

In: KSC-BC-2020-06

**The 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: Counsel for Rexhep Selimi

Date: 28 March 2024

Language: English

Classification: Public

**Public Redacted Version of Selimi Defence Submissions Supplement to
F02201 with Confidential Annex 1**

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1. As authorised by the Trial Panel,¹ the Defence for Mr. Rexhep Selimi (“the Defence”) hereby supplements its Reply to Prosecution Response to F02166² with the present submissions. This filing concerns information recently disclosed in the form of a two-page written record of telephone contacts between the SPO and [REDACTED] of W04846 (“Contact Note”), dated [REDACTED] and annexed to the present filing.³
2. First, the Contact Note is relevant to the matter in dispute as it sets out the SPO’s own view, unequivocally communicated in January 2022 to [REDACTED], that there exists no evidence to show that the death of [REDACTED] was anything other than what it appeared to be, and that this is why it was not included in the indictment.⁴ Essentially, the Contact Note sets out that, in the SPO’s view, there is no probative value to the [REDACTED] accusations.
3. This very same view had been relayed by the SPO to [REDACTED] in [REDACTED].⁵ In [REDACTED], the SPO interviewed W04846.⁶ That the Contact Note records that the SPO’s views on the matter in [REDACTED] remained the same as they did in [REDACTED] is a clear indicator that W04846’s evidence is similarly without probative value on the matter.
4. Despite this, in September 2022, the SPO asserted to the Pre-Trial Judge that W04846 “provides a highly incriminating account accusing [REDACTED] with

¹ Transcript of 27 March 2024, p. 13918.

² KSC-BC-2020-06/F02201, Selimi Defence Reply to Prosecution Response to F02166, 25 March 2024 (“Reply”).

³ Annex 1, 120266-120267. The Defence notes that although the date stamped on the top left-hand side of the Contact Note is 25 March 2024, the date that F02201 was filed; this document was received by the Defence in Batch 1180 on 26 March 2024, one day after the filing deadline had expired.

⁴ Annex 1, p. 120267. See KSC-BC-2020-06/F02166, Selimi Defence Motion for the Exclusion of Evidence of W04846 with Confidential Annex 1, 6 March 2024 (“Motion”), para. 36.

⁵ 091778-091790, pp. 091780-091781.

⁶ 102761-TR-ET Parts 1-3.

serious crimes mirroring the objectives of the joint criminal enterprise charged”.⁷ The SPO was making these representations which included the [REDACTED], notwithstanding that according to the Contact Note, it had privately told the [REDACTED] that “there is no evidence [as to] what exactly happened.”⁸ No evidence has been disclosed to the Defence which would suggest a new evidential basis to support the allegations pertaining to the [REDACTED], or which indicates that the SPO had altered its view on the probative value of this evidence by the time it elected to schedule W04846’s testimony in December last year.⁹

5. The SPO’s own admissions to the [REDACTED] support the Defence’s arguments and are conclusive of the fact that; absent any evidence available capable of proving that [REDACTED] was a “killing” of any kind,¹⁰ let alone that it was carried out by one person at the direction of another;¹¹ W04846’s “beliefs” about an order that [REDACTED] are irrelevant to the charges in this case.¹²
6. Second, since the Contact Note makes it clear that the SPO itself, as early as [REDACTED], would not classify this death a “killing” due to a dearth of supporting evidence to make that conclusion,¹³ its recent arguments about supposed “inextricable links” between certain alleged “altercations” and [REDACTED] are plainly devoid of any substance.¹⁴

⁷ KSC-BC-2020-06/F00947/CONF/RED, Confidential redacted version of Prosecution request to add two witnesses and associated materials With strictly confidential and ex parte Annexes 1-2, 2 September 2022, para. 8.

⁸ Annex 1, p. 120267.

⁹ KSC-BC-2020-06/F02007, Prosecution submission of list of witnesses for 15 January to 4 April 2024 with confidential Annexes 1 and 2, 14 December 2023.

¹⁰ KSC-BC-2020-06/F02187, Prosecution response to Selimi Defence Motion for the Exclusion of Evidence of W04846, 18 March 2024 (“Response”), para. 6; Motion, paras. 21-31; Reply, para. 13.

¹¹ Motion, paras. 32-35.

¹² Reply, paras. 13-14.

¹³ Annex 1, p. 120267

¹⁴ Response, paras. 6, 19.

7. As noted in the Reply,¹⁵ the only reasonable interpretation of the “inextricable link” advanced by the SPO is that, in the SPO’s view, these “altercations” would have precipitated [REDACTED].¹⁶ From what the Contact Note states, it is obvious that the alleged altercations, whether or not they even happened, cannot be inextricably linked to [REDACTED] for which there is “insufficient” or “no” evidence to show that it was anything but that.¹⁷
8. Finally, allowing the SPO to lead the Anticipated Testimony creates the manifest risk that the witness, being aware that the SPO sees no evidential basis upon which to suggest that [REDACTED], will proffer many more baseless suggestions and accusations,¹⁸ as he has done throughout his history of contacts with the SPO, which have no bearing on the substance of the present proceedings except to prejudice Mr. Selimi.

CLASSIFICATION

9. The present submissions are filed confidentially pursuant to Rule 82(4). A public redacted version will be filed shortly.

Word Count: 869

Respectfully submitted on 28 March 2024,

¹⁵ Reply, para. 16.

¹⁶ Response, paras. 6, 19.

¹⁷ Contact Note, p. 120267. The Defence notes that para. 6 of the Contact Note erroneously states that [REDACTED].

¹⁸ See most recent example 119379-119383, pp. 119382- 119383.



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