



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 W01158, W01605, W04240, W04278, W04352, W04366, and W04427 pursuant to Rule 154 with confidential Annexes 1-7'

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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') requests the admission of the statements (collectively, 'Rule 154 Statements'), together with associated exhibits,³ of the following witnesses: W01158, W01605, W04240, W04278, W04352, W04366, and W04427 (collectively, 'Witnesses').⁴ These witnesses are among the witnesses the SPO intends to call between 19 August and 7 November 2024.⁵

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 The Rule 154 Statements and associated exhibits are referred to herein as the 'Proposed Evidence'.

⁴ Attached to this motion are seven annexes. Each annex contains a table identifying the Proposed Evidence for each witness. In the interest of expeditiousness and as also set out below, the SPO: (i) has reduced the examination time for W01158 from 1 hour to 45 minutes; (ii) has reduced the examination time for W01605 from 1.5 to 1 hour; (iii) is now seeking to admit W04240's prior statement under Rule 154 (W04240 was previously fully *viva voce*) and, subject to a decision on this request, has reduced the examination estimate for W04240 from 6 to 2 hours; and (iv) has reduced the examination time for W04366 from 1.5 hours to 30 minutes.

⁵ See Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Conduct of Proceedings Order'), para.73. The information required by paragraphs 73-74 of the Conduct of Proceedings Order has been provided separately (see Prosecution submission of list of witnesses for 19 August to 7 November 2024, KSC-BC-2020-06/F02451, 16 July 2024, Confidential). A Rule 154 application including the witnesses tentatively listed in the first half of witnesses to be called from 19 August to 7 November 2024 has been filed (see Prosecution motion for admission of evidence of Witnesses W02135, W03871, W04295, W04372, W04590, W04600, W04735, W04737, and W04868 pursuant to Rule 154 and related requests, KSC-BC-2020-06/F02450, 16 July 2024, Confidential). Further Rule 154 applications for the remaining witnesses listed in KSC-BC-2020-06/F02451/A01 (namely, W04798 and W04809) will be filed in due course.

particular, that the witnesses will be available for cross-examination – is not outweighed by any prejudice. Admission is therefore in the interests of justice.⁶

II. SUBMISSIONS

A. W01158

3. *Relevance.* W01158, [REDACTED]. En route, [REDACTED] and he was [REDACTED] and beaten and threatened with an automatic weapon.

4. W01158 was [REDACTED], and was put into a locked and guarded room. [REDACTED]. [REDACTED]. [REDACTED].

5. [REDACTED]. [REDACTED].

6. W01158's evidence is thus relevant to crimes charged in the Indictment.⁷

7. *Authenticity and reliability.* W01158's Rule 154 Statement consists of verbatim transcripts of his audio-video recorded SPO interview.⁸ The statement bears sufficient indicia of authenticity and reliability.⁹ W01158 was duly advised of his rights and obligations as a witness,¹⁰ and confirmed that the contents of the statement are true and accurate and that his statement was given voluntarily.¹¹

8. *The associated exhibit is admissible.* The associated exhibit forming part of the Proposed Evidence in Annex 1 – which is a compilation of the materials used during his interview – should be admitted as an inseparable and indispensable part of the

⁶ 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.

⁷ *See, inter alia*, Amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, Confidential ('Indictment'), paras [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, Confidential ('Pre-Trial Brief'), paras [REDACTED].

⁸ 055290-TR-ET Parts 1-4 RED2.

⁹ For an individualised assessment of reliability, *see* Annex 1.

¹⁰ 055290-TR-ET Part 1 RED2, p.2.

¹¹ 055290-TR-ET Part 4 RED2, pp.10-12.

Rule 154 Statement. The witness identifies locations and persons and provides context to [REDACTED]. The Rule 154 Statement would be less comprehensible or have lesser probative value without the associated exhibit.

9. *Suitable for Rule 154 admission.* The Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. Rule 154 admission for W01158's Proposed Evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit oral testimony from W01158 for approximately 45 minutes¹² on essential matters that highlight, clarify, or explain certain aspects of his evidence.

B. W01605

10. *Relevance.* On [REDACTED] 1999, in [REDACTED], W01605, [REDACTED] were stopped by armed and uniformed soldiers with KLA emblems who pointed rifles at them, asked questions about their destination, and threatened to kill them. The KLA commander [REDACTED] said that, [REDACTED]. W01605 and [REDACTED] were let go only upon the intervention of [REDACTED]. Before leaving, W01605 saw that the KLA group had also stopped a car carrying [REDACTED].

11. On [REDACTED] 1999, the same KLA members stopped W01605 and [REDACTED]. [REDACTED] was first mistreated and then was [REDACTED]. When W01605 protested, [REDACTED]. W01605 was told to [REDACTED]. [REDACTED] that the latter was taken to the KLA headquarters located in [REDACTED], where he was abused and beaten. [REDACTED] was only allowed to return home after [REDACTED]. [REDACTED] told W01605 to leave his village. Shortly after the incident, W01605 and his family left Kosovo.

¹² Reduced from the 1 hour indicated in the Witness List. See Amended List of Witnesses, KSC-BC-2020-06/F01594/A01, 9 June 2023, Strictly Confidential and *Ex Parte* ('Witness List'), p.69/567.

12. W01605's evidence is thus relevant to charged crimes in the Indictment.¹³

13. *Authenticity and reliability.* W01605's Rule 154 Statement is comprised of W01605's SITF Interview.¹⁴ This statement bears sufficient indicia of authenticity and reliability.¹⁵ W01605's SITF interview consists of verbatim transcripts.¹⁶ During this interview, W01605 was made aware of his rights as a witness.¹⁷ He confirmed that the content was true and given voluntarily.¹⁸

14. *Suitable for Rule 154 admission.* The Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. Rule 154 admission for W01605's Proposed Evidence will reduce the length of direct examination. The SPO intends to elicit brief oral testimony from W01605 for approximately one hour¹⁹ on essential matters that highlight, clarify, or explain aspects of his evidence.

C. W04240

15. *Relevance.* W04240 was a KLA member who also occupied various positions within the LDK, including as a member of the [REDACTED]. W04240 provides information on the LDK's foundation, structure, membership and activities, and the relationship between the LDK and KLA, including threats and attacks by KLA members against LDK members.

16. W04240's evidence includes information concerning his knowledge of [REDACTED] Communiqué [REDACTED], and the impact and consequences of this communiqué [REDACTED]. W04240 also provides information regarding Hashim

¹³ Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

¹⁴ 010510-TR-ET Parts 1-3 RED2.

¹⁵ For an individualised assessment of reliability, see Annex 2.

¹⁶ 010510-TR-ET Part 1 RED2, p.1.

¹⁷ 010510-TR-ET Part 1 RED2, pp.1-3. See also 010506-010509-ET Revised RED2, paras 1-7.

¹⁸ 010510-TR-ET Part 3 RED2, pp.16-17.

¹⁹ Reduced from the 1.5 hours indicated in the Witness List. See Witness List, KSC-BC-2020-06/F01594/A01, p.103/567.

THAÇI and Rexhep SELIMI threatening [REDACTED], the arrest, detention, and mistreatment of Kosovo Assembly representatives in or around Qirez/Ćirez in September 1998, and the arrest, detention, killing, and/or other mistreatment of LDK members and other individuals, including Sejdi KOCI, Enver MALOKU, Haki IMERI, Jakup KASTRATI, and Cen DESKU.

17. W04240 also provides information about his interactions with, and/or knowledge of, KLA members, including Rexhep SELIMI, Hashim THAÇI, Jakup KRASNIQI, Sylejman SELIMI, Sami LUSHTAKU, and Sabit GECI.

18. W04240's evidence is thus relevant to charged crimes in the Indictment.²⁰

19. *Authenticity and reliability.* W04240's Rule 154 Statement – which consists of verbatim transcripts of his audio-video recorded SPO interview²¹ – is *prima facie* authentic and reliable.²² W04240 confirmed that his statement was true and accurate, and given voluntarily.²³

20. *The associated exhibits are admissible.* The associated exhibits forming part of the Proposed Evidence in Annex 3 – consisting of notes of information provided by the witness concerning events in 1998, a report referring to the witness's activities in 1999, and an article concerning the witness's family – should be admitted, as they are an inseparable and indispensable part of W04240's Rule 154 Statement. The associated exhibits are integral to the Rule 154 Statement as they were discussed and reviewed therein.

21. *Suitable for Rule 154 admission.* W04240's Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. The SPO initially proposed W04240

²⁰ Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

²¹ 053034-TR-ET Parts 1-6 RED2, 053034-TR-ET Parts 7-8.

²² For an individualised assessment of reliability, *see* Annex 3.

²³ 053034-TR-ET Part 8, p.4.

as a fully viva voce witness with a six-hour direct examination.²⁴ Rule 154 admission for W04240's Proposed Evidence will significantly reduce the time required for W04240's direct examination from six to two hours. During the supplemental examination, the SPO would elicit brief oral testimony on essential matters, including to clarify or explain certain aspects of W04240's evidence. The SPO would also address relevant issues not covered in W04240's Proposed Evidence.

D. W04278

22. *Relevance.* W04278 is a former KLA soldier from the [REDACTED]. He joined the KLA in [REDACTED] 1998. In [REDACTED] 1998, he became a [REDACTED].

23. W04278 describes the composition, command structure, and duties of the [REDACTED] unit and of the Military Police in [REDACTED]. He provides information about the [REDACTED] unit which operated in [REDACTED] and had its own military police. The leaders of the [REDACTED] units had a conflicting relationship until [REDACTED] 1998, when mediation was found [REDACTED]. [REDACTED].

24. After [REDACTED] appointment, W04278 received from [REDACTED] a decision signed by [REDACTED] tasking the military police to [REDACTED], which W04278 himself served on [REDACTED]. [REDACTED], were later arrested by the KLA on the accusation of collaborating with the Serbs.

25. Around 16, 17, or 18 July 1998, after the start of the KLA offensive against Rahovec/Orahovac, KLA soldiers brought [REDACTED], where they were held for about a week. Thereafter, [REDACTED], was taken to the same building. W04278 provides information about the events that occurred in and around [REDACTED] in the aftermath of the Rahovec/Orahovac offensive.

²⁴ Witness List, KSC-BC-2020-06/F01594/A01, p.238/567.

26. W04278's evidence is thus relevant to charged crimes in the Indictment.²⁵

27. *Authenticity and reliability.* W04278's Proposed Evidence is *prima facie* authentic and reliable.²⁶ W04278's Rule 154 Statement is comprised of the verbatim transcripts of his SPO Interview.²⁷ W04278 was duly advised of his rights and obligations as a witness,²⁸ and confirmed his statement was true and accurate, and given voluntarily.²⁹

28. *The associated exhibits are admissible.* The associated exhibits forming part of W04278's Proposed Evidence in Annex 4 – namely, various contemporaneous documents – should be admitted, as they are an inseparable and indispensable part of W04278's Rule 154 Statement. The associated exhibits were discussed and reviewed therein.

29. *Suitable for Rule 154 admission.* The Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. Rule 154 admission of W04278's Proposed Evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit oral testimony from W04278 for one hour on essential matters that clarify or supplement certain aspects of his evidence.

²⁵ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

²⁶ For an individualized assessment of reliability, see Annex 4.

²⁷ 059666-TR-ET Parts 1-8 RED.

²⁸ 059666-TR-ET Part 1 RED, pp.2-3.

²⁹ 059666-TR-ET Part 8 RED, pp.10-11.

E. W04352

30. *Relevance and Authenticity.* The Panel has already found that W04352's Proposed Evidence, including his Rule 154 Statement,³⁰ is *prima facie* relevant, authentic,³¹ and probative.³²

31. *Suitable for Rule 154 admission.* In the Rule 153 Decision, the Panel found that, because of its character, the prejudicial effect of the admission of W04352's evidence under Rule 153 would outweigh its probative value at this stage, noting the evidence relates to a charged murder victim and certain evidence already given in relation thereto might require further exploration.³³ This finding was without prejudice to, *inter alia*, any Rule 154 application in relation to W04352.³⁴

32. The Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. In this respect, the Panel has already found that W04352's Rule 154 Statement, comprised of statements given at different times to different authorities, is not unduly repetitive.³⁵ Further, Rule 154 admission for W04352's Proposed Evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit oral testimony on essential matters including to highlight, clarify, or explain certain aspects of W04352's evidence, for one hour or less.

F. W04366

33. *Relevance.* W04366 is a Kosovar Albanian who worked as [REDACTED] until the end of April 1999 when he left Kosovo for [REDACTED]. In [REDACTED] where

³⁰ The Rule 154 Statement consist of: the witness's SPO interview (092856-TR-ET Parts 1-2 RED2); [REDACTED] (SITF00180812-00180907 and SITF00181066-00181123); and [REDACTED] statements (SITF00297388-00297396 and SITF00297457-00297470 RED2).

³¹ For an individual assessment of reliability, *see* Annex 5.

³² Decision on 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/F02421, 2 July 2024, Confidential ('Third Rule 153 Decision'), paras 32-34.

³³ Third Rule 153 Decision, KSC-BC-2020-06/F02421, para.35.

³⁴ Third Rule 153 Decision, KSC-BC-2020-06/F02421, para.36.

³⁵ Third Rule 153 Decision, KSC-BC-2020-06/F02421, para.34.

W04366 was staying and brought him to the [REDACTED]. W04366's evidence includes information about the conditions of his detention, the regular physical abuse and mistreatment he endured at the hands of KLA members at [REDACTED], the injuries he sustained, and [REDACTED].

34. W04366 also provides information about the detention and mistreatment of other detainees, including [REDACTED]. [REDACTED].

35. W04366's evidence is thus relevant to charged crimes in the Indictment.³⁶

36. *Authenticity and reliability.* W04366's Rule 154 Statement is *prima facie* authentic and reliable.³⁷ It consists of (i) [REDACTED],³⁸ and (ii) his SPO statement.³⁹ W04366's statements are recorded in verbatim transcripts.⁴⁰ [REDACTED],⁴¹ and he confirmed at the conclusion of his SPO statement that its contents were true and accurate, and given voluntarily.⁴²

37. *The associated exhibits are admissible.* The associated exhibits forming part of the Proposed Evidence in Annex 6 – consisting of photographs of the detention building [REDACTED] and photographs of his co-detainees and KLA members involved in his detention – should be admitted as they are an inseparable and indispensable part of W04366's Rule 154 Statement. The associated exhibits are integral to the Rule 154 Statement as they were discussed and reviewed therein.

38. *Suitable for Rule 154 admission.* W04366's Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. Rule 154 admission for W04366's

³⁶ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

³⁷ For an individualised assessment of reliability, see Annex 6.

³⁸ [REDACTED].

³⁹ 059351-TR-ET Parts 1-3 RED2.

⁴⁰ [REDACTED]; 059351-TR-ET Part 1 RED2, p.1.

⁴¹ [REDACTED].

⁴² 059351-TR-ET Part 3 RED2, pp.23-24.

Proposed Evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit brief oral testimony on essential matters, including to highlight, clarify, or explain certain aspects of W04366's evidence for 30 minutes.⁴³

G. W04427

39. *Relevance.* W04427 was [REDACTED]. [REDACTED]. [REDACTED].

40. On or around [REDACTED] 1999, W04427 was stopped by KLA members and taken to the headquarters in [REDACTED]. [REDACTED]. W04227 was held in poor conditions, beaten repeatedly and threatened with death over the course of several days. [REDACTED].

41. On or around [REDACTED] 1999, W04427 was told that, [REDACTED], he would be transferred to [REDACTED]. There, he was kept in a [REDACTED] without furniture or bedding together with [REDACTED] other detainees, some of whom showed signs of mistreatment, or related that they had been beaten. W04427 was kicked by a KLA guard. On or around [REDACTED] 1999, W04427 was released [REDACTED], and was warned not to report the case of his abduction.

42. W04427's evidence is thus relevant to charged crimes in the Indictment.⁴⁴

43. *Authenticity and reliability.* The Proposed Evidence is *prima facie* authentic and reliable, bearing sufficient indicia of reliability.⁴⁵ The Rule 154 Statement is comprised of his SPO interview⁴⁶ and consists of verbatim transcripts of the audio-video

⁴³ Reduced from the 1.5 hours indicated in the Witness List. *See* Witness List, KSC-BC-2020-06/F01594/A01, p.278/567.

⁴⁴ *See, inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

⁴⁵ For an individualised assessment of reliability, *see* Annex 7.

⁴⁶ 066895-TR-ET Parts 1, 3-7 RED2, 066895-TR-ET Part 2.

recording. W04427 confirmed that his statement was true and accurate, and given voluntarily.⁴⁷

44. *Suitable for Rule 154 admission.* W04427's Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. Admission of W04427's Proposed Evidence will significantly reduce the length of direct examination. The SPO intends to elicit brief oral testimony from W04427 for approximately one hour on essential matters that highlight, clarify, or explain aspects of his evidence.

III. CLASSIFICATION

45. This submission and its Annexes are confidential pursuant to Rule 82(4) and to give effect to existing protective measures. In the public redacted version of this filing, specific ERNs have been redacted for the protection of an upcoming witness. To give effect to the witness's in-court protective measures, the ERNs of W04366's [REDACTED] must remain redacted, including after his testimony.⁴⁸


IV. RELIEF REQUESTED

46. 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.

⁴⁷ 066895-TR-ET Part 7 RED2, pp.13-14.

⁴⁸ See footnotes 38, 40-41.

Word Count: 3,631



Kimberly P. West

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Thursday, 18 July 2024

At The Hague, the Netherlands.