



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 with strictly confidential and *ex parte* Annex 1', KSC-BC-2020-06/F01090, dated 7 November 2022

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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 Rule 107(2) 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 two documents⁴ ('Rule 107 Documents') for which [REDACTED] ('Authorities'), the relevant information provider, have denied disclosure authorisation. In light of (i) available counterbalancing measures, in particular, the availability to the Defence of similar information and the anonymised summaries cleared for disclosure by the Authorities,⁵ and (ii) applicable safeguards, including the opportunity for judicial review, no prejudice arises from granting the relief sought.

II. SUBMISSIONS

2. [REDACTED]⁶ provided the Rule 107 Documents, which contain sensitive information obtained from intelligence sources, to the SITF⁷ as part of [REDACTED]. The Authorities have informed the SPO that – to the best of their knowledge – this was done without first obtaining authorisation for disclosure. Upon identifying these as potentially classified materials, the SPO notified the Authorities, who confirmed their classified status. This application is made after conclusion of relevant consultations in relation to clearance and counterbalancing measures.

3. Document [REDACTED], dated [REDACTED], is a compilation document containing certain intelligence information related to [REDACTED] from between

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 [REDACTED]; [REDACTED].

⁵ See Annex 1.

⁶ [REDACTED].

⁷ Special Investigative Task Force ('SITF').

[REDACTED] and [REDACTED]. Most of the information contained in the document is either not relevant,⁸ or – to the extent it is relevant – is purely incriminatory.⁹ Two pieces of information have been identified as potentially exculpatory: (i) [REDACTED];¹⁰ and (ii) [REDACTED].¹¹

4. The information relating to both of these allegations is reflected in the summary contained at Annex 1. Additionally, similar information in relation to [REDACTED] is otherwise available to the Defence.¹² As such, no prejudice arises from the withholding of [REDACTED], and no additional counterbalancing measures are necessary.

5. Document [REDACTED], dated [REDACTED], is an intelligence document relating to [REDACTED]. Most of the information contained in the document is either not relevant,¹³ or – to the extent it is relevant – is purely incriminatory.¹⁴ Two pieces of information have been identified as potentially exculpatory: (i) [REDACTED]; and (ii) [REDACTED].¹⁵

6. The relevant information relating to both of these matters is summarised in Annex 1. Additionally, similar information in relation to both matters is otherwise available to the Defence.¹⁶ As such, no prejudice arises from the withholding of [REDACTED], and no additional counterbalancing measures are necessary.

⁸ Such information includes details of post-Indictment period events and actions of actors of no known relevance.

⁹ For example, [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² See, for example, (i) in respect of [REDACTED]; (ii) in respect of [REDACTED].

¹³ Such information includes details of post-Indictment period events, actions of actors of no known relevance, and lists of names and telephone numbers.

¹⁴ See, for example, [REDACTED].

¹⁵ [REDACTED].

¹⁶ See, for example, (i) in respect of [REDACTED], see fn.12 above; (ii) in respect of [REDACTED].

III. REVIEW PROCEDURE

7. Considering the classification of the Rule 107 Documents and applicable restrictions, [REDACTED]. In the circumstances and in the interest of justice, the Authorities have exceptionally authorised the Pre-Trial Judge, subject to a non-disclosure agreement, to review the Rule 107 Documents [REDACTED] in [REDACTED]. The SPO is available to liaise with the Authorities and assist with appropriate arrangements.

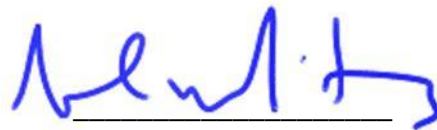
IV. CLASSIFICATION

8. This request is strictly confidential and *ex parte* in accordance with Rules 82(4) and 107(2). A confidential redacted version has been submitted. Pursuant to Rule 107, the redactions applied are necessary to protect (i) the identity of the information provider¹⁷ and (ii) contents of the Rule 107 Documents that have not been authorised for disclosure.¹⁸

V. RELIEF REQUESTED

9. For the foregoing reasons, the Pre-Trial Judge should relieve the SPO of its disclosure obligations in relation to the Rule 107 Documents.

Word count: 694



Alex Whiting

Acting Specialist Prosecutor

Monday, 3 April 2023

At The Hague, the Netherlands.

¹⁷ See paras 1, 7 above.

¹⁸ See fns 9, 14 above.