



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 'URGENT Prosecution response to' Selimi Defence
Second Motion for Exclusion of Evidence of W04846''**

Specialist Prosecutor's Office

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I. SUBMISSIONS

1. The Trial Panel should reject the baseless Request,¹ which seeks to further restrict the testimony of W04846 despite the fact that the two incidents at issue are relevant to the charges and that the Defence has had sufficient notice thereof. The Panel's own jurisprudence establishes that evidence concerning, *inter alia*, victims and/or incidents not specifically identified in the Indictment or Pre-Trial Brief can nevertheless be admissible to prove the charged crimes and modes of liability.² Further, since the Defence may cross-examine W04846 on his basis of knowledge and any other matter related to the challenged incidents, no undue prejudice arises.

[REDACTED] incident (First Allegation)

2. As noted in W04846's Preparation Note, W04846 provided information concerning the intervention of [REDACTED], intervening to release [REDACTED], who had been arrested by a KLA member, when he was referred to an excerpt from his Specialist Prosecutor's Office ('SPO') interview.³ The relevant interview excerpt refers to [REDACTED].⁴ Accordingly, the clarification sought falls squarely within the bounds of what the SPO is authorised to elicit during witness preparation.⁵

¹ Selimi Defence Second Motion for Exclusion of Evidence of W04846 [...], KSC-BC-2020-06/F02408, 25 June 2024 (notified on 26 June 2024 at 08:17 a.m.), Confidential ('Request').

² *Contra* Request, KSC-BC-2020-06/F02408, 25 June 2024, *e.g.*, paras 8, 9-12, 23; *See, e.g.* Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, 17 March 2023, Confidential, para.113; Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, Confidential, paras 157, 212, 218; Decision on Prosecution Motion for Admission of Evidence of W00208, W02082, W02475, W04147, W04325, W04491 and W04753 Pursuant to Rule 154, KSC-BC-2020-06/F01848, 10 October 2023, Confidential, para.54.

³ *See* Witness Preparation Note, 121715-121728, para.39, referring to 102761-TR-AT Part 3 Revised-ET, p.25.

⁴ 102761-TR-AT Part 3 Revised-ET, p.25, lns.6-8.

⁵ Annex 1 to Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023, para.86(ii). *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.

3. The Defence has been on notice of W04846's evidence that [REDACTED] saved people from execution since the disclosure of W04846's SPO interview. Accordingly, the Request misrepresents W04846's evidence on the matter.⁶ The information in the preparation note merely adds detail concerning this incident. The fact that W04846 also addressed the incident in his 2005 statement only adds to the notice that has been provided to the Defence. Further, the information at issue clearly relates to the background of [REDACTED], which was explicitly set out as one of the issues, facts and circumstances in relation to which W04846 will be examined.⁷

4. Defence speculation as to what W04846 may specifically say, during testimony, in relation to this incident⁸ should not be credited, considering that the Panel is composed of professional judges, not a lay jury, and that the Defence will have every opportunity to test anything the witness states in relation to this incident.

[REDACTED] incident (Second Allegation)

5. As the SPO noted in the email accompanying W04846's Preparation Note,⁹ it became necessary to amend the issues, facts, and circumstances in relation to which W04846 will be examined¹⁰ in light of the Panel's 19 June 2024 decision on the scope of W04846's testimony.¹¹

6. Absent the Decision, the SPO would have elicited information in relation to the [REDACTED] incident in the context of its direct examination of the witness concerning [REDACTED], given that the [REDACTED] incident took place the day

⁶ See Request, KSC-BC-2020-06/F02408, para.3.

⁷ See ANNEX 1 to Prosecution submission of list of witnesses for 15 January to 4 April 2024, KSC-BC-2020-06/F02007/A01, 14 December 2023, Confidential ('December 2023 Notification'), p.50/82, no.1.

⁸ Request, KSC-BC-2020-06/F02408, para.7.

⁹ Email from the SPO to the Panel, Parties and Participants dated 22 June 2024 at 19:37.

¹⁰ December 2023 Notification, KSC-BC-2020-06/F02007/A01.

¹¹ Decision on Selimi Defence Motion to Exclude Evidence of W04846, KSC-BC-2020-06/F02393, 19 June 2024, Confidential ('Decision').

immediately prior to [REDACTED].¹² Further, the incident is referred to in W04846's prior statements and was referenced in SPO filings.¹³

7. Detention of Opponents,¹⁴ the definition of which would encompass [REDACTED],¹⁵ are clearly relevant to the SPO's case, particularly, where, as here, the alleged detention took place at a charged site, [REDACTED], and in [REDACTED],¹⁶ which is during the charged timeframe.

8. As also set out above in relation to the [REDACTED] incident, Defence speculation as to what W04846 may specifically say, during testimony, in relation to [REDACTED]¹⁷ should not be credited. W04846 has been informed of the Decision¹⁸ and any matters related thereto can be addressed in court should the need arise.

II. CONFIDENTIALITY

9. This response is confidential in accordance with Rule 82(4) of the Rules.¹⁹

III. RELIEF REQUESTED

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

¹² See Prosecution response to Selimi Defence Motion for the Exclusion of Evidence of W04846, KSC-BC-2020-06/F02187, 18 March 2024, Confidential ('SPO Response').

¹³ See SPO Response, KSC-BC-2020-06/F02187, paras 6-7.

¹⁴ See ANNEX 1 to Submission of confirmed amended Indictment, KSC-BC-2020-06/F0099/A01, 30 September 2022, para.32.

¹⁵ See 102761-TR-AT Part 2 Revised-ET, p.26, where W04846 notes [REDACTED] was detained in [REDACTED] because he was [REDACTED].

¹⁶ See 102761-TR-AT Part 2 Revised-ET, pp.9, 26.

¹⁷ Request, KSC-BC-2020-06/F02408, para.20.

¹⁸ Witness Preparation Note, 121715-121728, para.9.

¹⁹ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

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Wednesday, 26 June 2024

At The Hague, the Netherlands.