

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: Counsel for Kadri Veseli

Date: 17 June 2022

Language: English

Classification: Public

**Public Redacted Version of
Veseli Defence Reply to SPO Response to its Request
for Reconsideration and Leave to Appeal Decision on
Confirmation of Amendments to the Indictment (F00831, dated 2 June 2022)**

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I. INTRODUCTION

1. The Defence for Mr Kadri Veseli (“Defence”) hereby replies to the SPO’s Response¹ to its request for reconsideration and leave to appeal the Decision on Confirmation of Amendments to the Indictment (“Request”).² Pursuant to the Order of the Pre-Trial Judge,³ the Defence is incorporating submissions on the admissibility of the Request.

II. SUBMISSIONS ON ADMISSIBILITY

2. The SPO’s ‘interpretation’⁴ of the Rules is clearly contradicted by the plain meaning of Rules 90(2), 86(3)-(4), and 90(4). Rule 90(2) limits the application *mutatis mutandis* to Rules 86(3)-(4), thereby excluding the application of Rule 86(7), or Rule 86 in its entirety. Rule 90(4) – which operates as *lex specialis* vis-à-vis Rule 86(7) – provides that the Defence may file preliminary motions ‘in respect of the new charges’.⁵ The new charges – as contained in the Indictment – and the decision on their confirmation constitute two conceptually different notions. While the former may be challenged pursuant to Rule 97, the latter may be appealed subject to Rule 77.
3. The above is unequivocally confirmed by the Appeals Panel. In *Gucati and Haradinaj*, the Appeals Panel held that a party may properly bring an appeal pertaining “to the sufficiency of the evidentiary basis for the confirmation of the Indictment” after “having sought or been granted leave to appeal [...] according to Rule 77”.⁶

¹ F00814, Prosecution response to Veseli Defence request for reconsideration and leave to appeal the Decision on Confirmation of Amendments to the Indictment, 23 May 2022 (“Response”).

² F00796, Veseli Defence Request for Reconsideration and Leave to Appeal Decision on Confirmation of Amendments to the Indictment, 2 May 2022.

³ Transcript 20 May 2022, pp.1222-1223.

⁴ Response, para. 2.

⁵ Note that Rule 90(4) is not directed against the decision confirming the charges.

⁶ KSC-BC-2020-07/IA003/F00005, [Decision on the Admissibility of Appeal and Joinder Against Decision on Preliminary Motions](#), 12 May 2021, para. 14. In [F00413](#), Public Redacted Version of Decision on Defence

4. Furthermore, the SPO's claim that the Impugned Decision can be distinguished⁷ from the First Amendment Decision⁸ is without merit. Both decisions originate from the same SPO request.⁹ The fact that the Pre-Trial Judge opted, for practical reasons,¹⁰ to defer his decision on the First and Second Categories does not change the nature of the Impugned Decision.
5. Finally, the SPO seems to conflate conceptually distinct notions. As the Pre-Trial Judge has previously implied,¹¹ preliminary motions challenging defects on the form of the Indictment are directed against the Indictment, rather than the Decision confirming the Indictment. It follows that Rule 90(4) provides a different, yet additional guarantee than the one already offered by Rule 77. Accordingly, the Request is admissible.

III. SUBMISSIONS ON MERIT

A. Reconsideration

6. The SPO appears to take the view that, Rule 79 requires an applicant to substantiate all three prongs cumulatively.¹² A plain reading of the Rule demonstrates that this is not the case. It provides that "in exceptional

Motions Alleging Defects in the Form of the Indictment, 22 July 2021, para.47, the Judge held that the Law "does not foresee the possibility for the Defence to appeal a decision on the review of the indictment". The Defence understands that passage to substantiate the specific finding in para. 49 that the Defence may not challenge the evidentiary findings of the confirmation decision by means of a preliminary motion. In light of the above-referenced holding of the Appeals Panel, the Pre-Trial Judge must give deference to the higher court and consider the request admissible. Should the Pre-Trial Judge certify the Request, the SPO will be able, if it so wishes, to re-submit admissibility issues before the Appeals Panel.

⁷ Response, para. 3.

⁸ F00635, Decision Concerning Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b), 23 December 2021.

⁹ F00455, Submission of Corrected Indictment and Request to Amend, 3 September 2021.

¹⁰ In similar proceedings, *ad hoc* tribunals decided issues concerning the prejudice of the accused and sufficiency of the evidence in one decision: See, *Prosecution v. Dordević*, IT-05-87/1-PT, [Decision on Prosecution Motion for Leave to Amend the Third Amended Joinder Amendment](#), 7 July 2008, paras 28-29; *Prosecutor v. Karadžić*, IT-95-5/18-PT, [Decision on Prosecution Motion to Amend the First Amended Indictment](#), 16 February 2009, paras 40-44.

¹¹ F00413, paras 45-47.

¹² Response, para. 6.

circumstances and where a clear error of reasoning has been demonstrated or where reconsideration is necessary to avoid injustice.” In any event, the Request adequately describes the impact of such errors to the legal characterisation of the charges.¹³

i. Medical Report

7. The Defence is gravely concerned by the SPO’s decision to intentionally omit crucial evidence - the Medical Report - from the Pre-Trial Judge.¹⁴ Considering that supporting material for the amendments (Package 77) was issued *ex parte*, the Defence could not have been aware of its absence. Had the Medical Report been available to the Pre-Trial Judge, as it should have been, its conclusion – [REDACTED] – would have undoubtedly impacted the legal qualification and standard of proof required to confirm an indictment.

ii. Accounts of [REDACTED] and [REDACTED]

8. The SPO fails to confute the Defence’s argument, namely that the evidence does not support the conclusion that the accounts of [REDACTED] and [REDACTED] “differ to such an extent that it is unlikely they are speaking of the same incident”, nor does it provide any reasons as to why the Defence assertions are unpersuasive.
9. Contrary to the SPO’s claims, all proposed Issues are appealable and constitute discrete, easily identifiable issues stemming from the Impugned Decision. The attempt to frame them as *res judicata* is plainly misplaced. The significance of the Issues, due to their nature, is also evident and self-explanatory. Finally, the Defence recalls that the primary purpose of the confirmation phase is to weed out and filter allegations which could not meet the high evidentiary standard

¹³ Request, paras 12, 15.

¹⁴ Response, para. 7.

required for trial. The SPO's argument that the Issues may be dealt with by the Trial Panel undermines such rationale.

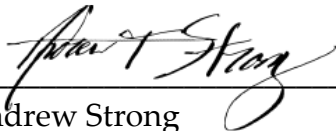
IV. CONCLUSION

10. The Defence reiterates its conclusions set out at paragraph 16 of its Request.

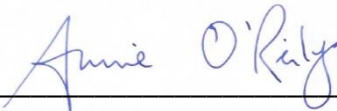
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