



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: **KSC-CA-2022-01**

Before: **A Panel of the Court of Appeals Chamber**
Judge Michèle Picard
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Fidelma Donlon

Date: 15 September 2022

Original language: English

Classification: **Public**

Public Redacted Version of Decision on Prosecution Notifications

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THE PANEL OF THE COURT OF APPEALS CHAMBER of the Kosovo Specialist Chambers (“Court of Appeals Panel” or “Panel” and “Specialist Chambers”, respectively),¹ acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 172 of the Rules of Procedure and Evidence (“Rules”), is notified of a confidential and *ex parte* communication received by the Specialist Prosecutor’s Office (“SPO”) on 7 July 2022 (“7 July 2022 Notification”)² and a confidential and *ex parte* communication received by the SPO on 7 September 2022 (“7 September 2022 Notification”) (collectively “Notifications”).³

I. BACKGROUND

1. On 22 January 2021, the Pre-Trial Judge issued a framework decision setting out *inter alia* the principles applicable to the disclosure of material under Rule 102(3) of the Rules.⁴
2. On 19 February 2021, the SPO filed an initial notice pursuant to Rule 102(3) of the Rules.⁵

¹ F00011, Decision Assigning a Court of Appeals Panel, 21 June 2022.

² F00028, Notification on W04730 telephone contact, 7 July 2022 (confidential and *ex parte*); F00028/A01, Annex 1 to Notification on W04730 telephone contact, 7 July 2022 (confidential and *ex parte*). Annex 1 is an official note providing some corrections to the transcription of the audio recording of the 22 April 2022 interview with the witness; F00028/A02, Annex 2 to Notification on W04730 telephone contact, 7 July 2022 (confidential and *ex parte*). Annex 2 is the transcription of the audio recording of the 22 April 2022 interview with the witness.

³ F00038, Notification on communication received by the SPO, 7 September 2022 (confidential and *ex parte*); F00038/A01, Annex 1 to Notification on communication received by the SPO, 7 September 2022 (confidential and *ex parte*).

⁴ KSC-BC-2020-07, F00104, Framework Decision on Disclosure of Evidence and Related Matters, 22 January 2021 (“Framework Decision on Disclosure”).

⁵ KSC-BC-2020-07, F00133, Prosecution’s Rule 102(3) notice, 19 February 2021.

3. On 23 February 2021, the Pre-Trial Judge issued a decision on the non-disclosure of documents seized from the Kosovo Liberation Army War Veterans' Association ("KLA WVA") on 8, 17 and 22 September 2020 ("Batches").⁶
4. On 1 April 2021, the Pre-Trial Judge issued a decision setting out a revised schedule for the disclosure of Rule 102(3) material.⁷
5. On 14 April 2021, further to the Decision on the Materiality of Rule 102(3) Items, the SPO submitted a consolidated detailed notice of material in its possession falling under Rule 102(3) of the Rules.⁸
6. On 21 April 2021, Mr Hysni Gucati ("Gucati") requested, via *inter partes* correspondence, the disclosure of all items listed in the SPO notice under Rule 102(3) of the Rules and of certain other items, including notably: (i) all material held by the SPO which relates to the origin and provenance of the material contained within the Batches; and (ii) all material held by the SPO which relates to attempts made by the SPO to identify the individual(s) disclosing the Batches to the KLA WVA (collectively "Gucati Requests B-C").⁹

⁶ KSC-BC-2020-07, F00141/RED, Public Redacted Version of Decision on Disclosure of Certain Documents Seized from the KLA War Veterans Association, 15 July 2021 (confidential version filed on 23 February 2021).

⁷ KSC-BC-2020-07, F00172/RED, Public Redacted Version of the Decision on the Materiality of Information Requested under Rule 102(3) and Related Matters, 15 July 2021 (confidential version filed on 1 April 2021) ("Decision on the Materiality of Rule 102(3) Items").

⁸ KSC-BC-2020-07, F00183/A01, Annex 1 to Prosecution's consolidated Rule 102(3) notice, 14 April 2021 (confidential) ("Rule 102(3) Notice").

⁹ See KSC-BC-2020-07, F00190/RED, Public Redacted Version of 'Prosecution requests and challenges pursuant to KSC-BC-2020-07/F00172', dated 26 April 2021, 18 May 2021 (confidential version filed on 26 April 2021) ("Request for Non-Disclosure"), paras 1, 32, quoting an email dated 21 April 2021 from the Gucati Defence team to the SPO.

7. On 26 April 2021, the SPO submitted a request for the non-disclosure of, *inter alia*, certain material not listed in the notice under Rule 102(3) of the Rules, including the material identified under Gucati Requests B-C.¹⁰

8. On 26 May 2021, the Pre-Trial Judge issued a decision, where he notably rejected Gucati's request for disclosure of the material identified under Gucati Requests B-C.¹¹

9. On 29 July 2021, a Court of Appeals Panel found that the Pre-Trial Judge erred in not requesting that the material identified under Gucati Requests B-C be included in the notice under Rule 102(3) of the Rules as relevant to the case, but that his error did not invalidate the overall conclusion of the Pre-Trial Judge that this material should not be disclosed to the Defence and did not impact the outcome of the decision issued on 26 May 2021. Accordingly, the Panel rejected Gucati's and Mr Nasim Haradinaj's appeals.¹²

10. On 1 September 2021, the Trial Panel, taking into consideration the findings of the Disclosure Appeal Decision, ordered the SPO to, *inter alia*, submit, by 6 September 2021, an updated notice listing material in its possession falling under Gucati Requests B-C.¹³ On 7 September 2021, the Trial Panel ordered the SPO to transmit, by 9 September 2021, a redacted updated Rule 102(3) notice to the Defence.¹⁴

¹⁰ Request for Non-Disclosure, para. 1(ii).

¹¹ KSC-BC-2020-07, F00210/RED, Public Redacted Version of Decision on Prosecution Requests and Challenges Pursuant to F00172, 15 July 2021 (confidential version filed on 26 May 2021) ("Decision on Prosecution Requests and Challenges dated 15 July 2021"), paras 57-65.

¹² KSC-BC-2020-07, IA005/F00008/RED, Public Redacted Version of Decision on the Appeals Against Disclosure Decision, 29 July 2021 (confidential version filed on 29 July 2021) ("Disclosure Appeal Decision"), paras 57-58.

¹³ KSC-BC-2020-07, Oral Order on updated Rule 102(3) Notice, transcript 1 September 2021, pp. 442-443.

¹⁴ KSC-BC-2020-07, F00304, Order on the Updated Rule 102(3) Detailed Notice, 7 September 2021, para. 26.

11. On 9 September 2021, the SPO filed its Updated Rule 102(3) Notice.¹⁵
12. On 17 September 2021, the SPO seized the Trial Panel with a request for non-disclosure of all items listed in the Updated Rule 102(3) Notice whose access was sought by the Defence.¹⁶
13. On 3 November 2021, the Trial Panel issued a decision granting, in part, the SPO challenges to the disclosure of several items from the Updated Rule 102(3) Notice, including items 186-190 containing an interview conducted by the SPO with Witness W04730, on [REDACTED] (“First Witness W04730 Interview”).¹⁷
14. On 29 September 2021, the SPO filed an official note on a strictly confidential and *ex parte* basis containing information provided by [REDACTED] to the SPO about alleged events connected to the proceedings.¹⁸ On 15 November 2021, following some hearings held *ex parte* the Defence, the Trial Panel found that the information provided by [REDACTED] was material to the Defence and ordered the SPO to disclose to the Defence a redacted version of the official note. The redactions were requested and authorised under Rule 108 of the Rules.¹⁹

¹⁵ KSC-BC-2020-07, F00307/A01, Annex 1 to Prosecution Addendum to its Consolidated Rule 102(3) Notice, 9 September 2021 (confidential) (“Updated Rule 102(3) Notice”).

¹⁶ KSC-BC-2020-07, F00316/RED, Public Redacted Version of Prosecution challenges to disclosure of items in updated Rule 102(3) Notice, 17 September 2021 (strictly confidential and *ex parte* and confidential redacted versions filed on 17 September 2021, corrected confidential version filed on 20 September 2021).

¹⁷ KSC-BC-2020-07, F00413/RED, Public Redacted Version of Decision on the Prosecution Challenges to Disclosure of Items in the Updated Rule 102(3) Notice, 16 December 2021 (confidential version filed on 3 November 2021) (“3 November 2021 Disclosure Decision”), paras 58, 61, 95.

¹⁸ KSC-BC-2020-07, F00337/CONF/RED, Confidential redacted version of ‘Prosecution transmission of official note of contact and related request [...]’ KSC-BC-2020-07/F00337, 17 January 2022 (strictly confidential and *ex parte* version filed on 29 September 2021). See also KSC-BC-2020-07, F00433/CONF/RED, Confidential Redacted Version of Prosecution Report Related to Rule 102(3) Notice Item 201 with four strictly confidential and *ex parte* annexes, 12 November 2021 (strictly confidential and *ex parte* version filed on 12 November 2021).

¹⁹ KSC-BC-2020-07, F00435/RED, Public Redacted Version of Decision on the Prosecution Request Related to Rule 102(3) Notice Item 201, 16 December 2021 (confidential version filed on 15 November 2021) (“15 November 2021 Disclosure Decision”), paras 20-26.

15. In the Trial Judgement that was issued in this case on 18 May 2022, the Trial Panel addressed matters related to disclosure and entrapment issues in a section titled “Fairness considerations”. The Trial Panel recalled that, throughout the proceedings, the Panel took numerous steps to ensure that the Defence was given every opportunity to present its entrapment claim.²⁰ The Trial Panel notably observed that, at trial, the Defence did not: (i) clearly explain how the Accused had been entrapped; or (ii) tender evidence from which the Panel could reasonably infer that entrapment had occurred.²¹

II. DISCUSSION

A. PRELIMINARY MATTERS

16. The Panel considers that, given the sensitive nature of the information contained in the Notifications and of the issues addressed in this Decision, it will rule on the Notifications on a confidential and *ex parte* basis and all filings submitted in relation to this decision should retain their present classification. The Panel shall revisit this finding when appropriate and will either reclassify as confidential, or file a confidential redacted version of, the present Decision.

17. Since the Notifications were filed *ex parte* the Defence, the Panel rules on this matter without having heard from the Defence. The Panel however recalls its inherent discretion to determine a matter without awaiting responses or replies, where its determination is favourable or causes no prejudice to the Party whose response or reply would be pending.²²

18. The Panel further observes that the Defence does not have access to the material provided in the Notifications and for that reason they are not in a position to make

²⁰ KSC-BC-2020-07, F00611/RED, Public Redacted Version of the Trial Judgment, 18 May 2022 (confidential version filed on 18 May 2022) (“Trial Judgment”), paras 841-850.

²¹ Trial Judgment, para. 850.

²² See e.g. 15 November 2021 Disclosure Decision, para. 13.

informed submissions on whether or not the material tendered by the SPO should be notified or disclosed to the Accused. In view of this and in order to preserve the effectiveness of the rights of the Accused in this matter, the Panel has exercised particular caution in reviewing the material provided in the Notifications.²³

B. DISCUSSION

19. At the outset, the Court of Appeals Panel recalls the provisions of the Law and of the Rules relevant to disclosure. Article 21(6) of the Law provides that:

All material and relevant evidence or facts in possession of the Specialist Prosecutor's Office which are for or against the accused shall be made available to the accused before the beginning of and during the proceedings, subject only to restrictions which are strictly necessary and when any necessary counter-balance protections are applied.

Rule 102(3) of the Rules states:

The Specialist Prosecutor shall, pursuant to Article 21(6) of the Law, provide detailed notice to the Defence of any material and evidence in his or her possession. The Specialist Prosecutor shall disclose to the Defence, upon request, any statements, documents, photographs and allow inspection of other tangible objects in the custody or control of the Specialist Prosecutor, which are deemed by the Defence to be material to its preparation, or were obtained from or belonged to the Accused. Such material and evidence shall be disclosed without delay. The Specialist Prosecutor shall immediately seize the Panel where grounds to dispute the materiality of the information exist.

Rule 103 of the Rules states:

Subject to Rule 107 and Rule 108, the Specialist Prosecutor shall immediately disclose to the Defence any information as soon as it is in his or her custody, control or actual knowledge, which may reasonably suggest the innocence or mitigate the guilt of the Accused or affect the credibility or reliability of the Specialist Prosecutor's evidence.

²³ See e.g. 15 November 2021 Disclosure Decision, para. 14.

Rule 112 of the Rules states:

If either Party discovers additional evidentiary material or information that should have been disclosed earlier pursuant to the Rules, that Party shall immediately disclose such evidence or information to the opposing Party and the Panel. 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.

20. The Panel stresses the importance of the disclosure process in ensuring the fairness of the proceedings and that the rights of the Defence are respected, and that this should remain paramount in disclosure related decisions.²⁴

21. The Panel already endorsed the principles applicable to disclosure pursuant to Rule 102(3) of the Rules set forth by the Pre-Trial Judge in the Framework Decision on Disclosure and, more significantly, the Decision on the Materiality of Rule 102(3) Items.²⁵ In that regard, the Panel recalls that Rule 102(3) of the Rules sets out a procedure involving the following steps: (i) the provision by the SPO of a detailed notice to the Defence of any material and evidence in its possession; (ii) any requests by the Defence for the disclosure or inspection of material in the custody or control of the SPO, which is deemed by the Defence to be material for its preparation, or was obtained from or belonged to the Accused; and (iii) any disputes raised by the SPO as to the materiality of the material requested by the Defence.²⁶ The Panel further recalls that the SPO can also invoke any of the grounds for non-disclosure provided under Rules 105-108 of the Rules.

²⁴ See Disclosure Appeal Decision, para. 35 and authorities cited therein.

²⁵ Disclosure Appeal Decision, para. 34.

²⁶ Decision on the Materiality of Rule 102(3) Items, para. 22. See also, Disclosure Appeal Decision, para. 38.

1. The 7 July 2022 Notification

(a) Submissions of the SPO

22. In the 7 July 2022 Notification, the SPO explains that, on [REDACTED], it conducted the First Witness W04730 Interview, in which the latter suggested that “[REDACTED]”.²⁷ The SPO provided notice of the First Witness W04730 Interview to the Defence pursuant to Rule 102(3) of the Rules, and the Defence requested its disclosure.²⁸ The SPO recalls that, on 3 November 2021, the Trial Panel granted the SPO’s request not to disclose the First Witness W04730 Interview as it was deemed not material to the preparation of the Defence.²⁹

23. On [REDACTED], the SPO had another contact with the same witness (“Second Witness W04730 Interview”) and the transcript of this contact was finalised on 4 July 2022.³⁰ The SPO explains that, in the course of this second contact, Witness W04730 claimed that [REDACTED].³¹

24. In support of its position that the Second Witness W04730 Interview does not fall under Rule 103 of the Rules and its intention not to provide the Defence with notice of this item,³² the SPO submits that: (i) the interview bears certain similarities to a telephone conversation that the SPO had with [REDACTED], whose information was analysed by the Trial Panel under Rule 102(3) of the Rules rather than under Rule 103 of the Rules;³³ (ii) unlike Rule 112 of the Rules, that clearly extends the SPO’s obligation to disclose Rule 103 of the Rules material throughout the appeal phase, the Rules do

²⁷ 7 July 2022 Notification, para. 3.

²⁸ 7 July 2022 Notification, para. 3, referring to KSC-BC-2020-07, F00307/A01, Annex 1 to Prosecution addendum to its Consolidated Rule 102(3) Notice, 9 September 2021 (confidential), Items 186-190.

²⁹ 7 July 2022 Notification, para. 4, referring to the 3 November 2021 Disclosure Decision, para. 60.

³⁰ 7 July 2022 Notification, paras 1, 6, 7.

³¹ 7 July 2022 Notification, para. 8.

³² 7 July 2022 Notification, paras 1, 11. The SPO nonetheless submits that because this case is the first appeal case at the Specialist Chambers, it “notifies the Appeals Panel in order to ensure the proper discharge of its disclosure obligations”. See 7 July 2022 Notification, para. 2.

³³ 7 July 2022 Notification, para. 9, referring to 15 November 2021 Disclosure Decision. The SPO adds that this material was not tendered into evidence by the Defence.

not have an equivalent provision on continuing Rule 102(3) of the Rules notifications;³⁴ and (iii) the Trial Panel already ordered the non-disclosure of the First Witness W04730 Interview, finding that there would be a grave risk to his security by disclosing his identity, and [REDACTED].³⁵

(b) Assessment of the Court of Appeals Panel

25. The Panel observes that, in the 3 November 2021 Disclosure Decision, the Trial Panel considered that the First Witness W04730 Interview (referred to as “Items 186-190” in that decision) contained no information that could assist the Defence claim or its investigations of entrapment, and therefore granted the SPO’s request not to disclose the First Witness W04730 Interview to the Defence. The Trial Panel specifically noted that “none of the items contain any information or opinion regarding any role or involvement the SPO would have had in the provenance [...] of the Batches”.³⁶

26. However, the Panel finds that, had the First Witness W04730 Interview suggested the involvement of the SPO in the provenance of the Batches, the interview would have been relevant to the claim of entrapment and should have been made available to the Defence under Rule 103 of the Rules. In that regard, the Panel notes that the Pre-Trial Judge acknowledged the exculpatory nature of material or information regarding purported incitement or entrapment of the Accused, stating that such information would have to be immediately disclosed to the Defence pursuant to Rule 103 of the Rules.³⁷ This finding was upheld by the Court of Appeals Panel in the Disclosure Appeal Decision.³⁸

³⁴ 7 July 2022 Notification, para. 10.

³⁵ 7 July 2022 Notification, para. 11.

³⁶ 3 November 2021 Disclosure Decision, paras 58-59, 95.

³⁷ Decision on Prosecution Requests and Challenges dated 15 July 2021, para. 63.

³⁸ Disclosure Appeal Decision, paras 49-50, 53.

27. [REDACTED], the Panel finds that, [REDACTED],³⁹ it is subject to disclosure under Rule 103 of the Rules according to Rule 112 of the Rules, which extends the SPO's obligation to disclose material falling under Rule 103 of the Rules throughout the appeal phase.

28. The SPO allegation that similar information was analysed by the Trial Panel under Rule 102(3) of the Rules rather than under Rule 103 of the Rules,⁴⁰ is irrelevant for the purpose of the present assessment. The Trial Panel analysed similar information in the 15 November 2021 Disclosure Decision, where the Judges were requested to evaluate the information exclusively under the spectrum of Rule 102(3) of the Rules. Thus, the Trial Panel never determined whether similar evidence could have fallen within the scope of Rule 103 of the Rules. Likewise, that the Trial Panel ordered the non-disclosure of the First Witness W04730 Interview in a prior decision⁴¹ is not determinative, because although it concerns the same witness, the nature of the reported allegations is different. Indeed, in the First Witness W04730 Interview, the witness did not implicate the SPO in the provenance of the Batches.⁴²

29. Having found that the Second Witness W04730 Interview shall be disclosed pursuant to Rule 103 of the Rules as relevant to the Defence's claim of entrapment, the Panel finds that the First Witness W04730 Interview shall also be disclosed to the Defence given that the interviews are inter-related and that the second one cannot be properly understood without the first one.

30. Finally, the Panel notes the SPO's concerns, as also reflected in the 3 November 2021 Disclosure Decision, regarding the security of the witness [REDACTED].⁴³ However, the Panel recalls that nothing precludes the SPO from invoking one of the

³⁹ 7 July 2022 Notification, para. 8.

⁴⁰ 7 July 2022 Notification, para. 9, referring to the 15 November 2021 Disclosure Decision.

⁴¹ 7 July 2022 Notification, para. 11.

⁴² 3 November 2021 Disclosure Decision, paras 58-60.

⁴³ 7 July 2022 Notification, para. 11.

grounds for non-disclosure provided under Rules 105 to 108 of the Rules and from proposing counterbalancing measures under Rule 102(3) of the Rules.

2. The 7 September 2022 Notification

(a) Submissions of the SPO

31. The SPO explains that, on 1 September 2022, it came across a 23 August 2022 English translation of a communication, received [REDACTED] on 27 January 2022 before the closing of the case (“Communication”).⁴⁴ As explained by the SPO, the author of the Communication appears to be referring to the documents made public by the Accused and alleges, *inter alia*, that:

(i) [REDACTED]; (ii) [REDACTED] and (iii) [REDACTED].⁴⁵

32. The SPO does not consider that the 7 September 2022 Notification falls under Rule 103 of the Rules and therefore has not disclosed it to the Defence.⁴⁶ Neither does the SPO consider that the Communication falls under Rule 102(3) of the Rules. In support of this assertion, the SPO submits that: (i) 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;⁴⁷ and (ii) unlike Rule 112 of the Rules that clearly extends the SPO’s obligation to disclose material falling under Rule 103 of the Rules throughout the appeal phase, the Rules do not have an equivalent provision on continuing notifications pursuant to Rule 102(3) of the Rules and there would be “little purpose” in doing so.⁴⁸ The SPO further submits that a

⁴⁴ 7 September 2022 Notification, paras 1, 5. In the 7 July 2022 Notification, the SPO underlined that the Trial Panel Presiding Judge declared the case closed on 17 March 2022. See 7 July 2022 Notification, para. 5.

⁴⁵ 7 September 2022 Notification, para. 2.

⁴⁶ 7 September 2022 Notification, para. 3.

⁴⁷ 7 September 2022 Notification, para. 3, referring to 3 November 2021 Disclosure Decision, paras 58-60.

⁴⁸ 7 September 2022 Notification, para. 4.

protective measures assessment in relation to the author of the Communication would be required prior to any disclosure.⁴⁹

(b) Assessment of the Court of Appeals Panel

33. At the outset, the Panel does not find that the 7 September 2022 Notification falls under the disclosure regime of Rule 103 of the Rules given that the evidence referred to in the Notifications does not make reference to any involvement by the SPO and therefore, is not relevant to the Defence's claim of entrapment.

34. Turning to whether the 7 September 2022 Notification falls under Rule 102(3) of the Rules, the Panel has already determined that the degree of initial assessment by the SPO in terms of which materials are relevant to the Defence's case and must therefore be included in a notice pursuant to Rule 102(3) of the Rules should leave little discretion to the SPO.⁵⁰ The Panel therefore finds the SPO's arguments stating that the Communication contains similar information to a number of items on the Rule 102(3) of the Rules' notice for which the SPO successfully challenged materiality before the Trial Panel,⁵¹ to be irrelevant and premature. Indeed, at this stage, only the relevance and not the materiality of the Communication shall be taken into consideration for the purpose of the first step of the assessment under Rule 102(3) of the Rules. The Appeals Panel has already determined that the process through which the information arrived at the KLA WVA premises is relevant for the purpose of the

⁴⁹ 7 September 2022 Notification, para. 6.

⁵⁰ See above, para. 21. See also Disclosure Appeal Decision, para. 46.

⁵¹ 7 September 2022 Notification, para. 3.

first step of Rule 102(3) of the Rules.⁵² Accordingly, the SPO should provide sufficiently detailed notice of the Communication to the Defence.⁵³

35. Further, the Communication was received on 27 January 2022, before the Presiding Judge of the Trial Panel declared the case closed.⁵⁴ Therefore, it is not necessary for the Court of Appeals Panel to assess whether the notification procedure under Rule 102(3) of the Rules continues during the appeal phase. The Panel further recalls that, according to Rule 112 of the Rules, if the SPO discovers information that should have been disclosed earlier pursuant to the Rules, it shall immediately disclose such information to the Defence and the Panel.

36. Finally, the Panel notes the SPO's request for a protective measures assessment should the Communication be disclosed. Although this request is premature at this stage given that the Panel is addressing in this decision the notification of the Communication to the Defence rather than its disclosure, the Panel recalls that nothing precludes the SPO from invoking one of the grounds for non-disclosure provided under Rules 105 to 108 of the Rules.

37. In light of the above, the Panel finds that the Communication shall be notified to the Defence pursuant to Rule 102(3) of the Rules.

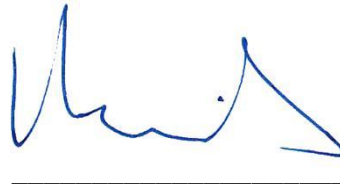
⁵² Disclosure Appeal Decision, para. 43. The Panel stated that: "although the process through which the information arrived to the KLA WVA premises does not *per se* form part of the charges against the Accused and relates to a different conduct, insofar as the Accused are alleged to have disseminated confidential information *following* the receipt of that information, such process nevertheless bears some connection, at least temporal, with the charges, in that it precedes the events forming part of the charges".

⁵³ Rule 102(3) of the Rules.

⁵⁴ 7 September 2022 Notification, paras 1, 5. The SPO underlines that this case is the first appeal case at the Specialist Chambers and that, it "notifies the Appeals Panel in order to ensure the proper discharge of its disclosure obligations". 7 September 2022 Notification, para. 5.

III. DISPOSITION

38. For these reasons, the Court of Appeals Panel **ORDERS**:
- a. the SPO to disclose, subject to Rules 105 to 108 of the Rules, the First Witness W04730 Interview⁵⁵ and the Second Witness W04730 Interview, by Monday, 19 September 2022, under Rule 103 of the Rules;
 - b. the SPO to seize the Panel, by Wednesday, 21 September 2022, with any request for non-disclosure of the First Witness W04730 Interview and the Second Witness W04730 Interview, pursuant to Rules 105 to 108 of the Rules, and with any corresponding counter-balancing measures, if warranted; and
 - c. the SPO to provide to the Defence, by Monday, 19 September 2022, a detailed notice of the Communication identified in the 7 September 2022 Notification, under Rule 102(3) of the Rules.



Judge Michèle Picard,

Presiding Judge

Dated this Thursday, 15 September 2022

At The Hague, the Netherlands

⁵⁵ Identified as “Items 186-190” in the 3 November 2021 Disclosure Decision.