



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-06
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: Specialist Prosecutor's Office

Date: 10 April 2026

Language: English

Classification: Confidential

Prosecution response to Selimi Defence Request for Certification to Appeal the Trial Panel's Decision on Selimi Defence Request for Rescission of Contact Restrictions

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Luka Mišetić

Counsel for Kadri Veseli

Rodney Dixon

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

I. INTRODUCTION

1. The Request¹ should be rejected as it fails to establish that any of the Issues² meet the criteria for certification³ under Article 45 of the Law⁴ and Rule 77 of the Rules.⁵ The matters raised do not constitute appealable issues within the meaning of Rule 77, nor does the Defence demonstrate any impact on the fairness and expeditiousness of proceedings, or that appellate review of the Decision⁶ would materially advance them. Rather, the Request misrepresents and merely disagrees with the Decision, and seeks to relitigate matters already raised and decided by the Panel.

II. SUBMISSIONS

A. THE ISSUES ARE NOT APPEALABLE

(i) *First Issue*

2. The First Issue, the Defence contention that the Panel erred by not explicitly referencing a 'risk threshold', is without merit. As a preliminary matter – as is apparent from Selimi's original pleadings⁷ - the issue does not in fact arise from the Decision, but rather is a belated attempt to relitigate the standard and factors applied in the prior

¹ Selimi Defence Request for Certification to Appeal the Trial Panels Decision on Selimi Defence Request for Rescission of Contact Restrictions, KSC-BC-2020-06/F03714, 30 March 2026, Confidential ('Request')

² Request, KSC-BC-2020-06/F03714, para.2 (defining the 'Issues')

³ The applicable law has been set out in prior decisions. *See e.g.* Decision on the Thaçi Defence Application for Leave to Appeal, KSC-BC-2020-06/F00172, 11 January 2021 ('January 2021 Decision'), paras 9-17; *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on the Defence Applications for Leave to Appeal the Decision on the Defence Preliminary Motions, KSC-BC-2020-07/F00169, 1 April 2021, paras 10-18.

⁴ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

⁵ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

⁶ Decision on Selimi Defence Request for Rescission of Contact Restrictions, KSC-BC-2020-06/F03708, 19 March 2026, Confidential ('Decision').

⁷ Selimi Defence Request for Rescission of Contact Restrictions, KSC-BC-2020-06/F03671, para.6.

Review Decision.⁸ It could be rejected on this basis alone. In any event, the Panel correctly identified and applied the governing legal framework in the Decision⁹ and explicitly addressed the Defence contention that the risk threshold embedded in the requirement of necessity of contact restrictions is one of ‘substantial risk’.¹⁰

3. There is no requirement in the applicable law that a trial panel must articulate a formulaic ‘risk assessment’ in order to impose contact restrictions. Rather, the relevant inquiry is whether the panel assessed, if the restrictions are in accordance with the law and necessary and proportionate under the circumstances.¹¹ The Decision demonstrates that the Trial Panel undertook precisely such an assessment. Defence’s submissions that any remote, hypothetical risk, detached from the particular accused, could otherwise justify restrictions,¹² simply ignore the inherent balancing required by the obligation to ensure that any restrictions are both necessary and proportionate.¹³ Moreover, in the context of this case, where the Panel’s original finding was one of ‘substantial risk’, the Defence fails to demonstrate any actual or possible impact on the Decision.

4. As such, the First Issue does not constitute an appealable issue.

(i) *Second Issue*

⁸ Decision Reviewing the Conditions of Detention Modified in F01977, KSC-BC-2020-06/F03308 (‘Review Decision’).

⁹ Decision, KSC-BC-2020-06/F03708, para.26.

¹⁰ Decision, KSC-BC-2020-06/F03708, para.27.

¹¹ Decision, KSC-BC-2020-06/F03708, paras 26-27; Further Decision on the Prosecution’s Urgent Request for Modification of Detention Conditions for Hashim Thaci, Kadri Veseli, and Rexhep Selimi, KSC-BC-2020-06/F01977, paras 45-48.

¹² Request, KSC-BC-2020-06/F03708, para.6.

¹³ Indeed, in the jurisprudence relied upon by the Defence it was the consideration of necessity and proportionality that was in fact determinative (Request, KSC-BC-2020-06/F03708, para.6, referring to ICC, *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, 24 May 2023).

5. The Second issue misrepresents the Decision by focusing on a single sentence in a single paragraph, thereby overlooking the paragraph specifically addressing the individualised assessment of Selimi's conduct.¹⁴ The Panel plainly appreciated the need to conduct an individualised assessment of each Accused, explicitly discussing and evaluating the conduct of each individual Accused in the Decision.¹⁵ Further, in light of the specific circumstances of this case and the notable climate of witness interference that persists in Kosovo,¹⁶ the Panel was well within its discretion to account for the combined effect of the Accused's conduct in light of the specific circumstances of this case.

6. Accordingly, the Second Issue incorrectly claims that 'there is no indication that the Trial Panel accounted for the individual differences among the three Accused'.¹⁷ The Second Issue misrepresents and merely disagrees with the Decision, and is not appealable.

(i) *Third Issue*

7. The Third Issue is an attempt to relitigate the merits of the Decision and represents a mere disagreement with the Panel's discretionary weighing of factors. The weighing of relevant considerations, including the stage of proceedings and the feasibility of the Registry in managing the modified detention conditions are squarely within the Trial Panel's discretion. The Panel explicitly addresses the various factors weighed in the Decision, including the stage of the proceedings¹⁸ and the impact on the Accused's right to respect for family life,¹⁹ noting that the conditions set out in the Decision 'align with, or provide for *additional* visitation rights comparatively to, the detention regulations'.²⁰

¹⁴ Decision, KSC-BC-2020-06/F03708, para.33.

¹⁵ Decision, KSC-BC-2020-06/F03708, paras 33-37.

¹⁶ Decision, KSC-BC-2020-06/F03708, paras 30-32.

¹⁷ Request, KSC-BC-2020-06/F03714, para.9.

¹⁸ Decision, KSC-BC-2020-06/F03708, para.40.

¹⁹ Decision, KSC-BC-2020-06/F03708, para.45.

²⁰ Decision, KSC-BC-2020-06/F03708, para.45.

That the Defence would have balanced those factors differently does not render the Panel's determination erroneous.

8. The Defence essentially requests the Appeals Panel to substitute its own judgement in regards to the factual circumstances prevailing at this stage of the proceedings for that of the Trial Panel, without identifying any error or abuse of discretion. This is not a proper basis for certification and accordingly, the Third Issue is not appealable.

B. NONE OF THE ISSUES WOULD HAVE A SIGNIFICANT IMPACT ON OR MATERIALLY ADVANCE THE PROCEEDINGS

9. The Request also fails to establish how the Issues would have any, let alone a significant, effect on the fairness and expeditiousness of the proceedings or the outcome of the trial.²¹ The burden is on the party challenging a decision to demonstrate that the relevant criteria for certification are met. Beyond a bare assertion,²² the Request makes no submissions whatsoever in respect of how any of the Issues could impact the expeditiousness of proceedings. Noting that a significant impact on both fairness and expeditiousness must be demonstrated, this alone is fatal to the Request, and warrants its dismissal. Equally with respect to fairness, instead of identifying any specific prejudice resulting from the Issues, the Defence makes only generic submissions relating to the Decision as a whole.²³

10. For the same reasons, the Request also fails to show any concrete need for an immediate resolution by the Court of Appeals Panel. The Defence's vague suggestion that, absent certification, Selimi would be subjected to the imposed restrictions for the

²¹ In this regard, no impact on the outcome of the trial is even alleged.

²² Request, KSC-BC-2020-06/F03714, para.2.

²³ Request, KSC-BC-2020-06/F03714, para.18.

foreseeable future is plainly insufficient to justify appellate intervention.²⁴ Certification on such basis, especially considering the advance stage of the trial, would do nothing to materially advance the proceedings.

11. Accordingly, none of the cumulative requirements for certification are met.²⁵

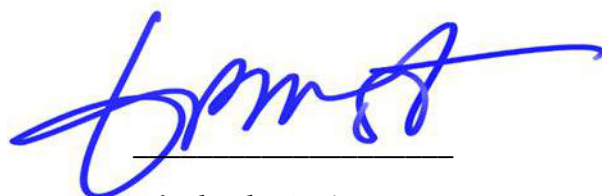
III. CLASSIFICATION

12. This filing is confidential pursuant to Rule 82(4). As it does not contain any confidential information, the SPO does not object to its reclassification as public.

IV. RELIEF REQUESTED

13. For the foregoing reasons, the Request fails to meet the leave to appeal standard and should be rejected.

Word count: 1,293



Kimberly P. West

Specialist Prosecutor

Friday, 10 April 2026

At The Hague, the Netherlands.

²⁴ The claim that he would be otherwise without a remedy is also factually incorrect, noting the applicable legal framework.

²⁵ January 2021 Decision, KSC-BC-2020-06/F00172, paras 10-16.