



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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Prosecution motion for admission of evidence of W04747 pursuant to Rule 155

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Articles 37 and 40 of the Law,¹ and Rules 137-138 and 155 of the Rules,² the Specialist Prosecutor's Office ('SPO') hereby seeks admission of the statements,³ together with associated exhibits,⁴ of W04747.

2. As set out in prior filings⁵ and disclosures⁶ summarised below, W04747's failure to attend as a witness has been materially influenced by improper interference. Reasonable efforts to secure this evidence are exhausted in light of W04747's refusal to consent to testify despite a summons issued by his country of residence ('Third State').⁷ W04747's evidence cannot otherwise be obtained, and it is in the interests of justice to admit the Proposed Evidence pursuant to Rule 155(2).

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(s)' are to the Rules.

³ The accounts tendered for admission are the 'Rule 155 Statements'.

⁴ See Annex 1. The Rule 155 Statements and associated exhibits are the 'Proposed Evidence.' The audio-visual recordings of the interviews are also tendered with the relevant written statements. Annex 1 contains the items from the SPO's Rule 154 request for this witness (KSC-BC-2020-06/F02625/A07), minus all associated exhibits not tendered. The removed items include the three items excluded by the Panel in Public Redacted Version of Decision on Prosecution Motion for Admission of Evidence of Witnesses W02586, W03873, W04264, W04393, W04401, W04679, and W04747 pursuant to Rule 154, KSC-BC-2020-06/F02720/RED, 14 November 2024 ('Rule 154 Decision') (U000-7684-U000-7684-ET (admitted elsewhere as P00128_ET); 060557-060557-ET; and 060558-060558-ET), as well as four further items since admitted through the Decision on Prosecution Motion for Admission of Shala Zone and Karadak Zone Documents, KSC-BC-2020-06/F02980, 4 March 2025 (U000-8583-U000-8583-ET Revised; U000-4168-U000-4169-ET Revised; 060465-060465-ET; and 060466-060467-ET).

⁵ Annexes 1-2 to Confidential Redacted Version of Prosecution request for video-conference testimony for W04747, KSC-BC-2020-06/F02990/CONF/RED/A01/COR and KSC-BC-2020-06/F02990/CONF/RED/A02, 7 March 2025, Confidential (notified 10 March 2025, with corrected version of Annex 1 notified 11 March 2025) ('Video Link Request').

⁶ Third State Minutes of Preparation Session, 126751-126759 RED; Official Note of Contact with W04747, 17 March 2025, 126627-126628; Preparation Note 2, 126605-126626 (126607-126626-ET); Preparation Note 1, 126604-126604; Official Note of Contact with W04747, 11 March 2025, 126459-126460. See also Letter from Third State Authorities, Email from the SPO, 31 March 2025, at 20:56. These items are only relied upon as supporting material for the present motion, and are not tendered as such.

⁷ See Confidential Redacted Version of "Further Registry Submissions Regarding the Specialist Prosecutor's Office's Request for Video-Conference Testimony for Witness W04747", KSC-BC-2020-06/F03052/CONF/RED, 24 March 2025, Confidential, para.5.

3. In the alternative, there are compelling reasons for the admission of the Proposed Evidence under Rule 155(1).

II. SUBMISSIONS

4. The Panel may admit evidence pursuant to Rule 155(2) provided that: (a) the person has failed to attend as a witness or, having attended, has not given evidence at all or in a material respect; (b) the failure of the person to attend or to give evidence has been materially influenced by improper interference, including threats, intimidation, injury, bribery, or coercion; (c) where appropriate, reasonable efforts have been made pursuant to Rule 100 and Rule 121 to secure the attendance of the person as a witness or, if in attendance, to receive from the witness all material facts known to that witness; (d) the proposed evidence or evidence to the same effect cannot be otherwise obtained; and (e) it is in the interests of justice. The improper interference required need not be attributable to the Accused.⁸

A. W04747'S FAILURE TO APPEAR HAS BEEN MATERIALLY INFLUENCED BY IMPROPER INTERFERENCE

5. [REDACTED].⁹ [REDACTED].¹⁰

⁸ Pursuant to Rule 155(3)(b)(ii), the apparent role in the interference of (someone acting on behalf of) a party is only a factor to be considered in determining whether the admission is in the interest of justice. The ICC also interprets its analogous rule – Rule 68(2)(d) of the ICC Rules – in the same way. *See* ICC, *Prosecutor v. Yekatom and Ngaïssona*, ICC-01/14-01/18-2126-Red, Trial Chamber V, Public redacted version of Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(d) of the Rules, 31 October 2023, para.20; ICC, *Prosecutor v. Gicheru*, ICC-01/09-01/20-247-Red, Trial Chamber III, Public redacted version of Decision on the Prosecution's Request to Admit Prior Recorded Testimony under Rule 68(2)(d), 14 December 2021, para.15; ICC, *Prosecutor v. Ruto and Sang*, ICC-01/09-01/11-1938-Corr-Red2, Public redacted version of Decision on Prosecution Request for Admission of Prior Recorded Testimony, 19 August 2015, para.44 (decision reversed on other grounds); ICC, Working Group on Lessons Learnt Report, ICC-ASP/12/37/Add.1, Annex II.A, para.34.

⁹ SPO Interview, 083220-TR-ET Parts 2-9, 11, 13, 15-16 and Parts 1,10, 12, 14 RED2, 1-4; SPO Interview, 083221-TR-ET Parts 1-4, 6, 8-9, 11-13, 15 and Parts 5, 7, 10, 14, 16 RED2.

¹⁰ Annex 1 to Video-Link Request, KSC-BC-2020-06/F02990/CONF/RED/A01/COR, 055745-055746, para.5 and 060104-060106, para.7.

6. [REDACTED].¹¹ [REDACTED].¹² [REDACTED].¹³ [REDACTED].¹⁴

7. [REDACTED].¹⁵ [REDACTED].¹⁶ [REDACTED].¹⁷ [REDACTED].¹⁸

8. [REDACTED].¹⁹ [REDACTED].²⁰ [REDACTED].²¹ [REDACTED].²²
[REDACTED].²³ [REDACTED].²⁴ [REDACTED].²⁵

B. REASONABLE EFFORTS TO SECURE W04747'S EVIDENCE ARE EXHAUSTED

9. Because W04747 does not reside in Kosovo, the SPO is unable to compel his attendance in the same manner as it can for witnesses in Kosovo.²⁶

¹¹ Annex 2 to Video-Link Request, KSC-BC-2020-06/F02990/CONF/RED/A02, 082136-01-TR-ET Revised, p.3 and 081358-03-TR-ET Revised, p.30.

¹² [REDACTED].

¹³ [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

¹⁴ Annex 1 to Video-Link Request, KSC-BC-2020-06/F02990/CONF/RED/A01/COR, paras 3, 5.

¹⁵ Official Note of Contact with W04747, 17 March 2025, 126627-126628, para.2; Annex 1 to Video-Link Request, KSC-BC-2020-06/F02990/CONF/RED/A01/COR, 125894-125895, paras 5-6.

¹⁶ Annex 1 to Video-Link Request, KSC-BC-2020-06/F02990/CONF/RED/A01/COR, 125894-125895, para.7.

¹⁷ Preparation Note 2, 126605-126626, p.126605 (para.4); Official Note of Contact with W04747, 11 March 2025, 126459-126460, paras 4-5.

¹⁸ Official Note of Contact with W04747, 11 March 2025, 126459-126460, para.6. *See also* Preparation Note 1, 126604-126604, para.3.

¹⁹ Third State Minutes of Preparation Session, 126751-126759 RED, p.126755; Official Note of Contact with W04747, 17 March 2025, 126627-126628, para.4; Official Note of Contact with W04747, 11 March 2025, 126459-126460, para.3; Annex 1 to Video-Link Request, KSC-BC-2020-06/F02990/CONF/RED/A01/COR, 125894-125895, para.3.

²⁰ Preparation Note 1, 126604-126604, para.3.

²¹ Preparation Note 2, 126605-126626, p.126605 (para.4). [REDACTED].

²² Preparation Note 2, 126605-126626, p.126605 (para.3).

²³ Preparation Note 2, 126607-126626-ET, pp.126607, 126609, 126612 [REDACTED], 126614, 126617, 126619.

²⁴ Preparation Note 2, 126607-126626, pp.126608, 126610-126611.

²⁵ Preparation Note 2, 126607-126626-ET, pp.126613, 126615, 126616, 126618, 126621-126622, 126624-126625.

²⁶ *See* Rules 100 and 121.

10. [REDACTED],²⁷ [REDACTED].²⁸ [REDACTED].

11. [REDACTED],²⁹ [REDACTED].³⁰

12. [REDACTED],³¹ [REDACTED].³² [REDACTED],³³ [REDACTED]³⁴
[REDACTED].

13. The SPO has pursued the possibility of W04747 testifying to its logical end. No further measure could reasonably secure his testimony.

C. W04747'S EVIDENCE CANNOT OTHERWISE BE OBTAINED, AND ITS ADMISSION IS IN THE INTERESTS OF JUSTICE

14. At this point in the proceedings, there is no other way to obtain W04747's evidence other than through Rule 155. Admission of the Proposed Evidence pursuant to Rule 155(2) is in the interests of justice, considering that: (i) the Rule 155 Statements are fully recorded formal interviews, which were taken in a way to ensure their reliability; (ii) W04747 has consistently asserted the truth of these statements, including as recently as his preparation session;³⁵ (iii) [REDACTED]; and (iv) the very creation of the KSC was premised on being a specialist court able to effectively

²⁷ See Prosecution reply to joint Defence response F03016, KSC-BC-2020-06/F03021, 17 March 2025, Confidential, para.3; Video-Link Request, KSC-BC-2020-06/F02990/CONF/RED, paras 3-8.

²⁸ In this regard, *see* Decision on Prosecution Request for Video-Conference Testimony for W04747, KSC-BC-2020-06/F03057, 26 March 2025, Confidential (Video-Link Decision), para.20.

²⁹ Annex 2 to Video-Link Request, KSC-BC-2020-06/F02990/CONF/RED/A02, 5014862-5014866.

³⁰ Annex 1 to Video-Link Request, KSC-BC-2020-06/F02990/CONF/RED/A01/COR, 126119-126120, para.3.

³¹ Video-Link Decision, KSC-BC-2020-06/F03057.

³² Confidential Redacted Version of "Further Registry Submissions Regarding the Specialist Prosecutor's Office's Request for Video-Conference Testimony for Witness W04747", KSC-BC-2020-06/F03052/CONF/RED, 24 March 2025, Confidential, para.7.

³³ Letter from Third State Authorities, Email from the SPO, 31 March 2025, at 20:56; Third State Minutes of Preparation Session, 126751-126759 RED, p.126755; Official Note of Contact with W04747, 17 March 2025, 126627-126628, para.1; Annex 1 to Video-Link Request, KSC-BC-2020-06/F02990/CONF/RED/A01/COR, 125894-125895, para.7.

³⁴ [REDACTED]. [REDACTED].

³⁵ Preparation Note 1, 126604-126604, para.3; Annex 1, Official Note of Contact, 091904-091905, para.8; Annex 1 to Video-Link Request, KSC-BC-2020-06/F02990/CONF/RED/A01/COR, 107893-107895, para.12 and 125894-125895, para.8.

respond to the climate of witness intimidation in Kosovo which has now pressured W04747 into silence.

D. ALTERNATIVELY, W04747 IS UNAVAILABLE

15. For the same reasons why reasonable efforts are exhausted in the Rule 155(2) context, W04747's circumstances constitute compelling reasons to determine him unavailable under Rule 155(1). Unavailability within the meaning of Rule 155(1) is a fact-intensive and case-by-case assessment, and has been found to include circumstances: (i) where the authorities acted diligently under relevant domestic laws and by resort to available international legal assistance mechanisms to no avail;³⁶ (ii) where, despite reasonable efforts, there are poor prospects of being able to successfully secure *viva voce* testimony at a reasonable stage of the proceedings;³⁷ and (iii) where, despite reasonable efforts, there are objective obstacles to a witness's cooperation and the court's ability to secure their testimony, and the reasonably foreseeable consequences of enforcing a summons or taking further measures would cause undue and disproportionate hardship.³⁸ All these considerations squarely apply to W04747's situation and justify admission of his evidence pursuant to Rule 155(1).

³⁶ See e.g. ECtHR, *Gabrielyan v. Armenia*, Judgment, 8088/05, 10 April 2012, para.82; ICC, *Prosecutor v. Al Hassan*, Public Redacted Version of Decision on the introduction into evidence of the prior recorded testimony of P-0605 and P-0582 pursuant to Rule 68(2)(c) of the Rules, ICC-01/12-01/18-2114-Red, 14 February 2022, paras 26-28.

³⁷ See e.g. ICC, *Prosecutor v. Ntaganda*, Public Redacted Version of 'Decision on certain requests related to the admission of the prior recorded testimony of Witness D-0080, ICC-01/04-02/06-2242-Red, 22 February 2018, para.32; ECtHR, *Mirilashvili v. Russia*, Judgment, 6923/04, 11 December 2008, para.220.

³⁸ See e.g. ICC, *Prosecutor v. Bemba et al.*, Decision on 'Prosecution Submission of Evidence Pursuant to Rule 68(2)(c) of the Rules of Procedure and Evidence', ICC-01/05/13-1481-Red-Corr, 12 November 2015, paras 17-18.

E. THE PROPOSED EVIDENCE IS RELEVANT, AUTHENTIC, RELIABLE, AND ADMISSION CAUSES NO UNDUE PREJUDICE

16. The Panel has previously found that W04747's Proposed Evidence as tendered herein is relevant, *prima facie* authentic, and probative.³⁹ The probative value of the Proposed Evidence is not outweighed by any prejudice. This evidence: (i) may not be relied upon to a sole or decisive extent in reaching a conviction;⁴⁰ (ii) was recorded in a manner that enables the Parties and Panel to assess the witness's credibility; and (iii) as set out below, is corroborated by and complementary to a significant amount of evidence, including of witnesses that have been available for cross-examination.

17. W04747's evidence concerning acts and conduct of the Accused does not bar admission under Rule 155.⁴¹ Further, the (in)ability to cross-examine a witness on certain matters can be adequately addressed in the Panel's final, holistic assessment of the evidence.⁴² The Defence has also had ample opportunity to question other witnesses on many of the same topics, including the same and similar matters related to the Accused's acts and conduct. This can be shown in relation to significant aspects of W04747's account upon which the SPO seeks to rely,⁴³ as read together with his Rule 95 summary and the citations to his evidence in the SPO Pre-Trial Brief.

³⁹ Rule 154 Decision, KSC-BC-2020-06/F02720/RED, paras 77-94.

⁴⁰ Rule 140(4)(a).

⁴¹ See e.g. Decision on Prosecution Fourth Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F02283, 3 May 2024, Confidential ('Fourth Decision'), paras 14, 66; Decision on Prosecution Sixth Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F03012, 23 March 2025, Confidential ('Sixth Decision'), para.57.

⁴² See e.g. Fourth Decision, KSC-BC-2020-06/F02283, para.51; Sixth Decision, KSC-BC-2020-06/F03012, para.57.

⁴³ In this regard, see Rule 154 Decision, KSC-BC-2020-06/F02720/RED, para.81.

18. [REDACTED]⁴⁴ [REDACTED].⁴⁵ [REDACTED]⁴⁶ [REDACTED],⁴⁷
[REDACTED].⁴⁸ [REDACTED]⁴⁹ [REDACTED].⁵⁰ [REDACTED].⁵¹

19. [REDACTED],⁵² [REDACTED].⁵³ [REDACTED].⁵⁴ [REDACTED],⁵⁵
[REDACTED].⁵⁶

20. [REDACTED].⁵⁷ [REDACTED],⁵⁸ [REDACTED].⁵⁹ [REDACTED],⁶⁰
[REDACTED].⁶¹

⁴⁴ 083220-TR-ET Part 1 RED2, pp.16-18.

⁴⁵ 083220-TR-ET Part 1 RED2, pp.14-15.

⁴⁶ 083220-TR-ET Part 3, pp.8-12.

⁴⁷ 083220-TR-ET Part 3, pp.17, 22-23.

⁴⁸ W04290, T.25020-21; W04403, T.25926; W01453, T.21836; W04752, T.17346; W01493, T.11117; P01745, p.6D00-0773; P01115.1_ET, pp.22-23.

⁴⁹ 083220-TR-ET Part 6, pp.32-33, 36-38.

⁵⁰ W04752, T.17400, 17415-16; W04739, T.14163-69. *See also* P01108; P01109, p.U002-2861 (notes written by W04401).

⁵¹ *Consider* 083220-TR-ET Part 3, pp.22-23; 083220-TR-ET Part 4, pp.4-5; 083220-TR-ET Part 5, pp.9-10; *with* W04752, P01355.14_ET, p.20; W04744, T.17134-35; P01097.8_ET, pp.4-6; P00492.4_ET, pp.27-29; W04746, T.5606-07; P02027.1, T.2073.

⁵² 083220-TR-ET Part 10 RED2, pp.4-5.

⁵³ 083220-TR-ET Part 10 RED2, p.6.; 083220-TR-ET Part 13, pp.20-21; 083221-TR-ET Part 1, pp.15-16. *See also* U000-8725-U000-8737-ET, p.U000-8732 (tendered associated exhibit of W04747).

⁵⁴ 083220-TR-ET Part 12 RED2, pp.1-2.

⁵⁵ 083220-TR-ET Part 8, p.25.

⁵⁶ W04401, P01870.3_ET, p.16.6-18; P01870.6_ET, p.13.9-14.4; P01871, para.43; W04748, T.3511-14. *See also* W04746, T.5563-67; P00890 (discussed in 083220-TR-ET Part 13, pp.13.10-15); P00074; P00158; P00167; P00270; P00273; P00274; P00283; P00288; P00292; P00303, P00507; P00651; P01837; SITF00240595-SITF00240597-ET (admitted TBA_F02951). [REDACTED]. 083220-TR-ET Part 9, p.16.

⁵⁷ 083220-TR-ET Part 10 RED2, pp.9-10; 083220-TR-ET Part 12 RED2, p.5; 083220-TR-ET Part 14 RED2, p.36. [REDACTED].

⁵⁸ 083220-TR-ET Part 15, pp.9-10.

⁵⁹ 083220-TR-ET Part 4, p.16.

⁶⁰ [REDACTED].

⁶¹ P00959; P00738; P00711; P00104; P00074. [REDACTED].

21. [REDACTED].⁶² [REDACTED],⁶³ [REDACTED].⁶⁴ [REDACTED],⁶⁵
[REDACTED]⁶⁶ [REDACTED].⁶⁷

22. [REDACTED].⁶⁸ [REDACTED].⁶⁹

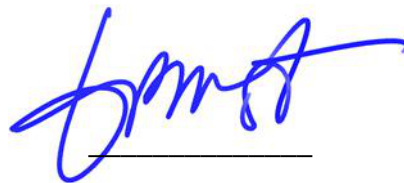
III. CLASSIFICATION

23. This filing is confidential pursuant to Rule 82(3) since it contains protected information concerning W04747. A public redacted version will be filed.

IV. RELIEF REQUESTED

24. For the foregoing reasons, the Panel should admit the Proposed Evidence as identified in Annex 1.

Word Count: 3470



Kimberly P. West

Specialist Prosecutor

Tuesday, 1 April 2025

At The Hague, the Netherlands.

⁶² 083220-TR-ET Part 13, pp.9, 30-32. [REDACTED]. P01134, p.SITF00010254.

⁶³ 083220-TR-ET Part 3, p.20; 083221-TR-ET Part 1, p.7.

⁶⁴ P02029, para.8; P02025, p.SITF00031115 [REDACTED]. [REDACTED].

⁶⁵ 083220-TR-ET Part 4, pp.29-30.

⁶⁶ P02025, pp.SITF00031115, SITF00031118.

⁶⁷ P00314, pp.034297-98; P00680, p.034243. *See also* W04240, T.20924; P00381, p.034463; P00678, p.034325.

⁶⁸ 083221-TR-ET Part 7 RED, pp.11, 18-19, 24-25, [REDACTED].

⁶⁹ [REDACTED]. [REDACTED].