



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:** 15 April 2024

**Language:** English

**Classification:** Public

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**Prosecution reply relating to Rule 154 motion F02196**

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## I. INTRODUCTION

1. The Specialist Prosecutor's Office ('SPO') hereby notifies the Panel, Parties, and participants of certain modifications to the tendered Rule 154 statement for W02677<sup>1</sup> and replies to the Response.<sup>2</sup> The Response, *inter alia*, oversimplifies the purposes of Rule 154 of the Rules,<sup>3</sup> and ignores the standard for admissibility of associated exhibits.

## II. SUBMISSIONS

### *Purpose of Rule 154*

2. For a number of witnesses, the Defence submits – referring, solely, to the number or length of statements being tendered or the direct examination estimate for a specific witness – that the time-saving function of Rule 154 is undermined. As it has previously ruled,<sup>4</sup> the Panel should dismiss these objections because, as set out in the Motion,<sup>5</sup> the proposed evidence would not unduly burden the record, the SPO will ensure that direct examination is not duplicative of admitted Rule 154 statements, and Rule 154 admission will therefore contribute to the expeditiousness of the proceedings. In this respect, while the time saved for a given witness may not be extensive, it should be considered in the broader context of ensuring the expeditious conduct of proceedings overall and the cumulative time that can be saved by recourse

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<sup>1</sup> See para.6 below.

<sup>2</sup> Joint Defence Consolidated Response to F02195 and F02196, KSC-BC-2020-06/F02229, 8 April 2024, Confidential ('Response').

<sup>3</sup> 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.

<sup>4</sup> See e.g. Decision on Prosecution Motion for Admission of Evidence of Witnesses W00498, W01140, and W01763 pursuant to Rule 154, KSC-BC-2020-06/F01976, 1 December 2023, Confidential, para.21; Decision on Prosecution Motion for Admission of Evidence of W01453, W03878, W04446, W04575, and W04651 Pursuant to Rule 154 (F02005), KSC-BC-2020-06/F02117, 12 February 2024, Confidential, para.51.

<sup>5</sup> Prosecution motion for admission of evidence of Witnesses W01978, W02540, W02677, W02714, W03865, W03881, W04371, W04710, and W004850 pursuant to Rule 154 and Related Requests, KSC-BC-2020-06/F02196, 22 March 2024, Confidential ('Motion').

to Rule 154 over the course of the Prosecution's case. It is with this purpose in mind that the SPO selects the evidence it proposes for Rule 154 admission.

3. Further, mindful of its obligations and the Panel's direction to use courtroom time as 'judiciously' as possible,<sup>6</sup> the SPO has reviewed, and in many cases reduced,<sup>7</sup> its direct examination estimates for Rule 154 witnesses, and will continue to do so where possible, notifying the Panel, Parties, and participants of any changes at the earliest opportunity.

*Admissibility of associated exhibits*

4. The Response indicates a fundamental misunderstanding of the admissibility criteria for associated exhibits.<sup>8</sup> The Panel has repeatedly held that associated exhibits are 'within the scope of Rule 154 where [they] form an "inseparable and indispensable" part of the statement or record of interview tendered pursuant to that Rule'.<sup>9</sup> Contrary to Defence submissions,<sup>10</sup> the key question is whether the 'witness's testimony would become incomprehensible or of lesser probative value' without the proposed associated exhibit. Of particular relevance, is 'whether the proposed exhibit was discussed with the witness during the record which is being tendered in evidence'.<sup>11</sup> The SPO reiterates its submission that these criteria, in addition to the standard admissibility criteria, are met in respect of the associated exhibits proposed.

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<sup>6</sup> See e.g. Decision on 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, 8 January 2024, Confidential, para.42.

<sup>7</sup> See e.g. Motion, KSC-BC-2020-06/F02196, footnote 5. Direct examination has been reduced from 2.5 to 2 hours for W02540, and from 3 to 2 hours for W03865.

<sup>8</sup> See Response, KSC-BC-2020-06/F02229, paras 28-29.

<sup>9</sup> Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 16 March 2023, Confidential ('First Decision'), para.24.

<sup>10</sup> See e.g. Response, KSC-BC-2020-06/F02229, paras 28-29.

<sup>11</sup> First Decision, KSC-BC-2020-06/F01380, para.24.

*Request to amend the exhibit list (W02540)*

5. In respect of the SPO's request to amend the exhibit list relating to W02540,<sup>12</sup> Defence submissions are based, in part, on claims of prejudice, as certain items, while notified under Rule 102(3) to all Defence teams, were not requested by or disclosed to one Defence team.<sup>13</sup> The Panel has previously taken into account Rule 102(3) notification, even if not requested by and disclosed to all Defence teams, when assessing prejudice.<sup>14</sup> One Defence team's failure to request disclosure previously should also be considered in light of the limited scope and size of the relevant items and the fact that such items have since been disclosed to all Defence teams. Accordingly, limited, if any, prejudice arises.

*Availability of lesser redacted translations of W02677's SPO interview*

6. As foreshadowed,<sup>15</sup> the SPO notifies the Panel, Parties, and participants that revised, lesser redacted translations of W02677's SPO interview, as well as the Serbian version, were disclosed. For purposes of admission, the new ERNs are 076247-TR-ST Part 1-ET RED and 076247-TR-ST Part 2-ET RED (English); 076247-TR-ST Part 1-ET-AT RED and 076247-TR-ST Part 2-ET-AT RED (Albanian); and 076247-TR-ST Part 1 RED and 076247-TR-ST Part 2 RED (Serbian).<sup>16</sup>

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<sup>12</sup> Motion, KSC-BC-2020-06/F02196, paras 21-25. The SPO does not seek to tender the relevant documents pursuant to Rule 154, but instead, may use and/or tender such documents during the witness's oral testimony.

<sup>13</sup> See Response, KSC-BC-2020-06/F02229, paras 15-16.

<sup>14</sup> See e.g. Decision on Prosecution Request to Amend the Exhibit List, KSC-BC-2020-06/F01995, 8 December 2023, Confidential, paras 23, 29; Decision on Prosecution Requests to Amend the Exhibit List (F01689 and F01747), KSC-BC-2020-06/F01785, 12 September 2023, Confidential, paras 65, 67.

<sup>15</sup> See Motion, KSC-BC-2020-06/F02196, fn.31. See also Annex 3 to Prosecution Motion for admission of evidence of Witnesses W03170, W04043, W04444, W04571, W04765, W04811, and W04870 pursuant to Rule 154 and Related Requests, KSC-BC-2020-06/F01830/A03, 3 October 2023, Confidential, fn.1.

<sup>16</sup> All were provided on 9 April 2024 in Disclosure Package 1190.

III. RELIEF REQUESTED

7. For the foregoing reasons and those previously given, (i) the tendered Rule 154 statement for W02677 should be modified in line with paragraph 6 above; and (ii) the Motion should be granted.

**Word Count: 988**



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**Kimberly P. West**

**Specialist Prosecutor**

Monday, 15 April 2024

At The Hague, the Netherlands.