



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

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Public Redacted Version of 'Prosecution reply relating to motion to admit Nerodime Zone documents (F02667)'

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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 Motion³ and the record in this case.

II. SUBMISSIONS

2. Contrary to Defence submissions,⁴ 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 witness⁹ and 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 particular in this complex multiple-Accused

¹ Joint Defence Response to Prosecution motion for admission of Nerodime Zone documents through the bar table and related request (F02667), KSC-BC-2020-06/F02725, 15 November 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; Prosecution reply relating to its motion to admit Drenica Zone documents (F02248), KSC-BC-2020-06/F02306, 13 May 2024; Prosecution reply relating to its motion to admit Shala Zone and Karadak Zone documents (F02468), KSC-BC-2020-06/F02539, 9 September 2024. Once again Defence submissions about the number of admitted and exhibit list items are inflated and misleading, including because the Defence at least doubles each figure in the Response, counting both the original and translation. See e.g. Response, KSC-BC-2020-06/F02725, paras 1, 29.

³ Prosecution motion for admission of Nerodime Zone documents, KSC-BC-2020-06/F02667, 21 October 2024, Confidential ('Motion'). See also para.1 (defining the 'Proposed Exhibits').

⁴ Response, KSC-BC-2020-06/F02725, paras 2, 4, 7-8, 14 (asserting that, if documents are relevant and probative enough to warrant admission, they should be authenticated by witnesses), 18, 24-28.

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 The Rules do not prescribe that exhibits should be tendered in a particular manner. See Decision on Prosecution Request for Admission of Documents Shown to W04739, KSC-BC-2020-06/F02293, 8 May 2024, Confidential ('W04739 Decision'), paras 9, 10.

case.¹⁰ It is neither practicable, nor in the interests of justice for all relevant, *prima facie* authentic documentary evidence to be tendered through a witness. In this respect, the Motion demonstrates how each Proposed Exhibit: (i) fits into the Prosecution's case; and (ii) is consistent with, complementary to, and corroborative of testimony, adjudicated facts, and other exhibits.¹¹

3. The Specialist Prosecutor's Office ('SPO') has put to and tendered through witnesses a significant number of contemporaneous KLA documents, including documents seized by the Serbian authorities from KLA bases and members during the Indictment period.¹² Such witnesses have contextualised, commented on, and/or authenticated them.

4. Contrary Defence submissions are selective and ignore that, while some witnesses did not comment on or confirm certain documents, other witnesses did.¹³ For example, like W04746,¹⁴ W04758 recognised the signature on P00150,¹⁵ and

¹⁰ See, similarly, ICTY, *Prosecutor v. Milutinović et al.*, IT-05-87-T, Decision on Lukić defence Motions for Admission of Documents From Bar Table, 12 June 2008, para.10 (and sources cited therein).

¹¹ Relatedly, the Response claims that Proposed Exhibits cannot be authenticated by other Proposed Exhibits. See Response, KSC-BC-2020-06/F02725, para.21. Rather than being 'circular' and 'illogical', as the Defence claims, *indicia* of authenticity may include the interconnected and corroborative nature of the Proposed Exhibits. For example, multiple Proposed Exhibits record the same, specific information (e.g. Proposed Exhibits 77, 81, 86, and 90), are dated in the same timeframe, bear the same signature, and have similar format and nature (e.g. Proposed Exhibits 25, 27-28, 31, 33, 36, 39), and correspond (e.g. Proposed Exhibits 75-77).

¹² By way of non-exhaustive example of KLA documents seized by the Serbian authorities, provided to the ICTY, and then provided to the SPO, and tendered by the SPO through witnesses, see e.g. [REDACTED]; W04746 (P00688); W04765 (P00711; P00716; P00717; P00721; P00722; P00723; P00724); [REDACTED]; W03865 (P01139); [REDACTED]; W04752 (P01358; P01360; P01383; P01385; P01386; P01387; P01388; P01389; P01390; P01409); [REDACTED]; W01511 (P01596; P01597; P01600); [REDACTED]; W04278 (P01698); W04240 (P01742); W04758 (P01759; P01760; P01761; P01762); W04485 (P01770); W04295 (P01810). While these documents are not among the Proposed Exhibits, many Proposed Exhibits were also seized by the Serbian authorities during the Indictment period and provided to the SPO by the ICTY. In addition to the cited examples, a significant number of other contemporaneous KLA documents – provided by the Serbian authorities and other sources, including witnesses – have also been used and tendered through witnesses.

¹³ Response, KSC-BC-2020-06/F02725, para.17, fn.41 (referring to testimony concerning, *inter alia*, P00150 and [REDACTED]).

¹⁴ Response, KSC-BC-2020-06/F02725, fn.41 (quoting the relevant part of W04746's testimony).

¹⁵ Transcript, 31 October 2024, pp.21682-21683.

[REDACTED] confirmed the contents of [REDACTED].¹⁶ Moreover, multiple KLA documents – including Proposed Exhibits – were recently used with W01453.¹⁷ For example: (i) he confirmed that requests like those contained in Proposed Exhibit 8 were made by the military police and brigades to the Zone Command;¹⁸ and (ii) while the Defence correctly quotes part of W01453's comments on Proposed Exhibit 53,¹⁹ it ignores that the witness confirmed in other parts of his testimony that he did, in fact, use the pseudonym featuring on the document²⁰ and did not question the document's authenticity as such.²¹ This record underlines that relevant and *prima facie* authentic contemporaneous KLA records, such as the Proposed Exhibits, should be admitted for holistic assessment in light of all evidence at the conclusion of the trial.²² Relevance, authenticity, and probative value should not be assessed selectively and in isolation, as the Defence does throughout the Response.²³

5. There has been no prejudice or unfairness.²⁴ The Proposed Exhibits – and other contemporaneous KLA documents tendered in past bar table motions – have long been disclosed and on the exhibit list. Further, consistent with this Panel's instructions, the SPO has provided clear and detailed advance notice of its intention to seek to

¹⁶ [REDACTED]. *See also* [REDACTED].

¹⁷ *Compare* Response, KSC-BC-2020-06/F02725, paras 14-17.

¹⁸ Transcript, 5 November 2024, pp.21946-21947 (while he could not recall the specific document, W01453 confirmed that there were 'many requests, from the military police, from brigades [...] So there were many requests sent to the Nerodime operational zone').

¹⁹ Response, KSC-BC-2020-06/F02725, para.7.

²⁰ Transcript, 5 November 2024, p.21813.

²¹ Transcript, 5 November 2024, pp.22008-22010 (testifying that if it was a battalion document, it would have been submitted as a report to the brigade command and acknowledging that the events recorded could have happened).

²² 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. *See e.g.* Sixth Decision, KSC-BC-2020-06/F01983, para.129.

²³ For example, in support of submissions that certain Proposed Exhibits have 'no discernible relevance', the Response refers to Proposed Exhibits 35 and 37 concerning 'cigarette smuggling in April 1999', but fails to acknowledge that Proposed Exhibit 35 records that 'these cigarettes are brought [...] by people who probably collaborate with the Serbs', and that both documents, as indicated in KSC-BC-2020-06/F02667/A01, are signed reports relevant also to KLA structure and authority. *Contra* Response, KSC-BC-2020-06/F02725, para.3, fn.4.

²⁴ *Contra* Response, KSC-BC-2020-06/F02725, paras 25-29.

admit such documents through the bar table, with the Defence declining to engage *inter partes*.²⁵ The Defence has also been provided adequate opportunity to respond to bar table motions, and use such documents with witnesses.²⁶ Indeed, like the SPO, the Defence has put contemporaneous KLA documents – including documents seized by the Serbian authorities from KLA bases and members during the Indictment period – to witnesses, relying on their contents, and sought their admission.²⁷

6. Concerning handwritten documents,²⁸ partially illegible or incomplete documents,²⁹ documents of ‘at the centre’ of the SPO’s case,³⁰ and documents seized from the Accused³¹ and provided by the Serbian authorities,³² the Defence largely repeats already considered and rejected objections to these categories of evidence.³³ Each Proposed Exhibit must be assessed on an item-by-item basis against the admissibility criteria, which apply to all categories of Proposed Exhibits.³⁴

²⁵ See e.g. Motion, KSC-BC-2020-06/F02667, fn.3.

²⁶ The Defence will also have the opportunity, in due course, to tender and elicit evidence on the Proposed Exhibits as part of its case(s) and make submissions on their ultimate weight.

²⁷ See e.g. 1D00184; 1D00185; 1D00188 MFI. Other KLA documents tendered by the SPO or on the exhibit list have also been put to witnesses by the Defence in a similar manner.

²⁸ Compare Response, KSC-BC-2020-06/F02725, para.19 *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.

²⁹ Compare KSC-BC-2020-06/F02725/A01, items 28, 58, 78 *with* Fifth Decision, KSC-BC-2020-06/F01832, para.83. 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.

³⁰ Compare e.g. Response, KSC-BC-2020-06/F02725, paras 14, 18 *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).

³¹ Compare Response, KSC-BC-2020-06/F02725, para.23 *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).

³² Compare Response, KSC-BC-2020-06/F02725, paras 12-13, 31 *with* Decision on Admission of Documents Shown to W04769, KSC-BC-2020-06/F01963, 27 November 2023, para.28 (and sources cited therein).

³³ Notably, the Defence objects to all Proposed Exhibits, often doing so only by category.

³⁴ See, *similarly*, Sixth Decision, KSC-BC-2020-06/F01983, para.92.

7. Finally, in relation to P01687 MFI, the Defence does not substantiate its assertion that certain non-tendered parts in Cyrillic ‘suggest’ fabrication.³⁵ Rather, consistent with the findings in the *Mustafa* Trial Judgment and *Mustafa* Appeal Judgment,³⁶ and the SPO’s previous submissions in this case,³⁷ there are ‘numerous details that lend credence to [P01687 MFI’s] authenticity and reliability’ – notwithstanding the absence of a signature, logo, or time of creation – including that it correctly records the personal details and arrest dates of multiple detainees at Zlash/Zlaš and its contents corroborate the testimony of several witnesses and other documentary evidence regarding the detainees.³⁸ Such details could only have been compiled by people with knowledge thereof, and indicate that it is a contemporaneous KLA document.³⁹ There are, accordingly, sufficient *indicia* of authenticity for P01687 MFI to be admitted and ultimately afforded due weight.

III. CLASSIFICATION

8. This reply is confidential pursuant to Rule 82(4) and to give effective to existing protective measures.

IV. RELIEF REQUESTED

9. For the reasons given above and previously, the Motion should be granted.

³⁵ Response, KSC-BC-2020-06/F02725, para.31.

³⁶ *Specialist Prosecutor v. Mustafa*, KSC-BC-2020-05/F00494, Trial Judgment, 16 December 2022, Confidential (‘*Mustafa* Trial Judgment’), paras 225-228; *Specialist Prosecutor v. Mustafa*, KSC-CA-2023-02/F00038, Appeal Judgment, 14 December 2023, Confidential (‘*Mustafa* Appeal Judgment’), paras 96-105.

³⁷ Motion, KSC-BC-2020-06/F02667, paras 19-20 (and sources cited therein).

³⁸ *Mustafa* Trial Judgment, KSC-BC-2020-05/F00494, paras 226-227; *Mustafa* Appeal Judgment, KSC-CA-2023-02/F00038, paras 101-102.

³⁹ *Mustafa* Trial Judgment, KSC-BC-2020-05/F00494, para.227; *Mustafa* Appeal Judgment, KSC-CA-2023-02/F00038, paras 101-102.

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At The Hague, the Netherlands.