



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: Trial Panel II
Judge Charles L. Smith, III, Presiding
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Acting Specialist Prosecutor

Date: 19 April 2023

Language: English

Classification: Public

Public Redacted Version of 'Prosecution Rule 107(2) request', KSC-BC-2020-06/F01254, dated 3 February 2023

Specialist Prosecutor's Office

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I. INTRODUCTION

1. As foreshadowed,¹ and pursuant to the Framework Decision,² Articles 35(2)(e)-(f) and 40 of the Law,³ and Rule 107(2) of the Rules,⁴ the Specialist Prosecutor's Office ('SPO') requests relief from its disclosure obligations in relation to the following documents ('Rule 107 Documents'):⁵

- a. SPOE00012307-SPOE00012308 and SPOE00012323-SPOE00012324;⁶
- b. SPOE00208060-00208127 and SPOE00208128-00208165;⁷ and
- c. SITF00360842.⁸

2. The SPO has not been able to obtain clearance for the Rule 107 Documents. Nevertheless, in light of (i) available counterbalancing measures, in particular, the availability to the Defence of similar information, which has already been disclosed, and (ii) applicable safeguards, including the opportunity for judicial review, no prejudice arises.

¹ Prosecution submissions pursuant to Decision F01161, KSC-BC-2020-06/F01240, 31 January 2023, Confidential.

² Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-06/F00099, 23 November 2020 ('Framework Decision').

³ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

⁴ 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.

⁵ The Rule 107 Documents are not annexed to this request due to their classification status, which requires particular storage and handling arrangements. A copy of these documents will be submitted to the custody of the Registry in hardcopy, under the case file number, in accordance with relevant evidence transfer procedures.

⁶ These are duplicates of one another and partials from the ERN range SPOE00012299-00012489, which was listed at #42190 on the Rule 102(3) notice (KSC-BC-2020-06/F00543/A01). The remaining pages of this document have been disclosed.

⁷ These documents were listed at #63291 and #63292 on the Rule 102(3) notice (KSC-BC-2020-06/F00543/A01).

⁸ This document is one page of the compilation with ERN SITF00360805-00360898 and, in light of applicable restrictions, this page has been redacted, in full, with a 'B.5' standard redaction code in the version disclosed to the Defence. SITF00360805-00360898 was listed at #31820 on the Rule 102(3) notice (KSC-BC-2020-06/F00543/A01).

II. SUBMISSIONS

SPOE00012307-SPOE00012308 and SPOE00012323-SPOE00012324⁹

3. The SPO has not obtained clearance from [REDACTED] for these documents, which are duplicates of one another. They contain an exchange of e-mails between two [REDACTED] officials that took place in May and June 2008, well after the Indictment period. This internal¹⁰ [REDACTED] exchange refers to weapons and other items seized during investigations conducted by [REDACTED] in June 1999. The last email [REDACTED]. While only marginally – if at all – relevant, the same or similar (and, indeed, more detailed) information is nevertheless available to the Defence.¹¹ No prejudice arises from withholding these documents and no counterbalancing measures are necessary.

SPOE00208060-00208127 and SPOE00208128-00208165

4. [REDACTED] has denied clearance of these two documents. They are internal briefings on the roles, structure and objectives of the [REDACTED]. These documents constitute internal [REDACTED] work product, which would have been covered by a standard redaction category.¹² They do not contain exculpatory information. Further, information on [REDACTED]'s structure, mission, area of responsibility, and related matters is available in other material already disclosed to the Defence.¹³ Accordingly,

⁹ As noted above, these documents were re-stamped with ERNs 7005966-7005967 and 7005968-7005969.

¹⁰ See also Framework Decision, KSC-BC-2020-06/F00099, para.95 (Category C, which applies, *mutatis mutandis*, to [REDACTED]).

¹¹ See SPOE00012299-SPOE00012306; SPOE00012309-SPOE00012322; SPOE00012325-SPOE00012489 (Disclosure 551).

¹² Framework Decision, KSC-BC-2020-06/F00099, para.95 (Category C, which applies, *mutatis mutandis*, to [REDACTED]).

¹³ See e.g. 077406-TR-ET Parts 1 to 5 (Disclosure package 174); 071136-TR-ET Parts 1 to 5 (Disclosure package 67); SITF00231377-SITF00231379-ET; SITF00229187-SITF00229224-ET; SITF00229168-SITF00229176-ET. These interviews [REDACTED] and partial English translations of longer, comprehensive reports are only a sample of the hundreds of [REDACTED] reports and related documents that have been disclosed under Rules 102 and 103, and contain information on, *inter alia*, the KLA forces within the [REDACTED] of responsibility, weapons confiscated, violations of the demilitarisation agreement, and war crimes. These documents – which can be identified by description

withholding these internal [REDACTED] work products does not prejudice the Defence and no counterbalancing measures are necessary.

SITF00360842

5. The SPO has been unable to obtain clearance for this document from [REDACTED].¹⁴ However, the information – [REDACTED] – is available to the Defence through other disclosed information, which is not subject to Rule 107 restrictions.¹⁵ As such, no prejudice arises from the withholding of SITF00360842 and no counterbalancing measures are necessary.

III. CLASSIFICATION

6. This request is strictly confidential and *ex parte* in accordance with 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 provider and (ii) contents of the Rule 107 Documents that have not been authorised for disclosure.

IV. RELIEF REQUESTED

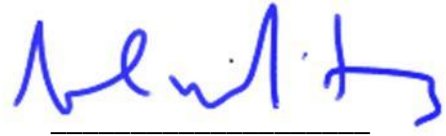
7. For the foregoing reasons, the Panel should relieve the SPO of its disclosure obligations in relation to the Rule 107 Documents.

and source in Legal WorkFlow – provide the same and similar information as that contained at pp.SPOE00208069-SPOE00208072 and SPOE00208087 of SPOE00208060-00208127, and pp.SPOE00208136-SPOE00208138 of SPOE00208128-00208165.

¹⁴ As noted above, this page in a larger compilation was disclosed to the Defence with a B.5 standard redaction pending the outcome of this request.

¹⁵ See e.g. SITF00360805-00360898, pp.SITF00360839- SITF00360841.

Word count: 827



Alex Whiting

Acting Specialist Prosecutor

Wednesday, 19 April 2023

At The Hague, the Netherlands