

In: KSC-BC-2020-06

Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Counsel for Kadri Veseli

Date: 12 November 2021

Language: English

Classification: Confidential

Veseli Defence Response to Confidential Redacted Version of 'Prosecution Rule 107(2) Request,' KSC-BC-06/F00555, Dated 1 November 2021

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I. INTRODUCTION

1. The Veseli Defence files this response to the SPO's request of 2 November 2021 to be relieved of its disclosure obligations in respect of certain materials, pursuant to rule 107(2) (F00555).¹

II. SUBMISSIONS

2. In F00555, the SPO requested that the Pre-Trial Judge relieve it of its disclosure obligations with respect to **five** categories of documents. The Defence submissions in response are as follows.

a. **Witness Statements of W02114**

3. At present, the Defence does not oppose the redactions to the name of a former UN employee and membership of a particular organizational unit, though it reserves the right to raise this matter, and any other matter relating to currently redacted information, should it become relevant during the course of investigations.

b. **Associated Exhibit of W02114**

4. The redactions to this document (SPOE00203360-00203365) are too extensive for the Defence to meaningfully contest its non-disclosure at this point in time. The Defence requests that the Pre-Trial Judge order the SPO to provide further specifics regarding the method by which it concluded that the redacted information is outside the scope of this case, in particular that it is not relevant to the alleged JCE in any way or issues of *mens rea*.
5. Similarly, the Defence requests that the Pre-Trial Judge order the SPO to provide further specifics regarding its understanding of potentially

¹ F00555, Confidential Redacted Version of 'Prosecution Rule 107(2) request, 2 November 2021.

exculpatory information in this context. The Defence recalls that it has previously raised the SPO's failure to identify rule 103 information among its rule 107 materials.² Without the requested specifics, the Defence is not in a position to ascertain whether, as the SPO contends, the redacted information is not material or exculpatory or that adequate counter-balancing measures are not required.

c. Associated Exhibits of W02160

6. The Veseli Defence observes that the redacted information in SPOE00203094-0020396 appears to relate to a meeting with one of the co-Accused. Given its obvious materiality, the Veseli Defence submits that the SPO must therefore be required to take counter-balancing measures in respect of this information.

7. Similar concerns pertain to the withholding in its entirety of SITF40001621-40001623. Based on the information relating to this document contained in W02160's witness statement, it is clear that the document is material to the Defence as it relates directly to at least two of the co-Accused in this case. The Defence therefore requests from the SPO more detailed information on how it has executed its disclosure obligations through counterbalancing measures and determined that no potentially exculpatory information has been withheld.

d. Statement of W04856

8. The Veseli Defence observes that the unredacted portion of a sentence in paragraph 76 of the statement contains *prima facie* potentially exonerating information: "*I believe, was that CEKU had authority with the commanders and was in effective control of his followers while THACI was not.*" The SPO's submission that no potentially exonerating information has been redacted is patently

² F00469, Veseli Defence response to SPO's Eleventh Request for Protective Measures (KSC-BC-2020-06/F00456/CONF/RED) 16 September 2021, para 5.

inaccurate, as the context for this statement is required for its proper understanding. The entirety of this information must be disclosed.

9. The Defence reiterates that the SPO's assurances regarding its compliance with its Rule 103 obligations are not reliable and cannot be taken at face value.

e. Associated Exhibits of W04856

10. The Defence has no objections in relation to the withholding of this information.

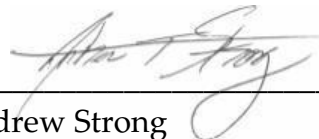
III. CONCLUSION

11. The Defence respectfully requests that the Pre-Trial Judge grant the relief outlined above as to ensure that the SPO complies in full with its disclosure obligations so as to ensure Mr Veseli's rights as required by Article 21(2) of the Law.

Word Count: 618



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