

**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:** 22 November 2023

**Language:** English

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**Public Redacted Version of Selimi Defence Response to Prosecution urgent  
request for modification of detention conditions with confidential  
Annexes 1 to 5 (F01933)**

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## I. INTRODUCTION

1. The Defence for Mr. Rexhep Selimi (“the Defence”) hereby files its response to the Prosecution urgent request for modification of detention conditions with confidential Annexes 1 to 5 (“Motion”)<sup>1</sup>.
2. Both the interim conditions as well as the newly proposed detention regime, raise a number of significant concerns regarding the fundamental rights of the Accused under Article 21(4) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”). These proposed conditions are based on insufficient evidence to justify the measures sought and appear manifestly untenable, displaying a marked departure from the principles of necessity and proportionality.
3. The Motion highlights the Prosecution's inability to tailor its approach to the specifics of the Accused. The SPO’s failure to individualise Mr. Selimi is twofold. First, the SPO requests the wholesale adoption of highly restrictive measures in relation to all Three Accused without distinction. This amalgamation of conduct and its attribution to Mr. Selimi often relies on remote inferences and associations that border on conspiracy, in total disregard for the fundamental principle of the presumption of innocence. Second, the SPO has failed to carry out an individual assessment of the particularities of Mr. Selimi’s situation, namely his close ties to his wife and children.

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<sup>1</sup> KSC-BC-2020-06/F01933, Prosecution urgent request for modification of detention conditions with confidential Annexes 1 to 5, 17 November 2023.

## II. SUBMISSIONS

### A. The Defence reserves the right to make further submissions on the issues in the Motion

4. It is unknown when the SPO first sought authorisation to conduct covert audio recordings of Mr. Selimi's conversations as SPO requests to authorise covert audio recordings of the conversations of Mr. Selimi were filed *ex parte*, with their existence only notified to the Defence in the Motion<sup>2</sup> filed on 17 November 2023. [REDACTED].<sup>3</sup>
5. [REDACTED].<sup>4</sup> At the time of filing, the Defence is not in possession of the relevant information to make submissions on the legal and factual basis of the covert recordings and whether they comply with the Law, Rules of Procedure and Evidence, and international human rights standards.
6. Further, it is self-evident that the covert recordings have been in progress for a significant duration and have resulted in substantial information being collected by the SPO which will need to be reviewed by the Defence.
7. Given the severe measures requested by the SPO in the Motion, the Trial Panel has rightly ordered an expedited filing schedule for Registry and Defence submissions in Response, which the Defence has fully complied with.
8. In light of the short timeline for Responses, the importance of issues at hand for Mr. Selimi, and [REDACTED], it is likely that the Defence will need to make further submissions on relevant issues on the basis of material that has been reclassified, disclosed or for which review has not been possible at the time of

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<sup>2</sup> Motion, para. 6.

<sup>3</sup> [REDACTED].

<sup>4</sup> [REDACTED].

filing. The Defence therefore reserves the right to make further submissions on these issues where necessary and appropriate.

**B. The SPO has failed to substantiate the allegations against Mr. Selimi**

9. Throughout its request, the SPO has continuously sought to depict the conduct of Mr. Selimi at all times in the most unfavourable manner, despite the absence of any concrete evidence in support.
10. The SPO alleges that the Accused made active attempts to impede visits being monitored indicating that they were aware of the risk of their conversations being monitored.<sup>5</sup> In support of the Accused's awareness of such risk, the SPO used a statement given by [REDACTED] to [REDACTED],<sup>6</sup> a [REDACTED], whereby [REDACTED] merely recognises that prison visits in the context of the operation of the Kosovo Specialist Chambers are likely not confidential. [REDACTED] does not state that any of the Accused expressed concerns about potential monitoring to their interlocutors. Worryingly, the SPO has unquestioningly accepted this statement whilst being aware that unlike what [REDACTED] states in the Article, he did not in fact [REDACTED].
11. The acts through which the SPO alleges the Accused were actively obstructing the monitoring of their visits are: (a) whispering and/or speak in hushed tones; (b) playing music inside the room while people are speaking; (c) the entrance of additional, non-scheduled detainees in the room and their participation in portions of the visits; and (d) individuals in the visit rooms engaging in multiple conversations at once, sometimes in a manner that appears intended to make monitoring the conversations more difficult.<sup>7</sup>

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<sup>5</sup> Motion, paras 19-20.

<sup>6</sup> [REDACTED].

<sup>7</sup> Motion, para. 19.

12. Notwithstanding the SPO using the term “the Accused” as an aggregate of the three, Mr. Selimi is not in fact alleged to have engaged in such actions as per the SPO Motion. Nor can Mr. Selimi bear responsibility for the “spillover effect” of the other Accused dropping into his scheduled visits.<sup>8</sup> None of the examples used to either support “the Accused” being aware of visits being monitored or “the Accused” actively impeding the monitoring of visits relate to Mr. Selimi.
13. Finally, there is nothing in the Registry Practice Direction on Detainees on Visits and Communications or Rules on Detention that makes speaking in a low volume, playing music, dropping into other detainees’ visits, or two conversations taking place simultaneously impermissible. If the opposite were true, the Accused would have likely been put on notice as all of the Accused’s non-privileged and non-private visits have been conducted within the sight and hearing of Detention Officers.<sup>9</sup>

1. **The SPO has presented no evidence demonstrating that Mr. Selimi has attempted to obstruct proceedings or disclosed the identities of protected witnesses and/or victims prior to their testimony**

14. The reliance by the SPO on the Panel’s finding that the Three Accused will, *inter alia*, obstruct proceedings or commit further crimes in justifying their continued detention<sup>10</sup> to support the proposed measures ignores that the alleged conduct of Mr. Selimi displays no evidence of such an intention.
15. In relation to [REDACTED], the Motion makes no mention of Mr. Selimi as having disclosed [REDACTED] identity to interlocutors. Neither does the SPO allege that Mr. Selimi attempted to interfere with the testimony of this witness.<sup>11</sup> The same is true for witnesses [REDACTED] and [REDACTED] as Mr. Selimi is

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<sup>8</sup> *ibid*, para.12.

<sup>9</sup> Registry Practice Direction on Detainees Visits and Communications, Article 15(1).

<sup>10</sup> Motion, para. 39.

<sup>11</sup> *ibid*, paras 8-12.

not alleged to have divulged these persons' status as witnesses or attempted to interfere with their forthcoming testimonies.

16. In relation to [REDACTED], the SPO allegations are at best, speculative.<sup>12</sup> [REDACTED], whose identity was disclosed to the Accused on 30 January 2023, claims that he was approached in April 2023 by, among others, [REDACTED], who asked him to withdraw his testimony against [REDACTED].<sup>13</sup> The SPO acknowledges that [REDACTED] did not visit the Detention Centre between 30 January and April 2023. Yet, it relies on [REDACTED] visit to [REDACTED] and [REDACTED] on [REDACTED] February 2023, [REDACTED] position as the superior of [REDACTED] during the war, and the fact that [REDACTED] are implicated by [REDACTED] evidence to suggest that the initial leaking of [REDACTED] identity and the subsequent interference originated from the Accused. Neither [REDACTED] nor [REDACTED] visited [REDACTED] in this period. The SPO has not proffered any evidence that Mr. Selimi dropped into the meetings of Mr. Thaci and Mr. Veseli. Neither is the SPO in possession of recordings of [REDACTED] visits to the Accused. The SPO's hypothetical assumptions to establish a causal link between the Accused's conduct and the interference suffered by the witness, alone, are no substitute for concrete evidence.
17. With regards to [REDACTED], the SPO relies upon his claim that he was approached by 5 unnamed individuals as well as [REDACTED] in May and [REDACTED] July 2023 respectively to allege that the Accused disclosed the

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<sup>12</sup> *id.*, paras 13-14.

<sup>13</sup> International Criminal Court ("ICC"), *The Prosecutor v. Dominic Ongwen*, Decision on a request by the Prosecutor under article 57 of the Rome Statute and regulation 101(2) of the Regulations of the Court, ICC-02/04-01/15, 24 June 2015, para. 4.

identity of [REDACTED].<sup>14</sup> In the contact note with the SPO, the following is stated:

“[REDACTED].”<sup>15</sup>

18. [REDACTED] did not ultimately disclose the identities of these 5 individuals to the SPO. Moreover, in relation to [REDACTED] being approached by [REDACTED] on [REDACTED] July 2023, the Defence notes that [REDACTED] visited [REDACTED] twice, first on [REDACTED] March 2023, [REDACTED] days before the identity of [REDACTED] was disclosed, and second on [REDACTED] July 2023, [REDACTED] days after [REDACTED] was approached by [REDACTED]. Photographs of [REDACTED] with [REDACTED] in the period between [REDACTED] March and May 2023 [REDACTED]<sup>16</sup> have minimal probative value.
19. It is clear from the examples above that there is neither any direct evidence nor clear and consistent circumstantial evidence that Mr. Selimi had any role in unlawfully disclosing the identities of upcoming witnesses or otherwise attempted to interfere with witnesses and obstruct their testimony. Given that these are the precise risks that the SPO purportedly seeks to address through the implementation of the new proposed measures<sup>17</sup>, the SPO has not met its burden of justifying such measures in relation to Mr. Selimi.

**2. The SPO has presented no evidence which would demonstrate that Mr. Selimi intentionally leaked confidential information**

20. The SPO appears to base its entire allegations against Mr. Selimi on an incomplete and partial interpretation of two conversations involving him from

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<sup>14</sup> Motion, paras 15-17.

<sup>15</sup> 113359-113360 RED, paras 5&9.

<sup>16</sup> Annex 4.2 to Motion.

<sup>17</sup> Motion, para. 3(a).

the covert monitoring of many months of conversations with friends and family at the Detention Unit.

21. The SPO maintains that like Mr. Veseli, Mr. Selimi discussed the confidential evidence of [REDACTED] during his [REDACTED] July 2023 visit with [REDACTED] and [REDACTED] and that Mr. Selimi, *inter alia*, named a protected victim in the case.<sup>18</sup> Upon review of the audio recordings of this visit handed over by the SPO on 20 November 2023 as well as closely reading the transcript in Annex 4 to the Motion<sup>19</sup>, it is noted that Mr. Selimi [REDACTED] but did not reveal the identity. At no point during the conversation did Mr. Selimi mention the names of witnesses [REDACTED]. Mr. Selimi mentioning that [REDACTED] was wearing a [REDACTED] and that [REDACTED] was wearing a [REDACTED], and that the testimony took place via Zoom could not have provided his interlocutors with sufficient information to identify them. Moreover, there was no mention of the place where these witnesses and the protected victim were from, or of the month/year the alleged crime took place, or even the names of the alleged perpetrators.
22. It is clear from the context in which the conversation took place that Mr. Selimi did not intend to reveal the identities of the protected victim, [REDACTED] to [REDACTED] and [REDACTED]. He was rather indicating to his interlocutors that he was perplexed by this story told in the courtroom as it had, as he expressed, “nothing to do with us.”<sup>20</sup>
23. The SPO also claims that during the [REDACTED] September 2023 visit with [REDACTED], Mr. Selimi provided identifying information about and discussed the testimony of “other protected witnesses, including that of [REDACTED] ”.<sup>21</sup>

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<sup>18</sup> *ibid*, para. 25.

<sup>19</sup> Annex 4.4 to Motion: 310723-074655-TR-ET.

<sup>20</sup> Annex 4.4 to Motion :310723-074655-TR-ET.

<sup>21</sup> Motion, para. 26.



This phrasing gives the impression that the SPO is alleging that Mr. Selimi discussed the testimonies of other protected witnesses aside from [REDACTED], which is not the reality as is apparent from the SPO omitting the names of these additional witnesses.

24. Similar to conversations regarding [REDACTED], Mr. Selimi never revealed the name of [REDACTED] to his interlocutors, at one point even explicitly stating “The one without identity.”<sup>22</sup> This statement alone elucidates on Mr. Selimi not intending to reveal the identity of [REDACTED]. The portions of [REDACTED] testimony that Mr. Selimi inadvertently leaked were of a general nature, and expressed a sentiment shared by a number of SPO witnesses, in that [REDACTED]. That Mr. Selimi had no malicious intent towards the witness when discussing [REDACTED] testimony is clear from the subsequent part of the conversation in which he states:

“RS: Truly, he is not a bad person.”<sup>23</sup>

25. The Defence argues that, notwithstanding the confidentiality of the testimony, it is in principle difficult for generic information to be considered confidential when, such as in this case, it lacks specificity and uniqueness which would ordinarily give it a proprietary or confidential status.
26. With regards to Mr. Selimi stating that the person in question was [REDACTED], the Defence acknowledges that while this information may potentially narrow the circle of persons to which the witness belongs, it does not per se identify [REDACTED]. Additionally, the fact that [REDACTED] was an [REDACTED] formed part of the summary of the witness read out in public session on [REDACTED] September 2023.<sup>24</sup>

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<sup>22</sup> Annex 4.7 to Motion: 160923-081500-TR-ET, pp.1-3.

<sup>23</sup> Annex 4.7 to Motion: 160923-081500-TR-ET, p. 3.

<sup>24</sup> Trial Hearing - [REDACTED] September 2023, pp.7780-7781.

27. The Defence notes the following excerpt from the conversation quoted in the Motion:

“[REDACTED].”

28. Mr. Selimi’s response to a question on what the identity of [REDACTED] again shows that Mr. Selimi does not want to reveal the identity of [REDACTED]. Additionally, a part of his response is “[indiscernible]”, followed by “[REDACTED]”. The Defence disagrees to this response being interpreted as unambiguously meaning that [REDACTED], which is what the SPO is alluding to. Further, in footnote 40, the SPO matches the word “[REDACTED]” with [REDACTED] stating during his testimony on [REDACTED] September 2023, the following:

“[REDACTED].”<sup>25</sup>

29. The witness here is responding to a question on [REDACTED] belongs to. When asked by the SPO [REDACTED], [REDACTED] responded with the following:

“[REDACTED].”<sup>26</sup>

30. While it is unclear whether Mr. Selimi was referring to [REDACTED] when mentioning [REDACTED], revealing [REDACTED], rather than the [REDACTED], would have risked [REDACTED] identity being uncovered.

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<sup>25</sup> Motion, fn 40 referring to Transcript (Testimony of [REDACTED]), [REDACTED] September 2023, p.7892.

<sup>26</sup> Trial Hearing - [REDACTED] September 2023, p.7821.

**C. The newly proposed detention regime is in violation with Mr. Selimi's right to privacy and to family life under Article 8 of the ECHR.**

**1. The necessity and proportionality of both the interim and new detention conditions cannot be argued in the abstract**

31. The SPO contends that the requested measures are the least restrictive means to achieve the necessary objectives of addressing the concrete risk of (a) unlawful attempts to interfere with witnesses and obstruct their testimony; (b) the dissemination from the Detention Centre of protected witness information, including confidential testimony given in this case; and (c) further threats to the integrity of the proceedings.<sup>27</sup>
32. When moving from a lesser to a more restrictive regime, it is essential to assess a series of progressively more rigorous measures before concluding that no realistic, effective lesser measure exists<sup>28</sup> to accomplish the specified objectives.
33. Article 7 of the Registry Practice Direction on Detainees provides that the Registrar may decide to impose necessary and proportionate restrictions on the visits and communications of a specific Detainee<sup>29</sup>, be it in the form of the exclusion of a specific visitor or a specific category of visitors, and the monitoring of visits and communications with a specific visitor.<sup>30</sup> To the knowledge of the Defence, no request for the imposition of such precursor targeted measures purporting to limit visits and communications have been made by either the Registrar or SPO and as a result, a finding that the newly proposed regime is the least restrictive available is speculative.

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<sup>27</sup> Motion, para. 3.

<sup>28</sup> *ibid*, para. 42.

<sup>29</sup> Registry Practice Direction on Detainees, Article 7(1).

<sup>30</sup> *ibid*, Article 7(2).

**2. The proposed interim measures violate the Registry Practice Direction on Detainees**

34. The SPO has urgently requested the Trial Panel to, on an interim basis, suspend all non-privileged outside communications - including visits (whether in person or by Zoom), phone calls, written communications and import-exports - until the Panel has the opportunity to rule on the merits of this request.<sup>31</sup> Non-privileged communications in this case included consular contacts, media contacts, and all other non-privileged communications,<sup>32</sup> meaning Mr. Selimi is prohibited from communicating with his family, be it in person or via other means.
35. Whilst the Panel has, on an interim basis, prohibited in-person visits but allowed telephone communications upon prior authorisation by the Registrar<sup>33</sup>, the Defence notes the requirement in Article 4(2) of the Practice Direction on Visits and Communications which provides that Restrictions shall be “proportionate to the aim pursued and shall never result in the total deprivation of family contact.” This must be fully borne in mind by the Trial Panel in assessing the Motion.

**3. The interference of the measures suggested by the SPO with Mr. Selimi’s right under Article 8 of the ECHR is disproportionate and not justified by their necessity**

36. The right to respect for private family life is set out in Article 8 of the ECHR, which among others, provides that “there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society...”<sup>34</sup>

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<sup>31</sup> Motion, para. 2.

<sup>32</sup> *ibid*, fn 4.

<sup>33</sup> KSC-BC-2020-06/F01936, Decision on Prosecution Urgent Request for Modification of Detention Conditions, 17 November 2023.

<sup>34</sup> ECHR, Article 8(2).

37. The SPO relies on ECtHR jurisprudence to demonstrate that measures restricting communication with prisoners and people outside the detention facilities may be imposed when they are necessary and pursue a legitimate aim.<sup>35</sup> The SPO makes no efforts whatsoever to argue how the severity of the measures it has put forward is still justified by their necessity and the legitimate aim pursued.

**a. The SPO request fails to individualise Mr. Selimi**

38. The ECtHR jurisprudence has continuously emphasized the importance of individualization in the application of special prison regimes. For instance, in *Trosin v. Ukraine*, the Court considered the application of automatic restrictions on frequency and length of visits for prisoners sentenced to the highest penalty under criminal law and found that "...[T]he regulation of such issues may not amount to inflexible restrictions and the States are expected to develop their proportionality assessment technique enabling the authorities to balance the competing individual and public interests and to take into account peculiarities of each individual case."<sup>36</sup> Similarly, in *Hirst v UK*, a general, automatic indiscriminate restriction on a vitally important Convention right (referring to Article 8) was seen as falling outside any acceptable margin of appreciation.<sup>37</sup>

39. The Defence notes that since being detained in November 2020, the maintenance of frequent contacts with his family, by way of in person visits or calls, has enabled Mr. Selimi to "be present" in his family. The recent days of no contact have profoundly impacted Mr. Selimi and run the risk of him being unable to meaningfully participate in his Defence.

40. In *Vintman v. Ukraine*, the ECtHR found that the Applicant being detained 700 km from home constituted a violation of Article 8, finding that the Applicant's

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<sup>35</sup> Motion, para. 36 (fn 62).

<sup>36</sup> European Court of Human Rights ("ECtHR"), *Trosin v. Ukraine*, 23 February 2012, para. 42; See also ECtHR, *Dickson v. The United Kingdom*, 4 December 2007, para. 82.

<sup>37</sup> ECtHR, *Hirst v. UK*, 6 October 2005, para. 82.

personal situation and his interest in maintaining his family ties had never been assessed.<sup>38</sup> Similarly, the Defence reminds that, regardless of the regime ordered by the Panel, Mr. Selimi is being detained some 1500km from where his wife and two children reside.

**b. The proposed measures do not strike a fair balance between their aims and Mr. Selimi's right**

41. In *Khoroshenko v. Russia*, that the SPO cites, the Grand Chamber found that measures such as physical separation may be justified by the prison's security needs or the danger that a detainee would communicate with criminal organisations through family channels.<sup>39</sup> The SPO has presented no evidence that (1) Mr. Selimi has communicated with criminal organisations and; (2) that he has used family channels to that end. The Grand Chamber also found that extended prohibition of direct contact can be justified only where a genuine and continuing danger of that kind exists,<sup>40</sup> a danger the existence of which has not been established in the first place in the case of Mr. Selimi.
42. The measures in question concerned a complete prohibition on direct physical contact with the applicant and the presence of a guard within hearing distance during this period which the Chamber found, among others, contributed to the applicant's inability to establish close bonds with his son.<sup>41</sup> Ultimately, a violation of ECHR Article 8 was found as no fair balance was struck between the protection of the applicant's private and family life and the aims by respondent government.<sup>42</sup>

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<sup>38</sup> ECtHR, *Vintman v. Ukraine*, 23 October 2014, para. 103.

<sup>39</sup> ECtHR, *Khoroshenko v. Russia*, Judgment, 30 June 2015, para.125.

<sup>40</sup> *Khoroshenko v. Russia*, para.125.

<sup>41</sup> *ibid*, para.147.

<sup>42</sup> *id*, paras 148-149.

43. The SPO also cites *Enea v. Italy*, in which the Grand Chamber recognized that before the introduction of the special regime, many dangerous prisoners were able to maintain their positions within the criminal organisations. It considered that, “given the specific nature of the phenomenon of organized crime, particularly of the mafia type, and the fact that family visits have frequently served as a means of conveying orders and instructions to the outside, the – admittedly substantial – restrictions on visits, and the accompanying controls, could not be said to be disproportionate to the legitimate aims pursued.”<sup>43</sup> As such, the purpose behind the severe restrictions authorised in that case, relates to the prevention of ongoing criminal conduct by a criminal organization akin to the mafia, controlled and directed from inside the prison. This is conspicuously different from the current situation.
44. In *Horych v. Poland*, the Court based its conclusion that no convincing justification for the prolonged, prohibition on the applicant’s direct contact with his wife and daughters, on the fact “that neither this first visit, nor any further events or the applicant’s own behaviour during his detention revealed any grounds to believe that he intended to use his wife or daughters as intermediaries to restore contacts with the criminal community or that open family visits from them would jeopardise the prison security.”<sup>44</sup> Nowhere in the motion is it suggested that that Mrs. Selimi or Mr. Selimi’s two children are implicated in any way in the leaking of confidential information.
45. Further, the SPO cites *Piechowicz v Poland*, in which the Grand Chamber when considering whether the interference with Article 8 pursued a “legitimate aim” and was “necessary in a democratic society” found that the fact that the applicant’s wife was indicted together with applicant can be regarded as applied

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<sup>43</sup> ECtHR, *Enea v. Italy*, Judgment, 17 September 2009, para.126;

<sup>44</sup> ECtHR, *Horych v. Poland*, Judgment, 17 April 2012, para. 130.

in pursuance of the “prevention of disorder or crime”.<sup>45</sup> It nonetheless found that there had been a violation of Article 8 as it argued that if the authorities were convinced that an “open visit” enabling the applicant direct physical contact and unrestricted conversation with his wife could not be allowed for the sake of the interests of the proceedings, they had a choice between, for instance, subjection of their contact to supervision by a prison guard, i.e. a “supervised visit” and granting a “close visit” without the possibility of direct contact.<sup>46</sup> Evidently, even in materially different situations when the visitor (wife) is indicted together with the detainee, the Chamber considered whether less restrictive measures would be sufficient to achieve the purported aims.

**c. The proposed measures impinge upon the rights of Mr. Selimi’s children**

46. As the ICC has held in *Katanga*, a detained person’s right correlates with the interests of other affected individuals such as those of his children of minority age who wish to have contact with their detained parent.<sup>47</sup> Similarly, in *Deltuva v. Lithuania*, the Court emphasized the importance of children maintaining connections with their incarcerated parents whilst in *Horych v. Poland*, it recognized that minors in prison require special arrangements and may be subjected to specific conditions depending on their age, possible effects on their emotional state or well-being and on the personal circumstances of the person visited.<sup>48</sup>

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<sup>45</sup> ECtHR, *Piechowiz v. Poland*, Judgment, 17 April 2012, para.219.

<sup>46</sup> *Piechowiz v. Poland*, paras 220&222.

<sup>47</sup> ICC, *Prosecutor v. Katanga & Chui*, Decision on "Mr Mathieu Ngudjolo's Complaint Under Regulation 221(1) of the Regulations of the Registry Against the Registrar's Decision of 18 November 2008, ICC-RoR-217-02/08, 10 March 2009, para. 35.

<sup>48</sup> *Horych v. Poland*, para. 131.



**d. The practical impact of the measures on Mr. Selimi's family is severe**

47. In this regard, the impact of the measures requested by the SPO have been set out by the Registry's Report filed on 21 November 2023. When analysing what visits could be accommodated with active monitoring, the Registry explained that it had the current capacity to implement "ten (10) video visits per month, with a duration of 15 minutes each, to be scheduled at pre-identified times based on the daily schedule of the Detention Facilities and the availability of staff."<sup>49</sup> In addition, Mr. Selimi would be entitled to "six (6) non-privileged telephone calls per month, with a duration of 15 minutes each."<sup>50</sup> However, it was also clarified that this schedule:

"is underpinned by an assumption that there would be no in-person visits that would require a similar regime of active monitoring. In the event that there is a regime that includes the active monitoring of in-person visits, the above schedule would need to be reduced."<sup>51</sup>

48. As such, the Motion is seeking a draconian reduction in the number of visits available to Mr. Selimi which is far from either necessary or proportionate.

**4. The Defence specifically requests a visit for Mrs. Selimi and her two children on an urgent basis.**

49. Despite repeated requests for interim release with extensive proposed conditions, Mr. Selimi has been detained for over three years already. For the first eight months of that detention, in person family visits were impossible due to the extensive Covid-19 restrictions imposed by the KSC detention regime. Since that date, regular visits by Mr. Selimi's wife and children have taken place

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<sup>49</sup> KSC-BC-2020-06/F01943, Registry's Submissions on the Prosecution's Urgent Request for Modification of Detention Conditions, 21 November 2023, para. 39(a).

<sup>50</sup> Ibid, para. 43(a)

<sup>51</sup> Id, para. 40.

which have been vital in allowing Mr. Selimi to continue a relationship with his wife and two underage children, aged 14 and 17.

50. In the Motion, despite these family visits constituting the vast majority of the visits to Mr. Selimi, there is no allegation that Mrs. Selimi or Mr. Selimi's two children are implicated in any way in the allegations put forth therein. As such, preventing them from continuing their in-person visits would constitute nothing more than a punitive measure that would be disproportionate to any purpose underlying the Motion.
51. In this regard, on 19 November 2023, the Defence wrote to the SPO<sup>52</sup> in light of an upcoming visit scheduled for Mr. Selimi and his wife and children between 25 and 28 November 2023, during the middle weekend in the break from court proceedings. The Defence informed the SPO that in this Response it would intend to request that Mr. Selimi's wife and children be permitted to visit Mr. Selimi as an exception or variation of the Interim Decision given the importance of family visits and the fact that neither Mrs. Selimi or the children are implicated in the allegations set forth in the Motion.
52. On 20 November 2023, the SPO responded that "having regard to the conduct and risks at issue, the SPO does not agree to the modification of the restrictions requested."<sup>53</sup>
53. For the reasons set out above, the SPO's position on this issue is as disappointing as it is unreasonable and unwarranted. It ignores the absence of any concrete proof of any intent to interfere in proceedings by Mr. Selimi despite the extensive covert recording of his visits. Given Mr. Selimi's right to participate in his own defence, family visits during court sessions and the weekends of when court

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<sup>52</sup> Email from Geoffrey Roberts to the SPO, dated 19 November 2023, at 19:54.

<sup>53</sup> Email response from the SPO to Geoffrey Roberts, dated 20 November, at 14:27.

proceedings are being conducted are simply not feasible. Therefore, visits must be scheduled for weekends in between court sessions as occurred in this case. If authorisation for such a visit is not granted it will not be possible to ensure such a visit until after the court sessions scheduled for December.

54. Therefore, the Defence respectfully requests the Trial Panel, pending the resolution of the complete regime of visits, to authorise the visit scheduled for Mrs. Selimi and his two children on 25-28 November.

### III. CLASSIFICATION

55. This response is filed confidentially pursuant to Rule 82(4) as it pertains to a confidential Request filed by the Prosecution. The Defence undertakes to submit a public redacted version of the present filing when directed by the Trial Panel.

### IV. CONCLUSION AND/OR RELIEF REQUESTED

56. For the reasons set out herein, the Defence hereby requests the Trial Panel to:
- a) on an urgent basis, **AUTHORISE** Mrs. Selimi and her two children to meet Mr. Selimi in person between 25-28 November 2023; and,
  - b) otherwise **REJECT** the measures requested in paragraph 2 of the Motion.

Word count: 5172

Respectfully submitted on 22 November 2023,



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GEOFFREY ROBERTS

Lead Counsel for Rexhep Selimi



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