



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:** 17 November 2025

**Language:** English

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**Public Redacted version of**

**'Prosecution response to request to admit W04760's evidence pursuant to Rule 155'**

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## I. INTRODUCTION

1. In the Request,<sup>1</sup> the THAÇI Defence attempts to tender a version of W04760's evidence which is so selective – particularly as to the relationship of his evidence to the Accused - as to make evaluating his credibility and reliability impossible. The only way to properly admit this witness's evidence pursuant to Article 37 and 40(2) of the Law<sup>2</sup> and Rules 138 and 155 of the Rules<sup>3</sup> is to admit his entire account, meaning that both alternative options advanced in the Request are inadequate.

## II. SUBMISSIONS

2. Noting its prior submissions about the Third State in question and the relevant Registry report on the unsuccessful attempt to summons W04760,<sup>4</sup> the SPO does not contest that W04760 is unavailable within the meaning of Rule 155(1)(a). The SPO also acknowledges that W04760's SPO interview is *prima facie* reliable if it were to be tendered as a whole, and does not object to the addition of the requested item to the Exhibit List (or to its admission).<sup>5</sup> However, tendering only those parts of W04760's evidence which the THAÇI Defence likes – or, alternatively, excluding those parts which it dislikes the most – manipulates the witness's account to such an extent that the prejudicial effect of admission would significantly outweigh any remaining probative value.<sup>6</sup>

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<sup>1</sup> Thaçi Defence Request Pursuant to Rule 155, KSC-BC-2020-06/F03571, 11 November 2025, Confidential (with two annexes) ('Request').

<sup>2</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

<sup>3</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(s)' are to the Rules.

<sup>4</sup> Registry Submissions Pursuant to Decision F03506, KSC-BC-2020-06/F03551, 30 October 2025, Confidential, para. 2; Prosecution response to 'Thaçi Defence Request for a Summons', KSC-BC-2020-06/F03495, 26 September 2025, para.2.

<sup>5</sup> 083627-083627-ET RED/083626-083627 RED, p.083627.

<sup>6</sup> Rule 138(1). See similarly ICC, *Prosecutor v. Al Hassan*, Decision on second Prosecution request for the introduction of P-01113's evidence pursuant to Rule 68(2)(b) of the Rules, ICC-01/12-01/18-1924, 15 November 2021, para.14 (rejecting a prosecution tender under the equivalent of Rule 153 on grounds that the acts and conduct of the accused evidence, though proposed for redaction, went so much to the

3. Rule 155(5) specifies that, if the evidence goes to proof of the acts and conduct of the Accused as charged in the indictment, this may be a factor against the admission of such evidence, in whole or in part. This provision distinguishes Rule 155 from Rule 153, where acts and conduct evidence is a procedural bar to admission.<sup>7</sup> Rule 155(5) reflects concerns over ensuring a fair trial and the reliability of evidence, balancing the scrutiny of potentially prejudicial acts and conduct evidence with preserving a path for admitting such evidence.<sup>8</sup>

4. The THAÇI Defence asserts that the untendered portions have not been tendered in order to avoid prejudice *to the accused*.<sup>9</sup> Such an argument cuts against the purpose of Rule 155(5), as in this instance the accused is choosing to rely on the witness in a way which furthers neither a fair trial nor the reliability of the evidence. Had W04760 appeared for cross-examination, the SPO would have been entitled to elicit the remainder of W04760's evidence from the witness directly.<sup>10</sup> That the particular vehicle for admission is Rule 155 cannot be used as justification to tender an incomprehensible version of the witness's evidence.

5. None of the authorities advanced by the THAÇI Defence apply to a situation where the tendering party seeks a partial admission of a witness's statement in order to avoid the portions adverse to itself. All of the cited Rule 155 decisions made by this

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core of the witness's evidence that admission would distort the substance of the witness's narrative; a dissenting judge disagreed the narrative would be so distorted, but gave no indication of disagreement with the principle that the substantive coherence of a narrative was an admissibility consideration). See also STL, *Prosecutor v. Ayyash et al.*, Decision Admitting into Evidence Statements of Witness PRH056 Under Rule 158, STL-11-01/T/TC/F3480, 13 December 2017, paras 52, 62 (in order to provide proper context, admitting additional statements proposed by the Sabra Defence of a prosecution witness tendered pursuant to the STL's analogous provision for Rule 155); ICC, *Prosecutor v. Ntaganda*, Public redacted version of 'Decision on Prosecution request for admission of evidence related to Agreed Fact 69', ICC-01/04-02/06-2184-Red, 17 January 2018, para.26 (Trial Chamber admitted parts of a statement tendered under the equivalent of KSC Rule 153 added by the Defence to the Prosecution's tender, though no objection was raised to admitting these additional parts).

<sup>7</sup> Rule 153(1).

<sup>8</sup> Public Redacted Version of "Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155", KSC-BC-2020-06/F01603/RED, 8 September 2023, para.15 (with further citations therein).

<sup>9</sup> Request, KSC-BC-2020-06/F03571, para.30.

<sup>10</sup> Rule 143(3).

Panel concern situations where the opposing party was seeking to limit the evidence of the tendering party.<sup>11</sup> Decisions redacting isolated acts and conduct evidence under Rule 153 – or under analogous provisions at other international courts – are also inapposite.<sup>12</sup> Because acts and conduct evidence is a procedural bar to any Rule 153 admission, the tendering party is foreclosed from tendering the entire statement by virtue of the rule itself. There is no indication in any of the THAÇI Defence authorities that the tendering party proposed redactions to such evidence in order to avoid potentially adverse evidence to the tendering party's case.

6. W04760 gives credible and reliable evidence on several significant points in this case, but was prone to overstatement on others.<sup>13</sup> As examples, W04760's evidence on the following points are meaningfully corroborated by other evidence in the record:

- (i) [REDACTED].<sup>14</sup>
- (ii) [REDACTED].<sup>15</sup>
- (iii) [REDACTED].<sup>16</sup>
- (iv) [REDACTED].<sup>17</sup>

7. In contrast, the aspects for which the THAÇI Defence seeks to rely on W04760 have no such corroboration. The THAÇI Defence is well aware of this, previously

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<sup>11</sup> Request, KSC-BC-2020-06/F03571, para.28 (with further citations therein). The same is true for Rule 143 witness W04746, where the SPO ended up tendering only discrete portions of this witness's SPO interview after an attempt to admit it as a whole pursuant to Rule 154 was rejected.

<sup>12</sup> *Contra* Request, KSC-BC-2020-06/F03571, para.29.

<sup>13</sup> [REDACTED].

<sup>14</sup> [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>15</sup> [REDACTED].

<sup>16</sup> [REDACTED]; [REDACTED].

<sup>17</sup> [REDACTED].

indicating specifically where the witness's account is challenged by W04474, W04489, and/or W04710 on these same points.<sup>18</sup> [REDACTED].<sup>19</sup>

8. [REDACTED]:

- (i) [REDACTED].<sup>20</sup> [REDACTED].<sup>21</sup>
- (ii) [REDACTED].<sup>22</sup> [REDACTED].

9. It is clear from the THAÇI Defence's tender that, even considering the alternative relief sought in the Request, what is tendered cannot be fairly described as W04760's 'full interview'.<sup>23</sup> The portions selected by the THAÇI Defence for exclusion<sup>24</sup> go to central points in W04760's account – they cannot be segregated while keeping the remainder understandable. Beyond the arbitrary selections made across the tender,<sup>25</sup> nearly every meaningful reference to the Accused is proposed to be redacted,<sup>26</sup> fundamentally misrepresenting this witness's account. In this regard, none of the examples indicated in paragraphs 6 and 8 above are included in the primary relief sought in the Request, and all but the point in paragraph 6(iv) are excluded from the alternative relief sought.

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<sup>18</sup> Thaçi Defence Motion to Compel the Specialist Prosecutor to Call Witnesses W04760 and W04583, KSC-BC-2020-06/F02602, 26 September 2024, Confidential, para.34 (with further citations therein).

<sup>19</sup> [REDACTED]; [REDACTED]; [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. See [REDACTED].

<sup>20</sup> [REDACTED].

<sup>21</sup> [REDACTED].

<sup>22</sup> [REDACTED].

<sup>23</sup> *Contra* Request, KSC-BC-2020-06/F03571, paras 30-31.

<sup>24</sup> Annex 2 of the Request, KSC-BC-2020-06/F03571/A02.

<sup>25</sup> See e.g. 083629-TR-ET Part 3 Revised, p.4 (l.24-25 included in tender, but surrounding lines giving context to the sentence excluded); 083629-TR-ET Part 3 Revised, p.5 (l.12-15 included in tender, but lines before and after giving context are excluded); 083629-TR-ET Part 3 Revised, p.6 (l.22 included in the tender, is in the middle of the witness's answer, rendering the exchange incomplete and incomprehensible); 083629-TR-ET Part 3 Revised, p.17 (l. 14 included in the tender, is in the middle of the witness's answer, rendering the exchange incomplete and incomprehensible); 083629-TR-ET Part 4 Revised, p.24 (l.2 included in the tender, is in the middle of an answer, with the beginning of the answer and the question excluded); 083629-TR-ET Part 4 Revised, p.29 (l.15 is excluded from tender, and is in the middle of the witness's answer which starts on line 14); 083629-TR-ET Part 4 Revised, p.32 (l.4 onwards is excluded rendering portion of answer included in lines prior incomplete).

<sup>26</sup> [REDACTED].

10. The only way to properly evaluate which parts of W04760's evidence can be given weight at the end of the case is to consider the extent to which his evidence is corroborated by other credible and reliable information.<sup>27</sup> Whether W04760's account is corroborated is not a requirement for concluding it has *prima facie* probative value, nor does the SPO contest that W04760's account as a whole satisfied this standard. However, how W04760 fits into the totality of the evidence is a necessary part of assessing his evidence and underscores the prejudicial effect caused by a selective admission of his evidence.<sup>28</sup>

11. If W04760's account is to be admitted at all in this case, the examples above demonstrate that it must be admitted in its entirety in order to properly assess the value of his evidence. Admitting only parts of his account distorts W04760's evidence in a way which is incompatible with determining the truth in this case.

12. Lastly, it was unforeseeable that the SPO would be confronted with a situation during the Defence case where W04760 would be presented in such a way that blocked any incriminating use of his evidence and presented limited exculpatory parts out of context.<sup>29</sup> Admitting isolated parts of W04760's evidence in the manner requested would therefore justify a further exceptional opportunity for the SPO to present W04760's remaining evidence in the interests of justice. Accordingly, even if the relief sought in the Request is granted, the SPO would seek to tender the remainder of W04760's statement pursuant to Rules 133 and 155(1).

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<sup>27</sup> Indeed, W04760 was streamlined out of the SPO's evidence presentation because the reliability of his evidence was so dependent on information which, at the point the decision to remove him from the witness list was made, had already been admitted.

<sup>28</sup> In this regard, *see* Public Redacted Version of Decision on Joint Defence Appeal Against Decision on Admission of W04747's Evidence Pursuant to Rule 155 of the Rules, KSC-BC-2020-06/IA039/F00005/RED, 10 November 2025, para.35 ('[t]he Panel agrees with the Parties that, in the context of admissibility of evidence, the purpose of considering the extent to which the proposed evidence is corroborated is to determine whether the admission of witness evidence without cross-examination complies with the requirement of a fair trial').

<sup>29</sup> [REDACTED]. [REDACTED].

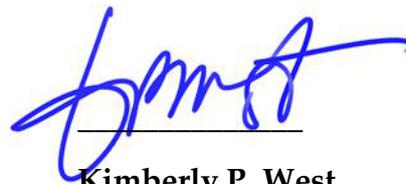
III. CLASSIFICATION

13. This filing is confidential pursuant to Rule 82(4) since it responds to a filing with the same classification. A public redacted version will be filed.

IV. RELIEF REQUESTED

14. For the foregoing reasons, admitting W04760's SPO interview in the manner requested should be rejected.<sup>30</sup>

**Word Count: 2,258**



**Kimberly P. West**

**Specialist Prosecutor**

Monday, 17 November 2025

At The Hague, the Netherlands.

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<sup>30</sup> As indicated in paragraph 2 above, there is no objection to the additional exhibit tendered.