



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 Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Acting Specialist Prosecutor

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Public Redacted version of 'Prosecution reply to joint Defence response to motion for admission of evidence pursuant to Rule 154 for eight witnesses (F01647) and related matters'

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I. INTRODUCTION AND SUBMISSIONS

1. The Specialist Prosecutor's Office ('SPO') hereby replies to the Response¹ and clarifies certain, related matters arising from the Witness Information Response.² The Response fails to identify any meritorious reasons not to admit the Rule 154 evidence submitted in the Motion.³ As necessary, the SPO responds to select Defence claims below, and submits that the Motion should be granted.⁴

A. W03832

2. The Response contains multiple inaccuracies and misrepresentations of various parts of W03832's evidence. Attempts to excise hearsay evidence from [REDACTED] statement ignore the Panel's previous holdings on this type of evidence. The suggestion that admitting [REDACTED] Rule 154 Statement overburdens the record

¹ Joint Defence Response to the Third Prosecution Motion for Admission of Evidence Pursuant to Rule 154 Concerning the Remaining Eight Witnesses, KSC-BC-2020-06/F01647, 5 July 2023 ('Response').

² Joint Defence Response to Prosecution Submission of List of the Next 12 Witnesses, Reserve Witnesses and Associated Information (F01630), KSC-BC-2020-06/F01657, 7 July 2023, Confidential ('Witness Information Response'). These clarifications are provided in footnotes 3-4 below.

³ 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'). The Panel has already issued its decision for W00072, W02153 and W04586 (Decision on Prosecution Motion for Admission of Evidence of W00072, W02153 and W04586 pursuant to Rule 154, KSC-BC-2020-06/F01664, 10 July 2023). As a related matter, the SPO notes that, as pointed out by the Defence, one item was incorrectly listed in KSC-BC-2020-06/F01630/A02 as a prior statement of W00072 (SPOE00193914-00193915). It is not a prior statement of W00072 and the SPO does not intend to rely upon or use it. *See* Witness Information Response, KSC-BC-2020-06/F01657, para.16, fn.30.

⁴ In light of related Defence submissions in the Witness Information Response (KSC-BC-2020-06/F01657, paras 14-15), the SPO clarifies that it only intends to rely upon those statements tendered pursuant to Rule 154. Other statements were notified in the Witness Information Submissions pursuant to paragraph 74(ii) of the Order on the Conduct of Proceedings (F01226/A01), which provides that '[a]ll prior statements or transcripts of the witness' shall be listed. *See* Prosecution submission of list of the next 12 witnesses, reserve witnesses and associated information, KSC-BC-2020-06/F01630, 28 June 2023 ('Witness Information Submissions'). Other Defence submissions in the Witness Information Response (KSC-BC-2020-06/F01657, para.16) concerning originators and alleged 'inaccuracies' in the Witness Information Submissions are matters that should have been addressed *inter partes*. In any event, any necessary corrections will be made sufficiently in advance of the witnesses' testimonies. Finally, the SPO notes that, including as indicated in F01630/A01 and F01630/A02, certain documents were provisionally listed, pending an upcoming request to amend the exhibit list, which the SPO intends to submit before the judicial recess.

is not grounded in fact.

3. Contrary to the Defence's claim, [REDACTED].⁵ [REDACTED].⁶ [REDACTED].

4. While certain evidence may not support allegations that have not been pleaded, that does *not* mean that evidence cannot be used as evidence of *other* facts that are pled in the Indictment.⁷ The Trial Panel has previously held that evidence related to a non-charged incident can properly be admitted in respect of other issues.⁸ In this instance, reference to [REDACTED] is evidence ripe for admission. Further, the SPO has provided ample notice by complying with the Trial Panel's direction that it should, in addition to providing notice in summaries of proposed evidence, also provide the relevance of the proposed evidence to the SPO's case, including, where possible, references to relevant paragraph(s) of the Indictment and Pre-Trial Brief.⁹

5. The Panel has confirmed that statements containing hearsay evidence may be admitted pursuant to Rule 154 and will only be denied admission in limited circumstances, such as if it would unfairly or disproportionately interfere with the Accused's rights, including the right to confrontation.¹⁰ As the witness will attend court, there is no impediment to the Defence exercising the right to confrontation via cross-examination. As can be addressed during [REDACTED] testimony, [REDACTED]. The Defence is free to present its own evidence and conduct its own investigation into the events.¹¹ The suggestion that [REDACTED] evidence is less

⁵ [REDACTED].

⁶ Prosecution Submission of Updated Witness List and Confidential Lesser Redacted Version of Pre-Trial Brief, KSC-BC-2020-06/F01594/A02, 9 June 2023, Confidential ('Pre-Trial Brief'), para.[REDACTED].

⁷ Decision on Taçi Defence's Motion to Strike Part of the Record of Testimony of W02652, KSC-BC-2020-06/F01623, 23 June 2023, para.30. [REDACTED].

⁸ Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 16 March 2023, ('First 154 Decision'), para.113.

⁹ First 154 Decision, KSC-BC-2020-06/F01380, paras 29, 131(f).

¹⁰ First 154 Decision, KSC-BC-2020-06/F01380, para.21.

¹¹ See e.g. Public redacted version of Decision on the Prosecution application pursuant to Rule 153 of the Rules, KSC-BC-2020-05/F00286/RED, 17 December 2021, para.27; ICTY, Appeals Chamber, *Prosecutor v. Martić*, IT-95-11-AR73.2, Decision on Appeal Against the Trial Chamber's Decision on the Evidence of Witness Milan Babić, 14 September 2006, para.15.

probative because [REDACTED] learned of part of the event from [REDACTED] was answering a question about whether [REDACTED].¹²

6. W03832's [REDACTED] testimony consists of 14 pages of questions and answers before a judge. No negative inference can be drawn about [REDACTED] — it concerns an entirely separate event, specifically, the investigation concerning [REDACTED].¹³ Admitting [REDACTED] concise [REDACTED] testimony with attendant indicia of reliability and authenticity furthers the interests of an expeditious trial and provides the Panel with the most authentic and readable version of [REDACTED] evidence.¹⁴

B. W04769

7. In challenging the relevance of the witness's evidence,¹⁵ the Defence have erroneously combined two separate incidents: (i) the abduction and disappearance of [REDACTED], and (ii) the killing of [REDACTED].¹⁶ These separate incidents are neither confused nor intertwined in W04769's account and the Panel should reject the Defence's attempt to exclude relevant evidence by misstating it.¹⁷

8. W04769's evidence about [REDACTED] is his direct evidence about information he and [REDACTED] received about a disappearance and his subsequent attempt to locate a person believed to be in KLA custody — matters which are relevant and probative to the charges. In addition to having knowledge of scheduled incidents,¹⁸ based on his position [REDACTED], W04769 gained first-hand knowledge of important issues in the case. [REDACTED] are naturally linked to his account of his own experiences and observations. The Defence has been on notice that the SPO

¹² [REDACTED].

¹³ *Contra* Response, KSC-BC-2020-06/F01647, para.9.

¹⁴ *Contra* Response, KSC-BC-2020-06/F01647, para.11.

¹⁵ Response, KSC-BC-2020-06/F01647, paras 16-21.

¹⁶ It is undisputed that none of the Accused are charged with [REDACTED]. However, that does not mean that evidence on this event is irrelevant.

¹⁷ *Contra* Response, KSC-BC-2020-06/F01647, paras [REDACTED].

¹⁸ *See* Motion, KSC-BC-2020-06/F01625, paras 39-40, 42.

would present evidence about accusations and actions against, and marginalisation of, [REDACTED].¹⁹ Likewise, witnesses are anticipated to testify about [REDACTED] only a few months after the Indictment period, which they, like W04769, link to events during the Indictment period.²⁰ In such circumstances, the challenged hearsay evidence concerning [REDACTED] is relevant. In any event, not every topic in a statement has to be directly relevant to the charges to be admissible²¹ and excluding aspects of his evidence at this stage would be an artificial attempt to remove part of the foundation of his account.

9. The associated exhibits concern persons, places and events well-known to the witness. None of the Defence arguments render the exhibits inadmissible. By admitting contemporaneous video footage, W04769 will assist the Panel by identifying KLA members, facilities and detention sites in the Indictment.²²

C. W03724

10. Although the Defence does not object to the admission of W03724's Rule 154 statement, they comment on the redactions applied to W03724's Rule 154 Statement and claim that they are not compliant with applicable requirements.²³ These redactions were not made by the SPO, but rather were applied by the Rule 107 provider, and the redactions were deemed necessary and proportionate.²⁴

11. The Defence opposes the admission of Associated Exhibit [REDACTED], in part on the basis that it contains a statement by [REDACTED] that it claims should be submitted in a separate Rule 154 application.²⁵ There is no exclusion under Rule 154

¹⁹ Pre-Trial Brief, KSC-BC-2020-06/F01594/A02, para.[REDACTED].

²⁰ [REDACTED].

²¹ Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, para.143.

²² Time codes are specified for items 5, 7, 8. Motion, KSC-BC-2020-06/F01625/A03.

²³ Response, KSC-BC-2020-06/F01647, para.27.

²⁴ Eleventh Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00559, 5 November 2021, paras 468-472.

²⁵ Response, KSC-BC-2020-06/F01647, para.29.

for evidence that originates from other witnesses. The evidence being tendered through this Rule 154 statement is W03724's, as informed by the Associated Exhibits including [REDACTED]. In this context, [REDACTED] statement is hearsay evidence of W03724 and what weight will be ascribed to it will be determined by the Trial Panel at the end of the case.²⁶

D. W04368

12. Although the Defence objection unequivocally claims that the [REDACTED] statement was not read back to the witness in Albanian,²⁷ the interview passage cited in support of this claim makes clear that while W04368 could not recall a readback, he was also not sure whether it took place or not, stating it was a long time ago and he had forgotten many things.²⁸ The [REDACTED] statement itself precludes any uncertainty, as it contains a sentence immediately above the signature block, in bold type, that verifies a readback in the witness's native language took place.²⁹ If this procedural safeguard had not been followed, the [REDACTED] official who took the statement would not have attested to such by signing immediately below. Finally, as the Defence noted, clarifications to the [REDACTED] statement were made throughout W04368's SPO interview. The [REDACTED] statement is therefore an integral part of the SPO interview, and its admission will promote a fuller understanding of W04368's evidence so that it can be properly assessed.

II. CLASSIFICATION

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

²⁶ See Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, para.158.

²⁷ See Response, KSC-BC-2020-06/F01647, para.35.

²⁸ Response, KSC-BC-2020-06/F01647, fn.65 citing [REDACTED].

²⁹ See [REDACTED].

III. RELIEF REQUESTED

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

Word Count: 1988



Alex Whiting

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Tuesday, 11 July 2023

At The Hague, the Netherlands.