



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

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Public Redacted Version of 'Prosecution request for Rule 107 measures for
W02475'

Specialist Prosecutor's Office

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 Alagenda

I. INTRODUCTION

1. Pursuant to Articles 35(2)(f), 40(2), 40(6) and 58 of the Law,¹ and Rules 107 and 116(1) and (4) of the Rules,² the Specialist Prosecutor's Office ('SPO') requests the Trial Panel to order necessary and proportionate measures to facilitate the in-court testimony of W02475, who is [REDACTED] ('Rule 107 Provider').

2. As detailed below, the Rule 107 Provider authorised the Witness's testimony subject to certain conditions, which are consistent with similar conditions previously found appropriate and authorised by the Panel,³ are reasonable and have also been employed in similar prior testimony before the International Criminal Tribunal for the former Yugoslavia ('ICTY'). As such, there is no prejudice to the Defence, which will be able to fully cross-examine the Witness.

II. BACKGROUND

3. In [REDACTED] 1999, W02475 worked for [REDACTED], W02475 was tasked with documenting human rights abuses of [REDACTED] in Kosovo. W02475 went to [REDACTED].⁴

4. W02475 will testify about, *inter alia*, the KLA detaining [REDACTED] and taking them to certain locations around [REDACTED]. This includes the [REDACTED], where detainees were accused of being Serb collaborators and thieves as well as threatened.⁵

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' herein refer to the Law, unless otherwise specified.

² 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.

³ Decision on the Prosecution Request for Rule 107 Measures for W04147 and W04868 (F01764), KSC-BC-2020-06/F01847, 10 October 2023, Confidential ('Decision').

⁴ See Annex 2 to Prosecution submission of updated witness list and confidential lesser redacted version of pre-trial brief, Confidential Redacted Version of 'Amended List of Witnesses', KSC-BC-2020-06/F01594/A02, 9 June 2023, Confidential ('Witness List'), p.147.

⁵ Witness List, KSC-BC-2020-06/F01594/A02, pp.147-148.

III. SUBMISSIONS

5. The evidence of W02475 was provided to the SITF on a confidential basis and did not cover any event connected to his current employment with the Rule 107 Provider. The Rule 107 Provider has recently authorised W02475 to testify, subject to the following two sets of conditions being applied. Such conditions are consistent with and are appropriate means of giving effect to Rule 107 (in particular, subparagraphs (3)-(5)),⁶ which provides, *inter alia*, that the Panel may not order the production of additional evidence beyond that authorised by a Rule 107 provider,⁷ and may not compel a witness to answer any question relating to Rule 107 information or its origin if such witness declines to answer on grounds of confidentiality.⁸

6. First, in terms of testimonial substance, the Rule 107 Provider authorised W02475's testimony on the condition that the scope would be strictly limited to the period and events when W02475 was not associated with the Rule 107 Provider.

7. Second, regarding the modalities of questioning, the Rule 107 Provider authorised testimony provided that the scope of cross-examination be limited to the scope of direct examination, as well as to issues regarding the credibility of W02475.

8. The above measures are lawful, proportionate, and fully respect the right of the Defence to effectively cross-examine W02475. Importantly, the above measures cause no prejudice to the Defence, as their right to effectively cross-examine – including on issues relating to credibility – remains intact. As noted by the Panel in its prior Decision, 'the proposed measures should be interpreted as authorising the Defence to cross-examine the Witnesses on *any* issue directly arising from any statement and

⁶ In this respect, the Panel has authority under Article 40(6)(d) to provide for the protection of confidential information, under Article 40(6)(f) and Rule 116(4)(b) to provide for the protection of witnesses, and under Article 40(2) and Rule 116(1) to take all necessary measures to facilitate fair and expeditious proceedings. Article 58 also provides that international institutions 'may make an application for necessary measures to be taken in respect of the protection of their servants or agents and for the protection of their confidential or sensitive information.'

⁷ See Rule 107(3), (5). Rule 107(3) also provides that the Panel may not summons the Rule 107 Provider for the purpose of obtaining of such additional evidence or order the attendance of other witnesses or the production of documents for the purpose of obtaining such additional evidence.

⁸ See Rule 107(4), (5).

associated exhibits admitted as evidence through the Witnesses pursuant to Rule 154 [...] It follows that the Defence will be able to effectively and thoroughly cross-examine the Witnesses on matters relevant to the case and explore any issues pertaining to their credibility.⁹ Similarly, the Trial Chamber in *Milutinović et al.* noted, ‘most matters favourable to the Defence case, which it might wish to raise, will be connected to the issues arising during examination-in-chief or during the challenges posed to the witnesses’ credibility.’¹⁰ Nevertheless, if there are any further matters it wishes to raise, it may seek advance permission from the Rule 107 Provider or alternative relief from the Panel.¹¹

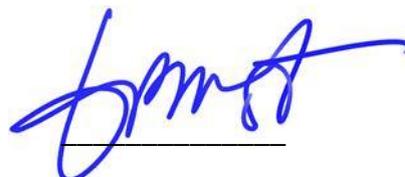
IV. CLASSIFICATION

9. This filing is confidential, as it refers to confidential Rule 107 matters and information concerning a witness whose identity is not public.

V. RELIEF REQUESTED

10. For the foregoing reasons, the Trial Panel should authorise the measures set out at paragraph 6-7 above for the Witness’s testimony.

Word Count: 972



Kimberly P. West

Specialist Prosecutor

Friday, 24 November 2023

At The Hague, the Netherlands.

⁹ Decision, KSC-BC-2020-06/F01847, para.15.

¹⁰ ICTY, *Prosecutor v. Milutinović et al.*, Trial Chamber, IT-05-87-T, Decision on Prosecution Second Renewed Motion for Leave to Amend its Rule 65 Ter List to Add Michael Phillips and Shaun Byrnes, 12 March 2007 (*‘Milutinović Decision’*), para.32.

¹¹ Decision, KSC-BC-2020-06/F01847, para.26; *See Milutinović Decision*, paras.33-34.