

**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:** Counsel for Kadri Veseli

**Date:** 24 February 2025

**Language:** English

**Classification:** Public

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**Veseli Defence Reply to Prosecution Response to Veseli Defence Request for Certification to Appeal First Oral Order of 30 January 2025 (F02946)**

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## I. INTRODUCTION

1. Pursuant to Rule 76 of the Rules, the Defence for Mr Kadri Veseli hereby submits its reply to the SPO's response<sup>1</sup> to its request for certification to appeal the Trial Panel's decision denying the admission of 2D00043, which comprises portions of the "Klecka" retrial judgment.<sup>2</sup>

## II. SUBMISSIONS

### A. SPO Submissions on the First Issue

2. The Prosecution submits that the Request "recycles" arguments previously put forward by the Thaçi Defence in an earlier Request, and rejected by the Trial Panel.<sup>3</sup> The Veseli Defence readily acknowledges the similarity between the decision challenged by Thaçi in the earlier Request and the Impugned Decision. Both concern the Trial Panel's refusal to admit credibility findings from another court.<sup>4</sup> However, the Thaçi Request did not address the arbitrariness of the distinction the Panel has drawn between credibility assessments and assessments of supposed contextual matters.<sup>5</sup> This is significant and remains to be addressed.
3. The situation at hand also differs from the circumstances of the Thaçi request because the credibility findings sought for admission concerned the witness who was currently testifying and were put to the witness in cross-examination,<sup>6</sup>

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<sup>1</sup> F02946, *Prosecution response to 'Veseli Defence Request for Certification to Appeal First Oral Order of 30 January 2025' (F2909)*, 19 February 2025, public ("Response.")

<sup>2</sup> F02909RED, *Veseli Defence Request for Certification to Appeal First Oral Order of 30 January 2025*, 6 February 2025 ("Request").

<sup>3</sup> Response, para. 3.

<sup>4</sup> F02719, *Thaçi Defence Request for Certification to Appeal the Second Oral Order of 7 November 2024*, 14 November 2024, public, paras 3-5 ("Thaçi Request"); Request paras. 5-6.

<sup>5</sup> Thaçi Request, paras 8-18.

<sup>6</sup> Thaçi Request, para. 3.

whereas the credibility findings at issue here concern a deceased individual who cannot be confronted by the Defence.<sup>7</sup>

4. The Prosecution complains that the Request constitutes a belated challenge to Rule 155 decision on W04839.<sup>8</sup> This is wrong. The Defence made appropriate use of the Klecka judgment in the cross-examination of a witness to whom W04839 was personally known.<sup>9</sup> Having received the witness's comments on the judgment as it related to W04839, it was entirely legitimate for the Defence to seek admission of the material.
5. The Prosecution contends that the Panel's distinction between F01733 and the Impugned Decision is not arbitrary because the former concerns contextual matters, whereas the latter concerns matters which are "clearly not contextual" because they concern another's court's credibility assessment of a witness.<sup>10</sup> As the Defence has already set out in its Request, this distinction does not withstand scrutiny as both judicial assessments at issue concern key pieces of evidence against the Accused relevant to their knowledge and involvement in the crimes charged. The distinction between the two matters – which essentially boils down to documentary versus testimonial evidence – is not grounded in any discernible legal principle. Indeed, the Trial Panel has never provided a legal basis for the distinction it draws.<sup>11</sup> This itself a strong indication of its arbitrariness.

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<sup>7</sup> F02013, *Decision on Prosecution Third Motion for Admission of Evidence pursuant to Rule 155*, 15 December 2023, public, para. 46 ("Third Rule 155 Decision").

<sup>8</sup> Response, para. 3.

<sup>9</sup> Transcript, 29 January 2025, p. 24775-2479.

<sup>10</sup> Response, para 4.

<sup>11</sup> See, F01603, *Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155*, 14 June 2023, confidential, para. 49; F02013, *Decision on Prosecution Third Motion for Admission of Evidence pursuant to Rule 155*, 15 December 2023, public, para. 50; F02757, *Decision on the Thaçi Defence Request for Certification to Appeal the Second Oral Order of 7 November 2024*, 3 December 2024, public, para.25.

6. As to the Prosecution's reference to the Panel's "duty to independently assess the credibility of witness evidence,"<sup>12</sup> the Defence reiterates that neither in the case of another court's assessment of a piece of documentary evidence, nor in the case of another court's assessment of witness testimony does the Defence seek to bind the Trial Panel.<sup>13</sup> More to the point, however, admission of another court's credibility assessment is not legally capable of binding the Panel. The Defence observes that even a decision to take judicial notice of an adjudicated fact from another proceedings merely creates a rebuttable presumption and does not bind the Panel.

**B. SPO Submissions on the Second Issue**

7. Turning to the second issue, the SPO asserts that the Defence "fails to identify any legal basis" for why the Panel should have considered W04839's unavailability.<sup>14</sup> In its Request, the Defence clearly submitted that the Panel was obligated to consider it because Defence Counsel explicitly raised it.<sup>15</sup> This was a critical issue which engaged the Accused's fundamental rights under Article 21 of the Law, which the Trial Panel overlooked in its reasoning, thus giving rise to an error of reasoning. While not *every* factor need be considered, those of critical importance must.
8. The Defence underscores that it is self-evident that several prongs of Article 21 are engaged by the second proposed issue: the right to a fair hearing; the right to full equality; and the right to examine witnesses.

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<sup>12</sup> Response, para. 4.

<sup>13</sup> Request, paras. 18-20.

<sup>14</sup> Response, para. 5.

<sup>15</sup> Request, para. 11.

### C. SPO Remaining Submissions

9. The SPO contends that there would not have been *any* effect on the fairness of the proceedings given that 2D00043 was read into the record. The Defence observes that as recently as 17 February 2025, the Prosecution has stated that: “‘mere reference’ to evidence on the record has no formal, legal effect, and does not equate to admission into the *evidential* trial record.”<sup>16</sup> Given the distinction the SPO itself draws between material which is read into the record and formally admitted into the evidential record, it is utterly disingenuous for it to assert that the Impugned Decision has no effect on the fairness of the decision.
10. The records of cases heard by the KSC’s predecessors, namely UNMIK, EULEX and the ICTY, are inextricably woven into the fabric of this trial. The arbitrary rule that the Trial Panel has fashioned in respect of findings of witness credibility significantly prejudices the Defence’s ability to have important – otherwise admissible – evidence admitted into the record. Resolution by the Appeals Panel will provide guidance not only for the remainder of the Prosecution’s case but for the entirety of the Defence phase and for any other cases before this Court.

### III. CONCLUSION


11. The Defence reiterates its request for certification of the two issues arising out of the Impugned Decision.

**Word Count: 1,077**

**Respectfully submitted on Monday, 24 February 2025, at the Hague, Netherlands.**

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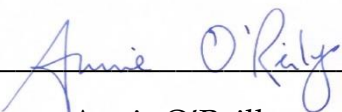
<sup>16</sup> IA031/F00003, *Prosecution response to ‘Veseli and Krasniqi Appeal Against First Oral Order of 5 December 2024*, 17 February 2025, confidential, para. 12.

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Rodney Dixon KC  
Lead Counsel for Kadri Veseli

A handwritten signature in black ink, appearing to read 'Kerrie Ann Rowan', is written over a horizontal line.

Kerrie Ann Rowan  
Co-Counsel for Kadri Veseli

A handwritten signature in blue ink, appearing to read 'Annie O'Reilly', is written over a horizontal line.

Annie O'Reilly  
Co-Counsel for Kadri Veseli