



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: Acting Specialist Prosecutor

Date: 16 June 2023

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Public Redacted Version of 'URGENT Prosecution updates and related requests concerning witnesses in the next evidentiary block with confidential Annexes 1-3', KSC-BC-2020-06/F01575, dated 2 June 2023

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I. INTRODUCTION

1. As recently notified,¹ a change in the witness order for the third evidentiary block is required in light of the unexpected unavailability of W02161 for health reasons. Accordingly, the Specialist Prosecutor's Office ('SPO') now proposes to call W04323,² W01602, W03540, and W03811, in that order. W01602, W03540, and W03811 were selected as suitable alternatives to W02161 considering they were among the first 40 witnesses previously notified and were available at short notice, the limited scope of their evidence and manageable volume of relevant material, and the fact that, together, their estimated examination times roughly corresponded to that anticipated for W02161.

2. The SPO therefore provides the information required by the Order on the Conduct of Proceedings³ for W01602, W03540, and W03811, submits Rule 154⁴ requests for W03811 and W03540, and requests to hear W03811's testimony via video-link. The SPO requests an expedited briefing schedule on these requests to enable a decision by 12 June 2023, the start of the third evidentiary block.⁵

3. While W02161's health situation could not have been anticipated, the SPO – as previously indicated⁶ – is taking measures to ensure that suitable alternative witnesses are available at relatively short notice in such circumstances. In order to avoid the need for expedited briefing schedules and mitigate any impact on trial preparations in future, any necessary Rule 154 requests and related notifications, including

¹ Email from the SPO dated 2 June 2023 at 11:40.

² The SPO's intention to call W04323 was previously communicated to the Parties, participants, and Panel. *See* Email from the SPO dated 24 May 2023 at 16:34.

³ Annex 1 to Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226, 25 January 2023 ('Order on the Conduct of Proceedings').

⁴ 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.

⁵ For this reason, the SPO has filed these submissions urgently.

⁶ *See* Email from SPO dated 10 May 2023 at 16:08 (notifying six potential alternative witnesses 'in order to avoid delay in the proceedings' and undertaking to file a related Rule 154 motion before the summer recess).

pursuant to the Order on the Conduct of Proceedings, will be completed sufficiently in advance of future evidentiary blocks.

II. BACKGROUND AND SUBMISSIONS

4. On 24 May 2023, the SPO informed the Trial Panel, Defence and Victims Counsel that it intended to call W04323 and W02161 during the third (June 2023) block of hearings.⁷

5. On 31 May 2023, W02161, who is currently in [REDACTED], informed the SPO that [REDACTED].⁸ W02161 informed the SPO that she did not feel well enough to travel for purposes of her upcoming testimony [REDACTED]. On 1 June 2023, W02161 informed the SPO that her illness had worsened and she would likely not be able to travel for at least a few weeks.

6. As noted above, in order to ensure efficient use of court time, on 31 May 2023, the SPO immediately attempted to find suitable replacements for W02161. Based on witness availability at short notice, the SPO identified W01602, W03540 and W03811 as suitable replacements, also considering the limited scope of their evidence and manageable volume of relevant material. All three witnesses are included in the list of the first 40 witnesses the SPO intends to call.⁹

7. Annex 3 contains the relevant information concerning W01602, W03540 and W03811 required pursuant to the third oral order of 16 December 2022 and the Order on the Conduct of Proceedings. The SPO notes that it has increased the estimated time for the direct examination of W03540 by one hour, for a total of two hours, having considered the witness' circumstances and abilities more closely.

8. The SPO previously indicated W01602 would testify pursuant to Rule 154 with a maximum of two hours for his testimony in court.¹⁰ Upon further review, the SPO

⁷ Email from the SPO dated 24 May 2023 at 16:34.

⁸ See also Email from the SPO dated 2 June 2023 at 11:40.

⁹ See Annex 2 to Prosecution submission of provisional list of first 40 witnesses to be called at trial, KSC-BC-2020-06/F01117/A02, Confidential, 18 November 2022.

¹⁰ See Annex 2 to Prosecution submissions pursuant to Decision F01229, Lesser Redacted List of Witnesses, KSC-BC-2020-06/F01296/A02, Confidential, 15 February 2023, pp.101-102/553.

has decided to lead the witness' evidence entirely *viva voce* within the two hours indicated. Accordingly, no Rule 154 request will be filed for this witness.

9. In view of the circumstances outlined above and for the reasons set out below, the SPO requests the Panel to authorise: (i) the admission of the statements and associated exhibits of W03540 and W03811 pursuant to Rule 154 ('First Request'); and (ii) the testimony of W03811 to take place via video-link ('Second Request').

A. RULE 154 REQUESTS

10. Pursuant to the Order on the Conduct of Proceedings,¹¹ the Trial Panel's Order,¹² Article 37 of the Law,¹³ the Trial Panel's First Rule 154 Decision,¹⁴ and Rule 154, the SPO seeks the admission of the statements,¹⁵ together with the associated exhibits where applicable,¹⁶ of W03811¹⁷ and W03540¹⁸ (collectively, 'Rule 154 Statements').

11. The Rule 154 Statements and associated exhibits of W03811 and W03540 (collectively, the 'Proposed Evidence') meet the requirements of the Rule, are relevant, authentic and reliable and have probative value, which is not outweighed by any prejudice.¹⁹ Admission is therefore in the interests of justice.

¹¹ Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, para.51 (encouraging 'Parties and participants to consider making effective use of Rules 153, 154 and 155, to the greatest extent possible').

¹² Third Oral Order, 18 January 2023, p.1902 lines 6-19 ('Order').

¹³ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' are to the Law, unless otherwise specified.

¹⁴ Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 16 March 2023 ('Rule 154 Decision').

¹⁵ The account of each witness tendered for admission is the 'Rule 154 Statement'.

¹⁶ See Annexes 1-2. The Rule 154 Statements and the associated exhibits for each witness are the 'Proposed Evidence'.

¹⁷ 0888951-TR-ET Parts 1-3 RED2; SITF00032742-SITF00032746 RED2 ('W03811 Rule 154 Statement').

¹⁸ 070629-TR Parts 1-2 Revised-ET RED; SPOE00087525-00087560; SPOE00119959-00119975; SPOE00123186-00123218 ('W03540 Statement').

¹⁹ Rules 137-138, 154; see also Prosecution motion for admission of evidence of Witnesses W03827, W04408, W04577, W04644, W04781, W04018, W04255, W01493, and W04448 pursuant to Rule 154, KSC-BC-2020-06/F01374, 15 March 2023, paras 5-10.

12. Attached to this motion is an annex for each Rule 154 witness.²⁰ Each annex contains a table identifying the proposed statements that collectively comprise the proposed Rule 154 Statement for that witness. In addition, for W03540, Annex 2 contains a second table identifying the associated exhibits tendered for admission.

13. As detailed below, and in the accompanying Annexes, the Proposed Evidence fulfils the requirements of admissibility under Rules 137 and 138(1). In this respect, the associated exhibits are an integral part of the Rule 154 Statements, without which the statements may become less complete or be of diminished probative value. The associated exhibits provide context to the evidence contained in the Rule 154 Statements and corroborate that evidence.

W03811

14. *Relevance.* W03811, an Albanian civilian, was arrested by KLA members and detained in [REDACTED] in August 1998. At the time of his arrest, [REDACTED].

15. During his detention, W03811 was blindfolded, beaten, and told that what was happening to him was punishment for working with the Serbs. While he was detained, [REDACTED]. [REDACTED]. [REDACTED].

16. After his release, when he went to [REDACTED] to obtain information about [REDACTED], his life was threatened. [REDACTED].

17. W03811's evidence is thus relevant to the charged crimes in the Indictment.²¹

18. *Authenticity and Reliability.* The Proposed Evidence is *prima facie* authentic and reliable. The Rule 154 Statement is comprised of: (i) W03811's SPO interview;²² and (ii) an UNMIK statement dated 10 April 2002.²³ Each statement bears sufficient indicia of reliability.²⁴ W03811's audio-video recorded SPO interview, as recorded in verbatim transcripts, is authentic as it includes details such as the date and time, and the names

²⁰ See Annexes 1-2.

²¹ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01296/A01, paras [REDACTED].

²² 088951-TR-ET Parts 1-3 RED2.

²³ SITF00032742-SITF00032746 RED2.

²⁴ For an individualized assessment of reliability, see Annex 1.

of attendees.²⁵ During the SPO interview, W03811 was made aware of his right to an interpreter, was duly advised of his rights as a witness,²⁶ and confirmed that the contents of his recorded statement are true and accurate, that his statement was given voluntarily without any threats, force, or guarantees, and that he had no objections to the manner or process by which the statement was taken.²⁷

19. During his SPO interview, W03811 had an opportunity to review his prior statements, including the UNMIK statement tendered herein, which was taken in a language understood by the witness.²⁸ W03811 verified that he provided this and other statements voluntarily and in a truthful manner.²⁹ As the contents of this statement were discussed in the SPO interview, it forms an integral part thereof.

20. *Suitable for Rule 154 Admission.* W03811's Proposed Evidence satisfies the requirements of Rule 154: W03811 will be: (i) present in court; (ii) available for cross-examination and any questioning by the Panel; and (iii) able to attest that the Rule 154 Statement accurately reflects his evidence and that it is an accurate reflection of what he would say, if examined. The probative value of the Proposed Evidence is not outweighed by any prejudice.

21. Rule 154 admission for W03811's Proposed Evidence will reduce the number of hours required for direct examination. The SPO intends to elicit brief oral testimony on essential matters, including to highlight, clarify or explain certain aspects of W03811's evidence for a maximum of 1 hour.³⁰

W03540

22. *Relevance.* W03540, a Serbian forest ranger, was abducted on or about 2 August 1998, in the forest near Bradash by KLA soldiers. He was first taken to Orlane, where

²⁵ See, e.g., 088951-TR-ET Part 1 RED2, p.1.

²⁶ 088951-TR-ET Part 1 RED2, pp.1-4.

²⁷ 088951-TR-ET Part 3 RED2, pp.17-19.

²⁸ See Annex 1. W03811's prior statements were taken in the Albanian language.

²⁹ 088951-TR-ET Part 1 RED2, p.12.

³⁰ List of Witnesses, KSC-BC-2020-06/F01078/A04.

he was briefly questioned by Nuredin IBISHI who told the witness to leave Kosovo, and then ordered the KLA soldiers to take him out. The witness was then tied, blindfolded and taken to another KLA location in Barë, where he was held for approximately twenty days in solitary confinement, was repeatedly beaten and pressured to admit to cooperating with the Serbian Police, the Ministry of Interior, and to give the names of disloyal Albanians. The person who interrogated the witness, threatened him, and beat him the most was alleged JCE member Latif GASHI. On or about 18 August 1998, W03540 was in such a bad physical state that the KLA had to bring a doctor, who acknowledged that the witness was in a critical condition and should be hospitalised.

23. On 21 August 1998, Sabit BERISHA was brought into W03540's cell. W03540 observed that he looked 'half-dead' with blood coming out of his nose and ears. Later that day, Latif GASHI and other KLA members beat W03540 with a rifle breaking his ribs. Sabit BERISHA was also badly beaten in the cell on that same day. At some point six more Albanian detainees were also brought in.

24. On or about 28 August 1998, W03540, together with Sabit BERISHA and six other prisoners, were transported to Bajgorë/Bajgora to a KLA house where they encountered two other detainees: Osman SINANI, and Fadil SULEVIĆ who used to work for Serbian Police. In Bajgorë/Bajgora, the witness was questioned by Latif GASHI, was not beaten, but suffered psychological mistreatment. After two to three days, W03540 and Osman SINANI, were taken to a forest where they were both tied to a tree and blindfolded. SINANI was then pressured to admit to cooperating with the Serbs, after which W03540 heard three shots, and saw SINANI's body slumped down. Then, the KLA member put the pistol into the witness's mouth and pulled the trigger, but the weapon's chamber was empty. W03540 was then taken back to the detention site in Bajgorë/Bajgora, while Osman SINANI remained tied to the tree. A few days later, the witness was again taken to the same forest where he saw three unknown Albanians being tied to a tree, then he heard shots, and saw their bodies slumped down.

25. On 15 or 17 September 1998, W03540, Sabit BERISHA and Fadil SULEVIĆ were relocated to Donje (lower) Lupqe and then to Gornje (upper) Lupqe, from where, on 26 September 1998, W03540 was released pursuant to a written decision of the Llap Operational Zone, signed by Latif GASHI. On the witness's release Latif GASHI ordered him to sign a paper indicating that he had not been maltreated or beaten. He was also given another document ordering him to leave Kosovo. Latif GASHI also told W03540 that if he ever spoke about what had happened to him, the KLA would come, set him on fire, and kill his entire family.

26. W03540's evidence is thus relevant to the charged crimes in the Indictment.³¹

27. *Authenticity and Reliability.* W03540's Proposed Evidence is *prima facie* authentic and reliable. The Rule 154 Statement is comprised of: (i) W03540's SPO interview;³² (ii) the record of W03540's testimony at the District Court of Pristina in the case against Latif GASHI *et al.*, dated 15 September 2009;³³ (iii) minutes of W03540's testimony at the District Court of Pristina in the case against Latif GASHI *et al.*, dated 9 June 2003;³⁴ and (iv) the record of W03540's testimony at the District Court of Pristina in the case against Latif GASHI *et al.*, dated 23 and 26 March 2002.³⁵

28. W03540's audio-video recorded SPO interview, as recorded in verbatim transcripts, is authentic as it includes details such as the date, time, place and attendees.³⁶ The tendered transcripts are inherently authentic and reliable as they are video-recorded verbatim records including all questions, answers and clarifications. Each statement bears sufficient indicia of reliability.³⁷ The interview was conducted with the assistance of an interpreter in a language understood by the witness.³⁸

³¹ See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, paras 16-57, 59-61, 70, 96-97, 106, 136-138, 156; Pre-Trial Brief, KSC-BC-2020-06/F01296/A01, paras 418-419, 421-424.

³² 070629-TR Parts 1-2 Revised-ET RED.

³³ SPOE00087525-00087560 RED.

³⁴ SPOE00119959-00119975 RED.

³⁵ SPOE00123186-00123218 RED.

³⁶ 070629-TR Part 1 Revised-ET RED, p.1.

³⁷ For an individualised assessment of reliability, see Annex 2.

³⁸ 070629-TR Part 1 Revised-ET RED, p.2.

W03540 was duly advised of his rights as a witness.³⁹ He confirmed that the contents of his recorded statement are true and accurate, that his statement was given voluntarily without any threats, force, or guarantees, and that he had no objections to the manner or process by which the statement was taken.⁴⁰

29. During his SPO interview, W03540 had an opportunity to review his prior statements, including those tendered herein as Rule 154 Statements, which were taken in a language understood by the witness.⁴¹ W03540 confirmed that the written materials were his statements and, where applicable, recognised his signature.⁴² He verified that he provided the statements in a truthful manner and to the best of his recollection.⁴³ For each statement he was given an opportunity to clarify or make corrections.⁴⁴ Further, as the contents of these statements were discussed in the SPO interview, these statements form an integral part thereof. Accordingly, these statements, together with the SPO interview and despite being, at times, repetitive, comprise one complete statement and should be admitted together as the witness's Rule 154 Statement.

30. *Suitable for Rule 154 Admission.* W03540's Proposed Evidence satisfies the requirements of Rule 154: W03540 will be (i) present in court; (ii) available for cross-examination and any questioning by the Panel; and (iii) able to attest that the Rule 154 Statement accurately reflects his evidence and that it is an accurate reflection of what

³⁹ 070629-TR Part 1 Revised-ET RED, pp.2-3.

⁴⁰ 070629-TR Part 1 Revised-ET RED, p.13.

⁴¹ See Annex 2. W03540's prior statements were taken in the Serbian language.

⁴² In respect of SPOE00087525-00087560 RED, see 070629-TR Part 1 Revised-ET RED, p.13. In respect of SPOE00119959-00119975 RED, see 070629-TR Part 1 Revised-ET RED, pp.11-12. In respect of SPOE00123186-00123218 RED, see 070629-TR Part 1 Revised-ET RED, pp.7-8.

⁴³ In respect of SPOE00087525-00087560 RED, see 070629-TR Part 1 Revised-ET RED, pp.13-15. In respect of SPOE00119959-00119975 RED, see 070629-TR Part 1 Revised-ET RED, pp.11-13. In respect of SPOE00123186-00123218 RED, see 070629-TR Part 1 Revised-ET RED, pp.10-11.

⁴⁴ In respect of SPOE00087525-00087560 RED, see 070629-TR Part 1 Revised-ET RED, pp.15-19 and 070629-TR Part 2 Revised-ET RED, pp.10-11. In respect of SPOE00119959-00119975 RED, see 070629-TR Part 1 Revised-ET RED, pp.20-25. In respect of SPOE00123186-00123218 RED, see 070629-TR Part 1 Revised-ET RED, pp.20-25 and 070629-TR Part 2 Revised-ET RED, pp.2-4.

he would say, if examined. The probative value of the Proposed Evidence is not outweighed by any prejudice.

31. Rule 154 admission for W03540's Proposed Evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit brief oral testimony on essential matters, including to highlight, clarify or explain certain aspects of W03540's evidence for 2 hours.⁴⁵

32. *The Associated Exhibits are admissible.* The Associated Exhibits forming part of W03540's Proposed Evidence in Annex 2—comprised of medical records, and the KLA's decision to release W03540—should be admitted as they are an inseparable and indispensable part of W03540's evidence. The Associated Exhibits are integral to the Rule 154 Statement as they were discussed and reviewed therein.⁴⁶

B. VIDEO-LINK REQUEST

33. Pursuant to Articles 23(1) and 40(2) of the Law, Rules 80, 141(1) and 144, noting the Registry Practice Direction on Video Links,⁴⁷ and in view of the exceptional circumstances arising from the sudden unavailability of W02161, W03811's personal circumstances, and the efficiency of the proceedings, the Panel should authorise W03811's testimony to take place via-video link from Kosovo. The requested measures are necessary, proportionate and would not result in undue prejudice to the Accused, in particular since the Defence will remain fully able to cross-examine the witness.

34. The Trial Panel has recently noted that while video-conference testimony should not be considered only on an exceptional basis, the presence in the courtroom of a witness during testimony remains the preferred option, and that when considering whether to allow video-link testimony, the Panel may consider a number of factors, such as the location, personal and health situation, availability and security

⁴⁵ Compare with List of Witnesses, KSC-BC-2020-06/F01078/A04.

⁴⁶ See Annex 2.

⁴⁷ Registry Practice Direction on Video Links, KSC-BD-23/COR, 17 July 2020 as corrected on 5 August 2020 ('Practice Direction').

of the witness, as well as the complexity and duration of any travel and other logistical arrangements to be made.⁴⁸

35. W03811 does not currently possess a valid passport. The SPO is informed it would not be possible to obtain a passport and visa in time for him to travel to The Hague to testify during the June block of hearings. Further, W03811 has expressed a preference to testify from Kosovo regardless of the circumstances, noting [REDACTED].

36. Pursuant to Article 3 of the Practice Direction, the SPO provides the following information: (i) the SPO intends to call W03811 to testify starting on or around 20 June 2023; (ii) W03811's direct examination will last a maximum of 1 hour (an estimate for his cross-examination is currently not available); (iii) the SPO requests that W03811 appear via video-conference from a location [REDACTED] at the Registry's discretion; (iv) in-court protective measures have been ordered in relation to this witness (the witness is unable to read and [REDACTED]); and (v) W03811 will testify in Albanian. The SPO remains available should the Registry require any further information.

III. CLASSIFICATION

37. This filing and its annexes are classified as confidential pursuant to Rule 82(4), and because the filing contains personal details concerning protected witnesses.

IV. RELIEF REQUESTED

38. For the reasons above, the Trial Panel should grant the First and Second Requests. To facilitate a decision on these requests by the start of the third evidentiary block (12 June 2023), the SPO exceptionally requests an expedited briefing schedule.

⁴⁸ Confidential Redacted Version of Decision on Prosecution Request for Video-Conference Testimony and Special Measure for W04337, KSC-BC-2020-06/F01558/CONF/RED, Confidential, 26 May 2023, para.16.

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Alex Whiting

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Friday, 16 June 2023

At The Hague, the Netherlands.