



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:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor

**Date:** 18 July 2022

**Language:** English

**Classification:** Confidential

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**Confidential Redacted Version of 'Prosecution Rule 107(2) request', KSC-BC-2020-06/F00875**

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## I. INTRODUCTION

1. Pursuant to the Framework Decision,<sup>1</sup> Articles 35(2)(e)-(f), and 39(1), (3) and (11) of the Law,<sup>2</sup> and Rule 107 of the Rules,<sup>3</sup> the Specialist Prosecutor's Office ('SPO') requests the Pre-Trial Judge to relieve the SPO of its disclosure obligations in relation to certain documents for which clearance has been denied by the Rule 107 providers.<sup>4</sup>
2. These documents have been denied clearance even after, in a number of cases, several rounds of consultation. As detailed below, no prejudice arises from not providing notice of the documents as the information contained in them is either (i) not exculpatory and of only tangential, or purely incriminatory, relevance; or (ii) to the extent it is relevant and/or exculpatory, the interests of the defence are adequately protected by counterbalancing measures under Rule 108(2).

## II. SUBMISSIONS

3. [REDACTED] has denied clearance for nine items which are either notes of SITF/SPO contacts with certain individuals or related materials provided by those individuals to the SITF/SPO, and for two other documents, being internal reports. There are less than 10 documents which now remain under discussion with [REDACTED], with clearance decisions having been made on all other items received from them.<sup>5</sup>

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<sup>1</sup> Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-06/F00099, 23 November 2020 ('Framework Decision'), paras 16, 22, 69-71, and 99(1).

<sup>2</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

<sup>3</sup> 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.

<sup>4</sup> See Prosecution Rule 102(3) notice, KSC-BC-2020-06/F00421, para.1. Annexes 1-10 and 23 provide the items not cleared by [REDACTED]. Annexes 11-20 provide the items not cleared by [REDACTED]. Annexes 21-22 provide two items not cleared by [REDACTED]. The remaining items not cleared by [REDACTED] will be provided directly to the Pre-Trial Judge, due to their classification status. Any documents intended as counter-balancing measures are contained in the same annex as the corresponding item for which clearance has been denied. However, any counterbalancing documents that have already been disclosed - and are therefore available on LWF - are not included in the annexes.

<sup>5</sup> As described in KSC-BC-2020-06/F00678, para.3, this is from in excess of 5,000 items which have been cleared by [REDACTED].

4. In addition, [REDACTED] has so far denied clearance for ten items<sup>6</sup> comprising four documents that contain lists and charts of persons who worked in [REDACTED], five documents that are internal [REDACTED] work product or notes, and one [REDACTED] statement.

5. Finally, [REDACTED] has so far denied clearance of six documents,<sup>7</sup> comprising confidential and classified internal reports, communications or other operational or guidance documents. The documents in question contain internal logistical and operational information or analysis, and do not contain exculpatory information.

A. [REDACTED]

6. The documents comprise SITF/SPO official notes reflecting screening contacts with [REDACTED] and include [REDACTED].<sup>8</sup>

7. The note of [REDACTED] comprises an initial screening contact, in which [REDACTED].<sup>9</sup> To the extent the information is relevant it is predominantly incriminatory.<sup>10</sup>

8. The note detailing the [REDACTED] comprise a more detailed account of [REDACTED].<sup>11</sup> Nevertheless, [REDACTED] mostly provides general and generic information about the [REDACTED], as well as incriminating information regarding [REDACTED]. All of the specific incidents mentioned are covered by contemporary incident reports, which have either been cleared for disclosure/notification<sup>12</sup> or disclosed already.<sup>13</sup>

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<sup>6</sup> [REDACTED] has already cleared for disclosure approximately 10,000 items, and clearance decisions remain pending from [REDACTED] for approximately 60 items.

<sup>7</sup> [REDACTED] has processed in excess of 1,000 documents for clearance purposes and a final 'batch' of approximately 320 documents remain pending clearance decisions.

<sup>8</sup> Annexes 1-3: [REDACTED].

<sup>9</sup> [REDACTED].

<sup>10</sup> [REDACTED].

<sup>11</sup> [REDACTED].

<sup>12</sup> [REDACTED].

<sup>13</sup> [REDACTED].

9. [REDACTED] also describes [REDACTED],<sup>14</sup> which again is purely incriminatory. [REDACTED] then provides certain background information on (*inter alia* confirming the accuracy of) [REDACTED]<sup>15</sup> and a related memorandum,<sup>16</sup> both of which have already been disclosed, and the [REDACTED] of which are described in greater detail in already disclosed materials.<sup>17</sup>

10. The [REDACTED], has been identified as containing potentially exculpatory information.<sup>18</sup> According to [REDACTED]. [REDACTED]. [REDACTED].<sup>19</sup> These generic statements are a self-serving account [REDACTED]. Similar statements, [REDACTED], are available in other material already disclosed to the Defence.<sup>20</sup> To the extent that any additional counterbalance is considered appropriate, the SPO would propose providing an anonymised summary.<sup>21</sup>

B. [REDACTED]

11. The documents comprise SITF/SPO official notes reflecting screening contacts with [REDACTED].<sup>22</sup>

12. The notes detail either brief initial screening contacts, [REDACTED],<sup>23</sup> or events that occurred after the indictment period.<sup>24</sup> To the extent that the information is relevant it is mainly incriminating.<sup>25</sup>

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<sup>14</sup> [REDACTED]. The report referenced [REDACTED] has been cleared for disclosure without redactions.

<sup>15</sup> [REDACTED].

<sup>16</sup> [REDACTED].

<sup>17</sup> [REDACTED].

<sup>18</sup> [REDACTED]. [REDACTED].

<sup>19</sup> [REDACTED].

<sup>20</sup> [REDACTED].

<sup>21</sup> [REDACTED].

<sup>22</sup> Annexes 4-6: [REDACTED].

<sup>23</sup> [REDACTED].

<sup>24</sup> [REDACTED].

<sup>25</sup> [REDACTED].

13. One set of meeting notes has been assessed as containing potentially exculpatory information. [REDACTED].<sup>26</sup> The sentence in question represents [REDACTED] in an open source [REDACTED]. No specification is given in relation to [REDACTED]. [REDACTED]. As a counter-balancing measure, the SPO has no objection to providing the Defence with [REDACTED].<sup>27</sup>

C. [REDACTED]

14. The documents comprise two [REDACTED].<sup>28</sup> [REDACTED]. [REDACTED].

15. [REDACTED], large sections of which are blank or contain private contact details of individuals unrelated to the case.<sup>29</sup> The second [REDACTED],<sup>30</sup> [REDACTED].<sup>31</sup>

16. [REDACTED]. Likewise, [REDACTED], which is irrelevant to the indictment. [REDACTED].<sup>32</sup>

17. [REDACTED], has been cleared for disclosure in redacted form and will be included in an upcoming disclosure package.<sup>33</sup> Disclosure of this document constitutes an effective counterbalancing measure to the material withheld by the provider.

D. [REDACTED]

18. The document is an SPO official note of a telephone contact with [REDACTED].<sup>34</sup> The note details a brief screening conversation to ascertain [REDACTED]. Most of the note

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<sup>26</sup> [REDACTED]. This paragraph also mentions [REDACTED], which is not assessed to be exculpatory but, in any case, is reflected in material otherwise available to the Defence (*for example* [REDACTED]). The reference at para.5 to [REDACTED] is similarly not assessed to be exculpatory as it relates to [REDACTED]. Nonetheless, in any event, similar information is available to the Defence from alternative sources (*for example* [REDACTED]).

<sup>27</sup> [REDACTED].

<sup>28</sup> Annexes 8-9: [REDACTED].

<sup>29</sup> [REDACTED].

<sup>30</sup> [REDACTED].

<sup>31</sup> [REDACTED]. [REDACTED].

<sup>32</sup> [REDACTED].

<sup>33</sup> [REDACTED].

<sup>34</sup> Annex 7: [REDACTED].

records irrelevant information, [REDACTED]. There is no exculpatory information and no counterbalancing measures are necessary.

E. [REDACTED]

19. Clearance has been denied for an internal [REDACTED] case report dated [REDACTED] November 1999 concerning [REDACTED].<sup>35</sup> The document is clearly marked as being restricted, internal product. The document, and the incident it describes, post-dates the indictment period, is at most of tangential relevance and contains no exculpatory information.

20. Consequently, no prejudice arises from not providing notice of this item, and no additional counterbalancing measures are necessary.

F. [REDACTED]

21. The document is an internal memorandum [REDACTED].<sup>36</sup> The memorandum concerns [REDACTED]. [REDACTED]. However, parts of the documents contain potentially exculpatory material.<sup>37</sup> As a counterbalancing measure, the SPO proposes to provide a summary of the document to the defence which includes all potentially exculpatory information.

G. [REDACTED]<sup>38</sup>

22. Three documents are [REDACTED],<sup>39</sup> [REDACTED]<sup>40</sup> and [REDACTED]<sup>41</sup> [REDACTED]. A fourth document is an undated chart of [REDACTED].<sup>42</sup> Such human resources and staffing information fall within confidential and sensitive information

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<sup>35</sup> Annex 23: [REDACTED].

<sup>36</sup> Annex 10: [REDACTED].

<sup>37</sup> [REDACTED].

<sup>38</sup> [REDACTED].

<sup>39</sup> Annex 11: [REDACTED].

<sup>40</sup> Annex 12: [REDACTED].

<sup>41</sup> Annex 13: [REDACTED].

<sup>42</sup> Annex 14: [REDACTED].

protected by Article 58 and Rule 107.<sup>43</sup> These documents contain no other relevant information and no exculpatory information.

23. One further document comprises eight lines of handwritten notes<sup>44</sup> attached to an [REDACTED]. The memorandum itself has been cleared for disclosure and use in judicial proceedings before the KSC.<sup>45</sup> The handwritten notes are a mere internal [REDACTED] to-do list concerning processing and distribution of [REDACTED], and constitute internal [REDACTED] work product, which in any event would have been covered by a standard redaction category.<sup>46</sup> They have no relevance to this case. Similarly, a further internal [REDACTED] document comprises a table<sup>47</sup> listing [REDACTED] and some internal comments. Such [REDACTED] are available to the Defence in other documents, insofar as they are relevant.<sup>48</sup> Withholding this internal work product does not prejudice the defence and no counter-balancing measures are necessary.

24. One document is an [REDACTED] statement exclusively concerning an uncharged alleged [REDACTED], which is, if at all relevant, incriminating.<sup>49</sup> [REDACTED], and the victim and crime site do not fall within the scope of the charged crimes. In any event, [REDACTED] are available to the Defence in other documents.<sup>50</sup> Accordingly, no further counterbalancing are necessary.

25. One document is an internal [REDACTED] report detailing [REDACTED].<sup>51</sup> [REDACTED],<sup>52</sup> an almost identical extract of the report with only minor, non-

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<sup>43</sup> Decision on Specialist Prosecutor's Rule 107(2) Request, KSC-BC-2020-06/F00770, para.13.

<sup>44</sup> Annex 16: [REDACTED].

<sup>45</sup> [REDACTED].

<sup>46</sup> Framework Decision, KSC-BC-2020-06/F00099, para.95 (Category C, which applies, *mutatis mutandis*, to [REDACTED]).

<sup>47</sup> Annex 17: [REDACTED].

<sup>48</sup> *See, for example*, [REDACTED].

<sup>49</sup> Annex 15: [REDACTED].

<sup>50</sup> *See, for example*, [REDACTED].

<sup>51</sup> Annex 18: [REDACTED].

<sup>52</sup> [REDACTED].

substantive changes and removal of [REDACTED] work product<sup>53</sup> has been provided [REDACTED] by way of counter-balance and has already been disclosed.<sup>54</sup> Likewise, the unredacted [REDACTED] is available to the Defence.<sup>55</sup> Accordingly, no further counterbalancing measures are necessary.

26. An internal [REDACTED] memorandum<sup>56</sup> containing [REDACTED]. The purpose of [REDACTED].<sup>57</sup> [REDACTED],<sup>58</sup> [REDACTED]. [REDACTED]. Parts of the report discuss irrelevant internal matters, such as [REDACTED]. An extract containing the relevant portions [REDACTED] has been cleared for disclosure [REDACTED] by way of counterbalance and will be included on the updated relevance list.<sup>59</sup> As the relevant information from the report will be available to the Defence, no further counterbalancing measures are necessary.

27. An [REDACTED] internal memorandum lists [REDACTED].<sup>60</sup> The contents of the memorandum are reproduced almost entirely in another document that has been cleared for disclosure and that will be included on the updated relevance list.<sup>61</sup> The only information not included are [REDACTED], which are irrelevant to the indictment.

28. Consequently, no prejudice arises from not providing notice of these items, and no additional counterbalancing measures are necessary.

#### H. [REDACTED]

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<sup>53</sup> [REDACTED]. [REDACTED].

<sup>54</sup> [REDACTED].

<sup>55</sup> [REDACTED].

<sup>56</sup> Annex 19: [REDACTED].

<sup>57</sup> [REDACTED].

<sup>58</sup> [REDACTED].

<sup>59</sup> [REDACTED].

<sup>60</sup> Annex 20: [REDACTED].

<sup>61</sup> [REDACTED].



29. [REDACTED] comprises [REDACTED], taken in 2002 [REDACTED]. They do not contain exculpatory or other relevant information, and - noting that [REDACTED] could, for example, be obtained from open sources - no counterbalancing measures are required.

30. [REDACTED] is a January 2000 request [REDACTED]. [REDACTED], the document in question comprises merely a request for further information and does not itself contain any relevant or substantive information, not does it contain any exculpatory information. As such, no counterbalancing measures are required.

31. [REDACTED] is an internal [REDACTED] document providing operational guidance to [REDACTED]. [REDACTED], [REDACTED]. [REDACTED]. No prejudice arises from withholding the document and no additional counterbalancing measures are necessary noting: (i) the fact that, for the most part, the document merely replicates text and requirements that are expressly set out in [REDACTED];<sup>62</sup> (ii) that [REDACTED] is already available to the Defence,<sup>63</sup> and (iii) the document does not contain any exculpatory information.

32. [REDACTED] is an internal [REDACTED] report on [REDACTED] prepared in or after 2003,<sup>64</sup> and primarily addressing developments and status as at that time - well after the indictment period in this case. The document does, however, contain potentially relevant information, including in the form of a short (unsourced) [REDACTED]<sup>65</sup> [REDACTED].<sup>66</sup> These references are, however, to the extent relevant, purely inculpatory and of a general nature which is reflected in multiple other materials available to the Defence. As such, no additional counterbalancing measures are necessary.

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<sup>62</sup> [REDACTED].

<sup>63</sup> [REDACTED].

<sup>64</sup> [REDACTED].

<sup>65</sup> [REDACTED].

<sup>66</sup> [REDACTED].

33. [REDACTED] is an [REDACTED] internal situation report by an [REDACTED].<sup>67</sup> The report contains no information relevant to the case, merely describing [REDACTED]. [REDACTED]. As such, no prejudice arises from withholding of the report and no counterbalancing measures are required.

34. Finally, [REDACTED]<sup>68</sup> is a [REDACTED] confidential communication from [REDACTED], which contains only [REDACTED]. It contains no exculpatory information, no prejudice arises from withholding it, and no counterbalancing measures are required.

### III. CLASSIFICATION

35. This request is strictly confidential and *ex parte* in accordance with Rules 82(4) and 107(2). A confidential redacted version will be submitted.

### IV. RELIEF REQUESTED

36. For the foregoing reasons, the Pre-Trial Judge should grant the relief specified at paragraph 1 above.

**Word count: 2005**



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**Jack Smith**  
**Specialist Prosecutor**

Monday, 18 July 2022

At The Hague, the Netherlands.

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<sup>67</sup> Annex 21.

<sup>68</sup> Annex 22.