



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: Acting Specialist Prosecutor

Date: 11 July 2023

Language: English

Classification: Public

Public Redacted Version of 'Prosecution reply to Krasniqi response to "Prosecution motion for admission of Accused's statements"', KSC-BC-2020-06/F01509, 8 May 2023

Specialist Prosecutor's Office

Alex Whiting

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

I. REPLY

1. The Specialist Prosecutor's Office ('SPO') hereby replies to the Response.¹ Krasniqi fails to substantiate why any of his statements, or the challenged associated exhibits, should not be admitted.

2. There has been no violation of Krasniqi's rights, and there is no barrier to admission. Krasniqi does not contest the authenticity or veracity of the content of any of his statements. The admission of this reliable, probative evidence will enhance, not damage, the integrity of the proceedings, much less 'seriously damage' them.²

a. ICTY Statements

3. Krasniqi's primary argument is based on the erroneous assertion that he was entitled to the rights of a suspect when these materials were created. But Krasniqi was not a suspect at the time those materials were created, and therefore was not entitled to those rights. Krasniqi's reliance on jurisprudence concerning the rights of suspects is therefore entirely inapposite. There is no barrier to admitting statements that were done in accordance with Krasniqi's rights at the time.³ In fact, Krasniqi himself referred to many of these statements in his Pre-Trial Brief.⁴

4. Krasniqi objects that the ICTY statements do not contain acknowledgment of his right not to self-incriminate as a witness.⁵ This is because the ICTY Rules of Procedure and Evidence did not require that a witness be informed of this right.⁶

¹ Krasniqi Defence Response to Prosecution Motion for Admission of Accused's Statements, KSC-BC-2020-06/F01475, 24 April 2023 ('Response').

² See Rule 138(2).

³ See, e.g., Response, KSC-BC-2020-06/F01475, para.18 (quoting ECtHR jurisprudence concerning the rights of suspects).

⁴ See, e.g., Pre-Trial Brief of Jakup Krasniqi, KSC-BC-2020-06/F01051, 21 October 2022, fn.7 (referencing IT-04-84bis P00064), fn. 51 (referencing IT-04-84 P00340, corresponding to IT-03-66 T3285-T3365, T3366-3447, T3448-T3540); fn.150 (referencing IT-04-84 T5000-T5086), fn.178 (referencing IT-04-84bis P00064).

⁵ Response, KSC-BC-2020-06/F01475, paras 31, 35.

⁶ Compare ICTY Rules of Procedure and Evidence, IT/32/Rev.40, 12 July 2007, Rule 90, with ICTY Rules of Procedure and Evidence, IT/32/Rev.40, 12 July 2007, Rule 42(A).

5. It is of no moment regarding the admissibility of these statements—or other testimony of witnesses from the ICTY—that the KSC Rules⁷ require that witnesses appearing subject to its procedures be informed of this right.⁸ This choice in the Rules of the KSC is not a reflection of a fundamental right the absence of which sufficiently taints statements to render them inadmissible. Indeed, the ICTY, too, was bound by fundamental international human rights law concerning fair trials when it created its Rules of Procedure and Evidence and conducted its trials.⁹ In addition there was no indication in any of Krasniqi's statements that he was denied the possibility of having counsel with him.

6. Krasniqi's attempt to impose his own retroactive assessment—based on incomplete knowledge of the ICTY prosecution's evidence and deliberations at the time—that Krasniqi should have been treated as a suspect is also meritless. Indeed, the ICTY prosecutor never charged Krasniqi, which is consistent with not treating him as a suspect.

7. Krasniqi notes that in his 2005 ICTY testimony he was subpoenaed to appear as a witness. However, he explained his reasons for not appearing voluntarily, which did not include concerns regarding self-incrimination.¹⁰ Moreover, in later statements Krasniqi confirmed that 'I told the truth during my testimony in Limaj and would give

⁷ 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.

⁸ Contra Krasniqi Response, para.16; See Rule 151(1).

⁹ As concerns the *Prlić* Trial Chamber decision referenced, whatever the standard at the ICTY, where multiple cases concerning overlapping events and individuals were happening within a single tribunal and prosecuted by a single prosecution office, the applicable standard for admission of evidence here is the KSC Law and Rules. Significantly, the *Prlić* Decision merely sought confirmation that Praljak was aware of his rights as a witness, not as a suspect. See Krasniqi Response, para.25, citing ICTY, *Prosecutor v. Prlić et al*, IT-04-74-T, Decision on the Admission into Evidence of Slobodan Praljak's Evidence in the Case of Naletelić and Martinović, 5 September 2007.

¹⁰ See IT-03-66 T3285-T3365, p.3291.

the same answers if questioned on the same topics again.’¹¹ He repeatedly re-affirmed this sentiment,¹² including in his 2007 testimony:

Q. I'd like to ask you if this statement reflects what you would say in court today if you were asked the same questions that you were asked during that statement last week?

A. What I've already stated in my statement, I'm going to state it here too.¹³

8. Regarding Krasniqi's 23-24 May 2007 ICTY statement,¹⁴ Krasniqi argues that because it is a statement and not a verbatim transcript, this argues against its admission. But the ICTY decision he relies on merely states that a recorded questioning may be more reliable in some circumstances than a statement.¹⁵ This is patently an aspect that this Trial Panel can factor in as to weight. In addition, Krasniqi signed the statement and initialled every page, as did others present.

b. 2 February 2018 SPRK Trial Testimony

9. The 2 February 2018 Trial Testimony¹⁶ is authentic and reliable. Krasniqi's reference to slight anomalies and patterns of speech are not sufficient to render the testimony inadmissible, and any attendant concerns can go to weight.

10. Krasniqi was a witness at the time of this testimony and was afforded the appropriate rights commensurate with that status. Moreover, it is not a requirement for admission that statements given in other judicial contexts comply with the procedures before the KSC, as Krasniqi seeks to argue.¹⁷ None of Krasniqi's fundamental rights were abrogated in giving this testimony. That the content of the

¹¹ IT-04-84 P00328.

¹² IT-04-84bis P00064, p.4944 lns 9-16, p.5067, lns 7-9, p.5088, lns 18-23; IT-04-84bis P00063 Confidential p.4948 lns 22-23, p.4951 lns 14-15, p.4952 lines 17-18, p.4953 lns. 1-3, p.4959 lns 23-24, p.4967 lns1-2, p.4989 lns 24-25, p.5047 lns 3-4.

¹³ IT-04-84bis P00064 (Public) (29 May 2007), page 4943, lines 14-18.

¹⁴ IT-04-84 P00328.

¹⁵ ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-AR73.6, Appeals Chamber, Decision on Appeal Against Decision Admitting Transcripts of Jadranko Prlić Questioning into Evidence, 23 November 2007, para.44.

¹⁶ SPOE00068088-SPOE00068094-ET.

¹⁷ Response, KSC-BC-2020-06/F01475, para.41.

statement relates to the current case, as Krasniqi acknowledges,¹⁸ increases its probative value, but does not militate against its admission.

c. 13 June 2018 SPRK Interview

11. Again, Krasniqi was a witness at the time of his 13 June 2018 SPRK interview¹⁹ and was afforded the appropriate rights commensurate with that status.

12. Krasniqi's attempt to diminish the probative value of this statement neglects to mention other evidence contained within this statement. [REDACTED].

d. 20 December 2013 SPRK Interview

13. Krasniqi fails to show that the 20 December 2013 SPRK Interview,²⁰ wherein he was afforded the rights of a suspect, should not be admitted. Krasniqi had use of an interpreter, was represented by counsel, signed the statement, and initialled every page. In attempting to diminish the value of the statement, Krasniqi's summary is once again glaringly truncated.²¹ Krasniqi fails to mention that the statement provides information on a range of matters including the location of the KLA general headquarters, meetings he attended, Sylejman SELIMI's positions in the KLA, and his position relative to Krasniqi.²²

e. Statements of Co-Accused Should be Admitted without Limitation

14. As the Panel held, the admission of a record or statement of an accused does not, without more, infringe upon the fundamental rights of his co-defendants.²³ The statements should be admitted without limitation. Regarding Selimi's statements in particular, not only do Krasniqi's submissions not demonstrate their unreliability,

¹⁸ Response, KSC-BC-2020-06/F01475, para.42.

¹⁹ SPOE00213595-SPOE00213597-ET.

²⁰ SITF00364476-00364497.

²¹ Response, KSC-BC-2020-06/F01475, para.46.

²² SITF00364476-00364497, at SITF00364478, SITF00364479, SITF00364479-80.

²³ Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 16 March 2023, para.50. This finding was based on a consideration of relevant jurisprudence, and submissions regarding the KCPC, which will not be repeated.

they actually highlight that Selimi was transparent about his basis of knowledge and/or lack of certainty on certain points,²⁴ thereby further contributing to a fair assessment of their weight. Should some/all Co-Accused not be available for examination, (i) the Defence has other avenues to challenge such evidence, and (ii) the Panel will be in a position to weigh them in light of the totality of the evidence, including taking account of their degree of corroboration.²⁵

f. The Associated Exhibits Should Be Admitted

15. Krasniqi fails to substantiate adequate reasons why any of the associated exhibits he addresses should not be admitted. The SPO will reply to Krasniqi's arguments on individual associated exhibits.

16. 076565-076565-ET. Krasniqi argues that this document does not meet the 'inseparable and indispensable' standard.²⁶ The content of the document is discussed over nine pages,²⁷ and this makes it an inseparable and indispensable part of the interview. It is also relevant and reliable. Its format and language are consistent with other communiqués, it is dated, identifies a place of issuance, and the information contained therein is corroborated by other evidence.

17. 076565-076705, p. 076596. Krasniqi argues that the Facebook screenshot lacks indicia of authenticity. In fact, it comes from a Facebook account bearing Krasniqi's name and likeness, and discusses matters that would have been within his knowledge. As a document that is discussed over seven pages of an SPO interview with Thaçi,²⁸ and was reported on in the press (as shown by another associated exhibit²⁹) it should be admitted.

²⁴ Response, KSC-BC-2020-06/F01475, paras 62, 65.

²⁵ KSC-BC-2020-06/F01351, paras 91-92.

²⁶ Response, KSC-BC-2020-06/F01475, para.75(d).

²⁷ 076563-TR-ET Part 4, pp.5-14.

²⁸ 076563-TR-ET Part 8, pp.5-12.

²⁹ 076565-076705, pp.076597-076599.

18. 076565-076705, pp. 076597-076599. Krasniqi opposes the admission of this newspaper article reporting on the Facebook post above³⁰ by stating that the ‘same submissions on authenticity apply’ to the article as to the Facebook post.³¹ But the relevant authenticity analysis for the article is whether the article is authentic, not the subject it is reporting on. The article is authentic and reliable. It comes from a known publication, is dated, and can be found on the internet to this day.

19. 074440-074458A, pp. 074450-074453. Krasniqi opposes the admission of this two-page extract of Krasniqi’s book ‘Kthesa e Mahde’. Krasniqi does not dispute the accuracy or reliability of its contents. This document is relevant and Selimi discussed it in detail in his February 2020 SPO interview.³²

20. 074440-074458A, pp.074458-074459. Krasniqi opposes admission of this interview with him. The article is an inseparable and indispensable part of Selimi’s February 2020 SPO interview. Over the course of seven pages, Selimi reacts to the content of the interview that is put to him.³³ It is furthermore relevant and reliable. It is contained in a known publication, Koha Ditore, and is dated. Krasniqi does not argue that any part of the interview is inaccurate.

21. IT-03-66 P140. Krasniqi objects to the admission of this interview with Krasniqi published in Der Spiegel on 6 July 1998. Krasniqi discusses this interview in detail in his testimony before the ICTY.³⁴ Krasniqi does not argue that the interview is inaccurate. In fact, during his ICTY testimony, Krasniqi stated that he recalled giving the interview and that ‘[t]he entire interview, with minor exceptions, is correct.’³⁵ The sole ‘minor exception’ that he stated was incorrect was how he phrased the goal of the

³⁰ 076565-076705, p.076596.

³¹ Response, KSC-BC-2020-06/F01475, para.75(f).

³² 074459-TR-ET Part 6, pp.10-13.

³³ 074459-TR-ET Part 8, pp.13-20.

³⁴ IT-03-66 T3285-T3365, pp 3359-3362.

³⁵ IT-03-66 T3285-T3365, p.3360 ln.10.

KLA.³⁶ This associated exhibit is therefore relevant and reliable and should be admitted.

II. CONCLUSION

22. Even should the Panel find issues with any of the tendered statements, any such imperfections would be of a limited nature³⁷ and not sufficient to cause possible damage to the integrity of the proceedings if the statements and associated exhibits are admitted.³⁸

23. For the foregoing reasons, the statements and associated exhibits should be admitted.

Word Count: 1967



Alex Whiting

Acting Specialist Prosecutor

Tuesday, 11 July 2023

At The Hague, the Netherlands.

³⁶ IT-03-66 T3285-T3365, p.3360 lns. 11-25.

³⁷ See Decision on Shala's Appeal Against Decision Concerning Prior Statements, KSC-BC-2020-04/IA006/F00007, 5 May 2023, para.79 ('Shala Decision').

³⁸ Cf. Shala Decision, KSC-BC-2020-04/IA006/F00007, para.81.