



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: Specialist Prosecutor's Office

Date: 7 September 2023

Language: English

Classification: Public

**Prosecution request for admission of items used during the examination of
W04746**

with public Annex 1

Specialist Prosecutor's Office

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I. INTRODUCTION

1. As directed,¹ and pursuant to Rules 138(1) and 143(2) of the Rules,² the Specialist Prosecutor's Office ('SPO')³ hereby requests the admission of the items listed in Annex 1 to this request ('Documents'). The Documents comprise materials shown to W04746 during his testimony between 11 and 18 July 2023.⁴

2. The Documents are relevant, authentic, have probative value, and their admission would cause no undue prejudice for the Accused. Annex 1 specifies the portions of the trial transcript where each of the Documents is discussed.

II. SUBMISSIONS

*Commander Remi Speaks*⁵

3. Item 3 is a book which contains a reprint of an interview with W04746, and was published not long after the events in question, in 2001. Although W04746 confirmed his familiarity with Item 3, and its contents, generally,⁶ so as not to burden the record, the SPO tenders only the portions put to the witness during his testimony, as identified in Annex 1.

¹ KSC-BC-2020-06, Transcript, 13 July 2023, pp.5671-5672; Transcript, 14 July 2023, p.5692, p.5735. The filing was held until after the judicial recess based on an *inter partes* agreement with the Defence that the SPO would not make non-urgent filings during the recess, and to facilitate preparation and disclosure of a revised translation of one item, where the date had clearly been inaccurately reflected in the English version (see SPOE00229217-SPOE00229217-ET Revised, disclosed on 30 August 2023 in Disclosure package 915).

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 Items 21-27 in Annex 1 were used by the Defence during cross-examination, and are being tendered by the Defence. They are contained in this filing for purposes of efficiency following *inter partes* consultation by way of e-mail. With the exception of one item (DJK00205-DJK00205), addressed further below, the SPO has no objection to their admission.

⁴ Certain additional items used with W04746 during his testimony may be tendered by other means in due course.

⁵ SPOE00053263-00053359 (Eng) and SPOE00330195-00330361 (Alb): Item 3, Annex 1. Portions of the book are already admitted under P00188. Item numbers used in this filing refer to the corresponding 'Item No.' used in Annex 1.

⁶ Transcript, pp.5482-5483.

*Skender Zhitia book*⁷

4. W04746 confirmed that he is familiar with this book, that the author was a KLA member in the Llap zone, and that W04746 spoke to the author during the preparation of the book.⁸ W04746 added that he considers the author to have written a 'good book',⁹ and throughout his testimony W04746 did not dispute the accuracy of its contents. The SPO tenders the portions of the book used during W04746's testimony as identified in Annex 1.

Other documents

5. The SPO additionally tenders the following items (each reflected in Annex 1):
- a. A one-page extract of Jakup Krasniqi's book 'The Big Turn',¹⁰ as used with W04746.
 - b. SPOE00228827-SPOE00228827 and SPOE00228827-SPOE00228827-ET, as well as U002-2849-U002-2851-ET and 099772-099774. These documents bear indicia of authenticity on their face, including signatures, dates, and stamps, and cross-refer to each other. W04746 recognised the signature on both documents,¹¹ and recalled discussions within the KLA in line with the content of the first document.¹²
 - c. SITF00243091-00243150 and SITF00243091-00243150-ET, pp.SITF00243130-SITF00243141 and SITF00243130-SITF00243141-ET, is a contemporaneous record used with W04746, with internal coherence, and which is also consistent with and corroborated by other contemporaneous admitted documents, including those authenticated

⁷ Item 4, Annex 1.

⁸ Transcript, p.5519.

⁹ Transcript, p.5618.

¹⁰ Identified at Item 5 of Annex 1. Other portions of this book have previously been admitted as P00189 and P00189_ET.

¹¹ Transcript, pp.5474, 5476.

¹² Transcript, p.5475.

by W04746.¹³ Additionally, in his testimony, W04746 was able to explain certain information in the document.¹⁴

Prior Statements

6. W04746's prior statements are relevant, reliable and probative. Each of the statements were made either before a court in the context of judicial proceedings in Kosovo, or directly before the SPO in which case they were audio-video recorded and are presented in the form of verbatim transcripts. The date, time and those present are recorded. W04746 was advised of his rights, and was represented by counsel on each occasion.

7. Moreover, throughout his testimony before the KSC, W04746 repeatedly stood behind his prior statements,¹⁵ and noted that he would in fact prefer to rely on them as they were proximate in time.¹⁶

8. In order not to burden the record, in this instance, the SPO is tendering only the portions of the statements put to W04746 during his examination, with, where relevant, an appropriate page range to provide subject-matter context, as identified in Annex 1. However, it is noted that W04746 himself indicated that he wished his statement to the SPO to be considered as a whole,¹⁷ and the SPO has no objection to all of that interview being admitted should that be considered more appropriate.¹⁸

¹³ For example, P00025, P00150, P00010. *See also* Transcript, pp.5586-5588.

¹⁴ Transcript, pp.5616, 5930-5932.

¹⁵ For example, Transcript p.5548 ('The records that you have, and which I have been able to see, those that were presented during the trial, they exist, and I – I fully support them'); p.5592 ('I cannot remember the details, but I agree with it. I – I agree with what I stated at the time.');

¹⁶ Transcript p.5620 ('You could use my prior statements prior to this. I stand by those.').

¹⁶ Transcript p.5558 ('And as I mentioned before, I stand by everything I have stated in those criminal proceedings, and I would rather rely on those statements because they were given earlier').

¹⁷ Transcript, p.5848 ('I stand by the statement that I've given to the Prosecutor, but it needs to be read in its entirety. So please, I would ask you to do that.').

¹⁸ 082894-TR-ET Parts 1-19; 082894-TR-AT Parts 1-19.

9. The statements should be admitted both for the truth of their contents and for the purposes of assessing the credibility of the witness.¹⁹

DJK00205-DJK00205

10. The SPO opposes the admission of DJK00205-DJK00205 (item 25 in Annex 1) on the basis of inadequate information. On its face, it is unclear what the item is, what time period (even approximately) it relates to, or when or how it was published or distributed. All the witness was able to confirm in relation to it is that it contains the nickname Leka.²⁰

Assignment of exhibit numbers

11. Finally, as a practical matter, where portions of larger single items,²¹ such as books or other similar items, are admitted, the SPO suggests that, at this time, the fact that only specific pages have been admitted into evidence be recorded in Legal WorkFlow metadata, rather than sub-dividing those items. An exhibit number can be assigned to the entire item, and it can be recorded in Legal WorkFlow that only portions of the item in question have been admitted. This entry could clearly record what those portions are, and when/how they were admitted. Should further portions of that same item subsequently be admitted during the course of the trial, which in many instances is likely to occur, Legal WorkFlow metadata can be updated accordingly, but no new exhibit number need be assigned. Should it be considered necessary, for clarity, at the end of the trial, the item could at that time be divided out so that only the pages which have ultimately been admitted are contained under the exhibit number.

¹⁹ Rule 143(2)(c).

²⁰ Transcript, p.5823.

²¹ Some larger files may contain multiple independent, severable documents, which could be more appropriate for division. See for example, e-mail from CMU dated 12 April 2023 indicating that the Panel had instructed that the different individual document contained within the associated exhibits for W04474 be assigned separate exhibit numbers.

12. It is submitted that this approach would lead to greater clarity and simplicity of the record, rather than having multiple portions of the same book/single item separated out each time a page is admitted and being given separate, new ERN and exhibit numbers. These separated portions are not easily associated to the underlying evidentiary material item in question, and, in fact, the underlying items themselves - being the ones listed on the SPO's exhibit list - do not always contain visible indication that any portion of them has been admitted.²² The approach proposed would allow for a clear association and link in Legal WorkFlow from the exhibit to the evidentiary material, and its disclosure history. It is also consistent with how the admission of portions of such items is treated at other courts and tribunals, and the SPO remains available to provide further information, including to CMU, as may be useful.

Word count: 1,460



Ward Ferdinandusse

Acting Deputy Specialist Prosecutor

Thursday, 7 September 2023

At The Hague, the Netherlands.

²² By way of example, after the testimony of just the first two witnesses, multiple new Legal WorkFlow entries (with non-consecutive pages), some admitted and some not, had already been generated for underlying item 057924-058024. This would be avoided by the approach suggested.