



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: Acting Specialist Prosecutor

Date: 3 April 2023

Language: English

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Public redacted version of 'Prosecution Rule 107(2) request', KSC-BC-2020-06/F00555,
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I. INTRODUCTION

1. Pursuant to the Framework Decision,¹ Articles 35(2)(e)-(f), and 39(1), (3) and (11) of the Law,² and Rules 95(2)(h), 107, and 108 of the Rules,³ the Specialist Prosecutor's Office ('SPO') requests the Pre-Trial Judge to relieve the SPO of its disclosure obligations in relation to certain, discrete information falling under Rule 107 ('Rule 107 Information'). The documents in question relate to witnesses W02114, W02160, and W04856.⁴

II. SUBMISSIONS

2. Active consultations with relevant information providers remain ongoing concerning certain of the Rule 107 Information. While the SPO anticipates that additional redactions may be lifted in due course, it seeks disclosure relief at this stage in light of the applicable disclosure deadline. If and when additional clearances are obtained, lesser redacted versions of the below documents will be promptly disclosed.

Witness Statement of W02114

3. The witness statement of W02114 at ERNs SPOE00309143-00309175 and SPOE00309176-00309205 contains very limited redactions to the name of a former [REDACTED] employee and that former employee's membership in the [REDACTED].⁵ The former employee, whose name is redacted, worked with W02114 in [REDACTED]. However, the name of [REDACTED] (W02144), who [REDACTED] worked with W02114

¹ 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(l). *See also* Transcript of Status Conference on 14 September 2021, p.625 (extending the deadline for the disclosure of the statements of three international witness with pending Rule 107 clearances).

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

³ 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.

⁴ The documents containing Rule 107 Information subject of this request are provided in Annexes 1-3 (both redacted and unredacted versions). Specifically, Annex 1 provides the items for witness W02114, Annex 2 provides the items for witness W02160, and Annex 3 provides the items for witness W04856.

⁵ [REDACTED], at SPOE00309274-00309306 and SPOE00309227-00309273 respectively, contain corresponding redactions.

in [REDACTED], is not redacted, and W02144 has independently discussed his work with [REDACTED] and with W02114.⁶ In addition, multiple references to the [REDACTED] elsewhere in the statement are not redacted, and no redactions are applied to potentially exculpatory information. Considering the nature and limited scope of the redacted information, no counterbalancing measures are necessary.

[REDACTED] Document – Associated exhibit of W02114

4. Document SPOE00203360-00203365 contains provider-applied redactions to the records of [REDACTED]. No redactions are applied to the two [REDACTED] meetings of relevance to the case, namely, with the LDK Presidency and the leader of the ‘Government-in-exile’ Bujar BUKOSHI. [REDACTED] is outside the scope of this case, and no redactions are applied to potentially exculpatory information. Considering the nature and limited scope of the redacted information, no counterbalancing measures are necessary.

[REDACTED] Documents – Associated exhibits of W02160

5. SPOE00209605-00209619, SPOE00210266-00210280, SPOE00209620-00209634, SPOE00210213-00210227, and SPOE00203123-00203124 each contain very limited redactions to [REDACTED]. No redactions are applied to exculpatory information or to any other substantive information. Further, W02160 discusses these documents in his statement, indicating his relationship thereto.⁷ Considering the nature and limited scope of the redacted information and the fact that the relevant information is available through other means, no counterbalancing measures are necessary.

6. SPOE00203172-00203173 and SPOE00203094-00203096 contain very limited redactions to information about the [REDACTED] and internal [REDACTED] projections and concerns about [REDACTED]. However, no redactions are applied to potentially

⁶ See e.g., [REDACTED].

⁷ SPO Statement of W02160 [REDACTED].

exculpatory information. Considering the nature and limited scope of the redacted information, no counterbalancing measures are necessary.

7. SITF40001621-40001623 was denied clearance by the provider. This internal document discusses [REDACTED]. However, this document does not include any potentially exculpatory information. Moreover, the witness statement of W02160 contains six paragraphs of discussion on the substantive points covered in the withheld document, including the subject of the document and [REDACTED].⁸ The disclosure of this information is sufficiently similar to constitute an effective counterbalancing measure to the material withheld by the provider.

Statement of W04856

8. The witness statement of W04856 at ERN 103821-103844 contains limited redactions to personal identifying and employment information about the witness, as well as certain internal [REDACTED] relating to [REDACTED]. However, the redactions are not applied to any exculpatory information and all necessary factual information and context is unredacted. Moreover, while certain internal [REDACTED] are redacted, the witness's own understanding or beliefs regarding these same issues is provided without redactions. Considering the nature and limited scope of the redacted information, no counterbalancing measures are necessary.

[REDACTED] Documents – Associated exhibit of W04856

9. Document SPOE00212698-00212700 contains very limited provider redactions to the name and signature of the document's author. However, the witness statement of W04856 makes it clear that W04856 himself drafted the document.⁹ No redactions are applied to exculpatory information. Considering the nature and limited scope of the redacted information, no counterbalancing measures are necessary.

⁸ SPO Statement of W02160, [REDACTED].

⁹ SPO Statement of W04856, [REDACTED].

III. CLASSIFICATION

10. 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

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

Word count: 863



Alex Whiting

Acting Specialist Prosecutor

Monday, 3 April 2023

At The Hague, the Netherlands.