



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-06

**The 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: Fidelma Donlon

Date: 20 June 2025

Language: English

Classification: Public

**Decision on Joint Defence Request for Certification to Appeal the Decision on
Prosecution Motion for Admission of General Staff and Provisional Government
of Kosovo (PGoK) Documents**

Specialist Prosecutor

Kimberly P. West

Counsel for Hashim Thaçi

Luka Mišetić

Counsel for Victims

Simon Laws

Counsel for Kadri Veseli

Rodney Dixon

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

TRIAL PANEL II (“Panel”), pursuant to Article 45(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 77 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 21 May 2025, the Panel issued its “Decision on Prosecution Motion for Admission of General Staff and Provisional Government of Kosovo Documents” (“Impugned Decision”).¹
2. On 28 May 2025, the Defence teams for the four Accused (collectively, “Defence”) filed a request for leave to appeal the Impugned Decision (“Request”).²
3. On 10 June 2025, the Specialist Prosecutor’s Office (“SPO”) filed a response to the Defence Request (“Response”).³
4. On 16 June 2025, the Defence filed a reply to the Response (“Reply”).⁴

II. SUBMISSIONS

5. The Defence requests leave to appeal the Impugned Decision in respect of three issues (“Issues”), namely:

¹ F03191, Panel, *Decision on Prosecution Motion for Admission of General Staff and Provisional Government of Kosovo Documents*, 21 May 2025, confidential. A corrected version was filed on 12 June 2025, F03191/COR.

² F03210, Specialist Counsel, *Joint Defence Request for Certification to Appeal the Decision on Prosecution Motion for Admission of General Staff and PGoK Documents*, 28 May 2025, confidential.

³ F03244, Specialist Prosecutor, *Prosecution Response to Joint Defence Request for Certification* F03210, 10 June 2025, confidential.

⁴ F03269, Specialist Counsel, *Joint Defence Reply to Prosecution Response to Joint Defence Request for Certification* F03210, 16 June 2025, confidential.

- (i) Whether the Impugned Decision erred in fact or in law, in only considering indicia supporting authenticity whilst failing to give consideration to indicia undermining authenticity (“First Issue”);⁵
- (ii) Whether the Panel erred in fact or law in finding that the Defence have not been prejudiced by the SPO’s tender of GS/PGoK documents *at the end of its case*, which prevented the Defence from putting them to Prosecution witnesses and testing their authenticity and probative value during the presentation of the SPO case (“Second Issue”);⁶ and
- (iii) Whether the Panel erred in fact or law in finding – for every single document – that prejudice does not outweigh probative value because the Defence will be able to challenge documents through the presentation of evidence at a later stage in the trial (“Third Issue”).⁷

6. The Defence submits that the Issues satisfy the test for certification as: (i) the Issues are appealable;⁸ (ii) the Issues have significant repercussions for the fairness of proceedings and the outcome of the trial;⁹ and (iii) immediate resolution of the Issues would materially advance proceedings.¹⁰

7. The SPO responds that the Issues are not appealable and would have no impact justifying certification.¹¹ Accordingly, the SPO submits that the Request should be denied.¹²

8. The Defence replies that the Panel, by relying only on indicia supporting authenticity and ignoring indicia undermining authenticity, admitted documents which failed to meet the test of *prima facie* authenticity.¹³ The Defence also asserts that the intervention of the Court of Appeals Panel will materially advance

⁵ Request, paras 2, 12.

⁶ Request, paras 2, 13.

⁷ Request, paras 3, 16, 22.

⁸ Request, paras 12-16.

⁹ Request, paras 17-18.

¹⁰ Request, para. 19.

¹¹ Response, paras 1-17.

¹² Response, paras 1, 17.

¹³ Reply, para. 2, *see also* paras 3-4.

proceedings by setting a clear precedent regarding the admissibility criteria for any future bar table motions.¹⁴

III. APPLICABLE LAW

9. Pursuant to Article 45(2) and Rule 77(2), a right to appeal only arises if the standard of certification set forth therein has been met. Rule 77(2) provides 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.

10. The Panel incorporates by reference the applicable law on the legal standard for certification to appeal set out in past decisions.¹⁵

IV. DISCUSSION

11. At the outset, the Panel finds that the indicia of *prima facie* authenticity may vary depending, for instance, on the nature and origin of the item in question. In this respect, the Panel also recalls that triers of fact are afforded considerable discretion in deciding whether and how to admit evidence, and certification to appeal admissibility decisions should be granted only on an exceptional basis.¹⁶

¹⁴ Reply, para. 4.

¹⁵ See e.g. F01237, Panel, *Decision on Thaçi Defence Request for Leave to Appeal Decision on Disclosure of Dual Status Witnesses*, 30 January 2023, paras 7-8, referring to KSC-BC-2020-07, F00423, Panel, *Decision on SPO Requests for Leave to Appeal F00413 and Suspensive Effect*, 8 November 2021, paras 13-21; F00372, Panel, *Decision on Haradinaj Defence's Application for Certification of F00328*, 15 October 2021, paras 15-17; F00484, Panel, *Decision on Defence Request for Leave to Appeal F00470*, 8 December 2021, paras 4-14. See also KSC-BC-2020-06, F00172, Pre-Trial Judge, *Decision on the Thaçi Defence Application for Leave to Appeal*, 11 January 2021, paras 6-7, 9-17.

¹⁶ F02241, Panel, *Decision on Veseli Defence Request for Leave to Appeal Decision to Admit P1046* ("Decision on LtA Decision to Admit P1046"), 15 April 2024, para. 10; F02157, Panel, *Decision on Veseli Defence Request for Leave to Appeal Decision to Admit P959 and P960* ("Decision on LtA Decision to Admit P959 and P960"), 29 February 2024, para. 11 and footnote 26 (with further references).

Such principles are reflected in the Court of Appeals Panel's holding that "appellate intervention in decisions relating to the admission of evidence is warranted only in very limited circumstances."¹⁷

A. FIRST ISSUE

12. The Defence submits that the Panel assessed, in relation to some documents, authenticity on the basis of singular indicators and found authentic a document containing a signature block but missing dates, signatures, or other indicia of authorship.¹⁸ The Defence asserts the Impugned Decision lowered the threshold for authenticity as the Panel found that one factor does suffice to establish authenticity of a tendered item. The Defence argues that this is not a matter of weight, but of admissibility. The Defence also argues that the Impugned Decision reversed the burden of proof, which is for the SPO to establish and not for the Defence to refute.¹⁹

13. The SPO responds that the First Issue is not appealable because it misinterprets the Impugned Decision and merely disagrees with it.²⁰ The SPO submits that the Defence's claim regarding singular indicators is unfounded as the Panel assessed in the Impugned Decision several indicators of *prima facie* authenticity.²¹ The SPO also contends that the Panel was clearly aware of the moving Party's burden to satisfy the admissibility criteria as the Panel assessed the Proposed Exhibits on an item-by-item basis and outlined the factors taken into account.²²

¹⁷ KSC-CA-2022-01, F00114, Court of Appeals Panel, *Appeal Judgment* ("Appeal Judgment"), 2 February 2023, para. 35.

¹⁸ Request, para. 12 referring to Impugned Decision, paras 21 (SPOE00231931-00231932 and SPOE00231933-00231936) and 34.

¹⁹ Request, para. 12.

²⁰ Response, paras 3-6.

²¹ Response, para. 5.

²² Response, para. 5.

14. The Defence replies that, in its Request, it quoted paragraph 34 of the Impugned Decision since it illustrates that the Panel only listed indicia in support of authenticity of the items, and failed to engage with any substantial objections developed by the Defence concerning the authenticity of these items. The Defence asserts that the same approach was adopted by the Panel in other parts of the Impugned Decision.²³

15. The Panel notes that the number of indicators of *prima facie* authenticity might depend from item to item. In evaluating this requirement of admissibility, the Panel assessed several indicia which were considered relevant to assessing the *prima facie* authenticity of items discussed at, *inter alia*, paragraphs 23 and 34 of the Impugned Decision. The Panel recalls that, for the Proposed Exhibits in paragraph 23 of the Impugned Decision, the Panel took note again of several relevant indicia of *prima facie* authenticity and in relation to two items mentioned by the Defence,²⁴ the Panel assessed not only the content of the item, the signature block but also the fact that these items were seized from Mr Krasniqi.²⁵ The Panel also recalls that in respect of the Proposed Exhibits assessed in paragraph 34 of the Impugned Decision, the Panel took note of the fact that, in addition to the KLA header,²⁶ most of the items also had a signature block of the KLA GS and/or GS Deputy Commander and/or Chief of the GS, and/or the General Staff stamp.²⁷ Additionally, some documents were also dated and signed.²⁸ The Panel also took into consideration that some items were seized from Mr Krasniqi.²⁹ Lastly, in absence of a date or signature, the Panel found that authenticity was supported by the fact that the existence of the document was corroborated by testimonial

²³ Reply, para. 4.

²⁴ Request, para. 12 *referring to* Impugned Decision, para. 23 (SPOE00231931-00231932 and SPOE00231933-00231936).

²⁵ Impugned Decision, para. 23.

²⁶ See Impugned Decision, para. 34, footnote 64.

²⁷ See Impugned Decision, para. 34, footnote 65.

²⁸ See Impugned Decision, para. 34.

²⁹ See Impugned Decision, para. 34.

evidence.³⁰ The Panel also notes that it addressed the Defence's objections in a consolidated manner.³¹ As the Panel is afforded considerable discretion in deciding whether and how to admit evidence, it is not required to address each of the objections if other indicia supporting *prima facie* authenticity are identified by the Panel.³² As such, the suggestion that the Panel lowered the threshold for authenticity and reversed the burden of proof is unsubstantiated and amounts to mere disagreement with the Impugned Decision. The Panel therefore finds that the Defence has failed to establish that the First Issue constitutes a discrete topic arising from the Impugned Decision.

16. Accordingly, the remaining requirements of the certification test arising from Article 45(2) and Rule 77(2) need not be addressed in relation to the First Issue. The request for certification to appeal the First Issue is therefore rejected.

B. SECOND ISSUE

17. The Defence submits that the Impugned Decision inadequately addresses the Defence's argument that the SPO prevented the Defence from testing the authenticity and probative value of the documents proposed for admission through SPO witnesses when the SPO tendered a large volume of untested documents right at the end of their case.³³ The Defence argues that, as a matter of fairness, a party may not choose to present its case in a way which materially prejudices the other party.³⁴

18. The SPO responds that the Second Issue misrepresents the Impugned Decision and relevant jurisprudence, and merely disagrees with the Panel's findings.³⁵ The SPO argues that the Panel expressly acknowledged the SPO's

³⁰ See Impugned Decision, para. 34.

³¹ See *e.g.* Impugned Decision, paras 11-16, 25, 26.

³² Decision on LtA Decision to Admit P1046, para. 10; Decision on LtA Decision to Admit P959 and P960, para. 11 and footnote 26 (with further references).

³³ Request, paras 13-14.

³⁴ Request, para. 13.

³⁵ Response, paras 8, 11.

burden and that the Defence may choose to challenge the content of the items, but has no onus to do so.³⁶

19. The Panel notes that, in the Impugned Decision, it found, *inter alia*, that: (i) the manner of presentation and tendering of evidence is primarily the responsibility of the Party concerned; and (ii) the fact that some of the documents were not authenticated, nor corroborated, and even in certain instances contradicted by witnesses who testified in this case, or by other evidence on the record, does not prevent their admission if the requirements of Rule 138 are otherwise met.³⁷ The Panel finds that, in this way, the Impugned Decision expressly acknowledged the SPO's onus to establish the requirements of admissibility and the effect that conflicting evidence may have on the Panel's assessment of the weight and/or probative value of an item.

20. For these reasons, the Panel is of the view that the Second Issue misrepresents the Panel's findings and constitutes mere disagreement with them. The Panel therefore finds that the Defence has failed to establish that the Second Issue constitutes a discrete topic arising from the Impugned Decision.

21. Accordingly, the remaining requirements of the certification test arising from Article 45(2) and Rule 77(2) need not be addressed in relation to the Second Issue. The request for certification to appeal the Second Issue is therefore rejected.

C. THIRD ISSUE

22. The Third Issue challenges the Impugned Decision's finding that the probative value of the items is not outweighed by any prejudicial effect "considering in particular 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,

³⁶ Response, para. 9, *referring to* Impugned Decision, paras 29, 37.

³⁷ Impugned Decision, para. 13.

although it bears no onus to do so.”³⁸ The Defence submits that Impugned Decision relies on the same reasoning regarding the prejudicial effect of all documents and such an approach constitutes a fundamental error.³⁹ The Defence argues that by finding that any prejudice may be cured through the presentation of Defence evidence, the Panel has shifted the burden and requires the Defence to refute the allegations, as opposed to the SPO proving the allegations.⁴⁰

23. The SPO responds that the Third Issue misrepresents the Impugned Decision and relevant jurisprudence, and merely disagrees with the Panel’s findings. The SPO argues that the Panel expressly acknowledged the SPO’s burden and that the Defence may choose to challenge the content of the items, but has no onus to do so.⁴¹ The SPO also argues that the Panel never found that any prejudice may be “cured” through the presentation of evidence.⁴² The SPO further argues that the Defence’s claim that the Panel committed a “fundamental error” when relying on the same reasoning regarding prejudicial effect is similarly unsubstantiated and it ignores the fact that, before assessing the probative value of the Proposed Exhibits and weighing it against any prejudicial effect, the Panel made extensive individualised findings on the relevance and authenticity of the Proposed Exhibits.⁴³

24. As a preliminary matter, the Panel notes that the same requirements for admissibility of exhibits apply all through the proceedings, whether at the beginning or the end of those. The Panel further notes that the principal purpose of the exhibit list which a Party is required to produce prior to the commencement of its case is primarily intended to give notice to the opposing Party (and to the Panel) of the evidence which it proposes to rely upon as part of its case. The

³⁸ Request, para. 15, *referring to* Impugned Decision, paras 29, 37, 49, 68, 76, 94, 109, 123, 133.

³⁹ Request, para. 15.

⁴⁰ Request, para. 15.

⁴¹ Response, para. 9, *referring to* Impugned Decision, paras 29, 37.

⁴² Response, para. 9, *referring to* Impugned Decision, paras 29, 37.

⁴³ Response, para. 10.

Defence was, therefore, on notice of the SPO's intention to use and rely upon each of the items since the beginning of these proceedings.

25. The Panel also recalls its finding in the Impugned Decision that the probative value of the tendered items was not outweighed by any prejudice to the Accused, pointing in particular to the fact that the Defence will be able to make submissions in respect of the weight and probative value of these items and could, if it so chooses, challenge the content of these items through the presentation of evidence, although it bears no onus to do so. In making such findings, the Panel was satisfied that, at this stage and contrary to the Defence's submissions, the probative value of the tendered items was not outweighed by any prejudice to the Accused.⁴⁴ Nothing in the Impugned Decisions assumed or required that the Defence make submissions in respect of the weight and probative value of these items or challenge their content through the presentation of evidence. As noted above, the Panel explicitly underlined the fact that the Defence bore no onus in this matter. The suggestion that the Impugned Decisions displaced the burden of proof is therefore without foundation and constitutes a misrepresentation of the Impugned Decision.

26. The Panel recalls that decisions regarding admission of evidence are discretionary decisions to which deference must be accorded.⁴⁵ In this context, the Panel also recalls that before assessing the probative value of the evidence tendered and weighing it against any prejudicial effect, the Panel made extensive findings on the relevance and authenticity of the tendered items thereby making an individualised assessment in relation to each and every Proposed Exhibit.⁴⁶

27. For these reasons, the Panel is of the view that the Third Issue misrepresents the Panel's findings and constitutes a mere disagreement with them. The Panel

⁴⁴ Impugned Decision, paras 29, 37, 49, 68, 76, 94, 109, 123, 133.

⁴⁵ Appeal Judgment, para. 34.

⁴⁶ Impugned Decision, paras 19-131.

therefore finds that the Defence has failed to establish that the Third Issue constitutes a discrete topic arising from the Impugned Decision.

28. Accordingly, the remaining requirements of the certification test arising from Article 45(2) and Rule 77(2) need not be addressed in relation to the Third Issue. The request for certification to appeal the Third Issue is therefore rejected.

V. CLASSIFICATION

29. The Panel notes that the Request has been submitted confidentially. The Panel therefore orders the Defence to request the reclassification or submit a public redacted version of the Request by Friday, 27 June 2025.

30. Noting that the Response and Reply were filed confidentially pursuant to Rule 82(4) and the SPO and the Defence request their reclassification as public,⁴⁷ the Panel instructs the Registry to reclassify the Response and Reply as public.

⁴⁷ Response, para. 16. Reply, para. 5.

VI. DISPOSITION

31. For these reasons, the Panel:

- a) **REJECTS** the request for leave to appeal the Issues;
- b) **DIRECTS** the Registry to reclassify the Response and Reply as public;
and
- c) **ORDERS** the Defence to request reclassification or submit a public redacted version of the Request by no later than Friday, 27 June 2025.



Judge Charles L. Smith, III
Presiding Judge

Dated this Friday, 20 June 2025

At The Hague, the Netherlands.