



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 consolidated motion for admission of evidence of Witnesses W04290 and W04403 pursuant to Rule 154 and request related to W04745 with confidential Annexes 1-2'

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I. INTRODUCTION

1. Pursuant to Articles 37 and 40 of the Law,¹ and Rules 118(2), 137-138 and 154 of the Rules,² the Specialist Prosecutor's Office ('SPO') requests the admission of the statements (collectively, 'Rule 154 Statements'), together with the associated exhibits,³ of the following witnesses: W04290 and W04403 (collectively, 'Witnesses').⁴ Furthermore, the SPO requests the addition of two items it intends to use with *viva voce* witness W04745 to the Exhibit List.⁵ [REDACTED].⁶

2. Consistent with Rule 154, the Witnesses are anticipated to: (i) be present in court; (ii) be available for cross-examination and any questioning by the Panel; and (iii) attest that their Rule 154 Statements accurately reflect their declaration and what they would say if examined. As detailed below and in the accompanying annexes for each of the Witnesses, the Proposed Evidence meets the requirements of the Rules, is relevant, authentic, and reliable, and has probative value, which – considering, in particular, that the Witnesses will be available for cross-examination – is not outweighed by any prejudice. Admission is therefore in the interests of justice.⁷

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

⁴ Attached to this motion are two Rule 154 annexes. Each annex contains a table identifying the Proposed Evidence for each witness. In the interest of expeditiousness and as also set out below, the SPO is now seeking to admit W04290's prior statements under Rule 154 (W04290 was previously fully *viva voce*) and, subject to a decision on this request, has reduced the examination estimate for W04290 from nine to five hours.

⁵ See paras 21-23 below. See also Annex 1 to Prosecution submission of amended exhibit list, KSC-BC-2020-06/F02807/A01, 19 December 2024, Strictly Confidential and *Ex Parte* ('Exhibit List').

⁶ See Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Conduct of Proceedings Order'), para.73. The information required by paragraphs 73-74 of the Conduct of Proceedings Order has been provided separately.

⁷ 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.

II. SUBMISSIONS

A. W04290

3. *Relevance.* [REDACTED]. Later, he became [REDACTED].
4. W04290 observed the development and organisation of the KLA in Drenicë/Drenica, and its structural relationship with the General Staff. [REDACTED]. [REDACTED].
5. W04290 speaks to the existence of a special unit under Jahir DEMAKU, located between Abri and Likovc/Likovac. [REDACTED]. W04290 knew Hashim THAÇI as a member of the General Staff and chief of the Political Directorate, [REDACTED].
6. [REDACTED]. [REDACTED].
7. W04290's evidence is thus relevant to charged crimes in the Indictment.⁸
8. *Authenticity and reliability.* The Proposed Evidence is *prima facie* authentic and reliable.⁹ It consists of W04290's (i) [REDACTED] UNMIK statement;¹⁰ (ii) [REDACTED] interview;¹¹ (iii) [REDACTED];¹² and (iv) [REDACTED].¹³
9. The [REDACTED] UNMIK statement is signed by the witness, contains his personal data, and other information, including details of other participants, date and time, and is recorded in an official UNMIK template.¹⁴

⁸ See, *inter alia*, Amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, Confidential ('Indictment'), 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, Confidential ('Pre-Trial Brief'), paras [REDACTED]. See also Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

⁹ For an individualised assessment of reliability, see Annex 1.

¹⁰ SITF00031715-SITF00031718 RED.

¹¹ [REDACTED].

¹² [REDACTED].

¹³ SITF00009431-00009439 RED.

¹⁴ SITF00031715-SITF00031718 RED.

10. Likewise, the [REDACTED] interview transcript includes details such as the date, time, the names of the interviewers, and [REDACTED].¹⁵ The witness confirmed that the interview was given voluntarily and without inducement.¹⁶

11. W04290's [REDACTED] also bears sufficient indicia of reliability, [REDACTED].¹⁷

12. Lastly, W04290's [REDACTED] statement records the questions asked and answers given, which was read back to the witness in Albanian, and is signed by the witness, who was informed of his rights and obligations.¹⁸

13. *Suitable for Rule 154 admission.* The Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. The SPO previously proposed W04290 as a fully *viva voce* witness with a nine-hour direct examination.¹⁹ Rule 154 admission of W04290's proposed evidence will significantly reduce the number of hours required for direct examination, and contribute to a fair and efficient trial. The SPO intends to elicit oral testimony for approximately five hours on essential matters that will expand, clarify or explain certain aspects of his evidence, including the acts and conduct of the Accused and other JCE members.

B. W04403

14. *Relevance.* W04403 is a Kosovar Albanian who was a member of the KLA, crossing into Kosovo from Albania in [REDACTED] 1998. During his time with the KLA, W04403 occupied various roles in locations including Dukagjini and Albania, and [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ SITF00009431-00009439 RED, pp.SITF00009431, SITF00009434.

¹⁹ Amended List of Witnesses, KSC-BC-2020-06/F01594/A01, 9 June 2023, Strictly Confidential and *Ex Parte* ('Witness List'), p.250.

15. W04403 provides evidence concerning the structure and organisation of KLA units, including in Dukagjini and Albania, and [REDACTED]. W04403 also provides evidence concerning his roles and responsibilities in the KLA, including training KLA members, providing operational assistance to various KLA units, and [REDACTED].

16. W04403 provides evidence concerning his interactions with, and the role and authority of, KLA members, including members of the KLA General Staff. W04403 also provides evidence about reporting lines in the KLA and meetings attended by members of the Operational Zone commands and the KLA General Staff. [REDACTED].

17. W04403's evidence is thus relevant to charged crimes in the Indictment.²⁰

18. *Authenticity and Reliability.* W04403's Rule 154 Statement is *prima facie* authentic and reliable, bearing sufficient indicia of reliability.²¹ It consists of his: (i) [REDACTED] interview;²² (ii) [REDACTED] record of a hearing during an investigation;²³ (iii) [REDACTED] interview;²⁴ and (iv) [REDACTED] SPO interview.²⁵ W04403's [REDACTED] interview is a transcription of disclosed audio-recordings;²⁶ and W04403 confirmed he answered the questions during this interview voluntarily.²⁷ The [REDACTED] and [REDACTED] prior statements are contained in official [REDACTED] records signed by W04403 who was informed of his rights and obligations.²⁸ W04403's SPO audio-video recorded interview [REDACTED],²⁹ and

²⁰ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

²¹ For an individualised assessment of reliability, see Annex 2.

²² [REDACTED].

²³ SPOE00070682-SPOE00070698.

²⁴ SPOE00067215-SPOE00067221-ET Revised RED.

²⁵ 064883-064886-ET RED; 064887-TR-ET Parts 1-3; 064888-TR-ET Parts 1, 3; 064888-TR-ET Part 2 RED.

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ SPOE00070682-00070698, pp.SPOE00070682, SPOE00070685; SPOE00067215-SPOE00067221-ET Revised RED, pp.SPOE00067216, SPOE00067221.

²⁹ See e.g. 064883-064886-ET RED; 064887-TR-ET Part 1, p.1.

consists of verbatim transcripts; during this interview, W04403 was duly advised of his rights as a witness, and confirmed that the contents of his statement are true and accurate.³⁰

19. *The associated exhibits are admissible.* The associated exhibits forming part of the Proposed Evidence in Annex 2 —[REDACTED]—should be admitted as they are an inseparable and indispensable part of W04403's Rule 154 Statement, in that they are used, explained and identified in W04403's evidence.

20. *Suitable for Rule 154 Admission.* W04403's Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. The SPO intends to elicit oral testimony on essential matters, including to clarify, supplement, or explain certain aspects of W04403's evidence, and address issues not covered therein, for two hours.

C. W04745

21. *Request to amend the Exhibit List.* Pursuant to Article 40 of the Law and Rule 118(2) of the Rules, the SPO requests leave to amend the Exhibit List to include two documents reassessed in the context of W04745's upcoming testimony before the Panel (collectively, 'Requested Amendments').³¹ As set out below, the documents concern relevant material and there is good cause for their addition to the Exhibit List. This request – which, at this stage, solely concerns amendment of the Exhibit List and

³⁰ 064883-064886-ET RED; 064888-TR-ET Part 3, pp.1-2.

³¹ SPOE00144629-00144630 and SPOE00144634-00144634 RED2.

not admission of the items³² – is limited in scope and would result in no prejudice to the Defence.³³

22. W04745 denies³⁴ being interviewed by UNMIK representatives on [REDACTED].³⁵ The Requested Amendments are necessary for the limited purpose of corroborating that such an interview did occur, and the SPO foresees the need to use these documents with the witness to explore the fact and circumstances of the resulting UNMIK statement. SPOE00144634-00144634 RED2 contains notes of a face-to-face contact between UNMIK representatives and W04745 on [REDACTED], during which a further meeting, for [REDACTED] (the date of the concerned statement), was arranged. SPOE00144629-00144630 contains a summary of the statement taken during that meeting, as well as the interviewer's assessment of W04745.

23. No prejudice to the Defence will result from the addition of these items to the Exhibit List. Both documents were previously disclosed to the Defence, SPOE00144634-00144634 RED was first disclosed under Rule 102(3) in 2021,³⁶ and SPOE00144629-00144630 under Rule 103 in 2022.³⁷ The documents are associated with, and reflect the content of, statements on the Exhibit list,³⁸ and their limited scope and

³² See Decision on Prosecution Request to Amend the Exhibit List and Related Matters, KSC-BC-2020-06/F01352, 8 March 2023, Confidential ('8 March 2023 Decision'), para.31 (an evaluation of proposed amendments to the Exhibit List does not call for an assessment of admissibility, but a *prima facie* evaluation only); Decision on Prosecution Request to Add Five Items Relating to Expert Witness to the Exhibit List, KSC-BC-2020-06/F01544, 23 May 2023 ('23 May 2023 Decision'), para.11; Decision on Prosecution Requests to Amend the Exhibit List (F01689 and F01747), KSC-BC-2020-06/F01785, 12 September 2023, Confidential, para.17.

³³ See 8 March 2023 Decision, KSC-BC-2020-06/F01352, paras 29, 31, 33; Decision on Thaçi's Appeal against "Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures", KSC-BC-2020-06/IA019/F00006, 12 July 2022, para.21. See also 23 May 2023 Decision, KSC-BC-2020-06/F01544, para.11.

³⁴ See e.g. 083217-TR-ET Part 4 Revised RED2, pp.11-12; 083217-TR-ET Part 10 Revised RED2, p.11.

³⁵ SPOE00144632-00144633 RED.

³⁶ Disclosures 281, 351, 354, 427 (Rule 102(3)). The lesser redacted version (SPOE00144634-00144634 RED2) was disclosed in Disclosure 1547.

³⁷ Disclosure 119 (Rule 103).

³⁸ SPOE00144632-00144633 RED. See e.g. 083217-TR-ET Part 4 Revised RED2, pp.11-12; 083217-TR-ET Part 10 Revised RED2, p.11.

length allows for timely and effective Defence preparation ahead of the witness's appearance.

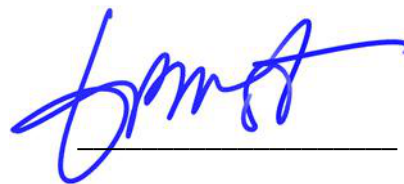
III. CLASSIFICATION

24. This submission and its Annexes are confidential pursuant to Rule 82(4) and considering that the witnesses' identities are not public at this time. In the public redacted version of this filing, specific ERNs have been redacted for two witnesses (namely, W04290 and W04403). Following the testimony of the witnesses, who do not have protective measures, the ERNs can be made public.

IV. RELIEF REQUESTED

25. For the foregoing reasons, the Trial Panel should: (i) admit the Proposed Evidence, subject to fulfilment of the Rule 154 conditions by the relevant witnesses during their appearances in court; and (ii) authorise the addition of the two items identified in Section II(C) above to the Exhibit List.

Word Count: 2,159



Kimberly P. West

Specialist Prosecutor

Tuesday, 14 January 2025

At The Hague, the Netherlands.