



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 Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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Prosecution motion for admission of documents concerning murder victims and related request

with confidential Annexes 1-2

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Articles 37 and 40 of the Law,¹ Rules 118(2) and 137-138 of the Rules,² and the Conduct of Proceedings Order,³ the Specialist Prosecutor's Office ('SPO') requests: (i) the admission of exhumation, autopsy, DNA and other documents related to murder victims⁴ ('Proposed Exhibits'); and (ii) the addition of one⁵ of the Proposed Exhibits to the Exhibit List. The Proposed Exhibits listed in Annex 1⁶—organised by victim or group of victims—are *prima facie* authentic, relevant, and have probative value that is not outweighed by any prejudice.⁷

II. SUBMISSIONS

2. The Proposed Exhibits corroborate and complement witness and documentary evidence, and adjudicated facts,⁸ which, taken together, establish the cause,

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 Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Conduct of Proceedings Order'), paras 60-62. Pursuant to paragraph 61 of the Conduct of Proceedings Order, Proposed Exhibits in Annex 1 were sent to the Defence and Victims' Counsel for *inter partes* consultation. The Defence responded, confirming that a response would be provided in the form of a response to the filed motion.

⁴ All tendered items relate to murder victims as charged in the Amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, Confidential ('Indictment'), with the exception of Annex 1, item 60.

⁵ Annex 1, item 63 (SPOE00325698-00325769).

⁶ Annex 1 includes specific indicia of the *prima facie* authenticity, relevance, and probative value of each Proposed Exhibit. The entries in the annex also indicate the relevant Indictment paragraphs for each Proposed Exhibit and identify exhibits associated with witness testimony. See Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01409, 31 March 2023, Confidential ('First Decision'), para.22. Annex 2 links the abbreviations used in the 'Indictment Primary Paragraphs' column of Annex 1 with the primary Indictment paragraph(s) to which each item relates. Annex 2 also defines other abbreviations and short names used in this filing and Annex 1.

⁷ The applicable law has been set out in prior decisions. See *e.g.* First Decision, KSC-BC-2020-06/F01409, paras 8-13.

⁸ Further detail on the Proposed Exhibits mentioned herein is provided in Annex 1, which refers to corroborative and complementary testimony, statements, exhibits, and adjudicated facts. In addition, Annex 1 refers to a number of related items tendered for admission, in particular through Expert Witnesses W04826, W04874 and W04875.

circumstances, and fact of mistreatment and/or death of numerous victims as charged in the Indictment.

3. The Panel has previously admitted items of comparable format, nature and/or content to the Proposed Exhibits, *inter alia*, through the bar table, as associated exhibits pursuant to Rule 154, and during the testimony of witnesses pursuant to Rule 138. By way of example, the Panel has admitted: (i) UNMIK autopsy reports;⁹ (ii) ICMP DNA reports;¹⁰ (iii) UNMIK Department of Justice, Office of the Medical Examiner, Death certificates;¹¹ and (iv) photographs of human remains relevant to victims of murder charged in the Indictment.¹²

A. THE PROPOSED EXHIBITS ARE *PRIMA FACIE* RELEVANT

4. The Proposed Exhibits, primarily consisting of exhumation reports and/or photographs related thereto,¹³ autopsy reports,¹⁴ and other forensic documents,

⁹ Compare *e.g.* (i) P00002, pp.031096-8 (admitted pursuant to the First Decision, KSC-BC-2020-06/F01409, para.64(b)); (ii) P00854, pp.75-108/296 (admitted pursuant to Sixth Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01983, 5 December 2023 ['Sixth Decision'], para.130(b)); (iii) P01678, pp.SITF00169000-2 (admitted during the testimony of W04422, *see* Transcript, 25 September 2024, pp.20213-4); and (iv) P01147, pp.SPOE00208416-8 (admitted as an Associated Exhibit to W04371's prior statement, *see* Decision on Prosecution Motion for Admission of Evidence of W01978, W02540, W02677, W02714, W02951, W03865, W03881, W04371, W04710, and W04850 Pursuant to Rule 154 and Amendment of Exhibit List (F02196), KSC-BC-2020-06/F02245, 16 April 2024 ('16 April 2024 Decision'), Confidential, fn.129, para.96(a), and Transcript, 30 April 2024, p.15252), to Annex 1, items 61, 63-64, 71, 78.

¹⁰ Compare *e.g.* (i) P00854, pp.281, 295 (admitted pursuant to the Sixth Decision, KSC-BC-2020-06/F01983, para.130(b)); and (ii) P00201, p.SPOE00056170 (admitted during the testimony of W03811, *see* Transcript, 20 June 2023, p.5135), to Annex 1, items 47, 61, 63.

¹¹ Compare *e.g.* (i) P00201, pp.SPOE00056164-5 (admitted during the testimony of W03811, *see* Transcript, 20 June 2023, p.5135); (ii) P01678, pp. SITF00168993-4 (admitted during the testimony of W04422, *see* Transcript, 25 September 2024, pp.20213-4); and (iii) P01147, pp.SPOE00208420-1 (admitted as an Associated Exhibit to W04371's prior statement, *see* 16 April 2024 Decision, KSC-BC-2020-06/F02245, fn.129, para.96(a); Transcript, 30 April 2024, p.15252), to Annex 1, items 60-62.

¹² Compare *e.g.*: (i) P01147, pp.SPOE00208412-5 (admitted as an Associated Exhibit to W04371's prior statement, *see* 16 April 2024 Decision, KSC-BC-2020-06/F02245, fn.129, para.96(a), Transcript, 30 April 2024, p.15252); and (ii) P00868, pp.4-23 (admitted pursuant to the Sixth Decision, KSC-BC-2020-06/F01983, para.130(b)), to Annex 1, items 10, 15, 25.

¹³ *See, e.g.*, Annex 1, items 8-9, 12-14, 25, 27, 29, 33-42, 45-55, 65, 67, 72.

¹⁴ *See, e.g.*, Annex 1, items 15-24.

establish the mistreatment and/or death of numerous victims as charged in the Indictment in relation to locations including Bare and Bajgorë/Bajgora, Drenoc/Drenovac, Gjilan/Gnjilane, Jabllanicë/Jablanica, Kleçkë/Klečka, Llapushnik/Lapušnik, Majac/Majance, Malishevë/Mališevo, Potok, Prizren, and Rahovec/Orahovac. A number of the Proposed Exhibits further demonstrate the circumstances and/or cause of such victims' death. The relevance of documents establishing or pertaining to the death of victims of murder as charged in the Indictment is readily apparent.¹⁵

5. The Proposed Exhibits indicate that the cause of death for multiple victims was of a violent nature.¹⁶ Further, the cause of death for victims murdered at the same location are at times similar, if not identical.¹⁷ The existence of such violent deaths at the hands of KLA members in the charged locations also corroborates evidence of cruel treatment and torture of detainees who made it out of the detention sites alive.

B. THE PROPOSED EXHIBITS ARE *PRIMA FACIE* AUTHENTIC AND RELIABLE

6. The Panel has been satisfied of the *prima facie* authenticity of certain items related to victims of murders charged in the Indictment because they contain hallmarks of authentic documents including letterhead, logos, names of authors, and signature blocks similar or identical to those in a number of the Proposed Exhibits.¹⁸

7. Indeed, the Proposed Exhibits contain multiple indicia of authenticity, as indicated for each in Annex 1.¹⁹ Many bear official headers, signatures of their authors,

¹⁵ Sixth Decision, KSC-BC-2020-06/F01983, paras 52-3.

¹⁶ See, e.g., Annex 1, items 15-24.

¹⁷ See, e.g., Annex 1, items 15-24.

¹⁸ Sixth Decision, KSC-BC-2020-06/F01983, para.54, fn.145, referring, *inter alia*, to P00854 (IT-03-66 P111), pp.75-108, 281, 295/296, which contain UNMIK OMPF and ICMP letterheads, logos, names of authors, and/or signature blocks similar to those in, for example, Annex 1, items 47, 61, 63-64, 71, 78.

¹⁹ For purposes of assessing certain of the indicia (such as signatures, stamps, and formatting including headers) identified below and in Annex 1, both the original and translation should be consulted.

and reference numbers.²⁰ In addition to such formalities, numerous Proposed Exhibits are interconnected with, replicate, and/or are corroborated by other Proposed Exhibits, admitted evidence and other items on the Exhibit List, witness evidence and adjudicated facts.²¹

8. The reports and prior statements of experts W04826, W04874, and W04875 (collectively, 'Experts'), which the SPO has tendered for admission,²² further complement and corroborate the Proposed Exhibits. By way of example, the expert reports of W04874 and W04875 address terminology and factors which are relevant not only to the source material and associated exhibits tendered in the 11 October 2024 Request, but also to the Proposed Exhibits given their similar nature, scope, and/or provenance.²³ Further, the Experts' reports and prior statements address source material and associated exhibits concerning certain victims or groups of victims in relation to whom additional items are tendered for admission in Annex 1.²⁴ In such instances, the items tendered in the 11 October 2024 Request and in Annex 1 complement each other and, often, are mutually corroborative.

9. Finally, while proof of provenance or authorship is not required,²⁵ the provenance of each Proposed Exhibit is indicated in Annex 1.

²⁰ See e.g. Sixth Decision, KSC-BC-2020-06/F01983, paras 85, 111, 119.

²¹ See Annex 1.

²² See 11 October 2024 Request, KSC-BC-2020-06/F02633.

²³ See, e.g., W04874 Expert Report, 103108-103132 RED, pp.103108-10; W04875 Expert Report 1: 103373-103387 RED, pp.103373-7.

²⁴ For example: (i) in his Expert Report, W04874 provides his opinion on the autopsy of Victim 7.1, also making reference to the state in which this victim's remains were found (see Indictment, KSC-BC-2020-06/F00999/A01, Schedule B and 103108-103132 RED, pp.103123-5). Annex 1, items 27-28 concern Victim 7.1's exhumation and identification, providing relevant context and detail in relation to the state of the victim's remains; and (ii) in his Expert Report, W04826 authenticates and addresses certain details relevant to the autopsies of Victims 10.1 and 10.15 (see Indictment, KSC-BC-2020-06/F00999/A01, Schedule B and 103427-103470 RED, pp.103427, 103438-40). Annex 1, items 77 and 82 concern the return of remains of the same victims. Further, Annex 1, items 1-5, 31-32 are photo logs related to photographs tendered through W04826.

²⁵ See, e.g. Decision on Veseli Defence Request for Leave to Appeal Decision to Admit P959 and P960, KSC-BC-2020-06/F02157, 29 February 2024, Public, paras 12, 14, 16; Transcript, 25 March 2024, p.13521.

C. THE PROBATIVE VALUE OF THE PROPOSED EXHIBITS IS NOT OUTWEIGHED BY ANY PREJUDICE

10. As the Proposed Exhibits are *prima facie* authentic, reliable, and relevant, they have probative value. Indeed, the Panel has already found that documents addressing the circumstances surrounding the disappearance and murder of victims identified in the Indictment are *prima facie* probative of these matters.²⁶ No prejudice outweighs such probative value. In particular, the hearsay information contained in the Proposed Exhibits does not mean that their *prima facie* probative value is outweighed by their prejudicial effect.²⁷ The 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.²⁸ At the end of the trial, the Panel will assess what weight to assign any admitted exhibits in light of the entire record.²⁹

D. REQUEST TO AMEND THE EXHIBIT LIST

11. Pursuant to Article 40 and Rule 118(2), the SPO seeks addition of SPOE00325698-00325769, which it tenders as item 63 in Annex 1, to the Exhibit List. The request is limited in scope, allows timely and effective Defence preparations and concerns relevant material, which is probative of the charges. The SPO disclosed the item on 15 October 2024 following a further review of items related to victims of murder charged in the Indictment.³⁰ The item is a compilation of EULEX, UNMIK, and ICMP reports concerning victim 28.1,³¹ including his death certificate, autopsy reports, and DNA analysis. It relates to known aspects of the SPO's case and contains

²⁶ Sixth Decision, KSC-BC-2020-06/F01983, para.55.

²⁷ Sixth Decision, KSC-BC-2020-06/F01983, para.56.

²⁸ See, *similarly*, Sixth Decision, KSC-BC-2020-06/F01983, paras 32, 87, 97, 105, 113, 121.

²⁹ Sixth Decision, KSC-BC-2020-06/F01983, para.129.

³⁰ Disclosed under Rule 102(3) in Disclosure Package 1446.

³¹ See Indictment, KSC-BC-2020-06/F00999/A01, Schedule B.

information already in evidence³² and reflected in noticed adjudicated facts.³³ There is good cause for amendment at this stage and limited, if any, prejudice would be caused to the Defence. Therefore, the requested Exhibit List amendment is justified.

III. CLASSIFICATION

12. The annexes to this filing are confidential to give effect to existing protective measures and to safeguard the interests and privacy of third parties. Given the nature of the Proposed Exhibits, containing, *inter alia*, explicit details concerning exhumations and autopsies, as well as personal information pertaining to family members of victims of murder, the SPO requests that all items in Annex 1 be classified as confidential.³⁴

IV. RELIEF REQUESTED

13. For the foregoing reasons, the Panel should grant the addition of SPOE00325698-00325769 to the Exhibit List and admit the Proposed Exhibits.

Word count: 1991



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Specialist Prosecutor

Friday, 13 December 2024

At The Hague, the Netherlands.

³² See e.g. P00468, pp.34-35.

³³ ANNEX 1 to Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F01534/A01, 17 May 2023, Confidential, adjudicated facts 459-460, 467.

³⁴ See First Decision, KSC-BC-2020-06/F01409, para.22.