



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

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'Prosecution response to Defence supplementary submissions on crime site visit'

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,¹ and Rule 74(1)(a) of the Rules,² the Specialist Prosecutor's Office ('SPO') hereby responds to the Defence Supplementary Submissions.³

2. In line with its prior submissions on this matter,⁴ it is the SPO's position that, while a site visit could be of assistance to the Trial Panel ('Panel'), the evidence on record on the layout of the Kukës Metal Factory is sufficient to enable a proper assessment of the allegations in the Indictment. As further elaborated below, a site visit is not necessary for the determination of the truth in this case. Should the Panel nonetheless deem a site visit necessary, it should be conducted expeditiously, taking into account the security, cost and logistical considerations involved.

II. SUBMISSIONS

A. THE EVIDENCE ON RECORD ALLOWS FOR THE PROPER DETERMINATION OF THE CHARGES AGAINST THE ACCUSED

3. The case record includes extensive documentary evidence showing the layout, features, and dimensions of the Kukës Metal Factory. In particular, the SPO has submitted, and the Panel has considered available for its deliberations and judgment, *inter alia*:⁵ (i) cadastral maps of the Kukës Metal Factory providing a description of its

¹ Decision conveyed by the CMU Court Officers by way of e-mail communication on 12 January 2024 at 15:56, reducing the time limits prescribed by the Rules for responses to the Defence supplementary submissions to its request for a crime site visit.

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 Defence Supplementary Submissions to its Request for a Crime Site Visit, KSC-BC-2020-04/F00761, 10 January 2024 ('Defence Supplementary Submissions'), confidential.

⁴ Prosecution submissions in advance of the trial preparation conference, with strictly confidential and *ex parte* Annexes 1- 2 and confidential Annex 3, KSC-BC-2020-04/F00303, 10 October 2022, confidential, para.18; Transcript (Trial Preparation Conference), 18 October 2022, pp.346-347; Prosecution response to Defence motion for a crime site visit, KSC-BC-2020-04/F00338, 7 November 2022, confidential, para.2.

⁵ Prosecution motion for admission of documentary evidence with confidential Annex 1, KSC-BC-2020-04/F00431, 22 February 2023, confidential, paras 18-19, 21-22; Annex 1 to Prosecution motion for

components, dimensions, and measurements, as well as the distance between its different buildings;⁶ (ii) photographs of the site, showing both its external⁷ and internal⁸ parts; and (iii) the written record of the search of the site conducted by the [REDACTED] together with W04379 and SPO staff in 2019, which provides a detailed description of the premises, the measurements of the internal and external spaces, and the materials found therein.⁹

4. The SPO has also tendered a number of sketches drawn by witnesses, which depict the structures existing at the time of the Indictment and their functions,¹⁰ as well as exhibits in which witnesses have located the position of doors or windows within specific parts of the Factory.¹¹

5. During their testimonies, SPO witnesses provided detailed descriptions of the Kukës Metal Factory's layout,¹² and identified specific buildings or parts within the

admission of documentary evidence, KSC-BC-2020-04/F00431/A01, 22 February 2023, confidential, items 47-60; Decision on the Specialist Prosecutor's motion for admission of documentary evidence, KSC-BC-2020-04/F00491, 20 April 2023, confidential, paras 36, 42(b); Prosecution request for admission of material used during the cross-examination of DW4-02 and DW4-05, KSC-BC-2020-04/F00684, 10 October 2023, public, paras 4-5, 8; Annex 1 to Prosecution request for admission of material used during the cross-examination of DW4-02 and DW4-05, KSC-BC-2020-04/F00684/A01, 10 October 2023, confidential, items 4-5; 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 15, 21(c).

⁶ P00070 and P00070_ET; P00078, P00079, P00080, P00081.

⁷ P00072; P00073 and P00073_ET; P00071 and P00071_ET; P00093; V00005.

⁸ P00074; P00075; V00005.

⁹ P00067_AT and P00067_ET.

¹⁰ See P00163; P00092; P00148 and P00148_ET, p.060653; P00161, p.108822; P00103.

¹¹ See, for example, P00149, p.108847; P00100.

¹² Transcript (TW4-10), 1 May 2023, pp.1038-1054 (describing the gate, the guard booth, the courtyard, the 'sleeping quarters', the kitchen, the warehouses, and identifying all of these buildings in pictures and on a previously drawn sketch) and P00094; Transcript (TW4-11), 2 May 2023, p.1198 ('from the entrance, there was a yard. We walked a bit to the right and then opposite on the left was the room where they brought me.');

Transcript (TW4-01), 30 May 2023, pp.1409-1413, and P00164.

premises.¹³ Several witnesses identified the detention building,¹⁴ and described its features.¹⁵

6. Defence witnesses, too, have provided evidence on the Kukës Metal Factory's layout. W04754 in particular identified a number of locations,¹⁶ and explained how the different warehouses were used,¹⁷ while W03887 identified in pictures and the videos he shot the courtyard, the entrance gate, the warehouse, the headquarters, and one of the offices inside the command building.¹⁸

7. This evidence, considered together with the visual aids used by the SPO during its opening statements,¹⁹ provides a clear picture of all locations relevant to this case, including the three locations the Defence requests be visited.²⁰ The Panel will be in a position to rely on this evidence to assess the credibility of the witnesses' account of events that took place within the premises.

8. With regard to the Defence submissions on the line of sight from inside the detention building,²¹ an issue of minimal relevance at best, a site visit would not be of assistance to the Panel, considering that that building has been mostly destroyed, and that only a minimal part of its original length remains standing.²² Under these circumstances, it would be very difficult to determine on site – with any useful degree

¹³ See, for example, Transcript (TW4-10), 1 May 2023, p.1055 (marking the entrance door on a picture of the detention building - P00097); Transcript of Hearing (TW4-11), 2 May 2023, pp.1192-1193 [REDACTED].

¹⁴ Transcript (TW4-10), 1 May 2023, p.1054; Transcript (TW4-11), 2 May 2023, pp.1200-1201, 1204-1205; [REDACTED].

¹⁵ Transcript (TW4-10), 1 May 2023, pp.1054-1055; Transcript (TW4-11), 2 May 2023, p.1199; Transcript (TW4-01), 30 May 2023, pp.1424-1431.

¹⁶ Transcript (W04754), 23 October 2023, pp.2961-2963, and D00046.

¹⁷ Transcript (W04754), 23 October 2023, pp.2949-2953 and D00045.

¹⁸ Transcript (W03887), 20 November 2023, pp.3177-3179, 3261-3262; Transcript (W03887), 21 November 2023, p.3289; 075138-02.

¹⁹ 20230221 3D model, Surrogate sheet for PowerPoint presentation of 3D Model used by the SPO during the opening statements in case KSC-BC-2020-04 on 21 February 2023.

²⁰ See, for example, P00074; V00005; 075138-02 (for the command building); P00074, p.065636; P00116, pp.5-6; Transcript (TW4-01), 30 May 2023, p.1471 (for the room under the stairs).

²¹ Defence Supplementary Submissions, KSC-BC-2020-04/F00761, paras 26-29.

²² See, in this regard, P00079 and P00081.

of precision – the location of the windows referred to by [REDACTED],²³ and to measure their distance and angle from the Kukës Metal Factory's entrance.

III. CONCLUSION

9. The evidence on record makes a visit to the Kukës Metal Factory unnecessary for the determination of the charges against the Accused. Should the Panel nonetheless consider a visit to the Kukës Metal Factory important for truth-finding purposes, the SPO submits that it should be conducted expeditiously, bearing in mind the security and logistical considerations involved.

IV. CLASSIFICATION

10. This filing is confidential pursuant to Rule 82(4) of the Rules. A public version will be filed.

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Kimberly P. West

Specialist Prosecutor

Friday, 19 January 2024

At The Hague, the Netherlands.

²³ [REDACTED].