



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

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**Public Redacted Version of 'Prosecution response to "Veseli Defence Request Regarding Items [REDACTED]"',
KSC-BC-2020-06/F01620, dated 22 June 2023**

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I. INTRODUCTION

1. The Request¹ to admit extracts of the Kosovo Basic Court and Court of Appeals judgments in the Bellanicë/Belanica case ('Proposed Judgment Extracts')² should be denied. The VESELI Defence fails to establish that the conditions for admission through the bar table are met.³ Rather, the Proposed Judgment Extracts are not evidence and/or consist of witness statements and judicial assessments and findings, admission of which is governed by Rules 153-155 and 157(2), respectively. The Request is nothing more than an attempt to tender the Proposed Judgment Extracts under the *lex generalis* of Rules 137-139 to avoid the stringency of the applicable *lex specialis*.⁴

II. SUBMISSIONS

2. Despite the Request's stated purpose, the Proposed Judgment Extracts far exceed those portions which are relevant to Military Police Directorate Communiqué No.4.⁵ The Proposed Judgment Extracts include: (i) discussion and interpretation of applicable law ('Applicable Law');⁶ (ii) legal and factual findings concerning LIMAJ's responsibility ('Responsibility Findings');⁷ (iii) judicial analysis of and findings

¹ Veseli Defence Request Regarding Items [REDACTED], KSC-BC-2020-06/F01599, 9 June 2023, Confidential ('Request').

² The term 'Bellanicë/Belanica case' is used in this response to refer to the case against Fatmir LIMAJ concerning the alleged abduction and murder of Ramiz HOXHA and Selman BINISHI in and around Bellanicë/Belanica in October 1998 (PKR. Nr. 154/16; PAKR. No. 206/2018). The Proposed Judgment Extracts are attached to the Request. See KSC-BC-2020-06/F01599/A01; KSC-BC-2020-06/F01599/A02.

³ See Rules 137-139 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. See also Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01 ('Conduct of Proceedings Order'), paras 60-62.

⁴ See, *inter alia*, ICTY, *Prosecutor v. Galić*, IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92bis(C), 7 June 2002, para.31. See also Transcript, 17 May 2023, pp.4251-4252.

⁵ See, for example, Request, KSC-BC-2020-06/F01599, paras 21-22 (asserting that the Proposed Judgment Extracts 'are only relevant to an evaluation of Announcement No. 4').

⁶ KSC-BC-2020-06/F01599/A01, pp.48-51 (SPOE00067986-SPOE00067989); KSC-BC-2020-06/F01599/A02, pp.7-9 (DKV0132-DKV0134).

⁷ KSC-BC-2020-06/F01599/A01, pp.35 (SPOE00067962), 48-51 (SPOE00067986-SPOE00067989), 53-54 (SPOE00067991-SPOE00067992); KSC-BC-2020-06/F01599/A02, pp.7-9 (DKV0132-DKV0134).

concerning Military Police Directorate Communiqué No.4⁸ ('Communiqué No.4 Findings');⁹ and (iv) extensive summaries of witness evidence in the Bellanicë/Belanica case ('Witness Summaries').¹⁰ No part of the Proposed Judgment Extracts is admissible through the bar table, and even if it was, its probative value is negligible, at best. Contrary to submissions in the Request, neither the interests of truth, nor the interests of justice would be served by admission of the Proposed Judgment Extracts.¹¹

A. ADMISSION OF THE APPLICABLE LAW IS NOT JUSTIFIED

3. The Applicable Law portions of the Proposed Judgment Extracts are not evidence as such, and, in any event, fall within the competence of the Panel. The Defence is free to incorporate the Applicable Law into appropriate submissions in future. Accordingly, admission is neither appropriate, nor necessary.¹²

B. THE RESPONSIBILITY FINDINGS AND COMMUNIQUÉ NO.4 FINDINGS DO NOT SATISFY THE REQUIREMENTS OF RULE 157(2)

4. Like the Applicable Law, the Responsibility Findings and Communiqué No.4 Findings are not evidence. Rule 157(2) governs judicial notice of adjudicated facts from prior proceedings and in that context, legal findings¹³ and credibility/reliability assessments¹⁴ are excluded. Other courts' legal findings and evidentiary assessments have no binding force, the circumstances and evidence of each case are different, and the Parties in this case are entitled to present arguments and evidence on legal matters

⁸ Exhibits P00090.2-P00090.3.

⁹ KSC-BC-2020-06/F01599/A01, p.52 (SPOE00067990); KSC-BC-2020-06/F01599/A02, pp.7 (DKV0132), 9 (DKV0134).

¹⁰ KSC-BC-2020-06/F01599/A01, pp.30-48 (SPOE00067957-SPOE00067986).

¹¹ *Contra* Request, KSC-BC-2020-06/F01599, para.17.

¹² *See, similarly*, ICTY, *Prosecutor v. Popović et al.*, IT-05-88-A, Judgement, 30 January 2015, para.79.

¹³ Decision on Defence Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F01536, 18 May 2023 ('Adjudicated Facts Decision'), para.14.

¹⁴ *See, for example*, ICTY, *Prosecutor v. Lukić and Lukić*, IT-98-32/1-T, Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts, 22 August 2008, para.28 (differentiating between findings of fact and credibility assessments, the latter not being appropriate for judicial notice).

and characterisations.¹⁵ The ultimate determination, in the context of this case and as relevant, is for this Panel.

5. In this respect, the Responsibility Findings and Communiqué No.4 Findings include two Defence-proposed adjudicated facts,¹⁶ which were rejected by the Panel.¹⁷ The Panel refused the Defence request for leave to appeal, *inter alia*, findings in the Adjudicated Facts Decision relating to these proposed facts, as one contained a legal finding and the other pertained to a time when LIMAJ's role, function, and power are in dispute between the Parties.¹⁸ For similar reasons, the remaining portions of the Responsibility Findings and Communiqué No.4 Findings – which use qualified language and were reached, in whole or in part, on the absence or insufficiency of evidence in the Bellanicë/Belanica case¹⁹ – are not appropriate for judicial notice.

6. Contrary to Defence submissions, the court in the Bellanicë/Belanica case did not conclude that 'the document was unreliable'.²⁰ Rather, it concluded that the prosecution in that case had failed to present sufficient evidence about the document's source.²¹ As set out previously, in this case, the Specialist Prosecutor's Office ('SPO') has tendered and intends to tender a significant amount of corroborative and complementary evidence demonstrating the authenticity of Communiqué No.4, which was not part of the Bellanicë/Belanica case.²²

¹⁵ See ICTY, *Prosecutor v. Simić et al.*, IT-95-9-PT, Decision on the Pre-Trial Motion by the Prosecution Requesting the Trial Chamber to Take Judicial Notice of the International Character of the Conflict in Bosnia-Herzegovina, 25 March 1999, pp.4-5; ICTR, *Simba v. Prosecutor*, ICTR-01-76-A, Judgement, 27 November 2007, para.132.

¹⁶ See KSC-BC-2020-06/F01331/A01 (Facts 117-118).

¹⁷ Adjudicated Facts Decision, KSC-BC-2020-06/F01536, para.46.

¹⁸ Decision on Joint Defence Request for Certification to Appeal Decisions F01534 and F01536, KSC-BC-2020-06/F01614, 16 June 2023, para.17.

¹⁹ Prosecution response to 'Joint Defence Motion for Judicial Notice of Adjudicated Facts', KSC-BC-2020-06/F01411, 31 March 2023, para.18 and the sources cited therein.

²⁰ Request, KSC-BC-2020-06/F01599, para.5.

²¹ KSC-BC-2020-06/F01331/A01, p.52. See also KSC-BC-2020-06/F01331/A02, p.7.

²² See, *inter alia*, Prosecution reply to Veseli response to 'Prosecution motion for admission of Accused's statements', KSC-BC-2020-06/F01512, 8 May 2023, Confidential, para.6 and the evidence cited therein.

7. Accordingly, the Request is an improper attempt to end-run the Adjudicated Facts Decision and belatedly²³ and improperly seek to introduce legal findings and evidentiary assessments from other courts, which were reached on different evidence and in different circumstances.

C. THE WITNESS SUMMARIES DO NOT SATISFY THE REQUIREMENTS OF RULES 153-155

8. The Witness Summaries comprise the majority of the Proposed Judgment Extracts and summarise the Bellanicë/Belanica case statements and testimony of, *inter alia*, Fatmir LIMAJ,²⁴ Nuhi BINISHI,²⁵ Imer HOXHA,²⁶ Rexhep SELIMI,²⁷ Bislim ZYRAPI,²⁸ Azem SYLA,²⁹ Naim MALOKU,³⁰ Sokol DUBRUNA,³¹ Jakup KRASNIQI,³² and Ragip BEGAJ.³³ Summaries of witness statements are subject to Rules 153-155, just as the statements themselves.³⁴ The Defence makes no attempt to show that such summaries meet the relevant requirements. Their admission should be denied.

9. Further, in the present case, [REDACTED]. The Defence will have the opportunity to, *inter alia*, tender their Bellanicë/Belanica case statements and testimonies [REDACTED] at the appropriate time and subject to applicable

²³ Beyond those addressed above, the Defence chose not to request judicial notice of any other part of the Proposed Judgment Extracts. In this regard, the Defence has been on notice of the Prosecution's intention to rely on Communiqué No 4 since, at the latest, the filing the confidential redacted version of the Pre-Trial Brief. See Confidential Redacted Pre-Trial Brief, KSC-BC-2020-06/F00631/RED/A01/CONF/RED, 21 December 2021, Confidential, paras 53-54, 470-478. See also KSC-BC-2020-06/F00709/A02.

²⁴ KSC-BC-2020-06/F01599/A01, pp.30-35.

²⁵ KSC-BC-2020-06/F01599/A01, pp.35-36.

²⁶ KSC-BC-2020-06/F01599/A01, p.36.

²⁷ KSC-BC-2020-06/F01599/A01, pp.36-39.

²⁸ KSC-BC-2020-06/F01599/A01, pp.39-41.

²⁹ KSC-BC-2020-06/F01599/A01, pp.41-42.

³⁰ KSC-BC-2020-06/F01599/A01, pp.42-43.

³¹ KSC-BC-2020-06/F01599/A01, pp.43-45.

³² KSC-BC-2020-06/F01599/A01, pp.45-47.

³³ KSC-BC-2020-06/F01599/A01, p.47.

³⁴ ICTY, *Prosecutor v. Milošević*, IT-02-54-AR73.2, Decision on Admissibility of Prosecution Investigator's Evidence, 30 September 2002, paras 18-19.

requirements. The same applies to other Bellanicë/Belanica case witnesses [REDACTED].

10. Likewise, admission of the Witness Summaries for two Accused is unnecessary and inappropriate, as the Bellanicë/Belanica case testimonies of Rexhep SELIMI³⁵ and Jakup KRASNIQI,³⁶ as summarised in the Witness Summaries, have been tendered by the SPO.³⁷ The Defence objected to the admission of these statements of the Accused,³⁸ and yet, inexplicably, seeks to rely on summaries of those same statements.

11. Other Defence teams made use of the Witness Summaries [REDACTED],³⁹ which may be permissible in certain circumstances even though the requirements of Rules 153-155 are not met. The VESELI Defence could have sought to use the Proposed Judgment Extracts [REDACTED], but chose not to. Subject to applicable requirements in the legal framework and as appropriate, it may also seek to use or tender such Proposed Judgment Extracts or the underlying evidence in future. In the meantime, the Request is wholly inadequate and should be dismissed.

III. CLASSIFICATION

12. This filing is classified as confidential pursuant to Rule 82(4).

IV. CONCLUSION

13. For the foregoing reasons, the Trial Panel should reject the Request.

³⁵ SPOE00068075-00068087.

³⁶ SPOE00068088-SPOE00068100.

³⁷ Prosecution motion for admission of Accused's statements, KSC-BC-2020-06/F01351, 8 March 2023, Confidential ('Prosecution Motion'), paras 64-69.

³⁸ See Veseli Defence Response to Prosecution Motion for Admission of Accused's Statements, KSC-BC-2020-06/F01476, 24 April 2023, Confidential, para.38 (objecting to the admissibility of statements of co-Accused 'as evidence against him'). Both KRASNIQI and SELIMI objected to the admission of these testimonies; yet, neither objected to the admission of the relevant Witness Summaries tendered in the Request. See Selimi Defence Response to SPO Motion for Admission of Accused's Statements, KSC-BC-2020-06/F01473, 24 April 2023, Confidential, paras 49-58; Krasniqi Defence Response to Prosecution Motion for Admission of Accused's Statements, KSC-BC-2020-06/F01475, 24 April 2023, Confidential, paras 40-42.

³⁹ Other parts of the Proposed Judgment Extracts were [REDACTED]. See, for example, [REDACTED].

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Friday, 23 June 2023

At The Hague, the Netherlands.