



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

Date: 29 April 2024

Language: English

Classification: Public

Public Redacted Version of 'URGENT Prosecution motion for admission of evidence of W02486 pursuant to Rule 154 and request for video-conference testimony with two confidential Annexes'

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I. INTRODUCTION

1. Pursuant to Articles 37 and 40 of the Law,¹ and Rules 137-138 and 154 of the Rules,² the Specialist Prosecutor's Office ('SPO'): (i) submits the information required by paragraphs 73-74 of the Conduct of Proceedings Order;³ and (ii) requests the admission of W02486's statements (collectively, 'Rule 154 Statement') and associated exhibit.⁴ Further, pursuant to Articles 23(1) and 40(2), and Rules 80, 141(1) and 144,⁵ and in light of W02486's personal circumstances, including the witness's age and physical frailty, the SPO requests the Trial Panel to authorise the testimony of W02486 to take place by video-conference from an appropriate location in [REDACTED].⁶ Finally, due to recent developments which required the SPO to call the witness to testify on 10 May 2024 as the last witness in this evidentiary block,⁷ the SPO requests an expedited briefing schedule.

II. SUBMISSIONS

A. ADMISSION OF THE PROPOSED EVIDENCE PURSUANT TO RULE 154

2. *Relevance.* W02486, [REDACTED], an employee of the Ministry of Interior [REDACTED].

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

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 refer to the Rules, unless otherwise specified.

³ See Annex 2. See also Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Conduct of Proceedings Order').

⁴ The Rule 154 Statement and associated exhibit are referred to herein as the 'Proposed Evidence'. Annex 1 attached to this filing contains a table identifying the Proposed Evidence for W02486. The applicable law has been set out in previous submissions and decisions in this case. 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, paras 26-35.

⁵ See also Registry Practice Direction on Video Links, KSC-BD-23/COR, 17 July 2020 as corrected on 5 August 2020 ('Practice Direction').

⁶ Based on preliminary consultations, the facilities of the [REDACTED] will be made available for testimony by video-conference.

⁷ As indicated by email (dated 29 April 2024 at 10.57), W02677 and W04575 are not able to testify during this evidentiary block and other planned testimonies are proceeding faster than expected.

3. On 13 July 1999, two men from the neighbourhood came to W02486's house, said that they were with the KLA and demanded that [REDACTED] surrender his weapons, which he did. The next morning, on 14 July 1999, two men came, including one named [REDACTED], asked for [REDACTED], and said that he should come with them to [REDACTED]. When [REDACTED] refused, they said that he had better go voluntarily or they would force him to. He left the house in his indoor slippers as he was told there was no need to change. W02486 then saw [REDACTED] being pushed into a car and driven away. After the abduction, W02486's neighbour went to the [REDACTED] and was informed that [REDACTED] was being interrogated and that he would be released within half an hour. W02486 never saw [REDACTED] alive again. His body was discovered in [REDACTED].

4. W02486's evidence is thus relevant to charged crimes in the Indictment.⁸

5. *Authenticity and Reliability.* W02486's Proposed Evidence is *prima facie* authentic and reliable. The Rule 154 Statement is comprised of a two-part transcript of her SPO interview conducted on 7 September 2020,⁹ and of her testimony given before the [REDACTED].¹⁰ Both bear sufficient indicia of reliability.¹¹ W02486's SPO interview, as recorded in a verbatim transcript, is authentic and reliable. The transcript includes details such as the date, time and attendees.¹² The interview was conducted with the assistance of an interpreter in a language understood by the witness.¹³ W02486 was duly advised of her rights as a witness.¹⁴ The transcript of her court testimony, apart

⁸ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 138, [REDACTED]; Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief', KSC-BC-2020-06/F01594/A03, 9 June 2023 ('Pre-Trial Brief'), paras [REDACTED].

⁹ 078047-TR-ET Part 1 RED; 078047-TR-ET Part 2 RED.

¹⁰ 021672-021683-ET RED.

¹¹ For an individualised assessment of reliability, see Annex 1.

¹² 078047-TR-ET Part 1 RED, pp.1, 30; 078047-TR-ET Part 2 RED, p.1.

¹³ 078047-TR-ET Part 1 RED, p.1.

¹⁴ 078047-TR-ET Part 1 RED, pp.1-3.

from indication of date, time, place and case number,¹⁵ also provides details of all participants in the session,¹⁶ and warnings of the witness's rights and obligations.¹⁷

6. *Suitable for Rule 154 Admission.* W02486's Proposed Evidence satisfies the requirements of Rule 154: W02486 will be (i) present in court, (ii) available for cross-examination and any questioning by the Panel, and (iii) able to attest that the Rule 154 Statement accurately reflects her evidence and what she would say, if examined. The probative value of the Proposed Evidence is not outweighed by any prejudice.

7. Rule 154 admission for W02486's Proposed Evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit brief oral testimony from W02486 for approximately 1 hour¹⁸ on essential matters that highlight, clarify or explain certain aspects of her evidence.

8. *The associated exhibit is admissible.* The Associated Exhibit, in the form of W02486's handwritten note,¹⁹ forming part of the Proposed Evidence should be admitted as an inseparable and indispensable part of W02486's evidence. It is integral to the Rule 154 Statement as it was discussed and reviewed therein.²⁰ The Rule 154 Statement would be less comprehensible or have lesser probative value without the admission of the Associated Exhibit. It also fulfils the requirements of admissibility under Rule 138(1).

B. VIDEO-CONFERENCE REQUEST

9. Rules 141(1) and 144 expressly permit the testimony of witnesses to be given by means of video-conference, establishing three conditions that must be satisfied in such cases: (i) the technology must permit the witness to be properly examined by the Parties and the Panel, at the time they are testifying; (ii) the venue chosen must be

¹⁵ 021672-021683-ET RED, pp.1, 12.

¹⁶ 021672-021683-ET RED, pp.1, 12.

¹⁷ 021672-021683-ET RED, p.2

¹⁸ Amended List of Witnesses, KSC-BC-2020-06/F01594/A01, p.150.

¹⁹ 101739-101739-ET.

²⁰ 078047-TR-ET Part 1 RED, pp.5-6; 078047-TR-ET Part 2 RED, p.1.

conducive to the giving of truthful and open testimony and to the safety, physical and psychological well-being, dignity and privacy of the witnesses; and (iii) the measure must not be prejudicial to or inconsistent with the rights of the accused. No additional criteria are warranted.²¹

10. Video-conference testimony should not be considered only on an exceptional basis.²² When considering whether to permit video-conference testimony, the Panel may consider a number of factors, such as the location, personal and health situation, availability and security of the witness, as well as the complexity and duration of any logistical travel and other arrangements to be made.²³ These factors may also include procedural considerations, including the efficient conduct of the proceedings,²⁴ and a degree of flexibility is warranted in particular regarding matters of scheduling for reserve witnesses, given their nature.²⁵

11. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

12. In these circumstances, video-conference is most consistent with minimising the risk of harm and facilitating the witness's truthful and complete testimony. For these reasons, participating via video-link will improve the quality of W02486's evidence, and ensure her physical and psychological well-being.²⁶

²¹ *Specialist Prosecutor v. Shala*, Public Redacted Version of Decision on Specialist Prosecutor's request for video-conference testimony for TW4-04, TW4-10 and TW4-11, KSC-BC-2020-04/F00482/RED, 13 April 2023 ('*Shala* Decision'), para.13.

²² Decision on Prosecution Request for Video-Conference Testimony and Special Measure for W04337, KSC-BC-2020-06/F01558, 26 May 2023, Strictly Confidential and *Ex Parte* ('Decision F01558'), para.16; Decision on Prosecution Request for Video-Conference Testimony for W03827, KSC-BC-2020-06/F01776, 8 September 2023, Confidential ('Decision F01776'), para.12.

²³ Decision F01776, KSC-BC-2020-06/F01776, para.12; Decision F01558, KSC-BC-2020-06/F01558, para.16; KSC-BC-2020-06/F02181, Decision on Prosecution Request for Video-Conference Testimony for W04571, 15 March 2024 ('Decision F02181'), para.7. *See also Specialist Prosecutor v. Gucati and Haradinaj*, KSC-BC-2020-07, Transcript, 14 January 2022, p.3034.

²⁴ *Shala* Decision, KSC-BC-2020-04/F00482/RED, para.14.

²⁵ Oral Order authorizing Witness W04586's testimony to take place via video-conference, 14 July 2023, Transcript, pp.5802-5803.

²⁶ *See Shala* Decision, KSC-BC-2020-04/F00482/RED, para.18; Decision F01776, KSC-BC-2020-06/F01776, para.14; Oral Order authorizing Witness W03878's testimony to take place via video-conference, 28 February 2024, Transcript, p.13064, lines 2-5.

13. Granting the request would not be prejudicial to or inconsistent with the rights of the Accused.²⁷ The available technology allows for W02486 to be examined under the same conditions as she would be in the courtroom. W02486 would testify before the Panel, after taking the solemn declaration, in real-time, in the presence of the Parties and Victims' Counsel, who will be able to question W02486 as if the witness was physically present in the courtroom. The Panel will also be able to observe W02486's demeanour and assess her credibility.

14. Pursuant to Article 3 of the Practice Direction, the SPO provides the following information: (i) W02486 is anticipated to appear on 10 May 2024; (ii) the expected duration of direct examination is 1 hour;²⁸ (iii) the SPO requests W02486 to appear via video-link from an appropriate location in [REDACTED]; (iv) W02486 does not have in-court protective measures; (v) the witness has requested the presence of her doctor during her testimony; and (vi) W02486 will testify in Serbian. The SPO remains available should the Registry require any further information.

III. CLASSIFICATION

15. This filing and its Annexes are confidential pursuant to Rule 82(3), since they contains personal information concerning W02486, whose identity is not yet public.

IV. RELIEF REQUESTED

16. For the reasons set out above, the SPO requests that the Trial Panel: (i) admit the Proposed Evidence, subject to fulfilment of the Rule 154 conditions by W02486 during her testimony; (ii) grant the Request for video-conference testimony; and (iii) order an expedited briefing schedule.

²⁷ See Decision F01776, KSC-BC-2020-06/F01776, para.15.

²⁸ Amended List of Witnesses, KSC-BC-2020-06/F01594/A02, 9 June 2023, Confidential, p.150.

Word Count: 1,758



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Monday, 29 April 2024

At The Hague, the Netherlands.