



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  
Judge Christoph Barthe  
Judge Guénaël Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor's Office

**Date:** 13 November 2023

**Language:** English

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**Prosecution reply to Selimi Defence Response to Prosecution submission pertaining to periodic detention review of Rexhep Selimi**

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## I. INTRODUCTION

1. The Response<sup>1</sup> should be rejected, and Rexhep Selimi ('Selimi') should remain detained. Selimi's argument that witness scheduling delays will have an impact in prolonging detention is entirely speculative and minimises the extent to which any such delay is caused by the Defence itself.

## II. SUBMISSIONS

A. THERE IS NO REASON TO BELIEVE THAT WITNESS SCHEDULING DELAYS WILL PROLONG DETENTION

2. Selimi's speculative estimate that the Specialist Prosecutor's Office ('SPO') will finish presenting its case in March 2027<sup>2</sup> is unsupported by fact, irrelevant to the issue currently before the Panel, and ignores relevant considerations. The sole basis for the calculation appears to be the rate at which witnesses have been heard during the first 7 months of trial.<sup>3</sup> This simplistic calculation ignores several relevant considerations. For one, the progress of trial cannot be measured solely by the metric of witnesses heard live; a considerable additional volume of evidence, including witness statements, have been

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<sup>1</sup> Selimi Defence Response to Prosecution submission pertaining to periodic detention review of Rexhep Selimi, KSC-BC-2020-06/F01908, 3 November 2023 ('Response').

<sup>2</sup> Response, KSC-BC-2020-06/F01908, para.12.

<sup>3</sup> Response, KSC-BC-2020-06/F01908, para.12.

admitted through the bar table<sup>4</sup> and Rules 153<sup>5</sup> and 155<sup>6</sup> of the Rules.<sup>7</sup> Second, it has no regard to the length or complexity of individual witnesses. Third, it fails to take account of scheduled sitting hours, or the manner in which blocks are broken up.<sup>8</sup> Fourth, and importantly, this calculation also ignores streamlining avenues available to and utilized by the SPO to reduce courtroom time going forward, including, but not limited to, shortening examination times, making further recourse to Rule 154, and electing not to call witnesses after the evidence of other witnesses make their testimony cumulative. Notable in this regard, recent filings for admission of evidence pursuant to Rule 154 demonstrate the commitment of the SPO to expeditiousness and significant reductions in examination time for forthcoming witnesses.<sup>9</sup> Many further such decisions can only be made as the case progresses, and in light of already admitted evidence.

3. Since there is no current basis to conclude that the SPO will not finish its case expeditiously, the length of Selimi's detention cannot be unreasonable on this basis.

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<sup>4</sup> See Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01409, 31 March 2023, confidential; Second Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01596, 9 June 2023, confidential; Third Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01705, 27 July 2023, confidential; Fourth Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01716, 8 August 2023, confidential; Fifth Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01832, 3 October 2023, confidential.

<sup>5</sup> See Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 153, KSC-BC-2020-06/F01904, 3 November 2023, confidential.

<sup>6</sup> See Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, confidential; Decision on Prosecution Second Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01864, 17 October 2023, confidential.

<sup>7</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>8</sup> Given that there are one, two or – over recess periods – three week breaks between blocks, where a witness finishes early on the last day of that block it is often not possible to start and complete a testimony within the time remaining available.

<sup>9</sup> See Prosecution motion for admission of evidence of Witnesses W00208, W02082, W02475, W04147, W04325, W04491, and W04753 pursuant to Rule 154 with confidential Annexes 1-7, KSC-BC-2020-06/F01788, 14 September 2023, Confidential, para.1 fn.3; Prosecution motion for admission of evidence of Witnesses W03170, W04043, W04444, W04571, W04765, W04811, and W04870 pursuant to Rule 154 and

Moreover, the question before the Panel is whether the length of Selimi's detention is unreasonable at this time; it is not.

B. SELIMI MINIMIZES THE EXTENT THAT THE DEFENCE CONTRIBUTES TO THE DELAYS AT ISSUE

4. Selimi's assertions of delay allegedly attributable to the SPO<sup>10</sup> largely fail to acknowledge the significant contributing role of the Defence in causing such delay.

5. The SPO is aware of its obligations as a calling party pursuant to the Order on the Conduct of Proceedings.<sup>11</sup> However, the efficiency by which witnesses are heard is compromised when other participants regularly fail to honour their obligations, including by providing inaccurate information or being unprepared to conduct examinations. As emphasised by the Panel, accurate cross-examination estimates are essential to facilitate scheduling decisions, are crucial for the SPO to provide timely notice of the witnesses it intends to call, and could avoid the need to regularly resort to reserve witnesses.<sup>12</sup> Unfortunately, as previously highlighted to the Panel, the Defence has a history of inaccuracies<sup>13</sup> and last-minute significant reductions<sup>14</sup> in cross-examination estimates. The Panel has repeatedly recognised that the estimates given by the Defence

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related request with confidential Annexes 1-7, KSC-BC-2020-06/F01830, 3 October 2023, Confidential, para.1 fn.5.

<sup>10</sup> Response, KSC-BC-2020-06/F01908, paras 2, 11-12.

<sup>11</sup> Annex 1 to Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Order on the Conduct of Proceedings'), para.81.

<sup>12</sup> Oral Order, Transcript, 10 July 2023, pp.5259-5261; Oral Order, Transcript, 19 July 2023, p.6089.

<sup>13</sup> See Prosecution request for video-conference testimony for W04448 and related matters, KSC-BC-2020-06/F01826, 22 October 2023, Confidential, para.13 fn.18

<sup>14</sup> See Prosecution response to THAÇI and SELIMI Defence request to postpone reserve witnesses, KSC-BC-2020-06/F01820, 27 September 2023, Confidential, paras 3-4.

have been considerably inflated, which create challenges in scheduling witnesses and contributed to loss of valuable courtroom time.<sup>15</sup>

6. To provide one stark example, during recent proceedings, while the SPO largely conformed to its estimated examination time, the Defence deviated over 12 hours from their cross-examination estimate, resulting in the loss of at least one day of court time, which prompted ‘concern[]’ from the Panel and an acknowledgement from the Defence that their estimates needed to be improved.<sup>16</sup> Focusing just on the Selimi Defence, for the first 17 witnesses - that is, up to and including W00072 – the Selimi Defence estimated 40 hours in total, and actually used only 12hrs 28mins. This represents an almost 70% reduction from estimates – counting only one of the four Defence teams – for which the SPO had to compensate.

7. In relation to W04746, after confirming cross-examination estimates that prompted the Panel to conclude that the witness would last until potentially Thursday of the following week,<sup>17</sup> the Defence suddenly and drastically reduced their cross-examination time later that same day.<sup>18</sup> Yet the SPO was still able to secure two separate witnesses for the period of Tuesday through Thursday the following week to ensure continuous testimony.

8. In a further recent example, when the SPO had the next witness scheduled for the block ready to take the stand, two of the Defence teams indicated they were not in a

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<sup>15</sup> See Decision on Joint Defence Request for a Variation of the Time Limit to Provide Information About the Examination of SPO Witnesses, KSC-BC-2020-06/F01650, 7 July 2023, para.14; Oral Order, Transcript, 19 June 2023, pp.4983-4984.

<sup>16</sup> See Transcript (Trial Proceedings), 30 October 2023, pp. 9239-9240. Similarly, among numerous other examples, in relation to W01236, Defence cross estimates dropped from four and a half hours to zero during the course of testimony (Transcript (Trial Proceedings), 23 May 2023, pp.4569, 4608-4609).

<sup>17</sup> Transcript (Trial Proceedings), 14 July 2023, p.5687-5688.

<sup>18</sup> Transcript (Trial Proceedings), 14 July 2023, p.5728-5730.

position to conduct cross-examination, and the Selimi Defence also requested that they not be required to commence their cross-examination until the following week.<sup>19</sup>

9. In sum, the SPO has acted with appropriate diligence leading to the reasonable progression of its case. The SPO continues to do everything within its power to improve its methods and ensure greater efficiencies whenever possible.

### III. CONCLUSION

10. Ultimately, and especially in light of the above, the assertion that detention until the end of trial is disproportionate,<sup>20</sup> is premature. As noted by Selimi,<sup>21</sup> though apparently without a recognition of its significance in this regard, each decision of the Panel extends detention for only a period of a further two months. The Panel has expressly noted that detention has already existed for ‘a significant amount of time’, and that it will ‘continue to monitor at every stage in these proceedings whether continued detention is necessary and reasonable’.<sup>22</sup> The ‘proactive’ assessment advanced by Selimi<sup>23</sup> is contrary to the relevant law and basic logic by seeking a determination of whether detention is justified for the next sixty days on the basis of things that may or may not happen years in the future.

11. For the foregoing reasons, the Trial Panel should reject the Response and extend Selimi’s detention.

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<sup>19</sup> Transcript, 11 October 2023, pp.8704-8709.

<sup>20</sup> Response, KSC-BC-2020-06/F01908, paras 3-13.

<sup>21</sup> Response, KSC-BC-2020-06/F01908, para.9

<sup>22</sup> See Previous Detention Decision, KSC-BC-2020-06/F01794, para.35.

<sup>23</sup> Response, KSC-BC-2020-06/F01908, paras 3-8.

**Word count: 1431**



**Kimberly P. West**

**Specialist Prosecutor**

Monday, 13 November 2023

At The Hague, the Netherlands.