



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: Trial Panel II
Judge Charles L. Smith, III, Presiding
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve

Registrar: Dr Fidelma Donlon

Filing Participant: Acting Specialist Prosecutor

Date: 3 July 2023

Language: English

Classification: Public

Public redacted version of

Prosecution response to Veseli Defence request to reconsider inadmissibility ruling

Specialist Prosecutor's Office

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1. The Request¹ is nothing more than an unsupported plea to reconsider an adverse admissibility ruling in non-conformance with the Rules.² Judicial finality forecloses the Veseli Defence supplementing the legal basis for its request to admit the tendered Items³ after it was rejected by the Trial Panel.
2. On 16 May 2023, the Veseli Defence tendered two items ('Items') in the course of cross-examining W04748.⁴ The SPO objected to their admission.⁵
3. On 17 May 2023, the Trial Panel denied the admission of these items in the Inadmissibility Ruling.⁶
4. On 30 May 2023, the Request was filed in which the Veseli Defence again seeks admission of the Items, now presenting legal bases not previously advanced.⁷
5. Had the Veseli Defence believed a legal error was present in the Inadmissibility Ruling, the appropriate response would have been to seek leave to appeal.⁸ Instead, the

¹ Veseli Defence Request for the Admission of Evidence Associated With W04748's Testimony, With Confidential Annexes 1 and 2, KSC-BC-2020-06/F01564, 30 May 2023, Confidential (with two annexes) ('Request').

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 Annexes 1-2 of the Request (SITF00299825-00299834; SITF00370155-00370173).

⁴ Transcript of Hearing, 16 May 2023, T.4061-64.

⁵ T.4062-63.

⁶ Transcript of Hearing, 17 May 2023, T.4251-52 ('Inadmissibility Ruling').

⁷ Compare T.4061-64 with Request, KSC-BC-2020-06/F01564, paras 3, 18-31, 49. In this regard, reliance on the admission of one of W01236's previous statements under Rule 138 (Request, KSC-BC-2020-06/F01564, para.30) is clearly inapposite. The SPO did not oppose the admission of that particular statement, and made it expressly clear that its non-opposition did not extend to Rule 154. Transcript of Hearing, 23 May 2023, T.4599-600. The absence of objection can negate the need to satisfy provisions analogous to Rules 153-55 (see ICTY, *Prosecutor v. Milošević*, Decision on Admissibility of Prosecution Investigator's Evidence, ICTY-02-54-AR73.2, 30 September 2002, para.18), but the SPO made no such concession for the Items.

⁸ Article 45 of Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015; Rule 77.

Veseli Defence submitted a thinly disguised reconsideration request following the expiration of the leave to appeal deadline.

6. The Veseli Defence does not even attempt to substantiate why the test for reconsideration is met under Rule 79. It is incumbent on parties seeking relief from the Trial Panel to advance all relevant legal and factual arguments at the time of a request,⁹ and no new circumstances are alleged to have arisen since the Inadmissibility Ruling. There is likewise no injustice caused, noting the relevant parts of these statements were already put on the record in the course of the Veseli Defence's cross-examination of W04748.¹⁰

7. For the foregoing reasons, the relief sought in the Request should be dismissed.¹¹

Word count: 624



Alex Whiting

Acting Specialist Prosecutor

Monday, 3 July 2023

At The Hague, the Netherlands.

⁹ See generally Article 40(1)(c) of the Practice Direction on Files and Filings before the Kosovo Specialist Chambers, KSC-BD-15, 17 May 2019 ('Practice Direction'); ICC, *Prosecutor v. Bemba et al.*, Decision on Joint Request to Strike Prosecution Witnesses P-198 and P-201 from the Witness List, ICC-01/05-01/13-1202, 31 August 2015, para.4 ('[t]he Chamber considers that a party breaches the terms of [the ICC's analogous provision to that cited in the Practice Direction] by filing a request and then attempting to supplement their submission with additional legal and factual arguments which were available when the request was first filed.').

¹⁰ See Inadmissibility Ruling, T.4251-52 ('[h]owever, the relevant parts of the doctor who treated [REDACTED] was already placed on the transcript and commented upon by the witness. There is no benefit to adding the actual statement to the record and no prejudice to the Defence').

¹¹ This response is submitted confidentially pursuant to Rule 82(4). The SPO has no objection to reclassifying this response as public.