



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA 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:** 2 February 2024

**Language:** English

**Classification:** Public

---

**Public Redacted Version of**

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

---

**Specialist Prosecutor**

Kimberly P. West

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Victims**

Simon Laws

**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 12 July 2023, the Panel, *inter alia*, ordered the Specialist Prosecutor Office (“SPO”) to continue to seek clearance from: (i) the [REDACTED] to disclose [REDACTED] (“[REDACTED] Document”); and (ii) [REDACTED] to disclose 7008921-7008935, 7005899-7005918, 7009623-7009624, 7009632-7009635, 7009636-7009638, 7009656-7009658, and 7009694-7009696 (“[REDACTED] Documents”).<sup>1</sup>

2. On 8 December 2023, the SPO requested relief from its disclosure obligations in relation to the [REDACTED] Document, the [REDACTED] Documents and one further document, namely a draft witness statement of an individual who is not a witness in this case (“Annex 1 Document”), as it has been unable to obtain clearance to disclose these documents from the [REDACTED] and [REDACTED] (“Request”).<sup>2</sup> The SPO argues that no prejudice is caused by granting the Request as: (i) the same, or similar information, has been disclosed to the Defence in other documents; and (ii) there are applicable safeguards, including the opportunity for judicial review.<sup>3</sup>

3. The Defence did not respond to the Request.

---

<sup>1</sup> F01667, Panel, *Decision on the Fifth Specialist Prosecutor’s Rule 107(2) Request* (“Decision on SPO’s Fifth Rule 107(2) Request”), 12 July 2023, strictly confidential and *ex parte*, paras 15, 21, 28(c) (a confidential redacted version was filed on the same day, F01667/RED).

<sup>2</sup> F01991, Specialist Prosecutor, *Prosecution Rule 107(2) Request*, 8 December 2023, strictly confidential and *ex parte*, paras 1-2, 14, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential (confidential and public redacted versions were filed on the same day, F01991/CONF/RED and F01991/RED).

<sup>3</sup> Request, paras 2, 5, 7-9-12.

## II. DISCUSSION

### A. ANNEX 1 DOCUMENT

4. The SPO submits that the Annex 1 Document: (i) is a draft statement of an individual who is not a witness in the case; (ii) concerns an abduction at an uncharged location and hearsay information of other uncharged events in June and July 1999; (iii) the same or similar information is available to the Defence through other disclosed documents; and (iv) an anonymised summary of the Annex 1 Document will be made available to the Defence.<sup>4</sup>

5. As regards the necessity of the requested measures, the Panel notes that the SPO was unable to obtain clearance for the Annex 1 Document.<sup>5</sup> The Panel finds that the Annex 1 Document contains confidential and sensitive information requiring protection under Article 58 and Rule 107(1). Accordingly, without consent from the information provider, the Panel finds it necessary to currently withhold the Annex 1 Document.

6. As regards the proportionality of the requested measures, the Panel notes that the Annex 1 Document: (i) is a draft witness statement of an individual who is not a proposed SPO witness in the current proceedings;<sup>6</sup> (ii) concerns an abduction at a location which is not charged in the Indictment;<sup>7</sup> (iii) similar information is available to the Defence in other disclosed documents;<sup>8</sup> and (iv) the SPO will disclose a summary of the Annex 1 Document to the Defence.<sup>9</sup> The Panel considers that these are appropriate counterbalancing measures, in the present circumstances, to uphold the Accused's rights under the Law. The Panel therefore finds that withholding this item will not cause prejudice to the Defence and that

---

<sup>4</sup> Request, para. 5.

<sup>5</sup> Request, para. 3.

<sup>6</sup> Request, para. 5; Annex 1 to the Request.

<sup>7</sup> Request, para. 5; Annex 1 to the Request.

<sup>8</sup> Request, para. 5; *See also* [REDACTED], SITF00294869-00294872, SPOE00068414-00068418; Disclosures 350, 420, 699.

<sup>9</sup> Request, para. 5; Annex 2 to the Request.

the requested measure is proportionate.

7. In light of the above, the Panel grants the request to withhold the Annex 1 Document.

#### B. [REDACTED] DOCUMENT

8. The SPO submits that the [REDACTED] Document is a compilation of documents consisting of: (i) photo sheets, field reports, statements, DNA reports and other case materials relating to efforts to identify human remains buried at the [REDACTED]; (ii) material from [REDACTED] listing names of missing persons; and (iii) a copy of part one of a book entitled [REDACTED].<sup>10</sup> The SPO contends that, while the [REDACTED] Document is relevant as the information contained therein concerns bodies discovered near Lake Radoniq/Radonjić, where the remains of a murder victim named in the Indictment were found, no counterbalancing measures are necessary and no prejudice arises from withholding this item as similar information is available to the Defence elsewhere.<sup>11</sup>

9. At the outset, the Panel recalls that it would not relieve the SPO of its obligation to disclose the [REDACTED] Document while clearance remained pending or consultation with the information provider is still ongoing as such a request is premature.<sup>12</sup> The Panel observes that the SPO now contends that, while it has not received a final response from [REDACTED], who in turn is seeking similar clearance from the original provider, its request has effectively been

---

<sup>10</sup> Request, para. 6.

<sup>11</sup> Request, para. 7 referring to F01482/A01, Specialist Prosecutor, *Annex 1 to Prosecution Rule 107(2) Request* (“Annex 1 to Prosecution Rule 107(2) Request of 26 April 2023”), 26 April 2023, strictly confidential and *ex parte*, pp. 10-210; F01482/A03, Specialist Prosecutor, *Annex 3 to Prosecution Rule 107(2) Request* (“Annex 3 to Prosecution Rule 107(2) Request of 26 April 2023”), 26 April 2023, strictly confidential and *ex parte*; F01482/CONF/RED/A01, Specialist Prosecutor, *Annex 3 to Confidential Redacted Version of Prosecution Rule 107(2) Request*, 28 April 2023, confidential.

<sup>12</sup> Decision on SPO’s Fifth Rule 107(2) Request, para. 9.

denied considering: (i) clearance has been pending for more than three years, (ii) the stage of the proceedings; and (iii) the absence of any indication that resolution may be obtained in the foreseeable future.<sup>13</sup> In this respect, the Panel reiterates its prior finding that the Rules do not provide for an exception to disclosure in the circumstances where the SPO's request for clearance remains pending and when there is no indication that consultations will not continue in the future.<sup>14</sup> Accordingly, consistent with the Rules, the Panel orders the SPO to continue its consultations with the information provider to seek clearance to disclose the [REDACTED] Document with a view to enable it to fulfil its disclosure obligations.

### C. [REDACTED] DOCUMENTS

10. The SPO submits that the [REDACTED] Documents are: (i) an [REDACTED] report relating to [REDACTED]; (ii) an [REDACTED] report concerning the [REDACTED]; and (iii) [REDACTED] reports relating to crimes allegedly committed by a group of KLA members in Ferizaj/Uroševac in late June 1999.<sup>15</sup> The SPO contends that no counterbalancing measures are necessary and no prejudice arises from the non-disclosure as either a summary of the relevant information from the documents has been provided to the Defence, or is available to the Defence elsewhere.<sup>16</sup>

11. As regards the necessity of the requested measures, the Panel notes that the SPO was unable to obtain clearance for the [REDACTED] Documents. The Panel finds that the [REDACTED] Documents contain confidential and sensitive information requiring protection under Article 58 and Rule 107(1). Accordingly,

---

<sup>13</sup> Request, para. 4.

<sup>14</sup> Decision on SPO's Fifth Rule 107 Request, para. 9.

<sup>15</sup> Request, paras 10-12.

<sup>16</sup> Request, paras 9-12.

without consent from the information provider, the Panel finds it necessary to currently withhold the [REDACTED] Documents.

12. As regards the proportionality of the requested measures, the Panel notes that: (i) large parts of the [REDACTED] Documents are not relevant as they concern crimes at a location not charged in the Indictment, or information and events outside the temporal scope of the Indictment, which otherwise do not have bearing on the events within the temporal scope of the Indictment;<sup>17</sup> (ii) same, or similar, information is available to the Defence elsewhere;<sup>18</sup> and (iii) summaries of two of the [REDACTED] Documents (7008921-7008935 and 7005899-7005918) have already been provided to the Defence.<sup>19</sup> The Panel considers that these are appropriate counterbalancing measures, in the present circumstances, to uphold the Accused's rights under the Law. The Panel therefore finds that withholding these items will not cause prejudice to the Defence and that the requested measure is proportionate.

13. In light of the above, the Panel grants the request to withhold the [REDACTED] Documents.

---

<sup>17</sup> See [REDACTED] Documents.

<sup>18</sup> See 7009230-7009261, SPOE00329274-SPOE00329360, pp. SPOE00329333-SPOE00329351; 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; 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; See also Disclosures 608, 699.

<sup>19</sup> Request, paras 10-11; See also F01482/A04, Specialist Prosecutor, *Annex 4 to Prosecution Rule 107(2) Request*, 26 April 2023, strictly confidential and *ex parte*, pp. 12-13 (a confidential redacted version was filed on 28 April 2023, F01482/A02/CONF/RED).

III. DISPOSITION

14. For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS** the Request, in part;
- b) **AUTHORISES** the SPO to currently withhold the Annex 1 Document and the [REDACTED] Documents; and
- c) **ORDERS** the SPO to continue to seek clearance to disclose the [REDACTED] Document.



---

**Judge Charles L. Smith, III**

**Presiding Judge**

Dated this Friday, 2 February 2024

At The Hague, the Netherlands.