



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:** 4 September 2024

**Language:** English

**Classification:** Public

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**Public Redacted Version of 'Prosecution motion for admission of evidence of Witnesses W03885, W04422, and W04669 pursuant to Rule 154 and related request with confidential Annexes 1-6'**

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## I. INTRODUCTION

1. Pursuant to Articles 37 and 40 of the Law,<sup>1</sup> and Rules 137-138 and 154 of the Rules,<sup>2</sup> the Specialist Prosecutor's Office ('SPO'): (i) submits the information required by paragraphs 73-74 of the Conduct of Proceedings Order;<sup>3</sup> and (ii) requests the admission of the statements (collectively, 'Rule 154 Statements'), together with the associated exhibits,<sup>4</sup> of the following witnesses: W03885, W04422, and W04669 (collectively, 'Witnesses').<sup>5</sup>

2. Considering the limited scope and straightforward nature of their evidence, their personal circumstances and availability, and recent developments in the proceedings,<sup>6</sup> the SPO has identified W03885, W04422, and W04669 as suitable

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<sup>1</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

<sup>2</sup> 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.

<sup>3</sup> See Annexes 4-6. See also Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Conduct of Proceedings Order').

<sup>4</sup> The Rule 154 Statements and associated exhibits are referred to herein as the 'Proposed Evidence'.

<sup>5</sup> Attached to this motion are three Rule 154 annexes: see Annexes 1-3. 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) has reduced the examination time for W03885 from two hours to one hour; and (ii) has reduced the examination time for W04669 from two hours to one hour.

<sup>6</sup> In particular:

a. Briefing in relation to the Consolidated Motion is not complete. See Prosecution consolidated Rule 153 motion for W04797 and W04808 and Rule 154 motion for W04798 W04809 and W04854, KSC-BC-2020-06/F02465, 22 July 2024, Confidential ('Consolidated Motion'). To enable holistic consideration of the Consolidated Motion – which would ultimately facilitate fair and expeditious proceedings – [REDACTED], the SPO has decided not to call W04798, W04809, and W04854 in the upcoming evidentiary block.

b. The Panel recently granted the Adjudicated Facts Motion, in which the SPO had foreshadowed certain changes. See Decision on Second Prosecution Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F02498, 21 August 2024; Prosecution second motion for judicial notice of adjudicated facts, KSC-BC-2020-06/F02365, 7 June 2024, Confidential ('Adjudicated Facts Motion'), para.19 (the SPO only proposed to call Rule 154 witnesses [REDACTED], if the motion was granted). Calling both [REDACTED], who provide evidence on the same crime site, to testify in the same block would ultimately facilitate fair and expeditious proceedings, noting also the SPO's upcoming Rule 153 motion relating to [REDACTED]. Consistent with paragraph 39 of the Conduct of Proceedings Order, *inter partes* consultations in relation to this motion are underway.

c. The SPO has decided not to rely on the evidence of W04372, who was tentatively scheduled for upcoming evidentiary blocks. See Prosecution withdrawal of Rule 154 application for W04372, KSC-

witnesses to fill gaps in the schedule of the 16 September – 3 October 2024 evidentiary block. W03885 and W04669 are anticipated to be called the week of [REDACTED] 2024, following the testimony of [REDACTED]. W04422 is anticipated to be called to testify on [REDACTED] 2024. Accordingly, the SPO requests an expedited briefing schedule.

3. 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 – considering, in particular, that the Witnesses will be available for cross-examination – is not outweighed by any prejudice. Admission is therefore in the interests of justice.<sup>7</sup>

## II. SUBMISSIONS

### A. W03885

4. *Relevance.* W03885 joined the [REDACTED], around May 1998, and later served as a member of the Military Police within [REDACTED].

5. W03885 was in [REDACTED]. W03885 and others [REDACTED]. [REDACTED]. [REDACTED]. W03885 was present when [REDACTED].

6. W03885 also provides information concerning his roles, and those of others, in the KLA, and on the membership, structure, activities, authorities, areas of

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BC-2020-06/F02529, 4 September 2024, Confidential. On 29 August 2024, the SPO notified the Parties, participants, and Panel that W04372 would not be called during the upcoming evidentiary block.

<sup>7</sup>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.

responsibility and reporting lines of KLA units, including the [REDACTED], and KLA Military Police units.

7. W03885's evidence is thus relevant to charged crimes in the Indictment.<sup>8</sup>

8. *Authenticity and reliability.* W03885's Rule 154 Statement is *prima facie* authentic and reliable, bearing sufficient indicia of reliability.<sup>9</sup> W03885's [REDACTED] statement<sup>10</sup> and his audio-video recorded SPO interview,<sup>11</sup> which is recorded in verbatim transcripts, are authentic, including details such as the date and attendees.<sup>12</sup> During his SPO interview, W03885 confirmed that he stood by his [REDACTED] statement<sup>13</sup> and confirmed that the content of his SPO statement is true and accurate, that his SPO statement was given voluntarily without any threats, force, or guarantees, and that he had no objections to the manner or process by which his SPO statement was taken.<sup>14</sup>

9. *The associated exhibit is admissible.* The associated exhibit forming part of the Proposed Evidence in Annex 1 – a hand-drawn sketch – should be admitted as it is an inseparable and indispensable part of W03885's Rule 154 Statement. The associated exhibit is integral to the Rule 154 Statement as it was discussed and reviewed therein, as detailed in Annex 1.

10. *Suitable for Rule 154 admission.* W03885's Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. Rule 154 admission for W03885's Proposed Evidence will significantly reduce the time required for W03885's direct

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<sup>8</sup> 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 ('Pre-Trial Brief'), paras [REDACTED].

<sup>9</sup> For an individualised assessment of reliability, see Annex 1.

<sup>10</sup> 051757-051760-ET RED2.

<sup>11</sup> 070966-TR-ET Part 1 RED, 070966-TR-ET Part 2 RED2, 070966-TR-ET Part 3 RED.

<sup>12</sup> See 051757-051760-ET RED2, p.051757; 070966-TR-ET Part 1 RED, p.1.

<sup>13</sup> 070966-TR-ET Part 1 RED, pp.6-7.

<sup>14</sup> 070966-TR-ET Part 3 RED, pp.7-8.

examination. The SPO reduces its estimate for W03885's supplemental examination from two hours<sup>15</sup> to one hour. During the supplemental examination, the SPO would elicit brief oral testimony on essential matters, including to clarify or explain certain aspects of W03885's evidence. The SPO would also address relevant issues not covered in W03885's Proposed Evidence.

B. W04422

11. *Relevance.* W04422 is [REDACTED]. On [REDACTED], KLA Military Police arrested and detained [REDACTED] at the [REDACTED] detention centre. [REDACTED]. [REDACTED]. [REDACTED].

12. Following [REDACTED] disappearance, W04422 and [REDACTED] visited [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. Throughout [REDACTED] detention, W04422 and [REDACTED], and unsuccessfully made attempts to visit him.

13. [REDACTED]. [REDACTED] he was being interrogated, maltreated, and abused [REDACTED].

14. In [REDACTED] 1999, W04422 went to [REDACTED]. [REDACTED]. [REDACTED] and could not provide any further assistance. [REDACTED].

15. After the war ended, W04422 [REDACTED], and was told [REDACTED] had been released and was possibly [REDACTED].

16. [REDACTED]. [REDACTED]. W04422 was told [REDACTED] had been killed by the KLA there, and he had seen his body with his own eyes.

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<sup>15</sup> Reduced from the two hours indicated in the Witness List. See Amended List of Witnesses, KSC-BC-2020-06/F01594/A01, 9 June 2023, Strictly Confidential and *Ex Parte* ('Witness List'), p.220/567.

17. W04422's evidence is thus relevant to charged crimes in the Indictment.<sup>16</sup>
18. *Authenticity and reliability.* W04422's Rule 154 Statement is comprised of (i) W04422's SPO interview,<sup>17</sup> and (ii) [REDACTED]<sup>18</sup> and [REDACTED]<sup>19</sup> [REDACTED]. Each statement bears sufficient indicia of authenticity and reliability.
19. W04422's SPO interview is recorded in a verbatim transcript of the audio-video recorded interview, and is authentic and reliable.<sup>20</sup> W04422 confirmed that the contents of his recorded statement are true and accurate, his statement was given voluntarily without any threats, force, or guarantees, and he had no objections to the manner or process by which the statement was taken.<sup>21</sup>
20. During his SPO interview, W04422 had an opportunity to review his prior statements, including [REDACTED] tendered herein as part of his Rule 154 Statement. W04422 confirmed [REDACTED] was voluntary, accurate, and truthful.<sup>22</sup> During his SPO interview, W04422 was also given the opportunity to clarify or make corrections to, *inter alia*, [REDACTED].<sup>23</sup> In addition, [REDACTED] bears sufficient independent indicia of reliability.<sup>24</sup>
21. *The associated exhibits are admissible.* The associated exhibits forming part of the Proposed Evidence in Annex 2 – consisting of two documents concerning events surrounding [REDACTED] – should be admitted as they are an inseparable and indispensable part of W04422's Rule 154 Statement, in that they are used and explained in W04422's evidence.

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<sup>16</sup> Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

<sup>17</sup> 066547-TR-ET Part 1 RED2, 066547-TR-ET Part 2 RED.

<sup>18</sup> SPOE00038114-SPOE00038127 RED2.

<sup>19</sup> SPOE00119681-00119713 RED2.

<sup>20</sup> For an individualised assessment, *see* Annex 2.

<sup>21</sup> 066547-TR-ET Part 2 RED, pp.19-21.

<sup>22</sup> *See* 066547-TR-ET Part 1 RED2, pp.10-12.

<sup>23</sup> *See* 066547-TR-ET Part 1 RED2, pp.27-28, 39-43.

<sup>24</sup> For an individualised assessment, *see* Annex 2.

22. *Suitable for Rule 154 admission.* W04422's Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. Further, [REDACTED] was discussed in the SPO interview and forms an integral part thereof. In the circumstances of this witness and his evidence, and considering their duplicative nature, the SPO has not tendered the witness's other prior statements, which were also discussed during the SPO interview.

23. Rule 154 admission for W04422's Proposed Evidence will significantly reduce the number of hours required for direct examination. The SPO intends to elicit brief oral testimony from W04422 for approximately one hour on essential matters that clarify or explain certain aspects of his evidence.

C. W04669

24. *Relevance.* In [REDACTED] 1999, W04669, [REDACTED]. [REDACTED]. In [REDACTED] 1999, W04669 was [REDACTED], and taken to the KLA compound in [REDACTED]. He was handed over to a soldier in black clothes wearing KLA insignia. W04669 was deprived of his belongings and placed in a barn with [REDACTED] other people. The barn was guarded at all times by armed soldiers in black clothes and W04669 and the other detainees were kept in appalling conditions. The detainees were individually taken outside to be interrogated and mistreated. W04669 heard the voices of other detainees while they were being beaten. During W04669's interrogation at [REDACTED], he was accused of, *inter alia*, [REDACTED], after which he was beaten. W04669 was released [REDACTED] days later.

25. On two occasions, KLA members [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. W04669 witnessed [REDACTED]. [REDACTED]. W04669 learned after the war that [REDACTED].

26. W04669's evidence is thus relevant to charged crimes in the Indictment.<sup>25</sup>

27. *Authenticity and Reliability.* W04669's Proposed Evidence is *prima facie* authentic and reliable. The Rule 154 Statement comprises transcripts of his SPO interview,<sup>26</sup> and his testimony in *Specialist Prosecutor v. Mustafa* (KSC-BC-2020-05).<sup>27</sup> These statements bear sufficient indicia of reliability.<sup>28</sup> W04669's SPO interview is recorded in verbatim transcripts. W04669 was duly advised of his rights as a witness<sup>29</sup> and confirmed the contents of his interview as true and accurate.<sup>30</sup> The witness's *Mustafa* testimony was given under oath and recorded in verbatim transcripts.

28. *The associated exhibit is admissible.* The associated exhibit forming part of the Proposed Evidence in Annex 3 – a photograph marked by the witness – should be admitted as an inseparable and indispensable part of the Rule 154 Statement. The Rule 154 Statement would be less comprehensible or have lesser probative value without the associated exhibit.

29. *Suitable for Rule 154 Admission.* W04669's Proposed Evidence satisfies the requirements and serves the purposes of Rule 154. Rule 154 admission for W04669's Proposed Evidence will significantly reduce the number of hours required for direct examination. While W04669's two statements overlap to some degree, altogether they are moderate in length, and should be admitted and considered as they include complementary details and reflect the consistency of the witness's evidence. If this request is granted, the SPO intends to elicit brief oral testimony from W04669 for

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<sup>25</sup> See, *inter alia*, Indictment, KSC-BC-2020-06/F00999/A01, paras [REDACTED]; Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras [REDACTED].

<sup>26</sup> 082023-TR-ET Parts 1-4 RED4.

<sup>27</sup> KSC-BC-2020-05 20211110 ENG; KSC-BC-2020-05 20211111 ENG. The SPO disclosed the unredacted versions of his testimony in Disclosure Package 1386.

<sup>28</sup> For an individualised assessment of reliability, see Annex 3.

<sup>29</sup> 082023-TR-ET Part 1 RED4, pp.2-3.

<sup>30</sup> 082023-TR-ET Part 4 RED4, pp.8-9.



approximately one hour<sup>31</sup> on essential matters that clarify or explain certain aspects of his evidence.

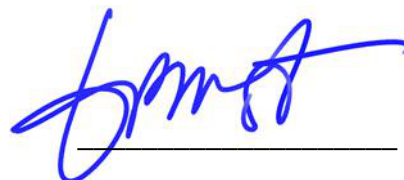
### III. CLASSIFICATION

30. This submission and its Annexes are confidential pursuant to Rule 82(4) and to give effect to existing protective measures. In the specific circumstances of these witnesses and their protective measures, no redactions to ERNs of prior statements or associated exhibits are required.

### IV. RELIEF REQUESTED

31. For the foregoing reasons, the SPO requests: (i) an expedited briefing schedule; and (ii) that the Panel admit the Proposed Evidence, subject to fulfilment of the Rule 154 conditions by the relevant witnesses during their appearances in court.

**Word Count: 2,713**



**Kimberly P. West**

**Specialist Prosecutor**

Wednesday, 4 September 2024

At The Hague, the Netherlands.

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<sup>31</sup> Reduced from the two hours indicated in the Witness List. See Witness List, KSC-BC-2020-06/F01594/A01, p.412/567.