



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-06/IA039

Before: A Panel of the Court of Appeals Chamber
Judge Michèle Picard
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Fidelma Donlon

Date: 10 November 2025

Original language: English

Classification: Public

**Public Redacted Version of Decision on Joint Defence Appeal Against Decision
on Admission of W04747's Evidence Pursuant to Rule 155 of the Rules**

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THE PANEL OF THE COURT OF APPEALS CHAMBER of the Kosovo Specialist Chambers (“Court of Appeals Panel”, “Appeals Panel” or “Panel” and “Specialist Chambers”, respectively),¹ acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 169 of the Rules of Procedure and Evidence (“Rules”), is seised of a joint appeal filed on 11 July 2025 (“Appeal”) by Mr Hashim Thaçi (“Thaçi” or “Thaçi Defence”), Mr Kadri Veseli (“Veseli” or “Veseli Defence”), Mr Rexhep Selimi (“Selimi” or “Selimi Defence”) and Mr Jakup Krasniqi (“Krasniqi” or “Krasniqi Defence”) (collectively, “the Accused” or “the Defence”),² against the “Decision on Veseli Defence Motion to Exclude Evidence of W04747 and SPO Motion for Admission of W04747’s Evidence Pursuant to Rule 155” (“Impugned Decision”).³ The Specialist Prosecutor’s Office (“SPO”) responded on 24 July 2025 (“Response”) that the Appeal should be rejected.⁴ The Defence replied on 29 July 2025.⁵

I. BACKGROUND

1. On 8 October 2024, the SPO filed a motion, requesting, *inter alia*, the admission of the transcripts of Witness W04747’s interviews with the SPO and associated exhibits pursuant to Rules 138 and 154 of the Rules (“Rule 154 Motion”).⁶

¹ IA039/F00001, Decision Assigning a Court of Appeals Panel, 4 July 2025.

² IA039/F00002, Joint Defence Appeal against Decision F03215, 11 July 2025 (confidential) (“Appeal”).

³ F03215/RED, Public Redacted Version of Decision on Veseli Defence Motion to Exclude Evidence of W04747 and SPO Motion for Admission of W04747’s Evidence Pursuant to Rule 155, 20 August 2025 (confidential version filed on 29 May 2025) (“Impugned Decision”).

⁴ IA039/F00003, Prosecution response to joint defence appeal against W04747 admissibility decision, 24 July 2025 (confidential) (“Response”). See also IA039/F00003/A01, Annex 1 to Prosecution response to joint defence appeal against W04747 admissibility decision, 24 July 2025 (confidential) (“Annex to Response”).

⁵ IA039/F00004, Joint Defence Reply to Prosecution Response to IA039-F00002, 29 July 2025 (confidential) (“Reply”).

⁶ F02625/RED, Public Redacted Version of ‘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’, 9 October 2024 (confidential version filed on 8 October 2024).

2. On 14 November 2024, after having received submissions from the Parties,⁷ the Trial Panel granted, in part, the Rule 154 Motion, having found, *inter alia*, most of W04747's proposed evidence appropriate for admission pursuant to Rules 138 and 154 of the Rules ("Rule 154 Decision").⁸

3. On 27 January 2025, the Veseli Defence filed a request to exclude certain evidence of W04747.⁹ The SPO responded on 6 February 2025,¹⁰ and the Veseli Defence replied on 11 February 2025.¹¹

4. On 1 April 2025, W04747 was due to start his testimony, but failed to attend as a witness.¹² On the same day, the SPO filed a request for the admission of W04747's evidence pursuant to Rule 155 of the Rules ("Rule 155 Request" and "W04747's Proposed Evidence", respectively).¹³

⁷ F02677/COR/RED2, Further Public Redacted Version of Corrected Version of Joint Defence Consolidated Response to F02620 and F02625, 2 December 2024 (uncorrected confidential version filed on 25 October 2024, corrected confidential version filed on 28 October 2024, corrected public redacted version filed on 22 November 2024, reclassified as confidential on 3 December 2024); F02696/RED, Public Redacted Version of 'Prosecution reply relating to Rule 154 motion F02625', 4 November 2024 (confidential version filed on 4 November 2024).

⁸ F02720/RED, Public Redacted Version of Decision on Prosecution Motion for Admission of Evidence of Witnesses W02586, W03873, W04264, W04393, W04401, W04679, and W04747 pursuant to Rule 154, 14 November 2024 (confidential version filed on 14 November 2024) ("Rule 154 Decision"). The Panel notes that the Trial Panel found W04747's Associated Exhibits with ERN U000-7684-U000-7684-ET, 060557-060557-ET, and 060558-060558-ET and corresponding translations, to be inappropriate for admission pursuant to Rule 154. See Rule 154 Decision, paras 86, 96.

⁹ F02864/RED, Public Redacted Version of Veseli Defence Request for Exclusion of Evidence, 5 June 2025 (confidential version filed on 27 January 2025).

¹⁰ F02907/RED, Public Redacted Version of Prosecution response to 'Veseli Defence Request for Exclusion of Evidence', 6 February 2025 (confidential version filed on 6 February 2025).

¹¹ F02920, Veseli Defence Reply to Prosecution Response to 'Veseli Defence Request for Exclusion of Evidence' (F02907), 11 February 2025 (confidential, reclassified as public on 16 June 2025).

¹² Transcript, 1 April 2025, p. 26116, lines 13-16.

¹³ F03069/RED, Public redacted version of Prosecution motion for admission of evidence of W04747 pursuant to Rule 155, 1 April 2025 (confidential version filed on 1 April 2025) ("Rule 155 Request").

5. On 25 April 2025, the Thaçi Defence, the Selimi Defence and the Krasniqi Defence jointly responded and the Veseli Defence responded separately to the Rule 155 Request, opposing it.¹⁴

6. On 5 May 2025, the SPO filed a consolidated reply to the Thaçi, Selimi, Krasniqi Joint Rule 155 Response and the Veseli Rule 155 Response.¹⁵

7. On 29 May 2025, the Trial Panel issued the Impugned Decision, admitting W04747's Proposed Evidence pursuant to Rule 155(2) of the Rules.¹⁶

8. On 5 June 2025, the Defence filed a joint request for certification to appeal the Impugned Decision.¹⁷ On 1 July 2025, the Trial Panel certified one issue for appeal out of the eight raised by the Defence ("Certification Decision"), namely:¹⁸

- (a) Whether the Trial Panel erred in law and/or fact when it inconsistently interpreted and applied Rule 155(2)(d) and Rule 155(3)(b)(iii) ("Certified Issue").

¹⁴ F03146/RED, Public redacted version of Thaçi, Selimi and Krasniqi Defence Response to Prosecution motion for admission of evidence of W04747 pursuant to Rule 155, 5 June 2025 (confidential version filed on 25 April 2025) ("Thaçi, Selimi, Krasniqi Joint Rule 155 Response"); F03147/RED, Public Redacted Version of Veseli Defence Response to Prosecution motion for admission of evidence of W04747 pursuant to Rule 155 (F03069), 5 June 2025 (confidential version filed on 25 April 2025) ("Veseli Rule 155 Response").

¹⁵ F03163/RED, Public Redacted Version of 'Consolidated Prosecution reply to responses F03146 and F03147', 5 May 2025 (confidential version filed on 5 May 2025).

¹⁶ Impugned Decision, paras 85, 87.

¹⁷ F03239/RED, Public Redacted Version of Joint Defence Request for Certification to Appeal the Decision on SPO Motion for Admission of W04747's Evidence Pursuant to Rule 155, 5 September 2025 (confidential version filed on 5 June 2025) ("Certification Request"). See also F03275, Prosecution response to joint Defence request for certification to appeal W04747 admissibility decision, 19 June 2025 (confidential, reclassified as public on 1 July 2025); F03287, Joint Defence reply to Prosecution response to joint Defence request for certification to appeal W04747 admissibility decision, 24 June 2025 (confidential, reclassified as public on 2 September 2025).

¹⁸ F03300/RED, Public Redacted Version of Decision on Joint Defence Request for Certification to Appeal the Decision on SPO Motion for Admission of W04747's Evidence Pursuant to Rule 155, 20 August 2025 (confidential version filed on 1 July 2025) ("Certification Decision"), paras 5, 33, 57.

9. In the Appeal, the Defence raises two grounds of appeal consisting of alleged errors of law and fact by the Trial Panel,¹⁹ and submits that the Appeals Panel should reverse the Impugned Decision in relation to the admission of W04747's Proposed Evidence and remit the issue to the Trial Panel.²⁰ The SPO responds that the Appeal should be dismissed as it fails to demonstrate any error in the Impugned Decision.²¹

II. STANDARD OF REVIEW

10. The Court of Appeals Panel adopts the standard of review for interlocutory appeals established in its first decision and applied subsequently.²²

11. The Panel recalls that decisions related to the admission of evidence are generally treated as discretionary, and that appellate intervention in that respect is warranted only in very limited circumstances.²³ The Panel notes that the Impugned Decision relates to the assessment and admission of evidence pursuant to Rules 138 and 155 of the Rules and is, therefore, discretionary in nature. In this regard, the Panel recalls that where the decision that is being challenged is a discretionary decision, a party must demonstrate that the lower level panel has committed a discernible error in that the decision is: (i) based on an incorrect interpretation of governing law;

¹⁹ Appeal, paras 4, 6-34. See also Reply, paras 2-21.

²⁰ Appeal, paras 35-36. See also Reply, para. 22.

²¹ Response, paras 1, 10, 14, 16.

²² KSC-BC-2020-07, IA001/F00005, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, 9 December 2020 ("*Gucati Appeal Decision*"), paras 4-14. See also KSC-BC-2020-06, IA030/F00009, Decision on Krasniqi and Selimi Appeals against "Decision on Prosecution Motion for Admission of Accused's Statements", 31 May 2024 ("*Krasniqi and Selimi Appeal Decision*"), para. 5; KSC-BC-2020-04, IA006/F00007, Decision on Shala's Appeal Against Decision Concerning Prior Statements, 5 May 2023 ("*Shala Appeal Decision on Prior Statements*"), para. 7.

²³ *Krasniqi and Selimi Appeal Decision*, para. 6; *Shala Appeal Decision on Prior Statements*, para. 8. See also KSC-BC-2020-07, IA006/F00006, Decision on Nasim Haradinaj's Appeal Against Decision on Prosecution Requests in Relation to Proposed Defence Witnesses, 7 January 2022 ("*Haradinaj Appeal Decision on Defence Witnesses*"), para. 14 and jurisprudence quoted therein.

(ii) based on a patently incorrect conclusion of fact; or (iii) so unfair or unreasonable as to constitute an abuse of the lower level panel's discretion.²⁴

III. PUBLIC FILINGS

12. The Appeals Panel notes that the Impugned Decision was initially filed confidentially. As a result, all submissions on appeal were also filed confidentially pursuant to Rule 82(4) of the Rules. However, the Panel notes that a public redacted version of the Impugned Decision was subsequently filed. The Panel recalls that all submissions filed before the Specialist Chambers shall be public unless there are exceptional reasons for keeping them confidential, and that Parties shall file public redacted versions of all submissions filed before the Panel.²⁵

13. The Panel notes that the SPO has already indicated that since its Response does not contain information warranting a confidential classification, the SPO has no objection to reclassifying the Response and its annex as public.²⁶ The Defence has mentioned that it will file a public redacted version of the Appeal "in due course".²⁷ The Panel therefore grants the reclassification request made by the SPO of the Response and Annex to Response, and further orders the Defence to file public redacted versions of the Appeal and Reply, or to indicate, through a filing, whether they can be reclassified as public within ten days of receiving notification of the present Decision.

²⁴ *Krasniqi and Selimi* Appeal Decision, para. 6; *Shala* Appeal Decision on Prior Statements, para. 8. See also *Haradinaj* Appeal Decision on Defence Witnesses, para. 14 and jurisprudence quoted therein; KSC-CA-2023-02, F00038/RED, Public Redacted Version of Appeal Judgment, 14 December 2023 (confidential version filed on 14 December 2023) ("*Mustafa* Appeal Judgment"), para. 36.

²⁵ See e.g. IA008/F00004/RED, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021), paras 8-9. See also KSC-CA-2022-01, F00103, Decision on Gucati Application for Reclassification or Public Redacted Versions of Court of Appeals Panel Decisions, 9 January 2023, para. 2.

²⁶ Response, para. 15.

²⁷ See Appeal, para. 5.

IV. DISCUSSION

A. ALLEGED ERRORS OF LAW REGARDING THE TRIAL PANEL'S ASSESSMENT OF RULE 155(2)(D) AND RULE 155(3)(B)(III) OF THE RULES

1. Submissions of the Parties

14. The Defence argues that Rule 155(2) and Rule 155(3) of the Rules, which regulate the admissibility of statements of witnesses who were subjected to interference, must be interpreted in such a way as to ensure that they are logical and coherent and that the Trial Panel erred in law by assessing both provisions together rather than sequentially.²⁸

15. The Defence challenges specifically the interpretation by the Trial Panel of Rule 155(2)(d) and Rule 155(3)(b)(iii) of the Rules, and of their relationship.²⁹ In the Defence's view, the Trial Panel erred in law in "ignor[ing] the progression required by the [R]ules and the clear hierarchy between Rule 155(2)(d) and Rule 155(3)(b)(iii)".³⁰ In addition, the Defence contends that the Trial Panel erred in admitting evidence on the basis of it being simultaneously unique and corroborated.³¹

²⁸ Appeal, paras 6-7, 18, 20, 22. See also Reply, para. 2.

²⁹ Appeal, paras 4, 6, 8-9, 11, 13-14, 16-24, 33-34. See also Reply, paras 2-3. The Defence also submits that the language of both Rule 155(2)(d) and Rule 155(3)(b)(iii) of the Rules amounts to "novel concepts" which cannot be found in the rules or jurisprudence of international courts, and therefore must be interpreted without relying on these sources. In particular, the Defence argues that while four of the elements of Rule 155(2) of the Rules are replicated in Rule 92 *quinqüies* of the International Criminal Tribunal for the former Yugoslavia Rules of Procedure and Evidence ("ICTY" and "ICTY Rules", respectively) on the admission of statements and transcripts of persons subjected to interference, this provision does not contain the requirement of Rule 155(2)(d) of the Rules. The Defence further argues that Rule 68(2)(d) of the International Criminal Court Rules of Procedure and Evidence ("ICC" and "ICC Rules", respectively) also "lacks the language" found in Rule 155(2)(d) of the Rules. See Appeal, paras 10, 12, 15.

³⁰ Appeal, paras 6, 16-20. See also Appeal, para. 24; Reply, para. 2.

³¹ See Appeal, para. 25; Reply, para. 3. While this argument is submitted in the Appeal under the section concerning alleged errors of fact, the Panel considers that, to some extent, it relates to the interpretation of Rule 155(2)(e) and Rule 155(3)(b) of the Rules and of their interactions. It will therefore address it, in part, under the section concerning alleged errors of law. See also Reply, paras 3-12.

16. Specifically, the Defence argues that, at the heart of Rule 155(2)(d) of the Rules is the requirement that the evidence being tendered be “unique” to be potentially admissible.³² In the Defence’s view, if the evidence is not unique, “that ends the inquiry”, and no further assessment – in particular of the interests of justice pursuant to Rule 155(2)(e) and Rule 155(3)(b) of the Rules – need be undertaken.³³ With respect to Rule 155(3)(b)(iii) of the Rules, the Defence contends that this provision “is redundant with” Rule 155(2)(d), “as far as it indicates that where such evidence [to the same effect] is already before the Trial Panel, it is not in the interests of justice to admit such cumulative evidence”.³⁴ The Defence also acknowledges that Rule 155(3)(b)(iii), where referring to whether the “proposed evidence is corroborated in whole or in part”, in effect recognises that the evidence of a witness may be unique in some respects, but may, in others, overlap with the evidence of other witnesses.³⁵ In the Defence’s view, the requirement under Rule 155(2)(e) of the Rules that the admission of the evidence tendered must be in the interests of justice, is intended to prevent unfair prejudice and, in this regard, “the issue of whether the evidence tendered has been corroborated is evidently central to the Trial Panel’s analysis of this evidence”.³⁶

17. The Defence further contends that the Trial Panel failed to conduct a “granular assessment” and case-by-case analysis of each aspect of W04747’s Proposed Evidence, which would have been required, especially in light of the expansive nature – 890 pages – of W04747’s Proposed Evidence.³⁷ In the Defence’s view, for each portion of W04747’s Proposed Evidence determined to be unique, the Trial Panel was required to assess against the interests of justice whether that portion may be properly admitted.³⁸ The Defence argues that such assessment would have been consistent with

³² Appeal, para. 17.

³³ Appeal, paras 17-18.

³⁴ Appeal, para. 19.

³⁵ Appeal, para. 19.

³⁶ Appeal, para. 34.

³⁷ Appeal, paras 21-23, 33-34.

³⁸ Appeal, paras 18, 22.

the Trial Panel's prior approach to evidence tendered under Rule 155 of the Rules³⁹ while instead, the Trial Panel made "sweeping statements" on both Rule 155(2)(d)⁴⁰ and Rule 155(3)(b)(iii) of the Rules.⁴¹

18. The SPO responds that the Appeal should be denied as the Defence fails to demonstrate any error in the Impugned Decision, which constitutes a highly discretionary ruling relating to the admission of evidence.⁴² The SPO contends that the Trial Panel interpreted Rule 155(2)(d) and Rule 155(3)(b)(iii) of the Rules in a logical and coherent way, and that the Defence proposes an interpretation which is the opposite in all aspects.⁴³

19. Recalling that the Defence argued regarding the Certified Issue that "the Panel simultaneously held that W04747's evidence is both unique and corroborated, concepts which are mutually exclusive",⁴⁴ the SPO first submits that the terms of "unique evidence" or "corroborated evidence" need to be understood in a context-specific way and do not need to be defined by the Appeals Panel in order to resolve the Appeal.⁴⁵ Noting that the Trial Panel defined a "unique" witness as the only or "primary" witness on a given point, the SPO argues that such witness can still have

³⁹ Appeal, para. 22. See also Reply, para. 16. The Defence also submits that some aspects of W04747's Proposed Evidence, when assessed against the interests of justice, may be properly admitted by the Trial Panel while other unique aspects of his evidence should be excluded on the same basis. See Appeal, para. 22.

⁴⁰ The Defence submits that the Trial Panel incorrectly found that because "parts of W04747's Proposed Evidence are unique", then the entirety of his evidence, or evidence to the same effect, cannot otherwise be obtained. In this respect, the Defence argues that parts of W04747's Proposed Evidence were not unique and were duplicative of other evidence. See Appeal, para. 21.

⁴¹ The Defence contends that the Trial Panel's analysis was insufficient, in particular when it found that other witnesses "testified generally, or partially, about the same, or similar, matters" as W04747's Proposed Evidence. See Appeal, para. 23. In relation to the substance of the Trial Panel's conclusions on the requirements set out in Rule 155(2)(d) and Rule 155(3)(b)(iii) of the Rules, the Appeals Panel notes that these arguments are repetitive of the alleged errors of facts and will address them below. See below, paras 58-59. See Appeal, paras 2, 21, 23.

⁴² Response, paras 1, 14, 16.

⁴³ Response, paras 1, 4-10.

⁴⁴ Response, para. 2, referring to Certification Request, para. 13. See also Certification Decision, para. 28.

⁴⁵ Response, para. 2.

his or her account complemented by secondary pieces of evidence.⁴⁶ It also contends that witnesses who only touch upon similar subjects, or who provide different accounts on the same matter or incident, *can* be considered as “corroborating” as they provide “evidentiary support”.⁴⁷ In the SPO’s view, the Defence has an unduly narrow understanding of “corroboration” which affects both its legal and factual arguments.⁴⁸

20. The SPO further submits that there is no hierarchy between the requirements set out in Rule 155(2)(d) and (e) of the Rules, and that these requirements need to be independently satisfied.⁴⁹ In the SPO’s view, these provisions are fully reconcilable: Rule 155(2)(d) of the Rules requires a holistic assessment of the substitutability of the evidence, whereas Rule 155(3)(b)(iii) of the Rules additionally considers the extent to which it is corroborated so as to determine whether admission without cross-examination is fair.⁵⁰

21. The SPO adds that by contrast, the Defence interpretation – assessing the “uniqueness” of each individual portion of the witness statement under Rule 155(2)(d) of the Rules and thus excluding the “corroborated” portions prior to the interest of justice inquiry under Rule 155(2)(e) and 155(3)(b)(iii) of the Rules – is unreasonable, and would make Rule 155(3)(b)(iii) of the Rules meaningless.⁵¹ In the SPO’s view, this interpretation, excluding probative evidence because it is corroborated, has no rational basis as meaningful corroboration improves the quality of the evidence and

⁴⁶ Response, para. 2.

⁴⁷ Response, para. 2. Relying on the jurisprudence of international courts and tribunals, the SPO submits that “corroboration” should be understood within the plain meaning of the term as “evidentiary support”, and “can extend to both a specific fact or a series of linked ones”, and permits for both “broader thematic consistencies and reconcilable differences between accounts”. See Response, para. 2, and references therein.

⁴⁸ Response, para. 3.

⁴⁹ Response, para. 4.

⁵⁰ Response, para. 4.

⁵¹ Response, para. 5.

bolsters admissibility.⁵² The SPO submits that, in the litigation leading up to the Impugned Decision, the Defence understood the importance of corroboration, requesting the exclusion of allegedly uncorroborated evidence.⁵³

22. Finally, the SPO argues that the Defence interpretation is also arbitrary and unworkable as it would require the Trial Panel, at the admissibility stage, to exhaustively index every individual part of a witness's statement, and then check each one against the entire evidentiary record – which varies depending upon the stage of the case – to assess the extent to which it is corroborated.⁵⁴

23. The Defence replies that the Appeals Panel must define the terms of “unique evidence” and “corroborated evidence” to resolve the Appeal and that the Trial Panel erred in not doing so.⁵⁵ In the Defence's view, the SPO's contention that a “unique” witness in the context of the Impugned Decision can still have his or her account complemented by secondary pieces of evidence is notably based on irrelevant or unsupportive authorities.⁵⁶ As for “corroboration”, the Defence argues that the SPO misinterpreted the jurisprudence it cited or relied upon irrelevant decisions,⁵⁷ and that corroboration should only be assessed for sufficiently specific facts or events.⁵⁸

⁵² Response, para. 6. The SPO refers to Rule 153(1)(a)(ii) of the Rules, wherein corroboration is one of the factors militating in favour of the admission of a written statement or transcript in lieu of oral testimony. See Response, fn. 19.

⁵³ Response, para. 6. See also Response, para. 7.

⁵⁴ Response, paras 8-9. The SPO also argues that the Defence's severe approach “contravene[s] Rule 155(2)'s purpose, which is to provide a pathway for credible and reliable evidence to be admitted despite obstructive forces like the climate of witness intimidation in Kosovo.” See Response, para. 9. The SPO further submits that, contrary to what the Defence argues, other courts have considered corroboration under analogous provisions. See Response, para. 10, and references therein.

⁵⁵ Reply, para. 3.

⁵⁶ Reply, paras 4-7.

⁵⁷ Reply, paras 9-12. The Defence also submits that, when arguing that witnesses “who only touch upon similar subjects, or who provide different accounts on the same matter or incident *can* be corroborating”, the SPO does not refer to any jurisprudence. See Reply, para. 8, referring to Response, para. 2.

⁵⁸ Reply, paras 10, 12. In the Defence's view, “[i]nterpreting corroboration as any evidentiary support of the Accused's knowledge or authority for the duration of the indictment period is overly broad”. See Reply, para. 10.

24. The Defence adds that the SPO also misunderstands its submissions on the relationship between Rule 155(2)(d) and Rule 155(3)(b)(iii) of the Rules,⁵⁹ explaining that the Defence indeed argued that unique portions of the evidence must be identified under Rule 155(2)(d), but never suggested that the corroborated portions be automatically excluded prior to the assessment under Rule 155(2)(e) and Rule 155(3)(b)(iii) of the Rules.⁶⁰ However, the Defence recalls that the requirements of Rule 138(2) of the Rules must be satisfied, and that the admission of the tendered evidence must be rejected if its prejudicial effect outweighs its probative value.⁶¹

25. Finally, the Defence adds that although the threshold for admission of witness statements is higher under Rule 155(2) of the Rules than under other provisions, the Defence's approach still provides a pathway for credible and reliable evidence to be admitted where the conditions are met.⁶²

2. Assessment of the Court of Appeals Panel

26. The Appeals Panel notes that the evidence that is the subject of the Defence's Appeal are the prior statements and associated exhibits of SPO Witness W04747, who was found by the Trial Panel to have been subjected to improper interference, which materially influenced his failure to testify.⁶³ The Trial Panel admitted W04747's Proposed Evidence pursuant to Rule 155(2) of the Rules.⁶⁴ In establishing the requirements of Rule 155(2)(d) and Rule 155(3)(b)(iii), the Trial Panel found that: (i) parts of W04747's Proposed Evidence were "unique",⁶⁵ and W04747's Proposed

⁵⁹ Reply, paras 14-15. See also Reply, para. 13.

⁶⁰ Reply, para. 14.

⁶¹ Reply, para. 15. The Defence also reiterates that the Trial Panel would be obliged to undertake a fragmented analysis of W04747's Proposed Evidence and is familiar with such exercise. See Reply, para. 16.

⁶² Reply, para. 17.

⁶³ Impugned Decision, paras 41-42.

⁶⁴ Impugned Decision, para. 87.

⁶⁵ The Trial Panel took into account: (i) the fact that W04747 was "the only, or primary witness, scheduled to testify about certain events"; (ii) the fact that he is the "only witness evidence referenced [for some propositions in the Pre-Trial Brief]"; and (iii) the witness's "[REDACTED]". See Impugned Decision, para. 54.

Evidence or evidence to the same effect cannot otherwise be obtained;⁶⁶ (ii) other witnesses, such as [REDACTED], testified generally, or partially, about the same, or similar, matters to W04747;⁶⁷ (iii) other evidence to the same effect is available in relation to a series of allegations that form part of W04747's evidence;⁶⁸ (iv) while certain allegations do not appear to be specifically corroborated, some of these allegations constitute circumstantial indications of alleged facts in the Indictment for which there is corroboration;⁶⁹ and (v) it would be contradictory to the plain language of Rule 155(2) of the Rules to require that each and all assertions in W04747's Proposed Evidence be corroborated since it would mean that the witness's evidence can "be otherwise obtained" and, as a result, the request would not meet the requirement of Rule 155(2)(d) of the Rules.⁷⁰

27. The Panel recalls that Rule 155(2) of the Rules, which regulates the admissibility of statements of witnesses subjected to improper interference, provides for five cumulative conditions and reads as follows:

The Panel may admit evidence in the form of a written statement, any other *prima facie* reliable record or transcript of a statement by a person, if it is satisfied that:

(a) the person has failed to attend as a witness or, having attended, has not given evidence at all or in a material respect;

(b) the failure of the person to attend or to give evidence has been materially influenced by improper interference, including threats, intimidation, injury, bribery, or coercion;

(c) where appropriate, reasonable efforts have been made pursuant to Rule 100 and Rule 121 to secure the attendance of the person as a witness or, if in attendance, to receive from the witness all material facts known to that witness;

⁶⁶ Impugned Decision, paras 54-55.

⁶⁷ Impugned Decision, para. 74.

⁶⁸ Impugned Decision, para. 75.

⁶⁹ Impugned Decision, para. 76.

⁷⁰ Impugned Decision, para. 77.

(d) the proposed evidence or evidence to the same effect cannot be otherwise obtained; and

(e) it is in the interests of justice.

28. Rule 155(3)(b) of the Rules provides, for the purposes of Rule 155(2), that the interests of justice include:

(i) the reliability of the statement or transcript, having regard to the circumstances in which it was made and recorded;

(ii) the apparent role in the improper interference of a Party or someone acting on behalf of a Party to the proceedings; and

(iii) whether other evidence to the same effect is available and whether the proposed evidence is corroborated in whole or in part.

29. The Appeals Panel will first examine the Defence's arguments that the Trial Panel's interpretation of Rule 155(2)(d) and Rule 155(3)(b)(iii) of the Rules is flawed, keeping in mind fair trial requirements and the guidance of the European Court of Human Rights in that regard ("ECtHR").⁷¹ In this respect, the Panel considers that the purpose of Rule 155(2) and (3) of the Rules is to protect the integrity of the proceedings and contribute to the determination of the truth, by enabling a trial panel to admit in written form the evidence of a witness subject to improper interference and to consider such evidence that it would otherwise not have been able to consider.⁷²

30. At the outset, the Panel notes that this is the first time that the Specialist Chambers are seised of the question of the admission of a witness's prior statements pursuant to Rule 155(2) of the Rules, as well as of the interpretation of Rule 155(2)(d)

⁷¹ See Articles 3(2)(e) and 21(4)(f) of the Law; Rule 138(2) of the Rules. The Panel notes that it is only in the Reply that the Defence alleges, in passing, a violation of the Accused's fair trial rights, but does not elaborate its contention. See Reply, para. 2.

⁷² See similarly ICC, *Prosecutor v. Yekatom and Ngaïssona*, ICC-01/14-01/18-2501-Red, Judgment on the appeal of Mr Patrice Edouard Ngaïssona against the decision of Trial Chamber V of 6 October 2023 entitled "Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(d) of the Rules", 20 May 2024 ("*Yekatom and Ngaïssona* Appeal Judgment on Prior Recorded Testimony"), paras 1, 42; ICTY, Statement by Judge Patrick Robinson, President of the International Criminal Tribunal for the former Yugoslavia, to the Security Council on 18 June 2010, 18 June 2010, pp. 3-4.

and Rule 155(3)(b)(iii) of the Rules and the interaction between these two provisions.⁷³ The Panel notes that while the legal framework of some international courts and tribunals include rules that regulate the admission of evidence of witnesses who have been subjected to interference,⁷⁴ none of them include language comparable to Rule 155(2)(d) and Rule 155(3)(b)(iii) of the Rules.⁷⁵ Therefore, the Panel will only be able to take limited guidance from the jurisprudence of international courts and tribunals.⁷⁶

31. Turning to the terms contained in the discussed provisions, the Panel first notes that, to conclude that the “proposed evidence or evidence to the same effect cannot be otherwise obtained” in accordance with Rule 155(2)(d) of the Rules,⁷⁷ the Trial Panel took into consideration: (i) that parts of the proposed evidence are “unique” in that

⁷³ Certification Decision, para. 31.

⁷⁴ See Rule 92 *quinqüies* of the ICTY Rules; Rule 113 of the International Residual Mechanism for Criminal Tribunals Rules of Procedure and Evidence (“IRMCT” and “IRMCT Rules”, respectively); and Rule 68(2)(d) of the ICC Rules.

⁷⁵ The Panel notes however that the requirement under Rule 155(2)(e) and (3)(b) of the Rules that admission should be “in the interests of justice” is included in the relevant rules of the ICTY, IRMCT and ICC. See Rule 92 *quinqüies* (A)(iv) of the ICTY Rules; Rule 113(A)(iv) of the IRMCT Rules; Rule 68(2)(d)(i) of the ICC Rules.

⁷⁶ The Appeals Panel recalls that subsidiary sources such as the jurisprudence from the international *ad hoc* tribunals, the ICC and other criminal courts can guide the Judges’ reflection in instances where primary sources do not provide guidance on a specific matter. See *Gucati* Appeal Decision, para. 11. See also KSC-CA-2022-01, F00114, Appeal Judgment, 2 February 2023, paras 28, 123; *Mustafa* Appeal Judgment, para. 28; KSC-CA-2024-03, F00069/RED, Public Redacted Version of Appeal Judgment, 14 July 2025 (confidential version filed on 14 July 2025) (“*Shala* Appeal Judgment”), para. 37. However, in the present context, the Panel also notes that international courts and tribunals have rarely been seised of motions for admission of prior statements of witnesses subjected to interference. See for example *Yekatom and Ngaïssona* Appeal Judgment on Prior Recorded Testimony; ICC, *Prosecutor v. Yekatom and Ngaïssona*, ICC-01/14-01/18-2126-Red, Public redacted version of Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(d) of the Rules, 31 October 2023 (confidential version filed on 6 October 2023); ICC, *Prosecutor v. Ruto and Sang*, ICC-01/09-01/11-2024, Judgment on the appeals of Mr William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber V(A) of 19 August 2015 entitled “Decision on Prosecution Request for Admission of Prior Recorded Testimony”, 12 February 2016; ICC, *Prosecutor v. Ruto and Sang*, ICC-01/09-01/11-1938-Corr-Red2, Public redacted version of Decision on Prosecution Request for Admission of Prior Recorded Testimony, 28 August 2015 (confidential version filed on 19 August 2015); ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on Prosecution Motion to Admit Prior Evidence of Milan Tupajić pursuant to Rule 92 *quinqüies*, 7 May 2012 (a public redacted version thereof is annexed to IRMCT, *Prosecutor v. Karadžić*, MICT-13-55-A & MICT-15-96-T, Decision on a Request to Provide Stanišić and Simatović Access to a Confidential Decision in the Karadžić Case, 27 July 2017).

⁷⁷ See Impugned Decision, paras 53-55.

the witness is the “only, or primary [one], scheduled to testify about certain events”;⁷⁸ and (ii) the witness’s [REDACTED], as well as [REDACTED].⁷⁹ In this regard, the Panel notes that the Defence acknowledges that the Trial Panel “treated the entire body of W04747’s evidence as unique given the witness’s characteristics”.⁸⁰

32. First, the Panel understands: (i) “proposed evidence” to refer to the specific evidence being tendered by the moving party, in this case being the SPO Interviews of W04747 and Associated Exhibits;⁸¹ and (ii) “evidence to the same effect” to refer to evidence from other witnesses or sources which speak to the same facts in the same way as the proposed evidence. In other words, the Panel considers that “evidence to the same effect” is similar in meaning to evidence of a “cumulative nature, in that other witnesses have given or will give oral testimony on similar facts”.⁸² Therefore, it is the Panel’s view that Rule 155(2)(d) of the Rules requires that the proposed evidence is unique (or irreplaceable) in the sense that evidence to the same (probative) effect – as defined above – cannot otherwise be brought before the Trial Panel. The Panel consequently finds that the Trial Panel did not err in its interpretation of Rule 155(2)(d) of the Rules when it considered that the criteria set out in this provision were fulfilled in light of the “uniqueness” of parts of the witness’s evidence as well as of the witness’s characteristics.⁸³

33. The Panel will now turn to Rule 155(3)(b) of the Rules, which contains a non-exhaustive list of factors to guide the assessment of the interests of justice under Rule 155(2)(e) of the Rules.⁸⁴ As rightly held by the Trial Panel, what is in the “interests of justice” will depend upon all relevant factors and circumstances of a particular

⁷⁸ In this regard, the Trial Panel noted that, for some propositions in the SPO Pre-Trial Brief, the only evidence referenced was that of W04747. See Impugned Decision, para. 54.

⁷⁹ Impugned Decision, para. 54.

⁸⁰ Appeal, para. 29.

⁸¹ See Appeal, para. 16.

⁸² See Rule 153(1)(a)(i) of the Rules.

⁸³ See Impugned Decision, paras 53-55.

⁸⁴ Rule 155(3)(b) of the Rules provides that “the interests of justice *include*” (emphasis added) three elements listed from (i) to (iii).

case.⁸⁵ The Panel notes that the first limb of Rule 155(3)(b)(iii) of the Rules also refers to the question of the availability of evidence to the same effect, but in the context of the assessment of the interests of justice. This provision thus contains language that mirrors that contained in Rule 155(2)(d) of the Rules. While under Rule 155(2)(d) of the Rules it is the absence of such evidence to the same effect which is one of the conditions that needs to be established to admit the written evidence, for the first limb of Rule 155(3)(b)(iii) of the Rules this is just one factor among others to assess the interests of justice. In this regard, the Panel agrees with the Defence that the wording of the first limb of Rule 155(3)(b)(iii) of the Rules is made redundant by the requirement set out in Rule 155(2)(d) of the Rules: the fact that there is no evidence to the same effect available speaks in favour of the interests of justice.⁸⁶ In the Panel's view, this is the only logical interpretation in line with the object and purpose of the two provisions.⁸⁷

34. Turning to the question of corroboration as set out in the second limb of Rule 155(3)(b)(iii) of the Rules, which provides that the interests of justice include "[...] whether the proposed evidence is corroborated in whole or in part", the Panel recalls that the Trial Panel, when assessing the extent to which W04747's Proposed Evidence is corroborated, considered the following elements: (i) other witnesses "testified generally, or partially, about the same, or similar, matters to W04747"; (ii) other evidence is available in relation to a series of allegations that form part of W04747's evidence; and (iii) while some allegations do not appear to be corroborated, some of

⁸⁵ See Impugned Decision, para. 62. See also *Yekatom and Ngaïssona* Appeal Judgment on Prior Recorded Testimony, para. 136.

⁸⁶ See Appeal, para. 19. In the Panel's view, interpreting these provisions otherwise (namely considering that if there *is* evidence to the same effect available, it would then be in the interests of justice to admit the proposed evidence) would contradict the requirement under Rule 155(2)(d) of the Rules.

⁸⁷ In this regard, the Panel is mindful of the doctrine of "harmonious interpretation" adopted by the Specialist Chamber of the Constitutional Court, according to which rules should not be construed in isolation but in the context of the other rules and the relevant provisions of the Law as to harmonise therewith. See KSC-CC-PR-2020-09, F00006, Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020, 26 May 2020, para. 16. See also *Gucati* Appeal Decision, para. 30.

these allegations constitute circumstantial indications of alleged facts in the Indictment for which there is corroboration.⁸⁸

35. The Panel agrees with the Parties that, in the context of admissibility of evidence, the purpose of considering the extent to which the proposed evidence is corroborated is to determine whether the admission of witness evidence without cross-examination complies with the requirement of a fair trial.⁸⁹ The Appeals Panel observes that Rule 155(3) of the Rules in fact does not set a specific standard nor require that all aspects of the proposed evidence be corroborated.⁹⁰ The Panel further notes that “corroboration” is not mentioned in the corresponding respective provisions before the ICTY, IRMCT or ICC.⁹¹ However, in the broader context of the admission of written statements and transcripts in lieu of oral testimonies, the fact that the proposed evidence is corroborated is considered to be a factor militating in favour of the admission of such evidence.⁹² The Panel further recalls that, in the context of admissibility of evidence under Rule 155 of the Rules, corroboration is one of several potential factors that a trial panel can consider when assessing whether admission of evidence is in the interests of justice.⁹³

36. As to the definition of “corroboration” itself, the Panel notes that while the Defence contests the definition proposed by the SPO, it does not suggest any

⁸⁸ Impugned Decision, paras 74-76.

⁸⁹ ECtHR, *Schatschaschwili v. Germany*, no. 9154/10, Judgment [GC], 15 December 2015 (“*Schatschaschwili v. Germany* Judgment”), para. 128; ICTY, *Prosecutor v. Haraqija and Morina*, IT-04-84-R77.4-A, Judgment, 23 July 2009, para. 61; ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-AR73.6, Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlić’s Questioning into Evidence, 23 November 2007, para. 59. See also Appeal, para. 34 (“[t]he requirement that the admission of evidence tendered is in the interests of justice under Rule 155(2) is intended to prevent unfair prejudice. [...] [T]he issue of whether the evidence tendered has been corroborated is evidently central to the Trial Panel’s analysis of this evidence”); Response, para. 4.

⁹⁰ Rule 155(3)(b)(iii) of the Rules provides that the interests of justice include “whether the proposed evidence is corroborated *in whole or in part*” (emphasis added). See also Impugned Decision, para. 77.

⁹¹ See Rule 92 *quinquies* of the ICTY Rules; Rule 113 of the IRMCT Rules; Rule 68(d) of the ICC Rules.

⁹² See Rule 153(1)(a)(ii) of the Rules. See also Rule 68(2)(b)(i) of the ICC Rules. See also for example, *Yekatom and Ngaïssona* Appeal Judgment on Prior Recorded Testimony, paras 99-101.

⁹³ The language of Rule 155(3)(b) of the Rules is non-exhaustive (“include”).

alternative definition and merely states that corroboration should be understood in a narrower manner.⁹⁴ According to the plain and ordinary meaning of the terms, the Panel observes that “corroboration” means “confirmation or support by additional evidence or authority” and “to corroborate” can be defined as “to strengthen or confirm”, and “to make more certain”.⁹⁵ The Panel considers therefore that corroborative evidence should be understood as evidence in support of the evidence in question (the “proposed evidence”).⁹⁶ Whether the proposed evidence is corroborated shall be assessed on a case-by-case basis.⁹⁷ In the Panel’s view, to be considered as corroborative, different testimonies or evidence do not need to be “identical in all aspects or describe the same fact in the same way”,⁹⁸ but “must confirm, even if in different ways, the same fact”.⁹⁹

37. The Panel further considers that at this stage of the proceedings, in the context of admissibility of evidence, the Trial Panel’s assessment does not require the same level of specificity than for the purpose of its judgment and a more general assessment may be possible in relation to broad themes discussed by the witness.¹⁰⁰ Moreover, the Panel stresses that the Trial Panel’s decision to admit W04747’s Proposed Evidence must be clearly distinguished from the Trial Panel’s determination as to the weight to

⁹⁴ Response, para. 2; Reply, paras 3-12.

⁹⁵ See Garner, Bryan A. (ed.), *Black’s Law Dictionary*, Thomas Reuters 2019 (11th ed.), p. 435.

⁹⁶ See ECtHR, *Al-Khawaja and Tahery v. the United Kingdom*, nos. 26766/05 and 22228/06, Judgment [GC], 15 December 2011 (“*Al-Khawaja and Tahery v. United Kingdom Judgment*”), para. 131; *Schatschaschwili v. Germany* Judgment, para. 128. See also SCSL, *Prosecutor v. Taylor*, SCSL-03-01-A, Judgment, 26 September 2013, paras 77-78.

⁹⁷ See *Yekatom and Ngaïssona Appeal Judgment on Prior Recorded Testimony*, para. 102; ICC, *Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/15-1400, Judgment in the appeal of the Prosecutor against Trial Chamber I’s decision on the no case to answer motions, 31 March 2021, para. 358.

⁹⁸ *Yekatom and Ngaïssona Appeal Judgment on Prior Recorded Testimony*, para. 102; ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-2666-Red, Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’, 30 March 2021 (“*Ntaganda Appeal Judgment*”), para. 672; ICTR, *Ntawukulilyayo v. Prosecutor*, ICTR-05-82-A, Judgment, 14 December 2011, para. 24; ICTR, *Prosecutor v. Munyakazi*, ICTR-97-36A-A, Judgment, 28 September 2011, paras 71, 103.

⁹⁹ *Yekatom and Ngaïssona Appeal Judgment on Prior Recorded Testimony*, para. 102; *Ntaganda Appeal Judgment*, para. 672; ICTR, *Nahimana et al. v. Prosecutor*, ICTR-99-52-A, Judgment, 28 November 2007, para. 428.

¹⁰⁰ *Yekatom and Ngaïssona Appeal Judgment on Prior Recorded Testimony*, para. 102.

be attributed to each statement and document, which will be assessed at the conclusion of the trial proceedings, in light of all the evidence.¹⁰¹ The Trial Panel's assessment at the admissibility stage does not predetermine the manner in which the evidence will be subsequently assessed and relied upon by the Trial Panel for the purpose of its judgment.¹⁰²

38. In light of the above, the Appeals Panel finds that the Trial Panel's interpretation does not depart from the plain and ordinary meaning of Rule 155(2)(d) and Rule 155(3)(b)(iii) of the Rules. The Defence's arguments in this respect are thus dismissed.

39. The Panel will now address the Defence's arguments on the interaction and alleged hierarchy between Rule 155(2)(d) and Rule 155(3)(b)(iii) of the Rules.¹⁰³ The Panel first notes that while the Defence argues that it is logically impossible that evidence can be both unique and corroborating,¹⁰⁴ it does not suggest how to resolve the interpretation of Rule 155(2)(d) and Rule 155(3)(b)(iii). In the Panel's view, the Defence's position would defeat the purpose of Rule 155(2) of the Rules, which is to enable a trial panel to admit in written form the evidence of a witness subject to improper interference and to consider such evidence that it would otherwise not have been able to consider.¹⁰⁵

¹⁰¹ IA036/F00011, IA037/F00011, IA038/F00011, IA040/F00011, Decision on Joint Defence Consolidated Appeal Against Decisions F03201, F03202, F03203, F03211 and F03213, 8 October 2025 ("Appeal Decision on Expert Evidence"), para. 45, referring to ICTY, *Prosecutor v. Popović et al.*, IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 January 2008, para. 22; ICTY, *Prosecutor v. Delalić et al.*, IT-96-21-AR 73.2, Decision on Application of Defendant Zejnil Delalić for Leave to Appeal Against the Decision of the Trial Chamber of 19 January 1998 for the Admissibility of Evidence, 4 March 1998, para. 20; ICTY, *Prosecutor v. Blagojević et al.*, IT-02-60-T, Decision on the Admission into Evidence of Intercept-Related Materials, 18 December 2003, para. 14.

¹⁰² See *Yekatom and Ngaïssona* Appeal Judgment on Prior Recorded Testimony, para. 102.

¹⁰³ See in particular, Appeal, paras 2, 6, 17-18, 20-22, 24.

¹⁰⁴ See e.g. Appeal, paras 2, 25; Reply, paras 3, 21.

¹⁰⁵ See above, para. 29.

40. At any rate, the Panel is of the view that, contrary to the Defence's submissions,¹⁰⁶ Rule 155(2)(d) and Rule 155(3)(b)(iii) of the Rules are fully reconcilable as (i) "corroboration" can meaningfully coexist with "unique evidence",¹⁰⁷ and (ii) the presence of corroborating material does not inherently undermine the uniqueness or irreplaceability of the proposed evidence. In other words, the Panel considers that, for instance, the specific perspective, role or position of a witness may render his or her evidence "unique" or irreplaceable, which does not necessarily exclude that part(s) of his or her evidence may be corroborated by other witnesses or other types of evidence (including, for instance, documentary evidence). In the Appeals Panel's view, these two provisions aim to fulfil different though complementary purposes: (i) uniqueness guarantees that only witness evidence that is necessary is admitted in writing;¹⁰⁸ and (ii) corroboration aims at ensuring that admission without cross-examination is fair.¹⁰⁹ The Appeals Panel considers that this is the only logical and coherent interpretation of Rule 155(2)(d) and Rule 155(3)(b)(iii) of the Rules that aligns with the object and purpose of these provisions.¹¹⁰

¹⁰⁶ See Appeal, para. 25. See also Reply, para. 3; Certification Request, para. 13.

¹⁰⁷ The Panel notes in this regard that the Defence concedes that "there may be situations where the evidence of a witness is unique in some respects, but in other aspects may overlap in part with the evidence of other witnesses". See Appeal, para. 19.

¹⁰⁸ The Panel considers that the Rule 155(2)(d) condition reflects the requirement of "necessity" as enshrined in the ECtHR jurisprudence, namely that any measures restricting the rights of the defence, including the right for an accused to examine witnesses against him or her, should be strictly necessary. See ECtHR, *Van Mechelen and Others v. The Netherlands*, nos. 21363/93, 21364/93, 21427/93 and 22056/93, Judgment, 23 April 1997, para. 58. In particular, the ECtHR has emphasised that when a witness has not been examined at any prior stage of the proceedings, given the extent to which the absence of a witness adversely affects the rights of the defence, the admission of a prior recorded statement "must be a measure of last resort". See *Al-Khawaja and Tahery v. United Kingdom* Judgment, para. 125; ECtHR, *T.K. v. Lithuania*, no. 14000/12, Judgment, 12 June 2018, para. 95.

¹⁰⁹ See above, para. 35.

¹¹⁰ The Panel is further mindful of the fact that the Specialist Chamber of the Constitutional Court found that Rule 155 of the Rules was not inconsistent with Chapter II of the Kosovo Constitution. See KSC-CC-PR-2017-01, F00004, Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 26 April 2017, disposition (p. 57), para. 5. See also KSC-CC-PR-2017-03, F00006/COR, Judgment on the Referral of Revised Rules of the Rules of Procedure and Evidence Adopted by Plenary on 29 May 2017 to the

41. The Panel further notes that the Defence fails to provide any support for its assertion that there exists a “clear hierarchy” between Rule 155(2)(d) and Rule 155(2)(e)/155(3)(b)(iii) of the Rules.¹¹¹ The Appeals Panel considers that the requirements under Rule 155(2)(a) to (e) are cumulative, which clearly follows from the word “and” at the end of sub-paragraph (d). Thus, each requirement needs to be individually affirmed in order for the evidence to be admissible. In that sense, while the Panel agrees with the Defence that – if one of these criteria is not met – this marks the end of the assessment and the evidence will not be deemed admissible,¹¹² this does not mean that there is any hierarchy among the requirements of Rule 155(2) of the Rules. As to Rule 155(3)(b) of the Rules, in the Panel’s view, the factors therein only inform Rule 152(2)(e) of the Rules but do not constitute mandatory criteria the fulfilment of which is a *sine qua non* to the admissibility of the evidence.¹¹³ In any event, the Panel observes that the Trial Panel, in the Impugned Decision, did assess W04747’s Proposed Evidence in a sequential manner, verifying first whether W04747’s Proposed Evidence or evidence to the same effect could not otherwise be obtained,¹¹⁴ before turning to the question whether it was in the interests of justice to admit the evidence, including whether this evidence is corroborated.¹¹⁵

42. Turning to the Defence’s proposition that Rule 155(2) and (3) of the Rules requires a “granular assessment” of each aspect of the proposed evidence, the Appeals Panel first recalls the principle applicable before the Specialist Chambers of the free assessment of evidence,¹¹⁶ which leaves broad discretion to trial panels when deciding

Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, 25 July 2017 (uncorrected version filed on 28 June 2017), para. 3.

¹¹¹ See Appeal, paras 2, 20, 24.

¹¹² See Appeal, paras 17-18.

¹¹³ See also above, para. 33.

¹¹⁴ Impugned Decision, paras 53-55.

¹¹⁵ Impugned Decision, paras 61-84.

¹¹⁶ See Rule 137(2) of the Rules which provides that “[a] Panel shall assess freely all evidence submitted in order to determine its admissibility and weight”.

on admissibility of evidence.¹¹⁷ As recalled above, appellate intervention in that respect is warranted only in very limited circumstances.¹¹⁸

43. The Panel further notes that the plain language of Rule 155(2)(d) and Rule 155(3)(b)(iii) of the Rules contradicts the Defence's unsupported interpretation that a "granular assessment" was required. Indeed, while it would have been within the Trial Panel's discretion to decide to only admit parts of W04747's Proposed Evidence, it is clear that the words "proposed evidence" used in Rule 155(2)(d) and Rule 155(3)(b)(iii) of the Rules refer to the witness's written statement, record or transcript of testimony and there is no indication that this expression was intended to have a narrower meaning in the sense that it would refer to "aspects", "parts", "portions" of the proposed evidence, or "allegations" contained in the proposed evidence.¹¹⁹ Therefore, the Panel is of the view that, when assessing whether "the proposed evidence or evidence to the same effect [can or] cannot be otherwise obtained", a reading of Rule 155(2)(d) of the Rules does not oblige the competent panel to assess, in a fragmented manner, individual "portions" of the witness's statements to determine the "irreplaceability" or "uniqueness" of the proposed evidence. The Panel considers that the purpose of the provision commands a holistic assessment of the uniqueness or irreplaceability of the witness's evidence and the necessity to admit the witness's evidence in writing. As for Rule 155(3)(b)(iii) of the Rules, while it specifically mentions that the panel assesses "whether the proposed evidence is

¹¹⁷ See above, para. 11. See also for example, IRMCT, *Prosecutor v. Stanišić and Simatović*, MICT-15-96-A, Judgement, 31 May 2023, para. 295; IRMCT, *Prosecutor v. Karadžić*, MICT-13-55-A, Judgement, 20 March 2019, paras 162, 190, 208, 304; ICTY, *Prosecutor v. Prlić et al.*, IT-04-75-A, Judgement, 29 November 2017, para. 143; ICTR, *Prosecutor v. Nyiramasuhuko et al.*, ICTR-98-42-A, Judgement, 14 December 2015, para. 331; ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-3343, Judgment pursuant to Article 74 of the Statute, 21 March 2016, para. 222. The Panel also recalls that the language of Article 40(6)(h) of the Law ("Prior to a trial or during the course of a trial, the Trial Panel *may, as necessary* [...] rule on any other matters, including the admissibility of evidence") (emphasis added) gives a broad discretion to the Trial Panel, on both whether and when it may rule on admissibility of evidence. See *Shala* Appeal Judgment, paras 138-139.

¹¹⁸ See above, para. 11.

¹¹⁹ Contra Appeal, paras 4, 21-23, 25-27, 30-34.

corroborated *in whole or in part*” (emphasis added), these terms equally do not require that the panel rejects the admission of the non-corroborated parts of the evidence.¹²⁰

44. As to the Defence’s argument that the Trial Panel, in prior decisions on admission of written statements under Rule 155 of the Rules, did admit or exclude parts of evidence proposed for admission,¹²¹ the Panel considers those decisions to be of little relevance to the issue at stake in the present appeal. The Panel notes that in those prior decisions, the Trial Panel excluded from admission discrete and limited portions of witness evidence which go to proof of acts and conduct of the Accused, which were incriminating, and whose probative value were outweighed by the prejudicial effect that would result from their admission.¹²² In any event, the Appeals Panel recalls that trial panels enjoy a broad discretion in relation to the admission of evidence,¹²³ and while it was open to the Trial Panel to admit the evidence in part, as suggested by the Defence, it also fell within its discretionary power not to do so.¹²⁴

45. Moreover, the Panel agrees with the SPO that the methodology suggested by the Defence is unreasonable as it would require the Trial Panel to check, at the admissibility stage, whether each and every part of the proposed evidence is “unique”, set aside the non-unique parts, before checking the unique parts against the entire evidentiary record to assess the extent to which they are corroborated.¹²⁵ Such assessment could moreover vary depending on the stage of proceedings when the

¹²⁰ By contrast, Rule 155(5) of the Rules provides that “[i]f the evidence goes to proof of the acts and conduct of the Accused as charged in the indictment, this may be a factor against the admission of such evidence, *in whole or in part*” (emphasis added).

¹²¹ See Appeal, para. 22, referring to F02013, Decision on Prosecution Third Motion for Admission of Evidence pursuant to Rule 155, 15 December 2023 (“Third Rule 155 Decision”), para. 56 and F01603/RED, Public Redacted Version of “Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155”, 8 September 2023 (confidential version filed on 14 June 2023) (“First Rule 155 Decision”), para. 193.

¹²² See Third Rule 155 Decision, paras 56, 63, 65; First Rule 155 Decision, para. 193.

¹²³ See above, paras 11, 42.

¹²⁴ The Panel notes that the possibility of excluding, *in part*, evidence that goes to proof of the acts and conduct of the Accused is expressly foreseen by Rule 155(5) of the Rules. See also above, fn. 120.

¹²⁵ See also Response, para. 8.

evidence is tendered, in particular in relation to whether other evidence had been tendered and/or admitted at that specific moment.¹²⁶ In addition, as a result of the method proposed by the Defence, the evidence might become so fragmented that it becomes unreadable. Therefore, such approach would also defeat the purpose of Rule 155(2) of the Rules, i.e. to contribute to the determination of the truth by enabling a panel to admit evidence in writing and advance the proceedings despite attempts of interference.¹²⁷

46. Finally, the Panel considers that the Defence merely disagrees with the Trial Panel's assessment of W04747's Proposed Evidence and fails to provide any support for its argument that the expansive nature of W04747's Proposed Evidence – approximately 890 pages of SPO interviews – would have required another approach and more detailed reasoning.¹²⁸

47. In light of the above, the Appeals Panel finds that the Trial Panel did not err in its interpretation of Rule 155(2)(d) and (e) and Rule 155(3)(b)(iii) of the Rules and their interaction. Accordingly, the Appeals Panel dismisses the Defence's First Ground of Appeal.

B. ALLEGED ERRORS OF FACT REGARDING THE TRIAL PANEL'S ASSESSMENT OF WHETHER W04747'S PROPOSED EVIDENCE WAS UNIQUE OR CORROBORATED

1. Submissions of the Parties

48. The Defence contends that the Trial Panel inconsistently found that W04747's Proposed Evidence was both unique pursuant to Rule 155(2)(d) of the Rules, and corroborated pursuant to Rule 155(3)(b)(iii) when "this is logically impossible".¹²⁹

¹²⁶ See also Response, para. 9.

¹²⁷ See above, para. 29.

¹²⁸ See Appeal, para. 23.

¹²⁹ Appeal, paras 21, 25, 30, 32. See also Reply, para. 3.

49. More specifically, the Defence submits that, in holding that W04747 was the only, or primary witness, to testify about certain events, and in referring to the Thaçi, Selimi, Krasniqi Joint Rule 155 Response, the Veseli Rule 155 Response, and the SPO Pre-Trial Brief, the Trial Panel in fact found that extensive parts of W04747's Proposed Evidence – 16 specific allegations – are unique, but erred in then concluding that the entirety of his evidence cannot otherwise be obtained.¹³⁰ However, the Defence also adds that, in considering the witness's characteristics, the Trial Panel effectively treated the entire body of W04747's evidence as unique.¹³¹

50. Furthermore, the Defence argues that the Trial Panel then noted that other witnesses, such as [REDACTED], testified generally, or partially, about the same, or similar matters to W04747, while failing to specify which specific aspects of the evidence of these witnesses corroborated these same "unique" allegations that it had previously identified.¹³² The Defence adds that the Trial Panel also contradicted itself in finding that, for some aspects of W04747's Proposed Evidence it had initially considered unique, other evidence to the same effect was available, which means that "the Rule 155(2)(d) conditions are not met".¹³³

51. In conclusion, the Defence contends that if a thorough and specific assessment had been carried out by the Trial Panel, substantial aspects of W04747's Proposed Evidence would have been denied admission.¹³⁴ Noting that this analysis requires access to the entire trial record, the Defence requests the Appeals Panel to "remit the assessment back to the Trial Panel who would be best placed to make this assessment".¹³⁵

¹³⁰ See Appeal, paras 21, 26-28, 30.

¹³¹ Appeal, para. 29, referring to Impugned Decision, para. 55.

¹³² Appeal, paras 23, 30. The Defence also contends that the testimony of other SPO witnesses "partially or generally about the same or similar matters" cannot equate to corroboration, without a detailed identification of this specific evidence. See Appeal, para. 31.

¹³³ Appeal, para. 32; Reply, paras 20-21.

¹³⁴ Appeal, para. 34.

¹³⁵ Appeal, paras 35-36.

52. The SPO responds that the claimed factual inconsistency alleged by the Defence should be summarily dismissed given that the Defence failed to substantiate in its Appeal the specific factual findings of the Impugned Decision which it claims are erroneous.¹³⁶ Furthermore, the SPO submits that, contrary to the Defence's contention, the Trial Panel never found that any of the 16 allegations mentioned by the Defence were uncorroborated.¹³⁷

53. Moreover, with respect to paragraph 75 of the Impugned Decision where the Trial Panel observed that other evidence is available regarding certain portions of W04747's evidence, the SPO argues that the Defence fails to explain where each of their 16 allegations have been specifically addressed within this paragraph of the Impugned Decision.¹³⁸ Finally, recalling that evidential rulings are highly discretionary, the SPO concludes that the Defence fails to identify any error in the Trial Panel's reasoning.¹³⁹

54. In reply, the Defence argues that the SPO misunderstands or misinterprets its submissions and that, contrary to the SPO contentions, it has identified in its submissions the allegations the Trial Panel considered to be uncorroborated.¹⁴⁰ It reiterates that the Trial Panel erred in initially considering the 16 allegations to be uncorroborated to find that W04747's Proposed Evidence was unique, while later finding that other evidence to the same effect was available, ultimately meaning that the Rule 155(2)(d) requirement is not met.¹⁴¹

¹³⁶ Response, para. 11.

¹³⁷ Response, paras 11-12.

¹³⁸ Response, para. 13. The SPO adds that "guesswork" is required to determine whether and how the Trial Panel supposedly contradicted itself, as the allegations mentioned by the Defence are described with a different level of specificity than those cited by the Trial Panel at paragraph 75 of the Impugned Decision. See Response, para. 13.

¹³⁹ Response, para. 14.

¹⁴⁰ Reply, paras 18-19.

¹⁴¹ Reply, paras 20-22.

2. Assessment of the Court of Appeals Panel

55. The Panel notes that, in the Appeal, the Defence takes issue with alleged inconsistencies in the Trial Panel's factual assessment of W04747's Proposed Evidence, and particularly with the Trial Panel admitting evidence that it found both unique and corroborated while, according to the Defence, "this is logically impossible".¹⁴² The Panel notes that the Defence specifically challenges the Trial Panel's factual conclusions in relation to the uniqueness of W04747's evidence,¹⁴³ and takes issue with two alleged inconsistencies in the factual findings of the Impugned Decision.¹⁴⁴ The Panel will address these arguments in turn.

56. At the outset, the Panel recalls its above findings concerning the interpretation of Rule 155(2)(d) and Rule 155(3)(b)(iii) of the Rules.¹⁴⁵ It also recalls that it found that Rule 155(2)(d) and Rule 155(3)(b)(iii) of the Rules are fully reconcilable as (i) "corroboration" can meaningfully coexist with "unique evidence"; and (ii) the presence of corroborating material does not inherently undermine the uniqueness or irreplaceability of the proposed evidence.¹⁴⁶ The Panel therefore considers that, *a priori*, the fact that the Trial Panel may have considered that W04747's Proposed Evidence, as a whole, was unique or irreplaceable, would not necessarily have prevented the Trial Panel from finding that some aspects of his evidence were corroborated in its assessment of the requirement set out in Rule 155(2)(e) and the second limb of Rule 155(3)(b)(iii) of the Rules.¹⁴⁷

57. First, in relation to the Trial Panel's findings that W04747's Proposed Evidence was unique and could not be otherwise obtained, the Panel observes that the Defence

¹⁴² Appeal, para. 25. See also Appeal, paras 26-33; Reply, paras 19-21.

¹⁴³ Appeal, paras 21, 26-29.

¹⁴⁴ See, respectively, Appeal, paras 30-31 (in relation to Impugned Decision, para. 74); Appeal, para. 32 (in relation to Impugned Decision, para. 75).

¹⁴⁵ See above, paras 31-38.

¹⁴⁶ See above, para. 40.

¹⁴⁷ Impugned Decision, paras 54-55, 74-79.

partly misrepresents the Impugned Decision.¹⁴⁸ Notably, the Appeals Panel considers that the Defence erroneously claims that the Trial Panel only relied on the fact that parts of W04747's Proposed Evidence were unique to conclude that the entirety of his evidence could not otherwise be obtained.¹⁴⁹ In fact, to draw such conclusion that W04747's Proposed Evidence or evidence to the same effect cannot otherwise be obtained,¹⁵⁰ the Trial Panel also relied on W04747's [REDACTED], as well as [REDACTED].¹⁵¹ In addition, the Panel observes that the Defence, to some extent, also acknowledges this finding when it states that the Trial Panel "effectively treated the entire body of W04747's evidence as unique *given the witness' characteristics*".¹⁵² The Appeals Panel therefore sees no error in the Trial Panel's holistic assessment of the uniqueness or irreplaceability of W04747's Proposed Evidence pursuant to Rule 155(2)(d) of the Rules, relying on the fact that parts of W04747's Proposed Evidence are unique, but also on his [REDACTED], as well as [REDACTED].¹⁵³

58. The Appeals Panel now turns specifically to the Defence's argument that the Trial Panel contradicted itself and failed to be specific enough when it noted that "other witnesses, such as [REDACTED] testified generally, or partially, about the same, or similar, matters to W04747".¹⁵⁴ The Panel notes that the Trial Panel did not provide specific details on the aspects of these witnesses' evidence which corroborate W04747's Proposed Evidence.¹⁵⁵ However, the Appeals Panel also notes that in the

¹⁴⁸ See also Appeal, paras 26-28, wherein the Defence describes the alleged reasoning and findings of the Trial Panel in relation to 16 allegedly unique allegations included in W04747's Proposed Evidence. However, the Appeals Panel notes that the Defence mainly cites its own prior submissions. See notably Appeal, fns 12-19. While the Panel understands that the Defence refers to paragraph 54 of the Impugned Decision, it also notices that the Defence's references differ in part from the Trial Panel's. *Compare* Impugned Decision, fn. 112 *with* Appeal, fns 12-19; *Compare* Impugned Decision, fn. 113 *with* Appeal, fns 21-24.

¹⁴⁹ Appeal, para. 21.

¹⁵⁰ Impugned Decision, para. 55.

¹⁵¹ Impugned Decision, para. 54. See also above, para. 31.

¹⁵² See Appeal, para. 29 (emphasis added).

¹⁵³ See Impugned Decision, paras 54-55.

¹⁵⁴ Appeal, paras 30-31, referring to Impugned Decision, para. 74.

¹⁵⁵ The Panel observes that the Trial Panel does not provide any supporting reference in this regard. See Impugned Decision, para. 74. See also Appeal, para. 30.

next paragraph, the Trial Panel provided specific examples of corroboration on seven allegations, including from some of the said witnesses,¹⁵⁶ and that it further concluded that not all of W04747's evidence is or must be corroborated.¹⁵⁷ Furthermore, the Appeals Panel recalls that the finding that some aspects of W04747's Proposed Evidence is corroborated is fully reconcilable with the Trial Panel's prior finding related to the uniqueness of W04747's evidence due to this witness's specific characteristics, and with its conclusion that W04747's Proposed Evidence cannot be otherwise obtained.¹⁵⁸ In other words, the fact that other witnesses may have testified about the same or similar matters does not necessarily entail that the evidence provided by these witnesses can replace W04747's Proposed Evidence. The Panel therefore dismisses the Defence's argument in this respect.

59. The Panel considers that the same reasoning applies to the last argument of the Defence that the Trial Panel contradicted its prior findings when observing that "other evidence to the same effect is available" in relation to seven specific allegations.¹⁵⁹ While this wording may appear at first sight to contradict the Trial Panel's earlier findings on the uniqueness and irreplaceability of Witness W04747,¹⁶⁰ the Panel considers that it merely purported to indicate that W04747's Proposed Evidence is in part corroborated.¹⁶¹ In that respect, the Panel also notes that the Trial Panel in fact made reference to specific allegations, which, in essence, it found to be also supported by other evidence on the record.¹⁶² Reiterating that the uniqueness of evidence does not necessarily exclude the possibility that it may be corroborated,¹⁶³ the Panel considers that the Defence fails to demonstrate any error in this respect. In light of the

¹⁵⁶ See Impugned Decision, para. 75, fns 156, 160-163. See also Impugned Decision, fn. 164.

¹⁵⁷ See Impugned Decision, para. 77.

¹⁵⁸ See above, paras 40, 57. In addition, the Panel does not adhere to the Defence's arguments in relation to the definition of corroboration. See above, para. 36. See also Appeal, para. 31.

¹⁵⁹ Appeal, para. 32, referring to Impugned Decision, para. 75.

¹⁶⁰ See Impugned Decision, para. 55.

¹⁶¹ In the Panel's view, the apparent confusion may have stemmed from the mirroring wording of Rule 155(2)(d) and the first limb of Rule 155(3)(b)(iii) of the Rules. See above, para. 33.

¹⁶² See Impugned Decision, para. 75, fns 154-163.

¹⁶³ See above, para. 40.

above, the Appeals Panel finds that the Defence has failed to identify any error of fact by the Trial Panel in the assessment of Rule 155(2)(d) and Rule 155(3)(b)(iii) of the Rules. Accordingly, the Appeals Panel dismisses the Defence's Second Ground of Appeal.

60. In conclusion, the Panel recalls that where the admission of "untested" evidence is at issue, the fairness of the proceedings is evaluated based on the weight attributed to the evidence and whether sufficient counterbalancing factors are present to permit a fair and proper assessment of the reliability of that evidence.¹⁶⁴ In this regard, the Panel stresses that the Trial Panel's decision to admit W04747's Proposed Evidence must be clearly distinguished from the Trial Panel's ultimate determination as to the weight to be attributed to W04747's evidence, which will be assessed at the conclusion of the trial proceedings, in light of all the evidence.¹⁶⁵ In particular, the Panel recalls that Rule 140(4)(a) of the Rules prohibits the Trial Panel from basing a conviction solely or to a decisive extent on the evidence of a witness whom the Defence had no opportunity to cross-examine.¹⁶⁶ As correctly mentioned in the Impugned Decision, the inability of the Defence to cross-examine W04747 will also be accounted for by the Trial Panel when assessing the entire body of evidence before it at trial.¹⁶⁷ On this basis, the Panel finds any claim of fair trial rights violation based on the admission of W04747's Proposed Evidence to be hypothetical at this stage.¹⁶⁸

¹⁶⁴ See Appeal Decision on Expert Evidence, para. 45, referring to *Al-Khawaja and Tahery v. United Kingdom* Judgment, para. 147.

¹⁶⁵ See similarly Appeal Decision on Expert Evidence, para. 45. The Panel notes that, to assess the overall fairness of the admission of W04747's Proposed Evidence, the Trial Panel also took into consideration: (i) the ability of the Defence to cross-examine witnesses who testified to the same or overlapping facts and circumstances; and (ii) the possibility that the Defence may call witnesses on any fact or circumstance relevant to W04747's Proposed Evidence during the course of the presentation of the Defence case. See Impugned Decision, paras 80, 82.

¹⁶⁶ See also *Shala* Appeal Judgment, paras 473-480, 850.

¹⁶⁷ See Impugned Decision, para. 82, fn. 170, referring to Rule 139(2) of the Rules.

¹⁶⁸ See above, fn. 71.

V. DISPOSITION

61. For these reasons, the Court of Appeals Panel:

DENIES the Appeal in its entirety;

ORDERS that the Response (IA039/F00003) and the Annex to Response (IA039/F00003/A01) be reclassified as public;

ORDERS the Defence to submit a public redacted version of the Appeal (IA039/F00002) and the Reply (IA039/F00004) or indicate, through a filing, whether they can be reclassified as public, within ten days of receiving notification of the present Decision; and

INSTRUCTS the Registry to execute the reclassification as public of the Appeal and the Reply upon indication by the Defence, if any, that they can be reclassified.



**Judge Michèle Picard,
Presiding Judge**

Dated this Monday, 10 November 2025

At The Hague, the Netherlands