



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

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Public Redacted Version of 'Prosecution motion for admission of evidence of Witnesses W00498, W01140, and W01763 pursuant to Rule 154 with confidential Annexes 1-3'

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I. INTRODUCTION

1. Pursuant to Articles 37 and 40 of the Law,¹ and Rules 137-138 and 154 of the Rules,² the Specialist Prosecutor's Office ('SPO') requests the admission of the transcripts and the other statements (collectively, 'Rule 154 Statements'), together with associated exhibits,³ of the following witnesses: W00498, W01140, and W01763 (collectively, 'Witnesses'). To fulfil its obligations under paragraph 81 of the Conduct of Proceedings Order,⁴ and considering developments in the proceedings and witness availability, these additional witnesses were identified for the evidentiary block between 4 and 13 December 2023.⁵

2. The Rule 154 Statements and associated exhibits (collectively, 'Proposed Evidence') meet the requirements of the Rule, are relevant, authentic and reliable, and have probative value, which is not outweighed by any prejudice. Admission is therefore in the interests of justice.⁶

3. Attached to this motion are three annexes, one for each of the Witnesses. Each annex contains a table identifying the proposed statements that collectively comprise the proposed Rule 154 Statement for that witness.⁷ In addition, where applicable, the annexes contain a second table identifying the associated exhibits tendered for admission for each witness.

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

² 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' or 'Rules' are to the Rules.

³ The Rule 154 Statements and associated exhibits are referred to herein as the 'Proposed Evidence'.

⁴ Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Conduct of Proceedings Order').

⁵ See also Email from SPO to Panel, Parties, and participants on 16 November 2023 at 11.55 (notifying, *inter alia*, [REDACTED]). The information required by paragraphs 73-74 of the Conduct of Proceedings Order will be provided separately.

⁶ The applicable law has been set out in previous submissions and decisions in this case. 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, Confidential, paras 26-35.

⁷ In this motion, relevant statements are often referred to using their base or English version ERN. The full reference and specific ERNs tendered are included in the relevant Annex for each witness.

II. SUBMISSIONS

4. Consistent with Rule 154, the Witnesses are anticipated to: (i) be present in court, (ii) be available for cross-examination and any questioning by the Panel, and (iii) attest that the written statement or transcript accurately reflects that witness's declaration and what they would say if examined. As detailed below, and in the accompanying Annexes, the Proposed Evidence also fulfils the admissibility requirements under Rules 137 and 138(1). Accordingly, the Rule 154 Statements, together with associated exhibits, are admissible in lieu of direct examination.

A. W00498

5. *Relevance.* W00498 is the son of deceased witness [REDACTED] and will provide corroboration to her statements by testifying as to what she told him about the events in question.

6. On [REDACTED], W00498 was working in [REDACTED] while his family drove back from a holiday [REDACTED]. As the family's car stopped near [REDACTED], a large number of armed KLA members came out from the bushes. The KLA put W00498's father ([REDACTED]) and brother ([REDACTED]) in the back seat of the family car and drove them towards [REDACTED].

7. W00498's mother ([REDACTED]), sister-in-law [REDACTED] were detained in a warehouse for the night. The next day, KLA soldiers moved them [REDACTED]. [REDACTED] saw the family car parked outside. They spent eight days [REDACTED] this building. [REDACTED] were also detained in that room. [REDACTED] could hear moaning coming from the men in the basement of the building. [REDACTED] learned that [REDACTED] were detained there. [REDACTED] was the warden of this prison.

8. On the eighth day, [REDACTED] were taken out of the building and [REDACTED], which also had [REDACTED] along with some [REDACTED] men with their hands tied and heads down. Amongst the [REDACTED] detainees

[REDACTED], [REDACTED] recognised [REDACTED]. W00498's [REDACTED] were not on the [REDACTED] and W00498 never saw them again.

9. [REDACTED] were taken away [REDACTED]. The men [REDACTED] did not go with them. The [REDACTED] spent one night under guard in the basement of a house before being moved to a barn for four further days of detention. They were then put [REDACTED] and let go on the road near [REDACTED].

10. W00498's evidence is thus relevant to the charged crimes in the Indictment.⁸

11. *Authenticity and reliability.* W00498's Rule 154 Statement is comprised of W00498's SITF interview, dated [REDACTED].⁹ The statement bears sufficient indicia of authenticity and reliability.¹⁰ W00498's SITF interview consists of verbatim transcripts of the audio-video recording. W00498 confirmed that his answers during this interview are true and accurate, his participation in the interview was voluntary without any threats, force, or guarantees, and he had no objections to the manner or process by which the statement was taken.¹¹

12. *Suitable for Rule 154 admission.* W00498's Proposed Evidence satisfies the requirements of Rule 154 and, considering that the witness will be available for cross-examination, its probative value is not outweighed by any prejudice. Rule 154 admission for W00498's Proposed Evidence will significantly reduce the length of direct examination. The SPO intends to elicit brief oral testimony from W00498 for a maximum of 1 hour on essential matters that highlight, clarify, or explain certain aspects of his evidence.

⁸ See, *inter alia*, Amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, Confidential ('Indictment'), paras [REDACTED]; 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'), paras [REDACTED].

⁹ [REDACTED].

¹⁰ For an individualised assessment, see Annex 1.

¹¹ [REDACTED].

B. W01140

13. *Relevance.* [REDACTED], W01140, [REDACTED], was [REDACTED] stopped by armed and uniformed KLA soldiers demanding to check his identification document. The soldiers then ordered him to go with them in the direction of the [REDACTED]. During the walk there, the soldiers stopped for a time to kick, punch, and beat him with their rifles while verbally abusing him with ethnically based insults.

14. W01140 was brought to [REDACTED], referred to as a staff or headquarters, where he saw numerous uniformed KLA soldiers. He was brought into a room where groups of soldiers took turns beating him with their fists, batons, baseball bats, hoses, and pipes, in between interrogation sessions by a soldier [REDACTED] who appeared to be in charge. This man accused W01140 of committing crimes against Albanians and berated him with ethnic slurs and insults. W01140's interrogator also forced W01140 to [REDACTED]. During W01140's detention, he saw KLA soldiers bring [REDACTED], into the building and heard sounds of screams from the room where [REDACTED] was taken.

15. Towards the evening, [REDACTED] entered the room, recognised W01140, and ordered the guards in the room to bring W01140 bread and water, and not to let anyone else enter the room. [REDACTED] left to speak to other soldiers and thereafter, W01140's interrogator returned and released him on the condition that he [REDACTED]. W01140 and his family subsequently fled Kosovo.

16. W01140's evidence is thus relevant to the charged crimes in the Indictment.¹²

17. *Authenticity and reliability.* W01140's Rule 154 Statement is *prima facie* authentic and reliable. The Rule 154 Statement is comprised of (i) W01140's SPO interview of

¹² Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

[REDACTED];¹³ (ii) [REDACTED];¹⁴ (iii) [REDACTED];¹⁵ and (iv) [REDACTED].¹⁶
Each statement bears sufficient indicia of reliability.¹⁷

18. W01140's SPO interview consists of verbatim transcripts of the audio-video recordings. W01140 confirmed that the contents of his statements made in the interview are true and accurate, given voluntarily without any threats, force, or guarantees, and affirmed that he had no objections to the manner or process by which the statements were taken.¹⁸

19. During his SPO interview, W01140 had an opportunity to review his prior statements.¹⁹ W01140 recognised his signature on [REDACTED], confirmed the contents of each statement to have been made truthfully, and was given the opportunity to make clarifications and corrections.²⁰

20. *The associated exhibits are admissible.* The associated exhibits forming part of the Proposed Evidence in Annex 2 – namely photos showing W01140's injuries, photo line-ups shown to the witness, and a sketch drawn by W01140 in relation to his detention – should be admitted as they are an inseparable and indispensable part of W01140's Rule 154 Statement, in that they are used and explained therein.

21. *Suitable for Rule 154 admission.* W01140's Proposed Evidence satisfies the requirements of Rule 154 and, considering that the witness will be available for cross-examination, its probative value is not outweighed by any prejudice. While the different parts of the Rule 154 Statement overlap in certain respects,²¹ [REDACTED] – were discussed and clarified in his SPO interview and form an integral part thereof.

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ For an individualised assessment of reliability, *see* Annex 2.

¹⁸ [REDACTED].

¹⁹ W01140 reviewed and affirmed all of his prior statements, not just those tendered in this motion, with the exception of [REDACTED], which was not shown to the witness during his [REDACTED] SPO interview.

²⁰ [REDACTED].

²¹ [REDACTED].

The SPO intends to elicit brief oral testimony on essential matters, including to highlight, clarify, or explain certain aspects of W01140's evidence for 1.5 hours.

C. W01763

22. *Relevance.* On or around [REDACTED], W01763, [REDACTED], was arrested with his relatives [REDACTED] by armed KLA members, [REDACTED], both in black uniforms. The three [REDACTED] were then taken to a house in [REDACTED]. During their transfer, they were kept at gunpoint and hit. A shot was fired at [REDACTED].

23. In [REDACTED], the three detainees were first taken to the yard of a house. Their shoelaces and t-shirts were removed, their hands were tied, they were blindfolded, kicked and beaten with rifles and chains. After the beating, W01763, still blindfolded, was thrown down the stairs leading to a bunker located behind the house. A person referred to as [REDACTED] kicked W01763 on his head from behind. In the bunker, a person wearing camouflage uniform with KLA insignia on his shoulder, [REDACTED], and armed with a pistol, questioned W01763 about the police and army presence in [REDACTED], and told W01763 that they had killed his father. [REDACTED] were also interrogated.

24. After their interrogation, the three [REDACTED], blindfolded and with hands tied, were taken to another house located about 2.5 kilometres away, and were locked in the basement. Two guards in uniforms were guarding them. At one point a group of people, including some in uniform and some women, arrived, put the three men in a circle and beat them. Sometime later, two Albanian detainees were thrown into the basement. One was a man referred to by W01763 as [REDACTED]. They said they had been detained as they were considered traitors, working for the Serbian police. Both showed signs of having been mistreated.

25. On [REDACTED] and another person put W01763, [REDACTED] in a vehicle and told them they were taking them to be shot. In [REDACTED], the three men were released. They were told not to go to [REDACTED] and that everybody had been

killed there, and ordered them to go to [REDACTED], which they did. W01763 never came back to his village, and learned that his house was demolished [REDACTED]. W01763 required medical treatment for his injuries, [REDACTED]. As a result of his mistreatment, [REDACTED].

26. W01763's evidence is thus relevant to crimes charged in the Indictment.²²

27. *Authenticity and reliability.* W01763's Proposed Evidence is *prima facie* authentic and reliable. The W01763 Rule 154 Statement is comprised of a three-part transcript of his SPO interview conducted on [REDACTED].²³ The statement bears sufficient indicia of reliability.²⁴ W01763's audio-video recorded interview, as recorded in a verbatim transcript, is authentic and reliable. The interview was conducted with the assistance of an interpreter in a language understood by the witness.²⁵ W01763 was duly advised of his rights as a witness,²⁶ and he confirmed that the statement was given voluntarily and is true accurate to the best of his knowledge and belief.²⁷

28. *Suitable for Rule 154 admission.* W01763's Proposed Evidence satisfies the requirements of Rule 154: W01763 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.

29. Rule 154 admission for W01763's Proposed Evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit brief oral testimony from W01763 for approximately 1 hour on essential matters that highlight, clarify, or explain certain aspects of his evidence.

²² Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

²³ [REDACTED].

²⁴ For an individualised assessment of reliability, *see* Annex 3.

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

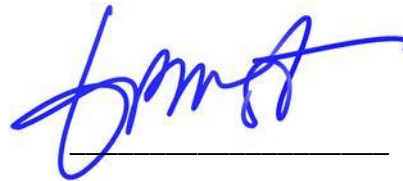
III. CLASSIFICATION

30. This submission and its Annexes are confidential pursuant to Rule 82(4) and because they contain information concerning protected witnesses.

IV. RELIEF REQUESTED

31. For the foregoing reasons, the Trial Panel should admit the Proposed Evidence, subject to fulfilment of the Rule 154 conditions by the relevant witnesses during their appearances in court.

Word Count: 2,637



Kimberly P. West
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Thursday, 16 November 2023

At The Hague, the Netherlands.