

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

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Public Redacted Version of 'Joint Defence Response to 'Prosecution motion for admission of evidence of Witness W04501 pursuant to Rule 154' (F02388)

with Confidential Annex 1'

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I. INTRODUCTION

1. The Defence for Messrs. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi (“Defence”) respond to the ‘Prosecution motion for admission of evidence of Witness W04501 pursuant to Rule 154’.¹ The Defence does not contest the *prima facie* authenticity and reliability of W04501’s proposed Rule 154² statements,³ but object to the admission of part of W04501’s evidence; namely, the evidence concerning the death of [REDACTED]. Evidence on this topic is irrelevant to charges in the Indictment,⁴ and its prejudicial effect outweighs its probative value. Accordingly, if the Trial Panel finds W04501’s SPO Interview admissible pursuant to Rule 154, the Defence requests that the Trial Panel order the SPO to:

- (i) redact the portions of W04501’s SPO Interview which contain substantive discussion of [REDACTED]’s death;⁵ and
- (ii) direct the SPO not to lead any evidence in respect of the death of [REDACTED] during his testimony, and to caution W04501 not to voluntarily give evidence about it.

2. In addition, the Defence submits cross-examination estimates for W04501, and objections to the documents and exhibits the SPO intends to use with W04501.⁶

¹ KSC-BC-2020-06/F02388, *Prosecution motion for admission of evidence of Witness W04501 pursuant to Rule 154 with confidential Annexes 1-2*, 18 June 2024, confidential (“SPO Motion” or “F02388”).

² KSC-BD-03/Rev3/2020, *Rules of Procedure and Evidence Before the Kosovo Specialist Chambers*, 2 June 2020 (“Rules”).

³ 068516-TR-ET Parts 1 to 4 RED2.

⁴ KSC-BC-2020-06/F00999/A01, Annex 1 – Amended Indictment, 30 September 2022, confidential (“Indictment”).

⁵ At a minimum, the Defence identifies: 068516-TR-ET Part 4 RED2, p. 4, line 1 to p. 18, line 17; p. 25, line 14 to p. 28, line 17, and 068516-TR-AT Part 4 Revised p. 3, line 14 to p. 18, line 20; p. 25, line 11 to p. 28, line 9.

⁶ See Annex 1.

3. This filing is confidential, since it contains confidential information about a witness with protective measures. A public redacted version will be filed as soon as possible.

II. SUBMISSIONS

4. The Defence does not object, in principle, to the admission of W04501's SPO Interview pursuant to Rule 154. The Defence accepts the SPO Interview meets the basic indicia of authenticity, and contains evidence that is *prima facie* relevant to the charges in the Indictment. The Defence also does not object to the associated exhibits tendered for admission by the SPO.⁷ However, the Defence objects to the admission of the parts of W04501's SPO Interview discussing the death of [REDACTED], for the reasons set out herein.

A. W04501'S EVIDENCE

5. The relevance of W04501's evidence is identified in the SPO Motion, and may be summarised as comprising three topics: (i) his own alleged arrest and detention in [REDACTED]; (ii) the alleged arrest and detention of [REDACTED]; and (iii) further contact of his family with the KLA in [REDACTED].⁸ The section on relevance concludes with the statement: "W04501's evidence is thus relevant to *charged crimes in the Indictment.*"⁹

6. The Defence does not contest the relevance of the witness' evidence on these topics. However, the witness' evidence in his SPO Interview goes beyond these topics, to cover material that is outside the scope of the Indictment. The Defence therefore

⁷ F02388/A01, Associated Exhibits Items 1-3.

⁸ SPO Motion, paras. 3-4.

⁹ SPO Motion, para. 5 (emphasis added).

does contest the relevance of the portion of the witness' SPO interview which discusses the death of [REDACTED].¹⁰

7. According to the witness, [REDACTED] was killed on [REDACTED], [REDACTED] after the end of the indictment period.¹¹ W04501 admits straight away that he was not present when [REDACTED], and does not know exactly what happened.¹² Notwithstanding this admission, and the timing of the incident, the SPO proceeds to conduct a lengthy examination on this topic, during which the witness is unable to provide any concrete information about the circumstances of [REDACTED]'s death, posits a number of inconsistent, speculative, and unsubstantiated theories as to who could be responsible, and provides multiple explanations for why [REDACTED] could have been killed, none of which are linked to the conflict.¹³

8. While the interviewers repeatedly attempt to link [REDACTED]'s death to issues during the war, the witness consistently and resolutely disagrees.¹⁴ Regardless of the fact that some of the people he alleges to be involved in [REDACTED]'s death may have been KLA members, their issues with [REDACTED] are described as personal or business disputes, unconnected to the conflict.¹⁵ In fact, when asked directly by the SPO about the reasons for [REDACTED]'s murder, the witness states unequivocally: [REDACTED].¹⁶ Further, there is a point at which even the SPO

¹⁰ 068516-TR-ET Part 4 RED2, p. 4, line 1 to p. 18, line 17; p. 25, line 14 to p. 28, line 17.

¹¹ The indictment period is "from at least March 1998 through September 1999": Indictment, para. 16.

¹² 068516-TR-ET Part 4 RED2, p. 4.

¹³ See 068516-TR-ET Part 4 RED2, pp. 4-18.

¹⁴ See, for example, 068516-TR-ET Part 4 RED2, pp. 16-17.

¹⁵ See, for example, 068516-TR-ET Part 4 RED2, pp. 9-11 (regarding personal dispute with [REDACTED]); 12-15 (regarding business dispute with [REDACTED]).

¹⁶ 068516-TR-ET Part 4 RED2, p. 15, lines 16-17.

interviewer acknowledges the information being provided in relation to [REDACTED]'s death is "clearly outside of our mandate."¹⁷

9. In subsequent contacts with the SPO, which are also subsequent to the arrest of the accused, the witness now alleges that Mr Thaçi may have had some involvement in [REDACTED]'s death.¹⁸ Despite the numerous statements given by W04501 in the past, this allegation was made for the first time during contact with the SPO on [REDACTED].¹⁹ During this call, W04501 alleged that [REDACTED]. The witness admitted he found this "suspicious", but could provide no further concrete or specific information.²⁰ Then, on [REDACTED], W04501 told the SPO [REDACTED].²¹ Immediately thereafter though, the witness instead names three entirely different people as having either admitted to, or been involved in, the killing of [REDACTED].²²

10. These allegations about Mr Thaçi's involvement lack any evidentiary foundation, being based entirely on multi-level hearsay, with unknown sources amongst the chain. The Defence therefore has no way to properly investigate or verify these allegations, causing significant prejudice. Further, the allegations may instead be linked to a personal grudge the witness seemingly has against Mr Thaçi, which [REDACTED].²³ Consequently, if the witness is allowed to discuss this incident during live testimony, he may take the opportunity to cast further unfounded aspersions against Mr Thaçi.

¹⁷ 068516-TR-ET Part 4 RED2, p. 26, line 24.

¹⁸ *See, for example*, notes of contact with the SPO from [REDACTED]: 107022-107022 RED; 108984-108984.

¹⁹ 107022-107022 RED.

²⁰ 107022-107022 RED, paras. 1, 3.

²¹ 108984-108984, para. 1.

²² 108984-108984, para. 2.

²³ 114216-114231 RED, p. 114217. *See also* [REDACTED].

B. EVIDENCE ABOUT THE INCIDENT SHOULD NOT BE ADMITTED

11. The death of [REDACTED] is not charged in the Indictment, nor is [REDACTED] listed as a victim. In addition, the incident is not referred to at all in the Pre-Trial Brief, the witness' Rule 95 summary,²⁴ or in the list of "issues, facts, and circumstances in relation to which the witness will be examined".²⁵ The Defence was therefore not on notice of any allegation about this incident or its link to any charges in the Indictment.

12. [REDACTED]'s death occurred after the Indictment period, and is therefore outside the temporal scope of these proceedings. The Panel has previously determined that "evidence of events outside the temporal scope of the indictment can be admitted if it is relevant to establishing facts and circumstances validly pleaded in the indictment, has probative value in respect of any such fact or circumstance, and there is no compelling reason to exclude it."²⁶ The Defence submits that none of these criteria are satisfied in relation to this allegation.

13. As noted above, the death of [REDACTED] has no relevance to any facts and circumstances in the Indictment. In particular, it is outside the Indictment period, is not linked to any specific crime site, and has no discernible connection to other material facts alleged in the Indictment. More broadly, W04501's evidence demonstrates no link between this incident and the alleged joint criminal enterprise, nor the alleged wider campaign of attacks against opponents.²⁷ There is also no credible indication that Mr Thaçi, or any of the accused, were involved in this incident in any way. In line with prior findings of this Panel, which declined to admit evidence

²⁴ KSC-BC-2020-06/F01594/A02, Annex 2 - Confidential Redacted Version of 'Amended List of Witnesses', 9 June 2023, pp. 366-367.

²⁵ See the list of proposed topics in F02388/A01, p. 2.

²⁶ KSC-BC-2020-06/F02393, Trial Panel II, *Decision on Selimi Defence Motion to Exclude Evidence of W04846*, 19 June 2024, confidential ("Exclusion Decision"), para. 17.

²⁷ Compare Exclusion Decision, para. 26.

that did not result from the alleged JCE, is not attributable to any accused, and is neither determinative of a widespread or systematic attack against opponents nor otherwise materially connected to the armed conflict charged in the Indictment, there is no basis to admit this evidence.²⁸ The Defence also repeats the Trial Panel's previous finding in a similar context that, even if this incident was alleged to be part of a pattern of conduct, "this is not the same pattern as being alleged in the Indictment".²⁹

14. The Defence further submits that the allegations of W04501 about the circumstances of [REDACTED]'s death, including Mr Thaçi's alleged involvement therein, have significant issues of credibility and reliability, which provide compelling reasons to exclude it. The witness' evidence is largely speculative, and is entirely based on hearsay, uncorroborated by other witnesses on the SPO's list, and devoid of any direct evidence identifying the persons involved and their relationship with the Accused. Instead, if this evidence is allowed to be admitted, and particularly if the SPO is allowed to lead evidence about [REDACTED]'s death live, it may only represent an attempt to enter bad character evidence against Mr Thaçi, or make unsubstantiated allegations against him.

15. Thus, the portions of the SPO interview that discuss this incident lack any relevance or probative value. Further, admitting evidence of this incident would bloat the record with unreliable and irrelevant allegations that fall outside the scope of the Indictment, and which would not assist the Panel in its determination of any other relevant issues in these proceedings. In these circumstances, the prejudicial impact of

²⁸ KSC-BC-2020-06, Transcript of Hearing, 17 April 2023, Oral Order, p. 2865.

²⁹ *Ibid.*

admitting the witness' evidence regarding [REDACTED]'s death would far outweigh its limited, or non-existent, probative value.

16. Finally, in his SPO interview, W04501 makes a series of allegations against [REDACTED],³⁰ linking him to the KLA by stating, [REDACTED].³¹ The Witness also stated in [REDACTED] that [REDACTED] by an organisation connected to Mr. Krasniqi.³² The Defence notes that the allegations against Mr. Krasniqi and [REDACTED] are not pleaded in the Indictment and are not contained in the SPO's Pre-Trial Brief. Allegations relating to [REDACTED] are in any event plainly outside the temporal scope of the Indictment. The allegations have no probative value in relation to any relevant issue in this case. They appear to be additional, specious allegations that have a purely prejudicial effect. For this reason, these excerpts should not be admitted pursuant to Rule 154.

III. CONCLUSION

17. In light of the foregoing, the Defence requests the Trial Panel order the relief set out in paragraph 1.

[Word count: 2,097 words]

³⁰ 068516-TR-ET Part 4 RED2, p. 13, lines 9-12.

³¹ 068516-TR-ET Part 4 RED2, p. 14, lines 4-5

³² 095486-095486, para. 2.

Respectfully submitted on 24 June 2024,



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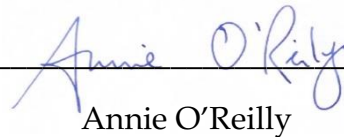
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