



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

**In:** KSC-CA-2022-01  
**Specialist Prosecutor v. Hysni Gucati and Nasim Haradinaj**

**Before:** **Court of Appeals Panel**  
Judge Michèle Picard, Presiding Judge  
Judge Kai Ambos  
Judge Nina Jørgensen

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Acting Specialist Prosecutor

**Date:** 12 January 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of Notification on W04730 telephone contact**

**with two confidential and *ex parte* annexes**

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## I. Introduction

1. After the evidence in this case closed, the SPO received a further contact from W04730 ('Contact').<sup>1</sup> The SPO does not consider the information received in the Contact to fall under Rule 103 in the KSC-BC-2020-07/ KSC-CA-2022-01 proceedings, and did not intend to provide the Defence with notice of this item.
2. Nonetheless, noting this is the first post-judgment appeal phase at the KSC, the SPO notifies the Appeals Panel in order to ensure the proper discharge of its disclosure obligations.

## II. Procedural Background

3. On [REDACTED], the SPO conducted a formal interview with W04730 ('Interview').<sup>2</sup> In the course of the Interview, W04730 provided information suggesting that [REDACTED]. For this reason, the SPO noticed the Interview pursuant to Rule 102(3)<sup>3</sup> and the Defence selected it.
4. On 3 November 2021, the Trial Panel granted the SPO's request not to disclose the Interview on grounds that [REDACTED].<sup>4</sup> [REDACTED].<sup>5</sup>
5. On 17 March 2022, the Trial Panel Presiding Judge declared the case closed.<sup>6</sup>

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<sup>1</sup> Annexes 1-2.

<sup>2</sup> Annex 2 to Prosecution challenges to disclosure of items in updated Rule 102(3) Notice, KSC-BC-2020-07/F00316/A02, 17 September 2021, Strictly Confidential and *Ex Parte* ('Interview').

<sup>3</sup> Annex 1 to Prosecution addendum to its Consolidated Rule 102(3) Notice, KSC-BC-2020-07/F00307/A01, 9 September 2021, Confidential (Items 186-90).

<sup>4</sup> Decision on the Prosecution Challenges to Disclosure of Items in the Updated Rule 102(3) Notice, KSC-BC-2020-07/F00413, 3 November 2021, Confidential (with annex) ('Rule 102(3) Decision'), para.60.

<sup>5</sup> Rule 102(3) Decision, KSC-BC-2020-07/F00413, para.61.

<sup>6</sup> Transcript of Hearing, 17 March 2022, p.3855.

6. On 22 April 2022, the SPO had the Contact with W04730.<sup>7</sup> The recording of the audio of the Contact was of poor quality, which impacted the quality and preparation of the English transcript.

7. On 4 July 2022, the SPO finalised the transcript of the Contact.<sup>8</sup>

### III. Submissions

8. In the course of the Contact, W04730 asserts that [REDACTED].<sup>9</sup> W04730 claimed [REDACTED].<sup>10</sup> W04730 then said [REDACTED].<sup>11</sup> [REDACTED].

9. The Contact bears certain similarities to a phone conversation the SPO had with [REDACTED].<sup>12</sup> The Trial Panel ordered counterbalancing measures to ensure the fairness of the trial, but analysed this information under Rule 102(3) and not Rule 103.<sup>13</sup> Ultimately, the phone conversation the SPO had with [REDACTED] – and the subsequent interview the SPO had with him about that conversation<sup>14</sup> – was not tendered into evidence by the Defence.

10. Rule 112 clearly extends the SPO's obligation to disclose Rule 103 material through the appeal phase.<sup>15</sup> The Rules do not have an equivalent provision on continuing Rule 102(3) notifications. There is little purpose in continuing with the Rule 102(3) process on appeal, given that the provision covers residual information not

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<sup>7</sup> Annex 2.

<sup>8</sup> Annex 1.

<sup>9</sup> Annex 2, pp.13-14, 21.

<sup>10</sup> Annex 2, pp.10, 14.

<sup>11</sup> Annex 2, p.17.

<sup>12</sup> [REDACTED].

<sup>13</sup> Rule 102(3) Decision, KSC-BC-2020-07/F00413, paras 75-78; Decision on the Prosecution Request Related to Rule 102(3) Notice Item 201, KSC-BC-2020-07/F00435, 15 November 2021, Confidential.

<sup>14</sup> 104127-TR-ET Part 1.

<sup>15</sup> 'The Specialist Prosecutor shall disclose to the Defence any exculpatory information referred to in Rule 103 notwithstanding the closing of the case pursuant to Rule 136 and any subsequent appeal'.

reasonably expected to be a 'decisive factor' in reaching a decision at trial within the meaning of Rule 181(3).

11. The Trial Panel already ordered non-disclosure of W04730's Interview, thus precluding the Defence from knowing W04730's identity or what he knows about [REDACTED]. [REDACTED]. [REDACTED].<sup>16</sup> Disclosing the Contact would largely defeat the purpose behind restricting disclosure of the Interview,<sup>17</sup> and the SPO does not consider that it falls under its disclosure obligations.

12. This filing is submitted as confidential and *ex parte* pursuant to Rule 82(3) in light of the sensitivity of the information involved.

**Word count: 603**



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**Alex Whiting**  
**Acting Specialist Prosecutor**

Thursday, 12 January 2023

At The Hague, the Netherlands.

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<sup>16</sup> Annex 2, pp.5-12.

<sup>17</sup> [REDACTED].