



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: 14 May 2026

Language: English

Classification: Public

**Prosecution supplementary submissions on admissibility of Dr Fraser's
evidence with one public annex**

Specialist Prosecutor's Office
Kimberly P. West

Specialist Counsel for Hashim Thaçi
Sophie Menegon
Specialist Counsel for Bashkim Smakaj
Jonathan Elystan Rees
Specialist Counsel for Isni Kilaj
Iain Edwards
Specialist Counsel for Fadil Fazliu
David Young
Specialist Counsel for Hajredin Kuçi
Alexander Admiraal

I. INTRODUCTION

1. Despite serious flaws, and bearing in mind the low *prima facie* standard, the Specialist Prosecutor's Office ('SPO') does not object to the admission of the evidence of Dr Helen Fraser (DHT-03) pursuant to Rule 149.¹

II. SUBMISSIONS

A. THE SPO DOES NOT OBJECT TO THE ADMISSION OF DR FRASER'S EVIDENCE

2. Dr Fraser's evidence comprises:

- a. her report, dated 27 March 2026;²
- b. the letter of instruction provided to her by the THAÇI Defence;³
- c. the annex to the letter of instruction;⁴
- d. her testimony given on 11-12 May 2026;⁵
- e. the video tendered through Dr Fraser by the THAÇI Defence;⁶ and,
- f. the eight items tendered through Dr Fraser by the SPO.⁷

3. Dr Fraser's report and related testimony were flawed by serious methodological issues and are – even taken at their highest – of very limited relevance and probative value to this case. The scope and materiality of these flaws are inherent to Dr Fraser's report itself and were further demonstrated during her testimony,⁸ which was at times evasive and contradictory.⁹ Indeed, the process by which Dr Fraser conducted her examination and finalised her report in this case, including the lack of recording and

¹ Rules of Procedure and Evidence before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' are to the Rules.

² 1D00136 MFI.

³ 1D00137 MFI.

⁴ 1D00138 MFI.

⁵ T.761-888 (11 May 2026); T.889-1021 (12 May 2026).

⁶ 1D00139 MFI. This does not include the materials tendered by the THAÇI Defence from the bar table without objection from the SPO. These items were admitted as 1D00140, 1D00142, 1D00143, 1D00144, 1D00144.1, 1D00144.2, 1D00145, 1D00146, 1D00148. See Oral Order, T.1020 (12 May 2026).

⁷ See ANNEX 1. The SPO notes that items 7 (P00232 MFI) and 8 (P00233 MFI) are currently classified confidential, however, they can both be reclassified as public upon admission.

⁸ See e.g. T.881-887 (11 May 2026); T.920-936, 939-947 (12 May 2026).

⁹ See e.g. T.878, 880-885 (11 May 2026); T.920-928 (12 May 2026).

reporting on: (i) the tools she used; (ii) the material she received and relied on; and (iii) what further instructions and ‘clarifications’ she received and how these impacted the unspecified number of undisclosed draft reports she provided to the THAÇI Defence,¹⁰ is indicative both of lack of clarity as to the methodology employed and a bias incompatible with what is expected of an expert witness.¹¹

4. These – and other - issues impugn the reliability of Dr Fraser’s evidence as a whole and are sufficient to militate against its admission. However, given: (i) the low threshold for the admissibility of expert evidence;¹² (ii) the stage of the proceedings and interests of judicial efficiency; and (iii) the fact that the deficiencies in the reliability of Dr Fraser’s evidence and the weight – if any - to be afforded to it can be adequately addressed in the parties’ final submissions and in light of the entirety of the evidential record,¹³ the SPO does not object to its admission.¹⁴

B. THE ITEMS TENDERED THROUGH DR FRASER ARE NECESSARY TO UNDERSTAND AND ASSESS HER EVIDENCE

5. As noted above, the THAÇI Defence and the SPO tendered items for admission through Dr Fraser. The SPO has no objection to the admissibility of the item tendered by the THAÇI Defence.¹⁵ The items tendered by the SPO are likewise admissible. The

¹⁰ T.897-900, 909, 914-915 (12 May 2026).

¹¹ ICTY, *Prosecutor v. Popović et al.*, IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 January 2008, para.22 noting that ‘Trial Chambers have ruled inadmissible the evidence of a proposed expert witness on the ground that this evidence was so lacking in terms of the indicia of reliability because of lack of impartiality and independence or appearance of bias that it was not probative.’

¹² Prosecution appeal against the ‘Decision on the Admission of Expert Evidence of Witness 8’ (F00825), KSC-BC-2023-12/IA009/F00002, 11 May 2026, Confidential, para.20 (citing the standard applied in ICTR, *Prosecutor v. Karemera et al.*, Decision on Joseph Nzirorera’s Motion to Limit the Scope of Testimony of Expert Witnesses Alison Des Forges and Andre Guichaoua, ICTR-98-44-T, 21 August 2007, para.5).

¹³ Witness 8 Decision, KSC-BC-2023-12/F00825, paras 18-23.

¹⁴ The SPO notes, for example, that the methodological and reporting flaws in Dr Fraser’s evidence may have less of an impact on Sections 5 and 6 of her report concerning linguistics and the broad concept of priming generally, compared to Sections 7 and 8 of the report concerning the application of such concepts to the evidence in this case.

¹⁵ 1D00139 MFI. *See above* fn.6.

items are *prima facie* reliable and authentic, and Dr Fraser discussed each during cross-examination and provided commentary thereon.¹⁶ Further, should the STJ admit Dr Fraser's evidence pursuant to Rule 149, each item in Annex 1 is relevant to that evidence, including to the assessment of Dr Fraser's methodology and credibility, and to the reliability of her report and its conclusions. The items are necessary to ensure a complete evidential record and that the STJ has all the contextual information required to properly assess Dr Fraser's evidence.

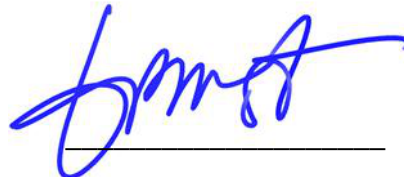
III. CLASSIFICATION

6. This filing is classified public.

IV. CONCLUSION

7. The SPO does not object to the admission of Dr Fraser's evidence, including the items tendered by Parties at the conclusion of her testimony.

Word count: 882



Kimberly P. West

Specialist Prosecutor

Thursday, 14 May 2026

At The Hague, the Netherlands

¹⁶ See ANNEX 1.