



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:** 23 June 2025

**Language:** English

**Classification:** Confidential

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**Prosecution response to 'Thaçi Defence Request for Admission of Prior Statements of W04752' (F03254)**

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## I. INTRODUCTION

1. The Thaçi Request<sup>1</sup> to admit prior statements of W04752 ('Prior Statements')<sup>2</sup> should be rejected because: (i) it is without foundation; (ii) admission via Rule 138 would circumvent Rules 153-155 of the Rules;<sup>3</sup> and (iii) W04752's answers on cross-examination are sufficient without further admission of his Prior Statements.

## II. SUBMISSIONS

2. *First*, the foundational premise of the Request is misconceived. At the conclusion of the Thaçi Defence's cross-examination of W04752, a request to admit additional prior statements was rejected because, *inter alia*, the circumstances were not ripe.<sup>4</sup> That has not changed. In seeking to re-tender the Prior Statements now, Thaçi fundamentally misconceives the nature and import of the Bar Table Decision,<sup>5</sup> and is again seeking to indiscriminately tender material in rebuttal of an allegation which has not been made.

3. As indicated by the SPO, none of the bases upon which the obstruction materials were tendered depended upon witnesses testifying differently at trial because of Thaçi's unlawful instructions.<sup>6</sup> Indeed, in admitting the material, the Trial Panel specifically stipulated that having regard to the obstruction materials was appropriate 'irrespective of whether any interference has materialized' and that it was not minded to determine whether such interference had in fact occurred.<sup>7</sup> Thus, admission of the

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<sup>1</sup> Thaçi Defence Request for Admission of Prior Statements of W04752, KSC-BC-2020-06/F03254, 12 June 2025 ('Request').

<sup>2</sup> As listed in the Request, KSC-BC-2020-06/F03254, para.1(a)-(e).

<sup>3</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules.

<sup>4</sup> T.17792-17793. *See also* ICTR, *Prosecutor v Ntakirutimana et al.*, ICTR-96-10-A, Judgement, 13 December 2004, para.147.

<sup>5</sup> Decision on Prosecution Motion for Admission of Obstruction Related Materials, KSC-BC-2020-06/F03216, 29 May 2025, Confidential ('Bar Table Decision').

<sup>6</sup> Consolidated Prosecution reply to responses to obstruction bar table motion, KSC-BC-2020-06/F03172, 12 May 2025, Confidential, para.3.

<sup>7</sup> Bar Table Decision, KSC-BC-2020-06/F03216, paras 36, 47.

obstruction material did not turn, nor was it dependent upon, a 'charge of recent fabrication', or direct witness interference.

4. In fact, the Trial Panel emphasised it will not directly or indirectly rule on allegations of witness interference, as that would be outside of its competence.<sup>8</sup> Rather, admission of the obstruction material was justified on the basis that it may assist with assessing the credibility and reliability of witnesses, and the climate of intimidation more generally.<sup>9</sup> The disingenuousness of this Request is highlighted by the submissions Thaçi made in opposing admission of the obstruction materials, where he claimed the SPO was making a 'revised attempt to reframe their relevance' precisely because interference was not being relied upon.<sup>10</sup>

5. Indeed, the prosecution has not alleged that W04752 provided 'recently fabricated' testimony before the Trial Panel, and the Thaçi Defence does not cite to any such claim anywhere in its Request.<sup>11</sup> Thus, the core premise of the Request is erroneous. Further statements from W04752 are therefore unnecessary to rebut what is a very specific allegation, which has not been made.

6. For the same reasons, the caselaw relied upon in the Request – concerning circumstances in which an allegation of fabrication was made – becomes inapposite.<sup>12</sup> Admission of the Prior Statements without such an allegation on the trial record would amount to legal error.<sup>13</sup>

7. The *Bemba* precedent, relied upon in the Request,<sup>14</sup> also does not assist Thaçi's argument. While the Prosecution in that case sought to admit a prior statement to

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<sup>8</sup> Bar Table Decision, KSC-BC-2020-06/F03216, paras 35, 39-40, 45.

<sup>9</sup> Bar Table Decision, KSC-BC-2020-06/F03216, paras 45, 47.

<sup>10</sup> Thaçi Defence Response to SPO Request for Admission of Proposed Exhibits (F03120) and Second Request for Exclusion of Materials *in limine*, KSC-BC-2020-06/F03156, 2 May 2025, Confidential paras 4-5, 7, 10.

<sup>11</sup> *Contra* Request, KSC-BC-2020-06/F03254, paras 4, 20, 23, 30.

<sup>12</sup> Request, KSC-BC-2020-06/F03254, fns 34, 35.

<sup>13</sup> See IRMCT, *Prosecutor v. Fatuma et al.*, MICT-18-116-A, Judgement, 29 June 2022, para.27.

<sup>14</sup> Request, KSC-BC-2020-06/F03254, para.24.

rebut 'express or implied' allegations of fabrication,<sup>15</sup> this point did not expressly form part of the Trial Chamber's ultimate reasoning to admit the statement in question.<sup>16</sup> The same irrelevance applies to the domestic provisions cited in the Request.<sup>17</sup>

8. *Second*, absent a clear justification for admission via Rule 138, granting the Request would circumvent Rules 153-155, which are *lex specialis* provisions governing the admission of prior witness testimony, including transcripts. Indeed, the Panel's admission of W04418's prior statement, referred to in the Request,<sup>18</sup> was admitted via Rule 155.<sup>19</sup> The two examples of prior Rule 138 admission, referred to by Thaçi,<sup>20</sup> both concerned situations where the Prosecution agreed to admission. Here, the Prosecution opposes admission of W04752's Prior Statements.

9. Similarly, the *Bemba* precedent discussed above, invoked the ICC Rule 68(b) (as it was then numbered in 2013), which was analogous to Rule 154.<sup>21</sup> It is for Thaçi to justify admission through recourse to any such provision(s), including by setting out how the relevant legal requirements are met. The Request does not attempt to do this.

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<sup>15</sup> ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-2793, Decision on the admission into evidence of items deferred in the Chamber's "First decision on the prosecution and defence requests for the admission of evidence" (ICC-01/05-01/08-2012), 3 September 2013 ('*Bemba Decision*'), para.19.

<sup>16</sup> See *Bemba Decision*, paras 23-25 ('the admission of written statements of witnesses who have testified at trial will enable the Chamber to compare the witnesses testimony against their prior statements to determine the extent of inconsistencies, if any, which will contribute to the fair evaluation of the witnesses' testimony.').

<sup>17</sup> Request, KSC-BC-2020-06/F03254, para.25, referring to, *inter alia*, domestic laws from the UK, U.S.A. and New Zealand, that each govern situations of alleged testimonial fabrication – a circumstance not alleged by the Prosecution in respect of W04752.

<sup>18</sup> Request, KSC-BC-2020-06/F03254, para.24, fn 38.

<sup>19</sup> Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, Confidential, paras 43-57.

<sup>20</sup> Request, KSC-BC-2020-06/F03254, para.27, fn 41. See Decision on Krasniqi Defence Request to Admit Additional Document Related to W02153, KSC-BC-2020-06/F01852, 11 October 2023, para.10 (noting the Parties' agreement to admit the Official Note in respect of W02153, and exceptionally admitting it via Rule 138); See also T.25896 (where the Prosecution confirmed it had no objection to admission of W02172's prior statement. However, the Prosecution notes that the Trial Panel did not appear to specify whether admission was on the basis of Rule 153 or Rule 138, which was provided as an alternative legal basis by the Defence in its Joint Defence Request for Relief Concerning W02172's Evidence, KSC-BC-2020-06/F03054, 24 March 2025, para.15).

<sup>21</sup> *Bemba Decision*, para.22.

10. *Third*, the Request does not explain why admission is substantively necessary, given that the Thaçi Defence cross-examined W04752 by putting propositions to him drawn from his Prior Statements now sought for admission.<sup>22</sup> W04752's answers to these questions are sufficient for the purpose of the trial record,<sup>23</sup> without unnecessarily overburdening it further.<sup>24</sup> Thaçi had every opportunity to use the statements with W04752, and did so. No explanation at all is provided as to what further purpose admission of the statements would have. This would not promote the fair and expeditious conduct of these proceedings.

11. The Request ultimately fails to provide any cogent reason or satisfactory legal basis to admit the Prior Statements. It should be rejected.

### III. CLASSIFICATION

12. This response is filed as confidential pursuant to Rule 82(4). As it does not contain any confidential information, the SPO requests its reclassification as public.

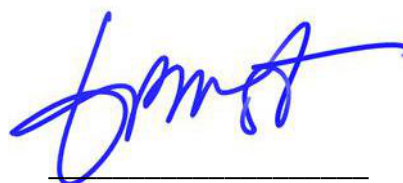
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<sup>22</sup> See e.g. T.17549, T.17565 (*referring to* IT-04-84 T3154-T3255); T.17566 (*referring to* IT-04-84bis T675-T771); T.17553, T.17555, T.17658 (*referring to* IT-03-66 T6757-T6836); T.17548 (*referring to* U016-0791-U016-0817 RED); T.17564, T.17637 (*referring to* SPOE00183317-00183342 RED).

<sup>23</sup> See *similarly*, T.23300, where the Trial Panel rejected the proposed admission by the Thaçi Defence of a note it recorded with W04401 ('relevant portions of the note which were put to the witness as well as his comments thereupon are on the record and will be duly considered by the Panel in its assessment of the witness's credibility in light of the totality of the evidence.'). See also ICTR, *Prosecutor v. Nshogoza*, ICTR-07-91-T, Decision on Defence motion to admit the statement of Defence witness Straton Nyawara into evidence, and for other relief, 1 July 2009, paras 29-30.

<sup>24</sup> ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-T, Decision on Prosecution motion to convert seven viva voce witnesses to Rule 92 *ter* witnesses, 10 May 2011, para.11 ('the Chamber is mindful of the need to avoid overburdening the record in the instant case with items of uncertain relevance.').

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Monday, 23 June 2025

At The Hague, the Netherlands.