



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-07

The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: Pre-Trial Judge

Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 20 April 2021

Language: English

Classification: Confidential

Decision on Request for Authorisation of Non-Standard Redactions

Specialist Prosecutor

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THE PRE-TRIAL JUDGE,¹ pursuant to Articles 23(1) and 39(1) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 80 and 108 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 22 February 2021, the Pre-Trial Judge ordered the Specialist Prosecutor's Office ("SPO") to disclose redacted records of SPO contacts with witnesses or potential witnesses who, during such contacts, addressed the impact of the disclosure of non-public and confidential information ("Decision on Non-Disclosure").²
2. On 30 March 2021, pursuant to a request of the SPO,³ the Pre-Trial Judge authorised non-standard redactions made to further records of SPO contacts with witnesses or potential witnesses in conformity with the Decision on Non-Disclosure.⁴
3. On 9 April 2021, the SPO submitted a further request for the authorisation of non-standard redactions ("Request").⁵
4. The Defence for Hysni Gucati and the Defence for Nasim Haradinaj (collectively referred to as, "the Defence") did not respond to the Request.

¹ KSC-BC-2020-07, F00061, President, *Decision Assigning a Pre-Trial Judge*, 29 October 2020, public.

² KSC-BC-2020-07, F00136, Pre-Trial Judge, *Decision on Non-Disclosure of Certain Witness Contacts*, 22 February 2021, confidential, para. 32.

³ KSC-BC-2020-07, F00155, Specialist Prosecutor, *Request for Authorisation of Non-Standard Redactions*, 17 March 2021, confidential, with Annex 1, strictly confidential and *ex parte*.

⁴ KSC-BC-2020-07, Transcript of Hearing, 30 March 2021, public, p. 214, line 21, to p. 215, line 11.

⁵ KSC-BC-2020-07, F00180, Specialist Prosecutor, *Request for Authorisation of Non-Standard Redactions*, ("Request"), 9 April 2021, confidential, with Annex 1, strictly confidential and *ex parte*.

II. SUBMISSIONS

5. The SPO submits that it has found four additional records and has applied redactions equivalent to those authorised in the Decision on Non-Disclosure.⁶ The SPO requests that the Pre-Trial Judge authorise the non-standard redactions as applied in Annex 1 to the Request.⁷

III. APPLICABLE LAW

6. Pursuant to Article 23(1) of the Law, Rules 80(1) and 108(1)(b) of the Rules, a Panel may order, *proprio motu* or upon request, appropriate measures for the protection, safety, physical and psychological well-being, dignity and privacy of witnesses, victims participating in the proceedings, as well as other persons at risk on account of testimony given by witnesses.

7. Pursuant to Rule 80(4)(a)(i)-(iii), (d), and (e) of the Rules, such measures may include the redaction of names and other identifying information in order to prevent disclosure to the Accused and/or the public, where necessary, of the identity and/or whereabouts of a witness, a victim participating in the proceedings or of a person related to or associated with them.

⁶ Request, para. 2.

⁷ Request, para. 2.

IV. DISCUSSION

8. The Pre-Trial Judge has reviewed the SPO's proposed redactions in Annex 1 to the Request.⁸ The Pre-Trial Judge recalls that redactions should be applied to the extent they are strictly necessary.⁹

9. The Pre-Trial Judge further recalls that, in order to provide the Defence with a meaningful opportunity to assess the information provided, redactions generally should not extend to information relating to the leaked batches and their effect on a particular witness or victim, unless and to the extent such information would identify the concerned witness or victim. To this end, sentences should also be kept intact to the extent possible so that the context of the information provided is understood.¹⁰

10. In addition, where a witness or potential witness confirms or reiterates that protective measures are necessary or not necessary, as the case may be, such information being relevant to the effect of the leaked batches on that individual should be disclosed to the extent that it does not identify the witness or potential witness. The Pre-Trial Judge, accordingly considers, that the portion of paragraph 3 on 093602 and paragraph 4 on 093602, relating to protective measures, should be unredacted under these parameters.¹¹

11. Furthermore, where a witness or potential witness indicates that s/he has security concerns related to the dissemination of non-public and confidential information, details of those concerns should be unredacted to the extent that they do not identify

⁸ KSC-BC-2020-07, F00180/A01, Specialist Prosecutor, *Annex 1 to Request for Authorisation of Non-standard Redactions* ("Annex 1"), 9 April 2021, strictly confidential and *ex parte*.

⁹ Article 21(6) of the Law.

¹⁰ Decision on Non-Disclosure, para. 30.

¹¹ Annex 1, p. 5.

the witness or potential witness. The Pre-Trial Judge, accordingly considers, that paragraphs 4 and 5 of 094748 should be unredacted under these parameters.¹²

V. DISPOSITION

12. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a. **GRANTS** the Request, in part;
- b. **ORDERS** the SPO to adjust the redactions to the documents in Annex 1 of the Request, as set out in paragraphs 10-11, above, by 30 April 2021.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Tuesday, 20 April 2021

At The Hague, the Netherlands.

¹² Annex 1, p. 7.