



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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: Specialist Prosecutor

Date: 18 February 2022

Language: English

Classification: Confidential

Prosecution response to Veseli Defence request for a lesser redacted public version of KSC-BC-2020-06/F00562

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I. INTRODUCTION

1. The Specialist Prosecutor's Office ('SPO') filed a public redacted version of its response¹ to the KP Submissions.² The Veseli Defence requests a lesser redacted version of the SPO Response.³ The challenged redactions are consistent with the Pre-Trial Judge's approach, as well as Trial Panel II's findings in the *Gucati and Haradinaj* case, and are necessary to protect certain individuals from unnecessary public exposure and scrutiny.

II. SUBMISSIONS

2. The Veseli Defence requests the Pre-Trial Judge to reclassify paragraphs 5, 6, 23 and 24, and associated footnotes 12, 14, 15, 57 and 58 of the public redacted version of the SPO Response as public.

3. All the challenged sections of the filing are consistent with the Pre-Trial Judge's latest decision on Veseli's detention, whereby the information at issue was referenced at a level of generality to avoid identifying it.⁴

4. As recognized by the Veseli Defence,⁵ the redacted information in paragraphs 5, 6, 23 and their associated footnotes represents an SPO analysis of public information. The redactions identify particular individuals, who were selected merely by way of example. While the underlying information in question is available in open source materials, reclassifying formal filings naming these individuals could expose

¹ Prosecution response to Kosovo Police submissions on detention with public Annex 1, KSC-BC-2020-06/F00562, 8 November 2021, Confidential ('SPO Response'). The public redacted version was filed on 29 November 2021, KSC-BC-2020-06/F00562/RED.

² Answer to the Request number KSC-BC-2020-06, dated 13 October 2021, KSC-BC-2020-06/F00548, 27 October 2021, Confidential (official English translation filed on 3 November 2021) ('KP Submissions').

³ Veseli Defence Request for a Lesser Redacted Public Redacted Version of "Prosecution Response to Kosovo Police Submissions on Detention with Public Annex 1 (KSC-BC-2020-06/F00562)", KSC-BC-2020-06/F00681, 8 February 2022, Confidential ('Veseli Defence Request').

⁴ Public redacted version of the Decision on remanded detention review decision and periodic review of detention of Kadri Veseli, KSC-BC-2020-06/F00576/RED, 8 December 2021, paras 35-38, 71-74.

⁵ Veseli Defence Request, KSC-BC-2020-06/F00681, para.14.

them to excessive and unnecessary public scrutiny. The filing in question is predominantly public, and there is no undue interference with the principle of publicity.⁶

5. These same considerations, in a directly comparable context, have been previously addressed by Trial Panel II in the *Gucati and Haradinaj* case.⁷ There, the Panel found that while the SPO relied on information from open source materials to make its detention submissions on conditions proposed by the Kosovo police, how the SPO used that information had not been made public in the course of the proceedings.⁸ The Panel found that redaction of the names and identifying information was necessary and reasonable,⁹ and would protect the individuals in question from unnecessary and excessive public scrutiny. The Haradinaj Defence was consequently ordered to file a public redacted version of its submissions on detention.

⁶ The public redacted version of the SPO Response is compatible with the principle of publicity and the jurisprudence cited by the Defence (Veseli Defence Request, KSC-BC-2020-06/F00681, para.6 and footnote 4). The SPO Response, as well as the underlying materials are available to the public, be it with redactions. The ECtHR judgment cited by the Defence relates mainly to the publicity and public pronouncement of ‘judgments’ (ECtHR, *Fazliyski v. Bulgaria*, 40908/05, Judgment, 16 April 2013). Even as concerns ‘judgments’, the ECtHR has found that classifying parts of judicial decisions whose disclosure could compromise the safety of others illustrates a technique to accommodate legitimate security concerns without fully negating the publicity of judicial decisions (ECtHR, *Raza v. Bulgaria*, 31465/08, Judgment, 11 February 2010, para.53). The ICTY decision cited by the Defence relates to an application filed by Lahi Brahimaj as confidential ‘out of an abundance of caution’ so that the ‘matter may be adjudicated upon by the Appeals Chamber at the earliest opportunity’. The Appeals Chamber stated that the public or confidential status of a filing has no effect on the adjudication schedule of the Appeals Chamber and found that this does not constitute an ‘exceptional reason’ to maintain a confidential filing (ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84-A, ‘Decision on Lahi Brahimaj’s Application for Provisional Release’, 25 May 2009, paras 4-5). However, this is not comparable with the underlying situation in this case, where the reasons for the redactions in the SPO Response are of an entirely different nature.

⁷ *Prosecutor v. Gucati and Haradinaj*, Decision on the Application for Reclassification of F00500, KSC-BC-2020-07/F00556, 8 February 2022. See also *Prosecutor v. Gucati and Haradinaj*, Prosecution Response to Haradinaj Defence Reclassification Request, KSC-BC-2020-07/F00545, 1 February 2022.

⁸ *Prosecutor v. Gucati and Haradinaj*, Decision on the Application for Reclassification of F00500, KSC-BC-2020-07/F00556, 8 February 2022, para.13.

⁹ *Prosecutor v. Gucati and Haradinaj*, Decision on the Application for Reclassification of F00500, KSC-BC-2020-07/F00556, 8 February 2022, para.14.

The same reasoning applies in this case and the redactions in the SPO Response are in line with the findings of Trial Panel II.

6. Regarding the redactions in paragraph 24, the information from where the quote is taken is classified as confidential, and the source was not cited deliberately.

7. The Veseli Defence argues that an unreferenced quote cannot fall under confidentiality.¹⁰ The information redacted in paragraph 24 is not based on open source materials. Further, as the redactions in the other paragraphs, the redactions in paragraph 24 relate to individuals who were selected merely by way of example to illustrate allegiances within the Kosovo police to the Accused. The redactions are necessary to avoid disclosure of an individual who could otherwise potentially be identified and to respect that individual's privacy, dignity, and safety. In line with the redactions in the other paragraphs, the redactions in paragraph 24 protect that individual from unnecessary public exposure and scrutiny.

8. It is requested that the Veseli Defence's request for a lesser redacted version of the Prosecution response to Kosovo police submissions on detention be rejected.¹¹

Word count: 985



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Friday, 18 February 2022

At The Hague, the Netherlands.

¹⁰ Veseli Defence Request, KSC-BC-2020-06/F00681, para.18.

¹¹ The present submission is filed confidentially in accordance with Rule 82(4). The SPO does not object to reclassifying the filing as public.