



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

**Public redacted version of Notification on communication received by the SPO
with Confidential and *Ex Parte* Annex 1**

Specialist Prosecutor's Office

Alex Whiting

Counsel for Mr Gucati

Jonathan Elystan Rees

Counsel for Mr Haradinaj

Toby Cadman

1. On 1 September 2022, while reviewing, for the purposes of disclosure across all cases, [REDACTED], the SPO came across a 23 August 2022 English translation of a [REDACTED] communication from a person purporting to be [REDACTED] (Communication).¹

2. The Communication primarily relates to security concerns. In that context, the author alleges, *inter alia*, that: (i) [REDACTED]; (ii) [REDACTED]; and (iii) [REDACTED]. The author appears to be referring to the documents made public by the Accused. He provides no basis for his assertions, and there is no reference to any involvement of the SITF/SPO.

3. The SPO does not consider the Communication to fall under Rule 103² in the KSC-BC-2020-07/ KSC-CA-2022-01 proceedings. Accordingly, it has not disclosed it to the Defence. The document contains similar information to a number of items on the Rule 102(3) notice for which the SPO successfully challenged materiality before the Trial Panel.³

4. Rule 112 clearly extends the SPO's obligation to disclose Rule 103 material through the appeal phase. As argued previously, the Rules do not have an equivalent provision on continuing Rule 102(3) notifications.⁴ There is little purpose in continuing with the Rule 102(3) process on appeal, given that the provision covers residual information not reasonably expected to be a 'decisive factor' in reaching a decision at trial within the meaning of Rule 181(3).

¹ Annex 1.

² 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.

³ 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, paras 58-60.

⁴ Notification on W04730 telephone contact, KSC-CA-2022-01/F00028, 7 July 2022, Confidential and *Ex Parte*.

5. The SPO did not intend to provide notice of this item, but, noting this is the first post-judgment appeal phase at the KSC and that this item was received by the SPO in Albanian before the closing of the case, the SPO notifies the Appeals Panel in order to ensure the proper discharge of its disclosure obligations.

6. This filing is submitted as confidential and *ex parte* pursuant to Rule 82(3) in light of the sensitivity of the information involved. A protective measures assessment in relation to the author of the Communication would be required prior to any disclosure.

Word count: 386



Alex Whiting
Acting Specialist Prosecutor

Thursday, 12 January 2023

At The Hague, the Netherlands.