

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

Date: 18 May 2026

Language: English

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Thaçi Defence Response to SPO Submissions concerning Professor Fraser

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

1. The Defence for Mr Hashim Thaçi (“Defence”) hereby responds to the Prosecution supplementary submissions on admissibility of Professor Fraser’s evidence (“SPO Submissions”).¹

Items tendered by the SPO

2. The SPO requests to admit a number of items marked for identification following Professor Fraser’s testimony, identified in an annex to the SPO Submissions (“SPO Annex”).²
3. The Defence does not object to the admission of these items, but highlights some caveats regarding their assessment/weight.
4. First, the admission and use of these items must reflect the extent to which they were shown to Professor Fraser and discussed with her. The SPO Annex does not accurately reflect this when listing references in the hearing transcript to these items.³ While Professor Fraser indicated her familiarity with some of the items tendered, others were neither written nor previously seen by her, and were only shown to her in part during the hearing. That is the case for the correspondence between the SPO and the Defence (Item 5⁴) and the Defence note of its 5 May 2026 meeting with Professor Fraser (Item 8⁵).
5. Secondly, it appears that the SPO seeks to use Items 1 and 2 to show how Professor Fraser’s evidence has been assessed by other courts. While the Defence does not object to their admission, since such admission will facilitate

¹ KSC-BC-2023-12/F00913, Prosecution supplementary submissions on admissibility of Dr Fraser’s evidence with one public annex, 14 May 2026, public.

² KSC-BC-2023-12/F00913/A01, ANNEX 1 to Prosecution supplementary submissions on admissibility of Dr Fraser’s evidence, public.

³ For example, Item 8, was mentioned in the hearing on two occasions: first, in respect of its paragraphs 27-28 at T.922-926; and then in respect of its paragraph 7 at T.986-987. The multiple other transcript references given at line 8 of the SPO Annex do not reference this item.

⁴ MFI P00230.

⁵ MFI P00231.

the understanding of Professor Fraser's testimony in relation to these items, the Defence stresses that the Single Trial Judge is not bound by these decisions.

6. Contrary to the picture painted by the SPO, these decisions in fact demonstrate the positive regard shown for Professor Fraser's expertise by those courts. In *Eastman*, the Supreme Court of the Australian Capital Territory said that Professor Fraser was "clearly a knowledgeable witness".⁶ In *Clark*, the New South Wales Supreme Court referred to "interesting and compelling analysis"⁷ and indeed accepted that the police transcripts in that case may have been rendered unreliable by contextual priming.⁸
7. However, the Defence cautions that the Single Trial Judge must make his own assessments of Professor Fraser's evidence and is not bound by other courts' credibility findings regarding a witness.⁹ The Single Trial Judge does not have before him all the material which was before the judicial panels in those cases. It is also clear from the face of these decisions that the tasks undertaken by Professor Fraser in those instances (for example, creating her own transcripts) differ from the more limited requests made of her in the present case, which focused on assessing the methodology used by the SPO to create its transcripts. Moreover, in the present case the Single Trial Judge is faced with a different task from those arising in *Clark* and *Eastman* cases. In *Clark* the court had to assess whether Professor Fraser's report constituted "fresh evidence" following

⁶ MFI P00227, p. SPOE00410938, para. 26.

⁷ MFI P00226, p. SPOE00410909, para.28.

⁸ MFI P00226, p. SPOE00410908, paras 25-28.

⁹ *Case 06*, KSC-BC-2020-06, Transcript of 7 November 2024, pp.22153-22154. In refusing to admit into evidence part of the ICTY *Limaj* Judgment which assessed the credibility of a person now appearing as a *Case 06* witness, Trial Panel II stated: "The responsibility to assess the credibility of a witness and the reliability of his evidence is exclusively that of this Panel, and any assessment of demeanour that might be relevant to the evaluation will be made by the Panel, not another court. Also, the relevant parts of the *Limaj* judgment have been put to the witness and he commented upon those in the course of his cross examination of W01453. The Panel further reiterates that it is not bound by evidentiary findings made by other trial chambers. The Panel, therefore, denies the admission of 1D00204 into evidence."

a conviction: the court considered that Professor Fraser's evidence was "interesting and compelling", but that it did not amount to fresh evidence.¹⁰ In *Eastman*, the court was faced with prosecution and defence experts who gave differing evidence. The court did not doubt Professor Fraser's evidence in itself; rather it *preferred* the evidence of other experts to the extent that there was a difference between them on some of the matters in dispute.¹¹ In the present case there is *no evidence* from the SPO which contradicts Professor Fraser's testimony, much less *expert* evidence.

8. Furthermore, the Defence highlights that Professor Peter French (the renowned expert¹² in phonetics whose evidence was preferred over Professor Fraser's in *Eastman*) has cited and relied on Professor Fraser's work in his writings.¹³ Indeed, on precisely the question at issue in the present case – the unreliability of forensic transcription undertaken without distance from investigators – Professors French and Fraser have co-published.¹⁴

The SPO's attack on Professor Fraser

9. The SPO Submissions make a hyperbolic attack on Professor Fraser's evidence which the Single Trial Judge should interpret as undermining only the credibility of the SPO.¹⁵
10. The SPO does not dispute the admissibility of Professor Fraser's evidence. It is clear that despite its best efforts, it could find no plausible basis on which to do

¹⁰ MFI P00226, p. SPOE00410908-SPOE00410909, para. 28.

¹¹ MFI P00227, p. SPOE00410959, paras 130-132.

¹² T.982, lines 4-6.

¹³ P. French and L. Stevens, "Forensic Speech Science", in M.J. Jones and R. Knight (eds), *The Bloomsbury Companion to Phonetics*, 2013, p.184.

¹⁴ P. French and H. Fraser, "Why 'Ad Hoc Experts' Should Not Provide Transcripts of Indistinct Forensic Audio, and a Proposal for a Better Approach, *Criminal Law Journal*, 2018, pp. 298-302.

¹⁵ SPO Submissions, para.3.

so. Questions of the weight to be given to admitted evidence are properly matters for final briefs.

11. Yet, the SPO – prematurely – questions the weight to be given to Professor Fraser’s expert evidence, presumably because her report and testimony directly question the reliability of the SPO’s central evidence.¹⁶ Her evidence reveals that the SPO’s conduct in this case has been marred by poor forensic practice.¹⁷
12. SPO disclosures made *during* Professor Fraser’s evidence only served to strengthen that conclusion, demonstrating that the SPO produced its transcripts using seven persons¹⁸ who were deeply involved in its investigation,¹⁹ and some of whom are not even language personnel but rather appear to be SPO analysts or investigators.²⁰ Indeed, the material now finally disclosed by the SPO contradicts statements in previous SPO submissions filed in this case, which identified only *two language workers* (“two interpreters/translators/transcribers with extensive relevant experience”²¹) as having “prepared and/or reviewed and verified” the SPO’s transcripts.²²
13. The public record now clearly shows that the SPO transcripts are unreliable. They are tainted by cognitive bias, brought about by the SPO’s ignorance or disregard of relevant forensic principles.

¹⁶ MFI 1D00136, pp. DHT1201306- DHT1201307; T.807, lines 18-24.

¹⁷ For example: T.787, line 2 – T.788, line 25; T.800, line 6 – T.801, line 3; T.808, line 5 – T.809, line 25; T.812, lines 9-25; T.819, lines 5-17; T.822, lines 18-21; T.824, line 19 – T.825, line 4; T.828, line 1 – T.829, line 21.

¹⁸ Exhibit 144, para. 3; Exhibit 1D00140.

¹⁹ Exhibit 144, paras 5-6; Exhibits 1D00144.1 and 1D00144.2.

²⁰ Exhibits 1D00141 and 1D00142.

²¹ KSC-BC-2023-12/F00666, Prosecution request for transcription/translation verification deadline, 14 January 2026, confidential, para. 8. The use of “both” in the following two sentences of that SPO filing makes clear that the reference to “two” individuals is not an inadvertent error.

²² *Ibid.*

14. Instead of showing candour to the Court by acknowledging that it made serious mistakes in the production of its transcripts, the SPO has chosen to attack a highly respected expert whose evidence stands in the way of its goal of winning this case at any cost. The Defence has searched extensively for material in the public domain regarding Professor Fraser's professional reputation and ethics, and has found not a single piece of evidence which calls these into doubt. For the sake of correcting the public record, the Defence highlights that:

- (i) Professor Fraser's methodology was clearly set out in her report and no flaws in that methodology were revealed by the SPO's cross-examination. Indeed Professor Fraser has been extremely careful and responsible in repeatedly identifying any limitations in what she was able to address and readily acknowledged certain limitations under cross-examination.²³ As an expert, Professor Fraser is best placed to assess what she is able to offer opinions on, and there is nothing before the Court which calls her judgment on that into question.
- (ii) More specifically, Professor Fraser was forthright (in her report and her oral testimony) about her lack of knowledge of Albanian.²⁴ Nonetheless, she did not consider that this prevented her from evaluating the quality of the SPO audio material and the reliability of the SPO's transcriptions in this case. Indeed, Professor Fraser's evidence about the reliability of the latter principally turned on the *lack* of methodology disclosed by the

²³ For example, regarding the fact that she received only a small amount of the audio material in the case and could not herself assess whether it is representative, see: T.902, line 16 – T.903, line 3; T.906 lines 1-14; T.916, line 16 – T.919 line 6; T.952, lines 16-21; T.1007, lines 20-22. See also T.1008, lines 17-20.

²⁴ In Professor Fraser's report see: MFI 1D00136, pp. DHT1201302 - DHT1201303; in the hearing transcript see: T.924, lines 16-24; T. 926, lines 10-13; T. 959, lines 9-15; T.969, lines 9-11; T.1011, lines 14-22.

SPO, something which in no way relates to the language used in the audio or Professor Fraser's knowledge of it.

(iii) Professor Fraser was similarly forthright regarding the limited use which could be made of Artificial Intelligence ("AI").²⁵ While Professor Fraser was observably tired towards the end of the hearing on 11 May when Counsel for the SPO attempted to badger her into identifying this as a foundational flaw in her methodology,²⁶ she repeatedly and unambiguously clarified these matters on 12 May.²⁷ She did so calmly and convincingly, despite the theatrics of Counsel for the SPO.²⁸

(iv) It was apparent that Professor Fraser was careful to ensure that her oral evidence was correctly presented and understood.²⁹ Far from making her "evasive",³⁰ this should be viewed as a factor which enhances the credibility of her evidence. She did not refuse to respond on any matters which she was asked about, but sought to ensure that her views were appropriately qualified and carefully phrased.

15. For the SPO to now claim that Professor Fraser's methodology was flawed or that her evidence was inconsistent ultimately should only serve as a reflection of the SPO's own desperation and lack of credibility.

²⁵ In Professor Fraser's report see: MFI 1D00136, p. DHT1201302; in the hearing transcript see: T.878, lines 3-4; T.883, lines 8-10; T.959, lines 16 – T.963, line 4; T.969, 8-9.

²⁶ Especially at T.883.

²⁷ T.921, line 25 – T.922, line 24; T.926, line10 – T.928, line 18.

²⁸ T.960, lines 7-23.

²⁹ For example: T.878, lines 12-13 and 17-19.

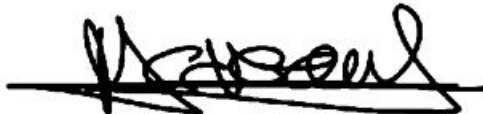
³⁰ SPO Submissions, para.3.

16. The Defence requests that the Single Trial Judge:

ADMIT the evidence of DHT-03.

[Word count: 1882 words]

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Sophie Menegon', written over a horizontal line.

Sophie Menegon
Counsel for Hashim Thaçi

Thursday, 18 May 2026

Paris, France