



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA 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:** 23 August 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of  
Decision on Joint Defence Request for Reclassification of F01636 and on  
Prosecution Request for Further Redaction of F01647/RED**

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**TRIAL PANEL II** (“Panel”), pursuant to Articles 21(2), 23 and 40(2) and (6)(f) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 75-76, 80 and 82(5) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 3 July 2023, the Defence for all four Accused (collectively, “Defence”) filed a joint response (“F01636”)<sup>1</sup> in relation to certain parts of a Rule 154 motion (“F01625”)<sup>2</sup> filed by the Specialist Prosecutor’s Office (“SPO”).
2. On 5 July 2023, the Defence filed a joint response in relation to the remaining parts of F01625 (“F01647”).<sup>3</sup>
3. On 10 July 2023, the Panel issued a decision on certain parts of F01625, wherein it, *inter alia*, ordered the Defence to submit public redacted versions of F01636 and F01647 by 21 July 2023.<sup>4</sup>
4. On 21 July 2023, the Defence filed: (i) a public redacted version of F01647 (“F01647/RED”);<sup>5</sup> and (ii) a request for reclassification of F01636 from confidential to public (“Defence Request”).<sup>6</sup>
5. On 24 July 2023, the SPO submitted its response to the Defence Request (“SPO

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<sup>1</sup> F01636, Specialist Counsel, *Joint Defence Response to Prosecution Motion for Admission of Evidence Pursuant to Rule 154 Concerning W02153 and W04586*, 3 July 2023, confidential.

<sup>2</sup> F01625, Specialist Prosecutor, *Prosecution Motion for Admission of Evidence of Witnesses W03832, W03880, W04769, W03724, W00072, W01504, W02153, W04368, W04566, and W04586 Pursuant to Rule 154*, 23 June 2023, confidential, with Annexes 1-10, confidential (a public redacted version was filed on 21 July 2023, F01625/RED).

<sup>3</sup> F01647, Specialist Counsel, *Joint Defence Response to the Third Prosecution Motion for Admission of Evidence Pursuant to Rule 154 Concerning the Remaining Eight Witnesses*, 5 July 2023, confidential.

<sup>4</sup> F01664, Panel, *Decision on Prosecution Motion for Admission of Evidence of W00072, W02153 and W04586 Pursuant to Rule 154*, 10 July 2023, confidential, paras 54, 55(h).

<sup>5</sup> F01647/RED, Specialist Counsel, *Public Redacted Version of Joint Defence Response to the Third Prosecution Motion for Admission of Evidence Pursuant to Rule 154 Concerning the Remaining Eight Witnesses*, 21 July 2023, reclassified from public to confidential (see para. 7 below).

<sup>6</sup> F01693, Specialist Counsel, *Joint Defence Request for Reclassification of Filing F01636*, 21 July 2023, in particular, para. 3.

Response”),<sup>7</sup> wherein it: (i) opposed the Defence Request;<sup>8</sup> and (ii) requested further redaction of F01647/RED (“SPO Redaction Request”).<sup>9</sup>

6. On 27 July 2023, the Witness Protection and Support Office indicated its support for the SPO Redaction Request.<sup>10</sup>

7. On 28 July 2023, the Panel reclassified F01647/RED as confidential, without prejudice to the Panel’s determination regarding the SPO Redaction Request.<sup>11</sup>

8. The Defence did not reply to the SPO Response.

## II. SUBMISSIONS

9. The Defence requests that the Panel reclassify F01636 as public as, in the Defence’s view, it contains no confidential information.<sup>12</sup>

10. The SPO responds that: (i) the Defence Request should be rejected, as F01636 contains non-public information about protected witness W04586 in relation to the witness’s prior testimony before the [REDACTED], which, if disclosed to the public, may lead to the witness being identified; and (ii) the Defence should be required to file a public redacted version of F01636 with appropriate redactions, including to the electronic record numbers (“ERNs”), so as to maintain the effectiveness of the witness’s protective measures.<sup>13</sup>

11. With respect to the SPO Redaction Request, the SPO submits that F01647/RED contains confidential information about certain witnesses who are yet to testify,

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<sup>7</sup> F01699, Specialist Prosecutor, *Prosecution Response to Joint Defence Request for Reclassification (F01636) and Request for Further Redaction of Filing KSC-BC-2020-06/F01647/RED*, 24 July 2023, confidential.

<sup>8</sup> SPO Response, paras 1-2, 5.

<sup>9</sup> SPO Response, paras 1, 3-5

<sup>10</sup> CRSPD269, *Email from CMU to Trial Panel II re WPSO Report Concerning F1647RED*, 27 July 2023, confidential.

<sup>11</sup> CRSPD270, *Reclassification of F01647RED (“CRSPD270”)*, 28 July 2023, confidential. F01647/RED had already been temporarily reclassified by the Court Management Unit (“CMU”) pursuant to an email sent by the SPO to CMU on 21 July 2023 (see CRSPD270; SPO Response, fn. 8).

<sup>12</sup> Defence Request, para. 3.

<sup>13</sup> SPO Response, paras 1-2 (in particular, fns 6-7), 5.

namely in relation to their prior testimonies (for instance, for [REDACTED])<sup>14</sup> or their gender ([REDACTED]), which, if disclosed to the public, may lead to their identification.<sup>15</sup> The SPO further requests that ERNs be removed for all witnesses in F01647/RED to maintain the effectiveness of their protective measures and safeguard their privacy and security.<sup>16</sup>

### III. DISCUSSION

#### A. DEFENCE REQUEST (PERTAINING TO F01636)

12. The Panel recalls that W04586 testified with a pseudonym and face and voice distortion, in order to avoid identification by the public as this could negatively impact the witness's security.<sup>17</sup>

13. The Panel agrees with the SPO that (the combination of) references to W04586's prior [REDACTED] testimony [REDACTED], may lead to W04586 being identified by the public and, thus, jeopardise the effectiveness of the protective measures granted for this witness in the present case. Therefore, the Panel finds it necessary that such information be redacted in the public version of the filing.

14. Furthermore, the Panel observes that such redactions are limited in nature and scope and is satisfied that: (i) no less restrictive measures would ensure the effectiveness of the protective measures granted for W04586; and (ii) no prejudice is caused to the Defence by redacting the above-mentioned information in the public version of the filing. Accordingly, the Panel finds that redacting the above-mentioned information in the public version of the filing is necessary, proportionate, and that no counter-balancing measures are needed or justified in

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<sup>14</sup> See SPO Response, fns 10-11.

<sup>15</sup> SPO Response, paras 1, 3-5.

<sup>16</sup> SPO Response, fn. 11.

<sup>17</sup> See Transcript of Hearing, 19 July 2023 (pp. 6221-6239) and 20 July 2023 (pp. 6244-6249); F00133/COR, Pre-Trial Judge, *Corrected Version of First Decision on Specialist Prosecutor's Request for Protective Measures* ("First Decision on Protective Measures"), 14 December 2020, strictly confidential and *ex parte*, para. 132(q) (a confidential redacted version was issued on the same day, F00133/COR/CONF/RED).

the present circumstances.

15. With respect to the SPO's request that all ERNs in F01636 related to W04586 be redacted, in line with the SPO's practice,<sup>18</sup> the Panel considers that: (i) these ERNs do not, without more, reveal that W04586 previously testified [REDACTED] or lead to the witness being identified by the public; and (ii) the SPO has not provided any specific reasons as to why such redactions would be necessary, submitting merely that this would correspond to the SPO's practice.<sup>19</sup> In light of the above, the Panel finds that the SPO has failed to substantiate its request in this regard, and accordingly, does not find it necessary that all ERNs related to W04586 be redacted in the public version of F01636.

16. In light of the above, the Panel rejects the Defence Request and orders the Defence to submit, by **Wednesday, 30 August 2023**, a public redacted version of F01636, wherein any references to: (i) W04586's prior [REDACTED] testimony; (ii) [REDACTED]; and (iii) the fact that W04586 [REDACTED], are redacted.

B. SPO REDACTION REQUEST (PERTAINING TO F01647/RED)

17. As a preliminary matter, the Panel notes that the relief sought by the SPO was contained in a response to a request by the Defence. The Panel reminds Parties and participants not to seek relief on a discrete issue in a response or a reply. Any Party or participant seeking relief on a discrete issue should generally file a motion pursuant to Rule 75, which triggers the sequence and timelines set out in Rule 76.<sup>20</sup> However, in order to resolve the matter expeditiously, the Panel will exceptionally treat the SPO Redaction Request as being validly before the Panel.

18. The Panel observes that, with respect to the SPO's request that references to prior testimonies of witnesses be redacted, the SPO explicitly refers to the prior

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<sup>18</sup> SPO Response, fn. 7, *referring to* F01636, para. 16 and fns 24-27.

<sup>19</sup> See SPO Response, fn. 7.

<sup>20</sup> See e.g. F01359, Panel, *Decision Regarding Cross-Examination by Victims' Counsel*, 9 March 2023, para. 11.

testimonies of [REDACTED], without clearly limiting its request to these [REDACTED] witnesses.<sup>21</sup> Noting that F01647/RED also contains references to a prior statement of [REDACTED],<sup>22</sup> the Panel will also examine whether that reference needs to be redacted in the public version of the filing.<sup>23</sup>

19. The Panel notes that [REDACTED] are protected witnesses who will, or may, testify soon<sup>24</sup> and have been granted the protective measures of, *inter alia*, testimony with a pseudonym, face and voice distortion, and the use of closed or private session for any in-court discussion or testimony identifying the witness, in order to prevent identification by the public.<sup>25</sup> Furthermore, with respect to [REDACTED], the Parties and Victims' Counsel have agreed that gender neutral language should be used during [REDACTED]'s examination when referencing the witness or [REDACTED] evidence in public filings or hearings, as revealing [REDACTED]'s gender would be identifying considering the limited number of women involved in the events about which she will testify.<sup>26</sup>

20. [REDACTED] testified on [REDACTED] 2023 without protective measures.<sup>27</sup> [REDACTED] is scheduled to testify [REDACTED]<sup>28</sup> but has, thus far, not been granted protective measures.

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<sup>21</sup> See SPO Response, fn. 10.

<sup>22</sup> F01647/RED, para. [REDACTED].

<sup>23</sup> In contrast, as the SPO acknowledges that references to [REDACTED] are not unique or identifying (see SPO Response, fn. 7), the present decision does not address such references.

<sup>24</sup> [REDACTED]: CRSPD268, *Email from SPO to CMU, Parties and Participants on Information Regarding Witnesses to be Called* ("CRSPD268"), 21 July 2023, confidential. [REDACTED]: F01625, [REDACTED]; F01630, Specialist Prosecutor, *Prosecution Submission of List of the Next 12 Witnesses, Reserve Witnesses and Associated Information*, 28 June 2023, [REDACTED], with Annexes 1-2, confidential, and Annex 3, strictly confidential and *ex parte*.

<sup>25</sup> [REDACTED]: F00338, Pre-Trial Judge, *Fifth Decision on Specialist Prosecutor's Request for Protective Measures*, 4 June 2021, strictly confidential and *ex parte*, para. 76(g) (a confidential redacted version was issued on 7 June 2021, F00338/CONF/RED). [REDACTED]: First Decision on Protective Measures, para. 132(q).

<sup>26</sup> CRSPD282, *Email from SPO to CMU and Parties re Notice of Witnesses to be Called [REDACTED] and Use of Gender Neutral Language [REDACTED]*, 10 August 2023, confidential.

<sup>27</sup> Transcript of Hearing [REDACTED].

<sup>28</sup> [REDACTED]: F01630/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of List of the Next 12 Witnesses, Reserve Witnesses and Associated Information*, 28 June 2023, confidential.



21. With respect to [REDACTED], the Panel considers that, in light of the considerations in paragraph 19 above, it is necessary to redact, at this time, references to prior testimonies of [REDACTED], other than statements given to the [REDACTED],<sup>29</sup> and references to [REDACTED]'s gender, to give effect to the protective measures in place for these witnesses and to prevent possible disclosure of their identities to the public.

22. Furthermore, the Panel observes that such redactions are limited in nature and scope<sup>30</sup> and is satisfied that: (i) no less restrictive measures would ensure the effectiveness of the protective measures granted for these witnesses; and (ii) no prejudice is caused to the Defence by redacting the above-mentioned information in the public version of the filing. Accordingly, the Panel finds that, at this time, redacting such information in the public version of the filing is also proportionate, and that no counter-balancing measures are needed.

23. With respect to [REDACTED], the Panel recalls that, in the meantime, this witness has testified without protective measures.<sup>31</sup> In light of the foregoing, the Panel considers that references to prior testimonies of [REDACTED] need not be redacted from the public version of the filing.

24. With respect to [REDACTED], the Panel notes the SPO's submissions that: (i) witnesses who are expected to testify publicly may request protective measures at any time before they testify; (ii) while witnesses may ultimately testify without protective measures, a person's status as an SPO witness is confidential at this time; and (iii) for all witnesses, their privacy and security interests are best protected if information which could tend to identify them remains confidential until the time of their testimony. In light of the above, and considering that references to the prior testimony of [REDACTED] may, in combination with other

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<sup>29</sup> SPO Response, fn. 7.

<sup>30</sup> See F01647/RED, paras [REDACTED].

<sup>31</sup> See above, para. 19 and fn. 27.

publicly available information, lead to the witness's identification by the public, the Panel finds that, at this time, it is necessary to redact such references.

25. Furthermore, the Panel observes that such redactions are limited in scope and nature<sup>32</sup> and is satisfied that: (i) no less restrictive measures would ensure the effective protection of confidential information and [REDACTED]'s privacy and security; and (ii) no prejudice is caused to the Defence by redacting the above-mentioned information in the public version of the filing. Accordingly, the Panel finds that, at this time, redacting references to [REDACTED] in the public version of the filing is also proportionate, and that no counter-balancing measures are needed.

26. With respect to the SPO's request that ERNs be removed for all witnesses in F01647 in order to maintain the effectiveness of protective measures and safeguard their privacy and security,<sup>33</sup> the Panel considers that: (i) these ERNs do not, without more, reveal confidential information or lead to the witnesses being identified by the public; and (ii) the SPO has not provided any specific reasons as to why such redactions would be necessary.<sup>34</sup> In light of the above, the Panel considers that the SPO has failed to substantiate its request in this regard, and accordingly, does not find it necessary that the ERNs for all witnesses be redacted in the public version of F01647.

27. In light of the above, the Panel finds it necessary and proportionate, at this time, to redact in the public version of F01647: (i) any references to prior testimonies of [REDACTED]; and (ii) any references to [REDACTED]'s gender.

28. Accordingly, the Panel grants the SPO Redaction Request, in part, and orders the Defence to submit, by **Wednesday, 30 August 2023**, a further redacted version of F01647/RED in accordance with paragraph 27 above.

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<sup>32</sup> See F01647/RED, paras [REDACTED].

<sup>33</sup> SPO Response, fn. 11.

<sup>34</sup> See SPO Response, fn. 11.



## IV. CLASSIFICATION

29. The Panel notes that while the Defence Request was filed publicly, the SPO Response was filed confidentially. The Panel orders the SPO to submit a public redacted version of the SPO Response by **Wednesday, 30 August 2023**.

## V. DISPOSITION

30. In light of the above, the Panel hereby:

- a. **REJECTS** the Defence Request;
- b. **ORDERS** the Defence to submit a public redacted version of F01636 in accordance with paragraph 16 above, by **Wednesday, 30 August 2023**;
- c. **GRANTS** the SPO Redaction Request, in part;
- d. **ORDERS** the Defence to submit a further redacted version of F01647/RED in accordance with paragraph 27 above, by **Wednesday, 30 August 2023**; and
- e. **ORDERS** the SPO to submit a public redacted version of the SPO Response (F01699), by **Wednesday, 30 August 2023**.



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**Judge Charles L. Smith, III**  
**Presiding Judge**

Dated this Wednesday, 23 August 2023  
At The Hague, the Netherlands.