



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 Reply to 'Joint Defence Response to Prosecution fifth motion for admission of evidence pursuant to Rule 155'"

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Luka Mišetić

Counsel for Kadri Veseli

Rodney Dixon

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

I. INTRODUCTION

1. The Joint Response¹ includes arguments which ignore the applicable law and the Panel's previous findings. The Proposed Evidence in the Fifth Motion² satisfies the relevant criteria, and its admission will assist the Panel in determining the truth in this case.

II. SUBMISSIONS

2. The Panel has previously stated that in the Rule 155 context *prima facie* reliability 'does not require proof of reliability in relation to each or every fact or circumstance in relation to which the witness gives evidence',³ as the weight will be 'accounted for when assessing the evidence at the end of the trial'.⁴

3. Further, Defence submissions regarding the volume of evidence in these proceedings are unavailing.⁵ Rule 155 is a well-established trial procedure, with built-in safeguards to protect the fairness of the proceedings. The Panel has carefully applied such safeguards, exercised appropriate caution, and been mindful of the need to ensure a manageable record.⁶ The Fifth Motion proposes only relevant, reliable, and probative evidence which falls squarely within the parameters of Rule 155.

4. Insofar as the Defence claims that certain evidence is unnecessary due to related adjudicated facts,⁷ the Panel, when noticing such facts, found that '[i]t is important that the Panel should be provided with all relevant evidence pertaining to any such

¹ Joint Defence Response to Prosecution fifth motion for admission of evidence pursuant to Rule 155, KSC-BC-2020-06/F02661, 18 October 2024, Confidential ('Joint Response').

² Prosecution fifth motion for admission of evidence pursuant to Rule 155, KSC-BC-2020-06/F02601, 26 September 2024, Confidential ('Fifth Motion').

³ Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, Confidential ('First Decision') para.64. *Contra* Joint Response, para.19.

⁴ Decision on Prosecution Second Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01864, 17 October 2023, Confidential, para.58. *Contra* Joint Response, para.19.

⁵ See e.g. Joint Response, KSC-BC-2020-06/F02661, paras 2, 5.

⁶ See e.g. First Decision, KSC-BC-2020-06/F01603, paras 108, 208.

⁷ Joint Response, KSC-BC-2020-06/F02661, paras 2, 16.

facts so as to enable it to perform its fact-finding functions, in particular in respect of facts that are in dispute between the parties'.⁸ To date, the Defence has not indicated that it agrees to or does not dispute any adjudicated facts relating to the crime base in this case.

5. The SPO addresses hereunder certain Defence arguments related to the evidence of W01473, W04431, W04648, and W04825.

A. W01473 and W04431

6. The Defence objections to the admission of [REDACTED] W01473's and W04431's [REDACTED]⁹ ignore that these recordings were tendered pursuant to the Panel's order that any such recordings should be tendered.¹⁰ Further, contrary to Defence assertions, the [REDACTED]¹¹ – provide additional elements for an assessment of the deceased witnesses' credibility.¹²

7. The Defence also objects to two associated exhibits of W01473,¹³ ignoring that both exhibits were shown to witness W01473 during [REDACTED].¹⁴ However, considering the technical issues with the [REDACTED], the SPO defers to the Panel as to whether it considers admission to be appropriate.¹⁵

⁸ Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F01534, 17 May 2023, para.26. *See also* Decision on Second Prosecution Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F02498, 21 August 2024, para.25.

⁹ Joint Response, KSC-BC-2020-06/F02661, para.5.

¹⁰ Transcript, 15 January 2024, p.11022.

¹¹ [REDACTED].

¹² *See* Fifth Motion, KSC-BC-2020-06/F02601, paras 14, 20.

¹³ Joint Response, KSC-BC-2020-06/F02661, paras 6-8; Annex 1 to Fifth Motion, KSC-BC-2020-06/F02601/A01, item 8: [REDACTED] and item 10: [REDACTED].

¹⁴ *See* Annex 1 to Fifth Motion, KSC-BC-2020-06/F02601, Item 8: [REDACTED]; and Item 10: [REDACTED].

¹⁵ While the SPO acknowledges that the [REDACTED] has technical issues, if it is played at a slower speed, the different images [REDACTED] are clear. The SPO does not possess any better-working version.

B. W04648

8. Contrary to Defence arguments,¹⁶ the letter tendered as part of W04648's Proposed Evidence bears sufficient indicia of reliability.¹⁷ The original typewritten version of the letter was [REDACTED] on both pages.¹⁸ He indicated [REDACTED] that he had previously written an account of the facts.¹⁹ Further, the details provided in the letter are consistent with W04648's account of [REDACTED] abduction in his [REDACTED], including the names of the alleged perpetrators and W04648's multiple attempts to obtain information [REDACTED].²⁰ Finally, Defence submissions about the scope of Rule 155(1) ignore its plain language,²¹ which permits the Panel to admit any 'record written or otherwise of what a person has said' and is not limited to statements given in the context of criminal investigations and proceedings. Accordingly, the letter satisfies the criteria for admission under Rule 155.

C. W04825

9. Contrary to the Defence's arguments²² and consistent with the SPO's submissions,²³ the probative value of W04825's Proposed Evidence is not outweighed by any prejudice. Further, any claim concerning the limited probative value of the Proposed Evidence, even if correct, would not warrant its exclusion.²⁴

10. The fact that the witness did not recognize [REDACTED] in some photos shown to him, does not diminish the probative value of his evidence. These photos²⁵

¹⁶ Joint Response, KSC-BC-2020-06/F02661, paras.12-13.

¹⁷ SPOE00130685-00130687 RED3, p.SPOE00130685; SPOE00128344-00128345; SPOE00130685-SPOE00130685-AT. See Fifth Motion, KSC-BC-2020-06/F02601/A04, item 3.

¹⁸ SPOE00128344-00128345.

¹⁹ SPOE00128333-00128343 RED3, p.SPOE00128334.

²⁰ W04648 [REDACTED].

²¹ Joint Response, KSC-BC-2020-06/F02661, para.13.

²² Joint Response, KSC-BC-2020-06/F02661, para.21.

²³ Fifth Motion, KSC-BC-2020-06/F02601, paras 42-46.

²⁴ First Decision, KSC-BC-2020-06/F01603, para.68.

²⁵ 092970-092973, at pp.092970-092971, corresponding to [REDACTED].

do not depict [REDACTED]. [REDACTED], another witness for this site who has already testified in these proceedings, indicated that they most likely show the [REDACTED].²⁶ Besides, the photos are not contemporaneous, and [REDACTED].²⁷ For these reasons, non-recognition by the witness cannot affect the probative value of his compelling evidence on his detention and mistreatment in [REDACTED], or its admissibility.²⁸

11. Further, the Response fails to acknowledge that W04825 identified the [REDACTED] on the aerial picture shown to him,²⁹ and explained that [REDACTED].³⁰

12. While corroboration is not a pre-condition to admission pursuant to Rule 155,³¹ but is rather part of the Panel's assessment regarding weight,³² W04825's evidence is corroborated by other documentary and witness evidence cited in the Fifth Motion. Such corroboration concerns several significant aspects of W04825's evidence, including:

- the existence of the KLA base and detention site [REDACTED] of 1999;³³
- detention of individuals, including of Serb ethnicity, in the [REDACTED],³⁴ held around the same time as W04825;³⁵

²⁶ See [REDACTED].

²⁷ 092974-TR-ET Part 2 Revised RED, pp.22-23.

²⁸ With regard to a third picture, 092970-092973, at p.092970, the witness stated that the building looked familiar, but 'I just can't remember whether that was [REDACTED] (see 092974-TR-ET Part 2 Revised RED, p.23).

²⁹ 092970-092973, p.092973. W04825 added that there is [REDACTED] (092974-TR-ET Part 2 Revised RED, p.24).

³⁰ 092974-TR-ET Part 2 Revised RED, p.18. See also [REDACTED]'s evidence in relation to the fact [REDACTED].

³¹ See e.g. First Decision, KSC-BC-2020-06/F01603, paras 86, 137.

³² See First Decision, KSC-BC-2020-06/F01603, paras 86, 88, 137.

³³ See Evidence of [REDACTED].

³⁴ See, e.g., [REDACTED]. Cf. with W04825 (SITF00161883-SITF00161892-ET, p.24; 092974-TR-ET Part 1 RED2, p.7).

³⁵ See [REDACTED]. Cf. with W04825, detained on or around [REDACTED] 1999 (SITF00161883-SITF00161892-ET, p.17).

- physical and psychological abuse of detainees³⁶ in [REDACTED];³⁷ and
- similar questions posed to the detainees (concerning [REDACTED]).³⁸

13. All this, taken cumulatively, corroborates the evidence of W04825, and indicates a consistent pattern of detentions and mistreatment of Serbs by KLA members in the aforementioned location in [REDACTED] 1999.

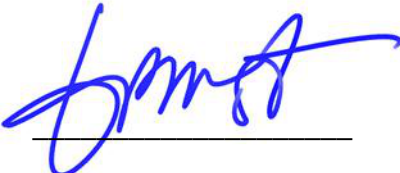
III. CLASSIFICATION

14. This reply is confidential as it contains information concerning witnesses with protective measures and/or whose identities are not public at this time. A public redacted version of the reply will be filed.

IV. RELIEF REQUESTED

15. For the foregoing reasons, the SPO requests that the Trial Panel admit the Proposed Evidence as identified in its Fifth Motion.

Word Count: 1,612



Kimberly P. West

Specialist Prosecutor

Monday, 28 October 2024

At The Hague, the Netherlands.

³⁶ See, e.g., [REDACTED]; W04825 (092974-TR-ET Part 2 Revised RED, pp.13-14).

³⁷ [REDACTED]. Cf. with W04825 (092974-TR-ET Part 2 Revised RED, pp.15-16).

³⁸ [REDACTED]. Cf. with W04825 (SITF00161883-SITF00161892-ET, p.24; 092974-TR-ET Part 2 Revised RED, p.15).