

In: KSC-BC-2023-12

Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi

Before: Single Trial Judge
Judge Christopher Gosnell

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hashim Thaçi

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**Public Redacted Version of Corrected Version of Thaçi Defence
Submissions Relating to Witness 8**

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I. INTRODUCTION

1. The Defence of Mr Hashim Thaçi (“Defence”) files the present submissions regarding the qualification of Mr Koen Herlaar (“Witness 8” or “the Witness”) as an expert witness pursuant to Rule 149 of the Rules of Procedure and Evidence (“Rules”)¹ and the admissibility of his Report,² the Associated Material,³ and his *viva voce* testimony on 3 and 4 March 2026 (collectively “Witness 8’s Evidence”).⁴
2. The Thaçi Defence hereby adopts and endorses as its own the “Joint Kilaj and Smakaj Defence Supplementary Submissions Relating to Witness 8” filed by the Defence for Mr Isni Kilaj (“Kilaj Defence”) and the Defence for Mr Bashkim Smakaj (“Smakaj Defence”) on 10 March 2026 and files separately the present submissions in order to address the issues resulting from Article 58 of the Law on Specialist Chambers (“Law”)⁵ and Rules 107 and 211 raised by the Defence prior to its cross-examination of Witness 8.⁶

II. PROCEDURAL BACKGROUND

3. On 19 September 2025, the Specialist Prosecutor’s Office (“SPO”) filed a list of witnesses including Witness 8 as an expert.⁷

¹ Rules of Procedure and Evidence, KSC-BD-03/Rev3/2020, 2 June 2020 (“Rules”). All references to “Rules” or “Rules” herein are to the Rules unless otherwise specified.

² 118299-118304.

³ [REDACTED].

⁴ KSC-BC-2023-12, T. 3 March 2026, p. 495, line 4 to p. 599, line 7; KSC-BC-2023-12, T. 4 March 2026, p. 602, line 5 to p. 656, line 15.

⁵ Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, 3 August 2015 (“Law”).

⁶ KSC-BC-2023-12, T. 3 March 2026, p. 555, lines 12-18, 22-25, and p. 563, line 22 to p. 565, line 19.

⁷ KSC-BC-2023-12/F00459/A03/COR, Annex 3 to Corrected Version of Prosecution Submission of Pre-Trial Brief, Witness, and Exhibit Lists, 19 September 2025, confidential.

4. On 1 December 2025, the Thaçi Defence, Smakaj Defence, and Kilaj Defence provided notice of their challenges to and wish to cross-examine Witness 8 pursuant to Rule 149(2).⁸
5. On 15 December 2025, the SPO filed a response to the Defence Rule 149(2) Notice and a motion for the admission of the evidence of Witness 8.⁹
6. On 5 January 2026, the Thaçi Defence, Smakaj Defence, and Kilaj Defence filed a joint response to the SPO Motion.¹⁰
7. On 26 January 2026, the Single Trial Judge issued an Interim Decision on the SPO Motion in which he *inter alia* deferred a final decision until after the testimony of Witness 8 and authorized the Defence to file submissions on the qualification of the Witness as an expert and on the admissibility of his evidence no later than two days after the end of the witness's testimony.¹¹
8. Witness 8 testified on 3 and 4 March 2026.¹²
9. During the 3 March 2026 trial hearing, the Single Trial Judge indicated that he sought further submissions from the Defence on the issues relating to Article 58 of the Law and Rules 107 and 211 of the Rules in its submissions regarding Witness 8 pursuant to the Interim Decision.¹³

⁸ KSC-BC-2023-12/F00586, Thaçi Defence, Smakaj Defence, and Kilaj Defence, [Joint Defence Notification Pursuant to Rule 149](#), 1 December 2025, public ("Defence Rule 149(2) Notice").

⁹ KSC-BC-2023-12/F00620, Prosecution Response to Filing F00586 and Motion for Admission of Evidence of Witness 8, 15 December 2025, confidential (public redacted version 7 January 2026) ("SPO Motion").

¹⁰ KSC-BC-2023-12/F00648, Thaçi Defence, Smakaj Defence, and Kilaj Defence, Joint Defence Response to Prosecution Motion for Admission of Evidence of Witness 8 (F00620), 5 January 2026, public.

¹¹ KSC-BC-2023-12/F00691, Single Trial Judge, [Interim Decision on Prosecution Motion for Admission of Evidence of Witness 8](#), 26 January 2026, public ("Interim Decision"), paras 10, 11, 14(a), (b).

¹² KSC-BC-2023-12, T. 3 March 2026, p. 495, line 4 to p. 599, line 7; KSC-BC-2023-12, T. 4 March 2026, p. 602, line 5 to p. 656, line 15.

¹³ KSC-BC-2023-12, T. 3 March 2026, p. 569, lines 3-5.

10. On 4 March 2024, the Single Trial Judge varied the deadlines set out in the Interim Decision, *inter alia* extending the deadline for Defence submissions regarding Witness 8 to 10 March 2025.¹⁴

III. APPLICABLE LAW

11. Article 58 of the Law provides as follows:

Third States and 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. The Rules of Procedure and Evidence shall provide for the procedure for such applications.

12. Rule 107 of the Rules defines the regime applicable to “protected information not subject to disclosure”.

13. Rule 211(2) and (3) of the Rules provide, in relevant part, as follows:

(2) If a Third State or international organisation learns that information subject to Article 58 of the Law is being or is likely to be disclosed at any stage of the proceedings [...], it may make an application to the President for a resolution of the matter, who shall refer the application to the competent Panel.

(3) The Panel may afford protective measures equivalent to those provided for in Rule 80(4)(a)(i) and (ii) or, where appropriate, apply Rule 107 *mutatis mutandis*.

IV. SUBMISSIONS

14. The SPO cannot shield undefined and indeterminate aspects of a witness’s testimony from disclosure, regardless of the SPO’s own knowledge of such information, by invoking Rule 107.¹⁵ Rule 107(1) stipulates that “information which has been provided on a confidential basis [...] shall be protected under Article 58 of the Law”. This formulation, read in conjunction with the text of Article 58 of the Law, does not confer upon any information automatic protective measures. Rather, Rule 107 requires that, in order for such

¹⁴ KSC-BC-2023-12, T. 4 March 2026, p. 660, lines 4-13.

¹⁵ SPO Motion, para. 15.

information to acquire protection, the SPO must make an application before the Panel to be relieved in whole or in part of its disclosure obligation pursuant to Rule 102 and Rule 103, and to seek counterbalancing measures, where appropriate. If the SPO fails to act, Article 58 and Rule 211(2) require that the Third State must make an application to the President who shall refer the matter to the relevant Panel; the Panel then may order protective measures, including by applying Rule 107.

A. THE SPO FAILED TO SEEK RULE 107 MEASURES FOR WITNESS 8

15. The SPO was obliged but failed to invoke the procedure of Rule 107 in calling Witness 8 to testify, knowing that the latter's testimony was subject to a regime of confidentiality imposed by a Third State agency, the NFI.

i. Witness 8's Evidence is Governed by Rule 107

16. Rule 107 is clearly applicable to the purportedly confidential information held by the Witness. This provision serves to incentivize the cooperation of Third States and international organizations with the KSC by providing a procedure for ensuring the confidentiality of sensitive information provided to parties in proceedings before Specialist Chambers.¹⁶ Trial Panel II has granted Rule 107 measures to witnesses who were former employees of foreign governments¹⁷

¹⁶ See *Prosecutor v. Thaçi et al.* ("Case 06"), KSC-BC-2020-06/F01847/RED, Trial Panel II, [Public Redacted Version of Decision on the Prosecution Request for Rule 107 Measures for W04147 and W04868 \(F01764\)](#), 10 October 2023 ("Case 06 Decision F01847"), para. 14; *Case 06*, KSC-BC-2020-06/F02004, Trial Panel II, [Decision on the Specialist Prosecutor's Rule 107\(2\) Request](#), 13 December 2023 ("Case 06 Decision F02004"), para. 5; ICTY, *Prosecutor v. S. Milošević*, IT-02-54-AR108bis & AR73.3, Appeals Chamber, [Public Version of the Confidential Decision on the Interpretation and Application of Rule 70](#), 23 October 2002 ("S. Milošević Appeal Decision"), para. 19; ICTR, *Prosecutor v. Bizimungu et al.*, ICTR-99-50-AR73.6, Appeals Chamber, [Decision on Interlocutory Appeal Relating to the Testimony of former United States Ambassador Robert Flaten](#), 16 July 2007 ("Bizimungu et al. Appeal Decision"), para. 17.

¹⁷ E.g., [Case 06 Decision F01847](#); KSC-BC-2020-06, T. 25 March 2024, p. 13524, line 7 to p. 13525, line 19; KSC-BC-2020-06, T. 19 August 2024, p. 18572, lines 2-24; *Case 06*, KSC-BC-2020-06/F02660/RED, Trial Panel II, [Public Redacted Version of Decision on Prosecution Request for Rule 107 Measures for Witnesses \[REDACTED\], \[REDACTED\], \[REDACTED\], \[REDACTED\], and \[REDACTED\]](#), 18 October 2024 ("Case 06 Decision F02660"); KSC-BC-2020-06, T. 15 September 2025, p. 26477, line 10 to p. 26480, line 22; KSC-BC-2020-06, T. 22 September 2025, p. 27009, line 14 to p. 27010, line 2.

or international organisations.¹⁸ Such measures were also granted by the International Criminal Tribunal for the former Yugoslavia (“ICTY”) and the International Criminal Tribunal for Rwanda (“ICTR”) to witnesses who were employed or formerly employed by foreign governments or international organizations under the analogous provisions of their respective Rules of Procedure and Evidence.¹⁹

17. Firstly, Witness 8 is an employee of a Third State agency, the NFI,²⁰ and the source of his claimed confidentiality constraints appears to be a result of unspecified agreements binding upon the NFI.²¹
18. Secondly, Witness 8’s Report and trial testimony was itself the lead evidence that is subject to Rule 107 because it appears that the NFI would not have allowed Witness 8 to submit the Report or to testify without the SPO’s agreement that certain information would remain confidential and not subject

¹⁸ E.g., [Case 06 Decision F02004](#), paras 1, 5-7.

¹⁹ E.g., [S. Milošević Appeal Decision](#), paras 28-33; [Bizimungu et al. Appeal Decision](#), paras. 20-28; ICTY, *Prosecutor v. Milutinović et al.*, IT-05-87-T, Trial Chamber, [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 et al.* Decision of 12 March 2007”), para. 37; ICTY, *Prosecutor v. D. Milošević*, IT-98-29/1-T, Trial Chamber III, [Decision on Prosecution’s Application for Rule 70 Conditions for Testimony of Witness W-46](#), 12 March 2007 (“*D. Milošević* Decision”), p. 4; ICTY, *Prosecutor v. Gotovina et al.*, IT-06-90-T, Trial Chamber I, [Decision on Prosecution’s Motion to Limit the Scope of Testimony of Witness 116](#), 12 June 2008 (“*Gotovina et al.* Decision of 12 June 2008”), para. 11; ICTY, *Prosecutor v. Gotovina et al.*, IT-06-90-T, Trial Chamber I, [Decision on Gotovina’s Motion to Limit the Scope of Testimony for Witness AG-24](#), 6 July 2009 (“*Gotovina et al.* Decision of 6 July 2009”), para. 12; ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Trial Chamber I, [Decision on Urgent Prosecution Motion for Protective Measures and Conditions for Witness RM-401 pursuant to Rule 70](#), 18 October 2013, paras 8-12.

²⁰ KSC-BC-2023-12, T. 4 March 2026, p. 648, lines 4-11 (“Q. [...] Can you please clarify what is the nature of the NFI? Is it a government agency? A. The NFI is an independent agency that operates under the aegis of the Ministry of Security and Justice. It is indeed a government institution. Q. Thank you. So can we say that you are a civil servant or employee of the public sector? A. That’s correct”).

²¹ 118299-118304, p. 118302; 128444-12844; KSC-BC-2023-12, T. 4 March 2026, p. 625, line 4 to p. 627, line 19.

to disclosure.²² The SPO was obliged to seek Rule 107 measures in order to be able to use Witness 8's Report and to obtain his trial testimony.²³

19. The burden rests upon the SPO, as the party moving Witness 8's report and testimony into evidence, to demonstrate that it was authorized by the NFI to tender that evidence *even in the absence of any protective measures for confidential information, and even in the absence of any limitations on cross-examination*. If the SPO cannot demonstrate that the NFI would have allowed the SPO to tender Witness 8's evidence *even if the Single Trial Judge would require the witness to disclose confidential information on cross-examination*, then the SPO did not have permission to tender Witness 8's Report or testimony, and it must be excluded, not only because the evidence was unlawfully tendered in violation of Rule 107, but also because there was no legal justification under Rule 107 for the Witness to refuse to answer relevant questions on cross-examination, denying the Accused his fundamental right to examine witnesses against him guaranteed under Article 21(4)(f) of the Law.
20. Because the probative value of Witness 8's evidence is outweighed by the prejudicial effect of (i) the SPO's failure to comply with its obligations under Rule 107 and (ii) Witness 8's refusal to answer questions about the basis of his

²² Cf., e.g., ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Trial Chamber, [Decision on the Accused's Fifth Motion for Order pursuant to Rule 70 \(United States of America\)](#), 20 December 2012, para. 8; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Trial Chamber, [Decision on the Accused's Motion for Order Pursuant to Rule 70 \(United Nations\)](#), 24 February 2011, p. 3; ICTR, *Prosecutor v. Bizimungu et al.*, ICTR-99-50-T, Trial Chamber II, [Decision on Casimir Bizimungu's Very Urgent Motion for an Order Applying Rule 70 to Specific Information to be Provided to the Defence by the United States Government](#), 11 December 2006, para. 11.

²³ ICTY, *Prosecutor v. Milutinović et al.*, IT-05-87-T, Trial Chamber, [Second Decision on Prosecution Motion for Leave to Amend its Rule 65 ter Witness List to Add Wesley Clark](#), 16 February 2007 ("*Milutinović et al.* Decision of 16 February 2007"), para. 24 ("once having been furnished with Rule 70 material and the decision having been made by the party to use the material in a trial-related way that involves the Chamber [...], it is the obligation of the party to make the appropriate Rule 70 application to the Chamber in each case in order to give the Chamber the opportunity to determine whether the Rule 70 conditions are consistent with the accused's right to a fair trial").

knowledge,²⁴ resulting in the denial of the Accused's fundamental rights, the Report and testimony of Witness 8 must be excluded under Rules 138(1) and 149(4).

ii. Limitations pursuant to Rule 107 Must be Judicially Authorized

21. Restrictions to the scope of testimony under Rule 107(3) and (4) do not automatically apply to any information the SPO, a Third State, or an international organisation claims is confidential under Article 58 and/or Rule 107(1). Rather, any *a priori* limitations on the scope of permissible examination and cross-examination of a witness pursuant to Rule 107 can only be authorized by the competent Panel,²⁵ upon the receipt of submissions from the calling party and consideration of the proposed limitations and their necessity and proportionality.²⁶ In doing so, the competent Panel must balance any legitimate confidentiality concerns of the Rule 107 provider against the need to ensure a fair trial, including by indicating, identifying, or approving counterbalancing measures as may be necessary for the latter.²⁷
22. Judicial authorization of Rule 107 measures is necessary to ensure that the accused's right to cross-examine witnesses against him under Article 21(4)(f) and Rule 143(3)²⁸ is interfered only in a manner provided "by law" and "subject to the control of the Panel", as required under the KSC's legal

²⁴ Cf. ICTY, *Prosecutor v. Milutinović et al.*, IT-05-87-AR73.1, Appeals Chamber, [Decision on Interlocutory Appeal Against Second Decision Precluding the Prosecution from Adding General Wesley Clark to Its 65 ter Witness List, 20 April 2007](#), para. 20.

²⁵ [Case 06 Decision F01847](#), para. 13; [Case 06 Decision F02004](#), para. 4.

²⁶ E.g., *Case 06*, KSC-BC-2020-06/F01645/RED, Trial Panel II, [Public Redacted Version of Decision on the Specialist Prosecutor's Rule 107\(2\) Request](#), 5 July 2023 ("*Case 06 Decision F01645*"), paras 5-6, 9-10, 17-18, 21-22, 25-26; [Case 06 Decision F01847](#), paras 14-15; [Case 06 Decision F02004](#), paras 5-6; *Case 06*, KSC-BC-2020-06/F03496/RED, Trial Panel II, [Public Redacted Version of Decision on Prosecution Rule 107\(2\) Request \(F03478\)](#), 26 September 2025 ("*Case 06 Decision F03496*"), paras 14-15, 20-22, 27-29.

²⁷ [Case 06 Decision F01645](#), paras 6, 10, 18, 22, 26; [Case 06 Decision F03496](#), paras 22, 29. See also [Bizimungu et al. Appeal Decision](#), para. 18.

²⁸ See KSC-CC-PR-2020-09/F00006, Specialist Chamber of the Constitutional Court, [Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020](#), 22 May 2020, para. 79.

framework.²⁹ If a witness were to be permitted to, *proprio motu*, refuse to answer questions on the basis of confidentiality without prior judicially authorized measures limiting the scope of their testimony pursuant to Rule 107(3) and/or (4), the accused's fair trial rights would be violated.³⁰

23. Significantly, in order for a Panel to be able to authorize Rule 107 measures, it must know the scope of the confidentiality measures which are purportedly necessary to safeguard the Rule 107 provider's confidentiality interests. Without such knowledge, the Panel is not in a position to assess the necessity or proportionality of the requested measures. Nor can a Panel formulate any meaningful Rule 107 measures which can be applied with certainty and predictability without any information as to the scope of confidentiality asserted by the Rule 107 provider.

24. The cross-examination of Witness 8 aptly demonstrated why judicial authorization is required with respect to information falling under Rule 107. All parties and the STJ himself were in the dark regarding what questions Witness 8 could and could not answer. The Witness was effectively left to control the boundaries of his own examination and cross-examination by determining which questions fell within the scope of relevant confidentiality arrangements and which did not, while simultaneously refusing to provide any clarification of the scope of such confidentiality arrangements, asserting this was, itself, also confidential.

²⁹ *Case 06*, KSC-BC-2020-06/F01821, Trial Panel II, [Decision on Prosecution Request for Admission of W03827's Witness Statements Pursuant to Rule 143\(2\) and Defence Request for Reconsideration](#), 28 September 2023 ("*Case 06* Decision F01821"), para. 29, and references cited therein. See also [Case 06 Decision F01847](#), para. 13; [Case 06 Decision F02004](#), para. 4.

³⁰ Cf. [Milutinović et al. Decision of 16 February 2007](#), para. 27 ("[t]o restrict cross-examination to the subject matter predetermined by anyone other than the Chamber with the approval, at least tacit, of the Prosecution is inevitably unfair to the Defence"); [Case 06 Decision F02660](#), paras 32, 37 (refusing to indicate Rule 107 measures which would require the Rule 107 provider to approval the redactions to private session testimony of affected witnesses before that testimony is reclassified as public as this would infringe upon the Panel's control of the proceedings).

25. In contrast, in *Case 06*, where a witness possessed information potentially effected by Rule 107, Trial Panel II was able to issues measures under this provision before their *viva voce* testimony which clearly delineated limits to permissible direct examination and cross-examination, allowing all parties to examine the witness with certainty and predictability as to what material fell within the scope of confidentiality.³¹ Such measures were also frequently framed in the positive sense (i.e., specifying what matters were permissible in direct and cross examination, rather than those that were not).³² The SPO could have thus sought such positive restrictions on the scope of Witness 8's testimony without the NFI having to breach its confidentiality agreements in revealing the full scope of information covered by the international agreements in question.

iii. The SPO Was Obligated to Seek Rule 107 Measures

26. The SPO was under an obligation to seek Rule 107 measures with respect to Witness 8 if it sought to rely on his evidence at trial. The SPO knew that the Witness was testifying subject to outstanding confidentiality arrangements and should have either sought the STJ's authorization to limit the scope of Witness 8 direct and cross-examination in line with such confidentiality requirements pursuant to Rule 107, or not have relied on the Witness or his evidence at all.

27. In her Framework Decision on Disclosure of Evidence and Related Matters, which remains in force at this stage, the Pre-Trial Judge observed that "Rule 107 of the Rules, together with Article 58 of the Law, regulate the disclosure of material which has been provided to the SPO on a confidential basis and solely

³¹ E.g., [Case 06 Decision F01847](#), paras 11, 15-17; [Case 06 Decision F02004](#), paras 2, 5-7.

³² E.g., [Case 06 Decision F01847](#), paras 15-16; [Case 06 Decision F02004](#), para. 6. See, similarly, [Milutinović et al. Decision of 12 March 2007](#), para. 37(b), (c); [D. Milošević Decision](#), p. 4; [Gotovina et al. Decision of 12 June 2008](#), para. 11; [Gotovina et al. Decision of 6 July 2009](#), para. 12; ICTY, *Prosecutor v. Gotovina et al.*, IT-06-90-T, Trial Chamber I, [Decision on Gotovina Defence Motion to Expand Scope of Testimony for Witness 116](#), 20 June 2008, para. 4.

for the purpose of generating new evidence”, further stipulating that “[s]uch material is, in principle, not subject to disclosure unless the information provider consents to such disclosure”.³³ The Pre-Trial Judge noted the SPO’s submission “that Rule 107 clearances are not necessary for material which it currently anticipates tendering into evidence at trial and [...] that it will promptly inform the Pre-Trial Judge should this change”.³⁴ On the basis of the latter undertaking by the SPO, the Pre-Trial Judge ordered “the SPO to promptly bring to her attention any issues regarding material affected by Rule 107 of the Rules”.³⁵

28. In July 2025, the NFI communicated to the SPO in writing that certain subjects of Witness 8’s knowledge and testimony could not be made public because they are confidential [REDACTED] (“NFI Letter”).³⁶ In the same correspondence, the NFI nonetheless indicated that it “[REDACTED]”.³⁷ Furthermore, Witness 8’s Report asserted broader confidentiality, submitting that unspecified information regarding microdots was not discussed therein due to confidentiality agreements.³⁸

29. It must be inferred that the SPO, either explicitly or implicitly, represented to the NFI, at some point prior to Witness 8’s *viva voce* testimony, that the NFI’s confidentiality concerns regarding Witness 8 and his evidence would be respected during the course of the proceedings. Indeed, at trial, Witness 8 testified (and, in fact, was permitted to do so by his employer, the NFI) under the understanding, expressed in Court, that he was free to refuse to answer

³³ KSC-BC-2023-10/F00076, Pre-Trial Judge, Framework Decision on Disclosure of Evidence and Related Matters, 24 October 2023, confidential ([public redacted version](#) issued the same day) (“Framework Decision on Disclosure”), para. 64.

³⁴ Framework Decision on Disclosure, para. 66, *referring to* KSC-BC-2023-12/F00079, Prosecution Submissions for First Status Conference, 12 December 2024, confidential ([public redacted version](#) 16 December 2024), paras 36-37.

³⁵ Framework Decision on Disclosure, paras 67, 104(o).

³⁶ 128444-12844.

³⁷ 128444-12844.

³⁸ 118299-118304, p. 118302.

any questions covered by confidentiality arrangements; he repeatedly claimed that he was [REDACTED].³⁹

30. Should the SPO have informed the NFI that the Witness would be subject to cross-examination that would, beyond the stipulations of Rule 143(3), not be limited in scope and that the Witness could be compelled to testify pursuant to Rule 141(6), the NFI would almost certainly not have permitted the SPO to rely on the Report as an expert report or call the Witness to provide testimony without the indication of measures under Rule 107 guaranteeing the confidentiality in question. The SPO sought no such measures, nor did it bring the matter of Witness 8's testimony being affected by Rule 107 to the attention of the competent Panel as it was required to under the Framework Decision on Disclosure.
31. The exceptional nature and scope of the confidentiality asserted by Witness 8 in response to numerous questions cannot be overstated. The Witness did not simply claim that he could not reveal certain information in public session. Rather, [REDACTED].
32. The extreme nature and breadth of the limitations Witness 8 asserted on the scope of his cross-examination could only have been authorized by the STJ upon receipt of an application by the SPO for Rule 107 measures, detailing their scope, their necessity, and their proportionality. Absent the indication of such measures by the STJ, there existed no basis for the Witness's unprecedented assertion of the right not to answer a broad and unspecified range of questions on the basis of confidentiality agreements the scope of which were also submitted to be confidential.

³⁹ See, *inter alia*, KSC-BC-2023-12, T. 3 March 2026, p. 555, lines 10-11.

iv. The Confidentiality Claimed by Witness 8 Was Incompatible with the Accuseds' Fair Trial Rights

33. Even if the SPO had sought measures under Rule 107, the extraordinary nature, degree, and scope of the confidentiality claimed by the Witness would have represented a wholly disproportionate interference with the Defence's right to cross-examine SPO witnesses under Article 21(4)(f).

34. Limitations on the scope of a witness's testimony through Rule 107 measures have, in the past, been found to be proportionate on the basis that the scope of such limitations would not prevent the accused from "effectively and thoroughly cross-examin[ing] the Witnesses on matters relevant to the case and [from] explor[ing] any issues pertaining to their credibility".⁴⁰ Moreover, whether or not material subject to a request under Rule 107 may be exculpatory in nature has been consistently considered a key factor in determining whether the non-disclosure of material subject to a request under Rule 107 is a proportionate interference with the right of the accused.⁴¹ To ensure proportionality and thus the rights of the Accused, past Rule 107 measures have been narrowly tailored to allow the Accused to cross-examine a witness on any issue directly arising from any statements of the witness and associated exhibits.⁴²

35. Yet, the questions Witness 8 has refused to answer do not concern material of "very marginal, to no relevance to the case",⁴³ but rather relate to matters of great relevance to the assessment of the Witness's evidence, qualification and knowledge, [REDACTED].⁴⁴ In fact, such questions primarily concerned

⁴⁰ [Case 06 Decision F01847](#), para. 15. See also [Milutinović et al. Decision of 12 March 2007](#), paras 31-34, 37; [D. Milošević Decision](#), pp. 3-4.

⁴¹ E.g., [Case 06 Decision F01645](#), paras 6, 18, 22, 26.

⁴² E.g., [Case 06 Decision F01847](#), para. 15; [Case 06 Decision F02004](#), para. 6.

⁴³ [Case 06 Decision F03496](#), paras 15, 21, 28. *Contra* SPO Motion, para. 15.

⁴⁴ KSC-BC-2023-12, T. 3 March 2026, p. 554, lines 5-8.

potentially exculpatory lines of inquiry, for instance, [REDACTED].⁴⁵ [REDACTED],⁴⁶ [REDACTED].⁴⁷ Therefore not only the reliability of his evidence is disputed in the current case, but also his expertise as such.

36. The Defence therefore submits that, even if the SPO had sought Rule 107 measures, the extraordinary nature, degree, and scope of the confidentiality claimed by the Witness represented such a disproportionate interference with the Accused's right to cross-examine SPO witnesses under Article 21(4)(f) and Rule 143(3) as to render the indication of measures to this effect incompatible with the STJ's duty to ensure a fair trial.

B. IN THE ALTERNATIVE, THE NFI FAILED TO MAKE AN APPLICATION UNDER RULE 211

37. If the STJ considers that the SPO was not under an obligation to make an application for measures under Rule 107 in order to properly limit the scope of Witness 8's cross-examination, the Defence submits, in the alternative, that it was incumbent upon the Dutch Authorities and/or the NFI to make an application under Rule 211(2) requesting the indication of measures allowing Witness 8 to refuse to answer certain questions on the basis of confidentiality.

38. If the NFI, at any point, considered that Witness 8 was likely to face questions that would require him to disclose confidential information within the meaning of Article 58, it should have submitted an application before the President of the Specialist Chambers, who would have referred it to the STJ.⁴⁸ It would have then rightly fallen to the STJ, considering any elaborations by the NFI on the nature and/or scope of the claimed confidentiality, to apply Rule 107 *mutatis mutandis*, as envisaged by Rule 211(3). The above consideration regarding proportionality and necessity would have applied to such an

⁴⁵ See, *inter alia*, KSC-BC-2023-12, T. 4 March 2026, p. 649, line 10-15, and p. 651, line 23 to p. 652, line 5.

⁴⁶ KSC-BC-2023-12, T. 4 March 2026, p. 649, line 16 to p. 650, line 8, and p. 651, line 23 to p. 652, line 15.

⁴⁷ KSC-BC-2023-12, T. 4 March 2026, p. 654, line 24 to p. 655, line 1.

⁴⁸ Had the NFI made an application prior to the transfer of the case file to the STJ, such an application would have likely been referred to the Pre-Trial Judge as the "competent Panel".

application as they would have to any similar application filed by the SPO under Rule 107.⁴⁹ This procedure would have, similarly to that under Rule 107, ensured that any limitations on Witness 8's testimony, particularly during cross-examination, would be provided "by law" and "subject to the control of the Panel", as required under the KSC's legal framework,⁵⁰ and thus compatible with the Accused's right to a fair trial.

V. CLASSIFICATION

39. The present submissions are filed as confidential since they refer to the testimony of Witness 8 in private session. A public redacted version will be filed in due course.

VI. RELIEF REQUESTED

40. On the basis of the above, the Defence requests that the Single Trial Judge:

REJECT the SPO Motion;

FIND Witness 8's Evidence, including his Report, the Associated Material, and his *viva voce* testimony of 3 and 4 March 2026, to be inadmissible under Rules 138(1) and 149(4); and

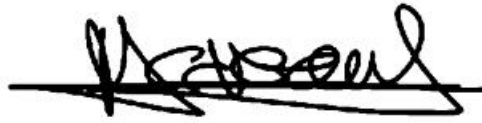
EXCLUDE Witness 8's Evidence pursuant to Rules 138(1) and 149(4).

[Word Count: 5,003]

⁴⁹ See above paragraphs 33-36.

⁵⁰ [Case 06 Decision F01821](#), para. 29, and references cited therein. See also [Case 06 Decision F01847](#), para. 13; [Case 06 Decision F02004](#), para. 4.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Sophie Menegon', written over a horizontal line.

Sophie Menegon

Counsel for Hashim Thaçi

Tuesday, 10 March 2026

Paris, France

Explanatory Note:

- The date in paragraph 28 was corrected to read "July 2025" instead of "July 2022"