



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**In:** KSC-BC-2020-06  
**Specialist 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:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor's Office

**Date:** 21 November 2024

**Language:** English

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**Prosecution response to 'Thaçi Defence Request for Certification to Appeal the Second Oral Order of 7 November 2024' (F02719)**

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## I. INTRODUCTION

1. The Request<sup>1</sup> should be dismissed as the Issues<sup>2</sup> identified by the Defence fail to meet the criteria for certification<sup>3</sup> under Article 45 of the Law<sup>4</sup> and Rule 77 of the Rules.<sup>5</sup> None of the Issues are appealable and the Defence fails to demonstrate how the other leave to appeal criteria are met.

2. As repeatedly stated by the Panel, it has considerable discretion in deciding whether to admit evidence, and certification to appeal admissibility decisions must be the absolute exception.<sup>6</sup> The Defence fails to demonstrate that such exceptional relief is justified.

## II. SUBMISSIONS

### A. THE ISSUES ARE NOT APPEALABLE

3. The Request misinterprets the Specialist Chambers' legal framework, misstates the evidence, and ultimately expresses only disagreement with the Decision.<sup>7</sup>

4. The First Issue ignores the record, relies on speculation, and fails to identify any concrete error, instead broadly asserting that the Panel erred 'in concluding that it cannot be assisted' by the *Limaj* Chamber's observations on W01453's demeanour.<sup>8</sup>

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<sup>1</sup> Thaçi Defence Request for Certification to Appeal the Second Oral Order of 7 November 2024, KSC-BC-2020-06/F02719, 14 November 2024 ('Request').

<sup>2</sup> Request, KSC-BC-2020-06/F02719, para.2, defining the 'First Issue', the 'Second Issue', and the 'Third Issue' (together, 'Issues').

<sup>3</sup> The applicable law has been set out in prior decisions. *See, for example, e.g.* Decision on the Thaçi Defence Application for Leave to Appeal, KSC-BC-2020-06/F00172, 11 January 2021, paras 9-17; *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on the Defence Applications for Leave to Appeal the Decision on the Defence Preliminary Motions, KSC-BC-2020-07/F00169, 1 April 2021, paras 10-18.

<sup>4</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

<sup>5</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules.

<sup>6</sup> Decision on Veseli Defence Request for Leave to Appeal Decision to Admit P959 and P960, KSC-BC-2020-06/F02157, 29 February 2024 ('February Decision'), para.11. *See also* Decision on Veseli Defence Request for Leave to Appeal Decision to Admit P1046, KSC-BC-2020-06/F02241, 15 April 2024, para.10.

<sup>7</sup> Oral Order, Transcript, 7 November 2024, pp.22153-22154 ('Decision').

<sup>8</sup> Request, KSC-BC-2020-06/F02719, para.2.

The Defence claim that 1D00204 MFI contains a factual element otherwise not available to the Panel<sup>9</sup> is incorrect and ignores that the excerpt was read onto the record and the witness commented on it.<sup>10</sup> Moreover, and contrary to the Defence claim that the Panel is in no position to visually assess W01453's testimony in the *Limaj* case,<sup>11</sup> the audio-video recordings<sup>12</sup> of his testimony allow the Panel to make its own assessment of W01453's demeanour and credibility. Noting that the *Limaj* Chamber based its observations on the witness 'as he gave evidence',<sup>13</sup> this Panel, consistent with the Decision, will be able to adequately assess the witness's demeanour and credibility on the basis of, *inter alia*, the recordings of the *Limaj* testimony, which show the witness as he gave evidence, and his testimony in this case. The First Issue does not reveal an error, but instead constitutes a mere disagreement with the Decision.

5. The Defence equally fails to demonstrate that the Second Issue is appealable. When tendering 1D00204 MFI, the Defence argued that the item is relevant to its Defence.<sup>14</sup> It is clear from the Decision that the Panel considered and dismissed the alleged relevance and probative value of the item, specifying the factors in took into account to reach its conclusion.<sup>15</sup> The Defence claim that the Panel did not render a reasoned Decision<sup>16</sup> disregards the reasons the Panel provided for not admitting the item, which are consistent with previous reasoned decisions concerning the credibility

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<sup>9</sup> Request, KSC-BC-2020-06/F02719, para.8.

<sup>10</sup> Transcript, 6 November 2024, p.22100, lines 14-25.

<sup>11</sup> Request, KSC-BC-2020-06/F02719, para.9.

<sup>12</sup> P01817.1 MFI; P01817.2 MFI; P01818.1 MFI; P01818.2 MFI; P01819 MFI; P01820.1 MFI; P01820.2 MFI; P01820.3 MFI; P01821.1 MFI; P01821.2 MFI; P01821.3 MFI; P01822.1 MFI; P01822.2 MFI; P01822.3 MFI.

<sup>13</sup> Request, KSC-BC-2020-06/F02719, para.3 (and sources therein). The Defence fails to substantiate its (implied) assertion – impermissibly raised for the first time in the Request – that the courtroom atmosphere, times when the camera was not focused on him, and his entry into and exit from the courtroom substantially affected the *Limaj* Chamber's credibility assessment overall or would substantially affect this Panel's assessment. *See* Request, KSC-BC-2020-06/F02719, para.9. Thus, contrary to the Request, these arguments are indeed abstract, speculative, and hypothetical.

<sup>14</sup> Transcript, 6 November 2024, p.22102.

<sup>15</sup> Decision, Transcript, 7 November 2024, pp.22153-22154.

<sup>16</sup> Request, KSC-BC-2020-06/F02719, para.14.

findings of other courts.<sup>17</sup> The Second Issue merely expresses disagreement with the Panel's reasons for not admitting the item into evidence.<sup>18</sup>

6. The Third Issue essentially rephrases the First Issue. Like the First Issue, the Third Issue fails to explain why the Panel's Decision to deny admission of 1D00204 MFI amounts to an appealable error. The Defence allegation that the Decision is based on 'irrelevant conclusions'<sup>19</sup> and that 1D00204 MFI 'is relevant and probative'<sup>20</sup> makes utterly clear that the Defence merely disagrees with the Panel's findings. No prejudice is caused<sup>21</sup> since 1D00204 MFI is, in any case, part of the record as it was read in its entirety to W01453, and the Defence was able to cross-examine W01453 on it.<sup>22</sup> Moreover, the decision cited by the Defence in support of its arguments, in fact underlined the 'very limited' probative value of reliability and credibility findings made by other courts.<sup>23</sup> In such circumstances, where the Panel has denied evidence of low, if any, probative value, the Defence cannot realistically claim an appealable error. The Third Issue ignores the record and prior findings of this Panel, and amounts to mere disagreement with the Decision.

#### B. THE ISSUES WOULD HAVE NO IMPACT JUSTIFYING CERTIFICATION

7. The Defence fails to establish how the Issues – which concern evidence of negligible, if any, value – would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial. The information is on the record, along with the witness's related testimony,<sup>24</sup> the audio-video recordings of W01453's ICTY

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<sup>17</sup> See e.g. Decision on Prosecution Third Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F02013, 15 December 2023, para.50; Public Redacted Version of Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, para.49.

<sup>18</sup> Request, KSC-BC-2020-06/F02719, para.13.

<sup>19</sup> Request, KSC-BC-2020-06/F02719, para.15.

<sup>20</sup> Request, KSC-BC-2020-06/F02719, para.16 (emphasis removed).

<sup>21</sup> *Contra* Request, KSC-BC-2020-06/F02719, para.17.

<sup>22</sup> Transcript, 6 November 2024, pp.22100-22101.

<sup>23</sup> Public Redacted Version of Decision on Veseli Defence Request Regarding Items Associated with [REDACTED]'s Testimony, KSC-BC-2020-06/F01733/RED, 23 August 2023, para.13. See Request, KSC-BC-2020-06/F02719, fn.16.

<sup>24</sup> Transcript, 6 November 2024, pp.22100-22101.

evidence have been tendered, and the Panel had the opportunity to observe the witness's demeanour and assess his credibility during his testimony in this case, including when questioned about his *Limaj* evidence. Further, the Decision is without prejudice to the Panel's ultimate assessment of the credibility and reliability of W01453's evidence at the conclusion of the trial. The Defence simply argues that the Decision is 'unreasonable' and its assertion that any error being rectified on appeals could contribute to 'safeguarding Mr Thaci's fair trial rights' is unsupported and speculative.<sup>25</sup> The Defence claim that all evidence satisfying the Rule 138 criteria is allowed to enter the record misinterprets the legal framework and this Panel's considerable discretion in admissibility matters.<sup>26</sup> The Panel correctly applied Rule 138(1), the plain language of which is clear.

8. For the same reasons given above, the Defence also fails to demonstrate how immediate resolution by the Court of Appeals for each of the Issues would materially advance the proceedings. The Defence reference to previous findings of the Panel in relation to materially different issues does not allow any useful comparison and is of a general nature.<sup>27</sup> Finally, the Defence claim that a resolution of the Issues would provide 'legal certainty' and 'useful guidance' is speculative and unsubstantiated.<sup>28</sup>

### III. RELIEF REQUESTED

9. For the foregoing reasons, the Request fails to meet the leave to appeal standard and should be rejected.

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<sup>25</sup> Request, KSC-BC-2020-06/F02719, para.20.

<sup>26</sup> Request, KSC-BC-2020-06/F02719, para.20.

<sup>27</sup> *Contra* Request, KSC-BC-2020-06/F02719, para.21, fn.19.

<sup>28</sup> *Contra* Request, KSC-BC-2020-06/F02719, para.22.

**Word count: 1314**



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**Kimberly P. West**

**Specialist Prosecutor**

Thursday, 21 November 2024

At The Hague, the Netherlands.