



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: 19 December 2024

Language: English

Classification: Public

Public Redacted Version of 'Prosecution motion for admission of evidence of W04500 pursuant to Rule 154 and request for video-conference testimony with confidential Annexes 1-2'

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. 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 statement ('Rule 154 Statement'), together with the associated exhibit,⁴ of W04500.⁵

2. The SPO has identified W04500 as a suitable reserve witness for the January 2025 evidentiary block,⁶ and he could be required as early as the first week of that block. The SPO therefore requests that the recess suspension of deadlines not apply in full to this filing, and any responses be filed not later than 3 January 2025 in order to facilitate timely adjudication.⁷

3. Further, pursuant to Articles 23(1) and 40(2), and Rules 141(1) and 144,⁸ and considering W04500's personal circumstances, the SPO requests the Trial Panel to authorise W04500's testimony via video-conference from [REDACTED].

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 exhibit are referred to herein as the 'Proposed Evidence'.

⁵ Annex 1 to this filing contains a table identifying the Proposed Evidence for W04500. In the interest of expeditiousness and as also set out below, the SPO is now seeking to admit W04500's prior statements under Rule 154 (W04500 was previously fully *viva voce*) and, subject to a decision on this request, has reduced the examination estimate for W04500 from three hours to 40 minutes.

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').

⁷ See Order on the Extension of Time for Filings and Private Session Transcript Reviews During Winter Recess Period, KSC-BC-2020-06/F02800, 19 December 2024.

⁸ See also Registry Practice Direction on Video Links, KSC-BD-23/COR, 17 July 2020 as corrected on 5 August 2020 ('Practice Direction').

II. SUBMISSIONS

A. ADMISSION OF THE PROPOSED EVIDENCE PURSUANT TO RULE 154

4. Consistent with Rule 154, W04500 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 W04500 will be available for cross-examination – is not outweighed by any prejudice. Admission is therefore in the interests of justice.⁹

5. *Relevance.* On or about [REDACTED] 1999, W04500 was detained by the KLA at the [REDACTED] detention site until about [REDACTED] 1999. He was arrested together with [REDACTED], when they went to the Military Police headquarters in [REDACTED] to ask about [REDACTED], who had also been detained.

6. W04500 was interrogated by KLA members about being [REDACTED]. For about two hours, he was punched, kicked and hit with the butts of firearms, mostly by a person named [REDACTED], while [REDACTED] questioned him.

7. On the second or third day of his detention, W04500 was again interrogated in a room with seven to ten other people, and was questioned about police officers that he was allegedly collaborating with. W04500 was brutally beaten by [REDACTED].

8. W04500 was kept in [REDACTED], where conditions were dire and many detainees were beaten. Among the detainees, he recalls [REDACTED]. [REDACTED] told W04500 that he was beaten in [REDACTED] by a soldier wearing a black uniform,

⁹The 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.

and that he was forced to chop wood. Other detainees also had to do mandatory work, such as fixing roads.

9. W04500 saw [REDACTED]. On that occasion, he was maltreated, [REDACTED]. W04500 also witnessed [REDACTED] being continuously interrogated during their time in detention. They were eventually taken away by four or five guards, never to be seen again.

10. Due to Serbian shelling, W04500 and other detainees were moved out of [REDACTED] on [REDACTED] 1999, and went [REDACTED], accompanied by KLA guards including [REDACTED]. After a few days, they were taken to the village of [REDACTED] and detained there in a private house. In [REDACTED], W04500 met [REDACTED]. After some time, [REDACTED] was taken out and W04500 never saw her again. W4500 was released from [REDACTED] together with [REDACTED].

11. W04500's evidence is thus relevant to charged crimes in the Indictment.¹⁰

12. *Authenticity and reliability.* W04500's Proposed Evidence is *prima facie* authentic and reliable.¹¹ The Rule 154 Statement is comprised of W04500's SPO interview and consists of verbatim transcripts of the audio-video recording of the interview.¹² During the interview, W04500 confirmed that the content of his statement was true and accurate, and given voluntarily.¹³

13. *The associated exhibit is admissible.* The associated exhibit – consisting of two drawings made by W04500 to explain the location where he was detained – forms an integral part of the Proposed Evidence in Annex 1, was discussed during the SPO

¹⁰ 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].

¹¹ For an individualised assessment of reliability, see Annex 1.

¹² 069880-TR-ET Parts 1-4 RED2; 069880-TR-ET Part 5 RED3.

¹³ 069880-TR-ET Part 5 RED3, p.18.

interview, and should therefore be admitted as an inseparable and indispensable part of the Rule 154 Statement.¹⁴

14. *Suitable for Rule 154 admission.* W04500's Proposed Evidence satisfies the requirements of Rule 154, and considering that he will be available for cross-examination, its probative value is not outweighed by any prejudice. The SPO initially proposed W04500 as a fully *viva voce* witness with a three-hour direct examination.¹⁵ Rule 154 admission of W04500's Proposed Evidence will reduce the time required for direct examination to 40 minutes.

B. REQUEST FOR VIDEO-CONFERENCE

15. Rules 141(1) and 144 expressly permit the testimony of witnesses to be given by means of video-conference, establishing three conditions that must be satisfied in such cases: (i) the technology must permit the witness to be properly examined by the Parties and the Panel, at the time they are testifying; (ii) the venue chosen must be conducive to the giving of truthful and open testimony and to the safety, physical and psychological well-being, dignity and privacy of the witnesses; and (iii) the measure must not be prejudicial to or inconsistent with the rights of the accused. No additional criteria are warranted.¹⁶

16. Video-link testimony should not be considered only on an exceptional basis.¹⁷ When considering whether to permit video-conference testimony, the Panel may

¹⁴ See Annex 1, Associated Exhibits table.

¹⁵ Amended List of Witnesses, KSC-BC-2020-06/F01594/A01, 9 June 2023, Strictly Confidential and *Ex Parte*, pp.12, 365.

¹⁶ Public Redacted Version of Decision on URGENT Prosecution Motion for Admission of Evidence of W02486 Pursuant to Rule 154 and Request for Video-Conference Testimony (F02270), KSC-BC-2020-06/F02281/RED, 3 May 2024 ('Decision F02281'), para.10. See also *Specialist Prosecutor v. Shala*, Public Redacted Version of Decision on Specialist Prosecutor's request for video-conference testimony for TW4-04, TW4-10 and TW4-11, KSC-BC-2020-04/F00482/RED, 13 April 2023 ('*Shala* Decision'), para.13.

¹⁷ Decision F02281, KSC-BC-2020-06/F02281/RED, para.21. See also Decision on Prosecution Request for Video-Conference Testimony and Special Measure for W04337, KSC-BC-2020-06/F01558, 26 May 2023, Strictly Confidential and *Ex Parte* ('Decision F01558'), para.16; Decision on Prosecution Request for

consider a number of factors, such as the location, personal and health situation, availability and security of the witness, as well as the complexity and duration of any logistical travel and other arrangements to be made.¹⁸ These factors may also include procedural considerations, including the efficient conduct of the proceedings,¹⁹ and flexibility warranted for reserve witnesses, given their nature.²⁰

17. W04500 will testify with protective measures, and using video-conference would further minimise the risk of harm, including by reducing the time the witness would be required to be absent, and the disruptions to the life and security of the witness and his family, supporting his ability to provide truthful and open testimony. For these reasons, participating via video-link will improve the quality of W04500's evidence, and ensure his physical and psychological well-being.²¹

18. W04500's anticipated evidence is also of limited scope and duration. Moreover, as a reserve witness, the timing of his testimony – which is anticipated to take no more than a day – is dependent on various contingent factors related to the progress of the block and the availability and (anticipated) duration of other witnesses. Permitting video-link testimony would thereby also facilitate efficiency in the court schedule.

19. Granting the request would also not be prejudicial to or inconsistent with the rights of the Accused.²² The available technology allows for W04500 to be examined under the same conditions as he would be in the courtroom. He would testify before

Video-Conference Testimony for W03827, KSC-BC-2020-06/F01776, 8 September 2023, Confidential ('Decision F01776'), para.12.

¹⁸ Decision F01776, KSC-BC-2020-06/F01776, para.12; Decision F01558, KSC-BC-2020-06/F01558, para.16; Oral Order authorising Witness W03878's testimony to take place via video-conference, 28 February 2024, Transcript, pp.13063-13064.

¹⁹ *Shala* Decision, KSC-BC-2020-04/F00482/RED, para.14.

²⁰ Oral Order authorising Witness W04586's testimony to take place via video-conference, 14 July 2023, Transcript, pp.5802-5803.

²¹ See *Shala* Decision, KSC-BC-2020-04/F00482/RED, para.18; Decision F01776, KSC-BC-2020-06/F01776, para.15; Oral Order authorising Witness W03878's testimony to take place via video-conference, 28 February 2024, Transcript, p. 13064, lines 2-5; Decision F02281, KSC-BC-2020-06/F02281/RED, para.23.

²² See Decision F01776, KSC-BC-2020-06/F01776, para.15; Oral Order authorising Witness W03878's testimony to take place via video-conference, 28 February 2024, Transcript, p.13064, lines 6-9.

the Panel, after taking his solemn declaration, in real-time, in the presence of the Parties and Victims' Counsel, who will be able to question him as if he was physically present in the courtroom. The Panel will also be able to observe his demeanour and assess his credibility.

20. Pursuant to Article 3 of the Practice Direction, the SPO provides the following information: (i) W04500 is currently anticipated to testify in January 2025; (ii) the expected duration of direct examination of W04500 is no more than 40 minutes; (iii) the SPO requests W04500 to appear via video-conference from [REDACTED]; (iv) the witness has in-court protective measures, including pseudonym and private session; (v) the SPO is not aware of any other special needs; and (vi) W04500 will testify in Albanian. The SPO remains available should the Registry require any further information.

III. CLASSIFICATION

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

IV. RELIEF REQUESTED

22. For the foregoing reasons, the Trial Panel should: (i) order that any responses be filed not later than 3 January 2025; (ii) admit the Proposed Evidence, subject to fulfilment of the Rule 154 conditions by W04500 during his appearance in court; and (iii) grant the request for video-conference testimony.

Word Count: 1981



Kimberly P. West

Specialist Prosecutor

Thursday, 19 December 2024

At The Hague, the Netherlands.