

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: 29 April 2022

Language: English

Classification: Public

**Veseli Defence Reply to
Prosecution Response to Veseli Request for Reclassification**

Specialist Prosecutor's Office

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I. SUBMISSIONS

1. The Defence for Mr Kadri Veseli (“Defence”), hereby, replies to the Prosecution Response to Veseli Request for Reclassification.¹ In its Response, the SPO sets out an approach that simply ignores the Framework Decision and it must be rejected.
2. The SPO states an intent to maintain blanket confidentiality over the entire casefile until it so chooses, at its discretion, to reclassify them.² The Framework Decision³ does not allow this. It sets out an approach whereby classification (a) pertains to items individually; (b) takes place at the time of disclosure; and (c) is presumed to be public. This rebuttable presumption can be overcome, but only where reasons are indicated. The SPO has violated all three prongs of this rule and now clarifies that it will continue to do so until it chooses otherwise, at its own discretion.
3. The SPO has not offered any justification for its proposed approach, other than asserting that factors relevant to determination of appropriate classification “are likely to change.”⁴ In fact, it does not refer to the Framework Decision at all. The SPO’s only contention, for which no evidence is adduced, is that factors that would justify confidentiality may arise in the future. Whether that is the case or not must be determined only after hearing the SPO’s reasoning.
4. The applicable legal framework does not allow for the resolution of this matter to be put off until trial.⁵ Waiting until trial to reclassify items will only encumber the Trial Panel with an issue that should be dealt with now. The SPO has been afforded significant latitude in maintaining blanket confidentiality to

¹ F00778, Prosecution Response to Veseli Request for Reclassification, 22 April 2022.

² F00778, para. 6.

³ F00099, Framework Decision on Disclosure of Evidence and Related Matters, 23 November 2021, para. 48.

⁴ F00778, para. 2.

⁵ F00778, para. 6.

date – but this must now end. The SPO's investigation is substantially completed, it has completed its Rule 102(1)(b) disclosure, it will shortly complete its Rule 103 disclosure, and it anticipates no further amendments to the indictment.⁶ It is in possession of all information that it would require to classify the items in its casefile, and it is under legal obligation to do so.

II. CONCLUSION

5. The Defence maintains its initial requests.⁷

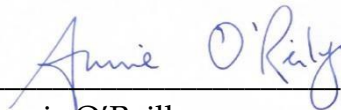
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⁶ F00742, Prosecution Submissions for Eleventh Status Conference, 21 March 2022, para. 11.

⁷ F00766, Veseli Defence Request for Reclassification of Evidentiary Material, 11 April 2022, paras 14-16.