



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: Trial Panel II

Judge Charles L. Smith III, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 4 October 2023

Language: English

Classification: Public

**Public Redacted Version of
Decision on Requests for Reclassification of Filings F01599/RED and F01632**

Acting Deputy Specialist Prosecutor

Ward Ferdinandusse

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Victims

Simon Laws

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

TRIAL PANEL II (“Panel”), pursuant to Articles 21(2), 23 and 40(2), (4) and (6)(f) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 80, 82 and 116(1) and (4)(b) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On [REDACTED] 2023, [REDACTED] testified in these proceedings.¹
2. On 16 May 2023, the Panel rendered the Decision on the Prosecution Request for Protective Measures (“Protective Measure Decision”).²
3. On [REDACTED] 2023, [REDACTED] testified in these proceedings.³
4. On 9 June 2023, the Defence for Mr Kadri Veseli (“Veseli Defence”) filed a request for the admission into evidence of two evidentiary items associated with [REDACTED]’s testimony (“Veseli Request”).⁴ On 22 June 2023, the Specialist Prosecutor’s Office (“SPO”) responded to the Veseli Request (“SPO Response to the Veseli Request”).⁵ On 30 June 2023, the Veseli Defence replied to the SPO Response to the Veseli Request (“Veseli Reply”).⁶

¹ Transcript of Hearing, [REDACTED] 2023.

² F01528, Panel, *Decision on the Prosecution Request for Protective Measures (F01523)*, 16 May 2023, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F01528/CONF/RED).

³ Transcript of Hearing, [REDACTED] 2023.

⁴ F01599, Specialist Counsel, *Veseli Defence Request Regarding Items Associated with [REDACTED]’s Testimony*, 9 June 2023, confidential, with Annexes 1-2, confidential.

⁵ F01620, Specialist Prosecutor, *Prosecution Response to ‘Veseli Defence Request Regarding Items Associated with [REDACTED]’s Testimony’*, 22 June 2023, confidential (a public redacted version was filed on 23 June 2023, F01620/RED).

⁶ F01632, Specialist Counsel, *Veseli Defence Reply to Prosecution Response to ‘Veseli Defence Request Regarding Items Associated with [REDACTED]’s Testimony’*, 30 June 2023, confidential.

5. On 7 July 2023, the Panel rendered the Decision on the Prosecution Submission on Reclassification of Portions of [REDACTED]'s testimony ("Reclassification Decision").⁷

6. On 23 August 2023, the Panel rendered the Decision on the Veseli Request, ordering the Veseli Defence to submit public redacted versions of the Veseli Request and the Veseli Reply by Friday, 1 September 2023 ("Decision on the Veseli Request").⁸

7. On 1 September 2023, the Veseli Defence filed: (i) a public redacted version of the Veseli Request ("Public Redacted Version of the Veseli Request");⁹ and (ii) a request for reclassification of the Veseli Reply as public ("Veseli Reclassification Request").¹⁰

8. On 4 September 2023, the Specialist Prosecutor's Office filed: (i) a request for reclassification of the Public Redacted Version of the Veseli Request as confidential, and for an order to the Veseli Defence to file a public redacted version of the Veseli Request consistent with the Protective Measure Decision, the Reclassification Decision, and the public redacted version of the SPO Response to the Veseli Request ("SPO Reclassification Request");¹¹ and (ii) a response to the Veseli Reclassification Request, requesting that the Veseli Defence be ordered to file a public redacted version of the Veseli Reply consistent with the Protective Measure Decision, the Reclassification Decision, and the public redacted version

⁷ F01654, Panel, *Decision on the Prosecution Submission on Reclassification of Portions of [REDACTED]'s Testimony*, 7 July 2023, confidential.

⁸ F01733, Panel, *Decision on Veseli Defence Request Regarding Items Associated with [REDACTED]'s Testimony*, 23 August 2023, confidential, para. 17(d).

⁹ F01599/RED, Specialist Counsel, *Public Redacted Version of Veseli Defence Request Regarding Items Associated with [REDACTED]'s Testimony*, 9 June 2023.

¹⁰ F01756, Specialist Counsel, *Veseli Defence Request for Reclassification of F01632*, 1 September 2023, para. 1.

¹¹ F01761, Specialist Prosecutor, *Prosecution Request for Reclassification of Filing F01599/RED*, 4 September 2023, confidential, paras 1-2.

of the SPO Response to the Veseli Request (“SPO Response to the Veseli Reclassification Request”).¹²

9. The Veseli Defence did not respond to the SPO Reclassification Request and did not reply to the SPO Response to the Veseli Request for Reclassification.

II. DISCUSSION

10. At the outset, the Panel recalls its findings that: (i) an objective basis exists for the conclusion that the disclosure of [REDACTED]’s identity to the public would pose a risk to the witness;¹³ and (ii) in-court protective measures, including the redaction of the witness’s name and identifying information from the Specialist Chambers’ public records and the non-disclosure to the public of any records identifying the witness, are therefore necessary to protect [REDACTED].¹⁴ The Panel also recalls that it found that the portions of [REDACTED]’s testimony referring to [REDACTED], are to remain confidential to avoid connections potentially leading to [REDACTED]’s identification.¹⁵ The Panel further notes that [REDACTED] testified in these proceedings with a pseudonym and face and voice distortion in order to prevent identification by the public.¹⁶

11. The Panel observes that, in the Public Redacted Version of the Veseli Request, the Veseli Defence did not redact references to: (i) [REDACTED]’s and [REDACTED]’s code; (ii) transcripts of [REDACTED]’s and [REDACTED]’s testimony in this case; (iii) [REDACTED]; and (iv) the contents of [REDACTED]’s

¹² F01762, Specialist Prosecutor, *Prosecution Response to Veseli Defence Reclassification Request (F01756)*, 4 September 2023, confidential, paras 1-2.

¹³ Protective Measure Decision, paras 10-12.

¹⁴ Protective Measure Decision, paras 13-14, 18(b).

¹⁵ Reclassification Decision, paras 10, 13-14.

¹⁶ Transcript of Hearing, 17, 18, and 19 April 2023. *See also* F00133/COR, Pre-Trial Judge, *Corrected Version of First Decision on Specialist Prosecutor’s Request for Protective Measures*, 10 December 2020, strictly confidential and *ex parte*, para. 132(q) (a confidential redacted corrected version was filed on 14 December 2020, F00133/COR/CONF/RED).

private session testimony.¹⁷ The Panel further observes that references to [REDACTED]'s code and transcripts of [REDACTED]'s testimony in this case are contained in the Veseli Reply, whose reclassification as public is sought by the Veseli Defence.¹⁸ In this regard, the Panel notes that the Veseli Defence did not provide any reason or justification for reconsideration of the Panel's above-mentioned findings or its failure to abide thereby. The Panel is therefore of the view that, consistent with the Panel's findings and protective measures in place for both [REDACTED] and [REDACTED], the Veseli Defence should have redacted from the Veseli Request, including its cover page, all references to: (i) [REDACTED]'s and [REDACTED]'s code; (ii) transcripts of [REDACTED]'s and [REDACTED]'s testimony in this case; (iii) [REDACTED]; and (iv) the contents of [REDACTED]'s private session testimony. By the same token, the Panel considers that the Veseli Defence should redact from the Veseli Reply, including its cover page, all references to: (i) [REDACTED]'s code; and (ii) transcripts of [REDACTED]'s testimony in this case.

12. For these reasons, the Panel rejects the Veseli Reclassification Request, grants the SPO Reclassification Request, and orders the Veseli Defence to file public redacted versions of the Veseli Request and of the Veseli Reply consistent with the Panel's directions in paragraph 11 above, by Friday, 13 October 2023.

III. CLASSIFICATION

13. The Panel notes that the SPO Reclassification Request and the SPO Response to the Veseli Reclassification Request were filed confidentially. The Panel orders the SPO to file public redacted versions of the SPO Reclassification Request and of

¹⁷ Veseli Request, paras 4-5, 13, 20, and footnotes, 3, 6-11, 24. *See also* Veseli Request, cover page.

¹⁸ Veseli Reply, para. 1, and footnotes 1-2, 6-7. *See also* Veseli Reply, cover page.

the SPO Response to the Veseli Reclassification Request, by Friday, 13 October 2023.

IV. DISPOSITION

14. For the above-mentioned reasons, the Panel hereby:

- a) **REJECTS** the Veseli Reclassification Request;
- b) **GRANTS** the SPO Reclassification Request;
- c) **ORDERS** the Veseli Defence to file public redacted versions of the Veseli Request and of the Veseli Reply consistent with the Panel's directions in paragraph 11 above, by **Friday, 13 October 2023**; and
- d) **ORDERS** the SPO to file public redacted versions of the SPO Reclassification Request and of the SPO Response to the Veseli Reclassification Request, by **Friday, 13 October 2023**.



Judge Charles L. Smith, III

Presiding Judge

Dated this Wednesday, 4 October 2023

At The Hague, the Netherlands.