



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: Specialist Prosecutor's Office

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Public Redacted Version of 'Prosecution response to "Selimi Defence Request to Caution the SPO and for Additional Relief"'

Specialist Prosecutor's Office

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I. SUBMISSIONS

1. The Trial Panel should reject the baseless Request,¹ which distorts the information unequivocally set out in W04846's Preparation Note.² During W04846's witness preparation session, the Specialist Prosecutor's Office ('SPO') fully abided by the Order on the Conduct of Proceedings³ and the Panel's decision on the scope of W04846's testimony,⁴ including by referring to an incident the witness recounted in detail in prior statements.

2. Witnesses are called because they are anticipated to provide relevant and important evidence.⁵ Witnesses, however, may not understand what is relevant and what is not, particularly where the scope of their evidence has been limited by the Panel. In turn, in order to ensure that witnesses give relevant, accurate, and structured testimony,⁶ the SPO, *inter alia*, during preparation (and/or the Panel or questioning lawyer during testimony) may need to clarify with the witness the parts of the witness's evidence that are relevant and those parts that are not. Informing a witness that part of their evidence – in particular, which they have already given in a prior statement – is relevant and important to the SPO's case does not amount to coaching, training or practising testimony, or seeking to influence the substance of the witness's answers.⁷ During both preparation⁸ and testimony, a witness is informed of his/her obligation to tell the truth.

¹ Selimi Defence Request to Caution the SPO and for Additional Relief, KSC-BC-2020-06/F02404, 24 June 2024 (notified on 25 June 2024 at 08:53 a.m.), Confidential ('Request').

² 121715-121728 ('W04846's Preparation Note').

³ Annex 1 to Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Order on the Conduct of Proceedings'). *See also* Decision on Joint Defence Request for Amendment of the Order on the Conduct of Proceedings, KSC-BC-2020-06/F02389, 18 June 2024.

⁴ Decision on Selimi Defence Motion to Exclude Evidence of W04846, KSC-BC-2020-06/F02393, 19 June 2024, Confidential ('Decision').

⁵ *See e.g.* Article 42(1) of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015.

⁶ Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, para.86(i)(a).

⁷ *Contra* Request, KSC-BC-2020-06/F02404, paras 2-3.

⁸ Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, para.97(i).

3. W04846's Preparation Note transparently sets out the information communicated by the SPO to W04846 and that provided by W04846. Nothing therein amounts to prohibited conduct. This would be true regardless of the circumstances, but even more so in the context of this particular discussion, which was undertaken when the witness was informed he was no longer authorised to address, in testimony, the majority of the evidence he provided in prior statements and when such witness was strongly considering not testifying at all in light of such restriction. Indeed, the witness did not understand why he could not speak about a part of his evidence excluded by the Panel, as 'it was tied to rest of his evidence'.⁹ In this context, that the SPO identified relevant parts of the witness's evidence that he could still testify about, while reiterating, as it is obliged to do,¹⁰ the witness's obligation to tell the truth, makes it clear nothing other than the truth was being asked – directly or indirectly – of the witness.¹¹

4. The Request misrepresents the information in W04846's Preparation Note.¹² The SPO merely provided examples of testimony the witness would still be authorised to provide despite the Decision. Going on to note that evidence the witness was authorised to provide is important and part of a larger puzzle is a generic clarification which cannot reasonably be interpreted as inappropriate, especially in the circumstances. As noted above, confusion as to the scope of relevant and permissible

⁹ Witness Preparation Note, 121715-121728, para.10.

¹⁰ Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, para.97(i).

¹¹ See Witness Preparation Note, 121715-121728, paras 13 ('[REDACTED] noted W04846 was the only witness the SPO was calling specifically about incidents involving [REDACTED] and that testifying and telling the truth would, in a way, honour [REDACTED]. While [REDACTED] had not met [REDACTED], based on what W04846 has said, in his prior statements, about [REDACTED]'s morals and beliefs, [REDACTED] would probably want W04846 to say what he could, telling the truth and nothing else'), 24 ('[REDACTED] then further explained what the witness could expect to happen during testimony, reminding the witness of the importance of telling the truth').

¹² See, e.g., Request, KSC-BC-2020-06/F02404, para.4.

evidence on the part of a witness is normal, particularly, where, as here, the Panel has excluded, for other reasons, evidence which it has acknowledged as being relevant.¹³

5. The allegation that the SPO directed or influenced W04846 to do anything but tell the truth is baseless.¹⁴ That the witness noted he thought he [REDACTED], thought they were going to be killed after [REDACTED], is hardly surprising.¹⁵ Moreover, the SPO certainly did not invite W04846 to submit any further information beyond the specific images referred to by W04846 during the course of the preparation session.¹⁶ That, following the preparation session, W04846 sent, *inter alia*, an image and text related to the location where the [REDACTED] incident took place and containing information largely duplicative of that in W04846's prior statements is not illustrative of the immediate effect of anything stated by the SPO – let alone anything improper – during the session.¹⁷

6. W04846 is being called to testify fully *viva voce*. As such, the Defence will have every opportunity to test his evidence during cross-examination, including on the contents of W04846's Preparation Note.

II. CONFIDENTIALITY

7. This response is confidential in accordance with Rule 82(4) of the Rules.¹⁸

¹³ Decision, KSC-BC-2020-06/F02393, paras 22, 27 (while the Panel considered that the 'First Allegation' had no or limited probative value, it did find that the 'Second Allegation' was relevant and sufficiently connected to material facts in the Indictment).

¹⁴ See Request, KSC-BC-2020-06/F02404, para.6.

¹⁵ See W04846 Preparation Note, 121715-121728, para.10; 102761-TR-AT Part 1 Revised-ET, pp.32-33. See Request, KSC-BC-2020-06/F02404, para.5.

¹⁶ See W04846 Preparation Note, 121715-121728, para.25.

¹⁷ *Contra* Request, KSC-BC-2020-06/F02404, para.6, fn.12.

¹⁸ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

III. RELIEF REQUESTED

8. For the foregoing reasons, the Panel should reject the Request.

Word count: 1018



Kimberly P. West

Specialist Prosecutor

Tuesday, 24 June 2024

At The Hague, the Netherlands.