

**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:** 18 May 2022

**Language:** English

**Classification:** Public

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**Krasniqi Defence Submissions**  
**for Twelfth Status Conference**

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**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 Alagenda, Aidan Ellis

## I. INTRODUCTION

1. The Defence for Jakup Krasniqi (“Defence”) hereby provides written submissions for the Twelfth Status Conference in accordance with the Order Setting the Date for a Twelfth Status Conference and for Submissions.<sup>1</sup> The Defence reserves the right to develop additional submissions orally at the Status Conference and, in particular, will make further submissions orally on agenda items relating to Defence Investigations.

2. As recently expressed by Mr. Krasniqi himself,<sup>2</sup> the Defence wishes to move this case expeditiously to trial. In pursuit of that objective, it is in the interests of all parties and participants for the Pre-Trial Judge now to set a firm deadline for the completion of disclosure by the Specialist Prosecutor’s Office (“SPO”). The procedural timetable for the remainder of the pre-trial phase is contingent upon the completion of disclosure. The Defence therefore respectfully requests the Pre-Trial Judge to set a deadline of **22 July 2022** for the SPO to complete disclosure. The Defence makes detailed submissions on Rule 102(3)<sup>3</sup> and Rule 103 below.

## II. RULE 102(3) DISCLOSURE

3. The Defence has made two further Requests for access to Rule 102(3) material since the Eleventh Status Conference. The Defence does not intend to submit any further Requests at this time.<sup>4</sup> However, the pace of disclosure from the SPO remains slow. The Defence is gravely concerned about the delay that this will cause to the

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<sup>1</sup> KSC-BC-2020-06, F00798, Pre-Trial Judge, *Order Setting the Date for a Twelfth Status Conference and for Submissions* (“Scheduling Order”), 12 May 2022, public.

<sup>2</sup> KSC-BC-2020-06, Transcript of Hearing, 10 May 2022, public, p. 1195, lines 4-5.

<sup>3</sup> Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”).

<sup>4</sup> The Defence, of course, reserves the right to make further requests if there is good reason, for example upon the lifting of redactions.

progression of this case and therefore submits that a deadline must now be imposed on the SPO for the completion of Rule 102(3) disclosure.

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
Seventh Request	19 April 2022	13,274 items
Eighth Request	17 May 2022	129 items
		<b>Total: 67,143 items</b>

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
DB 191	21 March 2022	436 items
DB 194	22 March 2022	438 items
DB 198	22 March 2022	62 items
DB 202	24 March 2022	338 items
DB 206	1 April 2022	42 items
DB 208	5 April 2022	820 items
DB 213	14 April 2022	5 items
DB 217	14 April 2022	418 items
DB 221	25 April 2022	205 items
DB 224	25 April 2022	338 items
DB 225	28 April 2022	1 item
DB 231	2 May 2022	3,458 items
DB 239	6 May 2022	317 items
DB 240	6 May 2022	298 items
		<b>Total: 18,274 items</b>

6. The Defence is therefore awaiting the disclosure of almost 49,000 items at the time of writing.

7. The Defence requests the Pre-Trial Judge to set a firm deadline of **22 July 2022**<sup>5</sup> for the SPO to complete the disclosure of Rule 102(3) material, seek protective measures or object to materiality. A firm deadline is required for the following reasons:-

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<sup>5</sup> This is the date suggested by the Pre-Trial Judge: Scheduling Order, para. 21(1)(b).

- a. It is in the interests of all parties and participants to move this case expeditiously to trial. As the Defence has previously highlighted,<sup>6</sup> Rule 102(3) disclosure remains the sticking point which prevents this case from progressing. Plainly, the Defence needs to be afforded a fair opportunity to review the disclosure of Rule 102(3) items which are, by definition, material to the preparation of the defence and Defence investigations, before drafting the Pre-Trial Brief. Delays in disclosure of Rule 102(3) material directly impede this case's progression towards trial and, moreover, it is necessary to set a deadline for the completion of Rule 102(3) disclosure before considering deadlines relating to Defence investigations;
- b. The Rule 102(3) Notice was submitted as long ago as 31 July 2021.<sup>7</sup> The original deadline for the SPO to complete Rule 102(3) disclosure was suspended on 18 October 2021.<sup>8</sup> That was seven months ago, during which time Mr. Krasniqi has remained in detention. It is unreasonable for him to remain in custody whilst the disclosure process continues to be delayed without a deadline for its completion;
- c. From the experience of the last seven months, it is clear that without a firm deadline in place, Rule 102(3) disclosure is likely to drag on indefinitely. As set out above, almost 49,000 items are outstanding to the Krasniqi Defence alone. Only 6,240 items have been disclosed to the Krasniqi Defence in the seven weeks since the day of the last Status Conference.<sup>9</sup> The Defence does

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<sup>6</sup> KSC-BC-2020-06, Transcript of Hearing, 24 March 2022 ("Eleventh SC Transcript"), public, p. 1080, lines 10-19; Transcript of Hearing, 4 February 2022, public, p. 891, line 22 to p. 892, line 1.

<sup>7</sup> KSC-BC-2020-06, F00421, Specialist Prosecutor, *Prosecution Rule 102(3) Notice*, 31 July 2021, public, with Annex 1, confidential, and Annex 2, confidential and *ex parte*.

<sup>8</sup> KSC-BC-2020-06, F00528, Pre-Trial Judge, *Order in Relation to Prosecution Request for Extension of Time Limit*, 18 October 2021, public, paras 12, 14(b).

<sup>9</sup> DB 202-DB 240.

not know how many items remain outstanding to other Defence Teams. At the current rate of progress, there is a real risk that Rule 102(3) disclosure will be ongoing at least throughout the summer of 2022. Seven months after the disclosure deadline was suspended, and eight months after the first Rule 102(3) Request was made by the Defence, the reality is that the SPO has had more than sufficient time to assess the position, put appropriate procedures and resourcing in place and to be able to meet any deadline imposed by the Court.

### III. RULE 103 DISCLOSURE

8. Since the last Status Conference, the SPO has disclosed 12 batches of exculpatory material comprising a total of 1,054 items. The recent batches include SPO interviews which have been in the SPO's possession for years. For instance, DB 248 was disclosed to the Defence on 17 May 2022 and includes transcripts of SPO interviews on 18 December 2018, 19 February 2019, 16 April 2019 and 22 May 2019. No explanation has been provided for the failure to disclose these documents immediately.

9. At the last Status Conference, the SPO divided the remaining exculpatory disclosure into two categories and indicated that it anticipated completing "the review side" of exculpatory disclosure by the next Status Conference, but submitted that in relation to additional targeted searches the SPO "really cannot give an accurate estimate".<sup>10</sup> The Pre-Trial Judge therefore ordered the SPO to complete its exculpatory review by 20 May 2022, setting no deadline for the completion of the SPO's targeted searches.<sup>11</sup>

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<sup>10</sup> Eleventh SC Transcript, p. 1113, lines 5-15.

<sup>11</sup> KSC-BC-2020-06, In Court – Oral Order, Oral Order on the Disclosure of Rule 103 Material, 24 March 2022, public.

10. Mr. Krasniqi has been in detention for eighteen months. The Defence needs to receive the exculpatory disclosure as a basis for investigations and for the preparation of the Pre-Trial Brief. It cannot be consistent with the requirement of immediacy in Rule 103 for exculpatory disclosure to be delayed any further.

11. The Defence therefore requests an order requiring the SPO to complete all Rule 103 disclosure by **22 June 2022**.

#### IV. STREAMLINING THE CASE

12. *Inter partes* discussions were brief. On 13 April 2022, the Thaçi Defence emailed the SPO on behalf of all Defence Teams in an attempt to initiate discussions. On 3 May 2022, the Veseli Defence sent a detailed proposal to the SPO which provided *inter alia* that the SPO should have one calendar year in which to present its case. On 6 May 2022, more than three weeks after the first Defence email, the SPO responded that the determination of the appropriate timeframe is a matter for the Trial Panel. The SPO did not make any suggestions as to what timeframe it considered appropriate but repeated that it is revisiting its witness list and time estimates and will inform the Defence of its decisions when they are made.

13. In order to protect Mr. Krasniqi's right to trial within a reasonable time, the Defence strongly supports the proposal made by the Veseli Defence that the SPO should have one calendar year to present its case. The Defence will file submissions in support of this proposal in writing by the deadline of 20 May 2022.

14. The Defence further requests, based on previous proposals made by the Veseli Defence, that the SPO should be ordered to provide the Defence with a list of the witnesses that they intend to call in the first six months of the trial (and an indication of the order in which they will be called). That would facilitate expeditious

preparations for trial by allowing the Defence to focus preparations on those witnesses likely to be called first.

## V. DEFENCE INVESTIGATIONS

15. The Defence has continued to take steps to progress its investigations and confirms that investigations are ongoing. Certain investigations cannot be completed until after the SPO has completed its disclosure obligations. The Defence will develop additional submissions in relation to Defence Investigations orally.

16. The Defence does intend to file a Pre-Trial Brief. In preparing the Pre-Trial Brief, the Defence will need to consider and analyse all of the disclosure received from the SPO. Accordingly, the date for the Pre-Trial Brief cannot be considered in isolation but must be tethered to the remainder of the procedural timetable – and, in particular, any date for the Defence to file the Pre-Trial Brief must be contingent on the date when the SPO completes its disclosure.

17. Similarly, the Defence is reviewing the SPO's proposed agreed facts but cannot respond more substantively until disclosure is complete. As the Pre-Trial Judge recognised at the Eleventh Status Conference, "when the Defence hasn't received all disclosure, it is also difficult for the Defence to agree on facts".<sup>12</sup>

## VI. NEXT STATUS CONFERENCE

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

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<sup>12</sup> Eleventh SC Transcript, p. 1150, lines 15-19.



Word count: 1,808



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**Venkateswari Alagenda**

Wednesday, 18 May 2022

The Hague, the Netherlands.



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**Aidan Ellis**

Wednesday, 18 May 2022

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**Victor Băieșu**

Wednesday, 18 May 2022

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