

In: KSC-BC-2023-12

Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi

Before: **Single Trial Judge**
Judge Christopher Gosnell

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hashim Thaçi

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Language: English

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**Thaçi Defence Request for Disclosure of information concerning SPO
Transcriptions with Confidential Annex 1**

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I. INTRODUCTION

1. The Defence of Mr Hashim Thaçi (“Defence”) requests the Single Trial Judge to order the disclosure of information concerning the process by which the SPO transcribed covertly recorded forensic audio materials in the present case. The SPO is obliged to disclose such materials pursuant to Rule 103 and Rule 102(3) of the Rules of Procedure and Evidence (“Rules”),¹ but has repeatedly refused to do so *inter partes*.
2. The SPO’s case depends fundamentally on the contents of covertly made recordings of meetings held in the KSC Detention Unit between Mr Thaçi and a number of visitors to him. The contents of those recordings are contested. The SPO has produced its own in-house transcripts of these recordings which purport to represent words spoken, non-verbal noises heard, the order in which such speech and noise occur, and the attribution of speech to individual speakers (“SPO Transcripts”). The Defence is entitled to the disclosure of information regarding the method by which these transcripts were produced. This is a question which fundamentally affects the reliability and credibility of the SPO Transcripts, which are the SPO’s central evidence in this case.
3. The requested information, which has been identified with specificity by the Defence, is potentially exculpatory and material for the preparation of the Defence.

¹ KSC-BD-03/Rev3/2020, Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, 2 June 2020 (“Rules”; or “Rule” for a provision therein).

II. PROCEDURAL HISTORY

4. On 20 December 2024, the Pre-Trial Judge issued the Framework Decision on Disclosure of Evidence and Related Matters (“Disclosure Framework Decision”).²
5. Pursuant to the timetable set out in the Disclosure Framework Decision,³ beginning from 17 February 2025, the SPO has filed seven notices under to Rule 102(3), with the most recent filed on 17 February 2026.⁴
6. On 17 July 2025, following *inter partes* exchanges regarding the contents of the SPO Transcripts,⁵ the Defence filed a Notice of Objection and Reservation of Rights, reiterating Mr Thaçi’s right to silence and that the SPO Transcripts are disputed.⁶
7. On 9 December 2025, the Defence emailed the SPO requesting information about the process by which the SPO Transcripts were produced, and about their creators (the “Requested Material”).⁷ On 19 December 2025, the SPO responded, refusing to provide such information. On 22 December 2025, the Defence responded and reiterated its request. The SPO did not reply.⁸

² KSC-BC-2023-12/F00100, PTJ, [Framework Decision on Disclosure of Evidence and Related Matters](#), 20 December 2024, Public (“Disclosure Framework Decision”).

³ [Disclosure Framework Decision](#), paras 56-57.

⁴ KSC-BC-2023-12/F00185, [Prosecution Rule 102\(3\) notice](#), 17 February 2025, Public; KSC-BC-2023-12/F00265, [Prosecution’s second Rule 102\(3\) notice](#), 17 April 2025, Public; KSC-BC-2023-12/F00341, [Prosecution’s third Rule 102\(3\) notice](#), 17 June 2025, Public; KSC-BC-2023-12/F00417, [Prosecution’s fourth Rule 102\(3\) notice](#), 18 August 2025, Public; KSC-BC-2023-12/F00515, [Prosecution’s fifth Rule 102\(3\) notice](#), 17 October 2025, Public; KSC-BC-2023-12/F00630, [Prosecution’s sixth Rule 102\(3\) notice](#), 17 December 2025, Public; KSC-BC-2023-12/F00744, [Prosecution’s seventh Rule 102\(3\) notice](#), 17 February 2026, Public.

⁵ These were detailed in KSC-BC-2023-12/F00688, Joint Defence Response to SPO motion for admission of material through the bar table, 23 January 2026 ([Public Redacted Version](#) 27 January 2026), para. 30.

⁶ KSC-BC-2023-12/F00376, [Thaçi Defence Notice of Objection and Reservation of Rights](#), 17 July 2025 (Reclassified as Public 21 October 2025).

⁷ The details of the Requested Material are set out in full in paragraph 17 below.

⁸ This exchanges was filed as Annex 6 to KSC-BC-2023-12/F00688, Joint Defence Response to SPO motion for admission of material through the bar table, 23 January 2026 ([Public Redacted Version](#) 27 January 2026), *i.e.* KSC-BC-2023-12/F00688/A06, Confidential.

8. In a filing made on 14 January 2026, the SPO provided limited information regarding the experience of two unidentified persons who created the SPO Transcripts, without addressing the outstanding disclosure request or providing any other part of the Requested Material.⁹
9. On 23 January 2026, the Defence responded to the SPO's first bar table motion ("First BTM Response") and in doing so set out in detail its reasons for challenging the reliability and credibility of the SPO Transcripts.¹⁰
10. On 12 February 2026, the Single Trial Judge issued his Decision on the SPO's first bar table motion ("First BTM Decision"), ruling that the SPO Transcripts were admissible but reserving the question of the weight to be afforded to them.¹¹
11. In decisions issued on 29 January 2026 and 18 February 2026, the Single Trial Judge ruled that disputed portions of the SPO Transcripts should be submitted to the Registry's Language Services Unit ("LSU") for "verification", and that (despite Defence objections¹²) this process should involve the LSU not only listening to the relevant audio, but referring to the SPO Transcripts.¹³
12. On 4 March 2026, the Defence reiterated its disclosure request to the SPO. The Defence noted that although the SPO Transcripts had been admitted, their weight remained in issue, and explained that the requested information is

⁹ KSC-BC-2023-12/F00666, Prosecution request for transcription/translation verification deadline, 14 January 2026, Confidential ([Public Redacted Version](#)), para. 8.

¹⁰ KSC-BC-2023-12/F00688, Joint Defence Response to SPO motion for admission of material through the bar table, 23 January 2026 ([Public Redacted Version](#) 27 January 2026) ("First BTM Response"), paras 23-106.

¹¹ KSC-BC-2023-12/F00737, Decision on the Specialist Prosecutor's Motion for Admission of Material through the Bar Table, 12 February 2026, Confidential ("First BTM Decision"), paras 32-38.

¹² KSC-BC-2023-12/F00722, [Joint Defence Request for partial reconsideration and clarification of "Decision on Prosecution Request for Transcription/Translation Verification Deadline"](#), 4 February 2026, Public.

¹³ KSC-BC-2023-12/F00708, [Decision on Prosecution Request for Transcription/Translation Verification Deadline](#), 29 January 2026, Public; KSC-BC-2023-12/F00745, [Decision on Joint Defence Request for Partial Reconsideration and Clarification of "Decision on Prosecution Request for Transcription/Translation Verification Deadline"](#), 18 February 2026, Public.

relevant to their reliability. On 10 March 2026, the SPO responded, refusing to disclose the Requested Material, claiming that they lack relevance.¹⁴

13. On 12 March 2026, the Single Trial Judge rejected a motion from the Defence of Bashkim Smakaj for the redaction of certain information contained in the SPO Transcripts, but in doing so reiterated that speaker attribution is a matter to be assessed by the Single Trial Judge in due course based on the evidence before him.¹⁵

III. APPLICABLE LAW

14. Article 21(6) of the KSC Law¹⁶ provides that:

All material and relevant evidence or facts in possession of the Specialist Prosecutor's Office which are for or against the accused shall be made available to the accused before the beginning of and during the proceedings, subject only to restrictions which are strictly necessary and when any necessary counter-balance protections are applied.

15. Rule 103 requires the proactive disclosure by the SPO of any potentially exculpatory material:

Subject to Rule 107 and Rule 108, the Specialist Prosecutor shall immediately disclose to the Defence any information as soon as it is in his or her custody, control or actual knowledge, which may reasonably suggest the innocence or mitigate the guilt of the Accused or affect the credibility or reliability of the Specialist Prosecutor's evidence.

16. Rule 102(3) additionally requires the disclosure "without delay" of any material which is "deemed by the Defence to be material to its preparation". To facilitate this process, the SPO is to provide detailed notices regarding material and evidence in its possession. The SPO "shall immediately seize the Panel" where it disputes the materiality of items requested by the Defence for disclosure.

¹⁴ Annex 1.

¹⁵ KSC-BC-2023-12/F00789, [Decision on Smakaj Request for Redaction of Admitted Material](#), 12 March 2026, Public, para. 9.

¹⁶ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ("KSC Law").

IV. SUBMISSIONS

A. THE REQUESTED MATERIAL AND ITS RELEVANCE

The Requested Material

17. The material requested by the Defence on 9 December 2025 (and repeatedly since then) is the following:

1. For each transcript, the dates for when the work on the Albanian transcription, English translation and revision/editing was begun and completed;
2. Identification of the individuals (by their job titles or codes if need be) who were involved in the transcription of the recordings in Albanian, and in creating the English language translations of the Albanian transcripts, including any subsequent revision/editing of those transcripts and/or translations;
3. Any written instructions which were given to these individuals regarding how they were to carry out these tasks;
4. In respect of each individual involved in transcription, translation and/or revision/editing:
 - (i) what role they played in the transcription, translation and review/editing, including which tasks they undertook and under whose supervision;
 - (ii) details of the expertise and experience which qualifies them for this work;
 - (iii) whether they are a staff or contractor for the SPO, and for how long that has been the case;
 - (iv) what their level of knowledge of Albanian language is, and whether they are familiar with any particular dialects;
 - (v) whether they had any prior involvement in the Case 06 proceedings, and their level of familiarity with Case 06 including the names and other personal details of SPO's witnesses and their actual or expected testimony;
 - (vi) any involvement that they have had in other SPO investigations relating to offences under Article 15(2) of the KSC Law, including regarding the current case, Case 7 and Case 10;
5. Regarding the transcription process,
 - (i) details of the process by which:
 - a) voices were attributed when creating and reviewing the transcripts?
 - b) non-verbal sounds were identified when creating and reviewing the transcripts?
 - (ii) how the individuals involved in each task resolved ambiguities in the audio recording or the subsequently created transcripts?

The relevance of the Requested Material

18. The SPO's stated reason for refusing to disclose this material is relevance. As relevance is a matter which affects the SPO's obligations under both Rule 103 and Rule 102(3), it is addressed here in general terms first, before submissions are made on each of these legal bases for the present request.
19. The Requested Material concerns various aspects of the transcription process, all of which are relevant to the reliability of the SPO Transcripts. In other words, all the Requested Material is relevant because it would enable the Defence (and the Single Trial Judge) to assess the extent to which the SPO Transcripts can be treated as likely to reflect the contents of the forensic audio. The aspects of the transcription process which are covered by the disclosure request are as follows:
 - a) The qualifications, experience and skills of the transcribers
20. Question 2 and Question 4 (ii) and (iv) concern the specific individuals who created the SPO Transcripts and their relevant skills and experience. These are matters relevant to the reliability of the SPO Transcripts because, as explained in the First BTM Response, the quality and reliability of a transcript is influenced in part by the transcriber's skill, including experience and aptitude.¹⁷
21. Indeed, the SPO appeared to accept that the skills and experience of its language staff are a relevant consideration when it included limited and selective information on this issue in its filing of 14 January 2026.¹⁸ However, the information included in that filing does not provide all information within the Requested Material. Most obviously, the information provided was generalised across the two unidentified language staff rather than specific to each of them. The information was also insufficiently specific. The SPO has not even stated what educational and professional qualifications these individuals have; what

¹⁷ First BTM Response, para. 71(i) and the sources cited in its footnote 93.

¹⁸ KSC-BC-2023-12/F00666, Prosecution request for transcription/translation verification deadline, 14 January 2026, Confidential ([Public Redacted Version](#)), para. 8.

roles/positions they occupy in the SPO. It is not known whether Albanian is the mother tongue of either of the transcribers and if not what level of tested proficiency they have in the language. It is not known whether the transcribers, or either of them, are Kosovars, and if not what is the precise extent of their experience with Kosovar dialects and current Kosovar usages. Regarding their experience in previous cases, the SPO has not indicated which cases they have worked on, or even in which legal systems. These further specifics are clearly relevant because they would enable the Defence to minimally assess the transcribers' qualifications.

b) Procedures used, including any guidelines, practices or instructions followed in the transcription work

22. Questions 3 and 5 concern any guidelines, procedures and internal practices used by the transcribers in the production of the SPO Transcripts. Question 4(i) also relates to this issue, in that it covers the question of how the transcribers shared work among themselves (for example, did they review each other's work, or operate separately) and the extent and nature of any supervision of their work.
23. The question of the *process* followed for transcription is relevant to assessing the reliability of the SPO Transcripts which resulted. As the SPO appears to agree, from its selective provision of information about the transcribers' experience, transcription is a complex and specialised area of work. Good practices and international standards exist for this work. As well as being documented in some stand-alone guidelines,¹⁹ they are evident from the extensive body of scientific material cited by the Defence in its First BTM Response.²⁰ That body of literature also demonstrate some areas of clear agreement regarding what constitutes *bad* practices. Whether and to what extent the SPO's processes followed recognised

¹⁹ For example: National Association of Judiciary Interpreters & Translators (NAJIT), [Position Paper: General Guidelines and Requirements for Transcription Translation in a Legal Setting for Users and Practitioners](#), 2019.

²⁰ First BTM Response, Annex 7.

good practices; and whether and to what extent they incorporated *bad* practices are clearly matters which will have a bearing on the reliability of the resulting SPO Transcripts. Likewise, if the SPO has *no* internal procedures, guidelines or practices for creating transcripts; and/or if the SPO transcribers did not document the processes by which they did their work, these would clearly be matters relevant to how much reliance could be placed on the resulting SPO Transcripts. This category of requested material is therefore relevant in respect of reliability.

24. This material is also relevant for a second reason: understanding the guidelines and instructions followed by SPO language staff in creating the SPO Transcripts would aid in reading and understanding the SPO Transcripts. For example, it would be useful to know what degree of confidence a transcriber was expected to have before inserting text rather than using the notation “[Indistinct]”; or to know which types of sounds transcribers were advised to note (something which may also explain why some of these sounds appear to have been edited or removed in successive versions of the SPO Transcripts).
25. By way of comparison, it is noteworthy that in respect of Witness 9, an SPO contractor who identified and extracted electronic evidence in this case, the SPO recognised the relevance of providing material regarding the methods by which he had undertaken his work. The SPO itself included such information in statements it tendered, and elicited further such evidence during Witness 9’s testimony.²¹ It also did not object on the grounds of relevance when the Defence questioned Witness 9 regarding the methods he had used and the instructions

²¹ For example: P00175, P00177, P00202; Transcript 4 March 2026, Confidential, p.677 line 20 to p. 678 line 8; p.680 line 4 to p.681 line 10.

he had been given.²² It is unclear why the SPO claims that equivalent information regarding the methods used for transcription would not be considered relevant.

c) The transcribers' knowledge of Case 06 and Case 12 allegations and other SPO influenced contextual material

26. Questions 4(iii), (v) and (vi) seek information concerning the extent to which the SPO's transcribers would have had been exposed to SPO confidential information, strategies, and opinions regarding Case 06 and Case 12.

27. As explained in the First BTM Response, a transcriber's exposure to contextual information, and the content, nature and reliability of that information, will have a very significant impact on the words which a transcriber perceives when listening to indistinct audio, with a resulting impact on the content of the transcription. Even beyond this general proposition, which is well-established through scientific research,²³ there are specific indicators in this case that the transcriber's exposure to contextual information or expectations influenced what they heard in the forensic audio recordings. As set out in the First BTM, the Defence attempted to obtain its own independently created transcripts of parts of the audio recordings. Both an independent language agency *and* LSU indicated that they were unable to decipher sections of the audio recordings and could produce *no transcript at all*.²⁴ And yet in respect of those same portions of audio, the SPO transcribers produced detailed SPO Transcripts. No explanation for this discrepancy in transcription output has been proffered by the SPO. Based on the scientific material referred to above, the most plausible explanation is that

²² For example Transcript 4 March 2026, Confidential, p. 684, line 11 to line 16; p. 686, line 21 to p.687 line 11; p. 689 line 3 to line 6; p. 692 line 1 to line 14; p.706 line 9 to line 13; p.710 line 2 to p.711 line 6; p. 711 line 15 to line 16; p. 712 line 17 to line 20; p. 714 line 17 to p.715 line 1.

²³ First BTM Response, paras 75- 85, and the sources cited therein. The Defence notes that in the SPO's reply of 30 January 2026, the SPO contested the Defence's conclusions largely on the basis of common legal practice, but did not point to any academic source disputing the principles of science on which the Defence submissions are based: KSC-BC-2023-12/F00713, Prosecution reply to 'Joint Defence Response to SPO motion for admission of material through the bar table' with three confidential annexes, 30 January 2026, Confidential ([Public Redacted Version](#) 4 February 2026), paras 3-9?

²⁴ First BTM Response, para. 57 and Annexes 8 and 9.

the SPO transcribers had been exposed to contextual material which the others had not.

28. The existence of contextual priming is not problematic *per se*. To the contrary, some context is necessary to understanding indistinct forensic audio.²⁵ However, it is clearly material to know with *what material* a transcriber has been primed. The Defence's concern is not that the transcribers were aware of context, but that the context in question was unreliable, being tainted by one the opinions and expectations of one party (the SPO). Accordingly, it is important for the Defence to understand the extent to which the transcribers were exposed to the SPO's views and case theories. Understanding the nature and extent of the transcribers' exposure to material from Case 06, as well as to ongoing investigation material concerning Case 12, is therefore essential to assessing the contents of the SPO Transcripts.

d) The relationship between the transcribers and SPO investigators and prosecutors

29. Questions 4(i), (iii) and (vi) seek information regarding the ways in which the transcribers worked together with SPO investigators and prosecutors. This material is relevant because, as elaborated in the First BTM Response, there is scientific consensus that forensic transcription is unreliable where it is undertaken in-house as part of a criminal investigation, whether by investigators themselves or embedded language staff who work closely with investigators.²⁶ This is because a close relationship between transcribers and investigators will tend to lead to transcribers having certain expectations when they listen to forensic audio, which then influence the words which they perceive in that audio.²⁷

²⁵ *Ibid.*, paras 75-77.

²⁶ First BTM Response, paras 79-82, 90, and the sources cited therein.

²⁷ *Ibid.*

30. It is therefore essential for assessing the reliability of the SPO Transcripts to understand the extent to which the transcribers interacted in their work with the SPO's investigators and lawyers. This material will indicate the extent to which the SPO's transcribers were primed by the SPO's opinions and expectations regarding the Detention Unit visits.
- e) Timing of the transcription work
31. Finally, Question 1 seeks information about the dates between which work on the various versions of the SPO transcripts was done. This information is relevant because the contextual information and relationships within the SPO which would have primed the transcribers will have developed over time. It is noteworthy that the SPO Transcripts themselves changed over time, with multiple different versions having been created of each. To be able to understand the manner in which these versions evolved – something which the SPO has failed to explain – the Defence considers it important to know at the very least the dates between which work was undertaken on each version of the various SPO Transcripts.

The continued relevance of the Requested Material

32. In its email of 10 March 2026, the SPO appeared to advance an alternative argument, namely that even if the Requested Material had been relevant, it is no longer relevant, due to decisions of the Single Trial Judge. The SPO stated that the Defence disclosure request:
- “in any event, was superseded by the subsequent decisions by the Single Trial Judge in F00708, F00737, and F00745. More specifically, each of the admitted transcripts at issue is now subject to the judicially-prescribed, independent verification process conducted by the LSU, with each Defence team able to raise via this process any and all specific challenges to the accuracy of the transcripts and corresponding translations.”
33. The three decisions identified by the SPO, and the LSU's involvement, in no way reduce the relevance of the Requested Material.

34. The Single Trial Judge's decision F00737, which determined the SPO's first bar table motion, ruled that the SPO Transcripts were admissible, but specifically stated that their weight remained a matter to be determined,²⁸ noting that there are "some facial indications that the transcripts may not be entirely reliable" which are matters for further inquiry and verification,²⁹ and that it is open to the Defence to contest the reliability of the SPO Transcripts.³⁰ The question of the reliability of the SPO Transcripts accordingly remains very much at issue in the present case, and material that is relevant to their reliability is clearly relevant to the case.
35. Neither do the Single Trial Judge's two decisions regarding LSU verification (F00708 and F00745) alter this position.
36. Most fundamentally, that is because the SPO relies solely on its own SPO Transcripts as evidence of what transpired during the Detention Centre visits. Accordingly, it remains relevant for the Defence to tender evidence concerning the reliability of that evidence relied on by the SPO. The means by which the Defence challenges that reliability are a matter for the Defence. The Single Trial Judge has never stated that the *only* means available to the Defence to challenge the SPO Transcripts' reliability is via LSU "verification". To the contrary, he highlighted that the Defence might challenge the reliability of the SPO Transcripts "*inter alia*" by making use of process he established involving LSU.³¹
37. Moreover, and in any event, even if LSU "verification" results are admitted into evidence and are given more weight by the Single Trial Judge than the SPO Transcripts themselves, this would not render material about the creation of the SPO Transcripts irrelevant. That is because the process established by the Single Trial Judge in his decision F00745 resulted in the SPO Transcripts playing a

²⁸ First BTM Decision, para. 32.

²⁹ *Ibid.*, para. 34.

³⁰ *Ibid.*, para. 38.

³¹ *Ibid.*, para. 38.

significant role in the creation of any material produced by the LSU.³² Because the Single Trial Judge has ruled that the LSU is to have regard to the SPO's Transcripts during its work, it is clear that the results of the LSU's work will be influenced by the contents of the SPO Transcripts. That is not only a matter of common sense, but of well-established scientific fact, as detailed in previous Defence submissions: a listener who reviews a purported transcript while listening to indistinct audio will be influenced towards hearing the words in that transcript even if they are demonstrably wrong.³³ Because the LSU staff will have been influenced in their own work by the contents of the SPO Transcripts, the reliability of the latter would remain highly relevant even if the Single Trial Judge were now to have regard *only* to the results of the LSU's process.

38. Of course, the SPO may disagree with the above analysis, and it is open to the SPO to argue that position in its closing brief. What it may *not* do, is selectively disclose to the Defence on the basis of whether such material is relevant on the SPO's own case theory, thereby denying the Defence the chance to fully prepare and present its case.

B. THE REQUESTED MATERIAL IS DISCLOSABLE UNDER TO RULE 103

39. Pursuant to Rule 103, the SPO has a continuous obligation to disclose to the Defence any information which is potentially exculpatory.³⁴ This is specifically stated in Rule 103 as including information which may "affect the credibility of reliability of the Specialist Prosecutor's evidence."

³² KSC-BC-2023-12/F00745, [Decision on Joint Defence Request for Partial Reconsideration and Clarification of "Decision on Prosecution Request for Transcription/Translation Verification Deadline"](#), 18 February 2026, Public, para. 38.

³³ First BTM Response, paras 86-89; KSC-BC-2023-12/F00722, [Joint Defence Request for partial reconsideration and clarification of "Decision on Prosecution Request for Transcription/Translation Verification Deadline"](#), 4 February 2026, Public, paras 23, 46-48.

³⁴ Rule 112; Disclosure Framework Decision, para. 59; *Case 07*, KSC-BC-2020-07/IA005/F00008/RED, AP, [Public Redacted Version of Decision on the Appeals Against Disclosure Decision](#), 29 July 2021 ("Case 07 Disclosure Appeal Decision"), para. 53.

40. When requesting the disclosure of exculpatory material, the Defence is required only to show that the material in question is *potentially* exculpatory, to a *prima facie* standard.³⁵ That standard is met in the present case. For the reasons elaborated above, the Requested Material is relevant for assessing the reliability of the SPO Transcripts which are relied on by the SPO. The small amount of information known to the Defence already on these matters – for example that the SPO Transcripts were created by in-house transcribers; and that very basic good practices such as the use of timestamps were not used³⁶ – indicates that the SPO did not follow good practices in the production of the SPO Transcripts. It is likely that the Requested Material will cast doubt on the reliability of the SPO Transcripts, bringing it squarely within Rule 103.
41. The Requested Material has been clearly and specifically described in a manner which enables the SPO to identify it. According to well-established principles, the request must be “sufficiently specific as to the nature of the evidence sought”, but need not “precisely identify which documents should be disclosed.”³⁷ There has been no suggestion from the SPO that the Requested Material cannot be located or that the SPO does not possess the material in question. Indeed, if the SPO *has kept no information* regarding the any aspect of the process for creating the SPO Transcripts, this fact itself would be exculpatory and should be disclosed.
42. The SPO’s only argument to justify its lack of disclosure is its claim that the Requested Material is not relevant. For the reasons set out above that is clearly not the case. The information is directly relevant to the reliability and credibility of central evidence in this case, the SPO Transcripts. Even if the SPO was

³⁵ ICTY, *Prosecutor v Kordić and Čerkez*, IT-95-14/2-A, [Appeals Judgement](#), 17 December 2004, para. 179

³⁶ First BTM Response, paras 53.

³⁷ ICTY, *Prosecutor v Blaškić*, IT-95-14-A, AC, [Decision on the Appellant’s Motions for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings](#), 26 September 2000, para. 40; ICTY, *Prosecutor v Bralo*, IT-95-17-A, AC, [Decision on Motions for Access to Ex Parte Portions of the Records on Appeal and for Disclosure of Mitigating Material](#), 30 August 2006, para. 30.

originally unaware of good practices concerning forensic audio transcription such that it could not, itself, identify that the Requested Material is exculpatory, it has had detailed notice of the Defence arguments on these matters since at least 23 January 2026, when the First BTM Response was filed.

43. The SPO has identified no concern about protective measures or material requiring redactions. In any event, had this been the SPO's concern, it was required pursuant to the Disclosure Framework Decision, to seize the Panel for a ruling on that matter in order to facilitate immediate disclosure.³⁸ It has not done so.
44. Accordingly, the Defence requests that the Single Trial Judge order the SPO to immediately disclose the Requested Material. The Defence also notes that the obligations contained in Rule 103 are not contingent on a specific Defence request. If the SPO has any other material, or is aware of any other information affecting the reliability of the SPO Transcripts more generally, this material must also be disclosed forthwith.

C. THE REQUESTED MATERIAL IS DISCLOSABLE UNDER TO RULE 102(3)

45. The Requested Material also falls within the SPO's disclosure obligations under Rule 102(3).
46. In Case 07, the procedure established by Rule 102(3) was considered by the Pre-Trial Judge and an Appeals Panel to establish a "three-step process", whereby:
 - (i) the SPO must provide detailed notices of "any material and evidence in [its] possession" which is of "relevance to the case";

³⁸ Disclosure Framework Decision, para. 63; ICTR, *Prosecutor v Nahimana et al.*, ICTR-99-52-A, AC, [Decision on Motions Relating to the Appellant Hassan Ngeze's and the Prosecutor's Requests for Leave to Present Additional Evidence of Witnesses ABC1 and EB](#), 27 November 2006, para. 11.

- (ii) where the Defence deems information or items to be “material to its preparation” and has requested them as such, the SPO must disclose such information or items; and
- (iii) if the SPO disputes the materiality of requested material, it must seize a Panel.³⁹

47. The SPO is in breach of these obligations in the present case.

48. First, the SPO’s Rule 102(3) notice is required to list “all material and relevant evidence or facts” in the SPO’s possession which are of “relevance to the case”.⁴⁰ A KSC Appeals Panel has ruled that the concept of “relevance to the case” must be interpreted broadly.⁴¹ It is even wider than the already broad concept of what is material to defence preparation.⁴² Moreover, the SPO is left “little discretion” as to what should be considered “relevant to the case” and is not permitted to make “unilateral assessments” as such which would render the Rule 102(3) process redundant.⁴³

49. In the present instance, it is clear that the Requested Material is relevant to the case. The material concerns the reliability and credibility of the SPO Transcripts, which is the evidentiary material most central to the SPO’s case.

50. Secondly, the SPO is obliged to disclose material which is requested by the Defence as being material to its preparations. That is the case even where such material was excluded from the SPO’s notice but nonetheless was identified by the Defence and requested.⁴⁴ The test for such disclosure is whether the material

³⁹ *Case 07*, KSC-BC-2020-07/F00172/RED, PTJ, [Public Redacted Version of the Decision on the Materiality of Information Requested under Rule 102\(3\) and Related Matters](#), 15 July 2021 (Original Confidential Version 1 April 2021), para. 22; [Case 07 Disclosure Appeal Decision](#), para. 38.

⁴⁰ [Case 07 Disclosure Appeal Decision](#), para. 38

⁴¹ *Ibid.*, para. 42.

⁴² *Ibid.*

⁴³ *Ibid.*, para. 46.

⁴⁴ *Case 07*, KSC-BC-2020-07/F00172/RED, PTJ, [Public Redacted Version of the Decision on the Materiality of Information Requested under Rule 102\(3\) and Related Matters](#), 15 July 2021 (Original Confidential Version 1 April 2021), para. 26.

is “material to the preparation of the defence”. That concept has been interpreted broadly: it goes beyond material which is directly incriminating or exonerating.⁴⁵ It includes material that would be “significantly helpful to an understanding of important inculpatory or exculpatory evidence”.⁴⁶ In the present case, it is clear that material relating to the production of the SPO Transcripts (when, by whom, and how they were created) would assist the Defence in understanding this central SPO evidence.

51. As set out above at paragraph 41, the Requested Material has been identified with sufficient specificity. It is within the possession of the SPO. The SPO has raised no reason for refusing to disclose this material other than disputing its relevance.
52. Accordingly, the SPO has breached its obligations under Rule 102(3) by failing to disclose the Requested Material.
53. Finally, for completeness, the Defence notes that where a Defence request has been made for Rule 102(3) disclosure and the SPO disputes materiality, it is for the SPO to seize the Panel with a request seeking resolution of the matter. This is made clear in Rule 102(3) itself, and in the prior decisions interpreting it.⁴⁷ The burden of raising these issues and of justifying its cause should not fall on the Defence. The SPO is in this respect also in breach of Rule 102(3).

⁴⁵ ICTR, *Prosecutor v Bagosora et al.*, ICTR-98-41-AR73, AC, [Decision on Interlocutory Appeal Relating to Disclosure Under Rule 66\(B\) of the Tribunal’s Rules of Procedure and Evidence](#), 25 September 2006, para. 9; ICTY, *Prosecutor v Karadžić*, IT-95-5/18-PT, TC,, [Decision on Accused’s Second Motion for Inspection and Disclosure: Immunity Issue](#), 17 December 2008, para. 11; ICC, *Prosecutor v Lubanga*, AC, [Judgment on the appeal of Mr. Lubanga Dyilo against the Oral Decision of Trial Chamber I of 18 January 2008](#), ICC-01/04-01/06-1433, 11 July 2008, paras 77-78.

⁴⁶ ICC, *Prosecutor v Lubanga*, AC, [Judgment on the appeal of Mr. Lubanga Dyilo against the Oral Decision of Trial Chamber I of 18 January 2008](#), ICC-01/04-01/06-1433, 11 July 2008, para. 81.

⁴⁷ *Case 07*, KSC-BC-2020-07/F00172/RED, PTJ, [Public Redacted Version of the Decision on the Materiality of Information Requested under Rule 102\(3\) and Related Matters](#), 15 July 2021 (Original Confidential Version 1 April 2021), para. 22; [Case 07 Disclosure Appeal Decision](#), para. 38.

V. CONCLUSION AND RELIEF SOUGHT

54. For the reasons set out above, the Defence requests that the Single Trial Judge:

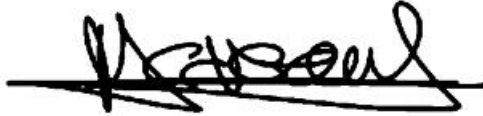
ORDER that the SPO immediately disclose the material listed in paragraph 17;
and

ORDER that the SPO immediately disclose any other material in its possession
which is potentially exculpatory regarding the reliability of the SPO
Transcripts.

[Word count: 5631 words]

Respectfully submitted,

16 March 2026

A handwritten signature in black ink, appearing to read 'Sophie Menegon', written over a horizontal line.

Sophie Menegon

Counsel for Hashim Thaçi