



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
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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**Public Redacted Version of 'Prosecution consolidated reply to Defence responses
F01799 and F01800'**

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I. INTRODUCTION

1. The SPO hereby replies to the Veseli Response¹ and the Joint Response filed by Thaçi, Selimi and Krasniqi² regarding the Rule 107 measures sought³ to facilitate the testimony of W04147 and W04868, both former employees of the [REDACTED] (the 'Rule 107 Provider').

2. The arguments raised in both Defence responses do not assist the Trial Panel to decide the fundamental issue at hand – whether the requested measures are reasonable and appropriate. Rather, both responses make observations as how to the requested measures should be *applied in practice*, and further speculate as to how the Rule 107 Provider will react to certain lines of cross-examination being explored. Similarly, whether a witness's evidence is heard *viva voce*, or admitted via Rule 154, is immaterial and has no bearing on the lawfulness of the measures sought.

3. These inchoate submissions are therefore premature, and made prior to any consultations with the Rule 107 Provider, which the Defence intends to pursue. In the absence of any concrete objections to the proposed measures, the Trial Panel should grant the Request.

II. SUBMISSIONS

A. THAÇI, SELIMI AND KRASNIQI RESPONSE

4. The Response by Thaçi, Selimi and Krasniqi ('Joint Response') agrees to the presence of the Rule 107 representatives in court,⁴ and also agrees that cross-examination should, in principle, be limited to the scope of the direct examination and

¹ Veseli Defence Response to Prosecution Request for Rule 107 Measures for W04147 and W04868, KSC-BC-2020-06/F01800, 18 September 2023 ('Veseli Response').

² Thaçi, Selimi and Krasniqi Defence Response to 'Prosecution request for Rule 107 measures for W04147 and W04868' (F01764), KSC-BC-2020-06/F01799, 18 September 2023 ('Joint Response').

³ Prosecution request for Rule 107 measures for W04147 and W04868, KSC-BC-2020-06/F01674, 4 September 2023 ('Request').

⁴ Joint Response, KSC-BC-2020-06/F01799, para.13.

matters pertaining to witness credibility.⁵ The submissions that follow thereafter relate to how these measures should be applied in practice – submissions which are premature and extraneous to the relief sought in the Request.

5. The first substantive concern raised in the Joint Response is that the Defence should be permitted to cross-examine on all issues contained in W04147's Rule 154 statement,⁶ noting that this 'covers most, if not all the issues that the Defence may want to address with the witness.'⁷ To this point, 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.⁸ This is reflected in ICTY caselaw referred to in the Request,⁹ which holds that this approach is likely to cover most, if not all, of the matters the Defence are likely to raise.

6. If admitted under Rule 154, the relevant statement and associated exhibits effectively comprise the 'direct examination', in addition to any supplemental questioning, and thus any subject-matter therein is ripe for cross-examination. The Joint Response thereafter proceeds to list various issues 'that it should not be prevented from developing' during cross-examination.¹⁰ However, deciding which issues fall within the rubric of W04147's statement, such that they might be the subject of legitimate cross-examination, does not need to be resolved now. These submissions go to the possible *scope* of the proposed measure, not to the validity of the measure itself.

7. With regard to W04868, the Joint Response suggests that the absence of any Rule 154 notification for this witness somehow inhibits determination of the issue at

⁵ Joint Response, KSC-BC-2020-06/F01799, paras 15-16 ('At this stage, the Defence does not object to the application to certain Rule 107 restrictions [...].')

⁶ Joint Response, KSC-BC-2020-06/F01799, paras 17-20.

⁷ Joint Response, KSC-BC-2020-06/F01799, para.20.

⁸ Request, KSC-BC-2020-06/F01674, para.7(a).

⁹ See para.9 and fn.13 of the Request, KSC-BC-2020-06/F01674, *citing to* [REDACTED].

¹⁰ Joint Response, KSC-BC-2020-06/F01799, para.20.

hand.¹¹ However, the application (or not) of Rule 154 has no bearing on the merits of the SPO Request, and the Rules contain no such restriction.

8. Furthermore, the Joint Response gives notice that the Defence intends 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.’¹² Notwithstanding that this proposal risks offending Rule 143(3) of the Rules and the Order on the Conduct of Proceedings,¹³ the Joint Response does not explain *how* the cited issue is relevant to their case(s). In any event, as above, this does not require resolution now, especially in circumstances where the Defence intends to consult the Rule 107 Provider.¹⁴

9. The remainder of the Joint Response signals the potential invocation of Rule 107(7), should consultations with the Rule 107 Provider not be productive.¹⁵ Again, these submissions are premature, and at this stage, have no bearing on the validity of the measures sought in the Request. Moreover, considering the Defence agrees to the presence of a representative of the Rule 107 Provider in court, adjourning scheduled testimony pending a formal response would be unnecessary.¹⁶ In this regard, the SPO encourages prompt communication between the Defence and the Rule 107 Provider in the interests of judicial economy.

B. VESELI RESPONSE

10. The Veseli Response supports the submissions made in the Joint Response, and further submits that certain specified matters relevant to its case, namely the nature of VESELI’s intelligence function, should be the subject of cross-examination.¹⁷ The

¹¹ Joint Response, KSC-BC-2020-06/F01799, para.21.

¹² Joint Response, KSC-BC-2020-06/F01799, para.22.

¹³ KSC-BC-2020-06/F01226, para.106.

¹⁴ Joint Response, KSC-BC-2020-06/F01799, para.22.

¹⁵ Joint Response, KSC-BC-2020-06/F01799, paras 22-24.

¹⁶ *Contra* Joint Response, KSC-BC-2020-06/F01799, para.23. *See also* para.34 of the *Milutinović* Decision, noting the possibility to explore alternative relief in the event consultations are not productive.

¹⁷ Veseli Response, KSC-BC-2020-06/F01800, paras 5-9.

evidentiary submissions that follow, including those pertaining to W03724 (who has already testified), are inapposite and do not relate to the merits of the SPO Request.

11. As above, in order to rule on the Request, the Panel does not need to assess or decide whether certain issues fall within the boundaries of a given statement or associated exhibit, or if they properly form part of an Accused's case. These issues are more appropriately raised, in the first instance, with the Rule 107 Provider, and thereafter with the Panel should additional relief become necessary.

12. Lastly, the Veseli Defence submits that it is prevented from meaningfully responding to the Request in respect of W04868, because it does not know which materials will be tendered pursuant to Rule 154.¹⁸ This assertion is left unexplained by the Veseli Defence. It does not describe, in any detail, how the potential application of Rule 154 impacts upon the validity of the proposed Rule 107 measures – the purpose of which is to ensure sensitive information is not ventilated in court. As such, this particular submission is without any substance. A decision on applicable conditions for W04868's testimony at this stage will enable the SPO to make informed scheduling and related decisions, and appropriately tailor its preparations for the witness.

III. CLASSIFICATION

13. This filing is confidential, as it refers to confidential Rule 107 matters and information concerning witnesses whose identities are not public.

IV. RELIEF REQUESTED

14. Given the premature and speculative nature of the Defence submissions, and in the absence of concrete objections to the proposed Rule 107 measures, the Trial Panel should grant the Request.

¹⁸ Veseli Response, KSC-BC-2020-06/F01800, para.11.

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At The Hague, the Netherlands.