



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**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:** Fidelma Donlon

**Date:** 21 September 2023

**Language:** English

**Classification:** Public

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**Decision on Selimi Request for Confidential Lesser Redacted Version of  
Decision on the Confirmation of the Indictment**

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**TRIAL PANEL II** of the Kosovo Specialist Chambers (“Panel”), pursuant to Article 21(2) and (4), 23, 40(2) and (6)(f) and (h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, and Rules 80, 81 and 82(5) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 26 October 2020, the Pre-Trial Judge confirmed the initial indictment against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (“First Confirmation Decision”).<sup>1</sup>
2. On 22 April 2022, the Pre-Trial Judge confirmed amendments to the confirmed initial indictment (“Second Confirmation Decision”).<sup>2</sup>
3. On 27 January 2023, pursuant to a decision by the Panel (“Decision on Indictment Redactions”),<sup>3</sup> the strictly confidential and *ex parte* version of the confirmed further amended indictment (“Indictment”)<sup>4</sup> was reclassified as confidential and its *ex parte* status lifted.<sup>5</sup>

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<sup>1</sup> F00026, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, strictly confidential and *ex parte*. A confidential redacted version was issued on 19 November 2020, F00026/CONF/RED. A public redacted version was issued on 30 November 2020, F00026/RED.

<sup>2</sup> F00777, Pre-Trial Judge, *Decision on the Confirmation of Amendments to the Indictment*, 22 April 2022, strictly confidential and *ex parte*. A public redacted version (F00777/RED) and a (lesser redacted) confidential redacted version (F00777/CONF/RED2) were issued on 6 and 16 May 2022, respectively.

<sup>3</sup> F01229, Panel, *Decision on Indictment Redactions*, 26 January 2023, strictly confidential and *ex parte*, para. 40(a). A confidential redacted version was filed on 27 January 2023, F01229/CONF/RED.

<sup>4</sup> F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment*, 30 September 2022, confidential.

<sup>5</sup> F01239, Registry (Court Management Unit), *Memorandum in Compliance with the “Confidential Redacted Version of Decision on Indictment Redactions”*, F1229, 30 January 2023, confidential.

4. On 15 February 2023, pursuant to the Decision on Indictment Redactions,<sup>6</sup> the Specialist Prosecutor's Office ("SPO") filed a confidential lesser redacted version of its pre-trial brief.<sup>7</sup>
5. On 6 March 2023, the Defence for Rexhep Selimi ("Selimi Defence") filed a request for a lesser redacted version of the First Confirmation Decision ("Selimi Request").<sup>8</sup>
6. On 17 March 2023, the SPO responded to the Selimi Request ("SPO Response").<sup>9</sup>
7. On 24 March 2023, the SPO notified the Panel of its intention to lift non-standard redactions protecting the identities of several witnesses ("SPO Notification").<sup>10</sup>
8. On 18 April 2023, the Panel issued a decision on an SPO request to vary the protective measures in place for two witnesses ("18 April 2023 Decision"), wherein it: (i) varied the protective measures in place for one witness ("Witness 1") to allow the lifting of non-standard redactions in the witness's materials, while maintaining the protective measures in place for the other witness; and (ii) ordered the SPO to disclose the material of Witness 1 without non-standard redactions to the Defence by no later than 25 April 2023.<sup>11</sup>

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<sup>6</sup> Decision on Indictment Redactions, para. 40(b).

<sup>7</sup> F01296/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submissions Pursuant to Decision F01229, Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief', KSC-BC-2020-06/F00709, dated 24 February 2022, 15 February 2023, confidential.*

<sup>8</sup> F01347/COR, Specialist Counsel, *Corrected Version of Selimi Defence Request for Lesser Redacted Version of Decision Confirming the Indictment, 7 March 2023 (the original request was filed on 6 March 2023), with Annex 1.*

<sup>9</sup> F01384, Specialist Prosecutor, *Prosecution Response to Selimi Defence Request for Lesser Redacted Confirmation Decision, 17 March 2023, with Annex 1, strictly confidential and ex parte.*

<sup>10</sup> F01394, Specialist Prosecutor, *Delayed Disclosure Notification for Witnesses, 24 March 2023, confidential, in particular, para. 1.*

<sup>11</sup> F01466, Panel, *Decision on the SPO Request to Vary Protective Measures, 18 April 2023, confidential, para. 17(b)-(d).*

9. On 9 June 2023, the SPO filed a further confidential lesser redacted version of its pre-trial brief.<sup>12</sup>

10. On 12 September 2023, pursuant to the Panel's instruction,<sup>13</sup> the SPO filed a supplement to the SPO Response ("SPO Supplement").<sup>14</sup>

## II. SUBMISSIONS

11. The Selimi Defence requests the Panel to issue a confidential lesser redacted version of the First Confirmation Decision, so as to reflect the lesser redacted versions of the Indictment and the SPO's pre-trial brief.<sup>15</sup> It argues, in particular, that: (i) due to the lifting of all redactions in the Indictment towards the Defence, the commensurate redactions in the First Confirmation Decision are no longer necessary or reasonable;<sup>16</sup> and (ii) receiving the information contained in the First Confirmation Decision regarding the recently unredacted allegations against Rexhep Selimi in the Indictment would assist the Selimi Defence to prepare in relation to these allegations.<sup>17</sup> Furthermore, the Selimi Defence contends that a lesser redacted version is warranted since the First Confirmation Decision is a "post-indictment instrument" which weighs the charges in the Indictment against the standard of establishing a well-grounded submission.<sup>18</sup>

12. The Selimi Defence recognises that a fully unredacted version of the First Confirmation Decision cannot be made available to the Defence due to the

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<sup>12</sup> F01594/A03, Specialist Prosecutor, *Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief'*, 9 June 2023, confidential.

<sup>13</sup> CRSPD309, *Email from Trial Panel II to CMU with Instructions for SPO Regarding Further Submissions on Selimi Request F01347*, 5 September 2023, confidential.

<sup>14</sup> F01783, Specialist Prosecutor, *Prosecution Supplement to Filing F01384*, 12 September 2023, strictly confidential and *ex parte*.

<sup>15</sup> Selimi Request, para. 1 and fn. 2. *See also* Selimi Request, para. 6.

<sup>16</sup> Selimi Request, para. 3.

<sup>17</sup> Selimi Request, para. 4.

<sup>18</sup> Selimi Request, para. 5, *referring to* Decision on Indictment Redactions, para. 17.

continuation of certain protective measures. Its request, therefore, is merely for a lesser redacted version to be filed.<sup>19</sup>

13. The SPO submits that it does not, in principle, object to the Selimi Request, but that certain redactions remain necessary to give effect to protective measures in place for certain witnesses.<sup>20</sup> Furthermore, the SPO indicates that: (i) it is conducting an ongoing review of the necessity of protective measures; (ii) an SPO request to vary protective measures for two witnesses is pending before the Panel; and (iii) accordingly, the Selimi Request may be premature.<sup>21</sup> However, as to the appropriate timing of any confidential lesser redacted version of the First Confirmation Decision, the SPO defers to the Panel, provided that necessary redactions are maintained to give effect to existing protective measures.<sup>22</sup>

14. In the SPO Supplement, the SPO submits that some of the redactions it had identified in Annex 1 to the SPO Response (“Annex 1”) as remaining necessary, are no longer necessary at this stage as the relevant witnesses’ identities have in the meantime been disclosed to the Defence.<sup>23</sup> However, the SPO submits that certain additional electronic record numbers (“ERNs”) of transcripts not previously mentioned in Annex 1 need to remain redacted.<sup>24</sup>

### III. DISCUSSION

15. The Panel recalls that the initial First Confirmation Decision was issued by the Pre-Trial Judge in only a strictly confidential and *ex parte* version. The Pre-Trial Judge later issued a confidential version, with redactions based upon the redactions in the indictment filed by the SPO. Additionally, the Pre-Trial Judge

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<sup>19</sup> Selimi Request, fn. 2.

<sup>20</sup> SPO Response, para. 1 and fn. 3, referring to Annex 1 to the SPO Response.

<sup>21</sup> SPO Response, para. 2 and fns 4-6.

<sup>22</sup> SPO Response, para. 2.

<sup>23</sup> SPO Supplement, para. 2, referring to the redactions mentioned in the first and the fourth row of Annex 1.

<sup>24</sup> SPO Supplement, paras 3-4.

authorised the delayed disclosure to the Defence of information related to certain SPO witnesses, either until 30 days before trial or 30 days before testimony.<sup>25</sup> In the Pre-Trial Judge's estimation, delayed disclosure was justified in each case due to an objective risk.

16. Having scrutinised the redactions in the First Confirmation Decision, the Panel finds that the vast majority of these redactions are no longer necessary in a confidential version of the decision at this stage of the proceedings, particularly in light of: (i) the lifting of all redactions in the Indictment towards the Defence on 27 January 2023; (ii) disclosure to the Defence of a large amount of witness-related

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<sup>25</sup> E.g. F00133/COR, Pre-Trial Judge, *Corrected Version of First Decision on Specialist Prosecutor's Request for Protective Measures*, 14 December 2020, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00133/COR/CONF/RED); F00190, *Decision on Specialist Prosecutor's Second Request for Protective Measures and Renewed Request for Protective Measures and Procedural Matters*, 5 February 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00190/CONF/RED); F00211, Pre-Trial Judge, *Third Decision on Specialist Prosecutor's Request for Protective Measures*, 3 March 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00211/CONF/RED); F00239, Pre-Trial Judge, *Fourth Decision on Specialist Prosecutor's Request for Protective Measures*, 26 March 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00239/CONF/RED); F00338, Pre-Trial Judge, *Fifth Decision on Specialist Prosecutor's Request for Protective Measures*, 4 June 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on 7 June 2021, F00338/CONF/RED); F00373, Pre-Trial Judge, *Sixth Decision on Specialist Prosecutor's Request for Protective Measures*, 25 June 2023, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00373/CONF/RED); F00407, Pre-Trial Judge, *Seventh Decision on Specialist Prosecutor's Request for Protective Measures*, 21 July 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00407/CONF/RED); F00438, Pre-Trial Judge, *Eighth Decision on Specialist Prosecutor's Request for Protective Measures*, 24 August 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00438/CONF/RED); F00466, Pre-Trial Judge, *Ninth Decision on Specialist Prosecutor's Request for Protective Measures*, 13 September 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00466/CONF/RED); F00467, Pre-Trial Judge, *Tenth Decision on Specialist Prosecutor's Request for Protective Measures*, 13 September 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00467/CONF/RED); F00559, Pre-Trial Judge, *Eleventh Decision on Specialist Prosecutor's Request for Protective Measures*, 5 November 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on 17 December 2021, F00559/CONF/RED); F00571, Pre-Trial Judge, *Twelfth Decision on Specialist Prosecutor's Request for Protective Measures*, 17 November 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00571/CONF/RED); F01057, Pre-Trial Judge, *Decision on Prosecution Rule 102(2) Submission and Related Requests*, 27 October 2022, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F01057/CONF/RED); F01058, Pre-Trial Judge, *Decision on Prosecution Request to Add Two Witnesses and Associated Materials*, 27 October 2022, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F01058/CONF/RED).

material without redactions on 30 January 2023; and (iii) further disclosure of witness-related material without non-standard redactions in April 2023.<sup>26</sup> In light of the opening of the trial on 3 April 2023 and pursuant to, in particular, Articles 21(4) and 40(2) as well as Rule 82(5), the Panel finds it appropriate to issue, at this stage, a confidential lesser redacted version of the First Confirmation Decision.

17. The Panel agrees with the SPO that the redactions mentioned in the first and the fourth row of Annex 1 are no longer necessary as the identities of the respective witnesses have in the meantime been disclosed to the Defence.<sup>27</sup> With respect to the redactions mentioned in the second row of Annex 1, the Panel finds that, in light of the 18 April 2023 Decision,<sup>28</sup> these redactions need to remain in place to give effect to existing protective measures for the relevant witness. Similarly, the redactions mentioned in the third row of Annex 1 remain necessary to give effect to protective measures in place for the relevant witness. With respect to the ERNs mentioned in the SPO Supplement, the Panel agrees that these redactions remain necessary so as not to reveal protected information. Furthermore, the Panel finds that a few additional redactions need to be maintained so as not to jeopardise existing protective measures for certain anonymous or delayed disclosure witnesses.

18. For the same reasons as set out in paragraph 16 above, the Panel finds it appropriate to also issue, *proprio motu*, a confidential lesser redacted version of the Second Confirmation Decision. Having scrutinised the redactions therein, the Panel finds that only a few redactions remain necessary to give effect to existing protective measures.

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<sup>26</sup> In particular with respect to the witnesses mentioned in the SPO Notification.

<sup>27</sup> See, in particular, 18 April 2023 Decision, para. 17(b) and (d); Disclosure Packages 739-741, 764.

<sup>28</sup> 18 April 2023 Decision, para. 17(c).

19. In light of the above, the Panel grants the Selimi Request in so far as it does not contravene any remaining protective measures.<sup>29</sup> The Panel will issue confidential lesser redacted versions of the First Confirmation Decision and the Second Confirmation Decision.

20. The Panel will turn to public lesser redacted versions of the First Confirmation Decision and the Second Confirmation Decision in due course.

#### IV. CLASSIFICATION

21. Noting that the SPO proposes to file a confidential redacted version of the SPO Supplement, the Panel orders the SPO to file such version by **Thursday, 28 September 2023**.

#### V. DISPOSITION

22. For the above-mentioned reasons, the Panel hereby:

- (a) **GRANTS** the Request;
- (b) **ISSUES** a confidential lesser redacted version of the First Confirmation Decision and of the Second Confirmation Decision; and
- (c) **ORDERS** the SPO to file a confidential redacted version of the SPO Supplement by **Thursday, 28 September 2023**.



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**Charles L. Smith, III**  
**Presiding Judge**

Dated this Thursday, 21 September 2023  
At The Hague, the Netherlands.

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<sup>29</sup> See above, para. 17.