



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: 19 December 2024

Language: English

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Public Redacted Version of Decision on Prosecution Motion for Admission of Evidence of Witness W04743 pursuant to Rule 154 (F02682)

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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 28 October 2024, the Specialist Prosecutor’s Office (“SPO”) filed a Rule 154 motion with regard to witness W04743 (“Motion”).¹
2. On 8 November 2024, the Defence teams for Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (collectively, “Defence” and “Accused”), jointly responded to the Motion (“Response”).²
3. On 15 November 2024, the SPO replied to the Response (“Reply”).³

II. SUBMISSIONS

4. The SPO requests the admission of the statements, together with associated exhibits (respectively, “Statements” and “Associated Exhibits”; collectively, “Proposed Evidence”) of witness W04743.⁴ The SPO submits that the Proposed Evidence meets the requirements of Rules 138(1) and 154 and that its admission is not outweighed by any prejudice and is in the interests of justice.⁵

¹ F02682, Specialist Prosecutor, *Prosecution Motion for Admission of Evidence of Witness W04743 Pursuant to Rule 154*, 28 October 2024, confidential, with Annexes 1-2, confidential (a public redacted version was filed on the same day, F02682/RED).

² F02702, Specialist Counsel, *Joint Defence Response to Motion for Admission of Evidence of Witness W04743 pursuant to Rule 154*, 8 November 2024, with Annex 1, confidential (a public redacted version was filed on 19 November 2024, F02702/RED).

³ F02726, Specialist Prosecutor, *Prosecution Reply Relating to Rule 154 Motion F02682*, 15 November 2024, confidential (a public redacted version was filed on the same day, F02726/RED).

⁴ Motion, para. 1.

⁵ Motion, para. 3.

5. The Defence does not object to the admission of W04743's Statements pursuant to Rule 154, but requests that the Panel order the SPO to revise its supplemental questioning (currently estimated at three hours), or to limit the size of the Rule 154 Proposed Evidence.⁶ The Defence argues that admission of material pursuant to Rule 154 should be appropriately time-saving and devoid of repetition and procedural discussions.⁷ The Defence also submits that the SPO has not explained which issues not contained in the Proposed Evidence it intends to elicit evidence on and that it has failed to provide adequate notice of the areas it intends to explore during the witness' direct examination.⁸ The Defence objects to the admission of parts of the Associated Exhibits⁹ on the basis that they lack relevance, reliability and authentication by W04743.¹⁰

6. The SPO replies that the Response ignores previous findings of the Panel, as well as the established standard for admissibility of statements and associated exhibits under Rule 154, where the witness will be available for cross-examination.¹¹ The SPO replies that the estimate for W04743's supplemental examination is based on the nature and volume of items the SPO intends to use with and/or tender through this witness and that the SPO has notified and provided information concerning the items it intends to use.¹² The SPO further replies that the relevant question for excluding specific pages of associated exhibits is whether the witness's testimony would become incomprehensible or of lesser probative value without the exhibit and particularly whether the proposed

⁶ Response, para. 6.

⁷ Response, paras 2-3.

⁸ Response, para. 5.

⁹ 082926-083087-ET Revised, pp. 082926, 082928, 082934-082937, 082989, 083011, 083014-083015, 083017-083043; (ii) 082911-082911-ET RED2; and (iii) IT-03-66 P35 Time code 02:46- 03:38.

¹⁰ Response, paras 7-10.

¹¹ Reply, para. 1.

¹² Reply, paras 3-4.

exhibit was discussed with the witness during the record which is tendered in evidence.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

8. The SPO submits that the Proposed Evidence of W04743¹⁵ is: (i) relevant;¹⁶ (ii) *prima facie* authentic and reliable;¹⁷ and (iii) suitable for admission under Rule 154.¹⁸

9. *W04743's Statements*. Regarding relevance, W04743 is alleged to have joined the Kosovo Liberation Army ("KLA") after the events in Prekaz. He held positions of command within the KLA during the relevant period.¹⁹ According to the SPO, W04743's Proposed Evidence is relevant to, *inter alia*: (i) the structure and composition of the KLA, including the General Staff, the operational zones, and

¹³ Reply, para. 6.

¹⁴ 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), paras 11-35.

¹⁵ The Proposed Evidence consists of the following statements and associated exhibits, including any translations thereof: (i) 082908-TR-ET Part 1-5 RED2; and (ii) 082909-TR-ET Part 1-6 RED2; (iii) SPOE00073191-SPOE00073199 RED2; and (i) 082926-083087-ET Revised, pp. 082926, 082928, 082934-082937, 082989, 083011, 083014-083015, 083017-083043; (ii) 082911-082911-ET RED2; and (iii) IT-03-66 P35 Time code 02:46-03:38. The Panel notes that the following associated exhibits have already been admitted by the Panel and are not tendered for admission by the SPO: (i) 055418-01_2 (P01262) Time code 00:00-00:28; (ii) U000-0445-U000-0461-ET (P00008_ET); (iii) ET-U000-3206-U000-3206 (P00009_ET); (iv) SITF00009608-SITF00009610 (P00893); (v) ET U000-3069-U000-3069; (vi) SPOE00082284-SPOE00082294-ET (P01401_ET); (vii) SITF00009589-SITF00009590 (P00980). See Annex 1 to the Motion.

¹⁶ Motion, paras 4-6.

¹⁷ Motion, para. 7.

¹⁸ Motion, paras 8-9.

¹⁹ Motion, para. 4.

brigades; (ii) the role, structure and duties of the intelligence services; (iii) the communication, structure and duties of the military police; (iv) the establishment, duties and functioning of the military court and the detention site in a location relevant to the charges; (v) the arrest and detention of certain individuals.²⁰ The Panel is satisfied that W04743's Statements are relevant to the charges in the Indictment.²¹

10. Regarding *prima facie* authenticity and reliability, the Panel notes that W04743's Statements consist of: (i) W04743's interview with the SPO ("W04743's SPO Interview");²² and (ii) W04393's Special Prosecution Office of the Republic of Kosovo ("SPRK") record of his suspect hearing ("W04743's SPRK interview").²³ Each statement contains multiple indicia of authenticity and reliability, including: (i) the verbatim transcript of both W04743's audio-video recorded SPO Interview and his SPRK interview;²⁴ (ii) indication of the date and time of the statements;²⁵ (iii) the attendees present;²⁶ (iv) the witness's personal details;²⁷ (v) the requisite witness warnings, rights and acknowledgments;²⁸ (vi) confirmation by W04743 that the statements are true, accurate and were given voluntarily;²⁹ and (vii) W04743's signature on the SPRK interview.³⁰ In light of the above, the Panel is satisfied of the *prima facie* authenticity and reliability of W04743's Statements.

²⁰ Motion, paras 5-6.

²¹ See Indictment, paras [REDACTED]; see also SPO Pre-Trial Brief, paras [REDACTED].

²² 082908-TR-ET Part 1-5 RED2; 082909-TR-ET Part 1-6 RED2.

²³ SPOE00073191-SPOE00073199 RED2.

²⁴ 082908-TR-ET Part 1-5 RED2; 082909-TR-ET Part 1-6 RED2; SPOE00073191-SPOE00073199 RED2.

²⁵ 082908-TR-ET Part 1-5 RED2, pp. 1, 26, 44, 71, 96; 082909-TR-ET Part 1-6 RED2, pp. 1, 31, 58, 84, 109, 142; SPOE00073191-SPOE00073199 RED2, pp. 1-2.

²⁶ 082908-TR-ET Part 1-5 RED2, p. 1; 082909-TR-ET Part 1-6 RED, p. 1; SPOE00073191-SPOE00073199 RED2, p. 1.

²⁷ 082908-TR-ET Part 1-5 RED2, pp. 4-5; SPOE00073191-SPOE00073199 RED2, p. 4.

²⁸ 082908-TR-ET Part 1-5 RED2, pp. 2-3; SPOE00073191-SPOE00073199 RED2, p. 4.

²⁹ 082908-TR-ET Part 1-5 RED2, p. 118; 082909-TR-ET Part 1-6 RED2, pp. 154-155; SPOE00073191-SPOE00073199 RED2, p. 9.

³⁰ SPOE00073191-SPOE00073199 RED2, p. 9.

11. Having found W04743's Statements to be relevant and *prima facie* authentic and reliable, the Panel is also satisfied that W04393's Statements have *prima facie* probative value.

12. Regarding suitability for admission pursuant to Rule 154, the Panel notes that W04743's Statements are 285 pages in length (in English) and that the SPO reduced its estimate for W04743's direct examination from five to three hours, mentioning that they would elicit brief oral testimony to address issues not fully covered in the Proposed Evidence during the supplemental examination.³¹

13. The Panel notes the Defence's submission that (i) the SPO's estimate of three hours of additional examination-in-chief appears incompatible with the time-saving function of Rule 154 and not significant given that the Statements amount to 285 pages;³² (ii) any time-saving effects of Rule 154 would be nullified if the SPO Motion was granted in full, considering that half of W04743's SPO Interview contains merely procedural discussions and is a repetition of evidence.³³ Contrary to the Defence's submissions, the Panel agrees with the SPO that, while the two parts of the Rule 154 Statements are partially duplicative, they provide complementary detail and represent W04743's Statements to different authorities at different times.³⁴ This and the consistency between successive accounts could be relevant to assessing the witness's overall credibility. Considering that it would reduce the time required for direct examination by two hours, the Panel is satisfied that admission of W04743's Statements under Rule 154 will contribute, albeit in limited fashion, to the expeditiousness of the proceedings.³⁵ At this stage, the Panel will not order the SPO to reduce its direct examination time estimate further as it appears reasonable to the Panel. However, the Panel will exercise its discretion if

³¹ Motion, para. 10.

³² Response, paras 2-3.

³³ Response, para. 4.

³⁴ Motion, para. 9; Reply, para. 5.

³⁵ Compare Witness List, p. 15 with Motion, para. 10.

and when it considers that court time is not being used judiciously. In this regard, the Panel reminds the SPO that oral evidence elicited from W04743 shall not be unnecessarily duplicative of the evidence contained in W04743's Statements.³⁶

14. The Panel also notes the Defence's submission that the SPO has not explained which "issues not covered in"³⁷ the Rule 154 package it intends to elicit evidence on and therefore has fallen foul of its obligation to provide adequate notice of the areas it intends to explore during the witness's direct examination.³⁸ The Panel notes the SPO reply that the estimate for W04743's supplemental examination is based on the nature and volume of items the SPO intends to use with and/or tender through this witness. The SPO gives the example of its intention to use the collection of KLA documents,³⁹ as some items were not discussed because they had not been translated and processed at the time of the interview.⁴⁰ Concerning the alleged failure to provide adequate notice,⁴¹ the Panel notes that the Order on the Conduct of Proceedings⁴² mentions that the presenting Party shall submit no later than 24 hours prior to the testimony of the witness a final list of the material to be used and upload any additional material to its presentation queue.⁴³ The calling Party is not expected nor required to provide additional notice of issues to be explored with a witness in questioning. The Panel therefore notes that, together with the information about the witness, preparation notes and the SPO's list of issues in relation to which the witness will be examined,⁴⁴ the Defence will have

³⁶ See *e.g.* First Rule 154 Decision, paras 32-33.

³⁷ Motion, para. 10.

³⁸ Response, para. 5.

³⁹ 082926-083087-ET Revised, pp. 082926, 082928, 082934-082937, 082989, 083011, 083014-083015, 083017-083043.

⁴⁰ Reply, para. 3.

⁴¹ Response, para. 5.

⁴² F01226/A01.

⁴³ Order on the Conduct of Proceedings, para. 82.

⁴⁴ See Annex 2 to Motion.

sufficient information to prepare as the witness is scheduled to testify in January.⁴⁵ Therefore, the Defence argument is dismissed.

15. In the present case, the Panel is also satisfied that admission pursuant to Rule 154 of W04743's Statements would not cause unfair prejudice to the Defence, as the Defence will have an opportunity to cross-examine the witness. The Panel therefore finds that the *prima facie* probative value of W04743's Statements is not outweighed by any prejudicial effect, and that W04743's Statements are suitable for admission pursuant to Rule 154.

16. *W04743's Associated Exhibits*. The Panel observes that W04743's Associated Exhibits are (i) a collection of documents from the KLA covering the period May-June 1999, and thus are relevant to the Indictment period ("KLA Document");⁴⁶ (ii) a list of names of potential candidates for positions within the KLA, relevant to the Indictment period ("List");⁴⁷ and (iii) a video recording and transcripts of a TV documentary about an individual ("Video material").⁴⁸ The Panel notes that this material were discussed during the SPO interview.⁴⁹

17. At the outset, the Panel notes that the Defence does not oppose the admission of the List.⁵⁰

18. The Defence opposes, however, the admission of a number of proposed Associated Exhibits primarily because they are said to lack relevance, reliability, and authentication by W04743.⁵¹ The Defence objects to several tendered pages of

⁴⁵ Response, para. 6.

⁴⁶ 082926-083087-ET Revised, pp. 082926, 082928, 082934-082937, 082989, 083011, 083014-083015, 083017-083043.

⁴⁷ 082911-082911-ET RED2.

⁴⁸ IT-03-66 P35 Time code 02:46- 03:38; IT-03-66 P35.1a, pp. 1-2 (English) and IT-03-66 P35.1, pp. 1-2. (Albanian) referring to 082909-TR-ET Part 5 RED2, pp. 15-25.

⁴⁹ 082908-TR-ET Part 5 RED2, pp. 14-20; 082909-TR-ET Part 1 RED2, pp. 14-29; 082909-TR-ET Part 2 RED2, pp. 9-27; 082909-TR-ET Part 2 RED2, pp. 5-7; 082909-TR-ET Part 5 RED2, pp. 12-14; 082909-TR-ET Part 5 RED2, pp. 15-25.

⁵⁰ 082911-082917 RED2; Response, para. 11.

⁵¹ Response, paras 7-10 referring to 082926-083087-ET Revised, pp. 082934-082937, 082934, 083017-083043; IT-03-66 P35.1a, pp. 1-2.

the KLA Document,⁵² on the grounds that: (i) regarding pages 082926 and 082928, W04743 could not authenticate it and identified potential inaccuracies in the said pages;⁵³ (ii) regarding pages 082934-082937, W04743 only referred to his name and signature being present on one page and absent in the rest of the page range, but made no comment on the document's content or the events it describes;⁵⁴ (iii) regarding pages 083017-083043, W04743 makes no specific reference to the information contained in the referred page range.⁵⁵ The Defence also objects to the admission of the Video material,⁵⁶ on the grounds that its probative value remains unexplained and that an extended footage of the video portion tendered has already been admitted as P01280.⁵⁷

19. Concerning the admission of the KLA Document, the SPO replies that the Defence indicates a fundamental misunderstanding of the admissibility criteria for associated exhibits, as questions of weight are not determinative of admission. In its view, the relevant question is whether the witness's testimony would become incomprehensible or of lesser probative value without the exhibit and whether it was discussed with the witness in the record being tendered into evidence.⁵⁸ Concerning the admission of the Video, the SPO replies that the Video and the video footage admitted as P01280 are not identical. It also avers that W04743's identification of certain KLA members is based on specific time codes of

⁵² 082926-083087-ET Revised.

⁵³ Response, para. 8 *referring to* 082909-TR-ET Part 1, pp. 15-18; 082926-083087-ET Revised, pp. 082926, 082928.

⁵⁴ Response para. 8 *referring to* 082926-083087-ET Revised, p. 082934.

⁵⁵ Response para. 9 *referring to* 082926-083087-ET Revised, pp. 083017-083043 *and to* 082908-TR-ET Part 5, pp. 14-20.

⁵⁶ IT-03-66 P35 Time code 02:46- 03:38; IT-03-66 P35.1a, pp. 1-2 (English) and IT-03-66 P35.1, pp.1-2. (Albanian) *referring to* 082909-TR-ET Part 5 RED2, pp. 15-25. The Panel understands that any objection to IT-03-66 P35 (video) extends to its transcription in English and Albanian.

⁵⁷ Response, para. 10.

⁵⁸ Reply, para. 6.

the tendered Video, which forms an inseparable and indispensable part of his evidence, and would become less comprehensive without it.⁵⁹

20. Regarding the KLA Document,⁶⁰ the Panel observes that, (i) regarding pages 082926 and 082928, W04743 confirms that he brought the documents discussed during the interview,⁶¹ he identifies relevant information about the procedure under which the document was produced and mentions individuals whose names are on the document;⁶² (ii) regarding pages 082934-082937, W04743 explains in which circumstances these type of documents would be signed;⁶³ (iii) regarding pages 083017-083043, W04743 provides contextual information and discusses the authors of the KLA Document, and also refers to several names of individuals mentioned on the relevant pages.⁶⁴ In this context, the Panel notes that the Defence's reliance on the Panel's previous consideration for admission of material stating that "the witness did not specifically comment on every entry" is inapposite as it pertains to the admission of a document of nearly two hundred pages in its entirety, many of which were considered not relevant to the charges in the Indictment.⁶⁵ The Panel observes that in the present instance, the SPO only seeks to tender twenty-six pages.⁶⁶ Therefore, the Panel's previous finding is not immediately relevant in the present case.

21. Regarding the List, the Panel notes that W04347 meaningfully commented on it in the SPO interview. Therefore, the Panel is satisfied that it forms an indispensable and inseparable part of W04743's Statements.

⁵⁹ Reply, para. 7.

⁶⁰ 082926-083087-ET Revised.

⁶¹ 082909-TR-ET Part 1, p. 14, lines 4-5.

⁶² 082909-TR ET Part 1, pp. 15-18 *referring to* 082926-083087-ET Revised, pp. 082926, 082928.

⁶³ 082909-TR ET Part 1, pp. 24-25 *referring to* 082926-083087-ET Revised, pp. 082934-082937.

⁶⁴ 082909-TR-ET Part 1, pp. 24-25 *referring to* 082926-083087-ET Revised, pp. 083017-083043.

⁶⁵ KSC-BC-2020-06/F02245, Decision on Prosecution Motion for Admission of Evidence of W019778, W02540, W02677, W02714, W02951, W03865, W03881, W04371, W04710, and W04850 Pursuant to Rule 154 and Amendment of Exhibit List (F02196), 16 April 2024, para. 74.

⁶⁶ *See* Annex 1 to the Motion.

22. Regarding the Video material,⁶⁷ the Panel notes that W04743 identifies a number of KLA members in his Statements, which appears relevant to the KLA structure and organisation.⁶⁸ The Panel notes that, as explained by the SPO,⁶⁹ the video footage already admitted as P01280 does not cover the same parts of the Video. Therefore, the Defence's arguments are without merit.

23. The Panel is satisfied that W04743's Associated Exhibits form an indispensable and inseparable part of W04743's Statements. The Panel is also satisfied that these Associated Exhibits are relevant, *prima facie* authentic and reliable, and that their *prima facie* probative value is not outweighed by any prejudicial effect as the Defence will have an opportunity to cross-examine the witness on the Associated Exhibits. Accordingly, the Panel finds that W04743's Associated Exhibits are appropriate for admission under Rules 138(1) and 154.

24. In light of the above, the Panel finds that W04743'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.

⁶⁷ IT-03-66 P35 and corresponding translation at IT-03-66 P35.1a, pp. 1-2.


⁶⁸ 082909-TR-ET Part 5 RED2, pp. 15-25.

⁶⁹ Reply, para. 7.

V. DISPOSITION

25. For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS** the Motion; and
- b) **FINDS** the Statements and Associated Exhibits of W04743 as set out in para. 24 and respective footnotes appropriate for admission once the requirements of Rule 154(a)-(c) are met.



Judge Charles L. Smith, III

Presiding Judge

Dated this Thursday, 19 December 2024

At The Hague, the Netherlands.