

In: KSC-BC-2020-06
**The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli,
Rexhep Selimi and Jakup Krasniqi**

Before: **Trial Panel II**
Judge Charles L. Smith, III, Presiding
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hashim Thaçi

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Thaçi Defence Reply to Prosecution response to F03576

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I. SUBMISSIONS

1. The Defence for Mr Thaçi (“Defence”) hereby replies to the Prosecution Response¹ to its request to admit W04752’s evidence pursuant to Rule 153² of the Rules.³
2. The SPO asserts that W04752’s addition to the Defence witness is not required because Rule 138 and Rules 153-155 do not expressly limit the admission of witness evidence to that tendered by the calling Party or during the calling Party’s case.⁴ Yet, the Defence recalls that: (i) Rules 153(3) and 154(b) explicitly require the Panel to take into account the interests of the cross-examining party, and Rule 154 expressly concerns the “Admission of Written Statements and Transcripts *in lieu of Direct Examination*”; (ii) the Defence has been barred from tendering witness’ statements pursuant to Rules 153-154 in its responses to SPO Rule 153-154 motions;⁵ (ii) the Trial Panel explicitly indicated that where proposed evidence qualifies as a statement, it must be offered pursuant to Rule 153-155 so as to ensure “that no unfair prejudice is caused to the *opposing party*” and in the absence of the SPO agreement with an admission under Rule 138, it invited the Defence to seek admission pursuant to the applicable Rule “as part of its case”.⁶ Accordingly, since the SPO cannot qualify as a cross-examining party vis-à-vis W04752 unless W04752 is on the Defence Witness List, and since the Panel directed the Defence to tender the Five Statements “as part of its

¹ KSC-BC-2020-06/F03593, *Prosecution response to F03576*, 20 November 2025, public (“**Response**”).

² KSC-BC-2020-06/F03576, *Thaçi Defence Request Related to W04752*, 13 November 2025, public (“**Request**”).

³ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 (“**Rules**”).

⁴ Response, para. 2, fn 3.

⁵ See, for instance, KSC-BC-2020-06/F02765, *Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W01234, W01338, W01743, W04423, W04570, W04696, W04812, W04859, and W04860 Pursuant to Rule 153 and Related Defence Motion to Exclude Evidence*, paras. 48, 64; KSC-BC-2020-06/F02842, *Decision on Joint Defence Request for Leave to Appeal Rule 153 Decision (F02765)*, 21 January 2025, paras 5, 11-14.

⁶ KSC-BC-2020-06/F03327, *Decision on Thaçi Defence Request for Admission of Prior Statements of W04752*, 11 July 2025, public (“**F03327**”), paras 20-21.

case”, the Defence understands that any tendering through Rule 153 (or Rule 154) requires that the witness be included in the witness list of the tendering party. Therefore, the Defence’s request to add W04752 to its Witness List in order to admit its Five Statements through Rule 153 is well-founded.

3. The SPO further challenges the necessity to admit the Five Statements because portions were put to the witness during his cross-examination.⁷ The Defence reiterates the concerns expressed in its Request regarding the weight attributed to these portions discussed but not admitted,⁸ and emphasizes that the admission of the Five Statements in their entirety is required because the SPO has concealed, so far, what arguments it intends to make in closing on W04752’s credibility. Specifically, the SPO submissions imply that W04752 may have changed his testimony as a result of a “climate of intimidation”, or at least that his credibility may be affected,⁹ but the SPO has failed to identify which portions of his evidence were allegedly impacted by the “climate of intimidation.” Due to the SPO’s failure to put its case to W04752 during his testimony, the Defence needs the Five Statements in evidence to be able to dispute any challenge to W04752’s credibility in the upcoming SPO Final Brief and to demonstrate whether W04752 has been consistent in the past. That is why the Defence has always requested their admission as prior *consistent* statements.¹⁰ The Panel itself acknowledged that the Five Statements are

⁷ Response, paras 1, 3-6.

⁸ Request, para. 34, fn 47.

⁹ KSC-BC-2020-06/F02279, *Prosecution request to amend the Exhibit List with confidential Annex 1*, 1 May 2024, Confidential (PRV issued on 6 September 2024), para. 2, referring to the need to “clarify, challenge, and/or contextualise” W04752’s evidence, in light of “the serious climate of witness interference and intimidation in which these proceedings », and para. 6, asserting that Mr Thaçi would have given instructions regarding W04752’s testimony during detention visits; KSC-BC-2020-06/F03120, *Prosecution motion for admission of obstruction related materials with confidential Annexes 1-3*, public, para. 5, arguing that the Obstruction Material “inform the credibility assessments of SPO witnesses.” See also Request, para. 32.

¹⁰ KSC-BC-2020-06/F03254, *Thaçi Defence Request for Admission of Prior Statements of W04752*, 12 June 2025, confidential (PRV notified on 18 July 2025) (“F03254”), paras 20, 23, 30, 33-34; KSC-BC-2020-

“relevant to this case insofar as it might help the Panel assess the credibility of W04752 and the reliability of his evidence and thus supplement evidence already admitted in respect of this matter”.¹¹

4. For the first time, the SPO indicates that it would not oppose the admission of the Five Statements pursuant to Rule 138, provided that they be admitted solely for comparative purposes and not for the truth of their contents.¹² The Defence observes that it first tendered the Five Statement in July 2024¹³ and then in June 2025¹⁴ under Rule 138, for the stated purpose of showing W04752’s consistency. The Defence therefore agrees with the admission of W04752’s Five Statements under Rule 138,¹⁵ for the limited purpose of showing the consistency of his evidence. It is regrettable that the SPO did not engage *inter partes* much earlier in order to reach an agreement on admission, instead of forcing extensive litigation before both the Trial and Appeals Panels needlessly before ultimately agreeing to admission pursuant to Rule 138.

II. CONCLUSION

5. For the foregoing reasons, the Defence requests that the Trial Panel to:
 - **AUTHORISE** the Defence to amend its Witness List to add W04752, and/or
 - **ADMIT** W04752’s Five Statements pursuant to Rule 153 and/or Rule 138.

06/IA041/F00002, *Thaçi Defence Appeal of the Decision on Request for Admission of Prior Statements of W04752*, 21 August 2025, confidential, paras 7, 28, 30, 32, 38, 45.

¹¹ F03327, para. 18, referring to Request, para. 7.

¹² Response, para. 7.

¹³ KSC-BC-2020-06, Transcript of 8 July 2024, p. 17774.

¹⁴ F03254.

¹⁵ The Defence notes that the Appeal Chamber endorsed the Trial Panel’s reasoning pursuant to which “Rules 153-155 of the Rules apply to the admission of written statements but that, to the extent that the opposing party would not object to the admission of a witness statement without the requirements of these Rules, the Trial Panel may exceptionally admit witness statements as exhibits pursuant to Rule 138(1) of the Rules”: KSC-BC-2020-06/IA041, *Decision on Thaçi Appeal Against Decision on Admission of W04752’s Prior Statements*, 10 November 2025, public, para. 36.

[Word count: 1085 words]

Respectfully submitted,



Luka Misetic

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Monday, 24 November 2025

At New York, United States