



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**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

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

**Registrar:** Fidelma Donlon

**Date:** 19 June 2024

**Language:** English

**Classification:** Public

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**Public Redacted Version of  
Decision on Selimi Defence Motion to Exclude Evidence of W04846**

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**TRIAL PANEL II** (“Panel”), pursuant to Articles 21, and 40(2) and (6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 137, and 138(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 14 December 2023, the Specialist Prosecutor’s Office (“SPO”) submitted a list of witnesses scheduled for 15 January to 4 April 2024, providing that W04846 is one of the witnesses to be called in this period.<sup>1</sup>
2. On 6 March 2024, the Defence for Rexhep Selimi (“Mr Selimi” and “Selimi Defence”) filed a request to exclude certain evidence of W04846 (“Request”).<sup>2</sup>
3. On 18 March 2024, the SPO responded to the Request (“Response”).<sup>3</sup>
4. On 22 March 2024, the SPO submitted a list of witnesses scheduled for 22 April to 18 July 2024, providing that W04846 is tentatively<sup>4</sup> scheduled as the last witness to be called in that period.<sup>5</sup>
5. On 25 March 2024, the Selimi Defence replied to the Response (“Reply”).<sup>6</sup>
6. On 26 March 2024, the SPO disclosed further documents related to W04846.<sup>7</sup>

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<sup>1</sup> F02007/A01, Specialist Prosecutor, *Prosecution Submission of List of Witnesses for 15 January to 4 April 2024*, 14 December 2023, confidential, p. 50.

<sup>2</sup> F02166, Specialist Counsel, *Selimi Defence Motion for the Exclusion of Evidence of W04846*, 6 March 2024, confidential, with one Annex, confidential (a public redacted version was filed on 8 March 2024, F02166/RED).

<sup>3</sup> F02187, Specialist Prosecutor, *Prosecution Response to Selimi Defence Motion for the Exclusion of Evidence of W04846*, 18 March 2024, confidential (a public redacted version was filed on the same day, F02187/RED).

<sup>4</sup> See F02195, Specialist Prosecutor, *Prosecution Submission of List of Witnesses for 22 April to 18 July 2024*, 22 March 2024, para. 1, with Annexes 1-2, confidential.

<sup>5</sup> F02195/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of List of Witnesses for 22 April to 18 July 2024 (Scheduled Witnesses)*, 22 March 2024, confidential, pp. 1, 274.

<sup>6</sup> F02201, Specialist Counsel, *Selimi Defence Reply to Prosecution Response to F02166*, 25 March 2024, confidential (a public redacted version was filed on the same day, F02201/RED).

<sup>7</sup> Disclosure Packages 1180-1182.

7. On 27 March 2024, pursuant to a request by the Selimi Defence,<sup>8</sup> the Panel granted the Selimi Defence leave to supplement its Reply by 28 March 2024.<sup>9</sup>

8. On 28 March 2024, the Selimi Defence filed a supplement to its Reply (“Supplemental Reply”).<sup>10</sup>

## II. SUBMISSIONS

9. The Selimi Defence requests that the Panel exclude the evidence of W04846 in relation to two allegations which relate to Mr Selimi, namely: (i) the alleged killing of [REDACTED] (“First Allegation”); and (ii) the alleged beating and killing of [REDACTED] (“Second Allegation”) (collectively the “Allegations”).<sup>11</sup> The Selimi Defence contends that evidence relating to these allegations falls outside the scope of the charges pleaded in the Indictment, is not relevant to the charges and is not reliable so its probative value is outweighed by its prejudicial effect.<sup>12</sup> The Selimi Defence, therefore, requests that the Panel order the SPO not to lead any evidence related to the Allegations during W04846’s testimony and that the witness be cautioned not to give such evidence.<sup>13</sup>

10. The SPO responds that the Panel should reject the Request.<sup>14</sup> The SPO argues that the evidence that W04846 is expected to give concerning the Allegations is *prima facie* relevant as it concerns statements and acts against alleged “opponents” just before, and during, the Indictment period by Mr Selimi and another named joint criminal enterprise (“JCE”) member.<sup>15</sup> The SPO avers that, therefore, the

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<sup>8</sup> Transcript of Hearing, 27 March 2024, p. 13916, line 16 to p. 13918, line 6.

<sup>9</sup> Transcript of Hearing, 27 March 2024, p. 13918, lines 10-23.

<sup>10</sup> F02207, Specialist Counsel, *Selimi Defence Submissions Supplement to F02201*, 28 March 2024, confidential, with one Annex, confidential (a public redacted version was filed on the same day, F02207/RED).

<sup>11</sup> Request, paras 1, 47.

<sup>12</sup> Request, paras 1, 3-45.

<sup>13</sup> Request, paras 2, 47.

<sup>14</sup> Response, paras 1, 21.

<sup>15</sup> Response, paras 1, 3.

Allegations are relevant to a multitude of facts and circumstances pleaded in the Indictment, including the elements of the modes of liability.<sup>16</sup> The SPO also contends that the probative value is not outweighed by any prejudicial effect as, *inter alia*, W04846's prior statements are generally consistent, hearsay does not negate the *prima facie* probative value and the Defence will be able to cross-examine W04846.<sup>17</sup>

11. In its Reply, the Selimi Defence submits that the Response should be rejected and the Request granted.<sup>18</sup> It argues that the Response: (i) mischaracterises the relevant admissibility tests; and (ii) contains paradoxical representations and attempts to establish groundless connections between the evidence challenged in the Request with the case against the Accused and/or other aspects of W04846's evidence.<sup>19</sup> In particular, the Selimi Defence argues that the SPO failed to establish the relevance of the evidence concerning the Allegations.<sup>20</sup>

12. In the Supplemental Reply, the Selimi Defence submits that a recently disclosed SPO contact note pertaining to W04846's [REDACTED] ("Contact Note")<sup>21</sup> shows that even the SPO is of the view that the First Allegation has no probative value.<sup>22</sup> In the Selimi Defence's view, this supports its argument that W04846's "beliefs" in relation to the First Allegation are irrelevant to the charges in the case.<sup>23</sup> The Selimi Defence further argues that allowing the SPO to lead

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<sup>16</sup> Response, paras 3-8 referring to F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment* ("Indictment"), 30 September 2022, confidential, paras 8, 17, 32-33, 35-36, 40-42, 45-47, 49, 52(b), 59 (a public redacted version was filed on the same day, F00999/A03); F00709/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Corrected Pre-Trial Brief and Related Request* ("Pre-Trial Brief"), 24 February 2022, paras 3, 7, 11, 112, 232, 278 (a public redacted version was filed on 3 April 2023, F01415/A01, and a lesser redacted confidential version was filed on 9 June 2023, F01594/A03).

<sup>17</sup> Response, paras 9-19.

<sup>18</sup> Reply, para. 21.

<sup>19</sup> Reply, para. 1.

<sup>20</sup> Reply, paras 2-19.

<sup>21</sup> See Annex to the Supplemental Reply; Disclosure Package 1180 (26 March 2024).

<sup>22</sup> Supplemental Reply, paras 1-4.

<sup>23</sup> Supplemental Reply, paras 5-7.

evidence on the First Allegation creates the manifest risk that W04846, being aware that the SPO sees no evidential basis for the First Allegation, will proffer more baseless suggestions and accusations, which would cause prejudice to Mr Selimi.<sup>24</sup>

### III. APPLICABLE LAW

13. Pursuant to Article 21(4)(a), the Accused shall be informed promptly and in detail of the nature and cause of the charges against him.

14. Pursuant to Article 38(4) and Rule 86(3), the Indictment must contain a concise statement of the facts and the crimes with which the Accused is charged, in particular, the alleged modes of liability in relation to the crimes charged pursuant to Article 16. The Indictment shall be filed with supporting material.

15. The applicable law regarding the admission of evidence pursuant to Rule 138 has been laid out extensively in previous decisions issued by the Panel.<sup>25</sup> The Panel recalls that the question of admission of evidence is distinct from the question of the weight to be accorded, if any, to a particular piece of evidence at the end of the trial in light of the entire body of evidence admitted.<sup>26</sup>

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<sup>24</sup> Supplemental Reply, para. 8.

<sup>25</sup> See for example, F01409, Panel, *Decision on Specialist Prosecutor's Bar Table Motion*, 31 March 2023, confidential, paras 8-13.

<sup>26</sup> Rule 139(2). See e.g. F01832, Panel, *Fifth Decision on Specialist Prosecutor's Bar Table Motion*, 3 October 2023, para. 93; F01705, Panel, *Third Decision on Specialist Prosecutor's Bar Table Motion*, 27 July 2023, para. 51; F01596, Panel, *Second Decision on Specialist Prosecutor's Bar Table Motion*, 9 June 2023, para. 178.

#### IV. DISCUSSION

16. The Panel notes that the Allegations are not charged in the Indictment, or included in the Pre-Trial Brief.<sup>27</sup> Therefore, while evidence of uncharged “acts and conduct of the Accused” may be inadmissible for the purpose of determining guilt for the crimes charged, such evidence may be admissible for other valid purposes,<sup>28</sup> including when events occurred outside of the indictment period.<sup>29</sup>

17. Specifically, evidence of events outside the temporal scope of the indictment can be admitted if it is relevant to establishing facts and circumstances validly pleaded in the indictment, has probative value in respect of any such fact or circumstance, and there is no compelling reason to exclude it. Such evidence may be validly admitted, and relied on, *inter alia* to: (i) clarify a given context; (ii) establish elements of the charged conduct occurring within the temporal scope of the Indictment; (iii) demonstrate a deliberate pattern of conduct, also referred to as “similar fact evidence”; (iv) establish a pleaded state of mind; or (v) establish

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<sup>27</sup> See Indictment; Pre-Trial Brief. The SPO has also acknowledged that it is not “inviting the Trial Panel to conclude that a murder has been committed”, see Response, para. 18.

<sup>28</sup> See also e.g. IA028/F00011, Court of Appeals Panel, *Decision on Thaçi, Selimi and Krasniqi Appeal Against Oral Order on Trial Panel Questioning*, 4 July 2023, confidential, para. 53 (with further references) (a public redacted version was filed on the same day, IA028/F00011/RED); F01623, Panel, *Decision on Thaçi Defence’s Motion to Strike Part of W02652’s Testimony* (“Decision on Thaçi Defence’s Motion to Strike Part of W02652’s Testimony”), 23 June 2023, confidential, para. 22 (with further references) (a public redacted version was filed on 24 July 2023, F01623/RED); F01380, Panel, *Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154* (“16 March 2023 Rule 154 Decision”), 16 March 2023, confidential, para. 113 (a public redacted version was issued on 7 November 2023, F01380/RED); F01700, Panel, *Decision on Prosecution Motion for Admission of Evidence of W03724, W03832, W03880, W04368, W04566, and W04769 Pursuant to Rule 154* (“24 July 2023 Rule 154 Decision”), 24 July 2023, confidential, para. 27 (a public redacted version was issued on 7 November 2023, F01700/RED).

<sup>29</sup> See for example, Transcript of Hearing, 17 April 2023, pp. 2863-2866 (Oral Order); 24 July 2023 Rule 154 Decision, para. 43. See e.g. also International Criminal Court (“ICC”), *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-2842, Trial Chamber, [Judgment pursuant to Article 74 of the Statute](#), (“Lubanga Judgment”) 14 March 2012, paras 1022, 1352; International Criminal Tribunal for Rwanda (“ICTR”), *Nahimana et al. v. Prosecutor*, ICTR-99-52-A, Appeals Chamber, [Judgment](#) (“Nahimana Judgment”), 28 November 2007, para. 315; *Simba v. Prosecutor*, ICTR-01-76-AR72.2, Appeals Chamber, [Decision on Interlocutory Appeal regarding Temporal Jurisdiction](#), 29 July 2004, pp. 2-3.

a contextual element of the offence.<sup>30</sup>

18. The Panel has previously set out that where objection is taken to the admission of evidence on the basis of lack of relevance to the charges as pleaded in the Indictment, it will, amongst other things, assess the adequacy of any notice given, the relevance and probative value of the evidence in respect of facts and circumstances validly pleaded in the Indictment and assess the prejudice, if any, to the Accused should the evidence be admitted.<sup>31</sup> The Panel enjoys a degree of discretion in making such assessment and the decision whether or not to exclude evidence largely depends on the circumstances of a particular case.<sup>32</sup> When assessing relevance, the Panel will evaluate it against the charges, as validly pleaded in the Indictment.<sup>33</sup>

19. Accordingly, Panel will proceed to consider whether to exclude evidence relating to the Allegations.

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<sup>30</sup> [Lubanga Judgment](#), paras 1022, 1352; ICTR, *Nahimana et al. v Prosecutor*, ICTR 97-27-AR72 & ICTR 96-11-AR72, Appeals Chamber, [Decision on the Interlocutory Appeals \(Separate Opinion of Judge Shahabuddeen\)](#) (“Nahimana Appeals Decision (Separate Opinion of Judge Shahabuddeen)”), 5 September 2000, paras 18-26; [Nahimana Judgment](#), paras 315-320 (with further references); *Prosecutor v. Théoneste Bagosora et al.*, ICTR-98-41-T, Trial Chamber, [Decision on Admissibility of Proposed Testimony of Witness DBY](#) (“Bagosora Trial Chamber Decision”), 18 September 2003, paras 5-39; International Criminal Tribunal for the former Yugoslavia (“ICTY”), *Prosecutor v. Pavle Strugar*, IT-01-42-T, Trial Chamber, [Decision on the Defence Objection to the Prosecution’s Opening Statement Concerning Admissibility of Evidence](#), 22 January 2004, pp. 1-4; *Prosecutor v. Dragoljub Kunarac et al.*, IT-96-23-T & IT-96-23/1-T, Trial Chamber, [Judgment](#), (“Kunarac Judgment”), 22 February 2001, paras 570-592; *Prosecutor v. Prlić et al.*, IT-04-74-T, Trial Chamber, [Decision on Slobodan Praljak’s Motion for Clarification of the Time Frame of the Alleged Joint Criminal Enterprise](#), 15 January 2009, p. 9; ICTY, *Prosecutor v. Zoran Kupreškić et al.*, IT-95-16-A, Appeals Chamber, [Judgment](#) (“Kupreškić Judgment”), 23 October 2001, para. 321

<sup>31</sup> Decision on *Thaçi Defence’s Motion to Strike Part of W02652’s Testimony*, paras 20-24 (with further references).

<sup>32</sup> See for example. ICTY, *Prosecutor v. Milan Milutinović et al.*, IT-05-87-T, Trial Chamber, [Decision on Evidence Tendered Through Witness K82](#) (“Milutinović Decision”), in particular, para. 12, referring to [Bagosora Trial Chamber Decision](#), para. 18 (see also [Milutinović et al. Decision](#), paras 9-11, with further references); Special Court for Sierra Leone, *Prosecutor v. Sesay et al.*, SCSL-04-15-T, [Decision on Kallon Motion to Exclude Evidence Outside the Scope of the Indictment](#), 26 June 2008, para. 16.

<sup>33</sup> Decision on *Thaçi Defence’s Motion to Strike Part of W02652’s Testimony*, paras 20-22 (with further references).

## A. FIRST ALLEGATION

20. At the outset, the Panel clarifies that its understanding of the Request is that the Selimi Defence is only requesting the exclusion of evidence regarding the murder of [REDACTED]. Accordingly, while the filings refer to other evidence that W04846 is due to give about [REDACTED], including the alleged altercation with Mr Selimi, the Request does not seek the exclusion of this evidence.<sup>34</sup>

21. The Rule 95 summary for W04846 states that W04846 is expected to give evidence that: “[REDACTED] was killed by [REDACTED]” and that W04846’s “inquiries into [REDACTED] death led him to believe that “Rexhep [REDACTED]”,<sup>35</sup> which the SPO asserts is relevant to a multitude of issues, including the modes of liability.<sup>36</sup>

22. The Panel considers that the *prima facie* relevance, reliability and probative value of the evidence that W04846 is expected to give about the First Allegation is remote at best. Although, the SPO avers that the First Allegation is relevant to events charged in the Indictment, and, in particular, that it is inextricably linked to W04846’s evidence about [REDACTED] and the verbal altercation between [REDACTED] and Mr Selimi,<sup>37</sup> the Panel is of the view that there appears to be no credible link to Mr Selimi being involved in the First Allegation, or that [REDACTED] was killed for being a “collaborator”. Importantly, the Indictment alleges neither of these things. Rather, in the Panel’s view, the (hearsay) accounts, which the SPO proposes to lead from W04846, are largely inconsistent accounts

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<sup>34</sup> See Request, paras 3, 5, 13, 21-36; Reply, paras 12-19, in particular, para. 19 where the Selimi Defence sets out that “if the SPO wishes to call W04846 to allege that the witness overheard words spoken during an argument, it is free to do so, but not to improperly suggest an inextricable link to [REDACTED].”

<sup>35</sup> F01594/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Updated Witness List and Confidential Lesser Redacted Version of Pre-Trial Brief* (“Updated Witness List”), 9 June 2023, strictly confidential and *ex parte*, p. 536, para. 2 (a confidential redacted version was filed on the same day, F01594/A02).

<sup>36</sup> Response, paras 6-8.

<sup>37</sup> Response, paras 1, 6; See also Updated Witness List, p. 536, para. 2.



concerning the circumstances of the First Allegation.<sup>38</sup> While hearsay evidence is admissible before this jurisdiction, and while inconsistencies within a witness's proposed evidence do not make such evidence inadmissible,<sup>39</sup> they are factors that the Panel has considered when assessing the First Allegation and whether to exercise its discretion to allow this evidence to be presented. The Panel has also accounted for the fact that the evidence that W04846 is expected to give is, at best, remotely relevant to what is being charged in the Indictment. Furthermore, there appears to be no other evidence proffered by the SPO about this incident.<sup>40</sup> The Panel also notes that the SPO has emphasised that it is not "inviting the Trial Panel to conclude that a murder has been committed"<sup>41</sup> and that it "does not intend to address the matter at length",<sup>42</sup> which belies the centrality of this evidence to the SPO's case. Having accounted for the above, the Panel is of the view that the First Allegation has no or remote *prima facie* probative value in respect of the facts and circumstances pleaded in the Indictment.

23. As regards prejudice, the Panel notes, as set out above, that the First Allegation is not charged in the Indictment.<sup>43</sup> The fact that an Accused is said by a witness to have committed a crime on a prior occasion (or, as in this case, said by a witness to have committed a crime during the indictment period but which is not charged in the Indictment) could be used to draw a reasonable inference about or to prove or disprove facts and circumstances validly pleaded in the Indictment.<sup>44</sup> Such evidence, however, in and of itself, has a potential of prejudice

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<sup>38</sup> See Contact Note, paras 5- 6; See also 119379-119383.

<sup>39</sup> See for example, 16 March 2023 Rule 154 Decision, para. 21; F02328, Panel, *Decision on Prosecution Motion for Admission of Evidence of Witnesses W01511, W04260, W04305, W04410, W04744, W04752, and W04764 Pursuant to Rule 154 (F02204)*, 22 May 2024, confidential, para. 89 (a public redacted version was issued on the same day, F02328/RED).

<sup>40</sup> See Contact Note, paras 5-6.

<sup>41</sup> Response, para. 18.

<sup>42</sup> Response, para. 19.

<sup>43</sup> See *supra*, paras 16-17.

<sup>44</sup> See *supra*, paras 16-17; See also for example, [Kunarac Judgment](#), paras 591-592; [Kupreškić Judgment](#), para. 321.

to the Accused as it could be introduced to suggest the “bad character” of the Accused, or to show that he had a “propensity to act a certain way”.<sup>45</sup> In this respect, the Panel agrees with the SPO that the First Allegation does not constitute “bad character” evidence<sup>46</sup> as it is not being offered to demonstrate a “propensity to act” in a certain way.<sup>47</sup> Rather, the First Allegation is being offered to establish the elements of offences and modes of liability pleaded in the Indictment and provide context and background information.<sup>48</sup> Nonetheless, the Panel is of the view that, given the limited probative value of the evidence that W04846 is expected to give about the First Allegation, its probative value is outweighed by its prejudicial effect on the Accused. The Panel, therefore, excludes the First Allegation.

24. In light of the above, the Panel grants the request to exclude the First Allegation and directs the SPO not to lead any evidence in respect of the First Allegation and to caution W04846 not to voluntarily give evidence about the First Allegation.

#### B. SECOND ALLEGATION

25. The Rule 95 summary of W04846 states that W04846 saw Mr Selimi and another individual arriving and “proceeded to [REDACTED] for some time” and that “[REDACTED] with Rexhep Selimi”,<sup>49</sup> which the SPO asserts is relevant to a multitude of facts, including the pleaded modes of liability.<sup>50</sup>

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<sup>45</sup> See for example, [Bagosora Trial Decision](#), paras 15-18, 28, 34, 38 (with further references).

<sup>46</sup> Response, para. 17.

<sup>47</sup> See for example, [Bagosora Trial Decision](#), paras 13, 35; ICTR, *Prosecutor v. Théoneste Bagosora et al.*, ICTR-98-41-AR93 & ICTR-98-41-AR93.2, Appeals Chamber, [Decision on Prosecutor’s Interlocutory Appeals Regarding Exclusion of Evidence](#) (“Bagosora Appeals Decision”), 19 December 2003, paras 13-14. ICTR, [Nahimana Judgment](#), para. 315, fn. 759; [Kupreškić Judgment](#), para. 321.

<sup>48</sup> See Response, paras 6-8.

<sup>49</sup> Updated Witness List, p. 536, para. 3.

<sup>50</sup> Response, paras 5, 7-8.

26. Regarding whether the evidence that W04846 is expected to give relating to the Second Allegation is relevant to the pleaded charges, the Panel, in view of the reasons outlined at paragraphs 16-18 above, considers that, while it is outside the indictment period and not linked to a specific crime site in the Indictment, the Second Allegation is, nonetheless, sufficiently connected to material facts alleged in the Indictment. Specifically, the Panel is of the view that the evidence that W04846 is expected to give that he in [REDACTED] claims to have seen Mr Selimi and another named individual [REDACTED] telling him “[REDACTED]”<sup>51</sup> is *prima facie* relevant to, *inter alia*, whether: (i) the Accused and other alleged members of a joint criminal enterprise shared a common purpose to gain and exercise control over all of Kosovo by means including unlawfully intimidating, mistreating, committing violence against, and removing those deemed to be opponents; and (ii) a wider campaign of attacks against opponents was implemented throughout Kosovo before, during, and after the indictment period.<sup>52</sup>

27. Accordingly, the Panel finds that the evidence that W04846 is expected to give relating to the Second Allegation is *prima facie* relevant and sufficiently connected to material facts in the Indictment.

28. The Panel considers that the *prima facie* reliability and probative value of the evidence that W04846 is expected to give about the Second Allegation appears limited. In particular, the Panel notes that in W04846’s prior statements there are statements which are clearly inconsistent or appear speculative. There appears to be little or no corroboration of the account. The proposed evidence is also highly prejudicial. As set out above, “similar fact evidence” can be admitted if it is not outweighed by any prejudicial effect.<sup>53</sup> Nonetheless, the Panel observes that the evidence that W04846 is expected to give about the Second Allegation has limited

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<sup>51</sup> Updated Witness List, p. 536, para. 3; *See also* 102761-TR-ET Part 2, pp. 38-39.

<sup>52</sup> Indictment, paras 32-33, 35, 40, 52, 59.

<sup>53</sup> *See supra*, para. 23.

*prima facie* probative value, took place outside the Indictment period, and concerns allegations that Mr Selimi took part in the same act, the mistreatment of an individual, which forms the basis of the Indictment. Accordingly, the evidence that W04846 is expected to give about the Second Allegation has low and questionable probative value but substantial prejudicial effect on the Accused.

29. In light of the above, the Panel grants the request to exclude evidence relating to the Second Allegation and directs the SPO to not lead any evidence in respect of the Second Allegation during W04846's testimony and to caution W04846 not to voluntarily give evidence about the Second Allegation.

#### C. DISCLOSURE

30. As the Panel has excluded the Allegations, the Selimi Defence's submission that it is prevented from challenging the Allegations since the SPO has not disclosed certain material<sup>54</sup> is moot.

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<sup>54</sup> Request, paras 20, 22-23, 25-28, 31, 33.

V. DISPOSITION

31. For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS** the Request; and
- b) **DIRECTS** the SPO not to lead any evidence in respect of the First and Second Allegations during W04846's testimony and to caution W04846 not to voluntarily give evidence about the First and Second Allegations.



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**Judge Charles L. Smith, III**  
**Presiding Judge**

Dated this Wednesday, 19 June 2024

At The Hague, the Netherlands.