



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**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:** Fidelma Donlon

**Date:** 2 May 2025

**Language:** English

**Classification:** Public

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**Decision on Veseli Defence Request for Leave to Appeal Decisions F03070 and  
F03071**

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**Specialist Prosecutor**

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**TRIAL PANEL II** ("Panel"), pursuant to Article 45 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 77 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## **I. PROCEDURAL BACKGROUND**

1. On 1 April 2025, the Panel issued two decisions admitting from the bar table, respectively: (i) 311 items ("F03070");<sup>1</sup> and (ii) four items ("F03071") (collectively "Impugned Decisions").<sup>2</sup>
2. On 8 April 2025, the Defence for Mr Kadri Veseli ("Veseli Defence") filed a request for leave to appeal the Impugned Decisions ("Request").<sup>3</sup>
3. On 22 April 2025, the Specialist Prosecutor's Office ("SPO") responded to the Request ("Response").<sup>4</sup>
4. On 29 April 2025, the Veseli Defence filed a reply to the Response ("Reply").<sup>5</sup>

## **II. SUBMISSIONS**

5. The Veseli Defence requests leave to appeal the Impugned Decisions regarding the following issue: "[w]hether the Trial Panel's admissibility decisions in F03070 and F03071 were rendered erroneous by their failure to weigh the

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<sup>1</sup> F03070, Panel, *Decision on Prosecution Motion for Admission of Pashtrik Zone Documents*, 1 April 2025.

<sup>2</sup> F03071, Panel, *Decision on Prosecution Request to Amend the Exhibit List and Admit Items*, 1 April 2025.

<sup>3</sup> F03096, Specialist Counsel, *Veseli Defence Request for Certification to Appeal Decisions F03070 and F03071*, 8 April 2025.

<sup>4</sup> F03137, Specialist Prosecutor, *Prosecution Response to 'Veseli Defence Request for Certification to Appeal Decisions F03070 and F03071' (F03096)*, 22 April 2025.

<sup>5</sup> F03151, Specialist Counsel, *Veseli Defence Reply to 'Prosecution Response to Veseli Defence Request for Certification to Appeal Decisions F03070 and F03071 (F03096)' (F03137)*, 29 April 2025.

probative value of the evidence tendered against its prejudicial effect, per the requirements of Rule 138(1)" ("Issue").<sup>6</sup>

6. The Veseli Defence submits that the Issue satisfies the requirements for leave to appeal as: (i) the Impugned Decisions exhibit the same flawed approach to the assessment of prejudice; (ii) the Issue arises from the Impugned Decisions and significantly impacts the fair and expeditious conduct of the proceedings; and (iii) immediate resolution of the Issue by the Court of Appeals Panel will materially advance the proceedings.<sup>7</sup>

7. The SPO responds that the Request should be dismissed because it fails to meet the requirements set out in the Law and Rules.<sup>8</sup> In particular, the SPO avers that: (i) the Panel is afforded considerable discretion in deciding whether to admit evidence; and (ii) the Defence fails to identify an error in the Panel's exercise of its discretion.<sup>9</sup>

8. The Veseli Defence replies that: (i) the SPO falsely equates the issue dismissed in F02639<sup>10</sup> with the one raised in the Request;<sup>11</sup> (ii) the SPO incorrectly asserts that in F03071, the Panel's findings on prejudice versus probative value are contained in a separate part of the Decision, namely paragraph 13;<sup>12</sup> and (iii) the SPO incorrectly contends that the Panel never suggested that limiting the weight of certain items was to be used as a means of curing the unfairness of any prejudice caused.<sup>13</sup>

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<sup>6</sup> Request, paras 1-2, 27.

<sup>7</sup> Request, para. 3. *See also* Request, paras 13-26.

<sup>8</sup> Response, paras 1, 8.

<sup>9</sup> Response, para. 1.

<sup>10</sup> F02639, Panel, *Decision on Joint Defence Request for Certification to Appeal the Reasons for Admission of W03780's Statements and Related Order (F02580)*, 11 October 2024.

<sup>11</sup> Reply, para. 2.

<sup>12</sup> Reply, para. 3.

<sup>13</sup> Reply, para. 4.

### III. APPLICABLE LAW

9. Pursuant to Article 45(2) and Rule 77(2), a right to appeal only arises if the standard of certification set forth therein has been met. Rule 77(2) provides that:

The Panel shall grant certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, including, where appropriate remedies could not effectively be granted after the close of the case at trial, and for which an immediate resolution by the Court of Appeals Panel may materially advance the proceedings.

10. The Panel incorporates by reference the applicable law on the legal standard for certification to appeal set out in past decisions.<sup>14</sup>

### IV. DISCUSSION

11. The Panel notes that in F03070, the Panel found that 311 items were relevant<sup>15</sup> and *prima facie* authentic.<sup>16</sup> The Panel further found that these items also bear *prima facie* probative value regarding facts and circumstances relevant to this case, and that the *prima facie* probative value of the 311 items was not outweighed by prejudicial effect.<sup>17</sup>

12. In F03071, the Panel found that four items were relevant<sup>18</sup> and *prima facie* authentic.<sup>19</sup> The Panel further found that these items also bear *prima facie* probative

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<sup>14</sup> See F01237, Panel, *Decision on Thaçi Defence Request for Leave to Appeal Decision on Disclosure of Dual Status Witnesses*, 30 January 2023, paras 7-8; KSC-BC-2020-07, F00423, Panel, *Decision on SPO Requests for Leave to Appeal F00413 and Suspensive Effect*, 8 November 2021, paras 13-21; F00372, Panel, *Decision on Haradinaj Defence's Application for Certification of F00328*, 15 October 2021, paras 15-17; F00484, Panel, *Decision on Defence Request for Leave to Appeal F00470*, 8 December 2021, paras 4-14. See also F00172, Pre-Trial Judge, *Decision on the Thaçi Defence Application for Leave to Appeal*, 11 January 2021, paras 6-7, 9-17.

<sup>15</sup> F03070, paras 24-25, 39, 50, 59, 72, 78, 92, 104, 112, 120, 131, 141, 147, 156, 162, 172.

<sup>16</sup> F03070, paras 29-34, 41-44, 51-54, 61-67, 73, 80-82, 84, 93-97, 105-107, 113-114, 121-126, 132-135, 142, 148-151, 157, 163-167, 173-176.

<sup>17</sup> F03070, paras 35, 45, 55, 68, 74, 85, 98, 108, 115, 127, 136, 143, 152, 158, 168, 177.

<sup>18</sup> F03071, para. 16.

<sup>19</sup> F03071, para. 17.

value regarding facts and circumstances relevant to this case.<sup>20</sup> The Panel was also satisfied that the *prima facie* probative value of these items was not outweighed by any prejudice to the Accused, considering that the Defence will be able to make submissions in respect of the weight and probative value of these items and could, if it so chooses, challenge the content of these items through the presentation of evidence, although it bears no onus to do so.<sup>21</sup>

13. As to whether the Issue is an appealable one, the Veseli Defence submits that the Panel erred by failing to weigh the probative value of the tendered evidence against its prejudicial effect, considering that: (i) it is incorrect to suggest that the prejudice may be cured by the presentation of Defence evidence as this constitutes an impermissible burden shifting;<sup>22</sup> (ii) the Panel improperly suggested that the weight accorded to the evidence might be limited as a remedy to any prejudice incurred, without articulating and weighing the prejudice that actually arises from admission against the probative value of the evidence;<sup>23</sup> (iii) the Impugned Decisions fail to consider and weigh the specific prejudice to the Accused occasioned by the admission of the evidence, against the probative value of the evidence;<sup>24</sup> and (iv) Rule 138(1) explicitly requires a weighing of probative value against prejudicial effect.<sup>25</sup>

14. The SPO responds that the Veseli Defence fails to identify any error in the Panel's exercise of its discretion.<sup>26</sup> In particular, the SPO submits that: (i) the Request fails to develop a specific, discrete, or identifiable appealable issue, and amounts to a mere disagreement with the Impugned Decisions;<sup>27</sup> (ii) the submissions in the Request are contradictory insofar as the Veseli Defence first

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<sup>20</sup> F03071, para. 19.

<sup>21</sup> F03071, para. 19.

<sup>22</sup> Request, para. 15.

<sup>23</sup> Request, para. 16. *See also* Request, para. 17.

<sup>24</sup> Request, para. 18. *See also* Request, paras 19-21.

<sup>25</sup> Request, para. 22.

<sup>26</sup> Response, para. 1.

<sup>27</sup> Response, para. 2.

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;<sup>28</sup> (iii) 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, and 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’;<sup>29</sup> (iv) the Panel’s assessment was preceded by a lengthy discussion of the relevance and authenticity of the tendered items;<sup>30</sup> and (v) at no stage did the Panel suggest that limiting the weight afforded to an item may ‘cure’ any prejudice caused by admission.<sup>31</sup>

15. The Veseli Defence replies that: (i) the Impugned Decisions are clearly incorrect and should be reviewed by the Court of Appeals Panel;<sup>32</sup> (ii) Rule 138(1) requires the Panel to determine whether the probative value of evidence is outweighed by the unfair prejudice occasioned by its admission;<sup>33</sup> and (iii) it is not enough to say that the Defence can make further submissions on weight and prejudice at a later stage, particularly while ignoring arguments that the Defence has made at the time of tendering.<sup>34</sup>

16. At the outset, the Panel recalls that decisions regarding admission of evidence are discretionary decisions to which deference must be accorded.<sup>35</sup> In this context, the Panel recalls that, as explicitly stated in the Impugned Decisions, before assessing the probative value of the evidence tendered and weighing it against any prejudicial effect, the Panel made extensive findings on the relevance and

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<sup>28</sup> Response, para. 3.

<sup>29</sup> Response, para. 4.

<sup>30</sup> Response, para. 4.

<sup>31</sup> Response, para. 5.

<sup>32</sup> Reply, para. 5.

<sup>33</sup> Reply, para. 5.

<sup>34</sup> Reply, para. 5.

<sup>35</sup> KSC-CA-2022-01, F00114, Court of Appeals Panel, *Appeal Judgment*, 2 February 2023, para. 34.

authenticity of the tendered items.<sup>36</sup> The Panel further held in F03071 that the probative value of the tendered items was not outweighed by any prejudice to the Accused, pointing in particular to the fact that the Defence will be able to make submissions in respect of the weight and probative value of these items and could, if it so chooses, challenge the content of these items through the presentation of evidence, although it bears no onus to do so.<sup>37</sup> In making such findings, the Panel was satisfied that, at this stage and contrary to the Defence's submissions, the probative value of the tendered items was not outweighed by any prejudice to the Accused.

17. The Panel is of the view that the Defence has failed to show that the Panel was required to explain its decision in any greater detail than it did.<sup>38</sup> Moreover, the Defence mischaracterises and merely disagrees with the Panel's findings when arguing that the Panel improperly suggested that: (i) the weight accorded to the evidence might be limited as a remedy to any prejudice incurred;<sup>39</sup> and (ii) the prejudice may be cured by the presentation of Defence evidence.<sup>40</sup> Nothing in the Impugned Decisions assumed or required that the Defence make submissions in respect of the weight and probative value of these items or challenge their content through the presentation of evidence. As noted above, the Panel explicitly underlined the fact that the Defence bore no onus in this matter. The suggestion that the Impugned Decisions displaced the burden of proof is therefore without foundation and constitutes a distortion of that decision.

18. In light of the above, the Panel finds that the Defence has failed to establish that the Issue constitutes a discrete topic emanating from the Impugned Decisions.

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<sup>36</sup> See *above* paras 11-12, and references cited therein.

<sup>37</sup> See *above* para. 12, and references cited therein.

<sup>38</sup> *Contra* Request, paras 18-22.

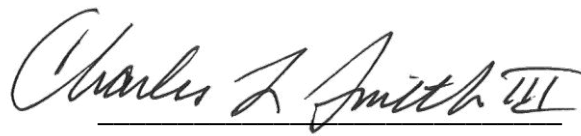
<sup>39</sup> Request, paras 16-17.

<sup>40</sup> Request, para. 15.

19. Accordingly, the remaining requirements of the certification test arising from Article 45(2) and Rule 77(2) need not be addressed in relation to the Issue. The request for certification to appeal the Issue is therefore rejected.

**V. DISPOSITION**

20. For the above-mentioned reasons, the Panel hereby **REJECTS** the Request.

A handwritten signature in black ink, reading "Charles L. Smith, III". The signature is written in a cursive style with a horizontal line underneath.

**Judge Charles L. Smith, III**

**Presiding Judge**

Dated this Friday, 2 May 2025

At The Hague, the Netherlands.