



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 Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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**Public Redacted Version of 'Prosecution Rule 107(2) request
with strictly confidential and *ex parte* Annex 1 and confidential Annex 2'**

Specialist Prosecutor's Office

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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 Rules 107(2) and 108 of the Rules,³ the Specialist Prosecutor's Office ('SPO') requests relief from its disclosure obligations in relation to certain documents (collectively, 'Rule 107 Documents').⁴

2. The SPO has not been able to obtain clearance for the Rule 107 Documents from the relevant providers, namely, [REDACTED]⁵ and [REDACTED].⁶ 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.

II. SUBMISSIONS

3. In the Fifth Decision,⁷ the Panel ordered the SPO to continue to seek clearance for, *inter alia*:⁸ (i) [REDACTED]; and (ii) 7008921-7008935, 7005899-7005918, 7009623-7009624, 7009632-7009635, 7009636-7009638, 7009656-7009658, and 7009694-7009696 ('[REDACTED] Documents'). Further, in the July 2023 Request,⁹ the SPO notified the

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 Any counterbalancing documents that have already been disclosed or filed – and are therefore available on Legal Workflow – are not included in the annexes, but are clearly identified by their respective filing numbers or ERNs in this request.

⁵ [REDACTED].

⁶ [REDACTED].

⁷ Decision on the Fifth Specialist Prosecutor's Rule 107(2) Request, KSC-BC-2020-06/F01667, 12 July 2023, Strictly Confidential and *Ex Parte* ('Fifth Decision'), paras 9, 20, 28(c).

⁸ Clearance was obtained for the unredacted version of the other outstanding document from the Fifth Decision, namely, [REDACTED]. It was promptly noticed and disclosed under Rule 102(3) (Disclosure [REDACTED]).

⁹ Prosecution Rule 107(2) request, KSC-BC-2020-06/F01684, 19 July 2023, Strictly Confidential and *Ex Parte* ('July 2023 Request'), fn.7. The other document referenced in the July 2023 Request has since been disclosed.

Panel and Parties that the document in Annex 1 ('Annex 1 Document') was pending clearance. Since the Fifth Decision and July 2023 Request, the relevant providers – respectively, [REDACTED] – have confirmed that they are unable to authorise the disclosure of the [REDACTED] Documents and the Annex 1 Document. Disclosure relief is therefore requested.

4. The SPO has not received a final response concerning the other document subject of this request: [REDACTED]. As noted previously, while [REDACTED] was received directly from the [REDACTED], it was subject to [REDACTED]¹⁰ [REDACTED] conditions imposed by the entity that originally provided it to the [REDACTED]. The SPO requested clearance of [REDACTED] on 30 July 2020. To date, the [REDACTED] has not received a final response from the [REDACTED] provider concerning clearance of [REDACTED] and is unable to provide any prediction if or estimate when the document may be cleared. While the SPO is mindful of the Panel's direction not to seek Rule 107 disclosure relief where consultations are ongoing,¹¹ the SPO's clearance request has effectively been denied, considering that clearance has been pending for more than three years, the stage of the proceedings, and the absence of any indication that resolution may be obtained in the foreseeable future. The SPO therefore renews its request for disclosure relief in relation to [REDACTED].

A. ANNEX 1 DOCUMENT

5. The Annex 1 Document is an [REDACTED] of an individual who is not a witness in this case. It concerns an abduction at an uncharged location and hearsay information concerning other uncharged events in June and July 1999. The same or similar information is available to the Defence through other disclosed documents.¹² Further, an

¹⁰ [REDACTED].

¹¹ Fifth Decision, KSC-BC-2020-06/F01667, para.28(e).

¹² See, for example, [REDACTED] (Disclosure 699); STIF00294869-00294872 (Disclosure 420); SPOE00068414-00068418 (Disclosure 350). All of these documents were disclosed to all Defence teams under Rule 102(3).

anonymised summary of the Annex 1 Document is provided in Annex 2. Accordingly, the Defence possesses the relevant information in the Annex 1 Document and no further counterbalancing measures are needed.

B. [REDACTED]¹³

6. As previously submitted,¹⁴ [REDACTED] is a compilation of documents consisting of [REDACTED]; [REDACTED]; and [REDACTED]. This compilation includes personal details of numerous innocent third parties, in particular, [REDACTED].

7. The SPO has previously provided a comparison chart indicating where the same or similar potentially relevant information can be located in disclosed and publicly available materials.¹⁵ The compilation of documents, specifically the [REDACTED] and related information, are relevant insofar as they concern, *inter alia*, bodies discovered at or near Lake Radoniq/Radonjić, where charged murder victim Pal KRASNIQI's remains were found.¹⁶ [REDACTED] relates to this victim. However, no prejudice arises, as similar [REDACTED],¹⁷ and [REDACTED] pertaining to Pal KRASNIQI's remains, are available to the Defence.¹⁸ Likewise, similar [REDACTED] are available for all other victims concerned by [REDACTED].¹⁹

8. Accordingly, the Defence possesses the relevant information contained in [REDACTED] and no further counterbalancing measures are needed.

¹³ See KSC-BC-2020-06/F01482/A01, item 2, pp.10-210.

¹⁴ Prosecution Rule 107(2) request, KSC-BC-2020-06/F01482, 26 April 2023, Strictly Confidential and *Ex Parte* ('April 2023 Request'), paras 5-6.

¹⁵ See KSC-BC-2020-06/F01482/A03. The confidential redacted version is available at KSC-BC-2020-06/F01482/CONF/RED/A01.

¹⁶ Amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, Confidential ('Indictment'), para.144.

¹⁷ See KSC-BC-2020-06/F01482/A01: [REDACTED].

¹⁸ See KSC-BC-2020-06/F01482/A03: with the relevant similar information indicated for [REDACTED].

¹⁹ See KSC-BC-2020-06/F01482/A03.

C. [REDACTED] DOCUMENTS²⁰

9. As previously noted,²¹ the relevant information in the [REDACTED] Documents is available to the Defence and no prejudice is caused by non-disclosure.

10. 7008921-7008935 is an [REDACTED] report relating to [REDACTED]. The document primarily concerns events and the roles and responsibilities of a number of former KLA members following the Indictment period. A summary of the relevant information from the document – pertaining to the roles and associations of the Accused and other KLA members during and immediately after the Indictment period has already been provided to the Defence.²²

11. 7005899-7005918 is an [REDACTED] report concerning [REDACTED]. Large parts of this document relate to events and associations post-dating the Indictment period, including [REDACTED],²³ and internal assessments.²⁴ 7005899-7005918 overlaps to a large extent with 7009312-7009341, for which disclosure relief has previously been granted.²⁵ In this respect, the Pre-Trial Judge ordered a summary of directly relevant information and otherwise found that withholding 7009312-7009341 was justified because it (i) was prepared after the Indictment period and primarily addressed developments at that time; and (ii) did not contain potentially exculpatory information. The same reasoning applies here. Moreover, the directly relevant information – in particular, that relating to the Indictment period, Accused, and charges – is replicated in

²⁰ Due to applicable restrictions, the [REDACTED] Documents were provided to the Panel via the Registry consistent with their security classifications and appropriate handling procedures. Corresponding surrogate sheets recording this transfer were disclosed through Legal Workflow.

²¹ See April 2023 Request, KSC-BC-2020-06/F01482, paras 10-14.

²² See KSC-BC-2020-06/F01482/A04, p.11 (Registry p.12/26). KSC-BC-2020-06/F01482/A04 is also available to the Defence at KSC-BC-2020-06/F01482/CONF/RED/A02. Further, similar information is also reflected in 7009230-7009261 and the counterbalancing documents for 7005899-7005918, as indicated below.

²³ 7005899-7005918, pp.7005914-7005918.

²⁴ 7005899-7005918, p.7005914.

²⁵ Decision on Specialist Prosecutor's Rule 107(2) Request, KSC-BC-2020-06/F01002, 30 September 2022, Strictly Confidential and *Ex Parte*, paras 74-76.

a cleared, redacted version of the report (7009230-7009261)²⁶ and the summary that was previously provided by the SPO.²⁷

12. 7009623-7009624, 7009632-7009635, 7009636-7009638, 7009656-7009658, and 7009694-7009696 are all [REDACTED] reports relating to crimes allegedly committed by a group of KLA members in Ferizaj/Uroševac in late June 1999.²⁸ All relevant information, including in greater detail, is available to the Defence through other disclosed materials.²⁹ No further counterbalancing measures are necessary.

III. CLASSIFICATION

13. This request is strictly confidential and *ex parte* in accordance with Rule 107(2).

IV. RELIEF REQUESTED

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

²⁶ Disclosure 608: Rule 102(3), 2022-12-02. 7005899-7005918 appears to be an updated version of 7009230-7009261, with the vast majority of the information being identical.

²⁷ See KSC-BC-2020-06/F01482/A04, p.12 (Registry p.13/26).

²⁸ While these incidents are not charged in this case, some of the same KLA members are allegedly responsible for crimes at the [REDACTED] crime sites charged in the Indictment. See Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Corrected Version of Prosecution Pre-Trial Brief, KSC-BC-2020-06/F00709/A01, 24 February 2022, Strictly Confidential and *Ex Parte*, paras [REDACTED].

²⁹ SPOE00329274-SPOE00329360, pp.SPOE00329333-SPOE00329351. See also SPOE00329255-00329255; SPOE00329257-00329257; SPOE00329263-00329271 RED; SPOE00329364-SPOE00329375; SPOE00329385-SPOE00329467; SPOE00329469-SPOE00329536; SPOE00329548-SPOE00329553; SPOE00329557-SPOE00329558; SPOE00329562-00329562; SPOE00329575-00329576; SPOE00329584-00329584; SPOE00329594-SPOE00329597; SPOE00329608-SPOE00329613; SPOE00329616-SPOE00329622; SPOE00329626-SPOE00329627; SPOE00329631-00329631; SPOE00329632-00329633; SPOE00329638-SPOE00329642; SPOE00329646-SPOE00329647; SPOE00329651-SPOE00329652; SPOE00329656-00329656; SPOE00329657-00329657; SPOE00329658-SPOE00329659; SPOE00329660-00329662; SPOE00329738-SPOE00329739; SPOE00329741-SPOE00329979; SPOE00329984-00329984; SPOE00329987-SPOE00329989; SPOE00330013-SPOE00330021; SPOE00330037-00330037; SPOE00330038-00330038; SPOE00330039-SPOE00330041; SPOE00330073-00330073; SPOE00330078-00330078; SPOE00330082-SPOE00330085; SPOE00330101-SPOE00330103 RED. All of these documents were disclosed to all Defence teams under Rule 102(3) in Disclosure 699.

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Friday, 8 December 2023

At The Hague, the Netherlands.