



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

In: KSC-BC-2020-04
Specialist Prosecutor v. Pjetër Shala

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: Acting Specialist Prosecutor

Date: 29 November 2022

Language: English

Classification: Confidential

**Prosecution reply to Defence response to motion for admission of the statements
of the Accused**

Specialist Prosecutor's Office

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I. INTRODUCTION

1. The Specialist Prosecutor's Office ('SPO') hereby replies¹ to a number of issues raised in the Response.² As set out in detail in the Motion,³ (i) the Interview Records⁴ are relevant, authentic, reliable, and have probative which is not outweighed by any prejudice; (ii) the Accused was fully informed of his rights before each of the Interviews,⁵ and (iii) the Accused knowingly and intelligently waived his rights to remain silent and to legal assistance, and had access to the free assistance of an interpreter. The Response, which is based on mischaracterisations of the record and applicable human rights standards, fails to demonstrate otherwise.

II. SUBMISSIONS

A. THE ACCUSED'S RIGHTS WERE RESPECTED DURING HIS 2005 AND 2007 ICTY INTERVIEWS

2. The Defence does not contest that prior to the 2005 and 2007 ICTY Interviews, the Accused was informed of the right to free interpretation, the right to remain silent, and that any statement he made could be used against him. It also agrees he was informed of the right to be assisted by counsel of his own choosing, to have counsel provided by the tribunal if he could not afford one, and to suspend the interview if he required legal assistance.⁶

¹ This reply is made pursuant to Rule 76 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers, KSC-BD-04/Rev3/2020, 20 June 2020 ('Rules'). Consistent with the permissible scope of replies, this reply is limited to addressing mischaracterisations and 'new' issues raised in the Response. The SPO does not address other issues already fully addressed in the Motion.

² Defence Response to Prosecution motion for admission of Accused's statements, KSC-BC-2020-04/F00358, 24 November 2022, confidential ('Response').

³ Prosecution motion for admission of Accused's statements, KSC-BC-2020-04/F00334, 1 November 2022, confidential ('Motion').

⁴ See Motion, KSC-BC-2020-04/F00334, para.1 (defining the term 'Interview Records').

⁵ See Motion, KSC-BC-2020-04/F00334, fn.4 (defining the terms 'Interviews', '2005 ICTY Interview', '2007 ICTY Interview', '2016 Belgian Interview', and '2019 Belgian Interview', as used herein).

⁶ Response, KSC-BC-2020-04/F00358, paras 18, 20, 23.

3. The Defence nevertheless claims that the information provided to the Accused was insufficient for him to express a valid waiver of his right to counsel,⁷ arguing that the Accused was not given ‘a real opportunity’ to be assisted by counsel before and during the interview.⁸ The inaccuracy of this claim is apparent on the face of the Interview Records. For example, at the start of the 2005 ICTY Interview, the interviewer read and explained each right, including to remain silent and to legal assistance, and asked the Accused whether he understood each. The interviewer informed the Accused that if he did not understand any question, he should ask and the interviewer would repeat and/or rephrase.⁹ The Accused individually confirmed that he understood each of his rights,¹⁰ and when asked if he wished to have a lawyer present for the interview, declared, ‘I don’t need it.’¹¹

4. Similar circumstances existed at the 2007 ICTY Interview,¹² where the Accused was fully informed of his rights. Indeed, at the start of the second day, the Accused stated that he did not need to hear his rights again, as he understood them well.¹³ The interviewer nevertheless read the Accused his rights, reiterating that anything could be clarified at any point.¹⁴ The Accused confirmed the interview could continue.¹⁵ Contrary to the Defence’s selective and inaccurate submissions, the Accused was fully informed of and was therefore fully able to effectively exercise his rights, including to legal assistance, during the ICTY Interviews.¹⁶

⁷ Response, KSC-BC-2020-04/F00358, paras 20, 22, 24.

⁸ Response, KSC-BC-2020-04/F00358, para.22.

⁹ T000-2742-T000-2742-Albanian and English Transcript, p.4.

¹⁰ T000-2742-T000-2742-Albanian and English Transcript, pp.2-7.

¹¹ T000-2742-T000-2742-Albanian and English Transcript, p.7. *See also* Motion, KSC-BC-2020-04/F00334, paras 4-7.

¹² Motion, KSC-BC-2020-04/F00334, paras 8-12.

¹³ T001-0105-3-A-TR, p.1.

¹⁴ T001-0105-3-A-TR, p.3.

¹⁵ T001-0105-3-A-TR, p.4.

¹⁶ *See also* Motion, KSC-BC-2020-04/F00334, paras 4-12, 42.

5. In this respect, the Defence – without citation to any authority– submits that the information provided at the start of the ICTY Interviews was insufficient.¹⁷ To the contrary, the Accused was clearly informed that he was a suspect, that there were grounds to believe he was responsible for committing crimes within the jurisdiction of the ICTY, and that the records of the Interviews could be used against him.¹⁸ The Defence does not explain why the Accused should have been explicitly informed that the Interviews could be used in proceedings other than before the ICTY, or how this would have impacted the exercise of his rights.

6. Further, contrary to Defence arguments about the extent of information provided concerning the charges,¹⁹ it is sufficient that a suspect is informed of the ‘nature of the investigation’ prior to the interview in order to make an informed decision about the waiver of his rights.²⁰ This standard is reflected in the Law.²¹ Under Article 38(3), a suspect, prior to being interviewed, must be informed, *inter alia*, that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Specialist Chambers. As found by Trial Panel I in *Mustafa*, such information concerning the charges is sufficient to duly respect suspect rights at the investigation stage.²²

7. Finally, Defence submissions concerning the Accused’s testimony of 30 October 2007 in the *Haradinaj* case are immaterial to the relief requested in the Motion.²³ The SPO is not seeking to tender that testimony into evidence, and whether it was appropriate to caution the Accused before his in-court testimony before the *Haradinaj* Chamber has no bearing on the admissibility of his ICTY Interviews.

¹⁷ Response, KSC-BC-2020-04/F00358, para.21.

¹⁸ Motion, KSC-BC-2020-04/F00334, paras 4-12 and the sources cited therein.

¹⁹ Response, KSC-BC-2020-04/F00358, paras 21-22.

²⁰ ICTY, *Prosecutor v Haraqija v. Morina*, IT-04-84-R77.4-A, Judgement, 23 July 2009, para.37.

²¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, 3 August 2015 (‘Law’).

²² See *Specialist Prosecutor v. Salih Mustafa*, Public redacted version of Decision on the admission of evidence collected prior to the establishment of the Specialist Chambers and other materials, KSC-BC-2020-05/F00281RED, 13 December 2021, para.22.

²³ Response, KSC-BC-2020-04/F00358, para.19.

B. THE ACCUSED'S RIGHTS WERE RESPECTED DURING HIS 2016 AND 2019 BELGIAN INTERVIEWS

8. The Defence acknowledges that, prior to the 2016 and 2019 Belgian Interviews, the Accused was informed of his rights.²⁴ Defence arguments concerning notice and exercise of such rights are fully addressed in the Motion.

9. In relation to the 2019 Belgian Interview, the Defence incorrectly submits that the Accused was not informed that he had the right to be assisted by counsel 'during the interview'.²⁵ This is simply untrue, as information on this right was explicitly contained in the summons,²⁶ together with information on the possibility of requesting legal aid in case the Accused could not afford to pay for a lawyer.²⁷

C. THE ACCUSED'S PARTICIPATION IN THE ICTY AND BELGIAN INTERVIEWS WAS VOLUNTARY

10. The Defence claims that the Accused's choice to represent himself without counsel created a 'disparity' with the ICTY, Belgian, and SPO prosecution teams which caused 'compulsion'.²⁸ The Defence does not explain how the Accused's choice not to avail himself of the assistance of counsel during the interviews may have affected his voluntary attendance thereto, especially when the Accused knew that he could decline to answer any question posed to him by the interviewing teams.

11. Contrary to the Defence's selective submissions, the records clearly show that the Accused's participation in all of the Interviews was on a voluntary basis.²⁹ The

²⁴ Response, KSC-BC-2020-04/F00358, paras 25, 31.

²⁵ Response, KSC-BC-2020-04/F00358, para.31.

²⁶ 101752-101763-ET, p.101758 ('You also have the right to be accompanied by your attorney and to have him assist you during your interview'). The Defence mischaracterises the SPO's submissions on this point. *See* Response, KSC-BC-2020-04/F00358, para.33. As set out in the Motion, the Accused was fully informed of his right to legal assistance and the Accused never revoked this right. *See* Motion, KSC-BC-2020-04/F00334, paras 19-20, 42, 45-49.

²⁷ Motion, KSC-BC-2020-04/F00334, paras 19, 42; 101752-101763-ET, p.101759 (number 9).

²⁸ Response, KSC-BC-2020-04/F00358, paras 22, 24, 30, 32.

²⁹ Motion, KSC-BC-2020-04/F00334, paras 6, 9-11, 46. The Accused was also always reminded of his right to remain silent. His waiver of this right at each interview cannot be interpreted as anything but his voluntary participation therein.

Defence refers to one portion of his 2007 ICTY Interview where the Accused indicated he had no choice.³⁰ Immediately thereafter, the ICTY prosecutor clarified that attendance to the interview was entirely the Accused's choice.³¹ On the following day, the ICTY Prosecutor reiterated again that the Accused had a 'real right to stop this interview. You don't have to be here just because we've asked you to come here today [...] If you want to stop this you, you let me know, ok?'. The Accused confirmed the interview could continue.³² Any claim that the Accused's participation in the Interviews was involuntary is thus false and contradicted by the Accused's conduct and statements prior to and during the Interviews.

12. Finally, insofar as the Response addresses the issues of interpretation, translation, and reliability of the records the SPO is offering into evidence,³³ the SPO does not consider it necessary to make submissions in reply, and refers the Panel to the submissions included in the Motion.³⁴

III. CLASSIFICATION

13. This reply is confidential pursuant to Rule 82(4).

IV. RELIEF REQUESTED

14. For reasons given in the Motion and this reply, the SPO requests the Trial Panel to admit all the materials listed in Annex 1 to the Motion into evidence.

Word count: 1557



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³⁰ Response, KSC-BC-2020-04/F00358, para.24.

³¹ T001-0105-1-A-TR, p.4.

³² T001-0105-3-A-TR, p.4.

³³ Response, KSC-BC-2020-04/F00358, paras 57-88.

³⁴ Motion, KSC-BC-2020-04/F00334, paras 30-37, 50-53.

Acting Specialist Prosecutor

Tuesday, 29 November 2022

At The Hague, the Netherlands.