

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

Date: 8 July 2022

Language: English

Classification: Public

Veseli Defence Submissions for Thirteenth Status Conference

Specialist Prosecutor's Office

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

II. SUBMISSIONS

A. Disclosures

i. Rule 102(3)

2. The Defence submitted its last bulk request for Rule 102(3) documents on 22 June 2022, as forecast in its submissions for the 12th Status Conference.² This brings the total number of documents requested by the Veseli Defence to 54,380 items. It has received 19,191 items to date. On 7 July 2022, for the first time, the SPO disclosed Rule 102(3) items accompanied by their item numbers from its Rule 102(3) Notice.
3. The Defence recalls that, at the last Status conference, the Pre-Trial Judge set a deadline of 30 September 2022 for all Rule 102(3) requests which were pending at that time.³ The Defence can confirm that only 263 of the documents it has requested since 20 May 2022 represent "new" requests - in that they had not been requested by any of the teams prior to the last Status conference. Given that this represents less than 0.5% of the Veseli Defence Rule 102(3) requests, the Defence submits that it is reasonable for the SPO to also disclose these by the 30 September 2022 deadline.

¹ F00863, Order Setting the Date for Thirteenth Status Conference and for Submissions, 1 July 2022.

² F00806, Veseli Defence Submissions for Twelfth Status Conference, With Confidential Annexes 1 and 2, 18 May 2022.

³ Transcript, 20 May 2022, p. 1323.

4. The Defence has not yet received an updated 102(3) Notice, despite assurances from the SPO at the 10th Status conference that newly received items were being reviewed under Rules 102(3) and 103.⁴

ii. Rule 107

5. At the last Status conference, the Defence requested to know the volume of outstanding material subject to Rule 107 to assist with planning its disclosure review. The SPO did not provide the requested information, and the Pre-Trial Judge invited the parties to continue discussions on the matter *inter partes*.⁵
6. Accordingly, the Defence sent an email to the SPO on 27 June 2022 requesting to know, *inter alia*, the number of documents and pages still awaiting clearance under each applicable disclosure rule; and the number of documents and pages for which clearance was denied, in respect of which Rule 107 applications were anticipated.⁶
7. The SPO responded on 5 July 2022, indicating that approximately 400 documents are still awaiting clearance decisions and that a further request for relief from disclosure obligations was imminent, without stating how many documents were subject to this request.
8. The Defence welcomes the SPO's partial response to its queries - but notes that, crucially, the SPO has not stated whether the outstanding Rule 107 documents are inculpatory, exculpatory or otherwise material. In this regard, it has indicated to the Defence that it is "not currently in a position to compile a detailed breakdown of the type." The Defence recalls that the pre-trial phase of this case commenced some twenty months ago. Assuming that by this late stage, the SPO has reviewed these documents in accordance with relevant

⁴ Transcript, 4 February 2022, p.877.

⁵ Transcript, 20 May 2022, p. 1272-1273.

⁶ Email from Veseli Defence to SPO entitled 'Rule 107 Material,' sent at 14:42 on 27 June 2022.

disclosure rules, the Defence fails to understand how the SPO is not in a position to state which rules these documents would fall under. It is particularly concerning to the Defence that a number of these documents may fall under Rule 102(1)(b) or Rule 103, given that the deadlines for both have expired.

iii. Further Requests to Delete Disclosure

9. Since the last Status conference, the SPO has requested the Defence to delete from its records items inadvertently disclosed on three further occasions.⁷ These latest requests concern documents that have been inadvertently disclosed to the Defence at various times between April 2021 and February 2022. The Defence notes that no justification or explanation was provided for the request in relation to Package 335, as was the case for the many requests received from the SPO earlier in the year.⁸

B. Defence Investigations and Next Steps

i. Status of Investigations

10. Defence investigations remain ongoing. The Defence observes that the Pre-Trial Judge's recently issued the Framework Decision on Investigations⁹ which places significant restrictions and logistical constraints on the Defence's ability to carry out interviews of any individual on the SPO's witness list. As a consequence, the Defence is considering the extent to which it will need to recalibrate its investigation plan, in light of the changed circumstances.

⁷ Disclosure letters for Packages 304, 307 and 335.

⁸ See F00806, Veseli Defence Submissions for Twelfth Status Conference, with Confidential Annexes 1 and 2, 18 May 2022, para. 15.

⁹ F00854, Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant, 24 June 2022.

11. Given the extensive use of protective measures in the case, and the SPO's failure, to date, to streamline its case in any regard, the Defence expects that its investigations will continue beyond the opening of the SPO's case and, for this reason, reiterates its request for the SPO to provide the Defence with (i) the first 32 witnesses (10% of its current total witness) it intends to call in the order it reasonably expects to call them; and (ii) the first 107 (30% of its current total witness) witnesses it intends to call.¹⁰

ii. Unique Investigative Opportunities

12. At present, it remains the Defence's intention to request measures to preserve evidence under Rule 99(1). However, taking into account the need to carry out further preliminary investigations relating to such opportunities, the forthcoming judicial recess, ongoing litigation on other matters, and the filing of its Pre-Trial Brief on 21 October 2022, the Defence is unable to commit to filing such requests by 1 September 2022.

iii. Alibi or Grounds for Excluding Responsibility,

13. The Defence will not be in a position to provide notice of an alibi or grounds for excluding responsibility, pursuant to Rule 95(5), until it receives an unredacted version of the indictment and the SPO has completed its disclosure obligations.

iv. Points of Agreement on Law and/or Facts

14. On 21 June 2022, the Defence notified the SPO of its acceptance of four proposed agreed facts and offered six counter proposals.¹¹

¹⁰ F00806, Veseli Defence Submissions for Twelfth Status Conference, With Confidential Annexes 1 and 2, 18 May 2022, Annex 1.

¹¹ Email from Veseli Defence to SPO and Defence Teams, entitled 'Agreed Facts,' sent at 10:21 on 21 June 2022.

15. On 4 July 2022, the SPO agreed to four of these counterproposals, and offered further amendments to the remaining two proposed agreed facts, which the Defence is taking under consideration.¹²
16. The Defence can agree to a 1 September 2022 deadline for the disposition of these two counterproposals. It expects further agreement on the remainder of the SPO's proposals to be limited.
17. The Defence may however submit to the SPO its own proposals for potential agreement in the coming months, as its investigations and evidence review reach a more advanced stage.

v. Objections to the Admissibility of Evidentiary Material Disclosed

18. The Defence intends to file a request for Rule 103 material pertaining to evidence emanating from the Republic of Serbia in the coming days. Whether the Defence will be able to comply with an 8 September deadline for any objections relating to this category of evidence will depend on the resolution of this request, and the timing of disclosure emanating from it.
19. As to any further objections, the Defence observes that, to date, the SPO has failed to: (i) reduce its number of witnesses or exhibits; (ii) indicate which of its proposed exhibits it intends to tender via bar table motions; or (iii) identify witnesses through whom it intends to tender other exhibits. Under the circumstances, the Defence is not in a position to commit to a deadline for raising further objections to the admissibility of evidence.

¹² Response to Veseli Defence email, from SPO to Defence Teams, sent at 12:43 on 4 July 2022.

vi. Any Difficulty in the Filing of Their Respective Pre-Trial Briefs by 21 October 2022

20. At present, the Defence does not foresee any difficulty in filing its pre-trial brief by 21 October 2022.

C. Proposals for Streamlining the Case

i. Time Limits for all Parties to Question Witness

21. The Defence is not in a position to provide time limits for the questioning of witnesses at this point in the proceedings. The Defence recalls that the SPO previously indicated its intent to reduce the number of hours of its own questioning of certain witnesses. At a minimum, the Defence would need clarity in this regard, before assessing the amount of time it would need to cross-examine.
22. As to the designation of one representative for certain witnesses, the Defence observes that such an approach would infringe on the right of each Accused to challenge witnesses against him.¹³ That aside, it is not a decision that could possibly be made this far in advance of trial when so many other matters remain undetermined.

ii. Average Sitting Time

23. The Defence envisages sitting for a maximum of four full days per week, for 4-week blocks, followed by a one-week break. This schedule would provide the Defence with the time that it requires for client and counsel to consult on the evidence as it emerges at trial; and for further investigations necessitated by the scale of the case to be carried out.

¹³ Art. 6(1), 6(3)(d) ECHR, see also ECtHR, *Lucà v. Italy*, App. no. 33354/96, [Judgement](#), 21 February 2001, para. 39.

iii. Global Time Limits

24. The Defence remains willing to commit to global time limits for the presentation of evidence as set out in its proposal on streamlining.

D. Next Status Conference

25. The Defence confirms its availability on Thursday 8 September 2022 for the 14th Status Conference.

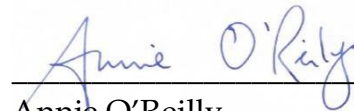
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