



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 its motion for admission of international reports (F03066)'**

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## I. INTRODUCTION

1. The Response<sup>1</sup> repeats objections previously considered and dismissed. It also misrepresents and ignores submissions in the Motion<sup>2</sup> and the record in this case. Accordingly, the Defence fails to successfully challenge the admissibility of the Proposed Exhibits set out in the Motion and Motion Annex.

## II. SUBMISSIONS

### A. The Proposed Exhibits are *prima facie* authentic and reliable

#### 1. Authenticity

2. The Defence's objections to the authenticity of the Proposed Exhibits ignore the Panel's previous rulings. Authentication through a witness is not a prerequisite for admission,<sup>3</sup> particularly when the document was authored by an identified representative of an official organisation, or when it is otherwise apparent from the document itself that it originates from a state authority, international, or non-governmental organisation.<sup>4</sup> Regarding documents in which the author is

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<sup>1</sup> Joint Defence Response to the Prosecution Motion for Admission of International Reports, KSC-BC-2020-06/F03144, 24 April 2025, Confidential ('Response'). See also ANNEX 1 to Joint Defence Response to the Prosecution Motion for Admission of International Reports, KSC-BC-2020-06/F03144/A01, 24 April 2025, Confidential ('Response Annex').

<sup>2</sup> Prosecution motion for admission of international reports, KSC-BC-2020-06/F03066, 31 March 2025, Confidential ('Motion'). See also ANNEX 1 to Prosecution motion for admission of international reports, KSC-BC-2020-06/F03066/A01, 31 March 2025, Confidential ('Motion Annex'). The term 'Proposed Exhibits', as used in this reply, is defined in Motion, para.1.

<sup>3</sup> *Contra* Response, KSC-BC-2020-06/F03144, paras 2, 4-5, 8, 14-15. See e.g. Decision on Prosecution Motion for Admission of Pashtrik Zone Documents, KSC-BC-2020-06/F03070, 1 April 2025, Public ('Pashtrik Decision'), paras 12, 16, 19.

<sup>4</sup> Motion, KSC-BC-2020-06/F03066, para.19 citing Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01409, 31 March 2023, Confidential ('First Decision'), para.43. As to authors who were identified representatives of the organisation, see Motion Annex, KSC-BC-2020-06/F03066/A01, Items 19, 21, 23, 27, 30, 31, 32, 38, 45, 50, 60, 62, 74, 91, 93, 95, 108, 124, 126 (identified by name); Item 82 (identified by military rank and unit); and Items 48, 52, 68, 83, 124, 131 (where named senior officials confirmed the documents were reports of the organisation in transmitting them to others). As to origin, numerous Items indicate they originated from a specific unit or office and/or were generated as part of a regular reporting structure designed to inform senior officials of events on the ground.

unidentified,<sup>5</sup> the Panel has repeatedly found that this factor goes to weight, not admissibility.<sup>6</sup>

3. The Defence asserts, without legal basis, that ‘mere official headers’ are insufficient for authentication,<sup>7</sup> and minimises or ignores the presence of other recognised authenticity indicia identified for such items,<sup>8</sup> including similarities in format, font, and structure to other reports already admitted;<sup>9</sup> official logos, dates, language, and reference numbers that are consistent with other reports of the organisation;<sup>10</sup> and contents that are corroborated in whole or in part by submitted or already-admitted evidence.<sup>11</sup>

4. As detailed in the Motion, each of the Proposed Exhibits is precisely what it purports to be: a contemporaneous document produced by personnel who, in the course of fulfilling their organisation’s mandate, recorded their own observations of events on the ground, as well as information that was reported to them as official representatives of their organisation.<sup>12</sup>

## *2. Reliability*

5. The Defence’s reliability challenges must also be rejected. Documents containing hearsay, material from unidentified sources, Rule 107 provider redactions,

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<sup>5</sup> Response, KSC-BC-2020-06/F03144, paras 14, 16-17, 20.

<sup>6</sup> Second Decision on Specialist Prosecutor’s Bar Table Motion, KSC-BC-2020-06/F01596, 9 June 2023, Public (‘Second Decision’), para.30; Fourth Decision on Specialist Prosecutor’s Bar Table Motion, KSC-BC-2020-06/F01716, 8 August 2023, Confidential (‘Fourth Decision’), para.14; Corrected Version of Sixth Decision on Specialist Prosecutor’s Bar Table Motion, KSC-BC-2020-06/F01983/COR, 5 December 2023, Public (‘Sixth Decision’), paras 37, 76.

<sup>7</sup> Response, KSC-BC-2020-06/F03144, para.12.

<sup>8</sup> Response, KSC-BC-2020-06/F03144, paras 13, 16, 17.

<sup>9</sup> Sixth Decision, KSC-BC-2020-06/F01983/COR, paras 76, 95.

<sup>10</sup> Second Decision, KSC-BC-2020-06/F01596, para.96; Sixth Decision, KSC-BC-2020-06/F01983/COR, paras 45, 76, 95.

<sup>11</sup> See e.g. Sixth Decision, KSC-BC-2020-06/F01983/COR, paras 76, 95; Pashtrik Decision, KSC-BC-2020-06/F03070, para.20. References to corroborating evidence are contained in the Motion Annex but also support authenticity.

<sup>12</sup> Motion, KSC-BC-2020-06/F03066, para.3.

or editorial comments and reformulations are not inherently unreliable for bar table admission,<sup>13</sup> as the Panel can address such issues in final deliberations by assigning them less weight or even disregarding assertions that are insufficiently substantiated.<sup>14</sup> The Motion and Motion Annex provide references to consistent, complementary, and corroborating testimony, adjudicated facts, and other admitted and Proposed Exhibits to further assist in demonstrating reliability.<sup>15</sup>

6. Relevance to central issues in the SPO's case is not a bar to admission,<sup>16</sup> nor does the timing of the Motion cause undue prejudice.<sup>17</sup> The Proposed Exhibits have long been disclosed and on the exhibit list,<sup>18</sup> and the Defence has been given adequate opportunity to respond to bar table motions and use such documents with witnesses. It will also have the opportunity, in due course, to tender and elicit evidence on the Proposed Exhibits as part of the Defence case(s), and make further submissions on their ultimate weight.<sup>19</sup>

7. The Defence erroneously argues that IT-04-84 P00006 should be denied admission because, *inter alia*, relevant portion(s) were not shown to [REDACTED] and other witnesses who could have helped contextualise it.<sup>20</sup> However, the Panel has held that the right to confrontation does not entitle the non-calling Party to have 'each and every exhibit or document' produced through a witness.<sup>21</sup> Here, the Defence had the

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<sup>13</sup> *Contra* Response, KSC-BC-2020-06/F03144, paras 3, 9, 14, 18, 20, 33.

<sup>14</sup> *See e.g.* Second Decision, KSC-BC-2020-06/F01596, para.30; Fourth Decision, KSC-BC-2020-06/F01716, paras 32-34, 47; Sixth Decision, KSC-BC-2020-06/F01983/COR, para.40.

<sup>15</sup> The Panel may also consider other factors, including that part of the mandate of international representatives and observers on the ground was to report, to the greatest extent possible, reliable and timely information regarding armed clashes or other developments that could endanger lives, including their own.

<sup>16</sup> *Contra* Response, KSC-BC-2020-06/F03144, paras 2-3, 6-9. *See e.g.* Pashtrik Decision, KSC-BC-2020-06/F03070, paras 12, 16, 19.

<sup>17</sup> *See e.g.* Response, KSC-BC-2020-06/F03144, paras 2, 9, 28-30.

<sup>18</sup> *See, similarly*, Decision on Prosecution Motion for Admission of Drenica Zone Documents, KSC-BC-2020-06/F02967, 26 February 2025, Confidential ('Drenica Decision'), para.14.

<sup>19</sup> *See, similarly*, Drenica Decision, paras 14, 34, 42, 51, 62.

<sup>20</sup> Response, KSC-BC-2020-06/F03144, para.17.

<sup>21</sup> Pashtrik Decision, KSC-BC-2020-06/F03070, para.16.

opportunity to confront [REDACTED] about the same events, and the Panel can assess whether the item corroborates [REDACTED]'s evidence in whole or in part.<sup>22</sup> Further, IT-04-84 P00006 is not a 'statement' within the meaning of Rules 153-155<sup>23</sup> and is admissible through the bar table.<sup>24</sup>

8. Finally, the fact that a document contains evidence of 'acts and conduct of the Accused does not constitute an independent ground of exclusion'.<sup>25</sup> In essence, the Defence proposes a standard whereby *any* statements that are attributed to the Accused require cross-examination.<sup>26</sup> Neither the Rules<sup>27</sup> nor this Panel have imposed such a restriction. The applicable admissibility standard for all evidence remains *prima facie* reliability and authenticity. The Proposed Exhibits meet this standard, and there is no reason why a statement made by an Accused in public or at a meeting with international stakeholders is not appropriate for bar table admission.

## **B. The Proposed Exhibits' probative value is not outweighed by potential prejudice**

### *1. Evidence relating to June-September 1999 KLA/PGoK leadership*

9. The allegation that the SPO failed to call evidence capable of Defence challenge regarding the continued existence of KLA police in summer 1999, is without

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<sup>22</sup> See Motion Annex, KSC-BC-2020-06/F03066/A01, Proposed Exhibit 10, for relevant corroborating evidence.

<sup>23</sup> *Contra* Response, KSC-BC-2020-06/F03144, para.17.

<sup>24</sup> IT-04-84 P00006 does not constitute a statement taken in the context of, or in connection with, legal proceedings, and hearsay is admissible under Rule 138. See, *similarly*, Decision on Prosecution Motion for Admission of Evidence of W03724, W03832, W03880, W04368, W04566, and W04769 Pursuant to Rule 154, KSC-BC-2020-06/F01700, 24 July 2023, Confidential, para.68 (admitting as an associated exhibit a 'statement' taken by an international representative from a victim). An HLC report of a similar nature has also been admitted without reference to Rules 153-155. See P01439.

<sup>25</sup> Fourth Decision, KSC-BC-2020-06/F01716, para.34. *Contra* Response, KSC-BC-2020-06/F03144, paras 4, 8, 15.

<sup>26</sup> Response, KSC-BC-2020-06/F03144, para.15. Notably, the Defence does not object to the admission of one purported Accused statement. See Response Annex, KSC-BC-2020-06/F03144/A01, Item 52.

<sup>27</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

foundation.<sup>28</sup> As the Defence acknowledges, the SPO called multiple witnesses who testified and were subject to cross-examination on this issue, including the role of the Ministry of Public Order ('MPO') in police matters.<sup>29</sup>

10. Upon being shown several MPO ID cards, including one bearing Rexhep SELIMI's signature,<sup>30</sup> W04868 testified that during his time in Kosovo, he saw KLA members in possession of such cards, which were routinely seized since only the UN had 'authorisation to establish policing.'<sup>31</sup> Similarly, [REDACTED].<sup>32</sup> SELIMI himself stated that during the summer of 1999, the MPO issued (and withdrew) identification cards,<sup>33</sup> and that he cooperated with Nexhmi KRASNIQI, Pashtrik OZ military police commander, and 'presume[d]' that KRASNIQI was his subordinate.<sup>34</sup>

11. It is for the Panel to decide what weight to afford the use of such ID cards, if admitted. However, any suggestion that these items are inadmissible due to the SPO's alleged failure to adduce contestable evidence regarding the existence of KLA police and the role of the MPO in summer 1999 misrepresents the record and cannot stand.

## *2. Uncharged incidents*

12. The Defence wrongly asserts that, at this stage of the case, the probative value of evidence of 'uncharged incidents' is outweighed by its prejudicial effect.<sup>35</sup> While uncharged incidents 'cannot result in a finding of guilt in respect of any of the Accused',<sup>36</sup> such evidence can be admitted for other valid purposes, including 'to

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<sup>28</sup> Response, KSC-BC-2020-06/F03144, paras 22-27.

<sup>29</sup> Response, KSC-BC-2020-06/F03144, paras 23-24. *See e.g.* W02183, W02517, W04868. *See also* [REDACTED]; [REDACTED], where [REDACTED].

<sup>30</sup> P01533; P01534. *See also* P00087, another ID card signed by Rexhep SELIMI.

<sup>31</sup> Transcript, 19 August 2024, pp.18580-18581. *See also* Transcript, 20 August 2024, pp.18725-18726.

<sup>32</sup> [REDACTED].

<sup>33</sup> P00761.8\_ET, pp.12-19.

<sup>34</sup> P00761.14\_ET, pp.17-18.

<sup>35</sup> Response, KSC-BC-2020-06/F03144, paras 28-29.

<sup>36</sup> Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 16 March 2023, Confidential, para.113.

demonstrate a deliberate pattern of conduct', and to establish the contextual elements of crimes against humanity.<sup>37</sup> As specified in the Motion Annex, the items identified by the Defence are tendered for such purposes.<sup>38</sup>

13. Prejudice does not accrue simply because these Proposed Exhibits were tendered toward the end of the Prosecution case, as the Defence has always been able to challenge the aspects of the case for which the identified items are tendered in support. Indeed, two of the uncharged incidents identified by the Defence have featured in evidence admitted pursuant to Rules 153 and 155, to which the Defence offered no objection.<sup>39</sup>

### III. CLASSIFICATION

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

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<sup>37</sup> Transcript (Oral Order), 18 September 2024, pp.19981-19982. *See also* Decision on Thaçi, Selimi and Krasniqi Appeal against Oral Order on Trial Panel Questioning, KSC-BC-2020-06/IA028/F00011, 4 July 2023, Confidential, para.53; Decision on Selimi Defence Motion to Exclude Evidence of W04846, KSC-BC-2020-06/F02393, 19 June 2024, Confidential, paras 16-17.

<sup>38</sup> Response, KSC-BC-2020-06/F03144, fn.50, referring to Items 57, 65-66, 68, 73, 80-81.

<sup>39</sup> Item 57 refers to the murder of [REDACTED], referenced by [REDACTED]. The Defence did not object to the admission of [REDACTED] Rule 153 evidence. *See* [REDACTED]. Item 73 refers to the discovery of a KLA detention centre at Ponosevac in July 1999, referenced by W02135 in P02523, para.4; P02517, para.49. The Defence did not mention this aspect in its extensive objections to admission of W02135's evidence. *See* Joint Defence Response to 'Prosecution Sixth Motion for Admission of Evidence Pursuant to Rule 155 and Related Request' (F02783) , KSC-BC-2020-06/F02855, 28 January 2025, Confidential.

#### IV. RELIEF REQUESTED

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

**Word count: 1,993**



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Specialist Prosecutor

Monday, 5 May 2025

At The Hague, the Netherlands.