

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: Counsel for Kadri Veseli

Date: 9 June 2023

Language: English

Classification: Public

Further Public Redacted Version of Veseli Defence Request Regarding Items Associated With [REDACTED]'s Testimony, With Confidential Annexes 1 and

2

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I. INTRODUCTION

1. The Defence for Mr Kadri Veseli (“Defence”) hereby submits this request for the admission of evidence, through the bar table, pursuant to Article 40(6)(h) of the Law,¹ Rules 137-139 of the Rules,² and the Trial Panel’s instructions.³
2. Admission is sought in respect of two evidentiary items. These evidentiary items are included in Annexes 1 and 2 of this Request and comprise:

Annex 1: English and Albanian extracts of the [REDACTED] (“[REDACTED] Judgement”).⁴

Annex 2: English and Albanian extracts of the [REDACTED] (“[REDACTED] Judgement”).⁵

3. The Defence tables Annexes 1 and 2 for admission through the bar, via Rule 138(1) of the Rules. The Defence submits that these items provide important contextual information that will assist the Trial Panel in evaluating the reliability and probative value of [REDACTED] (“[REDACTED]”) which refers to the [REDACTED]. The Defence submits that the two items ought to be admitted in the interests of truth and justice.

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, [REDACTED] 2023, p. [REDACTED].

⁴ [REDACTED].

⁵ [REDACTED].

II. PROCEDURAL BACKGROUND

4. [REDACTED] appeared before the Specialist Chambers on [REDACTED] 2023. [REDACTED] testimony was conducted in accordance with Rule 154 of the Rules.⁶
5. On [REDACTED] 2023, the SPO sought to tender into evidence, via rule 154, the [REDACTED] statement of [REDACTED] annexed to which, and also tendered, were two reproductions of [REDACTED].⁷ The Veseli Defence objected to the admission of these two reproductions in light of the reasons given by two courts in [REDACTED], both of which concluded that the document was unreliable.⁸
6. On [REDACTED] 2023, the Trial Panel deferred its ruling on those pages⁹ however it proceeded to admit them into evidence, at the start of the hearing on [REDACTED] 2023.¹⁰
7. On [REDACTED] 2023, Defence requested that the [REDACTED] Judgements be admitted into evidence as items which were highly relevant to the contextual understanding of [REDACTED]. The Trial Panel deferred on the request, instructing the Defence to “file a written document or a bar table motion to bring those documents in at the appropriate time.”¹¹

⁶ F01380, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154*, 16 March 2023, paras. [REDACTED]; Transcript, [REDACTED] 2023. *See also* Transcript, [REDACTED] 2023, [REDACTED].

⁷ Transcript, [REDACTED] 2023, [REDACTED]. *See*, [REDACTED] and their corresponding English translations. Another version of the document, referred to as a [REDACTED] was also tendered as part of item [REDACTED] on the SPO’s Bar Table Motion, in response to which the Defence raised the same objection. *See*, F01387/A01, *Annex 1 to Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table with Confidential Annexes 1-8*, 21 March 2023, p. [REDACTED].

⁸ Transcript, [REDACTED] 2023, p. [REDACTED].

⁹ Transcript, [REDACTED] 2023, p. [REDACTED].

¹⁰ Transcript, [REDACTED] 2023, p. [REDACTED].

¹¹ Transcript, [REDACTED] 2023, p. [REDACTED].

III. APPLICABLE LAW

8. In accordance with Article 40(2) of the Law, the Trial Panel:

[S]hall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses. The Trial Panel, having heard the parties, may adopt such procedures and modalities as are necessary to facilitate the fair and expeditious conduct of proceedings. It may give directions for the conduct of fair and impartial proceedings and in accordance with the Rules of Procedure and Evidence.

9. Article 40(6)(h) of the Law states that “the Trial panel may, as necessary rule on any other matters, including the admissibility of evidence.”

10. Pursuant to Rule 137(2) of the Rules, the “Panel shall assess freely all evidence submitted in order to determine its admissibility and weight.”

11. As regards admissibility, Rule 138(1) states that evidence submitted to the Panel will be admitted “if it is relevant, authentic, has probative value and its probative value is not outweighed by its prejudicial effect.”

12. According to Rule 139(4) of the Rules, “[i]n determining the weight to be given to the testimony of a witness, a Panel shall assess the credibility of the witness and the reliability of his or her testimony.”

IV. SUBMISSIONS

13. The Defence submits that Annexes 1 and 2 yield sufficient indicia of authenticity, reliability, relevance and probative value, thus rendering them admissible pursuant to Rule 138 of the Rules, as associated exhibits of [REDACTED].

A. Authenticity

14. As regards Annex 1, the SPO disclosed the Albanian version of the [REDACTED] Judgement on 2 November 2021, pursuant Rule 103 of the Rules.

The corresponding English translation was disclosed on 24 February 2023 – also under Rule 103.¹² The Defence avers that both language versions contained in Annex 1 are authentic. The Albanian version of the Judgement contains the seal of the [REDACTED] on the last page and is signed by the Court Secretary, [REDACTED].¹³ The English translation repeats the same information, albeit in textualized form.¹⁴

15. With respect to Annex 2, the Defence acquired the Albanian version of Annex 2 from the website of [REDACTED].¹⁵ It is the Defence's understanding that an English version of the [REDACTED] is not available online, nor has it been disclosed by the SPO. Consequently, the English version in Annex 2 is a Defence translation of the Albanian Judgement. Nevertheless, the Defence submits that, akin to Annex 1, Annex 2 is sufficiently authentic given that it is a Judgement issued by a recognised [REDACTED].¹⁶

B. Reliability

16. Annex 1 is reliable precisely because it comprises extracts of an official judgement as promulgated, signed and stamped by authorised personnel from a [REDACTED] – namely, the [REDACTED].¹⁷ The same holds true in respect of Annex 2, which also comprises extracts of an official judgement, as promulgated by the [REDACTED]. It clearly states the Panel which presided over the matter, as well as the date upon which the Judgement was issued.¹⁸

¹² See, Disclose Package 110 from 2 November 2021 and Disclosure Package 690 from 24 February 2023.

¹³ Annex 1, p. 27.

¹⁴ Annex 1, p. 54.

¹⁵ [REDACTED].

¹⁶ Annex 2, pp. 1, 5, 6 and 9.

¹⁷ Annex 1, pp. 1, 27-28 and 54.

¹⁸ Annex 2, pp. 5 and 9.

C. Relevance and Probative Value

17. Annexes 1 and 2 are both relevant and probative given that they address the authenticity, reliability and probative value of [REDACTED]. The Defence submits that the relevance of Annexes 1 and 2 to this case is clear and that, without the admission of these two items, any assessment of [REDACTED] will be incomplete. It is therefore in the interests of truth and justice that the items are admitted.
18. In this regard, the Defence recalls firstly the [REDACTED]'s finding that there was a failure to establish which entity authored the [REDACTED], and by proxy that the [REDACTED]'s authenticity was not established.¹⁹ The witnesses heard in that trial – whom the Prosecution had put forward – denied the authenticity of the [REDACTED].²⁰
19. Based on the evidentiary record from trial, the [REDACTED] found that [REDACTED] could not be “[REDACTED].”²¹ Both the [REDACTED] and [REDACTED] concluded, based on the evidence at trial, that the so-called [REDACTED] did not exist at the time when [REDACTED] was purportedly [REDACTED], and only came into being at the end of [REDACTED] or beginning of [REDACTED].²²

D. Prejudice

20. The admission of both Annexes causes no prejudice any of the Parties or Participants to these proceedings. The Defence recalls that it objected to the admission of [REDACTED] in its Joint Response to the SPO Bar Table Motion, within which it specifically relied upon the judicial findings contained in

¹⁹ Annex 1, p. 52.

²⁰ Annex 1, p. 52.

²¹ Annex 2, p. 7.

²² *See*, Annex 1, p. 52; Annex 2, p. 9.

Annexes 1 and 2.²³ Moreover, reference was made to the Annexed items in response to the judicial questioning of [REDACTED] in respect of the same [REDACTED].²⁴ Both the SPO and Victims' Counsel were well-aware of the Defence's intention to rely upon the Annexed items as evidence against [REDACTED].

21. As the [REDACTED] Judgment is a relatively lengthy document – [REDACTED] pages in length – the Defence has identified the portions which are relevant to evaluating the probative value of [REDACTED] and seeks only their admission. These comprise:

- i. the first two pages of the judgement for context only;
- ii. the testimony of the accused [REDACTED], as well as that of witnesses [REDACTED]; and finally
- iii. the Court's reasoning which includes its conclusions regarding [REDACTED].

22. Similarly, the pages of the [REDACTED] Judgment included in Annex 2 are only those that are relevant to an evaluation of [REDACTED].

V. CONCLUSION

23. In light of the foregoing, the Defence requests that the Trial Panel admit Annexes 1 and 2 into evidence pursuant to Rule 138(1) of the Rules.

Word Count: 1,797

²³ F01387/A01, *Annex 1 to Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table KLA General Staff Communiqués*, 21 March 2023, confidential, nos. [REDACTED].

²⁴ See, Transcript, [REDACTED] 2023, pp. [REDACTED] referring specifically to page [REDACTED].



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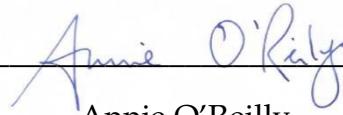
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