



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

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**Public Redacted Version of 'Prosecution reply relating to its Rule 107 request
(F02603)'**

Specialist Prosecutor's Office

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I. INTRODUCTION

1. The objections in the Response¹ rely on a misapplication of Rule 107 of the Rules² and are therefore without merit. The Request³ should be granted in relation to all Witnesses,⁴ [REDACTED].

II. SUBMISSIONS

2. As submitted in the Request, [REDACTED] evidence at issue – which is relevant to the charges – was provided pursuant to Article 35(2)(e) of the Law⁵ and Rule 107(1), and [REDACTED] ('Rule 107 Provider') has authorised the testimony of the Witnesses subject to the Conditions.⁶ The Defence does not dispute these submissions,⁷ instead objecting to certain Conditions on a variety of grounds, including that they are beyond the ambit of Rule 107,⁸ and inviting the Panel to second-guess the Conditions.⁹ However, such objections miss the mark.

3. Consistent with the underlying purpose of Rule 107,¹⁰ it is the prerogative of the Rule 107 Provider to invoke Rule 107 and impose conditions under that Rule at its discretion.¹¹ The Specialist Prosecutor's Office and Rule 107 Provider are under no

¹ Joint Defence Response to Prosecution request for Rule 107 measures for witnesses [REDACTED] (F02603), KSC-BC-2020-06/F02630, 9 October 2024, Confidential ('Response').

² 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 are to the Rules.

³ Prosecution request for Rule 107 measures for witnesses [REDACTED], KSC-BC-2020-06/F02603, 27 September 2024, Confidential ('Request').

⁴ [REDACTED] ('Witnesses').

⁵ 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 the Law.

⁶ Request, KSC-BC-2020-06/F02603, para.3. *See also* para.3(i)-(vii) (setting out the 'Conditions').

⁷ *See e.g.* Response, KSC-BC-2020-06/F02630, paras 4-5, 7.

⁸ Response, KSC-BC-2020-06/F02630, paras 1, 5.

⁹ Response, KSC-BC-2020-06/F02630, paras 7-9.

¹⁰ Request, KSC-BC-2020-06/F02603, para.3, fn.9 and sources cited therein (noting, *inter alia*, that the Panel has previously found that 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".').

¹¹ ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-PT, Decision on Prosecution's Motion for Protective Measures for Witnesses KDZ182, KDZ185, KDZ304, and KDZ450 pursuant to Rule 70, 2 July 2009 ('*Karadžić Decision*'), para.9.

obligation to provide additional justifications for the Conditions,¹² which are a *sine qua non* for the Panel to receive the relevant evidence at issue. Instead – noting also the scope of the Response¹³ – the Panel’s enquiry should be limited to an assessment of whether admitting or hearing the Witnesses’ evidence under the Conditions would be consistent with the Accused’s fair trial rights.¹⁴

4. In present circumstances, the Conditions are appropriate means of giving effect to Rule 107(1) and (3)-(4),¹⁵ and will not undermine the Accused’s rights or cause prejudice to the Defence, as the Witnesses’ identities are known to the Defence, the related evidence has been disclosed, and the Defence will have the opportunity to cross-examine the Witnesses.¹⁶ These considerations apply to all Conditions, including those opposed by the Defence, namely, non-disclosure to the public of the Witnesses’ identities (and related measures),¹⁷ video-conference testimony,¹⁸ and review of private session testimony before reclassification.¹⁹

5. Finally, the Defence request that [REDACTED] representative be excluded from the Witnesses’ preparation sessions²⁰ is unwarranted and fails to justify such a limitation.²¹ In this respect, the Defence does not object to [REDACTED]

¹² See, similarly, ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Decision on Urgent Prosecution Motion for Protective Measures and Conditions for Witness RM-401 pursuant to Rule 70, 18 October 2013 (*‘Mladić Decision’*), para.7.

¹³ See para.2 above. Neither the relevance of the Witnesses’ evidence, nor the applicability of Rule 107 to the relevant evidence is disputed. Instead, the Response focuses on certain Conditions.

¹⁴ See, similarly, *Mladić Decision*, paras 5, 8.

¹⁵ Request, KSC-BC-2020-06/F02603, para.3, fn.9.

¹⁶ Request, KSC-BC-2020-06/F02603, para.6.

¹⁷ Conditions (i)-(iv). In similar circumstances, ICTY Chambers have authorised ICTY Rule 70 conditions, *inter alia*, designed to protect a witness’s identity from the public. See *e.g.* *Mladić Decision*, paras 8-11; *Karadžić Decision*, paras 10-11.

¹⁸ Condition (v). See *e.g.* Decision on Prosecution request for video-conference testimony for W00344, KSC-BC-2020-06/F02640, 11 October 2024, para.11.

¹⁹ Condition (vii). In addition to being an appropriate means of giving effect to Rule 107, this condition is also consistent with Article 58, which provides that third States may make submissions concerning the protection of their ‘servants or agents’ and confidential or sensitive information.

²⁰ Response, KSC-BC-2020-06/F02630, para.12.

²¹ Pending a decision on the Request and in the interest of expeditious proceedings, [REDACTED], consistent with past practice where representatives of the relevant Rule 107 provider were present. See *e.g.* 122330-122335; 120244-120247. As before and in the interests of transparency and fairness, any

representative being present during testimony and the same reasons justifying such presence during testimony²² apply to the preparation sessions. The representative's presence during the preparation sessions ensures that the Rule 107 Provider's confidentiality interests are protected and ultimately serves the purposes of preparation,²³ considering that the representative may be able to advise on any issues concerning the relevant confidentiality agreement or seek appropriate relief in advance.

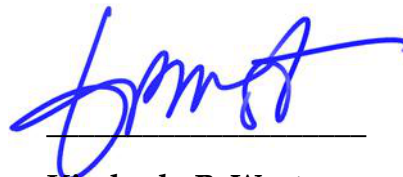
III. CLASSIFICATION

6. This submission is filed as confidential pursuant to Rule 82(4).

IV. RELIEF REQUESTED

7. For the foregoing reasons and those previously given, the Request should be granted.

Word Count: 943



Kimberly P. West

Specialist Prosecutor

Tuesday, 15 October 2024

At The Hague, the Netherlands.

relevant information concerning the representative's presence or their interventions will be duly recorded in the preparation note.

²² See Request, KSC-BC-2020-06/F02603, fn.11.

²³ Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023, para.86.