

**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 Guénaël Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Counsel for Hashim Thaçi  
Counsel for Kadri Veseli  
Counsel for Rexhep Selimi  
Counsel for Jakup Krasniqi

**Date:** 27 June 2025

**Language:** English

**Classification:** Public

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**Joint Defence Reply to Prosecution response to ‘Joint Defence Request for  
Certification to Appeal the Decision on Prosecution Motion for Admission of  
International Reports’**

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1. The SPO Response<sup>1</sup> repeatedly mischaracterizes the issues put forth for certification in the Request<sup>2</sup> and is replete with superficial criticisms that blatantly ignore the submissions therein, as well as the arguments in the Defence Response<sup>3</sup> to the SPO Motion.<sup>4</sup>
2. The SPO ignores the clear differences between the First and Second Issues by claiming that they both revolve around the SPO's failure to produce witnesses regarding the continued existence and functioning of the military police from June to September 1999.<sup>5</sup>
3. Regarding the First Issue, the Defence challenged the assessment of prejudice in admitting items relevant to several issues of paramount importance to the Accused's responsibility, rather than the prejudice inherent solely to the admission of items related to the functioning of the military police in the summer of 1999. This is evident from the Defence references<sup>6</sup> to paragraphs in the SPO Motion and the Impugned Decision discussing tendered material related to, *inter alia*, the alleged notice provided to the Accused of the charged crimes, the KLA/PGoK's alleged failure to halt illegal activities, and the effective control exercised by the Accused over the direct perpetrators.<sup>7</sup> Further, the SPO's unfounded criticism of the Defence's alleged failure "to relate this allegation to any specific International Reports" demonstrably overlooks the specific

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<sup>1</sup> KSC-BC-2020-06/F03276, Prosecution response to 'Joint Defence Request for Certification to Appeal the Decision on Prosecution Motion for Admission of International Reports', 19 June 2025 ("SPO Response").

<sup>2</sup> KSC-BC-2020-06/F03237, Joint Defence Request for Certification to Appeal the Decision on Prosecution Motion for Admission of International Reports, 5 June 2025 ("Request").

<sup>3</sup> KSC-BC-2020-06/F03144, Joint Defence Response to the Prosecution Motion for Admission of International Reports with Confidential Annex 1, 24 April 2025 ("Defence Response").

<sup>4</sup> KSC-BC-2020-06/F03066, Prosecution motion for admission of international reports with confidential Annexes 1-2, 31 March 2025 ("SPO Motion").

<sup>5</sup> Response, para. 4.

<sup>6</sup> Request, fn 7.

<sup>7</sup> SPO Motion, paras. 10-11.

references to individual exhibits referred to in the SPO Motion,<sup>8</sup> cited in the Request.<sup>9</sup>

4. Regarding the Second Issue, the SPO's claim that the "Request cites solely to paragraphs in the Defence response to the Motion that dealt exclusively with two Ministry of Public Order police identification cards",<sup>10</sup> ignores the broader scope of citations to several items which relate to the contested topic in its Request.<sup>11</sup> As further outlined in the portion of the Defence Response referenced in the Request,<sup>12</sup> the Defence has also raised specific objections to such items in the annex to its Response.<sup>13</sup> The SPO's contention that the Defence misrepresents the record by stating that the SPO has failed to produce witnesses regarding the functioning of the military police in the summer of 1999<sup>14</sup> simply recites evidence already identified and addressed by the Defence.<sup>15</sup> The SPO also fails to engage with the Defence's central contention that the narrow scope of and lack of specificity inherent to that evidence did not afford the Defence an adequate opportunity to challenge the contested aspect of the SPO's case.<sup>16</sup>
5. Regarding the Third Issue, the Panel's discretion to admit unsourced material<sup>17</sup> does not empower the Panel to exercise its discretion in an arbitrary manner.<sup>18</sup> As such, it may not deny admission of unsourced material in one instance, and admit the same type of material in another, without identifying any distinguishing characteristics between the two; to do so without reason is

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<sup>8</sup> SPO Motion, paras. 10-11, referring to, *inter alia*, Items 62-63, 75, 77, 111.

<sup>9</sup> Request, para. 3.

<sup>10</sup> Response, para. 3.

<sup>11</sup> Request, para. 5, fn. 12.

<sup>12</sup> Defence Response, para. 27.

<sup>13</sup> See, for example, Annex 1 to Defence Response, items 75, 124, 126.

<sup>14</sup> Response, para. 4.

<sup>15</sup> Defence Response, paras. 22-25.

<sup>16</sup> *Ibid.*

<sup>17</sup> SPO Response, para. 7.

<sup>18</sup> KSC-BC-2020-07/IA001/F00005, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, 9 December 2020, para. 49.

arbitrary. The SPO's attempt to equate discretionary assessments with arbitrary decisions so as to legitimize the latter should accordingly be dismissed.

6. Regarding the Fourth and Seventh Issues, the SPO's submissions relating to context and pattern of conduct<sup>19</sup> are outright misrepresentations, as first, the Trial Panel did not declare that the context and pattern of conduct it considered the contested items to be relevant to is the same context and pattern of conduct professed by the SPO.
7. Second, nowhere in the Motion did the SPO argue that the contested items are relevant to clarifying a given context. That is not the purpose for which their admission was sought. The SPO further conflates the Trial Panel's finding that certain items are relevant to establishing the contextual elements of crimes against humanity with its finding in relation to the relevance of items in clarifying a given context. The Trial Panel expressly determined that the uncharged incidents "are relevant for the purposes of clarifying a given context" *and* that "[t]he proposed evidence may also be relevant to establishing the [existence] of an alleged widespread or systematic attack".<sup>20</sup> It is evident from this juxtaposition that the Trial Panel considered relevance for the purposes of clarifying a given context to be separate and distinct from relevance for the purposes of establishing the contextual elements of crimes against humanity. The context that the Trial Panel deemed the contested items to be relevant to remains elusive.
8. Regarding the Sixth Issue, the SPO fails to explain how the Defence's limited ability to make submissions on the redacted exhibits in the Defence Response<sup>21</sup> cures the prejudice of being deprived of the ability to fully investigate and

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<sup>19</sup> SPO Response, para. 10.

<sup>20</sup> Impugned Decision, para. 27.

<sup>21</sup> SPO Response, para. 13.

challenge these documents owing to the application of redactions to crucial details, such as the authors of the contested items. Equally, the SPO fails to explain how the fact that the SPO itself is equally unaware of the unredacted portions of the contested items demonstrates lack of prejudice,<sup>22</sup> where, as the tendering party, the SPO is not expected to challenge such documents and only seeks to rely upon the unredacted portions of the documents.

9. Considering the foregoing, the Defence respectfully requests the Trial Panel to grant certification on all issues.

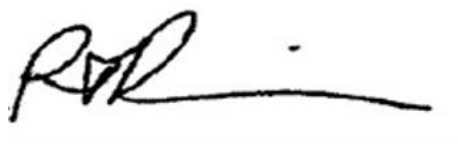
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Respectfully submitted on 27 June 2025,



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<sup>22</sup> *Ibid.*



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