

**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:** 15 August 2022

**Language:** English

**Classification:** Public

---

**Selimi Defence Reply to SPO Response to Selimi Defence Request for Certification to Appeal Decision F00854**

---

**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 Alagenda

## I. INTRODUCTION

1. The Selimi Defence hereby files this brief Reply, addressing new issues in the SPO Response<sup>1</sup> to the Selimi Defence Request to certify<sup>2</sup> the Pre-Trial Judge's Decision<sup>3</sup> while otherwise maintaining its original submissions in full.

## II. SUBMISSIONS

### A. First issue – Legal basis for Framework without individual assessment of risk

2. The First Issue as framed in the Request did not ignore<sup>4</sup> the findings in paragraphs 119 and 120 of the Impugned Decision but neither finding actually supports the existence of an individualised assessment of each witness.<sup>5</sup> They merely demonstrate the possibility that some witnesses not yet granted protective measures in this case<sup>6</sup> could be objectively entitled to the protections of the Framework, but yet still rendered it applicable to all of the 326 witnesses on the SPO's witness list.
3. Further, while the Pre-Trial Judge invoked four purported separate legal bases to impose the Framework, self-evidently 'protection' is primordial, with the other three being supplementary at best.<sup>7</sup> In any event, as the four were assessed

---

<sup>1</sup> KSC-BC-2020-06/F00904\_Prosecution response to Selimi Defence request for certification to appeal F00854, 1 August 2022 ("Response").

<sup>2</sup> KSC-BC-2020-06/F00884\_Selimi Defence Request for Certification to Appeal the Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses, 18 July 2022 ("Request").

<sup>3</sup> KSC-BC-2020-06/F00854\_Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Part or of a Participant, 24 June 2022 ("Impugned Decision").

<sup>4</sup> Response, para. 3.

<sup>5</sup> Response, para. 3.

<sup>6</sup> Impugned Decision, para. 119.

<sup>7</sup> Impugned Decision, paras 114-125 dedicates six paragraphs to (i) Protection, three to (ii) Privacy, and a mere one paragraph each to (iii) Preserving Evidence and (iv) Expeditious Court Proceedings.

together by the Pre-Trial Judge, each must also be presumed to be essential absent any contrary specification.

4. The SPO's limited arguments as to the fairness and expeditiousness of the First Issue<sup>8</sup> are similarly inapposite. In the context of the KSC's adversarial proceedings, where the Defence conducts its own investigations, the Pre-Trial Judge recognised that the imposition of the Framework could have a certain effect on the time and facilities afforded to the Accused to prepare a defence.<sup>9</sup> While the Pre-Trial Judge ultimately held the Framework at this stage does not violate Article 6(3)(b) ECHR,<sup>10</sup> this does not undermine the relevance of the issue to the fairness and expeditiousness of proceedings.

**B. Second Issue – Factual error in relation to the scope of the Framework**

5. The SPO contests the Second Issue based on its own speculative and artificial distinction between different aspects of the Framework into "Protections" on one side, and on the other, unspecified procedural aspects, to defend the finding by the Pre-Trial Judge that the "protection provided by the Proposed Framework will exclusively be extended to those who themselves wish to invoke it."<sup>11</sup>
6. The Framework is not separated into different aspects and must be treated as whole. The Defence may not have any contact with SPO witnesses from the issuance of the Impugned Decision with only the SPO permitted to contact SPO witnesses,<sup>12</sup> which is an inherent protective part of the Framework.

---

<sup>8</sup> Response, paras 5-6.

<sup>9</sup> Impugned Decision, para. 174.

<sup>10</sup> Impugned Decision, para. 176.

<sup>11</sup> Impugned Decision, para. 119.

<sup>12</sup> Transcript, 13 July 2022, p.1394 "But to be clear, the Defence may not contact witnesses whom the SPO has notified an intention to rely upon at all, not to check their availability or for any other purpose."

**C. Third Issue – Mandatory provision of audio-visual records of witness interviews to the Panel and the opposing Party**

7. The SPO misunderstands the Third Issue as mandating that the Defence conduct investigations on behalf of the SPO.<sup>13</sup> Yet as set out explicitly in the introduction, the Third Issue relates to the “mandatory **submission** of audio-visual records of witness interviews to the Panel and the opposing Party”<sup>14</sup> if, and only if, the Defence elects to interview SPO witnesses and the latter consents.
8. The other parallels the SPO seeks to draw between Defence interviews of SPO witnesses and cross-examination of SPO witnesses,<sup>15</sup> are similarly confused and irrelevant. Mr. Selimi has a fundamental right to both conduct investigations and examine witnesses who give evidence in court although vastly different rules and considerations apply to each.
9. Defence investigations are, in principle, conducted confidentially, *ex parte* and without judicial supervision. Court hearings are, in principle, public, held in the presence of the parties and Trial Chamber who supervises the manner, length and scope of questioning.
10. Cross-examination also takes place after the Defence has had sufficient time to prepare and decide upon appropriate lines of questioning which are in-keeping with the case theory, thereby excluding others which might not be in the interests of the accused. It is a carefully planned exercise based upon extensive planning and investigation, designed *inter alia* to show flaws in the prosecution’s evidence against the accused. Cross-examination is not an investigative exercise and the

---

<sup>13</sup> Request, para. 21.

<sup>14</sup> Request, para. 1(iii).

<sup>15</sup> Response, para. 12.

SPO's extremely reductive and ill-informed comparison between the Framework and the videotaping of court testimony should be disregarded entirely.

11. Moreover, the Defence will be obliged to record and provide to the SPO any interviews it conducts with SPO witnesses which the SPO can then make use of, both for its own investigations or even during examination of its own witnesses. The question remains whether the Pre-Trial Judge has the legal authority under Article 39(11) to order the provision of such evidence.

**D. Fourth Issue – Disproportionality of mandatory submission of records of witness interviews.**

12. The SPO's superficial response to the Fourth Issue,<sup>16</sup> misunderstands the nature of requests for certification. The Pre-Trial Judge clearly exercised his discretion to order the provision to the calling party of records of interview. Whether he abused his discretion in doing so is a matter for the Appeals Chamber.

**III. RELIEF REQUESTED**

13. The Defence hereby reiterates its request for the Four Issues to be certified for appeal.

Word count: 994

Respectfully submitted on 15 August 2022,

---

<sup>16</sup> Response, para. 15.



---

DAVID YOUNG

Lead Counsel for Rexhep Selimi



---

GEOFFREY ROBERTS

Co-counsel for Rexhep Selimi



---

ERIC TULLY

Co-counsel for Rexhep Selimi



---

RUDINA JASINI

Co-counsel for Rexhep Selimi