

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

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**Public Redacted Version of Joint Defence Response to Prosecution motion for
admission of evidence of Witnesses W00498, W01140, and W01763 pursuant to
Rule 154 (F01931)**

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I. INTRODUCTION

1. The Defence for Messrs Thaçi, Veseli, Selimi, and Krasniqi (collectively, “the Defence”) hereby files its response to the Prosecution motion for admission of evidence of Witnesses W00498, W01140, and W01763 pursuant to Rule 154 (“the Motion”).¹
2. The SPO seeks admission pursuant to Rule 154 of the prior statements and associated exhibits of three witnesses. The Defence hereby objects to parts of the material tendered through Rule 154 on the grounds that: (i) the SPO has failed to substantiate its relevance; (ii) the documents tendered as associated exhibits do not constitute an indispensable or inseparable part of the statements to which they relate; (iii) their probative value is outweighed by their prejudicial effect and (iv) the time-saving function of admission pursuant to Rule 154 is overshadowed by the lengthy *viva voce* testimony sought by the SPO.
3. Finally, some of the evidence sought to be tendered concerns matters of pivotal importance to the Defence case the admission of which would prove highly prejudicial for the rights of the Accused.

II. SUBMISSIONS

A. W00498

4. W00498 is the son of [REDACTED], a deceased witness whose evidence the Prosecution will seek to tender pursuant to Rule 155. W00498 provides second-hand evidence which recites what he claims [REDACTED] told him about her detention and the detention of their family members at [REDACTED], in [REDACTED]. The extremely limited probative value of W00498’s evidence does not outweigh the prejudicial effect of its admission. W00498’s evidence is entirely

¹KSC-BC-2020-06/F0931, Prosecution motion for admission of evidence of Witnesses W00498, W01140, and W01763 pursuant to Rule 154 with confidential Annexes 1-3, 16 November 2023.

hearsay. In effect, the Prosecution intends to use W00498 as a vehicle through which to admit allegations actually made by [REDACTED] concerning the alleged acts and conduct of [REDACTED], which can only properly be tendered through an application to admit the statements of [REDACTED] through Rule 155. W00498's evidence should therefore not be admitted.

5. The only relevant evidence that W00498 can give is hearsay. At the outset of his interview with the SITF, W00498 declared "[REDACTED]".² At the end of the interview, he repeated "[REDACTED]".³ It is quite clear that W00498 did not witness the relevant events himself; he was working in [REDACTED] when his family members were detained.⁴ W00498 did not witness their detention. His evidence offers nothing more than a recitation of allegations he claims to have heard from [REDACTED], who is [REDACTED], whose evidence [REDACTED]. W00498's evidence thus has no probative value.
6. Contrary to the Prosecution's position,⁵ W00498's evidence does not "provide corroboration" to [REDACTED]'s evidence. W00498 witnessed nothing. He cannot provide evidence which independently supports [REDACTED]'s account; he can only repeat what [REDACTED] told him. Repetition of the same account from the same original source should not be mistaken for corroboration. In any event, the Trial Panel has expressly held that a secondary witness cannot attest to a witness statement being tendered for the truth of its contents. Attempts by the Defence to tender related statements through a separate witness have been refused, with the tendering party advised to seek admission through Rules 153-155.⁶ Yet, in this instance, the Prosecution seeks to circumvent this system by

² 000152-TR-ET, p.4 lines 18-19.

³ *Idem*, p.32 lines 21-22.

⁴ *Idem*, p.5 lines 16-18.

⁵ SPO Request, para. 5.

⁶ Trial Hearing- 17 May 2023, p. 4251, line 22 – p. 4252, line 10.

using one witness to attest to the veracity of another. Just as this approach has not been permitted thus far, it should not be permitted in this instance.

7. Moreover, the prejudicial effect of admitting this evidence wholly outweighs any probative value it possesses. W00498 repeats [REDACTED]'s allegation, relied upon by the Prosecution in the Indictment, that [REDACTED]. This allegation is denied. Extreme caution is required in assessing identification evidence due to the vagaries of human perception and recollection, particularly when the identification was made in turbulent and traumatising circumstances.⁷ Admitting hearsay evidence about the identification of [REDACTED], is unfairly prejudicial to [REDACTED] because he has no opportunity to confront the original maker of the allegation against him. The Defence cannot be expected to cross-examine [REDACTED] through W00498; W00498 was not there, he cannot confirm when [REDACTED] claims that she saw [REDACTED], for how long she observed him or how she identified him. Accordingly, the evidence cannot fairly be admitted.
8. Additionally, the inconsistencies which permeate [REDACTED]'s evidence have already been addressed on the trial record. [REDACTED] was questioned extensively in relation to a statement given by [REDACTED], including the means by which the statement was taken,⁸ preserved,⁹ and verified.¹⁰ During his testimony, [REDACTED] admitted that the information contained in the statements was not collected to form a component of a criminal trial, and that the information therein was not subjected to follow-up investigation.¹¹ Shortly after his testimony ended, [REDACTED] accepted that "he did not think

⁷ ICTY, *Prosecutor v. Kupreškić et al.*, IT-95-16-A, Appeals Chamber, *Appeal Judgement*, 23 October 2001, paras 34-41; ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08, Trial Chamber III, *Judgment Pursuant to Article 74 of the Statute*, 21 March 2016, para. 241.

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

[REDACTED] was involved in any of this".¹² W00498's evidence cannot cure these fundamental defects, since he himself did not witness any of the alleged events.

9. Thus, while the Defence does not contest the *prima facie* authenticity of W00498's Rule 154 statement,¹³ the minimal probative value of this hearsay evidence is wholly outweighed by its prejudicial effect and his evidence should not be admitted.
10. Finally, the Defence further notes that the sole exhibit associated with W00498's statement is not tendered for admission.¹⁴ Any attempt to tender [REDACTED]'s prior statements through W00498 will be opposed; the only permissible way to tender this material is through a written application pursuant to Rule 155.

B. W01763

11. W01763's Rule 154 statement relates to his alleged arrest and detention, with two relatives, in [REDACTED]. The Defence has no objection to W01763's Rule 154 statement.

C. W01140

12. The Defence does not contest the *prima facie* authenticity and reliability of W01140's Rule 154 statements.¹⁵
13. However, the statements of W01140 in their totality are comparatively short and the time estimated for direct examination is currently one hour and a half. Given the nature and the scope of W01140's expected testimony, leading the witness

¹² [REDACTED].

¹³ 000152-TR-ET RED; 000152-TR-AT RED.

¹⁴ Prosecution Motion, Annex 1, p. 2.

¹⁵ KSC-BC-2020-06/F01931/A02, W01140: Annex 2 to Prosecution motion for admission of evidence of Witnesses W00498, W01140, and W01763 pursuant to Rule 154, p.1-3 (069662-TR-ET Part 1 RED2; 069662-TR-ET Part 2; 069662- TR-ET Part 3; 069662-TR-ET Part 4 RED2; 028512-028516-ET RED2; 028544-028546-ET RED2; 028643-028658-ET RED2).

viva voce would not add significantly to the expected trial time and would further provide necessary clarity for the evidentiary record. If, however, W01140's statements are admitted pursuant to Rule 154, the Defence will contest the elucidation of repetitive evidence by the SPO in court which is already contained in the admitted statements.

14. Regarding the content of W01140's evidence, a number of inconsistencies permeate W01140's statements, some of which the SPO highlighted in its interview with W01440. For instance, W01440 omitted to provide in his initial statement information about his [REDACTED].¹⁶ W01440 further provided new information concerning the persons involved in his alleged beating only during the course of his questioning by the [REDACTED], despite the fact that he had been interviewed at least twice by that time.¹⁷
15. W01140's statements are relied upon in the SPO Pre-Trial Brief with regards to detention and mistreatment of W01140 and [REDACTED],¹⁸ as well as at least two generalised allegations.¹⁹ Yet, W01140's SPO interview does not appear to support the allegation that "[REDACTED]".²⁰
16. In addition, W01440 told the SPO about his [REDACTED], in particular stating during the interview that he had brought "[REDACTED]".²¹

¹⁶ 069662-TR-ET Part 1, pages 15-16.

¹⁷ 069662-TR-ET Part 3, pages 19.

¹⁸ KSC-BC-2020-06/F01594/A02, ANNEX 2 to Prosecution submission of updated witness list and confidential lesser redacted version of pre-trial brief, Confidential Redacted Version of 'Amended List of Witnesses', 9 June 2023.

¹⁹ See KSC-BC-2020-06/F01594/A03, ANNEX 3 to Prosecution submission of updated witness list and confidential lesser redacted version of pre-trial brief, Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief', 9 June 2023 (SPO PTB) para. [REDACTED] including fn. [REDACTED] and para. [REDACTED] including fn. [REDACTED].

²⁰ SPO PTB, para. [REDACTED] at fn. [REDACTED].

²¹ 069662-TR-ET Part 4, pages 5-6.

17. Considering the inconsistencies between W01140's statements, W01140's [REDACTED] which affects the credibility and reliability of his evidence, his anticipated testimony regarding the alleged detention and mistreatment of [REDACTED], and the fact that for some of its allegations the SPO relied solely on W01140's statements, it is important to have a clear record of W01140's evidence. Therefore, leading the witness *viva voce* would not add significantly to the trial time and would provide necessary clarity in relation to the issues raised above.
18. The Defence takes no issue at the present moment with W01140's associated exhibits tendered for admission.

III. CONFIDENTIALITY

19. These submissions are filed confidentially pursuant to Rule 82(4) as they respond to confidential submissions filed by the SPO. The Defence will submit a public redacted version of the present submissions in due course.

IV. CONCLUSION AND RELIEF REQUESTED

20. In light of the above, the Defence respectfully requests the Trial Panel to take notice of the Defence objections, and to **DENY** the admission of:
- W00498's SITF transcript of interview;
 - W01140's SPO interview, [REDACTED] and associated exhibits.

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Respectfully submitted on 27 November 2023



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