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Witness K scandal: decision to charge Timor-Leste bugging whistleblower was 'independent'

Attorney general Christian Porter refuses to detail why he approved prosecution of former spy



Christian Porter says charging a former spy who alleged Timor-Leste's cabinet rooms were bugged was a decision of prosecutors. Photograph: Lukas Coch/AAP

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The attorney general has refused to elaborate on why he approved the prosecution of a former spy who revealed Australia had bugged Timor-Leste's cabinet rooms, describing it as an "independent decision" of prosecutors.

Independent MP Andrew Wilkie has blasted the government for approving the prosecution and suggested it has leaked information to a journalist to defend its position.

On Thursday Wilkie used parliamentary privilege to reveal the man, a former employee of the Australian Secret Intelligence Service known only as Witness K, and his lawyer, Bernard Collaery, were being prosecuted.

At a press conference in Perth on Monday, Christian Porter said he consented to the prosecution after "very detailed, very thorough" advice from the independent commonwealth director of public prosecutions.

Asked if the prosecution was an attack on basic freedoms, the attorney general replied that "people will take their own views" on the case.

He acknowledged the case needed his consent as attorney general to proceed, but characterised it as “an independent decision made by the director of public prosecutions based on their evidence and the law and their guidelines”.

Witness K was a key witness for Timor-Leste in a case against Australia over allegations the cabinet rooms in the capital Dili were bugged during negotiations over a gas and oil treaty in 2004.

The former Asis officer was supposed to give evidence at the permanent court of arbitration in the Hague, but was unable to leave Australia because his passport was seized in 2012.

Timor-Leste dropped the spy case against Australia last year as an act of goodwill ahead of signing a new resources treaty.

On Monday Wilkie pinned blame squarely on the government, telling reporters “all the DPP does” is make a recommendation, and “the decision to prosecute is entirely a decision for the attorney general”.

Wilkie said he had “no reason to speak ill of the DPP”, and accused Porter of a “political decision to go after Witness K and his lawyer”.

The independent MP also referenced comments by the Australian’s columnist Niki Savva on ABC’s *Insiders* on Sunday. Savva suggested the attorney general had no room to move because his predecessor George Brandis had sought information from the CDPP, which resulted in the recommendation, and if Porter had ignored it he would have “faced a lot of grief”.

Wilkie suggested people would be “appalled” by this, accusing “someone in the government” of leaking protected information to a journalist to defend its position.

Earlier, Porter was asked why “those who perpetrated the act” had not been pursued - a reference to the fact nobody has been charged for bugging Timor-Leste’s cabinet rooms. He replied he did not understand the question and would not go into the substance of the Witness K matter before the courts.

“I am not the prosecutor, nor is the government the prosecutor,” Porter said. “I am not the judge nor the jury in this matter, and nor is the government.”

Porter said he would not comment because “expansive commentary does no assistance to the defence or the prosecutors or the court or the jury in directing a regular trial”.

On Thursday Collaery explained he and Witness K face charges of conspiracy to breach section 39 of the Intelligence Services Act for allegedly communicating information they obtained in the course of employment or an agreement with Asis.

He described Australia as a police state, warning the case was “unprecedented” and meant that Australia was “not a safe country to represent another sovereign power anymore”.

Collaery said Witness K was not a whistleblower because he “went with his complaint to the inspector general of intelligence and security”, and received approval to disclose the alleged bugging. Similarly, Collaery said he had received approval to act for Timor-Leste in international proceedings.

The case will begin with a directions hearing on 25 July, during which the court will consider whether to hear it in private.