



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

**In:** KSC-BC-2020-06  
**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 Guénaël Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

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

**Date:** 9 January 2024

**Language:** English

**Classification:** Confidential

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**Prosecution response to 'Joint Defence Request for Leave to Appeal Decision on Admission of Documents Shown to W04769' (F01982)**

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## I. INTRODUCTION

1. The Request<sup>1</sup> fails to substantiate how the criteria for certification<sup>2</sup> under Article 45 of the Law<sup>3</sup> and Rule 77 of the Rules<sup>4</sup> are met with respect to any of the five Issues it raises. None of the Issues are appealable issues and the Defence also fails to demonstrate how the other leave to appeal criteria are met.

## II. SUBMISSIONS

2. Considering the cumulative test, the Defence fails to articulate on an issue-by-issue basis how the threshold for certification is met with respect to each Issue individually. Indeed, the Defence addresses the alleged impact on the proceedings altogether and without differentiation, failing to demonstrate how each Issue satisfies all three prongs of the cumulative test.<sup>5</sup> This pleading failure alone justifies dismissal. In any event, the Request also fails on the merits.

### A. THE ISSUES ARE NOT APPEALABLE

3. All five Issues generally mischaracterise the Impugned Decision, ignore the Trial Panel's considerations, repeat inferences which are purely speculative, and merely reflect the Defence's disagreement with the Trial Panel's admission into evidence of P00651.

4. The First Issue does not arise from the Impugned Decision.<sup>6</sup> The Defence allegation that the Trial Panel determined that the issues raised went exclusively to

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<sup>1</sup> Joint Defence Request for Leave to Appeal Decision on Admission of Documents Shown to W04769 (F01963), KSC-BC-2020-06/F01982, 4 December 2023, Confidential. The Panel *proprio motu* extended the response deadline to 9 January 2024. See Transcript, 7 December 2023, pp.10730-10731.

<sup>2</sup> The applicable law has been set out in prior decisions. See, for example, Decision on the Taçi Defence Application for Leave to Appeal, KSC-BC-2020-06/F00172, 11 January 2021, paras 9-17; *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on the Defence Applications for Leave to Appeal the Decision on the Defence Preliminary Motions, KSC-BC-2020-07/F00169, 1 April 2021, paras 10-18.

<sup>3</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

<sup>4</sup> 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' herein refer to the Rules, unless otherwise specified.

<sup>5</sup> Request, KSC-BC-2020-06/F01982, para.21.

<sup>6</sup> Decision on Admission of Documents Shown to W04769, KSC-BC-2020-06/F01963, 27 November 2023.

the weight to be assigned to P00651<sup>7</sup> mischaracterises the Impugned Decision. The Trial Panel considered the issues raised by the Defence in relation to its assessment of P00651's authenticity, finding that they do not negate its *prima facie* authenticity.<sup>8</sup> The Trial Panel expressly considered the objections to P00651's admissibility when raised.<sup>9</sup>

5. The Second Issue mischaracterises the Impugned Decision. The Trial Panel listed all factors on the basis of which it decided P00651 is *prima facie* relevant, authentic, and has probative value which is not outweighed by its prejudicial effect.<sup>10</sup> The Trial Panel considered the arguments raised by the Defence and found that the Defence claims had no basis or were merely speculative, and/or that they do not negate the *prima facie* authenticity of P00651.<sup>11</sup>

6. The Third and Fourth Issue do not arise from the Impugned Decision. The Trial Panel merely reiterated 'at the outset' that there is no basis to suggest that documents originating from or provided by Serbian authorities are *prima facie* suspicious.<sup>12</sup> It is clear from the Impugned Decision that the Trial Panel's *prima facie* assessment stands independently from this (self-evident) consideration, as well as the fact that the Thaçi Defence has tendered documents originating from Serbia. As regards the Trial Panel's purported disregard of jurisprudence and examples invoked by the Defence,<sup>13</sup> the Trial Panel is not required to discuss each submission individually.<sup>14</sup>

7. In support of the Fifth Issue, the Defence raises arguments already considered and rejected by the Trial Panel,<sup>15</sup> without demonstrating any error.<sup>16</sup> The Fifth Issue simply reflects the Defence's disagreement with the Trial Panel's findings in the

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<sup>7</sup> Request, KSC-BC-2020-06/F01982, para.8.

<sup>8</sup> Impugned Decision, KSC-BC-2020-06/F01963, paras 29-30.

<sup>9</sup> Impugned Decision, KSC-BC-2020-06/F01963, paras 29-30. *Contra* Request, KSC-BC-2020-06/F01982, para.8.

<sup>10</sup> Impugned Decision, KSC-BC-2020-06/F01963, paras 27-31.

<sup>11</sup> Impugned Decision, KSC-BC-2020-06/F01963, paras 29-30.

<sup>12</sup> Impugned Decision, KSC-BC-2020-06/F01963, para.28.

<sup>13</sup> Request, KSC-BC-2020-06/F01982, para.12.

<sup>14</sup> Decision on Appeals Against "Decision on Motions challenging the Jurisdiction of the Specialist Chambers", KSC-BC-2020-06/IA009-F00030, 23 December 2021, para.81 and the sources cited therein.

<sup>15</sup> Impugned Decision, KSC-BC-2020-06/F01963, paras 29-31.

<sup>16</sup> Request, KSC-BC-2020-06/F01982, paras 16-19.

Impugned Decision and relevant case law of the Specialist Chambers.<sup>17</sup> Contrary to the Defence assertion that the Trial Panel failed to consider arguments raised on the handwriting and vocabulary,<sup>18</sup> the Trial Panel expressly considered these issues in its assessment.<sup>19</sup> Moreover, the Panel is not required to articulate every step of its reasoning and discuss every detail of each submission.<sup>20</sup> The Defence simply repeats unsubstantiated inferences and attempts to relitigate the admissibility of P00651.

8. All five Issues, without more, are insufficient to demonstrate an appealable issue.

B. THE ISSUES HAVE NO IMPACT JUSTIFYING CERTIFICATION

9. None of the five Issues significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial. The Trial Panel correctly applied Rule 138(1), the interpretation and application of which have already been clarified, including that definitive proof of authenticity is not required for admissibility, but is a matter of the weight of the evidence to be given by the Panel in its deliberations.<sup>21</sup> The Trial Panel's admission of P00651 into evidence is without prejudice to any future assessment of the weight, if any, to be assigned to P00651. The impact of P00651's admission on the fair and expeditious conduct of the proceedings or outcome of the trial is entirely hypothetical and speculative. Any consideration of the impact on the proceedings or its outcome caused by admitting this single item is premature, making this decision inappropriate for an interlocutory appeal.<sup>22</sup>

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<sup>17</sup> See, for example, in relation to the chain of custody: Second Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01596, 9 June 2023, para.109; *Specialist Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2020-07/F00611/RED, 18 May 2022, para.28.

<sup>18</sup> Request, KSC-BC-2020-06/F01982, para.19.

<sup>19</sup> Impugned Decision, KSC-BC-2020-06/F01963, para.30.

<sup>20</sup> Decision on Appeals Against "Decision on Motions challenging the Jurisdiction of the Specialist Chambers", KSC-BC-2020-06/IA009-F00030, 23 December 2021, para.81 and the sources cited therein.

<sup>21</sup> *Specialist Prosecutor v. Mustafa*, Public Redacted Version of Decision on the Admission of Evidence Collected Prior to the Establishment of the Specialist Chambers and Other Material, KSC-BC-2020-05/F00281, 13 December 2021, para.12; see also *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on the Defence Request for Admission of Items through the Bar Table and Related Motions, KSC-BC-2020-07/F00502, 17 December 2021, para.11.

<sup>22</sup> *Contra* Request, KSC-BC-2020-06/F01982, para.21.

10. The Defence fails to demonstrate how an immediate resolution by the Court of Appeals may materially advance the proceedings.<sup>23</sup> The Defence assertion that a Decision from the Court of Appeals ‘would obviate the risk of any prejudice caused’ assumes the weight to be given to P00651 and is therefore purely hypothetical.<sup>24</sup> Not only would granting leave to appeal on any of the Issues not materially advance the proceedings, it would rather delay the proceedings. Moreover, the requirement for a reasoned judgment will enable the Defence to verify how the Trial Panel evaluated the evidence and addressed the objections raised, and allows appellate review as appropriate.<sup>25</sup>

11. The Trial Panel has a broad discretion on issues relating to the admission of evidence and granting leave to appeal a decision on the admissibility of evidence should be the absolute exception.<sup>26</sup>

### III. CLASSIFICATION

12. In light of the Request’s classification, this response is confidential pursuant to Rule 82(4) of the Rules. However, the SPO does not object to its reclassification as public.

### IV. RELIEF REQUESTED

13. For the foregoing reasons, the Request fails to meet the leave to appeal standard and should be rejected.

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<sup>23</sup> *Contra* Request, KSC-BC-2020-06/F01982, para.22.

<sup>24</sup> Request, KSC-BC-2020-06/F01982, para.22.

<sup>25</sup> *Specialist Prosecutor v. Mustafa*, Decision on the Submission and the Admissibility of Evidence, KSC-BC-2020-05/F00169, 25 August 2021, para.19.

<sup>26</sup> IRMCT, *Prosecutor v. Stanišić and Simatović*, MICT-15-96-PT, Decision on requests for certification to appeal decision on Stanišić’s request for stay of proceedings, 1 March 2017, paras 9-11, also referring to ICTR, *Prosecutor v. Nyiramasuhuko*, ICTR-98-42-AR73, Decision on Pauline Nyiramasuhuko’s request for reconsideration, 27 September 2004, para.10.

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**Kimberly P. West**

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Tuesday, 9 January 2024

At The Hague, the Netherlands.