



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
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Acting Specialist Prosecutor

Date: 8 May 2023

Language: English

Classification: Confidential

Prosecution reply to Veseli response to 'Prosecution motion for admission of Accused's statements'

Specialist Prosecutor's Office

Alex Whiting

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

I. INTRODUCTION

1. The Specialist Prosecutor's Office ('SPO') hereby replies to Veseli's Response,¹ on the following issues:² (i) the Veseli Defence's attempted reliance on provisions of the Law³ and Rules, in combination with the Kosovo Criminal Procedure Code ('KCPC'), to exclude the statements of co-Accused;⁴ (ii) the alternative request that specific portions of Mr Selimi's statements be excluded;⁵ and (iii) the challenge to the admissibility of two specific associated exhibits to the statements of Mr Thaçi and Mr Krasniqi.⁶ At the outset, it is noted that Veseli does not oppose the admission of any of his own statements which have been tendered.⁷

II. SUBMISSIONS

a. Statements May be Admitted for Use Against Co-Accused

2. As the Trial Panel has previously held, the admission of a record or statement of an accused does not, without more, infringe upon the fundamental rights of his co-defendants.⁸ Indeed, the Trial Panel also previously considered, and dismissed, Defence arguments on this issue based upon Article 123 of the KCPC.⁹ The Veseli Defence now

¹ Veseli Defence Response to Prosecution Motion for Admission of Accused's Statements, KSC-BC-2020-06/F01476, 24 April 2023 ('Response').

² Rule 76 of the 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 Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' herein refer to articles of the Law, unless otherwise specified.

⁴ Response, KSC-BC-2020-06/F01476, paras 16-21.

⁵ Response, KSC-BC-2020-06/F01476, paras 23-28.

⁶ Response, KSC-BC-2020-06/F01476, paras 29-37.

⁷ The Albanian language version of Kadri Veseli's Supreme Court of Kosovo EULEX trial testimony, dated 20 June 2012 (ERN: SPOE00220646-00220682) was inadvertently omitted from Annex 1 of F01351 (item No.19). The English language version SITF00398181-00398216 was included. SPOE00220646-00220682 was previously disclosed under Disclosure 9: Rule 102(1)(a), 2020-12-12 and is also being tendered.

⁸ Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 16 March 2023 ('Bar Table Decision'), para.50 (and jurisprudence cited therein).

⁹ Bar Table Decision, KSC-BC-2020-06/F01380, para.50.

seeks to re-litigate that finding by repeating the prior arguments,¹⁰ this time simply supplemented by references to Rules 4 and 5 and Article 19. These arguments are unavailing.

3. The Defence's central premise is that there is a 'void' in the KSC legal framework with respect to the admissibility of such material.¹¹ That is not correct. The legal framework of the KSC contains specific provisions regarding the admissibility of evidence.¹² These provisions reflect a *deliberate choice* - consistent with frameworks applicable at certain international courts and tribunals - to grant trial panels, composed of professional judges, wide discretion to freely assess all types of evidence,¹³ with a presumption in favour of admission.¹⁴ For these same reasons, the Defence's reliance upon jurisprudence or commentary from other domestic regimes¹⁵ is (i) inapposite, (ii) repetitive,¹⁶ and (iii) in certain instances, also not supportive of an *admissibility* challenge, relating instead to, for example, questions of weight.¹⁷

b. No Portions of Selimi's Statements are More Prejudicial than Probative

¹⁰ See Response, KSC-BC-2020-06/F01476, para.17 (acknowledging as much).

¹¹ Response, KSC-BC-2020-06/F01476, para.18 ('where an issue material to the case is not addressed in the Legal Framework'), ('the Rules are silent upon an issue which is otherwise contained in the KCPC'), 19 ('it fills a void left unaddressed in the Legal Framework'), 20 ('the Rules fail to expressly mention anything in respect of the admissibility'), 21 ('the KSC Legal Framework does not speak directly to the issue').

¹² Bar Table Decision, KSC-BC-2020-06/F01380, para.50 (noting the 'specific provisions' which apply).

¹³ Rule 137(2) (a Panel 'shall freely assess all evidence submitted in order to determine its admissibility and weight').

¹⁴ Rule 138(1).

¹⁵ Response, KSC-BC-2020-06/F01476, para.20.

¹⁶ Each of the domestic cases/commentary cited in footnotes 12 -16 of the Response were previously relied upon in Veseli Defence Submissions Regarding an Associated Exhibit of W04474, KSC-BC-2020-06/F01414, paras 15-24. The ICTR jurisprudence cited in fn.11 is similarly repetitive (see KSC-BC-2020-06/F01414, para.11).

¹⁷ Response, KSC-BC-2020-06/F01476, fn.16. Similarly, (i) the ICTY jurisprudence cited in fn.11 ignores the more authoritative ICTY Appeals Chamber guidance on this issue as identified in the Bar Table Decision, fn.87, and (ii) the ICC, Katanga, Decision on the Confirmation of Charges relied upon in fn.9 of the Response does not address admissibility, and merely indicates that the Chamber will exercise caution in assessing the weight of a statement of a deceased suspect.

4. There is equally no basis for the exclusion of portions of the statements of Mr Selimi. The Defence essentially seeks to by-pass the Panel's prior ruling on the admissibility of the statements of accused, by separating out for exclusion those portions of the statements relating to Veseli, as well as even to the KLA intelligence service generally, and to Sabit Geci.¹⁸ The information in question is clearly relevant and probative, including because (i) relevant procedural safeguards were applied,¹⁹ (ii) Selimi, as a former member of the KLA General Staff, is particularly well-placed to speak authoritatively to the matters discussed; and (iii) Selimi's basis of knowledge - which in many cases was his direct contemporaneous experience or observation²⁰ - is frequently specified, thereby further enabling a fair assessment of the information.

5. Indeed, the Veseli Defence identifies no specific prejudice attaching to these portions of the statements, as opposed to others, beyond the simple fact that they relate to, or may be considered incriminating for, Veseli. That does not preclude their admission. Should Selimi himself not be available for examination, (i) the Defence has other avenues to challenge such evidence, and (ii) the Panel will be in a position to weigh them in light of the totality of the evidence, taking into account, in particular, the degree of corroboration.²¹

c. The Associated Exhibits are Admissible

6. Contrary to Defence assertions,²² the Military Police Communiqué dated 23 September 1998 (076565-076705 (Alb); 076565-076565-ET (Eng)) clearly meets the

¹⁸ Response, KSC-BC-2020-06/F01476, paras 23, 26.

¹⁹ Prosecution motion for admission of Accused's statements, KSC-BC-2020-06/F01351 ('Statements Motion'), paras 14-21.

²⁰ For example 068933-TR-ET Part 8, p.5, lines 20-21; 074459-TR-ET Part 5, p.1, lines 19-22; SITF00009289-00009298, p.SITF00009292. *But equally see for example* 068933-TR-ET Part 1, p.16, lns 11-14 (specifying where he claims to have learnt certain information after the war).

²¹ Statements Motion, KSC-BC-2020-06/F01351, paras 91-92.

²² Response, KSC-BC-2020-06/F01476, paras 30 (including a cross-reference to submissions made by the Defence in filing F1387), 32-34.

standard for admission. The item is, as conceded by the Defence,²³ relevant, has sufficient *prima facie* indicia of authenticity and reliability, and is probative.²⁴ In particular:²⁵

- a. The document contains indicators of authenticity on its face, including bearing a date (23 September 1998) and a claim of authorship, being stated to have been issued by the Military Police Department of the KLA.
- b. It was contemporaneously published, on 1 October 1998, in LPK publication *Zëri I Kosovës*, on the same day and on the same page as KLA General Staff Political Declaration No.10.²⁶
- c. The document accurately describes, and relates to, contemporaneous arrests which had been conducted by members of the KLA – including two of the Accused, *Thaçi* and *Selimi*.
- d. Regarding Defence claims that the Military Police Directorate either did not exist at that time, or that its ‘implementation’ was ‘theoretical’,²⁷ it is noted that:
 - i. The document is one in a series of at least three published press releases attributed to the KLA Military Police Directorate in September, October and November 1998,²⁸ each of which took responsibility for high-profile arrests which had unquestionably been conducted by members of the KLA;

²³ Response, KSC-BC-2020-06/F01476, para.30.

²⁴ *Prosecutor v. Gucati*, Decision on the Prosecution Request for Admission of Items Through the Bar Table, KSC-BC-2020-07/F00334, paras 11-15.

²⁵ See also Prosecution application for admission of material through the bar table, KSC-BC-2020-06/F01268/A1, item 40 (043805-043805-ET).

²⁶ See 043805-043805.

²⁷ Response, KSC-BC-2020-06/F01476, paras 32-33.

²⁸ See Statement No.3 from the Military Police Directorate of the KLA, dated 22 October 1998 (043857-043858 / 043858-043858-ET); KLA Military Police Directorate Press Release No. 4, dated 1 November 1998 (043862-043862/ 043862-043862-ET Revised 1).

- ii. the Accused Selimi, as KLA General Inspector, has laid out in writing for the Museum of Kosovo that the Military Police Directorate was established in May 1998. While caveating that this G8 directorate was established pursuant to the specific circumstances prevailing in Kosovo, and therefore might not structurally have resembled that of other armies, Selimi proceeds to explain the necessity of its creation;²⁹
- iii. Military Police Directorate Statement Nr. 2, dated 21 October 1998 and equally stated to emanate from the Military Police Directorate, was seized in the Accused Krasniqi's house in typed, unpublished form with handwritten corrections on it;³⁰
- iv. A handwritten request from a KLA commander, dated 10 November 1998, and addressed specifically to the KLA Military Police Directorate,³¹ was found during a search of Fatmir Limaj's house; and³²
- v. Evidence establishes that, across zones, the KLA military police was both being reported on to,³³ and prepared to receive orders from,³⁴ the General Staff in summer 1998.

7. Equally, with respect to Communiqué 47:³⁵

- a. the Communiqué is dated and expressly issued on behalf of the KLA General Staff;

²⁹ SPOE00226856-SPOE00226857-ET.

³⁰ SPOE00225208-SPOE00225208-ET; SPOE00225007-SPOE00225401, at p. SPOE00225208.

³¹ IT-03-66 P29, IT-03-66 P29a.

³² SITF00291733-00291778, at pp. SITF00291770-SITF00291771.

³³ U001-5562-U001-5563-ET-1.

³⁴ 061427-16-TR-ET, p.6.

³⁵ IT-04-84 P00328 (Annex 13), p.U0162151. *See also* KSC-BC-2020-06/F01268/A01, item 2J (U008-1614-U008-1614-ET Revised).

- b. it was published contemporaneously in Koha Ditore on 13 May 1998;
 - c. it cross-refers to the operational goals in KLA Political Declaration No.2 (Mr Krasniqi has confirmed that declaration was issued by the General Staff and has acknowledged that he was its main author);³⁶ and
 - d. both Mr Krasniqi, several times,³⁷ and Mr Thaçi³⁸ have confirmed that this communiqué, Communiqué 47, was issued by the KLA General Staff.
8. Finally, with respect to the Defence challenge to the existence of an intelligence function at that time which could have provided information on enemy movements,³⁹ it is noted, *inter alia*, that in his first public appearance in 2008, Veseli himself stated, referring to the period 1992-1998, that 'we had a need for intelligence from the establishment of the KLA onwards'.⁴⁰

III. CONCLUSION

9. For the foregoing reasons, the statements and associated exhibits tendered should be admitted.

Word Count: 1,740

³⁶ IT-04-84 P00328, and p.U0162098 (referring to Annex 12).

³⁷ IT-04-84 P00328 at p.U0162098; IT-03-66 T3285-T3365, pp.3337, 3340.

³⁸ U008-1957-U008-1967, para.57; U008-1968-U008-1979, para.57.

³⁹ Response, KSC-BC-2020-06/F01476, para.36.

⁴⁰ SPOE00052992-SPOE00053035-ET, p.SPOE00053010 (he further added that the decision for a formal G2 Information Service was taken in June 1998, p.SPOE00053010). *See also* U015-8743-U015-8935-ET Revised, p.U015-8833 (where Krasniqi described Veseli as having been Chief of the 'Intelligence Service directorate' in June 1998).



Alex Whiting

Acting Specialist Prosecutor

Monday, 8 May 2023

At The Hague, the Netherlands.