

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 Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Counsel for Rexhep Selimi

Date: 13 December 2024

Language: English

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**Selimi Defence Request to the Trial Panel to Amend Decision F01977 with
Confidential Annexes 1 and 2**

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	Counsel for Rexhep Selimi Geoffrey Roberts
	Counsel for Jakup Krasniqi Venkateswari Alagenda

I. INTRODUCTION

1. The Defence for Mr. Selimi (“the Defence”) hereby requests the Trial Panel review and amend the conditions of detention set forth in the “Further Decision on the Prosecution’s Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi” (“Decision”),¹ as the measures ordered therein are no longer necessary and proportionate.
2. The Decision, which was interpreted and implemented by the Registrar, was issued over a year ago.² The Registrar informed Mr. Selimi of various restrictions concerning phone calls, non-privileged visits, and family visits that the Defence believes goes well beyond the intended scope of the Decision.
3. The restrictive measures have significantly impacted Mr. Selimi’s ability to maintain necessary contact with his family, as well as placing a significant burden upon the staff at the United Nations Detention Unit (“Detention Unit”).
4. For the foregoing reasons, the Defence requests the Trial Panel to revisit the Decision and amend the detention conditions as requested herein.

II. PROCEDURAL BACKGROUND

5. On 17 November 2023, the SPO filed an urgent request for modification of the detention conditions of Messrs. Thaçi, Veseli, and Selimi.³

¹ KSC-BC-2020-06/F01977, Further Decision on the Prosecution’s Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi, 1 December 2023 (“Decision”).

² Letter from the Registrar to Mr. Selimi, Measures in place to Implement Decision F01977, 7 December 2023 (“Registrar Letter”) attached as Annex 1 to KSC-BC-2020-06/F01989, Registry Update on Implementation Pursuant to Trial Panel II’s Further Decision on the Prosecution’s Urgent Request for Modification of Detention Conditions with confidential Annex 1 and confidential and *ex parte* Annexes 2, 3 and 4, 7 December 2023 (“Registry Update”).

³ KSC-BC-2020-06/F01933, Prosecution Urgent Request for Modification of Detention Conditions, 17 November 2023, confidential, with Annexes 1-5, confidential.

6. The Trial Panel issued an interim decision on the SPO's urgent request on the same day, placing temporary restrictions on Messrs. Thaçi, Veseli, and Selimi, pending briefing on the matters raised by the SPO.⁴
7. On 22 November 2023, the Defence for all accused, including Mr. Krasniqi, filed responses to the SPO request.⁵
8. On 1 December 2023, the Trial Panel rendered its "Further Decision on the Prosecution's Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi" ("Decision").⁶ The Trial Panel granted the Prosecution's request in part, imposing additional restrictions on visitations and telephone communications of the accused.⁷ The Trial Panel held that the measures ordered therein should only be maintained for as long as they serve a legitimate aim and were necessary and proportionate, and to that end, ordered the Registrar to submit a report to the Trial Panel every two months providing an update on the measures in place.⁸
9. As ordered by the Trial Panel, the Registrar filed an update on the implementation of the Decision, which included *inter alia* a letter sent to Messrs. Thaçi, Veseli, and Selimi outlining the specific measures implemented based upon the Registrar's understanding of the Decision.⁹

⁴ KSC-BC-2020-06/F01936, Decision on Prosecution Urgent Request for Modification of Detention Conditions, 17 November 2023.

⁵ KSC-BC-2020-06/F01944, Thaçi Defence Response to Prosecution Urgent Request for Modification of Detention Conditions, 22 November 2023; KSC-BC-2020-06/F01946, Selimi Defence Response to Prosecution Urgent Request for Modification of Detention Conditions, 22 November 2023; KSC-BC-2020-06/F01947, Veseli Defence Response to Prosecution Urgent Request for Modification of Detention Conditions, 22 November 2023; KSC-BC-2020-06/F01945, Krasniqi Defence Response to Prosecution Urgent Request for Modification of Detention Conditions, 22 November 2023.

⁶ Decision.

⁷ Decision, para. 84.

⁸ Decision, paras. 77-78.

⁹ KSC-BC-2020-06/F01989, Registry Update on Implementation Pursuant to Trial Panel II's Further Decision on the Prosecution's Urgent Request for Modification of Detention Conditions with

10. On 11 December 2023, the Selimi Defence requested the Trial Panel to order the Registrar to amend its implementation of the Decision based on the arbitrary and impermissible scope of the measures in place.¹⁰
11. The Trial Panel denied the Selimi Defence request, holding that any complaints related to a decision by the Registrar on the conditions of detention should be made to the Registrar and that the Defence request to the Trial Panel was “premature”.¹¹
12. On 8 January 2024, Mr. Selimi submitted a complaint to the Registrar seeking reconsideration of the manner in which the Registrar had implemented the Decision,¹² which the Registrar denied.¹³
13. On 26 January 2024, the Registrar submitted a Notification regarding Court-Ordered Protective Measures and Request for Guidance following Decision F01977.¹⁴ This notification sought additional guidance from the Trial Panel concerning the conduct of private visits.¹⁵ It informed the Trial Panel that, according to its evaluation—specifically that of the Witness Protection and

confidential Annex 1 and confidential and *ex parte* Annexes 2, 3 and 4, 7 December 2023 (“Registry Update”). The letter from the Registrar is attached as Annex 1 to the filing.

¹⁰ KSC-BC-2020-06/F02002, Urgent Selimi Defence Request to the Trial Panel for an Order to the Registrar Regarding Implementation of Decision F01977, 11 December 2023. Counsel for Mr. Thaçi and Mr. Veseli joined the request. KSC-BC-2020-06/F02017, Thaçi Defence Joinder to ‘Urgent Selimi Defence Request to the Trial Panel for an Order to the Registrar Regarding Implementation of Decision F01977’ (F02002), 15 December 2023; KSC-BC-2020-06/F02021, Veseli Defence Joinder to ‘Urgent Selimi Defence Request to the Trial Panel for an Order to the Registrar Regarding Implementation of Decision F01977’ (F02002), 18 December 2023.

¹¹ KSC-BC-2020-06/F02028, Decision on Urgent Request for an Order to the Registrar Regarding Implementation of Decision F01977, 20 December 2023, paras. 17-18.

¹² KSC-BC-2020-06/F02160/A02, Transmission of Rexhep Selimi’s Request for Judicial Review of Registrar’s Decision on Request for Reconsideration, Annex 2, 1 March 2024.

¹³ KSC-BC-2020-06/F02160/A03, Transmission of Rexhep Selimi’s Request for Judicial Review of Registrar’s Decision on Request for Reconsideration, Annex 3, 1 March 2024.

¹⁴ KSC-BC-2020-06/F02082, Registry Notification in Relation to Court-Ordered Protective Measures and Request for Guidance Pursuant to Decision F01977 with confidential Annexes 1-10, 26 January 2024, (“Notification”).

¹⁵ Notification, para. 19.

Support Unit (WPSO)—confidential information obtained during the proceedings or elicited during witness testimonies, where witnesses are under court-ordered protective measures, may have been disclosed during in-person visits at the Detention Facilities.¹⁶

14. On January 29, 2024, in response to the Notification, the Registrar issued a Decision on Specific Restrictions in accordance with Decision F01977.¹⁷ The Registrar notified Mr. Selimi of her decision to implement several measures, including the active monitoring of telephone calls Mr. Selimi had requested with his brother, his son, and a friend.

15. On 9 February 2024, the Trial Panel rendered its “Decision on Registry Notification in Relation to Court-Ordered Protective Measures and Request for Guidance Pursuant to Decision F01977”.¹⁸ The Trial Panel, based on the material before it, reminded Mr. Selimi of his obligations not to disclose or discuss confidential information with individuals outside his trial team, but did not take additional measures.¹⁹ The Trial Panel further reiterated the importance of “Private Visits” to the fundamental rights of Mr. Selimi, but noted that even Private Visits could be subject to restrictive measures where necessary and proportionate.²⁰ The Trial Panel found, however, that none of the visits upon which the Registrar’s Notification was based were private visits.²¹

¹⁶ Notification, paras. 4 and 5.

¹⁷ KSC/REG/IOR/6722, Decision of the Registrar on Specific Restrictions pursuant to Decision F01977, 29 January 2024 (“Decision on Specific Restrictions”); *see*, KSC-BC-2020-06/F02113, Transmission of Rexhep Selimi’s Request for Judicial Review of the Registrar’s Decision of 29 January 2024, KSC/REG/IOR/6722 with five confidential and *ex parte* annexes, 8 February 2024.

¹⁸ KSC-BC-2020-06/F02115, Decision on Registry Notification in Relation to Court-Ordered Protective Measures and Request for Guidance Pursuant to Decision F01977, 9 February 2024.

¹⁹ *Id.*, para. 28.

²⁰ *Id.*, para. 31.

²¹ *Id.*

16. On 29 February 2024, the Selimi Defence submitted to the Trial Panel a request for judicial review of the Registrar decision denying Mr. Selimi's request for reconsideration of the Registrar's decision.²²
17. The Trial Panel issued a decision on the Defence request for reconsideration of the Registrar's decision on 22 March 2024, in which it found that the Registrar acted within the scope of her legal authority and accepted as reasonable the Registrar's conclusion that it was "impossible to make the changes sought by Mr. Selimi while also fully executing the Panel's orders and fulfilling her obligations under the Law and the Rules..."²³ The Trial Panel did, however, order the Registrar to explore the possibility of successive visits and report back to the Panel.²⁴
18. The Registrar filed her report regarding the feasibility of successive visits on 12 April 2024, in which she highlighted the significant resources required for monitored in-person visits and informed the Panel that successive visits required resources beyond the capacity available at the Detention Unit.²⁵

III. SUBMISSIONS

19. Since the imposition of the additional, more restrictive measures in December 2023 by the Trial Panel and the Registrar, the Defence has attempted on multiple occasions to work with the Registrar to reduce the severity of

²² KSC-BC-2020-06/F02160, Transmission of Rexhep Selimi's Request for Judicial Review of Registrar's Decision on Request for Reconsideration, Annex 3, 1 March 2024.

²³ KSC-BC-2020-06/F02194, Decision on Rexhep Selimi's Request for Judicial Review of Registrar's Decision on Reconsideration, 22 March 2024.

²⁴ *Id.*, para. 53.

²⁵ KSC-BC-2020-06/F02235, Confidential Redacted Version of Registry Report Pursuant to F02194, 12 April 2024. The Registrar has noted from the beginning that the additional measures imposed require additional resources, which in turn necessitates limitations on certain privileges. KSC-BC-2020-06/F01943, Registry's Submissions on the Prosecution's Urgent Request for Modification of Detention Conditions, 21 November 2023, paras. 39, 40, 43.

measures while still respecting the concerns identified by the Trial Panel. These attempts have been fruitless. Indeed, the Registrar has indicated—and the Trial Panel explicitly accepted—that the Registrar is constrained by the terms of the Decision. The Decision confirmed that “responsibility over the conditions and nature of detention” of the Accused rests with the Trial Panel.²⁶

20. The Decision itself acknowledges, however, that the Decision is not immutable. The Trial Panel held that the measures ordered within “should only be maintained for as long as they serve a legitimate aim and continue to be necessary and proportionate.”²⁷ In order to determine the legitimacy and proportionality of the measures, the Trial Panel indicated that it would review the conditions imposed *proprio motu* every six months and/or upon a grounded request by an Accused subject to the measures.²⁸ In order to facilitate such a review, the Trial Panel ordered the Registrar to submit every two months a report that contained detailed information on the audio and video calls, in-person visits, suspicious communications, and active monitoring issues.
21. To date, the Defence has not been made privy to the Registrar’s reports. Outside of the Registrar’s notification and request for guidance referred to above,²⁹ for which the Trial Chamber declined to do anything more than remind Mr. Selimi of his obligations,³⁰ the Defence has not been made aware of any issues involving Mr. Selimi arising from the substantial monitoring in place.
22. Similarly, the SPO has not requested further measures be imposed on Mr. Selimi, or brought charges against him, as a result of any conduct by Mr. Selimi at the Detention Unit. In this regard, it must be noted that even the initial

²⁶ Decision, para. 25.

²⁷ Decision, para. 77.

²⁸ Decision, para. 77. The Defence has not been made aware of any *proprio motu* reviews of the detention conditions.

²⁹ *Supra*, para. 13.

³⁰ *Supra*, para. 15.

request by the Prosecution urgently seeking additional measures was not based on any specific conduct attributed to Mr. Selimi to influence the testimony of witnesses.³¹ The Trial Panel found, based on transcripts of communications between Mr. Selimi and visitors at the Detention Unit, that he had disclosed confidential information, but noted that it was not making any findings whether the conduct reflected in the transcripts constituted an offense.³²

23. In these circumstances, the restrictive measures put in place through the Decision, in particular the active monitoring of visits and the associated limitations on telephone calls, are no longer necessary and proportionate.

24. In particular, Mr. Selimi notes that the additional measures have significantly impacted his ability to communicate with his family. Before the Decision, Mr. Selimi was authorised to communicate with his close family members, namely his wife and two children, by telephone from the Detention Unit whenever he wished throughout the day. This allowed for regular communication between Mr. Selimi with his wife and children and also allowed for Mr. Selimi to maintain some autonomy in deciding when and to whom he would wish to speak on a particular day.

25. Since December 2023, Mr. Selimi is limited to one 15-minute phone call per day on trial days, two 15-minute calls on non-court weekdays, and one 20-minute phone call on weekends, all of which have to be scheduled well in advance.³³

26. Limiting the phone calls to Mr. Selimi's close family members in this manner is not a necessary and proportionate consequence of the basis for the additional measures. These conversations are not being actively monitored and therefore

³¹ See, Decision, para. 33, fn. 75, indicating that the alleged interference with SPO witnesses involved an attempt to compel the withdrawal of testimony against Mr. Selimi, but without attributing any aspect of the attempt to Mr. Selimi himself.

³² Decision, paras. 35, 37.

³³ Registrar Letter, p. 6.

nothing requires them to be made at a specific date or time to allow for an Albanian speaker to monitor the call. The Panel stressed that “in a detention setting, it is an essential part of a detainee’s right to respect for family life that contact with close relatives be maintained,”³⁴ a point the Trial Panel subsequently reiterated.³⁵ The limitations placed on phone calls that severely restrict calls with close family members fall afoul of this right.

27. It is important to note that Mr. Selimi shares an incredibly strong connection with his children, having never missed a day of speaking to them throughout their lives before he was detained. Since his detention in November 2020, Mr. Selimi has continued to maintain an exceptionally close bond with them as he is actively engaged in the upbringing of his children. Considering their young age, regularity, flexibility and spontaneity in their communications remain crucial.

28. It appears, at least in part, that the limitations on telephone access are related to the heavy burden placed upon the Registry and Detention Unit resources by active monitoring of visits and communications.³⁶ This can be seen in the restrictions on the number and duration of authorised non-privileged in-person visits (as well as private visits),³⁷ as well as the restrictions on the number and duration of video visits.³⁸ The heavy burden on the Registrar and

³⁴ Decision, para. 46.

³⁵ KSC-BC-2020-06/F2194, Decision on Rexhep Selimi’s Request for Judicial Review of Registrar’s Decision on Reconsideration, para. 51.

³⁶ KSC-BC-2020-06/F02235, Confidential Redacted Version of Registry Report Pursuant to F02194, 12 April 2024.

³⁷ Decision, para. 57.

³⁸ Registrar Letter, p. 5, “...based on the means and capabilities of [Detention Management Unit] resources, the Registrar has decided to limit video visits to five (5) per month, with each video visit not lasting more than 40 minutes.”

Detention Unit staff will only increase with the addition of detainees related to the recent indictment.³⁹

29. Additionally, the Decision requires that non-privileged in-person visits and video and telephone visits and communications shall require prior approval by the Registrar.⁴⁰ This has also resulted in considerable limitations placed upon Mr. Selimi, with the Registrar requiring significant advance notice of visits in addition to the limits on the number and duration of visits noted above. This restriction was imposed, however, despite “no indication before the Panel [...] that video or audio communications have been utilised in a manner incompatible with the integrity of the proceedings.”⁴¹ Similarly, the Trial Panel determined that the private visits Mr. Selimi engaged in did not breach any rules of the Detention Unit.⁴²

30. Furthermore, the SPO has now had over a year to investigate any wrongdoing on the part of Mr. Selimi and bring additional charges as necessary. None have been forthcoming.

31. Similarly, the Registrar is obligated to provided reports to the Trial Panel every two months. Mr. Selimi does not have access to those reports, but it is safe to assume that no issues have been brought to the attention of the Trial Panel regarding Mr. Selimi’s conduct as no such issues have been raised with Mr. Selimi, outside of the Registrar’s Notification referred to above.⁴³

32. It must also be noted that the Registry's filings do not raise any direct concerns about Mr. Selimi's misuse of the telephone call system. On the contrary, it is

³⁹ Case No. KSC-BC-2023-12.

⁴⁰ Decision, para. 51-53; 62.

⁴¹ See Registry Submissions, paras 39(a), 43(a); See Trial Panel Decision, para 67.

⁴² KSC-BC-2020-06/F02115, Decision on Registry Notification in Relation to Court-Ordered Protective Measures and Request for Guidance Pursuant to Decision F01977, paras. 30-31.

⁴³ *Supra*, para. 13.

Mr. Selimi who has submitted multiple complaints regarding the telephone call regime, specifically about the inability to consistently make calls during the designated times.

33. Over the past few months, there have been numerous occasions where Mr. Selimi has either been unable to make a scheduled call entirely or has lost significant minutes from his call due to factors beyond his control. The Defence has raised this issue with the Registry directly,⁴⁴ receiving no substantial cooperation in response.⁴⁵

34. In all, the restrictions discussed above no longer fall into the category of legitimate and necessary. It is unreasonable for Mr. Selimi to face such stringent communication restrictions indefinitely, especially considering the initial allegations were minor, did not affect the trial's progress, and were unrelated to his communication with close family members.

35. In line with the Decision's procedure to review the conditions based upon a grounded request,⁴⁶ the Defence requests that the Court review the conditions and amend the Decision, at a minimum, removing the conditions requiring approval by the Registrar for all non-privileged in-person visits⁴⁷ and video and telephone visits and communications;⁴⁸ active monitoring of all non-privileged in-person meetings;⁴⁹ active monitoring, to the extent it is in place, of video and audio visits and communications;⁵⁰ and limitations on the duration of private

⁴⁴ See, Annex 1, Email dated 26 June 2024.

⁴⁵ The Detention Management Unit's response is attached at Annex 2. The response indicated that the concerns raised by Mr. Selimi's counsel needed to be in the form of a complaint raised directly by Mr. Selimi.

⁴⁶ Decision, para. 77.

⁴⁷ Decision, paras. 51-53. As noted by the Trial Panel, the prior regime required approval by the Chief Detention Officer of the Detention Management Unit, a policy that could easily be reverted to.

⁴⁸ Decision para. 62.

⁴⁹ Decision, para. 57.

⁵⁰ Decision, para. 66.

visits. Further, the Defence requests that the Trial Panel explicitly remove the restrictions in place on Mr. Selimi's ability to call his wife and children.

VI. CLASSIFICATION

36. This submission is filed as public with its Annexes filed confidentially pursuant to Rule 82(4) as they pertain to a confidential letter sent by the Registry.

VII. REQUEST FOR EXPEDITED RESPONSE

37. The Defence recognises that the parties have agreed to suspend deadlines. The Defence requests, however, that the SPO submit any response to this request as soon as possible so that any decision granting the relief sought herein could be issued prior to the impending recess. This would allow Mr. Selimi to enjoy the benefit of any additional privileges over the recess period. The Defence is grateful for the SPO's consideration in this regard.


VIII. CONCLUSION

38. For the reasons set out herein, the Defence requests the Trial Panel to amend its Further Decision on the Prosecution's Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi to remove the measures ordered therein that are no longer necessary and proportionate, including at a minimum, removing the conditions requiring approval by the Registrar for all non-privileged in-person visits and video and telephone visits and communications; active monitoring of all non-privileged in-person meetings; active monitoring, to the extent it is in place, of video and audio visits and communications; and limitations on the duration of private visits. Further, the Defence requests that the Trial Panel explicitly remove the restrictions in place on Mr. Selimi's ability to call his wife and children. Finally, the Defence requests the Trial Panel to review the entirety of the Decision to

determine whether the conditions imposed therein remain legitimate and necessary, to the extent that the conditions are not already addressed herein.

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Respectfully submitted on 13 December 2024,



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