

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 Request for Reconsideration and Leave to Appeal Decision on
Confirmation of Amendments to the Indictment
(F00796, dated 2 May 2022)**

Specialist Prosecutor's Office
Jack Smith

Counsel for Hashim Thaçi
Gregory Kehoe

Counsel for Kadri Veseli
Ben Emmerson

Counsel for Victims
Simon Laws

Counsel for Rexhep Selimi
David Young

Counsel for Jakup Krasniqi
Venkateswari Alagendra

I. INTRODUCTION

1. The Defence for Mr Kadri Veseli (“Defence”), hereby files this application for reconsideration and leave to appeal the Decision on the Confirmation of Amendments to the Indictment (“Impugned Decision”).¹
2. The Defence proposes the following Issues for Certification:
 - **First Issue:** Whether, based on the evidentiary material, no reasonable trier of fact could have established a well-grounded suspicion that Mr Veseli, or any other JCE member, exercised effective control over, and used the physical perpetrators in furtherance of, the alleged common plan, and/or had any knowledge of the alleged crimes committed.²
 - **Second Issue:** Whether, based on the evidentiary material, no reasonable trier of fact could have established a well-grounded suspicion that the crimes alleged in the First and Second Category of amendments were committed in furtherance of the alleged common plan.³
 - **Third Issue:** Whether the Pre-Trial Judge erred in failing to establish a well-grounded suspicion that the Accused was responsible pursuant to JCE III, command responsibility, or aiding and abetting.⁴

¹ F00777/CONF/RED, Confidential Redacted Version of Decision on the Confirmation of Amendments to the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, 22 April 2022.

² F00777/CONF/RED, Section VI(D); F00668, Veseli Defence Submissions on the Supporting Material Submitted by the SPO in Respect of the First Category and Second Category Amendments to the Indictment, 31 January 2022, para. 11.

³ F00777/CONF/RED, Section VI(D); F00668, paras 38-41.

⁴ F00777/CONF/RED, Section VI(D); F00668, paras 11-12.

- **Fourth Issue:** Whether the Pre-Trial Judge erred in law by holding that only such material that “manifestly” violates Rules 138(2)-(3) of the Rules, shall be discarded.⁵
- **Fifth Issue:** Whether the Pre-Trial Judge erred in finding that the fundamental rights of certain witnesses (and consequently, those of Mr Veseli) were not violated based on the fact that the SPO did not formally consider these individuals to be suspects either now or at the time of their interview.⁶
- **Sixth Issue:** Whether the Pre-Trial Judge erred in law by refraining from considering any extraneous information or material submitted by the Defence.⁷
- **Seventh Issue:** Whether the Pre-Trial Judge erred in law by dismissing Defence arguments regarding the credibility of witnesses or inconsistencies in their evidence.⁸
- **Eighth Issue:** Whether, based on the evidentiary material, no reasonable trier of fact could have found a well-grounded suspicion that the Accused is responsible for the enforced disappearance of [REDACTED].⁹
- **Ninth Issue:** Whether, no reasonable trier of fact would have established a well-grounded suspicion that KLA members were responsible for abduction or murder.¹⁰

⁵ F00777/CONF/RED, Section VI(B); F00668, paras 14-17.

⁶ F00777/CONF/RED, Section VI(B); F00668, paras 14-17.

⁷ F00777/CONF/RED, paras 36-37.

⁸ F00777/CONF/RED, para 53; F00668, paras 20-22, 29.

⁹ F00777/CONF/RED, Section VI(B)(5); F00668, paras 25-31.

¹⁰ F00777/CONF/RED, Section VI(C)(4), para. 149; F00668, para. 43.

- **Tenth Issue:** Whether the Pre-Trial Judge made a discernible error in holding that the medical report(s) of [REDACTED] cannot form part of the assessment required under Rule 86(4) of the Rules.¹¹
- **Eleventh Issue:** Whether the Pre-Trial Judge made a discernible error in finding that the accounts of [REDACTED] and [REDACTED] differ to such an extent that it is unlikely they are speaking of the same incident.¹²

II. APPLICABLE LAW

3. The Defence recalls the legal test set out in KSC-BC-2020-06/F0017 which is hereby incorporated by reference.¹³

III. SUBMISSIONS

A. The Issues are appealable

4. The issues are concrete, easily identifiable and stem from the Impugned Decision.¹⁴ The First, Second, Eighth and Ninth Issues challenge the application, by the Pre-Trial Judge, of the relevant standard of proof required to confirm amendments to the Indictment. While the Pre-Trial Judge correctly identified the relevant (high) standard of proof (as compared to ad hoc tribunals), he failed to apply such standard in practice:

- The First Issue questions whether the Pre-Trial Judge may satisfy the evidentiary standard by simply recalling the alleged participation in a

¹¹ F00777/CONF/RED, para. 72; F00668, para. 20.

¹² F00777/CONF/RED, para. 61.

¹³ F00172, Pre-Trial Judge, Decision on the Thaçi Defence Application for Leave to Appeal (“Thaçi Decision on Leave to Appeal”), 11 January 2021, public, paras 9-17.

¹⁴ The First and Second and Third Issue concern section VI(D); the Fourth and Fifth Issue stem from section IV(B); the Sixth Issue relates to paragraphs 36-37; the Seventh Issue derives from paragraph 53; the Eighth Issue relates to Section VI(B)(5); the Ninth Issue from Section (VI)(C)(4), para. 149; the Tenth Issue from paragraph 72; and the Eleventh Issue from paragraph 61 of the Impugned Decision.

JCE and noting the association of the alleged perpetrators with the KLA, without proving a well-grounded suspicion that any of the perpetrators were JCE members or were used as Tools by the Accused or any JCE member.

- The Second Issue, the risk exists that any crime occurred in Kosovo during the Indictment period by individual KLA members against certain category of persons would *ipso facto* satisfy a well-grounded suspicion that such crime occurred in the furtherance of an alleged JCE.
- The Eighth Issue challenges the finding of the Pre-Trial Judge given the absence of any evidence establishing a link between the alleged perpetrators and the General Staff.
- The Ninth Issues, the Defence notes that, contrary to the considerations of the Pre-Trial Judge,¹⁵ the Defence did not argue that hearsay evidence should be considered inadmissible.¹⁶ Instead, the Ninth Issue questions whether, considering the facts of the case, hearsay evidence alone¹⁷ may be sufficient to meet the high evidentiary threshold of well-grounded suspicion.

5. The Third, Fourth, Fifth, Sixth and Seventh Issues identify certain self-explanatory errors of law relating to the scope of the Impugned Decision, while the Tenth and Eleventh Issues relate to discernible errors based on a patently incorrect conclusion of fact. Considering that the latter may have been caused

¹⁵ F00777/CONF/RED, para. 150.

¹⁶ F00668, Veseli Defence Submissions on the Supporting Material Submitted by the SPO in Respect of the First Category and Second Category of Amendments to the Indictment, 31 January 2022, para. 43 (note in addition that such submissions were made under the heading “*The evidentiary threshold is not met*”).

¹⁷ It is recalled that all the information concerning [REDACTED]’s whereabouts was based on hearsay, see, ¹⁷ F00668, Veseli Defence Submissions on the Supporting Material Submitted by the SPO in Respect of the First Category and Second Category of Amendments to the Indictment, 31 January 2022, para. 43(iii).

due to oversight in the assessment of the evidentiary material, the Defence requests, in the alternative, for reasons set out below, reconsideration pursuant to Rule 79 of the Rules.

6. The Defence stresses that all proposed Issues constitute discrete topics emanating from the Impugned Decision. They are not, therefore, mere disagreements.

B. The Issues significantly affect the fair and expeditious conduct of the proceedings

7. The proposed Issues concern the right of Mr Veseli to be promptly informed of the charges against him. As the Pre-Trial Judge has considered in a similar setting:

[I]t is important to resolve issues related to the specificity and clarity of the charges early on, in order for the Accused to have adequate time and facilities to prepare their defence, as provided in Article 21(4)(c) of the Law. Early resolution of the issues would also streamline the proceedings and advance the Accused's right to be tried within a reasonable time, as provided in Article 21(4)(d) of the Law.¹⁸

8. To ensure the fair and expeditious conduct of the proceedings, the above-conclusion is applicable *mutatis mutandis* to the Issues.

C. An immediate resolution from the Court of Appeal Panel will materially advance the proceedings.

9. Should the Defence be correct in its appeal, a favourable resolution from the Court of Appeals Panel would dismiss the Amended Indictment in whole or part, therefore avoiding unnecessary delays and waste of resources from both the Defence and the Trial Panel. In addition, an authoritative determination from the Court of Appeals Panel would provide clarity on the legal issues identified during the process of the confirmation of amendments to the

¹⁸ F00534, Decision on Defence Applications for Leave to Appeal the Decision on Defence Motions Alleging Defects in the Form of the Indictment, 18 October 2021, para. 18.

Indictment. An immediate resolution from the Court of Appeals Panel is therefore, warranted.

D. Request for consideration

i. Medical report of [REDACTED]

10. At paragraph 72 of the Impugned Decision, the Pre-Trial Judge found that

[T]his report is not included in the supporting material to the Proposed Amendments and the Veseli Defence has not provided the report or an appropriate citation thereto and therefore this report cannot form part of the assessment required under Rule 86(4) of the Rules’.

11. The Defence notes that the report, under ERN 0188-3935-0188-3937-ET¹⁹ was (i) disclosed by same Disclosure 64 which contained other supporting material; and (ii) as Rule 102(1)(b) item. Moreover, while the Defence did not cite the exact ERN, it made sure to provide enough detail to easily locate the document.²⁰

12. As previously submitted, the medical report, even if taken at face value, concludes that [REDACTED], which shows that (i) inhumane acts and cruel treatment as well as torture and persecution are clearly not established even under the lower standard of reasonable suspicion;²¹ and (ii) that [REDACTED] is unreliable on a key issue.

¹⁹ Description: “[REDACTED]”.

²⁰ Indeed, a quick search on LW with the query: “[REDACTED]” results with only one hit, namely the medical report cited by the Defence.

²¹ Notably [REDACTED] has no documentation in relation to [REDACTED], see 078045-TR-ET Part 2, p. 20.

ii. *Differing accounts of [REDACTED] and [REDACTED]*

13. At paragraph 61 of the Impugned Decision, the Pre-Trial Judge found that the accounts of [REDACTED] and [REDACTED] “differ to such an extent that it is unlikely that they are speaking of the same incident”.
14. First, the Defence submits that the Pre-Trial Judge erred in failing to note the relevance of type of weapons concerned. Unlike the Pre-Trial Judge’s reference to an overlap involving a previous “incident with a rifle”, both [REDACTED] and [REDACTED], as well as [REDACTED] refer to them having a “[REDACTED]”.²² The Defence submits that it is statistically very improbable (if not impossible) that [REDACTED] and [REDACTED] refer to different incidents considering that both refer (i) to an incident occurred at or around 4 July 1998;²³ (ii) [REDACTED].²⁴
15. Second, it is unreasonable to discard the statement of [REDACTED] relating to [REDACTED] incident. As the event occurred 20 years ago, it is unreasonable to expect [REDACTED] to recall every detail, especially since according to [REDACTED] “the incident was uneventful”. It is therefore perfectly reasonable for a witness to “recount well [the incident]” while at the same time, not being “clear on the name of the individual concerned”.²⁵

IV. CONCLUSION

16. For the abovementioned reasons, the Defence for Mr Veseli respectfully requests the Pre-Trial Judge to grant the request and certify the proposed Issues

²² 078045-TR-ET Part 1, p. 14, 17; KSC-BC-2020-06-025430-025437 RED, 5.2; 078562-TR-AT Part 3, p. 31 (“[REDACTED]”) (note that the English translation incorrectly mentions a “[REDACTED]”, 078562-TR-ET Part 3, p. 25).

²³ 078562-TR-ET Part 3, p. 27; 0188-3935-0188-3937-ET.

²⁴ It appears probable that [REDACTED] had an encounter with [REDACTED].

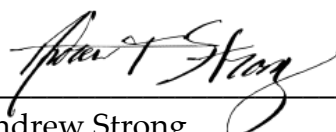
²⁵ F00777/CONF/RED, para. 61.

and reconsider his decision in accordance with the submissions in Section IV(D), or in the alternative, certify the relevant proposed Issues.

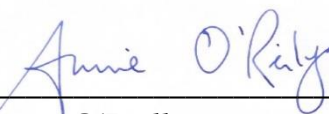
Word Count: 1843



Ben Emmerson, CBE QC
Counsel for Kadri Veseli



Andrew Strong
Co-Counsel for Kadri Veseli



Annie O'Reilly
Co-Counsel for Kadri Veseli