

In: KSC-BC-2020-06
**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi
and Jakup Krasniqi**

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Defence Counsel for Jakup Krasniqi

Date: 25 March 2021

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**Public Redacted Version of
Krasniqi Defence Joinder to Thaçi Defence Request for Orders Related to
Disclosure, KSC-BC-2020-06/F00228, dated 18 March 2021**

Specialist Prosecutor

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Venkateswari Alagendra, Aidan Ellis

I. INTRODUCTION

1. On 8 March 2021, the Defence for Mr. Thaçi filed their Request for Orders related to Disclosure which requests the Pre-Trial Judge to order the Specialist Prosecutor's Office ("SPO"): to disclose all materials and documents to which an accused or witness is referred in the course of interviews; to provide the complete and accurate ERN number of any exhibit referred to in an accused or witness interview; to disclose all audio/video recordings of interviews of an accused or witness; and to provide witness numbers for all materials and documents relating to witnesses.¹

2. The Defence for Mr. Krasniqi ("Defence") are afflicted by the same problems identified in the Thaçi Defence Request and therefore join in the submissions and relief requested in the Thaçi Defence Request.

3. This joinder is filed confidentially [REDACTED].

II. PRACTICAL PROBLEMS ENCOUNTERED IN THE SPO DISCLOSURE

4. The manner in which disclosure batches have been organised in this case is slowing the Defence preparations by requiring the Defence to divert time and resources to resolving questions that could and should have been answered by a structured disclosure process. The Defence agree with and join in particular paragraphs 10 – 19 of the Thaçi Defence Request. The Defence append a table to this joinder setting out additional examples of the problems that the Defence have encountered in relation to disclosure.² The Defence invite the Pre-Trial Judge to take

¹ KSC-BC-2020-06, F00213, Thaçi Defence, *Thaçi Defence Request for Orders Related to Disclosure* ("Thaçi Defence Request"), 8 March 2021, public, para. 24.

² Confidential Annex 1.

the following examples and the attached Annex into consideration as additional examples of the problems highlighted in the Thaçi Defence Request.

5. Where documents were shown by the SPO to a witness (or an accused) during an interview, it is impossible for the Defence to complete their review of that interview without also reviewing the documents. The Defence cannot assess the credibility of a witness' response to a document without being able to analyse it against the contents of the document itself. Moreover, the document itself is likely to be highly material to defence investigations and may provide additional lines of enquiry as to the author or recipients of the document. Complete disclosure of the interview requires disclosure of the documents referred to during the interview.

6. The Defence submit additional examples of the failure to disclose documents referred to in witness interviews in the attached Annex.³ The Defence acknowledge that [REDACTED]. [REDACTED],⁴ [REDACTED].⁵ [REDACTED]. [REDACTED].

7. The Thaçi Defence Request correctly submits that documents referred to in interviews are frequently not identified by a complete ERN reference number.⁶ The absence of a complete reference number is causing a substantial delay in Defence preparations. Each time a document was referred to in an SPO witness or accused interview, in the absence of a complete or accurate ERN, the Defence have to endeavour to find the document by searching through Legal Workflow for the document using clues from the way in which the document was referred to in the interview. The search capability of Legal Workflow is limited; to the knowledge of the Defence, it is not possible to search by the date of the document for instance. Moreover, a document can only be found on Legal Workflow by searching for the

³ Annex 1, items 1 – 12 and 24 – 29 inclusive.

⁴ [REDACTED].

⁵ [REDACTED].

⁶ Thaçi Defence Request, para. 15.

ERN number if the first or last number of the ERN range is known. Where the SPO refers to a page in the middle of a larger document by the ERN number for that specific page, a search on that ERN number will return no matches; a page in the middle of the ERN range for the document can only be retrieved on Legal Workflow if the Defence happen to know or guess the first page of the ERN range.⁷ This process is time consuming (because multiple searches are required to locate each document) and often fruitless since the documents often turn out not to have been disclosed,⁸ or to have been disclosed in translation only (with the result that the Defence cannot [REDACTED]).⁹ Even where a similar document is located on Legal Workflow, the Defence have no way of knowing whether that is the exact document shown to a witness. There are apparent discrepancies.¹⁰

8. The number of hours being spent searching for documents in this way is considerable. This waste of time would be avoided if (1) all documents shown during a witness interview are disclosed at the same time as the interview (subject, of course, to [REDACTED]) and (2) complete ERN numbers or some other index are provided so that the Defence have a means of identifying which precise documents have been shown to which witness.

9. The Defence emphasise that the items listed in Annex 1 are only examples. The Defence are encountering missing documents in relation to the majority of witness interviews that have been reviewed. The issue is pervasive. That is why the Defence seek the intervention of the Pre-Trial Judge at this stage.

⁷ [REDACTED].

⁸ Items 1 – 12 and 24 – 29 Annex 1.

⁹ See items 15 and 16 in Annex 1.

¹⁰ See item 15, fn. 2 and item 31, fn. 7 in Annex 1.

10. More broadly, the Defence do not understand the process by which the disclosure packages have been ordered. The packages are released on Legal Workflow without explanation to the Defence of the context or organisation of each package. The Defence have noted various occasions on which witness interviews (or their translations) are spread across different disclosure batches.¹¹ The Defence cannot see a logical reason why interviews would be split in this way, which only serves to increase the time spent on Defence preparations.

III. RELIEF REQUESTED

11. Accordingly, for the reasons set out in the Thaçi Defence Request, supported by the additional examples submitted in Annex 1, the Defence join the Thaçi Defence Request and respectfully request the Pre-Trial Judge to:-

ORDER the SPO to disclose all materials and documents to which an accused or a witness is referred in an interview at the same time as the disclosure of the interview and, in so far as this approach has not been followed to date in the interviews already disclosed by the SPO in its 16 previous packages, to provide complete disclosure of all and any material commented upon by an accused within 14 days and of a witness within 28 days; and

ORDER the SPO to provide the complete and accurate ERN number of any exhibit referred in an accused or a witness' interview, within the transcript of their interview or statement and, in so far as this approach has not been followed to date, to remedy any deficiencies within 4 weeks; and

¹¹ Items 17 – 23 in Annex 1

ORDER the SPO to disclose all audio/video recordings for all witness and accused interviews and, insofar as this approach has not been followed to date, to disclose all audio/video recordings relating to the witness and accused interviews disclosed to date within 4 weeks; and

ORDER the SPO to provide the witness numbers for all materials and documents relating to witnesses whose identities have been withheld from the defence and, in so far as this approach has not been followed to date, to remedy any deficiencies within 4 weeks.

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Venkateswari Alagenda

Thursday, 25 March 2021

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Thursday, 25 March 2021

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