



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: 23 June 2023

Language: English

Classification: Confidential

Prosecution reply to IA028/F00009

Specialist Prosecutor's Office

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1. The Veseli Response¹ fails to justify the propriety of the content of the Veseli Interlocutory Appeal Response,² and through such failure, further shows that the Veseli Interlocutory Appeal Response should be struck. The SPO notes that Veseli once again³ admits that the substance of his argument in furtherance of his requested relief—that the Appeals Panel ‘take judicial notice’ of Veseli’s proffered, but misguided, view on Trial Panel questioning—is based on speculation.⁴
2. Moreover, although this is his second opportunity to do so,⁵ Veseli fails to provide any jurisprudence supporting the right of a co-accused to circumvent the Trial Panel’s certification authority and prejudice the opposing party by waiting until co-accused have had issues certified on appeal and then injecting arguments on his own behalf—that ask for separate relief—in a response. As the *Ndayambaje et al.* Appeal Decision clearly indicates, the ICTR Appeals Chamber’s driving concern was preventing the clearly delineated and regulated discretionary interlocutory appellate process from being opened to abuse.⁶ And yet an approach condoning the Veseli Response would do just that.
3. Veseli’s intermingling of some modicum of responsive arguments with primarily unresponsive arguments made on his own behalf for which he did not seek certification does not make the Veseli Response permissible. It is plausible that there could theoretically be co-accused responses to interlocutory appeals that do not run afoul of the requirements of interlocutory appeals and principles of adversarial contestation; this is not one of them.

¹ Veseli Defence Response to Prosecution Request to Strike Veseli Filing IA028/F00004COR or for Leave to Reply, KSC-BC-2020-06/IA028/F00009, 20 June 2023 (‘Veseli Response’).

² Veseli Defence Response to Thaçi, Selimi and Krasniqi Defence Appeal Against Oral Order on Trial Panel Questioning, KSC-BC-2020-06/IA028/F00004, 9 June 2023 (‘Veseli Interlocutory Appeal Response’).

³ See Veseli Interlocutory Appeal Response, KSC-BC-2020-06/IA028/F00004, para.3

⁴ See Veseli Response, KSC-BC-2020-06/IA028/F00009, para.9 (‘should prejudice arise’).

⁵ See Veseli Interlocutory Appeal Response, KSC-BC-2020-06/IA028/F00004, paras 5-6.

⁶ ICTR, *Prosecutor v. Ndayambaje et al.*, Decision on Joseph Kanyabashi’s Appeal against the Decision of Trial Chamber II of 21 March 2007 concerning the Dismissal of Motions to Vary his Witness List, ICTR-98-42-AR73, 21 August 2007 (‘*Ndayambaje et al.* Appeal Decision’), para.14.

4. 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.

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Friday, 23 June 2023

At The Hague, the Netherlands.