



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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Prosecution response to 'Veseli Defence Request for Certification to Appeal Decisions F03070 and F03071' (F03096)

Specialist Prosecutor's Office

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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 consideration 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 ISSUE IS NOT APPEALABLE

2. The Request fails to develop a specific, discrete, or identifiable appealable issue. Rather, it amounts to a mere disagreement with the Decisions, and, in particular, the Panel's assessment of probative value *vis-à-vis* prejudicial effect in respect of the Admitted Items.⁸ Notably, the Panel has previously rejected a similar Defence request for leave to appeal in these circumstances.⁹

¹ Veseli Defence Request for Certification to Appeal Decisions F03070 and F03071, KSC-BC-2020-06/F03096, 8 April 2025 ('Request').

² Request, KSC-BC-2020-06/F03096, paras 2-3 (defining the 'Issue').

³ The applicable law has been set out in prior decisions. *See e.g.* Decision on the Taçi 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 refer 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 Decision on Prosecution Request to Amend the Exhibit List and Admit Items, KSC-BC-2020-06/F03071, 1 April 2025 ('Liridon Kosova Decision'); Decision on Prosecution Motion for Admission of Pashtrik Zone Documents, KSC-BC-2020-06/F03070, 1 April 2025 ('Pashtrik Zone Decision'; collectively with the Liridon Kosova Decision, 'Decisions').

⁸ 'Admitted Items' refers collectively to the Exhibits admitted in the Decisions.

⁹ 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, paras 20-21.

3. The Defence's submissions are contradictory. The Defence first argues that the Panel engaged in 'impermissible burden shifting' in its assessment of the probative value of the Admitted Items *vis-à-vis* any prejudicial effect, before arguing that the Panel failed to engage in any such assessment altogether.¹⁰ Both submissions distort the Panel's reasoning.

4. There is no basis to suggest that the Panel reversed the burden of proof in deciding that the probative value of the Admitted Items was not outweighed by any prejudice to the Accused.¹¹ In this regard, the Defence ignores that the Panel expressly acknowledged that the Defence may choose to challenge the content of the Admitted Items, but 'bears no onus to do so'.¹² Further, in the Liridon Kosova Decision, the Panel indeed referred to its findings in paragraphs preceding this assessment and applied the correct legal test.¹³ This is equally true of the Pashtrik Zone Decision, where the Panel's assessment was preceded by lengthy discussion of the relevance and authenticity of the tendered items.

5. At no stage did the Panel suggest that limiting the weight afforded to an item may 'cure' any prejudice caused by admission.¹⁴ This is a misstatement of the Panel's reasoning, which instead correctly reflects the distinction between assessments of admissibility and ultimate weight.¹⁵

6. Finally, Defence arguments alleging late notice in respect of the addition of Liridon Kosova to the exhibit list misrepresent the record.¹⁶ As the Defence has previously acknowledged, all four volumes of Liridon Kosova were disclosed by the

¹⁰ Request, KSC-BC-2020-06/F03096, paras 15, 21-22.

¹¹ *Contra* Request, KSC-BC-2020-06/F03096, para.15.

¹² Liridon Kosova Decision, KSC-BC-2020-06/F03071, para.19.

¹³ Liridon Kosova Decision, KSC-BC-2020-06/F03071, paras 13, 19.

¹⁴ *Contra* Request, KSC-BC-2020-06/F03096, para.17.

¹⁵ Pashtrik Zone Decision, KSC-BC-2020-06/F03070, para.14; Liridon Kosova Decision, KSC-BC-2020-06/F03071, para.18.

¹⁶ Request, KSC-BC-2020-06/F03096, para.19.

SPO in 2021 and 2022.¹⁷ Volume 1 has long been on the exhibit list, and as acknowledged by the Panel,¹⁸ the SPO does not seek to rely on the contents of the cover pages of the remaining volumes admitted in the Liridon Kosova Decision.¹⁹ Similarly, the Emrush XHEMAJLI article was added to the exhibit list solely for the purpose of supporting the authenticity of Liridon Kosova Volume 1. Therefore, no prejudice arises from the addition of these items to the exhibit list, which in any case was expressly considered by the Panel prior to their admission.²⁰

B. THE ISSUE WOULD HAVE NO IMPACT JUSTIFYING CERTIFICATION

7. The Defence fails to demonstrate that the Issue significantly affects the fair and expeditious conduct of the proceedings, or that immediate resolution by the Court of Appeals may materially advance them. The Panel's admission of the Admitted Items into evidence is without prejudice to any future assessment of the weight, if any, to be assigned. Any consideration of the impact on the proceedings or its outcome caused by the admission is hypothetical, speculative, and premature, and in any event, could be remedied, as necessary and appropriate, on any appeal against a final judgment in this case.²¹

III. RELIEF REQUESTED

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

¹⁷ Veseli Defence Response to Prosecution Request to Amend the Exhibit List and Admit Items (F02827), KSC-BC-2020-06/F02857, 23 January 2025, para.13. *See also* Liridon Kosova Decision, KSC-BC-2020-06/F03071, para.14.

¹⁸ Liridon Kosova Decision, KSC-BC-2020-06/F03071, para.14.

¹⁹ Liridon Kosova Decision, KSC-BC-2020-06/F03071, para.14.

²⁰ Liridon Kosova Decision, KSC-BC-2020-06/F03071, para.14.

²¹ *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.

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Tuesday, 22 April 2025

At The Hague, the Netherlands.