



**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:** 8 January 2025

**Language:** English

**Classification:** Public

---

**Prosecution response to 'Veseli, Selimi, and Krasniqi Defence Request for Certification to Appeal Decision F02787' (F02812)**

---

**Specialist Prosecutor's Office**

Kimberly P. West

**Counsel for Victims**

Simon Laws

**Counsel for Hashim Thaçi**

Luka Mišetić

**Counsel for Kadri Veseli**

Rodney Dixon

**Counsel for Rexhep Selimi**

Geoffrey Roberts

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

## I. INTRODUCTION

1. The Request<sup>1</sup> should be dismissed as the Issue<sup>2</sup> identified by the Defence fails 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> The Issue is not appealable, and the Defence fails to demonstrate how the other leave to appeal criteria are met.

2. In reaching the Decision,<sup>6</sup> the Panel properly exercised its broad discretion in managing the conduct of proceedings and the presentation and admissibility of evidence.<sup>7</sup> The Panel is entitled to deference in such discretionary matters and appellate intervention is only warranted in very limited circumstances.<sup>8</sup> For the same reasons, certification to appeal must be the absolute exception.<sup>9</sup> The Request fails to meet this burden.

## II. SUBMISSIONS

3. At the outset, the Specialist Prosecutor's Office ('SPO') notes that although the

---

<sup>1</sup> Veseli, Selimi, and Krasniqi Defence Request for Certification to Appeal Decision F02787, KSC-BC-2020-06/F02812, 20 December 2024 ('Request').

<sup>2</sup> Request, KSC-BC-2020-06/F02812, para.2 (defining the 'Issue').

<sup>3</sup> The applicable law has been set out in prior decisions. *See, 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'). Unless otherwise indicated, all references to 'Article' or 'Articles' are to the Law.

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

<sup>6</sup> Decision on Prosecution Motion for Admission of Evidence of Witnesses W04826, W04874, and W04875 pursuant to Rules 138, 149, and 154 and Related Request, KSC-BC-2020-06/F02787, 16 December 2024, Confidential ('Decision').

<sup>7</sup> Article 40; Rule 116. *See also* ICTY, *Prosecutor v. Popović et al.*, IT-05-88-AR73.3, Decision on Appeals Against Decision on Impeachment of a Party's Own Witness, 1 February 2008, para.12; ICTR, *Prosecutor v. Karemera et al.*, ICTR-98-44-AR73.8, Decision on Interlocutory Appeal Regarding Witness Proofing, 11 May 2007, para.3.

<sup>8</sup> *Specialist Prosecutor v. Gucati and Haradinaj*, Appeal Judgment, KSC-CA-2022-01/F00114, 2 February 2023, paras 34-35.

<sup>9</sup> Decision on Veseli Defence Request for Leave to Appeal Decision to Admit P959 and P960, KSC-BC-2020-06/F02157, 29 February 2024, para.11 (concerning discretionary admissibility decisions).

Defence submits only one Issue for certification, the Issue actually comprises two distinct matters, *i.e.*, whether the Panel erred in finding that nothing in the Specialist Chambers' ('SC') legal framework or in the Order on the Conduct of Proceedings:<sup>10</sup> (i) prohibits preparation sessions with expert witnesses; and (ii) prevents the calling Party from eliciting expert opinion from expert witnesses on documents not commented in an expert report. Despite raising two distinct matters, the Defence does not demonstrate how the certification criteria are met for each, instead merging its related submissions. Regardless, neither part of the Issue warrants interlocutory appellate intervention.

#### A. THE ISSUE IS NOT APPEALABLE

4. The Issue is not specific, discrete or identifiable. Rather, it amounts to mere disagreement with the Decision. The Request, which ignores the Panel's broad trial management powers,<sup>11</sup> repeats and supplements arguments set out in the November 2024 Response,<sup>12</sup> which the Panel considered and denied in the Decision.<sup>13</sup> The Defence does not explain why the Decision was in error.<sup>14</sup> Instead, the Defence devotes several pages to arguing the merits,<sup>15</sup> which are beyond scope of Article 45 and Rule 77 and should be disregarded.<sup>16</sup>

---

<sup>10</sup> Annex 1 to Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Order on the Conduct of Proceedings').

<sup>11</sup> Article 40; Rule 116.

<sup>12</sup> *Compare, e.g.*, Joint Defence Consolidated Response to F02620 and F02633 with confidential Annexes 1-4, KSC-BC-2020-06/F02703, 8 November 2024, Confidential ('November 2024 Response'), paras 6, 11, 16, 18, 40-46, 66(a)(b)(e)(f) *with* Request, KSC-BC-2020-06/F02812, paras 12-13, 15, 21.

<sup>13</sup> *See* Decision, KSC-BC-2020-06/F02787, paras 11, 18, 20, 39, 41.

<sup>14</sup> *See, similarly*, Decision on Joint Defence Request for Certification to Appeal the Reasons for Admission of W03780's Statements and Related Order (F02580), KSC-BC-2020-06/F02639, 11 October 2024, para.16.

<sup>15</sup> Request, KSC-BC-2020-06/F02812, paras 12-21.

<sup>16</sup> *See, similarly*, Decision on Veseli Defence Request for Certification to Appeal the Decision to Admit P1064 and P1065, KSC-BC-2020-06/F02259, 23 April 2024 ('April 2024 Decision'), paras 10-11. To the extent these submissions constitute an implied motion for reconsideration, the Rule 79 requirements are neither addressed nor met.

5. For example, the Defence assertions that ‘Rule 149 provides the only mechanism by which the calling party may elicit evidence from expert witnesses’<sup>17</sup> and that ‘[a]s the Panel has already recognised, Rule 149 is the *lex specialis* governing the admission of expert evidence’<sup>18</sup> merely repeat previous Defence argument.<sup>19</sup> While engaging in such repetition, the Request also ignores and misrepresents relevant findings in the Decision, which only establishes that Rule 149 is *lex specialis* for the admission of expert reports,<sup>20</sup> not for all expert evidence.

6. The Request also misrepresents the Decision in other instances. Contrary to the Defence assertion, the Panel did not cite a decision in *Mladić* as support for a calling Party being able to use witness preparation to take a new witness statement or report from an expert.<sup>21</sup> Rather, the Panel cited the *Mladić* decision in support of its finding that there is nothing preventing the calling Party from eliciting expert opinion from expert witnesses on documents not commented on in an expert report.<sup>22</sup> The Request fails to identify any error in this finding.

7. In addition to misrepresenting the Decision, the Request also misrepresents the content and result of witness preparation sessions and mischaracterises the permissible scope of witness preparation in this case.<sup>23</sup> Rather than identifying any error arising from the Decision, the Request makes broad, unsubstantiated assertions merely amounting to an expression of dissatisfaction with the witness preparation regime authorised by the Panel and in place since January 2023.<sup>24</sup>

---

<sup>17</sup> Request, KSC-BC-2020-06/F02812, para.13. *See also* Request, KSC-BC-2020-06/F02812, para.15.

<sup>18</sup> Request, KSC-BC-2020-06/F02812, para.12.

<sup>19</sup> *See* November 2024 Response, KSC-BC-2020-06/F02703, paras 6, 11, 16, 18, 40-44, 66(a)(b).

<sup>20</sup> Decision, KSC-BC-2020-06/F02787, para.41.

<sup>21</sup> *See* Request, KSC-BC-2020-06/F02812, para.17, fn.20 referring to ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Decision on the Prosecution Submissions on the Expert Statement of Prosecution Witness Teufika Ibrahimefendić Pursuant to Rule 94bis, 14 September 2012, cited in Decision, KSC-BC-2020-06/F02787, para.20, fn.32.

<sup>22</sup> *See* Decision, KSC-BC-2020-06/F02787, para.20, fn.32.

<sup>23</sup> *See* Request, KSC-BC-2020-06/F02812, paras 14-17, 21-22.

<sup>24</sup> *See* Request, KSC-BC-2020-06/F02812, paras 14-18, 21-22.

8. Further broad, unsubstantiated assertions, such as that ‘expert witnesses are professional witnesses and do not need help to prepare’,<sup>25</sup> also merely amount to disagreement with the Decision and fail to identify any error. The Defence assertion that, given their status as experts, there is no need for the SPO to evaluate the Experts’<sup>26</sup> capacity to provide relevant and credible evidence in respect of facts or circumstances relevant to the case<sup>27</sup> both merely disagrees with the Decision and ignores a core function of witness preparation, namely, for the calling Party to determine whether or not to use certain documents during testimony, thereby contributing to the efficiency of the proceedings.

B. THE ISSUE WOULD HAVE NO IMPACT JUSTIFYING CERTIFICATION

9. The Defence merely asserts that the Issue would significantly affect the fair and expeditious conduct of the proceedings.<sup>28</sup> Rather than explaining how this is allegedly so, the Defence instead makes generic, bald assertions on prejudice.<sup>29</sup> Similarly, while the Defence asserts that immediate appellate resolution will materially advance the proceedings, it fails to set out how<sup>30</sup> and fails to explain the alleged ‘material prejudice’<sup>31</sup> appellate intervention could avoid.

10. The Defence claims are also hypothetical, speculative, and premature. The Decision, in relevant part, only establishes that there is no prohibition on conducting preparation sessions with expert witnesses and nothing to prevent the calling Party from eliciting expert opinion from expert witnesses on documents not commented on in an expert report.<sup>32</sup> This applies to both Parties equally and is without prejudice to

---

<sup>25</sup> Request, KSC-BC-2020-06/F02812, para.21.

<sup>26</sup> W04826, W04874, and W04875 are referred to collectively as the ‘Experts’.

<sup>27</sup> Request, KSC-BC-2020-06/F02812, para.21.

<sup>28</sup> Request, KSC-BC-2020-06/F02812, para.22.

<sup>29</sup> Request, KSC-BC-2020-06/F02812, para.22.

<sup>30</sup> See Request, KSC-BC-2020-06/F02812, paras 23-24.

<sup>31</sup> Request, KSC-BC-2020-06/F02812, para.24.

<sup>32</sup> Decision, KSC-BC-2020-06/F02787, para.20.

the Panel's ultimate assessment of weight at the conclusion of the trial. Defence submissions about adequate time and resources – which are abstract and fail to adequately account for the limited nature of the additional information to be discussed with the Experts<sup>33</sup> – also ignore the remedies available should any new information of a significant nature be elicited that requires additional time and resources for preparation.<sup>34</sup>

11. Further, the Request ignores the fact that, as also noted in the Decision,<sup>35</sup> the Defence has the right to cross-examine the Experts. The Defence may also call its own experts to testify. That the Defence did not request suspensive effect of the Decision, an expedited briefing schedule, and/or that the Extension Order<sup>36</sup> not apply to the Request are further indications that the Issue does not require immediate appellate resolution.

12. Finally, the Defence provides no reason as to why appropriate remedies could not effectively be granted after the close of the case at trial. The Defence argument that appellate intervention is imperative at this juncture to ensure that a consistent approach is taken by all SC Panels<sup>37</sup> ignores the fact that the witness preparation regime in this case differs to that in certain other cases and fails to explain why such divergence necessitates appellate reconciliation. In any event, even in cases where witness preparation was generally not permitted, the equivalent was still permitted for expert witnesses.<sup>38</sup>

---

<sup>33</sup> Decision, KSC-BC-2020-06/F02787, para.20 (noting that the limited additional items are similar in nature to those already discussed in the Experts' reports).

<sup>34</sup> See Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, para.82.

<sup>35</sup> See Decision, KSC-BC-2020-06/F02787, para.36.

<sup>36</sup> Order on the Extension of Time for Filings and Private Session Transcript Reviews During Winter Recess Period, KSC-BC-2020-06/F02800, 19 December 2024 ('Extension Order'), paras 12-15.

<sup>37</sup> Request, KSC-BC-2020-06/F02812, para.23.

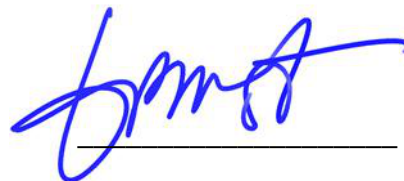
<sup>38</sup> See *Specialist Prosecutor v. Shala*, Decision on witness familiarisation, KSC-BC-2020-04/F00435, 24 February 2023, para.19; *Specialist Prosecutor v. Shala*, Transcript, 26 June 2023, p.2043.

13. Overall, the unsubstantiated, speculative, and generic submissions in the Request are incapable of demonstrating any, let alone significant, impact or that appellate intervention would materially advance the proceedings, as required under Article 45(2) and Rule 77(2).<sup>39</sup>

### III. RELIEF REQUESTED

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

**Word Count: 1733**



**Kimberly P. West**

**Specialist Prosecutor**

Wednesday, 8 January 2025

At The Hague, the Netherlands.

---

<sup>39</sup> See, similarly, April 2024 Decision, KSC-BC-2020-06/F02259, paras 12-14 (noting, *inter alia*, that certification applications that fail to articulate clearly how the requirements of Rule 77(2) are met will be dealt with summarily).