



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-06
Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: **Trial Panel II**
Judge Charles L. Smith III, Presiding Judge
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve

Registrar: Dr Fidelma Donlon

Filed by: Dr Fidelma Donlon

Date: 18 November 2023

Language: English

Classification: Public

**Public Redacted Version of “Report on the Implementation of Trial Panel II’s
Decision (F01936)”, filing F01937**

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I. BACKGROUND

1. On 17 November 2023, the Specialist Prosecutor's Office filed an urgent request ('Request')¹ before Trial Panel II (the 'Panel') for the modification of the detention conditions of Mr Hashim Thaçi, Mr Kadri Veseli and Mr Rexhep Selimi (the 'Three Accused'), including a request for the immediate suspension of all non-privileged communications of the Three Accused on an interim, urgent basis.²

2. On the same day, the Panel issued a Decision on the Request ('Decision').³ In the Decision, the Panel ordered the Registrar to temporarily restrict the contacts of the Three Accused until the Panel's final determination of the merits of the Request. Specifically, the Panel decided as follows:

"The Panel prohibits any visit to any of the Three Accused by non-privileged individuals until the Panel has decided upon the merits of the SPO's application. Any request for communication with a non-privileged person during that period shall be subject to prior authorisation by the Registrar. Any such communication, where authorised by the Registrar, shall be actively monitored and the Panel authorises the Registry to stop any such communication at any point in time where grounds exist to justify such a measure."⁴

3. The Panel also stressed that the restrictions in the Decision "do not apply to privileged contacts with Specialist Counsel and Co-Counsel as set out in Rule 111" of the Rules.⁵ Likewise, the Panel noted that "special visits within the meaning of Section 5(1)(d) of the Instruction on Video Visits and Article 23(1) of the [Practice Direction] on Visits and Communications shall remain unaffected."⁶

¹ KSC-BC-2020-06, F01933, Specialist Prosecutor, Prosecution Urgent Request for Modification of Detention Conditions, 17 November 2023, confidential, with Annexes 1-5, confidential.

² *Id.*, para. 2(a).

³ F01936, Trial Panel II, Decision on Prosecution Urgent Request for Modification of Detention Conditions, 17 November 2023, confidential ('Decision').

⁴ *Id.*, para. 5.

⁵ *Id.*, para. 6. *See also* Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

⁶ Decision, para. 6.

II. REPORT ON IMPLEMENTATION

4. “To ensure the effectiveness of the measures imposed,” the Panel ordered the Registrar “to bring to the immediate attention of the Panel and Parties any (suspected or attempted) violation of the Panel’s order, any irregularities or any difficulties in the execution of the Panel’s order.”⁷

5. Pursuant to the Panel’s Decision and Rule 23(2) of the Rules, the Registrar hereby reports to the Panel on the implementation of the Decision in the Detention Facilities of the Specialist Chambers.

6. **Visits.** In line with the Panel’s Decision, all visits with non-privileged individuals scheduled with the Three Accused were cancelled, including video visits. This applies to visits that were due to occur on [REDACTED] November 2023 and visits going forward until the Panel has decided upon the merits of the Request.

7. **Telephone Calls.** In terms of telephone calls, at [REDACTED] on [REDACTED] November 2023, the telephone provider in the Detention Facilities [REDACTED] confirmed to the Detention Management Unit (‘DMU’) that the telephone accounts of the Three Accused on the non-privileged telephone line have been blocked. This means that no telephone calls may be made on the non-privileged telephone line without the prior authorisation of the Registrar, in line with the Panel’s Decision. Any such communication that is authorised by the Registrar will be actively monitored (with simultaneous listening), in line with the Panel’s Decision.

8. [REDACTED]. Pursuant to the Practice Direction on Visits and Communications,⁸ all telephone calls on the non-privileged line are passively monitored, which means that they are, among other things, digitally recorded.⁹

⁷ Decision, para. 8.

⁸ See Practice Direction on Visits and Communications, KSC-BD-09-Rev1, 23 September 2020 (‘Practice Direction’), art. 17(1).

⁹ In line with Article 7(3) of the Practice Direction, 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.

9. In line with the Panel's Decision to actively monitor the non-privileged telephone calls of the Three Accused during this interim period, [REDACTED].

10. The Registrar is able to report that [REDACTED].

11. The Registrar also notes that [REDACTED]. [REDACTED].

III. REQUEST FOR CLARIFICATION

12. In terms of the execution of the Panel's Decision, the Registry also seeks clarification on specific aspects of its implementation.

A. Consular contacts

13. The Panel specified in the Decision that "special visits within the meaning of Section 5(1)(d) of the Instruction on Video Visits and Article 23(1) of the [Practice Direction] on Visits and Communications shall remain unaffected."¹⁰

14. The Registrar understands this aspect of the Decision to mean that all visits and communications with the ICRC and Ombudsperson, as well as visits and communications with authorities such as the Registrar and Judges under Article 23(1) of the Practice Direction, are unaffected.¹¹

15. However, the Registrar seeks clarification as to whether consular visits and communications are unaffected or should instead be treated like other non-privileged visits and communications under the Panel's Decision. If consular contacts are treated like other non-privileged visits and communications, this would mean that:

- a. No consular visits would be allowed;
- b. Telephone calls to consular representatives would be subject to prior authorisation by the Registrar and would be actively monitored (with simultaneous listening);¹² and

¹⁰ Decision, para. 6.

¹¹ See Practice Direction, art. 23(1); Registry Instruction on Video Visits, KSC-BD-34-Rev1, 6 September 2021, sect. 4(1)(d).

¹² Pursuant to Article 17(1) and 20(2) of the Practice Direction, telephone calls with consular officials are currently passively monitored the same as other telephone calls on the non-privileged telephone line.

- c. Correspondence (including import/export of items) may also be subject to prior authorisation of the Registrar.¹³

16. Pending clarification on the above, the Registrar will notify the Panel and seek its guidance if any consular contact is requested by the Three Accused.

B. Counsel and Co-Counsel contacts

17. In its Decision, the Panel stressed that the restrictions in the Decision “do not apply to privileged contacts with Specialist Counsel and Co-Counsel as set out in Rule 111” of the Rules.¹⁴

18. The Registrar seeks clarification from the Panel as to whether other members of the Defence Team may accompany Counsel and Co-Counsel during privileged visits with the Three Accused.¹⁵

19. The Registrar also seeks clarification from the Panel as to whether Defence Team members other than Counsel and Co-Counsel are permitted to have continued access to the Secure Electronic Data Sharing system (‘SEDS’).¹⁶

C. Correspondence

20. Pursuant to Article 2 of the Practice Direction on Visits and Communications, a “communication” is defined as any telephone call or correspondence between a Detainee and any other person.

¹³ See *infra*, paras 20-21. Pursuant to Article 20(1)-(2) of the Practice Direction, correspondence with consular officials is currently monitored the same as other non-privileged correspondence.

¹⁴ Decision, para. 6.

¹⁵ See Practice Direction on Counsel Visits and Communications, KSC-BD-10-Rev1, 23 September 2020, arts 6(5), 9(4).

¹⁶ The SEDS system provides Counsel and Detainees with additional means of exchanging materials for the preparation of the Defence. Counsel, Co-Counsel and one other designated Defence Team Member, with the approval of the Chief Detention Officer, can engage in secure electronic data sharing for the purpose of performing their duties. See Registry Instruction on Secure Electronic Data Sharing Between Counsel and Detainees, KSC-BD-39, 4 March 2021, sect. 5(3).

21. In view of the Panel's Decision,¹⁷ the Registrar seeks clarification on whether all non-privileged correspondence with the Three Accused is also subject to the prior authorisation of the Registrar in the same way as telephone calls.¹⁸

IV. CLASSIFICATION

22. Pursuant to Rule 82(4) of the Rules, this submission and is filed as confidential.

Word count: 1378



Dr Fidelma Donlon
Registrar

Saturday, 18 November 2023
At The Hague, the Netherlands

¹⁷ Decision, para. 5.

¹⁸ Pursuant Article 20(1) of the Practice Direction, non-privileged correspondence is opened, inspected, and read within two (2) working days of receipt.