

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

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Joint Defence Reply to F03530

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1. The Response¹ ignores the binding standard for establishing the nexus requirement, misleadingly accuses the Defence of failing to object to the admission of the impugned exhibits at the time of tender, and is replete with attempts to conceal the SPO's failure to lead the evidence contained in the impugned exhibits during its case-in-chief.
2. Regarding the First Issue, the SPO contends that the exhibits "provide relevant context" to the testimonies of 1DW-001 and 1DW-004, and on this basis alone, satisfy the nexus requirement.² In so doing, the SPO fails to identify any authority establishing such a lenient standard. The Appeals Panel has previously determined that "there is no bar to the admission of written evidence without calling its source to testify, and that documents may be admitted through other **persons who can speak to the origins and contents of the concerned documents** [emphasis added]."³ The jurisprudence of the ICTY also confirms that the nexus requirement demands that "the party tendering a piece of evidence shall do so through a witness who is either the author of that piece of evidence, or who can speak to its origins and/or content."⁴ The essential element of the nexus requirement is therefore whether the witness was in a position to comment on the content or origin of the document concerned, and the SPO's attempt to dilute the relevant standard to a mere inquiry into whether the proposed exhibit "provides relevant context" to the testifying witness' testimony is entirely baseless and should be rejected by the Panel.

¹ KSC-BC-2020-06/F03530, Prosecution response to joint Defence request for leave to appeal (F03512), 20 October 2025 ("Response").

² Response, paras. 4-6.

³ KSC-BC-2020-06/IA036/F00011, KSC-BC-2020-06/IA037/F00011, KSC-BC-2020-06/IA038/F00011, KSC-BC-2020-06/IA040/F00011, Decision on Joint Defence Consolidated Appeal Against Decisions F03201, F03202, F03203, F03211 and F03213, 8 October 2025, para.70.

⁴ ICTY, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5118-T, Decision on Guidelines for the Admission of Evidence Through Witnesses, 19 May 2010, para. 25(b).

3. Regarding the Second Issue, the SPO's argument that the Defence did not object to the tender of the two additional pages to P01883 based on prejudice⁵ is wholly disingenuous. Counsel for Mr. Selimi objected to the tender on the basis that "[t]he SPO's case is closed at this point, and [the SPO] had many weeks after the end of their case to tender documents that they felt were relevant to their case. And this is an attempt to reopen the case and improperly tender these documents [...]"⁶ To suggest that this submission by Counsel representing an Accused who has exercised his right to not call a defence case related to anything other than prejudice is a pedantic attempt to distort the plain and obvious essence of Counsel's objection.
4. Further, the SPO argues that it has led evidence as to Messrs. Selimi and Veseli's involvement in the provision of RPGs used during a synchronized attack on several police stations in September 1997 during its case,⁷ yet none of the exhibits cited by the SPO contain any reference to Mr. Veseli at all, or to Mr. Selimi's involvement in the procurement detailed in the two additional pages of P01883.⁸ Additionally, the SPO claims that the extracts from the two additional pages were read to W04401 during his direct examination, when in fact, the SPO failed to read the extract detailing Mr. Selimi's specific involvement during W04401's testimony.⁹
5. The SPO incorrectly claims that the Trial Panel determined these two pages of P01883 to have met the requirements of Rule 138(1) during W04401's testimony,

⁵ Response, para. 8.

⁶ Transcript, 1 October 2025, p. 27451.

⁷ Response, para. 9.

⁸ Response, fn. 35.

⁹ Compare P01883, p. SPOE00131832 with Transcript, 28 November 2024, pp. 22970-22971. In particular, the extract read by the SPO from P01883 starts with "[a]fter those first three ones", whereas the remainder of the paragraph preceding the read extract concerns the alleged receipt and handling of the RPGs by Mr. Selimi, which is not reproduced elsewhere in the read extract.

as a contextual reading of the Order makes clear that the Trial Panel solely addresses the one page of P01883 used during W04401's redirect examination.¹⁰

6. Finally, the SPO's argument that, even if the two additional pages of P01883 constitute new evidence, their admission still complied with Rule 138 because they are relevant and connected with the evidence of 1DW-004¹¹ simply ignores the immutable requirement to assess prejudice in every determination of admissibility.
7. Regarding the argument that the resolution of the Issues would not materially advance proceedings, the SPO fails to explain how the expectation that the Thaçi Defence have weighed the risks and benefits of calling witnesses entitles the SPO to lead highly prejudicial evidence regarding his co-Accused that falls foul of the requirements of Rule 138.¹² Further, the resolution of the Issues will allow the parties to make final submissions on the weight of admitted exhibits that are informed by the applicable standard concerning the nexus requirement and by the status of prejudicial evidence concerning co-Accused who elected not to call a defence case that has been admitted beyond the SPO's case-in-chief. Similarly, the Trial Panel will equally be in a better position to assign weight to such prejudicial exhibits or for which no or only a limited nexus to the testifying witness was established.
8. In conclusion, the Defence respectfully requests the Trial Panel to REJECT the arguments outlined in the Response and GRANT the Request.

¹⁰ Transcript, 4 December 2024, p. 23301. The Trial Panel's determination that "the portions of the interviews which were put to the witness are relevant, prima facie authentic, and probative, and therefore meet the Rule 138(1) requirements for admission" is prefaced by "[t]he SPO tendered P01883 MFI and P01884 MFI into evidence, having put one page from each of the two documents to W04401 during its redirect examination of the witness". It is obvious that the Trial Panel's reference to "the portions of the interviews which were put to the witness" relates to pages SPOE00131856 of P01883 and 6D00078 of P01884.

¹¹ Response, para. 9.

¹² Response, para. 12.

Word count: 1000

Respectfully submitted on 27 October 2025,



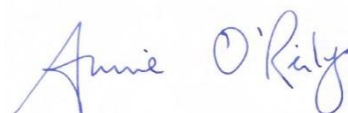
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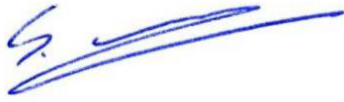
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