



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

Classification: Public

Public redacted version of 'Prosecution notice of Rule 102(1)(b) disclosure and related requests', KSC-BC-2020/F00670, dated 31 January 2022

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I. INTRODUCTION

1. Pursuant to the Order,¹ and with the exception only of the items addressed in the Extension Decision,² the Specialist Prosecutor's Office ('SPO') has disclosed all previously identified Rule 102(1)(b)³ materials.⁴ Since the Order, in the context of finalisation of the Rule 95(4) materials and Rule 109(c) chart, the SPO conducted additional verifications during which certain further materials falling under Rule 102(1)(b), which had not been included in prior disclosure packages, were identified ('Further Materials').⁵ In order to discharge its obligations under the Law⁶ and Rules,⁷ the SPO has, as set out below, promptly disclosed these Further Materials.⁸

2. Pursuant to the Framework Decision,⁹ Articles 21(6), 23, 35(2)(f), and 39(1), (3) and (11), and Rules 80, 81, 95(2)(h), 102(1)(b), 108, and 112, the SPO requests the Pre-Trial Judge to authorise: (i) the SPO to amend the Exhibit List¹⁰ to add the Further Materials;

¹ Status Conference Transcript, 29 October 2021, pp.753-754 ('Order').

² Decision on Specialist Prosecutor's Request for Extension of Time, KSC-BC-2020-06/F00667, 31 January 2022, Confidential ('Extension Decision').

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 are to the Rules, unless otherwise specified.

⁴ These include the prior statements and associated exhibits of W04590 and W04591 (Disclosure Package 128) and lesser and unredacted records relating to [REDACTED] of W04448, W04741, and W01453 (Disclosure Package 155). Further, two exhibits are subject of a pending Rule 107(2) request. *See* Prosecution Rule 107(2) request pursuant to Decision F00559, KSC-BC-2020-06/F00665, 31 January 2022, Confidential; Disclosure Package 154.

⁵ The Further Materials comprise 55 items comprising prior statements of witnesses ('Statements') and exhibits associated with prior statements ('Associated Exhibits'), as well as five other exhibits ('Additional Exhibits').

⁶ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'), Art.21(6). All references to 'Article' or 'Articles' herein are to the Law, unless otherwise specified.

⁷ Rules 102(1)(b), 112.

⁸ *See* Disclosure Package 157 (including the relevant Further Materials, with corresponding translations).

⁹ Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-06/F00099, 23 November 2020 ('Framework Decision').

¹⁰ Annex 3 to Submission of Pre-Trial Brief, with witness and exhibit lists, KSC-BC-2020-06/F00631/A03, Strictly Confidential and *Ex Parte* ('Exhibit List').

and (ii) necessary and proportionate protective measures for certain of the Further Materials to give effect to existing protective measures.¹¹

II. SUBMISSIONS

A. THE SPO SHOULD BE AUTHORISED TO AMEND THE EXHIBIT LIST

3. The Further Materials were either obtained between late 2021 and January 2022 or identified during the preparation of the Rule 95(4) materials and Rule 109(c) chart filed on 17 December 2021 and 28 January 2022, respectively.¹² Once identified, the SPO promptly took necessary measures, including, as appropriate, translation and transcription, to review and, as relevant, prepare the Further Materials for disclosure.

4. Considering the stage of proceedings, overall scope of the case, and number of witnesses and Rule 102(1)(b) materials previously disclosed, no prejudice arises from this request. The Further Materials are limited overall, and the Statements and Associated Exhibits relate to witnesses whose other prior statements and associated exhibits have already been disclosed. Moreover, the relatively limited Further Materials have – with the exception of one item, as authorised in the Extension Decision – all been disclosed by the deadline for other outstanding Rule 102(1)(b) materials,¹³ together with translations as relevant.

¹¹ To facilitate proceedings, the documents subject of the protective measures request below have been disclosed along with the other Further Materials and with the proposed non-standard redactions provisionally applied. The SPO will adjust and redisclose such materials, as may be necessary, in light of any decision issued.

¹² For example, the following items were obtained between late 2021 and January 2022: (i) SPOE00313999-00313999 was obtained in November 2021; (ii) 103211-03 was part of a number of Albanian-language recordings obtained in late September 2021; (iii) the transcripts for 095381 were obtained in late September 2021; and (iv) 104585-104586 and 104587-104587 were obtained in January 2022. The remaining Further Materials were inadvertently not disclosed previously; this error was identified during verifications checks conducted in the course of preparing the Rule 95(4) and Rule 109(c) materials.

¹³ See para.1 above.

5. In the circumstances, at this stage of proceedings and in the absence of any prejudice, the Pre-Trial Judge should authorise the SPO to amend the Exhibit List to add the Further Materials.

B. PROTECTIVE MEASURES FOR CERTAIN FURTHER MATERIALS ARE NECESSARY AND PROPORTIONATE

6. In order to give effect to existing protective measures, non-standard redactions to eight Statements and Associated Exhibits (Annexes 1-8) and delayed disclosure of one Statement (Annex 9) are required, as detailed below.

7. In addition, the SPO notes that it has disclosed an associated exhibit relating to [REDACTED]¹⁴ with [REDACTED].¹⁵ Such protective measures are appropriate and [REDACTED].¹⁶

Annexes 1-7

8. In the Statements and Associated Exhibits included at Annexes 1-7, non-standard (Category E) redactions are proposed to: (i) the names, initials, and/or signatures of W01978,¹⁷ W03878,¹⁸ W04380,¹⁹ and W04381;²⁰ (ii) name and personal data of W04323, including his lawyer's identity, and consistent with previously authorised redactions to this witness's prior disclosed statements,²¹ certain details relating to his position, unit,

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ Annex 1 ([REDACTED]). In addition, redactions are applied to [REDACTED]; any redactions thereto would indicate the [REDACTED]. The Pre-Trial Judge has previously authorised redactions to such information [REDACTED]. *See, for example,* [REDACTED].

¹⁸ Annex 2 ([REDACTED]).

¹⁹ Annex 3 ([REDACTED]).

²⁰ Annex 4 ([REDACTED]).

²¹ *See, for example,* [REDACTED].

and events only he would be in a position to know about;²² and (iii) unique and specific details relating to the abduction of W04393, including the identity of his abductor.²³

9. In this respect, W01978,²⁴ W03878,²⁵ W04380,²⁶ W04381,²⁷ W04323,²⁸ and W04393²⁹ have been granted protective measures including delayed disclosure of their identities to 30 days before trial (W01978, W03878, W04380, W04381, and W04393) or testimony (W04323). The non-standard redactions applied to the materials in Annexes 1-7 are necessary to give effect to these protective measures. Adequate counterbalancing measures exist. Redacted versions of the witnesses' statements and associated exhibits have been disclosed and the Defence will receive their complete evidence sufficiently in advance of their respective testimonies.³⁰

Annex 8

10. The non-standard (Category E) redactions to [REDACTED],³¹ a statement of W01143, are necessary to protect [REDACTED], who has been granted protective measures, including delayed disclosure of his identity [REDACTED].³² [REDACTED].³³ Such information is identifying and non-standard redactions have previously been authorised to similar information [REDACTED].³⁴

²² Annexes 5 ([REDACTED]) and 6 ([REDACTED]).

²³ Annex 7 ([REDACTED]).

²⁴ Corrected Version of First Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00133/COR, 10 December 2020, Strictly Confidential and *Ex Parte* ('First Decision'), para.132(h).

²⁵ First Decision, KSC-BC-2020-06/F00133/COR, para.132(h).

²⁶ First Decision, KSC-BC-2020-06/F00133/COR, para.132(h).

²⁷ Decision on Specialist Prosecutor's Second Request for Protective Measures and Renewed Request for Protective Measures and Procedural Matters, KSC-BC-2020-06/F00190, 5 February 2021, Strictly Confidential and *Ex Parte* ('Second Decision'), para.144(e).

²⁸ First Decision, KSC-BC-2020-06/F00133/COR, para.132(l).

²⁹ First Decision, KSC-BC-2020-06/F00133/COR, para.132(h).

³⁰ *See, similarly*, First Decision, KSC-BC-2020-06/F00133/COR, paras 84, 95; Second Decision, KSC-BC-2020-06/F00190, para.70.

³¹ *See* Annex 8.

³² [REDACTED].

³³ [REDACTED].

³⁴ *See, for example*, [REDACTED].

11. Adequate counterbalancing measures exist: the Defence has received redacted versions of [REDACTED] and will receive the complete related information sufficiently in advance of the witness's testimony.³⁵

Annex 9

12. [REDACTED]³⁶ is a prior statement of W04371, who was granted protective measures, including delayed disclosure of his identity until 30 days before trial.³⁷ [REDACTED].³⁸ Considering [REDACTED] and the Accused's means [REDACTED],³⁹ this statement cannot be redacted in a manner that would adequately protect W04371. Authorisation to withhold this statement from Rule 102(1)(b) disclosure until the witness's identity is disclosed is therefore necessary.

13. Adequate counterbalancing measures exist. [REDACTED]. Further, redacted versions of W04371's other prior statements and associated exhibits have been disclosed and the Defence will have access to the witness's complete evidence sufficiently in advance of his testimony.⁴⁰

III. CLASSIFICATION

14. This filing and its annexes are strictly confidential and *ex parte* in accordance with Rules 80(3) and 82(4). A confidential redacted version of the request will be filed.

IV. RELIEF REQUESTED

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

³⁵ See, similarly, [REDACTED].

³⁶ See Annex 9.

³⁷ First Decision, KSC-BC-2020-06/F00133/COR, para.132(i).

³⁸ [REDACTED].

³⁹ See, for example, Seventh Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00407, 21 July 2021, Strictly Confidential and *Ex Parte*, para.43.

⁴⁰ See, similarly, First Decision, KSC-BC-2020-06/F00133/COR, paras 56-58, 63-64.

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Monday, 3 April 2023

At The Hague, the Netherlands.