



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

**Date:** 19 June 2025

**Language:** English

**Classification:** Confidential

---

**Prosecution response to joint Defence request for certification to appeal W04747  
admissibility decision**

---

**Specialist Prosecutor's Office**

Kimberly P. West

**Counsel for Victims**

Simon Laws

**Counsel for Hashim Thaçi**

Luka Mišetić

**Counsel for Kadri Veseli**

Rodney Dixon

**Counsel for Rexhep Selimi**

Geoffrey Roberts

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

## I. INTRODUCTION

1. The Request<sup>1</sup> for leave to appeal the W04747 Decision<sup>2</sup> is entirely without merit. None of the eight issues meet the criteria for certification<sup>3</sup> under Article 45 of the Law<sup>4</sup> and Rule 77 of the Rules.<sup>5</sup>

## I. SUBMISSIONS

### A. THE ISSUES ARE NOT APPEALABLE

#### (i) *First Issue*<sup>6</sup>

2. The First Issue misrepresents the W04747 Decision. The Panel determined that W04747 failed to attend because of W04747's persistent refusal to testify, and his consent was required pursuant to the Third State's procedures.<sup>7</sup> W04747's medical certificate was not the primary reason – the SPO did not premise its request on it<sup>8</sup> and the Panel correctly considered that this certificate had to be considered in the context of the events that preceded it.<sup>9</sup> Characterising the Panel's findings as being due to a

---

<sup>1</sup> Joint Defence Request for Certification to Appeal the Decision on SPO Motion for Admission of W04747's Evidence Pursuant to Rule 155, KSC-BC-2020-06/F03239, 5 June 2025, Confidential (notified 10 June 2025) ('Request').

<sup>2</sup> Decision on Veseli Defence Motion to Exclude Evidence of W04747 and SPO Motion for Admission of W04747's Evidence Pursuant to Rule 155, KSC-BC-2020-06/F03215, 29 May 2025, Confidential ('W04747 Decision').

<sup>3</sup> The applicable law has been set out in prior decisions. See e.g. Decision on the Thaçi 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.

<sup>4</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

<sup>5</sup> 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.

<sup>6</sup> Request, KSC-BC-2020-06/F03239, para.1 (bullet one): '[w]hether the Panel erred in fact and/or in law when finding W04747's temporary absence for medical reasons constituted failure to attend as a witness under Rule 155(2)(a)'.

<sup>7</sup> W04747 Decision, KSC-BC-2020-06/F03215, para.25.

<sup>8</sup> W04747 Decision, KSC-BC-2020-06/F03215, para.45.

<sup>9</sup> W04747 Decision, KSC-BC-2020-06/F03215, para.48.

temporary absence for medical reasons does not accurately describe them.<sup>10</sup>

3. The W04738 decision cited by the Defence does nothing to advance its argument – the Panel made no distinction between that witness’s temporary unfitness and imminent treatment needs,<sup>11</sup> ultimately finding W04738 to be unavailable within the meaning of Rule 155(1).<sup>12</sup>

(ii) *Second Issue*<sup>13</sup>

4. The Second Issue does not arise from the W04747 Decision, as the Panel did not rely upon hypothetical or speculative considerations in finding that reasonable efforts to secure W04747’s testimony had been made.<sup>14</sup> The Panel relied on an array of concrete information in its considerations, including the SPO’s request for mutual legal assistance to the Third State, the Third State’s procedural requirement of consent as a pre-requisite to testify, and W04747’s extensive representations over a period of years that he would not give that consent.<sup>15</sup> There was no reasonable prospect of calling (or deposing) W04747 in light of these developments, as the Selimi Defence itself acknowledged before his non-appearance on 1 April 2025.<sup>16</sup>

---

<sup>10</sup> *Contra* Request, KSC-BC-2020-06/F03239, paras 2-4.

<sup>11</sup> *Contra* Request, KSC-BC-2020-06/F03239, para.3.

<sup>12</sup> Decision on Prosecution Consolidated Motion for Admission of Evidence pursuant to Rules 153 and 155 and Related Requests, KSC-BC-2020-06/F03212, 29 May 2025, paras 28-29 (rejecting the admission of W04738’s evidence on other grounds).

<sup>13</sup> Request, KSC-BC-2020-06/F03239, para.1 (bullet two): ‘[w]hether the Panel erred in fact and/or law or abused its discretion in holding that reasonable efforts to secure W04747’s testimony pursuant to Rule 155(2)(b) could be satisfied by hypothetical and speculative considerations’.

<sup>14</sup> *Contra* Request, KSC-BC-2020-06/F03239, paras 5-8.

<sup>15</sup> W04747 Decision, KSC-BC-2020-06/F03215, paras 37, 47-48.

<sup>16</sup> Transcript of Hearing, 24 March 2025, T.25756. When the Request focuses on W04747 not being able to give consent until he formally appeared (Request, KSC-BC-2020-06/F03239, para.7), the Defence conflates the Third State’s requirements for compliance with its summons (which required the witness’s appearance before seeking consent), with the Rule 155(2) criteria (which require reasonable efforts, and expressly can apply to situations when the person has failed to attend as a witness).

(iii) *Third Issue*<sup>17</sup>

5. The W04747 Decision never ruled that reliability was exclusively a consideration of weight and not admissibility, as suggested by the Third Issue.<sup>18</sup> The relevant paragraph cited by the Defence considered that inconsistencies or contradictions are matters that ‘*primarily* relate to weight, not admissibility’.<sup>19</sup> The Panel then explained that W04747’s alleged inconsistencies, even if established, did not justify exclusion of the proposed evidence.<sup>20</sup> This consideration is not ‘diametrically opposed’ to past rulings,<sup>21</sup> and the Third Issue is merely a disagreement with the Trial Panel’s reasoning.

(iv) *Fourth Issue*<sup>22</sup>

6. The Fourth Issue is premised on a manifestly unreasonable interpretation of Rule 155, where it is purportedly ‘inconsistent’ to consider evidence to be simultaneously corroborated (within the meaning of Rule 155(3)(b)(iii)) and non-substitutable (so as to satisfy Rule 155(2)(d)).<sup>23</sup> This interpretation – which the Defence did not even advance prior to the W04747 Decision<sup>24</sup> - would make it impossible to simultaneously satisfy both Rule 155(2)(d) and 155(3)(b), and is therefore contradictory to the plain language of the rule.<sup>25</sup>

7. The W04747 Decision made clear that W04747’s evidence is corroborated in

---

<sup>17</sup> Request, KSC-BC-2020-06/F03239, para.1 (bullet three): ‘[w]hether the Panel erred in law when finding that a reliability assessment was a consideration of weight and not admissibility as required by Rule 155(3)(b)(i)’.

<sup>18</sup> See Request, KSC-BC-2020-06/F03239, paras 9-11.

<sup>19</sup> W04747 Decision, KSC-BC-2020-06/F03215, para.69 (emphasis added), *cited in* Request, KSC-BC-2020-06/F03239, para.10 (n.14).

<sup>20</sup> W04747 Decision, KSC-BC-2020-06/F03215, para.69.

<sup>21</sup> *Contra* Request, KSC-BC-2020-06/F03239, para.10.

<sup>22</sup> Request, KSC-BC-2020-06/F03239, para.1 (bullet four): ‘[w]hether the Panel erred in law and/or fact when it inconsistently interpreted and applied Rule 155(2)(d) and Rule 155(3)(b)(iii)’.

<sup>23</sup> See Request, KSC-BC-2020-06/F03239, paras 12-14.

<sup>24</sup> See W04747 Decision, KSC-BC-2020-06/F03215, para.53.

<sup>25</sup> See W04747 Decision, KSC-BC-2020-06/F03215, para.77.

some aspects while other parts are unique to him, such that he was the only, or primary witness, scheduled to testify about certain events.<sup>26</sup> This finding is internally consistent in all aspects. The Defence merely disagrees with the Panel's interpretation of the Rule 155 requirements in the context of W04747's evidence, and fails to identify an appealable issue.

(v) *Fifth Issue*<sup>27</sup>

8. The Fifth Issue does not arise from the W04747 Decision, as the Trial Panel did consider the Defence's inability to cross-examine W04747 when assessing any potential prejudice.<sup>28</sup> The Panel also expressly indicated that it would take this inability into account when assessing the entire body of evidence before it at trial.<sup>29</sup>

9. The premise of the Fifth Issue also suggests that the Defence believes that it could not have been expected to cross-examine witnesses on issues before they were admitted into evidence. Such a proposition would create such a high risk of recalling witnesses as to offend common sense, and the Defence has never given any indication they conducted their cross-examinations on this understanding.<sup>30</sup>

---

<sup>26</sup> W04747 Decision, KSC-BC-2020-06/F03215, paras 54, 74-77.

<sup>27</sup> Request, KSC-BC-2020-06/F03239, para.1 (bullet five): '[w]hether the Panel failed to consider the prejudice caused to the Defence when finding it was able to cross-examine witnesses on issues not yet in evidence'.

<sup>28</sup> W04747 Decision, KSC-BC-2020-06/F03215, paras 80-82, *contra* Request, KSC-BC-2020-06/F03239, paras 15-17.

<sup>29</sup> W04747 Decision, KSC-BC-2020-06/F03215, para.82.

<sup>30</sup> To the contrary, when discussing Judge Mettraux's use of the SPO interview of a dropped witness when questioning W04401, the SPO noted that the Thaçi Defence had used this same interview in previous questioning. Thaçi Defence lead counsel responded that 'I used the interview because they were calling him, and he was supposed to come', making clear that this interview had been used in cross-examination precisely because it might have been subsequently admitted. *See* Transcript of Hearing, 4 December 2024, T.23432-23433. The propriety of the judge's questioning was unanimously upheld on appeal. Public Redacted Version of Decision on Appeal Against Oral Order of 5 December 2024, KSC-BC-2020-06/IA031/F00005/RED, 11 April 2025.

(vi) *Sixth Issue*<sup>31</sup>

10. The Defence has previously sought leave to appeal on essentially the same issue, with the Panel ruling that it was not capable of meeting the leave to appeal threshold.<sup>32</sup> The Defence fails to raise any argument distinguishing the Sixth Issue from the one previously rejected, merely disagreeing with a legal interpretation consistently advanced by the Trial Panel.<sup>33</sup>

(vii) *Seventh Issue*<sup>34</sup>

11. The Seventh Issue is muddled to the point that it is unclear exactly what the Defence even wants to appeal, and the Panel is not obligated to present a full evaluation of how W04747 fits in the totality of the evidence at the point of *prima facie* admissibility. But the W04747 Decision did specifically identify specific points in W04747's evidence which are corroborated by other admitted materials<sup>35</sup> in addition to witnesses who testify about similar matters.<sup>36</sup> To the extent a discrete topic for appellate resolution is even identified, it fails to arise from the W04747 Decision.

---

<sup>31</sup> Request, KSC-BC-2020-06/F03239, para.1 (bullet six): '[w]hether the Panel misapplied Rule 155(4) when refusing to consider Defence Statements'.

<sup>32</sup> Decision on Thaçi, Veseli & Krasniqi Defence Request for Certification to Appeal the 'Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155', KSC-BC-2020-06/F01671, 13 July 2023, paras 5(4), 32-33.

<sup>33</sup> See Request, KSC-BC-2020-06/F03239, paras 18-21.

<sup>34</sup> Request, KSC-BC-2020-06/F03239, para.1 (bullet seven): '[w]hether the Panel erred in law or abused its discretion in globally assessing whether the prejudicial effect of W04747's evidence outweighed its probative value rather than assessing each individual allegation'.

<sup>35</sup> W04747 Decision, KSC-BC-2020-06/F03215, para.75, *contra* Request, KSC-BC-2020-06/F03239, paras 22-25. The previous assessment cited by the Defence (Request, KSC-BC-2020-06/F03239, para.24 n.31) differs in result in that the Defence succeeds in redacting part of a Rule 155 statement, but the nature of the Panel's assessment in the cited decision is not meaningfully different from that in the W04747 Decision. See Decision on Prosecution Third Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F02013, 15 December 2023, para.56.

<sup>36</sup> W04747 Decision, KSC-BC-2020-06/F03215, paras 74, 80.

(viii) *Eighth Issue*<sup>37</sup>

12. The Eighth Issue misrepresents the W04747 Decision, making an artificial distinction between proving the ‘facts and circumstances validly pleaded in the indictment’<sup>38</sup> and proving ‘circumstantial indications’<sup>39</sup> relevant to those facts. The Panel made no such distinction,<sup>40</sup> and it was reconcilable with prior rulings to permit the admission of post-indictment evidence in circumstances when they prove other facts pleaded in the indictment.<sup>41</sup>

B. THE ISSUES WOULD HAVE NO IMPACT JUSTIFYING CERTIFICATION

13. The Panel has previously found that certification to appeal admissibility decisions should be granted only on an exceptional basis.<sup>42</sup> This is because any consideration regarding the impact on the proceedings or the outcome of the trial caused by the admission of evidence is hypothetical, speculative and premature, and in any event, could be remedied, as necessary and appropriate, on any appeal against a final judgment.<sup>43</sup> The Defence persistently fail to understand this.<sup>44</sup>

---

<sup>37</sup> Request, KSC-BC-2020-06/F03239, para.1 (bullet eight): ‘[w]hether the Panel erred in law and/or in fact when it inconsistently interpreted and applied the standard it set for assessing allegations not charged in the indictment’.

<sup>38</sup> Request, KSC-BC-2020-06/F03239, para.26.

<sup>39</sup> Request, KSC-BC-2020-06/F03239, para.27.

<sup>40</sup> See W04747 Decision, KSC-BC-2020-06/F03215, para.65.

<sup>41</sup> See generally Public Redacted Version of Decision on Selimi Defence Motion to Exclude Evidence of W04846, KSC-BC-2020-06/F02393/RED, 19 June 2024, paras 13-18.

<sup>42</sup> Decision on Veseli Defence Request for Certification to Appeal F03178 (Dukagjin Zone Bar Table Decision), KSC-BC-2020-06/F03236, 5 June 2025, para.22.

<sup>43</sup> 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.

<sup>44</sup> Decision on Veseli Defence Request for Leave to Appeal Decisions F03070 and F03071, KSC-BC-2020-06/F03157, 2 May 2025; Decision on Joint Defence Request for Leave to Appeal the Second Oral Order of 1 April 2025, KSC-BC-2020-06/F03150, 29 April 2025; Decision on Joint Defence Request for Leave to Appeal Decision to Admit the Evidence of W00542 via Rule 154, KSC-BC-2020-06/F02984, 5 March 2025; Decision on Joint Defence Request for Leave to Appeal Rule 153 Decision (F02765), KSC-BC-2020-06/F02842, 21 January 2025; Decision on Joint Defence Request for Leave to Appeal the Decision on Prosecution Motion for Admission of the Evidence of Witnesses W03808, W03812, W03815, W03870, W04785, and W04786 Pursuant to Rule 153 (F02666), KSC-BC-2020-06/F02705, 11 November 2024;



14. The Request is no different. There are clear statutory limits on how W04747's evidence can be used, noting in particular the requirement in Rule 140(4)(a) that a conviction may not be based solely or to a decisive extent upon it.<sup>45</sup> The impact of the W04747 Decision cannot be properly assessed until the Panel has an opportunity to reason how it relies on W04747's evidence in its judgment.<sup>46</sup> It is only an assumption that this ruling would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial. Especially noting that the judgment is drawing closer due to the advanced stage of trial, the interlocutory appeal requested at this point would not materially advance the proceedings.

## II. CLASSIFICATION

15. This filing is confidential pursuant to Rule 82(4). As it does not contain any confidential information, the SPO requests its reclassification as public.

## III. RELIEF REQUESTED

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

---

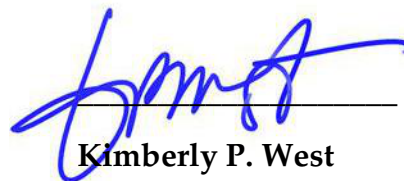
Corrected Version of Decision on Joint Defence Request for Leave to Appeal Decision of 18 September 2024 (F02598), KSC-BC-2020-06/F02652/COR, 15 October 2024 (corrected version 21 October 2024); Public Redacted Version of Decision on Joint Defence Request for Leave to Appeal the Decision to Admit P01608, KSC-BC-2020-06/F02644/RED, 14 October 2024; Decision on Veseli Defence Request for Leave to Appeal Decision to Admit P1046, KSC-BC-2020-06/F02241, 15 April 2024; Decision on Veseli Defence Request for Leave to Appeal Decision to Admit P959 and P960, KSC-BC-2020-06/F02157, 29 February 2024.

<sup>45</sup> Cited in W04747 Decision, KSC-BC-2020-06/F03215, para.82.

<sup>46</sup> Contra Request, KSC-BC-2020-06/F03239, paras 30-34.



**Word Count: 2237**



**Kimberly P. West**

**Specialist Prosecutor**

Thursday, 19 June 2025

At The Hague, the Netherlands.