



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

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**Prosecution response to joint Defence request for certification F03210**

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## I. INTRODUCTION

1. The Request<sup>1</sup> should be dismissed as the Issues<sup>2</sup> identified by the Defence 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 enjoy considerable discretion in deciding whether to admit evidence, and consequently certification to appeal admissibility decisions must be the absolute exception.<sup>6</sup> The Request fails to demonstrate that any of the Issues meet this standard.

## II. SUBMISSIONS

### A. THE ISSUES ARE NOT APPEALABLE

2. The Request fails to identify any appealable issue, and instead seeks to relitigate the admission of the General Staff and PGoK Documents<sup>7</sup> in their entirety, without challenging the admission of any specific document or category of documents,<sup>8</sup> and by misrepresenting the Decision and applicable legal standards. The Defence ultimately only articulates its disagreement with the Decision and fails to identify any

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<sup>1</sup> Joint Defence Request for Certification to Appeal the Decision on Prosecution Motion for Admission of General Staff and PGoK Documents (F03191), KSC-BC-2020-06/F03210, 28 May 2025, Confidential ('Request').

<sup>2</sup> Request, KSC-BC-2020-06/F03210, para.2. The issues identified in the Request are referred to herein 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 ('January 2021 Decision'), 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> Decision on Veseli Request for Certification to Appeal First Oral Order of 30 January 2025, KSC-BC-2020-06/F02973, 3 March 2025, para.14; Decision on Veseli Defence Request for Leave to Appeal Decision to Admit P959 and P960, KSC-BC-2020-06/F02157, 29 February 2024, para.11.

<sup>7</sup> The term 'General Staff and PGoK Documents' refers collectively to the documents admitted in the Decision. *See* Decision on Prosecution Motion for Admission of General Staff and Provisional Government of Kosovo Documents, KSC-BC-2020-06/F03191, 21 May 2025, Confidential ('Decision').

<sup>8</sup> It is generally insufficient to argue that the entirety of a Panel's reasoning is erroneous. *See e.g.* January 2021 Decision, KSC-BC-2020-06/F00172, para.11 (and sources cited in fn.13).

specific or discrete issue. Considering that the Panel assessed each of the General Staff and PGoK Documents on an individualised basis, the Request necessarily fails to satisfy the applicable criteria.

(i) *First Issue*

3. The First Issue incorrectly claims that the Panel lowered the threshold for admissibility by assessing authenticity on the basis of singular indicators and failing to consider indicia undermining authenticity.<sup>9</sup>

4. The legal standard for admission does not require absolute proof but instead verification of *prima facie* authenticity,<sup>10</sup> which is met when any indicia, for example, content and origin, provide *prima facie* indications of a document's authenticity and reliability.<sup>11</sup>

5. In support of its claim that the Panel found 'authentic a document containing a signature block but missing dates, signatures, or other indications of authorship', the Defence cites generally, without further explanation or specification, to paragraph 34 of the Decision addressing 22 General Staff and PGoK Documents.<sup>12</sup> In this respect, for each of the General Staff and PGoK Documents addressed in paragraph 34 of the Decision – most of which were seized from Jakup KRASNIQI – the Panel noted two or

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<sup>9</sup> Request, KSC-BC-2020-06/F03210, paras 2(i), 12.

<sup>10</sup> Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01409, 31 March 2023, Confidential ('First Bar Table Decision'), paras 11, 54.

<sup>11</sup> First Bar Table Decision, KSC-BC-2020-06/F01409, para.61. *See also* Decision on Prosecution Motion for Admission of Dukagjin Zone Documents, KSC-BC-2020-06/F03178, 13 May 2025, paras 13-14 (noting that information regarding chain of custody, authentication by a witness, and proof of authorship and/or provenance are not conditions for admission, and that while such indicia may assist in establishing the admissibility criteria, they primarily pertain to the Panel's final assessment of evidentiary weight); Decision on Prosecution Motion for Admission of Llap Zone Documents and Related Request, KSC-BC-2020-06/F02951, 21 February 2025 ('Llap Zone Decision'), para.23; *Specialist Prosecutor v. Mustafa*, KSC-CA-2023-02/F00038, Appeal Judgment, 14 December 2023, Confidential ('*Mustafa* Appeal Judgment'), 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>12</sup> Request, KSC-BC-2020-06/F03210, para.12, fn.13.

more (further) indicia, including headers, signature blocks, signatures, stamps, logos, and corroboration. Likewise, the only two General Staff and PGoK Documents specifically referred to in the Request in relation to the First Issue do not support the Defence's arguments.<sup>13</sup> A review of the Decision overall similarly demonstrates that the claim is unfounded. The Panel assessed documents on an item-by-item basis, and outlined the factors taken into account, including provenance and corroboration.<sup>14</sup> The confounding claim that the Panel – in an unspecified manner – reversed the burden of proof, is completely unsubstantiated. Contrary to Defence submissions,<sup>15</sup> the Panel was clearly aware of the moving Party's burden to satisfy the admissibility criteria,<sup>16</sup> denying tendered exhibits where it found that this burden was not met.<sup>17</sup>

6. Thus, the First Issue misrepresents the Decision, articulates mere disagreement with the Decision, and fails to develop a specific or identifiable appealable issue.

(ii) *Second and Third Issues*

7. The Second<sup>18</sup> and Third Issues<sup>19</sup> both relate to the alleged prejudice resulting from admitting the General Staff and PGoK Documents and will thus be addressed together.

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<sup>13</sup> Compare Request, KSC-BC-2020-06/F03210, para.12, fn.15 with Decision, KSC-BC-2020-06/F03191, para.23 (noting that Proposed Exhibits 1(B) / ERN SPOE00231931-00231932, and 1(C) / ERN SPOE00231933-00231936 contain a KLA General Staff signature block and were seized from Jakup KRASNIQI).

<sup>14</sup> See e.g. Decision, KSC-BC-2020-06/F03191, paras 23-24, 56-60. See also Decision on Prosecution Motion for Admission of Pashtrik Zone Documents, KSC-BC-2020-06/F03070, 1 April 2025 ('Pashtrik Zone Decision'), para.20 (noting that corroboration may assist to establish authenticity 'when not evident on the face of a document').

<sup>15</sup> Request, KSC-BC-2020-06/F03210, para.12 (claiming that the 'Impugned Decision reverses the burden of proof, which is for the Prosecution to establish and not for the Defence to refute').

<sup>16</sup> Decision, KSC-BC-2020-06/F03191, para.10, citing, *inter alia*, First Bar Table Decision, KSC-BC-2020-06/F01409, para.9 ('It is for the tendering Party to demonstrate, with clarity and specificity, that each proposed exhibit meets the aforementioned requirements and how it fits into its case').

<sup>17</sup> See e.g. Decision, KSC-BC-2020-06/F03191, para.24 ('the Panel is not satisfied that the SPO has established its *prima facie* authenticity').

<sup>18</sup> Request, KSC-BC-2020-06/F03210, paras 2(ii), 13-14.

<sup>19</sup> Request, KSC-BC-2020-06/F03210, paras 2(iii), 15.

8. The Second and Third Issues misrepresent the Decision and relevant jurisprudence, and merely disagree with the Panel's findings. The claim that the Panel failed to engage with the Defence submissions regarding its inability to test documents through witnesses is untrue.<sup>20</sup> The Decision outlines relevant jurisprudence, establishing that there is no requirement that exhibits must be authenticated through witnesses,<sup>21</sup> and that lack of authentication or corroboration by a witness is a matter that goes to weight and not admissibility.<sup>22</sup> The example highlighted by the Defence was specifically addressed by the Panel<sup>23</sup> and the Defence fails to make out an appealable error in the Panel's decision to consider the relevant General Staff and PGoK Documents together with W04752's testimony when assessing weight. Indeed, the example given only underlines that the Defence had the opportunity to put General Staff and PGoK Documents to witnesses.<sup>24</sup>

9. Contrary to Defence submissions,<sup>25</sup> at no point did the Panel reverse the burden of proof. The Defence ignores that the Panel expressly acknowledged the Prosecution's burden<sup>26</sup> and that the Defence may choose to challenge the content of the items, but has no onus to do so.<sup>27</sup> Similarly, the Panel never found that any prejudice may be 'cured' through the presentation of evidence.<sup>28</sup> The Panel's findings are clear: the *prima facie* probative value of the proposed exhibits is *not* outweighed by *any* prejudicial effect.<sup>29</sup>

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<sup>20</sup> Request, KSC-BC-2020-06/F03210, paras 13-14.

<sup>21</sup> Decision, KSC-BC-2020-06/F03191, para.11 (referring *inter alia* to Llap Zone Decision, KSC-BC-2020-06/F02951, para.21).

<sup>22</sup> Decision, KSC-BC-2020-06/F03191, para.13 (referring *inter alia* to Pashtrik Zone Decision, KSC-BC-2020-06/F03070, para.18).

<sup>23</sup> Request, KSC-BC-2020-06/F03210, para.14, fn.18.

<sup>24</sup> *Contra* Request, KSC-BC-2020-06/F03210, para.14.

<sup>25</sup> Request, KSC-BC-2020-06/F03210, paras 2(iii), 15.

<sup>26</sup> See para.5 above and sources cited therein.

<sup>27</sup> See e.g. Decision, KSC-BC-2020-06/F03191, paras 29, 37.

<sup>28</sup> Request, KSC-BC-2020-06/F03210, para.15, fn.20.

<sup>29</sup> See e.g. Decision, KSC-BC-2020-06/F03191, paras 29, 37.

10. The additional claim that the Panel committed a ‘fundamental error’ when relying on the same reasoning regarding prejudicial effect is similarly unsubstantiated and it ignores that before assessing the probative value of the General Staff and PGoK Documents and weighing it against any prejudicial effect, the Panel made extensive individualised findings on the relevance and authenticity of the General Staff and PGoK Documents.<sup>30</sup> Nothing in this approach is ‘generic’ or ‘superficial’.<sup>31</sup>

11. For these reasons, the Second and Third Issues rely on misrepresentations, articulate mere disagreement with the Decision, and fail to develop specific or identifiable appealable issues.

B. THE ISSUES WOULD HAVE NO IMPACT JUSTIFYING CERTIFICATION

12. The Defence fails to demonstrate that the Issues significantly affect the fair and expeditious conduct of the proceedings. The claim that the General Staff and PGoK Documents directly impact on the role and responsibilities of the Accused, and thus the trial, is misguided and misconstrues the legal standard.<sup>32</sup> As reiterated multiple times by the Panel, the alleged importance of proposed exhibits does not bar admission through the bar table.<sup>33</sup>

13. Similarly, immediate resolution by the Court of Appeals will not materially advance the proceedings. 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 signature, logo, or its time of creation’, but has ‘numerous [other] details that lend

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<sup>30</sup> See, similarly, Decision on Veseli Defence Request for Leave to Appeal Decisions F03070 and F03071, KSC-BC-2020-06/F03157, 2 May 2025, paras 16-17.

<sup>31</sup> Request, KSC-BC-2020-06/F03210, para.15.

<sup>32</sup> Request, KSC-BC-2020-06/F03210, para.17.

<sup>33</sup> Decision, KSC-BC-2020-06/F03191, para.11; Llap Zone Decision, KSC-BC-2020-06/F02951, para.21.

credence to its authenticity and reliability’.<sup>34</sup> The Defence’s generic assertion that appellate resolution would materially advance the proceedings as it would affect the potential scope of the Defence case is based on a misrepresentation of the Panel’s findings, as outlined above.<sup>35</sup>

14. The Panel’s admission of the General Staff and PGoK Documents is without prejudice to its future assessment of the weight, if any, to be assigned. Any speculation about the impact that the admission of this evidence may have on the proceedings or its outcome is, at this stage, hypothetical and premature, and could in any event be addressed, as necessary and appropriate, on final appeal.<sup>36</sup>

15. Accordingly, none of the cumulative requirements for certification are met.<sup>37</sup>

### III. CLASSIFICATION

16. 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

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

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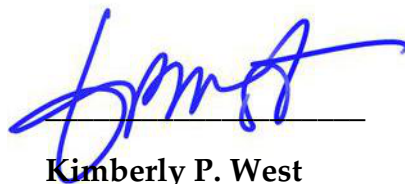
<sup>34</sup> *Mustafa* Appeal Judgment, KSC-CA-2023-02/F00038, paras 101-102.

<sup>35</sup> See paras 8-10 above.

<sup>36</sup> See 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. *Contra* Request, KSC-BC-2020-06/F03098, paras 20, 22.

<sup>37</sup> January 2021 Decision, KSC-BC-2020-06/F00172, paras 10-16.

**Word Count: 1892**

A handwritten signature in blue ink, appearing to read 'Kimberly P. West', is written over a horizontal line.

**Kimberly P. West**

**Specialist Prosecutor**

Tuesday, 10 June 2025

At The Hague, the Netherlands.