



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 Roland Dekkers
Judge Gilbert Bitti
Judge Vladimir Mikula, Reserve

Registrar: Dr Fidelma Donlon

Filing Party: Specialist Prosecutor's Office

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**'Prosecution consolidated response to Defence requests for admission of non-oral
evidence (F00770 and F00771)'**

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant the Trial Panel's ('Panel') instructions,¹ and Rules 119(5), 138(1), and 155 of the Rules,² the Specialist Prosecutor's Office ('SPO') hereby files a consolidated response to the Rule 155 Motion³ and the Request for Admission of Non-Oral Evidence.⁴
2. The Rule 155 Motion is untimely, with no good cause existing for its late filing. In addition, the Defence never raised with TW4-01 the existence of any alleged contradiction between his testimony and that of [REDACTED]. This is unfair to TW4-01, and leaves critical ambiguities unresolved in the relevant part of the Rule 155 Statements.⁵ Nonetheless, the SPO does not object to the admission of the Rule 155 Statements.
3. The SPO does not object to the admission of Items 5 to 10 listed in Annex 1 to the Request for Admission of Non-Oral Evidence; it considers the admission of Items 1 to 3 unnecessary; it objects to the admission of all remaining Items.

II. SUBMISSIONS

1. Rule 155 Motion

(a) *Timeliness of the request to amend the Defence lists of witnesses and showing of good cause*

4. Pursuant to Rule 119(5), the Panel may permit the Defence to amend its list of witnesses upon timely notice and a showing of good cause. The Rule 155 Motion does not meet either of these requirements with respect to the Rule 155 Statements.

¹ In its Decision on the Defence urgent request for an extension of the time limit for the closing of its case, KSC-BC-2020-04/F00766, 15 January 2024, confidential, para.18(c) and Email sent at 14:04 on 16 January 2024, the Trial Panel set the deadline to respond to F00770 and F00771 at 12 p.m. on 18 January 2024.

² 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 are to the Rules, unless otherwise specified.

³ [REDACTED] ('Rule 155 Motion').

⁴ Defence Request for the Admission of Evidentiary Material with Confidential Annex 1, KSC-BC-2020-04/F00771, 15 January 2024, confidential ('Request for Admission of Non-Oral Evidence').

⁵ SITF00374132-00374148 RED and SPOE00014640-00014668 RED ('Rule 155 Statements').

5. As noted by the Panel, the relevance of the Rule 155 Statements, at least with regard to TW4-01's credibility, was apparent since TW4-01's testimony, which was completed on 6 June 2023.⁶

6. With respect to the asserted relevance of the Rule 155 Statements in relation to [REDACTED]'s testimony,⁷ this, too, should have been apparent to the Defence well in advance of [REDACTED]'s testimony,⁸ since [REDACTED] had stated in his SPO interview, disclosed on 15 December 2021,⁹ that [REDACTED],¹⁰ and that [REDACTED].¹¹ The possible relevance of the Rule 155 Statements to assess [REDACTED]'s credibility, therefore, did not arise during the cross-examination of that witness by the SPO,¹² but much earlier in this trial.

(b) The Defence should have cross-examined TW4-01 about any alleged discrepancy between his testimony and the Rule 155 Statements

7. Untimeliness aside, if the Defence is of the view that the Rule 155 Statements contradict the evidence of TW4-01, an issue that the Defence specifically identifies as material to its case,¹³ it could – and should – have resorted to Rule 143(3) to question TW4-01 about it. Instead, [REDACTED],¹⁴ the Defence did not raise any inconsistency when it had the opportunity to do so.

8. The Panel has recently held that failure to discuss a document with a witness does not preclude its admission by way of written motion.¹⁵ In this instance, however,

⁶ Decision on the Defence urgent request for an extension of the time limit for the closing of its case, KSC-BC-2020-04/F00766, 15 January 2024, confidential, para.11.

⁷ Defence Rule 155 Motion, KSC-BC-2020-04/F00770, para.1 on page 4.

⁸ [REDACTED]

⁹ Disclosure Package 27, Rule 102(3).

¹⁰ [REDACTED]

¹¹ 063317-TR-ET Part 3 RED2, p.9.

¹² *Contra*, Defence Rule 155 Motion, KSC-BC-2020-04/F00770, para.1 on page 4.

¹³ Defence Rule 155 Motion, KSC-BC-2020-04/F00770, para.1 on page 4.

¹⁴ [REDACTED]

¹⁵ Decision on Defence requests for admission of non-oral evidence and amendment of its exhibit lists, KSC-BC-2020-04/F00769, 15 January 2024, confidential, para.24.

the Defence's failure leaves unresolved ambiguities in the relevant parts of the Rule 155 Statements which impact any probative value they may have for the assessment of TW4-01 and [REDACTED]'s credibility.

9. In the Rule 155 Statements, [REDACTED] was never asked [REDACTED].¹⁶ TW4-01 could have been of assistance in clarifying [REDACTED] The Defence, however, decided not to give TW4-01 the opportunity to explain, and to leave this ambiguity unclarified.

10. With this caveat, and in the interest of transparency, the SPO does not object to the admission of the Rule 155 Statements, should the Panel consider them useful for the truth-seeking process in this case.

2. Request for Admission of Non-Oral Evidence

11. The SPO does not object to the admission of **Items 5 to 10** listed in Annex 1 to the Request for Admission of Non-Oral Evidence.

12. The admission of **Items 1 to 3** into evidence is unnecessary. The Defence has tendered them as relevant for the purpose of sentencing. However, these materials are publicly available, the sentences imposed in those cases are a matter of public record, and they can be referenced without the need to submit them into evidence. The Panel, to the extent it considers them relevant, will be in a position to take into account sentences imposed in a range of relevant judgements issued by Kosovar, other domestic and international courts, without admitting such items into evidence. Indeed, doing so, would clutter the record in a wholly unnecessary way.

13. Moreover, sentencing is also the only matter for which Items 1 to 3 should, if at all, be considered. Judgments in other cases are not evidence, and reliance on any fact established therein is strictly regulated by the procedure set forth in Rule 157, governing judicial notice of adjudicated facts.

¹⁶ [REDACTED]

(c) *Item 4*

14. The SPO objects to the admission of **Item 4** for lack of relevance. The possibility of early release, regulated by Rule 196 under the heading 'General Standards on Commutation of Sentence', is an entirely distinct matter from the determination of the sentence, regulated by Rule 163. It is also a matter strictly related to the personal circumstances of a convicted person, and not within the purview of the Trial Panel. The fact that Xhemshit KRASNIQI received early release has no bearing on sentencing in this case.

(d) *Items 11-14*

15. The SPO objects to the admission of **Items 11 to 14** for lack of relevance. The Defence has failed to identify any specific portion of these items as relevant to any live issue in this case. As detailed below, these items address complaints or allegations against EULEX which have no identifiable link to the Specialist Chambers, the testimony of TW4-01, nor to any other live issue in the case. The very limited references to the Specialist Chambers in these materials¹⁷ bear no relevance to the case, and do not establish any link which would make the claims against EULEX relevant to the Specialist Chambers.¹⁸

16. **Items 11 and 12** concern allegations of corruption of officials of the Ministry of Health of Kosovo concerning health contracts,¹⁹ as well as other allegations against a former EULEX judge in relation to which, according to the information recorded in Item 11, no evidence was found.²⁰ The claim that these Items support the Defence position that there were 'serious flaws and corruption' in the investigations against the Accused finds no support in these materials.

¹⁷ DPS00006-DPS00041, pp.DPS00016, DPS00018, DPS00022.

¹⁸ See similarly, Court of Appeals, KSC-BC-2020-07/IA006-F00006, para.19 (considering and rejecting the relevance of generalised allegations against EULEX to the Specialist Chambers and proceedings before it).

¹⁹ DPS00043-DPS00048, p.DPS00044; DPS00001-DPS00005, p.DPS00002.

²⁰ DPS00043-DPS00048, p.DPS00046.

17. **Item 13** is a 2 hours and 29 minutes long speech of Malcolm Simmons, a former EULEX judge, before a Kosovo Parliamentary Committee. The Defence tendered the video in its entirety without identifying or explaining how any specific part of it is relevant to the charges in this case.²¹

18. **Item 14** contains the text of Mr Simmons' intervention before the Kosovo Parliamentary Committee, which although it does not reproduce *verbatim* the intervention recorded in the video, relates mostly to the same issues. The Defence claims that this article contains references to the case against *Sabit GECI*,²² without specifying where. The SPO could find no reference to that case. The Defence has also made no effort to explain how this purported reference, if it exists, would impact on the charges or any live issue in the case.

19. Each of Items 11-14 should be rejected accordingly.

(e) *Item 15*

20. The SPO objects to the admission of **Item 15** as both lacking relevance and being unsuitable for admission under Rule 138. The Defence again makes an unreferenced and unexplained claim that the Item relates to allegations of corruption of EULEX investigators and prosecutors as mentioned by TW4-01. As noted above, such allegations against EULEX have no relation or relevance to the Specialist Chambers or to the charges in this case. Similarly, the (politically motivated)²³ claims made against the former Specialist Prosecutor are (i) transparently outlandish and unreliable on their face, and (ii) bear no connection to the Accused or to this case. Admission of Item 15 should be denied on this basis alone.

²¹ The Defence makes a general reference to allegations of 'interferences in EULEX prosecutions and investigations, including in the case of *Sabit GECI et al*' (Annex 1 to the Request for Admission of Non-Oral Evidence, p.6). The SPO was not able to identify any part of the video directly relevant to that case, or the charges against the Accused.

²² Annex 1 to the Request for Admission of Non-Oral Evidence, p.7.

²³ In this regard, *see generally* Mother Jones, David Corn and Dan Friedman, [The Far-Right Pushes a New Conspiracy Theory to Discredit Jack Smith](#), 23 December 2023.

21. However, Item 15 should also be denied admission because it amounts to a compilation of signed witness statements seemingly prepared for the purpose of seeking to initiate criminal investigations or proceedings²⁴ with full knowledge of the witnesses. Item 15 is thus testimonial in nature and inadmissible under Rule 138(1).²⁵

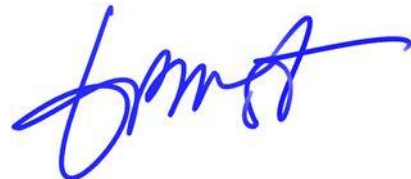
III. CLASSIFICATION

22. This filing is confidential to give effect to protective measures granted in this case. A public redacted version will be filed.

IV. RELIEF REQUESTED

23. For the foregoing reasons, the SPO:
- a. Does not object to the admission of the Rule 155 Statements, with the caveats expressed in this Response in relation to their probative value; and
 - b. Requests that admission of Items 1-4 and 11-15 listed in Annex 1 to the Request for Admission of Non-Oral Evidence be denied.

Word count: 2013



Kimberly P. West

Specialist Prosecutor

Thursday, 18 January 2024

At The Hague, the Netherlands.

²⁴ DPS01784-DPS01901, pp.DPS01795-DPS01796.

²⁵ See Decision on Defence requests for admission of non-oral evidence and amendment of its exhibit list, KSC-BC-2020-04/F00769, 15 January 2024, confidential, paras 14-18.