

**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 Christoph Barthe  
Judge Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr. Fidelma Donlon

**Filing Participants:** Specialist Counsel for Hashim Thaçi  
Specialist Counsel for Kadri Veseli  
Specialist Counsel for Rexhep Selimi  
Specialist Counsel for Jakup Krasniqi

**Date:** 18 April 2024

**Language:** English

**Classification:** Public

---

**Public Redacted Version of "Joint Defence Response to 'Prosecution Submission on Admissibility of Items Used with W04739 (F02228)' "**

---

**Specialist Prosecutor**

Kimberly P. West

**Counsel for Victims**

Simon Laws KC

**Counsel for Hashim Thaçi**

Luka Mišetić

**Counsel for Kadri Veseli**

Ben Emmerson KC

**Counsel for Rexhep Selimi**

Geoffrey Roberts

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

## I. INTRODUCTION

1. The Defence teams for Mr. Thaçi, Mr. Veseli, Mr. Selimi, and Mr. Krasniqi (collectively, “the Defence”) hereby oppose the Prosecution’s submission on admissibility of items used with W04739.<sup>1</sup> The Prosecution tenders four documents used during the judicial questioning of W04739. The Defence objects to this procedure; it is not procedurally fair - and runs contrary to the requirements of a fair and expeditious trial - for the Prosecution to tender documents through a witness, in circumstances when the Prosecution elected not to put those same documents to the same witness and hence has not discharged the burden on the tendering party to satisfy the admissibility criteria.

2. Moreover, the criteria laid down in Rule 138(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”) have not been satisfied. The documents are not self-authenticating and W04739 did not authenticate the documents in any meaningful way. Indeed, he had apparently never seen any of the four documents until he was shown them during judicial questioning.

3. This submission is filed confidentially because it responds to a filing of the same classification and refers extensively to evidence heard in a closed session.

## II. PROCEDURAL HISTORY

4. On 4 April 2024, the SPO sought to tender certain items used during judicial questioning of W04739 and proposed to do so by submitting a relevant written application. Accordingly, the Trial Panel II set the deadline for the SPO’s submission to 8 April 2024.<sup>2</sup>

---

<sup>1</sup> KSC-BC-2020-06, F02228, Specialist Prosecutor, *Prosecution submission on admissibility of items used with W04739* (“Prosecution Submission”), 8 April 2024, confidential.

<sup>2</sup> KSC-BC-2020-06, Transcript of Hearing, 4 April 2024, T.14508-14509, T. 14511.

5. On 8 April 2024, the SPO filed a submission on admissibility of items used with W04739 during the Judges' questioning of W04739.<sup>3</sup>

### III. SUBMISSIONS

6. At the outset, the Defence requests the Trial Panel to delay ruling on the admissibility of these four documents until after the Defence has concluded its further cross-examination. The Defence notes that the Trial Panel has previously adopted this course in order to ensure that the decision is fully informed by all relevant considerations.<sup>4</sup> The Defence intends to ask further questions of W04739 arising from the judicial questioning about the four documents, including in relation to W04739's knowledge of the four documents, his knowledge of their contents and their authenticity. The evidence elicited is likely to be relevant to the Trial Panel's assessment of the requirements of Rule 138(1), namely the relevance, authenticity and probative value of the four documents. The Defence therefore requests the Trial Panel to defer its ruling after the conclusion of the evidence of W04739.

7. Further, the Defence challenges the practice of the Prosecution tendering documents used during judicial questioning. It is for the Prosecution, which alone bears the burden of investigating and proving its case, to determine which documents it intends to use with a witness, to give proper notice to the Defence and to lay a foundation for those documents with a witness. That cannot be done through judicial questions. Indeed an appearance of bias would arise from the Prosecution taking advantage of judicial questioning to tender documents relevant to its case.

---

<sup>3</sup> Prosecution Submission.

<sup>4</sup> KSC-BC-2020-06, Transcript of Hearing, 20 March 2024, confidential, T.13434.

8. Article 4(1) of the Code of Judicial Ethics for Judges appointed to the roster of international judges of the Kosovo Specialist Chambers provides that “Judges shall exercise their functions impartially and ensure the appearance of impartiality”. An obligation is thus placed upon the Trial Panel not only to be impartial but also to “ensure the appearance of impartiality”. In this regard, it is noteworthy that whilst Rule 132 of the Rules permits the Trial Panel in certain circumstances to “invite the submission of or *proprio motu* call additional evidence”, the Rules do not explicitly provide for either Party to tender evidence after its use in judicial questions. The Order on the Conduct of Proceedings also makes no mention of this possibility. The Trial Panel did not rely on Rule 132 to place the four documents in evidence in this case. In the absence of a rule expressly permitting a Party to tender documents in reliance on judicial questioning, the Defence submits that the Panel should ensure the appearance of impartiality by not permitting this tender by the Prosecution.

9. It is the Prosecution which bears the burden of proving this case beyond reasonable doubt.<sup>5</sup> In addition to the general burden of persuasion, it is for the Prosecution, as the tendering party in this instance, to lay an appropriate foundation for tendering each document it relies upon.<sup>6</sup> The Trial Panel does not have prosecutorial responsibilities; it cannot fairly adjudicate the case and act as

---

<sup>5</sup> KSC-BC-2020-07, F00611RED, Trial Panel II, *Public Redacted Version of the Trial Judgment*, 18 May 2022, public, para. 34; KSC-CA-2022-01, F00114, Panel of the Court of Appeals, *Appeal Judgment*, 2 February 2023, public, para. 328.

<sup>6</sup> SCSL, Prosecutor v. Taylor, SCSL-03-01-T, Appeals Chamber, *Decision on “Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents”*, 6 February 2009, paras 40-42; ICTY, Prosecutor v. Karadžić, IT-95-5/18-PT, Trial Chamber, *Decision on Prosecution’s Third Motion for Admission of Statements and Transcripts of Evidence in lieu of Viva Voce Testimony Pursuant to Rule 92bis (Witnesses for Sarajevo Municipality)*, 15 October 2009, para. 4; Prosecutor v. Karadžić, IT-95-S/18-T, Trial Chamber, *Decision on Accused’s Motion for Admission of Evidence Pursuant to Rule 92bis*, 18 March 2014, para. 34.

investigator/prosecutor.<sup>7</sup> This line would be crossed if the Trial Panel allows the Prosecution to tender documents which were only used during judicial questioning.

10. The Prosecution had the option to use all of the four documents in its own direct examination of W04739. The Prosecution elected not to use them. This has an important procedural consequence, because had the Prosecution wished to use these documents with the witness, the Order on the Conduct of Proceedings would have required the Prosecution to place the Defence on notice by including the four documents in its Presentation Queue. The Defence would then have been prepared to address the documents. In this case, [REDACTED] were not on the Prosecution's Presentation Queue. The Prosecution should not be allowed to take advantage of judicial questioning to tender documents through a witness when the Prosecution has not even placed the Defence on notice that they intended to use those documents with the Witness.

11. Further, the Prosecution has not discharged its burden to lay an appropriate foundation for the tender of these documents. The Prosecution laid no foundation at all, since it did not use the documents with the Witness. As a result, to allow judicial questioning to be used to give the Prosecution a second chance to tender documents through a witness (without notice to the Defence) is detrimental to the appearance of impartiality because it risks judicial questioning appearing to act as a supplemental prosecution. The documents are not connected to the evidence that the Prosecution adduced from the Witness. The Panel should not allow a Party to bolster its case by tendering documents used during judicial questioning, because this practice risks creating or reinforcing the impression that judicial questioning is advancing the case of one Party to the proceedings to the detriment of the other party. This is contrary

---

<sup>7</sup> ICTY, *Prosecutor v. Hartmann*, IT-02-54-R77.5, Panel, *Report of Decision on Defence Motion for Disqualification of Two Members of the Trial Chamber and of Senior Legal Officer*, 27 March 2009, para. 46; *Prosecutor v. Blagojević*, IT-02-60-AR73.3, Appeals Chamber, *Decision*, 8 April 2003, paras 22-23.

to a fundamental tenant of what a fair trial requires. There is no reason to justify a departure from the basic requirement that the Prosecution puts its case and tenders its own exhibits, instead of trying to tender documents available to them and used by the Panel. This “tag team” approach which the Prosecution seeks to adopt with this application has serious implications for the fairness of proceedings and further justifies rejection of the present application.

12. At the very least, it is important to the accuracy of the record of proceedings, including potential appeal rights, that documents which were only used by the Trial Panel and not by the Prosecution should not be entered into the record as Prosecution exhibits. The documents should be clearly identified as documents that were used by the Trial Panel not by the Prosecution.

13. There is a further alternative procedure available; the Prosecution itself submits that the four documents “could be admitted through the bar table”.<sup>8</sup> The Defence respectfully submits that determining admissibility through the bar table would be a better course in this instance, particularly where, as demonstrated below, W04739 has not meaningfully commented on the four documents.

14. The Defence notes that on one occasion the Trial Panel permitted the Prosecution to tender three documents following their use in the judicial questioning of W04769. The tender was made after the Defence had had the chance to cross-examine on those documents.<sup>9</sup> On that occasion, the Defence objected to the admission of the documents on the basis that the Rule 138(1) criteria were not met

---

<sup>8</sup> Prosecution Submission, para. 2.

<sup>9</sup> See, KSC-BC-2020-06, F01963, Trial Panel, *Decision on Admission of Documents shown to W04769*, 27 November 2023, public, para. 23.

but did not raise the objection set out above in written submissions.<sup>10</sup> As a result, the Trial Panel's Decision did not address the challenge now advanced by the Defence.<sup>11</sup> The Defence raises this new objection now in the light of the developing practice of judicial questioning of witnesses in this trial.

15. In any event, W04739 was not able to authenticate any of the four documents. Rule 138(1) of the Rules requires that evidence shall be admitted if it is "relevant, authentic, has probative value and its probative value is not outweighed by its prejudicial effect". It is for the tendering party to satisfy these admissibility criteria. In the Order on Conduct of Proceedings, the Trial Panel addressed the tendering of documents through witnesses and confirmed that:<sup>12</sup>

"It is for the tendering Party to demonstrate the relevance and probative value of an exhibit, and the connection of an exhibit with the testimony of the witness through whom the Party seeks to tender the exhibit. Parties and participants should only seek to tender exhibits through a witness that are clearly relevant to that witness's evidence" (underlining added)

16. As developed further below, the four documents are not connected or clearly relevant to the testimony of W04739. They are documents that W04739 did not write and did not see at the material time. Indeed, he had not seen them at all until presented with them in the witness box. W04739 was not asked about the provenance or the originator of the documents. No additional weight accumulates to a document by virtue of placing it before a witness who has never seen it before and inviting him

---

<sup>10</sup> KSC-BC-2020-06, F01911, Specialist Counsel, *Joint Defence Response to Prosecution Submissions on Admissibility of Items Following W04769's Testimony*, 8 November 2023, confidential, with Annexes 1-3, confidential.

<sup>11</sup> KSC-BC-2020-06, F01963, Trial Panel, *Decision on Admission of Documents shown to W04769*, 27 November 2023, public.

<sup>12</sup> KSC-BC-2020-06, F01226/A01, Trial Panel, *Annex 1 to the Order on Conduct of Proceedings*, 25 January 2023, public, para. 49.

to confirm on the spur of the moment whether he has reason to disagree with it. The Defence notes that the Prosecution objected to the Defence questioning W04739 about a statement about which W04739 said he had no personal knowledge.<sup>13</sup> The Prosecution cannot adopt inconsistent positions. Consistent with its own prior objections to Defence questions, the Prosecution cannot now tender documents about which the witness had no personal knowledge. In the circumstances, W04739 was not able to authenticate the documents or advance their probative value and the four documents should not be tendered through him.

17. The Defence notes that three of the four documents are said to have been found during the search of Mr. Krasniqi's residence. The Defence re-iterates its standing objection to the conduct of the search and the admission of any documents said to have been found during the search operation.<sup>14</sup> In addition to these points, the tendered documents cannot be assumed to be relevant, authentic or to have probative value merely because they were purportedly found at Mr. Krasniqi's residence. The search documents include both paper documents and electronic documents found on a workstation. In relation to the paper copies, it is important to note that Mr. Krasniqi is a historian and a writer who has published books about matters relevant to this case. That a paper document is found in the home of a historian in November 2020 does not establish that the document was written by that person, nor that they had knowledge of the document or its contents at the material time more than twenty years prior to the search, nor even that the document is

---

<sup>13</sup> KSC-BC-2020-06, Transcript of Hearing, 3 April 2024, confidential, T.14309 lines 7-9.

<sup>14</sup> KSC-BC-2020-06, F01387, Specialist Counsel, *Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table*, 21 March 2023, confidential, with Annexes 1-8, confidential, paras 31-50; IA029/F00002, Veseli and Krasniqi Defence, *Veseli and Krasniqi Defence Appeal against the Second Decision on Specialist Prosecutor's Bar Table Motion*, 27 July 2023, public, with Annex 1, confidential and *ex parte* and Annex 2, public; IA029/F00004, Veseli and Krasniqi Defence, *Veseli and Krasniqi Defence Reply to "Prosecution response to 'Veseli and Krasniqi Defence Appeal against the Second Decision on Specialist Prosecutor's Bar Table Motion'"*, 14 August 2023, confidential.



authentic. Without more, the suggestion that a document was seized from Mr. Krasniqi does not authenticate it, nor imbue the document with probative value.<sup>15</sup>

18. The Prosecution has also failed to authenticate any electronic documents from the workstation. The Defence notes that the Prosecution has not tendered any evidence in relation to the extraction of the material from the workstation, the metadata relating to each document apparently extracted, whether the workstation was in working order and, if it was not, whether it ceased to be in working order before or after it was taken into Mr. Krasniqi's residence. No evidence has been adduced thus far as to who actually used the workstation during 1998-1999 or how many users there were, or thereafter. There is no evidence as to how the workstation came to be in Mr. Krasniqi's residence or when it was last used. There is no evidence as to who wrote the electronic documents or caused them to be written or whether the electronic versions were created elsewhere and transferred to the workstation later; the Defence notes that the electronic documents include documents of a variety of types using a variety of purported names [REDACTED],<sup>16</sup> [REDACTED],<sup>17</sup> and the [REDACTED].<sup>18</sup> There is no evidence as to when they were created; W04739 himself thought that [REDACTED].<sup>19</sup> No evidence has been adduced that the documents were actually even printed or transmitted from the workstation in any form during the conflict. As a result, the assertion that a document was found on a workstation at Mr. Krasniqi's residence does not assist the Prosecution to establish that the document is relevant, authentic or has probative value which exceeds its prejudicial effect.

---

<sup>15</sup> SPO Submission paras 3, 5, 7, 9.

<sup>16</sup> [REDACTED].

<sup>17</sup> [REDACTED].

<sup>18</sup> [REDACTED].

<sup>19</sup> 120275-120287, p. 120283, para. 56.

**A. [REDACTED]**

19. [REDACTED] is a typed document headed ‘The formation of the General Staff of the KLA’ which consists of eleven pages. The Defence notes at the outset that the Prosecution has not established the nature of this document. The Prosecution has not identified whether this is a draft or a finished document, which has been previously considered by the Trial Panel as a relevant factor to the determination of the probative value of the tendered material.<sup>20</sup> Nor has the Prosecution identified the purpose for which it was written, which is a relevant factor at least for the purposes of assessing probative value.

20. The Trial Panel, the Defence and even the Prosecution have rightly identified concern about the risk of creating an unmanageable trial record in this case.<sup>21</sup> Yet in tendering this document, the Prosecution expressly submits that the contents “substantially overlap” with a published book by Mr. Krasniqi, “excerpts of which are already admitted into evidence in this case”.<sup>22</sup> As such, this appears to be another example of the Prosecution unnecessarily tendering multiple documents with substantially overlapping content where one would be sufficient. Further, during judicial questioning, W04739 was only referred to certain extracts of the document appearing on pages [REDACTED].<sup>23</sup> No justification has been put forward for the need to admit the entire document, when substantial parts of it were not commented on by the Witness at all.

---

<sup>20</sup> KSC-BC-2020-06, F01596, Trial Panel II, *Second Decision on Specialist Prosecutor’s Bar Table Motion*, 9 June 2023, public, para. 130.

<sup>21</sup> KSC-BC-2020-06, F01380, Trial Panel II, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154*, 16 March 2023, confidential, para. 29; F01308, Specialist Counsel, *Joint Defence Response to ‘Prosecution motion for admission of evidence of Witnesses W04474, W04421, W04355, W02161, W01236, W04337, and W03165 pursuant to Rule 154’*, 20 February 2023, confidential, para. 3; KSC-BC-2020-06, Transcript of Hearing (W04147 Testimony), 26 March 2024, confidential, T. 13713-13714.

<sup>22</sup> Prosecution Submission, para. 4.

<sup>23</sup> KSC-BC-2020-06, Transcript of Hearing, 4 April 2024, confidential, T.14459-T.14461, T. 14467-14469, T.14471-14473.

21. Finally, W04739 did not contextualise this document in a manner bolstering its reliability.<sup>24</sup> In fact, nothing in W04739's evidence suggests that he had ever read this document before. Importantly, in relation to a section of the document [REDACTED], having been told that the account was attributable to Jakup Krasniqi,<sup>25</sup> W04739 was asked whether he had any reason to dispute the account.<sup>26</sup> In his response, W04739 confirmed that he did not dispute the account.<sup>27</sup> Nothing in that response bolsters the reliability or authenticates the document. [REDACTED]. [REDACTED]. That W04739 did not dispute an account which he evidently knew nothing about, does not bolster its reliability or authenticate the document.

22. The same pattern is evident throughout W04739's responses to Judges' questions in relation to this document. For instance, in relation to the structure of the General Staff in November 1998, he answered: "[REDACTED]."<sup>28</sup> Again, W04739 was confirming his own lack of knowledge – [REDACTED]. Apart from that limited personal knowledge, W04739 was in no position to authenticate the content of the document. He clearly used and repeated the form of words "it appears that" because he was seeing information for the first time in the document and confirmed only that it appeared that way from the document. It is unsafe and jeopardises the integrity of proceedings for the Prosecution to depart from established rules and principles of evidence in the manner they appear to be doing in this case. Such a cavalier approach to the admission of evidence would not be acceptable in other courts and tribunals and the bar should not be lowered by the KSC. Simply put a disputed document, 1) not put by the prosecution to a witness in direct examination (examination in chief), and 2) not established as authentic and reliable, cannot be put to a witness who has

---

<sup>24</sup> Contra, Prosecution Submission, para. 2.

<sup>25</sup> KSC-BC-2020-06, Transcript of Hearing, 4 April 2024, confidential, T.14468 lines 8-10.

<sup>26</sup> *Idem*, T.14469 lines 4-7.

<sup>27</sup> *Idem*, T.14469 lines 8-10.

<sup>28</sup> *Idem*, T.14471 lines 19-23.

never seen it before and presented to that witness AS IF it is authentic. Nor can the Prosecution rely on an inability by that Witness to dispute the document as a ground to admit it. This novel and dangerous approach to admissibility should be rejected by the Trial Panel.

23. In the circumstances, the Prosecution has not established that the document is relevant, authentic and has probative value which exceeds its prejudicial effect. It should not be admitted.

**B. [REDACTED]**

24. [REDACTED] is a twenty-three-page document [REDACTED].

25. The Defence objections to the previous document<sup>29</sup> apply with equal force to this document. In particular, first, the Prosecution has not distinguished whether sections of this twenty-three-page document are said to reproduce an original document or are editorial comment. Second, the Prosecution does not explain why it seeks to tender all twenty-three pages, in circumstances where judicial questioning only directed W04739 to around two pages of the material.<sup>30</sup>

26. Third, once again, W04739 did not authenticate the document but had no or limited knowledge of it. [REDACTED], W04739 responded “I did not understand it that way back then, but I do understand it now. So it seems it was this way.”<sup>31</sup> W04739’s understanding at the material time thus differed from the content of the document. His conclusion that “it seems it was this way” reflects nothing more than

---

<sup>29</sup> See paras 15-19 above.

<sup>30</sup> KSC-BC-2020-06, Transcript of Hearing, 4 April 2024, confidential, T.14461 (referring to page SPOE00231518) and T.14463 (referring to the next page).

<sup>31</sup> *Idem*, T.14463 lines 6-7.

that he was reading the document for the first time. He repeated “I did not understand it to be the case, but it seems it was the case” in answer to a later question about the document.<sup>32</sup>

27. Finally, putting it to a witness, in the form of a leading question, that “you have no reason to dispute any aspect of that account; correct”,<sup>33</sup> in no way validates the document. W04739’s answer could equally be because he had no basis of knowledge one way or the other and hence no reason to dispute it.

28. Accordingly, the Prosecution has not established that the document is relevant, authentic, or that it has probative value which is not outweighed by its prejudicial effect.

---

<sup>32</sup> *Idem*, T.14464 line 15.

<sup>33</sup> *Idem*, T.14464 lines 18-19.

### C. [REDACTED]

29. The Prosecution tenders [REDACTED], a single page document which purports to be [REDACTED].

30. This document was apparently seized from a workstation at Jakup Krasniqi's residence. The Prosecution has not established the authenticity or probative value of the document for the following reasons. First, it is unsigned. Second, it bears no official stamp. Third, it bears no official insignia, logo or other identifying features. The Defence notes that the Prosecution has relied upon the presence of a signature and official stamp as evidence of authenticity;<sup>34</sup> the corollary of that submission must be that the absence of signature or official stamp weakens the authenticity and probative value of a document. Fourth, having been found in electronic form on a workstation, there is no evidence that it was ever actually printed and distributed. Fifth, no metadata has been adduced by the Prosecution to confirm the date when it was typed. W04739 himself has previously said that [REDACTED].<sup>35</sup> Sixth, there is no evidence about who typed it or created the document, who (if anyone) gave instructions for it to be typed or for what reason. Seventh, it is not corroborated by other documents: other similar decisions on detention have not been produced.

31. W04739 was not able to authenticate the document. It is clear from his answers that he had not seen the document before.<sup>36</sup> In evidence he simply agreed with a leading question that the document "[REDACTED]"<sup>37</sup> and agreed again with the leading question "[REDACTED]".<sup>38</sup> These answers are not capable of authenticating

---

<sup>34</sup> Prosecution Submission, para. 9.

<sup>35</sup> 120275-120287, p. 120283, para. 56.

<sup>36</sup> See KSC-BC-2020-06, Transcript of Hearing, 4 April 2024, confidential, T.14479 line 21 "[REDACTED]".

<sup>37</sup> KSC-BC-2020-06, Transcript of Hearing, 4 April 2024, confidential, T.14479 lines 8-11.

<sup>38</sup> *Idem*, T.14480 lines 2-4.

the document – W04739 does not know who produced this document, if it was ever actually printed or when it was produced. W04739 added nothing to the admissibility of this document – he simply agreed with leading questions about what the document appeared to be on its face, in a manner which any literate person could have done, and confirmed superficial details which do not authenticate the substance of the document.

32. Finally, the Defence submits that the prejudicial effect of admitting this document is outweighed by any limited probative value it possesses. [REDACTED]. [REDACTED]. The Defence will not be able to cross-examine either of the witnesses most likely to have knowledge about this document.

33. Accordingly, the document should not be admitted through this witness. It has not been authenticated. Any probative value it possesses is outweighed by its prejudicial effect.

#### **D. [REDACTED]**

34. Finally, the Prosecution seeks to tender [REDACTED] which is a single page document said to be a [REDACTED].

35. The Defence notes that no information has been provided by the Prosecution to account for the provenance of this document. The originator field on LWF simply refers to “ICTY/MICT”. As a result, there is no evidence before the Trial Panel as to the origin of this document or its chain of custody.

36. W04739 was not able to authenticate this document. Prior to being shown this document, he confirmed that he did not have knowledge of who appointed

[REDACTED].<sup>39</sup> W04739 then expressly confirmed that it was the first time that he saw the document and that it was from a time before [REDACTED].<sup>40</sup> As a result, he had no knowledge about this document at all. His subsequent speculative answer to a leading question about the document that “It seems like it was that way, so it must be that way”,<sup>41</sup> is based on nothing more than the Witness reading the document for the first time.

37. The Prosecution wrongly submits that W04739 gave “meaningful context” about who [REDACTED] would report to “from the nature of this appointment”.<sup>42</sup> W04739 did not. W04739 was asked to speculate who he would expect [REDACTED] to report to and prefaces his response by saying “from what I can see here [...]”. He was not adding meaningful context, but merely reading from the face of a document which he had seen for the first time. When asked a second time who he understood [REDACTED] would be reporting to, W04739 again prefaced his answer “the way it is written here [...]”. Again, W04739 was not providing meaningful context, he was reading the face of the document and speculating on the basis of it. W04739 is a witness of fact. [REDACTED]. He is not offered as a military expert entitled to give opinion evidence speculating on the meaning of documents in relation to which he had no personal knowledge.

38. The Defence further notes that [REDACTED]. The document could be tendered through [REDACTED].

39. A witness cannot authenticate documents that he has never seen, [REDACTED]. Nor can a witness of fact speculatively offer opinion evidence about

---

<sup>39</sup> KSC-BC-2020-06, Transcript of Hearing, 4 April 2024, confidential, T.14484 lines 9-11.

<sup>40</sup> *Idem*, T.14485 lines 3-4.

<sup>41</sup> *Idem*, T.14485 lines 4-6.

<sup>42</sup> Prosecution Submission, para. 10.



likely reporting lines, from a document he had never seen. The Prosecution has not established that the document is authentic, relevant, or that its probative value exceeds any prejudicial effect.

#### IV. CONCLUSION

40. For all the reasons set out above, the Trial Panel should not admit the four documents as Prosecution exhibits. The Prosecution has not discharged its burden to lay the proper foundation to tender these documents. To ensure the impartiality of proceedings, the Prosecution cannot rely on the Trial Panel to lay the foundation for the Prosecution to tender documents, because by doing so the Prosecution puts the Trial Panel into a prosecutorial role. As set out above, alternative and more appropriate measures are available including for the documents to be admitted as the Panel's documents pursuant to Rule 132 (if the Panel decides that the Rule 138(1) criteria are otherwise satisfied) or for the Prosecution to submit a bar table motion.

41. The Defence therefore requests the Trial Panel to:-
- a. Delay resolution of the application until the conclusion of further cross-examination;
  - b. Reject the Prosecution Submission in its totality, for reasons set out above and to safeguard the integrity of the proceedings;
  - c. Alternatively, reject the request and order the Prosecution to file a bar table motion if it seeks to rely on the four documents.

[Word count: 4, 934]

Respectfully submitted on 18 April 2024



---

Luka Mišetić  
Counsel for Hashim Thaçi



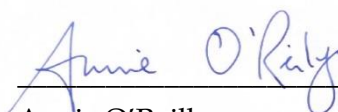
---

Ben Emmerson, CBE KC  
Counsel for Kadri Veseli



---

Kerrie Ann Rowan  
Co-Counsel for Kadri Veseli



---

Annie O'Reilly  
Co-Counsel for Kadri Veseli



---

Geoffrey Roberts  
Counsel for Rexhep Selimi



---

Eric Tully  
Co-Counsel for Rexhep Selimi



---

Rudina Jasini  
Co-Counsel for Rexhep Selimi



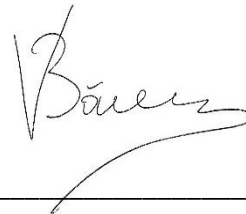
---

Venkateswari Alagenda  
Counsel for Jakup Krasniqi



---

Aidan Ellis  
Co-Counsel for Jakup Krasniqi



---

Victor Băieșu  
Co-Counsel for Jakup Krasniqi