



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

Date: 23 October 2023

Language: English

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Public Redacted Version of 'Prosecution reply relating to Rule 154 motion F01830 and related submissions'

Specialist Prosecutor's Office

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I. INTRODUCTION

1. The Specialist Prosecutor's Office ('SPO') hereby replies to the joint Defence Response.¹ The Response is based on misconceptions of 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 of the Rules,² where the witnesses will be available for cross-examination. The Motion³ should be granted.

2. Mindful of the permissible scope of replies⁴ and the Panel's prior decisions, which have addressed many of the matters raised in the Response,⁵ the SPO replies below on certain discrete issues and, as foreshadowed, provides updates concerning the disclosure of translations and other versions of the proposed evidence since the Motion.

II. SUBMISSIONS

A. W04444

3. The Defence objects to the admission of W04444's SPO interview pursuant to Rule 154 based on, *inter alia*, the assertion that W04444's account is uncorroborated and contains hearsay evidence.⁶ The Trial Panel previously held that, in relation to the probative value and suitability of a statement for admission pursuant to Rule 154, the fact that it would contain hearsay and uncorroborated assertions are matters for cross-

¹ Joint Defence Response to Prosecution Motion for Admission of Evidence of Witnesses W03170, W04043, W04444, W04571, W04765, W04811, and W04870 Pursuant to Rule 154 and Related Requests (F01830), KSC-BC-2020-06/F01857, 13 October 2023, Confidential ('Response').

² 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.

³ Prosecution motion for admission of evidence of Witnesses W03170, W04043, W04444, W04571, W04765, W04811, and W04870 pursuant to Rule 154 and related Request, KSC-BC-2020-06/F01830, 3 October 2023, Confidential ('Motion').

⁴ Rule 76.

⁵ See also Prosecution reply to joint Defence response concerning Rule 154 submissions (F01818), KSC-BC-2020-06/F01827, 2 October 2023, Confidential, para.2.

⁶ Response, KSC-BC-2020-06/F01857, para.24.

examination and weight to be given to the evidence.⁷ The arguments raised by the Defence do not justify non-admission of W04444's SPO interview pursuant to Rule 154. W04444 will be available for cross-examination and can be examined about any questions relevant to the weight of his evidence.

B. W04571

4. Contrary to the Defence assertion, W04571's evidence is of high probative value, in particular considering he is a direct victim of crimes charged in [REDACTED].⁸ In addition, the Defence fails to explain why any memory issues militate against admitting W04571's evidence under Rule 154; the Defence will be provided with an opportunity to test W04571's evidence during cross-examination.⁹ Finally, the Defence objection to the admission of an associated exhibit on the basis that the SPO did not indicate who [REDACTED], who signed the relevant document, might be misrepresents the SPO's position.¹⁰ The SPO Pre-Trial Brief clearly asserts that [REDACTED].¹¹

C. W04811 and W04870

5. The SPO informs the Panel that lesser redacted versions of W04811's statements were disclosed, as foreshadowed in the Motion.¹² For purposes of admission, the new ERNs are (1) [REDACTED]; [REDACTED]; (2) [REDACTED];¹³ [REDACTED]; and (3)

⁷ Corrected Version of Decision on Second Prosecution Motion Pursuant to Rule 154, KSC-BC-2020-06-F01595/COR, 9 June 2023, Confidential, para.46.

⁸ See Response, KSC-BC-2020-06/F01857, paras 31-35.

⁹ Response, KSC-BC-2020-06/F01857, para.32.

¹⁰ Response, KSC-BC-2020-06/F01857, para.34.

¹¹ Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief', KSC-BC-2020-06/F01594/A03, 9 June 2023 ('Pre-Trial Brief'), para.[REDACTED].

¹² See Motion, KSC-BC-2020-06/F01830, fn.52. See also KSC-BC-2020-06/F01830/A06 detailing the ERNs.

¹³ From ERN range [REDACTED].

[REDACTED];¹⁴ [REDACTED].¹⁵ Translations of the Serbian document proposed as an associated exhibit for W04811 have also been provided.¹⁶

6. Finally, the SPO disclosed a revised English translation of one of the proposed associated exhibits for W04870 and asks that the Panel replace the previous version with this version that more accurately reflects the Albanian original.¹⁷

III. CLASSIFICATION

7. This submission is filed as confidential pursuant to Rule 82(4) and because it contains information concerning protected witnesses.

IV. RELIEF REQUESTED

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

Word Count: 711



Kimberly P. West

Specialist Prosecutor

Monday, 23 October 2023

At The Hague, the Netherlands.

¹⁴ From ERN range [REDACTED].

¹⁵ From ERN range [REDACTED].

¹⁶ See KSC-BC-2020-06/F01830/A06, fn.4. The English and Albanian translations are [REDACTED].

¹⁷ See KSC-BC-2020-06/F01830/A07, p.3 at #2. The revised translation was disclosed as [REDACTED].