



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: 2 August 2024

Language: English

Classification: Public

Public redacted version of

Prosecution reply relating to response F02477

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. The Response¹ to the Motion² - as concerns W03871, W04735, and W04868 - ignores prior findings of the Panel and the established standard for admissibility of statements and associated exhibits, particularly in the context of Rule 154 where the witnesses will be available for cross-examination.

II. SUBMISSIONS

A. W03871

2. The SPO's estimate for the duration of W03871's supplemental examination is primarily based on the nature and volume of items the SPO may seek to use with and/or tender through this witness.³ The majority of these items directly refer to W03871 and/or KLA units he was a member of.⁴ The SPO has notified and provided information concerning these items, including as to their relevance, and has also set out the issues, facts, and circumstances in relation to which the witness will be examined.⁵ The SPO will use only the time necessary for completion of the supplemental examination, and will inform the Panel, Defence and Victims Counsel of any changes to such estimate should the need arise.

3. W03871's proposed associated exhibits meet the relevant requirements for admission,⁶ being discussed in his statement and with W03871 identifying, *inter alia*,

¹ Joint Defence Consolidated Response to F02450 and F02451, KSC-BC-2020-06/F02477, 29 July 2024, Confidential (with three annexes) ('Response').

² 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 (public redacted version notified same day) ('Motion').

³ See Response, KSC-BC-2020-06/F02477, para.8.

⁴ See ANNEX 1 to Prosecution submission of list of witnesses for 19 August to 7 November 2024, KSC-BC-2020-06/F02459, p.9.

⁵ See KSC-BC-2020-06/F02459, p.8.

⁶ *Contra* Response, KSC-BC-2020-06/F02477, para.8.

relevant names and tasks mentioned therein in his proposed Rule 154 Statements.

B. W04735

4. W04735's Rule 154 Statements are reliable and probative.⁷ The Defence misrepresents and exaggerates W04735's assertions, and draws unreasonable conclusions, failing to acknowledge that W04735's evidence about his arrest, detention, mistreatment and release has been consistent through the years. As already decided by the Trial Panel, contradictory or ambiguous statements need not affect the *prima facie* reliability of a witness statement or render the proposed Rule 154 evidence inadmissible.⁸ Some of the inconsistencies pointed out by the Defence have been addressed and clarified already within W04735's Rule 154 Statements.⁹ Other minor inconsistencies will be addressed in preparation or direct examination. Ultimately, any remaining uncertainties can be cross-examined and, to the extent relevant, considered when weighing the evidence.

5. The Defence claims of alleged defects in the form of concessions¹⁰ are unsubstantiated and/or irrelevant. First, some of these 'concessions' relate to prior statements which are not part of W04735's Rule 154 Statements.¹¹ Second, they relate to minor details explained by the Witness in subsequent statements.¹² Third, the Defence misrepresents a witness contact note by stating he has experienced memory

⁷ Motion, KSC-BC-2020-06/F02450, paras 49-55.

⁸ Decision on Prosecution Motion for Admission of Evidence of Witnesses W01511, W04260, W04305, W04410, W04744, W04752, and W04764 Pursuant to Rule 154 (F02204), KSC-BC-2020/F02328, 22 May 2024, paras 33, 89.

⁹ See e.g. SITF00016611-SITF00016704 RED3, pp.SITF00016626-SITF00016627 (clarifying SITF00013369-00013477 RED3, pp.SITF00013374-SITF0001375); SITF00016611-SITF00016704 RED3, pp.SITF00016647-SITF00016648 (clarifying SITF00013369-00013477 RED3, p.SITF00013394); SITF00016493-00016533 RED3, pp.SITF00016528-SITF00016529 (clarifying SITF00016611-SITF00016704 RED3, pp.SITF00016640-SITF00016645).

¹⁰ Response, KSC-BC-2020-06/F02477, paras 12-13.

¹¹ See footnotes 33 and 37 citing to statement referring to his [REDACTED] (SITF00013352-00013368 RED3).

¹² See e.g. SITF00016493-00016533 RED3, p.SITF00016514, where the witness explains a previous reference to a specific case file number was probably a mistake.

issues, when he in fact merely stated that ‘witnesses like him can’t remember all the details anymore’ with the passage of time.¹³ The alleged concessions do not affect the reliability of the proposed Rule 154 evidence and the Defence will have the opportunity to cross-examine on these issues.

6. Contrary to the Defence’s submissions,¹⁴ and as already mentioned in *inter partes* communications, the scope of the witness’ evidence has been laid out in the Motion and there is no compelling reason to exclude evidence in the Rule 154 statements related to other deaths,¹⁵ in particular that of [REDACTED].¹⁶ Deciding on a similar request related to W04501, the Panel ruled that ‘[w]hile the death of W04501’s relative occurred outside of the Indictment period, evidence relating to that death could be relevant [...], in particular in respect of any inference that the Panel may be asked to draw in respect of the reason(s) for which W04501 and members of his family might have been targeted during the relevant time frame’.¹⁷ Similarly, references to other deaths and to [REDACTED]’s murder in W04735’s Rule 154 Statements are relevant to W04735’s own arrest and mistreatment and the targeting of his family because of their links with LDK.¹⁸ Such evidence is relevant and should not be excluded.

7. Regarding procedural discussions in two of W04735’s prior statements forming part of his Rule 154 Statements, while the SPO does not intend to rely on these portions, specifically excluding them, and parsing the documents in the manner

¹³ 121899-121899 RED.

¹⁴ Response, KSC-BC-2020-06/F02477, para.14.

¹⁵ W04735 mentions other killings when recounting what he was told directly during his arrest and detention, as a means to intimidate him (*see e.g.* SPOE00014585-00014639, p.SPOE00014596; SITF00016611-SITF00016704 RED3, pp SITF00016630). This evidence is therefore relevant and probative of the motive behind his arrest, detention and mistreatment.

¹⁶ *Contra* Response, KSC-BC-2020-06/F02477, paras 14-18.

¹⁷ Decision on Prosecution Motion for Admission of Evidence of Witness W04501 pursuant to Rule 154 (F02388), KSC-BC-2020-06/F02415, 28 June 2024, Confidential, para.9.

¹⁸ SITF00013369-00013477 RED3, p.SITF00013377; SITF00016611-SITF00016704 RED3, pp.SITF00016630-SITF00016632; SITF00016493-00016533 RED3, p.SITF00016502.

proposed, is unnecessary. It is immediately apparent what relates to the substance of W04735's evidence, and such procedural discussions are limited.¹⁹ Their inclusion does not overburden the record. Lastly, the Prosecution has already disclosed several documents allowing the Defence and the Trial Panel to ascertain the identity of the individuals protected by pseudonyms.²⁰

C. W04868

8. Hashim THAÇI's 3 October 1999 speech is relevant to proving pleaded allegations in the Indictment,²¹ including his contribution to the common purpose charged through 'disseminating and/or facilitating the dissemination of information intended to promote the common purpose and engender fear, distrust, and hatred of Opponents, including through [...] public statements'.²² The speech, less than a month after the Indictment timeframe, informs the intentions behind Hashim THAÇI's statements made during this timeframe.²³ The 3 October 1999 speech is not itself a material fact which must be plead, and the SPO has previously been permitted to lead evidential details concerning Hashim THAÇI about events from well after the Indictment timeframe.²⁴

¹⁹ SPOE00014585-00014639 RED3, p.SPOE00014607, line 18 ('[REDACTED]') to p.SPOE00014611 and from SITF00016611-SITF00016704 RED3, p.SITF00016612 to p.SITF00016619, line 17 ('bring the witness in').

²⁰ See e.g. in the [REDACTED]: SITF00017845-00017857 RED2, p.SITF00017584; SPOE00015638-00015713 RED, p.SITF00015653. See also Prosecution motion for judicial notice of adjudicated facts, KSC-BC-2020-06/F01330/Annex 1, 1 March 2023, Confidential. [REDACTED]. [REDACTED].

²¹ *Contra* Response, KSC-BC-2020-06/F02477, paras 22-23.

²² Indictment, KSC-BC-2020-06/F01323/A01, para.50(d) (see also para.50(a)).

²³ In this regard, see generally Public Redacted Version of Decision on Selimi Defence Motion to Exclude Evidence of W04846, KSC-BC-2020-06/F02393/RED, 19 June 2024, para.17; Decision on Prosecution Motion for Admission of Evidence of W03724, W03832, W03880, W04368, W04566, and W04769 Pursuant to Rule 154, KSC-BC-2020-06/F01700, 24 July 2023, Confidential ('24 July 2023 Decision'), para.43; Decision on Prosecution Motion for Admission of Evidence of W00072, W02153 and W04586 Pursuant to Rule 154, KSC-BC-2020-06/F01664, 10 July 2023, Confidential, paras 21, 28. *Contra* Response, Response, KSC-BC-2020-06/F02477, para.26. See also P00755, p.SITF00172749.

²⁴ E.g. Transcript of Hearing, 17 January 2024, T.11359-11360 (part of broader discussion about events in 2013 across T.11356-11361).

9. W04868 hears Hashim THAÇI's speech in person through interpretation – the Defence plainly mischaracterises the interpreter's role when labelling this a 'hearsay' account.²⁵ W04868 was internally consistent in his SPO interview about this speech, and explained why other potentially inconsistent information did not affect the accuracy of his account.²⁶ There is no reason to deny the *prima facie* admission of W04868's evidence concerning this speech, and his credibility/reliability on this point is instead a question of weight.

10. As to associated exhibits, the Defence overstates the meaning of 'inseparable and indispensable' when considering W04868's associated exhibits,²⁷ omits essential context to tendered items,²⁸ and demands limited admission for reasonable-in-length items which would needlessly fracture the evidential record and lose courtroom time.²⁹ To highlight one example, W04868 is expected to testify how local KLA commander Florim KLLOKOQI was caught in a July 1999 U.S. KFOR raid at

²⁵ *Contra* Response, KSC-BC-2020-06/F02477, para.23. Even if correct, the Panel has consistently rejected such arguments. See e.g. Decision on Prosecution Motion for Admission of Evidence of W03170, W04043, W04444, W04571, W04765, W04811, and W04870 Pursuant to Rule 154 and Related Request (F01830), KSC-BC-2020-06/F01901, 2 November 2023, Confidential, para.83; 24 July 2023 Decision, KSC-BC-2020-06/F01700, paras 45-46; Corrected Version of Decision on Second Prosecution Motion Pursuant to Rule 154, KSC-BC-2020-06/F01595/COR, 9 June 2023, Confidential, para.46; Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 16 March 2023, Confidential, para.47.

²⁶ *Contra* Response, KSC-BC-2020-06/F02477, para.25. The other information is also more reconcilable than the Defence suggests. The AP article (020858-202859) does not say one way or the other if Hashim THAÇI made comments of the kind W04868 recalled from this speech. The UNMIK memo (SITF00173046-00173046) also indicates that Hashim THAÇI made remarks about Belgrade and that another speaker at the event was making inflammatory remarks about Serbs.

²⁷ E.g. Response, KSC-BC-2020-06/F02477, para.28 (R091-3823-R091-3824 – conceding document was discussed in W04868's SPO interview but arguing admission should be denied because the report is not 'verified').

²⁸ E.g. Response, KSC-BC-2020-06/F02477, para.28 (11th bullet point - indicating these are photos of a truck without noting W04868's further evidence that this truck was used to transport both illegal military equipment and a man later found beaten and killed). The Defence identifies the truck photos in relation to the full ERN range of 105816-106095, but from the submission the contested photos seem to be 106059-106060.

²⁹ E.g. Response, KSC-BC-2020-06/F02477, para.28 (105924-105951 and 105825-105876 – two items (one around 30 pages, and the other around 50 pages) which are [REDACTED] discussed at length across W04868's second SPO interview).

Novebërdë/Novo Brdo³⁰ with a formal appointment from Karadak Zone Commander Ahmet ISUFI.³¹ For the Defence to challenge the relevance of photos of this appointment order – complete with Florim KLLOKOQI holding it for the camera - because they are ‘photos of various alleged KLA men’ whose ‘physical description [...] is not an issue in this case’³² is utterly misguided.

III. CLASSIFICATION

11. This submission is filed as confidential pursuant to Rule 82(4).

IV. RELIEF REQUESTED

12. For the foregoing reasons and those previously given, the Motion should be granted.

Word Count: 1868



Kimberly P. West

Specialist Prosecutor

Friday, 2 August 2024

At The Hague, the Netherlands.

³⁰ In this regard, *see* SPO Pre-Trial Brief, KSC-BC-2020-06/F01415/A01, paras 687-93.

³¹ *See* 105816-106095, pp.105995-106016 (in particular page 106016; 106016 106016 ET). *See also* Annex 2 to Prosecution Motion for admission of Shala Zone and Karadak Zone documents, KSC-BC-2020-06/F02468/A02, 24 July 2024, Confidential, pp.5-6 (item 5).

³² Response, KSC-BC-2020-06/F02477, para.28 (105995-106016).