

**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 Guénaël Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Hashim Thaçi

**Date:** 20 November 2025

**Language:** English

**Classification:** Public

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**Public Redacted Version of Thaçi Defence Reply to Responses to Request  
Pursuant to Rule 155**

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## I. SUBMISSIONS

1. The Defence for Mr Thaçi (“Defence”) hereby replies to the Prosecution<sup>1</sup> and Veseli<sup>2</sup> responses to its request to admit portions of W04760’s evidence pursuant to Rule 155<sup>3</sup> of the Rules.<sup>4</sup>
2. The circumstances here are entirely of the SPO’s doing. W04760 repeatedly stated that [REDACTED].<sup>5</sup> The SPO dropped him for no other reason than that it did not want the Panel to hear his exculpatory evidence. It is the Accused that has been prejudiced by the SPO’s efforts to frustrate both this Trial Panel’s truth-finding function in violation of the SPO’s obligations under Rule 62, and the Accused’s right to cross-examine this witness on the portions of the statements related to the acts and conduct of the Accused. *The SPO cannot now be allowed to profit from its own efforts to conceal the truth.*
3. Thus, this is a unique situation where the SPO affirmatively decided it did not need the evidence it now seeks to admit in full, and fought to keep it out because it realised it is an overall exculpatory statement.
4. The SPO asserts that none of the authorities advanced by the Defence apply to a situation where the tendering party sought a partial admission of a witness’s statement to avoid the portions adverse to itself.<sup>6</sup> But this is for a simple reason: this is a unique case where a witness was dropped by the prosecution because his evidence was exculpatory. To this day, the SPO has never explained why it

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<sup>1</sup> KSC-BC-2020-06/F03581, *Prosecution response to request to admit W04760’s evidence pursuant to Rule 155*, 17 November 2025, confidential (PRV filed on the same day) (“**SPO Response**”).

<sup>2</sup> KSC-BC-2020-06/F03585, *Veseli Defence Response to Thaci Defence Request to Admit W04760’s Evidence Pursuant to Rule 155 with Confidential Annexes 1 and 2*, 17 November 2025, confidential (“**Veseli Response**”).

<sup>3</sup> KSC-BC-2020-06/F03571, *Thaçi Defence Request Pursuant to Rule 155 with Confidential Annexes 1 and 2*, 10 November 2025, confidential (“**Request**”).

<sup>4</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 (‘Rules’).

<sup>5</sup> Request, para. 44.

<sup>6</sup> SPO Response, para. 5, referring to Request, para. 28.

dropped W04760, beyond a mere reference to “streamlining its case”.<sup>7</sup> The SPO now claims that “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>8</sup> This new excuse is incoherent and unconvincing; since the relevant ‘information’ – presumably from [REDACTED] –, had already been admitted, but the SPO instead chose to drop him. The SPO had several opportunities to introduce the portions of W04760’s evidence it now claims should be admitted, first when the witness was included in its witness list, and then when the Defence sought an order from the Panel to compel the SPO to retain the witness and call him.<sup>9</sup>

5. The SPO cannot claim prejudice now after having had ample opportunity to tender this statement, and having told the Trial Panel that it did not need this evidence to prove its case beyond reasonable doubt.<sup>10</sup>
6. The SPO maintains that the Defence cannot tender selected portions of W04760’s evidence excluding the acts and conduct of the Accused because it would render the assessment of the witness’s credibility and reliability impossible.<sup>11</sup> Yet this is the result regularly achieved when one party tenders a statement pursuant to Rule 155 (or Rule 153), the opposing party objects to the admission of portions related to the acts and conduct of the accused, and the Panel admits the statement with the exclusion of such portions. In such a scenario, the exclusion of these portions does not prevent the Panel from assessing the credibility and reliability of the witness. Thus, the outcome would

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<sup>7</sup> KSC-BC-2020-06/F02576, *Prosecution notice of witness changes*, 16 September 2024, confidential, paras 1-2.

<sup>8</sup> SPO Response, para. 10, fn 27.

<sup>9</sup> Request, para. 8.

<sup>10</sup> KSC-BC-2020-06/F02629, *Prosecution Response to Thaçi Defence Motion to Compel the Specialist Prosecutor to Call Two Witnesses*, 9 October 2024, confidential, paras 1, 10.

<sup>11</sup> SPO Response, paras 1, 2, 5.

not be different if the SPO had tendered W04760's evidence pursuant to Rule 155, the Defence had objected to the admission of the excerpts related to the acts and conduct of the Accused, and the Panel had excluded these portions, like it did in the decisions quoted in the Request.<sup>12</sup> Indeed, whether a witness' statement is tendered by the SPO or the Defence makes no difference for the assessment of the credibility of a witness whose statement is admitted under Rule 155. In the instant case, the Defence submits that the two alternative options sought in its Request<sup>13</sup> would enable the Panel to assess W04760's credibility and reliability, especially since his evidence has already been put to [REDACTED].

7. The SPO further argues that had W04760 appeared for cross-examination, it would have been entitled to elicit the remainder of W04760's evidence directly pursuant to Rule 143(3),<sup>14</sup> which refers to "evidence relevant to the case of the cross-examining party". But the SPO twice had the opportunity to call this witness in support of its case and chose not to. It decided affirmatively that it did not need his evidence in support of its case. To now allege that the SPO needs W04760's evidence as part of its case is contradicted by the SPO's prior conduct.
8. Moreover, Rule 143 is not applicable now. The issue is whether Rule 155 allows the Panel to exclude portions of a statement that relate to acts and conduct of an Accused while admitting the rest of the statement. It indisputably does. Nor is it disputable that if the SPO had tendered this same statement under Rule 155, the Trial Panel would have been authorized to exclude the portions related to the acts and conduct of the Accused. There can be no finding of prejudice to the SPO if the Panel now excludes the portions of the statement related to acts

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<sup>12</sup> Request, para. 28.

<sup>13</sup> Request, para. 51.

<sup>14</sup> SPO Response, para. 4, fn 10.

and conduct of the Accused where the SPO affirmatively told the Trial Panel that it did not need those portions of the statement in support of its case.

9. Notably, the SPO still does not claim in its Response that it needs W04760's evidence in support of its case, nor could the SPO do so: having resisted the Defence's efforts to force the SPO to call W04760 as part of the SPO case, the SPO would have to explain what change of circumstance between the end of the SPO case and the Request suddenly made W04760's evidence important to the SPO case. No such justification exists.
10. The SPO fails to point at any case law prohibiting, as a matter of principle, a party from tendering only excerpts of a statement in support of its case. The Defence highlights that it did try to obtain the witness's appearance in Court and that it is tendering the excerpts it intended to elicit through his live testimony; the Defence was led to tender his evidence through Rule 155 only because the SPO refused to call him and the witness refused to appear on behalf of the Defence and is outside of the jurisdiction of the KSC.
11. The admissibility of a statement must be assessed on a case-by-case basis. The Defence disputes the SPO's claims pursuant to which the portions related to the acts and conduct of the accused selected by the Defence for exclusion "go to central points" in W04760's account and "cannot be segregated while keeping the remaining understandable".<sup>15</sup> The Defence has identified the core issues addressed by the excerpts tendered in its Request,<sup>16</sup> which are understandable without the extracts related to the acts and conduct of the accused. Contrary to the SPO assertion,<sup>17</sup> several aspects of W04760's Proposed Evidence are corroborated,<sup>18</sup> and in any event, corroboration is not a pre-

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<sup>15</sup> SPO Response, para. 9 ; see also para. 2.

<sup>16</sup> Request, para. 25.

<sup>17</sup> SPO Response, paras 7, 10.

<sup>18</sup> See Request, paras 39, fn 80-82.

condition admission pursuant to Rule 155.<sup>19</sup>

12. Moreover, the Defence submits that a statement is admissible even if portions related to central points in a witness's testimony are excluded. The SPO quotes only one decision, issued by the ICC Trial Chamber in the *Al Hassan* case, where a Chamber rejected a prosecution tender under the equivalent of Rule 153 on the grounds that evidence of the acts and conduct of the accused, though proposed for redaction, went so much to the core of the witness's evidence that admission would distort the substance of the witness's narrative.<sup>20</sup> Yet, the ICC Appeals Chamber expressed its disagreement with such reasoning, finding that the fact that key aspects of parts of the narrative may concern the criminal responsibility of the accused is not itself sufficient to bar admission pursuant to the equivalent of Rule 153, and added that the threshold for the admissibility of prior recorded testimony is not avoided because partial admission would cause those parts of the narrative to be "distorted" or "detached from their context".<sup>21</sup> The Defence submits that a similar approach ought to be adopted regarding the admission of parts of a witness's statement who is unavailable under Rule 155(1)(a), especially since Rule 155(5) explicitly envisages the exclusions of part of the evidence which goes to the acts and conduct of the Accused.
13. The Trial Panel needs not concern itself with the SPO's meritless position that it might seek to put on a rebuttal case to include the excluded portions of the statement pursuant to Rules 133 and 155(1).<sup>22</sup> First, the SPO will never be able

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<sup>19</sup> Request, para. 40.

<sup>20</sup> SPO Response, para. 2, fn 6, referring to ICC, *Prosecutor v. Al Hassan, Decision on second Prosecution request for the introduction of P-0113's evidence pursuant to Rule 68(2)(b) of the Rules*, ICC-01/12-01/18-1924, 15 November 2021, para. 14.

<sup>21</sup> ICC, *Prosecutor v. Al Hassan, ICC-01/12-01/18-2222, Appeals Chamber, Judgment on the appeal of the Prosecution against Trial Chamber X's "Decision on second Prosecution request for the introduction of P-0113's evidence pursuant to Rule 68(2)(b) of the Rules"*, 13 May 2022, paras 60-61.

<sup>22</sup> SPO Response, para. 12.

to tender any portion of W04760's statement pursuant to Rule 155 *because the witness has repeatedly affirmed that he will appear in court to testify if called by the SPO*. Accordingly, he is not "unavailable" to the SPO for purposes of Rule 155 and would have to appear for cross-examination by the Defence. The SPO, however, has confirmed that it will not attempt to call any more witnesses live or pursuant to Rule 154 in rebuttal.<sup>23</sup> Second, the SPO could never credibly claim that it could not foresee the need to call this witness as part of its case after having included him on its witness list and after having fought Defence efforts to keep him on the SPO witness list.

14. Finally, the Defence has no objection to the exclusion of the portions of W04760's evidence identified by the Veseli Defence in Annexes 1 and 2 of its Response.

## II. CLASSIFICATION

15. The present submissions are filed as confidential because they contain identifying information of the witness.

## III. CONCLUSION

16. For the foregoing reasons, the Defence maintains its request that the Trial Panel:
  - **GRANTS** the Defence leave to add Exhibit 3 to its Exhibit List;
  - **ADMIT** the Witness's Proposed Evidence<sup>24</sup> and its associated Exhibit 3 pursuant to Rule 155; or

*In the alternative,*

- **ADMIT** the Witness' SPO Interview and its associated Exhibit 3, with the

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<sup>23</sup> Tr. 28328:16-19.

<sup>24</sup> Listed in Annex 1 to the Request, with the exclusion of the portion identified in Annex 1 to the Veseli Response.

exclusion of the portions referring to the acts and conduct of any of the Accused.<sup>25</sup>

[Word count: 1992 words]

Respectfully submitted,



**Luka Misetic**

**Counsel for Hashim Thaçi**

Thursday, 20 November 2025

At New York, United States

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<sup>25</sup> As listed in Annex 2 to the Request and Annex 2 to the Veseli Response.