



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**In:** KSC-BC-2023-12  
Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj,  
Isni Kilaj, Fadil Fazliu, and Hajredin Kuçi

**Before:** Single Trial Judge  
Judge Christopher Gosnell

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor's Office

**Date:** 30 January 2026

**Language:** English

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Public redacted version of "Prosecution reply to 'Joint Defence Response to SPO  
motion for admission of material through the bar table'"

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## I. INTRODUCTION

1. The Response<sup>1</sup> mistakes the Rule<sup>2</sup> 138(1) threshold for the Tendered Items<sup>3</sup> admissibility with the weight they should ultimately receive. Moreover, an item's 'central importance' to the case does not prevent its bar table admission.<sup>4</sup> Further, if adopted, the Defence position regarding the transcriptions and translations would mark a radical and unsupported departure from established precedent of this tribunal, international law generally, the Working Language Decision,<sup>5</sup> and common sense. The Tendered Items are *prima facie* relevant, probative and authentic, and their admission would not unduly prejudice the Accused. The Motion should be granted.

## II. SUBMISSIONS

### A. THE TENDERED EVIDENCE IS CLEARLY LINKED TO THE CHARGED OFFENCES

2. The Response objects to the volume of material tendered through the bar table, and in particular the full transcripts of the tendered recordings.<sup>6</sup> However, even in instances where tendered items are 'part of lengthy compilations and sometimes bear no discernible link to one another,' they are suitable for bar table admission.<sup>7</sup> Here, the links are explicit and mutually reinforcing; the recordings and their transcripts – and the Detention Centre ('DC') records corroborating them – are essential to understanding the most relevant portions of the recordings, including the contrast in voices, the identity of the speakers, and the context of what is discussed in and across

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<sup>1</sup> Joint Defence Response to SPO motion for admission of material through the bar table, KSC-BC-2023-12/F00688, 23 January 2026, Confidential ('Response').

<sup>2</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ('KSC'), KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

<sup>3</sup> See Prosecution motion for admission of material through the bar table, KSC-BC-2023-12/F00632, 17 December 2025, Confidential ('Motion'), para.1 (defining the 'Tendered Items').

<sup>4</sup> Case 6, Public Redacted Version of Decision on Prosecution Motion for Admission of Documents (F03114), KSC-BC-2020-06/F03214/RED, 25 July 2025 ('Documents Decision'), para.44.

<sup>5</sup> Decision on Working Language, KSC-BC-2023-12/F00076, 11 December 2024 ('Working Language Decision').

<sup>6</sup> Response, paras 20-22.

<sup>7</sup> *Specialist Prosecutor v. Thaçi et al.* ('Case 6'), Decision on Prosecution Motion for Admission of Dukagjin Zone Documents, KSC-BC-2020-06/F03178, 13 May 2025 ('Decision F03178'), para.15.

visits. Further, the SPO has *already* identified in detail the main parts of the transcripts on which it intends to rely. The sole inquiry is whether the Tendered Items are relevant, *prima facie* authentic, probative, and not unduly prejudicial.<sup>8</sup> Here, the Motion clearly meets this threshold by linking each item to specific conduct and charges and articulating their relevance with sufficient specificity to justify admission, and establishing each item's authenticity and probative value.

#### B. AUDIO RECORDINGS, TRANSCRIPTS AND TRANSLATIONS

3. Regarding the THAÇI DC audio recordings and their corresponding transcripts/translations, the sole question before the STJ is: are the records *admissible* under Rule 138(1). The answer is yes. What weight the STJ should ultimately afford the material is not at issue.

4. Determinatively, '[t]he Defence does not object in principle to the admission of original DC audio recordings where...*relevant to the charges in the Indictment.*'<sup>9</sup> The tendered audio recordings – the Core and Pattern Visits – are incontrovertibly relevant to the Indictment charges, as they demonstrate THAÇI's repeated and systematic issuance of instructions to witnesses and revelation of confidential material, including to his Co-Accused. Their relevance is detailed exhaustively in the PTB and the BTM itself, and is corroborated not just by the pattern of activity across the visits, but by a litany of exogenous evidence collected from multiple independent sources. Further, aside from the content of the words spoken, THAÇI's and his visitors' repeated use of whispering and other methods of attempting to obscure their criminal conduct during the visits – which is readily discernible by the STJ or any other listener without aid of any transcript or translation – is itself relevant to the charged offences, demonstrating the attempted obfuscation of portions of the discussions which contrast with the

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<sup>8</sup> Decision F03178, para.15.

<sup>9</sup> Response, para.25 (emphasis added).

normal-toned, non-inculpatory parts of each visit. Thus, as is essentially conceded by the Defence, the recordings' admissibility under Rule 138(1) is established.

5. The Visit Recording transcripts/translations also meet the Rule 138(1) requirements, are admissible, and should be admitted now. The Defence position boils down to this: because parts of the recordings are more difficult to discern than others, and some portions of whispered content remain indiscernible, all the transcripts are *en masse* so unreliable as to bar *admission* in their entirety. The Defence is wrong legally and factually, and their position is demonstrably belied by the record.

6. The Defence acknowledges that established practice – here and at other tribunals – is to admit transcripts/translations with their underlying recordings.<sup>10</sup> Nevertheless, the Defence attempts to convert Rule 138(1)'s *prima facie* reliability and authenticity threshold to a requirement of proof beyond a reasonable doubt for mere *admission*. Their near-exclusive basis for doing so is the opinion of a linguist whose approach has, to the SPO's knowledge, never been adopted to bar admission of evidence in this or any similar tribunal, and whose conclusions (i) have been rejected or not followed in at least several domestic criminal cases,<sup>11</sup> and (ii) do not map onto a trial with a professional judge (as opposed to a lay jury) and where the court is not being asked to rely on *indecipherable* content nor to rely exclusively on transcripts *in lieu* of original audio, and where there is overwhelming mutually reinforcing evidence both across and independent of the recordings and transcripts.

7. While the Defence's concerns about the transcripts/translations' reliability might be considered when deciding what weight to assign each transcript, none is a legitimate challenge to their admissibility. There is 'no requirement under the SC's

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<sup>10</sup> Response, fn.73.

<sup>11</sup> See e.g. Australia, Supreme Court of New South Wales, *Clark v. The Queen*, Application for Inquiry into Conviction and Sentence pursuant to s 78 of the Crimes (Appeal & Review) Act 2001, 28 August 2015, paras 25-29.

legal framework that Proposed Exhibits be authenticated through witnesses.<sup>12</sup> That a transcript is prepared by a party does not rob it of its *prima facie* indicia of reliability for purpose of admissibility.<sup>13</sup> Attribution – even when challenged – is not a precondition to admissibility.<sup>14</sup> There is no requirement that a transcript – which is ‘automatically’ included in the admission of associated audio-visual material<sup>15</sup> – be introduced by its creator.<sup>16</sup>

8. Regarding the Defence’s attempts to generate their own transcriptions of two five-minute audio segments of the 3 September Visit, the results are irrelevant for the admission of the tendered transcripts. It is unclear *which* files in which quality were actually sent out, given that the CMU-screenshot of the contents of the USB that were forwarded for transcription by CMU/LSU indicates two file names that appear not to correspond with the file names of the Enhanced Audio Segments as disclosed in this case.<sup>17</sup>

9. In any event, verification of evidence should be conducted consistent with past practice for verification<sup>18</sup> and the Working Language Decision. There is no valid

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<sup>12</sup> Case 6, Decision on Prosecution Motion for Admission of Nerodime Zone Documents, KSC-BC-2020-06/F03082, 4 April 2025, para.11. *See also* Case 6, Decision on Prosecution Motion for Admission of Llap Zone Documents and Related Request, KSC-BC-2020-06/F02951, 21 February 2025, para.21; Documents Decision, KSC-BC-2020-06/F03214/RED, para.14; *Prosecutor v. Bemba et al.*, Public Redacted Version of Judgment pursuant to Article 74 of the Statute, ICC-01/05-01/13-1989-Red, 19 October 2016, paras 206-207, 217-218 (*‘Bemba et al. Trial Judgment’*).

<sup>13</sup> *See e.g.*: *Prosecutor v. Bemba et al.*, Public Redacted Judgment, ICC-01/05-01/13-2275-Red, 8 March 2018, para.1339; Working Language Decision, para.17.

<sup>14</sup> *See e.g.* Documents Decision, KSC-BC-2020-06/F03214/RED, para.43.

<sup>15</sup> *Specialist Prosecutor v. Mustafa*, Decision on the submission and the admissibility of evidence, KSC-BC-2020-05/F00169, 25 August 2021, para.37. *See also* ICC, *Prosecutor v. Bemba et al.*, Decision on ‘Prosecution’s Fifth Request for the Admission of Evidence from the Bar Table’, ICC-01/05-01/13-1524, 14 December 2015, para.7.

<sup>16</sup> *Contra* Response, paras 65-67.

<sup>17</sup> *See*: Response, fn.71; Annex 8, p.2; Annex 9, p.2.

<sup>18</sup> *See Specialist Prosecutor v. Gucati and Haradinaj* (*‘Case 7’*), Order for Submissions and Scheduling the Trial Preparation Conference, KSC-BC-2020-07/F00267, 21 July 2021 (*‘F00267’*), para.14. The SPO further notes that in multiple cases numerous specific verification requests, including to court transcripts (indicating the relevant segments and lines to be checked), have been made by the Defence and processed by the Registry. The results of the Case 7 method for verification of audio/video transcription

reason to deviate from the established practice here, and indeed the SMAKAJ Defence – as previously noted – has already properly identified two specific translation/transcription accuracy challenges. The SPO's request<sup>19</sup> for judicial authorisation to verify SMAKAJ's specific challenges consistent with past practice has been granted, and the SPO will forthwith submit the request as ordered.<sup>20</sup> SMAKAJ's clear identification of purported errors shows that this can be done by all Defence, and the proper procedure for doing so is further codified by Decision F00708.<sup>21</sup>

10. The results also conflict with the record and reality. The two audio segments selected for fresh transcription (instead of verification of specified pages/lines of the existing transcript) are not [REDACTED];<sup>22</sup> they were selected for enhancement precisely because they contain sections that, because of the extremely low whispering, are among the most difficult of all recordings to discern.<sup>23</sup> Further, there are indisputably parts of these segments that are readily discernible. The SPO thus invites the STJ to listen to, *inter alia*, the following portions of the original audio (as disclosed) in both the enhanced and non-enhanced versions of the segments selected by THAÇI where the participants are speaking in audible, transcribable voices:

- 030923-092409, timestamp 00:04 – 00:51; and

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verification as ordered in F00267 further demonstrate this. *See* Case 7, Public Redacted Version of 'Prosecution Final Brief', KSC-BC-2020-07/F00565/RED, 3 March 2022, para. 213. *See also* Annex 3 to this filing, showing the procedure used in Case 7 as cited in the F00565 para.213.

<sup>19</sup> *See* Prosecution request for transcription/translation verification deadline, KSC-BC-2023-12/F00666, 14 January 2026, Confidential.

<sup>20</sup> Decision on Prosecution Request for Transcription/Translation Verification Deadline, KSC-BC-2023-12/F00708, 29 January 2026 ('Decision F00708').

<sup>21</sup> Decision F00708, para.20.

<sup>22</sup> Response, para.57.

<sup>23</sup> While the SPO disputes that the fully-replicable level-adjustments made to the four enhanced five-minute audio segments (BTM#42) – as detailed in the [REDACTED] reports – require expert testimony to admit them and the corresponding transcripts, if the STJ disagrees the SPO will rely solely on the unenhanced audio recording and corresponding transcripts of the 3 September Visit, as found in BTM#41. While the enhanced version does provide additional clarity to the recording, the additionally-audible material is not essential to the charges arising from the 3 September Visit.

- 030923-092909, timestamp 03:53 – 04:59.

11. More broadly, although well beyond admissibility requirements, the SPO reiterates that there is before the STJ an abundance of ‘mutually reinforcing information confirming the accuracy’ of the transcripts/translations, which is a lodestar for reliability.<sup>24</sup> In other words, to use the Defence’s formulation, there is copious evidence ‘*external to the recording*’ that ‘verif[ies] the transcript’,<sup>25</sup> and the Defence claim that there are ‘*no indicators* of the reliability of the SPO Transcripts’<sup>26</sup> is both demonstrably false and misleading.

12. Regarding attribution, the Defence ignores<sup>27</sup> the record, which is full of intrinsic and extrinsic evidence far exceeding the admissibility threshold. As already noted,<sup>28</sup> the visit recordings contain numerous references to the visit participants *by name*, in addition to the participants repeatedly referring to independently verifiable attribution facts, including facts (like means of travel to The Netherlands) not known to the SPO prior to the visit. While not required for admission, Annex 1 to this filing contains a small, non-exhaustive sample of attributions to further specific the point already made in the Motion, including with recording timestamps. The Defence’s claim that the SPO has provided ‘no explanation at all regarding attribution’<sup>29</sup> of the DC recorded phone calls is similarly unfounded,<sup>30</sup> as further demonstrated (non-exhaustively) in Annex 2 to this filing. And, as was done in *Bemba*<sup>31</sup> and a matter of common sense, the STJ can easily compare the voices in THAÇI’s DC phone calls – including with several of the Accused – and across recorded visits, to check the attribution, all of which is a matter for judgment, not admission.

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<sup>24</sup> See *Bemba et al.* Trial Judgment, para.218.

<sup>25</sup> Response, para.71(iii) (emphasis in original).

<sup>26</sup> Response, para.68 (emphasis in original).

<sup>27</sup> Response, paras 92-96.

<sup>28</sup> See Motion, paras 16-17. See also indicia of authenticity for BTM #s 40-45.

<sup>29</sup> Response, para.92.

<sup>30</sup> See also Motion, para.10 and fn.21.

<sup>31</sup> *Bemba et al.* Trial Judgment, para.216(iii).

13. Second, the visit transcripts contain multiple examples of information transcribed from the recordings that *was not and could not have been known to the SPO* – let alone to any transcriber – when first transcribed. For instance, the SPO requested to seize FAZLIU’s and Witness 1’s phones on 1 September 2023 based primarily on the 2 July Visit recording.<sup>32</sup> The request quoted directly from the draft transcript, including where FAZLIU discussed (i) having met with ‘Remi’ (ii) on ‘Thursday. Before I left to come here’, and (iii) his plan to ‘return’ to Kosovo the **next day** [3 July].<sup>33</sup> The request cited to FAZLIU stating, ‘Because I have **my son, Fahri**, who /?lives/ next to him [indiscernible], and will ask him on the phone “**When can we have a coffee?**” and THAÇI responding ‘That’s right! **Not you.**’<sup>34</sup> FAZLIU also stated that after returning ‘**[t]omorrow. I will send [indiscernible] and meet him.**’<sup>35</sup>

14. The SPO’s *subsequent* seizure of the phones of FAZLIU, Witness 1, and ultimately Fahri FAZLIU on 12 September 2023 and 17 April 2024, respectively, confirmed *all* of these previously unknown facts, including: (i) Fahri FAZLIU texting Witness 1 to arrange a meeting with himself, FAZLIU, and Witness 1 on **Thursday, 29 June 2023**,<sup>36</sup> before FAZLIU’s visit to THAÇI on 2 July 2023;<sup>37</sup> (ii) FAZLIU’s **3 July departure** from the Netherlands and return to Kosovo;<sup>38</sup> and (iii) Fahri FAZLIU again **setting up a meeting** with himself, FAZLIU and Witness 1 immediately upon FAZLIU’s return on **3 July**.<sup>39</sup> The SPO did not – and could not – have had knowledge of any of these facts at the time of the original transcription of the recorded visit.

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<sup>32</sup> See Confidential redacted version of ‘Prosecution request for orders’, KSC-BC-2023-12/INV/F00029/CONF/RED, 1 September 2023 (‘INV/F00029’).

<sup>33</sup> INV/F00029, pp.5-6. See also 114037 020723-115000-140500-TR-AT Revised-ET, p.40 (BTM#40).

<sup>34</sup> INV/F00029, p.7. See also 114037 020723-115000-140500-TR-AT Revised-ET, p.42 (BTM#40).

<sup>35</sup> INV/F00029, p.6. See also 114037 020723-115000-140500-TR-AT Revised-ET, p.42 (BTM#40).

<sup>36</sup> 125704-125707\_added partial ET, chats #9-21 (BTM#53).

<sup>37</sup> See Agreed Fact 78.

<sup>38</sup> See: Notification of additional agreed facts, KSC-BC-2023-12/F00703, 28 January 2026, Confidential; 125645-125652\_added partial ET, chat #59 (BTM#57).

<sup>39</sup> 125704-125707\_added partial ET, chats #22-29 (BTM#53).

15. As another example, the SPO requested search and seizure authorisation for KILAJ and KRYEZIU on 16 October 2023, ten days after the charged KILAJ Group visit.<sup>40</sup> The request quoted portions of the draft transcript of the visit recording, and focused on indications of THAÇI's potential targeting of [REDACTED]/Witness 4 for witness interference.<sup>41</sup> This included THAÇI's reference to prior statements of a witness, stating '*These are the answers. Here are the questions, here are the answers. Answer, question, answer, question, answer, answer, question, answer*'<sup>42</sup> and indications that THAÇI directed his visitors to a **specific part and page of a prior statement** and directed that the witness should **change a portion of his statement to benefit THAÇI**.<sup>43</sup> The request also noted that THAÇI appeared to (i) discuss the specific issue of Witness 3 and **Witness 4's identification of THAÇI in relation to [REDACTED]**, (ii) discuss detailed instructions on **how Witness 4 should testify on this point**; and (iii) provide KRYEZIU with a **copy of a prior statement of Witness 4**.<sup>44</sup>

16. During the 2 November 2023 search and seizure of KILAJ's residence, the SPO recovered from a trash bag inside KILAJ's door torn up pages of portions of two of **Witness 4's prior statements disclosed in Case 6**. Among the torn pages were pages **7-8 from the Albanian version of Part 6** of Witness 4's [REDACTED] interview where the witness discussed THAÇI in relation to Witness 3 and Witness 4's [REDACTED], as charged in Case 6.<sup>45</sup> The torn pages contain highlighting and handwriting,

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<sup>40</sup> Confidential redacted version of 'Prosecution request for orders', KSC-BC-2023-12/INV/F00035/CONF/RED, 16 October 2023 ('INV/F00035').

<sup>41</sup> INV/F00035, paras 13, 16-17.

<sup>42</sup> INV/F00035, para.13. *See also* 116083 061023-111500-135746-TR-AT Revised 1-ET, p.49 (BTM#44).

<sup>43</sup> INV/F00035, para.13. *See also* 116083 061023-111500-135746-TR-AT Revised 1-ET, pp.51, 56-57 (BTM#44).

<sup>44</sup> INV/F00035, para.17. *See also* 116083 061023-111500-135746-TR-AT Revised 1-ET, pp.45-60 (BTM#44). While the statement indicating the taking of the document was originally attributed to KRYEZIU and later attributed to KILAJ after additional review, the SPO notes that both KILAJ's and KRYEZIU's voices as the speakers are clearly discernible from, *inter alia*, other portions of the recording where their names are directly stated by THAÇI and each other, as well as by comparing the visit recording to, KILAJ's recorded jail calls with THAÇI. *See* Annex 2, p.1; 116083-116083 containing 061023-115746.wav at 01:51-01:55.

<sup>45</sup> SPOE00343593-SPOE00343606, pp.SPOE00343600, SPOE00343604; 123402-123409 corrected, pp.123408-123409 (BTM#78).

including on a line of **Witness 4's statement related to his prior identification of THAÇI as potentially involved in his** [REDACTED], just as indicated in the SPO's search request.<sup>46</sup> Tendered computer and printer records obtained only in 2025 indicate that both torn up Witness 4 statements were printed by THAÇI from the detainee-used printer at the DC on 4 and 5 October 2023.<sup>47</sup> The SPO did not – and could not – have had knowledge of any of these facts at the time of the original transcription of the recorded visit.

17. As another example, the transcript of KUÇI's 3 September 2023 visit to THAÇI first disclosed in this case on 17 December 2024, reflects the men discussing KUÇI's plans to attend a hearing the next day, with KUÇI stating: **'I will stay tomorrow to attend tomorrow's hearing'** and THAÇI replying **'You stay for tomorrows hearing.'**<sup>48</sup> They then discussed details of KUÇI's return to Kosovo, with THAÇI asking, **'You arrive at 12 at night, don't you?'** KUÇI replied: **'At 12 at night.'**<sup>49</sup> The transcript then includes THAÇI instructing KUÇI: 'Yes, indeed, tell him, **"You pick me up at twelve,** tell him, only when I come, tell him -- and do not --. [...] [Whispers] -- until you reach Pristina. [...] Tell him, "If you can, like this, [Indiscernible]. **We will return tomorrow.** Tell him "Wait for us – [...] **at the airport."** Tell him.<sup>50</sup>

18. The SPO seized KUÇI's phone on 7 March 2024 and immediately transferred it to the Registry. The SPO and the KUÇI Defence first received KUÇI's September 2023

<sup>46</sup> SPOE00343593-SPOE00343606, p.SPOE00343600; 123402-123409 corrected, p.123408 (BTM#78) 'Q. I'm not talking about the Prosecutor. I'm talking about the moment when you jumped up saying, this is him, this is him. [...] Were you sure at that moment? A. Yes. /Handwritten/ ?????????'

<sup>47</sup> SPOE00374638-00374676, p.SPOE00374650 (BTM#87); SPOE40015903-40015903 (BTM#88); KSC-BC-2023-12 - F00539 - A01 RED, pp.13, 17, printing jobs [REDACTED] (BTM#89); KSC-BC-2023-12 - F00431 - A01, p.53 (BTM#92), SPOE00398294-00402849, pp.SPOE00398522-SPOE00398557 (BTM#96), SPOE00408676-00408680, p.SPOE00408680 (BTM#90). *See also* SPOE00343593-SPOE00343606/123402-123409 corrected (BTM#78).

<sup>48</sup> 115009 030923-072219-101409-TR-AT Revised-ET, p.8 (tendered revised version found at 115009 030923-072219-101409-TR-AT Revised 3-ET, pp.49-50 (BTM#41)).

<sup>49</sup> 115009 030923-072219-101409-TR-AT Revised-ET, p.91; (tendered revised version found at 115009 030923-072219-101409-TR-AT Revised 3-ET, p.143 (BTM#41)).

<sup>50</sup> 115009 030923-072219-101409-TR-AT Revised-ET, pp.93-94; (tendered revised version found at 115009 030923-072219-101409-TR-AT Revised 3-ET, pp.144-146 (BTM#41)).

text messages from the March Phone on 21 November 2025. The messages show, *inter alia*, KUÇI: (i) **on 4 September 2023** texting his family about his and his son's activities in The Netherlands, including that KUÇI is '**in a session**';<sup>51</sup> (ii) confirming his and his son's **travel on 5 September** and **ultimate arrival at the Kosovo airport at approximately 12:11 a.m. on 6 September 2023**;<sup>52</sup> and (iii) exchanging multiple texts with his family during 5 and 6 September indicating KUÇI would **be picked up from the Kosovo airport by a third party** while his son would be collected by KUÇI's wife.<sup>53</sup> Again, none of this information – all of which matches information in the transcript – was available or known to the SPO at the time of transcription.

19. In sum, the tendered transcripts are not the result of 'knowledge and assumptions about the context of a recording'<sup>54</sup> leading to a misunderstanding or 'priming';<sup>55</sup> but instead reflect the quality of a reliable recording transcript leading to the subsequent collection of inculpatory and reinforcing evidence. The Defence is free to raise challenges to and request verification of specific portions of transcripts/translations – as SMAKAJ has already done – and/or to challenge the factual or legal *significance* of those records, as THAÇI has previously done in other proceedings.<sup>56</sup> What the Defence cannot do is wholesale block the evidence's proper admission under Rule 138(1) when all the criteria – legal and factual – have been met.

### C. THE SMAKAJ DOCUMENT AND RELATED MATERIAL

<sup>51</sup> SPOE00409679-00409692, pp.SPOE00409684-SPOE00409686. This item was disclosed under Rule 102(1)(b) on 22 January 2026, and will be tendered for admission next week.

<sup>52</sup> SPOE00409679-00409692, pp.SPOE00409685, SPOE00409691. See Public redacted version of 'Prosecution notification regarding investigative activities and request related to Independent Counsel's review', KSC-BC-2023-12/F00689/RED, 23 January 2026, fn.23 (explaining +2UTC adjustment).

<sup>53</sup> SPOE00409679-00409692, pp.SPOE00409686-SPOE00409690.

<sup>54</sup> Fraser, H., 'How Interpretation of Indistinct Covert Audio Recordings Can Lead to Wrongful Conviction: A Case Study and Recommendations for Reform', in Ridge & Thornton (Eds.), *New directions for law in Australia: Essays in contemporary law reform* (ANU Press, 2017), p.198.

<sup>55</sup> Response, para.87.

<sup>56</sup> See Case 6, Public Redacted Version of 'Thaçi Defence Response to Registry Notification in Relation to Court-Ordered Protective Measures and Request for Guidance Pursuant to Decision F01977', KSC-BC-2020-06/F02107, 13 February 2024, para.7.

20. Of the tendered Seized Documents and Related Material<sup>57</sup> the Defence challenges only the SMAKAJ Document and related search photos ('SMAKAJ Material').<sup>58</sup> All are admissible under Rule 138(1).

21. To the extent SMAKAJ's denial that the document was located in his car and the photos were taken during the search of his residence constitutes a challenge to the legality of the search, SMAKAJ raised no such challenge to the Pre-Trial Judge within the Rule 42(3) deadline. SMAKAJ has thus waived his right to do so.<sup>59</sup>

22. The SMAKAJ Material is relevant, probative, contains sufficient indicia of authenticity, and its admission would not be unduly prejudicial. The items arise directly from the 30 October 2023 search of SMAKAJ's residence, which all parties agree occurred.<sup>60</sup> The photos show the SMAKAJ Document inside a vehicle registered to SMAKAJ.<sup>61</sup> Further, contrary to the Defence's claim, the document's relevance here does not depend solely on its seizure from SMAKAJ's car.<sup>62</sup>

23. Indeed, because of the SMAKAJ Document's connection to (i) THAÇI's tendered DC computer and printing records – including the electronic version of the *same document* – recovered from THAÇI's records and evidence of its printing at the DC on 7 October 2023,<sup>63</sup> (ii) the [REDACTED] showing that the same DC printer also printed the Witness 4 statements seized from KILAJ ('KILAJ Seized Documents'),<sup>64</sup>

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<sup>57</sup> See Motion, §III(D).

<sup>58</sup> Response, paras 107, 113.

<sup>59</sup> See e.g., Case 6, Second Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01596, 9 June 2023, paras 105-106.

<sup>60</sup> See Agreed Fact 87.

<sup>61</sup> Compare SPOE00344046-SPOE00344053, BTM#85 with SPOE00403495-00403498, item 9 in Annex 2 to Prosecution motion for admission of evidence of Witness 7 and Witness 9 pursuant to Rule 154, KSC-BC-2023-12/F00635/A02, 18 December 2025, Confidential, admitted subject to Rule 154 fulfilment in Decision on the Specialist Prosecutor's Motion for Admission of Evidence of Witnesses 7 and 9 pursuant to Rule 154, KSC-BC-2023-12/F00687, para.21(b).

<sup>62</sup> Response, para.109.

<sup>63</sup> E.g. BTM#s 87, 92, 94.

<sup>64</sup> 118299-118304, tendered through Prosecution response to Filing F00586 and motion for admission of evidence of Witness 8, KSC-BC-2023-12/F00620, 15 December 2025, Confidential.

and (iii) similar instructions issued by THAÇI in other tendered visit recordings, the SMAKAJ Document is relevant also to charged pattern of obstruction and to specific non-SMAKAJ Indictment counts. Finally, Witness 8 will testify about the connection between the SMAKAJ Document, the KILAJ Seized Documents, and the DC printer test page.

#### D. THE REGISTRY RECORDS

24. The two challenged Registry Records<sup>65</sup> meet the Rule 138(1) requirements. Both were provided by the Registry pursuant to judicial orders detailing precisely the information to be produced.<sup>66</sup> As such, their *prima facie* authenticity and reliability is established.<sup>67</sup> Calling a Registry witness for this purpose would be a ‘formal and useless exercise.’<sup>68</sup> Further, all redactions to Item 38 were made by the Registry/DC; should the Defence require additional information about the redacted material, it may request the STJ to order its production.

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<sup>65</sup> See Response, paras 115-119.

<sup>66</sup> See Motion, para.13. See also Decision on Prosecution Request for EFC Follow-up and Registry Information, KSC-BC-2023-12/F00437, 8 September 2025, Confidential, paras 65, 69(h); Lesser Redacted Confidential Version of Decision on Prosecution Requests F00676 and F00705, KSC-BC-2023-12/INV/F00170/CONF/RED2, 16 May 2025, Confidential, paras 27-28, 35(b).

<sup>67</sup> See e.g. *Bemba et al.* Trial Judgment, paras 222-223, 225. See also ICC, *Prosecutor v. Lubanga*, Public Redacted Version Decision on the admissibility of four documents, 13 June 2008, ICC-01/04-01/06-1399, para.37.

<sup>68</sup> See e.g. *Bemba et al.* Trial Judgment, para.225.

## E. EFI & EFC REPORTS

25. The Response seeks to bar admission of the EFI & EFC Reports ('External Reports') not by challenging their relevance, authenticity, or probative value, but by advancing incorrect interpretations of relevant KSC precedent.<sup>69</sup>

26. In Decision F00011,<sup>70</sup> the Appeals Panel clarified that 'expert witness' refers 'to persons whom a Party has identified as potential expert witnesses **and** intends to present before the relevant panel to give evidence at trial', underscoring that an expert 'must be **specifically** proffered by a Party or participant to provide testimony before the relevant panel in the proceedings in the capacity of an expert.'<sup>71</sup> As Victims' Counsel offered the expert as an expert witness, sought the admission of his written reports as expert evidence, and the reports were specifically prepared for the purpose of the proceedings '**in order to assist the Trial Panel in its determination**', they could only be tendered through Rule 149.<sup>72</sup>

27. Here, the SPO: (i) has not offered the authors of the External Reports as expert witnesses; (ii) has not sought the admission of the material as expert evidence; and (iii) did not request the EFI and EFC to prepare reports specifically for the purpose of the trial proceedings in the present case, nor to assist the STJ in his determination. Rather, these were prepared as part of the SPO's authorised investigation as commissioned by the Registry (EFC Reports), or as standard operating procedure

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<sup>69</sup> Response, paras 120-132.

<sup>70</sup> Case 6, Decision on Joint Defence Consolidated Appeal Against Decisions F03201, F03202, F03203, F03211 and F03213, KSC-BC-2020-06/IA036/F00011, 8 October 2025, ('Decision F00011'), paras 37-38.

<sup>71</sup> Decision F00011, KSC-BC-2020-06/IA036/F00011, para.38 (further rejecting the defence's argument that 'any evidence resulting from scientific analysis is 'expert evidence' within the meaning of Rule 149, regardless of the proceedings for which a report was prepared, or the manner in which it is offered by a Party') (emphasis added).

<sup>72</sup> Decision F00011, KSC-BC-2020-06/IA036/F00011, para.47 (emphasis added).

(EFI Reports).<sup>73</sup> The External Reports may be appropriately tendered – and admitted – through the bar table.

#### F. CHARGED PATTERN & CONTEXTUAL MATERIAL

28. The Response challenges admission of much of the ‘Non-Charged Visit’ material based on purported lack of notice and relevance by arguing that the material falls outside of the scope of the charges in the Indictment.<sup>74</sup> This is not the case.

29. First, as apparently conceded,<sup>75</sup> material falling outside of the charges in the indictment *is* admissible and may be relied upon to show, *inter alia*, a deliberate pattern of conduct or ‘similar fact evidence’, to provide context, to establish elements of the charged conduct, or establish state of mind.<sup>76</sup>

30. Second, contrary to the Response,<sup>77</sup> each item tendered in the Motion – including the Pattern Visits and related evidence such as DC records confirming those visits – is supported by a detailed relevance description and Indictment references, demonstrating how each item squarely falls within the charges in this case, including that THAÇI engaged in a pattern of obstructionist conduct throughout the charged period.<sup>78</sup> The material relates to, *inter alia*, the Accused’s pattern of obstructionist conduct;<sup>79</sup> the Accused’s revelation of confidential witness information;<sup>80</sup> the

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<sup>73</sup> See *similarly* Decision F00011, KSC-BC-2020-06/IA036/F00011, para.62 (finding Rule 149 did not apply as the at-issue reports ‘were produced in the ordinary course of their author’s profession, and not for the purposes of the present legal proceedings’).

<sup>74</sup> Response, paras 133-148.

<sup>75</sup> Response, paras 141, 143.

<sup>76</sup> Case 6, KSC-BC-2020-06/F02489/RED, Public Redacted Version of Decision on Prosecution Motion for Admission of Evidence of Witnesses W03871, W04735, and W04868 Pursuant to Rule 154 and Related Requests, 13 August 2024, para.45. See also Documents Decision, KSC-BC-2020-06/F03214/RED, para.39; Case 6, KSC-BC-2020-06/F01664/RED, Public Redacted Version of Decision on Prosecution Motion for Admission of Evidence of W00072, W02153 and W04586 Pursuant to Rule 154, 27 November 2023, para.28 (‘[T]he fact that the evidence pertains in part to uncharged incidents of violence attributed to KLA members does not render such evidence irrelevant *per se*,’ as it may be relevant ‘to a number of issues in the present case’, including ‘patterns of conduct [...] and associated inferences’).

<sup>77</sup> Response, paras 142, 144.

<sup>78</sup> See *generally* Annex 1 to Motion.

<sup>79</sup> E.g. BTM#s 1-2, 5-6, 9-16, 20-24, 26-27, 33-34, 46-51.

<sup>80</sup> E.g. BTM#s 1, 46-51.

Accused's knowledge of relevant KSC rules and regulations regarding detainee visits;<sup>81</sup> the relationships between the Accused and others related to obstructionist conduct;<sup>82</sup> the state of mind of the Accused as is relevant to the charges;<sup>83</sup> and providing essential context and corroboration of charged conduct.<sup>84</sup> Further, the Pattern Visits and related items at issue also correspond directly to the pattern alleged in the Indictment, and in many cases are expressly referenced in the SPO's PTB and/or were included in the SPO's Rule 86(b)(3) outline, further belying any claimed lack of notice.<sup>85</sup> The items' relevance is clear; they should be admitted.

### III. CONCLUSION & REQUESTED RELIEF

31. For the foregoing reasons, the STJ should grant the Motion.

### IV. CLASSIFICATION

32. This filing is confidential under Rule 82(4). A public redacted version will be filed.

**Word count: 4,955**



**Kimberly P. West**  
**Specialist Prosecutor**

Friday, 30 January 2026

At The Hague, the Netherlands

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<sup>81</sup> *E.g.* BTM#s 1, 4, 11, 17-18, 24, 29.

<sup>82</sup> *E.g.* BTM#s 2, 4-9, 11, 13-18, 20, 30, 33.

<sup>83</sup> *E.g.* BTM#s 11, 17, 20-25, 32, 47-51.

<sup>84</sup> BTM#s 1, 8-17, 20-21, 26, 29-36, 46-51. BTM#98, which is a publicly available media report, is similarly challenged on the purported basis of lack of notice, but is relevant to corroboration and context.

<sup>85</sup> *See e.g.* BTM#s 1, 4-7, 20, 30, 46-51.