



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 11 November 2024

Language: English

Classification: Public

**Prosecution request for the admission of W01453's prior statements pursuant to
Rule 143(2)(c)
with public Annex 1**

Specialist Prosecutor's Office

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I. INTRODUCTION

1. As directed,¹ pursuant to Rules 138(1) and 143(2)(c) of the Rules² and in line with the Order on the Conduct of Proceedings,³ the Specialist Prosecutor's Office ('SPO') requests⁴ the admission, for the truth of their contents and for the purposes of assessing credibility,⁵ of: (i) W01453's 2003 ICTY Statement⁶ and 2005 ICTY Testimony⁷ in full; and (ii) the excerpts from W01453's 2001 ICTY Statement,⁸ 2002 ICTY Testimony,⁹ and 2011 SPRK Hearing,¹⁰ which were put to W01453 during direct examination following the Panel's authorisation to do so under Rule 143(2).¹¹

2. The Prior Statements¹² are relevant, authentic, and have probative value. W01453's responses during the SPO's examination in court meant that the SPO, with the Panel's authorisation, had to make extensive reference to the Prior Statements, giving W01453 ample opportunity to comment thereon during direct examination. Reference to the Prior Statements was also made during questioning by the Defence

¹ Transcript, KSC-BC-2020-06, 7 November 2024, p.22153, lns.14-20.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ See Annex 1 to Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023, para.107.

⁴ The SPO incorporates by reference its submissions on this request as set out in Transcript, KSC-BC-2020-06, 6 November 2024, pp.22051, ln.20 – 22053, ln.23, 22054, ln.21 – 22055, ln.17, 22058, ln.21 – 22061, ln.3.

⁵ See Reasons for Admission of W03780's Statements and Related Order, KSC-BC-2020-06/F02580, 17 September 2024, Confidential ('W03780 Decision'), para.15.

⁶ Marked for Identification as P01816.1, P01816.1_AT, P01816.1_ET, P01816.2, P01816.2_AT, P01816.2_ET ('2003 ICTY Statement').

⁷ Marked for Identification as P01817.1, P01817_ET, P01114.3_AT.2, P01817.2, P01817.2_AT, P01818.1, P01818_ET, P01818.1_AT, P01818.2, P01818.2_AT, P01819, P01819_ET, P01819_AT, P01820.1, P01820_ET, P01820.1_AT, P01820.2, P01820.2_AT, P01820.3, P01820.3_AT, P01821.1, P01821_ET, P01821.1_AT, P01821.2, P01821.2_AT, P01821.3, P01821.3_AT, P01822.1, P01822_ET, P01822.1_AT, P01822.2, P01822.2_AT, P01822.3, P01822.3_AT ('2005 ICTY Testimony').

⁸ Marked for Identification as P01814, P01814_AT ('2001 ICTY Statement').

⁹ Marked for Identification as P01815, P01815_ET, P01815_AT ('2002 ICTY Testimony').

¹⁰ Marked for Identification as P01823, P01823_AT ('2011 SPRK Hearing').

¹¹ See Annex 1 listing all relevant ERNs, page ranges where applicable, and corresponding MFI numbers as set out in Email from the SPO to CMU, Defence and Victims' Counsel dated 6 November 2024 at 18:02, and Email from CMU to the SPO, Defence and Victims' Counsel dated 7 November 2024 at 09:52.

¹² 2003 ICTY Statement, 2005 ICTY Testimony, 2001 ICTY Statement, 2002 ICTY Testimony, and 2011 SPRK Hearing (collectively, the 'Prior Statements').

and Panel. Admission of the Prior Statements would cause no undue prejudice to the Accused.

II. SUBMISSIONS

3. During the course of its examination, the SPO extensively used the Prior Statements in order, *inter alia*, to confront W01453 with inconsistencies and changes in his description of various circumstances, consistently affording W01453 a fair opportunity to explain, or deny, any alleged inconsistencies between his prior statements and his testimony in court.¹³ In court, W01453 claimed not to recall certain information in the Prior Statements and/or testified in a manner inconsistent with the Prior Statements; after the Prior Statements were put to W01453, he adopted some of them, but primarily rejected the content thereof without credible explanation.¹⁴

4. Admission of the Prior Statements would cause no undue prejudice to the Accused. The SPO made an oral application for the admission of the Prior Statements pursuant to Rule 143 (2)(c) at the end of its direct examination, clearly stating the scope of its tender.¹⁵ Prior to the commencement of cross-examination, the Panel suggested that the Defence consider that any of the Prior Statements can be admitted.¹⁶ The

¹³ See W03780 Decision, KSC-BC-2020-06/F02580, para.11; Decision on the Thaçi Defence's Submissions Concerning Use of Prior Inconsistent Statements Pursuant to Rule 143(2), KSC-BC-2020-06/F02130, 15 February 2024 ('15 February 2024 Decision'), para.20; See, e.g., Transcript, KSC-BC-2020-06, 4 November 2024, pp.21822, ln.16 – 21826, ln.22, 21839, ln.10 - 21854, ln.19.

¹⁴ See, e.g., Transcript, KSC-BC-2020-06, 4 November 2024, pp.21839, ln.10 – 21847, ln.5, 5 November 2024, pp.21879, ln.22 – 21887, ln.21, 21923, ln.14 – 21926, ln.11. See also Transcript, KSC-BC-2020-06, 22 February 2024, p.12902, lns.16-19 ('the inconsistent nature of a prior statement might only become apparent when the witness has given his evidence in court and when his memory has been refreshed and he refuses to adopt an earlier account') and Transcript, KSC-BC-2020-06, 23 May 2024, pp.15879, ln.18 – 15880, ln.1, 24 May 2024, pp.15961, ln.5 – 15963, ln.20 (where the Panel noted that a failure to remember suffices for the purposes of admission pursuant to Rule 143(2)(c)).

¹⁵ See Transcript, KSC-BC-2020-06, 6 November 2024, pp.22051, ln.20 – 22053, ln.23, 22054, ln.21 – 22055, ln.17, 22058, ln.21 – 22061, ln.3; Email from the SPO to CMU, Defence and Victims' Counsel dated 6 November 2024 at 11:09 a.m.

¹⁶ Transcript, KSC-BC-2020-06, 6 November 2024, pp.22064, ln.24 – 22065, ln.2.

Defence then cross-examined W01453, making extensive reference to the Prior Statements.¹⁷

A. THE 2003 ICTY STATEMENT AND 2005 ICTY TESTIMONY SHOULD BE ADMITTED IN FULL

5. In relation to the 2003 ICTY Statement and 2005 ICTY Testimony, the Panel has already found that: (i) they are relevant to the charges in the Indictment; (ii) except for a limited number of excerpts, referred to as the ‘Pages’, the Panel is satisfied of their *prima facie* authenticity and probative value; and (iii) their *prima facie* probative value is not outweighed by any prejudicial effect.¹⁸

6. The 2003 ICTY Statement and 2005 ICTY Testimony should be admitted in full given the extensive references thereto during the SPO’s examination and the need to properly consider them in their full context relative to W01453’s testimony in this case. In this regard, as previously held by the Panel:¹⁹

Rule 143(2)(c) does not require the calling party to read the entire statement said to contain inconsistencies to the witness concerned. Instead, Rule 143(2)(c) merely requires the calling party to establish that the offered statement is “inconsistent” with the witness’s *viva voce* evidence. If the prior inconsistent statement meets the criteria of Rules 138 and 143(2)(c), it is a matter of discretion for the Panel to decide whether to admit the prior inconsistent statement in its entirety, in part, or to direct the Party calling the witness to only read discrete parts into the trial record, and for what purpose(s).

7. As also previously established by the Panel, alleged inaccuracy in a witness’s prior statements does not bar its admission into evidence; such a factor would be taken into account when assessing the weight to be given thereto in light of the totality of the evidence.²⁰ Indeed, the Panel has already considered and rejected Defence

¹⁷ See, e.g., Transcript, KSC-BC-2020-06, 6 November 2024, pp.22074, ln.10 – 22075, ln.11, 22078, ln.23 – 22084, ln.11, 22085, lns 8-16, 22086, ln.21 – 22098, ln.12, 22109, ln.21 – 22110, ln.13, 22113, ln.22 – 22115, ln.1, pp.22116, ln.6 – 22119, ln.5; Transcript, KSC-BC-2020-06, 7 November 2024, pp.22176, ln.13– 22178, ln.1, 22183, ln.1, – 22184, ln.25, 22186, ln.18 – 22189, ln.8, 22190, ln.14 – 22191, ln.16.

¹⁸ Decision on Prosecution Motion for Admission of Evidence of W01453, W03878, W04446, W04575, and W04651 Pursuant to Rule 154 (F02005), KSC-BC-2020-06/F02117, 12 February 2024 (‘Rule 154 Decision’), paras 12, 16, 21, 25. The ‘Pages’ are set out in fn.27 of this decision.

¹⁹ 15 February 2024 Decision, KSC-BC-2020-06/F02130, para.20; W03780 Decision, KSC-BC-2020-06/F02580, para.12.

²⁰ W03780 Decision, KSC-BC-2020-06/F02580, para.14

submissions that statements within the 2003 ICTY Statement that contradict those in the 2005 ICTY Testimony mean they are inadmissible.²¹

8. In the Rule 154 Decision, the Panel effectively narrowed down such contradictions to just three matters, as set out in the Pages: (a) Fatmir LIMAJ liaising or co-ordinating with the KLA General Staff in early 1998; (b) detainees in Llapushnik/Lapušnik and the specific location where they may have been detained; and (c) whether certain persons were stopped as opposed to arrested or detained. The SPO asked about these matters during its examination.²² The Panel should admit the 2003 ICTY Statement and 2005 ICTY Testimony, including the Pages, in order to ensure that the case record includes the full accounts given by W01453 in relation to these issues, enabling the Panel to better assess the veracity and credibility thereof at the end of the trial.

9. As noted by the Panel:²³

the SPO is not required at this stage to provide notice to the Panel or to the Defence of which part or parts of a witness statement is being offered for the truth of its content or for the credibility purposes or both. The Panel notes, however, that the Panel expects the SPO to make this matter very clear when it will be asked to present its case at the end of these proceedings and to expect the Panel to pick and choose.

B. THE EXCERPTS FROM THE 2001 ICTY STATEMENT, 2002 ICTY TESTIMONY AND 2011 SPRK HEARING SHOULD BE ADMITTED

10. The SPO tenders only the excerpts used with W01453 from his 2001 ICTY Statement, 2002 ICTY Testimony, and 2011 SPRK Hearing given that relatively fewer excerpts from these items were put to W01453 during the SPO's examination, and considering that the non-tendered excerpts in such items generally concern matters of limited relevance to the case. However, the SPO would not object to the admission of

²¹ Rule 154 Decision, KSC-BC-2020-06/F02117, para.15.

²² See, e.g., Transcript, KSC-BC-2020-06, 5 November 2024, pp.21926, ln.13 – 21927, ln.20, 6 November 2024, pp.22019, lns.6-18, 22022, ln.16 – 22024, ln.3, 22035, ln.19 – 22036, ln.11.

²³ Transcript, KSC-BC-2020-06, 6 November 2024, p.22066, lns.4-12.

such prior statements in their entirety should the Panel, in the exercise of its discretion,²⁴ deem this preferable.

11. As set out in further detail below, these statements are relevant and authentic. The excerpts tendered from these statements also have probative value, addressing matters directly relevant to this case, including the role and authority of W01453, Fatmir LIMAJ, Hashim THAÇI and Kadri VESELI in the KLA.

1. 2001 ICTY Statement

12. The 2001 ICTY Statement is in official ICTY statement format, including the dates and identification of attendees. Every page of the English version is signed by W01453, as also confirmed by the witness during his 9 March 2005 testimony in *Limaj et al.*²⁵ The statement contains an acknowledgement, signed by W01453, that the statement was read back to him in Albanian and that it is true to the best of his knowledge and recollection.²⁶ In his 2005 ICTY Testimony²⁷ and during his November 2024 testimony,²⁸ W01453 acknowledged that he was being truthful in his 2001 ICTY Statement.

2. 2002 ICTY Testimony

13. The 2002 ICTY Testimony is recorded in official ICTY transcripts, the audio-video of which is also being tendered for admission in line with the Panel's practice in instances of admission pursuant to Rule 143(2).²⁹ During his November 2024 testimony, W01453 acknowledged that he was being truthful in his 2002 ICTY Testimony.³⁰

²⁴ 15 February 2024 Decision, KSC-BC-2020-06/F02130, para.20.

²⁵ P01821_ET, pp.89, ln.13 – 90, ln.14.

²⁶ P01814, p.SITF00223960; *See also* P01821_ET, pp.88, ln.20 – 90, ln.14 and K022-9464-K022-9465.

²⁷ P01817_ET, p.35, lns.15-21.

²⁸ Transcript, KSC-BC-2020-06, 4 November 2024, pp.21827, ln.20 – 21828, ln.3.

²⁹ *See, e.g.*, Transcript, KSC-BC-2020-06, 25 September 2023, p.8183, lns.14-23.

³⁰ Transcript, KSC-BC-2020-06, 4 November 2024, pp.21844, ln.14 – 21845, ln.2.

3. 2011 SPRK Hearing

14. The 2011 SPRK Hearing is in official SPRK record format, including the date and identification of attendees. The English version is signed by W01453 on every page. W01453 was informed of his obligations, including to tell the truth, and confirmed his understanding thereof.³¹ W01453 confirmed, by signature, that the statement was read to him in Albanian and that he agrees it is a true record of his testimony which he signs without coercion.³²

III. RELIEF SOUGHT

15. For the forgoing reasons, the Panel should admit the Prior Statements.

Word count: 1915



Kimberly P. West
Specialist Prosecutor

Monday, 11 November 2024

At The Hague, the Netherlands.

³¹ P01823, p.SITF0009397.

³² P01823, p.SITF0009405.