

**In:** KSC-BC-2020-06  
**The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi**

**Before:** **Trial Panel II**  
Judge Charles L. Smith, III, Presiding  
Judge Christoph Barthe  
Judge Guénaël Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Hashim Thaçi

**Date:** 25 November 2024

**Language:** English

**Classification:** Public

---

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

---

**Specialist Prosecutor's Office**

Kimberly P. West

**Counsel for Victims**

Simon Laws

**Counsel for Hashim Thaçi**

Luka Misetic

**Counsel for Kadri Veseli**

Rodney Dixon KC

**Counsel for Rexhep Selimi**

Geoffrey Roberts

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

## I. INTRODUCTION

1. In accordance with Article 45(2) of the Law,<sup>1</sup> and Rule 77(2) of the Rules,<sup>2</sup> the Defence for Mr Hashim Thaçi (“Defence”) replies to the ‘Prosecution response to ‘Thaçi Defence Request for Certification to Appeal the Second Oral Order of 7 November 2024’ (F02719)’.<sup>3</sup> The Response both mischaracterises, and fails to engage with submissions raised by the Defence, as identified below. The Defence therefore respectfully confirms and reiterates the request that the Trial Panel grant leave to appeal the three issues set out in the Request.<sup>4</sup>

## II. SUBMISSIONS IN REPLY

2. The SPO submits that the first issue “ignores the record”, because the excerpt of the *Limaj* trial judgment tendered as 1D00204 MFI was read onto the record of the present proceedings and W01453 commented on it.<sup>5</sup> The fact that the relevant excerpt was read into the record, does not mean that the excerpt has been transformed into substantive evidence in this case.<sup>6</sup> The purpose of the Defence request to tender the visual observations of the ICTY Trial Chamber in the *Limaj* case on W01453’s courtroom demeanour, was to ensure its admission as substantive evidence in these proceedings, which could then be relied upon by this Trial Panel in its deliberations. The SPO’s reliance on the fact that the excerpt was read into the record and commented on by W01453, does not address this aim.

---

<sup>1</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, 3 August 2015 (“Law”).

<sup>2</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 (“Rules”).

<sup>3</sup> KSC-BC-2020-06/F02742, *Prosecution response to ‘Thaçi Defence Request for Certification to Appeal the Second Oral Order of 7 November 2024’ (F02719)*, 21 November 2024, public (“Response”).

<sup>4</sup> KSC-BC-2020-06/F02719, *Thaçi Defence Request for Certification to Appeal the Second Oral Order of 7 November 2024*, 14 November 2024, public (“Request”), para. 2.

<sup>5</sup> Response, para. 4.

<sup>6</sup> Response, para. 4.

3. Nor does the SPO address the Defence submissions on the limitations of the recordings, including that the camera was not fixed on W01453 at all times during his testimony in these proceedings, and did not broadcast key moments such as his entry to and exit from the courtroom.<sup>7</sup> It is therefore self-evident that the ICTY Trial Chamber in *Limaj* could observe the witness in the kind of moments that are necessarily unavailable to this Trial Panel.

4. The SPO's alternative suggestion that "this Panel [...] 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",<sup>8</sup> represents a stunning false economy, requiring each member of the Trial Panel to watch six days of ICTY hearings to purportedly circumvent the need to admit one paragraph of the *Limaj* trial judgment. Even if the SPO had the ability to make this commitment on behalf of the Trial Panel, the review of these six days of ICTY hearings does not mean that the *Limaj* Trial Chamber's visual observations have no relevance or probative value in these proceedings. They remain relevant, probative, and admissible pursuant to Rule 138, and the failure of the Trial Panel to recognise the admissibility of this item remains a concrete and discernible error.

5. Regarding the second and third issues, and contrary to the SPO's mischaracterisation, Defence is not seeking to admit a "credibility finding" of the ICTY Trial Chamber in the *Limaj* case.<sup>9</sup> The Defence sought the admission of the visual observation of W01453's testimony before the ICTY, a fact observed by the Trial Chamber. No "finding" is being tendered by the Defence. The Trial Panel erroneously

---

<sup>7</sup> Request, para. 9: "Further, the utility of the video recordings for assessing demeanour is limited, in that they do not provide insight into the courtroom atmosphere, do not focus on W01453 for the entirety of his testimony, and do not show key moments outside of testimony, such as his entry to, and exit from, the courtroom."

<sup>8</sup> Response, para. 4.

<sup>9</sup> Response, paras. 5 and 6.

understood the Defence to be tendering “findings” of another court, when this was not being attempted. Rather, the Defence sought to introduce relevant and probative evidence of W01453’s demeanour while giving prior statements that are now tendered pursuant to Rule 143(2)(c) of the Rules, to ensure that the Trial Panel will not be deprived of the opportunity to consider this evidence in its holistic assessment at the end of the case. This is a question of ensuring the admission of relevant and probative evidence, rather than a request that the Trial Panel adopt the findings of a previous trial chamber. This is not the Defence “merely expressing disagreement” with the Trial Panel’s reasoning,<sup>10</sup> but is rather a discernible error.

### III. CLASSIFICATION

6. These submissions are filed publicly, as no reference is made to confidential information.

[Word count: 803 words]

Respectfully submitted,



**Luka Misetic**

**Counsel for Hashim Thaçi**

Monday, 25 November 2024

At New York, United States

---

<sup>10</sup> Response, paras. 5 and 6.