

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 Reply to Prosecution response to Veseli request for reclassification

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1. The Defence for Mr Hashim Thaçi (“Defence”) hereby replies to the Prosecution response to Veseli request for reclassification¹ of evidentiary material.²

2. The SPO has failed to justify the systematic classification as confidential of any item disclosed pursuant to Rule 102 or Rule 103. It does not rely on any case law in support of its approach.

3. The SPO argues that the Veseli 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,’*³ however the SPO itself has not drawn any such distinction in its practice since each document has been classified as confidential by the SPO, wrongly.

4. The fact that the ECtHR has recalled that the public character of proceedings applies to both the public holding of hearings and to the public delivery of judgments,⁴ further supports the requirement that the evidence disclosed and/or intended to be used by the prosecution be classified as public, unless a justification is established to keep the evidence confidential.⁵ The SPO’s attempt to draw a distinction for the disclosure classification between the ICC and the KSC⁶ is ill-founded. Indeed, in his Framework Decision on Disclosure of Evidence and Related Matters, the Pre-Trial Judge explicitly recalled that:

48. According to Article 34(1) of the Law and Rule 24(1) and (2) of the Rules, the Registrar shall maintain a full and accurate record of proceedings and shall preserve all evidence and other material produced during the proceedings, in accordance with the principles set

¹ KSC-BC-2020-06/F00778, dated 22 April 2022, notified on 25 April 2022 (“SPO Response”).

² KSC-BC-2020-06/F00766, Veseli Defence Request for Reclassification of Evidentiary Material, 11 April 2022 (“Veseli Request”). See also KSC-BC-2020-06/F00773, Thaçi Defence Joinder to the Veseli Defence Request for Reclassification of Evidentiary Material (“Thaçi Joinder”).

³ SPO Response, para. 4.

⁴ SPO Response, para. 3, referring to ECtHR, *Fazliyski v. Bulgaria*, no.40908/05, para.64.

⁵ Thaçi Joinder, para. 3.

⁶ SPO Response, para. 4.

out in this decision and any future rulings on the matter. Such record must be accessible to the Parties and participants, as the case may be, subject to any necessary restriction regarding protection and level of confidentiality, as provided for in Articles 23 and 58 of the Law, as well as Rules 80, 82, 105, 106, 107, and 108 of the Rules, or as ordered by the Pre-Trial Judge. In this regard, **when disclosing evidence, the Parties shall determine the appropriate level of classification of each item and shall register evidence as public, unless there exist reasons to classify the material otherwise, in accordance with Rule 83(1) of the Rules.**⁷

The Pre-Trial Judge did not limit this ruling to evidence intended to be used at trial or to the trial stage only. The SPO's approach thus directly contravenes the Pre-Trial Judge's instructions.

5. Contrary to the SPO's submissions,⁸ the systematic classification as confidential of evidentiary material is prejudicial for the Defence: it is hampering the defence investigations, the Defence being necessarily affected and limited in its use of such material with potential witnesses.

6. Thus, the SPO's notice 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'*⁹ is insufficient¹⁰ to comply with the classification regime defined by the KSC Law and Rules and the Framework Decision. Such review should be done immediately, and the reclassification applied within the deadline to be set by the Pre-Trial Judge.

7. For these reasons, the Defence maintains its support to the relief sought in the Veseli Request.

⁷ KSC-BC-2020-06/F00099, para. 48.

⁸ SPO Response, para. 5.

⁹ SPO Response, para. 7.

¹⁰ See also KSC-BC-2020-06/F00785, Veseli Defence Reply to Prosecution Response to Veseli Request for Reclassification, para. 2.

[Word count: 641 words]

Respectfully submitted,



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Monday, 2 May 2022

At Tampa, United States