

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: 21 March 2022

Language: English

Classification: Public

Krasniqi Defence Submissions

for Eleventh 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 Eleventh Status Conference in accordance with the Order Setting the Date for Eleventh 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 orally.

2. The common thread running through these submissions is that, although the Defence is continuing to progress the Defence investigation, it is premature to discuss dates for the completion of this investigation and the filing of the Defence Pre-Trial Brief in circumstances where disclosure is still ongoing, the Specialist Prosecutor’s Office’s (“SPO’s”) investigation is ongoing, the translation of the Pre-Trial Brief has only recently been provided to Mr. Krasniqi and the translation of other important materials remains outstanding. The Defence expects to be able to provide more concrete details at the next Status Conference.

II. RULE 102(3) DISCLOSURE

3. Since the Tenth Status Conference, the Defence has submitted a further substantial Rule 102(3)² Request. The Defence is making good progress on the remaining items on the Rule 102(3) Notice and anticipates making two further requests. However, the Rule 102(3) disclosure received from the SPO has been limited. It is essential for purposes of timetabling and planning the Defence investigation that the SPO now provides a considered estimate of the time that it will actually take the SPO to complete all pending Rule 102(3) Requests.

¹ KSC-BC-2020-06, F00734, Pre-Trial Judge, *Order Setting the Date for Eleventh Status Conference and for Submissions*, 15 March 2022, public.

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

4. 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
Sixth Request	11 March 2022	23,872 items
		Total: 53,740 items

5. 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
DB 164	11 February 2022	1,126 items
DB 165	23 February 2022	327 items
DB 169	23 February 2022	1 item
DB 185	15 March 2022	2,145 items
DB 190	21 March 2022	80 items
		Total: 11,098 items

6. On 14 February 2022, as foreshadowed at the Tenth Status Conference, the SPO emailed the Defence with regard to the materiality of around 33 items from the Second Request. Five additional items were identified a week later. As a result of that correspondence, the Defence has withdrawn its requests for certain items and the parties remain in discussion about others.

7. At the Tenth Status Conference, the SPO submitted that it was “getting through approximately 5,000 items a week, on average”.³ The Pre-Trial Judge queried whether that meant that the SPO would have processed the 30,000 items then outstanding by the time of this Status Conference. The SPO responded that “might be slightly optimistic”.⁴ In fact, it was more than slightly optimistic. In the six weeks since the last status conference, at the time of filing the Defence has only in fact received 3,679 items of Rule 102(3) disclosure.

8. The Defence has made considerable progress in reviewing the Rule 102(3) Notice and anticipates submitting two further requests. The Defence will endeavour to submit its remaining Rule 102(3) requests by 16 May 2022 (the anticipated date of the next Status Conference). The Defence reserves the right to make additional requests at a later stage should items become material to the Defence investigation as the case develops, in particular once redactions are lifted.

9. However, the delay in receiving the Rule 102(3) material is hampering the Defence investigation. For example, the Defence cannot conclude interviews with potential witnesses, because there may be material relevant to those potential witnesses amongst the Rule 102(3) material which has not yet been disclosed.

³ KSC-BC-2020-06, Transcript of Hearing, 4 February 2022 (“Tenth Status Conference”), public, p. 892, lines 19-20.

⁴ *Ibid.*, p. 893, line 20.

10. The Defence therefore requests the SPO to provide a realistic and considered estimate of the time that it will take the SPO to complete disclosure of all pending Rule 102(3) Requests. Receiving and having adequate time to review the Rule 102(3) disclosure is an essential component of the Defence investigation. It is impossible for the Defence to commit to dates for the completion of its investigation or for its Pre-Trial Brief, without knowing when disclosure will be complete.

III. RULE 103

11. Since the last Status Conference, the SPO has disclosed no fewer than 8 batches of exculpatory material comprising a total of 723 items. The Defence does not understand why this material was not disclosed earlier, as Rule 103 clearly requires.

12. The SPO's failure to disclose this material earlier has a direct impact on the timetabling of this case. The Defence self-evidently needs to review all exculpatory material and conduct investigations based upon it, prior to preparing the Pre-Trial Brief.

13. Without prejudice to the general obligation on the SPO to disclose all categories of exculpatory material immediately, the Defence invites the SPO to confirm that it has now disclosed:-

All documents which state or suggest that the KLA did not have the command and control structures of a regular army;

All documents which suggest that the situation in Kosovo after 12 June 1999 was chaotic or anarchic;

All documents which show that Jakup Krasniqi was outside Kosovo at any time during the Indictment period, including during the period March – June 1999.

IV. TRANSLATIONS

14. On 21 February 2022, the Albanian translation of the Pre-Trial Brief became available to the Defence. Almost immediately, however, the Pre-Trial Brief was reclassified as strictly confidential and *ex parte*.⁵ The Defence immediately removed the Pre-Trial Brief from SEDS (the system used to transfer documents to Mr. Krasniqi). On 2 March 2022, the translation of the revised Pre-Trial Brief was released to the Defence. Accordingly, by the time of the Eleventh Status Conference, Mr. Krasniqi will have been able to read the Pre-Trial Brief for only three weeks.

15. At the Tenth Status Conference, the Defence submitted that translation of the Rule 109(c) chart was a priority and undertook to consider whether specific sections of the chart could be identified as a particular priority.⁶ It remains the Defence position that the whole Rule 109(c) chart should be translated into Albanian. Without prejudice to the need to translate the entire Rule 109(c) chart, the Defence has requested the Registry to prioritise the sections addressing the contextual elements of war crimes and crimes against humanity and the section addressing joint criminal enterprise. The Registry has not provided an estimate of when it will be able to translate this material and the Defence and representatives of the Registry have scheduled a meeting to discuss the translation of this material.

⁵ KSC-BC-2020-06, F00709, Specialist Prosecutor, *Prosecution Submission of Corrected Pre-Trial Brief and Related Request*, 24 February 2022, public, with Annexes 1 and 3, strictly confidential and *ex parte*, and Annex 2, confidential.

⁶ Tenth Status Conference, p. 927, lines 13-19.

16. The Defence understands that at the time of filing, there are 1,144 filing items originally provided in English and 214 of them have been translated into Albanian.

17. The recent provision of the Pre-Trial Brief to Mr. Krasniqi in Albanian and the fact that the Rule 109(c) chart has yet to be translated are further reasons why it is premature to set dates for the Defence Pre-Trial Brief or Defence objections to the admissibility of Rule 102(1)(b) material.

V. PROPOSED ADDITIONAL AGENDA ITEM: DELAYS IN SEDS

18. The Defence has recently suffered significant delays in the electronic transmission of documents between the Defence and Mr. Krasniqi. On 6 March 2022, Mr. Krasniqi sent a specific document to the Defence. It was received by the Defence on 14 March 2022 – 8 days later. Such delays are always unacceptable. At the current stage of proceedings, where the Court is considering imposing deadlines on the Defence, they cannot be tolerated. The Defence and the Registry are in correspondence about this issue. At this stage, no judicial intervention is needed, the Defence merely draws the Court's attention to the issue so that the Court is aware of it should the Defence need to request the Court's assistance in the future.

VI. NEXT STATUS CONFERENCE

19. The Defence will be available on 16 May 2022 at the Court's convenience.

Word count: 1,461



Venkateswari Alagenda

Monday, 21 March 2022
Kuala Lumpur, Malaysia.



Aidan Ellis

Monday, 21 March 2022
London, United Kingdom.