



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 admission of evidence of Witnesses W00992, W01336, and W04824 pursuant to Rule 154 and related request with confidential Annexes 1-6'

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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 the statements (collectively, 'Rule 154 Statements'), together with associated exhibits,⁴ of the following witnesses: W00992, W01336, and W04824 (collectively, 'Witnesses').⁵ If, *inter alia*, the examinations of scheduled witnesses proceed faster than expected,⁶ the SPO anticipates that it may need to call W00992, W01336, and/or W04824 – whose evidence and related materials are relatively limited in scope – as reserve witnesses the weeks of 27 May 2024 and/or 3 June 2024,⁷ and therefore requests an expedited briefing schedule.

2. Consistent with Rule 154, the Witnesses are anticipated to: (i) be present in court, (ii) be available for cross-examination and any questioning by the Panel, and (iii) attest that their Rule 154 Statements accurately reflect their declaration and what they would say if examined. As detailed below and in the accompanying annexes for each of the Witnesses, the Proposed Evidence meets the requirements of the Rules, is relevant, authentic, and reliable, and has probative value, which – considering, in

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'). Unless otherwise indicated, all references to 'Rule' or 'Rules' are to the Rules.

³ See Annexes 1-3. 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 Statements and associated exhibits are referred to herein as the 'Proposed Evidence'.

⁵ Annexes 4-6 contain tables identifying the Proposed Evidence for witnesses W00992, W01336, and W04824 respectively.

⁶ Notably, there has been a history of inaccurate cross-examination estimates in this case, including in the last evidentiary block, with last minute, significant reductions being communicated shortly before or at the start of a witness's testimony.

⁷ If examination estimates are ultimately accurate or total testimony times exceed estimates for the current block, the SPO may need to call these witnesses as reserve witnesses in future blocks.

particular, that the witnesses will be available for cross-examination – is not outweighed by any prejudice. Admission is therefore in the interests of justice.⁸

II. SUBMISSIONS

A. W00992

3. *Relevance.* On or around [REDACTED] 1999, W00992, [REDACTED], was abducted with [REDACTED] by a group of armed men wearing armbands with the KLA insignia. W00992 and [REDACTED] were leaving their village [REDACTED]. Both W00992 and [REDACTED] were tied up, blindfolded, detained, and beaten.

4. They were first taken to a nearby house, where they were beaten. They were then moved to a different location, where they were tied together with a third detainee, [REDACTED]. There, W00992, [REDACTED] were beaten by KLA members. W00992 recognised one of those beating them as [REDACTED]. KLA members interrogated the detainees.

5. The beatings lasted for several hours without interruption until early morning. In the morning, [REDACTED]. Later that day, the three detainees managed to escape, encountering [REDACTED].

6. W00992's evidence is thus relevant to charged crimes in the Indictment.⁹

7. *Authenticity and reliability.* W00992's Rule 154 Statement – consisting of his SITF interview and [REDACTED] statement – is *prima facie* authentic and reliable, bearing sufficient indicia of reliability.¹⁰ W00992's audio-video recorded SITF interview is recorded in verbatim transcripts. During the SITF interview, W00992 was made aware

⁸ 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.

⁹ *See, inter alia*, Amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, Confidential ('Indictment'), paras [REDACTED] and Schedule A, p.[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].

¹⁰ For an individualised assessment of reliability, *see* Annex 4.

of his rights as a witness.¹¹ W00992 confirmed that the content of this recorded statement is true and accurate, and given voluntary.¹² W00992's statement to the [REDACTED]¹³ is dated and signed by the witness.

8. *Suitable for Rule 154 admission.* W00992's Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. W00992's statement given to the [REDACTED]¹⁴ is brief, and referred to during his SITF interview,¹⁵ making its admission necessary for a full understanding of W00992's evidence. Further, W00992's [REDACTED] Statement is closest in time to the relevant events. Altogether, the size of the Proposed Evidence is manageable and would not unduly burden the record.

9. Rule 154 admission for W00992's Proposed Evidence will significantly reduce the number of hours required for direct examination to a maximum of one hour.¹⁶ During the supplemental examination, the SPO would elicit brief oral testimony on essential matters, including to highlight, clarify or explain certain aspects of W00992's evidence.

B. W01336

10. *Relevance.* W01336 and [REDACTED] were arrested on [REDACTED] 1999 on the road between [REDACTED], by a group of armed men wearing KLA armbands. Both W01336 and [REDACTED] were tied up, blindfolded, beaten, and taken to an empty house in [REDACTED] village, where they were mistreated. W01336 and [REDACTED] were then taken to an unfinished house in [REDACTED], not far from the previous location and put in the basement. Shortly after, [REDACTED] was also brought there. The three men were interrogated and beaten.

¹¹ See, e.g., 007545-TR-ET Part 1, pp.1-4.

¹² See 007545-TR-ET Part 3, pp.13-14.

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ See 007545-TR-ET Part 2, pp.20, 23-24 26.

¹⁶ Amended List of Witnesses, KSC-BC-2020-06/F01594/A01.

11. On [REDACTED] 1999, after having been beaten for many hours, the three detainees, including W01336, managed to escape and seek assistance from KFOR.
12. W01336's evidence is thus relevant to the charged crimes in the Indictment.¹⁷
13. *Authenticity and reliability.* W01336's Rule 154 Statement is comprised of W01136's SPO Interview,¹⁸ a SITF official note,¹⁹ [REDACTED],²⁰ and his [REDACTED]²¹ and [REDACTED]²² statements to the [REDACTED]. All statements bear sufficient indicia of authenticity and reliability.²³
14. W01336's SPO interview consists of verbatim transcripts of the audio-video recording. During this interview, W01136 confirmed that the content is true and accurate, and given voluntarily.²⁴ During his SPO interview, the SITF official note was discussed;²⁵ this note also records that that no promises were made or undertakings given.²⁶ W01336 also confirmed that his three prior [REDACTED] statements²⁷ were given voluntarily and, with the clarifications, corrections and additions he provided during the SPO interview, the statements were truthful and accurate to the best of his knowledge and belief.²⁸
15. *The Associated Exhibits are admissible.* The Associated Exhibit forming part of W01336's Proposed Evidence in Annex 5— namely, a map of [REDACTED] – should

¹⁷ Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

¹⁸ 074244-TR-ET Part 1 RED and Part 2 RED.

¹⁹ 032049-032051 RED.

²⁰ 028925-028934-ET Revised RED.

²¹ 031000-031003-ET Revised RED.

²² 028983-028985-ET RED.

²³ For an individualised assessment of reliability, see Annex 5.

²⁴ 074244-TR-ET Part 2 RED, pp.39-40.

²⁵ See e.g. 074244-TR-ET Part 1, pp.11-12.

²⁶ 032049-032051 RED, para.18.

²⁷ Namely, 032049-032051 RED, 028925-028934-ET Revised RED and 028983-028985-ET RED.

²⁸ 074244-TR-ET Part 1 RED, pp.5-8.

be admitted as an inseparable and indispensable part of W01336's Rule 154 Statements, in that it is used and explained therein.

16. *Suitable for Rule 154 admission.* W01336's Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. Rule 154 admission for W01336's Proposed Evidence will significantly reduce the length of direct examination. The SPO intends to elicit brief oral testimony from W01336 for approximately 1 hour on essential matters that highlight, clarify, or explain aspects of his evidence.

C. W04824

17. *Relevance.* In mid-June 1999, W04824, [REDACTED] were leaving their burned-out house when they were stopped by armed KLA members. W04824 [REDACTED] were told to disembark, and then beaten and insulted. They were then taken to the Dormitory in Gjilan/Gnjilane. At the entrance to the Dormitory, W04824 [REDACTED] were taken to the third floor where they were interrogated and beaten again.

18. W04824 [REDACTED] were released within a day of being abducted, due to the intervention of [REDACTED]. Before leaving the building, W04824 saw a Roma, who had visible injuries. W04824 could also hear screams that one would hear 'when you beat someone or when you torture someone.'

19. W04824's evidence is thus relevant to charged crimes in the Indictment.²⁹

20. *Authenticity and reliability.* W04824's Rule 154 Statement is comprised of: (i) W04824's SPO Interview;³⁰ (ii) [REDACTED];³¹ (iii) [REDACTED];³² and (iv) his

²⁹ Indictment, KSC-BC-2020-06/F00999/A01, paras 59-61, 93, 96-98, 133, 136-137; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 667-671.

³⁰ 092954-TR-ET Parts 1-3 RED.

³¹ SITF00162664-SITF00162674-ET RED.

³² SITF00195352-SITF00195370-ET Revised RED.

statement to the [REDACTED].³³ Each statement bears sufficient indicia of authenticity and reliability.³⁴

21. W04824's SPO interview consists of verbatim transcripts of the audio-video recording. During this interview, W04824 confirmed that the content is true and accurate, and given voluntarily.³⁵ During his SPO interview, W04824 also confirmed that his three prior statements³⁶ were given voluntarily and that, with the clarifications, corrections and additions he provided during the SPO interview, the statements were truthful and accurate to the best of his knowledge and belief.³⁷

22. *The associated exhibit is admissible.* The associated exhibit – consisting of two photographs – forming part of the Proposed Evidence in Annex 6 was discussed during his SPO interview and should therefore be admitted as an inseparable and indispensable part of the Rule 154 Statement.

23. *Suitable for Rule 154 admission.* W04824's Proposed Evidence satisfies the requirements of Rule 154 and, considering that the witness will be available for cross-examination, its probative value is not outweighed by any prejudice. Rule 154 admission for W04824's Proposed Evidence will significantly reduce the length of direct examination. The SPO intends to elicit brief oral testimony from W04824 for approximately 1 hour on essential matters that highlight, clarify, or explain aspects of his evidence.

III. CLASSIFICATION

24. This submission and its Annexes are confidential pursuant to Rule 82(4) and to give effect to existing protective measures. The ERNs redacted in footnotes 13-14 are

³³ SITF00271891-SITF00271891-ET.

³⁴ For an individualised assessment of reliability, see Annex 6.

³⁵ 092954-TR-ET Part 3 RED, pp.10-11.

³⁶ SITF00162664-SITF00162674-ET RED; SITF00195352-SITF00195370-ET Revised RED; SITF00271891-SITF00271891-ET.

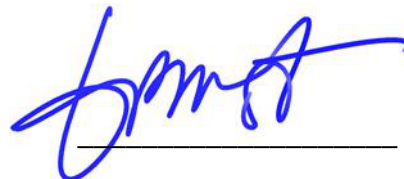
³⁷ 092954-TR-ET Part 3 RED, pp.9-10.

identifying and, in light of W01336's protective measures, these redactions cannot be lifted after his testimony.

IV. RELIEF REQUESTED

25. For the foregoing reasons, the Trial Panel should admit the Proposed Evidence, subject to fulfilment of the Rule 154 conditions by the relevant witnesses during their appearances in court.

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Thursday, 16 May 2024

At The Hague, the Netherlands.