



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**In:** KSC-BC-2023-12

**The Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj,  
Isni Kilaj, Fadil Fazliu and Hajredin Kuçi**

**Before:** Single Trial Judge

Judge Christopher Gosnell

**Registrar:** Fidelma Donlon

**Date:** 22 January 2026

**Language:** English

**Classification:** Public

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**Public Redacted Version of Decision on the Specialist Prosecutor's Motion for  
Admission of Evidence of Witnesses 7 and 9 pursuant to Rule 154**

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**THE SINGLE TRIAL JUDGE**, pursuant to Article 40(2) and (6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 137-138, 141(1) and 154 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby issues this decision.<sup>1</sup>

## I. PROCEDURAL BACKGROUND

1. On 18 December 2025, the Specialist Prosecutor's Office ("SPO") filed a request seeking the admission of the written statements of Witnesses 7 and 9, together with their associated exhibits, *in lieu* of direct examination, pursuant to Rule 154.<sup>2</sup>

2. On 12 January 2026, the Defence for Hashim Thaçi ("Mr Thaçi"), Bashkim Smakaj, Isni Kilaj ("Mr Kilaj"), Fadil Fazliu ("Mr Fazliu") and Hajredin Kuçi ("Defence") jointly responded to the Request.<sup>3</sup>

3. On 19 January 2026, the SPO replied.<sup>4</sup>

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<sup>1</sup> All references to "Article" and "Rule" shall be understood, unless otherwise indicated, as referring to the Law and Rules.

<sup>2</sup> KSC-BC-2023-12, F00635, Specialist Prosecutor, *Prosecution Motion for Admission of Evidence of Witnesses Witness 7 and Witness 9 pursuant to Rule 154* ("Request"), 18 December 2025, confidential, paras 1, 24, with Annexes 1-2, confidential. A public redacted version of the main filing was filed on 7 January 2026, F00635/RED.

<sup>3</sup> KSC-BC-2023-12, F00660, Defence for Hashim Thaçi, Hajredin Kuçi, Fadil Falziu, Isni Kilaj and Bashkim Smakaj, *Joint Defence Response to Prosecution Motion for Admission of Evidence of Witnesses 7 and 9 pursuant to Rule 154 (F00635)* ("Response"), 12 January 2026, confidential. A public redacted version was filed on 15 January 2026, F00660/RED.

<sup>4</sup> KSC-BC-2023-12, F00679, Specialist Prosecutor, *Prosecution Reply to 'Joint Defence Response to Prosecution Motion for Admission of Evidence of Witnesses Witness 7 and Witness 9 pursuant to Rule 154 (F00635)'*, 19 January 2026, confidential.

## II. SUBMISSIONS

### A. SPO REQUEST

4. The SPO seeks the admission under Rule 154 of three “declarations” of Witness 7 dated [REDACTED], [REDACTED] and [REDACTED], along with three exhibits that are said to be associated with the statements.<sup>5</sup> These exhibits consist of three prior statements of an SPO witness in case KSC-BC-2020-06 (“Case 06” and “Witness 4”),<sup>6</sup> that Witness 7 avers [REDACTED].<sup>7</sup>

5. The admission of four “official notes” prepared by Witness 9, all dated 19 September 2025, is also requested, along with [REDACTED] documents referenced in these statements.<sup>8</sup>

6. The SPO submits that the evidence of Witnesses 7 and 9 is relevant, has clear and sufficient indicia of authenticity, is *prima facie* reliable, has probative value, and its probative value is not outweighed by any prejudicial effect, as the witnesses will be available for cross-examination.<sup>9</sup> In addition, the admission of their statements under Rule 154 would, it is argued, promote judicial economy.<sup>10</sup> The associated exhibits are said to be an integral part of the statements and to provide necessary context, without which the statements may become less complete or have lower probative value.<sup>11</sup>

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<sup>5</sup> Annex 1 to the Request.

<sup>6</sup> [REDACTED]; [REDACTED] (Albanian version [REDACTED]); [REDACTED] (Albanian version [REDACTED]).

<sup>7</sup> 118243-118260, para. 9.

<sup>8</sup> Annex 2 to the Request.

<sup>9</sup> Request, paras 2, 6, 8-12, 14, 16-19, 21.

<sup>10</sup> Request, paras 2, 7.

<sup>11</sup> Request, paras 6, 13, 20.

## B. DEFENCE RESPONSE

7. The Defence does not object to the admission of the statements of Witness 7, subject to the fulfilment of the Rule 154 conditions in court,<sup>12</sup> but asserts that the three tendered exhibits are not admissible with the statement as “associated exhibits”.<sup>13</sup> The Defence argues that: (i) Witness 7 “merely refers to [the] ERNs” of Witness 4’s statements, without discussing their content, [REDACTED]; (ii) the SPO fails to clarify their relevance; (iii) they cannot be introduced through Rule 154 if Witness 4 himself is not present in court; and (iv) one of the exhibits is not listed on the SPO’s exhibit list, which refers to a different version of the item.<sup>14</sup>

8. As to Witness 9, the Defence has no objection to the admission of three of his official notes<sup>15</sup> or the majority of documents referred to therein, subject to the fulfilment of the Rule 154 conditions in court.<sup>16</sup> However, the Defence challenges the admissibility of one of Witness 9’s statements (ERN 129381-129383) and four exhibits.<sup>17</sup> Three of the challenged exhibits are referred to in the statement with ERN 129373-129380 and pertain to [REDACTED],<sup>18</sup> which the Defence submits concern matters not in dispute following a purported agreement with the SPO on two facts.<sup>19</sup> The Defence asserts that the SPO had agreed not to tender one of these three exhibits following such agreement.<sup>20</sup> The fourth exhibit challenged by the Defence is referred to in the statement with ERN 129388-129393 and is a document relating to Mr Kilaj (“Kilaj Document”).<sup>21</sup>

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<sup>12</sup> Response, para. 2.

<sup>13</sup> Response, para. 3.

<sup>14</sup> Response, paras 4-7, 12, *referring to* [REDACTED].

<sup>15</sup> Annex 2 to the Request, Statements 1, 3-4: 129373-129380, 129384-129387, 129388-129393.

<sup>16</sup> Response, para. 8.

<sup>17</sup> Response, paras 8-10.

<sup>18</sup> [REDACTED] (Albanian version [REDACTED]); [REDACTED] (Albanian version [REDACTED]).

<sup>19</sup> Response, para. 9, fn. 17.

<sup>20</sup> Response, para. 9, fn. 17, *referring to* [REDACTED].

<sup>21</sup> Response, para. 10, [REDACTED] (Albanian version [REDACTED]).

### C. SPO REPLY

9. The SPO elaborates further on the purpose of the Witness 7 associated exhibits, and offers several amendments or clarifications concerning the documents tendered with Witness 9. In particular, the SPO: (i) withdraws its request to admit Witness 9's statement with ERN 129381-129383 and "confirms that it does not at this time seek admission" of the three documents referenced in this statement either;<sup>22</sup> (ii) maintains its request for the admission of the documents concerning Mr Fazliu's [REDACTED];<sup>23</sup> and (iii) offers further arguments concerning the admissibility of the Kilaj Document.<sup>24</sup>

### III. APPLICABLE LAW

10. Rule 154 provides that a Panel may admit the written statement of a witness or transcript of evidence given by a witness in proceedings before the Specialist Chambers *in lieu* of direct examination if the following conditions are satisfied:

- (a) the witness is present in court;
- (b) the witness is available for cross-examination and any questioning by the Panel; and
- (c) the witness attests that the written statement or transcript accurately reflects his or her declaration and what he or she would say if examined.

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<sup>22</sup> Reply, para. 8, fn. 21 ("the SPO [...] no longer intends to rely in its case-in-chief on the Withdrawn Evidence", which is defined in fn. 4 as "Witness 9's official note, ERN 129381-129383 and the associated exhibits related thereto, ERNs SPOE00364485-00364494, SPOE00364447-00364484, and 120936-120940"). The Single Trial Judge observes that the associated exhibits to this statement were, in fact, not tendered for admission in the Request; *see* Request, para. 20; Annex 2 to the Request.

<sup>23</sup> Reply, para. 10.

<sup>24</sup> Reply, para. 11

11. Such statements must comply with the general standard of admissibility pursuant to Rule 138(1) and must not be otherwise prejudicial to or inconsistent with the rights of the accused pursuant to Rule 141(1).<sup>25</sup>

12. Rule 154 does not limit the substance or nature of the statements or transcripts that may be tendered under this rule.<sup>26</sup> In exercising its discretion whether to admit a statement pursuant to Rule 154,<sup>27</sup> a Panel may consider the importance of the proposed evidence to a Party's case,<sup>28</sup> the presence of potential inconsistencies or contradictions in the witness's evidence and their scope,<sup>29</sup> possible prejudice to the Defence,<sup>30</sup> and the extent to which admission under Rule 154 is expected to reduce the time required for direct examination.<sup>31</sup>

#### IV. DISCUSSION

##### A. WITNESS 7

13. The Defence does not object to the admission of Witness 7's three tendered statements, and the Single Trial Judge has no reason to doubt that they are admissible and appropriate for admission pursuant to Rule 154.

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<sup>25</sup> KSC-BC-2020-06, F01380/RED, Trial Panel II, [Public Redacted Version of Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154](#) ("Case 06 Rule 154 Decision F01380/RED"), 16 March 2023, public, para. 12(ii).

<sup>26</sup> [Case 06 Rule 154 Decision F01380/RED](#), para. 28.

<sup>27</sup> Rule 154: "the Panel *may* admit" (emphasis added); Rule 141(1): "The Panel *may* [...] permit the introduction of the witness's evidence in written or other form" (emphasis added).

<sup>28</sup> [Case 06 Rule 154 Decision F01380/RED](#), paras 28, 80.

<sup>29</sup> KSC-BC-2020-04, Trial Panel I, [Transcript of Hearing](#), 4 May 2023, public, p. 1353, line 16 to p. 1354, line 10.

<sup>30</sup> [Case 06 Rule 154 Decision F01380/RED](#), paras 28, 43, 62; F02655/COR/RED, Trial Panel II, [Public Redacted Version of Corrected Version of Decision on Prosecution Motion for Admission of Evidence of Witnesses W00344, W01225, W04485, and W04758 pursuant to Rule 154 \(F02593\)](#) ("Case 06 Rule 154 Decision F02655/COR/RED"), 16 October 2024, public, para. 13.

<sup>31</sup> [Case 06 Rule 154 Decision F01380/RED](#), paras 28, 43, 62, 81, 123; [Case 06 Rule 154 Decision F02655/COR/RED](#), para. 13; KSC-BC-2020-04, Trial Panel I, [Transcript of Hearing](#), 4 May 2023, public, p. 1353, line 16 to p. 1354, line 10.

14. The exhibits referenced in Witness 7's statements – namely the three statements of Case 06 Witness 4 – are, contrary to the Defence's submissions, appropriate for admission as associated exhibits. The reference to the three statements is brief but also no more than required to serve the central purpose of Witness 7's statement, which is to confirm the dates on or before which certain [REDACTED] were made available to the defence teams in Case 06 and, accordingly, to Mr Thaçi himself. Indeed, Witness 7's statements also make equally brief reference to the annexed [REDACTED], yet these are undoubtedly associated with the statement. The fact that the [REDACTED] are physically annexed whereas the three statements of Witness 4 are cited only by reference number is immaterial to their degree of association with the statement.

15. Further, Case 06 Witness 4 does not need to be present in court to attest to the truth of his statements, because they are not tendered for the truth of their content but merely as evidence of what was disclosed to the Case 06 defence teams.<sup>32</sup> In this sense, Witness 4's statements are documentary, rather than testimonial, in character,<sup>33</sup> and their admissibility does not depend on his appearance as a witness, pursuant to Rule 154 or otherwise.

16. Lastly, the reference on the SPO's exhibit list to a different version of one of the three statements of Witness 4 does not preclude its admission.<sup>34</sup> Both are evidently versions of one and the same statement and, accordingly, the Defence has received substantial notice of the document to be included amongst the SPO's evidence.

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<sup>32</sup> Reply, para. 6.

<sup>33</sup> See also KSC-BC-2023-12, F00684, Single Trial Judge, *Decision on Prosecution Motion for Admission of Prior Statement of an Accused*, 20 January 2026, public, para. 32 (discussing, among others, the admissibility of torn pages of Witness 4's prior statements allegedly seized from Mr Kilaj's residence).

<sup>34</sup> Response, para. 6; Reply, fn. 9; [REDACTED] (Albanian version [REDACTED]); cf. [REDACTED] (Albanian version [REDACTED]).

B. WITNESS 9

17. The Defence does not object to the conditional admission of Witness 9's statements pursuant to Rule 154, with the exception of the statement with ERN 129381-129383. Furthermore, except as discussed below, the Defence does not object to the conditional admission of the associated exhibits. The Single Trial Judge has no reason to doubt that the statements and associated exhibits are admissible and appropriate for admission pursuant to Rule 154.

18. The Defence objects to the admission of three documents referenced in the statement with ERN 129373-129380, which it submits are now purportedly unnecessary in light of an intention to enter into additional agreed facts. The Defence even asserts that the SPO had expressly agreed to withdraw one of these three documents.<sup>35</sup> The SPO disagrees, asserting that all three documents are still "relevant and probative of the communication within the group",<sup>36</sup> and making no reference to any agreement with the Defence. The Single Trial Judge finds, on a *prima facie* basis, that the relevance and probative value of the three documents is not necessarily extinguished by the potential agreed fact and that, accordingly, they are admissible as associated exhibits.

19. The SPO has now clarified, in its Reply, that it no longer tenders Witness 9's statement with ERN 129381-129383 or the three documents cited therein.<sup>37</sup> Their conditional admission is, accordingly, denied.

20. The SPO's request for admission of the Kilaj Document is now moot, as it has already been admitted into evidence.<sup>38</sup>

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<sup>35</sup> Response, para. 9, fn. 17.

<sup>36</sup> Reply, para. 10.

<sup>37</sup> Reply, para. 8, fns 4, 21.

<sup>38</sup> Annex 2 to the Request, Associated Exhibit [REDACTED]: SPOE00346751-SPOE00346770-ET (Albanian version SPOE00346751-00346770), admitted through KSC-BC-2023-12, F00684, Single Trial Judge, *Decision on Prosecution Motion for Admission of Prior Statement of an Accused*, 20 January 2026, public, para. 34(b).

## V. DISPOSITION

21. For the above reasons, the Single Trial Judge hereby:

- a. **GRANTS** the Request, in part;
- b. **ADMITS** into evidence, subject to the fulfilment of the Rule 154 requirements in court, Witness 7's statements and associated exhibits as listed in F00635/A01, and Witness 9's statements and associated exhibits as listed in F00635/A02, except for the statement with ERN 129381-129383 / 129381-129383-AT and the Kilaj Document, namely associated exhibit SPOE00346751-SPOE00346770-ET/SPOE00346751-00346770; and
- c. **ORDERS** the SPO to file a public redacted version or request reclassification of its Reply by no later than **Wednesday, 28 January 2026**.



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**Judge Christopher Gosnell**  
**Single Trial Judge**

Dated this Thursday, 22 January 2026

At The Hague, the Netherlands.