

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

**The 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

**Date:** 13 February 2023

**Language:** English

**Classification:** Public

---

**Public Redacted Version of Selimi Defence Submissions on Proposed Trial  
Schedule and SPO Submission of List of First 12 Witnesses**

---

**Acting Specialist Prosecutor**

Alex Whiting

**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. Pursuant to Rules 118, 123, 124 and 126 of the Rules,<sup>1</sup> the Defence for Mr. Rexhep Selimi, in advance of the Specialist Prosecutor's Preparation Conference, hereby files these written submissions in relation to the SPO's submission of its list of the first 12 witnesses<sup>2</sup> and the proposed courtroom schedule for March 2023.<sup>3</sup>
2. While the Defence currently sees no reason why opening statements cannot proceed as planned on 1 March 2023,<sup>4</sup> the SPO's deliberate choice to schedule witnesses whose evidence has been redacted from the Defence until barely a week ago and which relates to indictment allegations which were only notified on 27 January 2023, in the continued absence of Lead Counsel for Mr. Selimi [REDACTED], would render the hearing of SPO witnesses during the weeks of 6 and 13 March as fundamentally unfair.

## II. SUBMISSIONS

### A. Scheduling of SPO witnesses

3. On 1 February 2023, the SPO notified the Defence and Chamber of the witness schedule for the first twelve witnesses, the first six of which is expected to cover the first three-week block of court hearings.
4. Of these six witnesses, the identity, evidence and Rule 95(4) summary of the first three<sup>5</sup> and the fifth<sup>6</sup> of these witnesses ("New Witnesses") has been extensively

---

<sup>1</sup> 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.

<sup>2</sup> KSC-BC-2020-06/F01243, Prosecution submission of list of first 12 witnesses and associated information with confidential Annex 1, 1 February 2023 ("SPO Submission").

<sup>3</sup> KSC-BC-2020-06/F01227, Agenda for Specialist Prosecutor's Preparation Conference with Confidential Annex 1, 26 January 2023, para. 11 and Annex 1.

<sup>4</sup> KSC-BC-2020-06, Seventh Oral Order, 18 January 2023, T. 1903.

<sup>5</sup> [REDACTED].

<sup>6</sup> [REDACTED].

redacted throughout pre-trial proceedings and was only disclosed to the Defence in unredacted format on 30 January 2023 along with the remaining approximately 46,000 pages of unredacted materials.

5. Further, the paragraphs in the Indictment to which the evidence of these witnesses appears<sup>7</sup> to relate was also redacted pursuant to the protective measures ordered by the Pre-Trial Judge until an unredacted version of the Indictment was notified to the Defence on 27 January 2023. In particular, newly unredacted paragraphs 41, 42, 49, 115, 139 and 149 contain specific and direct allegations against Mr. Selimi (“New Selimi Allegations”). None of these new allegations have been investigated previously by the Defence.
6. At present therefore, the Defence is seeking to prepare to cross-examine the New Witnesses, in part against the New Selimi Allegations. In particular, [REDACTED]. This must be thoroughly reviewed and investigated and compared with the evidence of other witnesses on this topic, which necessarily takes extensive time and resources. The same applies to each of the New Witnesses.
7. This preparation is affected by many competing obligations at the present time, not least the extensive SPO bar table motion which is expected to be filed tomorrow, along with preparing for opening statements and preparing to admit adjudicated facts. In these circumstances, preparing for these witnesses is one of many competing tasks for the Defence team.
8. While the Defence has long been concerned about the impact of delaying disclosure until 30 days before trial, the extent of the prejudice caused to Defence

---

<sup>7</sup> The Defence notes that for these first 12 witnesses, the SPO has not yet disclosed unredacted Rule 95(4) summaries specifying the relevant Indictment paragraphs.

preparations is only measurable at this stage once the redactions to the Indictment and SPO witness interviews have been lifted

9. In this regard, the Defence's efforts to correspond with the SPO in good faith on the scheduling of the first 12 SPO witnesses, as suggested by the Panel during the Trial Preparation Conference,<sup>8</sup> has not managed to prevent these issues arising. When the Defence requested confirmation from the SPO on 19 January 2023 that none of the witnesses whose evidence relates directly to the alleged actions of Mr. Selimi be heard among the first 12 witnesses, referring to [REDACTED], [REDACTED], the SPO confirmed this to be the case, except for [REDACTED], which was workable for the Defence.
10. However, disappointingly, while the Defence clearly sought agreement from the SPO not to call witnesses whose evidence relates directly to the alleged actions of Mr. Selimi, at no point did the SPO confirm that it was considering scheduling witnesses unknown to the Defence that related to completely new allegations against Mr. Selimi, such as [REDACTED].
11. Fearing such a lack of candour from the SPO, the Defence had also raised in the email of 19 January that its request was limited based on the information in the Defence's possession at that time and that "when unredacted statements of other witnesses are provided on 30 January 2023 and more clarity is provided regarding the content of their statements, a further request in this regard may be made."
12. Consequently, on 31 January 2023, having received the unredacted indictment and statements, and in advance of the SPO Submission due the following day, the Defence again wrote to the SPO seeking "confirmation that the SPO will also not call any witness relating directly to the alleged actions of Mr. Selimi as

---

<sup>8</sup> KSC-BC-2020-06, Trial Preparation Conference Transcript of 18 January 2023, p. 1803.

contained in the new and recently unredacted sections of paragraphs 41, 42, 49, 115, 139 and 149 as part of the first 12 SPO witnesses.”

13. No response to this communication has been received at the time of filing.
14. In accordance with paragraph 12 of the Annex to the Order on Conduct of Proceedings, the parties are expected to regularly discuss issues arising from the case to find solutions that do not require litigation. This only works if both parties correspond in a forthright and transparent manner. When one party is in possession of information that the other does not, such as in this case, the identity, evidence and its intent to call [REDACTED], it behoves that party to take the necessary steps to ensure that the other party is meaningfully informed of that information to be able to avoid litigation. It also requires the SPO to respond in a timely manner to *inter partes* communications about the same. Both were conspicuously lacking from the SPO in this case.

**B. Availability of Lead Counsel for the Defence of Mr. Selimi**

15. The Selimi Defence’s preparation for cross-examination of SPO witnesses is also severely hampered by the current absence of Lead Counsel, Mr. Young [REDACTED]. Mr. Young [REDACTED] fully intends to continue to lead the Defence team of Mr. Selimi in the coming months. However, in light of the circumstances [REDACTED] it is vital that he does not return before [REDACTED] in light of the potential risks that could materialise for [REDACTED] the proceedings as a whole.

16. International criminal tribunals have consistently granted arrangements put forward to mitigate the unavailability of counsel [REDACTED]. [REDACTED],<sup>9</sup> [REDACTED],<sup>10</sup> [REDACTED].<sup>11</sup>
17. At the current time, and until at least early April, Mr. Young [REDACTED]. Since December he has been unable to undertake his usual role in relation to filings submitted by the Defence team, to conduct or prepare investigations, and, most importantly, to properly prepare for cross-examination of SPO witnesses, in the usual manner, for which it was intended that he would take principal responsibility.
18. Mr. Young's absence has therefore inevitably impacted upon Defence preparation and required all Selimi Defence team members to ensure that as far as possible, his absence is mitigated. However, [REDACTED] and the beginning of trial proceedings has meant that this is only possible to a certain extent.

### **C. Impact upon proposed hearing schedule**

19. The Defence is acutely aware that Mr. Selimi and his co-accused are detained and have been for more than two years during pre-trial proceedings. Any delay in commencing the presentation of evidence in this case could potentially further prolong their detention. However, given the expected duration of trial, whether or not the SPO accepts to reduce the time necessary to present its case, a short delay in commencing the presentation of evidence would have a minimal overall impact.
20. Therefore, a two-week break is proposed between the opening statements and the presentation of evidence with the first SPO witness scheduled to testify on 20 March rather than 6 March as is currently foreseen. Hearings would continue

---

<sup>9</sup> [REDACTED].

<sup>10</sup> [REDACTED].

<sup>11</sup> [REDACTED].

during the weeks commencing 27 March and 3 April as scheduled followed by a week break. Hearings would recommence on 17 April 2023.

21. This amended schedule would allow the minimum time necessary to review, prepare and investigate the New Selimi Allegations and prepare to cross-examine the New Witnesses without disrupting either the beginning of trial on 1 March 2023, or the SPO Preparation conference on 15 February 2023.
22. Finally, while the Defence notes the potential SPO concerns regarding the impact on the protective measures of the New Witnesses now that their statements are unredacted, the Trial Panel has instructed the Parties and participants to abide by the Court of Appeals Panel's Decision of 27 December 2022, which upheld the Witness Contact Protocol imposed by the Pre-Trial Judge.<sup>12</sup> As such, the Defence is bound by the obligation to fully maintain the confidentiality of all the unredacted information and may not contact any of the New Witnesses except through the SPO. These strict measures are more than sufficient to ensure that there are no negative consequences of the brief delay proposed.
23. Finally, the amendments proposed in the present request are entirely proportional in relation to the reliefs previously granted by international criminal tribunals in similar instances, as described in paragraph 18 above.

#### **D. Confidentiality & Timing**

24. These submissions are filed confidentially pursuant to Rule 82(4), as they respond to confidential information filed by the SPO and also include information on the [REDACTED] of Lead Counsel for Mr. Selimi. The Defence will file a public redacted version at the earliest opportunity.

---

<sup>12</sup> KSC-BC-2020-06/F01226/A01, Annex 1 to Order on the Conduct of Proceedings, 25 January 2023, para. 71.

25. The Defence also files these written submissions in advance of the SPO Preparation Conference in order to allow the SPO and Counsel for Victims to respond in writing if required in advance of the hearing. As the schedule would also impact upon the logistical arrangements of the Parties and participants of this case as well as the *Shala* case, as well as the court staff and associated personnel, a decision on this question by the Panel at the earliest opportunity would be of great assistance.

### III. CONCLUSION

26. The Defence hereby proposes the amended court schedule for March 2023 as set out in paragraph 20.

Word count: 1771

Respectfully submitted on 13 February 2023,



---

GEOFFREY ROBERTS

Co-counsel for Rexhep Selimi



---

ERIC TULLY

Co-counsel for Rexhep Selimi



---

RUDINA JASINI

Co-counsel for Rexhep Selimi