

**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:** 25 April 2022

**Language:** English

**Classification:** Public

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**Public Redacted Version of Veseli Defence Response to Prosecution Request  
KSC-BC-2020-06/F00767**

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## I. INTRODUCTION

1. The Defence for Mr Kadri Veseli (“Defence”), hereby responds to the SPO’s third request to amend its Exhibit List.<sup>1</sup>
2. The SPO’s latest request lays bare the extent of the disorganisation that persists within the SPO. Documents that form a key part of a witness’s evidence have become disassociated with interviews;<sup>2</sup> statements that were listed on the Rule 102(3) index are now being added to the Rule 102(1)(B) materials;<sup>3</sup> and even after the deadline for Rule 102(1)(B) disclosure had passed, the SPO was continuing to review various records to determine whether items it had in its possession were mere duplicates, or independent items which it may wish to rely upon to prove its case in court.<sup>4</sup> The Defence accepts that errors occur in the ordinary course of things, but the frequency of the SPO’s repeated ‘misplacements,’ ‘oversights,’ and late analysis of documents has surpassed what could reasonably be passed off as ordinary.<sup>5</sup>
3. The Defence has been working hard to keep pace with the thousands of items disclosed and to investigate the case despite extensive redactions to evidence, so as to move the case forward as swiftly as possible. It cognisant that the Pre-Trial Judge has requested the Defence to agree to a deadline, soon, for its Pre-Trial Brief. With the SPO’s case still a moving target, this places the Defence in an impossible position.<sup>6</sup>

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<sup>1</sup> F00767, Prosecution request to amend the Exhibit List and for protective measures with confidential Annexes 1 and 4-9 and strictly confidential and *ex parte* Annexes 2-3, 13 April 2022.

<sup>2</sup> See F00767 proposed additional items in Annexes 7 and 8.

<sup>3</sup> See F00767 proposed additional item in Annex 6.

<sup>4</sup> See F00767 proposed additional items in Annex 1, 2.

<sup>5</sup> F00767, paras 5 (Annex 1), 6 (Annex 2) and 14 (Annex 9) identified recently, 11 (Annex 6), 12 (Annex 7), 13 (Annex 8) had been overlooked.

<sup>6</sup> F00655, Order Setting the Date for Tenth Status Conference and for Submissions, 25 January 2022, para. 16g; Transcript of 4 February 2022, p. 931; F00734, Order Setting the Date for Eleventh Status Conference and for Submissions, 15 March 2022, para. 18(4)(g).

4. The Defence recalls that, in its Decision for the first SPO requests to amend its Exhibit List, the Pre-Trial Judge noted that:

[T]he SPO does not: (i) explain why some of the documents have been obtained only at this stage; or (ii) **justify the alleged administrative oversights that caused the non-identification of the Further Materials that should have been included in the Exhibit List filed on 17 December 2021**<sup>7</sup>...While granting this part of the Request, the Pre-Trial Judge warns the SPO that any further request for amendments to the Exhibit List, given the expiration of the 31 January 2022 deadline, **will be subject to greater scrutiny**.<sup>8</sup>

5. In line with the above, the Defence expects that this latest request will be scrutinised closely and only those requests that are properly justified will be granted.

## II. PROCEDURAL BACKGROUND

6. On 17 December 2021, the SPO filed its Pre-Trial Brief and related material, including a list of exhibits (“Exhibit List”).<sup>9</sup>
7. On 31 January 2022, the SPO requested to amend its Exhibit List.<sup>10</sup>
8. On 24 February 2022, the SPO requested to amend its Exhibit List, again.<sup>11</sup>
9. On 13 April 2022, the SPO requested to amend its Exhibit List, for the third time.<sup>12</sup>

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<sup>7</sup> F00727/CONF/RED, Confidential Redacted Version of Decision on Specialist Prosecutor’s Request to Amend its Exhibit List and to Authorise Related Protective Measures, 8 March 2022, para. 25. Emphasis added.

<sup>8</sup> F00727/CONF/RED, para. 30. Emphasis added.

<sup>9</sup> F00631, Submission of Pre-Trial Brief, with witness and exhibit lists with strictly confidential and *ex parte* Annexes 1-3, 17 December 2021; after the deadline was modified several times. Early July 2021, Transcript of 17 December 2020, p. 199; F00191, Corrected version of Prosecution submissions for third status conference, 10 February 2021, para. 14. Second week of September 2021, F00235, Prosecution submissions for fourth status conference and request for adjustment of time limits, 22 March 2021, para. 7; Transcript of 24 March 2021, p. 363. Mid-October 2021, F00314, Prosecution submissions for fifth status conference, 18 May 2021, para. 10; Transcript of 19 May 2021, p. 420-421; Transcript of 21 July 2021, p. 509. Deadline set to 17 December 202, Second Oral order, Status Conference of 29 October 2021.

<sup>10</sup> F00667, Decision on Specialist Prosecutor’s Request for Extension of Time, 31 January 2022.

<sup>11</sup> F00708, Prosecution Rule 102(2) submission and related requests with confidential Annexes 1 and 2 and strictly confidential *ex parte* Annex 3, 24 February 2022.

<sup>12</sup> F00767.

10. On 8 March<sup>13</sup> and 22 April<sup>14</sup>, respectively, the Pre-Trial Judge authorised the first and second requests.

11. At the time of writing, the SPO had made a fourth request.<sup>15</sup>

### III. APPLICABLE LAW

12. Article 21(6) of the Law states:

**All material and relevant evidence or facts in possession of the Specialist Prosecutor's Office which are for or against the accused shall be made available to the accused** before the beginning of and during the proceedings, subject only to restrictions which are strictly necessary and when any necessary counter-balance protections are applied.<sup>16</sup>

13. Pursuant to Rule 95(2) "The Pre-Trial Judge shall ensure that the proceedings are not unduly delayed and shall take all necessary measures for the expeditious preparation of the case for trial."

14. According to Rule 95(4) "The Pre-Trial Judge shall order the Specialist Prosecutor to file, within a set time limit: (c) the list of proposed exhibits the Specialist Prosecutor intends to present [at trial]".

15. Finally, Rule 102(1)(b) states that the SPO shall make available to the Defence within the time limit set by the Panel:

(i) the statements of all witnesses whom the Specialist Prosecutor intends to call to testify at trial; (ii) all other witness statements, expert reports, depositions, or transcripts that the Specialist Prosecutor intends to present at trial; and (iii) the exhibits that the Specialist Prosecutor intends to present at trial.

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<sup>13</sup> F00727/CONF/RED.

<sup>14</sup> F00779, Decision on Specialist Prosecutor's Rule 102(2) and Related Requests, 22 April 2022.

<sup>15</sup> F00774/CONF/RED, Confidential redacted version of 'Prosecution request to amend the exhibit list and for protective measures (KSC-BC-2020-05), with confidential Annex 1 and strictly confidential and *ex parte* annexes 2-16', 20 April 2022.

<sup>16</sup> Emphasis added.

## IV. SUBMISSIONS

16. The Defence submits that there is a lack of justification for the late inclusion of many of the SPO's proposed additional exhibits, and that those requests should be denied.

## A. Annex 1: 039769

17. The SPO submits that this item is a record pertaining to one of W01453's prior statements, a different version of a statement previously disclosed under SITF00452593-00452615. It submits that the proposed item contains 'additional relevant information' not included in SITF00452593-00452615, such that good cause exists for its inclusion.<sup>17</sup> The SPO submits that the 'additional relevant information' came to light during the course of disclosure review that took place after the 31 January deadline.<sup>18</sup>

18. The Defence observes that the SPO failed to provide any explanation as to why audio records that fell within the scope of its Rule 102(1)(b) disclosure obligation were still being reviewed after the deadline for disclosure had elapsed, despite assurances that it had fulfilled its disclosure obligations in this regard.<sup>19</sup> Nor, apparently, has the SPO made any efforts to identify for the Court the 'additional relevant information' that it says provides good cause for the inclusion of this item on its Exhibit List.<sup>20</sup>

19. The Defence submits that the SPO has failed to justify its request to include this item, and it should therefore be rejected. If granted however, the Defence requests that the SPO be ordered to identify specific portions of the record

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<sup>17</sup> F00767, para. 5.

<sup>18</sup> F00767, para. 5.

<sup>19</sup> F00673, para. 2. The SPO had an extension of deadline for 3 items, and items awaiting approval for protective measures: for clarification, those items did not concern W01453.

<sup>20</sup> See, for example, F00767, paras 5, 6, 8. Where the SPO simply states that the documents contain 'additional information' or variation of that phrase, without further explanation.

which it says constitute “additional relevant information” in order to limit the impact on the Accused and promote the efficient administration of this case.

**B. Annex 2: 104837-104855**

20. The SPO submits that this is a handwritten record for the same meeting as item 058578-058582, dated 21 May 2014, concerning [REDACTED].<sup>21</sup> As with the item in Annex 1, the SPO has failed to justify the late review of the record, and the Defence submits that if the request is granted, the SPO should be ordered to identify the additional relevant information which it says render it a “more complete record”<sup>22</sup> and thus warrants its inclusion in its Exhibit List.

**C. Annex 6: SITF00408812-SITF00408815**

21. The SPO submits that this item “was only identified in the SPO evidentiary databases in late March 2022 and was thereafter promptly translated and reviewed.”<sup>23</sup> The Defence clarifies for the Pre-Trial Judge that this item was in fact included in the SPO’s Rule 102(3) notice filed last summer (Serbian language version only). The Defence requested disclosure of the item on 19 October 2021 and the SPO disclosed it on 18 December 2021.<sup>24</sup> The Defence points out that the SPO’s failure to identify this as a potential exhibit (and Rule 102(1)(b) item) is further evidence that items on the Rule 102(3) list were not properly reviewed prior to notification – or, apparently, prior to disclosure.

**D. Annexes 7 through 9**

22. The Defence observes that, like most other items that are the subject of this request, the items in Annexes 7 through 9 are items that should have been but were not identified as requiring disclosure prior to the Rule 102(1)(b) deadline.

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<sup>21</sup> F00767, para 6.

<sup>22</sup> F00767, para. 6.

<sup>23</sup> F00767, para. 11.

<sup>24</sup> See item SITF00408806-SITF00408815 from Disclosure Batch 139, under Rule 102(3).

23. Furthermore, as far as the Defence can discern - Annexes 7 through 9 cannot be found in the Rule 102(3) list. Of course, such items should have been screened out of the Rule 102(3) list prior to its service and disclosed under other rules. But the fact that these items were not even identified as sufficiently relevant to be included on the Rule 102(3) list gives rise to questions about whether and how many other items may have been overlooked.

V. CONCLUSION

24. The Defence submits that the SPO's poor administration of its own case file has imposed significant burdens on all those involved in the proceedings, which are not justified and should no longer be tolerated.
25. For the foregoing reasons, and to the extent indicated, the Defence requests that the Pre-Trial Judge deny the request.

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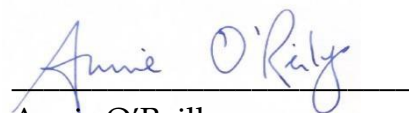
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