

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: Defence Counsel for Jakup Krasniqi

Date: 22 April 2022

Language: English

Classification: Public

**Krasniqi Defence Joinder to
Veseli Defence Request for Reclassification of Evidentiary Material**

Specialist Prosecutor

Jack Smith

Counsel for Victims

Simon Laws QC

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson QC

Counsel for Rexhep Selimi

David Young

Counsels for Jakup Krasniqi

Venkateswari Alagendra, Aidan Ellis

1. The Defence for Jakup Krasniqi (“Defence”) hereby joins the Veseli Defence Request for Reclassification of Evidentiary Material,¹ in which the Veseli Defence requested the Pre-Trial Judge to: (i) order the Specialist Prosecutor’s Office (“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 On 20 April 2022, the Taçi Defence joined the Veseli Defence Request.³

2. The Defence is affected by the same issues identified in the Veseli Defence Request and therefore joins the submissions and relief requested therein. More specifically, the Defence agrees that the SPO’s practice of classifying all material disclosed pursuant to Rule 102(1)(b),⁴ Rule 102(3) and Rule 103 as confidential, is in breach of various provisions and decisions of the Kosovo Specialist Chambers (“KSC”).⁵ 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 Law,⁶ Articles 31(2) and (3) of the Constitution of the Republic of Kosovo, and Article 6 of the European Convention on Human Rights.⁷

3. The Defence agrees with the Veseli Defence and the Taçi Defence that the SPO’s approach is inconsistent with the right of the accused to fair and public proceedings⁸ and is inconsistent with the established principle of publicity of proceedings, which according to the International Criminal Tribunal for the Former Yugoslavia and the

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

² *Ibid.*, paras 14-16.

³ KSC-BC-2020-06, F00773, Taçi Defence, *Taçi Defence Joinder to the Veseli Defence Request for Reclassification of Evidentiary Material* (“Taçi Defence Joinder”), 20 April 2022, public.

⁴ Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”).

⁵ Veseli Defence Request, paras 8-13.

⁶ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”).

⁷ Taçi Defence Joinder, para. 2.

⁸ Veseli Defence Request, para. 9; Taçi Defence Joinder, paras 2-3.

International Criminal Court, is of paramount 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.⁹

4. The SPO must provide a legal basis and justify the classification as confidential of, for example, public reports issued by NGOs or international organisations, such as the OSCE or UN, UN resolutions, publicly available press articles, and excerpts from books.

5. The Defence strongly supports the submissions made by the Veseli Defence and the Thaçi Defence regarding the practical issues associated with the SPO's practice of maintaining the confidential classification of all evidence.¹⁰

6. Accordingly, the Defence respectfully joins the Veseli Defence Request and the relief requested therein.

Word count: 498



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⁹ See the case-law cited at Veseli Defence Request, para. 5, fn. 5 and Thaçi Defence Joinder, para. 3, fn. 6.

¹⁰ Veseli Defence Request, para. 11; Thaçi Defence Joinder, para. 4.