



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-05
Specialist Prosecutor v. Salih Mustafa

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 6 May 2021

Language: English

Classification: Public

**Public Redacted Version of 'Submissions on the reclassification of filings', KSC-
BC-2020-05/F00026, dated 2 October 2020**

Specialist Prosecutor's Office

Jack Smith

Counsel for the Accused

Julius von Bóné

I. INTRODUCTION

1. Pursuant to the Reclassification Order,¹ Articles 21(2) and 39(6) of the Law,² and Rules 82(3),(5) and 88(2) of the Rules,³ the Specialist Prosecutor's Office ('SPO') hereby provides written submissions on the reclassification of previous filings in case KSC-BC-2020-05.⁴
2. This filing is submitted as strictly confidential and *ex parte* in accordance with Rule 82(4).

II. SUBMISSIONS

Public and/or confidential versions of filings

3. Pursuant to the Reclassification Order,⁵ on 2 October 2020, the SPO submitted the following filings:
 - Confidential (redacted) and public (redacted) versions of F00002;
 - Confidential (redacted) and public (redacted) versions of F00002/A01;
 - Confidential (redacted) version of F00002/A03;
 - Public (redacted) version of F00004;
 - Public (redacted) version of F00004/A01;
 - Public (redacted) version of F00004/A02;
 - Public (redacted) version of F00005;
 - Public (redacted) version of F00005/A01; and
 - Public (redacted) version of F00011.
4. The limited redactions applied to these filings pertain to the names and identifying information of victims or witnesses, which have been authorised on a

¹ Order for Submissions on the Reclassification of Filings, KSC-BC-2020-05/F00016, 25 September 2020, Strictly Confidential and *Ex Parte* ('Reclassification Order').

² Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

³ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). Unless otherwise indicated, all references to 'Rule(s)' are to the Rules.

⁴ Reclassification Order, KSC-BC-2020-05/F00016, paras 14-15.

⁵ Reclassification Order, KSC-BC-2020-05/F00016, para.14.

provisional basis pursuant to the Confirmation Decision,⁶ personal details of the Accused and/or matters which could prejudice ongoing SPO investigations.

Strictly confidential and ex parte filings

5. The SPO wishes to retain the current strictly confidential and *ex parte* classification for one of its previous filings: KSC-BC-2020-05/F00002/A02.

6. Maintenance of that classification is necessary at this time because KSC-BC-2020-05/F00002/A02 contains extensive detail regarding the identity of victims and witnesses, including direct quotes and excerpts, or summaries, from testimony and other evidentiary items.

7. The circumstances set out in the SPO's Initial Submissions of Indictment and Requests are still applicable.⁷ There are real risks of interference with witnesses and victims, which, pursuant to Rule 105, constitute exceptional circumstances justifying interim non-disclosure of the identities of witnesses and victims involved in these proceedings until appropriate protective measures have been ordered. Accordingly, the non-disclosure of filing F00002/A02, and information therein, is necessary at this stage to ensure the integrity of the proceedings, and the protection of witnesses and victims.

8. While noting the provisional authorisation to redact witness names and identifying information,⁸ implementation of such redactions in F00002/A02 requires painstaking review to ensure consistency, and ensure protection. That exercise is further complicated by the need to cross-refer against, and make relevant adjustments as a result of, confidential material [REDACTED]. The SPO will redact and reclassify filing F00002/A02 upon completion of disclosure of the indictment supporting

⁶ Decision on the Confirmation of the Indictment Against Salih Mustafa, KSC-BC-2020-05/F00008, 12 June 2020, Strictly Confidential and *Ex Parte* ('Confirmation Decision'), para.163(c).

⁷ Submission of Indictment for Confirmation and Related Requests, KSC-BC-2020-05/F00002, 14 February 2020, Strictly Confidential and *Ex Parte* ('Initial Submissions of Indictment and Requests'), paras 21-22.

⁸ Confirmation Decision, KSC-BC-2020-05/F00008, para.163(c).

materials in KSC-BC-2020-05, and consistent with the redactions applied to such material, and/or once appropriate protective measures are in place.

9. Finally, the SPO notes that KSC-BC-2020-05/F00019 – which was filed after the Reclassification Order and is currently designated as strictly confidential and *ex parte* – can be reclassified as confidential.⁹ Consequently, the SPO respectfully requests the Pre-Trial Judge to direct the Registrar to reclassify KSC-BC-2020-05/F00019 as confidential.

Word count: 599



Jack Smith

Specialist Prosecutor

Thursday, 6 May 2021

At The Hague, the Netherlands.

⁹ KSC-BC-2020-05/F00019 should not be reclassified as public [REDACTED]. KSC-BC-2020-05/F00019/A01 is already designated as public.