



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: 21 July 2023

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Public redacted version of 'Prosecution reply to joint Defence response concerning Rule 154 submissions (F01636)', KSC-BC-2020-06/F01653, dated 7 July

2023

Specialist Prosecutor's Office

Alex Whiting

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

I. INTRODUCTION AND SUBMISSIONS

1. The Specialist Prosecutor's Office ('SPO') hereby replies to the joint Defence Response.¹ The Response ignores the scope of evidence that is relevant to this case and the *prima facie* nature of admissibility assessments, particularly in the context of Rule 154, where the witnesses will be available for cross-examination. The Motion² should be granted.

A. W02153

2. The Defence's attempt to reduce relevance to charged incidents and evidence referenced in the Indictment or Pre-Trial Brief has previously been rejected.³ The Panel has held that evidence concerning contextual elements is relevant and admissible.⁴ By their nature, contextual elements require the admission of evidence that, on its own, may be only tangentially relevant to a charged incident. The Defence's attempt to unduly limit the SPO's ability to prove the existence of a widespread attack on a civilian population must be rejected.

3. The Defence's objections to the admission of the associated exhibits are equally unfounded.⁵ The fact that W02153 is not able to explain the authorship and provenance of certain exhibits is a question of weight and does not require their exclusion.⁶ Furthermore, the *prima facie* reliability standard does not require proof of

¹ Joint Defence Response to Prosecution Motion for Admission of Evidence Pursuant to Rule 154 Concerning W02153 and W04586, KSC-BC-2020-06/F01636, 3 July 2023 ('Response').

² Prosecution motion for admission of evidence of Witnesses W03832, W03880, W04769, W03724, W00072, W01504, W02153, W04368, W04566, and W04586 pursuant to Rule 154, KSC-BC-2020-06/F01625, 23 June 2023, Confidential ('Motion'). As ordered by the Panel, the Response and this reply only address the parts of the Motion relating to W02153 and W04586.

³ See e.g. Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 16 March 2023, para.113; *Contra* Response, KSC-BC-2020-06/F01636, paras 4-13.

⁴ See e.g. Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, para.218.

⁵ Response, KSC-BC-2020-06/F01636, paras 6-13.

⁶ Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 16 March 2023, para.85.

reliability in relation to each or every aspect of the tendered evidence,⁷ as the Trial Panel is able to disregard irrelevant or unreliable parts of the evidence in its holistic evaluation.⁸ The examples cited by the Defence are distinguishable as they concern reports that are each several hundred pages long, which is not comparable to the short documents tendered for W02153.⁹

4. W02153 extensively investigated the incidents to which the associated exhibits relate, in close temporal proximity to the events, and is able to testify to their accuracy. The victims on the lists include those referred to in W02153's statements.¹⁰ Any limitations of these documents will be considered by the Trial Panel in apportioning weight.

5. Furthermore, the Defence wrongly asserts that associated exhibits should not be admitted under Rule 154¹¹ until after 'the Defence has had the opportunity to ascertain the manner in which said material came into the possession of W02153 in the course of cross-examination'.¹² This proposition ignores the requisite standard, which is *prima facie* reliability.

B. W04586

6. The Defence objects to the admission of W04586's Rule 154 statement as the same transcript of proceedings also contains the evidence of another person, referred to as

⁷ Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, para.64.

⁸ Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, para.143.

⁹ Response, KSC-BC-2020-06/F01636, para.7, fn.13, citing KSC-BC-2020-06/F01380, Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, 16 March 2023, paras 87, 92.

¹⁰ See e.g. 0106-8151-0106-8166, pp.0106-8155-0106-8161 and 0106-8167-0106-8167, SPOE00196030-00196030, SPOE00196032-00196032, SPOE00196033-00196033, SPOE00196037-00196037.

¹¹ 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 of Procedure and Evidence.

¹² Response, KSC-BC-2020-06/F01636, para.9. See similarly Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, para.136.

[REDACTED].¹³ The SPO does not seek admission of this particular testimony and no such application was made in the Rule 154 motion. For clarity, the SPO confirms that it only relies on the pages relating to W04586, specifically the ERN range: [REDACTED].

7. Also, the Defence cites to a section of his SPO interview claiming that W04586 did not recall his previous testimony.¹⁴ This is incorrect. The witness confirmed he testified in [REDACTED].¹⁵ It would be inappropriate to deny admission on this basis before the Panel has the opportunity to observe and assess the witness's responses to the Rule 154 requirements concerning his recollection and his confirmation of his prior evidence, all of which will take place at the time of his testimony.

8. The Defence does not object to the admission of W04586's proposed Associated Exhibits, yet complains that certain exhibits are not discussed enough in the interview, arguing that they do not form an inseparable and indispensable part of his statement.¹⁶ This is misleading and ignores the overall context of his SPO interview. At the beginning of the interview, the SPO investigator exhibits documents that were brought by W04586 himself to the interview.¹⁷ Apart from a newspaper article, the other documents are [REDACTED].¹⁸ [REDACTED]. Notably, W04586 states that, after the war, [REDACTED].¹⁹ As such, the documents are clearly an inseparable and indispensable part of his statement.

9. Finally, the Defence submits that the remaining Associated Exhibit, [REDACTED].²⁰ The most appropriate time to ask this question is on cross-

¹³ Response, KSC-BC-2020-06/F01636, para.14.

¹⁴ Response, KSC-BC-2020-06/F01636, para.15.

¹⁵ [REDACTED].

¹⁶ Response, KSC-BC-2020-06/F01636, para.16.

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ Response, KSC-BC-2020-06/F01636, para.17.

examination with the witness. For now, the SPO notes that, [REDACTED].²¹ [REDACTED].²² [REDACTED].²³ As such, the document is *prima facie* reliable.


II. CLASSIFICATION

10. This submission is filed as confidential as it contains information concerning witnesses with protective measures.

III. RELIEF REQUESTED

11. For the foregoing reasons and those given previously, the Motion should be granted.

Word Count: 984



Alex Whiting

Acting Specialist Prosecutor

Friday, 21 July 2023

At The Hague, the Netherlands.

²¹ [REDACTED].

²² *See* [REDACTED].

²³ *Compare* [REDACTED].