

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

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

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Hashim Thaçi

**Date:** 23 November 2022

**Language:** English

**Classification:** Public

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**Further Public Redacted Version of 'Thaçi Defence Addendum to the Joint Defence Motion for Disclosure Pursuant to Rule 103 (F00877/COR)**

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## I. INTRODUCTION

1. As required by the Pre-Trial Judge,<sup>1</sup> the Defence for Mr Thaçi (“Defence”) hereby files an Addendum to the Joint Defence Motion for Disclosure Pursuant to Rule 103.<sup>2</sup> Pursuant to Rule 103 of the Rules of Procedure and Evidence (“Rules”), the Defence requests the Pre-Trial Judge to order the SPO to disclose:

- Any information related to [REDACTED], in particular:
  - o his interaction with [REDACTED], with the [REDACTED], and with the SPO;
  - o any document discussed during [REDACTED]’s SPO interviews;
  - o any payment received by [REDACTED] from the SPO or any other entity acting under the SPO’s instructions;
  - o any further information related to [REDACTED] by Mr Thaçi and Mr Veseli [REDACTED];
- Any information related to [REDACTED], in particular:
  - o his status within the SPO and the [REDACTED];
  - o any payment received by [REDACTED] from the SPO or any other entity acting under the SPO’s instructions;
  - o his contacts with the SPO and any witness on the SPO’s witness list;
  - o his contacts with the [REDACTED], if any;
  - o any further information related to [REDACTED] by Mr Thaçi and Mr Veseli [REDACTED];
- Any information related to the use of intermediaries between the SPO and witnesses on the SPO’s witness list;

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<sup>1</sup> KSC-BC-2020-06, Transcript of the Fifteenth Status Conference, 4 November 2022 (“Fifteenth Status Conference”), Public, p. 1692.

<sup>2</sup> KSC-BC-2020-06/F00877/COR, Corrected 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), 21 July 2022 (“Joint Request”).

- Any information related to the benefits provided to witnesses on the SPO's Witness List, in particular concerning relocation.

## II. PROCEDURAL BACKGROUND

2. On 12 July 2022, Counsel for Kadri Veseli, Counsel for Hashim Thaçi, Counsel for Rexhep Selimi, and Counsel for Jakup Krasniqi jointly filed a Joint Defence Motion for Disclosure Pursuant to Rule 103, requesting:<sup>3</sup>

- 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 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."

3. On 3 August 2022, the SPO responded to the Joint Request, requesting the Pre-Trial Judge to dismiss it in its entirety.<sup>4</sup>

4. On 15 August 2022, the four Defence teams replied to the SPO Response, requesting, in addition to granting the Joint Request, a declaration that the SPO has violated its obligation under Rule 102(3) to list all material in its possession which is

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<sup>3</sup> KSC-BC-2020-06/F00877/COR, Corrected 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), 21 July 2022 ("Joint Request").

<sup>4</sup> KSC-BC-2020-06/F00910, Prosecution response to 'Joint Defence Motion for Disclosure Pursuant to Rule 103' (F00877), Confidential ("SPO Response").

relevant to the case as well as any remedy the Pre-Trial Judge will consider appropriate.<sup>5</sup>

5. On 23 September 2022, the SPO disclosed to the Defence, pursuant to Rule 103 of the Rules, a Note concerning a SPO telephone interview with [REDACTED], dated [REDACTED] and a SPO Transcription of Telephone Interview with [REDACTED], dated [REDACTED].<sup>6</sup>

6. On 27 September 2022, the Defence asked the SPO, *inter partes*, pursuant to Rule 102(3):

“to be provided with the following materials related to [REDACTED], which are referred to during this interview [REDACTED] but which the Defence has not been able to locate in the Rule 102(3) notice (in part, due to the lack of clear identifying information):

1. Any SPO statement, transcript or other material relating to the SPO interview of [REDACTED] on or about [REDACTED] (see pages 1-3, 13);
2. Any notes, transcripts or other materials relating to an SPO telephone conversation with [REDACTED] on or about [REDACTED] (see pages 2-3); and
3. All materials provided by [REDACTED] to the SPO, including screenshots, or other evidence of phone calls and text messages, relating to [REDACTED]'s contact with certain individuals (see pages 20-21).”

7. On 20 October 2022, the SPO replied that it considered that the information requested was not relevant to the case or potentially exculpatory but, given that these interviews are inter-related, agreed to disclose, as a matter of courtesy, the [REDACTED] interview.

8. On 25 October 2022, the Defence was disclosed the [REDACTED] interview of [REDACTED].<sup>7</sup>

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<sup>5</sup> KSC-BC-2020-06/F00928, Joint Defence Reply to SPO Response to Joint Defence Motion for Disclosure Pursuant to Rule 103 (F00910), Confidential.

<sup>6</sup> [REDACTED], Disclosure Package 490 (Rule 103).

<sup>7</sup> [REDACTED], Disclosure Package 578 (Rule 102(3)).

9. During the Status Conference held on 4 November 2022, the Defence stressed, *inter alia*:

- The failure, by the SPO, to disclose any information related to relocation requests or other incentives given to witnesses on its Witness List – despite the fact that [REDACTED] relocation requests had been made;<sup>8</sup>
- The failure, by the SPO, to disclose all the material related to Witness [REDACTED] who initially alleged that Mr Thaçi and Mr Veseli [REDACTED], in coordination with certain [REDACTED] – despite the fact that [REDACTED]. [REDACTED] thereafter retracted his statement, maintaining that he had been manipulated by [REDACTED], who had been in contact with other prosecution witnesses.<sup>9</sup>

10. The SPO maintained that it had complied with its disclosure obligations.<sup>10</sup> The Pre-Trial ordered the Defence to supplement its Joint Request F00877-Corr by 14 November 2022.<sup>11</sup>

### III. APPLICABLE LAW

11. The Defence hereby incorporates by reference the legal submissions contained in the Joint Request.<sup>12</sup>

### IV. SUBMISSIONS

#### A. Information related to [REDACTED]

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<sup>8</sup> Fifteenth Status Conference, Confidential, p. 1590; See also KSC-BC-2020-06/F00434/A01, Notes from diplomatic briefing on 7 December 2020, p. 5.

<sup>9</sup> Fifteenth Status Conference, Confidential, pp. 1591-1598, 1602-1609, 1611-1612. KSC-BC-2020-06/F00434/A01, Notes from diplomatic briefing on 7 December 2020, p. 4.

<sup>10</sup> Fifteenth Status Conference, Confidential, p. 1599-1600, 1610.

<sup>11</sup> Fifteenth Status Conference, Public, p. 1692.

<sup>12</sup> Joint Request, paras 14-24.

12. The Defence requires to be disclosed any information in the SPO's custody, control or actual knowledge which relates to [REDACTED], pursuant to Rule 103 of the Rules. This witness [REDACTED]<sup>13</sup> in order to provide false incriminating information against Mr Thaçi and Mr Veseli, allegedly under the instructions of [REDACTED].

13. [REDACTED] was first interviewed by the SPO in [REDACTED]. He initially claimed that [REDACTED], close to Mr Thaçi and Mr Veseli, met with [REDACTED] and made a deal with him, on behalf of Mr Thaçi and Mr Veseli, pursuant to which [REDACTED].<sup>14</sup>

14. [REDACTED] said that [REDACTED].<sup>15</sup> [REDACTED].<sup>16</sup> [REDACTED] stated that [REDACTED].<sup>17</sup>

15. He maintained that [REDACTED]<sup>18</sup> [REDACTED].<sup>19</sup> He alleged that Mr Thaçi and Mr Veseli were the first two people to [REDACTED] and that [REDACTED].<sup>20</sup> He declared that according to his sources, [REDACTED].<sup>21</sup>

16. In the course of this [REDACTED] interview, [REDACTED] further claimed that [REDACTED] asked him for [REDACTED], but that he refused.<sup>22</sup>

17. Last, he offered his private [REDACTED] notebook to the SPO.<sup>23</sup>

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<sup>13</sup> [REDACTED], p. 13.

<sup>14</sup> [REDACTED], pp. 14-16, 22.

<sup>15</sup> [REDACTED], p. 23.

<sup>16</sup> [REDACTED], p. 21, l. 8-15.

<sup>17</sup> [REDACTED], p. 22, l. 5-10.

<sup>18</sup> [REDACTED], p. 22, l. 20-22.

<sup>19</sup> [REDACTED], p. 3.

<sup>20</sup> [REDACTED], pp. 3-4.

<sup>21</sup> [REDACTED], p. 2, l. 22-25.

<sup>22</sup> [REDACTED], pp. 6-7.

<sup>23</sup> [REDACTED], p. 4.

18. Yet, on [REDACTED], [REDACTED] contacted [REDACTED], a member of the SPO, to retract entirely his [REDACTED] statement.<sup>24</sup> A phone call was organised between [REDACTED] and [REDACTED] on [REDACTED], upon which [REDACTED] stated that all the testimony he gave to the SPO was “prepared” by a [REDACTED],<sup>25</sup> [REDACTED],<sup>26</sup> with the knowledge of [REDACTED]:

[REDACTED]<sup>27</sup>

[REDACTED]<sup>28</sup>

[REDACTED]<sup>29</sup>

19. [REDACTED] admitted that all the information he gave in his [REDACTED] interview [REDACTED],<sup>30</sup> with whom he had “written contracts”.<sup>31</sup>

20. [REDACTED] further maintained that following this [REDACTED] interview, he received threat [REDACTED], who threatened to [REDACTED].<sup>32</sup> [REDACTED] alleged that he met with [REDACTED] and [REDACTED] in [REDACTED] in the middle of [REDACTED], as well as with [REDACTED], [REDACTED].<sup>33</sup> At [REDACTED]’s request, he recorded a conversation with [REDACTED].<sup>34</sup> [REDACTED] claimed to have screenshots of his conversations with [REDACTED]<sup>35</sup> and with [REDACTED].<sup>36</sup>

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<sup>24</sup> [REDACTED], pp. 1-2.

<sup>25</sup> *Ibid.*, p. 13, l. 16.

<sup>26</sup> *Ibid.*, p. 18, l. 14-21.

<sup>27</sup> [REDACTED], p. 14, l. 1-5.

<sup>28</sup> *Ibid.*, p. 17, l. 5-14.

<sup>29</sup> *Ibid.*, p. 17, l.16 -20.

<sup>30</sup> *Ibid.*, p. 14, l. 13-15.

<sup>31</sup> *Ibid.*, p. 7, l. 20-21.

<sup>32</sup> *Ibid.*, pp. 5-6, 10-11.

<sup>33</sup> *Ibid.*, pp. 12-13.

<sup>34</sup> *Ibid.*, p. 7, l. 13-15.

<sup>35</sup> *Ibid.*, p. 20, l. 5-16.

<sup>36</sup> *Ibid.*, p. 21, l. 1-15.

21. During his [REDACTED] call with the SPO, [REDACTED] further tried to associate Mr Thaçi [REDACTED].<sup>37</sup> This latest allegation is extremely worrying for the Defence since one can wonder whether [REDACTED] was trying, through [REDACTED].

22. Thus, any information related to [REDACTED], to his contacts with the SPO, with [REDACTED], and with the [REDACTED], in particular [REDACTED], is manifestly exculpatory, since it relates to the fabrication of false evidence against Mr Thaçi and Mr Veseli, with or without the knowledge or assistance of [REDACTED], the [REDACTED] and/or the SPO. Any document discussed during [REDACTED]' SPO interviews should be disclosed to the Defence forthwith, such as:

- his private [REDACTED] notebook, offered by [REDACTED] to the SPO during his [REDACTED] Interview;<sup>38</sup>
- The recording of his talk with [REDACTED], mentioned during his [REDACTED] call;<sup>39</sup>
- The screenshots of his conversations with [REDACTED]<sup>40</sup> and with [REDACTED],<sup>41</sup> mentioned during his [REDACTED] call.

If such material is not currently in the SPO's custody, the SPO has actual knowledge of it and should require such items from [REDACTED] and disclose them to the Defence upon reception. Such material is obviously relevant, since the SPO itself acknowledged, during the Fifteen Status Conference, that it had requested the screenshots from [REDACTED] but had not received them yet.<sup>42</sup>

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<sup>37</sup> *Ibid.*, p. 10, l. 2-8 ; see also pp. 14-15.

<sup>38</sup> [REDACTED], p. 4.

<sup>39</sup> [REDACTED], p. 7, l. 13-15.

<sup>40</sup> [REDACTED], p. 20, l. 5-16.

<sup>41</sup> *Ibid.*, p. 21, l. 1-14.

<sup>42</sup> Fifteen Status Conference, Confidential, p. 1600, l. 11-15: [REDACTED].



23. The Defence is concerned not only by the nature of the false allegations raised by [REDACTED] against Mr Thaçi, but also by the weight, if any, granted to this witness by the SPO initially and, eventually, by the Pre-Trial Judge. While the SPO may doubt the credibility of this witness during his [REDACTED] interview, the SPO asked repeatedly what was [REDACTED]'s interest in coming forward to the SPO.<sup>43</sup> In any event, [REDACTED] presumably referred to him when he indicated [REDACTED].<sup>44</sup> During the Fifteen Status Conference, the SPO clarified that it had not relied on [REDACTED]'s evidence in the [REDACTED] context.<sup>45</sup> The Defence further requires confirmation that the SPO has not relied on [REDACTED]'s evidence in any submissions *ex parte* or otherwise against Mr Thaçi, be it related to detention matters, protective measures for witnesses, or any other matter.<sup>46</sup>

#### **B. Information related to [REDACTED]**

24. Pursuant to Rule 103 of the Rules, the Defence requires to be disclosed any information related to [REDACTED], in particular his status within the SPO and [REDACTED]; his contacts with [REDACTED]; and his contacts with the SPO and any witness on the SPO's witness list, given that he appears to have manipulated [REDACTED] to give a false testimony against Mr Thaçi and Mr Veseli and [REDACTED].<sup>47</sup> Such material is manifestly exculpatory since it puts in question the credibility of witnesses put in contact with the SPO by [REDACTED].

25. [REDACTED] is the brother of [REDACTED], and of [REDACTED], who is involved in [REDACTED]. [REDACTED] introduced several witnesses to the SPO.

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<sup>43</sup> [REDACTED], pp. 7-8, 18-19.

<sup>44</sup> KSC-BC-2020-06/F00434/A01, Notes from diplomatic briefing on 7 December 2020, p. 4.

<sup>45</sup> Fifteen Status Conference, Confidential, p. 1610, l. 20-24.

<sup>46</sup> KSC-BC-2020-06, Transcript of the Fifteen Status Conference, 4 November 2022, Confidential, p. 1611.

<sup>47</sup> [REDACTED], p. 10, l. 2-8 ; see also pp. 14-15.

[REDACTED] declared that he was first contacted by [REDACTED]<sup>48</sup> and that [REDACTED] prepared him for his false testimony before the SPO.<sup>49</sup> [REDACTED] acknowledged during a [REDACTED] interview on [REDACTED] that he had mediated several witnesses for the SPO, such as [REDACTED].<sup>50</sup> During an exchange with the SPO on [REDACTED], [REDACTED] stressed that he [REDACTED].<sup>51</sup> During a [REDACTED] on [REDACTED], [REDACTED] accused each other implicitly of having been sent to the SPO by [REDACTED], referred to as [REDACTED].<sup>52</sup> In this context, [REDACTED] has been described as a [REDACTED] by [REDACTED], [REDACTED], in a [REDACTED], who noted that he appeared [REDACTED].<sup>53</sup>

26. In his various interviews with the SPO, [REDACTED] made further false incriminating allegations against Mr Thaçi [REDACTED].<sup>54</sup> Therefore, as for [REDACTED], the Defence is concerned by the weight, if any, granted to this witness by the SPO initially and, eventually, by the Pre-Trial Judge. The Defence notes that during a hearing held on 22 February 2022, to support a wide application of the protocol on contact with witnesses, the SPO relied on an article from the newspaper Bota Sot dated 3 November 2022, which falsely accused the Thaçi Defence of having recruited several former members of the Kosovo Intelligence Agency.<sup>55</sup> The newspaper relayed [REDACTED].<sup>56</sup> Given [REDACTED], the Defence hereby requires confirmation that the SPO has not relied on [REDACTED]'s evidence in any submissions *ex parte* or otherwise against Mr Thaçi, be it related to detention matters, protective measures for witnesses, or any other matter.

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<sup>48</sup> *Ibid.*, pp. 18, l. 22 – p. 19, l. 4.

<sup>49</sup> *Ibid.*, p. 13, l. 15-16.

<sup>50</sup> Annex 1, [REDACTED].

<sup>51</sup> [REDACTED], para. 1.

<sup>52</sup> Annex 2, [REDACTED].

<sup>53</sup> Annex 3, [REDACTED].

<sup>54</sup> [REDACTED], para. 9, 10, 13, 25; [REDACTED], para. 11.

<sup>55</sup> KSC-BC-2020-06, Transcript of the hearing of 22 February 2022, p. 1042.

<sup>56</sup> Annex 4, Article from Bota Sot dated 3 November 2021.

27. The Defence further requires clarification as to the status of [REDACTED] within the SPO and, eventually, the [REDACTED] and the [REDACTED], *i.e.*, invites the SPO to clarify whether he has been hired under a contract and whether his services have been paid.

**C. Information related to the use of intermediaries between the SPO and witnesses on the SPO's Witness List**

28. The Defence further requests the Pre-Trial Judge to order the SPO to clarify the extent to which it has relied on intermediaries for witnesses on the SPO's Witness List. As illustrated by the example of [REDACTED] and [REDACTED], certain intermediaries and witnesses may not be reliable. This was further demonstrated in the *Lubanga* case,<sup>57</sup> the *Katanga and Ngudjolo* case<sup>58</sup> before the ICC. Such material is exculpatory given that it may affect the witnesses' credibility.

**D. Information related to the benefits provided to witnesses on the SPO's Witness List, in particular with regard to relocation**

29. Pursuant to Rule 103 of the Rules, the Defence requests to be disclosed any information related to the benefits provided to witnesses on the SPO's Witness List, in particular the witness code of the witnesses relocated, their date of relocation and the amount of money allocated to each of them to facilitate their relocation, if any. As

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<sup>57</sup> ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-2434-Red2, Redacted Decision on Intermediaries, 31 May 2020, paras 138, 140; ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06, Judgment pursuant to Article 74 of the Statute, 14 March 2012, paras 482-483.

<sup>58</sup> ICC, *Prosecutor v. Katanga and Ngudjolo*, ICC-01/04-01/07-1817, Order in relation to the disclosure of the identity of P-143, 1 February 2010, p. 12; ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-2471, Decision on the request from the defence in the Katanga and Ngudjolo case for disclosure of transcripts in the Lubanga case, 11 June 2020, para. 34.

noted during the Fifteen Status conference,<sup>59</sup> [REDACTED] relocation requests had been made and in certain criminal cases, such as in the Kenyan cases before the ICC, the parties saw dramatic changes in testimonies between statements that were taken before and after the witnesses were relocated. Such material is exculpatory since it may affect the witnesses' credibility.

## V. CONCLUSIONS

30. For the foregoing reasons, pursuant to Rule 103 of the Rules, the Defence requests the Pre-Trial Judge to order the SPO to disclose:

- Any information related to [REDACTED], in particular:
  - o his interaction with [REDACTED], with the [REDACTED], and with the SPO;
  - o any document discussed during [REDACTED]'s SPO interviews;
  - o any payment received by [REDACTED] from the SPO or any other entity acting under the SPO's instructions;
  - o any further information related to the allegation [REDACTED] by Mr Thaçi and Mr Veseli [REDACTED];
- Any information related to [REDACTED], in particular:
  - o his status within the SPO and [REDACTED];
  - o any payment received by [REDACTED] from the SPO or any other entity acting under the SPO's instructions;
  - o his contacts with the SPO and any witness on the SPO's witness list;
  - o his contacts with [REDACTED], if any;
  - o any further information related to the allegation of [REDACTED] by Mr Thaçi and Mr Veseli [REDACTED];
- Any information related to the use of intermediaries between the SPO and witnesses on the SPO's witness list;

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<sup>59</sup> Fifteen Status Conference, Public, p. 1590.

- Any information related to the benefits provided to witnesses on the SPO's Witness List, in particular the witness code of the witnesses relocated, their date of relocation and the amount of money allocated to each of them to facilitate their relocation, if any.

**[Word count: 3,215 words]**

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'G. W. Kehoe', is written over a white rectangular redaction box.

**Gregory W. Kehoe**

**Counsel for Hashim Thaçi**

Friday, 23 November 2022

At The Hague, The Netherlands