



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 motion for the admission of the evidence of witnesses W00686, W02765, W04491, W04694, W04782, W04788, W04820, and W04837 pursuant to Rule 153 with confidential Annexes 1-8'

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Luka Mišetić

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

I. INTRODUCTION

1. Pursuant to Articles 37 and 40 of the Law¹ and Rules 137-138, 141(1), and 153 of the Rules,² the Specialist Prosecutor's Office ('SPO') seeks the admission in lieu of oral testimony of the written statements, transcripts, and associated exhibits of witnesses W00686, W02765, W04491, W04694, W04782, W04788, W04820, and W04837. This evidence is relevant, authentic, has probative value which is not outweighed by any prejudice, and meets all the conditions of Rule 153. Admission pursuant to Rule 153 is therefore in the interests of justice.³

2. In addition to the submissions on admissibility made herein, the annexes to this motion identify the statement(s)⁴ tendered through each witness (collectively, 'Rule 153 Statement'), and the indicia of authenticity and reliability for each. The annexes also list the exhibits associated with the Rule 153 Statements, identifying where the exhibits are discussed, and describing in more detail how each meets the conditions for admission.

II. SUBMISSIONS

A. GENERAL SUBMISSIONS ON ADMISSIBILITY

3. The evidence tendered for each witness should be admitted in lieu of oral testimony because it:

- (i) is relevant to the crimes charged in the Indictment;
- (ii) is *prima facie* reliable, containing sufficient indicia of authenticity;

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').

³ The applicable law has been set out previously. *See* Public Redacted Version of 'Prosecution motion for admission of evidence of Witnesses W01237, W04594, W04592, W04872, W04871, W04673 and W04362 pursuant to Rule 153', KSC-BC-2020-06/F01658/RED, 17 November 2023, paras 6-12; Public Redacted Version of Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153, KSC-BC-2020-06/F01904/RED, 27 November 2023, paras 7-12.

⁴ As indicated in the annexes, the SPO has also tendered any audio/video records corresponding to these statements (*see* Disclosures 1224 and 1225).

- (iii) has probative value which is not outweighed by any prejudicial effect; and
- (iv) meets all of Rule 153's requirements for admission.

4. As set out in more detail below, numerous Rule 153(1)(a) factors apply to the tendered evidence, weighing heavily in favour of admission. The proposed evidence:

- (i) is of a cumulative nature, in that other witnesses have given or will give oral testimony on similar facts;
- (ii) is corroborated by evidence which the Accused has or will be able to effectively confront, including through cross-examination;
- (iii) relates to, *inter alia*, the crime-base, contextual elements, and the relevant historical, political, or military background;
- (iv) complements adjudicated facts;
- (v) concerns the impact of crimes on victims; and
- (vi) was recorded or documented in a manner enabling the Parties and Panel to assess each witness's demeanour and/or credibility.

5. Moreover, the tendered evidence meets the requirements set out in Rule 153(2) in that the witness statements and testimonies are either signed or otherwise attested to by the witnesses and/or others participating in the questioning of the witnesses. Additionally, the official records of these statements and testimonies note, where applicable, the date, time, place, and identities of those present during questioning.

6. In addition to fulfilling the letter of Rule 153, admission of the tendered evidence in lieu of oral testimony will serve the spirit of the Rule by not only avoiding repetitive testimony and saving valuable court-time, but also by sparing the witnesses the burden of testifying live, and avoiding the unnecessary stress, expense, and other disruptions to the witnesses' lives including the likelihood of retraumatisation.

7. For all of these reasons, pursuant to Rule 153(3), and as set out in more detail below, the necessities of a fair and expeditious trial warrant the admission of the tendered evidence in written form, without cross-examination.

B. SPECIFIC SUBMISSIONS ON ADMISSIBILITY

8. The eight witnesses who are subject of this motion provide evidence relevant to the Likoc/Likovac detention site. Their proposed evidence corroborates and complements the following:

- (i) evidence of *viva voce*,⁵ Rule 153,⁶ Rule 154,⁷ and Rule 155⁸ witnesses;
- (ii) documentary evidence;⁹ and
- (iii) adjudicated facts.¹⁰

9. Together, the proposed evidence and relevant facts constitute an interconnected and compelling account of the circumstances in which the charged Likoc/Likovac victims were abducted, detained, mistreated, and in some cases, killed or disappeared. In addition to corroborating the evidence listed above, these eight witnesses provide complementary evidence of their own backgrounds; the crimes perpetrated against them; and the impact of these crimes on them and their loved ones.

1. W00686

10. *Relevance.* W00686 is a Serb who lived in Kosovo, in the village of [REDACTED], with his family. He describes the situation in [REDACTED] in early 1998, including the KLA presence in the area. He recounts how [REDACTED], disappeared when

⁵ See e.g. [REDACTED].

⁶ See e.g. [REDACTED].

⁷ See e.g. [REDACTED].

⁸ See e.g. [REDACTED].

⁹ See e.g. P00142_ET, P00133_ET, P00211, P01056, P01058; P00067_ET; P00220, P01057.1_ET, P01057.2_ET, P01059. See also Prosecution motion for admission of Drenica Zone documents, KSC-BC-2020-06/F02248, 16 April 2024.

¹⁰ See e.g. Annex 1 to Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F01534/A01, 17 May 2023 ('Adjudicated Facts'), Facts 217, 244-245.

working in a field [REDACTED] on [REDACTED]. They were never heard from again and their bodies were never found. Neighbours told W00686 and his family that they were taken into KLA custody, and other witnesses reported hearing the voices of [REDACTED] in Likoc/Likovac, a charged detention site in this case. After the disappearance of [REDACTED], W00686 and his family left Kosovo and never returned. W00686's evidence is therefore relevant to charged crimes in the Indictment and to assessing the credibility of related evidence.¹¹

11. *Authenticity and Reliability.* W00686's Rule 153 Statement comprises his SPO interview which was audio-visually recorded and documented in verbatim transcripts.¹² W00686 was also advised of his rights as a witness and confirmed that his statement was truthful, accurate, and given voluntarily.¹³

12. *Suitability for Rule 153 Admission.* W00686 provides purely crime-base evidence which is particularly suitable for admission in lieu of oral testimony. W00686's evidence is also largely cumulative with other witness and documentary evidence concerning the KLA presence and activities in the Likoc/Likovac area.¹⁴ His evidence is also corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination;¹⁵ and complements certain adjudicated facts.¹⁶

2. W02765

13. *Relevance.* W02765 is a Serb who lived in Kosovo with her family, in the village of [REDACTED]. She describes the situation and ethnic composition of the area in the

¹¹ See, *inter alia*, Annex 1 to Submission of confirmed amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, ('Indictment'), paras 16-31, 59-62, 96-99, 103, 136-139, 153-154; Annex 3 to Prosecution Submission of updated witness list and confidential lesser redacted version of the Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, 9 June 2023 ('Pre-Trial Brief'), paras 273-280. See *e.g.* [REDACTED].

¹² 077584-TR-ET Part 1 RED2.

¹³ 077584-TR-ET Part 1 RED2, pp.3-4, 33.

¹⁴ See *e.g.* [REDACTED].

¹⁵ See *e.g.* [REDACTED].

¹⁶ See *e.g.* Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 244-245.

first half of 1998, including the presence of KLA soldiers. W02765 recounts how she was arrested by the KLA in front of her house, alongside [REDACTED], and taken to Likoc/Likovac. Once in Likoc/Likovac, W02765 and [REDACTED] were intimidated, interrogated and mistreated. They were asked about the whereabouts of their male relatives. W02765 heard other prisoners screaming and crying, and also saw and heard [REDACTED]. W02765 and her two female relatives were released after about a day. W02765 and her family ultimately left Kosovo and no one from her family ever returned. W02765's evidence is therefore relevant to charged crimes in the Indictment and to assessing the credibility of related evidence.¹⁷

14. *Authenticity and Reliability.* W02765's Rule 153 Statement comprises her SPO interview, [REDACTED], and [REDACTED].¹⁸ The SPO interview was audio-visually recorded and documented in a verbatim transcript.¹⁹ W02765 was also advised of her rights as a witness and confirmed that her SPO statement was truthful, accurate, and given voluntarily.²⁰ [REDACTED] includes the date, time, place, and attendees; and W02765 also confirmed that it was truthful and accurate.²¹ [REDACTED] includes the date and time of the interview, and W02765 was given the opportunity to make any changes or supply additional information if needed.²²

15. *Suitability for Rule 153 Admission.* W02765 provides purely crime-base evidence which is particularly suitable for admission in writing in lieu of oral testimony. W02765's evidence is also largely cumulative with other witness and documentary

¹⁷ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 16-31, 59-62, 96-99, 103, 136-139, 153-154; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 273-280. See *e.g.* [REDACTED].

¹⁸ 078044-TR-ET Part 1 RED, p.1; SITF00370803-SITF00370808 RED; SPOE00113242-SPOE00113245 RED.

¹⁹ 078044-TR-ET Part 1 RED.

²⁰ 078044-TR-ET Part 1 RED, pp.2-3; 078044-TR-ET Part 4 RED, p.7.

²¹ SITF00370803-SITF00370808 RED, pp.SITF00370803-SITF00370805.

²² SPOE00113242-SPOE00113245 RED, pp.SPOE00113242, SPOE00113245.

evidence concerning the KLA presence and activities in the Likoc/Likovac area.²³ Her evidence is also corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination;²⁴ and complements certain adjudicated facts.²⁵

16. *Admissibility of the Associated Exhibits.* The official note from the [REDACTED] containing information about an interview with W02765, and the photo line-up shown to the witness in the course of her [REDACTED] interview, were both discussed with W02765 to the extent they form an inseparable and indispensable part of her evidence and should, therefore, be admitted as associated exhibits.

3. W04491

17. *Relevance, Authenticity, and Reliability.* The Panel has already found that W04491's SPO interview²⁶ is *prima facie* relevant, authentic, and probative.²⁷

18. W04491's Rule 153 Statement additionally comprises W04491's Preparation Notes 1 and 2.²⁸ These notes are documented in official templates and include details such as date, time, and identities of those in attendance.²⁹ During his preparation session, W04491 was advised of his duties as a witness,³⁰ and the preparation notes were read back to W04491, who confirmed their accuracy and truthfulness.³¹

²³ See e.g. [REDACTED].

²⁴ See e.g. [REDACTED].

²⁵ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 244-245.

²⁶ 071102-TR-ET Part 1 Revised RED and 071102-TR-ET Part 2 Revised RED.

²⁷ Decision on Prosecution Motion for Admission of Evidence of W00208, W02082, W02475, W04147, W04325, W04491 and W04753 Pursuant to Rule 154, KSC-BC-2020-06/F01848, 10 October 2023, Confidential ('Rule 154 Decision'), paras 81-83.

²⁸ 118305-118310A; 118311-118321.

²⁹ 118305-118310A, paras 2-4; 118311-118321, para.1.

³⁰ 118305-118310A, para.4.

³¹ 118305-118310A, para.28; 118311-118321, para.29.

19. *Suitability for Rule 153 Admission.* W04491 provides crime-base evidence, which is particularly suitable for admission in lieu of oral testimony. W04491's evidence is also corroborated by and complementary to other witness and documentary evidence concerning, *inter alia*, the detention and mistreatment of civilians by KLA members in Likoc/Likovac around the time of W04491's detention, and the roles of KLA members named in his evidence.³² W04491's evidence is also corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination;³³ and complements certain adjudicated facts.³⁴ Moreover, W04491 recently reviewed his SPO interview in detail, and provided clarifications, corrections, and additional information which significantly strengthen the probative value of his Rule 153 Statement.

20. While the SPO initially applied for admission for W04491's evidence pursuant to Rule 154,³⁵ the witness has since confirmed, both during his preparation session and thereafter, that he is not willing to testify. In this respect, W04491's refusal to testify appears to be based to a significant degree on fears that if he testified, the Accused or members of their networks would find him, reveal his identity, and he and his family in Kosovo would be at risk.³⁶ Taking into account the scope and nature of the witness's crime-base evidence; the past threats to and attacks on the witness and his family members, and his resulting refusal to cooperate in prior proceedings;³⁷ the fact that other witnesses in this case have, in both these and prior proceedings, been subject to

³² See e.g. [REDACTED].

³³ See e.g. [REDACTED].

³⁴ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 217, 244-245.

³⁵ Rule 154 Decision, KSC-BC-2020-06/F01848.

³⁶ 118322-118325 paras 5, 8, 11.

³⁷ 071102-TR-ET Part 1, pp.11, 16, 29-43; 071102-TR-ET Part 2, pp.5-9, 32, 38-45; 118311-118321, paras 13-14, 16.

a variety of pressures and threats;³⁸ and the serious climate of witness interference and intimidation in which these proceedings are being conducted – requiring W04491 to testify live would not serve the interests of justice.³⁹ In conjunction with the continuing need to streamline the SPO’s evidence presentation, these factors weigh heavily in favour of the admission of W04491’s evidence pursuant to Rule 153.

21. *Admissibility of the Associated Exhibits.* The Panel has already found that two of W04491’s proposed associated exhibits – a report from a criminal investigation file and W04491’s letter to [REDACTED] – form an indispensable and inseparable part of W04491’s evidence.⁴⁰ W04491’s associated exhibits additionally include video footage and a photograph that were discussed by W04491 to the extent they form an inseparable and indispensable part of his evidence.⁴¹ All of W04491’s tendered associated exhibits should therefore be admitted.

4. W04694

22. *Relevance.* W04694 provides evidence about the disappearance of [REDACTED] in May-June 1998. At the time of [REDACTED]’s disappearance, [REDACTED] and [REDACTED] had retired from his job as [REDACTED]. W04694 recounts how [REDACTED] often visited his [REDACTED] and his [REDACTED] in Kosovo. According to information W04694 gathered, [REDACTED] drove to Kosovo, was stopped in Komoran/Komorane, and abducted. When [REDACTED] disappeared,

³⁸ See also Decision on Prosecution Third Motion for Admission of Evidence Pursuant to Rule 155, KSC-BC-2020-06/F02013, 15 December 2023, para.51.

³⁹ The witness also resides in a state where the SPO and KSC do not have compulsory powers.

⁴⁰ Rule 154 Decision, KSC-BC-2020-06/F01848, paras 86-87.

⁴¹ The Panel previously found the photograph was not appropriate for admission because it was not clear at the time that W04491 was commenting on this photograph (*see* Rule 154 Decision, KSC-BC-2020-06/F01848, paras 85, 88). Subsequently, the SPO showed the photograph to W04491 during his preparation session and he identified the person in the photograph and confirmed it was the same photograph provided during his SPO interview (*see* 118311-118321, para.17; 118305-118310A, para.17).

W04694 repeatedly tried to contact him without success. W04694 reported [REDACTED] disappearance and contacted W04837, a police officer from [REDACTED] who was a friend of [REDACTED]. After a few months, W04837 informed W04694 that a video had been recovered from a detention facility in the Drenica Zone. The video showed four Serbs including [REDACTED] being interrogated by KLA members. W04694 states that [REDACTED]'s remains were never found. W04694's evidence is therefore relevant to charged crimes in the Indictment and to assessing the credibility of related evidence.⁴² It also provides the additional context necessary for the admission of video 054774-01.⁴³

23. *Authenticity and Reliability.* W04694's Rule 153 Statement comprises her SPO interview which was audio-visually recorded and documented in a verbatim transcript.⁴⁴ W04694 was advised of her rights as a witness and confirmed that her statement was given voluntarily.⁴⁵

24. *Suitability for Rule 153 Admission.* W04694 provides crime-base and contextual evidence which is particularly suitable for admission in lieu of oral testimony. W04694's evidence is cumulative with other witness and documentary evidence concerning the abductions and disappearances in the Drenica Zone.⁴⁶ Her evidence is

⁴² See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 16-31, 59-62, 96-99; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 267-282. See *e.g.* [REDACTED].

⁴³ The video of four Serb men detained by the KLA in May 1999 was previously tendered through a bar table motion, and its admission was denied without prejudice as the relevance of the video, without further context, could not be ascertained (*see* KSC-BC-2020-06-F01596, paras 15-16). As W04694's evidence now makes clear, the video is relevant to the detention and disappearance of [REDACTED] in the Drenica Zone, and to the testimony of W04694 and W04837 about his disappearance. The full video is probative of the KLA's detention of real and/or perceived opponents.

⁴⁴ 076244-TR-ET Part 1 RED; 076244-TR-ET Part 2 RED.

⁴⁵ 076244-TR-ET Part 1 RED, pp.3-4.

⁴⁶ See *e.g.* [REDACTED]. See also P00220, p.098615; and related items tendered through a bar table motion, KSC-BC-2020-06-F02248/A01: Items 82 (098615-098626 / 098615-098626-ET Revised, pp.098620, 098623-098625); 83 (097963-097997 / 097963-097997-ET Revised).

also corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination;⁴⁷ and complements certain adjudicated facts.⁴⁸

25. *Admissibility of the Associated Exhibits.* The witness examination record, criminal report certificate, and video of four Serb men detained by the KLA were each discussed with W04694 during her interview to the extent they form an inseparable and indispensable part of her evidence, and should therefore be admitted as associated exhibits.

5. W04782

26. *Relevance.* W04782 is an Albanian who lived in [REDACTED], Kosovo, in 1999. W04782 was [REDACTED], a named murder and forced-disappearance victim. During the night of [REDACTED] 1999, W04782 was present when [REDACTED] armed men in uniform [REDACTED] arrested [REDACTED]. W04782 recounts how her and [REDACTED] W04782 went to the KLA camp there, [REDACTED]. Relatives, [REDACTED], continued to go to the KLA camp but were threatened and not permitted to see [REDACTED]. They also visited other KLA bases, [REDACTED]. [REDACTED] was never released and remains missing. W04782's evidence is therefore relevant to charged crimes in the Indictment and to assessing the credibility of related evidence⁴⁹

⁴⁷ See e.g. [REDACTED].

⁴⁸ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 62-64, 217, 244-245.

⁴⁹ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 59-62, 96-98, 136-138, 141, 175, Schedule B39, Schedule C9; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

27. *Authenticity and Reliability.* W04782's Rule 153 Statement comprises her [REDACTED] interview record⁵⁰ and [REDACTED] statement.⁵¹ The interview record and statement were taken by authorised officials and translated into a language understood by the witness by a certified interpreter.⁵² Both documents include the date, time, place of interview, and/or a list of attendees.⁵³ They also contain the witness's attestations, signatures of the relevant officials, and the witness's signature.⁵⁴

28. *Suitability for Rule 153 Admission.* W04782 provides purely crime-base evidence which is particularly suitable for admission in writing in lieu of oral testimony. The admission of the complete Rule 153 Statement is not unduly repetitive or unnecessary as the interview record provides additional details about the arrest and disappearance of [REDACTED] including the identity of at least one of the perpetrators.⁵⁵ W04782's evidence is also largely cumulative with other witness and documentary evidence concerning the KLA prison in Likoc/Likovac, and the fate of many of those who were detained there.⁵⁶ W04872's evidence is also corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination;⁵⁷ and complements certain adjudicated facts.⁵⁸

6. W04788

29. *Relevance.* W04788 is a Kosovar Albanian and [REDACTED], who had been a MUP employee until his retirement in 1990. W04788 provides information about the disappearance of his brother and the efforts made by his mother to locate him. He

⁵⁰ SPOE00069903-SPOE00069904 RED.

⁵¹ SITF00095413-00095418 RED3.

⁵² SPOE00069903-SPOE00069904 RED, p.SPOE00069904; SITF00095413-00095418 RED3, pp.SITF00095415, SITF00095418.

⁵³ SPOE00069903-SPOE00069904 RED, pp. SPOE00069903-SPOE00069904; SITF00095413-00095418 RED3, pp.SITF00095413, SITF00095415.

⁵⁴ SPOE00069903-SPOE00069904 RED, pp. SPOE00069903-SPOE00069904; SITF00095413-00095418 RED3, pp.SITF00095416-SITF00095418.

⁵⁵ SPOE00069903-SPOE00069904 RED, p.SPOE00069904.

⁵⁶ See e.g. [REDACTED]. See also [REDACTED].

⁵⁷ See e.g. [REDACTED].

⁵⁸ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 217, 244-245.

describes how in May 1998, [REDACTED] went with a neighbour, W04820, to KLA headquarters in Likoc/Likovac and how W04820 returned the same day and informed the family that [REDACTED] would remain in Likoc/Likovac and that they need not worry. W04788 describes how his mother looked for his brother in Likoc/Likovac on several occasions but failed to obtain information from the KLA. He also describes how his family learned from television reports that his brother's body was found on the roadside between [REDACTED]. W04788's evidence is therefore relevant to the crimes charged in the Indictment and to assessing the credibility of related evidence⁵⁹ including that of [REDACTED] who has already testified, *inter alia*, on the same event.

30. *Authenticity and Reliability.* W04788's Rule 153 Statement comprises his SPO interview and ICTY statement. W04788's SPO interview was audio-visually recorded and documented in a verbatim transcript.⁶⁰ W04788 was advised of his rights as a witness and confirmed his statement to be truthful, accurate, and given voluntarily.⁶¹ W04788's ICTY statement was taken and signed by a duly empowered investigator; contains a witness acknowledgement and interpreter certification; and the witness signed each page.⁶² The ICTY statement is also signed and stamped by the Presiding Officer appointed by the Registrar of the ICTY.⁶³

31. *Suitability for Rule 153 Admission.* W04788 provides purely crime-base evidence which is particularly suitable for admission in writing in lieu of oral testimony. W04788's evidence is also largely cumulative to and corroborated by other witness whom the Accused have confronted or will be able to confront, including through cross-examination;⁶⁴ and complements certain adjudicated facts.⁶⁵

⁵⁹ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 59-61, 64, 96-98, 101, 136-138, 145; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 267-282, 327-330.

⁶⁰ 094542-TR-ET Part 1 RED2; 094542-TR-ET Part 2 RED2.

⁶¹ 094542-TR-ET Part 1 RED2, pp.1-2, 13-14; 094542-TR-ET Part 2 RED2, pp.30-31.

⁶² [REDACTED], pp.1-7.

⁶³ [REDACTED], pp.1-7.

⁶⁴ See e.g. [REDACTED].

⁶⁵ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 217, 244-245.

32. *Admissibility of the Associated Exhibits.* The Malisheva Municipal Court document; newspaper articles about [REDACTED]'s trial and death; and the letter issued to [REDACTED]'s family were each discussed by W04788 in his Rule 153 Statement to the extent they form an inseparable and indispensable part of his evidence and should therefore be admitted as associated exhibits.

7. W04820

33. *Relevance.* W04820 is a Kosovar Albanian and former KLA soldier who had become part of the [REDACTED] by [REDACTED] 1998. Towards the end of [REDACTED] 1998, W04820 [REDACTED]. W04820 states that [REDACTED], a former Serbian MUP employee, sought to clear his name with the KLA, [REDACTED]. Following the handover of [REDACTED] to the KLA, W04820 was told by a KLA soldier to leave, because [REDACTED] would be interrogated for a long time. The soldier also stated that someone [REDACTED] unit should join the interrogation. W04820 left, and never saw [REDACTED] again. W04820's evidence is therefore relevant to the crimes charged in the Indictment and to assessing the credibility of related evidence⁶⁶ including that of [REDACTED] who has already testified, *inter alia*, on related events.

34. *Authenticity and Reliability.* W04820's Rule 153 Statement comprises his SPO interview which was audio-visually recorded and documented in a verbatim transcript.⁶⁷ W04820 was also advised of his rights as a witness and confirmed his statement was truthful, accurate, and given voluntarily.⁶⁸

⁶⁶ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 16-31, 32-34, 59-62, 64, 96-98, 101, 137-138, 145; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 327-330.

⁶⁷ 094542-TR-ET Parts 1 and 2 RED2.

⁶⁸ 094542-TR-ET Part 1 RED2, pp.2, 32.

35. *Suitability for Rule 153 Admission.* W04820 provides purely crime-base evidence, which is especially suitable for admission in lieu of oral testimony. W04820's evidence is also largely cumulative with other witnesses and corroborated by additional evidence concerning the arrest and detention of [REDACTED].⁶⁹ His evidence is also corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination;⁷⁰ and complements certain adjudicated facts.⁷¹

8. W04837

36. *Relevance.* During 1998-1999, W04837 lived in [REDACTED] and worked as a [REDACTED] in [REDACTED]. W04837 provides evidence regarding [REDACTED]. The witness knew [REDACTED] personally and would socialise with him several times a year in [REDACTED] when [REDACTED] visited his relatives there. The witness recounts how in May 1998, [REDACTED] called him from [REDACTED] to ask if it was safe to visit [REDACTED]. W04837 told him not to take the route through Prishtinë/Priština because the KLA was already active in the Drenica area, and warned him he may be kidnapped. W04837 recounts how, about a month later during an operation in Skënderaj/Srbica, the [REDACTED] police recovered a video showing [REDACTED] and other kidnapped Serbs and provided it to W04837. The witness also recounts receiving information about [REDACTED]'s detention in Likoc/Likovac and death, including a call from a mutual friend, [REDACTED], whose number was found in [REDACTED]'s car and who received a phone call in which he was told he would be killed in the same way as [REDACTED]. According to W04837, it was [REDACTED]'s understanding that the threatening call was made by a KLA member.

⁶⁹ See e.g. [REDACTED].

⁷⁰ See e.g. [REDACTED].

⁷¹ See e.g. Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 217, 244-245.

W04837's evidence is therefore relevant to crimes charged in the Indictment and to assessing the credibility of related evidence.⁷² W04837 also provides the additional context necessary for the admission of video 054774-01, discussed above.

37. *Authenticity and Reliability.* W04837's Rule 153 Statement comprises his SPO interview which was audio-visually recorded and documented in verbatim transcripts.⁷³ W04837 was also advised of his rights as a witness and confirmed that his statement was truthful, accurate, and given voluntarily.⁷⁴

38. *Suitability for Rule 153 Admission.* W04837 provides crime-base and contextual evidence which is particularly suitable for admission in lieu of oral testimony. W04837's evidence is also largely cumulative with other witness and documentary evidence concerning abductions and disappearances in the Drenica Zone.⁷⁵ His evidence is also corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination;⁷⁶ and complements certain adjudicated facts.⁷⁷

39. *Admissibility of the Associated Exhibits.* The witness examination record and the video of four Serb men detained by the KLA were discussed by W04837 during his interview to the extent they form an inseparable and indispensable part of his evidence and should therefore be admitted as associated exhibits.

⁷² See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 16-57, 59-61, 62, 96-98, 99, 136-138, 175; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 267-282. See *e.g.* [REDACTED].

⁷³ 093382-TR-ET-Part 1 RED; 093382-TR-ET-Part 2 RED; 093382-TR-ET-Part 3 RED3.

⁷⁴ 093382-TR-ET-Part 1 RED, pp.2-3; 093382-TR-ET-Part 3 RED3, p.12.

⁷⁵ See *e.g.* [REDACTED]. See also P00220, p.098615; and related items tendered through a bar table motion, KSC-BC-2020-06-F02248/A01: Items 82 (098615-098626 / 098615-098626-ET Revised, pp.098620, 098623-098625); 83 (097963-097997 / 097963-097997-ET Revised).

⁷⁶ See *e.g.* [REDACTED].

⁷⁷ See *e.g.* Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts 154, 244-246.

III. *INTER PARTES* CORRESPONDENCE

40. As instructed by the Panel, the SPO and Defence have engaged in *inter partes* correspondence in an effort to agree on the evidence to be admitted pursuant to the present motion.⁷⁸

41. The four Defence teams have indicated they do not object to the admission of the evidence of witness W04782 pursuant to Rule 153; but wish to cross-examine, W04491, W04820, and W04837. As set out above, however, the evidence of these witnesses is suitable for Rule 153 admission without cross-examination.

42. Additionally, the four Defence teams have invited the SPO to withdraw witnesses W00686, W02765, W04694, and W04788 from the SPO witness list in light of what the Defence characterises as the limited relevance and/or probative value of their evidence. As set out above, however, the evidence of these witnesses is clearly relevant and probative, providing important details that are both corroborative of and additional to other evidence on the record, and should therefore be admitted so that it can be assessed in light of all the evidence admitted during trial.

IV. CLASSIFICATION

43. This submission and its annexes are confidential as they contain information concerning witnesses with protective measures, and witnesses whose identities are not public at this time.

V. RELIEF REQUESTED

44. For the foregoing reasons, the Trial Panel should admit the tendered Rule 153 Statements and associated exhibits pursuant to Rule 153.

⁷⁸ Order on the Conduct of the Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023, paras 39, 51, 73.

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Kimberly P. West

Specialist Prosecutor

Wednesday, 8 May 2024

At The Hague, the Netherlands.