

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: Counsel for Rexhep Selimi

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**Selimi Defence Reply to ‘Prosecution consolidated response to F02785 and
F02846’**

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I. INTRODUCTION

1. The Defence for Mr. Rexhep Selimi (“the Defence”) hereby files its reply to the Prosecution consolidated response to F02785 and F02846¹ (“the Response”). The Response mischaracterises the standard through which the Selimi Defence Request² should be analysed, as well as the proceedings in *Specialist Prosecutor v. Januzi et al.* The Response is further replete with alarmist submissions on why the Trial Panel must defer its consideration of the Request until the conclusion of the SPO’s presentation of evidence. These submissions are limited to responding to those issues.

II. SUBMISSIONS

2. The Response criticises the Selimi Defence request for what it calls an attempt to “in effect, reconsider [the] necessity”³ of the conditions set down in the Further Decision on the Prosecution’s Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi (“Further Decision”).⁴ To the contrary, the Further Decision specifically indicated that the Trial Panel would review the necessity of the imposed conditions, either *proprio motu* or upon a grounded request by an Accused.⁵ The Further Decision did not indicate that the standard upon which the necessity of the conditions would be reviewed would be subject to a reconsideration requirement of a change in circumstances. The elevated burden that the SPO is attempting to impose upon the Defence is entirely inapplicable.

¹ KSC-BC-2020-06/F02896, Prosecution consolidated response to F02785 and F02846, 3 February 2025 (“Response”).

² KSC-BC-2020-06/F02785, Selimi Defence Request to the Trial Panel to Amend Decision F01977, 13 December 2024 (“the Request”).

³ Response, para. 9.

⁴ KSC-BC-2020-06/F01977, Further Decision on the Prosecution’s Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi, 1 December 2023.

⁵ *Id.*, para. 77.

3. Furthermore, the SPO's reference to the confirmation decision and guilty pleas in the *Specialist Prosecutor v. Januzi et al.* case is misplaced.⁶ The SPO argues that the three defendants in that case "interfered with a witness whose testimony implicated Selimi in criminality", citing to the confirmation decision.⁷ The paragraphs of the confirmation decision refer to the alleged interference of a witness against Mr. Selimi, but in no way does the decision hold that Mr. Selimi participated in the alleged interference or engaged in any criminality. Similarly, the fact that the Accused in the *Januzi et al.* case pled guilty for their own acts does not inculcate Mr. Selimi in the least. The factual basis agreed by Mr. Shala, Mr. Januzi and Mr. Bahtijari as part of their respective plea agreements simply refers to the acceptance that "BAHTIJARI told Witness 1 that he should withdraw his testimony before the Kosovo Specialist Chambers."⁸ No reference to Mr. Selimi appears as part of this agreement. The SPO's arguments in this regard can be disregarded.
4. Finally, the SPO's arguments that the measures ordered by the Trial Panel ought to remain in place until such time as no protected SPO witnesses are yet to give evidence are entirely arbitrary and constitute an attempt to reconsider the Trial Panel's framework for review of the detention conditions. The Trial Panel did not condition the applicability of the modified conditions on whether or not SPO protected witnesses are still yet to testify. The fact that the Trial Panel acknowledged that, at the time the Further Decision was issued, the Accused "have received information concerning, *inter alia*, the first 40 witnesses and beyond"⁹ was relevant to the context of the relief granted, but does not require

⁶ Response, para. 7.

⁷ *Id.*, citing *Specialist Prosecutor v. Januzi et al.*, KSC-BC-2023-10/F00377/RED, Public Redacted Version of Decision on the Confirmation of Amendments to the Indictment and Related Matters, 8 July 2024, paras 43-56.

⁸ *Specialist Prosecutor v. Januzi et al.*, KSC-BC-2023-10/F00618, URGENT Prosecution submissions on plea agreements and sentencing, 6 December 2024, Annexes 1 and 2; KSC-BC-2023-10/F00628, URGENT Joint submission of Plea Agreement, 16 December 2024, Annex 1.

⁹ Further Decision, para. 31.

maintaining that relief until the consideration in question is no longer pervasive. Equally, the fact that witness information will continue to be disclosed to the Accused cannot dispel an assessment of whether the measures ordered continue to be necessary and proportional, as the SPO is inviting the Trial Panel to find.

5. Indeed, the SPO's request goes even further, requesting that the ordered measures remain in force not only until the conclusion of its case, but also thereafter should it elect to adduce rebuttal evidence.¹⁰ However, the Rules prescribe several avenues for which additional evidence can be disclosed and presented in the proceedings even beyond the rebuttal/rejoinder stage, including at the sentencing,¹¹ appeal,¹² and Constitutional Court referral¹³ stages. Therefore, if the SPO's argument was to be followed to its logical conclusion, consideration of the Request would have to be deferred until such time as all avenues for administering evidence available under the Rules have been exhausted. Such outcome would render the procedure established by the Trial Panel for the review of the Further Decision essentially nugatory and would indefinitely condition the exercise of the Accused's rights on the theoretical possibility that the SPO would, at some indeterminate point in time, seek to call additional evidence. Nothing in the Further Decision suggests that the ordered measures were intended to be applicable for as long as the continued disclosure of witness information to the Accused subsists and the SPO's arguments to that effect must therefore be discarded.

¹⁰ Response, para. 15.

¹¹ Rule 162(5).

¹² Rule 181.


¹³ Rule 23 of the Rules of Procedure for the Specialist Chamber of the Constitutional Court.

III. CONCLUSION

6. For the foregoing reasons, the Defence respectfully requests the Trial Panel to REJECT the Response and GRANT the relief requested in the Selimi Defence request to review the detention conditions of Mr. Selimi.

Word count: 941

Respectfully submitted on 10 February 2025,



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