



In: KSC-BC-2020-06

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: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 3 February 2025

Language: English

Classification: Public

**Prosecution supplemental Rule 102(3) notice and related request
with confidential Annexes 1-2**

Specialist Prosecutor's Office

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1. Pursuant to the Order on the Conduct of Proceedings¹ and Rule 102(3) of the Rules,² the Specialist Prosecutor's Office ('SPO') hereby submits a supplemental Rule 102(3) notice ('February 2025 Notice').³ Further, following recent *inter partes* correspondence,⁴ the SPO requests the Panel's authorisation to continue disclosing Rule 102(3) items to all Defence teams once such items have been requested by at least one Defence team.

2. At the outset, the SPO notes that, while Rule 102(3) provides that requested items should be disclosed to the 'Defence', it does not explicitly address what this term means in the context of a multi-accused trial,⁵ and the Panel has the authority, under Article 40(2) of the Law,⁶ to issue any orders it considers necessary to facilitate fair and expeditious proceedings. Notably, the Panel has previously ordered the disclosure of Rule 102(3) items to all Defence teams, without an accompanying request, where considered necessary to safeguard the Accused's rights.⁷

¹ Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023, paras 21-22.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' are to the Rules.

³ See Annex 1. Annex 1 is confidential in accordance with Rule 82(4), to give effect to applicable confidentiality restrictions and protective measures, and for the protection and privacy of the individuals identified therein. The February 2025 Notice includes items falling under Rule 102(3) which have been recently identified or obtained. For the record, these include Item 78574, which was notified by the SPO through email and disclosed on 27 January 2025 to the VESELI, SELIMI, and KRASNIQI Defence in Disclosure Package 1570 in light of the upcoming testimony of W04290 (see Email from SPO to Defence Teams, on 27.01.2025 at 17:24 related to Disclosure Package 1570). The February 2025 Notice also includes Items 78571 and 78582, which were disclosed to the Defence in Package 1557, following a request by the VESELI Defence and pursuant to the Decision on Joint Defence Motion for Disclosure Pursuant to Rule 103, KSC-BC-2020-06/F01149, 9 December 2022, Confidential.

⁴ See Annex 2. Annex 2 is confidential as it contains confidential *inter partes* correspondence.

⁵ Likewise, Rule 2(1) defines the 'Defence' as the 'suspect/Accused and/or Specialist Counsel', but does not provide further clarity.

⁶ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

⁷ See e.g. Decision on the Specialist Prosecutor's Rule 107(2) Request, 14 April 2023, Strictly Confidential and Ex Parte, paras 5, 17-18, 23(c) (ordering the disclosure of Rule 102(3) documents to Defence teams who

3. In circumstances where at least one Defence team requests a given item notified under Rule 102(3), it has been the longstanding, previously unopposed practice of the SPO to disclose that item simultaneously to all four Defence teams, Victims' Counsel,⁸ and the Panel.⁹ This approach enhances the efficiency and fairness of the proceedings, promotes clarity, visibility, and greater ease of oversight regarding disclosure status, and reduces the consumption of time and resources for both the SPO and Defence that arises from staggered disclosure requests.¹⁰ The approach also avoids practical difficulties in the courtroom, including potential delay, when attempts are made to use Rule 102(3) items – whether by the SPO, Defence, Victims' Counsel, or Panel – which a Defence team did not previously request (but would obviously require in order to follow the proceedings and prepare).¹¹

4. While the THAÇI Defence indicated *inter partes* that it was, until 3 December 2024, previously 'content' with the Rule 102(3) disclosure practice in this case, it claims a 'material change in circumstances', namely, the SPO's use of a Rule 102(3) document during re-direct examination.¹² The THAÇI Defence objected to use of this document, including because it had been disclosed pursuant to Rule 102(3) without an accompanying Defence request.¹³ Taking into account these submissions, the Panel ruled that, in light of the reactive nature of redirect examination, a calling Party is allowed to

had not requested them 'to uphold the Accused's rights under the Law' and as a measure counterbalancing the non-disclosure of other documents).

⁸ See e.g., Transcript, 4 November 2022, p.1632; . See also Transcript, 15 February 2023, p.1949.

⁹ Concerning disclosure to the Panel, see Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-06/F00099, 23 November 2020, paras 49-50.

¹⁰ In this respect, if items are only disclosed to one Defence team, multiple disclosures may be required based on the timing of the respective disclosure requests.

¹¹ Transcript, 26 November 2024, p.22686; Transcript, 27 November 2024, pp.22785-22788. For example, in the last evidentiary block, 12 documents disclosed only under Rule 102(3) were part of Defence presentation queues.

¹² See Annex 2.

¹³ Transcript, 3 December 2024, pp.23265-23267.

use documents, including Rule 102(3) documents, which are not on its exhibit list, provided they have been disclosed to the Defence sufficiently in advance.¹⁴ The Defence's request for leave to appeal this decision – which raised arguments concerning the disclosure of a Rule 102(3) document without prior request¹⁵ – was denied.¹⁶

5. This background underlines that reverting to a piecemeal disclosure regime may negatively affect the fair and expeditious conduct of these proceedings. To illustrate this point, the VESELI, KRASNIQI, and SELIMI Defence teams recently requested disclosure of a duly noticed SPO contact note with upcoming witness W04290, while the THAÇI Defence pointedly declined to receive it.¹⁷ In effect, one Defence team is refusing relevant information deemed material by other Defence teams. In such circumstances, the THAÇI Defence cannot in good faith claim lack of notice or inability to prepare should one or more of the Parties, Victims' Counsel, or Panel ultimately seek to use the item in questioning.

6. For the foregoing reasons, selective and partial disclosure in a multi-accused case potentially infringes upon the rights of all Accused and risks undue delay and waste of time and resources. The Panel should therefore authorise continuation of the long-

¹⁴ Transcript, 4 December 2024, p.23295.

¹⁵ See e.g. Thaçi, Veseli and Krasniqi Defence Request for Certification to Appeal the First Oral Order of 4 December 2024, KSC-BC-2020-06/F02774, 11 December 2024, paras 2, 8-9, 15, 19.

¹⁶ Decision on Thaçi, Veseli and Krasniqi Defence Request for Certification to Appeal the First Oral Order of 4 December 2024, KSC-BC-2020-06/F02861, 24 January 2025 ('Certification Decision'). In dismissing the request, the Panel, *inter alia*, noted that, 'prior to the Impugned Decision, the Defence had already raised before the Panel objections as to the SPO's claimed erroneous disclosure of the Document under Rule 102(3) and circumvention of Rule 102(1)(b)'. See Certification Decision, KSC-BC-2020-06/F02861, para.17. See also para.25.

¹⁷ Disclosure 1570 (disclosed to VESELI, SELIMI, and KRASNIQI Defence teams only). Pending a decision on this request, the SPO will continue disclosing Rule 102(3) only to the requesting Defence teams, as it did with Disclosure 1570.

standing practice of simultaneous disclosure of requested Rule 102(3) items to all Defence teams.

Word Count: 1127



Kimberly P. West

Specialist Prosecutor

Monday, 3 February 2025

At The Hague, the Netherlands.