

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 Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr. Fidelma Donlon

Filing Participant: Specialist Counsel for Hashim Thaçi
Specialist Counsel for Kadri Veseli
Specialist Counsel for Rexhep Selimi
Specialist Counsel for Jakup Krasniqi

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**Further Public Redacted Version of Corrected Version of Joint Defence
Consolidated Response to F02620 and F02625, with Confidential Annexes 1-10**

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I. INTRODUCTION

1. The Defence for Messrs. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi (“Defence”) hereby responds to the Specialist Prosecutor’s Office (“SPO”) motion for admission of evidence of Witnesses W02586, W03873, W04264, W04393, W04401, W04679, and W04747 pursuant to Rule 154.¹

2. This filing is submitted confidentially because it responds to documents with the same classification.²

II. PROCEDURAL HISTORY

3. On 7 October 2024, the Specialist Prosecutor’s Office (“SPO”) filed the list of [REDACTED].³

4. On 8 October 2024, the SPO filed the SPO Motion.

5. On 11 October 2024, the SPO filed a motion for admission of evidence of Witnesses W04826, W04874, and W04875 pursuant to Rules 138, 149, and 154 and related request (“Experts Motion”).⁴

¹ KSC-BC-2020-06, F02625, Specialist Prosecutor, *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*, confidential, 8 October 2024 (“SPO Motion”).

² Rule 82(4) of the Rules of Procedure and Evidence on the Kosovo Specialist Chambers (“Rules”).

³ [REDACTED].

⁴ KSC-BC-2020-06, F02633, Specialist Prosecutor, *Prosecution Motion for Admission of Evidence of Witnesses W04826, W04874, and W04875 pursuant to Rules 138, 149, and 154 and Related Request*, 11 October 2024, confidential, with Annexes 1-3, confidential.

6. On 11 October 2024, following *inter-partes* correspondence, the Defence jointly requested an extension of time to respond to [REDACTED], the SPO Motion, and the Experts Motion, to Friday 25 October 2024.⁵

7. On 14 October 2024, the Trial Panel granted the request.⁶

III. SUBMISSIONS

8. The SPO Motion should be denied because admitting further critical witnesses onto the record pursuant to Rule 154, rather than *viva voce*, represents an unfair and unreasonable encroachment on the principle of orality and the rights of the Accused. The importance and centrality of the evidence provided by W04264 and W04401, in particular, militates against the admission of their prior statements. Their evidence goes to the heart of matters in this case, is the sole basis for Prosecution allegations regarding the Accused, or is so inherently contradictory that it has minimal probative value.

9. The Presiding Judge recently recalled that, as of 27 September 2024, the Panel had received evidence from 159 witnesses, of which 75 gave evidence pursuant to Rule 154 and only 13 testified *viva voce*.⁷ The character of these witnesses is particularly revealing; the majority of *viva voce* witnesses were crime-base victim witnesses.⁸ None of the *viva voce* witnesses were members of the KLA General Staff. The sole zone commander who has testified *viva voce* (W04746), did so because the SPO's proposal to convert him to Rule 154 was denied.⁹ One Deputy Brigade Commander (W04576)

⁵ F02638, Specialist Counsel, *Joint Defence Request for an Extension of Time to Respond to F02620, F02625 and F02633*, 11 October 2024, confidential.

⁶ F02648, Trial Panel II, *Decision on Joint Defence Request for an Extension of Time to Respond to F02620, F02625 and F02633*, 14 October 2024, public.

⁷ Transcript of Hearing, 1 October 2024, T.20535 lines 1-5.

⁸ W02652; W04748; W04323; W03879; W03832; W04753; W03825.

⁹ Transcript of Hearing, 10 July 2023, T.5355, lines 8-11.

testified *viva voce* after the Trial Panel determined that his statements contained “contradictions and not entirely candid responses that are, at times, ambiguous and of uncertain probative value.”¹⁰ *Viva Voce* witnesses have thus represented a fraction of the overall witness portfolio, which relies heavily on the submission of written statements pursuant to Rule 154 and Rule 143.¹¹

10. The present Motion seeks to convert four witnesses from *viva voce* to Rule 154. They are all KLA insider witnesses and W04264 and W04401 are amongst the most senior insider witnesses being called.

11. The effect of granting the Motion, combined with previous Rule 154 Decisions,¹² is to permit the continued departure from the principle of orality and to continue the journey towards a paper trial. As of 1 October 2024, the SPO intends to call a further 65 witnesses to give evidence in court, of which only 15 are listed as *viva voce*.¹³ Granting this Motion will reduce that number to 11. That would mean out of 153 witnesses giving evidence in court and 278 witnesses in total, a maximum of 22 – well under 10% - would appear *viva voce*. As the completion of the SPO’s case draws closer, the SPO will be further incentivised to convert the few remaining *viva voce* witnesses to Rule 154.

12. These figures become starker when assessed against the structural evidence provided by KLA witnesses. From the General Staff, the SPO has either called or

¹⁰ KSC-BC-2020-06 F02044, Trial Panel II, *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.

¹¹ The SPO has submitted evidence pursuant to Rule 143, related to the following witnesses: W03780; W04746; W04230; W03877; W03825; W03827; W04576; W03865; W04410.

¹² See KSC-BC-2020-06, F02328, Trial Panel II, *Decision on Prosecution Motion for Admission of Evidence of Witnesses W01511, W04260, W04305, W04410, W04744, W04752, and W04764 Pursuant to Rule 154 (F02204)*; F02117, Trial 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.

¹³ [REDACTED].

intends to call W04752, [REDACTED]. All [REDACTED] either have testified or the SPO has requested that they testify pursuant to Rule 154. From the Zone Commanders, the Prosecution was ordered to call W04746 live,¹⁴ converted W01453 to Rule 154¹⁵ and - for the moment - indicates that it will call [REDACTED] live.¹⁶ Other Zone Commanders are not Prosecution witnesses. As a Deputy Zone Commander, W04765 was called pursuant to Rule 154 and [REDACTED] have predominantly been called pursuant to Rule 154, including [REDACTED],¹⁷ W04744,¹⁸ and W04758.¹⁹ [REDACTED] have been called pursuant to Rule 154 including [REDACTED].²⁰ In short, the overwhelming majority of structure witnesses have testified pursuant to Rule 154. This hybrid system has allowed for large amounts of pre-captured evidence to enter the record, shortening the time frame of the trial but concomitantly placing an enormous burden on the Defence.

13. The Defence opposes further Rule 154 applications which will continue to convert this trial into a paper exercise, particularly in relation to senior KLA witnesses or other linkage evidence. The Defence re-iterates its core objections to the over-use of Rule 154: -

- a. Rule 154 is, and should be, an exception to the general rule that evidence should be given orally.²¹ In these proceedings, the reverse has become true;

¹⁴ KSC-BC-2020-06, Transcript of Hearing, 10 July 2023, T.5355, lines 8-11.

¹⁵ KSC-BC-2020-06, F02005, Specialist Prosecutor, *Prosecution motion for admission of evidence of Witnesses W01453, W03878, W04446, W04575, and W04651 pursuant to Rule 154 with confidential Annexes 1-5*, 14 December 2023, confidential.

¹⁶ See [REDACTED].

¹⁷ [REDACTED].

¹⁸ KSC-BC-2020-06, Transcripts of Hearings, 24-26 June 2024.

¹⁹ KSC-BC-2020-06, F02655, Trial Panel II, *Decision on Prosecution Motion for Admission of Evidence of Witnesses W00344, W01225, W04485, and W04758 pursuant to Rule 154 (F02593)*, 16 October 2024, confidential.

²⁰ [REDACTED].

²¹ See, Article 37(2) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rule 141(1) of KSC-BD-03/Rev3/2020, Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, 2 June 2020 ("Rules").

Rule 154 has become the default position, with *viva voce* testimony used exceptionally;

- b. The use of Rule 154 undermines the right to a public hearing.²² The effect of using Rule 154 is that majority of the direct examination is never heard in public. This effect is exacerbated by the fact that a significant volume of statements admitted pursuant to Rule 154 remain confidential;
- c. The use of Rule 154 creates an inequality of arms between direct examination and cross-examination. In contrast to cross-examination, Rule 154 means that the SPO's direct evidence is tendered in writing, in a form controlled by the Prosecution (i.e. it chooses whether to adduce a transcript or produce a statement);
- d. The use of Rule 154 bloats the court record by the admission of lengthy interviews, often hundreds of pages.

14. The Motion does not engage with this overarching picture, or even acknowledge that the SPO is seeking to abandon *viva voce* testimony for its most important witnesses. The Prosecution submissions on the prejudicial effect of its use of Rule 154 are cursory. Whilst the Defence acknowledges the importance of securing an expeditious trial, overburdening the record in this way has a disproportionate impact on Defence resources and preparations.

15. Specific reasoning is developed below in relation to W04264 and, by the Veseli, Selimi and Krasniqi Defence, in relation to W04401. The Defence also stands on its

²² KSC-BC-2020-06, F01566, Specialist Counsel, *Joint Defence Submissions on Trial Publicity, With Confidential Annexes 1-4*, 31 May 2023, confidential.

fundamental objection; granting this Motion and permitting the Prosecution to further avoid calling *viva voce* evidence from critical witnesses, violates the right to a fair trial.

A. W02586

16. The Defence objects to the admission of W02586's evidence via Rule 154. Particularly, the Defence objects to the admission of W02586's SPO interviews due to the lack of clarity and coherence in the transcript itself. The transcript of the SPO interview is of very poor quality and large parts of the transcript are unclear and the speaker unidentifiable. It is imperative that if evidence of a witness is to be admitted via Rule 154 that there is no ambiguity as to the exact words attributable to the witness; which is not the case here. The transcriber notes issues with transcription in each part of the interview.²³ Thus, the transcriber notes "*it was usually not possible to identify the speakers clearly.*"²⁴

17. It is unclear who is speaking and to whom the words spoken should be attributed. The identifiers "Speaker 1" and "Speaker 2" are used without clarifying who is speaking. For example, see 071408-TR-ET Part 1 Revised 2, pages 9-10, where "Speaker 2" first appears in the transcript to refer to the interviewer, then "Speaker 2" later appears to refer to the witness. Also see, 071408-TR-ET Part 1 Revised 2, page 13, where "Speaker 2" is used in succession, it appears again to refer to both the witness and the interviewer. Throughout the transcript, words are immediately duplicated in non-identical format as "dictated".²⁵ It is not clear why duplication of information occurs in the transcript, why the duplication does not contain identical forms of

²³ 071408-TR-ET Part 1 Revised 2, page 1; 071408-TR-ET Part 2 Revised 1, page 1, and 071408-TR-ET Part 3 Revised 1, page 1.

²⁴ 071408-TR-ET Part 1 Revised 2, page 1.

²⁵ See for example 071408-TR-ET Part 2 Revised 1, page 23.

words, or which version of the words are that of the witness. Evidence of this poor quality should not be admitted.

18. W02586 is due to give evidence on a narrow topic – the [REDACTED] at the MUP building in Prizren [REDACTED]. Hearing this evidence live should take a short amount of time. Part 3 of the SPO interview is largely concerned with evidence of the deaths of wholly unrelated persons to this case, which is irrelevant and therefore inadmissible. The SPO asserts that this evidence is relevant to demonstrate that W02586 [REDACTED]. It is not disputed that W02586 [REDACTED] while deployed in Prizren in 1999 and therefore this evidence is of no evidential value, is prejudicial, and simply bloats the record.

Associated Exhibits

19. The Defence objects to the admissibility of several of W02586's proposed associated exhibits. Regarding the photographs [REDACTED],²⁶ only three pages²⁷ concern allegations in this case and the remainder are irrelevant. In relation to the [REDACTED],²⁸ none of these [REDACTED] concern alleged victims in this trial. As such they are irrelevant and should not be admitted.

B. W03873

20. The Defence acknowledges the relevance, authenticity, and probative value of W03873's statements.²⁹ However, given W03873's role in the KLA and the

²⁶ 071394-071407.

²⁷ 071394-071396.

²⁸ SITF00189342SITF00189362-ET, p. SITF00189348, SITF00189402SITF00189426-ET, p. SITF00189408SITF00189409, SITF00189430SITF00189430-ET and SITF00189465-SITF00189484-ET, p. SITF00189482.

²⁹ See items in F02625/A02.

contributions he will provide on structure and organisation,³⁰ as well as contact he had with two of the Accused³¹ the Defence preserves its arguments on the importance of *viva voce* testimony.

21. The SPO requests four additional hours for supplemental questions.³² The Trial Panel has expressed concerns about the excessive additional time the SPO required for supplementary examination of witnesses in light of, *inter alia*, the number of written statements tendered through Rule 154.³³

22. Given the nature and scope of W03873's evidence, any time savings alleged by the SPO are likely not to be as significant as asserted in the Rule 154 motion.³⁴ Four hours of direct examination will inevitably result in questioning W03873 on issues already contained in the Rule 154 statement, defeating the primary purpose of the Rule 154 procedure, which is to save time and resources.³⁵ To prevent this from happening, W03873's evidence should be heard *viva voce*. Alternatively, the time for direct examination should be reduced.

C. W04264

23. The Defence objects to the admission of W04264's evidence via Rule 154. The Panel should exercise its discretion not to admit W04264's proposed evidence in writing, and instead order the SPO to elicit W04264's evidence *viva voce*, as foreshadowed by the SPO.

³⁰ SPO Motion, para. 7.

³¹ *Idem*, para. 8.

³² SPO Motion, para. 13.

³³ *See e.g.*, F01380, paras 33, 63.

³⁴ F01980, para. 36.

³⁵ F01380, para. 32.

24. The Defence is mindful of the Trial Panel's position that "the perceived importance of a witness's proposed evidence does not necessarily constitute an impediment to its admission pursuant to Rule 154";³⁶ however the importance of this evidence – grounded in the objective factors highlighted below – should compel the Panel to refuse admission of W04264's evidence via Rule 154.

25. W04264 is personally mentioned 17 times in the SPO's Pre-Trial Brief (PTB),³⁷ and his evidence is the sole support for 12 assertions in the SPO PTB, covering all the key topics of his evidence.³⁸

26. His evidence goes to the acts and conduct of the Accused,³⁹ and to highly contested issues central to the SPO's case, including: (i) the circumstances surrounding [REDACTED]; (ii) the role of the General Staff and some of its members in this process, including information allegedly provided by Jakup Krasniqi regarding [REDACTED] and the existence of detentions; (iii) reporting lines/information provided to the General Staff in relation to [REDACTED] in that capacity; (iv) the functioning of the [REDACTED] in practice, including the resources available to it and the work performed in the period after its establishment; (vi) the role of the [REDACTED] in dealing with collaborators

27. As [REDACTED], W04264 is the best placed among the (only) three witnesses to speak about [REDACTED]. The importance of the existence and functioning of a

³⁶ F02328, *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, para. 70.

³⁷ By comparison, W04746 is mentioned 13 times.

³⁸ See SPO PTB, footnotes 563-571, 1923-1924, 1933-1934,

³⁹ SPO Motion, paras. 14, 15.

[REDACTED] appears to be very clear to the Trial Panel as well, having often been the object of judicial questioning.⁴⁰

28. While the Defence appreciates the reduction of court time envisaged in theory by the admission of W04264's evidence via Rule 154, this should not be a deciding factor in relation to this witness. This is especially the case when the SPO has, despite the multiple calls from the TP to streamline its case,⁴¹ made minimal reductions to its witness list,⁴² and continues to use precious court time to examine witnesses of lesser relevance.

29. The Panel has previously determined that "reasons would have to be particularly compelling" to justify the admission of evidence that is central to the SPO case in writing, refusing admission when no such reasons have been shown.⁴³ In light of the unique position of this witness, a time-saving of little more than a court day is not, on its own, a sufficiently compelling reason to admit this evidence in writing.

30. The quality of the written evidence proposed for admission via Rule 154 militates against admission. W04264's SPO interview, which consists of 241 pages, is replete with admissions from the witness that [REDACTED],⁴⁴ and he [REDACTED] various

⁴⁰ Transcript of 17 July 2023, pages 5885 line 18, page 5886, line 9; Transcript of 16 August, page 6657 lines 16-25; Transcript of 9 September 2023, page 7585 lines 1-25; Transcript of 17 October 2023, page 8994 line 21 to 8995 line 5; Transcript of 4 December 2023, page 10461 line 22 to 10463 line 6; and page 10466 and following; Transcript of 5 December 2023, pages 10487-10489; Transcript of 28 March 2024, page 13990 line 10 to 13992 line 16; Transcript of 4 April 2024, pages 14481 to 14484; Transcript of 7 May 2024, page 15485 line 4 to page 15488, line 9; Transcript of 29 May 2024, page 16338 lines 1-11; Transcript of 16 July 2024, pages 18354 to 18360; Transcript of 18 September 2024, page 19915 line 25 to page 19917 line 17.

⁴¹ Transcript of Hearing, 29 May 2024, Oral Order, p. 16328; Transcript of Status Conference, 1 October 2024.

⁴² F02576, *Prosecution Notice of Witness Changes*, 16 September 2024.

⁴³ KSC-BC-2020-06, In Court – Oral Order, Order on SPO's Application to Admit the Evidence of W04746 Pursuant to Rule 154, 10 July 2023, public.

⁴⁴ 054739-TR-ET Part 1, p. 14.

pieces of information sought by the SPO.⁴⁵ [REDACTED].⁴⁶ Despite genuine efforts to elicit information based on the [REDACTED], many of his answers resulted from leading questions. Some answers are also objectively difficult to discern, as a result of which portions of the interview are simply unclear.⁴⁷

31. These circumstances create a record of written evidence that has uncertain probative value, which constitutes another reason for the Panel to exercise its discretion not to admit this evidence in writing – especially in light of the importance of the evidence itself.⁴⁸

Associated Exhibits

32. Related objections have been made to items 14-17 of F02625/A03, which are tendered into evidence.

D. W04393

⁴⁵ See for example. 054739-TR-ET Part 1, p. 12, about reporting structure in the [REDACTED]; 054739-TR-ET Part 1, p. 19; 054739-TR-ET Part 1, pp. 23-24 about his knowledge of [REDACTED]; 054739-TR-ET Part 1, pp. 28-29, about traveling to [REDACTED]; 054739-TR-ET Part 2, pp 1-3 about interactions with Hashim Thaçi and Jakup Krasniqi; 054739-TR-ET Part 2, p. 4 about knowledge of documents related to [REDACTED]; 054739-TR-ET Part 2, p. 6 about whether it was Jakup Krasniqi that told him [REDACTED]; 054739-TR-ET Part 2, p. 20, about who told him about the [REDACTED] when he took his post; 054739-TR-ET Part 5, pp. 13-14, about who approved the [REDACTED]; 054739-TR-ET Part 5, pp. 18-20 about the knowledge of [REDACTED]; 054739-TR-ET Part 6, pp. 13-14 about [REDACTED] *[sic]*, and p. 18 in relation to who [REDACTED].

⁴⁶ 054739-TR-ET Part 1, page 31, lines 1-24. See also 054739-TR-ET Part 2, p. 24, lines 9-14; 054739-TR-ET Part 6, p. 18, lines 13-25; 054739-TR-ET Part 7, p. 19, lines 9-25;

⁴⁷ E.g. 054739-TR-ET Part 2, pp. 25-27; 054739-TR-ET Part 3. pp. 5-6; 054739-TR-ET Part 4, pp. 3-5; 054739-TR-ET Part 9, p. 7

⁴⁸ See F02117, Decision on Prosecution Motion for Admission of Evidence of W01453, W03878, W04446, W04575, and W04651 Pursuant to Rule 154 (F02005), 12 February 2024, para. 14.

33. The Defence does not object to the to the admission of W04393's statements and associated exhibits,⁴⁹ provided that the conditions of Rule 154(c) are met.

E. W04401

34. The Veseli, Selimi, and Krasniqi Defence object to the admission of W04401's statements pursuant to Rule 154 and request that he testify *viva voce*. Following from prior submissions, it is noteworthy that W04401, according to the SPO's own hierarchy,⁵⁰ represents [REDACTED]. He played a critical role during the Indictment Period, and [REDACTED], is expected to provide critical insights into KLA structure and organisation, the acts and conduct of the Accused and other JCE members.⁵¹ The SPO intends for this witness to provide information on [REDACTED]. W04401 is the only witness on the SPO's witness list who can provide this information, particularly following its notified intention to drop W04583.⁵²

35. Noting the Trial Panel's ruling that the centrality of witness testimony does not necessarily preclude Rule 154 admission,⁵³ W04401's testimony is not only central but also provides unique information that would be better elicited live. For example, W04401 is [REDACTED]; his [REDACTED] is the sole reference used by the SPO to substantiate this assertion.⁵⁴ This allegation is critically important and only provided in this sole statement, which covers a comparatively narrower time frame and subject-matter than those at issue in the current case.

⁴⁹ See items in F02625/A04.

⁵⁰ DJK00772-DJK00772, as discussed by the SPO in KSC-BC-2020-06, Opening Statements - 3 April 2023, p. 2176, lines 7-11.

⁵¹ SPO Motion, paras 34, 39.

⁵² KSC-BC-2020-06, F02576, Specialist Prosecutor, *Prosecution Notice of Witness Changes*, 16 September 2024, confidential, para. 2.

⁵³ KSC-BC-2020-06, F02328, Trial Panel II, *Decision on Prosecution Motion for Admission of Evidence of Witnesses W01511, W04260, W04305, W04410, W04744, W04752, and W04764 Pursuant to Rule 154 (F02204)*, para. 70.

⁵⁴ SPO PTB, para. 70. See also SPO Motion, para. 35.

36. Crucially, in this statement there is no further information provided as to who allegedly gave these orders [REDACTED], specific examples of these orders, or particulars as to timings. The responsibility for probing this information should not fall to the Defence during cross-examination. The burden is on the SPO to prove its case, and the importance of this assertion, combined with the witness' central role and the critical importance of his testimony, means that W04401 should be heard live.

37. The Thaçi Defence does not object, in principle, to the admission of W04401's [REDACTED] statement from [REDACTED], and the seven [REDACTED] transcripts that underpin it ("Rule 154 Statements") pursuant to Rule 154.⁵⁵ However, the Thaçi Defence does object to the admission of discrete parts of these Statements, and the associated exhibit, on the basis that they do not meet the standard of relevance.

38. W04401 spends a considerable portion of the Rule 154 Statements discussing [REDACTED]. While such information may have been relevant to the [REDACTED] proceedings, it has no bearing on the charges in this case. For example, W04401 opines on [REDACTED].⁵⁶ This Panel has determined that evidence of events outside the temporal scope of the indictment can be admitted, but it must be relevant to "establishing facts and circumstances validly pleaded within the scope of the Indictment, has probative value in respect of any such fact or circumstance, and there is no compelling reason to exclude it."⁵⁷ W04401's evidence of [REDACTED] neither directly relates to the charges, nor does it clarify context, or establish elements of the charged conduct, a pleaded state of mind or contextual elements, particularly since

⁵⁵ See items in F02625, Annex 5, items 1 & 2.

⁵⁶ See, for example, [REDACTED].

⁵⁷ KSC-BC-2020-06/F02489, Trial Panel II, *Decision on Prosecution Motion for Admission of Evidence of Witnesses W03871, W04735, and W04868 Pursuant to Rule 154 and Related Requests (F02450)*, 13 August 2024, confidential, para. 45.

[REDACTED] is not a named JCE member.⁵⁸ It should therefore be excluded, to avoid bloating the record with irrelevant information and since it lacks probative value.

39. If the Panel excludes the identified portions regarding [REDACTED], the admission of the proposed associated exhibit should be similarly denied.⁵⁹ This is primarily because the document would no longer be considered an inseparable and indispensable part of W04401's Rule 154 Statements, since most of the portions in which it is discussed fall within the excerpts the Defence seeks to have removed.⁶⁰

40. In addition, the document suffers from the same issues of relevance outlined above, since it concerns [REDACTED]. The SPO submits the relevance of this article is that it refers to "the conduct of [REDACTED]."⁶¹ Even though this is an overly broad and generic representation of relevance, the portions of the document which could address this topic (and are relevant to events within the Indictment period) comprise only a few sentences within a five-page document. Importantly, the relevant portions were already read into the record in full.⁶² Further, the probative value of the article is undermined by the witness' own recognition that it is a "journalistic kind of article", prepared for a particular political purpose and to convey a particular message.⁶³ That is, the article was prepared by W04401 because he said he felt "morally obliged" to respond to what he perceived as dishonest, insulting and inaccurate publications put out by [REDACTED].⁶⁴

41. The article mostly consists of W04401's opinions about [REDACTED], very little of which has any grounding in facts or verifiable evidence, and which is irrelevant to

⁵⁸ KSC-BC-2020-06/F00999/A01, Amended Indictment, 30 September 2022, para. 35.

⁵⁹ [REDACTED].

⁶⁰ See various quotes in [REDACTED], pp. 6, 8, 9, 10; [REDACTED], paras. 44-49.

⁶¹ F02625/A05, p. 4.

⁶² [REDACTED], p. 15, lines 13-20, p. 16 line 22 to p. 17 line 1, p. 17 lines 13-14.

⁶³ *Idem*, p. 10, line 24 to p. 11, line 10.

⁶⁴ *Idem*, p. 6, lines 4-13.

the facts in issue in these proceedings. There is limited reliability for the contents of the author's self-described "bit of journalism" reflecting a rocky relationship between W04401 and [REDACTED].⁶⁵ As the article was politically motivated, the portions the SPO submits are relevant to their case are already in the record, and the remainder has no relevance; the prejudicial effect of tendering the entire article outweighs any probative value.

42. Finally, the Defence notes the time-saving advantages of tendering the witness' material in writing are limited, since the SPO has reduced its direct examination time from 8 hours to 5 hours.⁶⁶ This estimate appears excessive and contrary to the stated aims of expediency, particularly if the SPO intends to limit its direct examination to those issues identified in the "issues, facts, and circumstances relation to which the witness will be examined".⁶⁷ Since most, if not all, of these issues are addressed in W04401's Rule 154 Statements,⁶⁸ the SPO should reduce its direct examination time.

F. W04679

43. The Defence does not object to the to the admission of W04679's statements,⁶⁹ provided that the conditions of Rule 154(c) are met.

G. W04747

44. The Defence objects to the admission of W04747's evidence through Rule 154. His evidence is not only central to the SPO case but it is unique.⁷⁰ Despite the limited

⁶⁵ *Idem*, p. 16, lines 1-2.

⁶⁶ SPO Motion, fn. 4, and para. 39.

⁶⁷ F02620/A01, p. 50.

⁶⁸ To take one example: point 1 lists "the development of the KLA as an armed military group between 1997-1999". This topic is already discussed at some length in [REDACTED]; [REDACTED].

⁶⁹ See items in F02625/A06.

⁷⁰ Motion, paras 47-48.

summary of the relevance of this witness' evidence, it is W04747 who purports to unify the fragmented elements of the SPO's case. This is a fact that the Prosecution has continuously acknowledged, from the outset of the proceedings.

45. The witness' Rule 95 summary of over 2000 words, significantly longer than any other witness in this case, demonstrates the scope of his evidence.⁷¹ There, the witness' evidence seemingly spans geographically, covering the activities of the KLA in [REDACTED] through different zones; temporally, from [REDACTED]; thematically, covering topics such as [REDACTED].

46. The witness' evidence is cited 94 times in the SPO PTB to support allegations, among others, that [REDACTED]⁷²; [REDACTED]⁷³; [REDACTED]⁷⁴; [REDACTED]⁷⁵; [REDACTED]⁷⁶; and that [REDACTED]⁷⁷. So far, no witness has testified directly to these types of allegations.

47. Proceedings before the KSC are grounded in the principle of orality, and respect for the rights of the Accused.⁷⁸ This would be W04747's first time testifying on these issues; the immediacy and context offered by live testimony cannot be replicated by the admission of a written statement. Given the discretion available to the Panel not to admit a statement offered pursuant to Rule 154 and decide to hear the evidence of

⁷¹ KSC-BC-2020-06/F01594/A02, ANNEX 2 to Prosecution submission of updated witness list and confidential lesser redacted version of pre-trial brief, 9 June 2023, confidential, [REDACTED] ("SPO PTB").

⁷² SPO PTB, [REDACTED].

⁷³ *Idem*, para [REDACTED].

⁷⁴ *Idem*, para. [REDACTED].

⁷⁵ *Idem*, para. [REDACTED].

⁷⁶ *Idem*, para. [REDACTED].

⁷⁷ *Idem*, para. [REDACTED].

⁷⁸ Articles 21(2) and (4) and 37(2) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("KSC Law"), and Rule 141(1) of KSC-BD-03/Rev3/2020, Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, 2 June 2020 ("Rules").

a witness *viva voce* instead⁷⁹ for statements that are central to a party's case,⁸⁰ or where the length and nature of the proposed written evidence militates against it⁸¹ this is a situation when that discretion should be exercised.

48. The SPO's tender of the witness' SPO Interviews totalling 1770 pages, is unacceptable. The vast amount of information contained therein would overwhelm the trial record and present challenges for both the Trial Panel and the Defence in reducing focus on key matters. The SPO submits that the time saved by admitting these statements amounts to six hours.⁸² These time-savings pale in comparison to the additional number of hours the Defence will require for cross examination, if the statements are admitted. The stark contrast between the amount of material tendered and the three-hour examination in chief estimate⁸³ highlights over-reliance on the written evidence, whilst simultaneously undermining the value of *viva voce* testimony.

49. In these circumstances, the Trial Panel should refuse admission pursuant to Rule 154 of W04747's SPO Interviews and associated exhibits and order that his evidence be heard *viva voce*.

Associated Exhibits

50. In the event that the Panel considers W04747's evidence to be admissible pursuant to Rule 154, the Defence objects to the admission as associated exhibits of the following items since they do not form an inseparable and indispensable part of W04747's statements:

⁷⁹ KSC-BC-2020-06/F01380, Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, 16 March 2023, para.20.

⁸⁰ *Idem*, para.28.

⁸¹ *Idem*, para.20.

⁸² SPO Motion, footnote 4.

⁸³ The SPO sought ten hours of direct examination for W04752 whose 154 statements totalled to more than 700 pages.

(a) [REDACTED]

W04747 did not authenticate this order, he had not seen it before, was unable to recognise [REDACTED] signature and casted doubts as to the document's authenticity and probative value for its lack of a seal.

(b) [REDACTED]

W04747 did not authenticate this document as he had not seen it before and did not know or meet the people mentioned there. W04747 is invited to speculate on the document's contents but does not recognise the type of document.⁸⁴

(c) [REDACTED]

W04747 did not authenticate this document as he had not seen it before. W04747 proceeds to speculate on its contents based on gossip and rumours he had heard about the names mentioned there.⁸⁵

(d) [REDACTED]

W04747 did not authenticate this document as he had not seen this document before and does not know the people listed there.⁸⁶

(e) [REDACTED]

W04747 did not confirm that he had seen this document before and he was unable to authenticate the signature as pertaining to [REDACTED]. W04747 notes that he [REDACTED] and that this is a fake name.⁸⁷

(f) [REDACTED]

The SPO has stated that the relevance of these exhibits relates to the targeting of opponents and witness intimidation. W04747 does not know who created these

⁸⁴ 083220-TR-ET Part 5, p.29, lines 10-11.

⁸⁵ 083220-TR-ET Part 6, p.4, lines 1-3.

⁸⁶ 083220-TR-ET Part 6, pp.18-20.

⁸⁷ 083220-TR-ET Part 7, p.12, lines 21-24.

[REDACTED] is anonymous. No links to the KLA are demonstrable. The document has a low probative value.

(g) [REDACTED]

The SPO has stated that this document is relevant to acts of the Accused and common criminal purpose and that this document was discussed during W04747's SPO interview. The contents of this Article which is an [REDACTED] have not however been discussed at all with the witness and it is replete with broad and nondescript allegations towards the Accused. The prejudicial effect of this document being admitted outweighs the limited probative value of this document.

IV. CONCLUSION

51. The Defence respectfully requests the Trial Panel to:

- **TAKE NOTE** of the Defence objections;
- **DENY** the admission pursuant to Rule 154 of the prior statements of W02586, W03873, W04264, W04747 and, in the submission of the Veseli, Selimi and Krasniqi Defence, of W04401; and
- **DENY** the admission of the proposed associated exhibits as outlined above.

Word count: 5982

Respectfully submitted on 25 October 2024



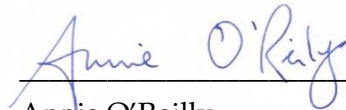
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Explanatory note

The following corrections have been made to the original filing:

- The signature of Lead Counsel for Kadri Veseli was added, following erroneous omission from the original filing.