

1 Tuesday, 1 April 2025

2 [Open session]

3 [The accused entered the courtroom]

4 [The accused Krasniqi appeared via videolink]

5 --- Upon commencing at 9.02 a.m.

6 PRESIDING JUDGE SMITH: Madam Court Officer, please call the
7 case.

8 THE COURT OFFICER: Good morning, Your Honours. This is file
9 KSC-BC-2020-06, The Specialist Prosecutor versus Hashim Thaci,
10 Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi.

11 PRESIDING JUDGE SMITH: I note that all accused are present in
12 court today except for Mr. Krasniqi, who is attending via videolink.

13 Today, we were supposed to start hearing the evidence of
14 Prosecution Witness W04747. However, I understand that the witness
15 is not able to make today's hearing and that the SPO intends to offer
16 the witness's evidence under Rule 155 instead.

17 Mr. Prosecutor, is there a need to go into private session
18 before we hear from you?

19 MR. HALLING: There is, Your Honour.

20 PRESIDING JUDGE SMITH: Please, into private session,
21 Madam Court Officer.

22 [Private session]

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24 [Open session]

25 THE COURT OFFICER: Your Honours, we're in public session.

1 PRESIDING JUDGE SMITH: I'll take the opportunity afforded us to
2 issue some oral orders.

3 First, the Panel will rule on the Veseli Defence request for
4 relief, which is filing F02968.

5 On 27 February 2025, the Veseli Defence requested that the Panel
6 order the SPO to disclose all contemporaneous notes taken by those
7 present during the preparation session of W04745. According to the
8 Veseli Defence, W04745 claimed during his testimony before the Panel
9 that the SPO had shown him a document during the preparation session
10 and that, based on the description of the document provided by
11 W04745, the document in question may have been internal SPO work
12 product.

13 The Veseli Defence argues that it was surprised to learn that
14 preparatory sessions are not audio-video recorded. That this itself
15 necessitates the disclosure of contemporaneous SPO notes of the
16 preparation session. The Veseli Defence argues that these notes are
17 necessary for the Panel to assess the credibility of the witness and
18 understand why W04745 stopped answering the SPO's questions during
19 his direct examination.

20 On March 4, 2025, the SPO responded that the Veseli Defence
21 request should be summarily dismissed. According to the SPO, it is
22 clear that the document to which W04745 repeatedly referred in his
23 testimony is a prior statement of the witness from 2001 which the
24 Defence already has, and that the Veseli Defence has failed to
25 demonstrate how additional notes could in any way shed further light

1 on the matter.

2 The Panel notes that the Veseli Defence relies on a selected
3 portion of W04745's testimony to support its contention that the
4 document referred to by W04745 may be an internal work product of the
5 SPO.

6 Having reviewed the record as a whole, the Panel finds no
7 support for the Veseli Defence contention. It is clear from W04745's
8 testimony, the SPO's preparation note, and 4745's 2019 interview with
9 the SPO that the document in question is the witness's 2001
10 statement, which has been disclosed to the Defence and is not
11 internal work product of the SPO.

12 The Panel observes that W04745's refusal to answer the SPO's
13 questions during his examination clearly related to his 2001
14 statement. W04745's reaction in court, when shown his 2001
15 statement, was consistent with his reaction on previous occasions
16 when he was shown the 2001 statement.

17 The Panel is therefore not satisfied that the document W04745
18 referred to may have been the SPO's contemporaneous notes or internal
19 work product as claimed by the Veseli Defence.

20 In respect of the Veseli Defence's submission that it was
21 surprised to hear that preparatory sessions are not audio or visually
22 recorded, the Panel recalls that it considered in detail and rejected
23 a Defence request that the SPO audio and video record witness
24 preparation sessions in its decision on joint Defence request for
25 amendment of the Order on the Conduct of Proceedings, which was filed

1 on 18 June 2024. In addition, the Panel notes that the SPO's
2 submission that it has provided the Defence with all documents shown
3 to, read by or discussed with W04745 during his preparation session.
4 There is no information before the Panel that would contradict his
5 assurance.

6 Consequently, the Panel finds that the requested disclosure is
7 not warranted. The request is accordingly dismissed.

8 The Panel instructs the Veseli Defence to request
9 reclassification or public redacted versions of the request, which is
10 F02968, and the reply, which is F02988, by Tuesday, 8 April 2025, and
11 instructs the Registry to reclassify as public the SPO's response by
12 Friday, April 4, 2025.

13 This ends the first oral order.

14 Number two will be an oral order on the reasons for admission of
15 evidence of 4745 pursuant to Rules 143(2)(b) and (c). The Panel will
16 issue the reasons for its decision of 25 February 2025 to admit
17 4745's prior statement and preparation note with three associated
18 exhibits tendered by the SPO pursuant to Rules 143(2)(b) and (c).

19 W04745 testified in these proceedings on 24 and 25 February
20 2025.

21 On 25 February 2025, during its examination of 4745, the SPO
22 requested that 4745's statements from 2001 and 2019, or portions
23 thereof, and the preparation note with three associated exhibits be
24 admitted pursuant to Rule 143(2)(b) and (c).

25 The Defence objected to the admission of this evidence under

1 that rule. The Thaci Defence noted, however, that should the Panel
2 admit 4745's evidence, appropriate redactions should be applied.

3 On the same day, having considered parties' submissions, the
4 Panel admitted 4745's prior statements and the preparation note with
5 the associated exhibits pursuant to Rule 143(2)(b) and (c) as
6 P02079.1 to P02079.17, also P02080, P02081, P02082, P02083, and
7 P02084.

8 The Panel now provides its reasons for that decision.

9 The Panel notes that Rule 143(2)(b) provides for the possibility
10 of questioning a witness who is not making a genuine attempt to give
11 evidence on a matter of which he may reasonably be supposed to have
12 knowledge.

13 In relation to the 2001 statement, which the witness commented
14 on during his 2019 interview with the SPO, as well as his preparation
15 session (see, for example, transcript page 25502) the SPO made
16 significant efforts to show the 2001 statement, and for avoidance of
17 doubt, any other statement or notes, to W04745. In relation to the
18 2019 interview, the Panel considers that 4745 stood by this interview
19 - that's transcript page 25505 - notwithstanding any purported
20 ambiguity in paragraph 6 of the preparation note, as argued by the
21 Thaci Defence. Nevertheless, the SPO was unable to examine the
22 witness in relation to the greater part of his prior testaments -
23 transcript pages 25506 and 25516 - despite being warned by the Panel
24 that he could be in violation of the Court's orders if he failed to
25 answer questions. That's transcript pages 25529 and 25530.

1 Furthermore, 4745 explicitly indicated that he would only answer
2 questions from the Defence. That's at transcript pages 25588 and
3 25590.

4 The Panel therefore considers that the conditions under
5 Rule 143(2) (b) are satisfied.

6 The Panel further considers that Rule 143(2) (c) provides that
7 prior inconsistent statements may be admissible for the purpose of
8 assessing the credibility of a witness, as well as for the truth of
9 its contents or for other purposes within the discretion of the
10 Panel.

11 The Panel recalls that a lack of genuine attempt to provide
12 evidence can constitute a prior inconsistent statement. For example,
13 F01821, paragraph 49. In this way, Rules 143(2) (b) and (c) can be
14 read together and may overlap in part, as in the present case.

15 The Panel notes in this regard that the parties agree that
16 W04745's 2001 statement contains inconsistencies with the witness's
17 other evidence, which is transcript pages 25575, 25576, and 25583.
18 The Panel is also satisfied that W04745's lack of genuine attempt to
19 provide evidence on matters he commented upon in his prior statements
20 and preparation note rendered his 2019 interview and the preparation
21 note with the associated exhibits inconsistent.

22 Regarding the admissibility of W04745's prior statements and the
23 preparation note with the three associated exhibits pursuant to
24 Rule 138, the Panel notes that this evidence is relevant to the facts
25 and circumstances material to the charges in the indictment, in

1 particular in respect of the structure, organisation, and hierarchy
2 of the Kosovo Liberation Army, as well as charged crimes. The Panel
3 therefore finds that 4745's prior statements, the preparation note,
4 and the associated exhibits are relevant to these proceedings both in
5 respect of the information which they contain and assessing the
6 credibility of the witness.

7 Regarding authenticity, the Panel first notes that the Krasniqi
8 Defence disputes that the 2001 statement qualifies as a statement
9 given that W04745 denied giving that statement. The Panel recalls
10 its earlier decision, which is filing F02580, at paragraph 10, where
11 it found that an investigative note prepared over a course of a
12 criminal investigation which reproduces information provided by a
13 witness qualifies as a statement. The fact that a witness denied
14 making the statement has no bearing on such finding. The Panel is
15 satisfied that 4745's 2001 statement meets these criteria given that
16 it was produced by investigators over a course of criminal
17 investigations and the statement reproduces information provided to
18 the investigators by 4745. The Panel further notes that 4745's 2001
19 statement contains multiple indicia of authenticity and reliability.
20 It is dated, includes the names and signatures of the relevant
21 investigators, 4745's personal details, and is included on an
22 official template.

23 Additionally, the Panel notes that the parties agree that the
24 2001 statement contains certain inconsistencies. That would be at
25 transcript pages 25575, 25576, and 25583. Nevertheless, the Panel

1 recalls that it will be for the Panel at a later stage to assess the
2 witness's credibility and the reliability of his statements in light
3 of the entire body of evidence admitted before it at trial, in
4 accordance with Rule 139(2). It will consider any such inconsistency
5 between successive accounts in that context.

6 The Panel notes that 4745's 2019 interview contains multiple
7 indicia of authenticity and reliability, including the fact that the
8 transcript of the interview was audio and visual recorded; the dates
9 of the interview and the identification of the attendees are clear;
10 the witness was under an obligation to tell the truth; and the
11 witness made the requisite acknowledgements that he had been
12 truthful.

13 Similarly, the preparation note contains the dates of the
14 interview and an identification of attendees. The witness was also
15 duly informed of his rights.

16 The Panel is further satisfied that the associated exhibits,
17 which consist of a sketch drawn by 4745 and two reports, bear
18 multiple indicia of authenticity. In particular, the two reports are
19 dated, signed, and provided relevant reference numbers. The Panel is
20 also satisfied that the associated exhibits form an inseparable and
21 indispensable part of 4745's evidence, given that the sketch as well
22 as the two reports were commented on by W04745 during the preparation
23 session.

24 Concerning the Veseli Defence's argument that the preparation
25 note contains new evidence - that's transcript page 25546 - the Panel

1 observes that, while the documents contained in paragraph 120 to 142
2 of the preparation note do not appear to have been shown to 4745
3 during his 2019 SPO interview, the Panel notes that the substance of
4 these issues discussed with 4745 were also raised in the 2019 SPO
5 interview. In addition, the Defence had every opportunity to
6 cross-examine the witness on this material and chose not to do so.

7 In relation to probative value and prejudice, the Panel recalls
8 that all Defence teams were afforded the opportunity to cross-examine
9 the witness. The Defence will further have the full opportunity to
10 make submissions regarding the weight to be given to 4745's prior
11 statements, preparation note, and the associated exhibits in its
12 final trial briefs and final submissions. The Panel is therefore
13 satisfied that the probative value of W04745's prior statements, the
14 preparation note with the three associated exhibits, is not
15 outweighed by their prejudicial effect.

16 This concludes the Panel's reasoning for admitting, pursuant to
17 Rules 138 and 143(2) (b) and (c), W04745's prior statements and the
18 preparation note, with appropriate redactions as agreed between the
19 parties, as well as the three associated exhibits.

20 This concludes that oral order.

21 Can you tell us a reasonable date to have your motion on file as
22 in regards to today's hearing?

23 MR. HALLING: I believe we can do it today, Your Honour.

24 PRESIDING JUDGE SMITH: All right.

25 The reply will be then as is standard.

1 MR. ROBERTS: Your Honour, can we wait until we receive the
2 request before deciding whether we would seek any further time to
3 respond? We haven't received it yet. So once we receive it, we'll
4 obviously inform you that's something that we require.

5 PRESIDING JUDGE SMITH: Yeah, I assume you would anyway, so
6 that's fine.

7 MR. ROBERTS: But it's just to not prejudge that --

8 PRESIDING JUDGE SMITH: We're not prejudging --

9 MR. ROBERTS: -- we may need extra time, depending on what other
10 motions are filed, because we are expecting other significant bar
11 table motions in the coming days as well. So just to preempt that.
12 Thank you, Your Honour.

13 PRESIDING JUDGE SMITH: I wasn't trying to prejudge your motion.

14 MR. ROBERTS: Much obliged.

15 PRESIDING JUDGE SMITH: We will certainly hear anything you
16 raise.

17 Anything further from the Prosecution today?

18 MR. HALLING: None, Your Honour. Thank you.

19 PRESIDING JUDGE SMITH: From the Defence.

20 MR. MISETIC: Nothing, Your Honour.

21 MR. ELLIS: Your Honour, can I just mention --

22 PRESIDING JUDGE SMITH: Yes, certainly.

23 MR. ELLIS: We have, I think, six documents still MFI'd over the
24 course of the trial, and I just wanted to highlight that. We believe
25 there are some rulings outstanding on those.

1 PRESIDING JUDGE SMITH: I believe we have a list and we will
2 rule on those.

3 MR. ELLIS: I'm grateful. I was sure that was the case, but I
4 just [Overlapping speakers] ...

5 PRESIDING JUDGE SMITH: Thanks for the reminder, though. No
6 problem.

7 So we are adjourned. We will reschedule the next hearing. I
8 assume it will not be on 15 April because there are going to be some
9 people missing, so we will do this shortly after that. We will
10 schedule it and notify everybody, and we will at that time take the
11 next step, assuming that you have rested your case by that time.

12 So we'll be in touch. Thank you.

13 We're adjourned.

14 --- Whereupon the hearing adjourned at 9.26 a.m.

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