



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 Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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Prosecution consolidated response to F02785 and F02846

Specialist Prosecutor's Office

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I. INTRODUCTION

1. The rationale and justification for the modification of detention conditions of Hashim Thaçi, Rexhep Selimi, and Kadri Veseli, namely, the risk to protected witnesses through unauthorised disclosure to third parties, remains undiminished.¹ In their Requests, neither Selimi,² nor Veseli³ point to any changed circumstance that would warrant removing these conditions. The conditions should, at a minimum, remain in place until the close of the Prosecution and Victims' cases. This is critical to preserving the integrity of the proceedings, and to safeguard protected witnesses who have testified and who are yet to testify.

II. SUBMISSIONS

2. As a result of serious risks of interference with and to the safety and security of protected witnesses, the Panel, at the request of the Specialist Prosecutor's Office ('SPO'),⁴ modified the detention conditions of Hashim Thaçi, Rexhep Selimi, and Kadri Veseli through, *inter alia*, restricting and monitoring their communications.⁵

3. In the Modification Decision, the Panel noted that the measures were 'solely intended to prevent the impermissible disclosure of confidential information, including the identity of protected witnesses, and guarantee the integrity of the proceedings.'⁶

¹ Further Decision on the Prosecution's Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi, KSC-BC-2020-06/F01977, 1 December 2023 ('Modification Decision'), para.37.

² Selimi Defence Request to the Trial Panel to Amend Decision F01977, KSC-BC-2020-06/F02785, 13 December 2024 ('Selimi Request').

³ Veseli Defence Submissions Pursuant to the Panel's Order on Review of Detention Conditions (F02805), KSC-BC-2020-06/F02846, 22 January 2025 ('Veseli Request'; collectively with the Selimi Request, 'Requests').

⁴ Prosecution urgent request for modification of detention conditions, KSC-BC-2020-06/F01933, 17 November 2023, Confidential ('SPO Request').

⁵ Modification Decision, KSC-BC-2020-06/F01977, paras 51-53, 55-60, 62-78.

⁶ Modification Decision, KSC-BC-2020-06/F01977, para.30.

4. Further, the Panel recalled, *inter alia*, that disclosure of witness identities to the Accused ‘amplif[ies] the risk of sensitive information pertaining to witnesses becoming known to members of the public before the witnesses in question testify’, that this trial is occurring in a climate of witness interference, and that the Accused have the interest, influence, and ability to interfere with the proceedings.⁷

5. The Panel noted with concern that Hashim Thaçi, Rexhep Selimi and Kadri Veseli each appeared to disclose confidential information to visitors at the Detention Centre,⁸ and that without adequate measures being put in place, there was ‘a substantial risk’ that they would ‘impermissibly disclose privileged information to unauthorised third parties.’⁹

6. In line with ECtHR¹⁰ case law, the restrictions placed on, *inter alia*, Selimi and Veseli were carefully considered by the Panel to ensure they were necessary and proportionate to the legitimate aim to be achieved, namely, protecting witnesses and the integrity of these proceedings.¹¹

7. The Panel’s concerns, which necessitated the communication restrictions, were reiterated and unaffected in the most recent periodic reviews of Selimi’s and Veseli’s detention.¹² Moreover, three persons who interfered with a witness whose testimony implicated Selimi in criminality,¹³ have since pleaded guilty to obstruction offences in proceedings before Trial Panel I. In these circumstances, to now remove certain conditions placed on Selimi and Veseli, as is requested, would *increase* the risk of

⁷ Modification Decision, KSC-BC-2020-06/F01977, paras 31-32.

⁸ Modification Decision, KSC-BC-2020-06/F01977, para.35.

⁹ Modification Decision, KSC-BC-2020-06/F01977, para.37.

¹⁰ European Court of Human Rights (‘ECtHR’).

¹¹ Modification Decision, KSC-BC-2020-06/F01977, paras 45-72.

¹² Decision on Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F02823, 13 January 2025, paras 18-21; Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F02780, 13 December 2024, paras 18-22.

¹³ *Specialist Prosecutor v. Januzi et al.*, Public Redacted Version of Decision on the Confirmation of Amendments to the Indictment and Related Matters, KSC-BC-2023-10/F00377/RED, 8 July 2024, paras 43-56.

further obstructive conduct and impermissible disclosure to unauthorised third parties. There is no justification for doing so.

A. THE SELIMI REQUEST SHOULD BE REJECTED.

8. Selimi requests that the conditions be removed ‘because they are no longer necessary and proportionate’,¹⁴ and fails to confront the serious factual context that merited the additional conditions, trivialising the initial factual basis for the Panel’s intervention as ‘minor’.¹⁵ The Request acknowledges the Panel’s findings that Selimi wilfully breached the Panel’s order by disclosing confidential information about protected witnesses to unauthorised third parties.¹⁶ Such conduct should not be brushed over. It demonstrates a concerning inability on the part of Selimi to respect and abide by the conditions of detention, or indeed to recognise the gravity of his unlawful conduct.

9. Despite this, Selimi effectively seeks the removal of most conditions placed upon him, so that he may have unrestricted family calls, and that active monitoring of non-privileged visits and communications be discontinued.¹⁷ In seeking a review of the conditions, Selimi asks the Panel to, in effect, reconsider their necessity. Yet, Selimi does not point to any changed circumstances that would warrant reconsideration. Selimi merely expresses frustration at these justified conditions, ‘assumes’ and speculates as to the content of the Registry’s reports to the Panel, and queries why formal charges have not been forthcoming.¹⁸ None are sufficient reasons for removing conditions that were justified by Selimi’s misconduct.

10. Moreover, Selimi’s request is, in substance, a repeat and/or reformulation of the arguments made when seeking judicial review of the Registrar’s implementation of

¹⁴ Selimi Request, KSC-BC-2020-06/F02785, para.23.

¹⁵ Selimi Request, KSC-BC-2020-06/F02785, para.34.

¹⁶ Selimi Request, KSC-BC-2020-06/F02785, paras 13-15, 22.

¹⁷ Selimi Request, KSC-BC-2020-06/F02785, para.35.

¹⁸ Selimi Request, KSC-BC-2020-06/F02785, paras 30-31.

the Modification Decision. These arguments were considered and rejected by the Panel, which found the Registrar's approach to be reasonable, proportionate and not arbitrary.¹⁹ For example, the same blanket request to call family members Selimi advances now, was previously rejected, with the Panel noting that a detained person is not entitled to contact his family 'whenever suits him or at his convenience.'²⁰

11. Similarly, the Registrar's implementation of the non-privileged visitor and active monitoring regime – which Selimi now seeks to remove – was deemed by the Panel to be reasonable in light of the resources available to the Registry to implement a regime that was necessary to prevent 'the recurrence of improper conduct in which Mr Selimi engaged (i.e., the sharing of sensitive, confidential, information to non-privileged third parties)'.²¹ That additional detainees have since arrived in the Detention Centre is materially irrelevant, and should not inform any resource-based assessment of the continuation of the conditions placed on Selimi.²² The active monitoring regime should therefore remain in force.

B. THE VESELI REQUEST SHOULD BE REJECTED.

12. Veseli offers the same generic arguments as Selimi, downplaying past misconduct that necessitated the imposition of additional conditions, and fails to point to any change in circumstance that would warrant removal of the conditions.²³ On the contrary, concerns identified by the SPO in its initial request – where Veseli clearly declared that there were ways of communicating messages, and linked the existence of the Defence team to that²⁴ – have been borne out, with a former member of the

¹⁹ Decision on Rexhep Selimi's Request for Judicial Review of Registrar's Decision on Reconsideration, KSC-BC-2020-06/F02194, 22 March 2024 ('Judicial Review Decision'), para.50.

²⁰ Judicial Review Decision, KSC-BC-2020-06/F02194, para.45.

²¹ Judicial Review Decision, KSC-BC-2020-06/F02194, paras 37-39.

²² *Contra* Selimi Request, KSC-BC-2020-06/F02785, para.28.

²³ See similarly, ICC, *Prosecutor v. Yekatom & Ngaïssona*, ICC-01/14-01/18-484-Red2, Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention, 16 February 2021, para.24.

²⁴ SPO Request, KSC-BC-2020-06/F01933, paras 47-48.

Veseli Defence team since having charges under Article 15(2) of the Law confirmed against him.²⁵

13. Detained persons do not enjoy absolute and unhindered access to family members.²⁶ Frustration at these justified conditions does not make them disproportionate or unreasonable.²⁷ Moreover, the absence of charges does not affect the reasoning that warranted the imposition of restrictions necessary to protect witnesses,²⁸ whom Veseli wilfully disclosed information about to unauthorised third parties, thereby triggering the intervention of the Panel.²⁹ This is not ‘a proposition’³⁰ – it is a fact that goes unmentioned by the Veseli Defence.

C. THE CURRENT CONDITIONS SHOULD REMAIN IN FORCE.

14. Given the sensitive stage of this trial, which is nearing the end of the Prosecution case with protected witnesses still to testify, and the Victims’ case to come thereafter, to remove conditions now would create unnecessary risk to those protected witnesses and threaten the integrity of the proceedings. The passage of time does not mean *per se* that the risk in question no longer exists and/or that restrictions have become disproportionate.³¹ Moreover, the fact that restrictive measures have – to the extent knowable – been effective does not necessarily lead to the conclusion that the need to continue these measures has diminished or disappeared.³²

²⁵ *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Confirmed Indictment, KSC-BC-2023-12/F00055/A01, 2 December 2024.

²⁶ Judicial Review Decision, KSC-BC-2020-06/F02194, para.45.

²⁷ Veseli Request, KSC-BC-2020-06/F02846, paras 14, 17.

²⁸ *Contra* Veseli Request, KSC-BC-2020-06/F02846, para.8.

²⁹ Modification Decision, KSC-BC-2020-06/F01977, paras 35-37.

³⁰ Veseli Request, KSC-BC-2020-06/F02846, para.8.

³¹ ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-1817-Red, Judgment on Mr Bosco Ntaganda’s appeal against the decision reviewing restrictions on contacts of 7 September 2016, 8 March 2017 (*‘Ntaganda Appeal Decision’*), para.72.

³² *Ntaganda Appeal Decision*, para.73.

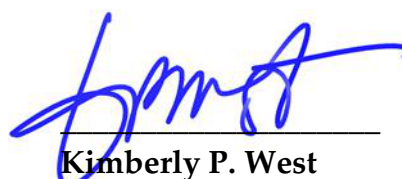
15. At the very least, the regime authorised by the Modification Decision should remain in place until after the close of the Prosecution and Victims' cases.³³ At that point, the Panel should invite the Parties to make submissions on the continuation or modification of the conditions. For example, should the SPO be granted leave to call further protected witnesses in any rebuttal and/or rejoinder phase, the current regime would need to be reinstated for the same reasons it was instituted. If active monitoring is removed in the interim, there is an objectively justifiable risk of repeat misconduct going unchecked, thus defeating the original purpose. Witnesses would be placed at risk irrespective of the Accused's intention to cause such a result.

16. As such, maintaining the restrictions is the least restrictive way to strike the correct balance between the right of the Accused to maintain family life and contract with the outside world, with the absolute necessity of ensuring the safety of witnesses, the preservation of evidence, and the integrity of the proceedings.³⁴

III. CONCLUSION

17. For the foregoing reasons, the Requests should be rejected.

Word count: 1722



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Specialist Prosecutor

Monday, 3 February 2025

At The Hague, the Netherlands.

³³ See similarly, ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-1913-Red2, Public redacted version of 'Further decision reviewing the restrictions placed on Mr Ntaganda's contacts', 19 May 2017, para.20; ICC, *Prosecutor v. Al-Hassan*, ICC-01/12-01/18-2100-Red, Public redacted version of Decision reviewing the measures restricting Mr Al Hassan's contacts in detention, 31 January 2022, para.15.

³⁴ ICC, *Prosecutor v. Al-Hassan*, ICC-01/12-01/18-871-Red4, Public redacted version of Decision on the measures restricting Mr Al Hassan's contacts while in detention, 11 June 2020, paras 15, 39.