



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: 5 May 2025

Language: English

Classification: Public

Public redacted version of 'Prosecution reply relating to consolidated motion for admission of evidence pursuant to Rules 153 and 155 (F03056) with public

Annex 1'

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I. INTRODUCTION

1. The Response¹ misrepresents submissions in the Motion² and disregards the applicable law and the Panel's previous findings. The evidence proposed in the Motion ('Proposed Evidence') satisfies all relevant criteria and should be admitted.

II. SUBMISSIONS

A. W04754

2. Contrary to Defence submissions, W04754 is amply corroborated by multiple witnesses and adjudicated facts.³ The lack of corroboration of any specific aspects or details of W04754's evidence is not a basis for refusing admission, but instead is relevant to ultimate weight.

3. W04754's corroborated and complementary evidence about the organisation and structure of the KLA in Albania, his interactions with other KLA members, and his knowledge of the collaborator policy does not bar Rule 153 admission.⁴ The Panel, in fact, has previously admitted under Rule 153 statements covering organisational matters such as the KLA structure in locations relevant to the Indictment,⁵ KLA threats against members of the LDK and FARK,⁶ and KLA mobilisation procedures.⁷

¹ Joint Defence Response to Prosecution consolidated motion for the admission of evidence pursuant to Rules 153 and 155 and related requests, KSC-BC-2020-06/F03143, 24 April 2025 ('Response'). Annex 1 to this reply includes full citations for filings referred to herein by their case/filing number.

² Prosecution consolidated motion for the admission of evidence pursuant to Rules 153 and 155 and related requests, KSC-BC-2020-06/F03056, 24 March 2025 ('Motion'). *See also* KSC-BC-2020-06/F03101.

³ Motion, para.34.

⁴ *Contra*, Response, para.4. For this reason, the Panel should also reject the Defence request to redact related parts of the Proposed Evidence, which is consistent with and complementary to other evidence in the case and may be appropriately assigned weight at the conclusion of the trial. *Contra* Response, paras.10-11.

⁵ KSC-BC-2020-06/F02666, paras.16, 22-24.

⁶ KSC-BC-2020-06/F02421, paras.57, 60.

⁷ KSC-BC-2020-06/F02557, para.72.

4. Moreover, W04754's evidence about persons other than the Accused – including their alleged subordinates and JCE members – is not precluded from admission under Rule 153.⁸ In arguing that it is,⁹ the Defence relies on a decision declining to admit the evidence of a witness who 'extensively' referred to the incriminatory conduct of an alleged JCE member, which included his personal and direct involvement in detentions and mistreatment.¹⁰ This is not the case with W04754, nor does the Defence argue that it is.

5. With respect to the additional redactions proposed by the Defence, the SPO agrees with those listed in paragraph 9(i)-(iii) of the Response.

B. W04260

6. The fact that W04260 previously expressed his unwillingness does not exclude that he is also unavailable to testify.¹¹ Rule 155(1) explicitly includes witnesses who can no longer be traced with reasonable diligence, which is the case for W04260.¹²

7. Moreover, as is clear from the plain language of Rule 155(2)-(3), improper interference need not be attributable to the Accused.¹³ 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 admission is in the interest of justice.¹⁴ Further, in arguing that the SPO provided no evidence of improper interference [REDACTED],¹⁵ the Defence ignores [REDACTED].¹⁶

⁸ KSC-BC-2020-06/F01603, paras.16 (and sources cited), 159.

⁹ Response, para.4.

¹⁰ KSC-BC-2020-06/F02111, para.42 (and sources cited).

¹¹ *Contra* Response, para.14.

¹² Motion, paras.3-8.

¹³ *Contra* Response, para.16.

¹⁴ The ICC interprets an analogous rule similarly. *See e.g.*: ICC-01/14-01/18-2126-Red, para.20.

¹⁵ *Contra* Response, para.16.

¹⁶ KSC-BC-2020-06/F03056/A03, Item 7, pp.23-24.

8. Finally, alleged inconsistencies and credibility issues do not render W04260's evidence inadmissible.¹⁷

C. W04738

9. *Unavailability.* The Defence's submissions regarding W04738's unavailability mischaracterise both the Rule 155(1) standard and the record. The Motion is based on W04738's health condition preventing him from testifying orally within a reasonable time.¹⁸ The related security concerns were identified as contextual factors informing his health situation, not as separate grounds.

10. Regarding the Defence's claim that the health information provided is 'generic' and insufficient,¹⁹ [REDACTED]. Any speculation about 'malingering'²⁰ is inappropriate, unsupported by evidence, and cannot supersede professional medical assessment.

11. Available information contradicts the Defence's characterisation of W04738 as merely a 'reluctant' witness.²¹ The Defence provides a selective reading of official contact notes whilst ignoring documented health and security concerns predating the start of the trial.²²

12. As for access to the entire [REDACTED] report, the Defence's request lacks legal basis and substantive justification. The report contains privileged medical information protected under Rule 111(3).²³ The Parties, which lack medical expertise,

¹⁷ KSC-BC-2020-06/F01603, paras.19, 50, 64. *See also* KSC-BC-2020-06/F02013, para.51. *Contra* Response, paras.19-23.

¹⁸ Motion, para.9.

¹⁹ Response, paras.26-29.

²⁰ Response, para.29.

²¹ Response, paras.31-43.

²² *See* KSC-BC-2020-06/F03056/A03, items: 1-6. *See also* KSC-BC-2020-06/F03056/A02, item 1: 082883-TR-ET Part 25 Revised 2 RED, pp.50-53.

²³ *See* KSC-CC-PR-2020-09/F00006, paras.36, 38-39, 41.

have been provided with sufficient information to make informed submissions, as demonstrated by the detailed Response.

13. *Reliability.* The Defence's contention that W04738's evidence is not *prima facie* reliable²⁴ misapprehends both the applicable standard²⁵ and the Proposed Evidence's nature.

14. While corroboration is not a pre-condition to admission,²⁶ as already indicated, the core of W04738's evidence is corroborated by and in line with other evidence in the case.²⁷ In any event, Defence submissions are inaccurate, ignore evidence which aligns with W04738's account and confirms its reliability,²⁸ and misrepresent SPO's submissions.²⁹ Further, any alleged gaps, ambiguities, and inconsistencies in W04738's evidence are matters for the Panel's assessment of weight and do not bar admission.³⁰ In any event, the examples cited by the Defence in support of its exaggerated allegations constitute – at best – marginal discrepancies, or are clarified by other parts of W04738's own evidence³¹ and/or an assessment of the record as a whole.³²

15. *Relevance.* The Defence's submission that parts of W04738's evidence are not relevant³³ incorrectly characterises the significance of his evidence. The examples cited by the Defence not only represent a limited portion of his evidence,³⁴ but also provide

²⁴ Response, paras.44-45.

²⁵ See e.g. KSC-BC-2020-06/F01603, paras.14, 64.

²⁶ KSC-BC-2020-06/F01864, para.46.

²⁷ Motion, para.19.

²⁸ Regarding Response, paras.48, 54, see e.g. [REDACTED]. Regarding Response, paras.49, 55, see e.g. [REDACTED]. Regarding Response, paras.50, 53, see e.g. [REDACTED].

²⁹ Compare Response, para.53 and Motion, para.19. See also [REDACTED].

³⁰ KSC-BC-2020-06/F01864, paras.37, 48, 83, 92.

³¹ E.g. KSC-BC-2020-06/F03143/A01, items 2, 4, 5, 7, 8, 9.

³² E.g. KSC-BC-2020-06/F03143/A01, items 1, 3, 6.

³³ Response, paras.60-63.

³⁴ Response, para.60, fn.119-127 (identifying approximately 25 pages).

necessary context, support a pattern of conduct, and are relevant to understanding W04738's conclusions and basis of knowledge [REDACTED].³⁵

16. *Prejudice.* No prejudice will result from admission of W04738's Proposed Evidence. The claim that admission would cause 'insurmountable and irreparable prejudice'³⁶ is hyperbolic, and ignores the applicable legal standard, which does not bar admission of evidence of acts and conduct of the Accused through Rule 155,³⁷ as well as Rule 140(4)(a).³⁸

17. The allegations highlighted by the Defence as allegedly concerning acts and conduct of the Accused are: (i) marginal;³⁹ (ii) extensively corroborated by evidence of witnesses who testified on the same and/or related events and circumstances, whom the Defence had ample opportunity to cross-examine⁴⁰ (for example, [REDACTED],⁴¹ [REDACTED],⁴² [REDACTED],⁴³ [REDACTED],⁴⁴ [REDACTED],⁴⁵ [REDACTED],⁴⁶ [REDACTED],⁴⁷ [REDACTED],⁴⁸ [REDACTED],⁴⁹ [REDACTED],⁵⁰ and

³⁵ E.g. The evidence qualified as [REDACTED] (Response, para.60(i)) [REDACTED] (Response, para.60(ii), (iii), (vi), (vii); see also 082883-TR-ET Part 20 Revised 2 RED, p.9); [REDACTED] (Response, para.60(ix), incorrectly referring to Part 26 instead of 082883-TR-ET Part 25, pp.51-52).

³⁶ Response, para.66. See also para.74.

³⁷ KSC-BC-2020-06/F01603, paras.90, 116.

³⁸ See, similarly, KSC-BC-2020-06/F03154, paras.20-21.

³⁹ E.g. Response, paras.67(vi); KSC-BC-2020-06/F03143/A02, items 8, 11-13, 18, 38, 42, 48, 55-56, 58, 64-65, 68-70.

⁴⁰ KSC-BC-2020-06/F01864, para.10.

⁴¹ Compare e.g. Response, para.67(i),(iii),(iv),(v),(ix); KSC-BC-2020-06/F03143/A02, items 4-7, 9, 24-25, 35-37, 42, 46-47, 57, 64, 66-68 with [REDACTED].

⁴² Compare e.g. Response, para.67(i),(v); KSC-BC-2020-06/F03143/A02, items 11-16, 18 with [REDACTED].

⁴³ Compare e.g. Response, para.67(i),(v); KSC-BC-2020-06/F03143/A02, items 1, 7, 11-14, 16, 18 with [REDACTED].

⁴⁴ Compare e.g. Response, para.67(vi),(viii) with [REDACTED].

⁴⁵ Compare e.g. Response, para.67(i), (v) with [REDACTED].

⁴⁶ Compare e.g. Response, paras.67(iii),(iv),68-72; KSC-BC-2020-06/F03143/A02, items 32-33 with [REDACTED].

⁴⁷ Compare e.g. Response, para.67(ix); KSC-BC-2020-06/F03143/A02, items 20, 25-29, 35-37 with [REDACTED].

⁴⁸ Compare e.g. Response, para.67(vii); KSC-BC-2020-06/F03143/A02, item 15 with [REDACTED].

⁴⁹ Compare e.g. KSC-BC-2020-06/F03143/A02, items 21-22 with [REDACTED].

⁵⁰ Compare e.g. KSC-BC-2020-06/F03143/A02, items 35-37 with [REDACTED].

[REDACTED]);⁵¹ and (iii) corroborated by other evidence, including of [REDACTED].⁵² Further, at times, the Defence appears to completely misunderstand the definition of acts and conduct of the Accused.⁵³

18. The Panel is well-equipped to assess W04738's evidence together with corroborating and complementary evidence, considering both its probative value and any potential limitations arising from the lack of cross-examination.⁵⁴

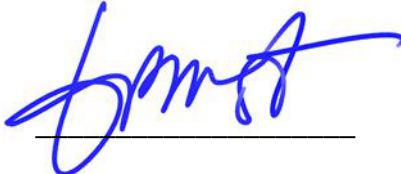
III. CLASSIFICATION

19. This reply is confidential pursuant to Rule 82(4).

IV. RELIEF REQUESTED

20. For the reasons outlined above and previously, the Panel should grant the Motion.

Word Count: 2,000



Kimberly P. West

Specialist Prosecutor

Monday, 5 May 2025

At The Hague, the Netherlands.

⁵¹ Compare e.g. Response, para.67(iii) with [REDACTED].

⁵² Compare e.g. Response, para.68; KSC-BC-2020-06/F03143/A02, items 31-33 with [REDACTED].

⁵³ E.g. Response, paras.67(i),(iii),(ix), 69; KSC-BC-2020-06/F03143/A02, items 2-3, 10, 14, 23, 34, 39-40, 41, 43-47, 49, 51, 53-54, 66-67, 71-73. See KSC-BC-2020-06/F01603, para.159.

⁵⁴ KSC-BC-2020-06/F01603, paras.18, 125.