



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

Date: 14 December 2023

Language: English

Classification: Public

Public Redacted Version of 'Prosecution motion for admission of evidence of Witnesses W01453, W03878, W04446, W04575, and W04651 pursuant to Rule 154 with confidential Annexes 1-5'

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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 statements (collectively, 'Rule 154 Statements'), together with associated exhibits,³ of the following witnesses: W01453, W03878, W04446, W04575, and W04651 (collectively, 'Witnesses').⁴ The SPO intends to call these witnesses (or list them as reserves) between January and March 2024.⁵

2. 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 their Rule 154 Statements accurately reflect their declaration and what they would say if examined. As detailed below and in the accompanying annexes for each of the Witnesses, the Proposed Evidence meets the requirements of the Rules, is relevant, authentic and reliable, and has probative value, which is not outweighed by any prejudice. Admission is therefore in the interests of justice.⁶

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 Attached to this motion are five annexes. Each annex contains a table identifying the Proposed Evidence for each witness. In the interest of expeditiousness and as also set out below, the SPO: (i) reduced the examination time for W03878 from three hours to two hours; (ii) reduced the examination time for W04575 from two hours to one hour; and (iii) is now seeking to admit W01453's prior statements under Rule 154 (W01453 was previously fully *viva voce*) and, subject to a decision on this request, has reduced the examination estimate for W01453 from 9 hours to 4 hours.

⁵ See Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Conduct of Proceedings Order'), para.73. The information required by paragraphs 73-74 of the Conduct of Proceedings Order, including the order of the January-March 2024 witnesses, will be provided separately. See Transcript (Oral Order), 16 November 2023, p.10227. A Rule 154 request relating to other January-March 2024 witnesses is pending. See Prosecution motion for admission of evidence of Witnesses W01163, W02144, W02749, W04230, W04445, W04489, W04576, W04739, W04741, and W04820 pursuant to Rule 154 and related request, KSC-BC-2020-06/F01980, 4 December 2023, Confidential.

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.

II. SUBMISSIONS

A. W01453

3. *Relevance.* W01453 was a member of the LPK and crossed into Kosovo [REDACTED]. Around June 1998, [REDACTED].

4. W01453 provides information on the creation of the KLA, his role and authority in the KLA, the structure of, and reporting lines within, the KLA, in particular concerning the Nerodime Zone, and the ways in which the KLA obtained weapons and other supplies and logistics.

5. W01453 [REDACTED].

6. In 1998 and 1999, W01453 met with members of the General Staff, including Hashim THAÇI, Rexhep SELIMI and Jakup KRASNIQI. W01453, who received information, instructions and orders from General Staff members, provides information concerning his knowledge of the composition, role and authority of the KLA General Staff and various members thereof.

7. W01453's evidence is thus relevant to the charged crimes in the Indictment.⁷

8. *Authenticity and reliability.* W01453's Rule 154 Statement is *prima facie* authentic and reliable, bearing sufficient indicia of reliability.⁸ W01453's [REDACTED] interview and [REDACTED] testimony are transcriptions of audio-video recordings. During his [REDACTED] testimony, W01453 stated that [REDACTED] interview.⁹ W01453's [REDACTED] testimony was provided under oath.¹⁰

9. *The associated exhibits are admissible.* The associated exhibits forming part of the Proposed Evidence in Annex 1 – consisting of maps annotated by W01453, a diagram drawn by W01453, and a KLA document – should be admitted as they are an

⁷ 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, Confidential ('Pre-Trial Brief'), paras [REDACTED].

⁸ For an individualised assessment of reliability, see Annex 1.

⁹ [REDACTED].

¹⁰ [REDACTED].

inseparable and indispensable part of W01453's Rule 154 Statement, in that they are used and explained in W01453's evidence.

10. *Suitable for Rule 154 admission.* W01453's Proposed Evidence satisfies the requirements of Rule 154. Given that W01453 will be available for cross-examination, the probative value of the Proposed Evidence is not outweighed by any prejudice.

11. The SPO originally indicated it would call this witness to testify live with 9 hours of direct examination.¹¹ Rule 154 admission for W01453's Proposed Evidence will significantly reduce the number of hours required for direct examination to a maximum of 4 hours. During the supplemental examination, the SPO would elicit brief oral testimony on essential matters, including to clarify or explain certain aspects of W01453's evidence. The SPO would also address relevant issues not covered in W01453's Proposed Evidence.

B. W03878

12. *Relevance.* W03878 was a member of KLA [REDACTED] under the command of [REDACTED]. He was responsible for [REDACTED]. In [REDACTED] 1999, W03878 was arrested [REDACTED]. W03878 was taken to KLA headquarters [REDACTED] where he was initially detained, interrogated, and beaten [REDACTED]. Later that day, W03878 was taken to a nearby house where he was detained in the basement and again interrogated and beaten for several hours with wooden sticks by four masked soldiers [REDACTED].

13. The next morning, W03878 was taken back to the KLA headquarters [REDACTED] where he was questioned [REDACTED]. Subsequently, W03878 was taken back to the basement in [REDACTED] and imprisoned for approximately [REDACTED] during which time he was repeatedly beaten, sustaining lasting injuries. During his detention, W03878 saw other Albanian detainees dressed in

¹¹ Amended List of Witnesses, KSC-BC-2020-06/F01594/A01, 9 June 2023, Strictly Confidential and *Ex Parte* ('Witness List'), [REDACTED].

civilian clothing who appeared to have also been beaten. W03878 was ultimately transferred from [REDACTED].

14. W03878's evidence is thus relevant to crimes charged in the Indictment.¹²

15. *Authenticity and reliability.* W03878's Proposed Evidence is *prima facie* authentic and reliable. W03878's Rule 154 Statement is comprised of (i) W03878's SPO interview dated [REDACTED],¹³ and (ii) W03878's EULEX statement dated [REDACTED].¹⁴ The statements bear sufficient indicia of reliability.¹⁵ W03878's SPO interview, as recorded in verbatim transcripts, is authentic and reliable. W03878 was duly advised of his rights as a witness.¹⁶ W03878 confirmed that the contents of his recorded statement are true and accurate.¹⁷ W03878's EULEX statement is also *prima facie* authentic and reliable, and it contains a witness acknowledgment with the witness having signed all pages.¹⁸

16. *Suitable for Rule 154 admission.* W03878's Proposed Evidence satisfies the requirements of Rule 154. Considering that the witness will be available for cross-examination, the probative value of the Proposed Evidence is not outweighed by any prejudice. Rule 154 admission for W03878's Proposed Evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit oral testimony on essential matters, including to highlight, clarify or explain certain aspects of W03878's evidence for 2 hours.¹⁹

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

¹³ 064732-TR-ET Parts 1-5 RED2.

¹⁴ SITF00011014-00011027 RED2.

¹⁵ For an individualised assessment of reliability, see Annex 2.

¹⁶ 064732-TR-ET Part 1 RED2, pp.1-2.

¹⁷ 064732-TR-ET Part 5 RED2, pp.20-21.

¹⁸ SITF00011014-00011027 RED2.

¹⁹ Reduced from the three hours indicated in the Witness List. See Witness List, KSC-BC-2020-06/F01594/A01, [REDACTED].

C. W04446

17. *Relevance.* W04446's brother was arrested by the KLA on [REDACTED]. The witness learned from his sister-in-law that four or five armed and masked KLA members entered his brother's house during the night, alleged that he worked for the Serbian government, and forced him to come with them.

18. W04446 went to look for his brother in [REDACTED] about three or four days after the arrest. KLA soldiers told him to speak to [REDACTED], who was in charge there. [REDACTED] introduced himself as [REDACTED] and confirmed that W04446's brother was there and that his case was being investigated, as he was a collaborator of the occupier. W04446 went to [REDACTED] to inquire about his brother [REDACTED]. He saw [REDACTED] in the area several times, but never dared to speak to him. On one occasion, [REDACTED] warned W04446 not to go back again or he would imprison him as well. At a certain point, KLA guards in [REDACTED] stopped accepting cigarettes and medicines, which W04446 understood as a sign that his brother was no longer detained in [REDACTED].

19. [REDACTED] later told W04446 that his brother had been sent to [REDACTED], then brought back to [REDACTED], until he was transferred to an unknown place. When W04446 went to the [REDACTED].

20. After the war, W04446's brother's [REDACTED] remains were never found.

21. W04446's evidence is thus relevant to crimes charged in the Indictment.²⁰

22. *Authenticity and reliability.* W04446's Rule 154 Statement is comprised of: (i) W04446's SPO interview dated [REDACTED];²¹ and (ii) W04446's [REDACTED].²² The statements bear sufficient indicia of authenticity and reliability.²³ W04446's SPO interview consists of verbatim transcripts of the audio-video recording. W04446

²⁰ Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

²¹ 066675-TR-ET Part 1 RED2; 066675-TR-ET Part 2 RED2.

²² 011022-011029 RED2.

²³ For an individualised assessment, see Annex 3.

confirmed that his answers during this interview are true and accurate.²⁴ During the SPO interview, W04446 had an opportunity to review his [REDACTED] and confirmed that it correctly reflects his evidence.²⁵

23. *The associated exhibits are admissible.* The associated exhibit forming part of the Proposed Evidence in Annex 3 – namely a sketch drawn by W04446 in relation to his brother’s detention – should be admitted as it is an inseparable and indispensable part of W04446’s Rule 154 Statement, in that it is used and explained therein.

24. *Suitable for Rule 154 admission.* W04446’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 W04446’s Proposed Evidence will significantly reduce the length of direct examination. The SPO intends to elicit brief oral testimony from W04446 for a maximum of 1 hour on essential matters that highlight, clarify, or explain certain aspects of his evidence.

D. W04575

25. *Relevance.* W04575 is a Kosovar Albanian [REDACTED]. W04575 and [REDACTED] were arrested by KLA members [REDACTED]. W04575 and [REDACTED] were briefly detained in [REDACTED], before being detained in [REDACTED] for two nights. In [REDACTED], W04575 and [REDACTED] were detained in a room with [REDACTED]. W04575 was beaten and accused of [REDACTED]. W04575 was then transferred to [REDACTED] and detained in [REDACTED] there with [REDACTED]. W04575 and other detainees were questioned in [REDACTED]; a number of his co-detainees were also physically mistreated.

²⁴ 066675-TR-ET Part 2 RED2, p.13.

²⁵ 066675-TR-ET Part 1 RED2, pp.9-10.

26. [REDACTED]. W04575 was released. [REDACTED]. [REDACTED]. W04575 subsequently attempted to obtain information about [REDACTED] whereabouts from KLA members but was not provided with any relevant information.

27. W04575's evidence is thus relevant to charged crimes in the Indictment.²⁶

28. *Authenticity and reliability.* W04575's Rule 154 Statement – comprised of his SPO interview, UNMIK statements, and [REDACTED] testimony – is *prima facie* authentic and reliable, bearing sufficient indicia of reliability.²⁷ W04575's UNMIK statements²⁸ are, *inter alia*, dated and signed by the witness, and contain an advisement of his rights. W04575 recognised his signatures on these statements during his testimony in [REDACTED]²⁹ and during his SPO interview.³⁰ W04575's testimony in [REDACTED]³¹ [REDACTED]. During his SPO interview, W04575 stated that he testified in that case voluntarily and that he was aiming to be truthful.³² W04575's audio-video recorded SPO interview is recorded in verbatim transcripts.³³ During the SPO interview, W04575 was made aware of his rights as a witness.³⁴ W04575 confirmed that the content of this recorded statement is true and accurate.³⁵

29. *Suitable for Rule 154 admission.* W04575's Proposed Evidence satisfies the requirements of Rule 154, and considering that the witness will be available for cross-examination, the probative value of the Proposed Evidence is not outweighed by any prejudice.

²⁶ Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

²⁷ For an individualised assessment of reliability, *see* Annex 4.

²⁸ SPOE00090690-00090698 RED2.

²⁹ 085716-085834, pp.085798-9.

³⁰ 088938-TR-ET Part 1 RED2, pp.8-11.

³¹ 085716-085834.

³² 088938-TR-ET Part 1 RED2, p.7.

³³ *See, e.g.*, 088938-TR-ET Part 1 RED2, p.1.

³⁴ *See* 088938-TR-ET Part 1 RED2, pp.2-3.

³⁵ *See* 088938-TR-ET Part 3, pp.8-9.

30. W04575's UNMIK statements³⁶ are brief and, along with his testimony in [REDACTED],³⁷ are extensively referred to during his SPO interview, making their admission necessary for a full comprehension of W04575's evidence. Further, W04575's UNMIK statements are those closest in time to the relevant events and, during his SPO interview, W04575 stated that when he testified in [REDACTED], he had a better recollection.³⁸ Altogether, their size is manageable and would not unduly burden the record.

31. Rule 154 admission for W04575's Proposed Evidence will significantly reduce the number of hours required for direct examination to a maximum of 1 hour.³⁹ During the supplemental examination, the SPO would elicit brief oral testimony on essential matters, including to highlight, clarify or explain certain aspects of W04575's evidence.

E. W04651

32. *Relevance.* W04651 joined the KLA in the Llap Operational Zone in May 1998. W04651 will testify about his initial role to mobilise civilians, and the establishment of the [REDACTED]. W04651 remained in that role until 19 June 1999, when he demobilised. After the war, he performed various duties in the [REDACTED]. In 2003, he was promoted to [REDACTED].

33. W04651 is [REDACTED],⁴⁰ [REDACTED]. [REDACTED].

34. W04651's evidence is thus relevant to the charged crimes in the Indictment.⁴¹

35. *Authenticity and reliability.* W04651's Proposed Evidence is *prima facie* authentic and reliable. The Rule 154 Statement is comprised of W04651's SPO interview, dated

³⁶ SPOE00090690-00090698 RED2.

³⁷ 085716-085834.

³⁸ 088938-TR-ET Part 1 RED2, pp.7-8.

³⁹ Reduced from the two hours indicated in the Witness List. See Witness List, KSC-BC-2020-06/F01594/A01, [REDACTED].

⁴⁰ [REDACTED].

⁴¹ Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

[REDACTED].⁴² The statement bears sufficient indicia of reliability.⁴³ W04651's SPO interview is recorded in verbatim transcripts. W04651 was duly advised of his rights as a witness.⁴⁴ W04651 confirmed the truthfulness, accuracy and voluntariness of his statement.⁴⁵

36. *The associated exhibits are admissible.* The Associated Exhibits forming part of W04651's Proposed Evidence in Annex 5 consist of: (i) a list of members of [REDACTED];⁴⁶ (ii) a document titled 'Elaborati';⁴⁷ (iii) a document signed by Kadri KASTRATI;⁴⁸ (iv) a document dated 18 December 1998;⁴⁹ (v) an order signed by Rrustem MUSTAFA;⁵⁰ (vi) a curriculum for Training and Education of Fighting Units in the Zone of Llap;⁵¹ and (vii) [REDACTED].⁵² The Associated Exhibits should be admitted as they are an inseparable and indispensable part of W04651's Rule 154 Statement, as they were used and discussed therein.

37. [REDACTED].⁵³ [REDACTED].⁵⁴ [REDACTED] is relevant to *inter alia*: (i) the context of the creation of the KLA, and its subsequent functioning throughout the Indictment period, including recruitment, funding, appointments and organisational structure in the [REDACTED], as well as the functioning of the KLA General Staff, the presence of named JCE members at meetings, and the division of the Operational Zones;⁵⁵ (ii) the formation of the KLA [REDACTED];⁵⁶ and (iii) the KLA's public

⁴² 077803-TR-ET Parts 1-3.

⁴³ For an individualised assessment of reliability, see Annex 5.

⁴⁴ 077803-TR-ET Part 1 RED, p.3.

⁴⁵ 077803-TR-ET Part 3, pp.13-15.

⁴⁶ See Annex 5, Associated Exhibits, item 2.

⁴⁷ See Annex 5, Associated Exhibits, 'Exhibit 1' of item 1.

⁴⁸ See Annex 5, Associated Exhibits, 'Exhibit 2' of item 1.

⁴⁹ See Annex 5, Associated Exhibits, 'Exhibit 3' of item 1.

⁵⁰ See Annex 5, Associated Exhibits, 'Exhibit 4' of item 1.

⁵¹ See Annex 5, Associated Exhibits, 'Exhibit 5' of item 1.

⁵² See Annex 5, Associated Exhibits, item 3.

⁵³ See also Annex 5, item 3, 'Comments' and 'Relevance' columns.

⁵⁴ Second Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06-F01596, 9 June 2023, Public, paras [REDACTED].

⁵⁵ [REDACTED].

⁵⁶ [REDACTED].

activity [REDACTED], including the establishment and functioning of the training centres, logistics, communications, KLA organisational structure in the Zone (including location details), presence of the Accused in the Zone, Zone command meetings and decisions/appointments, General Staff orders and instructions to the Zone command, communications and coordination with international observers, reporting to media, and the hostilities taking place in the [REDACTED].⁵⁷ [REDACTED],⁵⁸ [REDACTED],⁵⁹ [REDACTED]⁶⁰ [REDACTED].

38. *Suitable for Rule 154 admission.* W04651's Proposed Evidence satisfies the requirements of Rule 154. Considering that the witness will be available for cross-examination, the probative value of the Proposed Evidence is not outweighed by any prejudice. Rule 154 admission for W04651's Proposed Evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit brief oral testimony from W04651 for approximately 1 hour on essential matters that highlight, clarify or further explain certain aspects of the witness's evidence.

III. CLASSIFICATION

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

IV. RELIEF REQUESTED

40. 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.

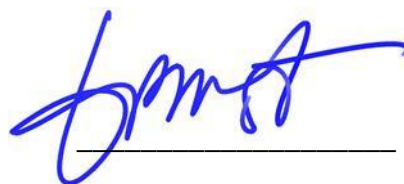
⁵⁷ [REDACTED].

⁵⁸ [REDACTED].

⁵⁹ [REDACTED].

⁶⁰ [REDACTED].

Word Count: 3,411



Kimberly P. West

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Thursday, 14 December 2023

At The Hague, the Netherlands.