



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 Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 20 December 2024

Language: English

Classification: Public

**Public Redacted Version of Decision on Prosecution Motion for Admission of
Evidence of Witness W02183**

Specialist Prosecutor

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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 November 2024, the Specialist Prosecutor’s Office (“SPO”) filed a Rule 154 motion with regard to witness W02183 (“Motion”).¹
2. On 9 December 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 11 December 2024, the SPO replied to the Response (“Reply”).³

II. SUBMISSIONS

4. The SPO requests the admission of the statement, together with the associated exhibits (respectively, “Statement” and “Associated Exhibits”; collectively, “Proposed Evidence”) of witness W02183.⁴ The SPO submits that the Proposed Evidence meets the requirements of Rules 138(1) and 154 for admission.⁵

¹ F02752, Specialist Prosecutor, *Prosecution Motion for Admission of Evidence of Witness W02183 Pursuant to Rule 154*, 28 November 2024, confidential, with Annexes 1-2, confidential (a public redacted version was filed on the same day, F02752/RED).

² F02762, Specialist Counsel, *Joint Defence Response to ‘Prosecution Motion for Admission of Evidence of Witness W02183 Pursuant to Rule 154’*, 9 December 2024, confidential, with Annex 1, confidential (a public redacted version was filed on 10 December 2024, F02762/RED).

³ F02771, Specialist Prosecutor, *Prosecution Reply Relating to Rule 154 Motion F02752*, 11 December 2024, confidential (a public redacted version was filed on the same day, F02771/RED).

⁴ Motion, para. 1.

⁵ Motion, para. 2.

5. The Defence does not oppose the admission of W02183's Statement, but objects to the admission of parts of the proposed Associated Exhibits.⁶ The Defence argues that the extensive redactions in parts of the Associated Exhibits prevent it from assessing their relevance and reliability.⁷ It also submits that the unredacted parts of the documents lack relevance and authentication by W02183 and that their admission would prejudice the Defence.⁸

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.⁹ The SPO replies that the redacted parts of the documents are not being relied on by the SPO and that the Statement would be less comprehensible and have less probative value without the admission of these documents.¹⁰

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 Rules 138(1) and 154.¹¹

⁶ Response, paras 1-3.

⁷ Response, paras 4-5.

⁸ Response, paras 4-6.

⁹ Reply, para. 1.

¹⁰ Reply, paras 2-4.

¹¹ 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.

IV. DISCUSSION

8. The SPO submits that the Proposed Evidence of W02183¹² is: (i) relevant;¹³ (ii) *prima facie* authentic and reliable;¹⁴ and (iii) suitable for admission under Rule 154.¹⁵

9. *W02183's Statement*. Regarding relevance, W02183 was [REDACTED]. According to the SPO, W02183's Proposed Evidence is relevant to, *inter alia*: (i) the security situation in Kosovo, the targeting of and crimes against ethnic minorities, and measures taken to address these issues within the KLA; (ii) the meetings W02183 had with KLA leaders; and (iii) the establishment of police units and local governments by the KLA.¹⁶ The Panel is satisfied that W02183's Statement is relevant to the charges in the Indictment.¹⁷

10. Regarding *prima facie* authenticity and reliability, the Panel notes that W02183's Statement consists of W02183's interview with the SPO.¹⁸ The Statement contains multiple indicia of authenticity and reliability, including: (i) an indication of the date of the Statement;¹⁹ (ii) the attendees present;²⁰ (iii) the requisite witness warnings, rights and acknowledgments;²¹ (iv) confirmation by W02183 that the Statement is true, accurate and was given voluntarily;²² and (v) W02183's

¹² The Proposed Evidence consists of the following statement and associated exhibits, including any translations thereof: (i) 101610-101634 RED; (ii) 101960-101963-ET; (iii) SPOE00203165-00203171; (iv) 012642-012643; (v) SPOE00209742-00209755; (vi) SPOE00203174-00203187; (vii) SPOE00246083-00246087; (viii) SPOE00203088-00203093; (ix) SPOE00246100-00246102; (x) SITF00173049-00173052 at SITF00173051-SITF00173051-ET and SITF00173052-SITF00173052-ET; (xi) SITF00172727-00172735; (xii) SPOE00246107-00246112. 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) SITF00172746-00172749-RED (P00755); (ii) SPOE00203094-00203096 (P01227). *See* Annex 1 to the Motion.

¹³ Motion, paras 3-7.

¹⁴ Motion, para. 8.

¹⁵ Motion, para. 10.

¹⁶ Motion, paras 3-7.

¹⁷ *See* Indictment, paras [REDACTED]; *see also* SPO Pre-Trial Brief, paras [REDACTED].

¹⁸ 101610-101634 RED.

¹⁹ 101610-101634 RED, p. 1.

²⁰ 101610-101634 RED, p. 1.

²¹ 101610-101634 RED, p. 1.

²² 101610-101634 RED, p. 2, 24.

signature.²³ In light of the above, the Panel is satisfied of the *prima facie* authenticity and reliability of W02183's Statement.

11. Having found W02183's Statement to be relevant and *prima facie* authentic and reliable, the Panel is also satisfied that W02183's Statement has *prima facie* probative value.

12. Regarding suitability for admission pursuant to Rule 154, the Panel notes that W02183's Statement is 25 pages in length (in English) and that the SPO estimates that W02183's direct examination will take two hours to elicit brief oral testimony on essential matters that clarify, supplement, or explain certain aspects of his evidence.²⁴ The Panel notes that the Defence does not object to the admission of W02183's Statement pursuant to Rule 154.²⁵ In the present case, the Panel is satisfied that admission pursuant to Rule 154 of W02183's Statement 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 W02183's Statement is not outweighed by any prejudicial effect, and that W02183's Statement is suitable for admission pursuant to Rule 154.

13. *W02183's Associated Exhibits*. The Panel observes that W02183's Associated Exhibits are: (i) an article about human rights abuses in Kosovo ("Article");²⁶ (ii) a note on KLA policing activity ("Note 1");²⁷ (iii) a note on the KLA and government functions ("Note 2");²⁸ (iv) a note on the civilian administration in Kosovo ("Note 3");²⁹ (v) a note on the demilitarization of the KLA ("Note 4");³⁰ (vi) notes on a meeting with Kosovo Albanian leaders ("Meeting Notes with Kosovo

²³ 101610-101634 RED, pp. 1-25.

²⁴ Motion, para. 10.

²⁵ Response, para. 2.

²⁶ 101960-101963-ET.

²⁷ SPOE00203165-00203171.

²⁸ 012642-012643.

²⁹ SPOE00209742-00209755.

³⁰ SPOE00203174-00203187.

Albanian leaders”);³¹ (vii) notes on a meeting with KLA leaders (“Meeting Notes with KLA leaders”);³² (ix) notes on talks with Hashim Thaçi (“Meeting Notes with Hashim Thaçi”);³³ a letter addressed to W02183 (“Letter”);³⁴ a note establishing [REDACTED] (“Note 5”);³⁵ and an additional note on talks with Hashim Thaçi (“Meeting Notes with Hashim Thaçi 2”).³⁶

14. At the outset, the Panel notes that the Defence does not oppose the admission of the Article;³⁷ Notes 2³⁸ and 3;³⁹ the Meeting Notes with Kosovo Albanian leaders;⁴⁰ the Meeting Notes with KLA leaders;⁴¹ the Letter;⁴² and the Meeting Notes with Hashim Thaçi 1⁴³ and 2.⁴⁴

15. The Defence opposes, however, the admission of Notes 1, 4, and 5 because: (i) redactions therein prevent the Defence from assessing their relevance and reliability; (ii) certain parts of these Associated Exhibits lack relevance; or (iii) W02183 has failed to authenticate the portions put to him.⁴⁵ Moreover, the Defence argues that none of this material should be considered as an inseparable and indispensable part of W02183’s Statement.⁴⁶

16. Concerning Note 1,⁴⁷ the SPO replies that: (i) the unredacted parts of the document are relevant and *prima facie* authentic; and (ii) the Defence’s challenges

³¹ SPOE00246083-00246087.

³² SPOE00203088-00203093.

³³ SPOE00246100-00246102.

³⁴ SITF00173049-00173052 at SITF00173051-SITF00173051-ET; SITF00173052-SITF00173052-ET.

³⁵ SITF00172727-00172735.

³⁶ SPOE00246107-00246112.

³⁷ 101960-101963-ET.

³⁸ 012642-012643.

³⁹ SPOE00209742-00209755.

⁴⁰ SPOE00246083-00246087.

⁴¹ SPOE00203088-00203093.

⁴² SITF00173049-00173052 at SITF00173051-SITF00173051-ET and SITF00173052-SITF00173052-ET.

⁴³ SPOE00246100-00246102.

⁴⁴ SPOE00246107-00246112; Response, paras 3-6.

⁴⁵ Response, paras 4-6 referring to SPOE00203165-00203171; SPOE00203174-00203187; SITF00172727-00172735.

⁴⁶ Response, paras 4-6.

⁴⁷ SPOE00203165-00203171.

to the SPO's use of this redacted document was previously rejected by the Pre-Trial Judge.⁴⁸ Concerning Note 4,⁴⁹ the SPO argues that: (i) it does not possess a lesser redacted version;⁵⁰ (ii) W02183 is well-placed to discuss the relevant topics;⁵¹ and (iii) the objections raised by the Defence are matters to be addressed during cross-examination.⁵² Concerning Note 5,⁵³ the SPO argues that: (i) W02183's Statement would be less comprehensible and have lesser probative value without the proposed Associate Exhibit; and (ii) relevant topics can be addressed during cross-examination.⁵⁴

17. Regarding Note 1,⁵⁵ the Panel observes that: (i) the Pre-Trial Judge previously found that [REDACTED];⁵⁶ (ii) the unredacted parts of the document are relevant and provide information on KLA policing activity; and (iii) W02183 commented upon the unredacted portions of the document.⁵⁷ While the Defence submits that it is not clear what other aspects of Note 1 the SPO intends to rely upon, or for what purpose,⁵⁸ the Panel notes that, as the SPO has made clear in the Reply, the redacted portions are not being relied on by the SPO.⁵⁹ In addition, the Panel notes that the SPO's Rule 95 summary lists the issues in relation to which the witness's evidence is considered relevant to the SPO's case.⁶⁰ The Defence therefore has sufficient information to prepare for the testimony of this witness. The Defence's argument in relation to Note 1 are therefore dismissed.

⁴⁸ Reply, para. 2 referring to F00559, Panel, [REDACTED] ("[REDACTED] Decision"), 5 November 2021, strictly confidential and *ex parte*, paras 437-444. The SPO notes that it does not possess a lesser redacted version of the last two pages of SPOE00203165-00203171.

⁴⁹ SPOE00203174-00203187.

⁵⁰ Reply, para. 3 referring to 101610-101634 RED, para. 47.

⁵¹ Reply, para 3.

⁵² Reply, para. 3.

⁵³ SITF00172727-00172735.

⁵⁴ Reply, para. 4.

⁵⁵ SPOE00203165-00203171.

⁵⁶ [REDACTED] Decision, para. 441.

⁵⁷ 101610-101634 RED, paras 36-37.

⁵⁸ Response, para. 4.

⁵⁹ Reply, para. 2.

⁶⁰ See Annex 2 to Motion.

18. Regarding Note 4,⁶¹ the Panel observes that: (i) the SPO has confirmed that it does not possess a lesser redacted version of this document;⁶² (ii) the SPO will only rely on the unredacted parts of the document;⁶³ (iii) the relevant part of the Statement shows that the witness has personal knowledge of the contents of this document and is well-placed to discuss the relevant topics therein;⁶⁴ and (iv) the unredacted parts of the document are relevant and provide information on the demilitarization and transformation of the KLA.⁶⁵ The Defence's arguments with respect to Note 4 are therefore dismissed.

19. Regarding Note 5,⁶⁶ the Panel observes that the document is referenced in W02183's Statement, and per W02183's account, purports to relate to an example of interference from the KLA in the decision making-process of [REDACTED].⁶⁷ The extent of W02183's knowledge of the relevant topics discussed in Note 5 can be explored further on cross-examination and therefore no prejudice is incurred by the Defence in this regard.⁶⁸ The Defence's arguments in relation to Note 5 are therefore dismissed.

20. The Panel is satisfied that W02183's Associated Exhibits form an indispensable and inseparable part of W02183's Statement as they were all discussed to a sufficient extent with the witness during his interview with the SPO.⁶⁹ The Panel is also satisfied that the 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

⁶¹ SPOE00203174-00203187; F01594/A01, Panel, *Prosecution Submission of Updated Witness List and Confidential Lesser Redacted Version of Pre-trial Brief*, 9 June 2023, strictly confidential and *ex parte*, pp. 138-139.

⁶² Reply, para. 3.

⁶³ Reply, para. 3 referring to 101610-101634 RED, para. 47.

⁶⁴ 101610-101634 RED, paras 44, 47.

⁶⁵ 101610-101634 RED, para. 47.

⁶⁶ SITF00172727-00172735.

⁶⁷ 101610-101634 RED, paras 82-83.

⁶⁸ 101610-101634 RED, paras 82-83.

⁶⁹ 101610-101634 RED, paras 23, 36-37, 39, 41, 47, 64, 71-72, 73-78, 79-80, 81, 82-83, 93.

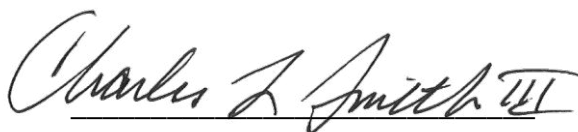
cross-examine the witness with respect to the content of the Associated Exhibits. Accordingly, the Panel finds that W02183's Associated Exhibits are appropriate for admission under Rules 138(1) and 154.

21. In light of the above, the Panel finds that W02183'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.

V. DISPOSITION

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

- a) **GRANTS** the Motion; and
- b) **FINDS** W02183's Proposed Evidence appropriate for admission once the requirements of Rule 154(a)-(c) are met.



Judge Charles L. Smith, III

Presiding Judge

Dated this Friday, 20 December 2024

At The Hague, the Netherlands.