



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 'Corrected Version of "Prosecution reply relating to Rule 153 motion F02599 with confidential Annex 1"'

Specialist Prosecutor's Office

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I. INTRODUCTION

1. The Specialist Prosecutor's Office ('SPO') hereby replies to the Defence Response,¹ which fails to show any convincing reasons why the Motion² should not be granted in its entirety. The evidence submitted in the Motion is admissible as it satisfies the Rule 153 conditions, and is relevant, *prima facie* reliable, and has probative value which is not outweighed by any prejudice.

2. As a preliminary matter, the SPO notes that [REDACTED], tendered in Annex 5 to the Motion as an associated exhibit for W04432, has now been admitted as P01689,³ rendering the request to admit this item in the Motion moot.

II. SUBMISSIONS

3. To the extent Defence objections related to W01679 (except from the issue addressed in this reply), W04432, and W04591 are repeated in the Exclusion Motion,⁴ the SPO will address these unfounded objections in its response thereto. In this respect – considering that the Exclusion Motion is procedurally irregular, will result in unnecessary and repetitive litigation, and raises arguments about the relevance and probative value of evidence submitted in the Motion⁵ – the Motion, Exclusion Motion, and related filings should be considered and addressed by the Panel altogether. Below, the SPO addresses certain arguments in the Response relating to W01679 and

¹ Joint Defence Response to Prosecution motion for the admission of the evidence of witnesses W01679, W03593, W04391, W04394, W04432, W04433, W04591, and W04858 pursuant to Rule 153, KSC-BC-2020-06/F02662, 18 October 2024, Confidential ('Response').

² Prosecution motion for the admission of the evidence of witnesses W01679, W03593, W04391, W04394, W04432, W04433, W04591, and W04858 pursuant to Rule 153, KSC-BC-2020-06/F02599, 26 September 2024, Confidential ('Motion').

³ See Public Redacted Version of Decision on the Remainder of Prosecution Motion for Admission of Evidence of Witnesses W02135, W04295, W04372, W04590, W04600, W04737, W01158, W01605, W04240, W04278, W04352, W04366, and W04427 Pursuant to Rule 154 (F02450 and F02460), KSC-BC-2020-06/F02571/RED, 13 September 2024, para.44. See also Transcript, 30 September 2024, p.20406.

⁴ Veseli, Selimi & Krasniqi Defence Motion to Exclude the Evidence of W01679, W04432, and W04591 Pursuant to Rule 153, KSC-BC-2020-06/F02663, 18 October 2024, Confidential ('Exclusion Motion'). The Exclusion Motion is repeatedly cited in the Response (see e.g. fns.5-7, 10).

⁵ See, similarly, Prosecution response to joint Defence motion to exclude Rule 153 evidence (F02478), KSC-BC-2020-06/F02508, 26 August 2024, Confidential, para.4.

W04433 that are not part of the Exclusion Motion.

A. W01679

4. The Defence assertion that 105373-105375 RED2 'is not a statement and was not commented by the witness in his SPO interview or KSC testimony since it is posterior'⁶ is incorrect. As is clear from W01679's Annex and explained in the Motion,⁷ W01679 was shown and commented on 105373-105375 RED2, dated [REDACTED], during his [REDACTED] testimony of [REDACTED].⁸ 105373-105375 RED2 is admissible pursuant to Rule 153.⁹

B. W04433

5. The Defence fails to provide convincing reasons why W04433's evidence is not suitable for admission pursuant to Rule 153.¹⁰ The Defence seeks to cross-examine the witness on matters that have been thoroughly explored during the witness's [REDACTED], including during cross-examination by multiple defence teams in that case, such as W04433's identification [REDACTED],¹¹ [REDACTED],¹² and [REDACTED],¹³ [REDACTED],¹⁴ and the content of his statement to [REDACTED].¹⁵ Additionally, as set out in the Motion and contrary to the Defence assertion, W04433's evidence is cumulative to other evidence concerning crimes at the [REDACTED] detention site, and is corroborated by witnesses whom the Accused have been or will

⁶ Response, KSC-BC-2020-06/F02662, para.8.

⁷ Motion, KSC-BC-2020-06/F02599, para.43(ii).

⁸ KSC-BC-2020-06/F02599/A01, p.3, Prior Statement no.3, [REDACTED]. *See also* KSC-BC-2020-06/F02599/A01, p.5, Associated Exhibit no.6, indicating where the Associated Exhibit was discussed with the witness.

⁹ *Contra* Response, KSC-BC-2020-06/F02662, para.8.

¹⁰ *Contra* Response, KSC-BC-2020-06/F02662, paras.11-16.

¹¹ Response, KSC-BC-2020-06/F02662, para.14. *See* [REDACTED].

¹² Response, KSC-BC-2020-06/F02662, para.14. *See* [REDACTED]; [REDACTED].

¹³ Response, KSC-BC-2020-06/F02662, para.14. [REDACTED].

¹⁴ Response, KSC-BC-2020-06/F02662, para.14. *See* [REDACTED].

¹⁵ Response, KSC-BC-2020-06/F02662, para.15. *See* [REDACTED].

be able to cross-examine.¹⁶ Therefore, the Defence has failed to establish that any prejudice would arise from an inability to cross-examine W04433.

6. Further, contrary to the Defence's argument,¹⁷ [REDACTED]¹⁸ and does not impact admissibility under Rule 153. Consistent with the Panel's previous decisions, findings regarding weight and probative value will be reached based on the entire body of evidence in this case,¹⁹ which is different than that in [REDACTED].

7. Finally, in relation to the challenged associated exhibit,²⁰ the Response ignores prior findings of the Panel and the established standard for admissibility of associated exhibits.²¹ [REDACTED] was used and discussed during W04433's [REDACTED] in a manner that makes it an inseparable and indispensable part of his [REDACTED], and the relevant part of his evidence cannot be properly understood without this document.

C. *INTER PARTES* PROCESS

8. The Defence claims concerning the *inter partes* process are unsubstantiated. Consistent with the Order on the Conduct of Proceedings,²² the SPO constructively engages in *inter partes* consultation and considers all relevant circumstances, including the outcome of such consultations, before filing any request. The SPO's position on

¹⁶ Motion, KSC-BC-2020-06/F02599, para.33. *Contra* Response, KSC-BC-2020-06/F02662, para.13.

¹⁷ Response, KSC-BC-2020-06/F02662, para.12.

¹⁸ Decision on Prosecution Third Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F02013, 15 December 2023, Public ('Third Rule 155 Decision'), para.50.

¹⁹ *See e.g.* Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, Confidential, para.19; Sixth Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01983, 5 December 2023, para.129; Third Rule 155 Decision, KSC-BC-2020-06/F02013, para.50.

²⁰ Response, KSC-BC-2020-06/F02662, para.16.

²¹ *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, para.24; Public Redacted Version of 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/RED, 24 July 2023, para.51; 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, 33, 49.

²² Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023, para.39.

inter partes proposals is set out clearly for the Panel's consideration, including where the SPO does not object to a Defence proposal or position. That the SPO does not accept certain Defence proposals is not, in and of itself, a reason for 'concern' or indicate that *inter partes* consultation is 'one-sided', as claimed in the Response.²³

9. As is clear from the *inter partes* discussions preceding the filing of the Motion (which are included at Annex 1 for the Panel's consideration) and as acknowledged by the Defence,²⁴ the SPO, in light of the Defence's position communicated *inter partes*, agreed to convert one witness to Rule 154 (W04393). The SPO also confirmed it would not rely on one witness's evidence concerning Rexhep SELIMI.²⁵ Further, as constructively explained *inter partes*, the Defence's request that three witnesses (W01679, W04432, and W04591) be withdrawn from the SPO's witness list due to related adjudicated facts runs contrary to this Panel's previous findings and ignores the nature of the witnesses' evidence and the purposes for which it is being tendered.²⁶ To the extent the Defence does not dispute any adjudicated facts, it should notify the SPO at the earliest opportunity, as this may impact on the SPO's decision to rely on certain evidence or witnesses. However, at present, all adjudicated facts relating to the crime base remain in dispute and, consistent with the Panel's previous findings, evidence of such disputed facts should be available to the Panel for its holistic assessment at the conclusion of the trial.²⁷

10. Defence submissions concerning the *inter partes* process should therefore be dismissed.

²³ Response, KSC-BC-2020-06/F02662, paras 17-19.

²⁴ Response, KSC-BC-2020-06/F02662, para.18.

²⁵ See Annex 1; Motion, KSC-BC-2020-06/F02599, para.43(iii); Response, KSC-BC-2020-06/F02662, para.9.

²⁶ See Annex 1.

²⁷ Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F01534, 17 May 2023, para.26; Decision on Second Prosecution Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F02498, 21 August 2024, para.25.

III. CLASSIFICATION

11. This filing is confidential pursuant to Rule 82(4).

IV. RELIEF REQUESTED

12. For the reasons given above and previously, the Motion should be granted in its entirety.

Word count: 1,381



Kimberly P. West

Specialist Prosecutor

Monday, 28 October 2024

At The Hague, the Netherlands.

Explanatory note: The witness codes W03595, W04391, and W04394 in para.9 were corrected to W01679, W04432, and W04591.