

**In:** KSC-BC-2020-06  
**Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi**

**Before:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Counsel for Kadri Veseli  
Counsel for Hashim Thaçi  
Counsel for Rexhep Selimi  
Counsel for Jakup Krasniqi

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**Public Redacted Version of  
Joint Defence Motion for Disclosure Pursuant to Rule 103,  
With Public Annexes 1-3 and Confidential Annex 4 (F00877, dated 12 July 2022)**

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## I. INTRODUCTION

1. Counsel for Kadri Veseli, Counsel for Hashim Thaçi, Counsel for Rexhep Selimi, and Counsel for Jakup Krasniqi (together, “Defence”) jointly files this request for the SPO to be ordered to disclose material pursuant to Rule 103 of the Rules of Procedure and Evidence (“Rules”), following the Pre-Trial Judge’s oral invitation of 20 May 2022 for written submissions.<sup>1</sup>
2. Serbia remains engaged in an ongoing disinformation campaign against Kosovo and the KLA, aimed at destabilising the State. In a wide array of venues connected to the 1998-1999 conflict, Serbia has repeatedly used deceptive means to incriminate the KLA, undermine Kosovo’s independence and evade responsibility for its own crimes. In particular, it has carried out false flag operations, tampered with crime scenes, and procured false testimony through torture and duress, raising well-founded concerns about the credibility and reliability of information emanating from this source.
3. The Special Investigative Task Force (“SITF”), and thereafter the SPO, have received an unknown but significant quantity of evidence through their cooperative relationship with Serbia. The Defence intends to challenge such evidence. However, the disclosure provided to the Defence to date is incomplete, and the SPO has shown unwillingness to be transparent about its relationship with Serbia and to comply with Defence’s requests.
4. Pursuant to Rule 103, the Defence requests that the Pre-Trial Judge order the SPO to disclose to the Defence all information in its possession which originally emanated from Serbia or which reasonably appears to have emanated from Serbia, as well as the provenance of any such material upon which the SPO intends to rely.

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<sup>1</sup> [Transcript](#), 20 May 2022, pp. 1254-55.

5. The Defence further requests that the Pre-Trial Judge order the SPO to disclose the nature and extent of the SITF and SPO's relationship with Serbia, including its legal basis, and specifically such materials as are necessary for the Defence to understand the conditions upon which information was requested and accepted, as this is likely to affect its credibility and reliability. This includes but is not necessarily limited to:
- a. All requests for assistance, and/or other agreements reached between the SITF and/or SPO and the Republic of Serbia or any of its organs or agents;
  - b. All requests for information and associated correspondence between the SITF and/or SPO and the Republic of Serbia or any of its organs or agents;
  - c. A summary of all contact related to this case between the SPO and officials from the Republic of Serbia or any of its organs or agents; and
  - d. A complete list of all documents and materials the source of which is the Republic of Serbia or any of its organs or agents.
6. The Defence raises the issue now as the SPO's position vis-à-vis its relationship with – and evidence emanating from – Serbia risks irreversible damage to the integrity of these proceedings.

## II. PROCEDURAL BACKGROUND

7. On 5 November 2020, following confirmation of the Indictment, the Accused were arrested pursuant to warrants issued by the Pre-Trial Judge.<sup>2</sup> In the intervening 18 months, the parties have attended 12 Status conferences.

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<sup>2</sup> F00027, Decision on Request for Arrest Warrants and Transfer Orders, 26 October 2020. *See* Annexes 1, 3, 5 and 7.

8. On 21 March 2022, the Veseli Defence requested the Pre-Trial Judge to order disclosure of information pertaining to the SPO's cooperation with Serbia, in light of its relevance to the admissibility of evidence deriving from this source.<sup>3</sup>
9. On 24 March 2022, at the 11<sup>th</sup> Status conference, the Parties made oral submissions on Rule 103 disclosure pertaining to Serbia's involvement with this case.<sup>4</sup>
10. Following that Status conference, the Thaçi Defence set out in an email its position that any evidence originating – directly or indirectly – from the Republic of Serbia or any of its organs is subject to Rule 103 disclosure. It further requested that the SPO confirm whether any such evidence had been withheld for any reason including, but not limited, to Rule 107.<sup>5</sup>
11. On 11 April 2022, the SPO, by email, declined to disclose such material, contending that the Defence had failed to demonstrate that the SPO's relationship with Serbia "without more" affected the reliability or credibility of evidence obtained via that relationship. It confirmed, however, that no evidence from Serbia was being withheld pursuant to Rule 107.<sup>6</sup>
12. On 3 May 2022, in the context of *inter partes* discussions on streamlining the SPO's case, the Defence reiterated its request for such disclosure; setting out four grounds which undermined the reliability or credibility of evidence deriving from the Serbian authorities.<sup>7</sup> The SPO's response, received on 6 May 2022, did not address the request.<sup>8</sup>

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<sup>3</sup> F00744, Veseli Defence Submissions for 11th Status Conference, 21 March 2022, paras 31-32.

<sup>4</sup> [Transcript](#), 24 March 2022, pp. 1093-1097, 1100, 1116.

<sup>5</sup> Email from Thaçi Defence to SPO, 24 March 2022.

<sup>6</sup> Email from SPO to Defence teams, 11 April 2022.

<sup>7</sup> Veseli Defence Streamlining Proposal transmitted to the SPO sent by Email to SPO, 3 May 2022; F00806/A01, Veseli Defence Submissions for 12<sup>th</sup> Status Conference, 18 May 2022.

<sup>8</sup> Email from SPO to Defence and Victims, 6 May 2022.

13. At the Status conference on 12 May 2022, following oral submissions from the Parties,<sup>9</sup> the Pre-Trial Judge invited written submissions on this topic.<sup>10</sup>

### III. APPLICABLE LAW

14. Article 21(6) of the Law provides that:

All material and relevant evidence or facts in possession of the Specialist Prosecutor's Office which are for or against the accused shall be made available to the accused before the beginning of and during the proceedings, subject only to restrictions which are strictly necessary and when any necessary counter-balance protections are applied.

15. Rule 102(3) provides that the SPO shall disclose to the Defence items that "are deemed by the Defence to be material to its preparation."

16. Rule 103 further states that:

Subject to Rule 107 and Rule 108, the Specialist Prosecutor shall immediately disclose to the Defence any information as soon as it is in his or her custody, control or actual knowledge, which may reasonably suggest the innocence or mitigate the guilt of the Accused or affect the credibility or reliability of the Specialist Prosecutor's evidence.

17. As the *Gucati* Trial Panel held, the phrase "reasonably suggests" means that:

[T]he information in question must point, in some logical manner, towards the innocence or mitigated guilt of the Accused, regardless of whether the SPO finds the information reliable or "fanciful". Holding otherwise would lead to the SPO's entitlement to withhold exculpatory evidence in violation of the Accused's right to a fair trial and the equality of arms principle.<sup>11</sup>

18. According to the jurisprudence of the *ad hoc* tribunals, the Defence must identify exculpatory material for disclosure with sufficient specificity, however, such request is not required to be "as specific as to precisely identify which documents should be disclosed."<sup>12</sup>

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<sup>9</sup> [Transcript](#), 20 May 2022, pp. 1223-1255.

<sup>10</sup> *Ibid.*

<sup>11</sup> [KSC-BC-2020-07/F00413/RED](#), para. 43.

<sup>12</sup> ICTR, *Prosecutor v. Nahimana et al*, ICTR-99-52-A, [Decision on Motions Relating to the Appellant Hassan Ngeze's and the Prosecutor's Requests for Leave to Present Additional Evidence of Witnesses ABC1 and EB](#), 27 November 2006, para. 11; ICTY, *Prosecutor v. Bralo*, IT-95-17-A, [Decision on Motions for Access to Ex Parte Portions of the Record on Appeal and for Disclosure of Mitigating Material](#), 30 August 2006, para. 30; ICTY, *Prosecutor v. Blaškić*, IT-95-14, [Decision on the Appellant's Motions for the](#)

19. Moreover, disclosure of evidence in summary form does not satisfy the duty to disclose exculpatory evidence where this “essentially deprives the Defence from being in a position to assess the real value of the exculpatory material for itself.”<sup>13</sup>
20. Information pertaining to cooperative agreements is disclosable to the Defence. Trial Chamber IX of the ICC found in *Ongwen* that the Defence was entitled to access requests for assistance, made to the Ugandan authorities, “**at least** to the extent RFAs in the Uganda situation investigation led to information which the Prosecution relies upon as incriminating evidence against Mr Ongwen”,<sup>14</sup> observing that requests for information to States, other third parties and external correspondence does not qualify as non-disclosable work product.<sup>15</sup> Similarly, before the MICT, the Prosecution was ordered to disclose RFAs by which intercepted communications were obtained, as well as the clearance letters by which the Rwandan government transmitted the said intercepts to the Prosecution.<sup>16</sup>
21. The obligation to disclose exculpatory material is not strictly limited to evidence that will be used at trial.<sup>17</sup> In *Ayyash et al*, the Trial Chamber ordered the disclosure of all outstanding requests for assistance where such material would provide a “full panoramic view” enabling the Defence to mount a

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[Production of Material, Suspension or Extension of the Briefing Schedule, and additional Filings](#), 26 September 2000, para. 40.

<sup>13</sup> ICTY, *Prosecutor v. Brđanin*, IT-99-36-T, [Decision on “Motion for relief from Rule 68 Violations by the Prosecutor and for Sanctions to be Imposed Pursuant to Rule 68bis and Motion for Adjournment While Matters Affecting Justice and a Fair Trial can be Resolved”](#), 30 October 2022, para. 27.

<sup>14</sup> ICC, *Prosecutor v. Ongwen*, ICC-03/04-01/15-468, [Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance](#), 15 June 2006 (“Ongwen Decision”).

<sup>15</sup> *ibid*, para. 1.

<sup>16</sup> MICT, *Prosecutor v. Nzabonimpa et al*, MICT-18-116-PT, [Decision on Requests for Disclosure of Information Arising From Interviews with Investigator Tomasz Blaszczyk](#), 7 May 2020, pp. 5-8.

<sup>17</sup> STL, *Prosecutor v. Ayyash et al*, STL-11-01/T/TC, F1875, [Decision Reconsidering “Decision on the Oneissi Defence Motion for Disclosure of Request for Assistance”, 7 November 2014](#), 6 March 2015, para. 19.

challenge to admissibility of evidence.<sup>18</sup> In arriving at this decision, the Court further took into consideration the existence of evidence that demonstrated that some of the call data records to which the requests related may not have been lawfully obtained;<sup>19</sup> and that the evidence in question went “to the heart of the Prosecution’s case against the five Accused.”<sup>20</sup>

22. Before the ICTY, which adjudicated allegations of war crimes and crimes against humanity relating to the events of 1998-1999 in Kosovo, the relation between the opposing party to the conflict and the source of documents was a central issue in determining disclosure and, ultimately, the credibility and reliability of evidence before the Trial Chamber.
23. In *Haradinaj*, the Defence was granted access to material from the *Milutinović* case, comprising “all confidential transcripts, exhibits, filings from 1 November 1998 until 1 July 1999 that concern the activities of all Serbian forces (VJ, RDB, MUP, PJP, SAJ, and JSO) operating within Dukagjin Operational Zone during [the indictment] period, including the VJ brigades stationed and operating in this area, such as the 549th Brigade and the 1251h Brigade.”<sup>21</sup> Such request – not opposed by the Prosecution - was made on the basis that the material was “highly relevant to credibility of [Serbian officials testifying in *Haradinaj*] and the evidence that they will be giving about the KLA and its activities.”<sup>22</sup> In granting the Defence access to the requested material, the Trial Chamber recalled that the Prosecution remained under obligation to determine whether

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<sup>18</sup> *Ibid.*, para. 20.

<sup>19</sup> *Ibid.*, paras 7, 16-18.

<sup>20</sup> *Ibid.*, para. 20.

<sup>21</sup> ICTY, *Prosecutor v. Milutinović et al*, IT-05-87-T (also filed in IT-04-84-T), [Decision on Motions on Behalf of Ramush Haradinaj, Lahi Brahimaj and Idriz Balaj for Access to Confidential Materials in the Milutinović et al case](#), 23 October 2007, para. 2 (“Milutinovic Decision”). Such “cross-case” disclosure is also becoming routine at the ICC. *E.g.*, *Prosecutor v. Maxime Kokom*, ICC-01/14-01/22-31, [Prosecution Observations on the Modalities and Procedure for Evidence Disclosure](#), 31 March 2022, para 5.

<sup>22</sup> [Milutinović Decision](#), para. 3.



there was additional material from *Milutinović* that should be disclosed but was not covered by this order.<sup>23</sup>

24. The Trial Chamber in *Haradinaj* later observed in its judgment that: “[s]ome of the witnesses that were former members of the warring factions were evasive or not entirely truthful regarding the roles they played in the events in Kosovo/Kosova in 1998,”<sup>24</sup> limiting the extent to which it could rely on this evidence.

#### IV. SUBMISSIONS

##### A. Information Emanating From Serbia and/or Pertaining to Serbia’s Involvement in This Case is Disclosable Pursuant to Rule 103

25. The Defence submits that, pursuant to Rule 103, it is entitled to all material emanating from the Serbian State, its organs, and its agents along with the provenance of any such material that the SPO has relied on (or will seek to rely upon) directly or indirectly in this case. The SPO’s current refusal to provide that information rests on a fiction that its relationship to Serbia is similar to any other information provider. This is simply not a seriously sustainable position in the context of these proceedings. It ignores the context of the 1998-1999 conflict which forms the basis of these proceedings and directly contributes to the current animosity between Kosovo and Serbia.

26. During the 1998-1999 conflict, the Serbian State was a direct adversary of the Kosovo Liberation Army, and the Accused in particular. It remains a partisan actor even today for issues related to that conflict. As a contemporary point of comparison, no one would dispute that Russian evidence, used to develop and

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<sup>23</sup> *Ibid.*, para. 11.

<sup>24</sup> ICTY, *Prosecutor v. Haradinaj et al*, IT-04-84-T, [Trial Judgment](#), 3 April 2008, para. 13, (“Haradinaj Trial Judgment”); *Prosecutor v. Milutinović et al*, IT-05-85-T, Trial Judgment, 26 February 2009, para. 54; *Prosecutor v. Haradinaj et al*, IT-04-84bis-T, [Trial Judgment](#), 29 November 2012, para. 653, (“Haradinaj Retrial Judgment”); *Prosecutor v. Tolimir*, IT-05-88/2-T, [Trial Judgment](#), 12 December 2012, para. 37.



prosecute a case against a Ukrainian individual would raise fair trial issues that would require heightened disclosure. By the same token, evidence emanating from Serbia must be understood to be coming from a partisan actor and disclosed to the Defence as Rule 103 material.

**B. Circumstances That Substantiate the Defence Request and Render Information Emanating From Serbia Rule 103**

27. The circumstances that render material emanating from Serbia as Rule 103 include (i) a clear and persistent bias against the Kosovo Liberation Army and specifically these four Accused; (ii) a proven record of manipulating evidence to incriminate the KLA and exculpate its own actions.

*i. Bias*

29. Serbia's bias against the KLA generally and against these Accused specifically is clear and persistent. Since the war, Serbia has continued to spread misinformation about the KLA to delegitimise Kosovo's claim to independence and undermine the existence of the State.

30. Serbia's bias toward the KLA and its attempts to influence these proceedings, can be seen by the following:

- To this day, the Serbian State refuses to recognise Kosovo's independence. Indeed, pursuant to Article 182 of the Serbian Constitution, Kosovo remains a province of the Serbian State.<sup>25</sup>
- The Serbian State refers to, and characterises the KLA, as a terrorist organisation.<sup>26</sup> As recently as 2018, the Director of the "Office of Kosovo and Metohija," Marko Đurić described the Kosovo Army – not the KLA but the armed forces of the State of Kosovo – as an "Occupational Force."<sup>27</sup>

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<sup>25</sup> [Constitution of the Republic of Serbia](#), Official Gazette of the RS no. 98/2006, art. 182.

<sup>26</sup> Republic of Serbia, [The MFA condemns the display of the KLA flag on the Embassy building in Helsinki](#), 28 September 2021.

<sup>27</sup> N1 Info, [Serbian government official says Kosovo army is occupation force](#), 14 December 2018.

- Following Ramush Haradinaj's acquittal, the Serbian top war crimes prosecutor was summoned to appear before a parliamentary committee and pressed about what his office had done to prevent this outcome.<sup>28</sup> The chairman of the committee said "nothing could persuade him that the Serbian War Crimes Prosecution was not partially responsible for Haradinaj's acquittal."<sup>29</sup>
- In 2019, Serbian Politician Veljko Odalović bragged that Serbia had submitted "a lot of evidence" to incriminate people in command of the KLA before the KSC. He surmised that proceedings specifically against Hashim Thaçi would depend upon "the strength" of people in the Specialist Tribunal.<sup>30</sup> Prosecutor Dragoljub Stanković reportedly claimed that his job was "to find witnesses, to encourage and convince them to give a statement for the [SPO]."<sup>31</sup> He encouraged them noting that it would be "great" for Serbia and understood that the KSC could further Serbia's interests in ways Serbia itself could not.<sup>32</sup>
- In 2019, Serbian Foreign Minister Ivica Dačić commented "that Serbia has such an opportunity to break apart the Albanian lobby [in the U.S. Congress], to show that Serbs were brutally murdered in the Yellow House and that KLA fighters committed crimes."<sup>33</sup>
- Serbian authorities continue to abuse the Interpol Red Notice system by refusing to withdraw arrest warrants against former KLA members.<sup>34</sup>

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<sup>28</sup> See Annex 4: Diane Orentlicher, *Some Kind of Justice: The ICTY's Impact in Bosnia and Serbia*, (OUP Press 2018), p. 414.

<sup>29</sup> Orentlicher (Annex 4), pp. 414-415: Vuckević was highly and publicly critical of the ICTY Prosecutor's handling of Haradinaj, provoking a rare rebuke from the ICTY. Euractiv, [Serbia accuses Hague tribunal of selective justice](#), 3 December 2012, wherein Vukčević falsely claimed that 9 potential witnesses in the Haradinaj case have been killed, and suggested that this is the result of the tribunal's "sloppiness and unprofessional work." Reuters, [Serbia says Kosovo war crimes acquittal a mockery of justice](#), 3 April 2008: Then Prime Minister Kostunica called the ICTY judgment "a new, major crime on top of Haradinaj's crimes". See also, BalkanInsight, [Serbia Suspects Limaj of Organ Trafficking](#), 2 April 2012; BalkanInsight, [Serbia 'Provided War Crimes Evidence' Against Kosovo President](#), 14 July 2020.

<sup>30</sup> N1 Info, [Serbia submitted evidence of KLA crimes, official says](#), 10 January 2019.

<sup>31</sup> See Annex 1: KosovoOnline, [Serbia provided witnesses against former members of the KLA](#), 5 November 2020.

<sup>32</sup> *Ibid.*

<sup>33</sup> Telegraph, ['We reveal details of Serbia's "offensive on US congress'](#), 7 August 2019.

<sup>34</sup> Foreign Affairs, [Engel: Detention of Ramush Haradinaj Unacceptable](#), 6 January 2017.

- At the Council of Europe (“CoE”), Russia instigated the report<sup>35</sup> that led to the Specialist Chamber’s creation<sup>36</sup> and Serbia provided much of the material upon which it was based. In 2018, former Serbian ambassador to Switzerland, Milan St. Protic, claimed in an interview that the Dick Marty report was based predominantly on material provided by Serbian authorities and that Dick Marty himself “never had any serious and convincing evidence.”<sup>37</sup> He went on to recalled in another interview, “the report is for the most part based on the material prepared by our prosecution and which was submitted to him in, as I call it, quite non-public circumstances, perhaps also conspiratorial.”<sup>38</sup>

31. The agenda of the Serbian State is clear, and it obviously sets Serbia in a category apart from any other information provider. Its persistent bias and concerted efforts to portray the KLA as inherently criminal is alone sufficient to trigger Rule 103 disclosure requirements. This is not a problem that the Court can safely ignore. It is with this firmly in mind that disclosure of all information emanating from Serbia as well as the nature and extent of the SITF and/or SPO’s cooperation with Serbia must be disclosed pursuant to Rule 103.

*ii. Manipulation of Evidence*

33. Serbia exhibits a clear pattern of manipulating evidence to self-serving ends. Repeatedly, it has attempted to incriminate the KLA and exculpate itself, raising well-founded concerns about the credibility and reliability of information emanating from this source. The Defence provides, below, illustrative examples of Serbia’s misconduct which may be considered under three heads:

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<sup>35</sup> CoE, Report on "[Inhuman treatment of people and illicit trafficking in human organs in Kosovo](#)", Doc. 12462, 7 January 2011, (“Dick Marty Report”).

<sup>36</sup> Robert Lansing Institute, [From the ICTY to the Specialized Chambers: The KLA’s Journey through the Courts](#), 30 March 2021.

<sup>37</sup> Annex 1: Epoka Ere, [Dick Marty i mori provat nga Serbia, e konfirmon ky diplomat \(Video\)](#), 19 January 2022.

<sup>38</sup> Annex 2: <https://www.youtube.com/watch?v=47bB7Ad7dZA&t=19s>. For a fuller account of events, see Annex 3: Zemlja Viljema Tela: price iz Svajcarske, Milan St Protić, 1 January 2018, p.108.

- a. False flag operations and crime scene manipulation, aimed at incriminating the KLA and exculpating Serbia;
- b. Deliberately creating and manipulating testimony to mislead the ICTY and other Courts; and
- c. Gathering 'information' through torture and other coercive means to incriminate the KLA.

1. False Flag Operations to Incriminate the KLA

a. Panda Café

34. On 14 December 1998, a gunman opened fire inside Panda Bar Café in Peja, leaving six young Serbs dead and two injured. Serbian authorities rushed to blame ethnic Albanians and the KLA specifically. On 17 December, Serb forces arrested approximately 30 young Albanians, including members of the Bajri family who recalled three tanks and hundreds of Serb soldiers surrounding their home. One boy who was violently beaten recalled being held in a room of corpses. At the end of the conflict, in June 1999, six detainees were transferred to Serbia to stand trial, where beatings and torture continued and at least one detainee signed a false confession.<sup>39</sup>
35. Serbia well understood the propaganda value of the Panda Café massacre. One of the detainees recalled that in Serbia he was beaten every day while the guards would bring children in to see the "terrorists who killed your brothers in Kosovo."<sup>40</sup> The fact that the detained individuals were neither terrorists, nor KLA fighters, and had nothing to do with the crime at Panda Café was immaterial. While the six Albanians who the Serbian State blamed, detained, tortured were found not guilty of the murder, they were nonetheless sentenced to a year in prison for 'public disorder' so that Serbia could save face.

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<sup>39</sup> See Annex 1 : Balkan Transnational Justice, [Kosovo's Panda Café Massacre Mystery Unsolved 20 years on](#), 14 December 2018, ("Panda Café Article").

<sup>40</sup> *Ibid.*

36. In the intervening years, the truth of the massacre has seeped out. Serbia's former war crimes Prosecutor, Vladimir Vukčević, later acknowledged that "[w]e came to the conclusion that [Albanians] are not the perpetrators."<sup>41</sup> President Vučić later echoed this statement agreeing that the most likely culprit was the Serbian government.<sup>42</sup> Vuk Drašković, Serbia's Deputy Prime Minister in 1999, explicitly told Serbian publication Kurir that it was the RDB, led by Radomir Marković, who orchestrated the massacre acting through notorious Serbian paramilitary commander, Milorad Ulemek aka Legija, on the orders of the then Serbian President Slobodan Milošević.<sup>43</sup> According to Drašković, the goal of this attack was to portray the KLA as a terrorist organisation before the international community and spark anti-Albanian sentiment in Kosovo and throughout Serbia.<sup>44</sup> Ulemek-Legija then went public to state his willingness to testify that the order for the assassinations in Peja came from Radomir Marković in his capacity as the head of the RDB.<sup>45</sup>
37. Whether the order came from Milošević, Marković or Ulemek-Legija, the important fact remains that Albanians were falsely and most deliberately accused of acts they did not commit during the very period when Serbian authorities were 'collecting' the evidence upon which the SPO now relies.

b. Chinese Munitions

38. During summer 1998, the Serbian political and military leadership were ramping up their campaign against the KLA. It being widely understood that the KLA typically used ammunition manufactured by China, Serbian Special forces were ordered to carry 30 rounds of Chinese ammunition in addition to

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<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*; PTC, [Vučić: Država je ubila Čuruviju](#), 29 December 2013.

<sup>43</sup> See Annex 1: Kurir, [Vuk Drašković: Milošević naredio Radetu i Legiji da ubiju srpsku decu!](#), 18 January 2014; Kurir, [Rade Marković dao nalog da se ubiju srpska deca u Peći 1998?!](#), 17 January 2014.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

their regular ammunition sets.<sup>46</sup> When this document was shown to Prosecution witness Colonel Crosland during the *Haradinaj* Trial, he agreed that it appeared to be evidence of the Serb forces engaging in underhand activities to implicate the KLA in crimes.<sup>47</sup>

39. Similarly, in a 4 January 1999 report, [REDACTED]. [REDACTED]. [REDACTED] "[REDACTED]."<sup>48</sup>

40. [REDACTED].<sup>49</sup> Given the propensity for manipulating crime scenes and planting 'evidence' (such as shell casings) as false flags to incriminate the KLA, serious questions arise regarding the authenticity of 'KLA' documents helpfully provided to the SPO by Serbia, rendering their provenance a Rule 103 issue.

#### c. Targeted Assassinations of Prominent Individuals

41. By November 1998, the 'false flag' policy escalated with Milošević's creation of 'death squads' to target Serbs and Albanians who supported Serbia or publicly condemned the KLA.<sup>50</sup> The objective was to substantiate the case that the KLA was a terrorist organisation and inflame anti-Albanian sentiment throughout the region.

42. It is hardly surprising therefore that in May 1999, the OSCE reported that:  
[REDACTED].<sup>51</sup>

43. It appears that this strategy, of assassinating high-profile individuals to discredit Albanians, still exists today. Earlier this year, allegations surfaced

<sup>46</sup> IT-04-84 D00086.E; ICTY, *Prosecutor v. Haradinaj et al.*, [Transcript](#), 23 May 2007, T.4685 *et seq.*

<sup>47</sup> *Ibid.*, T.4687-4689; ICTY, *Prosecutor v. Haradinaj et al.*, [Transcript](#), 2 July 2007, T.6516-6519.

<sup>48</sup> SPOE00234451-00234456, p. SPOE00060668.

<sup>49</sup> 099940-099940-ET with description: "[REDACTED]".

<sup>50</sup> See Annex 1: [Vuk Drašković: Milošević naredio Radetu i Legiji da ubiju srpsku decu!](#).

<sup>51</sup> SITF00012312- SITF00012324, p. SITF00012320.

regarding an attempt by elements within the Serbian intelligence community to assassinate Dick Marty and frame “the Kosovars” for his murder.<sup>52</sup>

44. The Defence recalls that the Trial Chamber in *Gucati* recently characterised these allegations as “unverified.”<sup>53</sup> Nonetheless, these allegations derive from Mr Marty himself, who is the main author of the CoE report that gave rise to the Specialist Chamber and is presumptively credible in the eyes of this Court.
45. The Defence submits that there is clear evidence that Serbia has intentionally and habitually manipulated events to incriminate the KLA and to exculpate Serbian actors. It follows that knowledge of provenance as regards Serbian-originating evidence is crucial and must be disclosed pursuant to Rule 103.

## 2. Crime Scene Manipulation

46. In addition to the above referenced incidents where Serbian Officials attempted to incriminate the KLA in specific criminal activity, evidence also exists of Serbia actively manipulating crime scenes to portray the KLA as ‘terrorists’ and avoid the international political repercussions of its own acts.

### a. Kleçkë

47. Serbian forces took control of Kleçkë in central Kosovo in late July 1998. Upon entering and razing Kleçkë, they announced the ‘discovery’ of a crematorium where, they alleged, Serbian civilians including women and children were massacred and some even burned alive.
48. This was sensational news and Serbian Investigative Judge Danica Marinkova attended the site accompanied by the press. Serbian officials were accompanied

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<sup>52</sup> Swiss Info, ‘[Former Swiss Prosecutor “targeted by Serbian assassins,”](#) 12 April 2022; RTS Radio Télévision Suisse, ‘[Menacé de mort, Dick Marty vit sous haute protection depuis seize mois](#)’, 11 April 2022.

<sup>53</sup> [KSC-BC-2020-07/F00610](#), para. 16.



by two “KLA soldiers” - Luan and Bekim Mazreku - allegedly captured on the battlefield. The two men were paraded in front of local and international media at a staged press conference. While Bekim Mazreku’s answers were largely incoherent, he nonetheless accepted publicly that they had raped children, and executed two children and three women.

49. It transpired that the “confessions” were false. No crematorium existed and Bekim and Luan Mazreku had been badly tortured and drugged into giving their account to the press. The HLC reported:

[H]e was beaten by police, one of whom stubbed out a cigarette on his penis and then pierced it with an electric wire. He said gun barrels were pushed into his mouth, breaking two of his teeth, that his nose was cut, and that he was forced to sign his purported statement, which was written up by police. When at first he refused, he was given a cup of coffee in which police had dissolved two pills, after which he signed. He said he was then taken to Klečka where he was forced to make another statement, and that he did not know he was being filmed. ‘The statement said I killed 10 people. After the torture I went through, any man would have backed down.’

50. The Mazreku brothers **could not have** committed the alleged crimes, having been arrested and taken into Serb custody in early July -- two weeks prior to the alleged incident in Klečkë.<sup>54</sup> Yet, when this fact came to light, Serb officials did not back down. Instead, they responded by changing the document containing the Mazreku’s official arrest date from July 1998 to August 1998.<sup>55</sup>

51. [REDACTED]<sup>56</sup> [REDACTED].<sup>57</sup>

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<sup>54</sup> Humanitarian Law Center (HLC), [Convicted Without Evidence](#) 12 January 2001, pp. 3, 5.

<sup>55</sup> *Ibid.*

<sup>56</sup> 053256-07.

<sup>57</sup> See items the Rule 102(3) List for: SITF00300325-00300336, SITF00300391-00300402, SITF00306770-00306781, SPOE00191234-00191237, SPOE00197132-00197143, U000-5595-U000-5598, U000-6235-U000-6238, U000-6290-U000-6293, U002-8144-U002-8396.

## b. Reçak

52. On 15 January 1999, Serbia initiated a campaign of terror in Shtime/Reçak where 45 civilians – including a 12-year-old child – were murdered. The BBC spoke with forensic expert Dr Helena Ranta at the site, who told them:

[T]here were no signs that the victims were anything other than unarmed civilians and that they were most likely shot where they were found. She said there was no reason to conclude that the victims were members of the separatist Kosovo Liberation Army or that they were killed accidentally.<sup>58</sup>

53. Such reports did not discourage Serbian authorities who issued a statement later the same day claiming that 15 terrorists were killed in clashes – a number that was subsequently revised upwards as the true extent became clear.<sup>59</sup>

54. Wiretaps of senior Serbian officials obtained and reported by the Washington Post show that the Serbian government was aware of the incident and actively tried to cover up the massacre by blaming the KLA:

Deputy Prime Minister Nikola Sainovic and Serbian Interior Ministry Gen. Sreten Lukic... discussed how to make the killings look as if they had resulted from a battle between government troops and members of the separatist Kosovo Liberation Army. The objective was to challenge claims by survivors -- later supported by international monitors -- that the victims had been killed in an execution-style massacre and to defuse pressures for a NATO military response.<sup>60</sup>

55. Incredibly, the Serbian authorities **even today** insist that the massacre of Reçak was staged by the KLA and the international community. They continue to peddle conspiracy theories that the KLA moved the bodies and dressed them in civilian clothes to blame Serbia and trigger NATO's intervention.<sup>61</sup>

<sup>58</sup> BBC News, [World: Europe Racak killings 'crime against humanity'](#), 17 March 1999.

<sup>59</sup> [World: Europe Racak killings 'crime against humanity'](#).

<sup>60</sup> The Washington Post, [Serbs tried to cover up massacre](#), 28 January 1999.

<sup>61</sup> N1 Info, [Serbian police minister denies Kosovo massacre that launched NATO campaign](#), 10 December 2021; Telegraf.tv, [Judge Danica talks about Racak case: "Walker destroyed Serbs in Kosovo, it was all a fraud"](#), 15 January 2021.

c. Refrigerator Truck

56. Yet another documented example of Serbian crime scene manipulation involved a practice of removing, from Kosovo, the bodies of victims killed by Serbian forces, so that they could not be found by international monitors. [REDACTED] Zoran Stijović [REDACTED] confirmed this in his testimony in *Milošević*, detailing a specific instance of this policy, where a refrigerator lorry was used to transport the bodies of 86 Albanian civilians out of Kosovo and dump them into the river Danube.<sup>62</sup>
57. The evidence from *Milošević* is that there existed a Serbian policy attempting to deceive international observers by manipulating crime scenes to avoid the appearance of criminality. If a State is prepared to treat the lives and bodies of its own citizens with such callous disregard, so as to deceive international observers, then it stands to reason that the documents provided by the same State agencies in these proceedings may need to be scrutinised with particular care.
58. Serbia's interest in blaming the KLA can be most clearly seen in its continued propaganda denying the actions of its forces in Reçak and continuing to assert that the Mazreku cousins were perpetrators of lurid crimes in Kleçkë involving a 'crematorium' that never existed.<sup>63</sup> These motivations must be kept in mind when assessing evidence emanating from Serbia. For these reasons, the Defence requests that it be provided with the information necessary to know the true

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<sup>62</sup> ICTY, [Prosecution Case - Kosovo](#).

<sup>63</sup> As recently as 2018 and 2021, Danica Marković, Milošević's top investigating judge in Kosovo in 1998/1999 – involved in the manipulation of evidence in the Reçak and Kleçkë crime scenes – wrote a book and gave statements to the press which reiterated these allegations. See Blood Libel, [Anti-Americanism and Genocide in the Kosovo War](#), 2015; Telegraf, [Terrible testimony of Albanian terrorists on the massacre of Serbs: We raped your girls, took their eyes and shredded them \(PHOTO\)](#), 28 April 2017. See also, [Convicted Without Evidence](#).

extent and nature of the SITF and SPO's cooperation with Serbia and the provenance of information and evidence deriving from this source.

### 3. Manipulation of Testimony and Other Forms of Evidence

#### a. ICTY

59. In 2012, the Office of the Prosecutor at the ICTY produced a witness in the *Haradinaj* retrial who had been provided to them by the Serbian war crimes prosecutor's office.<sup>64</sup> He made sensational allegations incriminating the KLA generally and Dukagjin zone leadership specifically. His testimony was so obviously fabricated that, in closing submissions, the Prosecution informed the Court that they would not rely on his evidence.<sup>65</sup>
60. This incident demonstrates why it is so important for the SPO to disclose the full nature and extent of the SITF and SPO's relationship with Serbian authorities. In the instance above, the key piece of information that ultimately allowed all parties to get to the truth of the matter concerning this witness was the Prosecution's disclosure of the provenance of the witness's evidence.
61. [REDACTED]. A story with 'several similarities' was repeated during a programme aired by the Serbian public broadcaster RTS.<sup>66</sup> The programme was set up by Serbia's deputy war crimes prosecutor Bruno Vekarić.<sup>67</sup> The programme was controversial in Serbia itself, prompting officials and experts to warn about Serbia's war crimes prosecutors' 'political agenda'.<sup>68</sup> Nataša Kandić, of the HLC, called the story "political and unconvincing".<sup>69</sup>

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<sup>64</sup> New Yorker Magazine, [Bring up the Bodies](#), 29 April 2013.

<sup>65</sup> [Haradinaj Retrial Judgment](#), paras. 457-461.

<sup>66</sup> [Bring up the Bodies](#); Balkan Insight, [EU Investigators to Examine Kosovo Organ Testimony](#), 11 September 2012.

<sup>67</sup> Balkan Insight, [TV Organ Testimony Harms Investigation](#), 5 October 2012.

<sup>68</sup> *Ibid.*

<sup>69</sup> [EU Investigators to Examine Kosovo Organ Testimony](#).

62. This incident underlines the lengths Serbia is prepared to go in order to incriminate the KLA, as well as the critical need for transparency from the SPO as to the nature and extent of their relationship with Serbia.

b. Manipulation Relating to These Proceedings

63. Evidence of Serbian manipulation is not limited to the ICTY. In 2009, Kosovo police arrested three Serbian men, two of whom were suspected Serbian intelligence operatives, for attempting to buy false testimony from Kosovar Albanians and others which implicated the KLA in trafficking the organs of captive Serbs.<sup>70</sup>

64. Even the SPO's Rule 102(1)(b) evidence gives a clear indication that Serbia is still engaged in shaping and interfering with evidence before the KSC. [REDACTED].<sup>71</sup> In the same interview, he also clarifies that [REDACTED],<sup>72</sup> [REDACTED].<sup>73</sup> This is to be read in the wider context of the methods employed by the Serbian intelligence which, [REDACTED] "[REDACTED]".<sup>74</sup>

65. There is no doubt that Serbia remains interested, and is attempting to manipulate the outcome of this trial – so much so that the President of Serbia personally called a witness to encourage him to testify. The Defence notes that a Serbian prosecutor whose assignment was to locate and encourage witnesses to come forward with the understanding that it would be "good" for Serbia.<sup>75</sup> This context places Serbia in a very different situation from 'any other information provider' and reinforces the need to disclose the provenance of all information emanating from Serbia under Rule 103.

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<sup>70</sup> SITF00446275-00446276. Balkan Insight, [Serbia Denies Kosovo Spy Claims](#), 15 June 2009.

<sup>71</sup> 078004-TR-ET Part 1, p. 29.

<sup>72</sup> 078004-TR-ET Part 6, pp. 15, 19.

<sup>73</sup> 078004-TR-ET Part 9, p. 9.

<sup>74</sup> 078004-TR-ET Part 9, p. 8.

<sup>75</sup> [Serbia provided witnesses against former members of the KLA](#).

## C. Impact on These Proceedings

### *i. Evidence Obtained Under Torture and Duress*

66. The evidence shows that Serbia tortured detainees in detention to procure false confessions, which were then used to secure convictions in Serbian courts and/or turned over to third parties including the SITF or SPO as evidence of the KLA criminality. Disclosure is required to identify such material in order ensure the proceedings are not contaminated by unlawfully obtained evidence.

67. The SPO has included the RDB statement of [REDACTED] on its exhibit list and intends to rely upon it at Trial. [REDACTED] similarly incriminates the KLA on its face; however, Lekë, and his cousin Krist, Pervorfi were subjected to a similar ordeal as the Mazrekus. They were arrested by Serbian police and forced to sign confessions implicating them - as KLA members - in a murder of a Serbian policeman.<sup>76</sup> [REDACTED]. The Trial Chamber in the *Haradinaj* case assessed their RDB statement evidence and excluded it:

[T]he Trial Chamber received evidence that some of the persons interviewed by the Serbian police might have been beaten. The Trial Chamber also heard evidence that the RDB would receive information from informers, who were rewarded depending on both the significance and type of information provided. The motivation of these informers was money, politics, or sometimes they were blackmailed by the RDB. One example of documents that the Trial Chamber decided not to admit was the two statements given to the Serbian MUP by Krist and Lëk Pervorfi in October 1998, which the Prosecution sought to have admitted through Zoran Stijović.<sup>77</sup>

68. The experience of the Pervorfis and the Mazrekus (described above) were not isolated incidents. Human rights organisations have documented the widespread use of torture on Kosovo Albanian prisoners by Serbian police and military in order to extract 'confessions' or 'statements' relating to the KLA.<sup>78</sup>

<sup>76</sup> ICTY, *Prosecutor v. Haradinaj et al*, IT-04-84-T, [Fourth Amended Indictment](#), 16 October 2007, para. 48; [Haradinaj Trial Judgment](#), para. 19.

<sup>77</sup> [Haradinaj Trial Judgment](#), para. 13.

<sup>78</sup> Amnesty International, [Torture and ill-treatment in the Federal Republic of Yugoslavia: Daily evidence contradicts government's rosy reports](#), 11 November 1998; New York Times, [Serbs in Kosovo Said to Rely Now on Arrest and Torture](#), 11 December 1998.

In 1998 – 2000, in the course of an enormous number of political trials of Kosovo Albanians before district courts in Serbia, the HLC documented gross violations of the right to a fair trial including repeated failures to investigate allegations that torture and inhumane treatment was used to extract confessions.<sup>79</sup>

69. At present the Defence does not have a complete picture of the SPO's relationship with Serbia. The Defence notes that the SPO is preparing to use [REDACTED] to prove its case and that it is only through Defence efforts that the full context of their statements will come to light and evidence obtained through torture will be challenged.<sup>80</sup> Other evidence which appears to come from district courts in Serbia during the period in which the HLC documented gross fair trial right violation [REDACTED].<sup>81</sup>
70. The Defence is aware that as of 9 December 2020, [REDACTED]<sup>82</sup> – but it does not have full sight of all requests, responses, or material obtained.
71. The Defence has also learned that at least one of the items received in response [REDACTED], whose statement and diaries, the Defence has reason to believe, were obtained under torture.<sup>83</sup>
72. Several notes and diaries described by the Serb government as having been taken from [REDACTED] are very similar to items disclosed to the Defence as Rule 102(1)(b) which the SPO intends to rely upon to prove its case.<sup>84</sup> Without

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<sup>79</sup> Humanitarian Law Centre, [Judging with impunity: The role of prosecutors and judges in show trials of Kosovo Albanians in the period 1998-2000](#), July 2017, p. 9-10.

<sup>80</sup> ET-0188-1979-0188-1980.

<sup>81</sup> F00631RED/A03, ANNEX 3 to Public Redacted version of 'Submission of Pre-Trial Brief, with witness and exhibit lists', KSC-BC-2020-06/F00631, dated 17 December 2021, 21 December 2021: 083812-083822-ET RED (doc no. 3537); SPOE00193914-00193915 (doc no. 9980); SPOE00195761-00195763 RED (doc no.9993).

<sup>82</sup> 095845-095862-ET.

<sup>83</sup> 095845-095862-ET, p.6.

<sup>84</sup> U000-4847-U000-4852-ET.



more information, there is no way for the Defence to know whether – for instance – a Rule 102(1)(b) unsigned diary relating to the area where [REDACTED] was detained was provided by Serbia and more specifically if it was obtained consequent to the detention and torture of [REDACTED]. For this reason, it is imperative that the Defence be provided with the provenance of documents from Serbia.

73. Fulsome knowledge of the SITF and SPO's relationship with Serbia is critical to the integrity of these proceedings. Any scenario that allows the SPO to withhold or conceal the nature and extent of its relationship with Serbia carries with it the significant risk that evidence obtained under torture or duress will not be identified as such – particularly in a case of this size. No one, except Serbia, will benefit from this.

1. Insufficiency of Information Provided to Date

74. At present, the Defence does not have an accurate account of all evidence obtained from Serbia. Through Legal Workflow, the Defence has been able to determine that at least 2356 documents originate from the Republic of Serbia or its organs. This is not sufficient for the Defence to properly investigate. The “originator” column, contains many blank entries and moreover, a number of documents clearly originate from Serbia but are identified as originating from MICT/ICTY.<sup>85</sup>
75. The Defence requests that the SPO be ordered to provide the provenance of all documents emanating from Serbia in an organised format (e.g. all documents relating to [REDACTED] should be linked together) so that the Defence can investigate and determine whether to challenge the documents' admissibility.

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<sup>85</sup> See, E.g., IT-05-87 1D00708-E, IT-03-66 P245.1a; IT-05-87 1D00553; U000-0253-U000-0254-ET RED; U016-1414-U016-1422.

76. The Defence has no indication, as yet, of which documents the SPO's exhibit list it seeks to tender through each of its witnesses: this information has not been provided. For the avoidance of doubt, however, the Defence will oppose any request that the SPO makes for any documents obtained via the Republic of Serbia to be tabled from the bar. As the *Haradinaj* retrial panel observed such evidence cannot be considered reliable in the absence of an authenticating witness.<sup>86</sup>
77. The Defence submits that the Prosecution has a duty to this Court to provide the Defence with the information it requires in order to properly understand the evidence and make appropriate challenges. What that requires will, necessarily, depend on its source. Given that Serbia has shown itself to be a thoroughly unreliable partner in international justice, detailed information on provenance is crucial. It is undeniable that any failure to do so will have consequences that are felt far beyond the confines of this case.

#### **E. Legal Basis of Cooperation With Serbia**

78. The Defence requests that the Pre-Trial Judge order disclosure of the legal basis of the SPO's cooperation with Serbia. The Defence notes that, pursuant to Article 4(4) of the Law, the KSC must obtain the agreement of the government of Kosovo before entering into a treaty with a third state relating to judicial co-operation. This has not occurred. The Defence further notes that Serbia does not recognise the existence of Kosovo as an independent State and that consequently, Serbia's cooperation with the SPO may not be grounded in Serbia's rules governing international legal assistance in criminal proceedings *or* the corresponding Kosovar provisions.<sup>87</sup> The Defence must have knowledge

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<sup>86</sup> [Haradinaj Retrial Judgment](#), para.13.

<sup>87</sup> Articles 4, 55 Law; Rule 208.

of the legal basis by which the SPO received material from Serbia in order to take a properly informed position on admissibility.

#### F. Rule 102(3) as an Alternative Basis

79. In the alternative, the Defence submits that such information is disclosable pursuant to Rule 102(3) by virtue of it being in the SPO's possession and deemed by the Defence to be material to its preparation. The Defence recalls the finding by the *Gucati* Trial Panel, according to which:

[T]he Defence may request the disclosure of material not included in a Rule 102(3) notice, but in such a case, the Defence must provide suitable parameters for specification of any requested items, so as to enable the SPO to identify the items sought and must indicate the materiality of the requested items for Defence preparation.<sup>88</sup>

80. Considering the specific nature of the present request, namely information provided by Serbian authorities, the SPO would encounter no difficulty in identifying the items sought. The Defence further notes that "disclosure constitutes an essential and fundamental element of the guarantee of a fair trial" and that "disclosure obligations stemming from this guarantee are not duties to be circumvented through sophistries, but legal obligations to be fulfilled with the greatest of care, urgency and diligence".<sup>89</sup>

#### V. CONCLUSION

81. For the foregoing reasons, pursuant to Rule 103 and/or Rule 102(3), the Defence requests:

- a. Disclosure of the provenance of any material in the possession of the SPO, where its origin is or appears to be the Republic of Serbia, or any of its organs or agents past or present; and
- b. Disclosure of the nature and extent of the SITF's and SPO's relationship with Serbia, including its legal basis, and specifically such materials as are necessary for the Defence to understand the conditions on which

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<sup>88</sup> [KSC-BC-2020-07/F00413/RED](#).

<sup>89</sup> *ibid.*

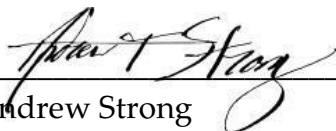
information was requested and accepted, including but not necessarily limited to:

1. All requests for assistance, and/or other agreements reached between the SITF and/or the SPO and the Republic of Serbia or any of its organs or agents;
2. All requests for information and associated correspondence between the SITF and/or the SPO and the Republic of Serbia or any of its organs or agents;
3. A summary of all contact related to this case between the SPO and officials from the Republic of Serbia or any of its organs or agents; and
4. A complete list of all documents and materials the source of which is the Republic of Serbia or any of its organs or agents.

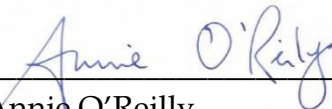
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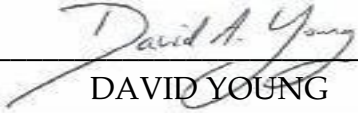


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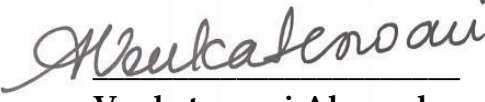



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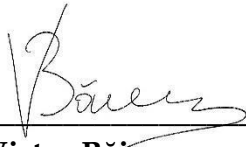


  
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