

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 Counsel for Kadri Veseli

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**Public Redacted Version of Veseli Defence Request for Certification to Appeal
F03178
(Dukagjin Zone Bar Table Decision)**

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I. INTRODUCTION

1. In accordance with Article 45(2) of the Law¹ and Rule 77(2) of the Rules,² the Defence for Kadri Veseli ("Defence") hereby files this request for certification to appeal the Trial Panel's Decision on the SPO's Dukagjin Bar Table Motion.³
2. The Defence submits the following issues for certification:

First issue: whether the Trial Panel erred by relying on handwritten KLA "headers" as indicia of *prima facie* authenticity;

Second issue: whether the Trial Panel erred by failing to articulate the "overlap" between documents used to establish their *prima facie* authenticity;

Third issue: whether the Trial Panel erred by making inconsistent findings regarding the *prima facie* authenticity of some documents and not others.

II. PROCEDURAL BACKGROUND

3. On 10 March 2025, the SPO filed a motion for the admission of Dukagjin Operational Zone documents from the bar table.⁴
4. On 28 March 2025, pursuant to the extended deadline ordered by the Panel,⁵ the Defence filed its joint response.⁶
5. On 7 April 2025, the SPO filed a reply.⁷

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ("Law").

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ("Rules").

³ F03178, *Decision on Prosecution Motion for Admission of Dukagjin Zone Documents*, 13 May 2025 (notified 14 May 2025), public.

⁴ F02997, *Prosecution Motion for Admission of Dukagjin Zone Documents*, 10 March 2025, public, with Annexes 1-2, confidential.

⁵ F03178, para. 2.

⁶ F03064, *Joint Defence Response to 'Prosecution Motion for Admission of Dukagjin Zone Documents (F02997)'*, 28 March 2025, confidential, with Annex 1, confidential.

⁷ F03092, *Prosecution Reply Relating to Motion to Admit Dukagjin Zone Documents (F02997)*, 7 April 2025, confidential.

6. On 13 May 2025, the Panel issued its Decision, which was notified the following day.⁸

III. APPLICABLE LAW

7. Pursuant to Article 45(2) of the Law and Rule 77(2) of the Rules, a right to appeal only arises if the standard of certification set forth herein has been met.
8. Rule 77(2) states 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 Defence recalls the legal test set for certification of appeal under Rule 77(2) has been developed in prior decisions issued by this Court, which are incorporated herein by reference.⁹

IV. SUBMISSIONS

A. The Issues Arise from the Impugned Decisions

10. The Trial Panel admitted into evidence over 336 documents tendered in the SPO's Dukagjin Bar Table having found them to be *prima facie* relevant, authentic and that their prejudicial effect did not outweigh their probative value.¹⁰ Only 17 were denied admission, in whole or in part.¹¹ Having reviewed the Panel's decision in detail, the Defence has identified the following **three**

⁸ F03178.

⁹ F02866, *Decision on Veseli and Krasniqi Request for Certification to Appeal First Oral Order of 5 December 2024*, 27 January 2025, public, para. 11 citing F01237, *Decision on Thaçi Defence Request for Leave to Appeal Decision on Disclosure of Dual Status Witnesses*, 30 January 2023, public, paras 7-8; KSC-BC-2020-07, F00423, *Decision on SPO Requests for Leave to Appeal F00413 and Suspensive Effect*, 8 November 2021, public, paras 13-21; F00372, *Decision on Haradinaj Defence's Application for Certification of F00328*, 15 October 2021, public, paras 15-17; F00484, *Decision on Defence Request for Leave to Appeal F00470*, 8 December 2021, public, paras 4-14. See also F00172, *Decision on the Thaçi Defence Application for Leave to Appeal*, 11 January 2021, public, paras. 6-7, 9-17.

¹⁰ F03178, para. 118(b).

¹¹ F03178, para. 118(c).

errors in the Trial Panel's assessment of these documents *prima facie* authenticity which arise from the Decision.

Issue 1: Handwritten KLA 'Headers'

11. The Dukagjin Bar Table Motion contained a significant number of documents said to date from 1998, for which there is no, or virtually no, chain of custody information.¹² The Trial Panel admitted a number of handwritten documents on the basis that the handwritten KLA header written across the top of a piece of paper is a *prima facie* indicator of it being an authentic KLA document.¹³ The Defence submits that this is a fundamental error of reasoning, which plainly arises from the Impugned Decision.
12. It is not rational to rely on a handwritten KLA "header" as an indicator of *prima facie* authenticity. To describe it as a KLA header at all is misleading, as it amounts to no more than evidence that an unidentified person, at an unidentified time, wrote the acronym UCK across the top of a piece of paper.¹⁴ Such a "header" can be created by any person, for any purpose, including by those seeking to assert the authority of the KLA for their own personal purposes or by those seeking to inculcate the KLA. It is an utterly unreliable indicator of authenticity. This flawed reasoning is irrational and as such, appealable.
13. Item 50 for example is a small, handwritten note purporting to be a "summons" issued by Lahi Brahimaj. The words "UCK Sh.O.N. Dukagjini" have been jotted

¹² See, for example F02997/A01, items 1-14; 17-22; 24-26; 28; 34-85; 87-122; 124-130; 132-135; 137-168; 170-182; 185-203; 210-212; 216-224; 227; 230-231; 233-260; 262-293; 295-353.

¹³ This includes item 95, which was put to W04403 in cross-examination who stated that he had never heard of a SHIK headquarters in the Dukagjin Zone, and that the word "SHIKI" contained in the "header" of the document is different to SHIK, though was possibly an attempted spelling of SHIK by someone with a primary level education; and that to his knowledge there is no such body as SHIKI in existence (Transcript of 26 March 2025, p. 26025). See also, *inter alia*, items 2; 22; 24; 63; 121; 146; 147; 152; 156; 158; 161; 162; 166; 174; 245; 267; 276; 309.

¹⁴ See, for example, item 24.

down at the top of the page. This isolated scrap of paper was provided to the SPO by the ICTY/MICT, and no further information about its origins is offered. Nonetheless, the Trial Panel found that it was *prima facie* an authentic KLA document on account of the handwritten notation at the top of the page.¹⁵

14. The Defence notes that a very similar document (item 120), also purportedly issued by Lahi Brahimaj, was denied admission because it did not exhibit such a “header”.¹⁶ While the Panel also pointed out that this document also bore no date, the Defence notes undated KLA material is routinely admitted in this case, including when other indicia of authenticity are absent.¹⁷ It is therefore unclear why the lack of date was deemed fatal by the Panel in this instance. The Panel’s reasoning in rejecting one and admitting one of these similar documents is inconsistent and irrational.

Issue 2: Unexplained ‘overlap’ between items tendered

15. The second issue is the manner of treatment of ‘overlap’ between documents. Throughout the Decision, the Trial Panel relies on purported overlap of information¹⁸, content¹⁹, or substance²⁰, between a tendered item and other documents that are either tendered in the same Motion or already in evidence, to establish an item’s authenticity. However, in most cases it simply cross-references the **SPO’s** submissions on overlap, without any discussion of

¹⁵ F03178, para. 33.

¹⁶ F03178, para. 37.

¹⁷ See, for example, F02997/A01, items 96; 116; 179; 186; 188; 192; 204-207; 251; 278; 334-353. See also F03070, para. 181 (*Decision on Prosecution Motion for Admission of Pashtrik Zone Documents*, 1 April 2025, public) admitting items 4, 49, 53, 56, 74, 107, 128, 186, 191, 196 of F02944/A01 (Specialist Prosecutor, *Prosecution Motion for Admission of Pashtrik Zone Documents*, 18 February 2025, confidential, with Annexes 1-3, confidential), and F02967, para. 66 (*Decision on Prosecution Motion for Admission of Drenica Zone Documents*, 26 February 2025, confidential) admitting items 2, 34B, 39, 42, 48, 77 of F02248/A01 (Specialist Prosecutor, *Prosecution Motion for Admission of Drenica Zone Documents*, 16 April 2024, with Annexes 1-2, confidential).

¹⁸ F03178, paras. 33, 38, 41, 42, 60, 62, 72, 75, 78, 82, 91, 95, 97, 98, 108.

¹⁹ F03178, paras. 39, 60, 63, 98, 108.

²⁰ F03178, paras. 38, 39, 55, 56, 61, 78, 80, 91, 95.

whether the overlap is significant, and without clarifying whether the SPO's submissions are endorsed in whole or in part.²¹ In some instances, the Panel does not refer to the SPO submissions on overlap and offers no explanation at all as to the basis of the purported overlap.²² In all of these cases, it is not apparent from the Decision what overlap of information, content or substance is being relied upon, and it is therefore impossible for the Defence to properly discern how the Trial Panel has determined that the document meets the admissibility standard. As the Decision is incomprehensible to the Defence, this amounts to an absence of reasoning. This failure to provide reasons is an articulable error, and should be certified for appeal.

Issue 3: Inconsistent Findings

16. Some decisions on the admission of individual documents in the Impugned Decision cannot be reconciled with decisions to exclude others. As noted above, the presence or absence of a KLA handwritten "header" was significant or decisive as regards the Panel's conclusion regarding the *prima facie* authenticity of documents as being what the SPO holds them out as being, *i.e.*, KLA documents. Yet, other items that do not refer to the KLA at all, have been admitted as *prima facie* authentic KLA documents. For example, item 122 contains lists of men with the words "Army duty roster" written at the top. Nowhere in the document is the KLA mentioned at all – except on the very last page, where it is written in Serbian that the document is a list of guards in the local KLA headquarters. The same applies to item 295, which is a handwritten log.
17. On the other hand, item 118 does mention the KLA, but was excluded from evidence for lack of authenticity. Item 118 is a handwritten note, presented as a

²¹ See, e.g., F03178, paras. 33, 34, 42, 55, 62, 91, 98.

²² See, e.g., F03178, paras. 38, 75, 82, 97.

record of Zone Commander Ramush Haradinaj's remarks about the KLA at a work meeting of the military police, which the SPO claims overlaps with other evidence.²³ The Defence objected on numerous grounds, including that it is unsigned, undated, no chain of custody information is provided, and the reference in the document to an accompanying letter which has not been tendered. The item was rightfully denied admission. In its reasoning, the Panel held that there was no "substantive detail linking the document to the KLA."²⁴ The Defence agrees that the item has not been established to be an authentic KLA document, including for all the reasons set out in its Response. But the inconsistent manner in which the Trial Panel has concluded that certain documents contain a substantive link to the KLA (e.g., item 122), while others do not (e.g., item 118) adds to uncertainty, and evidences the arbitrariness in the Panel's decision making.

18. Another example of the Trial Panel's inconsistent reasoning is item 125, which is admitted as a *prima facie* authentic KLA order, but does not mention the KLA.²⁵ The header refers instead to the Kryshec Defence Staff and is signed by Muhamet Berisha, as simply "commander." A second document refers to Muhamet Berisha as a KLA commander, not as a commander of the Defence Staff.²⁶ A third document - item 182 - has no header, and refers to the same individual as the "commander."²⁷ Despite these unexplained discrepancies, and the other deficiencies noted by the Defence in its response, all are admitted as *prima facie* authentic KLA documents. These decisions are irreconcilable.

²³ F02997/A01, p.66 (item 118).

²⁴ F03178, para. 40.

²⁵ IT-04-84 P00128.

²⁶ Item 181 (U002-2106-U002-2108).

²⁷ Item 182 (U002- 2109- U002- 2110).

19. These inconsistent rulings on admissibility all arise from the Impugned Decision and as such constitute an appealable issue.

B. The Issues Significantly Affect the Fair and Expeditious Conduct of the Proceedings

20. All of the issues raised concern the fundamental issue of the authenticity of the evidence that is being relied upon to prove the case against the Accused. As acknowledged by the Trial Panel's recent decision granting certification to appeal its decision on [REDACTED], authenticity is a crucial issue which has a significant affect on the fairness of these proceedings where – as it does here - it concerns a large volume of evidence.²⁸ Authenticity is particularly critical here where, like in the [REDACTED] Decision, there is reason to believe that [REDACTED],²⁹ noting that the Defence has repeatedly raised its concerns about the integrity of such material since the pre-trial phase of this case.³⁰

C. An Immediate Resolution by the Appeals Chambers Will Materially Advance the Proceedings

21. The Defence is entitled to clarity on whether the Trial Panel's approach to authenticity of purported KLA documents complies with the requirements of Rule 138(1). The issues identified above have ramifications for other evidence in the case, including evidence that has yet to be ruled upon and, potentially, on evidence tendered by Victims and Defence. Therefore, certification of these issues will materially advance the proceedings.

²⁸ F03183, para. 13.

²⁹ F03183, para. 26.

³⁰ F00877, *Joint Defence Motion for Disclosure Pursuant to Rule 103, With Public Annexes 1-3 and Confidential Annex 4*, confidential, 12 July 2022.

V. CONCLUSION

22. In light of the foregoing, the Defence respectfully seeks leave to appeal the issues identified above.

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Respectfully submitted on Wednesday, 21 May 2025,

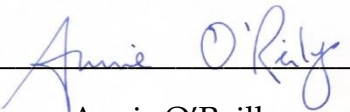
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