



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 Guénaël Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 17 November 2023

Language: English

Classification: Confidential

**Decision on Prosecution Urgent Request for Modification of Detention
Conditions**

Specialist Prosecutor

Kimberly P. West

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Victims

Simon Laws

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

TRIAL PANEL II (“Panel”), pursuant to Articles 3(5), 21, 34(12), 40 and 41 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 23(7) and 56(6) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), Section 5(1)(d) of the Registry Instruction on Video Visits (“Instruction on Video Visits”),¹ and Article 23(1) of the Practice Direction on Visits and Communications (“PD on Visits and Communications”),² hereby renders this decision.

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 17 November 2023, the SPO filed an urgent request for modification of detention conditions (“Request”),³ wherein it requests that the Panel order the measures outlined in paragraph 2 of the Request, including on an urgent, but interim, basis the immediate segregation and suspension of all communications of Hashim Thaçi, Kadri Veseli and Rexhep Selimi (“Three Accused”).⁴

II. DISCUSSION

2. The Panel notes that measures controlling a detainee’s contacts with the outside world are not *per se* incompatible with Article 8 of the European Convention on Human Rights (“ECHR”).⁵ In this regard, the Panel notes that, pursuant to Article 8 of the ECHR, an interference with a detainee’s right to private and family life, home and correspondence may be justified if it is “in

¹ KSC-BD-34, 23 September 2020.

² KSC-BC-09/Rev1, 23 September 2020.

³ F01933, Specialist Prosecutor, *Prosecution Urgent Request for Modification of Detention Conditions*, 17 November 2023, confidential, with Annexes 1-5, confidential.

⁴ Request, paras 2, 53.

⁵ ECtHR, *Khoroshenko v. Russia* [GC], no. 41418/04, Judgment, 30 June 2015, para. 123; *Piechowicz v. Poland*, no. 20071/07, Judgment, 17 April 2012, para. 212; *Silver and Others v. the United Kingdom*, no. 5947/72 and 6 others, Judgment, 25 March 1983, para. 98.

accordance with the law”, pursues one or more of the legitimate aims listed in Article 8(2) of the ECHR and is proportionate and necessary in the circumstances.

3. The Panel further notes that pursuant to Rule 56(6), without prejudice to Article 21(4)(c), it may, upon request or *proprio motu*, 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.

4. The information placed before the Panel suggests that there is a real risk of confidential information being disclosed to individuals not entitled to receive it. The unlawful disclosure of such information could negatively impact the effective protection of victims and witnesses and the integrity of proceedings. The Panel will therefore order interim measures necessary and proportionate to the need to prevent the disclosure of such information before the Panel is in a position to decide the merits of the SPO’s application. The Panel is satisfied that the measures ordered below are consistent with and compatible with the effective protection of the fundamental rights of the Accused.

5. The Panel prohibits any visit to any of the Three Accused by non-privileged individuals until the Panel has decided upon the merits of the SPO’s application. Any request for communication with a non-privileged person during that period shall be subject to prior authorisation by the Registrar. Any such communication, where authorised by the Registrar, shall be actively monitored and the Panel authorises the Registry to stop any such communication at any point in time where grounds exist to justify such a measure.

6. The Panel stresses that the restrictions adopted by the present decision do not apply to privileged contacts with Specialist Counsel and Co-Counsel as set out in Rule 111. Likewise, special visits within the meaning of Section 5(1)(d) of the

Instruction on Video Visits and Article 23(1) of the PD on Visits and Communications shall remain unaffected.

7. As regards proportionality, the Panel considers that there are no less restrictive measures that would ensure the effective protection of witnesses, confidential information and the integrity of the proceedings until such time when the Panel can hear submissions from the Defence and the Registry and decide the matter on its merits. The Panel is of the view that the above-mentioned reasons underpinning the necessity of the measures apply, by the same token, to the proportionality of the measures. The Panel emphasises that the restrictions are only adopted as interim measures pending the Panel's final determination on the merits of the Request. In assessing proportionality, the Panel has also accounted for the fact that the restrictions do not apply to privileged contacts or special visits as set out in paragraph 6 above. The Panel therefore considers that the measures set out in paragraph 5 are proportionate.

8. To ensure the effectiveness of the measures imposed, the Registry is ordered to bring to the immediate attention of the Panel and Parties any (suspected or attempted) violation of the Panel's order, any irregularities or any difficulties in the execution of the Panel's order.

9. At this stage, the Panel is not in a position to consider the immediate segregation and suspension of all communications of the Three Accused without submissions from the Registry and the Defence. In this regard, the Panel orders the Registry to file, by **noon on Tuesday, 21 November 2023**, submissions on the Request, in particular on: (i) the feasibility of the measures requested by the SPO; (ii) the resources and time needed to implement such measures, should they be ordered; (iii) any additional or alternative measures it considers available, subject to the Panel's decision, to address the risks identified by the SPO; and (iv) any other issues it considers appropriate to raise in relation to the Request.

10. The Panel orders the Defence to respond to the Request and to the Registry's submissions no later than **4 pm on Wednesday, 22 November 2023**.

III. DISPOSITION

11. For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS**, the Request, in part;
- b) **ORDERS** the Registrar to temporarily restrict the Three Accused's contacts in accordance with the terms set out in paragraph 5 above, pending the Panel's final determination on the merits of the Request;
- c) **ORDERS** the Registrar to bring to the immediate attention of the Panel and Parties any (suspected or attempted) violation of the Panel's order, any irregularities or any difficulties in the execution of the Panel's order; and
- d) **ORDERS** the Registry to file submissions on the Request by **noon on Tuesday, 21 November 2023**, and the Defence to respond to the Request and the Registry's submissions by **4 pm on Wednesday, 22 November 2023**.



Judge Charles L. Smith, III
Presiding Judge

Dated this Friday, 17 November 2023

At The Hague, the Netherlands.