



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:** 13 June 2025

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**Prosecution Response to 'Joint Defence Request for Leave to Appeal Decision on Prosecution Motion for Admission of Documents concerning Murder Victims and Related Request (F03211)'**

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## I. INTRODUCTION

1. The Request<sup>1</sup> should be dismissed as both 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> Triers of fact are afforded considerable discretion in deciding whether to admit evidence, and certification to appeal admissibility decisions are the absolute exception.<sup>6</sup> The Request merely disagrees with the Decision<sup>7</sup> and the regulatory framework governing this case, and misrepresents the Panel's findings. 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. Neither of the two Issues are appealable. Rather than submitting specific, discrete or identifiable issues, the Defence seeks to relitigate the admission of the items admitted in the Decision by repeating previous objections, distorting and ignoring the Panel's findings, and expressing mere disagreement with the Decision. The Defence

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<sup>1</sup> Joint Defence Request for Leave to Appeal Decision on Prosecution Motion for Admission of Documents concerning Murder Victims and Related Request (F03211), KSC-BC-2020-06/F03238, 5 June 2025 (notified 10 June 2025), Confidential ('Request').

<sup>2</sup> See Request, KSC-BC-2020-06/F03238, para.5, defining the 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, Confidential, paras 9-17; *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'). All references to 'Article' or 'Articles' herein are to the 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; 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.

<sup>7</sup> Decision on Prosecution Motion for Admission of Documents concerning Murder Victims and Related Request, KSC-BC-2020-06/F03211, 29 May 2025, Confidential ('Decision').

also impermissibly<sup>8</sup> argues the merits.<sup>9</sup> Further, the Issues are broadly and generically framed, asserting the Panel erred, but failing to identify one or more specific errors in the Panel's interpretation of an expert report or assessment of prejudice. The Request should therefore be dismissed *in limine*.<sup>10</sup> To the extent it is exceptionally considered on its merits, it still fails.

(i) *First Issue*

3. The First Issue constitutes mere disagreement with the regulatory framework governing this case, in particular with the plain language of Rules 138 and 149 and paragraph 60 of the Order on the Conduct of Proceedings,<sup>11</sup> as well as with the Decision and other similar decisions<sup>12</sup> issued by the Panel. This repetition of the Defence's previously canvassed arguments<sup>13</sup> does not amount to an appealable issue.<sup>14</sup>

4. The Panel correctly interpreted what constitutes an expert report within the meaning of Rule 149, which rule is unequivocally and exclusively concerned with experts to be called to testify by a Party and the report/s produced by such individuals.<sup>15</sup> The items admitted in the Decision do not fall within Rule 149(1)'s parameters.<sup>16</sup> Plainly, they are not '[t]he final report of any expert witness to be called by a Party'.<sup>17</sup> Defence arguments that Rule 149 is 'not exclusively concerned with the

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<sup>8</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 ('23 April 2024 Decision'), paras 10-11.

<sup>9</sup> See e.g. Request, KSC-BC-2020-06/F03238, paras 14-19, 25-26.

<sup>10</sup> See, similarly, Decision on Veseli Defence Request for Leave to Appeal Decision to Admit P1046, KSC-BC-2020-06/F02241, 15 April 2024, para.20.

<sup>11</sup> Annex 1 to Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Order on the Conduct of Proceedings').

<sup>12</sup> See Decision on Prosecution Motion for Admission of International Reports, KSC-BC-2020-06/F03213, 29 May 2025 ('International Reports Decision'), para.14; Decision on the Admission of Expert Evidence of Witness W04826, KSC-BC-2020-06/F03201, 27 May 2025, para.30; Decision on the Admission of Expert Evidence of Witness W04875, KSC-BC-2020-06-F03202, 27 May 2025, para.40; Decision on the Admission of Expert Evidence of Witness W04874, KSC-BC-2020-06/F03203, 27 May 2025, para.30.

<sup>13</sup> See e.g. Joint Defence Response to Prosecution motion for admission of documents concerning murder victims, KSC-BC-2020-06/F02853, 23 January 2025, Confidential ('Defence Response'), paras 4-7, 11-27.

<sup>14</sup> *Contra* Request, KSC-BC-2020-06/F03238, paras 2-3, 5(i), 12-21.

<sup>15</sup> *Contra* Request, KSC-BC-2020-06/F03238, paras 2-3, 5(i), 12-21.

<sup>16</sup> *Contra* Request, KSC-BC-2020-06/F03238, paras 2-3, 5(i), 12-21.

<sup>17</sup> Rule 149(1).

reports of witnesses to be called'<sup>18</sup> merely contest the rule's plain language and fail to identify any issue arising from the Decision.

5. The incoherent, hypothetical scenarios and assertions which litter the Request, premised on mere disagreement with the Decision and dissatisfaction with the regulatory framework governing this case,<sup>19</sup> do not identify any appealable issues either. Similarly, the Defence's speculation concerning the intention of the drafters of the Rules,<sup>20</sup> which exercise is unnecessary given the unequivocal language of the provision, does not render the proposed issue appealable.

6. The Panel's assessment of what does and does not fall within the parameters of Rule 149<sup>21</sup> is based on the provision's clear language.<sup>22</sup> Such assessment did not require it to 'cite to any precedent from any international or criminal tribunal',<sup>23</sup> and the Defence fails to provide any basis for this assertion. In any event, as previously noted, other courts have admitted forensics documents through general admissibility provisions similar to Rule 138(1).<sup>24</sup>

7. The Defence raises, without elaboration, its previously canvassed, unfounded argument that the items admitted in the Decision could, or do, amount to witness statements.<sup>25</sup> The Panel specifically considered such arguments against the established

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<sup>18</sup> Request, KSC-BC-2020-06/F03238, para.17.

<sup>19</sup> See Request, KSC-BC-2020-06/F03238, paras 16, 18.

<sup>20</sup> Request, KSC-BC-2020-06/F03238, para.19.

<sup>21</sup> See Decision, KSC-BC-2020-06/F03211, paras 17-18.

<sup>22</sup> *Contra* Request, KSC-BC-2020-06/F03238, para.20.

<sup>23</sup> *Contra* Request, KSC-BC-2020-06/F03238, para.20.

<sup>24</sup> 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.

<sup>25</sup> See Request, KSC-BC-2020-06/F03238, para.21; Defence Response, KSC-BC-2020-06/F02853, paras 7, 23-26.

definition of a witness statement and dismissed them,<sup>26</sup> and the Defence fails to explain, let alone establish, any error in this regard.

8. Multiple other items similar to those admitted in the Decision had already been admitted into evidence other than through Rule 149 and without any Defence objection. By way of example, at least two other autopsy reports<sup>27</sup> and at least one other DNA report<sup>28</sup> of the same kind as some of those addressed in the Request were previously admitted in this case with no Defence objection thereto. The Defence itself has also tendered a death certificate and DNA evidence, doing so in the regular course of cross-examination, not through the author thereof.<sup>29</sup>

9. Accordingly, the First Issue is not appealable. It amounts to unsubstantiated assertions merely expressing dissatisfaction with the Decision and the regulatory framework governing this case.

*(ii) Second Issue*

10. The Second Issue is characterised by generic allegations of prejudice repetitive of previous Defence submissions,<sup>30</sup> and by further distortions of the Decision. It is not appealable.

11. In view of the Defence's broad allegation of prejudice, the Decision first assessed any potential prejudice in relation to the tendered items generally.<sup>31</sup> The Panel then further assessed any potential prejudice when addressing the specific items tendered in relation to each group of victims, resulting in multiple pronouncements

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<sup>26</sup> Decision, KSC-BC-2020-06/F03211, para.19.

<sup>27</sup> 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).

<sup>28</sup> See P00201, p.SPOE00056170, admitted through W03811 (Transcript, 20 June 2023, pp.5131-5).

<sup>29</sup> See 1D00022, pp.SITF0182647, SITF0182644 admitted through W04337 (Transcript, 11 July 2023, pp.5432-7, 5454).

<sup>30</sup> See *e.g.* Defence Response, KSC-BC-2020-06/F02853, paras 28-30.

<sup>31</sup> See Decision, KSC-BC-2020-06/F03211, paras 16-18.

concerning prejudice,<sup>32</sup> the majority of which assessed prejudice specifically in relation to only one or a handful of related items at a time.<sup>33</sup> The Request fails to identify any error in this regard.<sup>34</sup>

12. The Defence has no absolute right to challenge the authors of the admitted items.<sup>35</sup> It cites no support therefor. Nevertheless, this factor was explicitly addressed by the Panel, which stated that '[t]he fact, however, that their author has not been called and his or her qualification established to draw up the items concerned will be considered by the Panel when determining the weight, if any, to be attributed to them.'<sup>36</sup>

13. The Accused's rights were fully respected. The admitted items had been disclosed long before their admission was sought and the Defence was free to use them during the cross-examination of any relevant witness, including SPO experts. Further, the Defence can itself call witnesses, including experts, seek to tender evidence in relation to the admitted items, and/or make closing submissions thereon. The Panel did not shift any burden onto the Defence merely by noting some of these possibilities.<sup>37</sup>

14. Accordingly, the Second Issue, which labels the Decision as 'wrong',<sup>38</sup> but fails to articulate any error therein, is not appealable.

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<sup>32</sup> See Decision, KSC-BC-2020-06/F03211, paras 30, 38, 46, 56, 66, 75, 84, 91, 99, 108, 116, 124, 133, 141.

<sup>33</sup> See e.g. Decision, KSC-BC-2020-06/F03211, paras 38 (concerning Exhibit 10), 46 (concerning Exhibits 11-13), 66 (concerning Exhibits 26-27), 75 (concerning Exhibits 29-32), 91 (concerning Exhibits 56-59), 99 (concerning Exhibit 60), 108 (concerning Exhibits 61-62), 124 (concerning Exhibit 72), 133 (concerning Exhibits 73-75).

<sup>34</sup> *Contra* Request, KSC-BC-2020-06/F03238, paras 5(ii), 22-27.

<sup>35</sup> *Contra* Request, KSC-BC-2020-06/F03238, paras 24, 26, 28.

<sup>36</sup> Decision, KSC-BC-2020-06/F03211, para.18.

<sup>37</sup> *Contra* Request, KSC-BC-2020-06/F03238, paras 25-27.

<sup>38</sup> Request, KSC-BC-2020-06/F03238, para.25.

B. THE ISSUES WOULD HAVE NO IMPACT JUSTIFYING CERTIFICATION

15. Although the Request asserts the Issues significantly affect the fair and expeditious conduct of the proceedings, alleging a deprivation of a right the Defence unilaterally ascribes to itself and a contravention to alleged, but unspecified, ‘well-established’ and ‘settled’ precedent’,<sup>39</sup> it fails to explain or substantiate these blanket claims. Notably, the Defence has not sought leave to appeal previous decisions admitting, through the bar table, autopsy reports<sup>40</sup> and DNA reports<sup>41</sup> of the same kind as some of those addressed in the Request.

16. Speculative, unfounded, allegations as to why appellate intervention is required<sup>42</sup> cannot satisfy the Rule 77(2) requirements. The evidentiary record and the Decision are clear. No appellate intervention is necessary for the Defence to be able to ‘determine whether to call a case’ or to understand ‘the nature and scope of the SPO’s case.’<sup>43</sup>

17. Finally, the Defence provides no explanation as to how the Decision could ‘taint the trial judgment’<sup>44</sup> and no reason as to why appropriate remedies could not effectively be granted after the close of the trial. The Panel’s admission of 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

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<sup>39</sup> Request, KSC-BC-2020-06/F03238, paras 28-29.

<sup>40</sup> 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 [‘Sixth Decision’], para.130(b)).

<sup>41</sup> See e.g. P00854, pp.281, 295 (admitted pursuant to the Sixth Decision, KSC-BC-2020-06/F01983/COR, para.130(b)).

<sup>42</sup> Request, KSC-BC-2020-06/F03238, paras 4, 28-30.

<sup>43</sup> *Contra* Request, KSC-BC-2020-06/F03238, para.30.

<sup>44</sup> Request, KSC-BC-2020-06/F03238, para.29.

be remedied, as necessary and appropriate, on any appeal against a final judgment in the case.<sup>45</sup>

18. The unsubstantiated, speculative, and generic submissions in the Request are incapable of demonstrating any, let alone significant, impact or that appellate intervention would materially advance the proceedings, as required under Article 45(2) and Rule 77(2).<sup>46</sup>

### III. CLASSIFICATION

19. 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

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

**Word count: 2049**



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**Kimberly P. West**

**Specialist Prosecutor**

Friday, 13 June 2025

At The Hague, the Netherlands.

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<sup>45</sup> See 23 April 2024 Decision, KSC-BC-2020-06/F02259, para.13.

<sup>46</sup> See 23 April 2024 Decision, KSC-BC-2020-06/F02259, paras 12-14.