



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**In:** KSC-BC-2020-06

**The 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:** Fidelma Donlon

**Date:** 14 October 2024

**Language:** English

**Classification:** Public

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**Public Redacted Version of Decision on Joint Defence Request for Leave to  
Appeal the Decision to Admit P01608**

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**Specialist Prosecutor**

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**TRIAL PANEL II** (“Panel”), pursuant to Article 45(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 77 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 17 September 2024, during the testimony of W04737,<sup>1</sup> the Panel issued an oral order admitting a document bearing the ERN U000-5853-U000-5894 into evidence as P01608 (“Impugned Decision”).<sup>2</sup>
2. On 24 September 2024, the Defences for Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (collectively “Accused” and “Defence”) filed a request for leave to appeal the Impugned Decision (“Request”).<sup>3</sup>
3. On 7 October 2024, the Specialist Prosecutor’s Office (“SPO”) filed a response to the Request (“Response”).<sup>4</sup>

## II. SUBMISSIONS

4. The Defence requests leave to appeal the Impugned Decision regarding the following issue:

Whether the Trial Panel erred in determining that P01608 satisfied the authenticity requirements of Rule 138(1) to the requisite *prima facie* standard (“Issue”).<sup>5</sup>

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<sup>1</sup> Transcript of Hearing, 16 September 2024, confidential, pp. 19640-19760; Transcript of Hearing, 17 September 2024, confidential, pp. 19763-19902; Transcript of Hearing, 18 September 2024, confidential, pp. 19904-19968.

<sup>2</sup> Transcript of Hearing, 17 September 2024, confidential, pp. 19764, lines 1-3.

<sup>3</sup> F02594, Specialist Counsel, *Joint Defence Request for Leave to Appeal Decision to Admit P01608*, 24 September 2024, confidential.

<sup>4</sup> F02622, Specialist Prosecutor, *Prosecution Response to ‘Joint Defence Request for Leave to Appeal Decision to Admit P01608’*, 7 October 2024, confidential.

<sup>5</sup> Request, paras 1-2, 16.

5. The Defence submits that the Issue satisfies the test for certification.<sup>6</sup> The Defence argues that the issue arises from the Impugned Decision as it is clear from the record that exhibit P01608 did not meet the *prima facie* standard for admission.<sup>7</sup> Specifically, the Defence argues that: (i) P01608 lacks authenticity as it is not clear what the item is;<sup>8</sup> (ii) P01608 is not relevant unless it is established that it is an [REDACTED] and, in any event, the witness was only shown two entries, which are of a remote relevance, in a 42-page document;<sup>9</sup> (iii) P01608 lacks probative value and cannot be regarded as reliable since the SPO has not shown authentically what P01608 is and what potential issues P01608 is likely to influence;<sup>10</sup> and (iv) the admission of P01608 under these circumstances prejudices the Accused.<sup>11</sup>

6. The Defence also argues that the Issue significantly affects the fair and expeditious conduct of the proceedings as the Impugned Decision does not comport with the admissibility standard set out by the Panel at the beginning of the trial and it is of central importance to the fairness of the proceedings that the correct test is applied.<sup>12</sup> Lastly, the Defence contends that appellate resolution of the Issue would materially advance the proceedings as it will clarify the test for admission of evidence.<sup>13</sup>

7. The SPO responds that the Request should be rejected,<sup>14</sup> arguing that the Panel is afforded considerable discretion in deciding whether to admit evidence and that certification to appeal such decisions is the absolute exception.<sup>15</sup> In any event, the SPO contends that the Issue fails to meet the test for certification as:

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<sup>6</sup> Request, paras 9-16.

<sup>7</sup> Request, para. 12.

<sup>8</sup> Request, para. 12(a).

<sup>9</sup> Request, para. 12(b).

<sup>10</sup> Request, para. 12(c).

<sup>11</sup> Request, para. 12(d).

<sup>12</sup> Request, para. 14.

<sup>13</sup> Request, para. 15.

<sup>14</sup> Response, paras 1, 9.

<sup>15</sup> Response, para. 2.

(i) the Defence merely disagrees with, and mischaracterises the Impugned Decision;<sup>16</sup> (ii) the Issue does not significantly affect the fair and expeditious conduct of the proceedings as the admission of one piece of evidence, on its own, cannot have such an impact on the proceedings to warrant certification;<sup>17</sup> (iii) no unfairness arises from the admission of P01608 since the Defence had the opportunity to cross-examine W04737 and to make submissions on whether P01608 should be admitted;<sup>18</sup> (iv) the Defence will be able to make submissions on the weight to be given to the document;<sup>19</sup> (v) in any event, any error could be remedied on any appeal against a final judgement;<sup>20</sup> and (vi) the test for admission of evidence does not need to be clarified as the Panel applied the correct and long-established test in the Impugned Decision.<sup>21</sup>

### III. APPLICABLE LAW

8. Pursuant to Article 45(2) and Rule 77(2), a right to appeal only arises if the standard of certification set forth therein has been met. Rule 77(2) provides that:

The Panel shall grant certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, including, where appropriate remedies could not effectively be granted after the close of the case at trial, and for which an immediate resolution by the Court of Appeals Panel may materially advance the proceedings.

9. The Panel incorporates by reference the applicable law on the legal standard for certification to appeal set out in past decisions.<sup>22</sup>

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<sup>16</sup> Response, paras 3-4.

<sup>17</sup> Response, para. 5.

<sup>18</sup> Response, para. 6.

<sup>19</sup> Response, para. 6.

<sup>20</sup> Response, para. 6.

<sup>21</sup> Response, para. 7.

<sup>22</sup> See F01237, Panel, *Decision on Thaçi Defence Request for Leave to Appeal Decision on Disclosure of Dual Status Witnesses*, 30 January 2023, paras 7-8; KSC-BC-2020-07, F00423, Panel, *Decision on SPO Requests for Leave to Appeal F00413 and Suspensive Effect* ("Decision on SPO Request for Leave to Appeal F00413"), 8 November 2021, paras 13-21; F00372, Panel, *Decision on Haradinaj Defence's Application for Certification*

#### IV. DISCUSSION

10. When first offered, the Panel marked U000-5853-U000-5894 for identification.<sup>23</sup> On the following day, having heard extensive submissions from the Parties, the Panel admitted the proposed item as exhibit P01608, pursuant to Rule 138, finding that it met the *prima facie* standard for admission.<sup>24</sup>

11. The Panel considers that the Defence misrepresents the Panel's reasoning in the Impugned Decision. The Panel's ruling that P01608 was "admitted, under Rule 138, meeting the *prima facie* standard for admission",<sup>25</sup> must be considered in the context of the Parties' submissions, and, in particular, the SPO's examination of W04737.<sup>26</sup> During the questioning of W04737, the witness confirmed that entries in P01608, concerning "[REDACTED]" and "[REDACTED]", one which is dated,<sup>27</sup> matched the information which he had of these individuals being considered "[REDACTED]".<sup>28</sup> W04737 further stated that "[REDACTED]".<sup>29</sup> W04737 further testified that "it was possible" that these entries were the [REDACTED].<sup>30</sup> Therefore, while the witness did not and could not confirm who authored P01608, he did confirm the information in the entries shown to him as consistent with his personal knowledge. Admission of a document is not conditioned by proof of the identity of the author of the document. Further, W04737 was only asked to comment on certain parts of P01608. The fact that the witness was only able to comment on those parts did not render the rest inadmissible. The fact that the

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of F00328, 15 October 2021, paras 15-17; F00484, Panel, *Decision on Defence Request for Leave to Appeal* F00470, 8 December 2021, paras 4-14. See also F00172, Pre-Trial Judge, *Decision on the Thaçi Defence Application for Leave to Appeal* ("Decision on the Thaçi Defence Application for Leave to Appeal"), 11 January 2021, paras 6-7, 9-17.

<sup>23</sup> Transcript of Hearing, 16 September 2024, confidential, p. 19672, lines 4-6.

<sup>24</sup> Transcript of Hearing, 17 September 2024, confidential, p. 19764, lines 1-3.

<sup>25</sup> Transcript of Hearing, 17 September 2024, confidential, p. 19764, lines 1-3.

<sup>26</sup> Transcript of Hearing, 16 September 2024, confidential, p. 19667, line 16 to p. 19672, line 6.

<sup>27</sup> See P01608.

<sup>28</sup> Transcript of Hearing, 16 September 2024, confidential, p. 19667, line 16 to p. 19669, line 1 (P01608, pp. U000-5866-U000-5867), p. 19669, lines 2-20 (P01608, p. U000-5888).

<sup>29</sup> Transcript of Hearing, 16 September 2024, confidential, p. 19669, lines 10-16.

<sup>30</sup> Transcript of Hearing, 16 September 2024, confidential, p. 19669, lines 17-20.

author is unknown, that W04737 was only shown three pages in P01608 and that other aspects of this exhibit are not further contextualised or corroborated by this witness are, as previously noted,<sup>31</sup> factors the Panel will consider when deciding what weight (if any) to assign to P01608 when assessing each piece of evidence in light of the entire body of evidence admitted before it at trial. The Panel also notes that *prima facie* authentication can be based, as in this case, on the substance of the document insofar as the content of the document contributes to establishing the origin of the document and the entity, group or persons from which it originates.

12. The Panel considers that the Impugned Decision applied the same test for admission of evidence set out in prior decisions and verified each of the requirements for admission articulated in Rule 138.<sup>32</sup> The Defence merely disagrees with the Panel's application of this test in relation to the admission of P01608 and seeks to re-litigate issues which were raised before the Panel and decided in the Impugned Decision.<sup>33</sup>

13. In light of the above, the Panel finds that the Defence have failed to establish that the Issue emanates from the Impugned Decision.

14. Accordingly, the remaining requirements of the certification test arising from Article 45(2) and Rule 77(2) need not be addressed in relation to the Issue. The request for certification to appeal the Issue is, therefore, rejected.

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<sup>31</sup> See for example, F01596, Panel, *Second Decision on Specialist Prosecutor's Bar Table Motion*, 9 June 2023, para. 178.

<sup>32</sup> F01409, Panel, *Decision on Specialist Prosecutor's Bar Table Motion*, 31 March 2023, confidential, paras 8-13.

<sup>33</sup> See Request, paras 10, 12(a)-(b); Transcript of Hearing, 16 September 2024, confidential p. 19670, lines 5-7, 10-22.

## V. CLASSIFICATION

15. The Panel notes that the Request and Response are filed confidentially. The Panel also notes that the SPO does not object to the Response being reclassified as public as it does not contain any confidential information.<sup>34</sup> The Panel, therefore, instructs the Registry to reclassify the Response as public and orders the Defence to request reclassification, or to file a public redacted version, of the Request by no later than **Monday, 21 October 2024**.

## VI. DISPOSITION

16. For these reasons, the Panel:

- a) **REJECTS** the Request;
- b) **INSTRUCTS** the Registry to reclassify the Response as public; and
- c) **ORDERS** the Defence to request the reclassification, or file a public redacted version, of the Request by no later than **Monday, 21 October 2024**.



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

Dated this Monday, 14 October 2024

At The Hague, the Netherlands.

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<sup>34</sup> Response, para. 8.