



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:** 7 March 2025

**Language:** English

**Classification:** Public

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**Public Redacted Version of 'Prosecution consolidated motion for the admission of the evidence of witnesses W02172 and W04858 pursuant to Rule 153, and related protective measures request with confidential Annex 1'**

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## I. INTRODUCTION

1. Pursuant to Articles 23, 37, and 40 of the Law<sup>1</sup> and Rules 80, 137-138, 141(1), and 153 of the Rules,<sup>2</sup> the Specialist Prosecutor's Office ('SPO'): (i) reapplies for the admission in lieu of oral testimony of the written statements, transcripts, and associated exhibits of witnesses W02172 and W04858;<sup>3</sup> and (ii) requests necessary and proportionate protective measures for W04858. The proposed evidence is relevant and *prima facie* reliable, has probative value which is not outweighed by any prejudice, and meets the requirements of Rule 153. Admission pursuant to Rule 153 is therefore in the interests of justice.<sup>4</sup>

## II. SUBMISSIONS

### A. GENERAL SUBMISSIONS ON ADMISSIBILITY

2. The evidence tendered for each witness should be admitted in lieu of oral testimony because it:

- (i) is relevant to the crimes charged in the Indictment;
- (ii) is *prima facie* reliable, containing sufficient indicia of authenticity;
- (iii) has probative value which is not outweighed by any prejudicial effect;  
and
- (iv) meets all of Rule 153's requirements for admission.

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<sup>1</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

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

<sup>3</sup> As set out in more detail below, the evidence of these witness was previously tendered by the SPO. The Panel denied without prejudice the admission of W02172's proposed evidence, and deferred its decision on the admission of the proposed evidence of W04858. In Annex 1, the SPO lists the evidence being re-tendered for W02172, together with proposed redactions marked on the relevant statements.

<sup>4</sup> The applicable law has been set out previously. See Public Redacted Version of Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153, KSC-BC-2020-06/F01904/RED, 27 November 2023, paras 7-12.

3. As set out in detail in the SPO's original motions,<sup>5</sup> numerous Rule 153(1)(a) factors apply to the tendered evidence, weighing heavily in favour of admission. The proposed evidence:

- (i) is of a cumulative nature, in that other witnesses have given oral testimony on similar facts;
- (ii) is corroborated by evidence which the Accused has confronted or will be able to confront, including through cross-examination;
- (iii) relates to, *inter alia*, the crime-base, contextual elements, and the relevant historical, political, or military background;
- (iv) complements adjudicated facts;
- (v) concerns the impact of crimes on victims; and
- (vi) was recorded or documented in a manner enabling the Parties and Panel to assess each witness's demeanour and/or credibility.

4. Moreover, the tendered evidence meets the requirements set out in Rule 153(2) in that the witness statements and testimonies are either signed or otherwise attested to by the witnesses and/or others participating in the questioning of the witnesses. Additionally, the official records of these statements and testimonies note, where applicable, the date, time, place, and identities of those present during questioning.

5. In addition to fulfilling the letter of Rule 153, admission of the tendered evidence in lieu of oral testimony will serve the spirit of the Rule by not only avoiding repetitive testimony and saving valuable court-time, but also by sparing these witnesses the

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<sup>5</sup> See Prosecution motion for the admission of the evidence of witnesses W00964, W02172, W02538, W02549, W04238, W04380, W04386, W04436, W04661, and W04734 pursuant to Rule 153, 13 December 2024, Confidential, para.13; Prosecution motion for the admission of the evidence of witnesses W01679, W03593, W04391, W04394, W04432, W04433, W04591, and W04858 pursuant to Rule 153, 26 September 2024, Confidential, para.41.

burden of testifying live, and avoiding the unnecessary stress, expense, and other disruptions to the witnesses' lives including the likelihood of retraumatisation.

6. For all of these reasons, pursuant to Rule 153(3), and as set out in more detail below, the necessities of a fair and expeditious trial warrant the admission of the tendered evidence in written form, without cross-examination.

## B. SPECIFIC SUBMISSIONS ON ADMISSIBILITY

### 1. W02172

7. *Relevance, Authenticity, and Reliability.* The Panel found W02172's Rule 153 statement as tendered herein to be relevant and *prima facie* authentic.<sup>6</sup> The Panel also found that three associated exhibits and a page of a fourth associated exhibit formed an inseparable and indispensable part of W02172's evidence, therefore satisfying the admissibility criteria of Rules 138 and 153.<sup>7</sup>

8. *Suitability for Rule 153 Admission.* The Panel found, however, that admitting W02172's evidence of her [REDACTED] interview with [REDACTED], and her interaction with various KLA members in that context would have a prejudicial effect outweighing the probative value of her evidence.<sup>8</sup> For this reason, the Panel denied admission of W02172's Rule 153 statement without prejudice, and indicated that the SPO could reapply for admission of those parts of the proposed evidence which fulfil the Rule 153 requirements, or call W02172 to give evidence before the Panel.<sup>9</sup>

9. The SPO has carefully considered the Panel's findings together with the nature and scope of W02172's evidence, and now reapplies for the admission of W02172's

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<sup>6</sup> Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W00964, W02172, W02538, W02549, W04238, W04380, W04386, W04436, W04661, and W04734 pursuant to Rule 153, KSC-BC-2020-06/F02937, 14 February 2025 ('W02172 Decision') paras 17-18. The SPO has not retendered a supplemental information sheet, which was found not to meet the formal requirements of Rule 153(2). See W02172 Decision, KSC-BC-2020-06/F02937, para.26.

<sup>7</sup> W02172 Decision, KSC-BC-2020-06/F02937, paras 19-21, 23.

<sup>8</sup> W02172 Decision, KSC-BC-2020-06/F02937, para.28.

<sup>9</sup> W02172 Decision, KSC-BC-2020-06/F02937, para.29.

Rule 153 statement with proposed redactions.<sup>10</sup> As the Panel has already found the admission criteria to be satisfied for the tendered portions of W02172's Rule 153 statement,<sup>11</sup> and the evidence identified by the Panel as requiring cross-examination is now proposed for redaction,<sup>12</sup> the probative value of W02172's Rule 153 statement is no longer outweighed by any prejudicial effect, and W02172's evidence should therefore be admitted pursuant to Rule 153.

## 2. W04858

10. *Relevance, Authenticity, and Reliability.* The Panel found W04858's Rule 153 statement to be relevant, *prima facie* authentic, probative, and not unduly prejudicial.<sup>13</sup>

11. *Suitability for Rule 153 Admission.* The Panel, however, deferred its decision on admission because the statement lacked W04858's signature.<sup>14</sup>

12. On [REDACTED], the SPO met with W04858. The witness read his statement, made corrections which were recorded in a separate document, and signed the statement, as well as the list of corrections. On 6 March 2025, the SPO disclosed the signed statement together with the corrections made by W04858.<sup>15</sup> In accordance with the Panel's decision and considering that the Rule 153(2) requirements are now satisfied, the SPO therefore requests admission of W04858's Rule 153 statement.

13. *Protective Measures.* During a meeting with the SPO [REDACTED] to discuss the signing of his [REDACTED] Statement, W04858 reiterated his concerns for his safety and that of his family, should his identity as an SPO witness become known, and

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<sup>10</sup> See redacted material presented in Annex 1 to this Motion.

<sup>11</sup> Compare W02172 Decision, KSC-BC-2020-06/F02937, paras 17-29, with the further redacted material presented in Annex 1 to this Motion.

<sup>12</sup> Compare W02172 Decision, KSC-BC-2020-06/F02937, paras 28-29, with the further redacted material presented in Annex 1 to this Motion.

<sup>13</sup> Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W01679, W03593, W04391, W04394, W04432, W04433, W04591, and W04858 Pursuant to Rule 153 (F02599) and Related Defence Motion to Exclude Evidence (F02663), KSC-BC-2020-06/F02779, 13 December 2024 ('W04858 Decision'), paras 79-81.

<sup>14</sup> W04858 Decision, KSC-BC-2020-06/F02779, para.81.

<sup>15</sup> Disclosure 1622, 126001-126012 RED.

requested protective measures. Considering that W04858 has now corrected and affirmed his [REDACTED] statement and cooperated further with the SPO to enable admission of his evidence, the already existing risks to his security and well-being have been aggravated and the requested protective measures are proportionate and necessary.

14. The first part of W04858's statement contains numerous references to [REDACTED],<sup>16</sup> [REDACTED].<sup>17</sup> If it was publicly known that W04858 is a witness in this case and provided evidence about [REDACTED], the risks of [REDACTED]. W04858's evidence, therefore, needs to remain confidential to give full effect to the protective measures granted to [REDACTED].

15. Further, W04858 is a [REDACTED], who was previously targeted, including [REDACTED], both during the Indictment period, as reflected in his Rule 153 statement, and after. Between [REDACTED], W04858 was attacked [REDACTED]. Around the same time, W04858 was warned [REDACTED]. While W04858 has since [REDACTED] and has not had further incidents, he fears that his cooperation with the SPO may aggravate existing security risks to him and his family.

16. Accordingly, considering the prevailing climate of witness interference and intimidation in Kosovo, and the Accused's incentives, influence, and networks,<sup>18</sup>

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<sup>16</sup> Seventh request for protective measures with strictly confidential and *ex parte* annexes 1-25, KSC-BC-2020-06/F00339, 4 June 2021, para.134.

<sup>17</sup> Seventh Decision on specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00407, 21 July 2021, paras 141, 145.

<sup>18</sup> See, for example, Confidential Redacted Version of Seventh Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00407/CONF/RED, 21 July 2021, Confidential, paras 43, 63, 76; Confidential Redacted Version of Twelfth Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00571/CONF/RED, 17 November 2021, Confidential, para.31; Public Redacted Version of Decision on Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F01111/RED, 18 November 2022, paras 26-28; Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F02642, 14 October 2024, Public, paras 20, 23; Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F02643, 14 October 2024, paras 19, 21; Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F02712, 13 November 2024, para.17; Decision on Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F02713, 13 November 2024, para.18.

proportionate protective measures are needed to mitigate the risks to W04858 and his family, as well as to [REDACTED].<sup>19</sup>

17. The SPO therefore requests the Trial Panel to order the following protective measures for W04858: the use of pseudonym, redaction of the witness's name and identifying information from the court's public records, and non-disclosure to the public of any records identifying the witness, including, but not limited to, W04858's Rule 153 statement. These measures are proportionate. They are also the least restrictive available to provide appropriate protection for W04858 and his family, and to avoid frustrating the protective measures granted to [REDACTED]. The requested measures will not prejudice the Accused, who have access to W04858's full statement.

### III. CLASSIFICATION

18. This submission and its annex are confidential as they contain information concerning witnesses with protective measures, and witnesses whose identities are not public at this time.

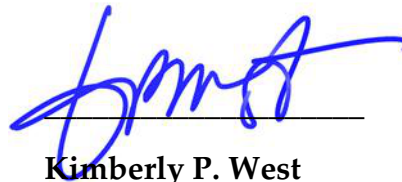
### IV. RELIEF REQUESTED

19. For the foregoing reasons, the Trial Panel should admit the tendered Rule 153 statements and associated exhibits pursuant to Rule 153, and grant the requested protective measures for W04858.

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<sup>19</sup> See ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Decision on Prosecution Motion for Protective Measures for Witness RM-115, 15 August 2010, para.6.

**Word count: 1,825**

A handwritten signature in blue ink, appearing to read 'Kimberly P. West', is written over a horizontal line.

**Kimberly P. West**

**Specialist Prosecutor**

Friday, 7 March 2025

At The Hague, the Netherlands.