

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: 25 April 2022

Language: English

Classification: Public

**Public Redacted Version of
Veseli Defence Response to SPO Request for Reclassification
(F00748, dated 23 March 2022)**

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I. INTRODUCTION

1. Following the Prosecution's Request for Reclassification of Filing F00744¹ and the Pre-Trial Judge's Order for responsive submission to be filed today,² the Defence for Mr Kadri Veseli ("Defence") hereby presents its reasons in support of its submission that F00744 need not be reclassified as confidential.
2. The Defence concurrently submits a redacted version of F00744 giving effect to redactions requested by the SPO, as an interim measure to ensure timely public access to the Defence submissions.

II. APPLICABLE LAW AND GUIDANCE

3. Rule 83(1) requests that "Any non-public record of proceedings and **evidence** shall indicate the reasons for such classification, and whether and when it may be reclassified".³
4. Pursuant to Article 38(2) Practice Direction on Filings, "The Participant or, as applicable, the Panel, shall ensure **that all confidential information** is removed from the public redacted version of the Filing."

III. SUBMISSIONS

A. [REDACTED]

5. [REDACTED] is not a protected witness. He is an individual that the SPO interviewed [REDACTED], and whose evidence it chose not to rely upon. As noted by the SPO, the fact that [REDACTED] was interviewed by the SPO is [REDACTED].⁴ Moreover, the Defence did not reveal the content of the

¹ F00745, Prosecution request for reclassification of filing F00744, 22 March 2022.

² F00747, Order Varying Time Limit, 22 March 2022.

³ As recalled in F00099, Framework Decision on Disclosure of Evidence and Related Matters, 23 November 2020, para. 48.

⁴ [REDACTED]

interview of [REDACTED]. It is thus unclear to the Defence how the mere fact of his interview with the SPO triggers the need for a redaction.

6. The Defence observes that the SPO has previously referred to interviewees by name in its own filings. For example, in F00161, the SPO refers to Rrustem Mustafa giving an interview to the SPO, as well as the approximate date of said interview.⁵ Rrustem Mustafa is – unlike [REDACTED] – a witness that the SPO intend to call at trial. If the SPO saw no need to redact the identity of that witness (the Defence agrees that there was no need) it seems reasonable to the Defence that there was even less justification for redacting the identity of a non-witness, whose statement is exculpatory.

B. [REDACTED]

7. The [REDACTED] at issue was disclosed to the Defence under Rule 103, as exculpatory material, without any Rule 107 limitations.⁶ In any event, similar to the [REDACTED] interview, the Defence does not disclose the substance of the [REDACTED]. It merely restates that an agreement exists between the SPO and [REDACTED], that numerous requests for documents have been made by the SPO to [REDACTED], and that documents have been handed over.⁷
8. There is nothing confidential about the fact of the SPO's relationship with [REDACTED]. Such information is available on the Kosovo Specialist Chambers' website, [REDACTED]⁸ [REDACTED]:

[REDACTED].⁹

⁵ F00161/RED, Public Redacted Version of 'Prosecution response to Application for Interim Release on behalf of Mr Kadri Veseli' with Public Redacted Annex 1, 15 January 2021, para 32. *See also* F00149RED, Public redacted version of Prosecution response to Application for Interim Release on behalf of Mr Hashim Thaçi, 21 December 2020, para. 28.

⁶ F00099, para. 69 defines Rule 107 material as "disclosure material which has been provided to the SPO on a confidential basis and solely for the purpose of generating new evidence."

⁷ F00744, Veseli Defence Submissions for Eleventh Status Conference, 21 March 2022.

⁸ [REDACTED]

⁹ [REDACTED]

C. The SPO's Classification System is Unworkable

9. The only basis for the SPO's request that this material be redacted is their unilateral designation of both items as "confidential" upon disclosing them to the Defence. It is observed, however, that the SPO has designated **all** Rule 102(1)(B), Rule 103, Rule 102(3) disclosure as confidential, without exception. This is not a workable system. It creates a blanket prohibition against discussing – or even referring to – any of the evidence in public. This cannot be reconciled with the right to a public trial, and places an unreasonable burden on the Defence to apply to reclassify each individual document it wishes to discuss in open court. Moreover, in order to avail of Rule 83(1), and as reiterated in the Framework Decision,¹⁰ the SPO is required to justify the classification of any material as confidential. This has not been done.
10. It is axiomatic that not all evidence should be confidential. Rather, evidence is presumed to be public unless reasons to maintain confidentiality exist. Accordingly, the Defence submits that the SPO should, as a matter of priority, review its classification of all disclosure items, so that confidentiality applies only to truly confidential documents as identified by the Pre-Trial Judge in the Framework Decision on Disclosure of Evidence and Related Matters.¹¹

IV. CLASSIFICATION

11. The Request is classified as confidential and the present Response will therefore bear the same classification in accordance with Rule 82(4) of the Rules, pending the outcome of this litigation.

¹⁰ F00099, para. 48.

¹¹ F00099, para. 48.

V. CONCLUSION

12. For the above-mentioned reasons, the Defence request the Pre-Trial Judge to reject the SPO's request for classification of filing F00744 as confidential.

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