



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

**Date:** 2 September 2024

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**Public Redacted Version of 'Prosecution reply relating to Rule 154 motions  
F02450, F02460, and F02465'**

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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. In relation to W02153, W04278, and W04295, the Defence raises arguments about the importance of (parts of) their Proposed Evidence.<sup>2</sup> As the Panel has previously held,<sup>3</sup> the centrality of a witness's evidence is not, of itself, a ground which prevents its admission under Rule 154. The Panel has repeatedly confirmed that in light of the ability to cross-examine the witness, evidence going to important issues in the case is admissible under Rule 154 and does not, without more, cause undue prejudice.<sup>4</sup>

### A. W02135

3. The objections that the Defence raises in relation to W02135's associated exhibits do not impact on their *prima facie* admissibility, but, at best, go to weight. They are also without merit.

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<sup>1</sup> Joint Defence Consolidated Response to F02450, F02451, F02460 and F02465, KSC-BC-2020-06/F02507, 23 August 2024, Confidential ('Response').

<sup>2</sup> Response, KSC-BC-2020-06/F02507, paras 22, 27, 30-32.

<sup>3</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 ('12 February 2024 Decision'), para.17.

<sup>4</sup> See e.g. Decision on Prosecution Motion for Admission of Evidence of W01511, W04260, W04305, W04410, W04744, W04752, and W04864 Pursuant to Rule 154 (F02204), KSC-BC-2020-06/F02328, 22 May 2024, Confidential, paras 55, 70-71, 88; 12 February 2024 Decision, KSC-BC-2020-06/F02117, para.17; Decision on Prosecution Motion for Admission of Evidence of W00072, W02153 and W04586, KSC-BC-2020-06/F01664, 10 July 2023, Confidential, para.31; Corrected Version of Decision on Second Prosecution Motion Pursuant to Rule 154, KSC-BC-2020-06/F01595/COR, 9 June 2023, Confidential, paras 15, 23, 33, 47, 82-83; 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.

4. The Defence assertion that SITF40000700-40000702 'describes alleged events to which W02135 was not a party'<sup>5</sup> ignores multiple mentions of contact between [REDACTED] in the document, including daily meetings between them,<sup>6</sup> not to mention further evidence to that effect in W02135's evidence.<sup>7</sup> Contrary to the Defence claim that W02135's evidence on [REDACTED] raising the issues mentioned directly with [REDACTED] is speculative, his evidence reflects awareness of practice and policy arising, *inter alia*, from that contact.

5. Moreover, Defence arguments that the evidence W02135 provided in relation to SITF00011523-00011528 is speculative<sup>8</sup> disregards evidence reflecting the basis for W02135's understanding regarding such matters, including his multiple contacts with [REDACTED]. As for the suggestions that the evidence on this point is uncorroborated, admissibility of the evidence of a witness, including under Rule 154, does not turn on corroboration.<sup>9</sup> Likewise, in relation to SPOE00212674-SPOE00212674, the Defence asserts that W02135 failed to establish the basis for his knowledge of the incident and did not provide corroborating information.<sup>10</sup> Even setting aside that W02135's evidence makes clear that such information was received as part of his responsibilities and function, the assertion – like the Defence's other arguments in relation to W02135's associated exhibits – go to weight and can be addressed in cross-examination. Further, as noted above, it is not incumbent on a witness to provide corroboration for his own evidence in order for it to be admitted.<sup>11</sup>

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<sup>5</sup> Response, KSC-BC-2020-06/F02507, para.18.

<sup>6</sup> SITF40000700-40000702, pp.SITF40000701-40000702.

<sup>7</sup> See e.g. 087342-087360, para.45.

<sup>8</sup> Response, KSC-BC-2020-06/F02507, para.22.

<sup>9</sup> See e.g. Corrected Version of Decision on Second Prosecution Motion Pursuant to Rule 154, KSC-BC-2020-06-F01595/COR, 9 June 2023, Confidential, para.46.

<sup>10</sup> Response, KSC-BC-2020-06/F02507, para.24.

<sup>11</sup> *Contra* Response, KSC-BC-2020-06/F02507, para.24.

## B. W04352

6. While the Defence does not object to W04352's Rule 154 Statement, the Defence's submission that the Trial Panel found W04352's evidence to be 'unique'<sup>12</sup> misrepresents the Trial Panel's assessment.<sup>13</sup> W04352's evidence is not 'unique', as claimed by the Defence, and the Trial Panel indeed referred to evidence already given concerning the incident relevant to W04352's evidence.<sup>14</sup> W04352's evidence corroborates and complements the evidence of several other witnesses,<sup>15</sup> as well as documentary evidence<sup>16</sup> and noticed adjudicated facts.<sup>17</sup>

## C. W04366

7. Contrary to the Defence claim,<sup>18</sup> associated exhibit 059341-059350 forms an indispensable part of W04366's prior statement. W04366 recognised several co-detainees<sup>19</sup> and the entrance to the facility where he was detained<sup>20</sup> among the photographs shown to him. When discussing the photographs at 059343-059347 (including when he could not identify the depicted location), the witness, *inter alia*, indicated whether he was held at the depicted place during his detention<sup>21</sup> and described the size and location of the building where he was held by reference to those depicted in the photographs shown to him.<sup>22</sup> These photographs, therefore, are useful for the identification of W04366's place of detention [REDACTED]. Finally, the parts

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<sup>12</sup> Response, KSC-BC-2020-06/F02507, para.34.

<sup>13</sup> Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W00996, W02257, W02303, W04352, W04367, W04420, W04569, W04645, W04677, and W04732 Pursuant to Rule 153, KSC-BC-2020-06/F02421, 2 July 2024, Confidential ('Third Rule 153 Decision'), para.35.

<sup>14</sup> Third Rule 153 Decision, KSC-BC-2020-06/F02421, para.35.

<sup>15</sup> See e.g. [REDACTED]. See also [REDACTED].

<sup>16</sup> See e.g. [REDACTED].

<sup>17</sup> See e.g. Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, KSC-BC-2020-06/F01534/A01, 17 May 2023, Confidential ('Adjudicated Facts Decision'), Facts [REDACTED].

<sup>18</sup> Response, KSC-BC-2020-06/F02507, para.35.

<sup>19</sup> 059351-TR-ET Part 2 RED2, pp.15-18; 059341-059350, pp.059348-059349.

<sup>20</sup> 059351-TR-ET Part 2 RED2, pp.8-10; 059341-059350, p.059342.

<sup>21</sup> 059351-TR-ET Part 2 RED2, p.10, lines 5-6.

<sup>22</sup> 059351-TR-ET Part 2 RED2, p.10, lines 7-8, 12-13.

of W04366's prior statement where he discusses these photographs would be incomprehensible and have lesser probative value without the photographs being available as associated exhibits.

D. W04427

8. W04427's Rule 154 Statement should be admitted in full as it is relevant, *prima facie* authentic, and reliable. The impugned part of W04427's statement concerning the [REDACTED] constitutes an inseparable and relevant aspect of his evidence about the [REDACTED]. The removal of such evidence would deprive the Trial Panel of the opportunity to assess his evidence – and the evidence of related witnesses (including [REDACTED]) – holistically. Moreover, as repeatedly held by the Panel, hearsay evidence is admissible.<sup>23</sup>

9. Further, admitting W04427's Rule 154 Statement in full does not prejudice the Defence. The Defence has been on notice of the entirety of W04427's evidence, including the contested parts since, at least, 30 January 2023,<sup>24</sup> when the Rule 154 Statement was disclosed. The Defence will have ample opportunity to challenge the aforementioned part of the witness's account during cross-examination, if they choose to do so.

E. W04737

10. That W04737 does not identify the original source of the documents he brought to the SPO during his SPO interview does not affect its authenticity and reliability, as such. The Defence will have the opportunity to cross-examine W04737 on the original source of these documents. Concerning the quality of the scanning, the SPO provided the best version it had received from W04737 to the Defence.

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<sup>23</sup> See e.g. Decision on Prosecution Motion for Admission of Evidence of Witnesses W00498, W01140, and W01763 pursuant to Rule 154, KSC-BC-2020-06/F01976, 1 December 2023, Confidential, para.12.

<sup>24</sup> Disclosure Package 656.

11. The Defence misrepresents W04737's statement regarding SPOE00124879-SPOE00124882 RED.<sup>25</sup> All phases of the document are discussed in W04737's SPO Statement, including phases two and three.<sup>26</sup> W04737 'agreed with the content of the second phase' and confirmed 'there are many things that [he has] knowledge of in phase two and three',<sup>27</sup> while specifying he was not present for certain incidents, or that parts might have been written by other persons. In any case, that W04737 did not recognise parts of SPOE00124879-SPOE00124882 RED as being [REDACTED] is no bar to its admission as an *associated exhibit*. The document forms an integral and inseparable part of W04737's Rule 154 Statement, and denying its admission in its entirety would render the statement incomprehensible. Accordingly, its probative value is not outweighed by its prejudicial effect, especially considering that the Defence will also have the opportunity to cross-examine the witness on this document, or its others versions.

F. W04798, W04809, AND W04854

12. The objections of the Defence to the associated exhibits tendered through W04798, W04809, and W04854 misapprehend the benefit of considering the evidence of these witnesses holistically, alongside that of W04797 and W04808, tendered under Rule 153.<sup>28</sup> The Defence approach appears to ask the Panel to consider the evidence of each witness in isolation and fails to appreciate that an understanding of [REDACTED] will permit the Panel to assess their authenticity and reliability. Specifically, the key to this assessment is an understanding of [REDACTED] the documents that constitute the associated exhibits.<sup>29</sup>

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<sup>25</sup> Response, KSC-BC-2020-06/F02507, paras 54-55.

<sup>26</sup> 083519-TR-ET Part 6, pp.18-19.

<sup>27</sup> 083519-TR-ET Part 6, p.19.

<sup>28</sup> This is also reflected in the decision of the Defence to respond to the SPO's motion for these witnesses – Prosecution consolidated Rule 153 motion for W04797 and W04808 and Rule 154 motion for W04798, W04809, and W04854, KSC-BC-2020-06/F02465, 22 July 2024, Confidential – in two parts.

<sup>29</sup> [REDACTED]. Admission of [REDACTED] is appropriate through any one of these witnesses and each [REDACTED] need only be admitted once. Thus, for example, if the Panel admits [REDACTED]

13. As the Panel has recognised, the fact that [REDACTED].<sup>30</sup> Accordingly, the Defence objection to the use of [REDACTED] is without merit.

14. Furthermore, the Law<sup>31</sup> and the Rules<sup>32</sup> neither require nor provide for the delayed admission of documents that otherwise meet the criteria for admission as associated exhibits.<sup>33</sup> The ability of the Defence to challenge the authenticity and content of these documents is not prejudiced by their admission as associated exhibits. Indeed, the Defence has already [REDACTED],<sup>34</sup> and will continue to have the opportunity to do so. Ultimately, challenges to the authenticity or reliability of the [REDACTED] will be a matter of the weight afforded to this evidence by the Trial Panel.

15. As repeatedly held by the Trial Panel, the key question is whether the ‘witness’s testimony would become incomprehensible or of lesser probative value’ without the exhibit.<sup>35</sup> Of particular relevance, is ‘whether the proposed exhibit was discussed with the witness during the record which is being tendered in evidence’.<sup>36</sup> [REDACTED]<sup>37</sup> tendered through W04798, W04809, and W04854 meet this test.

16. Moreover, by way of example, the fact that a witness cannot testify to authorship of a document is a question of weight and does not require its exclusion.<sup>38</sup> As the Panel has explained, ‘[t]he nature of the document, in particular if there are

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through W04798 – to which the Defence does not object -- there would be no need to admit these [REDACTED] as associated exhibits through W04809. *See* Response, KSC-BC-2020-06/F02507, paras 57 and 68.

<sup>30</sup> [REDACTED]. *Contra* Response, KSC-BC-2020-06/F02507, para.12. *See also* [REDACTED].

<sup>31</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, 3 August 2015 (‘Law’).

<sup>32</sup> 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 refer to the Rules, unless otherwise specified.

<sup>33</sup> *Contra* Response, KSC-BC-2020-06/F02507, paras 58, 72.

<sup>34</sup> *See e.g.* [REDACTED].

<sup>35</sup> First Rule 154 Decision, KSC-BC-2020-06/F01380, para.24.

<sup>36</sup> First Rule 154 Decision, KSC-BC-2020-06/F01380, para.24.

<sup>37</sup> [REDACTED].

<sup>38</sup> First Rule 154 Decision, KSC-BC-2020-06/F01380, para.85. *Contra* Response, KSC-BC-2020-06/F02507, paras 59, 66.

other indications of its origin and authenticity ... will be relevant to admitting it.’<sup>39</sup> Thus, here, for example, the Defence’s observation that, among other things, W04798 does not know who authored the associated exhibits misses the mark. The authenticity of [REDACTED] is, by the nature of [REDACTED], established by consideration of the totality of the evidence that explains [REDACTED].

17. Finally, the documents [REDACTED] and the [REDACTED] those documents are the sole focus of his [REDACTED] statement, which is tendered as part of W04798’s Rule 154 Statement,<sup>40</sup> and the Defence did not object to its admission.<sup>41</sup> [REDACTED] the documents themselves therefore form an inseparable and indispensable part of W04798’s Rule 154 Statement. Moreover, both the authenticity and relevance of the associated exhibits is corroborated by other evidence, including several adjudicated facts.<sup>42</sup> For example, one of the [REDACTED] documents<sup>43</sup> is the [REDACTED] are the subject of adjudicated facts.<sup>44</sup>

### III. CLASSIFICATION

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

### IV. RELIEF REQUESTED

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

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<sup>39</sup> First Rule 154 Decision, KSC-BC-2020-06/F01380, para.85.

<sup>40</sup> [REDACTED]. *See also* Prosecution consolidated Rule 153 motion for W04797 and W04808 and Rule 154 motion for W04798, W04809, and W04854, KSC-BC-2020-06/F02465/A03, 22 July 2024, Confidential, p.2.

<sup>41</sup> Response, KSC-BC-2020-06/F02507, para.56.

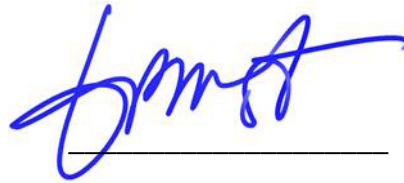
<sup>42</sup> Adjudicated Facts Decision, KSC-BC-2020-06/F01534/A01, Facts [REDACTED].

<sup>43</sup> [REDACTED].

<sup>44</sup> Adjudicated Facts Decision, KSC-BC-2020-06/F01534/A01, Facts [REDACTED]. [REDACTED].



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Monday, 2 September 2024

At The Hague, the Netherlands.