



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

Registrar: Fidelma Donlon

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Decision on Proposed Redactions for P00104

Specialist Prosecutor

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TRIAL PANEL II (“Panel”), pursuant to Articles 21 and 40(6)(d) and (f) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 84(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 23 November 2021, further to an order of the Panel,¹ the Specialist Prosecutor’s Office (“SPO”) filed a proposed public redacted version of exhibit P00104.²
2. On 13 December 2021, the SPO submitted an amended proposed public redacted version of P00104 (“P00104 Proposed Redactions”).³
3. On 15 December 2021, the Defence for Hysni Gucati (“Gucati Defence”) objected to the P00104 Proposed Redactions on the basis that the documents contained in the exhibit were public.⁴
4. On 17 December 2021, the Panel ordered the SPO to, *inter alia*, file further submissions regarding the P00104 Proposed Redactions.⁵ In particular, the Panel ordered the SPO to provide further submissions as to the following: (i) which of the documents included in P00104 were publicly available from official sources in Kosovo, and whether they were publicly available from those sources in redacted or un-redacted form; (ii) further details concerning the practice of the Kosovo courts and the Special Prosecution Office of the Republic of Kosovo to apply redactions to public

¹ F00427, Panel, *Decision on the Admissibility of Deferred Exhibits and the Classification of Certain Admitted Exhibits*, 9 November 2021, para. 68(j).

² F00445, Specialist Prosecutor, *Submissions Pursuant to the Trial Panel’s Decision F00427*, 23 November 2021, with Annex 1, confidential.

³ F00492, Specialist Prosecutor, *Submission of Amended Proposed Public Redacted Version of P00104*, 13 December 2021, with Annex 1, confidential (“P00104 Proposed Redactions”, “F00492/A01”).

⁴ F00498, Gucati Defence, *Response to SPO Submission of Amended Proposed Public Redacted Version of P00104*, 15 December 2021.

⁵ F00503, Panel, *Decision on Proposed Redactions of Certain Admitted Exhibits* (“Decision on Proposed Redactions”), 17 December 2021, paras 18, 22(c).

documents, and the legal basis for applying such redactions; (iii) for each document included in P00104, specific reasons to justify the request by the SPO for redactions, especially where such redactions go beyond those applied by Kosovo courts and the Special Prosecution Office of the Republic of Kosovo; and (iv) where the SPO has marked for redaction both specific parts of a page and the entire page, clarity from the SPO as to what it is seeking to redact.⁶

5. On 24 January 2022, the SPO filed further submissions on the proposed redactions (“Further Submissions”).⁷

6. The Defence submitted no response to the Further Submissions within the time limit ordered by the Panel.

II. SUBMISSIONS

7. The SPO submits that all proposed redactions to P00104 reflect the redactions applied by Kosovo courts to the online versions of judgments and other materials included in P00104. The SPO indicates that Annex 1 to the Further Submissions lists the available online versions of each of the documents included in P00104. The redactions in those versions are mirrored in the redactions that the SPO has proposed for P00104. The SPO avers that none of the proposed redactions go beyond those applied by Kosovo Courts on materials available online.⁸

8. The SPO also submits a revised version of the redactions proposed in relation to the excerpts included in pages 628-636 of P00104,⁹ to more clearly and accurately reflect the redactions applied to the version of the corresponding judgment that is

⁶ Decision on Proposed Redactions, para. 18.

⁷ F00531, Specialist Prosecutor, *Further Submissions on Public Redacted Version of P00104* (“Further Submissions”), 24 January 2022, with Annex 1 (“F00531/A01”), 2 and 3, public and Annex 4 (“F00531/A04”), confidential.

⁸ Further Submissions, para. 2.

⁹ P00104 Proposed Redactions, pp 629-637.

available online (“Revised Redactions”).¹⁰ The SPO further indicates that where it has marked for redaction (a) both specific parts of a page and (b) the entire page, the SPO seeks an order to redact the entire page in question, “as no public or open source version of the document could be identified” (“Full Redactions”).¹¹

III. APPLICABLE LAW

9. Pursuant to Article 40(6)(d) and (f) of the Law, the Panel may provide for the protection of confidential information as well as for the protection of the Accused, witnesses and victims.

10. Pursuant to Rule 84(1) of the Rules, the Panel shall review on an ongoing basis the classification of evidence and, where applicable, order their reclassification.

IV. DISCUSSION

11. The Panel has reviewed the publicly available, online versions of documents included in P00104 (*i.e.* Annex 1 to the Further Submissions) and has compared them with the P00104 Proposed Redactions and the Revised Redactions. The Panel has also reviewed the Full Redactions, most of which relate to documents which are not available online from official sources. The Panel also notes that, while the Gucati Defence objected to the P00104 Proposed Redactions on the basis that the documents contained in the exhibit were public,¹² neither Defence team has challenged the Revised Redactions or the Full Redactions.

12. As regards the P00104 Proposed Redactions, the Panel observes that, aside from limited exceptions, they reflect those applied by Kosovo courts in the publicly available versions of the documents. With regard to the limited additional redactions

¹⁰ Further Submissions, para. 5 referring to F00531/A04.

¹¹ Further Submissions, para. 6.

¹² See *supra* para. 3.

applied by the SPO, the Panel notes that some appear to be intended to ensure the consistent redaction of similar information within one document.¹³ Other additional redactions appear to be intended to ensure the consistent removal of similar information across different documents.¹⁴ In any event, all these additional proposed redactions cover information identifying accused persons, witnesses or other individuals connected with the respective judicial proceedings. A small number of further proposed redactions referring to Kosovo or international case-law appear, however, to be superfluous.¹⁵ These concerns, in particular, redactions to references to ICTY, ICTR, ECtHR and Kosovo judgments and decisions that relate to legal standards and are not redacted in their online versions. The Panel accordingly finds that the P00104 Proposed Redactions, except for those which redact references to Kosovo or international case-law,¹⁶ are consistent with the fundamental rights of the Accused and the principle of publicity, insofar as they pursue the legitimate aim of protecting witnesses and the privacy of accused persons and other individuals, and are proportionate and necessary for that purpose.

13. As regards the Revised Redactions, the Panel observes that they reflect those applied in the public version of the same document.¹⁷ The Panel further notes that the Revised Redactions cover the full names of individuals connected to other judicial proceedings and personal details of such individuals. The Panel accordingly finds that the Revised Redactions are consistent with the fundamental rights of the Accused and

¹³ P00104 Proposed Redactions, pp 21, 80-81, 308-309, 538. Page numbers refer to F00492/A01 and are one digit up from the numbers referred to in F00531/A01. This applies to all subsequent footnotes in this filing referring to P00104 Proposed Redactions.

¹⁴ P00104 Proposed Redactions, pp 8-9, 16-17, 21, 26, 129-163, 166, 170, 200 (para. 69), 252, 412, 414, 529-530, 535, 541-544, 560, 567, 597, 639, 762-763, 811, 814-815, 817-818, 821, 835 where similar information, including names of defence counsel, is proposed to be redacted across several documents the online versions of which do not necessarily follow a consistent approach in expunging the same information.

¹⁵ P00104 Proposed Redactions, pp 277, 279, 551-553, 776 (fn. 2).

¹⁶ P00104 Proposed Redactions, pp 277, 279, 551-553, 776 (fn. 2).

¹⁷ Further Submissions, F00531/A01, p.2 and F00531/A04. See also https://www.eulex-kosovo.eu/eul/repository/docs/126431-PML.KZZ_no.322-2016.pdf.

the principle of publicity, insofar as they pursue the legitimate aim of protecting the privacy of individuals, and are proportionate and necessary for that purpose.

14. As regards the Full Redactions, the Panel notes that these have been applied in two instances: (i) where no public or open source version of the document could be identified;¹⁸ and (ii) where the proposed text is available publicly from an official source with more limited redactions.¹⁹ As regards the first instance, the Panel observes that the documents in question contain an indictment and investigation-related records. Accordingly, in the absence of a public version of these documents, the Panel finds it prudent to authorise the Full Redactions proposed by the SPO. As regards the second instance, the Panel observes that neither the full nor the specific proposed redactions of the SPO reflect the redactions made in the publicly available versions of the documents from official sources. These contain redactions to names and other identifying information, but leave unexpunged the general content of the text. Accordingly, the Panel considers that the redactions applied in the versions publicly available from the official sources are more appropriate. The Panel accordingly finds that the Full Redactions, except those not reflecting the publicly available, official redacted versions,²⁰ are consistent with the fundamental rights of the Accused and the principle of publicity, insofar as they pursue the legitimate aim of protecting witnesses and the privacy of other individuals, and are proportionate and necessary for that purpose.

15. In light of the above, the Panel authorises: (i) the P00104 Proposed Redactions with the exceptions of those indicated in paragraph 12 that relate to Kosovo or international case-law;²¹ (ii) the Revised Redactions in full; and (iii) the Full Redactions with the exception of those indicated in paragraph 14 as not reflecting the

¹⁸ P00104 Proposed Redactions, pp 417-496, 616-621.

¹⁹ P00104 Proposed Redactions, pp 38-39, 525-526, 761-762, 809, 834.

²⁰ P00104 Proposed Redactions, pp 38-39, 525-526, 761-762, 809, 834.

²¹ P00104 Proposed Redactions, pp 277, 279, 551-553, 776 (fn. 2).

redacted versions that are publicly available from official sources. In relation to the latter, the Panel orders the SPO to apply redactions consistent with those made in the publicly available versions of the relevant documents. This decision is without prejudice to a future ruling of the Panel on the public or confidential nature of the documents included in P00104.

V. DISPOSITION

16. For these reasons, the Panel:

- a. **ORDERS** the SPO to implement:
 - i. the P00104 Proposed Redactions, within the limits set out in paragraphs 12 and 15;
 - ii. the Revised Redactions;
 - iii. the Full Redactions, within the limits and with the additional order set out in paragraphs 14 and 15;
- b. **ORDERS** the SPO to file a public redacted version of P00104 in compliance with the above orders by **18 February 2022**; and
- c. **DIRECTS** the Registrar to mark the public redacted version as P00104_RED.



Judge Charles L. Smith, III
Presiding Judge

Dated this Thursday, 10 February 2022

At The Hague, the Netherlands