



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

**The 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: Fidelma Donlon

Date: 14 June 2023

Language: English

Classification: Public

**Public Redacted Version of Decision on the Specialist Prosecutor's Rule 107(2)
Request**

Acting Specialist Prosecutor

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TRIAL PANEL II (“Panel”), pursuant to Articles 21(1)-(4) and (6), 40(2) and (6) and 58 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 103, 107 and 108 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rule”), hereby renders this decision.

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 6 April 2023, the SPO requested relief from its disclosure obligations in relation to 113 documents constituting daily and weekly reports for which the [REDACTED] and [REDACTED] have denied clearance after multiple rounds of consultations and follow-up requests (“Material”).¹ The SPO submits that little if any prejudice would arise from the non-disclosure of the items to the Defence teams for Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (collectively, “Accused” and “Defence”), as the material is, for the most part, general, contextual, or internal in nature and tangentially, if at all, relevant to the crimes charged in this case.² In addition, the SPO submits that: (i) the majority of the information contained therein is inculpatory; (ii) only four documents contain potentially exculpatory material;³ (iii) similar information has already been disclosed to the Defence; and (iv) the submitted summaries adequately serve as a counter-balancing measures.⁴ The SPO further submits that the redactions applied to the Request are necessary to protect the identity of the information-provider

¹ F01434, Specialist Prosecutor, *Prosecution Rule 107(2) Request and Related Matters* (“Request”), 6 April 2023, strictly confidential and *ex parte*, paras 1, 3-4, with Annexes 1-2, strictly confidential and *ex parte*. (A confidential redacted version was filed on the same day, F01434/CONF/RED, with Annex 1, confidential. A public redacted version was filed on 19 April 2023, F01434/RED).

² Request, para. 2.

³ The four documents that contain alleged exculpatory content are: SPOE00133896-00133897, SPOE00133984-00133985, SPOE00134110-00134111, SPOE00134307-00134308, contained in F01434/A02, Specialist Prosecutor, *Annex 2 to Prosecution Rule 107(2) Request and Related Matters* (“Annex 2”), 6 April 2023, strictly confidential and *ex parte*. See also F01434/A01, Specialist Prosecutor, *Annex 1 to Prosecution Rule 107(2) Request and Related Matters* (“Annex 1”), 6 April 2023, strictly confidential and *ex parte*. (A confidential redacted version was filed on the same day, F01434/CONF/RED/A01), items 27, 34, 50 and 73 respectively.

⁴ Request, paras 4-9.

and the contents of the items.⁵

2. None of the Defence teams responded to the Request.

II. DISCUSSION

3. Regarding the necessity of the requested measure, the Panel notes that despite multiple negotiations between the SPO and [REDACTED], the SPO was unable to obtain clearance for the Material. The Panel finds that the Material contains confidential and sensitive information requiring protection under Article 58 and Rule 107(1). Accordingly, and in the absence of consent from the information-provider, the Panel finds that it is necessary to withhold these items.

4. Regarding the proportionality of the requested measures, the Panel observes that much of the information is of a general or contextual nature, or tangentially related to the crimes charged in the present case. Where the items are potentially material or exculpatory to the Defence, as they contain, *inter alia*: (i) information on Kosovo Liberation Army (“KLA”) areas of operation during the indictment period;⁶ (ii) the capacity of the KLA’s communication structure;⁷ (iii) troop movements;⁸ (iv) the KLA’s power and authority in various regions,⁹ and (v) indicators of possible fragmentation in the KLA,¹⁰ the SPO has provided adequate summaries¹¹ of the material contained in these items, and has also identified similar prior disclosures where appropriate.¹²

⁵ Request, para. 14.

⁶ SPOE00133283-00133287. *See* Annex 2, item 1.

⁷ SPOE00133294-00133299. *See* Annex 2, item 2.

⁸ SPOE00133415-00133416; SPOE00133439-00133440. *See* Annex 2, items 14 and 16, respectively.

⁹ SPOE00133441-00133444. *See* Annex 2, item 17.

¹⁰ SPOE00133896-00133897, SPOE00133984-00133985, SPOE00134110-00134111, SPOE00134307-00134308. *See* Annex 2, items 27, 34, 50 and 73, respectively.

¹¹ *See generally* Annex 1.

¹² *See* SPOE00133818-00133821; SPOE00133918-00133919; SPOE00133938-00133940; SPOE00133941-00133944; SPOE00133945-00133948; SPOE00134382-00134383; SPOE00134393-00134394; SPOE00134702-00134704. *See* Annex 2, items 23, 28, 29, 30, 31, 89, and 99, respectively.

5. However, SPOE00133283-00133287 contains passages that appears to be *prima facie* exculpatory¹³ which have not been included in the SPO's proposed summary to be submitted to the Defence as a counter-balancing measure.¹⁴

6. The text provides:

- [REDACTED]
- [REDACTED]
- [REDACTED]

7. The text originates from an [REDACTED]. It is potentially exculpatory material as it might affect the question of the degree of organization of the KLA during the indictment period and its ability to speak with one voice.

8. Accordingly, the Panel considers that the SPO has not submitted a summary of this item which adequately serves as a counter-balancing measure. The Panel therefore orders the SPO to include the passages in paragraph 6, above, in the summary of SPOE00133283-00133287 to be provided to the Defence.

9. The Panel considers that these are appropriate counter-balancing measures in the present circumstances to uphold the Accused's rights under the Law. The Panel finds that withholding the Material will not cause any prejudice to the Defence and that, accordingly, the requested measure is proportionate.

10. In light of the above, the Panel authorises the SPO to withhold the Material pursuant to Rule 107.

III. DISPOSITION

11. For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS** the Request;

¹³ See SPOE00133283-00133287, paras 14-16; *See also* Annex 2, item 1.

¹⁴ *See* Annex 1, item 1.

- b) **AUTHORISES** the SPO to withhold the Material pursuant to Rule 107;
and
- c) **ORDERS** the SPO to amend its summary of SPOE00133283-00133287 in Annex 1 to include the quoted passages in paragraph 6, above, and provide the same to the Defence by 27 June 2023.



Judge Charles L. Smith, III
Presiding Judge

Dated this Wednesday, 14 June 2023

At The Hague, the Netherlands.