

**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:** Counsel for Kadri Veseli

**Date:** 20 June 2023

**Language:** English

**Classification:** Confidential

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**Veseli Defence Response to Prosecution Request to Strike Veseli Filing  
IA028/F00004COR or for Leave to Reply**

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## I. INTRODUCTION

1. The Defence for Mr Kadri Veseli (“Defence”) hereby files this Response to the Prosecution’s Request to strike IA028/F00004 or for leave to reply “(Response)”.<sup>1</sup>
2. The Defence maintains that IA028/F00004COR (“Impugned Response”) is a valid response within the legal framework of the Specialist Chambers and should be considered during the adjudication of the Appeal in question.<sup>2</sup> Whilst critical of the Trial Panel’s questioning of witnesses, the submissions contained therein are responsive to the Appeal despite the Prosecution’s arguments to the contrary.
3. The Request ought to be dismissed.

## II. SUBMISSIONS

4. At its core, the Request hinges upon the ill-founded submission that the Impugned Response is – in substance – an Appeal akin to that filed by Mr Veseli’s Co-Accused, for which certification was not granted.<sup>3</sup> On balance, however, the Request is devoid of any legal bases capable of adequately supporting this position. This is especially true in respect of the ICTR and ICTY Decisions invoked by the SPO.<sup>4</sup>

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<sup>1</sup> IA028/F00006, *Prosecution request to strike Veseli Filing IA028/F00004 or for leave to reply with public Annex 1*, 14 June 2023, confidential.

<sup>2</sup> IA028/F00004COR, *Corrected Version of Veseli Defence Response to Thaçi, Selimi and Krasniqi Defence Appeal Against Oral Order on Trial Panel Questioning*, 12 June 2023, confidential. A public redacted version was released on 15 June 2023.

<sup>3</sup> IA028/F00006, paras 1, 3-5.

<sup>4</sup> 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 (“Ndayambaye et al. Decision”); ICTY, *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, [Decision on the Prosecution’s Motion Seeking a Declaration](#), 20 June 2006 (“Blaškić Decision”).

5. Indeed, the Prosecution fails to acknowledge that the combined effect of both Decisions is such that a Response filed by an Accused against the Appeal of the Co-Accused is valid where:
- a. It gives a full answer to the issues raised in a motion by the moving party;
  - b. The responding Co-Accused has a specific interest in the matter; and
  - c. Consider the filing as valid would be in the interests of justice and of no prejudice to other parties.<sup>5</sup>
6. The Defence submits that the Impugned Response fulfils all three of the abovementioned criteria for the reasons set out below.
7. First, the Defence responded to the submissions on both certified issues. The Defence agreed with the Co-Accused submissions that it was not a Trial Panel's duty to engage in prosecutorial investigation via its questioning.<sup>6</sup> However, the Defence made clear that it does not regard the introduction of criteria to guide judicial questioning as a necessary measure to safeguard the Rights of the Accused (Fourth Issue); and relatedly, that it did not share the view that the Trial Panel's interpretation of its own discretion to pose questions is *prima facie* incompatible with the applicable legal framework (Second Issue). Whilst the proposed criteria could serve as a "useful guide," the bounds of judicial questioning should not be curtailed on the basis of criteria that were exhaustive and absolute.<sup>7</sup> Although none of this detracts from its criticism of the Trial

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<sup>5</sup> IA028/F00006, para. 5, fn. 18 *citing* Ndayambaye et al. Decision, para. 11 and Blaškić Decision, p. 4.

<sup>6</sup> IA028/F00004COR, para. 19

<sup>7</sup> IA028/F00004COR, para. 20.

Panel's questioning of witnesses, the Defence submits that these points of difference indicate its responsiveness to the Appeal.<sup>8</sup>

8. Second, the Impugned Response made it abundantly clear that Mr Veseli has a vested interest in the issues raised on Appeal. Whereas the Prosecution maligns the Impugned Response as "speculative [of] possible future events,"<sup>9</sup> the Defence maintains that the examples of judicial questioning provided therein make it clear that the risk of prejudice to Mr Veseli is both serious and ever-present. Moreover, the Defence felt compelled to respond to the Appeal because it could ultimately result in a ruling that is harmful to Mr Veseli's interests and may preclude him from seeking relief when an issue of actual prejudice arises as a consequence of judicial questioning.
9. Third, the Impugned Response must, in any event, be considered in the interests of justice because it alerts the Appeals Panel to obvious issues arising from judicial questioning, without requesting relief prematurely and that would otherwise curtail the Trial Panel's ability to question witnesses. It merely puts the entire Court on notice that, should prejudice arise, then the Defence will seek relief as necessary.
10. As regards the Prosecution's claim that it has suffered prejudice as a result of the Impugned Response,<sup>10</sup> the Defence reiterates that the submissions made therein do not fully support the Co-Accused's Appeal. In fact, the requested relief simply seeks to alert the Court to the real risk of prejudice arising from judicial questions of the nature identified by the Defence in the future.<sup>11</sup> On the basis of written submissions made by the Prosecution in respect of the issue of

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<sup>8</sup> This, in turn, negates the Prosecution's claim that the Impugned Response violates Article 46(1)(a) of the Practice Directions (*See*, IA028/F00006, para 6, fn. 25) precisely because it opposes the relief sought.

<sup>9</sup> IA028/F00006, para. 3.

<sup>10</sup> IA028/F00006, para. 3.

<sup>11</sup> IA028/F00004COR, paras 3-4 and 23.

judicial questioning, the Defence notes the requested relief as contained in the Impugned Response does not stand diametrically opposed to that forwarded by the Prosecution.<sup>12</sup>

11. Ultimately, the Prosecution Request seeks to bundle the four Defence teams into one indistinguishable outfit adopting materially congruent positions on every contentious issue arising from these proceedings. This position is unjustified and fails to appreciate that whilst cooperation between Defence teams is an expected corollary of multi-accused cases, each team ultimately functions independently of one another in order to best-vindicate the rights of the particular Accused that it represents. Mr Veseli was fully entitled to Respond to the Co-Accused's Appeal. He did so respectfully, and clearly communicated his stance on the issues raised therein.

### III. CONCLUSION

12. In light of the foregoing, the Defence asks that the Appeals Panel reject the Prosecution's Request and consider the Impugned Response during its deliberations on the Appeal filed by Mr Veseli's Co-Accused.

**Word Count: 1,050**



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Tuesday, 20 June 2023  
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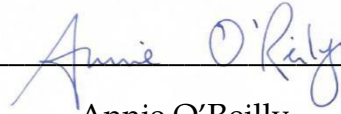
<sup>12</sup> See for instance, IA028/F00003, *Prosecution Response to Thaçi, Selimi and Krasniqi Defence appeal regarding Trial Panel questioning (IA028/F00002) with public Annex 1*, 9 June 2023, confidential, paras 1-2, where the Prosecution generally opposes the Appeal filed by the Co-Accused.



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