



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

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**Public Redacted Version of 'Prosecution reply relating to Rule 154 motion F02204'**

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## I. INTRODUCTION

1. The Response<sup>1</sup> ignores prior findings of the Panel, and the established standard for admissibility of statements and associated exhibits, particularly in the context of Rule 154, where the witnesses will be available for cross-examination.

## II. SUBMISSIONS

2. As the Panel has previously held,<sup>2</sup> the centrality of a witness's evidence is not, of itself, a ground which prevents its admission under Rule 154.<sup>3</sup> The Panel has repeatedly confirmed that in light of the ability to cross-examine the witness, evidence going to the acts and conduct of the Accused and/or important issues in the case is admissible under Rule 154 and does not, without more, cause undue prejudice.<sup>4</sup>

3. Moreover, the SPO proposed in the Motion<sup>5</sup> those prior statements it considered relevant to its case and the establishment of the truth.<sup>6</sup> If the Defence considers that there is relevant information in the witnesses' other statements, it can put that information to the witness during cross-examination and, as appropriate and necessary, seek the admission of additional records.

4. In relation to associated exhibits and as repeatedly held by the Panel, the key question is whether the 'witness's testimony would become incomprehensible or of

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<sup>1</sup> Joint Defence Consolidated Response to F02204, and the Remaining Witnesses in F02195, KSC-BC-2020-06/F02272, 29 April 2024, Confidential ('Response').

<sup>2</sup> Decision on Prosecution Motion for Admission of Evidence of W01453, W03878, W04446, W04575, and W04651 Pursuant to Rule 154 (F02005), KSC-BC-2020-06/F02117, 12 February 2024, Confidential ('February Rule 154 Decision'), para.17.

<sup>3</sup> *Contra* Response, KSC-BC-2020-06/F02272, paras 37 (in relation to W04744), 40-44 (in relation to W04752), 51-52 (in relation to W04764).

<sup>4</sup> See e.g. February Rule 154 Decision, KSC-BC-2020-06/F02117, para.17; Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 16 March 2023, Confidential ('First Rule 154 Decision'), para.28.

<sup>5</sup> Prosecution motion for admission of evidence of Witnesses W01511, W04260, W04305, W04410, W04744, W04752, and W04764 pursuant to Rule 154, KSC-BC-2020-06/F02204, 27 March 2024, Confidential ('Motion').

<sup>6</sup> February Rule 154 Decision, KSC-BC-2020-06/F02117, para.18.

lesser probative value' without the exhibit. Of particular relevance, is 'whether the proposed exhibit was discussed with the witness during the record which is being tendered in evidence'.<sup>7</sup> The tendered exhibits meet this test.

A. W04260

5. The Defence incorrectly states that [REDACTED] is a proposed associated exhibit for W04260.<sup>8</sup> As is clear from the Motion,<sup>9</sup> this item is tendered as a prior statement of W04260. Moreover, the Defence assertion in relation to [REDACTED] misrepresents the content of the statement. In addition to containing a photo board identification and W04260's recognition of some individuals, the statement also contains further clarifications and details.

B. W04744

6. The Defence's unfounded arguments that the alleged centrality of W04744's account prevents its admission under Rule 154 are addressed above.<sup>10</sup> Further, whether W04744 had previously [REDACTED] is irrelevant<sup>11</sup> to consideration of admission of a statement under Rule 154, as this has no bearing on the Defence's ability to cross-examine in this case. The Defence is also mistaken when claiming that hearing W04744's evidence through Rule 154 would lead to a 'false economy'<sup>12</sup> to save time. Eliciting the witness's evidence *viva voce* would substantially expand examination hours, as his knowledge touches upon multiple aspects of the case. That being said, the SPO is mindful of the Panel's direction for focused examinations and

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<sup>7</sup> First Rule 154 Decision, KSC-BC-2020-06/F01380, para.24.

<sup>8</sup> Response, KSC-BC-2020-06/F02272, para.27.

<sup>9</sup> Motion, KSC-BC-2020-06/F02204, paras 15-19; KSC-BC-2020-06/F02204/A02.

<sup>10</sup> See para.2 above.

<sup>11</sup> *Contra* Response, KSC-BC-2020-06/F02272, para.37.

<sup>12</sup> *Contra* Response, KSC-BC-2020-06/F02272, para.36.

hereby gives notice that the time for its examination-in-chief will be reduced from an estimated four hours to two hours should the Rule 154 request be granted.

7. With respect to W04744's associated exhibits, W04744 discussed [REDACTED] in detail and he confirmed some parts as being correct whilst making corrections, clarifications and expansions to other parts of the document.<sup>13</sup> W04744 gave substantial additional information about the event discussed in the document as well as the people mentioned within it.<sup>14</sup> Regarding 083227-083239 of 083227-083248-ET, W04744 stated that, with small corrections made, 'everything in this document is correct and true'.<sup>15</sup> W04744 gave meaningful context as to both documents, and they are an inseparable part of his interview.

#### C. W04752

8. In an attempt to further their argument about the centrality of W04752's account, as generally addressed above,<sup>16</sup> the Defence<sup>17</sup> again,<sup>18</sup> relies on a mischaracterisation of the Panel's oral order from 10 July 2023.<sup>19</sup> However, as the Panel has previously noted, such reliance is misplaced, as the primary basis for the rejection of that prior motion was its lack of timeliness.<sup>20</sup> Such factors are not applicable here. On the contrary, a witness such as W04752 who has repeatedly provided consistent evidence on a significant number of relevant areas is particularly suitable for Rule 154.

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<sup>13</sup> 083249-TR-ET Part 3 RED2, pp.16-24.

<sup>14</sup> 083249-TR-ET Part 3 RED2, pp.15-24; 083249-TR-ET Part 4 RED2, pp.1-26; 083249-TR-ET Part 5 RED2, pp.1-10.

<sup>15</sup> 083249-TR-ET Part 1 RED2, p.20.

<sup>16</sup> See para.2 above.

<sup>17</sup> Response, KSC-BC-2020-06/F02272, para.41.

<sup>18</sup> Joint Defence Response to Prosecution motion for admission of evidence of Witnesses W01453, W03878, W04446, W04575, and W04651 pursuant to Rule 154 (F02005), KSC-BV-2020-06/F02046, 8 January 2024, Confidential, para.13.

<sup>19</sup> Transcript, 10 July 2023, pp.5354-5355.

<sup>20</sup> February Rule 154 Decision, KSC-BC-2020-06/F02117, para.17.

9. The Defence's contention that the Rule 154(c) criterion is not met<sup>21</sup> is equally misplaced. First, the Defence selectively quotes and mischaracterises the nature of the advisement, in which the witness was in fact clearly informed that he should tell the truth, and could face prosecution if he did not do so – and confirmed his understanding of that.<sup>22</sup> But, second, and decisively, attestation by a witness for the purposes of Rule 154(c) occurs only in the courtroom, where the witness under oath attests that what is in the statements reflects what s/he would say if examined. The suggestion that a witness such as W04752 – [REDACTED] – would fail to understand this obligation<sup>23</sup> does not hold.

10. Contrary to Defence submissions,<sup>24</sup> the admission of W04752's prior statements under Rule 154 would result in significant time savings, thereby contributing to the fairness and expeditiousness of the proceedings. Should W04752 testify under Rule 154, the SPO estimates only 10 hours of direct examination which is significantly less than the (conservative) 24 hours originally estimated when W04752 was envisaged as a *viva voce* witness.<sup>25</sup> The SPO will ensure that direct examination is not duplicative of admitted Rule 154 statements and that admission will therefore contribute to the expeditiousness of the proceedings.

11. In objecting to certain associated exhibits, the Defence repeats a number of tangential arguments which the Panel has previously considered and rejected. For example, contrary to Defence submissions,<sup>26</sup> the fact that other witnesses are able to speak to some of the proposed associated exhibits is irrelevant to whether they meet the applicable test, and does not bar their admission. Similarly, as previously found

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<sup>21</sup> Response, KSC-BC-2020-06/F02272, paras 45-46.

<sup>22</sup> E.g. 083280-TR-ET Part 1, pp.3, 7.

<sup>23</sup> Response, KSC-BC-2020-06/F02272, para.46.

<sup>24</sup> Response, KSC-BC-2020-06/F02272, paras 47-49.

<sup>25</sup> Submission of Pre-Trial Brief, with witness and exhibit lists with strictly confidential and *ex parte* Annexes 1-3, KSC-BC-2020-06/F00631/A02, 17 December 2021, p.481.

<sup>26</sup> Response, KSC-BC-2020-06/F02272, para.50 (in relation to, for example, [REDACTED]).

by the Panel, the fact that a witness cannot comment on authorship or the truth of the content of certain exhibits is a question of weight and does not require their exclusion.<sup>27</sup> Moreover, W04752 did in fact confirm a number of important and potentially authenticating aspects of the documents in question.<sup>28</sup> In addition, the SPO notes the following specific points:

- a. [REDACTED]: there is no basis for segmenting one page of the document in the manner requested by the Defence,<sup>29</sup> W04752 spoke to the documents as a collection, confirming *inter alia* that [REDACTED] and that these were materials which were used as examples [REDACTED].<sup>30</sup>
- b. [REDACTED]: it is clearly indicated that W04752 commented on the first page of this item as an example, but that his explanation applies equally to the following related pages containing similar content.<sup>31</sup> The exhibit is relevant to organisation and command, irrespective of the content of any of the underlying orders referenced. Moreover, contrary to Defence submissions, the content of the underlying orders is not unknown. By way of example, the protocol number and date of the order referenced at p.4 of the exhibit ([REDACTED]) corresponds directly to already admitted exhibit 1D00071, which further re-enforces the probative value of this exhibit.<sup>32</sup> The full-page range for the Albanian original is contained in [REDACTED], which the SPO hereby tenders in place of [REDACTED] for completeness.

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<sup>27</sup> First Rule 154 Decision, KSC-BC-2020-06/F01380, para.85. *Contra* Response, KSC-BC-2020-06/F02272, para.50 (see e.g. [REDACTED]). Similar objections are raised in relation to W01511's associated exhibits and should be rejected for the same reasons. See Response, KSC-BC-2020-06/F02272, para.22.

<sup>28</sup> For example, in relation to [REDACTED] (see 083280-TR-ET, Part 6, pp.3-4, where the witness recognises the seal of the General Staff stating that '[t]he seal was kept by the commander and the deputy commander. This could have only come from there', and the General Staff reference or protocol number); in relation to [REDACTED] (see 083280-TR-ET, Part 2, pp.36-37 confirming the roles of two of the people named therein).

<sup>29</sup> Response, KSC-BC-2020-06/F02272, para.50.

<sup>30</sup> [REDACTED].

<sup>31</sup> [REDACTED].

<sup>32</sup> See *similarly* p.2 which corresponds precisely to [REDACTED] ([REDACTED]).

- c. [REDACTED]: the exhibit meets the relevant test and it is irrelevant whether the drawing was [REDACTED], any additional clarification considered necessary can be elicited in testimony.
- d. [REDACTED]: this exhibit is a very short video that was shown to W04752, his comments pertain to the visual content and not the audio. The video is tendered without sound.

#### D. W04764

12. The Defence's assertions that portions of W04764's evidence are contradictory, ambiguous, or do not include a basis of knowledge<sup>33</sup> – even if true – are matters going to weight and not admissibility.<sup>34</sup> The Defence also fails to articulate why such issues could not be addressed in cross-examination.<sup>35</sup> Furthermore, if W04764 were called live, the SPO would elicit much of the same evidence contained in the proposed statements, leaving the Defence to cross-examine on the same matters. The suggestion that W04764's evidence would change if adduced live should be dismissed as purely hypothetical.<sup>36</sup>

13. Further, noting that Defence objections on the basis of the 'centrality' of the witness's evidence are addressed above,<sup>37</sup> the Defence once again submits that the time-saving function of Rule 154 would be undermined by admitting a witness's statement,<sup>38</sup> but neglects to mention that W04764's statement captures an eight-hour

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<sup>33</sup> Response, KSC-BC-2020-06/F02272, paras 53-54.

<sup>34</sup> See e.g. 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), KSC-BC-2020-06/F01901, 2 November 2023, Confidential, paras 13, 83.

<sup>35</sup> See First Rule 154 Decision, KSC-BC-2020-06/F01380, para.17.

<sup>36</sup> Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153, KSC-BC-2020-06/F01904, 3 November 2023, Confidential, para.34.

<sup>37</sup> See para.2 above.

<sup>38</sup> Response, KSC-BC-2020-06/F02272, para.57.

SPO interview or that the SPO has already reduced its direct-examination estimate from six to three hours.<sup>39</sup>

14. Finally, W04764 addressed both 083699-083716-ET and 013442-013444 at length and, as the Defence acknowledges,<sup>40</sup> repeatedly offered his observations on their contents.<sup>41</sup> Without these exhibits, W04764's evidence would be less comprehensible regardless of whether he disputed their accuracy or authenticity,<sup>42</sup> which are considerations going to the weight to be assigned to these exhibits, not their admissibility.<sup>43</sup>

### III. CLASSIFICATION

15. This submission is filed as confidential pursuant to Rule 82(4).

### IV. RELIEF REQUESTED

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

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<sup>39</sup> Motion, KSC-BC-2020-06/F02204, para.1, fn.4.

<sup>40</sup> Response, KSC-BC-2020-06/F02272, paras 58-62.


<sup>41</sup> First Rule 154 Decision, KSC-BC-2020-06/F01380, para.24.

<sup>42</sup> Decision on Prosecution Motion for Admission of Evidence of W00208, W02082, W02475, W04147, W04325, W04491 and W04753 Pursuant to Rule 154 (F01788), KSC-BC-2020-06/F01848, 10 October 2023, Confidential, paras 53, 60, 86.

<sup>43</sup> See e.g. First Rule 154 Decision, KSC-BC-2020-06/F01380, para.127.



**Word Count: 1995**



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Monday, 6 May 2024

At The Hague, the Netherlands.