



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:** 9 September 2024

**Language:** English

**Classification:** Public

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**Prosecution reply relating to its motion to admit Shala Zone and Karadak Zone documents (F02468)**

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## I. INTRODUCTION

1. The Response,<sup>1</sup> once again,<sup>2</sup> 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.<sup>3</sup>

## II. SUBMISSIONS

2. Contrary to Defence submissions,<sup>4</sup> and consistent with the Law,<sup>5</sup> Rules,<sup>6</sup> Conduct of Proceedings Order,<sup>7</sup> and this Panel's prior decisions,<sup>8</sup> (i) there is no requirement that documents be tendered through a witness; and (ii) the admission of documents through the bar table is not, in and of itself, prejudicial. To consider otherwise would render relevant parts of the legal framework meaningless, and undermine the fairness and expeditiousness of the proceedings. In this respect, Defence arguments that admission of the 38 Proposed Exhibits would impede 'streamlining' are both unfounded and irrelevant to admissibility.<sup>9</sup>

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<sup>1</sup> Corrected Version of Joint Defence Response to 'Prosecution motion for admission of Shala Zone and Karadak Zone documents' with Confidential Annexes 1-3, KSC-BC-2020-06/F02521/COR, 30 August 2024, Confidential ('Response').

<sup>2</sup> See Prosecution reply relating to its motion to admit Llap Zone documents (F02138), KSC-BC-2020-06/F02266, 25 April 2024; Prosecution reply relating to its motion to admit Drenica Zone documents (F02248), KSC-BC-2020-06/F02306, 13 May 2024.

<sup>3</sup> Prosecution motion for admission of Shala Zone and Karadak Zone documents, KSC-BC-2020-06/F02468, 24 July 2024 ('Motion'). See also para.1 (defining the 'Proposed Exhibits').

<sup>4</sup> Response, KSC-BC-2020-06/F02521/COR, paras 7, 12-13.

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

<sup>6</sup> 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.

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

<sup>8</sup> 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.

<sup>9</sup> *Contra* Response, KSC-BC-2020-06/F02521/COR, paras 1-2, 10.

3. As indicated throughout the Motion,<sup>10</sup> 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. Indeed, since the Motion was filed, three of the Proposed Exhibits were admitted through W04868.<sup>11</sup> In any event, the Rules do not prescribe that exhibits should be tendered in a particular manner,<sup>12</sup> and 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.<sup>13</sup>

4. 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.<sup>14</sup> Rather, the Proposed Exhibits should be considered holistically in light of all relevant information and evidence. Defence submissions also ignore indicia of authenticity on the face of the Proposed Exhibits themselves. For example, contrary to Defence submissions otherwise,<sup>15</sup> SITF00435943-00435943 is

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<sup>10</sup> Motion, KSC-BC-2020-06/F02468, paras 2-21; KSC-BC-2020-06/F02468/A01 ('Motion Annex 1'); KSC-BC-2020-06/F02468/A02 ('Motion Annex 2').

<sup>11</sup> See Motion Annex 2, KSC-BC-2020-06/F02468/A02, items 5 (admitted as P01522/P01522\_ET.2), 8 (admitted as P01532/P01532\_ET), 9 (admitted as P01539/P01539\_ET). The request to admit these documents in the Motion is now moot.

<sup>12</sup> 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 suitable method has not been used, as long as they meet the requirements of the Rules for admission'), 10.

<sup>13</sup> See e.g. Sixth Decision, KSC-BC-2020-06/F01983, para.129. *Contra* Response, KSC-BC-2020-06/F02521/COR, paras 2, 7, 12-13.

<sup>14</sup> See e.g. Response, KSC-BC-2020-06/F02521/COR, paras 5, 8. The Defence also incorrectly claims that individualised submissions are not provided. See Response, KSC-BC-2020-06/F02521/COR, para.5. To the contrary, Motion Annex 1 and Motion Annex 2 provide individualised submissions for each Proposed Exhibit.

<sup>15</sup> Response, KSC-BC-2020-06/F02521/COR, paras 4 (fn.12), 8 (fn.28), 10 (fn.32) (claiming, that the relevance 'professed' for several documents is 'entirely exaggerated and/or legally untenable' and citing, by way of example, SITF00435943-00435943, which the Defence claims has no addressee and is not 'dispositive of the existence of the Shala OZ at the relevant time'). The SPO did not claim that this (or any) Proposed Exhibit was 'dispositive of' such fact, but did rightly submit it was relevant thereto.

typed and dated, has a KLA Shala Zone header, and identifies both its source and its addressee.<sup>16</sup>

5. Finally, concerning handwritten documents,<sup>17</sup> partially illegible documents,<sup>18</sup> documents of purported ‘importance’ to the SPO’s case,<sup>19</sup> and documents seized from the Accused,<sup>20</sup> the Defence largely repeats already considered and rejected objections to these categories of evidence.<sup>21</sup> Each Proposed Exhibit must be assessed on an item-by-item basis against the admissibility criteria, which apply to all categories of Proposed Exhibits.<sup>22</sup>

### III. RELIEF REQUESTED

6. For the reasons given above and previously, the Motion should be granted.<sup>23</sup>

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<sup>16</sup> Motion Annex 1, KSC-BC-2020-06/F02468/A01, item 28.

<sup>17</sup> *Compare* Response, KSC-BC-2020-06/F02521/COR, para.4 *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.

<sup>18</sup> *Compare* Response, KSC-BC-2020-06/F02521/COR, para.8 *with* Fifth Decision, KSC-BC-2020-06/F01832, para.83 (noting that the Panel will take into account the legibility of a document when assigning weight, provided the legible parts meet the admissibility criteria). The SPO has tendered the best quality versions in its possession and any illegible parts of the Proposed Exhibits do not impede an assessment of their relevance and probative value.

<sup>19</sup> *Compare* Response, KSC-BC-2020-06/F02521/COR, para.11 *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).

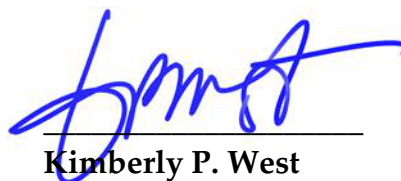
<sup>20</sup> *Compare* Response, KSC-BC-2020-06/F02521/COR, para.5 *with* Fifth Decision, KSC-BC-2020-06/F01832, para.17 (noting prior decisions of the Trial Panel and Court of Appeals concerning the lawfulness of the search and seizure operations, and that the Defence has tendered items seized from the Accused).

<sup>21</sup> Notably, the Defence objects to all Proposed Exhibits, often doing so by category.

<sup>22</sup> *See, similarly*, Sixth Decision, KSC-BC-2020-06/F01983, para.92.

<sup>23</sup> As noted in fn.11 above, three of the Proposed Exhibits have now been admitted through W04868 and this part of the Motion is now moot.

**Word count: 1066**



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**Kimberly P. West**

**Specialist Prosecutor**

Monday, 9 September 2024

At The Hague, the Netherlands.