

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: 11 February 2022

Language: English

Classification: Public

**Public Redacted Version of Veseli Defence Response to
Prosecution notice of Rule 102(1)(b) disclosure and related requests (KSC-BC-
2020-06/F00670)**

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I. INTRODUCTION

1. The Defence for Mr. Kadri Veseli (“Defence”) hereby responds to the Prosecution request to add further material falling under Rule 102(1)(b) which were not included in prior disclosure packages (“Further Materials”), filed on 31 January 2022 (“Request”).¹

II. SUBMISSIONS

2. The Defence submits that the SPO should not be authorised to amend the Exhibit List because the Request is (i) not supported by good cause, and (ii) prejudicial to the Defence.

A. The SPO has not Demonstrated Good Cause

3. The SPO has not demonstrated good cause for its failure to identify, obtain, and disclose the documents that are the subject of the Request, at an earlier date.
4. The Defence recalls that the 31 January 2022 deadline for the provision of the disclosure of Rule 102(1)(b) items was fixed over three months ago.² On 15 December, the SPO asserted that it was on track to meet the deadline of 31 January 2022 for disclosure of Rule 102(1)(b) items and anticipated completing it before the end of January.³ The SPO then claimed to have completed its “existing” Rule 102(1)(b) disclosures during the Status conference of 4 February 2022 (with the exception of a few discrete items) – failing to draw to the Court’s attention to the fact that they had filed this Request the very same week.⁴

¹ F00670, Prosecution notice of Rule 102(1)(b) disclosure and related requests, 31 January 2021.

² Transcript, 8th Status Conference, 29 October 2021, p.753.

³ Transcript, 9th Status Conference, 15 December 2021, p.774.

⁴ Transcript, 10th Status Conference, 4 February 2022, p.868.

5. The SPO's Further Materials comprises 132 documents including, *inter alia*, SPO statements,⁵ ICTY records,⁶ SITF records,⁷ SPRK records,⁸ EULEX records,⁹ open-source information such as a newspaper article,¹⁰ and yet another book.¹¹
6. With respect to the material that was only recently located in the SPO's databases, the Defence submits that there is no reasonable justification for the SPO still not knowing at this stage what it has in its possession. Once again, it serves to demonstrate that their initial projection of a trial commencing last year was never going to be remotely feasible.
7. With respect to the materials that were only obtained recently, the Defence registers its serious concern with the fact that SPO investigations are still ongoing, well over a year after indictments were served. Moreover, it appears from the examples provided in footnote 12 that all of those documents could

⁵ 061395- TR-ET Part 1 is the SPO translation of an interview of W01453, dated 23 July 2019; 095381-TR-ET Part 1 RED is a redacted version of the SPO transcript of an interview of W04323, dated 22 April 2021; 095381-TR-ET Part 2 RED is a redacted version of the SPO transcript of an interview of W04323, dated 22 April 2021; 095381-TR-ET Part 3 RED is a redacted version of the SPO transcript of an interview of W04323, dated 22 April 2021; 101598-TR-ET Part 1 RED is a redacted version of SPO transcript of an interview of [REDACTED], dated 8 July 2021.

⁶ 0188- 4029-0188-4030 ET RED is a redacted version of a statement of [REDACTED], dated 1 December 1999; IT-04-84 P00244.E is a copy of an original Information by Armed Forces of the Republic of Kosovo 131st Brigade Commander Rustem BERISHA, dated 7 August 1998 which was an exhibit in the Haradinaj case; IT-05-87 P02662-E is Austrian Embassy diplomatic correspondence re: Rambouillet Negotiations, dated 10 February 1999 which was an exhibit in the Milutinovic case.

⁷ 022567-022569 RED is the redacted version of SITF, Official Notes on the meeting of 11-12 November 2014 with [REDACTED]; 000150-000151-ET RED is the redacted version of SITF record statement of [REDACTED], dated 22 March 2013.

⁸ 051794-051797 is the UNMIK Witness Statement of [REDACTED], dated 18 August 2008; SITF00009903-00009918 is the District Court of Pristina's Order declaring [REDACTED] as a Cooperative Witness, dated 25 August 2010; SITF00010236- 00010250 RED is the redacted version of SPRK Record of witness hearing in criminal investigation against [REDACTED], dated 20 April 2010.

⁹ SITF00013570-00013584 RED is the redacted version of Kukes line up list used during SPRK hearing of W04381, dated 11 March 2010; SPOE00072848-SPOE00072876 RED is the redacted version of two EULEX WCIU statements of [REDACTED], dated 20 November 2009.

¹⁰ 055503-055505-ET is a Taz Newspaper article titled "Albanian police officers in Serbian service", dated 19 March 1999.

¹¹ SPOE00055703-SPOE00055705-ET is a book titled "Ushtria Clirimtare e Kosoves - Zona Operative e Llapit" [The KLA - OZ Llap], by Skender ZHITIA, published by the KLA War Veterans Organization in Prishtina in 2008.

have been obtained at a much earlier date. In the absence of any justification for their failure to obtain and disclose these documents before, they should not be permitted to add them to their exhibit list, now that the deadline has elapsed.

B. The SPO Request is Prejudicial to the Defence and Hampers the Defence's Ability to Respond.

8. If the Pre-Trial Judge were to grant this request it would cause significant unfair prejudice to the Defence. The Defence is still in the process of analysing the Prosecution's lengthy Pre-Trial Brief, and its accompanying 16, 000+ exhibits. While the number of documents sought to be added may appear limited in comparison to the SPO's overinflated exhibit list, it is objectively a very significant amount of material, which will further impede the Defence's ability to prepare and carry out its investigations. Moreover, the Defence observes that the SPO's overzealous redactions¹² make it impossible for the Defence to understand certain materials in the Request.
9. As a consequence of the SPO's failures, and through no fault on the part of the Defence, there will now be further delays to already drawn out proceedings, should the request be granted. All the while, the Accused remain in pre-trial detention, a fact which has significant bearing on the unfair prejudice that would result.

¹² SITF00296169- 00296209 RED has been completely redacted; Similarly heavy redactions have been made to 095381-TR-ET Part 1, Part 2, and Part 3, 101690- 101693- ET RED which make it difficult to understand the Witness Statement in entirety.

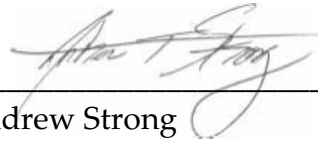
III. CONCLUSION

10. For the above- mentioned reasons, the Pre- Trial Judge is respectfully requested to reject the SPO request for adding Further Materials falling under Rule 102(1)(b) to its exhibit list.

Word Count: 1035



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