

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: 7 March 2022

Language: English

Classification: Public

**Public Redacted Version of Veseli Defence Response to Prosecution Rule
102(2) Submission and Related Requests (KSC-BC-2020-06/F00708)**

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I. INTRODUCTION

1. The Defence for Mr Kadri Veseli (“the Defence”) files this in response to the SPO’s submission of 24 February 2022 in which it sets out various requests pursuant to Rule 102(2) (late addition of documents associated with trial witnesses), Rules 80 and 81 (protective measures), and Rules 107 and 108 (relief from disclosure obligations).¹
2. The Defence submits the SPO has failed to provide adequate justification for the late addition of the documents it seeks to add to its Exhibit List, and that this portion of the Submission should therefore be rejected. Moreover, the SPO’s request for protective measures in respect of W04870 does not appear to be justified at this time. Lastly, the Defence requests that the SPO continue to seek lesser redacted versions of certain Rule 107 materials.

II. SUBMISSIONS

A. W04870

i. Additional Documents

2. While the SPO failed to explicitly state its precise request for relief, it appears on close inspection that it seeks to add **11 items** to its Exhibit List in connection with W04870.
3. In total, the SPO’s list of associated materials for W04870 set out in Annex 1 contains 17 items. The SPO requests that it wishes to add the materials on that list which were “not previously disclosed.” Based on paragraph 5 and the associated footnotes, the Defence consequently understands that:
 - a. The SPO seeks to add the following items 1, 2, 4, 5, 6, 7, 10, 13, 15 and 17 to its Exhibit List;

¹ 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.

- b. This is in addition to items 3, 12 and 14 which were already on its Exhibit List;
 - c. The SPO does not wish to rely on items 8, 9, and 11;²
 - d. The SPO previously disclosed documents 3, 8, 9, 11, 12 and 14;
 - e. Consequently, of the 14 documents that the SPO now seeks to rely on, it had only previously disclosed documents 3, 12 and 14.
4. The Defence submits that the SPO has failed to justify its request for the late inclusion – and indeed disclosure – of these documents. It is simply wrong to suggest, as the SPO does, that this material “only became available recently.”³ Most of these documents date from 1999 to 2003 and could have been included on the Exhibit List filed with the Pre-Trial Brief, particularly as W04870 has been identified as a trial witness since 22 October 2021.⁴
5. Only the SPO witness statement and the documents the witness brought to interview (items 1 and 17) are “new” in the sense of having been obtained within the last year. Yet, for reasons unstated, despite having been contacted by the witness over the summer,⁵ the SPO did not interview her until 19 October 2021. The SPO then elected to include her in their provisional witness list filed three days later on 22 October 2021; and again, on its witness list of 17 December 2021, leaving no doubt as to the importance of her evidence to its case. Despite this, the transcripts of her interview were not even procured in

² F00708, para 1a. The SPO states: “the prior statements and associated exhibits relating to W04868 and W04870, as identified in Annexes 1 and 2 as not previously disclosed, be added to the SPO’s exhibit list”. Items 8, 9 and 11 were previously disclosed by the SPO, but were not added to the Exhibit List. As now the SPO seeks to add not previously disclosed documents to its Exhibit List, the Defence understands that Items 8, 9 and 11 are not included in such request.

³ F00708, para. 2.

⁴ It is noted that the SPO references an additional prior statement that was translated on 14 February 2021. Given the context, it appears that the SPO may have meant 14 February 2022. Regardless, neither date results in the SPO having met its disclosure obligations and no justification is provided.

⁵ 103774-TR-ET, Part 4, pp. 2-3.

English and Albanian until 31 January and 8 February 2022 respectively. Once again, no justification for this delay is provided.

6. In short, the witness' "new" SPO statement and materials were available since last summer but were not disclosed to the Defence until very recently, and no reasonable justification has been offered for the delay. All other materials have been available since the SPO began functioning. The request for the additional documents in respect of W04870 should therefore be denied.

ii. Protective Measures

7. As to protective measures, the Defence queries how effective such measures can be, given that the witness's identity is already known by virtue of her involvement with the *Latif Gashi* case.⁶ To the extent that protective measures are not effective, all they can do is serve to obstruct general public from following the proceedings. It is also not clear from the passages cited by the SPO in paragraph [REDACTED]⁷ that the witness has actually requested protective measures be applied to her testimony in this case. Given the amount of time that has transpired since her involvement in the *Latif Gashi* case, and that she has presumably lived abroad for some time, it is not unreasonable to suppose that the circumstances may have changed in this regard.
8. On this basis, Defence submits that this request for protective measures does not appear to be justified at this time.

ii. W04868

i. Additional Documents

9. As was the case with the previous witness, the documents sought to be added in association with W04868's testimony are not new. As was also the case with

⁶ F00708, para. 14.

⁷ F00708, fns [REDACTED]-[REDACTED], citing cumulatively 103774-TR-ET, Part 2, pp. 48-69.

the previous witness, W04868 was included in both the provisional witness list of 22 October 2021 and the witness list that accompanied the Pre-Trial Brief on 17 December 2021. Despite this, and even though the English version of the transcript was available on 3 November 2021, the SPO has only disclosed his interview and made the attendant requests now.

10. The Defence submits that the SPO has not made any genuine attempt to demonstrate its due diligence in obtaining W04868's evidence. While insinuating that efforts to obtain [REDACTED] KFOR testimony have been ongoing since 2014, the SPO fails to provide any particulars regarding the dates, number or frequency of such requests; of any responses obtained; or of other means pursued. No explanation has been provided as to passing of three months from obtaining consent in July 2021 to conducting the interview in October 2021. Moreover, no explanation is provided as to how four months were allowed to elapse between obtaining the statement in English and disclosing it to the Defence.⁸
11. Finally, the Defence is unsure as to what the SPO means to imply with its submission that two of the documents on the list are open-source materials.⁹ Suffice it to say that in a case of such extraordinary size, the fact of their being publicly available cannot possibly be regarded as sufficient notice to the Defence that the SPO intends to rely on these documents at trial.

⁸ F00708, para. 10 indicating that the English transcript was finalized on 3 November 2021; and the Albanian transcript on 10 January 2022. Insofar as the 'interest of judicial economy' are invoked to justify late disclosure, the Defence submits that any such benefit that accrued in this regard was negligible at best, and far outweighed by the rights of the Accused to know the case against him and prepare for trial.

⁹ F00708, fn [REDACTED].

ii. *Rule 107 Documents*

12. As to W04868's associated documents to which Rule 107 applies, the Defence makes the following brief submissions.
13. First, the Defence requests disclosure from the SPO of ERN 012779-012780, said to contain information similar to that in 088038-088045 and welcomes the SPO's efforts to have the relevant redactions lifted.
14. Second, with respect to SPOE00215203-SPOE215209 (and its lesser redacted version SPOE00217146-SPOE00217152) the Defence requests that the SPO seeks to have all redactions lifted, notwithstanding that it is unaware of the content of the still-redacted parts, so that these documents may be better understood.

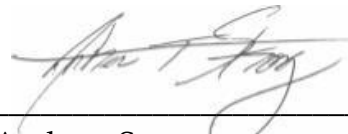
III. CONCLUSION

15. The Defence respectfully requests that the Pre-Trial Judge reject the SPO's requests to add additional documents to its Exhibit List and for protective measures; and orders the SPO to continue to seek Rule 107 clearance in respect of the documents referenced above.

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