



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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Public redacted version of Prosecution response to 'Selimi Defence Request for Rescission of Contact Restrictions' (F03671)

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I. INTRODUCTION

1. The rationale and justification for imposing detention conditions on Rexhep Selimi, namely, the risk to protected witnesses through unauthorised disclosure to third parties, remains undiminished.¹ At this sensitive stage of the trial, the contact restrictions remain critical to preserving the integrity of the proceedings.

2. In his Request, Selimi seeks the total rescission of the restrictions.² However, proportionate restrictions were necessitated by Selimi's unauthorised disclosure of confidential information to third parties.³ Moreover, complete rescission would contradict the Panel's recent findings identifying a risk of interference to the progress of proceedings if Selimi were to be released, which includes risks of retaliation and/or recantation⁴ – rationale approved by the Court of Appeals.⁵ Rescission would needlessly open the door to this risk, which is heightened by Selimi's previous unauthorised disclosure and may exist at any stage of the proceedings.⁶

3. In any event, under the further modified regime, Selimi is already entitled to [REDACTED],⁷ which is the core relief of the Request.⁸ Selimi does not explain how the current level of restrictions are inadequate or disproportionate, in light of the

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; [REDACTED].

² Selimi Defence Request for Rescission of Contract Restrictions, KSC-BC-2020-06/F03671, 30 January 2026, Confidential ('Request'), para.1.

³ Review Decision, KSC-BC-2020-06/F03308, para.43.

⁴ Decision on Periodic review of Detention of Rexhep Selimi, KSC-BC-2020-06/F03661, 16 January 2026 ('January 2026 Detention Decision'), para.22.

⁵ Decision on Rexhep Selimi's Appeal Against Consolidated Decision on Request for Provisional Release and on Review of Detention, KSC-BC-2020-06/IA033/F00006, 13 August 2025 ('Provisional Release Appeal Decision'), paras 50-51.

⁶ [REDACTED].

⁷ [REDACTED].

⁸ Request, KSC-BC-2020-06/F03671, para.12.

identified risk. The restrictions should therefore remain in place until judgement is pronounced pursuant to Rule 159 of the Rules.⁹

II. SUBMISSIONS

4. Trial Panel II previously modified the detention conditions of Hashim Thaçi, Rexhep Selimi, and Kadri Veseli through, *inter alia*, restricting and monitoring their communications.¹⁰ 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.'¹¹

5. Further, the Panel recalled, *inter alia*, that disclosure of witness identities to the accused 'amplify 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.¹²

6. 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,¹³ 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.'¹⁴

⁹ 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.

¹⁰ Modification Decision, KSC-BC-2020-06/F01977, paras 51-53, 55-60, and 62-78.

¹¹ Modification Decision, KSC-BC-2020-06/F01977, para.30.

¹² Modification Decision, KSC-BC-2020-06/F01977, para.32.

¹³ Modification Decision, KSC-BC-2020-06/F01977, para.35.

¹⁴ Modification Decision, KSC-BC-2020-06/F01977, para.37.

7. In line with ECtHR caselaw, the restrictions imposed were carefully considered by the Panel to ensure they were necessary and proportionate to the legitimate aim to be achieved – i.e. protecting the integrity of these proceedings.¹⁵

8. The Panel's concerns around Selimi's unauthorised disclosure, which necessitated the communication restrictions, were later reiterated [REDACTED]¹⁶ and in the most recent periodic review of Selimi's detention, where the Panel stated that 'such conduct supports and reinforces the Panel's finding that the release of Selimi constitutes a risk of obstruction with the progress of SC proceedings.'¹⁷

9. Moreover, three persons who interfered with a witness whose testimony implicated Selimi in criminality,¹⁸ have since pleaded guilty to obstruction offences in Case 10.¹⁹ In these circumstances, to now remove entirely the conditions placed on Selimi, as is requested, would *increase* the risk of further obstructive conduct and impermissible disclosure to unauthorised third parties. There is no justification for doing so.

A. SELIMI'S REQUEST SHOULD BE REJECTED

10. None of the arguments advanced in the Request merit rescission of the conditions currently placed on Selimi's communications.

11. First, the restrictions protect against unauthorised disclosure and the risk of interference with witnesses by third parties. That the evidentiary phase has closed does not mean this risk no longer exists. [REDACTED]. [REDACTED]:²⁰

¹⁵ Modification Decision, KSC-BC-2020-06/F01977, paras 45-76.

¹⁶ [REDACTED].

¹⁷ January 2026 Detention Decision, KSC-BC-2020-06/F03361, para.23.

¹⁸ *Specialist Prosecutor v. Januzi et al.*, KSC-BC-2023-10/F00377/RED, Public Redacted Version of Decision on the Confirmation of Amendments to the Indictment and Related Matters, 8 July 2024, paras 43-56.

¹⁹ *Specialist Prosecutor v. Januzi et al.*, KSC-BC-2023-10, Public Redacted Plea Agreement Hearing Transcripts, 18-19 December 2024.

²⁰ [REDACTED].

[REDACTED].

12. The risk of recantation and/or retaliation may exist at any stage of the proceedings, as consistently held by the Trial Panel²¹ and affirmed by the Court of Appeals.²² The period between closing statements and the pronouncement of the trial judgement is particularly sensitive, and the identified risk of recantation/retaliation does not diminish during this phase – it remains just as acute.

13. In terms of the *level* of risk, there is no material difference in the period between the end of the Prosecution case and closing statements, versus the period between closing statements and the pronouncement of judgement. Recantation and/or retaliation is equally possible during both periods. Selimi's claim that 'there is no possibility to alter the evidentiary matrix' is plainly incorrect.²³ Third parties remain with the incentive to interfere with witnesses whose evidence the judgement may rely upon to enter findings of guilt, and to retaliate against them. For example, on 10 February 2026, Hysni GUCATI, head of the KLA War Veterans Association and a convicted person in Case 07, stated during a televised interview that the witnesses who testified against the Accused are 'collaborators of Serbia' and 'spies'.²⁴

14. Three separate multi-accused cases (Cases 07, 10 and 12) have been commenced at the KSC because the proper administration of justice in Case 06 was threatened and directly interfered with. That Selimi has not been charged with obstructive conduct

²¹ Corrected Version of Consolidated Decision on Selimi Defence Request for Provisional Release and on Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F03175/COR, 13 May 2025, paras 36, 38; January 2026 Detention Decision, KSC-BC-2020-06/F03361, paras 22, 24.

²² Provisional Release Appeal Decision, KSC-BC-2020-06/IA033/F00006, paras 50-51.

²³ *Contra* Request, KSC-BC-2020-06/F03671, para.3.

²⁴ <https://www.youtube.com/watch?v=UbO0Prt8Iys> (54:00-54:33 – SPO translation: 'During the MILOŠEVIĆ times, as many as 60 Albanians testified against MILOŠEVIĆ whereas against Hashim THAÇI and the others testified over 200 Albanians. It means that these people, who testified against former KLA leaders, are precisely the collaborators of Serbia, or I can say plainly, they are spies in the whole meaning of the word. So our country should have been cleaned up from the remnants that MILOŠEVIĆ and the other have left behind. And the fact has it that they enjoy the freedom today, like you and me, and others who do not deserve to enjoy this freedom'). See also <https://klankosova.tv/mbeturina-te-lena-pas-nga-milloshewiqi-gucati-i-ashper-ndaj-deshmitareve-shqiptare-ne-hage-video/> (last accessed 11 February 2026).

himself does not mean that he does not pose a risk to the progress of proceedings, including to ongoing parallel cases.²⁵ Relevant too in this context is the broader climate of intimidation that persists in Kosovo [REDACTED].²⁶

15. Second, the fact that Selimi has not breached the restrictions in place should be given no weight.²⁷ Respecting the conditions of detention and refraining from prohibited conduct should be the norm.²⁸ That no further violations have been reported merely confirms that the restrictions are working effectively, rather than the disappearance of the risks that justified their imposition.²⁹ The passage of time, in and of itself, does not automatically lead to the conclusion that restrictions should be lifted entirely.³⁰ Rather, the exercise required is to determine whether restrictions are necessary and proportionate.³¹ In the present case, they remain so.

16. Third, drawing factual parallels with other international cases, and the timing that contact restrictions were lifted elsewhere, are of no assistance to the Panel when deciding whether restrictions are *currently* necessary and proportionate in respect of Selimi.³² The need for such restrictions will always be fact-specific and must be

²⁵ January 2026 Detention Decision, KSC-BC-2020-06/F03361, para.22; Provisional Release Appeal Decision, KSC-BC-2020-06/IA033/F00006, paras 50-51; [REDACTED].

²⁶ [REDACTED]; January 2026 Detention Decision, KSC-BC-2020-06/F03361, para.35.

²⁷ *Contra* Request, KSC-BC-2020-06/F03671, para.5.

²⁸ ICC, *Prosecutor v. Yekatom and Ngaïsonna*, Second Decision on Mr Ngaïsonna's Restrictions on Contacts and Communications in Detention, ICC-01/14-01/18-582, 8 July 2020, para.13.

²⁹ ICC, *Prosecutor v. Yekatom and Ngaïsonna*, Decision on fourteenth Registry report on the implementation of the restrictions on contacts of Mr Ngaïsonna, ICC-01/14-01/18-2872, 5 February 2026 ('*Ngaïsonna* Appeal Decision'), para.15.

³⁰ ICC, *Prosecutor v. Ntaganda*, Judgement on Mr Bosco Ntaganda's appeal against the decision reviewing restrictions on contacts of 7 September 2016, ICC-01/04-02/06-1817-Red, 8 March 2017, para.72.

³¹ [REDACTED].

³² *Contra* Request, KSC-BC-2020-06/F03671, paras 4, 10-11.

determined on a case-by-case basis.³³ When necessary, restrictions may legitimately continue until after judgment is rendered³⁴ and even into the appeal phase.³⁵

17. Fourth, Selimi misunderstands the basis for which restrictions were originally implemented. Referring to the Modification Decision, Selimi claims that the Trial Panel erred by ‘transposing’ the same risk factors identified in respect of provisional release against the ‘higher standard’ of ‘substantial risk’ that the Accused will impermissibly disclose privileged information.³⁶

18. However, the Trial Panel was not articulating any legal standard when it made this finding in the Modification Decision. Rather, this conclusion was part of the Panel’s analysis of the Accused’s conduct that gave rise to the decision itself.³⁷ In any event, and in contrast to Article 41(6), the Panel is not constrained by any risk-based threshold in Rule 56(6), which generally empowers it to ‘rule on conditions of detention and related matters for the purposes of protecting witnesses or victims, confidential information or the integrity of the proceedings, including on the imposition of necessary and proportionate restrictions on the communications of a detained person.’³⁸

19. Fifth, Selimi incorrectly describes the holding of the Court of Appeals with regard to the risk of recantation and to parallel proceedings.³⁹ What the Court of Appeals deemed ‘speculative’ was the risk for witnesses to be called by Victims

³³ ICC, *Prosecutor v. Ongwen*, Decision on the Defence Request for Immediate Release and the Communication Restrictions Applying to the Accused, ICC-02/04-01/15-1733, 16 April 2020, para.33.

³⁴ ICC, *Prosecutor v. Yekatom and Ngaisonna*, Decisions on restrictions to Mr. Yekatom’s contacts and communications in detention, ICC-01/14-01/18-2811, 16 September 2025, paras 4-6.

³⁵ *Ngaisonna* Appeal Decision, para.17.

³⁶ Request, KSC-BC-2020-06/F03671, para.6, *citing to* Modification Decision, KSC-BC-2020-06/F01977, para.37.

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

³⁸ Furthermore, to the extent Selimi appears to take issue with the legal standard underpinning the Modification Decision [REDACTED], the Prosecution notes that it did not seek leave to appeal this particular finding.

³⁹ Request, KSC-BC-2020-06/F03671, para.7.

Counsel,⁴⁰ due to the lack of concrete evidence supporting such a risk.⁴¹ However, contrary to what Selimi asserts, the Court of Appeals affirmed the Trial Panel's decision that Selimi's unauthorised disclosure established 'a sufficiently real possibility' that Selimi may attempt to retaliate against witnesses who have testified and/or attempt to secure recantations, as well as a risk of interference with witnesses in parallel proceedings.⁴² Selimi claims there 'is no basis' for these 'abstract' risks, ignoring the fact that his unauthorised disclosure is the very foundation for them.

20. More generally, Selimi still fails to confront the serious factual context that merited the modified conditions, trivialising the initial factual basis for the Panel's intervention as 'inadvertent'.⁴³ The Request therefore acknowledges that Selimi breached the Panel's order by disclosing confidential information about protected witnesses to unauthorised third parties. 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. As noted by the Court of Appeals, at a minimum, it demonstrates 'Selimi's possible willingness to obtain access to and disseminate confidential documents in relation to a matter to which he is connected.'⁴⁴ Selimi merely disagrees with the Panel's reasoned conclusion that a risk to the integrity of the proceedings arose because of Selimi's conduct, and that preventive action was necessary and proportionate in response.

21. Despite this, Selimi seeks the total removal of the conditions placed upon him, so that he may have entirely unrestricted non-privileged communications.⁴⁵ However, 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 the Panel's

⁴⁰ Provisional Release Appeal Decision, KSC-BC-2020-06/IA033/F00006, para.25.

⁴¹ Provisional Release Appeal Decision, KSC-BC-2020-06/IA033/F00006, para.32.

⁴² Provisional Release Appeal Decision, KSC-BC-2020-06/IA033/F00006, paras 50-53.

⁴³ Request, KSC-BC-2020-06/F03671, para.8.

⁴⁴ Provisional Release Appeal Decision, KSC-BC-2020-06/IA033/F00006, para.50.

⁴⁵ Request, KSC-BC-2020-06/F03671, para.16.

Modification Decision. These arguments were considered and rejected by the Panel, which found the Registrar's approach to be reasonable, proportionate, and not arbitrary.⁴⁶ 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.'⁴⁷

22. As Selimi acknowledges,⁴⁸ the conditions on Selimi's communications were further modified and relaxed [REDACTED].⁴⁹ However, Selimi asserts in general fashion that his right to family life is being interfered with and that his relationship with the outside world has worsened,⁵⁰ without explaining how the current conditions are disproportionate in their current form, or without suggesting how they might be amended to address any specific issue he raises. Instead, Selimi seeks *total* rescission of *all* restrictions on non-privileged communications, which is patently not justified in light of the identified risk and the legitimate aim the restrictions aim to pursue. Detained persons do not enjoy absolute and unhindered access to family members.⁵¹ Frustration at these justified conditions does not make them disproportionate or unreasonable.

23. Finally, to the extent Selimi takes issue with the Registrar's implementation of the modified conditions,⁵² the Panel previously noted that there is a procedure in place through which a detainee may challenge a decision made by the Registrar.⁵³ The Request does not indicate that any such challenge has recently been made.

B. THE CURRENT CONDITIONS SHOULD REMAIN IN FORCE

⁴⁶ 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.

⁴⁷ Judicial Review Decision, KSC-BC-2020-06/F02194, para.45.

⁴⁸ Request, KSC-BC-2020-06/F03671, para.12.

⁴⁹ [REDACTED].

⁵⁰ Request, KSC-BC-2020-06/F03671, para.12.

⁵¹ Judicial Review Decision, KSC-BC-2020-06/F02194, para.45.

⁵² Request, KSC-BC-2020-06/F03671, para.14.

⁵³ [REDACTED].

24. Given the sensitive stage of this trial, with judgment just a matter of months away, to remove conditions now would create unnecessary, heightened risk to protected witnesses and threaten the integrity of the proceedings.

25. At the very least, the regime authorised [REDACTED] should remain in place until judgement is rendered. At that point, the Panel should then invite the Parties to make submissions on the continuation or modification of the conditions. 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.

26. Maintaining the restrictions is the least restrictive way to strike the correct balance between the right of the Accused to maintain family life and contact with the outside world, with the absolute necessity of ensuring the safety of witnesses, the preservation of evidence, and the integrity of the proceedings.⁵⁴


III. CLASSIFICATION

27. This response is confidential pursuant to Rule 82(4).

IV. CONCLUSION

28. For the foregoing reasons, the Request should be rejected.

Word count: 2844



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⁵⁴ 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.

Specialist Prosecutor

Wednesday, 11 February 2026

At The Hague, the Netherlands.