

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: 6 September 2022

Language: English

Classification: Public

Public Redacted Version of Veseli Defence Submissions for Fourteenth Status Conference (F00955, dated 5 September 2022)

Specialist Prosecutor's Office

Jack Smith

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Victims

Simon Laws

Counsel for Rexhep Selimi

David Young

Counsel for Jakup Krasniqi

Venkateswari Alagendra

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 fourteenth 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 Veseli Defence has not requested further documents from the Rule 102(3) notice since the last status conference: the total requested remains 54,380 items. It has received at least 37,534 items as of 19 August 2022.²
3. On 18 August 2022, the SPO engaged in *inter partes* discussion with all Defence teams with regard to 34 items, which it sought to withhold on the stated basis that the documents were procedural and sensitive in nature. On 26 August 2022, the Defence responded, maintaining its request to a small number of the documents, while agreeing to withdraw its request for most of the items for the time-being – on the understanding that the items to be withheld contained neither Rule 102(1)(b)(i), nor Rule 103, information. On 1 September 2022, the SPO agreed to disclose the items in respect of which the Defence had maintained its requests and withdrew its challenges to several other documents, of its own accord. The SPO confirmed that the remaining items did

¹ F00940, Order Setting the Date for a Fourteenth Status Conference and for Submissions, 30 August 2022.

² The Defence has received additional 102(3) packages since 19 August 2022 (over 3000 items have been disclosed), however these packages have not yet been integrated in our calculations. The total of items receive may differ from the number of items disclosed as certain items disclosed were translations or multiple parts of a single item.

not contain Rule 102(1)(b)(i) information. It did not indicate whether or not they also contained Rule 103 information.

4. On 2 September 2022, the SPO sent an email to the Defence challenging certain categories of Rule 102(3) documents³ to which the Defence intends to respond in the coming days.

ii. Disorganised Nature of the Case File

5. The availability of translations and organisation of material on Legal Workflow continue to impose significant burdens on the Defence. As regards translations, the Defence observes that many documents which the Defence requires initially appear not to have been translated into English. However, because of the SPO's failure to link duplicates and translations, this is not necessarily the case. It is only by expending significant amounts of time carrying out searches in Legal Workflow that it becomes possible to establish, with a reasonable degree of certainty, whether the Defence is in fact in possession of English translations of certain documents.
6. The following examples illustrate some of the difficulties that the Defence has faced in attempting to navigate SPO disclosures:
 - 070217-070218 ([REDACTED]) was disclosed under Rule 102(3). It is not linked to a translation on LWF, however a partial duplicate and translation were located at KSC-BC-2020-06-U000-1941-U000-1945 and KSC-BC-2020-06-ET U000-1941-U000-1945. Further investigation shows that this version is on the SPO's exhibit list and is relied on in their pre-trial brief at footnote 809.

³ Email from SPO to Defence, 'Rule 102(3) materiality – requests to withdraw,' sent at 18:29 on 2 September 2022.

- SITF00243041-00243041 ([REDACTED]) was disclosed under Rule 102(3) for which an unlinked translation appears to be available at SITF00243042-SITF00243043-ET; SPOE00191255-00191267 ([REDACTED]), for which an unlinked translation appears to be available at 053882-053895;
- 099799-099821 ([REDACTED]) was disclosed under Rule 102(3). The linked translation consists of only the cover-page, and an unlinked partial duplicate appears to be available at 099808-099821 ([REDACTED]). The document or parts thereof were also disclosed under U002-2855-U002-2868 and U002-2855-U002-2868-ET and they also appear on the SPO's exhibit list for trial, and were also separately cited seven times in its pre-trial brief.⁴
- SITF00244133-00244133 ([REDACTED]) for which no translation was located was disclosed under Rule 102(3). SITF00244134-00244134, also disclosed under Rule 102(3) is an unsigned version of the same order, although this only becomes apparent through side-by-side comparison as the two documents are not linked on LWF and have different descriptions on the Rule 102(3) Notice.⁵

7. The Defence underscores the impossibility of the task of assessing a case file of this size, where translations of important documents are not available, or not readily apparent, and descriptions and other metadata are incomplete or inaccurate. The mere fact that the Defence must spend time searching through the disclosure to try and understand whether a specific document has been translated fundamentally prevents a true and coherent understanding of the material supporting this case. This is not in the interests of justice. The Defence submits that at this point in the pre-trial process it is not acceptable that SPO disclosure remains so disorganised and difficult to navigate.

⁴ See SPO Pre-Trial Brief, footnotes 182, 183, 242, 343, 386, 398, and 1997.

⁵ "[REDACTED]," and "[REDACTED]."

iii. Additional Witnesses and Exhibits

8. The Defence observes that the Pre-Trial Judge invites the SPO to clarify whether it intends to propose any additional expert witnesses, which would necessarily be accompanied by reports. The Defence recalls that the deadline for disclosure of trial witnesses and exhibits expired more than eight months ago: it would strongly oppose any such application at this very late stage.

iv. Adherence to Practice Directions

9. The Defence observes that the SPO recently failed to file an annex identifying the corrected information in its corrected version of F00891, despite this being a requirement of the practice direction.⁶ The Defence requests that the SPO be mindful in adhering to practice directions in future so as not to unduly burden the other parties.

B. Defence Investigations and Next Steps

i. Status of Investigations

10. Defence investigations remain ongoing. The Defence observes that the Framework Decision on Investigations⁷ is currently under appeal, the outcome of which litigation will have a significant impact on Defence investigations.
11. The Defence reiterates its request from its thirteenth Status conference submissions 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

⁶ See F00891/CONF/RED/COR, Corrected Version of 'Confidential redacted version of 'Prosecution request to amend the exhibit list and for protective measures', KSC-BC-2020-06-F00891, dated 20 July 2022', 8 August 2022.

⁷ 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.

expects to call them; and (ii) the first 107 (30% of its current total witness) witnesses it intends to call.⁸

12. The Defence does not foresee any difficulties in filing its pre-trial brief by 21 October 2022, at this stage.

ii. Unique Investigative Opportunities

13. 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, 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 28 October 2022.

iii. Alibi or Grounds for Excluding Responsibility,

14. The Defence reiterates the difficulty in establishing an alibi where specific allegations concerning the date and location remain redacted. Nonetheless the Defence currently intends to provide notice of alibi and is willing to commit to a deadline of 28 October 2022 to provide the relevant information pursuant the Rule 95. The Defence observes that this notice may be subject to change as its investigation remains severely limited by current redactions to the indictment and supporting evidence.

⁸ F00868, Veseli Defence Submissions for Thirteenth Status Conference, 8 July 2022; *See also*, F00806, Veseli Defence Submissions for Twelfth Status Conference, With Confidential Annexes 1 and 2, 18 May 2022, Annex 1.

iv. Points of Agreement on Law and/or Facts

15. On 17 August 2022, the Defence rejected the two remaining proposed facts that were outstanding as of the last Status conference.⁹ The Defence does not anticipate accepting further proposed agreed facts.
16. The Defence teams are jointly working on a set of proposed agreed facts which they intend to provide to the SPO by the end of September 2022. It would then fall to the SPO to determine whether this provides them with sufficient time to consider and respond to the Defence submissions by the 28 October 2022 deadline proposed by the Pre-Trial Judge.

v. Objections to the Admissibility of Evidentiary Material Disclosed

17. As to any further objections, the Defence observes that, to date, the SPO has still failed to: (i) reduce its number of 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. Furthermore, the SPO has recently requested to add witnesses to its witness list.¹⁰
18. Under the circumstances, the Defence is not in a position to commit to a deadline for raising further objections to the admissibility of evidence.

vi. Proposal for Appointment of a Defence Focal Point for Kosovar Institutions

19. As part of its investigation, the Defence foresees the need to obtain access to official records including criminal convictions, court records and other official information. Rule 201 provides Specialist Counsel with the ability to request an

⁹ Veseli Response to SPO Response to Email from Veseli Defence to SPO and Defence Teams, entitled 'Agreed Facts,' sent at 10:58 on 17 August 2022.

¹⁰ F00890/CONF/RED, Confidential redacted version of 'Prosecution Rule 102(2) submission and related requests', KSC-BC-2020-06-F00890, dated 20 July 2022; 21 July 2022. The decision on the matter is pending. See also, F00947/CONF/RED, Confidential redacted version of Prosecution request to add two witnesses and associated materials with strictly confidential and *ex parte* Annexes 1-2, 2 September 2022.

order from the Court only after a request for cooperation to local authorities has been refused or ignored. The Defence is reluctant to submit any such requests that contain witness names to anyone outside of these proceedings and particularly now in light of the Investigation Protocol. As such, the Defence seeks clarification regarding how it ought to proceed with this aspect of its investigation, and offers the following proposal, in the interests of efficiency and confidentiality.

20. The Defence raises the possibility of the appointment of a single representative within the Kosovo government to serve as a focal point to expedite Defence requests for assistance and information. As noted above, such assistance is likely to include access to criminal records, court records and other information that is required for the Defence to carry out its investigations properly.
21. The Defence observes that this trial is unlike other trials heard before this Court due to the number of witnesses proposed by the SPO and the corresponding volume of potential requests. Moreover, these requests will need to be made throughout the trial as the identity of the witnesses becomes known to the Defence. In the absence of a focal point, the Defence will be obliged to make individual requests to the relevant national agencies in Kosovo in respect of particular individuals or matters, prior to seizing the Pre-Trial Judge of the matter – again on an individual basis – should the national agencies refuse to provide the relevant information. This would likely lead to a significant volume of requests and attendant litigation, the communication of witness names to various government agencies, and potential delays in hearing witness's evidence.
22. The Defence submits that a focal point in the Kosovo government for all requests could allow a more efficient and more confidential application of Rule 201. Likewise, the Defence foresees a similar problem arising under Rule 208 in

relation to third states, such as Serbia and Bosnia. While the volume of requests is likely to be lower in respect of third states, failing to create a focal point that works directly with the Registry seems to the Defence an unnecessary risk to the protective witness regime.

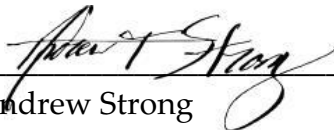
C. Next Status Conference

23. The Defence considers that it would be strongly preferable to schedule the next Status conference for the week following the filing of the Defence Pre-Trial Briefs, or as soon as possible thereafter taking into account courtroom availability.

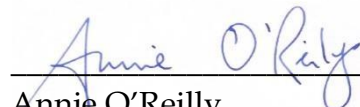
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Ben Emmerson, CBE QC
Counsel for Kadri Veseli



Andrew Strong
Co-Counsel for Kadri Veseli



Annie O'Reilly
Co-Counsel for Kadri Veseli