

**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:** 16 December 2022

**Language:** English

**Classification:** Public

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**Public Redacted Version of Veseli Defence Reply to Prosecution  
Consolidated Response to F01100 and F01101, With Confidential  
Annexes 1-4 (F01128, dated 29 November 2022)**

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**Specialist Prosecutor's Office**

Alex Whiting

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Kadri Veseli**

Ben Emmerson

**Counsel for Victims**

Simon Laws

**Counsel for Rexhep Selimi**

David Young

**Counsel for Jakup Krasniqi**

Venkateswari Alagenda

## I. INTRODUCTION

1. The Defence for Mr Kadri Veseli (“Defence”) hereby replies to the SPO Response<sup>1</sup> to its Supplemental Submissions for disclosure pursuant to Rule 102(3) and Rule 103.<sup>2</sup>
2. The SPO’s Response is characterised by repeated attempts to (i) downplay the significance of [REDACTED]’s account; (ii) minimise its legal obligations; and (iii) avoid direct engagement with issues posed by the Defence.
3. In reply, the Defence maintains that: (i) [REDACTED]’s account demonstrates that the SPO is susceptible to manipulation by Serbia and other bad actors; (ii) the applicable legal framework and precedents provide sufficient authority to order the requested disclosure; and (iii) the SPO’s failure to respond in clear and categorical terms only further underscores the need for judicial intervention.
4. The Defence reiterates that it has made a well-founded request for disclosure which must be granted.

## II. SUBMISSIONS

### A. Significance of [REDACTED]’s Account

5. The SPO attempts to downplay the importance of [REDACTED]’s account by (i) portraying him as a fantasist who thinks he has been in contact with the [REDACTED],<sup>3</sup> and (ii) avoiding the issue of his relationship with [REDACTED].

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<sup>1</sup> F01121, Prosecution Consolidated Response to F01100 and F1101 with strictly confidential and *ex parte* Annex 1, 24 November 2022.

<sup>2</sup> F001100, Veseli Defence Supplemental Submissions to Joint Defence Motion for Disclosure Pursuant to Rule 103 (F00877/COR), With Confidential Annexes 1-2, 14 November 2022 (“Supplemental Submissions”).

<sup>3</sup> F01121, paras 12-14.

6. First, it is immaterial whether [REDACTED] is in fact [REDACTED].<sup>4</sup> The real issue is that [REDACTED] held himself out to be a [REDACTED] in his initial approach to [REDACTED]. This is notable because other publicly available information demonstrates that this is [REDACTED]'s *modus operandi*,<sup>5</sup> lending authority to [REDACTED]'s account.
7. Second, the SPO now acknowledges that it has screenshots of [REDACTED]'s messages with [REDACTED],<sup>6</sup> making it very clear that [REDACTED] enjoys high level access to [REDACTED]. His relationship was, in any event, made clear in his [REDACTED] interview when he informed the SPO that he knew that [REDACTED], and advised that the information would soon be forthcoming.<sup>7</sup> The Defence underscores that the SPO interview with [REDACTED] occurred only three months after their meeting with [REDACTED],<sup>8</sup> demonstrating that his information on this was wholly accurate.
8. [REDACTED] has correctly (i) identified [REDACTED] as working with the SPO, (ii) relayed to the SPO that [REDACTED] holds himself out as [REDACTED], (iii) stated that screenshots [REDACTED] existed, and (iv) predicted that the SPO would receive information from [REDACTED]. These points of corroboration are not consistent with [REDACTED] being a 'fantasist'.
9. The Defence recalls its original Rule 103 submissions, in which it set out the many reasons that evidence emanating from Serbia may be unreliable. The Defence reiterates that its present concern is not just that [REDACTED] has a relationship with [REDACTED], but that an individual relied upon to an even greater extent in the SPO's investigations, *i.e.*, [REDACTED], shares a similar

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<sup>4</sup> The Defence recognises that he likely is not [REDACTED]— however, to ensure due diligence, the Defence maintains that the SPO must conduct further investigations into the matter. F01121, para. 16.

<sup>5</sup> [REDACTED]. *See* Annex 1.

<sup>6</sup> F01121, para. 7.

<sup>7</sup> F01100, para. 27.

<sup>8</sup> 089701-TR-ET Part 1 and 2, 13 January 2021. *See* Annex 2.

relationship with [REDACTED], and has shown himself willing to procure false evidence to the detriment of the Accused.

10. It is simply not possible for the SPO to quarantine [REDACTED] statement in the hopes that this will cause the infection to its case to go away. The source of the contamination is Serbia and its agents, a group that apparently includes [REDACTED] and possibly others. Ignoring this problem leaves the process open to manipulation from a known threat.

## **B. SPO Disclosure Obligations**

11. The SPO relies on a *Gucati* decision – which concerned the repeated, yet false,<sup>9</sup> assurance that that it did not have any information in its possession relating to the Defence’s entrapment argument – to argue that it cannot be ordered to produce that which it does not have.<sup>10</sup> This holding merely reflects the basic proposition that, as an independent agent in an adversarial system, the Prosecution cannot be compelled to pursue certain lines of investigation. In this instance, however, the SPO is simply being asked to disclose information that is, or should be, in its possession as a consequence of carrying out its existing lines of inquiry. Moreover, the Defences observes that Article 39(13) provides the Pre-Trial Judge with the authority to issue any order necessary for the preparation of a fair and expeditious trial.
12. The SPO also attempts to distinguish its disclosure obligations from those found to exist in *Lubanga* on grounds of seriousness.<sup>11</sup> The Defence recalls that the reason the use of intermediaries became so serious in *Lubanga* is because it went undiscovered until witnesses were on the stand. Here, the use of intermediaries

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<sup>9</sup> At the time of this litigation, the SPO was in possession of [REDACTED]; and that someone investigating the matter, *i.e.*, the SPO, had the operation under surveillance. *See* F01100/A01, 082095-TR-ET Part 2, p. 2.

<sup>10</sup> F01121, para. 6.

<sup>11</sup> F01121, para. 42.

has already been identified as an issue which will require heightened scrutiny and investigation, and there is an opportunity to address the matter before the case goes to trial. The SPO should not be allowed to delay the disclosure of this information until shortly before trial<sup>12</sup> when to do so will only result in utterly predictable delays.

13. Moreover, the issue in this case is extremely serious. As the Defence submitted in its original motion, the problem of Serbian misinformation and falsification of evidence is a very real and serious one that dates at least as far back to the conflict and continues to the present day.<sup>13</sup> The recent revelations as regards [REDACTED] Serbia only highlight the need to understand the provenance of evidence in this case.

### **C. SPO Failure to Provide Clear Information**

14. Throughout its Response, the SPO's submissions are vague, incomplete, or evasive, failing to address the specific issues raised by the Defence.
15. For instance, the SPO fails to state whether evidence emanating from [REDACTED] was used to support Mr Veseli's arrest warrant or subsequent applications for detention.<sup>14</sup> The Defence submits that it must be ordered to clarify this immediately, considering that the next detention review has been postponed to allow for consideration of such information.<sup>15</sup>

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<sup>12</sup> F01121, para. 35.

<sup>13</sup> The Defence has continued to discover further allegations of Serbian false flag operations in Kosovo, such as NATO reports from 1999 of a Serbian Special Forces campaign of covert assassinations of moderate Serbs aimed at falsely implicating the KLA with the purpose of destabilising the region. *See* 7003865-7003867, Annex 3.

<sup>14</sup> F01100, para. 42.

<sup>15</sup> F01094, Decision Amending the Briefing Schedule for the Seventh Detention Review of Mr Veseli, 9 November 2022, para. 13.

16. The SPO claims however that [REDACTED] statement was not used against Mr Veseli.<sup>16</sup> If the Defence is to understand from this that [REDACTED] was relying on a source other than [REDACTED] in his December 2020 presentation to EU ambassadors, [REDACTED] the documents leaked through the VWA, then the Defence reiterates its request that the SPO to be ordered to identify this other evidence so that it can be confirmed that the [REDACTED] did not base this allegation solely on the account of a man who the SPO has denounced as a 'fantasist'.
17. The SPO further claims that it "clearly asked" [REDACTED] to provide the screenshots he claimed to have to corroborate his claims. But, as the Defence pointed out in its Supplemental Submissions, the SPO actually did not ask for the screenshots of his conversation with [REDACTED] during that interview. Moreover, the Defence specifically asked for clarification as to whether such a request was made at any point after the interview.<sup>17</sup> The Response is silent on this point, though it is very clear that the SPO did have further contact with the [REDACTED], which resulted in him providing screenshots of his conversations with [REDACTED].
18. The Defence points out that, even if [REDACTED] did not engage directly with [REDACTED], it remains possible that [REDACTED] has screenshots purporting to be contacts between [REDACTED] and [REDACTED], [REDACTED]. This would surely be relevant evidence that the SPO would wish to obtain in the context of investigating [REDACTED]'s reliability.
19. As to [REDACTED]'s contamination of other witnesses, the SPO points to [REDACTED]'s interview, where he says [REDACTED] is not aware of the contents of his evidence, and has not influenced his account.<sup>18</sup> In another

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<sup>16</sup> F01121, para. 12.

<sup>17</sup> F01100, para. 37.

<sup>18</sup> F01121, para. 28.

passage of this interview, to which the SPO chose not to draw the Court's attention, [REDACTED] claims to have spoken to [REDACTED] every [REDACTED] for [REDACTED] about the events he has recounted to the SPO.<sup>19</sup>

20. As to the issue of intermediaries, the SPO fails to provide any meaningful information as regards the definition of intermediary that it employs, or its use of intermediaries in this case. It has provided no policy documents, protocols, guidelines or other indicia that would enable the Defence to understand when an individual is or is not an intermediary in its assessment; nor has it provided any indication of how many intermediaries it has in its employ, or how extensively they have been used.
21. As regards 'reasonable' payments made to [REDACTED] and [REDACTED],<sup>20</sup> the Defence submits that what is reasonable is entirely dependent on the circumstances of a particular witness. It observes for instance that the average wage in Kosovo is approximately EUR500 per month,<sup>21</sup> whereas the EU daily subsistence allowance (which covers food and accommodation) is EUR263 per day.<sup>22</sup> The Defence is unaware of either individual's financial circumstances, and does not submit that such an amount would necessarily constitute an incentive for either individual. It merely notes that no conclusions can be drawn whatsoever from the SPO's assurance that payments were 'reasonable' without specific information regarding the witness's circumstances and the amounts actually paid. As such, the information regarding payments to intermediaries that has been disclosed in the Response is obviously insufficient.
22. As to the SPO claim that [REDACTED] is "not an intermediary"<sup>23</sup> the Defence queries its usage of the term given that [REDACTED] repeatedly provided them

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<sup>19</sup> 078531-TR-ET Part 11, pp. 3-4.

<sup>20</sup> F01121, paras 23, 36.

<sup>21</sup> <https://tradingeconomics.com/kosovo/wages>.

<sup>22</sup> [https://ec.europa.eu/assets/eac/dgs/education\\_culture/calls/0715/annex5bis\\_en.pdf](https://ec.europa.eu/assets/eac/dgs/education_culture/calls/0715/annex5bis_en.pdf).

<sup>23</sup> F01121, para. 45.

investigative leads, facilitated contact with witnesses<sup>24</sup> and, indeed, regards himself to be an intermediary.<sup>25</sup> The SPO's rejection of the label 'intermediary' appears to turn on the claim that [REDACTED] provided this information "on his own initiative."<sup>26</sup> The Defence disputes this characterisation, given that the SPO remained open to receiving such information over the course of at least 15 conversations [REDACTED] – a course of conduct that any reasonable observer would consider encouragement.<sup>27</sup>

23. Finally, while the SPO now indicates that it is willing to make some further disclosures in respect of [REDACTED]<sup>28</sup> it fails to make clear the full extent of its contacts [REDACTED]. The Defence reiterates its request for **all** such records and not just a selection made by the SPO. It further reserves the right to make further submissions once it is in receipt of the disclosures referenced in the Response.

### III. CONCLUSION

24. For the foregoing reasons, the Defence respectfully requests that the Pre-Trial Judge grant its request for disclosure as set out in F01100.

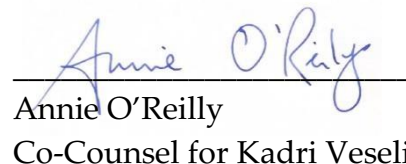
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Ben Emmerson, CBE KC  
Counsel for Kadri Veseli



Andrew Strong  
Co-Counsel for Kadri Veseli



Annie O'Reilly  
Co-Counsel for Kadri Veseli

<sup>24</sup> F01121, para. 27, F01100, paras 31-32.

<sup>25</sup> <https://fb.watch/h5PBOA7uh2/>, see Transcript, p.2, Annex 4.

<sup>26</sup> F01121, para.27.

<sup>27</sup> F01121, para. 31, see Fn. 55 for the relevant ERNs of the documents in which these conversations are documented.

<sup>28</sup> F01121, para. 34.