



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: 28 October 2024

Language: English

Classification: Public

Public Redacted Version of 'Prosecution motion for admission of evidence of W04743 pursuant to Rule 154 and related notifications with confidential

Annexes 1-2'

Specialist Prosecutor's Office

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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'): (i) submits the information required by paragraphs 73-74 of the Conduct of Proceedings Order,³ and (ii) requests the admission of the statements (collectively, 'Rule 154 Statement'), together with the associated exhibits,⁴ of W04743.⁵ The SPO has identified W04743 as a suitable additional witness for the January 2025 evidentiary block. W04743 is tentatively proposed to testify in that block between W04874 and W04826.⁶

2. Further, in addition to those notified previously,⁷ the SPO has identified two more reserve witnesses for evidentiary blocks (between 18 November 2024 and 30 January 2024: [REDACTED]). The information required by paragraphs 73-74 of the Conduct of Proceedings Order has previously been provided and the Rule 154 applications granted for both [REDACTED]⁸ and [REDACTED].⁹

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 See Annex 2. See also Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Conduct of Proceedings Order').

⁴ The Rule 154 Statement and associated exhibits are referred to herein as the 'Proposed Evidence'.

⁵ Annex 1 to this filing contains a table identifying the Proposed Evidence for W04743. In the interest of expeditiousness and as also set out below, the SPO is now seeking to admit W04743's prior statements under Rule 154 (W04743 was previously fully *viva voce*) and, subject to a decision on this request, has reduced the examination estimate for W04743 from five to three hours.

⁶ See Prosecution submission of list of witnesses for 18 November 2024 to 30 January 2025, KSC-BC-2020-06/F02620, 7 October 2024, Confidential ('Notification'). Additionally, as previously indicated in response to an *inter partes* Defence request, W04393's place in the order was tentatively changed, so that he would follow W03873 and precede W04401.

⁷ Notification, KSC-BC-2020-06/F02620, fn.2. Any further changes to scheduled or reserve witnesses will be noticed at the earliest opportunity.

⁸ See [REDACTED].

⁹ See [REDACTED]. See also [REDACTED].

II. SUBMISSIONS

3. Consistent with Rule 154, W04743 is anticipated to: (i) be present in court; (ii) be available for cross-examination and any questioning by the Panel; and (iii) attest that his Rule 154 Statement accurately reflects his declaration and what he would say if examined. As detailed below and in the accompanying Annex 1, the Proposed Evidence meets the requirements of the Rules, is relevant, *prima facie* authentic, and reliable, and has probative value, which – considering, in particular, that W04743 will be available for cross-examination – is not outweighed by any prejudice. Admission is therefore in the interests of justice.¹⁰

4. *Relevance.* W04743, [REDACTED], joined the KLA after the events in Prekaz. [REDACTED] He first arrived in [REDACTED], where [REDACTED] directed him to units. He then requested to be transferred to [REDACTED], where he joined [REDACTED]. From November or December 1998, W04743 was [REDACTED]. W04743 retained this function until the NATO agreement. Because of these functions, W04743 was in contact with [REDACTED]. In February or March 1999, W04743 was also appointed [REDACTED].

5. W04743 provides evidence about the structure and composition of the KLA, including the General Staff, operational zones, brigades – [REDACTED] – and smaller units. W04743 was also [REDACTED] and provides evidence on, *inter alia*, the role, structure, and duties of [REDACTED]; communication, structure, and duties of [REDACTED]; the establishment, duties, and functioning of [REDACTED]. W04743 also provides evidence about [REDACTED].

¹⁰ 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.

6. W04743's evidence is thus relevant to the charges.¹¹

7. *Authenticity and reliability.* W04743's Rule 154 Statement is *prima facie* authentic and reliable. It consists of his SPO statement [REDACTED],¹² and the SPRK record [REDACTED],¹³ which are recorded in verbatim transcripts, and bear sufficient indicia of reliability.¹⁴ The statements were taken with the assistance of interpreters in a language W04743 understands, [REDACTED].¹⁵ W04743 confirmed that the contents of his statements are true and accurate, and given voluntarily.¹⁶

8. *The associated exhibits are admissible.* The associated exhibits forming part of the Proposed Evidence in Annex 1 – which include KLA orders, reports and other contemporaneous documents – should be admitted as they are discussed and reviewed therein.¹⁷

9. *Suitable for Rule 154 admission.* W04743's Proposed Evidence satisfies the requirements of Rule 154, and considering that he will be available for cross-examination, the probative value of the Proposed Evidence is not outweighed by any prejudice. While the two parts of the Rule 154 Statement are partially duplicative, they provide complementary detail and represent W04743's statements to different authorities at different times.¹⁸

¹¹ Amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, Confidential, 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, paras [REDACTED].

¹² 082908-TR-ET Parts 1-5 RED2; 082909-TR-ET Parts 1-6 RED2.

¹³ SPOE00073191-SPOE00073199 RED2.

¹⁴ For an individualised assessment of reliability, see Annex 1.

¹⁵ SPOE00073191-SPOE00073199 RED2, pp.SPOE00073193-SPOE00073194, SPOE00073199; 082908-TR-ET Part 1 RED2, pp.1-3; 082909-TR-ET Part 1 RED2, p.2.

¹⁶ SPOE00073191-SPOE00073199 RED2, p.SPOE00073199; 082908-TR-ET Part 5 RED2, p.24; 082909-TR-ET Part 6 RED2, p.14.

¹⁷ As indicated in Annex 1, the SPO is not tendering items on which W04743 was not able to comment, and which do not otherwise form an indispensable part of his Rule 154 statement.

¹⁸ The SPRK record is also limited in length, totalling 9 pages.

10. The SPO initially proposed W04743 as a *viva voce* witness with a five-hour direct examination estimate.¹⁹ Rule 154 admission of W04743's Proposed Evidence will significantly reduce the time required for W04743's direct examination from five to three hours. During the supplemental examination, the SPO would elicit brief oral testimony to address issues not covered in, and clarify or explain certain aspects of, the Proposed Evidence.

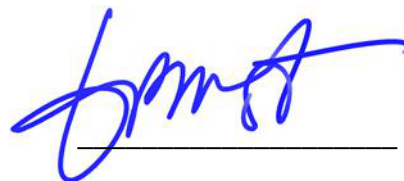
III. CLASSIFICATION

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

IV. RELIEF REQUESTED

12. For the foregoing reasons, the Trial Panel should admit the Proposed Evidence, subject to fulfilment of the Rule 154 conditions by W04743 during his appearance in court.

Word Count: 1399



Kimberly P. West

Specialist Prosecutor

Monday, 28 October 2024

At The Hague, the Netherlands.

¹⁹ Amended List of Witnesses, KSC-BC-2020-06/F01594/A01, 9 June 2023, Strictly Confidential and *Ex Parte*, pp.15, 454.