

**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

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Counsel for Rexhep Selimi

**Date:** 4 May 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of "Selimi Defence Response to Confidential Redacted Version of 'Prosecution Rule 107(2) request', KSC-BC-2020-06/F00555, dated 1 November 2021"**

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## **I. INTRODUCTION**

1. The Defence for Mr. Selimi hereby opposes the Confidential Redacted Version of 'Prosecution Rule 107(2) request', KSC-BC-2020-06/F00555, dated 1 November 2021 ("Request"), which was notified to the Defence on 2 November 2021.
2. The redactions applied are important for the preparation of Mr. Selimi's Defence and, if granted, require concrete and extensive counterbalancing measures in accordance with Rule 107. These have not been proposed by the SPO.

## **II. SUBMISSIONS**

### **A. Relevance and importance of witnesses**

3. The Request for an exemption of its disclosure obligations pursuant to Rule 107 relates to the evidence of the following witnesses:
  - (i) W02114 – [REDACTED]
  - (ii) W02160 - [REDACTED]
  - (iii) W04856 - [REDACTED]
4. Each of these witnesses, according to the summaries provided by the SPO, makes personal allegations relating to Mr. Selimi:
  - (i) W02114 – [REDACTED]
  - (ii) W02160 – [REDACTED]
  - (iii) W04856 – [REDACTED]
5. Each of these witnesses appears to be the only individual on the SPO preliminary witness list to provide the above listed information. As such, the

relevance, credibility and reliability of their evidence is of crucial importance to these proceedings. Any restrictions on the ability of the Defence to review, analyse and investigate this evidence therefore directly impinge upon the Defence's ability to prepare for trial, whether or not they relate to the substance of these allegations. The Defence must not be unfairly prevented from accessing such information.

## **B. Specific requested redactions**

### **a. W02114**

6. The SPO claims that the statement of W02114 contains "very limited redactions to the name of a former [REDACTED] employee and that former employee's membership in the [REDACTED]"<sup>1</sup> while confirming that this former employee worked with W02114 in [REDACTED]. However, the SPO seeks to minimise the prejudice of the proposed redactions by relying on the public evidence of W02144 [REDACTED] who has [REDACTED]<sup>2</sup> as well as asserting that no redactions are applied to potentially exculpatory information. The SPO further claims that "multiple references to the [REDACTED] elsewhere in the statement are not redacted."<sup>3</sup>
7. The proposed redactions appear to relate to meetings attended by W02114 and the [REDACTED]."<sup>4</sup> Given the importance of the alleged role of these [REDACTED] in the period from June until September 1999 when the SPO

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<sup>1</sup> KSC-BC-2020-06, F00555, Confidential Redacted Version of 'Prosecution Rule 107(2) request', KSC-BC-2020-06/F00555, dated 1 November 2021, para. 3, ("Request").

<sup>2</sup> [REDACTED]

<sup>3</sup> Id.

<sup>4</sup> [REDACTED]

alleges that there was still an armed conflict in Kosovo,<sup>5</sup> the importance of the identity of the redacted person cannot be overstated.

8. Self-evidently, the Defence can't meaningfully respond to whether there are multiple other unredacted references in the statement or not to the same information as suggested by the SPO, given the way the SPO application is phrased to obscure the nature of what is being referred to. Surely the SPO would have been able to phrase these submissions in such a manner to allow for effective Defence participation.
9. In any event, regardless of the nature of the purportedly similar unredacted information, the redaction of the employee's name deprives the Defence from the opportunity to identify that individual and verify whether their recollection corresponds to that of W02114. Even if W02144 has [REDACTED], that does not mean that his evidence, or indeed that of W02114, is reliable and accurate.
10. As for the associated exhibit, [REDACTED], it is impossible to verify the SPO's claim that no redactions are applied to the two [REDACTED] of relevance to the case and that the redacted material is outside the scope of this case.<sup>6</sup> However, given the lack of information available to the SPO at this stage as to the nature of Mr. Selimi's Defence, as well as its restrictive interpretation of what amounts to information relevant to the preparation of that Defence, the SPO's bald assertions to this end are of limited weight. The [REDACTED] all suggest that it was unlikely to have contained information that falls wholly outside the scope of the vast case pleaded by the SPO.

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<sup>5</sup> KSC-BC-2020-06, F00455, Annex 1 to Public Redacted Version of 'Submission of corrected Indictment and request to amend pursuant to Rule 90(1)(b)', KSC-BC-2020-06/F00455, dated 3 September 2021, paras 16, 18 ("Indictment").

<sup>6</sup> Request, para. 4.

**b. W02160**

11. The SPO seeks redactions to various associated documents to the statement of W02160.
12. First it seeks redactions to “SPOE00209605-00209619, SPOE00210266-00210280, SPOE00209620-00209634, SPOE00210213-00210227 and SPOE00203123-00203124” on the basis that these documents were discussed with W02160.<sup>7</sup> Yet, the paragraphs in W02160’s statement relied upon by the SPO where such discussions were recorded does not appear to make any reference to these documents.<sup>8</sup> While it appears that these are the same documents that are simply referred to by a different ERN, the lack of any such explanation or confirmation of this fact by the SPO unnecessarily complicates the issue.
13. Assuming these are the same documents, the redactions applied appear to undermine the SPO’s assertion that the redactions do not relate to exculpatory information or to any other substantive information.<sup>9</sup> Indeed, the content of the redactions is either wholly unclear,<sup>10</sup> or appears to relate to the names of [REDACTED];<sup>11</sup> [REDACTED];<sup>12</sup> [REDACTED]<sup>13</sup> [REDACTED].<sup>14</sup>
14. Given the importance of Mr. Selimi’s alleged role with the [REDACTED] to the Prosecution, and other evidence relied upon by the SPO in relation to this topic, it is far too simplistic to dismiss the relevance of this information. Even if the

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<sup>7</sup> Request, para. 5, Fn. 7.

<sup>8</sup> See Statement of W02160, paras 34-46, 55 and 89 which refer to SITF00441300-SITF00441314, SITF00441315-SITF00441329, SITF00441319, SITF00441319, SITF00441320-SITF00441323, SITF00441324 00441229, SITF00441285-SITF00441299, SITF00441286, SITF00441287, SITF00441288, SITF00441298, SITF00441300, SITF00441217-00441231 and 012772-012773.

<sup>9</sup> Request, para. 5.

<sup>10</sup> SPOE00209605-00209619, at SPOE00209605 and SPOE00209606.

<sup>11</sup> [REDACTED]

<sup>12</sup> [REDACTED].

<sup>13</sup> [REDACTED].

<sup>14</sup> [REDACTED].

redactions are required by the provider of the information, the SPO remains obliged to provide the necessary counterbalancing measures.

15. The redactions proposed to two further documents that the SPO seeks to redact, appear to relate firstly to [REDACTED] and another incident which is impossible to understand from the context;<sup>15</sup> and secondly, [REDACTED].<sup>16</sup> The redactions are thus not limited, as incorrectly asserted, since the information has been completely redacted. Further, the assertion of a lack of exculpatory content is impossible to verify.
16. Disclosure to the Defence of the remaining document relating to W02160<sup>17</sup> has been entirely refused by the information provider, thus depriving the Defence from making any meaningful submissions on the effect of the redactions. However, by nature, the refusal to disclose a document in its entirety is far more detrimental to Defence preparations than redactions to parts thereof.
17. Further, the purported discussion of the alleged content of the document by W02160 does not compensate for the absence of disclosure of the document itself. Indeed, the discussion raises more questions than it answers. In particular, the relationship between [REDACTED]<sup>18</sup> is of primordial importance, especially how the [REDACTED] allegedly exposes [REDACTED].<sup>19</sup> Far more concrete and detailed counterbalancing measures are therefore necessary in order to compensate for the lack of disclosure of this document.

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<sup>15</sup> SPOE00203172-00203173.

<sup>16</sup> [REDACTED].

<sup>17</sup> SITF40001621-40001623.

<sup>18</sup> [REDACTED].

<sup>19</sup> [REDACTED]

**c. W04856**

18. The redactions applied to personal identifying and employment information of the statement of W04856 (103821-103844) prevent the Defence from being given information regarding the witness' current occupation. The witness' ability to provide evidence on the issues set out in his statement may depend in part on this occupation before and after joining the [REDACTED].<sup>20</sup> Counterbalancing measures should therefore be ordered.

19. Further, the SPO's justification that redactions to [REDACTED] are not applied to any exculpatory information and all necessary factual information and context is unredacted"<sup>21</sup> as well as that "the witness's own understanding or beliefs regarding these same issues is provided without redactions"<sup>22</sup> is unverifiable and misses the point. Again, these discussions appear to relate to important issues regarding:

(i) [REDACTED];<sup>23</sup>

(ii) [REDACTED];<sup>24</sup> and, most importantly, that:

(iii) [REDACTED].<sup>25</sup>

20. All of these issues relate, to a greater or lesser extent, to Mr. Selimi directly or to other members of the alleged JCE. Their importance cannot be so easily minimised as the SPO attempts. Whether the Defence has accurately guessed the content of the redacted portions should not be left to chance. Proactive and

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<sup>20</sup> [REDACTED].

<sup>21</sup> Request, para. 8.

<sup>22</sup> Ibid.

<sup>23</sup> [REDACTED].

<sup>24</sup> [REDACTED].

<sup>25</sup> [REDACTED].

detailed counterbalancing measures are therefore necessary to offset the prejudice to the Defence arising from the proposed redactions.

21. Finally, while the Defence notes that W04856 expressly admitted drafting the associated document<sup>26</sup> the redactions to the name and signature of the person who signed these points may also be relevant to the credibility, reliability and knowledge of certain witnesses. The complete lack of explanation by W04856 as to why someone else transmitted the document, prevents this from being assessed. An adequate counterbalancing measure would therefore be a further statement from W04856 to explain this fact.

### III. CONCLUSION AND RELIEF REQUESTED

22. For the reasons set out herein, and in order to achieve concrete and practical solutions which move the pre-trial proceedings toward trial in an expeditious and fair manner, the Defence requests the Pre-Trial Judge to:
- a. DENY the Request;
  - b. ORDER the SPO to continue to actively consult with the information providers on lifting the redactions and report to the Pre-Trial Judge and parties on this issue; and, as an interim measure,
  - c. ORDER interim counterbalancing measures as set out herein until the redacted information can be disclosed.

**Word Count: 1,539**

Respectfully submitted on 4 May 2023,

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<sup>26</sup> Request, para. 9 referring to SPOE00212698-00212700, paras 80-81.





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GEOFFREY ROBERTS

Lead Counsel for Rexhep Selimi



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ERIC TULLY

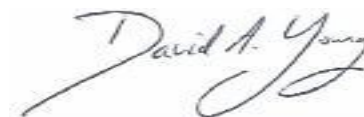
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