



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 Drenica Zone documents (F02248)

Specialist Prosecutor's Office

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I. INTRODUCTION

1. The Response,¹ once again,² repeats prior objections to broad categories of evidence, which have already been considered and dismissed by the Panel, and misrepresents and ignores submissions in the Motion.³

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, and corroborative of testimony, adjudicated facts, and other exhibits, some of which have been authenticated and contextualised by witnesses. In any event, the Rules do not prescribe that exhibits should be tendered in a particular manner,¹⁰ and

¹ Joint Defence Response to Prosecution Motion for Admission of Drenica Zone Documents, KSC-BC-2020-06/F02291, 6 May 2024, Confidential ('Response').

² See Prosecution reply relating to its motion to admit Llap Zone documents (F02138), KSC-BC-2020-06/F02266, 25 April 2024.

³ Prosecution motion for admission of Drenica Zone documents, KSC-BC-2020-06/F02248, 16 April 2024 ('Motion'). See also para.1 (defining the 'Proposed Exhibits').

⁴ Response, KSC-BC-2020-06/F02291, paras 2-8, 36-40.

⁵ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'), Article 37, 40.

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/F02248, paras 2-21; KSC-BC-2020-06/F02248/A01 ('Motion Annex 1').

¹⁰ Decision on Prosecution Request for Admission of Documents Shown to W04739, KSC-BC-2020-06/F02293, 8 May 2024, Confidential, paras 9 (considering that the manner of tendering documents is a decision to be primarily taken by the offering Party, and 'the Rules do not prescribe that proposed exhibits should be tendered in a particular manner or that their admission should be refused if the most

corroboration and/or contextualisation are factors relevant to the Panel's final assessment of the evidence, not admission, provided the Rule 138 requirements are otherwise met.¹¹

3. Moreover, relevance, authenticity, and probative value should not be assessed in isolation, ignoring submissions and evidence cited in the Motion, as the Defence does throughout the Response. Rather, the Proposed Exhibits should be considered holistically in light of all relevant information and evidence. For example, the Defence claims that certain Proposed Exhibits 'relate to individuals and units whose affiliation with the KLA and connection to the SPO's case as pled remain unexplained'.¹² However, as indicated in Motion Annex 1, the Proposed Exhibits cited by the Defence contain KLA headers, relate to KLA units and members (including, for example, Sabit GEKI), and/or were seized from Jakup KRASNIQI's residence.

4. Further, while the Defence appears to argue that the use of the word 'Pllumbi' in Proposed Exhibit 58 is insufficient to demonstrate that it refers to the unit of the same name, the Defence ignores that the Proposed Exhibit refers to 'Pllumbi' along with other units and commanders in the Drenica Zone,¹³ and is corroborated by other evidence.¹⁴ That certain corroborating evidence cited in Motion Annex 1 was previously denied admission without prejudice does not change its status on the exhibit list or prevent the Specialist Prosecutor's Office ('SPO') from referencing it in the Motion.¹⁵ Further, for certain Proposed Exhibits previously denied admission

suitable method has not been used, as long as they meet the requirements of the Rules for admission'), 10.

¹¹ See e.g. Sixth Decision, KSC-BC-2020-06/F01983, para.129. *Contra* Response, KSC-BC-2020-06/F02291, paras 36-40.

¹² Response, KSC-BC-2020-06/F02291, para.11, fn12 (referring to Proposed Exhibits 54, 60, and 91).

¹³ See e.g. Proposed Exhibit 58, p.097241 (referring to 'Pllumbi' along with other units and commanders in the Drenica Zone, including 'Gurri 1', 'Therra', 'Raketa', and 'Qopa').

¹⁴ See e.g. Motion, KSC-BC-2020-06/F02248, fn.104; Motion Annex 1, KSC-BC-2020-06/F02248/A01, Proposed Exhibits 31, 50, 59, 63, 79, 82-83, 86-96 (and related authenticity and relevance/probative value columns).

¹⁵ *Contra* Response, KSC-BC-2020-06/F02291, para.28.

without prejudice, the Defence ignores the detailed submissions on corroboration and/or contextualisation, including by witnesses, which explain and justify their admission at this stage.¹⁶

5. Concerning templates,¹⁷ documents of ‘importance’ to the SPO’s case,¹⁸ and documents seized from Jakup KRASNIQI’s and Rexhep SELIMI’s residences,¹⁹ the Defence largely repeats already considered and rejected objections to these categories of evidence.²⁰ Each Proposed Exhibit must be assessed on an item-by-item basis against the admissibility criteria, which apply to all categories of Proposed Exhibits.²¹

6. Finally, the Defence objects to a number of Proposed Exhibits because certain pages are not translated.²² However, consistent with previous submissions and decisions,²³ the SPO is only tendering those portions that have been translated and the pages identified by the Defence do not form part of the relevant Proposed Exhibits.

¹⁶ For example, while the Defence acknowledges that certain pages of Proposed Exhibit 82 were admitted through a witness, it ignores other corroborating evidence and submissions on other parts of the Proposed Exhibit, as set out in Motion Annex 1. *See also* Proposed Exhibits 22, 38, 42. *Contra* Response, KSC-BC-2020-06/F02291, para.29.

¹⁷ *Compare* Response, KSC-BC-2020-06/F02291, paras 11, 27 *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 e.g.* Response, KSC-BC-2020-06/F02248, fn.10 *with* Motion Annex 1, KSC-BC-2020-06/F02248/A01, Proposed Exhibits 93 and 96 (authenticity column). In any event, the creation of templates, in and of itself, is relevant to, *inter alia*, the KLA’s organisation.

¹⁸ *Compare* Response, KSC-BC-2020-06/F02291, paras 36-40 *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).

¹⁹ *Compare* Response, KSC-BC-2020-06/F02291, para.30 *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).

²⁰ Notably, the Defence objects to all Proposed Exhibits, often doing so by category.

²¹ *See, similarly*, Sixth Decision, KSC-BC-2020-06/F01983, para.92.

²² *See e.g.* KSC-BC-2020-06/F02291/A01, Proposed Exhibits 4, 6-8, 26-28. The pages that are not tendered generally consist of cover pages/work product of the provider or irrelevant information, and do not form part of the tendered contemporaneous record.

²³ *See e.g.* Fourth Decision on Specialist Prosecutor’s Bar Table Motion, KSC-BC-2020-06/F01716, Confidential, para.11.

For Proposed Exhibit 31, the SPO has disclosed a revised translation²⁴ that more accurately reflects the original²⁵ and seeks to substitute it for the previously tendered translation.

III. RELIEF REQUESTED

7. The SPO requests: (i) that the translation of Proposed Exhibit 31 in Motion Annex 1 be substituted with its revised version (096039-096074-ET Revised); and (ii) for the reasons given above and previously, that the Panel grant the Motion.

Word count: 1250



Kimberly P. West

Specialist Prosecutor

Monday, 13 May 2024

At The Hague, the Netherlands.

²⁴ 096039-096074-ET Revised.

²⁵ In particular, the translation of the document on page 096063 (which was previously disclosed separately as 096063-096063-ET in Disclosure Package 400) was inadvertently not included in the combined translation of Proposed Exhibit 31. The revised version incorporates the translation of this page.