



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:** 16 June 2025

**Language:** English

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**Prosecution response to 'Joint Defence Request for Certification to Appeal the  
"Decision on Prosecution Motion for Admission of Documents (F03114)"'**

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## I. INTRODUCTION

1. The Request<sup>1</sup> should be rejected as it fails to establish that any of the Issues meet the criteria for certification under Article 45 of the Law<sup>2</sup> and Rule 77 of the Rules.<sup>3</sup> The Panel is afforded considerable discretion in decisions on the admission of evidence, and certification must be the absolute exception.<sup>4</sup> Rather than demonstrating that such exceptional relief is warranted, the Request misrepresents and merely disagrees with the Decision,<sup>5</sup> seeks to relitigate matters already raised and decided by the Panel, and fails to demonstrate an impact justifying certification.

## II. SUBMISSIONS

### A. THE ISSUES ARE NOT APPEALABLE

2. Throughout the Request, the Defence misrepresents the Decision and previous decisions, failing to acknowledge that certain items were denied admission *without prejudice*.<sup>6</sup> It also repeats previously considered objections, and expresses mere disagreement with the Decision, in particular, the Panel's reliance on contextual and

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<sup>1</sup> Joint Defence Request for Certification to Appeal the "Decision on Prosecution Motion for Admission of Documents (F03114)", KSC-BC-2020-06/F03226, 4 June 2025, Confidential ('Request'). The 'Issues' are defined in paragraph 2 of the Request.

<sup>2</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

<sup>3</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, unless otherwise specified.

<sup>4</sup> Decision on Veseli Defence Request for Certification to Appeal F03178 (Dukagjin Zone Bar Table Decision), KSC-BC-2020-06/F03236, 5 June 2025, para.22 referring to Appeal Judgement, KSC-CA-2022-01/F00114, 2 February 2023, para. 35; Decision on Veseli Defence Request for Leave to Appeal Decisions F03070 and F03071, KSC-BC-2020-06/F03157, 2 May 2025, para.16; 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>5</sup> Decision on Prosecution Motion for Admission of Documents (F03114), KSC-BC-2020-06/F03214, 29 May 2025, Confidential ('Decision').

<sup>6</sup> Request, KSC-BC-2020-06/F03226, paras 6, 8, 11, 21.

corroborating evidence to assess the *prima facie* authenticity and probative value of certain Admitted Items.<sup>7</sup>

(i) *First Issue*

3. The First Issue relies on a prior finding of the Panel,<sup>8</sup> labelled by the Defence as a ‘general principle’, to submit that absent contextualisation by a witness, unpublished or draft manuscripts are not admissible.<sup>9</sup> The Panel has already found that it ‘has made no such finding or general proposition’.<sup>10</sup> Like any other tendered item, unpublished or draft manuscripts are subject to the requirements of Rule 138.<sup>11</sup>

4. The Request fails to acknowledge that, when previously denying the manuscript comprising Annex 2 Item 8<sup>12</sup> without prejudice, the Panel noted that, if the Prosecution had identified those parts or sections it sought to rely upon, it might have been able to make a more specific assessment of probative value and prejudice.<sup>13</sup> In the Motion,<sup>14</sup> the Specialist Prosecutor’s Office (‘SPO’) did so, tendering six pages in addition to the three that had already been admitted through a witness.<sup>15</sup> Having assessed these six pages against the submissions in the Motion, the Panel found that ‘the SPO sufficiently contextualized the item through the admitted evidence, including documentary and

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<sup>7</sup> KSC-BC-2020-06/F03114/A01, items 65-69, 78-79, 82 and KSC-BC-2020-06/F03114/A01, items 8-10,12,13 (together, the ‘Admitted Items’).

<sup>8</sup> Second Decision on Specialist Prosecutor’s Bar Table Motion, KSC-BC-2020-06/F01596, 9 June 2023 (‘Second Bar Table Decision’), para.130.

<sup>9</sup> Request, KSC-BC-2020-06/F03226, paras 6-10.

<sup>10</sup> Decision, KSC-BC-2020-06/F03214, para.61.

<sup>11</sup> Decision, KSC-BC-2020-06/F03214, para.61.

<sup>12</sup> See KSC-BC-2020-06/F03114/A02, item 8 (‘Annex 2 Item 8’).

<sup>13</sup> Second Bar Table Decision, KSC-BC-2020-06/F01596, para.130.

<sup>14</sup> Prosecution motion for admission of documents with confidential Annexes 1-4, KSC-BC-2020-06/F03114, 14 April 2025 (‘Motion’).

<sup>15</sup> Decision, KSC-BC-2020-06/F03214, para.61.

testimonial evidence’.<sup>16</sup> The Request ignores and does not specifically assert any error in this finding.

5. The First Issue is thus based on the Defence’s incorrect interpretation of the Panel’s previous findings, ignores relevant parts of the Second Bar Table Decision and the Decision, and, as such, fails to articulate an appealable issue.

(ii) *Second Issue*

6. The Second Issue relates to the admission of a five-part interview with Rexhep SELIMI (‘SELIMI Interview’),<sup>17</sup> three parts of which were previously denied admission without prejudice.<sup>18</sup> In this respect, the Request misrepresents the record in asserting that all five parts had previously been considered in the Second Bar Table Decision.<sup>19</sup>

7. The Defence also misrepresents the Panel’s reasoning in the Decision. The Panel did not find, as claimed in the Request, that ‘one single exhibit dealing with this singular issue [the KLA-LKÇK agreement/relationship] properly contextualises the entire breadth of issues addressed in [the SELIMI Interview]’.<sup>20</sup> Rather, it referred to Exhibit P01949 as an example of other similar interviews with SELIMI covering the same or similar topics, which assist in contextualising the SELIMI Interview.<sup>21</sup>

8. The Panel also noted the extensive evidence on record about the topics addressed in the SELIMI Interview, including the evidence of witnesses available for cross-examination.<sup>22</sup> Indeed, in the Motion, the SPO provided a detailed description of

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<sup>16</sup> Decision, KSC-BC-2020-06/F03214, para.61. *Contra* Request, KSC-BC-2020-06/F03226, para.9. The Panel had previously found Annex 2 Item 8 *prima facie* authentic. *See* Decision, KSC-BC-2020-06/F03214, para.61, fn.196.

<sup>17</sup> Request, KSC-BC-2020-06/F03226, paras 11-15.

<sup>18</sup> Second Bar Table Decision, paras 36, 40.

<sup>19</sup> Request, KSC-BC-2020-06/F03226, paras 11-12.

<sup>20</sup> Request, KSC-BC-2020-06/F03226, para.13.

<sup>21</sup> Decision, KSC-BC-2020-06/F03214, para.24.

<sup>22</sup> Decision, KSC-BC-2020-06/F03214, para.24.

topics covered in the SELIMI Interview together with corroborating and complementary evidence, including SELIMI's own statements – beyond those cited by way of example in footnote 76 of the Decision – and the evidence of live and Rule 154 witnesses.<sup>23</sup> Contrary to Defence submissions,<sup>24</sup> such corroborating and complementary evidence concerned, *inter alia*, 'the establishment of the General Staff and its alleged tasks in the early stages of its creation [and] the nature of the Accused's involvement in specific combat operations on the ground'.<sup>25</sup>

9. The Second Issue therefore merely disagrees with the Decision, which it misrepresents, and is not appealable.

(iii) *Third Issue*

10. The Third Issue asserts that, by admitting four interviews of Kadri VESELI ('VESELI Interviews') 'published for political and promotional purposes', and failing to consider their 'inherent unreliability' and the unfair prejudice caused, the Panel erred in law or fact.<sup>26</sup> The Third Issue and supporting submissions in the Request misrepresent the Decision.

11. The Panel addressed Defence arguments that – like those repeated in the Request – centre on the accuracy of statements attributed to the Accused (including the VESELI Interviews) and other items admitted in the Decision, the Defence's inability to cross-examine the authors, and whether they were used with witnesses.<sup>27</sup> The Panel took such submissions into account, found that they did not render, *inter alia*, the VESELI Interviews inadmissible, and noted that they would be considered when assessing

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<sup>23</sup> KSC-BC-2020-06/F03114/A01, pp.66-80.

<sup>24</sup> Request, KSC-BC-2020-06/F03226, para.15.

<sup>25</sup> See e.g. KSC-BC-2020-06/F03114/A01, item 65, pp.66-69 (concerning early KLA and General Staff organization), item 67, pp.72-74 (concerning SELIMI's involvement in combat operations on the ground).

<sup>26</sup> Request, KSC-BC-2020-06/F03226, paras 2(iii), 16-20.

<sup>27</sup> Request, KSC-BC-2020-06/F03226, paras 17-18.

ultimate weight.<sup>28</sup> These findings are consistent with the Panel's previous decisions, which have consistently found that the alleged 'propagandist, or exaggerated nature' of items, that they go to the acts and conduct of or are attributed to the Accused, and limitations on the ability of the Defence to challenge exhibits, will be assessed by the Panel when assigning weight at the end of the trial.<sup>29</sup>

12. Accordingly, and considering that the VESELI Interviews were admitted with due consideration of their prejudicial effect,<sup>30</sup> the Request incorrectly claims that the Defence's submissions 'were not even addressed'.<sup>31</sup> The Third Issue misrepresents and merely disagrees with the Decision, and is not appealable.

(iv) *Fourth Issue*

13. The Defence also fails to demonstrate that the Fourth Issue – which concerns an excerpt of a book by Pal REFSDAL ('REFSDAL Book') – is appealable. The Defence incorrectly claims that 'the Panel overlooked a key aspect of its previous finding that the author of the excerpt would not be called as a witness, making it difficult for the Defence to test the evidence and for the Panel to assess its reliability'.<sup>32</sup> Indeed, in the Decision paragraph cited in the Request, the Panel specifically recalled its previous finding, quoting it in full, and noted that the SPO had provided additional context and corroboration in the Motion.<sup>33</sup> In other Decision paragraphs – which are not cited or acknowledged in the Request – the Panel: (i) considered Defence arguments that the REFSDAL Book contains pages concerning the acts and conduct of the Accused and

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<sup>28</sup> See e.g. Decision, KSC-BC-2020-06/F03214, paras 14, 42-44, 62. See also para.32.

<sup>29</sup> See e.g. Fourth Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01716, 8 August 2023, Confidential ('Fourth Decision'), paras 33-34.

<sup>30</sup> Decision, KSC-BC-2020-06/F03214, paras 49-50, 62 (noting, *inter alia*, that 'the Defence will be able to make submissions in respect of the weight and probative value of these items and may, if it so chooses, challenge the content of any of these items through the presentation of evidence, although it bears no onus to do so.'). *Contra* Request, KSC-BC-2020-06/F03226, paras 19-20.

<sup>31</sup> Request, KSC-BC-2020-06/F03226, para.18.

<sup>32</sup> Request, KSC-BC-2020-06/F03226, para.22.

<sup>33</sup> Decision, KSC-BC-2020-06/F03214, para.53.

‘issues of central importance to the SPO case’,<sup>34</sup> (ii) recalled its prior finding in the Second Bar Table Decision that the REFSDAL Book was *prima facie* authentic; (iii) noted that, in the Motion, the SPO had made specific submissions on the REFSDAL Book’s indicia of authenticity and reliability, including details of corroborating evidence;<sup>35</sup> and (iv) proceeded to assess prejudice, including in light of Defence submissions about book excerpts, such as the REFSDAL Book, their probative value, purported absence of witness verification, and alleged inaccuracies.<sup>36</sup> Largely ignoring these considerations and findings, the Defence relies on previous decisions denying the admission of the REFSDAL Book to suggest that absent testimony of the author, the book should not be admitted.<sup>37</sup> As already set out above in respect of the other Issues, authentication by a witness is not a condition for admission.

14. Accordingly, and considering that the Panel duly considered the prejudicial effect of the REFSDAL Book when admitting it,<sup>38</sup> the Fourth Issue articulates mere disagreement with the Decision and is not appealable.

#### B. THE ISSUES WOULD HAVE NO IMPACT JUSTIFYING CERTIFICATION

15. The Defence does not demonstrate how the Issues significantly affect the fair and expeditious conduct of the proceedings, or that immediate resolution by the Court of Appeals may materially advance them. Notably, when considering a defence interlocutory appeal against the admission of a document seized from and attributed to an accused – and which asserted, like in the Request, errors revolving around authorship, accuracy, and prejudice (including alleged burden-shifting) – the ICTR Appeals Chamber: (i) considered that, as admissibility falls within the scope of a Trial Chamber’s broad discretion, certification should have not been granted; and in any

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<sup>34</sup> Decision, KSC-BC-2020-06/F03214, para.54.

<sup>35</sup> Decision, KSC-BC-2020-06/F03214, para.59, fn.190.

<sup>36</sup> Decision, KSC-BC-2020-06/F03214, para.62.

<sup>37</sup> Request, KSC-BC-2020-06/F03226, paras 21-24.

<sup>38</sup> Decision, KSC-BC-2020-06/F03214, para.62.



event, (ii) confirmed that the issues raised were appropriately considered when assessing ultimate weight.<sup>39</sup> The same reasoning applies here.

16. The Panel's Decision is without prejudice to its future assessment of the weight, if any, to be assigned to the Admitted Items. Any submission concerning the impact on the proceedings or its outcome caused by the admission is hypothetical, speculative, and premature. In any event, the Issues can be remedied as necessary and appropriate on appeal against a final judgement in the case.<sup>40</sup>

### III. CLASSIFICATION

17. This reply 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

18. For the reasons given above, the Request fails to meet the leave to appeal standard and should be dismissed.

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<sup>39</sup> ICTR, *Nyiramasuhuko v. Prosecutor*, ICTR-98-42-AR73.2, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence, 4 October 2024, paras 2-3 (noting that the appeal concerned issues such as chain of custody, ownership/authorship, accuracy/completeness, and alleged burden-shifting), 5 (finding that, 'as the matters in the Appeal are clearly for the Trial Chamber, as the trier of fact, to determine in the exercise of its discretion, in the view of the Appeals Chamber, it does not justify such an exception and should not have been certified'), 7 (finding that authenticity and reliability 'are to be assessed by the Trial Chamber at a later stage in the case when assessing the probative weight to be attached to the evidence').

<sup>40</sup> See, similarly, 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.





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**Specialist Prosecutor**

Monday, 16 June 2025

At The Hague, the Netherlands.