



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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Public Redacted Version of 'Prosecution reply relating to motion F02676 and supplement F02738'

Specialist Prosecutor's Office

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I. INTRODUCTION

1. The Response¹ misrepresents and ignores submissions in the Motion² and Supplement,³ the record, and the legal framework, as consistently interpreted and applied by this and other courts.

II. SUBMISSIONS

2. The submissions in the Response⁴ must be considered in light of the specific circumstances of this case and the purpose and nature of the Proposed Exhibits, which are not tendered as ultimate proof of guilt on their own.⁵ 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.

3. General and unsubstantiated Defence objections based on relevance fail when considered in the proper context. In this respect, when considered in isolation, the relevance of certain Proposed Exhibits may not be readily apparent from their contents; however, together with other Proposed Exhibits, they form part of a contemporaneous record of events during the Indictment period.⁶ Contrary to

¹ Consolidated Defence Response to 'Prosecution Motion for Admission of [REDACTED] (F02676)' and 'Prosecution Supplement to Motion F02676 (F02738)', KSC-BC-2020-06//F02755, 2 December 2024, Confidential ('Response').

² Prosecution motion for admission of [REDACTED], KSC-BC-2020-06/F02676, 25 October 2024, Confidential ('Motion'). *See also* para.1 (defining the 'Proposed Exhibits').

³ Prosecution supplement to motion F02676, KSC-BC-2020-06/F02738, 21 November 2024, Confidential ('Supplement'). *See also* para.1 (defining the 'Rule 154 Witnesses').

⁴ The Defence, once again, focuses on the evidence in isolation. This results in assertions that are unhelpful to the Panel's analysis, such as that [REDACTED]. *See* Response, KSC-BC-2020-06//F02755, para.19. However, such [REDACTED]. The Response also ignores that [REDACTED]. *See* Supplement, KSC-BC-2020-06/F02738, paras 3-6 (and citations to [REDACTED] therein). Curiously, the Defence notes that [REDACTED] *See* Response, KSC-BC-2020-06//F02755, para.19. The Defence explains neither why this is significant, nor why, considering the [REDACTED].

⁵ [REDACTED].

⁶ *See, similarly*, [REDACTED].

Defence submissions otherwise:⁷ (i) Proposed Exhibit [REDACTED]⁸ is relevant, including when considered together with complementary evidence;⁹ (ii) Proposed Exhibits marked with Defence codes [REDACTED], and, in any event, are relevant for the reasons indicated previously;¹⁰ and (iii) Proposed Exhibits marked with Defence code 'IR' concern, *inter alia*, [REDACTED].¹¹

4. The Proposed Exhibits are also *prima facie* authentic. No Party is obliged to tender 'perfect evidence'¹² and [REDACTED],¹³ [REDACTED],¹⁴ [REDACTED]¹⁵ are matters relevant to ultimate weight, not admissibility. Viewed holistically, the evidence demonstrates that the Proposed Exhibits [REDACTED].¹⁶

5. The Defence attempt to undermine this evidence is riddled with misrepresentation. Contrary to assertions in the Response: (i) [REDACTED];¹⁷ (ii) there is corroborated and complementary evidence about the [REDACTED];¹⁸ (iii)

⁷ Response, KSC-BC-2020-06/F02755, para.17.

⁸ KSC-BC-2020-06/F02755/A03, item 133. *See also* Response, KSC-BC-2020-06/F02755, para.17(i), fn.13.

⁹ In Proposed Exhibit [REDACTED]. Two weeks after [REDACTED]. *See* KSC-BC-2020-06/F02468/A02, item 10. This tendered item was [REDACTED].

¹⁰ *See e.g.* KSC-BC-2020-06/F02755/A01, items 142 ([REDACTED]), 213 ([REDACTED]), 262 ([REDACTED]); KSC-BC-2020-06/F02755/A02, items 29 ([REDACTED]), 141 ([REDACTED]), 225 ([REDACTED]), 251 ([REDACTED]); KSC-BC-2020-06/F02755/A03, items 75 ([REDACTED]), 83 ([REDACTED]), 87 [REDACTED]. The Defence marked all these Proposed Exhibits, as well as more than [REDACTED], without concretely explaining in paragraph 17(ii) of the Response or elsewhere how they are irrelevant or, in many cases, even marking them with 'IR'.

¹¹ *See e.g.* KSC-BC-2020-06/F02755/A01, items 5 ([REDACTED]), 370 ([REDACTED]); KSC-BC-2020-06/F02755/A02, items 3 ([REDACTED]), 192 ([REDACTED]), 202 ([REDACTED]); KSC-BC-2020-06/F02755/A03, item 116 ([REDACTED]). These Proposed Exhibits, and more than 85 others, were marked with 'IR' by the Defence without any concrete explanation in paragraph 17(iii) of the Response or elsewhere.

¹² [REDACTED].

¹³ *See, similarly*, [REDACTED]; [REDACTED].

¹⁴ *See, similarly*, [REDACTED].

¹⁵ *See, similarly*, [REDACTED].

¹⁶ Supplement, KSC-BC-2020-06/F02738, paras 3-6.

¹⁷ Compare Response, KSC-BC-2020-06/F02755, para.20 with Supplement, KSC-BC-2020-06/F02738, para.3.

¹⁸ Compare Response, KSC-BC-2020-06/F02755, para.26 with Supplement, KSC-BC-2020-06/F02738, para.4.

[REDACTED];¹⁹ (iv) [REDACTED],²⁰ [REDACTED];²¹ and (v) that the Proposed Exhibits [REDACTED] does not, on its own, raise any doubt regarding their *prima facie* authenticity or reliability.²²

6. Moreover, there has been no undue prejudice and any limitations on the ability of the Defence to test the Proposed Exhibits – for example, those resulting from the passage of time, which are inherent in proceedings before this court – go to weight.²³ In this respect, the SPO [REDACTED];²⁴ [REDACTED];²⁵ and the SPO has disclosed all materials [REDACTED].²⁶

7. Finally, Defence submissions requesting Rule 138(2)²⁷ exclusion are unsubstantiated. [REDACTED],²⁸ this does not mean, as generically claimed in Response, that the Proposed Exhibits were collected without any legal basis. In this respect, (i) the Response does not substantiate its bare assertion²⁹ that the Proposed Exhibits were obtained without basis in domestic law;³⁰ (ii) when deciding admissibility, the Panel shall not rule on the application of another State's national law;³¹ and (iii) [REDACTED].³² In any event, consistent with the plain language of Rule

¹⁹ Compare Response, KSC-BC-2020-06/F02755, paras 28-29 with Supplement, KSC-BC-2020-06/F02738, para.5.

²⁰ Contra Response, KSC-BC-2020-06/F02755, paras.32-35.

²¹ For example, any [REDACTED]. See [REDACTED], paras 22-23.

²² Compare Response, KSC-BC-2020-06/F02755, para.36 with [REDACTED]. See also [REDACTED].

²³ Contra Response, KSC-BC-2020-06/F02755, paras 43-45.

²⁴ [REDACTED].

²⁵ Supplement, KSC-BC-2020-06/F02738, para.7.

²⁶ Contra Response, KSC-BC-2020-06/F02755, para.43.

²⁷ 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.

²⁸ Supplement, KSC-BC-2020-06/F02738, para.7.

²⁹ Response, KSC-BC-2020-06/F02755, para.48.

³⁰ Instead, evidence, such as [REDACTED]. See also [REDACTED] (many the factors set out also apply here). The [REDACTED] cited in paragraph 48 of the Response does not state that [REDACTED], which is not disputed.

³¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015, Article 37(5).

³² [REDACTED].

138(2), illegally obtained evidence will only be excluded where the violation casts substantial doubt on the reliability of the evidence or where admission would be antithetical to or would seriously damage the integrity of the proceedings. That is not the case here. The Proposed Exhibits are relevant and *prima facie* authentic [REDACTED], may be necessary to establishing the truth, and in the interests of justice, should be admitted.³³

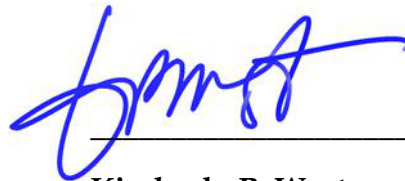
III. CLASSIFICATION

8. This reply is confidential pursuant to Rule 82(4).

IV. RELIEF REQUESTED

9. For the reasons given above and previously, the Proposed Exhibits should be admitted.

Word count: 1856



Kimberly P. West

Specialist Prosecutor

Monday, 9 December 2024

At The Hague, the Netherlands.

³³ [REDACTED].