

In: KSC-BC-2020-06
The 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 Counsel for Hashim Thaçi

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Thaçi Defence Joinder to the Veseli Defence Request for Reclassification of Evidentiary Material

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I. INTRODUCTION

1. The Defence for Mr Hashim Thaçi (“Defence”) hereby joins the Veseli Defence Request for Reclassification of Evidentiary Material,¹ in which the Veseli Defence requested that the Pre-Trial Judge:

- (i) order the SPO to reclassify non-confidential material as public;
- (ii) order the SPO to justify the confidential classification of non-publicly available evidentiary material; and
- (iii) set a deadline for the completion of reclassification of disclosure.²

II. DISCUSSION

2. The Defence adopts in full the submissions presented in the Veseli Request. In particular, the Defence agrees that the SPO’s approach of classifying all material disclosed pursuant to Rule 102(1), Rule 102(3) and Rule 103 as confidential, is in violation of various legislative provisions and decisions of the KSC.³ Such an approach by the SPO violates the Accused’s right to a fair and public hearing, as enshrined in Article 21(2) of the KSC Law,⁴ Articles 31(2) and (3) of the Constitution of the Republic of Kosovo, and Article 6 of the European Convention on Human Rights. For instance, the SPO, without any legal basis, has classified as confidential public reports issued by NGOs or international organisations such as the OSCE or UN, UN resolutions, international press articles, local press articles containing KLA communiques, excerpts from books, etc.

3. It has been recognised by the International Criminal Tribunal for the Former Yugoslavia that “the principle of publicity of the proceedings is of paramount

¹ KSC-BC-2020-06/F00766, Veseli Defence Request for Reclassification of Evidentiary Material, 11 April 2022 (“Veseli Request”).

² Veseli Request, paras. 14-16.

³ Veseli Request, paras. 8-10.

⁴ Law No.05/L-053 on the Specialist Chambers and Specialist Prosecutor’s Office (“KSC Law”).

importance to the public perception of the judicial process in ensuring not only that justice is done but also that it is seen to be done”, such that “evidence will be in the public domain unless a justification is established to keep the evidence confidential”.⁵ This is further supported by a line of authority at the International Criminal Court to the effect that, “[i]n view of the principle of publicity of proceedings, the evidence submitted shall in principle be registered as public unless there is a reason to classify it otherwise.”⁶ It is therefore clear that the SPO’s approach of classifying all evidence as confidential, without justification, is inconsistent with the right of the accused to fair and public proceedings.

4. Further, the Defence shares the concerns raised in the Veseli Request regarding the practical issues associated with maintaining the confidential classification of all evidence.⁷ First, the current approach to confidentiality unduly hampers Defence investigations, particularly the ability of the Defence to freely interact with witnesses and potential witnesses regarding the nature of the SPO’s case. In addition, the confidentiality requirements have proven to be inordinately inefficient, even within the limited scope of the short courtroom appearances the parties have had to date. It can only be anticipated that the impacts will be exponentially magnified during the trial itself.

⁵ ICTY, *Prosecutor v. Lukić & Lukić*, IT-98-32/1-T, Trial Chamber III, Decision on Prosecution’s Motion to Change Private / Closed Session Testimony and 92^{ter} Statements Admitted Under Seal to Public Status, 10 July 2009, p. 3.

⁶ In addition to the case cited at Veseli Request, para. 5 and fn. 5, see, e.g., ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15, Pre-Trial Chamber II, Decision Setting the Regime for Evidence Disclosure and Other Related Matters, 27 February 2015, para. 29; ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06, Pre-Trial Chamber II, Decision Setting the Regime for Evidence Disclosure and Other Related Matters, 12 April 2013, para. 28; ICC, *Prosecutor v. Ruto et al.*, ICC-01/09-01/11, Pre-Trial Chamber II, Decision Setting the Regime for Evidence Disclosure and Other Related Matters, 6 April 2011, para. 20.

⁷ Veseli Request, para. 11.

5. Thus, the Defence submits that the arguments presented by the Veseli Defence warrant the intervention of the Pre-Trial Judge. On this basis, the Defence hereby joins the Veseli Request, and supports the request for relief as set out therein.

[Word count: 654 words]

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "G. W. Kehoe", is written over a white rectangular redaction box.

Gregory W. Kehoe

Counsel for Hashim Thaçi

Wednesday, 20 April 2022

At Tampa, United States