



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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**Language:** English

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**Public Redacted Version of 'Prosecution consolidated reply relating to Rule 153 motion F02322'**

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## I. INTRODUCTION

1. Pursuant to Rule 76 of the Rules,<sup>1</sup> the Specialist Prosecutor's Office ('SPO') hereby replies to the Defence Response,<sup>2</sup> which fails to show any convincing reasons why the Motion<sup>3</sup> should not be granted in relation to W03812, W03815, or W03870. The evidence tendered in the Motion is admissible as it is relevant, *prima facie* reliable, and has probative value which is not outweighed by any prejudice. Moreover, the proposed evidence satisfies all of the relevant conditions for admission in lieu of oral testimony pursuant to Rule 153.

2. The Defence fails to demonstrate that the issues it would explore if it were to cross-examine W03812, W03815, or W03870 are central to its case; or that the inability to cross-examine these witnesses would deprive it of a fair opportunity to raise relevant issues with other witnesses that it will cross-examine.<sup>4</sup>

3. The SPO also replies to the Victims Response<sup>5</sup> in relation to W04785.

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<sup>1</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

<sup>2</sup> Joint Defence Response to Prosecution motion for the admission of the evidence of witnesses W03808, W03812, W03815, W03870, W04785, and W04786 pursuant to Rule 153, KSC-BC-2020-06/F02352, 31 May 2024, Confidential ('Defence Response').

<sup>3</sup> 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, KSC-BC-2020-06/F02322, 21 May 2024, Confidential ('Motion').

<sup>4</sup> See Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W04016, W04019, W04044, W04305, W04361, W04722, W04816, W04850, W04851, and W04852 pursuant to Rule 153, KSC-BC-2020-06/F02111, 8 February 2024, Confidential.

<sup>5</sup> 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), KSC-BC-2020-06/F02351, 31 May 2024, Confidential ('Victims Response').

## II. SUBMISSIONS

### A. W03812

4. The Defence has had the opportunity to cross-examine multiple witnesses, including [REDACTED]<sup>6</sup> and [REDACTED],<sup>7</sup> about the KLA structure in [REDACTED].<sup>8</sup>

5. Inconsistencies between the evidence of a witness proposed for admission pursuant to Rule 153 and other evidence, especially where the other evidence has been subject to cross-examination, is not a bar to Rule 153 admission.<sup>9</sup> Such inconsistencies are an issue relevant to the weight to be assigned to the evidence at the end of the trial in light of all available evidence, and not to assessing admissibility at this stage of the proceedings. Similarly, the frequency with which a witness's name is mentioned in court or their evidence is cited in the SPO's Pre-Trial Brief, is not determinative of whether their evidence is admissible pursuant to Rule 153.<sup>10</sup>

6. Moreover – as is made clear by the Rules which allow the admission of evidence in lieu of oral testimony, and by the Panel's orders directing and encouraging the SPO to utilise Rule 153 to streamline its case and save valuable court time<sup>11</sup> – the Defence does not have a blanket right to cross-examine witnesses, particularly where their evidence primarily relates to the crime-base and not to the acts and conduct of the Accused.<sup>12</sup>

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<sup>6</sup> See e.g. [REDACTED].

<sup>7</sup> See e.g. [REDACTED].

<sup>8</sup> See Defence Response, KSC-BC-2020-06/F02352, para.5.

<sup>9</sup> Contra Defence Response, KSC-BC-2020-06/F02352, paras 5, 8.

<sup>10</sup> Contra Defence Response, KSC-BC-2020-06/F02352, para.7.

<sup>11</sup> See e.g. Transcript, 27 May 2024, pp.16015, 16328-16331.

<sup>12</sup> Contra Defence Response, KSC-BC-2020-06/F02352, para.7.

**B. W03815**

7. W03815's [REDACTED] statement<sup>13</sup> is *prima facie* authentic.<sup>14</sup> The fact that [REDACTED] identifying information may not be included therein, that the witness denies the statement was read back to him despite indications to the contrary,<sup>15</sup> and that the witness asserts he signed the statement because he trusted [REDACTED],<sup>16</sup> does not render the statement inadmissible.<sup>17</sup> This is particularly so in light of other indicia of authenticity such as the witness's signatures, which were recognised by the witness during his SPO interview,<sup>18</sup> and the general consistency between the witness's [REDACTED] statement and SPO interview. Additionally, numerous excerpts from the [REDACTED] statement were referenced or put to the witness during his SPO interview<sup>19</sup> to the extent that admitting the SPO interview without the [REDACTED] statement would render the SPO interview unintelligible. Further, and crucially, during his SPO interview, W03815 deferred to the content of his [REDACTED] statement given his acknowledgement that he has now forgotten certain details due to the passage of time.<sup>20</sup>

8. The fact that some of W03815's assertions were challenged during the course of his SPO interview in no way renders the interview unsuitable for admission pursuant to Rule 153.<sup>21</sup> Significantly, W03815 attested to the truth and accuracy of this interview and his only remark in relation to the manner in which the interview was conducted was that the SPO allegedly mentioned the terms [REDACTED] and [REDACTED], which, the witness stated, [REDACTED].<sup>22</sup>

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<sup>13</sup> SITF00032782-SITF00032791 RED.

<sup>14</sup> *Contra* Defence Response, KSC-BC-2020-06/F02352, paras 12-13.

<sup>15</sup> See SITF00032782-SITF00032791 RED, pp.SITF00032784, SITF00032791.

<sup>16</sup> See 089115-TR-ET Part 3 RED, p.22.

<sup>17</sup> *Contra* Defence Response, KSC-BC-2020-06/F02352, paras 12-13.

<sup>18</sup> 089115-TR-ET Parts 1-3 RED; See 089115-TR-ET Part 2 RED, pp.4-5.

<sup>19</sup> See e.g. 089115-TR-ET Part 2 RED, pp.5-6, 9; Part 3 RED, pp.15, 19, 21-22.

<sup>20</sup> See e.g. 089115-TR-ET Part 3 RED, p.19.

<sup>21</sup> *Contra* Defence Response, KSC-BC-2020-06/F02352, para.19.

<sup>22</sup> 089115-TR-ET Part 3 RED, pp.25-26.

9. Alleged orders given by [REDACTED] in relation to detainees in [REDACTED]<sup>23</sup> could have been addressed during the cross-examination of [REDACTED], and were addressed during [REDACTED]'s cross-examination.<sup>24</sup>

10. The Defence's assertion that no witness has provided meaningful evidence regarding the alleged arrest, detention, and transfer of [REDACTED]<sup>25</sup> ignores the evidentiary record. For example, [REDACTED] testified that he spoke to [REDACTED], while [REDACTED] was detained in [REDACTED].<sup>26</sup> [REDACTED] stated that he questioned [REDACTED] detainees in [REDACTED].<sup>27</sup> [REDACTED] stated that, after 2002, [REDACTED] and [REDACTED] told him that they had transferred the [REDACTED] detainees away from [REDACTED].<sup>28</sup>

11. The Defence fails to provide adequate reasons why the Panel should defer its admission of the evidence of W03812 or W03815 pursuant to Rule 153 until one of them is heard under Rule 154.<sup>29</sup> Both are suitable for admission under Rule 153 now.

### C. W03870

12. As submitted above, the Defence has had the opportunity to cross-examine multiple witnesses including [REDACTED] and [REDACTED] about the KLA structure in [REDACTED],<sup>30</sup> and inconsistencies between the evidence of a witness proposed for admission pursuant to Rule 153 and other evidence is not a bar to Rule 153 admission.<sup>31</sup>

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<sup>23</sup> See Defence Response, KSC-BC-2020-06/F02352, para.14.

<sup>24</sup> [REDACTED].

<sup>25</sup> Defence Response, KSC-BC-2020-06/F02352, paras 21-22.

<sup>26</sup> Transcript, 19 June 2023, p.5098.

<sup>27</sup> [REDACTED], pp.9-10, 21-22; Transcript, 29 April 2024, pp.15091-15092.

<sup>28</sup> [REDACTED], pp.14-17; [REDACTED], pp.2-3.

<sup>29</sup> Defence Response, KSC-BC-2020-06/F02352, para.34.

<sup>30</sup> See Defence Response, KSC-BC-2020-06/F02352, para.25.

<sup>31</sup> *Contra* Defence Response, KSC-BC-2020-06/F02352, paras 25-26.

13. W03870 stated, in relation to the one-page associated exhibit<sup>32</sup> challenged by the Defence,<sup>33</sup> that he was glad the SPO found this document since it shows he did what he could when he [REDACTED].<sup>34</sup> The Defence objections to the admission thereof<sup>35</sup> are irrelevant to its admissibility.

14. W03870 has already made his views on [REDACTED] clear, and the SPO has noted it would not object to admission of the item containing such information.<sup>36</sup> Moreover, the Defence fails to explain how W03870's assertion that during the war he did not know the Accused in this case, means that oral testimony is required to clarify his evidence about the reporting structure at relevant locations.<sup>37</sup>

#### D. W04785

15. In October 2021, the SPO indicated that W04785's evidence might be tendered in writing.<sup>38</sup> In September 2022, the SPO confirmed that W04785's evidence would be tendered pursuant to Rule 153.<sup>39</sup> In making this determination, the SPO took into consideration the limited scope of the witness's evidence, that the witness was not opposed to this procedure when consulted, and that the witness expressed security concerns for [REDACTED] on two separate occasions. The witness has recently reiterated security concerns to the SPO. The Panel's repeated encouragement to streamline the SPO's case also militated in favour of maintaining Rule 153 as the

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<sup>32</sup> U001-2310-U001-2319, p.U001-2318 (U001-2310-U001-2319-ET, p.U001-2318).

<sup>33</sup> Defence Response, KSC-BC-2020-06/F02352, para.31.

<sup>34</sup> 088944-TR-ET Part 2 RED, pp.29-30.

<sup>35</sup> Defence Response, KSC-BC-2020-06/F02352, para.31.

<sup>36</sup> See Motion, KSC-BC-2020-06/F02322, fn.30 and 107757-107757, para.5.

<sup>37</sup> Defence Response, KSC-BC-2020-06/F02352, para.32.

<sup>38</sup> Corrected Version of Annex 2 to Prosecution submission of preliminary witness list, KSC-BC-2020-06/F00542/A02, originally filed on 22 October 2021, correction filed on 23 May 2022, Confidential, p.349, 400.

<sup>39</sup> Annex 3 to Prosecution submission of revised witness list, KSC-BC-2020-06/F00948/A02, 2 September 2022, Confidential, pp.8-9.

appropriate mode of testimony for this witness, as did the Defence not opposing such admission when consulted by the SPO *inter partes* in advance of filing the Motion.<sup>40</sup>

16. Should W04785's evidence be admitted pursuant to Rule 153, Victims' Counsel could still seek leave, pursuant to Rule 114(5), to call W04785 to elicit evidence concerning the impact of the crime relevant to this witness.

### III. CONFIDENTIALITY

17. This request is confidential in accordance with Rule 82(4).

### IV. RELIEF REQUESTED

18. For the aforementioned reasons, the Panel should grant the Motion in its entirety.

**Word count:** 1557



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**Kimberly P. West**

**Specialist Prosecutor**

Monday, 10 June 2024

At The Hague, the Netherlands.

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<sup>40</sup> Email from the SPO to the Defence and Victims Counsel dated 24 April 2024 at 15:16; Email from Co-Counsel for Kadri VESELI on behalf of the Defence dated 9 May 2024 at 10:23. Victims Counsel did not respond to the SPO's 24 April 2024 email.