



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: 21 October 2022

Language: English

Classification: Public

Public Redacted Version of 'Prosecution Response to Confidential "Urgent Selimi Defence Request for an Extension of Time to Submit its Response to KSC-BC-2020-06/F01004 and Request for Order to the SPO" with Confidential Annexes 1-3', KSC-BC-2020-06/F01035, dated 14 October 2022

Specialist Prosecutor's Office

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I. INTRODUCTION

1. The Specialist Prosecutor's Office ('SPO') takes no position on whether the Selimi Defence should receive an extension of time to respond to the Prosecution submission challenging disclosure of certain items on the Rule 102(3) notice.¹ However, to the extent that the Selimi Defence has based its assertion that good cause is shown due to the timing of the SPO's response to an *inter partes* email or the alleged lack of clarity in the Motion, the SPO files this response to clarify and confirm that these bases are false and moot and cannot be the justification for granting the extension of time sought in the Request.² Furthermore, the SPO opposes the Defence's request for an order for disclosure of the annexes to the Motion.

II. PROCEDURAL BACKGROUND

2. On 30 September 2022, the Prosecution filed the Motion. The confidential redacted version was filed on 6 October 2022.³

3. On 12 October 2022 at 13:07, the Selimi Defence sent an email requesting information about the items in the Motion and disclosure of the *ex parte* annexes.⁴ The email requested a refiled version of the annexes or disclosure thereof by close of business on the same date, 12 October 2022.⁵

¹ Prosecution Challenge to disclosure of items in the Rule 102(3) Notice with strictly confidential and *ex parte* annexes 1-13, KSC-BC-2020-06/F01004, 30 September 2022 ('Motion').

² Urgent Selimi Defence Request for an Extension of Time to Submit its Response to KSC-BC-2020-06/F01004 and Request for Order to the SPO, KSC-BC-2020-06/F01033, 13 October 2022 ('Request').

³ Confidential Redacted version of 'Prosecution Challenge to disclosure of items in the Rule 102(3) Notice with strictly confidential and *ex parte* annexes 1-13' dated 30 September 2022, KSC-BC-2020-06/F01004CONFRED, 6 October 2022.

⁴ See Annex 1.

⁵ In addition, the Selimi Defence sought the list of items in each category challenged and the ERN, title of the item, and which defence team requested it.

4. Upon receipt of the request by the Selimi Defence⁶ the SPO elected to prepare an excel spreadsheet (for ease of reference by the Defence) listing the item number, ERN, description and annex number for the items in the Motion found in Annexes 1-12.⁷ An explanation of the SPO's spreadsheet and the spreadsheet itself were sent by email to the Defence teams at 16:19 on 13 October 2022 with instructions on how to access the attached spreadsheet.⁸

5. At 15:26 on 13 October 2022, the Selimi Defence filed the Request.

III. SUBMISSIONS

6. Contrary to the Defence submission,⁹ the Motion is clear and contains the information needed to respond. Subject to two exceptions, every item challenged is listed by ERN in the footnotes. Due to the volume and the similarity of the items in question, the SPO did not list every item in Annex 1 by ERN in the Motion. However, the Motion describes the items, in detail, which are, in any case, all belonging to the same category and which necessitate non-disclosure for the same reasons, which are detailed in the Motion.¹⁰ Second, the ERNs for Annex 13 are redacted in the confidential redacted version of the Motion. This is because these items are [REDACTED] and are withheld on that basis. It is plainly stated in the Motion that these items are, like the items in Annex 12, noticed as withheld based on the provisions of [REDACTED].¹¹

⁶ The SPO also received a request on the same date by *inter partes* email from the Veseli Defence for a limited number of ERNs. This request copied all Defence teams and the SPO thus prepared a consolidated response email to all teams.

⁷ See Annex 2.

⁸ See Annex 3.

⁹ Request, paras.3, 8, 10.

¹⁰ Motion, paras.13-17. The items are [REDACTED].

¹¹ Motion, paras.2, 12, 41-44.

7. Furthermore, in response to the Selimi request and a limited, similar request by the Veseli Defence, the SPO prepared the spreadsheet and provided it on the day after the Selimi request was made. The spreadsheet is an additional tool which was prepared in an easy to view format to assist the Defence. It contains the same information found in the Motion and also includes the ERNs for Annex 1. The spreadsheet thus also contains all the information that the Selimi Defence needs to respond to the Motion.¹²

8. As the SPO has explained in the Motion¹³ and by *inter partes* email, it cannot disclose the annexes, as requested, because the annexes contain the materials for which non-disclosure is sought. The Motion and the spreadsheet contain the information that the SPO can provide *inter partes* about the challenged items at this time. There is no basis to maintain a request for an order for disclosure of the annexes.

9. Finally, the SPO notes that it endeavours to maintain open communication and engages in *inter partes* email with all Defence teams in good faith and with the objectives of mutual assistance, minimising misunderstandings and curtailing the expenditure of resources in unnecessary litigation. However, the SPO does not consider that it has failed to provide any necessary information to the Defence in this instance, and certainly not by providing additional tools to assist the Defence, where possible, within one day of receiving a request. Throughout the Rule 102(3) disclosure process, the SPO has communicated with the Defence cordially and with requests containing reasonable timelines for responses.

¹² The spreadsheet does not contain a breakdown of which items were requested by each team. As noted in the Motion, the Motion contains the SPO's requests for non-disclosure of Rule 102(3) items selected by all Defence teams. *See* Motion, footnote 5.

¹³ Motion, para.11.

IV. CLASSIFICATION

10. This filing is submitted as confidential in accordance with Rule 82(4). It refers to the contents of a confidential Motion and describes and annexes the list of challenged items and the *inter partes* communications of the parties.

V. RELIEF REQUESTED

11. As the basis for the Request is both false and moot given the *inter partes* email of the SPO, the SPO requests that the Pre-Trial Judge deny the request for an order to the SPO and find that the Selimi Defence has failed to show good cause for an extension based on Selimi's claims about the SPO's Motion and its response to an email request. The SPO takes no position on whether the Selimi Defence should be granted an extension of time to respond to the Motion.

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Friday, 21 October 2022
At The Hague, the Netherlands.