



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-04
Specialist Prosecutor v. Pjetër Shala

Before: Trial Panel I
Judge Mappie Veldt-Foglia, Presiding
Judge Roland Dekkers
Judge Gilbert Bitti
Judge Vladimir Mikula, Reserve

Registrar: Dr Fidelma Donlon

Filing Party: Specialist Prosecutor's Office

Date: 8 December 2023

Language: English

Classification: Public

Public Redacted Version of

**'Prosecution request for admission of material used during the cross-examination
of W03887, W04441, W04440 and DW4-03**

with confidential Annex 1'

Specialist Prosecutor's Office

Kimberly P. West

Counsel for the Accused

Jean-Louis Gilissen

Counsel for Victims

Simon Laws

I. INTRODUCTION

1. Pursuant to the Decision on Non-Oral Evidence¹ and Rule 138(1) of the Rules,² the Specialist Prosecutor's Office ('SPO') hereby requests the admission of the items listed in Annex 1 to this request ('Documents'). The Documents include material used during the cross-examination of W03887, W04441, W04440, and DW4-03 between 20 and 27 November 2023.³

2. The Documents are relevant, authentic, have probative value, and their admission would cause no undue prejudice to the Accused.⁴ Annex 1 lists the Documents relevant to each witness and specifies the portions of the trial transcript where each of the Documents is discussed.

II. SUBMISSIONS

A. REQUEST FOR ADMISSION OF DOCUMENTS RELATED TO W03887

3. The SPO tenders the following items used during the cross-examination of W03887: (i) partial excerpts of SPO interview of W03887 (Parts 1, 2), dated 1 September 2020 (videos);⁵ (ii) five out of 296 photographs taken by Forensic Expert [REDACTED] of the Albanian Ministry of Internal Affairs at Kukes Metal Factory on 22 May 2019;⁶ (iii) redacted version of SPO interview of W03887 (Part 2), dated 1 September 2020 (video).⁷

¹ Decision on the submission and admissibility of non-oral evidence, KSC-BC-2020-04/F00461, 17 March 2023, public ('Decision on Non-Oral Evidence'), paras 55-65.

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 are to the Rules, unless otherwise specified.

³ In relation to the documents used during the cross-examination of W04280, *see* para.12 below.

⁴ *See* Rule 138. Unless challenged or *proprio motu* excluded, evidence submitted to the Panel shall be admitted if it is relevant, authentic, has probative value and its probative value is not outweighed by its prejudicial effect.

⁵ Annex 1, items 1, 2. The SPO is mindful of para.60 of the Decision on Non-Oral Evidence, KSC-BC-2020-04/F00461. However, as the witness was directed to audio-visual recordings of portions of his prior statement, and these portions were not read out to him, these items are included herein for the sake of completeness.

⁶ Annex 1, item 3.

⁷ Annex 1, item 4. *See* fn.5 for reasons of inclusion of this item. While the SPO used a redacted version of the aerial map of the Kukës Metal Factory available at SPOE00330362-00330362 RED during its cross-

4. These items were used to assist the witness to answer certain questions, and to clarify certain relevant matters. In particular, items (i) - (iii) were used in relation to the time W03887 spent during the Indictment period at the Kukës Metal Factory. They were also used to test W03887's credibility on certain aspects of his evidence, including on his knowledge of certain locations within the factory relevant for the case. For these reasons the items used are relevant.

B. REQUEST FOR ADMISSION OF DOCUMENTS RELATED TO W04441

5. The SPO tenders three Facebook posts used during the cross-examination of W04441.⁸ The Facebook posts were discussed with the witness and used to test the credibility of her evidence and bias, and are therefore relevant. They are publicly available on open sources, and their admission causes no undue prejudice to the Accused.

C. REQUEST FOR ADMISSION OF DOCUMENTS RELATED TO W04440

6. The SPO tenders the following seven documents used during the cross-examination of W04440: (i) the record of [REDACTED] testimony in the *Geci et al.* trial;⁹ (ii) the record of witness statement of [REDACTED] provided in the context of the investigation against Xhemshit KRASNIQI and Sabit GEÇI;¹⁰ (iii) the testimony of witness M in the *Geci et al.* trial;¹¹ (iv) the transcript of the SPO interview with

examination of W03887 (Transcript (Trial Hearing), 21 November 2023, pp.3363-3397), it does not request its admission considering that the un-redacted version of this item has already been admitted into evidence and bears exhibit number P00078: *see* Decision on the Specialist Prosecutor's motion for admission of documentary Evidence, KSC-BC-2020-04/F00491, 20 April 2023, confidential, para.42. The SPO similarly does not submit p.1 of 074390-074391, 2 colour photographs taken in 2009 by [REDACTED] of Kukës Metal Factory, used with W03887 (Transcript (Trial Hearing), 21 November 2023, p.3388) as this item has already been admitted into evidence pursuant to Decision on requests for admission of items used with witnesses TW4-08, TW4-06, TW4-07, TW4-09, TW4-10 and TW4-11 during their in-court testimonies with one public annex, KSC-BC-2020-04/F00528, 30 May 2023, confidential ('Decision on admission of items'), para.22, and bears exhibit number P00093.

⁸ Annex 1, items 5-7.

⁹ Annex 1, item 8.

¹⁰ Annex 1, item 9.

¹¹ Annex 1, item 10.

W04735;¹² (v) the transcript of a conversation between [REDACTED];¹³ (vi) a EULEX officer report concerning [REDACTED];¹⁴ and (vii) an on-line media article reporting statements made by W04440 concerning the Kosovo Specialist Chambers.¹⁵

7. All of the documents are relevant to the assessment of the charges in this case and the credibility of W04440's evidence. In particular, documents (i) to (v), while statements of witnesses who were not called to testify in the present proceedings, should be relied on by the Panel, who will determine their weight and probative value, for a full understanding of W04440's testimony and to assess credibility, in line with the approach adopted in this trial.¹⁶ Reliance on these documents for these purposes would cause no undue prejudice for the Accused.

8. The EULEX report is authentic, bearing EULEX's official logo, as well as the relevant officers' signatures. The on-line media article is publicly available on open sources. Both documents were used to test the credibility of W04440's evidence and bias, and are therefore relevant. Their admission causes no undue prejudice to the Accused.

D. REQUEST FOR ADMISSION OF DOCUMENTS RELATED TO DW4-03

9. The SPO tenders three items used during the cross-examination of DW4-03: (i) a portion of a video of the KFOR raid at MUP building in Prizren;¹⁷ (ii) two pages of

¹² Annex 1, item 11.

¹³ Annex 1, item 12.

¹⁴ Annex 1, item 13.

¹⁵ Annex 1, item 14. The SPO also referenced pp.15, 28 of 082892-TR-AT-ET Part 5 RED2, which is the transcript of W04733's SPO interview, during its cross-examination of W04440: *see* Transcript (Trial Hearing), 23 November 2023, p.3594. Pursuant to para.64 of the Decision on Non-Oral Evidence, the SPO does not seek the admission of these pages of the transcript considering that the item in question has already been submitted to the Panel and assigned exhibit number P00128: *see* Decision on the Specialist Prosecutor's motion for admission of evidence pursuant to Rule 155 of the Rules, KSC-BC-2020-04/F00562, 4 July 2023, confidential ('Rule 155 Decision'), para.70(b).

¹⁶ Decision on requests for admission of items used with DW4-06, DW4-02, DW4-05 and W04754 during their in-court testimonies with one public annex, KSC-BC-2020-04/F00714, 13 November 2023, confidential, paras 13-14; Transcript (Trial Hearing), 23 November 2023, p.3578, lines 5-14.

¹⁷ Annex 1, item 15.

DW4-03's expert report DPS00864-DPS00875;¹⁸ and (iii) a video of DW4-03 at a shooting range.¹⁹

10. The KFOR video was used for identification purposes, as DW4-03 identified and named a number of weapons shown at time stamp 06:01 of 072508-01.²⁰ DPS00864-DPS00875 and DPS01727 emanate from DW4-03, who authenticated them, and are relevant to his findings concerning the [REDACTED] and the [REDACTED]. The three items are relevant and their admission causes no undue prejudice to the Accused.

11. While the SPO only put page 7 of DPS00864-DPS00875 to DW4-03, and to the extent that the Defence is not seeking admission of the entirety of its own expert's report,²¹ the SPO submits that all pages should be admitted to enable a full understanding of DW4-03's findings and conclusions.²²

¹⁸ Annex 1, item 16.

¹⁹ Annex 1, item 17. The SPO also used p.7 of 031049-031095 RED2, which is the redacted version of the [REDACTED], during its cross-examination of DW4-03: *see* Transcript (Trial Hearing), 27 November 2023, pp.3688-3695. Pursuant to para.64 of the Decision on Non-Oral Evidence, the SPO does not seek the admission of this page of the report considering that the item in question has already been submitted to the Panel and assigned exhibit number P00175: *see* Decision on the Specialist Prosecutor's and Defence's motions for admission of materials related to expert witnesses W04887, W04826 and W04875 with one public annex, KSC-BC-2020-04/F00639, 6 September 2023, confidential, para.49(b); Annex 1 to Decision on the Specialist Prosecutor's and Defence's motions for admission of materials related to expert witnesses W04887, W04826 and W04875, KSC-BC-2020-04/F00639/A01, 6 September 2023, public, p.2.

²⁰ Transcript (Trial Hearing), 27 November 2023, p.3684.

²¹ Defence Request for Admission of Items Used with W03887, DW4-03, and W04280 During Their In-Court Testimonies with confidential Annex 1, KSC-BC-2020-04/F00737, 6 December 2023, confidential, para.7(i).

²² *See* in this regard, Decision on admission of items, KSC-BC-2020-04/F00528, para.16 ('[t]he Panel recalls that, as a general rule, material shall be submitted for admission in its entirety, in order to allow the Panel to assess the correct meaning and broader context of the portion(s) relied upon by the Party or Victims' Counsel, as the case may be.')

E. REQUEST FOR ADMISSION OF DOCUMENTS RELATED TO W04280

12. All of the items used during the cross-examination of W04280 have already been admitted by the Panel,²³ for which reason the SPO does not include them anew in the present request.

III. CLASSIFICATION

13. This filing and Annex 1 are confidential as they contain sensitive information. A public redacted version will be filed.

IV. RELIEF REQUESTED

14. For the foregoing reasons, the SPO requests admission of the Documents listed in Annex 1 to this request.

Word count: 1,817

²³ The SPO showed W04280 or made reference to, in the context of its cross-examination: (i) p.1 of 074390-074391, two colour photographs taken in 2009 by [REDACTED] of the Kukës Metal Factory: *see* Transcript (Trial Hearing), 29 November 2023, pp.3842-3843; (ii) p.3 of SITF00012876-SITF00012878 RED, redacted version of sketch provided by W04734: *see* Transcript (Trial Hearing), 29 November 2023, p.3843; (iii) p.15 of SITF00013736-SITF00013800 RED5, Redacted version of District Public Prosecutor's office in Pristina, Record of Witness hearing of W01448: *see* Transcript (Trial Hearing), 29 November 2023, p.3856; (iv) p.12 of 060664-TR-ET Part 5 RED4, Redacted version of Transcript of SPO Interview with W04380 (Part 5): *see* Transcript (Trial Hearing), 29 November 2023, p.3856; and (v) p.16 of 064716-TR-ET Part 3 RED4, and pp.21, 29-30 of 064716-TR-ET Part 5 RED4, Redacted version of Transcript of SPO interview with W04436 (Parts 3 and 5): *see* Transcript (Trial Hearing), 29 November 2023, p.3856. Pursuant to para.64 of the Decision on Non-Oral Evidence, the SPO does not seek the admission of the listed pages considering that the items in question have already been submitted to the Panel and assigned exhibit numbers P00093 (Decision on admission of items, KSC-BC-2020-04/F00528, para.22); P00163 (non-redacted version - Decision on requests for admission of items used with TW4-01 during his in-court testimony with one public annex, KSC-BC-2020-04/F00610, 16 August 2023, confidential, paras 10, 24(b)); P00110 (Rule 155 Decision, KSC-BC-2020-04/F00562, para.70(b)), P00147_ET, P00157_ET and P00159_ET (Decision on the Specialist Prosecutor's requests to admit the evidence of TW4-02 and TW4-04 under Rule 153 of the Rules, KSC-BC-2020-04/F00556, 23 June 2023, confidential, paras 54(b) and (c)), respectively.



Kimberly P. West
Specialist Prosecutor

Friday, 8 December 2023

At The Hague, the Netherlands.