



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 Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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Prosecution response to 'Veseli Defence Request for Exclusion of Evidence'

Specialist Prosecutor's Office

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I. INTRODUCTION

1. The Trial Panel should dismiss the VESELI Request¹ and allow the Specialist Prosecutor's Office ('SPO') to elicit W04747's anticipated, first-hand testimony concerning [REDACTED] ('Challenged Evidence'). Relying largely on undeveloped and generalised assertions of prejudice, the Defence seeks an untimely and extreme remedy – which constitutes an improper attempt at reconsideration of the Rule 154 Decision.²

2. The Challenged Evidence is inextricably linked to other parts of W04747's evidence and is relevant to numerous facts and circumstances pleaded in the Indictment.³ The Panel, composed of professional Judges, are able to assess the Challenged Evidence and assign it appropriate weight. The Defence has therefore failed to demonstrate that the probative value of the Challenged Evidence is outweighed by any prejudicial effect.

II. SUBMISSIONS

A. THE VESELI REQUEST IS AN UNJUSTIFIED ATTEMPT AT RECONSIDERATION

3. The VESELI Defence had an opportunity to respond to the scope of W04747's tendered evidence in the context of responding to the SPO's Rule 154 request.⁴ The Defence made no submission to exclude the Challenged Evidence from the remainder

¹ Veseli Defence Request for Exclusion of Evidence, KSC-BC-2020-06/F02864, Confidential, 27 January 2025 ('VESELI Request').

² Decision on Prosecution Motion for Admission of Evidence of Witnesses W02586, W03873, W04264, W04393, W04401, W04679, and W04747 pursuant to Rule 154, KSC-BC-2020-06/F02720, 14 November 2024 ('Rule 154 Decision').

³ Annex 1 to Submission of confirmed amended Indictment, KSC-BC-2020-06/F00999/A01, Confidential, 30 September 2022 ('Indictment').

⁴ Prosecution motion for admission of evidence of Witnesses W02586, W03873, W04264, W04393, W04401, W04679, and W04747 pursuant to Rule 154, KSC-BC-2020-06/F02625, 8 October 2024, Confidential (with seven annexes).

of W04747's written statements in that response,⁵ even though all three challenged allegations appearing in W04747's Rule 95 Summary.⁶ The Defence made express reference to this Rule 95 Summary when summarising W04747's evidence in paragraph 45 of its Rule 154 Response,⁷ and the Trial Panel cited to this same paragraph when considering that (with emphasis added) '[t]he Defence notes that W04747 will testify about the KLA's activities in Albania and in Kosovo covering various times and topics relevant to these proceedings. *These topics are clearly relevant and important to the case*'.⁸

4. The VESELI Request provides no justification for why this ruling should be revisited, or why the standard for reconsideration is met.⁹ The VESELI Defence's failure to do so is particularly inexcusable given that they been told recently that such issues are to be raised during Rule 154 litigation and that relief of this nature is an attempt to seek reconsideration.¹⁰

5. The Veseli Request should be dismissed *in limine* on this basis alone. If it is considered further, there is no justification for excluding the Challenged Evidence.

⁵ Joint Defence Consolidated Response to F02620 and F02625, KSC-BC-2020-06/F02677, 25 October 2024, Confidential ('Rule 154 Response'), paras 44-49 (focusing only on the centrality of the witness in general and the length of the tendered statements).

⁶ Compare VESELI Request, KSC-BC-2020-06/F02864, para.14, with ANNEX 2 to Prosecution submission of updated witness list and confidential lesser redacted version of pre-trial brief, KSC-BC-2020-06/F01594/A02, 9 June 2023 ('Rule 95 Summary'), p.468 (paras 19-21). The Trial Panel made express reference to how W04747's Rule 95 Summary assisted in understanding his proposed evidence in its ruling. Rule 154 Decision, KSC-BC-2020-06/F02720, para.81.

⁷ Rule 154 Response, KSC-BC-2020-06/F02677, para.45.

⁸ Rule 154 Decision, KSC-BC-2020-06/F02720, para.80 (citations removed and emphasis added).

⁹ The VESELI Defence argues that it 'should not be compelled to divert its limited preparation time' to the Challenged Evidence (VESELI Request, KSC-BC-2020-06/F02864, para.23), seemingly oblivious to the broader diversion of resources caused by not timely raising this manner in its Rule 154 response.

¹⁰ Oral Order of 13 January 2025, Transcript Page 23601 Line 7 to Page 23602 Line 7. This is also not the first time. See also Decision on Veseli Defence Submissions Regarding the "Selimi Note", KSC-BC-2020-06/F01433, 6 April 2023 (rejected a disguised VESELI Defence attempt to reconsider a Rule 154 decision in the week following the trial commencement).

B. THE CHALLENGED EVIDENCE IS *PRIMA FACIE* RELEVANT, RELIABLE, AND PROBATIVE

6. Defence Submissions ignore the clear language of Rules 137-138, which establish that evidence submitted to the Panel shall be admitted if it is relevant, authentic, has probative value and its probative value is not outweighed by its prejudicial effect. The Challenged Evidence fully satisfies these criteria.

7. The Indictment alleges that, between at least March 1998 through September 1999, the Accused and other JCE members shared the common purpose to gain and exercise control over all of Kosovo by means including unlawfully intimidating, mistreating, committing violence against, and removing those deemed to be Opponents, *inter alia*, persons who were or were perceived to be collaborators.¹¹ Events that occurred outside the Indictment Period are not *per se* irrelevant to the case; nor is evidence going to prove those events inadmissible merely because they go to prove a fact outside of the Indictment Period.¹² Indeed, the Panel has already admitted evidence of, *inter alia*, statements and acts against Opponents that fall outside the Indictment period and/or are not charged in the Indictment, finding such evidence is relevant to, for example, proof and context of events falling within the temporal scope of the Indictment, including a pattern of conduct, and the Accused's intent and contributions to the pleaded JCE.¹³

¹¹ See Indictment, KSC-BC-2020-06/F00999/A01, para.32 (defining the term 'Opponents').

¹² See Transcript, 17 April 2023, p.2864, lns 17-21; *Prosecutor v. Hysni Gucati and Nasim Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2020-07/F00611/RED, 18 May 2022 ('*Gucati and Haradinaj* Trial Judgment'), para.22; See also ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-T, Decision on Slobodan Praljak's Motion for Clarification of the Time Frame of the Alleged Joint Criminal Enterprise, 15 January 2009 ('*Prlić* Decision'), p.9.

¹³ See Third Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01705, 27 July 2023, para.18; Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, Confidential, 16 March 2023 ('First Rule 154 Decision'), para.113; Corrected Version of Decision on Second Prosecution Motion Pursuant to Rule 154, KSC-BC-2020-06/F01595/COR, Confidential, 9 June 2023, para.47; 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, Confidential, 24 July 2023 ('24 July 2023 Decision'), paras 26-27, 40, 43; Decision on Prosecution Motion for Admission of Evidence of W00072, W02153 and W04586 Pursuant to Rule 154, KSC-BC-2020-06/F01664, Confidential, 10 July 2023 ('10 July 2023 Decision'), paras 28, 33; Decision on

8. [REDACTED]. [REDACTED]. [REDACTED].¹⁴ [REDACTED].¹⁵ [REDACTED].
9. [REDACTED];¹⁶ [REDACTED] ¹⁷ [REDACTED].¹⁸ [REDACTED].

C. THE CHALLENGED EVIDENCE'S PROBATIVE VALUE IS NOT OUTWEIGHED BY ITS PREJUDICIAL EFFECT

10. Defence submissions about prejudice are general and unsupported, and do not address other available and adequate measures to remedy any purported prejudice, short of the extreme remedy requested.¹⁹

11. That evidence is or might be incriminating does not render it prejudicial for purposes of Rule 138.²⁰ The Defence has already had opportunities to investigate details of the Challenged Evidence, and will have the opportunity to present evidence and make submissions challenging the Challenged Evidence, as appropriate, during

Prosecution Motion for Admission of Evidence of W00208, W02082, W02475, W04147, W04325, W04491 and W04753 Pursuant to Rule 154 (F01788), KSC-BC-2020-06/F01848, Confidential, 10 October 2023, para.54; Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, Confidential, 14 June 2023 ('Rule 155 Decision'), para.157. The Panel has also taken judicial notice of adjudicated facts concerning events prior to the Indictment period, *see* ANNEX 2 to Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F01534/A02, Public, 17 May 2023, *e.g.* adjudicated facts 20, 21, and 24; Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F01534, 17 May 2023, paras 10, 18, 27(b). *See also* ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-2842, Judgment pursuant to Article 74 of the Statute, 14 March 2012, para.1352; *Gucati and Haradinaj* Trial Judgment, KSC-BC-2020-07/F00611/RED, para.22; ICTY, *Prosecutor v. Strugar*, IT-01-42-T, Decision on the Defence Objection to the Prosecution's Opening Statement Concerning Admissibility of Evidence, 22 January 2004.

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ *See e.g.* Indictment, KSC-BC-2020-06/F00999/A01, paras 17, 59; 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 113, 267, 704.

¹⁹ *See e.g.* Conduct of Proceedings Order, KSC-BC-2020-06/F01226/A01, para.82 (providing that, where new material is of a significant nature, an opposing Party may seek an adjournment or other necessary relief to enable it to adequately review the material and effectively prepare for cross-examination).

²⁰ *See e.g.* June 2023 Decision, KSC-BC-2020-06/F01623, para.36. *See also* Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

the remainder of the Prosecution case, during the Defence case, and at the conclusion of the trial.

12. The Defence's arguments relating to the reliability and credibility of the Challenged Evidence²¹ are matters pertaining to weight, not admissibility,²² and are premature and speculative. They should be dismissed. The Defence will have every opportunity to make such arguments at the end of the case.

13. Accordingly, considering its *prima facie* relevance, reliability, and probative value, which is not outweighed by any prejudice, the Defence has failed to justify exclusion of the Challenged Evidence. It should be allowed in the interests of justice and the determination of the truth.

III. CLASSIFICATION

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

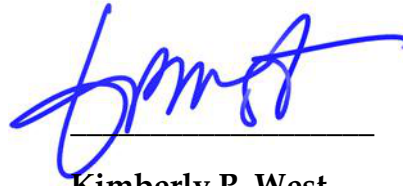
IV. RELIEF REQUESTED

15. For the reasons set out above, the Panel should dismiss the VESELI Request.

²¹ VESELI Request, KSC-BC-2020-06/F02864, paras 17-20.

²² See Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 16 March 2023, Confidential, para.113; 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, para.28; 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, 24 July 2023, Confidential, para.27.

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Thursday, 6 February 2025

At The Hague, the Netherlands.