



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:** 10 October 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of Decision on the Prosecution Request for Rule 107  
Measures for W04147 and W04868 (F01764)**

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**TRIAL PANEL II** (“Panel”), pursuant to Articles 21(4)(f) and (6), 35(2)(f), 40(2) and (6), and 58 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 107 and 116(1) and (4) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 4 September 2023, the Specialist Prosecutor’s Office (“SPO”) filed a request for Rule 107 measures in respect of the testimony of W04147 and W04868 (“Request”).<sup>1</sup>

2. On 13 September 2023, granting the request from the Defence for Jakup Krasniqi, the Panel extended the time for all Defence teams to respond to the Request to 18 September 2023.<sup>2</sup>

3. On 18 September 2023, the Defence for Hashim Thaçi, Rexhep Selimi and Jakup Krasniqi (respectively, “Defence” and “Joint Response”) and the Defence for Kadri Veseli (respectively, “Veseli Defence” and “Veseli Response”) responded to the Request, (collectively “Responses”).<sup>3</sup>

4. On 22 September 2023, the SPO replied to the Responses (“Reply”).<sup>4</sup>

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<sup>1</sup> F01764, Specialist Prosecutor, *Prosecution Request for Rule 107 Measures for W04147 and W04868* (“Request”), 4 September 2023, confidential.

<sup>2</sup> Provisional Transcript of Hearing, 13 September 2023, p. 8021, lines 3-18, p. 8024, lines 13-20.

<sup>3</sup> F01799, Specialist Counsel, *Thaçi, Selimi and Krasniqi Defence Response to ‘Prosecution Request for Rule 107 Measures for W04147 and W04868’* (F01764), 18 September 2023, confidential; F01800, Specialist Counsel, *Veseli Defence Response to Prosecution Request for Rule 107 Measures for W04147 and W04868* (“Veseli Response”), 18 September 2023, confidential.

<sup>4</sup> F01810, Specialist Prosecutor, *Prosecution Consolidated Reply to Defence Responses F01799 and F01800*, 22 September 2023, confidential.

## II. SUBMISSIONS

### A. REQUEST

5. The SPO requests the Panel to order measures to facilitate the in-court testimony of W04147 and W04868 (“Witnesses”), who are [REDACTED] (“Rule 107 Provider”).<sup>5</sup> The SPO explains that the Rule 107 Provider authorised the Witnesses to testify subject to the following measures: (i) that the scope of their testimonies be limited to three defined topics;<sup>6</sup> (ii) that the scope of their cross-examination be limited to the scope of direct examination and issues regarding their credibility;<sup>7</sup> and (iii) that representatives of the Rule 107 Provider be authorised to be present during their testimonies (collectively, “Measures”).<sup>8</sup> The SPO avers that the Measures are lawful, necessary and proportionate and submits that there is no prejudice to the Defence, which will be able to fully cross-examine the Witnesses.<sup>9</sup>

### B. RESPONSES

#### a) **Joint Response**

6. In the Joint Response, the Defence responds that the Measures are prejudicial.<sup>10</sup> To ensure that the Witnesses can present their evidence in a manner that accords with the rights of the accused to confront the case against them, the Defence requests that the Panel find that: (i) the scope of direct examination of a Rule 154 witness includes not only the witness’s in-court testimony but also any statement and associated exhibits admitted as evidence through this witness pursuant to Rule 154 and, consequently, that the Defence is entitled to cross-examine a Rule 154 witness on *any* issues raised in the witness’s Rule 154 evidence and direct

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<sup>5</sup> Request, para. 1

<sup>6</sup> Request, para. 6 (a)-(c). *See also* below para. 11.

<sup>7</sup> Request, para. 7(a).

<sup>8</sup> Request, para. 7(b).

<sup>9</sup> Request, paras 1-2, 8-9.

<sup>10</sup> Joint Response, para. 2.

examination, including through additional documents directly related to such issues; (ii) the Defence may contact the Rule 107 Provider *ex parte* to ask permission to cross-examine the Witnesses on additional topics outside of the scope of direct examination and which do not affect the Witnesses' credibility; (iii) upon notification by the Defence of the submission of such a request to the Rule 107 Provider, the Panel may order that the testimony of the Witnesses be postponed until the Rule 107 Provider notifies its response; and (iv) should the Rule 107 Provider not allow the Defence to cross-examine the Witnesses on additional topics relevant to its case, the Panel may consider that this warrants the exclusion of all or part of the Witnesses' evidence to ensure the fairness of the proceedings.<sup>11</sup>

**b) Veseli Response**

7. The Veseli Defence supports the submissions made in the Joint Response.<sup>12</sup> It adds that, depending on how the Measures are applied in practice, there is a risk that they could prejudice Mr Veseli's fair trial rights.<sup>13</sup> Regarding W04147, the Veseli Defence indicates that it would wish to cross-examine the witness on matters pertaining to Mr Veseli's external intelligence function from November 1998 until the end of the war.<sup>14</sup> It suggests that this issue appears to fall within the scope accepted by the Rule 107 Provider. However, should it not be the case, the Veseli Defence avers that Mr Veseli would be deprived of the opportunity to elicit favourable evidence relevant to the crimes with which he has been charged and to put a central element of his case to a witness testifying for the SPO.<sup>15</sup> The Veseli Defence argues that the evidence already provided by W03724 furthers its assertion that it has an interest in questioning W04147 regarding

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<sup>11</sup> Joint Response, paras 3, 25.

<sup>12</sup> Veseli Response, paras 4, 12(a).

<sup>13</sup> Veseli Response, para. 3.

<sup>14</sup> Veseli Response, para. 5.

<sup>15</sup> Veseli Response, para. 7.

Mr Veseli's external intelligence activities.<sup>16</sup> Should the Veseli Defence be prevented to do so, it submits that it would warrant the exclusion of W04147's testimony as the prejudice caused to the Accused's fair trial rights would outweighs its probative value.<sup>17</sup> Regarding W04868, the Veseli Defence submits that the Request is premature: absent notice from the SPO of the proposed Rule 154 evidence of W04868, it is not in a position to meaningfully respond to the Request.<sup>18</sup> The Veseli Defence requests the Panel to defer its decision until the SPO provides the Parties and participants with the requisite notice.<sup>19</sup>

### C. REPLY

8. The SPO replies that the arguments raised in the Responses – *i.e.* observations as to how the Measures should be applied in practice – do not assist the Panel in deciding whether the Measures are reasonable and appropriate, and are thus premature.<sup>20</sup> The SPO argues that, in the absence of concrete objections to the Measures, the Request should be granted.<sup>21</sup>

9. In reply to the Joint Response, the SPO raises four main points. First, in relation to the scope of cross-examination, the SPO recalls that the Rule 107 Provider agrees to the Defence cross-examining on matters raised in direct examination and issues that pertain to credibility.<sup>22</sup> The SPO accepts that, if admitted, the Rule 154 statements and associated exhibits comprise the direct examination in addition to any supplemental questioning and that, therefore, any subject matter therein is ripe for cross-examination.<sup>23</sup> The SPO submits, however, that deciding which issues fall within W04147's statements do not need to be resolved now as

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<sup>16</sup> Veseli Response, para. 9.

<sup>17</sup> Veseli Response, paras 10, 12(b).

<sup>18</sup> Veseli Response, para. 11.

<sup>19</sup> Veseli Response, paras 11, 12(c).

<sup>20</sup> Reply, paras 2-3.

<sup>21</sup> Reply, paras 3, 14.

<sup>22</sup> Reply, para. 5.

<sup>23</sup> Reply, para. 6.

this goes to the possible scope of the proposed measure, not to its validity.<sup>24</sup> Second, with regards to W04868, the SPO submits that: (i) the application (or not) of Rule 154 has no bearing on the merits of the Request;<sup>25</sup> and (ii) the Defence's intent to cross-examine W04868 on "additional topics or individuals not mentioned in the Witnesses' statements or anticipated examination-in-chief, and not related to their credibility" does not require resolution now, particularly since the Defence intends to consult the Rule 107 Provider.<sup>26</sup> Lastly, regarding the potential invocation of Rule 107(7) should the consultation with the Rule 107 Provider not be productive, the SPO replies that these submissions are premature and without bearing on the Request.<sup>27</sup>

10. Further, the SPO replies that the Veseli Response does not relate to the merits of the Request.<sup>28</sup> The SPO submits that the Veseli Defence should first raise its concerns with the Rule 107 Provider and only thereafter with the Panel should additional relief become necessary.<sup>29</sup> The SPO rejects the submission of the Veseli Defence that the absence of Rule 154 motion for W04868 would prevent it from meaningfully responding to the Request.<sup>30</sup>

### III. DISCUSSION

#### A. TESTIMONIAL SCOPE

11. In line with the authorisation of the Rule 107 Provider, the SPO requests: (i) that the scope of the direct examination of the Witnesses be limited to: (a) the structure, command and operations of the KLA; (b) the roles and responsibilities

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<sup>24</sup> Reply, para. 6.

<sup>25</sup> Reply, para. 7.

<sup>26</sup> Reply, para. 8.

<sup>27</sup> Reply, para. 9.

<sup>28</sup> Reply, para. 10.

<sup>29</sup> Reply, para. 11.

<sup>30</sup> Reply, para. 12.

of particular individuals within the KLA, including their involvement in prisoner releases; and (c) general information about incidents involving detentions and mistreatment by individuals associated with the KLA or other topics covered by the Witnesses' statements (collectively "Authorised Topics"); and (ii) that the cross-examination of the Witnesses by the Defence be limited to the scope of the direct-examination and to issues regarding the credibility of the Witnesses ("First Measure").<sup>31</sup>

12. The Defence emphasises that it understands that the scope of the Witnesses' testimonies can cover *any* topic covered in the Witnesses' statements or related to the KLA.<sup>32</sup> As detailed above,<sup>33</sup> the Defence requests the Panel to clarify this point.<sup>34</sup> The Defence does not object to the First Measure as long as its right to cross-examine the Witnesses on issues relevant for its case is preserved.<sup>35</sup> Failing this, the Defence submits that exclusion of part or all of the Witnesses' evidence pursuant to Rule 107(7) may be warranted.<sup>36</sup>

13. At the outset, the Panel recalls that the right of the defence to cross-examine a prosecution witness is not absolute.<sup>37</sup> This is apparent from Rule 143(3), which

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<sup>31</sup> Request, paras 6-7.

<sup>32</sup> Joint Response, paras 14, 19 (W04147).

<sup>33</sup> See *supra* para. 6.

<sup>34</sup> Joint Response, paras 19, 25.

<sup>35</sup> Joint Response, para. 16.

<sup>36</sup> Joint Response, para. 16.

<sup>37</sup> See F01821, Panel, *Decision on Prosecution Request for Admission of W03827's Witness Statements Pursuant to Rule 143(2) and Defence Request for Reconsideration*, 28 September 2023, para. 29. See, for example, ICTY, *Prosecutor v. Martić*, IT-95-11-AR73.2, [Decision On Appeal Against The Trial Chamber's Decision On The Evidence Of Witness Milan Babić](#) ("Martić Appeal Decision"), 14 September 2006 (regarding the admission of the statement of a deceased witness), para. 12; See also *Prosecutor v. Jadranko Prlić et al.*, IT-04-74-AR73.2, Appeals Chamber, [Decision on Joint Defence Interlocutory Appeal against the Trial Chamber's Oral Decision of 8 May 2006 Relating to Cross-Examination By Defence and on Association of Defence Counsel's Request for Leave to File an Amicus Curiae Brief](#), 4 July 2006, p. 3; *Prosecutor v. Aleksovski*, IT-95-14/1-AR73, Appeals, Chamber, [Decision on Prosecutor's Appeal on Admissibility of Evidence](#), 16 February 1999, para. 27; *Prosecutor v. Milutinović et al.*, IT-05-87-PT, Trial Chamber III, [Decision on Prosecution's Rule 92bis Motion](#), 4 July 2006, para. 11; *Prosecutor v. Blagojević et al.*, IT-02-60-T, Trial Chamber I, [First Decision on Prosecution's Motion for Admission of Witness Statements and Prior Testimony Pursuant to Rule 92bis](#), 12 June 2003, para. 14; *Prosecutor v. Martić*, IT-95-11-T, Trial

sets out the general boundaries of permissible cross-examination. In addition, cross-examination is at all times subject to the control of the Panel.<sup>38</sup> Further, the Panel observes that Rule 107 provides for particular circumstances where the Panel might be justified in limiting *a priori* the scope of permissible examination and cross-examination. The Panel finds the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) on this point to be of assistance.<sup>39</sup>

14. As regards the necessity of the First Measure, the Panel notes that, pursuant to Rule 107(3) and (4), it may neither compel the Witnesses to answer questions relating to the information or its origin if the Witnesses decline to answer on grounds of confidentiality, nor order the production of additional evidence, beyond that authorised by the Rule 107 Provider. The *raison d’être* of Rule 107 (*i.e.*, the equivalent of Rule 70 of the ICTY Rules) is to “create an incentive for such cooperation by permitting the sharing of information on a confidential basis and by guaranteeing information providers that the confidentiality of the information they offer and of the information’s sources will be protected”.<sup>40</sup> The Panel also notes that the proposed information of the Witnesses is relevant to these proceedings and could assist the Panel in establishing facts and circumstances relevant to this case. For this reason, the Panel is satisfied that the First Measure

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Chamber I, [Decision on Defence Motion to Exclude the Testimony of Witness Milan Babić, together with Associated Exhibits, from Evidence](#), 9 June 2006, para. 56.

<sup>38</sup> See again F01821, Panel, *Decision on Prosecution Request for Admission of W03827’s Witness Statements Pursuant to Rule 143(2) and Defence Request for Reconsideration*, 28 September 2023, para. 29. See also, for example, [Martić Appeals Decision](#), para. 12; ICTY, *Prosecutor v. Tolimir et al.*, Appeals Chamber, [Decision on Radivoje Miletić’s Interlocutory Appeal Against the Trial Chamber’s Decision on Joinder of Accused](#), 27 January 2006, para. 29. See also Order on the Conduct of Proceedings, paras 106, 109.

<sup>39</sup> See references cited in previous two footnotes. The Panel notes that the equivalent of Rule 107 of the Rules is Rule 70 of ICTY Rules of Procedure and Evidence.

<sup>40</sup> ICTY, *Prosecutor v. Milosević*, Appeals Chamber, IT-02-54- AR108bis & AR73.3, [Public Version of the Confidential Decision on the Interpretation and Application of Rule 70](#), 23 October 2002, para. 19. See also *Prosecutor v. Mladić*, IT-09-92-T, Trial Chamber I, [Decision on Urgent Prosecution Motion for Protective Measures and Conditions for Witnesses RM-055, RM-120, RM-163, and RM-176 Pursuant to Rule 70](#), (“Mladić Decision”) 30 November 2012, para. 8.

is consistent with, and is an appropriate means of giving effect to, Rule 107(3)-(5). The Panel is therefore satisfied that the First Measure is necessary.

15. As regards the proportionality of the First Measure, the Panel observes that the SPO and the Defence agree<sup>41</sup> that the proposed measure should be interpreted as authorising the Defence to cross-examine the Witnesses on *any* issue directly arising from any statement and associated exhibits admitted as evidence through the Witnesses pursuant to Rule 154. The Panel shares this understanding. Consequently, and as conceded by the Defence in relation to W04147,<sup>42</sup> the Authorised Topics cover most, if not the entirety, of the proposed evidence of the Witnesses.<sup>43</sup> It follows that the Defence will be able to effectively and thoroughly cross-examine the Witnesses on matters relevant to the case and explore any issues pertaining to their credibility.<sup>44</sup> Should any issue arise regarding the permissible scope of questioning of the Witnesses, representatives of the Rule 107 Provider will be present in court to raise and address such matters.<sup>45</sup> For this reason, the Panel is satisfied that the limitations on the scope of the Witnesses' testimonies imposed by the Rule 107 Provider will not undermine the Accused's rights under the Law or cause prejudice to the Defence. The Panel is therefore satisfied that the First Measure is proportionate.

16. The Panel clarifies: (i) that the scope of direct examination of a Rule 154 witness comprises the witness's in-court testimony as well as any statement and

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<sup>41</sup> See Joint Response, para. 18; Annex 1 to the Joint Response.

<sup>42</sup> Joint Response, para. 20.

<sup>43</sup> F01594/A02, Specialist Prosecutor, *Annex 2 to Amended List of Witnesses Prosecution Submission of Updated Witness List and Confidential Lesser Redacted Version of Pre-Trial Brief* ("Amended Witness List"), 9 June 2023, confidential, pp. 229-230 (W04147), p. 558 (W04868). A strictly confidential and *ex parte* version was filed on the same day.

<sup>44</sup> See similarly ICTY, *Prosecutor v. Milutinović et al.*, Trial Chamber, IT-05-87-T, [Decision on Prosecution Second Renewed Motion for Leave to Amend its Rule 65 Ter List to Add Michael Phillips and Shaun Byrnes](#) ("Milutinović Decision"), 12 March 2007, paras 31-34, 37. See also *Prosecutor v. Milošević*, IT-98-29/1-T, Trial Chamber III, [Decision on Prosecution's Application for Rule 70 Conditions for Testimony of Witness W-46](#), 12 March 2007, pp. 3-4

<sup>45</sup> See, *infra*, paras 18-21.

associated exhibits admitted as evidence through this witness pursuant to Rule 154; and (ii) that the Defence is therefore entitled in principle to cross-examine a Rule 154 witness on any issues directly arising from the witness's Rule 154 evidence and direct examination, including through additional documents *directly* related to such issues.

17. In light of the above, the Panel authorises the First Measure.

#### B. PRESENCE OF RULE 107 PROVIDER'S REPRESENTATIVES

18. The Panel turns to the measure seeking the authorisation of the presence of representatives of the Rule 107 Provider during the testimonies of the Witnesses ("Second Measure").<sup>46</sup>

19. As regards the necessity of the Second Measure, the Panel notes that the SPO may not be sufficiently informed to identify questions where sensitive interests of the Rule 107 Provider might be adversely affected.<sup>47</sup> The presence of representatives of the Rule 107 Provider is therefore required to indicate to the Panel, the Parties and participants where their might be a breach in the relevant confidentiality agreement or to seek necessary rulings from the Panel. The Panel is therefore satisfied that the Second Measure is necessary.

20. As regards the proportionality of the Second Measure, the Panel notes that the Defence has no objection to the presence of representatives of the Rule 107 Provider during the testimony of the Witnesses.<sup>48</sup> Further, the Panel observes that the presence of representatives of Rule 107 Provider during the testimony of the Witnesses may be conducive to resolving any matters relating to the scope of permissible questioning or use of documents with the Witnesses.<sup>49</sup> For this reason,

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<sup>46</sup> Request, para. 7(b).

<sup>47</sup> See [Milutinović Decision](#), para. 35.

<sup>48</sup> See Joint Response, para. 13.

<sup>49</sup> See, similarly, [Mladić Decision](#), para. 13.

the Panel considers that the Second Measure safeguards the interests of the Rule 107 Provider and is compatible with the fundamental rights of the Accused. The Panel is therefore satisfied that the Second Measure is proportionate.

21. In light of the above, the Panel authorises the presence of representatives of the Rule 107 Provider during the testimony of the Witnesses.

### C. CONTACTS WITH RULE 107 PROVIDER

22. The Defence submits that it should be allowed to contact the Rule 107 Provider *ex parte* in order to request leave to address additional topics than those authorised in cross-examination.<sup>50</sup> The Defence states that, if authorised by the Panel, it will do so as soon as practicable.<sup>51</sup>

23. The SPO encourages prompt communication between the Defence and the Rule 107 Provider.<sup>52</sup>

24. At the outset, the Panel observes that the Defence may contact the Rule 107 Provider *ex parte* to ask permission to alter the Authorised Topics for the Defence to cross-examine the Witnesses on certain additional topics outside of the scope of direct examination and which do not affect the Witnesses' credibility.<sup>53</sup> Such contacts between a Party and the Rule 107 provider are not subject to authorisation or supervision by the Panel. In particular, it is the responsibility of the Defence to seek and obtain authorisation from the Rule 107 Provider if and where it wishes to raise issues going beyond the scope of what has been authorised to date by the Rule 107 Provider.

25. In this regard, the Panel notes that: (i) the Defence intends to cross-examine the Witnesses on additional topics or individuals not mentioned in the Witnesses'

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<sup>50</sup> Joint Response, para. 22.

<sup>51</sup> Joint Response, para. 22.

<sup>52</sup> Reply, para. 9.

<sup>53</sup> See similarly, [Milutinović Decision](#), para. 33.

statements or anticipated examination-in-chief, and not related to their credibility;<sup>54</sup> (ii) the Defence may want to address with W04147 (e.g. the LDK, FARK, Serb attacks, NATO intervention) issues that are discussed only briefly in the witness's Rule 154 statement;<sup>55</sup> and that (iii) the Veseli Defence wants to elicit from W04147 "matters pertaining to Mr Veseli's external intelligence function from November 1998 until the end of the war" (collectively, "Additional Topics").<sup>56</sup>

26. The Panel reiterates that it is up to the Defence to seek authorisation from the Rule 107 Provider to cross-examine the Witnesses on any topic on which it may want to cross-examine the Witnesses, which does not fall within the presently Authorised Topics. If the Defence is in doubt as to whether a given topic comes within the scope of authorised questioning, it is for the the Defence to verify whether that is the case or not and, as the case may be, to seek authorisation for questioning on any additional matter of relevance to this case. The Defence is not required to notify the SPO in advance of its cross-examination of the details of any further authorisation received from the Rule 107 provider. However, in order to assist the Panel in supervising the cross-examination of the Witnesses, the Panel directs the Defence to notify the Panel upon commencing cross-examination if any additional authorisation has been obtained from the Rule 107 Provider relevant to the permissible scope of cross-examination.

27. In any event, the Panel underscores that it will *not* entertain questions that cannot be shown to be: (i) clearly linked to matters authorised by the Rule 107 Provider; and (ii) relevant to the case.

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<sup>54</sup> Joint Response, para. 22.

<sup>55</sup> Joint Response, para. 20.

<sup>56</sup> Veseli Response, paras 5-10.

#### D. ADDITIONAL REQUESTS FROM THE DEFENCE

##### a) **Prospective Reliefs**

28. The Defence requests that: (i) upon notification by the Defence of the submission of a request to the Rule 107 Provider, the Panel may order that the testimony of the Witnesses be postponed until the Rule 107 Provider notifies its response; and (ii) should the Rule 107 Provider not allow the Defence to cross-examine the Witnesses on certain additional topics relevant to its case, the Panel may consider that this warrants the exclusion of all or part of the Witnesses' evidence to ensure the fairness of the proceedings.<sup>57</sup>

29. The Panel finds the reliefs sought by the Defence to be premature. The Panel will therefore not entertain them at this stage. The Panel reiterates that the Defence shall seek authorisation from the Rule 107 Provider to cross-examine on any issues, and to put to the witnesses additional documents, that do not fall squarely within the Authorised Topics. In any event, the Panel retains overall control over the questioning of witnesses and to decide whether to exclude any evidence from these proceedings.

##### b) **Rule 154 motion**

30. The Defence submits that, in the absence of a Rule 154 motion filed for W04868, it has no information on the anticipated scope of direct examination of this witness other than the information provided in the Rule 95 summary.<sup>58</sup> The Veseli Defence submits that the part of the request concerning W04868 is premature and requests that the Panel defer its decision until the SPO has provided the Parties and participants with the requisite, timely, notice.<sup>59</sup>

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<sup>57</sup> Joint Response, paras 24-25; Veseli Response, para. 10.

<sup>58</sup> Joint Response, para. 21.

<sup>59</sup> Veseli Response, para. 11.

31. The Panel first observes that the SPO provided a general summary of the anticipated evidence-in-chief of W04868,<sup>60</sup> which provides a clear enough outline of the expected scope of direct examination of the witness. Second, the Panel considers that whether a witness's evidence is heard *viva voce*, or admitted pursuant to Rule 154, has no bearing on the validity of the First Measure. The Panel is therefore not persuaded that the Request is premature in relation to W04868. It follows that deferring its decision in this regard is neither necessary nor justified in the present circumstances.

32. In light of the above, the Panel rejects the request of the Defence to defer its decision in relation to W04868.

#### IV. CLASSIFICATION

33. The Panel notes that the Request (F01764), the Responses (F01799 and F01800), and the Reply (F01810) are confidential as they pertain to confidential Rule 107 matters and information concerning witnesses whose identities are not public. The Panel requests the SPO and the Defence to file public redacted versions of their respective filing by, Friday, 20 October 2023.

#### V. DISPOSITION

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

- a) **GRANTS** the Request;
- b) **AUTHORISES** the Measures set out at paragraphs 11 and 18 above for the in-court testimonies of the Witnesses;
- c) **EMPHASISES** that it will strictly police the implementation of the

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<sup>60</sup> See Request, para. 4; Amended Witness List, p. 558.

Measures;

- d) **DIRECTS** the SPO to: (i) enquire as soon as practicable with W04147 whether the witness has personal knowledge of Mr Veseli's external intelligence activities between November 1998 and the end of the war; (ii) if that is the case, to verify with the Rule 107 Provider whether such topics fall within the scope of issues in relation to which W04147 has been authorised to testify; and (iii) notify the Defence and the Panel at least two weeks prior to the beginning of W04147's testimony about the results of their enquiries in (i) and (ii);
- e) **ORDERS** the questioning party during cross-examination to expressly identify any question relating to the Witnesses' credibility and to state clearly and directly its case on that point;
- f) **ORDERS** the Defence, upon commencing cross-examination of either witness, to notify the Panel of any additional authorisation obtained from the Rule 107 Provider relevant to the permissible scope of cross-examination; and
- g) **REQUESTS** the SPO and the Defence to file public redacted versions of their respective filing by, **Friday, 20 October 2023**.



**Judge Charles L. Smith, III**  
**Presiding Judge**

Dated this Tuesday, 10 October 2023

At The Hague, the Netherlands.