



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 relating to motion for admission of documents (F03114)

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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. The Motion demonstrates how each Proposed Exhibit: (i) fits into the Prosecution's case; (ii) is consistent with, complementary to, and corroborative of testimony, adjudicated facts, and other admitted and Proposed Exhibits; and (iii) satisfies the admissibility criteria.⁴ Defence submissions concerning hearsay, the alleged propagandist or exaggerated nature of certain Proposed Exhibits, their authorship, and their relevance to purported central issues in the case and/or the acts and conduct of the Accused⁵ go to weight, not admissibility.⁶

3. For documents provided by the Serbian authorities, the Defence repeats submissions that have already been considered and rejected by the Panel.⁷ Whether

¹ Joint Defence Response to 'Prosecution motion for admission of documents (F03114)', KSC-BC-2020-06/F03166, 5 May 2025, Confidential ('Response').

² See e.g. Prosecution reply relating to motion for admission of General Staff and Provisional Government of Kosovo documents (F03065), KSC-BC-2020-06/F03167, 5 May 2025, Confidential (addressing many of the same (categories of) arguments raised in the Response).

³ Prosecution motion for admission of documents, KSC-BC-2020-06/F03114, 14 April 2025 ('Motion'). See also KSC-BC-2020-06/F03114/A01 ('Motion Annex 1'); KSC-BC-2020-06/F03114/A02 ('Motion Annex 2'); KSC-BC-2020-06/F03114/A03 ('Motion Annex 3'; together with Motion Annex 1 and Motion Annex 2, 'Motion Annexes'). The term 'Proposed Exhibits', as used in this reply, is defined in para.1 of the Motion.

⁴ Rule 79 does not apply to Proposed Exhibits previously denied admission without prejudice; rather, the normal, *prima facie* admissibility criteria apply. See Decision on Prosecution Motion for Admission of Drenica Zone Documents, KSC-BC-2020-06/F02967, 26 February 2025, Confidential ('Drenica Decision'), para.12. *Contra* Response, KSC-BC-2020-06/F03166, paras 25, 30-31, 38.

⁵ Response, KSC-BC-2020-06/F03166, paras 5, 13-23, 26-28, 34-37, 41.

⁶ Fourth Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01716, 8 August 2023 ('Fourth Decision'), paras 32-34.

⁷ Compare e.g. Response, KSC-BC-2020-06/F03166, paras 42-44 with Decision on Admission of Documents Shown to W04769, KSC-BC-2020-06/F01963, 27 November 2023, para.28.

the armed groups and individuals concerned by certain Serbian reports (which are tendered primarily as proof of contextual elements or as relevant to the provenance of other admitted and Proposed Exhibits⁸) were part of the KLA should be assessed holistically in light of corroborating and complementary evidence.⁹

4. There has been no prejudice or unfairness. The Proposed Exhibits have long been disclosed and on the exhibit list.¹⁰ The Defence has been provided adequate opportunity to respond to bar table motions, and use the Proposed Exhibits with witnesses.¹¹ The Defence will also have the opportunity, if it so chooses, to tender and elicit evidence on the Proposed Exhibits as part of any Defence case(s) and make submissions on their ultimate weight.¹² In this context, assertions of burden-shifting are baseless¹³ and ignore the sequence and phases of the trial, as reflected in, *inter alia*, Rule 127 of the Rules.¹⁴

5. While any limitations on the ability of the Defence to challenge the Proposed Exhibits can be taken into account in the Panel's final assessment of the evidence,¹⁵ the

⁸ In this respect, Defence submissions concerning Proposed Exhibit 52 in Motion Annex 3 ignore the primary purpose the document is being tendered (*see* Response, KSC-BC-2020-06/F03166, para.4), namely, so that it can be assessed together with other seized items, including as concerned by the same report, and Defence submissions on the reliability of such contemporaneous KLA records. Indeed, it is implausible that the template restaurant 'visa' comprising Proposed Exhibit 52 in Motion Annex 3 was fabricated.

⁹ For example, certain terms highlighted in paragraph 47 of the Response are used interchangeably with KLA in Proposed Exhibits of a similar nature (*see e.g.* Motion Annex 3, KSC-BC-2020-06/F03114/A03, items 18, 30) or there is other evidence, including as cited in Motion Annex 3, confirming KLA involvement in the events concerned by Serbian reports among the Proposed Exhibits.

¹⁰ *See, similarly*, Drenica Decision, KSC-BC-2020-06/F02967, para.14.

¹¹ As acknowledged by the Defence (*see e.g.* Response, KSC-BC-2020-06/F03166, paras 27, 31, 35, 41), parts of multiple Proposed Exhibits were put to witnesses and admitted.

¹² *See, similarly*, Drenica Decision, KSC-BC-2020-06/F02967, paras 14, 34, 42, 51, 62.

¹³ *See, similarly*, Decision on Joint Defence Request for Certification to Appeal the Oral Order on Reasons for Ruling on the Joint Defence Submissions on Consecutive Final Briefs, KSC-BC-2020-06/F03058, 26 March 2025, para.25.

¹⁴ 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' are to the Rules.

¹⁵ Fourth Decision, KSC-BC-2020-06/F01716, para.34.

Defence does not substantiate such asserted limitations.¹⁶ For example, in relation to the HAXHIU-VESELI interview – certain excerpts of which have already been used with and admitted through witnesses¹⁷ – the Defence, *inter alia*, examined Prosecution witnesses on topics it concerns¹⁸ and may conduct further investigations to verify and challenge the tendered interview, including in light of publicly available information.¹⁹ Similar considerations apply to, for example, SELIMI's *Zëri i Kosovës* interview series²⁰ and KRASNIQI's books,²¹ which, as set out in detail in the Motion Annexes, are complementary to, and corroborated and contextualised by, the Accused's own admitted statements, as well as other documentary and witness evidence.

6. Finally, the SPO: (i) clarifies that Proposed Exhibits 50 (IT-05-87 P01975 / IT-05-87 P01975-E) and 54 (SPOE00225028-SPOE00225036 / SPOE00225028-SPOE00225036-ET) in Motion Annex 3, which were missing a proposed classification, should both be public; (ii) corrects the ERNs for the translations of Proposed Exhibit 1 in Motion Annex 2 to U016-2577-U016-2579-ET, Proposed Exhibit 6 in Motion Annex 2 to SPOE00055341-SPOE00055341-ET Revised, Proposed Exhibit 60 in Motion Annex 3 to U000-0341-U000-0341-ET Revised 2, and Proposed Exhibit 77 in Motion Annex 3 to 074964-074968-ET Revised; and (iii) requests authorisation to correct the Legal Workflow metadata for Proposed Exhibit 81 (101931-01 / 101931-01-TR / 101931-01-

¹⁶ See e.g. Response, KSC-BC-2020-06/F03166, paras 12-13.

¹⁷ See e.g. Response, KSC-BC-2020-06/F03166, para.41, fn.47.

¹⁸ For example, in relation to the timing of intelligence trainings, see e.g. KSC-BC-2020-06/F03166/A02, item 13 (and corresponding Defence submissions acknowledging witness questioning on this topic).

¹⁹ For example, an audio-video recorded version of the interview is publicly available (https://web.archive.org/web/20100211000949oe_/http://videos.klankosova.com/zonaedebatit/Zona_Debatit_2912.wmv). The SPO only identified this version of the interview when preparing this reply. It will be disclosed (along with a transcript and translation) in due course. The video confirms, for example, that VESELI – who was discussing G2, not SHIK, in the relevant part of Proposed Exhibit 13 in Motion Annex 2 – dated intelligence trainings to 1998, not 1999 as claimed by the Defence. See KSC-BC-2020-06/F03166/A02, item 13.

²⁰ See e.g. Response, KSC-BC-2020-06/F03166, para.25.

²¹ See e.g. Response, KSC-BC-2020-06/F03166, paras 33-39. See also paras 29-32 (concerning the book by Pal REFSDAL).

TR-ET) in Motion Annex 1 to reflect that it was seized from Rexhep SELIMI. The SPO has also reviewed Defence submissions concerning certain translations and, while it does not intend to rely on the previously untranslated Serbian pages and text, the SPO will disclose revised translations of Proposed Exhibits 58 (U001-7478-U001-7572) and 62 (U002-2369-U002-2370) in Motion Annex 3, including the Serbian pages and text, by 16 May 2025 for the sake of clarity and completeness.

III. CLASSIFICATION

7. As there is no public version of the Response, this reply is confidential pursuant to Rule 82(4). Since it does not contain any confidential information, the SPO requests its reclassification as public.

IV. RELIEF REQUESTED

8. For the reasons given above and previously, the Motion, taking into account paragraph 6 above, should be granted.

Word count: 1225



Kimberly P. West

Specialist Prosecutor

Monday, 12 May 2025

At The Hague, the Netherlands.