



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**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

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

**Registrar:** Fidelma Donlon

**Date:** 3 May 2024

**Language:** English

**Classification:** Public

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**Public Redacted Version of Decision on URGENT Prosecution Motion for  
Admission of Evidence of W02486 Pursuant to Rule 154 and Request for Video-  
Conference Testimony (F02270)**

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**Specialist Prosecutor**

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**TRIAL PANEL II** (“Panel”), pursuant to Articles 21, 23(1), 37 and 40(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 137-138, 141(1), 144 and 154 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 16 March 2023, 9 June 2023, 10 July 2023, 24 July 2023, 10 October 2023, 2 November 2023, 1 December 2023, 8 January 2024, 12 February 2024 and 16 April 2024 the Panel issued decisions on motions of the Specialist Prosecutor’s Office (“SPO”) pursuant to Rule 154 with regard to sixty-nine witnesses.<sup>1</sup>

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<sup>1</sup> F01380, Trial Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154* (“First Rule 154 Decision”), 16 March 2023, confidential (a public redacted version was filed on 7 November 2023, F01380/RED); F01593, Trial Panel, *Decision on Urgent Prosecution Updates and Related Requests Concerning Witnesses in the Next Evidentiary Block*, 9 June 2023, confidential (a public redacted version was filed on 31 October 2023, F01593/RED); F01595, Trial Panel, *Decision on Second Prosecution Motion Pursuant to Rule 154*, 9 June 2023, confidential (a corrected version was issued on 10 August 2023, F01595/COR) (a public redacted version was filed on 9 November 2023, F01595/COR/RED); F01664, Trial Panel, *Decision on Prosecution Motion for Admission of Evidence of W00072, W02153 and W04586 Pursuant to Rule 154*, 10 July 2023, confidential (a public redacted version was filed on 27 November 2023, F01664/RED); F01700, Trial Panel, *Decision on Prosecution Motion for Admission of Evidence of W03724, W03832, W03880, W04368, W04566, and W04769 Pursuant to Rule 154*, 24 July 2023, confidential (a public redacted version was filed on 7 November 2023, F01700/RED); F01848, Trial Panel, *Decision on Prosecution Motion for Admission of Evidence of W00208, W02082, W02475, W04147, W04325, W04491 and W04753 Pursuant to Rule 154 (F01788)*, 10 October 2023, confidential (a public redacted version was filed on 14 November 2023, F01848/RED); F01901, Trial Panel, *Decision on Prosecution Motion for Admission of Evidence of W03170, W04043, W04444, W04571, W04765, W04811, and W04870 Pursuant to Rule 154 and Related Request (F01830)*, 2 November 2023, confidential (a public redacted version was filed on the same day, F01901/RED); F01976, Panel, *Decision on Prosecution Motion for Admission of Evidence of W00498, W01140, and W01763 Pursuant to Rule 154*, 1 December 2023, confidential (a public redacted version was filed on the same day, F01976/RED); F02044, Trial Panel, *Decision on 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*, 8 January 2024, confidential (a public redacted version was filed on the same day, F02044/RED); F02117, Trial Panel, *Decision on Prosecution Motion for Admission of Evidence of W01453, W03878, W04446, W04575, and W04651 Pursuant to Rule 154*, 12 February 2024, confidential (a public redacted version was filed the same day, F02117/RED); F02245, Trial Panel, *Decision on Prosecution Motion for Admission of Evidence of Witnesses W01978, W02540, W02677, W02714, W02951, W03865, W03881, W04371, W04710, and W04850 Pursuant to Rule 154*, 16 April 2024, confidential (a public redacted version was filed the same day, F02245/RED).

2. On 29 April 2024, the SPO filed a Rule 154 motion with regard to W02486 (“Motion”).<sup>2</sup> In its Motion, the SPO also requested authorisation for the witness to testify via video-conference.<sup>3</sup>

3. On 1 May 2024, pursuant to an order from the Panel for an expedited briefing schedule,<sup>4</sup> the Defence Teams responded that they do not oppose the requests made in the SPO’s Motion,<sup>5</sup> with one limited exception.<sup>6</sup>

4. On the same day, the Registrar provided an assessment on the feasibility of enabling the witness to testimony via video-conference (“Assessment”).<sup>7</sup>

## II. SUBMISSIONS

5. The SPO requests admission of the statements, together with an associated exhibit (respectively, “Statements” and “Associated Exhibit”; collectively, the “Proposed Evidence”) of witness W02486 (“Witness”).<sup>8</sup> The SPO submits that the Proposed Evidence meets the requirements of Rules 138(1) and 154.<sup>9</sup>

6. The SPO also requests the Panel to permit the Witness to testify by video-conference from an appropriate location in [REDACTED] on 10 May 2024.<sup>10</sup> The SPO indicates that the Witness is not able to travel due to serious health issues.<sup>11</sup> The SPO argues that video-conference testimony will minimise the risk of

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<sup>2</sup> F02270, Specialist Prosecutor, *URGENT Prosecution Motion for Admission of Evidence of W02486 Pursuant to Rule 154 and Request for Video-conference Testimony*, 29 April 2024, confidential, with Annexes 1-2, confidential (a public redacted version was filed the following day, F02270/RED).

<sup>3</sup> Motion, paras 1, 16.

<sup>4</sup> Order for Expedited Submissions, CRSPD482, 30 April 2024.

<sup>5</sup> *Transcript of Hearing* (“Transcript”), 1 May 2024, p. 15288, lines 3-15.

<sup>6</sup> Transcript, p. 15288, lines 3-15 (noting that 021672-021683, pp. 021678 to 021680 include a discussion of photos which are not in possession of the SPO, and that without them, those pages are without probative value).

<sup>7</sup> F02278, Registrar, *Registry Assessment Regarding Prosecution’s Request for Video-Conference Testimony for W02486*, 1 May 2024, confidential and *ex parte* (a confidential redacted version was filed on the same day, F02278/CONF/RED).

<sup>8</sup> Motion, paras 1, 16.

<sup>9</sup> Motion, paras 6-8.

<sup>10</sup> Motion, para. 1.

<sup>11</sup> Motion, para. 11.

harm to the Witness while facilitating the Witness's truthful and complete testimony.<sup>12</sup> The SPO argues that permitting the Witness to testify via video-conference would not be prejudicial to the Accused.<sup>13</sup>

7. With regard to the SPO's Rule 154 request, the Defence responds that it only opposes the admission of pages 021678 to 021680 of 021672-021683, because these pages are devoid of probative value as they discuss photographs which neither the SPO nor the Defence have access.<sup>14</sup> The Defence does not object to the Witness testifying via video-conference.<sup>15</sup>

8. The Registrar submits that it is feasible to conduct the testimony of the Witness via video-link from [REDACTED] in a manner that is consistent with the Practice Direction on Video Links on 10 May 2024.<sup>16</sup>

### III. APPLICABLE LAW

9. The Panel incorporates by reference the applicable law as set out in its First Rule 154 Decision.<sup>17</sup>

10. Pursuant to Rule 141(1), the testimony of a witness at trial shall normally be given in person. The Panel may also permit the testimony of a witness by means of video-conference pursuant to Rule 144 in a way that is not prejudicial to or inconsistent with the rights of the Accused. Pursuant to Rule 144(1) and (3), the Panel may order that testimony be received via video-conference, provided that such technology permits the witness to be properly examined. The Panel shall ensure that the video-conference permits the witness to be examined by the Parties and the Panel at the time the witness so testifies.

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<sup>12</sup> Motion, para. 12.

<sup>13</sup> Motion, para. 13.

<sup>14</sup> Transcript, p. 15288, lines 3-15.

<sup>15</sup> Transcript, p. 15288, lines 3-15.

<sup>16</sup> Assessment, para. 19; *see also* KSC-BD-23/COR, Registrar, *Practice Direction on Video Links*, 17 July 2020.

<sup>17</sup> First Rule 154 Decision, paras 11-35.

#### IV. DISCUSSION

##### A. THE WITNESS'S PROPOSED EVIDENCE

11. The SPO submits that the proposed evidence of the Witness<sup>18</sup> is: (i) relevant;<sup>19</sup> (ii) *prima facie* authentic and reliable;<sup>20</sup> and (iii) suitable for admission under Rule 154.<sup>21</sup>

12. The Defence responds that pages 021678 to 021680 of 021672-021683 contain a discussion of photos that is not available to be placed into evidence, and that these pages are therefore devoid of probative value.<sup>22</sup>

13. *The Witness's Statements.* Regarding relevance, the Witness is the widow of [REDACTED] an alleged victim in the Indictment.<sup>23</sup> On [REDACTED] two men came to the Witness's home, stated they were members of the Kosovo Liberation Army ("KLA"), and demanded that [REDACTED] surrender his weapons, which he did.<sup>24</sup> On [REDACTED], two men purported to be KLA members came back to the home and told [REDACTED] that he should come with them.<sup>25</sup> The Witness never saw [REDACTED] alive again.<sup>26</sup> His body was later discovered.<sup>27</sup>

14. The SPO intends to rely upon the Witness's Proposed Evidence regarding the alleged crime of murder as a war crime and a crime against humanity, which, *inter alia*, is based upon events alleged to have occurred at the [REDACTED] between

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<sup>18</sup> The proposed evidence of the Witness ("Witness's Proposed Evidence") consists of the following statements, including any translation thereof (collectively, "Witness's Statements") and one associated exhibit, including any translation thereof ("Witness's Associated Exhibit"). The Witness's Statements consist of: (i) 078047-TR-ET Parts 1-2 RED; and (ii) 021672-021683-ET RED. The Witness's Associated Exhibit is 101739-101739-ET. *See* Annex 1 to the Motion.

<sup>19</sup> Motion, paras 2-4.

<sup>20</sup> Motion, para. 5.

<sup>21</sup> Motion, paras 6-7.

<sup>22</sup> Transcript, p. 15288, lines 3-15.

<sup>23</sup> Motion, para. 3.

<sup>24</sup> Motion, para. 3.

<sup>25</sup> Motion, para. 3.

<sup>26</sup> Motion, para. 3.

<sup>27</sup> Motion, para. 3.

[REDACTED].<sup>28</sup> The Panel is satisfied that the Witness's Proposed Evidence is relevant to the charges in the Indictment.<sup>29</sup>

15. Regarding authenticity and reliability, the Panel notes that the Witness's Statements consist of: (i) the Witness's SPO interview; and (ii) the Witness's testimony in another jurisdiction. Each statement contains multiple indicia of authenticity and reliability, including: (i) the date of the statements; (ii) the attendees present; (iii) the Witness's personal details; (iv) witness warnings, rights and/or acknowledgments; and (v) confirmation by the Witness that the statements are true and accurate.<sup>30</sup> The Panel is satisfied of the *prima facie* authenticity and reliability of the Witness's Statements.

16. The Panel notes the Defence's suggestion that pages 021678 to 021680 of 021672-021683 are devoid of *prima facie* probative value because they contain discussions of photographs that will not be entered into evidence.<sup>31</sup> While the absence of the photographs preclude the SPO from offering the Panel images of individuals whom the Witness recognised and discussed during his interview, these pages nonetheless reveal additional information that has *prima facie* probative value. The Witness discusses the content of paperwork the Witness received regarding [REDACTED] death.<sup>32</sup> Moreover, the Witness shares information regarding an individual who came to her door every day after [REDACTED] was abducted, trying to get her to let him into her home, alleging that he would provide her with information regarding [REDACTED].<sup>33</sup> The

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<sup>28</sup> Motion, paras 3-4

<sup>29</sup> See F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential, paras [REDACTED] (a public lesser redacted version was filed on 27 February 2023, F01323/A01); F00709/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Corrected Pre-Trial Brief and Related Request* ("SPO Pre-Trial Brief"), 24 February 2022, strictly confidential and *ex parte*, in particular, paras [REDACTED] (a public redacted version was filed on 3 April 2023, F01415/A01; a confidential lesser redacted version was filed on 9 June 2023, F01594/A03).

<sup>30</sup> Motion, para. 5; Annex 1 to the Motion, pp. 1-2.

<sup>31</sup> Transcript, p. 15288, lines 3-15.

<sup>32</sup> 021672-021683, p. 21678.

<sup>33</sup> 021672-021683, p. 21678-21679.

Witness discusses that [REDACTED] kidnappers spoke to him in Serbian, that [REDACTED] was unarmed, and that the events surrounding his abduction occurred within a period of five minutes.<sup>34</sup> To the extent that the Witness makes reference to the missing photographs in portions of these pages, the Panel can exercise its discretion in assessing the weight, if any, to give those portions of the Witness's statement. Having found the Witness's Statements to be relevant and *prima facie* authentic and reliable, the Panel is satisfied that the Witness's Statements also bear *prima facie* probative value and rejects the Defence request to redact pages 021678 to 021680 of 021672-021683.

17. Regarding suitability for admission pursuant to Rule 154, the Panel notes that the admission of the Witness's Statements pursuant to Rule 154 would materially enhance the efficiency of proceedings by reducing the time needed for examination-in-chief to approximately one hour.<sup>35</sup> In light of the above, the Panel is satisfied that the admission of the Witness's Statements under Rule 154: (i) would contribute to the expeditiousness of the proceedings; and (ii) given that the Defence will have an opportunity to cross-examine the witness, would not cause unfair prejudice to the Defence. The Panel therefore finds that the *prima facie* probative value of the Witness's Statements is not outweighed by any prejudicial effect, and that the Witness's Statements are suitable for admission pursuant to Rule 154.

18. *The Witness's Associated Exhibit.* The Panel observes that the Witness's Associated Exhibit for which the SPO seeks admission is a handwritten list of names provided by the Witness during her SPO interview.<sup>36</sup> The Panel notes that the Defence does not oppose admitting the Associated Exhibit into evidence.<sup>37</sup>

19. The Panel notes that the Witness's Associated Exhibit was used and discussed

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<sup>34</sup> 021672-021683, p. 21680.

<sup>35</sup> Motion, para. 7.

<sup>36</sup> 101739-101739-ET.

<sup>37</sup> Transcript, p. 15288, lines 3-15.



during one of the Witness's Statements and as such it constitutes an indispensable and inseparable part of the statement to which it relates. Without the Witness's Associated Exhibit, relevant parts of the Witness's Statement would be of lesser probative value. The Panel is therefore satisfied that the Witness's Associated Exhibit is relevant, *prima facie* authentic and probative. The Panel also finds that, given that the Defence will have an opportunity to cross-examine the Witness, the *prima facie* probative value of the Witness's Associated Exhibit is not outweighed by any prejudicial effect. Accordingly, the Panel finds that the Witness's Associated Exhibit is appropriate for admission under Rules 138(1) and 154.

20. In light of the above, the Panel finds that the Witness's Proposed Evidence is relevant, *prima facie* authentic, and has *prima facie* probative value which is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

#### B. THE VIDEO-CONFERENCE REQUEST

21. The Panel recalls that while video-conference testimony should not be considered only on an exceptional basis, the presence in the courtroom of a witness during testimony remains the preferred option.<sup>38</sup> This is to ensure the Panel is in the best possible position to assess the demeanour of the witness and that the rights of the Accused to confront a witness is not negatively affected.<sup>39</sup> Presence of the witness in court also ensures that the Panel is able to address any issues without impediment or delay, in particular security issues, that might arise from a witness's testimony. When considering whether to allow video-link testimony, the Panel may consider a number of factors, such as the "location, personal and

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<sup>38</sup> F01776, Trial Panel, *Decision on Prosecution Request for Video-Conference Testimony for W03827* ("8 September 2023 Decision"), 8 September 2023, confidential, para. 12 (a public redacted version was filed on the 1 November 2023, F01776/RED); F01558, Trial Panel, *Decision on Prosecution Request for Video-Conference Testimony and Special Measure for W04337* ("26 May 2023 Decision"), 26 May 2023, strictly confidential and *ex parte*, para. 16 (a confidential redacted version was issued on 30 May 2023).

<sup>39</sup> 8 September 2023 Decision, para. 12; 26 May 2023 Decision, para. 16.



health situation, availability and security of the witness, as well as the complexity and duration of any logistical travel and other arrangements to be made.”<sup>40</sup>

22. In determining whether to permit the Witness to testify via video-conference, the Panel has carefully considered all relevant circumstances put forth by the Parties. In particular, the Panel notes that the Witness has serious health issues.<sup>41</sup> While the Witness has not been granted any protective measures, secure video-conference facilities will enable the use of private session, if necessary.<sup>42</sup> The Panel also notes that the available technology would permit the Panel to observe the Witness’s demeanour while the Witness testifies without causing prejudice to the Defence.<sup>43</sup> The Panel further notes the Registry’s assessment that it would be feasible to conduct the testimony of the Witness via video-conference.<sup>44</sup>

23. Having carefully considered the request, the Panel is satisfied that the SPO has established that the circumstances, as presented in the Motion, warrant allowing the Witness to testify via secure video-conference. The Panel considers that the information supplied by the SPO establishes that having the Witness give testimony via secure video-conference at an appropriate location,<sup>45</sup> is more conducive to the Witness’s well-being than transferring the Witness to The Hague to testify in person. The Panel is also satisfied the Witness’s testimony via secure video-conference will cause no prejudice to the Accused and is compatible with the effective protection of their rights, as the Witness will be examined under the same conditions as those in the courtroom.

24. In light of the above, the Panel is satisfied that the secure video-conference is warranted for the Witness’s testimony. The Panel therefore grants the SPO’s request to permit the Witness to testify via video-conference link.

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<sup>40</sup> 8 September 2023 Decision, para. 12; 26 May 2023 Decision, para. 16.

<sup>41</sup> Motion, para. 11.

<sup>42</sup> Assessment, para. 11.

<sup>43</sup> Motion, para. 13.

<sup>44</sup> Assessment, paras 9-16, 19.

<sup>45</sup> See Motion, para. 1, fn. 6; Assessment, paras 15-16.

## V. CLASSIFICATION

25. The Panel notes that the Motion was filed confidentially. The SPO has already filed a public redacted version of its Motion.<sup>46</sup> The Panel therefore orders the Registrar to submit a public redacted version of its Assessment by Tuesday, 14 May 2024.

## VI. DISPOSITION

26. Based on the above, the Panel hereby:

- a. **GRANTS** the Motion;
- b. **FINDS** the Witness's Proposed Evidence appropriate for admission once the requirements of Rule 154(a)-(c) are met;
- c. **ORDERS** the testimony of W02486 to be received via video-conference;
- d. **ORDERS** the Registry to make the necessary arrangements for the Witness's testimony via video-conference; and
- e. **ORDERS** the Registrar to submit a public redacted version of its Assessment by Tuesday, 14 May 2024.



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**Judge Charles L. Smith, III**

**Presiding Judge**

Dated this Friday, 3 May 2024

At The Hague, the Netherlands.

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<sup>46</sup> See fn. 2, above.