



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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Prosecution reply to 'Joint Defence Response to Prosecution Request for Admission of Expert Report and Source Material of W04826' (F02876)

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I. INTRODUCTION

1. The Supplemental Submissions¹ are equivocal, misrepresent the framework governing expert evidence, ignore established admissibility standards, focus on factors potentially relevant, if at all, to weight, rather than admissibility, and misstate and misrepresent W04826's evidence. The Proposed Evidence² consisting of W04826's Expert Report,³ Letter of Instruction,⁴ *Curriculum Vitae*,⁵ and source material is admissible and the Panel should admit it under Rules 138 and/or 149 of the Rules.⁶

II. SUBMISSIONS

2. The Defence's position on the admissibility of the Proposed Evidence is equivocal.⁷ The Defence states it does not object to the admission of W04826's Expert Report, Letter of Instruction, *Curriculum Vitae*, and two items⁸ marked by W04826 during testimony.⁹ It then asserts it objects to the admission of all tendered source material,¹⁰ while also stating that the 'autopsies and reports carried out by the Expert are suitable for admission, but notice should be taken as to how much weight such

¹ Joint Defence Response to Prosecution Request for Admission of Expert Report and Source Material of W04826, KSC-BC-2020-06/F02876, 30 January 2025, Confidential ('Supplemental Submissions').

² The SPO initially set out the items to be tendered through W04826 in Prosecution motion for admission of evidence of Witnesses W04826, W04874, and W04875 pursuant to Rules 138, 149, and 154 and related request, KSC-BC-2020-06/F02633, 11 October 2024, Confidential ('11 October 2024 Request'), and Annex 2 to the 11 October 2024 Request, KSC-BC-2020-06/F02633/A02, Confidential. The SPO also set out its tender through W04826 in Annex 1 to W04826 Witness Preparation Note, 124921-124937, adding five items (items 61-65) not contained in Annex 2 to the 11 October 2024 Request. The 'Proposed Evidence' is set out in Email from the SPO to the Panel, Parties and Participants dated 27 January 2025 at 16:07 ('27 January 2024 Request'), which reflects the contents of Annex 1 to W04826 Witness Preparation Note with the addition of two items marked by W04826 during his testimony.

³ 103427-103470 ('Expert Report').

⁴ 102443-102471 ('Letter of Instruction').

⁵ 103409-103410 ('*Curriculum Vitae*').

⁶ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). Unless otherwise indicated, all references to 'Rule' or 'Rules' are to the Rules.

⁷ Compare Supplemental Submissions, KSC-BC-2020-06/F02876, paras 1-2, 12 and 26-27.

⁸ REG01201-REG01201; REG01202-REG01202.

⁹ Supplemental Submissions, KSC-BC-2020-06/F02876, paras 1, 12.

¹⁰ Supplemental Submissions, KSC-BC-2020-06/F02876, paras 1, 12, 26-27 (under heading 'Conclusions').

documents are afforded’¹¹ and that it ‘takes issue with the admissibility of *certain* documents contained within the Underlying Material’.¹² Considering that the Defence agrees that such items are suitable for admission, and that, at this stage, submissions as to any weight to be attributed thereto are premature and inappropriate, it would seem that the vast majority of the Proposed Evidence – that specifically authored by W04826 – is unopposed. Regardless, to the extent the Defence does object to the admissibility of any or all of the source material, such a position is illogical given the non-objection to the admissibility of the Expert Report addressing such material. Such a position would also ignore the clear language of the Conduct of Proceedings Order.¹³

3. The Supplemental Submissions also ignore the Decision, which held that Rule 149 is *lex specialis* for the admission of expert reports as defined in Rule 149(1),¹⁴ not for ‘all expert evidence’, as claimed by the Defence.¹⁵

4. The Proposed Evidence should be considered with all other evidence tendered in relation to the relevant victims, including other documentary and witness evidence. Neither the condition of the victims’ examined remains, nor whether a cause of death can be ascertained in relation to certain victims impacts the *prima facie* admissibility of the Proposed Evidence, in particular considering that such evidence would nevertheless be relevant, *inter alia*, to proof of death.¹⁶

5. Similarly, it is irrelevant, for the purposes of admissibility, whether autopsy reports and death certificates are authored or signed by the same person.¹⁷ Each of

¹¹ Supplemental Submissions, KSC-BC-2020-06/F02876, para.1.

¹² Supplemental Submissions, KSC-BC-2020-06/F02876, para.2 (emphasis added).

¹³ Annex 1 to Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 (‘Conduct of Proceedings Order’), para.123.

¹⁴ See Decision on Prosecution Motion for Admission of Evidence of Witnesses W04826, W04874, and W04875 pursuant to Rules 138, 149, and 154 and Related request, KSC-BC-2020-06/F02787, 16 December 2024, Confidential (‘Decision’), para.41; Prosecution reply relating to request to admit expert witness evidence (F02633), KSC-BC-2020-06/F02732, 18 November 2024, para.3.

¹⁵ Supplemental Submissions, KSC-BC-2020-06/F02876, paras 10 and 13.

¹⁶ *Contra* Supplemental Submissions, KSC-BC-2020-06/F02876, para.14.

¹⁷ *Contra* Supplemental Submissions, KSC-BC-2020-06/F02876, paras 16 and 17.

these two types of documents have independent evidential value. Where both documents are available, the SPO has tendered each of them under the applicable Rule or Rules. By way of example, in relation to SITF00030155-SITF00030784 RED2,¹⁸ the SPO tendered the death certificate,¹⁹ containing W04826's signature, through W04826 under Rules 138 and/or 149, as it is source material for the expert report,²⁰ and the complete item, including the autopsy report²¹ and other relevant documentation concerning the relevant victim through the bar table, pursuant to Rules 137-138.²²

6. While the vast majority of items tendered in the Proposed Evidence contain W04826's signature, that certain of the items do not bear his signature does not render them inadmissible.²³ Such items contain other indicia of authenticity and have probative value.²⁴ The Defence's reference to certain dates in one item²⁵ as 'inconsistent' is a mischaracterisation; the two dates at issue describe two different events – one is the date of the autopsy, the other the date the typewritten autopsy report was prepared.²⁶ That W04826 may have signed a death certificate on behalf of a colleague or *vice versa*²⁷ is also irrelevant to the admissibility thereof.²⁸

7. W04826's failure to remember specific autopsies conducted decades ago also has no bearing on the admissibility of the Proposed Evidence,²⁹ in particular

¹⁸ See Supplemental Submissions, KSC-BC-2020-06/F02876, para.17.

¹⁹ SITF00030155-SITF00030784 RED2, pp.SITF00030181-2.

²⁰ 124921-124937, p.124935, Annex 1 to W04826 Witness Preparation Note, item 62.

²¹ SITF00030155-SITF00030784 RED2, pp.SITF00030155-74.

²² Annex 1 to the Prosecution motion for admission of documents concerning murder victims and related request, KSC-BC-2020-06/F02784/A01, 13 December 2024, Confidential ('Annex 1 to the Bar Table Motion'), item 61.

²³ *Contra* Supplemental Submissions, KSC-BC-2020-06/F02876, para.21.

²⁴ See Annex 1 to the Bar Table Motion, KSC-BC-2020-06/F02784/A01, e.g. item 71.

²⁵ Supplemental Submissions, KSC-BC-2020-06/F02876, para.21; SPOE00194606-00194608.

²⁶ See SPOE00194606-00194608, p.SPOE00194607; Transcript, 27 January 2025, pp.24540-1.

²⁷ IT-03-66 P228; SPOE00208422-00208440 RED, pp.SPOE00208436-SPOE00208440.

²⁸ *Contra* Supplemental Submissions, KSC-BC-2020-06/F02876, paras 16 and 20.

²⁹ *Contra* Supplemental Submissions, KSC-BC-2020-06/F02876, paras 16, 20 and 21.

considering W04826's vast experience and the number of autopsies he would have conducted throughout the years.³⁰

8. Any alleged contradictions in evidence generally go to their weight rather than admissibility.³¹ All eight items underlying SPOE00212987-SPOE00213007 establish the death of the relevant victim. W04826's evidence in relation to this item and in relation to SPOE00208422-00208440 RED does not adversely impact the admissibility thereof,³² and the SPO is under no obligation to state its case in relation to any alleged inconsistencies related thereto.³³ The relevance of IT-03-66 P228 is clear.³⁴

9. Defence submissions that the SPO is barred from tendering through W04826 any items it did not show to him in court³⁵ are unsubstantiated and ignore the clear language of the Conduct of Proceedings Order.³⁶ The SPO's prior written submissions set out the Proposed Evidence alongside information noting where the source material is referred to in W04826's Expert Report, and the relevance thereof.³⁷

10. The SPO is not seeking to tender evidence beyond W04826's expertise under Rule 149.³⁸ Defence submissions in this regard ignore that the evidence the SPO tendered in the 11 October 2024 Request is also submitted, and admissible, under Rule 138. Where the SPO seeks admission of pages from an item beyond the pages

³⁰ 103409-103410; Transcript, 27 January 2025, p.24540.

³¹ *Contra* Supplemental Submissions, KSC-BC-2020-06/F02876, paras 18-20.

³² *Contra* Supplemental Submissions, KSC-BC-2020-06/F02876, paras 18-20.

³³ *Contra* Supplemental Submissions, KSC-BC-2020-06/F02876, para.19. *See* Transcript, 6 November 2024, pp.22065-6; *See also* Decision on Prosecution Motion for Admission of Evidence of W01453, W03878, W04446, W04575, and W04651 Pursuant to Rule 154 (F02005), KSC-BC-2020-06/F02117, 12 February 2024, Confidential, para.15; ICTY, *Prosecutor v. Stanišić and Simatović*, IT-03-69-T, Transcript, 7 June 2012, pp.20104-20106; ICTY, *Prosecutor v. Stanišić and Simatović*, IT-03-69-T, Decision on Prosecution Motion for Admission of Excerpts from Mladić Notebooks and Second Prosecution Notification of Excerpts from Mladić Notebooks, 10 March 2011, para.17.

³⁴ *Contra* Supplemental Submissions, KSC-BC-2020-06/F02876, para.16 *See* 11 October 2024 Request, KSC-BC-2020-06/F02633, paras 32-33.

³⁵ Supplemental Submissions, KSC-BC-2020-06/F02876, para.22.

³⁶ Conduct of Proceedings Order, KSC-BC-2020-06/F01226/A01, para.123.

³⁷ *See* Annex 2 to the 11 October 2024 Request, KSC-BC-2020-06/F02633/A02.

³⁸ *Contra* Supplemental Submissions, KSC-BC-2020-06/F02876, para.24.

specifically addressed by W04826, the reasons therefor are readily apparent and/or made clear in the SPO's submissions,³⁹ and the Defence provides no reason why the Panel would be barred from admitting the entirety of such items pursuant to the applicable legal framework. SITF00200595-00200618 RED, pp.SITF00200612-SITF00200613, is a death certificate signed by W04826 – not a DNA report, as erroneously alleged by the Defence.⁴⁰

11. Neither is the SPO seeking to tender any witness statements through W04826. The fact that two of the reports W04826 authored contain his notes on what the relevant victims told him about the manner in which they were injured does not alter the nature of W04826's medical report.⁴¹ The Panel can assign appropriate weight to any hearsay contained in the Proposed Evidence at the end of the trial and in light of the entire body of evidence.⁴²

12. Generally, the Supplemental Submissions go – if anything – to the weight to be attributed to the Proposed Evidence at the end of the trial and do not affect admissibility. The Defence was given the opportunity to cross-examine W04826, and may seek to call their own experts to testify and admit other relevant evidence. Accordingly, the admission of the Proposed Evidence would not be prejudicial to the Defence.

III. CLASSIFICATION

13. This filing is confidential pursuant to Rule 82(4). As it does not contain any information requiring confidential classification, the SPO requests that it be reclassified as public.

³⁹ See Annex 2 to the 11 October 2024 Request, KSC-BC-2020-06/F02633/A02, *e.g.* items 22, 23, 25-27, 30, 31, 33-57, 61, 63, 66, 68, 70, 72, 74.

⁴⁰ Supplemental Submissions, KSC-BC-2020-06/F02876, para.26, fn.55.

⁴¹ SITF00019134-SITF00019150 RED, p.SITF00019137; SITF00019793-00019810 RED, p.SITF00019794.

⁴² Corrected Version of Sixth Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01983/COR, 5 December 2023, Confidential, para.56.

IV. RELIEF REQUESTED

14. The Proposed Evidence meets the requirements for admissibility since it is relevant, authentic, and reliable, and has probative value, which – considering, in particular, that the Defence cross-examined W04826 thereon – is not outweighed by any prejudice. Admission is therefore in the interests of justice. The Panel should admit the Proposed Evidence.

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Monday, 3 February 2025

At The Hague, the Netherlands.