



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: 28 August 2024

Language: English

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Decision on Selimi Defence Motion to Exclude Evidence of W04735

Specialist Prosecutor

Kimberly P. West

Counsel for Hashim Thaçi

Luka Mišetić

Counsel for Victims

Simon Laws

Counsel for Kadri Veseli

Rodney Dixon

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

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 16 July 2024, the Specialist Prosecutor’s Office (“SPO”) submitted a list of witnesses to be called between 19 August 2024 and 7 November 2024, including W04735 as one of those witnesses (“August-November Witness List”).¹
2. On 22 August 2024, the Defence for Rexhep Selimi (“Mr Selimi” and “Selimi Defence”) filed a request to exclude certain evidence of W04735 (“Request”).²
3. On 27 August 2024, following an order for an expedited briefing schedule,³ the SPO responded to the Request (“Response”).⁴
4. On 28 August 2024, Victims’ Counsel also responded to the Request (“VC Response”).⁵

¹ F02451/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of List of Witnesses for 19 August 2024 to 7 November 2024*, 16 July 2024, confidential, pp. 19-24.

² F02502, Specialist Counsel, *Selimi Defence Motion for the Exclusion of Evidence of W04735*, 22 August 2024, confidential, with one Annex, confidential (a public redacted version was filed on 27 August 2024, F02502/RED).

³ CRSPD557, *Email from Trial Panel II to the Parties and Participants*, 26 August 2024.

⁴ F02510, Specialist Prosecutor, *Prosecution Response to ‘Selimi Defence Motion for the Exclusion of Evidence of W04735’*, 27 August 2024, confidential (a public redacted version was filed on the same day, F02510/RED).

⁵ F02513, Victims’ Counsel, *Victims’ Counsel’s Response to “Selimi Defence Motion for Exclusion of Evidence of W04735”*, 28 August 2024, confidential (a public redacted version was filed on the same day, F02513/RED).

II. SUBMISSIONS

5. The Selimi Defence requests that the Panel exclude the evidence of W04735 in relation to the following four allegations falling outside the scope of W04735's statements which have been found appropriate for admission pursuant to Rule 154 ("Rule 154 Statements"), namely that: (i) Mr Selimi was involved in the alleged murder of an individual ("First Allegation"); (ii) Mr Selimi was involved in the death of a second individual ("Second Allegation"); (iii) Mr Selimi was involved in a further incident, as alleged by W02652 ("Third Allegation"); and (iv) a conversation took place in 2017 between W04735 and Hashim Thaçi ("Mr Thaçi") during which Mr Selimi was alleged to have been responsible for a further incident ("Fourth Allegation") (collectively the "Allegations").⁶ The Selimi Defence contends that, as the Panel has previously excluded evidence relating to the First, Second and Third Allegations on the grounds that their probative value is outweighed by their prejudicial effect, the Panel should extend the exclusion orders to W04735's evidence in respect of the same allegations.⁷ The Selimi Defence further argues that the marginal probative value, if any, of the Fourth Allegation is substantially outweighed by its prejudicial effect and, therefore, it should be excluded and W04735 cautioned not to give evidence about this incident.⁸

6. The SPO responds that the Panel should summarily dismiss the Request.⁹ The SPO argues that the Request is alarmist and speculative since, as it already indicated in *inter partes* communication, the SPO "does not intend to address any of the topics sought to be excluded" in the Request during W04735's direct examination.¹⁰ The SPO adds that, contrary to the Selimi Defence's submissions,

⁶ Request, paras 1, 23.

⁷ Request, paras 1, 4-14, 22-23.

⁸ Request, paras 2, 15-20, 22-23.

⁹ Response, paras 1, 13.

¹⁰ Response, paras 1, 3-5.

there is no need to caution W04735 to prevent him from voluntarily providing evidence regarding the Allegations since there are adequate safeguards in the Specialist Chambers' existing legal framework to address such a risk.¹¹

7. Victims' Counsel responds that the Panel should reject the Request as it undermines the fundamental rights of victims participating in the proceedings based on speculations as to what W04735 might say if questioned about the meeting with Mr Thaçi.¹² Victims' Counsel argues that, while this meeting and its effect on W04735 is relevant to the continued harm suffered by the witness, he does not intend to ask W04735 any questions about the allegations against Rexhep Selimi in the Fourth Allegation.¹³ Should W04735 volunteer such information, Victims' Counsel contends that the fair trial rights of the Accused would not be affected because the Panel can restrain the testimony and/or ignore it in their deliberations.¹⁴

III. APPLICABLE LAW

8. The applicable law regarding the admission of evidence pursuant to Rule 138, including when events are not charged in the Indictment, or included in the Pre-Trial Brief, has been laid out extensively in previous decisions issued by the Panel.¹⁵ 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.¹⁶

¹¹ Response, paras 2-3, 6-11.

¹² VC Response, paras 2, 13, 15.

¹³ VC Response, paras 9-10, 12, 14.

¹⁴ VC Response, para. 14.

¹⁵ See for example, F01409, Panel, *Decision on Specialist Prosecutor's Bar Table Motion*, 31 March 2023, confidential, paras 8-13; F02393, Panel, *Decision on Selimi Defence Motion to Exclude Evidence of W04846* ("Decision on Exclusion of Evidence of W04846"), 19 June 2024, confidential, paras 13-18 (a public redacted version was filed on the same day, F02393/RED).

¹⁶ 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*,

IV. DISCUSSION

9. The Panel recalls that it previously ordered the SPO not to elicit evidence which it intended to elicit from W04846, excluded evidence in respect of the First and Second Allegation, and directed the SPO to caution W04846 not to voluntarily give evidence about the First and Second Allegations.¹⁷ The Panel also recalls that it ordered the SPO not to elicit evidence which it intended to elicit in respect of the Third Allegation during W02652's testimony, and ordered the SPO to redact references to the Third Allegation from any material it sought to tender into evidence.¹⁸

10. Here, the SPO has expressly confirmed that it does not intend to address any of the topics which the Selimi Defence seeks to exclude, and submits that the Request seeks a wholly unnecessary order to the SPO to elicit evidence that it does not intend to elicit.¹⁹ In addition, the SPO had earlier confirmed, in *inter partes* correspondence, that "[i]t is currently foreseen that W04735's direct examination will be limited to the evidence detailed in the Rule 95 Summary, in the Pre-Trial Brief, Notification filing and in the Rule 154 Motion".²⁰ The Panel notes that the Rule 95 summary for W04735, the Indictment, the Pre-Trial Brief and the August-November Witness List do not contain any references to the Allegations.²¹

27 July 2023, para. 51; F01596, Panel, *Second Decision on Specialist Prosecutor's Bar Table Motion*, 9 June 2023, para. 178.

¹⁷ Decision on Exclusion of Evidence of W04846, paras 24, 29, 31.

¹⁸ Transcript of Hearing, 17 April 2023, pp. 2863-2866.

¹⁹ Response, para. 1.

²⁰ Annex to the Request, p. 2.

²¹ F01594/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Updated Witness List and Confidential Lesser Redacted Version of Pre-Trial Brief*, 9 June 2023, strictly confidential and *ex parte*, pp. 440-441 (a confidential redacted version was filed on the same day, F01594/A02); F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment*, 30 September 2022, confidential (a public lesser redacted version was filed on 27 February 2023, F01323/A01); F00709/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of Corrected Pre-Trial Brief and Related Request*, 24 February 2022, strictly confidential and *ex parte* (a public redacted version was filed on 3 April 2023, F01415/A01; a confidential lesser redacted version was filed on 9 June 2023, F01594/A03).

11. As the SPO has confirmed that it does not intend to lead any evidence in respect of the Allegations,²² the Panel considers the Request to be without merit. The Panel also observes, in respect of the Selimi Defence's submissions, that: (i) while two of W04735's prior statements contain references to the Allegations,²³ the SPO does not offer them for admission pursuant to Rule 154,²⁴ and does not propose to use them with W04735 during his testimony;²⁵ (ii) while certain other documents contain references to the Allegations,²⁶ the SPO does not propose to use these documents with W04735 during his testimony;²⁷ and (iii) while 058510-058528 RED 2 contains references to persons in the Allegations,²⁸ and the SPO proposes to use it with W04735 during his testimony,²⁹ there are no references in this document to Mr Selimi's involvement.³⁰

12. Lastly, in respect of the Selimi Defence's submission that Victims' Counsel has notified his wish to cross-examine W04735 about the Fourth Allegation,³¹ the Panel notes that Victims' Counsel has confirmed that he does not intend to ask W04735 any questions about Mr Selimi and his alleged involvement in any incident.³² The Panel also notes that it generally rules on a request by Victims' Counsel to question a witness when the SPO has completed its direct examination

²² Annex to Request, p. 2; Response, paras 1, 3-5.

²³ Request, paras 4, 10, 15-16, 18-19 referring to 083218-TR-ET Part 2, pp. 3-4, 9,17, 20-21; 083218-TR-ET Part 3, p. 24 ; 083218-TR-ET Part 4, pp. 8, 20; 083218-TR-ET Part 9, p. 5; 085835-085867, pp. 085835-085836.

²⁴ F02450/A07, Specialist Prosecutor, W04735: *Annex 7 to Prosecution Motion for Admission of Evidence of Witnesses W02135, W03871, W04295, W04372, W04590, W04600, W04735, W04737, and W04868 Pursuant to Rule 154 and Related Requests*, 16 July 2024, confidential, pp. 2-4.

²⁵ August-November Witness List, pp. 20-23; *See also* CRSPD558, *Email from the Specialist Prosecutor to Trial Panel II, Parties and Participants*, 22 August 2024.

²⁶ Request, paras 4, 10, 15-16 referring to 104364-104365, p. 104365; 107023-107023; 058273-01-TR-ET.

²⁷ August-November Witness List, pp. 20-23; *See also* CRSPD558, *Email from the Specialist Prosecutor to Trial Panel II, Parties and Participants*, 22 August 2024.

²⁸ Request, paras 4, 10 referring to 058510-058528 RED 2, p. 058527-058528.

²⁹ August-November Witness List, p. 20.

³⁰ *See* 058510-058528 RED 2.

³¹ Request, para. 20 referring to F02470, Victims' Counsel, *Victims' Counsel's Sixteenth Notification of Wish to Cross-Examine Witnesses*, 24 July 2024, confidential, pp. 5-6.

³² VC Response, para. 14.

of the witness. The Panel therefore does not consider it necessary to direct Victims' Counsel at this time.

13. In light of the above, the Panel rejects the request to exclude the Allegations. The Panel also finds that a caution to the witness not to testify about certain topics is not necessary, as the Panel can deal with this if, and when, it arises.

V. DISPOSITION

14. For the above-mentioned reasons, the Panel hereby **REJECTS** the Request.



Judge Charles L. Smith, III
Presiding Judge

Dated this Wednesday, 28 August 2024

At The Hague, the Netherlands.