



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 Guénaël Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 28 June 2024

Language: English

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**Public Redacted Version of
Decision on Prosecution Motion for Admission of Evidence of Witness W04501
pursuant to Rule 154 (F02388)**

Specialist Prosecutor

Kimberly P. West

Counsel for Hashim Thaçi

Luka Mišetić

Counsel for Victims

Simon Laws

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

TRIAL PANEL II (“Panel”), pursuant to Articles 21 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, 3 May 2024, 22 May 2024, and 24 May 2024 the Panel issued decisions on motions of the Specialist Prosecutor’s Office (“SPO”) pursuant to Rule 154 with regard to eighty (80) witnesses.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* (“Second Rule 154 Decision”), 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* (“Third Rule 154 Decision”), 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* (“Fourth Rule 154 Decision”), 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* (“Fifth Rule 154 Decision”), 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* (“Sixth Rule 154 Decision”), 2 November 2023, confidential (a public redacted version was filed on the same day, F01901/RED; a further public redacted version was filed on 30 May 2024, F01901/RED2); F01976, Panel, *Decision on Prosecution Motion for Admission of Evidence of Witnesses 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, 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*, 12 February 2024, confidential (a public redacted version was filed the same day, F02117/RED); F02245, Panel, *Decision on Prosecution Motion for Admission of Evidence of W01978, W02540, W02677, W02714, W02951, W03865, W03881*,

2. On 18 June 2024, the SPO filed a Rule 154 motion in relation to W04501 (“Motion”).²
3. On 24 June 2024, the Defence teams for the four Accused (“Thaçi Defence”, “Veseli Defence”, “Selimi Defence”, “Krasniqi Defence”; collectively, “Defence”) filed a joint response to the Motion (“Joint Response”).³
4. No reply was entertained.⁴

II. SUBMISSIONS

5. The SPO seeks admission of the statement, together with associated exhibits (respectively, “Statement” and “Associated Exhibits”; collectively, the “Proposed Evidence”) of W04501.⁵ The SPO submits that the Proposed Evidence of W04501⁶ is: (i) relevant;⁷ (ii) *prima facie* authentic and reliable;⁸ and (iii) suitable for

W04371, W04710, and W04850 Pursuant to Rule 154 and Amendment of Exhibit List, 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 was filed the same day, F02281/RED). W02486’s proposed evidence was subsequently admitted under Rule 153, see Transcript of Hearing, 7 May 2024, p. 15468, line 13 to p. 15459, line 19; F02328, Panel, *Decision on Prosecution Motion for Admission of Evidence of Evidence of Witnesses W01511, W04260, W04305, W04410, W04744, W04752, and W04764 Pursuant to Rule 154*, 22 May 2024, confidential (a public redacted version was filed the same day, F02328/RED); and F02339, Panel, *Decision on Prosecution Motion for Admission of Evidence of W00992, W01336, and W04824 Pursuant to Rule 154*, 24 May 2024, confidential (a public redacted version was filed the same day, F02339/RED).

² F02388, Specialist Prosecutor, *Prosecution Motion for Admission of Evidence of Witness W04501 Pursuant to Rule 154*, 18 June 2024, confidential (a public redacted version was filed the same day, F02388/RED).

³ F02403, Specialist Counsel, *Joint Defence Response to ‘Prosecution Motion for Admission of Evidence of Witness W04501 Pursuant to Rule 154’ (F02388)*, 24 June 2024, confidential, with Annex 1, confidential (a public redacted version was filed on 27 June 2024, F02403/RED).

⁴ CRSPD526, *Email from Trial Panel II to CMU on Message from Trial Panel II to the Parties and participants regarding Expediated briefing schedule for the Motion R154 for W4501 (F02388)*, 18 June 2024, confidential.

⁵ Motion, paras 1, 10.

⁶ The Proposed Evidence of W04501 consists of the SPO Interview 068516-TR-ET, Parts 1-4 (068516-TR-ET Part 1 RED2; 068516-TR-ET Part 2 RED2, 068516-TR-ET Part 3 RED2, and 068516-TR-ET Part 4 RED2) and three associated exhibits, consisting of: (i) 068510-068515, p. 068510; (ii) 068510-068515, p. 068511; and (iii) 068510-068515, p. 068512. Item 4 is not tendered for admission (068510-068515, p. 068512A-068515). See, generally, Annex 1 to the Motion.

⁷ Motion, paras 3-5.

⁸ Motion, para. 6.

admission under Rule 154.⁹

6. The Defence does not object to the admission of the Proposed Evidence with the exception of the parts discussing: (i) the death of W04501's relative; and (ii) allegations against Jakup Krasniqi ("Mr Krasniqi") and his family, including the allegation that an organization in charge of demolishing W04501's house was connected to Mr Krasniqi.¹⁰ The Defence argues that the death of W04501's relative is not relevant,¹¹ the alleged involvement of Mr Thaçi in the death of W04501's relative lacks any evidentiary foundation,¹² and allegations pertaining to Mr Krasniqi lack probative value.¹³

III. APPLICABLE LAW

7. The Panel incorporates by reference the applicable law as set out in the Panel's first decision regarding the admission of evidence under Rule 154.¹⁴

IV. DISCUSSION

A. ADMISSION OF EVIDENCE

8. The Panel notes that W04501's Statement, tendered for admission into evidence, contains only W04501's SPO Interview (Parts 1-4).¹⁵ Regarding the Defence objections noted above, the Panel notes that information regarding: (i) the alleged *involvement of Mr Thaçi* in the death of W04501's relative, and (ii) the allegation that an organization in charge of demolishing W04501's house was connected to Mr Krasniqi, is not contained in W04501's SPO Interview. For this

⁹ Motion, para. 8.

¹⁰ Joint Response, paras 4 and 16.

¹¹ Joint Response, paras 6-10.

¹² Joint Response, para. 10.

¹³ Joint Response, para. 16.

¹⁴ First Rule 154 Decision, paras 26-35.

¹⁵ 068516-TR-ET, Parts 1-4 (068516-TR-ET Part 1 RED2; 068516-TR-ET Part 2 RED2, 068516-TR-ET Part 3 RED2, and 068516-TR-ET Part 4 RED2).

reason, these two specific allegations do not form part of the evidence whose admissibility the Panel is asked to decide here.

9. *W04501's Statement.* Regarding relevance, the SPO relies upon W04501's Statement in respect of: (i) the presence and identities of the KLA commanders in W04501's area; (ii) the abduction and detention of W04501 and his relatives in 1998; (iii) W04501's detention, interrogation and mistreatment by the KLA at a specific location and W04501's interactions with KLA members; (iv) the detention and mistreatment of others at that location; (v) the circumstances surrounding W04501's release; and (vi) the KLA's continued targeting of W4501's family.¹⁶ The Panel also notes that the Defence contests the relevance of the portion of W04501's Statement concerning the death of W04501's relative.¹⁷ Having reviewed W04501's Statement, the Panel is satisfied that the information it contains is relevant to this case, in particular, in respect of the targeting of the witness and members of his family, the reason(s) for them being targeted, as well as in respect of the death of one of W04501's relatives. Regarding the death of W04501's relative, the Panel recalls that, while evidence of uncharged "acts and conduct of the Accused" may be inadmissible for the purpose of determining guilt for the crimes charged, such evidence may be admissible for other valid purposes, including when events occurred outside of the indictment period.¹⁸ Specifically, evidence of events outside the temporal scope of the indictment can be admitted if it is relevant to establishing facts and circumstances validly pleaded within the scope of the

¹⁶ See Annex 2 to the Motion, p. 1. F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential, paras [REDACTED]; F01594/A03, Specialist Prosecutor, *Annex 3 to Prosecution Submission of Updated Witness List and Confidential Lesser Redacted Version of the Pre-Trial Brief* ("SPO PTB"), 9 June 2023, confidential, paras [REDACTED]; F01594/A02, Specialist Prosecutor, *Annex 2 to Prosecution Submission of Updated Witness List and Confidential Lesser Redacted Version of Pre-Trial Brief* ("Amended List of Witnesses"), 9 June 2023, confidential, pp. [REDACTED].

¹⁷ Joint Response, para. 6 ("The Defence therefore does contest the relevance of the portion of the witness' SPO interview which discusses the death of his [relative, name of the relative]").

¹⁸ Decision on Selimi Defence Motion to Exclude Evidence of W04846, para. 16 (with further references).

Indictment, has probative value in respect of any such fact or circumstance, and there is no compelling reason to exclude it.¹⁹ While the death of W04501's relative occurred outside of the Indictment period, evidence relating to that death could be relevant in respect of facts and circumstances validly pleaded in the Indictment, in particular in respect of any inference that the Panel may be asked to draw in respect of the reason(s) for which W04501 and members of his family might have been targeted during the relevant timeframe.²⁰ In light of the above, the Panel is satisfied that W04501's Statement is relevant to the charges in the Indictment.

10. Regarding authenticity, W04501's Statement consists of a transcript of W04501's SPO Interview (Parts 1-4). The Defence does not challenge the authenticity of W04501's Statement.²¹ In light of the above, the Panel is satisfied of the *prima facie* authenticity of W04501's Statement.

11. Regarding probative value and any prejudicial effect, the Panel observes that W04501 confirmed that the content of W04501's Statement is true and accurate.²² The Panel also notes that the Defence does not object, in principle, to the admission of W04501's Statement pursuant to Rule 154, but objects only to discrete parts of it.²³ The Panel recalls that the information regarding Mr Thaçi's alleged involvement in the death of W04501's relative is not contained in documents subjected to the present application.²⁴ The Panel further recalls that the information regarding the death of W04501's relative, contained in W04501's Statement, has been found relevant to the charges.²⁵ The Panel further finds that admitting W04501's Statement does not prejudice the Defence and does not outweigh its probative value.

¹⁹ Decision on Selimi Defence Motion to Exclude Evidence of W04846, para. 17 (with further references).

²⁰ See for example Indictment, paras 16-17.

²¹ Joint Response, para. 4.

²² 068516-TR-ET Part 4 RED2, pp.28-29. See Motion, para. 6.

²³ Joint Response, paras 4 and 16.

²⁴ 107022-107022 RED. 108984-108984. See also para. 8 of this Decision.

²⁵ See para. 9 of this Decision.

12. Regarding the evidence pertaining to Mr Krasniqi, the Panel has already noted that the allegation that an organization in charge of demolishing W04501's house was connected to Mr Krasniqi does not form part of the tendered Statement.²⁶ In contrast, references to Mr Krasniqi and a relative contained in W04501's Statement²⁷ have some probative value in respect of the facts and circumstances relevant to this case. That probative value is not outweighed by its prejudicial effect, and the Panel will ultimately decide the weight to give such evidence in light of all relevant evidence admitted. In light of the above, the Panel is satisfied that W04501's Statement, in its entirety, has *prima facie* probative value and is not prejudicial to the Defence.

13. Regarding the suitability of W04501's Statement for admission pursuant to Rule 154, the Panel observes that W04501's Statement amounts to 134 pages (in English). The Panel notes that the SPO intends to elicit brief oral testimony from W04501 for less than one hour.²⁸ In light of the above, the Panel is satisfied that the admission of W04501's Statement under Rule 154 would: (i) contribute to the expeditiousness of the proceedings; and (ii) insofar as the Defence will have an opportunity to cross-examine the witness, would not cause unfair prejudice to the Defence. The Panel is therefore satisfied that W04501's Statement is suitable for admission pursuant to Rule 154.

14. *W04501's Associated Exhibits*. The Panel observes that W04501's Associated Exhibits comprise: (i) a sketch drawn by W04501 to describe the location and circumstances of W04501's arrest by KLA members in early June 1998;²⁹ (ii) a sketch drawn by W04501 regarding his place of detention;³⁰ and (iii) several

²⁶ See para. 8 of this Decision.

²⁷ 068516-TR-ET Part 4 RED2, p. 13, lines 9-12. See also Joint Response, para. 16.

²⁸ Motion, para. 8.

²⁹ 068510-068515, p. 068510. See Annex 1 to the Motion.

³⁰ 068510-068515, p. 068511. See Annex 1 to the Motion.

sketches drawn by W04501 when describing the abduction of W04501's relative.³¹

15. The Panel observes that W04501 drew, and provided a detailed explanation of, the Associated Exhibits during the SPO Interview.³² The Panel is satisfied that W04501's Associated Exhibits are relevant since they concern W04501's detention, arrest and/or release, as discussed by the witness during his SPO Interview. They are *prima facie* authentic and reliable and have probative value in relation to facts and circumstances of the case. Without the sketches, the relevant parts of W04501's Statement could become less incomprehensible or be of lesser probative value. The Panel also notes that the Defence does not object to the admission of W04501's Associated Exhibits.³³ Accordingly, the Panel finds the Associated Exhibits appropriate for admission under Rules 138(1) and 154.

16. Lastly, the SPO is ordered to provide to the Panel, the Defence and Victims' Counsel, three days prior to the start of the testimony of any Rule 154 witness, a list of general topics and areas of questioning that will be covered during the *viva voce* examination of the witness.³⁴

17. In light of the above, the Panel finds that W04501's Proposed Evidence³⁵ 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.

B. RELATED DEFENCE REQUESTS

18. The Panel notes the Defence request to: (i) redact the portions of W04501's SPO Interview which contain substantive discussion of the death of W04501's relative;

³¹ 068510-068515, p. 068512. See Annex 1 to the Motion.

³² See 053191-TR-ET Part 1 RED3, pp. 7-9; 053191-TR-ET Part 6 RED2, pp. 8-13, 28-33.

³³ Joint Response, para. 4.

³⁴ See also Third Rule 154 Decision, paras.53 and 55(e); Fourth Rule 154 Decision, para. 92(g); Fifth Rule 154 Decision, para. 104(e); Sixth Rule 154 Decision, para. 90(f).

³⁵ 068516-TR-ET, part 1-4 (068516-TR-ET Part 1 RED2; 068516-TR-ET Part 2 RED2, 068516-TR-ET Part 3 RED2, and 068516-TR-ET Part 4 RED2) and three associated exhibits, consisting of: (i) 068510-068515, p. 068510; (ii) 068510-068515, p. 068511; and (iii) 068510-068515, p. 068512.

and (ii) direct the SPO not to lead any evidence in respect of the death of W04501's relative during his testimony, and to caution W04501 not to voluntarily give evidence about it.³⁶ For reasons outlined above,³⁷ the fact that W04501's Statement contains information about the death of W04501's relative does not provide a basis for the requested redactions. In light of the aforementioned, the Defence requests are rejected.

V. DISPOSITION

19. Based on the above, the Panel hereby:

- a. **GRANTS** the Motion with respect to W04501;
- b. **FINDS** W04501's Statement and Associated Exhibits to be appropriate for admission once the requirements of Rule 154(a)-(c) are met; and
- c. **ORDERS** the SPO to provide to the Panel, the Defence and Victims' Counsel, three days prior to the start of the testimony of any Rule 154 witness, a list of general topics and areas of questioning that will be covered during the *viva voce* examination of the witness.



Judge Charles L. Smith, III

Presiding Judge

Dated this Friday, 28 June 2024

At The Hague, the Netherlands.

³⁶ Joint Response, para. 1.

³⁷ See para. 9 of this Decision.