



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: Trial Panel II
Judge Charles L. Smith, III, Presiding Judge
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 27 September 2024

Language: English

Classification: Public

Public Redacted Version of 'Prosecution request for Rule 107 measures for witnesses [REDACTED]'

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to the Conduct of Proceedings Order,¹ Articles 23, 35(2)(e)-(f), 40(2) and (6)(d) and (f), and 58 of the Law,² and Rules 80, 107, 116(4)(b), 141(1), and 144 of the Rules,³ the Specialist Prosecutor's Office ('SPO') requests that the Trial Panel authorise necessary and proportionate measures, including protective measures and video-conference testimony for – as appropriate and pending the outcome of the [REDACTED]⁴ – [REDACTED] (collectively, 'Witnesses').

2. The Witnesses are [REDACTED]⁵ of the [REDACTED],⁶ and, as detailed below, [REDACTED] ('Rule 107 Provider') has authorised the Witnesses' testimony and/or admission of their evidence in writing subject to certain conditions, which are consistent with the Specialist Chambers' legal framework and [REDACTED]. There is no prejudice to the Defence, which will be able to fully cross-examine [REDACTED].

II. SUBMISSIONS

3. The Witnesses' evidence concerns [REDACTED] during the Indictment period ([REDACTED]). Consistent with Rule 107, [REDACTED] were initially provided on a confidential basis and for lead purposes only, and the Rule 107 Provider conditioned the use of the Witnesses' related evidence on their prior authorisation.⁷ The Rule 107 Provider has since authorised: (i) the disclosure and use of [REDACTED] evidence in

¹ Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Conduct of Proceedings Order'), paras 63-64, 66-70.

² Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' are to 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. *See also* Registry Practice Direction on Video Links, KSC-BD-23/COR, 17 July 2020 as corrected on 5 August 2020 ('Practice Direction').

⁴ [REDACTED]. While the SPO only intends to [REDACTED]. Certain of the conditions set out below apply, regardless of whether the Witnesses testify or their evidence is admitted under Rule 153.

⁵ [REDACTED].

⁶ [REDACTED]. [REDACTED]. [REDACTED].

⁷ [REDACTED]. [REDACTED].

proceedings before the Specialist Chambers, subject to certain conditions;⁸ and (ii) the Witnesses to testify, subject to conditions that are consistent with and appropriate means of giving effect to Rule 107(1) and (3)-(4),⁹ and which also safeguard [REDACTED], and ensure the security and well-being of the Witnesses. These conditions include protective measures and, as relevant, the modalities of the Witnesses' testimonies,¹⁰ namely:

- (i) that the Witnesses be identified only by an assigned pseudonym;
- (ii) that their names and identifying information be redacted from the KSC's public records;
- (iii) the non-disclosure to the public of any records identifying the Witnesses or [REDACTED];
- (iv) that the Witnesses testify with face and voice distortion, with private session for any in-court discussion or testimony identifying them;
- (v) that the Witnesses testify by video-conference from an appropriate location in [REDACTED];
- (vi) that [REDACTED] representative be permitted to be present during testimony; and

⁸ Consistent with the conditions the Rule 107 Provider has placed on the use of [REDACTED]. *See, for example* [REDACTED].

⁹ Pursuant to Rules 107(3)-(4), the Panel may not summons the Rule 107 Provider or compel the Witnesses to answer questions relating to the information or its origin if the Witnesses' decline to answer on grounds of confidentiality, nor order the production of additional evidence beyond that authorised by the Rule 107 Provider. *See also* Decision on the Prosecution Request for Rule 107 Measures for W04147 and W04868 (F01764), KSC-BC-2020-06/F01847, 10 October 2023, Confidential ('Rule 107 Decision'), para.14 ('The *raison d'être* of Rule 107 [...] is to "create incentive for such cooperation by permitting the sharing of information on a confidential basis and by guaranteeing information providers that the confidentiality of the information they offer and of the information's sources will be protected".').

¹⁰ [REDACTED].

(vii) that the [REDACTED] have the opportunity to review any private session testimony before it is reclassified as public.¹¹

4. [REDACTED], which are consistent with those applied by the Rule 107 Provider. [REDACTED]. Specifically, the [REDACTED].¹² [REDACTED].¹³

5. The requested protective measures are also necessary in light of the [REDACTED], and to safeguard the [REDACTED].¹⁴ The [REDACTED] Witnesses also expose them to additional risk. Additionally, [REDACTED] should he testify without protective measures. [REDACTED].¹⁵ Furthermore, [REDACTED] have all expressed concerns about [REDACTED].

6. Finally, the requested protective measures are proportionate, as the Accused are aware of the Witnesses' identities; have access to their evidence, including statements, associated exhibits, and [REDACTED]; and will be able to cross-examine [REDACTED]. Bearing in mind both the principle of publicity and the right of each of the Accused to a fair trial, the requested measures are the least restrictive available to ensure this relevant and probative evidence is available to the Panel, satisfy the conditions of the Rule 107 Provider, ensure expeditious proceedings (considering, *inter alia*, the degree of flexibility that video-conference testimony provides), and safeguard the [REDACTED].

7. Pursuant to Article 3 of the Practice Direction, the SPO provides the following information in relation to the [REDACTED] Witnesses proposed to testify under Rule 154: (i) [REDACTED] are currently anticipated to testify [REDACTED]; (ii) the

¹¹ Conditions (vi)-(vii) are necessary to ensure that the Rule 107 Provider's interests are protected, and advise the Panel, Parties, and participants where there might be a breach in the relevant confidentiality agreement or to seek necessary rulings from the Panel. *See* Rule 107 Decision, KSC-BC-2020-06/F01847, paras 19-20.

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ Public disclosure of such information, including [REDACTED].

¹⁵ *See, for example* [REDACTED].

expected duration of their direct examinations is 1 hour each;¹⁶ (iii) the SPO requests [REDACTED] to appear via video-link from an appropriate location in [REDACTED]; (iv) the SPO is requesting in-court protective measures for [REDACTED], including pseudonym and face/voice distortion;¹⁷ and (v) [REDACTED] will testify in [REDACTED]. The SPO remains available should the Registry require any further information.

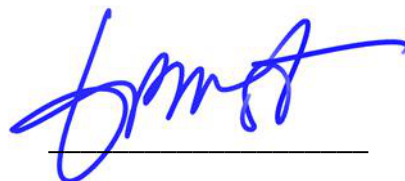
III. CLASSIFICATION

8. This filing is confidential pursuant to Rule 82(4) due to the confidential nature of its subject matter and [REDACTED].

IV. RELIEF REQUESTED

9. For the reasons set out above, the Trial Panel should authorise the requested measures set out in paragraph 3(i)-(vii) above, including video-conference testimony for [REDACTED].

Word Count: 1,606



Kimberly P. West

Specialist Prosecutor

Friday, 27 September 2024

At The Hague, the Netherlands.

¹⁶ [REDACTED].

¹⁷ See para.3 above.