

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 Counsel for Hashim Thaçi  
Specialist Counsel for Kadri Veseli  
Specialist Counsel for Rexhep Selimi  
Specialist Counsel for Jakup Krasniqi

Date:

20 May 2025

Language:

English

Classification:

Public

Public Redacted Version of Urgent Joint Defence Request to Access Confidential Material

<div>Specialist Prosecutor’s Office</div> <div>Kimberly P. West</div>	<div>Counsel for Hashim Thaçi</div> <div>Luka Misetić</div>
	<div>Counsel for Kadri Veseli</div> <div>Rodney Dixon</div>
<div>Counsel for Victims</div> <div>Simon Laws</div>	<div>Counsel for Rexhep Selimi</div> <div>Geoffrey Roberts</div>
	<div>Counsel for Jakup Krasniqi</div> <div>Venkateswari Alagendra</div>

## I. INTRODUCTION

1. The Defence for Messrs. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi ("the Defence") hereby requests, pursuant to Rule 81, Rule 82(1) and (5) of the Rules of Evidence and Procedure and Article 70 of the Registry Practice Direction Files and Filings before the KSC, to access and use, on a confidential basis, confidential filings and/or annexes from Prosecutor v. *Pjetër Shala* (Case KSC-BC-2020-04) and Prosecutor v. *Salih Mustafa* (Case KSC-BC-2020-05).
2. The requested material is specifically identified, there is a legitimate forensic purpose for the request and would facilitate fair and expeditious proceedings in *Thaçi et al.* Access to the requested material is necessary for the Defence to be able to effectively prepare the response to F03160 "*Victims' Counsel's submission of expert reports with a request to admit them into evidence*"<sup>1</sup> due on 9 June 2025, and more generally the upcoming Victims' case.
3. This request should have no impact on applicable protective measures which shall continue to have effect in *Thaçi et al.* Any reference to or use of confidential portions of the filings would occur on a confidential basis.

## II. SUBMISSIONS

4. International Tribunals have held that a party is entitled to seek material from any source, including another case before the Tribunal, to assist in the preparation of its case.<sup>2</sup> The material sought should be specifically identified and the applicant seeking access to confidential material must demonstrate a legitimate forensic

---

<sup>1</sup> KSC-BC-2020-06/F03160, Victims' Counsel, Victims' Counsel's submission of expert reports with a request to admit them into evidence with eight confidential annexes, confidential, 2 May 2025 ("Victims' Counsel submission of expert reports").

<sup>2</sup> See, e.g. *Theoneste Bagosora et al. v. The Prosecutor*, Case No. ICTR.98-41-A, Decision on Augustin Ndirabatware Motion for Disclosure of Confidential Material Relating to Witness DAK, 23 July 2010, paras. 10-11; *Prosecutor v. Kvocka et al.*, Case No. IT-98-30/1-A, Decision on Momcilo Gruban's Motion for Access to Material, 13 January 2003, para. 3, *see also* footnote 2.

purpose.<sup>3</sup> In this regard, consideration should be given to the relevance of the material sought which may be demonstrated by showing the existence of a nexus between the applicant's case and the case from which such material is sought and that this material is likely to assist his case materially or that there is at least a good chance that it would.<sup>4</sup> The Trial Panel assessed the request in light of "the Defence's right to receive all material and relevant evidence or facts, pursuant to Article 21(6), and the need to ensure the protection of victims and witnesses, pursuant to Article 23" and held that the Panel had discretion to grant access to parts of the record of a closed or completed case.<sup>5</sup>

5. Victims' Counsel, in *Thaçi et al.* submitted reports which were already admitted in other cases: one iMMO report from Case 04 and two iMMO reports from Case 05 as well as one report authored by Dr Lerz in Case 04 and one in Case 05 ("Expert Reports").<sup>6</sup> Victims' Counsel requested the Panel to admit them into evidence.<sup>7</sup>

6. The iMMO Reports in Case 05 concern the physical and psychological harm suffered by V08/05 [REDACTED] and V09/05 [REDACTED] whereas the Report in Case 04 concerns the physical and psychological harm suffered by V01/04 [REDACTED].<sup>8</sup> The report prepared by Dr Lerz in Case 04 concerns all of the VPPs in that case. With regard to V01/04 [REDACTED], Dr Lerz gives a calculation that

---

<sup>3</sup> KSC-BC-2020-06/F02276, Trial Panel II, *Decision on Prosecution Request Concerning Access to Confidential Versions of Judgments from Case KSC-BC-2020-05*, 30 April 2024, Public, para 8. See also e.g. ICTY, *Prosecutor v. Limaj*, IT-03-66-T, Decision on Motion of Assigned Counsel in Milosevic for Variance of Protective Measures pursuant to Rule 75, 14 April 2005, p. 2; *Prosecutor v. Lukic*, IT98-32/1-T, Decision on Motion by Radovan Karadzic for Access to Confidential Materials in the Lukic and Lukic Case, 10 July 2009, para. 9; ICTR, *The Prosecutor v. Edouard Karemera et al.*, Appeals Chamber, Decision on Jacques Mungwarere's Motion for Access to Confidential Material, 31 May 2012, para. 17.

<sup>4</sup> ICTR, *The Prosecutor v. Edouard Karemera et al.*, Appeals Chamber, Decision on Jacques Mungwarere's Motion for Access to Confidential Material, 31 May 2012, para. 17. See also, *Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-2000-55A-A, Decision on Ildephonse Nizeyimana's Request for Access to Closed Session Transcripts, 31 March 2011, para. 3; *Theoneste Bagosora et al. v. The Prosecutor*, Case No. ICTR.98-41-A, Decision on Augustin Ndirabatware Motion for Disclosure of Confidential Material Relating to Witness DAK, 23 July 2010, paras. 10-11. See also *Prosecutor v. Kvocka et al.*, Case No. IT-98-30/1-A, Decision on Momcilo Gruban's Motion for Access to Material, 13 January 2003, paras 3-4 and footnote 2.

<sup>5</sup> KSC-BC-2020-06/F02276, Trial Panel II, *Decision on Prosecution Request Concerning Access to Confidential Versions of Judgments from Case KSC-BC-2020-05*, 30 April 2024, Public, para 7. See also footnote 12.

<sup>6</sup> Victims' Counsel submission of expert reports, para. 31.

<sup>7</sup> *Ibid.*

<sup>8</sup> Victims' Counsel submission of expert reports, para. 13.

provides an estimate for his loss of income as a result of his inability to work. The report prepared by Dr Lerz in Case 05 concerns the loss of income and/or loss of opportunities suffered by V08/05 [REDACTED], V09/05 [REDACTED], and V10/05 [REDACTED] due to the harm that they allegedly suffered.<sup>9</sup>

7. The Defence is entitled to access the confidential filings and/or annexes related to the Expert Reports. The arguments put by the Parties and reasoning applied in those cases are relevant for the Defence in Case 06. The overlap between Case 06 and Cases 04 and 05 is obvious and was already acknowledged by the Panel.<sup>10</sup> The crimes for which Mr. Shala and Mr. Mustafa were charged are identical to the temporal and geographical scope as those with which the Accused are charged. Also, the Accused have been charged under the Joint Criminal Enterprise (“JCE”) mode of liability within the temporal period of March 1998 through September 1999 and within the context of the same alleged armed conflict between the KLA and FRY forces. The Defence and SPO previously requested for the *Thaçi et al.* Panel, Parties and Victims’ Counsel to access and use confidential filings from Case 04 and Case 05 and the requests were granted.<sup>11</sup> In the present case, the Expert Reports relate to Victims participating in the proceedings in Case 06.

8. The Defence submits that the requested material is sufficiently identified as it only relates to thirteen specific filings or annexes, has a legitimate forensic purpose considering the factual nexus between the cases and that the requested material will assist the Defence materially.

---

<sup>9</sup> Victims’ Counsel submission of expert reports, paras 23-24.

<sup>10</sup> English transcript of 23 April 2025, p. 26137, lines. 7-16; KSC-BC-2020-06/F02276, Trial Panel II, *Decision on Prosecution Request Concerning Access to Confidential Versions of Judgments from Case KSC-BC-2020-05*, 30 April 2024, Public, para. 10.

<sup>11</sup> KSC-BC-2020-06/F02276, Trial Panel II, *Decision on Prosecution Request Concerning Access to Confidential Versions of Judgments from Case KSC-BC-2020-05*, 30 April 2024, Public; English transcript of 23 April 2025, confidential, p. 26135, line 23-p. 26138, line 13.

**Prosecutor v. Pjetër Shala, Case KSC-BC-2020-04**

9. The Defence requests access and use, on a confidential basis, to the following confidential filings from Prosecutor v. *Pjetër Shala*, Case KSC-BC-2020-04:

- **F00558RED, Public Redacted Version of ‘Victims’ Counsel’s Submissions pursuant to the Order of 4 May 2023 setting further procedural steps for the presentation of evidence by Victims’ Counsel, 30 June 2023, Annexes confidential (1 and 4 cited in footnote 6 and 10-11):** The Defence requests access to the confidential version of the filing and access, at least, to Annexes 1 and 4 cited in footnotes 6, 10 and 11 of KSC-BC-2020-06/F03160 Victims’ Counsel submission of expert reports.
- **F00578RED, Public Redacted Version of the Defence Notice on Evidence of Victims’ Counsel’s Expert Witnesses Pursuant to the Trial Panel’s Order of 4 May 2023, 13 July 2023:** The Defence requests access to the confidential version of the filing.
- **F00585RED, Public Redacted Version of Defence Response to the Victims’ Counsel’s Submissions pursuant to the Order of 4 May 2023 setting further procedural steps for the presentation of evidence by Victims’ Counsel, 12 July 2023, six confidential annexes:** The Defence requests the confidential version of the filing and access to the annexes.
- **F00687, Defence Submission of Written Questions for Victims’ Counsel’s Expert Witness, 11 October 2023, public with Annex 1 confidential:** The Defence requests access to the confidential Annex 1.
- **F00696, Victims’ Counsel’s Submission of Expert’s Answers to Written Questions from the Defence, 27 October 2023, public with Annex 1 confidential:** The Defence requests access to the confidential Annex 1.
- **F00866RED, Public redacted version of Reparation Order against Pjetër Shala, 29 November 2024:** The Defence requests access to the confidential version of the filing or, to the least, the paragraphs related to the Expert Reports

and the Victims both admitted in Case 04 and Case 06 (paras. 100-119, 164-165, 197-200).

- **F00711RED, Defence Objection to the Admissibility of Victims' Counsels Expert Witness Report and Request to Call the Expert Witness to Testify Live, 8 November 2023, confidential:** The Defence requests access to the confidential version of the filing.

**Prosecutor v. *Salih Mustafa*, Case KSC-BC-2020-05**

10. The Defence requests access and use, on a confidential basis, to the following confidential filings from Prosecutor v. *Salih Mustafa*, Case KSC-BC-2020-05:

- **F00370, Victims' Counsel report pursuant to the Oral Order of 21 March 2022, 31 March 2022, strictly confidential and ex parte:** The Defence requests access to the confidential version of the filing.
- **F00417, Victims' Counsel's Submission of medical reports pertaining to Victims 08/05 and 09/05, 24 May 2022, public with two Annexes strictly confidential:** The Defence requests access to the two annexes, cited in footnote 5 of KSC-BC-2020-06/F03160.
- **F00430RED, Public redacted version of Decision under Rules 132 and 149 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers on evidence called by the Panel, 3 June 2022:** The Defence requests access to the confidential version of the filing, cited in footnote 20 of KSC-BC-2020-06/F03160.
- **F00434RED, Public redacted version of the Defence request to present evidence in rejoinder and related matters, following the order of the Panel as prescribed in filing F00430, 9 June 2022, with confidential Annex 1:** The Defence requests access to the confidential version of the filing and Annex 1.

- **F00440, Victims' Counsel's Submission of report pertaining to economic loss, 23 June 2022**, public with confidential Annex 1: The Defence requests access to the confidential Annex 1, cited in footnote 5 of KSC-BC-2020-06/F03160.
- **F00517REDCOR, Corrected version of Public redacted version of Reparation Order against Salih Mustafa, 6 April 2023, with 4 Annexes strictly confidential and ex parte**: The Defence requests access to the confidential version of the filing or, to the least, the paragraphs related to the Expert Reports and the Victims both admitted in Case 05 and Case 06 (paras. 131-142, 146-156, 159-169, 202, 230-232, 236, 237, 240).

### III. CONCLUSION

11. In light of the foregoing, the Defence requests to access and use, on a confidential basis, the confidential filings from:

- Prosecutor v. *Pjetër Shala*: F00558RED; F00578RED; F00585RED; F00687; F00696; F00866RED; F00711RED.
- Prosecutor v. *Salih Mustafa*: F00370; F00417; F00430RED; F00434RED; F00440, F00517REDCOR.

**Word Count: 1873 words**

Tuesday, 20 May 2025,

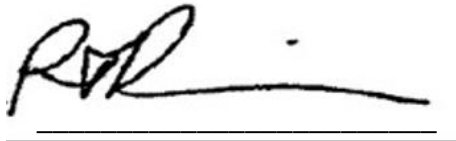
The Hague, The Netherlands



---

Luka Misetic  
Counsel for Hashim Thaçi

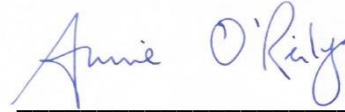




Rodney Dixon KC  
Counsel for Kadri Veseli



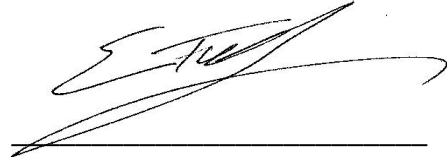
Kerrie Ann Rowan  
Co-Counsel for Kadri Veseli



Annie O'Reilly  
Co-Counsel for Kadri Veseli



Geoffrey Roberts  
Lead Counsel for Rexhep Selimi



Eric Tully  
Co-counsel for Rexhep Selimi



Chad Mair  
Co-counsel for Rexhep Selimi



Rudina Jasini  
Co-counsel for Rexhep Selimi



Venkateswari Alagendra  
Lead Counsel for Jakup Krasniqi



Shyamala Alagendra Khan  
Co-Counsel for Jakup Krasniqi





---

Aidan Ellis  
Co-Counsel for Jakup Krasniqi



---

Victor Băieșu  
Co-Counsel for Jakup Krasniqi