



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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: Specialist Prosecutor

Date: 5 September 2022

Language: English

Classification: Public

Prosecution submissions for fourteenth status conference

Specialist Prosecutor's Office

Jack Smith

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

David Young

Counsel for Jakup Krasniqi

Venkateswari Alagendra

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

Status Conference Submissions

Outstanding Issues From Thirteenth Status Conference – Rule 103

2. Since the Thirteenth Status Conference, the SPO has disclosed one further package of Rule 103 material.² The SPO notes the order to provide a Rule 103 disclosure report,³ and will comply within the indicated deadline.

Item 1:⁴ Disclosure

Rule 102(3) Notice

3. Since the 13th status conference, the SPO has disclosed more than 12,300 further items falling under the 30 September 2022 Rule 102(3) deadline, not including redisclosures. 80% of the total number of selected Rule 102(3) items have now been resolved,⁵ leaving just over 11,000 unique items remaining to be disclosed.

4. The SPO also foreshadows that materiality challenges and requests for redactions will be necessary in respect of certain Rule 102(3) requests by 30 September 2022. The SPO has been engaging with the Defence on materiality, and is grateful for

¹ Order Setting the Date for a Fourteenth Status Conference and for Submissions, 30 August 2022, KSC-BC-2020-06-F00940 ('Order').

² Disclosure Package 418. The timing of this disclosure is explained in a corresponding protective measures filing. Confidential Redacted Version of 'Corrected Version of Fourth Prosecution request for protective measures for items containing Rule 103 information, KSC-BC-2020-06/F00941/COR/CONF/RED, 31 August 2022, Confidential (with 44 annexes; corrected version notified 1 September 2022), para.6.

³ Decision on Thaçi and Krasniqi Defence Motions Seeking Remedies for Non-Compliance with Disclosure Obligations, KSC-BC-2020-06/F00936, 26 August 2022, Confidential, para.37.

⁴ The numbering follows that indicated in the Order.

⁵ '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 protective measures is pending before the Pre-Trial Judge.

the Defence withdrawing their selection of certain immaterial items. From the progress made since the last status conference, the SPO anticipates making materiality challenges for fewer than 400 of the over 67,000 items selected by the Defence. Applications on materiality and for protective measures will be submitted on a rolling basis whenever possible.

5. The SPO maintains its estimate it will meet the Pre-Trial Judge's 30 September deadline. This includes both the items selected from the Rule 102(3) notice and all corresponding materiality/protective measures requests. This estimate takes into account the SPO's other commitments in this and other cases. The continued feasibility of the estimate importantly depends on no new resource-intensive obligations compromising the SPO's progress.

Updated Rule 102(3) Notice

6. As for the updated Rule 102(3) notice, in the course of preparing the update it has become clear that a disproportionate number of items are not in English. Only a limited pool of SPO staff can provide detailed descriptions for these items. The SPO still anticipates meeting the 7 October deadline for providing the updated notice, but if any extension is required it would be limited to further time to provide descriptions for these items.

Rule 107

7. The SPO previously reported there were about 400 uncleared items, the overwhelming majority with a single provider. The SPO has made significant progress with this provider since the last status conference, securing clearance for half the pages provided with Rule 107 restrictions.⁶ The other half of these pages is scheduled to be

⁶ For items cleared with redactions, the SPO is reviewing those redactions in conformity with its disclosure obligations.

processed by the provider by the end of September 2022. Once this occurs, there will be less than 50 Rule 107 items whose clearance remains outstanding.

8. In respect of certain items for which clearance has already been denied, an application in relation to these items is pending.⁷ The SPO will continue its efforts to secure all necessary clearances.

Rule 109(c) Chart

9. The SPO foresees no difficulty in meeting the deadline to update the Rule 109(c) chart.

Expert Witnesses

10. The expert reports disclosed for experts on the witness list are final, to the extent that no further information is sought from these experts at present. The SPO is mindful that it must seize the Pre-Trial Judge should it seek to call any additional experts.

Delayed Disclosure Witnesses

11. Of the 68 witnesses with delayed disclosure until 30 days prior to trial, approximately 10,000 new pages across withheld items (including translations and transcriptions) will be disclosed. A further approximately 25,000 pages disclosed with non-standard redactions will also be disclosed with these redactions lifted. Not all these pages are fully covered by non-standard redactions. There are also a further

⁷ Confidential Redacted Version of 'Prosecution Rule 107(2) request', KSC-BC-2020-06/F00875, KSC-BC-2020-06/F00875/CONF/RED, 8 July 2022, Confidential (with 23 annexes; redacted version notified 18 July 2022).

approximately 11,000 pages of items where non-standard redactions are requested before the Pre-Trial Judge and a ruling is pending.

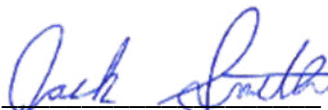
Item 3: Other Matters: Rules 153-55

12. The number of Rule 153, 154, and 155 witnesses are provided with the SPO's latest witness list.⁸ These witnesses' materials meet the standards for admission under Rules 153 to 155 of the Rules, and the SPO is in the process of collecting supporting documentation for Rule 155 witnesses. Applications to introduce these materials will be filed before the Trial Panel.

Availability

13. The SPO will be available on 18 October 2022 for the next status conference, or otherwise at the Pre-Trial Judge's convenience.

Word count: 955


Jack Smith
Specialist Prosecutor

Monday, 5 September 2022

At The Hague, the Netherlands.

⁸ Prosecution submission of revised witness list, KSC-BC-2020-06/F00948, 2 September 2022 (with three annexes), para.6. In the cited paragraph, the SPO indicated that it was no longer seeking to rely on six witnesses from its previous witness list. The SPO inadvertently omitted W04174, a seventh witness who is also no longer being relied upon.