



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: 5 July 2023

Language: English

Classification: Public

Public Redacted Version of

Decision on the Specialist Prosecutor's Rule 107(2) Request

Acting Specialist Prosecutor
Alex Whiting

Counsel for Victims
Simon Laws

Counsel for Hashim Thaçi
Gregory Kehoe

Counsel for Kadri Veseli
Ben Emmerson

Counsel for Rexhep Selimi
Geoffrey Roberts

Counsel for Jakup Krasniqi
Venkateswari Alagendra

TRIAL PANEL II (“Panel”), pursuant to Articles 21(1)-(4) and (6), 40(2) and (6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 102(3), 103 and 107 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, hereby renders this decision.

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 19 April 2023, the Specialist Prosecutor Office (“SPO”) requested relief from its disclosure obligations in relation to 19 items (“Items and Request”):¹ (i) the uncleared portions of the trial testimony and statements of [REDACTED] relating to the [REDACTED] case for which an [REDACTED] has denied disclosure authorisation (“Witness Documents”); (ii) two compilations of DNA-related information (“DNA Documents”) for which the [REDACTED] has denied disclosure authorisation; (iii) four Special Investigative Task Force (“SITF”)/SPO notes of interviews with [REDACTED] officials (“[REDACTED] Documents”), which have not been cleared by, as applicable, the [REDACTED]; (iv) an uncleared [REDACTED] report (“[REDACTED] Document”); and (v) uncleared parts of an [REDACTED] (“[REDACTED] Document”). The SPO submits that in light of available counterbalancing measures and applicable safeguards, no prejudice will arise from granting the request.²

2. On 1 May 2023, the Defence for Mr Veseli (“Veseli Defence”) responded to the Request (“Response”).³ The Veseli Defence argues that the SPO should not be relieved of its disclosure obligation in relation to the Witness Documents

¹ F01469, Specialist Prosecutor, *Prosecution Rule 107(2) request*, 19 April 2023, strictly confidential and *ex parte*, with Annexes 1-7 and 10, strictly confidential and *ex parte*, and Annex 8-9, confidential (a confidential redacted version was filed on the same day, F01469/CONF/RED, with Annexes 4 and 6 and Annexes 8-9).

² Request, paras 1-2.

³ F01496, Specialist Counsel, *Veseli Defence Response to Prosecution Rule 107(2) Request (F01469)*, 1 May 2023, confidential, with Annex 1, confidential.

contained in Annexes 1-3 of the Request.⁴ The Veseli Defence avers that all documentation emanating from or otherwise connected to [REDACTED] are material to its case and ought to be disclosed immediately.⁵ The Veseli Defence requests that the Panel: (i) reject the Request in relation to Annexes 1-3; (ii) order the SPO to continue discussions with the information provider; and/or (iii) order the SPO to disclose a lesser redacted versions of [REDACTED]'s materials.⁶

II. DISCUSSION

A. WITNESS DOCUMENTS (ANNEXES 1-3)

3. The SPO requests to be relieved of its disclosure obligations in relation to [REDACTED]'s: (i) unredacted statements that were given to the [REDACTED] in November and December 2010 (Annex 1); (ii) unredacted transcripts in the [REDACTED] (Annex 2); and (iii) [REDACTED] statement and associated exhibits (Annex 3).⁷ The SPO clarifies that [REDACTED] is not a witness in this case and that the uncleared documents relate, *inter alia*, to Indictment crimes allegedly committed by KLA members in or around the Jabllanicë/Jablanica detention facility in 1998.⁸ The SPO avers that the entirety of his evidence is of limited, if any, value to the Defence and was deemed unreliable by both the [REDACTED]. Prosecution and the [REDACTED] Trial Chamber.⁹ According to the SPO no further counterbalancing measures are necessary since the relevant information in the Witness Documents is available to the Defence through other disclosed and publicly available materials.¹⁰

4. The Defence responds that: (i) the fact that this individual is not a witness in

⁴ Response, para. 2.

⁵ Response, para. 3.

⁶ Response, para. 15.

⁷ Response, paras 11-12.

⁸ Request, para. 11.

⁹ Request, para. 11.

¹⁰ Request, para. 13.

this case generally obscures his relevance to the issue of Serbian interference in the current proceedings;¹¹ (ii) the witness's consent should not be required for clearance to be provided since he presented materially false allegations to the [REDACTED];¹² (iii) there remains a significant amount of relevant material that is currently obscured by the redactions because [REDACTED]'s cross-examination concerning the extent of his relationship to Serbian officials took place in private session;¹³ and (iv) it is precisely because [REDACTED] is unreliable that his evidence is relevant to these proceedings.¹⁴ The Defence submits that the SPO should be instructed to continue discussions with the information provider to obtain consent to fully disclose the [REDACTED] items or, at a minimum, lesser redacted versions thereof.¹⁵

5. As regards the necessity of the requested measures, the Panel notes that: (i) the SPO has exhausted reasonable efforts to obtain disclosure authorisation for the items; (ii) the [REDACTED] denied the SPO's application to vary the witness's protective measures; and (iii) the witness could not be located in order to obtain his consent to vary his protective measures.¹⁶ The Panel considers that in the absence of clearance by the [REDACTED] for disclosure of portions of the trial testimony and statements of [REDACTED] relating to the [REDACTED] case, the SPO is not permitted to disclose the information to the Defence. The Panel considers that the content of these items constitutes sensitive information protected under Article 58 and Rule 107. Accordingly, and in the absence of consent from the information provider, the Panel finds that it is necessary to withhold these items.

6. As regards the proportionality of the requested measure, the Panel observes

¹¹ Response, para. 6.

¹² Response, para. 7.

¹³ Response, para. 8.

¹⁴ Request, para. 9.

¹⁵ Response, para. 14.

¹⁶ Response, paras 9-10.

that: (i) the relevance, if any, of the information contained in these items appears to be limited and there is no indication that any part thereof would be of potentially exculpatory nature; (ii) the relevant information in the Witness Documents is available to the Defence through other disclosed and publicly available materials;¹⁷ (iii) [REDACTED]'s redacted [REDACTED] transcripts, his identity as an [REDACTED] witness, and [REDACTED] interview records have all been disclosed;¹⁸ and (iv) the SPO does not intend to call [REDACTED] in this case so that the non-disclosure redacted items does not raise an issue of confrontation as the SPO does not seek to rely upon it.¹⁹ The Panel considers that these are appropriate counterbalancing measures, in the present circumstances, to uphold the Accused's rights under the Law and do not result in any demonstrable unfairness to the Accused. The Panel notes, furthermore, that the information disclosed would enable the Defence to conduct necessary investigations of the matter, if regarded as relevant to its case. The Panel therefore finds that withholding these items will not cause any prejudice to the Defence and that, accordingly, the requested measure is proportionate.

7. In light of the above, the Panel grants the SPO's request to withhold the Witness Documents.

B. DNA DOCUMENTS (ANNEX 5)

8. The SPO submits that: (i) the DNA Documents consist of reports, analysis, photographs of samples, and related donor and missing person information; (ii) they are relevant insofar as some of the documents concern bodies discovered at or near Lake Radoniq/Radonjić, where charged murder victim [REDACTED]'s

¹⁷ 060919-060940 (disclosed under Rule 102(3) to the Thiçi and Krasniqi Defence on 23 September 2022 and to the Veseli Defence on 1 October 2022); 070028-070048 RED (disclosed under Rule 103 to all Defence teams on 10 March 2023); U000-7691-U000-7691 and U000-7691-U000-7691-ET (disclosed under Rule 102(1)(b) to all Defence teams on 11 August 2021); [REDACTED]

¹⁸ Disclosure Package 247, 505, 528, 571, 505, 708, 489, 496 and 549.

¹⁹ Request, para. 9.

remains were found; and (iii) while a one-page DNA report among the DNA Documents relates to this victim, no prejudice arises as similar identification documents and DNA information reaching similar conclusions are available to the Defence.²⁰ The SPO avers that the Defence possesses the relevant information and no further counterbalancing measures are needed.²¹

9. As regards the necessity of the requested measure, the Panel notes that the [REDACTED] has denied disclosure authorisation, therefore the SPO is not permitted to disclose this information to the Defence. The Panel considers that the content of these items constitutes sensitive information protected under Article 58 and Rule 107. Accordingly, and in the absence of consent from the information provider, the Panel finds that it is necessary to withhold these items.²²

10. As regards the proportionality of the requested measure, the Panel observes that these items are relevant to the Defence, as they relate to the discovery of a murder victim in this case.²³ However, similar DNA information reaching similar conclusions and identification documents are available to the Defence²⁴. The Panel considers that these are appropriate counterbalancing measures, in the present circumstances, to uphold the Accused's rights under the Law. Therefore, the Panel finds that withholding these items will not cause any prejudice to the Defence and that, accordingly, the requested measure is proportionate.

11. In light of the above, the Panel grants the SPO's request to withhold the DNA Documents.

C. [REDACTED] DOCUMENTS (ANNEX 7)

12. The SPO avers that it has been unable to obtain clearance of the [REDACTED] Documents; however, non-disclosure does not unduly prejudice the Defence due

²⁰ Request, paras 14-15.

²¹ Request, para. 16.

²² Request, para. 1.

²³ Request, para. 15.

²⁴ Disclosure Package 73; and [REDACTED]

to available counterbalancing measures.²⁵

a) 073230-073233

13. The SPO submits that: (i) 073230-073233 is a note of a meeting with former [REDACTED] (W02093), who is not a witness in this case; (ii) 073230-073233 includes information concerning W02093's role in Kosovo in the second half of 1999 and 2000, which for the most part, is of marginal, if any, relevance; (iii) the directly relevant information is available to the Defence; (iv) to the extent W02093 briefly discussed the Accused THAÇI and SELIMI, an anonymised summary reproducing this allegedly incriminating information is included in Annex 8; and (v) the November 1999 report discussed by W02093 has been disclosed.²⁶

b) 073152-073159

14. The SPO submits that: (i) 073152-073159 is a note of a meeting with former [REDACTED] (W02326), who is not a witness in this case, but whose involvement and role in Kosovo are publicly known; (ii) all directly relevant information in the note is available to the Defence and numerous documents have been disclosed that detail the composition and functioning of the [REDACTED] and the security situation in Kosovo; and (iii) all information directly relevant to the case, including potentially exculpatory information, is reproduced in the anonymised summary in Annex 8.²⁷

c) 073920-073922

15. The SPO submits that: (i) 073920-073922 is a note of a meeting with former [REDACTED] (W03631), who is not a witness in this case, but whose involvement and role in Kosovo are publicly known; (ii) it primarily concerns irrelevant matters such as the internal functioning of the [REDACTED] and its interactions with other

²⁵ Request, para. 17.

²⁶ Request, para. 18.

²⁷ Request, para. 19.

international bodies; and (iii) the anonymised summary in Annex 8 contains the only potentially relevant information, in particular, that relating to the KLA.²⁸

d) 073998-074001

16. The SPO submits that 073998-074001 is a note of a meeting with former [REDACTED] (W03609), who is not a witness in this case, but whose involvement and role in Kosovo is available to the Defence. The note largely concerns irrelevant information outside the Indictment period, and where there is potentially relevant information, that information has been summarized in Annex 8.²⁹

17. As regards the necessity of the requested measures, the Panel notes that the [REDACTED] have denied disclosure authorisation, so that the SPO is not permitted to disclose this information to the Defence. The Panel considers that the content of these items constitutes sensitive information protected under Article 58 and Rule 107. Accordingly, and in the absence of consent from the information provider, the Panel finds that it is necessary to withhold these items.

18. As regards the proportionality of the requested measure, the Panel observes that that all relevant and potentially exculpatory information in the [REDACTED] Documents have been made available to the Defence either through previous disclosures³⁰ or through the summaries provided in Annex 8 to the Request.³¹ The Panel considers that these are appropriate counterbalancing measures, in the present circumstances, to uphold the Accused's rights under the Law. The Panel therefore finds that withholding these items will not cause any prejudice to the Defence and that, accordingly, the requested measure is proportionate.

19. In light of the above, the Panel grants the SPO's request to withhold the [REDACTED] Documents.

²⁸ Request, para. 20.

²⁹ Request, para. 21.

³⁰ Request, paras 18-21.

³¹ See Annex 8, Summary Relating to: 073230-073233, 073920-073922, 073152-073159 and 073998-074001.

D. [REDACTED] DOCUMENT

20. The SPO submits, in relation to a [REDACTED] Report, dated 30 June 1999, classified as [REDACTED] Confidential, that: (i) this document primarily concerns internal [REDACTED] matters of no known relevance to the present case; (ii) the only potentially relevant and/or exculpatory portions are included in the summary in Annex 8; and (iii) no prejudice results from non-disclosure and therefore no further counterbalancing measures are necessary.³²

21. As regards the necessity of the requested measure, the Panel notes that the [REDACTED] Document has not been authorised to be disclosed, therefore the SPO is not permitted to disclose this information to the Defence. The Panel considers that the content of this item constitutes sensitive information protected under Article 58 and Rule 107. Accordingly, and in the absence of consent from the information provider, the Panel finds that it is necessary to withhold this item.

22. As regards the proportionality of the requested measure, the Panel observes that this item: (i) concerns primarily irrelevant information to the case; and (ii) the potentially relevant or exculpatory information is included in the summary in Annex 8. The Panel considers that these are appropriate counterbalancing measures, in the present circumstances, to uphold the Accused's rights under the Law. The Panel therefore finds that withholding this item will not cause any prejudice to the Defence and that, accordingly, the requested measure is proportionate.

23. In light of the above, the Panel grants the SPO's request to withhold the [REDACTED] Document.

E. [REDACTED] DOCUMENT

24. The SPO submits that 7008171-7008220: (i) is an [REDACTED] Restricted [REDACTED] Intelligence Report concerning, *inter alia*, two [REDACTED]

³² Request, para. 23.

meetings with [REDACTED], who is not a witness in this case, and concerning an incident which is not charged in this case; (ii) all directly relevant information is available to the Defence; (iii) the anonymised summary in Annex 8 includes the additional, potentially relevant and exculpatory information from 7008171-7008220 that is not otherwise available to the Defence; (iv) an SPO official note of an interview with W02450, which concerns the same incident, will be notified and disclosed to the Defence under Rule 102(3); and (v) no prejudice results from non-disclosure and no further counterbalancing measures are necessary.³³

25. As regards the necessity of the requested measure, the Panel notes that the SPO was unable to obtain clearance for this item. The Panel considers that the content of this item constitutes sensitive information protected under Article 58 and Rule 107. Accordingly, and in the absence of consent from the information provider, the Panel finds that it is necessary to withhold this item.

26. As regards the proportionality of the requested measure, the Panel observes that: (i) [REDACTED] is not a witness in this case; (ii) the [REDACTED] Document concerns an incident which is not charged in this case; (iii) the relevant information contained in the [REDACTED] Document is available to the Defence;³⁴ (iv) Annex 8, which is accessible to the Defence, contains the additional, potentially relevant and exculpatory information that is not otherwise available to the Defence; and (v) the SPO shall disclose, if it has not already done so, an SPO official note of an interview with W04250 (ERN 053766-053771) concerning the same incident discussed in the [REDACTED] Document, by no later than Wednesday, 19 July 2023. The Panel considers that these are appropriate counterbalancing measures, in the present circumstances, to uphold the Accused's rights under the Law. The Panel therefore finds that withholding this item will not

³³ Request, para. 24.

³⁴ SPOE00219486-00219535; 7008171-7008220, pp.7008171-7008178, 7008198-7008202.

cause any prejudice to the Defence and that, accordingly, the requested measure is proportionate.

27. In light of the above, the Panel grants the SPO's request to withhold the [REDACTED] Document.

III. CLASSIFICATION

28. The Panel notes that the Veseli Response has been filed confidentially. The Panel, therefore, orders the Veseli Defence to file a public redacted version of its submission by no later than Wednesday, 19 July 2023.

IV. DISPOSITION

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

- a) **GRANTS** the Request;
- b) **AUTHORISES** the SPO to withhold the Items pursuant to Rule 107(2);
- c) **ORDERS** the SPO to disclose to the Defence, document 053766-053771, by no later than Wednesday 19 July 2023; and
- d) **ORDERS** the Defence for Mr Veseli to file a public redacted version of the Veseli Response, by no later than Wednesday, 19 July 2023.



Judge Charles L. Smith, III

Presiding Judge

Dated this Wednesday, 5 July 2023

At The Hague, the Netherlands.