



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA 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: 30 June 2023

Language: English

Classification: Public

**Public Redacted Version of Decision on Veseli Defence Request for
Admission of Evidence Associated with W04748's Testimony**

Acting Specialist Prosecutor

Alex Whiting

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Victims

Simon Laws

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

TRIAL PANEL II (“Panel”), pursuant to Article 40(6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 137-139 and 153-155 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 10-12 and 15-17 May 2023, W04748 testified in these proceedings.¹
2. On 16 May 2023, during W04748’s testimony, the Defence for Kadri Veseli (“Veseli Defence”) confronted W04748 with, *inter alia*: (i) [REDACTED]’s statement before the United Nations Mission in Kosovo of [REDACTED] regarding [REDACTED] (“Statement”);² and (ii) the transcript of the main trial hearing of [REDACTED] in the [REDACTED] case, whereby a doctor testified in respect of [REDACTED] (“Transcript”),³ as well as a related medical certificate (“Certificate”).⁴ Thereupon, the Veseli Defence requested admission of (parts of) the Statement (“Exhibit 2D7 MFI”),⁵ and of (parts of) the Transcript and the Certificate (“Exhibit 2D6 MFI”)⁶ (“Initial Request”).⁷ The Specialist Prosecutor’s Office (“SPO”) opposed the Initial Request.⁸

¹ Transcript of Hearing, 10-12 and 15-17 May 2023 (pp. 3395-4227).

² SITF00299825-00299851 RED, in particular, p. SITF00299827 (Albanian version: p. SITF00299829); Transcript of Hearing, 16 May 2023, p. 3948, line 6 to p. 3953, line 2.

³ SITF00370155-SITF00370178 RED, in particular, pp. SITF00370160-SITF00370161 (Albanian version: SITF00370179-SITF00370212 RED, in particular, p. SITF00370185); Transcript of Hearing, 16 May 2023, p. 4047, line 24 to p. 4053, line 22.

⁴ SITF00018856-00018884, p. SITF00018868 (Albanian version: p. SITF00018880); Transcript of Hearing, 16 May 2023, p. 4606, line 17 to p. 4047, line 23.

⁵ SITF00299827-SITF00299830.

⁶ SITF00018867 and SITF00370160-SITF00370161 (Albanian version: SITF00018880 and SITF00370180).

⁷ Transcript of Hearing, 16 May 2023, p. 4061, line 23 to p. 4064, line 18. The exact ERN ranges of Exhibit 2D6 MFI and Exhibit 2D7 MFI were clarified between the Veseli Defence and the Court Management Unit and indicated accordingly in Legal Workflow prior to the Panel’s oral ruling on the two exhibits. *See also* Transcript of Hearing, 17 May 2023, p. 4251, lines 11-14 and p. 4252, lines 7-9.

⁸ Transcript of Hearing, 16 May 2023, p. 4062, lines 10-13 and p. 4063, lines 2-5.

3. On 17 May 2023, the Panel issued an oral order (“Oral Order”)⁹ whereby it: (i) admitted the first page of Exhibit 2D6 MFI into evidence, pursuant to Article 40(6)(h) and Rule 138(1), so as to ensure that the corresponding part of the questioning of the witness is complete and fully understandable;¹⁰ and (ii) denied admission of the remaining pages of Exhibit 2D6 MFI¹¹ and of Exhibit 2D7 MFI (“Denied Items”).

4. On 30 May 2023, the Veseli Defence filed a request (“Request”)¹² for the admission into evidence of SITF00299825-SITF00299834 (“Annex 1”) and SITF00370155-SITF00370173 (“Annex 2”) (collectively, “Annexes”).

5. On 6 June 2023, the SPO responded to the Request (“Response”).¹³

6. On 9 June 2023, the Veseli Defence replied to the Response (“Reply”).¹⁴

II. SUBMISSIONS

7. The Veseli Defence requests, in essence, that the Annexes be admitted as evidence collected prior to the establishment of the Specialist Chambers (“SC”) pursuant to Article 37, or alternatively, as associated exhibits of W04748’s testimony before the SC pursuant to Rule 138(1),¹⁵ as they are authentic, reliable, relevant and probative, and as no prejudice is caused by their admission.¹⁶ In the context of its submissions on Rule 138(1), the Veseli Defence draws a comparison to the Panel’s provisional admission, pursuant to Rule 138(1), of a statement of

⁹ Transcript of Hearing, 17 May 2023, p. 4251, line 8 to p. 4252, line 14.

¹⁰ SITF00018867 (Albanian version: SITF00018880), admitted as Exhibit 2D6_ET (and Exhibit 2D6).

¹¹ SITF00370160-SIF00370161 (Albanian version: SITF00370180).

¹² F01564, Specialist Counsel, *Veseli Defence Request for the Admission of Evidence Associated with W04748’s Testimony*, 30 May 2023, confidential, with Annexes 1-2, confidential.

¹³ F01578, Specialist Prosecutor, *Prosecution Response to Veseli Defence Request to Reconsider Inadmissibility Ruling*, 6 June 2023, confidential.

¹⁴ F01598, Specialist Counsel, *Veseli Defence Reply to Prosecution Response to Veseli Defence Request for the Admission of Evidence Associated with W04748’s Testimony*, 9 June 2023, confidential.

¹⁵ Request, paras 1-3, 18-28, 49.

¹⁶ Request, paras 29-47.

W01236 [REDACTED] ([REDACTED] and “Witness Statement”).¹⁷ The Veseli Defence further avers that: (i) the Annexes form an inseparable component of W04748’s testimony before the SC such that the cross-examination of that witness cannot be fully understood without them;¹⁸ and (ii) admission of the Annexes is crucial for determining the weight to be given to W04748’s testimony.¹⁹

8. The SPO opposes the Request,²⁰ arguing that: (i) it is an unsupported plea to reconsider the Oral Order in non-conformity with the Rules; (ii) judicial finality precludes the Veseli Defence from supplementing the legal basis of its request for admission of the Annexes after having been rejected by the Panel; and (iii) had the Veseli Defence believed that a legal error was present in the Oral Order, the appropriate response would have been to seek leave to appeal.²¹ The SPO further submits that: (i) the Veseli Defence does not allege that new circumstances have arisen since the Oral Order; and (ii) that no injustice is caused as the relevant parts of the Annexes were already put on the record in the course of the Veseli Defence’s cross-examination of W04748.²² With respect to the comparison drawn by the Veseli Defence to the Panel’s provisional admission of the Witness Statement pursuant to Rule 138(1),²³ the SPO argues that relying on such arguments is inapposite, noting that while the SPO did not oppose the admission of that particular statement as such, it clearly indicated that it did, however, oppose the admission thereof pursuant to Rule 154.²⁴

9. The Veseli Defence replies that the Response is wholly misguided and should be dismissed.²⁵ It avers that the Request does not constitute a plea for

¹⁷ Request, para. 30, *referring to* Transcript of Hearing, 23 May 2023, p. 4602.

¹⁸ Request, para. 3.

¹⁹ Request, para. 48.

²⁰ Response, para. 7.

²¹ Response, paras 1, 5-6.

²² Response, para. 6, *referring to* the Oral Order.

²³ Request, para. 30.

²⁴ Response, fn. 7 with further references.

²⁵ Reply, paras 2, 8.

reconsideration, but an entirely new application predicated upon legal bases not previously advanced.²⁶ Furthermore, the Veseli Defence submits that the Panel did not foreclose the admission of the items with prejudice.²⁷ With respect to the SPO's submissions regarding the comparison drawn by the Veseli Defence to the Witness Statement,²⁸ the Veseli Defence reiterates its view that a witness statement can be admitted exclusively through Rule 138.²⁹ Lastly, it contends that the Response does not appear to challenge the items' admission pursuant to Article 37 and reaffirms its position in this respect.³⁰

III. DISCUSSION

10. At the outset, the Panel recalls that it already ruled on the admission of Exhibit 2D6 MFI and Exhibit 2D7 MFI.³¹

11. The Panel further recalls that with respect to the Denied Items, it held that: (i) they are statements being offered for the truth of their content; (ii) as such, they are subject to Rules 153-155; and (iii) if the Defence wishes to tender them, it will therefore have to do so in accordance with Rules 153-155.³² In addition, the Panel found with respect to the denied portion of Exhibit 2D6 MFI³³ that: (i) the relevant parts of the doctor's statement were already placed on the record and commented upon by W04748; and (ii) there is no benefit to adding the actual statement to the

²⁶ Reply, paras 3-4.

²⁷ Reply, para. 5.

²⁸ Response, fn. 7.

²⁹ Reply, para. 6.

³⁰ Reply, para. 7.

³¹ Transcript of Hearing, 17 May 2023, p. 4251, line 8 to p. 4252, line 14. *See also* above, para. 3. The Panel notes that the scope of Exhibit 2D6 MFI and Exhibit 2D7 MFI is not identical to the scope of Annex 1 and Annex 2, but they overlap substantially. **Exhibit 2D6 MFI / Annex 2:** Exhibit 2D6 MFI consisted of SITF00018867 (Albanian version: SITF00018880), which was admitted as Exhibit 2D6_ET, as well as SITF00370160-SITF00370161 (Albanian version: SITF00370180). Annex 2 consists of SITF00370155-SITF00370173. **Exhibit 2D7 MFI / Annex 1:** Exhibit 2D7 MFI consisted of SITF00299827-SITF00299830. Annex 1 consists of SITF00299825-SITF00299834 (the Veseli Defence specifically refers, however, to SITF00299827-SITF00299834, *see* Request, fn. 3).

³² Transcript of Hearing, 17 May 2023, p. 4251, lines 22-25 and p. 4252, lines 11-13.

³³ SITF00370160-SIF00370161 (Albanian version: SITF00370180).

record and no prejudice is caused to the Defence.³⁴ Thus, while it is true that the Panel “did not foreclose the items’ admission with prejudice”,³⁵ the Panel clearly indicated how, *i.e.* under which provisions, the items would have to be tendered, namely, pursuant to Rules 153-155.

12. The Panel notes that the Veseli Defence does not seek to tender the Annexes pursuant to Rules 153-155. Rather, it appears to be arguing that the rigours of Rules 153-155 can be avoided entirely because of the language of Article 37 and/or Rule 138(1). However, Rules 153-155 are *leges speciales* to Rules 137-139 and the latter cannot serve to circumvent the strictures of the former.³⁶ Contrary to the Veseli Defence’s submissions,³⁷ the Law does not regulate the conditions of admissibility of evidence. The Law only provides the legal basis by which the relevant rules on admission of evidence were adopted. Admission is therefore determined based on the requirements of the Rules which are to be interpreted in light of the Law. While the Panel agrees with the Veseli Defence³⁸ that the Panel enjoys broad discretion in the admission of evidence, the Panel emphasises that such discretion has to be exercised in compliance with the SC’s legal framework,

³⁴ Transcript of Hearing, 17 May 2023, p. 4251, line 25 to p. 4252, line 4.

³⁵ See Reply, para. 5.

³⁶ See F01380, Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154*, 16 March 2023, confidential, para. 15; KSC-BC-2020-07, F00334, Panel, *Decision on the Prosecution Request for Admission of Items Through the Bar Table*, 29 September 2021, para. 87; ICTY, *Prosecutor v. Galić*, IT-98-29-AR73.2, Appeals Chamber, [Decision on Interlocutory Appeal concerning Rule 92bis\(C\)](#), 7 June 2002, para. 31; *Prosecutor v. Milošević*, IT-02-54-AR73.2, Appeals Chamber, [Decision on Admissibility of Prosecution Investigator’s Evidence](#), 30 September 2002, para. 18; *Prosecutor v. Milošević*, IT-02-54-T, Trial Chamber, [Decision on Prosecution Motion for the Admission of Evidence-in-Chief of Its Witnesses in Writing](#), 16 April 2003, p. 2. See also ICTY, *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-AR73.5, Appeals Chamber, [Decision on Appeal Regarding Statement of a Deceased Witness](#), 21 July 2000; *Prosecutor v. Naletilić and Matinović*, IT-98-34-T, Trial Chamber, [Decision on the Prosecutor’s Request for Public Version of Trial Chamber’s “Decision on the Motion to Admit Statement of Deceased Witnesses \[...\]” of 22 January 2002](#), 27 February 2002, p. 3. See further, STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/PTJ/F0622/PRV/20130528/R143308-R143315/EN/nc, Pre-Trial Judge, [Public Redacted Version of “Decision on the Prosecution Application for Non-Disclosure of Certain Statements of Witnesses Pursuant to Rule 116” Dated 20 December 2012](#), 28 May 2013, paras 14 ff.; *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC/F2576/20 160429/R285141-R285144/EN/dm, Trial Chamber, [Order to Prosecution to Disclose Documents Relating to Witness PRH707 to the Defence](#), 29 April 2016.

³⁷ Request, paras 22-28.

³⁸ See Request, para. 30.

and particularly the Rules, and does not extend to amending or disregarding the Rules.

13. The Panel reiterates that, to the extent that the Statement/Annex 1 was relevant to W04748's evidence, it was duly put to the witness and the relevant evidence is recorded on the transcript.³⁹ The same reasoning applies to Annex 2.⁴⁰ Moreover, the Panel has already admitted evidence pertaining to the issue which is the subject of Annex 2,⁴¹ and the need for additional evidence in this respect has not been established. If the Veseli Defence wishes to produce evidence on the issues which are the subject of the Annexes, in addition to what is already on the record, it will therefore have to call the individuals concerned.

14. Lastly, the Veseli Defence's reliance on the Panel's provisional admission of the Witness Statement pursuant to Rule 138(1) does not hold.⁴² The Panel recalls that, on 12 June 2023, further to submissions made by the Veseli Defence,⁴³ having satisfied itself that the substance of the requirements of Rule 154 had been met through the process of proofing and that there was no objection to the admission of the relevant item, the Panel amended its oral order of 23 May 2023⁴⁴ to admit parts of the relevant item, pursuant to Rules 137 and 154.⁴⁵ It was critical to the Panel's reasoning that these were parts of a record of interview of the witness himself, not that of another person. Thus, in light of the amended oral order and, in particular, the legal bases referenced in said order, the Panel considers the comparison drawn by the Veseli Defence to be inapposite.

15. In light of the above, the Panel denies admission of the Annexes.

³⁹ See Transcript of Hearing, 16 May 2023, p. 3948, line 6 to p. 3953, line 2.

⁴⁰ See Transcript of Hearing, 16 May 2023, p. 4046, line 17 to p. 4053, line 22.

⁴¹ See, in particular, Exhibit 2D6_ET (SITF00018867-SITF00018867). See also Transcript of Hearing, 17 May 2023, p. 4251, line 25 to p. 4252, line 4.

⁴² See Request, para. 30, referring to Transcript of Hearing, 23 May 2023, p. 4602.

⁴³ F01567, Specialist Counsel, *Veseli Defence Notice Regarding Exhibit 2D00008*, 1 June 2023, confidential.

⁴⁴ Transcript of Hearing, 23 May 2023, p. 4601, line 20 to p. 4602, line 9. See also Transcript of Hearing, 23 May 2023, p. 4597, line 11 to p. 4601, line 18 and p. 4602, line 25 to p. 4603, line 1.

⁴⁵ Transcript of Hearing, 12 June 2023, p. 4614, line 14 to p. 4615, line 1.

IV. CLASSIFICATION

16. The Panel notes that the SPO has no objection to the Response being reclassified as public.⁴⁶ However, the Panel considers that the reference to [REDACTED] in footnote 10 of the Response should be redacted, as the relevant portion of the testimony was made in private session and should remain confidential.⁴⁷ Similarly, the Panel considers that while the Reply could generally be made public, it is necessary to redact [REDACTED] in paragraph 6 of the Reply.⁴⁸

17. The Panel orders the SPO and the Veseli Defence to submit, by 7 July 2023, public redacted versions of the Request, the Response and the Reply, in accordance with paragraph 16 above and the redactions in the public redacted version of the present decision, where relevant.

V. DISPOSITION

18. For the above-mentioned reasons, the Panel hereby:

- a) **DENIES** the Request; and
- b) **ORDERS** the SPO and the Veseli Defence to submit, **by 7 July 2023**, public redacted versions of the Request, the Response and the Reply, in accordance with paragraphs 16-17 above.



Judge Charles L. Smith, III

Presiding Judge

Dated this Friday, 30 June 2023
At The Hague, the Netherlands.

⁴⁶ Response, fn. 11.

⁴⁷ See Transcript of Hearing, 16 May 2023, p. 4046, line 17 to p. 4053, line 22.

⁴⁸ See, in particular, Transcript of Hearing, 23 May 2023, p. 4597, line 11 to p. 4602, line 9 (confidential).