



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

**Date:** 7 April 2025

**Language:** English

**Classification:** Public

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**Prosecution reponse to 'Veseli Defence Request to Access Confidential Material'  
(F03062)**

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## I. INTRODUCTION

1. The Specialist Prosecutor's Office ('SPO') does not object to Defence access to the *Mustafa*<sup>1</sup> and *Shala*<sup>2</sup> filings identified in the Request.<sup>3</sup> The Request for access to certain *Gucati*<sup>4</sup> filings, however, should be rejected, as no legitimate forensic purpose has been shown.<sup>5</sup>

2. As a preliminary matter, the Request does not seek or concern a variation of protective measures, considering that protective measures continue to apply *mutatis mutandis* in any subsequent proceedings.<sup>6</sup> Nevertheless, the President previously applied Rule 81(2) of the Rules<sup>7</sup> to a similar request, finding that, as the original Panel was no longer seized of the case, it should be referred to the Panel seized of the subsequent proceedings.<sup>8</sup> No Panel is currently seized of the *Mustafa* and *Gucati* cases, while a Court of Appeals Panel is currently seized of the *Shala* case.<sup>9</sup> Considering the ambiguity in the legal framework, noting applicable consultation requirements,<sup>10</sup> and

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<sup>1</sup> *Specialist Prosecutor v. Mustafa*, KSC-BC-2020-05.

<sup>2</sup> *Specialist Prosecutor v. Shala*, KSC-BC-2020-04.

<sup>3</sup> Veseli Defence Request to Access Confidential Material, KSC-BC-2020-06/F03062, 27 March 2025 ('Request'), paras 6, 10, 18. *See also* Thaçi Defence Joinder to 'Veseli Defence Request to Access Confidential Material' (F03062), KSC-BC-2020-06/F03063, 28 March 2025. This response is without prejudice to any position taken by Victims' Counsel in relation to filings KSC-BC-2020-04/F00640/RED and KSC-BC-2020-05/F00325/RED.

<sup>4</sup> *Specialist Prosecutor v. Guçati and Haradinaj*, KSC-BC-2020-07.

<sup>5</sup> Request, KSC-BC-2020-06/F03062, paras 15, 18. The applicable law, including the legitimate forensic purpose requirement, has been set out in previous decisions. *See e.g.* Decision on Prosecution Request Concerning Access to Confidential Versions of Judgments from Case KSC-BC-2020-05, KSC-BC-2020-06/F02276, 30 April 2024 ('Access Decision'), paras 7-8.

<sup>6</sup> Rule 81(1)(a).

<sup>7</sup> 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.

<sup>8</sup> *Specialist Prosecutor v. Mustafa*, Decision Referring a Request to Trial Panel II, KSC-CA-2023-02/F00043, 12 February 2024 ('*Mustafa* Decision'), para.6.

<sup>9</sup> KSC-CA-2024-03.

<sup>10</sup> While this Panel correctly did not address a similar request under the Rule 81(2) framework, it did consult with the Trial and Court of Appeals Panel Judges from the initial proceedings, consistent with Rule 81(4). *See* Access Decision, KSC-BC-2020-06/F02276, para.11.

in the interest of expeditiousness, the SPO does not object to this Panel's resolution of the Request should it find that it is competent to do so.<sup>11</sup>

## II. SUBMISSIONS

3. Considering (i) that the concerned filings have been specifically identified, (ii) the significant overlap between the cases, (iii) that the underlying evidence and information has been disclosed, as appropriate, pursuant to Rules 81(1)(b) and 102-103, (iv) that applicable protective measures continue to apply in this case, and (v) that the Defence's access to the confidential information in the requested filings does not pose an increased risk to witnesses or victims,<sup>12</sup> the SPO does not object to the Defence's access to the identified filings in the *Shala* and *Mustafa* cases.<sup>13</sup>

4. In relation to the identified *Gucati* filings,<sup>14</sup> the Defence has failed to establish any legitimate forensic purpose. The Request notes that 'the relevance of the material sought may be demonstrated by showing the existence of a nexus between the applicant's case and the case from which such material is sought',<sup>15</sup> yet neglects to make any attempt to establish such a link between this case and the *Gucati* case.<sup>16</sup>

5. The Defence attempts to establish materiality by claiming that access to the *Gucati* filings will enable understanding of the Trial Panel's reasoning and application

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<sup>11</sup> In relation to those parts of the Request concerning *Mustafa* and *Gucati* filings, see Access Decision, KSC-BC-2020-06/F02276, para.7 (noting the Panel's discretion to grant access to parts of the record of 'a closed or completed case').

<sup>12</sup> See, similarly, Access Decision, KSC-BC-2020-06/F02276, para.11.

<sup>13</sup> Request, KSC-BC-2020-06/F03062, paras 6, 10.

<sup>14</sup> Request, KSC-BC-2020-06/F03062, para.15.

<sup>15</sup> Request, KSC-BC-2020-06/F03062, para.4.

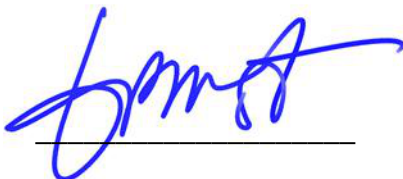
<sup>16</sup> See, similarly, ICTY, *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, Order on Pasko Ljubičić's Motion for Access to Confidential Supporting Material, Transcripts and Exhibits in the Kordić and Čerkez Case, 19 July 2002, p.3; ICTY, *Prosecutor v. Simić*, IT-95-9-A, Appeal Judgement, 28 November 2006, paras 214, 217; ICTY, *Prosecutor v. Mladić*, IT-09-92-PT, Decision on Defence Request for Access to Confidential Materials From Krstić Case, 21 March 2012, para.5.

of Rule 130 in those proceedings.<sup>17</sup> In fact, the *Gucati* Rule 130 Decision is public<sup>18</sup> and the information redacted in the Parties' related filings is not relevant to these proceedings and does not concern the Rule 130 standard or its application. The Defence fails to explain how any further information from these filings would materially assist its preparations in this case.

### III. CONCLUSION

6. For the foregoing reasons, while the SPO does not object to the Request insofar as it concerns specifically identified filings in *Shala* and *Mustafa*, the Request for access to the *Gucati* filings should be denied.

**Word Count: 809**



**Kimberly P. West**

**Specialist Prosecutor**

Monday, 7 April 2025

At The Hague, the Netherlands.

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<sup>17</sup> Request, KSC-BC-2020-06/F03062, para.16.

<sup>18</sup> *Specialist Prosecutor v. Guwati and Haradinaj*, Decision on the Defence Motions to Dismiss Charges, KSC-BC-2020-07/F00450, 26 November 2021 ('*Gucati* Rule 130 Decision').