



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

**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 Guénaël Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Acting Specialist Prosecutor

**Date:** 25 April 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of 'Prosecution Rule 107(2) request with strictly confidential and *ex parte* Annexes 1-7 and 10 and confidential Annexes 8-9', KSC-BC-2020-06/F01469, dated 19 April 2023**

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## I. INTRODUCTION

1. Pursuant to the Framework Decision,<sup>1</sup> Articles 35(2)(e)-(f) and 40(6) of the Law,<sup>2</sup> and Rule 107(2) of the Rules,<sup>3</sup> the Specialist Prosecutor's Office ('SPO') requests the Trial Panel to relieve the SPO of its disclosure obligations in relation to the following documents (collectively, 'Rule 107 Documents'):<sup>4</sup> (a) the uncleared portions of the [REDACTED] and statements of witness [REDACTED]<sup>5</sup> ('Witness') relating to [REDACTED] ('Witness Documents'), for which [REDACTED]<sup>6</sup> [REDACTED] has denied disclosure authorisation; (b) two compilations of DNA-related information ('DNA Documents'), for which the [REDACTED]<sup>7</sup> has denied disclosure authorisation; (c) four SITF<sup>8</sup>/SPO notes of interviews with [REDACTED]<sup>9</sup> and [REDACTED]<sup>10</sup> officials ('[REDACTED] Documents'), which have not been cleared by, as applicable, the [REDACTED];<sup>11</sup> (d) an uncleared [REDACTED]<sup>12</sup> report ('[REDACTED] Document'); and (e) uncleared parts of an [REDACTED]<sup>13</sup> [REDACTED] ('[REDACTED] Document').<sup>14</sup>

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<sup>1</sup> Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-06/F00099, 23 November 2020 ('Framework Decision'), paras 16, 22, 69-71, and 99(l).

<sup>2</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

<sup>3</sup> 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.

<sup>4</sup> The Rule 107 Documents comprise the 19 documents referenced in paragraph 11 and footnote 32 of the 6 April Request. See Prosecution Rule 107(2) request and related matters, KSC-BC-2020-06/F01434, 6 April 2023, Strictly Confidential and *Ex Parte* ('6 April Request').

<sup>5</sup> [REDACTED].

<sup>6</sup> [REDACTED].

<sup>7</sup> [REDACTED]. While the DNA Documents were received directly from the [REDACTED], they were subject to confidentiality and use restrictions imposed by the [REDACTED], which refused disclosure authorisation.

<sup>8</sup> Special Investigative Task Force ('SITF').

<sup>9</sup> [REDACTED].

<sup>10</sup> [REDACTED].

<sup>11</sup> Three of these documents required clearance by both organisations.

<sup>12</sup> [REDACTED].

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

<sup>14</sup> Annexes 1-3, 5, and 7 contain the items for which clearance has been denied. Due to applicable restrictions, the [REDACTED] Document and [REDACTED] Document are not annexed and will be provided to the Panel via the Registry consistent with their security classifications and appropriate handling procedures. Annexes 4 and 6 contain comparison charts setting out relevant counterbalancing

2. In light of (i) available counterbalancing measures, in particular the availability to the Defence of the same or similar information, and (ii) applicable safeguards, including the opportunity for judicial review, no prejudice will arise from granting the request.

## II. SUBMISSIONS

### A. WITNESS DOCUMENTS (ANNEXES 1-3)

3. As set out below, the SPO has exhausted reasonable efforts to obtain disclosure authorisation for the Witness Documents. However, no prejudice is caused, as all directly relevant information contained in the uncleared portions of the Witness Documents is available to the Defence. The Witness Documents are included at Annexes 1-3 and charts comparing uncleared portions with information available to the Defence by other means are included at Annex 4.

#### i. Background

4. [REDACTED]. [REDACTED]. [REDACTED].

5. On [REDACTED] 2013, [REDACTED] allowed the SITF to access the Witness's identity and evidence for the sole purpose of its investigation, [REDACTED].

6. [REDACTED].<sup>15</sup> [REDACTED]<sup>16</sup> [REDACTED].<sup>17</sup>

7. On [REDACTED] 2021, the SPO requested the [REDACTED] to enable the disclosure of [REDACTED] evidence in these proceedings.

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measures in relation to the Witness Documents and DNA Documents. Annexes 9-10 include proposed counterbalancing documents that have not yet been disclosed. Counterbalancing documents that have already been disclosed are not included in the annexes, as they are available on Legal WorkFlow. To the extent any of the counterbalancing documents have not been disclosed or have only been disclosed to certain Defence teams pursuant to Rule 102(3), the SPO will disclose them to all Defence teams upon resolution of this request and unless ordered otherwise.

<sup>15</sup> [REDACTED]. *See also* [REDACTED].

<sup>16</sup> [REDACTED].

<sup>17</sup> [REDACTED]. [REDACTED].

8. On [REDACTED] 2021, the [REDACTED] informed the [REDACTED] that local authorities had not been able to locate the Witness, no information regarding his possible location was available, and it had exhausted all of its leads.

9. On [REDACTED] 2021, the [REDACTED] denied the [REDACTED], due to, *inter alia*, the fact that the SPO does not intend to call the Witness or rely on his evidence, and that the Witness could not be located [REDACTED].<sup>18</sup>

10. The SPO subsequently undertook its own investigative steps to locate the Witness, but these were also unsuccessful and have now been concluded, as have consultations concerning available counterbalancing measures.

ii. Annexes 1-2

11. Annex 1 contains unredacted statements that were given by the Witness [REDACTED],<sup>19</sup> and Annex 2 contains [REDACTED].<sup>20</sup> The Witness is not a witness in this case, but the uncleared documents relate, *inter alia*, to Indictment crimes that were allegedly committed by KLA members in or around the [REDACTED] detention facility in 1998.<sup>21</sup> As indicated in the comparison charts at Annex 4, the same or similar information has been previously disclosed or is publicly available. The gaps in available comparable information primarily relate to the Witness's credibility. However, such information is of limited, if any, value to the Defence, [REDACTED]. [REDACTED].<sup>22</sup>

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<sup>18</sup> [REDACTED]. See [REDACTED].

<sup>19</sup> 009058-009079; 009080-009093.

<sup>20</sup> SITF00029472-00029501, SITF00029502-00029574, SITF00029575-00029658, SITF00029659-00029717, SITF00029718-00029804. Disclosure relief is only requested in relation to the non-cleared information, namely, that included in [REDACTED]. [REDACTED]. See para.6 above.

<sup>21</sup> Amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, Confidential ('Indictment'), paras [REDACTED].

<sup>22</sup> [REDACTED].

iii. Annex 3

12. Annex 3 contains the Witness's [REDACTED] statement and associated exhibits.<sup>23</sup> [REDACTED] asked the Witness to identify, as precisely as possible, the location [REDACTED].<sup>24</sup> As the Witness did not want to go to Kosovo because of security concerns, the [REDACTED] showed him a variety of maps, photos, and a video to identify this location.<sup>25</sup> The Witness utilised and marked the Annex 3 materials to identify the route taken, pinpoint the site, and further clarify his account regarding that location.<sup>26</sup> [REDACTED],<sup>27</sup> none of which directly relate to any charged murder victims in this case.

iv. No further counterbalancing measures are necessary

13. As set out above and in the comparison charts at Annex 4, the relevant information in the Witness Documents is available to the Defence through other disclosed and publicly available materials. While the Witness's identity [REDACTED] has not been disclosed to the Defence due to applicable restrictions,<sup>28</sup> [REDACTED].<sup>29</sup> Given the availability of such information, as well as the unreliable nature of the Witness's evidence,<sup>30</sup> as discussed above in relation to [REDACTED] and as further borne out in relation to the Annex 4 materials,<sup>31</sup> withholding the Witness Documents would cause limited, if any, prejudice and no further counterbalancing measures are necessary.

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<sup>23</sup> 009096-009111; 009112-009113; 009114-009129; 009130-009141.

<sup>24</sup> Annex 3, p.009098, paras 4-5.

<sup>25</sup> Annex 3, p.009098, para.5

<sup>26</sup> Annex 3, pp.009098-009108.

<sup>27</sup> See, for example, [REDACTED].

<sup>28</sup> Throughout his interactions with [REDACTED], the Witness repeatedly voiced security concerns. See, for example, Annex 2, p.009084, para.18; Annex 3, pp.[REDACTED].

<sup>29</sup> See para.6 above.

<sup>30</sup> While the reliability of information does not impact on its status under Rules 102-103, it may still be a factor when considering prejudice caused by non-disclosure.

<sup>31</sup> [REDACTED].

## B. DNA DOCUMENTS (ANNEX 5)

14. Annexes 5 and 6 contain, respectively, (i) the DNA Documents; and (ii) a comparison chart indicating where similar relevant information can be located in disclosed and publicly available materials. The DNA Documents consist of reports, analysis, photographs of samples, and related donor and missing person information. They contain personal details of numerous, innocent third parties, in particular, DNA sample donors.

15. The DNA Documents are relevant insofar as they concern, *inter alia*, bodies discovered at or near [REDACTED], where charged murder victim [REDACTED] remains were found.<sup>32</sup> A one-page DNA report among the DNA Documents relates to this victim. However, no prejudice arises, as similar DNA information reaching similar conclusions,<sup>33</sup> and identification documents based on the results of the relevant DNA analysis pertaining to [REDACTED] remains, are available to the Defence.<sup>34</sup> Likewise, similar DNA analysis, results, and related identification conclusions are available for all other victims concerned by the DNA Documents.<sup>35</sup>

16. Accordingly, the Defence possesses the relevant information and no further counterbalancing measures are needed.

## C. [REDACTED] DOCUMENTS (ANNEX 7)

17. The SPO has been unable to obtain clearance of the [REDACTED] Documents. Nevertheless, non-disclosure does not unduly prejudice the Defence due to available counterbalancing measures.

18. 073230-073233 is a note of a meeting with former [REDACTED] (W02093), who is not a witness in this case. While the fact that the SITF/SPO met W02093 is not

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<sup>32</sup> Indictment, KSC-BC-2020-06/F00999/A01, para.[REDACTED].

<sup>33</sup> See Annex 5: [REDACTED].

<sup>34</sup> See Annex 6 with the relevant similar information indicated for [REDACTED].

<sup>35</sup> See Annex 6.

disclosed to the Defence due to the refusal by the [REDACTED].<sup>36</sup> The brief note includes information concerning W02093's role in Kosovo in [REDACTED], which, for the most part, is of marginal, if any, relevance.<sup>37</sup> The directly relevant information is available to the Defence. First, numerous documents have been disclosed,<sup>38</sup> detailing, in greater depth, the composition and functioning of the [REDACTED].<sup>39</sup> Further, to the extent the witness briefly discussed the Accused THAÇI and SELIMI, an anonymised summary reproducing this primarily incriminating information is included at Annex 8.<sup>40</sup> Finally, the November 1999 report discussed by the witness has been disclosed.<sup>41</sup> Other than identifying W02161 as a co-author of Annex C to this report, the witness did not provide any additional, relevant information.<sup>42</sup>

19. 073152-073159 is a note of a meeting with former [REDACTED] (W02326), who is not a witness in this case. While the fact that the SITF/SPO met W02326 is not disclosed to the Defence due to the refusal by the [REDACTED].<sup>43</sup> Further, all directly relevant information in the note is available to the Defence. Numerous documents have been disclosed<sup>44</sup> that detail the composition and functioning of the [REDACTED] and the security situation in Kosovo.<sup>45</sup> Moreover, all information directly relevant to

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<sup>36</sup> [REDACTED]. *See, for example*, [REDACTED].

<sup>37</sup> 073230-073233, paras 2-3 (concerning his background and entry into Kosovo), 8 (concerning certain visits that he did not go on and did not provide information about), 9-11 (concerning post-Indictment period events relating to cooperation between international organisations, diplomatic visits to Kosovo, and refugees).

<sup>38</sup> *See, for example*, SITF40008467-40008467 (Disclosure 69: Rule 102(1)(b), 2021-08-18); SPOE00000089-00000089 (Disclosure 54: Rule 102(1)(b), 2021-07-27); SPOE00246094-00246094 (Disclosure 103: Rule 102(1)(b), 2021-10-27); SPOE00304085-00304086 (Disclosure 79: Rule 102(1)(b), 2021-09-13); SPOE00304092-00304093 (Disclosure 79: Rule 102(1)(b), 2021-09-13).

<sup>39</sup> 073230-073233, paras 4-6.

<sup>40</sup> 073230-073233, paras 7, 10. The witness did not remember or have knowledge of the documents he was shown, as recorded in paragraph 10.

<sup>41</sup> 010246-010292 (Disclosure 215: Rule 102(3), 2022-04-14, RS; Disclosure 260: Rule 102(3), 2022-05-24, JK; Disclosure 349: Rule 102(3), 2022-07-15, KV). The SPO will also disclose this report to the THAÇI Defence (which did not previously request it) upon resolution of this request.

<sup>42</sup> 073230-073233, paras 12-16.

<sup>43</sup> [REDACTED]. *See, for example*, [REDACTED].

<sup>44</sup> *See, for example*, [REDACTED]. More than 2,500 documents were disclosed with '[REDACTED]' in the description and more than 2,800 disclosed documents originated from the [REDACTED].

<sup>45</sup> 073152-073159, paras 2, 6-7, 13-19, 21-22.

the case, including potentially exculpatory information,<sup>46</sup> is reproduced in the anonymised summary at Annex 8.<sup>47</sup>

20. 073920-073922 is a note of a meeting with former [REDACTED] (W03631), who is not a witness in this case. While the fact that the SITF/SPO met W03631 is not disclosed to the Defence due to the refusal by the [REDACTED].<sup>48</sup> The note primarily concerns irrelevant matters, namely, the internal functioning of the [REDACTED], at the end of and after the Indictment period and in locations that are not charged crime sites.<sup>49</sup> The anonymised summary at Annex 8 contains the only potentially relevant information, in particular, that relating to the KLA.

21. 073998-074001 is a note of a meeting with former [REDACTED] (W03609), who is not a witness in this case. While the fact that the SITF/SPO met W03609 is not disclosed to the Defence due to the refusal by the [REDACTED].<sup>50</sup> [REDACTED] was deployed to Kosovo only in [REDACTED] 1999<sup>51</sup> and the note solely concerns events outside the Indictment period. In this respect, the note primarily consists of irrelevant matters relating to the internal organisation of the [REDACTED], and the witness's observations of post-Indictment period [REDACTED] and 'ethnic cleansing' and 'house burning', without further attribution of or details about such events. The summary at Annex 8 contains the only potentially relevant information, in particular, that relating to the KLA and political parties that are relevant to the charges in this case.

22. In the circumstances of the [REDACTED] Documents and considering that all relevant and potentially exculpatory information is available to the Defence, disclosure relief is justified and no further counterbalancing measures are necessary.

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<sup>46</sup> 073152-073159, para.4 (The KLA lacked military training in terms of planning and organization), 23 ([REDACTED]), 25.XVIII (the witness was not convinced then or now that THACI had full control of KLA).

<sup>47</sup> 073152-073159, paras 3-5, 8-12, 20, 23-25.

<sup>48</sup> [REDACTED]. *See, for example*, [REDACTED].

<sup>49</sup> 073920-073922, para.2 ([REDACTED]).

<sup>50</sup> *See, for example*, [REDACTED].

<sup>51</sup> 073998-074001, para.4.



## D. [REDACTED] DOCUMENT

23. 7007990-7007994<sup>52</sup> is a [REDACTED] Report, dated 30 June 1999, classified as [REDACTED]. The document primarily concerns internal [REDACTED] matters, including formations and structure, which are of no known relevance to the case. The only potentially relevant and/or exculpatory portions – concerning KLA attendance at a funeral, with authorisation to carry arms, and KLA compliance with demilitarisation obligations ‘in a friendly and relaxed manner’<sup>53</sup> – are included in the summary at Annex 8. Accordingly, no prejudice results from non-disclosure and no further counterbalancing measures are necessary.

## E. [REDACTED] DOCUMENT

24. 7008171-7008220<sup>54</sup> is an [REDACTED] Report concerning, *inter alia*, two [REDACTED] meetings with [REDACTED], who is not a witness in this case, and concerning an incident which is not charged in this case. In any event, all directly relevant information is available to the Defence. First, a redacted version of 7008171-7008220 has been cleared,<sup>55</sup> which redacts the results of the meetings with [REDACTED]. All other relevant information is unredacted.<sup>56</sup> Second, an SPO official note of an interview with W02450, which concerns the same incident, will be notified and disclosed to the Defence under Rule 102(3).<sup>57</sup> Third, a number of documents have already been disclosed concerning the incident discussed by [REDACTED].<sup>58</sup> Finally,

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<sup>52</sup> As noted above, due to applicable restrictions, this document is not annexed. *See* fn.4 above.

<sup>53</sup> 7007990-7007994, p.7007993.

<sup>54</sup> As noted above, due to applicable restrictions, this document is not annexed. *See* fn.4 above.

<sup>55</sup> SPOE00219486-00219535. This version is included at Annex 9.

<sup>56</sup> 7008171-7008220, pp.7008171-7008178, 7008198-7008202.

<sup>57</sup> 053766-053771. This document is included at Annex 10. It will be disclosed with appropriate standard redactions that do not affect the substance.

<sup>58</sup> *See, for example*, [REDACTED]; SITF00423182-00423190; SITF00423191-00423265; SITF00423266-00423271; SITF00423272-00423282; SITF00423283-00423288; SITF00423289-00423298; SITF00423303-00423303 RED; SITF00423326-00423327; SITF00423329-00423332; SITF00423333-00423334; SITF00423336-00423339; SITF00423340-00423423; SITF00423424-00423518; SITF00423519-00423560;

the anonymised summary at Annex 8 includes the additional, potentially relevant and exculpatory<sup>59</sup> information from 7008171-7008220 that is not otherwise available to the Defence. Accordingly, no prejudice results from non-disclosure and no further counterbalancing measures are necessary.

### III. CLASSIFICATION

25. This request and Annexes 1-7 and 10 are strictly confidential and *ex parte* and Annexes 8-9 are confidential in accordance with Rule 107(2) and to give effect to confidentiality restrictions. Confidential redacted versions of this request and Annexes 4 and 6 will be submitted. Redactions are necessary to (i) identifying information of the Rule 107 providers;<sup>60</sup> and (ii) the contents and sources of the Rule 107 Documents. In this respect, certain ERNs and document excerpts have been redacted in this request and the Annexes, as the [REDACTED] would identify the [REDACTED] as a provider and/or to avoid linking documents which identify certain witnesses with documents in which their identifying information is redacted.<sup>61</sup>

### IV. RELIEF REQUESTED

26. For the foregoing reasons, the SPO requests that the Trial Panel relieve the SPO of its disclosure obligations in relation to the Rule 107 Documents.

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SITF00423561-00423566; SITF00423567-00423585; SITF00423586-00423591; SITF00423592-00423602; SITF00423603-00423608; SITF00423609-00423614.

<sup>59</sup> While the summary contains primarily incriminating information, there is some information that, while unclear, may fall within the scope of Rule 103. See Annex 9: Summary relating to 7008171-7008220, paras 6-8.

<sup>60</sup> As a redacted version of the [REDACTED] document was cleared, no redactions to [REDACTED] as a provider are required.

<sup>61</sup> For example, redactions have been applied to the ERNs and excerpts from [REDACTED], which identify him by name. See Section II(A) and Annex 4.

**Word count: 2630**



**Alex Whiting**

**Acting Specialist Prosecutor**

Tuesday, 25 April 2023

At The Hague, the Netherlands.