



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 Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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Prosecution reply relating to its motion to admit Llap Zone documents (F02138)

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I. INTRODUCTION

1. The Response¹ – following misleading and inaccurate submissions about the number of Proposed Exhibits² and previously tendered and admitted exhibits³ – mischaracterises and ignores submissions made in the Motion, and repeats prior objections to broad categories of evidence, which have already been considered and dismissed by the Panel.

II. SUBMISSIONS

2. Contrary to Defence submissions⁴ and consistent with the Law,⁵ Rules,⁶ Conduct of Proceedings Order,⁷ and this Panel's prior decisions,⁸ there is no requirement that documents be tendered through a witness or that a decision on admission should be deferred until after relevant witnesses appear. To consider otherwise would undermine the fairness and expeditiousness of the proceedings. As indicated throughout the Motion,⁹ the Proposed Exhibits are consistent with, complementary to,

¹ Joint Defence Response to Prosecution motion for admission of Llap Zone documents and related request (F02178), KSC-BC-2020-06/F02243, 15 April 2024, Confidential ('Response').

² Prosecution motion for admission of Llap Zone documents and related request, KSC-BC-2020-06/F02178, 14 March 2024 ('Motion'), para.1 (defining the 'Proposed Exhibits').

³ Response, KSC-BC-2020-06/F02243, paras 2-5. *See also* paras 10, 14, 39. The Defence's figures include all language or other versions of a given item. In addition, in relation to admitted exhibits, the Defence does not distinguish between the modes of admission. While, in the context of this complex, multi-Accused case, the size of the record may, indeed, be substantial, the Defence's misleading and inaccurate submissions should be disregarded, considering also that the Panel conducts an item-by-item assessment of each Proposed Exhibit, including in light of any prejudice, before it is admitted. *See also* Prosecution reply relating to its request to amend the Exhibit List (F02099), KSC-BC-2020-06/F02138, Confidential, para.2.

⁴ Response, KSC-BC-2020-06/F02243, paras 7-10, 13, 16, 18, 32, 40-41.

⁵ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'), Article 37, 40. All references to 'Article' or 'Articles' herein refer to articles of the Law unless otherwise noted.

⁶ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'), 137-138. All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

⁷ Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Conduct of Proceedings Order'), para.60.

⁸ *See e.g.* Fifth Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01832, 3 October 2023 ('Fifth Decision'), paras 63-64, 67-68, 71-75; Sixth Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01983, 5 December 2023 ('Sixth Decision'), paras 83-89.

⁹ Motion, KSC-BC-2020-06/F02178, paras 2-21; KSC-BC-2020-06/F02178/A01 ('Motion Annex 1').

and corroborative of testimony, adjudicated facts, and other exhibits, some of which have been authenticated and contextualised by witnesses. In any event, corroboration and/or contextualisation are factors relevant to the Panel's final assessment of the evidence, not admission, provided the relevant requirements in Rule 138 are otherwise met.¹⁰

3. Moreover, authenticity and reliability should not be assessed in isolation, ignoring submissions and evidence cited in the Motion, as the Defence does throughout the Response.¹¹ Rather, the Proposed Exhibits should be considered holistically in light of all relevant information and evidence. For example, the Defence wrongly claims that, other than identifying the Proposed Exhibits' providers as the Serbian authorities, EULEX, and ICTY/IRMCT, no other submissions are made as to provenance.¹² Noting that evidence collected in the context of prior investigations and proceedings is, in principle, admissible,¹³ the Motion includes detailed submissions demonstrating the *prima facie* authenticity and reliability of each Proposed Exhibit. For Proposed Exhibits provided by the Serbian authorities, EULEX, and ICTY/IRMCT, the Specialist Prosecutor's Office ('SPO') also made submissions, with supporting documentation, concerning how these entities obtained the Proposed Exhibits.¹⁴ Nowhere in the Response does the Defence acknowledge, address, or dispute these submissions.

¹⁰ See e.g. Sixth Decision, KSC-BC-2020-06/F01983, para.129.

¹¹ See e.g. Response, KSC-BC-2020-06/F02243, paras 4-5, 19-27, 29, 40. Likewise, that certain witnesses did not recognise certain documents (which are not among the Proposed Exhibits) does not undermine the authenticity of the Proposed Exhibits, particularly where there are sufficient indicia on their face. See e.g. Decision on Prosecution Request for Admission of Items Used During the Examination of W04746, KSC-BC-2020-06/F01903, 3 November 2023, para.11. *Contra* Response, KSC-BC-2020-06/F02243, para.16. In any event, as noted previously, the same witnesses cited in the Response, as well as other witnesses, have authenticated documents corroborated by the Proposed Exhibits and/or from the same collections. See Motion, KSC-BC-2020-06/F02178, paras 20-21.

¹² Response, KSC-BC-2020-06/F02243, paras 4, 19-25.

¹³ Article 37.

¹⁴ Motion, KSC-BC-2020-06/F02178, para.21; KSC-BC-2020-06/F02178/A02.

4. Further, while the Defence claims that many Proposed Exhibits have ‘no discernible link to the KLA at all’, the Response refers, by way of example, to Proposed Exhibits, which are, in fact, clearly linked to the KLA, including by corroborating evidence, as already detailed in Motion Annex 1.¹⁵ Likewise, in relation to ‘compilations’, Motion Annex 1 provides detailed explanations of how such documents as a whole, including all individual parts, are admissible.¹⁶ In the Response, the Defence refers to two ‘compilations’, both of which consist of reports, statements, notes, and information that are clearly interrelated, linked to the KLA, *prima facie* authentic, relevant, and probative.¹⁷

¹⁵ Response, KSC-BC-2020-06/F02243, para.15, fn.22 (referring to, *inter alia*, Proposed Exhibits 211 and 226). Proposed Exhibit 211: (i) is corroborated by Proposed Exhibit 205, which is signed and bears a KLA Llap Zone header; and (ii) was issued based on the order of the ‘Commander of the 2nd Sector’, whose position in the KLA Llap Zone military police in summer 1999 is corroborated by other Proposed Exhibits. *See e.g.* Proposed Exhibit 213. Likewise, that this ‘sector’ was part of the KLA is corroborated by, *inter alia*, Proposed Exhibit 138, which includes formal indicia that it is a KLA document. Further, Proposed Exhibit 226, a statement which the Defence also claimed to have no link to the KLA, is corroborated by the Proposed Exhibits listed directly above and below in Motion Annex 1, namely, the signed, type-written Llap Zone military police summons for the individual who gave the statement (Proposed Exhibit 225) and a signed note to the ‘commander’ relating to the questioning of that same individual (Proposed Exhibit 227).

¹⁶ *Contra* Response, KSC-BC-2020-06/F02243, paras 28-29.

¹⁷ Response, KSC-BC-2020-06/F02243, para.28 (referring to Proposed Exhibits 237 and 290). Proposed Exhibit 290 contains a compilation of documents relating to the individual mentioned in the Kosovo Intelligence Service’s briefing note on p.SITF00244716. Further, the relevance of this document to KLA activities during the Indictment period is already explained in Motion Annex 1. Likewise, when Proposed Exhibit 237 is read holistically, as opposed to each page in isolation as the Defence does, the connection between the different parts and to the KLA is apparent. For example, the Defence claims that the first page, reading ‘Closed File’ has no connection to any other page, yet, the second page, includes a signed KLA intelligence document explaining that a file concerning a particular individual had been closed. The following pages contain reports, information, and a statement relating to the same individual (pp.SITF00244831-SITF00244836). The remaining pages of Proposed Exhibit 237 contain similarly formatted ‘personal files’ on other individuals.

5. Concerning handwritten documents,¹⁸ templates,¹⁹ purported ‘testimonial documents’,²⁰ documents of ‘importance’ to the SPO’s case,²¹ and documents provided by the Serbian authorities²² and seized from Rexhep SELIMI’s residence,²³ the Defence merely repeats already considered and rejected objections to these categories of evidence.²⁴ Each Proposed Exhibit must be assessed on an item-by-item basis against the admissibility criteria, which apply to all categories of Proposed Exhibits.²⁵

6. Finally, for the sake of accuracy and completeness:

- a. the SPO notes that Proposed Exhibit 107 was admitted as P01046 / P01046_ET following the Motion, and the request for its admission through the bar table is now moot;

¹⁸ Compare Response, KSC-BC-2020-06/F02243, paras 30-32 *with, inter alia*, Second Decision on Specialist Prosecutor’s Bar Table Motion, KSC-BC-2020-06/F01596, 9 June 2023, para.90; Sixth Decision, KSC-BC-2020-06/F01983, paras 100-106.

¹⁹ Compare Response, KSC-BC-2020-06/F02243, paras 30-32 *with* Fifth Decision, KSC-BC-2020-06/F01832, paras 87-92. For certain ‘empty’ templates tendered as Proposed Exhibits (and objected to on this basis), there are also ‘filled’ versions among the Proposed Exhibits. Compare, for example, Proposed Exhibit 74-76 *with* Proposed Exhibits 115 and 121. In any event, the creation of templates, in and of itself, is relevant to, *inter alia*, the KLA’s organisation.

²⁰ Compare Response, KSC-BC-2020-06/F02243, paras 33-35 *with, inter alia*, Sixth Decision, KSC-BC-2020-06/F01983, paras 124-128. The ‘statements’ identified by the Defence were not prepared for purposes of legal proceedings or offered for the truth of their contents, and are therefore not subject to Rules 153-155.

²¹ Compare Response, KSC-BC-2020-06/F02243, paras 14, 38 *with* Sixth Decision, KSC-BC-2020-06/F01983, para.92 (in relation to Defence objections to the admission of ‘important’ documents through the bar table, the Panel emphasised that it would ultimately base its findings on all relevant evidence, and that the same conditions and requirements for admission, as set out in Rule 138(1), apply to all categories of proposed exhibits, regardless of their (perceived) importance to a Party’s case).

²² Compare Response, KSC-BC-2020-06/F02243, para.20 *with* Decision on Admission of Documents Shown to W04769, KSC-BC-2020-06/F01963, 27 November 2023, para.28 (and the sources cited therein).

²³ Compare Response, KSC-BC-2020-06/F02243, para.36 *with* Fifth Decision, KSC-BC-2020-06/F01832, para.17 (noting prior decisions of the Trial Panel and Court of Appeals concerning the lawfulness of the search and seizure operations, and that the THAÇI Defence has tendered items seized from the residences of SELIMI and KRASNIQI).

²⁴ Notably, the Defence objects to all Proposed Exhibits, often doing so only by category and without providing specific submissions on the admissibility of individual items.

²⁵ See, *similarly*, Sixth Decision, KSC-BC-2020-06/F01983, para.92.

- b. the SPO clarifies that Proposed Exhibit 36 has been tendered as a better-quality version of the text on pages U000-4320-U000-4321 of Proposed Exhibit 35, as well as admitted exhibit P00170;
- c. in light of submissions made in the Response, the SPO has corrected the translations of four Proposed Exhibits to more accurately reflect their original versions, and requests that these revised translations be substituted for those tendered in the Motion;²⁶
- d. in light of submissions made in the Response, the SPO requests authorisation to make corrections to the metadata (namely, dates and descriptions) of three Proposed Exhibits;²⁷ and
- e. for Proposed Exhibits 78 and 90-94, the Panel should refer to Motion Annex 1, as the annex to the Response (KSC-BC-2020-06/F02243/A01) includes limited alterations to the text of related SPO submissions on authenticity and relevance/probative value.²⁸

III. RELIEF REQUESTED

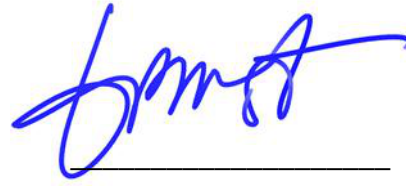
7. The SPO requests: (i) that the translations of four Proposed Exhibits be substituted with their revised versions as detailed in paragraph 6.c above; (ii) authorisation to make limited corrections to the metadata (namely, dates and descriptions) of three Proposed Exhibits, as detailed in paragraph 6.d above; and (iii) for the reasons given above and previously, that the Panel grant the Motion.

²⁶ Proposed Exhibits 176, 235, 246, 262. *See* Disclosure Package 1212. The revisions made have no impact on the submissions previously made concerning these Proposed Exhibits' *prima facie* authenticity, relevance, and probative value.

²⁷ Proposed Exhibits 9, 272, 273. *See also* KSC-BC-2020-06/F02243/A01 (identifying certain errors in dates and descriptions for these Proposed Exhibits). As the presentation queue for the Motion has been released, these fields are locked in Legal WorkFlow and the SPO is unable to correct these errors without judicial authorisation. These proposed revisions have no impact on the submissions previously made concerning these Proposed Exhibits' *prima facie* authenticity, relevance, and probative value.

²⁸ It appears that these alterations were made inadvertently in the course of preparing KSC-BC-2020-06/F02243/A01.

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Kimberly P. West
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Thursday, 25 April 2024

At The Hague, the Netherlands.