



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: 21 February 2025

Language: English

Classification: Confidential

**Public redacted version of 'Prosecution seventh motion for admission of evidence
pursuant to Rule 155**

with confidential Annexes 1-3'

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I. INTRODUCTION

1. Pursuant to Articles 37 and 40 of the Law,¹ and Rules 137-138 and 155 of the Rules,² the Specialist Prosecutor's Office ('SPO') seeks admission of the statements³ of two witnesses: W00742⁴ and W04324⁵ (collectively, 'Rule 155 Witnesses').

2. The Proposed Evidence should be admitted because: (i) the Rule 155 Witnesses are unavailable;⁶ and (ii) the Proposed Evidence is relevant, authentic, reliable, and has probative value, which is not outweighed by any prejudice.⁷ As these admissibility criteria are satisfied, admission is in the interests of justice.⁸

3. Attached to this Motion are three Annexes. Annexes 1-2, one for each of the Rule 155 Witnesses, contain a table identifying the Proposed Evidence⁹ for that witness.¹⁰ Annex 3 contains documents supporting W00742's unavailability.¹¹

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article(s)' are to the Law, unless otherwise specified.

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(s)' are to the Rules.

³ The account of each witness tendered for admission is the 'Rule 155 Statement'.

⁴ See Annex 1, items 1-4.

⁵ See Annex 2, items 1-6.

⁶ Rule 155(1)(a).

⁷ Rules 137-138, 155(1)(b).

⁸ The applicable law has been set out in prior submissions and decisions in this case. See e.g. Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, Confidential ('First Decision'), paras 10-19.

⁹ As indicated in the Annexes, where an audio-video recording exists, the SPO also tenders it along with the relevant written statement pursuant to the Trial Panel's fourth oral order of 15 January 2024, Transcript, 15 January 2024, p.11022. See also Decision on Prosecution Third Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F02013, 15 December 2023 ('Third Decision'), para.65(e); Decision on Prosecution Second Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01864, 17 October 2023, Confidential ('Second Decision') para.97(d).

¹⁰ For each item, the Annexes provide a description, date of the document, relevant ERNs, and indicia of reliability. See First Decision, KSC-BC-2020-06/F01603, paras 62-64, 101 (setting out indicia of authenticity and reliability).

¹¹ The supporting material for W04324's unavailability (7009926-7009927) [REDACTED].

II. SUBMISSIONS

1. W00742

4. *Relevance.* W00742 is a [REDACTED].¹² On or about 17 June 1999, about a dozen KLA soldiers, including [REDACTED],¹³ [REDACTED] Dimko PARLIĆ to a commander stationed in a military facility in the nearby village of Balaj/Balić.¹⁴ The commander interrogated Dimko PARLIĆ and searched for his name in a book containing various Serbian names. As he did not find it, he permitted PARLIĆ to leave.¹⁵

5. The following day, Dimko PARLIĆ was again taken by the KLA soldiers, including [REDACTED], and brought before the same commander in Balaj/Balić.¹⁶ Once there, PARLIĆ was beaten and forced to lick blood from the floor, while KLA soldiers cursed his Serbian mother.¹⁷ [REDACTED] Dimko PARLIĆ relayed to her what had happened to him.¹⁸

6. The next day, [REDACTED] and other KLA soldiers came again and took Dimko PARLIĆ [REDACTED].¹⁹ He was never seen again.²⁰ On the same night, other villagers were also abducted and disappeared.²¹

7. *Authenticity and reliability.* The Proposed Evidence, with individualised explanations of circumstances supporting its *prima facie* reliability, is listed in Annex 1 to this Motion. W00742's SPO interview – as audio/video recorded and transcribed –

¹² See Annex 1, item 1: 072659-TR-ET Part 1, pp.4, 7, 10, 29-30.

¹³ 072659-TR-ET Part 1, p.15.

¹⁴ 072659-TR-ET Part 1, pp.13-14, 16, 18; Annex 1, item 2: SITF00316405-00316409 RED, pp.SITF00316406-00316407.

¹⁵ 072659-TR-ET Part 1, pp.13–14, 17–18.

¹⁶ 072659-TR-ET Part 1, pp.11, 16, 19-20; SITF00316405-00316409 RED, p.SITF00316407.

¹⁷ 072659-TR-ET Part 1, p.19.

¹⁸ 072659-TR-ET Part 1, p.19.

¹⁹ 072659-TR-ET Part 1, pp.16, 20-21; SITF00316405-00316409 RED, p.SITF00316407.

²⁰ 072659-TR-ET Part 1, pp.21–22.

²¹ 072659-TR-ET Part 1, p.25.

was conducted with an interpreter understood by the witness,²² who was duly advised of her rights and obligations.²³ The date, time and place of the interview, as well as all persons present, are reflected in the record of the interview.²⁴ W00742 understood the requirement to tell the truth, and confirmed that her statement was given voluntarily.²⁵

8. In her SPO interview, W00742 confirmed the authenticity of the statement she provided to EULEX in October 2013.²⁶ She also declared it to be true, and confirmed and clarified its contents.²⁷ Her EULEX statement therefore forms an integral part of W00742's SPO statement. Written on an official template, the EULEX statement shows the date and time of the interview and notes the names of those present, including an interpreter.²⁸ The witness was informed of her rights and obligations and both she and the relevant officials signed the statement.²⁹ On the day of her EULEX interview, the witness was also presented with a photo line-up, which thus forms an integral part of that statement.³⁰ This latter process was properly recorded with the date and time, and signed by the witness, the relevant officials, and an authorised interpreter.³¹ While W00742's statements overlap in certain respects, they corroborate and complement one another, and permit a full assessment of the witness's evidence and credibility.³²

9. *Fairness.* The probative value of W00742's Proposed Evidence is not outweighed by any prejudice. Indeed, this evidence: (i) does not go to proof of the acts and conduct of the Accused; (ii) may not be relied upon to a sole or decisive extent in

²² 072659-TR-ET Part 1, pp.1-3.

²³ 072659-TR-ET Part 1, pp.2-4.

²⁴ 072659-TR-ET Part 1, p.1.

²⁵ 072659-TR-ET Part 1, p.3, 38.

²⁶ 072659-TR-ET Part 1, p.6.

²⁷ 072659-TR-ET Part 1, pp.6-16.

²⁸ SITF00316405-00316409 RED, p.SITF00316405.

²⁹ SITF00316405-00316409 RED, p.SITF00316409; SITF00316410-00316414 RED, p.SITF00316414.

³⁰ Annex 1, item 4: SITF00316399-SITF00316401-ET RED.

³¹ SITF00316399-SITF00316401-ET RED, p.SITF00316401.

³² First Decision, KSC-BC-2020-06/F01603, paras 93, 108.

reaching a conviction; (iii) was recorded in a manner – including by different law enforcement bodies and at different times over the course of more than six years – that enables the Parties and Panel to assess the witness’s demeanour and credibility; and (iv) is consistent with and corroborated by the evidence of [REDACTED] and other witness and documentary evidence – including concerning crimes committed in similar circumstances and for similar reasons at other locations in the same time period³³ – which the Accused have confronted and will be able to challenge, including through cross-examination and by other means.³⁴

10. *Unavailability.* W00742 is unavailable as her health condition effectively prevents her from testifying orally,³⁵ as evidenced by the medical documentation available at Annex 3. Indeed, the witness’s health and vulnerability indicate that she is unlikely fit to testify, there is a significant risk of harm to the witness should she be required to testify, and it is unlikely that the application of special measures can

³³ See e.g. [REDACTED]. See also Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, Sections III(S)-(DD). Untested evidence may be corroborated by a pattern of conduct, including as demonstrated by the commission of similar acts in the same or other locations. See eg. ICTY, *Prosecutor v. Popović et al.*, IT-05-88-A, Judgement, 30 January 2015, paras 101-104.

³⁴ The Panel reached similar findings when admitting the evidence of corroborating witness [REDACTED] under Rule 153. See Decision on Prosecution Motion for the Admission of the Evidence of [REDACTED].

³⁵ See First Decision, KSC-BC-2020-06/F01603, para.123; Decision on Thaçi, Veseli & Krasniqi Defence Request for Certification to Appeal the ‘Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155’, KSC-BC-2020-06/F01671, 13 July 2023, paras 18-19. See also ICTY, *Prosecutor v. Gotovina et al.*, IT-06-90-T, Decision on the Admission of Statements of Four Witnesses pursuant to Rule 92 *quater*, 24 July 2008, para.16; ICTY, *Prosecutor v. Gotovina et al.*, IT-06-90-T, Decision on the Admission of Statements of Two Witnesses and Associated Documents pursuant to Rule 92 *quater*, 16 January 2009, paras 8, 10 (where the Chamber found that the witness was unable to testify orally due to Parkinson’s disease, with severe symptoms); ICTY, *Prosecutor v. Karadžić*, IT -95-5/18-T, Decision on Prosecution Motion for Admission of Testimony of Sixteen Witnesses and Associated Exhibits pursuant to Rule 92 *quater*, 30 November 2009, para.5; ICTY, *Prosecutor v. Hadžić*, IT-04-75-T, Decision on Prosecution Omnibus Motion for Admission of Evidence Pursuant to Rule 92 *quater* and Prosecution Motion for the Admission of the Evidence of GH-083 Pursuant to rule 92 *quater*, 9 May 2013, paras 23, 29, 41, 95, 101; ICC, *Prosecutor v. Al Hassan*, ICC-01/12-01/18-1588-Red, Trial Chamber X, Public redacted version of Decision on the introduction into evidence of P0570’s prior recorded testimony pursuant to Rule 68(2)(c) of the Rules, 11 August 2021, paras 18-20; STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, Decision Admitting Witness PRH437’s Statements Under Rule 158 and Granting Protective Measures, 28 February 2017, paras 12-14.

sufficiently protect the witness's well-being and dignity.³⁶ She is thus unavailable for the purposes of Rule 155(1)(a).

2. W04324

11. *Relevance.* W04324 is a Kosovar-Albanian who joined the KLA in June 1998.³⁷ He served in [REDACTED].³⁸ He recalls how membership of the LDK provoked suspicion within the KLA and his knowledge of an order from KLA headquarters to [REDACTED] due to his support of Ibrahim RUGOVA.³⁹

12. W04324 went to [REDACTED] on several occasions between June and September 1998, [REDACTED], who at the time was deputy commander of the [REDACTED].⁴⁰ At the [REDACTED] headquarters, W04324 could see two rooms with 10-15 Serbs, or LDK supporters, kept captive in each.⁴¹ The prisoners were miserable, exhausted, hungry, and covered in bruises and blood stains.⁴² W04324 also has knowledge of the identity of some of those detainees at [REDACTED].⁴³

13. Additionally, W04324 describes the killing of [REDACTED], who were killed by the KLA in June 1999 for being 'Serbian collaborators'.⁴⁴

³⁶ See also [REDACTED].

³⁷ See Annex 2, item 2: SITF00370952-SITF00370963 RED2, p.SITF00370953; item 3: SITF00369389-SITF00369438 RED, p.SITF00369397.

³⁸ SITF00370952-SITF00370963 RED2, p.SITF00370953; SITF00369389-SITF00369438 RED, pp.SITF00369396-00369398.

³⁹ SITF00370952-SITF00370963 RED2, pp.SITF00370953-00370954; SITF00369389-SITF00369438 RED, pp.SITF00369399-00369400.

⁴⁰ SITF00370952-SITF00370963 RED2, p.SITF00370953; SITF00369389-SITF00369438 RED, pp.SITF00369398-00369399, SITF00369401-00369402.

⁴¹ SITF00370952-SITF00370963 RED2, p.SITF00370954; SITF00369389-SITF00369438 RED, p.SITF00369419.

⁴² SITF00370952-SITF00370963 RED2, p.SITF00370955; SITF00369389-SITF00369438 RED, p.SITF00369419.

⁴³ SITF00370952-SITF00370963 RED2, p.SITF00370954-00370955.

⁴⁴ SITF00370952-SITF00370963 RED2, p.SITF00370956; Annex 2, item 1: SITF00176851-SITF00176855 RED, pp.SITF00176852-00176854.

14. *Authenticity and reliability.* W04324's Proposed Evidence, with an individualised explanation of circumstances militating for its *prima facie* reliability, is listed at Annex 2.⁴⁵ W04324 provided two statements to the SPRK, on [REDACTED] and [REDACTED], respectively.⁴⁶ Both SPRK interviews, written on an official template, were conducted with an interpreter understood by the witness and with W04324 duly advised of his rights and obligations.⁴⁷ The date, time, and place of the interview, as well as all persons present, are reflected in the record of the interview.⁴⁸ Additionally, W04324 confirmed that the contents of both statements are true, accurate, and provided without coercion.⁴⁹ Finally, both statements are signed by the witness and by the relevant SPRK officials.⁵⁰

15. The four tendered EULEX records of W04324's [REDACTED] bear similar indicia of reliability.⁵¹ These [REDACTED] are written on official templates, with the date, time, place, and and indication of those present, including an interpreter.⁵² W04324 was duly advised of his rights and obligations as a witness, [REDACTED].⁵³ [REDACTED].⁵⁴

16. *Fairness.* The probative value of W04324's Proposed Evidence is not outweighed by any prejudice. Indeed, this evidence: (i) does not go to proof of the acts

⁴⁵ W04324's SPO interview is not included as the Proposed Evidence sets out the core of W04324's account in a more concise manner.

⁴⁶ SITF00370952-SITF00370963 RED2; SITF00176851-SITF00176855 RED.

⁴⁷ SITF00370952-SITF00370963 RED2, pp.SITF00370952-00370953; SITF00176851-SITF00176855 RED, p. SITF00176851.

⁴⁸ SITF00370952-SITF00370963 RED2, pp SITF00370952-00370953; SITF00176851-SITF00176855 RED, p.SITF00176851.

⁴⁹ SITF00370952-SITF00370963 RED2, p.SITF00370957; SITF00176851-SITF00176855 RED, pp.SITF00176855.

⁵⁰ SITF00370952-SITF00370963 RED2; SITF00176851-SITF00176855 RED.

⁵¹ See Annex 2, item 3: SITF00369389-SITF00369438 RED; item 4: SITF00369491-SITF00369522 RED; item 5: SITF00369558-SITF00369606 RED; item 6: SITF00369659-SITF00369676 RED.

⁵² SITF00369389-SITF00369438 RED, p.SITF00369389; SITF00369491-SITF00369522 RED, p.SITF00369491; SITF00369558-SITF00369606 RED, p.SITF00369558; SITF00369659-SITF00369676 RED, p.SITF00369659.

⁵³ SITF00369389-SITF00369438 RED, p.SITF00369393-SITF0036394.

⁵⁴ See e.g. SITF00369389-SITF00369438 RED, pp.SITF00369389, SITF00369396, SITF00369406-00369407.

and conduct of the Accused; (ii) may not be relied upon to a sole or decisive extent in reaching a conviction; (iii) was recorded in a manner – including by different law enforcement bodies and at different times over the course of over two years – that enables the Parties and Panel to assess the witness’s demeanour and credibility; and (iv) is consistent with, and corroborated by, statements of other witnesses in the case,⁵⁵ some of whom have been available for cross-examination by the Defence,⁵⁶ and other documentary evidence.⁵⁷

17. *Unavailability.* W04324 is unavailable as the SPO has, as set out below, exhausted reasonable efforts to secure the witness’s appearance.⁵⁸ This situation amounts to a ‘compelling reason’ for his inability to testify within the meaning of Rule 155(1).

18. The addition of this non-exhaustive wording – ‘other compelling reason’ – to the Rule demonstrates the intention to depart from a prescribed narrow set of circumstances in which a witness could be deemed ‘unavailable’, and to include a broader range of situations, such as the present.⁵⁹ Similarly, ICC Chambers have noted that the analogous ICC rule comparatively expanded on the ICTY provision by leaving the nature of unavailability undefined, and as such ‘must be interpreted broadly’.⁶⁰ Unavailability within the meaning of Rule 155 is a fact-intensive and case-by-case assessment, and has been found to include circumstances: (i) where the authorities acted diligently under relevant domestic laws and by resort to available

⁵⁵ See e.g. W04491, W04694, W04782, W04239, W04445. See also W04290.

⁵⁶ See e.g. W04445, W04491, W04444. See also W04290.

⁵⁷ See e.g. IT-05-87 6D00067; U015-8743-U015-8935-ET Revised 1; U000-7885-U000-7885-ET.

⁵⁸ See 7009926-7009927. See also fn.11 above.

⁵⁹ Compare Rule 155(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev2/2020, 5 May 2020.

⁶⁰ See e.g. ICC, *Prosecutor v. Bemba et al.*, ICC-01/05/13-1481-Red-Corr, Decision on ‘Prosecution Submission of Evidence Pursuant to Rule 68(2)(c) of the Rules of Procedure and Evidence’, 12 November 2015 (*Bemba et al.* Decision), para.16.

international legal assistance mechanisms to no avail;⁶¹ (ii) where, despite reasonable efforts, relevant authorities are unresponsive to international requests for assistance and there are poor prospects of being able to successfully secure *viva voce* testimony at a reasonable stage of the proceedings;⁶² and (iii) where, despite reasonable efforts, there are objective obstacles to a witness's cooperation and the court's ability to secure their testimony, and the reasonably foreseeable consequences of enforcing a summons or taking further measures would cause undue and disproportionate hardship.⁶³

19. In the current situation, the SPO has exercised reasonable diligence, having explored the matter directly with the witness on multiple occasions,⁶⁴ requesting the cooperation of relevant domestic authorities, and examining the prospect of compelling the witness to testify in conjunction with the relevant authorities. Those authorities have recently confirmed that the witness refuses to testify, he is not subject to any requirement to cooperate with [REDACTED] or Kosovo authorities for purposes of testimony, and the representatives of the host country have no authority to compel him to testify.⁶⁵

20. Despite reasonable efforts to secure his testimony, W04324 is therefore unavailable for compelling reasons within the meaning of Rule 155(1).

⁶¹ See e.g. ECtHR, *Berisha v. The Netherlands*, Decision as to the Admissibility of Application no.42965/98, 4 May 2000; ECtHR, *Haas v. Germany*, Decision as to the Admissibility of Application no.73047/01, 17 November 2000; ECtHR, *Gabrielyan v. Armenia*, 8088/05, Judgment, 10 April 2012, para.82. See also ICC, *Prosecutor v. Al Hassan*, ICC-01/12-01/18-2114-Red, Public Redacted Version of Decision on the introduction into evidence of the prior recorded testimony of P-0605 and P-0582 pursuant to Rule 68(2)(c) of the Rules, 14 February 2022, paras 26-28.

⁶² See e.g. ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-2242-Red, Public Redacted Version of 'Decision on certain requests related to the admission of the prior recorded testimony of Witness D-0080, 22 February 2018, para.32; ECtHR, *Mirilashvili v. Russia*, 6923/04, Judgment, 11 December 2008, para.220.

⁶³ See e.g. *Bemba et al.* Decision, paras 17-18. See, similarly, ECtHR, *Gani v. Spain*, 61800/08, Judgment, 19 February 2013, para.39.

⁶⁴ See e.g. 068791-TR-ET Part 9, p.3; 101779-101780 RED2; 106951-106951.

⁶⁵ See 7009926-7009927. [REDACTED].

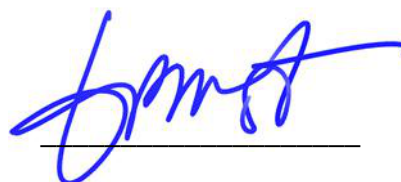
III. CLASSIFICATION

21. This motion and Annexes 1-3 are confidential as they contain information concerning witnesses with protective measures and/or whose identities are not public at this time. A public redacted version of the motion will be filed.

IV. RELIEF REQUESTED

22. For the foregoing reasons, the SPO requests that the Trial Panel admit the Proposed Evidence.

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Kimberly P. West

Specialist Prosecutor

Friday, 21 February 2025

At The Hague, the Netherlands.