



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-06
**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi,
and Jakup Krasniqi**

Before: Trial Panel II
Judge Charles L. Smith III
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 6 April 2023

Language: English

Classification: Public

Decision on Veseli Defence Submissions Regarding the “Selimi Note”

Acting Specialist Prosecutor
Alex Whiting

Counsel for Victims
Simon Laws

Counsel for Hashim Thaçi
Gregory Kehoe

Counsel for Kadri Veseli
Ben Emmerson

Counsel for Rexhep Selimi
David Young

Counsel for Jakup Krasniqi
Venkateswari Alagenda

TRIAL PANEL II (“Panel”), pursuant to Articles 19(2)-(3) and 21 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 79 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 7 February 2023, the Specialist Prosecutor’s Office (“SPO”) filed a Rule 154 motion in respect of its first twelve witnesses (“Rule 154 Motion”).¹
2. On 20 February 2023, the Defence teams jointly responded to the Rule 154 Motion.²
3. On 16 March 2023, the Panel rendered its decision on that Motion (“Rule 154 Decision”).³ Therein, the Panel found, *inter alia*, that the record of a declaration made by the Accused Rexhep Selimi to a Prosecution witness (“the Selimi Note”) was suitable for admission as associated exhibit of an SPO witness’s Rule 154 Statement.⁴
4. On 20 March 2023, during the status conference, the Defence for Kadri Veseli (“Veseli Defence”) raised objections regarding the use and weight of the Selimi Note.⁵
5. On 31 March 2023, the Veseli Defence filed further submissions regarding this document (“Veseli Submissions”).⁶

¹ F01262, Specialist Prosecutor, 7 February 2023, confidential, with Annexes 1-7, confidential. A public redacted version was filed on 31 March 2023, F01262/RED.

² F01308, Specialist Counsel, 20 February 2023, confidential. A public redacted version was filed on 31 March 2023, F01308/RED.

³ F01380, Panel, 16 March 2023, confidential.

⁴ Rule 154 Decision, para. 50.

⁵ Transcript of Hearing, 20 March 2023, confidential, p. 2125, line 18 to p. 2128, line 12.

⁶ F01414, Specialist Counsel, 31 March 2023, confidential.

6. On 4 April 2023, the Panel ordered the SPO to file its response to the Veseli Submissions no later than Thursday 5 April 2023, 4:00 p.m., with no reply being entertained.⁷

7. On the same day, 4 April 2023, the Defence for Hashim Thaçi (“Thaçi Defence”) joined the Veseli Submissions (“Thaçi Joinder”).⁸

8. On 5 April 2023, the SPO responded to the Veseli Submissions and the Thaçi Joinder (“SPO Response”).⁹

II. SUBMISSIONS

9. The Veseli Defence, joined by the Thaçi Defence,¹⁰ requests the Panel to: (i) limit the use of the Selimi Note to evidence of the fact that the Note was compiled, and not as evidence of the truth of its content (“First Request”);¹¹ or failing that (ii) account for the Selimi Note’s inherently low probative value and invariably high prejudicial effect during its deliberations (“Second Request”).¹²

10. The SPO responds that the Veseli Submissions should be rejected as it is a late and manifest attempt to reconsider the Rule 154 Decision and it fails to meet the standard for reconsideration.¹³ It avers that the Selimi Note is admissible under the Rules, against all Accused, and can be used against Mr Veseli for the truth of its content.¹⁴ It contends that the Veseli Submissions unconvincingly try to distinguish admissibility from use and that the question as to how much weight

⁷ Draft Transcript of Hearing, 4 April 2023, p. 2266.

⁸ F01422, Specialist Counsel, 4 April 2023, confidential.

⁹ F01427, Specialist Prosecutor, 5 April 2023, confidential.

¹⁰ Thaçi Joinder, para. 12.

¹¹ Veseli Submissions, paras 5, 7, 11, 25, 28.

¹² Veseli Submissions, paras 2-3,25-28.

¹³ SPO Response, paras 1, 9, 11, 15.

¹⁴ SPO Response, paras 1, 13.

should be ascribed to the Selimi Note is a matter to be considered at the end of the proceedings.¹⁵

III. DISCUSSION

11. The Veseli Submissions rely on Article 21(4) of the Law and Rules 138(1) and 154 of the Rules. None of these provisions provides for the relief sought by the Veseli Defence, joined by the Thaçi Defence.

12. Insofar as it seeks an assurance from the Panel not to use the Selimi Note for the truth of its content, the First Request amounts, despite the Veseli Defence's suggestion to the contrary,¹⁶ to a motion for reconsideration of the Rule 154 Decision finding the Selimi Note suitable for admission.

13. The Panel notes in that regard that submissions similar in substance to those made in the Veseli Submissions and the Thaçi Joinder were made, albeit in more limited fashion, in F01308.¹⁷ The Panel has ruled upon these submissions, finding that the Selimi Note met the requirements for admissibility of Rule 138(1) and that, in particular, the probative value of this proposed associated exhibit was not outweighed by its prejudicial effect.¹⁸ The Veseli Submissions and Thaçi Joinder are therefore a thinly disguised attempt to revisit and re-litigate an issue already decided by the Panel. Neither the Veseli Defence, nor the Thaçi Defence ("Defence" collectively), has established that the requirements for reconsideration pursuant to Rule 79 were met. Nor has the Defence identified any other rule that would authorize it to seek the requested relief. The Panel, therefore, dismisses the First Request.

¹⁵ SPO Response, paras 9-10.

¹⁶ Veseli Submissions, para. 2.

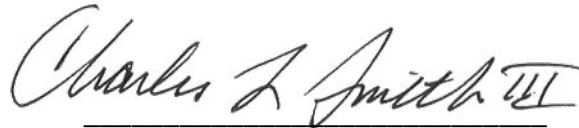
¹⁷ F01308, para. 21(iv).

¹⁸ Rule 154 Decision, para. 50.

14. Regarding the Second Request, the Panel will consider the weight of all admitted evidence at the end of the trial.¹⁹ The Panel, therefore, dismisses the Second Request as being premature.

IV. DISPOSITION

15. Based on the above, the Panel **DISMISSES** the Veseli Submissions and the Taçi Joinder.



Judge Charles L. Smith, III
Presiding Judge

Dated Thursday, 6 April 2023

At The Hague, The Netherlands.

¹⁹ Rule 139(2). See also ICTY, *Prosecutor v. Popović et al.*, IT-05-88-A, Appeals Chamber, [Judgement](#), 30 January 2015, para. 1150; ICTR, *Prosecutor v. Setako*, ICTR-04-81-A, Appeals Chamber, [Judgement](#), 28 September 2011, paras 31, 48, 154, 222. ICTY, *Prosecutor v. Limaj et al.*, IT-03-66-A, Appeals Chamber, [Judgement](#), 27 September 2007, paras 88, 153.