



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 Smith III, Presiding
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve

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Prosecution submissions on admissibility of items following W04769's testimony

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I. INTRODUCTION

1. Following W04769's testimony, the Trial Panel directed the parties to file written submissions on the admissibility of certain items shown during W04769's testimony. The present submissions cover the admissibility of the items marked for identification following the judges' questions of this witness ('MFI items')¹ and a response to the Veseli Defence request to tender three further items ('Veseli Request').²

2. The MFI Items all meet the test for admissibility³ and should be admitted. In contrast, certain submissions in the Veseli Request are highly inappropriate and two of the three items tendered are plainly inadmissible.

II. SUBMISSIONS

A. MFI ITEMS

3. Each of the MFI Items is clearly relevant, and with indicia of reliability such that they could be admitted through the bar table without any witness. W04769 has now provided additional commentary on these items, and his overall testimony further

¹ SITF00245505-00245703 (MFI P00649); SITF00245547-SITF00245555-ET (MFI P00649_ET.1); SITF00245555-SITF00245562-ET (MFI P00649_ET.2); U003-1741-U003-1749 (MFI P00650); U003-1744-U003-1748-ET (MFI P00650_ET); 061167-061171 (MFI P00652); 061168-061168-ET (MFI P00652_ET); U000-6550-U000-6598 (MFI P00651); U000-6550-U000-6598-ET (MFI P00651_ET). The headings in Section II.A below provide further specificity on the items tendered.

² Veseli Defence Request for Admission of Items Used During the Cross-Examination of W04769, KSC-BC-2020-06/F01871, 19 October 2023, Confidential (with three annexes) ('Veseli Request'), *tendering* 077601-TR-ET Part 4, pp.1-4; 077596-TR-ET Part 4, pp.28-30; DKV0801-0802.

³ Article 40(6)(h) of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'); Rule 138 of Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'); Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01409, 31 March 2023, Confidential, paras 8-13. All references to 'Article' or 'Articles' herein refer to articles of the Law and all references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

bolsters their reliability. Procedural efficiency dictates that, rather than litigating these items in a future bar table motion, their admissibility should be resolved now.

4. Preliminarily, there is no prohibition in the statutory scheme or Conduct of Proceedings Decision⁴ from a party tendering items for admission used during the judges' questioning of a witness. Each of the MFI Items is on the SPO's list of evidence, and all were disclosed under Rule 102(1). The SPO has been clear in its intent to rely upon these items and, subject to judicial deadlines or orders, can tender them at any appropriate moment during its case.

1. *MFI P00649: SITF00245547-SITF00245555; SITF00245555-SITF00245562*⁵

5. These two items form parts of an interview with Zafir Berisha in the 2002 book entitled 'Road of Freedom'. This book is available open source and was published in Prizren by the KLA War Veterans Association. The interview is recorded in a way so as to be able to see both the questions posed and answers given throughout.

6. Zafir Berisha is the former commander of 2nd Battalion of the KLA's 125th Brigade, and the interviews concern the workings of this brigade and the Vrrin/Verrin Local Staff which preceded it. The interview concerns matters such as the members of the KLA working in the Vrrin/Verrin area, financing of the KLA staff, and information regarding KLA weapons supplies in Albania. In particular, Zafir Berisha describes the Vrrin/Verrin Local Staff's connection with the KLA General Staff by emphasising that 'the connections with other staffs and the KLA General Staff have never been missing'.⁶

⁴ Annex 1 to Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Conduct of Proceedings Decision').

⁵ These pages are tendered in both English and Albanian, with the English page range split across two ERNs. The remaining pages of MFI P00649 beyond this range are not tendered at this time.

⁶ MFI P00649_ET.2, p.SITF00245556.

7. W04769's testimony further establishes their admissibility by virtue of his evidence: (i) identifying the role of Zafir Berisha during the war, along with other key characters mentioned in the interview such as Selim Krasniqi, Xhevat Berisha, Smailj (Ismail) Kryeziu, Elbasan Shoshaj, and Safet Krasniqi; (ii) confirming or contextualising events discussed in the interview, including Bislim Zyrapj coming to Vrrin/Verrin to set up the area; and (iii) explaining how what Zafir Berisha describes is consistent with W04769's own knowledge and understanding of how the Vrrin/Verrin Local Staff worked.⁷ W04769 also confirmed the contents of another item authored by Zafir Berisha in admitted exhibit P00506.⁸

8. These items are *prima facie* relevant, probative, and authentic to justify admission. [REDACTED].⁹

2. MFI P00650: U003-1744-U003-1746¹⁰

9. This item is a letter of 16 March 1999 by Halil Qadraku – head of intelligence in the Pashtrik Zone – to, *inter alia*, the KLA General Staff recommending changes in the command of the 124th Brigade. Part of Halil Qadraku's letter concerns complaints of his which were not duly considered by Pashtrik Zone commander Ekrem Rexha (Commander Drini). The item is dated and has a KLA letterhead indicating that it comes from the Pashtrik Operational Zone.

10. The letter is an extension of P00500, which is another March 1999 Halil Qadraku letter complaining to the General Staff about Commander Drini. This item was admitted

⁷ Transcript of Hearing, 17 October 2023, T.8997-9004.

⁸ Transcript of Hearing, 11 October 2023, T.8729-32.

⁹ [REDACTED].

¹⁰ These pages are tendered in both English and Albanian. The remaining pages of U003-1741-U003-1749 were not shown to the witness and are not tendered at this time.

as an associated exhibit through W04769, who discussed the people mentioned in P00500 and parts of its contents.¹¹

11. Both this letter and P00500 demonstrate how a KLA zone-level intelligence head communicated zone level information to and sought action from the KLA General Staff. W04769's evidence also discusses Halil Qadraku's circumvention of Commander Drini's authority in the Pashtrik Zone, and both items reinforce how Halil Qadraku perceived Commander Drini as an obstacle to the intelligence work he sought to do.

12. Just as with P00500, this item is *prima facie* relevant, probative, and authentic so as to justify admission.

3. MFI P00652: 061168-061168¹²

13. This page was drafted by KLA General Staff member Bislim Zyrapi,¹³ and reflects the results of discussions on new KLA General Staff structures dated 2 November 1998. It is signed by Kadri Veseli, Bislim Zyrapi, and representatives of FARK. The item has stamps of both the KLA and government in exile, as W04769 confirmed when testifying.¹⁴

14. This item is relevant to demonstrate, *inter alia*, Kadri Veseli's senior leadership role in the KLA through his participation in this signed agreement on personnel matters. This item is *prima facie* relevant, probative, and authentic to justify admission. The Veseli

¹¹ P00492.2, pp.28-30. *See also* Transcript of Hearing, 16 October 2023, T.8897-8902, Transcript of Hearing, 17 October 2023, T.9005-06; 9043-46.

¹² This page is tendered in both English and Albanian. The remaining pages of MFI P00652 beyond this one are not translated into English and are not tendered at this time. The SPO is mindful that untranslated page 061170 was also discussed with W04769 (Transcript of Hearing, 17 May 2023, T.9026-28), and has no objection to this page being admitted.

¹³ W04752, 083280-TR-ET Part 14, pp.33-39.

¹⁴ Transcript of Hearing 17 October 2023, T.9025-26; 9041-42.

Defence appears to accept the authenticity of this document in its Pre-Trial Brief, Opening Statement, and cross-examinations.¹⁵

4. *MFI P00651: U000-6550-U000-6598*¹⁶

15. This KLA notebook discussed by W04769¹⁷ sets out the activities of the Vrrin/Verrin Local Staff in 1998, and certain pages of it were tendered and admitted in the ICTY *Dorđević* trial.¹⁸ Many entries are dated, and its pages concern the activities of the same people in the area discussed in detail in the course of W04769's other evidence such as intelligence members Xhevat Berisha, Smajil (Ismail) Kryeziu, Elbasan Shoshaj, and Safet Krasniqi.¹⁹ These activities discussed in this notebook concern questioning detainees²⁰ and a 'special unit for assassinations and abductions' supervised by Smajil Kryeziu. The notebook also includes: (i) a statement of Xhevat Berisha indicating that named JCE member Sylejman Selimi (Sultan) ordered someone to hand over weapons and seek refuge at the KLA base in Likoc/Likovac;²¹ and (ii) a list of persons with arrest warrants which includes Jeshkovë/Ješkovo detention victim W04571.²²

¹⁵ See Public Redacted Version of Corrected Version of the Pre-Trial Brief on Behalf of Kadri Veseli, KSC-BC-2020-06/F01052/COR/RED, 22 October 2023 (with three annexes; redacted version notified 13 March 2023), para.54; Transcript of Hearing, 4 April 2023, T.2361-62; Transcript of Hearing, 12 September 2023, T.7862-70.

¹⁶ This item is tendered in both English and Albanian.

¹⁷ Transcript of Hearing, 17 October 2023, T.9010-18.

¹⁸ See IT-05-87.1 D00787; IT-05-87.1 D00787.E.

¹⁹ See Transcript of Hearing, 17 October 2023, T.9062-63. The intelligence connections of these men are corroborated by other items to be tendered, such as KLA order U000-5914-U000-5914-ET and item SPOE00227323-SPOE00227328-ET seized from Rexhep Selimi's residence.

²⁰ MFI P00651_ET, p.U000-6567.

²¹ MFI P00651_ET, p.U000-6576.

²² MFI P00651_ET, p.U000-6593.

16. The reference to a special unit for assassinations and abductions in this notebook is corroborated by item U001-9738-U001-9739, which discusses the composition of a special unit of the same name and is an expanded version of page U000-6584 of MFI P00651.

17. The notebook also corroborates the 'Division of duties in the Intelligence and Counter-Intelligence unit' page admitted through W04769 as P00499, plus its enhanced quality duplicate P00507. This page describes persons identified by W04769 as working in intelligence²³ having responsibilities in conducting abductions and executions.

18. P00507 is part of the same notebook as admitted extract P00074, and indeed is the page immediately following the range admitted as P00074. [REDACTED].²⁴ P00074 describes intelligence responsibilities as extending to '[k]idnappings, actions, activities with the Military Police official' which mirror those discussed in P00499/P00507 and MFI P00651. [REDACTED].²⁵ This information in P00074 is provided by 'Ardit', which other evidence will show is a nickname for Safet Krasniqi.²⁶ That these KLA notebooks have overlapping contents demonstrates the reach of KLA intelligence functions across the territory of what becomes the Pashtrik operational zone.

19. MFI P00651 thus fits within a mosaic of different KLA items, including P00507, which mutually reinforce the reliability of each other. This contemporaneous documentation includes independent pieces of evidence on the area and timeframe covered in MFI P00651 plus evidence from other places/times confirming KLA

²³ P00495, para.16.

²⁴ [REDACTED]. [REDACTED].

²⁵ [REDACTED].

²⁶ SPOE00227323-SPOE00227328-ET, p.SPOE00227323 ('Safet KRASNIQI – the so called Arditi who was in the sector of Intelligence Counterintelligence Directorate /ZKZ/ as deputy commander.').

intelligence conducting the same kinds of activities,²⁷ bolstering both authenticity and weight while contradicting claims by the Defence.

20. This notebook is *prima facie* relevant, probative, and authentic and should be admitted accordingly.

B. VESELI REQUEST

21. All three items tendered in the Veseli Request concern P499/P507. All should be considered in light of the submissions above as to why these items are relevant and probative.

22. The SPO has no objection to tendering DKV0801-0802 in the Veseli Request, though the Veseli Defence should prepare an English translation of the item before it is admitted. Needless to say, the inference that a 1998 signature in a KLA field book is 'forged' because a 2020 signature within a Prizren law faculty document looks different is, without significantly more, unreasonable.

23. The statements of [REDACTED], on the other hand, clearly fall under Rules 153-55 and the SPO strongly objects to their admission. The Trial Panel has given clear and recent guidance on this point,²⁸ and the Veseli Defence has no legal basis to tender these statements in this way. It is also to be noted that: (i) both [REDACTED] had transparent incentives to lie to the SPO when being confronted with a document like P00499; (ii) [REDACTED] actually did initially recognise his signature in the document, only to call

²⁷ For another example, see U001-7059-U001-7061 ('Regulations of the Military Intelligence Service at the District Level', speaking in particular that '[t]he intelligence service has a duty to discover people who are important to the enemy either domestic or abroad their commanders offering accurate information about the staff in order to kidnap or kill them in order to physically liquidate the leading group or individuals etc').

²⁸ See Transcript of Hearing, 17 October 2023, T.8989, lines 16-23; Decision on Krasniqi Defence Request to Admit Additional Document Related to W02153, KSC-BC-2020-06/F01852, 11 October 2023, para.10.

this a 'lapse' when questioned about the document's contents;²⁹ and (iii) W04769 was in no position to comment on the veracity or reliability of either person's interviews.

24. As made clear during its redirect examination and the submissions above, P00499/P00507 have many factors supporting their reliability. The Veseli Defence assertion that the document is a 'forgery', by contrast, has no meaningful support.

25. The Veseli Defence is entitled to argue that SPO evidence is inauthentic in the course of conducting its defence, but it cannot do so through baseless claims that the SPO was 'knowingly tendering a forged document for admission'.³⁰ The Veseli Defence is not free to claim that any position on this document contrary to its arguments is an ethical breach, and repeating such a claim is all the more egregious in the circumstances outlined here.³¹ Groundless accusations of ethical impropriety breach the Conduct of Proceedings Decision³² and should not be part of the proceedings going forward.

III. CLASSIFICATION

26. This filing is classified confidentially in line with Rule 82(4).

IV. RELIEF SOUGHT

27. For the foregoing reasons, the SPO requests the Trial Panel to admit the MFI Items as set out above and reject the two interview statements tendered through the Veseli Request.

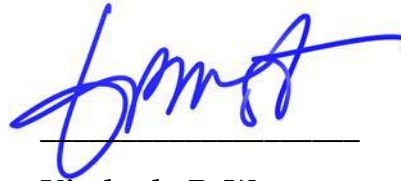
²⁹ See Transcript of Hearing, 16 October 2023, T.8967-69.

³⁰ Veseli Request, KSC-BC-2020-06/F01871, para.13.

³¹ Transcript of Hearing, 16 October 2023, T.8970.

³² Conduct of Proceedings Decision, KSC-BC-2020-06/F01226/A01, paras 11, 17.

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At The Hague, the Netherlands