



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, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 28 April 2023

Language: English

Classification: Public

Decision on SPO Submissions Regarding Procedure for Rule 151 Cases

Acting Specialist Prosecutor

Alex Whiting

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Counsel for Victims

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Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

David Young

Counsel for Jakup Krasniqi

Venkateswari Alagendra

TRIAL PANEL II (“Panel”), pursuant to Article 40(2) and (6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 43 and 151 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 4 April 2023, the Specialist Prosecutor’s Office (“SPO”) filed submissions regarding a procedure for cases of (potential) self-incrimination by a witness (“SPO Submissions”),¹ requesting the Panel to adopt the procedure outlined in the SPO Submissions (“Request”).²
2. None of the Defence teams responded to the SPO Submissions.

II. SUBMISSIONS

3. The SPO submits that: (i) issues of self-incrimination may arise in relation to certain witnesses whom it intends to call; and (ii) pursuant to the Order on the Conduct of Proceedings, it will indicate during preparation sessions with these witnesses that they are entitled to seek the advice of counsel if they are concerned about self-incrimination, and provide Rule 43 notifications.³ However, as these witnesses may, according to the SPO, require Rule 151(3) assurances when they appear before the Panel, the SPO proposes a specific procedure for such cases and requests the Panel to adopt the outlined procedure.⁴ The SPO contends that this procedure would: (i) promote the fairness and expeditiousness of the proceedings; (ii) be consistent with procedures adopted in other cases before the Specialist

¹ F01421, Specialist Prosecutor, *Prosecution Submissions for a Procedure to Regulate Cases Falling under Rule 151*, 4 April 2023, confidential (a public redacted version was filed on 19 April 2023, F01421/RED).

² SPO Submissions, paras 1, 5.

³ SPO Submissions, para. 2.

⁴ SPO Submissions, paras 2-5.

Chambers, as well as by the International Criminal Court; and (iii) be without prejudice to the Panel's assessment of whether assurances pursuant to Rule 151(3) will in fact be granted.⁵

III. DISCUSSION

4. Rule 151 addresses the issue of (potential) self-incrimination by a witness during testimony. In addition, paragraph 97(v) of the Order on the Conduct of Proceedings⁶ provides that during witness preparation sessions, the questioning lawyer must indicate that if the witness is concerned that information could be self-incriminatory, he or she is permitted to seek the advice of a counsel before answering such questions. The SPO indicated that it will do so with respect to the witnesses concerned and that it will also provide notifications pursuant to Rule 43.⁷

5. The Panel is of the view that Rules 43 and 151, in combination with paragraph 97(v) of the Order on the Conduct of Proceedings, adequately regulate the matter of (potential) self-incrimination by witnesses at this point in the proceedings. Should the SPO have any concern in respect of self-incrimination by a given witness that requires the intervention of the Panel, it should seek the necessary relief at the relevant point in time and in relation to the witness concerned.

6. The Panel notes, furthermore, that it is in the interest of all to ensure that proceedings are conducted in a fair, effective and expeditious manner. This requires, *inter alia*, that any Party should ensure that any relief it wishes to seek

⁵ SPO Submissions, para. 2, referring to KSC-BC-2020-05, F00170, Trial Panel I, *Decision on the Conduct of the Proceedings*, 26 August 2021, paras 46-48; KSC-BC-2020-04, F00434, Trial Panel I, *Decision on the Conduct of the Proceedings*, 24 February 2023, paras 56-58; ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-619, Trial Chamber VI, [Decision on the Conduct of Proceedings](#), 2 June 2015, paras 44-46.

⁶ F01226, Trial Panel II, *Order on the Conduct of Proceedings*, 25 January 2023, with Annex 1.

⁷ SPO Submissions, para. 2.

from the Panel is sought at the earliest possible opportunity. Therefore, where a Party has concrete information to suggest that a witness might refuse to testify or to answer questions on grounds of self-incrimination, the Party concerned should bring the matter to the attention of the Panel, the Registry, the opposing Party and counsel for victims, and, where necessary, to seek appropriate relief from the Panel without delay in accordance with the Rules.

7. In light of the above, the Panel rejects the Request.

IV. DISPOSITION

8. For the above-mentioned reasons, the Panel hereby **REJECTS** the Request.



Judge Charles L. Smith, III
Presiding Judge

Dated this Friday, 28 April 2023

At The Hague, the Netherlands.