

**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 Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr. Fidelma Donlon

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

**Date:** 8 April 2025

**Language:** English

**Classification:** Public

---

**Joint Defence Request for Leave to Appeal**

**the Second Oral Order of 1 April 2025**

---

**Specialist Prosecutor**

Kimberly P. West

**Counsel for Victims**

Simon Laws KC

**Counsel for Hashim Thaçi**

Luka Mišetić

**Counsel for Kadri Veseli**

Rodney Dixon KC

**Counsel for Rexhep Selimi**

Geoffrey Roberts

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

## I. INTRODUCTION

1. The Defence for Messrs. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi ("Defence") seek leave to appeal the second oral order dated 1 April 2025 (reasons for the admission of the prior statements of W04745) on the following issues:

- a) Whether the Trial Panel erred in law or abused its discretion in failing to take adequate measures to secure the oral testimony of W04745;
- b) Whether the Trial Panel erred in law in finding that the fact that a witness denied making a statement has "no bearing" on its status as a "statement" or on authenticity;
- c) Whether the Trial Panel erred in admitting W04745's preparatory note pursuant to Rule 143.

## I. PROCEDURAL HISTORY

2. On 5 – 11 March 2019, the SPO interviewed W04745.<sup>1</sup> During the course of that interview, the SPO showed W04745 an UNMIK Supplement / Continuation Form dated January 2001 which purports to record information provided by W04745.<sup>2</sup> W04745 responded that more than 80% of the 2001 document was fabricated,<sup>3</sup> that not even a journalist would believe it,<sup>4</sup> and that he had never said these things.<sup>5</sup>

---

<sup>1</sup> 083217-TR-ET Parts 1-20.

<sup>2</sup> SPOE00144632-SPOE00144633.

<sup>3</sup> 083217-TR-ET Part 10 Revised RED3, p. 22, lines 1-3.

<sup>4</sup> *Idem*, p. 23, lines 8-13.

<sup>5</sup> *Idem*, p. 24, lines 22-9.

3. On 17 – 20 February 2025, the SPO carried out a preparation session with W04745, during the course of which the SPO again showed W04745 his purported prior statement dated 2001. W04745 again responded that “its contents are not true.”<sup>6</sup>

4. On 24 February 2025, W04745 began to testify. Immediately before the ten o’clock break, W04745 asked the Court to “show me the document in which I have raised my suspicions and doubts regarding my interviews with the investigators and Prosecutors in 2019.”<sup>7</sup> On resumption, W04745 repeated that “I will not answer any questions until the review of that document is done in public session.”<sup>8</sup> The Presiding Judge responded that “You will be ordered to answer the questions. Do you understand? You don't have the option.”<sup>9</sup> After a further exchange, the Presiding Judge indicated “If you refuse to answer all questions, there are other procedures that the Prosecution can take to admit your prior statements and included in that will be that document, and you will never be able to question it if that's done that way.”<sup>10</sup>

5. The Prosecution then showed several documents to W04745, who continued to say that these were not the document and to refuse to answer the Prosecution’s questions. The Prosecution asked the Panel to compel the witness to answer.<sup>11</sup> The Presiding Judge said to W04745 “You understand you are ordered to answer the question, and you could be in violation of this Court's rules if you fail to answer the question, and you could be fined if you fail to answer the question.”<sup>12</sup> W04745 responded “Not only fined, but you can even -- even if I get killed, I will not speak before having seen that document. Even if I am to be killed, I will not speak”.<sup>13</sup> After

---

<sup>6</sup> P02080, p. 125923, para. 119.

<sup>7</sup> KSC-BC-2020-06, Trial Hearing – 24 February, p. 25502 lines 10-12.

<sup>8</sup> *Idem*, p. 25504, lines 11-13.

<sup>9</sup> *Idem*, p. 25504, line 25 – p. 25505, line 2.

<sup>10</sup> *Idem*, p. 25506 lines 21-25.

<sup>11</sup> *Idem*, p. 25528 line 25 to T.25529 line 1.

<sup>12</sup> *Idem*, p. 25529 lines 7-10.

<sup>13</sup> *Idem*, p. 25529 lines 11-13.

W04745 again refused to answer a question, the Prosecution tendered the 2001 document, the SPO interview and the preparation notes pursuant to Rule 143.

6. After the Defence objected that not all avenues had been exhausted and W04745 had not actually been held in contempt, the Presiding Judge responded that “The witness has been warned by the Court. He's indicated he really didn't care and would refuse to answer, and we do not see the need to go any further on contempt at this time.”<sup>14</sup>

7. On 25 February 2025, after further legal argument, the Panel indicated that it would admit all the tendered documents pursuant to Rule 143 and that reasons would follow.<sup>15</sup> Upon returning to the courtroom, and having received advice from duty counsel, at the outset of cross-examination W04745 then indicated that “after consulting my attorney, I am saying that I will answer all the questions posed to me by both sides. In order to help the Defence, I will answer also the questions asked of me from the Prosecutor”.<sup>16</sup> Cross-examination then proceeded, without the Prosecutor attempting to restart direct examination.

8. On 1 April 2025, the Panel provided its reasons, finding that, reading Rule 143(2)(b) and (c) together, the lack of genuine attempt to answer questions constituted a prior inconsistent statement.<sup>17</sup> Further, the Panel found that an investigative note which reproduces information provided by a witness qualifies as a statement and that “[t]he fact that a witness denies making the statement has no bearing on such finding”.<sup>18</sup> The Panel went on to find that the statement “reproduces information

---

<sup>14</sup> KSC-BC-2020-06, Trial Hearing – 24 February 2025, p. 25530 lines 7-25.

<sup>15</sup> KSC-BC-2020-06, Trial Hearing – 25 February 2025, p. 25584 lines 22-25.

<sup>16</sup> *Idem*, p.25590 lines 17-20.

<sup>17</sup> KSC-BC-2020-06, Trial Hearing – 1 April 2025, p. 26123 lines 11-14.

<sup>18</sup> *Idem*, p. 26124 lines 13-14.

provided to the investigators by 4745” and there were multiple indicia of authenticity and reliability.<sup>19</sup>

## II. THE TEST FOR CERTIFICATION IS SATISFIED

9. The Defence incorporates by reference its prior submissions on the test for certification.<sup>20</sup>

10. The three issues arise from the Impugned Decision and are not mere disagreements. Furthermore, the three issues significantly affect the fair and expeditious conduct of proceedings and the outcome of trial, and resolution by the Appeals Panel may materially advance proceedings. Accordingly, certification should be granted.

### The Issues arise from the Impugned Decision

11. The First Issue relates to the procedure which was followed prior to deciding to admit W04745’s evidence in writing, specifically that the Trial Panel moved straight to admitting W04745’s evidence in writing without expressly finding W04745 in contempt of court, fining him or imprisoning him. As set out in paragraph 5, 6 and 7 above, it arises directly from the decisions made by the Presiding Judge on 24 and 25 February 2025.

---

<sup>19</sup> *Idem*, p. 26124 lines 17-19.

<sup>20</sup> See, for example, KSC-BC-2020-06, F02305, Specialist Counsel, *Krasniqi Defence Request for Certification to Appeal the Decision on Prosecution Fourth Motion for Admission of Evidence Pursuant to Rule 155*, 13 May 2024, public, paras 10-13.

12. The First Issue is not a mere disagreement. It is a legal issue capable of undermining the trial proceedings as a whole. The Defence recalls that in *Haradinaj* the Appeals Chamber of the ICTY ordered a re-trial because the Trial Chamber had failed to take adequate measures to secure the testimony of two witnesses.<sup>21</sup> In particular, the Appeals Chamber held that “actual arrest and the immediate threat of imprisonment have proved effective in compelling testimony from unwilling witnesses”.<sup>22</sup> The First Issue challenges whether the Impugned Decision fell into the same error as the Trial Chamber in *Haradinaj* – it admitted the evidence of an important witness in writing without taking adequate measures to secure oral testimony. Specifically, available steps which were not taken included: enquiring whether W04745’s approach had changed following consultation with duty counsel; exploring his oral answer on 25 February 2024 that he would answer the Prosecutor’s questions; fining W04745; and imprisoning W04745.

13. The Second Issue also arises from the Impugned Decision. It relates to the Panel’s express finding that W04745’s denial of the 2001 document “has no bearing” on whether it should be regarded as a statement, and the subsequent disregard of W04745’s disavowal of the document in assessing authenticity.

14. The Second Issue is not a mere disagreement. The Defence challenges the finding that the W04745’s disavowal had “no bearing” on the issues. If the Impugned Decision had evaluated all of the evidence and concluded that W04745’s disavowal of the 2001 document was outweighed by other factors, then any resulting request for certification might be challenged as a mere disagreement with the weighting exercise. However, the Impugned Decision found that the W04745’s disavowal had “no bearing” at all so that it was not considered in the Panel’s assessment. That was an error of law. In assessing whether a document is an investigative note which reproduces information

---

<sup>21</sup> ICTY, *Prosecutor v Haradinaj et al*, IT-04-84-A, Appeal Judgment, 19 July 2010, para. 40.

<sup>22</sup> *Ibid.*, para. 42.

provided by W04745, it must, at least, be a relevant factor that W04745 has denied providing the information to the investigator. Further, even if it was not an error to treat the document as a statement, W04745's disavowal of the document was also relevant to authenticity. It was not open to the Panel to conclude that the document reproduces information provided to the investigators by W04745 without considering W04745's denial that he provided that information.

15. The Third Issue equally arises from the Impugned Decision as it relates to the admission by the Panel of the Preparation Note for W04745 under Rule 143.

16. This likewise is not a mere disagreement. The well-established procedure of this Panel, in order to safeguard the rights of the Defence and the fairness of proceedings, is that the evidence arising from the Prosecution's preparatory session must be divided into Preparation Note 1, which contains clarifications and corrections to existing prior statements, and Preparation Note 2, which contains new material. The contents of Preparation Note 2 are not admissible in writing, but must be elicited live from a witness. Throughout the duration of this trial, the Panel has never previously admitted a Preparation Note 2 into evidence. Indeed, the Panel previously barred attempts by the SPO to encroach upon this practice by seeking to admit a Preparation Note 2 Annex, which contained new evidence from a witness.<sup>23</sup>

17. There have been numerous serious concerns as to how the Prosecution has conducted Preparatory Sessions in this case and they have been the subject of ongoing challenge and litigation by the Defence. The division of content between Preparation Note 1 and 2, and the requirement that the evidence contained in Preparation Note 2 must be led live, were among the few safeguards applicable to this procedure. This protection should not be ignored or circumvented where the SPO application to admit evidence is made under Rule 143 instead of Rule 154.

---

<sup>23</sup> Transcript page 21040 – 21043 of 23 October 2024

18. In this case, as W04745 was a live witness, the SPO served only one Preparation Note, namely a summary in the prosecution lawyer's words of what occurred in the preparatory session, which contained both clarifications and corrections and new evidence from the witness. The admission of the Preparation Note, which contained new evidence, i.e. a Preparation Note 2, was a fundamental and unjustified departure from the well-established procedures in this trial. Further, no effort was made by the Panel, to exclude any new evidence from the admitted Preparation Note, which should only have been admissible if elicited live from the witness.

19. Further, the witness in his evidence disputed the content of the Preparation Note. For example, W04745 stated that he did not ask the SPO that that UNMIK statement is not made public<sup>24</sup> and that his answer in paragraph 127 of the Preparation Note was incorrect.<sup>25</sup> W04745's disavowal of the content of the Preparation Note was a relevant consideration which the Impugned Decision failed to address. Additionally, it was a clear manifestation of why such evidence must only be led live.

*The Issues significantly affect the fair and expeditious conduct of proceedings and the outcome of trial*

20. All Issues significantly affect the fair and expeditious conduct of proceedings and the outcome of the trial. As a result of the Impugned Decision's resolution of both issues, the 2001 document was tendered into evidence without the Prosecution eliciting oral evidence from W04745 about the contents of the document. The 2001 document is relevant to central and contested issues in the case, including the alleged KLA policy of mistreating suspected collaborators.<sup>26</sup> The admissibility of evidence

---

<sup>24</sup> Transcript pages 25538-9 of 24 February 2025

<sup>25</sup> Transcript pages 25500-1

<sup>26</sup> SPOE00144632-SPOE00144633, p. SPOE00144632.



relating to such a critical issue may significantly affect the outcome of trial. Moreover, the result of the Impugned Decision was that, in an exception to the principle of orality, the Prosecution was spared the need to elicit such important evidence through live testimony. Accordingly, the fair conduct of proceedings was significantly affected.

21. Moreover, allowing W04745's prior statements to be tendered for the truth of their contents on the basis that he did not make a genuine attempt to answer questions in Court is fundamentally irrational, as it means that the Panel could rely on the prior evidence of a witness that the Panel clearly thought was not credible in Court.

22. The admission of a Preparation Note containing fresh evidence from a witness, i.e. Preparation Note 2, marks an improper and stark departure from the established procedures in this trial, put in place to protect the rights of the Accused. Such a significant departure from procedure warrants appellate intervention and consideration at this stage as it will impact the evidential content of the prosecution case on important matters.

*Resolution by the Appeals Panel would materially advance proceedings*

23. Resolution of the three issues by the Appeals Panel would materially advance the proceedings. The Prosecution is about to close its case. The parties need to know what evidence has been correctly admitted, particularly on central issues, in order to prepare Rule 130 submissions and ultimately the Final Trial Brief. Accordingly, resolution by the Appeals Panel would assist all parties and, ultimately, the Trial Panel.

24. Moreover, in relation specifically to the first issue, the *Haradinaj* Appeal Judgment demonstrates that, if the Impugned Decision erred in failing to take

sufficient steps to secure oral testimony from W04745, that could undermine the entire trial proceedings and lead to a re-trial. The immediate resolution of this issue by the Appeals Panel would avoid that circumstance.

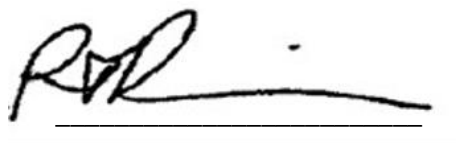
**Word Count:** 2322

Respectfully submitted on 8 April 2025



---

Luka Mišetić  
Counsel for Hashim Thaçi



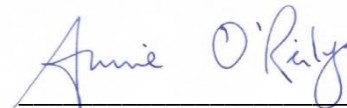
---

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  
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  
Counsel for Jakup Krasniqi



---

Aidan Ellis  
Co-Counsel for Jakup Krasniqi



---

Shyamala Alagendra Khan  
Co-Counsel for Jakup Krasniqi



---

**Victor Băieșu**  
Co-Counsel for Jakup Krasniqi