



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

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Language: English

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Public redacted version of 'Prosecution Rule 102(2) submission and related requests', with confidential Annexes 1 and 2 and strictly confidential *ex parte* Annex 3', KSC-BC-2020-06/F00708, dated 24 February 2022

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I. INTRODUCTION

1. Pursuant to the Framework Decision,¹ Articles 23, 35(2)(f), and 39(1), (3) and (11) of the Law,² and Rules 80, 81, 95(2)(h), 102(2), 107 and 108 of the Rules,³ the Specialist Prosecutor's Office ('SPO') requests that:

- a. the prior statements and associated exhibits relating to W04868 and W04870, as identified in Annexes 1 and 2 as not previously disclosed,⁴ be added to the SPO's exhibit list;
 - b. W04870 be granted in-court protective measures in the form of (i) assignment of a pseudonym; (ii) redaction of the witness's name and identifying information from the public records; (iii) non-disclosure to the public of any records identifying the witness; (iv) testimony with face and voice distortion; and (v) closed or private sessions for any in-court discussion or testimony identifying the witness; and
 - c. the SPO be relieved of its disclosure obligations in respect of Rule 107 provider redactions applied to two items.⁵
2. As outlined below: (i) the evidence of the witnesses in question only recently became available to the SPO, (ii) their evidence is relevant to the case and would contribute to the

¹ Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-06/F00099, 23 November 2020 ('Framework Decision').

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 Annex 1 lists the prior statements and associated exhibits relating to W04870 and Annex 2 lists the prior statements and associated exhibits relating to W04868. For W04870: nine items were previously disclosed under Rule 102(1)(b), and four of these items are on the exhibit list. The five previously disclosed items not on the exhibit list are translations disclosed in disclosure package 159. For W04868: one item [REDACTED] was already disclosed and was on the exhibit list. The disclosure packages for these items are indicated in Annexes 1 and 2. The items which are already on the SPO's exhibit list are not subject to this request. The additional materials listed in Annex 1 and 2 (plus certain redisclosures in order to update metadata) have been disclosed in Disclosure Packages 166 and 167.

⁵ Redacted and unredacted versions of the items with Rule 107 provider redactions are contained in Annex 3.

establishment of the truth, (iii) the SPO has been diligent in providing notice of their evidence, and (iv) no undue prejudice to the Defence would arise.

II. TIMING OF THE DISCLOSURE

W04870

3. W04870 [REDACTED]. [REDACTED].⁶ W04870 was interviewed by the SPO on [REDACTED] 2021, and was included in both the preliminary witness list filed on 22 October 2021⁷ and the Witness List filed on 17 December 2021.⁸

4. W04870 provides highly relevant evidence, which will contribute to the establishment of the truth. [REDACTED].⁹ W04870 will testify about the arrest, detention and mistreatment of [REDACTED] between [REDACTED] and [REDACTED].¹⁰ [REDACTED].¹¹ [REDACTED],¹² [REDACTED].¹³

5. The English and Albanian transcripts, respectively, of the SPO's interview of W04870¹⁴ were finalised and processed on 31 January and 8 February 2022, and underwent a redaction review. [REDACTED]. [REDACTED] transcripts of W04870's SPO interview, and related associated exhibits have been disclosed in packages 166 and 167. [REDACTED] had previously been disclosed pursuant to Rule 102(1)(b),¹⁵ and [REDACTED] were included on the Exhibit List.¹⁶ This request therefore pertains only to W04870's [REDACTED] statements and associated exhibits.

⁶ See [REDACTED].

⁷ Prosecution submission of preliminary witness list, KSC-BC-2020-06/F00542, 22 October 2021.

⁸ List of Witnesses, Annex 2 to Submission of Pre-Trial Brief, KSC-BC-2020-06/F00631RED/A02/CONF/RED.

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ See Annex 1 to this Request, item n.1.

¹⁵ See Annex 1 to this Request, items nn 3, 8, 9, 11, 12. Disclosure packages 53, 69, 91, 159.

¹⁶ Namely, [REDACTED].

6. The addition of these materials relating to W04870 to the Exhibit List will not result in any undue prejudice to the Defence noting that: (i) W04870 has been included on the SPO's witness list, together with a summary of her evidence, since October 2021; (ii) [REDACTED] statements have been previously disclosed pursuant to Rule 102(1)(b) and [REDACTED] were included on the Exhibit List; and (iii) disclosure of W04870's remaining materials are being made in a timely manner, within weeks of the 31 January 2022 deadline for disclosure of Rule 102(1)(b) materials.

W04868

7. From as early as at least September 2014, multiple requests were submitted by the Special Investigative Task Force (SITF) and subsequently the SPO to [REDACTED] to interview [REDACTED]. Despite repeat requests, it was only in July 2021, for the first time, that [REDACTED] indicated it would be willing to permit such interviews. The SPO then promptly sought the necessary permissions and made arrangements for the interview of W04868.

8. W04868 was interviewed on [REDACTED] 2021, and was included in both the preliminary witness list filed on 22 October 2021¹⁷ and the Witness List filed on 17 December 2021.¹⁸ Following the interview, the SPO promptly sought clearance from [REDACTED] for disclosure of W04868's materials and for him to testify at trial. This was granted on 17 December 2021, subject to the continuation of certain protections pursuant to Rule 107.¹⁹

9. W04868 provides highly relevant evidence, which will contribute to the establishment of the truth. W04868 is [REDACTED]. W04868 will testify in relation to his knowledge of KLA organisation, structure and personnel in the area, as well as to the

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

existence of detention sites. In particular, W04868 will detail his direct knowledge of the charged detention site [REDACTED].

10. The English and Albanian transcripts, respectively, of the SPO interview of W04868²⁰ were finalised and processed on 3 November 2021 and 10 January 2022, and underwent a review for redactions. All prior statements and related associated exhibits have been disclosed in package 166.²¹ In the interests of judicial economy, the requests in respect of W04870 and W04868 are being submitted at the same time, once the relevant materials for both witnesses were available.

11. The addition of these materials relating to W04868 to the Exhibit List will not result in any undue prejudice to the Defence noting that: (i) W04868 has been included on the SPO's Witness List since October 2021; (ii) the materials in question are limited in scope;²² and (iii) disclosure of W04868's remaining materials are being made in a timely manner, within weeks of the 31 January 2022 deadline for disclosure of Rule 102(1)(b) materials.

III. IN COURT PROTECTIVE MEASURES ARE NECESSARY AND PROPORTIONATE

12. As previously submitted,²³ and consistent with the Pre-Trial Judge's previous decisions, in the present case there exist objective risks to witnesses which justify the application of protective measures. With respect to witness W04870, the need for protective measures is linked to the [REDACTED] nature of the witness's evidence, [REDACTED] interference, and the incentives, means, and opportunity of the Accused

²⁰ See Annex 2 to this Request, item nn 1.

²¹ One associated exhibit (see Annex 2 to this Request, item nn 2) was previously disclosed pursuant to Rule 102(1)(b) (disclosure package 54), and included on the Exhibit List, and therefore does not form part of this request.

²² [REDACTED].

²³ Request for Protective Measures, KSC-BC-2020-06/F00094, 19 November 2020, Strictly Confidential and *Ex Parte* ('First Request'), paras 6, 275-278. See also Supplement to Request for Protective Measures, KSC-BC-2020-06/F00102, 26 November 2020, Strictly Confidential and *Ex Parte*.

and their networks, including former subordinates, to readily identify and interfere with witnesses, were their names to be made public. The above factors should also be considered jointly with the endemic climate of severe witness interference, violence, and intimidation in criminal proceedings involving former members of the Kosovo Liberation Army ('KLA').²⁴

W04870

13. Witness W04870 is [REDACTED], who will testify about the arrest, detention and mistreatment of [REDACTED] between [REDACTED] and [REDACTED].²⁵ [REDACTED].²⁶ [REDACTED]²⁷ [REDACTED].²⁸ [REDACTED],²⁹ [REDACTED].³⁰

14. [REDACTED]. [REDACTED]. [REDACTED],³¹ [REDACTED].³² [REDACTED].³³ [REDACTED].³⁴ [REDACTED].³⁵

15. [REDACTED]. [REDACTED].³⁶ With respect to [REDACTED], the Pre-Trial Judge confirmed the existence of an objectively justifiable risk,³⁷ and duly considered [REDACTED] safety concerns stemming from [REDACTED].³⁸ The same considerations hold true with regard to [REDACTED].

²⁴ See First Request, KSC-BC-2020-06/F00094, paras 7-11.

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

³⁴ [REDACTED].

³⁵ [REDACTED].

³⁶ [REDACTED].

³⁷ [REDACTED].

³⁸ [REDACTED].

16. In the circumstances of this case, the requested measures are the least restrictive available to provide appropriate protection for the witness, bearing in mind both the principle of publicity of the proceedings and the fair trial rights of the Accused.³⁹

IV. THE RULE 107 REDACTIONS SHOULD BE AUTHORISED

17. Two of the associated exhibits discussed with W04868 contain a small number of provider-applied redactions.⁴⁰ The SPO should be relieved of its disclosure obligations in respect of the redacted information noting (i) the minimal nature of the redactions in question, (ii) that the redactions do not cover substantive information of direct relevance to the charges or any information which is potentially exculpatory, and (iii) the fact that it was the redacted versions of the documents which were discussed with W04868, and therefore the redactions do not in any way impede understanding of his evidence.

18. The redactions to SPOE00215496-SPOE00215496 relate solely to administrative markings, rather than substantive content, and do not impede understanding of the content of the document.

19. The redactions applied to 088038-088045 relate to [REDACTED]. The incident in question is not related to the charges in this case. Moreover, information relating to this incident, including [REDACTED], is both publicly available and contained in other materials available to the Defence.⁴¹ Therefore, while the SPO will endeavour to have these redactions lifted, no prejudice arises from them as the information in question is otherwise available. As such, considering the limited nature and scope of the information redacted, and the information which is otherwise available, no additional counterbalancing measures are necessary in respect of the Rule 107 redactions applied to the three documents.

³⁹ See also First Request, KSC-BC-2020-06/F00094, paras 279-282, 285-293.

⁴⁰ See Annex 3.

⁴¹ See, for example, ERN [REDACTED] listed on the SPO's Rule 102(3) notice.

20. Finally, it is noted that in respect of SPOE00215203-SPOE00215209, although the SPO is not in possession of a version of this document without any redactions, the SPO has also disclosed SPOE00217146-SPOE00217152, which contains some lesser redacted pages.⁴² The SPO has therefore disclosed versions revealing all information of which it is aware, and with respect to the parts of the document that remain redacted in both versions, the SPO is unaware of their content.⁴³


V. CLASSIFICATION

21. This request is submitted as confidential in accordance with Rules 80(3) and 82(4).

VI. RELIEF REQUESTED

22. For the foregoing reasons, the SPO requests that the Pre-Trial Judge grant the relief sought at paragraph 1 above.

Word count: 1777



Alex Whiting

Acting Specialist Prosecutor

Monday, 3 April 2023

At The Hague, the Netherlands.

⁴² [REDACTED].

⁴³ This document is consequently not included in Annex 3.