

**In:** KSC-BC-2020-06

**Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi**

**Before:** **Pre-Trial Judge**  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Counsel for Rexhep Selimi

**Date:** 14 February 2022

**Language:** English

**Classification:** Confidential

---

**Selimi Defence Response to “Registrar’s Submissions on Proposed Protocol for Interviews with Witnesses”**

---

**Specialist Prosecutor**

Jack Smith

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Victims**

Simon Laws

**Counsel for Kadri Veseli**

Ben Emmerson

**Counsel for Rexhep Selimi**

David Young

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

## I. INTRODUCTION

1. Pursuant to an Order of the Pre-Trial Judge<sup>1</sup> issued following the Prosecution submissions on confidential information and contacts with witnesses<sup>2</sup> and the responses thereto,<sup>3</sup> the Defence for Mr. Selimi (“Defence”) now responds to the Registrar’s Submissions.<sup>4</sup>

## II. SUBMISSIONS

2. As set out in the Selimi Response, the Proposed Framework poses a profound threat to the fundamental fair trial rights of Mr. Selimi and his co-accused in the present case. The fundamental rights of the accused to a fair hearing as guaranteed by the Law,<sup>5</sup> the Kosovo Constitution<sup>6</sup> and the relevant international human rights instruments to which Kosovo is a party,<sup>7</sup> must be the primary concern of the Pre-Trial Judge in deciding this matter. As such, the general logistical feasibility of the measures is irrelevant where those rights are directly threatened by the Proposed Framework.
3. While this specific issue is not addressed directly by the Registrar’s Submissions, the questions raised by the Registrar highlight, and add to, some specific concerns of the Defence on the detrimental effect the Proposed Framework would have on its ability freely and independently to carry out the necessary investigations for the preparation of an effective defence.<sup>8</sup>

---

<sup>1</sup> KSC-BC-2020-06/F00650, Order to the Registrar for Submissions, 21 January 2022 (“Order”), paras. 6, 7(b).

<sup>2</sup> KSC-BC-2020-06/F00594, Prosecution Submissions on Confidential Information and Contacts with Witnesses, 3 December 2021 (“SPO Submissions” or “Proposed Framework”).

<sup>3</sup> KSC-BC-2020-06/F00625, Thaçi Defence Response to Prosecution submissions on confidential information and contacts with witnesses, 15 December 2021; KSC-BC-2020-06/F00626, Selimi Defence response to “Prosecution submissions on confidential information and contacts with witnesses” (“Selimi Response”), 15 December 2021; KSC-BC-2020-06/F00627, Krasniqi Defence Response to Prosecution Submissions on Confidential Information and Contacts with Witnesses, 15 December 2021, confidential; a public redacted version as filed on 17 December 2021 – KSC-BC-2020-06/F00627/RED, KSC-BC-2020-06/F00628 Veseli Defence Response to Prosecution Submissions on Confidential Information and Contacts with Witnesses, 15 December 2021.

<sup>4</sup> KSC-BC-2020-06/F00679, Registrar’s Submissions on Proposed Framework for Interviews with Witnesses, 3 February 2022 (“Registrar’s Submissions”).

<sup>5</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, 3 August 2015 (‘Law’), Articles 3.2, 21.

<sup>6</sup> Constitution of the Republic of Kosovo, Articles 21, 30.

<sup>7</sup> See Constitution of the Republic of Kosovo, Article 22.

<sup>8</sup> Selimi Response, paras. 45, 46

**A. Contacts with Witnesses of Other Parties and Participants****1. Issues not addressed in the Registrar's Submissions**

4. In her submission, the Registrar notes that the SPO's list of witnesses includes 326 witnesses and that the present case includes four different Defence teams.<sup>9</sup> She further notes that the measures proposed by the SPO "foresee the extensive involvement of the Registry"<sup>10</sup> and that due to this fact, certain points of information are requested so that she may "accurately inform the Pre-Trial Judge on the feasibility, impact, and ramifications of the proposals [in order to] assess and determine the financial and human resources implications of delivering certain or all of the services proposed...".<sup>11</sup> Prior to addressing the specific questions of the Registrar, certain additional issues must be raised.
5. First, the Defence notes that the Registrar does not address that the Proposed Framework as it relates to the contact with witnesses is submitted by the SPO under the auspices of Rule 80, arguing that the measures "are necessary [to] safeguard the "safety, physical and psychological well-being, dignity and privacy" of its entire witness list, regardless of any objectively identified risk.<sup>12</sup>
6. As noted in the Defence submissions,<sup>13</sup> the SPO foresees an extensive role for "the parties"<sup>14</sup> in apparently ensuring witness protection (by *inter alia* having the ability to attend witness interviews, even against the wishes of the witness<sup>15</sup> and having automatic access to a recording of every witness interview<sup>16</sup> with the right to submit those interviews as evidence in support of its case against the accused<sup>17</sup>), despite the fact that Rule 27(1) states that:

"The Witness Protection and Support Office in the Registry shall be responsible for protecting witnesses, victims participating in the proceedings and, where appropriate, others at risk on account of testimony given by witnesses."

Accordingly, given that the Proposed Framework contains provisions that essentially ask for the parties to assume and/or share this statutorily defined role of the WPSO, the

---

<sup>9</sup> Registrar's Submissions, para. 10.

<sup>10</sup> Registrar's Submissions, para. 10.

<sup>11</sup> Registrar's Submissions, para. 11.

<sup>12</sup> SPO Submissions, para. 6. *See* Selimi Submissions, paras. 17-21.

<sup>13</sup> Selimi Response, Section II.C.

<sup>14</sup> Selimi Response, paras. 10 – 16.

<sup>15</sup> SPO Submissions, paras. 6.b.

<sup>16</sup> SPO Submissions, paras. 6.n.

<sup>17</sup> SPO Submissions, paras. 6.o.

Defence considers that the Registrar's opinion on this matter would be of benefit to the Pre-Trial Judge in making his decision as it relates to whether Rule 80 provides for the measures requested.

7. Second, while 326 is the number of listed Prosecution witnesses,<sup>18</sup> this overlooks the fact that the SPO intends for the Proposed Framework to include not only those witnesses intended to be called, to testify, "...or on whose statement a Party or Participant intends to rely, insofar as the intention of the Party or Participant is known *or apparent to the opposing Party*".<sup>19</sup> As such, the SPO's intention is to extend the Framework to potentially cover many more individuals than those included on the witness list and the Registrar must factor this into any equation.
8. Third, as noted by the Registrar, there are four different Defence teams.<sup>20</sup> The Defence understands this to be a recognition that it must be kept in mind that regardless of the commonality of charges and any potential for cooperation during proceedings, each Defence team functions independently of one another, which also includes independent investigations and investigative strategies. As such, any calculation must also account for the fact that the desired date, time (and to a lesser degree, place) for interviews with witnesses is not likely to synchronise across all four teams, given the independent nature and duties of the respective Defence teams.

## **2. Information sought by the Registrar**

9. The Registrar asks for information on five separate points in order to respond comprehensively to the Order:
  - (i) The approximate number of witnesses to be interviewed;
  - (ii) Whether the individual witnesses would be interviewed once or whether multiple interviews with individual witnesses is a possibility;
  - (iii) The country location of the interviews, to estimate the cost of travel and mission support;
  - (iv) The estimated duration of the individual interviews, for an assessment of human resources and costs; and

---

<sup>18</sup> Registrar's Submissions, para. 10.

<sup>19</sup> SPO Submissions, para. 5.b [emphasis added]. See Selimi Response, para 24.

<sup>20</sup> Registrar's Submissions, para. 10.

- (v) Should the proposals be ordered, the approximate period of time during which Registry resources will be required to implement the proposals.
10. The Defence reiterates<sup>21</sup> that imposing a burdensome and completely unnecessary level of bureaucracy onto the Defence in the manner envisaged by the Proposed Framework would severely hamper and delay trial preparations, would constitute a clear violation of the principle of equality of arms and would by its very nature run contrary to the duty of the Pre-Trial Judge to ensure through his orders that a case is prepared properly and expeditiously for trial.<sup>22</sup>
- a. Approximate number of witnesses to be interviewed**
11. The Defence reserves its right to seek interviews with every living witness on the SPO list should it be deemed necessary for trial preparation.
- b. Whether the individual witnesses would be interviewed more than once**
12. The Defence is not in a position to state with certainty whether multiple interviews with witnesses would be required. However, it is a strong possibility that this may be the case in many instances, given the complexity of the charges and evidence, the extensive redactions to witness statements granted in this case which will be lifted at different stages of proceedings, and the likelihood of further information being disclosed by the SPO or uncovered by the Defence which would then need to be discussed with these witnesses.
- c. The country location of the interviews**
13. The Defence is not in a position to provide this information. However, it is likely that interviews would need to take place in various locations outside of the Netherlands and Kosovo, given the number of international witnesses who could provide relevant evidence, as well as those of Kosovo nationality residing abroad.
- d. The estimated duration of the individual interviews**
14. The Defence is not in a position to provide this information, but notes that SPO interviews with various witnesses took many hours, and in some cases, several days.

---

<sup>21</sup> Selimi Response, paras 4, 15 and 46.

<sup>22</sup> Law, Article 39(1).

**e. The Approximate period of time during which Registry resources will be required to implement the proposals**

15. The Defence notes that the SPO does not provide any specific time-frame for the Proposed Framework, with the apparent foundation for the measures being Rule 80 applied to its entire witness list. Therefore, it is reasonably safe for the Registry to assume that its resources would be required throughout Pre-Trial and extend through the duration of Trial, especially given the fact that a significant number of witnesses on the SPO list are the subject of decisions which have delayed disclosure of their identities to the Defence, to be revealed only during trial proceedings.

**B. Handling of Confidential Information and Submissions in *Gucati and Haradinaj***

16. The Registrar submitted that it is feasible for WPSO to consult and advise in the manner foreseen by the SPO in paragraph 5 of their submissions with regard to protected witnesses.<sup>23</sup> The feasibility of the involvement of the WPSO in the manner contained in the Proposed Framework should not be used to ignore the well-founded concerns of the Defence regarding the unnecessary and accusatory nature of these proposals, aimed almost exclusively at the Defence.<sup>24</sup>
17. The Registrar also noted that the Registry submissions in *Gucati and Haradinaj* were “tailored to the specificities of that case and are, therefore, not immediately applicable to another case before the Specialist Chambers”.<sup>25</sup> This supports the submission that measures imposed at a different stage in a case of a wholly disparate nature, size, complexity cannot and should not be regarded as a one-size fits all set of provisions that can be imported from case-to-case.<sup>26</sup> In addition, should similar measures be proposed at any other point in the present case, the Defence will challenge their imposition on the basis of their manifestly prejudicial effect.

**III. CLASSIFICATION**

18. The present Response is filed confidentially pursuant to Rule 82(4). The Defence would not oppose the reclassification of the filing to public should the Pre-Trial Judge find it appropriate to do so.

---

<sup>23</sup> Registrar’s Submissions, para. 9.

<sup>24</sup> Selimi Response, Section II.B.

<sup>25</sup> Registrar’s Submissions, para. 8.

<sup>26</sup> Selimi Response, para. 23.

#### IV. CONCLUSION

19. The measures proposed by the SPO pose many grave threats to the fundamental rights of the Accused. As noted in previous submissions, there is no reason why only one party should be subjected to an extra substantial layer of bureaucracy while under the already considerable pressure of preparing efficiently and effectively for trial.
20. In light of the above, the Defence reiterates the relief requested in its previous submissions.<sup>27</sup>

Word count: 1,823

Respectfully submitted on 14 February 2022



---

DAVID YOUNG  
Lead Counsel for Rexhep Selimi



---

GEOFFREY ROBERTS  
Co-counsel for Rexhep Selimi

---

<sup>27</sup> Selimi Response, para. 52.