

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: 8 February 2022

Language: English

Classification: Public

Public Redacted Version of 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)"

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I. INTRODUCTION

1. The Defence for Mr Kadri Veseli (“Defence”) files this request for a lesser redacted version of the Prosecution response to Kosovo Police submissions on detention with public Annex 1 (KSC-BC-2020-06/ F00562) in accordance with Rules 82-84 of the Rules and Articles 37-39 of Practice Directions on Filings.
2. Despite formally complying with its obligation to file a public redacted version of filing F00562, the SPO has applied redactions to certain publicly available information (drawn from Kosovo media) without justification. The Pre-Trial Judge is therefore requested to reclassify paragraphs 5, 6, 23 and 24, and footnotes 12, 14, 15, 57 and 58 of Filing F00562 as public, and accordingly order the SPO to file a lesser redacted version of Filing F00562.

II. PROCEDURAL BACKGROUND

3. On 27 October 2021, the Kosovo Police (“KP”) filed its submissions in response to the Pre-Trial Judge’s Order.¹
4. On 8 November 2021, the SPO responded to the Kosovo Police Submissions.²
5. On 29 November 2021, the SPO submitted its Public Redacted Version of “Prosecution response to Kosovo Police submissions on detention with public Annex 1”.³

¹ F00548, Answer to the Request number KSC-BC-2020-06, dated 13 October 2021, 27 October 2021. An official English translation was filed on 3 November 2021.

² F00562, Prosecution response to Kosovo Police submissions on detention with public Annex 1, 8 October 2021 (“Response”).

³ F00562/RED, Public redacted version of Prosecution response to Kosovo Police submissions on detention with public Annex 1, 29 November 2021.

III. APPLICABLE LAW

6. The principle of the publicity of proceedings is a cornerstone requirement of fair trial rights, protected by the Constitution and international human rights instruments.⁴ According to the Court of Appeals, “all submissions filed before the Specialist Chambers shall be public unless there are exceptional reasons for keeping them confidential” and “parties shall file public redacted versions of all submissions filed before the Panel”.⁵
7. Pursuant to Rule 82(3) any filing classified as confidential or strictly confidential shall state the reasons for such classification, and whether and when it may be reclassified.
8. Pursuant to Article 38(2) of the Practice Direction on Filings, the participant or, as applicable, the Panel, shall ensure that all confidential information is removed from the public redacted version of the Filing.
9. Pursuant to Rule 82(5) of the Rules, a Panel may, *inter alia*, reclassify a filing upon request by any other participant or *proprio motu*.

IV. SUBMISSIONS

10. Preliminarily, the Defence notes that, while the Rules regulate the classification of filings as confidential, they do not explain what constitutes “confidential information” as such. Nevertheless, the Framework Decision⁶ provides some guidance, by instructing that information may be classified confidential, *mutatis mutandis*, if it concerns:

⁴ ECtHR, *Fazliyski v. Bulgaria*, Application no. 40908/05, Judgment, 16 April 2013, paras 64-69 (and associated references); ICTY, *Prosecutor v. Haradinaj*, IT-04-84-A, Decision on Lahi Brahimaj’s Application for Provisional Release, 25 May 2009, paras 4-5.

⁵ IA008-F00004/RED, Public Redacted Version of Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention, 1 October 2021, para, 8.

⁶ F00099, Framework Decision on Disclosure of Evidence and Related Matters, 23 November 2020, (“Framework Decision”) paras 86-98.

- a. The safety, physical and psychological well-being, dignity, and privacy of witnesses or victims; or
 - b. Ongoing or future investigation; or
 - c. Public interest and/or the rights of third parties.⁷
11. An open source material such as a newspaper article cannot be classified as confidential because i) it does not meet the criteria set out in the Framework Decision, and ii) it would defy the purpose of the classification system (simply because it is already public). This is true unless, for contextual reasons, revealing the information would conflict with the exceptions to publicity set in the Framework Decision by: (a) posing a security risk to an individual that has been granted protective measures; (b) posing a risk to ongoing investigations; or (c) violating the rights of third parties, *e.g.*, by perpetuating a wrongful violation of privacy. None of these exceptions apply. Furthermore, the SPO itself adheres to this interpretation: open source material should not be redacted,⁸ unless it reproduces images or content of confidential documents illegally disseminated.⁹
12. Applying the above legal test to the SPO redactions in F00562, paragraphs 5 (including footnote 12); 6 (including footnotes 14 and 15); 23 (including footnotes 57 and 58); and 24 it is clear that no legal basis exists for those

⁷ Framework Decision, para. 82.

⁸ KSC-BC-2020-07/F00531, [Further Submissions on Public Redacted Version of P00104 with public Annexes 1-3 and confidential Annex 4](#), 24 January 2022, para. 6 (“the entire page is meant to be redacted, as no public or open source version of the document could be identified”). *See also*, Framework Decision, paras 67-68.

⁹ KSC-BC-2020-07/F00324, [Submissions pursuant to the Trial Panel’s Third Oral Order of 8 September 2021 with confidential Annex 1](#), 24 September 2021, para. 3 (“[...] SPO’s request that exhibits obtained from open sources and reproducing the images or the contents of confidential documents that were illegally disseminated be redacted in the relevant parts prior to being made public”).

redactions. They are unnecessary, unreasonable and must be reclassified as public.¹⁰

A. Redactions of Allegations of [REDACTED] (paragraph 5, including footnote 12)

5. According to information reportedly in [REDACTED],¹² Media also report the influence of former SHIK members over the KP.¹³

Footnote 12: [REDACTED].

13. The redacted parts in paragraph 5 cite content [REDACTED]. Interestingly, while footnote 12 is redacted, [REDACTED]. Furthermore, the web link is also an open source and easily available online. No information redacted in paragraph 5 or in footnote 12 is confidential or otherwise falls under any of the exceptions set out in the Framework Decision.

B. Redactions of Allegations of [REDACTED] (paragraph 6 and associated footnotes 14-15)

[REDACTED].

14. Similar to the above considerations, paragraph 6 conveys and discusses publicly available information drawn from Kosovo media. With the exception of one sentence referring to certain SPO investigative steps, all the remaining redacted parts i) are taken from publicly available sources; ii) refer to posts occupied by public officials; iii) represent an SPO analysis of such public information; and iv) do not fall under any of the exceptions contained in the Framework Decision.
15. Moreover, while footnotes 14 and 15 are redacted, they can be found online and, [REDACTED]. The Defence notes that the SPO left unredacted the

¹⁰ The redacted portions which are opposed by the Defence and should therefore be reclassified as public are herewith emphasised in **bold**.

photograph at the end paragraph 6, depicting Messrs Abelard Tahiri, Rashit Qalaj, Shpend Maxhuni, Hashim Thaçi, and Bedri Hamza.

C. Redactions of Allegations Linking KP Leadership to the KLA (paragraph 23 and associated footnotes 57-58)

23. Prominent figures in the KP leadership have connections to the KLA. [REDACTED].⁵⁸ Other former KLA/PGoK members in the KP leadership include [REDACTED]. The objectivity of these men, and those subordinate to them, in enforcing conditional release for their former superiors in the KLA war cannot be assured.⁵⁹

Footnote 57 [REDACTED].

Footnote 58 [REDACTED].

16. The redactions applied in paragraph 23 concern unsubstantiated allegations by certain media outlets, which remain publicly available, and are easily accessible online, [REDACTED]. [REDACTED]:

- a. [REDACTED];¹¹
- b. [REDACTED];¹² and
- c. [REDACTED].

17. It is abundantly clear that Information found in paragraph 23 and its associated footnotes do not fall under the scope of confidential or redacted information.

D. Redactions to an Unreferenced [REDACTED] (paragraph 24)

Paragraph 24. The allegiances within the KP to these Accused is pronounced and fundamentally compromises conditional release. [REDACTED]:

[...] [REDACTED].

Q. [REDACTED]?

A. [REDACTED].

Q. [REDACTED]?

¹¹ [REDACTED].

¹² [REDACTED].

A. [REDACTED]. [REDACTED].

18. The Defence notes that the SPO failed to provide any citation in relation to the above quote. It is therefore impossible to assess whether the information is confidential. In any event, an unreferenced quote cannot fall under the limited exception of confidentiality. The SPO cannot interfere with the fair trial rights of Mr Veseli without any adequate justification.

V. CLASSIFICATION

19. This filing is submitted as confidential, in accordance with Rule 82(4) of the Rules.

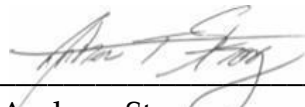
VI. CONCLUSION

20. For the foregoing reasons, the Pre-Trial Judge is respectfully requested to order the SPO to submit a lesser redacted version of its response (F00562), concerning paragraphs 5, 6, 23 and 24, and footnotes 12, 14, 15, 57 and 58.

Word Count: 1923



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