



In: KSC-BC-2018-01/IA006

Before: A Panel of the Court of Appeals Chamber
Judge Michèle Picard
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Fidelma Donlon

Date: 27 May 2025

Original language: English

Classification: Public

Decision on Specialist Prosecutor's Office Request for Reclassification

Specialist Prosecutor's Office:

Kimberly P. West

Counsel for Hashim Thaçi:

Luka Mišetić

Counsel for Rexhep Selimi:

Geoffrey Roberts

THE PANEL OF THE COURT OF APPEALS CHAMBER of the Kosovo Specialist Chambers (“Court of Appeals Panel”, “Appeals Panel” or “Panel” and “Specialist Chambers”, respectively),¹ acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 169 of the Rules of Procedure and Evidence (“Rules”), is seised of a request filed on 13 May 2025 by the Specialist Prosecutor’s Office (“Request” and “SPO”, respectively), requesting that the Appeals Panel reclassify and/or lift *ex parte* markings for 11 appellate submissions and decisions filed in the context of the IA006 appellate proceedings in the investigation file KSC-BC-2018-01 (the “Appellate Proceedings”) in order to make them available in the Case 12 INV Subfolder to all the Accused in the KSC-BC-2023-12 proceedings (“Case 12”).² Neither Mr Hashim Thaçi (“Thaçi”) nor Mr Rexhep Selimi (“Selimi”) (collectively, the “Defence”) responded to the Request.

I. BACKGROUND

1. In 2023, the Single Judge issued several decisions authorising the SPO to conduct special investigative measures (respectively, “SIMs” and “Decisions on SIMs”) related to alleged witness interference and concerning Thaçi, Selimi and Mr Kadri Veseli, Accused in KSC-BC-2020-06.³

¹ IA006/F00001, Decision Assigning a Court of Appeals Panel, 4 April 2024 (confidential and *ex parte*, reclassified as confidential on 24 May 2024, and as public on 23 May 2025) (corresponding to KSC-BC-2023-12/INV/F00257) (“Assignment Decision”).

² IA006/F00011, Prosecution request for reclassification, 13 May 2025 (confidential and *ex parte*) (“Request”); IA006/F00011/A01, Annex 1 to Prosecution request for reclassification, 13 May 2025 (confidential and *ex parte*) (“Annex 1”). See also KSC-BC-2023-12, F00293, Prosecution submissions pursuant to Order F00287, 12 May 2025 (strictly confidential and *ex parte*, reclassified as public on 15 May 2025).

³ See in particular, F00324/CONF/RED, Confidential Redacted Version of Decision on Prosecution Requests for Detention Centre Information [REDACTED], 8 January 2024 (confidential and *ex parte*) (strictly confidential and *ex parte* version filed on 31 March 2023); F00355/CONF/RED, Confidential Redacted Version of Decision on the Prosecution Requests for Detention Centre Information [REDACTED], 10 January 2024 (confidential and *ex parte*) (strictly confidential and *ex parte* version filed on 16 May 2023); F00394/CONF/RED, Confidential Redacted Version of Decision on Prosecution Request for Special Investigative Measure, 24 November 2023 (confidential and *ex parte*) (strictly confidential and *ex parte* version filed on 7 July 2023); F00429/CONF/RED, Confidential Redacted

2. On 4 July 2024, the Appeals Panel issued a decision denying the appeals filed by Thaçi and Selimi against the Decisions on SIMs.⁴

3. On 29 November 2024, the Pre-Trial Judge confirmed the charges against Thaçi, Mr Bashkim Smakaj, Mr Isni Kilaj, Mr Fadil Fazliu and Mr Hajredin Kuçi in Case 12 (collectively, “Case 12 Accused”) for 19 counts of criminal offences against public order and criminal offences against the administration of justice and public administration.⁵

4. On 27 January 2025, the Single Judge ordered the transfer, from Case KSC-BC-2018-01 to Case 12 (within the “Case 12 INV Subfolder”), of filings including the ones referenced by the SPO in Annex 1 to its Request.⁶

II. DISCUSSION

5. The SPO seeks the reclassification and/or lifting of the *ex parte* markings for 11 filings from the Appellate Proceedings (collectively “Selected Filings”), with a view to making them available in the Case 12 INV Subfolder to all the Case 12 Accused.⁷

6. The SPO submits that there exists specific and legitimate purposes for the Request, namely: (i) the evidence obtained as a result of the investigative measures at

Version of Decision on Prosecution Requests for the Extension of Measures Authorised in F00377 and F00394 and Access to Preserved Records, 12 January 2024 (confidential and *ex parte*) (strictly confidential and *ex parte* version filed on 21 August 2023).

⁴ IA006/F00010/RED, Public Redacted Version of Decision on Thaçi and Selimi Appeals Against Decisions on Special Investigative Measures, 15 July 2024 (confidential version filed on 4 July 2024). See also IA006/F00002, Thaçi Appeal against Single Judge Decision on Investigative Measures, 11 April 2024 (confidential and *ex parte*); IA006/F00003, Selimi Defence Appeal against Decisions on Prosecution Requests for Detention Centre Information and Special Investigative Measures, 11 April 2024 (confidential and *ex parte*).

⁵ KSC-BC-2023-12, F00036/RED, Public Redacted Version of Decision on the Confirmation of the Indictment, 12 February 2025 (strictly confidential and *ex parte* version filed on 29 November 2024, reclassified as confidential on 13 December 2024).

⁶ F00814, Order for Transfer of Documents, 27 January 2025 (corresponding to KSC-BC-2023-12/INV/F00003).

⁷ Request; Annex 1.

issue in the Appellate Proceedings has been disclosed in Case 12; (ii) the legal and factual basis related to the investigative measures at issue and the jurisprudential developments of the Appellate Proceedings are relevant to Case 12; (iii) granting equal access would preserve the equality of arms since the SPO and the Thaçi Defence already have access to the material; and (iv) granting equal access at this stage may ultimately facilitate fair and expeditious proceedings, and avoid the need for further access requests in the future.⁸

7. The Court of Appeals Panel recalls that pursuant to Article 21(6) of the Law, all material and relevant evidence or facts in possession of the SPO which are exculpatory or inculpatory shall be made available to the Accused before the beginning of and during the proceedings, subject only to restrictions which are strictly necessary and when any necessary counter-balancing protections are applied. The Panel further recalls that, in accordance with Rule 82(5) of the Rules, where the basis for a classification no longer exists, whoever submitted the original filing shall apply to the Panel for reclassification and that a Panel may also reclassify a filing upon request by any other participant or *proprio motu*.

8. The Panel notes that the Selected Filings include (i) the Assignment Decision issued by the President of the Specialist Chambers (IA006/F00001); (ii) appellate submissions by the Defence (IA006/F00002, IA006/F00003, IA006/F00005, IA006/F00006, and IA006/F00007); (iii) appellate submissions by the SPO (IA006/F00004, IA006/F00004/A01 and IA006/F00008); and (iv) decisions issued by the Appeals Panel (IA006/F00009 and IA006/F00010).⁹

⁸ Request, para. 2.

⁹ Annex 1.

9. Noting that, since the Request, the Assignment Decision has been reclassified as public, the Panel thus finds the request for reclassification of this filing moot.¹⁰

10. Turning to the remaining Selected Filings, the Court of Appeals Panel agrees with the reasons set out by the SPO for reclassification¹¹ and finds that the *ex parte* markings of the Selected Filings, which have been cross-filed in Case 12 INV Subfolder, shall be lifted in Case 12 so that the filings can be made available to all the Accused in that case:

- (i) KSC-BC-2023-12/INV/F00258, Thaçi Appeal against Single Judge Decision on Investigative Measures, 11 April 2024 (confidential and *ex parte*) (corresponding to KSC-BC-2018-01/IA006/F00002 (confidential and *ex parte*));
- (ii) KSC-BC-2023-12/INV/F00259, Selimi Defence Appeal against Decisions on Prosecution Requests for Detention Centre Information and Special Investigative Measures, 11 April 2024 (confidential and *ex parte*) (corresponding to KSC-BC-2018-01/IA006/F00003 (confidential and *ex parte*));
- (iii) KSC-BC-2023-12/INV/F00260, Consolidated Prosecution Response to Thaçi and Selimi Appeals of F00324, F00355, F00394 and F00429, 22 April 2024 (confidential and *ex parte*) (corresponding to KSC-BC-2018-01/IA006/F00004 (confidential and *ex parte*));
- (iv) KSC-BC-2023-12/INV/F00260/A01, Annex 1 to Consolidated Prosecution Response to Thaçi and Selimi Appeals of F00324, F00355, F00394 and F00429,

¹⁰ The Assignment Decision (KSC-BC-2023-12/INV/F00257, corresponding to KSC-BC-IA006/F00001) was reclassified as public on 23 May 2025 in both Case KSC-BC-2018-01 and Case 12.

¹¹ See above, para. 5.

22 April 2024 (confidential and *ex parte*) (corresponding to KSC-BC-2018-01/IA006/F00004/A01 (confidential));

- (v) KSC-BC-2023-12/INV/F00261, Thaçi Reply to 'Consolidated Prosecution Response to Thaçi and Selimi Appeals of F00324, F00355, F00394 and F00429', 29 April 2024 (confidential and *ex parte*) (corresponding to KSC-BC-2018-01/IA006/F00005 (confidential and *ex parte*));
- (vi) KSC-BC-2023-12/INV/F00262, Selimi Defence Reply to Consolidated Prosecution Response to Thaçi and Selimi Appeals of F00324, F00355, F00394 and F00429 (IA006-F00004), 29 April 2024 (confidential and *ex parte*) (corresponding to KSC-BC-2018-01/IA006/F00006 (confidential and *ex parte*));
- (vii) KSC-BC-2023-12/INV/F00263, Urgent Thaçi Defence Request for Reclassification of Filings, 14 May 2024 (confidential and *ex parte*) (corresponding to KSC-BC-2018-01/IA006/F00007 (confidential and *ex parte*));
- (viii) KSC-BC-2023-12/INV/F00264, Prosecution response to 'Urgent Thaçi Defence Request for Reclassification of Filings', 15 May 2024 (confidential and *ex parte*) (corresponding to KSC-BC-2018-01/IA006/F00008 (confidential and *ex parte*));
- (ix) KSC-BC-2023-12/INV/F00265, Decision on Urgent Thaçi Defence Request for Reclassification of Filings, 16 May 2024 (confidential and *ex parte*) (corresponding to KSC-BC-2018-01/IA006/F00009 (confidential and *ex parte*));
- (x) KSC-BC-2023-12/INV/F00266, Decision on Thaçi and Selimi Appeals Against Decisions on Special Investigative Measures, 4 July 2024 (confidential and *ex parte*) (corresponding to KSC-BC-2018-01/IA006/F00010 (confidential)).

11. Finally, noting the SPO's request for reclassification of the Request as either confidential or public, and considering that nothing in the Request or Annex 1 justifies maintaining their current classification as confidential and *ex parte*, the Panel instructs the Registry to reclassify them as public.

III. DISPOSITION

12. For these reasons, the Court of Appeals Panel:

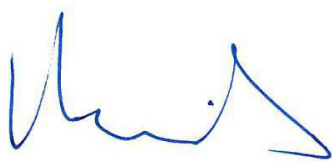
GRANTS the Request, in part;

FINDS the SPO's request for reclassification of the Assignment Decision (IA006/F00001) to be moot;

INSTRUCTS the Registry to execute the reclassification of the Selected Filings in Case 12 from confidential and *ex parte* to confidential, by lifting the *ex parte* marking, as specified in paragraph 10;

INSTRUCTS the Registry to reclassify as public the Request (KSC-BC-2018-01/IA006/F00011) and Annex 1 (KSC-BC-2018-01/IA006/F00011/A01); and

ORDERS the Registry to cross-file the present Decision, the Request and Annex 1, in the Case 12 INV Sub-Folder.



**Judge Michèle Picard,
Presiding Judge**

Dated this Tuesday, 27 May 2025

At The Hague, the Netherlands