



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 Christoph Barthe  
Judge Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Acting Specialist Prosecutor

**Date:** 20 February 2023

**Language:** English

**Classification:** Public

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**Prosecution response to SELIMI Defence request for a further initial appearance and related relief (F01281)**

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**Specialist Prosecutor's Office**

Alex Whiting

**Counsel for Victims**

Simon Laws

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Kadri Veseli**

Ben Emmerson

**Counsel for Rexhep Selimi**

David Young

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

1. The Request<sup>1</sup> should be dismissed.<sup>2</sup> The SELIMI Allegations<sup>3</sup> are not ‘new’ charges.<sup>4</sup> In turn, there is no right to further initial appearances or preliminary motions, as requested by the Defence. The related request for an extension of time to file an alibi notice – insofar as it is dependent on the resolution of further preliminary motions<sup>5</sup> – is therefore also unsubstantiated.

2. The Accused are not charged with having directly committed any of the charged crimes. However, the Indictment<sup>6</sup> does allege that the Accused contributed to the common purpose of the alleged JCE by, *inter alia*, personally participating in the crimes charged.<sup>7</sup> The Indictment provides examples of such personal participation, including the SELIMI Allegations. As found by the Pre-Trial Judge and Court of Appeals, such instances of personal participation (i) are material facts, which provide specificity and precision concerning the existing charges,<sup>8</sup> and (ii) cannot amount to an additional or

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<sup>1</sup> Selimi Defence Request for Trial Panel to Schedule a Further Initial Appearance and Preliminary Motions and Suspend the Order Updating the Notice of Alibi, KSC-BC-2020-06/F01281, 13 February 2023 (‘Request’). *See also* Specialist Prosecutor’s Preparation Conference, Transcript, 15 February 2023, pp.2034-2037; Selimi Defence Updated Notice of Alibi, KSC-BC-2020-06/F01298, 15 February 2023.

<sup>2</sup> Specialist Prosecutor’s Preparation Conference, Transcript, 15 February 2023, p.2038 (the SPO undertook to file this response by 20 February 2023).

<sup>3</sup> The ‘SELIMI Allegations’ are those concerned by the Request (*see* para.2), namely, the portions of paragraphs 41-42, 49, 115, 139, and 149 of the Indictment that were redacted from the Defence before 26 January 2023.

<sup>4</sup> *See also* Specialist Prosecutor’s Preparation Conference, Transcript, 15 February 2023, pp.2035-2037.

<sup>5</sup> Request, KSC-BC-2020-06/F01281, para.27.

<sup>6</sup> *See* Amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, Confidential (‘Indictment’).

<sup>7</sup> *See also* Decision on Defence Motions Alleging Defects in the Form of the Indictment, KSC-BC-2020-06/F00413, 22 July 2021, Confidential (‘Indictment Decision’), para.90.

<sup>8</sup> Indictment Decision, KSC-BC-2020-06/F00413, para.91; Decision on Defence Appeals Against Decision on Motion Alleging Defects in the Form of the Indictment, KSC-BC-2020-06/IA012/F00015, 22 August 2022, Confidential (‘Indictment Appeal Decision’), paras 46-47; Decision Concerning Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b), KSC-BC-2020-06/F00635, 23 December 2021, Confidential (‘Amended Indictment Decision’), para.26; Decision on Defence Appeals Against Decision Concerning Request to Amend the Indictment Pursuant to Rule(1)(b) of the Rules, KSC-BC-2020-06/IA018/F0007, 22 March 2022 (‘Amended Indictment Appeal Decision’), para.26.

independent basis for conviction.<sup>9</sup> Thus, none of the SELIMI Allegations constitute a ‘new’ charge.<sup>10</sup>

3. Considering the nature of the SELIMI Allegations, there is no basis for any further initial appearance or Rule 97<sup>11</sup> preliminary motions. Rule 90 – upon which the Request is largely based<sup>12</sup> – only applies to Indictment amendments and then, only provides for further initial appearances and preliminary motions in respect of new charges,<sup>13</sup> which the SELIMI Allegations are not.

4. Finally, the Pre-Trial Judge and Court of Appeals have already considered and rejected Defence arguments concerning previous redactions to the Indictment, finding that such redactions, including to the SELIMI Allegations, (i) did not impact Indictment specificity and (ii) were in line with previously granted protective measures intended to ensure a proper balance between the rights and interests of the Accused, victims, and witnesses.<sup>14</sup> Defence submissions that such redactions potentially amounted to an abuse of process<sup>15</sup> are therefore wholly unsubstantiated and should be disregarded.

5. For the foregoing reasons, the Trial Panel should reject the Request in its entirety.

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<sup>9</sup> Amended Indictment Decision, KSC-BC-2020-06/F00635, paras 26-27; Amended Indictment Appeal Decision, KSC-BC-2020-06/IA018/F00007, paras 26-27, 29. These decisions specifically concerned, *inter alia*, Indictment paragraphs 42 and 139. However, the reasoning applies broadly to all of the SELIMI Allegations.

<sup>10</sup> *See, similarly*, Amended Indictment Decision, KSC-BC-2020-06/F00635, paras 26-28; Amended Indictment Appeal Decision, KSC-BC-2020-06/IA018/F00007, paras 26-27.

<sup>11</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.

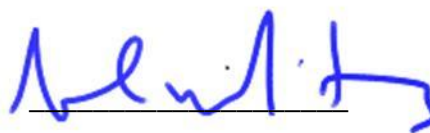
<sup>12</sup> Request, KSC-BC-2020-06/F01281, paras 2, 9, 14, 19-20.

<sup>13</sup> Rule 90(3)-(4).

<sup>14</sup> Indictment Decision, KSC-BC-2020-06/F00413, fns 163, 165, 167, 218, 250, 259, 277-281, 285-286; Indictment Appeal Decision, KSC-BC-2020-06/IA012/F00015, paras 26-27, 29. *See also* Amended Indictment Decision, KSC-BC-2020-06/F00635, para.47.

<sup>15</sup> Request, KSC-BC-2020-06/F01281, paras 16-17.

**Word Count: 669**

A handwritten signature in blue ink, appearing to read 'Alex Whiting', written over a horizontal line.

**Alex Whiting**

**Acting Specialist Prosecutor**

Monday, 20 February 2023

At The Hague, the Netherlands.