

**In:** KSC-BC-2020-06  
**The 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 Counsel for Hashim Thaçi

**Date:** 7 October 2022

**Language:** English

**Classification:** Public

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**Public Redacted Version of Thaçi Defence Request for an Extension of Time for Request for Certification to Appeal the Decision on Specialist Prosecutor’s Rule 107(2) Request (F01002)**

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**Specialist Prosecutor**

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## I. PROCEDURAL BACKGROUND AND INTRODUCTION

1. On 8 July 2022, the SPO submitted a “Prosecution Rule 107(2) Request”,<sup>1</sup> asking to be relieved of its disclosure obligations in relation to 28 documents for which clearance has been denied by four Rule 107 providers. On 28 and 29 July 2022, the Defence for Mr Thaçi, the Defence for Mr Veseli and the Defence for Mr Selimi responded to the SPO Request.<sup>2</sup> On 8 August 2022, the SPO replied to the Veseli Response.<sup>3</sup>

2. On 30 September 2022, the Pre-Trial Judge issued the Decision on Specialist Prosecutor’s Rule 107(2) Request,<sup>4</sup> granting the Request; authorizing the SPO to withhold the items contained in Annexes 1-23 and items [REDACTED], pursuant to Rule 107 of the Rules; and ordering the SPO to provide a summary of the information referred to in paragraphs 25, 28, 31, 37, and 76, of the Impugned Decision by Friday, 14 October 2022.

3. In accordance with Rule 77(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), when a Party seeks to appeal a decision for which an appeal does not lie as of right, that Party shall request certification from the Panel that rendered the impugned decision within seven (7) days thereof. Rule 9(5)(a) of the Rules allows for the variation of any time limit prescribed by the Rules, upon a showing of good cause or *proprio motu*.

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<sup>1</sup> KSC-BC-2020-06/F00875/CONF/RED, Confidential Redacted Version of ‘Prosecution Rule 107(2) request’ (“Request”), 18 July 2022. A strictly confidential and *ex parte* version was filed on 8 July 2022.

<sup>2</sup> KSC-BC-2020-06-F00900, Thaçi Defence Response to Prosecution Rule 107(2) Request F00875, 28 July 2022, confidential.; KSC-BC-2020-06-F00899, Selimi Defence Response to Confidential Redacted Version of ‘Prosecution Rule 107(2) Request’, KSC-BC-2020-06/F00875, 28 July 2022, Confidential ; KSC-BC-2020-06, F00901, Veseli Defence Response to Prosecution Rule 107(2) Request (F00875), 29 July 2022, confidential.

<sup>3</sup> KSC-BC-2020-06-F00917, Prosecution Reply to Veseli Defence Filing F00901, 8 August 2022, confidential.

<sup>4</sup> KSC-BC-2020-06/F01002/CONF/RED, Confidential Redacted Version of Decision on Specialist Prosecutor’s Rule 107(2) Request, dated 30 September 2022, notified on 3 October 2022 (“Impugned Decision”).

4. The Defence submits that good cause exists in the present case for a limited variation of the time limit to request certification to appeal the Impugned Decision **until Wednesday 19 October 2022**, for the reasons set out below.

## II. SUBMISSIONS

5. The SPO has been ordered to disclose to the Defence, by Friday 14 October 2022, summaries of the information contained in several items for which clearance has been denied by several Rule 107 providers, as counterbalancing measures to the withholding of such items. The information has been qualified as either “potentially exculpatory” or “relevant” by the Pre-Trial Judge.<sup>5</sup>

6. The Defence submits that it is in the interest of a good administration of justice that it be allowed to determine whether an appeal is warranted against the Impugned Decision only once it has been notified of the SPO summaries.

7. Indeed, it is only after having reviewed such summaries that the Defence will be in a position to assess whether their provision constitutes a sufficient counterbalancing measure pursuant to Rule 108, to the withholding of items containing Rule 103 or Rule 102(3) information, especially given the extent of redactions in the SPO Request and in the Impugned Decision. In particular, the Defence will be able to assess whether the information provided is sufficiently detailed to be useful in any way or whether it is too succinct to be used. For instance, in accordance with a prior Pre-Trial Judge’s Decision on protective measures,<sup>6</sup> the Defence has been provided with summaries of Rule 103 information, pursuant to

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<sup>5</sup> Impugned Decision, paras 24, 27, 36, 75.

<sup>6</sup> KSC-BC-2020-06/F00962, Confidential Redacted Version of Decision on the Third Prosecution Request for Protective Measures for Items Containing Rule 103 Information.

which a protected witnesses [REDACTED]<sup>7</sup> or another [REDACTED],<sup>8</sup> but unless and until the Defence is provided with the witness number of the concerned witnesses, such information cannot be used in any way.

8. The variation sought would accordingly assist the Defence to determine whether an appeal is warranted and if so, to prepare a meaningful request for certification to appeal, which may ultimately contribute to a more streamlined appeal process.

9. Last, the variation being requested is a reasonable and limited one. Given the good cause for the limited variation being sought, the Defence submits that the additional time will negate any prejudice which could arise from the delayed adjudication of this issue.

### III. RELIEF SOUGHT

10. Accordingly, the Defence respectfully requests the Pre-Trial Judge to:

- **FIND** that good cause exists pursuant to Rule 9(5)(a) of the Rules for a variation of the time limit; and
- **ORDER** that any request for certification to appeal the Impugned Decision be filed by **Wednesday 19 October 2022**.

[Word count: 793 words]

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<sup>7</sup> 108047-108047

<sup>8</sup> 108048-108048

Respectfully submitted,



**Gregory W. Kehoe**

**Counsel for Hashim Thaçi**

Friday, 7 October 2022

At Tampa, United States