



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: Specialist Prosecutor's Office

Date: 24 July 2023

Language: English

Classification: Public

Public Redacted Version of 'Prosecution response to Joint Defence Request for Reclassification (F01636) and request for further redaction of filing KSC-BC-2020-06/F01647/RED'

Specialist Prosecutor's Office

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I. INTRODUCTION

1. The Specialist Prosecutor's Office ('SPO') opposes the Joint Defence Request for Reclassification of Filing F01636 ('Request').¹ Filing F01636 contains non-public information about a protected witness.² For that reason, the Defence should be required to file a public redacted version of F01636, as ordered by the Panel,³ with appropriate redactions as explained below. In addition, the SPO requests further redaction of F01647/RED.⁴

II. SUBMISSIONS

2. The Defence response to the relevant Rule 154 application (F01636) concerns two SPO witnesses, including W04586. This witness testified with protective measures.⁵ The Defence response contains the following details, which may tend to reveal his identity: (i) [REDACTED], and (ii) [REDACTED].⁶ Redactions are therefore required to maintain the effectiveness of his protective measures.⁷

3. On 21 July 2023, the Defence filed a public redacted version of F01647/RED.⁸ The public redacted version contains information about witnesses who have not yet

¹ Joint Defence Request for Reclassification of Filing F01636, KSC-BC-2020-06/F01693, 21 July 2023 ('Request'). Unless otherwise stated, all references to Kosovo Specialist Chambers ('KSC') filings are to this case.

² The necessary redactions concern W04586. W02153 testified publicly and has completed his evidence.

³ Decision on Prosecution Motion for Admission of Evidence of W00072, W02153 and W04586 Pursuant to Rule 154, KSC-BC-2020-06/F01664, 10 July 2023, p.21.

⁴ Public Redacted Version of Joint Defence Response to the Third Prosecution Motion for Admission of Evidence Pursuant to Rule 154 Concerning the Remaining Eight Witnesses, KSC-BC-2020-06/F01647/RED, 21 July 2023.

⁵ See Corrected Version of First Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00133/COR, 14 December 2020, p.52.

⁶ [REDACTED]. [REDACTED]. [REDACTED]. See [REDACTED].

⁷ For certain witnesses, [REDACTED]. [REDACTED] should be redacted in paragraphs 14-17 of F01636. [REDACTED]. In addition, the SPO has consistently redacted ERNs of [REDACTED], in order to further ensure the effectiveness of protected measures. In line with this practice, all ERNs related to W04586's evidence should be redacted (footnotes 24-27 and paragraph 16 of F01636).

⁸ For the reasons described below and as reflected in the email sent by the SPO to CMU on 21 July 2023 at 4:54 p.m., the SPO requested reclassification of F01647/RED as confidential and confirmed that it would file a reclassification request on 24 July 2023.

testified, which should be redacted from the public.⁹ This includes the fact of [REDACTED]¹⁰ including with specific mention of the fact of [REDACTED].¹¹

4. Finally, the Defence redactions reveal the gender of certain protected witnesses. Pursuant to the Panel's request,¹² the SPO has engaged in *inter partes* communications with the Defence in respect of the necessity for gender neutral language for certain witnesses. On 21 July 2023, having considered the security and privacy concerns of the witnesses in the next group of witnesses, the SPO informed the Defence that it requested that gender neutral language be used for [REDACTED].¹³ The SPO requests further redactions to the Defence's submissions on this witness to remove all language which identifies the witness's gender.

III. RELIEF REQUESTED

5. For the foregoing reasons, the SPO respectfully requests that the Panel: (i) reject the Defence request to re-classify F01636, (ii) maintain its order to the Defence to file a public redacted version of F01636, and (iii) order the Defence to make further redactions to F01647, including to ERNs, in accordance with the criteria explained herein.

⁹ While witnesses may ultimately testify without protective measures, the fact of their status as an SPO witness is confidential at this time. Similarly, witnesses who are expected to testify publicly may request protective measures at any time before they testify. For example, while the SPO anticipated that W03165 and W03540 would testify without protective measures, both witnesses requested and were granted protective measures on the eve of testimony. For all witnesses, their privacy and security interests are best protected if information which could tend to identify them remains confidential until the time of their testimony.

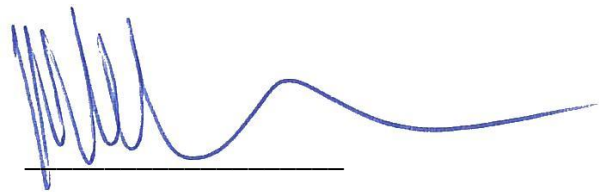
¹⁰ For example, for [REDACTED].

¹¹ See e.g. para.33, which indicates that certain associated exhibits are alleged by the SPO to be connected to [REDACTED]. Furthermore, as noted in respect of F01636, the SPO requests that ERNs be removed for all of the witnesses in F01647 in order to maintain the effectiveness of protective measures and safeguard the privacy and security of the witnesses at this time.

¹² See Decision on the Prosecution Submission on Reclassification of Portion's of W03165's testimony, KSC-BC-2020-06/F01654, 7 July 2023, para.17.

¹³ By email dated 21 July 2023, 2:37 p.m., the SPO informed the Defence that gender neutral language is requested for [REDACTED] in light of the particular circumstances of the witness's evidence. This request was made in respect of the witness's courtroom examination and references to the witness in public filings.

Word Count: 978



Ward Ferdinandusse

Acting Deputy Specialist Prosecutor

Monday, 24 July 2023

At The Hague, the Netherlands.