



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

Date: 29 April 2024

Language: English

Classification: Confidential

Prosecution reply to Defence response on admissibility of items used with W04739

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1. The Defence Response¹ to the Request² tendering four items ('Items') used during the judges' questioning of W04739 demands a brief reply³ because it contains fundamental misunderstandings about the admissibility of evidence framework at the KSC.
2. It is the Specialist Prosecutor's Office ('SPO') *alone* proving its case in the present context.⁴ The Items are all on the SPO list of exhibits and, subject to judicial orders and deadlines, the SPO may tender them freely during its case. It is immaterial whether items tendered by the SPO are first used in the courtroom by the Panel,⁵ and the SPO has likewise sought exhibit numbers of items first used by the Defence without objection.⁶
3. There is likewise no reason why tendering the Items through a bar table motion would be better, or even meaningfully different, from what is requested.⁷ Bar table eligible items can be admitted at any time and without a witness, even before the trial commencement.⁸ The Request currently under consideration could have been entitled 'SPO bar table motion' and requested admission of the same four items at the same moment for the same reasons.

¹ Joint Defence Response to 'Prosecution Submission on Admissibility of Items Used with W04739 (F02228)', KSC-BC-2020-06/F02252, 18 April 2024, Confidential ('Response').

² Prosecution submission on admissibility of items used with W04739, KSC-BC-2020-06/F02228, 8 April 2024, Confidential ('Request').

³ See Transcript of Hearing, 22 April 2024, T.14515-14516, read with Rule 76 of Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSCBD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

⁴ *Contra* Response, KSC-BC-2020-06/F02252, para.11.

⁵ E.g. Decision on Admission of Documents Shown to W04769, KSC-BC-2020-06/F01963, 27 November 2023.

⁶ See Transcript of Hearing, 16 October 2023, pp. 8964-8965.

⁷ *Contra* Response, KSC-BC-2020-06/F02252, para.41(c).

⁸ *Prosecutor v. Gucati and Haradinaj*, Decision on the Prosecution Request for Admission of Items Through the Bar Table, KSC-BC-2020-07/F00334, 29 September 2021, paras 24-25.

4. The Panel's assessment of evidence for purposes of its final judgement is circumscribed by the admitted evidence in the record, without distinction of who first tendered it.⁹ The Panel's ultimate consideration of the Items would not change if they are admitted as SPO exhibits, versus Defence or Panel exhibits.

5. The Response betrays a lack of understanding of what 'submitting and admitting an exhibit' means in this trial, and is merely an extension of prior challenges to judges' questioning that are contrary to the Rules¹⁰ and rejected by the Appeals Panel.¹¹ For these reasons, and as argued further in the Request, the items tendered should be admitted.¹²

Word count: 472



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Monday, 29 April 2024

At The Hague, the Netherlands.

⁹ See Rule 139.

¹⁰ See especially Rule 127(3).

¹¹ Public Redacted Version of Decision on Thaçi, Selimi and Krasniqi Appeal against Oral Order on Trial Panel Questioning, KSC-BC-2020-06/IA028/F00011/RED, 4 July 2023.

¹² This filing is classified as confidential pursuant to Rule 82(4) for the same reasons as the Request.