



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:** 22 April 2022

**Language:** English

**Classification:** Public

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**Prosecution response to Veseli request for reclassification**

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**Counsel for Rexhep Selimi**

David Young

**Counsel for Jakup Krasniqi**

Venkateswari Alagenda

1. The Specialist Prosecutor's Office ('SPO') hereby replies to the Request<sup>1</sup> for reclassification of evidentiary materials.
2. At the current pre-trial stage of proceedings, in particular, a confidential classification remains appropriate for a significant proportion of evidentiary items, including witness-related materials pertaining both to the SPO/KSC and to investigation and trial proceedings conducted by other prior institutions. Contrary to Defence submissions,<sup>2</sup> even materials which may on their face appear public – such as transcripts of public testimony or even books and similar materials – may implicate serious questions of privacy, security and well-being to the extent they are referenced in a manner which associates the person or author concerned with SPO/KSC proceedings.<sup>3</sup> This is particularly so in the climate of witness - or potential or perceived witness - intimidation and stigmatisation which prevails. Moreover, factors relevant to determination of appropriate classifications are likely to change as proceedings advance, which further militates in favour of a conservative approach at the pre-trial stage.
3. Further, in seeking to support the reclassification request, the Defence misapprehend the scope of the principle of publicity as enshrined in Article 21 of the Law and Article 6 of the European Convention on Human Rights ('ECHR). The Thaçi Defence cite no relevant authority for their erroneous claim of a rights violation,<sup>4</sup> while the Veseli Defence misrepresent the European Court of Human Rights ('ECtHR') authority cited.<sup>5</sup> In *Fazliyski v. Bulgaria*, the court was concerned not with the entire case file as such, but

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<sup>1</sup> Veseli Defence Request for Reclassification of Evidentiary Material, KSC-BC-2020-06/F00766 ('Veseli Request'); Thaçi Defence Joinder to the Veseli Defence Request for Reclassification of Evidentiary Material, KSC-BC-2020-06/F00773 ('Thaçi Request', and together with the Veseli Request the 'Request').

<sup>2</sup> Thaçi Request, KSC-BC-2020-06/F00773, para.2.

<sup>3</sup> In respect of the Veseli Defence demonstrating an inability to appropriately make this distinction referencing otherwise public materials in an inappropriate and identifying manner see, for example, KSC-BC-2020-06/F00237 and KSC-BC-2020-06/F00553.

<sup>4</sup> Thaçi Request, KSC-BC-2020-06/F00773, para.2.

<sup>5</sup> Veseli Request, KSC-BC-2020-06/F00766, para.6.

rather with the fact that the *judgment* in the case had not been made public for a considerable period of time.<sup>6</sup> The ECtHR, in fact, reaffirmed the well-established principle that the principle of publicity enshrined in Article 6 of the ECHR entails two aspects - the holding of public hearings and public delivery of judgments.<sup>7</sup>

4. The Request fails to draw any distinction between materials intended to be used, discussed and potentially admitted at trial and the large body of other materials which have been disclosed in the context of pre-trial proceedings. Public classification of such other material - which may be of limited, if any, relevance to the actual charges - does little, if anything, to further the publicity of proceedings within the meaning of Article 21 of the Law or Article 6 of the ECHR. In fact, jurisprudence relied upon by the Defence in this respect in the Request is concerned not with such materials, but rather specifically with evidence already admitted at trial.<sup>8</sup> Further, in citing to ICC authorities,<sup>9</sup> the Defence fail to acknowledge procedural differences between the ICC framework and that applicable at the KSC, which are relevant to classifications at the pre-trial stage. In particular, unlike at the KSC, the ICC pre-trial phase encompasses confirmation of charges hearings for which the presentation and discussion of evidentiary material are a necessary component.

5. Prior to the commencement of trial at the KSC, the necessity for detailed discussion of specific evidentiary items is limited. Notably, a significant number of the public references to confidential material made by the Defence to date have been gratuitous and

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<sup>6</sup> ECtHR, *Fazliyski v. Bulgaria*, no.40908/05, paras 64-69 (the case file is only referenced in passing and for the purpose of noting that the judgment at issue formed part of it).

<sup>7</sup> ECtHR, *Fazliyski v. Bulgaria*, no.40908/05, para.64. *See also, for example* ECtHR, *Tierce & Others v. San Marino*, 24954/94, 24971/94, 24972/94, 25 July 2000, para.93.

<sup>8</sup> For example, *Thaçi Request*, KSC-BC-2020-06/F00773, para.3 *citing to* ICTY, *Lukić & Lukić*, Decision on Prosecution's Motion to Change Private /Closed Session Testimony and 92<sup>ter</sup> Statements Admitted Under Seal to Public Status (relating to items of evidence which had already been admitted at trial).

<sup>9</sup> *Veseli Request*, KSC-BC-2020-06/F00766, para.5; *Thaçi Request*, KSC-BC-2020-06/F00773, para.3. The ICC jurisprudence cited by the *Thaçi* Defence also includes decisions related specifically to Rule 76 material (i.e. material related to prosecution witnesses, and not to the general body of disclosed material).

unnecessary - either at all or in the degree of detail given - for the purposes of making the points in question.<sup>10</sup> Equally, the classification of disclosed materials does not prevent their responsible use in Defence investigations, provided the relevant legal framework is respected.

6. It is both appropriate and consistent with the principle of publicity for definitive determinations of classification to be made at trial, including, in some instances, at the point of presentation or submission of evidence.

7. Nonetheless, the SPO advises that it shall be reviewing, and where appropriate revising, the classification of evidentiary materials prior to the commencement of trial, and consistent with the principle of publicity such classifications shall remain under review throughout the proceedings.

**Word count: 856**



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**Jack Smith**  
**Specialist Prosecutor**

Friday, 22 April 2022

At The Hague, the Netherlands.

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<sup>10</sup> KSC-BC-2020-06/F00749, para.4; Transcript of Status Conference dated 24 March 2022, pp.1092-1093.