

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: 19 October 2023

Language: English

Classification: Public

**Public Redacted Version of Veseli Defence Request for Admission of Items
Used During the Cross-Examination of W04769, With Confidential
Annexes 1-3**

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I. INTRODUCTION

1. As directed,¹ and pursuant to Rules 138(1) of the Rules, the Defence for Mr Kadri Vesei (“Defence”) hereby tenders for admission the following documents that were shown during the cross-examination of W04769 [REDACTED]:
 - a. [REDACTED] (“Annex 1”).²
 - b. [REDACTED] (“Annex 2”).³
 - c. [REDACTED] (“Annex 3”).⁴
2. These Documents are suitable for admission as they are relevant, authentic and have probative value, which is not outweighed by any prejudicial effect. Not only do they comprise an inseparable and indispensable part of W04769’s cross-examination but they are crucial to properly assessing the authenticity, reliability, and probative value of P499⁵ and P507⁶ – substantively identical documents of Serbian provenance which the Defence contends ought to be given minimal weight, if any, in the Trial Panel’s deliberations. In this regard, the Defence notes that, as matter of efficiency, all references made in this Request to P507 apply equally to P499.⁷

II. SUBMISSIONS

3. The Defence recalls that during W04769’s direct examination, P507 was admitted for the truth of its contents.⁸ It further notes that the item is central to

¹ See, [REDACTED].

² See, [REDACTED].

³ See, [REDACTED].

⁴ See, [REDACTED].

⁵ U000-5851-U000-5851/ U000-5851-U000-5851_ET.

⁶ U000-4853-U000-4853/ U000-4853-U000-4853-ET.

⁷ The Defence notes that the Prosecution tendered P00507 as “an enhanced version of that same document” – *i.e.*, P00499.

⁸ [REDACTED].

the Prosecution's case against Kadri Veseli,⁹ and is being relied upon as proof that:

- a. A KLA intelligence and counter-intelligence function was established in the Pashtrik Zone, in July 1998;
 - b. The duties of that function comprised, *inter alia*, the carrying out of executions and kidnappings of collaborators and criminals; and
 - c. Those tasks were divided between [REDACTED], [REDACTED] and [REDACTED], all [REDACTED] of whom [REDACTED].¹⁰
4. The Defence has expressed, on multiple occasions, grave concerns over the item's authenticity and reliability.¹¹ It is the Defence's position that P507 is a forged document provided to [REDACTED] by Serbian Intelligence for the sole purpose of falsely implicating the KLA in the commission of crimes. P507 has been extracted from a larger collection of KLA documents which, although obscured by the metadata, was evidently provided to [REDACTED] by Serbian intelligence, as it includes a Serbian version of the document in typed Cyrillic script.¹² The Defence has already placed extensive evidence before this Court regarding the source of these documents, showing that P507 was published in a book authored by the war-time deputy chief of the Serbian Security Service,

⁹ See, F01594/A03, Annex 3 to Prosecution submission of updated witness list and confidential lesser redacted version of pre-trial brief: Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief', 9 June 2023, confidential, fns 219, 650, 1652-1654.

¹⁰ See, P00507/P00507_ET. See also, P00499/P00499_ET and U000-4844-U000-4859.

¹¹ See, F01115, Defence Preliminary Submissions on Admissibility of Evidentiary Material Disclosed under Rule 102, 18 November 2022, confidential, paras. 42-43; F01387, Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table with confidential Annexes 1-8, 21 March 2023, confidential, para 74, fn. 128; F01387/A06, Annex 6 to Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table, 21 March 2023, confidential, p. 14, no. 164.

¹² F01115, paras. 42-43.

Zoran Mijatović.¹³ On this basis alone, the Defence avers that there is ample ground for the Trial Panel to conclude that P507 lacks the requisite evidentiary weight to support the charges to which it pertains.

5. However, given that P507 has now entered the evidentiary record, the Defence seeks admission of Annexes 1-3 in order to cement its challenge in respect of P507's authenticity, reliability, and probative value. It submits that Annexes 1-3 fulfil the requirements for admission in Rule 138(1) of the Rules and should be accepted as such by the Trial Panel. Anything short of their admission would deprive Mr Veseli of the right to challenge the evidence brought against him.

A. Authenticity

6. There can be no doubt that Annexes 1-3 are *prima facie* authentic. Annexes 1 and 2 are extracts of validly prepared [REDACTED] of interviews conducted by [REDACTED] with [REDACTED] and [REDACTED], respectively. [REDACTED] personnel as well as [REDACTED] are clearly identified in the [REDACTED].¹⁴ As regards Annex 3,¹⁵ it is an official, stamped, document from the [REDACTED], where [REDACTED]. [REDACTED] signature clearly appears over the [REDACTED] on both pages.¹⁶ Moreover, the second page, in particular, is stamped by [REDACTED] – the accepting officer at the [REDACTED].¹⁷

¹³ See, F01115, para. 43, fns 53 and 54 citing SITF00077620-00077822, p. SITF00077816 – Z. Mijatović, OPELO ZA DRŽAVNU TAJNU - Svedočenje iz vrha Državne bezbednosti, (ITP "Pharos" Beograd, 2004.

¹⁴ See generally, Annex 1, p. 1; Annex 2, p. 1. See further, [REDACTED].

¹⁵ This document was shown to the witness as it appeared in [REDACTED] [see, [REDACTED]]. [REDACTED].

¹⁶ See generally, Annex 3.

¹⁷ Annex 3, p. 2.

B. Relevance and Probative Value

7. The Defence avers that Annexes 1-3 are highly relevant and probative because they address the authenticity, reliability, and probative value of P507. Without the admission of these three Annexes, any assessment of P507 will be necessarily incomplete. It is in the interests of justice that they be admitted into evidence.
8. Annexes 1 and 2 demonstrate that two of the three individuals named in P507 – specifically, [REDACTED] and [REDACTED] – categorically oppose the suggestion that the signatures contained therein are attributable to them.¹⁸ As indicated in the extracted portions of their statements, both men have reservations about P507's authenticity, and [REDACTED] specifically decried the document as certainly stemming from the Serbian state apparatus.¹⁹
9. The Prosecution told the Trial Panel that it does not consider [REDACTED], nor [REDACTED] to be reliable individuals and therefore chose to disregard the fact that both men denied the signatures were theirs. In this regard, Annex 3 is particularly relevant because it shows that [REDACTED]'s signature differs markedly from that contained in P507,²⁰ providing independent corroboration that his denial is truthful, and by extension tends to show that [REDACTED]'s denial was also truthful.
10. Assessed cumulatively, Annexes 1-3 are relevant to the assessment of P507 and offer evidence in support of the position that the item was forged by Serbian intelligence with the sole purpose of incriminating the KLA. Further to this, the Defence avers that this Request must, as a matter of principle, be considered in light of P507's (i) inclusion in RDB Section of Zoran Mijatović's book as an

¹⁸ Annex 1, p. 1 line 14 – p. 2 line 2; Annex 2, p. 2, lines 24-25.

¹⁹ Annex 1, p. 2, line 2 *et seq.*

²⁰ *C.f.*, Annex 3, pp 1-2 and P00507.

example of evidence he handed over to [REDACTED];²¹ (ii) the Serbian state's consistent and unabashed participation in the falsification and manipulation of evidence against the KLA;²² and (iii) the continuance of that participation in the current proceedings through the provision of other, seemingly incriminating, documentation to the SPO, as well as, through intermediaries like [REDACTED].²³

C. Prejudice

11. Lastly, the Defence submits that admission of Annexes 1-3 causes no prejudice to any of the Parties or Participants to these proceedings.
12. The Defence only seeks admission of discrete extracts of [REDACTED] and [REDACTED]'s [REDACTED]. Indeed, only those portions which are relevant to the assessment of P507's authenticity, reliability and probative value are being offered for admission. To this end, the Defence notes that all three Annexes were shown to W04769 during his cross-examination.²⁴ The Prosecution is fully on notice of this request given that Counsel for Mr Veseli originally intend to have Annexes 1-3 admitted in-court.²⁵ It is only upon instructions from the Trial Panel that this request is being made in written form.
13. Whereas the Defence foresees a potential challenge to the admission of Annexes 1 and 2, on the basis that they are statements not admissible solely under Rule 138(1) of the Rules, it nonetheless submits that the Prosecution has

²¹ See, F01115, para 43, fns 53 and 54 citing SITF00077620-00077822, p. SITF00077816 – Z. Mijatović, OPELO ZA DRŽAVNU TAJNU - Svedočenje iz vrha Državne bezbednosti, (ITP "Pharos" Beograd, 2004.

²² See, F00877/COR, *Corrected Version of Joint Defence Motion for Disclosure Pursuant to Rule 103, With Public Annexes 1-3 and Confidential Annex 4* (F00877, dated 12 July 2022), 21 July 2022, confidential, paras 25-77.

²³ See generally, F01100, *Veseli Defence Supplemental Submissions to Joint Defence Motion for Disclosure Pursuant to Rule 103 (F00877/COR), With Confidential Annexes 1-2*, 14 November 2022, confidential.

²⁴ See, [REDACTED].

²⁵ [REDACTED].

necessarily opened itself up to the possibility of their admission under that Rule by knowingly tendering a forged document for admission. It has done so while failing – throughout the pre-trial and trial processes – to correctly link P507 and substantively similar versions of that item with the Cyrillic version that contains 15 additional pages of the alleged KLA notebook,²⁶ which are highly relevant to any assessment of the isolated and formally distinct page that appears in P507.²⁷

III. CLASSIFICATION

14. These submissions are filed confidentially pursuant to Rule 82(3) as they concern matters that are subject to protective measures. The Defence will submit a public redacted version of the Request in due course or until it is ordered to do so by the Trial Panel.

IV. CONCLUSION

15. In light of the foregoing, the Defence requests that Annexes 1-3 be admitted into evidence.

Word Count: 1,855



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²⁶ See, ERN U000-4844-U000-4859 within the context of F00631/A03, ANNEX 3 to Public Redacted version of 'Submission of Pre-Trial Brief, with witness and exhibit lists', KSC-BC-2020-06/F00631, dated 17 December 2021, 21 December 2021, confidential, pp. 1107-1108, items 12477 and 12478 (U000-4844-U000-4845/U000-4844-U000-4859) and 1119, items 12573 and 12574.

²⁷ The Defence reiterates, at this stage, that the writing contained in P507 is markedly different from the rest of the handwriting which appears in the other pages of the KLA notebook (U000-4844-U000-4859). This issue was addressed at length during W04769's testimony at [REDACTED].

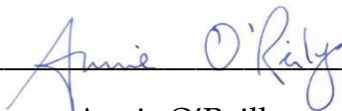
Thursday, 19 October 2023,
The Hague, The Netherlands

Signed

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