



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2018-01
Before: Single Judge Panel
Judge Nicolas Guillou
Registrar: Dr Fidelma Donlon
Date: 5 June 2024
Language: English
Classification: Public

Decision on Request for Reclassification and Related Matters

Specialist Prosecutor

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THE SINGLE JUDGE,¹ pursuant to Article 33(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rule 82(5) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 15 January 2024, the Specialist Prosecutor's Office ("SPO") disclosed to the Defence for Isni Kilaj ("Defence" and "Mr Kilaj") that it had submitted for confirmation a strictly confidential and *ex parte* indictment against Mr Kilaj on 15 December 2023.²

2. On 19 April 2024, the SPO filed a notice notifying the Single Judge and the Defence of its intention to submit an amended indictment for confirmation against Mr Kilaj ("Prospective Amended Indictment" and "Notice").³

3. On 29 April 2024, the Defence submitted a filing ("Request"),⁴ seeking that the Single Judge (i) order the reclassification of the Notice and of the Request as public, pursuant to Rule 82(5) of the Rules ("Request for Reclassification");⁵ (ii) order that future submissions concerning the status of the Prospective Amended Indictment be filed *inter partes* ("Request for *Inter Partes* Submissions");⁶ and (iii) set a target date for the delivery of a confirmation decision as a matter of urgency ("Request for Target Date").⁷

¹ KSCPR-2018, F00004, President, *Decision Assigning a Single Judge Pursuant to Article 33(2) of the Law*, 29 May 2018, public.

² KSC-BC-2018-01, F00549, Specialist Prosecutor, *Prosecution Response to Defence Request F00548*, 15 January 2024, public.

³ KSC-BC-2018-01, F00636, Specialist Prosecutor, *Prosecution Notice*, 19 April 2024, confidential.

⁴ KSC-BC-2018-01, F00646, Defence for Mr Kilaj, *Kilaj Request for Reclassification of Prosecution's Notice of Intention to File an Amended Indictment (F00636)*, 29 April 2024, confidential.

⁵ Request, paras 7, 23, 24(i), (iv).

⁶ Request, paras 7, 20, 24(ii).

⁷ Request, paras 7, 21, 24(iii).

4. On 2 May 2024, the SPO filed a supplemental notice informing the Defence that (i) on 11 March 2024, the SPO submitted for confirmation a strictly confidential and *ex parte* revised indictment; and (ii) it intends to file the Prospective Amended Indictment by a certain date (“Supplemental Notice”).⁸

5. On 14 May 2024, the SPO notified the Single Judge, via email, that it does not oppose the reclassification of the information in the Notice, the Request and the Supplemental Notice as public, subject to an exception for the anticipated date for filing the Prospective Amended Indictment, which should remain confidential. On the same day, the Defence responded, via email, that the interest of publicity of proceedings outweighs the SPO’s preference in maintaining the anticipated date for filing the Prospective Amended Indictment as confidential.⁹

II. APPLICABLE LAW

6. Pursuant to Rule 82(5) of the Rules, where the basis for reclassification no longer exists, whoever submitted the original filing shall apply to the Panel for reclassification. A Panel may also reclassify a filing upon request by any other participant or *proprio motu*.

III. DISCUSSION

7. At the outset, the Single Judge notes that the SPO (i) does not oppose the Request for Reclassification, subject to an exception for the anticipated date for filing the Prospective Amended Indictment; and (ii) does not make any submissions

⁸ KSC-BC-2018-01, F00654, Specialist Prosecutor, *Prosecution Supplemental Notice*, 2 May 2024, confidential.

⁹ KSC-BC-2018-01, CRSPD56, Emails from CMU to the Basic Court Team on Defence Response re Urgent Order to the SPO, 14 May 2024, confidential.

with respect to the Request for *Inter Partes* Submissions and the Request for Target Date.¹⁰

8. In relation to the Request for Reclassification, the Single Judge pays heed to, on the one hand, the fact that the principle of publicity of proceedings demands that all submissions filed before the Specialist Chambers shall be made public as soon as possible, unless there are exceptional reasons for keeping them confidential,¹¹ and, on the other hand, the duty of the Single Judge to provide for the protection of witnesses and victims, and confidential information, in accordance with Article 23(1) of the Law and Rule 80(1) of the Rules.

9. In this regard, the Single Judge takes note of the Defence's submissions that: (i) there is no objective or tenable justification for keeping the confidentiality of the Notice, since it contains no sensitive or compromising information;¹² and (ii) the reclassification of the Notice would correct the public record concerning the status of the indictment.¹³

10. In addition, the Single Judge notes that: (i) the Notice was filed as confidential in light of the sensitive information contained therein and the potential serious impact its premature disclosure would have had on the SPO's ongoing investigation at that time;¹⁴ (ii) the SPO does not object to the reclassification of the Notice as public;¹⁵ (iii) the Request and the Supplemental Notice¹⁶ were filed as

¹⁰ See above para. 5.

¹¹ See, for example, KSC-BC-2020-06, IA008/F00004/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Review of Detention*, 1 October 2021, public, paras 8-9; KSC-CA-2022-01, F00103, Court of Appeals Panel, *Decision on Gucati Application for Reclassification or Public Redacted Versions of Court of Appeals Panel Decisions*, 9 January 2023, public, para. 2.

¹² Request, paras 7-10.

¹³ Request, paras 7, 15-19.

¹⁴ Notice, para. 3.

¹⁵ See above para. 5.

¹⁶ The Single Judge notes that the Supplemental Notice is not included in the Request for Reclassification, given that it was filed after it. However, considering that the Supplemental Notice supplements and incorporates by reference the Notice, the Single Judge deems it appropriate to include it in the present analysis.

confidential in light of the confidential classification of the Notice, pursuant to Rule 82(4) of the Rules;¹⁷ and (iv) the SPO wishes to maintain the anticipated date for filing the Prospective Amended Indictment as confidential.¹⁸

11. In light of the above, the Single Judge is of the view that neither the Notice nor the Request contain sensitive information compromising the safety and security of witnesses, the privacy of Mr Kilaj or the security and integrity of the proceedings. Accordingly, the Single Judge finds it appropriate to instruct the Registrar to reclassify the Notice and the Request as public in the record of the present proceedings. Regarding the Supplemental Notice, the Single Judge orders the SPO to submit a public redacted version of this filing, redacting the anticipated date for filing the Prospective Amended Indictment, in order to safeguard the security and integrity of the proceedings.

12. In relation to the Request for *Inter Partes* Submissions, the Single Judge takes note of (i) the Defence's arguments that there is currently no basis to maintain the *ex parte* marking of filings concerning the submission status of the Prospective Amended Indictment;¹⁹ and (ii) the fact that the SPO did not make any submissions on this point.²⁰ Nevertheless, the Single Judge does not find it appropriate to order that any future submission concerning the status of the Prospective Amended Indictment is automatically filed *inter partes*, and considers that the classification of any such filing must be justified on a case-by-case basis, in accordance with Rules 82 and 83 of the Rules. In this regard, the Single Judge emphasises that the Defence shall be duly informed of any information which is deemed appropriate as concerns Mr Kilaj's rights and interests. Accordingly, the Single Judge rejects the Request for *Inter Partes* Submissions.

¹⁷ Request, para. 23; Supplemental Notice, para. 6.

¹⁸ See above para. 5.

¹⁹ See above para. 3. See also Request, para. 20.

²⁰ See above para. 7.

13. Lastly, in relation to the Request for Target Date, the Single Judge notes that (i) the setting of a target date for the delivery of a decision on confirmation of the indictment is a function of the Pre-Trial Judge under Rule 85(5) of the Rules, and not of the Single Judge as affirmed by the Defence;²¹ and (ii) neither the Law nor the Rules indicate a deadline for the setting of such date. In light of the foregoing, the Single Judge rejects the Request for Target Date.

²¹ Request, para. 21.

IV. DISPOSITION

14. For the above reasons, the Single Judge hereby:
- a. **GRANTS** the Request for Reclassification;
 - b. **ORDERS** the Registrar to reclassify the following documents as public in the record of the present proceedings:
 - i. KSC-BC-2018-01/F00636 (currently classified as confidential);
and
 - ii. KSC-BC-2018-01/F00646 (currently classified as confidential);
 - c. **ORDERS** the SPO to submit public redacted version of the Supplemental Notice (KSC-BC-2018-01/F00654, currently classified as confidential), redacting the anticipated date for filing the Prospective Amended Indictment;
 - d. **REJECTS** the Request for *Inter Partes* Submissions; and
 - e. **REJECTS** the Request for Target Date.



Judge Nicolas Guillou
Single Judge

Dated this Wednesday, 5 June 2024

At The Hague, the Netherlands.