



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

**Date:** 2 June 2025

**Language:** English

**Classification:** Confidential

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**Prosecution Response to 'Veseli Defence Request for Certification to Appeal F03178 (Dukagjin Zone Bar Table Decision)'**

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## I. INTRODUCTION

1. The Request<sup>1</sup> should be rejected as the Issues<sup>2</sup> fail to meet the criteria for certification<sup>3</sup> under Article 45 of the Law<sup>4</sup> and Rule 77 of the Rules.<sup>5</sup> As repeatedly stated by the Panel, triers of fact are afforded consideration discretion in deciding whether to admit evidence, and certification to appeal admissibility decisions are the absolute exception.<sup>6</sup> The Request fails to identify any error in the Panel's exercise of this discretion,<sup>7</sup> let alone one warranting such exceptional relief.

## II. SUBMISSIONS

### A. THE ISSUES ARE NOT APPEALABLE

2. The Request does not present any appealable issue. Instead, it seeks to relitigate the admission of certain documents by repeating previous objections, misrepresenting the Panel's findings, and expressing mere disagreement with the Decision, in particular, the Panel's assessment of the *prima facie* authenticity of certain Admitted Items.<sup>8</sup>

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<sup>1</sup> Veseli Defence Request for Certification to Appeal F03178 (Dukagjin Zone Bar Table Decision), KSC-BC-2020-06/F03190, 21 May 2024, Confidential ('Request').

<sup>2</sup> Request, KSC-BC-2020-06/F03190, paras 2, 11-19. The issues identified in the Request as the 'First Issue', 'Second Issue', 'Third Issue', and collectively, 'Issues'.

<sup>3</sup> The applicable law has been set out in prior decisions. *See e.g.* Decision on the Thaçi Defence Application for leave to Appeal, KSC-BC-2020-06/F00172, 11 January 2021, paras 9-17; *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on the Defence Applications for Leave to Appeal the Decision on the Defence Preliminary Motions, KSC-BC-2020-07/F00169, 1 April 2021, paras 10-18.

<sup>4</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

<sup>5</sup> 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.

<sup>6</sup> *See e.g.* Decision on Veseli Defence Request for Leave to Appeal Decision to Admit P1046, KSC-BC-2020-06/F02241, 15 April 2024, para. 10.

<sup>7</sup> Decision on Prosecution Motion for Admission of Dukagjin Zone Documents, KSC-BC-2020-06/F03178, 13 May 2025 ('Decision').

<sup>8</sup> 'Admitted Item(s)' refers collectively to the exhibit(s) admitted in the Decision. 'Denied Item(s)' refers to the exhibit(s) denied admission in the Decision.

(i) *First Issue*

3. The First Issue alleges that the Panel admitted a number of documents for which there is ‘no, or virtually no’ chain of custody information on the basis that the handwritten KLA ‘header’ is an indicator of *prima facie* authenticity.<sup>9</sup> These submissions are misleading and distort the Decision.

4. As previously held by the Panel, for an item to be admitted through the bar table, it must meet the cumulative requirements of Rule 138(1). Information regarding chain of custody, authentication by a witness, and proof of authorship and/or provenance are not conditions for admission. While such indicia may assist in establishing the admissibility criteria, they primarily pertain to the Panel’s final assessment of evidentiary weight.<sup>10</sup>

5. By arguing that the Panel’s findings are ‘inconsistent and irrational’,<sup>11</sup> the Defence ignores that each document is assessed on an item-by-item basis. The claim that the Panel’s reasoning in relation to authenticity was based on a handwritten KLA ‘header’ is simply incorrect. To the contrary, when assessing the *prima facie* authenticity of Admitted Item 50 – which is the only Admitted Item specifically addressed in connection with the First Issue<sup>12</sup> – the Panel considered other indicia together with the handwritten KLA header, including that it was dated, signed, contained details about individuals and people concerned, and overlapped with other tendered and admitted evidence.<sup>13</sup> Likewise, the Defence attempt to compare Admitted Item 50 with Denied Item 120 (and other items concerned by this and past

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<sup>9</sup> Request, KSC-BC-2020-06/F03190, paras 11-14.

<sup>10</sup> Decision, KSC-BC-2020-06/F03178, paras 13-14.

<sup>11</sup> Request, KSC-BC-2020-06/F03190, para.14.

<sup>12</sup> While the Request refers to, *inter alia*, a number of Admitted Items in footnotes 12-14 and 17, the Request only specifically discusses Admitted Item 50. In any event, the same arguments made – including in relation to the multi-layered assessment undertaken by the Panel, which was not limited to the KLA header on any document – apply to all Admitted Items referenced in the Request in relation to the First Issue.

<sup>13</sup> Decision, KSC-BC-2020-06/F03178, para.33.

decisions<sup>14</sup>) misrepresents the Decision and fails to account for the item-by-item assessment conducted.<sup>15</sup>

6. Thus, the First Issue, relying on misrepresentations, expresses mere disagreement with the Decision.

(ii) *Second Issue*

7. The Defence equally fails to demonstrate that the Second Issue is appealable. The Panel relied on the overlap of information, content, or substance between a tendered item and other tendered and admitted evidence as one factor relevant to *prima facie* authenticity.<sup>16</sup> Contrary to sweeping and unsubstantiated assertions in the Request,<sup>17</sup> the overlap relied upon is easily identified from the relevant documents' contents and the Decision.<sup>18</sup>

8. While the Request does not specifically discuss any Admitted Items in connection with the Second Issue, in each of the referenced Decision paragraphs,<sup>19</sup> the Panel took any overlap into account together with other indicia, including that the relevant Admitted Items: (i) are dated, signed, and/or indicate the place of issuance; (ii) identify the author and/or issuing/receiving authority; (iii) bear headers, logos, emblems, and/or reference numbers; (iv) were discussed with witnesses; (v) contain details about the individuals, matters, and places concerned; and/or (vi) were seized

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<sup>14</sup> Request, KSC-BC-2020-06/F03190, para.14, fn.17.

<sup>15</sup> The Panel was not satisfied of Denied Item 120's *prima facie* authenticity because, in addition to lacking a header/logo and date, it also lacked 'any indication of when and for what purpose [it] was prepared'. See Decision, KSC-BC-2020-06/F03178, para.37.

<sup>16</sup> Request, KSC-BC-2020-06/F03190, para.15.

<sup>17</sup> *Contra* Request, KSC-BC-2020-06/F03190, para.15 (claiming that it is not apparent from the Decision what 'overlap' is being relied upon, and that the Decision is 'incomprehensible').

<sup>18</sup> The Decision includes references to the detailed submissions in the Motion and Motion Annex, and/or indicates which specific documents an Admitted Item overlaps in content with. See e.g. Decision, KSC-BC-2020-06/F03178, paras 33-34 (with further references in fn.20 below). See also Prosecution motion for admission of Dukagjin Zone documents, KSC-BC-2020-06/F02997, 10 March 2025 ('Motion'); Annex 1 to the Motion, KSC-BC-2020-06/F02997/A01, Confidential, 10 March 2025 ('Motion Annex').

<sup>19</sup> Request, KSC-BC-2020-06/F03190, fns 18-22.

from the Accused's residences.<sup>20</sup> In this context, and noting that corroboration or overlap of content is not a requirement for admission,<sup>21</sup> the Defence cannot reasonably claim that it is 'impossible [...] to discern' from the Panel's detailed, item-by-item analysis how it determined the Admitted Items were admissible.<sup>22</sup>

9. As the Defence has failed to substantiate or explain any 'failure to provide reasons' in the Decision<sup>23</sup> – including by reference to the Panel's multi-layered reasoning for any specific Admitted Item – the Second Issue expresses mere disagreement and is not appealable.

(iii) *Third Issue*

10. The Third Issue alleges that the Panel erred by making 'inconsistent findings' regarding the *prima facie* authenticity of certain documents.<sup>24</sup> Once again, the Defence submissions distort the Panel's reasoning and ignore that each document is assessed on an item-by-item basis.

11. Contrary to Defence submissions,<sup>25</sup> and as already set out above in respect of the First Issue, whether an item includes a KLA header was one of several factors considered by the Panel when assessing *prima facie* authenticity. In this respect, even if *arguendo* there was inconsistency between one part of the Panel's conclusions on Denied Item 118 (referring to the KLA) and Admitted Items 122, 125, 182, and 295 (with no specific reference to the KLA), as claimed by the Defence,<sup>26</sup> the Third Issue fails to account for the other indicia of authenticity underlying the Panel's conclusions

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<sup>20</sup> Decision, KSC-BC-2020-06/F03178, paras 33-34, 38-39, 41-42, 55-56, 60-63, 72, 75, 78, 80, 82, 91, 95, 97-98, 108.

<sup>21</sup> Decision, KSC-BC-2020-06/F03178, para.16.

<sup>22</sup> Request, KSC-BC-2020-06/F03190, para.15.

<sup>23</sup> Request, KSC-BC-2020-06/F03190, para.15.

<sup>24</sup> Request, KSC-BC-2020-06/F03190, paras 16-19.

<sup>25</sup> Request, KSC-BC-2020-06/F03190, para.16.

<sup>26</sup> Request, KSC-BC-2020-06/F03190, paras 16-18.

on each. For example, as opposed to Denied Item 118,<sup>27</sup> the Panel considered that: (i) Admitted Item 122 contained a detailed account of the duty roster in the village of Prejlep, indicating a place and date of issuance;<sup>28</sup> (ii) Admitted Item 125 was signed by a KLA commander, indicates a date and place of issuance, and bears a reference number;<sup>29</sup> (iii) Admitted Item 182 is signed by the same commander who signed, *inter alia*, Admitted Exhibits 180-181 (both of which include a KLA header), and overlaps in substance with Admitted Item 184;<sup>30</sup> and (iv) Admitted Item 295 contains records of names and personal details of KLA members allegedly serving in the Dukagjin Zone, including their date of birth, place of origin, profession, date of enlistment, and the weapons and ammunition assigned to them, and that the content overlaps with information recorded in other Admitted Items.<sup>31</sup>

12. Thus, similar to the first two Issues, the Third Issue relies on misrepresentations, articulates mere disagreement with the Decision, and fails to develop a specific or identifiable appealable issue.

#### B. THE ISSUES WOULD HAVE NO IMPACT JUSTIFYING CERTIFICATION

13. The Defence fails to demonstrate that the Issues significantly affect the fair and expeditious conduct of the proceedings, or that immediate resolution by the Court of Appeals may materially advance them. Notably, the Court of Appeals has already had the opportunity to consider issues similar to those raised in the Request, including in *Mustafa*, where it found no error in the Trial Panel's admission of and reliance upon on a contemporaneous document that 'lacked indicia of authorship, such as a

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<sup>27</sup> Decision, KSC-BC-2020-06/F03178, para.40 (noting there is no 'header, date, signature, or other substantive detail linking the document to the KLA').

<sup>28</sup> Decision, KSC-BC-2020-06/F03178, para.57.

<sup>29</sup> Decision, KSC-BC-2020-06/F03178, para.58.

<sup>30</sup> Decision, KSC-BC-2020-06/F03178, para.61.

<sup>31</sup> Decision, KSC-BC-2020-06/F03178, para.108.

signature, logo, or its time of creation’, but has ‘numerous [other] details that lend credence to its authenticity and reliability’.<sup>32</sup>

14. The Panel’s admission of the Admitted Items into evidence is without prejudice to its future assessment of the weight, if any, to be assigned. Any consideration of the impact on the proceedings or its outcome caused by the admission is hypothetical, speculative, and premature, and in any event, could be remedied, as necessary and appropriate, on any appeal against a final judgment in the case.<sup>33</sup>

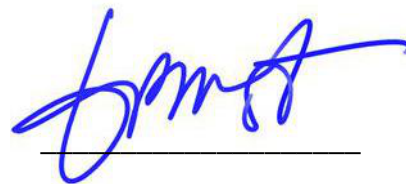
### III. CLASSIFICATION

15. This filing is confidential pursuant to Rule 82(4). As it does not contain any confidential information, the Specialist Prosecutor’s Office requests its reclassification as public.

### IV. RELIEF REQUESTED

16. For the foregoing reasons, the Request fails to meet the leave to appeal standard and should be dismissed.

**Word count: 1742**



**Kimberly P. West**

**Specialist Prosecutor**

Monday, 2 June 2025

At The Hague, the Netherlands.

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<sup>32</sup> *Specialist Prosecutor v. Mustafa*, KSC-CA-2023-02/F00038, Appeal Judgment, 14 December 2023, Confidential, paras 101-102 (finding no error in the Trial Panel’s ‘finding, which acknowledges the absence of certain features indicative of a document’s authenticity, but nevertheless finds sufficient indicia of authenticity to support reliability’).

<sup>33</sup> *See, similarly*, Decision on Veseli Defence Request for Certification to Appeal the Decision to Admit P1064 and P1065, KSC-BC-2020-06/F02259, 23 April 2024, para.13.