



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: 1 July 2025

Language: English

Classification: Public

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

Specialist Prosecutor

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Luka Mišetić

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Counsel for Kadri Veseli

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Geoffrey Roberts

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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 29 May 2025, the Panel issued its “Decision on Prosecution Motion for Admission of Documents concerning Murder Victims and Related Request” (“Impugned Decision”).¹
2. On 5 June 2025, the Defence for the four Accused (“Defence”) filed a joint request for leave to appeal the Impugned Decision (“Request”).²
3. On 13 June 2025, the Specialist Prosecutor’s Office (“SPO”) responded (“Response”).³
4. On 23 June 2025, the Defence replied (“Reply”).⁴

II. SUBMISSIONS

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

¹ F03211, Panel, *Decision on Prosecution Motion for Admission of Documents concerning Murder Victims and Related Request*, 29 May 2025.

² F03238, Specialist Counsel, *Joint Defence Request for Leave to Appeal Decision on Prosecution Motion for Admission of Documents concerning Murder Victims and Related Request (F03211)*, 5 June 2025, confidential.

³ F03261, Specialist Prosecutor, *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)’*, 13 June 2025, confidential.

⁴ F03284, Specialist Counsel, *Joint Defence Reply to 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)’*, 23 June 2025, confidential.

- (i) Whether the Panel erred in its interpretation of the definition of an expert report within the meaning of Rule 149 (“First Issue”);⁵ and
- (ii) Whether the Panel erred in the assessment of the prejudice caused to the Defence (“Second Issue”).⁶

6. The Defence submits that the Issues are appealable,⁷ affect the fair and expeditious conduct of the proceedings,⁸ and their immediate resolution would materially advance the proceedings.⁹

7. The SPO responds that that the Issues fail to meet the criteria for certification as: (i) they are not appealable; and (ii) the Defence failed to demonstrate that the Issues significantly affect the fair and expeditious conduct of the proceedings, or that immediate resolution by the Court of Appeals Panel may materially advance the proceedings.¹⁰ Accordingly, the SPO submits that the Request should be dismissed.¹¹

8. The Defence replies that the First Issue does not merely disagree with the regulatory framework governing this case, and that a resolution by the Appeals Chamber would significantly affect the fair and expeditious conduct of the proceedings.¹² The Defence further replies that, regarding the Second Issue, the SPO demonstrates a fundamental misunderstanding and disregard of the prejudice suffered by the Defence, compounding the need for appellate intervention.¹³

⁵ Request, paras 5, 12-21, 31.

⁶ Request, paras 5, 22-27, 31.

⁷ Request, paras 12-27.

⁸ Request, para. 28.

⁹ Request, paras 29-30.

¹⁰ Response, paras 1-18.

¹¹ Response, paras 9, 14, 20.

¹² Reply, paras 2-6.

¹³ Reply, paras 7-10.

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.¹⁴

IV. DISCUSSION

A. FIRST ISSUE

11. The Defence argues that the Panel's definition of an expert report within the meaning of Rule 149 is wrong in law and submits that: (i) the Panel determined that what amounts to an expert report is contingent upon the manner in which it is offered by a Party, although the determination of the character of the evidence is exclusively a matter for the Panel to determine, based on its substantive content;¹⁵ (ii) evidence deemed expert evidence must be tendered via Rule 149 as it is *lex specialis* and should prevail over Rule 138;¹⁶ (iii) the proposition that Rule 149 applies only to expert witnesses "called by a Party" is inconsistent with the Rule itself, and fails to enable parties to challenge a witness's expertise or

¹⁴ 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.

¹⁵ Request, para. 14.

¹⁶ Request, para. 15. See also Request, paras 16, 19.

evidence;¹⁷ (iv) the Impugned Decision does not cite to any precedent to support its findings and lacks a legal basis;¹⁸ and (v) if the author of a report was ultimately deemed not to be an expert by the Panel, their statement would still meet the legal definition of a witness statement and be inadmissible from the bar table.¹⁹ The Defence, thus, submits that the Panel should grant leave to appeal the First Issue.²⁰

12. The SPO responds that: (i) the Defence's submissions merely disagree with the Impugned Decision and 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;²¹ (ii) the Defence's submissions raise hypothetical scenarios and repeat arguments that have already been canvassed;²² (iii) the Impugned Decision is based on Rule 149's clear language and did not need to cite precedents from other international criminal tribunals, and, in any case, other courts have admitted forensic documents through general admissibility provisions;²³ and (iv) the Defence raises the unfounded argument that the items admitted in the Decision could amount to witness statements.²⁴

13. The Defence replies that: (i) the First Issue do not merely disagree with the regulatory framework governing this case, and the Defence takes issue with the Panel's narrow interpretation of the Rules, which amounts to a severe contradiction of the rights of the Parties to challenge expert evidence; (ii) the SPO failed to argue that this was the "unequivocal" interpretation of Rule 149, and advances this interpretation for the first time and to its own benefit; and (iii) issues related to the correct interpretation of the Rules are appropriate and important questions for appellate review, and should be settled before further expert

¹⁷ Request, paras 17-18.

¹⁸ Request, para. 20.

¹⁹ Request, para. 21.

²⁰ Request, para. 31.

²¹ Response, paras 3-5. *See also* Response, para. 9.

²² Response, paras 5, 7.

²³ Response, para. 6.

²⁴ Response, paras 7-8.

evidence is called by Victims' Counsel and before the commencement of the Defence case.²⁵

14. The Panel recalls that, in the Impugned Decision, it found that the tendered documents did not constitute expert witness reports within the meaning of Rule 149, and could thus be admitted under Rule 138.²⁶

15. The Panel is satisfied that the question of whether documents requiring or expressing some kind of expertise constitute expert reports and whether, as such, they can only be admitted in accordance with the procedure set out in Rule 149, constitute discrete topics arising from the Impugned Decision. The Panel also notes that there appears to be no established jurisprudence from this jurisdiction on this particular point. The Panel is therefore of the view that the First Issue arises from the Impugned Decision and is therefore appealable.

16. The Panel further finds that resolution of this question may impact the procedural rights of the Parties with regard to the admission of documents requiring or expressing some kind of expertise, and thus the fairness of the proceedings. It could also affect the way in which the Panel should approach this evidence when assessing its weight and probative value. The Panel is therefore satisfied that the First Issue would significantly affect the fair conduct of the proceedings.

17. The Panel also considers it beneficial for the conduct of the proceedings and the rights of the Accused that any dispute regarding the application and interpretation of Rule 149 be addressed by the Court of Appeals Panel, and that resolution of the First Issue might affect the scope of the SPO's case, the ability of the Parties and participants to make informed submissions in respect of such evidence, and the Defence's presentation of their cases, if any. The Panel therefore

²⁵ Reply, paras 2-6.

²⁶ Impugned Decision, paras 17-18.

finds that immediate resolution of the First Issue by the Court of Appeals Panel will materially advance the proceedings.

18. In light of the above, the Panel finds that the requirements of the certification test arising from Article 45(2) and Rule 77(2) have been met and accordingly grants certification to appeal the First Issue.

B. SECOND ISSUE

19. The Defence submits that the Panel erred in the assessment of the prejudice caused to the Defence by the admission of the tendered documents, considering that: (i) the Panel failed to conduct any meaningful individualised assessment of the prejudice caused by the admission of each document;²⁷ (ii) the Panel failed to recognise the true nature of the prejudice suffered by the Defence, namely the inability for the Defence to challenge the evidence in question by way of cross-examination of its authors;²⁸ (iii) the Panel erred in finding that the Defence will be able to make submissions in respect of the weight and probative value of these items, as it will not be possible for the Defence to make submissions on every relevant document admitted through the bar table in the final brief due to word-limitations;²⁹ and (iv) it is incorrect to suggest that the prejudice may be cured by the presentation of Defence evidence, as this constitutes a shifting of the burden, and the Defence cannot be expected to call witnesses to cure this prejudice.³⁰ The Defence, thus, submits that the Panel should grant leave to appeal the Second Issue.³¹

20. The SPO responds that the Defence's submissions regarding the Second Issue are repetitive, further distort the Impugned Decision, and fail to articulate any

²⁷ Request, para. 23.

²⁸ Request, para. 24.

²⁹ Request, para. 25.

³⁰ Request, para. 26.

³¹ Request, para. 31.

error therein, and that the Second Issue is not appealable.³² The SPO further argues that: (i) the Panel assessed any potential prejudice when addressing the specific items tendered in relation to each group of victims, resulting in assessing the prejudice in relation to one or a handful of related items at a time; (ii) the Defence has no absolute right to challenge the authors of the admitted items, and this was explicitly addressed by the Panel; and (iii) the Accused's rights were fully respected as the admitted items were 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, and the Defence can itself call witnesses.³³

21. The Defence replies that: (i) the SPO demonstrates a fundamental misunderstanding of the Second Issue, and disregards the prejudice suffered by the Defence, which cannot challenge evidence admitted from the bar table by way of cross-examination, or mitigate that prejudice by later submissions; (ii) contrary to the SPO's submission, the Defence has an absolute right to question experts under Rule 149(4), further compounding the need for appellate intervention; (iii) the fact that the Defence, on previous occasions, objected to the admission of the evidence but failed to appeal is not relevant to the Issues being raised; and (iv) the Parties became aware of the Panel's interpretation of the scope of Rule 149, and its consideration of the issue of prejudice, only when the Impugned Decision was issued, and were therefore only then able to appeal these discrete issues.³⁴

22. The Panel recalls that, in the Impugned Decision, it evaluated whether the probative value of the tendered documents was outweighed by any prejudice, and ultimately found that it was not. In particular, the Panel pointed out 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 any of

³² Response, paras 10, 14.

³³ Response, paras 11-13.

³⁴ Reply, paras 7-10.

these items through the presentation of evidence, although it bears no onus to do so.³⁵

23. The Panel is of the view that the Request mischaracterises and merely disagrees with the Panel's findings on prejudice. The Panel notes that, due to the large number of documents of a similar nature tendered by the SPO, it adopted a consolidated approach for each group of victims or each individual victim, but it ultimately assessed any potential prejudice associated with *each* of the tendered documents. In doing so, the Panel was satisfied that, at this stage, the probative value of the tendered items was not outweighed by any prejudice to the Accused.

24. The Panel in the Impugned Decision did not require the Defence to make further submissions regarding the weight and probative value of these items, nor to challenge their content through the presentation of evidence. To the contrary, the Panel explicitly underlined the fact that the Defence bears no onus in this matter.³⁶ The suggestion that the Impugned Decision displaced the burden of proof is therefore without foundation and constitutes a distortion of the Impugned Decision.

25. The Panel therefore finds that the Second Issue misrepresents and merely disagrees with the outcome of the Panel's assessment, and attempts to re-litigate the issue of prejudice.³⁷ Moreover, the Panel recalls that it has considerable discretion in deciding whether to admit evidence, and certification to appeal admissibility decisions should be granted only on an exceptional basis.³⁸ This is reflected in the Court of Appeals Panel's holding that "appellate intervention in

³⁵ Impugned Decision, paras 30, 38, 46, 56, 66, 75, 84, 91, 99, 108, 116, 124, 133.

³⁶ See above footnote 35.

³⁷ See e.g. 23 January 2025 Response, paras 28-30.

³⁸ F02241, Panel, *Decision on Veseli Defence Request for Leave to Appeal 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*, 29 February 2024, para. 11 and footnote 26 (with further references). See also ICTR, *Nyiramasuhuko v. Prosecutor*, ICTR-98-42-AR73.2, Appeals Chamber, [Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence](#), 4 October 2004, para. 5.

decisions relating to the admission of evidence is warranted only in very limited circumstances”.³⁹ In light of the above, the Panel finds that the Defence has failed to establish that the Second Issue constitutes a discrete topic emanating from the Impugned Decision.

26. 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.

V. CLASSIFICATION

27. The Panel notes that the Request, Response, and Reply were filed confidentially. The Panel also notes the SPO’s submission that the Response can be classified as public.⁴⁰ The Panel, therefore: (i) instructs the Registry to reclassify the Response, currently classified as confidential, as public; and (ii) orders the Defence to file public redacted versions of the Request and Reply, or request reclassification thereof, within 7 days of the filing of the present decision.

VI. DISPOSITION

28. For these reasons, the Panel:

- a) **GRANTS** the request for leave to appeal the First Issue;
- b) **REJECTS** the request for leave to appeal the Second Issue;
- c) **INSTRUCTS** the Registry to reclassify the Response, currently classified as confidential, as public; and
- d) **ORDERS** the Defence to file public redacted versions of the Request and

³⁹ KSC-CA-2022-01, F00114, Court of Appeals Panel, *Appeal Judgment*, 2 February 2023, para. 35. *See also* 29 February 2024 Decision, para. 11; ICTY, *Prosecutor v. Delalić et al.*, IT-96-21-A, Appeals Chamber, [Judgement](#), 20 February 2001, para. 533.

⁴⁰ Response, para. 19.

Reply, or request reclassification thereof, within 7 days of the filing of the present decision.

A handwritten signature in black ink, reading "Charles L. Smith, III". The signature is written in a cursive style with a horizontal line underneath the name.

Judge Charles L. Smith, III

Presiding Judge

Dated this Tuesday, 1 July 2025

At The Hague, the Netherlands.