

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

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

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Hashim Thaçi  
Specialist Counsel for Kadri Veseli  
Specialist Counsel for Rexhep Selimi  
Specialist Counsel for Jakup Krasniqi

**Date:** 18 April 2024  
**Language:** English

**Classification:** Public

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**Public Redacted Version of Joint Defence Response to Prosecution motion for the  
admission of the evidence of witnesses W00996, W02257, W02303, W04352,  
W04367, W04420, W04569, W04645, W04677, and W04732 pursuant to Rule 153**

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## I. INTRODUCTION

1. The Defence for Messrs. Thaçi, Veseli, Selimi, and Krasniqi (“the Defence”) hereby responds to the Prosecution motion for the admission of the evidence of witnesses W00996, W02257, W02303, W04352, W04367, W04420, W04569, W04645, W04677, and W04732 pursuant to Rule 153.<sup>1</sup>
2. The Defence does not object to the admission, pursuant to Rule 153, of the proposed evidence for W00996, W02257, W04420, W04645, and W04677.
3. The Defence objects to the admission of W04352, W04367 and W04569’s proposed evidence through Rule 153 in light of their significance for the prosecution case and wishes to cross-examine them.
4. The Defence requests the Panel to dismiss the SPO motion to tender W02303 and W04732’s evidence through Rule 153 in light of their low relevance and probative value; they should be dropped from the SPO Witness List, which would contribute to the SPO’s objective to streamline the proceedings.

## II. SUBMISSIONS

### A. W02303

5. The SPO’s request to admit W02303’s evidence through Rule 153 should be dismissed, in light of the limited added value of her evidence.
6. W02303 should be dropped from the SPO’s Witness List as her evidence is

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<sup>1</sup> KSC-BC-2020-06/F02227, Prosecution motion for the admission of the evidence of witnesses W00996, W02257, W02303, W04352, W04367, W04420, W04569, W04645, W04677, and W04732 pursuant to Rule 153 with confidential Annexes 1-10, Confidential, 8 April 2024 (“Prosecution Motion”). A public redacted version was filed on the same day.

mainly hearsay. She is not able to give any direct evidence to any event. She merely reiterates other witnesses' evidence. Therefore the admission of her evidence, of low probative value, would unnecessarily burden the record. As noted previously by the Panel, evidence going to proof of a matter other than the acts and conduct of the Accused as charged in the indictment or meeting one or more of the factors militating for admission under Rule 153 does not result in the evidence's *automatic* admission.<sup>2</sup>

7. More precisely, W02303 discusses the arrest of her relative Jugoslav Kostic on 11 July 1998 but she did not witness it; her source of information is mainly his father Dragoljub Kostic.<sup>3</sup>

8. She reports what she learnt, mainly from [REDACTED] W00083 but also from from W00072 and other individuals, about the attacks on Retimlje and Opterushe on 17 and 18 July 1998, in particular regarding the disappearance of her brothers Lazar and Tudor Kostic. Yet, W02303 was not an eye witness to these events.<sup>4</sup> She locked herself in her apartment with her husband in Orahovac when the incidents took place, for four days; they were hiding in the corridor and the bathroom and didn't even see the streets.<sup>5</sup> Thus, all her evidence is based on the information she got after the events from alleged survivors or the media; she has been investigating who was responsible for the attacks and what happened to her deceased brothers, but has not got any answers. She compiled a 'list of kidnappers', mainly with W00083 and W00072's help, but W02303 does not have any *personal* knowledge about it.<sup>6</sup> W02303 said herself that she did not take statements from witnesses, but just heard their stories;<sup>7</sup> she is thus

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<sup>2</sup> KSC-BC-2020-06/ F01904, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153, para. 12.

<sup>3</sup> 061376-TR-ET Part 1 RED, pp. 15-16.

<sup>4</sup> 061376-TR-ET Part 1 RED, p. 6.

<sup>5</sup> 061376-TR-ET Part 1 RED, p. 13.

<sup>6</sup> SITF00063120-SITF00063142-ET RED, pp.3-4.

<sup>7</sup> 061376-TR-ET Part 1 RED, p. 23.

often unable to specify with certainty her source of information<sup>8</sup> and she speculates on the basis of hearsay.<sup>9</sup>

9. Most of W02303's information comes from [REDACTED] W00083, whom she saw several days after her release from the KLA, and whose evidence is subject to a pending Rule 155 application from the prosecution.<sup>10</sup> W00072's evidence is already part of the record since she testified on 17 August 2023.

10. In this context, the Defence stresses that W02303's proposed Rule 153 material is essentially redundant and hardly of cumulative nature – there is evidence of similar events from other witnesses, such as W00083 or W00072, but W02303's evidence is rather reiteration of that evidence than independent evidence, as she collected the evidence from other witnesses. Its admission through Rule 153 should be dismissed.

#### **B. W04732**

11. The SPO's request to admit W04732's testimony through Rule 153 should be dismissed in light of its low relevance and added value.

12. The Defence submits that this witness should be dropped from the SPO Witness List in light of its limited interest for the prosecution case.

13. The SPO Pre-Trial Brief quotes W04732's evidence once, to assert that the body of [REDACTED] was found in [REDACTED] village in the municipality of

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<sup>8</sup> 061376-TR-ET Part 2, p. 5, l. 17-18; 061376-TR-ET Part 2, p. 6, l. 24.

<sup>9</sup> 061376-TR-ET Part 2, p. 11.

<sup>10</sup> KSC-BC-2020-06/F02152, Prosecution fourth motion for admission of evidence pursuant to Rule 155 with confidential Annexes 1-7, paras 17-24. The Defence raised several objections to the admission of W00083's evidence, including to unpleaded allegations about the acts and conduct of the Accused. See KSC-BC-2020-06/F02173, Joint Defence Response to Prosecution Fourth Motion for Admission of Evidence Pursuant to Rule 155, paras 29-36.

[REDACTED].<sup>11</sup> Yet, [REDACTED]<sup>12</sup> and [REDACTED]<sup>13</sup> have already testified about the circumstances of [REDACTED]'s killing and the SPO further relies on W04826's testimony to determine the cause of his death. Therefore, W04732's evidence does not appear to be significant for the prosecution case.

14. Similarly, while W04732 proposed Rule 153 material relates, to a significant extent, to his interactions with W04416, the Defence notes that W04416's evidence has already been admitted through Rule 155<sup>14</sup> and W04732's testimony appears to be mainly repetitive in this regard.

15. In these circumstances, the admission of W04732's evidence through Rule 153 is not warranted; it would unnecessarily burden the record.

### C. W04352

16. The Defence objects to the admission, through Rule 153, of W04352's proposed evidence and elects to exercise its right to cross-examine him.

17. The SPO seeks to relies on his evidence to establish the circumstances of the alleged detention and arrest of [REDACTED] in Drenoc and the alleged military police structure in this village. In particular, in its Pre-Trial Brief, the SPO quotes W04352's SPO interview to support the allegations that Drenoc military police [REDACTED];<sup>15</sup> that [REDACTED];<sup>16</sup> that [REDACTED];<sup>17</sup> and that [REDACTED].<sup>18</sup> Therefore the

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<sup>11</sup> SPO PTB, para. [REDACTED], referring to his UNMIK testimony and report.

<sup>12</sup> KSC-BC-2020-06, Transcript [REDACTED].

<sup>13</sup> KSC-BC-2020-06, Transcript [REDACTED].

<sup>14</sup> KSC-BC-2020-06/F01603, Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, 14 June 2023, paras 42, 220.

<sup>15</sup> *Ibid.*, [REDACTED].

<sup>16</sup> KSC-BC-2020-06/F01594/A03, Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief', [REDACTED].

<sup>17</sup> *Ibid.*, [REDACTED].

<sup>18</sup> *Ibid.*, [REDACTED].

Defence wishes to cross-examine W04352 on these key issues for the prosecution case, related to the KLA structure.

18. The Defence further notes that W04352 mentioned several potential motives for the arrest of [REDACTED], that the Defence would like to explore in cross-examination in order to clarify the exact reason(s) for his arrest. The Defence is cognisant of the Panel's previous ruling, that evidence of the state of mind of alleged perpetrators of underlying crimes is not, ordinarily speaking, evidence of the alleged *mens rea* of the Accused.<sup>19</sup> The Defence underscores that the issue of motive, which it seeks to explore in cross-examination, is relevant to matters such as whether the alleged acts could have been anticipated and prevented by the Accused, which is not the same as imputing the perpetrator's *mens rea* to the Accused. In the present case, while [REDACTED]'s detention is discussed by other witnesses, W04352 is [REDACTED] on the SPO witness list who is available for cross-examination<sup>20</sup> and can speak to what he was told in Drenoc [REDACTED].

19. In particular, W04352 testified that [REDACTED] they arrested [REDACTED] to settle a personal score. In W04352's [REDACTED] interview, he claims that [REDACTED].<sup>21</sup> In W04352's [REDACTED] interview, he claims that [REDACTED]."<sup>22</sup> Similarly, in W04352's [REDACTED], he claims that [REDACTED]."<sup>23</sup> In his SPO interview, W04352 reiterated his belief that [REDACTED].<sup>24</sup> Nevertheless, for the first time, he added that [REDACTED].<sup>25</sup> In this context, the Defence wishes to clarify through cross-examination of W04352, the possible reason(s) for [REDACTED]'s arrest.

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<sup>19</sup> KSC-BC-2020-06/F02111-CONF, paras 41, 75.

<sup>20</sup> The evidence of [REDACTED] was admitted through Rule 155.

<sup>21</sup> SITF00297388-00297396, [REDACTED], p. SITF00297390.

<sup>22</sup> SITF00297457-00297470 RED2, [REDACTED], p. SITF00297457.

<sup>23</sup> SITF00181066-00181123, p. SITF00181073.

<sup>24</sup> 092856-TR-ET Part 1 RED2, pp. 50-51.

<sup>25</sup> 092856-TR-ET Part 1 RED2, pp. 51-52 – He conceded “[REDACTED].”

20. Last, the Defence submits that SITF00297388-00297396 is not suitable for admission through Rule 153; the identity of the note taker is not specified, the document, handwritten, is not dated, does not contain any stamp, logo or signature but only mentions, at the end, [REDACTED], without any distinction being made [REDACTED].

**D. W04367**

21. The Defence objects to the admission of W04367's evidence pursuant to Rule 153 in its entirety.

22. At the outset it is submitted that it is premature at this stage to consider the admissibility of W04367's evidence. Submissions on, and consideration of, the admissibility of W04367's evidence should await the Trial Panel's determination on the admissibility of [REDACTED]'s evidence via Rule 155. These two witnesses are inherently interconnected and the submissions and objections that arise in relation to the admissibility of W04367's evidence via Rule 153 vary depending on the outcome of the decision in relation to [REDACTED].

23. W04367 is [REDACTED], whose evidence is currently proposed for admission via Rule 155.<sup>26</sup> The Prosecution has suggested that W04367's evidence corroborates that of [REDACTED],<sup>27</sup> providing details on [REDACTED]'s visit to and detention in Drenoc in [REDACTED] 1998 following [REDACTED]'s arrest.<sup>28</sup> The Defence has strongly objected to the admission of [REDACTED]'s evidence on the basis that it is central to allegations in the indictment.<sup>29</sup> Ultimately, the Prosecution relies heavily on

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<sup>26</sup> [REDACTED].

<sup>27</sup> [REDACTED].

<sup>28</sup> 059673-TR-ET Part 1, pp.6-8.

<sup>29</sup> See [REDACTED].

[REDACTED], as a sole and decisive witness, to some of the key allegations at Drenoc.<sup>30</sup>

24. W04367's evidence regarding the presence of [REDACTED] detainees in Drenoc is based entirely on what [REDACTED] has told her. It is not an independent account: it is one and the same. If [REDACTED]'s evidence were to be admitted via Rule 155, admission of W04367's evidence under Rule 153 would only further compound the prejudice to the Defence, by foreclosing the only other avenue to probe this account through cross-examination. On the other hand, if [REDACTED]'s evidence is not admitted under Rule 155, then the admission of an uncorroborated hearsay account such as W04367's account without cross-examination would be clearly an affront on the rights of the Accused.

25. Finally, the Defence observes that there are indications that the witness's [REDACTED] raise doubts over whether the Defence would be able to effectively cross-examine the witness, even if she were to be made available. While it may be premature to determine that matter at this point, the Defence respectfully requests the right to be heard on this matter, should the SPO be ordered to produce the witness for cross-examination.

**E. W04569**

26. The Defence objects to the admission of W04569's evidence pursuant to Rule 153 and elects to exercise its right to cross-examine him.

27. The Prosecution seeks to rely on W04569's [REDACTED] statements to provide contextual and background evidence to prove the existence of a common policy of

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<sup>30</sup> *Ibid.*, paras 58-60.



violence and intimidation against individuals associated with the LDK [REDACTED].<sup>31</sup> W04569's evidence provides a detailed description of [REDACTED].<sup>32</sup> Particularly, W04569's evidence concerns events in the [REDACTED], containing details of a specific incident in [REDACTED] 1998 where W04569 alleges he was targeted, beaten, and [REDACTED].<sup>33</sup>

28. Given the centrality of these issues – particularly that of the relationship between the KLA and [REDACTED] in [REDACTED] 1998 and [REDACTED] – to the Prosecution's case, the nature of this evidence must be subject to Defence cross examination. The fundamental importance of W04569's evidence to charges in the Indictment<sup>34</sup> and the SPO's Pre-Trial Brief – notably which the Prosecution relies upon<sup>35</sup> – therefore warrants further cross-examination than that previously tested in prior proceedings, superseding the Prosecution's claims that W04569's evidence is corroborated by other witnesses or has already been tested.<sup>36</sup>

### III. CLASSIFICATION

29. These submissions contain confidential information about witnesses and documents, and as such are filed confidentially.

### IV. CONCLUSION AND RELIEF SOUGHT

30. For the foregoing reasons, the Defence respectfully requests that the Trial Panel:

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<sup>31</sup> Prosecution Motion, para 32.

<sup>32</sup> [REDACTED].

<sup>33</sup> [REDACTED].

<sup>34</sup> KSC-BC-2020-06/F00999/A01, Indictment, paras [REDACTED].

<sup>35</sup> See KSC-BC-2020-06/F01594/A03, Pre-Trial Brief, para [REDACTED].

<sup>36</sup> Prosecution Motion, para 32.

**DISMISS** the SPO request to admit W04352, W04367, W04569, W02303 and W04732's evidence through Rule 153.

**[Word count: 2 603 words]**

Respectfully submitted on 18 April 2024



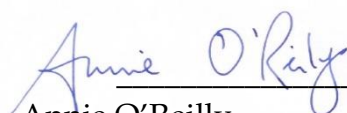
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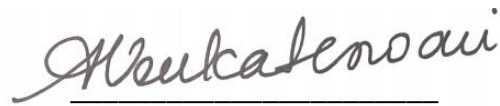


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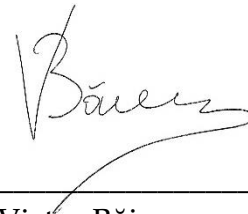
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