

**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 Christoph Barthe  
Judge Guénaël Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Hashim Thaçi

**Date:** 1 December 2023

**Language:** English

**Classification:** Public

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**Thaçi Defence Reply to Prosecution Response to Thaçi Defence's Submissions on  
Rule 143(2)(c)**

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1. In its Response to Thaçi Defence's submissions on Rule 143(2)(c), the SPO agrees with the Defence for Mr Thaçi ("Defence") that for purposes of Rule 143(2)(c), the Panel should define a "prior inconsistent statement" as a prior inconsistent representation or assertion, and not a prior inconsistent witness statement.<sup>1</sup> However, the SPO claims "the Defence is legally and factually wrong in claiming that a statement cannot be 'inconsistent' unless it has been put to a witness."<sup>2</sup> This claim by the SPO ignores the plain text of Rule 143(2)(c), which is binding authority in this case.

2. Rule 143(2)(c) states:

With leave of the Panel, a Party who called a witness **may question that witness** about the following matters, where relevant to the witness's credibility: whether the witness has, at any time, made a **prior inconsistent statement**. Any **such 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.<sup>3</sup>

3. The first sentence of the Rule makes clear that a Party may *question* a witness about a prior inconsistent statement. The second sentence then states that "*such*" prior inconsistent statement may be admissible. The word "*such*" clearly refers to the prior inconsistent statement discussed in the first sentence, namely a prior inconsistent statement which has been the subject of a "*question*" by a Party. Under the plain text, only *such* prior inconsistent statement as has been the subject of questioning by a Party is admissible. As noted above, the Parties agree that "prior inconsistent statement" here means prior inconsistent assertion or representation, not prior inconsistent witness statement. A prior *witness statement* therefore cannot be admitted simply because it contains the prior inconsistent *assertions or representations* about which the witness was questioned.

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<sup>1</sup> KSC-BC-2020-06-F01962, para. 2.

<sup>2</sup> *Ibid.*, para. 7.

<sup>3</sup> Emphasis added.

4. All of the domestic and international cases cited by the Defence in its initial submissions are consistent with this interpretation of the plain text of Rule 143(2)(c). In contrast, the SPO is asking the Trial Panel to rewrite Rule 143(2)(c) to mean, “Any 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.” In doing so, the SPO asks the Trial Panel to ignore the first sentence of Rule 143(2)(c), and the reference in the second sentence to “*such*” prior inconsistent statements. The SPO cites no domestic or international precedent to support its proposed rewrite of Rule 143(2)(c).

5. Finally, the Defence notes that it never suggested that an exclusionary hearsay rule applies, but rather that the principle of orality prevents the Panel from admitting prior testimony that was not put to the witness in the form of questioning per the terms of Rule 143(2)(c).<sup>4</sup>

**[Word count: 500 words]**

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'G. W. Kehoe', is written over a white rectangular redaction box.

**Gregory W. Kehoe**

**Counsel for Hashim Thaçi**

Friday, 1 December 2023

At Tampa, United States

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<sup>4</sup> KSC-BC-2020-06-F01940, Thaçi Defence Submissions Concerning Use of Prior Inconsistent Statements Pursuant to Rule 143(2)(c), para. 18.