



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: 10 March 2023

Language: English

Classification: Public

Public redacted version of 'Prosecution Rule 102(2) submission and related requests with strictly confidential and ex parte Annexes 1-7 and 9, and confidential Annex 8', KSC-BC-2020-06/F00890, dated 20 July 2022

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I. INTRODUCTION

1. Pursuant to the Framework Decision,¹ Articles 21(6), 23, 35(2)(f), and 39(1), (3) and (11) of the Law² and Rules 80, 81, 95(2), 95(4)(b) and (c), 102(1)(a) and (b), 102(2), 107, 108, and 112 of the Rules,³ the Specialist Prosecutor's Office ('SPO') requests: (i) leave to add two witnesses ([REDACTED] and W04043) and their associated materials⁴ to the Witness List⁵ and Exhibit List,⁶ respectively; (ii) authorisation of protective measures for [REDACTED], as specified below; and (iii) relief from its disclosure obligations in relation to certain Rule 107 information redacted from one exhibit associated with the SPO interview of W04043.

2. In this complex multi-accused case involving a considerable amount of witnesses and evidence, amendments to the Witness List and Exhibit List should be treated with flexibility, particularly at this stage of proceedings.⁷ In this regard, the requested amendments – which, considered in context, are limited in scope and cause no undue prejudice – strike an appropriate balance between the rights of the Accused and the duty of the Prosecution to present available evidence to prove its case.⁸

¹ Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-06/F00099, 23 November 2020 ('Framework Decision').

² Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' herein refer to articles of the Law, unless otherwise specified.

³ 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.

⁴ Annex 1 comprises an index of the materials included at Annexes 2-9. To enable the Defence to fully respond to this request, the SPO has applied standard redactions where relevant in the Annexes. As indicated below and in the index at Annex 3, certain materials that were previously disclosed and therefore available on Legal WorkFlow are not annexed.

⁵ Annex 1 to 'Prosecution submission of corrected and lesser redacted witness list', KSC-BC-2020-06/F00885/A01, 18 July 2022, Strictly Confidential and *Ex Parte* ('Witness List').

⁶ Annex 1 to 'Prosecution submission of amended exhibit list', KSC-BC-2020-06/F00788/A01, 29 April 2022, Strictly Confidential and *Ex Parte* ('Exhibit List').

⁷ Decision on Thaçi's Appeal against "Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures", KSC-BC-2020-06/IA019/F00006, 12 July 2022 ('Appeal Decision'), para.21.

⁸ Appeal Decision, KSC-BC-2020-06/IA019/F00006, para.21.

II. SUBMISSIONS

3. As detailed below, the request is timely, shows good cause, and would have no undue impact on Defence preparations. In the interest of judicial economy and to avoid piecemeal requests which could ultimately cause delay and disruption, the SPO consolidated these materials into a combined request. In the instances where protective measures are required, the SPO demonstrates objectively justifiable risks necessitating the proportionate protective measures requested.

A. [REDACTED]

i. The evidence is unique and important.

4. During the Indictment period, [REDACTED], [REDACTED], was based in various locations in [REDACTED]. [REDACTED].

5. The SPO seeks to add [REDACTED] to its Witness List and add his prior statements and related materials to the Exhibit List.⁹ This evidence is relevant, unique, and important. [REDACTED] is [REDACTED] to testify about certain important events involving, [REDACTED], joint criminal enterprise ('JCE') members who include the Accused SELIMI and THAÇI (particularly in meetings around [REDACTED]),¹⁰ as pleaded in the Indictment¹¹), as well as KRASNIQI.¹² [REDACTED] also (i) corroborates key aspects of other witnesses' evidence; (ii) authenticates a

⁹ The materials pertaining to this part of the request are included at Annexes 2-7. Annex 2 contains a witness summary, as discussed at para.154 below. Annex 3 is an index of [REDACTED]'s prior statements and associated exhibits, which are, as applicable, provided in Annexes 4-7. As set out in Annex 3, [REDACTED] have already been disclosed under Rule 102(1)(b) and are currently on the Exhibit List. Accordingly, the SPO only seeks to amend the list to add the materials provided in Annexes 4-7. In this regard, the SPO notes that [REDACTED] are not included in the Annexes. [REDACTED]. Accordingly, they do not require protective measures. Further, as their contents ([REDACTED]) have been deemed of marginal, if any, relevance to this witness's evidence or the charges, and are not discussed in his prior statements, the SPO does not propose their addition to the Exhibit List at this time.

¹⁰ See, for example, Annex 4: [REDACTED].

¹¹ See Annex 1 to 'Submission of amended Indictment and related documents', KSC-BC-2020-06/F00789/A01, 29 April 2022, Strictly Confidential and *Ex Parte* ('Indictment'), para. [REDACTED].

¹² See, for example, Annex 4: [REDACTED].

number of contemporaneous records, including documents already on the Exhibit List;¹³ and provides [REDACTED] evidence concerning (iii) the structure of the Kosovo Liberation Army ('KLA') and the relationship between the KLA, FARK, and government-in-exile;¹⁴ and (iv) the targeting of opponents pursuant to the alleged common purpose.¹⁵

ii. *The requested additions are timely.*

6. The SPO has exercised due diligence in obtaining the evidence of [REDACTED] and in making this request. After its own attempts to locate and contact [REDACTED] were unsuccessful, the SPO requested the assistance of [REDACTED] on 5 February 2020. The [REDACTED] did not respond until 5 January 2021, citing the COVID-19 pandemic as the reason for delay. The SPO then promptly contacted the witness and met with him in person on [REDACTED] 2021 to discuss security and logistical matters, including [REDACTED]. Based on information in its possession, the SPO was aware that [REDACTED], but until it could obtain and review such information, a comprehensive, efficient, and effective interview was not possible; nor was it possible to ascertain [REDACTED]'s relevance and importance to the SPO's case.¹⁶

7. With [REDACTED], the SPO [REDACTED].¹⁷ [REDACTED] on 23 March 2021. [REDACTED] on 18 June 2021 [REDACTED]. The majority of these items¹⁸ were provided by [REDACTED] on 4 August 2021. The SPO reviewed these materials and, on 14 September 2021, [REDACTED]. On 14 October 2021, [REDACTED], some of which were only available in Albanian, while other materials were available only in audio-visual format. The SPO promptly began processing and reviewing these

¹³ See, for example, Annex 4: [REDACTED]; Annex 6: [REDACTED]. See also Annex 3.

¹⁴ See, for example, Annex 6: [REDACTED].

¹⁵ See, for example, Annex 6: [REDACTED].

¹⁶ See, similarly, Decision on Specialist Prosecutor's Rule 102(2) and Related Requests, KSC-BC-2020-06/F00779, 22 April 2022, Confidential, para.24.

¹⁷ See [REDACTED].

¹⁸ [REDACTED].

materials, arranging for translations and transcriptions as necessary. This review coincided with several significant pre-trial deadlines in this case.

8. In early February 2022, the SPO sought to arrange a comprehensive interview of [REDACTED], which could not be held until the week of [REDACTED] 2022 due to scheduling conflicts arising from the personal and professional commitments of [REDACTED] and [REDACTED]. After the interview, the SPO carefully assessed the witness's SPO statement, [REDACTED], and security concerns in consideration of making this Request. The English transcripts of [REDACTED]'s SPO interview – [REDACTED]¹⁹ – were finalised and processed in late June 2022. [REDACTED]'s processed materials were then reviewed and organised for purposes of this request.

iii. The requested additions will cause no undue prejudice.

9. In addition to being important and timely, adding [REDACTED] and his related materials to the Witness List and Exhibit List will not result in undue prejudice to the Defence because (i) [REDACTED];²⁰ (ii) a number of his associated exhibits are already on the Exhibit List; and (iii) subject to the necessary protective measures requested below, the remaining materials relating to this Request will be disclosed sufficiently in advance of the witness's testimony to enable adequate Defence preparations.

iv. Protective measures are necessary and proportionate.

10. During the Indictment period²¹ and [REDACTED] thereafter, [REDACTED] has been subjected to threats (including death threats), intimidation, and interference by (former) KLA members and others acting on their behalf, [REDACTED].²²

¹⁹ Due to technical error, the audio corresponding to Parts 4 and 7 of the interview was not recorded. Instead, a draft statement covering the contents of these interview sessions was read onto the record, which the witness was given an opportunity to correct, supplement, and confirm. See Annex 4: [REDACTED].

²⁰ See Annex 3.

²¹ See, for example, Annex 6: [REDACTED].

²² See, for example, Annex 6: [REDACTED].

[REDACTED];²³ [REDACTED].²⁴ On account of the SPO's activities, [REDACTED] has faced renewed risks of interference. For example, [REDACTED]. [REDACTED] emphasised to the SPO that he has serious concerns for his safety and that of his family if his name is disclosed to the Defence at this stage of the proceedings.

11. [REDACTED],²⁵ [REDACTED].²⁶ [REDACTED]. As set out above, the grave and objective risks [REDACTED] are further heightened in the context of this case when considered with the highly incriminating nature of his evidence; past interference; [REDACTED]; the incentives, means, and opportunity of the Accused and their networks; and the endemic climate of witness interference in proceedings involving former KLA members.²⁷ Accordingly, protective measures are necessary, including:

- a) delayed disclosure of [REDACTED]'s identity until 30 days before trial;
- b) assignment of a pseudonym;
- c) redaction of his name and identifying information from the court's public records;
- d) non-disclosure to the public of any records identifying the witness;
- e) testimony with face and voice distortion; and
- f) closed or private session for any in-court discussion or testimony identifying the witness.

12. To give effect to [REDACTED]'s protective measures at this stage, particularly delayed disclosure of his identity, it is necessary to withhold from Rule 102(1)(b) and 102(2) disclosure:²⁸

²³ [REDACTED]. [REDACTED]. *See, for example*, [REDACTED] (last accessed 19 July 2022).

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ Annex 6: [REDACTED].

²⁷ *See, inter alia*, Corrected Version of First Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00133/COR, 10 December 2020, Strictly Confidential and *Ex Parte*, para.33.

²⁸ Annex 3 identifies certain associated exhibits that have already been disclosed under Rule 102(1)(b) and are therefore excluded from this request. [REDACTED].

- a) [REDACTED];²⁹ and
- b) [REDACTED] statements and materials [REDACTED].³⁰

13. Withholding these materials until 30 days before trial is a necessary measure. [REDACTED]. Given that [REDACTED], if these materials are now disclosed under Rules 102(1)(b) and 102(2) – even with extensive redactions – the Accused would be able to easily deduce the witness’s identity. In a similar vein, [REDACTED] comprise duplicates of certain [REDACTED] and/or relate directly to, were provided by, and/or [REDACTED].³¹ [REDACTED]’s SPO interview also refers extensively to certain [REDACTED] and concerns the same unique constellation of events, persons, and places that only this witness is in a position to discuss. In such circumstances, there is no way to meaningfully redact [REDACTED] and still give effect to the requested protective measures. Disclosure at this juncture would enable the Accused to, [REDACTED], identify [REDACTED].

14. As a counterbalancing measure, the SPO proposes to disclose a summary of [REDACTED]’s evidence.³² Withholding is further counterbalanced because: (i) [REDACTED];³³ and (ii) the Defence will receive the witness’s complete evidence 30 days before trial, enabling adequate preparation. Accordingly, the proposed protective measures are, in addition to being necessary, also proportionate.

B. W04043

15. The SPO seeks to add W04043 to its Witness List and his prior statements and related documents to the Exhibit List.³⁴ This evidence is of *prima facie* relevance

²⁹ Annexes 6-7.

³⁰ Annexes 4-5.

³¹ See Annex 3.

³² See Annex 2. [REDACTED].

³³ See Annex 3.

³⁴ See Annexes 8-9. Certain Rule 102(1)(b) materials relating to this witness were previously disclosed and are already on the Exhibit List. See SPOE00225888-SPOE00225913, pp.SPOE00225895, SPOE00225897 (Disclosure 44). Accordingly, they are not part of this request.

because [REDACTED].³⁵ W04043 would therefore be the only live witness who can corroborate [REDACTED] at the relevant time period.

16. This request is being made now due to several factors. As the materials in the SPO's possession contained conflicting information, it took some time for the SPO to verify the witness's identity and whereabouts. It was not until 2021 that the SPO determined that the witness was the same person who was linked to [REDACTED]. On 9 February 2021, the SPO requested [REDACTED] in locating W04043, but due to scheduling and logistical issues, including complications arising from the COVID-19 pandemic, the interview with W04043 did not take place until 21 April 2022. The SPO immediately thereafter took the necessary measures to translate and transcribe the interview. These transcripts were completed and processed in mid-June 2022.

17. The SPO submits that adding W04043 and the small number of related items would not unduly impact Defence trial preparations. The requested materials – which are limited in scope (and several of which merely summarise W04043's evidence in one paragraph or mention his name as a missing person) – concern a discrete topic of which the Defence is already aware. Further, a number of W04043's prior statements and related materials were previously disclosed under 102(3).³⁶ Finally, W04043 does not require protective measures at this time, so the Defence will be able to assess all related information together as soon as it is disclosed, with the exception of one associated exhibit with Rule 107 redactions (SPOE00233960-00233960).

18. In relation to SPOE00233960-00233960,³⁷ the relevant redacted information (namely, the identities of the witness and related victims) is available to the Defence through other means, including the portion of his SPO interview transcript where he was questioned about certain contents of this document.³⁸ Accordingly, no

³⁵ Indictment, KSC-BC-2020-06/F00789/A01, para.166, Schedule B at 16.1.

³⁶ See fn.34. Further, SITF00010993-00011013 was disclosed to the Selimi Defence on 5 April 2022 (Disclosure 207) and to the Krasniqi Defence on 24 May 2022 (Disclosure 257).

³⁷ The unredacted version (SITF00384355-00384355) is provided along with SPOE00233960-00233960 at Annex 9.

³⁸ See Annex 8: 106336-TR-ET Part 2, p.7. See also the already-disclosed statements cited in fn.36 above, which identify the witness and related victims by name.

counterbalancing measures are necessary and, pursuant to Rule 107(2), the SPO should be relieved of its disclosure obligations. In any event, while there is no prejudice to the Defence in the circumstances and disclosure relief is justified, the SPO is engaged in consultations with the Rule 107 information provider to obtain clearance of the relevant redacted portions of SPOE00233960-00233960.

III. CLASSIFICATION

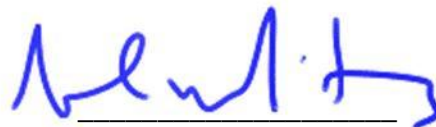
19. This filing is submitted as strictly confidential and *ex parte* in accordance with Rules 80(3) and 82(4). A confidential redacted version will be filed.

IV. RELIEF REQUESTED

20. For the foregoing reasons, the Pre-Trial Judge should:

- a) authorise the SPO to amend the Witness List to include [REDACTED] and W04043 and amend the Exhibit List to include their associated materials;
- b) grant protective measures for [REDACTED], including in-court measures and delayed disclosure until 30 days before trial, in the terms requested in paragraphs 11-12 above; and
- c) relieve the SPO of its disclosure obligations in relation to the Rule 107 information redacted from SPOE00233960-00233960.

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Alex Whiting

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Friday, 10 March 2023

At The Hague, The Netherlands.