

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: 31 October 2022

Language: English

Classification: Confidential

Veseli Defence Submissions for Fifteenth Status Conference

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I. INTRODUCTION

1. The Defence for Mr Kadri Veseli (“Defence”) files these submissions pursuant to the Pre-Trial Judge’s scheduling order of 17 October 2022.¹ The Defence reserves its right to present additional submissions orally at the upcoming Status conference.

II. SUBMISSIONS

A. Defence Investigations

2. Defence investigations remain ongoing. The Defence recalls that SPO disclosure remains incomplete; and that a significant amount of material will only be de-redacted shortly before, or after, trial has commenced.² Accordingly, Defence investigations will necessarily continue beyond the start of trial.
3. As regards the latter, the Defence supports the Thaçi Defence request for the Pre-Trial Judge to order the SPO to systematically identify the portions of a lesser redacted document that were previously redacted.³ The Defence submits that this would contribute to the overall fairness and efficiency of the proceedings, given the size of the case file, and the number of pages that will be served in lesser-redacted form prior to or during trial.
4. The Defence additionally supports the request to order the SPO to notify persons if and when they are no longer considered ‘suspects’, given the chilling effect that this status has had on cooperation with the Defence, and its deleterious impact on the affected individuals’ wellbeing.⁴

¹ F01039, Order Setting the Date for a Fifteenth Status Conference and for Submissions, 17 October 2022.

² F00952, Prosecution Submissions for Fourteenth Status Conference, 5 September 2022, para. 11.

³ F01070, Thaçi Defence Submissions for Fifteenth Status Conference, 31 October 2022, paras 14-16.

⁴ F01070, paras 20-23.

B. Agreed Facts

5. On 31 October 2022, the Defence teams jointly submitted 135 proposed agreed facts to the SPO. It looks forward to receiving the SPO's response in due course. Taking into account the SPO's submissions, the Defence does not foresee any issues meeting the 18 November 2022 deadline.⁵

C. Admissibility

6. The Defence does not foresee any difficulty in filing submissions on admissibility by 18 November 2022. It clarifies that these submissions will necessarily be preliminary in nature.

D. Transferring Case to Trial Panel

7. The Defence does not foresee any difficulties in transferring the case to a trial panel around the end of the year, as proposed in the Pre-Trial Judge's order⁶ - except to note that the SPO has not fully discharged its disclosure obligations as yet.
8. The Defence is willing to come before a trial panel soon thereafter. The precise timeframe in which it will be ready to do so will depend on a number of factors that are largely outside the Defence's control, such as the resolution of currently pending litigation and the completion of SPO disclosure.

E. Additional Issues

i. Rule 102(3) Disclosure

9. So far, the Defence has been unable to determine whether items from its Rule 102(3) Requests may still be outstanding. At present it appears that there may be as many as 2000 items yet to be disclosed. The Defence recalls that the

⁵ F01071, Prosecution submissions for fifteenth status conference, 31 October 2022, para. 4.

⁶ F01039, para. 4(c).

cataloguing of Rule 102(3) disclosure material is particularly challenging for a number of reasons, including the disclosure of documents under ERNs that differ to those listed in the Rule 102(3) Notice, and the extensive use of redactions in the SPO's requests to redact or withhold Rule 102(3) items. The Defence is engaging with the SPO on an *inter partes* basis to obtain the information it requires in order to complete the initial cataloguing process.

ii. Rule 103 Disclosure

8. The Defence observes that the SPO continues to disclose Rule 103 material well after the deadline.⁷ It requests that the Pre-Trial Judge issue a finding that the SPO is in violation of its disclosure obligations.⁸ It is submitted that the SPO's clear and ongoing lack of regard for judicially-imposed deadlines is worrisome. Moreover, such conduct can only be expected to continue if the SPO is not held to account.

iii. Reclassification of Evidentiary Material

10. The Defence recalls the SPO's obligation, pursuant to the Pre-Trial Judge's order of 23 August 2022, "to determine the appropriate level of classification, to indicate the reasons for any non-public classification, and to indicate whether and when such non-confidential material may be reclassified" when disclosing material to the Defence.⁹

⁷ See Disclosure Packages 562 and 577.

⁸ The Defence observes that the Pre-Trial Judge has previously found that the delay to disclosure has been in some instances "significant" and that the SPO has not been "fully diligent" but that, nonetheless, this does not amount to non-compliance. F00936, 'Decision on Thaçi and Krasniqi Defence Motions Seeking Remedies for Non-Compliance with Disclosure Obligations,' 26 August 2022, para. 32.

⁹ F00934, Decision on Veseli Defence Request for Reclassification of Evidentiary Material, 23 August 2022, para 21(c).

11. Following this order, the SPO initially continued to disclose batches of disclosure in which it marked as confidential, without explanation, documents that were publicly available.
12. More recently, when disclosing a package on Legal Workflow, the SPO has included the following ‘explanation’ of confidentiality via the Description box:

The items classified as confidential have been classified as such due to the context within which the information was obtained, including from (potential) witnesses, the nature of the provider and applicable restrictions on use and classification, and/or the potential identification of SPO witnesses and/or victims whose identity is not public.¹⁰
13. The Defence submits that an utterly generic, blanket statement such as the above fails to comply with the Pre-Trial Judge’s order of 23 August 2022. It submits that the SPO should be ordered to provide individualised explanations for the documents it seeks to classify as confidential and, in particular, to avoid the “and/or” formulation, which effectively amounts to the submission that a particular rationale “may or may not” apply to a given item.

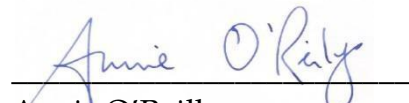
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¹⁰ See Disclosure Package 577.