

In: KSC-BC-2020-06

**The 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: Counsel for Hashim Thaçi
Counsel for Kadri Veseli
Counsel for Rexhep Selimi
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Date: 30 August 2024

Language: English

Classification: Confidential

**Corrected Version of Joint Defence Response to 'Prosecution motion for
admission of Shala Zone and Karadak Zone documents' with Confidential**

Annexes 1-3

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I. INTRODUCTION

1. Pursuant to Articles 37 and 40 of the Law,¹ Rules 137-138 of the Rules,² and the Order on the Conduct of Proceedings,³ the Defence for Messrs. Thaçi, Veseli, Selimi and Krasniqi (“the Defence”) hereby files its response to the Prosecution motion for admission of Shala Zone and Karadak Zone documents⁴ (“SPO Motion”). Despite the numerous submissions expressing legitimate and immediate concerns about the size of the SPO’s case and the latter’s ability to complete its presentation of evidence by the 1st of April 2025,⁵ and the Trial Panel’s indication that “[t]he Prosecution is going to get a lot of pressure by us to finish as promised”,⁶ the SPO nonetheless conspicuously fails to comply with its obligation to introduce only material of high probative value into the evidentiary record.⁷ The SPO’s heavy reliance on the wholesale submission of evidence via the bar table is a key contributor to the size of the evidential record and raises the immediate concern that its unmanageable size may negatively impact the fairness of these proceedings and impede their streamlining.⁸

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, 3 August 2015 (‘Law’). All references to ‘Article’ or ‘Articles’ herein refer to the Law, unless otherwise specified.

² 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.

³ KSC-BC-2020-06/F01226/A01, Annex 1 to the Order on the Conduct of Proceedings, 25 January 2023, paras. 60-62.

⁴ KSC-BC-2020-06/F02468, Prosecution motion for admission of Shala Zone and Karadak Zone documents with confidential Annexes 1-3, 24 July 2024.

⁵ KSC-BC-2020-06/F02476, Thaçi Defence Response to ‘Prosecution submissions concerning the completion of its case’ (F02400), 25 July 2024; KSC-BC-2020-06/F02475, Selimi Defence Response to Prosecution submissions concerning the completion of its case, 25 July 2024; KSC-BC-2020-06/F02473, Krasniqi Defence Response to ‘Prosecution Submissions Concerning the Completion of its Case’ (F02400), 25 July 2024.

⁶ Transcript of 19 August 2024, p. 18568.

⁷ 5 KSC-BC-2020-06/F01226/A01, Order on the Conduct of Proceedings, 25 January 2023, para. 49.

⁸ KSC-BC-2020-06/F02291, Joint Defence Response to Prosecution Motion for Admission of Drenica Zone Documents with Confidential Annex 1, 6 May 2024, para. 16; KSC-BC-2020-06/F02243, Joint Defence Response to Prosecution motion for admission of Llap Zone documents and related request (F02178) with confidential Annex 1, 15 April 2024, paras. 1-6.

2. The collection tendered is replete with, *inter alia*, material (i) devoid of any indicia of authenticity; (ii) whose relevance as professed by the SPO rests on the SPO's imputations of hypothetical information into its contents; and (iii) whose probative value is entirely arcane in the absence of further contextualizing testimony. The admission of these materials would nonetheless require ample efforts to verify or otherwise challenge the facts and circumstances they purport to describe, including by way of courtroom time used for cross-examination and written submissions in the Parties' final brief. In that respect, the Defence reiterates that the SPO's attempts to enter written evidence into the record absent contextualizing or authenticating testimony is not an effective streamlining exercise, as both the size of the SPO's case and the Parties and the Trial Panel's obligation to review, challenge or otherwise assign weight to that evidence remain unaffected.⁹
3. For the foregoing reasons, and as further set out below, the Defence requests that the admission of the tendered material be rejected. The Defence has annexed modified versions of Annexes 1 and 2 to the SPO Motion, listing specific objections to the Proposed Exhibits. For the convenience of the Trial Panel, the Defence relies on the same categories of objections formulated in response to the First Bar Table Request in March 2023.¹⁰ An overview of the objections raised therein is provided below.

⁹ KSC-BC-2020-06/F02478, Joint Defence Motion to Exclude the Evidence of W01234, W04859, W04860 and W04570, 30 July 2024, para. 12.

¹⁰ KSC-BC-2020-06/F01387/A07, Annex 7 to Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table, 21 March 2023.

II. SUBMISSIONS

A. The SPO has failed to establish the authenticity of the proposed exhibits

4. The SPO's tender contains a myriad of documents with little to no indication of authenticity, including (i) handwritten material containing numerous different forms of handwriting whose provenance has not been established;¹¹ (ii) draft documents bereft of any stamp, signature or any other indication as to the circumstances of their creation;¹² (iii) documents provided to the SPO by international organizations absent any information on how the institutions concerned came into their possession;¹³ and (iv) compilations amassing numerous documents without any discernible link between one another.¹⁴ Notwithstanding that the Proposed Exhibits now tendered by the SPO fail to satisfy the requirements of authenticity by themselves, the SPO's submissions in support of their admission likewise fall short of the requisite threshold.
5. In particular, the SPO repeatedly relies on cross-references to material not tendered for admission to buttress the authenticity of the proposed exhibits,¹⁵ in defiance of the Trial Panel's previous determination that it will not base its assessment of admissibility on material not offered for admission.¹⁶ The SPO further invites the Trial Panel to assess the collection "holistically" at the expense

¹¹ See, for example, Item 10 of Annex 1 to SPO Motion: 096592- 096653-ET; Item 16 of Annex 1: SITF00285703-00285705; Item 20 of Annex 1 to SPO Motion: SITF00435966-00436009.

¹² Item 24 of Annex 1: SITF00435934-00435935; Item 28 of Annex 1: SITF00435943-00435943.

¹³ Item 20 of Annex 1 to SPO Motion: SITF00435966-00436009; Item 24 of Annex 1: SITF00435934-00435935.

¹⁴ Item 1 of Annex 1 to SPO Motion: 096537-096563; Item 5 of Annex 1 to SPO Motion: 096797-096858. The Defence reiterates its position on the authenticity of compilations and their suitability for admission from the bar table (see KSC-BC-2020-06/F02243, Joint Defence Response to Prosecution motion for admission of Llap Zone documents and related request (F02178) with confidential Annex 1, 15 April 2024, paras. 28-29).

¹⁵ SPO Motion, footnote 53; Item 26 of Annex 1 of SPO Motion: 060465-060465; Item 27 of Annex 1 to SPO Motion: 060466-060467.

¹⁶ KSC-BC-2020-06/F01603, Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, 14 June 2023, para. 50; KSC-BC-2020-06/F02291, Joint Defence Response to Prosecution Motion for Admission of Drenica Zone Documents with Confidential Annex 1, 6 May 2024, para. 28.

of providing individualized submissions in support of the professed authenticity of the Proposed Exhibits.¹⁷ The Defence reiterates in that respect that a collection of documents which are themselves poorly or not authenticated do not assist in establishing the authenticity of yet other documents suffering the same deficiencies.¹⁸ Furthermore, the SPO's reliance on the fact that several of the documents tendered have been seized from Mr. Selimi's residence as an authenticating factor¹⁹ is entirely presumptuous in the absence of further, specific information on the circumstances in which those documents were prepared and by whom. The Defence further reiterates its submissions on the authenticity and reliability of material seized from the Accused made in previous submissions.²⁰

6. Several of the Proposed Exhibits contain virtually no indication of authorship, while other such documents merely identify the purported authors by common pseudonyms, which impedes the Defence's ability to ascertain the identity of the individuals concerned.²¹ The SPO's averment that "proof of provenance or authorship is not required",²² employed as a justification for the tender of numerous such documents, also belies an ill-conceived attempt to rewrite the applicable standard wherein *definite* or *absolute* proof of authorship is not required at admissibility stage.²³ The Trial Panel has consistently emphasized

¹⁷ SPO Motion, para. 16.

¹⁸ KSC-BC-2020-06/F02291, Joint Defence Response to Prosecution Motion for Admission of Drenica Zone Documents with Confidential Annex 1, 6 May 2024, para. 20; F02243, Joint Defence Response to Prosecution motion for admission of Llap Zone documents and related request (F02178) with confidential Annex 1, 15 April 2024, para. 17.

¹⁹ SPO Motion, para. 17.

²⁰ KSC-BC-2020-06/F01387, Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table with confidential Annexes 1-8, 21 March 2023, paras. 31-51.

²¹ Item 5 of Annex 1 to SPO Motion: 096797-096858; Item 10 of Annex 1 to SPO Motion: 096592-096653; Item 1 of Annex 1 to SPO Motion: 096537-096563.

²² SPO Motion, para. 17.

²³ KSC-BC-2020-06/F01409, Decision on Specialist Prosecutor's Bar Table Motion, 31 March 2024, paras. 11-12; KSC-BC-2020-06/F02293, Decision on Prosecution Request for Admission of Documents Shown to W04739, 8 May 2024, para. 13.

that “[i]t is for the tendering Party to provide indicators of a proposed exhibit’s authenticity, where that document does not, on its face, contain sufficient indicators of authenticity.”²⁴ The tender of numerous document devoid of any indication of authorship that is unaccompanied by any independent, reliable information that goes to proving the latter is entirely antithetical with the standard established by the Trial Panel.

7. Finally, the SPO avers that “documents forming part of many of the relevant, seized collections and/or their contents have been or will be authenticated by witnesses, which buttress the authenticity of the collections as a whole.”²⁵ While no reference is made in the SPO’s submissions as to which witness(es) have been, or will hypothetically be, in a position to testify to the authenticity of the Proposed Exhibits, the SPO motion further fails to provide any explanation for why their tender was not made, or will not be made, at the time the witnesses concerned testified or will otherwise testify.

B. The SPO has failed to establish the relevance and probative value of the proposed exhibits

8. Several of the proposed exhibits bear only a tenuous connection to the facts and circumstances alleged in the Indictment in the absence of further contextualizing testimony. Numerous such exhibits are incomplete drafts,²⁶ documents whose attribution to the KLA, or to the specific individuals or units as purported by the SPO, is not evident from their face and premised on conjecture;²⁷ or in respect of which there is no indication that they were at any point disseminated, and if so,

²⁴ F01226/A01, Annex 1 to the Order of the Conduct of Proceedings, 25 January 2024, paras. 52, 62(iii); KSC-BC-2020-06/F01409, Decision on Specialist Prosecutor’s Bar Table Motion, 31 March 2024, para. 11.

²⁵ SPO Motion, para. 17.

²⁶ Item 5 of Annex 1: 096797-096858; Item 24 of Annex 1: SITF00435934-0043593; Item 28 of Annex 1: SITF00435943-00435943; Item 4 of Annex 2: U001-2019-U001-2021.

²⁷ Item 2 of Annex 1: U000-8844-U000-8860; Item 17 of Annex 1: SITF00285698-00285700; Item 14 of Annex 1: U000-8660-U000-8662.

to whom.²⁸ Several documents of poor quality also pervade the collection, which contain illegible sections or where entire portions of the documents are missing.²⁹ Should the SPO intend to rely on the evidence therein, it is incumbent upon it to submit original or better quality versions of such documents so that their entire content can be explored.

9. In its attempt at countering these concerns, the SPO has proceeded with imputing speculative facts into the contents of the document and putting forward its singular interpretations of the information contained therein as proffers of relevance. Examples include inviting the Trial Panel to draw such implausible inferences as that references to “temporary regulations” should be interpreted to mean the Provisional Regulations of the Organisation of the Internal Life of the Army,³⁰ or that ambiguous references to individuals being surveyed or subject to travel restrictions necessarily entails that these actions were premised on the belief that these individuals qualify as collaborators.³¹ In the absence of contextualizing testimony which can certify the accuracy of the SPO’s assertions, they remain unilateral and conclusory.
10. Additionally, in respect of several documents, the relevance professed by the SPO is entirely exaggerated and/or legally untenable. Examples include averring that an unsigned request without any addressee made in July 1999 would be dispositive of the existence of the Shala OZ at the relevant time,³² or that an alleged travel permit that bears no date, signature or any other indication of authorship is indicative of the KLA’s ability to control movements.³³ As previously argued, the introduction of irrelevant evidence that bears no

²⁸ Item 24 of Annex 1: SITF00435934-00435935; Item 28 of Annex 1: SITF00435943-00435943; Item 9 of Annex 2: SPOE00231630-SPOE00231630.

²⁹ Item 1 of Annex 1: 096537-096563, Item 7 of Annex 1: U000-8636-U000-8637-ET Revised.

³⁰ Item 15 of Annex 1: SITF00435385-00435385.

³¹ Item 22 of Annex 1: SITF00435508-00435545.

³² Item 28 of Annex 1: SITF00435943-00435943.

³³ Item 24 of Annex 1: SITF00435934-00435935.

semblance of a connection to the charges against the Accused and which is of marginal probative value constitutes a manifest obstacle to the expeditious conduct of the present proceedings.³⁴ Allowing the SPO to introduce such evidence at this stage where its ability to complete its case by the target date is hampered by its continued reticence to focus its presentation of evidence would frustrate any consideration of expediency.

C. The probative value of the Proposed Exhibits is outweighed by their prejudicial effect

11. While numerous documents tendered by the SPO bear only marginal, if any, probative value, certain other documents relate to crucial issues in the present proceedings, including the reporting lines to the General Staff and the Ministry of Public Order of zone officials in the Karadak OZ,³⁵ and the alleged targeting of collaborators in the Shala OZ.³⁶ While the SPO avers that “[t]he Defence has had and will have ample opportunity to address and make submissions concerning the Proposed Exhibits, put their contents to witnesses, and lead evidence to the contrary”,³⁷ it fails to identify the specific witnesses through which the Defence will be in a position to challenge the contents of these documents.
12. The SPO has elected to call less than a handful of witnesses who are in a position to offer structural evidence as to the functioning and organization of the Shala and Karadak Zones, namely W04747, W04601 and W04484. Even so, there is little to no indication from the documents tendered that these individuals would be able to comment on their contents in the course of cross-examination, which risks wasting valuable courtroom time ascertaining who the individuals envisaged by

³⁴ KSC-BC-2020-06/F02475, Selimi Defence Response to Prosecution submissions concerning the completion of its case, 25 July 2024, paras. 25-27.

³⁵ Item 9 of Annex 2: SPOE00231630-SPOE00231630.

³⁶ Item 4 of Annex 1: 096566-096590.

³⁷ SPO Motion, para. 18.

the SPO might be. Nor should the Defence be required to call a case in violation of the Accused's right to silence in order to challenge material that has been introduced into the proceedings in a circuitous fashion and for which no foundation has been established. The fact that several of these documents suffer from the authenticity defects detailed above also further prevent meaningful Defence investigations as to the authorship of these documents, and, as such, the SPO's averment that the Defence will be able to challenge these documents during its own presentation of evidence is simply illusory.

13. For these reasons, the SPO should ascertain the witnesses which can lay the proper foundation for the admission of the Proposed Exhibits and tender the latter in this fashion in order to ensure that the Accused's right to challenge the evidence against them is safeguarded.

III. CLASSIFICATION

14. This filing is submitted confidentially pursuant to Rule 82(4). A public redacted version will be filed in due course.

IV. CONCLUSION

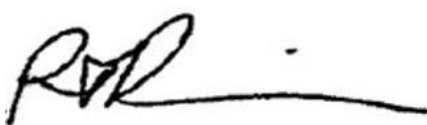
15. For the foregoing reasons, the Defence respectfully requests the Trial Panel to REJECT the SPO Motion.

Word count: 2521

Respectfully submitted on 30 August 2024,




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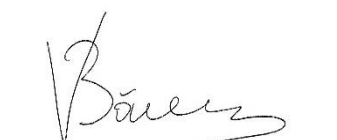
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