



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: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

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Prosecution reply relating to disclosure reports F01019 and F01036

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I. INTRODUCTION

1. The Response¹ is based on general and inaccurate submissions, which should be dismissed.² The Reports³ (i) complied with the Orders;⁴ and (ii) when considered together with the relevant record in this case and the Prosecution's transparent and thorough Rule 103 pre-trial disclosure process,⁵ show that the Specialist Prosecutor's Office ('SPO') is taking all necessary measures to discharge its disclosure obligations under the Rules.⁶

II. SUBMISSIONS

2. In compliance with the First Order, the SPO filed the First Report: (i) indicating the substantive difficulties encountered in carrying out the disclosure of exculpatory material;⁷ and (ii) providing a detailed explanation of its Rule 103 review and disclosure procedure.⁸ In compliance with the Second Order, the SPO filed the Second Report concerning items subject of the Fourth Decision, including detailed explanations as to the

¹ Joint Consolidated Defence Response to Prosecution Disclosure Reports (F01019 and F01036), KSC-BC-2020-06/F01043, 19 October 2022, Confidential ('Response').

² This filing is made pursuant to Rule 76 of 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. This reply addresses the new issues raised in the response, in particular, the requests for a finding of non-compliance and order to file supplemental submissions. These requests are based on the submissions in Section III(A) of the Response (entitled 'Rule 103 Material From Rule 102(3) Notice') and one further submission concerning 'dysfunctionalities' in para.13. Accordingly, this reply concerns only those submissions.

³ Prosecution disclosure report, KSC-BC-2020-06/F01019, 7 October 2022, Confidential ('First Report'); Prosecution submissions pursuant to Decision F01016, KSC-BC-2020-06/F01036, 14 October 2022, Strictly Confidential and *Ex Parte* ('Second Report'; together with the First Report, 'Reports').

⁴ Decision on Thaçi and Krasniqi Defence Motions Seeking Remedies for Non-Compliance with Disclosure Obligations, KSC-BC-2020-06/F00936, 26 August 2022, Confidential ('Decision'), paras 36, 40(d) ('First Order'); Decision on the Fourth Prosecution Request for Protective Measures for Items Containing Rule 103 Information, KSC-BC-2020-06/F01016, 7 October 2022, Strictly Confidential and *Ex Parte* ('Fourth Decision'), paras 29, 177(g) ('Second Order'; collectively with the First Order, 'Orders').

⁵ See, for example, First Report, KSC-BC-2020-06/F01019, paras 4-6 and the sources cited therein.

⁶ See Decision, KSC-BC-2020-06/F00936, para.37 (ordering a report 'explaining the difficulties [the SPO] is still facing in fulfilling its Rule 103 disclosure obligations and satisfying the Pre-Trial Judge that everything is being done to comply with the legal requirements set in the Rules').

⁷ First Report, KSC-BC-2020-06/F01019, Section III.

⁸ First Report, KSC-BC-2020-06/F01019, Section II.

timing of the Fourth Request.⁹ The Defence allegations of non-compliance with the Orders revolve solely around two issues discussed in these Reports, namely, Rule 103 disclosures resulting from Rule 102(3) reviews and evidence registration errors related to the departure of a former staff member.¹⁰ However, instead of supporting Defence claims that further relief is necessary, the manner in which these issues have been addressed demonstrate that the SPO's disclosure practices are thorough and comply with its obligations.

3. In regard to the first issue, the SPO has reviewed all items on both Rule 102(3) notices¹¹ in light of its obligations under all applicable disclosure Rules and has disclosed or sought protective measures for all Rule 103 items as they have been identified.¹² Every time items are reviewed for another purpose, they are reviewed again for Rule 103 content, which sometimes results in a change to the initial Rule 103 determination.¹³ The SPO specifically incorporated this rereview into its methodology to address inevitable errors that result from the challenges inherent to any disclosure review process, including those particular to this case,¹⁴ and to also accommodate developments in proceedings.¹⁵

4. The lone concrete example cited by the Defence to support its sweeping claim that the SPO has committed 'a litany of oversights'¹⁶ fails to do so and instead highlights how the SPO's practices comply with the Rules and appropriately take developments in the

⁹ Fourth Prosecution request for protective measures for items containing Rule 103 information, KSC-BC-2020-06/F00941, 31 August 2022, Strictly Confidential and *Ex Parte* ('Fourth Request').

¹⁰ Response, KSC-BC-2020-06/F01043, paras 7-11, 13. *See also* fn.2 above.

¹¹ Annex 1 to Prosecution Amended Rule 102(3) Notice Pursuant to F00421, KSC-BC-2020-06/F00543/A01, Confidential ('Rule 102(3) Notice'); Annex 1 to Prosecution supplemental Rule 102(3) notice, KSC-BC-2020-06/F01021/A01, Confidential.

¹² *Contra* Response, KSC-BC-2020-06/F01043, paras 7, 10.

¹³ First Report, KSC-BC-2020-06/F01019, paras 10-11; Second Report, KSC-BC-2020-06/F01036, para.4.

¹⁴ First Report, KSC-BC-2020-06/F01019, para.16.

¹⁵ First Report, KSC-BC-2020-06/F01019, paras 6, 10-12, 16.

¹⁶ Response, KSC-BC-2020-06/F01043, para.9.

proceedings into account.¹⁷ Document 095244-095244 was included on the Rule 102(3) Notice and, on request, was disclosed on 13 October 2021 to the THAÇI Defence¹⁸ and on 21 January 2022, to the SELIMI and KRASNIQI Defence.¹⁹ Following the filing of the witness list and consistent with status conference submissions in February 2022,²⁰ the document was redisclosed to all Defence teams under Rule 103 on 4 March 2022,²¹ more than two months before the applicable Rule 103 deadline.²²

5. In regard to the redisclosure of document 095244-095244 under Rule 103, many ‘reassessed’ items, including this one, potentially impact witness credibility.²³ Initial Rule 103 reviews were generally conducted before the filing of the Rule 95(4) materials, including the witness list.²⁴ Thus, as items were re-reviewed for purposes of Rule 102(3) disclosure, developments in the proceedings, such as the filing of the Rule 95(4) materials reasonably, led to further Rule 103 disclosures of items that – at previous stages of the proceedings – had not been assessed as Rule 103. The SPO’s reassessments therefore accommodate the natural progression of the pre-trial disclosure process.

6. Finally, in relation to disclosures resulting from the review of a former staff member’s records,²⁵ once this error was identified, the SPO promptly took measures to review the relevant records to ensure that they were, *inter alia*, properly registered and disclosed. This review is now complete and related disclosures and protective measures

¹⁷ *Contra* Response, KSC-BC-2020-06/F01043, para.11.

¹⁸ Disclosure Package 96.

¹⁹ Disclosure Package 146.

²⁰ Transcript, 4 February 2022, pp.896-897.

²¹ Disclosure Package 175.

²² Transcript, 24 March 2022, p.1161-1162.

²³ *See, for example*, First Report, KSC-BC-2020-06/F01019, para.7 and the sources cited therein.

²⁴ While earlier reviews took into account the witnesses whose materials were being disclosed pursuant to Rule 102(1)(a)-(b), the witness list, consistent with its purpose under the Rules, represented a definitive identification of witnesses the SPO intended to rely upon at the time of filing. This issue – namely, the impact of the witness list on disclosure reviews – was foreseen previously and transparently acknowledged by the SPO. *See, for example*, Transcript, 21 July 2021, pp.589-590; Transcript, 15 December 2021, p.811.

²⁵ Response, KSC-BC-2020-06/F01043, para.13.

requests made. Instead of demonstrating any ‘dysfunctionalities’, as broadly asserted by the Defence,²⁶ these circumstances demonstrate the SPO’s commitment and ability to promptly and transparently address any errors in the disclosure process at the earliest opportunity and limit their potential to impact the fair and expeditious conduct of the proceedings.

III. CLASSIFICATION

7. This filing is confidential pursuant to Rule 82(4). The SPO has reviewed the First Report and this reply and has no objection to their reclassification as public.

IV. RELIEF REQUESTED

8. For the foregoing reasons, the Response and the relief requested therein should be rejected.

Word count: 1176



Jack Smith
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Tuesday, 25 October 2022
At The Hague, the Netherlands.

²⁶ Response, KSC-BC-2020-06/F01043, para.13.