

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:** Counsel for Kadri Veseli

**Date:** 1 May 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of Veseli Defence Response to Prosecution Rule  
107(2) Request (F01469), With Confidential Annex 1**

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## I. INTRODUCTION

1. The Defence for Mr Kadri Veseli ("Defence") hereby responds to the SPO's Request of 19 April 2023, pursuant to which it seeks to be relieved of its disclosure obligations in respect of items falling under Rules 102 and 103 respectively ("Request").<sup>1</sup>
2. Whereas the Defence does not challenge the majority of the items contained in the Request, it nonetheless submits that the SPO should not be relieved of its disclosure obligations in respect of the items contained in Annexes 1-3 ("[REDACTED] items").
3. The Defence avers that all documentation emanating from or otherwise connected to [REDACTED] are material to its case and ought to be disclosed immediately.

## II. SUBMISSIONS

4. The SPO seeks to be relieved of its disclosure obligations in respect of a number of items pertaining to [REDACTED],<sup>2</sup> who testified as a [REDACTED] witness in the [REDACTED].<sup>3</sup> Relief is sought because "the SPO has exhausted reasonable efforts to obtain disclosure authorisation for the Witness Documents."<sup>4</sup>
5. Though heavily redacted, it appears from the Request that authorisation to disclose was denied by the provider because:

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<sup>1</sup> F01469/CONF/RED, *Confidential Redacted Version of 'Prosecution Rule 107(2) request with strictly confidential and ex parte Annexes 1-7 and 10 and confidential Annexes 8-9' with confidential redacted Annexes 4 and 6 and confidential Annexes 8-9*, 19 April 2023, confidential.

<sup>2</sup> See, F01469/CONF/RED/A01, *Annex 4 to Confidential Redacted Version of 'Prosecution Rule 107(2) request with strictly confidential and ex parte Annexes 1-7 and 10 and confidential Annexes 8-9'*, 19 April 2023, confidential.

<sup>3</sup> F01469/CONF/RED, paras 11-12. See also, F01469/CONF/RED/A01.

<sup>4</sup> F01469/CONF/RED, para 3.

- i. the individual is not an SPO witness in this case and
- ii. he could not be located to obtain his consent.<sup>5</sup>

The SPO also argues that no prejudice is caused because:

- iii. All directly relevant information contained in the uncleared portions of the Witness Documents is available to the Defence;<sup>6</sup>
  - iv. [REDACTED]'s evidence is of an unreliable character.<sup>7</sup>
6. *First*, the fact that this individual is not a witness in this case generally, obscures his relevance to the Defence, and thus, grounds for providing clearance. This is an important circumstance which should be communicated to the information Provider. [REDACTED] is directly relevant to the issue of Serbian interference in the current proceedings, which the Defence first raised approximately one year ago.<sup>8</sup> The public redacted version of [REDACTED], which has been disclosed in this case,<sup>9</sup> offers glimpses into the extent of [REDACTED]'s background and his relationship with Serbia and the Serbian authorities – notwithstanding the fact that he [REDACTED] as a member of the [REDACTED]. For instance, it reveals that all of his [REDACTED] interviews were conducted in Serbian, at the Serbian gendarmerie building and in the presence of Serbian officials, specifically a [REDACTED] and [REDACTED].<sup>10</sup>
7. *Second*, his consent should not be required for clearance to be provided. [REDACTED]'s evidence was so lacking in [REDACTED] that (a) the

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<sup>5</sup> F01469/CONF/RED, para. 9.

<sup>6</sup> F01469/CONF/RED, para. 3.

<sup>7</sup> F01469/CONF/RED, para. 13.

<sup>8</sup> [REDACTED].

<sup>9</sup> See for example, [REDACTED] (Package 596); [REDACTED] (Package 596); [REDACTED] (Package 8); [REDACTED] (Package 8); [REDACTED] (Package 8).

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

[REDACTED] (“[REDACTED]”) sought to have it [REDACTED] from the [REDACTED]; and (b) the [REDACTED] regarded him as a “[REDACTED]” whose evidence it found to be [REDACTED].<sup>11</sup> The Defence submits that a witness [REDACTED] to a [REDACTED] should not, without more, be allowed to retain the benefit of protective measures – particularly where, as here, there are exigent circumstances for requesting the variation. Moreover, it is not intended that the de-redacted materials be provided to the public, but only to the Defence. In this respect, [REDACTED] suffers no prejudice given the extensive efforts to obtain his consent, all of which have failed because he cannot be located.<sup>12</sup> The Defence submits that these circumstances are relevant to the matter of clearance and, if they have not been put to the Provider, ought to be put to them before the matter is finally decided upon.

8. *Third*, there remains a significant amount of relevant material that is currently obscured by the redactions because significant portions of [REDACTED] concerning the extent of his relationship to Serbian [REDACTED] took place in [REDACTED]. The public redacted version of [REDACTED] – *i.e.*, that which was disclosed to the Defence<sup>13</sup> – presents a sanitised version of events that obscures the truly egregious nature of what occurred in the [REDACTED]. It is relevant to these proceedings because, like the [REDACTED], the SPO has relied heavily on Serbian cooperation in the preparation of this case. The Defence has repeatedly warned that this relationship presents a threat to the

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<sup>11</sup> [REDACTED].

<sup>12</sup> In this respect, the Defence refers the Panel to ICTY, *Prosecutor v. Karadzic*, MICT-13-55-R86H.9, Appeals Chamber, [Public Redacted Version of the “Decision on an Application Pursuant to Rule 86\(H\)”](#), 21 December 2018, where the Appeals Chamber in that case granted a variation of protective measures where the Applicant made a showing of, *inter alia*, that it was not possible to obtain the witness’s consent due to his death. The salient point to be drawn from that Decision is that the Witness in question, as in the present instance, was not contactable, which, in turn, militated in favour of the request.

<sup>13</sup> *See*, footnote 9 above.

integrity of these proceedings and [REDACTED]'s disastrous evidence in the [REDACTED] is uniquely instructive in this regard.

9. The Defence recalls that there have already been apparent attempts by witnesses linked to Serbian intelligence – namely [REDACTED], and [REDACTED]– to procure false evidence to manipulate the course of events before this Court. [REDACTED] and [REDACTED]'s involvement in this case form part of the same, ongoing pattern of malicious conduct as did [REDACTED]'s involvement in [REDACTED], and requires fuller disclosure than is currently being requested.
10. The Defence, therefore, submits that the entirety of [REDACTED]'s evidence would assist in understanding Serbia's *modus operandi*, as well as evaluating the circumstances in which [REDACTED], [REDACTED] and potentially other, as yet unidentified, individuals who have come to be involved in providing [REDACTED] evidence to the SITF, SPO and, potentially, this Court during trial.
11. *Fourth*, it is precisely because [REDACTED] is unreliable that his evidence is relevant to these proceedings. As alluded to by the SPO,<sup>14</sup> the Defence recalls that [REDACTED] testimony was so flagrantly incoherent that the only reasonable deduction which could have been made was that his testimony [REDACTED]. In this regard, the arguments put forward by the [REDACTED] were endorsed by the [REDACTED] in that case, who, in turn, agreed with Defence Counsel's proposition that [REDACTED] was a "[REDACTED]."<sup>15</sup> Indeed, his evidence was so devoid of any credibility that the [REDACTED] itself motioned to have [REDACTED]'s evidence struck from the record as

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<sup>14</sup> F01469/CONF/RED, para. 13.

<sup>15</sup> [REDACTED].

unreliable and not credible.<sup>16</sup> This, however, was rejected by the [REDACTED] who observed that:

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

12. The Defence contends that [REDACTED] is the quintessential example of the Serbian state's protracted efforts to manipulate evidence to the detriment of the KLA, whilst attempting to simultaneously exonerate Serbia of any wrongdoing during the war in Kosovo. In the case of [REDACTED], not only was he offered as a [REDACTED] at the [REDACTED], it appears he was also subsequently used to amplify the organ trafficking allegation on Serbian television, thereby serving as a catalyst for the creation of this very Court.<sup>18</sup>
13. When considered in conjunction with the SPO's disclosure of an exorbitant amount of evidence stemming from Serbia, or otherwise connected with the Serbian State,<sup>19</sup> the Defence submits that the provision of [REDACTED]'s unredacted materials is relevant to its case. Contrary to the SPO's assertion, the inherently unreliable nature of his [REDACTED] is a factor which militates in favour of disclosure; the items must be disclosed without delay.
14. The Defence accordingly submits that the SPO should be instructed to continue discussions with the Provider to obtain consent to fully disclose the [REDACTED] items or, at a minimum, lesser redacted versions thereof.

### III. CONCLUSION

15. In light of the foregoing, the Defence requests that the Trial Panel:

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

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

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

<sup>19</sup> See, F00877/COR, para. 74. The Defence anticipates that the number of 2,356 documents has grown exponentially in recent months, given that the SPO has continued to disclose evidence emanating from, or otherwise connected with, Serbian State Institutions. See for instance, Disclosure Packages 747; 743; 737; 720; 717; 707; 668; 667; 645.

- i. Reject, at this time, the Request in respect of the items contained in Annexes 1-3.
- ii. Order the SPO to continue discussions with the Information Provider in line with the submissions above with a view to securing permission for full disclosure of [REDACTED]'s materials.
- iii. In the alternative, order the SPO to disclose lesser redacted versions of [REDACTED]'s materials.

**Word Count: 1,857**



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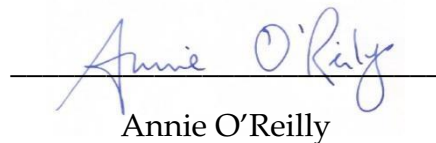
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