



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

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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Public Redacted Version of 'Prosecution reply relating to Rule 153 motion F02227'

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I. INTRODUCTION

1. Pursuant to Rule 76,¹ the Specialist Prosecutor's Office ('SPO') hereby replies to the Response,² which fails to show any convincing reasons why the Motion³ should not be granted in its entirety. The evidence tendered in the Motion is admissible as it is *prima facie* relevant, authentic, and has probative value which is not outweighed by any prejudice. Moreover, the proposed evidence satisfies all of the relevant conditions for admission in lieu of oral testimony pursuant to Rule 153.

2. As a preliminary matter, the SPO notes that for one interview tendered in the Motion, there exist further revised versions of its two parts. The SPO hereby notifies the Panel and the Defence of the following replacements for Witness W00996, which do not contain any changes impacting the submissions made in the Motion or Response:⁴

- 033109-TR-AT Part 1 Revised 1 RED replaces 033109-TR-AT Part 1 Revised RED;
- 033109-TR-AT Part 2 Revised 1 RED replaces 033109-TR-AT Part 2 Revised RED;
- 033109-TR-ET Part 1 Revised 1 RED replaces 033109-TR-ET Part 1 Revised RED;
- 033109-TR-ET Part 2 Revised 1 RED replaces 033109-TR-ET Part 2 Revised RED.

II. SUBMISSIONS

3. Despite the Defence's claims to the contrary,⁵ the Rules and accompanying caselaw which explicitly allow for the admission of evidence in lieu of oral testimony

¹ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rule' or 'Rules').

² Joint Defence Response to Prosecution motion for the admission of the evidence of witnesses W00996, W02257, W02303, W04352, W04367, W04420, W04569, W04645, W04677, and W04732 pursuant to Rule 153, KSC-BC-2020-06/F02251, 18 April 2024, Confidential ('Response').

³ Prosecution motion for the admission of the evidence of witnesses W00996, W02257, W02303, W04352, W04367, W04420, W04569, W04645, W04677, and W04732 pursuant to Rule 153, KSC-BC-2020-06/F02227, 8 April 2024, Confidential ('Motion').

⁴ The SPO also notes that the ERN for one of W02303's associated exhibits was incomplete. 061367-061370-ET should have been 061367-061370-ET RED.

⁵ See e.g. Response, KSC-BC-2020-06/ F02251, paras 16, 26.

make it clear there is no ‘right’ to cross-examination, and no party can simply ‘elect’ to cross-examine any witness it chooses.⁶ Furthermore, and as set out in more detail below, the Defence’s arguments against admission either concern matters which go to the weight to be assigned to the evidence and not to its admission, or address factors which are immaterial for assessing the admissibility of evidence pursuant to Rule 153.

A. W02303 AND W04732

4. The evidence of W02303 and W04732 should be admitted in its entirety. The Defence arguments against admission demonstrate a fundamental misunderstanding and/or misstatement of the nature of the evidence, the general requirements for admissibility, and the factors used to assess whether admission is warranted pursuant to Rule 153.

5. First, the Defence incorrectly characterises the witnesses’ evidence as having low relevance and limited probative value.⁷ As set out in detail in the Motion, however, the evidence of both witnesses is plainly relevant to and probative of crimes charged in the Indictment.⁸ Moreover, by arguing the evidence has low relevance and low value, the Defence concedes that the evidence *is* in fact relevant and probative. Even if the Panel were to agree with the Defence’s mischaracterisations of the level of relevance and value, the Motion clearly demonstrates that this evidence has more than a tenuous or remote connection to the facts and circumstances of the case.⁹

⁶ See e.g. Rule 153; Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153, KSC-BC-2020-06/F01904, 3 November 2023, Confidential (‘First Rule 153 Decision’), paras 7-13 (setting out how it is the Panel, not the Parties, which decides whether a witness must appear for cross-examination). Compare Rule 127(3) (referencing the availability of cross-examination to an opposing Party ‘if it elects to exercise this right,’ but *only* for witnesses ‘called before the Trial Panel.’).

⁷ Response, KSC-BC-2020-06/F02251, paras 5-6, 11.

⁸ Motion, KSC-BC-2020-06/F02227, paras 14-15, 41-42.

⁹ See e.g. Decision on Specialist Prosecutor’s Bar Table Motion, KSC-BC-2020-06/F01409, 31 March 2023, Confidential, para.10.

6. Second, the Defence incorrectly argues that W02303's evidence should not be admitted because it is 'mainly hearsay.'¹⁰ As discussed in the Motion, however, much of the witness's evidence is based on her first-hand observations and personal experiences.¹¹ Furthermore, even if the Panel were to accept the Defence's mischaracterisation of W02303's evidence, it would not render the evidence inadmissible because – as this and other Panels have held numerous times – hearsay evidence is admissible before the Specialist Chambers.¹²

7. Finally, the Defence argues that admitting the witnesses' evidence pursuant to Rule 153 would unnecessarily overburden the record.¹³ However, considering the purpose of Rule 153 is to alleviate the potential burden on the record from, for example, adducing cumulative, crime base, contextual, and/or background evidence *viva voce*, the admission of the evidence of these witnesses in lieu of oral testimony will have the exact opposite effect as that described by the Defence. Moreover, it will facilitate fair and expeditious proceedings.¹⁴

B. W04352

8. The evidence of W04352 should be admitted in its entirety. The Response is misleading as to the claimed centrality of W04352's account. W04352 is a crime base witness and offers no evidence concerning the acts and conduct of the Accused. The Defence points to the SPO's reliance on W04352's evidence in its Pre-Trial Brief concerning 'key issues' related to Drenoc/Drenovac.¹⁵ The Defence neglects to mention, however, the other evidence relied upon by the SPO in this regard, including

¹⁰ Response, KSC-BC-2020-06/F02251, paras 6-9.

¹¹ Motion, KSC-BC-2020-06/F02227, para.14.

¹² See e.g. Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 16 March 2023, Confidential, para.21; Second Rule 153 Decision, KSC-BC-2020-06/F02111, paras 22, 41.

¹³ Response, KSC-BC-2020-06/F02251, paras 6, 10, 14-15.

¹⁴ First Rule 153 Decision, KSC-BC-2020-06/F01904, para.13.

¹⁵ Response, KSC-BC-2020-06/F02251, para.17.

that of [REDACTED].¹⁶ In this respect, the Defence also understates its opportunities to confront other evidence concerning crimes at Drenoc/Drenovac, including witnesses who have already testified and been subject to cross-examination.

9. Conversely, the Defence overstates its ability and need to explore with W04352 the motives behind the arrest of [REDACTED].¹⁷ When asked about the possible reasons for [REDACTED] arrest, W04352 stated, '[H]ow do I know what was in their minds or what their reasons were? I don't know.'¹⁸ The Defence suggestion that W04352 would be able to provide further clarity on this topic beyond his existing statements is purely hypothetical and should, therefore, be dismissed.¹⁹ To the extent that W04352's statements show any discrepancy in his understanding of the motives behind [REDACTED] arrest, such discrepancies would be matters going to the weight to be assigned to W04352's evidence in light of all evidence at trial, and not to the issue of admissibility at this stage pursuant to Rule 153.²⁰

C. W04367

10. The evidence of W04367 should be admitted in its entirety. The Defence arguments concerning W04367, [REDACTED], are contradictory and unpersuasive. The Defence position appears to be that W04367's evidence is either impermissibly uncorroborated hearsay, or integral to the Defence's ability to challenge the allegations relating to Drenoc/Drenovac.²¹ The Panel has previously dismissed similar

¹⁶ Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, 9 June 2023, Confidential ('Pre-Trial Brief'), [REDACTED].

¹⁷ In this regard, *see generally* Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W04016, W04019, W04044, W04305, W04361, W04722, W04816, W04850, W04851, and W04852 pursuant to Rule 153, KSC-BC-2020-06/F02111, 8 February 2024, Confidential ('Second Rule 153 Decision'), paras 15, 41.

¹⁸ 092856-TR-ET Part 1 RED2, pp.51-52.

¹⁹ First Rule 153 Decision, KSC-BC-2020-06/F01904, para.34.

²⁰ First Rule 153 Decision, KSC-BC-2020-06/F01904, para.56; Second Rule 153 Decision, KSC-BC-2020-06/F02111, para.50.

²¹ Response, KSC-BC-2020-06/F02251, para.24.

arguments against the admission of hearsay evidence pursuant to Rule 153.²² Admitting the evidence of W04367 pursuant to Rule 153 [REDACTED], is entirely appropriate given that: (i) the witnesses provide crime base evidence which does not go to the acts and conduct of the Accused; and (ii) [REDACTED] has already appeared and has been subjected to cross-examination on the same events discussed by these witnesses.

11. There is also no merit in the Defence assertion that the Rule 153 Motion for W04367 is premature.²³ It is for the SPO to determine the order and proposed mode of testimony of its witnesses.²⁴ Moreover, there is nothing in the Law, the Rules, or relevant jurisprudence limiting the number of written statements the Panel may admit.²⁵ Finally, no prejudice results from the admission of W04367's evidence pursuant to Rule 153, regardless of the Panel's determination with respect to [REDACTED] evidence. The lack of any prejudice is particularly clear given the Defence does not appear to contest that detainees were mistreated at Drenoc/Drenovac.²⁶

D. W04569

12. The Defence fails to provide any convincing reasons why W04569's evidence is unsuitable for admission pursuant to Rule 153. W04569 unambiguously addresses his knowledge of the relationship between the KLA and [REDACTED]²⁷ in [REDACTED] 1998,²⁸ and the accusations made against [REDACTED] and his subordinates.²⁹

²² Second Rule 153 Decision, KSC-BC-2020-06/F02111, para.22.

²³ Response, KSC-BC-2020-06/F02251, para.22.

²⁴ Second Rule 153 Decision, KSC-BC-2020-06/F02111, para.22.

²⁵ See e.g. *Specialist Prosecutor v. Shala*, Decision on the submission and admissibility of non-oral evidence, KSC-BC-2020-04/F00461, 17 March 2023, para.36. See also ICTY, *Prosecutor v. Prlić*, IT-04-74-AR73.17, Decision on Slobodan Praljak's Appeal of the Trial Chamber's Refusal to Decide Upon Evidence Tendered Pursuant to Rule 92bis, 1 July 2010, paras 16, 31-33.

²⁶ See e.g. Transcript, [REDACTED].

²⁷ [REDACTED].

²⁸ Response, KSC-BC-2020-06/F02251, para.28. See also [REDACTED].

²⁹ Response, KSC-BC-2020-06/F02251, para.28. See also [REDACTED].

Moreover, the Defence seeks to cross-examine the witness on matters which have been [REDACTED].³⁰

13. In support of its claim that W04569's evidence is of 'fundamental importance' to charges in the Indictment, the Defence refers to two paragraphs: one defines the common purpose, without reference to specific factual allegations; and the other refers to events around [REDACTED] 1998 [REDACTED].³¹ As noted in the Motion and as acknowledged in the Response, W04569 provides primarily 'contextual and background' evidence³² [REDACTED].³³ Other witnesses, including [REDACTED] and [REDACTED], have testified or will testify on the same matters mentioned in the Response – for example, the relationship between the KLA [REDACTED].³⁴ Moreover, unlike W04569, [REDACTED] and [REDACTED] were both present at and have first-hand knowledge of events around [REDACTED] 1998 [REDACTED], as alleged in the Indictment. The Defence had or will have every opportunity to cross-examine those witnesses and, under these circumstances, W04569's evidence is entirely suitable for admission in lieu of oral testimony pursuant to Rule 153.

III. CLASSIFICATION

14. This submission is filed as confidential pursuant to Rule 82(4) and because it contains information concerning protected witnesses.

³⁰ [REDACTED].

³¹ See Response, KSC-BC-2020-06/F02251, para.28, *citing* Indictment, KSC-BC-2020-06/F00999/A01, paras 32, [REDACTED].

³² Response, KSC-BC-2020-06/F02251, para.27. See also Motion, KSC-BC-2020-06/F02227, para.32.

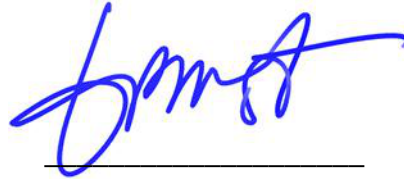
³³ Motion, KSC-BC-2020-06/F02227, para.30.

³⁴ Motion, KSC-BC-2020-06/F02227, para.32.

IV. RELIEF REQUESTED

15. For the foregoing reasons and those previously given, the Motion, with the replacements indicated in paragraph 2 above, should be granted in its entirety.

Word Count: 1925



Kimberly P. West
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Monday, 29 April 2024

At The Hague, the Netherlands.