



**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 F02625'**

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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. The Defence submissions about the relative importance or ‘uniqueness’ of the witnesses’ evidence ignore and misstate the Panel’s prior findings.<sup>2</sup> As acknowledged by the Defence,<sup>3</sup> the Panel has consistently held that the centrality of a witness’s evidence is not, of itself, a ground which prevents its admission under Rule 154.<sup>4</sup> 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>5</sup> As such, the Response again mischaracterises the Panel’s oral order of 10 July 2023,<sup>6</sup> which rejected a Rule 154 application primarily due to its timing, not the centrality of the evidence.<sup>7</sup> The same does not apply here.

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<sup>1</sup> Corrected Version of Joint Defence Consolidated Response to F02620 and F02625, with Confidential Annexes 1-10, KSC-BC-2020-06/F02677/COR, 25 October 2024, Confidential (‘Response’).

<sup>2</sup> Response, KSC-BC-2020-06/F02677/COR, paras 8-9, 14-15, 20, 24-29, 34-35, 44-47.

<sup>3</sup> Response, KSC-BC-2020-06/F02677/COR, para 24, 35.

<sup>4</sup> See e.g. Decision on Prosecution Motion for Admission of Evidence of Witnesses W01511, W04260, W04305, W04410, W04744, W04752, and W04764 Pursuant to Rule 154 (F02204), KSC-BC-2020-06/F02328, 22 May 2024, Confidential (‘May Rule 154 Decision’), paras 55, 70-71; 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; Corrected Version of Decision on Second Prosecution Motion Pursuant to Rule 154, KSC-BC-2020-06/F01595/COR, 9 June 2023, Confidential (‘Second Rule 154 Decision’), paras 15, 23, 33, 70, 82-83; Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 17 March 2023, Confidential (‘First Rule 154 Decision’), para.28.

<sup>5</sup> See e.g. February Rule 154 Decision, KSC-BC-2020-06/F02117, para.17; May Rule 154 Decision, KSC-BC-2020-06/F02328, paras 55, 70-71.

<sup>6</sup> Transcript, 10 July 2023, pp.5354-5355.

<sup>7</sup> See February Rule 154 Decision, KSC-BC-2020-06/F02117, para.17 (finding that ‘the Defence’s reliance upon the Panel’s oral order of 10 July 2023 is misplaced’). *Contra* Response, KSC-BC-2020-06/F02677/COR, para.29.

3. As set out in the Motion,<sup>8</sup> Rule 154 admission of the witnesses' evidence would result in significant time savings without unduly burdening the record, thereby promoting the expeditiousness of the proceedings.<sup>9</sup> The Defence claims that the time-saving function of Rule 154 is undermined<sup>10</sup> disregard the significance of the reductions in the direct examination estimates for the witnesses and the cumulative time that can be saved by recourse to Rule 154 over the course of the SPO's case. The SPO will ensure that its direct examination is supplementary to, not duplicative of, admitted Rule 154 statements.<sup>11</sup>

A. W02586

4. The Defence claim that the quality of W02586's written evidence renders it unsuitable for Rule 154<sup>12</sup> is transparently false and entirely inconsistent with its prior position when this witness's evidence was tendered under Rule 153, namely: '[t]he Defence does not object to the admission, through Rule 153, of W02586's SPO interview.'<sup>13</sup> The Panel has found that W02586's statement, a verbatim transcript, is *prima facie* authentic and contains evidence relevant to the charges in the Indictment.<sup>14</sup> There is no ambiguity as to the words attributable to the witness, who is identified by name in the transcript, and any ambiguity can be clarified in cross-examination.<sup>15</sup>

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<sup>8</sup> Prosecution motion for admission of evidence of Witnesses W02586, W03873, W04264, W04393, W04401, W04679, and W04747 pursuant to Rule 154 with confidential Annexes 1-7, KSC-BC-2020-06/F02625, 8 October 2024, Confidential ('Motion').

<sup>9</sup> See e.g. February Rule 154 Decision, KSC-BC-2020-06/F02117, para.51; Second Rule 154 Decision, KSC-BC-2020-06/F01595/COR, paras 33-35, 70, 81.

<sup>10</sup> Response, KSC-BC-2020-06/F02677/COR, paras 21-22, 42, 48.

<sup>11</sup> See February Rule 154 Decision, KSC-BC-2020-06/F02117, para.51; Second Rule 154 Decision, KSC-BC-2020-06/F01595/COR, para.35; First Rule 154 Decision, KSC-BC-2020-06/F01380, para.33.

<sup>12</sup> Response, KSC-BC-2020-06/F02677/COR, para.16.

<sup>13</sup> Corrected Version of Joint Defence Response to Prosecution Motion for the Admission of the Evidence of Witnesses W00994, W02397, W02398, W02517, W02586, W02587, W03861, W04399, W04452, and W04044 Pursuant to Rule 153, KSC-BC-2020-06/F02418/COR, 28 June 2024, Confidential ('Defence Rule 153 Response'), para.12 (see also para.2).

<sup>14</sup> Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W00994, W02397, W02398, W02517, W02586, W02587, W03861, W04399, W04452, and W04044 Pursuant to Rule 153, KSC-BC-2020-06/F02557, 10 September 2024, Confidential ('Rule 153 Decision'), paras 42-43.

<sup>15</sup> The witness and the two SPO staff members present are identified by name in the transcript every time each speaks. Transcript references to 'speaker' or information being 'dictated' by the speaker are

Furthermore, the Panel has already ruled that the associated exhibits are sufficiently relevant and form an indispensable and inseparable part of W02586's statement.<sup>16</sup>

B. W04264

5. The Defence argument concerning the alleged centrality of W04264's evidence, including its misplaced reliance on the Panel's 10 July 2023 oral order,<sup>17</sup> is addressed above.<sup>18</sup>

6. The Defence fails to explain why any memory problems militate against admitting W04264's evidence under Rule 154. As the Panel has previously stated when confronted with similar challenges, the Defence can explore this issue during cross-examination.<sup>19</sup> In rejecting such a challenge, the Panel explained that 'consistency of successive records of interview over the course of time and across different investigative and judicial institutions could be relevant to assessing the reliability and credibility of the proposed evidence.'<sup>20</sup> Finally, the Panel has noted that ability to accurately recall relevant events 'is appropriate for consideration with regard to the weight' of a witness's prior statements, but 'does not suggest that any such difficulties, as might affect the witness, would justify the non-admission of the proposed evidence pursuant to Rule 154.'<sup>21</sup> These considerations apply to W04264's evidence as well.

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to the [REDACTED] interviewing official who made oral notes which were audio-recorded in line with national practice. The SPO recorded the entirety of the interview and the transcript tendered is a verbatim transcript of the entire interview (*contra* Response, KSC-BC-2020-06/F02677/COR, para.17).

<sup>16</sup> Rule 153 Decision, KSC-BC-2020-06/F02557, para.44.

<sup>17</sup> Response, KSC-BC-2020-06/F02677/COR, para.29.

<sup>18</sup> See para.2 above.

<sup>19</sup> 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 ('November Rule 154 Decision'), para.46.

<sup>20</sup> November Rule 154 Decision, KSC-BC-2020-06/F01901, para.46.

<sup>21</sup> May Rule 154 Decision, KSC-BC-2020-06/F02328, para.14.

### C. W04401

7. The Veseli, Krasniqi and Selimi Defence argument concerning the alleged centrality of W04401's evidence<sup>22</sup> is addressed above.<sup>23</sup> As to the specific details purportedly not covered in W04401's statement,<sup>24</sup> the Defence overlooks the SPO's stated intention to clarify matters primarily of structure and the [REDACTED]'s attitude towards collaborators in its supplemental examination,<sup>25</sup> and the Defence will be in a position to meaningfully cross-examine W04401 on these areas.

8. Separately, the Thaçi Defence objects to the admission of W04401's evidence insofar as it relates to discussion of a certain Zone commander.<sup>26</sup> Dissecting W04401's statements in the manner suggested is of no utility. It would deprive the Panel of the full picture of W04401's credibility and view of a Zone commander that was subordinate to the General Staff. Moreover, W04401's associated exhibit,<sup>27</sup> an article discussing the same Zone commander's interaction with the General Staff, is an indispensable and inseparable part of W04401's statement – which is not disputed by the Defence. Indeed, Thaçi concedes the exhibit contains information relevant to the indictment period which is quoted and discussed in W04401's Rule 154 statement.<sup>28</sup> Ultimately, the issues identified by the Defence<sup>29</sup> are matters to be considered by the Panel when weighing all of the evidence at the end of trial, and are not dispositive of admission via Rule 154.

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<sup>22</sup> Response, KSC-BC-2020-06/F02677/COR, paras 34-35.

<sup>23</sup> See para.2 above.

<sup>24</sup> Response, KSC-BC-2020-06/F02677/COR, para.36.

<sup>25</sup> ANNEX 1 to Prosecution submission of list of witnesses for 18 November 2024 to 30 January 2025, KSC-BC-2020-06/F02620/A1, 7 October 2024, Confidential, p.50.

<sup>26</sup> Response, KSC-BC-2020-06/F02677/COR, paras 37-38.

<sup>27</sup> [REDACTED].

<sup>28</sup> Response, KSC-BC-2020-06/F02677/COR, para.40.

<sup>29</sup> Response, KSC-BC-2020-06/F02677/COR, paras 39-41.

## D. W04747

9. In an attempt to further their argument about the centrality of W04747's evidence, as addressed above,<sup>30</sup> the Defence argues that W04747's evidence is unique and that no other witness has testified directly to the type of allegations W04747's evidence is expected to support.<sup>31</sup> However, this claim does not withstand scrutiny given the Defence's own submissions on another witness in the Response,<sup>32</sup> and the testimony of other witnesses already heard in this case.<sup>33</sup> Further, contrary to Defence submissions,<sup>34</sup> the length and nature of W04747's SPO interviews, which are about half as long as claimed by the Defence, are not such as to militate against their admission under Rule 154.<sup>35</sup>

10. As to W04747's associated exhibits, the Panel has repeatedly held that the key question is whether the 'witness's testimony would become incomprehensible or of lesser probative value' without the proposed associated exhibit. 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> The tendered exhibits meet this test. Contrary to Defence submissions,<sup>37</sup> the fact that a witness has not seen a document before and 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>38</sup> Moreover, W04747 did in fact confirm a number of important and potentially authenticating

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<sup>30</sup> See para.2 above.

<sup>31</sup> Response, KSC-BC-2020-06/F02677/COR, paras 44-47.

<sup>32</sup> See Response, KSC-BC-2020-06/F02677/COR, para.35.

<sup>33</sup> See e.g. [REDACTED].

<sup>34</sup> Response, KSC-BC-2020-06/F02677/COR, paras 47-48.

<sup>35</sup> See e.g. Second Rule 154 Decision, KSC-BC-2020-06/F01595/COR, para.81 (considering that it was in the interests of the expeditiousness of the proceedings to admit a 'lengthy' statement under Rule 154 rather than to elicit all the evidence contained therein *viva voce*); First Rule 154 Decision, KSC-BC-2020-06/F01380, para.103.

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

<sup>37</sup> Response, KSC-BC-2020-06/F02677/COR, para.50.

<sup>38</sup> First Rule 154 Decision, KSC-BC-2020-06/F01380, para.85.

aspects of the documents in question, including knowing who signed them,<sup>39</sup> the names of individuals discussed therein,<sup>40</sup> and that documents of the nature shown to him were produced regularly and that he had seen similar documents.<sup>41</sup>

### III. CLASSIFICATION

11. This filing is confidential pursuant to Rule 82(4) of the Rules.<sup>42</sup> Certain ERNs have been redacted to protect the identities of the witnesses, which are not public at this time. Considering that W04401 does not have protective measures, such redactions may be lifted after the witness testifies. The ERNs of associated exhibits for W04747 should remain redacted.

### IV. RELIEF REQUESTED

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

**Word Count: 1825**



**Kimberly P. West**

**Specialist Prosecutor**

Monday, 4 November 2024

At The Hague, the Netherlands.

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<sup>39</sup> See e.g. 083220-TR-ET Part 5, pp.26-33, concerning [REDACTED] (W04747 recognises the signature and indicates that he personally knows the person who signed the document, confirming that the document was valid at the time despite the lack of stamp).

<sup>40</sup> See e.g. 083220-TR-ET Part 6, pp.18-19, concerning [REDACTED] (W04747 confirming he has heard the names of the people in document and that they were considered collaborators).

<sup>41</sup> See e.g. 083220-TR-ET Part 7, pp.10-14, 22, concerning [REDACTED] (W04747 confirming that he has seen many letters of this nature).

<sup>42</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').