



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 consolidated Rule 153 motion for W04797 and W04808 and Rule 154 motion for W04798, W04809, and W04854 with confidential Annexes 1-7'

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I. INTRODUCTION

1. Pursuant to Article 40 of the Law,¹ and Rules 137-138 and 153-154 of the Rules,² the Specialist Prosecutor's Office ('SPO'): (i) seeks the admission of the statements ('Rule 154 Statements') and associated exhibits of W04798, W04809, and W04854 ('Rule 154 Witnesses');³ (ii) submits the information required by paragraphs 73-74 of the Conduct of Proceedings Order⁴ for W04854;⁵ and (iii) seeks the admission in lieu of oral testimony of the statements ('Rule 153 Statements')⁶ and associated exhibits of W04797 and W04808 ('Rule 153 Witnesses').⁷

2. As detailed below, the Proposed Evidence concerns, *inter alia*, the provenance, authenticity, and reliability of certain [REDACTED]. When assessing this interconnected evidence, the SPO decided to: (i) convert W04809 and W04854 to Rule 154 and W04808 to Rule 153;⁸ and (ii) file this consolidated request to enable the Panel's holistic consideration. The Proposed Evidence meets the requirements of, as applicable, Rules 153-154, is relevant, authentic, and reliable, and has probative value,

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 Attached to this motion are seven annexes. Annexes 3-7 contain a table identifying the Proposed Evidence for each witness.

⁴ Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Conduct of Proceedings Order').

⁵ See Annex 1 (indicating, *inter alia*, that the SPO intends to call the witness as the [REDACTED] witness in the tentative order provided in KSC-BC-2020-06/F02459/A01, between [REDACTED]). At the time the list of witnesses for 19 August to 7 November 2024 was filed (which included W04798 and W04809), *inter partes* consultations concerning W04854 (who was initially proposed under Rule 153) were ongoing. It was only after receiving confirmation on 18 July 2024 from the Defence that it objected to the admission of the evidence of W04854 under Rule 153 that the SPO decided to convert him to Rule 154, considering his role and the nature of his evidence, as detailed below.

⁶ As indicated in the relevant annexes for the Rule 153 Witnesses, the SPO has also tendered the audio/video recordings corresponding to the Rule 153 Statements.

⁷ The Rule 153 Witnesses and Rule 154 Witnesses are referred to collectively as the 'Witnesses'. The Rule 153 Statement and/or Rule 154 Statement, together with associated exhibits, are referred to herein as the 'Proposed Evidence'.

⁸ W04809 and W04854 were initially proposed as Rule 153, and W04808 as Rule 154. See Prosecution submission of list of witnesses for 19 August to 7 November 2024, KSC-BC-2020-06/F02451, 16 July 2024, Confidential, para.4, fn.10 (concerning W04808 and W04809). In relation to W04854, see fn.5 above.

which is not outweighed by any prejudice. Admission is therefore in the interests of justice.⁹

II. SUBMISSIONS

3. Collectively, these five Witnesses provide evidence primarily concerning the provenance, authenticity, and reliability of [REDACTED],¹⁰ and of two [REDACTED]¹¹ [REDACTED]. In the context of seeking addition of certain [REDACTED] to the Exhibit List, the SPO previously made submissions on the relevance of the [REDACTED] to allegations in the Indictment,¹² which the Panel recognised, when granting the SPO's request.¹³

4. At the time of the Witnesses' interviews, the SPO did not yet have [REDACTED] in its possession. As previously indicated,¹⁴ the SPO intends to use certain of the recently-obtained [REDACTED] with the Witnesses, because their evidence serves to further establish the authenticity and the relevance of this documentary evidence.¹⁵ For the purposes of the present motion, only those [REDACTED] which are associated exhibits of the Rule 153 Statements and Rule 154 Statements are tendered.¹⁶ Given the thematic nature of this motion, there is some

⁹ The applicable law has been set out in previous submissions and decisions in this case. For Rule 154, *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. For Rule 153, *see e.g.* 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, 7 July 2023, Confidential, paras 6-12; Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153, KSC-BC-2020-06/F01904, 3 November 2023, Confidential, paras 7-13.

¹⁰ A consolidated list of all such [REDACTED] is provided in Annex 2, together with clarifying information about superseded duplicates that the SPO will not rely on.

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ *See* KSC-BC-2020-06/F02459/A01.

¹⁵ A number of [REDACTED] have already been used in court with other witnesses.

¹⁶ In the interest of efficiency, the SPO intends to use a selection of [REDACTED] with the Witnesses, but does not intend to tender [REDACTED] through these Witnesses. Instead, the SPO will file a bar table motion in due course addressing the relevance of each [REDACTED], which will provide the Panel with the holistic perspective necessary to understand this evidence. *See, similarly*, [REDACTED].

overlap in the associated exhibits for this group of witnesses. Such instances are highlighted in Annexes 3-7.¹⁷ The SPO brings this to the Panel's attention to ensure each tendered document is admitted only once.

5. The Witnesses were [REDACTED] during the Indictment period. W04808 and W04809 were [REDACTED] in 1998 and 1999. W04797 and W04798 were [REDACTED] during the Indictment period, who frequently used and relied upon [REDACTED]. Within each of these pairs of witnesses, one witness provides evidence that is largely cumulative and corroborative of the other's evidence. The SPO therefore seeks, with respect to each pair of witnesses, the admission of one witness's evidence under Rule 154 and of his counterpart's evidence under Rule 153. This approach will significantly contribute to the expeditiousness of the proceedings.

6. As the [REDACTED], W04854 offers information regarding [REDACTED]. [REDACTED], W04854 provides evidence that is, in some respects, additional to and distinct from the evidence provided by the two pairs of witnesses discussed in paragraph 5 above. Considering [REDACTED] and evidence, and following confirmation by the Defence that it does not agree to admission of his evidence under Rule 153, the SPO has decided to convert W04854 to Rule 154.¹⁸

Rule 154 Witnesses

A. W04798

7. *Relevance.* W04798 was an [REDACTED]. W04798 provides evidence regarding the authenticity and reliability of [REDACTED]. His testimony covers [REDACTED],

¹⁷ [REDACTED] was shown to W04797 and W04798; [REDACTED] was shown to W04808 and W04854; [REDACTED] was shown to W04808, W04809, W04797, W04798; [REDACTED] was shown to W04808, W04809, W04797, W04798; and [REDACTED] was shown to W04808, W04809, W04797, W04798.

¹⁸ W04854 was previously notified as a Rule 153 witness. See Amended List of Witnesses, KSC-BC-2020-06/F01594/A01, 9 June 2023, Strictly Confidential and *Ex Parte* ('Witness List'), p.544/567. See also fn.5 above.

including how [REDACTED] relied upon and used the information obtained from [REDACTED]. W04798 describes a [REDACTED] in early 1999.

8. W04798 highlights that [REDACTED] was essential. Therefore, [REDACTED] were required to [REDACTED]. W04798 explains that [REDACTED], and any other [REDACTED]. [REDACTED]. Therefore, the [REDACTED].

9. In [REDACTED] 1998, W04798's [REDACTED]. W04798 was assigned the task of [REDACTED]. Some of these documents, such as [REDACTED].

10. W04798's evidence is thus relevant to charged crimes in the Indictment.¹⁹

11. *Authenticity and Reliability.* The Proposed Evidence is *prima facie* authentic and reliable. The Rule 154 Statement is comprised of W04798's [REDACTED] SPO interviews,²⁰ and his [REDACTED] statement.²¹ All statements bear sufficient indicia of authenticity and reliability.²²

12. W04798's SPO interviews were recorded in verbatim transcripts, and include details such as the date, time, and attendees.²³ The interviews were conducted with the assistance of an interpreter in a language understood by the witness.²⁴ W04798 was duly advised of his rights as a witness.²⁵ [REDACTED] Statement includes details such as the date, attendees, witness acknowledgement, and interpreter certification.

¹⁹ 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 ('Pre-Trial Brief'), paras [REDACTED].

²⁰ 088739-TR-ET Parts 1-2; 101598-TR-ET Parts 1-2.

²¹ [REDACTED].

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

²³ 088739-TR-ET Part 1, p.1; 088739-TR-ET Part 2, p.1; 101598-TR-ET Part 1, pp.1, 3; 101598-TR-ET Part 2, p.1. For additional information on reliability, see Annex 3.

²⁴ 088739-TR-ET Part 1, pp.1-2; 101598-TR-ET Part 1, pp.1-2; see also [REDACTED].

²⁵ 088739-TR-ET Part 1, pp.2-3. 101598-TR-ET Part 1, pp.2.

W04798 signed the statement on every page and confirmed the accuracy and truthfulness of his evidence.²⁶

13. *The associated exhibits are admissible.* Notwithstanding any overlap with other witnesses addressed in this motion,²⁷ the associated exhibits – including [REDACTED], and other related material, as well as documents related to [REDACTED] – forming part of the Proposed Evidence in Annex 3 should be admitted as they form an inseparable and indispensable part of W04798’s Rule 154 Statement, in that they are discussed and explained therein.

14. *Suitable for Rule 154 Admission.* W04798’s Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. Rule 154 admission of the Proposed Evidence will significantly reduce the number of hours required for direct examination to a maximum of one hour. During supplemental examination, the SPO would elicit brief oral testimony from W04798 on essential matters that highlight, clarify, or explain certain aspects of his evidence.

B. W04809

15. *Relevance.* W04809 was [REDACTED]. During 1998 and 1999, W04809 regularly [REDACTED]. W04809 provides evidence of [REDACTED]. W04809 also describes [REDACTED].

16. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

17. [REDACTED]. [REDACTED]. [REDACTED].

18. W04809’s evidence is thus relevant to charged crimes in the Indictment.²⁸

²⁶ [REDACTED].

²⁷ See above para.4.

²⁸ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

19. *Authenticity and reliability.* The Proposed Evidence is *prima facie* authentic and reliable.²⁹ The Rule 154 Statement is comprised of W04809's SPO interview,³⁰ which is recorded in a verbatim transcript, and includes details such as the date, time, and attendees.³¹ The interview was conducted with the assistance of an interpreter in a language understood by the witness.³² W04809 was duly advised of his rights as a witness.³³

20. *The associated exhibits are admissible.* Notwithstanding any overlap with other witnesses addressed in this motion,³⁴ the associated exhibits – including [REDACTED], and other related material – forming part of the Proposed Evidence in Annex 4 should be admitted as they are an inseparable and indispensable part of W04809's Rule 154 Statement, in that they are discussed therein and used to explain how W04809 [REDACTED].

21. *Suitable for Rule 154 Admission.* W04809's Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. Rule 154 admission of the Proposed Evidence will significantly reduce the number of hours required for direct examination to a maximum of one hour. During supplemental examination, the SPO would elicit brief oral testimony from W04809 on essential matters that highlight, clarify, or explain certain aspects of his evidence.

C. W04854

22. *Relevance.* [REDACTED]. W04854 describes [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

²⁹ For an individualised assessment of reliability, *see* Annex 4.

³⁰ 091206-TR-ET Part 1.

³¹ 091206-TR-ET Part 1, pp.1-2. For additional information on reliability, *see* Annex 4.

³² 091206-TR-ET Part 1, p.2.

³³ 091206-TR-ET Part 1, pp.2-3.

³⁴ *See above* para.4.

23. W04854 will [REDACTED]. He will testify that [REDACTED].
24. W04854's evidence is thus relevant to charged crimes in the Indictment.³⁵
25. *Authenticity and reliability.* The Proposed Evidence is prima facie authentic and reliable. The Rule 154 Statement is comprised of W04854's SPO interview,³⁶ which was recorded in a verbatim transcript, and includes details such as the date, time, and attendees.³⁷ The interview was conducted with the assistance of an interpreter in a language understood by the witness.³⁸ W04854 was duly advised of his rights as a witness.³⁹
26. *The associated exhibit is admissible.* Notwithstanding any overlap with other witnesses addressed in this motion,⁴⁰ the single associated exhibit – [REDACTED] – that forms part of the Proposed Evidence in Annex 5 should be admitted as it is an inseparable and indispensable part of W04854's Rule 154 Statement, in that it is discussed and explained therein.
27. *Suitable for Rule 154 admission.* W04854's Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. Rule 154 admission of the Proposed Evidence will significantly reduce the number of hours required for direct examination to a maximum of one hour.⁴¹ During supplemental examination, the SPO would elicit brief oral testimony from W04854 on essential matters that highlight, clarify, or explain certain aspects of his evidence.

³⁵ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

³⁶ 101505-TR-ET Parts 1-2.

³⁷ 101505-TR-ET Part 1, p.1. For additional information on reliability, see Annex 5.

³⁸ 101505-TR-ET Part 1, pp.1-2.

³⁹ 101505-TR-ET Part 1, pp.2-3.

⁴⁰ See *above* para.4.

⁴¹ This is as compared to presenting his testimony *viva voce*, considering that he has been converted from Rule 153 to Rule 154, as noted above.

Rule 153 Witnesses

D. W04797

28. *Relevance.* W04797 was [REDACTED]. He was [REDACTED]. Like W04798, W04797 provides evidence regarding [REDACTED]. W04797's evidence is thus relevant to charged crimes in the Indictment.⁴²

29. *Authenticity and Reliability.* W04797's Rule 153 Statement consists of his [REDACTED] SPO interview which was audio-visually recorded and documented in a verbatim transcript.⁴³ During this interview, W04797 was advised of his rights and obligations as a witness.⁴⁴

30. *Suitable for Rule 153 Admission.* W04797's evidence primarily concerns the authenticity and reliability of [REDACTED], does not go to proof of the acts and conduct of the Accused, and is corroborated by the evidence of witnesses the Defence will be able to cross-examine. Both W04797 and W04798 were [REDACTED] during the Indictment Period, and have [REDACTED]. Therefore, W04797's evidence is largely cumulative of that provided by W04798, and in certain respects, also W04809 and W04854, whom the Defence will have the opportunity to cross-examine. Accordingly, W04797's evidence is suitable for admission in writing in lieu of oral testimony.

31. *The associated exhibits are admissible.* Notwithstanding any overlap with other witnesses addressed in this motion,⁴⁵ the Associated Exhibits that form part of the Proposed Evidence in Annex 6 should be admitted as they are an inseparable and

⁴² See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

⁴³ 088957-TR-ET Parts 1-2. For additional information on reliability, see Annex 6.

⁴⁴ 088957-TR-ET Part 1, pp.3-4.

⁴⁵ See *above* para.4.

indispensable part of W04797's Rule 153 Statement, in that they are discussed and explained therein.

E. W04808

32. *Relevance.* From [REDACTED] 1998, W04808 was [REDACTED]. W04808 personally [REDACTED]. [REDACTED]. In particular, W04808 confirms that [REDACTED]. [REDACTED]. W04808's evidence is thus relevant to charged crimes in the Indictment.⁴⁶

33. *Authenticity and Reliability.* W04808's Rule 153 Statement consists of his [REDACTED] SPO interview which was audio-visually recorded and documented in a verbatim transcript.⁴⁷ During this interview, W04808 was advised of his rights and obligations as a witness.⁴⁸

34. *Suitability for Rule 153 Admission.* W04808's evidence primarily concerns the authenticity and reliability of [REDACTED], does not go to proof of the acts and conduct of the Accused, and is corroborated by the evidence of witnesses the Defence will be able to cross-examine. W04808 [REDACTED] W04809 [REDACTED]. Both witnesses have [REDACTED]. Therefore, W04808's evidence is largely cumulative of that provided by W04809, and in certain respects, also W04798 and W04854, whom the Defence will have the opportunity to cross-examine. Accordingly, W04808's evidence is suitable for admission in writing in lieu of oral testimony.

35. *The associated exhibits are admissible.* Notwithstanding any overlap with other witnesses addressed in this motion,⁴⁹ the Associated Exhibits that form part of the Proposed Evidence in Annex 7 should be admitted as they are an inseparable and

⁴⁶ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

⁴⁷ 089987-TR-ET Part 1. For additional information on reliability, see Annex 7.

⁴⁸ 089987-TR-ET Part 1, pp.2-3.

⁴⁹ See *above* para.4.

indispensable part of W04808's Rule 153 Statement, in that they are discussed and explained therein.

III. *INTER PARTES* CORRESPONDENCE

36. As instructed by the Panel, the SPO, Defence, and Victims' Counsel have engaged in *inter partes* correspondence in an effort to agree on the admission of the Proposed Evidence of W04797, W04808, and W04854 under Rule 153.

37. Victims' Counsel does not object to any of this Proposed Evidence being admitted pursuant to Rule 153.

38. On 18 July 2024, the four Defence teams objected to the admission of the Proposed Evidence of W04797, W04808, and W04854 pursuant to Rule 153. As indicated above, after receiving the Defence response, the SPO decided to convert W04854 to a Rule 154 witness.⁵⁰ However, notwithstanding Defence objections, the SPO has tendered the evidence of W04797 and W04808 pursuant to Rule 153, as it satisfies the Rule 153 criteria and is relevant, *prima facie* authentic and reliable, and of probative value which is not outweighed by any prejudice.

39. With regard to W04808, the four Defence teams also object to the admission through him of [REDACTED]. However, as indicated above and in the relevant annex, these documents satisfy the applicable test for associated exhibits and the requirements of Rule 138.

IV. CLASSIFICATION

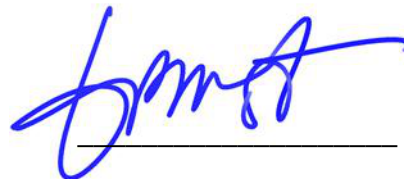
40. This submission and its Annexes are confidential pursuant to Rule 82(4) and to give effect to existing protective measures and [REDACTED].

⁵⁰ See also fn.5 above.

V. RELIEF REQUESTED

41. For the foregoing reasons, the Trial Panel should admit: (i) the Rule 153 Statements and associated exhibits; and (ii) the Rule 154 Statements and associated exhibits, subject to the fulfilment of the Rule 154 conditions by the relevant Witnesses during their appearances in court.

Word Count: 3,643



Kimberly P. West

Specialist Prosecutor

Monday, 22 July 2024

At The Hague, the Netherlands.