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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
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Public Redacted Version of Selimi Defence Reply to F03675

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1. The Response[1] baselessly claims that the Request[2] demands that Mr. Selimi should be able to contact his family "whenever suits him or at his convenience", or that he should enjoy "absolute and unhindered access to family members." No such relief was sought in the Request. Rather, the Defence sought the reversal of the contact restrictions and the reinstatement of the communications regime in place before their imposition because of the change in circumstances that arose since [REDACTED]. The Response fails to disprove the significance of this change of circumstances. Instead, the SPO claims that the risks [REDACTED [3] continue to exist due to the conduct of third parties with no discernible connection to Mr. Selimi, artificial distinctions with the vast amount of jurisprudence supporting the relaxation of contact restrictions at similar stages of the proceedings, and references to Mr. Selimi's alleged conduct that bear no semblance of a connection with the risks professed by the SPO.

2. As to the existence of the risk of securing recantations or incentivizing witnesses to recant at this stage of the proceedings, the SPO claims that the period between closing statements and the pronouncement of the trial judgment is "particularly sensitive",[4] yet fails to identify any factual particularities innate to this period that support the continued existence of these risks. It argues that the submissions in the Request that there is no possibility to alter the evidentiary matrix underpinning the Accused's guilt or innocence are "plainly incorrect",[5] yet it nonetheless fails to refer to any provision in the Rules or to any other legal basis allowing for the admission of evidence past the closing of the case pursuant to Rule 136 in the absence of exceptional circumstances.

[1] KSC-BC-2020-06/F03675, Prosecution response to 'Selimi Defence Request for Rescission of Contact Restrictions' (F03671), 11 February 2026 ("Response").
[2] KSC-BC-2020-06/F03671, Selimi Defence Request for Rescission of Contact Restrictions, 30 January 2026 ("Request").
[3] [REDACTED].
[4] Response, para. 12.
[5] Response, para. 13.

3. Regarding the level of risk, the SPO claims that third parties remain with the incentive to interfere with witnesses, exemplifying with a purported statement by Hysni Gucati concerning witnesses in this case.[6] The SPO nonetheless does not identify any connection between this statement and Mr. Selimi's conduct, and equally fails to substantiate any basis for its implicit suggestion that Mr. Selimi would co-opt third parties into engaging in retaliatory conduct. It is further unexplained on what basis the SPO perceives that statement to be tantamount to retaliation or to an attempt to incentivise witnesses to recant. The prevention of individuals with no discernible link to Mr. Selimi from expressing their unilateral views about these proceedings, especially when such views are not indicative of an interference attempt to interfere, is not a legitimate aim for the continued restrictions on Mr. Selimi's contacts, nor is it explained how such restrictions on Mr. Selimi specifically are necessary to prevent such conduct.

4. Regarding other parallel proceedings, the SPO limits itself to making the statement in the negative "[t]hat Selimi has not been charged with obstructive conduct himself does not mean that he does not pose a risk to the progress of proceedings,"[7] yet fails to put forth any explanation as to why he then *does* pose such a risk. The SPO's reference to the "broader climate of intimidation that persists in Kosovo"[8] is simply insufficient to demonstrate that the rescission of the contact restrictions will result in Mr. Selimi interfering with parallel proceedings. The Appeals Panel has determined that the climate of intimidation is, by itself, insufficient to establish that the risk to the integrity of proceedings has crossed the threshold of "more than a mere possibility of a risk materializing" under Article 41(6)(b). As outlined in the Request, and as further argued below, that threshold is markedly lower than the threshold of risk

[6] Response, para. 13.
[7] Response, para. 14.
[8] Response, para. 14.

required to justify the maintenance of contact restrictions. Further, if the climate of witness intimidation could serve as the sole basis for imposing contact restrictions, then it is unexplained why not all Accused at the DMU have been subject to contact restrictions.

5. The SPO's claim that "the fact that Selimi has not breached the restrictions in place should be given no weight"[9] plainly ignores the extensive jurisprudence establishing that the lack of any conduct contrary to the integrity of the proceedings since the imposition of contact restrictions is a relevant factor in assessing the necessity of maintaining these restrictions.[10] Nevertheless, the SPO contends that factual parallels with other international cases are inapposite since the risk analysis is necessarily fact-specific,[11] yet fails to explain why this entails that the factors uniformly considered by other chambers in their analyses are not instructive in the present case.

6. Further, despite its caution against factual parallels with other cases, the SPO relies on another international case for its proposition that "restrictions may legitimately continue until after [the] judgment is rendered and even into the appeal phase."[12] Nonetheless, the SPO blatantly ignores that the restrictions were maintained in that case against a background of continued attempts to interfere with the integrity of the proceedings in the period after the imposition of contact restrictions,[13] a circumstance which is inapplicable in the present context.

[9] Response, para. 15.
[10] ICC, *The Prosecutor v. Yekatom and Ngaïssona*, Case No. ICC-01/14-01/18 A, Decision on restrictions to Mr Yekatom's contacts and communications in detention, 16 September 2025, para. 28; *The Prosecutor v. Al Hassan*, Case No. ICC-01/12-01/18, Public redacted version of Decision reviewing the measures restricting Mr Al Hassan's contacts whilst in detention following the closure of the submission of evidence, 3 July 2023, paras. 29-30; *The Prosecutor v. Said*, Case No. ICC-01/14-01/21, Second Decision on Contact Restrictions, 11 December 2024, para. 38.
[11] Response, para. 16.
[12] Request, para. 16.
[13] ICC, *The Prosecutor v. Yekatom and Ngaïssona*, Case No. ICC-01/14-01/18 A, Decision on fourteenth Registry report on the implementation of the restrictions on contacts of Mr Ngaïssona, 5 February 2026, para. 9.

Further, even in those circumstances, the restrictions that were maintained in that case[14] are significantly less invasive than those ordered against Mr. Selimi.

7. The SPO further contends that the Trial Panel, in referring to the substantial risk that the Accused will impermissibly disclose privileged information as a rationale for the imposition of contact restrictions, was not articulating any legal standard because Rule 56(6) is not constrained by any risk-based threshold.[15] Such an interpretation would essentially render the imposition of modified detention conditions as the default position, as according to that line of reasoning any hypothetical risk, no matter how tenuous or remote, would justify contact restrictions pursuant to Rule 56(6).

8. Further, that the imposition of contact restrictions would require a higher threshold of risk than an order for continued detention is further supported by the fact that the requirements of Article 46(1)(b) being met is a *de facto* precondition to the applicability of Rule 56(6). It is already a requirement that there is "more than a mere possibility" that the risks imperilling the integrity of the proceedings laid out in Article 46(1)(b) will materialize for the Accused's continued detention to be justified. If a risk assessment carried out by reference to that threshold, or to no threshold or a lower one, could then be relied upon as the sole basis for imposing additional contact restrictions, then the Rule 56(6) assessment would be superfluous. Such an automaticity would effectively mean that novel and wide-ranging constrictions on the Accused's right to private and family life, which is already limited by the Accused's detention, can be imposed absent any additional risks being established.

9. Further undermining the SPO's contention that Rule 56(6) does not presuppose any risk threshold is the fact that Article 46(1)(b) does not expressly contain such

[14] *Ibid,* para. 7.
[15] Request, para. 18.

a threshold either; instead, the reference to "articulable grounds to believe" that the risks detailed therein will materialize "does not speak directly to the standard or threshold, but to the specificity of the information or evidence required."[16] The risk threshold of "more than a mere possibility but less than certainty" was developed in the subsequent jurisprudence concerning that Rule, specifically with a view to ensure that not every hypothetical risk can trigger the application of Rule 46(1)(b).[17] Therefore, simply because Rule 56(6) does not contain an express reference to a risk threshold does not entail that any level of risk will suffice, and the Panel's reference to the "substantial risk" that the Accused will impermissibly disclose privileged information cannot be interpreted in any way other than a formulation of the applicable legal standard.

10. The SPO further argues that the Appeals Panel determined that there was a "sufficiently real possibility" that Selimi poses a risk to witnesses in parallel proceedings, and only found that the risk surrounding Victims' Counsel's witnesses was speculative.[18] The Appeals Panel however expressly determined that risk to be speculative in light of the fact that the Victims' Counsel's witnesses were expert witnesses not residing in Kosovo.[19] As evident from the public record in Case 12, the witnesses in that case share the same particularities. However, at the time the Appeals Panel pronounced on the issue, the SPO's list of witnesses in Case 12 was not yet submitted,[20] such that the Appeals Panel was not in a position to make the same assessment vis-à-vis Case 12 witnesses.

[16] KSC-BC-2020-06/IA003/F00005, Decision on Rexhep Selimi's Appeal Against Decision on Interim Release, 30 April 2021, para. 43.
[17] *Ibid,* para. 40; KSC-BC-2020-07/IA001/F00005, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, 9 December 2020, para. 67.
[18] Response, para. 19.
[19] KSC-BC-2020-06/IA033/F00006, Decision on Rexhep Selimi's Appeal Against Consolidated Decision on Request for Provisional Release and on Review of Detention, 13 August 2025, para. 25.
[20] KSC-BC-2023-12/F00395, Order Relating to the Calendar for the Remaining Pre-Trial Proceedings, 25 July 2025, para. 18(c).

11. The SPO then attempts to attach a false layer of gravity to the allegations against Mr. Selimi and criticizes the Defence for "trivializing" them,[21] yet fails to connect these allegations with any concrete risks that are pervasive at this stage of the proceedings. At no point throughout its Response does the SPO make any attempt at demonstrating how the conduct it attributes to Mr. Selimi engenders the substantial risk that he will incentivize witnesses to recant or retaliate against them, which it argues are "just as acute" at this point in time.[22] Therefore, the SPO's attempt to justify the continuation of the contact restrictions on purported risks that are completely independent from his own conduct is devoid of any basis.

12. Finally, the SPO's argument that "[a]t the very least, the regime authorized [REDACTED] should remain in place until [the] judgment is rendered"[23] is wholly arbitrary. The SPO provides no submissions on why there exists "an objectively justifiable risk of repeat misconduct going unchecked, thus defeating the original purpose"[24] that would justify revisiting the issue only after the issuance of the trial judgment. Instead, it claims that "[w]itnesses would be placed at risk irrespective of the accused's intention to cause such a result",[25] thus implicitly accepting that its rationale for wishing to maintain the contact restrictions is to prevent hypothetical perpetrators from engaging in acts that have no tangible link to Mr. Selimi's conduct or intent. The SPO failed to allude to any basis for why the deterrence of such third parties is a legitimate aim for curtailing Mr. Selimi's right to private and family life and why it is necessary that Mr. Selimi's contact rights be so limited with a view to achieving that goal.

[21] Response, para. 20.
[22] Response, para. 12.
[23] Response, para. 25.
[24] *Id.*
[25] *Id.*

13. These submissions are filed confidentially pursuant to Rule 82(4).

14. For the foregoing reasons, the arguments in the Response should be rejected and the relief sought in the Request be granted.

Word count: 1996

Respectfully submitted on 18 February 2026,

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