



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:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor

**Date:** 10 June 2022

**Language:** English

**Classification:** Public

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**Prosecution response to Veseli Defence request for leave to appeal Decision F00817**

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## I. INTRODUCTION

1. The Request<sup>1</sup> for leave to appeal the Decision<sup>2</sup> should be rejected because it fails to meet the criteria for leave to appeal<sup>3</sup> under Article 45 of the Law<sup>4</sup> and Rule 77 of the Rules.<sup>5</sup> None of the four Issues<sup>6</sup> constitute appealable issues. The Defence also fails to substantiate how the other leave to appeal criteria are met.

## II. SUBMISSIONS

2. Considering the cumulative test, the Defence fails to properly articulate—on an issue-by-issue basis—how each Issue satisfies the leave to appeal standard. Indeed, the Defence argues generally that the Issues meet the criteria, but fails to demonstrate how *each* of the Issues satisfies *all* three prongs, instead addressing their purported impact on the proceedings altogether and without differentiation.<sup>7</sup> This pleading failure alone justifies dismissal.

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<sup>1</sup> Veseli Defence Request for Leave to Appeal Third Decision on Victims' Participation, KSC-BC-2020-06/F00828, 1 June 2022 ('Request').

<sup>2</sup> Public Redacted Version of Third Decision on Victims' Participation, KSC-BC-2020-06/F00817/RED, 25 May 2022 ('Decision').

<sup>3</sup> The applicable law has been set out in prior decisions. *See, for example*, 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, unless otherwise specified.

<sup>6</sup> The four Issues ('Issues') are set out in para.2 of the Request. This response refers to the Issues as individually defined in the Request.

<sup>7</sup> Request, KSC-BC-2020-06/F00828, paras 4,9-10. *See, for example*, ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-3382, Reasons for Decision on 'Defence Request for Leave to Appeal the "Decision on Defence request for stay of proceedings and further disclosure"' and 'Defence Request for Leave to Appeal the "Decision on Defence requests for further disclosure"', 3 May 2016, para.12.

3. Further, insofar as certain of the Issues, in particular, the Fourth Issue,<sup>8</sup> do not concern legal errors, the Request partially runs afoul of Rule 113(6) and such parts have no legal basis.<sup>9</sup> In any event, on the merits, the Request also fails.

A. THE ISSUES ARE NOT APPEALABLE

4. None of the Issues are appealable issues. Notably, three of the Issues are based on the Pre-Trial Judge's purported failure to address Defence arguments.<sup>10</sup> However, the Pre-Trial Judge is not required to articulate every step of his reasoning and to discuss each submission.<sup>11</sup> Accordingly, these Issues, without more, are insufficient to demonstrate an appealable issue.

5. In any event, in relation to the First Issue<sup>12</sup> and contrary to the Defence's submission,<sup>13</sup> the Pre-Trial Judge explained, in some detail, the various factors and obligations he took into consideration according to the legal framework of the Specialist Chambers ('SC'), including Rules 80 and 113, and addressed to the Defence's previous submissions on the issue.<sup>14</sup> Therefore, the First Issue simply reflects the Defence's disagreement with the Pre-Trial Judge's findings in the Decision and previous relevant case law of the SC.<sup>15</sup>

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<sup>8</sup> Request, KSC-BC-2020-06/F00828, para.2 ('Fourth Issue: Whether, in light of the fact that all admitted victims to date have been granted total anonymity, the Pre-Trial Judge erred in finding that exceptional circumstances justify such measure').

<sup>9</sup> See also Framework Decision on Victims' Applications, KSC-BC-2020-06/F00159, 4 January 2021, para.54.

<sup>10</sup> Request, KSC-BC-2020-06/F00828, paras 5-7.

<sup>11</sup> Decision on Appeals Against "Decision on Motions Challenging the Jurisdiction of the Specialist Chambers", KSC-BC-2020-06/IA009/F00030, 23 December 2021, para.81 and the sources cited therein.

<sup>12</sup> Request, KSC-BC-2020-06/F00828, para.2 ('First Issue: Whether total anonymity of victims participating in the proceedings is a valid protective measure foreseen by Articles 22-23 of the [Law] and Rule 80 of the Rules').

<sup>13</sup> Request, KSC-BC-2020-06/F00828, para.5.

<sup>14</sup> Decision, KSC-BC-2020-06/F00817/RED, paras 25, 36-41.

<sup>15</sup> See Public Redacted Version of Second Decision on Victims' Participation, KSC-BC-2020-06/F00611/RED, 10 December 2021 ('Second Decision'), paras 53-54; Public Redacted Version of the First Decision on Victims' Participation, KSC-BC-2020-06/F00257/RED, 21 April 2021 ('First Decision'), paras 69-70,72. See also *Specialist Prosecutor v. Mustafa*, Public redacted version of Third decision on victims' participation, KSC-BC-

6. In support of the Second Issue,<sup>16</sup> the Defence raises the same arguments already considered and rejected by the Pre-Trial Judge,<sup>17</sup> without demonstrating any error and thereby expressing mere disagreement with the findings of the Pre-Trial Judge. The Defence incorrectly states that the Decision has ‘failed to address’ this issue.<sup>18</sup> In fact, the Pre-Trial Judge expressly considered the Defence arguments,<sup>19</sup> including the jurisprudence cited by the Defence,<sup>20</sup> and rejected the Defence arguments on this issue. Simply concluding that the Pre-Trial Judge’s approach violated constitutional and international recognised human rights law<sup>21</sup> is insufficient to identify and substantiate an appealable issue.

7. The Third Issue<sup>22</sup> is purely speculative as it concerns hypothetical civil proceedings before other courts. Moreover, the extent to which other courts can rely on the determinations on victim status in a final judgement of the SC is properly a matter for those courts. This includes determining any prejudice to the Accused that may result from anonymity of claimants in civil proceedings.<sup>23</sup> In such circumstances, the Defence

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2020-05/F00126/RED, 21 May 2021, paras 30-32 (The Trial Panel grants anonymity under Rule 80(4)(e)(i) to Participating Victims).

<sup>16</sup> Request, KSC-BC-2020-06/F00828, para.2 (‘Second Issue: Whether total anonymity of victims participating in the proceedings violates basic constitutional and international human rights of the Accused as protected by Article 32 of the [Law], Article 31 of the Constitution and Articles 6 of the ECHR and Article 14 of the ICCPR’).

<sup>17</sup> Request, KSC-BC-2020-06/F00828, para.6. *See also* Decision, KSC-BC-2020-06/F00817/RED, para.25.

<sup>18</sup> Request, KSC-BC-2020-06/F00828, para.6.

<sup>19</sup> Decision, KSC-BC-2020-06/F00817/RED, para.36-39.

<sup>20</sup> Decision, KSC-BC-2020-06/F00817/RED, paras 36-41, fn.50.

<sup>21</sup> Request, KSC-BC-2020-06/F00828, paras 2, 6.

<sup>22</sup> Request, KSC-BC-2020-06/F00828, para.2 (‘Third Issue: Whether the Pre-Trial Judge failed entirely to address the Defence argument that total anonymity is inconsistent with Article 22(9) of the Law and eliminates the possibility of civil proceedings before other Kosovo courts’).

<sup>23</sup> *See* STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC/AR126.3, Decision on Appeal by Legal Representative of Victims Against Pre-Trial Judge’s Decision on Protective Measures, 10 April 2013, para.34.

merely disagrees with the Pre-Trial Judge's treatment of these speculative and irrelevant arguments, which were expressly referenced in the Decision.<sup>24</sup>

8. The Fourth Issue<sup>25</sup> does not merit leave to appeal because it raises an abstract and hypothetical concern, without identifying any error in the Pre-Trial Judge's reasoning pertaining to the specific victims concerned by the Decision. The Defence fails to identify an appealable issue in the context of the Pre-Trial Judge's reasoning. In the specific circumstances of the concerned victims, the Pre-Trial Judge: (i) balanced the fair trial rights of the Accused and other interests at stake, such as those of the victims; (ii) found the protective measures are necessary and proportionate; and (iii) emphasised that such measures are 'without prejudice to any future ruling by the relevant Trial Panel and without prejudice to any additional measures stemming from the victims' potential dual status.'<sup>26</sup> Considering its hypothetical and abstract nature, the Fourth Issue is not an appealable issue.

#### B. THE ISSUES HAVE NO IMPACT JUSTIFYING CERTIFICATION

9. As the leave to appeal test is cumulative, the failure to identify any appealable issue must lead to rejecting the Request. Nevertheless, the remaining criteria are addressed below for completeness.

10. As the Decision is without prejudice to any future ruling by the relevant Trial Panel and without prejudice to any additional measures stemming from the victims' potential dual status,<sup>27</sup> the Decision's impact on the fair and expeditious conduct of the proceedings or outcome of the trial is entirely hypothetical. In this context, the Accused's

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<sup>24</sup> Decision, KSC-BC-2020-06/F00817/RED, para.25.

<sup>25</sup> Request, KSC-BC-2020-06/F00828, para.2 ('Fourth Issue: Whether, in light of the fact that all admitted victims to date have been granted total anonymity, the Pre-Trial Judge erred in finding that exceptional circumstances justify such measure').

<sup>26</sup> Decision, KSC-BC-2020-06/F00817/RED, paras 40,45. *See also* Second Decision, KSC-BC-2020-06/F00611/RED, para.53; First Decision, KSC-BC-2020-06/F00257/RED, para.69.

<sup>27</sup> Decision, KSC-BC-2020-06/F00817/RED, paras 40,45. *See also* Second Decision, KSC-BC-2020-06/F00611/RED, para.53; First Decision, KSC-BC-2020-06/F00257/RED, para.69.

fair trial rights – which were expressly and appropriately considered by the Pre-Trial Judge in the Decision – are ensured. The Request is premature and unmerited because the protective measures granted to the participating victims are not final and, where justified by changes in circumstances, may be varied in future pursuant to Rule 81. The Defence thus fails to substantiate any, let alone significant, impact on the proceedings or outcome of the trial.

11. For similar reasons, granting leave to appeal on any of the Issues would not materially advance proceedings. Rather, interlocutory appeal in the current circumstances, including (i) the stage of the proceedings, (ii) the minimal, if any, prejudice to the Defence, and (iii) the real and objective risks to the participating victims, would only delay the proceedings.

### III. RELIEF REQUESTED

12. For the foregoing reasons, the Request should be rejected in its entirety.

**Word count: 1470**



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**Jack Smith**  
**Specialist Prosecutor**

Friday, 10 June 2022

At The Hague, the Netherlands.