



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**In:** KSC-BC-2020-06

**The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi**

**Before:** Trial Panel II

Judge Charles L. Smith III, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

**Registrar:** Fidelma Donlon

**Date:** 18 June 2024

**Language:** English

**Classification:** Public

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**Decision on Joint Defence Request for Amendment of the  
Order on the Conduct of Proceedings**

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**TRIAL PANEL II** (“Panel”), pursuant to Articles 21 and 40(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 116(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”) hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 25 January 2023, the Panel adopted guidelines to govern the presentation of evidence and the conduct of proceedings (“Order”) and ordered the Parties and participants to comply with these guidelines.<sup>1</sup>
2. On 9 April 2024, the Defences for Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (collectively “Accused” and “Defence”) jointly requested an amendment to the Order (“Request”).<sup>2</sup>
3. On 22 April 2024, the SPO responded to the Request (“Response”).<sup>3</sup>
4. On 29 April 2024, the Defence replied to the Response (“Reply”).<sup>4</sup>
5. On 1 and 7 May 2024, the Defence raised similar objections in court to those in the Request.<sup>5</sup>

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<sup>1</sup> F01226, Panel, *Order on the Conduct of Proceedings* (“Decision on the Order on the Conduct of Proceedings”), 25 January 2023, with one Annex.

<sup>2</sup> F02230, Specialist Counsel, *Joint Defence Request for Relief in the Form of Amendment to the Order on the Conduct of Proceedings*, 9 April 2024.

<sup>3</sup> F02258, Specialist Prosecutor, *Prosecution Response to Joint Defence Request for Amendments to the Conduct of Proceedings Order*, 22 April 2024.

<sup>4</sup> F02273, Specialist Counsel, *Joint Defence Reply to Prosecution Response to Joint Defence Request for Amendments to the Conduct of Proceedings Order*, 29 April 2024.

<sup>5</sup> Transcript of Hearing, 1 May 2024, p. 15279, lines 4-7; Transcript of Hearing, 7 May 2024, p. 15496, line to p. 15497, line 3.

## II. SUBMISSIONS

6. The Defence requests three amendments to the Order in relation to witness preparation, namely the inclusion of: (i) a prohibition on the intentional gathering of new evidence during witness preparation; (ii) an express requirement that the SPO audio and video record all witness preparation sessions and, in particular, those with alleged suspects; and (iii) a requirement that the SPO disclose the notes from the witness preparation session (“preparation session” and “preparation notes” respectively) at least 48 hours before a witness’s scheduled testimony.<sup>6</sup> The Defence submits that these amendments are necessary because the SPO has developed a practice by which the SPO uses the preparation sessions to collect new evidence and continue its investigation.<sup>7</sup>

7. The SPO responds that the Request should be rejected as it seeks reconsideration of the Order without addressing the requirements of Rule 79.<sup>8</sup> The SPO further contends that the Request should be rejected as the three proposed amendments are ill-founded since: (i) they are based on a specious portrayal of preparation sessions to date; (ii) the SPO adheres to the Order; (iii) audio and video recordings are unnecessary; (iv) a new 48-hour disclosure rule is neither necessary, nor practicable; and (v) the Defence fails to demonstrate any concrete prejudice.<sup>9</sup>

8. The Defence replies that Rule 79 is not the only avenue available for the relief sought and that it submitted the Request seeking relief on the basis of, *inter alia*, Article 40(6)(e)-(g).<sup>10</sup> The Defence adds that the SPO fails to distinguish between “decisions” and “orders”, of which only the former expressly fall within Rule 79,<sup>11</sup>

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<sup>6</sup> Request, paras 1, 13, 19, 28, 33, 40, 42.

<sup>7</sup> Request, paras 1, 12, 14-19, 24-27, 35.

<sup>8</sup> Response, paras 1, 3-4, 22.

<sup>9</sup> Response, paras 2, 22.

<sup>10</sup> Reply, paras 2-4.

<sup>11</sup> Reply, para. 5.

and that it is impossible for the Defence to seek reconsideration of the Order as the reasoning is not available to it.<sup>12</sup> The Defence argues that, if the Panel considers that reconsideration is the more appropriate avenue, the requirements for reconsideration are met as the relief is necessary to avoid injustice and as the Defence has demonstrated the existence of exceptional circumstances.<sup>13</sup>

### III. APPLICABLE LAW

9. Pursuant to Article 40(2), the Panel shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

10. Pursuant to Rule 116(1), the Panel shall, on an ongoing basis, take all measures and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the trial proceedings.

11. Paragraphs 85 to 99 of the Order regulate witness preparation for the purpose of these proceedings. The paragraphs most relevant to the present decision are discussed in detail below.

### IV. DISCUSSION

#### A. REQUEST FOR RECONSIDERATION

12. In respect of the SPO's argument that the Defence has failed to establish the requirements for a request for reconsideration,<sup>14</sup> the Panel notes as follows.

13. First, the Panel clarifies that Rule 79 applies to any decision rendered by the Panel, whether it is called an "order" or a "decision". There is no reason to read

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<sup>12</sup> Reply, para. 7.

<sup>13</sup> Reply, para. 9.

<sup>14</sup> Response, paras 1, 3-4.

Rule 79 restrictively to apply only to decisions of the Panel that bear the title “decision”.

14. Second, the Panel is not convinced that the Request constitutes, in substance, a request for reconsideration. Specifically, pursuant to Rule 116(1), the Panel is required to on “an ongoing basis, take all measures and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the trial proceedings”. Accordingly, when adopting the Order, the Panel stated that the Order “remains subject to future variation by the Trial Panel, where necessary, as the trial progresses”.<sup>15</sup> Therefore, the Panel considers that it can vary, and already has varied,<sup>16</sup> the Order when necessary without applying the standard for reconsideration under Rule 79. The fact that the same, or similar, arguments have already been made by the Defence for Mr Krasniqi (“Krasniqi Defence”) and considered by the Panel does not affect this view.<sup>17</sup> The Krasniqi Defence’s submissions were made before the commencement of trial whereas the present reliefs are being sought in light of issues and challenges that have arisen in the course of the trial proceedings.<sup>18</sup> The Panel therefore considers it unjustified to subject the Request to the threshold set out in Rule 79.

15. In accordance with Rule 116(1) and the Panel’s indication that the Order may be varied, where necessary, as the trial progresses, the Panel will now assess whether the requested amendments are necessary to facilitate the fair and expeditious conduct of the proceedings.

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<sup>15</sup> Decision on the Order on the Conduct of Proceedings, para. 10.

<sup>16</sup> See for example, F01960, Panel, *Decision on Specialist Prosecutor’s Request Concerning Post-Testimony Witness Contact*, 27 November 2023, paras 15, 26; Transcript of Hearing, 13 April 2023, p. 2813, lines 17-21.

<sup>17</sup> See F01207, Specialist Counsel, *Further Krasniqi Defence Submissions in Addition to Joint Defence Written Observations on the Draft Order on the Conduct of Proceedings*, 13 January 2023, paras 17-23; F01246, Specialist Counsel, *Krasniqi Defence Request for Certification to Appeal the “Order on the Conduct of Proceedings”*, 1 February 2023, paras 22, 25-27.

<sup>18</sup> Request, paras 1, 12, 14-15, 24, 26-27, 34-36, fns 11-13, 22-23, 27; Reply, paras 10-11, 15-16, 23.

## B. REQUEST FOR AMENDMENTS TO THE ORDER

16. The Defence seeks three amendments to the Order.

### 1. Amendment to Prohibit the Gathering of Fresh Evidence

17. The Defence requests that the Panel add a paragraph to the Order to provide that: "Witness preparation should not be conducted for the purpose of seeking new evidence or continuing the calling party's investigations."<sup>19</sup>

18. The Panel clarified in paragraph 86 of the Order the purpose of witness preparation:

86. The purpose of witness preparation is:

i. To assist the witness who will be giving evidence during the proceedings:

(a) to help ensure that the witness gives relevant, accurate and structured testimony; and

(b) to help ensure the well-being of the witness.

ii. For the calling Party to assess and clarify the witness's evidence in order to facilitate the focused, efficient and effective questioning of the witness during the proceedings.

19. Therefore, it is clear from the Order that the purpose of witness preparation is, *inter alia*, to ensure the well-being of the witness and to facilitate the focused, efficient and effective questioning of the witness during the proceedings. However, the Order does not prohibit the calling party from obtaining new information from a witness, nor does it prohibit the calling party from showing documents to the witness with a view to eliciting further information from the witness in respect of those documents.

20. The Panel also did not limit witness preparation to a process where the calling party only provides the witness with an opportunity to review his or her prior statements, and to explain any changes to them, as argued by the Defence.<sup>20</sup>

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<sup>19</sup> Request, paras 13(a), 14-23, in particular, para. 19; Reply, paras 10-14.

<sup>20</sup> Request, para. 17 *referring to* the Order on the Conduct of Proceedings, para. 97.

21. Specifically, paragraph 96 of the Order requires, *inter alia*, the calling party to disclose “any new information obtained from the witness”, thereby making it clear that the Panel foresaw the possibility that the preparation session could result in new information being elicited from a witness. As a safeguard, however, the calling party must clearly identify new information received during a witness preparation session so as: (i) to enable effective preparation by the opposing party; and (ii) to ensure that such information is not admitted in writing under Rule 154, but may be elicited orally from the witness during direct examination.

22. The Defence relies in support of its submissions on witness preparation protocols at the International Criminal Court (“ICC”).<sup>21</sup> As a preliminary matter, the Panel notes that this jurisdiction is not bound by the practice of the ICC, or any other international(ised) tribunals, though it may find such practice relevant to adopting its own practices. The Panel also notes that the ICC’s practice has been varied on this issue, but that some ICC trial chambers have allowed witness preparation and have adopted witness preparation protocols.<sup>22</sup> Some of those protocols have provided that “witness preparation should not be conducted for the purpose of seeking new evidence or continuing the calling party’s investigations”,<sup>23</sup> but still expressly permit the calling party to “show the witness potential exhibits and ask him or her to comment on them for the purpose of determining the utility of using the exhibits in court,”<sup>24</sup> and, in some protocols, to

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<sup>21</sup> Request, paras 18-19, 21-22.

<sup>22</sup> Some trial chambers have decided to retain witness preparation, while others have decided not to allow witness preparation; *See, for example*, ICC, *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, ICC-01/12-01/18-666, Trial Chamber, [Decision on Witness Preparation and Familiarisation](#) (“Al Hassan Decision”), 17 March 2020, para. 10 (with further references), with one [Annex](#); *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06-652, Trial Chamber, [Decision on Witness Preparation](#) (“Ntaganda Decision”), 16 June 2015, para. 15 (with further references), with one [Annex](#).

<sup>23</sup> *See for example* [Annex to Al Hassan Decision](#), para. 2; [Al Hassan Decision](#), para. 25; [Annex to Ntaganda Decision](#), para. 2; ICC, *Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*, ICC-01/09-02/11-588, Trial Chamber, [Decision on Witness Preparation](#) (“Kenyatta Decision”), 2 January 2013, para. 46, with one [Annex](#), para. 2.

<sup>24</sup> *See for example* [Annex to Ntaganda Decision](#), para. 24; [Kenyatta Decision](#), para. 37; [Annex to Kenyatta Decision](#), para. 23.

do so “regardless of whether or not the witness has previously seen them”.<sup>25</sup> One ICC Chamber noted that such a possibility is intended to assist in the efficient conduct of proceedings, to ensure that the witness is in a position to give the most complete version of his or her evidence, and to give the witness adequate time to consider what relevant information, if any, he or she can provide on the matter.<sup>26</sup>

23. The Panel reiterates that preparation sessions are intended to ensure the focused, efficient and effective presentation of evidence.<sup>27</sup> They also serve to ensure that the calling party can explore with the witness issues and documents which might be relevant to the witness’s testimony.<sup>28</sup> The calling party enjoys in that regard a degree of discretion and the Panel will not intervene unless the calling party abuses that discretion or where the new information elicited from the witness requires the Panel to adopt any relief to ensure that no prejudice is caused to the opposing party. For the same reasons, the Panel is not convinced by the Defence’s argument that certain preparation sessions have been used as fresh evidence gathering exercises.<sup>29</sup>

24. The Panel also notes that adequate safeguards are foreseen in the Rules and the Order. In particular, the calling party is required to notify the opposing party of the exhibits it intends to use at trial by filing a list of proposed exhibits in accordance with Rule 95(4)(c) and Rule 119(2)(b). The Order makes additional provision that the presenting party put the opposing party on notice of the documents that the presenting party intends to use with a particular witness. Under paragraph 82 of the Order, the presenting party must file in advance a list of the exhibits it intends to use during the direct examination of its witnesses, and,

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<sup>25</sup> See [Annex to Al Hassan Decision](#), para. 24.

<sup>26</sup> [Kenyatta Decision](#), para. 37; See also International Criminal Tribunal for the former Yugoslavia (“ICTY”), *Prosecutor v. Fatmir Limaj et al.*, IT-03-66-T, Trial Chamber, [Decision on Defence Motion on Prosecution Practice of “Proofing” Witnesses](#) (“Limaj Decision”), 10 December 2004, p. 2.

<sup>27</sup> Order, para. 86(ii).

<sup>28</sup> See for example, [Limaj Decision](#), p. 2.

<sup>29</sup> Request, para. 15, fn 13.



“should the presenting party become aware of any additional material, which it wishes to use during the direct examination of that witness, the presenting party shall: (i) notify the other Parties and participants and the Trial Panel without delay; (ii) submit no later than 24 hours prior to the testimony of the witness a final list of the material to be used and upload any additional material to its presentation queue.” In addition, “[w]here new material is of a significant nature, an opposing party may seek an adjournment or other necessary relief to enable it to adequately review the material and effectively prepare for cross-examination.”<sup>30</sup>

25. The Panel therefore considers that the restriction sought by the Defence is both unnecessary and unjustified in the circumstances. Should a preparation session result in a large amount of new information being elicited, the Defence can, at that point, seek adequate relief from the Panel, such as a delay in cross-examination or a short adjournment.

26. For these reasons, the Panel rejects the Defence’s request to add the proposed paragraph to the Order.

## **2. Amendment to Require the Audio-Video Recording of Preparation Sessions**

27. The Defence requests that the Panel amend the Order to require the SPO to audio and video record all preparation sessions with all witnesses, and in particular with alleged suspects.<sup>31</sup>

28. The Panel notes the Defence’s concern that it has “no means of observing how this questioning is conducted or how any new information is elicited from witnesses, i.e. whether it was done in a leading manner and then subsequently recorded as if the witness provided the material without being led.”<sup>32</sup> The Panel

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<sup>30</sup> Order, para. 82; *See also* Order, para. 74(vi).

<sup>31</sup> Request, paras 13(b), 24-33, in particular, paras 28, 33 ; Reply, paras 15-21.

<sup>32</sup> Request, para. 25.

underlines that it is assumed that the calling party will produce a fair and accurate summary of the preparation session in the preparation note.<sup>33</sup> In addition, as concerns the use of leading questions, the Order provides that the questioning lawyer shall not, *inter alia*, lead the witness in an inappropriate way.<sup>34</sup> The Panel sees no reason, on the basis of the proceedings to date, to doubt the SPO's statement that it engages in "legitimate witness preparation".<sup>35</sup>

29. The Panel notes that whether audio and video recording of preparation sessions is necessary is subject to the discretion of the Panel concerned in light of all relevant circumstances.<sup>36</sup> The Panel is not persuaded that it is necessary, in the present case, to order the calling party to audio and video record witness preparation sessions. The calling party has an obligation, pursuant to paragraph 88 of the Order, to carry out witness preparation in good faith and in keeping with the applicable standards of professional conduct and ethics.<sup>37</sup>

30. In addition, the calling party is, under paragraphs 97 and 98 of the Order, subject to clear obligations and restrictions as to the matters that it must and must not discuss with the witness during the preparation session.

31. Furthermore, the calling party is required to maintain and disclose detailed records of the preparation session in accordance with paragraphs 95 and 96 of the Order.

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<sup>33</sup> See Order, para. 88.

<sup>34</sup> See Order, para. 98(i).

<sup>35</sup> Response, paras 6-11.

<sup>36</sup> For illustrations of decisions rejecting a request for audio and video recordings, see for example, [Limaj Decision](#); ICTY, *Prosecutor v. Ramush Haradinaj et al.*, IT-04-84-T, Trial Chamber, [Decision on Defence Request for Audio-Recording of Prosecution Witness Proofing Sessions](#), 23 May 2007, para. 22; *Prosecutor v. Ramush Haradinaj et al*, IT-04-84bis-T, [Decision on Lahi Brahimaj's Urgent Motion Seeking Memorialisation of Further Contact Between Prosecution and Witness 3](#), 31 October 2011, para. 20. See contra, [Al Hassan Decision](#), paras, 43, 46; [Annex to Al Hassan Decision](#), para. 12; [Annex to Ntaganda Decision](#), para. 12; [Annex to Kenyatta Decision](#), para. 12.

<sup>37</sup> See also, [Limaj Decision](#), p. 3.

32. The Panel considers that these safeguards are adequate to protect the rights of the opposing parties, who remain at liberty to cross-examine the witness on the matters contained in the preparation notes, and on the conduct of the preparation session. The Panel does not consider that the Defence has demonstrated that audio and video recording of preparation sessions is necessary in this case to ensure the fairness of the proceedings.

33. The Panel will now address the Defence argument that the calling party is required to audio and video record preparation sessions of witnesses who are regarded as suspects by the SPO. The Panel notes the SPO's argument that the Defence does not have standing to make submissions on behalf of suspects.<sup>38</sup> While the Defence may not have standing to represent the interests of alleged suspects, the Defence is entitled to raise arguments relevant to the preservation of the rights of the Accused and to the fairness of proceedings. The Panel is satisfied that the Defence arguments on that point fall in this category.

34. The Defence relies on Rule 44 to argue that the SPO has violated the rights of suspects who have been the subject of preparatory sessions.<sup>39</sup> Rule 44 provides in the relevant part:

(1) During the questioning of a suspect by the Specialist Prosecutor, the procedure envisaged in Rule 43 shall apply. The questioning shall be video-recorded [...]

(2) A suspect may be questioned without the questioning being video-recorded pursuant to paragraph (1) where exceptional circumstances do not allow for such recording to take place. The Specialist Prosecutor shall record the reasons for not following the procedure in paragraph (1).

(3) Where, pursuant to paragraph (1) or (2), the questioning is not video-recorded, the Specialist Prosecutor shall prepare a written transcript of the questioning of the suspect, which shall be signed by him or her and by the suspect. The Specialist Prosecutor shall record any refusal by the suspect to read or sign the transcript and any reason he or she might give for it, and any other persons present shall be asked to read and sign the transcript.

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<sup>38</sup> Response, para. 15.

<sup>39</sup> Request, para. 31.

35. Rule 44 is located in Chapter 3 (“Investigations”), Section II of the Rules, which deals with the “Rights of Persons During Investigation”. Accordingly, this part of the Rules regulates investigations and provides for specific provisions and safeguards applicable to this phase of the process. The preparation sessions are conducted in the trial phase of proceedings, which is primarily regulated by Chapter 9 (“Trial Proceedings”) of the Rules. The Defence has provided no authority in support of its suggestion that Rule 44 should apply, by analogy, to the trial phase of proceedings. The Panel emphasises that a witness preparation session is not an interview during an investigation.<sup>40</sup> The Panel further notes that preparation notes are not signed by the witness and that any issue arising from a preparation session can be explored with the witness in cross-examination. Furthermore, as noted above, the decision whether to order audio and video recording of preparation sessions is a discretionary one, not one that derives from Rule 44. Accordingly, the Panel finds no merit in the Defence suggestion that Rule 44 applies by analogy to witness preparation sessions.

36. The Panel also recalls that it included in the Order certain protections for witnesses who are also suspects. In particular, the Panel ordered:

99. Where, as part of the investigation, a person was given a notification in accordance with Rule 43 and he or she is re-interviewed by the SPO prior to giving evidence, the SPO shall renew that notification where there remains a reasonable suspicion that the person committed or participated in the commission of a crime within the jurisdiction of the Specialist Chambers. Where an individual was interviewed during the investigation without being given such notification, but the SPO at the time of the preparation session has grounds to believe that the person committed or participated in the commission of a crime within the jurisdiction of the Specialist Chambers, the SPO shall provide a Rule 43 notification to the person.

37. Accordingly, during the witness preparation session, if the SPO has grounds to believe that the witness committed or participated in the commission of a crime within the jurisdiction of the Specialist Chambers, it must provide a Rule 43

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<sup>40</sup> ICC, *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Trial Chamber, ICC-01/12-01/18-734, [Decision on Defence Request for Reconsideration and, in the Alternative, Leave to Appeal the ‘Decision on Witness Preparation and Familiarisation’](#), 9 April 2020, paras 25-26.

notification to the witness. Rule 43, in turn, requires the SPO to inform the witness of the rights provided in Article 38(3) of the Law.

38. In addition, paragraph 97(v) of the Order requires the calling party to inform all witnesses that they may seek the advice of counsel if he or she is concerned that information could be self-incriminatory. As noted above, the calling party is required to maintain and disclose detailed records of the preparation session in accordance with paragraphs 95 and 96 of the Order.

39. The Panel considers that these provisions adequately protect the interests of witnesses who are suspects and guarantee the effective protection of the rights of the Accused.

40. For the same reasons, the Panel also rejects the Defence's suggestion that the SPO violated the rights of W04765, W04323 and W04746 by failing to record their witness preparation sessions.<sup>41</sup>

41. In light of the above, the Panel rejects the Defence's request to add a new paragraph to the Order requiring that witness preparation sessions be audio and video recorded.

### **3. Amendment to Vary the Timing of Disclosure of Preparation Notes**

42. The Defence requests that the Panel amend paragraph 96 of the Order to require "the calling Party to provide the non-calling Parties and participants and the Trial Panel with all of the information that is subject to the calling Party's disclosure obligations", at least 48 hours before testimony instead of at least 24 hours before testimony, as currently prescribed.<sup>42</sup>

43. The Panel recalls that the relevant part of paragraph 96 of the Order provides:

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<sup>41</sup> Request, para. 31.

<sup>42</sup> Request, paras 13(c), 34-40, in particular, para. 40; Reply, paras 1, 22-24.

96. At least 24 hours before testimony, the calling Party shall provide the non-calling Parties and participants and the Trial Panel with all of the information that is subject to the calling Party's disclosure obligations, including: (i) any clarifications, changes or corrections made by the witness to his or her previous statements and the reasons advanced by the witness, if any, to justify the change or correction; and (ii) any new information obtained from the witness [...].

44. In addition, pursuant to paragraph 94 of the Order, the calling party "shall endeavour to complete its preparation sessions *as early as possible* and, in any event, at least 24 hours before the witness's testimony is due to commence". Accordingly, it is clear from the Order that, while the preparation session should take place at least 24 hours before the witness's testimony is due to commence, the calling party is expected to complete it earlier, if possible, to ensure the timely disclosure of the resulting preparation notes.

45. The Panel recognises the concerns raised by the Defence that the SPO interprets 24 hours to include weekends and non-working hours,<sup>43</sup> and recognises that the disclosure of preparation notes on Friday evenings or during the weekend for a witness due to testify on a Monday morning could prejudice its ability to have adequate time to prepare its defence.

46. The Panel further observes that the SPO has indicated that it may be able to accommodate a request for provision of preparation notes in advance of the time limit set down in the Order for specific witnesses when the request is made sufficiently in advance of scheduled testimony.<sup>44</sup> The Panel urges both Parties to conduct *inter partes* discussions to identify any such witnesses.

47. The Panel is of the view that the SPO should take reasonable steps to ensure that preparation notes are disclosed as soon as possible following preparation sessions. The Panel also considers that, in respect of witnesses of greater evidential complexity, the SPO should ensure that preparation sessions are conducted

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<sup>43</sup> Request, paras 35-36.

<sup>44</sup> Response, para. 18.

sufficiently in advance of the commencement of testimony to ensure that the resulting preparation notes are disclosed in a manner consistent with the Accused's right to have adequate time to prepare their defence. For that purpose, the SPO is expected to organise preparation sessions of any such witness sufficiently in advance of their testimony to guarantee the timely disclosure of the resulting preparation notes.

48. Nonetheless, given that the SPO is willing to accommodate the concerns of the Defence in respect of such witnesses, the Panel sees no need, at this point, to formally amend the Order.

49. In light of the above, the Panel rejects the Defence's request to amend the deadline for disclosing preparation notes in paragraph 96 of the Order.

#### V. DISPOSITION

50. For these reasons, the Panel **REJECTS** the Request.



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**Judge Charles L. Smith, III**  
**Presiding Judge**

Dated this Tuesday, 18 June 2024

At The Hague, the Netherlands.