

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

Date: 17 February 2022

Language: English

Classification: Public

Public Redacted Version of Thaçi Defence Joinder to Veseli Defence Request for Lesser Redacted Public Redacted Version of “Prosecution Response to Kosovo Police Submissions on Detention with Public Annex 1 (KSC-BC-2020-06/F00562)”

Specialist Prosecutor

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I. INTRODUCTION

1. The Defence for Mr Hashim Thaçi (“the Defence”) hereby joins the Veseli Defence Request for a Lesser Redacted Public Redacted Version of “Prosecution Response to Kosovo Police Submissions on Detention with Public Annex 1 (KSC-BC-2020-06/F00562)”,¹ in which the Veseli Defence requested the Pre-Trial Judge order the SPO to submit a lesser redacted version of its Response,² regarding paragraphs 5, 6, 23 and 24, and footnotes 12, 14, 15, 57 and 58.

II. PROCEDURAL HISTORY

2. On 8 October 2021, the Pre-Trial Judge issued an Order to the Kosovo Police to Provide Information, relating to their ability to enforce conditions of release.³

3. On 26 October 2021, the Kosovo Police provided their submissions, containing detailed answers to each of the questions raised by the Pre-Trial Judge.⁴

4. On 8 November 2021, the SPO filed their Response to the Kosovo Police Submissions. The SPO Response also had one annex, which contained the SPO’s translations of public sources that were referred to within the Response.⁵ The Response was filed with the classification ‘Confidential’, but the Annex was filed with the classification ‘Public’.

¹ KSC-BC-2020-06/F00681, Veseli Defence Request for a Lesser Redacted Public Redacted Version of “Prosecution Response to Kosovo Police Submissions on Detention with Public Annex 1 (KSC-BC-2020-06/F00562)”, 8 February 2022 (“Veseli Request”).

² KSC-BC-2020-06/F00562, Prosecution response to Kosovo Police submissions on detention with public Annex 1, 8 October 2021 (“SPO Response”).

³ KSC-BC-2020-06/F00513, Order to the Kosovo Police to Provide Information with confidential Annex, 8 October 2021.

⁴ KSC-BC-2020-06/F00548/eng, Answer to the Request number KSC-BC-2020-06, dated 13 October 2021, 26 October 2021 (“Kosovo Police Submissions”).

⁵ KSC-BC-2020-06/F00562/A01, ANNEX 1 to Prosecution response to Kosovo Police submissions on detention, 8 November 2021 (“SPO Response Annex”).

5. On 29 November 2021, the SPO filed a public redacted version of their Response.⁶ In this version, the SPO chose to redact the information at paragraphs 5, 6, 23 and 24 (and the corresponding footnotes 12, 14, 15, 16, 57 and 58). This included references to, and information which was contained in, [REDACTED].

6. On 3 December 2021, the Defence contacted the SPO by email, *inter partes*, to request a lesser redacted version of the SPO response, as follows:

We note that information has been redacted in paragraphs 5, 6, 23 and 24 (and their corresponding footnotes 12, 14, 15, 16, 57 and 58) which is based on publicly available, open-source material. This includes information that is contained in [REDACTED].

[...]

We therefore request that you file a lesser redacted version of F00562, with the material in paragraphs 5, 6, 23 and 24 (and their corresponding footnotes) left unredacted.

7. On 8 December 2021, the SPO replied by email, rejecting the Defence's request, and noting:

We have reviewed the redactions in question, and consider it appropriate to maintain them to the extent they (i) identify particular individuals, who were selected merely by way of example (paras 5, 6 and 23) or (ii) are not based on open sources (para.24). As you note, [REDACTED], and therefore the public is not impeded in its understanding of open source material relied upon, nor is the Defence impeded in its discussion of such material with any relevant person or entity. However, if you believe that not to be the case and there are specific ways in which the Defence considers itself impeded, we are happy to discuss further.

III. DISCUSSION

8. The Defence adopts the Veseli Defence submissions in full. Notably, the Veseli Defence submits that open-source material should not be redacted as it cannot be

⁶ KSC-BC-2020-06/F00562/RED, Public redacted version of Prosecution response to Kosovo Police submissions on detention with public Annex 1, 29 November 2021.

classified as confidential; consequently, the SPO's redactions are unnecessary and unreasonable.⁷

9. The Defence agrees with the Veseli Defence's classification of the redacted material in paragraphs 5, 6, 23 and 24 (and the corresponding footnotes) of the SPO Response.⁸ In particular, all of the identified material, including the identities of the individuals referred to, is open-source material which is readily available both online and in [REDACTED]. There can therefore be no legitimate ground to maintain this information is confidential. Redaction of material that is publicly available is in contravention of Article 38 of the Practice Direction on Files and Filings,⁹ which provides that only confidential information should be removed from the public redacted version of a filing.

10. The Defence also emphasises that unnecessary redactions may violate the Accused's right to a fair and public hearing, as enshrined in Article 21(2) of the KSC Law,¹⁰ Articles 31(2) and (3) of the Constitution of the Republic of Kosovo, and Article 6 of the European Convention on Human Rights. The importance of this approach has been confirmed by the Court of Appeals, when identifying that all submissions filed before the KSC should be public unless there are exceptional reasons to keep them confidential.¹¹

11. Finally, the Defence rejects the SPO's contention that these redactions do not impede the understanding of the material by the public, or the Defence's ability to discuss such material. For example, the SPO has redacted references in the text and

⁷ Veseli Request, paras. 11-12.

⁸ Veseli Request, paras. 13-18.

⁹ Registry Practice Direction, Files and Filings before the Kosovo Specialist Chambers, KSC-BD-15, 17 May 2019.

¹⁰ Law No.05/L-053 on the Specialist Chambers and Specialist Prosecutor's Office ("KSC Law").

¹¹ KSC-BC-2020-06/IA008-F00004/RED, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Review of Detention, 1 October 2021, para, 8.

corresponding footnotes of its Response, which contain a citation to [REDACTED]. Consequently, [REDACTED]. Conversely, the SPO has left in the public redacted version of its Response a picture of Mr Thaçi surrounded by several persons, while redacting both its submissions and the source of this picture. The public is therefore unable to understand its relevance to the SPO Response.¹² The SPO's extensive redactions prevent both the public from understanding the SPO Response and [REDACTED], and the Defence from being able to meaningfully discuss such material with others. In any event, this submission by the SPO misconstrues the Defence's concerns, and misunderstands the purpose of redactions, which are intended to be used for the *limited* purpose of protecting:

- (i) the safety, physical and psychological well-being, dignity, and privacy of witnesses, victims participating in the proceedings, and other persons at risk on account of the testimony given by witnesses of the SC, provided that these measures are consistent with the rights of the Accused;
- (ii) ongoing or future investigations; and
- (iii) the public interest and the rights of third parties.¹³

IV. REQUESTED RELIEF

12. For the above reasons, the Defence joins the Veseli Request, and respectfully requests that the SPO be ordered to submit a lesser redacted version of its Response, concerning paragraphs 5, 6, 23 and 24, and footnotes 12, 14, 15, 57 and 58.

Word count: 1,159 words

¹² SPO Response, p. 3.

¹³ KSC-BC-2020-06/F00099, Framework Decision on Disclosure of Evidence and Related Matters, 23 November 2020, para. 82. *See also*, Rule 108(1) of the Rules of Procedure and Evidence, KSC-BD-03/Rev3/2020, 2 June 2020.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'G. W. Kehoe', is written over a white rectangular redaction box.

Gregory W. Kehoe

Counsel for Hashim Thaçi

Thursday, 17 February 2022

At Tampa, United States of America