

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

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Language: English

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**Veseli Defence Submissions for Twelfth Status Conference,
with Confidential Annexes 1 and 2**

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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 Twelfth Status conference. The Defence reserves its right to present additional submissions orally at the upcoming Status conference.

II. SUBMISSIONS

A. Disclosure Issues

i. Rule 103

2. The Defence reports that, as of disclosure 248 received on 17 May 2022, the Veseli Defence has received 1,054 items under 103, since the last Status conference. One of these items, from batch 237, was withdrawn.² The Defence observes that many of these are "old" SPO witness interviews (dating from 2016 to 2020), which should have been disclosed in the initial months after the Accused were taken into custody.
3. The Defence recalls that, at the last Status conference, the SPO indicated that it was still processing various Rule 103 materials which had been identified as exculpatory³ and further, that two types of 103 review were ongoing:⁴ (i) a review of approximately 2,500 documents which represented the remainder of documents received or cleared between mid-2021 and 31 January 2022; and (ii) targeted searches relating to, *e.g.*, the witness list.

¹ F00798, Order Setting the Date for Twelfth Status Conference and for Submissions, 13 May 2022.

² See below, Section iv(b) *Removal of Documents*.

³ F00742, Prosecution Submissions for Eleventh Status Conference, 21 March 2022, para. 8.

⁴ Transcript, 24 March, p. 1087, 3:12 and F00742, para. 8.

4. The Pre-Trial Judge ordered the SPO, at the last Status conference, to review and disclose as relevant, the remaining 2,500 aforementioned documents by 20 May 2022.⁵ No deadline was imposed as regards the targeted searches.
5. The Defence reiterates that the completion of Rule 103 disclosure is required in order for the Defence to prepare its Pre-Trial Brief and requests the Pre-Trial Judge to set 22 June 2022 as the date for completion of all Rule 103 disclosure.
 - ii. *Rule 102(3)*
6. As of disclosure 238 received on 6 May 2022,⁶ the Defence has received 2,262 items under 102(3), and has requested over 10,800 further items, since the last Status conference. In total, the Defence has requested disclosure of 31,328 documents, and has received 11,646⁷ in response to those requests.
7. As noted at the Eleventh Status conference,⁸ documents from the Rule 102(3) Notice continue to be disclosed under other rules, without reference to their inclusion on the Rule 102(3) Notice.⁹ Additionally, documents from the Rule 102(3) Notice continue to be disclosed pursuant to Rule 102(3), but without reference to their item number. These factors significantly impede the Defence's ability to track Rule 102(3) disclosure.
8. The SPO has previously informed the Defence that it would provide the item number when making disclosures under Rule 102(3), where it can reasonably

⁵ *Ibid.*, p. 1161-1162.

⁶ The Defence has received two additional 102(3) packages on 13 May, however due to the difficulty of linking the disclosed items to the 102(3) Notice given the absence of the "item" number when disclosed, these packages have not yet been integrated in our calculations.

⁷ This number may differ from the number of items disclosed as certain items disclosed were translations or multiple parts of a single item.

⁸ F00744, Veseli Defence Submissions for Eleventh Status Conference, 21 March 2022, para. 4.

⁹ It is only when a document has **already** been disclosed under another Rule that this is indicated in Legal Workflow. Where a document is merely listed on the Rule 102(3) index, or has been requested under Rule 102(3), no indication is provided in Legal Workflow.

be done at the time of disclosure.¹⁰ No such information has yet been provided, and the Defence would be grateful for its imminent receipt.

9. The Defence can confirm that it does intend to make further requests for Rule 102(3) disclosure and is willing to commit to a deadline of 22 June 2022 to submit further bulk requests. It is willing to agree that any requests made after this cut-off date would need to be justified in specific terms.
10. The Defence is preparing a request for translations into English of some of the Rule 102(3) documents, which will be filed in due course.

iii. Rule 107 Material

11. No further material has been disclosed under Rule 107 since the last Status conference.

iv. Other Disclosure Matters

a. Legal Workflow Inter Partes Discussions

12. On 12 May 2022, an additional *inter partes* meeting was held between the Defence teams, the SPO, the Victims' Counsel and the Registry to further discussions on issues relating to disclosures on Legal Workflow.
13. Various issues were raised by the Defence teams, *inter alia*:
 - a. The need for notification when new material is linked to witness entities;
 - b. The creation of a list of duplicate items disclosed under different ERNs;
 - c. As raised at the last Status conference, persisting discrepancies in the documents' descriptions;
 - d. The need to track items that have been inadvertently disclosed, via ERN of the deleted and/or substitute item;
 - e. Linkage of translated items, some of which are still missing; and
 - f. Rediscovery of items not yet OCR'd, where of sufficient quality.

¹⁰ Emails from SPO dated 30 March 2022 and 26 April 2022.

14. The Defence was encouraged by progress made at the last meeting. A fifth meeting is scheduled for 21 June 2022.

b. Removal of documents

15. Since last February, the SPO has requested, on five occasions, that the Defence delete from its records items inadvertently disclosed.¹¹ No justification or explanation was provided for any of these requests, often compelling the Defence to engage in lengthy email exchanges with the SPO to obtain clarifications in order to be in a position to evaluate the propriety of the measures requested.
16. The latest such request relates to Package 237, disclosed on 6 May 2022, in relation to which the SPO requested the Defence to delete from its records item SITF00395669-00395725 (disclosed three weeks prior, in Package 212). The SPO informed the Defence that the item had been fully removed from Legal Workflow – *i.e.* not replaced by a redacted version – but failed to provide any information as to why the Defence was not allowed access to this item (which contained obvious exculpatory information¹² rightfully disclosed under Rule 103),¹³ whether they intended to redisclose it in a different format, request protective measures to apply redactions, or withhold the item. Once again, the Defence was obliged to review its records to try to understand the request, verify if this item was related to any past protective measures requests/decisions and finally write to the SPO to request clarifications – which are still awaited.

¹¹ Disclosure letters for Packages 161, 177, 189, 204 and 237.

¹² The document, which is listed as Item 34058 on the Rule 102(3) Notice is described as “UNMIK Police, Collection of witness statements in case against Nazim BLLACA et al. (No. PPS 460/09), dated 15-12-2009, re. intimidations/threats in Nazim BLLACA investigation and several assaults in which Nazim BLLACA is allegedly involved including on 14 September 2000 in Pristina and on 17 January 2000 in Gllobar.”

¹³ The Defence has also requested disclosure of this item under Rule 102(3).

c. Disclosure letters

17. It is also observed that the disclosure letters have been significantly lacking since the last Status conference. Twenty-five packages were disclosed specifically to the Veseli Defence since the last Status conference, for which 16 letters are still outstanding.¹⁴ The disclosure letters assist the Defence in orientating their categorisation and analysis, and delaying their disclosure is hampering the Defence's work.

d. Pre-Trial Brief

18. On 11 April 2022, the Defence requested, by email, that the SPO provide a lesser-redacted version of its Pre-Trial Brief.¹⁵ This request was supported by examples and made pursuant to paragraph 91 of the Framework Decision which provides that the parties shall consult on specific redactions in good faith prior to bringing the matter before the Pre-Trial Judge.¹⁶ On 13 May 2022, the SPO responded that the redactions were necessary in order to give effect to the protective measures ordered by the Pre-Trial Judge.¹⁷

B. Defence Investigation

v. The Status of Investigations

19. Defence investigations are currently ongoing and will continue over the summer months.

¹⁴ The Defence is currently awaiting the accompanying letters for package/batch 210, 212, 222, 230, 232, 233, 234, 235, 236, 238, 242, 243, 245, 246, 247, 248.

¹⁵ Email from Veseli Defence, 11 April 2022.

¹⁶ F00099, Framework Decision on Disclosure of Evidence and Related Matters, 23 November 2020, para. 91.

¹⁷ Email response from SPO, 13 May 2022.

vi. Unique Investigative Opportunities

20. As previously stated, the Defence has identified individuals from the SPO's list for whom a request may still be made.¹⁸ It will liaise with the other Defence teams to determine the most efficient means of pursuing such requests, should they prove necessary.
21. The Defence is also currently considering the necessity of seeking such measures to preserve the evidence of Mr Dick Marty, as it is believed that elements within Serbian intelligence services continue to pose a threat to his life.¹⁹ It is reported that "his house is now equipped with surveillance cameras and a safe room with plain clothes police keeping an eye out nearby. Marty must wear a bullet-proof vest when he goes out in public."²⁰

vii. Notice of an Alibi or Grounds for Excluding Responsibility

22. The Defence has proposed that the SPO allow Defence Counsel on a strictly confidential basis to see redacted material relating to any direct allegations against the Defence.²¹ To recall, the Defence submits that sharing the pertinent information regarding these few specific allegations could be accomplished without revealing the identity of any witness; and it would significantly assist the progress of the case by allowing the Defence to provide the SPO with more notice of potential alibi and/or other grounds for excluding responsibility.
23. The SPO has not opposed the request, but it observes that this would require a variation of protective measures.²² The Defence will pursue a variation.

¹⁸ F00744, para. 26.

¹⁹ See Swiss Info, ["Former Swiss Prosecutor "targeted by Serbian assassins,"](#) 12 April 2022.

²⁰ Ibid.

²¹ F00744, paras. 27-28; Streamlining proposal of 3 May 2022 (see Annex 1), p. 4.

²² Email from SPO to Defence and Victims regarding proposals for streamlining the case, 6 May 2022 (see Annex 2).

viii. Agreed Law and/or Facts

24. The Defence notes the SPO's request for progress to be made on this issue, which they say will inform several next steps as regards documents to be tendered, including whether and which documents they intend to tender via bar table motion.²³ Accordingly, the Defence has taken under review a number of proposed agreed facts that do not appear to depend on the completion of Rule 103 disclosure and should be in a position to revert to the SPO on this issue within the coming days.

ix. Objections to the Admissibility of Evidentiary Material Disclosed under Rule 102

25. In advance of the last Status conference, the Defence requested the Pre-Trial Judge to order disclosure of information pertaining to the cooperation of a particular State with the SPO, as several circumstances cast doubt about the admissibility of evidence deriving from this source.²⁴ This request was reiterated to the SPO in the Defence's streamlining proposal of 3 May 2022.²⁵
26. The Defence has identified other potential objections to the evidence that the SPO has proposed, however, the number and specificity of objections are likely to grow in the coming months as the Defence investigation progresses. Moreover, questions of admissibility are dependent on other matters, such as progress on agreed facts, and the streamlining of the case. It is therefore respectfully suggested that matters of admissibility generally are referred to the Trial Chamber for resolution, once decisions have been taken on these other matters.

²³ Annex 2.

²⁴ F00744, paras. 31-32.

²⁵ Annex 1, pp. 4-5.

27. Referral of admissibility matters to the Trial Chamber would not affect the SPO's obligation to disclose immediately material pertaining to its relationship with the State in question, which falls under Rule 103.

x. Issues (not) Subject to Dispute

28. The Defence has nothing to report as regards this topic for the last period.

xi. Pre-Trial Briefs

29. The Defence proposes to fix 16 September 2022 as the date of for its Pre-Trial Brief. The proposal has in mind that it is in the interests of all parties to expeditiously move this case to completion; and the repeated delays and failures of the SPO to disclosure their case in a timely manner.

30. The proposed date is contingent on the SPO meeting its specific disclosure obligations as set by the Pre-Trial Judge. These conditions include:

- a. The SPO completing its 103 disclosure of new materials by the Court-imposed deadline of 20 May 2022 and all other Rule 103 disclosure by 22 June 2022;
- b. The provision to the Defence of all material requested pursuant to 102(3) by 22 July 2022, with the understanding that the Defence completes its Rule 102(3) requests by 22 June 2022;
- c. The completion of all Rule 107 requests and disclosure by the 22 July 2022;
- d. The completion of the SPO's full disclosure obligations by no later than 22 July 2022; and
- e. Notice to the Defence of the witnesses that the SPO intends to call during the first six months of trial, and the order in which they intend to call them, by 22 July 2022; and notice, at the outset of trial, as to the order of witnesses for the second half of its case.

31. Subject to all five of these conditions being met, the Defence would undertake to complete its Pre-Trial Brief within two months of the SPO's completion of its

disclosure obligations, with a target date of 16 September 2022 for filing the Defence Brief and a trial start-date no later than 16 December 2022.

C. Proposals for Streamlining the Case

32. On 13 April 2022, the Thaçi Defence sent an email on behalf of the Defence teams to the SPO, requesting to know its position on various matters pertaining to streamlining.²⁶ On 3 May 2022, having received no response, the Veseli Defence sent another email to the SPO, to which it annexed its proposals on streamlining, building on submissions made in advance of the 11th Status conference.²⁷ The SPO responded on 6 May 2022, addressing some but not all of the points raised by the Veseli Defence. The correspondence pertaining to proposals for streamlining the case which set out the Defence and Prosecution positions can be found at Annexes 1 and 2 to this filing.

33. In summary, those discussions have yielded the following:

- As noted above, the SPO has observed that in order to share an unredacted account of allegations in the indictment, it will be necessary for existing protective measures to be varied.²⁸ The Defence will therefore request that the Pre-Trial Judge order a variation of protective measures in order to facilitate the sharing of this information with Defence Counsel.
- As noted above, in order to advance issues of admissibility so far as they can be advanced at this stage, the Defence has commenced discussions with the client on agreed facts. The SPO observes that this will inform several next steps as regards bar table motions and modes of testimony.²⁹
- Finally, the parties agree that the best way to manage the case is by setting a timeframe for the parties to present their respective cases.³⁰ The Defence proposes that the SPO should have one year to present its case

²⁶ Email from Thaçi Defence to SPO, 13 April 2022, (*see* Annex 2), p. 4.

²⁷ F00744, paras. 19 *et seq.*

²⁸ Annex 2.

²⁹, Annex 2.

³⁰ Annex 1, pp. 1-2.

with a possible extension of three months for unforeseen delays.³¹ The SPO has not indicated a timeframe which it believes would be appropriate for its case, but states that it is revisiting its witness list and time estimates and will inform the Defence of their decisions.³²

- The Defence's proposal would result in a two- to three- year trial, and a total trial phase of four to five years, depending on whether extension periods are used and any break between the SPO and Defence cases. The Defence submits that 12-15 months provides ample opportunity for the SPO to establish a case against the Accused. Moreover, if it cannot be done within this timeframe, it is eminently unlikely that drawing out the proceedings further will serve anyone's interests.

34. Key matters on which no agreement has been reached or remain unaddressed include:

- The timing of the decision to set a timeframe for the SPO's case. While the SPO believes that setting a timeframe is a matter for the Trial Panel,³³ the Defence submits that Article 39 and Rule 95 provide the authority for the Pre-Trial Judge to act now, and that he should do so, in order to maximise the benefit that a streamlined case would have on resources and the rights of those affected;
- The Defence's request to know the order of the SPO's first witnesses in order to efficiently plan their trial preparation,³⁴ which remains unaddressed;
- The Defence's request for disclosure of information pertaining to the SPO and a cooperating State,³⁵ which remains unaddressed.

D. Next Status Conference

35. The Defence will be available at the Court's convenience on Thursday 30 June 2022.

³¹ Annex 1, p. 1.

³² Annex 2.

³³ Annex 2.

³⁴ Annex 1, p. 4.

³⁵ Annex 1, pp. 4-6.

E. Other Matters

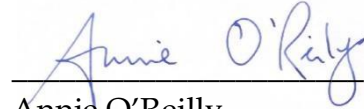
36. The Defence recalls that at the further appearance of 10 May 2022, the Pre-Trial Judge ordered the SPO to file responsive submissions to the Defence request for certification on the decision on the amended indictment by 23 May 2022.³⁶ Noting also that the Pre-Trial Judge previously requested the Thaçi Defence to file observations on the admissibility of an appeal on these matters,³⁷ the Defence requests clarification from the Pre-Trial Judge as to how it ought to proceed as regards submissions on admissibility.

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³⁶ Transcript, 10 May 2022, p. 1187-1188.

³⁷ *Id.*; F00795.