



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 21 January 2025

Language: English

Classification: Public

Decision on Joint Defence Request for Leave to Appeal Rule 153 Decision (F02765)

Specialist Prosecutor

Kimberly P. West

Counsel for Hashim Thaçi

Luka Mišetić

Counsel for Victims

Simon Laws

Counsel for Kadri Veseli

Rodney Dixon

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

TRIAL PANEL II (“Panel”), pursuant to Article 45(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 77 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 11 December 2024, the Panel issued its “Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W01234, W01338, W01743, W04423, W04570, W04696, W04812, W04859, and W04860 Pursuant to Rule 153 and Related Defence Motion to Exclude Evidence” (“Impugned Decision”).¹
2. On 18 December 2024, the Defence for Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (collectively, “Defence” and “Accused”) filed a joint request for leave to appeal the Impugned Decision (“Request”).²
3. On 13 January 2025, upon authorisation from the Panel,³ the Specialist Prosecutor’s Office (“SPO”) filed a response to the Defence Request (“Response”).⁴
4. The Defence did not reply to the Response.

II. SUBMISSIONS

5. The Defence requests leave to appeal the Impugned Decision in respect of one issue, namely:

¹ F02765, Panel, *Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W01234, W01338, W01743, W04423, W04570, W04696, W04812, W04859, and W04860 Pursuant to Rule 153 and Related Defence Motion to Exclude Evidence*, 11 December 2024, confidential (a public redacted version was issued on the same day, F02765/RED).

² F02796, Specialist Counsel, *Joint Defence Request for Leave to Appeal Rule 153 Decision (F02765)*, 18 December 2024, confidential.

³ F02800, Panel, *Order on the Extension of Time for Filings and Private Session Transcript Reviews During Winter Recess Period*, 19 December 2024, para. 15(b).

⁴ F02828, Specialist Prosecutor, *Prosecution Response to ‘Joint Defence Request for Leave to Appeal Rule 153 Decision (F02765)’*, 13 January 2025, confidential.

[W]hether the Trial Panel erred in its determination that a Defence response to an SPO Rule 153 Motion is not the correct procedural vehicle for the relief sought, *i.e.* the admission of additional Rule 153 statements or material which would provide the Panel the truest and fullest account of the witness in question (“Issue”).⁵

6. The Defence submits that the Issue satisfies the test for certification as it: (i) arises from the Impugned Decision and does not merely disagree with it;⁶ (ii) is liable to significantly affect the fair and expeditious conduct of the proceedings;⁷ and (iii) requires immediate resolution by the Court of Appeals Panel in order to materially advance the proceedings.⁸

7. The SPO responds that the Issue is not appealable and would have no impact justifying certification.⁹ Accordingly, the SPO requests that the Request be denied.¹⁰

III. APPLICABLE LAW

8. Pursuant to Article 45(2) and Rule 77(2), a right to appeal only arises if the standard of certification set forth therein has been met. Rule 77(2) provides that:

The Panel shall grant certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, including, where appropriate remedies could not effectively be granted after the close of the case at trial, and for which an immediate resolution by the Court of Appeals Panel may materially advance the proceedings.

The Panel incorporates by reference the applicable law on the legal standard for certification to appeal set out in past decisions.¹¹

⁵ Request, paras 2, 29.

⁶ Request, para. 12. *See also* Request, paras 13-24.

⁷ Request, para. 12. *See also* Request, paras 25-26.

⁸ Request, para. 12 *See also* Request, paras 27-28.

⁹ Response, paras 2-10.

¹⁰ Response, paras 1, 12.

¹¹ *See e.g.* F01237, Panel, *Decision on Thaçi Defence Request for Leave to Appeal Decision on Disclosure of Dual Status Witnesses*, 30 January 2023, paras 7-8, referring to KSC-BC-2020-07, F00423, Panel, *Decision on SPO*

IV. DISCUSSION

9. The Defence submits that, in its reasoning in relation to W04570 and W04812, the Panel erred in finding that a Defence response to an SPO Rule 153 Motion is not the correct procedural vehicle for the admission of additional Rule 153 statements or material.¹² The Defence argues that as such finding: (i) is contrary to the Panel's own established precedent on this issue;¹³ (ii) is wrong in principle and contrary to fairness;¹⁴ and (iii) places the neutrality and truth-seeking function of the Panel in jeopardy.¹⁵ According to the Defence, the Panel has previously granted a similar request regarding W01237's Rule 153 material, finding admissible an OSCE form related to this witness, following a request of the Defence in response to a separate Rule 153 request by the SPO.¹⁶ The Defence also argues that the Panel has provided no justification for any departure from this "clear precedent", and, the Defence submits, no justification exists.¹⁷ Secondly, the Defence argues that it is not permissible for a non-tendering party to seek to use Rule 153 to admit the evidence of a witness upon whom the non-tendering party does not rely and would or could not otherwise call live, in circumstances where they openly refute such evidence and have objected to its admission via that Rule.¹⁸ Thirdly, the Defence argues that, in refusing to admit additional evidence which

Requests for Leave to Appeal F00413 and Suspensive Effect, 8 November 2021, paras 13-21; F00372, Panel, *Decision on Haradinaj Defence's Application for Certification of F00328*, 15 October 2021, paras 15-17; F00484, Panel, *Decision on Defence Request for Leave to Appeal F00470*, 8 December 2021, paras 4-14. See also KSC-BC-2020-06, F00172, Pre-Trial Judge, *Decision on the Thaçi Defence Application for Leave to Appeal*, 11 January 2021, paras 6-7, 9-17.

¹² Request, para. 13.

¹³ Request, paras 14-17.

¹⁴ Request, paras 18-23.

¹⁵ Request, para. 24.

¹⁶ Request, para. 15, referring to F01904, Panel, *Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153*, 3 November 2023, confidential, paras 16-20 (a public redacted version was filed on 27 November 2023, F01904/RED); F01688, Defence, *Joint Defence Response to 'Prosecution Motion for Admission of Evidence of Witnesses W01237, W04594, W04592, W04872, W04871, W04673 and W04362 pursuant to Rule 153'*, 20 July 2023, confidential, paras. 16-19 (a public redacted version was filed on 17 November 2023, F01688/RED).

¹⁷ Request, para. 17.

¹⁸ Request, para. 23. See also Request, paras. 18-23.

would provide the Panel with the truest and fullest account of events, the Panel is closing its mind to the truth.¹⁹ The Defence asserts that this is contrary to the truth-seeking function of the Panel and the fair trial rights of the Accused.²⁰

10. The SPO responds that the Issue is not appealable because it does not arise from the Decision, is hypothetical in nature, and merely represents a disagreement with the Panel's ruling.²¹ The SPO contends that the Panel previously exercising its discretion to exceptionally admit certain unopposed evidence improperly tendered through a response does not create any binding precedent.²² The SPO also submits that the Defence arguments on the Panel closing its mind to the truth are unsubstantiated as the Defence is free to present evidence in accordance with the procedures outlined in the Rules.²³

11. The Panel notes that, in the Impugned Decision, it found, *inter alia*, that W04570's and W04812's evidence, as offered by the SPO, was suitable for admission pursuant to Rule 153. The Panel also addressed the Defence's separate request for the admission of additional evidence for W04570 and W04812, which was put forward by the Defence in its response to the SPO's Rule 153 motion.²⁴ In this regard, the Panel found that responses to motions are not the correct vehicle in which to seek extraneous relief such as admission of items of evidence, and therefore declined to entertain such relief at this stage.²⁵

12. Contrary to the Defence's submissions,²⁶ the fact that, in the one instance referred to by the Defence, the Panel has previously exercised its discretion to

¹⁹ Request, para. 24.

²⁰ Request, para. 24.

²¹ Response, para. 2. *See also* Response, paras 3-5.

²² Response, para. 3.

²³ Response, para. 7.

²⁴ Impugned Decision, paras 48, 64

²⁵ Impugned Decision, paras 48, 64.

²⁶ Request, paras 14-17.

exceptionally admit certain unopposed evidence, which had been improperly tendered through a response, does not constitute a binding precedent.

13. Turning to the Defence's arguments that the Panel's determination is contrary to basic legal principles and fairness as well as to the truth-seeking function of the Panel,²⁷ the Panel notes that it has not ruled on the admissibility of the additional evidence of W04570 and W04812, and the Defence, should it choose, has the ability to seek the admission of any such additional evidence, as it wishes, in accordance with the procedures outlined in the Rules. If and when the Defence offers this evidence in a manner compliant with the Rules, the Panel will decide upon its admission.

14. For these reasons, the Panel is of the view that the Issue misrepresents the Panel's findings and constitutes a mere disagreement with them. The Panel therefore finds that the Defence has failed to establish that the Issue constitutes a discrete topic arising from the Impugned Decision.

15. Accordingly, the remaining requirements of the certification test arising from Article 45(2) and Rule 77(2) need not be addressed in relation to the Issue. The request for certification to appeal the Issue is therefore rejected.

V. CLASSIFICATION

16. The Panel notes that the Request was filed confidentially. The Panel therefore orders the Defence to request the reclassification or submit a public redacted version of the Request by **Tuesday, 28 January 2025**.

17. Noting that the SPO does not object to the reclassification of the Response as public and considering that the Response contains no confidential information, the Panel directs the Registry to reclassify the Response as public.

²⁷ Request, para 18-24.

VI. DISPOSITION

18. For these reasons, the Panel:

- a) **REJECTS** the Request;
- b) **ORDERS** the Defence to request the reclassification or submit a public redacted version of the Request by **Tuesday, 28 January 2025**; and
- c) **DIRECTS** the Registry to reclassify the Response (F02828) as public.



Judge Charles L. Smith, III
Presiding Judge

Dated this Tuesday, 21 January 2025

At The Hague, the Netherlands.