



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: 23 August 2023

Language: English

Classification: Public

**Public Redacted Version of Decision on Veseli Defence Request Regarding Items
Associated with [REDACTED]'s Testimony**

Acting Deputy Specialist Prosecutor

Ward Ferdinandusse

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

TRIAL PANEL II (“Panel”), pursuant to Articles 21 and 40(6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 137-138 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 [REDACTED], [REDACTED] testified in these proceedings.¹
2. On [REDACTED] 2023, during [REDACTED]’s testimony, the Defence for Kadri Veseli (“Veseli Defence”) requested that extracts of the Gjakova Basic Court Verdict against the accused Fatmir Limaj, case PKR. nr. 154/16 (“Bellanicë/Belanica Trial Judgment”) and the Court of Appeals Verdict against the accused Fatmir Limaj in the case PAKR.no. 206/2018 (“Bellanicë/Belanica Appeal Judgment”) be admitted into evidence as items relevant to the contextual understanding of the KLA Military Police Directorate Announcement No. 4 (“Communiqué No. 4”). The Panel deferred its decision on the request, instructing the Defence to “file a written document or a bar table motion to bring those documents in at the appropriate time”.²
3. On 9 June 2023, the Veseli Defence filed a request (“Request”) for the admission into evidence of two evidentiary items: (i) extracts from the Bellanicë/Belanica Trial Judgment; and (ii) extracts from the Bellanicë/Belanica Appeal Judgment (collectively, “Proposed Exhibits”).³

¹ Transcript of Hearing, [REDACTED] 2023.

² Transcript of Hearing, [REDACTED] 2023, pp. [REDACTED].

³ F01599, Specialist Counsel, *Veseli Defence Request Regarding Items Associated with [REDACTED]’s Testimony*, 9 June 2023, confidential, with Annexes 1-2, confidential.

4. On 22 June 2023, the Specialist Prosecutor's Office ("SPO") responded to the Request ("Response").⁴

5. On 30 June 2023, the Veseli Defence replied to the Response ("Reply").⁵

II. SUBMISSIONS

6. The Veseli Defence requests that the Proposed Exhibits be admitted pursuant to Rule 138(1) as they are authentic, reliable, relevant and probative, and as no prejudice is caused by their admission.⁶ The Defence further avers that these items provide important contextual information that will assist the Panel in evaluating the reliability and probative value of Communiqué No. 4.⁷ Lastly, the Defence submits that it is in the interest of truth and justice that the Proposed Exhibits are admitted.⁸

7. The SPO opposes the Request, arguing that: (i) the Veseli Defence fails to establish that the conditions for admission through the bar table are met; (ii) the Proposed Exhibits are not evidence and/or consist of witness statements and judicial assessments and findings; (iii) the Request is an attempt to tender the Annexes under the *lex generalis* of Rules 137-139 to avoid the applicable *lex specialis* (i.e., Rules 153-155);⁹ and (iv) the Proposed Exhibits exceed those portions which are relevant to Communiqué No. 4.¹⁰ The SPO further argues that no part of the Proposed Exhibits is admissible through the bar table, and even if it was, its probative value is negligible.¹¹ The SPO argues that discussion and interpretation

⁴ F01620, Specialist Prosecutor, *Prosecution Response to 'Veseli Defence Request Regarding Items Associated with [REDACTED]'s Testimony'*, 22 June 2023, confidential (a public redacted version was filed on 23 June 2023, F01620/RED).

⁵ F01632, Specialist Counsel, *Veseli Defence Reply to Prosecution Response to 'Veseli Defence Request Regarding Items Associated with [REDACTED]'s Testimony'*, 30 June 2023, confidential.

⁶ Request, paras 13-22.

⁷ Request, paras 3, 17.

⁸ Request, paras 3, 17.

⁹ Response, para. 1.

¹⁰ Response, para. 2.

¹¹ Response, para. 2.

of applicable law are not evidence, and in any event, fall within the competence of the Panel.¹² The SPO further argues that findings of responsibility and findings related to Communiqué No. 4 are governed by Rule 157(2), and, in this respect, these findings include two Defence-proposed adjudicated facts which were rejected by the Panel.¹³ The SPO asserts that the Defence mischaracterises the findings in the Bellanicë/Belanica case and attempts to circumvent the Panel's decision on adjudicated facts.¹⁴ Finally, the SPO argues that the majority of the extracts consist of witness summaries, relating to witnesses in this case as well as statements of the Accused that have been proposed for admission by the SPO in another motion.¹⁵ The SPO argues that the Defence could have used the relevant witness summaries when questioning [REDACTED], but chose not to do so, and that in this respect the Request is wholly inadequate and should be dismissed.¹⁶

8. The Veseli Defence replies that the SPO mischaracterises the Request. It avers that the Request is made for the purpose of more completely informing the Panel's assessment of Communiqué No. 4.¹⁷ The Defence submits that the Panel remains free to assess the weight that the Proposed Exhibits should be afforded in its assessment of Communiqué No. 4.¹⁸ With respect to the SPO's submission that admission should be denied because the Veseli Defence did not put the extracts of the Bellanicë/Belanica Trial Judgment and Appeal Judgment ("Judgments") to the witness, the Veseli Defence replies that it made clear during the testimony of [REDACTED] its intention not to put portions of the Judgments to the witness as the witness indicated he had no knowledge regarding the authenticity of

¹² Response, para. 3.

¹³ Response, paras 4-5, referring to F01536, Panel, *Decision on Defence Motion for Judicial Notice of Adjudicated Facts with Annex 1 (Public)*, 18 May 2023, para. 46.

¹⁴ Response, paras 6-7.

¹⁵ Response, paras 8-10, referring to F01351, Specialist Prosecutor, *Prosecution Motion for Admission of Accused's Statements*, 8 March 2023, confidential, paras 64-69, with Annex 1, public.

¹⁶ Response, para. 11.

¹⁷ Reply, para. 2.

¹⁸ Reply, para. 2.

Communique No. 4.¹⁹ Lastly, with regard to the SPO's submission that summaries of witness statements are subject exclusively to Rules 153-155, the Veseli Defence argues that a court's summary of a witness's testimony is not the same as the testimony itself and the summaries are provided to give adequate context to the findings made in the Judgments.²⁰

III. DISCUSSION

9. The Panel considers that the Proposed Exhibits are relevant and have *prima facie* probative value as they address the existence, authenticity and reliability of Communique No. 4, which refers to the [REDACTED], a fact of significance to the witness's testimony. Communique No. 4 is also relevant to the question of the existence of the KLA Military Police Directorate, the authorship of the Communique, and issues of knowledge relevant to the charges. The Panel notes, however, that the proposed excerpts are difficult to comprehend unless they are placed within the broader context of the Judgments to which they belong. Therefore, the Panel is only prepared to admit the whole of the proposed Judgments.

10. The Panel notes that the Veseli Defence seeks to tender the Proposed Exhibits pursuant to Rule 138(1) while the SPO's response contends that they fall outside this provision and should be subject to Rules 153-155 and 157(2) as they contain what, in effect, are witness statements. First, the Panel observes that the criteria for admission of evidence are established in accordance with the Rules, which must be interpreted in alignment with the principles laid down in the Law.²¹ The Panel is of the view that the Proposed Exhibits are not being offered for the purposes of taking judicial notice of any portion of them. Rather, they are being

¹⁹ Reply, para. 3.

²⁰ Reply, para. 4.

²¹ F01631, Panel, *Decision on Veseli Defence Request for Admission of Evidence Associated with W04748's Testimony*, 30 June 2023, confidential, para. 12.

offered to provide what the Defence describes as a contextual understanding of Communiqué No. 4.²² The admission of such evidence would not, therefore, create any rebuttable presumption of factual accuracy regarding any finding contained in those Judgments.

11. The Panel further notes that the Judgments to which the Proposed Exhibits belong contain summaries of witness testimonies in the Bellanicë/Belanica case and other references to testimonial material as part of the courts' findings. The Panel has already pointed out that the requirements of Rules 153-155 cannot be circumvented by seeking to tender what in effect are statements through Rule 138.²³ The summary of testimonies given before the Gjakova Basic Court and the Court of Appeals as well as other references contained in these Judgments to the testimony of witnesses fall within the scope of the definition of a 'statement', as applicable before this jurisdiction.²⁴ As such, their admission is regulated by Rules 153-155 and they cannot be admitted as exhibits under Rule 138. The Panel therefore refuses admission on that basis of those parts of the Judgments that contain summaries of witnesses' evidence or other testimonial content. The Panel will disregard any testimonial material contained in the Judgments so that references to the evidence of witnesses contained in the Judgments do not form part of the record of the present proceedings.

²² Request, para. 7; Reply, para. 2.

²³ KSC-BC-2020-07, F00334, Panel, *Decision on the Prosecution Request for Admission of Items Through the Bar Table ("Gucati and Haradinaj Decision")*, 29 September 2021, paras 85-87. See also F01700, Panel, *Decision on Prosecution Motion for Admission of Evidence of W03724, W03832, W03880, W04368, W04566, and W04769 Pursuant to Rule 154*, 24 July 2023, confidential, para. 68; F01603, Panel, *Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155*, 14 June 2023, confidential, para. 158; F01380, Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154*, 16 March 2023, confidential, para. 50; F1226/A01, Panel, *Annex 1 to Order on the Conduct of Proceedings*, 25 January 2023, para. 74 and footnote 14. See also Transcript of Hearing, 19 July 2023, p. 6207, lines 16-25, p. 6208, line 1.

²⁴ Regarding the definition of this notion, see *Gucati and Haradinaj Decision*, para. 86, referring to ICC, *Prosecutor v. Katanga*, ICC-01/04-01/07-2635, Trial Chamber II, [Decision on the Prosecutor's Bar Table Motions](#), 17 December 2010, para. 47.

12. Turning to the question of authenticity, the Panel considers that the Judgments are *prima facie* authentic as: (i) they are dated; (ii) the Bellanicë/Belanica Trial Judgment contains the seal of the Gjakova Basic Court and is signed by a duly empowered official authority of that Court; and (iii) the Judgment rendered by the Appeal Court emanated from a duly recognized and authoritative appellate body within the legal system of Kosovo.

13. The Panel finds that the Judgments carry some probative value in respect of the issues outlined above. Their probative value will be limited, however, in view of the fact that the testimonies underlying the impugned findings (including the testimony of two of the Accused in the present case) are not at present part of the evidence in these proceedings and that the courts' findings in that case were based on a record different than the one on which this Panel will decide this case. Their probative value is therefore per force very limited. However, in order to ensure equality of arms and to benefit from a record that is as complete as possible, the Panel finds the Judgments to meet the *prima facie* threshold for admission.

14. The Panel is of the view that the admission of the Judgments cause no or little prejudice to the Parties and participants of these proceeding as: (i) both the SPO and Victims' Counsel were fully aware and informed in advance of the Defence's intention to rely upon the Proposed Exhibits as evidence against the Communique No. 4; (ii) the Veseli Defence has identified the specific portions of the Judgments that it intends to rely upon; and (iii) all testimonial elements of these Judgments will be disregarded by the Panel.²⁵ The Panel reiterates that none of the findings made by the Chambers in those Judgments are binding on the Panel. Nor do any of these create a presumption (rebuttable or otherwise) regarding their truth or accuracy.

²⁵ Request, para. 21.

15. In light of the above, the Panel finds that, aside from the testimonial elements which they contain, the two Judgments to which the Proposed Exhibits belong are admissible under Rule 138(1).

IV. CLASSIFICATION

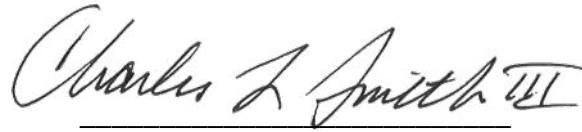
16. The Panel notes that both the Request and Reply have been submitted confidentially. In this regard, the Panel orders the Veseli Defence to submit public redacted versions of the Request and the Reply by Friday, 1 September 2023.

V. DISPOSITION

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

- a) **GRANTS** the Request, in part;
- b) **ADMITS** the Bellanicë/Belanica Trial Judgment (SPOE00067951-SPOE00067992-ET and the corresponding Albanian version SPOE00067951-00067992) and the Bellanicë/Belanica Appeal Judgment (DKV0129-0135 and the corresponding Albanian version DKV0129-0135-AT);
- c) **DIRECTS** the Registrar to assign exhibit numbers to the admitted items, including to any translations thereof; and

d) **ORDERS** the Veseli Defence to submit public redacted versions of the Request and the Reply by **Friday, 1 September 2023**.

A handwritten signature in black ink, reading "Charles L. Smith, III". The signature is written in a cursive style and is positioned above a horizontal line.

Judge Charles L. Smith, III

Presiding Judge

Dated this Wednesday, 23 August 2023

At The Hague, the Netherlands.