



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

In: KSC-BC-2020-06
Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Trial Panel II
Judge Charles L. Smith, III, Presiding
Judge Christoph Barthe
Judge Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Acting Specialist Prosecutor

Date: 8 February 2023

Language: English

Classification: Public

**Prosecution application for admission of material through the bar table
with public Annexes 5 and 8, and confidential Annexes 1-4, 6 and 7**

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Articles 37 and 40(6)(h) of the Law,¹ Rules 137-139 of the Rules,² and the Trial Panel's Orders,³ the Specialist Prosecutor's Office ('SPO') submits its first bar table motion to request admission of evidence important to the clear and effective presentation of the SPO's case. In the coming months, the SPO will file additional bar table motions to further facilitate the efficiency and expeditiousness of the proceedings.

2. The items requested for admission at this stage are key KLA communications and other items covered by the Trial Panel's Fourth Oral Order.⁴ Annexes 1-6 organise the items into six categories:

- (i) KLA General Staff communiques, political declarations and other announcements;
- (ii) Drafts of KLA public statements, seized from Jakup KRASNIQI;
- (iii) Published archives of KLA General Staff media agency 'Radio Free Kosovo' ('RFK');
- (iv) Published archives of KLA General Staff media agency 'Kosovapress';
- (v) Republications of Kosovapress material in other media; and
- (vi) Other items covered by the Trial Panel's Fourth Oral Order.⁵

3. Within each of these six annexes,⁶ the SPO sets out the criteria showing that each item contains sufficient indicia of authenticity, is *prima facie* relevant and has probative

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 Transcript, KSC-BC-2020-06, Public, 16 December 2022 ('Fourth Oral Order'), pp.1775-1776; Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, Public, 25 January 2023 ('Order on the Conduct of Proceedings'), Annex 1, paras 60-62.

⁴ See Fourth Oral Order, p.1775.

⁵ Fourth Oral Order, p.1775.

⁶ To further facilitate understanding of the significance of the proposed items, the SPO provides Annex 7 as a key that links the abbreviations used in the 'Indictment Primary Paragraphs' column of Annexes

value, along with an indication to which Indictment paragraphs each item primarily relates.⁷ For the reasons set out below, the admission of these items would cause no undue prejudice to the Accused if admitted through the bar table.⁸

4. Pursuant to Rule 82(3), Annexes 1-4, 6 and 7 are filed as confidential in order to protect confidential information in the case. The proposed exhibits in Annex 5 do not require redactions or protective measures and can be public, as can Annex 8. Once a decision is reached on this Motion or as otherwise ordered, the SPO will make appropriate submissions concerning the classification of the proposed exhibits in the confidential annexes.

II. SUBMISSIONS

A. LEGAL BASIS

5. The Trial Panel enjoys a broad discretion regarding the process for admissibility of evidence,⁹ including through bar table motions. There is no statistical or numerical limit to the number of documents which may be tendered by way of a bar table, so long as the requisite clarity and specificity are provided when explaining each

1-6 with the primary relevant Indictment paragraph numbers to which each item relates. Annex 8 defines the acronyms used throughout the annexes.

⁷ See Articles 37 and 40(6)(h) of the Law; Rule 138(1); *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on the Prosecution Request for Admission of Items Through the Bar Table, KSC-BC-2020-07/F00334, Public, 29 September 2021 ('*Gucati and Haradinaj* Bar Table Decision'), paras 10-14; *Specialist Prosecutor v. Mustafa*, Decision on the admission of evidence collected prior to the establishment of the Specialist Chambers and other material, KSC-BC-2020-05/F00281, Confidential, 13 December 2021 ('*Mustafa* Bar Table Decision'), paras 9-13. 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 *Gucati and Haradinaj* Bar Table Decision, KSC-BC-2020-07/F00334, paras 13-14; *Mustafa* Bar Table Decision, KSC-BC-2020-05/F00281, paras 12-13; 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.

⁸ Rule 138(1); *Gucati and Haradinaj* Bar Table Decision, KSC-BC-2020-07/F00334, para.15; *Mustafa*, Bar Table Decision, KSC-BC-2020-05/F00281, para.14.

⁹ Articles 40(2) and (6)(h); Rule 138(1).

document's relevance to the case.¹⁰ There is likewise no requirement that evidence produced other than in open court may only be admitted if corroborated, noting that a legal requirement for corroboration cannot be imposed when assessing admissibility or, ultimately, the standard of proof.¹¹

6. So long as the evidence is not subject to extra-procedural requirements – such as those in Rules 153-155 – the Trial Panel may admit materials through the bar table in the exercise of its discretion.¹² This framework is in accord with the European Convention of Human Rights, particularly Article 6(3)(d) of the ECHR, which gives an accused the right to confront witnesses against him.¹³

B. PRELIMINARY ISSUE

7. On 1 and 2 February 2023,¹⁴ the SPO provided the Defence and Victims' Counsel¹⁵ with provisional lists of the exhibits that it intended to propose for admission, asking them to indicate any objections they might have by 17:00 on 7 February 2023.¹⁶ For each item, the SPO indicated the Exhibit List item number, ERN,

¹⁰ IRMCT, *Prosecutor v. Turinabo et al.*, Decision on Prosecution Second Motion for Admission of Evidence from the Bar Table (Material Obtained from Registry and Seizures from Augustin Ngirabatware at the UNDF), MICT-18-116-T, 15 January 2021, p.3; IRMCT, *Prosecutor v Stanišić and Simatović*, Decision on Prosecution Motion for Admission of Documents from the Bar Table (Expert Reports), MICT-15-96-T, 11 February 2019, para.7.

¹¹ Rule 139(3).

¹² As to the exercise of this discretion, see generally ICC, *Prosecutor v. Katanga and Ngudjolo*, Directions for the Conduct of the Proceedings and Testimony in Accordance with Rule 140, ICC-01/04-01/07-1665-Corr, 1 December 2009, para.100.

¹³ The ECtHR has given the term 'witnesses' in this context a particular meaning, extending its application beyond those persons called by the parties at trial. ECtHR, *Laukkanen and Manninen v. Finland*, 50230/99, 3 February 2004, para.32 ('[e]ven though police officers named by N. have not testified at a hearing they should, for the purposes of Article 6 § 3 (d), be regarded as witnesses – a term to be given an autonomous interpretation – because their statements, as referred to by the prosecutor in his submissions to the Court of Appeal, were in fact before the court, which took account of them when assessing their relevancy'); ECtHR, *Asch v. Austria*, 12398/86, 26 April 1991, para.25; ECtHR, *Jussi Uoti v. Finland*, 20388/02, 23 October 2007, para.30.

¹⁴ The provisional list of items comprising Annexes 1-5 was emailed to the other parties on 1 February 2023 at 18:44, and the provisional list for items requested in Annex 6 was emailed on 2 February 2023 at 18:28.

¹⁵ For ease of reference, throughout this filing, the relevant parties and participants (namely, the Defence and Victims' Counsel) are referred to collectively as the 'Parties'.

¹⁶ Per the Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, para.61.

document date and description so the other Parties could easily match the items to the disclosed materials already in their possession.

8. However, in a joint response emailed on 3 February 2023, the Defence stated it was not able to provide any indications on the position it takes in relation to the documents, given that the SPO had not included the authenticity, relevance, and probative value assessments for each item.¹⁷

9. The Parties clearly have divergent understandings of the Panel's instructions. The plain language of the Order on the Conduct of Proceedings provides that the information the requesting Party is required to supply in advance is governed solely by paragraph 61, whereas paragraph 62 relates to information that must be included in the motion itself.¹⁸

10. In cases such as this, which involve a large volume of documents, a bar table analysis requires a series of crucial reviews and decisions to ensure that the requesting Party's position is consistently and clearly articulated. Having to provide a full analysis for the other Parties' consideration in advance, as suggested by the Defence, would effectively require the SPO to submit its motion over email and deprive it of using the full time it was allotted to prepare the submission. This could not have been the Panel's goal.

11. Finally, the SPO notes that on 7 February 2023, Victims' Counsel informed the SPO that in the relatively short time available, his team had not identified any documents to which they wished to object; he considered it unlikely that position would change.¹⁹

¹⁷ Email from Selimi Defence Counsel on behalf of the Thaçi, Veseli, Selimi and Krasniqi Defence teams, 3 February 2023 ('Joint Defence email'), 17:12.

¹⁸ As indicated by the use in para.61 of the language '*Prior to filing a bar table motion*, a Party shall provide to the other Parties and participants *a list* of the exhibits that it proposes to submit' in contrast to the language use in para.62 that '*In a request for the admission of evidence from the bar table*, the requesting Party shall' provide a short description, clearly specify the relevance and probative value, and provide indicators of the proposed exhibit's authenticity. Emphasis added. The Trial Panel's deliberate choice not to modify these provisions despite the SPO's anticipation of the Defence's objections (*see* Prosecution submissions on the conduct of proceedings, KSC-BC-2020-06/F01205, 13 January 2023, paras 15-17), also suggests that providing a list is all that is required.

¹⁹ Email from Victims' Counsel, 7 February 2023, 15:24.

C. ANNEXES 1-5: KLA COMMUNICATIONS

12. The documents listed in Annexes 1-5 are KLA communications from the Indictment period. They demonstrate the highly systematic and organised control that was exercised by the KLA General Staff ('GS') over its public communications. Annex 1 shows that the same KLA public statements and communications appeared in multiple publications, reinforcing the KLA's position through frequent and consistent messaging across the media spectrum. Annex 2 shows Jakup KRASNIQI's involvement with creating the messages that were disseminated from the General Staff to the public. Annexes 3 and 4 demonstrate how the KLA successfully used its two media agencies to amplify and further its political agenda by informing public opinion. Annex 5 continues this thread and demonstrates the dissemination of KLA communications to a broader, international audience.

13. The proffered items are appropriate for admission from the bar table. As summarised below and particularised in Annexes 1-5, they are relevant, have probative value, and contain numerous indicia of authenticity.

14. None of the items would cause undue prejudice if admitted through the bar table, as the Defence will be able, *inter alia*, to respond to this motion, thereby setting forth its views for the Panel's consideration. It will also be able to put the contents of any of the documents to witnesses and to the Accused, should they decide to testify, and lead evidence to the contrary if deemed necessary.

15. Finally, the admission of these items through the bar table will expedite the proceedings by significantly reducing the need for oral submissions concerning their admissibility—a highly relevant factor in a case of this magnitude where the SPO has several thousands of items on its exhibit list.

Annex 1: KLA General Staff communiques, political declarations and other announcements

16. Annex 1 contains a collection of KLA public statements, including General Staff communiques, political declarations, and other official announcements. Issued by the senior leaders of the KLA, these materials are highly relevant and probative to the

crimes charged in the Indictment, relating to the roles of the Accused, their *mens rea*, and the common purpose. The proposed items also offer evidence of, *inter alia*, the existence of an armed conflict, General Staff command and control, and the policy of targeting so-called collaborators and other perceived opponents.

17. In order to assist the Panel and Parties in navigating Annex 1, the SPO organised the relevant communications as follows. The annex opens with three compilations. The first two compilations include an Albanian original 'mother document' covering a broad range of pages, followed by translations of the relevant parts. The third compilation is provided in English and therefore stands alone. After the compilations, the remainder of the annex is structured around groupings. For example, newspaper pages including KLA communiques and political declarations are grouped so that, to the extent possible, different versions of one item are together. When a communique or political declaration appears for the first time, it contains a full relevance/probative value assessment, whereas when it reappears, there is a cross-reference to its first mention. In this respect and as indicated where relevant in Annex 1, different versions of one communique or political declaration, in particular as published by different sources and media outlets, demonstrate the extent and consistency of dissemination, even if the content is duplicative.

Annex 2: Drafts of KLA public statements, seized from Jakup KRASNIQI

18. Annex 2 contains drafts of KLA public statements, communiques and political declarations that were seized during a duly authorised²⁰ search-and-seizure operation at Accused Jakup KRASNIQI's residence, as well as versions of official statements that KRASNIQI had included in an unpublished book manuscript. For the reasons given above in relation to Annex 1 and as further detailed in Annex 2, all these materials are relevant, authentic and probative. In addition to being seized from the Accused's

²⁰ See Decision Authorising Search and Seizure, KSC-BC-2020-06/F00031/COR, 26 October 2020, Confidential and *Ex Parte*.

residence, many of the draft versions of public statements in Annex 2 were ultimately published and disseminated. The published versions are listed in Annex 1.

19. As with Annex 1, different versions, including drafts, of the same document are grouped together in Annex 2, with probative value being discussed at the first instance only, while other versions that follow contain appropriate cross-references and any additional specific considerations.

Annex 3: Published archives of KLA General Staff media agency 'Radio Free Kosovo'

20. Annex 3 contains the republished archives of RFK, which were contained in the three-volume 'Radio Kosova e lirë - Arkivi' book published in Pristina in 2009.²¹ The book's publication was financed by the Prime Minister's Office,²² which, in 2009, was the office held by Hashim THAÇI.

21. Indicia of authenticity for the RFK archives are numerous. Each volume cover bears the distinctive black-and-red logo of the KLA and the FM number of the station.²³ The 'front matter' for each volume contains two registered 13-digit International Standard Book Numbers (ISBNs) that uniquely identify the book and the relevant volume.²⁴ Members of the book's editorial board are listed,²⁵ and one member of the editorial board, Ahmet QERIQI, was appointed by the General Staff on 13 November 1998 to co-lead RFK and Kosovapress with Berat LUZHA.²⁶ More than 180 coloured photographs of radio station operators, employees, and KLA personnel appear throughout the book.²⁷ The consistent formatting of the documents across all three volumes is mutually authenticating, and further corroborating information for individual items is detailed in Annex 3 where applicable.

²¹ See 007789-008966, pp.007790, 008966.

²² See 007790-007799-ET, p.007794.

²³ See 007789-008966, pp.007789, 008206, 008610.

²⁴ See 007789-008966, pp.008205, 008609, 008966.

²⁵ See 007789-008966, p.007791.

²⁶ U015-8743-U015-8935-ET, p.U015-8881; U015-8885 (partial English translation of Jakup KRASNIQI's book titled 'Kthesa e Mahde - Ushtria Clirimtare e Kosoves').

²⁷ See 007789-008966, pp.008173-008202, 008575-008606, 008937-008962.

22. The Foreword to the collection also speaks to the book's authenticity. According to the archives' editor, the collection is 'the authentic archive of the spoken, written and broadcast words which is held by the Kosovo Liberation Army', and due to the RFK staff's efforts, 'almost one hundred percent of this treasure has been preserved until today'.²⁸

23. These materials are highly relevant to the case since RFK was established by order of the General Staff and was one of two KLA media agencies used to disseminate official KLA news reports, communiqués and announcements (the other was Kosovapress, which is featured in Annex 4).²⁹ Accordingly, the items in Annex 3 are probative of numerous issues in the Indictment, including KLA General Staff command and control, General Staff monitoring and oversight of zones, the level of organisation required to establish and maintain such a public communications system, the existence of an armed conflict, and the policy of targeting so-called collaborators and other perceived opponents. The colour photographs and accompanying captions also constitute a contemporaneous record of the physical appearance and identity of numerous KLA members at or around the time of the events at issue, which is useful for identification purposes.

24. Annex 3 is arranged so that the first item on the list is the Albanian original 'mother document' that encompasses the entire three-volume archived collection. The items listed thereafter are partial English translations of pages from the larger document. Here and in all other such arrangements, the ERNs of the translations are a numerical subset of the broader ERN range associated with the Albanian original.

Annex 4: Published archives of KLA General Staff media agency 'Kosovapress'

25. Similar to the RFK collection in Annex 3, the published archives of the KLA's Kosovapress media agency are contained in a four-volume book bearing numerous

²⁸ See 007790-007799-ET, p.007793.

²⁹ See 007790-007799-ET, pp.007792, 007797-007799. See also KLA General Staff Communiqué no. 68, SPOE00053560-SPOE00053560-ET Revised.

indicia attesting to the collection's authenticity, including the KLA seal, date of publication, publisher name and logo, unique ISBN and barcode, date ranges for the items contained within each volume,³⁰ and specific dates for the individual items therein. The formatting is consistent across all four volumes of the book, and corroboration that further authenticates the items is noted in the annex.³¹

26. The Kosovapress archives are highly relevant and probative to the policy of targeting so-called collaborators and other perceived opponents. The General Staff could issue orders to both Kosovapress and RFK,³² and with General Staff protection and support,³³ the two agencies publicly labelled and condemned collaborators, traitors, and other opponents.³⁴ The Kosovapress archives are also probative of, *inter alia*, the existence of an armed conflict, the structure of the KLA, command and control, and the high level of organisation required to establish and maintain such a public communication system.

Annex 5: Republications of Kosovapress material in other media

27. Annex 5 contains 20 Kosovapress news articles that were picked up by the BBC's monitoring service and republished internationally. Each item bears the BBC logo, copyright information, and the time and date that the article was republished. In

³⁰ SPOE00053504-00054088, pp.SPOE00053504-00053507; SPOE00054089-00054655, pp.SPOE00054089-00054092; SPOE00054656-00055197, pp.SPOE00054656-00054660; SPOE00055198-00055677, pp.SPOE00055198-00055201.

³¹ Annex 4 is also organised in a similar fashion to Annex 3. The annex contains four 'mother documents' (one for each volume of the archive) followed by English translations of their relevant pages.

³² SPOE00225249-SPOE00225249-ET.

³³ SPOE00225251-SPOE00225251-ET; SPOE00225248-SPOE00225248-ET; SPOE00225205-SPOE00225205-ET; SPOE00226468-SPOE00226480-ET, p.SPOE00226468; SPOE00229806-SPOE00229816-ET.

³⁴ 007909-007909-ET (in Annex 3); 007996-007997-ET (in Annex 3); 008034-008034-ET (in Annex 3); 008098-008099-ET (in Annex 3); 008874-008877-ET (in Annex 3); 007789-008966, pp.008279-008280 (see 008279-008280-ET in Annex 3), 008366 (in Annex 3), 008078-008081 (in Annex 3), 008407 (see 008405-008407-ET in Annex 3), 008508 (in Annex 3), 008887 (see 008879-008887-ET in Annex 3); SPOE00054089-00054655, p.SPOE00054579 (see Annex 3); SPOE00054878-SPOE00054879-ET (in Annex 4); SPOE00054910-SPOE00054912-ET (in Annex 4); SPOE00055067-SPOE00055070-ET, pp.SPOE00055068-SPOE00055070 (see SPOE00055067-SPOE00055070-ET in Annex 4); SPOE00053836 (see SPOE0005836-SPOE00053836-ET in Annex 4).

addition, the source of each item is clearly attributed to the Kosovapress news agency website, and the original dateline and language are also noted.³⁵ All of the republished articles are open source and can therefore be independently verified.

28. As contemporaneous records from the Indictment period, the republished articles are highly relevant and probative. Individually, they provide evidence relating to the existence of an armed conflict, JCE, superior responsibility, and the roles and *mens rea* of the Accused. Collectively, the items further demonstrate that Kosovapress was viewed as one of the main voices of the KLA and was routinely used by KLA leaders to disseminate information and amplify their political agenda.

29. No undue prejudice would be caused by the admission of the Annex 5 documents through the bar table, as they were messages sanctioned by the General Staff to serve the KLA's goals.

D. ANNEX 6: OTHER ITEMS COVERED BY THE FOURTH ORAL ORDER

30. Annex 6 contains other items that are included pursuant to the Fourth Oral Order issued on 16 December 2022. Unlike the collections in the previous annexes, the items within Annex 6 are widely varied in source and subject matter, ranging from specific KLA orders to contemporaneous newspaper articles and documentation relating to victims of crimes charged in the Indictment. The items in this annex are therefore organised by ERN in descending order and the indicia of authenticity and relevance/probative value analyses are particularised for each proposed item within the annex itself.

31. Some of the proposed items in this group are admissible as bar table exhibits falling under Rule 138, and/or in writing pursuant to Article 37 of the Law.³⁶ For

³⁵ A few of the republished items contained in Annex 5 correspond to one of the news reports contained in Annex 2 or 4, further corroborating their authenticity and duly noted in the 'Indicia of Authenticity' column.

³⁶ Examples include forensic expert testimony of non-SPO witnesses from the ICTY. Article 37(3)(d) specifically provides that reports or statements of expert witnesses admitted into evidence at the ICTY or testimony of an expert before the ICTY may be admissible before the SC, whether or not the expert

evidence collected in criminal proceedings within the subject matter jurisdiction of the KSC prior to its establishment, these exhibits are tendered under, and meet the requirements of, both provisions, although either is sufficient.³⁷

III. RELIEF REQUESTED

32. For the foregoing reasons, the SPO requests that the Trial Panel admit through the bar table the proposed items listed and described in Annexes 1-6.

Word count: 3661



Alex Whiting

Acting Specialist Prosecutor

Wednesday, 8 February 2023

At The Hague, the Netherlands

attends to give oral evidence before the SC. Article 37(3)(b)-(c) likewise acknowledge the admissibility of testimony given before Kosovo courts and evidence collected by any authority listed in Article 37(1).

³⁷ See e.g. U003-6888-U003-6903; IT-03-66 P110; SPOE00125979-00126002.