



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 153 motion F02782'

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.

II. SUBMISSIONS

A. W02172

2. As noted in the Response, the SPO stated via *inter partes* communication that references to the accused in paragraphs 19, 20, and 21 of W02172's ICTY statement would be redacted.³ This is still the SPO's position, despite a typographical error in the Motion that inadvertently excluded mention of paragraph 21.⁴ For the sake of clarity, the SPO does not object to redacting all references to the acts and conduct of the Accused in paragraphs 19-21, as previously proposed, in order to fully comply with the requirements of Rule 153.⁵

3. The Defence objection that W02172's evidence also relates to the role of alleged JCE members such as Rrustem Mustafa⁶ should not bar admission under Rule 153. W02172's evidence in this regard is limited in scope and is repetitive of evidence that

¹ Joint Defence Response to 'Prosecution motion for the admission of the evidence of witnesses W00964, W02172, W02538, W02549, W04238, W04380, W04386, W04436, W04661, and W04734 pursuant to Rule 153', KSC-BC-2020-06/F02856, 23 January 2025, Confidential ('Response').

² Prosecution motion for the admission of the evidence of witnesses W00964, W02172, W02538, W02549, W04238, W04380, W04386, W04436, W04661, and W04734 pursuant to Rule 153, KSC-BC-2020-06/F02782, 13 December 2024, Confidential ('Motion').

³ See Response, KSC-BC-2020-06/F02856, paras 28-30.

⁴ Motion, KSC-BC-2020-06/F02782, fn.24.

⁵ The SPO would redact the following portion of [REDACTED], para.21: [REDACTED].

⁶ See Response, KSC-BC-2020-06/F02856, para.28.

the Defence has already extensively tested, including with W02161 and Rrustem Mustafa himself.⁷

4. As to the argument that W02172's live testimony is 'particularly justified' because the SPO has not tendered W02172's [REDACTED] that is different or more nuanced than W02172's SPO statement,⁸ the SPO again notes that it would not object to the admission of W02172's [REDACTED] should the Defence wish to tender it.⁹ Ultimately, this is opinion evidence, which W02172 has had the opportunity to clarify, including the basis thereof,¹⁰ and no further cross-examination is required for the Panel to assess this evidence and assign it appropriate weight at the conclusion of the trial.¹¹ Additionally, the way other Trial Chambers have used W02172's evidence has no bearing on this Panel¹² and is not a determinative factor in a Rule 153 assessment.¹³

5. Finally, the associated exhibits – which would also be admissible through the bar table¹⁴ even if they had not been commented on and/or authenticated by W02172¹⁵ – meet the admissibility criteria:

- While W02172 commented on one part of SPOE00059980-00059987 (a two-page section entitled 'Update on Missing Serbs'), the remaining five pages should not be excluded, as they provide *indicia* of authenticity and

⁷ Despite the Defence representation that the admission of W02172's Llapashticë/Lapaštica evidence would have a prejudicial effect if not tested on cross-examination (*see* Response, KSC-BC-2020-06/F02856, para.41), W02172's evidence so closely corroborates W02161's on this issue that it reinforces Rule 153 admission.

⁸ Response, KSC-BC-2020-06/F02856, paras 31-40.

⁹ *See e.g.* Motion, KSC-BC-2020-06/F02782, para.53(i); Response, KSC-BC-2020-06/F02856, para.40.

¹⁰ *See e.g.* Response, KSC-BC-2020-06/F02856, para.34 (and source cited therein).

¹¹ *See* Oral Order, Transcript, 18 July 2023, pp.5984-5986.

¹² Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, 14 June 2023, KSC-BC-2020-06/F01603, Confidential, para.49.

¹³ *Contra* Response, KSC-BC-2020-06/F02856, paras 38-39.

¹⁴ *See e.g.* Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01409, 31 March 2023, Confidential, paras 41-50.

¹⁵ To the extent the Panel considers that these documents or any part thereof are not associated exhibits, they should be admitted under Rule 138, as they are relevant and *prima facie* authentic, and their probative value is not outweighed by any prejudice.

include, *inter alia*, additional information relevant to abductions and detentions by KLA members;

- W02172 confirmed that she authored SPOE00233961-SPOE00233961 RED, it concerns Serbs missing since mid-July 1998, and the fact that certain names and locations are redacted may be taken into account when assigning weight, but should not bar admission; and
- W02172's statement – including that SITF00384554-SITF00384557 was the type of document circulated regularly and that it was regular practice to report on these types of incidents,¹⁶ which concern KLA involvement in abductions and detentions – would be incomprehensible without the example given.

B. W02549

6. The Defence seeks to cross-examine W02549 concerning matters on which three other KFOR witnesses have already testified and been cross-examined.¹⁷ Contrary to the Defence suggestion, W02549 cannot provide 'critical insights' concerning KFOR operations at [REDACTED] and [REDACTED],¹⁸ as W02549 was not present during these operations, and [REDACTED].¹⁹ The two [REDACTED] have already been admitted²⁰ and used in court with witnesses who had first-hand knowledge of these events, with the Defence afforded a full opportunity to explore them on cross-examination.²¹

7. The claim that W02549 would be 'best placed' to provide evidence on the legal basis of KFOR operations beyond his existing statement is purely hypothetical and

¹⁶ 051842-051848 RED, para.17.

¹⁷ W02540, W03881, and W04868.

¹⁸ *Contra* Response, KSC-BC-2020-06/F02856, para.18.

¹⁹ [REDACTED].

²⁰ [REDACTED] and [REDACTED].

²¹ *See e.g.* [REDACTED].

refuted by his background, role, and evidence.²² In 1999, he was a [REDACTED] in the [REDACTED].²³ There are no indications that W02549 is legally trained or acted in any legal advisory role, nor are there reasons to believe that he would be able to comment substantively on KFOR's legal framework. Moreover, the Defence has had the opportunity to cross-examine W02183, an UNMIK legal adviser, on KFOR's mandate and the legal basis of their activities.²⁴

8. In sum, there is no indication that W02549 will be able to provide information on the issues identified by the Defence. The Defence has already had the opportunity to cross-examine other witnesses on those topics,²⁵ and will be able to present evidence and witnesses on such matters, if they so choose, during the Defence case. The Defence, therefore, fails to provide convincing reasons why W02549's evidence is not suitable for admission pursuant to Rule 153.

C. W04380

9. As a threshold matter, assessments of credibility and reliability are matters that go to the weight of evidence, not to its admissibility.²⁶ W04380's evidence satisfies the *prima facie* authenticity and reliability standard, and is thus admissible.²⁷

10. W04380's [REDACTED]²⁸ does not undermine the *prima facie* reliability of his evidence. [REDACTED], nearly two years after the SPO interview occurred.²⁹ [REDACTED], consisted primarily of clarifications and confirmations [REDACTED]. W04380 could not have been motivated by 'what he believed he may gain by

²² *Contra* Response, KSC-BC-2020-06/F02856, paras 18, 20-21.

²³ 069658-TR-ET Part 2, p.2.

²⁴ See e.g. Transcript, 21 January 2025, T.24074-24085.

²⁵ W02540, W03881, W04868, and W02183.

²⁶ Decision on Prosecution Request for the Admission of W01453's Prior Statements Pursuant to Rule 143(2)(c), KSC-BC-2020-06/F02790, 16 December 2024, para.11; Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W00686 W02765 W04491 W04694 W04782 W04788 W04820 and W04837 pursuant to Rule 153, KSC-BC-2020-06/F02464, para.29.

²⁷ Motion, KSC-BC-2020-06/F02782, para.30.

²⁸ 108646-108682-ET.

²⁹ 060664-TR-ET Part 1, p.1.

providing such testimony³⁰ when the events that allegedly gave rise to that motivation had not yet occurred. Further, alleged inconsistencies are not *per se* an impediment to admission.³¹ Any issue going to W04380's credibility will be assessed holistically, pursuant to Rule 139, at the end of the trial and in light of all the evidence.

11. Other Defence submissions are unsubstantiated. For example, the Defence claims that '[i]t is no longer clear what part of his testimony W04380 is willing to stand by'.³² W04380 has expressed reluctance to testify in person because he believes that [REDACTED].³³ He has not distanced himself from any portion of his testimony.

12. For the reasons above, the Panel should admit W04380's evidence pursuant to Rule 153.

III. CLASSIFICATION

13. This filing is confidential pursuant to Rule 82(4) and because it contains information concerning protected witnesses.

³⁰ Response, KSC-BC-2020-06/F02856, para.10.

³¹ Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W00686 W02765 W04491 W04694 W04782 W04788 W04820 and W04837 pursuant to Rule 153, KSC-BC-2020-06/F02464, para.29. *Contra*, Response, KSC-BC-2020-06/F02856, para.14.

³² Response, KSC-BC-2020-06/F02856, para.9.

³³ 113247-113247, para.4.

IV. RELIEF REQUESTED

14. For the reasons given above and previously, the Motion should be granted in its entirety, subject to the *inter partes* agreement concerning redactions as outlined above and in the Response.³⁴

Word count: 1473



Kimberly P. West

Specialist Prosecutor

Friday, 31 January 2025

At The Hague, the Netherlands.

³⁴ Response, KSC-BC-2020-06/F02856, para. 6, Annex 1.