



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-06

The 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: Fidelma Donlon

Date: 13 December 2023

Language: English

Classification: Public

Decision on the Specialist Prosecutor's Rule 107(2) Request

Specialist Prosecutor
Kimberly P. West

Counsel for Victims
Simon Laws

Counsel for Hashim Thaçi
Gregory Kehoe

Counsel for Kadri Veseli
Ben Emmerson

Counsel for Rexhep Selimi
Geoffrey Roberts

Counsel for Jakup Krasniqi
Venkateswari Alagendra

TRIAL PANEL II (“Panel”), pursuant to Articles 21(1)-(4) and (6), 40(2) and (6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 102(3), 103 and 107 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, hereby renders this decision.

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 24 November 2023, the Specialist Prosecutor Office (“SPO”) requested measures to facilitate the in-court testimony of W02475 (“Request”).¹ The SPO submits that W02475 is employed at an international organization (“Rule 107 Provider”), which has authorized the witness’s testimony subject to certain conditions.²

2. More specifically, the SPO submits that, pursuant to the specifications of the Rule 107 Provider, the witness should testify subject to the following measures: (i) the scope of W02475’s testimony should be strictly limited to the period and events when W02475 was not associated with the Rule 107 Provider;³ and (ii) the scope of cross-examination should be limited to the scope of direct examination, as well as to issues regarding the credibility of W02475 (collectively, “Measures”).⁴ The SPO argues that these conditions are lawful, proportionate, and fully respect the right of the Defence to effectively cross-examine W02475.⁵

3. The Defence did not respond.

¹ F01957, Specialist Prosecutor, *Prosecution Request for Rule 107 Measures for W02475*, 24 November 2023, confidential, para. 1.

² Request, para. 2.

³ Request, para. 6.

⁴ Request, para. 7.

⁵ Request, para. 8.

II. DISCUSSION

4. At the outset, the Panel recalls that the right of the Accused to cross-examine a prosecution witness is not absolute.⁶ This is apparent from Rule 143(3), which sets out the general boundaries of permissible cross-examination. In addition, cross-examination is at all times subject to the control of the Panel.⁷ Further, the Panel observes that Rule 107 provides for particular circumstances where the Panel might be justified in limiting *a priori* the scope of permissible examination and cross-examination.⁸ The Panel finds the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) on this point to be of assistance.⁹

5. As regards the necessity of the Measures, the Panel notes that, pursuant to Rule 107(3) and (4), it may neither compel the witness to answer questions relating to the information or its origin if the witness declines to answer on grounds of confidentiality, nor order the production of additional evidence, beyond that authorised by the Rule 107 Provider.¹⁰ The *raison d’être* of Rule 107 (i.e., the equivalent of Rule 70 of the ICTY Rules) is to “create an incentive for such cooperation by permitting the sharing of information on a confidential basis and by guaranteeing information providers that the confidentiality of the information they offer and of the information’s sources will be protected”.¹¹ The Panel further recalls its finding that the

⁶ F01821, Panel, *Decision on Prosecution Request for Admission of W03827’s Witness Statements Pursuant to Rule 143(2) and Defence Request for Reconsideration*, 28 September 2023, para. 29 (“Decision on Rule 143(2)”); F01847, Panel, *Decision on the Prosecution Request for Rule 107 Measures for W04147 and W04868 (F01764)*, 10 October 2023, confidential, para. 13 (a public redacted version was filed on 10 October 2023, F01847/RED), (“Decision on Rule 107 for W04147 and W04868”).

⁷ Decision on Rule 143(2), para. 29; Decision on Rule 107 for W04147 and W04868, para. 13.

⁸ Decision on Rule 107 for W04147 and W04868, para. 13.

⁹ ICTY, *Prosecutor v. Tolimir et al.*, IT-05-88/2-AR73.1, Appeals Chamber, Decision on Radivoje Miletić’s Interlocutory Appeal Against the Trial Chamber’s Decision on Joinder of Accused, 27 January 2006, para. 29; ICTY, *Prosecutor v. Martić*, IT-95-11-AR73.2, Decision On Appeal Against The Trial Chamber’s Decision On The Evidence Of Witness Milan Babić, 14 September 2006, para. 12.

¹⁰ Decision on Rule 107 for W04147 and W04868, para. 14.

¹¹ ICTY, *Prosecutor v. Milošević*, Appeals Chamber, IT-02-54-AR108bis & AR73.3, Public Version of the Confidential Decision on the Interpretation and Application of Rule 70, 23 October 2002, para. 19. See also *Prosecutor v. Mladić*, IT-09-92-T, Trial Chamber I, Decision on Urgent Prosecution Motion for

witness's testimony could assist the Panel in establishing facts and circumstances relevant to this case.¹² For this reason, the Panel is satisfied that the Measures are consistent with, and are an appropriate means of giving effect to, Rule 107(3)-(5). The Panel is therefore satisfied that the Measures are necessary.

6. As regards the proportionality of the Measures, the Panel observes that the Measures should be interpreted as authorising the Defence to cross-examine the witness on any issue directly arising from any statement and associated exhibits admitted as evidence through the witness pursuant to Rule 154. The Panel also notes that the evidence of W02475 was provided on a confidential basis and did not cover any event connected to his current employment with the Rule 107 Provider.¹³ The Defence will be able to effectively and thoroughly cross-examine the witness on matters relevant to the case and explore any issues pertaining to the witness's credibility.¹⁴ However, should there be any additional issues the Defence wants to address, it can request prior approval from the Rule 107 Provider or seek alternative remedies from the Panel. For this reason, the Panel is satisfied that the limitations on the scope of the witness's testimony imposed by the Rule 107 Provider will not undermine the Accused's rights under the Law or cause prejudice to the Defence. The Panel is therefore satisfied that the Measures are proportionate.

7. In light of the above, the Panel authorises the Measures.

Protective Measures and Conditions for Witnesses RM-055, RM-120, RM-163, and RM-176 Pursuant to Rule 70, 30 November 2012, para. 8.

¹² F01848, Panel, *Decision on Prosecution Motion for Admission of Evidence of W00208, W02082, W02475, W04147, W04325, W04491 and W04753 Pursuant to Rule 154 (F01788)*, 10 October 2023, confidential, para. 27 (a public redacted version was filed on 14 November 2023, F01848/RED).

¹³ Request, para. 5.

¹⁴ See F01594/A02, Specialist Prosecutor, *Annex 2 to Prosecution Submission of Updated Witness List and Confidential Lesser Redacted Version of Pre-Trial brief*, 9 June 2023, confidential, p. 148.

III. CLASSIFICATION

8. The Panel notes that the Request has been filed confidentially. The Panel, therefore, orders the SPO to file a public redacted version of its submission by no later than Thursday, 4 January 2024.

IV. DISPOSITION

9. For the above-mentioned reasons, the Panel hereby:
- a) **GRANTS** the Request;
 - b) **AUTHORISES** the Measures set out at paragraphs 5 and 6 above for the in-court testimony of the witness;
 - c) **ORDERS** the questioning party during cross-examination to expressly identify any question relating to the Witness's credibility and to state clearly and directly its case on that point;
 - d) **ORDERS** the Defence, upon commencing cross-examination, to notify the Panel of any additional authorisation obtained from the Rule 107 Provider relevant to the permissible scope of cross-examination; and
 - e) **REQUESTS** the SPO to file a public redacted version of the Request by Thursday, 4 January 2024.



Judge Charles L. Smith, III
Presiding Judge

Dated this Wednesday, 13 December 2023

At The Hague, the Netherlands.