



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* Annexes 1-4', KSC-BC-2020-06/F01105, dated 16 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 three documents ('Rule 107 Documents').⁴ Two of these documents were subject of previous submissions⁵ and, pursuant to the Decision,⁶ further consultations with the relevant information provider, [REDACTED] ('Provider'). Such consultations have now concluded and the Provider has denied clearance for all three Rule 107 Documents subject of this request.⁷ In light of (i) available counterbalancing measures, in particular, the availability to the Defence of similar information in the disclosed materials and proposed summary,⁸ and (ii) applicable safeguards, including the opportunity for judicial review, no prejudice arises.

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(1).

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 Rule 107 Documents are included at Annexes 1-3. Consistent with redactions applied to the confidential redacted version of the Decision (*see* fn.6 below) and considering that the ERNs [REDACTED], the Rule 107 Documents are referred to herein as 'Annex 1', 'Annex 2', and 'Annex 3'.

⁵ In relation to the items contained in Annexes 1 and 2, *see* Prosecution submissions pursuant to Decision F00918, KSC-BC-2020-06/F00997, 30 September 2022, Strictly Confidential and *Ex Parte* ('Submissions'); Second Prosecution request for protective measures for items containing Rule 103 information, KSC-BC-2020-06/F00825, 31 May 2022, Strictly Confidential and *Ex Parte* ('Request'), paras 14-15.

⁶ Decision on the Second Prosecution Request for Protective Measures for Items Containing Rule 103 Information, KSC-BC-2020-06/F00918, 8 August 2022, Strictly Confidential and *Ex Parte* ('Decision'), paras 48-49, 57(f).

⁷ Outstanding Rule 107 consultations with the Provider are nearing completion. To date, the Provider has cleared for disclosure approximately [REDACTED].

⁸ *See* Annex 4. *See also* Request, KSC-BC-2020-06/F00825, para.18, fn.32; Decision, KSC-BC-2020-06/F00918, para.47.

II. SUBMISSIONS

A. ANNEXES 1-2

2. Annexes 1-2 contain [REDACTED]⁹ and [REDACTED]¹⁰ [REDACTED]. While primarily incriminating, parts of these documents have been identified as falling within the scope of Rule 103.¹¹ Such potentially exculpatory information – as well as other directly relevant information from Annexes 1-2 – is available to the Defence through a previously disclosed summary¹² and [REDACTED].¹³ The only directly relevant, substantive information that is not available by other means consists of internal comments and analysis in Annex 1 by the author,¹⁴ which is covered by standard redaction Category C.¹⁵ Accordingly, as the Defence has received the potentially exculpatory and directly relevant information from Annexes 1-2, no prejudice arises from the withholding thereof and no additional counterbalancing measures are necessary.

3. In addition to Rule 107, existing protective measures provide an additional or alternative basis for the disclosure relief requested. As previously noted by the Pre-Trial Judge,¹⁶ [REDACTED]'s particularly vulnerable position resulted in the Provider refusing to clear these documents [REDACTED].¹⁷ During renewed consultations between the Provider and SPO, it has been confirmed that [REDACTED] are not possible, without posing grave risks to [REDACTED]'s and his family's security.¹⁸ Indeed, [REDACTED]. This would undermine the protective measures previously authorised for [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ *See, for example*, Annex 1, p.[REDACTED] (concerning [REDACTED]); Annex 2, pp.[REDACTED] (including the same or similar potentially exculpatory information as Annex 1), [REDACTED] (concerning [REDACTED]).

¹² [REDACTED].

¹³ *Compare* [REDACTED].

¹⁴ Annex 1, pp.[REDACTED].

¹⁵ Framework Decision, KSC-BC-2020-06/F00099, para.95(c).

¹⁶ Decision, KSC-BC-2020-06/F00918, para.45.

¹⁷ Request, KSC-BC-2020-06/F00825, para.15; Submissions, KSC-BC-2020-06/F00997, para.2.

¹⁸ *See also* Request, KSC-BC-2020-06/F00825, para.15; Submissions, KSC-BC-2020-06/F00997, para.2.

4. The Pre-Trial Judge has previously found, *inter alia*, that: (i) disclosure of [REDACTED] may cause an objectively justifiable risk to the security of [REDACTED] and his family members; and (ii) [REDACTED].¹⁹ Considering the grave risks to the witness and his family and available counterbalancing measures (which provide the Defence with the same or similar information, [REDACTED]), withholding of Annexes 1-2 is not only justified under Rule 107,²⁰ but also necessary and proportional to give effect to existing protective measures under, *inter alia*, Rule 108.²¹

B. ANNEX 3

5. Annex 3 is [REDACTED]. The document primarily concerns matters related to [REDACTED].²² However, the document also contains information about [REDACTED] and [REDACTED]. The same or similar information is available to the Defence in other disclosed materials.²³ Further, the proposed summary at Annex 4 contains all information of direct relevance to the charges in this case.²⁴ Accordingly, considering that the document contains no potentially exculpatory information and all relevant information is available to the Defence, including through other disclosed materials and the proposed summary, no prejudice arises from the withholding of Annex 3 and no additional counterbalancing measures are necessary.

III. CLASSIFICATION

6. This request is strictly confidential and *ex parte* in accordance with Rules 82(4) and 107(2). A confidential redacted version has been submitted. The redactions applied are:

¹⁹ Decision, KSC-BC-2020-06/F00918, paras 45-46.

²⁰ See para.2 above.

²¹ See, *similarly*, Decision, KSC-BC-2020-06/F00918, para.47.

²² Annex 3, para.1.

²³ See, *for example*, [REDACTED].

²⁴ The directly relevant information in Annex 3, paragraphs 5, 7, 15-16, 20-25, and 32 is contained in the summary at Annex 4. The remaining portions of Annex 3 concern events outside the temporal and geographical scope of the charges, and of marginal, if any, relevance thereto.

(i) consistent with those applied to the confidential redacted versions of the Request, Submissions, and Decision;²⁵ and (ii) necessary to protect the identity of the information provider²⁶ and contents of the Rule 107 Documents that have not been authorised for disclosure.²⁷

IV. RELIEF REQUESTED

7. 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: 978



Alex Whiting

Acting Specialist Prosecutor

Monday, 3 April 2023

At The Hague, the Netherlands.

²⁵ See paras 2-4 and fns 4, 11, 13, 14 above.

²⁶ See paras 1, 2, 5 and fn.10 above.

²⁷ See para.5 and fn.9 above.