

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: Counsel for Kadri Veseli

Date: 23 October 2023

Language: English

Classification: Public

Public Redacted Version of Veseli Defence Submissions on Duty Counsel’s Request to Adjourn [REDACTED]’s Testimony and Related Requests, With Strictly Confidential Annexes 1 and 2

Specialist Prosecutor’s Office

Kimberly P. West

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 Alagenda

I. INTRODUCTION

1. In accordance with Rule 76 of the Rules,¹ the Defence for Mr Kadri Veseli (“Defence”) hereby files this response to Duty Counsel’s Request for an adjournment of [REDACTED]’s evidence.² The Defence urges the Trial Panel to adopt the Duty Counsel’s request for a [REDACTED] adjournment and to pursue all other reasonable avenues to secure [REDACTED]’s presence and testimony in Court. Moreover, pursuant to Articles 21 and 40 of the Law³ and, Rules 27 and 102(3) of the Rules, the Defence requests that [REDACTED] be subject to a [REDACTED] and that any documentation relevant to [REDACTED] be located and disclosed to the Defence as a matter of urgency.
2. The Defence avers that it has a well-founded interest in cross-examining the witness due to the uniquely important nature of [REDACTED] evidence and the myriad of inconsistencies contained therein. Admission of [REDACTED]’s evidence without a full and thorough cross-examination would fatally undermine the principle of orality in these proceedings and serve to directly undercut the fair trial rights of the Accused.
3. It follows that the Defence fully supports the [REDACTED] adjournment sought by Duty Counsel to facilitate [REDACTED]’s testimony before the Court. Moreover, any decision taken in the absence of the requested [REDACTED] would be premature. The Trial Panel is enjoined to ensure that comprehensive and exhaustive measures be taken to secure the witness’ testimony, in order to ensure that the proceedings are fair and expeditious.

¹ 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.

² [REDACTED].

³ Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, 3 August 2015 (‘Law’). Unless otherwise indicated, all references to ‘Article(s)’ are to the Law.

II. PROCEDURAL BACKGROUND

4. On [REDACTED], the Prosecution conducted a mandatory preparation session with [REDACTED]. It became apparent during the course of that session that [REDACTED].⁴ [REDACTED] eventually told the Prosecution that [REDACTED] “[REDACTED].”⁵
5. On [REDACTED], the Panel, Parties and participants were informed that [REDACTED] had made a number of “[REDACTED]” during the weekend preceding [REDACTED] schedule testimony.⁶ [REDACTED] expressed [REDACTED]:
- a. [REDACTED];
 - b. [REDACTED]; and
 - c. [REDACTED].⁷
6. On [REDACTED], [REDACTED] appeared before the Trial Panel to commence [REDACTED] testimony. Shortly after the Prosecution began with the Rule 154 formalities, [REDACTED] requested a break. [REDACTED] explained that [REDACTED].⁸ After hearing oral submissions by the Parties,⁹ the Presiding Judge adjourned the hearing until the next day to allow [REDACTED] to speak with duty counsel.¹⁰
7. [REDACTED] ([REDACTED]):

[REDACTED].¹¹

⁴ 110649-110656 RED (Preparation Note 2), paras 2 *et seq.*

⁵ Preparation Note 2, para. 13.

⁶ *See*, Annex 1, p. 1.

⁷ *See*, Annex 1, p. 1.

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

8. The SPO reminded the witness of [REDACTED] to the questions before the Court and asked [REDACTED] to comment [REDACTED]; [REDACTED].¹² This led [REDACTED] Duty Counsel to solicit a [REDACTED], having found in the morning a “[REDACTED].”¹³ Following a short break, [REDACTED]’s Duty Counsel applied for an adjournment of [REDACTED], noting that he had seen, in his view, a “[REDACTED],” who felt [REDACTED] a statement very likely not to be [REDACTED].¹⁴
9. The Presiding Judge granted, in part, the request for an adjournment in [REDACTED]’s evidence, ordering that the witness would continue on [REDACTED].¹⁵
10. [REDACTED], upon conclusion of another witness’ testimony, Duty Counsel informed the Panel, Parties and participants that [REDACTED] and asked that the Trial Panel reconsider its decision not to grant an adjournment of [REDACTED].¹⁶
11. On the same day, [REDACTED] consented to the distribution of [REDACTED] documenting [REDACTED],¹⁷ as well as notes of the contact the witness had with the WPSO.¹⁸
12. The Trial Panel deferred its decision on the requested [REDACTED] adjournment until it had received a [REDACTED].¹⁹
13. On the same day, the Panel, Parties and participants received, by email:

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

- a. [REDACTED];²⁰ and
- b. The WPSO's assessment of [REDACTED]. The assessment concluded that the witness was [REDACTED] on the basis of (i) [REDACTED]; (ii) [REDACTED]; and (iii) [REDACTED].²¹

III. APPLICABLE LAW

14. Pursuant Article 21(4)(f) of the Law, the Accused has a right to, *inter alia*, "examine, or have examined, the witnesses against him."

15. Article 40(2) states that:

The Trial Panel shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses. The Trial Panel, having heard the parties, **may adopt such procedures and modalities as are necessary to facilitate the fair and expeditious conduct of proceedings.** It may give directions for the conduct of fair and impartial proceedings and in accordance with the Rules of Procedure and Evidence.

16. In accordance with Rule 27 of the Rules, the WPSO shall "provide any additional assistance as decided by the Registrar or a Panel as is consistent with the mandate and responsibilities of the Witness Protection and Support Office."

17. Lastly, it is recalled that on the basis of the Appeal Judgment in the case of *Prosecutor v. Haradinaj et al.*, it is incumbent upon Trial Panel to make use of their broad powers to ensure that the fairness of trial is preserved. Indeed, a Trial Panel is required to "provide every practicable facility it is capable of granting under the Rules and Statute when faced with a request by a party for assistance in presenting its case."²²

²⁰ See, generally, Annex 2.

²¹ See, F01866/A01, A01, Annex 1 to WPSO Observations Regarding [REDACTED], 18 October 2023, strictly confidential, p. 5.

²² ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84-A, [Appeal Judgement](#), 19 July 2010, ("Haradinaj Appeal Judgement") para. 35.

IV. SUBMISSIONS

A. [REDACTED] Must Give Evidence in Person and be Cross-Examined

18. The Defence submits that [REDACTED]'s evidence is uniquely important to the Prosecution's case. Not only does it go to the acts and conduct of the Accused, but it pertains to some of the most serious crimes charged in the Indictment – [REDACTED].²³ W04577 also provides evidence in respect to [REDACTED].²⁴ It is particularly notable that [REDACTED] evidence is riddled with glaring inconsistencies, many of which are of crucial importance to the charged crimes and are of inherent interest to the Defence, for instance:

a. [REDACTED] claimed that Prosecutor Maurizio Salustro "[REDACTED]" and [REDACTED].²⁵ The witness later told the Prosecution that this was a story that had been prepared for [REDACTED]. What's more, the witness indicated to the Prosecution that [REDACTED] told Mr Salustro of this plan in advance; this appears patently untrue from the [REDACTED].²⁶ This discrepancy must be explored with the witness and cannot be done adequately on paper. The nature of the witness's out-of-court interactions with Mr Salustro will not only go to the witness's credibility but also Defence strategy going forward and whether, for instance, Mr Salustro's account of this event is needed.

b. Similarly, [REDACTED] told UNMIK [REDACTED]. [REDACTED]: "[REDACTED]."²⁷ [REDACTED].²⁸ What's more, the witness now maintains that [REDACTED] personally bumped into the

²³ 088347-TR-ET Part 3 RED2, p. 23, line 5

²⁴ 088347-TR-ET Part 1 RED2, p. 4

²⁵ SITF00393380-00393392, p. SITF00393390.

²⁶ 088346-TR-ET Part 2 RED2, p. 5, line 19.

²⁷ SITF00305130-00305135 RED, p. SITF00305133.

²⁸ 088347-TR-ET Part 3 RED2, p. 19, line 17; p. 25, line 20 – p. 28, line 2.

[REDACTED]. [REDACTED] describes them in detail and describes individuals from the KLA by name whom [REDACTED] recognised guarding and escorting [REDACTED].²⁹ The witness's explanation of these discrepancies, [REDACTED] demeanor and tone in court will be central to any assessment of [REDACTED] credibility and whether [REDACTED] account of these allegations can be taken seriously. They cannot be fully ventilated on paper.

19. There are numerous other examples of this kind that must be explored through cross-examination and which run throughout [REDACTED]'s evidence. Given the centrality of [REDACTED]'s allegations to the SPO's case and the scale of inconsistencies contained in [REDACTED] various statements, the Defence submits that before any part of [REDACTED]'s evidence can safely be relied upon, the Defence must be permitted to develop and explore its reliability and the witness' credibility. It is, therefore essential that every effort is made to secure this witness's presence and testimony.
20. The Defence notes, in this regard, that it is incumbent upon the Trial Panel to make use of its broad powers to ensure that the fairness of trial is preserved. On the basis of the Appeal Judgement in *Prosecutor v. Haradinaj et al.*, a Trial Panel is required to "provide every practicable facility it is capable of granting under the Rules and Statute when faced with a request by a party for assistance in presenting its case."³⁰ Indeed, in that case, the Appeals Panel specifically held that the Trial Chamber had not done enough to secure the witness' testimony against the background of witness intimidation:

[T]he Trial Chamber seriously erred in failing to take adequate measures to secure the testimony of Kabashi and the other witness. By contrast, the Trial Chamber appeared to place undue emphasis on ensuring that the Prosecution took no more than its pre-allotted time to present its case, and that the Trial Chamber's deadlines for presenting

²⁹ 088346-TR-ET Part 3 RED2, p. 9, line 19.

³⁰ Haradinaj Appeal Judgement, para. 35

evidence were respected, irrespective of the possibility of securing the testimony of two key witnesses.³¹

21. The same measures must be taken to protect the fundamental rights of the Accused – specifically, Mr Veseli’s right to confront allegations made against him. Every feasible effort must be made to secure the witness’ testimony. Not only is this supported by the unique and fundamental character of [REDACTED]’s evidence but it is further underpinned by the principle of orality, of which due observance is required in this instance. A failure to hear [REDACTED]’s evidence orally would only serve to undercut the Accused’s right to a fair trial.
22. The Defence further notes that there is no time pressure to hear this witness’s evidence now. The WPSO assessment that [REDACTED] “[REDACTED]”³² has been made after a [REDACTED] event where [REDACTED]. The Defence notes that [REDACTED] did not report any further [REDACTED].³³
23. In light of such findings, the Defence avers that an adjournment is the most appropriate action at the present time. Delaying [REDACTED]’s evidence would allow the witness to [REDACTED]. There is no rush to hear [REDACTED] evidence. The present case is set to run until April 2025.³⁴ There is another 18 months left on the Prosecution’s case for [REDACTED] to obtain [REDACTED] and to be in a position for [REDACTED] evidence to be heard orally.
24. For these reasons the Defence submits that the Duty Counsel’s request for a [REDACTED] adjournment should be granted and that all other reasonable

³¹ Haradinaj Appeal Judgement, para. 40.

³² F01866/A01, p. 5.

³³ F01866/A01, p. 3.

³⁴ Transcript, 15 February 2023, p. 2039 line 12 – p. 2039 line 16.

measures should be taken to secure [REDACTED]'s presence and testimony in these proceedings.

B. [REDACTED]

25. The Defence further requests that the Panel direct a [REDACTED] be conducted to provide a full picture of [REDACTED] and specifically [REDACTED] credibility. As noted by counsel on [REDACTED] it would be patently unfair to place the Defence in a position to cross-examine a witness with [REDACTED].
26. The manner in which cross-examination is normally conducted is contingent on a [REDACTED] witness answering questions. Here there are clear indications that [REDACTED] is not a reliable historian of events and that this could well be the result not solely due to an attempt to obfuscate or mislead but also – at least in part – due to [REDACTED]. For these reasons a [REDACTED] is necessary not only to assist the Trial Panel and the parties evaluate the witness's evidence, but also to help the parties in their examination of this witness.

C. Disclosure of [REDACTED]

27. Finally, the Defence contends that full disclosure [REDACTED] is now required to properly assess [REDACTED] reliability and credibility. Therefore, the Defence request the full disclosure of all [REDACTED].
28. The Defence notes that the witness has provided inconsistent accounts of [REDACTED] prior treatment in the past. For instance, in [REDACTED] first telephone call with the Prosecution on [REDACTED], [REDACTED] said that

“[REDACTED]”³⁵ Contrarily, in [REDACTED] SPO interview, [REDACTED] denied ever having [REDACTED]:

[REDACTED].³⁶

29. It further appears from the witness’s [REDACTED] that the witness previously received [REDACTED].³⁷ Yet again, this is an issue which is highly relevant to the Defence’s preparation. It needs to be fully disclosed to the Defence before [REDACTED] returns to testify.

V. CLASSIFICATION

30. These submissions are filed strictly confidential pursuant to Rule 82(4).

VI. CONCLUSION

31. In light of the foregoing, the Defence requests that the Trial Panel:
- a. **GRANT** the adjournment requested by Duty Counsel for [REDACTED];
 - b. **ORDER** that a [REDACTED] be carried out as soon as possible and, in any event, before the witness returns to testify; and
 - c. **ORDER** the Prosecution to locate and disclose [REDACTED].

Word Count: 2,810



Ben Emmerson, CBE KC

Counsel for Kadri Veseli

³⁵ 103531-103531, p. 103531.

³⁶ 088346-TR-ET Part 2 RED2, p. 3, line 10.

³⁷ Annex 2, p. 3.

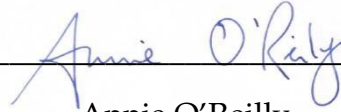
Monday, 23 October 2023,
The Hague, The Netherlands



Andrew Strong

Co-Counsel for Kadri Veseli

Monday, 23 October 2023,
The Hague, The Netherlands



Annie O'Reilly

Co-Counsel for Kadri Veseli

Monday, 23 October 2023,
The Hague, The Netherlands