

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: Counsel for Kadri Veseli

Date: 27 October 2022

Language: English

Classification: Public

**Public Redacted Version of Veseli Defence Response to Prosecution
Challenge to Disclosure of Items in Rule 102(3) Notice**

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I. INTRODUCTION

1. Pursuant to Article 21 of the KSC Law, Rules 102, 106, and 111 of the Rules of Procedure and Evidence, and the Framework Decision,¹ the Defence for Mr Kadri Veseli (“Defence”), hereby, responds to the SPO Request challenging the materiality of certain 102(3) items that were requested by the Defence.²

II. PROCEDURAL BACKGROUND

2. On 30 July 2021, the Defence received the SPO Rule 102(3) Notice.³
3. On 22 October 2021, the Defence received the Amended SPO Rule 102(3) Notice.⁴
4. On 20 May 2022, the Pre-Trial Judge ordered the SPO to complete its disclosure of, and file any materiality challenges to, items requested by the Defence under Rule 102(3), by 30 September 2022.⁵
5. On 6 October 2022, the SPO filed the instant request, challenging the materiality of items requested by the Defence under Rule 102(3).⁶

III. APPLICABLE LAW

6. Article 21(6) of the Law provides that the Accused must be provided with all material and relevant evidence for or against him, “subject only to restrictions

¹ F00099, Framework Decision on Disclosure of Evidence and Related Matters, 23 November 2020.

² F01004/CONF/RED, Confidential 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, 6 October 2022.

³ F00421, Prosecution Rule 102(3) notice with confidential Annex 1 and confidential *ex parte* Annex 2, 30 July 2022.

⁴ F00543/A01, ANNEX 1 to Prosecution Amended Rule 102(3) Notice Pursuant to F00421 with confidential Annexes 1 and 2, 22 October 2022.

⁵ Transcript, 20 May 2022, p. 1323, lines 16 to 25.

⁶ F01004.

which are strictly necessary and when any necessary counter-balancing protections are applied.”

7. Rule 102(3) specifies:

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.

8. The Framework Decision elaborates that:

The formulation material to the Defence preparation shall be construed broadly and refers to all documents and objects of relevance to the preparation of the Defence case, in the exercise of the Accused’s rights under the Law and the Rules. What is relevant in this context should not necessarily be limited by the temporal scope of the Confirmed Indictment nor should it be confined to material relevant to countering the SPO’s case. The Defence preparation is also a broad concept and need not be limited to what is directly linked to exonerating or incriminating evidence, or related to the SPO’s case.⁷

9. It further states that, should the SPO dispute materiality of an item selected by the Defence, it should bring the matter before the Pre-Trial Judge within 10 days of the Defence’s indication.⁸

10. In addition, the Appeals Panel, in *Gucati and Haradinaj*, noted that:

[S]ome documents may be deemed material to the preparation of the Defence because they: (i) are relevant to a breach of the **accused’s rights** under the Statute; (ii) are able “to support a colourable argument; that is, an argument that has **some prospect of success**”; (iii) could assist in the assessment of the **credibility and reliability of Defence witnesses**, and therefore the decision of whether to call them; or (iv) might dissuade a defendant from pursuing an unmeritorious defence. By contrast, 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”** – may be considered as not material to the preparation of the Defence.⁹

11. Rule 102(1)(b) requires the SPO to disclose all “statements, expert reports, depositions, or transcripts” of witnesses it intends to call at trial.

⁷ F00099, Framework Decision on Disclosure of Evidence and Related Matters, 23 November 2020, para. 62.

⁸ F00099, para. 65.

⁹ KSC-BC-2020-07/IA005-F00008/RED, Public Redacted Version of Decision on the Appeals Against Disclosure Decision, 29 July 2021, para. 41, (emphasis added).

12. Rule 106 which limits the disclosability of work product specifies that:

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.

13. Rule 111(2) which concerned privileged material not subject to disclosure states that:

Communications made in the context of professional or other confidential relationships shall be regarded as privileged, and consequently **not subject to disclosure, if a Panel decides that:** (a) such communications are made in the course of a **confidential relationship producing a reasonable expectation of privacy and non-disclosure;** (b) confidentiality is **essential to the nature of that relationship;** and (c) the privilege is not **unduly invoked** to further an abuse or does not constitute evidence of a criminal offence.

IV. SUBMISSIONS

A. Preliminary Matters

14. The Defence observes that the Prosecution was responsible for identifying all items on the Rule 102(3) Notice. Initially containing 100,000 items, the list was reduced to 68,000 items as a consequence of the SPO's internal review. In that regard, items to which privilege or other exceptions to disclosure applied should have been screened out of the Notice at this point, prior to its provision to the Defence – and indeed, the Defence believed that this was the case. It is reiterated that at no point was the Defence made aware that the 102(3) Notice presented to the Defence as containing undisclosable items,¹⁰ and it is extremely concerning that the SPO brings these matters to the Court's attention at such a late stage in the disclosure. Moreover, it tends to confirm the Defence's

¹⁰ The only exception to this pertains to uncleared Rule 107 items, for which clearance had not been obtained. While the Defence originally believed that this material had been removed from the list, the SPO later clarified that some items for which clearance had not (yet) been obtained remained on the list. Email from Veseli Defence to SPO, dated 27 June 2022 and SPO response, dated 5 July 2022.

suspicion that the SPO does not know what material it has in its possession, almost two years after arrest warrants were issued.

15. The Defence further observes that while the Framework Decision instructs that the SPO should bring materiality challenges to the Pre-Trial Judge's attention within 10 days of a dispute arising, the materiality of some items was **never** disputed by the SPO via *inter partes* correspondence. The pursuit of *inter partes* correspondence would have almost certainly reduced the burden on the parties and the Court. The Defence therefore requests that the SPO be ordered to provide an explanation for its failure to engage in *inter partes* correspondence on such items, prior to commencing this litigation.
16. As to item descriptions, the Defence observes that in its Request, the SPO frequently provides information which contradicts the description of items provided in the Rule 102(3) Notice. In view of such discrepancies, the Defence respectfully requests that the Pre-Trial Judge be mindful of the contents of each item and not just their descriptions.

B. Materiality not Challenged at This Time

17. At the outset, the Veseli Defence clarifies that some items under consideration in the SPO request were never requested by the Veseli Defence or such request were withdrawn, following *inter partes* discussions.¹¹ Similarly, the Defence will not challenge the materiality of the certain other items at the time, but reserves its right to do so at a later stage should circumstances evolve.¹²

¹¹ SITF00181668-00181686; SITF00300729-00300730; SPOE00157696-00157696; SPOE00157694-00157694; SITF00192802-00192814; SPOE00115490-0011539; SITF00192973-00192973; SPOE00023369-00023808; 094558-094569; 094570-094581; 093436-093436; SITF00455588-00455597; SPOE00114380-00114382; SPOE00157363-00157146.

¹² 026971-026971; 032843-032847; 082259-082262; 087019-087024; 091252-091253; 091254-091254; 093433-093434; 093435-093435; 093437-093441; 094538-094539; 094582-094624; 094626-094627; 094681-094726; 5002135-5002135; 5002148-5002148; 5002650-5002652; 5002753-5002754; 5004910-5004910; 5005356-5005369; 5005535-5005535; 5007123-5007123; 5009280-5009289; 5010761-5010769; 5010779-5010787;

C. Rule 102(1)(b) Witnesses

18. A number of items contained in the SPO's materiality challenge fall under Rule 102(1)(b). While the SPO fails to acknowledge this, it is willing to go so far as to admit that some of the material is duplicative of material that has been disclosed previously under Rule 102(1)(b).¹³ The Defence submits that these items should have been identified as 102(1)(b) from the outset, so that disclosure or requests to withhold could have been disposed of prior to the March 2022 deadline.
19. The Defence must be in possession of all materials to which it is entitled pursuant to Rule 102(1)(b) currently in the SPO's possession, by the time this case is transferred to the Trial Panel. That this has not been the case to date, since the original provision of the Notice some 15 months ago, should be a matter for serious concerns. The Defence accordingly requests that the Pre-Trial Judge find the SPO in violation of its disclosure obligations.
20. Furthermore, the Defence considers that all materials listed on the Rule 102(3) Notice that relates to SPO witnesses – if not disclosable under Rule 102(1)(b) – is *presumptively* material and thus disclosable under Rule 102(3). Moreover, these items can have an impact on the credibility of the witnesses, their reliability, and the weight of their testimony, rendering them disclosable under Rule 103. Consequently, if the SPO wishes to withhold such items, it must provide a clear and convincing basis on which to do so – which it has largely failed to do.

5010835-5010843; SITF00004899-00004968; SITF00180917-00180918; SITF00180919-00180925;
SITF00181157-00181158; SITF00181167-00181168; SITF00181173-00181174; SITF00300745-00300745;
SITF00304036-00304037; SITF00307171-00307171; SITF00307181-00307181; SITF00307191-00307192;
SITF00380167-00380167; SITF00429295-00429296; SPOE00114013-00114016.

¹³ F01004, para. 22.

i. Official Notes and Interviews

21. The Defence highlights that several items have been disclosed from the Rule 102(3) Notice which are similarly described as Official Notes or Interviews.¹⁴
22. 064714-064716: SPO - *Official note, interview with [REDACTED]* (see 064716-TR-ET Part 1 RED etc).¹⁵ While the SPO categorises this item as purely procedural, the Defence does not comprehend how it could be *purely* procedural, based on its description.¹⁶ Under the circumstances, it appears to the Defence that, either the description of the item is erroneous,¹⁷ or – given that similar items have been disclosed to the Defence previously – the item is actually disclosable to the Defence, notwithstanding the SPO’s submissions to the contrary. If it is the descriptions that are erroneous, the Defence requests that it be provided with more accurate descriptions of all affected items, as it cannot be expected to protect the rights of its client if it is operating on the basis of inaccurate or incomplete information.
23. Moreover, to the extent that such items contain “a list of the exhibits shown with an explanation of the marking applied by the witness”¹⁸ the Defence submits that it would be extremely helpful to have such information, given the disorganised state of the SPO’s case file and its failure to systematically link exhibits to witness interviews. The Defence adopts the same submissions for items 100801-100807: SPO *Official note of interview with [REDACTED] with*

¹⁴ The Defence has identified at least 45 items disclosed with a similar description, from the 102(3) list “SPO Official Notes”. For example see F00543, 076233-076233; 094511-094517; 094518-094525; SPOE00295103-00295104; SPOE00301356-00301357; SPOE00301358-00301360; SPOE00301361-00301362; SPOE00301363-00301366; SPOE00301485-00301494; SPOE00301504-00301512. The Defence counts at least 57 items disclosed with a similar description “SPO interviews” and 42 items “interview/ statement summaries.”

¹⁵ ERN, Description from the Rule 102(3) Notice, see F00543/A01.

¹⁶ F01004, para. 20, Fn. 26.

¹⁷ F00543/A01, item 3453.

¹⁸ F01004, para. 22 (referring to ERN 100801-100802.)

exhibits attached and 100801-100807 "SPO Official note of interview with [REDACTED] with exhibits attached.

24. *077829-077833: SPO - Official Note re. interview with [REDACTED], see 077828-TR-ET Part 1 etc.* The SPO asserts that this item consists of "[v]arious attorney notes concerning witness evidence [that] are not subject to Rule 102(3) disclosure as all disclosable information has already been provided to the Defence".¹⁹ Such a general justification offered by the SPO does not allow the Defence to truly understand the materiality issue. The Defence understands that 077828-TR-ET Part 1 is an official interview of [REDACTED]. The Defence is unaware, however, as to whether the Official Note pertains to SPO work product, notes taken during interview, or some other matter entirely. Again, it appears that either the item is disclosable, or the SPO has mis-described the item.
25. The Defence adopts the same submissions for items (2 interview summaries) *077804-077813: SPO - Witness Interview summary of an Audio/Video recorded witness interview of [REDACTED] at SPO premises in Pristina, dated 28 August 2020 and 077817-077822: SPO - Witness Interview summary of an Audio/Video recorded witness interview of [REDACTED], dated 26 August 2020. (see 077816-TR-ET Part 1 RED2 etc).*
26. *095367-095367: SPO - Official Note of telephone call with [REDACTED], on April 16, 2021.* The Defence observes that similar items have already been disclosed to the Defence.²⁰ Additionally, the Defence reiterates that *all* information related to SPO witnesses such as [REDACTED], is presumptively material – particularly where a decision has previously been made to list the item on the

¹⁹ F01004, para. 37, Fn. 54.

²⁰ See for example 042641-042642; 042643-042644; 042656-042657; 049103-049104; 059210-059211; 059363-059364; 059618-059619; 063252-063253; 064720-064721; 069741-069745; 091950-091950; 091951-091952; 091953-091953; 091954-091955; 091956-091957.

Rule 102(3) Notice as potentially material. Should the SPO wish to withhold information pertaining to one of its trial witnesses, it must be able to demonstrate that it does not constitute a prior statement pertaining to relevant events; exculpate the Accused; undermine the SPO's case; or otherwise constitute 'material' information for the purposes of the Defence. The Defence adopts the same submissions for item 095436-095437: *SPO - Official Note of contact with [REDACTED]*.

ii. *Other*

27. 091764-091767: *Letter from Albanian Ministry of Justice No. 15162/1- Response to SPO request SPO/SP/2020-1596-JS, dated 25 January 2021 re [REDACTED]*. The SPO's justification for challenging materiality does comport with the description of the item.²¹ This is a letter and even if it relates to a request for interview or similar matters, [REDACTED] is on the witness list, and there is no valid justification for withholding the item.

D. Rule 103 Witnesses

28. Similarly as for the witnesses from the SPO witness list, the Defence considers that all material related to Rule 103 individuals must be disclosed.²² The Defence reiterates *mutatis mutandis* its submissions from paragraphs 18-20 above.

i. *Official Notes and Interviews*

29. 053734-053765: *SPO Official Note specifying contact with [REDACTED] in 2018*. The SPO's justification that "[c]ertain items selected by the Defence detail the security situation and security related concerns of persons who have spoken to

²¹ See F01004 para. 20, Fn. 25.

²² 103 witnesses are individuals whose material (or part thereof) was disclosed under Rule 103 by the SPO.

UNMIK, EULEX, and/or the SITF/SPO”²³ is insufficient. This is an official note of interview – *see* above submissions on official interview notes paragraph 21 *et seq.* – and not a request for protective measures or for victim participation. Moreover, the Defence’s case has been significantly impacted by alleged security concerns, which have been used to justify the Accused’s incarceration and the withholding of incriminating and exculpatory evidence to which he would otherwise be entitled. As such, it is self-evidently an issue with which the Defence is greatly concerned.

30. 072739-072745: SPO - Internal Work Product, Summary of a Witness Interview conducted on 27 November 2019 in The Hague, dated 26 January 2020. [REDACTED] about events in Drenoc and generally about the KLA. [REDACTED] is not a SPO witness, however his SPO transcript was disclosed under Rule 103.²⁴ The Defence reiterates that official notes and similar documents are disclosable.²⁵ The Defence accepts that internal work product may be exempted from disclosure, depending on circumstances, however it observes that any such work product contained in the document could easily be redacted prior to disclosure.

ii. External Interviews

31. 043160-043180: Interview with [REDACTED], 17 November 2016. Again, the SPO’s justification is insufficient and does not explain the discrepancy between the 102(3) description and its submissions.²⁶ [REDACTED] is an important

²³ F01004, para 25, Fn. 33.

²⁴ “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”.

²⁵ F01004, para 37, Fn. 54.

²⁶ “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”.

individual related to this case and the Defence has previously confirmed that it regards all information pertaining to this individual as material.²⁷

32. 094553-094557: FBI - Interview of [REDACTED] aka [REDACTED] according to a proffer agreement in New York, on 16 August 2012. Interviewed gave information on [REDACTED], [REDACTED], [REDACTED], and [REDACTED] ([REDACTED]) regarding smuggling people. [REDACTED], a member of Rugova political party was shot several times by KLA. [REDACTED] was killed by the KLA in [REDACTED] or [REDACTED]. [REDACTED], a leader of KLA wants to eradicate all political parties and kill all opponents. [REDACTED], [REDACTED], [REDACTED], criminal activity explained. Dated 22 August 2012. The item relates to the alleged JCE and its members,²⁸ and is therefore material, notwithstanding the SPO's observation that it does not overlap with the indictment temporally or geographically.

iii. Others

33. SITF00020108-00020109: Medical Certificate for [REDACTED], DoB [REDACTED], stating the patient suffers from heavy chronic ailment, dated 11 March 2011. This individual alleges being detained and tortured by KLA.²⁹ Information related to his medical condition to the extent that it is said to be at all attributable to his detention is material.

²⁷ See PL001-F00001, Veseli Defence Request for Protection of Legality against Decision on Appeal Concerning Remanded Detention Review and Periodic Review of Detention (IA014-F00008), 29 June 2022; IA014-F00007, Veseli Defence Reply to Prosecution Response to Veseli Defence Appeal Against Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli, 21 December 2021; F00800, Veseli Defence Response to Prosecution Submissions on Veseli Detention Review (KSC-BC-2020-06-F00790), with Confidential Annex 1, 12 May 2022.

²⁸ See for example F00709/A02, ANNEX 2 to Prosecution submission of corrected Pre-Trial Brief and related request, 24 February 2022, paras 192-198.

²⁹ F00885/A02, ANNEX 2 to Prosecution submission of corrected and lesser redacted witness list with strictly confidential and *ex parte* Annex 1 and confidential Annex 2, 18 July 2022, pp. 86-87.

34. *SITF00294272-00294272: EULEX WCIU Officer's Report with schedule of the interview of witnesses in case 2005-00221.* This case relates to war crimes in June 1999, in Prizren and mentions KLA members. All material from this case should be disclosed to the Defence.
35. *SITF00444038-00444038: NATO, Presentation Slide, chart showing Sabit GECI family links to political parties and criminal activities, undated.* Sabit Geci is a named JCE member from the SPO Pre-Trial Brief/ Indictment.³⁰ He was prosecuted in Kosovo, and is linked to several crime sites related to this case. All materials pertaining to Sabit Geci must be disclosed to the Defence.
36. *051501-051501: SPO, Official Note of meeting with [REDACTED], former OSCE Human Rights Officer relating to information [REDACTED] provided to SITF representatives on 20 May 2015, dated 19 June 2018.* See arguments above on SPO Official Notes.³¹ Additionally, OSCE material is relevant to this case, given their work in Kosovo and heavy reporting. This item could fall under 103.

E. Other Items

*i. Documents Which Concern Relations With External Entities*³²

37. The Defence prefaces that those items were not raised in *inter partes* discussions. As the ERNs in question were not provided in the Request, on 12 October 2022, the Defence requested the Prosecution to provide those ERNs, which it did the following day.
38. The Defence maintains its request for all materials in annexes 1 and 2 of the Request. Moreover, the Defence is concerned about the SPO's misinterpretation

³⁰ See for example F00709/A02, paras 225, 260, 273, 459, 540, 558; F00999/A02, ANNEX 2 to Submission of confirmed amended Indictment with strictly confidential and *ex parte* Annex 1, confidential Annex 2, and public Annex 3, 30 September 2022, paras 35, 46, 76, 81, 82, 99.

³¹ See above para. 21 *et seq.*

³² F01004, paras 13-19.

of the *Al Hassan* Decision cited in the Request.³³ In particular, the SPO ignores the emphasis placed on *inter partes* discussion (in which it did not engage), the importance of offering alternative such as summaries or excerpts (which it has not provided), and that such decisions must be made on a case-by-case basis.³⁴

39. The Defence submits that only information communicated by the Third Party to the Prosecutor – not the other way around – on a confidential basis (with clear expectation of confidentiality) should be withheld.³⁵ Confidential information should only be restricted to material that would have *otherwise* not been provided to the Prosecution.³⁶ In other words, the SPO should only be permitted to withhold information given to the Prosecution under explicit request for confidentiality.³⁷ Otherwise there is no legal basis for withholding such items, nor would it be logical to assert that such disclosure could possibly be detrimental to the relationship of trust between the Court and its partners.³⁸
40. The Defence’s submissions on particular items covered by this part of the SPO’s request are as follows.
41. SPOE00217509-SPOE00217518; SPOE00216764-SPOE00216773;
SPOE00215117-SPOE00215152; SPOE00214871-SPOE00214872: *collection[s] of*

³³ F01004, para. 15.

³⁴ See further F00877, Joint Defence Motion for Disclosure Pursuant to Rule 103, with Public Annexes 1-3 and Confidential Annex 4, 12 July 2022, paras. 20-21 (citing ICC, *Prosecutor v. Ongwen*, ICC-03/04-01/15-468, [Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance](#), 15 June 2016; STL, *Prosecutor v. Ayyash et al*, STL-11-01/T/TC, F1875, [Decision Reconsidering “Decision on the Oneissi Defence Motion for Disclosure of Request for Assistance”](#), 7 November 2014, 6 March 2015; *Prosecutor v. Nzabonimpa et al*, MICT-18-116-PT, [Decision on Requests for Disclosure of Information Arising From Interviews with Investigator Tomasz Blaszczyk](#), 7 May 2020).

³⁵ ICTY, *Prosecution v. Milutinović*, IT-05-87-AR108bis.2, [Decision on the Request of United States of America for Review](#), 12 May 2006, para. 38.

³⁶ ICTY, *Prosecutor v. Milošević*, [Public Version of Confidential Decision on the Interpretation and Application of Rule 70](#), 6 May 2002, para. 18.

³⁷ See ICTR, *Prosecutor v. Nahimana*, ICTR-99-52-A, [Public redacted version of the decision on Motions Relating to the Appellant Hassan Ngeze’s and the Prosecution’s Request for Leave to Present Additional Evidence of Witnesses ABC1 and EB](#), 27 November 2006, para. 12.

³⁸ F01004, para. 17.

NATO documents from 1999, including intelligence summaries, situation and other reports. These are likely to contain Rule 103 information, such as assessments pertaining to the KLA and events on the grounds in Kosovo that are material to the alleged JCE;

42. 093456-093459: [REDACTED], [REDACTED], Verbal Note No 24/2021, ref. Re 10-502.40/8, and [REDACTED] KFOR Report, specifying events at office of the [REDACTED] on [REDACTED], regarding materials requested, dated 25 March 2020. Much of the materials in this case emanates from [REDACTED] KFOR. The circumstances under which such materials were requested and obtained is relevant to its admissibility and weight.
43. 092854-092858/092867-092868: Audio/Video recorded interview of [REDACTED]. [REDACTED] is on the witness list, and there are no reasons to withhold this item. It should be disclosed when protective measures for this witness are lifted.³⁹
44. 5008130-5008228: SPO, Submission of a Request for International Legal Assistance in Criminal Matters to Federal Office Justice in [REDACTED], requesting information about [REDACTED], with attached list of questions and photos dated 18 October 2019. [REDACTED] is an SPO trial witness. The Defence is entitled to know what questions were asked, and photographs were put to the witness.

ii. Request for Clarification

45. The Defence wishes to obtain the following items only in the event that they appear to be genuinely material. In order to make such an assessment, the Defence requires further information.

³⁹ F00407/CONF/RED, Confidential Redacted Version of Seventh Decision on Specialist Prosecutor's Request for Protective Measures, 21 July 2021, para. 148(C).

46. 072710-072716: SPO - Confidential Internal Work Product regarding Witness Interview Summary, dated 22 January 2020. Victim [REDACTED] mostly regarding his detention in [REDACTED], [REDACTED]. This item pertains to SPO witness [REDACTED]. The Defence requires further information of a genuinely descriptive nature, in order to challenge the SPO's assertion of non-materiality. The same considerations apply to 071923-071968: SPO - Confidential Internal Work Product regarding Witness Interview Summary, dated 16 January 2020.
47. 5004435-5004435: SITF, Prosecutor Instruction to conduct a meeting with [REDACTED] between 1 March 2018 and 30 March 2018 in the Netherlands in relation to collecting information/evidence, dated 21 February 2018." The Defence notes that it has no record of [REDACTED], and seeks clarification in this regard.
48. 095415-095424: SPO - Summons and Request to produce documents and records, by SPO to [REDACTED], dated 15 April 2021. The Defence requests confirmation that the item does not contain any information other than the summons and request for documents.
49. 5005961-5005961: SPO, Prosecutor's Instruction to interview suspect [REDACTED] on 12-15 March 2019 in Kosovo, dated 28 February 2019. (procedural document). The Defence wants to ensure that this item does not contain any information other than instructions to interview.
50. 049167-049169: SPO, Official Note of meeting with [REDACTED], dated 1 December 2017. The Defence requests confirmation of whether the item contains information regarding crime sites or allegations in the indictment and, in the event that it does, maintains its request for disclosure.
51. 063232-063250: SPO, Official Note of Raiffeisen Bank data for [REDACTED], dated 27 August 2019, and attachments. On 30 September 2022, Counsel for Mr Veseli

requested further information from the SPO regarding this item and never obtained a response. The Defence reiterates:

The issue is whether these were used in this case in order to justify pre-conviction detention (i.e., for reasons not related to the actual charges) – or, for that matter, in relation to protective measures, or withholding of evidence. If they were not and will not be used in this manner, then you can regard our request for those documents as waived.

F. Rule 107 Items are Excluded From Rule 102(3) Disclosure⁴⁰

52. The Defence understands material under Rule 107 cannot be disclosed without the clearance of the Third Party concerned. The Defence requests the SPO to expedite its discussions with the relevant providers.

53. In the interim, the Defence requests disclosure of the ERNs of the material the SPO cannot disclose due to Rule 107 restrictions, to ensure its records are up-to-date and avoid engaging in further discussions with the SPO on those items.

V. CONCLUSION

54. The Defence requests that the Pre-Trial Judge order the SPO to disclose all items in respect of which it maintains its requests.⁴¹

55. Should the Pre-Trial Judge determine that any of the items are not disclosable, the Defence requests, as counterbalancing measures to be disclosed items with redactions or summaries, or for items containing substantially similar information to be identified by ERN.

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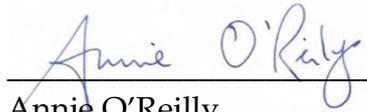
Ben Emmerson, CBE KC
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⁴⁰ F01004, para. 44.

⁴¹ All items except for the ones referred to in para. 17.



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