



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-05
Specialist Prosecutor v. Salih Mustafa

Before: Trial Panel I
Judge Mappie Veldt-Foglia, Presiding
Judge Roland Dekkers
Judge Gilbert Bitti
Judge Vladimir Mikula, Reserve

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 28 October 2021

Language: English

Classification: Public

**Prosecution Request for Admission of Exhibits from the Direct Examinations of
W01679 and W03594**

with Confidential Annex 1

Specialist Prosecutor's Office

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Victims' Counsel

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I. INTRODUCTION

1. Pursuant to the Trial Panel's Decision,¹ and Rule 138(1) of the Rules,² the SPO hereby requests the admission into evidence of the items listed in Annex 1 to this Request ('Documents'). The Documents include the portions of prior statements made by W01679 and W03594 that were referred to during their direct examinations, as well as material shown to W01679 and W03594 during their examinations.

2. The Documents are relevant, authentic, have probative value, and their admission would cause no undue prejudice to the Accused.³

3. Pursuant to Rule 82(3), Annex 1 to this Request is filed as confidential in order to protect confidential information in this case.

II. SUBMISSIONS

a. Audio-visual materials

4. In accordance with the Admissibility Decision,⁴ audio-visual material listed in Annex 1 is tendered with the corresponding transcripts and translations.⁵

b. Previous statements of W01679 and W03594

5. The parts of the transcripts of SPO interviews and other prior statements that were put to W01679 and W03594 at trial are tendered into evidence.⁶

c. Photographs and drawings shown to W01679 and W03594

¹ Decision on the conduct of the proceedings, KSC-BC-2020-05/F00170, Public, 26 August 2021, ('Decision') paras 36-38.

² 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' herein refer to the Rules, unless otherwise specified.

³ See Rule 138. Unless challenged or *proprio motu* excluded, evidence submitted to the Panel shall be admitted if it is relevant, authentic, has probative value and its probative value is not outweighed by its prejudicial effect.

⁴ Decision on the submission and the admissibility of evidence, KSC-BC-2020-05/F00169, Public, 25 August 2021 ('Admissibility Decision'), para.37.

⁵ Annex 1, items 2, 11.

⁶ Annex 1, items 1, 3, 4, 10, 12, 13.

6. Both W01679 and W03594 were shown, during direct examination, specific photographs and/or drawings, some of which taken from larger packets or booklets.⁷ The complete packets or booklets listed in Annex 1 are tendered in their entirety. Admission of the packet or booklet in their entirety will provide the Panel with a more complete record and context,⁸ including information going to reliability and authenticity. For example, the various cover pages of these documents contain information including the name of the organization that obtained them,⁹ and the circumstances under which a witness was shown photographs.¹⁰

d. SPO Official Note containing exhibits used during SPO interview of W01679 on 5 June 2019

7. The SPO also tenders into evidence the Official Note of the 5 June 2019 interview of W01679,¹¹ which contains at pages 6-8¹² the handwritten corrections made by the witness to his prior UNMIK statement, during his SPO interview.¹³ As indicated to the Trial Panel,¹⁴ for what concerns the English translation of the UNMIK statement of the witness, the SPO relies on the original statement and its authoritative English translation therein.¹⁵ This document was also shown to W01679 during his direct examination,¹⁶ and is the one tendered into evidence in its English and Albanian versions.¹⁷

8. Document marked with ERN 060690-060698-ET, which the SPO does not tender into evidence, is an internal/draft SPO translation of the original UNMIK statement of

⁷ Annex 1, items 5-7, 12.

⁸ Admissibility Decision, para.38.

⁹ Annex 1, items 6, 12.

¹⁰ Annex 1, items 7, 12.

¹¹ Annex 1, item 3.

¹² ERN pages 060695-060697 RED1.

¹³ Cf. SPO Transcript of interview of Witness W01679, 060698-TR-ET Part 3 Revised RED3, pp 20-22, 24-28.

¹⁴ KSC-BC-2020-05, Transcript of Trial Hearing, 14 October 2021, pp 1228-1230.

¹⁵ See 7000687-7000691 RED3, pp.1-2 (Eng).

¹⁶ KSC-BC-2020-05, Transcript of Trial Hearing, 4 October 2021, pp 874-876.

¹⁷ See Annex 1, item 4.

the witness, which was not finalised and was not intended to replace the original English version of the statement.¹⁸ Document 060690-060698-ET was relied upon during the re-examination of the witness only to provide the English translation of the three handwritten corrections made by the witness to his UNMIK statement.¹⁹ Since those three corrections were read by the witness into the record during his testimony, and thus appear translated into English in the live transcript of the proceedings,²⁰ the SPO does not see the need to tender document 060690-060698-ET into evidence and to finalise a further English translation of the UNMIK statement of the witness.

III. RELIEF REQUESTED

9. For the foregoing reasons, the SPO requests admission of the exhibits used during the direct examinations of W01679 and W03594, listed in confidential Annex 1 to this Request.

Word count: 763



Jack Smith
Specialist Prosecutor

Thursday, 28 October 2021
At The Hague, the Netherlands.

¹⁸ See 7000687-7000691 RED3, pp.1-2 (Eng): Annex 1, item 4.

¹⁹ See Annex 1, item 3, pp 6-8 (ERN pp 060695-060697 RED1).

²⁰ KSC-BC-2020-05, Transcript of Trial Hearing, 5 October 2021, pp 1001 (lines 18-19), and 1002 (lines 12-13).