



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:** 20 December 2023

**Language:** English

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**Public Redacted Version of 'Prosecution reply relating to Rule 154 motion F01980'**

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## I. INTRODUCTION

1. The Specialist Prosecutor's Office ('SPO') hereby replies to the Joint Defence Response.<sup>1</sup> The Joint Defence Response is based on arguments about irrelevant matters and misconceptions about the *prima facie* nature of admissibility assessments, particularly in the context of Rule 154 of the Rules<sup>2</sup> where the witnesses will be available for cross-examination.

2. The SPO replies on certain discrete issues, mindful of the permissible scope of replies<sup>3</sup> and the Panel's prior decisions on this matter, which have addressed many of the matters raised in the Joint Defence Response.<sup>4</sup>

## II. SUBMISSIONS

### A. W04739

4. The notion that hearing W04739's evidence through Rule 154 would only lead to a 'limited time saving'<sup>5</sup> is inaccurate. The SPO estimates only two hours of direct examination if the Motion<sup>6</sup> is granted,<sup>7</sup> four times less than what was estimated when W04739 was envisaged as a *viva voce* witness.<sup>8</sup>

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<sup>1</sup> Joint Defence Response to Prosecution Motion for Admission of Evidence of Witnesses W01163, W02144, W02749, W04230, W04445, W04489, W04576, W04739, W04741, and W04820 Pursuant to Rule 154 and Related Request, KSC-BC-2020-06/F02008, 14 December 2023, Confidential ('Joint Defence Response').

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

<sup>3</sup> Rule 76.

<sup>4</sup> See Prosecution reply to joint Defence response concerning Rule 154 submissions (F01818), KSC-BC-2020-06/F01827, 2 October 2023, Confidential, para.2 and references therein.

<sup>5</sup> Joint Defence Response, KSC-BC-2020-06/F02008, para.40.

<sup>6</sup> Prosecution motion for admission of evidence of Witnesses W01163, W02144, W02749, W04230, W04445, W04489, W04576, W04739, W04741, and W04820 pursuant to Rule 154 and related request, KSC-BC-2020-06/F01980, 4 December 2023, Confidential ('Motion').

<sup>7</sup> Annex 1 to Motion, KSC-BC-2020-06/F01980, p.19.

<sup>8</sup> Annex 2 to Public Redacted version of 'Submission of Pre-Trial Brief, with witness and exhibit lists', KSC-BC-2020-06/F00631, dated 17 December 2021, KSC-BC-2020-06/F00631RED/A02/CONF/RED, 21 December 2021, Confidential, p.16.

5. Nothing in W04739's evidence is so central to justify hearing him entirely *viva voce*.<sup>9</sup> Though the Panel has noted that the importance of proposed evidence to a party's case is a factor that may be taken into consideration, the Panel has also considered that 'Rule 154 does not set any limitation of substance or nature in respect of the sort of evidence that could be tendered pursuant to that Rule'.<sup>10</sup> The basis for W04739's knowledge can be fully tested following any Rule 154 admission, and the notion that granting the Motion somehow shifts a 'burden to the Defence to cure the defects in the SPO's poor questioning'<sup>11</sup> misapprehends both the Rule 154 procedure and evidential burdens generally.

6. As concerns [REDACTED].<sup>12</sup> [REDACTED],<sup>13</sup> [REDACTED].<sup>14</sup> W04739's Rule 154 statement cannot be understood without this item, qualifying it as an associated exhibit.

#### B. W04741

7. W04741's [REDACTED] is relevant to the present case. Contrary to the Defence's arguments,<sup>15</sup> the fact that W04741's [REDACTED]<sup>16</sup> was not cited in the Pre-Trial Brief is no bar to its use and admission.<sup>17</sup> While W04741's SPO Statement corroborates most of his [REDACTED], the latter also provides unique evidence on

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<sup>9</sup> [REDACTED].

<sup>10</sup> Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380/RED, para.28, *in contrast to* Joint Defence Response, KSC-BC-2020-06/F02008, para.41. The Panel's decision rejecting W04746's Rule 154 application was not premised on the importance of the witness's account alone, but in conjunction with other factors that do not apply to W04739. *See* Transcript, 10 July 2023, pp.5354-5355.

<sup>11</sup> Joint Defence Response, KSC-BC-2020-06/F02008, para.43.

<sup>12</sup> [REDACTED].

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

<sup>14</sup> [REDACTED]; *Contra* Joint Defence Response, KSC-BC-2020-06/F02008, para.46.

<sup>15</sup> Joint Defence Response, KSC-BC-2020-06/F02008, paras 49-51.

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

<sup>17</sup> By its very nature, and pursuant to Rule 95(4), the Pre-Trial Brief is a *summary* of the evidence the SPO intends to rely on to prove its case and, consequently, the evidence therein is by no means intended to be exhaustive, *see e.g.* Submission of Pre-Trial Brief, with witness and exhibit lists, KSC-BC-2020-06/F00631, 17 December 2021, Confidential, para.2.

the KLA background,<sup>18</sup> its organisation and structure,<sup>19</sup> [REDACTED] and its activities,<sup>20</sup> and on W04741's knowledge of certain crimes.<sup>21</sup>

8. A prior credibility assessment of the witness by other courts is not binding on the Panel<sup>22</sup> and does not preclude the admission of the witness's evidence in this case. The Panel has already underlined that findings regarding weight and probative value must be conducted in each case, and that it will fulfil its responsibilities under Rule 139(2) and 139(4) based on the entire body of the evidence in the present proceedings.<sup>23</sup>

### III. CLASSIFICATION

9. This submission is filed as confidential pursuant to Rule 82(4) and because it contains information concerning protected witnesses.

### IV. RELIEF REQUESTED

10. For the foregoing reasons and those previously given, the Motion should be granted.

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<sup>18</sup> [REDACTED]; [REDACTED].

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

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

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

<sup>22</sup> Decision on Prosecution Third Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F02013, 15 December 2023, Public ('Third Rule 155 Decision'), para.50.

<sup>23</sup> See e.g. Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, Confidential, para.19; Sixth Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01983, 5 December 2023, para.129; Third Rule 155 Decision, KSC-BC-2020-06/F02013, para.50.

**Word Count:** 991



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**Kimberly P. West**

**Specialist Prosecutor**

Wednesday, 20 December 2023

At The Hague, the Netherlands.