



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 Rule 107(2) request', KSC-BC-2020-06/F00678,
dated 3 February 2022**

Specialist Prosecutor's Office

Alex Whiting

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

David Young

Counsel for Jakup Krasniqi

Venkateswari Alagendra

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 Rule 107 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 documents for which clearance has been denied by the Rule 107 providers.⁴

2. These documents have been denied clearance even after, in many cases, several rounds of consultation with the relevant providers. As detailed below, no prejudice arises from not providing notice of the documents as the information contained in them (i) is not exculpatory; (ii) is of only tangential, or purely incriminatory, relevance; and (iii) to the extent it is relevant, in many cases, similar information is already otherwise available to the Defence. As such, no additional counterbalancing measures are necessary.

II. SUBMISSIONS

A. [REDACTED]⁵

3. [REDACTED] has cleared in excess of 5000 documents (some with redactions) for disclosure in proceedings before the Kosovo Specialist Chamber ('KSC'). Clearance for 19 documents has been denied.

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).

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 See Prosecution Rule 102(3) notice, KSC-BC-2020-06/F00421, para.1. Annex 1 provides the items not cleared by [REDACTED]. As indicated in Annex 2 the items not cleared by [REDACTED] will be provided directly to the Pre-Trial Judge, due to their classification status.

⁵ Certain documents requiring clearance by [REDACTED] had to go through a two-step clearance process whereby they were first cleared by [REDACTED] and then cleared by [REDACTED]. These were documents from [REDACTED]. However, there were also isolated instances where a document implicated [REDACTED] for other reasons (e.g., it referenced [REDACTED]). In such cases the SPO also had to clear the document through both [REDACTED] in a two-step clearance process.

4. The documents in question comprise: (i) internal [REDACTED] communications and other memoranda;⁶ and (ii) a [REDACTED] note⁷ and report.⁸
5. All of the [REDACTED] documents comprise internal communications or other internal memoranda/ position papers. All except 8 of them,⁹ are from after the indictment period.¹⁰ Of those documents falling after the indictment period: (i) none contain exculpatory information; (ii) the majority are, at most, of tangential or contextual relevance; and (iii) to the extent they are relevant they are purely incriminatory.¹¹ As such, no prejudice arises from not providing notice of these items, and no additional counterbalancing measures are necessary.
6. In respect of the 8 documents falling during the indictment period (or which are undated): (i) six relate purely to internal [REDACTED] staffing/consultancy arrangements and related budgetary matters;¹² (ii) one contains a set of draft [REDACTED],¹³ and (iii) similarly another is a set of internal comments on a draft [REDACTED].¹⁴ These documents (i) do not contain any exculpatory content, (ii) are, in most cases, of tangential or contextual relevance at best; and (iii) to the extent they are relevant, are purely incriminatory.¹⁵ As such, no prejudice arises from not providing notice of these items, and no additional counterbalancing measures are necessary.
7. Both of the [REDACTED] documents are from November 1999, after the indictment period, and also focus on geographic areas outside of those to which the charged crimes relate.¹⁶ Neither of the documents otherwise relate directly to the charged crimes or the

⁶ [REDACTED].

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ See fn.10 above.

¹² [REDACTED]. See also fn.9 above.

¹³ [REDACTED]. See also fn.9 above.

¹⁴ [REDACTED]. See also fn.9 above.

¹⁵ See fn.9 above.

¹⁶ [REDACTED].

Accused, nor do they contain any exculpatory information. The documents contain only information of, at most, general, contextual relevance.¹⁷ As such, no additional counterbalancing measures are necessary.

B. [REDACTED]

8. [REDACTED] has denied clearance for two (related) documents¹⁸ falling within the SPO's Rule 102(3) notice obligations. Neither of these documents contain exculpatory information, or information of direct relevance to the Accused or to the charged crimes.

9. Both documents contain [REDACTED]. The incident in question, falling right at the end of the indictment period, has not been charged.¹⁹ Moreover, information relating to this incident – including [REDACTED] – is otherwise available to the Defence.²⁰ As such, no prejudice arises and no additional counterbalancing measures are necessary.

C. REMAINING CLEARANCE MATTERS

10. Clearance discussions for a small number of documents (less than 20) remain ongoing with each of [REDACTED]. Additionally, there is a document, potentially subject to disclosure, which was obtained by the SPO from [REDACTED] and for which the SPO has been advised that the originator is unknown. As such, [REDACTED] is not in a position to provide the relevant clearance. The SPO is therefore continuing to pursue clearance of that item, through the mechanism applicable to such circumstances.

11. As previously advised,²¹ clearance decisions are awaited in respect of a final batch of materials from [REDACTED]. Since filing F00539 was submitted a number of documents within that final batch have been cleared, and the SPO has recently been advised that clearances for the remaining documents are anticipated to be completed in the coming

¹⁷ See fn.16 above.

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ KSC-BC-2020-06/F00539/CONF/RED, para.2.

weeks. A final batch of clearances are also in process with [REDACTED]. Two other documents remain in discussion with a national authority.

12. Should clearance be denied for any of these outstanding documents the SPO will submit a further Rule 107(2) request. Otherwise, the SPO shall, upon receipt, proceed to process the documents for notification or disclosure as relevant.

13. Finally, the SPO advises that it is in the process of preparing a Rule 107(2) application in relation to certain documents denied clearance by [REDACTED].

III. CLASSIFICATION

14. 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

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

Word count: 1003



Alex Whiting

Acting Specialist Prosecutor

Monday, 3 April 2023

At The Hague, the Netherlands.