



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:** Acting Specialist Prosecutor

**Date:** 3 April 2023

**Language:** English

**Classification:** Public

---

**Public redacted version of 'Prosecution challenge to disclosure of items in Rule 102(3) Notice with strictly confidential and *ex parte* annexes 1-13', KSC-BC-2020-06/F01004, dated 30 September 2022**

---

**Specialist Prosecutor's Office**

Alex Whiting

**Counsel for Victims**

Simon Laws

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Kadri Veseli**

Ben Emmerson

**Counsel for Rexhep Selimi**

David Young

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

## I. INTRODUCTION

1. Pursuant Article 23 of the Law,<sup>1</sup> Rules 102, 106, 107, and 108 of the Rules,<sup>2</sup> and the Framework Decision,<sup>3</sup> the Specialist Prosecutor's Office ('SPO') makes the following submissions contesting the materiality of certain items selected from the SPO's Rule 102(3) notice ('Notice') by Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi<sup>4</sup> (individually, 'Accused'; collectively, 'Defence').<sup>5</sup>

2. As explained below, the contested items are not material to the preparation of the Defence, and/or fall within Rule 106/Rule 107 and thus may be withheld. In addition, these materials, if disclosed, may harm multiple important interests of the SPO and the Kosovo Specialist Chambers ('KSC'), including: safeguarding witnesses and other persons affected by the proceedings; protecting sensitive, ongoing SPO investigations into obstruction of justice; and securing legitimate interests of states and organizations relied upon for various forms of essential cooperation. Preserving these interests is crucial to the ability of the SPO and KSC to fulfil their mandates.

---

<sup>1</sup> Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

<sup>2</sup> 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.

<sup>3</sup> Framework Decision on Disclosure and Related Matters, KSC-BC-2020-06/F00099, 23 November 2020, public, para.63 ('Framework Decision').

<sup>4</sup> Respectively, 'Thaçi', 'Veseli', 'Selimi', and 'Krasniqi'.

<sup>5</sup> Prosecution Rule 102(3) Notice, KSC-BC-2020-06/F00421, 31 July 2021, with Annex 1, confidential, and Annex 2, strictly confidential and *ex parte*. This challenge to disclosure based on materiality concerns items requested by various Defence teams pursuant to Rule 102(3).

## II. PROCEDURAL BACKGROUND

3. On 26 October 2020, the Pre-Trial Judge confirmed the Indictment against the Accused.<sup>6</sup>
4. On 23 November 2020, the Pre-Trial Judge issued the Framework Decision.
5. On 31 July 2021, the SPO filed the Notice. On 22 October 2021, the SPO filed amendments to the Notice.<sup>7</sup>
6. Following multiple requests from the Defence for documents, on 20 May 2022, the Pre-Trial Judge ordered that the SPO request protective measures or submit materiality challenges by 30 September 2022.<sup>8</sup>

## III. APPLICABLE LAW

7. Rule 102(3) states, in relevant part, that the ‘Specialist Prosecutor shall immediately seize the Panel where grounds to dispute the materiality of [items requested from the Rule 102(3) Notice] exist.’
8. The Appeals Panel has explained that, in relation to Rule 102(3), ‘information that bears no connection to the events relevant to the charges—such as items of a purely personal nature; too remote, hypothetical or speculative; not related to the charges against the accused; or which has only an “abstract logical relationship to the issues” —

---

<sup>6</sup> Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06, F00026/RED, 26 October 2020; *see also* Further Redacted Indictment, KSC-BC-2020-06/F00045/A03, 4 November 2020; Confidential Redacted Version of ‘Submission of corrected Indictment and request to amend pursuant to Rule 90(1)(b)’, KSC-BC-2020-06/F00455, 3 September 2021.

<sup>7</sup> Prosecution Amended Rule 102(3) Notice Pursuant to F00421, KSC-BC-2020-06/F00543, 22 October 2021.

<sup>8</sup> Transcript of Hearing, KSC-BC-2020-06, 20 May 2022, p. 1323, lines 16-25.

may be considered as not material to the preparation of the Defence.’<sup>9</sup> To be material, an item should be shown to have ‘a direct connection to the charges or a live issue in the case.’<sup>10</sup>

9. Rule 106 states:

Subject to Rule 103, and unless otherwise ordered by a Panel, reports, memoranda or other internal documents prepared by a Party or Victims’ Counsel, their assistants or representatives in connection with the investigation or preparation of a case are not subject to disclosure or notification under these Rules. For purposes of the Specialist Prosecutor, this includes reports, memoranda or other internal documents prepared by the SITF or its assistants or representatives in connection with its investigative work.

10. Rule 107(1) states, in part:

The initial material or information shall not be disclosed without the consent of the provider [...]

#### IV. SUBMISSIONS

11. In the course of reviewing the selected Defence Rule 102(3) items, the SPO has identified documents which are not material.<sup>11</sup> Certain of these documents fall within broader categories and those categories will be explained herein, with reference to the annex containing the documents. A limited number of items do not fit within these categories and are addressed separately (‘Residual Items’).

12. Furthermore, the Defence has requested disclosure of documents which are Rule 106 or Rule 107 materials. In addition, certain documents which are not material also

---

<sup>9</sup> Public Redacted Version of Decision on the Appeals Against Disclosure Decision, KSC-BC-2020-07/IA005/F00008/RED, 29 July 2021 (‘Appeals Disclosure Decision’), para.41 (citations removed).

<sup>10</sup> ICC, *Prosecutor v. Al Hassan*, ICC-01/12-01/12-01/18-859-Red, Decision on Defence request for disclosure of material related to Mr Al Hassan’s arrest and detention in Mali, 12 June 2020, para.10.

<sup>11</sup> The SPO and the Defence have been engaged in *inter partes* communications on certain, but not all, of these categories in the spirit of cooperation in good faith to minimise unnecessary litigation. It follows that the documents forming part of this submission have not been withdrawn by all Defence teams who requested them.

have Rule 106 content. As such, the SPO has explained the type of Rule 106 or Rule 107 material appended to this submission and confirms that these materials will not be disclosed for this reason.

**A. Documents which concern relations with external entities are not disclosable *per se***

13. The Defence have selected requests for assistance and requests for international legal assistance (herein 'RFAs') from the Rule 102(3) notice.<sup>12</sup>

14. In the course of its investigations, the SITF and SPO have requested and received the assistance of national authorities and international organisations to, *inter alia*, provide documents, locate potential witnesses or other persons of interest and facilitate interviews. Such communications, which reflect and reinforce agreements on mutual cooperation and trust, are integral to the ability of the SPO and KSC to function. While an expectation of confidentiality is not absolute, the official correspondence between an organ of the court and an external authority such as a state or organization, has been recognised to bear a presumption of confidentiality, to be lifted only in particular circumstances.<sup>13</sup>

15. In the *Al-Hassan* case before the ICC, the Single Judge noted that 'in principle, documents related to cooperation between the Prosecution and national authorities are not disclosable *per se*,' as the 'cooperation regime [...] is integral to the effective functioning of the Court and central to that regime is the relationship of trust between

---

<sup>12</sup> See Annex 1. By their nature, RFA responses related to clearance for documents frequently include attached documents, which are what is subject to disclosure. In this submission and in Annex 1, the SPO has indicated which portion of the ERN range is RFA correspondence and subject to a materiality challenge. Documents of a similar character to RFAs also challenged in this section are found in Annex 2.

<sup>13</sup> ICC, *Prosecutor vs. Al Hassan*, ICC-01/12-01/18-768-Red, Public redacted version of Decision on Defence motion seeking disclosure of Prosecution's correspondence with national authorities, 23 April 2020, para.6.

the State Parties and the organs of the Court.’<sup>14</sup> This principle does not always apply, for instance, if the ‘specific need for disclosure is demonstrated in accordance with the disclosure regime.’<sup>15</sup> However, any request to overcome this presumption ‘should be specific and must demonstrate materiality of the information sought [...] and particularly how the information has a direct connection to the charges or a live issue in this case.’<sup>16</sup>

16. The Appeals Panel has explained that the test for materiality will not be met where the requested items are too remote, hypothetical or speculative in relation to the charges in the case.<sup>17</sup> An example, cited by the Appeals Panel in confirming that certain materials are not material to the preparation of the defence, is a request for RFAs of the prosecution at a similarly situated court.<sup>18</sup>

17. While the Defence have not articulated the rationale for seeking this correspondence from the Notice, the selected SPO requests and responses from third parties reveal the official relationship and communications between the SPO and many

---

<sup>14</sup> ICC, *Prosecutor vs. Al Hassan*, ICC-01/12-01/18-768-Red, Public redacted version of Decision on Defence motion seeking disclosure of Prosecution’s correspondence with national authorities, 23 April 2020, para. 6. See also ICC, *Prosecutor v. Bemba et al.*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Judgment pursuant to Article 74 of the Statute”, ICC-01/05-01/13-2275-Red, 8 March 2018, paras 640-42 (from para.642, with citations removed: ‘the fact that at least some of the Prosecutor’s requests for assistance led to the collection of evidence on which the Prosecutor relied at trial is manifestly insufficient for their disclosure to the defence to be considered mandatory under rule 77 of the [ICC] Rules’).

<sup>15</sup> ICC, *Prosecutor v. Al Hassan*, ICC-01/12-01/18-768-Red, Public redacted version of Decision on Defence motion seeking disclosure of Prosecution’s correspondence with national authorities, 23 April 2020, para. 6.

<sup>16</sup> ICC, *Prosecutor vs. Al Hassan*, ICC-01/12-01/18-768-Red, Public redacted version of Decision on Defence motion seeking disclosure of Prosecution’s correspondence with national authorities, 23 April 2020, para. 13; see also *Prosecutor v. Dominic Ongwen*, Decision on Defence Request for Remedies in Light of Disclosure Violations, 22 April 2020, ICC-02/04-01/15-1734, para. 22.

<sup>17</sup> Appeals Disclosure Decision, KSC-BC-2020-07/IA005/F00008/RED, paras 41, 56, fn 122.

<sup>18</sup> Appeals Disclosure Decision, KSC-BC-2020-07/IA005/F00008/RED, fn.94, 123, citing to ICC, *Prosecutor v. Al Hassan*, ICC-01/12-01/12-01/18-859-Red, Decision on Defence request for disclosure of material related to Mr Al Hassan’s arrest and detention in Mali, 12 June 2020.

countries and organizations on various matters. Broad requests for records of correspondence with national authorities have been found to not warrant full disclosure under similar rules.<sup>19</sup> No particular circumstances which would warrant disclosure are apparent here. As the SPO has previously maintained, requiring disclosure of the SPO's arrangements with States and other entities as a matter of law, without a particularised and justified showing, would not only intrude on the powers afforded to the SPO under the Law, but would significantly constrain the SPO's ability to enter into the necessary arrangements, which may require negotiations premised on confidentiality.<sup>20</sup>

18. Defence requests for disclosure of similar documents should also be rejected on the basis of materiality.<sup>21</sup> The SPO's [REDACTED] outlining the framework for assistance by the [REDACTED] to the SPO was inadvertently included on the Rule 102(3) notice.<sup>22</sup> It is not relevant, has no relationship to the charged events and no relationship to the Accused or any known issue in the case. Similarly, a memorandum outlining the SPO's discussions on cooperation with the [REDACTED]<sup>23</sup> concerning the anticipated parameters of cooperation and personnel involved at both organizations has no bearing on the charges against the accused or the events giving rise to the Indictment. It lacks more than tangential relevance and should be excluded from disclosure as it is not material.

19. SITF/SPO correspondence with international organizations<sup>24</sup> such as [REDACTED], which references privileges and immunities and the procedures and

---

<sup>19</sup> ICC, *Prosecutor vs. Al Hassan*, ICC-01/12-01/18-768-Red, Public redacted version of Decision on Defence motion seeking disclosure of Prosecution's correspondence with national authorities, 23 April 2020, para. 8.

<sup>20</sup> See Prosecution response to 'Joint Defence Motion for Disclosure Pursuant to Rule 103' (F00877), KSC-BC-2020-06/F00910, 3 August 2022, para. 38.

<sup>21</sup> See Annex 2.

<sup>22</sup> [REDACTED].

<sup>23</sup> [REDACTED].

<sup>24</sup> [REDACTED].

agreements in place concerning interviewing staff and former staff about information they acquired during the course of their employment, is remote from the charges facing the Accused. These are sensitive, internal records which, while not subject to Rule 107 privilege, lack materiality and implicate the security and other interests of these organizations. Some of these records also explain the SITF/SPO's investigative objectives justifying the request to interview personnel. Considering the lack of materiality and the interest of these organizations in delineating the scope of participation of personnel and the interest of the SITF/SPO in safeguarding information related to its investigative decisions, this correspondence should not be disclosed. No prejudice results from maintaining the confidentiality of these immaterial items.

**B. Documents of a purely procedural character concerning contacts with witnesses and similar matters do not meet the standard for Rule 102(3) disclosure**

20. The Defence have selected summons and delivery receipts for SPO interviews and service of process and [REDACTED].<sup>25</sup> The Defence selected Official Notes documenting the occurrence of a meeting or interview<sup>26</sup> and have selected one additional document from [REDACTED] of a purely procedural character.<sup>27</sup>

21. Purely procedural documents related to official contacts with witnesses and persons of interest, for example, summons and receipts of delivery and lists of documents made for [REDACTED], are not material to the preparation of the defence. SPO summonses for interviews [REDACTED] ordering witnesses to attend court are unrelated to the substance of the charges and are temporally and frequently geographically remote from the charges. These documents, issued for purposes of

---

<sup>25</sup> [REDACTED]. *See* Annex 3.

<sup>26</sup> [REDACTED]. The Official Notes are found in Annex 4.

<sup>27</sup> SITF00015982-00015985. *See* Annex 5.



securing attendance or facilitating travel, do not concern the substance of testimony found in witness interviews or have any bearing on the Accused. [REDACTED] interest served in disclosing these documents is tangential at best.

22. Similarly, the Defence request for certain Official Notes prepared by the SITF/SPO should be rejected.<sup>28</sup> These are internal SPO records in the form of an Official Note made for the purpose of documenting the occurrence of a meeting. These notes are purely factual and administrative internal office records, listing the names of those present, the purpose of the meeting, dates, location, and the computer equipment used. They do not contain any information relevant for the preparation of the defence not already disclosed to the Defence. For example, in an Official Note concerning an interview, a list of the exhibits shown with an explanation of the marking applied by the witness is entirely duplicative of the associated exhibits and transcripts of the witness interview disclosed under Rule 102(1)(b).<sup>29</sup> For all notes in this category, the Defence has received disclosure of the verbatim transcripts of the recorded interviews.<sup>30</sup>

### **C. Items of a personal nature are not disclosable**

23. Financial records in the possession of the SPO which contain post-Indictment period personal financial data of non-Accused persons are too remote from the charges and events in the Indictment to be material to the preparation of the Defence.<sup>31</sup>

---

<sup>28</sup> [REDACTED]. See Annex 4.

<sup>29</sup> [REDACTED]. The information on exhibits at [REDACTED] has been disclosed in Disclosure Package 68 as Rule 102(1)(b) material (100803-100806 RED2) and the witness's comments, found in the transcript, have been disclosed as Rule 102(1)(b) material in that same package (100807-TR-ET Part 1 RED2).

<sup>30</sup> [REDACTED] is the Official Note on the interview at 064716-TR-ET RED Part 1-5 (disclosed in Disclosure Package 9 as Rule 102(1)(a) material as well as Disclosure Package 20 as Rule 103 material), [REDACTED] is the Official Note on the interview at SPOE00325917-00325925 (disclosed in Disclosure Package 232 as Rule 103 material), [REDACTED].

<sup>31</sup> [REDACTED]. See Annex 6. Furthermore, this item could only be disclosed with heavy redactions to protect the inherent data privacy interests of the concerned person. The Defence teams of Thaçi (by email

Furthermore, there are inherent data privacy concerns implicated by sharing these records, which are of a purely personal nature.

24. Certain personal IDs and other identifying personal items have been requested by the Defence.<sup>32</sup> There are inherent data privacy concerns implicated and the information contained in the IDs or other personal documents has no bearing on the charges in this case or these Accused. Many of the individuals whose personal information is depicted do not have any connection to the proceedings. For those who do have a connection to the proceedings or the KSC generally, the information sought for disclosure is of a purely personal nature and has no geographic, temporal or substantive relationship to the charges and should not be disclosed.

**D. Witness security notes are too remote from the charged events and the Accused to be found material**

25. Certain items selected by the Defence detail the security situation and security-related concerns of persons who have spoken to [REDACTED].<sup>33</sup> These persons include both witnesses and non-witnesses. Certain notes discuss methods for protecting witnesses, including [REDACTED].<sup>34</sup> This information is distinct from any information provided concerning the charged events, or the Accused. Further, by their very nature, these notes reveal personal concerns, personal background information and personal relations, and locations and movements, all of which are substantively and temporally

---

dated 15 October 2021), Krasniqi (by email dated 11 September 2022) and Selimi (by email dated 12 September 2022) agreed to withdraw their requests for this item.

<sup>32</sup> See Annex 6. [REDACTED].

<sup>33</sup> See Annex 7. [REDACTED].

<sup>34</sup> In addition, an internal SPO record [REDACTED] documenting a conversation with a witness in which he raises the fact that he has security concerns (though not enumerating them), and the SPO's response detailing the process for addressing these concerns, should also be found immaterial, as it has no bearing on the charges and may reveal the methodology and operations of witness security specialists.

remote from the events giving rise to the charges. This information is personal and should remain confidential.

26. For one item in particular, it was neither possible to withhold nor disclose the item in its entirety. This document, based on a conversation with a non-witness, contains a limited amount of information that is potentially material.<sup>35</sup> As such the potentially material information has been extracted and disclosed to the Defence as an extract of a Rule 102(3) requested item.<sup>36</sup> The information that has not been disclosed is neither relevant nor material as it contains a discussion of personal security, family-related information, and certain details concerning [REDACTED]. Even if this document is considered material as a whole, the SPO requests that the document be withheld [REDACTED] and that disclosure of the extracts, which contain information that is disclosable, be considered an adequate counter-balancing measure.

27. Finally, Thaçi has maintained his request for [REDACTED].<sup>37</sup> The pages which are subject to challenge<sup>38</sup> are [REDACTED]. [REDACTED]. None of the [REDACTED], which are of a purely personal nature, can be deemed material. For the avoidance of doubt, they do not contain any Rule 103 content.

#### **E. Investigative records of unrelated crimes bearing no connection to the charged events and which are not material**

28. An investigative file and related case record of a crime committed in Kosovo after the Indictment period and investigated and prosecuted by UNMIK<sup>39</sup> does not bear upon

---

<sup>35</sup> [REDACTED].

<sup>36</sup> [REDACTED].

<sup>37</sup> [REDACTED]. The Selimi and Krasniqi teams also requested this item but have withdrawn their requests by email dated 28 September 2022.

<sup>38</sup> Thaçi has withdrawn his request for a duplicate ([REDACTED]) of [REDACTED].

<sup>39</sup> See Annex 8. [REDACTED].

the charges or evidence to be presented in this case in any way. Any purported connection to Case 06 would be too remote, distant, or of tangential relevance to qualify as material to the preparation of the defence.<sup>40</sup> For these reasons, the materials should not be disclosed.

**F. Certain materials related to non-witnesses which do not bear even an abstract logical relationship to issues relevant for defence preparation should not be disclosed**

29. During the course of its investigations, the SPO gathered materials and interviewed many persons, some of whom were selected as witnesses and others who were not. Pursuant to Rules 102 and 103, the SPO has disclosed these interviews, which it will not rely upon at trial.

30. For example, the SPO interviewed [REDACTED] and has not relied on his evidence nor selected him as a witness. His SPO interview has been disclosed to all defence teams.<sup>41</sup> Various documents related to his post-conflict activities and interactions with law enforcement concerning [REDACTED] have been requested by the defence.<sup>42</sup> These materials are substantively, temporally and geographically remote from the charges and are unrelated to the Accused. They are not linked to any known live issue in the case. His passing reference to a person who was shot by the KLA does not render

---

<sup>40</sup> In addition, some of these investigative and case-related materials reveal the identity of protected witnesses or other vulnerable persons associated with these unrelated incidents and crimes. [REDACTED].

<sup>41</sup> 065343-TR-ET RED Parts 1-4 (disclosed in Disclosure Package 418 as Rule 103 material).

<sup>42</sup> See Annex 9. [REDACTED].

these items material, in particular as the information he shares is publicly available information disclosed elsewhere.<sup>43</sup>

31. Similarly, a reference to a person with no connection to the charges having [REDACTED] does not require disclosure under Rule 102(3) given the lack of a connection to the Accused or the charges in this case and [REDACTED].<sup>44</sup>

**G. Additional Items that do not meet the requirement for materiality and should not be disclosed ('Residual Items')<sup>45</sup>**

32. The Defence request for disclosure of [REDACTED] should be denied as the document is not material to the preparation of the defence. [REDACTED]. While it is not dated, based on the context it concerns events after the charged indictment timeframe. Any link between the contents of the document and the charges in this case or the Accused or any other known issue in these proceedings is remote and would be speculative at this time and cannot therefore compel disclosure.<sup>46</sup>

33. The personal medical file found at [REDACTED] is not material to the preparation of the defence as it concerns the medical condition of a person who was treated by [REDACTED] medical professionals [REDACTED]. [REDACTED]<sup>47</sup>, the connection described in the file relates to events in [REDACTED]. This file has inherent data privacy concerns and is geographically, substantively and temporally remote from the events relevant to the charges and should thus be found not material.

---

<sup>43</sup> [REDACTED]'s reference to this publicly known information appears on page [REDACTED]. The information he gives is publicly known, *see also* [REDACTED] (disclosed in Disclosure Package 54 as Rule 102(1)(b) material).

<sup>44</sup> [REDACTED].

<sup>45</sup> *See* Annex 10.

<sup>46</sup> [REDACTED].

<sup>47</sup> *See* [REDACTED]; *see also* [REDACTED].

34. [REDACTED]'s private medical information is contained in a medical certificate, [REDACTED].<sup>48</sup> Historical medical information of this kind is not material and should not be disclosed. The document has inherent data privacy concerns and is geographically, substantively and temporally remote from the events relevant to the charges and should thus be found not material.

35. [REDACTED].<sup>49</sup> [REDACTED]. These items do not bear any relation to the charges or to the temporal, geographic, substantive or contextual scope of the case. They are not material to the preparation of the defence. In the alternative, these materials should be withheld [REDACTED].

36. The defence have requested SPO official notes which document procedural matters in other cases.<sup>50</sup> These official notes were inadvertently included on the Rule 102(3) notice and are not relevant to the Case 6 proceedings. These items are substantively remote from these Accused and the charges. For example, some concern discussions with opposing counsel on upcoming filings in other cases<sup>51</sup> and SPO procedures on the provision of materials to opposing counsel in other cases.<sup>52</sup> Further, certain of them are personal to accused persons in other cases.<sup>53</sup> None of these items are material to these accused or to the preparation of this case.

---

<sup>48</sup> [REDACTED]. The witness is deceased.

<sup>49</sup> [REDACTED].

<sup>50</sup> [REDACTED], 094538-094539.

<sup>51</sup> 091252-091253, 091254-091254.

<sup>52</sup> 093435-093435, 093436-093436, 093433-093434.

<sup>53</sup> 094626-094627, 082259-082262, 094681-094726.

**H. Various attorney notes concerning witness evidence are not subject to Rule 102(3) disclosure as all disclosable information has already been provided to the Defence**

37. The Defence has requested Official Notes and similar summary documents which concern meetings and interviews with witnesses and other persons.<sup>54</sup> These documents reflect contemporaneous attorney or investigator notes. Some of these official notes or summaries were prepared for internal discussions taking place during the waiting period before transcriptions (and translations) of audio and/or video-recorded meetings were available.

38. Notes prepared by attorneys and investigators at the conclusion of a meeting are not disclosable, as they are akin to draft statements or rough notes, fully superseded by the disclosed transcripts or other formal record of the interview. The Pre-Trial Judge has previously held that in the situation where an Official Note or similar record has been prepared based on notes taken during an interview and the Official Note or record has been disclosed, contemporaneous notes taken during the interview are subject to disclosure under Rule 102(3) only to the extent that they contain disclosable information not otherwise recorded and disclosed.<sup>55</sup> In respect of these Official Notes or summaries requested by the Defence, the transcripts of the interviews have been disclosed, or will be in accordance with applicable protective measures, and there is no additional disclosable information found in the notes.<sup>56</sup> The information therein is both replicated

---

<sup>54</sup> See Annex 11. [REDACTED].

<sup>55</sup> *Gucati and Haradinaj*, Public Redacted Version of Decision on Prosecution Requests and Challenges Pursuant to F00172, KSC-BC-2020-07/F00210/RED, 26 May 2021, para.54.

<sup>56</sup> [REDACTED] is the Official Note summarising the interview at 070725-TR-ET RED Parts 1-3 (disclosed in Disclosure Package 9 as Rule 102(1)(a) material). [REDACTED] is the Official Note summarising the interview at 069756-TR-ET Parts 1-3 (disclosed in Disclosure Package 297 as Rule 103 material). [REDACTED] is the Official Note summarising the interview at 077803-TR-ET Parts 1-3 (disclosed in Disclosure Package 37 as Rule 102(1)(b) material). [REDACTED] is the Official Note summarising the

by and subsumed by the official record itself, which is the transcript of the recorded interview, which contains the questions asked and answers provided. For this reason, no additional disclosure is warranted.<sup>57</sup>

39. Similarly, the draft notes of a lawyer present at a meeting with a non-witness, is not disclosable pursuant to Rule 102(3).<sup>58</sup> The meeting was not recorded, but an Official Note detailing what was said by the parties present was prepared by the investigator and disclosed.<sup>59</sup> This official note contains all disclosable information from the meeting. In addition, the SPO has disclosed an Official Note of the lawyer present which memorialises the occurrence of the meeting and details the status of cooperation between the SPO and the person at the conclusion of the meeting.<sup>60</sup>

40. In the alternative, these materials are non-disclosable internal work product pursuant to Rule 106. There is no prejudice to the defence as questions asked and answers given are reflected in the transcripts of the interviews or in the official records of the meetings.

#### **I. Rule 106 internal work product is excluded from Rule 102(3) disclosure**

41. Internal work product under Rule 106 is not subject to disclosure or even notification.<sup>61</sup> In Annex 12, the SPO has included requested items it does not intend to

---

interview at 077816-TR-ET RED Parts 1-2 (disclosed in Disclosure Packages 38 and 41 as Rule 102(1)(b) material). [REDACTED] is the Official Note summarising the interview at 077828-TR-ET RED Parts 1-3 (disclosed in Disclosure Package 16 as Rule 102(1)(b) material). [REDACTED]. In addition to recounting what was said in the meeting, some of these notes contain privileged, non-disclosable information about impressions, analysis, and credibility. For example, [REDACTED].

<sup>57</sup> [REDACTED].

<sup>58</sup> [REDACTED].

<sup>59</sup> [REDACTED].

<sup>60</sup> [REDACTED].

<sup>61</sup> Rule 106.



disclose based on Rule 106 protection.<sup>62</sup> None have any Rule 103 content which has not been disclosed.

42. These materials contain information on the preparation of investigations carried out by the SPO and its predecessors, reveal investigative directions and priorities, and contain internal analyses prepared by EULEX and the SITF/SPO in furtherance of these investigations and in the context of preparation of cases.<sup>63</sup> Other internal documents contain schedules for official travel detailing meetings with witnesses and others and records of conversations with witnesses on matters that are unrelated to the events, the Accused or any of the charges.<sup>64</sup> Other documents describe internal administrative procedures and protocols adopted in connection with the SPO's investigative work and are not subject to disclosure.<sup>65</sup> Finally, [REDACTED] are not subject to further disclosure.<sup>66</sup> Furthermore, they lack probative value as the actual evidence of the persons interviewed is found in the transcripts of the interviews, [REDACTED]. The Rule 106 privilege also applies to similar materials prepared by UNMIK.<sup>67</sup>

43. In addition, the SPO has withheld from disclosure certain internal materials of [REDACTED], which are also not material.<sup>68</sup> For example, email correspondence between staff on matters entirely unrelated to the charges in this case or the Accused has been requested by the Defence in several instances.<sup>69</sup> Other email correspondence reveals discussions about office tasks, including scanning and identification of files and binders.<sup>70</sup>

---

<sup>62</sup> [REDACTED].

<sup>63</sup> [REDACTED].

<sup>64</sup> [REDACTED].

<sup>65</sup> [REDACTED].

<sup>66</sup> [REDACTED].

<sup>67</sup> [REDACTED].

<sup>68</sup> See Annex 12. [REDACTED].

<sup>69</sup> [REDACTED].

<sup>70</sup> [REDACTED].

Similarly, an official note documenting a meeting between an [REDACTED]<sup>71</sup> [REDACTED] has been withheld for disclosure as it is not material and contains Rule 106 material. Certain of these documents reveal the internal practices and procedures of [REDACTED] and have no relationship to the events that bear on the charges in this case.

#### **J. Rule 107 items are excluded from Rule 102(3) disclosure**

44. There are nine items noticed that currently fall partially or wholly under Rule 107.<sup>72</sup> The SPO cannot disclose these items because they hold this status. [REDACTED].<sup>73</sup> [REDACTED],<sup>74</sup> [REDACTED].

#### **V. CLASSIFICATION**

45. This request is strictly confidential and *ex parte* in order to protect the integrity of SPO investigations and the security and privacy of persons at risk on account of the activities of this court. A confidential redacted version will be filed.

#### **VI. RELIEF REQUESTED**

46. For the foregoing reasons, the SPO requests the Pre-Trial Judge to deny any disclosure of the items specified above.

---

<sup>71</sup> [REDACTED].

<sup>72</sup> See Annex 13.

<sup>73</sup> [REDACTED].

<sup>74</sup> [REDACTED].

**Word count: 4861**



**Alex Whiting**

**Acting Specialist Prosecutor**

Monday, 3 April 2023

At The Hague, the Netherlands.