



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA 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: 2 April 2025

Language: English

Classification: Public

**Public Redacted Version of Decision on Prosecution Consolidated Motion for the
Admission of the Evidence of Witnesses W02172 and W04858 pursuant to
Rule 153, and Related Protective Measures Request**

Specialist Prosecutor
Kimberly P. West

Counsel for Victims
Simon Laws

Counsel for Hashim Thaçi
Luka Mišetić

Counsel for Kadri Veseli
Rodney Dixon

Counsel for Rexhep Selimi
Geoffrey Roberts

Counsel for Jakup Krasniqi
Venkateswari Alagendra

TRIAL PANEL II ("Panel"), pursuant to Articles 21, 37 and 40(2) and (6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 80, 137, 138, 141(1) and 153 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 13 December 2024 and on 14 February 2025, the Panel issued decisions, *inter alia*, deferring its decision on admission of W04858's statements ("First W04858 Decision"),¹ and denying the admission of W02172's statements and associated exhibits ("First W02172 Decision"),² respectively.
2. On 7 March 2025, the Specialist Prosecutor's Office ("SPO") filed a motion (i) reapplying for the admission of the statements, transcripts, and associated exhibits of witnesses W02172 and W04858 pursuant to Rule 153, and (ii) requesting that the Panel order protective measures for W04858 ("Motion").³

¹ F02779, Panel, *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)*, 13 December 2024, confidential, para. 83(d) (a public redacted version was issued on the same day, F02779/RED). *See also* F02599, Specialist Prosecutor, *Prosecution Motion for the Admission of the Evidence of Witnesses W01679, W03593, W04391, W04394, W04432, W04433, W04591, and W04858 Pursuant to Rule 153 ("First W04858 Motion")*, 26 September 2024, confidential, with Annexes 1-8, confidential (a public redacted version was filed on the same day, F02599/RED)

² F02937, Panel, *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*, 14 February 2025, confidential, para. 95(d) (a public redacted version was issued on the same day, F02937/RED). *See also* F02782, Specialist Prosecutor, *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 ("First W02172 Motion")*, 13 December 2024, confidential, with Annexes 1-10, confidential (a public redacted version was filed on the same day, F02782/RED).

³ F02989, Specialist Prosecutor, *Prosecution Consolidated Motion for the Admission of the Evidence of Witnesses W02172 and W04858 pursuant to Rule 153, and Related Protective Measures Request*, 7 March 2025, confidential, with Annex 1, confidential (a public redacted version was filed on the same day, F02989/RED).

3. On 19 March 2025, the Defence teams for the four Accused (collectively, “Defence”) responded to the Motion (“Response”).⁴
4. On 24 March 2025, the SPO replied to the Response (“Reply”).⁵
5. On the same day, the Defence filed a request seeking the admission of an additional statement of W02172 (“Testimony”)⁶ (“Relief Request”).⁷
6. On 26 March 2025, having heard oral submissions from the SPO,⁸ the Panel granted the Relief Request and admitted the Testimony into evidence.⁹

II. SUBMISSIONS

7. The SPO submits that W02172’s statements and associated exhibits (“W02172’s Statements” and “W02172’s Associated Exhibits”, respectively), and W04858’s statement (“W04858’s Statement”) meet the requirements for admission under Rules 138 and 153.¹⁰ The SPO accordingly requests that the Panel admit those items (collectively, the “Proposed Evidence”) into evidence pursuant to Rules 138 and 153.¹¹ The SPO also requests that the Panel order certain protective measures *vis-à-vis* the public for W04858, namely the use of pseudonym, redaction of the witness’ name and identifying information from the court’s public records, and non-disclosure to the public of any records identifying the witness, including,

⁴ F03039, Specialist Counsel, *Joint Defence Response to Prosecution Consolidated Motion for the Admission of the Evidence of Witnesses W02172 and W04858 pursuant to Rule 153*, 19 March 2025, confidential (a public redacted version was filed on 27 March 2025, F03039/RED).

⁵ F03053, Specialist Prosecutor, *Prosecution Reply Relating to Rule 153 Motion F02989*, 24 March 2025, confidential.

⁶ [REDACTED].

⁷ F03054, Defence, *Joint Defence Request for Relief Concerning W02172’s Evidence*, 24 March 2025, confidential (a public redacted version was filed on 27 March 2025, F03054/RED).

⁸ Transcript of Hearing, 26 March 2025, p. 25896, lines 3-6.

⁹ Transcript of Hearing, 26 March 2025, p. 25896, lines 7-8.

¹⁰ Motion, para. 1. *See also* Motion, paras 2-12; Annex 1 to the Motion.

¹¹ Motion, paras 1, 19.

but not limited to, W04858's Statement ("Proposed Protective Measures").¹² In support, the SPO submits that the Proposed Protective Measures are necessary and proportionate, and do not cause prejudice to the Accused.¹³

8. The Defence objects to the admission of W02172's Proposed Evidence pursuant to Rule 153 and incorporates by reference the arguments previously made in that respect.¹⁴ Particularly, the Defence submits that W02172's Statements contain incriminating evidence which is central to the SPO's case, and which is inconsistent with the witness's account on the same matter in the Testimony (which at the time of the Motion, Response and Reply was not tendered for admission).¹⁵ The Defence asserts that, in light of said inconsistencies, the prejudicial effect of admitting W02172's Proposed Evidence under Rule 153 would outweigh its probative value.¹⁶ The Defence therefore requests that the Panel: (i) denies the Motion; or, in the alternative, (ii) orders certain redactions to W02172's Statements.¹⁷ The Defence does not object to the SPO's request for admission of W04858's Proposed Evidence and to the Proposed Protective Measures.

9. The SPO replies that the Panel has already addressed the issues raised in the Response in the First W02172 Decision.¹⁸ The SPO maintains that the Motion addresses the reasons for which the Panel denied admission of W02172's Proposed Evidence in the First W02172 Decision, and, accordingly, it should be granted.¹⁹

¹² Motion, paras 1, 17, 19.

¹³ Motion, paras 1, 13, 17. *See also* Motion, paras 14-16.

¹⁴ Response, para. 4. *See also* Response, paras 5-16.

¹⁵ Response, paras 7-13.

¹⁶ Response, para. 14.

¹⁷ Response, paras 13-16.

¹⁸ Reply, paras 1-3.

¹⁹ Reply, paras 4, 6.

III. APPLICABLE LAW

10. The Panel incorporates by reference the applicable law as set out in: (i) its First Rule 153 Decision as well as the law applicable to the admission of evidence;²⁰ and (ii) in previous decisions concerning protective measures.²¹

IV. DISCUSSION

A. W02172²²

11. The SPO recalls that, in the First W02172 Decision, the Panel found that W02172's Statements and W02172's Associated Exhibits are relevant and *prima facie* authentic.²³ It also recalls that the Panel denied their admission pursuant to Rule 153, having found that admitting W02172's evidence of her interview with persons allegedly detained at the Llapashticë/Lapaštica detention facilities, and her interactions with various KLA members in that context would render the effect of admitting W02172's Proposed Evidence prejudicial beyond its probative value ("First W02172 Decision Issues").²⁴ The SPO submits that, since said evidence is now proposed for redactions ("Proposed Redactions"), the probative value of

²⁰ F01904, Panel, *Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153* ("First Rule 153 Decision"), 3 November 2023, confidential, paras 8-10, 12-13 (a public redacted version was filed on 27 November 2023, F01904/RED).

²¹ See e.g. F01276, Panel, *Decision on the "Prosecution request for protective measures for items requested by the Defence pursuant to Rule 102(3) and for one item to be disclosed pursuant to F01149"*, 10 February 2023, strictly confidential and *ex parte*, paras 10, 12 (a confidential redacted version was filed on the same day, F01276/CONF/RED).

²² W02172's Proposed Evidence consists of W02172's Statements and W02172's Associated Exhibits. W02172's Statements consists of the following items, and any translations thereof, including the Proposed Redactions (see below footnote 36): (i) U003-7272-U003-7280 RED ("W02172's [REDACTED] Statement"); (ii) SPOE00119442-00119453 RED, pp. SPOE0019442, SPOE0019446-00119453 ("W02172's [REDACTED] Statement"); and (iii) 051842-051848 RED ("W02172's SPO Statement"). W02172's Associated Exhibits consists of the following items, and any translations thereof: (i) SITF00384344-00384344; (ii) SPOE00059980-00059987, p. SPOE00059986; (iii) SPOE00233950-00233951 RED; and (iv) SPOE00233961-SPOE00233961 RED. See Annex 1 to the Motion. The Panel notes that the SPO does not tender Associated Exhibits 1, 3-5, 9 (see Annex 1 to the Motion, pp. 3-8).

²³ Motion, para. 7, referring to First W02172 Decision, paras 17-21, 23, 26.

²⁴ Motion, para. 8, referring to First W02172 Decision, para. 28.

W02172's Statements is no longer outweighed by any prejudicial effect, and W02172's Proposed Evidence should therefore be admitted pursuant to Rule 153.²⁵

12. The Defence repeats its previous arguments that W02172's Proposed Evidence should not be admitted pursuant to Rule 153 since the witness's accounts about the structure of the KLA and the alleged KLA's policy of punishing collaborators contained in her Statements is incriminatory and inconsistent with her accounts in the Testimony on the same matter ("Inconsistencies").²⁶ It maintains that, whereas in the First W02172 Decision the Panel underscored that it would not assess said inconsistencies insofar as the Testimony was not tendered for admission, it should exercise its discretion not to admit W02172's Proposed Evidence, since said inconsistencies are irreconcilable and touch upon matters which are central to the SPO's case.²⁷ The Defence further maintains that: (i) the prejudicial effect of admitting W02172's Proposed Evidence under Rule 153 outweighs its probative value;²⁸ and (ii) said prejudice would not be cured even if the Testimony were admitted into evidence.²⁹ The Defence therefore requests that the Panel denies the Motion, or, in alternative, orders the redaction of certain parts of W02172's Statements, were it minded to admit W02172's Proposed Evidence pursuant to Rule 153.³⁰

13. The SPO replies that the Defence fails to identify any additional reasons why the Motion should not be granted in its entirety.³¹ According to the SPO, with the Proposed Redactions, the Motion addresses the First W02172 Decision Issues and should therefore be granted in its entirety.³²

²⁵ Motion, para. 9.

²⁶ See Response, paras 3-4, 6-9.

²⁷ See Response, paras 4-5, 9.

²⁸ Response, para. 14.

²⁹ Response, para. 10.

³⁰ Response, paras 13-16.

³¹ Reply, para. 1.

³² Reply, paras 4, 6.

14. Regarding the relevance and *prima facie* authenticity of W02172's Proposed Evidence, the Panel maintains its previous findings in the First W02172 Decision,³³ and remains satisfied that W02172's Statements and Associated Exhibits are relevant and *prima facie* authentic.

15. Regarding the probative value of W02172's Proposed Evidence and its suitability for admission pursuant to Rule 153, the Panel recalls its previous considerations that: (i) W02172's Proposed Evidence provides primarily contextual and crime-base evidence; (ii) W02172's Statements complement each other, providing relevant corrections and clarifications which enable a fuller assessment of W02172's evidence over time; and (iii) W02172's Proposed Evidence is corroborated by documentary evidence and witnesses whom the Accused were able to confront, and complements relevant adjudicated facts of which the Panel has taken judicial notice.³⁴ Accordingly, in light of its findings on the relevance and *prima facie* authenticity of W02172's Proposed Evidence,³⁵ the Panel is satisfied that such evidence has probative value.

16. Regarding the prejudicial effect of the evidence contained in W02172's Statements, the Panel is satisfied that the SPO's Proposed Redactions to W02172's Statements address the First W02172 Decision Issues.³⁶ Accordingly, the Panel finds that admission of W02172's Proposed Evidence, with the Proposed

³³ First W02172 Decision, paras 17-21, 23.

³⁴ First W02172 Decision, para. 24. *See also* Motion, para. 3, *referring to* First W02172 Motion, para. 13.

³⁵ *See above* para. 14.

³⁶ The Panel takes note of the Proposed Redactions in: (i) paras 19-21 of W02172's [REDACTED] Statement, and any translation thereof, as tendered in Annex 1 to the Motion (notably, references to the acts and conduct of the Accused as charged in the Indictment); (ii) paras 8-18 of W02172's [REDACTED] Statement, and any translation thereof, as tendered in Annex 1 to the Motion; (iii) pp. 5-11 of W02172's [REDACTED] Statement, and any translation thereof, as tendered in Annex 1 to the Motion; and (iv) paras 3-4, 7, 13 of W02172's SPO Statement, and any translation thereof, as tendered in Annex 1 to the Motion (notably, references to W02172's [REDACTED], and interaction with various KLA members in that context). *See* Annex 1 to Motion, pp. 10-59.

Redactions applied, would no longer cause undue prejudice in respect to said issues.

17. In relation to the Defence's argument regarding the Inconsistencies, the Panel recalls at the outset that, while inconsistencies and contradictions can be relevant factors in the exercise of the Panel's discretion to admit Rule 153 evidence, they do not bar admission under Rule 153.³⁷ The ultimate reliability of the evidence will be a factor in the Panel's determination of the weight to attach to that evidence, which is assessed in light of all the evidence at the end of the trial.³⁸ The Panel notes the Defence's assertion that the Inconsistencies relate to evidence which is incriminatory in nature or touches upon central allegations in the SPO's case.³⁹ However, the Panel considers that said evidence: (i) is not unique, as related matters have already been addressed by other witnesses who were available for cross-examination by the Defence;⁴⁰ and (ii) does not go to proof of the acts and conducts of the Accused as charged in the Indictment. Furthermore, the Panel notes that the Testimony was admitted in evidence,⁴¹ including the purported exculpatory excerpts thereof, referred to by the Defence.⁴² Accordingly, the Panel is satisfied that no undue prejudice would result from the admission of W02172's Proposed Statements.

18. Furthermore, the Panel is satisfied that: (i) W02172's Statements, amounting to 25 pages in English,⁴³ are limited in length; and (ii) W02172's Proposed Evidence is not unduly repetitive and provides crime-base evidence which goes to the proof of matters other than the acts and conduct of the Accused as charged in the

³⁷ See First W02172 Decision, para. 60.

³⁸ See e.g. First W02172's Decision, para. 60.

³⁹ Response, paras 4-5, 9, 13-15.

⁴⁰ See *above* para. 15, footnote 34. See also First W02172 Motion, para. 13, *referring to* the testimony of several witnesses and other evidentiary material, such as [REDACTED].

⁴¹ Transcript of Hearing, 26 March 2025, p. 25896, lines 7-8.

⁴² Response, para. 11.

⁴³ Including the portions of W02172's Statements concerned by the Proposed Redactions.

Indictment.⁴⁴ The Panel is also satisfied that W02172's Proposed Evidence is *prima facie* probative and not unduly prejudicial,⁴⁵ and that the requirements of a fair and expeditious trial exceptionally warrant its admission without cross-examination. Additionally, the Panel recalls its findings regarding the *prima facie* authenticity of W02172's Proposed Evidence.⁴⁶ The Panel further notes that W02172's [REDACTED] and SPO Statements are both signed and thus meet the requirements of Rule 153(2).

19. For these reasons, the Panel finds that W02172's Proposed Evidence, including the Proposed Redactions,⁴⁷ is admissible pursuant to Rules 138(1) and 153 without cross-examination. The SPO is ordered to disclose W02172's Proposed Evidence with the Proposed Redactions applied by Wednesday, 9 April 2025.

B. W04858

(a) W04858's Proposed Evidence⁴⁸

20. The SPO recalls that, in the First W04858 Decision, the Panel: (i) found W04858's Proposed Evidence to be relevant, *prima facie* authentic, probative, and not unduly prejudicial,⁴⁹ but (ii) deferred its decision on admission because W04858's Statement lacked the witness' signature, as required by Rule 153(2).⁵⁰

⁴⁴ See above paras 14-17.

⁴⁵ See above paras 15-17.

⁴⁶ See above para. 14.

⁴⁷ See above footnote 36.

⁴⁸ W04858's Proposed Evidence consists of W04858's Statement, which is item 126001-126012 RED, disclosed by the SPO on 6 March 2025 (see Disclosure 1622), consisting of (i) the signed witness's [REDACTED] written statement previously tendered unsigned in Annex 8 to the First W04858 Motion (see and compare, 126001-126012 RED, pp. 15-12, with SPOE00185393-00185400 RED, pp. 1-8); and (ii) a signed list of corrections and clarifications made W04858 during the [REDACTED]'s meeting with the SPO (see 126001-126012 RED, pp. 1-4).

⁴⁹ Motion, para. 10, referring to First W04858 Decision, paras 79-81.

⁵⁰ Motion, para. 11. referring to First W04858 Decision, para. 81.

The SPO submits that, on [REDACTED], it met with the witness, who signed the statement and a document containing a list of corrections made by the witness to the statement.⁵¹ Accordingly, the SPO requests that W04858's Proposed Evidence be admitted pursuant to Rule 153.⁵²

21. As found in the First W04858 Decision, the Panel is satisfied that W04858's Proposed Evidence is relevant, *prima facie* authentic, probative, and not unduly prejudicial, and that the requirements of a fair and expeditious trial exceptionally warrant its admission without cross-examination.⁵³

22. Having reviewed the signed W04858's Statement,⁵⁴ which was disclosed by the SPO on 6 March 2025,⁵⁵ the Panel is satisfied that W04858's Proposed Evidence now meets the Rule 153(2) requirement.

23. For these reasons, the Panel finds that W04858's Proposed Evidence is admissible pursuant to Rules 138(1) and 153 without cross-examination.

(b) W04858's Proposed Protective Measures⁵⁶

24. The SPO submits that the Proposed Protective Measures are necessary to mitigate the existing risks to W04858, and provides contextual information in support.⁵⁷ It also submits that the Proposed Protective Measures are necessary to ensure the full effect of the protective measures granted to [REDACTED],

⁵¹ Motion, para. 12.

⁵² Motion, paras 12, 19.

⁵³ First W04858 Decision, paras 79-81. The Panel has taken note of the list of corrections made by the witness to the W04858's Statement during the [REDACTED]'s meeting with the SPO (*see* Motion, para. 12; *see also* 126001-126012 RED) and considers that they do not impair the findings made in paras 79-81 of the First W04858 Decision.

⁵⁴ 126001-126012 RED.

⁵⁵ Disclosure 1622.

⁵⁶ *See above* para. 7.

⁵⁷ Motion, paras 13, 15-17.

[REDACTED], who is recurrently referred in W04858's Statement.⁵⁸ The SPO further asserts that the Proposed Protective Measures are: (i) proportionate; (ii) the least restrictive available to provide appropriate protection for W04858 and his family and to avoid frustrating the protective measures granted to [REDACTED]; and will (iii) not cause prejudice to the Accused.⁵⁹

25. In assessing the Proposed Protective Measures, the Panel has considered, *inter alia*, the following factors: (i) W04858's Statement provides evidence relevant to the charges in the Indictment, including [REDACTED];⁶⁰ (ii) W04858 was previously targeted, including allegedly [REDACTED], during and after the Indictment period;⁶¹ (iii) W04858's concerns that his further cooperation with the SPO may heighten the existing risks to him and his family;⁶² (iv) the fact that W04858 [REDACTED], and identification of W04858 may lead [REDACTED], hence hindering the effectiveness of the protective measures granted;⁶³ and (v) the general climate of witness interference and intimidation prevailing in Kosovo.⁶⁴ Having considered all these factors, the Panel finds that an objective basis exists for the conclusion that disclosure of the identity of W04858 to the public would pose a risk to the safety, security, physical and psychological well-being and privacy of the witness and his family, as well as, potentially, of [REDACTED].

26. Regarding the necessity of the Proposed Protective Measures, the Panel notes: (i) the general climate of witness interference and intimidation relating to criminal proceedings against former KLA members, which results in the risk of intimidation or interference for witnesses and/or their family members as well as

⁵⁸ Motion, paras 14, 16.

⁵⁹ Motion, para. 17.

⁶⁰ First W04858 Decision, para. 79.

⁶¹ Motion, para. 15.

⁶² Motion, paras 13, 15.

⁶³ Motion, para. 14. See F00407, Pre-Trial Judge, *Seventh Decision on Specialist Prosecutor's Request for Protective Measures*, 21 July 2021, strictly confidential and *ex parte*, paras 137-139, 140-142, 143-145, 148(i) (a confidential redacted version was issued on the same day, F00407/CONF/RED).

⁶⁴ Motion, para. 16.

interferences with the dignity and privacy of those concerned; (ii) the risks to W04858 and [REDACTED] stemming from W04858's Proposed Evidence, as found in paragraph 25; and (iii) the need to preserve the integrity of the Specialist Chambers' proceedings. The Panel also considers that no less restrictive measures would sufficiently address the above-mentioned concerns. As such, the Panel finds that the Proposed Protective Measures are necessary.

27. Further to the above, the Panel notes that: (i) the identity of W04858 has been disclosed to the Defence by the SPO; (ii) the Defence has full access to W04858's Proposed Evidence; and, therefore, (iii) no prejudice is caused to the Defence by the Proposed Protective Measures.

28. For these reasons, the Panel finds that the Proposed Protective Measures are consistent with the effective protection of the rights of the Accused and proportionate in light of the demonstrated need for such measures. Therefore, the Panel grants the SPO's request for the Proposed Protective Measures.

V. CLASSIFICATION

29. The Panel notes that the Reply was submitted confidentially. Noting that the Reply does not contain confidential information, and the SPO requests its reclassification as public,⁶⁵ the Panel directs the Registrar to reclassify the Reply as public.

VI. DISPOSITION

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

- a) **GRANTS** the Motion;

⁶⁵ Reply, para. 5.

- b) **ADMITS** into evidence, without cross-examination, the following items, including any translations thereof: (i) W02172's Proposed Evidence, including the Proposed Redactions;⁶⁶ and (ii) W04858's Proposed Evidence;⁶⁷
- c) **ORDERS** the SPO to disclose W02172's Statements with the Proposed Redactions applied by Wednesday, 9 April 2025;
- d) **GRANTS** the Proposed Protective Measures for W04858;
- e) **DIRECTS** the Registrar to: (i) assign exhibit numbers to the statements disclosed pursuant to para 30(c) as well as to W04858's Statement and W02172's Associated Exhibits, linking such associated exhibits with the admitted statements as disclosed by the SPO, as identified in footnote 22 above; and (ii) assign the classification indicated in Annex 1 to the Motion to the admitted items; and
- f) **INSTRUCTS** the Registry to reclassify the Reply as public.



Judge Charles L. Smith, III

Presiding Judge

Dated this Wednesday, 2 April 2025

At The Hague, the Netherlands.

⁶⁶ See above, footnotes 22 and 36.

⁶⁷ See above, footnote 48