

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 Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr. Fidelma Donlon

Filing Participant: Defence Counsel for Jakup Krasniqi

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Public Redacted Version of

Krasniqi Defence Request to Admit Additional Document Related to W02153

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I. INTRODUCTION

1. The Defence for Mr. Jakup Krasniqi (“Defence”) hereby requests the admission of an Official Note¹ of a post-testimony meeting between representatives of the Specialist Prosecutor’s Office (“Prosecution”) and W02153, who testified as a Prosecution Witness before the Kosovo Specialist Chambers (“KSC”) on 18 and 19 July 2023.

2. Having been called by the Prosecution to give evidence about the alleged identification of Mr. Krasniqi at a detention site in Malishevë/Mališevo, in his post-testimony meeting W02153 stated that “he thought Jakup KRASNIQI was always peripheral and that he did not think Jakup KRASNIQI was involved in any of this.”² The Official Note thus provides a crucial insight into the witness’ understanding of Mr. Krasniqi’s role and responsibilities. The Defence therefore requests that the Official Note of the post-testimony meeting be admitted pursuant to Rule 138³ or, in the alternative, pursuant to Rule 154 as an associated exhibit.

3. As set out below, the Prosecution does not oppose the admission of the additional document pursuant to Rule 138.

4. Pursuant to Rule 82(3) of the Rules, this filing is submitted confidentially because it refers to the content of evidentiary material currently classified as confidential.

¹ 114335-114335.

² *Idem*, para. 2.

³ Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”).

II. SUBMISSIONS

5. On 23 June 2023, the Prosecution requested the admission of the statements⁴ and associated exhibits⁵ of W02153. These requests were granted on 10 July 2023,⁶ subject to verifications of the truth and accuracy of their contents⁷ and with the exclusion of two paragraphs from the statement given to the Prosecution.⁸ In his statement to the Prosecution, W02153 alleged that Mr. Krasniqi had been identified at the Malishevë/Mališevo police station and that he “was quite certain that...Krasniqi [was] present at the detention site.”⁹

6. During cross-examination, amongst other points, W02153 was questioned by the Defence on interviews he conducted with alleged victims of crimes in his capacity as an OSCE Human Rights Officer.¹⁰ When questioned as to the potential misidentification of Jakup Krasniqi by his interviewees, W02153 admitted that it was possible that “there may have been someone who like -- looked like Mr. Krasniqi or some other possibility.”¹¹ W02153 noted that he may have confused Mr. Krasniqi for Jakup Hoti, who was also alleged to have been present at the Malishevë/Mališevo police station.¹² W02153 further acknowledged that the statements he had taken did

⁴ 076841-076856; 076841-076856-AT; U008-7623-U008-7629; U008-7623-U008-7629-AT; 0106-8151-0106-8166; 0106-8151-0106-8166-AT. Note that following the Trial Panel’s Decision on 10 July 2023, the September 2018 statement W02153 gave to the Prosecution was redisclosed as 114301-114316_F01664; 114301-114316_F01664-AT.

⁵ SPOE00130803-00130867; U007-9607-U007-9661, p. U007-9617; 0206-2089-0206-2095; 0206-2089-0206-2095-AT; 0106-8167-0106-8167; SPOE00196030-00196030; SPOE00196031-00196031; SPOE00196032-00196032; SPOE00196033-00196033; SPOE00196034-00196034; SPOE00196035-00196036; SPOE00196037-00196037; SPOE00196137-00196137; SPOE00196138-00196142; 0106-8182-0106-8183; 0106-8184-0106-8185.

⁶ KSC-BC-2020-06, F01664, Trial Panel II, *Decision on Prosecution Motion for Admission of Evidence of W00072, W02153 and W04586 Pursuant to Rule 154*, 10 July 2023, confidential.

⁷ *Idem*, para. 35.

⁸ *Idem*, para. 29, which excludes paras 53-54 of the statement to the Prosecution.

⁹ 114301-114316_F01664, para. 15.

¹⁰ KSC-BC-2020-06, Transcript of Hearing of 19 July 2023 (“Hearing of 19 July 2023”), p. 6155, line 5 to p. 6157, line 3.

¹¹ *Idem*, p. 6167, lines 14-15.

¹² *Idem*, p. 6171, lines 7-14.

not necessarily support the assertion that Jakup Krasniqi was indeed present in Malishevë/Mališevo.¹³ Finally, he noted that, having not met Mr. Krasniqi himself, he had not had “the pleasure of [meeting] a very learned and impressive individual and his conversation.”¹⁴ It was evident by the end of his cross-examination that W02153 was no longer “quite certain” of Mr. Krasniqi’s alleged presence at the detention site.

7. Following his testimony, W02153 met with representatives from the Prosecution. During the course of this short meeting, W02153 stated that [REDACTED]. This statement differs substantially from his original statement to the Prosecution and confirms the evolution of his position during cross-examination.

8. The Defence requests that the document be admitted pursuant to Rule 138, which provides that evidence submitted to the Panel shall be admitted if it is relevant, authentic, has probative value and its probative value is not outweighed by its prejudicial effect.¹⁵ Following *inter partes* discussions,¹⁶ the Prosecution did not oppose admission of the document by agreement, consistent with the stipulations set out in Rule 138.

9. The document is plainly relevant to the proceedings. The role of Mr. Krasniqi is a central issue. W02153 was relied on by the Prosecution in relation to an Indictment allegation against Mr. Krasniqi.¹⁷ The assessment by this very witness that in fact Mr. Krasniqi’s role was [REDACTED] and [REDACTED] is highly relevant to the truth of

¹³ Hearing of 19 July 2023, p. 6173, lines 11-16.

¹⁴ *Idem*, p. 6164, lines 19-20.

¹⁵ KSC-BC-2020-06, F01409, Trial Panel II, *Decision on Specialist Prosecutor’s Bar Table Motion*, 31 March 2023, confidential, para. 8.

¹⁶ The Defence contacted the SPO via email on 16 August 2023 to ascertain whether the SPO would object to the admission of the document. The SPO responded on the same day that they did not intend to object.

¹⁷ KSC-BC-2020-06, F01594/A03, Specialist Prosecutor, *Lesser Redacted Version of Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief*, 9 June 2023, confidential, para. 371.

the Prosecution's pleaded allegation, the assessment of W02153's evidence and the role of Mr. Krasniqi more broadly.

10. The document is authentic. It is an Official Note prepared by the Prosecution. It identifies the date and duration of the meeting and the date of the Official Note. It was typed soon after the meeting. It is signed by a member of the Prosecution to confirm its authenticity.

11. The document has probative value. It tends to disprove the Prosecution's allegation that Mr. Krasniqi was involved in the detentions in Malishevë/Mališevo. It also has probative value in relation to the assessment of the credibility and reliability of the evidence of W02153 and the role of Mr. Krasniqi more generally.

12. There is no prejudicial effect. The document was prepared by the Prosecution itself following a meeting with one of the Prosecution's witnesses. The Prosecution could not claim to be prejudiced by its contents and, indeed, the Prosecution has indicated *inter partes* that it does not oppose admission under Rule 138. Nor is there any prejudice to any other Accused, because the document does not relate to them. The Rule 138 criteria are therefore met and the record should therefore be admitted.

13. In the alternative, the document should be considered an associated exhibit under Rule 154. The witness was present in court, was cross-examined by members of the respective defence teams and questioned by the Trial Panel, and the Official Note contains a statement made at the culmination of testimony that aligns with the sentiments expressed during the witness' testimony itself. It therefore meets the criteria for admission. The Defence notes that Witness Preparation Notes assembled by the Prosecution, have been consistently admitted as evidence under Rule 154.¹⁸ Per

¹⁸ 112720-112723; [REDACTED]; 113193-113197; 113279-113286; 113598-113603; 113604-113611; 114125-114141. *See also* the preparation note of W02153 himself: 114260-114272.

the Order on the Conduct of Proceedings, official notes shall be provided by the calling Party when “any new information [is] obtained from the witness.”¹⁹ In this instance, W02153 has provided new information that substantially alters his original assertions, and supplements the information established during cross-examination. The Official Note thus constitutes an “inseparable and indispensable”²⁰ part of the record related to W02153 and should be admitted as an associated exhibit pursuant to Rule 154.

III. CONCLUSION

14. For all of the reasons outlined above, the Official Note is relevant to W02153’s testimony, authentic, and its probative value is not outweighed by any prejudicial effect. Failing to admit the document would prejudice the Defence by preventing the Trial Panel from considering the totality of W02153’s evidence on a vital issue concerning Mr. Krasniqi’s alleged presence at a detention centre. The Defence therefore respectfully requests that the Trial Panel admit this document pursuant to Rule 138 or, in the alternative, Rule 154.

¹⁹ KSC-BC-2020-06, F01226/A01, Trial Panel II, *Order on the Conduct of Proceedings*, 25 January 2023, public, para. 96.

²⁰ KSC-BC-2020-06, F01380, Trial Panel II, *Decision on Admission of Evidence of First 12 Witnesses Pursuant to Rule 154*, 16 March 2023, confidential, para. 24.

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