



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA 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: 22 May 2025

Language: English

Classification: Public

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

Specialist Prosecutor

Kimberly P. West

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Simon Laws

Counsel for Kadri Veseli

Rodney Dixon

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

TRIAL PANEL II ("Panel"), pursuant to Articles 21 and 40(2) and (6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 79, 138(1) and 155 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 17 October 2023, following a motion from the Specialist Prosecutor's Office ("Rule 155 Motion" and "SPO", respectively),¹ the Panel found, *inter alia*, W04239's proposed evidence ("W04239's Evidence") to be admissible pursuant to Rules 138(1) and 155 ("Impugned Decision").²
2. On 17 April 2025, the Defence teams for the four Accused (collectively, "Defence") filed a joint request for partial reconsideration of the Impugned Decision ("Request").³
3. On 1 May 2025, the SPO filed a response to the Request ("Response").⁴
4. The Defence did not reply.

II. SUBMISSIONS

5. The Defence requests the Panel to reconsider its decision to admit W04239's Evidence to avoid injustice and to guarantee a fair trial for the Accused.⁵ The

¹ F01691, Specialist Prosecutor, *Prosecution Second Motion for Admission of Evidence pursuant to Rule 155*, 20 July 2023, confidential, with confidential Annexes 1-8 (a public redacted version was filed on 5 September 2023, F01691/RED).

² F01864, Panel, *Decision on Prosecution Second Motion for Admission of Evidence pursuant to Rule 155*, 17 October 2023, confidential (a public redacted version was issued on 12 December 2023, F01864/RED).

³ F03133, Specialist Counsel, *Joint Defence Request for Partial Reconsideration of F01864*, 17 April 2025, confidential (a public redacted version was filed on 30 April 2025, F03133/RED).

⁴ F03153, Specialist Prosecutor, *Prosecution Response to 'Joint Defence Request for Partial Reconsideration of F01864'*, 1 May 2025, confidential (a public redacted version was filed on the same day, F03153/RED).

⁵ Request, para. 2.

Defence submits that the fact that the SPO, after the Impugned Decision, failed to present [REDACTED] for cross-examination constitutes a material change in circumstances occasioning an injustice warranting reconsideration.⁶ The Defence argues that: (i) the Panel found in the Impugned Decision that fairness to the Accused under Rule 155 could be ensured by allowing the Defence to cross-examine other witnesses on the same or related events, such as [REDACTED];⁷ (ii) the Panel articulated in the Impugned Decision that a failure of the SPO to call a corroborating witness who was relied upon by the Panel to admit a Rule 155 statement might lead to a request for reconsideration;⁸ (iii) the Defence was notified by the SPO that it intended not to call [REDACTED] but to submit the evidence of [REDACTED] in writing almost a year and a half after the Impugned Decision was issued;⁹ and (iv) the SPO's decision not to call [REDACTED] deprived the Defence of its sole opportunity to challenge W04239's Evidence.¹⁰

6. The SPO responds that the Request does not identify any injustice warranting reconsideration under Rule 79, and therefore should be dismissed.¹¹ It argues that the Defence failed to justify that the high threshold for reconsideration has been met.¹² The SPO further submits that: (i) the Panel has consistently emphasized that corroboration is not a prerequisite for admission, but a matter of weight, and did not condition the admissibility of W04239's Evidence to [REDACTED]'s availability for cross-examination;¹³ (ii) the opportunity to cross-examine [REDACTED] was anticipated, and [REDACTED]'s unavailability does not affect the Panel's reasoning, which stated that any constraints that might impact the Defence's ability to fully exercise the right of confrontation, as well as any absence

⁶ Request, para. 11.

⁷ Request, paras 5, 7.

⁸ Request, para. 6, *referring to* Impugned Decision, paras 11-12. *See also* Request, para. 8.

⁹ Request, para. 9.

¹⁰ Request, para. 10.

¹¹ Response, para. 1. *See also* Response, para. 3.

¹² Response, para. 2. *See also* Response, para. 3.

¹³ Response, para. 4.

of corroboration of W04239's Evidence, would be taken into account when evaluating the weight and probative value of that evidence;¹⁴ (iii) the Defence's generic assertion that weight assessment would not sufficiently protect it from the alleged prejudice cause by the admission of W04239's Evidence is undeveloped and unavailing;¹⁵ and (iv) the Defence's characterisation of [REDACTED] as the only corroborative witness misrepresents the Prosecution's past submissions, the evidentiary record and the Panel's related findings, as the Panel acknowledged that W04239's evidence is consistent with, and corroborated in material respects by, the evidence of other witnesses in this case, many of whom the Defence had the opportunity to cross-examine.¹⁶

III. APPLICABLE LAW

7. The law applicable to deciding a request for reconsideration of a decision has been laid out extensively in earlier decisions. The Panel will apply this standard to the present decision.¹⁷

IV. DISCUSSION

8. As a preliminary matter, the Panel notes that reconsideration is subject to stringent conditions.¹⁸ The principle of finality dictates that the power of a Panel

¹⁴ Response, para. 4.

¹⁵ Response, para. 4.

¹⁶ Response, para. 5.

¹⁷ See F01918, Panel, *Decision on Veseli Defence Request for Reconsideration of Decision to Admit P380*, 9 November 2023; F01736, Panel, *Decision on Urgent Prosecution Request for Reconsideration of Decision F01727*, 23 August 2023, confidential, para. 11; F01448, Panel, *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"), 12 April 2023, paras 7-12; 13 January 2023 Decision, para. 18.

¹⁸ See Rule 79. See also F01918, Panel, *Decision on Veseli Defence Request for Reconsideration of Decision to Admit P380*, para. 9; 12 April 2023 Decision, paras 8-12; 13 January 2023 Decision, para. 18; ICTR, *Prosecutor v. Karemera et al.*, ICTR-98-44-PT, Trial Chamber III, [Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses](#), 29 August 2005, para. 8; *Prosecutor v. Karemera et al.*, ICTR-98-44-T, Trial Chamber III, [Decision on Defence Motion for Modification of](#)

to reconsider previous decisions should be exercised sparingly, and a party must therefore meet a high threshold in order to succeed in its motion for reconsideration.¹⁹ The party seeking reconsideration bears the burden of showing that the Panel clearly erred or that reconsideration is necessary in order to avoid injustice.²⁰

9. Regarding the substance of the application, the Panel notes that the Defence misrepresents the Impugned Decision by arguing that W04239's Evidence was admitted by the Panel on the assumption that [REDACTED] would be available for cross-examination.²¹ The Panel recalls that, in the Impugned Decision, it stated that the Defence's opportunity to cross-examine [REDACTED] would, to some extent, enable the Defence to exercise its right of confrontation concerning specific challenged allegations contained in W04239's Evidence, and that any constraints that might impact the Defence's ability to fully exercise this right, and any absence of corroboration of W04239's Evidence, would be accounted for by the Panel when evaluating the weight and probative value to attach to this evidence.²² The Panel therefore clearly addressed the Defence's submissions opposing the admission of W04239's Evidence under Rule 155, based on claims of undue prejudice, as well as the Defence's challenge to the SPO's assertion that W04239's Evidence was

[Protective Order: Timing of Disclosure](#), 31 October 2005, para. 3; *Prosecutor v. Karemera et al.*, ICTR-98-44-T, Trial Chamber III, [Decision on Reconsideration of Admission of Written Statements in lieu of Oral Testimony and Admission of the Testimony of Prosecution Witness GAY](#), 28 September 2007, para. 10.

¹⁹ See e.g. ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84bis-T, Trial Chamber II, Decision on Prosecution Motion for Reconsideration of Majority Decision Denying Admission of Document Rule 65 *ter* Number 03003 or in the Alternative Certification of the Majority Decision with Partly Dissenting Opinion of Judge Delvoie ("[Haradinaj et al. Decision](#)"), 27 February 2012, para. 12 (and references cited therein); *Prosecutor v. Šešelj*, IT-03-67-T, Chamber Convened by Order of the Vice-President, [Decision on Prosecution Motion for Reconsideration of Decision on Disqualification, Requests for Clarification, and Motion on Behalf of Stanišić and Župljanin](#), 7 October 2013, para. 10 (and references cited therein).

²⁰ See e.g. ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-AR73.16, Appeals Chamber, [Decision on Jadranko Prlić Interlocutory Appeal Against the Decision on Prlić's Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence](#), 3 November 2009, para. 18; [Haradinaj et al. Decision](#), para. 11.

²¹ Request, para. 2, referring to Impugned Decision paras 59, 63.

²² Impugned Decision, para. 59.

consistent with that of [REDACTED].

10. Contrary to the Defence's submissions,²³ the Panel was satisfied that W04239's Evidence met the conditions for admission under Rule 155, and did not condition its admissibility on [REDACTED]'s availability for cross-examination. In this regard, the Panel recalls that, as stated in its previous decisions,²⁴ corroboration is not a prerequisite for admission under Rule 155. And the right to confrontation is not absolute, as apparent *inter alia* from the very terms of Rule 155.

11. As stated in the Impugned Decision,²⁵ the Panel will consider the Defence's inability to cross-examine when assessing the weight, probative value and reliability of W04239's evidence. The Panel is therefore satisfied that the admission of W04239's Evidence is not unduly prejudicial due to [REDACTED]'s unavailability for cross-examination, and will evaluate it accordingly.

12. For these reasons, the Panel concludes that the Defence has failed to demonstrate that the Panel committed a clear error of reasoning in admitting W04239's Evidence under Rule 155, and that the unavailability of [REDACTED] for cross-examination caused an injustice warranting the exceptional reconsideration of the Impugned Decision.²⁶ The Panel therefore finds that the Defence has failed to demonstrate that reconsideration of the Impugned Decision is warranted pursuant to Rule 79. The Request is therefore rejected.

²³ Request, paras 5-11.

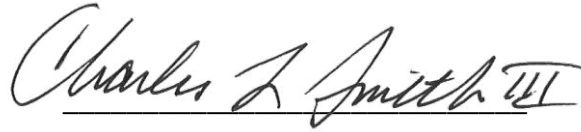
²⁴ See e.g. F01603, Panel, *Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155*, 14 June 2023, confidential, (a public redacted version was filed on 8 September 2023, F01603/RED), paras 86, 137.

²⁵ Impugned Decision, para. 59.

²⁶ *Contra* Request, paras 5-11.

V. DISPOSITION

13. 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 Thursday, 22 May 2025

At The Hague, the Netherlands.