

SPECIALIST PROSECUTOR'S OFFICE ZYRA E PROKURORIT TË SPECIALIZUAR SPECIJALIZOVANO TUŽILAŠTVO

In:	KSC-BC-2020-05
	Specialist Prosecutor v. Salih Mustafa
Before:	Trial Panel I
	Judge Mappie Veldt-Foglia, Presiding
	Judge Roland Dekkers
	Judge Gilbert Bitti
	Judge Vladimir Mikula, Reserve
Registrar:	Dr Fidelma Donlon
Filing Participant:	Specialist Prosecutor, Victims' Counsel
Date:	15 September 2021
Language:	English
Classification:	Public

Public Redacted Version of

'Prosecution Application for the Admission of Prior Statements of witness W04648 under Rule 155(1)', KSC-BC-2020-05/F00200, dated 13 September 2021

Specialist Prosecutor

Counsel for the Accused

Jack Smith

Julius von Bóné

Victims' Counsel

Anni Pues

I. INTRODUCTION

1. Pursuant to paragraph 40 of the Decision,¹ the Specialist Prosecutor's Office ('SPO') hereby files its application for admission of the written records of statements of witness W04648, and related documents, as identified in Annex 1 ('Documents'), under Rule 155(1) of the Rules.²

2. As discussed below, the Documents are admissible under Rule 155(1) as (i) W04648 is deceased,³ and (ii) the evidence has sufficient indicia of reliability.⁴

3. This submission is filed as confidential to respect the confidentiality of prior filings concerning W04648, for whom protective measures have been granted. A public redacted version will be filed.

II. SUBMISSIONS

4. W04648, a Kosovar-Albanian, now deceased, was [REDACTED].⁵ In his statements, W04648 described how in early April 1999 [REDACTED] went to the village of [REDACTED].⁶ W04648 learned that subsequently [REDACTED].⁷ W04648 also stated that people detained with [REDACTED].⁸ Finally, W04648 spoke about his efforts to locate [REDACTED].⁹

A. UNAVAILABILITY OF W04648

¹ Decision on the submission and the admissibility of evidence, KSC-BC-2020-05/00169, 25 August 2021, ('Decision').

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

³ Rule 155(1)(a).

⁴ Rule 155(1)(b).

⁵ See Annex 1, no.4: [REDACTED].

⁶ See Annex 1, no.4: [REDACTED].

⁷ See Annex 1, no.1: [REDACTED].

⁸ See Annex 1, no.1: [REDACTED].

⁹ See Annex 1, no.1: [REDACTED].

5. Witness W04648 died on [REDACTED], as confirmed by his death certificate,¹⁰ as well as by [REDACTED].¹¹

B. INDICIA OF RELIABILITY

6. Statements given by W04648 in the period of [REDACTED] were taken by duly empowered investigators [REDACTED] in the framework of a criminal investigation.¹² Witness W04648 was duly advised of his rights and obligations. The statements were signed by the interviewers and/or the witness, and were given voluntarily and freely.¹³ All statements of this witness are internally consistent and mutually corroborative. They are also coherent with statements of other witnesses in the case.¹⁴

7. Other related documents, [REDACTED], were discussed in W04648's prior statements,¹⁵ and/or are items which he submitted voluntarily in the course of providing the aforementioned statements, and consequently constitute an integral part thereof. Bearing all this in mind, the requirement of the *prima facie* reliability of this material are met.

8. Moreover, [REDACTED] will be available for cross-examination by the Defence. In the circumstances, the probative value of the Documents outweighs any prejudice which may arise.

9. The Documents, with an individualised explanation of circumstances militating for their *prima facie* reliability, are listed in Confidential Annex 1 attached to this application.

¹⁰ See Annex 1, no.10: [REDACTED].

¹¹ [REDACTED].

¹² All statement of W04648 were taken within the framework of [REDACTED].

¹³ The voluntary nature of cooperation with [REDACTED].

¹⁴ See particularly statements of [REDACTED].

¹⁵ *See similarly*, ICC, Prosecutor v Ntaganda, Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony, ICC-01/04-02/06-1205, 11 March 2016, para.7.

III. RELIEF REQUESTED

10. For the foregoing reasons, the SPO requests the Panel to admit the Documents into evidence.

Word count: 481

Jack Inthe

Jack Smith Specialist Prosecutor

Wednesday, 15 September 2021

At The Hague, the Netherlands.