



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: Court of Appeals Panel
Judge Michèle Picard
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Dr Fidelma Donlon

Filing Participant: Acting Specialist Prosecutor

Date: 14 June 2023

Language: English

Classification: Confidential

Prosecution request to strike Veseli Filing IA028/F00004 or for leave to reply

with public Annex 1

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Article 45 of the Law¹ and Rules 75, 77, and 170 of the Rules,² the Veseli Filing³ is not properly before the Panel and should be struck.⁴ Veseli fails to justify why his arguments, which in substance challenge the Trial Panel's practices, should be permitted as a response to the Appeal,⁵ and without seeking certification pursuant to Article 45 and Rule 77. By ignoring the process set out in the Rules for interlocutory appeals, the Veseli Filing opens these proceedings to abuse: it deprives the Trial Panel of the ability to exercise its gatekeeping certification functions; deprives the Specialist Prosecutor's Office ('SPO') of the opportunity to respond at relevant stages of the process; deprives the Panel of full argument on the matters before it; complicates and confuses the certified issues and the submissions and requested relief raised in the Appeal; and ultimately leads to a waste of time and resources. For these same reasons, should the Panel decide to consider the Veseli Filing or part thereof, the SPO alternatively requests the opportunity to reply.

II. BACKGROUND AND SUBMISSIONS

2. On 20 April 2023, the Trial Panel issued the Oral Order concerning Trial Panel questioning of witnesses.⁶ Thaçi, Selimi, and Krasniqi sought leave to appeal the Oral

¹ Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article' or 'Articles' herein are to the Law.

² 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.

³ Corrected Version of Veseli Defence Response to Thaçi, Selimi and Krasniqi Defence Appeal Against Oral Order on Trial Panel Questioning, KSC-BC-2020-06/IA028/F00004/COR, 12 June 2023, Confidential ('Veseli Filing').

⁴ ICTY, *Nikolić v. Prosecutor*, IT-02-60/1-A, Decision on Prosecution's Motion to Strike, 20 January 2005, paras 25 (noting that the benefit of striking improper submissions is not only to guarantee fairness of the proceedings but also to clarify for the parties, and for the public, which arguments have been considered in reaching a particular decision), 42.

⁵ Thaçi, Selimi and Krasniqi Defence Appeal against the Oral Order on Trial Panel Questioning, KSC-BC-2020-06/IA028/F00002, 30 May 2023, Confidential ('Appeal').

⁶ Transcript (Procedural Matters), 20 April 2023, pp.3262-3263 ('Oral Order').

Order,⁷ and the Trial Panel certified two of the requested four issues for appeal.⁸ Veseli did not seek leave to appeal the Oral Order. Thaçi, Selimi, and Krasniqi then filed the Appeal. On 9 June 2023, the SPO filed a response to the Appeal.⁹ On the same day, Veseli filed the Veseli Filing.¹⁰

3. Despite claiming to be a response,¹¹ the Veseli Filing's own description of its contents show that it is not responding to the arguments contained in the Appeal, but instead is submitting claims regarding speculative possible future events.¹² At the same time, on Veseli's behalf, it impugns the Trial Panel's actions in relation to instances where the Trial Panel posed questions concerning, *inter alia*, Veseli.¹³ The Veseli Filing, in substance and stated purpose, therefore constitutes additional argument challenging aspects of the Trial Panel's questioning of witnesses and seeks relief distinct from the Appeal, without Veseli having applied for certification. The Veseli Filing therefore impermissibly attempts to circumvent the process for interlocutory appeals established in the Rules,¹⁴ which allows for the orderly and fair resolution of disputes and safeguards the distribution of power between the Trial Panel and the Appeals Panel. In doing so, the Veseli Filing also prejudices the SPO, by depriving it of an opportunity to respond to the additional arguments Veseli raises.

4. There was, of course, no obligation for Veseli to join the Certification Request. Had he preferred, he could have filed a separate certification request and, if granted

⁷ Thaçi, Selimi and Krasniqi Defence Request for Certification to Appeal the Oral Order on Trial Panel Questioning, KSC-BC-2020-06/F01495, 1 May 2023.

⁸ Decision on Thaçi, Selimi and Krasniqi Defence Request for Certification to Appeal the Oral Order on Trial Panel Questioning, KSC-BC-2020-06/F01531, 17 May 2023.

⁹ Prosecution Response to Thaçi, Selimi and Krasniqi Defence appeal regarding Trial Panel questioning (IA028-F00002), KSC-BC-2020-06/IA028/F00003, 9 June 2023.

¹⁰ Veseli subsequently filed a corrected version on 12 June 2023.

¹¹ Veseli Filing, KSC-BC-2020-06/IA028/F00004/COR, paras 1, 5.

¹² Veseli Filing, KSC-BC-2020-06/IA028/F00004/COR, paras 3-4. *See also* paras 6, 19.

¹³ *See, e.g.*, Veseli Filing, KSC-BC-2020-06/IA028/F00004/COR, paras 11-16. Veseli also uses the Veseli Filing to make incomplete and inaccurate arguments concerning certain translation issues. *See* Veseli Filing, KSC-BC-2020-06/IA028/F00004/COR, fn.13. Indeed, in context, the translation of the word '*Shërbimi informativ*' as 'intelligence service' is not a mis-translation, as Veseli claims. For example, the 'State Intelligence Service' of the Republic of Albania is known as the '*Shërbimi Informativ I Shtetit*'. *See* shish.gov.al/index.html; shish.gov.al/en/index.html (last accessed 13 June 2023).

¹⁴ *See* Rules 77, 170(2).

certification, a separate appeal. If he felt he did not have a basis to do so because he had not been prejudiced,¹⁵ he could have waited until such a time that he felt he did have a basis to do so. But it should not be permissible for Veseli to, *inter alia*,¹⁶ deprive the SPO of an opportunity to make submissions at the stage of seeking certification and on appeal, and to deprive the Trial Panel of the opportunity to exercise its functions concerning certification of interlocutory appeal issues, by labelling his arguments challenging the Oral Order and seeking distinct relief as a ‘response’.

5. Veseli submits that his response is proper because he ‘has differentiated [his] position from that expressed in’ the Appeal.¹⁷ But that is not sufficient. An ICTR Appeals Chamber has had the opportunity to address this issue in a multi-accused case. There, one co-accused appealed an order of a trial chamber, and two other co-accused responded to the appeal. The Appeals Chamber noted that the responding co-accused submitted arguments relating not to the content of the appeal, but concerning themselves and their own situations.¹⁸ The co-accused’s responses furthermore challenged the decision of the Trial Chamber that the appellant co-accused had appealed.¹⁹ The Appeals Chamber therefore held that it would ‘only take into consideration those arguments made by [the responding co-accused] that are legitimately made in response to the certified appeal of the Appellant’ and ruled the remainder of the responding co-accused’s arguments inadmissible.²⁰ It explained that ‘to grant an accused, who has not obtained the required certification, the standing to

¹⁵ Veseli Filing, KSC-BC-2020-06/IA028/F00004/COR, para.2.

¹⁶ See also para.1 above.

¹⁷ Veseli Filing, KSC-BC-2020-06/IA028/F00004/COR, para.6.

¹⁸ ICTR, *Prosecutor v. Ndayambaye et al.*, ICTR-98-42-AR73, Decision on Joseph Kanyabashi’s Appeal against the Decision on Trial Chamber II of 21 March 2007 concerning the Dismissal of Motions to Vary his Witness List, 21 August 2007 (‘ICTR Appeals Decision’), paras 11 (considering that (i) the purpose of a response is to give a full answer to the issues raised in a motion by the moving party; and (ii) a co-accused may be allowed to make submissions in appeal proceedings initiated by another co-accused where such co-accused has a specific interest in the matter and whether considering the filing as valid would be in the interests of justice and of no prejudice to other parties), 12-13.

¹⁹ ICTR Appeals Decision, paras 12-13.

²⁰ ICTR Appeals Decision, paras 12-13.

challenge a Trial Chamber decision on appeal in his response to an appeal filed by a co-accused would open the interlocutory appeal process to abuse.’²¹

6. The same is true here. As set out above, Veseli raises arguments that are not responsive to the Appeal,²² that primarily rely on Trial Panel questioning concerning Veseli,²³ that are critical of the Trial Panel questioning,²⁴ and that seek relief not tied to the relief requested in the Appeal (either in support or opposition²⁵) or provided for in the applicable legal framework.²⁶ Veseli does so without certification and in a filing improperly titled as a ‘response’.

III. CLASSIFICATION

7. This filing is filed as confidential pursuant to Rule 82(4) because it concerns confidential filings. The SPO is not opposed to it being reclassified as public.

IV. RELIEF REQUESTED

8. The Veseli Filing should be struck. In the alternative, should the Appeals Panel decide to consider the Veseli Filing or part thereof, the SPO should be granted an opportunity to reply.

²¹ ICTR Appeals Decision, para.14.

²² See Veseli Filing, KSC-BC-2020-06/IA028/F00004/COR, paras 3-4 (describing arguments).

²³ See Veseli Filing, KSC-BC-2020-06/IA028/F00004/COR, paras 11-16.

²⁴ See Veseli Filing, KSC-BC-2020-06/IA028/F00004/COR, paras 10-18, 20. See also paras 7-9 (which provide context to the submissions).

²⁵ See KSC Registry Practice Direction on Files and Filings before the Kosovo Specialist Chambers, KSC-BD-15, 17 May 2019, Article 46(1)(a) (‘whether the relief sought is supported or opposed’).

²⁶ Veseli Filing, KSC-BC-2020-06/IA028/F00004/COR, para.23 (seeking that ‘that the Appeals Panel take judicial notice of’ certain alleged risks arising from judicial questioning). See also paras 19, 21.

Word count: 1446



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Wednesday, 14 June 2023

At The Hague, the Netherlands.