



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:** 21 March 2022  
**Language:** English  
**Classification:** Public

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**Prosecution submissions for eleventh status conference**

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**Specialist Prosecutor's Office**

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Simon Laws

**Counsel for Hashim Thaçi**

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**Counsel for Kadri Veseli**

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**Counsel for Rexhep Selimi**

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**Counsel for Jakup Krasniqi**

Venkateswari Alagenda

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

### Status Conference Submissions

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

2. Relevant additional materials emanating from other proceedings are being prepared for disclosure and/or notice in this case, in accordance with applicable provisions. The majority of such materials require extensive redactions, and related protective measures, in order to make them available in this case.<sup>3</sup> These redaction reviews are underway, and once reviews of the full package of materials is completed, a protective measures filing will be submitted.

3. Since the last status conference, the SPO has disclosed a further seven packages of Rule 102(3) materials, comprising 5,298 items,<sup>4</sup> and additional packages are being prepared for imminent disclosure. In addition, the SPO has filed three requests for protective measures, relating to certain materials sought by the Krasniqi Defence in one Rule 102(3) request, and by the Veseli Defence across three separate Rule 102(3) requests.<sup>5</sup> The SPO has also completed *inter partes* communications regarding materiality in relation to the Requests from the Veseli Defence dated 16, 19 and 22

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<sup>1</sup> Order Setting the Date for Eleventh Status Conference and for Submissions, 15 March 2022, KSC-BC-2020-06-F00734 ('Order').

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

<sup>3</sup> See for example Decision on the request of the Defence in KSC-BC-2020-06 to access confidential material in the Prosecution v Salih Mustafa case, KSC-BC-2020-05/RAC001/F00009, para.26 (noting the extensive nature of the redactions/ protective measures necessary for witness-related material in the case).

<sup>4</sup> Package 164 (1,126 items; Krasniqi Defence); Package 165 (327 items; Krasniqi Defence); Package 172 (679 items; Veseli Defence); Package 173 (479 items; Veseli Defence); Package 184 (151 items; Selimi Defence); Package 185 (2,145 items; Krasniqi Defence); Package 187 (391 items; Selimi Defence). These figures exclude packages with constituted redisclosure of previously disclosed items for the purpose of correcting certain metadata or other elements (see e.g. Packages 168, 169, 171).

<sup>5</sup> Request for protective measures for certain information requested by the Krasniqi Defence pursuant to Rule 102(3), KSC-BC-2020-06/F00699, 16 February 2022; Request for protective measures for certain information requested by the Veseli Defence in three requests pursuant to Rule 102(3), KSC-BC-2020-06/F00731, 15 March 2022; Prosecution request for protective measures for certain information requested by the Veseli Defence pursuant to Rule 102(3) and related variation of F00699, KSC-BC-2020-06/F00739, 21 March 2021.

October 2021 and as a result will not challenge materiality of any of the requested items. On 14 February, the SPO also initiated communications regarding materiality of 39 items with the Krasniqi Defence relating to its request dated 7 October 2021. Those discussions are ongoing.

4. Of the 25 Rule 102(3) requests which had been received up to the date of the last status conference, 10 of those have been fully completed, and a further six are more than 75% complete. However, in addition, since the last status conference, the SPO has received nine further Rule 102(3) requests.<sup>6</sup>

5. The number of Rule 102(3) items disclosed over the past seven weeks has been lower than forecast. There is currently a discrepancy between the number of items reviewed and those disclosed, which has arisen, in particular, due to COVID-related staff absences in the Disclosure Team and a consequent backlog in the processing and final check of disclosure packages. Steps have been taken to address this, including the retraining of other staff members to supplement the Disclosure Team and compensate for such absences.

6. For the reasons previously submitted,<sup>7</sup> the SPO does not consider that the re-imposition of deadlines to Rule 102(3) requests and responses would serve to advance the process at this time.

7. Finally, as indicated at the last status conference,<sup>8</sup> the SPO will continue to provide the Defence with spreadsheets upon the completion of processing of individual Rule 102(3) requests, including, as requested, the 'item' numbers.

8. Since the last status conference, seven packages of potentially exculpatory items have been disclosed pursuant to Rule 103,<sup>9</sup> and further packages are being

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<sup>6</sup> Thaçi Defence requests (received on 16 February, 23 February and 14 March), Krasnisi Defence request (received on 11 March), Veseli Defence requests (received on 16 February and 11 March), and Selimi Defence request (received on 7 March 2021).

<sup>7</sup> Prosecution submissions for tenth status conference, KSC-BC-2020-06/F00673, paras 5-6; Transcript of Status Conference dated 4 February 2022, pp.882-894.

<sup>8</sup> Transcript of Status Conference dated 4 February 2022, pp.885-886.

<sup>9</sup> Disclosure packages **170** (55 items); **174** (118 items); **175** (47 items); **176** (89 items); **181** (138 items); **186** (42 items); **188** (233 items).

prepared. As previously advised, the SPO is currently working to complete reviews of, in particular, materials received by the office since mid-2021, or material for which clearance has been received since that date. With respect to materials received or cleared (as relevant) up to 31 January 2022, this review is more than 70% complete, with approximately 2,500 items remaining to be assigned for exculpatory review. In addition, the SPO (i) is continuing to process for disclosure purposes certain materials which have to date been identified as potentially exculpatory, and (ii) as the item-by-item, systematic review of the SPO's collection nears completion, and in light of the witness and exhibit lists submitted in December 2021, is simultaneously proceeding with targeted searches specifically relating to the evidence and charges, as a means of ensuring that any further potentially exculpatory material is identified and disclosed. Appropriate resources are continuing to be allocated towards completing this process. No further protective measures request in respect of potentially exculpatory material is imminent at this time.

9. The SPO is continuing to work on concluding discussions with Rule 107 providers. Significant further progress, narrowing the scope of remaining items and issues, has been made. The SPO is, as previously advised, preparing a number of further Rule 107(2) applications, reflecting where final determinations have been reached.<sup>10</sup>

10. With respect to the further population of witness entities in LWF, the SPO has been advised that the Registry has inserted applicable protective/special measures with the relevant protective measures decisions for witness entities. Separately, the SPO is in the process of adding witness names in respect of those witnesses not subject to delayed disclosure. Finally, following the reviews, explanations and discussions previously held, the SPO is not aware of outstanding queries or requests in relation to the linking of translations, or redacted or corrected versions.

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<sup>10</sup> An overview of scope of material remaining outstanding was provided in Prosecution Rule 107(2) request, KSC-BC-2020-06/F00678, paras 10-13.

*Item 3: SPO investigations and next steps*

11. The SPO's investigation in this case is largely completed.<sup>11</sup> No currently contemplated steps implicate amendments to the indictment or the SPO's overall case theory, nor would they require resolution before the case is transferred to the Trial Panel. The case charged in the latest indictment and reflected in the pre-trial brief is the case which the SPO aims to bring at trial, and any new evidence generated from further investigations must be justified under Rules 102(2), 102(4), and/or 118(2) prior to being relied upon by the SPO.

12. However, matters requiring further investigation in this case is also not a static list, as there are many necessary reasons to investigate a case beyond the pre-trial stage. New investigative leads may be discovered, and such leads may uncover evidence necessary for the determination of the truth. Witnesses may become unavailable or uncooperative, justifying a reasonable opportunity to identify substitute evidence. Investigations into other cases may unearth information relevant to this case, an issue that is especially pertinent in *Thaçi et al.* because two other KSC cases (*Shala* and *Mustafa*) concern crime sites charged in this case. Disclosure of defence evidence and witness identities may prompt further investigative steps not currently foreseeable. Investigations arising from such potential circumstances cannot fairly be foreclosed.

13. Nonetheless, to the extent this agenda item aims to identify a completion date of the general investigation in this case, as described in paragraph 11 above, the investigation is largely completed and no deadline is therefore necessary.

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<sup>11</sup> Transcript of Status Conference dated 4 February 2022, p.928 (Pre-Trial Judge: 'I would like to insist on the fact that the factual basis of the case of the SPO shall be set before trial and that SPO investigations in this case should largely be completed by the time the case is transmitted to the Trial Panel. General investigations should not continue throughout the trial. There needs to be a case file that is properly transmitted to the Trial Panel').

*Other matters*

14. Notwithstanding the fact that there is pending litigation on the matter, the SPO is aware that individuals on its witness list are continuing be contacted by various Defence teams. In these circumstances, the SPO reiterates its request for retroactive application, and/or, pending any resolution of the matter, a suspension of such contacts.<sup>12</sup>

*Availability*

15. The SPO will be available on 16 May 2022 for the next status conference, or otherwise at the Pre-Trial Judge's convenience.

**Word count: 1,490**



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**Jack Smith**  
**Specialist Prosecutor**

Monday, 21 March 2022  
At The Hague, the Netherlands.

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<sup>12</sup> Transcript of Status Conference dated 22 February 2022, pp.970-971.