



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

**In:** KSC-BC-2020-05  
**Specialist Prosecutor v. Salih Mustafa**

**Before:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor

**Date:** 8 February 2021

**Language:** English

**Classification:** Public

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**Prosecution's further submissions on disclosure**

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**Specialist Prosecutor's Office**

Jack Smith

**Counsel for the Accused**

Julius von Bóné

## I. INTRODUCTION

1. Pursuant to the Order,<sup>1</sup> the Specialist Prosecutor's Office ('SPO') hereby submits additional information related to the status of disclosure.

## II. SUBMISSIONS

### Rule 102(1)(b)<sup>2</sup>

2. In addition to the items disclosed under Rule 102(1)(b) in November and December 2020 in compliance with the timeline set-out in the Framework Decision, the SPO disclosed one additional item under Rule 102(1)(b) on 29 January 2021.<sup>3</sup> This additional disclosure was the result of the final assessment of the relevance of items seized from the Accused, conducted within the permitted four-month period from the date of seizure, and consisted of two badges, one passport photograph and one veterans' card. These items are familiar to the Accused, and do not require translation.

3. The SPO also expects to disclose a small number of further items pursuant to Rule 102(1)(b) before or in conjunction with the filing of the Pre-Trial Brief. These items will consist of: a) seven maps; b) four contemporaneous reports; and c) the transcript and related official note of a recent SPO interview with an additional witness that the SPO intends to call to testify at trial.<sup>4</sup> As required by Rule 102(1), the witness's transcripts will be provided in both English and Albanian. Disclosure of items a) and b) will be completed on or before 15 February 2021.

4. With respect to the timing of these additional disclosures, the potential utility of the maps for both parties, as well as the Panel, was identified during the course of preparing

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<sup>1</sup> Order for Further Submissions on Disclosure, KSC-BC-2020-05/F00073, Public, 4 February 2021 ('Order').

<sup>2</sup> 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' herein refer to the Rules, unless otherwise specified.

<sup>3</sup> Disclosure 30.

<sup>4</sup> Out of an abundance of caution, the SPO will also disclose certain 'near duplicates' of a number of evidentiary items that have already been disclosed under Rule 102(1)(b) where slight differences in layout or format have been identified.

the Pre-Trial Brief. The maps do not require translation, are not voluminous, and are readily understandable. Disclosure of the four contemporaneous reports pursuant to Rule 102(1)(b) is occurring now following verification of their Rule 107 clearance status, as these reports were obtained from a third-party organisation.

5. With respect to the additional witness, the SPO had previously noted that certain limited investigative steps were being undertaken. This included locating and contacting this witness in a Third State, with the assistance of the authorities of that state, and making relevant arrangements for interview. That interview was completed in the last week of January 2021.

6. The SPO is promptly preparing the witness's transcripts in both English and Albanian for disclosure. While no protective measures will be requested for this witness, limited parts of the transcripts will need redactions to protect the identity of victims/witnesses for whom protective measures have already been granted in this case. The SPO expects to seize the Pre-Trial Judge on or about 10 February 2021 with a discrete application in order to request authorisation for such redactions, and will be in a position to immediately disclose the transcripts thereafter. The SPO intends to call the additional witness to testify at trial (Rule 102(1)(b)(i)).

7. Beyond this one witness, the SPO does not anticipate any further disclosure under Rule 102(2).

Rule 102(3)

8. On 1 December 2020, the SPO provided the Defence with detailed notice pursuant to Rule 102(3). The SPO anticipates adding a further four items to that list. The items to be added consist of material related to three SPO interviews which were recently conducted, and for which transcripts have only recently become available. Two of the interviews were conducted in October 2020, and the third was conducted in January 2021.

9. The amended list will be made available to the Defence by way of a filing to be made on or before 15 February 2021. Should the material be requested by the Defence pursuant to Rule 102(3), the SPO would anticipate applying for protective measures.

Rule 103

10. Prior to 15 February 2021, certain further potentially exculpatory items which either do not require redaction, or for which only standard redactions are required, will be disclosed.<sup>5</sup> Additionally, as foreshadowed at the Fourth Status Conference, the SPO will be making an application for protective measures relating to certain Rule 103 material.<sup>6</sup> That application will be filed on or before 15 February 2021.<sup>7</sup>

**Word count: 791**



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**Jack Smith**

**Specialist Prosecutor**

Monday, 8 February 2021

At The Hague, the Netherlands.

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<sup>5</sup> This includes, *inter alia*, two of the items mentioned at the Status Conference.

<sup>6</sup> This includes, *inter alia*, the other four items mentioned at the Status Conference.

<sup>7</sup> In order not to duplicate the record, the items referred to at the Status Conference to be disclosed pursuant to Rule 103 will not additionally be added to the Rule 102(3) notice.