

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 Christoph Barthe
Judge Guénaél 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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Classification: Public

**Public Redacted Version of Joint Defence Response to Prosecution Rule 153
Motions F02465 and F02469**

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I. INTRODUCTION

1. The Defence for Messrs. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi (“Defence”) hereby files a consolidated response to the Prosecution consolidated Rule 153 motion for W04797 and W04808,¹ and to the Prosecution motion for the admission of the evidence of witnesses W01234, W01338, W01743, W04423, W04570, W04696, W04812, W04859, and W04860 pursuant to Rule 153.²

2. As noted by the SPO, the Defence and the SPO have engaged *inter partes* regarding the admission of the evidence which is the subject of this response. In summary:

- a. The Defence does not object to the admission, through Rule 153, of: W01338, W01743, W04423, and W04696’s evidence.
- b. With regard to W04812, the Defence does not object to the admission of her evidence through Rule 153, provided that her statement SITF00240132-00240134 is also admitted.
- c. The Defence objects to the admission, through Rule 153, of W01234, W04859, W04860, W04570’s evidence and submits that these witnesses should be withdrawn from the SPO witness list in light of their low relevance and of the SPO’s duty to streamline its case, as developed in the Joint Defence Motion to Exclude the Evidence of W01234, W04859, W04860 and W04570.³ Nevertheless, should the Panel be minded to admit their

¹ KSC-BC-2020-06/F02465, Prosecution consolidated Rule 153 motion for W04797 and W04808 and Rule 154 motion for W04798, W04809, and W04854 with confidential Annexes 1-7, 22 July 2024, Confidential (“F02465”).

² KSC-BC-2020-06/F02469, Prosecution motion for the admission of the evidence of witnesses W01234, W01338, W01743, W04423, W04570, W04696, W04812, W04859, and W04860 pursuant to Rule 153 with confidential Annexes 1-9, 24 July 2024, Confidential (“F02469”).

³ KSC-BC-2020-06/F02478, Joint Defence Motion to Exclude the Evidence of W01234, W04859, W04860 and W04570, 30 July 2024.

evidence under Rule 153, the Defence submits that W04750's [REDACTED] evidence [REDACTED] should also be admitted.

- d. The Defence objects to the admission of W04797 and W04808's statements and associated exhibits through Rule 153 and wishes to cross-examine them.

3. This filing is submitted confidentially because it responds to documents with the same classification.⁴

II. SUBMISSIONS

A. W04812

4. The Defence does not object to the admission of W04812's proposed evidence through Rule 153, provided that her statement of [REDACTED] 2000, SITF00240132-00240134⁵ ("2000 statement"), is also admitted.

5. W04812 is [REDACTED], alleged victim named in the Indictment,⁶ and her proposed evidence related to his alleged arrest, detention and death.⁷

6. The SPO currently seeks the admission, through Rule 153, of W04812's SPO interview dated [REDACTED] 2021⁸ and of a [REDACTED] Statement of W04812 dated [REDACTED] 2002.⁹ For the Defence to agree to waive its right to cross-examine W04812 pursuant to Rule 153, the Defence requests that her 2000 statement is also admitted in light of its particular relevance and probative value.

⁴ Rule 82(4) of the Rules of Procedure and Evidence on the Kosovo Specialist Chambers ("Rules").

⁵ See also Albanian version SITF00240132-SITF00240134-AT RED.

⁶ KSC-BC-2020-06/F00999/A01, Amended Indictment, para. [REDACTED].

⁷ [REDACTED]. [REDACTED].

⁸ 092646-TR-ET Part 1.

⁹ SPOE00122578-SPOE001225606 RED.

7. The Defence notes that the Trial Panel has already granted a similar request regarding W01237's Rule 153 material, finding admissible an OSCE Form related to this witness, following a request of the Defence, on the ground that it was (i) probative and not unduly prejudicial within the meaning of Rule 138(1) and (ii) suitable for admission pursuant to Rule 153(1)(a).¹⁰ As developed below, the Defence submits that these criteria are similarly met for W04812's 2000 statement.

8. The 2000 statement was given shortly after the alleged events, in [REDACTED] 2000. It provides further details regarding the alleged reasons behind [REDACTED]'s arrest and [REDACTED]'s alleged involvement in his arrest, detention and subsequent death. In particular, when asked "[REDACTED]", W04812 replied that "[REDACTED]. [...]".¹¹ W04812's evidence makes clear that [REDACTED] had a long-standing relationship with [REDACTED] as detailed in her statements. [REDACTED] were not privy to the extent of this relationship. She told the SPO that "[REDACTED]".¹² Therefore W04812's 2000 statement is particularly relevant to understand [REDACTED]'s role, if any. It corroborates and clarifies her subsequent evidence. It would have been put to W04812 during her cross-examination had she testified live, and is intrinsically linked to her proposed evidence. W04812 commented on it in her SPO interview and confirmed that it was her statement, that she had a good recollection of the events at the time, and that she aimed at being as accurate as possible and said the truth in this statement.¹³ It is therefore *prima facie* authentic and reliable. Last, the Defence notes that in the course of *inter partes* discussions, the SPO had initially included W04812's 2000 statement among its proposed Rule 153 evidence, in an email sent on 16 May 2023,¹⁴ which confirms its relevance. Its probative

¹⁰ KSC-BC-2020-06/F01904, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153, 3 November 2023, paras 16-20.

¹¹ SITF00240132-00240134 RED, p. SITF00240133.

¹² 092646-TR-ET Part 1, p. 20, 1-2.

¹³ 092646-TR-ET Part 1, pp. 6-8.

¹⁴ Email from SPO to the Defence, 'Proposed Rule 153 witnesses', 16 May 2023, 3.34pm.

value is not outweighed by any prejudice. It is short – 3 pages – and the incident referenced therein is discussed throughout W04812's proposed evidence.

9. On this basis, should the Trial Panel exercise its discretion to admit W04812's proposed evidence under Rule 153, the Defence seeks the admission of her 2000 statement pursuant to the same rule. Alternatively, the Defence requests the Trial Panel to admit this item as an exhibit tendered by the Defence through the bar table, pursuant to Rule 138.

B. W01234, W04859 AND W04860

10. The Defence has already invited the Panel to exclude the evidence of witnesses W01234, W04860, and W04859 by way of a separate filing.¹⁵ As set forth in this filing,¹⁶ the evidence of these witnesses is neither sufficiently relevant nor probative and will not assist the Panel in their deliberations on the ultimate issues in this case. Their evidence adds nothing to the issues which the Panel are obliged to consider and do not go to "proof of a matter" on the indictment. Admission of these witnesses through Rule 153 will simply bloat the already vast trial record and ultimately increase the workload to be done by the parties outside of court time - all of which is contrary to the SPO's obligation to streamline the size of its case, rather than simply alter the means by which it seeks to call it.

11. Therefore, the Defence's primary position remains that the SPO's Request to admit the evidence of witnesses W01234, W04860, and W04859 through Rule 153 should be dismissed, and the witnesses be excluded. In the event the Panel disagrees with the above submissions on relevance and declines to exclude the evidence of these

¹⁵ KSC-BC-2020-06/F02478, Joint Defence Motion to Exclude the Evidence of W01234, W04859, W04860 and W04570, 30 July 2024, confidential.

¹⁶ *Ibid*, paras 18-26.

witnesses, the Defence has no further observations to make on their proposed admission via Rule 153.

C. W04570

12. In a similar manner, the Defence refers the Panel to its previous submissions concerning the evidence of W04570 as set forth in its Request to exclude the evidence of witnesses W01234, W04860, W04859 and W04570.¹⁷ The evidence of this witness again ultimately lacks relevance and probative value and as such, the Defence's primary position is that admission through Rule 153 should be denied and it should be excluded.

13. However, the Defence submits that should the evidence of W04570 be deemed to be suitable under Rules 153 and 138, the witness's [REDACTED] evidence [REDACTED]¹⁸ must also be admitted, in order for the Panel to have a true and fair reflection of the totality of the witness's evidence. As outlined in the Request,¹⁹ the witness's identification of [REDACTED] as an alleged perpetrator of his beating at [REDACTED] was significantly undermined [REDACTED].²⁰ It is clear that omission of this part of the witness's evidence, which is the truest and fullest account of events, ultimately misrepresents and distorts the true nature and significance of the witness's evidence.

D. W04797 AND W04808

¹⁷ *ibid*, paras 27-33.

¹⁸ Which consists of [REDACTED].

¹⁹ KSC-BC-2020-06/F02478, paras 29-32.

²⁰ [REDACTED]. *See also* [REDACTED].

14. The Defence opposes the admission of W04797 and W04808's evidence pursuant to Rule 153 and elects to exercise its right to cross-examine them, *inter alia*, on how they [REDACTED]. The Defence submits that the SPO Rule 153 application for these witnesses is premature since none of the witnesses involved [REDACTED] has testified in Court yet, while their reliability remains a live issue.²¹

a. W04797

15. W04797 was [REDACTED] during that time.²² None of the [REDACTED] used with the witness were authored by him and the witness was not interviewed about the information contained in these documents or the details [REDACTED], matters which the Defence intends to cross-examine on.

16. The Defence further notes that [REDACTED] allege that W04797 is [REDACTED].²³ The eventual involvement of W04797 [REDACTED], are issues that the Defence wishes to explore in cross-examination.

17. With regards to associated exhibits, the SPO has already tendered two [REDACTED]²⁴ and one [REDACTED]²⁵ as proposed associated exhibits for W04798 under Rule 154 which the Defence has objected to. The objection to these exhibits being admitted under Rule 153 is maintained on the basis of previous submissions concerning the authenticity and reliability issues that constitute a bar to the admission [REDACTED].²⁶ [REDACTED]²⁷ was briefly discussed with the witness who

²¹ See, *inter alia*, [REDACTED].

²² 088957-TR-ET Part 1, p.8.

²³ See [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ F02507, Joint Defence Consolidated Response to F02450, F02451, F02460 and F02465 with Confidential Annexes 1-16, 23 August 2024, para. 58.

²⁷ [REDACTED].

acknowledged that he was familiar with this 'type' of document and the information it contains but that he nevertheless did not create such document. The witness did not authenticate the [REDACTED] as it originated from a different [REDACTED] than that of the witness but merely stated that he recognised this 'type' of report.²⁸ Lastly, the witness was not the author of [REDACTED]²⁹ and he expressed uncertainty about the meaning of certain information [REDACTED] when prompted during the interview.³⁰

b. W04808

18. W04808 works as [REDACTED], since [REDACTED]. He stated that he spent [REDACTED].³¹ The SPO intends to tender several [REDACTED] through him; yet, for most of them, he was not interviewed about their content, beyond confirming that he [REDACTED] some of them. Thus, the Defence opposes the admission of W04808's evidence through Rule 153 and elects to cross-examine him, in order to clarify the origin and content of these [REDACTED], as well as W04808's [REDACTED], and to determine whether he was aware of other [REDACTED] for instance.³² Such information is relevant to assess the probative value of the [REDACTED] and the resort to such [REDACTED] by KLA members.

19. With regards to W04808's associated exhibits, the Defence objects to the admission of two [REDACTED]. They do not form an inseparable part of his statement. They were only briefly shown to him; he confirmed that he was not their author, and he did not provide any substantial information about their content. While he identified [REDACTED] in the [REDACTED], he did not provide any further

²⁸ 089987-TR-ET Part 1, p.11.

²⁹ [REDACTED].

³⁰ 089987-TR-ET Part 2, p.15.

³¹ 089987-TR-ET Part 1, pp. 5-6.

³² The Defence notes that [REDACTED].

information.³³ Regarding the [REDACTED], he could not clarify the meaning of [REDACTED] on the document nor identify its author.³⁴

20. The Defence further objects to the admission of the [REDACTED], which was not authenticated by the witness. The witness stated that he was not familiar with these types of reports and how they were created, and he was not able to provide any information on the origin or content of such reports.³⁵

III. CONCLUSION AND RELIEF REQUESTED

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

- (a) *Should it exercise its discretion to admit W04812 evidence under Rule 153, ADMIT her 2000 statement SITF00240132-00240134;*
- (b) DENY the admission of W01234, W04859, and W04860's proposed evidence;
- (c) DENY the admission of W04570's proposed evidence; or, in the alternative, ADMIT W04570's [REDACTED] evidence [REDACTED];³⁶
- (d) DENY the admission of W04797 and W04808's proposed evidence.

Word count: 2536

³³ 089987-TR-ET Part 1, pp. 24-25

³⁴ 089987-TR-ET Part 1, p. 20.

³⁵ 089987-TR-ET Part 1, pp. 30-31.

³⁶ Which consists of [REDACTED].

Respectfully submitted on 30 August 2024



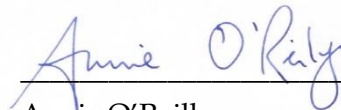
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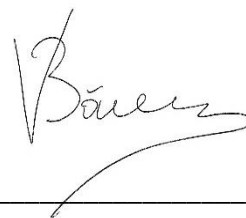
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