



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
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 with strictly confidential and *ex parte* Annexes 1-6 and confidential Annexes 7-9', KSC-BC-2020-06/F01386, dated 21 March 2023

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I. INTRODUCTION

1. Pursuant to the Framework Decision,¹ Articles 35(2)(e)-(f) and 40(6) of the Law,² and Rule 107(2) of the Rules,³ the Specialist Prosecutor's Office ('SPO') requests the Trial Panel to relieve the SPO of its disclosure obligations in relation to eight documents ('Rule 107 Documents')⁴ for which [REDACTED] denied disclosure authorisation.

2. The Rule 107 Documents have been denied clearance after several rounds of consultations. Nevertheless, no prejudice would arise from their non-disclosure, as the proposed Rule 108(2) counterbalancing measures adequately protect the interests of the Accused.

II. SUBMISSIONS

A. ANNEX 1

3. [REDACTED]⁵ [REDACTED] that relate primarily to the disappearance and death of W04433's [REDACTED]. While mostly incriminating, a portion of one of the documents has been identified as falling within the scope of Rule 103.⁶ However, the potentially exculpatory information – as well as other directly relevant information in the Annex 1 documents – is already available to the Defence through W04433's evidence⁷ and statements of his [REDACTED].⁸ Accordingly, no prejudice arises from the non-disclosure of the two Annex 1 statements.⁹

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].

⁵ [REDACTED].

⁶ [REDACTED].

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

B. ANNEXES 2-3

4. Annexes 2 and 3 contain internal [REDACTED] notes, one detailing an interview with [REDACTED]¹⁰ and the other relating to an interview with [REDACTED].¹¹ Although neither individual is a witness in this case and the notes are primarily incriminatory, both contain information that has been identified as falling within the scope of Rule 103.¹² However, no prejudice will arise to the Defence from the non-disclosure of the uncleared notes because corresponding extracts have already been disclosed.¹³ Almost identical to the notes from which they were taken, the extracts contain only minor, non-substantive changes and the removal of [REDACTED] work product.¹⁴ As such, the disclosed extracts sufficiently counterbalance the non-disclosure of the [REDACTED] notes.

C. ANNEX 4

5. [REDACTED] and [REDACTED] that relate primarily to the beating of [REDACTED] and the kidnapping of his brother. The documents are incriminating, and the same or similar information is available in other material not subject to Rule 107 restrictions.¹⁵ As a counterbalancing measure, the SPO will disclose (and, in the meantime, has provided at Confidential Annex 8) cleared material that has not yet been disclosed,¹⁶ so no prejudice will arise from withholding the two uncleared documents.

D. ANNEX 5

6. [REDACTED] contains information on the presence of KLA and Serbian troops in different municipalities of Kosovo in 1998 and 1999. While this individual is not a

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ 108891-108893 (the cleared extract of [REDACTED]) and 108894-108894 (the cleared extract of [REDACTED]), were both disclosed under Rule 103 on 10 March 2023 in Disclosure Package 708.

¹⁴ The SPO notes that the information removed from the extracts would have, in any event, been authorised for standard redactions pursuant to the Framework Decision, KSC-BC-2020-06/F00099, para.95 (Category 'C', which applies, *mutatis mutandis*, to the [REDACTED]).

¹⁵ See the comparison charts contained in Annex 4 (see Annex 7 for the confidential redacted version).

¹⁶ See Annex 8, [REDACTED]. The SPO has recently confirmed the clearance status of this statement.

Case 06 witness, a portion of the uncleared document has been identified as falling within the scope of Rule 103.¹⁷ However, the potentially exculpatory information – as well as other directly relevant information – has already been disclosed to the Defence.¹⁸ Accordingly, withholding the uncleared document would not prejudice the Defence and no counterbalancing measures are necessary.

E. ANNEX 6

7. [REDACTED]¹⁹ [REDACTED]. In the uncleared statement, the witness discusses [REDACTED]²⁰ [REDACTED]. The relevant information contained in the statement is already available to the Defence through materials previously disclosed.²¹ As such, no prejudice arises from withholding the document and no counterbalancing measures are necessary.

III. CLASSIFICATION

8. This request and Annexes 1-6 are strictly confidential and *ex parte* in accordance with Rule 107(2), while annexes 7-9 are confidential. A confidential redacted version of the request has also been submitted. Pursuant to Rule 107, the redactions applied are necessary to protect the identity of the information provider and the contents of the Rule 107 Documents that have not been authorised for disclosure.

IV. RELIEF REQUESTED

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

¹⁷ [REDACTED].

¹⁸ See the comparison chart contained in Annex 5 (see Annex 9 for the confidential redacted version). To the extent any documents referenced in the chart have not been disclosed to all Defence teams (in light of the different requests made by the Defence under Rule 102(3)), the SPO will disclose them to all Defence teams upon resolution of this request.

¹⁹ [REDACTED].

²⁰ [REDACTED], see 050018-050026 RED, p.050020, para.6.

²¹ See e.g. SPOE00017690-00017833 (containing the personal data from the [REDACTED] database; disclosed under Rule 102(3) to all Defence teams on 2 December 2022); 049105-049106 (regarding the purpose, collection and verification of personal data in the [REDACTED] database; disclosed under Rule 103 on 31 August 2022) and 050018-050026 RED ([REDACTED]; disclosed under Rule 103 on 20 May 2022).

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Wednesday, 19 April 2023

At The Hague, the Netherlands.