



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

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

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Language: English

Classification: Public

Prosecution reply relating to request F02895

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Luka Mišetić

Counsel for Kadri Veseli

Rodney Dixon

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

1. The Response¹ misrepresents the Request² and the Defence's refusal to accept Rule 102(3) disclosures requested by and made to other Parties and participants is ill-fitted to the unjustified reasons given in the Response and contradicts the underlying purposes of the Rule.

2. At its core, the Response seeks the Panel's confirmation that the Defence can refuse relevant information disclosed to other Parties and participants due to its disagreement with a prior decision.³ Even if this was an appropriate manner to challenge a decision – which it is not⁴ – and contrary to what is claimed, the Defence position is not a 'shield' against use of Rule 102(3) documents requested by no Defence teams.⁵ The question at issue does not relate in any way to documents which no Defence team has requested; it relates only to circumstances in which one or more teams have requested the document in question.⁶

3. The Request, which seeks authorisation to continue the long-standing practice of simultaneous disclosure of requested Rule 102(3) items to all Parties and participants,⁷ is by no means an attempt to introduce inculpatory evidence, circumvent the requirements of Rule 118(2) (which have been appropriately and

¹ Joint Defence Response to Prosecution supplemental Rule 102(3) notice and related request (F02895), KSC-BC-2020-06/F02934, 14 February 2025 ('Response').

² Prosecution supplemental Rule 102(3) notice and related request, KSC-BC-2020-06/F02895, 3 February 2025 ('Request').

³ Response, KSC-BC-2020-06/F02934, paras 7, 10-13, 16-18.

⁴ Notably, the Defence request for leave to appeal the relevant order was refused. *See* 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. *See also* Request, KSC-BC-2020-06/F02895, para.4.

⁵ Response, KSC-BC-2020-06/F02934, paras 12-13.

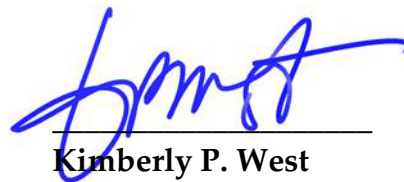
⁶ Moreover, the SPO has already agreed not to disclose Rule 102(3) documents unless requested by one or more Defence teams. *See* KSC-BC-2020-06/F02895/A02, p.4. In case of urgency and *inter partes* consultation is not successful, the SPO will, as appropriate, seek judicial authorisation in the event Rule 102(3) disclosures requested by no Defence team are required.

⁷ That the Rule 102(3) disclosure process was different during the pre-trial phase of the proceedings is immaterial to the Request, which concerns the practice during the trial phase.

consistently applied and respected), or transmit documents to be used in judicial questioning, as baselessly claimed by the Defence.⁸ The Response presents no justification or explanation as to how unequal and piecemeal disclosure serves the Accused's rights or facilitates fair and expeditious proceedings. Rather, as set out in the Request, it is equal and simultaneous disclosure that serves these interests.

4. While the Defence cannot claim prejudice arising from its refusal to accept disclosure of relevant information disclosed to other Parties and participants,⁹ such refusal inevitably leads to delay and waste of resources.¹⁰ Each individual Defence team cannot demand piecemeal disclosure as if the four Accused were being tried separately. In this multi-Accused case, relevant information disclosed to one Defence team should generally¹¹ be disclosed to all to ensure that there is no prejudice to any of the Accused or the rights and interests of other Parties and participants.¹²

Word Count: 756



Kimberly P. West

Specialist Prosecutor

Friday, 21 February 2025

At The Hague, the Netherlands.

⁸ *Contra* Response, KSC-BC-2020-06/F02934, paras 7, 10, 12, 15, 17-18.

⁹ Request, KSC-BC-2020-06/F02895, para.5.

¹⁰ *See also* Request, KSC-BC-2020-06/F02895, paras 3, 5-6. The additional processing required to maintain a system where every Rule 102(3) item disclosed to a Defence team might require as many as three further disclosures afterwards, resulting in unequal disclosure and access, is needlessly inefficient.

¹¹ The SPO acknowledges that, in certain circumstances, there may be justification for unequal disclosure, for example, to protect the privacy interests of one Accused. However, such circumstances are limited and generally do not apply to relevant and material information disclosed to the other Parties and participants.

¹² As held by the ICTY Appeals Chamber, 'it is not imperative that the protection of [an Accused's] rights be identical in a separate and in a joint trial' and the Panel is entitled to take into account a proper balance among all the co-accused in managing the proceedings, so that prejudice does not result to one or more co-accused. *See* ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-AR73.17, Decision on Slobodan Praljak's Appeal of the Trial Chamber's Refusal to Decision Upon Evidence Tendered Pursuant to Rule 92 bis, 1 July 2010, para.20 (and sources cited therein).