



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2023-10
Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 19 April 2024

Language: English

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Prosecution detailed notice of disclosure process

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to the Decision,¹ the Specialist Prosecutor's Office ('SPO') hereby submits its detailed notice of the disclosure process related to KSC-BC-2023-10 ('Case 10').

II. SUBMISSIONS

2. During the pre-trial phase of the case, the disclosure of evidence between the Parties and communication to the Pre-Trial Judge was governed in Case 10 by the Case 10 Framework Decision,² and in KSC-BC-2023-11 ('Case 11') by the Case 11 Framework Decision³ (collectively the 'Framework Decisions'). In the Framework Decisions, the Pre-Trial Judge set out the principles governing disclosure of evidence between the Parties, set out the procedure for disclosure of evidence, established a calendar for disclosure of evidence by the SPO, and adopted the redaction regime applicable to Case 10 and Case 11.⁴ The SPO's pre-trial disclosure obligations were set to be completed by 16 February 2024.⁵ By way of the Decision, this was extended to 19 April 2024,⁶ subject to any items requiring judicial authorisation,⁷ in respect to a small volume of material arising from (then) pending investigative steps.

3. In addition to a calendar for disclosure, the Pre-Trial Judge regulated restrictions to disclosure.⁸ In this respect, the Pre-Trial Judge established general

¹ Decision Setting out the Calendar for the Remaining Procedural Steps of the Pre-Trial Phase, KSC-BC-2023-10/F00233, 27 March 2024 ('Decision'), paras 25, 30(g).

² Public Redacted Version of the Framework Decision on Disclosure of Evidence and Related matters, KSC-BC-2023-10/F00076/RED, 24 October 2023 ('Case 10 Framework Decision').

³ Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2023-11/F00023, 19 December 2023 ('Case 11 Framework Decision').

⁴ Case 10 Framework Decision, KSC-BC-2023-10/F00076/RED, paras 39-48, 82-91, 92-109; Case 11 Framework Decision, KSC-BC-2023-11/F00023, paras 39-48, 49-77, 86-87, 90-107.

⁵ Case 10 Framework Decision, KSC-BC-2023-10/F00076/RED, para.122(b), (d)-(g); Case 11 Framework Decision, KSC-BC-2023-11/F00023, para.111(b)-(c), (f)-(j).

⁶ Decision, KSC-BC-2023-10/F00233, para.30(g).

⁷ At the time of filing of this Notice there are two pending requests for Rule 102(1)(b) disclosure. *See* Prosecution request for Rule 102(1)(b) disclosure and to amend exhibit list, KSC-BC-2023-10/F00242, 5 April 2024, Confidential; Prosecution request for Rule 102(1)(b) disclosure and to amend exhibit list, KSC-BC-2023-10/F00254, 18 April 2024, Confidential.

⁸ Case 10 Framework Decision, KSC-BC-2023-10/F00076/RED, paras 92-109; Case 11 Framework Decision, KSC-BC-2023-11/F00023, paras 90-107.

principles underpinning restrictions to disclosure,⁹ the legal test for withholding certain information from the receiving party,¹⁰ and a regime governing the application of standard and non-standard redactions to disclosable materials.¹¹ On this basis, the SPO submitted a total of three (3) requests for protective measures,¹² which were ruled on with three (3) decisions by the Pre-Trial Judge.¹³ The Pre-Trial Judge granted protective measures for two witnesses, which are listed in the SPO List of Witnesses filed pursuant to Rule 95(4)(b) of the Rules.¹⁴ In addition, the SPO submitted a materiality challenge to an item disclosable under Rule 102(3),¹⁵ which was granted in part,¹⁶ and in accordance with which the SPO provided the Defence with a summary of the item in question on 18 April 2024.

4. On 8 February 2024, the Pre-Trial Judge granted joinder of the confirmed indictments in Case 10 and Case 11.¹⁷ Prior to the joinder, fifteen (15) disclosure packages were disclosed in Case 10, and seven (7) packages were disclosed in Case 11.

⁹ Case 10 Framework Decision, KSC-BC-2023-10/F00076/RED, paras 92-94; Case 11 Framework Decision, KSC-BC-2023-11/F00023, paras 90-92.

¹⁰ Case 10 Framework Decision, KSC-BC-2023-10/F00076/RED, para.95; Case 11 Framework Decision, KSC-BC-2023-11/F00023, para.93.

¹¹ Case 10 Framework Decision, KSC-BC-2023-10/F00076/RED, paras 96-105; Case 11 Framework Decision, KSC-BC-2023-11/F00023, paras 94-103.

¹² Prosecution notice concerning protective measures and related requests, KSC-BC-2023-10/F00031, 12 October 2023, Strictly Confidential and *Ex Parte*; Prosecution request for protective measures for Rule 102(1)(b) material, KSC-BC-2023-10/F00108, 17 November 2023, Strictly Confidential and *Ex Parte*; Prosecution request for protective measures and related requests, KSC-BC-2023-11/F00009, 11 December 2023, Strictly Confidential and *Ex Parte*.

¹³ Decision on Prosecution Notice Concerning Protective Measures and Related Requests, KSC-BC-2023-10/F00087, 2 November 2023, Strictly Confidential and *Ex Parte*; Decision on Prosecution Request for Protective Measures for Rule 102(1)(b) Material, KSC-BC-2023-10/F00131, 13 December 2023, Confidential; Decision on Prosecution Request for Protective Measures and Related Requests, KSC-BC-2023-11/F00029, 11 January 2024, Strictly Confidential and *Ex Parte*.

¹⁴ Annex 2 to Submission of Prosecution Pre-Trial Brief, witness and exhibit lists, and Rule 109(c) Chart, KSC-BC-2023-10/F00177/A02, 16 February 2024, Confidential, pp.2-5.

¹⁵ Prosecution challenge to disclosure of items in Rule 102(3) Notice and related request, KSC-BC-2023-10/F00186, 23 February 2024, Strictly Confidential and *Ex Parte*.

¹⁶ Decision on Prosecution Challenge to Disclosure of Items in Rule 102(3) Notice and Related Request, KSC-BC-2023-10/F00248, 11 April 2024, Strictly Confidential and *Ex Parte*, paras 49, 52(b) and (d-e).

¹⁷ Decision on Request for Joinder and Amendment of the Indictment, KSC-BC-2023-10/F00161, 8 February 2024, Confidential; Decision on Request for Joinder and Amendment of the Indictment, KSC-BC-2023-11/F00041, 8 February 2024, Confidential.

Since the joinder, another fourteen (14) packages were disclosed. On 19 April 2024, the SPO disclosed to Haxhi Shala the latest versions of all items previously disclosed to the other two Accused in Case 10 prior to the joinder of Case 10 and Case 11.¹⁸ In accordance with the calendar established by the Pre-Trial Judge, and as further set forth below, the SPO released a total of 34 disclosure packages¹⁹ to the Defence,²⁰ and communicated the same to the Pre-Trial Judge, through Legal Workflow.

5. The SPO filed a supplemental Rule 102(3) notice on 19 April 2024, and will continue to review any newly received materials for relevance and/or exculpatory content, as applicable.²¹

Case 10 Disclosure: Pre-Joinder

| Type of Material | Disclosure Packages and number of items | Date |
|--|---|--|
| Rule 86(3) material (material supporting the indictment) | Disclosure Package 1 (17 items) to PTJ | 12-09-2023 |
| Rule 102(1)(a) disclosure material (material supporting the indictment) together with Detailed Outline pursuant to Rule 86(3)(b) of the Rules | Disclosure Package 2 (38 items) to IB, SJ Disclosure Package 3 (6 items) to IB, SJ Disclosure Package 9 (24 items) to IB, SJ Disclosure Package 11 (2 items) to IB, SJ | 31-10-2023 03-11-2023 19-12-2023 20-12-2023 |

¹⁸ All of these items had previously been disclosed to Shala in the context of Case 11, and the disclosure of these packages on 19 April 2024 just ensured that he also had access to all relevant materials within the framework of the Case 10 LWF record.

¹⁹ All packages are accessible via Legal Workflow.

²⁰ Except for disclosure package 1 in Case 10 pre-joinder (Rule 86 supporting material), and disclosure package 1 in Case 11 pre-joinder (Rule 86 supporting material), which went to the Pre-Trial Judge only.

²¹ The SPO is reviewing materials in response to a Rule 102(3) request from one of the Defence teams, and a further 102(3) notice may be filed in due course. *See* Transcript (Status Conference), 22 March 2024, p.242, lines 4-7.

| | | |
|---|--|------------|
| Rule 102(1)(b) material (material to be used at trial) | Disclosure Package 5 (5 items) to IB, SJ | 06-12-2023 |
| | Disclosure Package 6 (101 items) to IB, SJ | 15-12-2023 |
| | Disclosure Package 8 (14 items) to IB, SJ | 19-12-2023 |
| | Disclosure Package 10 (1 item) to IB, SJ | 19-12-2023 |
| | Disclosure Package 15 (1 item) to IB, SJ | 01-02-2024 |
| Rule 102(3) material | Disclosure Package 7 (4 items) to IB, SJ | 18-12-2023 |
| | Disclosure Package 12 (1 item) to IB, SJ | 21-12-2023 |
| Rule 103 material (exculpatory material) | Disclosure Package 4 (14 items) to IB, SJ | 16-11-2023 |
| | Disclosure Package 13 (2 items) to IB, SJ | 26-01-2024 |
| | Disclosure Package 14 (2 items) to IB, SJ | 01-02-2024 |

Case 11 Disclosure: Pre-Joinder

| Type of Material | Disclosure Packages and number of items | Date |
|--|---|------------|
| Rule 86(3) material (material supporting the indictment) | Package 1 (30 items) to PTJ | 21-11-2023 |
| Rule 102(1)(a) disclosure material (material supporting the indictment) together with Detailed Outline pursuant to Rule 86(3)(b) of the Rules | Package 2 (27 items) to HS | 21-12-2023 |
| | Package 4 (20 items) to HS | 10-01-2024 |
| | Package 7 (2 items) to HS | 01-02-2024 |
| Rule 102(1)(b) material (material to be used at trial) | Package 5 (119 items) to HS | 19-01-2024 |
| Rule 102(3) material | N/A | N/A |

| | | |
|------------------------|----------------------------|------------|
| Rule 103 material | Package 3 (15 items) to HS | 21-12-2023 |
| (exculpatory material) | Package 6 (1 item) to HS | 26-01-2024 |

Case 10 Disclosure: Post-Joinder

| Type of Material | Disclosure Packages and number of items | Date |
|--|--|------------|
| Rule 102(1)(a) disclosure material | Disclosure Package 19 (2 items) to IB, SJ, and HS | 21-03-2024 |
| (material supporting the indictment) together with Detailed Outline pursuant to Rule 86(3)(b) of the Rules | Disclosure Package 23 (36 items) to HS | 19-04-2024 |
| | Disclosure Package 28 (9 items) to IB, SJ, and HS | 19-04-2024 |
| Rule 102(1)(b) material | Disclosure Package 20 (2 items) to IB, SJ, and HS | 21-03-2024 |
| (material to be used at trial) | Disclosure Package 24 (120 items) to HS | 19-04-2024 |
| | Disclosure Package 26 (2 items) to IB, SJ, and HS | 19-04-2024 |
| | Disclosure Package 29 (10 items) to IB, SJ, and HS | 19-04-2024 |
| Rule 102(3) material | Disclosure Package 16 (40 items) to HS | 16-02-2024 |
| | Disclosure Package 17 (44 items) to SJ | 16-02-2024 |
| | Disclosure Package 18 (44 items) to IB | 16-02-2024 |
| | Disclosure Package 21 (1 item) to IB, SJ, and HS | 21-03-2024 |
| | Disclosure Package 22 (1 item) to IB, SJ, and HS | 18-04-2024 |
| Rule 103 material | Disclosure Package 25 (13 items) to HS | 19-04-2024 |
| (exculpatory material) | Disclosure Package 27 (11 items) to IB, SJ, and HS | 19-04-2024 |

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Kimberly P. West

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At The Hague, the Netherlands.