



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: 8 July 2022
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Prosecution submissions for thirteenth status conference

Specialist Prosecutor's Office

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

Item 1:² Disclosure

Rule 102(3)

2. Since the last status conference, the SPO has disclosed over 45,000 Rule 102(3) items in response to Defence requests.³ Approximately 65% of the total number of selected Rule 102(3) items across Defence requests have now been resolved.⁴

3. Materiality challenges and requests for protective measures will be necessary in respect of certain Rule 102(3) requests in the near future. The SPO will file these applications on a rolling basis to the extent possible.

4. Disclosure reviews are necessarily complex, painstaking and require a high level of care and consistency (both with prior disclosures and the Pre-Trial Judge's protective measures decisions) throughout a multi-level review process. Other considerations (privilege, Rule 107, internal work product, etc.) must also be addressed, not to mention the project management and technical logistics required for disclosure. The Rule 102(3) review in this case is therefore extremely resource intensive, and is engaging all relevant SPO staff from across cases. Staff resource constraints are also implicated by the nature of the items in question, with certain

¹ Order Setting the Date for Thirteenth Status Conference and for Submissions, 1 July 2022, KSC-BC-2020-06-F00863 ('Order').

² The numbering follows that indicated in the Order.

³ This figure includes in excess of 22,000 'unique' items (that is, separate items on the Rule 102(3) notice, discounting items which are being disclosed to more than one Defence team).

⁴ 'Resolving' an item means it has been disclosed or had its disclosure status resolved in some other way, including: (i) the Defence withdrawing their request for the item; (ii) the Pre-Trial Judge permitting delayed disclosure and/or withholding of the item; or (iii) an application for delayed disclosure/withholding is pending a ruling of the Pre-Trial Judge.

items requiring review from a more limited pool of experienced staff with more specialised knowledge or skills.

5. This said, taking into account all relevant factors currently known to the SPO and barring additional resource-intensive obligations arising, the SPO estimates it will meet the Pre-Trial Judge's 30 September deadline. This includes both the items which had been selected from the Rule 102(3) notice by Defence teams as at the date of the Pre-Trial Judge's order, and all corresponding materiality/protective measures requests.

Rule 107

6. The SPO is continuing to actively progress discussions with relevant Rule 107 providers, with a view to completing outstanding matters as expeditiously as possible. Relevant providers have been advised of the necessity of prioritising completion of these clearance processes. Currently, there are approximately 400 items in total for which clearance decisions remain pending. The vast majority of these pending items are with one provider, which is processing a final 'batch' of materials. In respect of items for which clearance decisions have already been made and an item has been denied clearance, there is an application in an advance stage of preparation which it is anticipated will be submitted either later today or early next week. The SPO also awaits the conclusion of discussions with an individual state in respect of a further filing.

Item 2(d): Defence investigations and next steps

7. There has been a degree of further progress with respect to agreed facts. In particular, the Veseli and Taçi defence teams indicated agreement to four facts. The SPO also engaged with the Taçi and Veseli Defence teams on a proposed re-wording of certain proposed facts, which has so far resulted in agreement on five further facts. To date, agreement has been reached with one or more Defence team on 22 facts

(primarily relating to the background or personal details of the Accused) from the over 300 proposals made by the SPO in March 2021. The SPO remains willing and available to continue such discussions, including on any proposals the Defence may wish to present.

8. To the extent that agreement has been reached, such information can be provided to the Pre-Trial Judge by 1 September 2022.

Item 3: Proposals for streamlining the case

9. The SPO is continuing its internal review of witness and exhibit lists and case presentation proposals with a view to streamlining its overall hours estimate.⁵ As previously indicated, it is anticipated that this exercise will result in significant reductions.⁶ Such reductions are anticipated to be achieved through a variety of means, including the mode of presentation and questioning time. At this stage, no crime sites or witnesses have been dropped from the prosecution case, but should any such decisions be taken the SPO will communicate that promptly to the Defence. The SPO witness list therefore remains up-to-date in terms of the number of witnesses the SPO intends to rely upon.

10. The SPO will be in a position to provide a concrete and consolidated streamlining proposal in advance of the transfer of the case to a trial panel, and would envisage being in a position to provide such a proposal by mid-October 2022. These proposals will include estimated numbers of hours for the examination of each witness and any changes to the proposed mode of testimony, in addition to a resulting overall reduced hours estimate. The SPO would therefore propose filing an updated witness list at the same time.

⁵ See Prosecution submissions for twelfth status conference, KSC-BC-2020-06/F00805, paras 13, 15; Transcript of Hearing dated 20 May 2022, p.1302.

⁶ Prosecution submissions for twelfth status conference, KSC-BC-2020-06/F00805, para.15; Transcript of Hearing dated 20 May 2022, p.1302.

11. It is the SPO's understanding that there is agreement amongst the parties with regard to an overall hours limit being set for the presentation of a party's case.⁷ However, noting variables such as sitting hours, availability or other logistical matters which would be outside of the control of any one party, it is considered that any such limit is best expressed as a number of hours, rather than a particular calendar period, as has also been the practice at other institutions. The SPO anticipates being available to sit continuously at the court's convenience.

12. The SPO will provide the Defence with its intended order of witnesses for the first three months of trial in due course, and sufficiently in advance of any trial commencement date. It is not, however, in a position to do so at present, noting the number of variables still at issue at this pre-trial stage, including timing of any transfer of the case, trial commencement date, intended sitting schedule, knowledge of the Defence position with regard to a range of matters (including objections to admissibility, alibi, or points of agreement), and the availability of witnesses.

Availability

13. The SPO will be available on 8 September 2022 for the next status conference, or otherwise at the Pre-Trial Judge's convenience.

Word count: 1,128



Jack Smith
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Friday, 8 July 2022
At The Hague, the Netherlands.

⁷ Prosecution submissions for twelfth status conference, KSC-BC-2020-06/F00805, para.13.