



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 relating to Rule 154 motion F02682'

Specialist Prosecutor's Office

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I. INTRODUCTION

1. The Response's¹ flawed and circular reasoning is speculative, and 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

2. The Defence does not object to the admission of W04743's Rule 154 statement, but inexplicably argues, primarily on the basis of the proposed Rule 154 statement's moderate number of pages, that the supplemental direct examination estimate is 'entirely incompatible with the time-saving function of Rule 154.'² The Response's ensuing speculation that granting the Motion would shift the burden to the Defence,³ shows a misunderstanding of, *inter alia*, the Rule 154 procedure and purposes of cross-examination. The challenges raised in the Response⁴ go to ultimate weight, not admissibility.

3. The estimate for W04743's supplemental examination is based, *inter alia*, on the nature and volume of items the SPO intends to use with and/or tender through this witness. For example, during his SPO interview, [REDACTED].⁵ While some items from this collection were discussed with W04743 during the SPO interview, other items were not, including because they had not been translated and processed at that time. As indicated in W04743's notification and reflected in the proposed estimate,⁶

¹ Joint Defence Response to 'Prosecution motion for admission of evidence of W04743 pursuant to Rule 154 and related notifications', KSC-BC-2020-06/F02702, 8 November 2024, Confidential ('Response').

² Response, KSC-BC-2020-06/F02702, paras. 2-3.

³ Response, KSC-BC-2020-06/F02702, para.4.

⁴ Response, KSC-BC-2020-06/F02702, para.4 (arguing, *inter alia*, that certain parts of the statement are 'unfocused and unspecific').

⁵ 082926-083087 RED2; 082926-083087-ET Revised.

⁶ Prosecution motion for admission of evidence of W04743 pursuant to Rule 154 and related notifications, KSC-BC-2020-06/F02682, 28 October 2024, Confidential ('Motion'), para.10. *See also* KSC-BC-2020-06/F02682/A02.

the SPO intends to use these items with the witness, who is in a unique position to comment on them.

4. The Defence assertions about notice⁷ are also incorrect and unsubstantiated, as the SPO has notified and provided information concerning the items it intends to use, including their relevance, and has also set out the issues, facts, and circumstances in relation to which the witness will be examined.⁸ There is no ambiguity about the topics the SPO intends to explore with the witness or the documents it intends to use.

5. Further, the Defence misrepresents the SPO's submissions in relation to the partially duplicative nature of the two parts of the Rule 154 statement,⁹ and ignores further submissions on complementarity and timing.¹⁰ The Defence suggestion that the SPRK record overburdens the record is baseless as the statement only amounts to nine pages,¹¹ and together with the SPO interview is of combined, moderate length.

6. Finally, the Defence indicates a fundamental misunderstanding of the admissibility criteria for associated exhibits.¹² Defence arguments for exclusion of 082926, 082928 and 083017-083043 are a question of weight, and as repeatedly held by the Panel, are not determinative of admission.¹³ The relevant question is whether the 'witness's testimony would become incomprehensible or of lesser probative value' without the exhibit, and particularly, 'whether the proposed exhibit was discussed with the witness during the record which is being tendered in evidence.'¹⁴ The pages

⁷ Response, KSC-BC-2020-06/F02702, para.5.

⁸ See KSC-BC-2020-06/F02682/A02. Such notice should also be considered in light of the detailed summaries of the witness's evidence in the witness list and Motion.

⁹ Response, KSC-BC-2020-06/F02702, para.6.

¹⁰ Motion, KSC-BC-2020-06/F02682, para.9.

¹¹ Response, KSC-BC-2020-06/F02702, para.4. See SPOE00073191-SPOE00073199 RED2.

¹² See Response, KSC-BC-2020-06/F02702, paras 8-10.

¹³ Decision on Admission of Evidence of First Twelve SPO witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 16 March 2023, Confidential ('First Decision'), para.85.

¹⁴ First Decision, KSC-BC-2020-06/F01380, para.24.

tendered were clearly identified,¹⁵ and meet the admissibility criteria for the reasons set out in the Motion and corresponding annex.

7. In relation to IT-03-66 P35, while P01280 contains video footage of the same ceremony, it is not identical to IT-03-66 P35 – the video shown to and commented on by W04743 during his interview. W04743's identification of certain KLA members is based on specific time codes of the tendered video, which forms an inseparable and indispensable part of his evidence, and would become less comprehensible without it.

III. CLASSIFICATION

8. This filing is confidential pursuant to Rule 82(4) of the Rules.¹⁶

IV. RELIEF REQUESTED

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

Word count: 740



Kimberly P. West

Specialist Prosecutor

Friday, 15 November 2024

At The Hague, the Netherlands.

¹⁵ See Annex 1 to Motion, KSC-BC-2020-06/F02682.

¹⁶ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').