relevant filings. Further, the Registry has confirmed that - consistent with practice in other cases, and before other courts - it will be adding certain additional metadata, including mode of testimony, and linking other relevant filings as the case progresses.

12. The SPO has completed a review of the linking and tagging of translations, has made any necessary adjustments where this could be done and has sought Registry assistance for certain additional changes to be implemented. The parties have also further discussed the manner in which redacted versions and corrections are identified and communicated.

*Item 3: SPO investigations and next steps*

13. As previously outlined,<sup>21</sup> SPO investigations in fulfilment of its mandate are anticipated to continue for the foreseeable future. This should not, however, impact the pre-trial timeline as any disclosure and/or reliance on material resulting from such investigations is adequately governed by the applicable framework, and would be subject to judicial oversight.

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<sup>21</sup> Transcript of Status Conference dated 22 July 2021, pp.508-509; Transcript of Status Conference dated 14 September 2021, pp.600-601.

*Availability*

14. The SPO will be available on 24 March 2022 for the next status conference, or otherwise at the Pre-Trial Judge's convenience.

**Word count: 2,335**



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Tuesday, 1 February 2022  
At The Hague, the Netherlands.