



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 W04760
admissibility order**

Specialist Prosecutor's Office

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I. INTRODUCTION

1. The Request¹ for leave to appeal the W04760 Order² is untimely, and entirely lacking in merit. Neither of the issues meet the criteria for certification³ under Article 45 of the Law⁴ and Rule 77 of the Rules.⁵

II. SUBMISSIONS

A. THE REQUEST IS UNTIMELY

2. Although framed as a request for leave to appeal the W04760 Order, in truth the decision impugned by the Request is the W04760 Decision,⁶ issued some three days prior. It is the W04760 Decision which addressed the issues of prejudice and fairness of proceedings⁷ upon which the Request is founded and, materially, the W04760 Decision which determined the admissibility⁸ of the entirety of W04760's Evidence.⁹ The lead up to this decision was where the scope of admission was litigated, with the SPO Response expressly arguing that this evidence must be admitted in full if it was to be admitted at all.¹⁰ The W04760 Order merely formalised the admissibility decision, in light of the Thaçi Defence's confirmation it maintained

¹ Veseli Defence Request for Leave to Appeal the Order of 5 December 2025, KSC-BC-2020-06/F03628, 15 December 2025, Confidential ('Request').

² Order Following the Decision on Thaçi Defence Request Pursuant to Rule 155, KSC-BC-2020-06/F03617, 5 December 2025, Confidential ('W04760 Order').

³ 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. Guçati 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').

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 Decision on Thaçi Defence Request Pursuant to Rule 155, KSC-BC-2020-06/F03607, 2 December 2025, Confidential ('W04760 Decision').

⁷ Request, KSC-BC-2020-06/F03628, paras 12-14, 16-17; referring to W04760 Decision, KSC-BC-2020-06/F03607, paras 37-41.

⁸ W04760 Decision, KSC-BC-2020-06/F03607, para.46(d); W04760 Order, KSC-BC-2020-06/F03617, paras 1, 6, 8.

⁹ 1D00453_ET Parts 1-8 ('Statement'); 1D00452_ET ('Associated Exhibit'; collectively 'Evidence').

¹⁰ Prosecution response to request to admit W04760's evidence pursuant to Rule 155, KSC-BC-2020-06/F03581, Confidential ('SPO Response').

its request for admission.¹¹ Indeed as the Panel underlined, the appropriate recourse for the Veseli Defence following the W04760 Decision was to seek leave to appeal or reconsideration of that decision.¹²

3. The Request is therefore untimely for being filed outside the seven-day limit in Rule 77(1),¹³ and can be dismissed on that ground alone.

B. THE ISSUES ARE NOT APPEALABLE

(i) *First Issue*¹⁴

4. The First Issue misrepresents the W04760 Decision (and W04760 Order), by focusing on a single paragraph concerned with prejudice to the Thaçi Defence and thereby overlooking the three further paragraphs directed to prejudice to all Accused, including Veseli. The Panel correctly concluded the probative value of the Statement outweighed its prejudicial effect because:

- a. it overlapped with evidence of other witnesses in the case, whom the Parties had the opportunity to question (and had in fact cross-examined on the content of the Statement, including the Veseli Defence);¹⁵
- b. the Panel had already heard evidence about various topics addressed in the Statement, including acts and conduct of Mr Veseli charged in the Indictment;¹⁶
- c. W04760's credibility would be assessed in considering what weight, if any,

¹¹ W04760 Order, KSC-BC-2020-06/F03617, para.9, referring to Thaçi Defence Submissions pursuant to Decision F03607, KSC-BC-06/F03614, 4 December 2025, Public, para.3.

¹² W04760 Order, KSC-BC-2020-06/F03617, para.7, referring in footnote 23 to Rules 77 and 79.

¹³ Rule 77(1). *See also Specialist Prosecutor v. Januzi, Bahtijari and Shala*, Corrected Version of Decision Concerning Timeframe for Filing of Defence Pre-Trial Briefs, KSC-BC-2023-10/F00453, Public, para.15.

¹⁴ Request, KSC-BC-2020-06/F03628, para.2(a): '[w]hether the Trial Panel erred in law by admitted W04760's Evidence without assessing the specific prejudicial impact that such admission would have on Mr Veseli'.

¹⁵ W04760 Decision, KSC-BC-2020-06/F03607, para.37.

¹⁶ W04760 Decision, KSC-BC-2020-06/F03607, para.38.

to be given to the Statement in light of the entire body of admitted evidence;¹⁷ and

d. to permit the Thaçi Defence to selectively tender the Statement would undermine the Panel's truth-seeking function.¹⁸

5. The Veseli Defence has not identified any specific prejudice which arises from the fact that cross-examination of other witnesses on the Statement occurred at a point at which W04760 was listed as an SPO witness, and overlooks the Panel's comments on weight which militate against any such concerns. The Panel plainly appreciated the need to consider prejudice to the Veseli Defence, particularly having received a filing addressing it,¹⁹ and duly considered it in reaching its decision. The Veseli Defence merely disagrees with the Panel's determination, and has failed to identify an appealable issue.

(ii) *Second Issue*²⁰

6. The Second Issue relitigates the same complaint underpinning the First Issue, albeit at a greater level of abstraction. Although it is not clearly articulated what measures the Veseli Defence contends ought to have been adopted to 'compl[y] with the purpose of Article 40(2)', it appears the fundamental complaint is that fair trial considerations were violated because the Panel did not decline to admit the Statement on account of prejudice to the Accused.

¹⁷ W04760 Decision, KSC-BC-2020-06/F03607, para.39.

¹⁸ W04760 Decision, KSC-BC-2020-06/F03607, para.40.

¹⁹ Veseli Defence Response to Thaçi Defence Request to Admit W04760's Evidence Pursuant to Rule 155 with Confidential Annexes 1 and 2, KSC-BC-2020-06/F03585, Confidential, paras 3-4. As acknowledged in Request, KSC-BC-2020-06/F03628, para.13, in apparent contradiction to para.18, the Veseli Defence indicated its view on prejudice in response to Thaçi Defence Request pursuant to Rule 155 with Confidential Annexes 1 and 2, KSC-BC-2020-06/F03571, Confidential. *See also* W04760 Decision, KSC-BC-2020-06/F03607, para.16.

²⁰ Request, KSC-BC-2020-06/F03628, para.2(b): '[w]hether the Trial Panel, by admitted W04760's Evidence, failed to comply with its obligations under Article 40(2) of the Law to ensure the fairness of the proceedings and safeguard the Accused's rights'.

7. It also entirely misrepresents the W04760 Decision and W04760 Order, in which the Panel properly directed itself to Article 40(2) at the outset and underlined that the Rules provided proper procedural remedies to any perceived unfairness.²¹ The Trial Panel also highlighted that the Veseli Defence had a previous opportunity to make submissions of the kind belatedly made before the W04760 Order.²²

8. In both respects, the Veseli Defence fails to identify a discrete appealable issue.

C. THE ISSUES WOULD HAVE NO IMPACT JUSTIFYING CERTIFICATION

9. The Panel has previously found that certification to appeal admissibility decisions should be granted only on an exceptional basis.²³ 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.²⁴

10. That reasoning is apposite. The Request overlooks that the Panel admitted the Statement after applying the Rules 138 and 155 admissibility thresholds (which together import considerations of prejudice and the right to examine witnesses), the Panel's comments regarding weight, and that Rule 140(4)(a) imposes a statutory limit on the use of the Statement.

11. Against that backdrop, the impact of the W04760 Decision and W04760 Order cannot be properly assessed until the Panel has had an opportunity to reason how it relies on the Statement in its trial judgment. It is only an assumption that the ruling(s)

²¹ W04760 Decision, KSC-BC-2020-06/F03607 (preamble); W04760 Order, KSC-BC-2020-06/F03617, paras 4, 7.

²² W04760 Order, KSC-BC-2020-06/F03617, para.7. *See also* W04760 Decision, KSC-BC-2020-06/F03607, para.16.

²³ 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.

²⁴ *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.

would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial. And at such an advanced stage of trial — at which all parties have closed their cases — the interlocutory appeal requested would not materially advance proceedings.

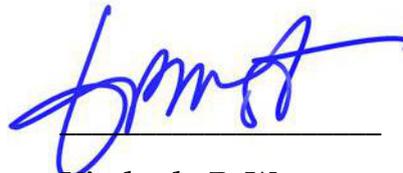
III. CLASSIFICATION

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

IV. RELIEF REQUESTED

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

Word Count: 1,363



Kimberly P. West

Specialist Prosecutor

Thursday, 18 December 2025

At The Hague, the Netherlands.