



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

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: Fidelma Donlon

Date: 17 September 2024

Language: English

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**Public Redacted Version of
Reasons for Admission of W03780's Statements and Related Order**

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TRIAL PANEL II (“Panel”), pursuant to Articles 21 and 40(2) and (6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 137, 138(1) and 143(2) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby issues reasons for admitting exhibits P01581, P01582, and P01583 into evidence.

I. PROCEDURAL BACKGROUND

1. On 28 and 29 August 2024, W03780 (“Witness”) testified in these proceedings.¹
2. On 29 August 2024, the Specialist Prosecutor’s Office (“SPO”) tendered three statements of the Witness (“Statements”)² for admission into evidence,³ and the Defence teams for the four Accused (“Defence”) made oral submissions objecting to the admission of the Statements.⁴
3. On the same day, the Panel admitted the Statements into evidence, and indicated that the written reasons underlying its ruling would be provided subsequently.⁵

II. SUBMISSIONS

4. The SPO submitted that, in light of the degree of inconsistency in the witness's examination in contradistinction to his prior accounts, the Statements are

¹ Transcripts of Hearings, 28-29 August 2024, confidential.

² [REDACTED] (“2010 Statement”); [REDACTED] (“2006 Statement”); [REDACTED] (“2018 Statement”).

³ Transcript of Hearing, 29 August 2024, pp. 19297-19299, 19303-19307, confidential.

⁴ Transcript of Hearing, 29 August 2024, pp. 19299-19303, 19307-19308, confidential.

⁵ Transcript of Hearing, 29 August 2024, pp. 19308-19309, confidential. The 2010 Statement has been admitted as P01581; the 2006 Statement has been admitted as P01582; the 2018 Statement has been admitted as P01583.

admissible pursuant to Rule 143(2)(c).⁶ The SPO argued that the Statements fall under the definition of ‘written statement’ consistently applied by the Panel.⁷ In addition, the SPO contended that, even if the Statements did not fall within the Panel’s definition, they would still be admissible under Rule 138.⁸

5. The Selimi Defence opposed the admission of the Statements on the basis that: (i) the 2006 Statement does not constitute a ‘statement’ pursuant to Rule 143;⁹ and (ii) the uniqueness of the witness’s evidence and the inaccuracy with which such evidence was recorded constitute factors militating against the admission of the witness’s prior inconsistent statements.¹⁰ The Selimi Defence also submitted that it is unclear which parts of the 2006 Statement are information provided by the Witness and which parts are supposedly provided by anyone else.¹¹

6. The Krasniqi Defence joined the Selimi Defence’s submissions, and further argued that it is unclear whether the 2010 Statement, which bears no signature, is in fact a compilation of interviews.¹²

7. The Veseli Defence echoed the submissions of the Selimi and Krasniqi Defence, and further argued that: (i) the 2018 Statement does not amount to a prior inconsistent statement and is therefore not admissible pursuant to Rule 143;¹³ and (ii) the Panel is not in a position to assess the relevance and probative value of the

⁶ Transcript of Hearing, 29 August 2024, pp. 19297-19298, confidential, referring to F02130, Panel, *Decision on the Thaçi Defence’s Submissions Concerning Use of Prior Inconsistent Statements Pursuant to Rule 143(2)* (“15 February 2024 Decision”), 15 February 2024; F01821, Panel, *Decision on Prosecution Request for Admission of W03827’s Witness Statements Pursuant to Rule 143(2) and Defence Request for Reconsideration* (“28 September 2023 Decision”), 28 September 2023.

⁷ Transcript of Hearing, 29 August 2024, p. 19298, confidential, referring to 15 February 2024 Decision, para. 15. See also Transcript of Hearing, 29 August 2024, pp. 19305-19306, confidential.

⁸ Transcript of Hearing, 29 August 2024, p. 19298, confidential. See also Transcript of Hearing, 29 August 2024, pp. 19306-19307, confidential.

⁹ Transcript of Hearing, 29 August 2024, p. 19299, confidential.

¹⁰ Transcript of Hearing, 29 August 2024, pp. 19300-19301, confidential, referring to 28 September 2023 Decision, paras 40, 44.

¹¹ Transcript of Hearing, 29 August 2024, p. 19299, lines 20-24.

¹² Transcript of Hearing, 29 August 2024, p. 19301, confidential.

¹³ Transcript of Hearing, 29 August 2024, p. 19302, confidential.

2018 Statement unless and until the SPO states their case in relation to the contents of such statement.¹⁴ The Veseli Defence further submitted that, if the Panel determines that the 2006 Statement constitutes a ‘written statement’ under the Specialist Chambers’ (“SC”) legal framework, then only Rules 143, 153, 154, or 155 are applicable.¹⁵

8. The Thaçi Defence joined the Selimi Defence’s submissions, and further reiterated its objection to the use of Rule 143 statements for the truth of their contents or the admission of any part(s) of a Rule 143 statement which was not put to the witness.¹⁶

III. APPLICABLE LAW

9. The applicable law regarding the admission of evidence pursuant to Rules 138 and 143 has been laid out extensively in previous decisions issued by the Panel.¹⁷

IV. DISCUSSION

10. At the outset, the Panel considers the Defence’s submissions that the Statements do not fall under the definition of ‘written statement’ pursuant to the SC’s legal framework.¹⁸ The Panel notes that: (i) the 2010 Statement is a verbatim transcript of the Witness’s hearing before [REDACTED]; (ii) the 2006 Statement appears to be an investigative note, prepared to assist in planning future investigations, which reproduces information provided by the Witness in the course of a formal investigation conducted by [REDACTED]; and (iii) the 2018

¹⁴ Transcript of Hearing, 29 August 2024, pp. 19302-19303, confidential.

¹⁵ Transcript of Hearing, 29 August 2024, pp. 19302, 19307-19308, confidential.

¹⁶ Transcript of Hearing, 29 August 2024, p. 19303, confidential.

¹⁷ See 15 February 2024 Decision, paras 10-11; 28 September 2023 Decision, paras 17-18; F01409, Panel, *Decision on Specialist Prosecutor’s Bar Table Motion*, 31 March 2023, confidential, paras 8-13.

¹⁸ Transcript of Hearing, 29 August 2024, p. 19299, confidential.

Statement is a report accounting for what the Witness is recorded to have said during a phone call and a subsequent meeting with an SPO investigator. The Panel is therefore of the view that the three Statements constitute a record, in whatever form, of what the Witness said in respect of facts and circumstances relevant to the case in the context of a criminal investigation or proceedings.¹⁹ For these reasons, the Panel is satisfied that the Statements fall under the definition of ‘written statement’ pursuant to the SC’s legal framework as consistently applied by the Panel. The Panel has therefore assessed whether the Statements tendered under Rule 143(2)(c) meet the admissibility requirements set forth by Rule 138(1) and are therefore admissible into evidence.

11. In relation to relevance, the Panel notes that the Statements have been extensively used by the SPO and the Selimi Defence, in the course of their examination of the Witness, in order, *inter alia*, to confront him with what was being suggested were inconsistencies and changes in his description of various circumstances.²⁰ The Panel is therefore satisfied that, contrary to the Veseli Defence’s argument in relation to the 2018 Statement,²¹ the three Statements fall within the scope of application of Rule 143(2)(c) and are relevant to the credibility of the Witness and reliability of his evidence.

12. Regarding the Thaçi Defence’s objection to the admissibility of those parts of the statements that have not been put to the witness,²² the Panel recalls its previous finding that Rule 143(2)(c) does not require the calling party to read the entire

¹⁹ 15 February 2024 Decision, para. 15. See also F01963, Panel, *Decision on Admission of Documents Shown to W04769*, 27 November 2023, para. 15, fn. 35; F01852, Panel, *Decision on Krasniqi Defence Request to Admit Additional Document Related to W02153*, 11 October 2023, para. 8; F01380, Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154*, 16 March 2023, confidential, paras 12, 26 (a public redacted version was issued on 7 November 2023, F01380/RED); KSC-BC-2020-07, F00334, Panel, *Decision on the Prosecution Request for Admission of Items Through the Bar Table*, 29 September 2021, paras 84-87.

²⁰ See e.g. Transcript of Hearing, 28 August 2024, pp. 19219-19221, 19236-19237, confidential; Transcript of Hearing, 29 August 2024, pp. 19266-19270, 19286-19296, 19314-19316, 19323-19330, confidential.

²¹ Transcript of Hearing, 29 August 2024, p. 19302, confidential.

²² Transcript of Hearing, 29 August 2024, p. 19303, confidential.

statement said to contain inconsistencies to the witness concerned.²³ The Thaçi Defence's objections is accordingly dismissed. In light of the above, the Panel finds that the Statements are *prima facie* relevant to these proceedings.

13. In relation to authenticity, the Panel recalls its above findings that the Statements consist of detailed records of the Witness's accounts taken in the context of criminal investigations conducted by [REDACTED], [REDACTED], and SPO investigators.²⁴ The Panel further notes that the 2010 and 2018 Statements: (i) are dated; (ii) bear the header of the investigating authority conducting the investigation; and (iii) contain the Witness's details as well as those of the participants to the interview, phone call and meeting with the Witness. In addition, the 2018 Statement is signed by the investigator who prepared it. Turning to the Krasniqi Defence's arguments that the 2010 Statement bears no signature and it is not clear if it is in fact a compilation of interviews,²⁵ the Panel notes that, during the SPO's direct examination, the Witness stated that he gave the 2010 Statement voluntarily and cooperatively, and does not remember signing any document.²⁶ The Panel is therefore satisfied that the 2010 Statement was given by the Witness on the date indicated in the document, even if the statement does not bear his signature. The Krasniqi Defence's arguments are therefore rejected. The Panel further notes that the 2006 Statement and the 2010 Statement partly overlap, and many commonalities between these two statements have been explored by the SPO during its direct examination of the Witness.²⁷ In addition, while the 2006 Statement is not dated or signed, has no header indicating the investigative authority that prepared it, and is heavily redacted, the facts and

²³ 15 February 2024 Decision, paras 19-20; F01903, Panel, *Decision on Prosecution Request for Admission of Items Used During the Examination of W04746* ("3 November 2023 Decision"), 3 November 2023 Decision, para. 22.

²⁴ See above para. 10.

²⁵ Transcript of Hearing, 29 August 2024, p. 19301, confidential.

²⁶ Transcript of Hearing, 28 August 2024, p. 19172, confidential.

²⁷ See Transcript of Hearing, 29 August 2024, pp. 19286-19292, confidential.

circumstances reported therein appear to indicate that the document was prepared around August 2006 by [REDACTED] investigators on the basis of contemporaneous discussions with the Witness, identified by a nickname. The Panel has taken into account that the 2006 Statement does not purport to be a verbatim nor an exhaustive record of what the witness said to [REDACTED] investigators at the time. With respect to the Selimi Defence's submission that it is unclear which parts of the 2006 Statement are information provided by the Witness,²⁸ the Panel finds it appropriate to order the SPO to submit the unredacted version of the investigative report containing the 2006 Statement for the limited purpose of providing better context to the redacted version thereof.²⁹ In light of the above, the Panel is satisfied that the Statements bear sufficient indicia of authenticity and are therefore *prima facie* authentic.

14. Having found the Statements to be relevant and authentic,³⁰ the Panel is also satisfied that they have *prima facie* probative value. In relation to prejudice, the Panel considers the Selimi Defence's argument that the uniqueness of the Witness's evidence and the inaccuracy with which such evidence was recorded militate against its admission.³¹ The Panel observes that, in the 28 September 2023 Decision referred to by the Selimi Defence, the Panel was called upon to address the specific situation of a witness who, during the course of his testimony, claimed not to have any recollection of the events recounted in his prior statements.³² In the present circumstances, the Witness fully testified as to the events recounted in his Statements, and did not deny that he gave the relevant Statements. In addition, the Defence has had ample opportunity to cross-examine the Witness regarding every aspect of his evidence that it deemed pertinent, including in

²⁸ Transcript of Hearing, 29 August 2024, p. 19299, lines 20-24.

²⁹ See *below* paras 17, 18(a).

³⁰ See *above* paras 11-13.

³¹ Transcript of Hearing, 29 August 2024, pp. 19300-19301, confidential, *referring to* 28 September 2023 Decision, paras 40, 44.

³² See 28 September 2023 Decision, paras 6-7.

respect of the accuracy of his Statements and the way they were taken.³³ The Panel is therefore of the view that, contrary to the Selimi Defence's submissions, the alleged uniqueness of the Witness's evidence as well as its claimed inaccuracy do not bar its admission into evidence in the present circumstances. This being said, the Panel will take such factors into proper account when assessing the weight to be given to the Statements in light of the totality of the evidence.³⁴

15. Regarding the Thaçi Defence's objection to the Statements being used for the truth of their content,³⁵ the Panel recalls its previous holding that Rule 143(2)(c) provides that a prior inconsistent statement may be admissible for the purpose of assessing the credibility of the witness, as well as for the truth of its contents or for other purposes within the discretion of the Panel.³⁶ The Thaçi Defence's objections is accordingly dismissed.

16. In light of the above, the Panel is satisfied that the probative value of the Statements is not outweighed by their prejudicial effect.

17. For these reasons, the Panel finds that the Statements are relevant and *prima facie* authentic, probative, and not prejudicial. The Panel therefore finds that the Statements are admissible pursuant to Rules 138(1) and 143(2)(c). In relation to the 2006 Statement, the Panel orders the SPO to submit the unredacted version of the investigative report which contains the statement,³⁷ for the limited purpose of providing better context to the redacted version thereof, already admitted into evidence as P01582.³⁸ The Panel therefore directs the Registry to link the unredacted version of the investigative report containing the 2006 Statement to exhibit P01582.

³³ Transcript of Hearing, 29 August 2024, pp. 19312-19337, confidential.

³⁴ 15 February 2024 Decision, para. 21; 28 September 2023 Decision, para. 50.

³⁵ Transcript of Hearing, 29 August 2024, p. 19303, confidential.

³⁶ 3 November 2023, para. 22; 28 September 2023 Decision, paras 28, 36.

³⁷ [REDACTED].

³⁸ See above para. 13.

V. DISPOSITION

18. The Panel hereby provided the reasons for the admission of the Statements into evidence and further:

- (a) **ORDERS** the SPO to provide the Registry with the unredacted version of the investigative report which contains the 2006 Statement for the limited purpose indicated in paragraph 17; and
- (b) **DIRECTS** the Registry to link the unredacted version of the investigative report containing the 2006 Statement to exhibit P01582.



Judge Charles L. Smith, III
Presiding Judge

Dated this Tuesday, 17 September 2024

At The Hague, the Netherlands.