

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 Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

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

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Language: English

Classification: Public

**Public Redacted Version of “Joint Defence Request for Relief Concerning
W02172’s Evidence”**

Specialist Prosecutor’s Office
Kimberly P. West

Counsel for Victims
Simon Laws

Counsel for Hashim Thaçi
Luka Misetic

Counsel for Kadri Veseli
Rodney Dixon

Counsel for Rexhep Selimi
Geoffrey Roberts

Counsel for Jakup Krasniqi
Venkateswari Alagendra

I. INTRODUCTION

1. On 13 December 2024, the SPO applied to admit W02172's evidence through Rule 153.¹ On 23 January 2025, the Defence for Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi ("Defence") objected to such admission and requested that the witness be heard live on the ground, *inter alia*, that her evidence was incriminating in character or pertained to issues central to the SPO's case, given that it related to the acts and conduct of Mr Thaçi, the KLA structure, the existence, or otherwise, of a KLA policy targeting alleged collaborators, and the role of certain alleged JCE members [REDACTED], with whom W02172 was allegedly in contact regarding her interview of persons allegedly detained in [REDACTED] on [REDACTED].² In particular, the Defence stressed that W02172's proposed Rule 153 evidence about an alleged KLA policy towards collaborators was inconsistent with [REDACTED],³ not tendered by the SPO.⁴

2. On 14 February 2025, the Trial Panel denied the SPO request to admit W02172's evidence through Rule 153; noting that certain parts of her statements were not admissible under Rule 153, such as those related to the alleged acts and conduct of Mr Thaçi as charged in the Indictment and to W02172's interview [REDACTED] and her interaction with various KLA members in this context.⁵ The Trial Panel

¹ KSC-BC-2020-06/F02782, Prosecution motion for the admission of the evidence of witnesses W00964, W02172, W02538, W02549, W04238, W04380, W04386, W04436, W04661, and W04734 pursuant to Rule 153 with confidential Annexes 1-10, 13 December 2024, Confidential ("First Rule 153 Motion") (a public redacted version was filed on the same day, F02782/RED).

² KSC-BC-2020-06/F02856, Joint Defence Response to 'Prosecution motion for the admission of the evidence of witnesses W00964, W02172, W02538, W02549, W04238, W04380, W04386, W04436, W04661, and W04734 pursuant to Rule 153' with Confidential Annex 1, 23 January 2025, Confidential ("First Rule 153 Response"), paras. 26-42 (a public redacted version was filed on 7 February 2025, F02856/RED).
³ [REDACTED].

⁴ First Rule 153 Response, paras. 31-40.

⁵ KSCBC-2020-06/F02937, Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W00964, W02172, W02538, W02549, W04238, W04380, W04386, W04436, W04661, and W04734 pursuant to Rule 153, 14 February 2025, Confidential ("Rule 153 Decision") (a public redacted version was filed on the same day, F02937/RED).

observed that W02172's [REDACTED] "had not been offered for admission", and noted the SPO's submissions that: "(i) the SPO did not tender [REDACTED] as it is duplicative of the W02172's Proposed Evidence; (ii) W02172 provided sufficient clarification in the [REDACTED]; and (iii) the SPO would have no objection to the admission of W02172's [REDACTED] should the Defence wish to tender it." The Panel stated that it would not assess the admissibility of a statement based on alleged discrepancies with material not offered for admission.⁶

3. On 7 March 2025, the SPO renewed its request to admit W02172's evidence pursuant to Rule 153, while redacting the references to the acts and conduct of Mr Thaçi, W02172's [REDACTED] with persons allegedly detained at the [REDACTED], and her interaction with various KLA members in that context.⁷ The SPO did not offer to tender W02172's [REDACTED].

4. On 19 March 2021, the Defence responded to the SPO Second Rule 153 Motion, reiterating that the Trial Panel should deny the admission of W02172's proposed evidence through Rule 153, maintaining that W02172's inconsistencies are irreconcilable in writing, requiring her appearance to give evidence so that clarification can be sought. The Defence noted specifically the variations in W02172's accounts regarding the alleged existence of a KLA policy of arresting, detaining and 'punishing' perceived collaborators, which is one of the core allegations levelled against the defendants in the Indictment and SPO Pre-Trial Brief.⁸

⁶ Rule 153 Decision, para. 27.

⁷ KSC-BC-2020-06/F02989, Prosecution consolidated motion for the admission of the evidence of witnesses W02172 and W04858 pursuant to Rule 153, and related protective measures request with confidential Annex 1, 7 March 2025, Confidential ("Second Rule 153 Motion"), para. 8 and Annex 1 (a public redacted version was filed on the same day, F02989/RED).

⁸ KSC-BC-2020-06/F03039, Joint Defence Response to Prosecution consolidated motion for the admission of the evidence of witnesses W02172 and W04858 pursuant to Rule 153, 19 March 2025 ("Second Rule 153 Response"), paras. 7-9.

5. The Defence primary position remains that the Trial Panel should reject the SPO Second Rule 153 Motion. However, should the Trial Panel be minded to admit W02172's evidence via Rule 153, the Defence requests that W02172's [REDACTED] is also admitted pursuant to Rule 138, or, in the alternative, pursuant to Rule 153; it is a prior inconsistent statement on a crucial aspect of the case, whose admission is in the interests of justice, and necessary for the determination of the truth.⁹

II. SUBMISSIONS

6. In its Rule 153 Decision, the Trial Panel, taking note of the Defence's argument regarding the discrepancies in W02172's evidence on this issue, observed that W02172's [REDACTED] had not been offered for admission, and that the SPO would have no objection to the admission of W02172's [REDACTED] should the Defence wish to tender it. The Panel added that it would not assess the admissibility of a statement based on alleged discrepancies with material not offered for admission.¹⁰

7. In these circumstances, and in light of the Trial Panel's ruling that the Defence is not authorised to tender additional statements in a Rule 153 response,¹¹ the Defence requests the admission of W02172's [REDACTED] pursuant to Rule 138, should the Trial Panel grant the Second Rule 153 Motion.

8. W02172's [REDACTED] constitutes a written statement taken in the context of legal proceedings and should therefore be admitted pursuant to Rules 153-155.

⁹ The Trial Panel regularly stresses that it has the responsibility to establish the truth. See, *inter alia*, KSC-BC-2020-06/F01531, Decision on Thaçi, Selimi and Krasniqi Defence Request for Certification to Appeal the Oral Order on Trial Panel Questioning, 17 May 2023, para. 30.

¹⁰ Rule 153 Decision, para. 27.

¹¹ KSC-BC-2020-06/F02765, Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W01234, W01338, W01743, W04423, W04570, W04696, W04812, W04859, and W04860 Pursuant to Rule 153 and Related Defence Motion to Exclude Evidence, 11 December 2024, paras 48, 64; KSC-BC-2020-06/F02842, Decision on Joint Defence Request for Leave to Appeal Rule 153 Decision (F02765), 21 January 2025, paras. 11-13.

However, as previously established by the Trial Panel, admission under Rule 138 by agreement of the Parties is permissible, notwithstanding non-compliance with Rules 153-155.¹² The Trial Panel has, on that basis, already admitted statements under Rule 138,¹³ when admission was not sought through Rules 153-155, as [REDACTED].¹⁴ The Defence submits that W02172's [REDACTED] is thus admissible under Rule 138.

9. Factors in favour of its admission are the SPO's statement that it would not object to the admission of W02172's [REDACTED] if tendered by the Defence;¹⁵ and that W02172's [REDACTED] satisfies the requirements of Rule 138. It is highly relevant, *prima facie* authentic,¹⁶ and it has probative value, which is not outweighed by any prejudicial effect.

10. Importantly, the Trial Panel noted that the Defence objection to the admission of W02172's evidence is "in respect of a critical issue in the case," *i.e.* "whether or not there was a KLA policy of punishing collaborators".¹⁷

11. As outlined in previous submissions, W02172's [REDACTED] is key in this respect as it contains an account of the witness' position on that issue which is effectively inconsistent with that contained in the Rule 153 evidence proposed by the SPO.¹⁸ The admission of W02172's [REDACTED] is thus necessary to enable the Panel to properly assess W02172's inconsistent statements, to determine in due

¹² KSC-BC-2020-06/F01852, Decision on Krasniqi Defence Request to Admit Additional Document Related to W02153, 11 October 2023, paras. 6, 10.

¹³ KSC-BC-2020-06/F01852, Decision on Krasniqi Defence Request to Admit Additional Document Related to W02153, 11 October 2023.

¹⁴ [REDACTED].

¹⁵ First Rule 153 Motion, para. 53(i); KSC-BC-2020-06/F02888, Prosecution reply relating to Rule 153 motion F02782, 31 January 2025, Confidential, para. 4.

¹⁶ The [REDACTED] bears several indicia of authenticity. It contains [REDACTED] and records W02172's answers verbatim.

¹⁷ Rule 153 Decision, para. 27.

¹⁸ Second Rule 153 Response, paras. 7-8; see also First Rule 153 Response, paras. 31-37.

course which parts to accept as the truth, and thus assign proper weight to W02172's evidence. What matters is that the Panel has all the relevant information before it to assess the Witness's credibility and the reliability of her evidence. The admission of this [REDACTED] will enable the Panel to make that assessment and will contribute to the establishment of the truth in this case.¹⁹

12. The significance of W02172's [REDACTED] is further underlined by the fact that it was [REDACTED].²⁰

13. For the reasons above and those outlined in previous submissions, admitting W02172's evidence via Rule 153 without also admitting her [REDACTED] would prejudice the Defence by preventing the Trial Panel from considering the totality of W02172's evidence on a vital issue concerning all of the accused.

14. The Defence therefore requests the Trial Panel to admit W02172's [REDACTED] pursuant to Rule 138.

15. In the alternative, the Defence requests the Trial Panel to admit her [REDACTED] pursuant to Rule 138(1) and Rule 153, as a supplement to the evidence tendered by the SPO,²¹ since the SPO has stated that it does not object to its admission, and the [REDACTED] is relevant to the crimes charged in the Indictment, *prime facie* authentic, and its probative value is not outweighed by its prejudicial effect.

¹⁹ See, *mutatis mutandis*, KSC-BC-2020-06-F02790, Decision on Prosecution Request for the Admission of W01453's Prior Statements Pursuant to Rule 143(2)(c), 16 December 2024, para. 11. See also [REDACTED].

²⁰ [REDACTED].

²¹ The Defence observes that the Trial Panel, in a decision granting the SPO request to admit W01237's evidence pursuant to Rule 153, concomitantly admitted a OSCE "Missing Person" form tendered by the Defence, whose admission was not opposed by the SPO, under Rule 138(1) and Rule 153; the OSCE form contained a statement of W01237. See KSC-BC-2020-06/F01904, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153, 3 November 2023, paras. 14-20.

III. CLASSIFICATION

16. This filing is classified as confidential as it contains information concerning a witness whose identity is not public at this time. A public redacted version will be filed in due course.

IV. CONCLUSION

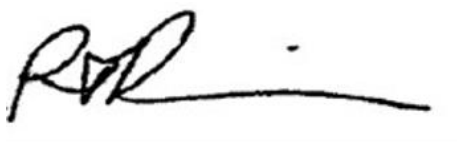
17. For the foregoing reasons, the Defence respectfully requests that, should the Trial Panel grant the Second Rule 153 Motion and admit W02172's evidence through Rule 153, it also admits W02172's [REDACTED] pursuant to Rule 138, or, in the alternative, pursuant to Rule 153.

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Respectfully submitted on 24 March 2025,



Luka Misetic
Counsel for Hashim Thaçi



Rodney Dixon 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



CHAD MAIR
Co-counsel for Rexhep Selimi



RUDINA JASINI
Co-counsel for Rexhep Selimi



Venkateswari Alagendra
Lead Counsel for Jakup Krasniqi



Shyamala Alagendra Khan
Co-Counsel for Jakup Krasniqi



K:



Aidan Ellis
Co-Counsel for Jakup Krasniqi

Victor Băieșu
Co-Counsel for Jakup Krasniqi