

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: Dr Fidelma Donlon

Filing Participant: Victims' Counsel

Date: 28 August 2024

Language: English

Classification: Public

Public Redacted Version of Victims' Counsel's response to "Selimi Defence Motion for Exclusion of Evidence of W04735 with Confidential Annex 1"

Specialist Prosecutor's Office
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I. INTRODUCTION

1. Pursuant to Article 22(3) and (6) of the Law on Specialist Chambers and Specialist Prosecutor's Office (Law No. 05/L-053) ("Law"), and Rule 114(4)(a) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), Victims' Counsel responds to the Selimi Defence request to order Victims' Counsel not to elicit any evidence related to the conversation [REDACTED].¹
2. The Defence's request undermines fundamental rights of victims participating in the proceedings ("VPPs") based on a mere speculation as to what W04735 might say if questioned about [REDACTED]. At the same time, it fails to provide any reasoning that would suggest that the evidence that Victims' Counsel intends to elicit through his questions goes against the fair trial rights of the Accused.

II. CLASSIFICATION

3. This submission is classified as confidential pursuant to Rule 82(4). A public redacted version is filed simultaneously.

III. PROCEDURAL HISTORY

4. The Prosecution notified the Panel, Parties, and Participants of the witnesses for 19 August to 7 November 2024 on 16 July 2024.²
5. On 24 July 2024, Victims' Counsel submitted the sixteenth notification of his wish to cross-examine witnesses,³ as instructed by the Trial Panel in the Order on the Conduct of Proceedings.⁴

¹ KSC-BC-2020-06/F02502, Selimi Defence Motion for Exclusion of Evidence of W04735 with Confidential Annex 1, 22 August 2024 ("Defence Motion"), para. 23(ii).

² KSC-BC-2020-06/F02451, Prosecution submission of list of witnesses for 19 August to 7 November 2024 with confidential Annex 1, 16 July 2024.

³ KSC-BC-2020-06/F02470, Victims' Counsel's Sixteenth Notification of Wish to Cross-Examine Witnesses, 24 July 2024 ("Sixteenth Notification").

⁴ KSC-BC-2020-06/F01226/A01, Annex 1 to the Order on the Conduct of Proceedings, 25 January 2023 ("Order on the Conduct of Proceedings"), paras 33 and 35.

6. On 22 August 2024, the Selimi Defence objected to Victims' Counsel's questioning of W04735.⁵
7. On 26 August 2024, the Panel directed an expediated briefing schedule in relation to the Defence Motion, ordering that any response by the Specialist Prosecutor's Office ("SPO") should be submitted by 28 August 2024 and that no replies will be entertained.⁶
8. On 27 August 2024, the SPO responded to the Defence Motion.⁷

IV. SUBMISSIONS

9. Evidence concerning [REDACTED] and its effect on W04735 is relevant to the continued harm suffered by this witness due to the crimes charged against the Accused.
10. The Defence acknowledges that Victims' Counsel intends to question W04735 about [REDACTED].⁸ The Defence also acknowledges that Victims' Counsel's intended cross-examination relates to W04735's continued harm and attempts to discover the truth about what had happened to him in 1999, why and who was responsible for it, and [REDACTED].⁹
11. At the same time, the Selimi Defence requests the Trial Panel to, *inter alia*, order Victims' Counsel not to elicit any evidence related to [REDACTED] ("Defence request").¹⁰ According to the Defence, cross-examining W04735 about [REDACTED] by Victims' Counsel "bears the imminent risk that the witness will

⁵ Defence Motion, paras 20 and 23(ii).

⁶ E-mail from Court Management Unit, dated 26 August 2024, received at 11:40.

⁷ KSC-BC-2020-06/F02510, Prosecution Response to 'Selimi Defence Motion for Exclusion of Evidence of W04735', 27 August 2024.

⁸ Defence Motion, para. 20; Sixteenth Notification, p. 5; KSC-BC-2020-06/F02492, Victims' Counsel's response to "Defence Notice of Objection to Victims' Counsel Cross-examination of W04295, W04278 and W04735", 14 August 2024, para. 29.

⁹ Defence Motion, para. 20; Sixteenth Notification, p. 5; KSC-BC-2020-06/F02492, Victims' Counsel's response to "Defence Notice of Objection to Victims' Counsel Cross-examination of W04295, W04278 and W04735", 14 August 2024, para. 29.

¹⁰ Defence Motion, para. 23(ii).

use this opportunity to air [...] allegations that are borne entirely out of conjecture and untestable hearsay.”¹¹

12. The right to determine what happened and who was responsible for it, and the determination and acknowledgement of harm suffered by victims are among the fundamental rights of every VPP.¹² Therefore, allowing Victims’ Counsel to elicit evidence aimed at the realization of these rights is an important element of these proceedings.
13. The Defence’s request intends to curtail these basic rights of the VPP concerned, on the basis of a mere speculation as to the information that W04735 might volunteer if questioned about [REDACTED], and that this could “constitute a manifest obstacle to the expeditious conduct of the present proceedings”.¹³
14. A possibility that a witness may offer irrelevant evidence when questioned about a topic relevant to victims’ interests is not a basis for prohibiting such questioning. Victims’ Counsel has limited time to ask his questions. He does not intend to ask W04735 any questions about Rexhep Selimi and his alleged involvement in [REDACTED]. Should W04735 volunteer such information, the fair trial rights of the Accused would not be affected because the Judges can restrain such testimony and then ignore it in their deliberations.

V. CONCLUSION

15. For all of these reasons, the Defence request should be rejected and the proposed questioning of W04735 by Victims’ Counsel be permitted.

¹¹ Defence Motion, para. 20.

¹² *Prosecutor v Salih Mustafa*, KSC-BC-2020-05/F00152, Decision on victims’ procedural rights during trial, 12 July 2021; *Prosecutor v Pjetër Shala*, KSC-BC-2020-04/F00433, Decision on victims’ procedural rights during trial and related matters, 24 February 2023, paras 18-19, 25-26.

¹³ Defence Motion, paras 20 and 22.

Word count: 914



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28 August 2024

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