



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

In: KSC-BC-2020-06
Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon
Filing Participant: Specialist Prosecutor
Date: 18 March 2021
Language: English
Classification: Public

**Prosecution Response to 'Thaçi Defence Request for Orders related to Disclosure'
with confidential *ex parte* Annex 1**

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I. INTRODUCTION

1. The Defence Requests¹ should be rejected because they fail to demonstrate any disclosure violation or even any prejudice. The Defence Requests are premature, betray a misapprehension of the stage of proceedings and of the applicable framework, and appear to merely be an attempt to create a record of disclosure failures where none exist. The defence for Mr Thaçi ('Thaçi Defence') and Mr Krasniqi ('Krasniqi Defence', and together 'Defence Teams') are simply disagreeing with the order in which the Specialist Prosecutor's Office ('SPO') is disclosing material.

II. APPLICABLE LEGAL FRAMEWORK

2. The Law² and the Rules³ establish the general legal framework within which specific disclosure provisions are enshrined. In particular, Rule 102(1)(a) provides for the disclosure, only, of indictment supporting material, and of statements obtained from the accused. Rule 102(1)(b) relates to the statements of witnesses and evidence upon which the SPO intends to rely at trial. The disclosure provisions, including, in particular, Rule 102(1)(b), become operative within the calendar set by the Pre-Trial Judge's Framework Decision,⁴ as recently amended by the Decision on

¹ Thaçi Defence Request for Orders related to Disclosure, 8 March 2021, KSC-BC-2020-06/F00213 ('Request'). On 18 March 2021, the Krasniqi Defence joined the Request, Krasniqi Defence Joinder to Thaçi Defence Request for Orders Related to Disclosure, KSC-BC-2020-06/F00228, 18 March 2021 ('Krasniqi Request', and together with the Request the 'Defence Requests'). Given that the Krasniqi Request is seeking the same relief as sought by the Thaçi Defence in the Request, the SPO position as outlined in this response applies. However, noting the extremely limited opportunity to review the Krasniqi Request, the SPO reserves the right to further supplement this filing, specifically in relation to the Krasniqi Request, as relevant, within the applicable response deadline from the date of filing of the Krasniqi Request.

² Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

³ 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.

⁴ Framework Decision on Disclosure of Evidence and Related Matters, 23 November 2020, KSC-BC-2020-06/F00099, ('Framework Decision'), see especially para.99(c) – (e).

Categorisation.⁵ These Decisions establish a clear deadline for the SPO to fulfil its Rule 102(1)(b) disclosure obligations, i.e. 23 July 2021.⁶ The SPO is in the process of discharging its Rule 102(1)(b) disclosure obligations and intends to complete the related disclosure within the set deadline.

III. SUBMISSIONS

3. As a preliminary matter, it is noted that judicial intervention on matters of disclosure should be exceptional, and should occur only after all efforts to resolve a dispute in good faith between the parties have been exhausted.⁷ Despite the SPO's demonstrated record of responsiveness to all queries raised to date, (i) the Thaçi Defence simply chose not to engage (further, or in some cases, at all) in *inter partes* discussion about the issues raised in this Request;⁸ and (ii) the Krasniqi Defence has

⁵ Decision on Categorisation of Evidence Under Rule 109(c) and Related Matters, 12 March 2021, KSC-BC-2020-06/F00218, ('Decision on Categorisation'), see especially paras 22, 27(e) (together with the Framework Decision referred as the 'Decisions').

⁶ At the time of filing of the Request, that deadline was 31 May 2021.

⁷ STL, Pre-Trial Judge, *The Prosecutor v. Ayyash et al.*, STL-11-01/PT/PTJ, F0913, Decision on Sabra's Seventh Motion for Disclosure-Experts, 24 May 2013, para.10 (describing such *inter partes* efforts as a 'pre-condition' to any request); ICC, Trial Chamber, *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, Decision on Defence Request Seeking an Order to the Prosecution to Disclose Additional Information in Relation to Category F Redactions, 29 November 2019, para.11 ('Noting the stage of the proceedings in which the Defence made the Request and that it did not exhaust the *inter partes* process set up by the Chamber, the Chamber considers the Request to be untimely'); ICC, Trial Chamber V, *The Prosecutor v. Alfred Rombhot Yekatom and Patrice-Edouard Ngaissona*, ICC-01/14-01/18, Transcript of Status Conference, 8 July 2020, ICC-01/14-1/18-T-012-ENG ET, p.6, lns 12-19 ('First on cooperation, the participants and participants are expected to cooperate with each other wherever possible and to resolve matters *inter partes* before seizing the Chamber with a request. In the same way, the Chamber expects that issues concerning matters within the Registrar's purview be resolved directly with the Registry and not first go to the Chamber. The Chamber considers this approach to be the most efficient. If a resolution has not been tried *inter partes* beforehand, the Chamber may dismiss the relief sought *in limine*'); STL, Trial Chamber, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/T/TC, F1435, Decision and Observations on Inspection of Prosecution's Expert Reports, 28 February 2014, para.5 ('Parties should only bring matters of *inter partes* disclosure to the Trial Chamber's attention where reasonable attempts to resolve any issues have failed.');

STL, Contempt Judge, *The Prosecutor v. Akhbar Beirut S.A.L. Ibrahim Mohamed Ali Al Amin*, STL-14-06-PT-CJ, F0093, Decision on Defence Application for Disclosure of the Statement of a Former Prosecution Witness, 2 April 2015, para.3 ('Here, it appears that the Defence never made such a request. This is regrettable, because it would have avoided needless litigation, which puts a strain on the scarce time and resources of the parties and the Court. I strongly encourage both parties to attempt resolving any contentious matter, especially as regards disclosure, before seizing the Court.')

⁸ See also Request, KSC-BC-2020-06/F00213, para.20 (admitting this failure to appropriately raise the alleged issues *inter partes*).

never contacted the SPO *inter partes* in relation to these issues. Seeking such premature and unwarranted judicial intervention is a misuse of the Panel's time, and the Defence Teams should be cautioned accordingly.

A. THE CLAIM THAT THE SPO HAS FAILED TO PROVIDE COMPLETE WITNESS INTERVIEW MATERIALS IS PREMATURE

4. It is self-evidently premature to claim that there has been a disclosure failure because certain witness related materials have not yet been disclosed⁹ at a time when Rule 102(1)(b) disclosure is ongoing on a rolling basis. The Thaçi and Krasniqi Defence submissions appear to be made in complete disregard of the stage of proceedings and of applicable deadlines established in the Decisions.

5. Moreover, the submissions betray a misunderstanding of the applicable framework. As is apparent from the Defence Annex,¹⁰ the vast majority of witness interviews for which it is alleged that incomplete related materials have been provided were disclosed pursuant to Rule 102(1)(a). At the time of making Rule 102(1)(a) disclosure it is neither required nor incumbent upon the SPO, for any reason, to provide 'complete' witness packages containing all material referenced in such statements. Rather, what is to be disclosed is simply the material used to support the indictment.¹¹

6. The subsequent disclosure timeline established by the Pre-Trial Judge is precisely for the purpose of providing additional and remaining materials the SPO intends to rely upon at trial, including additional prior statements of relevant witnesses and related exhibits.¹² The SPO is not hiding behind the Rule 102(1)(b)

⁹ Request, KSC-BC-2020-06/F00213, paras 1, 8, 10-17.

¹⁰ Annex 1 to the Request, 8 March 2021, KSC-BC-2020-06/F0213/A01, ('Defence Annex'), p. 2-8, *see* Disclosure package column 'R102(1)(a). In fact, 36 of the 38 'examples' provided relate to Rule 102(1)(a) material (the other two relate to Rule 103 material). Similarly, all of the additional examples provided in the Annex to the Krasniqi Request, where it is alleged that items referenced in an interview have not yet been disclosed, relate to Rule 102(1)(a) material (KSC-BC-2020-06/F00228/A01).

¹¹ Rule 102(1)(a).

¹² Rule 102(1)(b).

deadline, or any other deadline.¹³ On the contrary, the SPO is diligently and proactively fulfilling its Rule 102(1)(b) disclosure obligations, on a rolling basis¹⁴ - including complying with the timelines established for relevant protective measures applications¹⁵ - and will continue to do so. The SPO is working through Rule 102(1)(b) materials in a systematic manner, and - as previously outlined¹⁶ - is currently focused on providing the Defence with the SPO statements and prior statements of witnesses it intends to rely on at trial. Indeed, such prior statements appear to be a main focus of the Request,¹⁷ which further underlines the inapposite nature of the Thaçi Defence filing. Regardless, it is not for the Defence Teams to attempt to set an internal calendar for SPO disclosure, or to dictate the precise order in which Rule 102(1)(b) materials are provided.¹⁸

7. Notwithstanding this, the SPO has been and remains responsive to defence requests on disclosure matters, and accommodates such requests to the extent possible. Indeed, the *inter partes* exchanges in relation to exhibits associated with interviews of the Accused exemplify the SPO's consistently cooperative and responsive approach.

¹³ *Contra*. Request, KSC-BC-2020-06/F00213, paras 14, 22.

¹⁴ Disclosure packages 16, 22, 23.

¹⁵ Second request for protective measures, 8 January 2021, KSC-BC-2020-06/F00167; Third request for protective measures with strictly confidential and *ex parte* annexes 1-15, 5 February 2021, KSC-BC-2020-06/F00189; Fourth request for protective measures with strictly confidential and *ex parte* annexes 1-20, 5 March 2021, KSC-BC-2020-06/F00212.

¹⁶ Corrected version of Prosecution submissions for third status conference, 10 February 2021, KSC-BC-2020-06/F00191COR, para.3.

¹⁷ Request, KSC-BC-2020-06/F00213, paras 10-11.

¹⁸ In respect of the prosecution having a degree of discretion in fulfillment of its disclosure obligations, and of there being a presumption of good faith unless there is evidence to the contrary demonstrating that the prosecution has abused it *see e.g.* MICT, *Prosecutor v. Niyitegeka*, MICT-12-16-R, Appeals Chamber, Decision on Appeals of Decisions Rendered by a Single Judge, 9 August 2017, para.18; MICT, *Prosecutor v. Ngirabatware*, MICT-12-29-A, Appeals Chamber, Decision on Ngirabatware's Motions for Relief for Rule 73 Violations and Admission of Additional Evidence on Appeal, 21 November 2014, para.15; ICTY, *Prosecutor v. Mladić*, IT-09-92-AR73.2, Appeals Chamber, Decision on Defence Interlocutory Appeal Against the Trial Chamber's Decision on EDS Disclosure Methods, 28 November 2013, para.24; Framework Decision, KSC-BC-2020-06/F00099, para.60; Categorisation Decision, KSC-BC-2020-06/F00218, paras 21-22.

8. Within a day¹⁹ of having received a request from the Thaçi Defence to receive, *inter alia*, all exhibits discussed in the SPO interviews of the accused, and of Mr Thaçi in particular, the SPO responded to indicate, *inter alia*, that (i) exhibits used during Mr Thaçi's second interview had already been disclosed as part of the indictment supporting materials, and (ii) the SPO would review Mr Thaçi's first interview, and the SPO interviews of the other accused, and would disclose such materials as part of the ongoing disclosure process. Significantly, in that same response, the SPO added 'noting your interest in the exhibits used during the interviews of Mr Thaçi [...], we will make sure to prioritise their disclosure';²⁰ a fact which is misleadingly omitted from the Thaçi Defence submissions.²¹

9. In light of that *inter partes* undertaking, the SPO disclosed the remaining exhibits used during the SPO interviews of Mr Thaçi on 17 March 2021, and would have done so regardless of the Request being filed. Instead of respecting the usual *inter partes* process, the Thaçi Defence chose to submit a misleading and unwarranted request before the Pre-Trial Judge.

10. Similarly, with respect to ERNs which are alleged to be either missing or incorrectly referenced in transcripts,²² the Thaçi Defence never contacted the SPO in relation to this issue. Had it done so, the SPO would have promptly provided any necessary clarification. Transcripts necessarily reflect the referencing used during the interview. Each of the examples cited in the Request relate exclusively to the interviews of Mr Thaçi.²³ In respect of Mr Thaçi's second interview, the SPO could have immediately referred the Thaçi Defence to filing KSC-BC-2020-06/F00012, where

¹⁹ Email correspondence from Thaçi Defence, 15 February 2021 at 15:02; Email correspondence from SPO, 16 February 2021 at 09:47.

²⁰ In respect of exhibits used during SPO interviews of other Accused the SPO similarly indicated that '[...] if agreement from the Defence teams of the other Accused can be obtained in the form of a joint request, any exhibits used during their interviews can also be prioritised for disclosure to all Accused' (Email correspondence from SPO, 16 February 2021 at 09:47).

²¹ See Request, KSC-BC-2020-06/F00213, para.14 (blatantly misrepresenting the *inter partes* exchange by indicating that the SPO response had 'presumably' nominated 31 May as the disclosure date for exhibits discussed during Mr Thaçi's interview).

²² Request, KSC-BC-2020-06/F00213, para.15.

²³ Request, KSC-BC-2020-06/F00213, fns 16-17.

each of the 'Exhibits' used during that interview are directly correlated to relevant ERNs. As mentioned above, all remaining exhibits referenced during Mr Thaçi's interviews have also now been disclosed and include, on their face, the 'exhibit' number used during the interview. As such, the Thaçi Defence request is moot.

11. Nonetheless, it is noted that the submission that ERNs referenced in the Thaçi transcripts were incomplete or wrong is misleading. The fact that a certain item was disclosed pursuant to Rule 102(1)(a) under a different ERN from that used in a particular interview transcript does not make the transcript reference wrong.²⁴ The SPO is in possession of multiple copies or versions of certain documents. Items disclosed as indictment supporting material reflected simply the materials provided to the Single Judge for purposes of confirmation of the indictment; they were not, and were not purported to be, disclosed as exhibits related to any particular transcript, as such. As the SPO has previously indicated,²⁵ as exhibits associated with certain transcripts are disclosed as part of the ongoing disclosure process the SPO will endeavour to indicate relevant associations through Legal WorkFlow, subject to applicable protective measures.

12. Finally, with respect to the Krasniqi Defence submissions regarding interview parts being disclosed in separate Disclosure Packages,²⁶ the alleged difficulty is entirely artificial. The Defence have access to all Rule 102(1)(a) material regardless of which specific disclosure package it is released in.²⁷ Moreover, of the seven examples provided by the Krasniqi Defence,²⁸ six of those relate to divisions between Disclosure Packages 9 and 10, which were packages of indictment supporting material released

²⁴ Request, KSC-BC-2020-06/F00213, fn.17 (referencing exhibits 3 and 7); Krasniqi Request, KSC-BC-2020-06/F00228, para.7. Similarly, the omission of a dash ('-') from an ERN when identifying an exhibit during an interview does not render it wrong or incomplete (contra. Request, KSC-BC-2020-06/F00213, fn.17 (with reference to exhibits 8 and 9).

²⁵ See fn.38 below.

²⁶ Krasniqi Request, KSC-BC-2020-06/F00228, para.10.

²⁷ The lists of disclosed material, which can be automatically generated from Legal WorkFlow in excel format, can be quickly and easily combined to create a comprehensive listing of all Rule 102(1)(a) material in one document. Legal WorkFlow searches similarly locate documents irrespective of the particular package in which they were released.

²⁸ Krasniqi Request, KSC-BC-2020-06/F00228/A01, pp.4-6.

within a matter of hours of each other. The SPO has previously explained the technical difficulties encountered in relation to generating those specific disclosure packages.²⁹

B. THE REQUEST FOR AUDIO/VIDEO RECORDINGS IS ENTIRELY UNSUBSTANTIATED

13. The Defence Teams request for audio-video recordings of interviews³⁰ indicates no legal basis, and is entirely unsubstantiated. As such, it should be summarily dismissed.

14. Moreover, the SPO notes that again it has not been previously contacted at all by the Defence Teams in relation to audio/video recordings. Had it been contacted, the SPO would have clarified as follows.

15. The SPO has already provided the Defence with both the English and the Albanian transcripts of interviews forming part of the indictment supporting materials under Rule 102(1)(a), and will continue to do so for transcripts to be disclosed under Rule 102(1)(b). Where a witness has spoken in Albanian, the original Albanian recording has been transcribed and disclosed.³¹ As such, the Defence is in a position to examine both transcripts should there be a doubt as to the interpretation.

16. The SPO's practice is entirely consistent with relevant jurisprudence. Multiple Trial and Pre-Trial Chambers have held that 'when audio recordings of interviews have been transcribed, and those transcripts disclosed, the audio recordings need not, in principle, also be disclosed, as both the transcripts and the audio recordings contain

²⁹ Transcript of Second Status Conference, pp.185–187. Similarly, at the time of releasing Disclosure Package 13, the SPO provided the Defence with an explanatory e-mail indicating that the Disclosure Package was the result of the detailed cross-check the SPO had conducted (as had been indicated as underway during the Second Status Conference). Disclosure Package 20 was separately release pursuant to Rule 103, and therefore does not comprise part of the indictment supporting material disclosure, and again was accompanied by an explanatory e-mail to the Defence teams indicating that it was a Rule 103 disclosure (as is also apparent from Legal Workflow metadata).

³⁰ Request, KSC-BC-2020-06/F00213, paras 18 and 24.

³¹ Only where an interview was conducted in a language other than Albanian has the English transcript been translated into Albanian. In such instances, the Albanian transcript is indicated as a translation in Legal Workflow.

the same record of words used'.³² The Defence has provided no basis that would warrant modifying that approach.³³

17. Moreover, disclosure of the audio/video format, in addition to the English and Albanian transcripts, has some significant practical and technical difficulties from the perspective of reviewing and, as necessary, redacting such recordings. This is not only relevant in the context of delayed disclosure of witness identities, but also where standard redactions of, for example, locations, interpreters, stenographers, investigators as well as contact information of witnesses or of their families apply.³⁴ The materials sought are therefore not only unnecessary for Defence purposes, but cannot be readily made available.

C. THE THAÇI DEFENCE CLAIM THAT THERE IS A FAILURE TO PROVIDE WITNESS NUMBERS IS ERRONEOUS

18. The Thaçi Defence submission that there is a 'systematic' or 'consistent' failure to provide witness numbers for disclosed documents is simply not correct.³⁵ The descriptions of all but six items of Rule 102(1)(b) material disclosed to date contain the witness code of the witness to which they relate. No code is provided in respect of those six items in order not undermine applicable protective measures.

³² ICC, Trial Chamber VI, *Prosecutor v Ntaganda*, ICC-01/04-02/06, 'Decision on Defence request for disclosure of audio recording of Witness P-0963's interview', 8 April 2016, para.9. *See similarly* ICC, Pre-Trial Chamber, *Prosecutor v. Mbarushimana*, 'Decision on Defence Request to deny the use of certain incriminating evidence at the Confirmation Hearing and the postponement of confirmation hearing', para.22 (finding that where both English and Kinyarwanda transcripts had been disclosed to the Defence, the audio format of those interviews not necessary at that point of the proceeding). *See also* ICC, *Prosecutor v. Laurent Gbagbo*, ICC-02/11-01/11, 'Prosecution's Request Pursuant to Regulation 35 for an Extension of Time to Disclose Certain Material', 6 February 2015, paras 8 12; ICC, *Prosecutor v. Mbarushimana*, ICC-01/04-01/10, 'Prosecution's response to Defence Request to deny the use of certain incriminating evidence at the Confirmation Hearing', 11 August 2011, paras 15,17.

³³ ICC, Trial Chamber VI, *Prosecutor v Ntaganda*, ICC-01/04-02/06, 'Decision on Defence request for disclosure of audio recording of Witness P-0963's interview', 8 April 2016, para.9 ('In this instance, the Defence has raised only a hypothetical argument regarding the use of the audio recording to 'verify' the content of the transcripts, without identifying any specific aspect in which the transcripts in question appear to be inadequate or any additional purpose to inspection of these particular audio recordings').

³⁴ Framework Decision, KSC-BC-2020-06/F00099, para 95 (a), Category "A.1", Category "A.2", Category "A.3", Category "B.1", Category "B.2", Category "B.4".

³⁵ *Contra*. Request, KSC-BC-2020-06/F00213, paras 8, 20, 22.

19. In respect of statements disclosed pursuant to Rule 102(1)(a), exceptionally, a small number did not contain a witness code. When the Thaçi Defence previously identified such items *inter partes*, having reviewed the request, the SPO promptly adjusted the descriptions at issue and redisclosed the material with the specific witness codes included in the description.³⁶ The SPO further specifically clarified to the Thaçi Defence team via email the precise adjustments which had been made. In addition, pursuant to a Thaçi Defence request, the SPO has already undertaken on an *inter partes* basis to accompany each disclosure package with a short explanatory email, which will, where possible, indicate the witness code(s) to which the disclosure relates. Consistent with that undertaking, such an explanatory e-mail was sent after the most recent Rule 102(1)(b) disclosures.³⁷ Relatedly, the SPO has further already indicated that it will link exhibits shown to a witness to that witness through the Legal Workflow system, subject to applicable protective measures considerations.³⁸

³⁶ Disclosure Package 21. *See also* KSC-BC-2020-06, Status conference of 16 February 2021, p. 235 ln.18-22 ('On the specific inquiry relating to the materials of three witnesses, the SPO has responded *inter partes* to that query. And in order to assist all Defence teams, last week we redisclosed nine Rule 102(1)(a) items with the relevant pseudonym mentioned in the description in order to facilitate linkage and identification').

³⁷ On Friday 12 March 2021, after disclosing Disclosure Package 23 pursuant to Rule 102(1)(b); and following Disclosure Package 24. *Contra.* Krasniqi Request, KSC-BC-2020-06/F00228, para.10 (stating that Disclosure Packages are released without any explanation).

³⁸ KSC-BC-2020-06, Status conference of 16 February 2021, p. 293 ln. 17-p. 206 ln. 2 (SPO ' Your Honour, I believe there is a manner of indicating it in Legal Workflow, and it would be our intention to do so. Some of the exhibits are documents that have been discussed during interviews have simply not been disclosed yet because they weren't part of the indictment supporting material and haven't so far been part of the Rule 102(1)(b) disclosure. Noting the Defence's interest in them, we're obviously happy to try and prioritise disclosure of such items in our ongoing disclosure process, and where possible, without compromising protective measures and at an appropriate point, we will link such items'). The Thaçi Defence attempts to rely on a decision in the *Ayyash et al.* case in this regard. However, it is notable that the linking at issue in that decision was done after the STL equivalent of Rule 102(1)(b) disclosure was complete, and more than 6 months after the submission of the Pre-Trial Brief. The Prosecution Pre-Trial Brief was submitted on 15 November 2012 whereas the linking of witnesses to evidentiary material was to be completed by 19 July 2013. (STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, F0946, "Order on Joint Notice Regarding the Legal Workflow System and Witness Entities", 10 June 2013, p.7).

20. With regard to the 17 items identified in the Defence Annex,³⁹ all of which relate to Rule 102(1)(a) material, the Thaçi Defence has again not previously raised this with the SPO. Had it done so, the SPO would have responded appropriately. Now informed of the issue, the SPO has reviewed each of the listed documents, adjusted relevant descriptions and redisclosed the material with the specific witness code included in the description where possible. In three instances, the witness number cannot be associated with the document at this time as such a link would reveal the identity of the witness and thereby undermine the protective measures granted. The SPO provides the Pre-Trial Judge with further relevant information in relation to those three items in *ex parte* Annex 1. The Thaçi Defence request is therefore moot.

21. Once more, the very small number of instances at issue could have been resolved in a much faster and more efficient manner had the Thaçi Defence raised the matter with the SPO *inter partes* in the normal fashion.

D. THE DEFENCE TEAMS FAIL TO DEMONSTRATE ANY PREJUDICE

22. Not only has no disclosure violation been demonstrated, but no prejudice arises. As detailed above, and contrary to the Thaçi Defence submissions, the SPO is complying with both the letter and the spirit of all relevant disclosure obligations in a responsive and accommodating manner.

23. Bearing in mind the pre-trial stage of proceedings, the fact that Rule 102(1)(b) disclosure is ongoing on a rolling basis, that relevant deadlines have not yet been reached, and that no trial date has been set, the Thaçi Defence's invocation of fair trial rights is entirely misplaced.⁴⁰ Further, the Thaçi Defence's submission that, absent judicial intervention, relevant material would not otherwise be disclosed until the final deadline,⁴¹ is not only unsubstantiated but clearly contradicted by the record to

³⁹ In many instances, the Defence Annex lists both the English and Albanian versions of the same statement. 17 reflects the number of distinct statements identified once that translation duplication is removed.

⁴⁰ *Contra*. Request, KSC-BC-2020-06/F00213, para.22.

⁴¹ Request, KSC-BC-2020-06/F00213, paras 14, 22.

date. The SPO has, in line with the Pre-Trial Judge's direction,⁴² been consistently and regularly disclosing significant volumes of Rule 102(1)(b) material on a rolling basis, and well in advance of any applicable deadlines.

24. Moreover, despite no obligation to do so, the SPO has, where possible, prioritised disclosure of particular items specifically in order to accommodate Defence requests. This is notwithstanding the fact that, at the time of making the Request, the Defence were less than 90 days away from receiving all Rule 102(1)(b) materials, not only those in which a particular interest has been expressed.⁴³ As such, even were the items in question not to have been disclosed until the final deadline – which, as indicated above, is unlikely to be the case for most of the items in which a particular interest has been expressed – the time difference at issue was marginal, especially when considering the unnecessary time consumed in litigating the matter.⁴⁴

25. Additionally, it is self-evidently not the case that every item referenced in an interview must already be available in order for the substance of that witness's evidence to be understood.⁴⁵ Indeed, the Pre-Trial Judge was able to conduct his assessment of those same Rule 102(1)(a) indictment supporting materials without sight of every item referenced in them.

26. Finally, the Thaçi Defence submission that its investigations are hampered to a degree that repeat, costly missions may be necessary,⁴⁶ is transparently baseless. This is the same Defence team which recently announced that it still had not started investigations, and did not envisage doing so at all until at least April.⁴⁷

E. CONCLUSION

⁴² Framework Decision, KSC-BC-2020-06/F00099, para.60.

⁴³ That timeline has now necessarily been adjusted by way of the Categorisation Decision in order to facilitate the additional subcategorisation of materials as requested by the Defence teams.

⁴⁴ The Thaçi Defence's request for an order that such items to be disclosed within 28 days (Request, KSC-BC-2020-06/F00213, para.24) is a mere attempt to circumvent the Framework Decision and calendar set by the Pre-Trial Judge, and seek to dictate the disclosure process.

⁴⁵ *Contra*. Request, KSC-BC-2020-06/F00213, para.11; Krasniqi Request, KSC-BC-2020-06/F00228, para.5.

⁴⁶ Request, KSC-BC-2020-06/F00213, para.12.

⁴⁷ Transcript of Status Conference dated 16 February 2021, pp.295-297.

27. The Defence Requests should be rejected in full and, in the interests of proper administration of justice, the Defence Teams should be cautioned against bringing such requests in future without having first appropriately sought to resolve such matters *inter partes*.

Word count: 4,428



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Thursday, 18 March 2021
At The Hague, the Netherlands.