



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 Guénaël Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Fidelma Donlon

**Date:** 12 September 2024

**Language:** English

**Classification:** Public

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**Decision on Selimi Defence Request Concerning W04846's Preparation Session and Selimi Defence Request to Caution the SPO and for Additional Relief**

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**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 Rule 116(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 14 December 2023, the Specialist Prosecutor’s Office (“SPO”) included W04846 in its list of witnesses scheduled to testify in the period 15 January to 4 April 2024.<sup>1</sup>

2. On 18 June 2024, the Panel issued a decision on a joint Defence request to amend the Order on the Conduct of Proceedings (“Order”) rejecting certain proposed amendments to the Order (“Decision”).<sup>2</sup>

3. On 19 June 2024, the Panel issued its Decision on Selimi Defence Motion to Exclude Evidence of W04846 (“Second Decision”).<sup>3</sup> The Panel ordered the SPO not to elicit evidence from W04846 in relation to two allegations which relate to Rexhep Selimi (“Mr Selimi”), namely: (i) the alleged killing of an individual (“First Allegation”); and (ii) the alleged beating and killing of another individual (“Second Allegation”) (collectively the “Allegations”), and directed the SPO to caution W04846 not to voluntarily give evidence about the Allegations.<sup>4</sup>

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<sup>1</sup> F02007/A01, Specialist Prosecutor, *Prosecution Submission of List of Witnesses for 15 January to 4 April 2024*, 14 December 2023, confidential, p. 50.

<sup>2</sup> F02389, Panel, *Decision on Joint Defence Request for Amendment of the Order on the Conduct of Proceedings*, 18 June 2024.

<sup>3</sup> F02393, Panel, *Decision on Selimi Defence Motion to Exclude Evidence of W04846*, 19 June 2024, confidential (a public redacted version was issued on the same day, F02393/RED).

<sup>4</sup> Second Decision, paras 24, 29, 31.

4. On 20 June 2024, the Defence for Mr Selimi (“Selimi Defence”) filed an urgent request concerning W04846’s preparation session, which was scheduled to commence on the following day (“First Request”).<sup>5</sup>
5. On 21 June 2024, the Specialist Prosecutor’s Office (“SPO”) responded to the First Request (“First Response”).<sup>6</sup>
6. On 21 June 2024, the Panel informed the Parties and participants that it had received the First Request and saw no need to take action at that time, and that the witness preparation session should proceed as scheduled.<sup>7</sup>
7. On 24 June 2024, the Selimi Defence filed a second request in respect of W04846’s preparation session (“Second Request”).<sup>8</sup>
8. On 25 June 2024, the SPO responded to the Second Request (“Second Response”).<sup>9</sup>
9. On 26 June 2024, W04846 testified in the present proceedings.<sup>10</sup>
10. On 26 June 2024, the Panel issued an oral order rejecting the First Request and Second Request with a reasoned decision to follow.<sup>11</sup> The Panel now sets forth its reasoned decision.

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<sup>5</sup> F02397, Specialist Counsel, *Urgent Selimi Defence Request Concerning W04846’s Preparation Session*, 20 June 2024, confidential (a public redacted version was filed on 24 June 2024, F02397/RED).

<sup>6</sup> F02398, Specialist Prosecutor, *Urgent Prosecution Response to Urgent Selimi Defence Request Concerning W04846’s Preparation Session*, 21 June 2024, confidential.

<sup>7</sup> CRSPD572, *Email from Trial Panel II to the Parties and Participants*, 21 June 2024, confidential.

<sup>8</sup> F02404, Specialist Counsel, *Selimi Defence Request to Caution the SPO and for Additional Relief*, 24 June 2024, confidential (a public redacted version was filed on 9 July 2024, F02404/RED).

<sup>9</sup> F02405, Specialist Prosecutor, *Prosecution Response to ‘Selimi Defence Request to Caution the SPO and for Additional Relief’*, 25 June 2024, confidential (a public redacted version was filed on 27 June 2024, F02405/RED).

<sup>10</sup> Transcript of Hearing, 26 June 2024, confidential, pp. 17256-17324.

<sup>11</sup> Transcript of Hearing, 26 June 2024, confidential, p. 17252, line 19 to p. 17253, line 15.

## II. SUBMISSIONS

### A. FIRST REQUEST AND RESPONSE

11. In the First Request, the Selimi Defence requested that the Panel issue an order directing the SPO to: (i) refrain from discussing with or showing to W04846 any of his prior statements that had not been included on the SPO's exhibit list ("Exhibit List"); (ii) provide W04846 with versions of his prior statements that are included on the Exhibit List with redactions applied to the evidence excluded in the Second Decision; and (iii) conduct any preparation session with W04846 in accordance with the relief set out in paragraphs (i) and (ii) pending a decision on the First Request.<sup>12</sup> The Selimi Defence argued that this was necessary as the SPO had indicated that, during the preparation session, it would provide W04846 with: (i) his prior witness statements which are not on the Exhibit List; and (ii) his prior witnesses statements, which are on the Exhibit List, but without redactions to the parts which the Panel excluded in the Second Decision. This, the Selimi Defence contended, was non-compliant with the Order, the Decision and the Second Decision.<sup>13</sup>

12. The SPO responded that the Panel should reject the First Request.<sup>14</sup> The SPO noted that, pursuant to paragraph 97(iii) of the Order, "[d]uring preparation sessions, the questioning lawyer must: [...] Provide the witness with an opportunity to review his or her prior statements".<sup>15</sup> The SPO added that it is only required to seek leave to add items, including prior statements, to the Exhibit List when it foresees that those items may be used in court or tendered in evidence.<sup>16</sup>

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<sup>12</sup> First Request, paras 1, 20.

<sup>13</sup> First Request, paras 1-2, 7-16.

<sup>14</sup> First Response, paras 1, 6.

<sup>15</sup> First Response, para. 1.

<sup>16</sup> First Response, paras 1-2.

## B. SECOND REQUEST AND RESPONSE

13. In the Second Request, filed after W04846's preparation session and before he testified, the Selimi Defence requested the Panel to: (i) caution the SPO to abide with the Order 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.<sup>17</sup> The Selimi Defence contended this was necessary as the SPO had, according to the SPO's note of the preparation session with W04846, conducted it in a manner inconsistent with paragraphs 87 and 98(i) of the Order,<sup>18</sup> and had created a risk of W04846's testimony being influenced.<sup>19</sup>

14. The SPO responded that that the Panel should reject the Second Request as it distorted the information set out in the preparation note.<sup>20</sup> The SPO argued that it did not influence W04846 during the preparation session, and had abided by the Order, and the Second Decision.<sup>21</sup> The SPO averred that it may need to clarify with the witness, during the preparation session, the parts of the witness's evidence that are relevant and those that are not, to ensure that witness gives relevant, accurate, and structured testimony.<sup>22</sup> In the present circumstance, the SPO contended that it had to explain to W04846 that the Panel had excluded parts of his evidence and indicate the parts on which he could still testify.<sup>23</sup>

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<sup>17</sup> Second Request, paras 1-2, 9.

<sup>18</sup> Second Request, paras 3-5.

<sup>19</sup> Second Request, paras 6-7.

<sup>20</sup> Second Response, paras 1, 8.

<sup>21</sup> Second Response, paras 1-2, 5.

<sup>22</sup> Second Response, paras 1-3, 5.

<sup>23</sup> Second Response, paras 3-4.

### III. APPLICABLE LAW

15. Pursuant to Article 40(2), the Panel shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

16. Pursuant to Rule 116(1), the Panel shall, on an ongoing basis, take all measures and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the trial proceedings.

17. Within the framework of the Law and of the Rules, paragraphs 85 to 99 of the Order regulate witness preparation for the purpose of these proceedings.

### IV. DISCUSSION

#### A. FIRST REQUEST

18. The Selimi Defence's argument that the SPO may not show to a witness during a preparation session a prior statement which is not on the Exhibit List<sup>24</sup> has no basis and is contradictory to the terms of the Order. Paragraph 97(iii) of the Order specifically provides: "During preparation sessions, the questioning lawyer must: [...] [p]rovide the witness with an opportunity to review his or her prior statements". This is to ensure that witnesses have a reasonable opportunity to familiarise themselves with their prior statements before they begin to testify, and applies regardless of whether a witness is to testify entirely *viva voce* or pursuant to Rule 154. This familiarisation process is consistent with the purpose of witness preparation which, as the Order states, is "to help ensure that the witness gives

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<sup>24</sup> First Request, paras 2, 7-13.

relevant, accurate and structured testimony”<sup>25</sup> and “to facilitate the focused, efficient and effective questioning of the witness during the proceedings”.<sup>26</sup>

19. This familiarisation process during the preparation session – during which the SPO should show the witness all prior statements of the witness – is distinct from the testimony of the witness at trial, where the SPO may only tender in evidence statements of the witness which are included on the Exhibit List. If the SPO wishes to tender a statement which is not on the Exhibit List, it must first seek leave to add that statement to the Exhibit List.<sup>27</sup>

20. In this instance, the SPO did not express any intention to tender in evidence any prior statement of the witness, nor to elicit any evidence from the witness which the Panel had excluded in the Second Decision. There was nothing improper in the SPO showing the witness during the preparation session his prior statements, including those not on its Exhibit List.

21. The Selimi Defence’s argument that the SPO should have redacted the Allegations from W04846’s prior statements before showing them to him during the preparation session<sup>28</sup> is also without merit. First, as noted, paragraph 97(iii) of the Order expressly requires the calling party to give the witness an opportunity to review all their prior statements. Second, the SPO intended to call W04846 as a *viva voce* witness, and did not intend to offer any part of his prior statements for admission in evidence, let alone the impugned part.<sup>29</sup> Therefore, the Defence has failed to establish a basis on which the impugned section should have been redacted prior to the statement being shown to the witness in preparation of his testimony. Third, to ensure the “focused, efficient and effective questioning” of

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<sup>25</sup> Order, para. 86(i)(a).

<sup>26</sup> Order, para. 86(ii).

<sup>27</sup> Rule 118(2).

<sup>28</sup> First Request, paras 2, 14-16.

<sup>29</sup> See *supra*, fn. 1.

W04846,<sup>30</sup> the SPO had to explain the Second Decision to W04846, including what evidence he was and was not permitted to give. It was reasonable for the SPO to show W04846's unredacted prior statements to him, to facilitate this process. Fourth, showing the witness the unredacted prior statements was reasonable to enable the SPO to effectively caution W04846 not to voluntarily give evidence about the Allegations.

#### B. SECOND REQUEST

22. The Selimi Defence contends that the fact that the questioning lawyer indicated that: (i) "there remained important evidence W04846 could provide to the Panel", in particular concerning an alleged incident involving Mr Selimi ('First Comment'); and (ii) exemplified that W04846's evidence was "important and part of a larger puzzle" referring specifically to a relative's efforts to have another individual released from KLA custody ("Second Comment") constituted conduct that falls short of paragraphs 87 and 98(i) of the Order.<sup>31</sup>

23. Paragraph 87 of the Order provides that "[a]ny attempt to influence a witness to testify to factual events that the witness did not observe or perceive is prohibited. Coaching, training or practising are not allowed."

24. Paragraph 98(i) of the Order further provides:

98. During preparation sessions, the questioning lawyer shall not:

i. Seek to influence the substance of the witness's 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) [...].

25. The Panel considers that the SPO's conduct during W04846's preparation session was in accordance with the Order. The Panel accepts the SPO's explanation

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<sup>30</sup> Order, para. 86(ii).

<sup>31</sup> Second Request, para. 4



that, when the restrictions imposed by the Second Decision were explained to the witness, he strongly considered not testifying at all, and did not understand why he could not speak about a part of his evidence that was “tied to the rest of his evidence”.<sup>32</sup>

26. It is apparent from the preparation note that, after the SPO explained to W04846 that the Panel had excluded the SPO from leading evidence, and W04846 from testifying about the Allegations, the SPO made the First Comment to explain to W04846 that there was still relevant evidence that he could give.<sup>33</sup> Given that the Panel had excluded a substantial part of the witness’s proposed evidence, the Panel considers that it was reasonable to explain to the witness that there was still important evidence that he was permitted to give. The manner in which this was done was not unreasonable or unfair.

27. It is also apparent from the preparation note that the SPO made the Second Comment in response to W04846’s expression of disappointment in not being able to testify about the First Allegation, and to explain that the witness could still give evidence about a relative’s life.<sup>34</sup> There is no indication that the SPO was attempting to influence W04846 to testify to factual events that he did not observe,<sup>35</sup> or to influence the substance of the W04846’s answers.<sup>36</sup>

28. Since the Panel considers that the SPO’s conduct during the preparation session complied with the Order, there was no need to caution the SPO.<sup>37</sup> Nor is it necessary “to take into account the impact occasioned by the SPO’s conduct” when assessing the weight to be accorded to W04846’s evidence, as requested by the Selimi Defence.<sup>38</sup> The Panel will, in accordance with Rule 139(2), assess the

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<sup>32</sup> Second Response, para. 3.

<sup>33</sup> See 121715-121728, para. 9.

<sup>34</sup> See 121715-121728, para. 12.

<sup>35</sup> Order, para. 87.

<sup>36</sup> Order, para. 98(i).

<sup>37</sup> Second Request, paras 2, 9.

<sup>38</sup> Second Request, paras 2, 9.

evidence of the witness in light of the entire body of evidence admitted before it at trial.

#### V. CLASSIFICATION

29. The Panel notes that the First Response was filed confidentially. The Panel, therefore, orders the SPO to submit a public redacted version of the First Response, or to request the reclassification of the First Response, by no later than **Thursday, 19 September 2024**.

#### VI. DISPOSITION

30. For these reasons, the Panel:

- a) **REJECTED** the First and Second Requests; and
- b) **ORDERS** the SPO to submit a public redacted version of the First Response, or to request the reclassification of the First Response, by no later than **Thursday, 19 September 2024**.



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**Judge Charles L. Smith, III**  
**Presiding Judge**

Dated this Thursday, 12 September 2024

At The Hague, the Netherlands.