

**In:** KSC-BC-2023-10

**The Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala**

**Before:** Pre-Trial Judge

Judge Nicolas Guillou

**Registrar:** Fidelma Donlon

**Filing Participant:** Specialist Counsel for Sabit Januzi

**Date:** 06 March 2023

**Language:** English

**Classification:** Public

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Public Redacted Version of Challenge to A7 Redaction pursuant to Paragraph 102 of the Framework Decision on Disclosure of Evidence and Related Matters

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## I. INTRODUCTION

1. On 24 October 2023, the Pre-Trial Judge set out the Framework Decision on Disclosure of Evidence and Related Matters<sup>1</sup>.
2. At paragraph 107 thereof, the Pre-Trial Judge provided categories of information which may be redacted by the disclosing Party without prior judicial authorisation, including: ...

**Category "A.7":** Other redactions under Rule 108(1)(a) of the Rules, insofar as disclosure of the redacted information would prejudice ongoing or future investigations.

3. At paragraphs 98 and 102, the Pre-Trial Judge provided that the receiving Party may challenge any specific redaction it believes to be unwarranted or if it believes that a specific redaction should be lifted as a result of changed circumstances, by way of application to the Pre-Trial Judge, in the event that attempts to resolve the matter by agreement between the Parties are unsuccessful.
4. On 15 December 2023, as part of Disclosure 6, the SPO disclosed [REDACTED].
5. At page 13 lines 6-8 and page 13 line 17, the commentary given by [REDACTED] contained redactions marked A.7.

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<sup>1</sup> KSC-BC-2023-10/F00076/RED, *Framework Decision on Disclosure of Evidence and Related Matters*, Pre-Trial Judge, 24 October 2023, Public

6. During *inter partes* correspondence in relation to those redactions, the SPO has asserted that: “the A.7 redactions applied to page [REDACTED]”.

7. The Accused hereby challenges the impugned redactions.

## II. SUBMISSIONS

8. The passage containing the impugned redactions is the very passage in which, it is said, [REDACTED].

9. It is anticipated at this stage that the admissibility of the [REDACTED] will itself be challenged by the Accused pursuant to Rule 138 of the Rules. The precise circumstances in which the [REDACTED] will be crucial to the fair determination of that challenge.

10. Further, even if admissible at trial, the Panel is required to ‘take into account the manner in which the evidence was collected and the effect that this might have on the course and fairness of the proceedings’ (Rule 139(7) of the Rules). The matters referred to in paragraph 9 above remain relevant even if the evidence [REDACTED] is admitted at trial.

11. It is further anticipated that an application to stay proceedings as an abuse of process will be made by the Accused on the basis that important evidence relating to [REDACTED] has been lost. The precise circumstances in which the [REDACTED] in which it has subsequently been lost (such as the state of mind of [REDACTED]) will be crucial to the fair determination of that challenge.

10. The Impugned Redactions at page [REDACTED] particularly given that the interviewer, [REDACTED] does not express any surprise that there is a [REDACTED]. Any suggestion that the A.7 redactions in lines 6-9 are ‘unrelated to the [REDACTED]’ does not make sense, given that they immediately precede,

and lead to, the words, '[REDACTED]', at least in Witness 1's mind, because they lead Witness 1 from discussing a [REDACTED] to Witness 1 turning *back* to [REDACTED].

12. The Impugned Redactions at page 13 line 17 come *in the middle* of a passage in which Witness 1 is [REDACTED]:

"[REDACTED]"

13. Again, any suggestion that the A.7 redactions in line 17 are 'unrelated to the substantive account being relayed by the witness' does not make sense, given that they are immediately preceded by the words '[REDACTED]' and immediately succeeded by the words, '[REDACTED]'.

14. The Impugned Redactions appear clearly relate to '[REDACTED]'.

15. Further, the Impugned Redactions are applied to the answers of Witness 1. They are not redactions to the questions from any SPO officer. To the extent that they relate to '[REDACTED]' they are indicative of the state of mind of Witness 1, and the circumstances in which the [REDACTED].

16. There can be no suggestion that the redacted information relates to confidential and sensitive [REDACTED], as the words redacted are the words of Witness 1.

17. Contrary to the assertion by the SPO that the redactions relate to [REDACTED], it is clear from the context that the redacted words must relate, in the mind of Witness 1 at least, to [REDACTED].

18. It is clear that the words subject to the Impugned Redactions are part and parcel of the account given by Witness 1 as to the circumstances in which [REDACTED]

and should be disclosed.

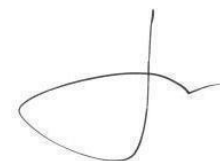
### III. CONCLUSION

19. The explanation for the redactions given by the SPO is not accepted for the reasons above.
20. The general principle is that full disclosure of all material and relevant evidence is required, while withholding information is the exception.
21. The Impugned Redactions should be: (i) assessed on a case-by-case basis by the Pre-Trial Judge according to the principles set out in paragraph 95 of the Framework Decision on Disclosure of Evidence and Related Matters, and (ii) thereafter lifted for the reasons set out above.

### IV. CLASSIFICATION

22. This filing is classified as confidential pursuant to Rule 82(4) of the Rules.

Word count: 1485 words



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06 March 2024

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