

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: 1 February 2022

Language: English

Classification: Public

Krasniqi Defence Submissions

for Tenth 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 Alagendra, Aidan Ellis

I. INTRODUCTION

1. The Defence for Jakup Krasniqi (“Defence”) hereby provides written submissions for the Tenth Status Conference in accordance with the Order Setting the Date for Tenth Status Conference and for Submissions.¹ The Defence reserves the right to develop additional submissions orally at the Status Conference and intends, in particular, to address the issues concerning Defence Investigations and Next Steps orally.

II. RULE 102(3) DISCLOSURE

2. The Rule 102(3)² process continues to be cumbersome and unwieldy. The Specialist Prosecutor’s Office (“SPO”) is taking significantly longer than the anticipated time-scales to process Defence Requests. The Defence has attempted to develop ways to streamline the process and will continue to do so. At the present rate of progress, Rule 102(3) disclosure is likely to be ongoing for a considerable period.

3. The Defence has submitted the following Requests for access to Rule 102(3) material to the SPO.

First Request	7 September 2021	358 items
Second Request	7 October 2021	5,945 items
Third Request	27 October 2021	8,305 items
Fourth Request	3 December 2021	12,956 items
Fifth Request	13 January 2022	2,304 items
Total: 29,868 items		

¹ KSC-BC-2020-06, F00655, Pre-Trial Judge, *Order Setting the Date for Tenth Status Conference and for Submissions*, 25 January 2022, public.

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

4. The Defence has received the following disclosure batches (“DB”) from the SPO.

DB 89	30 September 2021	544 items
DB 114	15 November 2021	2 items
DB 126	10 December 2021	41 items
DB 141	18 December 2021	4,315 items
DB 146	21 January 2022	564 items
DB 149	27 January 2022	234 items
DB 151	28 January 2022	1,719 items
Total: 7,419 items		

5. On 29 January 2022, the Defence received an email from the SPO which stated that the SPO aims to correspond with the Defence about the materiality of / apply for redactions regarding some (less than 100) of the remaining items on the 7 October 2021 Request over the next two weeks. That confirms that, although the Second Request was submitted almost four months ago, the SPO has yet to finish processing it or to correspond with the Defence about materiality / apply for redactions.

6. *Prima facie*, the Defence therefore awaits the disclosure of more than 22,000 items, some of which were requested as long ago as 7 October 2021. However, the true figure is likely to be higher than this because the number of items disclosed by the SPO in response to a request does not match the number of items in the request. For instance, the First Defence Request for 358 items was met by the disclosure of 546 items in DB 89 and DB 114.

7. Since the number of items in the disclosure batches has not replicated the number of items contained in any particular request, and given that the SPO is not

disclosing one batch per request, it is practically impossible for the Defence to verify that all the items contained in a request have been provided. The Defence requests that the SPO provide the Defence with a copy of a master Rule 102(3) spreadsheet with each disclosure batch in order that all parties can keep track of which items have been disclosed and which remain outstanding.

8. The Defence opposes the imposition of a final deadline for Rule 102(3) Requests. In the course of this case, it is likely that items will become relevant in ways which could not reasonably be anticipated at this stage. The Defence should not be prevented from making subsequent Rule 102(3) Requests when the need arises. For instance, items will become relevant later in these proceedings once protective measures are lifted.

9. Moreover, it may be possible to improve and expedite the Rule 102(3) process through *inter partes* discussions. The first working forum meeting between the Defence, the SPO, the Victims and the Registry took place on 19 January 2022. Amongst the topics discussed were proposals to streamline the Rule 102(3) process, for instance by attempting to co-ordinate requests between Defence teams. The Defence has arranged the second working forum meeting on 15 February 2022. The Defence will be able to update the Pre-Trial Judge at the next Status Conference.

10. In any event, imposing a deadline of 4 March 2022 for Defence Requests would be unreasonable. The SPO was due to complete Rule 102(1)(b) disclosure on 31 January 2022 but this deadline was recently extended until 31 March 2022.³ The deadline for Rule 102(3) Requests cannot logically be before the SPO completes its Rule 102(1)(b) disclosure. Further, the Defence only received the SPO's Pre-Trial Brief and associated documents on 21 December 2021. A translation into Albanian has yet

³ KSC-BC-2020-06, F00667/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Specialist Prosecutor's Request for Extension of Time*, 31 January 2022, public, paras 11, 13(b).

to be provided. The Defence understands, as set out below, that the translation of the Pre-Trial Brief itself (not the witness and exhibit lists) is only estimated to be available on 18 February 2022. A deadline of 4 March 2022, would be unfair and unreasonable because it would allow only 14 days for Mr. Krasniqi to digest the Pre-Trial Brief and provide his instructions on the 68,753 items on the Rule 102(3) Notice and for the Defence to prepare and submit the remaining Rule 102(3) Requests. That is manifestly insufficient.

11. The Defence would support the re-introduction of practical deadlines for the SPO to respond to Rule 102(3) Requests. Deadlines should also be imposed on the responses to Rule 102(3) Requests which have already been made. Based on the response to the Defence's Second Rule 102(3) Request, it is currently taking almost four months for the SPO to correspond with the Defence about materiality / apply for redactions. Given the number of items which remain outstanding (both in terms of Rule 102(3) Requests already made and the number of items remaining on the Rule 102(3) Notice which may be requested), unless practical deadlines are imposed there is a real likelihood of inordinate delay.

III. TRANSLATIONS

12. On 22 December 2021, the Language Services Unit provided an estimate of 18 February 2022 for the translation of the Pre-Trial Brief into Albanian but indicated that it was not possible to estimate when the witness and exhibit lists would be translated.

13. The Defence repeats that the translation of the Pre-Trial Brief and associated documents has the very highest priority for the Defence. The fact that Mr. Krasniqi cannot read the Pre-Trial Brief and associated documents is impeding the Defence investigation and the assessment of the Rule 102(3) Notice.

14. The Defence understands that at the time of filing, there are 1,059 filing items originally provided in English and 188 of them have been translated into Albanian.

15. The Defence is also concerned that the filings which have been translated into Albanian recently have tended to be shorter filings such as requests for extensions of time or word limits. More significant filings such as the Court of Appeal Panel's Decision on Jakup Krasniqi's Appeal against Decision on Review of Detention dated 1 October 2021 have not been translated.

IV. NEXT STATUS CONFERENCE

16. The Defence will be available on 24 March 2022 at the Court's convenience.

Word count: 1,207



Venkateswari Alagendra

Tuesday, 1 February 2022
Kuala Lumpur, Malaysia.



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Tuesday, 1 February 2022
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