



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 Consolidated Request for Leave to Appeal Decisions on the Admission of Expert Evidence of Witnesses W04826 and W04874 (F03201 and F03203)'

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I. INTRODUCTION

1. The Request¹ should be dismissed as the Issues² fail to meet the criteria for certification³ under Article 45 of the Law⁴ and Rule 77 of the Rules.⁵ Triers of fact are afforded considerable discretion in deciding whether to admit evidence, and certification to appeal admissibility decisions are the absolute exception.⁶ The Request merely disagrees with, and misrepresents, the Decisions.⁷ It fails to identify any error in the Panel's exercise of its discretion, let alone one warranting exceptional relief.

II. SUBMISSIONS

A. THE ISSUES ARE NOT APPEALABLE

2. The Request presents no appealable issues. Rather than submitting specific, discrete, or identifiable issues, the Defence seeks to relitigate the admission of certain Source Material⁸ by repeating previous objections, distorting and ignoring the Panel's findings, and expressing mere disagreement with the Decisions. The Defence also fails

¹ Joint Defence Consolidated Request for Leave to Appeal Decisions on the Admission of Expert Evidence of Witnesses W04826 and W04874 (F03201 and F03203), KSC-BC-2020-06/F03223, 3 June 2025, Confidential ('Request').

² See Request, KSC-BC-2020-06/F03223, para.5, defining the issues.

³ 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, Confidential, paras 9-17.

⁴ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' herein are to the Law.

⁵ 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.

⁶ See e.g. 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; *Specialist Prosecutor v. Gucati and Haradinaj*, Appeal Judgment, KSC-CA-2022-01/F00114, 2 February 2023, paras 34-35.

⁷ Decision on the Admission of Expert Evidence of Witness W04826, KSC-BC-2020-06/F03201, 27 May 2025 ('W04826 Decision'); Decision on the Admission of Expert Evidence of Witness W04874, KSC-BC-2020-06/F03203, 27 May 2025 ('W04874 Decision', collectively with the W04826 Decision, the 'Decisions').

⁸ See W04826 Decision, KSC-BC-2020-06/F03201, fn.32 defining 'Source Material' in relation to W04826; W04874 Decision, KSC-BC-2020-06/F03203, fn.15 defining 'Source Material' in relation to W04874.

to clearly articulate why the Decisions were allegedly in error,⁹ impermissibly¹⁰ arguing the merits instead.¹¹

(i) *First Issue*

3. The First Issue misconstrues the Panel's findings, constituting mere disagreement with them and with other similar decisions issued by the Panel.¹²

4. The Panel did not find that forensic pathologists other than W04826 and W04874 are not experts in the lay sense of the term.¹³ Rather, the Panel found that W04826 and W04874 qualified as expert witnesses 'within the meaning of Rule 149'.¹⁴ Only W04826, W04874 and W04875 can be classified as Prosecution expert witnesses for the purposes of this rule since only they, thus far, have been 'called by a Party' as required by Rule 149(1).

5. Neither did the Panel 'redefine what an autopsy is'.¹⁵ The autopsy reports constituting the Source Material are not 'expert witness report[s]' within the meaning of Rule 149.¹⁶ Plainly, they are not '[t]he final report of any expert witness to be called

⁹ See, similarly, Decision on Joint Defence Request for Certification to Appeal the Reasons for Admission of W03780's Statements and Related Order (F02580), KSC-BC-2020-06/F02639, 11 October 2024, para.16.

¹⁰ 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 ('23 April 2024 Decision'), paras 10-11.

¹¹ See e.g. Request, KSC-BC-2020-06/F03223, paras 11-12, 18, 22.

¹² See Decision on the Admission of Expert Evidence of Witness W04875, KSC-BC-2020-06/F03202, 27 May 2025, para.40; Decision on Prosecution Motion for Admission of Documents concerning Murder Victims and Related Request, KSC-BC-2020-06/F03211, 29 May 2025, Confidential ('Decision on Documents concerning Murder Victims'), paras 17-18; Decision on Prosecution Motion for Admission of International Reports, KSC-BC-2020-06/F03213, 29 May 2025 ('International Reports Decision'), para.14.

¹³ *Contra* Request, KSC-BC-2020-06/F03223, paras 4, 5(i), 8-12.

¹⁴ Decision on Prosecution Motion for Admission of Evidence of Witnesses W04826, W04874, and W04875 pursuant to Rules 138, 149, and 154 and Related Request, KSC-BC-2020-06/F02787, 16 December 2024, paras 30-31.

¹⁵ *Contra* Request, KSC-BC-2020-06/F03223, para.13.

¹⁶ *Contra* Request, KSC-BC-2020-06/F03223, paras 5(i), 8-10, 12-13.

by a Party'.¹⁷ The Oxford English Dictionary definition of a 'report'¹⁸ cannot alter the regulatory framework governing this case.

6. Defence submissions about the Panel's alleged failures to provide definitions and/or reasons¹⁹ are blind to logic and misrepresent the Decisions. The Panel is under no obligation to define self-explanatory terms, and the Defence fails to provide any basis for such an assertion. In particular, the Defence provides no explanation as to what it deems constitutes an 'autopsy document', let alone provide a reason or basis as to why the definition of such a term would be necessary for the purposes of the Decisions.

7. 'Source material', a term which appears, *inter alia*, in the Order on the Conduct of Proceedings,²⁰ was defined by the Panel in relation to both W04826 and W04874.²¹ The Panel also explained the term 'expert report' for the purposes of Rule 149(1) and provided clear reasons as to why it does not deem an autopsy report to constitute an expert report for the purposes of this rule.²² The Defence merely continues to dispute such findings.

8. The Request repeatedly conflates scientific skill with what constitutes an expert witness and an expert witness report under the regulatory framework governing this case,²³ merely repeating submissions that the Defence has already made and that the Panel has already rejected. In particular, the Defence has already argued that autopsy reports constitute expert reports under Rule 149, that those who prepare autopsy

¹⁷ Rule 149(1); See Decision on Documents concerning Murder Victims, KSC-BC-2020-06/F03211, paras 17-18; International Reports Decision, KSC-BC-2020-06/F03213, para.14.

¹⁸ See Request, KSC-BC-2020-06/F03223, para.12, fn.14.

¹⁹ Request, KSC-BC-2020-06/F03223, paras 4, 10.

²⁰ Annex 1 to Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Order on the Conduct of Proceedings'), para.123.

²¹ See W04826 Decision, KSC-BC-2020-06/F03201, paras 28-30, 35, fn.32; W04874 Decision, KSC-BC-2020-06/F03203, paras 28-30, 34, fn.15.

²² See W04826 Decision, KSC-BC-2020-06/F03201, paras 23-24, fn.32; W04874 Decision, KSC-BC-2020-06/F03203, paras 18, 30, fn.15.

²³ See Request, KSC-BC-2020-06/F03223, paras 8-13.

reports are experts for the purposes Rule 149, and that autopsy reports prepared by persons other than the experts called to testify are not admissible.²⁴ The Decisions rightly dismissed these arguments and the Request fails to identify any error arising therefrom.

9. The Defence does not explain, or provide any support for, the allegation that the Panel's findings are 'wrong in law and fact'.²⁵ Similarly it provides no elaboration or any examples to illustrate the alleged 'well-settled law' the Decisions are said to have 'departed significantly from'.²⁶

10. First, as previously noted, other courts have admitted forensics documents through general admissibility provisions similar to Rule 138(1).²⁷ Moreover, the admission of autopsy reports as source material is fully in line with the applicable legal framework, including paragraph 123 of the Order on the Conduct of Proceedings. Indeed, at least two other autopsy reports of the same kind as some of those addressed in the Request were previously admitted in this case with no Defence objection thereto.²⁸ The Defence itself has also tendered a death certificate which notes the cause of death, doing so in the regular course of cross-examination, not through the author thereof.²⁹

²⁴ Request, KSC-BC-2020-06/F03223, paras 3, 5(i), 8-13; *See e.g.* Joint Defence Consolidated Response to F02620 and F02633, KSC-BC-2020-06/F02703, 8 November 2024, Confidential ('8 November 2024 Response'), paras 19-23, 27, 64-66; Corrected Version of Joint Defence Response to Prosecution Request for Admission of the Expert Report and Source Material of W04874, KSC-BC-2020-06/F02871/COR, 29 January 2025, Confidential ('W04874 Response'), paras 11-12, 22.

²⁵ Request, KSC-BC-2020-06/F03223, paras 4, 11.

²⁶ Request, KSC-BC-2020-06/F03223, paras 4, 13.

²⁷ *See* Prosecution reply to 'Joint Defence Response to Prosecution motion for admission of documents concerning murder victims' (F02853), KSC-BC-2020-06/F02867, 28 January 2025, Confidential, para.9, fn.33. *See also* *Prosecutor v Martić*, IT-95-11-T, Decision on Prosecution's Motions for Admission of Transcripts Pursuant to Rule 92 bis(d) and of Expert Reports Pursuant to Rule 94 bis, 13 January 2006, para.47.

²⁸ *See* P01678, pp.SITF00169000-2, admitted through W04422 (Transcript, 25 September 2024, pp.20212-4); P01147, pp.SPOE00208416-8, admitted through W04371 (Transcript, 30 April 2024, pp.15249-52; the Defence did not object in its written submissions either, *see* Joint Defence Consolidated Response to F02195 and F02196, KSC-BC-2020-06/F02229, 8 April 2024, Confidential, para.35, fn.69).

²⁹ *See* 1D00022, p.SITF0182647 admitted through W04337 (Transcript, 11 July 2023, pp.5432-7, 5454).

11. Accordingly, the First Issue is not appealable. It amounts to unsubstantiated assertions merely amounting to an expression of dissatisfaction with the Decision.

(ii) *Second Issue*

12. The Panel properly considered, and admitted, autopsy reports as source material.³⁰ The Defence attempt to argue the Second Issue exclusively by cross-reference³¹ is inappropriate, lacks proper substantiation, and should be rejected *in limine*.³² The Defence's failure to articulate clearly and unambiguously how or on what basis, it says, the Panel allegedly erred in these Decisions makes it impossible for this issue to meet the Rule 77 threshold.³³ Should the Panel nevertheless decide to consider this issue, the Specialist Prosecutor's Office ('SPO') relies on its submissions in response to the Third Issue in the W04875 Request.³⁴

(iii) *Third Issue*

13. The Third Issue does not arise from the Decision.³⁵ While, following the completion of W04874's testimony, the VESELI Defence asked that the SPO state its case in relation to unspecified evidence, the Panel made no such order.³⁶ Accordingly, if at all, the issue arises from what transpired on 23 January 2025, not from the Decisions. The time limit set out in Rule 77(1) has not been met.

³⁰ *Contra* Request, KSC-BC-2020-06/F03223, paras 5(ii), 15; *See* W04826 Decision, KSC-BC-2020-06/F03201, paras 28-36; W04874 Decision, KSC-BC-2020-06/F03203, paras 28-36.

³¹ Request, KSC-BC-2020-06/F03223, para. 15, fn.15 citing Joint Defence Request for Leave to Appeal Decision on the Admission of Expert Evidence of Witness W04875 (F03202), KSC-BC-2020-06/F03222, 3 June 2025, Confidential ('W04875 Request'), paras 16-26.

³² *See, similarly, Specialist Prosecutor v. Gucati and Haradinaj*, Decision on the Defence Appeals Against Decision on Preliminary Motions, KSC-BC-2020-07/IA004/F00007, 23 June 2021, para.65.

³³ *See* Decision on Veseli, Selimi, and Krasniqi Defence Request for Certification to Appeal the Decision on Prosecution Motion for Admission of Intercepted Communications, KSC-BC-2020-06/F03183, 19 May 2025, Confidential, para.31.

³⁴ *See* Prosecution response to 'Joint Defence Request for Leave to Appeal Decision on the Admission of Expert Evidence of Witness W04875 (F03202)', 13 June 2025, Section II(A)(iii).

³⁵ *Contra* Request, KSC-BC-2020-06/F03223, para.16.

³⁶ Transcript, 23 January 2025, pp.24450-1.

14. Regardless, the Defence's choice to repeat, in the W04874 Response,³⁷ a blanket request made orally for the SPO state its case³⁸ created no obligation on the Panel, in the W04874 Decision, to specifically rule thereon.³⁹ Indeed, the Defence's failure to specify what concrete alleged inconsistencies it purportedly required clarity on⁴⁰ meant that the Panel could not have issued a specific ruling.

15. Nevertheless, Defence submissions were by no means 'completely ignored'.⁴¹ The W04874 Decision specifically noted the Defence's oral and written submissions concerning the alleged need for the SPO to state its case.⁴² The fact W04874's evidence was admitted despite such submissions necessarily means the Panel determined that no further clarity from the SPO or any specific ruling in relation thereto was required for the purposes of determining the admissibility of any of W04874's evidence. Further, the Panel specifically noted 'Defence objections to autopsy reports whose findings W04874 was not able to adopt fully' and determined this was among the issues that primarily go to weight rather than admissibility.⁴³

16. A request to a cross-examining party to state its case and the rejection of admission of an item because the witness it was tendered through provided 'full and complete testimony' are distinguishable from the situation with W04874's evidence.⁴⁴ On the other hand, as the Defence now acknowledges,⁴⁵ previous requests for the SPO

³⁷ W04874 Response, KSC-BC-2020-06/F02871/COR, paras 15-21.

³⁸ Transcript, 23 January 2025, pp.24450-3.

³⁹ *Contra* Request, KSC-BC-2020-06/F03223, paras 5(iii), 16-20.

⁴⁰ *See* Transcript, 23 January 2025, p.24452 ('And we would ask that they state their case on all of it'); W04874 Response, KSC-BC-2020-06/F02871/COR, para.15 (referring to the SPO's alleged failure to state its case 'on the forensic evidence tendered through W04874'); Request, KSC-BC-2020-06/F03223, paras 5(iii) (generically referring to 'the SPO tendering wholly contradictory evidence' and to a 'stream of evidence').

⁴¹ *Contra* Request, KSC-BC-2020-06/F03223, para.16.

⁴² *See* W04874 Decision, KSC-BC-2020-06/F03203, para.12, fn.24 citing W04874 Response, KSC-BC-2020-06/F02871/COR, paras 13-21, 29-44 and Transcript, 23 January 2025, pp.24450-1.

⁴³ W04874 Decision, KSC-BC-2020-06/F03203, para.31.

⁴⁴ *Contra* Request, KSC-BC-2020-06/F03223, para.17, fns. 18, 20; Transcript, 18 September 2024, pp.20017-9.

⁴⁵ Request, KSC-BC-2020-06/F03223, para.17, fn.19.

to state its case in relation to certain evidence before the conclusion of trial have rightly been dismissed, with the Panel noting that '[s]uch an assessment [...] is not one that could or should be made at the time of tender' and that 'a party should be permitted, in principle, to make such an assessment in light of the evidence as a whole'.⁴⁶ This is consistent with the findings of other tribunals.⁴⁷ The Panel need not repeat rulings it has already made. The Accused are unequivocally charged with the murders of the victims addressed in W04874's expert report. The SPO's case is clear.⁴⁸

17. Finally, the Defence assertion that the SPO cannot rely on Source Material for the truth of its content is wholly unsupported – no argument in relation thereto is 'outlined' anywhere in the Request⁴⁹ or set out in any submissions predating the Decisions. The latter factor alone means the Defence cannot raise such an argument, which ignores the regulatory framework governing this case, at this stage.

(iv) Fourth Issue

18. The Panel properly assessed the potential prejudice caused to the Defence by the admission of W04874's Source Material,⁵⁰ finding that the Defence's ability to cross-examine W04874 in relation thereto meant that its admission was not outweighed by its prejudicial effect.⁵¹ Beyond the opportunity to cross-examine W04874, the Defence can call witnesses, experts, seek to tender evidence in relation to W04874's Source Material, and/or make closing submissions thereon. The Request

⁴⁶ Transcript, 6 November 2024, pp.22065-6; *See also* Decision on Prosecution Motion for Admission of Evidence of W01453, W03878, W04446, W04575, and W04651 Pursuant to Rule 154 (F02005), KSC-BC-2020-06/F02117, 12 February 2024, Confidential, para.15; Transcript, 23 January 2025, p.24452.

⁴⁷ *See e.g.* ICTY, *Prosecutor v. Stanišić and Simatović*, IT-03-69-T, Transcript, 7 June 2012, pp.20104-20106; ICTY, *Prosecutor v. Stanišić and Simatović*, IT-03-69-T, Decision on Prosecution Motion for Admission of Excerpts from Mladić Notebooks and Second Prosecution Notification of Excerpts from Mladić Notebooks, 10 March 2011, para.17.

⁴⁸ *Contra* Request, KSC-BC-2020-06/F03223, para.18.

⁴⁹ *See* Request, KSC-BC-2020-06/F03223, para.20.

⁵⁰ *Contra* Request, KSC-BC-2020-06/F03223, paras 5(iv), 21-24.

⁵¹ W04874 Decision, KSC-BC-2020-06/F03203, para.35.

merely disagrees with the Decision, describing it as ‘flawed’⁵² but failing to articulate any error therein.

(v) *Fifth Issue*

19. The Fifth Issue repeats previous Defence submissions⁵³ which the Panel considered and rejected.⁵⁴ The content of SPOE00111910-SPOE00111913, a crime scene report provided to W04874 by the SPO,⁵⁵ is referred to in W04874’s expert report⁵⁶ and concerns victims whose autopsy reports are addressed at length in W04874’s expert report and testimony. The Defence’s mere disagreement with the W04874 Decision does not constitute an appealable issue.⁵⁷

B. THE ISSUES WOULD HAVE NO IMPACT JUSTIFYING CERTIFICATION

20. Although the Request asserts the Issues significantly affect the fair and expeditious conduct of the proceedings, alleging a deprivation of unspecified Defence procedural rights,⁵⁸ it fails to explain or substantiate these blanket claims. The Issues could have no such impact. Notably, the Defence has not sought leave to appeal decisions admitting, through the bar table, autopsy reports of the same kind as some of those addressed in the Request.⁵⁹

21. As part of its argument on the alleged impact on the fair and expeditious conduct of proceedings, the Defence raises, without elaboration, its previously canvassed and unfounded argument that the Source Material amounts to witness

⁵² Request, KSC-BC-2020-06/F03223, para.21.

⁵³ See W04874 Response, KSC-BC-2020-06/F02871/COR, para.48, fn.90.

⁵⁴ See W04874 Decision, KSC-BC-2020-06/F03203, paras 12, 34, fns 27, 90.

⁵⁵ See P01990, p.102433.

⁵⁶ Compare e.g. P01991, p.103111 (‘The documents provided indicate [...] the only blood visible was on or under the bodies themselves’) to SPOE00111910-SPOE00111913.

⁵⁷ *Contra* Request, KSC-BC-2020-06/F03223, para.5(v), 25-28.

⁵⁸ Request, KSC-BC-2020-06/F03223, paras 3, 29.

⁵⁹ See e.g. P00002, pp.031096-8 (admitted pursuant to Decision on Specialist Prosecutor’s Bar Table Motion, KSC-BC-2020-06/F01409, 31 March 2023, Confidential para.64(b)); P00854, pp.75-108/296 (admitted pursuant to Sixth Decision on Specialist Prosecutor’s Bar Table Motion, KSC-BC-2020-06/F01983/COR, 5 December 2023, para.130(b)).

statements.⁶⁰ It is not clear how this argument – which has been dismissed⁶¹ – relates to the Decisions' impact.

22. The Request also alleges that appellate intervention is required, including because of the impact on 'precedent in ICL' and 'trials in the future'.⁶² Such speculative, unfounded allegations cannot satisfy the Rule 77(2) requirements. The evidentiary record and the Decisions are clear. No appellate intervention is necessary for the Defence to be able to 'make decisions about whether to call a Defence case' or to understand 'the nature and scope of the SPO's case.'⁶³

23. Finally, the Defence provides no reason as to why appropriate remedies could not effectively be granted after the close of the trial. The Panel's admission of certain Source Material 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.⁶⁴

III. CLASSIFICATION

24. This filing is confidential pursuant to Rule 82(4). As it does not contain any confidential information, the SPO requests its reclassification as public.

IV. RELIEF REQUESTED

25. For the foregoing reasons, the Request should be dismissed.

⁶⁰ See Request, KSC-BC-2020-06/F03223, para.29; 8 November 2024 Response, KSC-BC-2020-06/F02703, paras 28-30; Joint Defence Response to Prosecution motion for admission of documents concerning murder victims with confidential Annexes 1 and 2, KSC-BC-2020-06/F02853, 23 January 2025, Confidential, paras 7, 23-26.

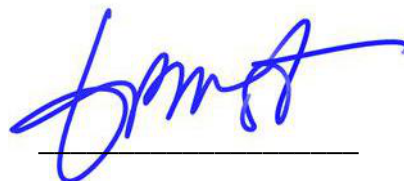
⁶¹ Decision on Documents concerning Murder Victims, KSC-BC-2020-06/F03211, para.19.

⁶² Request, KSC-BC-2020-06/F03223, paras 14, 30.

⁶³ *Contra* Request, KSC-BC-2020-06/F03223, para.30.

⁶⁴ See 23 April 2024 Decision, KSC-BC-2020-06/F02259, para.13.

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Friday, 13 June 2025

At The Hague, the Netherlands.