



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: 5 June 2025

Language: English

Classification: Public

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

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 13 May 2025, the Panel issued its "Decision on Prosecution Motion for Admission of Dukagjin Zone Documents" ("Impugned Decision").¹
2. On 21 May 2025, the Defence for Kadri Veseli ("Defence") filed a request for leave to appeal the Impugned Decision ("Request").²
3. On 2 June 2025, the Specialist Prosecutor's Office ("SPO") filed a response to the Request ("Response").³
4. The Defence did not reply to the Response.⁴

II. SUBMISSIONS

5. The Defence requests leave to appeal the Impugned Decision in respect of three issues ("Issues"), namely:
 - (i) Whether the Panel erred by relying on handwritten Kosovo Liberation Army ("KLA") headers as indicia of *prima facie* authenticity ("First Issue");⁵

¹ F03178, Panel, *Decision on Prosecution Motion for Admission of Dukagjin Zone Documents*, 13 May 2025.

² F03190, Specialist Counsel, *Veseli Defence Request for Certification to Appeal F03178 (Dukagjin Zone Bar Table Decision)*, 21 May 2025, confidential.

³ F03221, Specialist Prosecutor, *Prosecution Response to 'Veseli Defence Request for Certification to Appeal F03178 (Dukagjin Zone Bar Table Decision)'*, 2 June 2025, confidential.

⁴ See CRSPD824, *Email from Trial Panel to Veseli Defence re Reply to F3221*, 4-5 June 2025, confidential.

⁵ Request, paras 2, 11-14, 22.

- (ii) Whether the Panel erred by failing to articulate the “overlap” between the documents used to establish their *prima facie* authenticity (“Second Issue”);⁶ and
- (iii) Whether the Panel erred by making inconsistent findings regarding the *prima facie* authenticity of some documents and not others (“Third Issue”).⁷

6. The Defence submits that the Issues are appealable,⁸ they affect the fair and expeditious conduct of the proceedings,⁹ and their immediate resolution would materially advance the proceedings.¹⁰

7. The SPO responds that the Issues fail to meet the criteria for certification as: (i) they are not appealable; and (ii) the Defence failed to demonstrate that the Issues significantly affect the fair and expeditious conduct of the proceedings, or that immediate resolution by the Court of Appeals Panel may materially advance the proceedings.¹¹ The SPO further contends that any consideration regarding the impact on the proceedings or the outcome of the trial caused by the admission of documents is hypothetical, speculative and premature, and in any event, could be remedied, as necessary and appropriate, on any appeal against a final judgment.¹² Accordingly, the SPO submits that the Request should be dismissed.¹³

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

⁶ Request, paras 2, 15, 22.

⁷ Request, paras 2, 16-19, 22.

⁸ Request, paras 10-19.

⁹ Request, para. 20.

¹⁰ Request, para. 21.

¹¹ Response, paras 1-13, 16.

¹² Response, para. 14.

¹³ Response, paras 1, 16.

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.¹⁴

IV. DISCUSSION

A. FIRST ISSUE

10. The Defence submits that the Panel admitted a number of handwritten documents on the basis that the handwritten KLA headers included therein are a *prima facie* indicator of their authenticity, despite the fact that there was little to no information regarding their chain of custody.¹⁵ According to the Defence, handwritten KLA headers are an unreliable indicator of authenticity.¹⁶ The Defence, thus, submits that the Panel's reasoning is flawed and, as such, appealable.¹⁷

11. The SPO responds that the Defence's submissions regarding the First Issue are misleading, express a mere disagreement with the Impugned Decision, and ignore the fact that the Panel assessed the admissibility of each document on an item-by-item basis.¹⁸

¹⁴ See e.g. F01237, Panel, *Decision on Thaçi Defence Request for Leave to Appeal Decision on Disclosure of Dual Status Witnesses*, 30 January 2023, paras 7-8, referring to KSC-BC-2020-07, F00423, Panel, *Decision on SPO Requests for Leave to Appeal F00413 and Suspensive Effect*, 8 November 2021, paras 13-21; F00372, Panel, *Decision on Haradinaj Defence's Application for Certification 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 KSC-BC-2020-06, F00172, Pre-Trial Judge, *Decision on the Thaçi Defence Application for Leave to Appeal*, 11 January 2021, paras 6-7, 9-17.

¹⁵ Request, para. 11.

¹⁶ Request, para. 12.

¹⁷ Request, para. 12.

¹⁸ Response, paras 3-6.

12. First, the Panel recalls that it has repeatedly ruled that proof or record of chain of custody is not a condition for the admission of evidence.¹⁹ Second, the Panel notes that, when assessing the *prima facie* authenticity of tendered documents under Rule 138(1), it considered the existence of handwritten KLA headers together with other indicia of authenticity, such as dates, signatures and other details supporting the documents' authenticity.²⁰ Contrary to the Defence's submissions,²¹ the Panel did not admit or reject the admission of handwritten documents *solely* on the basis of handwritten KLA headers. Such a suggestion misrepresents the basis on which the Panel's findings were based.

13. For these reasons, the Panel is of the view that the First Issue misrepresents the Panel's findings, seeks to relitigate matters already raised and decided by the Panel and constitutes a mere disagreement with the Impugned Decision. The Panel therefore finds that the Defence has failed to establish that the First Issue constitutes a discrete topic arising 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 First Issue. The request for certification to appeal the First Issue is therefore rejected.

B. SECOND ISSUE

15. The Defence submits that, when assessing certain items' *prima facie* authenticity, the Panel relied on the purported overlap of information, content or substance between these items and other documents that were either simultaneously tendered or were already in evidence.²² According to the Defence, it is not apparent from the Impugned Decision what overlap of information, content or substance is being relied upon, rendering it impossible for the Defence

¹⁹ See e.g. F01596, Panel, *Second Decision on Specialist Prosecutor's Bar Table Motion*, 9 June 2023, para. 109.

²⁰ See e.g. Impugned Decision, paras 33, 39, 42, 56.

²¹ Request, paras 11, 13-14.

²² Request, para. 15.

to properly discern how the Panel determined that the documents in question meet the admissibility standard.²³ The Defence submits that the Panel's failure to provide reasons is an articulable error, and should be certified for appeal.²⁴

16. The SPO responds that the Second Issue expresses mere disagreement with the Impugned Decision and is not appealable, arguing that: (i) the Panel's reliance on the overlap of information, content or substance between a tendered item and other tendered and admitted evidence was one of the factors it took into account to establish the *prima facie* authenticity of documents; (ii) said overlap is easily identified from the relevant documents' contents and the Impugned Decision; and (iii) corroboration or overlap of content is not a requirement for a document's admission in evidence.²⁵

17. The Panel notes that it conducted a careful assessment, as prescribed by Rule 138(1), of each and all items tendered by the SPO relating to the Dukagjin Operational Zone on the basis of the Parties' related submissions. Where the Panel was satisfied that the content of tendered items overlapped with the information recorded in other tendered items or evidence in the record, the Panel took this into account as a factor supporting the item's *prima facie* authenticity.²⁶ In doing so, the Panel clearly identified which tendered or admitted items it took into consideration.²⁷ Furthermore, the Panel agrees with the SPO that the overlap which the Panel relied upon in the Impugned Decision is readily discernible upon a review of the items in question, the Impugned Decision and/or the SPO's submissions, as cited by the Panel. More importantly, the Panel notes that, when assessing the *prima facie* authenticity of the tendered documents, it relied, in addition to the aforementioned overlap, on the existence of other indicia of

²³ Request, para. 15.

²⁴ Request, para. 15.

²⁵ Response, paras 7-9.

²⁶ See e.g. Impugned Decision, paras 33, 55, 61, 98.

²⁷ See e.g. Impugned Decision, paras 33, 55, 60-62, 72, 98.

authenticity, such as dates, headers/logos, signatures and other details supporting the documents' *prima facie* authenticity.²⁸ In light of the above, the Panel is not convinced by the Defence's submissions that it is not apparent from the Impugned Decision what overlap of information, content or substance is being relied upon and that it is impossible for the Defence to properly discern how the Panel determined that the documents in question meet the admissibility standard.

18. For these reasons, the Panel is of the view that the Second Issue misrepresents the Panel's findings and constitutes a mere disagreement with them. The Panel therefore finds that the Defence has failed to establish that the Second Issue constitutes a discrete topic arising from the Impugned Decision.

19. 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 Second Issue. The request for certification to appeal the Second Issue is therefore rejected.

C. THIRD ISSUE

20. The Defence argues that the Panel's reasoning with respect to the *prima facie* authenticity of certain tendered items is inconsistent.²⁹

21. The SPO responds that the Defence's submissions distort the Panel's reasoning, ignore that each document is assessed on an item-by-item basis, and express mere disagreement with the Impugned Decision.³⁰

22. The Panel finds the Defence's submissions comparing the Panel's findings on the *prima facie* authenticity of discrete documents to be inapposite. The Panel's assessment under Rule 138(1) is conducted on a case-by-case basis, taking into account the specific characteristics of each tendered document. As stated above, and contrary to the Defence's submissions,³¹ the Panel considered various indicia

²⁸ See e.g. Impugned Decision, paras 33, 42, 55-56, 76, 98.

²⁹ Request, paras 16-19.

³⁰ Response, paras 10-12.

³¹ Request, paras 16-18.

of authenticity or the lack thereof when examining the *prima facie* authenticity of tendered documents under Rule 138(1).³² These indicia naturally vary depending on the nature and origin of the document in question. In this respect, the Panel also recalls that triers of fact are afforded considerable discretion in deciding whether and how to admit evidence, and certification to appeal admissibility decisions should be granted only on an exceptional basis.³³ Such principles are reflected in the Court of Appeals Panel's holding that "appellate intervention in decisions relating to the admission of evidence is warranted only in very limited circumstances."³⁴

23. For these reasons, the Panel is of the view that the Third Issue misrepresents the Panel's findings and constitutes a mere disagreement with them. The Panel therefore finds that the Defence has failed to establish that the Third Issue constitutes a discrete topic arising from the Impugned Decision.

24. 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 Third Issue. The request for certification to appeal the Third Issue is therefore rejected.

V. CLASSIFICATION

25. Noting that the Request was filed confidentially, the Panel instructs the Defence to request its reclassification or file a public redacted version thereof within 7 days of the filing of the present decision. Noting that the Response was filed confidentially pursuant to Rule 82(4) and the SPO requests its reclassification as public,³⁵ the Panel instructs the Registry to reclassify the Response as public.

³² See e.g. Impugned Decision, paras 58, 73, 78, 110. See also paras 12, 17 above.

³³ F02241, Panel, *Decision on Veseli Defence Request for Leave to Appeal Decision to Admit P1046*, 15 April 2024, para. 10; F02157, Panel, *Decision on Veseli Defence Request for Leave to Appeal Decision to Admit P959 and P960*, 29 February 2024, para. 11 and footnote 26 (with further references).

³⁴ KSC-CA-2022-01, F00114, Court of Appeals Panel, *Appeal Judgment*, 2 February 2023, para. 35.

³⁵ Response, para. 15.

VI. DISPOSITION

26. For these reasons, the Panel:

- a) **REJECTS** the request for leave to appeal the Issues;
- b) **ORDERS** the Defence to request the reclassification of the Request or file a public redacted version thereof within 7 days of the filing of the present decision; and
- c) **DIRECTS** the Registry to reclassify the Response as public.



Judge Charles L. Smith, III
Presiding Judge

Dated this Thursday, 5 June 2025

At The Hague, the Netherlands.