



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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 Prosecutor's Office

Date: 16 March 2026

Language: English

Classification: Public

Public redacted version of 'Prosecution response to Defence submissions F00784
and F00785'

Specialist Prosecutor's Office
Kimberly P. West

Specialist Counsel for Hashim Thaçi
Sophie Menegon
Specialist Counsel for Bashkim Smakaj
Jonathan Elystan Rees
Specialist Counsel for Isni Kilaj
Iain Edwards
Specialist Counsel for Fadil Fazliu
David A. Young
Specialist Counsel for Hajredin Kuçi
Alexander Admiraal

I. INTRODUCTION

1. The Defence spent more than four hours cross-examining Witness 8 in detail. Witness 8's clear, precise, and forthcoming responses to every relevant aspect left no doubt as to his expertise, the reliability of his conclusions, or the admissibility of his evidence. The submissions by THAÇI,¹ SMAKAJ, and KILAJ² (collectively, the 'Defence Motions') are premised on matters unrelated to either the conclusion reached in Witness 8's report, or the methodology he employed to arrive at it. These matters had no impact on the Defence's ability to challenge the witness's evidence for purposes of these proceedings.

2. The witness's testimony occurred under the direct oversight of the Single Trial Judge ('STJ'), and in conformity with a ruling governing the conditions and manner of examination.³ Notably, the Defence neither sought leave to appeal that ruling, nor at any point thereafter made any concrete request for the witness to be compelled to answer any specific question. Defence attempts to now relitigate the conditions of Witness 8's testimony are misplaced, and merely represent an effort to distract from the reality that no meaningful impact resulted. In fact, the Defence raise only one substantive challenge, being to the reliability and clarity of the witness's methodology,⁴ which, as outlined below, is premised on a misrepresentation of his evidence.

¹ Corrected Version of Thaçi Defence Submissions Relating to Witness 8, KSC-BC-2023-12/F00784/COR, 10 March 2026, Confidential ('Thaçi Motion').

² Joint Kilaj and Smakaj Defence Supplementary Submissions Relating to Witness 8, KSC-BC-2023-12/F00785, 11 March 2026, Confidential ('Joint Motion').

³ T.554-556 (3 March 2026).

⁴ Joint Motion, KSC-BC-2023-12/F00785, paras 47-56.

3. The Defence Motions should therefore be rejected and Witness 8's evidence admitted. The Rule 149⁵ criteria are clearly satisfied, and the Defence had a full and fair opportunity to cross-examine the witness on all relevant aspects.

II. SUBMISSIONS

A. WITNESS 8 SATISFIES THE RULE 149 CRITERIA

4. Rule 149(4) provides that the Panel shall decide on the admissibility of the expert witness report following the testimony and questioning of the expert. Evidence from an expert report is admissible if: (i) the proposed witness can be regarded as an expert; (ii) the expert report meets the requirements of Rule 138(1), including in respect of minimum standards of reliability, relevance and probative value; and (iii) the content of the expert report falls within the accepted expertise of the expert witness and is permissible.⁶ An expert can be defined as '[a] person who by virtue of some specialised knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute'.⁷ For the purpose of determining whether a witness meets this requirement, 'the witness' former and present positions and professional experience are important'.⁸

5. Witness 8's report and testimony clearly satisfy the Rule 149 criteria. As outlined in his extensive CV⁹ and explained in court, Witness 8 is an expert in the field of striations, impressions and shape analysis ('SISA'), which includes the microdot

⁵ 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, unless otherwise specified.

⁶ *Specialist Prosecutor v. Thaçi et al.*, Decision on Victims' Counsel's Submission of Expert Reports and Request to Admit them into Evidence, KSC-BC-2020-06/F03305, 3 July 2025 ('Decision on Expert Reports'), para.21.

⁷ Decision on Expert Reports, KSC-BC-2020-06/F03305, para.22.

⁸ ICTY, *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Written Reasons for the Trial Chamber's Oral Decision Accepting Dorothea Hanson as an Expert Witness, 5 November 2009, para.8.

⁹ 127822-127830.

patterns comparison performed in this case,¹⁰ and has worked since 2009 for the Netherlands Forensic Institute ('NFI'),¹¹ an agency of the Dutch Ministry of Security and Justice and one of the world's leading forensic laboratories,¹² examining evidence for the Dutch criminal justice system and for international partners.¹³ Witness 8 has been authorised to sign expert reports on behalf of the NFI since 2011.¹⁴ Prior to becoming certified as a SISA expert in 2019, Witness 8 was from 2011 to 2018 a certified expert in the field of Questioned Document and Printers, which included microdot analysis.¹⁵ As his CV and testimony make clear, Witness 8 has undergone extensive training in his field of expertise, has lectured and published widely in scientific journals, and is himself a trainer of others in the specific expert analysis performed in this case, including to new experts hired by the NFI as well as, *inter alia*, [REDACTED].¹⁶ The Defence has not, in fact, raised any specific challenge to Witness 8's qualifications as an expert in his stated field.

6. Witness 8 has previously provided expert testimony before Dutch criminal courts on behalf of the NFI, submitting expert reports, including on microdot analysis, in the same format and structure, and with a similar level of detail and substantiation as that provided to the court in these proceedings.¹⁷ Witness 8's testimony has therefore been accepted in Dutch courts with the same confidentiality restrictions which arose during his testimony in this case.

¹⁰ T.507-508 (3 March 2026).

¹¹ T.496-497 (3 March 2026). *See also* 127822-127830, p.127822.

¹² *See* T.648 (4 March 2026). *See also* <https://www.forensicinstitute.nl/about-nfi>.

¹³ *See* T.496 (3 March 2026).

¹⁴ *See* 127822-127830, p.127822.

¹⁵ T.499-500 (3 March 2026). *See also* 127822-127830, p.127822.

¹⁶ T.509-510 (3 March 2026).

¹⁷ T.501-504 (3 March 2026), T.538-540 (3 March 2026), T.621 (4 March 2026), T.655 (4 March 2026) ('THE WITNESS: [Interpretation] The reports I issue to Dutch courts are similar in detail as what I submitted to the SPO, so the English report is based on the Dutch reports that I drafted previously'). *See also* 127822-127830, p.127830.

7. Witness 8's 14 December 2023 expert report ('Expert Report') is *prima facie* reliable, relevant, and probative of issues that fall to be determined in this case. As Witness 8 confirmed, the Expert Report, including its discussion of methodology, is in a format and level of detail that followed standard NFI protocols, including the NFI's Quality Management System, and the guidelines of the European Network of Forensic Science Institutes.¹⁸ The Expert Report's content manifestly falls within the expertise of Witness 8 – *i.e.*, comparative microdot analysis. Moreover, Witness 8's conclusion – which he reached on the basis on an examination he conducted using publicly available [REDACTED]¹⁹ – was then separately validated through an independent peer-review by a fellow SISA expert at the NFI, who conducted the review without access to Witness 8's own conclusions.²⁰

8. Having appeared for cross-examination and been questioned at length, there is no procedural bar to the admission of Witness 8's evidence pursuant to Rule 149(4).

B. DEFENCE OBJECTIONS TO WITNESS 8'S EVIDENCE SHOULD BE REJECTED

9. The Defence Motions raise common and overlapping arguments. First, the disputed relevance of certain confidential matters to Witness 8's expert conclusions. Second, the extent to which the right to a fair trial and/or cross-examination has purportedly been affected by the confidential matters. And third, the conditions, and related framework, pertaining to Witness 8's testimony. These arguments, which do not survive close scrutiny, are addressed in turn.

1. The Confidential Matters are not relevant to Witness 8's conclusions.

10. The Defence claims that Witness 8 'withheld critical aspects of his methodology' that were 'central' to his conclusions, arguing, *inter alia*, that questions

¹⁸ 128072-128080, para.23. *See also* T.637-639 (4 March 2026).

¹⁹ 118299-118304, p.118302.

²⁰ T.538 (3 March 2026), T.634 (4 March 2026), T.654 (4 March 2026).

pertaining to general 'characteristics' of microdots, and the [REDACTED], directly impact Witness 8's discrete comparison analysis.²¹ This is not correct, as Witness 8 himself explained.

11. Of the more than 250 questions posed by the Defence on cross-examination, fewer than 25, many of them repetitive and overlapping,²² were not answered due to reasons of confidentiality. Importantly, these unanswered questions primarily pertain to matters outside the scope of Witness 8's Expert Report and are immaterial to the forensic examination he performed in this case.²³ As noted in the Joint Motion,²⁴ these matters relate to: (i) questions on the underlying [REDACTED];²⁵ and (ii) the possibility of [REDACTED]²⁶ (the 'Confidential Matters').

12. This alleged alternative means of conducting a microdot analysis, through [REDACTED], was not used in this case.²⁷ Witness 8 stated this clearly and repeatedly,²⁸ and further explained why the Confidential Matters were not relevant to the analysis he conducted. For example, after repeated questions pertaining to specific characteristics of [REDACTED], Witness 8 explained that his examination pertained solely to the [REDACTED].²⁹

²¹ Joint Motion, KSC-BC-2023-12/F00785, paras 2-3, 33, 36

²² See e.g. the following questions/assertions: T.550 (3 March 2026) [REDACTED]; T.551 (3 March 2026) [REDACTED]; T.555 (3 March 2026) [REDACTED]; T.556 (3 March 2026) [REDACTED]; T.558 (3 March 2026) [REDACTED]; T.579 (3 March 2026) [REDACTED]; T.646 (4 March 2026) [REDACTED].

²³ See e.g. T.577-580 (3 March 2026) [REDACTED]; T.595-596 (3 March 2026) [REDACTED].

²⁴ Joint Motion, KSC-BC-2023-12/F00785, para.33.

²⁵ T.555 (3 March 2026); T.558 (3 March 2026); T.625-627 (4 March 2026); T.645-646 (4 March 2026).

²⁶ T.550-551 (3 March 2026); T.556-558; (4 March 2026); T.571 (3 March 2026); T.573 (3 March 2026); T.575-577 (3 March 2026); T.579-580 (3 March 2026); T.646 (4 March 2026); T.649 (4 March 2026); T.653 (4 March 2026).

²⁷ T.557-558 (3 March 2026).

²⁸ See e.g. T.558 (3 March 2026) [REDACTED]; T.581-582 (3 March 2026) [REDACTED]; T.585 (3 March 2026) [REDACTED]; T.595 (3 March 2026) [REDACTED]; T.596 (3 March 2026) [REDACTED]; T.653 (4 March 2026) [REDACTED].

²⁹ T.577-578 (3 March 2026).

13. Witness 8 nonetheless answered several questions touching upon the Confidential Matters so as to provide further context to the Defence while similarly underscoring and explaining the irrelevance of these matters to his findings.³⁰

14. Given their clear irrelevance to the expert work conducted in this case, the Confidential Matters cannot objectively be considered as 'central' to the witness's conclusions and are not a bar to admissibility of Witness 8's evidence. To the extent relevant at all, Defence submissions on the Confidential Matters may be considered as part of the trial record as a whole,³¹ including being weighed against the multiple other independent forms of corroborating evidence also showing that the documents at issue were in fact printed using the lone Detention Centre printer available to THAÇI and other detainees.³²

2. No prejudice has been established

15. As underscored by prior Panels, the right to cross examination is not absolute.³³ Modalities may be put in place to limit cross examination, provided that, on balance, they do not disproportionately impact the rights of an accused.³⁴ In the present case, the record is replete with concrete examples as to how the rights of the Accused were not impacted by the Confidential Matters, as well as with examples of how the Defence was able to repeatedly test Witness 8's findings and expertise in a manner more than sufficient to mitigate against any purported prejudice concerning the

³⁰ See e.g. T.556 (3 March 2026); T.559-560 (3 March 2026); T.572-578 (3 March 2026).

³¹ See e.g.: ICC, Trial Chamber, *Prosecutor v. Ruto & Sang*, Decision on Sang Defence Application to exclude Expert Report of Mr Hervé Maupeu, ICC-01/09-01/11-844, 7 August 2013, para.27; ICC, Trial Chamber, *Prosecutor v. Ntaganda*, Decision on Defence preliminary challenges to Prosecution's expert witnesses, ICC-01/04-02/06-1159, 9 February 2016, para.16.

³² See e.g.: P00103, pp.2-3; P00128, p. 13; P00133, p. 13; P00109_ET, pp. 55-58, 118; P00110_ET pp.112-113.

³³ *Specialist Prosecutor v. Thaçi et al.*, Decision on the Specialist Prosecutor's Rule 107(2) Request, KSC-BC-2020-06/F02004, 13 December 2023, ('Case 6 Rule 107 Decision'), para.4 ('At the outset, the Panel recalls that the right of the Accused to cross-examine a prosecution witness is not absolute. This is apparent from Rule 143(3), which sets out the general boundaries of permissible cross-examination.')

³⁴ Case 6 Rule 107 Decision, KSC-BC-2020-06/F02004, para.5.

Confidential Matters. For example, the Defence thoroughly questioned Witness 8 on his probability conclusions and the Bayesian method of interpreting evidence, a central aspect of his report.³⁵

16. In making claims of prejudice, it is incumbent on the Defence to substantiate its position and explain how the Confidential Matters are relevant to, and directly impact upon, Witness 8's methodology and comparison conclusions. The Defence has failed to do so. It is not enough to simply speculate and claim that the Confidential Matters – which are decisively general and substantively remote from the discrete comparison task carried out by Witness 8 – were somehow potentially exculpatory.³⁶

17. Indeed, when developed, the 'central' substantive complaint of the Defence is solely an alleged lack of detail in Witness 8's methodology as contained in the Expert Report³⁷ – a topic Witness 8 duly addressed at length on the stand. Contrary to Defence assertions, Witness 8 provided detailed explanations of his methodology³⁸ and clear parameters as to how his peer-reviewed findings were independently tested by another NFI SISA expert.³⁹

18. Similarly, Defence claims that the witness's findings cannot be tested because of the Confidential Matters⁴⁰ are false and based upon a selective reading of the transcript. The relevant underlying material – including the same [REDACTED] by Witness 8 for the purpose of creating the Expert Report and upon which all of his conclusions rest – have been available for Defence inspection and examination for

³⁵ See e.g.: T.584-587 (3 March 2026); T.609 (4 March 2026); T.615 (4 March 2026); T.628-630 (4 March 2026); T.643-644 (4 March 2026).

³⁶ Thaçi Motion, KSC-BC-2023-12/F00784/COR, paras 34-35.

³⁷ Joint Motion, KSC-BC-2023-12/F00785, paras 47-56.

³⁸ See e.g.: T.528-538 (3 March 2026); T.635-638 (4 March 2026); T.640-643 (4 March 2026).

³⁹ See e.g.: T.538 (3 March 2026); T.587 (3 March 2026); T.634 (4 March 2026); T.653-654 (4 March 2026).

⁴⁰ Joint Motion, KSC-BC-2023-12/F00785, paras 50-53.

many months.⁴¹ The Defence had, and still have, every opportunity to procure their own expert examination and conduct their own microdot comparative examination. Indeed, as Witness 8 explained, a document examiner with the relevant expertise would be in a position to verify the results in the report,⁴² and the probability analysis can also be confirmed, by someone who has, or develops, the relevant expertise.⁴³ Just like with the methodology and conclusions themselves, neither of these are dependent upon the Confidential Matters. As such, there is no discernible basis to reject reliable and probative expert testimony under these circumstances

3. The STJ appropriately oversaw Witness 8's examination, which was conducted in accordance with the law

19. The Specialist Prosecutor's Office ('SPO') duly obtained and disclosed Witness 8's expert report, which was created following the completion of the comparison task requested of him by the SPO and prepared in a manner to facilitate its use in public proceedings.⁴⁴ In such circumstances, it is manifestly incorrect for the Defence to characterise Witness 8's report and testimony as 'lead information' or otherwise suggest that the SPO somehow did not have the NFI's permission to tender the report or call the witness.⁴⁵ The SPO also has no information on the Confidential Matters in its possession, meaning no disclosure obligation can arise.⁴⁶

⁴¹ Indeed, following its June 2025 meeting with Witness 8 where he confirmed that another qualified expert could test his conclusions using the [REDACTED], the SPO requested from Witness 8 the [REDACTED] and provided them to the Defence [REDACTED] (*see* 128072-128080, para.27 and 129531-129531). Furthermore, the underlying original paper documents themselves (*i.e.*, the seized KILAJ torn papers, the seized SMAKAJ Document, and the Registry-provided printer test page) have all been noticed to the Defence and thus available for Defence inspection and [REDACTED] since February 2025.

⁴² T.534 (3 March 2026); T.650 (4 March 2026).

⁴³ T.652 (4 March 2026).

⁴⁴ T.632 (4 March 2026).

⁴⁵ *Contra* Thaçi Motion, KSC-BC-2023-12/F00784/COR, paras 18-19.

⁴⁶ T.553 (3 March 2026).

20. As outlined below, the STJ's ruling governing the conditions for Witness 8's examination were appropriate, and within his statutory authority. Attempts in the Defence Motions to relitigate that the testimony should have been preceded by a request under Rules 107, 211 and/or Article 58,⁴⁷ are misplaced. The protections in Rule 107 are primarily aimed at preserving the rights of the information provider in question.⁴⁸ If further steps are required to protect information falling under Rule 107, it is for the information provider – not the Defence – to assert that protected interest. The wording of Rule 211 and Article 58 likewise indicates that these provisions are directed, in the first instance, at 'third states and international institutions', to invoke as *they* deem necessary.

21. In any event, hypothetical Rule 107 measures prior to testimony would have improved neither the extent to which Witness 8 could have discussed the Confidential Matters nor judicial scrutiny of the reasons therefore. Even if invoked, Rule 107(3)-(4) provides that the Panel may neither compel the witness to answer questions relating to the information or its origin if the witness declines to answer on grounds of confidentiality.⁴⁹ In this specific context, Rule 107 measures such as (additional) closed sessions would not have made a difference to the outcome.⁵⁰ No other specific

⁴⁷ Thaçi Motion, KSC-BC-2023-12/F00784/COR, paras 14-32; Joint Motion, KSC-BC-2023-12/F00785, paras 44-46.

⁴⁸ See SCCC, Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor, KSC-CC-PR-2017-01/F00004, 26 April 2017, para.176 (in reference to Rule 104, which is Rule 107 in the current Rules (emphasis added): '[t]he above rule relates to information that is protected under Article 58 of the Law, which permits Third States and international institutions to apply for necessary measures to be taken to protect their servants or agents and their confidential or sensitive information.');

ICTY, *Prosecutor v. Milošević*, Public Version of the Confidential Decision on the Interpretation and Application of Rule 70, IT-02-54-AR108bis, 23 October 2002, para.19 (concerning analogous ICTY Rule 70: '[t]he purpose of Rule 70(B) to (G) is to encourage States, organisations, and individuals to share sensitive information with the Tribunal').

⁴⁹ *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on the Prosecution Request for Rule 107 Measures for W04147 and W04868 (F01764), KSC-BC-2020-06/F01847/RED, 10 October 2023, para.14; Rules 107(3) and (4).

⁵⁰ *Contra*: Joint Motion, KSC-BC-2023-12/F00785, para.41; Thaçi Motion, KSC-BC-2023-12/F00784/COR, para.28.

counterbalancing measure that would have ameliorated Witness 8's position in this respect have been suggested or proposed.

22. Practice before this Court shows that, contrary to suggestions from the THAÇI Defence,⁵¹ prior Rule 107 litigation is not based on more specific information about the scope or grounds of confidentiality. Typically, such litigation is limited to the general recognition that a witness is bound by confidentiality and may invoke it to decline to answer questions, without more specific information on scope or grounds provided.⁵² That practice recognises the reality that witnesses bound by confidentiality cannot give more information for procedural discussions than they can when (cross-) examined without violating their obligations. Given Witness 8's standing in the NFI and his field of expertise, he would have retained the flexibility and scope to determine whether or not to answer questions that encroached upon confidentiality. In the present case, contrary to Defence submissions, the witness did in fact clearly delineate the scope of what he could not discuss, and even provided guiding explanations differentiating it from other matters which he was in a position to provide information on.⁵³

23. The STJ's ruling on the conduct of Witness 8's examination was in full conformity with this practice. The STJ has broad authority to manage trial proceedings, including discretion to protect confidential information, by virtue of Article 40(6) and Rules 116(4) and 143(4). When the Confidential Matters became implicated by Defence questioning, the STJ provided a ruling on the conditions

⁵¹ Thaçi Motion, KSC-BC-2023-12/F00784/COR, paras 23-24.

⁵² See e.g. *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of 'Thaçi Defence Fifth Notification of Additional Witness Information and Related Requests, KSC-BC-2020-06/F03505/RED, 3 October 2025 (public version notified 17 November 2025), paras 17-19; Public Redacted Version of 'Thaçi Defence Request for Rule 107 Measures for Witnesses 1DW-003, 1DW-004, 1DW-005 and 1DW-006', KSC-BC-2020-06/F03424/RED, 27 August 2025 (public redacted version notified 19 September 2025), paras 12, 18, 23; T.27009 (22 September 2025), 27022 (22 September 2025), 27122 (22 September 2025), 28091 (17 November 2025).

⁵³ See e.g. T.556-557 (3 March 2026).

governing cross-examination in conformity with the discretion granted under the statutory framework.⁵⁴ The Defence were afforded latitude to fully explore the scope of what the witness was in a position to answer, and the impact (if any) of the witness's refusal to answer questions would be considered in the context of considering admissibility or weight.⁵⁵ The STJ's ruling in fact provided the Defence with the widest possible latitude that could have been obtained under any of the alternative provisions being invoked, and the Defence's procedural submissions fail to advance concrete arguments of claimed prejudice in any way.

24. In light of the examination that subsequently unfolded, Witness 8's report and evidence are admissible and should be given due weight in the final judgement.

III. CLASSIFICATION

25. This filing is confidential due to the nature of the material referenced herein. A public redacted version will be filed.

IV. RELIEF REQUESTED

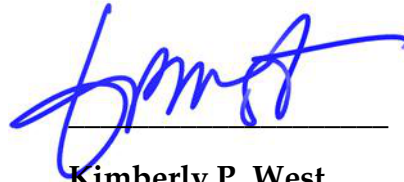
26. The Single Trial Judge should dismiss the Defence Motions and admit the Expert Report, the expert testimony of Witness 8, and the associated items already tendered.⁵⁶

⁵⁴ T.554-556 (3 March 2026). *See e.g.* Rules 116, 141(6).

⁵⁵ None of the Defence teams sought reconsideration of, or leave to appeal, that ruling, and no subsequent request was made at any point for the witness to be compelled to answer a specific question. In this regard, the notion that a witness who appears before the Panel is compellable to provide testimony does not mean that such a witness must be so compelled in every instance. This is rather a matter to be decided on a case-by-case basis within the discretion of the Panel.

⁵⁶ *See* Annex 1 to Prosecution response to Filing F00586 and motion for admission of evidence of Witness 8, KSC-BC-2023-12/F00620, 15 December 2025, Confidential. *See also* T.541 (3 March 2026) (conditionally tendering SPOE00410059-SPOE00410065 RED in court).

Word count: 4,058



**Kimberly P. West
Specialist Prosecutor**

16 March 2026

At The Hague, the Netherlands