

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
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: 28 June 2024

Language: English

Classification: Public

Public Redacted Version of Corrected Version of Joint Defence Response to
Prosecution motion for the admission of the evidence of witnesses W00994, W02397,
W02398, W02517, W02586, W02587, W03861, W04399, W04452, and W04044
pursuant to Rule 153

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Luka Misetić

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

I. INTRODUCTION

1. The Defence for Messrs. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi (“Defence”) hereby responds to Prosecution motion for the admission of the evidence of witnesses W00994, W02397, W02398, W02517, W02586, W02587, W03861, W04399, W04452, and W04044 pursuant to Rule 153 (“SPO Motion”).¹
2. As noted by the SPO,² the Defence and the SPO have engaged *inter partes* regarding the admission of evidence which is subject of this response. The Defence does not object to the admission, pursuant to Rule 153, of the proposed evidence of W00994, W02398, W02587, W03861 and W04399 and W02586, with the exception of the KFOR reports SITF00189342-SITF00189362, SITF00189402-00189426, SITF00189427-00189437, SITF00189465-00189484. The Selimi Defence objects to the admission of the proposed evidence of W02517 unless the SPO is content to call W02549 under Rule 154 rather than Rule 153. The Defence for Mr. Thaci and Mr. Krasniqi object to the admission of the evidence of W04452 since he puts Mr. Thaçi and Mr. Krasniqi in a position of command and wishes to cross-examine him on this issue, in the alternative, Mr. Thaci and Mr. Krasniqi Defence would not object to its admission through Rule 153 provided that the corresponding excerpt of his testimony³ is redacted. The Defence for Mr. Thaci and Mr. Krasniqi also objects to the admission of evidence W02397. The Defence for Mr. Krasniqi also reiterates its objection to the admission of evidence of W04044.

¹ KSC-BC-2020-06/F02383, Prosecution motion for the admission of the evidence of witnesses W00994, W02397, W02398, W02517, W02586, W02587, W03861, W04399, W04452, and W04044 pursuant to Rule 153 with confidential Annexes 1-11, 14 June 2024 (“SPO Motion”).

² SPO Motion, paras 48-54.

³ In particular, 065230-TR-ET Part 2 at pp. 12-13.

II. SUBMISSIONS

A. W02397

3. The Defence for Mr. Thaçi and Mr. Krasniqi oppose the admission of W02397's evidence pursuant to Rule 153 and elect to exercise their right to cross-examine him.
4. Whilst the Defence acknowledges that W02397 provides crime-base evidence,⁴ his evidence contains multiple contradictions with [REDACTED], who was allegedly detained with W02397 and whose evidence is also being tendered pursuant to Rule 153.⁵ Some of the inconsistencies between W02397 and [REDACTED] include: (i) the clothes that the person who allegedly stopped them was wearing;⁶ (ii) the number of people present in [REDACTED] when W02397 and [REDACTED];⁷ (iii) whether they were questioned in detention;⁸ and (iv) the instruments that W02397 and [REDACTED] were allegedly beaten with.⁹
5. In addition, W02397's evidence contains [REDACTED],¹⁰ [REDACTED],¹¹ is of exceptional nature in the present case.
6. W02397's evidence is not corroborated by any of the witnesses indicated by the Prosecution.¹² Neither W02397 nor [REDACTED] claimed to have seen other persons in detention at the time they allegedly were at [REDACTED].

⁴ SPO Motion, para. 15.

⁵ SPO Motion, paras 17-20.

⁶ [REDACTED] (059637-TR-ET Part 2, p. 2). [REDACTED].

⁷ [REDACTED] (059637-TR-ET Part 2, pp. 10-11), [REDACTED].

⁸ [REDACTED] (059637-TR-ET Part 3, p. 16) [REDACTED].

⁹ [REDACTED] (059637-TR-ET Part 2, p. 9), [REDACTED].

¹⁰ [REDACTED] (059637-TR-ET Part 1, p. 20; 059637-TR-ET Part 2, pp. 11-12).

¹¹ [REDACTED] (060119-TR-ET Part 1, pp. 18-19).

¹² SPO Motion, para. 15, fn. 22.

[REDACTED] was not present at [REDACTED] when W02397 and [REDACTED] were allegedly detained. [REDACTED] states that he only saw W02397 for [REDACTED].¹³ Given that the Defence does not object to the evidence of [REDACTED] being admitted pursuant to Rule 153,¹⁴ the Defence should be allowed to explore these areas in cross-examination with W02397.

7. Finally, the Defence seeks to cross-examine W02397 on additional topics relevant to the Defence case including: (i) the chaos in [REDACTED]; (ii) the hatred towards the [REDACTED] by the Albanian; and (iii) the potential that crimes attributed by the Prosecution to the KLA were, in fact, committed by non-KLA actors.

B. W02517

8. The Defence for Mr. Selimi opposes the admission of W02517's evidence pursuant to Rule 153, and seeks to cross examine W02517. In relation to W02517, the Defence notes that the SPO intends to call only a limited number of witnesses associated with the KFOR [REDACTED], namely W02517, W02549 and W02587, who are all listed as Rule 153 witnesses. As set out below in further detail, individuals associated with the KFOR [REDACTED] are in a position to provide unique and highly relevant evidence in relation to the present proceedings. For these reasons, the Defence has communicated to the SPO that it would not object to the admission of W02517's evidence pursuant to Rule 153 should the SPO agree to seek the admission of W02549¹⁵ pursuant to Rule 154 instead of Rule 153, so that the Defence may cross-examine the latter. As the SPO did not offer a guarantee to that effect, the Defence therefore opposes the admission of W02517's evidence pursuant to Rule 153 and seeks to cross-examine W02517.

¹³ [REDACTED], whereas according to W02397, he was beaten in a room together with [REDACTED].

¹⁴ See para. 2.

¹⁵ The Defence notes that it did not oppose the admission of W02587's evidence pursuant to Rule 153 in light of [REDACTED] vis-à-vis W02517 and W02549 and the limited scope of his evidence.

9. As a member of KFOR who served as [REDACTED] in Prizren, W02517 is in a position to offer central evidence in relation to the allegations made by the SPO concerning Prizren [REDACTED] that can only be elicited if W02517 appears for cross-examination. W02517 possesses first-hand knowledge of [REDACTED] being carried out by KFOR, and has been, in the SPO's submission, directly involved in [REDACTED].¹⁶ In particular, W02517 is well-placed to provide evidence concerning [REDACTED] carried out by KFOR, (ii) [REDACTED], and (iv) whether KFOR constituted the sole authority in Kosovo [REDACTED].
10. The Parties as well as the Trial Panel¹⁷ have previously sought to elicit evidence in relation to the above issues during the testimony of witnesses formerly affiliated with KFOR. However, the witnesses that have testified in relation to KFOR [REDACTED] in Prizren [REDACTED] in this case so far, [REDACTED], have indicated a lack of knowledge and an inability to provide evidence of the aforementioned issues.¹⁸ In fact, [REDACTED] has specifically asserted that only [REDACTED] can provide evidence in relation to the above issues. Therefore, considering the SPO's intention to introduce the evidence of all KFOR [REDACTED] witnesses absent cross-examination, and the fact that the SPO has recently removed one such witness from its witness list,¹⁹ the admission of W02517's evidence pursuant to Rule 153 would deprive the Defence of the opportunity to address crucial issues arising from the SPO's Indictment. Owing to [REDACTED], W02517 is best-positioned to provide evidence on these matters.
11. Regarding W02517's associated exhibits, the Defence notes that pages 068303-068304 of 068301-068304-ET Revised purport to record information provided in

¹⁶ SPO Motion, para. 21.

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ KSC-BC-2020-06/F02325, Prosecution notice of witness changes, 21 May 2024, [REDACTED].

the form of declarations from individuals who are neither SPO witnesses, nor have they been interviewed by the SPO, nor have their previous statements been disclosed to the Defence. Notably, when shown this document, the witness recognized his signature yet emphasized on several instances that he cannot recall any of the facts described therein.²⁰ Given that the witness has not provided any substantive comment in respect of the document concerned, the SPO has failed to establish that the pages in question form an inseparable and indispensable part of the witness' evidence or that his Rule 153 Statement would be of no or lesser probative value should the document not be admitted. Therefore, in order to preserve the Defence's ability to confront the allegations set out in this document, the SPO should seek admission of this document through a witness who is in a position to testify to those events and be cross-examined on that basis.

C. W02586

12. The Defence does not object to the admission, through Rule 153, of W02586's SPO interview.
13. The Defence objects to the admission of the KFOR reports SITF00189342-SITF00189362, SITF00189402-00189426, SITF00189427-00189437, SITF00189465-00189484, [REDACTED] SITF00189348, SITF00189408-SITF00189409, SITF00189430 and SITF00189482 [REDACTED]. The SPO relies on W02586's evidence [REDACTED].²¹ Yet, [REDACTED] in the Indictment, are not quoted in the SPO Pre-Trial Brief, and therefore lack sufficient relevance. While the SPO asserts that [REDACTED] would unnecessarily burden the record.

²⁰ 068306-TR-ET Part 3, p. 22.

²¹ SPO Motion, para. 25. See also KSC-BC-2020-06/F01594/A02, Confidential Redacted Version of 'Amended List of Witnesses', 9 June 2023, [REDACTED].

D. W04044

14. The Krasniqi Defence objects to the admission of W04044's evidence pursuant to Rule 153. The Prosecution's proposed redactions to W04044's evidence is not an appropriate remedy for the admission of the witness' evidence in lieu of oral testimony.
15. The Prosecution sought to tender W04044's evidence as part of its second Rule 153 application,²² which the Defence opposed on the basis of, *inter alia*, a potential misidentification of Jakup Krasniqi [REDACTED].²³ In this regard, the Panel found that the probative value of W04044's evidence was outweighed by its prejudicial effect because: (i) the issue cannot be considered to be peripheral, as it relates to W04044's identification of one of the Accused; and (ii) it is not entirely clear whether the proposed evidence goes to acts and conduct of Mr. Krasniqi.²⁴
16. The Defence wishes to cross-examine W04044 precisely on the information that the Prosecution proposes to redact. As previously submitted, Mr. Krasniqi's role and whereabouts [REDACTED] are important to the Defence case.²⁵ The Prosecution alleges that Mr. Krasniqi personally implemented the common criminal purpose on the ground [REDACTED].²⁶ Evidence relating to the misidentification of Mr. Krasniqi in this period is therefore a topic the Defence

²² KSC-BC-2020-06/F01994, Prosecution motion for the admission of the evidence of witnesses W04016, W04019, W04044, W04305, W04361, W04722, W04816, W04850, W04851, and W04852 pursuant to Rule 153 with confidential Annexes 1-10, paras 13-17, 8 December 2023.

²³ KSC-BC-2020-06/F02063, Joint Defence Response to Prosecution motion for the admission of the evidence of witnesses W04016, W04019, W04044, W04305, W04361, W04722, W04816, W04850, W04851, and W04852 pursuant to Rule 153 (F01994), para. 12, 15 January 2024 ("Defence Response to SPO Motion for admission of W04044").

²⁴ F02111, Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W04016, W04019, W04044, W04305, W04361, W04722, W04816, W04850, W04851, and W04852 pursuant to Rule 153, para. 32, 8 February 2024.

²⁵ Defence Response to SPO Motion for admission of W04044, para. 12.

²⁶ F01594/A03, Annex 3 to Prosecution submission of updated witness list and confidential lesser redacted version of pre-trial brief with strictly confidential and ex parte Annex 1 and confidential Annexes 2-3, [REDACTED], 9 June 2023. [REDACTED].

wishes to explore further in cross-examination. In fact, there are other witnesses who have pointed at Mr. Krasniqi as being the person who [REDACTED].²⁷

17. If W04044's evidence is admitted with the proposed redactions, the Defence will be denied the opportunity to elicit information from a witness who states that people mixed up Mr. Krasniqi due to his role as KLA spokesperson.²⁸

E. W04452

18. The Defence for Mr. Thaçi and Mr. Krasniqi objects to the admission of the evidence of W04452 through Rule 153, since he puts Mr. Thaçi and Mr. Krasniqi in a position of command, without further precision,²⁹ and wishes to cross-examine him on this issue. In the alternative, the Thaçi and Krasniqi Defence do not object to its admission through Rule 153 provided that the corresponding excerpt of his testimony³⁰ be redacted. Indeed, the low probative value of such assertion by the witness is outweighed by its prejudicial effect.

III. CLASSIFICATION

19. This filing is submitted confidentially because it responds to a filing with the same classification³¹ and contains confidential information about witnesses.

IV. CONCLUSION AND RELIEF REQUESTED

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

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ 065230-TR-ET Part 2 RED2, p. 13 l. 1-4:
[REDACTED].

³⁰ The Defence for Mr. Thaçi and Mr. Krasniqi agrees with the excerpt identified by the SPO in its Motion at footnote 68, *i.e.* 065230-TR-ET Part 2 RED2, p. 13 l. 2-4.

³¹ SPO Motion, para. 55.

- (i) deny the admission of W02397's evidence and associated exhibits pursuant to Rule 153;
- (ii) deny the admission of W02517's evidence and part of associated exhibit 068301-068304-ET Revised at 068303-068304 pursuant to Rule 153;
- (iii) deny the admission of W2586's associated exhibits SITF00189342-SITF00189362, SITF00189402-00189426, SITF00189427-00189437, SITF00189465-00189484, [REDACTED] SITF00189348, SITF00189408-SITF00189409, SITF00189430 and SITF00189482 pursuant to Rule 153;
- (iv) deny the admission of W04044's evidence pursuant to Rule 153;
- (v) deny the admission of W04452's evidence pursuant to Rule 153; or, in the alternative, redact the disputed excerpt related to Mr. Thaçi and Mr. Krasniqi from his testimony.

Word count: 2522

Respectfully submitted on 28 June 2024,



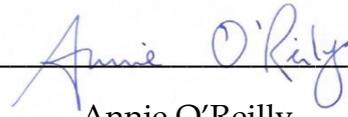
Luka Misetic
Counsel for Hashim Thaçi



Ben Emmerson, CBE KC
Counsel for Kadri Veseli



Kerrie Ann Rowan
Co-Counsel for Kadri Veseli



Annie O'Reilly
Co-Counsel for Kadri Veseli



GEOFFREY ROBERTS
Lead Counsel for Rexhep Selimi



ERIC TULLY
Co-counsel for Rexhep Selimi



RUDINA JASINI

Co-counsel for Rexhep Selimi



Venkateswari Alagenda

Lead Counsel for Jakup Krasniqi



Aidan Ellis

Co-Counsel for Jakup Krasniqi



Victor Băieșu

Co-Counsel for Jakup Krasniqi