



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 Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Acting Specialist Prosecutor

**Date:** 11 July 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 1-3 and confidential Annex 4', KSC-BC-2020-06/F01482, dated 26 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 Rules 107(2) and 108 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'): (a) six documents provided by [REDACTED]<sup>4</sup> ('[REDACTED] Documents'); (b) seven documents provided by [REDACTED]<sup>5</sup> ('[REDACTED] Documents'); and (c) twelve documents, for which [REDACTED]<sup>6</sup> has denied disclosure authorisation<sup>7</sup> ('[REDACTED] Documents').<sup>8</sup>

2. The Rule 107 Documents consist of materials for which clearance has been denied since the 6 April Request or remains pending.<sup>9</sup> While additional clearances

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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').

<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> [REDACTED].

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

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

<sup>7</sup> In certain cases, these documents were cleared, but with extensive, provider-applied redactions covering all or nearly all information contained therein.

<sup>8</sup> Annexes 1-2 contain the [REDACTED] Documents and eight of the [REDACTED] Documents, respectively (036306-036311, 037123-037128, 037129-037134, 037143-037148, 037149-037155, 037220-037225, 037277-037282, and 037677-037683). Due to applicable restrictions, four of the [REDACTED] Documents (7005128-7005165, 7006144-7006147, 7006940-7006947, and 7008010-7008013) and the [REDACTED] Documents are not annexed and will be provided to the Panel via the Registry consistent with their security classifications and appropriate handling procedures. Annex 3 contains a comparison chart setting out relevant counterbalancing measures in relation to one of the [REDACTED] Documents ([REDACTED]). Annex 4 includes summaries, where applicable, for the Rule 107 Documents. Counterbalancing documents referenced in this request and Annex 3 are not annexed, as they are all available on Legal WorkFlow. To the extent any of the counterbalancing documents 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 unless ordered otherwise.

<sup>9</sup> 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'), paras 12-13, fn.36. Other documents referenced in this cited portion of the 6 April Request have since been cleared and/or their disclosure status has been resolved. As appropriate, such documents are being processed for disclosure and will be promptly notified and disclosed.

may be obtained,<sup>10</sup> the SPO is applying for disclosure relief now in the interest of fair and expeditious proceedings. 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. [REDACTED] DOCUMENTS

3. The [REDACTED] Documents are included in Annex 1. Clearance for two of the [REDACTED] Documents has been denied since the 6 April Request ([REDACTED]) and four others remain pending, including one ([REDACTED]) that is subject to additional restrictions imposed by an [REDACTED] provider.<sup>11</sup> However, all relevant information is available to the Defence and no prejudice is caused by non-disclosure.

4. [REDACTED] is the [REDACTED] statement of an individual who is not a witness in this case and concerns [REDACTED], an incident that is not charged in this case. The witness was unable to identify the attackers of this or a related incident, allegedly involving unknown 'Albanians'.<sup>12</sup> The factual information concerning the names and fate of the victims and circumstances of the [REDACTED] incident is included in other documents available to the Defence.<sup>13</sup> Further, a summary of the witness's evidence concerning an alleged KLA attack about two weeks before the [REDACTED] incident is included in Annex 4.<sup>14</sup>

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<sup>10</sup> If and when such clearances are obtained, the SPO will promptly notify and disclose them in accordance with its obligations under Rule 102(3).

<sup>11</sup> While this document was received directly from the [REDACTED], it was subject to [REDACTED] conditions imposed by the entity that originally provided it to the [REDACTED]. [REDACTED].

<sup>12</sup> Annex 1: [REDACTED].

<sup>13</sup> See, for example, 071975-072473 (Disclosure 64: Rule 102(1)(b), 2021-08-11), p.072234; [REDACTED] (Disclosure 69: Rule 102(1)(b), 2021-08-18), pp. [REDACTED].

<sup>14</sup> [REDACTED].

5. [REDACTED] is a compilation of documents consisting of (i) photo sheets, field reports, statements, DNA reports and other case materials ('DNA Documents') relating to efforts to identify human remains buried at the site of the [REDACTED]; (ii) material from the [REDACTED] listing names of missing persons; and (iii) a copy of [REDACTED]. This compilation includes personal details of numerous innocent third parties, in particular, DNA sample donors.

6. Annex 3 contains a comparison chart indicating where the same or similar potentially relevant information can be located in disclosed and publicly available materials. The compilation of documents, specifically the DNA reports and related information, are relevant insofar as they concern, *inter alia*, bodies discovered at or near [REDACTED], where charged murder victim [REDACTED] remains were found.<sup>15</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>16</sup> and identification documents based on the results of the relevant DNA analysis pertaining to [REDACTED] remains, are available to the Defence.<sup>17</sup> Likewise, similar DNA analysis, results, and related identification conclusions are available for all other victims concerned by the DNA Documents.<sup>18</sup>

7. [REDACTED] are all [REDACTED] statements, with redactions applied to identifying information of the relevant witnesses. The Special Investigative Task Force received them in redacted form and the SPO does not possess lesser or unredacted versions. Due to the redactions, which cover most locations and specific dates and details, these statements have little, if any, value, even if clearance were to be obtained. Nevertheless, anonymised summaries of directly relevant factual information, which is primarily incriminating, is provided at Annex 4.<sup>19</sup>

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<sup>15</sup> Amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, Confidential ('Indictment'), para. [REDACTED].

<sup>16</sup> See Annex 1: [REDACTED].

<sup>17</sup> See Annex 3: with the relevant similar information indicated for [REDACTED].

<sup>18</sup> See Annex 3.

<sup>19</sup> The ERN of the relevant document is not included for this summary, [REDACTED].

8. [REDACTED] consist of the transcripts of an audio-recorded [REDACTED] interview of an individual who is not a witness in this case. Portions of the document pertain to the witness's background and procedural matters of no direct relevance to the case.<sup>20</sup> Other parts are relevant insofar as they concern the roles and acts of witnesses and named JCE members in this case and charged crime sites.<sup>21</sup> This information is available to the Defence through the anonymised summary at Annex 4.<sup>22</sup>

9. Accordingly, the Defence possesses the relevant information contained in the [REDACTED] Documents and no further counterbalancing measures are needed.

#### B. [REDACTED] DOCUMENTS

10. At this stage, consultations are ongoing in relation to the [REDACTED] Documents. However, the relevant information is available to the Defence and no prejudice is caused by non-disclosure.

11. 7008921-7008935<sup>23</sup> is an [REDACTED] report relating to [REDACTED]. The document primarily concerns events and the roles and responsibilities of a number of former KLA members following the Indictment period. The relevant information from the document – pertaining to the roles and associations of the Accused and other KLA members during and immediately after the Indictment period – is summarised at Annex 4.<sup>24</sup>

12. 7005899-7005918<sup>25</sup> is an [REDACTED] report concerning the [REDACTED]. Large parts of this document relate to events and associations post-dating the

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<sup>20</sup> Annex 1: [REDACTED], pp.1-11, 16-19; [REDACTED], pp.2-4, 20-21.

<sup>21</sup> Annex 1: [REDACTED], pp.9, 13-15, 19-25; [REDACTED], pp.1, 5-20.

<sup>22</sup> The ERN of the relevant document is not included for this summary, [REDACTED].

<sup>23</sup> As noted above, due to applicable restrictions, this document is not annexed. *See* fn.8 above.

<sup>24</sup> Further, similar information is also reflected in 7009230-7009261 and the counterbalancing documents for 7005899-7005918, addressed below. *See* para.12 below.

<sup>25</sup> As noted above, due to applicable restrictions, this document is not annexed. *See* fn.8 above.

Indictment period, including the [REDACTED],<sup>26</sup> and internal assessments.<sup>27</sup> 7005899-7005918 overlaps to a large extent with 7009312-7009341, for which disclosure relief has previously been granted.<sup>28</sup> In this respect, the Pre-Trial Judge ordered a summary of directly relevant information and otherwise found that withholding 7009312-7009341 was justified because it (i) was prepared after the Indictment period and primarily addressed developments at that time; and (ii) did not contain potentially exculpatory information. The same reasoning applies here. Moreover, the directly relevant information – in particular, that relating to the Indictment period, Accused, and the charges – is replicated in a cleared, redacted version of the report (7009230-7009261)<sup>29</sup> and the summary provided at Annex 4.

13. 7009623-7009624, 7009632-7009635, 7009636-7009638, 7009656-7009658, and 7009694-7009696<sup>30</sup> are all [REDACTED] Reports relating to crimes allegedly committed by a group of KLA members in [REDACTED].<sup>31</sup> All relevant information, including in greater detail, is available to the Defence through other disclosed materials.<sup>32</sup>

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<sup>26</sup> 7005899-7005918, pp.7005914-7005918.

<sup>27</sup> 7005899-7005918, p.7005914.

<sup>28</sup> Decision on Specialist Prosecutor's Rule 107(2) Request, KSC-BC-2020-06/F01002, 30 September 2022, Strictly Confidential and *Ex Parte*, paras 74-76.

<sup>29</sup> Disclosure 608: Rule 102(3), 2022-12-02, KV RS JK HT. 7005899-7005918 appears to be an updated version of 7009230-7009261, with the vast majority of the information being identical.

<sup>30</sup> As noted above, due to applicable restrictions, these documents are not annexed. *See* fn.8 above.

<sup>31</sup> While these incidents are not charged in this case, some of the same KLA members are allegedly responsible for crimes at the [REDACTED] crime sites charged in the Indictment. *See* Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Corrected Version of Prosecution Pre-Trial Brief, KSC-BC-2020-06/F00709/A01, 24 February 2022, Strictly Confidential and *Ex Parte*, paras [REDACTED].

<sup>32</sup> SPOE00329274-SPOE00329360 (Disclosure 699: Rule 102(3), 2023-03-01, HT KV RS JK), pp.SPOE00329333-SPOE00329351. *See also* SPOE00329255-00329255; SPOE00329257-00329257; SPOE00329263-00329271 RED; SPOE00329364-SPOE00329375; SPOE00329385-SPOE00329467; SPOE00329469-SPOE00329536; SPOE00329548-SPOE00329553; SPOE00329557-SPOE00329558; SPOE00329562-00329562; SPOE00329575-00329576; SPOE00329584-00329584; SPOE00329594-SPOE00329597; SPOE00329608-SPOE00329613; SPOE00329616-SPOE00329622; SPOE00329626-SPOE00329627; SPOE00329631-00329631; SPOE00329632-00329633; SPOE00329638-SPOE00329642; SPOE00329646-SPOE00329647; SPOE00329651-SPOE00329652; SPOE00329656-00329656; SPOE00329657-00329657; SPOE00329658-SPOE00329659; SPOE00329660-00329662; SPOE00329738-SPOE00329739; SPOE00329741-SPOE00329979; SPOE00329984-00329984; SPOE00329987-SPOE00329989; SPOE00330013-SPOE00330021; SPOE00330037-00330037; SPOE00330038-00330038;



14. Accordingly, the Defence possesses the relevant information contained in the [REDACTED] Documents and no further counterbalancing measures are necessary.

### C. [REDACTED] DOCUMENTS

15. Rule 107 consultations concerning the [REDACTED] Documents have concluded and clearance has not been obtained. Nevertheless, no prejudice arises from non-disclosure, as the relevant information is available to the Defence.

16. 7005128-7005165, 7006144-7006147, 7006940-7006947, and 7008010-7008013<sup>33</sup> are [REDACTED]<sup>34</sup> documents relating to events between June and September 1999. The documents largely concern internal [REDACTED] information, as well as information concerning [REDACTED] procedures, movements, logistics, preparations, and bases that are of no direct relevance to the case.<sup>35</sup> Further, certain events discussed are publicly known and the same or similar information is available to the Defence by other means.<sup>36</sup> In any event, the directly relevant information from these documents – in particular, that relating to KLA members and activities – is included in the anonymised summaries at Annex 4.

17. The same considerations apply to the [REDACTED] Documents included at Annex 2. 036306-036311 is a [REDACTED] Report, dated 27 September 1999. The document primarily concerns internal [REDACTED] matters, including operations and logistics, which are of no known relevance to the case. The only potentially

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SPOE00330039-SPOE00330041; SPOE00330073-00330073; SPOE00330078-00330078; SPOE00330082-SPOE00330085; SPOE00330101-SPOE00330103 RED. All of these documents were disclosed to all Defence teams under Rule 102(3) in Disclosure Package 699 on 1 March 2023.

<sup>33</sup> As noted above, due to applicable restrictions, these documents are not annexed. *See* fn.8 above.

<sup>34</sup> [REDACTED].

<sup>35</sup> *See, for example*, 7005128-7005165, pp.7005132-7005139, 7005141-7005147, 7005150, 7005152, 7005155-7005157, 7005159, 5005161-7005163, 7005165.

<sup>36</sup> *See, for example*, 7005128-7005165, pp.7005132 (concerning the signing of the Military Technical Agreement on 9 June 1999), 7005149 (concerning the signing of the Demilitarisation Agreement on 21 June 1999).

relevant information – concerning [REDACTED]<sup>37</sup> – is available to the Defence in other disclosed documents<sup>38</sup> and the summary at Annex 4.

18. 037123-037128 is a [REDACTED] Report, dated 24 July 1999. The document primarily concerns internal [REDACTED] matters, including operations and logistics, which are of no known relevance to the case. The only potentially relevant portions – concerning KLA military police detentions and interrogations and other KLA-related information<sup>39</sup> – are included in the summary at Annex 4.

19. 037129-037134 is a [REDACTED] Report, dated 25 July 1999. The document primarily concerns internal [REDACTED] matters, including operations and logistics, which are of no known relevance to the case. The only potentially relevant portions – concerning KLA members' intimidation of minorities and other KLA-related information<sup>40</sup> – are included in the summary at Annex 4.

20. 037143-037148 is a [REDACTED] Report, dated 15 July 1999. The document primarily concerns internal [REDACTED] matters, including operations and logistics, which are of no known relevance to the case. The only potentially relevant portions – concerning the warnings to the KLA about compliance with its demilitarisation obligations and other KLA-related information<sup>41</sup> – are included in the summary at Annex 4.

21. 037149-037155 is a [REDACTED] Report, dated 28 July 1999. The document primarily concerns internal [REDACTED] matters, including operations and logistics, which are of no known relevance to the case. The only potentially relevant portions – concerning KLA control of the population and other KLA-related information<sup>42</sup> – are included in the summary at Annex 4.

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<sup>37</sup> 036306-036311, p.036306.

<sup>38</sup> See, for example, 027409-027485 (Disclosure 54: Rule 102(1)(b), 2021-07-27), p.027474.

<sup>39</sup> Annex 2: 037123-037128, pp.037123-037124.

<sup>40</sup> Annex 2: 037129-037134, pp.037129-037130.

<sup>41</sup> Annex 2: 037143-037148, pp.037143-037144.

<sup>42</sup> Annex 2: 037149-037155, pp.037149-037150.



22. 037220-037225 is a [REDACTED] Report, dated 10 August 1999. The document primarily concerns internal [REDACTED] matters, including operations and logistics, which are of no known relevance to the case. The only potentially relevant portion – concerning a meeting with [REDACTED]<sup>43</sup> – is included in the summary at Annex 4.
23. 037277-037282 is a [REDACTED] Report, dated 29 August 1999. The document primarily concerns internal [REDACTED] matters, including operations and logistics, which are of no known relevance to the case. The only potentially relevant portion – concerning statements by the Commander of the KLA [REDACTED]<sup>44</sup> – is included in the summary at Annex 4.
24. 037677-037683 is a [REDACTED] Report, dated 15 August 1999. The document primarily concerns internal [REDACTED] matters, including operations and logistics, which are of no known relevance to the case. The only potentially relevant portions – concerning [REDACTED] and other KLA-related information<sup>45</sup> – are included in the summary at Annex 4.
25. Accordingly, no prejudice results from non-disclosure of the [REDACTED] Documents and no further counterbalancing measures are necessary

### III. CLASSIFICATION

26. This request and Annexes 1-3 are strictly confidential and *ex parte* and Annex 4 is confidential in accordance with Rule 107(2) and to give effect to confidentiality restrictions. Confidential redacted versions of this request and Annex 3 will be submitted. Redactions are necessary to (i) identifying information of the Rule 107 providers; 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, [REDACTED].

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<sup>43</sup> Annex 2: 037220-037225, pp.037220-037221.

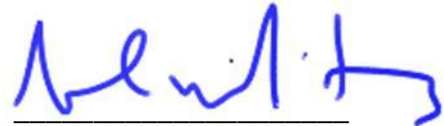
<sup>44</sup> Annex 2: 037277-037282, p.037278.

<sup>45</sup> Annex 2: 037677-037683, p.037678.

IV. RELIEF REQUESTED

27. 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.

**Word count: 2435**



**Alex Whiting**

**Acting Specialist Prosecutor**

Tuesday, 11 July 2023

At The Hague, the Netherlands.