

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 Counsel for Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi

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Joint Defence Request for partial reconsideration and clarification of “Decision on Prosecution Request for Transcription/Translation Verification Deadline”

Specialist Prosecutor’s Office

Kimberly P. West

Specialist Counsel for Hashim Thaçi

Sophie Menegon

Luka Mišetić

Specialist Counsel for Bashkim Smakaj

Jonathan Elystan Rees KC

Huw Bowden

Specialist Counsel for Isni Kilaj

Iain Edwards

Joe Holmes

Specialist Counsel for Fadil Fazliu

David A. Young

Specialist Counsel for Hajredin Kuçi

Alexander Admiraal

I. INTRODUCTION

1. The Defence for Messers Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi ("Defence") requests the Single Trial Judge to partly reconsider and to clarify his Decision on Prosecution Request for Transcription/Translation Verification Deadline ("Transcripts Decision").¹

II. PROCEDURAL HISTORY

2. On 17 July 2025, the Thaçi Defence filed a Notice of Objection and Reservation of Rights, reiterating Mr Thaçi's right to silence, and making clear that the Thaçi Defence disputes the transcripts produced by the SPO which purport to reflect the contents of covertly recorded audio in this case.²
3. On 17 December 2025, the SPO filed a bar table motion ("BTM") which sought admission of large volumes of evidence, including more than 35 hours of covertly recorded audio. The SPO also tendered Albanian transcripts, apparently produced within the SPO, which purport to represent the conversations contained in these recordings ("SPO Transcripts"), and English translations of the latter ("SPO Translations").³
4. On 7 January 2026, the Single Trial Judge extended the time for the Defence response to 23 January 2026.⁴
5. Before that deadline fell and therefore before the Defence had filed its submissions on the inadmissibility of the SPO Transcripts and SPO Translations,

¹ KSC-BC-2023-12/F00708, STJ, [Decision on Prosecution Request for Transcription/Translation Verification Deadline](#), 29 January 2026, Public ("Transcripts Decision").

² KSC-BC-2023-12/F00376, [Thaçi Defence Notice of Objection and Reservation of Rights](#), 17 July 2025 (Reclassified as Public 21 October 2025).

³ KSC-BC-2023-12/F00632, Prosecution motion for admission of material through the bar table, 17 December 2025, Confidential (Public Redacted Version 7 January 2026) ("BTM").

⁴ KSC-BC-2023-12/F00656, STJ, [Decision on "Joint Defence Request for Extensions of Time and Word Limit for Responding to the SPO Bar Table Motion"](#), 7 January 2026, Public.

- on 14 January 2026, the SPO filed its Prosecution request for transcription/translation verification deadline (“SPO Request”).⁵
6. On 20 January 2026, the Defence filed a joint response to the SPO Request,⁶ which *inter alia* indicated that the Defence’s submissions regarding the unreliability of the SPO Transcripts would be included in its response to the BTM.⁷
 7. On 21 January 2026, the SPO replied.⁸
 8. On 23 January 2026, the Defence filed its joint response to the BTM, objecting to the admission of the SPO Transcripts and SPO Translations in their entirety (“BTM Response”).⁹
 9. On 29 January 2026, the Single Trial Judge issued the Transcripts Decision.
 10. On 30 January 2026, the SPO filed its reply to the BTM Response (“BTM Reply”),¹⁰ which was notified on 2 February 2026.
 11. On 3 February 2026, following *inter-partes* correspondence regarding the meaning of the Transcripts Decision, the Single Trial Judge ordered by email that any request for clarification of the Transcripts Decision be made by 5 February 2026, at 16h00.

⁵ KSC-BC-2023-12/F00666, Prosecution request for transcription/translation verification deadline, 14 January 2026, Confidential, para. 8.

⁶ KSC-BC-2023-12/F00683, Joint Defence Response to Prosecution request for transcription/translation verification deadline (F00666), 20 January 2026, Confidential (Public Redacted Version 21 January 2026).

⁷ *Ibid.*, para. 8.

⁸ KSC-BC-2023-12/F00686, Prosecution reply to ‘Joint Defence Response to Prosecution request for transcription/translation verification deadline (F00666)’, 21 January 2026, Public (Reclassified from Confidential 29 January 2026).

⁹ KSC-BC-2023-12/F00688, Joint Defence Response to SPO motion for admission of material through the bar table with confidential Annexes 1-6, 8-10 and public Annex 7, 23 January 2026, Confidential (Public Redacted Version 27 January 2026).

¹⁰ KSC-BC-2023-12/F00713, Prosecution reply to ‘Joint Defence Response to SPO motion for admission of material through the bar table’ with three confidential annexes, 30 January 2026, Confidential.

III. APPLICABLE LAW

12. Rule 79 of the Rules of Procedure and Evidence (“Rules”)¹¹ permits a Panel to exceptionally reconsider its own decisions where a clear error of reasoning has been demonstrated or where reconsideration is necessary to avoid injustice.

IV. SUBMISSIONS

A. OVERVIEW

13. The Defence maintains its submission that the orders contained in the Transcripts Decision violate the Defence right to silence, and may raise this matter in any eventual appeal.

14. To enable proceedings to advance, and without prejudice to any such appeal, the Defence will comply with the order set out in paragraph 23 of the Transcripts Decision. Nonetheless, the present filing is necessary for two reasons:

- (i) Material aspects of the procedure ordered in the Transcripts Decision are ambiguous. To ensure that the procedure is implemented fairly, the Defence respectfully requests certain clarifications. The reasons why these clarifications are essential are elaborated in the submissions below.
- (ii) The Transcripts Decision states that it is “[w]ithout prejudice to a decision on the pending bar table motion, including the Defence’s objections to the admission of the Visit Transcripts.”¹² Indeed, the Transcripts Decision makes no reference to the Defence’s BTM Response. However, parts of the reasoning in the Transcripts Decision have the effect of prematurely deciding – and deciding erroneously – arguments made in the BTM Response. Partial reconsideration is necessary to address these errors in

¹¹ Rules of Procedure and Evidence before the Kosovo Specialist Chambers, KSC-BD-03/Rev3, 2 June 2020 (“Rules”), Rules 77(1) and 97(3). All references to “Rule” or “Rules” refer to the Rules, unless otherwise specified.

¹² Transcripts Decision, para. 17.

reasoning, so as to ensure that the Transcripts Decision is (as it apparently intends to be) without prejudice to the determination of arguments in the BTM Response.

15. The following submissions identify a number of errors in the Transcripts Decision which have a bearing on both of these purposes. However, before identifying those errors it is necessary to set out some material regarding the science which forms the basis for the Defence submissions on these issues. It is in light of this science that the errors in the Transcripts Decision are made clear.
16. Defence submissions on these issues were set out at length in the BTM Response. Annex 7 to the BTM Response¹³ contains a (far from exhaustive) list of sources on this question. The submissions below should be read together with the BTM Response. Full citations for the expert literature referenced in the footnotes of these submissions are found in BTM Response Annex 7.

B. SCIENTIFIC PRINCIPLES REGARDING FORENSIC AUDIO AND ITS TRANSCRIPTION

17. In recent decades, a significant body of writing has developed in linguistic science which explains how long-established judicial practices for handling forensic audio are flawed, and can lead to miscarriages of justice.¹⁴
18. As a result of these new understandings, scientists call for the handling and analysis of forensic audio – and particularly its transcription – to be recognised by courts as an area of expert knowledge.¹⁵ Just as a court would not try to interpret fingerprint evidence without expert assistance; so too should it insist on expert assistance when interpreting forensic audio.

¹³ KSC-BC-2023-12/F00688/A07, Defence, Expert literature on ‘enhancement’ and transcription of forensic audio, 23 January 2026, Public (“BTM Response Annex 7”).

¹⁴ The list of sources in Annex 7 of the BTM contains 24 papers addressing these and closely related matters, but many others exist.

¹⁵ Fraser 2023, pp.335-337; Fraser 2014, p.18; Fraser and Stevenson, p.228; Fraser and Loakes, pp.417-18; Fraser and Kinoshita, p.151; Fraser House of Lords Evidence, sections 5.2, 6.1, 6.2, 7.1.

19. Moreover, just as long-accepted judicial practices for visual identification were eventually discarded when scientific understandings about psychology (and particularly suggestibility) demonstrated them to be unsound, an equivalent change is needed in how investigators, lawyers and courts deal with forensic *audio*, in order to avoid miscarriages of justice borne from a similar form of suggestibility, referred to as “priming”. The idea that the Single Trial Judge should simply perpetuate established practice,¹⁶ without scrutinising the science which now shows it liable to cause injustice, would be like continuing to use visual identification methods now known to be suggestible, simply because such methods had always been used.
20. The Defence acknowledges that this appears to be the first time that arguments have been made in an international criminal law setting about these new scientific understandings about forensic audio and how its improper transcription can result in injustice. That is not a reason to reject the science. The position reflected in these submissions and the BTM Response is not that of one radical thinker, or even a group of controversial scientists: it represents prevailing scientific opinion as indicated by the numerous sources cited. It is telling that the SPO has produced not one piece of material to argue otherwise.¹⁷
21. One of the most common misconceptions about forensic audio transcription which is addressed in the literature is reflected in the Transcripts Decision, paragraph 16. It states that the issue in dispute is
- ...whether certain sounds on these audio recordings have been transcribed accurately into Albanian. That is a purely objective exercise of linguistic analysis.¹⁸
22. That assertion is unreferenced and is a sufficiently commonplace assumption that it might have been simply considered a matter of “common sense”. Nonetheless,

¹⁶ BTM Reply, para 6.

¹⁷ The one and only expert source reference in the BTM reply is in footnote 54, where the SPO references a source which it apparently disagrees with, but without providing any basis for that disagreement.

¹⁸ Transcripts Decision, para. 16.

it is wrong as a matter of science. A central tenet of the expert literature in this field is that there is simply *no objectively determinable* truth about the speech (or non-speech sounds) contained in forensic audio. The exercise of listening to audio and giving it meaning in terms of language is subjective. In the process of transcribing forensic audio, there simply is no ascertainable “ground truth” as to what words were spoken.¹⁹

23. Relatedly, a person’s *subjective* understanding of the sounds they hear in an indistinct audio recording is significantly influenced by their contextual knowledge and expectations. In other words, *a listener tends to hear what he or she expects to hear*. This “priming” effect operates subconsciously. Importantly, it operates both (i) at the point of transcription (with a transcriber subconsciously influenced towards hearing words in the audio that he or she expects to hear); and (ii) at the point of using a transcript as an aid to audio (with a listener being subconsciously influenced towards hearing the words which appear in the transcript). These “priming” effects have been consistently demonstrated through experiments, and the Defence has been unable to identify any controversy among scientists about their existence.²⁰

24. A second and related error implicit in the Transcription Decision is an assumption that it is appropriate to handle forensic audio transcription in the same way as court audio transcription. This is another common assumption which is debunked in the scientific literature. The reason is that while the above principles regarding subjectivity and priming apply in theory for any audio recording, the level of

¹⁹ BTM Response paras 61-63; Fraser 2014, pp. 13-14; French and Fraser, p.300; Haworth 2018, pp. 435-437; Fraser and Loakes, pp. 414-416; Love and Wright, p.5; Fraser 2022, pp.3-4; Richardson, Haworth and Deamer, p.678; Fraser and Kinoshita, p. 150; Fraser 2023, pp324; Lai 2023, p. 2; Fraser, House of Lords Evidence, section 3.1; Harrington House of Lords Evidence, Question 2. In particular, see the experiment described in Love and Wright, where a 4-minute conversation among 5 speakers was transcribed by 8 different professionals, with in considerable variation between the resulting transcripts.

²⁰ Examples of experiments demonstrating these effects are found in: Fraser, Stevenson and Marks; Fraser and Stevenson; Fraser and Kinoshita; Fraser 2021; Kettle and Fraser.

subjectivity involved varies significantly based on the quality of the audio.²¹ Thus priming operates with vastly more effect for *covertly recorded forensic audio*; and potentially with virtually no effect for high quality, carefully curated audio such as that recorded in a court hearing. Some of the reasons for that were set out in the BTM response.²² They are well recognised in the literature.²³ It is for this reason that processes which are entirely appropriate for transcribing *court audio* (which is rarely indistinct) become entirely inappropriate for transcribing *forensic audio* (which is frequently indistinct).

25. Finally, the Defence notes that *transcription* is a qualitatively different exercise than *translation*. Translation involves using written text in one language to represent the meaning of a written text in another language. Transcription involves producing a written text from sounds. These are different processes.²⁴

C. ERRORS IN THE TRANSCRIPTS DECISION

26. The Transcripts Decision does not take note of the principles above, including as they were set out in the BTM Response. It instead proceeds on the basis of assumptions about forensic audio and its appropriate treatment which, although they are commonplace and intuitive, have been shown by scientists to be wrong. Several clear errors are seen in the Transcripts Decision as a result:

²¹ As explained by Haworth 2018, p.435: “the transcriber adds their own layer of interpretation to the original data, even with a relatively straightforward transcription of uncontentious audio material. And as the quality of the recording drops, the amount of interpretation will increase.”

²² BTM Response, paras 89.

²³ Fraser 2014, pp. 8-9; Fraser and Loakes, pp.414-416; Lai 2023, p. 2; Fraser Houser of Lords Evidence, sections 3.3 and 5.1. For similar points about the differences between covert forensic audio and *overt* recordings used as evidence, such as police interviews, see: Harrington 2024, p.26; Haworth 2018, pp.434-435.

²⁴ Lai 2023, pp.4-5.

(i) *The Transcripts Decision wrongly posits that transcription is an ‘objective’ process*

27. The Transcripts Decision’s principal error is found in paragraph 16, which states that transcription is an “objective exercise”.²⁵ For the reasons explained above in paragraphs 21-23, this is incorrect.

28. Indeed, this fact is illustrated by SPO’s own continuous disclosure of different “revised” versions of the SPO Transcripts (on the basis on an unknown process). This shows that transcription of this audio is not a mechanical or “objective” exercise leading only to one unique, “correct” transcription.

(ii) *The Transcripts Decision wrongly assimilates procedures for verifying court hearing transcripts to the evaluation of transcripts of indistinct forensic audio*

29. Because the Transcripts Decision treats forensic audio transcription as an “objective” process, it appears to assume that there exists a notional “correct” transcript. Accordingly, “verification” appears to be treated as a process by which LSU would divine this objective ground truth as to the contents of the audio. This is erroneous. As set out above, there is no knowable “ground truth” about the words spoken in indistinct forensic audio.

30. Despite this, transcripts can be more or less reliable, based on the factors explained in the BTM response.²⁶ The means recommended for *evaluating* the reliability of a transcript is the production of a separate transcript, by an independent transcriber.²⁷ In principle, the LSU staff might be in a position to play this role (subject to questions about their prior exposure to SPO material and similar matters). However, in order for this process to remain independent and impartial, the transcriber *must not read the disputed transcript while (or before/after) listening to the audio*. That is because – as explained above and in the BTM response – to do so

²⁵ Transcripts Decision, para. 16.

²⁶ BTM Response, paras 69-71 *et seq.*

²⁷ This is usually recommended to be done under supervision from an independent expert: Harrington House of Lords Evidence, Questions 1, 5, 5a and 6.

would result in textual priming. The independent transcriber would be (unconsciously) subject to the suggestibility of the disputed transcript.²⁸

31. The process for *evaluating* a transcript of forensic audio is thus different in nature from the process for *verifying* a transcript of court audio which is commonly used in this tribunal and others. Listening to audio while reading the challenged transcript is relatively unproblematic for court audio, because the audio is unlikely to be indistinct (for reasons explained in the BTM Response²⁹ and in scholarly papers³⁰).
32. The Transcripts Decision wrongly conflates these processes. As well as using the term “verification”, it refers to LSU’s “usual procedures”.³¹ However, the texts regulating LSU’s work make no mention of LSU playing a role in the “verification” of forensic audio. The Registry Instruction on Requesting Translation, Interpretation and Verification Services³² provides that “verification requests” may be submitted to verify “official translations produced by LSU”, “post-session verification of accuracy of interpretation of hearings”, and “post-session verification of accuracy of transcripts of hearings”.³³ “Verification” as used in this document relates only to transcripts of KSC court hearings. It *does not* include the reviews of *transcripts of forensic audio*. Such reviews are also not mentioned in the Registry’s Policy on Translation and Interpretation.³⁴ It is

²⁸ See again Harrington, House of Lords Evidence, Questions 5, 5a and 6: “...checks should be carried out by independent transcribers who do not have access to information about the case or suggested interpretations. It is important that the person checking the transcript is not primed by this information.”

²⁹ BTM Response, para. 89.

³⁰ See the sources cited in footnote 23 above.

³¹ Transcripts Decision, para. 20(c).

³² KSC-BD-14/COR, [Registry Instruction on Requesting Translation, Interpretation and Verification Services](#), 15 May 2019 (Correction 30 May 2019).

³³ *Ibid.*, section 10(1).

³⁴ KSC-BD-13, [Policy on Translation and Interpretation](#), 15 May 2029

explicitly stated not to cover transcripts,³⁵ and refers only to verification of interpretation regarding *hearings*.³⁶

33. There are, accordingly, no “usual procedures”³⁷ for LSU to “verify” the correctness of an SPO produced transcript.
34. The Defence does not object to LSU playing a role in the evaluation of the SPO Transcripts. However, in light of the fundamentally different nature of the process this involves, in comparison with the verification of a court transcript, certain safeguards are necessary to ensure that this process is appropriate for forensic audio transcripts, and does not merely replicate the defects in the SPO’s approach. These requirements are identified below in Section E of these submissions.

(iii) The Transcripts Decision wrongly assimilates procedures for verifying translations to the evaluation of transcripts of indistinct forensic audio

35. The Transcripts Decision repeatedly refers to the Decision on Working Language,³⁸ and appears to consider that it establishes relevant procedures to resolve the dispute between the parties concerning the SPO Transcripts.³⁹
36. However, the Decision on Working Language does not create an established procedure for LSU “verification” of forensic transcription, or any other procedure for the handling of forensic audio. The paragraphs which the Single Trial Judge has relied on as establishing LSU as the arbiter of disputes⁴⁰ *do not refer to disputes about transcription*. Rather they state that:

Any translation requests to the LSU shall be made sufficiently in advance, and in line with the protocols in place, so as to allow for the proper translation and revision of the text elements concerned.[emphasis added]

³⁵ *Ibid.*, section 1(4).

³⁶ *Ibid.*, section 12.

³⁷ Transcripts Decision, para. 20(c).

³⁸ KSC-BC-2023-12/F00076, PTJ, [Decision on Working Language](#), 11 December 2024, Public.

³⁹ Transcripts Decision, paras 14, 17, 18, 21.

⁴⁰ Transcripts Decision paras 14 and 21 which refer to Decision on Working Language, para. 27; and para. 18, which cites Decision on Working Language, para. 20.

And that:

Any disagreement or controversy regarding the accuracy of *translations* shall be resolved by the LSU. [emphasis added]⁴¹

37. This is not mere semantics. As set out above (paragraph 25) the processes of translation and transcription are different. Accordingly, the fact that the Defence did not challenge the Decision on Working Language⁴² is irrelevant to the Defence's arguments concerning the appropriate procedure for evaluating transcriptions, let alone transcripts of contested forensic audio. The Defence had no reason to interpret the Decision on Working Language as establishing a procedure for "verifying" or evaluating such transcripts. In fact, the Decision on Working Language makes references to transcription in only two paragraphs,⁴³ and does so apparently to ensure a written record which can then be subject to *translation*, in accordance with the subject of that Decision. These paragraphs require the provision of online sources (where relevant) and timestamps. But they do not prescribe any principles regarding *how* or *by whom* transcription should be done. And contrary to what is stated in the Transcripts Decision,⁴⁴ these paragraphs also do not mention any procedure regarding the admission into evidence of transcripts (for example, whether through the evidence of the transcript's creator or not).

38. For the same reason, the Single Trial Judge erred in relying on the "procedure consistently adopted" in this court and others for addressing "alleged errors of either transcription or translation." These are different processes. The decisions regarding working language from other KSC cases⁴⁵ are materially the same as the Decision on Working Language in this case. Of the ICC and ICTY sources cited, only the *Bemba Appeal Judgment* concerns transcription, while the others are *solely*

⁴¹ Decision on Working Language, para. 27.

⁴² Transcripts Decision, para.14.

⁴³ Decision on Working Language, paras 16 and 26.

⁴⁴ Transcripts Decision, para. 17.

⁴⁵ Cited in Transcripts Decision, footnote 29.

concerned with translations and make no reference to transcription.⁴⁶ The Defence has already explained in its BTM Response why the approach taken in *Bemba* was flawed.⁴⁷ At the same time, the Transcripts Decision makes no reference to the more relevant ICTY jurisprudence concerning summaries and transcripts of intercepted audio communications, referenced in the BTM Response.⁴⁸

39. In any event, the Defence submits that the importance of practice is outweighed by evolving scientific opinion where the latter reveals that prior practice can lead to miscarriages of justice.
40. The Transcripts Decision therefore exhibits three significant errors of reasoning. These errors are undeniable if reference is made to the relevant science regarding forensic audio. It is telling that the SPO has to date made no reference to such science. It cannot contest the scientific consensus and therefore simply ignores it. The Single Trial Judge should not replicate that error. If he has any doubt about the matters set out above, even after reading the material contained in Annex 7 to the BTM Response, the appropriate path is to hear expert evidence on this question.

D. INJUSTICE CAUSED BY THE TRANSCRIPTS DECISION

41. While the existence of a “clear error of reasoning” is already a sufficient reason to reconsider, the Defence submits that it is also necessary to reconsider the Transcripts Decision so as to avoid injustice. This is for two reasons.

⁴⁶ See Transcripts Decision, footnote 30: ICC Regulations of the Court, Regulations 23(3) and 39(1) (which relate requirements to file a *translation* where materials are not in a language of the ICC, and make no mention of transcription); ICC Regulations of the Registry, Regulations 72 and 75 (which relate to the status and marking of Registry *translations*, and any issues arising from such *translations*, and make no mention of transcription); ICTY, *Prosecutor v Prlić et al.*, IT-04-74-A, Appeals Chamber, [Decision on Prlić’s Motion to Replace Translation of Exhibits 4D00348 and 3D03065](#), 11 March 2015, Public (which concerned Registry *translations*, and makes no mention of transcription); and *Prosecutor v Haradinaj et al.*, IT-04-84bis-T, [Decision on Prosecution’s Motion Relating to English Translations of Exhibits Associated with Bislim Zyrapi’s Written Evidence](#), 15 December 2011, Public (also which concerned Registry *translations*, and makes no mention of transcription).

⁴⁷ BTM Response, paras 87-88.

⁴⁸ BTM Response, para. 67.

42. First, as a matter of process, the Transcripts Decision has resulted in the Single Trial Judge ruling on certain matters fundamental to the case, without first considering the Defence submissions on those issues. The Defence explained in its response filed on 20 January that the SPO Request implicated matters which were within the scope of the Defence's BTM Response and would be set out there in full. Nonetheless, the Transcripts Decision expresses a (wrong) position on a number of matters addressed in the Defence's BTM Response without a single reference to those submissions. As such, the Transcripts Decision infringed the natural justice principle of *audi alteram partem*, which is applicable in KSC proceedings.⁴⁹
43. Secondly, as a matter of substance, the Transcripts Decision will result in injustice if it leads to the admission of unreliable and prejudicial material. This is the likely outcome if the Single Trial Judge is not willing to reconsider the aspects of the Transcripts Decision which are at odds with scientific opinion, and accept an approach informed by the relevant science.

E. AMBIGUITY IN THE TRANSCRIPTS DECISION

44. The Transcripts Decision establishes a procedure and timeframes for LSU to "verify" the contents of the contested audio recordings. However, it is apparent that material differences of opinion exist between the Parties regarding the meaning of the procedure.
- (i) Procedure to be followed by LSU, particularly regarding the use of SPO Transcripts*
45. The Defence understands that in responding to any request pursuant to the Transcripts Decision, LSU is not to undertake any attempt at, or element of, voice attribution.⁵⁰Beyond this, the procedure to be used followed is unclear. The

⁴⁹ *Referral of the Rules of Procedure and Evidence Pursuant to Article 19(5) of the Law*, KSC-CC-PR-2017-01, Constitutional Court Chamber, [Judgment](#), 26 April 2017, Public, para. 23.

⁵⁰ Transcripts Decision, para. 20(d).

Transcripts Decision directs that LSU should use its “usual procedures”. However, for the reasons set out above, LSU has no “usual procedures” for this work.

46. Correspondence between the SPO and the Registry since the Transcripts Decision, triggered by its paragraph 21, makes clear that the SPO seeks to have LSU read its impugned SPO Transcripts while listening to the relevant audio segments. The Defence objects to this approach, which would taint the LSU’s transcripts and render this process pointless.
47. This is due to the phenomenon of *textual priming*, which is described above at paragraph 23 and in more detail in the BTM Response.⁵¹ There appears to be no dispute within the expert literature that textual priming operates such that a person who listens to indistinct audio while reading a transcript will be influenced towards hearing the words written in the transcript even if those words have been inaccurately transcribed. This effect has been demonstrated through numerous experiments.⁵² The SPO has made no attempt to dispute the existence of textual priming as a scientifically accepted phenomenon and does not explain why the Single Trial Judge should ignore this science.
48. Having the LSU produce a transcript *without* access to the SPO Transcripts, would, on the other hand allow the Single Trial Judge to at least identify how much of the audio purportedly transcribed by the SPO is in fact entirely unintelligible, and which parts these are. The Defence also notes in this regard that the SPO has disclosed multiple versions of the SPO Transcripts of the Detention Centre visits and that it is unclear why any one version would be more authoritative than any other, *i.e.* why one version should serve as a better reference in comparison with anterior or posterior versions. That is particularly so given that all SPO Transcripts

⁵¹ BTM Response, paras 86-91.

⁵² See footnote 20 above. For a short audiovisual demonstration showing how textual priming operates, see: Forensic Transcription Australia, [Why we need forensic phonetics](#).

have been issued on the basis of an unknown process. For example, the process through which SPO interpreters/translators have been able to add more and more words to the SPO Transcripts with each successive version has not been transparent. Even in its BTM Reply, the SPO has provided no information at all about how the SPO Transcripts were created, or how they were subsequently “revised”.

49. The SPO claims that the LSU’s inability to transcribe two segments already sent to it by the Defence is “irrelevant”⁵³ and that those segments are not representative.⁵⁴ If the SPO is correct, and the material contained in the covert audio is *not indistinct*, then it is unclear why the SPO even wants to provide the SPO Transcripts to the LSU, since – on the SPO’s case – LSU should simply be able to replicate these. Only by asking LSU to create fresh transcripts of the contested material *without* reference to the SPO Transcripts will the Single Trial Judge be in a position to assess these matters.
50. Accordingly, the Defence requests the Single Trial Judge to clarify, for the benefit of all Parties and LSU, that in responding to any requests made in implementation of the Transcripts Decision, LSU must not access or have regard to any transcripts produced by the SPO. This is the only way to prevent LSU transcribers from being unduly influenced by the SPO’s interpretation of the audio of the Detention Centre visits.

(ii) Involvement of appropriate LSU staff

51. The Defence has already made a number of submissions about the importance of contextual priming in the process of creating transcript of indistinct forensic audio.⁵⁵ Contextual priming operates such that a person’s perceptions of speech

⁵³ BTM Reply, para. 8.

⁵⁴ BTM Reply, para.10.

⁵⁵ BTM Response, paras 75-85.

in an indistinct audio are influenced by that person's knowledge and expectations about the contents of the recording.⁵⁶

52. While LSU staff are less likely than SPO staff to have prejudicial expectations regarding the contents of the audio, the Defence cannot rule out that these staff have been influenced by their prior language work at the KSC, including by translating and/or interpreting key parts of the SPO's case in the Case 12 or Case 06 proceedings. The Defence is conscious that staffing limitations may make it difficult for LSU to assign transcribers who have had minimal involvement with SPO material. Bearing this in mind, but also considering the need to protect Defence rights and ensure the value of this process, the Defence requests the Single Judge to order LSU to exclude, or at least minimise, to the extent possible, the involvement of staff who have previously worked on SPO material in Case 12 or Case 06, and to disclose information relevant to these matters (as detailed below at paragraph 58).

(iii) Assurance of defence rights safeguards

53. The Defence maintains its submission, as set out in the BTM Response, that a forensic transcript amounts to testimony from a transcriber of what that transcriber hears when listening to the relevant forensic audio.⁵⁷ This follows from the fact, as set out above,⁵⁸ that a transcript is inherently subjective.

54. For the reasons already elaborated in the BTM Response,⁵⁹ this means that if LSU transcripts are admitted and relied on, the Defence may need to call the LSU staff who have created such transcripts to testify, including for example on their

⁵⁶ Coulthard and Johnson, 144-145; Fraser 2014, pp.11-12, 13-14; Haworth 2018, pp. 435; Fraser and Stevenson; Fraser and Loakes, pp.410-413; French and Fraser, pp.299-301; Fraser 2022, pp.6-9; Fraser 2023, pp.324-325; Fraser House of Lords Evidence, sections 3.2 and 5.1.

⁵⁷ BTM Response, paras 61-67.

⁵⁸ Paragraphs 22-23 above.

⁵⁹ BTM Response, paras 61-67.

relevant skills, applicable guidelines, procedures used, and any contextual knowledge which could have a bearing on priming.

55. Should the Single Trial Judge consider that LSU staff should *not* be called to testify, then an alternative mechanism must be established that would ensure Defence rights to confrontation are upheld. For example, an alternative, independent, transcription service could be used so that the independent transcriber could be called to testify and be subjected to examination.

V. CONCLUSION AND RELIEF SOUGHT

56. The Single Trial Judge has established a procedure which can, if carried out correctly, independently test the SPO Transcripts. In this respect the Transcripts Decision is a step forward. However, it is essential that this procedure be undertaken appropriately, in a manner which reflects the science around forensic audio transcription and particularly the effects of textual priming. If appropriate procedures are not followed, the material produced by LSU will be subject to precisely the same concerns as the Defence has already expressed about the SPO Transcripts, and the process will have been nothing more than a waste of time and resources.
57. The Defence has found no scientifically supported basis for diverging from the course that it proposes in this filing. And it is impossible to overstate the importance in this case of ensuring that any transcripts relied on are not flawed. That is so not only because of the centrality of the evidence in question for the SPO case, but also because the participants and the Single Trial Judge himself, not being Albanian speakers, have no other means of accessing this evidence.
58. For all of the above reasons, the Defence requests the Single Trial Judge to clarify the Transcripts Decision by ordering that:
- (i) In responding to any request pursuant to the Transcripts Decision regarding a contested segment of audio, LSU must listen to the audio and create a new

transcript without regard to any material provided by the SPO, and particularly without accessing or referring to any transcripts created by the SPO;

- (ii) LSU must endeavour to assign for this work those of its staff who have no prior involvement with SPO material from Case 12 or Case 06, or at least minimise the assignment of staff with such prior involvement;
- (iii) At the conclusion of its work, LSU must provide a report regarding how the work was undertaken, including any relevant information about the transcribers.⁶⁰
- (iv) The Defence retains the right to confront the evidence against it, including transcripts produced by LSU in response to any request pursuant to the Transcripts Decision, through the examination of LSU staff, if that material is tendered and relied on.

59. Finally, in light of the scientific material summarised above and in the BTM Response, the Defence requests that the Single Trial Judge reconsider the parts of his reasoning in the Transcripts Decision which are tainted by the errors set out above in Section C of the Defence submissions. While this partial reconsideration does not necessitate changes in the orders made in the Transcripts Decision (beyond the clarifications requested above), the Defence requests the Single Trial Judge to confirm that future rulings, including the ruling on the BTM, will not be constrained by these portions of reasoning in the Transcripts Decision.

⁶⁰ In the first instance, information which may identify the transcribers may be redacted from the version made available to the Defence.

VI. RELIEF SOUGHT

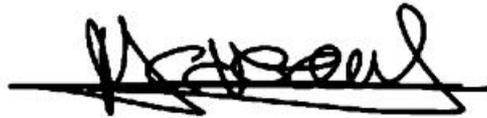
60. Accordingly, the Defence requests that the Single Trial Judge:

CLARIFY and **PARTLY RECONSIDER** the Transcripts Decision as set out above in paragraphs 58 and 59.

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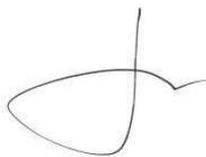
Respectfully submitted,

4 February 2026



Sophie Menegon

Counsel for Hashim Thaçi



Jonathan Elystan Rees KC

Specialist Counsel for Bashkim Smakaj



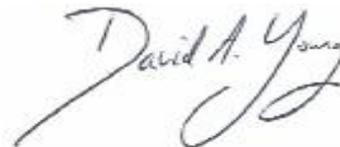
Iain Edwards

Specialist Counsel for Isni Kilaj



Alexander Admiraal

Specialist Counsel for Hajredin Kuçi



David A. Young

Specialist Counsel for Fadil Fazliu