

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 Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Counsel for Rexhep Selimi

Date: 24 June 2024

Language: English

Classification: Public

**Public Redacted Version of Selimi Defence Request to Caution the SPO and
for Additional Relief**

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I. INTRODUCTION

1. The Defence for Mr. Rexhep Selimi (“the Defence”) hereby files its Request to Caution the SPO and for Additional Relief (“Request”). The present request is filed in light of the recently disclosed preparation note of W04846,¹ which details clear instances of conduct prohibited by the Order on the Conduct of Proceedings² (“Order”) on the part of the SPO personnel involved in the preparation session of W04846.
2. Accordingly, the Defence respectfully requests the Trial Panel to (i) caution the SPO to abide by the Order on the Conduct of Proceedings when carrying out preparation sessions and refrain from any conduct that may amount to coaching, training or practising the testimony of witnesses in the course of its preparation sessions; and (ii) take into account the impact occasioned by the SPO’s conduct on W04846’s testimony in assessing the weight to be accorded to W04846’s evidence.

II. SUBMISSIONS

3. Pursuant to the Order, the “[c]oaching, training or practising” of a witness’ testimony during a preparation session is prohibited.³ The Order further prohibits the questioning lawyer from “[s]eek[ing] to influence the substance of the witness’ answers, either directly or indirectly (including, for instance, by informing the witness of the type of evidence that would assist the calling Party’s case, by suggesting whether or not the witness’s answers are right, or leading the witness in an inappropriate way).⁴ As further established in the jurisprudence of the *ad hoc* tribunals, communications between the calling party and its witnesses

¹ 121715-121728.

² KSC-BC-2020-06/F01226, Annex 1 to Order on the Conduct of Proceedings, 25 January 2023.

³ Order, para. 87.

⁴ Order, para. 98(i).

during the course of proofing sessions are not permitted insofar as they are used for the purposes of (i) the rehearsal, practice, or coaching of witnesses;⁵ (ii) the training of or tampering with a witness' forthcoming testimony;⁶ or (iii) moulding the Prosecution's case against the Accused in the course of the trial.⁷

4. During the preparation session of W04846, it is recorded that, upon informing the witness of the Trial Panel's decision limiting the scope of his testimony and hearing the witness' intention to not provide any evidence to assist the SPO,⁸ the questioning lawyer indicated to the witness that "there remained important evidence W04846 could provide to the Panel, in particular concerning the [REDACTED]."⁹ Only three paragraphs later, the questioning lawyer is recorded exemplifying the areas of W04846's evidence that the SPO deems "important and part of a larger puzzle", referring specifically to W04846's [REDACTED] alleged attempts to [REDACTED]."¹⁰ All of these directions took place *before* the witness was given his prior statements to review. By seizing the witness of the type of evidence that would assist its case, the SPO's conduct falls foul of paragraph 98(i) of the Order.
5. In that respect, the SPO's explicit references to the witness' evidence that would be most helpful to the SPO conspicuously orientated the witness into providing additional incriminating information related to that incident, in particular adding his belief that [REDACTED].¹¹

⁵ ICTY, *Prosecutor v. Milutinovic et al.*, Case No. IT-05-87-T, Decision on Ojdic Motion to Prohibit Witness Proofing, 12 December 2006, para. 16; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Decision on Lahi Brahimaj's Urgent Motion Seeking Memorialisation of Further Contact Between Prosecution and Witness 3, 31 October 2011, para. 15.

⁶ ICTR, *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, 15 December 2006, paras. 11, 12, 15.

⁷ *Ibid*, para. 11.

⁸ KSC-BC-2020-06/F02393, Decision on Selimi Defence Motion to Exclude Evidence of W04846, 19 June 2024.

⁹ 121715-121728, para. 9.

¹⁰ *Ibid*, para. 12.

¹¹ *Ibid*, para. 10.

6. Illustrative of the immediate effect of the SPO's directions, today at 16.50, in disclosure package 1311, the Defence received copies of text messages from W04846 sent one day after the conclusion of his preparation session, [REDACTED] containing new, additional information specifically related to the allegation in question.¹²
7. Accordingly, the SPO created the apparent risk of W04846's testimony being influenced by virtue of informing him of the type of evidence that would be helpful to its case. As such, any assessment of the weight to be accorded to the evidence provided by W04846 during his forthcoming testimony ought to account for the SPO's conduct in the course of his preparation session.

III. CLASSIFICATION

8. The present submissions are filed confidentially as they refer to confidential information pertaining to witnesses who have been granted protective measures. A public redacted version of this filing will be filed in due course.

IV. CONCLUSION

9. Considering the foregoing, the Defence respectfully requests the Trial Panel to (i) caution the SPO to abide by the Order on the Conduct of Proceedings when carrying out preparation sessions and refrain from any conduct that may amount to coaching, training or practising the testimony of witnesses in the course of its preparation sessions; and (ii) take into account the impact occasioned by the SPO's conduct on W04846's testimony in assessing the weight to be accorded to W04846's evidence.

¹² 121738-121744, pp. 1217443-121744

Word count: 851

Respectfully submitted on 24 June 2024,



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