



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

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

Date: 12 December 2022

Language: English

Classification: Public

**Public Redacted Version of
Decision on the Prosecution Request for Reclassification
of Filings F01100/RED and F01101/RED**

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THE PRE-TRIAL JUDGE,¹ pursuant to Articles 21(2) and 39(13) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 82(5) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 14 November 2022, the Defence for Kadri Veseli ("Mr Veseli" and "Veseli Defence", respectively) filed supplemental submissions to the joint defence motion for disclosure pursuant to Rule 103 of the Rules ("F01100").²
2. On the same day, 14 November 2022, the Defence for Hashim Thaçi ("Mr Thaçi" and "Thaçi Defence") filed its addendum to the joint defence motion for disclosure pursuant to Rule 103 of the Rules ("F01101").³
3. On 18 November 2022, the Veseli Defence filed the public redacted version of F01100 ("F01100/RED").⁴
4. On 23 November 2022, the Thaçi Defence filed the public redacted version of F01101 ("F01101/RED").⁵

¹ KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

² KSC-BC-2020-06, F01100, Specialist Counsel, *Veseli Defence Supplemental Submissions to Joint Defence Motion for Disclosure Pursuant to Rule 103 (F00877/COR)*, 14 November 2022, confidential, with Annexes 1-2, confidential.

³ KSC-BC-2020-06, F01101, Specialist Counsel, *Thaçi Defence Addendum to the Joint Defence Motion for Disclosure Pursuant to Rule 103 (F00877/COR)*, 14 November 2022, confidential, with Annexes 1-4, confidential.

⁴ KSC-BC-2020-06, F01100/RED, Specialist Counsel, *Public Redacted Version of Veseli Defence Supplemental Submissions to Joint Defence Motion for Disclosure Pursuant to Rule 103 (F00877/COR)*, 18 November 2022, public, with Annexes 1-2, confidential.

⁵ KSC-BC-2020-06, F01101/RED, Specialist Counsel, *Public Redacted Version of Thaçi Defence Addendum to the Joint Defence Motion for Disclosure Pursuant to Rule 103 (F00877/COR)*, 14 November 2022, public, with Annexes 1-4, confidential.

5. On 29 November 2022, the Specialist Prosecutor Office (“SPO”) filed a request for reclassification of F01100/RED and F01101/RED (“Request”).⁶

6. On 2 December 2022, the Thaçi Defence and the Veseli Defence responded to the Request (“Thaçi Response”, “Veseli Response”, respectively).⁷ No other Defence teams responded.

7. On 5 December 2022, the SPO indicated that it will not reply.⁸

II. SUBMISSIONS

8. The SPO submits that F01100/RED and F01101/RED (collectively, “Filings”) should be reclassified because they reference confidential information. The SPO avers that the Veseli Defence and Thaçi Defence should be ordered to file new public redacted versions of the Filings, with redactions applied to all confidential information.⁹

9. The Thaçi Defence responds that the Pre-Trial Judge should dismiss the Request.¹⁰ The Thaçi Defence argues that it is unable to provide a complete response since the SPO failed to identify the parts of F01101/RED that should be redacted.¹¹ The Thaçi Defence submits that the Request lacks legitimate basis as no confidential information remains in F01101/RED.¹² It opines that no further redactions to F01101/RED are required.¹³ The Thaçi Defence also avers that there

⁶ KSC-BC-2020-06, F01127, Specialist Prosecutor, *Prosecution Request for Reclassification of Filings F01100/RED and F01101/RED*, 29 November 2022, confidential.

⁷ KSC-BC-2020-06, F01136, Specialist Counsel, *Thaçi Defence Response to ‘Prosecution Request for Reclassification of Filings F01100-RED and F01101-RED’*, 2 December 2022, confidential; F01139, Specialist Counsel, *Veseli Defence Response to the Prosecution Request for Reclassification of Filings F01100-RED and F01101-RED’*, 2 December 2022, confidential.

⁸ See KSC-BC-2020-06, Correspondence 154.

⁹ Request, para. 1.

¹⁰ Thaçi Response, para. 12.

¹¹ Thaçi Response, para. 7.

¹² Thaçi Response, paras 2, 11.

¹³ Thaçi Response, paras 2, 11.

is no risk to the witnesses since it redacted all their details (including their witness codes) in F01101/RED.¹⁴ The Thaçi Defence argues that, in light of the extensive redactions in F01101/RED, the general public can neither comprehend the matters at issue, nor identify the persons to which it refers.¹⁵ Lastly, the Thaçi Defence avers that the information left unredacted in F01101/RED is “evident from, or implicit in” the public version of the transcript of the fifteenth status conference and the SPO’s response to the Filings.¹⁶

10. The Veseli Defence opposes the Request and argues that no further redactions to F01100/RED are unnecessary.¹⁷ The Veseli Defence responds that F01100/RED balances the key principle of publicity in a criminal trial with the rights of third parties as: (i) nothing in F01100/RED would allow identification of individuals whom the SPO considers could be at risk; (ii) it respected both the redactions ordered to the transcript of the fifteenth status conference and the public version of such transcript; and (iii) it redacted dates, information of contacts between the SPO and the witnesses, electronic record numbers and pseudonyms.¹⁸ The Veseli Defence observes that the SPO waited two weeks to challenge the redactions of the Filings.¹⁹ The Veseli Defence avers that the SPO should identify the further redactions it believes necessary and the reasons for it.²⁰ Lastly, should the Pre-Trial Judge deem that further redactions to F01100/RED are necessary, the Veseli Defence seeks clear guidance as to the information that may or may not remain in the public domain.²¹

¹⁴ Thaçi Response, para. 8.

¹⁵ Thaçi Response, para. 9.

¹⁶ Thaçi Response, para. 10 *referring to* KSC-BC-2020-06, F01121/RED, Specialist Prosecutor, *Public Redacted Version of ‘Prosecution Consolidated Response to F01100 and F01101 with strictly confidential and ex parte Annex 1’*, KSC-BC-2020-06/F01121, dated 24 November 2022, 29 November 2022, public.

¹⁷ Veseli Response, paras 1, 5.

¹⁸ Veseli Response, paras 2-3.

¹⁹ Veseli Response, para. 4.

²⁰ Veseli Response, para. 4.

²¹ Veseli Response, para. 5.

III. APPLICABLE LAW

11. Pursuant to Article 21(2) of the Law, the accused is entitled to a fair and public hearing, subject to Article 23 of the Law and any measures ordered by the Specialist Chambers (“SC”) for the protection of victims and witnesses.

12. Pursuant to Rule 82(5) of the Rules, a panel may reclassify a filing upon request by any other participant.

IV. DISCUSSION

13. At the outset, the Pre-Trial Judge recalls that the need for redactions is to be assessed on a case-by-case basis and, in deciding upon the applicable redaction regime, a balance must be struck between the competing interests at stake, whilst ensuring that the proceedings are fair.²² The Pre-Trial Judge notes that submissions filed before the SC shall be public unless there are exceptional reasons for keeping them confidential.²³ Lastly, the Pre-Trial Judge recalls that while publicity of proceedings is a fundamental right of the accused under Article 21(2) of the Law, this right is not absolute, but subject to necessary restrictions to protect other interests.²⁴

14. As a preliminary note, the Pre-Trial Judge notes that, while F01100/RED and F01101/RED were respectively filed on 18 November 2022 and 23 November 2022, the SPO did not file the Request before 29 November 2022. The SPO did not explain why it did not file the Request earlier, nor did the SPO present the Request as urgent. In any event, the Filings have been in the public domain for several

²² KSC-BC-2020-06, F00099, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 23 November 2020, public, para. 84.

²³ KSC-BC-2020-06, IA008-F00004, Court of Appeals Panel, *Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention*, 1 October 2021, confidential, para. 8. A public redacted version was filed on the same day, IA008-F00004/RED.

²⁴ KSC-BC-2020-06, F00934, Pre-Trial Judge, *Decision on Veseli Defence Request for Reclassification of Evidentiary Material (“Decision on Veseli Defence Request for Reclassification of Evidentiary Material”)*, 23 August 2022, public, para. 16.

days. Further, the Pre-Trial Judge observes that the SPO fails in the Request to: (i) identify clearly the unredacted portions of the Filings it takes issue with; and (ii) justify why, in its view, the information disclosed in the Filings should be treated as confidential. Indeed, the Pre-Trial Judge is of the view that the mere footnote in the Request referencing some paragraphs of the Filings “for example” is insufficient to identify with precision the parts of the Filings that the SPO alleges should have been redacted.²⁵ The SPO should have identified the redactions that it believes to be necessary and should have provided the reasons for their implementation. It should not be incumbent upon the Defence, nor upon the Pre-Trial Judge, to decipher the delineation of the information which the SPO deems confidential, nor the justifications underlying it.

15. That said, the Pre-Trial Judge proceeded to carry out the review of the Filings, without seeking further submissions from the SPO, with a view to preserve the expeditiousness of the proceedings and in light of the imminent transfer of the case.

16. The Pre-Trial Judge observes that the Filings contains the following allegations: (i) that an individual gave a statement to the SPO, claiming that [REDACTED], and provided details about the modalities of the alleged [REDACTED]; (ii) that another individual has a relationship with [REDACTED]; (iii) that Serbia would have refused an SPO request of documents pertaining to [REDACTED]; (v) that the individual was asked to [REDACTED]; as well as (vi) references to [REDACTED] in the context of communication exchanges (collectively, “Unredacted Information”).²⁶

²⁵ See Request, fn. 3.

²⁶ See F01100/RED, paras 7, 19, 25-27, 40, 47(a)(i), 47(b)(ii), (iv), 47(c); F01101/RED, paras 9, 12-15, 20-24, 26, 30.

17. The Pre-Trial Judge notes that the Unredacted Information derives from information provided by [REDACTED].²⁷ The Pre-Trial Judge recalls that [REDACTED] is not a witness in this case but that the SC legal framework allows for protective measures to be taken with respect to a person in need of protection in relation to criminal proceedings before the SC.²⁸ Further, the Pre-Trial Judge also recalls that he previously found that: (i) the disclosure of [REDACTED];²⁹ and that (ii) the non-disclosure of [REDACTED].³⁰

18. Further, the Pre-Trial Judge notes that, until the Filings, the Unredacted Information had only been shared amongst the Parties – not with the public. Indeed, with the exception of the Filings, the Pre-Trial Judge observes that the Unredacted Information: (i) had been redacted from the public version of the transcript of the fifteenth status conference; (ii) had been discussed in private session during said conference;³¹ or (iii) had either been redacted from public versions of other related court filings or described in very generic terms therein.³² The Pre-Trial Judge is of the view that denying the Request would defeat the purpose of the precautions taken thus far with respect to the allegations

²⁷ See 082095-TR-ET, Parts 1-5 RED2; 105694-TR-ET Part 1 RED. See also 106868-106868 RED.

²⁸ KSC-BC-2020-06, F00962, Pre-Trial Judge, *Decision on the Third Prosecution Request for Protective Measures for Items Containing Rule 103 Information* (“Third Rule 103 Decision”), 9 September 2022, strictly confidential and *ex parte*, para. 40. A confidential redacted version was filed on the same day, F00962/RED.

²⁹ Third Rule 103 Decision, para. 40.

³⁰ Third Rule 103 Decision, para. 41.

³¹ Compare public and confidential versions of KSC-BC-2020-06, Transcript of Hearing, 4 November 2022, p. 1591, lines 5-9, 17-21, p. 1593, lines 7-17, p. 1594, line 11 to p. 1615, line 4. See also KSC-BC-2020-06, F01087, Registrar, *In Court – Redaction Orders* (“4 November Redaction Orders”), 4 November 2022, confidential.

³² See e.g. KSC-BC-2020-06, F01121/RED, Specialist Prosecutor, *Public Redacted Version of ‘Prosecution Consolidated Response to F01100 and F01101’*, 29 November 2022, public, with Annex 1, strictly confidential and *ex parte*. See also KSC-BC-2020-06, F01091, Specialist Counsel, *Veseli Defence Notice of Waiver of Detention Review*, 7 November 2022, public; F01094, Pre-Trial Judge, *Decision Amending the Briefing Schedule for the Seventh Detention Review of Mr Veseli*, 9 November 2022, public, paras 3, 10, 12; F01095, Specialist Counsel, *Thaçi Defence Request for an Extension of Time for Submissions on Review of Detention*, 9 November 2022, public, para. 5; F01098, Pre-Trial Judge, *Decision on Thaçi Defence Request for an Extension of Time for Submissions on Review of Detention*, 11 November 2022, public, paras 3-4, 7-8, 14-15, 17.

covered by the Unredacted Information, namely: (i) the use of private session during the fifteenth status conference;³³ (ii) the issuance of in-court redaction orders in relation to the public transcript of the fifteenth status conference;³⁴ and (iii) the use of redactions or of generic language to refer to these allegations in previous filings.³⁵

19. With all of the above in mind, the Pre-Trial Judge considers that the divulcation of the Unredacted Information to the public, to the extent that it emanates from material provided by [REDACTED], increases the existing risk towards [REDACTED]. The Pre-Trial Judge is of the view that the current redactions in the Filings, while not giving away the identity or even the code of the individual, insufficiently mitigate this risk. Accordingly, the Pre-Trial Judge finds that the Unredacted Information should, at this stage, remain confidential.

20. In light of the foregoing, the Pre-Trial Judge finds it appropriate to order the Thaçi Defence and the Veseli Defence to file a further public redacted version of their respective Filings, redacting the Unredacted Information as encompassed in the description set out in paragraph 16, above.

³³ See KSC-BC-2020-06, Transcript of Hearing, 4 November 2022, p. 1594, line 11 to p. 1615, line 4.


³⁴ 4 November Redaction Orders.

³⁵ See *supra* fn. 32.

V. DISPOSITION

21. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a. **GRANTS** the Request;
- b. **ORDERS** the Veseli Defence to file a further public redacted version of F01100 and the Thaçi Defence to file a further public redacted version of F01101, as set out in paragraph 20, by **Friday, 16 December 2022**; and
- c. **DIRECTS** the Registrar to reclassify F01100/RED and F01101/RED as confidential.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Monday, 12 December 2022
At The Hague, the Netherlands.