

In: KSC-BC-2020-06
**The 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: Victims' Counsel

Date: 31 May 2024

Language: English

Classification: Public

**Public redacted version of Victims' Counsel's response to Prosecution motion for
the admission of the evidence of witnesses W03808, W03812, W03815, W03870,
W04785, and W04786 pursuant to Rule 153 (F02322)**

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I. INTRODUCTION

1. Pursuant to Article 22(6) of the Law on Specialist Chambers and Specialist Prosecutor's Office (Law No. 05/L-053) ("Law"), Rule 114(4)(a) and (b) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), and Rule 153(1)(b) and Rule 153(1)(a)(v) *a contrario*, Victims' Counsel opposes the Prosecution motion for the admission of W04785's evidence pursuant to Rule 153¹ and requests the Panel to hear this witness's evidence pursuant to Rule 154.
2. W04785 is a dual status witness/victim. Her previous statement, which the SPO seeks to have admitted pursuant to Rule 153, does not elicit any evidence concerning the immediate and long-lasting impact that the crime in question has had on this witness. W04785 has expressed her preference to testify in person which will allow her to give evidence in relation to the impact of the crime. To refuse W04785 this opportunity would render her evidence incomplete and unnecessarily limit her participation in the proceedings.

II. CLASSIFICATION

3. This filing is classified as confidential pursuant to Rule 82(4). A public redacted version will be filed simultaneously.

III. PROCEDURAL HISTORY

4. On 15 February 2023, W04785 was admitted as an indirect victim of imprisonment/illegal or arbitrary arrest and detention as well as other inhumane acts and cruel treatment.²

¹ KSC-BC-2020-06/F02322, Prosecution motion for the admission of the evidence of witnesses W03808, W03812, W03815, W03870, W04785, and W04786 pursuant to Rule 153 with confidential Annexes 1-6, 21 May 2024 ("Motion").

² F01293, Fifth Decision on Victim Participation, 15 February 2023 ("Fifth Decision on Victim Participation"), [REDACTED].

5. Protective measures were assigned to W04785 on 10 December 2020.³
6. On 21 May 2024, the SPO filed the Motion requesting the admission through Rule 153 of, *inter alia*, W04785's previous statement.⁴ The Defence do not oppose the Motion.⁵

IV. SUBMISSIONS

7. W04785 has been admitted to participate in these proceedings as an "indirect victim of imprisonment/illegal or arbitrary arrest and detention as well as other inhumane acts and cruel treatment, allegedly committed in [REDACTED]".⁶ The SPO seeks to have her previous statement [REDACTED] admitted pursuant to Rule 153.⁷
8. [REDACTED].
9. Victims' Counsel agrees with the Prosecution that W04785's evidence is relevant, authentic, and has probative value not outweighing any prejudicial effect.⁸
10. However, it is submitted that due consideration must be given to the factors militating against the Motion under Rule 153(1)(a)(v) *a contrario* and Rule 153(1)(b)(iii) as it relates to W04785.

³ F00190, Confidential Redacted Version of Decision on Specialist Prosecutor's Second Request for Protective Measures and Renewed Request for Protective Measures and Procedural Matters, 5 February 2021, para. 128 *et seq.*; F00133/COR, Confidential Redacted Version of Corrected Version of First Decision on Specialist Prosecutor's Request for Protective Measures, 10 December 2020.

⁴ Motion, paras 3-7, 26-28.

⁵ Motion, paras 32 and 33.

⁶ Fifth Decision on Victims' Participation, [REDACTED].

⁷ Motion, paras 26-28; KSC-BC-2020-06/F02322/A05, W04785: Annex 5 to Prosecution motion for the admission of the evidence of witnesses W03808, W03812, W03815, W03870, W04785, and W04786 pursuant to Rule 153, Confidential, 21 May 2024; SPOE00027837-SPOE00027842 RED.

⁸ Motion, paras 3, 26-27.

(a) Rule 153(1)(a)(v) *a contrario*

11. Rule 153(1)(a)(v) lists among the factors militating in favour of admission of a written statement in lieu of oral testimony, circumstances in which the evidence in question concerns the impact of crimes on victims.
12. W04785's previous statement which the SPO seeks to have admitted in writing is very limited in scope and does not provide any evidence concerning the immediate and long-lasting impact that the crimes in question have had on this witness. Therefore, Rule 153(1)(a)(v) *a contrario*, this circumstance speaks against admitting W04785's previous statement in writing.

(b) Rule 153(1)(b)(iii): other factors

13. At the time when W04785's statement was taken, she did not have the formal status of a victim participating in these proceedings ("VPP"), did not enjoy the rights of a VPP and was not asked to give evidence about issues relevant to her rights as a VPP. Victims have the right to, *inter alia*, acknowledgement (Article 22(3) of the Law). Trial Panel I explained that acknowledgement "must be understood, in the context of criminal proceedings before the KSC concerning the determination of the charges in the Confirmed Indictment against the Accused, as the victims' personal interest and right to have the harm they allegedly suffered recognised and, to that end, to contribute meaningfully, through the modalities of their participation, to the recognition of such harm and of the responsibility of those at the origin of it."⁹
14. Victims' procedural rights at trial include the possibility to elicit evidence, including through questioning witnesses called by the Parties.¹⁰ Moreover,

⁹ *The Specialist Prosecutor v. Mustafa*, KSC-BC-2020-05/F00152, Decision on victims' procedural rights during trial, 12 July 2021, para. 16, see also paras 17-18; *The Specialist Prosecutor v. Shala*, KSC-BC-2020-04/F00433, Decision on victims' procedural rights during trial and related matters, 24 February 2023, para. 25, see also paras 26-27.

¹⁰ Rule 114(4)(b) of the Rules; Fifth Decision on Victims' Participation, para. 46 and fn 79; F00257/RED, First Decision on Victims' Participation, paras 82-84, 85(d); F01226/01/A01, Annex 1 to Order on the

pursuant to Rule 114(5), when evidence was not produced by the Parties or the produced evidence does not adequately address the impact the alleged crimes have on the personal interests of VPPs, Victims' Counsel may request the Panel to submit relevant evidence or call witnesses to testify.

15. It is therefore submitted that W04785, as a VPP in these proceedings, enjoys a procedural right to have what happened to her (including the impact of the crimes of which she is a victim) acknowledged and, as a witness already called by the Prosecution, should be permitted to give evidence to that effect. To refuse W04785 this opportunity would render her evidence as a dual status victim incomplete.
16. Admitting this evidence under Rule 154 would allow the Panel to receive W04785's evidence in its entirety, at one time, and in an efficient manner without the need for the VPP to be called by Victims' Counsel at a later stage. Of some relevance here are the instructions of Trial Panel I in the *Mustafa* case: "[...] when a witness appears in court for the purpose of providing his or her testimony, both the Parties, as well as Victims' Counsel shall endeavour to put all questions they consider necessary to that witness, subject to the control of the Presiding Judge, so as to avoid having to recall that witness as part of their respective presentation of evidence."¹¹ Victims' Counsel submits that admitting W04785's evidence under Rule 154 would similarly promote clarity and judicial economy. As the Prosecution calls the evidence of W04785, Victims' Counsel will be able to put all necessary questions to her.

Conduct of Proceedings, 25 January 2023, paras 32-36. See also, *Specialist Prosecutor v. Salih Mustafa*, KSC-BC-2020-05/F00152, Decision on victims' procedural rights during trial, 12 July 2021, paras 30-31 and 39-41; *The Specialist Prosecutor v. Shala*, KSC-BC-2020-04/F00433, Decision on victims' procedural rights during trial and related matters, 24 February 2023, paras 38-39, 47-49.

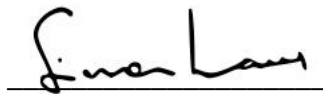
¹¹ *Specialist Prosecutor v. Salih Mustafa*, KSC-BC-2020-05/F00152, Decision on victims' procedural rights during trial, 12 July 2021, para. 31; *The Specialist Prosecutor v. Shala*, KSC-BC-2020-04/F00433, Decision on victims' procedural rights during trial and related matters, 24 February 2023, para. 39.

17. As W04785's oral testimony would not materially delay the proceedings, particularly considering that the Defence has indicated that it does not oppose its admission in writing, Victims' Counsel submits that a consideration of all of these factors militates against W04785's evidence being admitted through Rule 153.

V. RELIEF REQUESTED

18. For the reasons above, Victims' Counsel respectfully requests the Panel to admit W04785's evidence pursuant to Rule 154 instead of Rule 153.

Word count: 1366



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31 May 2024

At The Hague, the Netherlands.