



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: **KSC-BC-2018-01**

Before: **Single Judge Panel**
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 11 November 2022

Language: English

Classification: **Public**

Decision on the Application for Reclassification of F00261 and F00265

Specialist Prosecutor
Jack Smith

Specialist Counsel
Toby Cadman

THE SINGLE JUDGE,¹ pursuant to Article 33(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office and Rules 82(5) and 84 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), hereby renders the following decision.

I. PROCEDURAL BACKGROUND

1. On 4 July 2022, Counsel for Driton Lajçi ("Defence") filed a second application before the Single Judge to order the termination of the investigation against Driton Lajçi ("Mr Lajçi").²
2. On 3 October 2022, the Single Judge issued a decision rejecting the Defence's application for an order terminating the investigation against Mr Lajçi ("Impugned Decision").³
3. On 10 October 2022, the Defence requested leave to appeal the Impugned Decision ("Request for Leave to Appeal").⁴
4. On 21 October 2022, the Specialist Prosecutor's Office ("SPO") filed its response ("Response").⁵

¹ KSCPR-2018, F00004, President, *Decision Assigning a Single Judge Pursuant to Article 33(2) of the Law*, 29 May 2018, public.

² KSC-BC-2018-01, F00238, Specialist Counsel, *Second Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Driton Lajçi*, 4 July 2022, public. A corrected version with confidential Annexes A and B was filed on 25 July 2022, F00238/COR.

³ KSC-BC-2018-01, F00258, Single Judge, *Decision on Second Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Driton Lajçi*, 3 October 2022, confidential. A public redacted version was filed on 27 October 2022.

⁴ KSC-BC-2018-01, F00261, Specialist Counsel, *Application for Certification for Leave to Appeal the Decision on Second Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Driton Lajçi*, 10 October 2022, confidential.

⁵ KSC-BC-2018-01, F00264, Specialist Prosecutor, *Prosecution Response to Driton Lajçi's Request for Leave to Appeal Decision on Second Application to Terminate Investigation (KSC-BC-2018-01/F00258)*, 21 October 2022, confidential. A public redacted version filed on 1 November 2022, F00264/RED.

5. On 24 October 2022, the Defence replied to the Response (“Reply”).⁶
6. On 31 October 2022, the Single Judge granted in part the Defence’s application for leave to appeal (“Decision Granting Leave to Appeal”).⁷
7. On 4 November 2022, the Defence filed an application to reclassify as “public” both its Request for Leave to Appeal and its Reply (“Request”).⁸

II. SUBMISSIONS

8. The Defence refers to the Decision Granting Leave to Appeal, in which the Single Judge ordered the Defence to file a public redacted version of the Request for Leave to Appeal (F00261) and the Reply (F00265) (collectively, “Filings”).⁹ It avers that it filed those two documents as “confidential” out of an abundance of caution pending, *inter alia*, a review of the matters in contention, submissions contained therein and the classification of the Impugned Decision.¹⁰ It cites the need for the proceedings to be public in nature, and avers that the Filings do not contain matters of a confidential nature.¹¹
9. Thus, the Defence requests that the Filings be reclassified as “public”.¹²

⁶ KSC-BC-2018-01, F00265, Specialist Counsel, *Reply to Prosecution Response to Defence Application for Certification for Leave to Appeal the Decision on Second Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Driton Lajçi* (KSC-BC-2018-01/F00258), 24 October 2022, confidential.

⁷ KSC-BC-2018-01, F00267, Single Judge, *Decision on the Defence Application for Leave to Appeal F00258*, 31 October 2022, confidential.

⁸ KSC-BC-2018-01, F00268, Specialist Counsel, *Application to Reclassify Filings KSC-BC-2018-01/F00261 and KSC-BC-2018-01/F00265*, 4 November 2022, public.

⁹ Request, para. 17, referring to Decision Granting Leave to Appeal, paras 32 and 33(c).

¹⁰ Request, para. 17.

¹¹ Request, para. 18.

¹² Request, para. 18.

III. APPLICABLE LAW

10. Pursuant to Rule 82(5) of the Rules, where the basis for the classification no longer exists, whoever submitted the original filing shall apply to the Panel for reclassification.

11. Pursuant to Rule 84(1) of the Rules, the Panel shall on an ongoing basis review the classification of records of proceedings and evidence and, where applicable, order their reclassification.

IV. DISCUSSION

12. The Single Judge recalls that in the Decision Granting Leave to Appeal, he ordered both the Defence and the SPO to file public redacted versions of their submissions with redactions to information consistent with the redactions in the public version of the Impugned Decision (F00258/RED) and the SPO's submissions leading to it (F00240/RED).¹³ The SPO has since filed a public version of its Response with redactions in compliance with the order of the Single Judge.

13. The Single Judge observes that in principle the written submissions in these proceedings should be available to the public, where possible. However, the Filings in question contain sensitive information that may compromise the investigation if publicly disclosed. On this basis, the Single Judge rejects the Request and orders the Defence to file a public version of the Filings with redactions, taking guidance from the redactions applied in the public versions of the Impugned Decision and the Response.¹⁴

¹³ Decision Granting Leave to Appeal, paras 32 and 33(c).

¹⁴ *For example*, the Single Judge notes, by way of illustration, that in the public redacted version of the Response, paragraph 12, the SPO applied redactions corresponding to information in paragraphs 21-23 and 25-26 of the public redacted version of the Impugned Decision.

14. In view of the discrete nature of the Request and the fact that it is rejected in the present decision, the Single Judge considers that no prejudice is caused to the SPO in issuing the present decision prior to receiving its response to the Request.

V. DISPOSITION

15. For the above-mentioned reasons, the Single Judge hereby:

- a) **REJECTS** the Request; and
- b) **ORDERS** the Defence to file public redacted versions of the Request for Leave to Appeal (F00261) and the Reply (F00265) by **Friday, 18 November 2022** and in accordance with paragraph 13 above.



Judge Nicolas Guillou
Single Judge

Dated this Friday, 11 November 2022
At The Hague, the Netherlands.