



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: 4 February 2022

Language: English

Classification: Public with Confidential Annexes 1-2

**Prosecution Application for Admission of remaining Material under Article 37 of
the Law**

with Confidential Annexes 1-2

Specialist Prosecutor's Office

Jack Smith

Counsel for the Accused

Julius von Bóné

Counsel for Victims

Anni Pues

I. INTRODUCTION

1. Pursuant to Article 37 of the Law,¹ Rules 137-139 of the Rules,² and the Trial Panel's Decision,³ the Specialist Prosecutor's Office ('SPO') hereby requests the admission of the remaining Article 37 material from its Updated List of Exhibits,⁴ listed in confidential Annex 1 to this Application (the 'Document').
2. The Document falls under Article 37 of the Law and consists of:
 - (i) A list of people detained in April 1999;
 - (ii) A number of related handwritten notes.
3. The Document is relevant, has probative value, contains sufficient indicia of authenticity, and its admission would cause no undue prejudice to the Accused.⁵
4. Pursuant to Rule 82(3), Annexes 1 and 2 are filed as confidential in order to protect confidential information in this case.

II. SUBMISSIONS

5. The Document listed in Annex 1⁶ falls under Article 37 of the Law as it was collected prior to the establishment of the Specialist Chambers. Annex 2 contains a

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

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 Second Decision on the conduct of the proceedings, KSC-BC-2020-05/F00296, Public, 21 January 2022 ('Decision'), paras 9, 21(c).

⁴ Prosecution's submission of Updated List of Exhibits, KSC-BC-2020-05/F00302, Public, 1 February 2022, with Confidential Annex.

⁵ See Article 37 of the Law; and Rule 138. Admission of evidence does not require definitive proof of reliability or credibility of the evidence, but rather a showing of *prima facie* reliability on the basis of sufficient indicia, see ICTY, *Prosecutor v. Prlić et al.*, Decision on Jadranko Prlić's Interlocutory Appeal Against the Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence, IT-04-74-AR73.16, 3 November 2009, paras 32-36; ICTY, *Prosecutor v. Popović et al.*, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, IT-05-88-AR73.2, 30 January 2008, para.22; IRMCT, *Prosecutor v Nzabonimpa et al.*, Decision on Augustin Ngirabatware's First Motion for Admission of Evidence from the Bar Table (Intercepted and Downloaded Communications), MICT-18-116-T, 29 April 2021, p.2.

⁶ Annex 1, items 1-20.

declaration prepared by an SPO investigator providing information on the provenance of the Document.

6. As explained in more details in Annex 2, the Document was part of a large collection of documents seized by Serb forces from a number of KLA bases around Kosovo, and then handed over to the International Criminal Tribunal for the Former Yugoslavia ('ICTY'). The Special Investigative Task Force ('SITF'), the precursor of the SPO, then received this collection of documents from the ICTY. The Document was part of a binder containing materials pertaining to the territory of the KLA Llap Operational Zone. An ICTY certified copy of the Document has been disclosed on 31 January 2022 in Disclosure package 112.

7. The Document is relevant as it lists a number of people arrested and detained in April 1999,⁷ which coincides with the temporal framework of the crimes contained in the confirmed Indictment against the Accused.⁸ The Document refers to personal details of the detainees (name, last name, father's name, place and date of birth, and date of arrest) and corroborates the evidence heard so far by the Trial Panel in this case.

8. In sum, the Document is relevant and probative of the crimes alleged in the Indictment. It contains sufficient indicia of authenticity to warrant admission.⁹ Admission of the Document would not result in unfair prejudice to the Accused.

III. RELIEF REQUESTED

9. For the foregoing reasons, the SPO requests the Trial Panel to admit into evidence the Document (and its translation), as listed in Annex 1.

⁷ See Annex 1, Document listed, pp 1-2, 5-6.

⁸ See also Decision on the Specialist Prosecutor's notice of disclosure pursuant to Rule 102(4) of the Rules, KSC-BC-2020-05/F00294, Public, 21 January 2022, para.12.

⁹ Annex 1 provides the English and Albanian ERN, description, a summary of relevance and probative value, and available indicia of authenticity.

Word count: 672



Jack Smith
Specialist Prosecutor

Friday, 4 February 2022
At The Hague, the Netherlands.