



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: Fidelma Donlon

Date: 1 December 2023

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**Further Decision on the Prosecution's Urgent Request for Modification of
Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi**

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TRIAL PANEL II of the Kosovo Specialist Chambers (“Panel”), pursuant to Articles 3(2), 15, 23(1) and 40(6)(d) and (f) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 9(5)(b), 56(6), 57(2), 80(1) and 116(4)(d) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), Detention Rules 1(3), 16(4), and 43(3) of the Registry Practice Direction: Rules on Detention (“Practice Direction on the Rules of Detention”),¹ Articles 1(3), 12(1), 13, 14, 15(1), 16(4), 17(3), 19(5) and (6) and 20(2) of the Registry Practice Direction on Detainees: Visits and Communications (“Practice Direction on Visits and Communications”)² and Articles 14-18 of the Registry Practice Direction on Detainees: Counsel Visits and Communications (“Practice Direction on Counsel Visits and Communications”).³

I. PROCEDURAL BACKGROUND

1. The procedural background concerning the arrest and detention of Hashim Thaçi (“Mr Thaçi”), Kadri Veseli (“Mr Veseli”), and Rexhep Selimi (“Mr Selimi”) (collectively “Three Accused”), has been set out extensively in previous decisions.⁴

¹ KSC-BD-08-Rev1, Registrar, *Registry Practice Direction: Rules on Detention*, 23 September 2020.

² KSC-BD-09-Rev1, Registrar, *Registry Practice Direction on Detainees: Visits and Communications*, 23 September 2020.

³ KSC-BD-10-Rev1, Registrar, *Registry Practice Direction on Detainees: Counsel Visits and Communications*, 23 September 2020.

⁴ See e.g. F00994, Pre-Trial Judge, *Decision on Periodic Review of Detention of Hashim Thaçi*, 29 September 2022, confidential, paras 18-21. A public redacted version was issued on 6 October 2022, F00994/RED; F00802, Pre-Trial Judge, *Decision on Periodic Detention Review of Rexhep Selimi*, 13 May 2022, confidential, paras 1-12. A public redacted version was issued on 24 May 2022, F00802/RED; F00819, Pre-Trial Judge, *Decision on Periodic Detention Review of Kadri Veseli*, 26 May 2022, confidential, paras 1-13. A public redacted version was filed 8 June 2022, F00819/RED.

2. On 17 November 2023, the SPO filed an urgent request for modification of detention conditions (“Request”) of the Three Accused,⁵ wherein it requests that the Panel order the measures outlined in paragraph 2 of the Request, which includes a request for the immediate segregation and suspension of all communications of the Three Accused on an interim basis.⁶
3. On 17 November 2023, the Panel rendered its interim Decision on the SPO’s Request (“Interim Decision”)⁷ placing temporary restrictions on contact with the Three Accused.⁸ In the same Decision, the Panel ordered the Registry to file submissions regarding the merit of the SPO’s Request by noon on Tuesday, 21 November 2023 and the Defence to respond to the SPO’s Request and to the Registry’s submissions by 4 pm on Wednesday, 22 November 2023.⁹
4. On 18 November 2023, the Registry issued a report on the implementation of the Interim Decision outlining its position in respect of each measure sought by the SPO.¹⁰
5. On 20 November 2023, the Three Accused filed an urgent request seeking the reclassification of the SPO’s request for covert audio-recorded non-privileged visits to the Three Accused and the judicial authorisation for such covert recording issued by the Single Judge.¹¹ This request was incorrectly filed in the *Specialist*

⁵ F01933, Specialist Prosecutor, *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.

⁶ Request, paras 2, 53.

⁷ F01936, Trial Panel, *Decision on Prosecution Urgent Request for Modification of Detention Conditions*, 17 November 2023, confidential. This decision was reclassified as “public” on 23 November 2023.

⁸ Interim Decision, paras 5, 11(b).

⁹ Interim Decision, para. 11(d).

¹⁰ F01937, Registry, *Report on the Implementation of Trial Panel II’s Decision*, 18 November 2023, confidential.

¹¹ F01941, Specialist Counsel, *Urgent Selimi, Thaçi and Veseli Request for Reclassification of Filings*, 20 November 2023, confidential.

Prosecutor v. Hashim Thaçi et al. case. It was subsequently withdrawn¹² and re-filed in the correct case file.

6. On 21 November 2023, the Registry filed its submissions on the SPO's Request ("Registry Submissions").¹³
7. On 22 November 2023, the Defence for the Three Accused and the Defence for Jakup Krasniqi filed responses to the SPO's Request ("Thaçi Response",¹⁴ "Selimi Response",¹⁵ "Veseli Response",¹⁶ and "Krasniqi Response",¹⁷ respectively).
8. On 23 November 2023, the SPO filed a clarification relating to its Request.¹⁸

II. SUBMISSIONS

9. The SPO submits that the Three Accused have violated the Panel's orders by revealing the identities of protected witnesses and/or disseminating the content of confidential testimony to persons visiting the Detention Facilities. The SPO also submits that its investigations have revealed further attempts to obstruct the

¹² F01972, Specialist Counsel, Defence Notice of Withdrawal of F01941, 30 November 2023, confidential.

¹³ F01943, Registry, *Registry's Submissions on the Prosecution's Urgent Request for Modification of Detention Conditions*, 21 November 2023, confidential. A corrected version was filed on the same day, F01943/COR.

¹⁴ F01944, Specialist Counsel, *Thaçi Defence Response to Prosecution Urgent Request for Modification of Detention Conditions*, 22 November 2023, confidential.

¹⁵ F01946, Specialist Counsel, *Selimi Defence Response to Prosecution Urgent Request for Modification of Detention Conditions*, 22 November 2023, confidential. A public redacted version was filed on 24 November 2023, F01946/RED.

¹⁶ F01947, Specialist Counsel, *Veseli Defence Response to Prosecution Urgent Request for Modification of Detention Conditions*, 22 November 2023, confidential. The Veseli Response was submitted at 17:42 and distributed the next day, on 23 November 2023. A public redacted version was filed on 24 November 2023, F01947/RED. A further public redacted version was filed on 28 November 2023, F01947/RED2.

¹⁷ F01945, Specialist Counsel, *Krasniqi Defence Response to Prosecution Urgent Request for Modification of Detention Conditions*, 22 November 2023, confidential.

¹⁸ F01948, Specialist Prosecutor, *Prosecution Clarification Relating to F01933*, 23 November 2023, confidential.

proceedings, including issuing instructions on how witnesses should testify and planned approaches to witnesses.¹⁹

10. The SPO requests that the Trial Panel modify the detention conditions of the Three Accused to include: (i) segregating the Three Accused from the other detainees housed in the Detention Facilities;²⁰ (ii) denial of all non-privileged in-person visits;²¹ (iii) restrictions on who may have non-privileged communications with the Three Accused;²² (iv) active monitoring, recording and/or copying, review, and preservation of all non-privileged visits, communications, correspondence, and import-export items;²³ (v) further limitations regarding the scope of matters which may be discussed in non-privileged communications,²⁴ (vi) preclusion of common visitors among the Three Accused and other detainees;²⁵ and (vii) limiting the privileged visits of the Three Accused to meetings only with their respective counsels and co-counsels.²⁶

11. The SPO requests that the Registry be ordered to bring any suspected violations of these orders to the Panel's attention.²⁷ The SPO also requests that the Panel order the Registry to prepare monthly reports, which it would submit to the Panel and Parties, and which would include: (i) logs of all visits and calls (both privileged and non-privileged) of all four Accused in this case, including date, time and participants; (ii) whether these communications have been actively monitored and/or recorded; (iii) copies of all items/correspondence exchanged (whether sent or received), including by way of import-export, and including the

¹⁹ Request, paras 1, 6-35.

²⁰ Request, para. 2(h).

²¹ Request, para. 2(d).

²² Request, para. 2(b).

²³ Request, para. 2(c).

²⁴ Request, para. 2(g).

²⁵ Request, para. 2(f).

²⁶ Request, para. 2(e).

²⁷ Request, paras 2(i), 50.

identity of the sender and receiver, the nature of the item, and whether a copy has been preserved; (iv) whether the Registry has noted any irregularities; and (v) whether the Registry has encountered any difficulties in executing the Panel's order.²⁸

12. The SPO claims that the requested measures are the least restrictive means to achieve the necessary objectives of preventing the re-occurrence of improper activities by the Three Accused.²⁹

13. The Registry Submissions address: (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) other issues it considers appropriate to raise in relation to the Request.³⁰ The Registry advises that the conditions proposed by the SPO are generally feasible. The Registry does note, however, that active monitoring of in-person and video visits and telephone calls would require additional resources, thereby requiring some limitations on the number of these privileges.³¹

14. The Thaçi Defence submits that they have not been granted the time or materials necessary to thoroughly respond to the substance of the SPO's allegations.³² Based upon the content of the SPO's filing, the Thaçi Defence questions whether the SPO has acted with due care with regard to preserving the rights of the Accused and safeguarding the integrity of the proceedings.³³ The Thaçi Defence submits that the SPO's request contains material that is speculative and vague, and that the vast

²⁸ Request, paras 2(i), 50.

²⁹ Request, para. 3.

³⁰ See generally Registry Submissions, paras 8-54.

³¹ Registry Submissions, paras 39, 40, 43.

³² Thaçi Response, para. 1.

³³ Thaçi Response, paras 10, 11, 14.

majority of the transcripts provided have no relevance to the SPO's Request.³⁴ The Thaçi Defence submits that it has been prejudiced through the SPO's filing, as placing this information before the Panel has potentially contaminated the Panel's ability to be impartial, or at least has created a reasonable perception that the Panel can no longer be impartial or objective when assessing the merits of this case.³⁵

15. The Thaçi Defence further submits that the measures and modifications sought by the SPO are disproportionate, fail to further a legitimate aim, and are without a legal basis.³⁶ In particular, the Thaçi Defence requests that the Panel reject the SPO's request to: (i) prohibit in-person family visits; (ii) restrict privileged visits to counsel and co-counsel and requiring prior authorisation for other team members; (iii) place restrictions on consular visits; (iv) impose active monitoring and preservation of records of non-privileged communications until the end of trial; and (v) prohibit non-privileged communication about public information concerning the proceedings.³⁷

16. The Selimi Defence submits that the measures requested by the SPO are not sufficiently supported by the evidence and fail to comply with the principles of necessity and proportionality.³⁸ The Selimi Defence also submits that the SPO's Request for specific modifications fails to sufficiently distinguish between individual Accused, and to take into account the individualised scope of their alleged violations.³⁹ The Selimi Defence submits that they have not been granted the time or materials necessary to thoroughly respond to the substance of the SPO's allegations and that further submissions will likely be necessary.⁴⁰

³⁴ Thaçi Response, para. 11.

³⁵ Thaçi Response, paras 12, 13.

³⁶ Thaçi Response, paras 15, 19, 27.

³⁷ Thaçi Response, paras 15-31.

³⁸ Selimi Response, para. 2.

³⁹ Selimi Response, paras 3, 38-40.

⁴⁰ Selimi Response, paras 4-8.

17. The Selimi Defence also submits that the SPO has failed to sufficiently establish the allegations against Mr Selimi as the SPO ascribes both actions and intentions to Mr Selimi that are unsupported in the materials accompanying the Request.⁴¹ The Selimi Defence asserts that the requested modifications to the conditions of detention would violate Mr Selimi's rights under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR"),⁴² that they are inconsistent with the Practice Direction on the Rules of Detention,⁴³ and that they are disproportionate and unjustified.⁴⁴ The Selimi Defence requests that the Panel reject the SPO's request in its entirety.⁴⁵ The Selimi Defence also submits that proposed measures impinge on the rights of Mr Selimi's children,⁴⁶ and he requests that the Panel amend the interim conditions to permit Mr Selimi to visit with his family between 25 and 28 November 2023.⁴⁷

18. The Veseli Defence submits that the SPO has failed to sufficiently support the assertion that Mr Veseli attempted to compromise the integrity of proceedings.⁴⁸ The Veseli Defence submits that when the recorded conversations are considered in their entirety they actually support the opposite position, namely that Mr Veseli has respected the directives of the Panel and has not attempted to interfere with witnesses or the integrity of the proceedings.⁴⁹ The Veseli Defence submits that Mr Veseli's participation in the visits of the Co-Accused were both innocent and permissible under the current conditions of detention.⁵⁰ The Veseli Defence submits that the SPO's claims of interference rest solely upon unsupported inferences and multiple levels of

⁴¹ Selimi Response, paras 9-30.

⁴² Selimi Response, paras 31-45.

⁴³ Selimi Response, paras 34-35.

⁴⁴ Selimi Response, paras 36-37, 41-45.

⁴⁵ Selimi Response, para. 56(b).

⁴⁶ Selimi Response, paras 46-48.

⁴⁷ Selimi Response, paras 49-54.

⁴⁸ Veseli Response, paras 2, 4, 7, 14-15.

⁴⁹ Veseli Response, paras 6, 21-35, 48-50.

⁵⁰ Veseli Response, paras 36-39.

hearsay, which originate from the account of an anonymous source.⁵¹ The Veseli Defence also submits that the Panel must consider the proposed conditions of detention on an individualised basis.⁵² The Veseli Defence submits that the SPO's Request should be rejected in its entirety.⁵³

19. The Krasniqi Defence limited its submissions to the SPO's request regarding common visitors and visitation reporting.⁵⁴ The Krasniqi Defence notes that no evidence has been produced to suggest that Mr Krasniqi has improperly shared any confidential information or sought to interfere with any witness, and that the Request makes no allegation that Mr Krasniqi has engaged in misconduct.⁵⁵ The Krasniqi Defence submits that in light of these circumstances, no additional restrictions can be considered to be necessary and proportionate with regard to Mr Krasniqi, and that the proposed conditions would therefore violate his rights under Article 8 of the ECHR.⁵⁶ The Krasniqi Defence specifically challenges the proposed condition that would preclude visits from individuals who have visited the Three Accused, as this would include various individuals with whom no wrongdoing is suspected, as well as a member of the Krasniqi Defence.⁵⁷ The Krasniqi Defence also indicates that it would be willing to voluntarily ensure that members of the Krasniqi Defence do not visit the Three Accused in the Detention Facilities in any manner in the future.⁵⁸

III. APPLICABLE LAW

20. Pursuant to Article 3(2) of the Law, the Specialist Chambers shall adjudicate and function in accordance with the Constitution of the Republic of Kosovo (Constitution)

⁵¹ Veseli Response, paras 41, 51-53.

⁵² Veseli Response, para. 54.

⁵³ Veseli Response, para. 58.

⁵⁴ Krasniqi Response, para. 1.

⁵⁵ Krasniqi Response, para. 3.

⁵⁶ Krasniqi Response, paras 4-19.

⁵⁷ Krasniqi Response, paras 10-14.

⁵⁸ Krasniqi Response, para. 14.

and international human rights law. Articles 3 and 8 of the ECHR protect, respectively, the right not to be subjected to torture, inhuman or degrading treatment or punishment, and the right to respect for private and family life.

21. Pursuant to Article 23(1) of the Law and Rule 80(1) of the Rules, the Specialist Chambers shall provide for the protection of victims and witnesses, including their safety, physical and psychological well-being, dignity and privacy.

22. Pursuant to Article 40(2) and (6) of the Law and Rule 116(1) of the Rules, the Panel shall take all necessary measures, on an ongoing basis, as are necessary to facilitate the fair and expeditious conduct of the trial proceedings and to protect the Accused, witnesses and victims.

23. Pursuant to Rules 56, 57(2) and 116(4)(d), the Panel may rule on conditions of detention and related matters for the purpose 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. And pursuant to Article 1(3) of the Practice Direction on Visits and Communications, the rules therein do not affect, and are subject to, any order or decision of the Panel under Rule 56 of the Rules of Procedure and Evidence.

24. The Parties and Participants are under a general obligation not to disclose to third parties any confidential documents or information linked to the proceedings.⁵⁹ In particular, a Party or Participant shall not disclose the identity of a protected witness to any third party. It may only do so in the exceptional circumstance where such disclosure is directly and specifically necessary for the preparation and presentation of its case,⁶⁰ and even in such case shall not reveal to third parties that

⁵⁹ See generally F00854, Pre-Trial Judge, *Decision on Framework for Handling Confidential Information During Investigations and Contact Between a Party or Participant and Witnesses of the Opposing Party or of a Participant* ("Framework Decision on Handling Confidential Information"), 24 June 2022, para. 212(I)(a)

⁶⁰ Framework Decision on Handling Confidential Information, para. 212(I)(e).

any protected witness is involved with the activities of the KSC/SPO or the nature of such involvement.⁶¹

IV. DISCUSSION

A. PRELIMINARY MATTERS

1. Impartiality

25. In respect of the submissions of the Thaçi Defence about impartiality,⁶² the Panel notes that responsibility over the conditions and nature of detention of the four Accused rests with this Panel.⁶³ In order for the Panel to carry out its responsibilities under the Law, information relevant to its decisions on these matters must be placed before it. Such information is relevant to and will only be considered in respect of the question of detention and for the purpose of deciding the conditions thereof. The suggestion that the Panel's acquaintance with this material would impugn its impartiality or the appearance thereof has no basis.

2. Limited Time Provided to the Accused to Respond

26. The Defence has drawn attention to the fact that the timeframe within which to make submissions was extremely tight.⁶⁴ The Panel has indeed pointed to the need for expeditiousness in this matter and taken notice of the fact that a Defence request for access to certain information is presently pending before the Single Judge.⁶⁵ The need for particular expeditiousness in this matter is evident from the circumstances underlying it. The Panel has accounted, however, for the fact that the expedited schedule might have affected the ability of the Defence to review all relevant material

⁶¹ Framework Decision on Handling Confidential Information, para. 212(I)(f).

⁶² Thaçi Response, para. 12.

⁶³ See Article 40(2) and (6) of the Law; Rules 56, 57(2), and 116(1) and (4)(d).

⁶⁴ Thaçi Response, para. 2; Selimi Response, paras 7-8; and Veseli Response, para. 8.

⁶⁵ See Thaçi Response, para. 1.

before making its submissions. Should the Defence's subsequent review of relevant records reveal information that it considers material to the Panel's Decision, it could seek reconsideration or variation of the Panel's decision.

27. Nevertheless, the Panel notes that while the Defence for Messrs Thaçi, Selimi, and Krasniqi complied with the short deadline imposed by the Panel, the Veseli Defence filed their Response out of time.⁶⁶ While the Panel would normally decline to consider submissions made out of time, in light of the limited amount of time given to the Defence to address this matter, it will exercise its discretion under Rule 9(5)(b) to recognise the Veseli Response as validly filed despite its belatedness.

3. Selimi Defence Urgent Request for Family Visit

28. The Panel observes that the urgent request from the Selimi Defence is now moot as the requested visit was scheduled to take place on 25-28 November.⁶⁷ Nevertheless, the Panel notes that the Interim Decision set only a temporary prohibition on family visits, and that that prohibition is modified by the terms of the present decision.

4. Measures Concerning Mr Krasniqi

29. The Panel agrees with the Krasniqi Defence that no evidence has been produced which suggests that Mr Krasniqi improperly shared any confidential information with visitors, sought to interfere with any witness, or otherwise behaved inappropriately in the Detention Facilities.⁶⁸ For this reason, none of the measures outlined below is intended to restrict the conditions of Mr Krasniqi's detention based on any impropriety attributed to him. Some of the measures outlined below might, however, impact him insofar as they are necessary to ensure the effectiveness of measures

⁶⁶ Filing data reflects that the Veseli Response was received by the Court Management Unit at 17:42 on 22 November 2023.

⁶⁷ Selimi Response, paras 49-54.

⁶⁸ Krasniqi Response, para. 3.

decided in relation to the Three Accused. The Panel has satisfied itself that those measures are necessary and proportionate and compatible with the rights of Mr Krasniqi.

5. Purpose of the Measures

30. The measures adopted below are not intended and do not serve as sanction for any conduct attributed to the Accused. Those measures are solely intended to prevent the impermissible disclosure of confidential information, including the identity of protected witnesses, and guarantee the integrity of the proceedings. The Panel notes in this regard that many of the guarantees foreseen in the Registry's Practice Directions on detention are *privileges* that go beyond what detainees would be entitled to as a matter of fundamental rights. As such, their restriction is not *per se* incompatible with the effective protection of the fundamental rights of detainees. Those are subject, in particular, to the possibility of necessary and proportionate restrictions being placed upon them to protect the rights and security of others, in particular victims and witnesses.

B. CONTEXT OF THIS DECISION

31. The Panel notes that it has previously determined that a general climate of witness interference persists in Kosovo regarding this case and others before the Specialist Chambers.⁶⁹ The Court of Appeals has confirmed that contextual factors may be relevant when assessing detention.⁷⁰ The Panel also notes that the Three

⁶⁹ See e.g. F01720, Trial Panel, *Decision on Periodic Review of Detention of Hashim Thaçi*, 16 August 2023, para. 21; See also KSC-BC-2020-05, F00494/RED, Trial Panel, *Trial Judgment*, 19 January 2023, para. 57. A corrected version was filed on 8 June 2023, F00494/RED3/COR.

⁷⁰ IA017/F00011, Court of Appeals Panel, *Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 5 April 2022, confidential, para. 43. A public redacted version was issued on the same date, IA017/F00011/RED.

Accused have received information concerning, *inter alia*, the first 40 witnesses and beyond, and that the Three Accused will continue to receive such information regarding additional future witnesses. The Panel has previously found that these disclosures amplify the risk of sensitive information pertaining to witnesses becoming known to members of the public before the witnesses in question testify.⁷¹ The Panel notes that despite all efforts undertaken to protect witnesses, witnesses in this case have complained of attempted or actual interference. The Panel will take all necessary measures compatible with the rights of the Accused to ensure that such cases do not re-occur and that all necessary steps are taken to reduce such a risk.

32. The Panel has previously determined that the Three Accused have: (i) the interest and ability to interfere with the proceedings; (ii) a position of influence in Kosovo which could allow them to elicit the support of sympathisers; and (iii) given the ongoing trial, increased knowledge of the evidence underpinning the serious charges against them; and (iv) with regard to Mr Thaçi, attempted to undermine the Specialist Chambers and offered benefits to persons summoned by the SPO.⁷²

⁷¹ See e.g., F01302, Trial Panel, *Decision on Periodic Review of Detention of Hashim Thaçi*, 17 February 2023, confidential, para. 25. A public redacted version was filed on the same date, F01302/RED.

⁷² See e.g. F00177, Pre-Trial Judge, *Decision on Hashim Thaçi's Application for Interim Release*, 22 January 2021, confidential, para. 41. A public redacted version was issued on 26 January 2021, F00177/RED; F01111, Pre-Trial Judge, *Decision on Periodic Review of Detention of Rexhep Selimi*, 18 November 2022, confidential, paras 26-27. A public redacted version was filed the same day, F01111/RED; F00576, Pre-Trial Judge, *Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli*, 23 November 2021, confidential, para. 52. A public redacted version was filed on 8 December 2021, F00576/RED; Framework Decision on Handling Confidential Information, para. 118 (noting that "there is a climate of witness intimidation and interference in connection with criminal proceedings regarding former members of the KLA, and that the Accused in the present case, who were high-ranking members of the KLA and occupied other influential positions, continue to exercise significant influence.")

C. ALLEGED VIOLATIONS AND RISKS PRESENTED

1. Interference with SPO Witnesses

33. The Panel now turns to the alleged facts and circumstances recently disclosed by the SPO. The SPO identifies three SPO witnesses that were contacted or approached by individuals who attempted to compel these witnesses to withdraw or modify their testimony in a manner favourable to the Three Accused.⁷³ In each case, the witness was approached within a few months of their identities being disclosed to the Three Accused.⁷⁴ In each case, the individual(s) approaching the witness alleged that they are acting on behalf of one or more of the Three Accused,⁷⁵ or on behalf of someone linked to the Three Accused.⁷⁶ In each case, however, the individual(s) who made the approach have not been shown to have visited any of the Three Accused during the time when the relevant witness information was disclosed to the Accused and when the attempted intervention occurred.⁷⁷

34. The Panel has not determined that any of these attempts at interfering with SPO witnesses can be attributed to any of the Accused, acting jointly or individually. The Panel notes, however, that the information regarding the identity of SPO witnesses and the order in which they are being called is only accessible to a limited number of people involved in these proceedings. The Panel further notes that such attempts present a major challenge to the integrity of these proceedings, which the Panel will not tolerate.

⁷³ Request, paras 8-20.

⁷⁴ Request, paras 8, 13, 15.

⁷⁵ See Request paras 8 (allegedly instructed by Mr Thaçi and Mr Veseli), 13 (seeking to compel the witness to withdraw testimony against Mr Selimi, in particular).

⁷⁶ Request, 8, 9, 13, 15.

⁷⁷ Request, paras 10, 14, 16.

2. Disclosure of Protected and Confidential Witness Information by the Three Accused

35. The SPO has provided the Panel with transcripts of communications between Mr Thaçi,⁷⁸ Mr Selimi,⁷⁹ Mr Veseli⁸⁰ and their respective visitors during non-privileged visits at the Detention Facilities. In the pertinent parts of each transcript, it appears that the Accused disclosed to their visitor(s) confidential information received in the context of the proceedings or elicited during testimony of protected witnesses.⁸¹

36. The Panel reiterates that the Accused are prohibited from disclosing or discussing with anyone other than their counsel and Defence team members information subject to protective measures, in particular the names and details of SPO witnesses, confidential information and/or the content of evidence given in private or closed session.⁸² This includes information which, directly or indirectly, could identify witnesses subject to protective measures. Such disclosure to unauthorised third parties could constitute grounds for an offence under the applicable legal regime.⁸³

37. Without making findings regarding whether the conduct reflected in the transcripts constitutes an offense on the part of any of the Accused, the Panel notes that the foregoing illustrates a substantial risk that, without adequate measures being put in place, the Three Accused will impermissibly disclose privileged information to unauthorised third parties.

⁷⁸ F01933/A04, Specialist Prosecutor, *Annex 4 to Prosecution Urgent Request for Modification of Detention Conditions ("Annex 4 to the Request")*, 17 November 2023, confidential, pp. 183-186.

⁷⁹ Annex 4 to the Request, p. 172.

⁸⁰ Annex 4 to the Request, pp. 240-242.

⁸¹ See Annex 4 to the Request, pp. 172, 183-186, 240-242; see also F01948, Specialist Prosecutor, *Prosecution Clarification Relating to F01933*, 23 November 2023, confidential.

⁸² Framework Decision on Handling Confidential Information, paras 212(I)(a), (e), (f).

⁸³ See Rule 82(6) of the Rules; Article 15 of the Law.

3. Instructions Issued by Mr Thaçi

38. The SPO has submitted three transcripts memorialising communications between Mr Thaçi and non-privileged visitors in which the upcoming testimony of specific witnesses is discussed.⁸⁴ The identity of the concerned witness was protected at the time and Mr Thaçi was not authorised to share that information with unauthorised third parties. In each transcript, it appears that Mr Thaçi is providing his visitor with instructions to pass on to the witness regarding the form and content of the witness's upcoming testimony.⁸⁵ In some sections of the transcript it appears as though Mr Thaçi is showing his visitors a statement previously made by an upcoming witness whose identity is confidential.⁸⁶ Other portions of a transcript make clear that one of Mr Thaçi's visitors who is receiving instructions has previously visited with witnesses prior to their testimony.⁸⁷

39. The Panel has not determined whether the conduct described above involved the commission of an offence on the part of Mr Thaçi. The Panel has determined, however, that the actions described above are indicative of a substantial risk that, without adequate measures being put in place, Mr Thaçi may engage in prohibited conduct which could endanger the security of witnesses and/or the integrity of proceedings.

4. Individual and Collective Nature of Underlying Conduct

40. In assessing the need for, and proportionality of, the requested measures, the Panel has considered the individual circumstances and actions of each of the Accused concerned. At the same time, the Panel has accounted for the fact that the combined effect of their actions has increased the risks associated with the

⁸⁴ Annex 4 to Request, pp. 43-44, 50-53, 218-222, 287-288, 298-299, 354-355.

⁸⁵ Annex 4 to Request, pp. 43-44, 50-53, 218-222, 287-288, 298-299, 354-355.

⁸⁶ Annex 4 to Request, 287-288, 298-299, 354-355. *See also* Request, para. 34.

⁸⁷ Annex 4 to Request, pp. 266-273. *See also* Request, para. 35.

impermissible disclosure of protected information and thus created a multiplicity of paths that could result in third parties interfering with these proceedings.

5. Conclusion

41. Based upon the foregoing, the Panel finds that the SPO has established that the current conditions of detention are insufficient to mitigate the risk of the Three Accused engaging in conduct that could interfere with the proceedings and/or present a risk to the safety and security of witnesses.

42. Thus, the Panel will assess the SPO's requested measures in light of the factors and circumstances outlined above but also in light of the fundamental rights of the Accused⁸⁸ and the need to ensure the protection of victims and witnesses and the integrity of the proceedings. In carrying out this assessment, the Panel will consider the regime of detention as a whole, the necessity of proposed measures, their proportionality, as well as the cumulative effect of those measures upon the rights of the Accused.

D. SEGREGATION OF THE THREE ACCUSED FROM OTHER DETAINEES

43. The SPO suggests that segregating the Three Accused from all other current detainees in the Detention Facilities is necessary to address the risks discussed above.⁸⁹ The Panel notes that the segregation of an accused is not in itself contrary to Article 3 of the ECHR,⁹⁰ and it is a measure recognised in the Specialist Chambers' legal regime

⁸⁸ See European Convention on Human Rights ("ECHR") Arts. 3, 8; the United Nations Standard Minimum Rules for the Treatment of Prisoners (UN Doc. A/Res/70/175); Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules (adopted by the Committee of Ministers on 11 January 2006, revised and amended on 1 July 2020).

⁸⁹ Request, para. 2(h).

⁹⁰ European Court of Human Rights ("ECtHR"), *A.T. v. Estonia* (No. 2), no. 70465/14, [Judgment](#), ("A.T. v. Estonia (No. 2)"), 13 November 2018, para. 72; *Öcalan v. Turkey* (No. 2), nos. 24069/03, 197/04, 6201/06

as available to ensure the integrity of the proceedings against the accused.⁹¹ Nevertheless, such a measure must be necessary to ensure a legitimate purpose – such as security, discipline or other protective reasons.⁹²

44. The Panel finds that, while segregating the Three Accused would ensure that they could not utilise fellow detainees as intermediaries to propagate confidential information, additional factors must be considered. In particular, the Panel notes that there is, thus far, no indication that any of the Three Accused sought to use another detainee to interfere with the proceedings or disclose confidential information. There is also no indication of any fellow detainee being prepared to engage in such conduct on their behalf. Secondly, such measures would have a severe eroding effect upon the rights of the Three Accused. Lastly, the Panel considers that the legitimate aim pursued can be achieved by measures that are less invasive of the rights of those concerned and that should therefore be preferred to segregation. At this stage, the Panel is therefore not convinced that measures of segregation would be necessary and/or proportionate based on the information presently before the Panel.

E. RESTRICTIONS ON THE THREE ACCUSED'S VISITATIONS AND TELEPHONE COMMUNICATIONS

45. Measures of control of a detainee's contacts with the outside world are not *per se* incompatible with Article 8 of the ECHR.⁹³ In this regard, the Panel notes that, pursuant to Article 8 of the ECHR, an interference with a detainee's right to private

and 10464/07, [Judgment](#) ("*Öcalan v. Turkey (No. 2)*"), 18 March 2014, para. 104; *Rohde v. Denmark*, no. 69332/01, [Judgment](#) ("*Rohde v. Denmark*"), 21 July 2005, para. 93.

⁹¹ Practice Direction on Rules of Detention, Rule 43(3)(c).

⁹² ECtHR, *Ramirez Sanchez v. France* [GC], no. 59450/00, [Judgment](#) ("*Ramirez Sanchez v. France*"), 4 July 2006, para. 123; *Öcalan v. Turkey (No. 2)*, para. 107; *Babar Ahmad and Others v. the United Kingdom*, no. 24027/07 and 4 others, [Judgment](#) ("*Babar Ahmad and Others v. the United Kingdom*"), 10 April 2012, para. 208.

⁹³ ECtHR, *Khoroshenko v. Russia* [GC], no. 41418/04, [Judgment](#) ("*Khoroshenko v. Russia*"), 30 June 2015, para. 123; *Piechowicz v. Poland*, no. 20071/07, [Judgment](#) ("*Piechowicz v. Poland*"), 17 April 2012, para. 212.

and family life, home and correspondence may be justified if it is “in accordance with the law”, it pursues one or more of the legitimate aims listed in Article 8(2) of the ECHR and is necessary and proportionate under the circumstances.⁹⁴ Such measures should also not affect the essence of a person’s fundamental rights.

46. The requirement that any restrictions be “in accordance with the law” means that the measures should have some basis in the applicable law, which should be accessible to the person concerned and foreseeable as to its effects.⁹⁵ As to the requirement of necessity, this implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim(s) pursued.⁹⁶ Having said that, the Panel stresses that, in a detention setting, it is an essential part of a detainee’s right to respect for family life that contact with close relatives be maintained.⁹⁷

47. With regard to the criteria established in Article 8 of the ECHR, the Panel observes that Rules 56(6) and 116(4)(d) of the Rules, together with internal regulations of the Registry,⁹⁸ foresee the possibility to adopt restrictions with regard to the Accused’s contacts.

48. 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

⁹⁴ National security, public safety, economic well-being, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others (Article 8(2) of the ECHR).

⁹⁵ [Khoroshenko v. Russia](#), para. 110.

⁹⁶ ECtHR, [Khoroshenko v. Russia](#), para. 118.

⁹⁷ ECtHR, [Messina v. Italy \(No. 2\)](#), no. 25498/94, [Judgment](#), 28 September 2000, para. 61; [Onoufriou v. Cyprus](#), para. 91; [Horych v. Poland](#), no. 13621/08, [Judgment](#), 17 April 2012, para. 122; [Piechowicz v. Poland](#), para. 212.

⁹⁸ Practice Direction on Visits and Communications, Arts. 6-7, 12-13, 15, 17, 19; Practice Direction on Counsel Visits and Communications, Arts. 14-18.

imposition of necessary and proportionate restrictions on the communications of a detained person.

1. Specific Limitations on Communications and Common Visitors

49. The SPO suggests that all non-privileged communications of the Three Accused be limited to a list of pre-approved family members and consular officials,⁹⁹ and that the Three Accused should have no visitors in common with the other detainees.¹⁰⁰ In the Panel's view, this has the potential to impact would-be visitors randomly and indiscriminately, and these measures are therefore disproportionate.

2. Non-Privileged In-Person Visits

50. The SPO proposes a full denial of all non-privileged in-person visits for the Three Accused.¹⁰¹ The Panel finds that, while this approach would preclude the Three Accused from directly disclosing confidential material in such a context, a complete bar to all non-privileged in-person visits is, in the Panel's view, not proportional at this stage. Such a measure would also create the general presumption of impropriety on the part of any non-privileged visitors. Other measures, more compatible with the rights of the Accused, can be implemented in order to subject non-privileged visits to greater scrutiny that is both compatible with the rights of the Accused and the aim pursued by such measures.

51. First, prior to the Panel's Interim Decision, the discretion to grant or reject a visit would be reviewed and considered by the Chief Detention Officer of the Detention Management Unit ("DMU").¹⁰² The Panel finds that, going forward, all

⁹⁹ Request, para. 2(b).

¹⁰⁰ Request, para. 2(f).

¹⁰¹ Request, para. 2(d).

¹⁰² Practice Direction on Visits and Communications, Art. 12(1).

non-privileged in-person visits for the Three Accused shall be subject to prior approval by the Registrar so that all relevant considerations – legal; practical; security – can be factored in the decision whether to authorise a given visit. It goes without saying that the Chief Detention Officer of the DMU shall be consulted before any such decision. Where necessary, the Registrar should consult with the SPO to determine whether there are indications that a given individual has engaged or could engage in conduct incompatible with his/her request for a non-privileged visit to one of the Accused.

52. The Panel finds 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 regulation of the DMU. The powers of the Registrar and the Chief Detention Officer to deny a visit are provided in Articles 7 and 12 of the Practice Direction on Visits and Communications. In addition, the Panel directs the Registrar to refuse in-person visits where, in the exercise of her discretion, she determines that there are credible indications that the individual concerned has engaged or could engage in conduct incompatible with the integrity of proceedings and/or the regulations of detention.

53. A decision to refuse a visit can be challenged before the Panel by the Accused concerned within seven days of being notified by the Registrar of the refusal. A request for judicial review of such a decision shall comply with Article 9(2)-(6) of the Registry Practice Direction on Detention: Complaints (KSC-BD-11-Rev1).

3. Conditions of Visitation

54. The SPO has identified circumstances of visitations in the Detention Facilities of concern, including: (i) music being played inside the visitation room;¹⁰³ (ii) non-scheduled detainees entering the visitation room;¹⁰⁴ (iii) non-scheduled detainees participating in portions of visits;¹⁰⁵ and (iv) detainees entering the visitation area with transcripts of protected materials.¹⁰⁶

55. The Panel orders that the Registry ensure that the following: (i) the Three Accused should not meet with more than one visitor at any one time (with the exception of visits by spouses/partners and children who could conduct visits jointly but without any other visitor present); (ii) the visitation area shall be devoid of music or other loud noises that may impair hearing communications; (iii) the only detainee that a visitor comes into contact with is the detainee that the visitor has been authorised to visit; detainees shall not join visits of other detainees; (iv) detainees shall not have a non-privileged in-person visitor at the same time as another detainee or within such temporal proximity that visitors may have an opportunity to interact with each other or with other detainees; (v) detainees shall not enter the visitation area with documents or materials of a privileged or confidential nature pertaining to a case before the Specialist Chambers; (vi) all detainees and visitors shall communicate audibly, and are not permitted to conceal any part of a conversation through whispering or using coded language;¹⁰⁷ (vii) if any of these provisions or other visitation rules are violated, the Registrar and those acting on her behalf are authorised to terminate the visit immediately. Where a visitation is prematurely terminated in such a way,

¹⁰³ Request, para. 19.

¹⁰⁴ Request, para. 19.

¹⁰⁵ Request, para. 19.

¹⁰⁶ Request, para. 34.

¹⁰⁷ See Practice Direction on Visits and Communications, Art. 15(1) (requiring that all visits must be made within hearing of detention officers).

the Registry shall immediately notify the Panel, and provide the Panel within five days with a report of the incident.

4. Consular Visits

56. The Panel notes that consular visits are non-privileged.¹⁰⁸ Currently, Article 20(2)(a) of the Practice Direction on Visits and Communications notes that consular visits shall be conducted within sight, but not within hearing of detention officers. Given that consular visits are not privileged and considering the risk to the integrity of proceedings outlined above, the Panel orders that consular visits to any of the Three Accused shall be subject to the same requirements as other non-privileged visits, i.e., that they shall be within sight and hearing of the Detention Officers. Consular visits to any of the Three Accused shall last no longer than 45 minutes.

5. Active Monitoring

57. The Panel finds that active monitoring of all non-privileged in-person meetings (excluding consular visits with proper authorisation)¹⁰⁹ between the Three Accused and their visitors is necessary to address the concerns raised by the SPO and acknowledged by the Panel. In order for this measure to be effective, these visits must be monitored by an Albanian speaker. The Panel is cognisant of the fact that such monitoring requires additional time and resources from the Registry and the DMU.¹¹⁰ In order to ensure the effective monitoring of such visits, the Panel limits the number of authorised non-privileged in-person visits to five

¹⁰⁸ See Rule 111 (failing to identify consular communications as being privileged); Practice Direction on Visits and Communications, Art. 20(2).

¹⁰⁹ See Practice Direction on Visits and Communications, Art. 20.

¹¹⁰ See Registry Submissions, para. 40.

such visits per month, not including consular and private visits.¹¹¹ Private visits in this context are those visits by the Accused's spouse and/or children. The Registry shall have the discretion to further limit the number of these visits or to limit the time for any such visit in order to guarantee the effective monitoring of those visits. Where such restrictions are decided by the Registrar, it shall immediately inform the Panel of its Decision.

6. Logs of Non-Privileged in-Person Visits

58. As contemplated in the relevant regulations,¹¹² the Chief Detention Officer is to keep a log of all non-privileged in-person visits, including the name of the visitor, the name of the detainee, the visitor's contact information and address, the date, time and duration of the visit, and any other information the Chief Detention Officer deems relevant.¹¹³ The Registrar is to make a weekly review of these logs in order to determine, after consultation with the SPO, whether any circumstances exist which might indicate suspicious activity. Where such concerns arise, the Registrar shall immediately notify the Panel.

59. This specific measure (keeping and reviewing the visitor log) shall also apply to Mr Krasniqi's visits. As noted above, this is not intended to suggest any impropriety on Mr Krasniqi's part but seeks to ensure that measures ordered in respect of the Three Accused can be effectively implemented by the Registrar under the Panel's supervision. The Panel is satisfied that this measure is compatible with the effective protection of Mr Krasniqi's rights and is necessary and proportionate in the present circumstances.

¹¹¹ Note: Consular visits shall not count against this five-visit limit.

¹¹² See Practice Direction on Visits and Communications, Art. 10(4)

¹¹³ Practice Direction on Visits and Communications, Art. 16(4).

7. Visits by Defence Team Members Other Than Counsel or Co-Counsel

60. The Panel recalls that only named counsel and co-counsel are entitled to privileged visits.¹¹⁴ Visits by other defence team members, when not accompanied by counsel or co-counsel, are not privileged¹¹⁵ and are subject to the restrictions outlined above, including Registry approval.

61. The additional measures sought by the SPO with regard to limitations on visits with members of the Defence Team are disproportionate to the risk involved. The Panel does not have before it information that would justify such measures.¹¹⁶ The Panel notes, furthermore, that such measures, if granted, could have a detrimental effect on the ability of the Defence to prepare. The Panel, therefore, declines to adopt at this stage the other measures sought by the SPO in relation to visits by Defence Team members.

8. Video and Telephone Visits and Communications

62. Video and telephone visits and communications with the Three Accused shall require prior approval by the Registrar for the reasons articulated in the foregoing section.¹¹⁷ In this regard, the Registrar is directed to limit telephone contacts of the Three Accused to individuals approved by the Registrar.¹¹⁸ In particular, prior to authorising calls, the Registrar is directed to ensure that the would-be interlocutor has not engaged in conduct incompatible with the integrity of the proceedings or the protection of confidential information. Where necessary, the Registrar should consult with the SPO regarding this matter. Where the Registrar refuses to

¹¹⁴ See Practice Direction on Counsel Visits and Communications, Art. 6(5).

¹¹⁵ See Practice Direction on Counsel Visits and Communications, Art. 9(4), (5).

¹¹⁶ See Request, para. 47.

¹¹⁷ See *above*, para. 51.

¹¹⁸ See Registry Submissions, para. 24. The Panel notes that individuals other than “immediate family members and consular officials”, as proposed by the Registrar, may have telephone contact with the Three Accused, subject to the approval of the Registrar.

authorise calls to a given individuals it shall immediately inform the Panel of her decision.

63. For video visits, in addition to the above, the DMU must require a valid form of identification at the start of the visit.¹¹⁹ The Registrar shall apply the same methods and oversight referenced above in the context of grounds to refuse in-person visits to her review of requests for video and telephone visits and communications.¹²⁰

64. Those authorised to have telephone or video communications with one of the Three Accused shall be notified that: (a) they are not authorised to discuss confidential or protected information with the Accused and could expose themselves to legal consequences if they do; (b) they are not authorised to speak in coded language and that the communication could be terminated if they do; (c) they are not authorised to record the conversation or to give access to the communication to any third party.

65. The Panel also notes that the default policy regarding monitoring of telephone communications in the Detention Facilities is that the Chief Detention Officer may listen to up to ten (10) percent of the number of telephone conversations digitally recorded each week, which shall be randomly selected.¹²¹ The SPO seeks to have all communications of the Three Accused actively monitored by an Albanian language speaker.¹²² In the Panel's view, such a measure at this point is not proportional to the risk. The Panel notes in that context that there is no indication before the Panel at this point that video or audio communications have been utilised in a manner incompatible with the integrity of the proceedings. Additionally, general active monitoring would place a heavy burden on Registry

¹¹⁹ See Registry Submissions, para. 26.

¹²⁰ See *above*, paras 51-53.

¹²¹ Practice Direction on Visits and Communications, Art. 17(3).

¹²² Request, para. 2(c)(i)-(iii).

and DMU resources not warranted by the information presently before the Panel.¹²³

66. The Panel therefore orders the Registry to engage in active monitoring (of which the Accused shall be notified) of both video and audio visits and communications when the Registrar, in the exercise of her discretion, or under the guidance of the Panel when needed, 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 measures ordered in the present decision.¹²⁴ As indicated above, the Registry shall liaise, where necessary, with the SPO in order to identify visitors whose communications with the Accused should be monitored.

67. Additional conditions for video and audio visits and communications with regard to third parties include: (i) no unannounced individual shall participate in the call; (ii) no person will be permitted to passively listen to the call or to otherwise receive or obtain the content of the call aurally or textually¹²⁵ other than the announced individual; (iii) use of speaker-phone or similar functions is prohibited; (iv) use of coded language is prohibited; and (v) the detainee as well as anyone communicating with the detainee is prohibited from making audio or video recordings of visits and communications. In the exercise of her discretion and to guarantee the effective monitoring of such communications, the Registrar can in her discretion limit the number of calls/videos and/or their duration. Any such decision shall be immediately brought to the attention of the Panel.

¹²³ See Registry Submissions, paras 39(a), 43(a).

¹²⁴ The Panel notes that, for the Three Accused, this order modifies the limitation placed on the Chief Detention Officer, who may only listen to 10% of randomly selected digitally recorded conversations pursuant to Article 17(3) of the Practice Direction on Visits and Communications.

¹²⁵ For example, text telephone (TTY), telephone devices for the deaf (TDD), voice carry-over (VCO) and hearing carry-over (HCO) services.

68. The Panel orders the Registrar to provide monitoring personnel with the necessary instructions and authority to terminate communications that fail to comply with relevant regulations or the present Decision. As already ordered, where non-privileged communication is interrupted on that basis, the Registrar is to notify the Panel immediately and prepare a report on the matter which it shall provide to the Panel within five days.

69. The Accused concerned shall have the right to seek judicial review of a decision of the Registrar limiting its communications to third parties within seven days of being notified by the Registrar of the refusal. A request for judicial review of such a decision shall comply with Article 9(2)-(6) of the Registry Practice Direction on Detention: Complaints (KSC-BD-11-Rev1).

9. Logs and Recordings of Video and Audio Visits and Communications

70. As contemplated in the internal rules,¹²⁶ the Chief Detention Officer is to keep a log of all video and telephone calls sent or received, including the name of the detainee, the name of the visitor, their telephone number, the date, time and duration of the call, and any other information the Chief Detention Officer deems relevant.¹²⁷ The Registrar is to make a weekly review of these logs in order to determine, where necessary after consultation with the SPO, whether active review of any of the recordings should be conducted.

71. This measure shall also apply to the communications of Mr Krasniqi. As noted above, this is intended to ensure that measures ordered in relation to the Three Accused can be effectively implemented by the Registrar under the supervision of the Panel. The Panel is satisfied that such a measure is compatible

¹²⁶ See Practice Direction on Visits and Communications, Art. 16(4).

¹²⁷ Practice Direction on Visits and Communications, Art. 16(4).

with the effective protection of the Mr Krasniqi's rights and is necessary and proportionate in the present circumstances.

72. The SPO asks that the recordings of visits and communications originating from or received by the Three Accused be maintained until the end of the proceedings.¹²⁸ The Panel finds this measure necessary and proportional in the circumstances.¹²⁹

F. WRITTEN CORRESPONDENCE

73. Based on information presently before the Panel, the Panel sees no justification to prohibit or restrict this form of communication with regard to the Three Accused. Consistent with relevant regulations, such communication is subject to passive monitoring. Furthermore, the Panel orders that the Registry systematically copy and maintain copies of all written correspondence of the Three Accused until the end of proceedings in this case.

74. When considered necessary to ensure the effective implementation of the present Decision, the Registrar or the Chief Detention Officer acting on the Registrar's behalf may also impose reasonable limits on the number of written correspondence which the Accused shall be permitted to send. Where the Registrar has credible indications that such correspondence might be used for purposes contrary to the detention regulations and/or the present Decision, the Registrar is authorised to review the content of relevant correspondence. The Registrar shall immediately inform the Panel of such action.

75. The Three Accused are also reminded that such correspondence cannot be used to communicate confidential information and/or information that could

¹²⁸ Request, para. 2(c)(i), (ii).

¹²⁹ The Panel notes that this is an extension of the 8-month period reflected in Article 17(2) of the Practice Direction on Visits and Communications, which also specifically authorises the Registrar to lengthen this period.

identify a protected witness to unauthorised third parties. Such correspondence shall not contain coded language. The use of such language would be grounds for the Registrar to exercise her discretion not to authorise the communication of such correspondence to its intended recipient.

76. Other than in respect of the general prohibition to communication confidential information, this provision shall not apply to correspondence clearly marked as originating from or being sent to the ICRC, the Ombudsperson, the Registrar or a staff member acting on his or her behalf, a Judge or Panel of the Specialist Chambers or staff members acting on their behalf, any other judicial authority recognised by the Registrar.¹³⁰ Communications with the Accused's lead counsel and co-counsel are also unaffected by the present Decision.

G. REGISTRY REPORTING OBLIGATIONS

77. Consistent with the requirements of necessity and proportionality, the measures hereby ordered should only be maintained for as long as they serve a legitimate aim and continue to be necessary and proportionate. The Panel will review the conditions of detention referenced herein either *proprio motu* every six months and/or upon a grounded request by an Accused subject to those measures.

78. In order for the Panel to be apprised of circumstances related to these matters, it places the following reporting obligations upon the Registrar. The Registrar shall submit a report to the Panel every two months, which will include, at a minimum, the following information:

- (a) The percentage of recorded calls actively monitored (per accused);
- (b) Any incident where non-privileged communication was terminated;
- (c) Any refusal by the Registrar to allow a non-privileged visit or call;

¹³⁰ See Practice Direction on Visits and Communications, Art. 19(5), (6).

- (d) Number of granted non-privileged in-person visits, video calls and audio calls initiated or received by the Three Accused;
- (e) Any incident of non-compliance with the Detention Regulations and/or Panel's Decision during unprivileged contacts;
- (f) Any suspicious communication identified during review of recorded communications;
- (g) Any other event, occurrence or circumstance relevant to ensuring that the Panel is able to guarantee the integrity of proceedings, to protect witnesses and/or prevent the dissemination of confidential information;
- (h) Information on the expenditure of Registrar resources regarding the detention conditions ordered herein and updates on the Registrar's capacity to continue the implementation of these conditions; and
- (i) Whether there are new or other circumstances that should affect the effectiveness and/or necessity of any of the ordered measure(s).

H. AFFIRMATION OF RIGHTS THAT REMAIN UNAFFECTED

79. The Panel notes that this Decision has no effect on the rights of representatives of the ICRC, the Ombudsperson, the Registrar, Specialist Chambers' Judges or any staff members acting on behalf these organisations and individuals.

80. The Panel has also declined, at this stage, to adopt any restrictive measures in respect of private visits. This is the result of both the importance of such visits to the Accused¹³¹ and the fact that there is no indication of these visits having been used to engage in improper conduct thus far. The Panel wishes to make it very

¹³¹ See e.g. ECHR, Art. 8.

clear, however, that it will not hesitate to impose additional restrictions¹³² upon private visits should any party engage in improper conduct during such visits.

81. The Panel also finds that no basis exists to restrict Defence Team members' access to the Secure Electronic Data Sharing system ("SEDS").¹³³ There is no indication of improper conduct by member of the Defence Team or of abuse of the SEDS system. Further, SEDS is a useful and important preparatory tool and limitations upon it could unnecessarily slow down and impede Defence preparations.

I. OTHER MEASURES

82. With regard to any other measures sought by the SPO that are not specifically addressed above, the Panel finds them to be unjustified and/or disproportionate at this time.¹³⁴ The SPO and the Registry shall continue to monitor the circumstances in the implementation of their respective responsibilities. Should new circumstances warrant an amendment of the measures currently in place, they shall bring those to the attention of the Panel in the manner provided for by the Law and the Rules.

V. CLASSIFICATION

83. The Panel notes that the Responses of each Accused and the Registry's Submissions were filed confidentially. The Panel notes that the SPO, the Selimi Defence, and the Veseli Defence have filed public redacted versions of their respective filings.¹³⁵ The Panel therefore orders the Thaçi Defence, the Krasniqi Defence, and the Registry to submit a public redacted version of their respective

¹³² See Practice Direction on Visits and Communications, Art. 24.

¹³³ See Registry Submissions, para. 50.

¹³⁴ See *e.g.* Request, para 50 (seeking that periodic Registry reports be issued to the Parties).

¹³⁵ See *above*, fns. 6, 15, 16.

filings or a request for their former filing to be reclassified as public by no later than Wednesday, 6 December 2023.

VI. DISPOSITION

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

- (a) **SUPERSEDES** the interim measures ordered in the Panel's Interim Decision, effective as soon as all relevant measures in the present Decision are put in place.
- (b) **GRANTS IN PART** the SPO's Request to the extent specified in paragraphs 51-53, 55-60, and 62-78 of the present decision;
- (c) **ORDERS** the Registrar to take measures and to implement the modifications to conditions of detention as reflected in paragraphs 51-53, 55-60, and 62-78 immediately, and to notify the Panel when this has been accomplished.
- (d) **ORDERS** the Registrar to submit a consolidated report to the Panel in accordance with the terms set out in paragraph 78 of the present decision every two months (the first report being due on 1 February 2024), or at any time earlier, should the Registrar deem it necessary;
- (e) **REMINDS** the Accused of their obligation not to divulge to unauthorised third parties or to propagate any confidential information and/or information that could lead to the identification of protected witnesses;
- (f) **REJECTS** the remainder of the SPO's Request.
- (g) **ORDERS** the Thaçi Defence, the Krasniqi Defence, and the Registry to submit public redacted versions of their respective filings or a request for their former filing to be reclassified as public by Wednesday,

6 December 2023.

A handwritten signature in black ink that reads "Charles L. Smith, III". The signature is written in a cursive style with a horizontal line at the end.

Judge Charles L. Smith, III
Presiding Judge

Dated this Friday, 1 December 2023

At The Hague, the Netherlands.