

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: 15 December 2023

Language: English

Classification: Confidential

Veseli Defence Reply to Prosecution Consolidated Response to Veseli, Selimi, and Krasniqi Requests for Leave to Appeal Decision F01917 (F01990)

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I. INTRODUCTION

1. The Defence for Mr Kadri Veseli (“Defence”) hereby files this reply to the Prosecution’s Response to the Defence’s request for leave to appeal the Trial Panel’s Decision of 9 November 2023.¹

II. SUBMISSIONS

2. As regards the **First Issue**, the Defence maintains that it arises from the Impugned Decision,² despite reference being made to an outdated version of the KCPC.³ Inasmuch as the Prosecution attempts to contort the submission that the Panel completely ignored the relevant KCPC provision,⁴ the crux of the Defence’s argument is that the Panel gave no attention to the rule that statements of an accused are inadmissible against a co-accused, despite being required to do so by the Legislative Framework⁵ and jurisprudence from the Appeals Chamber.⁶
3. Moreover, the Prosecution’s claim that the term “where appropriate,” as contained Rule 4(1) of the Rules, is “primarily a reference to articles that have been incorporated into the Rules” is unpersuasive. Indeed, the Pre-Trial Judge’s Decision of 22 July 2021, which the Prosecution relies upon to make its

¹ F01990, *Prosecution consolidated response to Veseli, Selimi, and Krasniqi requests for leave to appeal Decision F01917*, 7 December 2023, public (“Prosecution Response”).

² F01917, *Decision on Prosecution Motion for Admission of Accused’s Statements*, 9 November 2023, public (“Impugned Decision”), para. 215.

³ The Defence acknowledges that it mistakenly referred to Article 123 of the KCPC 2012 in its Request, whereas it ought to have cited to the version dated 17 August 2022, in which the relevant rule has been transposed to Article 119(5) (“Statements provided by a defendant in any context, if given voluntarily and without coercion, may not be used against co-defendants”).

⁴ Prosecution Response, paras 2-3.

⁵ Specifically, Rule 4(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 (‘Rules’) and Article 19(2) of the Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, 3 August 2015 (“Law”).

⁶ See, KSC-BC-2018-01/IA001/F00005, [Decision on Appeal Against “Decision on Application for an Order Directing the Specialist Prosecutor to Terminate the Investigation against Driton Lajci”](#), 1 October 2021, public, paras. 20-21.

point,⁷ pertained to the issue of preliminary motions – an issue that is highly regulated by the Legislative Framework. The same cannot be said for the admission of the accused’s statements – as noted by the Panel.⁸ The Pre-Trial Judge’s determination in the 22 July 2021 Decision, that Article 250 of the KCPC did not govern the issue of preliminary motions, was necessarily determined by whether the issue was sufficiently addressed in the Legislative Framework. Again, the Prosecution fails to consider that the admission of the accused’s statements is an issue left completely unaddressed by the Law or the Rules. Considering the extent of the identified lacunae, the Defence reiterates that the Panel’s Decision ought to have

4. As regards the **Second Issue**, the Defence reiterates its submission that the Panel did not consider Rule 4(3) and 5 of the Rules and, therefore, rendered a Decision which was predicated upon an interpretation of the Rules that was the least favourable to the accused. Whereas the Prosecution might contend that the array of sources cited by the Defence fail to show a general principle of law,⁹ any fair reading of their content would lead a reasonable arbiter to conclude the opposite. The Prosecution’s reliance upon the five sources cited in the Impugned Decision to indicate the lack of a general principle advocating against the admission of the accused’s statements does nothing to negate the fact that the Panel rendered a decision which contravened the basic principles contained in Rule 4(3) and 5 of the Rules. The Defence recalls that, when read in combination, these provisions provide that where the KSC legal framework is silent on an issue, and more than one interpretation is possible, the interpretation “most favorable” to the accused must be applied. It stands to reason, therefore, that in circumstances such as those at issue, where prejudicial

⁷ Prosecution Response, para. 3 *citing* F00413, *Decision on Defence Motions Alleging Defects in the Form of the Indictment*, 22 July 2021, confidential, para. 46.

⁸ Impugned Decision, para. 215.

⁹ Prosecution Response, paras 4-5.

statements of a co-accused are entering the record, Mr Veseli was meant to benefit from an application of the Rules which was the most favourable to him.

III. CONCLUSION

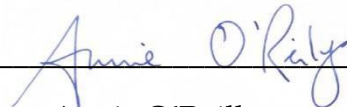
5. In light of the foregoing, the Prosecution's response ought to be disregarded and leave to appeal the Impugned Decision granted.

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