



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

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Public Redacted Version of 'Prosecution response to "Joint Defence Request for Leave to Appeal Decision to Admit the Evidence of W00542 via Rule 154" (F02935)'

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 Request¹ should be dismissed as the Issue² fails to meet the criteria for certification³ under Article 45 of the Law⁴ and Rule 77 of the Rules.⁵ As repeatedly stated by the Panel, triers of fact are afforded considerable discretion in deciding whether to admit evidence, and certification to appeal admissibility decisions are the absolute exception.⁶ The Request fails to identify any error in the Trial Panel's exercise of its discretion,⁷ let alone one warranting such exceptional relief.

II. SUBMISSIONS

A. THE ISSUES IS NOT APPEALABLE

2. The Request does not present any appealable issue. Instead, it seeks to relitigate the admission of W00542's statement,⁸ misinterprets and misrepresents the plain language of Rule 154(c), and merely disagrees with the Decision.

3. When admitting the statement, the Panel considered the VESELI Defence's arguments⁹ (repeated again in the Request) and found that the witness had attested to the accuracy of his prior statement, consistent with the plain language of Rule 154(c).

¹ Joint Defence Request for Leave to Appeal Decision to Admit the Evidence of W00542 via Rule 154, KSC-BC-2020-06/F02935, 14 February 2025, Confidential ('Request').

² Request, KSC-BC-2020-06/F02935, para.1 (defining the 'Issue').

³ The applicable law has been set out in prior decisions. *See, for example*, 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.

⁴ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' herein are to the Law.

⁵ 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 are to the Rules.

⁶ *See e.g.* Decision on Veseli Defence Request for Leave to Appeal Decision to Admit P1046, KSC-BC-2020-06/F02241, 15 April 2024, para.10.

⁷ Transcript, 10 February 2025, p.24879, lines 17-24 ('Decision').

⁸ Exhibits P02023.1 to P02023.4. *See also* P02024. Insofar as the Request may be considered as an implied motion for reconsideration, the Defence arguments do not acknowledge or meet the requirements of Rule 79, for the same reasons given below.

⁹ Transcript, 10 February 2025, pp.24875-24878.

The Request does not contest this fact, which is clear on the record.¹⁰ Rather, the Defence questions the witness's ability to confirm the accuracy of his prior statement. As noted by the Panel,¹¹ the Defence was free to cross-examine on this part of the witness's testimony – it chose not to.¹² The opportunity for cross-examination is not 'wholly irrelevant', as wrongly claimed in the Request.¹³ It is an express admissibility requirement under Rule 154 and a relevant consideration under Rule 138 when assessing any claimed prejudice.

4. Contrary to Defence submissions – which misrepresent the applicable framework – the Conduct of Proceedings Order does not impose any additional admissibility requirement and provides only that a witness be given the opportunity to review and correct his or her prior statements.¹⁴ In this respect, preparation sessions are intended to assist the witness in giving relevant, accurate, and structured testimony, and help ensure the witness's well-being.¹⁵ The relevant requirements and purposes of both the Conduct of Proceedings Order and Rule 154 were respected, as reflected clearly and transparently in the admitted preparation note and testimony transcript: (i) the witness had the opportunity to review his prior statements; (ii) the witness did in fact review the majority of his Rule 154 statement,¹⁶ including in relation to key elements of [REDACTED]'s abduction, detention, and mistreatment,¹⁷ and his

¹⁰ Transcript, 10 February 2025, pp.24874-24875.

¹¹ Transcript, 10 February 2025, p.24879, lines 22-24.

¹² No Defence team cross-examined the witness on his testimony confirming the accuracy of his Rule 154 statement or the portions of his statement he did not review as part of his preparation session. *See* Transcript, 10 February 2025, pp.24884-24895.

¹³ Request, KSC-BC-2020-06/F02935, para.18.

¹⁴ Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Conduct of Proceedings Order'), paras 96 (reiterating the Rule 154(c) requirement), 97(iii)-(iv) (concerning the obligation to provide the witness the opportunity to review his or her prior statements, confirm their accuracy, and explain any changes as necessary).

¹⁵ Conduct of Proceedings Order, KSC-BC-2020-06/F01226/A01, para.86(i). *See also* para.89 (the calling Party shall exercise particular care with regard to vulnerable witnesses).

¹⁶ P02024, para.3.

¹⁷ *See e.g.* P02023.1_ET, p.13; P02023.2_ET, pp.3, 10-16; P02023.3_ET, pp.4-5, 9; P02023.4_ET, pp.15, 21. *See also* F02024, para.3.

prior confirmation of the truthfulness and accuracy of his full statement;¹⁸ (iii) declined to review limited portions containing certain details of [REDACTED]'s brutal mistreatment to [REDACTED];¹⁹ and, as noted above, (iv) attested to the truthfulness and accuracy of his Rule 154 statement in court. Defence submissions otherwise merely disagree with the Decision and the applicable framework, and fail to identify any error.

5. Accordingly, as it does not raise any appealable issue, the Request should be dismissed on this basis alone.

B. THE ISSUE WOULD HAVE NO IMPACT JUSTIFYING CERTIFICATION

6. The Request also fails to establish how the Issue would have any – let alone significant or material – impact within the meaning of Article 45(2) and Rule 77(2). In this respect: (i) the Defence had the opportunity to cross-examine the witness on this matter, but chose not to; (ii) the record is clear and will be considered by the Panel when assigning weight to the witness's evidence at the conclusion of the proceedings; and (iii) the Court of Appeals would be able to address any claimed error in the context of any Article 46 appeal. In such circumstances, and considering the Panel's broad discretion when issuing admissibility decisions, which are necessarily tailored to the specific circumstances of each witness and piece of evidence, the Defence's speculative and generic arguments fail.²⁰

¹⁸ P02023.4_ET, p.27, lines 16-20 (Q: 'Based on your knowledge and belief the answers you have provided are true and correct. Is that correct?' A: 'Yes.' Q: 'A bit louder, please.' A: 'Yes, yes.'). Notably, the Defence acknowledges that there are no temporal requirements as to when a witness must have read or reviewed his or her prior statement to confirm it accurately reflects words spoken. *See* Request, KSC-BC-2020-06/F02935, para.13.

¹⁹ *See e.g.* Transcript, 10 February 2025, pp.24876-24879.

²⁰ Request, KSC-BC-2020-06/F02935, paras 21-23. *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, para.13.

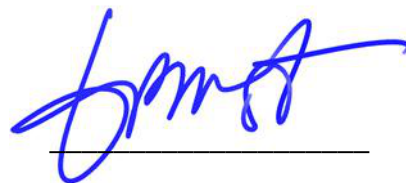
III. CLASSIFICATION

7. This filing is confidential pursuant to Rule 82(4).

IV. RELIEF REQUESTED

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

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Kimberly P. West

Specialist Prosecutor

Wednesday, 26 February 2025

At The Hague, the Netherlands.