



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: 1 April 2025

Language: English

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Public redacted version of
'Prosecution reply to joint Defence response F03059'

Specialist Prosecutor's Office

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1. The Response¹ to the Request² misrepresents the timeliness of the relief sought, the broader connections to W04363's evidence, and the extent of a *prima facie* admissibility assessment.
2. The Defence submissions against the timing of the Request are wholly unjustified. The Pre-Trial Judge determined that the objectively justified risks to this witness justified full anonymity³ – the Defence fail to fully appreciate that it was impossible for the SPO to provide W04363's identity absent a variation of protective measures.⁴ The SPO requested this variation before the commencement of trial, and this request was rejected by the Trial Panel due to a lack of the witness's consent.⁵ The SPO then made multiple unsuccessful efforts to secure the witness's consent before [REDACTED] made clear that further attempts would be futile.⁶
3. All of this is set out in the Request,⁷ and the Defence is simply wrong in its assertion that no explanation was given for why this motion was filed when it was.⁸ The Defence also fails to acknowledge that most of its submissions amount to challenging a lack of diligence in seeking the variation of W04363's protective measures, an assertion necessarily rejected by the Panel in the Variation Decision.⁹

¹ Joint Defence Response to Prosecution request to vary protective measures and admit evidence of W04363, KSC-BC-2020-06/F03059, 26 March 2025, Confidential ('Response').

² Prosecution request to vary protective measures and admit evidence of W04363, KSC-BC-2020-06/F02886, 31 January 2025, Confidential (with annexes; reclassified as confidential on 11 March 2025) ('Request').

³ Confidential Redacted Version of Decision on Specialist Prosecutor's Second Request for Protective Measures and Renewed Request for Protective Measures and Procedural Matters, KSC-BC-2020-06/F00190/CONF/RED, 5 February 2021, Confidential ('5 February 2021 Decision'), para.91.

⁴ See Response, KSC-BC-2020-06/F03059, para.13.

⁵ Decision on the SPO Request to Vary Protective Measures, KSC-BC-2020-06/F01466, 18 April 2023, Confidential, para.14.

⁶ Annex 2 of the Request, KSC-BC-2020-06/F02886/A02, pp.50-55 (notes of contacts from 28 March 2023 through 5 November 2024).

⁷ Request, KSC-BC-2020-06/F02886, paras 2, 5-13.

⁸ *Contra* Response, KSC-BC-2020-06/F03059, paras 14-17.

⁹ Confidential Redacted Version of Decision on the SPO Request to Vary Protective Measures of W04363, KSC-BC-2020-06/F02998/CONF/RED, 11 March 2025, Confidential ('Variation Decision'), paras 12-16. Although the Defence version of the original Request contained extensive redactions, the

Notably – and with the previously withheld information now disclosed – nowhere in the Response does the Defence challenge the fact that W04363 is currently unable to testify.

4. There is a meaningful difference between characterising W04363's evidence as 'notable' (as done by the SPO)¹⁰ or that it 'appears to be of significant importance' (as considered by the Trial Panel),¹¹ versus describing this evidence as 'unique' (as argued by the Defence, and the Defence alone).¹² The Request sets out in detail how W04363's account fits into the totality of the evidence.¹³ Defence submissions on the victims discussed in W04363's evidence omit significant corroborating details elsewhere in the record.¹⁴ The Response is also inconsistent with Defence positions on these victims advanced during trial, as illustrated in this exchange [REDACTED]:

Q. [REDACTED]

A. [REDACTED].

Q. [REDACTED]¹⁵

5. This exchange demonstrates both the lack of prejudice in admitting W04363's evidence and the opportunity the Defence had to explore these matters during trial. In any event, noting that W04363's evidence cannot be used to a sole or decisive extent in entering any conviction,¹⁶ no undue prejudice is demonstrated.

6. Defence arguments concerning [REDACTED] affecting the reliability of his accounts¹⁷ are speculative, and the consistency between W04363's [REDACTED]

full record was available to the Panel *ex parte* in advance of its ruling and the Defence never sought leave to appeal the Variation Decision (even after it gained access to all the same information).

¹⁰ Request, KSC-BC-2020-06/F02886, para.14.

¹¹ Variation Decision, KSC-BC-2020-06/F02998/CONF/RED, para.14.

¹² *Contra* Response, KSC-BC-2020-06/F03059, para.8.

¹³ Request, KSC-BC-2020-06/F02886, paras 14, 29.

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ Rule 140(4)(a).

¹⁷ Response, KSC-BC-2020-06/F03059, paras 18-19.

accounts¹⁸ contradict any notion that memory issues affect the *prima facie* reliability of his evidence. The full video-recording of W04363's [REDACTED] is also tendered, allowing for the judges to be able to fully assess the witness's demeanour when making this prior statement. The ultimate weight to be given to W04363's evidence is a distinct question from its admissibility, and the Panel has already rejected arguments similar to those raised in the Response for other Rule 155 witnesses.¹⁹

7. The admissibility of the proposed evidence is only a *prima facie* assessment. Alleged inconsistencies between the evidence of W04363 [REDACTED]²⁰ go beyond such an assessment, and therefore have no bearing on the merits of the Request. There is no indication that [REDACTED], and the Defence is free to call him in its evidence presentation – further demonstrating the multiple avenues which remain open to the Defence in challenging the evidence, should it choose to do so.²¹

8. The Request meets all the Rule 155 criteria and should be granted.²²

¹⁸ This can be seen from how both accounts complement each other in the footnotes cited across paragraphs 18-25 of the Request.

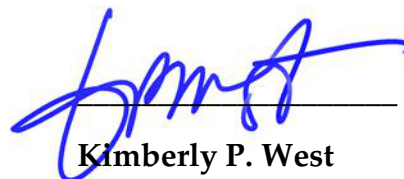
¹⁹ Decision on Prosecution Third Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F02013, 15 December 2023, 15 December 2023, paras 41, 49-55, 63 (W04839); Decision on Prosecution Fourth Motion for Admission of Evidence pursuant to Rule 155", KSC-BC-2020-06/F02283, 3 May 2024, Confidential, paras 76, 79-86 (W01914).

²⁰ Response, KSC-BC-2020-06/F03059, paras 21-23.

²¹ *Contra* Response, KSC-BC-2020-06/F03059, para.22.

²² This submission is confidential pursuant to Rule 82(4).

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Tuesday, 1 April 2025

At The Hague, the Netherlands.