



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**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 Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

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**Registrar's Submissions Pursuant to Order F02805**

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## I. INTRODUCTION

1. Pursuant to the Order<sup>1</sup> for submissions regarding the modified conditions of detention in Decision F01977,<sup>2</sup> the Registrar makes the following submissions to Trial Panel II ('the Panel'), responding to the Selimi Request<sup>3</sup> and to the Veseli Submissions.<sup>4</sup>

## II. PROCEDURAL HISTORY

2. On 1 December 2023, following a request by the Specialist Prosecutor's Office ('SPO'),<sup>5</sup> the Panel issued Decision F01977, ordering the Registrar to take measures and to implement modifications to the conditions of detention of Hashim Thaçi ('Mr Thaçi'), Kadri Veseli ('Mr Veseli') and Rexhep Selimi (Mr Selimi') (collectively the 'Three Accused'), including restrictive measures on non-privileged in-person visits, video visits and telephone calls ('Modified Conditions').<sup>6</sup> The Panel held that the measures "shall be maintained for as long as they serve a legitimate aim and continue to be necessary and proportionate".<sup>7</sup> To that end, the Panel indicated it will review the Modified Conditions *proprio motu* every six months and/or upon a grounded request by an Accused affected by Decision F01977.<sup>8</sup>

3. On 13 December 2024, Mr Selimi filed a request to amend Decision F01977 ('Selimi Request'), submitting that the Modified Conditions are no longer necessary and proportionate.<sup>9</sup> Specifically, Mr Selimi requested that the Panel remove, at a

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<sup>1</sup> KSC-BC-2020-06, F02805, Order on the Selimi Defence's Request for an Expedited Briefing Schedule for F02785, 19 December 2024 ('Order'), para. 15, public.

<sup>2</sup> 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 F01977'), public.

<sup>3</sup> F02785, Selimi Defence Request to the Trial Panel to Amend Decision F01977, with confidential Annexes 1 and 2, 13 December 2024 ('Selimi Request'), public.

<sup>4</sup> F02846, Veseli Defence Submissions Pursuant to the Panel's Order on Review of Detention Conditions (F02805), 22 January 2025 ('Veseli Submissions'), public.

<sup>5</sup> F01933, Prosecution Urgent Request for Modification of Detention Conditions, 17 November 2023, confidential, with Annexes 1-5, confidential. A public redacted version was filed on 22 November 2023 (F01933/RED).

<sup>6</sup> Decision F01977, paras 51-53, 55-60, 62-78.

<sup>7</sup> *Id.*, para. 77.

<sup>8</sup> *Id.*

<sup>9</sup> Selimi Request, paras 1, 23, 38.

minimum, the conditions requiring: prior approval by the Registrar of all in-person visits, video visits, and telephone calls; active monitoring, to the extent it is in place; limitations on the duration of Private Visits; and any restrictions on Mr Selimi's ability to call his spouse and children.<sup>10</sup>

4. On 22 January 2025, Mr Veseli filed similar submissions ('Veseli Submissions'), requesting the Panel to review Decision F01977 and remove the Modified Conditions.<sup>11</sup>

5. Mr Thaçi did not file any submissions.

### III. SUBMISSIONS

6. At the outset, it should be noted that should the Panel find that the Modified Conditions continue to be necessary and proportionate, the Registry has the capacity to continue to implement the Modified Conditions.

7. As of 6 December 2024, with the addition of three new Detainees,<sup>12</sup> there are currently 12 Detainees housed in the Specialist Chambers' Detention Facilities ('Detention Facilities'). This requires careful management and advance scheduling of the finite means and resources available to the Detention Management Unit ('DMU') to properly implement Decision F01977 whilst ensuring, *inter alia*, that all Detainees are provided with reasonable means of maintaining personal relationships and that good order and security are preserved in the Detention Facilities as a whole.

8. At this time, the arrival of the new Detainees has not affected the Registry's ability to continue to effectively implement the Modified Conditions. However, the Panel will be notified should issues related to resources and facilities arise, and

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<sup>10</sup> Selimi Request, para. 38.

<sup>11</sup> Veseli Submissions, paras 1-2, 9-11, 14-15, 18.

<sup>12</sup> KSC-BC-2023-12, F00056, Notification of Reception of Isni Kilaj in the Detention Facilities of the Specialist Chambers, 6 December 2024, public; KSC-BC-2023-12, F00057, Notification of Reception of Fadil Fazliu in the Detention Facilities of the Specialist Chambers, 6 December 2024, public; KSC-BC-2023-12, F00058, Notification of Reception of Bashkim Smakaj in the Detention Facilities of the Specialist Chambers, 6 December 2024, public.

whether they have any impact on the Registry's ability to effectively implement Decision F01977.

#### A. F01977 SYSTEM

9. In Decision F01977, the Panel ordered that all visits and communications with the Three Accused be pre-approved by the Registrar.<sup>13</sup> With regard to non-privileged in-person visits, the Panel ordered that a system should be "put in place which focuses on identifying and excluding only those individuals who could pose a threat to the integrity of the proceedings or engage in conduct incompatible" with the detention regulations.<sup>14</sup> In terms of approving video visits and telephone calls, the Panel directed the Registrar "to ensure that any would-be interlocutor has not engaged in conduct incompatible with the integrity of the proceedings or the protection of confidential information".<sup>15</sup> The Panel also ordered active monitoring of all non-privileged in-person visits<sup>16</sup> and further ordered the Registrar to engage in active monitoring of both video visits and telephone calls (of which the Accused shall be notified) where, "in the exercise of her discretion, or under the guidance of the Panel where needed," she "finds it necessary to ensure the integrity of the proceedings, the protection of confidential information and/or to ensure compliance by the Three Accused or those in contact with them" with the Modified Conditions.<sup>17</sup> The Panel declined to adopt any restrictive measures with regard to Private Visits.<sup>18</sup>

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<sup>13</sup> Decision F01977, paras 51, 62.

<sup>14</sup> *Id.*, para. 52.

<sup>15</sup> *Id.*, paras 62-63.

<sup>16</sup> *Id.*, para. 57.

<sup>17</sup> The active monitoring of video visits and telephone calls is not automatic but requires a written decision of the Registrar that is notified to the Accused. *See* Decision F01977, paras 66, 70. Active monitoring, if deemed necessary and proportionate, is a discretionary decision of the Registrar under the pre-existing detention regulations. *See* Practice Direction on Visits and Communications, KSC-BD-09-Rev1, 23 September 2020 ('Practice Direction'), arts 4(2), 7, 15(2), 17(4); Registry Instruction on Video Visits, KSC-BD-34-Rev1, 5 September 2021 ('Registry Instruction'), sect. 3(1), 2(b). *Cf.* Selimi Request, paras 35, 38; Veseli Submissions, para. 10.

<sup>18</sup> Decision F01977, para. 80. *See also* F02115, Decision on Registry Notification in Relation to Court-Ordered Protective Measures and Request for Guidance Pursuant to Decision F01977, 9 February 2024, confidential. A public redacted version was filed on the same date (F02115/RED).

10. On 7 December 2023, the Registrar filed an update on the implementation of the Modified Conditions with the Panel and notified the Three Accused and their Counsel of the new system in place to implement the Modified Conditions ('F01977 System').<sup>19</sup>

11. Subsequently, on 22 March 2024, the Panel rendered its decision on a request for judicial review by the Selimi Defence challenging the F01977 System.<sup>20</sup> The Panel rejected the Defence's request, finding, *inter alia*, that the challenged measures were necessary and proportionate and that the Registrar acted reasonably and within the limits of her authority and discretion.<sup>21</sup>

12. As described at length by the Registrar in response to Mr Selimi's previous challenge to the F01977 System ('Registrar's Reconsideration Decision'),<sup>22</sup> the system in place has been designed so that it is predictable, manageable, and reasonable. It ensures that the Three Accused are provided with reasonable means of maintaining personal relationships whilst at the same time ensuring that Decision F01977 is fully implemented. It also ensures that the necessary resources are properly allocated so that the security controls in the Detention Facilities are maintained for all other Detainees, who are also entitled to visits and communications.<sup>23</sup> In sum, should the Panel find that the Modified Conditions continue to be necessary and proportionate, it is not possible to change the F01977 System while at the same time fully executing the Modified Conditions, maintaining the necessary security controls in the Detention Facilities, and safeguarding the rights of all Detainees.<sup>24</sup>

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<sup>19</sup> F01989, Registry Update on Implementation Pursuant to Trial Panel II's Further Decision on the Prosecution's Urgent Request for Modification of Detention Conditions, 7 December 20203, public, with confidential Annex 1 and confidential and *ex parte* Annexes 2-4.

<sup>20</sup> F02194, Decision on Rexhep Selimi's Request for Judicial Review of Registrar's Decision on Reconsideration, 22 March 2024, public.

<sup>21</sup> *Id.*, paras 48-50.

<sup>22</sup> See F02440/A02, Annex 2 to Public Redacted Versions of F02160/A01 and F02160/A03 and submission on reclassification, 14 April 2024, public ('Registrar's Reconsideration Decision').

<sup>23</sup> Registrar's Reconsideration Decision, para. 22.

<sup>24</sup> *Id.*, para. 23.

13. Nevertheless, the Registry notes that the Modified Conditions could be eased by the Panel in two areas, without affecting the Registry's effective implementation of Decision F01977.

**i. Lifting the one-visitor restriction on approved video visits**

14. Currently, as set out in the Modified Conditions, the Three Accused may only have one pre-approved visitor at a time during video visits, with the exception of visits with their spouses/partners and children.<sup>25</sup> The Registrar notes that the one-visitor restriction could instead be replaced with the pre-existing detention regulations on video visits,<sup>26</sup> which permit up to four visitors per video visit with Close Relatives only.<sup>27</sup> This could be implemented by the Registry in the already-existing prior approval system without significant additional strain on the DMU's finite resources.

15. Pursuant to Decision F01977, the Panel has ordered the Registrar, in the exercise of her discretion, to engage in active monitoring of video visits where necessary to ensure the integrity of the proceedings, the protection of confidential information, and/or compliance with the measures ordered in Decision F01977.<sup>28</sup> Although the active monitoring of video visits (with simultaneous interpretation) presents additional challenges when multiple visitors are present, all video visits are recorded in line with the Modified Conditions, which would allow for the active review of any video visit recordings, should this be deemed necessary and proportionate.<sup>29</sup>

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<sup>25</sup> Decision F01977, para. 55.

<sup>26</sup> Registry Instruction, sects 4(1)(a), 6(5).

<sup>27</sup> Close Relatives are defined as a Detainee's spouse/partner, parent, child, grandchild, sibling, grandparent, and son- and daughter-in-law. *See* Registry Instruction, sect. 6(1).

<sup>28</sup> Decision F01977, para. 66.

<sup>29</sup> *See id.*, para. 70.

**ii. Allowing the Accused's spouse and children on approved telephone calls**

16. Similarly, in the Modified Conditions, the Panel directed the Registrar to limit telephone contacts with individuals pre-approved by the Registrar.<sup>30</sup> The Panel also imposed specific conditions on the Three Accused's telephone calls, including the following: (1) authorised call recipients are not permitted "to give access to the communication to any third party"; (2) "no unannounced individual shall participate in the call"; (3) "no person will be permitted to passively listen to the call or to otherwise receive or obtain the content of the call aurally or textually other than the announced individual"; and (4) "use of speaker-phone or similar functions is prohibited".<sup>31</sup> Accordingly, telephone calls are limited to one pre-authorised individual only.<sup>32</sup>

17. Similar to video visits, the Registry notes that allowing the Three Accused to have telephone calls where both their spouses/partners and children are present on the calls at the same time can be implemented by the Registry without significant additional strain on the DMU's finite resources.

18. Pursuant to Decision F01977, the Panel has ordered the Registrar, in the exercise of her discretion, to engage in active monitoring of telephone calls where necessary to ensure the integrity of the proceedings, the protection of confidential information, and/or compliance with the measures ordered in Decision F01977.<sup>33</sup> Although the active monitoring of telephone calls (with simultaneous interpretation) presents additional challenges when multiple call recipients are present, all telephone calls are recorded as part of the passive monitoring regime,<sup>34</sup> which would allow for active review of any telephone recordings, should this be deemed necessary and proportionate.<sup>35</sup>

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<sup>30</sup> *Id.*, para. 67.

<sup>31</sup> Decision F01977, para. 67.

<sup>32</sup> *See id.*

<sup>33</sup> *Id.*, para. 66.

<sup>34</sup> Practice Direction, art. 17(1)-(2).

<sup>35</sup> *Id.*, para. 70.

## B. OTHER SUBMISSIONS

19. In the interest of ensuring an accurate record before the Panel, the Registrar also takes this opportunity to respond to certain specific issues raised in the Selimi Request and the Veseli Submissions. As noted above, many of the issues raised in both the Selimi Request and the Veseli Submissions have been addressed in a previous challenge to the F01977 System.

### **i. Limitations on telephone calls and video visits**

20. Mr Selimi submits that the limitations on telephone calls with his “close family members” should be lifted as these calls are “not being actively monitored”.<sup>36</sup> This specific argument and the prior scheduling and duration of telephone calls have been addressed at length in the Registrar’s Reconsideration Decision.<sup>37</sup>

### **ii. Any incident of non-compliance with Decision F01977**

21. Mr Selimi asserts that there have been no issues regarding his conduct and compliance with the Modified Conditions, maintaining that it is safe to assume that no issues have been brought to the attention of the Panel as no issues have been raised with Mr Selimi.<sup>38</sup> The Registrar submits any incidents involving the Three Accused’s compliance with Decision F01977 have been reported to the Panel pursuant to the Registry’s reporting obligations, as outlined in Decision F01977.<sup>39</sup>

### **iii. Duration of Private Visits**

22. Both Mr Selimi and Mr Veseli request the Panel to remove the “limitations on the duration of private visits”.<sup>40</sup>

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<sup>36</sup> Selimi Request, para. 26.

<sup>37</sup> Registrar’s Reconsideration Decision, paras 25-29. *Cf.* Selimi Request, paras 25-28, 38; Veseli Submissions, para. 11.

<sup>38</sup> Selimi Request, paras 21, 31.

<sup>39</sup> Decision F01977, paras 77-78.

<sup>40</sup> Selimi Request, para. 35; Veseli Submissions, para. 15.



23. The F01977 System provides for three Private Visits per month of three hours each, which is in excess of those prescribed in the detention regulations.<sup>41</sup> For the detailed reasons set out in the Registrar's Reconsideration Decision, it is not possible to increase the duration of Private Visits from three hours to a full day.<sup>42</sup>

**iv. Issues related to establishing a consistent telephone connection**

24. Mr Selimi also asserts that he has submitted "multiple complaints" regarding telephone calls either not connecting entirely, or being cut short due to factors beyond Mr Selimi's control.<sup>43</sup> The Selimi Defence states that there has been "no substantial cooperation" from the Registry in response.<sup>44</sup> This is incorrect.

25. The complaints filed by Detainees, and the decisions rendered by the Chief Detention Officer on those complaints, are confidential; therefore, the Registrar will not further elaborate on the contents of any specific complaint submitted by Mr Selimi with regard to an inconsistent telephone connection. It is noted, however, that Mr Selimi has not sought administrative or judicial review of any of the Chief Detention Officer's decisions in this respect.

26. As noted in the Panel's decision on Mr Selimi's previous challenge to the F01977 System, the Registry's protocols are appropriate and adequate to fulfil its responsibilities and provide an effective vehicle to guarantee the fundamental rights of the Accused.<sup>45</sup> As part of the protocols that the Registry has in place, should a perceived technical issue arise, a Detention Officer will attempt to place the telephone call again during the allotted time.<sup>46</sup> Should this also prove unsuccessful, the Accused

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<sup>41</sup> Practice Direction, art 24(1); *see also* Annex A (Private Visits) to DMU Instruction on Visiting Procedures for Family Members and Other Personal Visitors, KSC-BD-33/Annex A, 23 September 2020, sect. 1(2)(b).

<sup>42</sup> Registrar's Reconsideration Decision, paras 30-25. *Cf.* Selimi Request, paras 35, 38; Veseli Submissions, para. 15.

<sup>43</sup> Selimi Request, para. 32.

<sup>44</sup> Selimi Request, para. 33.

<sup>45</sup> F02194, Decision on Rexhep Selimi's Request for Judicial Review of Registrar's Decision on Reconsideration, 22 March 2024, public, para. 35.

<sup>46</sup> *Id.*, para. 35.

may request that the authorised call be rescheduled. In line with the Panel's directions, the Registry continues to make reasonable efforts within the limits of available resources to reschedule any authorised call that is cut short or made impossible due to technical reasons unrelated to the Accused's conduct.<sup>47</sup>

27. Although the Selimi Defence takes issue with this procedure,<sup>48</sup> all Detainees are aware of the process for raising connection issues so that they can be promptly and appropriately addressed by the Detention Officer placing the call or, failing that, the Chief Detention Officer.

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**Dr Fidelma Donlon**

**Registrar**

Monday, 3 February 2025

At The Hague, the Netherlands

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<sup>47</sup> Id., para. 53(a), (c).

<sup>48</sup> Selimi Request, para. 33.