



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 eighth Rule 155 motion
with confidential Annex 1'**

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I. INTRODUCTION

1. The Response¹ raises arguments that misrepresent submissions in the Motion² and disregard the applicable law and the Panel's previous findings. The evidence proposed in the Motion ('Proposed Evidence') satisfies all relevant criteria and should be admitted.

2. As a preliminary matter, the SPO requests to replace certain parts of W04577's 2022 SPO interview with revised versions,³ as indicated in Annex 1.

II. SUBMISSIONS

3. The Response selectively challenges certain aspects of the Proposed Evidence and the SPO's submissions on unavailability, ignoring the witness-specific, case-by-case, and fact-intensive nature of Rule 155 admissibility assessments. Based on a holistic assessment of each witness's circumstances and measures taken to secure their appearance, the witnesses are not merely unwilling;⁴ rather, they are objectively unavailable for compelling reasons.

4. Further, prejudice should be assessed on the basis of the circumstances as they stand now. For example, the Panel's rejection of the admission of W04352's and W04433's evidence pursuant to Rule 153 was premised on the understanding that they would be available to testify. Their subsequent inability to do so for reasons falling under Rule 155(1)-(2) fundamentally changes the assessment,⁵ noting in particular that

¹ Joint Defence Response to 'Prosecution eighth motion for admission of evidence pursuant to Rule 155' (F03028), KSC-BC-2020-06/F03087, 04 April 2025, Confidential ('Response'). *See also* KSC-BC-2020-06/F03087/A01 ('Annex 1').

² Prosecution eighth motion for admission of evidence pursuant to Rule 155, KSC-BC-2020-06/F03028, 17 March 2025, Confidential ('Motion').

³ Disclosure 1668.

⁴ Response, para.12. Other than its general submissions, the Defence only makes specific submissions on the unwillingness of W04427 and W04433.

⁵ *See, similarly*, ICTY, *Prosecutor v. Šešelj*, IT-03-67-T, Decision on Prosecution's Motion for admission of evidence of Mujo Džafić pursuant to Rule 92quater of the Rules of Procedure and Evidence, 13 May 2009, paras.2-3, 13.

the Defence makes no specific submission challenging that the Rule 155(2) criteria are met for W04352. Additional submissions are provided below in relation to W00092, W04577, and W04427.

A. W00092

5. The Defence does not challenge W00092's unavailability; rather, it attempts – but fails – to establish that W00092's evidence is unreliable and lacks corroboration.

6. By honing in on the format of one item of W00092's Proposed Evidence,⁶ the Defence neglects the larger picture of a remarkably consistent account from the same witness over the course of six years and five statements. Similarly, the identification of minor inconsistencies between the evidence [REDACTED],⁷ in no way affects the strongly corroborative nature of their core accounts.

7. In addition, the Defence claim that it has been deprived of the opportunity to cross-examine related witnesses⁸ is unavailing, given that several witnesses who were present at various moments of W00092's detention testified live in court.⁹

B. W04577

8. The Defence's mischaracterisation of relevant facts and attempts to substitute [REDACTED] opinion with its own baseless views as to W04577's fitness,¹⁰ going so far as to misquote [REDACTED] and ignore [REDACTED],¹¹ in no way detract from the case record, which unambiguously establishes W04577 is unavailable.¹²

⁶ Response, para.15.

⁷ Response, para.26.

⁸ Response, para.27.

⁹ [REDACTED].

¹⁰ Response, paras.28-29, 38.

¹¹ [REDACTED].

¹² Motion, paras.15-16.

9. Defence contentions concerning W04577's evidence,¹³ while not challenging the authenticity thereof,¹⁴ ignore the Panel's findings that W04577's Rule 154 Statement, identical to his Rule 155 Statement but for W04577 Preparation Note 1,¹⁵ is relevant and *prima facie* authentic, has probative value, that the 'contacts and sightings of three of the Accused alleged by W04577 are relatively limited in scope and only remotely connected to their acts and conduct', and that concerns raised by the Defence about W04577's credibility and reliability focus on a very limited part of W04577's statements.¹⁶ The Defence also ignores the Panel's prior Rule 155 decisions on, *inter alia*, *prima facie* reliability¹⁷ and assessment of discrepancies,¹⁸ and also pays no heed to the Panel's rejection of prior attempts to have the SPO state its case in relation to parts of, and purported inconsistencies in, certain evidence before the conclusion of the trial.¹⁹

10. There is nothing misleading about the Proposed Evidence.²⁰ The Defence selectively cites from, and speculates about, W04577's assertions during his [REDACTED].²¹ Those assertions must be considered in their totality²² and in the context of the persisting climate of witness intimidation in Kosovo. Similarly, such climate, W04577's documented concerns about his and his family's safety/security,

¹³ Response, paras.28, 31-32, 34, 36, 44-57.

¹⁴ Response, para.33.

¹⁵ 116039-116048.

¹⁶ Corrected Version of Decision on Second Prosecution Motion Pursuant to Rule 154, KSC-BC-2020-06/F01595/COR, 9 June 2023, Confidential ('9 June 2023 Decision'), paras.31-33.

¹⁷ Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, Confidential ('First Decision'), para.64.

¹⁸ Decision on Prosecution Second Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01864, 17 October 2023, Confidential ('Second Decision'), paras.83, 92.

¹⁹ Response, para.37; Transcript, 6 November 2024, pp.22065-6.

²⁰ *Contra* Response, para.35.

²¹ Response, para.36(a).

²² *See* [REDACTED].

and [REDACTED] assessment of W04577,²³ must be considered when analysing W04577's conduct in October 2023.²⁴

11. Defence attempts to portray W04577's evidence as unreliable fail. W04577's [REDACTED] clarifications/corrections to his prior statements,²⁵ including concerning his basis of knowledge and other details,²⁶ do not indicate any fundamental inconsistency that would render his evidence inadmissible. Further, the Defence assertion that W04577 '[REDACTED]' relies on semantics and speculation, and focuses on issues peripheral to W04577's evidence.²⁷

12. In further attempts to discredit W04577, the Defence ignores [REDACTED], cites [REDACTED] on W04577 out of context, alleges, without a single citation in support, that '[REDACTED]', and seeks to taint W04577's credibility by virtue of previous contact with [REDACTED].²⁸ The Defence also mischaracterises SPO attempts to clarify W04577's basis of knowledge and keep him focused on answering the relevant questions during his SPO interview.²⁹

13. The fact that W04577's evidence, including on key issues therein such as the detention of persons by KLA members, is internally consistent and corroborated by admitted evidence³⁰ is also relevant, including in light of Defence submissions about W04577's motives.³¹

²³ Motion, paras.15-16.

²⁴ Response, paras.36(b), 39-40.

²⁵ That the witness reviewed his statements and provided such corrections during his preparation session, which followed the Panel's Rule 154 decision, adds to the reliability and probative value of the Proposed Evidence.

²⁶ *Contra* Response, KSC-BC-2020-06/F03087, paras.36(d)-(f).

²⁷ Response, para.36(e). [REDACTED].

²⁸ Response, paras.42-44.

²⁹ Response, para.37.

³⁰ *See e.g.* Motion, para.22, fns.56-60.

³¹ *Contra* Response, paras.39-41.

14. The Defence also fails to demonstrate any error in the Panel's finding concerning the references to the Accused in the Proposed Evidence.³²

15. With one exception,³³ W04577 does not specifically implicate any of the Accused in any charged crimes. Rather, several of his references to the Accused concern his having seen, or otherwise having knowledge of, the Accused at certain locations.³⁴ Such evidence does not necessarily go to the acts and conduct of the Accused as charged in the Indictment.³⁵ Further, several of W04577's assertions concerning the Accused's presence at certain locations are corroborated by admitted evidence. For example, [REDACTED]³⁶ and in [REDACTED].³⁷ Similarly, W04577's is not the only evidence placing [REDACTED]³⁸ and near [REDACTED].³⁹ Contrary to the Defence assertion,⁴⁰ a witness other than [REDACTED]; that witness, [REDACTED], was cross-examined by the Defence, including in relation to this assertion.⁴¹

16. In a number of instances where W04577 goes beyond merely noting the Accused's presence at certain locations,⁴² the information he provides would only marginally go to issues material to the case.⁴³ In relation to W04577's evidence going to the Accused's authority within the KLA,⁴⁴ W04577 made it clear that he did not himself witness the Accused giving orders and that such evidence was based on what

³² 9 June 2023 Decision, KSC-BC-2020-06/F01595/COR, para.33.

³³ Annex 1, no.5; Response, fn.129.

³⁴ Annex 1, nos.2, 8-9, 12, 15-18, 31-36, 38, 40-47; Response, paras.36(e)(i), fns.135-136, 139, 142, 148-150, 152, 154.

³⁵ First Decision, paras.90, 112, 116.

³⁶ Response, para.47; Annex 1, nos.17, 35. *See e.g.* [REDACTED].

³⁷ Response, para.48. *See e.g.* [REDACTED].

³⁸ Response, para.53; Annex 1, no.18. *See e.g.* [REDACTED].

³⁹ Response, para.53; Annex 1, no.39. *See e.g.* [REDACTED].

⁴⁰ Response, para.52; Annex 1, nos.38, 40-42.

⁴¹ [REDACTED].

⁴² Annex 1, nos.10, 14, 19-21, 26; Response, para.36(e)(ii).

⁴³ First Decision, para.90; Decision on Prosecution Fourth Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F02283, 3 May 2024, Confidential, para.66.

⁴⁴ Response, paras.45, 48-49, 54; Annex 1, nos.1, 3, 7, 12, 30, 38, 48-49.

he learned from others.⁴⁵ Further, W04577's evidence in this regard is corroborated by other evidence.⁴⁶

17. Regardless, corroboration is not a pre-requisite for admission of evidence,⁴⁷ and Rule 155 does not prohibit the admission of evidence when it pertains to the acts and conduct of the Accused.⁴⁸

18. Allegations of prejudice⁴⁹ ignore Rule 140(4)(a), and fail to acknowledge that the Defence has had the opportunity to question other witnesses on multiple issues addressed in the Proposed Evidence and/or about W04577 himself⁵⁰ and that the Defence can further test W04577's evidence by calling or seeking to admit evidence to the contrary and making final submissions in relation thereto.⁵¹

C. W04427

19. The Defence misrepresents the reasons for W04427's unavailability.⁵² In this respect, the Defence selectively takes issue with parts of the SPO submissions on the witness's circumstances, but fails to address the Third State's stated inability to compel him to testify.⁵³

20. Further, the Response ignores the Panel's previous findings that W04427's Proposed Evidence is relevant, *prima facie* authentic and probative,⁵⁴ and seeks to re-

⁴⁵ See e.g. [REDACTED].

⁴⁶ See e.g. [REDACTED].

⁴⁷ Second Decision, para.46; Decision on Prosecution Sixth Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F03012, 13 March 2025, Confidential ('Sixth Decision'), para.57.

⁴⁸ See e.g. First Decision, paras.90, 116.

⁴⁹ Response, paras.45-47, 49, 51-53, 55, 57.

⁵⁰ See e.g. Motion, fn.65.

⁵¹ Sixth Decision, para.57.

⁵² Response, paras.64-66.

⁵³ Motion, paras.46-48.

⁵⁴ Motion, para.49.

litigate such matters.⁵⁵ The matters raised in the Response are not a bar to Rule 155 admission, but instead go to ultimate weight.

21. While, as noted above, admission of evidence under Rule 155 is not conditioned on the existence of corroboration, W04427's account indeed aligns with and is supported by the admitted evidence of [REDACTED]⁵⁶ and [REDACTED],⁵⁷ as well as the evidence of other witnesses who were detained and mistreated at [REDACTED].⁵⁸

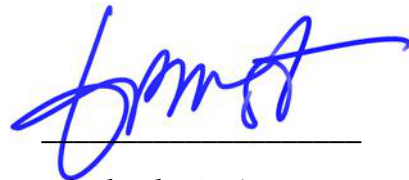
III. CLASSIFICATION

22. This reply is confidential pursuant to Rule 82(4).

IV. RELIEF REQUESTED

23. The Panel should grant the Motion, taking into account para.2 above and Annex 1.

Word Count: 1,998



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Monday, 14 April 2025

At The Hague, the Netherlands.

⁵⁵ Response, paras.67-68.

⁵⁶ [REDACTED].

⁵⁷ [REDACTED].

⁵⁸ Motion, fn.96.