



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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

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

Registrar: Dr Fidelma Donlon

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Public Redacted Version of “Registry Submissions in Relation to Thaçi Defence Request for Disclosure of Certain Information Related to Witnesses (F01404)”, filing F01436, dated 6 April 2023

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1. Pursuant to Articles 23 and 34(1) and (8) of the Law,¹ Rules 23(2) and 27 of the Rules,² and Trial Panel II ('Panel')'s directions,³ the Registrar hereby provides submissions in relation to the Thaçi Defence Request for Disclosure of Information related to the Relocation of Prosecution Witnesses.⁴

I. PROCEDURAL HISTORY

2. On 28 March 2023, the Defence for Mr Hasim Thaçi ('Thaçi Defence' or 'Defence') requested the Panel "to order the [Specialist Prosecutor's Office ('SPO')] and/or the Witness Protection and Support Office ('WPSO') to disclose to the Defence" the (i) costs associated with the relocation and subsistence of [REDACTED] witnesses, as well as information related to (ii) the number of family members involved with their relocation, and (iii) the date of relocation.⁵

3. In the Request, the Defence submits that relocation of witnesses is an extraordinary measure, that goes "far beyond" "the usual management of witnesses", and constitutes an incentive to testify and thus may have an impact on his/her credibility. For these reasons, the Defence suggests certain details related to relocation should be disclosed to the Defence to enable it to test the witness's credibility during cross-examination.⁶

II. APPLICABLE LAW

4. Pursuant to Article 34(8) of the Law, the Registrar has the overall responsibility and oversight over the witness protection and support function at the Specialist Chambers. On behalf of the Registrar, WPSO implements all necessary protective and

¹ Law on Specialist Chambers and Specialist Prosecutor's Office, Law No. 05/L-053, 3 August 2015 ('Law').

² Rules of Procedure and Evidence Before the Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

³ [REDACTED].

⁴ F01404, Thaçi Defence Request for Disclosure of Information related to the Relocation of Prosecution Witnesses, 28 March 2023, confidential ("Defence Request" or "Request").

⁵ Id., para. 2.

⁶ Defence Request, para. 23.

security arrangements, counselling and other appropriate assistance for witnesses and others who are at risk on account of testimony given by witnesses.⁷ As part of responsibilities set out in the Law relevant to the protection of witnesses and other persons, the Registrar has established a Witness Protection Programme ('WPP') managed by WPSO.

5. In accordance with Article 23(1) of the Law, WPSO applies necessary protective measures for the protection of witnesses and others including, but not limited to, those set out at Articles 5 – 13 of the Kosovo Law on Witness Protection.⁸ One of these measures envisages the relocation of protected persons to a secure place. All procedures and administrative functions in relation to the WPP remain strictly confidential and are solely carried out by WPSO.

III. SUBMISSIONS

6. The Registrar reiterates that by virtue of the Law and the Rules, the Registry is a neutral organ, servicing the Specialist Chambers and providing services to all parties and participants to the proceedings. In the exercise of her functions, the Registrar, among others, ensures compliance with the principle of sound financial management. In carrying out its mandate, on behalf of the Registrar, WPSO acts impartially in the provision of assistance to witnesses appearing before the court, whether called by the SPO, Defence or Victims' Counsel. Protection arrangements are foreseen in the statutory framework applicable to the Specialist Chambers and are carried out according to internal procedures. At the ICC, the Defence in the *Katanga* case argued that the mere fact of a witness having been relocated, or having benefitted from non-negligible advantages raised concerns with regard to credibility. The *Katanga* Trial Chamber found that the neutrality of the Registry and of its witness support unit constituted an "essential guarantee" which ensured the requirement of fairness, and

⁷ See also Rule 27 of the Rules.

⁸ Law on Witness Protection, No. 04/L-015, 29 July 2011.

rejected the Defence request for detailed information related to expenditure incurred in relation to a witness's relocation.⁹

7. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

8. For these reasons, WPSO maintains strict confidentiality in relation to the WPP, upholding a level of independence from all parties and participants to the proceedings, including the calling party, who is also not provided with details regarding the implementation of protection arrangements.

9. In relation to the costs associated with the relocation of witnesses and others who are at risk on account of testimony given by witnesses, it is a basic principle of witness relocation that the protected witness and any persons accompanying them are provided with "appropriate physical, psychological, educational, social and financial protection and support."¹⁰ International jurisprudence also supports the finding that admission in a court's witness protection program and basic relocation expenses, are not special or extraordinary benefits.¹¹

⁹ ICC, *Prosecutor v. Katanga*, Trial Chamber II, [ICC-01/04-01/07-T-215-RED-ENG](#), 8 November 2010, p.9, lines 5 – 8: "[The Chamber] also notes that the competence which is ascribed to it the VWU in this field, which is a neutral organ of the Registry, constitutes an essential guarantee and makes it possible to ensure that the requirement of fairness is satisfied"; *see also* p.8, lines 11-20: "In this regard the Chamber can only stress that in the present case the expenditure that Counsel Hooper wants to see disclosed – or the amount of which he wants to see disclosed were not undertaken by the Prosecutor but by the Registrar of this court, a neutral organ, in applying the provisions of the Regulations of the Registry and in accordance with internal procedures which it does not consider that it has to reveal. The Chamber therefore has no element which would enable it to think that the behaviour adopted by the Registry with regards to Witness 0028 can be of such a nature as to harm a fair trial and it therefore does not intend to order the disclosure (...)."

¹⁰ Council of Europe, Recommendation [CM/Rec\(2022\)9](#) of the Committee of Ministers to Member States on the Protection of Witnesses and Collaborators of Justice, 30 March 2022, para. 22.

¹¹ ICC, *Prosecutor v. Ntaganda*, [Judgment](#), 8 July 2019, para. 84: "(...) the Chamber also finds that protection-related assistance, such as admission in the [ICC Protection Program], and/or relocation, or associated expectations, do not necessarily qualify as benefits and, without more, do not undermine a witness's credibility"; ICTR, *Prosecutor v. Karemera et al*, Decision on Joseph Nziirorera's Motion for Disclosure of Benefits to Prosecution Witness ZF, [ICTR-98-44-T](#), 21 October 2009, para. 5 "(...) [Witnesses and Victims Support Section ('WVSS')] only pays standard benefits to witnesses that are related to transport, accommodation, loss of income, and support for minor dependents because of the prolonged absence of a single parent. Additionally, WVSS pays for the basic relocation expenses associated with witnesses who are entitled to protective measures. These benefits are provided to all witnesses regardless of whether they testify for the Defence or the Prosecution. WVSS did not pay any of the special benefits to G and T, which went above and beyond basic relocation expenses". The special

10. To determine the type of assistance to provide to a specific witness [REDACTED]. The type of assistance and protective measures provided to a witness, with the resulting costs, are thus determined in an objective manner [REDACTED].

11. The Registrar confirms to the Panel that all such costs covered are necessary, reasonable and justifiable in the specific circumstances, reflective of the actual costs incurred.

12. For the above reasons, the Registrar submits that [REDACTED] details related to the implementation of the WPP and relocation, [REDACTED], should not be provided to the Parties. The amounts spent in relation to the WPP and relocation are only what is necessary, reasonable and justifiable.

13. If the Panel decides that further information should be made available, the Registrar respectfully requests that the information be kept strictly confidential and be provided to the Panel only.

III. CLASSIFICATION

14. The submissions are filed as confidential pursuant to Rule 82(4) of the Rules.

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Dr Fidelma Donlon
Registrar

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benefits paid to G and T that are mentioned in the last sentence were special payments and benefits conferred by the Prosecution – *see idem*, para. 4.