

In: KSC-BC-2020-06

**The 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: Counsel for Hashim Thaçi
Counsel for Kadri Veseli
Counsel for Rexhep Selimi
Counsel for Jakup Krasniqi

Date: 24 April 2025

Language: English

Classification: Public

**Public Redacted Version of Joint Defence Response to the Prosecution Motion
for Admission of International Reports with Confidential Annex 1**

Specialist Prosecutor's Office
Kimberly P. West

Counsel for Victims
Simon Laws

Counsel for Hashim Thaçi
Luka Misetic

Counsel for Kadri Veseli
Rodney Dixon

Counsel for Rexhep Selimi
Geoffrey Roberts

Counsel for Jakup Krasniqi
Venkateswari Alagendra

I. INTRODUCTION

1. The Defence for Messrs. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi (“Defence”) hereby responds to the Prosecution motion for admission of international reports through the bar table motion (“SPO BTM”)¹
2. The SPO is again attempting to seek admission of 132 items (“Items”) through the bar table procedure and thus to avoid the process of authentication and verification of each one of them in court allowing the Defence to test it accordingly. The Defence has repeatedly made extensive submissions on the size of the record which has been recently exponentially increased by the SPO’s last minute bar table motions. Those submissions are fully applicable in the present case as well.
3. In this particular case, the SPO is tendering for admission a large amount of international reports which it intends to use to support central and contested aspects of the case, despite the fact that the majority of the Items do not identify the source of their information, are based on hearsay or anonymous sources and contain information deriving from unidentified “media”. This evidence has limited probative value, and admitting such evidence from the bar table deprives the Accused of the possibility to challenge both the content and authenticity of such evidence and allegations therein.²
4. The Items, for the most part, do not provide any basis for the conclusions contained therein, which refer to the acts and conduct of the Accused or their

¹ KSC-BC-2020-06/F03066, Prosecution motion for admission of international reports with confidential Annexes 1-2, 31 March 2025 (“SPO BTM”).

² The Defence reiterates its submissions provided in KSC-BC-2020-06/F01387, Joint Defence Response to Prosecution Application for Admission of Material through the Bar Table with confidential Annexes 1-8, 21 March 2023 (“Defence Response to the BTM”) at para. 87 including fn. 149-151, see also ICC, The Prosecutor v. Ntaganda, ICC-01/04-02/06, Trial Chamber: Decision on Defence Request for Admission of Evidence from the Bar Table, 31 January 2018 (“Ntaganda Decision”), para.45.

alleged authority.³ For instance, some of the items supposedly demonstrate “SELIMI's position of superior responsibility”, that “Rexhep SELIMI, the PGoK Minister of Public Order, [REDACTED]”⁴ or “Hashim THAÇI's public endorsements that contravened UNMIK's authority”.⁵ Admission of evidence concerning the conduct, positions and authority of the Accused without allowing the Defence to cross-examine the authors of such reports or, at the very least, witnesses who could otherwise contextualise and verify the allegations contained therein is highly prejudicial.⁶

5. The Trial Panel previously acknowledged in relation to the UN and OSCE reports tendered by the SPO through the bar table procedure that international(ised) criminal tribunals have approached reports from international organisations or NGOs with caution and that caution should also be taken in relation to the reports which contain little or no information regarding, *inter alia*, their methodology, the identity of those who prepared the report, the standards relied upon to prepare it, the identity of those who provided information, and what verification or corroboration was sought in respect of individual pieces of information.⁷
6. One of the key concerns deriving from the SPO BTM is that the SPO intends to rely on the majority of the Items in respect of central issues in the case, contested by the Defence. For instance, the SPO is seeking admission of the Items to support the allegation that the armed conflict existed from March to November 1998 and from June to September 1999. This disputed issue goes to the core of the case. Admitting such a large amount of Items which bear major reliability

³ See for instance, 55, 60, 74, 75, 86.

⁴ Items 89, 90

⁵ Item 107.

⁶ The Defence similarly reiterates its submissions provided in Defence Response to the BTM at para. 89 including fn. 155.

⁷ KSC-BC-2020-06/F01409, Decision on Specialist Prosecutor's Bar Table Motion, 31 March 2023 (“Decision on BTM”), para. 43 including fn. 43.

issues, and are of a limited probative value, without providing the Defence with an opportunity to cross-examine the authors of the reports where possible or other witnesses who can testify to the events described therein is prejudicial to the Defence.⁸

7. Further, the SPO tenders a substantial amount of Items purportedly relevant to other key allegations of the case. In particular, the SPO tendered several documents which are claimed to be probative of the “KLA's policy against perceived Opponents, and illegal policing activities into September 1999 in violation of the Undertaking”, “KLA/PGoK leadership's constructive knowledge of ongoing crimes and breaches of Resolution 1244 and the Undertaking,” and relevant to the “ongoing widespread and/or systematic attack on civilians by the KLA, including the targeting of Opponents.”
8. The Items contain statements attributed to the Accused; however, these mostly derive from the media.⁹ Any statements that the SPO attributes to the Accused are likely to be of a central importance. Admission of the Items containing such statements or summaries thereof should be avoided in order to preserve the rights of the Accused, in particular the right to test the evidence of acts and conduct that is of potentially central importance to the case. For such Items to be deemed reliable and admissible the SPO should be required to identify a witness who can authenticate the statements therein and elaborate on their context and substance. Otherwise, the statements cannot not be considered *prima facie* reliable, considering that their purpose, context and authorship cannot be established under current circumstances.¹⁰

⁸ The Defence reiterates its submissions provided in Defence Response to the BTM at para. 89 including fn. 152-154.

⁹ See, for instance, items 51-52.

¹⁰ The Defence reiterates its submissions provided in Defence Response to the BTM at paras 59-60, including fn. 98-105.

9. The SPO BTM contains numerous examples of Reports which make reference to alleged arrests and detentions by the KLA. In many cases, both the alleged victims and perpetrators are unknown and the source of the information unidentified. Little to no detail is provided as to the circumstances of these detentions and there is no evidence of any investigation having been conducted to verify the allegations. The issue of KLA detentions, and the reason for such detentions, is a central issue in this case. Seeking to admit at the close of the case, multiple vague and unsubstantiated allegations of KLA detentions is highly prejudicial to the Defence who have not had the opportunity to challenge or investigate any such matters in the course of the trial. These incidents, for which there is little to no detail provided, do not form part of the indictment and as such are insufficiently relevant to the charges to warrant their admission.

II. SUBMISSIONS

10. In line with previous practice, the Defence has made its objections to each item tendered in a modified version of Annex 1 to the SPO BTM,¹¹ relying on the same categories of objections as listed in Annex 7 to F01387. Further, the Defence makes the following submissions on the distinct and/or common characteristics of the Items which render them inadmissible through the bar table motion procedure.

A. *Prima facie* authenticity and reliability of the Items is not established

11. The SPO stated in its BTM that “the vast majority [of the Items] are dated and bear official headers, signatures or their authors, reference numbers, and/or seals/stamps” which authenticate the Items accordingly.¹²

¹¹ See Annex 1 to this Response.

¹² SPO BTM, para. 17.

12. Contrary to the SPO's assertion, the "vast majority" of the Items bear none of the above consistently, except for mere official headers that are not sufficient for the purpose of authentication of a document. The Defence notes the SPO's suggestion to consult both the original and translation of the Items for the purposes of assessing indicia such as signatures, stamps and formatting;¹³ however, that is of little assistance, since the vast majority of the tendered Items, 120 items, have been disclosed only in their original language, primarily English, and as such comparison with the Albanian version does not assist. The professed *indicia* of authenticity simply do not exist; there are no stamps or signatures within the majority of the Items. The Defence has provided code objections in every such case in the Annex to this Response.
13. The SPO referred to the Trial Panel's finding that "official documents from international or non-governmental organisations 'need not be independently authenticated if: (i) the author of such document is an identified representative of an official organisation, or body, who has signed the document; or (ii) it is otherwise apparent from the documents themselves that they originate from such an authority.'" ¹⁴ The authors of the tendered reports are identified in very few instances. Lack of authorship, which is also noted accordingly in the Annex to the Response, combined with an absence of the *indicia* of authenticity listed above, obscures a genuine understanding of the provenance of such Items. In these circumstances, where the only *indicia* of reliability are a header and standard formatting, it cannot be concluded that such reports originate from a certain authority.
14. A further authenticity issue arises in relation to the sources of information provided in the reports. Sources are (i) not specified at all or referred to in an

¹³ SPO BTM, para. 17, in particular fn.77.

¹⁴ SPO BTM, para. 19, including fn. 80.

unhelpful or unclear way, such as “local source”,¹⁵ (ii) unidentified and unverified, for instance “unconfirmed reports”,¹⁶ (iii) based on unidentified alleged “media” coverage of the relevant events without providing the original source.¹⁷ The Items provide no details as to how the information contained within was gathered, how the sources were selected and verified, how the information was further assessed or corroborated and no details are provided as to the process and context of their creation. In such instances, the Defence is fully deprived of the opportunity to challenge the authenticity of these Items, as the SPO did not put them to any witness who could meaningfully contextualise and authenticate them and, similarly. In line with the Trial Panel’s finding,¹⁸ caution should be exercised when considering such items for admission from the bar table.

15. In addition, several items tendered in the Motion seek to attribute statements or comments to the Accused.¹⁹ It would be highly prejudicial to admit such items through the bar table, barring the Defence from cross-examining the author(s) of these documents and test the basis upon which they sought to attribute statements to the Accused, as well as the accuracy of what is attributed. In fact, in all these instances, the Defence cannot address the methodology employed by the author(s) of the documents and explore whether what is reported is an accurate reflection of what was allegedly said by one of the Accused, or, worse, whether it is nothing more than a fabrication²⁰ or the author(s)’ personal interpretation of an alleged public statement by one of the Accused.

¹⁵ See, for instance, items 2-12, 28, 53, 46-47, 55, 57, 58, 61, 67, 69, 70, 74, 76, 83, 87.

¹⁶ See, for instance, item 8.

¹⁷ See, for instance, items 3-6, 8.

¹⁸ Decision on BTM, para. 43 including fn. 43

¹⁹ See for example Items 74, 87, 107, 120,

²⁰ See Item 53, p. SPOE00217496.

16. Separate note should be taken of SITF00441805-00441805, which has no headings, markings, signature, names or any other indication that it was prepared by [REDACTED] KFOR.²¹ The assertion that the Report was provided to the SPO by the relevant originator is not sufficient to establish its source.²² Moreover, the basis of the information contained therein is not specified, the Report does not provide any information on the circumstances and purpose of its creation. In line with prior findings on similar items²³ and without further authentication and contextualisation, such Report should be deemed unreliable and found inadmissible.
17. Similarly, IT-04-84 P00006 should be denied admission from the bar table. The Report is allegedly based on the witness statements of 69 witnesses of violence by either Serbian police or the KLA.²⁴ First, the document is testimonial in nature and thus should be denied admission on this basis.²⁵ Second, the statements are not attached to the Report and were not otherwise disclosed to the Defence. The alleged witnesses are referred to in the Report by their names, surnames at times and age. The report bears no details as to methodology of either the interviewing process or the Report compilation process. The authors of the Report are not clearly indicated; the mere listing of the members of the organisation along with its chairman should not be considered as a clear indication of the authorship. The Report allegedly refers to SPO witnesses, for instance W01763, who could potentially provide at least partial authentication and contextualisation of the Report, if asked to comment during their testimony. At this stage of the proceedings, the Defence is deprived of any opportunity to meaningfully test the

²¹ Similar note should be taken of, for instance, item 113.

²² Ntaganda Decision, paras. 12, 38.

²³ Decision on BTM, para. 46.

²⁴ Item 10, p.2.

²⁵ The Defence reiterates its submissions provided in Defence Response to the BTM at paras. 82-85.

Report's reliability and therefore its admission from the bar table is highly prejudicial to the Accused.

18. In the same vein, SPOE00217108-SPOE00217508, which contains various statements made in relation to, and on behalf of, the [REDACTED].²⁶ This Report makes general statements about the [REDACTED].²⁷ This is merely opinion evidence, and the prejudicial effect of such sensationalist claims is apparent. Additionally, reports therein relating to the [REDACTED] equally resemble editorial commentary and suffer from the same lack of identifiable sources used to compile the report.²⁸

B. Prejudicial effect of the Items significantly outweighs their probative value

1. Admission of the Items relied by the SPO for the purpose of the KLA/PGoK leadership during June-September 1999 is prejudicial to the Accused

19. The SPO suggests that the Items show that the KLA/PGoK leadership, including the Accused, were repeatedly put on notice of violations of the Undertaking during the summer of 1999 and that they either took no measures to stop illegal conduct or endorsed and engaged in such conduct in various ways.²⁹
20. The SPO referred to Items 62-63, 77, 81 and 111 in support of this allegation, however, none of these items directly refers to the Accused or otherwise addresses their alleged knowledge of the violations. These documents lack authorship,³⁰ identification of sources³¹ and participants of the alleged incidents

²⁶ Item 53, p. SPOE00217136.

²⁷ Item 53, p. SPOE00217169.

²⁸ Item 53, p. SPOE00217140, SPOE00217161.

²⁹ SPO BTM, para. 10

³⁰ See, for instance, item 81.

³¹ See, for instance, item 81, 77, 62.

recorded therein.³² The SPO failed to put to W04765 Item 77 which contains W04765's statement,³³ thus, the Defence was deprived of an opportunity to challenge the basis of the views expressed therein. Item 63 relied upon by the SPO for this purpose is hardly legible, does not mention the Accused and lacks any context for it to be considered as relevant and probative of the Accused's purported knowledge of the alleged violations. Further, in relation to Item 62, the SPO professes that the document is relevant to the [REDACTED] solely on the basis of hearsay attributed to an alleged KLA political representative whose identity is redacted. The Defence is therefore prevented from challenging the veracity of that assertion.

21. Separately, the SPO alleged that the fact that military police cards were allegedly issued by the Ministry of Public Order and signed by Mr. Selimi ("MPO ID Cards") suggests that the Accused personally issued statements critical of international organisations in Kosovo and personally engaged in illegal policing.³⁴
22. Previously, the Trial Panel explicitly stated that "if it is a part of the SPO case to establish the continued existence and functioning of the military police during the period from June 1999 and September 1999 and its involvement in the commission of crimes, it will have to meet the applicable standard of proof" and that "it is therefore to be expected that, if the SPO pursues such a case, it will call evidence that the Defence will be able to challenge on that point".³⁵ As outlined below, the SPO failed to abide by the Trial Panel's direction to ensure that witnesses who are in a position to provide evidence in relation to this aspect of its case are available for cross-examination. Further, the SPO now attempts to

³² See, for instance, item 81.

³³ See, for instance, item 77.

³⁴ SPO BTM, para.11.

³⁵ KSC-BC-2020-06/F01603, Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, 14 June 2023, para. 159.

benefit from this failure by seeking the admission of such items in a circuitous fashion, with the Defence barred from challenging that evidence.

23. The Trial Panel issued the above finding on 14 June 2023, merely two months or so into the SPO case. Since then, the SPO has had various opportunities to present evidence in relation to this central aspect of its case in a form that enables the Defence to challenge it. Instead, the SPO merely showed a couple of the MPO ID Cards to W04868 and [REDACTED]. W04868 was not in a position to provide any evidence regarding the alleged use of the MPO ID Cards and could not even testify as to whether they had been actually issued by the MPO.³⁶ W04868 also accepted that he did not know who the Minister of Public Order was at the time of his interactions with MPO ID card bearers.³⁷ [REDACTED].³⁸ [REDACTED].³⁹ [REDACTED].⁴⁰
24. Besides these individuals, other SPO witnesses have referred to Mr. Selimi's position as Minister of Public Order,⁴¹ but offered no substantive evidence regarding Mr. Selimi's role and authority in that position, or his supposed command and control over the bearers of MPO ID cards. W04758, who was appointed as a Chief of Public Order in summer 1999,⁴² testified in court following admission of his evidence under Rule 154.⁴³ W04758 provided evidence on the "effort placed towards the formation or the creation of Kosovo police force"⁴⁴ by means of contact with UNMIK and OSCE⁴⁵ and the "idea" of

³⁶ Transcript of 20 August, 2024, T.18726.

³⁷ Transcript of 19 August 2024, T. 18581-18582.

³⁸ [REDACTED].

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ [REDACTED]; [REDACTED]; [REDACTED]; Transcript of 4 December 2024, T. 10407-10409; [REDACTED].

⁴² 083639-TR-ET Part 9, p.36.

⁴³ KSC-BC-2020-06/F02655, Decision on Prosecution Motion for Admission of Evidence of Witnesses W00344, W01225, W04485, and W04758 pursuant to Rule 154 (F02593), 16 October 2024, paras. 35-47.

⁴⁴ P01755.9, p.36.

⁴⁵ P01755.9, p.38.

how Kosovo police forces were to look and how they were to be established.⁴⁶ W04758 did not elaborate on whether this idea was eventually fulfilled or, if so, how it functioned in practice.⁴⁷ Moreover, W04758 stated in his SPO interview that there was no connection between the military police and the Ministry of Interior and that the Ministry of Public Order didn't have a police of its own.⁴⁸ Despite W04758's evidence having been admitted under Rule 154, the SPO specifically chose to ask him no questions and elicited no additional evidence about this part of the case, despite the clear directions from the Panel from in June 2023.

25. Where, as in this case, the SPO fails to lead evidence crucial to its case after specific directions from the Trial Panel to do so, it cannot then seek to shift the responsibility to question SPO witnesses on this issue onto the Defence to disprove a case that has not been made out. Nor can it seek to further circumscribe the Defence's ability to challenge such evidence, through its attempt to tender documents relating to this part of the case, at the last moment, through the bar table.
26. The Items that the SPO references in support of these allegations, besides the authenticity issues as identified in the Annex to this Response, are not probative of the allegations they are purported to support.⁴⁹ The Items at issue merely state the existence of the named MPO ID Cards without providing any context, or verified information on the process of their creation, signing, issuance, and the competences that their owners were entrusted with.
27. In light of the above and as provided in the Annex to this Response in relation to the relevant Items, it is highly prejudicial to the Accused to admit the evidence

⁴⁶ P01755.10, p.2.

⁴⁷ P01755.10.

⁴⁸ P01755.9, p.38-39.

⁴⁹ Items 86 and 126.

regarding this core aspect of the SPO case from the bar table following the closure of the SPO's case and leaving the Defence with no available opportunity to effectively challenge such evidence. In addition, the SPO's intended use of the bar table as a vehicle to admit numerous materials purported to be relevant to Mr. Selimi's authority as Minister of Public Order is a blatant attempt to circumvent the Trial Panel's clear directions regarding the necessity of live evidence to support this aspect of its case.

2. Items contain evidence in relation to uncharged incidents, some of which have been previously excluded by the Trial Panel

28. The SPO included in its BTM Items which address uncharged incidents in respect of which the SPO has not put the Defence on notice and has adduced no additional evidence on which the Defence could have cross-examined.⁵⁰ Immediately after submitting the BTM, the SPO proceeded with submitting its notice pursuant to Rule 129 on the closure of its case, including the statement that there are "no more witnesses to be called".⁵¹ In line with the SPO's notice on the closure of the case, the Defence will no longer have any opportunity to address any such allegations.
29. Therefore, in accordance with the Trial Panel's findings on the evidence related to uncharged incidents⁵² and considering the stage of the trial, the probative value of such Items is outweighed by prejudice to the Accused which renders them inadmissible from the bar table.

⁵⁰ See, for instance, items 57, 65, 66, 68, 73, 80, 81

⁵¹ KSC-BC-2020-06/F03121, Prosecution notice pursuant to Rule 129, 15 April 2025.

⁵² Transcript of 17 April 2023, Trial Panel, Oral Order on the Selimi Defence Motion for the exclusion of evidence filed on 6 April 2023 in F01438, T. 2863-2866, F01864, Decision on Prosecution Second Motion for Admission of Evidence pursuant to Rule 155, 17 October 2023, para. 47, KSC-BC-2020-06/F02393, Decision on Selimi Defence Motion to Exclude Evidence of W04846, 19 June 2024, KSC-BC-2020-06/F02013, Decision on Prosecution Third Motion for Admission of Evidence pursuant to Rule 155, paras. 56-57.

30. Some of these items contain evidence related to acts and conduct of the Accused which are not charged by the SPO and, more importantly, which have been already excluded by the Trial Panel during a previous admission process.⁵³ Both items 89 and 90 refer to an allegation concerning Mr. Selimi that was previously excluded by the Trial Panel when admitting W02135's evidence pursuant to Rule 155 ("Trial Panel's Decision on W02135").⁵⁴ The Trial Panel explicitly determined that the Defence did not have a meaningful opportunity to cross-examine any witness regarding this incident, and that the probative value of W02135's evidence on that point was outweighed by its prejudicial effect.⁵⁵ Any attempt to admit such evidence through the bar table procedure at this stage of the trial and after the Trial Panel's Decision on W02135 has been issued, appears to be nothing other than an SPO's attempt to circumvent the Panel's Decision and to use the bar table procedure to benefit its strategy.
31. No witnesses have testified since the issuance of the Trial Panel's Decision on W02135 who the Defence could have examined on this incident, and the SPO has not provided adequate notice of its intention to again rely on this incident. Therefore, the probative value of the tendered item is outweighed by its prejudicial effect and its admission should accordingly be denied.

3. The Items are overly redacted to allow the Defence to meaningfully review them

32. Some of the Items tendered by the SPO cannot be meaningfully assessed or objected to by the Defence in light of the extensive redactions applied to crucial information potentially contained in them.⁵⁶ For instance, the SPO seeks to tender

⁵³ Items 89, 90,

⁵⁴ F03012, Decision on Prosecution Third Motion for Admission of Evidence pursuant to Rule 155, 13 March 2025 ("Trial Panel's Decision on W02135"), para. 59.

⁵⁵ Trial Panel's Decision on W02135, para. 59.

⁵⁶ See, for instance, items 53, 62, 64, 79.

portions of a [REDACTED].⁵⁷ The Report describes [REDACTED].⁵⁸ [REDACTED].⁵⁹ The identities of the participants are redacted. Moreover, [REDACTED].

33. Such redactions prevent the Defence from properly investigating and challenging the contents of the documents. The overly redacted Items, as indicated in each case in the Annex attached to this Response, should not be admitted unless the Defence is given an opportunity to review unredacted or at least lesser redacted versions thereof.

III. CLASSIFICATION

34. This Response is submitted confidentially because it addresses documents with the same classification. A public redacted version will be submitted in due course.

IV. RELIEF REQUESTED

35. For the reasons set out in the present Response, the Defence hereby requests the Trial Panel to:

- (i) Deny admission of the Items except for the Items 1, 35, 49, 52, 54, 56.

Word count: 4446

Respectfully submitted on 24 April 2025,

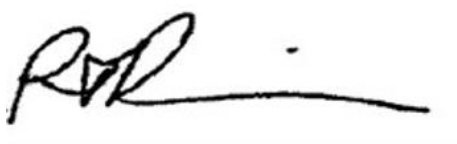
⁵⁷ Item 53.

⁵⁸ Item 53, pp. SPOE00217127, SPOE00217138, SPOE00217159.

⁵⁹ Item 53, p. SPOE00217153.



Luka Misetic
Counsel for Hashim Thaçi



Rodney Dixon KC
Counsel for Kadri Veseli



Kerrie Ann Rowan
Co-Counsel for Kadri Veseli



Annie O'Reilly
Co-Counsel for Kadri Veseli



GEOFFREY ROBERTS
Lead Counsel for Rexhep Selimi



ERIC TULLY
Co-counsel for Rexhep Selimi



CHAD MAIR

Co-counsel for Rexhep Selimi



RUDINA JASINI

Co-counsel for Rexhep Selimi



Venkateswari Alagendra

Lead Counsel for Jakup Krasniqi



Shyamala Alagendra Khan

Co-Counsel for Jakup Krasniqi



Aidan Ellis

Co-Counsel for Jakup Krasniqi



Victor Băieșu

Co-Counsel for Jakup Krasniqi