



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA 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: 7 November 2022

Original language: English

Classification: **Public**

**Public Redacted Version of Decision on Defence Motions for
Alternate Relief Relating to Rule 103 Disclosure Violations**

Specialist Prosecutor's Office:
Jack Smith

Counsel for Hysni Gucati:
Jonathan Elystan Rees

Counsel for Nasim Haradinaj:
Toby Cadman

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 seised of motions filed by Mr Hysni Gucati (“Gucati”) and Mr Nasim Haradinaj (“Haradinaj”) (collectively, “Accused”) on 17 and 18 October 2022, respectively, alleging disclosure violations of Rule 103 of the Rules and requesting an alternate remedy in the form of a judgment of acquittal, stay of further proceedings or a retrial.² The Specialist Prosecutor’s Office (“SPO”) responded on 27 October 2022 that the Motions should be rejected.³ Gucati and Haradinaj replied on 1 November 2022⁴ and 2 November 2022,⁵ respectively.

I. BACKGROUND

1. On 18 May 2022, Trial Panel II (“Trial Panel”) issued a judgment finding the Accused guilty of five of the six counts charged and sentencing them to four and a

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

² F00068, Gucati Motion for Alternate Relief relating to Disclosure Violations, namely, An Order Overturning the Convictions, with the Imposition of a Stay or Order for Re-Trial, 17 October 2022 (confidential) (“Gucati Motion”); F00073, Haradinaj Motion for Relief for Violations of Rule 103, 18 October 2022 (confidential) (“Haradinaj Motion”) (collectively, “Motions”).

³ F00076, Prosecution Consolidated Response to Defence Rule 103 Requests and Related Reconsideration Requests, 27 October 2022 (confidential) (“Response”), paras 3, 29. The Panel will consider the SPO’s submissions to the extent they concern the present Motions, as it has already disposed of the matter to which the remainder thereof concerned. See F00082/RED, Public Redacted Version of Decision on Defence Applications for Reconsideration of “Decision on Defence Requests to Amend the Notices of Appeal Pursuant to Rule 176(3) of the Rules”, 3 November 2022 (confidential version filed on 3 November 2022) (“Decision on Reconsideration”).

⁴ F00078, Gucati Reply to Prosecution Consolidated Response to Defence Rule 103 Requests and Related Reconsideration Requests, 1 November 2022 (confidential) (“Gucati Reply”).

⁵ F00080, Defence Reply to SPO Consolidated Response to Defence Rule 103 Requests and Related Reconsideration Requests, 2 November 2022 (confidential) (“Haradinaj Reply”). The Panel notes that the Response was notified on 27 October 2022 and therefore, according to Rules 9(1)-(2) and 76 of the Rules the deadline for the filing of the Defence replies was on 1 November 2022. As the Haradinaj Reply was filed on 2 November 2022, and in the absence of a justification for the late filing, the Panel will not consider the Haradinaj Reply.

half years of imprisonment, with credit for the time served, and to a fine of one hundred euros.⁶

2. On 20 June 2022, the Accused filed notices of appeal.⁷ Pursuant to a decision of the Court of Appeals Panel,⁸ Haradinaj and Gucati re-filed their notices of appeal on 10 and 11 July 2022, respectively.⁹

3. On 19 August 2022, the Accused filed their appeal briefs.¹⁰

4. On 21 September 2022, the SPO filed its brief in response.¹¹

5. Pursuant to a SPO notification of a confidential and *ex parte* communication with Witness W04730,¹² the Court of Appeals Panel issued a decision on 15 September 2022 ordering the SPO to, *inter alia*, disclose to the Defence under

⁶ KSC-BC-2020-07, F00611/RED, Public Redacted Version the Trial Judgment, 18 May 2022 (confidential version filed on 18 May 2022) ("Trial Judgment"), paras 1012-1017.

⁷ F00008, Haradinaj Defence Notice of Appeal of Trial Judgement, 17 June 2022 (distributed on 20 June 2022); F00009/RED, Public Redacted Version of Gucati Notice of Appeal re Trial Judgment KSC-BC-2020-07/F00611 ("Judgment") Pursuant to Art.46(1)(a), (b) and (c) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 176(2) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), 17 June 2022 (distributed on 20 June 2022) (confidential version filed on 17 June 2022).

⁸ F00021, Decision on Haradinaj's Request for Variation of Word Limit to File Appeal Brief and SPO's Request for Order to Re-File Haradinaj's Notice of Appeal, 1 July 2022, paras 10-14.

⁹ F00029, Haradinaj Defence Re-Filed Notice of Appeal of Trial Judgement, 10 July 2022; F00030/RED, Public Redacted Version of Re-Filed Gucati Notice of Appeal re Trial Judgment KSC-BC-2020-07/F00611 ("Judgment") Pursuant to Art.46(1)(a), (b) and (c) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 176(2) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), 11 July 2022 (confidential version filed on 11 July 2022) (collectively, "Notices of Appeal").

¹⁰ F00036/RED, Public Redacted Version of Gucati Appeal Brief Pursuant to Rule 179(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), 19 August 2022 (distributed on 22 August 2022) (confidential version filed on 19 August 2022, distributed on 22 August 2022) ("Gucati Appeal Brief"); F00035/COR2, Further Corrected Version of Defence Appeal Brief on Behalf of Mr. Nasim Haradinaj, 2 September 2022 (uncorrected confidential version filed on 19 August 2022, corrected version filed on 31 August 2022, reclassified as public on 2 September 2022) ("Haradinaj Appeal Brief") (collectively, "Appeal Briefs").

¹¹ F00047, Prosecution Brief in Response to Defence Appeals with Two Public Annexes, 21 September 2022 (confidential, reclassified as public on 30 September 2022).

¹² F00028/CONF/RED, Confidential Redacted Version of Notification on W04730 telephone contact, 23 September 2022 (confidential) (confidential and *ex parte* version filed on 7 July 2022) ("7 July 2022 Notification").

Rule 103 of the Rules two interviews of Witness W04730 dated [REDACTED] and [REDACTED] (“First Witness W04730 Interview” and “Second Witness W04730 Interview”, respectively, and “Rule 103 Material”, collectively) and/or to request counter-balancing measures.¹³

6. On 23 September 2022, the Panel granted the SPO’s request for protective measures regarding the Rule 103 Material and ordered the disclosure to the Defence of a confidential redacted version of the material by 26 September 2022.¹⁴ The SPO abided by this order and disclosed the Rule 103 Material to the Defence (“Disclosure”).

7. On 7 October 2022, Gucati and Haradinaj filed their briefs in reply.¹⁵

8. On 13 October 2022, the Panel denied the Defence requests to amend their notices of appeal in order to challenge the effect of the SPO’s alleged breach of its disclosure obligations under Rule 103 of the Rules.¹⁶

9. Pursuant to an order of the Court of Appeals Panel,¹⁷ Haradinaj and Gucati re-filed on 16 and 17 October 2022, respectively, their briefs in reply.¹⁸

¹³ F00044/CONF/RED, Confidential Redacted Version of Decision on Prosecution Notifications, 26 September 2022 (confidential) (confidential and *ex parte* version filed on 15 September 2022) (“Decision on SPO Notifications”), paras 25-29, 38(a)-(b).

¹⁴ F00049/CONF/RED, Confidential Redacted Version of Decision on Specialist Prosecutor’s Office Request for Protective Measures, 26 September 2022 (confidential) (strictly confidential and *ex parte* version filed on 23 September 2022).

¹⁵ F00060, Gucati Brief in Reply pursuant to Rule 179(3) with one Annex, 7 October 2022 (confidential); F00062, Haradinaj Reply to SPO Brief in Response to Defence Appeal Brief, 7 October 2022 (confidential).

¹⁶ F00064/RED, Public Redacted Version of Decision on Defence Requests to Amend the Notices of Appeal Pursuant to Rule 176(3) of the Rules, 13 October 2022 (confidential version filed on 13 October 2022) (“Decision on Amending Notices of Appeal”).

¹⁷ F00063, Decision on Defence Requests for Variation of Word Limit of Briefs in Reply, 12 October 2022.

¹⁸ F00065, Haradinaj Re-filed Reply to SPO Brief in Response to Defence Appeal Brief, 16 October 2022; F00067/RED, Public Redacted Version of Re-Filed Gucati Brief in Reply pursuant to Rule 179(3) with one Annex, 21 October 2022 (confidential version filed on 17 October 2022).

10. On 3 November 2022, the Panel dismissed the Defence requests to reconsider its Decision on Amending Notices of Appeal.¹⁹

II. DISCUSSION

A. SUBMISSIONS OF THE PARTIES

11. The Accused submit that the Disclosure consists of exculpatory material which was disclosable under Rule 103 of the Rules, as it suggests SPO involvement in the provenance of the Batches which were seized at the offices of the Kosovo Liberation Army War Veterans' Association ("KLA WVA") and, as such, could support their entrapment defence.²⁰ Haradinaj also submits that although it is entirely possible that the SPO may have further Rule 103 material of which it has not provided notice, he has been able to comply with the requirements for establishing a breach of the Prosecution's disclosure violations, since he has identified with sufficient precision the material and has established that this material falls under Rule 103 of the Rules.²¹

12. The Accused further argue that the SPO provided no explanation for failing to disclose immediately the Rule 103 Material despite the fact that: (i) the SPO was aware of it since [REDACTED], or at least [REDACTED]; (ii) the person present at the Second Witness W04730 Interview testified as a SPO witness in these proceedings and was aware of the importance of the issue and assured during her evidence that she would bring any relevant material to the Specialist Prosecutor or his deputy immediately; (iii) the Court of Appeals Panel had held that all material concerning the process through which the Batches arrived at the KLA WVA premises were relevant to the

¹⁹ Decision on Reconsideration, paras 20-21.

²⁰ Gucati Motion, paras 27-44; Haradinaj Motion, paras 68-72, 74. See also Gucati Reply, paras 7-8.

²¹ Haradinaj Motion, paras 33, 38, 52, 61, 64-67. See also Haradinaj Motion, paras 50-51, 54-55, 57, 76, 83 (submitting *inter alia* that the assessment of whether material under Rule 103 of the Rules is not to be based on the SPO's opinion).

case; and (iv) the SPO had already been warned about its disclosure conduct by the Trial Panel.²²

13. The Accused, moreover, argue that the Trial Panel's finding that the Defence was afforded a full and fair opportunity to put forward entrapment claims in compliance with the fair trial standards laid down by the European Court of Human Rights, including the opportunity to conduct effective investigations, as well as the rejection by the Trial Panel of the defence of entrapment were wrong.²³ Haradinaj also argues that the failures of the SPO to disclose the Rule 103 Material have caused him real and significant prejudice.²⁴

14. Accordingly, the Accused request that the Court of Appeals Panel orders an appropriate remedy that would address the violation of Article 6 of the European Convention on Human Rights, namely a judgment of acquittal, a stay of further proceedings or a retrial.²⁵ Haradinaj additionally requests an explicit finding by the Appeals Panel that the SPO violated Rule 103 of the Rules by failing to disclose the Rule 103 Material.²⁶

15. The SPO responds that the two interviews have no bearing on the evidence, since the only reason they were found to fall under Rule 103 of the Rules is because of the witness's baseless statements in the second interview [REDACTED].²⁷ According to the SPO, the Accused's arguments that the first interview has on its own exculpatory content is a clear attempt to reconsider the Appeal Panel's previous

²² Gucati Motion, paras 45-53; Haradinaj Motion, paras 39, 41, 45-46, 62-63. See also Haradinaj Motion, paras 27-28, 42; Gucati Reply, para. 17.

²³ Gucati Motion, paras 18-19, 22-23, 54-59, referring to Trial Judgment, paras 851, 890; Haradinaj Motion, paras 47-49, 53, 56, 58, 77, 84-85, 86(e). See also Gucati Motion, paras 20-21, 25-26; Haradinaj Motion, paras 34-36, 47; Gucati Reply, paras 14, 16, 18-19.

²⁴ Haradinaj Motion, paras 26, 40-41, 51, 53, 59, 79, 86(f).

²⁵ Gucati Motion, paras 60-66; Haradinaj Motion, paras 78, 84, 88. See also Haradinaj Motion, paras 80-82, 87.

²⁶ Haradinaj Motion, para. 86(a)-(d).

²⁷ Response, paras 1, 15-16. See also Response, para. 17, referring to F00075, Decision on the Specialist Prosecutor's Office's Request Regarding Item 206, 21 October 2022 (confidential) ("Decision on Item 206"), para. 32 ([REDACTED]).

findings.²⁸ The SPO also submits that there is no violation of Rule 103 of the Rules, since the SPO acted transparently and in good faith, having reasonable grounds to consider that the Second Witness W04730 Interview does not fall under Rule 103 of the Rules.²⁹ Further, the SPO argues that even if a disclosure violation were to be found, the Defence can establish no prejudice and the relief sought is not in time pursuant to Rule 6 of the Rules.³⁰ The SPO, finally, submits that the Defence arguments regarding Rule 102(3) of the Rules are irrelevant and that those relating to item 206 have already been rejected.³¹

16. In reply, Gucati submits that the SPO refuses to accept the Panel's binding ruling regarding the significance of the Rule 103 Material, and did not act transparently, since it did not notify the Trial Panel of the Second Witness W04730 Interview nor did it provide to the Defence a detailed notice thereof in accordance with Rule 102(3) of the Rules.³² Gucati also argues that the SPO had no grounds, reasonable or otherwise, to consider that the Second Witness W04730 Interview did not fall under Rule 103, *inter alia*, because it recognised similarities between it and information provided by [REDACTED], in relation to whom the Defence adduced evidence.³³ Gucati finally argues that a remedy can be achieved by: (i) disclosing contact details for the intermediary referred to in the Second Witness W04730 Interview, (ii) enabling Defence interviews with the SPO officers involved, and (iii) enabling a Defence interview with Witness W04730, using appropriate protective measures.³⁴

²⁸ Response, para. 18.

²⁹ Response, paras 2, 19-23.

³⁰ Response, paras 24-27.

³¹ Response, para. 14, referring to Decision on Item 206.

³² Gucati Reply, paras 2-5, 10, 12.

³³ Gucati Reply, paras 9, 11, 15.

³⁴ Gucati Reply, para. 20. The Panel notes that Gucati did not propose these measures in his motion and that a reply cannot be used to make new claims or raise totally new arguments. See ICTY, *Prosecutor v. Nikolić*, IT-02-60/1-A, Decision on Prosecution's Motion to Strike, 20 January 2005, para. 32. See also Rule 76 of the Rules.

B. PRELIMINARY MATTERS

17. At the outset, the Panel notes that the Defence for Haradinaj submits arguments in relation to not only the Rule 103 Material, but also to item 206 for which it requested disclosure pursuant to Rule 102(3) of the Rules.³⁵ The Panel recalls its decision, filed after the submission of the Motions, denying disclosure of item 206.³⁶ Accordingly, the Panel considers arguments alleging a disclosure violation in relation to Rule 102(3) of the Rules moot and will not consider them.

18. Moreover, the Panel's determinations in the present Decision are without prejudice to broader allegations of SPO disclosure violations made in the Appeal Briefs, particularly the Haradinaj Appeal Brief.³⁷ Rather, the present Decision will limit its findings to whether the timing of disclosure of the *specific* Rule 103 Material amounts to a disclosure violation that would justify at this stage of the proceedings the remedies of stay of proceedings, acquittal of the Accused or re-trial proposed by the Defence.

C. ASSESSMENT OF THE COURT OF APPEALS PANEL

19. The Panel recalls that pursuant to Rule 103 of the Rules, and subject to Rules 107 and 108 which regulate instances of information not subject to disclosure, the SPO shall immediately disclose to the Defence any information as soon as it is in its 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 SPO evidence. The Panel also recalls that, pursuant to Rule 112 of the Rules, the SPO 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

³⁵ See e.g. Haradinaj Motion, paras 29-33, 37-38, 41, 75, 77, 86(d).

³⁶ Decision on Item 206, paras 45-46. See also Decision on SPO Notifications, para. 33 (wherein the Panel found that Item 206 does not fall under the disclosure regime of Rule 103 of the Rules).

³⁷ See e.g. Haradinaj Appeal Brief, Grounds 1 in part, 4, 10, 16-17. See also Haradinaj Motion, para. 3.

appeal. According to Rule 110 of the Rules, the Panel may decide, upon request by a Party or *proprio motu*, on measures to be taken as a result of the non-compliance with disclosure obligations pursuant to the Rules, including a stay of proceedings and the exclusion of evidence, except for exculpatory evidence.

20. The Panel further notes that, if an accused wishes to show that the Prosecution is in breach of its disclosure obligations, he or she must identify the materials sought, present a *prima facie* showing of its probable exculpatory nature and prove the Prosecution's custody or control of the materials requested.³⁸ Even where a panel is satisfied that the SPO has failed to discharge its obligations, the panel will still examine whether the Defence was actually prejudiced by such failure before considering whether a remedy is appropriate.³⁹

21. Regarding the First Witness W04730 Interview, the Panel has already found that the nature of the reported allegations is different from those made in the Second Witness W04730 Interview as it did not implicate the SPO in the provenance of the Batches.⁴⁰ The Panel does not consider that the vague statements to which the Defence points⁴¹ could have reasonably led the SPO to have reached a different conclusion. In this regard, the Panel recalls its previous finding that the First Witness W04730 Interview shall be disclosed to the Defence only in order to provide context to the Second Witness W04730 Interview, given that the two interviews are inter-related.⁴² Accordingly, the Panel finds that the SPO has not failed to discharge its disclosure obligations with respect to the First Witness W04730 Interview.

³⁸ See e.g. ICTY, *Prosecutor v. Bralo*, IT-95-17-A, Decision on Motions for Access to *Ex Parte* Portions of the Record on Appeal and for Disclosure of Mitigating Material, 30 August 2006 ("*Bralo* Decision"), para. 31; ICTR, *Kalimanzira v. Prosecutor*, ICTR-05-88-A, Judgement, 20 October 2010 ("*Kalimanzira* Appeal Judgement"), para. 18.

³⁹ See e.g. *Bralo* Decision, para. 31; *Kalimanzira* Appeal Judgement, para. 18.

⁴⁰ Decision on SPO Notifications, para. 28.

⁴¹ See Gucati Motion, paras 29-31, 36, 39, 43, referring to 082095-TR-ET Part 2, pp. 1-2 and 082095-TR-ET Part 1, p. 2; Haradinaj Motion, paras 36, 68, 70; Gucati Reply, paras 7-8.

⁴² Decision on SPO Notifications, paras 29, 38(a).

22. As for the Second Witness W04730 Interview, the Panel recalls its previous finding that, were the SPO to have any material or information in its custody, control or actual knowledge on any purported incitement or entrapment of the Accused, this material must be disclosed immediately pursuant to Rule 103 of the Rules.⁴³ Accordingly, the Second Witness W04730 Interview has already been found to have a *prima facie* exculpatory nature.⁴⁴ The SPO argument that similar information was analysed by the Trial Panel under Rule 102(3) of the Rules rather than under Rule 103 of the Rules, is irrelevant, as in that case the Trial Panel was requested to evaluate the information exclusively under the spectrum of Rule 102(3) of the Rules and, therefore, it did not determine whether similar evidence could have fallen within the scope of Rule 103 of the Rules.⁴⁵

23. In this regard, the Panel recalls that, as confirmed by extensive international criminal jurisprudence, there is a presumption of good faith on the Prosecution's part when discharging its disclosure obligations.⁴⁶ When assessing whether the SPO demonstrated good faith, the Panel notes that the SPO filed a submission notifying the Panel of the Rule 103 Material in order to ensure the proper discharge of its disclosure obligations despite the fact that it did not consider the information received in the Second Witness W04730 Interview to fall under Rule 103 of the Rules.⁴⁷

24. Regarding the timing of this notification, the Panel observes that the SPO, represented by a senior prosecutor and the investigator Ms Zdenka Pumper, had the second interview with Witness W04730 on [REDACTED], after the case was closed.⁴⁸

⁴³ 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 49-50, 53. See also Decision on SPO Notifications, para. 26.

⁴⁴ See Decision on SPO Notifications, paras 27, 29, 38(a).

⁴⁵ Decision on SPO Notifications, para. 28. Contra Response, paras 19-20.

⁴⁶ F00057/RED, Public Redacted Version of Decision on Defence Applications for a Formal Decision that the Specialist Prosecutor's Office Failed to Comply with Rule 179(5) of the Rules, 6 October 2022 (confidential version filed on 6 October 2022), para. 13, referring to Disclosure Appeal Decision, para. 53 and jurisprudence referred therein.

⁴⁷ 7 July 2022 Notification, paras 1-2, 11.

⁴⁸ KSC-BC-2020-07, Transcript, 17 March 2022, pp. 3855-3856.

While Ms Pumper testified as a witness in the trial proceedings of this case and was aware of the Defence interest in the circumstances surrounding the delivery of the Batches,⁴⁹ the Panel notes the SPO's submission that because the recording of the audio was of poor quality, the English transcript was finalised on 4 July 2022,⁵⁰ as well as the fact that the Second Witness W04730 Interview took place in relation to another case before the Specialist Chambers.⁵¹ Although the SPO representatives at the Second Witness W04730 Interview must have been able to sufficiently understand what was said during the interview already at that time, the Panel considers that in these circumstances, the SPO may reasonably have required the final English version in order to fully review and assess the content of the interview.⁵² In the Panel's view, this, coupled with the SPO's notification of the Rule 103 Material at a time when the Defence could still raise challenges on appeal, is sufficient to demonstrate good faith.

25. Moreover, the Panel notes that the requirement that the SPO shall disclose potentially exculpatory material immediately, as soon as it is in its custody, control or actual knowledge, is meant to identify a continuous obligation for the SPO to disclose such material to the Defence, unless justifiable reasons prevent immediate disclosure.⁵³ In this regard, the Panel notes the disclosing party's obligation to disclose the evidence, including witness statements, in English, the working language of the

⁴⁹ See e.g. KSC-BC-2020-07, Transcript, 21 October 2021, p. 1249.

⁵⁰ 7 July 2022 Notification, para. 7.

⁵¹ See 7 July 2022 Notification, paras 8, 11. In this regard, the Panel observes that the voluminous nature of materials in the possession of the Prosecution may give rise to delays in disclosure. See ICTY, *Prosecutor v. Blaškić*, IT-95-14-A, Judgement, 29 July 2004, para. 300; *Kalimanzira* Appeal Judgement, para. 21.

⁵² See ICTY, *Prosecutor v. Kršić*, IT-98-33-A, Judgement, 19 April 2004, para. 197 (recognising that the Prosecution cannot be expected to disclose material of potentially exculpatory nature which it has not been able to review and assess).

⁵³ KSC-BC-2020-07, F00104, Framework Decision on Disclosure of Evidence and Related Matters, 22 January 2021 ("Framework Decision on Disclosure"), para. 49, referring to, *inter alia*, ICC, *Prosecutor v. Yekatom*, ICC-01/14-01/18-64-Red, Public Redacted Version of "Decision on Disclosure and Related Matters", 23 January 2019, para. 16 and ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15-203, Decision Setting the Regime for Evidence Disclosure and Other Related Matters, 27 February 2015, para. 18.

proceedings, as determined in accordance with Article 20 of the Law and Rule 8(3) of the Rules.⁵⁴

26. In view of the fact that the SPO notified the Panel on 7 July 2022, only three days after the finalisation of the English translation, the Panel considers that the SPO acted as soon as possible after the information was in its actual knowledge. Therefore, the Panel finds that the SPO demonstrated good faith in this instance and did not violate Rule 103 of the Rules.

27. In relation to the additional items for which the Defence approached the SPO requesting disclosure and/or additional information,⁵⁵ the Panel observes that the Defence does not clarify if it requests any relief,⁵⁶ nor has it demonstrated if the requested information is of *prima facie* exculpatory nature or provided any other legal basis for requesting it at this stage.⁵⁷ In the absence of such justification and considering the presumption of good faith on the Prosecution's part when discharging its disclosure obligations,⁵⁸ the Panel does not consider that disclosure of the additionally requested material is warranted at this stage.

28. Having found no violation of the SPO's disclosure obligations under Rule 103 of the Rules, the Panel finds that the remedies requested by the Defence are moot.

⁵⁴ Framework Decision on Disclosure, para. 61. See also F00004, Decision on Working Language, 25 May 2022.

⁵⁵ See Haradinaj Motion, paras 54-55; F00073/A01, Annex A to Haradinaj Motion for Relief for Violations of Rule 103, 18 October 2022 (confidential); F00073/A02, Annex B to Haradinaj Motion for Relief for Violations of Rule 103, 18 October 2022 (confidential); F00073/A03, Annex C to Haradinaj Motion for Relief for Violations of Rule 103, 18 October 2022 (confidential). See also Gucati Reply, para. 20; above, fn 34.

⁵⁶ See KSC-BD-15, Registry Practice Direction, Files and Filings before the Kosovo Specialist Chambers, 17 May 2019, Articles 40(d), 53(1) (requiring that a motion shall contain, *inter alia*, "a conclusion with a concise statement of the ruling or relief sought" (emphasis added)).

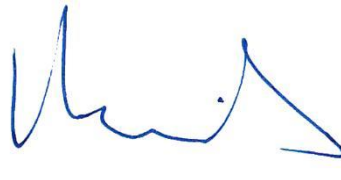
⁵⁷ See Rules 102(3) and 103 of the Rules.

⁵⁸ See above, para. 23.

III. DISPOSITION

29. For these reasons, the Court of Appeals Panel:

DENIES the Motions.



**Judge Michèle Picard,
Presiding Judge**

Dated this Monday, 7 November 2022

At The Hague, the Netherlands