



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: 24 May 2024

Language: English

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**Public Redacted Version of
Decision on Prosecution Motion for Admission of Evidence of W00992, W01336,
and W04824 Pursuant to Rule 154**

Specialist Prosecutor

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TRIAL PANEL II (“Panel”), pursuant to Articles 21, 37 and 40 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 137, 138, 141(1), 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, 16 April 2024, and 3 and 22 May 2024, the Panel issued decisions on motions of the Specialist Prosecutor’s Office (“SPO”) pursuant to Rule 154.¹

¹ F01380, 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, 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, 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, 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, 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, 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, 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 (“F01976”)*, 1 December 2023, confidential (a public redacted version was filed on the same day, F01976/RED); F02044, 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, Panel, *Decision on Prosecution Motion for Admission of Evidence of W01453, W03878, W04446, W04575, and W04651 Pursuant to Rule 154 (F02005)*, 12 February 2024, confidential (a public redacted version was filed on the same day, F02117/RED); F02245, 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); F02281, Panel, *Decision on URGENT Prosecution Motion for Admission of Evidence of W02486 Pursuant to Rule 154 and Request for Video-Conference Testimony (F02270)*, 3 May 2024, confidential (a public redacted version

2. On 16 May 2024, the SPO filed a Rule 154 motion in relation to W00992, W01336, and W04824 (“Motion”).²

3. On 22 May 2024, following an expedited briefing schedule,³ the Defence for all four Accused Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (collectively, “Accused” and “Defence”) responded jointly to the Motion (“Response”).⁴

4. The SPO did not file a reply.

II. SUBMISSIONS

5. The SPO requests the admission of the statements, together with associated exhibits (respectively, “Statements” and “Associated Exhibits”; collectively, the “Proposed Evidence”) of three witnesses: W00992, W01336, and W04824.⁵ The SPO submits that the Proposed Evidence meets the requirements of Rules 138(1) and 154 and its admission is not outweighed by any prejudice and is therefore in the interests of justice.⁶

6. The Defence responds that, with the exception of an excerpt in one of W01336’s statements, it does not oppose the Motion.⁷

was issued on the same day, F02281/RED); F02328, Panel, *Decision on Prosecution Motion for Admission of Evidence of Witnesses W01511, W04260, W04305, W04410, W04744, W04752, and W04764 Pursuant to Rule 154 (F02204)*, 22 May 2024, confidential (a public redacted version was issued on the same day, F02328/RED).

² F02319, Specialist Prosecutor, *Prosecution Motion for Admission of Evidence of Witnesses W00992, W01336, and W04824 Pursuant to Rule 154 and Related Request*, 16 May 2024, confidential, with Annexes 1-6, confidential (a public redacted version was filed on the same day, F02319/RED).

³ CRSPD496, *Email from Trial Panel II to CMU Regarding Expedited Briefing Schedule for F02319*, 17 May 2024.

⁴ CRSPD509, *Email from the Defence to CMU Regarding Defence Responses to F02319*, 22 May 2024.

⁵ Motion, paras 1, 24.

⁶ Motion, para. 2.

⁷ See Response.

III. APPLICABLE LAW

7. The Panel incorporates by reference the applicable law as set out in its First Rule 154 Decision.⁸

IV. DISCUSSION

A. W00992

8. The SPO submits that the proposed evidence of W00992⁹ is: (i) relevant;¹⁰ (ii) *prima facie* authentic and reliable;¹¹ and (iii) suitable for admission under Rule 154.¹²

9. The Defence does not object to W00992's Proposed Evidence being tendered under Rule 154.¹³

10. *W00992's Statements*. Regarding relevance, W00992, was allegedly abducted by a group of armed men wearing armbands with Kosovo Liberation Army ("KLA") insignia. The witness was then allegedly tied up, blindfolded, beaten, and taken to a nearby house, where he was mistreated, and, thereafter, taken to different location, where he was tied up, beaten and interrogated.¹⁴ The Panel is satisfied that W00992's Statements are relevant to the charges in the Indictment.¹⁵

11. Regarding *prima facie* authenticity and reliability, the Panel notes that

⁸ First Rule 154 Decision, paras 11-35.

⁹ The proposed evidence of W00992 ("W00992's Proposed Evidence") consists of the following statements, including any translation thereof: (i) 007545-TR-ET Parts 1-3 RED; and (ii) [REDACTED] (collectively, "W00992's Statements"). See Annex 4 to the Motion.

¹⁰ Motion, paras 3-6.

¹¹ Motion, para. 7.

¹² Motion, paras 8-9.

¹³ See Response.

¹⁴ Motion, paras 3-5; 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*, 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).

¹⁵ See F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential, paras [REDACTED]; Schedule A. [REDACTED] (a public lesser redacted version was filed on 27 February 2023, F01323/A01).

W00992's Statements consist of: (i) W00992's Special Investigative Task Force ("SITF") interview; and (ii) W00992's statement made in another jurisdiction.¹⁶ W00992's Statements contain multiple indicia of authenticity and reliability, including: (i) the verbatim transcript of the audio-video recorded SITF interview; (ii) a statement of the witness warnings, rights and acknowledgment during the SITF interview; (iii) the witness's signature on the statement; (iv) indication of the date, time and place of the interview and statement; and (v) the details of the witness and the staff.¹⁷ In light of the above, the Panel is satisfied of the *prima facie* authenticity and reliability of W00992's Statements.

12. The Panel is satisfied that W00992's Statements also bear *prima facie* probative value, which is not being disputed by the Defence. Regarding suitability for admission pursuant to Rule 154, the Panel notes that W00992's Statements are 76 pages in length (in English) and the Defence does not object to their admission. The Panel is satisfied that the admission of W00992's Statements under Rule 154: (i) would contribute to the expeditiousness of the proceedings as it would reduce the amount of direct examination required for this witness to a maximum of one hour;¹⁸ and (ii) insofar as the Defence will have an opportunity to cross-examine the witness and conduct further investigations into this matter, would not cause unfair prejudice to the Defence. The Panel therefore finds that the *prima facie* probative value of W00992's Statements is not outweighed by any prejudicial effect, and that W00992's Statements are suitable for admission pursuant to Rule 154.

13. In light of the above, the Panel finds that W00992'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.

¹⁶ See 007545-TR-ET Parts 1-3 RED, [REDACTED].

¹⁷ Motion, para. 7; Annex 4 to the Motion, pp. 2-3.

¹⁸ Motion, para. 9.

B. W01336

14. The SPO submits that the proposed evidence of W01336¹⁹ is: (i) relevant;²⁰ (ii) *prima facie* authentic and reliable;²¹ and (iii) suitable for admission under Rule 154.²²

15. The Defence responds that, except in relation to one item, it does not object to W01336's Proposed Evidence being tendered under Rule 154. The Defence contends that, while it does not object to the admission of W01336's statement to an entity in another jurisdiction, it considers that the excerpt at page 2, which refers to a picture that is not annexed to the record, has no probative value.²³

16. *W01336's Statements*. Regarding relevance, W01336 was allegedly abducted by a group of armed men wearing armbands with KLA insignia. The witness was then allegedly tied up, blindfolded, beaten, and taken to an empty house, where he was mistreated, and, thereafter, taken to an unfinished house and put in the basement together with others where they were also interrogated and beaten.²⁴ The Panel is satisfied that W01336's Statements are relevant to the charges in the Indictment.²⁵

17. Regarding *prima facie* authenticity and reliability, W01336's Statements consist of: (i) W01336's interview with the SPO; (ii) an SITF official note; (iii) information provided by W01336's in another jurisdiction; (iv) W01336's statement to an entity in different jurisdiction; and (v) W01336's statement to an

¹⁹ The proposed evidence of W01336 ("W01336's Proposed Evidence") consists of the following statements, including any translation thereof (collectively, "W01336's Statements") and associated exhibits, including any translation thereof (collectively, "W01336's Associated Exhibit"). W01336's Statements consist of: (i) 074244-TR-ET Parts 1-2 RED; (ii) 032049-032051 RED; (iii) 028925-028934-ET Revised RED; (iv) 028983-028985-ET RED; and (v) 031000-031003-ET Revised RED. W01336's Associated Exhibit consists of [REDACTED]. *See* Annex 5 to the Motion.

²⁰ Motion, paras 10-12.

²¹ Motion, paras 13-14.

²² Motion, para. 16.

²³ *See* Response.

²⁴ Motion, para. 10; SPO Pre-Trial Brief, paras [REDACTED].

²⁵ *See* Indictment, paras [REDACTED]; Schedule A. [REDACTED].

entity in a different jurisdiction some years later.²⁶ W01336's Statements contain multiple indicia of authenticity and reliability, including: (i) the verbatim transcript of the audio-video recorded SPO interview; (ii) indication of the date, time and place of the interviews and testimonies; (iii) the details of the witness and the staff present during the interviews; (iv) a statement of the witness's rights and/or the witness's signature and/or the relevant authorities' signature; and (v) confirmation of prior statements, or testimonies, during the SPO interview.²⁷ In light of the above, the Panel is satisfied of the *prima facie* authenticity and reliability of W01336's Statements.

18. Regarding the *prima facie* probative value of W01336's Statements, the Defence argues that the excerpt referring to a picture at page 3 of W01336's statement to an entity in another jurisdiction,²⁸ lacks probative value as the photograph discussed is not annexed.²⁹ The Panel is of the view that this issue is a matter of what weight, if any, to be assigned to this part of the statement. The Panel further notes that the picture is not available to either Party, and that its absence would not cause unfair prejudice to the Defence. The Panel also notes that, if this part of the witness's account is relevant to either Party, it can be put to the witness during the witness's testimony. Therefore, and having found W01336's Statements to be relevant and *prima facie* authentic and reliable, the Panel is satisfied that W01336's Statements also bear *prima facie* probative value. Regarding suitability for admission pursuant to Rule 154, the Panel notes that W01336's Statements are 81 pages in length (in English) and that the Defence does not object to their admission pursuant to Rule 154. The Panel is satisfied that the admission of W01336's Statements under Rule 154: (i) would contribute to the expeditiousness of the proceedings as it would reduce the amount of direct examination required for this witness to one

²⁶ See 074244-TR-ET Parts 1-2 RED, 032049-032051 RED, 028925-028934-ET Revised RED, 028983-028985-ET RED, 031000-031003-ET Revised RED.

²⁷ Motion, paras 13-14; Annex 5 to the Motion, pp. 2-3.

²⁸ See 028983-028985-ET RED, p. 3.

²⁹ See Response.

hour;³⁰ and (ii) insofar as the Defence will have an opportunity to cross-examine the witness and conduct further investigations into this matter, would not cause unfair prejudice to the Defence. The Panel therefore finds that the *prima facie* probative value of W01336's Statements is not outweighed by any prejudicial effect, and that W01336's Statements are suitable for admission pursuant to Rule 154.

19. *W01336's Associated Exhibits*. The Panel observes that W01336's Associated Exhibit consists of a map. The Panel notes that W01336's Associated Exhibit is used and explained during W01336's SPO interview and during W01336's SITF meeting³¹ and constitute an indispensable and inseparable part of the statements to which it relates. The Panel is therefore satisfied that W01336'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 this witness, and as it does not oppose the admission of the item as an associated exhibit, the *prima facie* probative value of W01336's Associated Exhibit is not outweighed by any prejudicial effect. Accordingly, the Panel finds that W01336's Associated Exhibit is appropriate for admission under Rules 138(1) and 154.

20. In light of the above, the Panel finds that W01336's Proposed Evidence is relevant, *prima facie* authentic, and its *prima facie* probative value is not outweighed by any prejudicial effect, and is therefore appropriate for admission pursuant to Rules 138(1) and 154.

³⁰ Motion, para. 16.

³¹ Motion, para. 15; Annex 5 to the Motion, p. 4.

C. W04824

21. The SPO submits that the proposed evidence of W04824³² is: (i) relevant;³³ (ii) *prima facie* authentic and reliable;³⁴ and (iii) suitable for admission under Rule 154.³⁵

22. The Defence does not object to W04824's Proposed Evidence being tendered under Rule 154.³⁶

23. *W04824's Statements*. Regarding relevance, W04824, together with others, were taken to a location in Gjilan/Gnjilane, where they were allegedly interrogated and beaten. Before leaving the building, W04824 said that he saw an individual of a different ethnicity, who had visible injuries, and heard screams of another person.³⁷ The Panel is satisfied that W04824's Statements are relevant to the charges in the Indictment.³⁸

24. Regarding *prima facie* authenticity and reliability, W04824's Statements consists of: (i) W04824's SPO interview; (ii) information provided by W04824 in another jurisdiction; (iii) additional information provided by W04824 in another jurisdiction; and (iv) W04824's statement to an entity in another jurisdiction.³⁹ W04824's Statements contain multiple indicia of authenticity and reliability, including: (i) a verbatim transcript of the audio-video recorded SPO interview of the witness; (ii) indication of date and time of the interviews and testimonies;

³² The proposed evidence of W04824 ("W04824's Proposed Evidence") consists of the following statement, including any translation thereof (collectively, "W04824's Statements") and associated exhibits, including any translation thereof (collectively, "W04824's Associated Exhibit"). W04824's Statements consist of: (i) 092954-TR-ET Parts 1-3 RED; (ii) SITF00162664-SITF00162674-ET RED; (iii) SITF00195352-SITF00195370-ET Revised RED; and (iv) SITF00271891-SITF00271891-ET. W04824's Associated Exhibit consists of 092952-092953. See Annex 6 to the Motion.

³³ Motion, paras 17-19.

³⁴ Motion, paras 20-21.

³⁵ Motion, para. 23.

³⁶ See Response.

³⁷ Motion, paras 17-18; Pre-Trial Brief, paras [REDACTED].

³⁸ See Indictment, paras [REDACTED].

³⁹ See 092954-TR-ET Parts 1-3 RED, SITF00162664-SITF00162674-ET RED, SITF00195352-SITF00195370-ET Revised RED, SITF00271891-SITF00271891-ET.

(iii) the witness's personal details; and (iv) statements of the witness's warning, rights and the witness's acknowledgment.⁴⁰ In light of the above, the Panel is satisfied of the *prima facie* authenticity and reliability of W04824's Statements.

25. Regarding the *prima facie* probative value of W04824's Statements, having found W04824's Statements to be relevant and *prima facie* authentic and reliable, the Panel is satisfied that W04824's Statements also bears *prima facie* probative value. Regarding suitability for admission pursuant to Rule 154, the Panel notes that W04824's Statements are 65 pages (in English) and that the Defence does not object to their admission pursuant to Rule 154. The Panel is satisfied that the admission of W04824's Statements under Rule 154: (i) would contribute to the expeditiousness of the proceedings as it would reduce the amount of direct examination required for this witness to one hour;⁴¹ and (ii) given that the Defence will have an opportunity to cross-examine the witness and conduct further investigations into this matter, would not cause unfair prejudice to the Defence. The Panel therefore finds that the *prima facie* probative value of W04824's Statements is not outweighed by any prejudicial effect, and that W04824's Statements are suitable for admission pursuant to Rule 154.

26. *W04824's Associated Exhibit*. The Panel observes that W04824's Associated Exhibit consists of photographs. The Panel notes that W04824's Associated Exhibit was shown and discussed in W04824's SPO interview, and constitutes an indispensable and inseparable part of the statement to which it relates.⁴² The Panel is therefore satisfied that W04824'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 this witness, and as it does not oppose the admission of the item as an associated exhibit, the *prima facie* probative value of W04824's Associated Exhibit is not outweighed by any prejudicial effect.

⁴⁰ Motion, paras 20-21; Annex 6 to the Motion, pp. 2-3.

⁴¹ Motion, para. 23.

⁴² Motion, para. 22; Annex 6 to the Motion, p. 4.

Accordingly, the Panel finds that W04824's Associated Exhibit is appropriate for admission under Rules 138(1) and 154.

27. In light of the above, the Panel finds that W04824's Proposed Evidence is relevant, *prima facie* authentic, 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.

V. DISPOSITION

28. Based on the above, the Panel hereby:

- a. **GRANTS** the Motion with respect to W00992, W01336, and W04824; and
- b. **FINDS** the Statements and Associated Exhibits of W00992, W01336, and W04824 as set out in paragraphs 13, 20, and 27 and the respective footnotes, appropriate for admission once the requirements of Rule 154(a)-(c) are met in respect of each witness and their statements and associated exhibits.



Judge Charles L. Smith, III

Presiding Judge

Dated this Friday, 24 May 2024

At The Hague, the Netherlands.