



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06/IA031

Before: A Panel of the Court of Appeals Chamber
Judge Michèle Picard
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Fidelma Donlon

Date: 11 April 2025

Original language: English

Classification: Public

**Public Redacted Version of Decision on Appeal Against Oral Order of
5 December 2024**

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THE PANEL OF THE COURT OF APPEALS CHAMBER of the Kosovo Specialist Chambers (“Court of Appeals Panel”, “Appeals Panel” or “Panel” and “Specialist Chambers”, respectively),¹ acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 169 of the Rules of Procedure and Evidence (“Rules”), is seised of an appeal filed on 6 February 2025 (“Appeal”) by Mr Kadri Veseli (“Veseli Defence”) and Mr Jakup Krasniqi (“Krasniqi Defence”) (collectively, “the Accused” or “the Defence”),² against the Trial Panel’s oral order of 5 December 2024 (“Impugned Order”).³ The Specialist Prosecutor’s Office (“SPO”) responded on 17 February 2025 (“Response”) that the Appeal should be dismissed.⁴ The Defence replied on 25 February 2025 (“Reply”).⁵

I. BACKGROUND

1. On 25 January 2023, the Trial Panel issued the Order on the Conduct of Proceedings, which, *inter alia*, sets out the procedures governing the presentation of evidence and the questioning of witnesses.⁶

2. On 4 December 2024, in the course of judicial questioning of W04401, the Veseli Defence objected to the Panel’s use of a portion of the transcript of [REDACTED]’s interview with the SPO, on the basis that the SPO no longer intends to call this witness

¹ IA031/F00001, Decision Assigning a Court of Appeals Panel, 28 January 2025 (“Assignment Decision”).

² IA031/F00002, Veseli and Krasniqi Appeal Against First Oral Order of 5 December 2024, 6 February 2025 (“Appeal”).

³ Oral Order on the Veseli Defence continuing objection on the use of an item in judicial questioning, Transcript, 5 December 2024 (redacted), pp. 23435-23437 (“Impugned Order”).

⁴ IA031/F00003, Prosecution response to ‘Veseli and Krasniqi Appeal Against First Oral Order of 5 December 2024’, 17 February 2025 (confidential) (“Response”).

⁵ IA031/F00004, Veseli and Krasniqi Reply to Prosecution Response To ‘Veseli and Krasniqi Appeal Against First Oral Order of 5 December 2024’, 25 February 2025 (confidential) (“Reply”).

⁶ F01226/A01, Annex 1 to Order on the Conduct of Proceedings, 25 January 2023 (“Order on the Conduct of Proceedings”).

to testify.⁷ On 5 December 2024, the Panel issued the Impugned Order dismissing the objection raised by the Veseli Defence.⁸

3. On 12 December 2024, the Accused filed a request for certification to appeal the Impugned Decision.⁹ On 27 January 2025, the Trial Panel certified two issues for appeal (“Certification Decision”), namely:¹⁰

- a) Whether the introduction of witness testimony that has been expressly excluded from the SPO’s case onto the record through judicial questioning improperly and unfairly usurps the role of the SPO (“First Certified Issue”); and,
- b) Whether the [Trial Panel] erred by failing to consider the obvious and unavoidable prejudice which arises out of the Defences’ inability to cross-examine the maker of a witness statement who will not be called as a witness, but whose testimony (or a part thereof) forms part of the record as a result of its use in the course of judicial questions (“Second Certified Issue”).

4. In the Appeal, the Defence submits that the Appeals Panel should overturn the Impugned Order and decide that “the relevant question and answer”, namely the evidence provided by W04401 in relation to [REDACTED]’s statement (“Impugned Evidence”) “may not be relied upon”.¹¹ The Defence further requests the Appeals Panel to convene an oral hearing.¹² The SPO responds that the Appeal should be dismissed. The SPO argues that the Impugned Evidence was lawfully obtained, the questioning of the Trial Panel conformed to Rule 127(3) of the Rules and the Defence suffered no actual prejudice.¹³ The SPO further argues that an oral hearing is not warranted.¹⁴

⁷ Transcript, 4 December 2024, pp. 23431-23432 (redacted).

⁸ Impugned Order, pp. 23435-23437.

⁹ F02777/RED, Public Redacted Version of ‘Veseli and Krasniqi Request for Certification to Appeal First Oral Order of 5 December 2024’, 31 January 2025 (confidential version filed on 12 December 2024).

¹⁰ F02866, Decision on Veseli and Krasniqi Request for Certification to Appeal First Oral Order of 5 December 2024, 27 January 2025 (“Certification Decision”), paras 6, 14-17.

¹¹ Appeal, paras 42, 58. See also Reply, para. 13.

¹² Appeal, para. 57.

¹³ Response, paras 1-24.

¹⁴ Response, para. 26.

II. STANDARD OF REVIEW

5. The Court of Appeals Panel adopts the standard of review for interlocutory appeals established in its first decision and applied subsequently.¹⁵

6. The Panel stresses that decisions concerning trial management issues and the conduct of proceedings are generally treated as discretionary.¹⁶ The Trial Panel's Impugned Order in this case relates to judicial questioning of witnesses under Rule 127(3) of the Rules and it is discretionary in nature. In this regard, the Panel recalls that when challenging a discretionary decision, a party must demonstrate that the lower level panel has committed a discernible error in that the decision is: (i) based on an incorrect interpretation of governing law; (ii) based on a patently incorrect conclusion of fact; or (iii) so unfair or unreasonable as to constitute an abuse of the lower level panel's discretion.¹⁷

III. PRELIMINARY MATTERS

A. TRIAL PANEL'S DECISIONS RELEVANT TO THE APPEAL

7. The Court of Appeals Panel notes, as a preliminary matter, that the Trial Panel issued decisions, after the filing of the Appeal and the Response, that are relevant to some of the submissions raised by the Parties in this case. In that regard, the Panel

¹⁵ KSC-BC-2020-07, IA001/F00005, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, 9 December 2020 ("*Gucati and Haradinaj* Appeal Decision on Gucati's Arrest and Detention"), paras 4-14. See also IA024/F00019, Decision on Defence Appeals against "Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant", 27 December 2022 ("Appeal Decision on Confidential Information Framework").

¹⁶ IA028/ F00011, Public Redacted Version of Decision on Thaçi, Selimi and Krasniqi Appeal against Oral Order on Trial Panel Questioning, 4 July 2023 (confidential version filed on 4 July 2023) ("First Appeal Decision on Trial Panel Questioning"), para. 10; Appeal Decision on Confidential Information Framework, para. 26.

¹⁷ First Appeal Decision on Trial Panel Questioning, para. 10. See also *Gucati and Haradinaj* Appeal Decision on Gucati's Arrest and Detention, para. 14.

recalls that the Appeal was filed on 6 February 2025, the Response was filed on 17 February 2025 and the Reply was filed on 25 February 2025.¹⁸

8. On 16 September 2024, the SPO notified the Panel, the Defence and Victims' Counsel that it no longer intended to rely upon, *inter alia*, [REDACTED]. On 26 September 2024, the Defence for Hashim Thaçi filed a request for the Panel to compel the SPO to call, *inter alia*, [REDACTED]. In a decision dated 18 February 2025, the Trial Panel rejected the Defence's request and authorised the SPO to amend its witness list and to remove [REDACTED].¹⁹ Both Parties nonetheless assumed, in their respective filings, that, in light of the SPO's notification that it no longer intended to rely on [REDACTED], this witness was no longer part of the SPO's case.²⁰

9. The Panel further observes that, in the Appeal, the Defence is referring to its "Joint Defence Request for the Trial Panel to take Measures to Ensure the Appearance of Impartiality of the Proceedings and Avoid Prejudice to the Defence," filed on 13 November 2024,²¹ as still pending.²² The Panel notes however that this motion was dismissed by the Trial Panel in a decision issued on 26 February 2025.²³

¹⁸ See above, fns 2, 4, 5.

¹⁹ F02942/RED, Public Redacted Version of Decision on Thaçi Defence's Request to Compel the Specialist Prosecutor to Call Two Witnesses, 18 February 2025 (confidential version filed on 18 February 2025), paras 2, 3, 26. See also F02576, Prosecution notice of witness changes, 16 September 2024 (confidential), para. 2; F02602/RED, Public Redacted version of 'Thaçi Defence Motion to Compel the Specialist Prosecutor to Call Witnesses [REDACTED]', 10 October 2024 (confidential version filed on 26 September 2024).

²⁰ Appeal, paras 7, 16, 34(b), 37, 49, 53; Response, para. 13.

²¹ F02718, Joint Defence Request for the Trial Panel to take Measures to Ensure the Appearance of Impartiality of the Proceedings and Avoid Prejudice to the Defence, 13 November 2024 (confidential, reclassified as public on 21 November 2024).

²² Appeal, para. 10.

²³ F02965, Decision on Joint Defence Request for the Panel to take Measures to Ensure the Appearance of Impartiality of the Proceedings and Avoid Prejudice to the Defence, 26 February 2025 ("Decision on Defence Request for the Panel to Ensure the Appearance of Impartiality of the Proceedings and Avoid Prejudice to the Defence").

B. SCOPE OF CERTIFIED ISSUES

10. The Court of Appeals Panel recalls that the scope of its review lies strictly within the confines of the issues certified by the lower panel and that it may thus decline to consider arguments of an appellant that go beyond the issues in relation to which certification has been granted.²⁴ Nevertheless, the Panel may consider arguments even if they extend beyond the scope of the appeal as long as they are intrinsically linked to the issue certified for appeal.²⁵

11. The Defence argues that the Trial Panel had, on other previous occasions, used statements of witnesses who no longer formed part or even never formed part of the SPO case,²⁶ and that it repeatedly engages in forms of questioning causing prejudice to the Defence.²⁷ The Defence submits that, as of 30 January 2025, the Trial Panel had spent 84:08:18 hours on judicial questioning. The Defence underlines that this is allegedly more time than both the Veseli Defence (71:31:57 hours) and the Krasniqi Defence (53:41:02 hours). As a result of the Trial Panel's questioning, the Defence alleges that an additional 35:37:56 of questioning by parties was required, only 00:13:58 of which were used by the SPO.²⁸ The Defence submits that the nature and scope of judicial questioning in this case altered the course of the trial, impacted negatively the rights of the Accused,²⁹ and even attracted media interest in Kosovo.³⁰

²⁴ First Appeal Decision on Trial Panel Questioning, para. 11. See also KSC-BC-2020-04, IA004/F00008/RED, Public Redacted Version of Decision on Pjetër Shala's Appeal against Decision on Motion Challenging the Form of the Indictment, 22 February 2022 (confidential version filed on 22 February 2022), para. 10.

²⁵ First Appeal Decision on Trial Panel Questioning, para. 11. See also IA012/F00015/RED, Public Redacted Version of Decision on Defence Appeals Against Decision on Motions Alleging Defects in the Form of the Indictment, 22 August 2022 (confidential version filed on 22 August 2022), para. 165.

²⁶ Appeal, para. 20.

²⁷ Appeal, para. 51.

²⁸ Appeal, para. 10. See also IA031/ F00002/A01, Annex 1 to the Veseli and Krasniqi Appeal Against First Oral Order of 5 December 2024, 6 February 2025 (confidential).

²⁹ Appeal, paras 8-9.

³⁰ Appeal, para. 11. See also IA031/ F00002/A02, Annex 2 to the Veseli and Krasniqi Appeal Against First Oral Order of 5 December 2024, 6 February 2025.

12. The Panel observes that this matter, as well as other matters related to judicial questioning, have in the meantime been dismissed by the Trial Panel.³¹ The Panel further notes that, as raised by the SPO,³² these matters fall outside of the scope of the certified issues. The Panel declines to consider these submissions and formally dismisses them.

13. Further, the Defence makes submissions on the nature of the SPO's case theory regarding the People's Movement for Kosovo ("LPK"), the roles of [REDACTED] and W04401 in the [REDACTED] as well as their importance [REDACTED].³³ In addition, the Defence develops arguments regarding the alleged significance of the questions asked by the Trial Panel for the SPO's case and submits that the Trial Panel's questioning of W04401 on the topic of the connection between the LPK abroad and the Central Staff in Kosovo, specifically as to whether early communiques were published by the LPK abroad, is relevant to demonstrate the existence of a common criminal purpose.³⁴ As noted by the SPO,³⁵ these matters fall outside of the scope of the certified issues. To the extent the references made by the Defence provide context to their arguments concerning the potential significance for the SPO's case of the line of questioning put by the Trial Panel to W04401, the Panel takes these arguments into account. However, the Panel will not address the substance of these submissions.

C. REQUEST FOR ORAL HEARING

14. The Defence requests the Appeals Panel to convene an oral hearing.³⁶ The Defence argues that judicial questioning in this trial is a highly controversial issue, which is the subject of a prior appeal and other filings related to the preservation of

³¹ See above, para. 9. See also Decision on Defence Request for the Panel to Ensure the Appearance of Impartiality of the Proceedings and Avoid Prejudice to the Defence.

³² Response, para. 2 referring to Appeal, paras 8-11.

³³ Appeal, paras 12-15.

³⁴ Appeal, para. 14.

³⁵ Response, para. 4 referring to Appeal, paras 12-15.

³⁶ Appeal, para. 57.

the impartiality of the proceedings. The Defence further submits that it is also an issue which is attracting public scrutiny in Kosovo.³⁷ The SPO responds that, given the discrete nature of the two issues that were certified, an oral hearing would not assist the expeditious resolution of the Appeal.³⁸

15. The Panel recalls that, pursuant to Rule 170(3) of the Rules, interlocutory appeals shall be determined on the basis of written submissions, unless otherwise decided by the Court of Appeals Panel.³⁹ The granting of an oral hearing is therefore a matter for the sole discretion of the Appeals Panel.⁴⁰

16. First, the Panel has declined to address some issues for which the Defence requests an oral hearing having found that these issues fall outside the scope of the appeal.⁴¹ Second, the Panel agrees with the SPO's assertion that the two issues that were certified by the Trial Panel are discrete ones,⁴² and the Panel finds that the wider issues that the Defence argues are of such importance as to warrant a hearing are not under consideration here due to the narrow scope of the certified issues.⁴³ In any event, the Panel considers that it has been provided with sufficiently detailed written submissions to enable it to reach an informed decision on this basis. Consequently, the Panel does not consider that an oral hearing is necessary in the present circumstances and dismisses the Defence's request.

³⁷ Appeal, para. 57.

³⁸ Response, para. 26.

³⁹ See IA009/F00030, Decision on Appeals Against "Decision on Motions Challenging the Jurisdiction of the Specialist Chambers," 23 December 2021 ("Appeal Decision on Jurisdiction"), para. 13.

⁴⁰ Appeal Decision on Jurisdiction, para. 13.

⁴¹ See above, paras 10-13. The Panel refers specifically to the Defence's reference to filings on preservation of the impartiality of the proceedings. The Panel further refers to the Defence's submission that the issues raised in this Appeal are attracting public scrutiny in Kosovo. See Appeal, para. 57.

⁴² Response, paras 2, 26.

⁴³ See above, fn. 41.

D. PUBLIC FILINGS

17. The Court of Appeals Panel recalls that all submissions filed before the Specialist Chambers shall be public unless there are exceptional reasons for keeping them confidential, and that Parties shall file public redacted versions of all non-public submissions filed before the Panel.⁴⁴

18. The Panel notes that the Impugned Order was initially issued as confidential. For this reason and because of a potential risk that confidential information related to an SPO witness might have been inadvertently disclosed, the Panel ordered the Appeal to be reclassified from public to confidential.⁴⁵ Likewise, the Reply initially filed as public was refiled as confidential following a request made by the Court Management Unit to the Defence.

19. The Panel further notes that, although the Response was filed as confidential, the SPO indicated that it would not object to the reclassification of its filing as public.⁴⁶ A public redacted version of the Impugned Order is now available and shows that some limited information still needs to be kept as confidential. As it contains references to confidential information, the Panel finds that the Response cannot be reclassified as public. Therefore, the Panel instructs: (i) the Defence to file a public redacted version of the Appeal and of the Reply and; (ii) the SPO to file a public redacted version of the Response. The Parties are instructed to file public redacted versions of their respective submissions within ten days of receiving notification of

⁴⁴ See e.g. IA008/F00004/RED, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021), paras 8-9. See also KSC-CA-2022-01, F00103, Decision on Gucati Application for Reclassification or Public Redacted Versions of Court of Appeals Panel Decisions, 9 January 2023, para. 2.

⁴⁵ See CRSPD734, Email, Reclassification order regarding IA031 F00002, 11 February 2025 (confidential). The Panel notes that the Defence did not comply with the reclassification order instructing that a public redacted version of the Appeal be filed by 14 February 2025.

⁴⁶ Response, para. 25.

the present Decision and in a manner that is consistent with the redactions applied to the present Decision.

IV. DISCUSSION

A. SCOPE OF THE TRIAL PANEL QUESTIONING

20. The Panel recalls that Rule 127(3) of the Rules places no limitation on the subject matter of the Trial Panel's questions to witnesses and rather stresses that "[a] Judge may at any stage put any question to the witness".⁴⁷ The Panel previously emphasised the power of the Trial Panel to put to witnesses any questions deemed necessary for the clarification of their testimony or the discovery of the truth.⁴⁸ Questions asked by the Judges may include facts and issues not raised by the Parties, and facts beyond those described in the charges.⁴⁹ The Trial Panel is not limited either to questioning witnesses on facts and issues already examined by the Parties.⁵⁰ However, the broad discretionary power of the Trial Panel to question witnesses is not without limit and such questioning is only permitted provided that it does not lead to the apprehension of bias, suffering of prejudice, or otherwise encroach upon the rights of the accused.⁵¹ This interpretation of Rule 127(3) of the Rules is correctly referred to in the Impugned Order⁵² and in the Certification Decision.⁵³

21. The Panel further recalls that in the First Appeal Decision on Trial Panel Questioning, the Court of Appeals Panel confirmed that it was permitted for the Trial Panel to ask questions with reference to out-of-court statements of testifying

⁴⁷ First Appeal Decision on Trial Panel Questioning, para. 29.

⁴⁸ First Appeal Decision on Trial Panel Questioning, para. 32.

⁴⁹ First Appeal Decision on Trial Panel Questioning, para. 32.

⁵⁰ First Appeal Decision on Trial Panel Questioning, para. 32.

⁵¹ First Appeal Decision on Trial Panel Questioning, para. 32. See also ICTR, *Rutaganda v. Prosecutor*, ICTR-96-3-A, Judgement, 26 May 2003 ("*Rutaganda* Appeal Judgement"), para. 111; ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-2360, Decision on judicial questioning, 18 March 2010, paras 40-42.

⁵² Impugned Order, p. 23435, l. 20-25 (private session), p. 23436, l. 1-3 (private session).

⁵³ Certification Decision, para. 13.

witnesses. The Panel noted in particular that the impugned statements had previously been disclosed to the Defence and that the Defence had been notified of all documents the SPO intended to use with the witnesses. The Panel considered that the Defence had reasonable notice and adequate opportunity to prepare for cross-examination.⁵⁴

22. The Panel notes that this specific example is discussed by the Parties and that they draw different conclusions from it. In the view of the Defence, the reference to out-of-court statements of testifying witnesses is not relevant to this Appeal which is about questions which rely upon the out-of-court statements of non-testifying witnesses. The Defence argues that this “distinction is vital [and] the Defence can confront testifying witnesses and hence there is no prejudice in asking questions with reference to their statements”.⁵⁵ In the view of the SPO, the previous decision of the Panel on this matter is relevant,⁵⁶ as it “makes no procedural or forensic difference whether an out-of-court statement was of someone never on the SPO witness list, or someone who was on the list and is no longer being relied upon”.⁵⁷

23. In the Panel’s view, the crux of this Appeal is not whether it was permitted for the Trial Panel to question W04401 by reading into the record the statement of a witness who has been dropped by the SPO; rather it is whether, in doing so, the Trial Panel appeared to be biased, caused prejudice, or otherwise encroached upon the rights of the accused, in accordance with Article 21 of the Law.⁵⁸ In that sense, the Panel agrees with the Defence’s assertion that the issue of prejudice is at the heart of

⁵⁴ First Appeal Decision on Trial Panel Questioning, para. 46.

⁵⁵ See Reply, para. 4. See also Reply, para. 5.

⁵⁶ See Response, para. 9. See also Response, paras 10-11.

⁵⁷ Response, para. 19.

⁵⁸ First Appeal Decision on Trial Panel Questioning, para. 32. The Panel notes that the Defence recalls this definition several times and emphasises that although the First Appeal Decision on Trial Panel Questioning allows for any questions to be asked by the Judges, this does not mean that the Judges’ prerogative is without limits. To the contrary, the broad discretion which applies to judicial questioning is subject to three clear limitations. Namely, that questioning must (a) not lead to the apprehension of bias (b) not cause prejudice and (c) not otherwise encroach upon the rights of the accused. See Appeal, paras 4, 19, 43-44, 54-55.

both certified issues.⁵⁹ The Panel further agrees with the Defence's argument that it makes sense to address the Second Issue before turning to the First Issue.⁶⁰

B. SECOND CERTIFIED ISSUE

1. Submissions of the Parties

24. The Defence interprets the First Appeal Decision on Trial Panel Questioning as meaning that "it is not permissible for judicial questioning to cause any prejudice to any party, irrespective of how minor and/or what additional steps could be taken to mitigate it".⁶¹ In the Defence's view, once a finding of prejudice is made, "that is the end of the matter".⁶² The Defence further argues that the Impugned Order "appears to acknowledge" the existence of prejudice by referring to the possibility of further cross-examining W04401 as a way of eliminating it.⁶³ The Defence submits that the suggestion that it could further cross-examine W04401, as well as the Trial Panel's observation that [REDACTED]'s statement was in the possession of the Defence for a long time, would not mitigate the prejudice "to a sufficient degree to render the impugned conduct fair".⁶⁴

25. In support of the above, the Defence argues that it was prevented from cross-examining [REDACTED] and from testing the reliability, credibility and truthfulness of his statement. The Defence further argues that any comment by W04401 on [REDACTED]'s statement would be no more than impermissible speculation with no evidential value.⁶⁵ The Defence adds that it is left in a worse position than it would have been if [REDACTED]'s statement had been relied upon by the SPO because had

⁵⁹ Appeal, para. 7. See below, para. 46.

⁶⁰ Appeal, para. 7.

⁶¹ Appeal, para. 30. See also Appeal, paras 31, 33.

⁶² Appeal, para. 42.

⁶³ Appeal, para. 32.

⁶⁴ Appeal, para. 41. See also Appeal, paras 19, 34-40. See also Reply, para. 7.

⁶⁵ Appeal, paras 7, 34(a), 35, 39, 40. See also Reply, paras 4-5, 7-8.

this been the case, [REDACTED] would have had a chance to clarify or correct his prior statement as provided by Rule 154(c) of the Rules.⁶⁶

26. In addition, the Defence submits that it was not on notice that [REDACTED]'s statement remained part of the SPO's case.⁶⁷ Since the SPO decided not to rely on [REDACTED], the statement of this witness is inadmissible and the Defence was entitled to prepare its case on the basis that it would not be introduced.⁶⁸ The Defence further submits that the SPO would not have been allowed to put this statement to its witnesses in direct or re-direct examination and it would not be fair for the Trial Panel to be allowed to engage in conduct the SPO is prohibited from engaging in.⁶⁹

27. The SPO concedes that [REDACTED] was removed from the SPO's witness list but argues that this, as such, would not prevent the Trial Panel from putting a proposition to a witness for comment as part of the truth-finding exercise a tribunal of fact is entitled to undertake.⁷⁰

28. Turning to [REDACTED]'s statement, the SPO submits that this statement was never sought for admission onto the trial record.⁷¹ The SPO further argues that the Trial Panel merely quoted [REDACTED]'s statement and that this does not necessarily mean that the Trial Panel intends to rely on it to make any adverse findings of fact. In the SPO's view, the Defence's claim that it was prejudiced reflects a misunderstanding of the fact that [REDACTED]'s statement was relied upon by Judge Mettraux to clarify an aspect of W04401's evidence.⁷² In that regard, the SPO submits that the sole proposition drawn from [REDACTED]'s statement was whether W04401 himself had

⁶⁶ Appeal, para. 36.

⁶⁷ Appeal, paras 7, 34(b), 37, 40, 49. See also Reply, para. 7.

⁶⁸ Appeal, paras 17, 37, 40, 48-49.

⁶⁹ Appeal, para. 38. See also Reply, para. 5.

⁷⁰ Response, paras 11, 18.

⁷¹ Response, paras 12, 21-22.

⁷² Response, para. 13.

contact with the LPK abroad in 1993-1994.⁷³ In addition, W04401 confirmed his response about foreign contact with LPK later on, a second time, without reference to any statement, and a third time when confronted with Rexhep Selimi's interview with the SPO.⁷⁴

29. The SPO further argues that the Defence had sufficient notice of [REDACTED]'s statement to prepare, as a result of advance disclosure.⁷⁵ The SPO adds that following the Impugned Order, the Defence had the opportunity to revisit the topic during their further cross-examination of W04401, but did not do so. In these circumstances, the SPO submits that the Defence's argument of "irreparable prejudice" is unsustainable.⁷⁶

2. Assessment of the Court of Appeals Panel

30. At the outset, the Panel disagrees with the Defence's argument that once a finding of prejudice is made, "that is the end of the matter".⁷⁷ The Panel rather recalls the general principle that any finding of a violation of a person's rights, entails the provision of an effective remedy.⁷⁸ The nature and form of the remedy should be proportional to the gravity of harm suffered.⁷⁹

31. The Panel further disagrees with the Defence's allegation that the Impugned Order "appears to acknowledge" the existence of prejudice by referring to the

⁷³ Response, para. 14.

⁷⁴ Response, para. 15.

⁷⁵ Response, para. 9. See also Response, para. 16.

⁷⁶ Response, para. 17.

⁷⁷ Appeal, para. 42.

⁷⁸ See e.g. ICTR, *Prosecutor v. Nyiramasuhuko et al.*, ICTR-98-42-A, Judgement, 14 December 2015 ("Nyiramasuhuko et al. Appeal Judgement"), para. 391. See also ICTR, *Gatete v. Prosecutor*, ICTR-00-61-A, Judgement, 9 October 2012, para. 286; ICTR, *Kajelijeli v. Prosecutor*, ICTR-98-44A-A, Judgement, 23 May 2005, para. 255. See also International Covenant on Civil and Political Rights, General Assembly Resolution 2200 A (XXI), UN Doc. A/RES/21/2200, 16 December 1966, entered into force on 23 March 1976, Article 2(3)(a).

⁷⁹ *Nyiramasuhuko et al.* Appeal Judgement, para. 391.

possibility of further cross-examining W04401 as a way of eliminating it.⁸⁰ In the Impugned Order, the Trial Panel clearly found that there was no prejudice caused to the Accused.⁸¹ In support of its finding that no prejudice arose to the Defence or the Accused's rights, the Trial Panel observed that: (i) the Specialist Chambers' legal framework, as interpreted by the Court of Appeals Panel, places no limitation on the subject matter of the Panel's questions to the witnesses; (ii) in accordance with the Order on the Conduct of the Proceedings, the SPO has appropriately given notice to the Parties and participants about its intention not to call [REDACTED] to testify; (iii) [REDACTED]'s interview had been in the possession of the Defence for a long time and the Defence is therefore acquainted with it; and (iv) the Defence was in a position to conduct further cross-examination of W04401 on issues directly arising from the Panel's use of [REDACTED]'s interview.⁸²

32. The Panel considers that the Trial Panel's reference to the possibility of further cross-examining W04401 does not suggest that this would overcome any prejudice suffered by the Defence,⁸³ but rather suggests that the possibility of further cross-examining W04401 would prevent the occurrence of any prejudice in the first place. This conforms to the practice adopted by the Trial Panel in the Order on the Conduct of Proceedings that specifically foresees the right to re-examine a witness on new matters raised during the Trial Panel's questioning of a witness, as a *safeguard against any prejudice* to the Parties.⁸⁴

33. The Panel recalls that when an accused asserts a violation of his fair trial rights on appeal, he must demonstrate that he has suffered actual prejudice from the violation.⁸⁵ In light of this, the Panel will first consider the Defence's arguments that

⁸⁰ Appeal, para. 32.

⁸¹ Impugned Order, pp. 23436-23437.

⁸² Certification Decision, para. 12.

⁸³ Appeal, para. 41.

⁸⁴ Order on the Conduct of Proceedings, para. 112.

⁸⁵ First Appeal Decision on Trial Panel Questioning, para. 51.

by referring to [REDACTED]'s statement despite the fact that he was no longer on the SPO witness list, the Trial Panel deprived the Defence of the opportunity to cross-examine [REDACTED] and for [REDACTED] himself to clarify or correct the prior statement.⁸⁶ The Panel agrees with the Defence's suggestion that further examination of W04401 would not have allowed it to test the reliability, credibility and truthfulness of [REDACTED]'s statement and that any comment by W04401 on [REDACTED]'s statement would be speculative.⁸⁷ In addition, the Panel acknowledges that if [REDACTED] had been called by the SPO, he would have had a chance to clarify or correct his prior statement as a result of the requirements under Rule 154(c) of the Rules.⁸⁸ Notwithstanding the above, for the reasons developed below, the Panel is not convinced that through these arguments, the Defence demonstrates that it suffered actual prejudice from the judicial questioning of W04401.

34. In that regard, the Panel observes that when asked by Judge Mettraux whether he was in contact with the LPK abroad, W04401 said "no".⁸⁹ Following this response, Judge Mettraux confronted W04401 with the statement of [REDACTED] in which the latter said that W04401 as well as other individuals "were the direct link or communication with the LPK abroad".⁹⁰ W04401 then conceded that he was in contact with three individuals abroad and that these individuals were members of the LPK.⁹¹ Judge Mettraux further confronted W04401 with Exhibit 761.10 where Rexhep Selimi, during an interview with the SPO said that "the only person that had contacts with people abroad and the LPK in Switzerland was him", talking about W04401. W04401 responded "no, it's not true".⁹²

⁸⁶ Appeal, paras 7, 19, 34-42. See also Reply, paras 4-5, 7-8.

⁸⁷ Appeal, paras 34(a), 39, 40.

⁸⁸ Appeal, para. 36.

⁸⁹ Transcript, 4 December 2024, p. 23411, l. 10-13.

⁹⁰ Transcript, 4 December 2024, p. 23412, l. 10-15.

⁹¹ Transcript, 4 December 2024, p. 23412, l. 21-25, p. 23413, l. 13-14.

⁹² Transcript, 4 December 2024, p. 23414, l. 4 to p. 23415, l. 9.

35. It is not the function of the Panel in this Decision to assess the evidentiary value of the information provided by W04401. However, a mere reading of the relevant transcript clearly shows that what was tested by the Trial Panel was the credibility of W04401 himself, not that of [REDACTED]. The evidence provided by W04401 pertained to his own knowledge and own alleged role regarding contacts with the LPK abroad. In this specific context, the relevance of questioning [REDACTED] on his own credibility is unclear and the Defence fails to demonstrate that the inability to question [REDACTED] on W04401's knowledge and alleged connection with the LPK abroad caused prejudice to the Accused. The Panel further notes that, as expressly recalled by the Trial Panel during the hearings,⁹³ further questioning of W04401 was available to the Defence but it did not exercise this right.

36. Furthermore, the reference to the possibility that [REDACTED] would have had to clarify or correct his prior statement on this very specific topic if his testimony had been relied upon by the SPO,⁹⁴ is speculative. The Panel notes the Defence's assertion that it was "left in a worse position than it would be if [REDACTED]'s statement had been relied on by the SPO".⁹⁵ However, the Panel recalls that questioning by the Parties and judicial questioning are both expressly foreseen by the legal framework of the Specialist Chambers and governed by different provisions which necessarily entail that the Defence is placed in a different position depending on whether a witness is questioned by the other Party or by the Judges. This as such cannot be constitutive of prejudice.

37. The same reasoning as above applies to the Defence's argument that it would not be fair for the Trial Panel to be allowed to engage in conduct the SPO is prohibited

⁹³ Transcript, 4 December 2024, p. 23410, l. 6-7 (Presiding Judge Smith: "We'll continue, and you can, of course, delve into that more deeply on your follow-up questions if you wish.").

⁹⁴ Appeal, para. 36.

⁹⁵ Appeal, para. 36.

from engaging in.⁹⁶ The Panel recalls that a Trial Panel is not bound by Rule 143(3) of the Rules, which applies to the cross-examination of witnesses,⁹⁷ or to any other rules governing the conduct of the Parties during trial. Instead, the Trial Panel's procedure for questioning witnesses, is governed by Rules 127(3) of the Rules. The Panel recalls the Trial Panel's broad powers under the Rules in managing the presentation of evidence and questioning of witnesses in order to make them "effective for the ascertainment of the truth",⁹⁸ and the Trial Panel's responsibility in making factual determinations regarding the relevance, credibility and reliability of testimony.⁹⁹ In contrast, the SPO shall have the responsibility to investigate and prosecute persons responsible for the crimes falling within the jurisdiction of the Specialist Chambers.¹⁰⁰ Therefore, the Defence's argument is dismissed.

38. Turning to the argument that [REDACTED]'s statement is inadmissible and that the Defence was entitled to prepare its case on the basis that [REDACTED]'s statement would not be introduced,¹⁰¹ the Panel notes first that [REDACTED]'s statement was not admitted as an exhibit in this case, and the evidence in the transcript remains that of W04401 alone. Second, the Panel recalls that the SPO obtained authorisation to amend its witness list and to remove [REDACTED] from this list in a decision issued by the Trial Panel, after the filing of the Appeal, on 18 February 2025.¹⁰² The Panel agrees with the Defence's assertion that it was entitled to assume that [REDACTED]'s statements would no longer form part of the SPO's case.¹⁰³ Nonetheless, in light of the specific circumstances of this case, and for reasons set out

⁹⁶ Appeal, paras 37-38. See also Reply, para. 5.

⁹⁷ See First Appeal Decision on Trial Panel Questioning, para. 32.

⁹⁸ Rule 143(4)(a) of the Rules.

⁹⁹ Rule 139 of the Rules. See also First Appeal Decision on Trial Panel Questioning, para. 34.

¹⁰⁰ Article 35 of the Law.

¹⁰¹ Appeal, paras 7, 34(b), 37, 40.

¹⁰² See above, para. 8.

¹⁰³ Appeal, paras 16, 34(b), 49. See also para. 8 above. Although the decision of the Trial Panel was issued after the filing of the Appeal, the SPO had, on 16 September 2024, notified the Defence of its intention to remove [REDACTED] from its witness list.

below, the Panel is not convinced that the Trial Panel's questioning was prejudicial to the Defence because of the alleged denial of the Defence to adequate time and facilities to prepare for the use of [REDACTED]'s statement in Court.¹⁰⁴

39. In the Panel's view, the fact that the Defence was entitled to assume that [REDACTED]'s statements would no longer form part of the SPO's case should be considered in the context of other factors such as the fact that [REDACTED]'s statement had been in the possession of the Defence for a long time,¹⁰⁵ and the fact that this same interview was also used by the Defence.¹⁰⁶ The Panel further underlines that where the material concerns already known witnesses, the Defence is not presented with a new aspect of the SPO case.¹⁰⁷

40. In conclusion, the Panel finds that the Defence fails to demonstrate that the Trial Panel "erred by failing to consider the obvious and unavoidable prejudice which arises out of the Defences' inability to cross-examine the maker of a witness statement who will not be called as a witness, but whose testimony (or a part thereof) forms part of the record as a result of its use in the course of judicial questions".¹⁰⁸ Therefore, the Panel dismisses the Second Certified Issue of the Appeal.

C. FIRST CERTIFIED ISSUE

1. Submissions of the Parties

41. The Defence argues that by introducing inculpatory evidence onto the record in the form of an inadmissible witness statement, the Trial Panel is usurping the role

¹⁰⁴ Appeal, para. 34(b).

¹⁰⁵ Certification Decision, para. 12.

¹⁰⁶ Transcript, 25 January 2024, pp. 11817-11818 (private session).

¹⁰⁷ IA019/F00006, Decision on Thaçi's Appeal against "Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures", 12 July 2022, para. 22.

¹⁰⁸ See above, para. 3(b).

of the SPO that is responsible for investigations and prosecutions, and therefore creating a clear apprehension of bias.¹⁰⁹

42. The Defence submits the Trial Panel's questions were inculpatory, targeted at bolstering the SPO case on a contested issue or at undermining an exculpatory answer given by the live witness and that this is an abuse of discretion.¹¹⁰ Furthermore, the Defence argues that by introducing the Impugned Evidence through judicial questioning, the Trial Panel disregarded relevant applicable rules and undermined the basic principle that evidence should be produced with proper notice and in the presence of the Accused with a view to adversarial argument.¹¹¹

43. The SPO repeats and emphasises that [REDACTED]'s statement has not been formally admitted into the trial record.¹¹²

44. The SPO submits that the Court of Appeals Panel is not called upon to decide if what transpired on 4 December 2024 gives rise to an appearance of bias.¹¹³ In any event, the SPO argues that the questioning of the Trial Panel did not usurp the role of the SPO considering that: (i) the Trial Panel is vested with the responsibility to resolve any inconsistencies that may arise within and/or amongst witnesses' testimonies; (ii) Rule 127(3) of the Rules affords the Trial Panel broad discretion to ask questions on any issue; and (iii) the prerogative of the SPO to call (or not) witnesses it deems necessary to prove its case has not been infringed in any objective way in these proceedings.¹¹⁴

¹⁰⁹ Appeal, paras 43-48, 50, 54-55. See also Reply, paras 9, 11-12.

¹¹⁰ Appeal, para. 52; Reply, para. 6.

¹¹¹ Appeal, para. 53. The Defence also submits that the First Issue is clearly distinguishable from those raised on the First Appeal Decision on Trial Panel Questioning. See Appeal, para. 56.

¹¹² Response, paras 21-22.

¹¹³ Response, para. 5.

¹¹⁴ Response, para. 23.

45. The Defence replies that the Response wrongly places emphasis on the substance of the answers provided by W04401 instead of considering the nature of the judicial questioning that clearly shows that the Judge of the Trial Panel adopted the conduct of a prosecutor.¹¹⁵

2. Assessment of the Court of Appeals Panel

46. At the outset, the Panel recalls that the issues of apprehension of bias, prejudice, and rights of the Accused are at the heart of this Appeal,¹¹⁶ and for this reason, some of the arguments raised by the Defence with regard to the First Certified Issue largely overlap or, are repetitive of the ones already addressed in relation to the Second Certified Issue. In relation to these arguments, the Panel will not repeat its assessment and refers to its previous findings.¹¹⁷ The Panel will limit its assessment of the First Certified Issue to arguments related to whether the introduction of witness testimony, which has been expressly excluded from the SPO's case onto the record through judicial questioning, improperly and unfairly usurps the role of the SPO.

47. Contrary to the SPO's assertion, the Panel finds that the First Certified Issue requiring the Panel to determine whether, by introducing the Impugned Evidence onto the record, the Trial Panel "improperly and unfairly usurps the role of the SPO",¹¹⁸ is an allegation of appearance of bias.¹¹⁹ In that regard, the Panel recalls that

¹¹⁵ Reply, para. 6.

¹¹⁶ See above, para. 23.

¹¹⁷ The Panel refers to arguments that (i) the Trial Panel miss-read the First Appeal Decision on Trial Panel Questioning (Appeal, paras 44-45); (ii) the statement of [REDACTED] is inadmissible (Appeal, para. 48); (iii) the use of the statement of [REDACTED] in the course of judicial questioning infringed the Accused's right to prepare his case (Appeal, para. 49); and (iv) the Trial Panel cannot be allowed to engage in conduct the SPO is prohibited from engaging in (Appeal, para. 54). The Panel notes that the SPO is also raising that the Defence repeats some arguments across both issues. See Response, para. 6.

¹¹⁸ See above, para. 3(a).

¹¹⁹ Response, para. 5.

the Accused are entitled, *inter alia*, to a fair and public hearing by independent and impartial Judges.¹²⁰

48. The Panel further recalls that the Specialist Chambers' Judges' obligation to be and remain impartial is laid down in the Law,¹²¹ and the procedure setting out the circumstances in which Judges should recuse themselves or be disqualified is provided for by Rule 20 of the Rules.¹²²

49. A Judge should not only be subjectively free from bias, but also there should be nothing in the surrounding circumstances which objectively gives rise to an appearance of bias. There is an unacceptable appearance of bias if "the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias".¹²³ With regard to the test of the "reasonable observer", the ICTY Appeals Chamber held that:

[T]he reasonable person must be an informed person, with knowledge of all the relevant circumstances, including the traditions of integrity and impartiality that form a part of the background and

¹²⁰ Article 21 of the Law (on the Rights of the Accused). See also Article 3(2) of the Law and Article 6(1) of the European Convention on Human Rights providing that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

¹²¹ Article 1(2) of the Law (on the Scope and Purpose of the Law, which provides the Specialist Chambers shall "ensure secure, independent, impartial, fair and efficient criminal proceedings"); Article 27(1) of the Law (on the Qualifications of the Specialist Chambers Judges, which provides "The Specialist Chambers Judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective states for appointment to the highest judicial offices"); Article 36 of the Law (on Solemn Declaration, which provides Judges shall make a solemn declaration that they "will exercise their functions independently, impartially and conscientiously"); Article 40(2) of the Law (on The Powers and Functions of the Trial Panel, which provides "The Trial Panel shall ensure that a trial is fair and expeditious [...] It may give directions for the conduct of fair and impartial proceedings and in accordance with the Rules of Procedure and Evidence"). See also KSC-BD-01/Rev1/2023, Code of Judicial Ethics for Judges Appointed to the Roster of International Judges of the Kosovo Specialist Chambers (adopted on 14 March 2017 amended on 24 March 2023), and Article 4(1) requiring the Judges to exercise their functions impartially and ensure the appearance of impartiality.

¹²² Rule 20 of the Rules on the Recusal or Disqualification of Judges.

¹²³ ICTY, *Prosecutor v. Hadžihasanović and Kubura*, IT-01-47-A, Judgement, 22 April 2008, para. 78; *Rutaganda Appeal Judgement*, para. 39; ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-A, Judgment, 1 June 2001 ("Akayesu Appeal Judgement"), para. 91; ICTY, *Prosecutor v. Furundžija*, IT-95-17/1-A, Judgement, 21 July 2000 ("Furundžija Appeal Judgement"), paras 196-197.

apprised also of the fact that impartiality is one of the duties that Judges swear to uphold.¹²⁴

50. Judges enjoy a strong presumption of impartiality and there is a high threshold to reach in order to rebut this presumption.¹²⁵ The Trial Panel is made up of professional Judges who are qualified to assess the credibility and probative value of witness testimony, and to consider what weight, if any, to afford to it.¹²⁶ In the context of the present Decision, it is not the role of the Appeals Panel to assess whether the Impugned Evidence was inculpatory.¹²⁷ In any event, assuming that it was, this would not, in itself, demonstrate that the Judges appear to be biased since, as underlined by the Defence, the assessment of the Panel should not focus on the substance of the answers provided by W04401 but rather on the nature of the judicial questioning.¹²⁸

51. To conduct this assessment, the Panel will place the allegations of bias identified by the Defence in their proper context as it appears from the trial records and will then examine these allegations of bias in the light of the test of a reasonable observer.¹²⁹

52. The Panel recalls that when asked by Judge Mettraux whether he was in contact with the LPK abroad, W04401 said “no”.¹³⁰ Following this response, Judge Mettraux read to W04401 an abstract of [REDACTED]’s statement in which the latter said that W04401 as well as other individuals “were the direct link or communication with the LPK abroad”.¹³¹ Judge Mettraux then asked: “So I’ll ask my question again. Did you,

¹²⁴ *Rutaganda* Appeal Judgement, para. 40; *Furundžija* Appeal Judgement, para. 190.

¹²⁵ See KSC-BC-2020-07, F00272, Decision on the Application for Recusal or Disqualification, 6 August 2021, paras 31-32 and references therein.

¹²⁶ First Appeal Decision on Trial Panel Questioning, para. 53.

¹²⁷ See above, para. 31.

¹²⁸ Reply, para. 6.

¹²⁹ The Panel notes that a similar approach was adopted in *Rutaganda* Appeal Judgement, para. 47 and *Akayesu* Appeal Judgement, para. 316.

¹³⁰ Transcript, 4 December 2024, p. 23411, l. 10-13.

¹³¹ Transcript, 4 December 2024, p. 23412, l. 10-15.

in those early years, 1993, 1994, and onwards, have connections with the LPK?"¹³² W04401 responded that he was in contact with three individuals – that he named – abroad and that these individuals were members of the LPK.¹³³

53. Judge Mettraux further told the witness about a statement made by Rexhep Selimi according to whom W04401 had contacts with the LPK abroad and asked: "Now, do you confirm during the time, 1994, 1995, 1996, 1997, you had contacts, including abroad, with LPK members; yes or no?"¹³⁴ The witness repeated that he was only in contact with the three individuals he previously mentioned.¹³⁵ Judge Mettraux then read to W04401 the relevant portion of the statement made by Rexhep Selimi during an interview with the SPO where he said that "the only person that had contacts with people abroad and the LPK in Switzerland was him", talking about W04401.¹³⁶ Judge Mettraux further asked: "Now, is what Mr. Selimi asserts here true according to you, sir?"¹³⁷ W04401 responded "No, it's not true".¹³⁸

54. The Panel finds that it is correct to say that Judge Mettraux extensively questioned W04401 on the subject of his links with the LPK abroad resulting in the witness' partial admission that he had such links. It is also apparent that the witness had not voluntarily addressed the question of his own contact with the LPK abroad and only did so in response to the Judge's question. This only shows, however, that the Judge was testing the credibility of the witness, including by confronting the witness's testimony in court with written statements.

55. The Panel further notes that the question related to the Central Staff's contacts with the LPK abroad was already addressed during the examination in chief and the

¹³² Transcript, 4 December 2024, p. 23412, l. 19-20.

¹³³ Transcript, 4 December 2024, p. 23412, l. 21-25, p. 23413, l. 13-14.

¹³⁴ Transcript, 4 December 2024, p. 23413, l. 11-12.

¹³⁵ Transcript, 4 December 2024, p. 23413, l. 13-14.

¹³⁶ Transcript, 4 December 2024, p. 23413, l. 11, p. 23414, l. 25.

¹³⁷ Transcript, 4 December 2024, p. 23415, l. 8.

¹³⁸ Transcript, 4 December 2024, p. 23415, l. 9.

cross-examination of the witness through the angle of the publication of early communiques by the LPK abroad.¹³⁹ In that regard, the Panel notes that the witness's testimony on whether he personally knew if these communiques were written abroad and by whom was somehow unclear.¹⁴⁰ Before Judge Mettraux questioned the witness on this matter, Judge Barthe also asked W04401 whether the communiques were written abroad and by whom.¹⁴¹

56. Having been placed in their context, the Appeals Panel is of the view that those questions, which served to clarify the witness's testimony without obviously furthering the SPO's case or suggesting answers to the witness, would not lead a reasonable observer, properly informed, to apprehend bias. Recalling that the appropriate manner of questioning a witness will necessarily depend on the circumstances of that witness's testimony,¹⁴² the Trial Panel's questions do not, on their face, demonstrate any bias or partiality, or the appearance thereof. Accordingly, the Defence fails to overcome the high threshold of rebutting the presumption of the Judge's impartiality.¹⁴³

57. In conclusion, the Panel considers that the arguments put forward by the Defence in support of the submission that in questioning W04401 in relation to [REDACTED]'s statement, the Trial Panel "improperly and unfairly usurped the role

¹³⁹ See above, para. 13. See also Transcript, 28 November 2024, pp. 22975, 23002; Transcript, 2 December 2024, pp. 23081, 23136.

¹⁴⁰ During his cross-examination, the witness was reminded that he previously told the SPO that the communiques were written abroad but he did not know who wrote them. The witness then declared that he did not know whether the communiques were written abroad and that this was a speculation. See Transcript, 2 December 2024, p. 23136, l. 10 – p. 23137, l. 2.

¹⁴¹ Transcript, 4 December 2024, pp. 23346-23347, 23353-23356.

¹⁴² First Appeal Decision on Trial Panel Questioning, para. 52.

¹⁴³ KSC-CA-2023-02, F00038/RED, Public Redacted Version of Appeal Judgment, 14 December 2023 (confidential version filed on 14 December 2023), para. 40; IA014/F00008/RED, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, 31 March 2022 (confidential version filed on 31 March 2022), para. 34.

of the SPO”,¹⁴⁴ are unfounded. Therefore, the Panel dismisses the First Certified Issue of the Appeal.

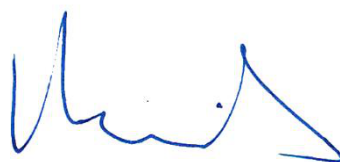
V. DISPOSITION

58. For these reasons, the Court of Appeals Panel:

DENIES the Appeal;

INSTRUCTS the Defence to submit a public redacted version of the Appeal (IA031/F00002) and the Reply (IA031/F00004) within ten days of receiving notification of the present Decision and in a manner that is consistent with the redactions applied to the present Decision; and

INSTRUCTS the SPO to submit a public redacted version of the Response (IA031/F00003) within ten days of receiving notification of the present Decision and in a manner that is consistent with the redactions applied to the present Decision.



**Judge Michèle Picard,
Presiding Judge**

Dated this Friday, 11 April 2025

At The Hague, the Netherlands

¹⁴⁴ See above, para. 3(a).