



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**In:** KSC-BC-2020-04  
**Specialist Prosecutor v. Pjetër Shala**

**Before:** **Trial Panel I**  
Judge Mappie Veldt-Foglia, Presiding Judge  
Judge Roland Dekkers  
Judge Gilbert Bitti  
Judge Vladimir Mikula, Reserve

**Registrar:** Dr Fidelma Donlon

**Filing Party:** Specialist Prosecutor's Office

**Date:** 8 December 2023

**Language:** English

**Classification:** Public

---

**Public Redacted Version of**

**'Prosecution response to Defence request to admit the evidence of DW4-01 in writing, with Confidential Annex 1'**

---

**Specialist Prosecutor's Office**

Kimberly P. West

**Counsel for Pjetër Shala**

Jean-Louis Gilissen

**Counsel for Victims**

Simon Laws

## I. INTRODUCTION

1. Pursuant to the Order,<sup>1</sup> and to Rule 153 of the Rules,<sup>2</sup> the Specialist Prosecutor's Office ('SPO') hereby responds to the DW4-01 Request.<sup>3</sup> The Trial Panel ('Panel') should deny admission of the Proposed Evidence<sup>4</sup> in written form.
2. The Defence argues that the Proposed Evidence is relevant to assess the credibility of TW4-01.<sup>5</sup> The Proposed Evidence, however, is unfit for this purpose as a number of factors heavily affect its credibility and reliability.
3. The issues affecting the Proposed Evidence are not merely external or internal inconsistencies in the evidence of DW4-01, which may not *per se* render the evidence unsuitable for admission under Rule 153.<sup>6</sup> As further elaborated in this response, the Proposed Evidence is marred by evident bias, lack of foundation for certain conclusions drawn by DW4-01, and other defects which render it unsuitable as a tool to assess the credibility of TW4-01. Pursuant to Rule 153(1)(b)(i) and (iii), these circumstances militate against the admission of the Proposed Evidence in writing.
4. Nor can the Proposed Evidence be admitted under Rule 155, since DW4-01 is not unavailable, [REDACTED].

## II. SUBMISSIONS

### A. DW4-01'S STATEMENT IS MARRED BY NUMEROUS *INDICIA* OF UNRELIABILITY

5. The Defence identifies the following topics in the Proposed Evidence as relevant to the assessment of TW4-01's credibility.

---

<sup>1</sup> Transcript (Procedural Matters), 29 November 2023, p.3877 ('Order').

<sup>2</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, unless otherwise specified.

<sup>3</sup> Defence Request to Admit the Evidence of DW4-01 Pursuant to Rules 153 and 155 of the Rules, KSC-BC-2020-04/F00733, 4 December 2023, confidential ('DW4-01 Request').

<sup>4</sup> [REDACTED], SITF00015437-00015510 RED2 ('Proposed Evidence').

<sup>5</sup> DW4-01 Request, KSC-BC-2020-04/F00733, para.21.

<sup>6</sup> Decision on the Specialist Prosecutor's requests to admit the evidence of TW4-02 and TW4-04 under Rule 153 of the Rules, KSC-BC-2020-04/F00556, 23 June 2023, para.35.

6. First, the Defence submits that the Proposed Evidence contains information that TW4-01 [REDACTED].<sup>7</sup> Second, the Defence submits that the Proposed Evidence relates to alleged JCE member Sabit GECI, [REDACTED].<sup>8</sup> A reading of the Defence Rule 119 summary for DW4-01 and of the Proposed Evidence<sup>9</sup> further indicates that the purported relevance of this topic is linked to [REDACTED].<sup>10</sup> Finally, the Defence submits that the Proposed Evidence relates to [REDACTED], as well as to [REDACTED].<sup>11</sup>

7. Numerous circumstances pertaining both to DW4-01 and to specific aspects of [REDACTED], however, make the Proposed Evidence, in the manner submitted, unsuitable as a tool to assess TW4-01's credibility on these topics.

#### **1. DW4-01's evidence of TW4-01's alleged [REDACTED]**

8. DW4-01's testimony about the reasons why he received [REDACTED] should not be admitted in writing, as by its own nature it is unsuitable to be taken at face value.

9. In [REDACTED], DW4-01 was tried and convicted in a case [REDACTED] [REDACTED]. [REDACTED].<sup>12</sup>

10. DW4-01 was convicted to [REDACTED] years' imprisonment, while [REDACTED].<sup>13</sup> DW4-01 claimed that [REDACTED].<sup>14</sup> An alternative explanation, however, is that the sentencing in that case is reflective of a higher degree of criminal responsibility of DW4-01.

---

<sup>7</sup> DW4-01 Request, KSC-BC-2020-04/F00733, para.22.

<sup>8</sup> DW4-01 Request, KSC-BC-2020-04/F00733, para.23.

<sup>9</sup> Annex II to Defence Updated List of Witnesses and Revised Witness Summaries, KSC-BC-2020-04/F00628/A02, 29 August 2023, p.1. *See also* See SITF00015437-00015510 RED2, p.14.

<sup>10</sup> [REDACTED].

<sup>11</sup> DW4-01 Request, KSC-BC-2020-04/F00733, para.24.

<sup>12</sup> SITF00015437-00015510 RED2, p.11; [REDACTED].

<sup>13</sup> SITF00015437-00015510 RED2, p.18.

<sup>14</sup> SITF00015437-00015510 RED2, pp.11-12.

11. A number of circumstances suggest that DW4-01's explanation may not be truthful. Notably, DW4-01 was detained in [REDACTED].<sup>15</sup> In addition, between his release from [REDACTED] and 2021, DW4-01 accumulated [REDACTED] additional criminal convictions,<sup>16</sup> a circumstance which renders DW4-01's explanations even harder to be taken at face value. The evidence of DW4-01 on this point is thus highly unreliable, and thus unsuitable to be admitted in writing, untested in this case, for the purpose of assessing another witness's credibility.

## **2. DW4-01's evidence concerning the [REDACTED] [REDACTED] is lacking in foundation**

12. In submitting that [REDACTED],<sup>17</sup> the Defence omits to specify that [REDACTED]. Specifically, DW4-01 was detained in [REDACTED],<sup>18</sup> [REDACTED].<sup>19</sup> When DW4-01 testified that [REDACTED],<sup>20</sup> [REDACTED].<sup>21</sup>

13. This circumstance undermines the reliability of DW4-01's evidence concerning [REDACTED]. This evidence should not be admitted untested, and should not be used to assess the credibility of [REDACTED].

## **3. DW4-01's evidence concerning [REDACTED]**

14. DW4-01 [REDACTED]. This is evident from [REDACTED], and most notably from the part where he explicitly [REDACTED].<sup>22</sup> DW4-01 also levied other generalised accusations against [REDACTED].<sup>23</sup> These statements cast serious doubt on the impartiality of DW4-01, and further undermine the reliability of his evidence concerning TW4-01.

---

<sup>15</sup> SITF00015437-00015510 RED2, p.16

<sup>16</sup> See Annex 1, 116111-116113-ET.

<sup>17</sup> DW4-01 Request, KSC-BC-2020-04/F00733, para.23.

<sup>18</sup> SITF00015437-00015510 RED2, p.13.

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

<sup>20</sup> SITF00015437-00015510 RED2, p.17.

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

<sup>22</sup> SITF00015437-00015510 RED2, p.20.

<sup>23</sup> SITF00015437-00015510 RED2, pp.13, 18, 19.

#### 4. Other circumstances undermining the reliability of the Proposed Evidence

15. Admission of the Proposed Evidence in writing would also prevent the SPO from exploring DW4-01's reasons for becoming a witness for [REDACTED]. This line of cross-examination could offer valuable insights to the Panel, especially considering certain aspects of the Proposed Evidence which cast doubt on DW4-01's impartiality and on the genuine character of his testimony.

16. During his testimony, DW4-01 called [REDACTED].<sup>24</sup> The basis for DW4-01's [REDACTED].<sup>25</sup> This line of cross-examination could expose ulterior motives on the part of DW4-01 [REDACTED]. In this regard, there are also indications that DW4-01 may have been [REDACTED],<sup>26</sup> which would further undermine the reliability and credibility of DW4-01's evidence.

17. Finally, [REDACTED] DW4-01 suffered [REDACTED].<sup>27</sup> It is unclear what effects this incident has had on his memory. The SPO should be entitled to explore this topic with the witness, as his ability to recollect events is clearly relevant to the assessment of the Proposed Evidence. In this regard, the SPO also notes that DW4-01 was [REDACTED].<sup>28</sup>

#### B. DW4-01 IS NOT UNAVAILABLE TO TESTIFY WITHIN THE MEANING OF RULE 155

18. Contrary to the Defence submissions,<sup>29</sup> 'unavailable' for the purpose of Rule 155 means 'a person who can no longer be traced with reasonable diligence, or who is by reason of physical or mental impairment or other compelling reason unable to testify orally.'<sup>30</sup> Rule 155 does not cover a scenario where a witness could be located, but the calling party decided not to avail itself of other reasonable means at its disposal to secure that witness's testimony.

---

<sup>24</sup> SITF00015437-00015510 RED2, p.14.

<sup>25</sup> SPOE00248405-00248500, pp.3-5.

<sup>26</sup> SITF00015437-00015510 RED2, p.21.

<sup>27</sup> SITF00015437-00015510 RED2, p.19.

<sup>28</sup> Annex 1, 116111-116113-ET, p.2.

<sup>29</sup> DW4-01 Request, KSC-BC-2020-04/F00733, paras 31-33.

<sup>30</sup> Rule 155(1).

19. [REDACTED],<sup>31</sup> [REDACTED].<sup>32</sup> [REDACTED].<sup>33</sup> [REDACTED] does not make the witness unable to testify due to ‘other compelling reasons’ within the meaning of Rule 155.<sup>34</sup>

### C. CONCLUSION

20. The Panel should exercise its discretionary power to deny admission of the Proposed Evidence pursuant to Rule 153.<sup>35</sup>

21. None of the factors listed in Rule 153(1)(a) as militating in favour of admission pursuant to this Rule apply to the Proposed Evidence. At the same time, the SPO has identified several factors that make the Proposed Evidence unreliable, including bias, lack of foundation, and possible [REDACTED] and memory issues on DW4-01’s part. These circumstances make the Proposed Evidence unsuitable to assist the Panel in its credibility assessment of TW4-01 and, pursuant to Rule 153(1)(b)(i) and (iii), they militate against the admission of the Proposed Evidence in writing.

22. The list of factors militating against admission of a statement in writing, set forth in Rule 153(1)(b), is not exhaustive.<sup>36</sup> The reliability and credibility shortcomings identified above acquire particular significance in light of the purpose for which the Proposed Evidence is tendered, which is to assess TW4-01’s credibility. An inherently unreliable testimony should not be admitted in writing to assess the credibility of a witness the SPO called live and made available for cross-examination, especially when DW4-01 is not unavailable. Under these circumstances, any probative value that the Proposed Evidence may have would be outweighed by its prejudicial effect.

---

<sup>31</sup> Transcript (Procedural Matters), 28 November 2023, p.3798.

<sup>32</sup> Transcript (Procedural Matters), 29 November 2023, pp.3831-3832.

<sup>33</sup> Transcript (Procedural Matters), 28 November 2023, p.3828.

<sup>34</sup> *Contra* DW4-01 Request, KSC-BC-2020-04/F00733, paras 31, 33.

<sup>35</sup> Decision on the submission and admissibility of non-oral evidence, KSC-BC-2020-04/F00461, 17 March 2023, para.33.

<sup>36</sup> Decision on the Specialist Prosecutor’s requests to admit the evidence of TW4-02 and TW4-04 under Rule 153 of the Rules, KSC-BC-2020-04/F00556, 23 June 2003, confidential, para.22.

23. The Panel should also decline to admit the Proposed Evidence pursuant to Rule 155. The witness is not unavailable; [REDACTED]. However, use of Rule 155 should not be allowed to introduce the evidence of [REDACTED] witnesses, whose live testimony could reasonably have been secured. This is especially true in the case of the Proposed Evidence, which is marred by numerous indicia of unreliability.


### III. CLASSIFICATION

24. This filing is confidential pursuant to Rule 82(4). A public redacted version will be filed.

### IV. RELIEF REQUESTED

25. For the reasons set out above, the SPO requests the Panel to reject the Defence request to admit the evidence of DW4-01 in writing, either through Rule 153 or Rule 155.

**Word Count: 1679**



**Kimberly P. West**

**Specialist Prosecutor**

Friday, 8 December 2023

At The Hague, the Netherlands.