



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**In:** KSC-BC-2020-06  
**Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi**

**Before:** **Trial Panel II**  
Judge Charles L. Smith, III, Presiding Judge  
Judge Christoph Barthe  
Judge Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor's Office

**Date:** 25 August 2023

**Language:** English

**Classification:** Confidential

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**Prosecution response to Krasniqi request to admit additional document related to W02153**

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1. The Specialist Prosecutor's Office ('SPO') does not oppose admission of the Official Note<sup>1</sup> that is the subject of the Request<sup>2</sup> ('Official Note') pursuant to Rule 138 of the Rules.<sup>3</sup> The document should not be admitted under Rule 154 because it does not meet the requirements of that rule.<sup>4</sup>

2. A written statement of a witness can be admitted under Rule 154 only if 'the witness attests that the written statement [...] accurately reflects his or her declaration and what he or she would say if examined'.<sup>5</sup> W02153 has not made any such attestation with respect to the Official Note. Accordingly, KRASNIQI does not seek its admission as a written statement under Rule 154, but argues – as an alternative submission to admission under Rule 138 – that the Official Note may be admitted as an associated exhibit to W02153's Rule 154 statement.<sup>6</sup>

3. The Panel has previously set the following standard for the admission of associated exhibits, which is grounded in the jurisprudence of other tribunals:

The Panel is satisfied that the notion of "associated exhibits" comes within the scope of Rule 154 where the exhibits form an "inseparable and indispensable" part of the statement or record of interview tendered pursuant to that Rule. In order to qualify, the document in question must be one without which the witness's testimony would become incomprehensible or of lesser probative value. Particularly relevant in this context is whether the proposed exhibit was discussed with the witness in the record which is being tendered in evidence. Exhibits that do not fall within this category will have to be tendered either orally through a witness or by means of a bar table application.<sup>7</sup>

4. Logically, the Official Note cannot form an 'inseparable and indispensable' part of W02153's Rule 154 statement since it came into being subsequent to any of W02153's statements admitted pursuant to Rule 154. The absence of the Official Note does not render those statements incomprehensible or of lesser probative value. Nor was the

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<sup>1</sup> 114335-114335.

<sup>2</sup> Krasniqi Defence Request to Admit Additional Document Related to W02153, KSC-BC-2020-06/F01723, 17 August 2023, confidential ('Request').

<sup>3</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein are to the Rules, unless otherwise specified.

<sup>4</sup> *Contra* Request, KSC-BC-2020-06/F01723, para.13.

<sup>5</sup> Rule 154(c).

<sup>6</sup> KSC-BC-2020-06/F01723, para.13.

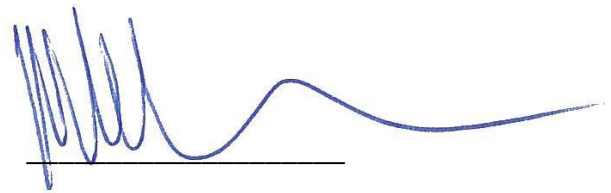
<sup>7</sup> Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 16 March 2023, confidential, para.24 ('First Rule 154 Decision').

Official Note discussed with the witness in the record which is being tendered in evidence.

5. Furthermore, the Official Note constitutes a written statement taken in the context of, or in connection with, legal proceedings and therefore must ordinarily meet the requirements of Rules 153 to 155 to be admitted into evidence.<sup>8</sup> However, the admission of such written statements *by agreement* is consistent with Rule 138 and ICTY appellate jurisprudence, notwithstanding the non-compliance with Rules 153 to 155.<sup>9</sup> Hence, admission of the Official Note as an associated exhibit under Rule 154 is unnecessary and inconsistent with the Panel's prior rulings.<sup>10</sup>

6. This response is confidential pursuant to Rule 82(4). The SPO does not object to its reclassification as public.

**Word count: 628**



**Ward Ferdinandusse**

**Acting Deputy Specialist Prosecutor**

Friday, 25 August 2023

At The Hague, the Netherlands.

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<sup>8</sup> Decision on Prosecution Motion for Admission of Evidence of W03724, W03832, W03880, W04368, W04566, and W04769 Pursuant to Rule 154, KSC-BC-2020-06/F01700, 24 July 2023, confidential, para.68.

<sup>9</sup> ICTY, *Prosecutor v. Milosević*, Decision on the admissibility of prosecution investigator's evidence, IT-02-54-AR73.2, 30 September 2002, para.18.

<sup>10</sup> Decision on Veseli Defence Request Regarding Items Associated with W03165's Testimony, KSC-BC-2020-06/F01733, 23 August 2023, confidential, para.11; Decision on Prosecution Motion for Admission of Evidence of W03724, W03832, W03880, W04368, W04566, and W04769 Pursuant to Rule 154, KSC-BC-2020-06/F01700, 24 July 2023, confidential, para.68; T. 19 July 2023, p.6207, ln.7 to 6208, ln.2; First Rule 154 Decision, KSC-BC-2020-06/F01380, para.50.