



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-06

**The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli,
Rexhep Selimi, and Jakup Krasniqi**

Before: Trial Panel II

Judge Charles L. Smith III, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 9 July 2025

Language: English

Classification: Public

**Public Redacted Version of Decision on Victims' Counsel's Request for
Admission of Documents Through the Bar Table**

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TRIAL PANEL II ("Panel"), pursuant to Articles 21, 22(3), (6), and (7), 37(1) and 3(c), and 40(6)(e) and (h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 114(4)(a) and (5), and 138(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 28 May 2025, Victims' Counsel filed a motion requesting: (1) the admission of various documents through the bar table; and (2) the "possibility" to amend the exhibit list as a result of the Panel's 15 May 2025 consolidated decision that admitted four new victims to participate in the proceedings¹ ("Motion").²
2. On 10 June 2025, the Defence filed a joint response to the Motion ("Response"),³ and the Specialist Prosecutor's Office ("SPO") filed a consolidated response ("SPO Response").⁴
3. On 16 June 2025, Victims' Counsel filed a reply ("Reply").⁵

¹ F03179, Panel, *Consolidated Decision on the Eighteenth and Nineteenth Registry Report on Victims' Applications for Participation in the Proceedings* ("Decision on the Registry Report on Victims"), 15 May 2025, confidential (a public redacted version was filed on the same day, F03179/RED).

² F03207, Counsel for Victims, *Victims' Counsel's Request for Admission of Documents Through the Bar Table*, 28 May 2025, confidential, with Annex 1, confidential (a public redacted version was filed on 10 June 2025, F03207/RED).

³ F03246, Specialist Counsel, *Joint Defence Response to 'Victims' Counsel's Request for Admission of Documents Through the Bar Table*, 10 June 2025, confidential, with Annex 1, confidential.

⁴ F03243, Specialist Prosecutor, *Prosecution Consolidated Response to Victims' Counsel's Submissions F03160, F03206, F03207, and F03208*, 10 June 2025, confidential.

⁵ F03267, Counsel for Victims, *Victims' Counsel's Reply to the "Joint Defence Response to 'Victims' Counsel's Request for Admission of Documents through The Bar Table"* ("Reply"), 16 June 2025, confidential.

II. SUBMISSIONS

A. MOTION

4. Victims' Counsel requests the admission of: (a) medical records regarding six victims participating in the proceedings (VPPs)⁶; (b) one page from a compilation of reports from the European Union Rule of Law Mission in Kosovo ("EULEX") containing [REDACTED] data⁷ ("EULEX record"); and (c) six extracts (totalling seven pages)⁸ from a book entitled "Abducted Truth", published by the Association of Families of Kidnapped and Missing Persons in Kosovo and Metohija⁹ (collectively, "Proposed Records").¹⁰ Further, Victims' Counsel submits that, if the newly admitted victims produce relevant documentation regarding harm, the Panel should permit the amendment of the exhibit list and a second bar table motion.¹¹

5. Victims' Counsel argues that the Proposed Records are: (i) relevant; (ii) *prima facie* authentic and reliable; and (iii) have probative value that is not outweighed by any prejudice.¹²

B. DEFENCE RESPONSE

6. The Defence objects to the admission of all the Proposed Records on the basis that they lack *prima facie* authenticity and reliability, and/or are prejudicial.¹³

⁶ Victims' Counsel provided unredacted versions to the Panel on a strictly confidential and *ex parte* basis. See Motion, para. 10, footnote 5. See also Annex 1 to the Motion, items 1-12. The proposed medical records are: (i) V0070029-V0070033 RED; (ii) V0070029-V0070033; (iii) V0200001-V0200004 RED; (iv) V0200001-V0200004; (v) V0210001-V0210008 RED; (vi) V0210001-V0210011 (vii) V0820001-V0820004 RED; (viii) V0820001-V0820004; (ix) V1300001-V1300002 RED; (x) V1300001-V1300002; (xi) V2150004-V2150008 RED; and (xii) V2150001-V2150008.

⁷ See Annex 1 to Motion, item 13. The Proposed EULEX document is [REDACTED].

⁸ Motion, para. 24.

⁹ See Annex 1 to Motion, item 14. The Proposed Extracted pages are V0000323-V0000331 (pp. 18, 33, 48, 55, 56, 79, and 97).

¹⁰ Motion, paras 10-24.

¹¹ Motion, para. 24.

¹² Motion, paras 2, 10.

¹³ Response, para. 12.

7. In summary, the Defence argues that the medical records have one or more of the following issues:

- (a) It is not possible to discern what portions reflect the medical professional's own assessment versus the victim's testimonial account.¹⁴ Testimonial accounts are inappropriate for admission through the bar table.¹⁵
- (b) Many reports address matters beyond the scope of the proceedings and unduly expand on the notion of harm.¹⁶
- (c) Certain records were disclosed in a manner that prevents the Defence from challenging their reliability.¹⁷
- (d) Certain records lack corroboration through contemporaneous prescriptions, pharmacy records, or clinical notes to substantiate medical conditions.¹⁸

8. Regarding the EULEX record, the Defence argues that it is not for Victims' Counsel to provide evidence that goes to the credibility of witnesses, and that its admission would be highly prejudicial.¹⁹ The Defence emphasises that Victims' Counsel has been aware of this document since December 2020 and should have applied to use it when [REDACTED] testified.²⁰ Further, the Defence submits that whether [REDACTED] was in prison or not at the time in question, is a matter for the SPO to address. Regarding the extracts of "Abducted Truth", the Defence argues that they contain testimonial-like evidence and allegations that go directly

¹⁴ Annex 1 to the Response, items 1, 3, 9. *See also* Annex 1 to the Response, para. 15.

¹⁵ Response, para. 15.

¹⁶ Response, para. 13.

¹⁷ Response, paras 14, 16. *See e.g.* Annex 1 to the Response, items 5, 7, 9, 11. Victims' Counsel states that original language versions of the records regarding V021 and V215 have not been provided because they reveal the location of those VPPs.

¹⁸ *See e.g.* Annex 1 to the Response, items 7-8, 9, 11; Response, para. 14.

¹⁹ Response, paras 20-22, 24-25.

²⁰ Response, para. 23.

to the alleged crimes.²¹ As a result, the Defence argues that this kind of evidence is beyond the scope of what can be presented by Victims' Counsel.²²

C. SPO RESPONSE

9. The SPO does not object to the admission of the Proposed Records.²³

D. REPLY

10. Victims' Counsel replies that they are entitled to call evidence of harm.²⁴ In response to specific objections raised about the medical records, Victims' Counsel argues that medical records inevitably contain self-reported descriptions of alleged illnesses, which do not make them "testimonial" in nature.²⁵ Further, they submit that the remaining Defence arguments are issues that can be addressed through submissions at the end of the case.²⁶

11. Regarding the EULEX record, Victims' Counsel argues that evidence of harm includes adducing relevant evidence bearing on the credibility of [REDACTED] who has testified.²⁷ Finally, regarding extracts from "Abducted Truth", Victims' Counsel clarifies that they are not interested in the truth of the material contained therein, only the fact that the book was made and that the identified victims appear in it, demonstrating the victims' ongoing search for the truth.²⁸

²¹ Response, para. 26.

²² Response, para. 9.

²³ SPO Response, para. 3.

²⁴ Reply, para. 3.

²⁵ Reply, paras 8, 10.

²⁶ Reply, paras 9, 11-13.

²⁷ Reply, para. 3.

²⁸ Reply, para. 16.

III. APPLICABLE LAW

12. The law regarding the admission of evidence from the bar table is set out in Article 40(6)(h) and Rule 138(1). The law has also been laid out extensively in the Panel's prior decisions.²⁹

13. In this case, the tendering party is Victims' Counsel. As such, admissibility must be analysed in light of the permissible role and responsibilities of Victims' Counsel. As the Panel has previously noted, Victims' Counsel may make a genuine contribution to the proceedings without duplicating or interfering with the responsibilities of the SPO or the Defence.³⁰ Further, Victims' Counsel is, in principle, limited to calling evidence in respect of the following issues: (i) the harm or injury done to victims; (ii) the consequences of those acts on the victim, relatives, or community; and (iii) the appropriate relief to remedy the harm.³¹ Where Victims' Counsel seeks to address other issues, they must seek leave of the Trial Panel.³²

14. The Panel will apply these standards to the present decision, in light of the Parties' submissions.

IV. DISCUSSION

A. NEWLY ADMITTED VPPs

15. Victims' Counsel requests the possibility to submit an additional bar table request should newly admitted VPPs produce relevant documents.³³ The Panel

²⁹ See e.g. F01409, Panel, *Decision on Specialist Prosecutor's Bar Table Motion* ("Decision on Bar Table Motion"), 31 March 2023, confidential, paras 8-13; F01785, Panel, *Decision on Prosecution Requests to Amend the Exhibit List (F01689 and F01747)*, 12 September 2023, confidential, paras 15-17 (a public redacted version was issued on 10 November 2023, F01785/RED).

³⁰ F01226/A01, Panel, *Annex 1 to Order on the Conduct of Proceedings* ("Order on the Conduct of Proceedings"), 25 January 2023, para. 32.

³¹ Order on the Conduct of Proceedings, paras 34, 36.

³² Order on the Conduct of Proceedings, para. 35.

³³ Request, para. 25.

will not decide a hypothetical that might never require an order on its part. The Panel will decide upon it if and when an application for leave to amend is made by Victims' Counsel. Any such application should be made without undue delay.

B. ADMISSION OF PROPOSED EXHIBITS

1. Medical Records

16. Regarding relevance, the Panel notes that the medical records contain information about the physical and psychological health conditions of six VPPs. The Panel is satisfied that the medical records are relevant to allegations of mistreatment charged in the Indictment.

17. Regarding *prima facie* authenticity, the Panel notes that the medical records are either signed or contain the name of the treating specialist,³⁴ and some records contain letterheads or are stamped.³⁵ Noting that absolute proof of authenticity is not required at the admissibility stage,³⁶ the Panel finds that the records are *prima facie* authentic and reliable.

18. Regarding the Defence argument that some medical records contain self-reporting,³⁷ the Panel disagrees with the argument that this fact renders those documents "testimonial" in nature, and inadmissible through the bar table. The victims provided information in the context of a professional medical assessment so that a proper diagnosis or treatment plan could be made. Information provided in this context does not fall within the definition of a "statement" for the purposes

³⁴ See Annex 1 to the Motion, items 1-12. In Annex 01 of the Response, the Defence points out that item 5 is redacted such that the name of the physician and other identifying information is redacted. As a result, the Defence state that they cannot challenge its reliability. Having reviewed the redacted version, despite the redactions, the record clearly shows that it bears a letterhead, stamp, and certificate used for official purposes. See V0210001-V0210008 RED.

³⁵ See Annex 1 to the Motion, items 1-12.

³⁶ F01409, Panel, *Decision on Specialist Prosecutor's Bar Table Motion* ("Decision on Bar Table Motion"), 31 March 2023, confidential, para. 11.

³⁷ Response, para. 15.

of the present proceedings.³⁸ Given that the information contained in the medical records was provided in the course of a medical diagnosis or treatment plan, the medical records do not qualify as statements. As such, the medical records do not need to be tendered pursuant to Rules 153-155.

19. Regarding the Defence argument that, in some instances, the reporting of treatment or harm is not clearly connected to the alleged crimes, or beyond the scope of the Indictment, this is a matter that will be assessed at the end of these proceedings, in particular when evaluating the merit of the allegations of mistreatment and the consequences thereof upon alleged victims.³⁹ It is sufficient for the purpose of deciding admission that the proposed evidence is *prima facie* relevant to a fact or circumstance material to the case.

20. Further, in relation to item 3, the Defence claims that, because the physician notes that the victim came to pick up documents, it is doubtful that the report was prepared for the purposes of this proceeding.⁴⁰ This suggestion is entirely hypothetical and does not materially affect the admissibility of this item.

21. In terms of the two medical records that have not been disclosed in their original language, the Panel notes Victims' Counsel's submission that the original language version would disclose the location of the relevant victims, and therefore, cannot be disclosed.⁴¹ The Panel agrees that this information is important to protecting the privacy and security of the individuals concerned. The Panel also considers that the English translations do not prevent the Defence from assessing, and making informed submissions in respect of their relevance,

³⁸ See e.g., F03211, Panel, *Decision on Prosecution Motion for Admission of Documents Concerning Murder Victims and Related Request*, 29 May 2025, confidential, para. 19 (a public redacted version was filed on the same day, F03211/RED).

³⁹ Response, paras 13, 18.

⁴⁰ See Annex 1 to the Response, items 3-4.

⁴¹ Motion, para. 10, footnote 5.

authenticity or probative value.⁴² Further, in terms of the redacted reports,⁴³ and the absence of dates on pictures appended to reports, the Panel finds that this does not in any way impact the Defence's ability to make informed submissions regarding the admissibility of these items.

22. The Panel also takes note of the Defence submissions that certain medical conditions have been reported long after the war, and have been provided without corroborating records.⁴⁴ While this may be true, these circumstances are not relevant to the admissibility of the records. First, evidence of harm is not limited to harm identifiable during the period relevant to the Indictment. Harm resulting from a charged crime may not materialise, or become apparent, until years later. Second, there is no requirement that proposed evidence of harm must be corroborated by other records. The standard for admission is relevance, *prima facie* authenticity, and probative value. Third, there is also no requirement that the evidence offered be dispositive of a fact or circumstance to which it relates.⁴⁵ Such an assessment will be made by the Panel in light of all the evidence and submissions at the end of the trial.

23. Having found the medical records to be relevant⁴⁶ and *prima facie* authentic⁴⁷, the Panel is also satisfied that the records bear *prima facie* probative value. The Panel further finds that the probative value is not outweighed by any prejudicial effect. The Panel notes, in particular, that the Defence will be able to make submissions on ultimate weight and reliability.⁴⁸ The Panel therefore admits the

⁴² See V0210001-V0210008 RED and V2150004-V2150008 RED.

⁴³ Response, para. 16.

⁴⁴ Response, para. 14.

⁴⁵ Decision on Bar Table Motion, para. 12.

⁴⁶ See *above*, para. 16.

⁴⁷ See *above*, para. 17.

⁴⁸ The Panel notes that it appears many of the medical documents were provided to two experts that are anticipated to testify. See F03305, Panel, *Decision on Victims' Counsel's Submission of Expert Reports and Request to Admit Them into Evidence*, 3 July 2025, public, para. 44. See also F03160, Victims' Counsel, *Victims' Counsel's Submission of Expert Reports with a Request to Admit them into Evidence with Eight*

medical records identified as items 1, 3, 5, 7, 9, and 11 in Annex 1 to the Motion. Considering that the confidential *ex parte* versions have not been disclosed to the Defence, at this stage of the proceedings, the Panel exercises its discretion to deny admission of those medical records without prejudice. The confidential *ex parte* versions are identified as items 2, 4, 6, 8, 10, and 12 in Annex 1 to the Motion, without prejudice.

2. EULEX Record

24. Regarding relevance, the Panel notes Victims' Counsel's submission that the content of the proposed [REDACTED] in the EULEX record addresses matters that [REDACTED] testified to – namely his claim that he was kidnapped by [REDACTED] (and others) in the summer of 2001.⁴⁹ [REDACTED], while imprisoned at the time, [REDACTED] while serving a sentence [REDACTED].⁵⁰ As such, Victims' Counsel argues that it was possible he was also free to leave prison [REDACTED].⁵¹ The Panel finds that the EULEX record is relevant to [REDACTED]'s allegations of harm and the circumstances thereof.

25. Regarding authenticity, the EULEX record consists of [REDACTED].⁵² The Panel notes that they bear EULEX logos, include case numbers, [REDACTED].⁵³ On the other hand, the page that Victims' Counsel seeks to tender contains only a portion of [REDACTED]. It does not include information about how the participants were identified, what method of [REDACTED] was used and by whom, and the [REDACTED] has been redacted.⁵⁴ These considerations are also

Confidential Annexes, 2 May 2025, confidential, Annex 03, a public redacted version was filed on the same day.

⁴⁹ Motion, para. 23. *See also* [REDACTED].

⁵⁰ Motion, para. 23.

⁵¹ Motion, para. 23.

⁵² [REDACTED]. *See also* Annex 1 to the Motion, item 13.

⁵³ *See* [REDACTED].

⁵⁴ *See e.g.* F03141, Panel, *Decision on Prosecution Motion for Admission of Intercepted Communications*, 22 April 2025, confidential, paras 43-46.

relevant to assessing the probative value and the question of prejudice. The reliability of the record – in particular, the attribution of the conversation [REDACTED]– is uncertain. And, since the document was not put to [REDACTED] for comments, the Parties and the Panel were denied an opportunity to ask [REDACTED] questions about it. In those circumstances, the Panel finds that the prejudicial effect of the admission of this document would outweigh its probative value.

26. The Panel also has concerns regarding the compatibility of the material with the limited evidential allowance made for Victims' Counsel to offer evidence in these proceedings. As noted above, the [REDACTED] purports to contain a summary of part of a conversation where a person identified as [REDACTED]. Victims' Counsel says this bolsters the credibility of [REDACTED].⁵⁵ The Panel notes the Defence submission that the credibility of a victim is beyond the role of Victims' Counsel.⁵⁶ The Panel agrees with the Defence that Victims' Counsel's primary role is to present evidence in relation to harm or injury done to victims, and the appropriate relief required to remedy such harm.⁵⁷ Insofar as this document may have been relevant to [REDACTED] credibility, it should have been put to him during questioning by the SPO. This would, in turn, have enabled all concerned, if necessary, to ask questions about the document.

27. For the reasons outlined above, the Panel denies admission of the EULEX record identified as item 13 in Annex 1 to the Motion.

3. Extracts from "Abducted Truth"

⁵⁵ Motion, para. 23.

⁵⁶ Response, paras 20-22.

⁵⁷ Order on the Conduct of Proceedings, paras 34, 36.

28. Regarding relevance, the Panel notes that the extracts contain photographs of deceased relatives of VPPs.⁵⁸ The photographs have descriptions of the circumstances surrounding the person's disappearance or death, including material allegations against the KLA.⁵⁹ The Panel also notes that Victims' Counsel does not seek to admit these extracts for the truth of what they claim, but only "for the fact that the book was made and that the identified direct victims appear in it."⁶⁰ Victims' Counsel submits that the extracts "demonstrate the continued search for the truth that the indirect victims experience."⁶¹ As a result, the Panel is satisfied that the proposed material bears some relevance to the question of harm and circumstances thereof.

29. Regarding authenticity, the Panel is satisfied that the book is *prima facie* authentic. It was published by the Association of Families of Kidnapped and Missing Persons in Kosovo and Metohija.

30. Regarding probative value, the Panel notes that the source, basis, and origin of the information contained in the report, are unknown. So is the methodology being used. In these circumstances, it is impossible to verify how reliable the information is, and what probative value would attach to it. As such, any probative value that would attach to this item would be outweighed by its prejudicial effect. The Panel does not admit the extracts from "Abducted Truth" identified as item 14 in Annex 1 to the Motion.

⁵⁸ Motion, para. 24, footnote 41.

⁵⁹ See V0000323-V0000331, pp. V0000324-V0000330.

⁶⁰ Reply, para. 16.

⁶¹ Reply, para. 16.

V. CLASSIFICATION

31. The Panel notes that the Defence Response, and Victims' Counsel's Reply, have been filed as confidential. The Panel orders that public redacted versions be filed no later than **Wednesday, 16 July 2025**.

32. Furthermore, the Panel directs the Registrar to assign the admitted items the classification indicated in Annex 1 to the Motion.

VI. DISPOSITION

33. For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS** the Motion, in part;
- b) **ADMITS** into evidence the medical records identified as items 1, 3, 5, 7, 9, and 11 in Annex 1 to the Motion, with the classification indicated therein;
- c) **DENIES** admission of: (i) the medical records identified as items 2, 4, 6, 8, 10, and 12 in Annex 1 to the Motion, without prejudice; (ii) the EULEX record identified as item 13 in Annex 1 to the Motion; and (iii) the extracts from "Abducted Truth" identified as item 14 in Annex 1 to the Motion;
- d) **ORDERS** that public redacted versions of the SPO response, Defence response, and Victims' Counsel's reply, to be filed no later than **Wednesday, 16 July 2025**; and
- e) **DIRECTS** the Registrar to assign each of the admitted documents exhibit numbers, and the classification indicated in Annex 1 to the Motion.



Judge Charles L. Smith, III
Presiding Judge

Dated this Wednesday, 9 July 2025

At The Hague, the Netherlands.