



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: 21 May 2024

Language: English

Classification: Public

Public Redacted Version of 'Prosecution motion for the admission of the evidence of witnesses W03808, W03812, W03815, W03870, W04785, and W04786 pursuant to Rule 153 with confidential Annexes 1-6'

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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 W03808, W03812, W03815, W03870, W04785, and W04786. 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* Disclosure 1253).

- (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 six witnesses who are subject of this motion provide evidence relevant to the arrest and detention of detainees in Budakovë/Budakovo, Semetishtë/Semetište, and Jeshkovë/Ješkovo. Their proposed evidence corroborates and complements the following:

- (i) evidence of Rule 153⁵ and Rule 154⁶ witnesses; and
- (ii) documentary evidence.⁷

9. Together, the proposed evidence and relevant facts constitute an interconnected and compelling account of the circumstances in which the charged victims related to these locations were abducted, detained, mistreated, and in some cases, killed or disappeared. In addition to corroborating the evidence listed above, these 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. W03808

10. *Relevance.* W03808 is a Kosovo-Albanian civilian from [REDACTED]. In 1998 he worked for [REDACTED]. He recounts that on [REDACTED] 1998 he was arrested by three armed KLA members in uniform, one of whom was [REDACTED], and driven to [REDACTED]'s house in [REDACTED] where he was questioned about [REDACTED] and about whether he had any connections with the Serbian police. [REDACTED]; he was told [REDACTED] was also being detained. W03808 was detained in [REDACTED] for three days, during which time he was subjected to

⁵ See e.g. [REDACTED].

⁶ See e.g. [REDACTED].

⁷ See e.g. [REDACTED].

verbal abuse and punched in his jaw. He was transferred to [REDACTED] where he was detained for two days and again questioned about [REDACTED] and whether he was involved with the Serbian police. [REDACTED]. W03808's evidence is therefore relevant to crimes charged in the Indictment and to assessing the credibility of related evidence.⁸

11. *Authenticity and Reliability.* W03808's Rule 153 Statement comprises his [REDACTED] and SPO statements. During W03808's SPO statement, which was audio-visually recorded and documented in verbatim transcripts,⁹ W03808 was advised of his rights as a witness and confirmed his statement was true, accurate, and given voluntarily.¹⁰ W03808's [REDACTED] statement is recorded in an official [REDACTED] template and contains W03808's signatures, including as acknowledgement of his rights and obligations as a witness.¹¹

12. *Suitability for Rule 153 Admission.* The witness's evidence is particularly suitable for admission in lieu of oral testimony as it relates to the crime-base and does not go to proof of the acts and conduct of the Accused. The statements comprising the Rule 153 Statement also complement each other. The SPO interview authenticates, confirms, and clarifies some of the points discussed in the [REDACTED] statement, adding relevant evidentiary aspects that were not originally discussed. W03808's evidence is also cumulative to other witness and documentary evidence concerning the arrest, detention, and transfer of detainees by KLA members in [REDACTED].¹²

⁸ See, *inter alia*, Annex 1 to Submission of confirmed amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, ('Indictment'), paras 32-39, 59-60, 68, 104, 155; 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, Confidential ('Pre-Trial Brief'), paras [REDACTED]. See e.g. [REDACTED].

⁹ 078559-TR-ET Parts 1-3 RED2.

¹⁰ 078559-TR-ET Part 1 RED2, pp.3-4; 078559-TR-ET Part 3 RED2, pp.1-2.

¹¹ SITF00032765-SITF00032773 RED2.

¹² See e.g. [REDACTED].

Furthermore, his evidence is corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination.¹³

2. W03812

13. *Relevance.* W03812 joined [REDACTED] in June 1998, initially serving as an ordinary soldier and later as the [REDACTED]. He recounts how in [REDACTED] 1998, [REDACTED] were arrested by [REDACTED] and taken to [REDACTED]'s house in [REDACTED] where they were detained. [REDACTED] spoke to them while they were detained there. [REDACTED] issued a written order instructing that [REDACTED], together with [REDACTED] who had also been arrested, should be sent to [REDACTED]. W03812 and [REDACTED]. While W03812 asserts he does not know the names [REDACTED], at the end of [REDACTED] 1998 he saw two or three Serbs who had been brought to [REDACTED] and knows they were subsequently released by [REDACTED]. W03812 also provides information on his role, and that of others, in the KLA, in particular within [REDACTED]. W03812's evidence is therefore relevant to crimes charged in the Indictment and to assessing the credibility of related evidence.¹⁴

14. *Authenticity and Reliability.* W03812's Rule 153 Statement comprises his [REDACTED] and SPO statements. During W03812's SPO statement, which was audio-visually recorded and documented in verbatim transcripts,¹⁵ W03812 was advised of his rights as a witness and confirmed his statement was true, accurate, and given voluntarily.¹⁶ W03812's [REDACTED] statement is recorded in an official [REDACTED] template and contains W03812's signatures, including as acknowledgement of his rights and obligations as a witness.¹⁷

¹³ See e.g. [REDACTED].

¹⁴ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 32-39, 59-60, 68, 104, 155; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 384-402. See e.g. [REDACTED].

¹⁵ 088941-TR-ET Parts 1-2 RED, 088941-TR-ET Parts 3-4 RED2.

¹⁶ 088941-TR-ET Part 1 RED, pp.2-3; 088941-TR-ET Part 4 RED2, p.15.

¹⁷ SITF00032792-00032807 RED.

15. *Suitability for Rule 153 Admission.* The witness's evidence is entirely suitable for admission in lieu of oral testimony as it relates primarily to the crime-base and does not go to proof of the acts and conduct of the Accused. The statements comprising the Rule 153 Statement also complement each other. The SPO interview authenticates, confirms, and clarifies some of the points discussed in the [REDACTED] statement, adding relevant evidentiary aspects that were not originally discussed. W03812's evidence is also cumulative to other witness and documentary evidence concerning the arrest, detention, and transfer of detainees by KLA members in [REDACTED], and of the role of certain KLA members, in particular those forming part of [REDACTED].¹⁸ Furthermore, his evidence is corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination.¹⁹

16. *Admissibility of the Associated Exhibits.* The two proposed associated exhibits comprise photograph line-ups and a note by a KLA member concerning [REDACTED]. These items were discussed with the witness to the extent they form an inseparable and indispensable part of W03812's evidence, and should therefore be admitted as associated exhibits.

3. W03815

17. *Relevance.* W03815 joined KLA [REDACTED] in June 1998. He recounts how in August 1998, himself and [REDACTED] received an order from the command of [REDACTED] to escort [REDACTED]. W03815 states that, together with [REDACTED], he subsequently transferred [REDACTED] as well as [REDACTED]. W03815 also provides information on the role of certain KLA members based in

¹⁸ See e.g. [REDACTED].

¹⁹ See e.g. [REDACTED].

[REDACTED], including on his role as a member of the [REDACTED] within [REDACTED]. W03815's evidence is therefore relevant to crimes charged in the Indictment and to assessing the credibility of related evidence.²⁰

18. *Authenticity and Reliability.* W03815's Rule 153 Statement comprises his [REDACTED] and SPO statements. During W03815's SPO statement, which was audio-visually recorded and documented in verbatim transcripts,²¹ W03815 was advised of his rights as a suspect and confirmed his statement was true, accurate, and given voluntarily.²² W03815's [REDACTED] statement is recorded in an official [REDACTED] template and contains W03815's signatures, including as acknowledgement of his rights and obligations.²³

19. *Suitability for Rule 153 Admission.* The witness's evidence is entirely suitable for admission in lieu of oral testimony as it primarily relates to the crime-base, and does not go to proof of the acts and conduct of the Accused. The statements comprising the Rule 153 Statement also complement each other. The SPO interview authenticates, confirms, and clarifies some of the points discussed in the [REDACTED] statement, adding relevant evidentiary aspects that were not originally discussed. W03815's evidence is also cumulative to other witness and documentary evidence concerning the arrest, detention and transfer of detainees by KLA members in [REDACTED], and of the role of certain KLA members, in particular those forming part of [REDACTED].²⁴ Furthermore, his evidence is corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination.²⁵

²⁰ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 32-39, 59-60, 68, 104, 155; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 384-402. See *e.g.* [REDACTED].

²¹ 089115-TR-ET Parts 1-3 RED.

²² 089115-TR-ET Part 1 RED, pp.3-4; 089115-TR-ET Part 3 RED, pp.25-26.

²³ SITF00032782-SITF00032791 RED.

²⁴ See *e.g.* [REDACTED].

²⁵ See *e.g.* [REDACTED].

20. *Admissibility of the Associated Exhibit.* The proposed associated exhibit comprises two photograph line-ups shown to W03815 in which he recognises KLA members relevant to crimes charged in the Indictment. The line-ups were discussed with the witness to the extent they form an inseparable and indispensable part of W03815's evidence, and should therefore be admitted as an associated exhibit.

4. W03870

21. *Relevance.* W03870 joined KLA [REDACTED] in [REDACTED] 1998. Between [REDACTED] 1998, he provided training to soldiers, was a member of a unit in charge of [REDACTED], and [REDACTED]. Around [REDACTED] 1998, W03870 joined [REDACTED]. Around [REDACTED] 1998, [REDACTED] assigned W03870 to work on the [REDACTED]. [REDACTED] later asked W03870 to [REDACTED], which W03870 did from [REDACTED] 1999, providing [REDACTED]. W03870 recounts how around [REDACTED] 1998, [REDACTED], told him that, pursuant to orders by [REDACTED], he detained [REDACTED] and arrested [REDACTED]. W03870 states that [REDACTED] were then detained in [REDACTED] for one or two days and that [REDACTED] ordered [REDACTED] to transfer [REDACTED]. [REDACTED] handed the three detainees over to [REDACTED]. While W03870 states he does not know that [REDACTED] were detained in [REDACTED] in [REDACTED] 1998, he heard that when the KLA was set up in [REDACTED], two Serbs from [REDACTED] were brought to [REDACTED] where they were spoken to prior to their release. W03870 also provides information on his role and that of others in the KLA, in particular within [REDACTED]. W03812's evidence is therefore relevant to crimes charged in the Indictment and to assessing the credibility of related evidence.²⁶

²⁶ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 32-39, 59-60, 68, 104, 155; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 384-402. See *e.g.* [REDACTED].

22. *Authenticity and Reliability.* W03870's Rule 153 Statement comprises his [REDACTED] and SPO statements. During W03870's SPO statement, which was audio-visually recorded and documented in verbatim transcripts,²⁷ W03870 was advised of his rights as a witness and confirmed his statement was true and accurate, and given voluntarily.²⁸ W03870's [REDACTED] statement is recorded in an official [REDACTED] template and contains W03870's signatures, including as acknowledgement of his rights and obligations as a witness.²⁹

23. *Suitability for Rule 153 Admission.* The witness's evidence is entirely suitable for admission in lieu of oral testimony as it relates to the crime-base and the structure of [REDACTED], and does not go to proof of the acts and conduct of the Accused. The statements comprising the Rule 153 Statement also complement one another. The SPO interview authenticates, confirms, and clarifies some of the points discussed in the [REDACTED] statement, adding relevant evidentiary aspects that were not originally discussed.³⁰

24. W03812's evidence is also cumulative to other witness and documentary evidence concerning the arrest, detention, and transfer of detainees by KLA members in [REDACTED], and of the role of certain KLA members, in particular those forming part of [REDACTED].³¹ Furthermore, his evidence is corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination.³²

25. *Admissibility of the Associated Exhibits.* The three proposed associated exhibits comprise photographs of KLA members and relevant locations, a note by a KLA

²⁷ 088944-TR-ET Parts 1-4 RED.

²⁸ 088944-TR-ET Part 1 RED, pp.2-3; 088944-TR-ET Part 4 RED, p.13.

²⁹ SITF00032827-SITF00032835 RED, pp.SITF00032827-SITF00032829.

³⁰ For a full assessment of the witness's evidence, the SPO would not object to the admission of item 107757-107757 along with W03870's Rule 153 Statement given that it refers to the content thereof.

³¹ See e.g. [REDACTED].

³² See e.g. [REDACTED].

member concerning [REDACTED], and a note concerning a lecture delivered by W03870 to KLA members. These items were discussed with the witness to the extent they form an inseparable and indispensable part of W03870's evidence, and should therefore be admitted as associated exhibits.

5. W04785

26. *Relevance.* W04785 is a Kosovar-Albanian civilian. W04785 recounts how around [REDACTED] 1998, she was walking home with her father, [REDACTED], after having been to church in [REDACTED] when she saw four armed people in black uniforms and masks emerge from a vehicle. Two of these people forced [REDACTED] into the vehicle. W04785 states that her father's body was found about ten days after he was abducted, and that her mother told her his body had bruises all over. W04785's evidence is therefore relevant to crimes charged in the Indictment and to assessing the credibility of related evidence.³³

27. *Authenticity and Reliability.* W04785's Rule 153 Statement comprises her [REDACTED] statement, which is recorded in an official [REDACTED] template and contains W04785's signatures and an attestation to the truth and accuracy thereof.³⁴

28. *Suitability for Rule 153 Admission.* The witness's evidence is particularly suitable for admission in lieu of oral testimony as it is entirely crime-base evidence, and does not go to proof of the acts and conduct of the Accused. W04785's evidence is also cumulative to other witness and documentary evidence relevant to the arrest and detention of detainees by KLA members in [REDACTED], and the fate of such

³³ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 32-39, 59-60, 69, 105; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 412-414, 416. See *e.g.* [REDACTED].

³⁴ SPOE00027837-SPOE00027842 RED.

detainees.³⁵ Furthermore, her evidence is corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination.³⁶

6. W04786

29. *Relevance.* W04786, a Kosovar-Albanian who is an old friend of the [REDACTED] family, recounts that in [REDACTED] 1998 he accompanied [REDACTED], to search for the body of [REDACTED]. W04786 states that about [REDACTED] kilometres from [REDACTED] they found a body which [REDACTED] identified as [REDACTED]. W04786's evidence is therefore relevant to crimes charged in the Indictment and to assessing the credibility of related evidence.³⁷

30. *Authenticity and Reliability.* W04786's Rule 153 Statement comprises his [REDACTED] statement, which is recorded in an official [REDACTED] template and contains W04786's signatures and an attestation to the truth and accuracy thereof.³⁸

31. *Suitability for Rule 153 Admission.* The witness's evidence is suitable for admission in lieu of oral testimony as it primarily relates to the crime-base, and does not go to proof of the acts and conduct of the Accused. W04786's evidence is also cumulative to other witness and documentary evidence concerning the arrest and detention of detainees by KLA members in [REDACTED], and the fate of such detainees.³⁹

³⁵ See e.g. [REDACTED].

³⁶ See e.g. [REDACTED].

³⁷ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras 32-39, 59-60, 69, 105; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 412-414, 416. See e.g. [REDACTED].

³⁸ SPOE00027799-SPOE00027808 RED.

³⁹ See e.g. [REDACTED].

Furthermore, his evidence is corroborated by witnesses whom the Accused have confronted or will be able to confront, including through cross-examination.⁴⁰

III. *INTER PARTES* CORRESPONDENCE

32. 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.⁴¹

33. The four Defence teams agree to the admission of the evidence of witnesses W03808, W04785, and W04786 pursuant to Rule 153. The Defence teams submit that witnesses W03812, W03815, and W03870 should be made available for cross-examination. As set out above, however, the evidence of these witnesses is suitable for Rule 153 admission in lieu of oral testimony.

IV. CLASSIFICATION

34. 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.

⁴⁰ See e.g. [REDACTED].

⁴¹ Order on the Conduct of the Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023, paras 39, 51, 73.

V. RELIEF REQUESTED

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

Word count: 3514



Kimberly P. West

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Tuesday, 21 May 2024

At The Hague, the Netherlands.