



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: Specialist Prosecutor's Office

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Public Redacted Version of 'Prosecution reply relating to Rule 154 motion F01931'

Specialist Prosecutor's Office

Kimberly P. West

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

1. The Specialist Prosecutor's Office ('SPO') hereby replies to the Response.¹ Once again,² 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,³ where the witnesses will be available for cross-examination. The Motion⁴ should be granted.

II. SUBMISSIONS

A. W00498

2. The Defence's primary objection to the admission of W00498's Rule 154 Statement – that his account is hearsay – has been rejected by the Trial Panel on numerous occasions.⁵ Likewise, submissions about inconsistencies in [REDACTED]'s account and the evaluation of identification evidence go to weight, not admission.⁶

¹ Joint Defence Response to Prosecution motion for admission of evidence of Witnesses W00498, W01140, and W01763 pursuant to Rule 154 (F01931), KSC-BC-2020-06/F01965, 27 November 2023, Confidential ('Response').

² See, similarly, Prosecution reply to joint Defence response concerning Rule 154 submissions (F01818), KSC-BC-2020-06/F01827, 2 October 2023, Confidential, paras 1-3.

³ 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.

⁴ Prosecution motion for admission of evidence of Witnesses W00498, W01140, and W01763 pursuant to Rule 154, KSC-BC-2020-06/F01931, 16 November 2023, Confidential ('Motion').

⁵ See e.g. Decision on Prosecution Motion for Admission of Evidence of W03170, W04043, W04444, W04571, W04765, W04811, and W04870 Pursuant to Rule 154 and Related Request (F01830), KSC-BC-2020-06/F01901, 2 November 2023, Confidential, para.83; Decision on Prosecution Motion for Admission of Evidence of W00208, W02082, W02475, W04147, W04325, W04491 and W04753 Pursuant to Rule 154 (F01788), KSC-BC-2020-06/F01848, 10 October 2023, Confidential, para.56; Fourth Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01716, 8 August 2023, Confidential, para.32; Decision on Prosecution Motion for Admission of Evidence of W03724, W03832, W03880, W04368, W04566, and W04769 Pursuant to Rule 154, KSC-BC-2020-06/F01700, 24 July 2023, Confidential, paras 45-46; Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, Confidential, paras 179, 217; Corrected Version of Decision on Second Prosecution Motion Pursuant to Rule 154, KSC-BC-2020-06/F01595/COR, 9 June 2023, Confidential, para.46; Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 16 March 2023, Confidential, para.47.

⁶ Response, KSC-BC-2020-06/F01965, paras 7-8.

3. Given that [REDACTED] will be unavailable to testify in this trial, W00498 will be able to contextualise her statements to judicial and other authorities, and speak to matters impacting her credibility and reliability generally. The Defence has itself highlighted the importance of this type of witness testimony in the past.⁷ W00498's Rule 154 Statement is limited to 32 pages and will not overburden the trial record.

4. The Defence incorrectly asserts that information originating from [REDACTED] can only be admitted through [REDACTED] under Rules 153-155.⁸ This may be the case where [REDACTED]'s representations are contained in the form of a statement made in the context of legal proceedings, but not where [REDACTED] provides information directly to W00498.⁹ In the latter case, the proffered evidence is ordinary hearsay, which is admissible under Rules 138(1) and 154.¹⁰

5. Finally, the Defence's argument that it cannot cross-examine W00498 about [REDACTED]'s identification of KRASNIQI is at odds with its own assertion that '[REDACTED] was questioned extensively in relation to a statement given by [REDACTED]'.¹¹ The Defence fails to explain how the matters raised in relation to that statement, which the Trial Panel admitted after [REDACTED]'s cross-examination, could affect the admission of W00498's Rule 154 Statement.¹²

B. W01140

6. The claims made by the Defence attacking the suitability of W01140 for Rule 154 should be dismissed in their entirety and the application should be granted. The Defence wrongly asserts that the time needed to elicit W01140's account fully *viva voce*

⁷ See e.g. Joint Defence Response to Prosecution Application for Admission of Material Through the Bar Table with confidential Annexes 1-8, KSC-BC-2020-06/F01387, 21 March 2023, Confidential, para.60.

⁸ Response, KSC-BC-2020-06/F01965, para.4.

⁹ Order on the Conduct of Proceedings, KSC-BC -2020-06/F01226/A01, 25 January 2023, para.74, fn.14.

¹⁰ While the SPO may also seek to use statements made by [REDACTED] in the context of legal proceedings during W00498's examination, the SPO will only seek to admit such statements at the appropriate time and under the appropriate admissibility provisions. In any event, such statements are not part of the evidence proposed for W00498 in the Motion.

¹¹ Response, KSC-BC-2020-06/F01965, paras 7-8.

¹² *Contra* Response, KSC-BC-2020-06/F01965, para.8.

is comparable to the estimate for his Rule 154 testimony.¹³ The time required to elicit his prior evidence in full in the courtroom would substantially exceed 1.5 hours. The use of court time in this manner would be inefficient since W01140 has already given several statements which contain his account and the Defence itself does not challenge their *prima facie* authenticity and reliability.¹⁴ Furthermore, the SPO considers that the time needed for direct examination, if W01140's evidence is admitted pursuant to Rule 154, would not exceed 1 hour.¹⁵

7. The argument that W01140's statements contain some different content or minor inconsistencies, thus favouring *viva voce* testimony,¹⁶ is also unpersuasive, particularly in the circumstances of this witness who has clearly and consistently described his detention. Similarly, the Defence's reference to a comment made by the witness about his mental health is misplaced and cannot be a basis to require *viva voce* examination.¹⁷ The Defence can raise perceived differences or inconsistencies between statements or any issue potentially affecting the credibility of the witness on cross-examination and no negative inferences should be made concerning Rule 154 suitability from the fact that W01140 was asked clarifying questions during a previous interview.¹⁸

8. Finally, W01140 is not the sole witness being called to support the charges concerning mistreatment at a [REDACTED] which was used as a staff or headquarters by the KLA.¹⁹ There is no requirement for corroboration for Rule 154 witnesses, but in this case, there is corroborating witness evidence in respect of the detention and

¹³ Response, KSC-BC-2020-06/F01965, para.13.

¹⁴ Response, KSC-BC-2020-06/F01965, para.12.

¹⁵ Upon further consideration, the SPO has reduced the estimated direct examination from 1.5 hours. The Defence have collectively estimated 4.5 hours of cross-examination. See Annex 2 to Joint Defence Response to 'Prosecution submission of list of additional witnesses for December 2023' (F01932), KSC-BC-2020-06/F01952/A02, 23 November 2023, Confidential, p.2.

¹⁶ Response, KSC-BC-2020-06/F01965, paras 14, 17.

¹⁷ Response, KSC-BC-2020-06/F01965, para.16.

¹⁸ *Contra* Response, KSC-BC-2020-06/F01965, para.14.

¹⁹ *Contra* Response, KSC-BC-2020-06/F01965, para.15. The citation referenced by the Defence ignores the content and references in the same section of the pre-trial brief.

mistreatment of detainees by members of the KLA at this location.²⁰ The Defence's objections should be dismissed and the Rule 154 application should be granted.

III. CLASSIFICATION

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

IV. RELIEF REQUESTED

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

Word Count: 1,196



Kimberly P. West

Specialist Prosecutor

Friday, 1 December 2023

At The Hague, the Netherlands.

²⁰ See Annex 3 to Prosecution submission of updated witness list and confidential lesser redacted version of pre-trial brief, Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief', KSC-BC-2020-06/F01594/A03, 9 June 2023, Confidential ('SPO PTB), [REDACTED]. Factual assertions regarding the detention site are further detailed and supported in the subsequent paragraph. See SPO PTB, KSC-BC-2020-06/F01594/A03, [REDACTED].