

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

**Before:** Trial Panel II  
Judge Charles L. Smith, III, Presiding Judge  
Judge Christoph Barthe  
Judge Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participants:** Acting Specialist Prosecutor and Victims' Counsel

**Date:** 14 March 2023

**Language:** English

**Classification:** Public

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**Prosecution and Victims' Counsel joint observations pursuant to Order F01348**

**with strictly confidential and *ex parte* Annex 1**

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**Specialist Prosecutor's Office**

Alex Whiting

**Counsel for Victims**

Simon Laws

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Kadri Veseli**

Ben Emmerson

**Counsel for Rexhep Selimi**

David Young

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

1. The Specialist Prosecutor's Office ('SPO') and Victims' Counsel hereby submit joint observations on redactions to the application forms attached to the Order.<sup>1</sup>
2. At the outset, for the record and in light of the plain language of Rule 113(1) of the Rules<sup>2</sup> and decisions of other panels of this court,<sup>3</sup> the SPO reiterates its position that: (i) Rule 113(1) – which applies to all stages of the proceedings<sup>4</sup> – provides that victim application forms shall not be disclosed to the parties, regardless of whether they relate to dual status witnesses or not;<sup>5</sup> (ii) victim application forms do not fall within the scope of the SPO's disclosure obligations;<sup>6</sup> and (iii) these forms do not amount to prior statements and are not intended to be used as evidence.<sup>7</sup> However, in the circumstances of the Order and this case<sup>8</sup> and considering the applicable criteria,<sup>9</sup> the SPO has decided not to seek leave to appeal the portion of the Order concerning the scope and application of Rule 113.<sup>10</sup>

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<sup>1</sup> Order on the Disclosure of Application Forms Pertaining to Dual Status Witnesses, KSC-BC-2020-06/F01348, 6 March 2023 ('Order'), para.30(c).

<sup>2</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule(s)' herein are to the Rules, unless otherwise indicated.

<sup>3</sup> See, for example, *Specialist Prosecutor v. Shala*, Decision on victims' procedural rights during trial and related matters, KSC-BC-2020-04/F00433, 24 February 2023 ('Shala Decision'), para.58.

<sup>4</sup> Rule 113 is not limited by its terms only to the application stage and, in fact, also addresses later stages of the proceedings, for example, matters relating to the final judgment (see Rule 113(9)).

<sup>5</sup> See, for example, *Shala* Decision, KSC-BC-2020-04/F00433, para.58. See also Prosecution response to 'Thaci Defence Motion for Disclosure of Witnesses with Dual Status', KSC-BC-2020-06/F00722, 3 March 2022, para.2; Prosecution response to Thaci Defence request for certification to appeal decision F01153, KSC-BC-2020-06/F01217, 20 January 2023, para.4; Transcript (SPO Conference), 15 February 2023, p.2024.

<sup>6</sup> See, for example, Third Decision on Victims' Participation, KSC-BC-2020-06/F00817/RED, 25 May 2022, para.38; Order, KSC-BC-2020-06/F01348, para.14.

<sup>7</sup> See, for example, Decision on Thaci Defence's Request for Disclosure of Dual Status Witnesses, KSC-BC-2020-06/F01153, 13 December 2022, para.30. See also Prosecution response to Thaci Defence request for certification to appeal decision F001153, KSC-BC-2020-06/F01217, 20 January 2023, para.9.

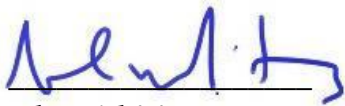
<sup>8</sup> The Order – which was intended to strike a balance between competing rights and interests, in the circumstances of this case – is limited to a specific section of the application forms and to a certain type of applicants, namely dual status witnesses. Further, disclosure is only being done following review by Victims' Counsel and the SPO.

<sup>9</sup> Rule 77(2) (providing, *inter alia*, that an appealable issue must significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial).

<sup>10</sup> See Order, KSC-BC-2020-06/F01348, paras 16-20.

3. The SPO and Victims' Counsel submit that additional redactions are necessary to the personal (including medical, family, and location) details of W04421's son.<sup>11</sup>
4. Additionally, the SPO and Victims' Counsel note that redactions to Section 1, box 13 of the forms attached to the Order have been applied inconsistently. As such information – including whether the victim did not respond and any information provided in response – falls outside the scope of information to be transmitted to the Defence pursuant to the Order, Section 1, box 13 should be consistently redacted in its entirety.<sup>12</sup>
5. No other redactions are necessary for the documents attached to the Order.
6. Annex 1 is strictly confidential and *ex parte* pursuant to Rule 82(4).

**Word count: 615**



**Alex Whiting**

**Acting Specialist Prosecutor**

Tuesday, 14 March 2023

The Hague, the Netherlands



**Simon Laws KC**

**Counsel for Victims**

Tuesday, 14 March 2023

Pristina, Kosovo



**Maria Radziejowska**

**Co-Counsel for Victims**

Tuesday, 14 March 2023

Pristina, Kosovo

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<sup>11</sup> See Annex 1.

<sup>12</sup> See Order, KSC-BC-2020-06/F01348, paras.24-25. Section 1, box 13 falls outside of Section 2 of the application form and does not amount to a supporting document without which Section 2 of the application forms would be incomprehensible.