

In: KSC-BC-2023-12
Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi

Before: **Single Trial Judge**
Judge Christopher Gosnell

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Isni Kilaj

Date: 27 March 2026

Language: English

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Kilaj Defence Motion for Admission of Statements of Four Character Witnesses Pursuant to Rule 153, with public Annex 1

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I. INTRODUCTION

1. Pursuant to Rules 138 and 153 of the Rules of Procedure and Evidence (“Rules”), and the order of the Single Trial Judge (“STJ”),¹ the Defence for Mr Isni Kilaj (“Defence”; “Accused”) requests the admission of the statements of four character witnesses in lieu of oral testimony (“Statements”). The Statements are listed in Annex 1 to this Motion.

2. The Statements are relevant, authentic, and have probative value that is not outweighed by their prejudicial effect.² None of the Statements contain material which goes to proof of the acts and conduct of the Accused.³ They include reliable evidence that constitute factors militating in favour of their admission pursuant to Rule 153, namely evidence that relates to the character of Mr Kilaj, and to mitigation in the event Mr Kilaj were to be convicted.

3. The Statements contain no material that constitute factors militating against their admission pursuant to Rule 153. It would not be appropriate to require any of the four witnesses to appear for cross-examination on their character evidence, nor is there any overriding public interest in the character evidence being presented orally.

II. SUBMISSIONS

4. The Statements meet the requirements of Rules 138 and 153 and are suitable for admission in lieu of oral evidence.

A. Authenticity and reliability

5. All the Statements are authentic and reliable. All the Statements satisfy the requirements of Rule 153(2). Each Statement identifies the witness, as well as the dates,

¹ Scheduling Order, KSC-BC-2023-12/F00790, 13 March 2026, paras 11(iii) and 17(c).

² See Rule 138

³ See Rule 153

times and places of the taking of the Statement. Each Statement contains details of all persons present during the witness interviews, with the signatures of these persons.

6. Each Statement contains confirmation that the witness interviews were conducted in Albanian and English and that each witness fully understands and speaks Albanian. Each contains a signed certification from an interpreter that the English version of the Statement was translated into Albanian.

7. Each contains an attestation that: (i) the witness has read the Statement; (ii) it is true to the best of their knowledge and recollection; (iii) it was given voluntarily without promise, inducement, threat or coercion; (iv) the witness understands that they are under an obligation to tell the truth; and (v) the witness understands that they may be prosecuted for providing false testimony. Each Statement is signed by the witness in two places.

B. Relevance

8. All the Statements are relevant. Rule 153(1)(a)(vi) specifically envisages the admissibility of character evidence of the Accused. It is submitted that the very existence of this provision necessarily assumes the relevance of character evidence.

9. Each Statement is given by a witness who has known Mr Kilaj for many years and can speak about his character. All Statements give details of Mr Kilaj's good character with his integrity, honesty, sincerity, respectfulness, and sense of public service being common traits described by the witnesses. These are matters of relevance to a matter that is in issue between the Parties, that is, Mr Kilaj's intent to commit the offences with which he is charged. While the four witnesses are not relied upon to give direct evidence of Mr Kilaj's intent vis-à-vis these specific allegations, it may be concluded that a person of good character attested to by these four witnesses would be less likely to have the intention to commit crimes such as those charged in the Indictment.

10. These are also matters that would be of relevance to mitigation in the event Mr Kilaj is convicted of one or both counts with which he is charged. Article 44(5) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") provides that "In imposing punishment, the Specialist Chambers shall take into account aggravating and mitigating factors, including [...] the individual circumstances of the convicted person." A convicted person's good character, it is submitted, is an individual circumstance that can amount to a mitigating factor. This is especially so where the individual is convicted not of core international crimes, but of crimes that are of relatively lesser seriousness.

C. Statement of Ekrem Kastrati, Mayor of Malisheva (IK-01)

11. Item DKI00001-00010 / DKI00001-00010-AT is the statement of Ekrem Kastrati. He was elected as Mayor of the Municipality of Malisheva in 2021.⁴ He gives relevant and probative evidence of his knowledge of Mr Kilaj from the latter's university days.⁵

12. Mr Kastrati gives evidence of the history of Mr Kilaj's career in politics, both local and national, since 2003. Of relevance is his evidence that Mr Kilaj was elected twice as Mayor of Malisheva, from 2007 to 2009, and again from 2009 to 2013.⁶

13. Mr Kastrati explains that Mr Kilaj was "a very principled, decent and sincere man [...] very motivated by public service and doing all he could to help others in the community."⁷

14. After 2013, Mr Kastrati left the PDK, the party of which Mr Kilaj was a long-standing member, to join Nisma Socialdemokrate ("Nisma").⁸ Despite their political differences, Mr Kastrati always held Mr Kilaj in high esteem. The two men were

⁴ DKI00001-00010 / DKI00001-00010-AT, para. 8

⁵ DKI00001-00010 / DKI00001-00010-AT, para. 10

⁶ DKI00001-00010 / DKI00001-00010-AT, paras 12-13

⁷ DKI00001-00010 / DKI00001-00010-AT, para. 14

⁸ DKI00001-00010 / DKI00001-00010-AT, para. 17

political rivals in the 2021 elections for the position of Mayor of Malisheva.⁹ Mr Kastrati describes Mr Kilaj's election campaign as fair, policy-based, and never becoming personal. Both he and Mr Kilaj were simply motivated by the best interests of the local community.¹⁰ Mr Kilaj lost to Mr Kastrati but was gracious in defeat.¹¹

15. Mr Kastrati describes Mr Kilaj as a man of integrity and honesty. "His reputation is well-deserved due to his humanity, understanding, tolerance, sincerity, collegiality and professionalism. Furthermore, he is very family-oriented and is extremely friendly.¹² [...] Ultimately, he is a decent and good man."¹³

16. The probative value of Mr Kastrati's statement is not outweighed by any prejudicial effect.

17. Mr Kastrati's statement is suitable for admission under Rule 153. The statement does not go to proof of the acts and conduct of Mr Kilaj. It contains no factors that would tend to make it appropriate for the witness to appear for cross-examination and there is no overriding public interest in the evidence being presented orally.

D. Statement of Ali Paçarizi (IK-02)

18. Item DK100011-00019 / DK100011-00019-AT is the statement of Ali Paçarizi. He is a retired primary school teacher.¹⁴ He gives relevant and probative evidence of his knowledge of Mr Kilaj since the latter's childhood.¹⁵

19. Among other things, Mr Paçarizi describes his excellent relationship with Mr Kilaj during the war of 1998-1999, "primarily because of his kind nature and

⁹ DK100001-00010 / DK100001-00010-AT, para. 20

¹⁰ DK100001-00010 / DK100001-00010-AT, para. 20

¹¹ DK100001-00010 / DK100001-00010-AT, para. 21

¹² DK100001-00010 / DK100001-00010-AT, para. 22

¹³ DK100001-00010 / DK100001-00010-AT, para. 26

¹⁴ DK100011-00019 / DK100011-00019-AT, para. 8

¹⁵ DK100011-00019 / DK100011-00019-AT, para. 12

professionalism.”¹⁶

20. Mr Paçarizi describes how Mr Kilaj’s electoral campaigns for Mayor of Malisheva in 2007 and 2009 were marked by his focus on policy and not on attacks on the personalities of the other candidates.¹⁷ “As Mayor of Malisheva, from 2007– 2013, Isni was entirely dedicated to the people of Malisheva. He achieved many things during his time in office [...] even with limited resources. He was very well-respected [...]”¹⁸

21. Mr Paçarizi describes Mr Kilaj as a “brave, sincere and very trustworthy man [...] a family-oriented man”.¹⁹ Mr Kilaj “has a reputation in the village and the municipality of Malisheva as a very honourable, dedicated and well-respected man.”²⁰

22. The probative value of Mr Paçarizi’s statement is not outweighed by any prejudicial effect.

23. Mr Paçarizi’s statement is suitable for admission under Rule 153. The statement does not go to proof of the acts and conduct of Mr Kilaj. It contains no factors that would tend to make it appropriate for the witness to appear for cross-examination and there is no overriding public interest in the evidence being presented orally.

E. Statement of Filloreta Bytyqi (IK-03)

24. Item DK100020-00027 / DK100020-00027-AT is the statement of Filloreta Bytyqi. She has been a biology teacher for 23 years.²¹ She has been elected on three occasions to the Malisheva Municipality Assembly²² and was the head of her village of

¹⁶ DK100011-00019 / DK100011-00019-AT, para. 16

¹⁷ DK100011-00019 / DK100011-00019-AT, paras 19-20

¹⁸ DK100011-00019 / DK100011-00019-AT, para. 21

¹⁹ DK100011-00019 / DK100011-00019-AT, para. 26

²⁰ DK100011-00019 / DK100011-00019-AT, para. 28

²¹ DK100020-00027 / DK100020-00027-AT, para. 7

²² DK100020-00027 / DK100020-00027-AT, para. 8

Kërvasare between 2010 and 2014.²³ Ms Bytyqi gives relevant and probative evidence of her knowledge of Mr Kilaj since 2009.²⁴

25. Ms Bytyqi was politically in opposition to Mr Kilaj. She was a member of the LDK whilst Mr Kilaj was the Mayor of Malisheva from the PDK.²⁵ Nevertheless, they “had a very good working relationship. His door was always open for our requests, and even if they could not always be fulfilled, Isni would always take the time to listen.”²⁶

26. Ms Bytyqi describes the “great efforts undertaken” by Mr Kilaj for the benefit of Malisheva Municipality; for example, “During his second mandate, he lobbied central government to make available extra capital investment to fund much needed road construction out in the villages.”²⁷ Ms Bytyqi describes herself as “the main critical voice against Isni in the local Assembly. I was more of an opponent than the men in the Assembly. But even back then, he never held it against me that I opposed him.”²⁸

27. Despite being such a critic of Mr Kilaj, the witness states that he was always reasonable and professional,²⁹ and that despite the limited resources available to him, Mr Kilaj “tried to do as much as he could” and was “very competent and was clearly well-liked by the local community.”³⁰ Ms Bytyqi explains that Mr Kilaj “always acted with integrity.”³¹

28. Ms Bytyqi describes Mr Kilaj as “a very good man: professional, well-educated, and dedicated to public service [...] an intellectual, who clearly loves his country and

²³ DKI00020-00027 / DKI00020-00027-AT, para. 9

²⁴ DKI00020-00027 / DKI00020-00027-AT, para. 10

²⁵ DKI00020-00027 / DKI00020-00027-AT, para. 13

²⁶ DKI00020-00027 / DKI00020-00027-AT, para. 13

²⁷ DKI00020-00027 / DKI00020-00027-AT, para. 14

²⁸ DKI00020-00027 / DKI00020-00027-AT, para. 16

²⁹ DKI00020-00027 / DKI00020-00027-AT, para. 17

³⁰ DKI00020-00027 / DKI00020-00027-AT, para. 18

³¹ DKI00020-00027 / DKI00020-00027-AT, para. 19

his community [...] always guided by delivering on the needs of the local population.”³²

29. The probative value of Ms Bytyqi’s statement is not outweighed by any prejudicial effect.

30. Ms Bytyqi’s statement is suitable for admission under Rule 153. The statement does not go to proof of the acts and conduct of Mr Kilaj. It contains no factors that would tend to make it appropriate for the witness to appear for cross-examination and there is no overriding public interest in the evidence being presented orally.

F. Statement of Bajrush Hoti (IK-04)

31. Item DK100028-00035 / DK100028-00035-AT is the statement of Bajrush Hoti. He is a civil servant in the Ministry of Health.³³ He gives relevant and probative evidence of his knowledge of Mr Kilaj since before the war.³⁴

32. Mr Hoti describes Mr Kilaj as a “good and no-nonsense person. He is a man with vision.”³⁵ He knew Mr Kilaj during his two mayoral terms and states that he “worked very hard for the municipality with very limited resources. [Mr Kilaj] did what he could with what he had.”³⁶

33. The witness was a member of the LDK party. Indeed he was an LDK candidate for National Assembly elections in 2014.³⁷ After the war, Mr Kilaj moved from the LDK to the PDK but the witness recognises that he “continued to do what he could for all the villages of the Malisheva municipality.”³⁸

³² DK100020-00027 / DK100020-00027-AT, para. 21

³³ DK100028-00035 / DK100028-00035-AT, para. 5

³⁴ DK100028-00035 / DK100028-00035-AT, para. 7

³⁵ DK100028-00035 / DK100028-00035-AT, para. 11

³⁶ DK100028-00035 / DK100028-00035-AT, para. 13

³⁷ DK100028-00035 / DK100028-00035-AT, para. 6

³⁸ DK100028-00035 / DK100028-00035-AT, para. 15

34. In the 2021 mayoral elections, Mr Hoti and Mr Kilaj were initially rival candidates, although the witness later endorsed Mr Kilaj in the second round of elections.³⁹ He describes the electoral campaign as “very fair”, revolving “around the political issues, not the personalities of the candidates.”⁴⁰

35. Mr Hoti states that it was clear to him that Mr Kilaj “did not run in the election for selfish reasons [...] He wanted to make the lives of the population better. [...] when Isni lost this election, he respected the result.”⁴¹

36. The probative value of Mr Hoti’s statement is not outweighed by any prejudicial effect.

37. Mr Hoti’s statement is suitable for admission under Rule 153. The statement does not go to proof of the acts and conduct of Mr Kilaj. It contains no factors that would tend to make it appropriate for the witness to appear for cross-examination and there is no overriding public interest in the evidence being presented orally.

III. CONCLUSION

38. For the foregoing reasons, the STJ is respectfully requested to

ADMIT the Statements under Rule 153.

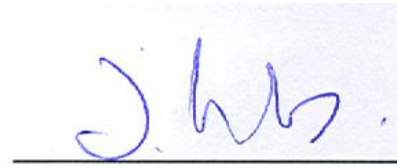
³⁹ DKI00028-00035 / DKI00028-00035-AT, para. 16

⁴⁰ DKI00028-00035 / DKI00028-00035-AT, para. 17

⁴¹ DKI00028-00035 / DKI00028-00035-AT, para. 20



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