



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 motion for the admission of the evidence of witnesses W02018, W02085, W04067, and W04575 pursuant to Rule 153 with confidential Annexes 1-4'

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 Law¹ and Rules 137-138, 141(1), and 153 of the Rules,² the Specialist Prosecutor's Office ('SPO') seeks the admission in lieu of oral testimony of the written statements, transcripts, and associated exhibits of witnesses W02018, W02085, W04067, and W04575. The proposed evidence is relevant, *prima facie* reliable, has probative value which is not outweighed by any prejudice, and meets all the conditions of Rule 153. Admission pursuant to Rule 153 is therefore in the interests of justice.³

2. In addition to the submissions on admissibility made herein, the annexes to this motion identify the statement(s)⁴ tendered through each witness (collectively, 'Rule 153 Statement'), and the indicia of authenticity and reliability for each. The annexes also list exhibits associated with the Rule 153 Statements, identifying where such exhibits are discussed, and describing in more detail how each meets the conditions for admission.

II. SUBMISSIONS

A. GENERAL SUBMISSIONS ON ADMISSIBILITY

3. The evidence tendered for each witness should be admitted in lieu of oral testimony because it:

- (i) is relevant to the crimes charged in the Indictment;
- (ii) is *prima facie* reliable, containing sufficient indicia of authenticity;

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').

³ The applicable law has been set out previously. See Public Redacted Version of 'Prosecution motion for admission of evidence of Witnesses W01237, W04594, W04592, W04872, W04871, W04673 and W04362 pursuant to Rule 153', KSC-BC-2020-06/F01658/RED, 17 November 2023, paras 6-12; Public Redacted Version of Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153, KSC-BC-2020-06/F01904/RED, 27 November 2023, paras 7-12.

⁴ As indicated in the annexes, the SPO has also tendered any audio/video records corresponding to these statements.

(iii) has probative value which is not outweighed by any prejudicial effect;
and

(iv) meets all of Rule 153's requirements for admission.

4. As set out in more detail below, numerous Rule 153(1)(a) factors apply to the tendered evidence, weighing heavily in favour of admission. The proposed evidence:

- (i) is of a cumulative nature, in that other witnesses have given oral testimony on similar facts;
- (ii) is corroborated by evidence which the Accused have had an opportunity to confront, including through cross-examination;
- (iii) relates to, *inter alia*, the crime-base, contextual elements, and the relevant historical, political, or military background;
- (iv) complements adjudicated facts;
- (v) concerns the impact of crimes on victims; and
- (vi) was recorded or documented in a manner enabling the Parties and Panel to assess each witness's demeanour and/or credibility.

5. Moreover, the tendered evidence meets the requirements set out in Rule 153(2) in that the witness statements and testimonies are either signed or otherwise attested to by the witnesses and/or others participating in the questioning of the witnesses. Additionally, the official records of these statements and testimonies note, where applicable, the date, time, place, and identities of those present during questioning.

6. In addition to fulfilling the letter of Rule 153, admission of the tendered evidence in lieu of oral testimony will serve the spirit of the Rule by not only avoiding repetitive testimony and saving valuable court-time, but also by sparing these witnesses the burden of testifying live, and avoiding the unnecessary stress, expense, and other disruptions to the witnesses' lives including the likelihood of retraumatisation.

7. For all of these reasons, pursuant to Rule 153(3), and as set out in more detail below, the necessities of a fair and expeditious trial warrant the admission of the tendered evidence in written form, without cross-examination.

B. SPECIFIC SUBMISSIONS ON ADMISSIBILITY

1. W02018

8. *Relevance.* In [REDACTED] 1999, W02018, [REDACTED] was abducted by [REDACTED] men carrying automatic rifles, dressed in black clothes with [REDACTED]. His hands were tied, a bag was put on his head, and he was driven to a house in [REDACTED] where he was detained in a room together with approximately [REDACTED]. [REDACTED], and he was interrogated about his alleged participation in the [REDACTED]. He was then kicked and beaten with [REDACTED], mostly in the [REDACTED]. The beating lasted for up to an hour, and was repeated. W02018 was [REDACTED] as a result of these beatings. He also heard other detainees screaming outside. W02018 was taken to a [REDACTED] located in one of the houses within the same compound where he was interrogated and then beaten. He was later interrogated about [REDACTED], and beaten again. [REDACTED], W02018 was released [REDACTED]. W02018 saw other detainees who were forced to stay behind and others with their hands tied and [REDACTED]. After this incident, W02018 left Kosovo and has never returned. W02018's evidence is therefore relevant to the charged crimes in the Indictment⁵ and to assessing related evidence.

9. *Authenticity and reliability.* W02018's Rule 153 Statement comprises the witness's audio-visually recorded SITF⁶ and SPO interviews,⁷ and the witness's [REDACTED]⁸

⁵ See, *inter alia*, Annex 1 to Submission of confirmed amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022 ('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 ('Pre-Trial Brief'), paras [REDACTED].

⁶ 012450-TR-ET Part 1 Revised RED2; 012450-TR-ET Part 2 Revised.

⁷ 076246-TR-ET Part 1 RED2.

⁸ 012437-012449-ET RED2.

all of which were documented in official transcripts. During the SITF and SPO interviews, W02018 was made aware of his rights as a witness.⁹ W02018 confirmed that the content of these recorded statements was true and accurate, that his statements were given voluntarily without any threats, force, or guarantees, and that he had no objections to the manner or process by which the statements were taken.¹⁰ W02018's [REDACTED]—which is extensively referred to during his SITF interview—was given under oath, is dated and signed by the witness, and contains an advisement of his rights.¹¹ The materials comprising the Rule 153 statement also complement each other, providing relevant clarifications which enable a more comprehensive assessment of W02018's evidence as whole.

10. *Suitable for Rule 153 admission.* W02018 provides crime-base evidence which is particularly suitable for admission in writing in lieu of oral testimony. W02018's evidence is also largely cumulative with and corroborated by the evidence of other witnesses,¹² including those whom the Accused have had an opportunity to confront, including through cross-examination.¹³

2. W02085

11. *Relevance.* W02085 is a [REDACTED]. On [REDACTED], he was arrested by KLA members at his house along with [REDACTED]. KLA members beat [REDACTED] during the arrest. W02085 and [REDACTED] were then taken to the [REDACTED], where they were placed in a room with approximately ten to fifteen other detainees who were handcuffed and showed signs of beatings. During their detention, W02085 and [REDACTED] were not given any food or water and [REDACTED] was interrogated and accused of collaborating with the Serbian regime. W02085 and [REDACTED] despite KLA members' efforts to conceal them. W02085's evidence is

⁹ 012450-TR-ET Part 1 Revised RED2, pp.1-4; 076246-TR-ET Part 1 RED2, pp.2-3.

¹⁰ 012450-TR-ET Part 2 Revised, pp.24-25; 076246-TR-ET Part 1 RED2, pp.12-13.

¹¹ 012437-012449-ET RED2, p.012437.

¹² See e.g. [REDACTED].

¹³ See e.g. [REDACTED].

therefore relevant to the crimes charged in the Indictment¹⁴ and to assessing related evidence.

12. *Authenticity and Reliability.* W02085's Rule 153 Statement consists of his audio-video recorded SPO interview which was documented in a verbatim transcript.¹⁵ W02085 was advised of his rights and duties as a witness, and confirmed that his statement was true, accurate, and given voluntarily.¹⁶

13. *Suitability for Rule 153 Admission.* W02085 provides purely crime-base evidence which is particularly suitable for admission in writing in lieu of oral testimony, noting also that the Defence does not object to the admission of W02085's evidence pursuant to Rule 153. W02085's evidence is also largely cumulative with other witness and documentary evidence concerning, *inter alia*, the detention of civilians in the [REDACTED].¹⁷ His evidence is also corroborated by witnesses whom the Accused have had an opportunity to confront, including through cross-examination.¹⁸ Finally, the witness's well-being, dignity, and interests also militate in favour of admission of his evidence in writing, as, considering his health and his non-cooperation, any further court-related interactions or testimony may result in further harm for the witness.¹⁹

14. *Admissibility of the Associated Exhibits.* The associated exhibits comprise photographs portraying various individuals, including detainees and KLA members identified and marked by the witness. These materials were referenced and discussed with W02085 during his SPO interview to the extent they form an inseparable and

¹⁴ See e.g. Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

¹⁵ 066671-TR-ET Parts 1-3 RED2.

¹⁶ 066671-TR-ET Part 1 RED2, pp.2-3; 066671-TR-ET Part 3 RED2, pp.3-4.

¹⁷ See e.g. [REDACTED].

¹⁸ See e.g. [REDACTED].

¹⁹ KSC-BC-2020-06/F01460/A02. This filing is strictly confidential and *ex parte*, and consistent with submissions therein by the filing participant, the SPO does not object to reclassification as confidential.

indispensable part of his evidence and should, therefore, be admitted as associated exhibits.

3. W04067

15. *Relevance.* W04067 was a [REDACTED] who served with KDOM and then the OSCE-KVM from [REDACTED]. W04067 returned independently to Albania and Kosovo in [REDACTED] to work with [REDACTED]. During his time in Kosovo and Albania, W04067 kept written notes of his activities. Based on his [REDACTED] experience and interactions with the KLA, W04067 was able to observe and assess the KLA's structure and command and control systems during this period. In late-1998 and early 1999, W04067 patrolled frequently in the area around [REDACTED]. In late-December 1998, W04067 became a [REDACTED] for the KVM's [REDACTED], working alongside [REDACTED]. In the course of this work, W04067 had numerous contacts with KLA members operating in his patrol area including Ekrem REXHA, Sabahajdin CENA, and Skender HOXHA, and Fatmir LIMAJ.

16. In [REDACTED] 1999, W04067 was deployed to the KVM's [REDACTED], where he remained until the start of the NATO bombing campaign. As part of his work with the [REDACTED], W04067 sought information from the KLA about individuals believed to have disappeared or to have been detained. W04067's SPO statement and associated exhibits provide evidence of these interactions and the information obtained including: discussions with [REDACTED] on the subject of Serbs who had disappeared from [REDACTED] during summer 1998; the detention of [REDACTED]; the detention of [REDACTED]; visiting a prisoner held by the KLA in [REDACTED]; and his contacts with Commander DRINI and the KLA General Staff concerning the release of [REDACTED]. W04067 also describes how he went to [REDACTED] where [REDACTED], were handed over to him. W04067's evidence is

therefore relevant to crimes charged in the Indictment²⁰ and to assessing related evidence.

17. *Authenticity and Reliability.* W04067's Rule 153 Statement consists of his signed SPO statement. W04067 was advised of his rights and obligations as a witness;²¹ and confirmed that his statement was true, accurate, and voluntary.²²

18. *Suitability for Rule 153 Admission.* W04067 provides primarily contextual and crime-base evidence which is particularly suitable for admission in writing in lieu of oral testimony. W04067's evidence is also generally cumulative with and corroborated by other evidence which the Accused have had an opportunity to confront, including through cross-examination,²³ and complements certain adjudicated facts.²⁴

19. While W04067's evidence contains a second-hand reference to a 'Krasniqi,'²⁵ he said that he did not know whether this referred to the Accused, Jakup KRASNIQI.²⁶ In light of this explanation and the obvious limited nature of this evidence, the SPO considers these references to be incidental rather than going to proof of the acts and conduct of the Accused as charged in the Indictment. Nonetheless, because the SPO does not intend to rely on these parts of W04067's evidence, it has agreed with the Defence to redact all such references, should the Panel find that they go to proof of acts and conduct, and that said redactions are necessary for admission pursuant to Rule 153.

20. *Admissibility of the Associated Exhibits.* The handwritten notebooks, typed notes, [REDACTED] record(s), book excerpt, photograph of a KLA sign, and an

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 075959-075992 RED, p.1.

²² 075959-075992 RED, pp.33-34.

²³ See e.g. [REDACTED].

²⁴ See e.g. Annex 1 to Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F01534/A01, 17 May 2023 ('Adjudicated Facts'), Facts [REDACTED].

²⁵ See 075959-075992 RED, paras 60, 63; SPOE00109493-00109506, p.SPOE0010955.

²⁶ 075959-075992 RED, para.63.

[REDACTED] document were all discussed with W04067 during the taking of his SPO statement²⁷ to the extent they form an inseparable and indispensable part of W04067's evidence and should, therefore, be admitted as associated exhibits.

4. W04575

21. *Relevance, authenticity and reliability.* The Panel has already found that W04575's Rule 154 Statement²⁸ is relevant to the charges in the Indictment, *prima facie* authentic, and has sufficient probative value.²⁹

22. *Suitable for Rule 153 admission.* W04575 provides primarily contextual and crime-base evidence, which is particularly suitable for Rule 153 admission in lieu of oral testimony. W04575's evidence is cumulative to that of other witnesses³⁰ and documentary evidence³¹ concerning crimes committed by the KLA in and around [REDACTED]. W04575's evidence is corroborated by witnesses whom the Accused have had an opportunity to confront, including through cross-examination,³² and complements adjudicated facts.³³ The interests of the witness and justice are also served, as set out below.

²⁷ Although not every page of W04067's notes were directly discussed with the witness, the complete notes (handwritten and typed) were referenced numerous times and provide clarity and context to the entries that were discussed, thereby enabling the Panel to fully understand and evaluate the witness's evidence as a whole. Because the witness's statement would have lesser probative value without reference to the complete notes, they form an inseparable and indispensable part of W04067's evidence.

²⁸ The Rule 154 Statement consists of: (i) the witness's statement to [REDACTED]; (ii) minutes from the witness's testimony in an [REDACTED] trial; and (iii) the witness's SPO Statement (*see* Annex 4).

²⁹ Decision on Prosecution Motion for Admission of Evidence of W01453, W03878, W04446, W04575, and W04651 Pursuant to Rule 154 (F02005), KSC-BC-2020-06/F02117, 12 February 2024, Confidential, paras 41-42.

³⁰ *See e.g.* [REDACTED].

³¹ *See e.g.* [REDACTED].

³² *See e.g.* [REDACTED].

³³ Adjudicated Facts, KSC-BC-2020-06/F01534/A01, Facts [REDACTED].

23. While the SPO initially applied for admission of W04575's evidence pursuant to Rule 154³⁴ and subsequently noticed him as a reserve witness,³⁵ he refused to travel to The Hague to testify despite being served with a summons on [REDACTED] 2024, citing concerns about his safety and that of his family.³⁶ After extended periods of time during which the SPO was unable to make contact with W04575, he informed the SPO [REDACTED]³⁷ and that he was willing to testify. The SPO, WPSO, and W04575's [REDACTED] then made arrangements for W04575's travel to, and testimony in, The Hague in January 2025.³⁸ W04575 once again refused to do so, citing his family's situation in the [REDACTED] and trauma related to the war.³⁹ Since this refusal, the SPO has once again been unable to contact W04575.

24. Taking into account the scope and nature of W04575's crime-base evidence; the Defence indication it would not oppose admission of his evidence pursuant to Rule 153; his refusal to testify and the reasons therefor; the fact that other witnesses in this case have, in both these and prior proceedings, been subject to a variety of pressures and threats and the serious climate of witness interference and intimidation in which these proceedings are being conducted – requiring W04575 to testify live would not serve the interests of justice and poses undue risks of retraumatisation and harm. In conjunction with the continuing need to streamline and, at this stage, conclude, the SPO's evidence presentation, these factors weigh heavily in favour of the admission of W04575's evidence pursuant to Rule 153.

³⁴ Prosecution motion for admission of evidence of Witnesses W01453, W03878, W04446, W04575, and W04651 pursuant to Rule 154, KSC-BC-2020-06/F02005, 14 December 2023, Confidential.

³⁵ See Annex 2 to Prosecution submission of list of witnesses for 15 January to 4 April 2024, KSC-BC-2020-06/F02007/A02, 14 December 2023, Confidential.

³⁶ See 120978-120978 RED; 120912-120913 RED.

³⁷ See 124610-124610 RED.

³⁸ See Email from SPO to the parties and participants, 9 January 2025, 09:37, notifying W04575 as a reserve witness for the week of 20 January 2025.

³⁹ See 125882-125883.

III. *INTER PARTES* CORRESPONDENCE

25. As instructed by the Panel, the SPO, Defence, and Victims' Counsel have engaged in *inter partes* correspondence in an effort to agree on the evidence subject of the present motion.⁴⁰

26. The Defence agrees to the admission of the Rule 153 Statements and associated exhibits for witnesses W02085, W04067 (subject to redacting the references to the Accused as discussed above), and W04575. The Defence, however, objects to admission of W02018's evidence pursuant to Rule 153, wishing to cross-examine the witness on his mobilisation during the war by the Serbian army.

27. W02018's evidence, as set out above, is crime-base evidence which is cumulative with and corroborated by witnesses whom the Accused have had an opportunity to confront. Despite the Defence objection, the proposed evidence of W02018 is entirely suitable for admission in writing in lieu of oral testimony and should, therefore, be admitted pursuant to Rule 153.

IV. CLASSIFICATION

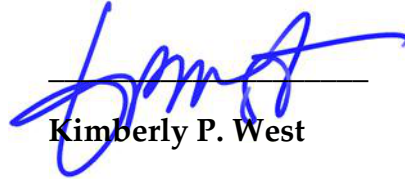
28. This submission and its annexes are confidential as they contain information concerning witnesses with protective measures, and witnesses whose identities are not public at this time.

⁴⁰ Order on the Conduct of the Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023, paras 39, 51, 73.

V. RELIEF REQUESTED

29. For the foregoing reasons, the Trial Panel should admit the tendered Rule 153 Statements and associated exhibits pursuant to Rule 153.

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Kimberly P. West
Specialist Prosecutor

Thursday, 20 February 2025

At The Hague, the Netherlands.