

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: Dr Fidelma Donlon

Filing Participant: Counsel for Hashim Thaçi
Counsel for Kadri Veseli
Counsel for Rexhep Selimi
Counsel for Jakup Krasniqi

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Classification: Public

**Public Redacted Version of Joint Defence Request for Partial Reconsideration
of F01864**

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I. INTRODUCTION

1. Pursuant to Rule 79 of the Rules,¹ the Defence requests the Trial Panel to reconsider its Decision on Prosecution Second Motion for Admission of Evidence pursuant to Rule 155 ("Decision")² insofar as it found the evidence of W04239 proposed by the SPO ("W04239's evidence")³ admissible pursuant to Rule 155 ("Relevant Part of the Decision").⁴
2. The Trial Panel issued its Decision regarding W04239's evidence on the understanding that [REDACTED], listed by the SPO as the only corroborative witness,⁵ would be available for cross-examination.⁶ At a much later stage of the trial the SPO changed [REDACTED] mode of testimony and tendered his evidence under Rule 155.⁷ This constitutes a material change in circumstances that arose after the Decision had been made. Accordingly, reconsideration is necessary to avoid injustice and to guarantee a fair trial for the Accused.

II. APPLICABLE LAW

3. Rule 79 provides in relevant part:

In exceptional circumstances and where a clear error of reasoning has been demonstrated or where reconsideration is necessary to avoid injustice, a Panel may, upon request by a Party, [...] reconsider its own decisions.

¹ 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, unless otherwise specified.

² KSC-BC-2020-06/F01864, Decision on Prosecution Second Motion for Admission of Evidence pursuant to Rule 155, 17 October 2023 ("Decision").

³ KSC-BC-2020-06/F01691/A04, Annex 4 to Prosecution second motion for admission of evidence pursuant to Rule 155 with confidential Annexes 1-8, 20 July 2023 (in particular SITF00370905- 00370916 RED (pp.1-6)).

⁴ Decision, paras 53-64.

⁵ [REDACTED].

⁶ Decision, paras 59 and 63.

⁷ [REDACTED].

4. The Trial Panel previously found that the party seeking reconsideration bears the burden of showing a clear error of Trial Panel's reasoning or that reconsideration is necessary in order to avoid injustice.⁸ Further, the Trial Panel determined that "new facts and arguments arising after the impugned order was rendered may be relevant to deciding whether the relevant threshold (a clear error of reasoning or the need to avoid injustice) has been met" and that the party needs to establish justification for reconsideration following the appearance of such new facts or arguments.⁹

III. SUBMISSIONS

5. The Trial Panel has previously found when admitting evidence pursuant to Rule 155 that one of the ways to ensure that proceedings remain fair to the Accused is to consider the possibility, and the extent thereof, for the Defence to cross-examine other witnesses who will testify about the same or related events.¹⁰
6. Moreover, the Trial Panel articulated in its Decision that a failure of the party of the SPO to call "corroborating" witness who was relied upon by the Panel to admit a Rule 155 statement may lead to a request for reconsideration of such decision¹¹ and that if the requirements of the Rule 79 are met the Defence may seek reconsideration of the admission decision.¹²
7. The SPO referred to [REDACTED] as the only corroborative witness, who, at the time of filing its Motion, was available for cross-examination.¹³ The Trial Panel explicitly acknowledged the pertinence of [REDACTED] evidence to W04239's

⁸ KSC-BC-2020-06/F01448, Decision on Victims' Counsel's Request for Reconsideration of Trial Panel II's "Order on the Disclosure of Application Forms Pertaining to Dual Status Witnesses", 12 April 2023, ("Decision on Reconsideration Request") para. 8.

⁹ Decision on Reconsideration Request, para. 10.

¹⁰ Decision, para. 10.

¹¹ Decision, para. 12.

¹² Decision, para. 11.

¹³ [REDACTED].

treatment during their alleged detention,¹⁴ and further found that the opportunity to cross-examine [REDACTED] will at least to some extent allow the Defence to exercise its right to test W04239's allegation regarding mistreatment.¹⁵ Indeed this factor was specifically noted by the Trial Panel in making its determination that the probative value of admitting W04239's evidence was not outweighed by its prejudicial effect.¹⁶

8. Although the Trial Panel highlighted both the possibility for reconsideration and that "the absence of a fair opportunity for the Defence to confront evidence tendered through Rule 155 is a factor affecting the weight which the Panel will give to such evidence"¹⁷ only the former would sufficiently protect the Defence from the prejudice occasioned by the admission of [REDACTED] evidence under Rule 155.
9. The SPO notified the Defence for the first time that it intended to submit the evidence of [REDACTED] in writing on [REDACTED], almost a year and a half after the Decision was issued.¹⁸ The SPO proceeded to submit [REDACTED] evidence on [REDACTED]¹⁹ which was subsequently admitted into evidence by the Trial Panel.²⁰
10. There is a clear inconsistency between the accounts of [REDACTED] and W04239, specifically regarding [REDACTED].²¹ Furthermore, [REDACTED] contradictory account relating W04239's alleged mistreatment in [REDACTED] is based on hearsay and goes to reliability of both W04239 and [REDACTED]. As

¹⁴ Decision, para. 59.

¹⁵ Decision, para. 59.

¹⁶ Decision, para. 61.

¹⁷ Decision, para .11.

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ SPOE00113252-SPOE00113255, p. SPOE00113253; SITF00370952-SITF00370963 RED2, p. SITF00370954.

a direct result of the SPO's own decision not to make [REDACTED] available for cross-examination, the admission of [REDACTED] evidence under Rule 155 has deprived the Defence of its sole opportunity to challenge W04239's evidence on the relevant points.

11. The fact that the Trial Panel had relied upon, *inter alia*, [REDACTED] availability for cross-examination in admitting W04239 evidence, and that the SPO failed to present [REDACTED] for cross-examination constitutes a material change in circumstances occasioning an injustice, and warrants the Defence request for reconsideration by the Trial Panel of the Relevant Parts of its Decision.

IV. CONCLUSION AND RELIEF REQUESTED

12. For the above reasons, the Defence requests the Trial Panel to reconsider Relevant Paragraphs of its Decision and to find W04239's evidence inadmissible pursuant to Rule 155.

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Respectfully submitted on 17 April 2025,



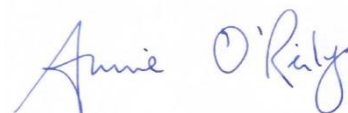
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